THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-T

IN TRIAL CHAMBER No. 3

Before: Judge O-Gon Kwon, Presiding
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Date: 29 September 2014

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public Redacted Version

DEFENCE FINAL TRIAL BRIEF

The Office of the Prosecutor:
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic hereby files this public redacted version of his Final Trial Brief filed on 29 August 2014.

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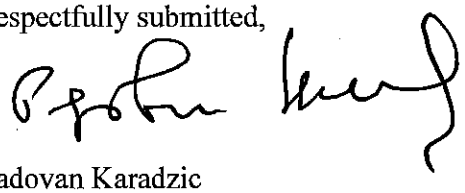
Respectfully submitted,



Radovan Karadzic

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Chapter 1

I. JOINT CRIMINAL ENTERPRISE

Part 1

A. Pre-War Period

1. Historical, legal and constitutional framework within which events in the BiH took place and alleged JCE members operated

a. Creation of Yugoslavia - Bosnian Serbs as Constituent People

1. In order to understand the end of Yugoslavia, it is necessary to understand how that same country came to exist.

2. When the Austro-Hungarian Empire broke up, the Slovenian, Croat and Serb peoples living in the former empire set up the National Council of Slovenes, Croats, and Serbs.[1] Their representatives proclaimed the state of Slovenes, Croats, and Serbs (SCS) on 29 October 1918.[2] Each of the three peoples was constituent and equal in the newly formed state.[3] The word constituency meant statehood,[4] "able to make or change a political constitution."[5] The SCS state then requested the Kingdom of Serbia to unite with it forming the Kingdom of the Serbs, Croats and Slovenes.[6] Therefore, Yugoslavia came into being by virtue of the fact that the state of Slovenes, Croats and Serbs united with Serbia, and they were joined by Montenegro later.[7] The Serbs west of the Drina (that would later be called as Bosnian Serbs) never gave up on their own constituent status in that joint state.[8]

[1] Treanor, T.14102
[2] Treanor, T.14102
[3] Treanor, T.14102, D0244, pp. 80-1 (No. 60)
[4] Treanor, T.14099
[5] Treanor, T.14099; D1259
[6] Treanor, T.14105; D0244, p. 85 (No. 65)
[7] Treanor, T.14108
[8] Treanor, T.14108

3. In the course of the Second World War genocide was committed against the Serbs.[9] After the Second World War the Socialist Federal Republic of Yugoslavia was formed.[10] The decision to create Yugoslavia on federal principles was made in 1943 in Jajce by the Anti-Fascist Council of National Liberation (AVNOJ),[11] a non-democratic body. [12] These AVNOJ republican borders were the main disputed topic during the dissolution of Yugoslavia.[13]

b. 1974 SFRY Constitution

4. Principle 1 of the SFRY 1974 Constitution that was in force in 1990 describes the SFRY as a federation proceeding from the right of every people to self-determination.[14] Alteration of the SFRY frontiers required the consent of all the republics under Article 5 of the Constitution.[15]

c. 1974 Constitution of Croatia - Croat Serbs as Constituent People

5. The Croatian 1974 Constitution that was in force in 1990 referred to the Serbs as a constituent people.[16] When Croatia was seeking independence from SFRY, there was no such consent by one of its constituent peoples, namely the Serbs. The Croatian 1974 Constitution equally guaranteed the right to both Croats and Serbs in Croatia to unite with others, including Serbs living in Serbia. [17] However, the new Croatian constitution adopted in 1990 dropped the reference in Croatia's 1974 Constitution to the Serbs as one of the constituent people of the republic.[18] These changes were made contrary to the wishes of the Serb constituent peoples in Croatia.[19] The new Croatian Constitution of 1990 was something that greatly disturbed Serbs not only in Croatia.[20]

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[9] Donia, T.3200
[10] Donia, T.3197
[11] D0244, p. 110
[12] Donia, T.3198
[13] Donia, T.3197
[14] Treanor, T.14109; D1260, pp. 4-5
[15] D1260, pp.18-9
[16] Treanor, T.14108, T.14113; D1261; Donia, T.3232
[17] D1261, p. 1
[18] P2538, para 27; Treanor, T.14113
[19] Treanor, T. 141134
[20] Treanor, T. 14108-9

d. Constitution of Bosnia and Herzegovina - Bosnian Serbs as Constituent People

6. The Basic principle I of the BiH Constitution that was in force in 1990 stated that the Serbs, Muslims, Croats, and members of other peoples and nationalities formed Bosnia and Herzegovina.[21] Articles 1 and 3 of the BiH Constitution guaranteed that the nations of Bosnia and Herzegovina, Muslims, Serbs and Croats, were sovereign and equal.[22] There can be no doubt that the three peoples that constituted BiH, Muslims, Serbs and Croats were constituent peoples with absolutely equal rights.[23]

7. On 31 July 1990 amendments to the BiH Constitution were adopted. Amendment 60 confirmed that Bosnia and Herzegovina was a state of the equal peoples.[24] Amendment 69 prohibited political organisation and activity directed at forcibly changing the constitutionally-established order and threatening the territorial integrity of both the SFRY and BiH.[25]

e. National Equality Council

8. Amendment 70 established an Assembly Council for ensuring the equality of the nation of Bosnia and Herzegovina.[26] When vital interests of a people were at stake, it took twenty deputies to raise that issue, which then could not be resolved before a recommendation is received from the Council with regard to that specific issue.[27] This system of protection of national equality was successfully put to practice at least twice, on 30 January 1991 and 27 February 1991, when the SDA proposed a Declaration on the Sovereignty and Indivisibility of the Republic of BH in the Assembly, which was prevented by the SDS.[28]

[21] D1262, pp. 1-2
[22] D1262, p. 15
[23] Treanor, T.14116
[24] D1263, p. 1
[25] D1263, p. 1
[26] D1263, p. 3
[27] Treanor, T.14120; D4368, para 16; D3645, para 36
[28] P2538, paras 30, 34; D3645, para 36; P2538, para 34; Treanor, T.14121; Krajišnik, T.43171

f. Referendum on Independence

9. Article 152 of the BiH 1974 Constitution stated, *inter alia*, that the assembly of the socio-political unit may declare a referendum on particular issues *within the competence of the assembly*.[29] Article 26 of the Law on Referendum stipulated that the BiH Assembly may call a referendum on matters from its own purview.[30] Article 5 of the Constitution of SFRY made it clear that the BiH Assembly was not able to decide about the territorial integrity of Yugoslavia.[31] Pursuant to Amendment 62 to BiH Constitution the borders of the Republic may be altered by a decision of the BH Assembly only in accordance with the will of the people of the entire Republic as expressed *by at least two-thirds* of registered voters in a referendum.[32] Therefore, even a minimal change in the administrative borders of Bosnia and Herzegovina within Yugoslavia required a positive response of two-thirds of the entire electorate.[33]

10. Amendment 70, in paragraph 10, stipulated that even if two-thirds of the electorate turned out for the referendum and voted for independence, that decision also had to get a two-third majority of the total number of MPs in the BiH Assembly of Bosnia and Herzegovina.[34] The BH Assembly had 240 deputies in total.[35] 83 deputies, who walked out of the Assembly of Bosnia and Herzegovina and joined the Assembly of the Serbian People, making up more than one-third of deputies in total,[36] and could halt anything that was unconstitutional.[37]

g. Conclusion

11. As could be seen from the preceding paragraphs, in order to complete the process of acquiring independence from SFRY in a constitutional and legal manner, the SDA and HDZ in Bosnia and Croatia had to overcome several obstacles:

[29] D1262, p. 4 (Emphasis added)
[30] Treanor, T.14125
[31] D1260, p. 2
[32] D1265, p. 3 (Emphasis added)
[33] Treanor, T.14127
[34] D1263, p. 3
[35] P0971, p. 23; Krajišnik, T.43170
[36] Treanor, T.14130-31
[37] Krajišnik, T.43170

a) Constitutions of SFRY, Croatia and BiH, as well as amendments to the BiH Constitution, guaranteed sovereignty and equality to all constituent peoples in Yugoslavia, including the Serbs living both in Croatia and BiH;

b) SFRY and BiH Constitutions prohibited political activity directed at forcibly changing the territorial integrities of the SFRY and BiH within SFRY;

c) Without consent of all the republics, there could be no secession from SFRY. Without consent of all constituent peoples in Croatia and BiH, no changes in the status of those two republics within SFRY were possible;

d) The Assembly of Bosnia-Herzegovina was not able to decide about the territorial integrity of Yugoslavia;

e) If at least 20 deputies in the BH Assembly considered that a proposed act violated the equality of nations and nationalities, the draft would go to the Council for an assessment of its equality;

f) Even a minimal change in the administrative borders of Bosnia and Herzegovina within Yugoslavia required a positive response of two-thirds of the BH electorate;

g) Even if two-thirds of the BH electorate turned out for the referendum and voted for independence, that decision also had to get a two-third majority of the total number of MPs in the Assembly of Bosnia and Herzegovina.

12. As we shall see from the chapters to follow, none of these conditions had been met by the SDA and HDZ in Bosnia and Croatia prior to proclaiming their respective independence.

2. Criminal Plans

a. The Prosecution's Manipulation of the Historical Record

13. In paragraphs 10, 12, 13 and 16 of its Pre-Trial Brief, the Prosecution alleges the following in paragraph 10:

> As the paramount leader of the Bosnian Serbs from 1990-1995, [Karadžić] led the formulation and implementation of a criminal plan to create an ethnically-separate entity on large portions of BiH through the forcible removal of hundreds of thousands of Bosnian Muslims and Croats.

14. In this final brief, Dr. Karadžić provides unambiguous and overwhelming evidence that the Prosecution turned the truth upside down. A genuine indictment should have read as follows:

> As the paramount leader of Croats (Muslims) from 1990-1995, Tudjman (Izetbegović) led the formulation and implementation of a criminal plan to create an ethnic entity on large portions of SFRY.

15. Paragraph 12:

> [Karadžić] pursued a two-pronged approach [...]: engaging in negotiations to secure a common state, while simultaneously preparing the organs, entities and conditions for the forcible ethnic separation and creation of a Serb state carved out from BiH, similar to a process that had started in Croatia.

16. A genuine indictment should have read as follows:

> Tudjman (Izetbegović) pursued a two-pronged approach: engaging in negotiations to deceive the Serbs about finding a political solution for the Yugoslav crisis, while simultaneously preparing the organs, entities and conditions for the forcible ethnics separation and creation of a Croat (Muslim) state carved out from Yugoslavia, similar to a process that had started in Slovenia (Croatia).

17. Paragraph 16:

> Karadžić cited the Croatian Serb effort as an example to the Bosnian Serbs

18. which was explained in paragraph 13 of the Prosecution Pre-Trial Brief as follows:

> Croatian Serbs, guided by Milošević and collaborating with other Serb leaders including Karadžić, earmarked territories considered Serb, created separate Serb institutions to resist Croatian authority, declared autonomy and then independence and forcibly took control of approximately one-third of Croatian territory, killing thousands of Croats and expelling hundreds of thousands from their homes.

19. A genuine indictment should have read as follows:

> Croats (Muslims) earmarked territories considered Croat (Muslim), created separate Croat (Muslim) institutions to resist Yugoslav authority, declared independence and forcibly took control of large part of Yugoslav territory, killing thousands of Serbs and expelling hundreds of thousands from their homes.

3. Croatia

20. In its Pre-Trial Brief, the Prosecution alleges that the Croatian Serbs in collaboration with other Serb leaders including Dr. Karadžić, earmarked territories considered Serb, created separate Serb institutions to resist Croatian authority, declared autonomy and then independence and forcibly took control of approximately one-third of Croatian territory, killing thousands of Croats and expelling hundreds of thousands from their homes, and that the Bosnian Serb leadership later repeated the same strategy in Bosnia.[38] The story of the Bosnian war, therefore, begins in Croatia.

21. At the outset, it must be noted that the Prosecution turned the crisis in Yugoslavia and Croatia on its head. Even Prosecution expert Patrick Treanor agreed that it was the Muslims and Croats who earmarked territories that they wanted to carve out from Yugoslavia, and did everything in their power to carry out the unilateral secession.[39] He testified that Tudjman and Izetbegovic were simultaneously setting up their own respective armies and laying down foundations for seceding from Yugoslavia.[40] Therefore, the actions of the Serbs in Knin should not be regarded in isolation, but rather, they should be put in the context of the developments that were taking place in Zagreb at the same time.[41] And it is an established fact, as Prosecution's expert Donia testified, that Tudjman consciously opted for the war option.[42]

22. In 1990, extremists and groups of Ustasha emigrants legally entered Croatia and became part of state organs.[43] This is not surprising if one bears in mind that President Tuđman publicly stated that he was happy that his wife was neither a Serb nor a Jew.[44] The victory of the HDZ, with its 1989 program calling for a loosening of the Yugoslav

[38] Prosecution Pre-Trial Brief, paras 13-16
[39] Treanor, T.14098
[40] Treanor, T.14096
[41] Treanor, T.14136
[42] Donia, T.3266; *See also* Treanor, T.14134; D3015, para 21
[43] D3015, para 21; D3065, para 19
[44] Donia, T.3234

federation, and its display of the Ustasha symbols was particularly worrisome from the Serbian point of view and compelled them to organize.[45] Resultantly, in February 1990, the SDS had been founded in Croatia.[46] The Serbs in Croatia organized politically only when the changes started by the Croatian authorities on the ground and when there were clear signs that the constitution of Croatia would be changed and the Serbs downgraded in a constitutional sense.[47] Already in May 1990, the HDZ prepared a draft of a projection of its forces, making its goals clear that the independence of Croatia would not be achieved by peaceful means, but by armed clashes and war.[48]

a. Measures of Croat Authorities Against Croat Serbs

23. The measures that the new Croatian authorities took in 1990 against the Serbs in Krajina included: dismissals from public services, the state administration, police, and judiciary;[49] decision to change official insignia at police stations and to display the signs reminding the Serbs of the Ustasha past[50]; attacks on the police stations in Serbian municipalities[51]; [redacted];[52] [redacted];[53] arrests of Serbs[54]; Martin Spegelj, the Croatian minister of defence, illegally armed Croatian paramilitary troops, giving them instructions to kill JNA officers[55]; Spegelj was filmed educating his killers on the ground, training them and telling them how JNA officers should be shot in the stomach, praising himself for having 80.000 Kalashnikovs, which shows the advanced point at which the Croatian Defence forces were preparing for conflict[56]; High-level Croat politicians plotted against Yugoslavia, planning to resolve the problem with Knin by butchering Serbs, killing army officers, women and children in the army barracks, on

[45] P2538, para 11; D3015, para 21; [redacted]
[46] P2538, para 13
[47] D3065, para 49
[48] D3065, para 39
[49] D3015, para 20
[50] D3065, para 47
[51] Treanor, T.14137-8
[52] [redacted]
[53] [redacted]
[54] Treanor, T.14138
[55] Treanor, T.14143
[56] Donia, T.3236-37

the street, in apartments, insulting the President of Serbia Slobodan Milošević by calling him a whore - all of which was evidence of a nasty piece of intent to massacre people.[57]

24. In December, 1990, the Croatian leadership passed a resolution on the dissolution of Yugoslavia and proclaimed a new Constitution dropping the reference to the Serbs as one of the constituent peoples, while the Serbian leadership in Knin adopted a statute of the SAO Krajina defining it as a form of territorial autonomy within the Republic of Croatia.[58] The Serbian leaders in Croatia were not claiming anything that the Belgrade leadership was not willing to concede in Serbia.[59]

25. Lord Carrington noted that the Serbs in Croatia and, indeed, outside Croatia had a very vivid memory of what happened in 1941-42, when Hitler declared Croatia as an independent puppet state, and the horrors that went on there when hundreds of thousands of Serbs were murdered.[60] It was very understandable that when Croatia declared its independence and promulgated a new constitution without any safeguard for the 600.000 Serbs who still lived in Croatia, that the Serbs were very perturbed about this.[61]

26. The Constitutional Court of Yugoslavia addressed illegal measures of the Croatian authorities and annulled them, proclaiming them unconstitutional.[62] When the Serbs in Croatia found out about the Croat illegal arming, they also started organising and arming themselves.[63] Considering that the decision to disarm the Croat paramilitary formations fell through, the Serbian leadership decided to support the Serbs in Croatia.[64]

27. Both Slovenia and Croatia rather happily ignored the decisions of the Constitutional Court of Yugoslavia.[65] One week after the Croat Parliament's resolution on the procedure for the dissolution of the SFRY, the Croat Serbs adopted their own resolution on the separation of SAO Krajina from Croatia and declared that the Serbian people would apply laws of Croatia only insofar as they did not conflict with federal provisions.[66]

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[57] Donia, T.3238-39
[58] P2538, paras 27, 28; Treanor, T.14139; D3015, para 19
[59] P2538, footnote 39; Treanor, T.14140
[60] D0248
[61] D0248
[62] D1266; D1268; P2538, para 54
[63] D3065, para 64
[64] D3065, para 71
[65] Treanor, T.14446
[66] P2538, para 35

b. War Against the JNA and Serbs

28. In order to get independence, Tudjman and his associates refused peaceful settlements because they wanted the JNA and Croatian paramilitaries to engage in an open conflict in order to show to the world that Croatia was being threatened and attacked by the JNA.[67]. The war option chosen by the Croat leadership was also aimed against the Serb civilians and eradication of any form of presence of Serbs in Croatia.[68] Things that happened in Croatia had also an impact on people in Bosnia, including the Serbs of Bosnia.[69]

29. Events in Croatia and Bosnia were indeed very much connected. HDZ Bosnian Croat regional communities consulted with Tudjman in June 1991 deciding to create a sovereign Croatia in its ethnic borders by force, if necessary, and in this regard issued instructions to

> Prepare even better military for clashes with all those forces which will try to stop this inevitable process in the establishment of the free Croatian state.[70]

30. This was a call for a Greater Croatia.

31. The state of the SFRY was unable to prevent these events and the Serbs in Croatia, therefore, had no other choice but to organise in order to protect themselves.[71] In the end, in 1995, the greatest ethnic cleansing after the Second World War took place, with a total of about 400.000 Serbs being expelled from Croatia, in accordance with Tuđman's goal that Serbs did not make up more than 3 or 4 per cent of the population in Croatia.[72]

4. Bosnia

32. The Prosecution alleges that there was a JCE led by Dr. Karadžić that came to existence as a result of the efforts of the Muslim and Croat people in Bosnia and Herzegovina to achieve independence from Yugoslavia[73], aimed at ethnic separation and

[67] D3015, para 22
[68] D3015, para 23
[69] Donia, T.3382; D0263
[70] D0293
[71] D3065, para 85
[72] V. Jovanović, T.34322
[73] OTP Pre-Trial Brief paras 11-16 (Bosnian Serb response to Independent BiH)

determination of the territory that is considered to be Serbian[74], and which would be homogenized through regionalization[75] and then separated from Bosnia and Herzegovina. At the same time, the alleged JCE members worked on the establishment of separate Serbian state and local authorities[76] that were supposed to take over power in municipalities[77] considered as Serbian territory, and through which (including paramilitaries[78]) was planned, and then effected ethnic cleansing. Finally, Dr. Karadžić is alleged to have had supreme power and control over all state and party organs[79] through which he achieved his genocidal[80] and other criminal plans[81]. The truth, however, is very different.

a. The SDA Joint Criminal Enterprise

33. There indeed existed a JCE in Bosnia, but only the one formed by ex-convicts Alija Izetbegović, Hasan and Halid Čengić, Omer Behmen, and their close associates infiltrated in all levels of BH government. Their aim was earmarking territories that they wanted to carve out from Yugoslavia, doing everything in their power to carry out the unilateral secession,[82] setting up own army and laying down foundations for seceding from Yugoslavia,[83] in order to, as we will see, establish a fundamentalist Islamic republic in Bosnia.

34. On 27 March 1990, a group of top Muslims disclosed that they would establish the Party of Democratic Action (SDA),[84] which was officially formed on 26 May 1990.[85] Among them were Alija Izetbegović, Omer Behmen, Hasan Čengić, and others, who became the leadership of the SDA.[86] The core of this group that established the SDA, Izetbegović, Behmen, and Čengić were people who were tried for subversive political

[74] OTP Pre-Trial Brief paras 10, 17, 20-32 (Ethnic separation, the need for ethnically homogeneous territories and genocidal intent)
[75] OTP Pre-Trial Brief para 33
[76] OTP Pre-Trial Brief paras 12, 13, 42, 43
[77] OTP Pre-Trial Brief para 3
[78] OTP Pre-Trial Brief para 2
[79] OTP Pre-Trial Brief paras 55-136
[80] OTP Pre-Trial Brief paras 27-32
[81] OTP Pre-Trial Brief paras 5-9
[82] Treanor, T.14098
[83] Treanor, T.14096
[84] Donia, T.3209
[85] D0246 p. 5; D3981, para 10
[86] Donia, T.3209

activity against the state and nation, and were subsequently convicted and imprisoned in 1983.[87] The idea about SDA, the nucleus of it, was created within the circle of these people doing sentence in prison.[88]

35. In 1970, Izetbegović wrote his Islamic Declaration, which was disseminated through Islamic circles from 1970 to 1980.[89] In the 1980s, Izetbegović started creating the nucleus of an organisation which was supposed to put into practice the Islamic Declaration, because of which he was tried at the Court in Sarajevo.[90] The Islamic Declaration was republished in 1990, it was sold and distributed freely and Izetbegović signed it as its author, thereby confirming his authorship.[91] The Islamic Declaration preached that first and foremost there certainly was the incompatibility of Islam with non-Islamic systems.[92] There could be neither peace nor co-existence between the Islamic religion and non-Islamic social and political institutions.[93] Izetbegović announced an age of unrest and trial, rather than that of peace and security.[94] According to him, there were too many things crying out to be destroyed.[95] A people which was asleep could be awakened only by blows, and whoever wished the Muslim community well would not try to spare it struggle, danger and misfortune.[96] The Islamic movement, Izetbegović thought, should and could start to take over power as soon as it was morally and numerically strong enough to be able to overturn not only the existing non-Islamic government, but also to build up a new Islamic one.[97]

36. In the autumn of 1991 Dr. Karadžić asked Izetbegović to renounce the Islamic Declaration and state publicly that it was not his political and state programme but Izetbegović refused to do so.[98]

37. During Izetbegović's trial in Sarajevo, the Court[99]established that Izetbegović and Behmen sought support to implement the positions set out in the Islamic Declaration[100]

[87] D0245; Donia, T.3209-3210; T.3212; Nielsen, T.16387; Kecmanović, T.39088; D3981, para 19
[88] D0246 pp. 5-6, Donia, T.3214
[89] Okun, T.1578
[90] Okun, T.1578
[91] Okun, T.1626
[92] D0075, p. 29
[93] D0075, p. 29
[94] D0075, p. 46
[95] D0075, p. 46
[96] D0075, p. 46
[97] D0075, p. 55
[98] Okun, T.1606

and to create the necessary conditions to turn Bosnia and Herzegovina into an Islamic Republic with Islamic laws.[101]

38. Hasan Čengić, another member of the SDA JCE and a close associate of Izetbegović, asserted that an Islamic revival began with a religious revival, and was brought to a successful conclusion with a political revolution and the establishment of an Islamic government; that the goal of the Islamic revolution in Bosnia was the creation of a unified Islamic state comprising Bosnia and Herzegovina, Sandžak and Kosovo; that a Jihad should be pursued to its final outcome in order to exterminate the enemy and the infidel, and that Muslims must confront all non-Muslims.[102] At that time, Sandžak and Kosovo were parts of Serbia.[103] Čengić also asserted that

> We should not wait for a challenge or a provocation. Muslims must devise that challenge themselves. They must be the ones who produce the challenge, and the goal will then disclose itself.[104]

39. Muslims, according to Čengić, must be prepared for self-sacrifice to achieve their goals.[105] Izetbegović was among the founders and top officials of the organisation of the Young Muslims,[106] together with Hasan Čengić.[107] The Sarajevo District Court found that there were many similarities, even identical views between the programme and goals of the Young Muslims and the basic premises of the Islamic Declaration.[108]

40. According to Čengić, Muslims should not take infidels as friends; Muslim women should not nurse the children of non-Muslim women; a Muslim cannot receive the blood of, or give blood, to a nonbeliever; Muslims must be superior to all others, and every effort should be made to create an environment in which everyone will be of pure Muslim blood; Muslims must not greet the unfaithful; Muslims must kill the infidel, that

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[99] The Court heard 63 witnesses, out of which 58 were Muslims (D0073, p. 65; Okun did not deny this fact, T.1591)
[100] D0073, p. 7
[101] D0073, p. 10
[102] D0073, p. 14
[103] Okun, T.1584
[104] D0073, p. 14
[105] D0073, p. 15
[106] Donia, T.3210
[107] Mandić, T.4732
[108] D0073, pp. 15, 114

is, all those who are not Muslims.[109] This same person, Hasan Čengić, held the position of the general secretary of the SDA[110] and the Deputy Chief of the ABiH Sector for Logistics.[111]

41. The Sarajevo Court concluded that in Bosnian circumstances, supporting such an ideology meant going back to the positions of fratricidal war and that there was no doubt that such ideology could not come into being in an environment which was ethnically and religiously so mixed that the predominance or total domination of one of the existing national groups was simply unimaginable, unless it were based on terror or even on foreign intervention.[112]

42. As we will see, Izetbegović et al. managed to achieve exactly what the Court feared they were capable of doing: causing the fratricidal war, then organizing the terror against both Serbs and Muslims, and finally provoking the foreign intervention. Izetbegović pursued the same policies and plans before, during and after the war. A report by the US Republican Policy Committee claimed that there was no doubt that Izetbegović was an Islamic fundamentalist with a goal to establish a Muslim state in Bosnia, and that the Serbs and Croats understood this better than anybody,[113] noting that

> major atrocities against civilians in Sarajevo were staged for propaganda purposes by operatives of the Izetbegović government;and suppression of enemies, both non-Muslim and Muslim.[114]

b. SDA Arming, Military Organization and Effecting the JCE Plan

43. According to Prosecution's expert Donia, the formation of the Patriotic League and the Council for National Defence of the SDA was a significant factor in the preparation for and lead-up to war.[115] Already on 27 February 1991, Izetbegović announced in the BH Assembly what his priorities were going to be

[109] D0073, p. 15
[110] D0260; D0360; D0471; D3173
[111] D0074
[112] D0073, p. 115
[113] D0079, p. 1
[114] D0079, p. 3
[115] Donia, T. 3268

> Sovereign and integral Bosnia and Herzegovina, and a peaceful road to it, are not on the same level of significance, in my opinion. For sovereign Bosnia, I would sacrifice peace. For peace in Bosnia, I would not sacrifice sovereign Bosnia[116]

44. Izetbegović did not utter empty words. Also Cengic, one of the Muslim leaders from Foca, said that the Muslims would sacrifice a million people for a sovereign Bosnia.[117] Foča, as explained by another JCE member Halid Čengić, was one of centres for Muslim arming.[118] Halid Čengić was later appointed to the post of assistant commander for the reception, control, and distribution of material resources.[119] Šahinpašić, an SDA deputy from Foča, also procured weapons.[120] More than 160,000 weapons entered Bosnia and Herzegovina illegally and was received by the Muslims.[121] Already on 1 August 1990, the SDA had armed formations.[122]

45. Simultaneously, the SDA engaged in ordinary political life. The three national parties won the 1990 elections[123] and established criteria for the distribution of municipal posts and departments.[124]

46. Immediately following the elections Dr. Karadžić proposed that in order to ease political tensions a non-partisan, expert government, rather than a party government, be formed, but the proposal was not accepted.[125] Pursuant to the inter-party agreement the Ministry of Interior went to the SDA[126] and the minister of defence post went to the HDZ.[127] Most leading positions in the new Government, especially those in the ministries of power, went to the SDA and HDZ.[128] The SDS did not get a single department of power because, unlike the SDA and HDZ, the Serbs were not preparing for war.[129] In addition, there were many obstructions in relation to the implementation of the inter-party

[116] D0256, p. 4; Treanor, 14147; D4077, para 11
[117] D3749, para 12
[118] D0246 p. 6
[119] D0247
[120] D0246 p. 7
[121] D3917, para 4
[122] D0246 p. 7
[123] Donia, T.3301
[124] D0257
[125] Donia, T. 3312; Mandić, T.4710; D3960, para 26; D4368, para 4
[126] This ministry will be discussed separately
[127] Donia, T. 3321; Mandić, T.4713; D4368, para 4
[128] D0356; D3960, para 31; D3854, para 8; D4368, para 4; D3856, para 6
[129] D3960, para 31; D4368, para 4

agreement with regards to appointments of the SDS representatives of the authorities, from the lowest ones in municipalities to the highest levels in the Republic.[130]

47. The situation in the BH media was also disastrous and the Serbian people suffered the greatest damage as a result of the unbalanced editorial policy.[131] What the Muslim leadership did not want to make public at political meetings, was made public through newspaper articles,[132] among which the most Nazi-like was the *Vox* or *Glas*.[133] *Vox* magazine was published by Sahinpasic, who was an associate and a close friend of Izetbegovic, and he was among the top leadership of the SDA.[134] *Vox* described discriminatory measures to be taken against the Serbs in the future Islamic Republic of Bosnia and Herzegovina.[135] Measures included 10 Serbian houses would be destroyed for one destroyed Muslim house, 100 Serbs killed for one dead Muslim, 10-50 Serbs for one wounded Muslim; all the Serbs would have a 12-hour working day with salaries 30% lower than the salaries of the Muslims holding the same job; the Serbs would not be allowed to visit all public institutions without special permits; a good Serb was an alive and obedient Serb, or a dead disobedient Serb.[136]

48. Dr. Karadzic was fully aware of this anti-Serb propaganda

> *Slobodna Bosna*, *Muslimanski Glas* or *Vox*[…]are the papers[…]which have shown us clearly that we cannot live together and that this living together means a fundamentalist attitude towards the infidel, meaning that the Serbian people in BH will be a national minority that will even be treated in the laws and before the courts and the state differently from believers and members of the majority people. These papers have done ten times, a thousand times more to break up BH than all the actions of the Serbian Democratic Party[137]

49. The Government was hardly formed on 30 January 1991,[138] when Izetbegović launched an initiative on 31 January 1991 to adopt a declaration on sovereignty for Bosnia-Herzegovina, [139] which was a step towards the independence of Bosnia-

[130] Krajišnik, T.43161-2; D3198, para 10
[131] D3981, para 20
[132] D3981, para 20
[133] Toholj, T.42995; D3981, para 62
[134] Mandic T.5312
[135] D2768, pp. 2-4
[136] D2768, pp. 2-4
[137] P1353, p. 6
[138] P0971, p. 23
[139] Donia, T.3322

Herzegovina.[140] This first attempt to adopt the declaration on the sovereignty of Bosnia and Herzegovina was hindered by the 20 SDS deputies, who referred the issue for consideration to the Council for national equality.[141]

50. Izetbegović was not giving up on a sovereign Bosnia and on 30 March 1991 stated that the declaration on sovereignty had already been submitted to the BH Assembly and would most probably be adopted, if not with the agreement of the SDS, it would be adopted without it.[142] Izetbegović's remark ran directly counter to what seems to have been agreed at the Assembly session in February 1991, entirely ignoring the agreed procedure.[143] The very next day, on 31 March 1991, the military wing of the SDA, the so-called Patriotic League, was created.[144]

51. As of May 1991, the SDA-HDZ officials in the State Security started the illegal wire-tapping of telephones of the Serb leadership.[145] The telephone of the SDS Deputies' Club, that was mainly used by Dr. Karadžić was tapped.[146] All the reproductions and the written materials were sent to leading officials of the SDA and the HDZ with the assistance of BH MUP Muslim and Croat high-level officials.[147]

52. In June 1991, the SDA founded the Council for the Defence of Muslims, and Izetbegović became the president of that Council.[148] This was the body from which both the Patriotic League and later the Army of Bosnia-Herzegovina would be further formed.[149] Donia and Zepinic testified that this position did not go hand-in-hand with Izetbegović's position as President of the Presidency of Bosnia-Herzegovina.[150] Soon thereafter, the SDA, as a political party, started sending through the joint Bosnian MUP its own members to the MUP of Croatia for training,[151] although at that time in Sarajevo there was a school set up by the MUP that held regular training and education.[152] The

[140] Mandić, T.4753
[141] Treanor, T.14145
[142] D0258, p. 6; Krajišnik, T.43173 and T.43179
[143] Treanor, T.14148
[144] Donia, T.3374; D3854, para 13
[145] D0384, pp. 4-5
[146] D0384, p. 5; D0359; Donia, T.3400; Mandić, T.4725
[147] D0384, p. 5
[148] D0359; Donia, T.3400; Mandić, T.4725
[149] D3996, p. 2
[150] Donia, T.3400; Žepinić, T.33591
[151] D0260; D0261; D3663, para 6; D1517; Nielsen, T.16399-01
[152] Donia, T.3388; Stanišić, T.46597-8; Mandić, T.4734

referral documents were signed by Hasan Čengić,[153] the ex-convict now acting as the SDA secretary, who later became the Deputy Chief of the Sector for Logistics in the ABiH.[154] Čengić was not an employee of the MUP and he did not have the right on behalf of the MUP to invoke any contacts and communications with the MUP of the Republic of Croatia.[155] Dr. Karadžić complained to Koljević about these activities.[156]

53. The SDA attempts to create a Muslim army from the Muslim MUP members was also apparent to lower MUP levels, such as the CSB Banja Luka[157], that on 25 July 1991 complained about this attempts to the Council for the Protection of the Constitutional order.[158] By that time, the JNA Security Service had already intercepted a conversation between Tuđman and Izetbegović in which Tuđman asked Izetbegović to have Bosnia be active and help Slovenian war effort that had already started,[159] and to call on the members of the JNA from BH to obstruct it,[160] which he did in August 1991.[161]

c. Muslim-Serb Historic Agreement and Other Peaceful Efforts

54. Izetbegović was not the only prominent Muslim politician in Bosnia. During the 1990 elections, the majority of Muslim votes was won by Fikret Abdić, whom Izetbegović managed to outmanoeuvre to obtain the post of President of the BH Presidency.[162] Later on, during the war, Izetbegović was at war also against Abdić's Muslims, because, as Abdić thought, Izetbegović was not waging war for territory, but for an Islamic order.[163]

55. There were also other moderate Muslim politicians, like Adil Zulfikarpašić and Muhamed Filipović, original members of the SDA[164], but who - unlike the SDA hardliners - sought to reach an agreement with the Serbs.[165] Zulfikarpašić testified he felt

[153] D0260; D1518 (BCS version)
[154] D0074
[155] Žepinić, T.33617-8
[156] D4284, pp. 1-2
[157] D0362, p. 1
[158] D0361, p. 1
[159] D3065, para 95
[160] D3065, para 95
[161] D3065, para 128; D3996, p. 2
[162] D3645, para 14; D3960, para 30
[163] D3960, para 30
[164] D3981, para 10
[165] Kecmanović, T.39089

that the SDA espoused extremist views and, on one occasion, referred to the SDA as a pro-fascist party.[166]

56. Zulfikarpašić, together with Filipović, concluded a so-called "Historic agreement" with the Serbs, represented by the SDS. The agreement envisaged that Bosnia and Herzegovina would remain legally and politically united, and that it would be a democratically structured federal unit with legal powers in its entire territory, limited only by the federal constitution.[167] Zulfikarpašić, Filipović, Dr. Karadžić, Koljević and others visited mixed Serb-Muslim areas and held rallies dealing with the Muslim-Serb agreement.[168] The agreement itself raised the hopes of Muslims and Serbs that there would be piece.[169]

57. Although Izetbegović seemingly encouraged the agreement, [170] he tricked Zulfikarpasic claiming that it was his private affair. [171] After the conflict between Izetbegović and Zulfikarpašić, the leaders of the MBO were also bugged.[172]

58. The SDA and Izetbegović, whom even Okun described as very disingenuous,[173] continued to organize militarily[174] obstructing Serb officials and leading employees occupying positions in republican state organs.[175] in order to achieve their criminal plans. Lord Owen noted that Izetbegović felt he had to establish Bosnia's independence from Serbia, knowing that this would lead to bloodshed, and that in his Islamic Declaration Izetbegović warned that the Islamic renaissance could not be imagined without people prepared for enormous personal and material sacrifice.[176]

d. Stepping Up of SDA Military Organization and Arming

59. In September 1991, while Izetbegović was misleadingly negotiating with the Serbs, Sefer Halilović left the JNA and applied himself with total commitment to the

[166] Kecmanović, T.39090
[167] D4368, para 10
[168] Donia, T.3421; Vučurević, T.36012-13
[169] Donia, T.3422
[170] Donia, T.3420, T.3480
[171] Krajišnik, T.43177; D3981, paras 33-34; P5881, p. 5; D4538, pp. 2-8
[172] D0384, p. 5
[173] P0784, p. 45; D3065, para 198
[174] D3065, para 127
[175] D4003, p. 2
[176] P0799, p. 41

function of organizing preparations for the defence.[177] He drew up a proposal for organising the Patriotic League for Sarajevo area, organised the regional staff of the Patriotic League and a plan for the defence of the Sarajevo area.[178] Halilović held a meeting with Izetbegović in Hrasnica, where he informed him of what had been done up to then,[179] and upon Iztebegovic's approval,[180] Halilović set about organising the Main Staff of the Patriotic League of the Republic of Bosnia and Herzegovina, as well as nine regional and 98 municipal military staffs of the Patriotic League and a large number of manoeuvre, area and logistic units.[181]

60. However, since the Serbs lived in most of these municipalities,[182] the SDS and Dr. Karadžić knew exactly what was going on.[183] So did the JNA that had very precise information about the organisation of the Patriotic League that even had staffs for territories outside BH, that is, a staff for Kosovo and for Sandžak, which was the territory of Serbia and a part of Montenegro.[184]

61. In Indictment paragraph 14(c) the Prosecution describes Dr. Karadžić's contribution to the alleged JCE as dissemination of propaganda that Bosnian Serbs were in jeopardy of oppression at the hands of Bosnian Muslims and Croats.

62. Was it a propaganda that the Serbs were in jeopardy at the hands of Bosnian Muslims and Croats? Prosecution's expert Donia testified that this vast activity by Halilović and Izetbegović led to fear amongst the Serbs.[185]

63. It was certainly no propaganda that as of September 1991, Senaid Memić purchased, imported and distributed around 5000 automatic rifles and around 1.400.000 bullets for the purposes of and by orders from the SDA leaders in Bosnia and Sandžak.[186] Memić's closest ties in this job were with the Secretary of the SDA Čengić and the entire arming operation was done with the knowledge and approval of SDA leaders Izetbegović, Behmen, and Mahmutčehajić, and leading SDA MUP officials who enabled

[177] D0298, p. 2
[178] D0298, p. 2
[179] D0298, p. 2
[180] D0298, p. 2
[181] D0298, p. 2
[182] Donia, T.3618
[183] Donia, T.3619
[184] D3065, para 117
[185] Donia, T.3622
[186] D3121, p. 1

the transport of weapons through the BH territory, while the transport of weapons across the territory of Croatia was enabled by the Croatian MUP.[187]

64. Weapons were distributed in about 85-86 municipalities throughout BiH.[188] Subsequent purchases took place according to the same or similar scenarios, involving the same participants.[189] Distribution of weapons was ordered by the President of the BiH Presidency, Alija Izetbegović,[190] with the participation of the SDA at the local and regional levels, such as the SDA Crisis Staff in Ilidža, the Vogošća SDA or the Eastern Bosnian regional SDA, led and armed by Šahinpašić.[191] While both Halid and Hasan Čengić secured the position of Chief logistics officer at the Visoko Logistics Centre and Deputy Chief of the Logistics Centre respectively, Šahinpašić was given the position of chief logistics officer for South-Eastern Bosnia.[192]

65. In order to achieve its plans, the SDA had to neutralize another force standing in its path, the JNA. In September 1991, the SDA ordered secret monitoring of all activities and movements, primarily of the JNA,[193] which was unlawful, unconstitutional and illegal mono-party exercise,[194] although less than a month earlier the three parties in power had agreed to monitor all developments jointly.[195] Under directions from Sarajevo, units of the Patriotic League blocked roads and JNA facilities.[196] Force was not needed to stay in Yugoslavia; force was needed by those who wanted to secede.[197]

e. 8th BiH Assembly Session and Establishment of Serb Organs

66. Dr. Karadžić's faith in Izetbegović was destroyed on 14/15 October 1991 when the BH Assembly reached a stalemate in a debate on a draft Platform on the Position on BH and a related Memorandum presented by the SDA, asserting that BH was a sovereign state.[198] One day before the infamous BH Assembly session, Dr. Karadžić understood the

[187] D3121, p. 1
[188] D3121, p. 1
[189] D3121, pp. 1-2
[190] D3121, p. 2
[191] D3121, pp. 2-3
[192] D299, p. 3
[193] D0266
[194] Mandić, T.4777
[195] D0264
[196] D3065, para 121
[197] Treanor, T.14171
[198] P2538, para 68

Serb members of Parliament to have been fed up with the attempts to proclaim BH independence.[199]

67. The speech made by Dr. Karadžić at this Assembly has been extensively used and abused by the Prosecution. Dr. Karadžić was cited selectively in order to prove Dr. Karadžić's alleged discriminatory and even genocidal intent. The Prosecution never cared to cite[200] the following parts

> **Constitutional violence, and after constitutional violence, come all other forms of violence**[...]**I must reiterate for the hundredth time that the Serbs are not threatening war**. […]Gentlemen, I have not come here as a god of war[...]**I beg you once again, I am not threatening, only begging**, to take seriously the interpretation of the will of the Serbian people[…]**How will you stop everyone from killing everyone in Bosnia and Herzegovina?**[…]**I have to repeat for the hundredth time that the Serbs are not threatening a war[...]Please, gentlemen, Muslim leaders have up to now clearly stated that, if there is a catastrophe, it will be a catastrophe primarily for the Muslim people, this is also a catastrophe for the Serbian and Croatian peoples**, **especially for the Serbian and Muslim peoples** because we are intermingled[…]**The Serbs have never attacked the Muslims and will never attack the Muslims[...]**but the chaos that could result from irregular decisions made by the majority[...]Order is in someone's hands, is brought to life by people, but **chaos is not in anyone's hands**[...]**chaos that no one would be able to control**[...]Serbian Democratic Party is not for chaos[…]**We can thus say there will be no war, we can thus guarantee that there will be no chaos because order is in our hands. Chaos is no longer in anyone's hands**.[201]

> There is not a shred of a discriminatory or genocidal intent in this speech. The obvious aim of the speech was to prevent the war.[202]

68. After a long and exhausting discussion - just as was the case back in early 1991 - the Serbian deputies once again submitted a request with 20 signatures that this item of the agenda should be delegated to the Council for inter-ethnic equality.[203] Krajišnik, who run the Assembly business in a democratic and tolerant manner, seeking to achieve compromises and avoid conflicts,[204] closed the sessions after midnight and SDS deputies left.[205] However, at the proposal of an SDA deputy, the Vice-President of the Assembly, Mariofil Ljubić of the HDZ, lacking the powers to do so, reconvened the session enabling

[199] D0377, p. 2
[200] Prosecution Pre-Trial brief para 16
[201] D1270 (Emphasis added)
[202] Krajišnik, T.43264
[203] Krajišnik, T.43187
[204] D4077, para 4
[205] P2538, para 68; Krajišnik, T.43187

the SDA and HDZ to adopt the Platform and the Memorandum without the SDS deputies.[206]

69. Treanor conceded that the procedure that the SDA and the HDZ adopted at this Assembly session, passing the so-called memorandum and letter, could broadly be described as using force.[207]

70. Izetbegović was not concerned about the illegal decisions the SDA and HDZ had been taking, and did not hide his "fluid" view of the constitution, laws and legality

> We are fully aware that we may have even violated some laws directly by declaring neutrality of BH, but there are at this point, everything is a little bit fluid, there are laws and laws. [...] We are aware that there are certain things that even constitute a violation of some federal law. But you see, everything has become rather fluid including these federal laws.[208]

71. The Council of the SDS met on the same day to discuss this "fluid" but flagrant violations of the constitution and laws by the SDA and HDZ. [209] The SDS sent officially to the SDA and the HDZ a request to withdraw their decision that was considered to be unlawful and unconstitutional, and issued a deadline until 24 October 1991.[210] The SDA and HDZ did not withdraw their decision. As a result and in response, on 24 October 1991, Bosnian Serb deputies in the BH Assembly, created an Assembly of the Serbian People.[211] At the same time, hoping that the SDA and HDZ would come back to their senses, the Serb Assembly decided that the Serbian deputies would continue to work in the BH Assembly.[212] During the following sessions of the Serb Assembly, Serb leaders continued advocating quality of nations, legality, and objecting to outvoting and forcing of will of one nation to any other nation. [213]

72. While the Serbs were advocating the coexistence and equality, the SDA relentlessly continued its arming and preparations for war.[214]

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[206] Krajišnik, T.43187-88
[207] Treanor, T.14159
[208] D0375, p. 8
[209] D0294, p. 1
[210] Donia, p. 3570; D0295
[211] P2538, para 80; P1343, pp. 10-11; Krajišnik, T.43282; D0082, p. 24; Treanor, T. 14178-79; D3364, paras 2-5; D3981, paras 38-39; D3854, para 10; D4063, para 7; D4077, para 5; Okun, T. 1701
[212] D0296, pp. 1-2
[213] D0083, p. 13
[214] D0298, p. 3; D3065, para 116

73. In December 1991, the Serb Assembly, yielding to pressure coming from people from the grass roots, issued a Recommendation on the establishment of municipal assemblies of the Serbian people in BH, recommending that the SDS deputies' clubs in the municipal assemblies in BH where decisions against Serbian interests were imposed through outvoting transform themselves into assemblies of the Serbian people.[215] Prosecution's expert Treanor testified that the procedure that had been recommended by the Bosnian Serb Assembly to Serbian members in the municipalities in which they were in a minority, but felt that they were being out-voted, was a peaceful procedure.[216]

f. Variants A & B

74. The document in question, the so-called Variants A&B[217] occupies one of the central places in the Prosecution's case. It should be noted at the outset that even the Krajišnik Trial Judgment concluded that it is wrong to "place these goals on a pedestal, as the Prosecution does, for in the final analysis they are anodyne statements"[218] and that "an anachronistic reading of the December Instructions misses the point".[219]

75. Leaving aside all the inconsistencies in the document that may bring into question its authenticity or origin, and dispute its conspiratorial nature[220] there is absolutely nothing wrong with this document.

76. The reason for the existence of the document is stated at the very beginning, where it is said that there is reasonable ground for suspicion that certain forces are working persistently, thoroughly and in an organised way to take Bosnia and Herzegovina and thence also the Serbian people out of Yugoslavia **by force**.[221] Was this true? The Muslim Patriotic League Main Staff, nine regional and 98 municipal military staffs, a large number of manoeuvre, area and logistic units, millions of bullets, thousands of automatic rifles, increased Muslim reserve police forces and all other SDA activities were certainly highly organized and definitely not peaceful.

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[215] D0085, p. 4; D1183; Treanor, T. 14181-2; Krajišnik, T. 43199-200
[216] Treanor, T. 14448
[217] P0005
[218] *Krajisnik*, AJ, para 995
[219] *Krajisnik*, AJ, para 995
[220] D1278, pp. 27-8; Donia, T.3591-2; D3198, para 23; D1278, p. 28; Nešković, T.14264, T.14325; T.14329-30; D3981, para 92; Krajišnik, T.43201, T.43869
[221] P0005, p. 1 (Emphasis added)

77. The document further states in both variants that a member of the Crisis Staff shall be appointed to be the Coordinator for Relations with the SDA and HDZ municipal leaders.[222] Variant A also states that

> When taking all these measures, make sure that national and other rights of members of all nations are respected and that they are later engaged in government organs established by the Assembly of the Serbian people in the municipality.[223]

78. The document envisaged only eminently defensive measures,[224] and was in agreement with the existing laws.[225] Prosecution's expert Donia was of the opinion that whoever wrote this document, it was distributed after the government of Bosnia-Herzegovina had asked for recognition of independence.[226] The law envisaged bodies for crisis situations, whatever they may have been called. Everybody knew that in the Socialist BH, including Dr. Karadžić who told the Serb deputies

> When you return to your municipalities, especially the newly-formed municipalities, I ask you to do **what you are required and entitled to do under the law.** The moment you arrive in your municipalities, you must **urgently establish crisis staffs**. You must try to organise the people so that they can defend themselves[...]The **presidents of municipalities and executive boards will hold the highest ranks in the crisis staffs**[...]We must study the situation regarding the saving of lives, property and territory. We have no other plans.[227]

79. Prosecution's expert Hanson claimed that "none of the SFRY federal, republic or provincial documents examined to date use the term Crisis Staff".[228] However, during her cross-examination, Hanson testified that there was a crisis staff in the BH Presidency and other crisis staffs formed elsewhere, accepting that her original assertion was wrong and misleading.[229] Although she never mentioned any crisis staffs, other than the Serb ones, she was now willing to "readily concede that there were crisis staffs on the Bosnian side

[222] P0005, pp. 3, 7
[223] P0005, p. 6
[224] P0005, pp. 4, 6, 8, 9; Treanor agreed that these were protective measures that have been put in place in case of attack from other sides, T.14188
[225] D1358, pp. 8, 42 (Article 72); D1359, p. 19 (Article 69); Kapetina, T.41278-79, T.41280-82; T.41266; D3860, pp. 7, 9; D4313, para 10; Kličković, T.46835-36; Šarac, T.47172
[226] Donia, T.3610
[227] D0304, p. 20
[228] P2589, para 12
[229] Hanson, T.14703

and on the Croat side."[230] Hanson concluded that crisis staffs, in themselves, were not illegal.[231] When further cross-examined by Dr. Karadžić and showed relevant laws, Hanson insecurely agreed that "it may be that crisis staffs were, indeed, provided for under the legislation of the Republic of Bosnia-Herzegovina."[232]

80. Republic of Croatia and Bosnian Croats established their crisis staffs in August 1991.[233] SDA also had its own crisis staffs for military purposes.[234] Bosnian HDZ even decided, in September 1991, that

> The Crisis Staff shall start working immediately and shall be in charge of the entire system of the defence of the Croatian people in Bosnia and Herzegovina and ensure the **acquisition of weapons**. The president of the Crisis Staff shall be **Stjepan Kljuić**.[235]

81. Finally, Prosecution's expert Hanson conceded that the actions of the Serb side were not unjustified and unmotivated.[236] That is not a surprise bearing in mind that the SDA created its crisis staffs at the time of the creation of the Patriotic League,[237] which was in late March 1991.[238]

g. Further SDA and HDZ Efforts Toward Illegal Independence of BiH

82. Coupled with the illegal arming of their units, on 21 December 1991, the SDA and HDZ part of the authorities, ignoring the opposition by the Serb representatives in the government and Presidency[239], lacking a two-thirds majority in the BH Assembly, and violating both the SFRY and BiH constitutions and laws, appealed to the European Community to recognize Bosnia-Herzegovina as an independent republic.[240] On the same day the Bosnian Serb Assembly called for the illegal decisions made by the SDA and HDZ to be withdrawn.[241] The Bosnian Serb Assembly also voted to make preparations

[230] Hanson, T.14704
[231] Hanson, T.14706
[232] Hanson, T.14836
[233] D1361
[234] D3067, pp. 1-2
[235] D1329, pp. 1-2 (Emphasis added)
[236] Hanson, T.14712
[237] D1333, p. 2
[238] Donia, T.3374
[239] Treanor, T.14369
[240] Krajišnik, T.43193-95; D3997
[241] Donia, T.3590

for the proclamation of a separate Bosnian Serb state if the HDZ and the SDA did not change their behaviour and rescind the decision,[242] and made a decision to establish the Council of Ministers,[243] which was the result of continuous out-voting of Serbs by the SDA and HDZ and a direct response to the violation of Serb constitutional rights.[244] Since the SDA and HDZ did not rescind the unlawful decisions and failed to withdraw the request for independence, on 9 January 1992, the Serb Assembly proclaimed the Republic of the Serbian people of BH.[245] In the Preamble to the Declaration on the Proclamation of the Serb Republic, all the most important reasons and events causing this act to be made, were enumerated.[246]

83. In January 1992, the Serb leadership, giving up on their indisputable right to remain in Yugoslavia in order to save the peace in Bosnia, publicly expressed their support for the Conference on the democratic transformation of Bosnia and Herzegovina, believing that the transformation of Bosnia and Herzegovina was inevitable; Dr. Karadžić emphasized that nobody should try to purport this position to be a division of Bosnia.[247] He again, in vain, begged for reason in the BiH Assembly.[248] The Serb constituent people were yet again outvoted.[249] The next day, on 26 January 1992, the Serb Assembly convened, and Dr. Karadžić repeated the reasons for this act.[250]

84. In February 1992, SDA and Halilović continued to organise militarily.[251]

85. Dr. Karadžić warned the Serb Assembly that

> The moment that the Muslims arrive at **fundamentalism**, they won't be able to live with anyone, not with anyone in the same legal and political system[252]

[242] Donia, T.3591; Treanor, T.14372; Krajišnik, T.43194
[243] D0296, p. 23
[244] Mandić, T.4826-7
[245] Krajišnik, T.43210; P6444
[246] P6444, pp.1-2
[247] D0300, p. 2; P3119, p. 1; Treanor, T.14158
[248] D0087, p. 103-04
[249] Krajišnik, T.43187-8
[250] P1349, p. 8
[251] D0298, p. 2; D3065, para 164-A-C
[252] P0012, pp. 18-20 (Emphasis added)

86. As Prosecution expert Donia conceded, Dr. Karadžić linked the difficulties of living with the Muslims to the appearance of the fundamentalism phenomenon,[253] not with the Muslims as such.

h. Cutileiro Agreement

87. Towards the end of 1991 and early 1992, Lord Carrington, the Chairman of the European Commission's Conference on the former Yugoslavia, asked Cutileiro to chair talks on Bosnia and Herzegovina.[254] The talks began on 13-14 February 1992 in Sarajevo.[255] On 21-22 February 1992, the second round of talks took place in Lisbon.[256] On 23 February, the parties reached the first outlines of an agreement that was supposed to be further developed, called the Statement of Principles for New Constitutional Arrangements for BH.[257] The agreement envisaged the existence of three separate constituent units that would have jurisdiction over many governmental areas, including judiciary and police.[258] Members of the nations who would be in a minority in a particular constituent unit would receive protection and there would be an absolute right of freedom of movement from one constituent unit to another part of the same constituent unit.[259] The protection of minorities was explained by Dr. Karadzic to the Serb Assembly.[260]

88. On 27 February 1992, the third round of talks took place in Sarajevo.[261] The next day, on 28 February 1992, the Serb Assembly met to discuss and adopt a constitution of the Serbian Republic of Bosnia and Herzegovina, in accordance with the negotiations that were going on.[262]

[253] Donia, T.3664
[254] Mandić, T.4873; D2968, para 3
[255] D2968, para 5
[256] D2968, para 5
[257] P0798
[258] P0798, pp. 2-3
[259] P0798, p. 3
[260] D0088, p 10
[261] D2968, para 5
[262] D0089, p. 8

89. During that session the Serb Assembly adopted a Constitution of the Serbian Republic of BH,[263] but did not promulgate it until 27 March 1992 because it hoped that an agreement would be reached among the three ethnic communities under the auspices of the EC.[264] On 29 February and 1 March 1992, in the middle of the Cutileiro negotiations, the SDA and HDZ organized a referendum on BH Independence, which was a direct violation of the BH Constitution.[265] This was also clear to Dr. Karadzic

> They are naturally trying to conduct this referendum according[...]the outdated law that is not in alignment with the Constitution. That was related to the questions of utility companies, waterworks and all other things where 51% of votes suffices. However,in such big issues that are connected to the Constitution, majority of two thirds would be needed. [266]

90. Still, the position of the SDS was that this referendum was a referendum of the Croatian and Muslim peoples which should not be obstructed.[267] On 1 March 1992, a Serb was murdered by Delalic called Celo, a Muslim, at the wedding ceremony in a church in Sarajevo, immediately after the referendum on independence organized by the SDA and HDZ.[268]

91. On 11 March 1992, President of the Serb Assembly Krajišnik sent a letter to Cutileiro expressing the view of the Assembly that three national-state entities be created and form a union after that - keeping the existing borders of Bosnia and Herzegovina.[269] On 18 March 1992, the SDA, HDZ and SDS agreed to and accepted the Statement of Principles for new constitutional arrangements of Bosnia and Herzegovina.[270] The so-called Cutileiro Agreement, *inter alia*, contained that BiH would be a state composed of three constituent units, based on national principles and taking into account other criteria, within existing borders, and that the constituent units would be established with powers in the fields of legislation, police, judiciary, etc; established by constituent units would

[263] D0089, p. 14
[264] P1634, pp. 2, 7
[265] Mandić, T.4915; D4368, para 15
[266] P0012, p. 6
[267] P3308; Krajišnik, T.43215
[268] D2923, para 58; D3774, p. 45; D4143, para 16; Krajišnik, T.43264; D4368, para 18; D2969; D2968, para 6
[269] D2970; D2968, para 8
[270] P0782; D2968, para 10; Krajišnik, T.43252-53

reflect proportionally their national composition.[271] Members of the nations who would be in a minority in a particular constituent unit would receive protection.[272]

92. The agreement also envisaged that all three ethnic communities and their administrative units did not have territorial continuity[273] and that Srebenica, Žepa and Goražde were included as Muslim units.[274] At the Carrington-Cutileiro conference, before the war and without a war, the Serb side had agreed to even less than what it held after the war, about 45 per cent, without having contiguous territories.[275]

93. The Prosecution Pre-Trial Brief alleges in paragraph 40 that on 18 March 1992, at the 11th Assembly session, Krajišnik stressed the need to begin the actual and physical process of seizing territory, that "it would be good if we could do one thing for strategic reasons: if we could start implementing what we have agreed upon[276], the ethnic division on the ground." suggesting that this was some kind of conspiratorial step with the aim to further some JCE plan. But the truth is that the three delegations, Muslim, Serb, and Croat, and the representative of the international community had agreed about principles based on national principles which included identifying territories on the ground, i.e. Krajišnik was referring to the agreement made the same day with Cutileiro.[277]

94. Even Prosecution's expert Treanor concedes that on 18 March 1992, Dr. Karadžić and the SDS devoted to respecting the fact that the national minorities would exist and that there would be mutual protection of their rights in a transformed Bosnia as envisaged by the Cutileiro agreement.[278] By agreeing to those principles, according to Cutileiro, Dr. Karadžić and the Bosnian Serb leaders committed to having religious and ethnic minorities in the areas covered by the Serb constituent unit and to respecting the rights of primarily Muslim and Croat minorities.[279] To appease many Serb officials who considered the acceptance of the agreement to be treason,[280] Dr. Karadzic again explained

[271] P0782
[272] P0782; D2968, para 11 p. 3
[273] D0091; D0486; P0782 p. 4
[274] Okun, T.1730
[275] Okun, T.1835
[276] Prosecution's pre-trial brief, para 40 (Emphasis added)
[277] Krajišnik, T.43254-5; D2968, para 13; Cutileiro, T.33962
[278] Treanor, T.14389
[279] D2968, para 16
[280] D4368, para 19

the Assembly provisions of the agreement, emphasising national proportionality in the instiutions[281] asking the deputies to do

> Whatever is necessary on the ground to establish the de facto situation based on justice and the law, to have good and complete control of our destinies and areas, with full respect for citizens of other nationalities[282] There will probably be all sorts of resettlement going on, but none of it should occur under pressure.[283]

95. On the very same day, 18 March 1992, the media reported that the Muslims were satisfied with the agreed upon statehood.[284] The SDA spokesman, Irfan Ajanović, even boasted that the Muslim nation in its constituent unit would be a majority of 82%, while the Serbian nation would comprise 50% of the Serbian unit.[285] Ajanović also commented on the possibility that the Serbian Assembly would reject the agreement adding that

> In that case it will become clear as to who is not for peace in Bosnia and Herzegovina and who is cheating the European Community and the Chairman of the Conference on Bosnia.[286]

96. A week later, on 25 March 1992, the SDA renounced the Cutileiro agreement.[287]

97. Ambassador Cutileiro, the Ajanović's cheated Chairman of the Conference on Bosnia, wrote in retrospective

> After several rounds of talks our principles for constitutional arrangements for Bosnia and Hezegovina were agreed by all three parties (Muslim, Serb and Croat) in Sarajevo on March 18 1992 as the basis for future negotiations. These continued, maps and all, until the summer, when Muslims reneged on the agreement. Had they not done so, the Bosnian question might have been settled earlier, with less loss of (mainly Muslim) life and land. To be fair, President Izetbegović and his aides were encouraged to scupper that deal and to fight for a unitary Bosnian state by well-meaning outsiders who thought they knew better.[288]

[281] D0090, p. 9; Cutileiro, T.33956
[282] D0090, p. 45
[283] D0090, p. 46
[284] D0302
[285] D0302
[286] D0302
[287] D0303, p. 2
[288] D2981; D2968, para 35

98. The "well-meaning outsider" was, in the first place, US Ambassador Zimmermann who encouraged Izetbegović to directly undermine the Cutileiro talks.[289] In fact, at the time of the negotiations, Cutileiro was even more blunt about Izetbegović, whom he called a liar who could not be trusted.[290]

99. Implementing the Cutileiro agreements, the Serb Assembly revived the Council of Ministers from duty on 24 March 1992, and elected a new Government of the Serbian Republic of BH.[291] On the same day, Dr. Karadžić addressed the Serb deputies explained to them the ongoing negotiations with the other two parties and reminding them that

> **We do not plan to attack anybody**[292][...]Another important thing is to **prevent the spreading of crisis spots in BH**[...]Newly established municipalities must establish their organs as soon as possible[...]Freedom of movement would, of course, be granted, but they must not enter the area with armed forces or anything else that would threaten our territory, our municipality[...]**Peace at any cost**[293][...]The Brussels documents provided us with many things and many of the things we are doing are in line with them[294]

100. On the same day when the SDA renounced the Cutileiro agreement, armed formations from Croatia crossed the border with Bosnia, killing a Serb family,[295] shelling Bosanski Brod,[296] and butchering entire Serb families in Sijekovac.[297] Resultantly, on 27 March 1992, the Serbian Assembly established a Council for national security and promulgated the constitution of the Serbian Republic of Bosnia and Herzegovina.[298]

101. The Prosecution alleges that one of the organs executing the objectives of the JCE was the Council for national security which was established on 27 March 1992 and that Dr. Karadžić through this body contributed to the alleged JCE.[299] We have just seen the sequence of events leading up to the establishment of this body. Prosecution's expert Treanor agreed that up to 27 March 1992, i.e. until the outbreak of war, throughout the

[289] D3015, para 41; D3051, para 9
[290] P0780, p. 61
[291] P1354, pp. 3-4
[292] P0961, pp. 16-7 (Emphasis added)
[293] P0961, p. 17 (Emphasis added)
[294] P0961, p. 18
[295] Donia, T.3650
[296] Treanor, T.14393-4
[297] Donia, T.3650
[298] Donia, T.3651-2
[299] Prosecution Pre-Trial Brief, p. 16 (E. Organs and individuals executing the objectives of the JCE and Karadžić's role and contribution) and paras 66-9

preceding months, Dr. Karadžić always advocated peace and peaceful solutions, never, ever advocating war.[300] [redacted][301]

102. On 27 March 1992, just days before the war, Dr. Karadžić summarizied the events that took place in the preceding two years emphasising that

> We wanted no divisions. **We did not want the destruction of the things we had in common**[...]**We kept on hoping that the forces of unity would prevail over the forces of destruction in the BH Parliament**[...]But we are clean before God, because **we have not made a single move which was not provoked** [...]**we can be proud of having responded to all non-democratic measures democratically**.[302]

i. Conclusion

103. All the decisions that were made by the Serbs, including the setting up of separate state organs, were mere reaction to SDA/HDZ action.[303] The Bosnian Serbs had no intention of engaging in war. They wanted to stay in Yugoslavia, but when this became unfeasible under the pressure from the West, they agreed to leave Yugoslavia under the conditions laid down by Cutileiro's plan.[304]

104. Let us not forget the very basic, first and foremost fact, which directly runs against the shaky foundations of the OTP Indictment - the Serbs wanted to go on living **together** with all the other nations in Yugoslavia.[305] It was others who wanted separation, secession, the end of the common life.[306]

105. The civil war started as a consequence of the illegal breakup of Yugoslavia.[307] Lawrence Eagleberger, the former US Secretary of State, opined that the recognitions of ex-Yugoslav republics had nothing to do with the law; rather the politics played the key role.[308] Prosecution witness Okun testified that in the fall of 1991, Germany played an important role in the Yugoslav crisis and took a very strong anti-Yugoslav and pro-

[300] Treanor, T.14442
[301] [redacted]
[302] D0304, pp. 7-8 (emphasis added)
[303] S. Ćeklić, T.41225; Kuprešanin, T.43470-1
[304] D3015, para 41; P2538, para 96
[305] Nedić, T.45867 (emphasis added)
[306] Kuprešanin, T.43562
[307] D3051, para 6
[308] D0253

Croatian position, by, for example, saying it would recognise Croatia regardless of what the rest of the European Community did. [309]

106. Cyrus Vance was concerned whether Germany would push for another early recognition, i.e. that of Bosnia-Herzegovina, in the same way it pushed for the premature recognition of Croatia and Slovenia.[310] Portuguese mediators Pinheiro and Cutileiro were very concerned about what they saw as German minister Hans-Dietrich Genscher's efforts to lay all the blame on the Serbs and Milošević for everything that went wrong in BH.[311] At the same time, the German ambassador even told Koljević that they wanted to use Serbs and Croats as "firemen" for isolating the Muslims in Bosnia and Herzegovina who then would not have the possibility of linking up further to their Muslim transversals.[312]

107. Dr. Karadžić lost faith in the great Western powers and realized that they only cared about their own interests and were not interested in a just solution of the Yugoslav question

> The aim of the entire fall fo Yugoslavia was actually the fall of Serbia and the Serbian people and the Serbian state. The aim of the European powers was to bring Serbia in the situation to ask for recognition. [...]and then they would begin conditioning it with Vojvodina, and Kosovo and Sandžak and so on. So, Serbia would really be seized down to the "Belgrade pashalic [...]We have to help our friends in the world. We must help them by not being the aggressor, for we seek nothing that belongs to somebody else.[313]

108. In retrospective, Lord Carrington noted that under the constitution which then prevailed, it was illegal for Izetbegović to declare independence because any constitutional change of that magnitude had to be agreed by all three parties.[314] Also in retrospective, the then US Secretary of State James Baker, the predecessor of Lawrence Eagelberger, essentially agreed with Lord Carrington

> [W]e said if Yugoslavia does not break up peacefully there's going to be one hell of a civil war. It nevertheless broke up non-peacefully. **It broke up through the unilateral declaration of independence** by Slovenia and Croatia and the seizing by these two countries, republics, of their border posts, which was an act of force and **which was an act that was in violation of the**

[309] Okun, T.1562
[310] D3017, p. 13
[311] P0780, p. 119
[312] P986 p. 37
[313] P0012, pp. 11-14
[314] D0251, p. 1

> **Helsinki principles**. But the **European powers and the United States ultimately recognised Slovenia and then Croatia and then Bosnia as independent countries** as member -- and admitted them to the United Nations. **The real problem was that there was a unilateral declaration of independence and a use of force to gain that independence rather than a peaceful negotiation** of independence, which is the way **it should have happened**."[315]

109. Those who accepted the Cutileiro agreement that envisaged the existence, protection and equality of minorities, and Dr. Karadžić was among the leading supporters of the agreement, could not and did not form any joint criminal enterprise with the objective of creating an ethnically pure Serb unit within BH.[316]

110. It was a real tragedy that peace was not achieved through the Statement of Principles that Cutileiro negotiated in March 1992. In the end, the Dayton agreement that ended the three and a half years of civil war was more or less identical to the Cutileiro agreement and accompanying map[317] that could have and should have been adopted and implemented by the SDA. Countless lives could have been saved. But in the minds of the Young Muslims, ex-convicts and SDA fundamentalists this did not matter because

> **A people which was asleep could be awakened only by blows, and whoever wished the Muslim community well would not try to spare it struggle, danger and misfortune**.[318]

5. Division of MUP

111. The Prosecution Pre-Trial Brief in paragraphs 109 and 110 alleges that from the outset of the conflict, the MUP played a significant role in establishing and maintaining Bosnian Serb authority over the territory and in implementing the common criminal purpose[319] and that for months prior to its division, Karadžić contemplated the division of the MUP as an essential component of the division of BiH.[320]

112. As we have already seen or will see from further text, prior to the transformation of the BiH MUP, which in the end took place within and according to the Cutileiro

[315] D0252(emphasis added); Donia, T.3269
[316] Krajišnik, T.43267; D3051, paras 16-7; D2968, paras 17-8
[317] D2968, paras 33; Krajišnik, T.43266; V. Jovanović, T.34251; D3051, para 9
[318] D0075, p. 46 (emphasis added)
[319] Pre-Trial Brief para 109
[320] Pre-Trial Brief para 110

agreement, the following phases directly or indirectly contributed to the division of the MUP

1. Representatives of the SDA did not abide by party agreement related to personnel issues in the MUP, brought exclusively SDA staff and together with the HDZ took the most important departments in the Ministry of Interior, while simultaneously abolishing important positions that were supposed to be occupied by Serb personnel

2. The authorities who were under the control of Muslim personnel conducted illegal wire tapping of Serbian members in the government and the party

3. In 1991 the SDA began secret arming through Slovenia, Croatia, and other countries, forming its paramilitary units in Bosnia and employing criminals in the joint MUP

4. In June 1991 the SDA secretly created a Council for National Defence as a political body under whose mantle would operate SDA paramilitary forces

5. SDA sent SDA members and supporters on a mass scale to the training centres of the Croatian MUP in Croatia in order to prepare them for war

6. SDA/HDZ obstruction of JNA legal and legitimate call-ups of conscripts, while itself illegally mobilized and enormously enlarged reserve police force, composed mainly of Muslims, over the opposition from the Serb representatives in the MUP, thereby creating the nucleus of the future Muslim army

7. SDA simultaneously worked on the further organization of the Patriotic League and other paramilitary units in all municipalities in BiH, which eventually declared war on the Serbs and the JNA

a. Personnel Policy in MUP

113. After the multi-party elections in 1990 the victorious three parties took steps to reach an agreement on the division of government posts among their nominees.[321] By the end of December in 1990 they had reached a specific agreement on how to divide posts in the Ministry of Internal Affairs.[322] Furthermore, the three parties also negotiated on dividing up posts at all of the levels of the hierarchy - at the regional Security Services Centres and at the municipal and local levels.[323] Dr. Karadžić insisted that this agreement that had been signed be honoured.[324] Unlike Dr. Karadžić and the SDS, the SDA would soon breach what had been agreed.[325]

114. The regional organisation of MUP was based on nine Security Services Centres (CSBs), out of which the SDS was strongly represented in only two, Banja Luka and Goražde,[326] however, not a single chief of a regional centre of the MUP was a member of the SDS.[327]

115. The new head of the MUP was **Alija Delimustafić**, a Muslim who had previously been dismissed from service.[328] His appointment was not a coincidence - on the contrary - he was a person prone to corruption needed to head the Ministry so as to use the position to make the Ministry ineffective and create conditions to organise paramilitary formations as the embryos of the future armed forces of BH on the foundations of Islam.[329] Thus, enter Alija Delimustafić, a businessman brought by the SDA to head the MUP although lacking qualifications for that position.[330] [redacted][331] Delimustafić, the Minister of Interior who should have been the first man to protect law

[321] P2958, para 7; Nielsen, T.16240
[322] D0356; Nielsen, T.16240
[323] P2960; Nielsen, T.16240-1
[324] Mandić, T.4441
[325] D3917, para 6
[326] P2958, para 8
[327] Nešković, T.14233
[328] D3960, para 32; D3197, para 3; D3917, para 5
[329] D3960, para 32; D3981, para 26
[330] D. Kezunović, T.14979
[331] [redacted]

and order, was associated with criminals, who also worked as body-guards for him.[332] In fact, Minister Delimustafić himself had a criminal record.[333]

116. Another crucial position in the MUP was that of the Chief of State Security.[334] The State Security Service was taken over by the Croats who appointed **Branko Kvesić**,[335] whose role will become clearer in the paragraphs to come.

117. The Deputy Minister of the Interior for Public Security was **Vito Žepinić**,[336] a Serb who discharged his duties without having any political responsibility for the overall situation in the MUP, including personnel matters with respect to Serbs.[337] Since it was not a requirement from the point of view of SDS that their representatives in the police be members of the party,[338] neither Žepinić nor other Serbs such as Mandić were members of the SDS, or any party.[339] Prior to 1991, Žepinić did not have any personal, political or professional relationship with Dr. Karadžić.[340] After the 1990 elections, Žepinić was invited to a meeting with the SDS leadership and was told that pursuant to the inter-party agreement the SDS was able to designate the Deputy Minister of Interior.[341] Žepinić made his position clear that he would not become an SDS member and as a proponent of the continuation of a multi-cultural society of Bosnia, was nominated for the position of the Deputy Minister of the Interior by the SDS, with the support of Dr. Karadžić, although other SDS members argued that the post should go to a loyal SDS party member.[342]

118. **Avdo Hebib**, an SDA extremist, was in charge of the police and was ranked below Vito Žepinić.[343] He was the Chief of the Police Administration, who during socialist times systematically worked on the negative selection of Serbian personnel in the MUP until he was suspended from the Ministry.[344]

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[332] Nielsen, T.16426
[333] D3749, para 8
[334] D3065, para 202
[335] D3065, para 202; D3917, para 5; D3960, para 37
[336] D3065, para 202; D3917, para 5
[337] D3960, para 36
[338] Nielsen, T.16375-6
[339] Nielsen, T.16408; D2923, para 7; Mandić, T.4437
[340] D2923, para 8
[341] D2923, para 9
[342] D2923, para 10-1
[343] D3065, para 205
[344] D3960, para 33

119. **Momčilo Mandić** was appointed Assistant Minister for the Prevention and Detection of Crime.[345] He was appointed at the proposal of Žepinić, who proposed him to Rajko Dukić, the then head of the Executive Board and main personnel man of the SDS.[346] That was the first time Mandić saw Dr. Karadžić ever, who said that the Serbs needed good, honourable policemen of Serbian ethnicity who would take into their hands law enforcement and protect the lives and property of citizens.[347] In all other matters concerning his appointment, Mandić communicated with Žepinić and Dukić.[348] Mandić was never a member of the party.[349]

120. The Assistant Minister for Personnel was **Hilmo Selimović** against whom criminal reports had previously been filed for corruption and white collar crime.[350] His task was to remove all professional personnel from the MUP and not allow recruitment to the MUP of any new personnel who might recognise the real intentions of those heading the Ministry.[351] Apparently, the SDA was not content with the results of Selimović's work and appointed **Mirsad Srebrenković** instead, to make sure that the cooperation between the SDA and the MUP be more successful and to make up for anything that had not been done prior to his appointment.[352] Although Dr. Karadžić, Žepinić and others had serious objections about Selimović's illegal and unprofessional conduct in the MUP,[353] an even worse situation was created when the SDA managed to replace Selimović with Srebrenković, a religious teacher from the Zagreb mosque, as minister of personal affairs, who created chaos in personnel affairs in the police.[354] There was a profound dissatisfaction of the Bosnian Serbs in the joint police when Muslims appointed Srebrenković.[355]Srebrenković's task was to transfer the armed clashes from Croatia to BH

[345] P2958, para 7
[346] Mandić, T.4426
[347] Mandić, T.4426
[348] Mandić, T.4426
[349] Mandić, T.4437
[350] D3960, para 34
[351] D3960, para 34
[352] D3775, p. 1
[353] D0364; P5869; P2963
[354] Mandić, T.4820; Stanišić, T.46599; D3960, para 35
[355] Nielsen, T.16378

and illegally arm SDA paramilitary formations,[356] acquiring weapons from, among others, the Crisis Staff of the Islamic Community of Croatia and Slovenia.[357]

121. Other relevant MUP officials appointed by the SDA were **Jusuf Pušina**, the Assistant Minister for the Policing,[358] **Munir Alibabić**, the chief of the Sarajevo State Security Centre,[359] and **Asim Dautbašić**, State Security official and assistant to Kvesić.[360] The SDA and Izetbegović entrusted Pušina and Dautbašić with controlling the work on the preparation and organisation of the Green Berets, whose commander was going to be Jusuf Juka Prazina, a notorious Sarajevo criminal.[361]

122. **Mico Stanišić** and Dr. Karadžić did not know each other personally before 1990.[362] Momčilo Mandić and Vitomir Žepinić proposed Stanišić to work at the Ministry of the Interior, after which Alija Delimustafić appointed Stanišić.[363] Dr. Karadžić only consented to Stanišić's appointment.[364] After the transformation of the MUP into two different MUPs Prime Minister Đeric proposed Stanišić as a minister, and convinced him to accept the position.[365]

123. In the MUP, as far as the Serb personnel was concerned, the main principle was professionalism.[366] Unlike the SDS, the SDA was not minded to respect the agreed procedures, filling positions in MUP with people who were not qualified or had criminal background, and who received instructions from the SDA to obstruct appointments that would arrive from the Serbian side[367]

124. Dr. Karadžić did not have political influence over the people in the MUP, asking of them to ensure legality of work and adequate national representation.[368]

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[356] D3960, para 35
[357] D0402
[358] D0390, p. 1
[359] Mandić, T.4611; D0380
[360] D3960, para 46
[361] D3960, para 46
[362] Stanišić, T.46327
[363] Stanišić, T.46330-1
[364] Stanišić, T.46437
[365] Stanišić, T.46343
[366] Stanišić, T.46332; Kljajić, T.42237; Mandić, T.4437; D0355
[367] D3917, paras 2, 6-7; Mandić, T.4439-40; Nielsen, T.16377-8; Stanišić, T.46332; D. Kezunović, T.14973; Kljajić, T.42237,T.42234-5; D. Kezunović, T.14975-6, T.14979-80; D0364, pp. 2-5; D3197, para 3; D4143, paras 7-8,10; D4144; Žepinić, T.33643
[368] D3960, para 43; Mandić, T.4441; Stanišić, T.46333; Žepinić, T.33621, T.33640-1; D. Kezunović, T.14975, T.14980; Andan, T.40819; D3917, para 14; D4143, para 7; D3663, para 4; D1517; Nielsen, T. 16399-400

125.

b. Abuses in State Security Service

126. In the Ministry of the Interior, the minister is the most important position and the second-ranking post was the chief of State Security.[369] For both these positions, the SDS got only deputy positions, and even one of those two deputy positions, the post of Deputy Under-Secretary for state security was unlawfully abolished.[370] **Neđo Vlaški**, a man who had served in the security system in the Socialist regime, with many years of service, was supposed to occupy that position on behalf of the SDS but the HDZ Secretary for State Security Kvesić and the SDA MUP Minister Delimustafić made a new staffing system practically deleting this post of deputy, because of which the SDS lost this executive position.[371]

127. Serbs were very dissatisfied that the position of Deputy Under-Secretary of the State Security Service had been eliminated.[372] Dr. Karadžić protested against this more than once, writing a series of letters, nevertheless, Neđo Vlaški never took up that post belonging to the Serbian community.[373]

128. The very roots of the secessionist armies in Slovenia, Croatia, and in Bosnia-Herzegovina were in the MUPs.[374] The State Security in Bosnia and Herzegovina was allocated to the HDZ, which was in favour of secession, and on the side of Croatia in the war against Krajina, and the lacking of control by the SDS through the position of Deputy Under-Secretary for State Security was a reason for concern for the SDS.[375] Later in December 1991, that same State Security would claim that it could not disarm the Muslim and Croat paramilitary groups.[376] The State Security had information that the SDA was working on creating paramilitary formations already in May 1991[377] and if it had wanted, it could have disarmed and arrested them before the Muslim units became

[369] Mandić, T.4715
[370] D0384, p. 2; Mandić, T.4716
[371] Mandić, T.4716; Stanišić, T.46333-4, T.46613
[372] Nielsen, T.16409
[373] Mandić, T.4716
[374] Mandić, T.4719
[375] Mandić, T.4719
[376] Nielsen, T.16420
[377] D3663, para 5

well armed and organised. Instead, Muslim paramilitary units developed close links with the Muslim staff in the MUP.[378]

c. Wiretapping

129. Secret wiretapping and interception of conversations had to be authorised by law under special circumstances before they could be put into action.[379] There was no legal provision allowing wiretapping of an MP or an official in the government.[380]

130. Nevertheless, the State Security was unlawfully wire-tapping Serbs in the police, government and the SDS which started a year before the war and was done by a service under control of Munir Alibabić, the chief of the Sarajevo State Security Centre, who would take those intercepts to the SDA.[381] There was a relocated wiretapping centre in Hrasnica, which was an unauthorised parallel centre relocated from the official centre located in the State Security.[382] The technical services for intercepts were located in the training centre of internal affairs in Vraca, and the work was carried out by Croats and Muslims.[383]

d. Special Police Unit

131. Other important positions in the MUP were also in the hands of the SDA-HDZ. The chief of the uniform police was from the ranks of the Muslim people, and Vikić, a Croat, was the commander of the special unit.[384] The position of the Deputy commander of the BH MUP special police unit belonged to the Serbs, and it was held by Milenko Karišik,[385] who was not a member of the SDS.[386]

[378] D3663, para 5
[379] D3065, para 203
[380] Mandić, T.4853-4; D. Kezunović, T.14982
[381] Mandić, T.4611; D3917, para 7; D3065, para 202
[382] D3065, para 204
[383] D. Kezunović, T.14980
[384] Mandić, T.4723
[385] D3749, para 5
[386] D3749, para 56

132. The special unit of the BH MUP was intended for the performance of the most complex security tasks on orders from the Minister of the Interior.[387] In the second part of 1991, the usual training stopped and a complete transition was made to military training, using hand-held and rocket launchers, mortars, mines and explosives of all sorts, paying special attention to tactical training under the military rules.[388] All of this clearly pointed to deviation from the regular training plan and to the preparation of the unit for new purposes.[389]

133. Already in May 1991, Dr. Karadžić and Žepinić discussed the Special Police Unit within the MUP, because Dr. Karadžić wanted to make sure that there were no illegal activities.[390] The SDS was asking for democratic control, that is to say, that the number-one and number-two man could not be from the ranks of the same people.[391]

e. Chronological Story of the Agony in the MUP and the Reasons for its Division

134. On 17 June 1991, Dr. Karadžić complained to Žepinić that a Serb held a post at the MUP without the consent of the SDS,[392] but Žepinić saw no reason to remove him.[393] Žepinić did however complain about the SDA's nomination of a person with a criminal record to a high-ranking position within the MUP and agreed with Dr. Karadžić that the SDS, on the other hand, had not nominated anyone with a criminal record to serve in the Ministry.[394]

135. By mid-June 1992, Dr. Karadžić had enough of cheating in the common institutions

> We haven't appointed a single criminal[...]We haven't brought a single man who, who wasn't already at the MUP![...]They tricked us, for we brought professional people, honest people, who have nothing to do with the party[...]We are honest and decent. I didn't know you, I didn't know Drašković or Mandić and you were not outside the MUP, party people[...]We asked who was the

[387] D3749, paras 5-6
[388] D3749, paras 11
[389] D3749, paras 11
[390] D0357, p. 5; D2923, para 33
[391] Mandić, T.4724-25
[392] D0270, p. 8
[393] D2923, para 37
[394] D0270, p. 7; D2923, para 36

> most honest and the most competent and we appointed them[...]They were appointing the most loyal people, we were appointing the most competent people.[395]

136. Žepinić, also thought that it was not in the interest of the Muslim people to employ criminals in the MUP.[396] The Muslims were not only dominant in the top positions in the MUP, but they also started to increase their numbers in lower positions and thus increased the number of reserve policemen to over 60.000 men.[397] In June 1991 Dr. Karadžić expressed his concern to Zepinic that the SDA might create mischief through the mobilization of reserve police.[398]

137. In July 1991, Dr. Karadžić told Žepinić that he had been with Izetbegović and Zulfikarpašić the night before and had told them that the SDS would form a parallel police if they excluded SDS people.[399] He shared the same sentiment with Krajisnik.[400] Dr. Karadžić was convinced that Žepinić was corrupted by the SDA and HDZ.[401] Witnesses in this trial testified that the SDA managed to corrupt Žepinić, giving him money, a car, and business premises.[402]

138. Krajišnik was shocked,[403] while Rajko Dukić, the president of the Executive Board of the SDS, and the main personnel officer in the party[404] felt guilty because he had recommended Žepinić.[405] Dr. Karadžić and Krajišnik concluded that the Serbs would not let anyone break up Bosnia at the expense of the Serbian people[406], thus working for a united, undivided Bosnia and Herzegovina as a state with the rule of law.[407]

139. However, the problem with SDA/HDZ cheating in the MUP persisted.[408] Dr. Karadžić continued to urge Žepinić to arrange for the Collegium of Serbs to meet every

[395] D0270, pp. 5, 6, 7, 8, 9, 12, 14
[396] D0270, p. 7
[397] D3917, para 7
[398] D2924, p. 2; D2923, para 38
[399] P5625, p. 1
[400] D0363, p. 3
[401] D0363, p. 3
[402] Mandić, T.4746-7; D3917, para 15; D3960, para 36
[403] D0363, p. 3
[404] Mandić, T. 4747
[405] D0363, p. 3
[406] D0363, p. 5
[407] Mandić, T.4748
[408] P1079, p. 4; Mandić, T.4751; D1521; Nielsen, T.16434, T.16391; D1521; P2958, para 13

morning so that no one was appointed without the full approval of all the Serbs in the MUP.[409] Dr. Karadžić appeared to be furious

> And we've been tricked at the MUP, especially at the State Security [...]This is not a private thing. [...]I beg you to stop doing these things on a private basis.[...]Please be sure that no one is appointed without all the Serbs giving their opinion on that[...]I was with Izetbegović last night and with Zulfikarpašić and I told him, right to his face, we'll establish a parallel government, parallel police, we'll withdraw our people[...] We'll establish an entire parallel state if you keep on screwing around[...]let there be war, but we'll finish the job for once. [...] Their little tricks[...]This is a disaster.[410]

140. On the same day, Dr. Karadžić complained to Simović that Žepinić

> just lied to my face. [...]he is not entitled to privately appoint anyone. He should call a Serbian board of experts and say people, we have a Serbian place, this and that, who will go to that place. [...]I am shocked by what Vito is doing.[411]

141. Several days later, Dr. Karadžić wrote to the BH Presidency warning that

> Personnel matters in MUP BiH and in the Service of State Security have not been dealt with according to the multi-party agreement or in accordance to the constitutional obligation fo proportional representation of peoples in state organs. Please take urgend measures to solve this problem.[412]

142. While the Serbs were quarrelling among themselves, the SDA and Avdo Hebib did not lose time, arming Muslim people through the reserve force.[413] In September 1991, Dr. Karadžić again complained to Žepinić about problems with appointments of Serb personnel.[414] He warned Žepinić that the situation is getting out of hands and that such "fucked-up situations" which are not in line with the agreement and the law may lead to a civil war.[415]

143. Dr. Karadžić demanded from Izetbegović a simple balance in the MUP, i.e. that the Serbs get as much power as they had won, and to have the people selected by Serbs,

[409] D0364, p. 5; Mandić, T.4758
[410] D0364, pp. 5, 7, 8, 9, 11
[411] D0281, pp.2, 3, 5, 6
[412] D4285, p. 1
[413] D4286; Stanišić, T.46605
[414] P2963, pp. 2-3
[415] P2963, p. 3

not by Hilmo Selimović,[416] who had wreaked havoc in the MUP and who was preparing a civil war.[417] Dr. Karadžić desperately criticized Žepinić for not doing anything to prevent this course of action, frustratingly stating that he would ask Izetbegović for the MUP to be disbanded.[418]

144. By 9 September 1991, the number of SDA and HDZ irregularities and illegal activities in the MUP reached its peak.[419] For the umpteenth time, Dr. Karadžić furiously complained to Žepinić that

> There is a fuck up there again[...]We did not approve transfer of that Administration, transfer of Vlaški from the State Security to the Public[...]You are the Chief of the Serbs in the MUP. You are the Minister of Interior representing Serbian people. To fucking hell with them. I just called Hebib. He said that he had nothing to do with it, that it had to do with Žepinić, Delimustafić and Selimović. I will fuck Selimović's fucking arse for dinner tonight because of this. I told him ten days ago, fuck him and I told Izetbegović that Selimović will make Bosnia and Herzegovina disappear[...]Please, regardless of the fact that he doesn't understand what's right, he is not entitled to do illegal things. Abolish his decision[...]They are doing to us whatever they want to[...]Selimović will lead people to civil war in Bosnia and Herzegovina[...]Nobody else will ever again appoint the Serbs in power, but the Serbs[...]It will not take much for me to break relations with Alija, to withdraw all the Ministers, all Deputy Ministers, all officials, to withdraw everything.[420]

145. During the same conversation Žepinić threatened to form a separate Ministry if Avdo Hebib and Hilmo Selimović remained in their positions and suggested that a criminal report be filed against them and that they be arrested.[421] Also Plavšić expressed her concerns about the situation at the MUP and the fact that the position that Vlaški was supposed to hold was eliminated and a Muslim was put instead.[422] She and Dr. Karadzic concluded that Izetbegović must be told that if the trickery continued, the Serbs would establish a separate MUP.[423] Dr. Karadžić shared the same frustration with Simović.[424]

146. Dr. Karadžić tried to bring to reason the very people responsible for the chaos in the MUP

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[416] P2963, p. 7
[417] P2963, p. 18
[418] P2963, p. 18
[419] D0374; Mandić, T.4810; D1275, p. 6
[420] P5869, pp. 1, 2, 3, 4
[421] P5869; D2923, para 50
[422] D0366
[423] D0366
[424] P5868

> **Look, Mr. Hebib**[...]the Serbs will never appoint Muslim personnel and the Serbian personnel will never be appointed by the Muslims[...]**Muslim staff will never be appointed by Serbs and Serb staff will never be appointed by Muslims.** [...] either there'll be three MUPs and three governments and three presidencies or **there'll be one BH with normal authorities We have not imposed a single Muslim**[...]**People should act professionally**[...]every mistake made in the MUP shakes up BH in its foundations .[425]

147. The SDA did not care. Instead it continued with arming of its Muslim MUP members, including those with prior convictions.[426]

148. In September 1991, the Chief of the Banja Luka CSB Župljanin protested that in his security centre persons were being appointed without him knowing about it and without receiving proper clearance.[427] There were a number of such incidents.[428] The next day, a desperate Dr. Karadžić told Žepinić

> Everything we did so far and everything we are doing now is strictly according to the Law. The only question I have is whether it was smart and good for us.[429]

149. Žepinić assured him that the SDS had the support of the professionals in the MUP and even some Muslims and Croats for this approach.[430] Dr. Karadzic was truly satisfied with the Serb MUP personnel professionalism in their work.[431]

150. The agony in the MUP continued in October 1991. Almost 10 months from the time when the coalition government was established, there was no implementation of the electoral results and the inter-party agreement due to SDA manipulations. [432]

151. The Bosnian Serbs in BiH MUP and the SDS party were increasingly unhappy with the affairs in BiH MUP.[433] On 17 October 1991, and two days after the SDA/HDZ illegal outvoting of the Serb deputies in the joint Assembly, the SDS and leading Serbs in the MUP began to contemplate possible alternatives for how to remedy the situation in the MUP through decentralising police and internal affairs in BiH.[434] The problems in

[425] D4287, pp. 2-7 (Emphasis added)
[426] D3197, paras 5-6, 9
[427] D0367; P2958, para 11; Nielsen, T.16392
[428] Nielsen, T.16398
[429] D02926, p. 3
[430] D02926, p. 3; D2923, para 51
[431] D0372, pp. 1-2
[432] D0377
[433] Nielsen, T.16247
[434] Nielsen, T.16247; P2961

appointing Serbian personnel to the authorities, however, continued.[435] In yet another telephone drama between Dr. Karadžić and Žepinić in November 1991, Dr. Karadžić helplessly mourned "that they are doing what they want[...]They have blatantly distributed weapons to the Muslims, they are cheating in hundreds of places."[436] It is a small wonder that Dr. Karadžić still showed hope that things would change and that Žepinić would do something to change the SDA behaviour

> Well, they are fucking us around, Vito. Do stop that shit and don't let them fuck us around. Because everything will go to hell.[437]

152. The Trial Chamber should ask itself how many times Dr. Karadžić needed to repeat an appeal that law and agreements needed to be respected? Would a reasonable person kept begging and repeating the same request for months? What else could Dr. Karadžić have done to make the unreasonable coalition "partners" come to their senses? Something **had** to be done.

153. Towards the end of 1991, the situation, especially in Sarajevo, was becoming increasingly complex, because criminals visitied openly police stations where the Muslims formed a majority and from where the Serb policemen had been expelled.[438] In January 1992, Dr. Karadžić continued to complain and get frustrated telling his alleged fellow "JCE member" Milošević that

> They are deceiving us, in the MUP […] they're laying off our personnel, and they're doing all sorts of things." … "No, they want a war, they are preparing for war" ... "Yes, they are preparing for war, but we are ready, so let them go ahead.[439]

154. Mandić, another alleged "JCE member", wrote to the appropriate and responsible institutions about an overtly partisan conduct of the former Assistant for the police and now adviser to the Minister of the Interior, Avdo Hebib, whose conduct was causing inter-ethnic hatred.[440] because he was creating a parallel armed force in the police.[441]

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[435] P2585, pp. 3-4
[436] D4288, p. 2
[437] D4288, p. 2
[438] D3663, paras 7-8, 10; D3774, p. 32
[439] D4289
[440] D0379

f. Further Division, Cutileiro Negotiations and SDA/HDZ Manipulation

155. Finally, in early 1992, the political party leaders meeting in Lisbon for negotiations led by the Portuguese diplomat Cutileiro, had proposed to divide the MUP into three separate Ministries.[442] The negotiations between the parties continued until 23 February 1992, when it was agreed that under the jurisdiction of the constituent units would also come the police.[443] Still, the SDA continued with cheating, this time in Bratunac MUP.[444]

156. On 11 February 1991, one day before the Cutileiro negotiations officially started, there was a meeting of Serbian personnel in the joint MUP, where dissatisfaction was expressed with the work of the joint MUP.[445] None of those present was a member of the SDS, and they were mainly people with long years of service on the police force.[446] Mandić convened the meeting because of all the problems in the MUP, about which also police chiefs on local level complained.[447]

157. This meeting was, in fact, the result of the multiplying problems that had come to completely paralyse the state machinery fourteen months after the creation of the joint government. It was not a secret meeting. It was organized in a public place and the minister of the police was notified.[448] The leading Serb MUP officials recounted all the problems presented above, showing a high level of awareness about all SDA-HDZ manipulations and preparations for war.[449]

158. The attendees decided to establish a Serbian Collegium in the BH MUP, consisting of Serbian personnel at executive positions in all the lines of work that would carry out all preparations necessary for the functioning of the Serbian MUP after the promulgation of the Serb Constitution.[450] It was also concluded that maximum efforts

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[441] Mandić, T.4824
[442] D2923, para 53
[443] P0798, p. 3
[444] D0381
[445] P1083; Mandić, T.4421
[446] Mandić, T.4840
[447] Mandić, T.4841
[448] Mandić, T.4839
[449] P1083, pp. 1-3
[450] P1083, p. 4

should be made to preserve peace and that maximum media coverage of the work and the decisions about the Serbian MUP must be ensured.[451]

159. Mandić, who was in charge of the Serbian Collegium,[452] discussed these problems with his Croat and Muslim colleagues and invited Minister Delimustafić to attend this meeting in Banja Luka.[453] Delimustafić, who failed to attend it, was reported to by Mandić about the meeting and the conclusions, and they agreed to do their best to prevent a break-up in the MUP.[454] They decided to do what the Lisbon Agreement and negotiations in Sarajevo proposed.[455]

160. After the meeting in Banja Luka, on 13 February 1992 Mandić had a meeting with Minister Delimustafić, and send a dispatch that said

> Following the conclusions reached at the meeting held in Banja Luka on 11 February 1992, please set up and have a meeting with all senior executives of MUP of the Socialist Republic of SRBiH in your area and inform me accordingly.[456]

161. In other words, Mandić asked that all senior personnel of all ethnic backgrounds, Serbs, Croats and Muslims, be informed about this in order to place relations on a sound basis.[457]

162. After the meeting in Banja Luka and Mandić's subsequent dispatch, the SDA reacted on 14 February 1992 by removing Mićo Stanišić from the position of the chief of the Sarajevo police, appointing him to the position of adviser in the Office of the Minister of the Interior.[458] This position of adviser was meaningless.[459] Instead of Stanišić, Kemal Šabović, an ethnic Muslim, was appointed to the position that belonged to the Serbs.[460] This same Kemal Šabović, about a year prior to his new appointment, was, in his official capacity, handing over wireless police hand-held radios to SDA members.[461]

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[451] P1083, p. 5
[452] P1083, p. 4
[453] Mandić, T.4844
[454] Mandić, T.4844
[455] Mandić, T.4844
[456] P1112
[457] Mandić, T.4845
[458] D0382; Mandić, T.4846-7
[459] Mandić, T.4846-7
[460] Mandić, T.4846-7
[461] D383; Mandić, T.4848-9

163. Although all three sides had been making concrete plans to divide the MUP before the Lisbon negotiations began[462] and discussed this issue at many joint collegiums meetings at the MUP[463], the three main parties managed to reach an agreement on 23 February 1992, envisaging that under the jurisdiction of the constituent units would also come the police.[464]

164. [redacted], [465] [redacted], [466] [redacted].

165. Notwithstanding a long-standing dissatisfaction of MUP representatives, the SDS, as well as other parties, with the situation that prevailed in the MUP and many Serb warnings from the summer of 1991 onwards that they would have no other recourse than to form their own MUP unless the situation was not redressed,[467] on 28 February 1992 the Serb Assembly passed a law establishing a Serbian Ministry of Internal Affairs[468] **pursuant to an agreement** with the SDA and HDZ in Lisbon, and adopted a Constitution of the Serbian Republic of BH.[469]

166. However, the Lisbon agreement did not end the cheating in the MUP. In March 1992, Serb employees in the State Security sent an Information on abuse, illegal action, and manipulation by personnel of the SDA and the HDZ in the State Security Service of the MUP.[470] They complained about everything: the personnel policy run by Hilmo Selimović, Munir Alibabić and Branko Kvesić,[471] division of administrations in the State Security,[472] dismissals of Serbs,[473] even about the illegal import of weapons by the SDA representatives Kadić, Mahmutčehajić and MUP Minister Delimustafić.[474]

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[462] Kljajić, T.42191
[463] Kljajić, T.42196
[464] P0798, p. 3
[465] [redacted]
[466] [redacted]
[467] Nielsen, T.16442
[468] D0089, p. 19; P2964; Nielsen, T.16260
[469] D0089, p. 14
[470] D0384
[471] D0384, p. 2
[472] D0384, p. 2
[473] Mandić, T.4851
[474] D0384, p. 5

g. Killing of Gardovic and Setting Up of Barricades

167. On 1 March 1992, a Serb was murdered by Delalić called Ćelo, a Muslim, at the wedding ceremony in a church in Sarajevo, immediately after the referendum on independence organized by the SDA and HDZ.[475] The father of the bridegroom was killed near the old Serbian church because he was carrying a Serbian flag in Baščaršija[476] The Crime Prevention Service knew who the perpetrator was, and that he was in a house at Bistrik, however, they were not in a position to arrest him or to take any measures because the Patriotic League and the reserve police force were guarding him,[477] which enforced the opinion that police should be divided.[478]

168. When the MUP finally arrested Delalić, he stated that the killing had been ordered by Izetbegović.[479] Based upon all of the information the MUP had at the time, Žepinić believed that Delalić was telling the truth, and this was confirmed when he was released with no charges filed aganist him.[480] Žepinić believed that Izetbegović wanted to provoke a conflict with the Serbs.[481] The killer was treated as a hero and appeared very soon on television.[482] The same man would later become the commander of the 9th Mountain Brigade of the ABiH 1st Corps.[483]

169. As the immediate response to the killing of the member of the Serbian wedding party in Baščaršija, barricades were put up,[484] while Dr. Karadžić was in Belgrade.[485] On one side there were Serbs and on the other were Muslims.[486] There was no doubt in anyone's mind that it was all done over the killing of the bride's father in Baščaršija, and not because of the BH Independence referendum.[487] When Žepinić called Plavšić on the

[475] D2923, para 58; D3774, p. 45; D4143, para 16; Krajišnik, T. 43264; D4368, para 18
[476] Mandić, T. 4862; D0385, p. 2
[477] Mandić, T. 4877; D3774, p. 45; D3981, para 85
[478] P5598
[479] D2923, para 58
[480] D2923, para 58
[481] D2923, para 58
[482] Mandić, T.4939
[483] D3981, para 85; D4368, para 18
[484] Mandić, T.4833
[485] D2923, para 59; Krajišnik, T.43264
[486] Stanišić, T.46337; D4143, para 18; Krajišnik, T.43264-5
[487] Mandić, T.4939; Stanišić, T. 46337, T. 46456

same evening, she was completely unaware of - and surprised by - the erection of the barricades.[488] Žepinić called upon Izetbegović and Ganić, who was in charge of the Presidency Crisis Staff, but both were uninterested in helping to solve the problem.[489] The SDS became involved in resolving the problem of the barricades by forming a Crisis Staff headed by Rajko Dukić.[490]

170. During the telephone conversation with Stanišić, Dr. Karadžić sounded astonished

> How come they are not ashamed to killing a man at a wedding ceremony? That's utterly insane. It is probably because nobody could have stopped those Serbs. Will you be able to persuade the people to remove barricades?[491]

171. In certain parts of town, there were counter-barricades, such as the ones at Bistrik and Koševsko Brdo, and a great danger was looming over Sarajevo.[492] The Muslim forces were shooting and using snipers,[493] and a person of Serb ethnicity got killed.[494] The MUP managed to negotiate an end to the crisis together with Rajko Dukić and Franjo Boras[495] and on 2 March 1992, the barricades were removed.[496]

172. In several telephone calls Dr. Karadžić showed great concern about the crisis. He feared that Serbs who were fleeing en masse may get organised and destroy Sarajevo demanding that they not use weapons and stay in their neighbourhoods,[497] asking that Green Berets be disbanded and calling the Serbian police to join the barricades and guard the people.[498] Dr. Karadzic hoped that it would still be possible to persuade the people to remove barricades,[499] noting that "there are heavy weapons directed at them" and that "they must return to their homes and remain peaceful.[500] Finally, he was worried about

[488] D2923, para 59
[489] D2923, para 60
[490] Krajišnik, T.43265
[491] P5602, p. 6
[492] Mandić, T.4882-3
[493] P5602, p. 7
[494] Stanišić, T.46340
[495] D2928
[496] D2923, para 61
[497] P5728
[498] P5727, pp. 3, 4
[499] P5602, pp. 3, 5, 6, 8
[500] D4524, pp. 2, 3

the fact that "they have started secret mobilisation" reiterating that "we're not going on any sort of offensive. We're not doing anything aggressive."[501]

173. On 2 March 1992, the BiH Presidency met to discuss the situation in Sarajevo and BiH.[502] The SDS Crisis Staff President, Rajko Dukić, also attended the session, asking, *inter alia,* that personnel transformation of the BH MUP be carried out in accordance with the agreements reached by the three leading political parties immediately after the republican elections;[503] and disarmament of the Green Berets paramilitary units operating openly in Sarajevo and protecting perpetrators of crimes.[504]

174. All the requests put forward by the SDS Crisis Staff were accepted and signed by Izetbegović.[505] In other words, the BH Presidency, 14 months after the coalition government was established, and 16 months after the elections, ultimately accepted the fact that the coalition agreement regarding the MUP had not been carried out.[506]

175. Although on 2 March 1992 the BH Presidency adopted all the SDS proposals aimed at resolving the crisis, two days later, on 4 March 1992 the BH MUP sent an order for the reserve police force to be increased by 100 per cent by taking over unassigned conscripts who had previously undergone training in Croatia.[507] On 6 March 1992, the SDS and Dr. Karadžić personally again asked the BH Presidency to carry out its promises made on 2 March 1992.[508] In effect, Dr. Karadzic demanded that all the results of the SDA/HDZ cheating be annulled.

h. Final Division

176. The Cutileiro constitutional solutions for Bosnia-Herzegovina that were adopted by all sides envisaged that the constituent entities would have their own police forces.[509] On 18 March 1992, the SDA, HDZ and SDS accepted the agreement which reaffirmed

[501] D4554, p. 2
[502] D0214
[503] D0214, p. 3
[504] D0214, p. 3
[505] D0214, p. 4
[506] Mandić, T.4876-77
[507] D0387; Mandić, T.4891-92; D1519; Nielsen, T.16406-07
[508] D0380
[509] Stanišić, T.46342; D3663, para 11; D3917, para 8; Kljajić, T.42191; D4143, para 22

that the police would be within the jurisdiction of the constituent units.[510] Soon thereafter, on 24 March 1992 Dr. Karadžić addressed the Serb Assembly asking the deputies that

> **As soon as we are informed that we have our own separate MUP**, which will probably follow the coming session, all the newly-established municipalities should **immediately set up police stations and all policemen should be withdrawn**.[511][...]The **Brussels documents** provided us with many things and many of the things we are doing are **in line with them**[512] [...]a regular and reserve police force of the size we would want is also important because no one is limiting us in any international agreement on this point[...]We have a legal basis in the Law on Internal Affairs[513]

177. During the same Assembly, Stanišić was elected as the Minister of Serbian MUP.[514] On 30 March 1992, the freshly appointed MUP Minister Stanisic addressed the policemen informing them that

> As of today the Serbian Republic of Bosnia and Herzegovina has its own police force. The legality of our existence is provided by the Constitution of the Serbian Republic of BH and the Law on Internal Affairs recently adopted by the Assembly at its session. **Moreover, the legality of our existence is based on the result of negotiations of the three ethnic communities under the auspices of the European Community.** As of today we will act as the police of the Serbian Republic of BH which will carry out its tasks and assignments professionally, and not politically, as the MUP of the old Bosnia and Herzegovina has done so far, in order to protect property, life, body and other securities of all citizens in the Serbian Republic of BH equally. Members of the police, we are not involved in politics. We must carry out our tasks professionally[...]as of today, good luck, get to work in the interest of all who live in the Serbian Republic of Bosnia and Herzegovina.[515]

178. After months and months of (a) SDA and HDZ cheating in the MUP, (b) illegal arming and mobilisation of reserve police forces, (c) creation of paramilitary forces, and (d) wire-tapping of Serb members of the government and the party, the Serbs in the MUP responded legally, publicly and in agreement with both the international negotiators and the "partners" from the SDA and HDZ. The most senior Serb MUP official, Mandic, sent a dispatch on 31 March 1992 informing the MUP that

> At its meeting held on 27 March 1992, the Assembly of the Serbian People in Bosnia and Herzegovina, **in accordance with** the political orientation of the Serbian people and **the Sarajevo**

[510] P0782, p. 2
[511] P0961, p. 16 (emphasis added)
[512] P0961, p. 18 (emphasis added)
[513] P0961, pp. 21-2; Stanišić, T.46463
[514] P1354, p. 7
[515] D4271 (emphasis added)

> **agreement**, promulgated the Constitution of the Serbian Republic of Republic of Bosnia and Herzegovina ...]It passed a Law on Internal Affairs, which shall be uniformly applied on the territory of the Republic of Serbian People in BH as of 1 April 1992, and appointed Mić Stanišić[...]as Minister[...]**All employees in service on the day this Law comes into force, in the Administrations at the seat of SR BH MUP, as well as employees of the abolished CSBs and SJBs who so wish, will be taken over by MUP of the Republic of the Serbian People in BH**[...]**The contents of this dispatch should be made known to all employees of the SR BH MUP, in order to provide objective and timely information and to avoid incidents or disagreeable situations.**[516]

179. On the same day, 31 March 1992, the Law on Internal Affairs of the Serbian Republic of Bosnia-Herzegovina came into effect.[517] A week later, when Mandić came to work in the joint MUP, he was given an official document relieving him of his duties in the joint MUP, although the agreement had been that all the senior people in the BiH MUP should stay in their posts until the whole situation in the republic and in the Ministry of Police was resolved.[518]

180. Also on 31 March 1992, the Minister of Interior Delimustafić, under pressure exerted by the SDA, wrote a dispatch disassociating himself from the dispatch sent by Mandic,[519] because Izetbegović had learned that the independence of BH would be recognized and ordered Minister Delimustafić to abort the implementation of the Cutileiro's plan.[520]

181. Notwithstanding Delimustafić's disassociation, one day after Mandić's dispatch, on 1 April 1992 the entire BH MUP Collegium met to discuss the reorganisation of the organs for internal affairs and their respective security services that had already taken place further to the Cutileiro Agreement which had been endorsed at the Brussels talks on 31 March 1992.[521] MUP officials of all three nations were there: Vitomir Žepinić, Branko Kvesić, Jusuf Pušina, Bruno Stojić, Momčilo Mandić, Akif Šabić, Bogdan Kosarac, Avdo Hebib, and Mićo Stanišić.[522]

182. Mićo Stanišić informed the Advisory Board on the reasons why the existing MUP did not function properly, and presenting the views on the new organisation of the

[516] P1116 (emphasis added)
[517] Mandić, T.4473
[518] Mandić, T.4428
[519] Mandić, T.4904-5; P1117
[520] Stanišić, T.46467
[521] D0390; Stanišić, T.46342-3
[522] D0390, pp. 1-2

security services, both in the headquarters and in the field.[523] The Advisory Board decided that the existing MUP at all levels should be transformed peacefully and without any excesses.[524] The executive officers were tasked with making the contents of this dispatch known to all MUP employees, both in the headquarters and in the field.[525]

183. The Croatian senior MUP officials were the first ones to leave the MUP,[526] while the SDA continued to cheat. On the same day, 1 April 1992, the joint MUP Collegium sent a dispatch allegedly bearing Mandić's but lacking Stanišić's signature, calling all MUP employees to return to work as soon as possible.[527] Stanišić warned all CSBs and SJBs that a false dispatch with Mandić's signature had been sent out on behalf of Serb Republic BH MUP inviting all employees to return to their jobs and asking the employees not to fall for these and similar tricks and misinformation.[528]

184. On 3 April 1992, CSB Banja Luka informed all SJBs that the CSB would be transformed in line with the dispatch from the SR BH MUP Collegium concerning the reorganisation of Internal Affairs and the Sarajevo and Brussels Agreements

> It was concluded that there was no mono-ethnic aspect to the transformation of the Security Services Centre that had been carried out, and that we would not permit facilities and equipment to be taken over on a mono-ethnic basis. Workers will volunteer their preferences for the work that they will be engaged in future and their status in the framework of the Internal Affairs organs, with the proviso that new Law on Internal Affairs provides for everyone the option of remaining in the jobs they had when the transformation began.[529]

185. In the meantime, there were parallel talks between Mandić and Minister Delimustafić, who discussed the division of the MUP special police and agreed that the Serb part of the unit be relocated to the special unit facility that was at the school in Vrace, whereas the second part of the special unit, consisting of Muslims and Croats, should go to the police centre at Bjelave, but when the part of the special police brigade of the Serbian ethnicity arrived in the new facility, fire was opened on them, and two members of the brigade were killed.[530]

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[523] D0390, pp. 1-2
[524] D0390, pp. 1-2
[525] D0390, pp. 1-2
[526] D3774, p. 61; D2923, para 56; D3663, para 11; Mandić, T.4902-03
[527] P6631
[528] P2745
[529] D0391, pp. 1-2
[530] Mandić, T.4927-9; Stanišić, T.46346-7; D3749, paras 19-21; D3197, paras 15-6

186. On 4 April 1992, the SDA and HDZ part of the BH Presidency, without the consent of the Serbian representatives, proclaimed a general mobilisation of the TO units and of the entire reserve police force and Civilian Protection.[531] The Serbs were the proclaimed enemy.[532]

187. On the same day, Dr. Karadžić warned the public that the rump BH Presidency, operating without any representatives of the Serbian people, had issued highly irresponsible and illegal instructions regarding the activation of TO and the activation of Civilian Protection and reserve police, thereby instigating chaos, violence and civil war, and called upon the people to disregard this ill-advised appeal of the rump BH Presidency and do everything in its power to avoid civil war.[533] It was too late, because the SDA attacks on Serbs had started.[534] The SDA terror began.

188. All JNA Command appeals to Izetbegović to stop the Green Berets' attacks on the JNA and its facilities were futile

> All actions by the SDA - Party of the Democratic Action and these armies of yours, show that you have chosen the option of war. Are you aware where all this will lead?[535]

189. The rump BH Presidency had already proclaimed an imminent threat of war, establishing a new BH TO Staff,[536] indicating the JNA and TO in municipalities where Serbs were the majority as enemies.[537] The Presidency relieved from duty Commander of the Republican TO Staff Drago Vukosavljević, a Serb, and instead appointed Colonel Hasan Efendić.[538]

190. On 23 April 1992, Efendić issued the infamous Directive on the Defence of the Sovereignty and Independence of the Republic of Bosnia and Herzegovina.[539] Efendić ordered expeditious formation of combat units in all municipalities and putting them under the joint command of the municipal and district staffs and the Republican BH TO

[531] D0392, p. 2; Mandić, T.4914; D4368, para 20
[532] Mandić, T.4918
[533] D0394, pp. 1-2
[534] D0396, p. 1; D3197, para 14; D4143, para 25; D1278, p. 32; D3854, para 17-8; Mandić, T.4926; D3854, para 19; D3981, para 73; D0397; D0398; Mandić, T.4934; D0402; D0218; D0401
[535] D3068, p. 1
[536] D0393, p. 4
[537] D4368, para 20
[538] D0393, p. 4; Mandić, T.4919; D4368, para 20
[539] D0222, p. 1

staff, and then taking swift and vigorous action to break the offensive power of the enemy, capturing weapons and ammunition depots, cutting off barracks, and detaining members of the JNA.[540] Efendić also ordered establishment of units of the TO: volunteers units, the **Patriotic League** of BH, TO units and other patriotic forces on the territory of the municipality, all under a joint command and with the insignia prescribed by a decree of the BH Presidency.[541] The paramilitary units were finally legalized.

191. He further demanded setting up of the combat formations, keeping the main forces for active operations, and organising the defence of the towns with auxiliary forces in cooperation with police reserve and **armed civilians**.[542]

192. The final blow to the common life in Bosnia was done on 29 April 1992, when Efendić issued further order to mount a complete and full-scale blockade of all roads in BH where units of the JNA had begun their withdrawal, and to speed up the planning of and start combat activities throughout the territory of BH in coordination with the regional, district and republican TO Staffs.[543] The same order was issued by the MUP Minister Delimustafić.[544] Both orders were based on the BH Presidency's decision.

193. During the Muslim-Croat BH Presidency session of 6 May 1992, the only real JCE members acknowledged that

> **Delimustafić:** [...] This thing that Bakir did or that Avdo Hebib did in **ordering the war to start, to open fire, to occupy the barracks**. Sending an order to all the centres without my knowledge. **Declaring war**. [...]
> **Izetbegović:** Who did that?
> **Delimustafić:** Avdo Hebib.
> **Izetbegović:** What did he do?
> **Delimustafić: Declared war on the army**. Four points. Signed the dispatch?
> **Izetbegović:** In what capacity?
> **Kljujić:** We are finished with recording, **don't record that**.
> [...]
> **Delimustafić:** Officially, signed it and said - **kill, grab, attack the barracks**[...]
> **Kljujić:** Don't go on about that now, please[...]
> **Izetbegović:** I conclude the meeting.[545]

[540] D0222, p. 2
[541] D0222, p. 2 (emphasis added)
[542] D0222, p. 2 (emphasis added)
[543] D0399, p.1; D0332
[544] D0400
[545] D0403, p. 31-3 (emphasis added)

6. Regionalisation and Division of Municipalities

a. SDS Legal Response to SDA/HDZ Illegal Activities

194. Let us begin this subject by noting that the Prosecution, strikingly, suggests that the borders of the municipalities were codified more than the external borders of Yugoslavia, which was an internationally-recognised state. Nowhere in the Indictment or in the Prosecution's Pre-Trial brief was stated that the SFRY was a state with a constitution and laws governing its territory and external borders. This inconvenience was simply ignored by the Prosecution that focused immediately on the internal, **administrative** borders between the Republics and equally so on the issue of municipal borders within Bosnia and Herzegovina.

195. The administrative or AVNOJ borders were drawn by a handful of Communists during World War II, who overturned the constitutional and legal order of the Kingdom of Yugoslavia.[546] Administrative boundaries within states are fully assimilated within the international frontiers of states when it comes to the territorial integrity and relations between sovereign states.[547] That is the underlying principle of the SFRY Constitution which was in force in 1990-91.[548] Only the frontiers of Yugoslavia were internationally delineated by international treaties.[549]

196. It is worth emphasizing at the beginning that in the event of conflict between federal and republican laws, federal laws had priority.[550] Federal law could not be suspended by applying only republican laws, because that would have been unconstitutional.[551] Federal law could only be changed at federal level; it could not be suspended by the republican Assembly or republican organs.[552]

197. Although Prosecution expert Treanor's original position (and supposedly also the position of the Prosecution) was that the division of the existing municipalities into several municipalities was invariably setting the stage for conflict, he subsequently

[546] D4011, para 11
[547] D3020, p. 10
[548] D1260, p. 18
[549] D3020, p. 11-4
[550] Krajišnik, T.43247
[551] Krajišnik, T.43247
[552] Krajišnik, T.43247

agreed that **the division of Yugoslavia** and **unilateral secessions** of various republics were setting stage for a conflict.[553]

b. Legal Framework

198. The concept of 'communities of municipalities' was defined in SFRY and BiH constitutions, consitutional amendments and laws.[554] In fact, a number of them existed by 1990, including, significantly, the Banja Luka community of municipalities, which incorporated a dozen of municipalities in and around Banja Luka.[555] The Croat members of the BiH Presidency also considered the question of municipal rearrangements to be constitutional.[556]

199. Article 119 of the SFRY Constitution specifically allowed for a possibility, and apparently in some cases made it even obligatory, for municipalities to associate in regional communities as special socio-political communities to which specific affairs falling within the competencies of the Republics would be transferred.[557]

200. The Prosecution, through its expert Donia, struggled to show the illegality of regionalisation, but was not able to point out a single Serb action that was illegal.[558] Nor was there any doubt about the legality of regionalisation in the minds of the participants at the constitutive session of the ZOBK

> The community of municipalities by association, this constitutional matter is regulated by the 42nd Amendment to the BH Constitution[...]It is stipulated here that the municipalities that are economically and territorially joined together for the purpose of a more rational implementation of their rights and legal interests can enter into a community of municipalities[559]

201. On 31 December 1992, the *Glas* published an article stating that the idea of transorming the Republic into regions was not new, and that it had been conceived by the

[553] Treanor, T.14187 (emphasis added)
[554] Treanor, T.14450-1; P4743, p. 54; D4368, para 12; Donia, T.3330; Krajišnik, T.43174, T.43243; Hanson, T.14807; Kličković, T.46833
[555] Donia, T.3330
[556] P0986 p. 43
[557] D1260 p. 103
[558] Donia, T.3687, T.3692-3
[559] D1890, p. 36

Banja Luka economists, businessmen and politicians ten years earlier.[560] The idea of dividing the Republic into regions was later re-born again in Banja Luka, and the creator of this idea was Dr. Duško Jakšić, director of the Banja Luka Institute of Economics and scholar working in the field of the regionalisation in Europe and the world.[561] Jakšić was never a member of the SDS.[562]

202. Although Dr. Karadžić told Stevandić on 11 January 1992 that he had "invented" regionalisation,[563] that was simply not the case as it is clear from the above mentioned *Glas* article that was published a couple of days earlier, and as it will be clearer from the text to follow. In the beginning, the SDS leadership was even against the idea of regionalisation, fearing that the power would move to Banja Luka.[564] The entire telephone conversation with Stevandić clearly suggests that this was said in the context of political struggle with the Krajina politicans. Rather than selectively quoting Dr. Karadžić in its Pre-Trial brief paragraph 33, the Prosecution should have presented the context of the conversation on which it relies so heavily, namely that the Krajina people were rebelling against the SDS leadership's attempt to influence their firm regionalisation policy.[565]

203. The European Commission pursued very similar regional organisation of Bosnia-Herzegovina after the war.[566]

c. Economic Reasons for Regionalisation

204. The regionalisation issue was primarily an economic one and a result of a need to develop the underdeveloped areas and prevent that all funds went to Sarajevo.[567] Also Ante Marković's government supported these intiatives.[568] The regionalisation processes

[560] D4262, p. 1; D4259, para 40
[561] D4262, p. 1; D4259, para 40
[562] Jakšić, T.46171
[563] P2556, p. 6
[564] D4262, p. 2
[565] P2556 (emphasis added)
[566] Jakšić, T. 46165-7; D4267, p. 2
[567] D4259, paras 14-16, 24-25, 39; Jakšić, T.46162-4; D4011, paras 2-3; D4064, pp. 13-4; D4063, para 27; D4034 para 2; D4079; D4077, para 19; D4260, pp. 15-6; D4069, pp. 10-1; D4063, para 26; D1890, for example pp. 4-13, 52; D4019, p. 3
[568] Jakšić, T.46164

had started at a time when the SDS was not even formed.[569] When finally formed, all Serbian parties, including the SDS, insisted on economic development of the regions regardless of the political issue as to whether BH will stay in Yugoslavia or not, which was legitimate.[570]

d. Subsequent Political Dimension of Regionalisation

205. Regionalisation, as time went on, acquired an additional dimension. The regions also came to serve as protection against anti-constitutional and illegal acts by the SDA and HDZ and their forcible secession from Yugoslavia.[571] The economic interests of the BH regions coincided with the interests of the Serbs when they resisted the centralisation by Sarajevo, and later the predominance and outvoting by the Muslims and Croats.[572] As Kuprešanin told the Assembly later in September 1992, the regionalisation became a means to fight Alija's state[573] which was supposed to be a centralised state within the borders of Bosnia-Herzegovina, with the objective to dominate over everyone else.[574]

e. Regionalisation was not a Mono-National Project

206. The constitutive session of the ZOBK was held on 25 April 1991.[575] This session as well as the entire project was not founded on a national basis but on economic reality which is evident from the fact that all parties were present at the constitutive session.[576] The municipalities which did not enter the ZOBK during the constitutional session were given the opportunity to join later.[577] Kuprešanin, having been elected as President of the ZOBK Assembly, addressed not only the Serbs, but also the Muslims and the Croats,

[569] D4259, para 23; Jakšić, T.46168-70; Nešković, T.14254
[570] D4259, para 18; D0282; Donia, T.3512; Krajišnik, T.43175
[571] D4011, paras 2, 19; Kuprešanin, T.43468; D4034 para 3; Krajišnik, T.43175, T.43181; D0290, pp. 2-3; D4077, para 14; D4012; P2585; P2586; Nešković, T.14358, T.14360
[572] D4259, para 19
[573] D0456, p. 70
[574] Erceg, T.44107
[575] D0286, p. 1
[576] D1890, p. 3; D4259, para 21
[577] D1890, p. 3

calling them brothers and thanking them for electing him.[578] Kuprešanin laid particular emphasis on the fact that by forming the ZOBK, *Krajišnici* were not breaking up the Bosnian borders and that its formation was in accordance with the law and the Constitution.[579] Prominent Muslims took part in the debate on regionalisation and supported the regionalisation of Bosnian Krajina.[580]

207. Immediately after the creation of the ZOBK, the newly elected ZOBK officials expressed a wish for the ZOBK to be joined by Muslim dominated Cazin, Bihać, Velika Kladuša, Bosanski Novi, Bosanska Krupa, Prijedor, Jajce, Gornji Vakuf, Donji Vakuf and Bugojno.[581]

208. Two weeks before the constitutive session of the ZOBK, on 11 April 1991, the BiH Assembly recommended municipal assemblies to stop issuing decisions in connection with regionalisation, that is, the joining into communities of municipalities, while talks on resolving the constitutional crisis and on the future constitutional order of Yugoslavia were under way.[582] The Recommendation was signed by Krajišnik.[583] The process of regionalization that was underway was therefore considered by the BH Assembly and was not banned.[584] On 4 May 1991, all non-Serb municipalities were invited to join the ZOBK.[585] However, even prior to this public call, on 29 April 1991, municipalities with non-Serb majority, such as Kotor Varoš,[586] or Sanski Most,[587] also joined the ZOBK.[588]

209. The ARK Statute was written for all three nations and all municipalities in Krajina were invited to join the Region of Krajina.[589]

[578] D1890, pp. 52-53; D4019, pp. 3-4; D4011, para 3
[579] D1890, pp. 52; D4019; D4011, para 3
[580] D4261; D4259, para 29
[581] D4018; D4011, para 7; Kuprešanin, T.43569
[582] D0284
[583] D0284
[584] Donia, T.3520; Treanor, T.14471
[585] D0286, p.1
[586] P5449 p. 4
[587] P5449 p. 8
[588] D1287 p. 1
[589] D4034, para 2; D4014; D4011, para 16; Kličković, T.46833

f. ZOBK and ARK were Set Up as Mini States

210. ZOBK and ARK organs were elected and financed by - and responded to - regional and local institutions.[590] They did not function as a branch of the SDS.[591] Dr. Karadžić did not interfere in the least with the election of the Krajina leaders, who functioned autonomously.[592]

211. Many public and state entities were formed at the ZOBK and ARK levels , such as chamber of commerce, regional police, judiciary, prosecutor's office, postal service, etc,[593] without coordination with the republican organs.[594]

212. The central republican organs in Pale were financed from the revenues which they collected in their areas, that is, by the municipalities controlled by the Serbian authorities in that region.[595] Until the unified payment transactions system was established in late autumn 1992 or early 1993, the ARK did not take part in financing the work of the RS republican organs.[596]

g. SDA and HDZ Regionalisation

213. Regionalisation was a frequent official topic among the three political parties; Izetbegovic and Muhamed Cengic agreed to regionalisation.[597] SDA and HDZ also worked on regionalisation of Bosnia and Herzegovina; they considered the regionalization, transformation and reorganization of municipalities to be both beneficial and legal and took active part in it.[598]

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[590] D4011, paras 4, 8, 16; D4020, pp. 3-4; Treanor, T.14463; D4077 para 37; D4014; D4063, paras 12, 15, 16; D4075
[591] D4011, para 4
[592] D4011, para 4
[593] D4016; D4022;D4011, para 9; D4083; D4084; D4077 paras 23-24; D4075, p. 4; D4071; D4063, para 18; D4086, para 58
[594] D4011, para 8; D4077 para 37; D4063, para 16; D1278, p. 14
[595] D4063, para 17
[596] D4063, para 17
[597] D1278, p. 14; D290, p. 2-3; D3367, p. 3; D3364, para 15; D0087, p. 105
[598] Donia, T.3426-7; D0287; D4259, para 38; D0291, p. 1-2; D0292; D4263, p. 7; D4259, para 46; Treanor, T.14472; D1292 p. 7; D3984; D0293

h. Krajina Separatism

214. The relationship between the Republican SDS and the people from AR Krajina was anything but harmonious. The ARK leaders did not fear Dr. Karadžić, but rather opposed him and harshly criticized him, freely speaking their minds. There was no subjugation in the SDS, rather the opposite - the people from Krajina expressed strong political independence.[599]

215. All Krajina officials, **Radic**, **Brdjanin, Vukic**, **Kupresanin, Lazarevic, Jaksic** were manifestly independent vis-à-vis the central Serbian authority.[600] There was also a rift between the Sarajevo option and the Krajina option because the Banja Luka leaders were in favour of establishing a state that would comprise the two Krajinas (Bosnian and Croatian), which was opposed by the central SDS and Dr. Karadzic.[601] In June 1991 *Krajišnici* drafted and proclaimed the Constitution of the Republic of Krajina.[602] The two Krajinas signed a Declaration on Unification and an agreement on cooperation at all levels, which stated that all decisions of interest and importance were to be made at the level of the Krajinas themselves.[603] This was done despite the opposing views of Dr. Karadžić.[604] It must be emphasised that the unification and the Declaration happened after both Croatia and Slovenia declared their independence and secession from Yugoslavia[605] The Republican Serb leadership had a different view of the regionalisation of BH.[606]

216. Although the ARK leaders *did*, however, *occasionally* coordinate their activities with the central SDS when the basic security of the country was at stake, the conflict between the SDS leadership in Sarajevo and the Krajina leaders was never resolved before the war broke out, because *Krajisnici* acted as a state within a state. [607] It would be

[599] D1278, p. 17; Nešković, T.14234-5
[600] D4259, paras 18, 30-32; D4011, para 14; Kuprešanin, 43472; T.43478; T.43481; T.43485; D4034 para 3
[601] D4086, para 25
[602] D4259, para 34
[603] P0747; D4077, para 20;D4011, para 12; P746; [redacted]
[604] P5894; D4077, paras 20-1;D4011, para 11
[605] Martic T.38105-6
[606] D0288, p. 20-2
[607] P1084, p. 2; P2571; P5841; D0280; D4077, paras 22, 26-27, 30, 35-38; D4259, paras 36, 41; D4021; D4011, paras 14, 27-28, 30, 32-34, 36; Kuprešanin, T.43485; D4081; P2556; P5678; D4085; D4266, pp. 12-13; P2552; D4025; D3146, para 36; D4015; D4086, paras 24, 27; D4015, p. 4; D4034, paras 7-8; P0938, p. 34; D3970;

only in September 1992 that the RS Assembly decided to start centralisation of the government and to try and reduce the authority that the regions had so as to exercise greater control.[608] The ARK Assembly was disbanded only on 23 October 1992.[609]

217. In conclusion, did Dr. Karadzic control the regional and local authorities? The Prijedor power-holders did not think so

> Who cares about Karadžić, who is he, what does he want,? we'll do whatever we want! He can't impose his will on us, let him think and say what he wants in Sarajevo.[610]

7. The Alleged Object of the JCE

218. An examination of the character, words, and deeds of Dr. Karadzic during the pre-war period demonstrates that he never had the objective of expelling Bosnian Muslims or Bosnian Croats from Serb areas of Bosnia and that he did everything humanly possible to avoid the war.

219. The object of a JCE is central to the charges against Dr.Karadzic because it links the plurality component of the JCE together and thus extends liability. The Prosecutor has specifically charged Dr.Karadzic with participating in a joint criminal enterprise, the object of which was to expel '*Bosnian Muslim and Bosnian Croat inhabitants'* from Serb-claimed territory, starting from at least October 1991.[611] This object is that which the prosecution claims was the motivating force behind the actions and intent of the accused.

220. The Appeals Chamber has stated that the *'common plan, design or purpose',* which is the object of the JCE, must amount to or involve the *'commission of a crime provided for in the Statute.'*[612] Therefore, if the object does not reach this level of criminality, there can be said to be no joint criminal enterprise. If the object was to control territory then this does not amount to a crime provided for in the statute, which focuses on crimes during a time of war. Controlling or seizing territory is not a violation

[608] Treanor, T. 14464; P2536 paras 158, 161
[609] P2536 para 161
[610] P2571, p. 11
[611] No. IT-95-5/18, *Third Amended Indictment* (19 October 2009), para 9
[612] Tadic AJ, para 227

of the laws of war. Therefore, the Chamber would be obligated to acquit the accused by virtue of the fact that the central element of the joint enterprise, the criminal element, does not exist.

8. Dr. Radovan Karadzic—The Person

221. Up until 1990 Dr. Karadzic was involved in psychiatry first and foremost, and also was an accomplished poet, as well as involved in counselling a sports team.[613] In the beginning of 1990, together with his entire family, Dr. Karadzic was a supporter of the ecological movement of the Greens in Sarajevo.[614] When Prosvijeta was founded in June 1990, Dr. Karadzic was not willing or prepared at that point to assume the leadership of the party.[615] Donia testified that Dr. Karadzic did not have a conscious nor a deliberate desire for war.[616] Donia also testified that many of the professional people that Dr. Karadzic engaged with were Muslims or Croats in Sarajevo, and that Dr. Karadzic did not choose people according to religion.[617]

222. Dr. Karadzic enjoyed great authority among the Serbian people, because he led the party that protected the Serbian people and strove to keep everyone in their own homes protected from any kind of domination by anyone.[618] After all the cheating and tricks of the Muslim and Croatian leaderships, the people were irritated by Dr. Karadzic's statement that the Serbs did not want to fight the Muslims.[619] Neither Dr. Karadzic nor Krajišnik ever promoted the hatred against other peoples; rather, their positions were much more moderate than those of the other deputies.[620] Dr. Karadzic always promoted respect for the Geneva Conventions and insisted on humane treatment of non-Serbian

[613] Donia, T.3203
[614] Donia, T.3208
[615] Donia, T.3225-6
[616] Donia, T.3268
[617] Donia, T.3283
[618] D4063, para 4
[619] D4063, para 6
[620] D4077, para 10

civilians and prisoners of war.[621] In Assembly sessions, he always said that the Serbs must all see to it that crimes are not committed as the Serbian people had never committed them in the past, insisting on respect for the International Law of War.[622]

223. At the state level, there were plans on how to defend the Serbs or how to wrap-up Serb territories if others did not want to live with the Serbs, but there were never any plans or political instructions how to harm other people, how to expel them, or how to disenfranchise them.[623] There was no strategic plan ever about forcible relocation, particularly not in the sense as the Prosecution alleges.[624]

224. Deputy Interior Minister of Bosnia and Herzegovina Vitomir Zepinic testified that if prior to war in Bosnia Dr. Karadzic had in any way directly or through documents said that the Serbs needed to expel Muslims and Croats from the Serbian areas, he would have been arrested.[625] The security detail of Dr. Karadzic included Muslims because he was never interested in ethnic backgrounds of policemen.[626] Dr. Karadzic had friends and relatives from all ethnic groups in Bosnia-Herzegovina.[627] Mico Stanišić testified that Dr. Karadžić was not in favour of interethnic conflict but, rather, a political solution.[628]

9. Dr. Karadžić's Mens Rea and Actus Reus

225. The main form of Dr. Karadžić's alleged individual criminal responsibility pursued by the Prosecution is his participation in the so-called JCE. There are certain criteria to be fulfilled in order for one to be a member of a JCE. To begin with, an accused must possess the requisite intent, and the Chamber can only find that the accused has the requisite intent if this is the only reasonable inference on the evidence.[629] The other requirements for a conviction under the JCE doctrine are no less stringent. A trier of fact must find beyond reasonable doubt that a plurality of persons shared the common criminal purpose; that the accused made a contribution to this common criminal purpose;

[621] D4034, para 32
[622] D4034, para 32
[623] Brdanin, T.43668
[624] Brđanin, T.43666
[625] Zepinic, T.33655
[626] Zepinic, T.33650
[627] Zepinic, T. 33651
[628] Stanisic, T. 46335
[629] *Brdjanin* AJ, para 429

and that the commonly intended crime (or, for convictions under the third category of JCE, the foreseeable crime) did in fact take place.[630] Although the contribution need not be necessary or substantial, it should at least be a significant contribution to the crimes for which the accused is to be found responsible.[631]

226. What is this significant contribution in relation to the **pre-war period**? What did Dr. Karadžić do to significantly contribute to the furtherance of the (non-existing) object of the JCE? The Prosecution alleges that Dr. Karadžić's contribution to the alleged JCE consisted of formulating, promoting, participating in, and/or encouraging the development and implementation of the SDS and Bosnian Serb governmental policies intended to advance the objective of the JCE; and participating in the **establishment**, support and/or maintenance of **Bosnian Serb Political and Governmental Organs** through which the objective of the JCE was implemented.[632] This fancy language means that Dr. Karadžić was involved in the **establishment** and maintenance of the Serb political bodies in Bosnia with the aim to expel and kill the non-Serbs. This, as we could see from the previous text, is not true. But it is worth elaborating further this Prosecution's theory in order to expose its nonsensical nature.

227. For a person to be held responsible pursuant to the JCE theory, in addition to one's actions (actus reus), one must also possess a certain state of mind (mens rea). In other words, for Dr. Karadžić to be convicted under the above-stated Prosecution's theory, the only logical conclusion must be that the SDS and Bosnian Serb governmental structures were created and maintained for the commission of crimes against Muslims and Croats, which is the alleged JCE object. Dr. Karadžić's contribution was the establishment, support and/or maintenance of Bosnian Serb Political and Governmental Organs. It follows from this that the SDS (and later governmental) structures were created for the purpose of committing crimes against Muslims and Croats with whom they had formed a coalition back in November 1990 and nearly two years participated in the exercise of power.

228. From the preceding paragraphs we could clearly observe the reasons why Bosnian Serbs in BiH formed their own government. The Prosecution seems to be suggesting that

[630] *Brdjanin* AJ,para 430
[631] *Brdjanin* AJ, para 430
[632] Indictment para 14 (a) and (b)

the Chamber should analyze events in an anachronistic way. Once the war started, the fact that some of the local party or government officials allegedly committed crimes in a civil war should be retroactively attributed to Dr. Karadžić because he was involved in creating and maintaining the continuity of the SDS and state authorities (to which the perpetrators allegedly belonged) long before the war even started. And when the war broke out, according to this logic of the Prosecution, Dr. Karadžić should have worked on the abolishment of the party and state authorities to avoid being responsible for offenses committed by some vague state or party officials in the field. Without the party and the state there could be no crime? Nonsense.

229. What are exactly these governmental bodies that **were established in order to allegedly further and implement the JCE object**? The first and foremost is the National Assembly of the Serbian People of Bosnia and Herzegovina, created in October 1991. Thus, the Prosecution suggests that the Serb Assembly was established with the aim to expel the non-Serbs, and goes on to say that an overarching joint criminal enterprise came to existence in October 1991.[633] As we could see the only Serb organ created in October 1991 was the Assembly. If we go a step further, it can be concluded that one entire nation is criminalized because the National Assembly is the embodiment of the nation. Another organisation that was criminalized is the SDS. The Prosecution points out the SDS as one of the organs executing the objectives of the JCE.[634] The SDS, the overwhelming force in the Serb parliament, won nearly 100% of the Serb votes. Therefore, the Prosecution's logic suggests that the Serbian nation, the Serbs - are criminals. This is simply beyond comprehension and common sense.

230. The Prosecution's overarching JCE construction carries the risk of incriminating anyone who supported a national, religious or political idea in the circumstances where war crimes took place. It is this moment that dilutes the difference between the theory of the JCE liability and the guilt by association, that is, membership in an organization. It also represents a *post hoc ergo propter hoc* fallacy: a crime that occurred at a specific time (say committed by a policeman in 1993) is inevitably the result of an action that preceded it, i.e. the creation of the Serb government and the Serb MUP in early 1992. No

[633] Indictment, para 9
[634] Prosecution Pre-Trial brief pp. 16-17 (E. Organs and individuals executing the objectives of the JCE and Karadžić's role and contribution)

Serb MUP = No Serb policeman committing the crime. In other words, having determined that the crimes were committed in BH, the Chamber is expected to analyze problems backwards and automatically come to the conclusion that the crime must have occurred as a result of the activities of state bodies. This is a wrong, anachronistic understanding of events in Bosnia. Exactly the opposite analysis is necessary to establish the truth, as is shown in this final brief. Leaving, temporarily, aside the events or crimes that followed, it is necessary to perform a chronological analysis of a specific event, action and state of mind and see what reasons at **that** exact time influenced **that** specific action of the accused, and this method must be applied to each and every event. There cannot exist some floating, ever-growing legal constructions that stretch to fit the needs of the Prosecution.

231. The required *mens rea* for the first form of JCE, is that it must be shown that "the JCE participants, including the accused, had a common state of mind, namely the state of mind that the statutory crime(s) forming part of the objective should be carried out." [635]

232. Since according to the Indictment paragraph 9 Dr. Karadžić participated in an overarching joint criminal enterprise **from at least** October 1991, the plain reading of this paragraph means that a JCE could have been formed prior to October 1991, which in turn means that we must go back to the very beginnings of Dr. Karadžić's political career in order to look for the alleged criminal state of mind. Consequently, we shall now turn to Dr. Karadžić's *mens rea* and *actus reus* and examine if and when his state of mind developed to aspire that the alleged JCE object be carried out and whether he significantly contributed to it. Therefore, let us begin a chronological journey through Dr. Karadžić's state of mind:

233. In July 1990 Dr. Karadzic called for "a federative Yugoslavia and in it – coequal Bosnia and Herzegovina, with unconditionally coequal citizens and ethnicities" adding that The Serbs put civil peace and freedom above everything[...]Bosnia[...]should not be divided or seceded[...]We must say that we are going to oppose to any ethnic-based coalition […] certain issues cannot be outvoted. [...]."[636]

[635] *Krajisnik* AJ, para 200
[636] D0269, pp.6-12

234. Dr. Karadžić added that "there is nowhere a conflict of interests between the Serbs and the Muslims. Regardless of what may happen, the Serbs and the Muslims will always live in a common state[...]Muslims are Slavs, people with our blood and language who, for the most part, opt for the European quality of life and preservation of the Islamic faith. There is no room for panic neither among the Serbs nor among the Muslims. [...]We are much closer to our Muslims than to Europe which does not recognise or identify with any of our vital needs."[637] In the view of Dr. Karadžić "making peace is absolutely essential. The Serbs have to make peace with others and forgive wherever possible".[638]

235. In October 1990, he said that "the Serbian people should not be threatened with civil war" and emphasised that the Croats changed the essence of "our internal borders. So the administrative lines which are supposed to join us have been transformed, or will soon be transformed into firm state borders which separate us."[639]

236. In November 1990 Dr. Karadžić emphasised that "the Serbian people wish to coexist with other peoples in Yugoslavia equally and peacefully" [640]

237. Dr. Karadžić predicted that "without the Chamber of Peoples, not one of the people is safe. Both hypothetically and in practice, alliances between two people as the expense of the third are possible [...]The BH Assembly could become a place of dramatic events, because the Serbs could be outvoted by a two-thirds majority regarding, for instance, the issues of the change of the state character of BH."[641]

238. When asked about the war, Dr. Karadžić stated that “My opinion is that it won’t happen because the Serbs won’t start the skirmish first and others are afraid to. No one has reason to fear the Serbs if they have no misdeeds against them .“[642]

239. During the spring of 1991, in a series of intercepted telephone conversations or public utterances, Dr. Karadžić never expressed anything remotely similar to discriminatory or other criminal intent. Instead, he told his interlocutors to organise meetings with the SDA and "tell them not to be worried, we guarantee that nothing will

[637] D0269, pp.8-9
[638] D0269, p.11
[639] D1280, p.4
[640] D4651, p.1
[641] P2539, p.3
[642] D1281, p.3

happen to the Muslims [...]This is very important to convince Muslims that we have nothing against them. And please meet them and convince them that the Muslims are not endangered[...]".[643]

240. He kept repeating that everyone needed to tell the Muslims there that "the Serbs have nothing against them[...]Nobody may threaten them. They must feel fine and they must know that neighbours or neighbourly arguments will not resolve the Yugoslav crisis We don't want a civil war in Bosnia[...]And the neighbours need to know this, that their blood will not resolve anything, but just make matters more complicated."[644]

> The Serbs have got nothing against the Muslims [...]Make this clear for the Muslims: that we ..... that the eastern Herzegovina is the safest place for them. They are not endangered at all. [...] How arc the Muslims feeling now? W**e have lived together for centuries and we always will**[645]

241. Dr. Karadzic asked Koljevic to "shut up all those halfwits, because we have absolutely no need for these Chetniks to be marching up and down BH[...]organize a civil panel discussion for both Serbs and Muslims, because the Muslims are afraid of Serbs there. Even though there is no reason for them to be afraid of Serbs, because even the Chetniks there aren't against them, but against the Ustashas, but all the same, people simply don't like to see Chetniks, and that's it! One should understand that..."[646]

242. As much as he was against the Chetniks, Dr. Karadzic was also against an Islamic state in which Serbs would be hostages and against Muslim outvoting that could provoke chaos in Bosnia.[647]

243. In June 1991 it was clear to Dr. Karadzic that

> **Izetbegovic was preparing a war** [...]Alija Izetbegovic was preparing a war and that he was looking for help. And tell them not to eat shit anymore, because I'll accuse them all of giving an incentive for Alija Izetbe ovic to start the war [...]there are forces in BH that know that they cannot do it from on high without war. But they need a pretext for war, to blame someone else. **We must not give them a pretext for war**.[648]

[643] D3171, pp.4-5
[644] D3172, pp.2-3
[645] D3377, pp.2-4 (Emphasis added)
[646] D1282, p.2
[647] D0270, p.16
[648] D0271, pp.6-7 (Emphasis added)

244. Dr. Karadzic even asked the Serbs to suffer if necessary if that would help prevent chaos and war.

> Let them beat them, let them suffer[...]Because I know what's behind all that. There is a need to incite [...] provocation[...] and only where the Serbs are in a majority.[649]

245. In July 1991 Dr. Karadzic warned that if others violated BH and SFRY constitutions, the Serbs would prepare the democratic response emphasising that they must pursue the policy of co-operation and that nothing bad can happen to this people, nor can anything bad come to others from this people and emphasising that it is good when the fighting is in Parliament, not in the streets. That Serbs will not do anything that would lead to the fighting spilling over into the streets.[650]

246. Dr. Karadzic had faith in the Muslim people believing that

> The Muslims are strongly opposing some Alija's war intentions [651]... They have a republic, they have Yugoslavia, **no sane person wants to wage war.** Alija would like to wage war in order to change it, and now Alija can't explain to the Muslim people why they should wage war, and if they do something stupid, he will say: this is why we should wage war. […]This is the only thing, now **he** only **needs an alibi for war. We don't need to help him with it**[652]

247. Although in possession of this statement and all the other peaceful private and public utterings of Dr. Karadžić, the Prosecution still have the audacity to assert that Dr. Karadžić was leading an overarching persecutory campaign[653] intending even to destroy a part of the Bosnian Muslim and Bosnian Croat groups.[654]

248. In August 1991 Dr. Karadzic asked that those Serbs who caused incidents with the Muslims must be found, arrested and punished, calling them "goddamn brazen motherfuckers" and reiterating that the Serbs were not going to attack other nations.[655]

249. He repeatedly asked that the Serbs refrain from doing

> anything stupid on any account[...]Alija doesn't have any arguments against the Serbs[...]he told the Muslims: "We don't want to reach an understanding with the Serbs", but he can't say why[...] [Izetbegović] has to tell the Muslims why he wants war with the Serbs.[656]

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[649] D0272, p.2
[650] D0273 pp.36, 94,116,133
[651] P0274, pp. 1-2
[652] D0274, p.2 (Emphasis added)
[653] Prosecution Pre-Trial brief, para 5
[654] Prosecution Pre-Trial brief, para 27
[655] D4539, pp.3, 5

and was furious about the fact that

> They want to set Bosnia on fire[...]So wherever the road blocks are, the police should remove them and you are not to erect any road blocks. Instead, file a criminal report[...]but no road blocks whatsoever. We won't do anything. [657]

250. In September 1991, Dr. Karadzic told Kupresanin that

> Peace is the only solution, that they must not wage the war [658]

and emphasised to another interlocutor that

> If it wasn't for this party, war would have already broken out here[...]Because the Serbs would foment an uprising[...]we are now keeping it in[...]some sort of a democratic realm[...]And so **we shall avoid the war in Bosnia**[...]**They won't achieve anything by war**[...]**It should be done peacefully**[...]**All disputed issues should be resolved peacefully**[659]

251. Dr. Karadzic also made it clear to Koprivica from Vogosca that he was against the civil war.[660]

252. In October 1991 during a telephone conversation with Miodrag Simovic, Dr. Karadzic advised that

> That's very important, and it's also very important /to say/ that the Army and MUP are preserving peace in Bosnia and Herzegovina [...]we just sit and watch how they arm Muslims, etc, but I told Alija, we will give you weapons if necessary[...]if you're afraid of something, but don't arm yourselves for the Serbs and Muslims to get entangled[661]

253. A few days later, Dr. Karadzic noted that

> **These Muslims want to have a war**[662]**[**…]but still, we will see tomorrow if they are ready for, for reasonable deals which will guarantee both them and us that there will be no war and no majorities and so on.[…] we have to count on the fact that they want to engage in combat. **They have some weapons and they have been preparing and following the moves of the army.** [...]And a number of **sensible Muslims** is turning away. Last night after my speech in the Assembly they **called the Muslims here and congratulated them.** Nobody called to provoke them, they called the Muslims and congratulated. **Therefore, the Muslims know what it is, it is hell in which five-six hundreds of thousands of them will disappear,** they will disappear. I have just spoken to my wife, our estimation is that **there were between 40 and 60 thousand dead in the war in Croatia**[663]

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[656] D0277, pp.1-2
[657] D4543, pp.3, 5
[658] D0278, p.3
[659] D4546, pp.4,6 (Emphasis added)
[660] P2360, p.1
[661] D4500, p. 2
[662] P5846, p. 1
[663] P5846, pp.1,3 (Emphasis added)

254. We have come to one of the telephone conversations used by the Prosecution in its attempt to prove Dr. Karadžić's genocidal intent,[664] quoting only highly selectively those parts which will be given below in *italics*, while the other important quotations, given in **bold**, were conveniently omitted by the Prosecution

> **They are preparing for war**. **They will try to, to, to wage war here. Probably as soon as next week. Well, he's crazy. They're, they're totally crazy**[...]*they should be thrashed if they start a war, they will…they…they'll disappear…They will disappear, that people will disappear from the face of the earth if they, if they start now*[...]They were offered more than Serbs should ever have offered, but still they wouldn't take it[...]whoever wants to leave Yugoslavia, let him formulate their wish. Let[...]them go to the Yugoslav Assembly and to try to make it happen there. **Only in a constitutional manner**[...]**I can't tell our, I mean, our Muslim partners, for crying out loud, don't you understand that Serbs will fight for their state, not to lose their state, down to the last man**[...]**I put it to them, privately I told them a hundred times, don't fool yourselves, there is no way we will sign anything for you now, all of Bosnia would rise up in two hours, and, and be on fire**[...]Izetbegović promised Tuđman[...] that the Muslims would rise up against the Serbs to fight[...]they have to know that *there are 20,000 armed Serbs around Sarajevo, that's insane, they will, they will disappear, Sarajevo will be a karakazan /black cauldron/ where 300,000 Muslims will die*, they're not right in the head.[...]**the poor Muslims would disappear, who don't know where he is taking them, where he is taking the Muslims**[...]They did prepare, they have some weapons, the MUP gave them weapons, and **we said so to Izetbegović, we don't mind it at all if Muslims have weapons, but not to use them against the Serbs unless you're crazy, and it will be hard for the Serbs too, but you'll see how it'll recoil on your own heads**[...]**But the negotiations continue tomorrow and we will try to come out with an option acceptable to all**[...]**We will not force them to do anything**[...]*It will be a real bloodbath, this time the Army won't use only two planes any more, of the five hundred it has, it will use twenty for each assault. And that would be it then, if Bosnia goes up in flames, Sandžak will follow, and Kosovo, you know…. And Europe will be told to go fuck itself, not to come back until the job is finished*[...]**there are ordinary people out there, and I think that they should be welcomed with open arms. But as far as the leadership is concerned, there will be no hesitation, they must know that, that if they want to secede they will have to[...]start a war against us and to hit us, to fight us, and then they will get their answer back, that goes without saying** [...]**our ambition is not to kill them**[...]the **army treats civilians properly.**[665]

255. This intercept in isolation, let alone taken together with all the other statements by Dr. Karadžić, is not a proof of any criminal intent. Far from it. It is the proof that Dr. Karadžić was amazed and shocked by Izetbegović's insistence on war as a way to obtain the illegal independence of Bosnia, for which, as we have already seen, he was ready to sacrifice peace.[666] Dr. Karadžić made a clear distinction between the ordinary Muslim people and the SDA belligerent leadership. The telephone conversation in question merely reflects Dr. Karadžić's frustration with his coalition "partners" and his fear that the

[664] Prosecution's Pre-Trial brief para 28
[665] D0279, pp.2,3,7,8,9,17
[666] D0256, p. 4; Treanor, T.14147; D4077, para 11

SDA was preparing for war, as reflected in the intercept of the following day, 13 October 1991

> Alija is preparing for war, we know where his headquarters is, and that he has set up […]a secret studio there[667]

256. Another Prosecution's "smoking gun" purportedly proving Dr. Karadžić's genocidal intent[668] is the following telephone conversation between Dr. Karadžić and his brother on 15 October 1991

> They want an independent Bosnia and Herzegovina. This is an attempt to create it. Is this hell, man? Twelve percent of Serbs made hell in Croatia, they didn't allow an Ustasha state to be introduced into their homes, and these here are trying to /do this/ with thirty-five percent, you know[669].[…] On the huge territory controlled by the Serbs, that's…**There are many Muslims who are aware of what's happening,** you know. Who'll do it, man? That would mean war until their extinction.[…] The Serbs would never forgive them such a thing, it would destroy them completely. First, none of their **leaders** would survive, the'd all be killed in three to four hours. They'd stand to chance of surviving whatsoever[670]

257. Again, the belligerent SDA leadership is not the same as the Muslim people in general. Secondly, these two "genocidal" conversations were conducted immediately prior and immediately after the BH Assembly during which the SDA and HDZ illegally adopted the Declaration on Sovereignty, as noted by Dr. Karadžić during the second conversation of 15 October 1991.[671] These two conversations do not exist in vacuum. There had been many statements and conversations before these two intercepts and many were yet to follow. Even if one is to take these two intercepts as an indication of a genocidal intent, which they certainly are not, what about all the preceding pacifying comments made by Dr. Karadžić? Equally importantly, what about all his subsequent public and private conciliatory words? Does that mean that Dr. Karadžić changed his "genocidal/criminal" intent? The answer must be - no. There simply was no criminal state of mind, and these two conversations have to be considered in conjunction with all the other conversations and thoughts in order to understand the real nature of Dr. Karadžić's *mens rea*.

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[667] D0377, p. 2
[668] Prosecution Pre-Trial brief, para 28
[669] D2540, p. 5
[670] P2540, pp.5-6 (Emphasis added)
[671] P2540, p. 2

258. These two conversations were reflections of Dr. Karadžić's frustration with the SDA and HDZ war-mongering policies, of his attempts to prevent armed clashes, and nothing more than that. Therefore, it is submitted that not only the Chamber, in line with the rule *in dubio pro reo*, can and should infer other reasonable conclusions which are in favour of the Accused, but that it is *the only* reasonable conclusion that Dr. Karadžić did not have the alleged genocidal or discriminatory intent, which will be confirmed as we continue our journey.

259. When Borisav Jovic, expressing his concern, asked Dr. Karadzic whether the illegal outvoting during the infamous 8th BH Assembly session would cause reactions of the Serbian people and unrest, Dr. Karadzic answered

> Not unrest. I hope not[...]If they try to take power on the basis of such decisions, then it would[...] cause unrest[...]no Radovan Karadžić will be able to prevent barricades. This is simply not a question of the leadership but of the people, who will not allow it.[672]

260. However, Dr. Karadzic still believed that Bosnia could be organized in such a way where "there will be a lot of Serbs in their Muslim region[...]We will regulate rights completely reciprocally. As such, rights will be primarily cultural and personal autonomy[...]everyone will be able to live their own life and there will not be any hindrances[673]

261. In November 1991 Dr. Karadzic reminded that it was actually Izetbegovic who first suggested that if he could not make all of Bosnia sovereign, he would make sovereign that part of Bosnia which he could control prosperously.[674]

262. When the SDS organised the plebiscite of the Serbian people, Dr. Karadžić asked the Serbs that

> the plebiscite goes off with dignity and good spirits, the way Serbs can do it, like gentlemen[...]on best terms with your Muslim and Croatian neighbours[...]no conflict anywhere whatsoever[675]

263. This speech is also a fine example of the Prosecution's highly selective and misleading method of work. In para 22 of its Pre-Trial brief, the Prosecution selectively

[672] P5843, p. 2-3
[673] D4517, pp.2
[674] P0958, p.7
[675] P0958, p.8

quoted Dr. Karadžić and alleged that he insisted that the Muslim demographics threatened to overrun Serb living space through birth-rate and immigration. However, was it not Izetbegović who preached that **the Islamic movement** should and **could start to take over power as soon as** it was morally and **numerically strong enough** to be able to overturn not only the existing non-Islamic government, but also **to build up** a new **Islamic** one?[676] Anyway, let us have a look at what Dr. Karadžić exactly said on that occasion

> The Muslim gentlemen are now establishing a **ministry for emigrants**[...]to move all the rabble, beggars and scoundrels **from Turkey and settle them in our territories**. But I am telling you, *whatever Bosnia we have one day, no Muslim foundation shall ever be laid in Serb areas and Serb villages* whether or not you import Turks because we will instruct Serbs not to sell land to Muslims. *The first foundations that are laid will be blown up, and all foundations that are laid will be blown up*. You took Novo Sarajevo, now you have 300 houses that are being built there without licenses…you took Ilidža with the Sokolović kolonija from us.…they settled people from Sandžak, they took Vogošća...in Pale they planned to build a thousand or more flats[...]**They are implementing a demographic policy here**[...]The world will understand /us/ when we tell them that *we will not allow the demographic picture to change, either naturally or artificially.* No way, our territories are ours, we may be hungry but we will be there…we will proclaim: *"You must not sell land to Muslims!" You must not! Because this is a fight to the finish, a battle for living space.* **They have a plan to conquer Bosnia**, **to keep all of Bosnia for themselves** so that when the next census is taken within ten years, they will have an absolute majority **and turn us into raja**[...]They've showed us how merciless they are. We have the example of the Stari Grad municipality where [...]**Serbs have been deprived of all rights.**[677]

264. It has already been established in the preceding paragraphs that the Islamic plans of the Muslim convicts, headed by Izetbegović, were real and being implemented as Dr. Karadžić spoke. Even Prosecution's expert Donia testified that Izetbegović argued that Muslims should take over a state if they reached a certain threshold of the population.[678] The concern about Muslim expansionist policy through demographics was, therefore, real, and Dr. Karadžić shared it with Milošević on 1 November 1991

> The birth rate that they're relying on and the ministry they formed to bring Turks to Bosnia[...] They adopted a decision to form this ministry and this has really motivated the Serbs, while also showing their real intentions, conquering intentions in fact[679]

265. Further chronological *verbatim* evidence shows that Dr. Karadzic never possessed criminal intent. Instead he expressed satisfaction that the Muslims wanted to live together

[676] D0075, p. 56 (Emphasis added)
[677] P0958 (Emphasis added) (The Prosecution's quotation in para 22 of its Pre-Trial brief is written in italic)
[678] Donia, T.3696
[679] P5828, pp.1-2

with the Serbs.[680] On another occasion, Dr. Karadzic believed that "the policies of the Serbian people are linked to what's good for /Serbs/ and to **what's good for other nationalities who live with us, and that we will manage to confront the madness of secession and separation**[...]**We think that rifles and bullets should be set aside for hunting**[...]**war should be expelled from these areas for all time**."[681]

266. However, he feared that "they have prepared something for war, we know where they keep it and what they have, but we must say that that war will not last long and that it will be terrible and that it really will, first of all Sarajevo and several of these Bosnian cities will be destroyed, so to speak. I think that all of that would be destroyed in three to five days. They can't play around[...]**In the end, I can stand before the assembly and say that we accept the sovereignty and independence of BH**[...]**That same moment the people would reject it. That same moment the people would take up arms against both me and them**[...]**the people wouldn't have accepted it anyway and I'd be speaking in vain.** "[682]

267. Dr. Karadzic's efforts for peace continued in December 1991 when he told his interlocutor that "we are not going to give up. We believe that there should be negotiations, better negotiations than war[...]**Who in their right mind wants war? No normal person wants war**[...]I am going to pretend that I didn't hear those ultimatums. I am going to pretend as if they were never uttered, because we[...]**care about avoiding war in Bosnia and about people living in peace**."[683]

268. However, on 18 December 1991 the fear of war was still ever present

> I am afraid that they might start a war , because the Serbs are so much in the mood for war. Everyone is telling them, to have it over with and get the fuck lost. They don't want to live with them now... This is a great danger.[684]

269. On 21 December 1991 Dr. Karadzic told the deputies that

> **We will continue to do our best to preserve the civil order in BiH**[...]**They should not scare Muslims with Serbs**[...]**They should stop scaring Muslims with Serbs!** This Assembly should send a sincere message that nobody should be afraid of Serbs [...] **Everything is better than civil war**[...]Everything is better than the chaos and hell, which we can see developing and evolving.

[680] D1283, p.3
[681] D4548, p.2 (Emphasis added)
[682] P5817, p.2 (Emphasis added)
[683] D4550, p.2 (Emphasis added)
[684] D4502, p.7

> **We are committed not to instigate any such thing**[...]**A civil war in Bosnia and Herzegovina would also result in massive and rapid population movements; in other words, it would lead to population homogenisation. What would be the end result of it all? The end result would be the situation as it is today: separate Serbian, Croatian, and Muslim areas, left impoverished by several hundred towns and several hundred thousand people[...]We think that a war in Bosnia and Herzegovina would, through some intermediary stages and terrible killings, lead to the same starting position.** The question if whether after such a war any form of peaceful coexistence could be re-established and also whether there would be anywhere for the people to live, because we have seen that apart from the loss of human lives, war also brings the destruction of property. **War would destroy what people in our communities**, which have always lived simultaneously separately and together, **have been building over centuries**[...]**And I do not see why we could not achieve that again in a peaceful way.**[685]

270. In a telephone conversation with a Muslim person, Dr. Karadzic made it clear that

> I will not wage war, nor call to war, nor do I know how to wage war, nor do I believe war should be waged.[686]

271. On the same day, he again emphasised that

> **I don't want to call to war and I don't want to generate, to provoke war**[...]And if they're offering us slavery then I will withdraw the party from political life, there you go, Serbs, find your own way. And the Serbs will find their own way, they can't wait. **I am having a hard time calming them down, my**[...]**hawks**, they want to fight, they don't want to talk[...]they want to stop me from talking to Izetbegović any more[...]I mean, it's such great pressure[...]I think it's awful that the media in Sarajevo have created this fear of Serbs among the Muslims that is completely unjustified and silly[687]

272. As could be seen, day in, day out, Dr. Karadzic consistently opposed to war

> It allc comes under threat if the blue helmets don't come. Otherwise we'll have to declare a state of war and call up 500.000 soldiers and flatten Croatia. But then you still have to negotiate [...] Military end, and a gradual, slow one, at that, where the people there won't demobilise and disarm for five years. Nobody will build house for five years, nobody will work the land for five years- well that can't be, there's no sense in that.[688]

273. On 1 January 1992 Dr. Karadzic claimed that "the average Muslim is not inclined to the idea of war, like any average person, but certain leaders would like to have an independent Islamic Jamahiriya[...]**what will we have after war? We will have the same situation as we have now, but we will have two or three hundred thousand people killed and two or three hundred towns destroyed, and we will still have to**

[685] D0086, pp.21,38,40-1 (Emphasis added)
[686] D4551, p.3
[687] D4553, pp.5-6 (Emphasis added)
[688] P5784, pp.6-7

negotiate about the same thing[...]So war cannot resolve anything in Bosnia and Herzegovina; it will only kill people "[689]

274. International negotiators were also explained that a war would cause

> mass movements, homogenisation of territories, migrations from one area into another and, of course, accompanied by instances of shooting out of hand[...]Who would start it? Nobody knows that, who would start[...]In these situations there is no knowing who would start[...]someone from the lowest strata will start[690]

275. In every opportunity, privately or publicly, Dr. Karadzic tirelessly advocated for peace

> We accept this. Not unity but fellowship: you and I and something in common. Not life but cohabitation. We agree that all decisions should be adopted peacefully and by agreement[691]

276. On 25 January 1992 Dr. Karadzic clarified that "we want the transformation of Bosnia and Herzegovina. Not a greater Serbia, nor a smaller Yugoslavia, but the transformation of Bosnia and Herzegovina[...]Izetbegović called for a break and after the break he called it all off[...]unless he wants war. If he wants war, there will be chaos. His own people will destroy him."[692]

277. In February 1992 Dr. Karadzic continued explaining that the SDS was against any division, making it clear that transformation of Bosnia into cantons was not a division of the country.[693]

278. Another speech of Dr. Karadzic's, the one dated 14 February 1992, or rather bits and pieces of that speech, were used by the Prosecution several times in its Pre-Trial brief,[694] to make their "points". However, the Prosecution again "forgot" to include relevant parts of the speech which are emphasised below

> I have to say that we must grab the very last drops of power**,** wisely, harmoniously, devotedly, self-sacrificing, **in a humane way, of course, and righteously, with regard to the Muslims and the Croats who live there. This is particularly important, that there be no exodus from our areas**[...]**we will not create any conflict**.[695]

[689] D4519, p.5 (Emphasis added)
[690] P5774, p.6
[691] P1347, p.50
[692] P5621, pp.2-3
[693] D0424, p.5
[694] Prosecution Pre-Trial brief, paras 38, 84, 99-100
[695] P0012, p.5 (Emphasis added)

279. On 22 February 1992 Dr. Karadzic yet again contradicted the Prosecution's case that his goal was a Great Serbia

> The future Bosnia will remain within its present borders[...]Which means **we won't join anything to Serbia**, and everyone must be satisfied![696]

And again on 24 February 1992

> We have achieved a fantastic success, because this is what we have always said, that we will not accept anything being annexed by anyone.[697]

280. On 28 February 1992 Dr. Karadzic gave another speech which was quoted by the Prosecution in paragraph 21 of its Pre-Trial Brief "As Karadžić told the Bosnian Serb deputies on 28 February 1992, Muslims would quickly overwhelm you with their birthrate and their tricks" or in paragraph 83 "Karadžić instructed the delegates about ethnic separation -- for example, that no one could live with Muslims" or as paragraph 271 of the Pre-Trial Brief states "Members of the Bosnian Serb civilian and military organs reported to Karadžić about crimes." But is that really the gist of Dr. Karadžić's speech? Let us look at what he really said

[redacted][698].

281. When the first killing occured in Sarajevo, that of a Serb in front of the Orthodox church, a frustrated Dr. Karadzic did his best to preserve the peace in Bosnia, as is apparent from a series of telephone conversations on 3 March 1992

> We won't give them any reasons to erect their barricades[...]If we had not intervened, the people would have gone to war on their own. Their Sarajevo would have been ruined[...]Therefore, if the SDS Crisis Staff not intervened, everything would have gone to fucking hell.[699]

> Our people should be calm[700]

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[696] D4505, p.2 (Emphasis added)
[697] P5745, p.3
[698] [redacted]
[699] D4522, p.3
[700] P5603, p. 2

> It is an evident mobilization and beginning of civil war in Bosnia and Herzegovina. He doesn't not want to, to attend the conference. We have rejected his letter...now only Sarajevo…**I am scared that somebody does not launch something on their settlements from the big weapons…I am afraid that somebody does not launch something on their settlements from the big weapons. If you're in contact with the people who are in possession of it, to tell them to control themselves** till we see to where they'll go and what they will do…**No, they are starting the civil war**…They should dismiss that, they should dismiss it because **I am scared that will start sooting from big weapons, rockets and howitzers on their settlements, then Sarajevo will be fucked**. I am scared that it doesn't start and then… **If you have any connections with the people who are in possession of the weapons, tell them to wait, to control themselves as long as possible**[701]

> Muslims have responded to the mobilisation and they are attacking Serbian villages [...]a real civil war will develop, which will be a catastrophe.[702]

> They would disappear if they dared to try. There are nice people as well it's better for things to settle down as soon as possible because there are some nice people and they're afraid [703]

> Someone from the SDA has ordered a secret mobilisation of the Muslims and a massive civil war is starting in Sarajevo[...]**The Serbs have received instructions to stay in their neighbourhoods and organise themselves for defence, not to attack anyone anywhere**[...]Please, this has to stop now, or nobody will be able to control this process anymore[...]**the Serbs and Muslims should stay at home** [...]**If we plunge into a civil war, the solution is entirely uncertain, and it is certain that the people and citizens of Bosnia will suffer a catastrophe[...]We will never recover from this. Everyone must stop this instant and go home**[...]**We keep telling them not to do anything**.[704]

> **Please, don't start anything until we've started to get things under control[...]wherever you're in contact with the Serbs[...]they should stay in their neighbourhoods**.[705]

282. It is obvious from the preceding paragraphs that Dr. Karadzic spoke the same language of peace both publicly and privately, and was continously advocating against

> **Uncontrolled processes and chaos, which would result in a bloody civil war with hundreds of thousands dead, and hundreds of destroyed towns, after which we would have the same situation we have now,** with three Bosnia and Herzegovinas, only after a war with much less citizens and cities and completely homogenised. For it is assumed that in the civil war a massive and bloody emigration of minority people parts would take place from one region into another[706]

283. Month after month after month, Dr. Karadzic was calling for reason. In vain, because on 16 March 1992 he knew "full well that the Muslim and the Croatian communities were very well armed" and that "as far as the Serbian Democratic Party is

[701] P5604 (Emphasis added)
[702] D4523
[703] P5724
[704] P5605 (Emphasis added)
[705] D4525 (Emphasis added)
[706] P1353 (Emphasis added)

concerned, I can say that there is a great danger of our people becoming more extreme than the leaders."[707]

284. Finally, in his last pre-war Assembly speech on 27 March 1992, Dr. Karadzic made a final appeal to the Serb deputies that

> We must study the situation regarding the s**aving of lives, property and territory. We have no other plans**[...]I urge you to undertake, with the full authorisation of the Assembly, the task of introducing discipline and organising crisis staffs, headed by reserve and retired officers in order to organise the people for defensive purposes. Exclusively for defensive purposes. **We should strive to maintain peace. Peace is in our interest**[708]

285. Having arrived at the end of the journey through Dr. Karadžić's state of mind, one must ask oneself - when exactly did his mind develop into a criminal intent? At what point in time? What did Dr. Karadžić do to contribute significantly to the alleged JCE object? "Maintain peace", "Tell Serbs to stay at homes in their neighbourhoods", "Do not attack anyone anywhere", "I do not want to call to war and I do not want to generate, to provoke war", "I am having a hard time calming down my hawks", "We will continue to do our best to preserve the civil order in BiH", "They should stop scaring Muslims with Serbs!" "Everything is better than civil war", "We are committed not to instigate any such thing". Those are the **words and deeds** of Dr. Karadžić. There is **absolutely no** intent to further any JCE object, common plan or commit any crimes whatsoever. Dr. Karadžić *did* significantly contribute, but to the efforts to maintain peace, legal order and security of **all** citizens in Bosnia and Herzegovina. That is his **only** significant contribution. There was **no** Join Criminal Enterprise on the Serb side, and whoever is claiming or supporting the opposite, is trying to re-write the history and is, in the parlance of the ICTY, *contributing significantly* to future civil wars in the Balkans.

10. Dr. Karadzic's Contact with Alleged JCE Members

286. We shall now chronologically examine the interaction between Dr. Karadžić and his alleged co-members of the JCE, in order to try to find a **common criminal** mental state to carry out an agreed criminal plan or design

[707] P1940
[708] D0304

287. Date: 23 May 1991

"JCE members": Dr. Karadžić and Plavšić

> Bosnia is sliding into chaos and civil war, [...] we have to reach an agreement with Izetbegović.[709]

288. Date: 29 May 1991

"JCE members": Dr. Karadžić and Milošević

> We still believe that it would be a pity for Bosnia were to fall apart [...]if anybody decides to break away, it would have to be the ones that have decided to secede from Yugoslavia. [710]

Dr. Karadžić also said that

> Izetbegovic talked about the division of Bosnia, explicitly and openly, he'd never been more explicit! I, we were shocked. We hadn't thought about that[...]we still believe that it would be a pity if Bosnia were to fall apart. That is our basic stand[…]he is very cunning, he doesn't steal what he[…]those ultimate moves. Those last moves of his, the last intentions of an Islamic Republic, and he is hiding behind the state and citizens […] Their biggest concern is to accuse us, and we not giving them any reason…**The Muslims are arming themselves.**[711]

289. There we have two principal "JCE members" who allegedly had the aim to grab the Bosnian territory and expel the non-Serbs, but in fact are shocked by Izetbegović's idea of Bosnian division. They found the breaking up of Bosnia to be a pity. The real JCE member, as it could be seen from this intercept, was Izetbegović, who relentlessly pursued the establishment of the Islamic state.

290. Date: 4 June 1991

"JCE members": Dr. Karadžić, Koljević and Milošević

> **Karadžić:** [...]we have arranged something with Alija on Saturday, he has changed it the next day.
> **Milošević:** he's always changing his opinion, you can't come to an agreement with him about anything.
> **Karadžić**. Yes but I think that he is changing his opinion according to TUDJMAN, hem, TUDJMAN, because TUDJMAN is supporting some, heating up his hopes and increasing his ambitions compared with something he cannot actually realise.[712]

291. Date: 8 June 1991

"JCE members": Dr. Karadžić /discussing Martić and Babić with Simović/

[709] P5681, p. 2
[710] D1282, p. 3
[711] D1282, pp. 1, 3-4 (Emphasis added)
[712] P5683, p. 2

Karadžić: So, you can see that Martic did it with no reason…He doesn't listen to anyone as well as Milan Babic.[713]

292. Date: 17 June 1991

"JCE members": Dr. Karadžić and Milošević

Karadžić: providing themselves with weaponry, and they have formed some council
Milošević: Who, the SDA?
Karadžić: The **SDA**, the Muslim National Council for the Defence of the Muslims, something like that.
Milošević: What is there to defend from?
Karadžić: We don't know yet.
Milošević: Who attack them so they have to defend?
Karadžić: That is **not clear to** us. Allegedly, they are plotting something.[714]

293. This telephone conversation, that speaks for itself may be the best example of the absurd, Kafkaesque nature of the Prosecution's theory of the case and interpretation of the past.

294. Date: 24 June 1991

"JCE members": Dr. Karadžić and Milošević

Karadžić: [...]**they are preparing for war over here**. They have made, they have brought in huge armaments**, they have a plan to attack five or six hundred Serbs in Sarajevo** at the same coordinated hour, at the same coordinated minute, and then to put them in one concentration camp. [...] I'm afraid.[715]

295. Date: 28 June 1991

"JCE members": Dr. Karadžić and Milošević

Karadžić: [...]As long as there is a Constitution we will respect it and we will be the last to violate it.
[...]Babić, either you will work in co-operation with others, abide by the law, otherwise don't expect that we will follow you in your sill actions.
Milošević: No, he's really a fool.[716]

296. Date: 13 July 1991

"JCE members": Dr. Karadžić and Krajišnik

Krajišnik: [...]We have the right only to live together and we will press for that and we won't let anyone to break up Bosnia at the expense of Serbian people, that's it.[717]

[713] D1435, p.5
[714] P5688, p.2 (Emphasis added)
[715] P5893, p. 2 (Emphasis added)
[716] D3531, p. 2
[717] D0363, p. 5

297. Date: 28 July 1991

"JCE members": Dr. Karadžić and Brđanin

> **Karadžić:** The fact is that whether Bosnia will fall apart or not depends on them [...] "It depends on you, gentlemen", if you try to take control over us in some sort of a unitarian BH, then you want to destroy Bosnia Herzegovina.[718]

298. Date: 29 July 1991

"JCE members": Dr. Karadžić and Milošević

> **Karadžić** I even think that Alija is ready, I think that he is such a **religious fanatic that he is absolutely ready to lead a war.** And through MUP, through his influence in MUP, he is preparing them, he is handing out the arms, and all kind of things, **he is ready to, to lead a war!**[719]

299. Date: 31 July 1991

"JCE members": Dr. Karadžić and Milošević

> **Milošević:** [...]**organise such meetings between Serbs and the Muslims** in as many places as possible.
> **Karadžić:** Yes, yes, we will…
> **Milošević:** Because, look, the people want to calm down, they do not **want war**.
> **Karadžić:** [...]**Izetbegović**[...]**is preparing a civil war through his people in MUP**[...]he must let his Muslim people know what he is pushing them in, where he is taking them.[...] there are signs that[...] huge signs that there is relief among the Muslims who do not want to bleed for their, for their nonsence[720]

300. Date: 1 August 1991

"JCE members": Dr. Karadžić and Krajišnik

> **Karadžić:** But here *Politika* reports that he[721] said that they will fight if it comes to war, the Muslims will fight on the Croatian side. That is something that I think is terrible. Now we have to ask the Muslims if what Alija says is true.[722]

301. Date: 7 August 1991

"JCE members": Dr. Karadžić and Krajišnik

> **Karadžić:** I think that **"our hawks" can be sorry too** [...] **many of our own people will be disappointed if we reach an agreement with the Muslims.**
> **Krajišnik:** Our hawks will not agree with that for sure.
> **Karadžić:** They will not agree, they won't[...][Izetbegović] said at one point last night that **he would divide Bosnia**[...] **to introduce an Islamic Republic**, and he doesn't care that the Muslims will be up shit creek.

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[718] D1290, p. 8
[719] P5875, p. 2 (Emphasis added)
[720] P5881 (Emphasis added)
[721] Izetbegovic
[722] D0275, p. 4

> **Krajišnik:** Fools, he says should be divided. Wherever you divide, a part of the Serbs will remain there
> **Karadžić:** [...]and a part of the Muslims will stay here who will feel uncomfortable and so on[...] If you leave, we will vote against you, but **we will not fight**.[723]

302. Date: 4 September 1991

"JCE members": Dr. Karadžić and Krajišnik

> **Karadžić:** [...]they attacked the Serbian village of Kravica[...] that's where it leads, where your[724] policies leads!**"** "Can you see where this leads?" and "Do you realise that **you will disappear** in all this?!" "Man, you will disappear. **Many of us will also disappear**, but you will be annihilated!"
> **Krajišnik:** [...] **we will all disappear**, both sides.[725]

303. The Prosecution uses this conversation in order to prove that Dr. Karadžić spoke openly of his genocidal intent,[726] choosing to quote only the latter part of the intercept, and ignoring, as shown in this brief, the entire corpus of Dr. Karadžić's pleadings and demands for peace. Even this conversation is proof of Dr. Karadžić's disbelief and anger over the fact that Izetbegović intentionally led Bosnia to war, in which, like in every war, people get killed and disappear in great numbers. Those who led such policies showed genocidal intent, not those who advocated peace.

304. Date: 4 September 1991

"JCE members": Dr. Karadžić and Milošević

> **Karadžić:** [...]**you insist that there is no use of force**... [...] **I am fiercely holding back our extremists**, but now when, if they start the procedure with the platform and the Constitution and the referendum [...] **I can't hold the people back**.[727]

305. Date: 8 September 1991

"JCE members": Dr. Karadžić and Babić

> **Karadžić:** [...]Serbs are afraid of Muslims and Muslim are afraid of Serbs here. You cannot walk around in patterned camouflage uniforms in Bosnia[...]nobody should go into Bosnia, because[...]Bosnian Krajina would burst into flames, all of it! The Serbs would come from up there. They're angry anyway because of this thing in Okučani, and all hell would break loose[...]You wouldn't be able to stop it.[728]

306. Date: 19 September 1991

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[723] D0276, pp. 2-4 (Emphasis added)
[724] Izetbegovic's
[725] P3200, pp. 1-2 (Emphasis added)
[726] Prosecution Pre-Trial brief, para 28
[727] P5877, pp. 2, 6 (Emphasis added)
[728] D3532, pp. 1-2

"JCE members": Dr. Karadžić and Milošević

> **Karadžić:** Today I'm meeting with Izetbegovic again. They're simply going for a division of BH[…]Also, chaos in BH certainly suits Tudjman because he wants to internationalize the conflict, and maybe this is true of Alija, too. Let them do this as soon as possible, or we'll have a catastrophe on our hands. That would mean the initiation of conflicts in BH. People from Romanija have informed me they were preparing to block Sarajevo. No one will be able to get our of Sarajevo. It will be a catastrophe. I'm going to call Izetbegovic now to tell him this.[729]

307. Date: 19 September 1991

"JCE members": Dr. Karadžić and Milošević

> **Milošević:** Did you have an agreement with Alija about the Belgrade initiative?[...]
> **Karadžić:** [...] **he is ready to divide Bosnia, he is ready for regionalisation**[...]We are therefore, **aiming at the regionalisation thing**, or better say, **cantonisation**. [...]The Serbs have agreed to the federation as a compromise[...] **Greater Serbia would be the best, but we gave up on it a long time** ago[...]If they give up on Greater Croatia and Greater Bosnia, federation is the compromise[730]

308. Date: 23 September 1991

"JCE members": Dr. Karadžić and Milošević

> **Karadžić:** [...]We really don't have , nor are we allowing our people to get armed, or to have some ideas of theirs on the war[731]

The same two men had another conversation on the same day

> **Karadžić:** [...]they are enforcing the police and taking conscripts in the police and it seems they are preparing for the war here.[…] **they might be preparing for the war**[…] **he started the war**[…] **they started making a state army**[732]

309. Date: 24 September 1991

"JCE members": Dr. Karadžić and Milošević

> **Karadžić: […]We are trying hardly to prevent the destruction of the town by the Serbs from the surrounding mountains.** They have beaten 7 or 8 Serbs already. […]
> **Milošević: We do not want them to get killed, either, nor any of our people,** but, but they caused so much bloodshed with their madness […]
> **Karadžić:**.[...] We are keeping peace here[…] We are, that it is, that peace in Bosnia.[733]

310. In another telephone conversation of the same day, the same two "JCE members" continued

[729] D0365, pp. 2, 4
[730] P5867, pp. 2, 5 (Emphasis added)
[731] P5861, p. 5
[732] P5853, pp. 1-3 (Emphasis added)
[733] P5859, pp. 1-10 (Emphasis added)

Karadžić: […] I will have to squeeze IZETBEGOVIC
Milošević: Milošević: Sit down with him and make an agreement. It's better to make an agreement than to start fighting[…]He is crazy if he thinks he should fight.
Karadžić: He has his lunatics and he is hoping to pull Bosnia out, as independent. […] incredible war time propaganda, no responsibility, no nothing.[734]

311. Date: 26 September 1991

"JCE members": Dr. Karadžić and Milošević

Karadžić: I said there is no chance that you fight Serbs, because we shall not force you on anything.
Milošević: Absolutely.
Karadžić: But **if you want to secede from Bosnia**, we shall **vote against** it, but **we will not fight** against it.[735]

312. Date: 1 October 1991

"JCE members": Dr. Karadžić and Koljević

Karadžić: [...]there are no particular brushes between the Serbs and the Croats.
Koljević: Yes
Karadžić: [...]between the Serbs and the Muslims, there aren't any conflicts anywhere, nor is there a realistic basis for a conflict, but in the media, there is, er… propaganda war and propaganda strain …And then, I think that the point should be that we have been persistently…. Repeat that there is no reason for a conflict between the Serbs and the Muslims, there isn't an issues that can't be solved in a satisfactory way through the talks between Serbs and Muslims.[736]

313. Date: 4 October 1991

"JCE members": Dr. Karadžić and Krajišnik

Krajišnik: [...] there is no one thing that we will do that is against Bosnia, against unity, against peace […]
Karadžić: No, no that is for certain.[…] there are ground to stop the bloodshed and implement the peace…[737]

314. Date: 12 October 1991

"JCE members": Dr. Karadžić /discussing Milošević with Đogo/

Karadžić: [Milošević] he's lost /?certainty/ in Serbia. [...]. his party should not be spared, they need to be kicked where it hurts..[738]

315. Date: 13 October 1991

"JCE members": Dr. Karadžić and Mandić

[734] D4496, pp. 5-8
[735] D4497, pp. 1-2 (Emphasis added)
[736] D4498, p. 2
[737] D4499, pp. 2, 4
[738] D0279, p. 4

> **Alija is preparing for war, we know where his HQ** is[…] and Serb members of Parliament are fed up with all those attempts to proclaim independence. Alija Izetbegovic admitted to us[…] And this is the way Croatia took and we know what is going to happen here, that has nothing to do with Karadzic's or anyone else's decision[…] In just a couple of days, Sarajevo will be gone and there will be five hundred thousand dead, in one month Muslims will be annihilated in Bosnia and Herzegovina, number of Serbs will be reduced and Croats will be the only ones to profit because they will keep their municipalities[…]that is, I think, nasty and it creates chaos.[739]

316. Date: 24 October 1991

"JCE members": Dr. Karadžić and Milošević

> **Karadžić: Alija is focused on his goal with the conviction of a religious fanatic and he cannot be talked to. I would like to talk to him**, but [...] he wasted three months of our time on the cantonisation of Bosnia and then he showed up with[...] a paper ordered by Tuđman[...]**it's they who are working illegally, and implementing their illegal and illegitimate decisions**[...]**we will recognise this government as the federal BiH government, but we have, we will go on to organise our own authorities** [...]they've destroyed the BiH Constitution[...]we then start to organise ourselves. We don't have a choice[740]

317. Date: 3 December 1991

"JCE members": Dr. Karadžić and Mandić

> **Karadžić:** What did this fucking Hebib bark about [...] He's distributed weapons to the Muslims[...]they're[...]eavesdropping on us. The fucking leader of a party in power being tapped by his own police. For fuck's sake.
> **Mandić:** It's not your police, you'll get ours.
> **Karadžić:** We're going to get ours that wouldn't tap [741]

318. Date: 20 December 1991

"JCE members": Dr. Karadžić and Milošević

> **Milošević:** [...]anyone who wants to fight can go fuck themselves hard because we're here and we're stronger.
> **Karadžić:** And whoever wants to live peacefully, we're here, it won't be any better or any worse for anyone than it is for us[...]
> **Milošević:** Anyone who wants to fight us with Alija, go ahead[...]and whoever wants to be honest and polite with us, we will treat him as we treat each other.
> **Karadžić:** And it will be exactly the same for them as it is for us[...]
> **Milošević:** It'll be exactly the same for them as for us. Right.
> **Karadžić:** There's nothing fairer than that. Justice is on our side[742]

319. Date: 21 December 1991

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[739] D0377, pp. 2-3 (Emphasis added)
[740] P2546, p. 8 (Emphasis added)
[741] P5806, pp. 1-2
[742] P5790, p. 3

"JCE members": Dr. Karadžić and Koljević

> **Karadžić:** [...]**we want war by no means** [...] **we do not want that at all**, we have no aims, we do not want to take from other people[...]Other people's villages, **all we want is that they do not take ours**[...]that has to be resolved democratically. There is no other way[743]

320. Date: 21 December 1991

"JCE members": Dr. Karadžić and Jovica Stanišić

> **Karadžić:** Everybody is worried - is this an ultimatum, will there be war? I told them **we had no war objectives** or interests**. We won't attack anyone**, **we have no interest in entering Croatian or Muslim villages and driving them out**[744]

321. Date: 1 January 1992

"JCE members": Dr. Karadžić and Krajišnik

> **Krajišnik:** [...] one can see who wants war and who wants peace.
> **Karadžić:** He's[745]-crazy, man, he… he is directly irritating the Serbs…Now they are openly saying sovereign and independent Bosnia. Does he want someone to come and destroy Sarajevo?[...]He really isn't normal, God fuck him [...]We have been keeping the Serbian people down for a year, keeping them under water because of his nonsense. What will I do, I won't hold down anyone. I can't and won't hold them[...]I am saying that you can't stop them any more[...] he wants war. He is playing with fire. [...] he is trying now to irritate the Serbs as much as possible[746]

322. Date: 5 January 1992

"JCE members": Dr. Karadžić and Milošević

> **Karadžić:** They are cheating us, replacing our people in the MUP, doing and doing things like that... [...] they want a war, they are preparing for war[...] Some of their people are doing very illegal things, distributing weapons[...]They are simply making a Bosnian army, doing really stupid things[747]

323. Date: 7 January 1992

"JCE members": Dr. Karadžić and Jovica Stanišić

> **Karadžić:** We are working on peaceful solutions, that's the only way…I gave them my hand hundreds of times and they rejected it…**We have no, we have no closer people…We have no closer in Bo… in blood, no one is closer to us.**[748]

324. Date: 15 January 1992

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[743] P5789, p. 1 (Emphasis added)
[744] P5788, p. 2 (Emphasis added)
[745] Izetbegovic
[746] P5779, pp. 5-6
[747] P5775, pp. 1-4; D4289
[748] D4503, pp. 1-3 (Emphasis added)

"JCE members": Dr. Karadžić and Milošević

> **Karadžić:** [...]internal transformation, autonomy for the three national communities, like in Belgium.[...]
> **Milošević:** You don't want Bosnia to be partitioned[...]
> **Karadžić:** Yes, transformation is not partition. This is a transformation, not a partition[749]

325. Date: 22 January 1992

"JCE members": Dr. Karadžić and Jovica Stanišić

> **Karadžić:** [...]we said that we do not want any division of Bosnia[...]If there is war[...] nobody will win, we will all be impoverished and ruined. [...]if the Muslims want, we can finish everything peacefully so that everyone is satisfied, and if they don't, there will be chaos.[750]

326. Date: 27 February 1992

"JCE members": Dr. Karadžić and Krajišnik

> **Krajišnik:** [...]In case BiH becomes a unitary state, it will become an Islamic, unitary state in the future…We accepted it as a whole to prevent the creation of an Islamic state not to join Serbia and Montenegro…
> **Karadžić:** We are not the ones who want to secede but Croats and Muslims. [...]Serbs will not accept an independent BH, but they will not attack anyone. [751]

327. Having arrived at the end of this exercise, the results certainly sound striking to anyone who read the Prosecution's Indictment that claims that Dr. Karadžić participated in an overarching joint criminal enterprise to permanently remove Bosnian Muslims and Croats from Serb territories and shared the intent for the commission of the crimes with other members of this JCE. **When** did the "plurality" came to an express or implied agreement that a particular crime or underlying offence would be committed? At **no point in time** did any of the alleged JCE members have, let alone share any common mental state to carry out an agreed criminal plan or design. At **no point in time** was there any criminal plan or design in the first place. This is not merely one of the reasonable inferences that the Chamber should or could draw. It is the **only** one.

11. Dr. Karadžić as SDS President

328. The time has come to put to test paragraphs 61-4 of the Prosecution's Pre-Trial Brief, where it is essentially alleged that the SDS, headed by its leader Dr. Karadžić, was

[749] P5766, p. 3
[750] D0301, pp. 5-22
[751] D1284

autocratic, centralized and a Nazi-like party. Dr. Karadžić, as the Prosecution alleges, significantly contributed to achieving the objective of the permanent removal of Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory through the commission of crimes through, *inter alia,* formulating, promoting, participating in, and/or encouraging the development and implementation of SDS policies intended to advance the objective of the JCE.[752] These SDS policies are by their very definition illegal.

329. Therefore, a new chronological journey through Dr. Karadžić's state of mind is necessary in order to determine the veracity of the Prosecution's case. Dr. Karadžić's words and thoughts on the issues of the inner-party dynamics, democracy, legality and the SDS in general will be now elaborated on.

330. In November 1990 Dr. Karadzic expected that "all three peoples will continue to participate in government, except but the key to their participation and selection will not lie in the hands and offices of the communists and offices but in the electoral will of all three peoples."[753]

331. In May and June 1991 Dr. Karadzic advocated against illegal activities.[754] He insisted that no party leader could intervene or interfere in the work of state organs and that anyone committing a crime could not seek protection from politicians.[755]

332. In July 1991 he emphasised to the SDS members that personnel appointments were almost exclusively up to the local political leaderships and had never been imposed by the Main Board or the party president, that everyone could freely present their views, that the main place of work for the SDS was the local board, that the leadership did not dictate which delegates would become assemblymen and that

> We from the Main Board are not a power above the municipal boards [...] local political actions[...]are entirely in the jurisdiction of the municipal boards[...]In a democracy it is unacceptable to favour anyone[...]Everyone must be equal now, and will have to be equal in the future.[756]

333. In October 1991 Dr. Karadzic reiterated that he personally “won’t make any decision[...]I am desperate, how come that Serbs do not listen to their leadership [...]I do

[752] Indictment, para 14 (a)
[753] P2539, p. 3
[754] D0357, p. 5
[755] D1435, p. 2
[756] D0273, pp. 28, 44

not want to bring important decisions for the Serb nation by myself[…]We are not communistic party that can abolish someone by issued decree."[757]

334. In November 1991 he made it clear that

> The highest someone that can decide for the Serb people is the Assembly" … […]I cannot change that now. Not even God can change that now." […]I don't have the right nor does anyone else have the right to change it.[758]

and again emphasised that neither him nor anybody else was above the Parliament

> The Serbian Assemlby has made the decision [...] There is no one who can change that – neither Karadžić nor Milošević, nor God himself! [...]that is what the Assembly decided[...]and everyone must respect it. There is no alternative![…] If the Assemlby makes a decision then who am I to change it? I am a little pawn which serves the Assembly and the who… the who… the whole party and the entire Serbian people! I am not either a big shot or a boss to change it. Neither is he! Nobody among us is! We are here to serve the Assembly".[759]

335. He continuously appealed that "the Serbs must not rely on criminals anywhere".[760]

336. In December 1991 Dr. Karadzic insisted that "nothing should be based on a botched jobs and scandalous acts. Everything should be clean, sensible and honest"[761] and demonstrated that he was a true democrat by organising "two votes of confidence in me"[762] He continued to insist that no one must stand behind criminals and that politics would not exercise influence over courts of law.[763]

337. In January 1992 Dr. Karadzic reminded his interlocutor that "no one has imposed a single decision" on Krajina leaders..[764] and another interlocutor that the SDS must not impose naked political will against legal norms, and that the Party is not my private property.[765]

338. In February 1992 he again emphasised that deputies are the supreme authority and when the Assembly makes a decision others cannot do differently, adding that

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[757] P2559, pp. 3-5
[758] D0423, pp. 1-2
[759] D0280, p. 6
[760] P5634
[761] P5639, p. 2
[762] P5616, pp. 2-5
[763] D1434, pp. 2-5 (Emphasis added)
[764] P2556, pp. 8, 13, 16
[765] D1219, pp. 2-4

> The people have first priority with us, and all our positions are in tenth place[766]

339. Finally, Dr. Karadzic lamented about disorganisation and lack of party discipline and underlined that

> The deputy is for us the government[...]party officials are not our government …]Our whole policy is determined in two bodies[...]Political Council and the Deputies' Club[...] if this policy is no good[...]then we must change the leadership[...] I will be happy and grateful that we are embarking on some other policy[...]then we deserve it if you replace us[…]I have no wish to remain one day longer at the head of this party[...]A better person will be found, it's not a problem, nobody is irreplaceable.[767]

340. No one is indispensable, said Dr. Karadzic, the alleged autocrat. Prosecution witness Neskovic testified that there was democracy in decision-making,[768] and that Dr. Karadžić was a democrat all the way until 1996, in line with what the statute said; there was an absolute freedom of expressing different views, voting, criticising, there was no dictatorship or oppression whatsoever; there was an absolute freedom of thought in the internal communication.[769] This is how one of the SDS Main Board and Executive Board members, Radomir Neskovic, experienced the SDS

> The discussions in the Main and the Executive Board were democratic, the party was democratic, there was no dictatorship, The party was not burdened by authority, for example, the authority of Krajišnik and Biljana Plavšić and Koljević was not felt in the Main Board, Krajišnik didn't even ask for the floor, he couldn't say: "You know, I'm the President of the Assembly, let me tell you this and I'll go." We couldn't care less that you are the President of the Assembly, you are a member just as we are, so Radovan was not burdened with authority.[770]

341. It is worth emphasising that Nešković was called by the Prosecution to, *inter alia*, confirm its theory that the entire SDS answered to Dr. Karadžić and his "old friend" Krajišnik.[771]

342. There was a lot of autonomy and lack of discipline in the work of municipal SDS bodies, rendering it extremely difficult for the central organs to control them.[772] Even

[766] D0424, p. 13
[767] P0012
[768] Neskovic, T.14231
[769] D1278, p. 18
[770] D1278, p. 18
[771] Prosecution Pre-Trial Brief, para 61
[772] D3198 paras 19-20; Komad, T.36353l D1278, p. 13; Nešković, T.14232, T.14236-37; P2571; D3146, paras 25. 37; D3364, para 13; P6228; D3202; D3170; D3147; D3375; D3168; D3160; D3163; Radan, T.31092-93; D4003, p. 3; D1277, p. 2; D4091, D4122, D4086, paras 51-2

Treanor testified that Dr. Karadžić had struggles with the people from the SDS for them to respect what had been agreed, and that he had to fight not only for the making of decisions and finding solutions, but to have the adopted decisions implemented and he met with a lot of resistance and trouble within his party.[773]

> That's what I proposed to them then, but they did not agree to it. They refused to agree [...]democratic elections should be prepared, but actually democratic in all the local boards [...]we have specific mild democratic methods which achieve that everyone is satisfied[...]A democratic /party/ does not adopt decisions, but finds solutions.[774]

343. The SDS was everything but a centralized party with uniformity of approach, headed by an autocratic Dr. Karadžić. All intercepts and documents are the evidence of disunity, political amateurism, fragmented policies, lack of coordination, local separatisms, independencies in work, and Dr. Karadžić's fruitless efforts to bring the conduct of endless SDS officials at all levels in line with the SDS Statute and Program.

344. In conclusion, hearing Dr. Karadžić's words that were consistently uttered over a long period of time, it is submitted that one can hardly be more democratic and law-abiding than Dr. Karadžić was while he was steering the SDS in the post-communist system. The SDS was a truly democratic party and Dr. Karadžić a true democrat.[775]

12. Regionalisation

345. In light of Dr. Karadžić's contemporaneous statements and deliberations, it will become apparent that the regionalisation was not used as a tool that would further some JCE plan.

346. Already on 20 July 1990 Dr. Karadzic showed discontent about the fact that geographical areas inhabited by Serbs were divided up in invented divisions between

[773] Treanor, T.14476
[774] D3202
[775] Komad, T.36329-30; D1278, p. 21; S. Ćeklić, T.41240; D4368, paras 4, 6, 7, 9, D3198 paras 13-14, 27; D3854, paras 4, 6; D4011, para 22; Donia, T.3316, T.3319; Krajišnik, T.43285; Mandić, T.4710-11, Mandić, T.4765; D1278, pp. 13, 15-16, 47-48; Nešković, T.14233-34, T.14245, T.14348, T.14350-51; D4063, para 6; D4313, para 7; Brđanin, T.43670; D4080, p. 6; D4077, paras 31-32; D4078, p. 3

municipalities and regions so that the Serbian presence was weakened, and Serbian regions destroyed and abandoned due to emigration.[776]

347. On 26 July 1990 Dr. Karadzic thought that the regionalisation issue did not only concern the exercising of national rights, but also economic development.[777] On 8 June 1991 he further elaborated that legal regulations had to be developed in such a way as to allow the regions to dispose of their resources and start to develop cultural life.[778] He suggested to the regional leaders to develop a Culture Fund for the money to be directed from all the municipalities that joined the Regional Fund to the Republic for the maintenance of republican institutions.[779]

348. In June 1991 Dr. Karadzic continued to insist on the economic and cultural contents of the regionalisation[780]

> [Y]ou can connect all the programmes, economic and all, you can connect everything […] but I will not have any connecting in a state, in a state and political sense [781]

349. In addition, at no point in time did Dr. Karadzic consider the issue of regionalisation to be illegal

> The regions that we have envisaged, which we have proclaimed as communities of municipalities within the framework of the BH Constitution are not yet socio-political communities at this time. In order for them to become that, we have to go through the BH Assembly[...]We will not create anything that is not in the Constitution for as long as the Constitution exists[...] all the things we have done so far, we have done them within the framework of the constitutions of BH and Yugoslavia[...]the policy of the Serbian Democratic Party is not to divide Bosnia and Herzegovina until others bring it to that point.[782]

> When we proclaimed the communities of municipalities, this was completely in keeping with the Constitution of Bosnia and Herzegovina.[783]

350. To the contrary, he advised regional leaderships to pay attention to legal provisions regulating the issue of regionalisation and supported the idea of other nations having the same rights.[784]

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[776] D0269, p. 3
[777] D0282
[778] D0283, pp. 2-3
[779] D0285, p. 1
[780] P5891
[781] D1289, p. 8
[782] D0273, pp. 25-6
[783] D0268, p. 4
[784] D1290

351. In fact, Dr. Karadzic continously negotiated the regionalisation issue with Izetbegovic[785]

> **I'm currently negotiating with Alija, that's all in keeping with this**. The question remains whether[regions]will be called Serbian[...]How much of the legislative power will belong to the region, how much to the republic, how much to the joint state[...]**This is in keeping with our agreement, regionalization is on**.[786]

352. Dr. Karadzic believed that SAOs would make sure that there was no "tension, and that each is the master of his own, and that there is peaceful co-existence among the peoples here."[787] But when the SDA and HDZ intensified their anti-constitutional activities, Dr. Karadzic advised in November 1991 that Serbs should establish authority in Serb regions,[788] and was at the same time advocating equal rights for others to do the same

> Their Islamic way of life, and we have nothing against this[...]I want the Serbs to be organised in these Krajinas, like in… in some districts, and yet there is a united Serbian Bosnia and Herzegovina[...] we are not defending the existence of a Muslim one or a Croatian one [...]And everything is united in the institutions in Sarajevo[...]And in the Sandžak I agree that Muslim children should use Muslim textbooks. That's not a problem[...]Let the children learn what they want to learn[...]What I am asking for we should offer to the others[789]

353. In conclusion, regionalisation was a legal and constitutional activity aimed at improving regions economically, which with time gained a political perspective as a result of SDA and HDZ illegal activities. Regionalisation was not conspiratorial and was pursued both by the SDA and HDZ in the regions with their respective Muslim and Croat majorities. Finally, regionalisation would prove to be a double-edged sword for the Serb leadership, because it would create states within the state, effectively leaving the Pale leadership with no control over the regions and municipalities.

354. Dealing specifically with the Krajina separatism, it must be reiterated that paragraphs 61-4 of the Prosecution's Pre-Trial Brief are entirely incorrect. In these paragraphs, the Prosecution alleges that Dr. Karadžić created SDS policies and strategies, selected the personnel to effect them and enforced their implementation. The SDS was allegedly a hierarchical organisation and those within it subordinated to the President.

[785] D0289, p. 2
[786] D0290, pp. 2-3 (Emphasis added)
[787] P5849, p. 4
[788] P0958, pp. 9-11
[789] P5819, pp. 6, 11, 13 (Emphasis added)

Everybody in the SDS, according to the Prosecution, answered to Dr. Karadžić, who ensured the party discipline in the regional and local levels. As shown, the opposite was the case. The SDS to a great extent was a party of disunity, political amateurism, fragmented policies, lack of coordination, local separatisms and independencies in work, and this was especially true of the Krajina people. The following chronological investigation into Dr. Karadžić's state of mind corroborates this statement.

355. As of June 1991 Dr. Karadzic had so serious misunderstandings and arguments with the Krajina leadership that made him conclude that

> Banja Luka is a difficult, difficult, difficult town, a very difficult town.[790]

> **They are idiots**[...]I think they are **complete idiots**. [...]**They're idiots**. I cannot understand why I let there be **so much indiscipline in the party** [...]**They are idiots**[...]**They're idiots**, you can freely tell them that Karadžić is angry and unrelenting and says go to hell to anyone who is working against the policy we have adopted[...]let him go to hell. I don't want to see anyone any more. **I'm trying to convince idiots**[...]**I will not stand those idiots. I find them more difficult than the opponent**[791]

356. When Brdjanin said "forget Karadžić and we'll do our own thing", Dr. Karadzic again concluded that "they're insane[...]They're insane. I'll send them to hell. They're not normal" calling Martic a fool and adding that "he is crazy. That night then I figured out that Babić was stupid[...]He is stupid[...]He is playing into the hands of this aggressive Izetbegović[...]Idiots[...] Let them[792] eat shit! Let Babić[...]go to hell. He's a fool."[793]

357. On 24 June 1991, Dr. Karadzic understood that "Krajina wants to secede and join the other Krajina[...]I have to calm the fools down."[794]

358. On 12 July 1991, he complained about "little Napoleons who are trying to do something that will be to the detriment of the Serbian people. It is in the Bosnian Krajina itself that we had a regional board that we had to replace. It got completely out of control and became a government over the municipal boards."[795]

359. On 23 July 1991 it seemed that there was no end to the problems with people from Krajina

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[790] D0285, p. 4
[791] D1289, pp. 6, 8 (Emphasis added)
[792] Brdjanin and Kupresanin
[793] D0271, p. 3
[794] D4495, p. 5
[795] D0273, p. 25

> Referendum about what? Are they normal, fuck their impudent mothers! [...]I cannot conduct a policy when someone there does things without authorisation[...]This step cannot be taken without the Main Board. What are they thinking? But to constantly listen to Milan Babić, who is always running and never asks anyone anything because Milan Babić thinks he is the cleverest man on this earth[...]Damn him,[...]I have a harder time with our people than with enemies. Fuck them! Is it normal that I would have a harder time with our people?[796]

360. In September 1991 Dr. Karadzic continued to *not* control his alleged subordinates

> Let them fuck their mothers, let them make their own party, let them resign. Whoever refuses to obey Sarajevo should resign. Write papers for them tomorrow and say: this is a party which has its top and its bottom, and nobody will fuck about under our name[797]

361. In October 1991 nothing really changed

> Fucking hell. Are these people insane?[…] But Babic is unbelievable concerning that, he doesn't have a clue, he acts foolishly[798]

> Is that how these gentlemen imagine democracy?[...]To save the faces of these, these idiots there[...]I'll declare a state of emergency in the party and explain to the people and explain of Krajina, organize a rally and explain to them who in…in the future represent them in the future, who will be their leadership! I can't work with these idiots anymore! [...]Once this political battle is over, once everything, everything is over, when the state is saved, I'll sign now that I am quitting politics, and of course they will too.[799]

362. In November 1991 JNA General Uzelac told Dr. Karadzic that "the fool, this madman" Kupresanin was "thinking of creating a Krajina state" to which Dr. Karadzic replied

> That's foolish.[800]

363. On 9 November 1991 there really was no end to problems with *Krajisnici*

> Brdo walks around..making a mess there?[…]What is this. God damn it, it is more difficult to deal with one's own people than with rivals! […] To hell with it all! I find more difficulty dealing with my own people than with the rivals[…] What have I done to deserve the problems with my people? What have I don't to deserve this?[801]

364. On 11 December 1991 Krajisnik joined Dr. Karadzic's club

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[796] P1084, pp. 2-4
[797] P2571, p. 3
[798] P5841, pp. 3-4
[799] D1293, pp. 3-4
[800] P5824, p. 5
[801] D0280, pp. 1-3, 5

> Krajisnik: [...]To hell with them, both Krajina and Herzegovina, the motherfuckers[...]Fuck their mothers[...]and they came to me tonight. I had to leave. I could not stand it any longer[...]that idiot Vojo, fuck his family, the mother-fucker, what state, the mother-fucker
> Karadžić: The fools, fools[...] look after your heart, fuck him[...]
> Krajišnik: [...]it has all accumulated in me. I have had enough of Radić [...]had enough of[...] Herzegovina, Krajina, Herzegovina, Krajina[802]

365. On 15 December 1991, in Dr. Karadzic's view, Babic was still "an idiot"[803] and on 27 December 1991 Babic was "full of shit".[804]

366. In January 1992 Dr. Karadzic "shouted at this Lazarević. They have done some stupid things there regarding the solution of the Krajina question as a federal unit or a constituent element of the Federation. That is nonsense[...]they are all idiots."[805]

367. The Chamber is reminded that in its Pre-Trial brief paragraph 150, the Prosecution alleged that "Karadzic maintained constant contact with ARK personnel, especially Brdjanin, Kupresanin, Radic, Vukic, Stevandic, and Cizmovic in relation to SDS policies, strategies and plans."

368. However, the Prosecution has failed to explain the contradiction between Dr. Karadzic's description of these people as "idiots and fools" and its allegation that they were all part of one overarching criminal enterprise in which he made "strategies and plans" with these same people.

369. On 13 January 1992 Dr. Karadzic was told that the "Krajina option" were saying "terrible things about us", and that they had "enough of Karadzic" to which Dr. Karadzic "surprisingly" responded

> They are idiots[…]I will pull out after that, have anyone come after me. I don't give a fuck.[806]

370. On 16 January 1992 Dr. Karadzic believed that clever people must be found in the ARK and that Vukic was "an idiot", once more adding that

> I have no idea what's happening to these people. They seem to turn fucking childish![807]

[802] P5803, pp. 1-2
[803] P5641, p. 4
[804] P5784, p. 3
[805] P2596, p. 5
[806] P5619, p. 3
[807] P2552, p. 5

371. On 10 February 1992 Dr. Karadzic, yet again, complained about Brdjanin and Vukic referring to them as "fools".[808]

372. On 15 February 1992 Dr. Karadzic stated that he

> We have to calm down my **madmen in the Krajina** […] **I ran out of patience, although I am quite patient**, so at about 10;00 **I told them all to go fuck themselves** and that they would either pursue a policy we all agree on or they could elect someone else right there and then […]**No, no, it's not Grahovac now** […] **it's Brdanin**[…]except for **five madmen in Banja Luka**, not a single municipality in the Krajina is for them[…] Izetbegovic can't wait to see us split Bosnia[…] He does not care at all for Bosnia to stay a whole.[809]

373. Finally, on 25 February 1992 Dr. Karadzic concluded that

> I myself have been to Banjaluka 27 times. Things went wrong there from the first day[...]Banjaluka remains our trouble spot just as it was at the beginning[810]

374. It must be repeated that the Prosecution had in its possession all these intercepts when it was writing the Indictment paragraph 12 which says that there was a joint criminal enterprise between Dr. Karadžić and members of SDS and Bosnian Serb government bodies at the regional, municipal, and local levels. It does not get more obvious from the quoted intercepts that there was **nothing** "joint" between the republican and regional leaderships. They simply could not stand each other.

375. From 19 June 1991 when Dr. Karadžić shouted "Tell them that Karadzic is angry and determined and is going to send to hell anyone who is working against what we have adopted as our policy. Let them go, let them go to hell. I don't want to see anyone anymore"[811] until 25 February 1992 when Dr. Karadžić yelled "I won't tolerate them. If they start fooling around, I'll throw them all out of the party"[812] and later during the war, as will see later, nothing changed in the relationship between the republican and regional/local leaderships. The central authorities were angry and frustrated, but still impotent.

376. The Prosecution's Pre-Trial Brief paragraph 64, when read properly, actually proves this. It is true that Dr. Karadžić insisted on centralisation and uniformity of approach. In vain. It is also true that he actively tried to enforce party discipline.

[808] D0424, p. 7
[809] P5747, pp. 3-5 (Emphasis added)
[810] D0088, p. 44
[811] D1289, p. 6
[812] P5732, p. 2

Unsuccessfully. Dr. Karadžić did his best to oversee the activities of municipal and regional leaders and monitor what was happening on the ground at the regional and local level. However, he only became extremely frustrated. It is also true that he was adamant that those who deviated from the party platform must relinquish their position. Empty words. Just like the Prosecution's case.

377. Having heard Dr. Karadžić on the issue of regionalisation and taking into account the arguments presented above in relation to that same issue, no reasonable trier of fact could infere or conclude what the Prosecution is suggesting, namely - that the regionalisation was in effect preparation and implementation of steps to permanently remove Bosnian Muslims and Croats from Bosnian Serb claimed territories in BiH.

13. Paramilitaries and JNA Forces

378. The JNA was a multi-ethnic army with a mission to protect the multi-ethnic Yugoslavia.[813] The general principle in the JNA was to act as a buffer between the two sides, which did not change in the course of 1991.[814] The JNA was Yugoslav and it did not interfere in political decisions and agreements on the fate of the future Yugoslavia.[815] None of the statements that Zepinic heard in all the meetings, official and unofficial, with the JNA generals, did they ever say that they would support the concept of the SDS or any national party.[816] Prosecution witness Neskovic testified that the JNA had viewed the SDS as a party that they were opposed to, but since there was no other party then it was a necessary evil.[817] The JNA tried as much as possible of making a joint effort to ensure peace and the peaceful political transformation of Yugoslavia.[818]

379. It is true that certain JNA officers would cooperate with the SDS,[819] but that was no crime. On the contrary, it was a legal duty of citizens to organise themselves and to take part in the organisation/preparation for an implementation of All People's

[813] Vasiljevic, T.34672
[814] Vasiljevic, T.34673
[815] Zepinic, T.33622
[816] Zepinic, T.33623
[817] Neskovic, T.14265
[818] Zepinic, T.33623
[819] Vasiljevic, T.34680

Defence.[820] Any political party, regardless of whether it is the ruling party or a party in the opposition, was duty-bound to have its own contingency plan.[821] The Law on All People's Defence defined contingencies as *armed or other activity that directly jeopardises the independence of the country, its sovereignty, and territorial integrity*, and the established social system under the constitution of SFRY.[822] The SDA and HDZ activities unquestionably qualified as activities that directly jeopardised the sovereignty and territorial integrity of Yugoslavia.

380. In cases where JNA officers expressed some kind of nationalism, Serb, Croat, or other, they were disciplined,[823] which also included potential arming of Serbs.[824] When a JNA major established contacts with the echelons of the SDS, criminal charges were brought against him.[825] General Vasiljevic testified that he was not aware of any JNA position changing concerning the SDS, and that the JNA did not engage in discussion with any political party.[826]

381. When it comes to the JNA behaviour towards various nations in the SFRY, what made the difference between the Serbs and non-Serbs in Yugoslavia was their attitude towards the only legal military force, the JNA. The JNA was supported by the Serbs in the sense that people responded to the call-up and the mobilisation, they did not block the JNA army barracks and did not attack JNA members and their families.[827] In any normal country in this world, those who attack the legal military force end up in prison. The Prosecution seems to suggest that only in Yugoslavia, different rules should have applied, and that the JNA was an aggressor in its own country.

382. All nations had been asked to send recruits and reservists to the JNA, but only the Serbs complied.[828] The Muslims and Croats, not only avoided their legal obligations by not responding to mobilisation, but they actively planned and carried out military attacks against the JNA. In late March 1992, the JNA submitted a detailed report on the armed

[820] D1358; D4326, Articles 385-8, 392
[821] Kapetina, T.41268; Klickovic, T.46926-27; D4326, Articles 389-90; Sarac, T.47172
[822] Kapetina, T.41258; D3860, p. 2 (Emphasis added)
[823] Vasiljevic, T.34680
[824] Vasiljevic, T.34680
[825] Vasiljevic, T.34681
[826] Vasiljevic, T.34707
[827] D3065, para 156
[828] D3065, para 213

SDA and HDZ paramilitary forces, predicting that they were attempting to embroil the JNA in armed conflicts with the intention of starting a more widespread war.[829]

383. Finally, the role of the JNA in Bosnia was best described by the American mediator Vance in a letter to the UN Secretary-General sent on 11 March 1992, some three weeks before the war

> In Bosnia-Hercegovina the army remained neutral and was the crucial factor in defusing the situation. All my interlocutors, starting with President Izetbegovic, praised the moderating role of the JNA and General Kukanjac.[830]

384. There is a significant difference between the terms paramilitaries and volunteers. The issue of volunteers was regulated by law and other legal documents. According to Article 80 of the All People's Defence, the Federal Secretariat for National Defence issued an Instruction on accepting volunteers into the JNA,[831] thus regulating this area and making a clear distinction between the men under the JNA command and those who were not.

385. The Prosecution often erroneously singles out the so-called "Seselj's men" and describe them as paramilitaries who participated in the execution of the alleged JCE.[832] The volunteers and paramilitaries associated with Seselj, according to the Prosecution, were widely feared for committing atrocities against non-Serbs.[833]

386. Again, the Prosecution misconstrues its own evidence. The "Seselj's men" or more precisely, the volunteers of the Serb Radical Party were put under the JNA command.[834]

387. As far as Arkan's units are concerned and their relationship with Dr. Karadzic, the Prosecution presented insufficient evidence to claim that there was a JCE between him and Arkan. In late October 1995, Dr. Karadzic thanked the unit for their assistance during the Muslim-Croat August 1995 offensive, when several hundred thousands of Serb civilians were expelled from their homes and thousands killed. This topic will be dealt with later separately. Other than this footage, the Prosecution offered a letter from Arkan

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[829] D3070, pp. 4-6
[830] D3017, p.5
[831] D3678, pp. 1-3
[832] For example, Prosecution's Pre-Trial brief, para 136
[833] Prosecution's Pre-Trial brief, para 14
[834] P6388, p. 2

to Dr. Karadzic dated 16 April 1994 expressing support for his heroic resistance against NATO and the USA aggressor forces during the crisis in Gorazde.[835] Is that the evidence that Dr. Karadzic supported paramilitaries?

388. The most appropriate way to find out whether the Prosecution's case with regards to Dr. Karadžić's alleged support for paramilitaries and the JNA forces in order to further the JCE objective is correct, is to consult Dr. Karadžić's contemporaneous mind. What did Dr. Karadžić think about paramilitary units? Did he, and for what purposes, support the JNA? The chronological journey that follows will provide the answers.

389. In May 1991 Dr. Karadzic told Milosevic that Serb men must be placed under the JNA command.[836] In July 1991 he was against the creation of a separate Serb army and suggested that Serbs should use the TO if the Croats attacked Bosnia.[837] He also thought that

> The one thing we cannot do is create a Serbian army. That's more than clear. What is this, if not a Serbian army, **when these others no one is responding to[...] the call up**, **we should reprimand our brothers for not responding** [...] only the Serbs /respond/ and [...] again it is the task of Serbs to defend Yugoslavia, while the rest either[...]are actively fighting against Yugoslavia or are passive in its defence.[838]

390. Dr. Karadzic made it clear that the

> Party is not in command of anything, it is simply ensuring that the mobilisation is under the command of the Yugoslav Army, the territorials and the volunteers. [...]Make sure that nothing happens to the Muslims there, that some idiot doesn't threaten them, they are our fellow townsmen and this is their homeland. Nothing must happen to any of them.[839]

391. He told an SDS gathering that the"attitude of the Army towards all the parties is more or less the same" and that the JNA was "resolved to defend, not the Serbian people, but whoever comes under attack. And that's fine by us. Because we will not be attacking anyone" reiterating that "we as a party do not have the right to arm the people" and that "all personnel should respond to the first call-up of the JNA".[840]

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[835] P2854
[836] P5887, p. 4
[837] P5888, pp. 2-3
[838] P5889, p. 1 (Emphasis added)
[839] D4533, pp. 2-3
[840] D0273

392. Dr. Karadzic kept repeating that no political party could or should have command staff or armed forces.[841] Instead, he continued urging that citizens respond to the JNA call-ups emphasising that

> Peace is the only solution, that they must not wage the war [842]

393. Dr. Karadzic noted in November 1991 that had told the JNA that there was

> a map for you so that you know where you can spend the night[...]So, they have no other place to go but to come here. We are that army until the others come to reason[...]**Serbs do not need an army for their party**, the Army is here. **And incidentally, theirs and our aims overlap one hundred per cent.**[843]

And emphasised that "our party doesn't have an army, and if any of our members wants to defend the country, we're asking them to join the army".[844]

394. In December 1991 Dr. Karadzic made his position clear regarding "Seselj's men"

> What Šešelj's soldiers, they should all join the Army.[845]

395. In February 1992, Dr. Karadzic again demanded that "There must not be two armies but only JNA anywhere"[846] and told his SDS colleagues that "The Yugoslav Army in Bosnia and Herzegovina[...] won't interfere in politics" but would rather "obey whatever the three sovereign peoples sign".[847]

396. Finally, a telephone conversation between Željko Ražnjatović Arkan and one of his commanders called Legija of 20 May 1992, explains the true relationship between the paramilitaries and the Bosnian Serb leadership

> **Captain Legija: They look at us as if we are from another planet**. And now that guy Mladić arrived, I had an argument with him today[...]But again, this command up here, they don't like us very much[...]I don't think I can argue with them anymore. These people from up **there are rather going to arrest me**[...]Next thing is that these people from up there are going to arrest me.
> **Ražnjatović Željko:** I see. Hey brother, if it's that way, what are you doing there then.

[841] D4534, pp. 2-3
[842] D0278, p. 3
[843] P0958, pp. 10-1 (Emphasis added)
[844] P0004, p. 3
[845] D1251, p. 4
[846] D4504, p. 2
[847] P0012

> Captain Legija: Really.
> Ražnjatović Željko: Real assholes.
> **Captain Legija:** Or this Karadžić guy up there. They are holding hands with the Muslims up there.[848]

397. Having heard Arkan and his captain, it is not surprising that on 16 April 1992, Dr. Karadzic and Koljevic, when asked about Arkan, said in tandem: “We have never, ever seen Arkan”.[849]

398. It was remarkable during Dr. Karadzic's trial that while giving quite a detailed evidence on the formation of Muslim and Croat paramilitary forces in Bosnia[850], Prosecution's expert Donia could not name a single paramilitary unit formed or supported by the SDS, not at the time of writing his report, or at the time when he was giving evidence in Court.[851]

399. In short, the Prosecution's theory regarding Dr. Karadžić's relationship with the JNA and the paramiliraries is wrong. There is no better evidence for it than Dr. Karadžić's own words that "the party is not in command of anything, it is simply ensuring that the mobilisation is under the command of the Yugoslav Army, the territorials and the volunteers", that the "attitude of the Army towards all the parties is more or less the same", and that "we as a party do not have the right to arm the people".

14. Conclusion

400. Today, instead of Izetbegović, Tuđman and their associates, ex-convicts, Nazi-Ustasha émigrés, Islamic fundamentalists and criminals, Dr. Karadžić is put on trial for something that he vehemently fought against, war in Yugoslavia and Bosnia. And, as President Dodik observed, "Today, 20 years later, there is no more Dr. Karadzic in the political arena who could be used as an excuse for the inter-ethnic tensions, and yet the political positions in Bosnia are almost identical".[852]

401. As we could observe, already by mid-1990 the HDZ in Croatia had created their illegal army, advocating the killing of JNA members, their families and Serbs. The Serbs

[848] P5675, pp. 3-4 (Emphasis added)
[849] P0780, p. 38
[850] P0973, p. 40
[851] Donia, T.3653-7
[852] Dodik, T.36840

organised to defend themselves. The same was repeated in Bosnia and Herzegovina. The Muslims and Croats illegally outvoted Serbs and made their decisions contrary to SFRY and BiH Constitutions and Laws. The Bosnian Serbs had no intention of engaging in war. They wanted to stay in Yugoslavia, but when this became unfeasible under the pressure from the West, they agreed to leave Yugoslavia under the conditions laid down by Cutileiro's plan. The Serbs wanted to go on living together with all the other nations in Yugoslavia. It was others who wanted separation, secession, the end of the common life. The civil war started as a consequence of the illegal breakup of Yugoslavia and not as the result of any joint criminal enterprise to expel non-Serbs from areas of Bosnia. Countless lives could have and should have been saved.

Chapter 1
JOINT CRIMINAL ENTERPRISE
Part 2

B. War Period

1. Pale Republican Authorities Did Not Control Events in the Field

a. Interregnum and Building of New System

402. The Prosecution's Pre-Trial Brief in paragraph 268 alleges that President Karadzic exercised *de jure* and *de facto* authority and control over individuals and party and governmental organs in the municipalities and the SAOs involved in the crimes. The truth is that neither the republican authorities controlled the local ones, nor could they control the events in the field which amounted to chaos and anarchy with the outbreak of the war. Leaving aside Sarajevo and Srebrenica components of the case against Dr. Karadzic for the time being, virtually all alleged Indictment crimes occurred during this period of general anarchy. Therefore, it is not surprising that as the state and its organs were slowly and gradually emerging, the level of crime was drastically dropping. However, not until the end of war did the Republican authorities manage to establish full control in the field.

b. Presidency, President Karadzic and Djeric's Government Did Not Control Events in the Field

403. The situation in which the Pale authorities found themselves at the outbreak of war is best described by Prime Minister Djeric who at the RS Assembly said that

> The BiH Serb Republic Government was formed in war, and started working in war[...]the Government was completely isolated and cut off from all sources of communication, ranging from available institutions, services, functions, information, means of equipment, technology and staff. It began operating as the time came to put an abrupt end to what the system had been building in the passed 50 years. This was at a stage when we were not economically, politically or even psychologically prepared for what happened.[853]

[853] D0092, pp. 21-2

404. Before the war started, on 24 March 1992, the Prime Minister to be, Djeric, told the deputies that one cannot allow all sorts of things to happen on the ground, and that there existed certain international as well as domestic laws and customs.[854] Already in late March 1992, Djeric identified a chaotic situation, and Serb inclination towards excessive autonomy, forecasting that this would be a major obstacle in the functioning of a proper government.[855] The local factor was highly influential, which was the result of the existential fear that prevailed among people.[856]

405. It should be emphasised that people in power in 1992 were the people who spent their lives in opposition for 45 years before coming to power, and they did not have any experience in running a country.[857] It was the period of transition.[858] At the same time, war in Bosnia was a civil war in the true meaning of the word. Everyone was fighting against everyone, both organised and unorganised groups.[859]

406. With the outbreak of war, the system of state administration and all institutions at the level of the republic collapsed except for municipal-level of government.[860] In that situation, the presidents of municipalities had an enormous responsibility for the functioning of the municipalities and their security.[861]

407. When Minister of Defence Bogdan Subotic came to Pale in April 1992 he found chaos, because no organised system had been put in place.[862] His successor, Dusan Kovacevic, found the situation in the summer of 1992 to be chaotic, where no one was in control of events in the field.[863] Local authorities in the municipalities and municipal commanders were those who exercised authority in the field.[864] Crisis staffs operated on their own and the way they saw fit.[865] The municipalities were states within the state and

[854] P0961, p. 25
[855] Djeric, T. 27925
[856] Djeric, T. 27925
[857] M.Mandic, T. 4965; Djeric, T. 28038-9; D3695, para 83
[858] Djeric, T. 28039
[859] M.Mandic, T. 4963-4
[860] M.Mandic, T. 4964-5; D3695, para 54
[861] M.Mandic, T. 4965; D3695, para 54
[862] D3695, para 45
[863] D3671, para 21
[864] D3671, para 21
[865] D3671, para 21

the Pale authorities were constantly having trouble establishing a republican power in the entire territory.[866]

408. In the chaos that followed the collapse of the entire state system, a handful of people, calling itself the Presidency and the Government, gathered in Pale and began the long and painstaking work on building a new system from scratch.[867]

409. In April 1992, the National Security Council (NSC) and the Government concluded that a group of lawyers should prepare basic laws in order to set up a legal system,[868] and soon thereafter, on 8 May 1992, the NSC and the Government adopted a decision that the Defence Minister would start drafting the Law on Defence and the Law on the Army.[869]

410. NSC and the Government decided on 10 May 1992 to prepare and propose to the Assembly that it adopt a list of laws within three months in order to secure the functioning of the Serbian Republic.[870] The NSC and the Government also called for taking necessary measures to gather professionals and ensure conditions for the work of state and judicial organs.[871]

411. On 31 May 1992 President Karadzic complained about "problems of our republic" and the fact that "in many of the municipalities the authorities are not functioning."[872] On 2 June 1992, the Government concluded that the necessary measures for the rehabilitation of the complete social and economic life everywhere in the republic should be introduced, emphasising the importance of connecting the regions of the Republic.[873] It was also concluded that all the ministries should speed up the drafting of laws that ensure the rule of law.[874]

412. The central authorities were unsuccessfully trying to exert their influence on the municipalities, such as through the establishment of commissioners. It was proposed that, as the local authorities could not operate and as Pale had no contact with various

[866] D3671, para 41
[867] M. Mandic, T. 4989; D3695, para 55
[868] P1087
[869] P3078; D3695, para 273
[870] D0409, p. 1
[871] D0409, p. 2
[872] P1478, p. 39
[873] D0414, p. 1
[874] D0414, p. 1

locations on the ground, commissioners of the Presidency would tour the field and try to help with establishing authorities.[875] Until that time, the authorities in Pale were receiving all sorts of unverified reports and were not sure about the real facts. [876]

413. Therefore, the role of war commissioners and presidencies was not to contribute to the alleged JCE. As Koljevic noted on 6 June 1992, "close to the front **where the authority cannot function** war presidencies are being established."[877] The task of these commissioners was to go out into the field and help the local authorities to establish regular authorities rather than to have Crisis Staffs or other ad hoc groups.[878]

414. During its session of 15 June 1992, the Government indicated how exceptionally important it was for authority to function in all parts of the republic, expecting that republican commissioners would help carry out the policy of the Republic in municipalities.[879]

415. On 16 June 1992, the Government noted that there was insufficient co-operation with the Presidency and the Main Staff causing difficulties to functioning of the Government.[880] The Presidency decided on 25 June 1992 to set up working bodies and to precisely divide responsibilities among its members.[881] Although Koljević was charged with appointing commissioners of the Serbian municipality of Sarajevo Centre,[882] the power of Pale did not reach very far. When in July 1992 Koljevic talked with soldiers from Nedzarici, he learned that they were embittered by the political authorities and wanted to lynch them, complaining that the authorities were not functioning beyond Pale.[883]

416. In some cases, the local provisional governments suspended all republican and federal laws, and ordered that it was only their decisions that would be valid.[884] Mico Davidovic testified that year 1992 was the beginning of the war, when paramilitaries

[875] Krajisnik, T.43339
[876] Krajisnik, T.43339
[877] P1478, p. 109 (Emphasis added)
[878] Krajisnik, T. 43339
[879] P1095, p. 5; M.Mandic, T. 5086
[880] D0435, p.5
[881] D0437, p.2
[882] D0437, p.2
[883] P1478, p. 312
[884] Milorad Davidovic, T.15650

came to Bosnia, and when institutions were just being established, and when work was only starting.[885]

417. The miserable position of the Presidency reached the peak in the summer of 1992. On 6 July 1992, Koljević stated that he was discontented with the work of the Presidency.[886] He could not endure the work physically or psychologically and stressed that the efficiency of the Presidency was low.[887] The members of the Presidency even considered resigning from it, but Plavšić suggested that this would be counterproductive.[888] Đerić proposed closer cooperation with the Government and division of tasks within the Presidency, and disagreed with Koljević that little had been done in the Presidency.[889] Dr. Karadžić stressed that

> It was important that we existed, even if we did nothing, because the Presidency was a **symbol of the statehood** of the Serbian Republic of BH.[890]

418. The Presidency was *only a symbol* of the statehood - a slowly emerging republican authority that needed time to acquire control over the country and *de iure* subordinated local organs, that in practice operated as independent states within a state, as Prosecution witness Djeric described them.[891] Not even the commissioners that had previously been introduced to gain the control over the local authorities[892], could be controlled by the Presidency.[893] On 8 July 1992, the Government concluded that the decision on the establishment of war commissioners in municipalities had caused confusion.[894]

419. The Government found that it was indispensable for the government and the ministers to exercise their rights and responsibilities based on law incessantly in the field. Therefore, it was concluded that visits to the SAO regions should be planned as soon as possible.[895] The Government also concluded that the SAOs should be abolished.[896] Since

[885] M. Davidovic, T.15678
[886] D0440, p. 1
[887] D0440, p. 1
[888] D0440, p. 1
[889] D0440, pp. 1-2
[890] D0440, p. 2 (emphasis added)
[891] Djeric, T.28059
[892] M.Mandic, T.5109
[893] D0440, p. 2
[894] D0441, p. 4
[895] D0441, p.5

the SAOs were a constitutional category, the Constitution was to be amended, so that these autonomous provinces could be thrown out of the Constitution.[897]

420. On 11 July 1992, the Presidency adopted a proposal to convene the Assembly on 22 July 1992, in Pale, because it was necessary to discuss the functioning of the authorities and the organisation of the SAOs.[898]

421. When it became possible for the Assembly to meet, on 24-26 July 1992, President Karadzic addressed the deputies criticizing the state of affairs and disobedience of local organs

> One of the essential problems we are facing is the poor functioning of the central authorities[...]we have not yet fully defined the status of SAO autonomous regions, or their organs in relation to the central authorities[...]it is about the Serb tendency toward autonomy, creating of small principalities and small princes[899][...]Assembly will have[...]to give the authority to the Presidency and Government to energetically implement necessary measures[...]to introduce order in the state mechanisms of power[...]placing all special police, which are being misused by some, under single command of Republic MUP, not under the command of some local lords.[900][...]No emergency committees or war presidencies should be entitled to suspend deputies[...]I must say that it is in accordance with laws and international law, everything adopted by various emergency committees and presidencies. Such measures are adopted during conditions of war, and they bear no legal weight[...]Most importantly one must effectively eliminate para-state and also paramilitary factions. The para-state ones are even more dangerous at this stage, because they can make catastrophic decisions that nobody would even recognise in peacetime, ones that would only cause us great damage in the meantime.[901]

422. The local factor wanted to rule on the ground,[902] and President Karadzic continuously insisted on the need for removing this strong local factor.[903]

423. The same sentiment was shared by Prime Minister Djeric

> The Government began operating without a set legal frame, which is the elementary aspect of any legal state[...]the Government worked to adopt laws ensuring the forming of the legal system[...]This was accompanied with certain weaknesses and children's diseases, imminent to anything young and new[...]fighting and other factors have kept the Government fully isolated from municipalities, for a long period of time. SAO Krajina and SAO Herzegovina were fully cut off from the Government[904]

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[896] D0441, p.5
[897] Mandić, T.5110
[898] D0444
[899] D0092, pp. 17-8
[900] D0092, p. 19
[901] D0092, p. 20
[902] Djeric, T.27928
[903] Djeric, T.27933
[904] D0092, p. 22

424. Djeric testified that the Government in Pale was completely cut off and that certain regions "became so independent in the meantime that it was difficult to establish any kind of communication with them, and that situation persisted for quite a while. Even after I resigned and left, some regions[...]still did not fully accept the central authority."[905]

425. The Government asked for support to immediately revoke all laws and other acts made by municipalities and regions which ran counter to the constitution, laws, or other regulations of BiH Serb Republic.[906] On 26 July 1992, in a meeting with General Mladic, General Gvero noted that "in the SAO and regional authorities there are tendencies towards disintegration" and emphasised the need to "disable paramilitary and para-state organisations".[907]

426. The Government made another attempt to centralise power in the Republic on 29 July 1992 suggesting that the ministries or republican organisations should carry out their work outside their headquarters, which was supposed to help shut down any illegal para-state organs.[908] The Government also discussed how to improve the work of the government in present conditions with inadequate road, telephone, and other links with the field.[909] For the first time, the Government considered the possibility of introducing martial law in municipalities to bring order.[910]

427. On 7 August 1992, the Government decided to inspect the administrative and individual acts brought during the war by various municipal organs, which were not in conformity with the law, and tasked all ministries to remove any irregularities.[911]

428. On 30 August 1992 President Karadzic managed to suspend all decisions of Bijeljina municipal assembly in relation to the military matters and further tasked the civilian authorities to investigate personal responsibility of the officials who issued the illegal decisions in times of war.[912] The struggle with the municipalities continued.

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[905] Djeric, T.27937
[906] D0092, p. 27; Djeric, T. 27938-9
[907] P1478, p. 370
[908] D0452, p.3
[909] D0452, p 4
[910] D0452, p.7
[911] D0453, p.3
[912] D0454

429. During the Assembly session of 15 September 1992, President Karadzic addressed the deputies and said that

> Some municipal officials behaved unlawfully, up to the point of necessitating their arrest and punishment[...]we, as the Assembly, must[...]punish and find a way for the Presidency to take a stand in such matters[...]in future there will have to be arrests and punishment. This Assembly[...]will have to note this and give us authorisation[...]to straighten things out in certain municipalities[...]to use vigorous measures.[913][...]We will have to be forceful, as members of the Government and the Presidency, we must visit municipalities and restore order even at the risk of introducing extraordinary measures, making replacements, arrests, appointments and naming others who, with the help of deputies, will be able to pull the municipality out of a crisis[...]If we look at all the legislation that has been adopted, it may be concluded that a lot of work has been done, but the question now is to ensure the implementation of those decisions.[914][...]In order for this to happen, we must first strengthen the central authorities[...]We must build such mechanisms that the decisions of this Assembly, the Government and the Presidency do not meet with any resistance, to implement them and achieve an effect on the ground[915][...]there are attempts every day to bypass the BH central authorities.[916]

430. Djeric testified that "there was not a single day that we didn't work on the institutionalisation of the system[...]we had this problem of implementation that we faced on the ground."[917] The deputies and war commissioners, such as Mirko Mijatovic, justified the behaviour of municipalities by blaming the overall war chaos

> I want to say something about the functioning of the civilian authorities, where I think the problem lies in many municipalities. The Government has adopted regulations but we don't have developed mechanisms to implement them[...]I am a commissioner of the Presidency for a large number of municipalities[...]I can tell you my experience - not a single Government representative has visited those parts[...]contact with government representatives must be established, at least between people working in the government and those who are on the ground[...]we are talking about self-will of certain municipal presidents which is valid in the context - they are sometimes forced to act like this because there are no mechanisms, no organs of authority. A large number of our municipalities are engulfed in war operations and these municipalities do not have civilian authorities. There is no one to implement these regulations and the civilian authorities are not functioning.[918]

431. It is worth stopping here for a moment and remind ourselves of the Prosecution's allegations in relation to the war commissioners. In paragraph 98 of its Pre-Trial brief, the Prosecution alleges that "in early June 1992, Karadzic further formalised and centralised

[913] D0456, p. 15
[914] D0456, p. 15
[915] D0456, p. 16
[916] D0456, p. 16
[917] Djeric, T.27965
[918] D0456, pp.47-8

the governance of the Serbian municipalities by transforming Crisis Staffs into War Presidencies and War Commissions." Yet, in mid-September 1992, one of those commissioners of the Presidency for a large number of municipalities contemporaneously testified that there were no contacts between the central and municipal authorities.

432. The Prosecution also erroneously alleged in paragraph 107 of its Pre-Trial Brief that the commissioners conveyed directives from the Republic War Presidency to the field and information back to the War Presidency. As we could hear directly from one of those commissioners, there was no one in the municipalities to implement the republican regulations. Instead, municipal presidents acted on their own.

433. Another erroneous suggestion of the Prosecution is found in paragraph 106 of its Pre-Trial brief, where it alleges that the Crisis Staffs received orders from, reported to, and implemented the policies of the republic-level organs. As we could see, President Karadzic fought a difficult battle with the crisis staffs urging the Assembly not to allow crisis staffs or war presidencies to suspend the authority of the deputies in municipalities.[919] He also insisted that decisions by crisis staffs and war presidencies were merely measures created in wartime conditions and had no legal strength when legitimate bodies enforced them.[920] With the same dedication, President Karadzic continued fighting with the local authorities in the Assembly

> We must establish the central organs of authority. We must establish a central police which will come and make arrests[...]The authorities must function and start operating[...]We must be given authorisation to be able to replace and arrest a blockhead municipal president.[921][...]There can be no authorities without the central authorities. There can be no authorities with so many Krajinas, no more SAOs[...]In history whenever there was a golden period of a country, during Pericles for example, the first thing he said was that the central authorities should be strengthened.[922]

434. Prosecution witness Djeric testified that "these were the biggest problems that we had. The problems of what was happening on the ground in local areas was very difficult and very slow. Implementing our authority."[923]

435. The municipal leaders did not even bother to deny the amount of power vested in the local authorities. Jovo Mijatovic, an official and deputy from Zvornik remarked that

[919] D0092, p. 20
[920] D0092, p. 20
[921] D0456, p. 53
[922] D0456, p. 54
[923] Djeric, T.28041

> At one point[...]we had a municipal army, municipal police and municipal administration - **a state within a state**. I hear that this is also the case at the regional level in eastern Herzegovina, there are instances of regional organisation at all levels.[924]

Nikola Koljevic also noted that

> The most delicate and most important political issue at the moment - centralisation of power and command[...]local leaders are a great problem, the main reason why the authorities are not functioning[...]As deputy Mijatovic said, an even more absurd thing has happened, from the level of SAO we went even further down, to the municipal level and that resulted in the breakdown of the authorities.[925]

436. Notwithstanding the overwhelming evidence to the contrary, the Prosecution claims in paragraph 98 of its Pre-Trial brief that President Karadzic ensured Crisis Staffs were subordinated to republican organs by the commencement of the conflict. Did the Prosecution read the transcript of this session? It seems that it did, since it quotes bits and pieces of it in its Pre-Trial Brief paragraphs 26, 140, and 174.

437. The Prosecution also overlooked President Karadzic's speech in which he urged that

> This Assembly must give us authorisation[...]give us broad authority, otherwise we are doomed.[926][...]A democratic party must be mild[...]but in a country which is at war, this cannot be the situation in the state organs[…]that is why there are laws and laws do not allow any ambiguity[...]the Government, the deputies, the ministers, the commissioners, the municipal presidents, the policemen in a municipality, the military police – they all must start functioning within three days or we're doomed. That is a must. Get rid of the shitheads if they are not for the police[...]Change the whole police force.[927]

438. Prosecution witness Mico Davidovic agreed that the President could not have done more than this.[928] Chamber witness Mandic testified that the government did not have the budget to finance the army, and that it was done by the municipalities that also financed the police and the municipal administration.[929] The central authorities in Pale had nothing until the government was properly set up and until cash-flow started to run.[930]

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[924] D0456, p. 69 [Emphasis added]
[925] D0456, p. 69
[926] D0456, p. 54
[927] D0456, p. 56
[928] Milorad Davidovic, T.15744
[929] M.Mandic, T.5201
[930] M.Mandic, T.5201

439. Also Deputy Prime Minister Milan Trbojevic complained in the Assembly that

> Camps for inmates, prisoners, civilians and who knows what are being opened in the Republic but no one, or most authorities, know nothing about them. The minister in charge of refugees is stunned when people from the International Red Cross tell him about the camps. Is that a state? I'm sorry, but that cannot be a state. [931]

440. The same state of affairs was in the Army as well, that struggled to establish and organise united military units and do away with all local and private military units which were not accountable to anyone.[932]

441. On 14 September 1992, a consultative meeting was held between the military and civilian authorities of Krajina, which was attended by mayors of 26 municipalities and several members of the Main Staff led by Mladic.[933] One of the subjects of the meeting was the existing rift between the central authorities in Pale and the regional authorities in Banja Luka.[934] At this meeting, Minister Subotic pointed out that the state was being built with difficulties, that the authorities had started this work from scratch and that it took some time to build institutions and establish rule of law.[935] One of the conclusions of this meeting was to prevent any negative behaviour towards other nations.[936]

442. On 21 September 1992, the Government met to discuss the situation in Bosanska Krajina, deciding to "energetically exercise its constitutional and legal functions, using all the means of a law-governed state, in organising and exercising power in the Republic" and "propose to the Serb Republic Presidency to introduce martial administration in certain areas of the Republic."[937]

443. In late October 1992, the Assembly complained that local authorities "obstruct the implementation of the republican regulations, and thus hinder their implementation in practice. It was suggested that the functioning of the authorities on all levels in the Republic should be enabled at any cost."[938]

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[931] D0456, p. 36
[932] D0455, pp. 1–2
[933] D3702, p.1; D3695, para 292
[934] D3702, pp.1–7; D3695, para 292
[935] D3702, p.3; D3695, para 292
[936] D3702, p.5–6; D3695, para 292
[937] D0457, p. 1; M.Mandic, T.5213–T.5214
[938] P1468, pp.1, 9

444. On 20 October 1992, the Government started to put into practice its warnings to the local authorities when Minister Subotic proposed to President Karadzic to introduce a military rule in parts of Republika Srpska due to a threat to the system and the danger of it falling apart

> Considering the fact that the political and security situation in some Republika Srpska municipalities has become more tense due to the increasingly active paramilitary formations, quasi-state organs and institutions, that legal state organs and other state subjects are not performing their duties in accordance with the Constitution and laws[...]and that decisions issued by the Government and other state organs are not being respected, I propose that military rule be introduced in the following municipalities: Bijeljina, Centar Sarajevo, Ilidza, Ilijas, Hadzici, Novo Sarajevo, Stari Grad Sarajevo, Sokolac, Pale, Rajlovac, Vogosca, and Zvornik.[939]

445. Defence Minister Subotic defined military administration in municipalities as "a specially organised system of measures and activities which enable functioning of the political, legal and economic system[...]in the cases where the constitutional and legal system is not functioning or is not established due to serious armed conflicts or illegal conducts and other objective and subjective circumstances."[940]

446. For this purpose, Minister of Defence had already prepared Obligatory instructions on tasks of the military administration organs, Republic state organs and other bodies.[941] The Military Administration organs, in cooperation with the Republic state organs, took over the competence of the legislative, executive and administrative organs. [942] Repressive measures were to be taken against groups and individuals who make it impossible to carry out law enforcement or disrupt the political, economic, and legal system.[943]

447. The military administration was to ensure the full effectiveness and promptitude of the judicial organs, training of the lower organs of justice for effective work and rendering functional the regular organs of state administration, executive organs and organs of the Assembly, in collaboration with the competent Republican organs.[944] The

[939] D0458, pp.1–2
[940] D0460, p. 2
[941] D0459, pp.1–7
[942] D0459, p. 2
[943] M.Mandic, T.5220, D0459
[944] D0459, pp. 2–3

military administration was to ensure provisions for refugees, prevent any abuses of humanitarian aid, and provide conditions for the return of refugees.[945]

448. Pursuant to Article 7, paragraph 5 of the Law on defence, the President introduced military administration in municipalities,[946] together with the Defence Minister.[947] However, it took another four months, until February 1993, for the new military administration to produce first concrete results.[948]

449. At the same time, the Ministry of Justice was appointing its own republican administrative inspectors whose job was to examine the legality of the activity of local governments.[949] These inspectors were to examine the extent to which regulations passed by the Assembly and the Government were being violated.[950]

450. In November 1992 President Karadzic again noted that "we have a state but we don't have government, we don't have functioning levers[...]The state organism must start functioning."[951] Several days later the Government delegation visited the municipalities in Eastern Bosnia that were not implementing the republican regulations.[952]

451. The Presidency again discussed the same problem on 30 November 1992 and concluded that commissioners and commissions must be introduced in areas where the civilian municipal authority was not functioning.[953] The Presidency concluded that

> **It is necessary to make it legally possible for municipal authorities to be stripped of power.**[954]

452. This is a revealing piece of evidence. It tells us that until December 1992, it was not legally possible to dismiss municipal authorities. It is also enlightening because it questions the very basics of the Prosecution's theories. Why would the Presidency want

[945] D0459, p. 7
[946] D0461, p.1
[947] D0462, p.1
[948] D0463, pp.1–2
[949] D0464; M.Mandic, T.5233
[950] M.Mandic, T. 5233
[951] P1481, pp.106, 110
[952] D3696; D3695, para 294
[953] D0478, p. 3
[954] D0478, p. 3 (Emphasis added)

to replace municipal authorities if they were part of an overarching JCE with the task to implement persecutory measures against non-Serbs?[955]

453. Year 1992 was the worst year in terms of crimes, but once the government was properly set up in Republika Srpska, and more centralisation carried out, the crime rate dramatically dropped.[956]

454. When in October 1992 a journalist asked Minister of the Interior Stanisic whether it could be said that the number of criminal acts had been reduced with the establishment of the rule of law, the Minister responded

> Fortunately, our state was creating this legal system at an accelerated pace and it is now in force to a considerable degree.[957]

455. In conclusion, with the outbreak of war, the existing socio-political and legal system broke down. It ceased to exist, and was replaced by anarchy and chaos in the field, everywhere. The authorities in Pale began a painstaking process of building a new system encompassing all segments of the society, especially those dealing with law and order. This takes time, especially in a time of wars. However, the authorities persisted against all odds.

456. Let us now focus on "the two most powerful Government ministers" as the Prosecution labelled the Ministries of Justice and the Interior in paragraph 93 of its Pre-Trial brief and see how "powerful" they really were.

c. Ministry of Justice Did Not Control Events in the Field

457. In 1992, **Momcilo Mandic** was the Minister of Justice for about eight months, and did not manage to establish his ministry fully before he left this position.[958] When the war broke out, the Government was located on temporary "Kikinda" premises on the outskirts of Pale, and then in Hotel Bistrica at Jahorina.[959] The Ministry of Justice had

[955] Prosecution's Pre-Trial brief para 105; *See also* Indictment para 12
[956] M.Mandic, T. 5339
[957] D4274, p. 6
[958] M. Mandic, T.4990
[959] M. Mandic, T.5011

only two hotel rooms at its disposal, transformed into offices, an old Golf car and five or six employees.[960] The situation was so bad that the employees started collecting paper and pencils in order to draft bills for the Assembly.[961]

458. The Ministry of Justice initially did not have any sectors; only Minister Mandic was officially appointed and the rest of the officials were doing everything from procuring petrol and furniture to recruiting professional staff.[962] This dire situation and the lack of organization lasted at least until the end of 1992.[963]

459. The situation was so hopeless that the Ministry of Justice had to write to other ministries to provide it with at least the bare minimum in order to be able to establish the legal system as successfully as possible.[964] But other ministries were in equally difficult position. For instance, when it was "properly" established, the entire Defence Ministry had about 30 staff, out of which merely three or four worked in the legal section.[965] The central authorities in general did not have the budget.[966]

460. **Slobodan Avlijas** testified that the central authorities "worked in very poor conditions, we had nowhere to sit, we had no norms or regulations, we had nothing to start from."[967]

461. Avlijas testified that abandoned property was managed by municipal authorities, and that the crisis staffs and municipal authorities often founded and organized prisons, appointed wardens and guards in these prisons and remand centres and did so without the knowledge of the district courts.[968] In so doing, the local authorities often ignored the instruction on the organization of prisons and decisions of the Assembly.[969] Some crisis staffs went so far as to grant pardons to prisoners.[970] All the crisis staffs in all the regions were states within the state.[971]

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[960] M. Mandic, T.5011
[961] M. Mandic, T.5011
[962] D3105, para 4
[963] D3105, para 4
[964] D0413
[965] D3695, para 77
[966] M. Mandic, T. 5200
[967] D3105, para 9
[968] D3105, para 36
[969] D3105, para 36
[970] D3105, para 36
[971] D3105, para 36

462. In the summer of 1992, the Assembly issued a decision establishing correctional and penal institutions in places where this was possible.[972] Correctional facilities were established in Banja Luka, Kula, Doboj and Foca.[973] The Ministry of Justice sent a delegation to Foca on 24 June 1992 that reported back to the Ministry about the problems with, *inter alia*, communication, shortage of equipment for crime scene investigations, difficulties with the work of the MUP and prosecutors.[974]

463. The seat of the civilian judiciary and the main republican prosecutor was at Pale in an annex of Hotel Panorama.[975] There was a serious shortage of prosecutors and judges.[976] Judiciary military organs had not started to work yet, which was one of the greatest obstacles in establishing law and order.[977]

464. On 31 May 1992, Dr. Karadžić signed an amendment on the establishment, seat, and jurisdiction of military courts and military prosecutors' offices.[978] On 3 July 1992, The Presidency adopted further decisions and conclusions in relation to the creation of state administration, the Supreme Military Court and Prosecutors' Office, and urged the Government to regulate the appointments of judges and prosecutors.[979]

465. The Government also concluded that public prosecutors' office and courts must be formed as soon as possible, and that, due to emergency, the possibility of delegating authority from military to regular judiciary organs be examined and, if necessary, amendments to appropriate laws be proposed,[980] since in an imminent threat of war, a vast majority of crimes committed fell under the jurisdiction of the military judiciary.[981]

466. On 10 July 1992, the Ministry of Justice informed the President that it had organised and set up regular courts and public prosecutor's offices.[982] Minister Mandic added that

[972] D3105, para 8
[973] D3105, para 8
[974] P6195, p. 2
[975] M.Mandic, T.5099-100
[976] Stanisic, T.46398
[977] D0441, p. 5
[978] D0412
[979] D0438
[980] D0441, p. 5
[981] M.Mandic, T. 5111
[982] D0442, pp. 1–2

> By monitoring the situation in the field of criminal offences, it was noted that a large number of the criminal offences committed came under subject-matter jurisdiction of the military judiciary which has not been established yet. For this reason, we propose that regular judicial bodies should temporarily, until such time as military judicial bodies are established, take over their role. This would to a considerable degree help prevent the commission of these criminal offences and help establish legal order and legal security throughout the Serbian Republic.[983]

467. The same proposal was again made on 11 July 1992[984] and 5 August 1992.[985]

468. However, until the government resigned in late November 1992, that did not happen because the military was opposed to this.[986] They thought that the civilian judiciary was taking over their powers.[987] At the Assembly session in November 1992, Minister Mandic again proposed that the powers of the military judiciary temporarily be delegated to the civilian judiciary and told the deputies that

> The number of crimes and of the perpetrators increases every day, and have a hard time finding our bearings in this chaos [...]there are terrible practical problems, conflicts of jurisdiction, was the man who committed a crime in the morning on leave or on holiday, is he a civilian or a military conscript, etc.[...]we need to resolve this, we need to put Serbs on trial[...]when the war ends, the civilian and the military justice system will most likely be separate again.[988]

469. However, General Gvero, who was in charge of the military judiciary, opposed the proposal of the Ministry of Justice, fearing that the authorities would act unconstitutionally and unlawfully.[989] As this was a constitutional category, the president of the Assembly proposed that the item on the agenda be postponed, pending possible amendments to the Constitution.[990]

470. The authorities invested enormous efforts in the field of justice and administration. In several war-time Assembly sessions, 90 out of 100 items discussed dealt with the establishment of judiciary, administration, penal and correctional facilities and courts.[991] Nevertheless, the confusion went on. The authorities in charge of

[983] D0442, p.1
[984] D0446, p. 6
[985] P1136, p.1
[986] M. Mandic, T.5113
[987] M.Mandic, T.5113
[988] P1105, p. 91-2
[989] P1105, p. 92; M.Mandic, T.5120
[990] P1105, p. 91-2; M.Mandic, T.5120
[991] P1105, p. 13

prosecution, the civilian and the military police, did not always understand who had jurisdiction over individuals who perpetrated crimes.[992]

471. One of the greatest obstacles in the establishment of an efficient state system was an enormous lack of personnel. On 31 December 1992 there were 21 people working at the Ministry of Justice,[993] out of which the majority were drivers and technical services, thus leaving only ten people, working 16 hours a day, to establish the judicial organs in 1992.[994] Pale was not The Hague, and the conditions were not as good as the Prosecution has at the ICTY. Far from it.

472. During the Government session of 17 November 1992, Minister Mandic pointed out that penal and correctional institutions had finally been established and that the illegal camps and collection centers should therefore be abolished as soon as possible.[995] Mandic was referring to the collection centres that were established outside the system of central government.[996]

d. Ministry of Interior Did Not Control Events in the Field

473. The situation in the Ministry of the Interior was not much better. During the first year of war, the Ministry of the Interior went through three phases. In the first stage, in April 1992, the main activity was the evacuation of crime prevention officers from the joint BiH MUP to Vraca and setting up the operational groups and crime departments in SJBs.[997] At that time, the Crime Prevention Administration had in fact not yet been established, since the majority of crime prevention officers were taking personal part in the war operations.[998] The second stage was characterised by the relocation of the MUP to the Pale municipality.[999] The third stage began with the relocation of MUP headquarters to Bijeljina.[1000] Only then was the criminal police administration, with

[992] M.Mandic, T.5126; Milorad Davidovic, T. 15697
[993] D0443, pp. 1–2
[994] M.Mandic, T. 5130
[995] P3102, p. 6
[996] D3105, para 61
[997] P2761, p. 14-5;
[998] P2761, p. 14-5
[999] P2761, p. 14-5;
[1000] P2761, p. 14-5;

organised planned work on the task of crime prevention and detection actually set up and posts filled.[1001]

474. MUP Minister **Mico Stanisic** testified that probably no ministry of the interior in the world ever functioned under such conditions.[1002] There was not even a minimum of preconditions required to carry out the basic functions of the ministry.[1003] Still, those few employed MUP officials tried to deal with the issues of crimes and put maximum effort humanly possible to tackle such issues.[1004]

475. During the first seven months of 1992, the seat of the Ministry moved four times and was without water, electricity, or communications system.[1005] There was only a single telephone line, controlled by the other side that could interrupt the Serb MUP communication whenever it wanted.[1006] The republican MUP even had to borrow **one** car to enable one of its inspectors to do his job,[1007] while other SJBs had virtually no vehicles at all.[1008]

476. Stanisic testified that "we tried from one day to the next to improve it, but[...]there was combat interrupting communications and there was no physical contact with the Security Services Centres and security service stations." [1009] The Ministry of Interior lacked technical equipment, vehicles, fuel, personnel, both quality-wise and in terms of numbers.[1010] The entire ministry logistics was carried out by less than 20 people.[1011] In addition, in 1992, over 50% of MUP members were engaged in combat activities, based on the principle of re-subordination to the military units,[1012] leaving the policing tasks in the depth of the territory unattended.

477. On 6 July 1992, Minister Stansic tried to improve the work of his ministry by introducing wartime procedures in the organisation and operation of security services.[1013]

[1001] P2761, p. 14-5
[1002] Stanisic, T.46358-60
[1003] Stanisic, T.46358-60
[1004] Stanisic, T.46359-60
[1005] Stanisic, T.46359-60
[1006] Stanisic, T.46359-60
[1007] D3781
[1008] D3806
[1009] Stanisic, T.46359-60
[1010] Stanisic, T.46359-60
[1011] Stanisic, T.46359-60
[1012] Stanisic, T. 46360
[1013] P6633

The reason for the new measures were, among other, a state of war, appearance of some new types of crime (war crimes, aggravated thefts, war profiteering, etc.), population movement, a large number of refugees on both sides, problems with communication systems along with the shortage of technical equipment because practically everything was left in the hands of the Muslim-Croat side when the ministries were divided.[1014]

478. All MUP members testified about similar problems. **Cedo Kljajic**, **Goran Macar** and **Dobrislav Planojevic** testified about the lack of equipment, poor communication, and the lack of personnel in the MUP that was formed from scratch.[1015] The MUP base in Vrace was under constant artillery and sniper fire.[1016] There was not any equipment to conduct an adequate on-site investigation,[1017] and there was chaos in all areas.[1018] There were two cars in the Crime Prevention and Detection Administration, but there was no fuel.[1019] There were only a few inspectors in the administration in which Macar worked.[1020] The MUP was set up with almost nothing.[1021]

479. None of the things required for the normal work of the crime police were in place: no cameras, no films for the cameras, nor any of the things required for an on-site investigation to be carried out in the field; not even paper for the typewriters.[1022] From April 1992 to the end of the year, up to 80% of the MUP members were used in combat operations, and this included both the active and reserve men, as well as criminal investigations inspectors.[1023]

480. Very often the police would be re-subordinated to the military command which would not return the policemen to their regular duties.[1024] Misunderstandings between the police and the army were not uncommon in the general state of chaos. There were even

[1014] P6633
[1015] D3917, para 12; D3663, para 19; D3197, para 18
[1016] D3917, para 12,D3663, para 18; D3197, para 19
[1017] D3917, para 12
[1018] D3917, para 13
[1019] D3663, para 18
[1020] D3663, para 19
[1021] D3663, para 17
[1022] D3663, para 19
[1023] D3663, para 21
[1024] D0447, p. 9; M. Mandic, T. 5143

cases of armed clashes between the police and the military,[1025] which was a major problem for the RS authorities.[1026]

481. At first, the CSBs only existed on paper.[1027] The MUP headquarters had no idea what was formed where and what they had at their disposal.[1028] In fact, the centres operated like small ministries, in part because they were physically isolated, and in part because each centre chief wanted to be a big-time chief.[1029] They were the only ones who set the appointment policy in their centres.[1030]

482. **Tomo Kovac** testified that only in August 1992, the republican MUP started the process of consolidating the MUP of Republika Srpska in local areas which had up to then mainly functioned independently.[1031] The MUP started a process to eliminate persons who had been employed in the police without a background check and to make them available to the army if they had not committed crimes.[1032]

483. In October 1992, when Planojevic joined the National Security Service (SNB), there were not more than 10 to 15 men in their headquarters.[1033] In its April-December 1992 report, the SNB stated that "the availability of all types of material and technical equipment, from consumables, to vehicles, surveillance devices, and office space, was at such level that it sometimes jeopardised the fulfilment of the basic role[...]The SNB[...]sectors operated for a long time in an environment in which all contacts with the seat of the SNB were severed."[1034] The SNB continued organizing its work in September 1993, producing provisional instructions governing basic documents and reporting.[1035]

484. The MUP complained that "one of the greatest problems was the fact that the Serbian MUP began its work without any records necessary for good quality of operative work and the system of reporting and informing".[1036] Further difficulties that the MUP

[1025] D0451
[1026] M.Mandic, T. 5183
[1027] D3197, para 21
[1028] D3197, para 21
[1029] D3197, para 21
[1030] D3197, para 21
[1031] D3960, para 86
[1032] D3960, para 86
[1033] D3197, para 32
[1034] D4145, p. 7
[1035] D4147, pp.1–12
[1036] P2761, p. 3

had to face during the first year of the war included 132 attacks on police officers while carrying their regular duties outside combat activities. [1037]

485. Additionally, there was a problem with the number of security centres and police stations which were established outside the scope of the Law on the Interior by unauthorised personnel.[1038]

486. A problem with reservists arose during the joint BiH MUP. The SDA and the HDZ did not allow reserve military to respond to the call-ups of the JNA, but they, rather, redeployed them as members of the MUP.[1039] In doing that, they did not take to account whether they had criminal records.[1040] When the war broke out, the same police stations, now set up by the crisis staffs, continued to admit reservists as members of the MUP without applying the necessary criteria.[1041] It took time for the Ministry to properly organise its police stations in the field.[1042]

487. On 27 July 1992, Minister Stanisic, in accordance with the order by the President, ordered all CSBs to "establish the optimum number of members of security services in all security services centres based on the criteria prescribed by the Law on Internal Affairs and the Rules of Practice in the Public Security Service."[1043] Minister Stanisic managed to remove about 6.000 reservists from the records of the MUP. [1044]

488. The influence of local strongmen and the crisis staffs on the SJBs was enormous. [1045] Because of this, the SJBs did not report properly and fully to the Ministry.[1046] This meant that it was not possible to establish proper subordination from the top downwards.[1047] For example, in November 1992, Goran Macar, the Republican coordinator for operative tasks in the Crime Prevention and Detection Administration,

[1037] P2761, p. 18
[1038] Stanisic, T. 46361
[1039] Stanisic, T. 46365-6;
[1040] Stanisic, T. 46365-6
[1041] Stanisic, T. 46365-6
[1042] D3663, para 20
[1043] D4273
[1044] Stanisic, T. 46366
[1045] D3663, para 20
[1046] D3663, para 20
[1047] D3663, para 20

went to the SJB in Prijedor.[1048] However, the Prijedor chief of Police Drljaca did not appreciate Macar's visit and abruptly terminated his stay.[1049]

489. In short, the MUP did not control events in the field either.

e. President Karadzic and Lukic's Government Did Not Control Events in the Field

490. The new Government that replaced Djeric's one encountered the same problems. In 1993 the municipalities still functioned as states within the state and their powers were too great.[1050] It was very difficult to remove the presidents of the municipalities because the change had to be supported by both the RS Assembly and the local assembly.[1051] The Lukic Government did not manage during his term of office to resolve the problem of the independence of the municipalities from the republican authorities.[1052] Instead, this remained a problem to the end of the war.[1053]

491. In mid February 1993, Nikola Koljevic noted that the municipalities had too much power and were **states within the state**, and that the only way to resolve this problem was to change the jurisdiction of the municipalities.[1054] Koljevic thought that this problem arose from the previous communist system, which had given the municipalities enormous power.[1055]

492. It was obvious in September 1993 that the RS authorities could not acquire a functional control over the state matters. President Karadzic addressed the Assembly and said

> Gentlemen, our authorities are not functioning.[1056]

493. In May 1994 President Karadzic called Republika Srpska "a confederation of municipalities".[1057]

[1048] D3663, para 20
[1049] D3663, para 20
[1050] D3568, p. 5; D3563, para 27
[1051] D3563, para 27
[1052] D3563, para 27
[1053] D3563, para 27
[1054] D3568, p. 5 (Emphasis added)
[1055] D3568, pp. 5-6
[1056] P1379, p. 408

494. Throughout 1993 and 1994, the Republican authorities, Prime Minister Lukic and President Karadzic continously, but also unsuccessfully tried to reduce the powers of municipalities and para-state organs, defeat their separatism and ensure the implementation of the law and Republican decisions.[1058]

495. Endless fight for the rule of law and establishment of a proper, functional state system made Prime Minister Lukic resign from the post of Prime Minister because he felt that a change of the top man in the Government was needed in order to continue with still greater energy to build the rule of law.[1059] Prime Minister Lukic testified that

> As a republic we functioned as a confederation of municipalities[...]It is a notorious fact. That's what existed during the war. I have to say that we had municipalities which were better off than the republic itself[1060]

f. President Karadzic and Kozic's Government Did Not Control Events in the Field

496. During the second half of 1994, the third war-time President of the Government, Dusan Kozic, and his Government endeavoured to make the state efficient, but like any state-establishing process, it was a complicated affair, as there was overlap with the municipalities in terms of jurisdiction.[1061]

497. In 1994 and 1995, Kozic's government, together with President Karadzic, continued Prime Minister Lukic's struggle with municipal and quasi-state organs but was equally ineffective.[1062]

498. Before we continue with the narrative, it is worth reminding the Trial Chamber that they should try to travel in time with their minds and live through the chaos that prevailed in the civil war in the 1990s, rather then stick to the safe, year 2014-2015

[1057] P1486, pp.58, 63
[1058] D3569, p. 2; P3129, p. 5; D3606, pp. 3– 4; D3611; D3061, pp. 5–6; P3112, pp. 15, 20-21; P3139, p. 6; D3585; P3142, pp. 5-6; P3141, p. 12; P3140, pp. 15 and 23; D3607, p. 3; D4811, p. 5; P3135, pp. 13-14 and 18; D3610, pp.1 – 2; D3563, paras 28, 33, 41, 43, 45-46, 50, 61, 62, 65, 83, 90; D3671, para 21
[1059] P3132; D3563, para 93
[1060] V. Lukic, T. 38828
[1061] D3364, para 17
[1062] P3147, p. 8; D3372, p. 3; P3124, pp. 3-4; D3365, pp. 1,3; P3128, pp.1,4; D3364, paras 19, 30-32; D3674; D3671, para 22

perspective of how things should ideally have happened. In this regard Dragan Andan, an experienced policeman, testified

> We learnt about war from books in peace time. What I learnt from books at the university was absolutely different from what I experienced in war time.[1063]

499. In conclusion, at no point in time did the republican authorities manage to acquire an effective control over the events in the field and local authorities; or as President Karadzic told a journalist in May 1995

> You see, in order for the rule of law to exist, there has to be[...]a well-developed and functioning government administration. **You should not forget that we are creating a state in time of war, from scratch**, and will need a lot of time to build a solid government administration.[1064]

2. Central Authorities Lacked Meaningful Communications with Municipalities in Order to be Able to Control Events in the Field

500. The central authorities based in Pale could also not and did not control events in the municipalities because they did not have any meaningful communication with the local authorities. By mid-April 1992 all telecommunications broke down that functioned in normal times and the road system collapsed.[1065] In the period from April to December 1992 it was very difficult to communicate with municipalities.[1066]

501. The SNB noted in September 1993 that "in the circumstances of war under which the SNB came into existence, one of the initial and crucial deficiencies among the problems it faced was an **almost complete breakdown of every form of communication, including the flow of information**."[1067]

502. Cedo Kljajic testified that parts of RS were physically completely inaccessible or with great difficulty, and in this situation, SJBs behaved independently and did things on their own.[1068]

[1063] Andan, T. 40875
[1064] P2562, p.2 (Emphasis added)
[1065] M. Mandic, T.4962-3
[1066] D3105, para 9
[1067] D4147, p. 1
[1068] D3917, para 12; Kljajic, T.42231

503. Goran Macar testified that "we did not receive regular information from the field as per Serb-held municipalities. We didn't even receive information from the respective security stations and CSBs. All communication was down."[1069]

504. Dobrislav Planojevic testified that "there was a communication breakdown. There was no way to know whether anyone received a dispatch that we sent, and if so, who received it. We were not receiving reports either."[1070] Planojevic did not manage to establish a single direct contact with any centre chief or criminal investigation service chief.[1071]

505. Slobodan Avlijas testified that the communications with Sarajevo municipalities were cut off, and that in order to get to Kula from Ilidza or Hadzici one had to travel 120 kilometres along the road with at least five critical points containing Muslim sniper nests.[1072]

506. Bogdan Subotic testified that the communication between his Ministry and sections of the Ministry of Defence in municipalities "were very poor[...]very slow, and that improved only in the first half of 1993."[1073]

507. Momcilo Mandić testified that he did not know what the municipal authorities did in the field.[1074] All the communications were down at the outset of the war.[1075] Bosnia and Herzegovina was so intersected that one could not pass from one place to another and the entire Republic had been under blockade.[1076] Until there was a corridor in place in Posavina in late June 1992, it was practically impossible to move from Western to Eastern Herzegovina or from Central to Eastern Bosnia.[1077]

508. Momcilo Krajisnik testified that up until 28 June 1992, all territorial links had been torn or were very bad, especially close to Pale where the Serb leadership was seated.[1078] After June 1992, when the corridor between the western and eastern parts of

[1069] Macar, T.39518
[1070] D3197, para 20
[1071] D3197, para 20
[1072] D3105, para 10
[1073] D3695, para 92
[1074] M.Mandic, T.4969
[1075] M.Mandic, T.4969
[1076] M.Mandic, T.4971
[1077] M.Mandic, T.4996
[1078] Krajisnik, T.43314

the republic was established, it was very risky to move through the area of Brcko.[1079] Throughout 1992 the telephone and other communications worked with lots of difficulties, because of which headquarters in Pale did not receive full or truthful information.[1080]

509. Milan Ninkovic, testified that Doboj and Teslic were completely cut off from the leadership and that none of the authorities knew at the time what was happening in the Doboj region.[1081] They could not affect any of the events there, nor did anyone inform them about them.[1082]

510. The distance between Sarajevo to Trebinje or Bileca was about 120 kilometres, but due to the war circumstances, one had to take a 1.000 kilometres long road via Serbia and Montenegro in order to reach Trebinje.[1083] The state of communications was so bad that not even the Sarajevo municipalities could reach the Pale leadership.[1084]

a. Republic Communications Centre Communication with Municipalities was Non-Functional to be Able to Control Events in the Field

511. The main hubs of intelligence communications centre that existed in municipalities before the war were in Banja Luka, Tuzla, Zenica, Sarajevo, and Mostar, meaning that only Banja Luka remained under Serb control.[1085]

512. The Republic Communications Centre had difficulties in maintaining the communications lines, because frequently they would break down and be out of operation.[1086] This centre was originally a Pale municipal centre which had a small number of staff, and which now had to transform into a republican centre and service the entire republic.[1087]

513. Prosecution witness Ranko Vukovic, the chief of the Republic Communications Centre in Pale, testified that during the first months of combat operations those

[1079] Krajisnik, T. 43314
[1080] Krajisnik, T. 43314-5
[1081] D3733, para 20
[1082] D3733, para 20
[1083] Avlijas, T. 35200
[1084] D3750, p. 1
[1085] Sajic, T. 44174
[1086] R.Vukovic, T.15084
[1087] R.Vukovic, T.15111–2

communications systems would be down quite often,[1088] and that telephones and teleprinter communications were down.[1089] The Republic centre had very few people, very little equipment and assets and was confronted with major problems. Some of the wires were crossing enemy territory, and the enemy would engage in sabotage activities, cutting these wires, electronically surveilling Serb activities, and jamming Serb radio-relay communications.[1090] The Republic Centre very often did not have return information whether something reached its destination or not.[1091]

b. MUP Communications with the Field were Non-Functional to be Able to Control Events

514. The MUP Communications Centre also had great difficulties at Pale. The chief of the MUP Communications Centre frequently complained about the difficulties he had and his inability to carry out his duty.[1092]

515. The MUP headquarters had no technical equipment, personnel or documents for work.[1093] Response from communications staff, especially technical experts of Serbian nationality from the former MUP was very low.[1094] The separation of Serbian territories and the CSBs and SJBs belonging to them, led to the disintegration of the communications system of the former MUP, either because of physical damage and destruction, or because it was deliberately cut off by the former MUP.[1095]

516. With the disintegration of the single teleprinter link, the system of cryptographic data protection for written communications also disintegrated.[1096] The short-wave and ultra short-wave radio links was in a state of disintegration as well.[1097]

517. The MUP headquarters was not able to find out the real situation in the SJBs, their numerical strength or what equipment they had.[1098]

[1088] R.Vukovic, T. 15115
[1089] R.Vukovic, T. 15116
[1090] R.Vukovic, T. 15112; D1372, p. 2
[1091] R.Vukovic, T. 15116
[1092] R.Vukovic, T. 15113
[1093] P2761, p. 25
[1094] P2761, p. 25
[1095] P2761, p. 26
[1096] P2761, p. 26; P2760, p. 7
[1097] P2761, p. 26

518. Only two or three telephone lines were working, which the Muslims listened in.[1099] These lines were primarily used by the people to find out about their families.[1100] The MUP had to turn to more primitive means of communication, such as courier service, which did not operate properly either.[1101]

519. In its report covering the period April-June 1992, the MUP complained that the report could not be exhaustive due to limited or, more often, completely disrupted communications systems.[1102] The separation of the Serbian territories and the CSBs and SJBs **resulted in the total collapse of all communications systems**, due to either physical damage and destruction or deliberate shutdowns by the former MUP.[1103] Public telephone and telegraph systems were also blocked because different relay facilities were held by different parties to the conflict.[1104]

520. The short wave and ultra short wave radio networks were falling apart.[1105] Radio connections could not be treated as a functional communications system for the purpose of the police work.[1106] Electronic jamming was present in the system rendering it inoperative.[1107] Some regions and municipalities had obtained radio stations from various sources and of various types on their own initiative, which made it difficult to network all the equipment into a single system and make it functional.[1108] The communication system had, therefore, to be built from scratch.[1109]

521. Due to difficulties with communications, Minister Stanisic authorised chiefs of CSBs to organize the officials in their territory.[1110] In July 1992, the most senior MUP officials noted that "the functional communication system is destroyed".[1111] In August 1992, Minister Stansic was informed through the official channels that "there are obvious

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[1098] D3663, para 18
[1099] D3663, para 18
[1100] D3663, para 18
[1101] D3663, para 18
[1102] P2760, p. 2
[1103] P2760, p. 7 (Emphasis added)
[1104] P2760, p. 7
[1105] P2760, p. 7
[1106] Planojevic, T. 36273
[1107] P2760, p. 7
[1108] P2760, p. 7
[1109] P2760, p. 7
[1110] P2966, p. 2
[1111] D0447, p. 8

problems with the information transmission from the SJB level to the MUP level, in all lines of work. The system of communications is broken."[1112]

522. In September and in October 1992 Dragan Kijac, the National Security Service Undersecretary, learned that, due to the vacuum when the headquarters of the service had not functioned, SNB sectors were executing tasks without the knowledge of the leadership of the service.[1113] Due to the poor functioning of the system, operative information only got as far as CSB Chief.[1114] Consequently, the national security leadership at the headquarters was not being informed about many security-relevant events.[1115]

c. VRS Communications with the Field were Non-Functional to be Able to Control Events

523. All diagrams of the VRS Radio Relay or other Communications presented by the Prosecution depicted situation after the formation of the Drina Corps in November 1992,[1116] and probably later. In order to get a better picture of the state of communications in 1992, one should turn to the VRS analysis of combat readiness for 1992, where the VRS Main Staff concluded that combat missions in 1992 were characterised by heavy shelling of communications stations and centres, of stationary communications centres, stationary communications hubs, PTT communication centres, and auxiliary PTT communications centres and connections.[1117] The greatest problem was the destruction of the stationary section of the system, especially some vital objects like Bjelasnica, Zlovrh and Vlasic.[1118] Prosecution witness Vukovic testified that there were also plenty of other problems, not just at those three facilities.[1119]

524. Sixteen stationary communications hubs were left in enemy territory, while one stationary communications hub, Zlovrh, was later seized by the enemy.[1120] Of a total of

[1112] D1076, p. 6–7
[1113] D4143, para 37
[1114] D4143, para 37; D4149, p. 6
[1115] D4143, para 37
[1116] P2795, p. 8; P2796; P2797; P2798; P2802
[1117] D0325, p. 30
[1118] D0325, p. 30
[1119] R.Vukovic, T. 15135
[1120] D0325, p. 30

32 stationary communications centres and auxiliary communication centres of the former JNA, 11 were abandoned or captured and 3 were damaged.[1121] The very high frequency radio network also ceased to be used in the system of communications with the disruption of other types of communications.[1122]

525. The VRS Main Staff noted that there was a problem of understaffing in respect of key duty officers and critical specialties such as radio-relay operators, radio-relay mechanics, radio teleprinter operators, automatic telephone and TT exchange mechanics, which **affected the communication system and the battle readiness** of the signal branch as a whole.[1123] These problems remained throughout the entire 1992-1995 period.[1124]

526. Dusan Kovacevic testified that General Milovanovic in 1992 had almost no communication with the units in the field.[1125] In September and October 1992, General Kovacevic was in the team created by General Mladic touring all units in the field, and could witness the disorder, chaos, and wilfulness.[1126]

527. It seems that only Milovanovic could press a button and talk to everybody.[1127] At least that is what he boasted in Court. Considering the contemporaneous evidence stated above, Milovanovic's boasting had little in common with the real situation in 1992.

528. When re-examined by the Prosecution about "the intricacies of the military communication system designed to relay information from the field up through the chain of command to the highest echelons of military command", Prosecution witness Djeric answered

> As far as military communications are concerned, I didn't know about that[...]we could not rely on that.[1128]

[1121] D0325, p. 31
[1122] D0325, p. 31
[1123] D0325, p. 39 (Emphasis added)
[1124] R.Vukovic, T. 15137
[1125] D.Kovacevic, T. 39686
[1126] D.Kovacevic, T. 39686
[1127] Milovanovic, T. 25438–9
[1128] Djeric, T. 2805 –2

529. Although Djeric testified that the army was a separate mechanism that was linked to the Presidency, he admitted that he could not speak about it.[1129] The fact is that as late as 1995, both the Government and the Presidency were receiving incomplete, inadequate, incorrect and late information on the situation in the Republic regarding the important issues of the defence and particularly at frontlines.[1130]

d. Information Flow Between Republic and Municipalities was Extremely Slow to Enable Republic to Control Events in the Field

530. If and when the Republican authorities' instructions occasionally arrived in the field, this would happen with a significant delay. For instance, the Serb Presidency members Koljevic and Plavsic ordered a mobilisation of the TO forces on 15 April 1992[1131], and the Ministry of Defence issued a similar decision on 16 April 1992,[1132] which was implemented by the ARK authorities only on 4 May 1992.[1133] **Twenty days** had passed in between the two documents. Municipalities, such as Prijedor, implemented the same republican decisions in question only on 22 May 1992, thus **38 days later.**[1134]

531. In fact, local authorities were not even implementing orders of the higher authorities, but were rather copying the acts of the central government, although lacking the authority to do that.[1135] Prosecution witness Djeric called this phenomenon a "synchronicity", or imitation, pretending to be proper authorities.[1136]

532. On 27 April 1992, the Ministry for Health, Social Welfare, and Family Affairs sent the following instructions to all crisis staffs

> 1. We ask you to provide free passage to all convoys of humanitarian aid(food, clothes, medicaments, sanitary material)[...]regardless of their destination - sites under our control **or under the control of Muslim or Croatian authorities.**
> 2. You are required to make a strong point to the heads of all medical facilities on your territory, both civilian and military ones, to continue treating the sick and the wounded, **regardless of their nationality and political beliefs**, in accordance with the basic principles of medical ethics and **give all patients medical treatment of the same quality.**

[1129] Djeric, T. 28054
[1130] P3114, p. 4–5
[1131] P3922
[1132] P2412
[1133] P4985; P2818; Sajic, T. 44131
[1134] P3537
[1135] Djeric, T. 28059-60
[1136] Djeric, T. 28059-60

> 3. In treatment of prisoners of war **internationally established norms must be respected** concerning their accommodation, nutrition, and medical treatment.[1137]

533. **Eighteen days later**, the Municipality of Sipovo received and discussed the document sent by the Ministry of Health.[1138] Djeric testified that this Ministry "tried to reach the remotest areas and that they were concerned about the situation regarding health and all other necessities, humanitarian and otherwise."[1139] This document also shows the extremely inefficient and slow communication between the various levels of Serb authorities.

534. On 28 April 1992, the NSC and the Government emphasised "the need to keep the crisis staffs more fully informed of the opinions, proposals and information available to the public, and on the crisis staffs informing the Government."[1140]

535. When on 13 June 1992 President Karadzic ordered application of the international law in the VRS,[1141] army units received the order on 27 July 1992,[1142] **44 days later.**

536. Although the Republican organs managed to occasionally send instructions to the field, the communications with the overwhelming part of the Republic were poor and very inadequate, and the authorities at Pale and on Mount Jahorina remained totally isolated.[1143] Inversely, occasional instructions from the Republic to the field were no proof of the existence of such communication that would enable the Republic level to control the municipalities. In a war, what is required is a **constant**, **uninterrupted** communication and possibility to contact every corner of the state within minutes, if not seconds. The communication between municipalities and the Republic was infrequent, occasional, and sporadic **at best**.

537. In late December 1992, the roads between Pale and the rest of the republic were still poor, cut in many places and under enemy artillery fire.[1144] As late as 27 April 1994,

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[1137] D0408 (Emphasis added)
[1138] P4987, p. 2
[1139] Djeric, T. 28058
[1140] P2627
[1141] D0434
[1142] D3698
[1143] M. Mandić,T. 5091
[1144] P3106, p. 6; D3563, para 19

there were problems with normal communications between Pale and Sarajevo municipalities.[1145]

538. The Prosecution evidence regarding the intensity of communications between all Republican authorities based in Pale and the rest of Republika Srpska shows that between April and November 1992 some 24 telegrams were exchanged with the regions outside of the Sarajevo area.[1146] Even if this number had been higher, or even 10 times bigger, it would have amounted to not more than one telegram per day with all regions. It is impossible to control and run the country with such miserable communication level. However, there is no such evidence; not even for this calculation.

539. President Karadzic's ability to send orders to and receive information from the ground was severely limited due to the dysfunction of the communication systems. The timeliness of the conveyance of an order is of the utmost importance when implementing a component of control to events in the field. According to the US Army Field Manual 6.0, "effective communication is essential to effective command and control". [1147] Canada's Military Code of Conduct characterizes military effectiveness as dependent on "the prompt obedience of orders"[1148] In this case, however, the time lapse between the issuance of an order at the RS leadership level, and its implementation in the field, could reach as much as 44 days.

540. With the aforementioned disruptions in communication lines, it became impossible for President Karadzic, to control the activities on the ground instantly, as and when they occurred.

3. Republic Authorities Instructed Municipalities to Protect Non-Serb Civilian Population and Respect Geneva Conventions

541. The Prosecution alleges that the Crisis Staffs were the primary organs utilised by the Serb leadership to take over power in claimed municipalities and effect the forcible

[1145] D3594; D3563, para 82
[1146] P2824, pp.1–5; P2804, pp.1–6
[1147] FM 6.0: Mission Command – Command and Control of Armed Forces
[1148] Code of Conduct for Canadian Force Personnel, Office of the Judge Advocate General, 2005, Rule 11, §§ 4–5

removal of non-Serbs.[1149] It is also alleged that Serb Crisis Staffs participated in the initial take-overs and shelling of urban Sarajevo.[1150] The RS leadership, therefore, must have instructed the crisis staffs to persecute and forcibly remove non-Serbs from municipalities and shell Sarajevo.

542. On 27 April 1992, the NSC and the Government concluded that "comprehensive **instructions for crisis staffs** should be drafted in which the **manner of political work on the ground** and organisation of the **functioning of the authorities** will be presented."[1151] The central authorities indeed drafted and managed to send the said instructions to the municipal crisis staffs. So far, the Prosecution has been right. But only so far, because the Government demanded from the municipal crisis staffs to

> 5. **Forbid any use of artillery**[...]**that causes the destruction of towns** and move it to the locations far away from the battle lines[...][1152]
> 9. The Crisis Staff is obliged to create conditions for the work of the international peace-making and humanitarian organisations and **ensure** the safe passage of **humanitarian aid convoys** to their final destinations.
> 10. Act **utterly kindly** and in accordance with the International Red Cross **towards the non-combat populace** and the wounded, and act **humanely** and in accordance with the laws of the Serbian Republic of Bosnia and Herzegovina **towards the POWs**[...]
> 13. War profiteers, **looting hordes** and the like are to be **arrested** and handed over to the investigating judicial organs.[1153]

543. The evidence is as clear as it can be that the very foundation of the Prosecution's theory is a complete shambles, disastrously wrong and extremely misleading. The very document that the Prosecution quotes in paragraph 103 of its Pre-trial brief to claim that these instructions are the evidence of the Crisis Staffs being recognised by the Government as formal bodies of the Bosnian Serb state, when read in its entirety, squarely contradicts **everything** that the Prosecution claims in paragraphs 98 and 180 of its Pre-Trial brief(forcible transfer of non-Serbs and shelling of Sarajevo).

544. In addition, how on Earth could the Prosecution mention these instructions and **simply ignore the substance** of the document, the evidence that concerns the **heart of this case**? The Prosecution acted utterly selectively.

[1149] Prosecution Pre-Trial brief para 98
[1150] Prosecution Pre-Trial brief para 180
[1151] D0406, p. 2(Emphasis added)
[1152] D0407 (Emphasis added);P2717
[1153] D0407, p.2(Emphasis added);P2717, p.2

545. "The Prosecutor is a party", Judge Shahabuddeen wrote, "but it is recognised that she represents the public interest of the international community and has to act with objectivity and fairness appropriate to that circumstance. She is in a real sense a minister of justice. Her mission is not to secure a conviction at all costs[...]It is an aspect which a criminal tribunal acting on the international plane has to bear in mind." [1154] The Prosecution in this case is anything but Judge Shahabuddeen's minister of justice.

546. Anyhow, it is obvious that the Government was doing everything in its power, when both the road communications in and telecommunications with the field had been severed, to prevent any developments that were detrimental to non-Serbs.[1155]

547. On 15 June 1992, the Government pointed out the necessity to find possibilities for distributing the post and other material in municipalities, and to that end, the possibility of providing a helicopter or ultimately a messenger service as a last resort.[1156] This meant that the seat of government and Republican organs were terribly isolated.[1157]

548. Nevertheless, the central authorities were doing everything possible to create and issue as many legally binding regulations as possible.[1158] All the leaders and state organs, as well as members of the armed forces, were fully and until the end informed in detail of all the provisions under the international law of war and conduct in an armed conflict.[1159]

549. The Government continuously tried and therefore tasked its officials with familiarizing the presidents of municipal assemblies with the Instruction issued by the President of the Republic concerning the treatment of prisoners of war.[1160]

550. In June 1992, when Ilidža municipality asked the government about its position in relation to using abandoned houses to accommodate people whose property had been destroyed elsewhere, the Government responded that citizens whose apartments or houses had been destroyed may obtain only **temporary** permission to move into deserted houses.[1161]

[1154] *Prosecutor v Milosevic, No. IT-02-54-AR73.2, Decision on Admissibility of Prosecution Investigator's Evidence (30 September 2002), Partially Dissenting Opinion of Judge Shahabuddeen at para. 18*
[1155] M.Mandić, T. 4987
[1156] P1095, p. 6; Mandić, T. 5087
[1157] M.Mandić, T. 5087
[1158] D3695, para 80
[1159] D3695, para 80
[1160] D3105, paras 11-14
[1161] D0416

551. Momcilo Krajisnik testified that

> When the war started, each municipality at its local level in this all-out war was in conflict. And whoever was stronger militarily was victorious in such a municipality[...]That was a war among three peoples. There was no guidance. There was no connection with the municipal levels. People in Sarajevo were saying: We don't even know if Karadzic is alive, let alone that there was someone pulling the strings from somewhere.[1162]

552. Prime Minister Lukic testified that the Government was constantly sending instructions and decisions to all state organs on how they should behave, meaning that they should treat all citizens equally and in accordance with the law, regardless of ethnicity.[1163]

553. President Karadzic never issued or signed any document containing the words kill, destroy, burn, or slaughter.[1164] President Milorad Dodik testified that he, as a member of the War Presidency of the Laktasi municipality, never got instructions from the republican authorities to harass other ethnic communities.[1165] On the contrary, when a Mujahedin unit killed 16 young men from Latkasi, President Karadzic told President Dodik that the authorities must not cause a reaction that would threaten the Bosnian Muslim community in Laktasi.[1166]

554. The MUP tried hard to establish control over the local SJBs, reinstate the rule of law, suggest measures for the improvement of shortcomings observed and offer instructions on how to proceed.[1167]

4. What were Pale Authorities and President Karadzic Able to Learn About Events in the Field?

555. The President could receive his information from three different sources, from the army, from the police and from state bodies, i.e. municipalities.[1168] We shall now examine each of the information channels.

[1162] Krajisnik, T. 43918-19
[1163] D3563, para 28
[1164] D3695, para 105
[1165] Dodik, T.36852-3
[1166] Dodik, T.36855-6
[1167] [redacted]; D3663, para 22; D3778; D3800

a. President Karadzic was Neither Informed Nor Misinformed through VRS Channels

556. There were two kinds of intelligence reports reaching Presidency: military intelligence and state security intelligence. President Karadzic had special advisors for those two sectors who read those reports, General Subotic for military matters and Gordan Milinic for state security matters.[1169]

557. Gordan Milinic, President Karadzic's security advisor, testified that his job was analysis, collection of all information, analytical processing and preparation for the President of the Republic.[1170] Milinic received information from the State Security and from the VRS Main Staff intelligence and security sector which he selected and forwarded information that he considered relevant to the President, because the President could not manage to read all the documents due to great pressure and a tremendous amount of work.[1171]

558. The VRS Chief of Staff, Manojlo Milovanovic, testified that the daily reports that were sent by the Main Staff to the Supreme Commander were read by President Karadzic's advisors, who were not sufficiently capable or educated to provide him with adequate advice or to distinguish what was important from what was not important in order to provide the President with relevant information.[1172]

559. However, the incompetence of the President's advisors described by Milovanovic was not the only problem, if it was problem at all. The problem was that the advisors themselves were not receiving relevant information, because the Main Staff would simply stop sending daily combat or intelligence information to the President,[1173] or would prevent physical inspection of the units.[1174]

560. There was a requirement that after operations the military report back through the political side and regular reports were sent after the communications system was set up in

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[1168] D3695, para 86
[1169] Zametica, T. 42443
[1170] D3682, para 9 (
[1171] D3682, para 10; Milinic, T. 39730
[1172] Milovanovic, T. 25646
[1173] D3685; D3682, para 31
[1174] D3695, paras 87-8; B. Subotic, T.40004

1993.[1175] Half-way through 1992 to the end of 1992 it was based on what was possible.[1176] However, General Mladic did not report to anyone, and for the most part, he mainly operated on his own.[1177] As Defence Minister Subotic put it

> In our army, during that year while I was minister of defence, a great many things happened, things that people didn't even know about. The president didn't know about it. I didn't. The government didn't know about it.[1178]

561. In June 1992, General Mladic briefed the Presidency about the overall situation in the Serb Army, and presented figures on logistical issues.[1179] Minister Subotic testified that Mladic expected from the civil authorities only to provide logistical support, and not concern with operations.[1180]

562. This session is used by the Prosecution to allege that President Karadzic was regularly informed by Mladic and the Main Staff about events in the field[1181] and that he issued orders to Mladic on military matters relating to the shelling of Sarajevo.[1182]

563. Nowhere in this document did Mladic say anything about events in the field. He informed the Presidency about the situation in the Serb Army, focusing on logistical problems. This is also consistent with Krajisnik's testimony that practically all the issues requested by the army was to support them logistically and that all the information that the civilian leadership received were general and there was no information about crimes.[1183]

564. During the same session General Gvero reported on the situation in the area of the Banja Luka Corps and proposed that authorities be established at all levels swiftly because of the widespread crimes.[1184] He presented it as a problem, not as something that was a result of the alleged state criminal policy. President Karadzic reacted **immediately**, at the same session, ordering that the heavy artillery fire on the city be halted and that

[1175] D3695, para 86
[1176] D3695, para 86
[1177] D3695, para 89
[1178] B. Subotic, T.40001
[1179] D0428
[1180] D3695, para 88
[1181] Prosecution Pre-Trial brief, para 125
[1182] Prosecution Pre-Trial brief, para 174
[1183] Krajisnik, T. 43754-5
[1184] D0428

instructions be written for the Serbian Army to abide by Geneva Conventions in its treatment of prisoners of war.[1185] Why was not this mentioned anywhere by the Prosecution?

565. In addition to the extremely difficult relationship between President Karadzic and General Mladic that will be discussed later in this brief, President Karadzic encountered another problem in his dealings with the VRS - failure to report or reporting false information. During the Supreme Command meeting in October 1994, President Karadzic noted that there was a phenomenon of false reporting in the Army.[1186] John Zametica, President Karadzic's advisor for international relations of Muslim nationality,[1187] testified that once in 1994 he and President Karadzic read a report sent by General Tolimir and concluded that the VRS was sending lies to President Karadzic, who added that he was "never again going to read the rubbish".[1188]

566. In April 1995, President Karadzic again complained about "false reports, catastrophe[...]Are we going to keep quiet about it, does it exist? Does Mladic know everything that goes on? Does Milovanovic know everything that goes on? Does Talic know everything that goes on? How many times have they lied to him?[...]False reports are unfriendly activity, equal to treason[...]the corps and the Main Staff and the Supreme Command have to know."[1189] President Karadzic concluded that "half of the corps commanders do not know half of the truth, because that blockhead is not obliged, he is not afraid to write a false report."[1190]

567. Probably the best illustration of the reporting problems is the conversation that President Karadzic had with a man from the Main Staff, General Tomanic,[1191] to whom President Karadzic complained that

> Someone is putting the state at risk, the motherfucker, from Mladic to I-don't-know-who, I will relieve him of his duty and I will execute him by firing squad. The bloody motherfucker, whoever it was[...]Well, man, it is clear to me. The army is lying to me. They have been lying to me the whole time. The reports I receive are never accurate.[1192]

[1185] D0428
[1186] P1487, p. 142
[1187] Zametica, T. 42441
[1188] Zametica, T. 42443-4
[1189] P0970, p. 328-9
[1190] P0970, p. 336
[1191] Radinovic, T. 41608
[1192] D3872, p. 1

b. Civil Authorities Information Channels and Their Reactions to Alleged Crimes

568. Until the end of 1992 the SNB did not send any reports to the President of the RS.[1193] Due to communications problems, information that the MUP received was very incomplete.[1194] Until the MUP headquarters moved to Bijeljina, the Crime Prevention and Detection Administration received only 31 dispatches.[1195]

569. During rare telephone conversations between the MUP headquarters and the CSBs, there was hardly ever any information about crimes. On the contrary, when the chief of Bijeljina CSB Jesuric talked with Cedo Kljajic, the Under-Secretary for Public Security, the two MUP officials did not discuss any criminal plan to expel the non-Serbs from Zvornik or Bijeljina, but were rather pleased that the non-Serbs had trust in the Serbian people.[1196]

570. On 30 April 1992, Minister Ostojic informed the Government that the Foca Serb TO "is still making every effort in order to clean up the area from armed groups of SDA paramilitary formations" and that "80 SDA combatants who[...]registered as refugees while they were in full battle kit were disarmed".[1197] Rare reports on the situation in the field did not state anything illegal.

571. On 24 May 1992, the Government determined that the Ministry of the Interior should prepare a comprehensive analysis regarding the security situation and the state of law and order in the Republic, paying special attention to the question of crime, protection of private and social property, and mistreatment of citizens.[1198] It was also concluded that the overall situation in the Republic should be recorded as soon as possible in order to get an insight in various municipalities.[1199] In other words, the government did not have an insight into what was going on in Republika Srpska.[1200]

[1193] D4143, para 39
[1194] D3663, para 18
[1195] D3663, para 18
[1196] D1694, pp. 3, 5
[1197] P4986, p. 1
[1198] D0410, pp. 1-2
[1199] D0410, p. 2
[1200] M.Mandić, T. 5000

572. The government was not satisfied with the crisis staffs, and launched an initiative for them to be abolished.[1201] The reason for the initiative was the fact that the crisis staffs were unable to exercise power and the government had no way of controlling them.[1202] Hence, on 31 May 1992, the Government decided to abolish the crisis staffs and replace them with war presidencies in the municipalities.[1203]

573. On 31 May 1992, the Government concluded that it was not sufficiently informed about issues relevant to its work, in particular, the situation on the front.[1204] On 2 June 1992, the Government once again concluded that it was not informed about current political and military issues and about the situation in the Republic, and drew attention to the problem of the information flow among the regions.[1205]

574. During the session of the Government on 8 June 1992, it was decided that the ministries should prepare a questionnaire on the basis of which the situation in the field could be examined in order to get an insight into the real situation in the municipalities.[1206]

575. On 10 June 1992, during a Presidency session, Djeric was tasked to submit a report on prisoners with proposed measures.[1207] On the same day, the Government tasked the Ministry of Justice to make a report about prisoners, paying special attention to treatment of civilian population, prisoners of war, accommodation, food, etc.[1208]

576. Krajisnik testified that "it's not in dispute whether it was known on all three sides that there were prisons in Bosnia and Herzegovina[...]The problem was the treatment in those prisons. I assert, I'm convinced that Karadzic didn't know that either. He would have told me. I know definitely that I did not know it and Mr. Karadzic did not know it either. Had he known, he would have informed us."[1209]

577. Mandic testified that when information had reached the Government from the field about certain instances of the inhuman treatment of detained persons the

[1201] M.Mandić, T. 5003
[1202] M.Mandić, T. 5003
[1203] D0411, p. 2; M.Mandić, T. 5003-4
[1204] D0411, p. 5
[1205] D0414, p. 2
[1206] D0427, p. 2
[1207] P1093, p. 2
[1208] P1092, p. 3
[1209] Krajisnik, T. 43929

government took steps to overcome the situation and to prevent any further violations of the Geneva Conventions.[1210] The government reacted to information from the field, and took steps to establish the rule of law and ensure the security of those people who were of non-Serb ethnicity. [1211]

578. On 16 June 1992, the Government had another meeting during which it assessed that a political and security situation in SAO Birac region was not satisfactory and that all measures needed to be undertaken to step up security to a higher level.[1212] SAO Birač encompassed Sekovici, Vlasenica, Srebrenica, Milici, Bratunac, and Zvornik municipalities.[1213] The Government again noted that there were difficulties with getting in touch with the regions and the municipalities. [1214] The situation was so desperate that the Government concluded that a helicopter should be requested from the Main Staff to be used by the government to establish contacts with the municipalities.[1215]

579. Avlijas went from place to place in the field and asked to be given information and, if he judged that the protection of human lives and human rights was involved, he produced a written submission with his proposals and opinion how to improve the situation.[1216]

580. On 4 July 1992, the Government raised the question whether there were agreed criteria regarding the moving out of the Muslims population from the Serb territory.[1217] The Government concluded that it "has not until now had a point of view on this matter. The Ministry of the Interior is entrusted with preparing information on this issue that the government would consider and take the appropriate standpoint."[1218] This is yet another piece of evidence showing that no JCE plan to forcibly remove non-Serbs existed. Otherwise, the Government would certainly have had a position that non-Serbs should be expelled.

[1210] M.Mandic, T. 4556-7
[1211] M.Mandic, T. 4561-2
[1212] D0435, p.4
[1213] M.Mandić, T. 5088
[1214] D0435, p.5
[1215] D0435, p.6
[1216] D3105, para 23
[1217] P1098, p. 4
[1218] P1098, pp. 4-5

581. [redacted][1219] The Prosecution wishes to establish through this fact that the MUP was aware of the alleged crimes in the municipalities, which were part of a state plan, but in reality, the Minister was working hard on the establishment of the rule of law.

582. In his response to the Minister's order, Dragan Anadan informed the Minister that "intensive activities are underway to process individuals who have committed crimes and members of paramilitary formations in the Zvornik area"[1220] and that the MUP forces were resolving the same issue in Brcko.[1221]

583. On 1 July 1992, President Karadzic ordered all local civilian and police authorities that

> Delegates of the ICRC are allowed to travel on the entire territory of Bosnia and Herzegovina that is under our control. They are also authorised to visit all prisons, including military camps and police stations under our control. For that reason, all soldiers of the Serbian forces of Bosnia and Herzegovina are required:
> A) To facilitate the safe passage of the delegates and vehicles of the ICRC[...]
> B) To take all measures to respect the emblem of the Red Cross and prevent any disruption and/or attack against ICRC[...]
> C) To provide necessary information in relation to detainees and facilitate the visits of the ICRC to all prisons.
> I hereby order that you strictly abide by these instructions. Any soldier who does not comply with these instructions shall be punished.[1222]

584. In July 1992, Biljana Plavsic stated that she heard from Izetbegovic's media about alleged 57 camps on the Serb territory and since she could not communicate with the government in Sarajevo, she requested UNPROFOR to convey the names of the alleged concentration camps from the Muslim authorities.[1223] Plavsic was so convinced that there

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[1219] [redacted]
[1220] D3792, p. 1
[1221] D3810, p. 1
[1222] D0477, p. 1
[1223] P1099

had been no camps on the Serb territory that she promised to visit them together with UNPROFOR should such places really turned out to exist. [1224]

585. The Serb authorities received a list of 57 alleged camps with 58,810 alleged detainees. [1225] Having checked the information, it turned out that there were 8,251 detainees in regular prisons in Republika Srpska. [1226] For example in Pale, instead of the alleged 2500 detained persons, there were merely 44 inmates.[1227] Plavsic was telling the truth, because she correctly and honestly stated that in Prijedor there were 3000 inmates in Omarska.[1228] The information that the Presidency had was that the people detained there were sentenced by courts or otherwise detained in accordance with the law. [1229]

586. On 14 August 1992, pursuant to Minister Stanisic's order, Banja Luka CSB chief Zupljanin established a commission to visit the municipalities of Prijedor, Bosanski Novi and Sanski Most and their Public Security Stations.[1230] He ordered the Commission to establish whether any prisoner-of-war camps, reception centres, investigation centres or other facilities for the bringing in and reception of citizens had been established in the municipalities, as well as the reasons for it and the number, ethnicity, gender and age of persons brought in.[1231] Zupljanin also asked that he be reported about conditions in which they lived and whether there had been "any instances of citizens being moved out, their ethnicity and number and whether they have moved out voluntarily or under coercion."[1232] The Commission was to complete the task and draft a report by 17August 1992.[1233]

587. On 18 August 1992, the Commission sent its report to the chief of the Banja Luka CSB.[1234] The Commission informed Zupljanin that during the clashes in Prijedor in late May 1992, the VRS captured a large number of members of enemy units and other persons who had been found in the areas of armed conflict, while a number of citizens

[1224] P1099
[1225] P1099
[1226] P1099
[1227] P1099
[1228] P1099
[1229] P1099
[1230] D0468
[1231] D0468
[1232] D0468
[1233] D0468
[1234] D0470, p. 1

leaving their homes sought help and protection.[1235] In order to deal with this problem, the Crisis Staff of the Prijedor municipality decided to organise reception and accommodation of such persons in Trnopolje and that prisoners of war should be held for processing in Keraterm in Prijedor or in Omarska. [1236]

588. In relation to Trnopolje, the Commission noted that a large number of Muslim citizens of both sexes and all age groups sought protection in the centre and that the number of people in the centre varies, because there were no special records kept, since the citizens were free to come and go as they please. [1237] Around-the-clock infirmary was organised in the centre, and activists of the Red Cross, the municipal authorities, and the army were providing the citizens with aid in food, clothing, and other things. [1238] The citizens obtained and prepared food and other essentials. [1239] The centre was not fenced in, and there was no interrogation of citizens.[1240] Army troops stood guard outside the centre to secure it against any threat from the extremists outside.[1241] Avlijas received the same information at a different meeting in Banja Luka.[1242]

589. Regarding Keraterm, the Commission informed the CSB that it consisted of the rooms of the administration building (offices, halls, restaurant, toilets and washrooms).[1243] Mixed operations team were set up, composed of representatives of national, public and military security services, whose task was to carry out operative processing of all the prisoners and to determine the degree of their personal responsibility in the armed conflict. [1244]

590. However, the armed conflicts in the municipality quickly spread and the number of persons captured rapidly increased, so that the capacity of this facility could neither meet the growing needs nor provide conditions for work with the prisoners.[1245] Therefore,

[1235] D0470, p. 2
[1236] D0470, p. 2
[1237] D0470, p. 2
[1238] D0470, p. 3
[1239] D0470, p. 3
[1240] D0470, p. 3
[1241] D0470, p. 3
[1242] D3105, para 38
[1243] D0470, p. 3
[1244] D0470, p. 3
[1245] D0470, p. 3

the local Crisis Staff decided to transfer prisoners to Omarska and use Keraterm exclusively for transit. [1246]

591. In Omarska POW Investigation Centre mixed teams of operative workers undertook the same job as is Keraterm.[1247] Omarska had all the living ad residential conditions for a large number of persons: offices, halls, toilets and washrooms, kitchen and dining room, constant supply of drinking water, a large number of showers, constant supply of electricity.[1248] There was no barbed wire around the facility and basic medical protection was provided for the prisoners, whereas food was prepared in the Omarska kitchen and served in the Centre's restaurant. [1249]

592. The Commission further reported that a total of 3334 persons, who were captured in immediate armed conflicts or in places where hostilities had occurred, were brought to Omarska. [1250] After completing the investigations, the operatives sort the persons into three categories: persons suspected of the gravest crimes, persons suspected of organising, abetting and supplying arms and persons who were captured in areas where there had been fighting but no evidence was found that they had taken part in the armed combat. [1251]

593. For each category and each individual the operatives collected documentation and material evidence, after which 1331 persons were transferred to Manjaca, and 1773 to Trnopolje, while 179 persons were still under investigation that would be completed in the seven days, after which there would be no more need to use Omarska for these purposes. [1252]

594. The events in Prijedor will be dealt with later in this final brief, but it is important to emphasise here that this is the exact information that was reported to the chief of the CSB who then passed on the information to the Republican MUP. There was absolutely nothing illegal or unusual in the report. The report further dealt with the departure of both the Serb and non-Serb population, and again reported nothing illegal.[1253]

[1246] D0470, p. 3
[1247] D0470, p. 4
[1248] D0470, p. 4
[1249] D0470, p. 4
[1250] D0470, p. 4
[1251] D0470, p. 4
[1252] D0470, pp. 4-5
[1253] D0470, p. 5

595. From the beginning of the armed conflicts in Sanski Most, the report continued, the municipal Crisis Staff ordered the setting up of collection and investigation centres in the premises of the sports hall, the facilities of *Betonirka*, which was also a prison, and the *Krings* factory.[1254] Members of the army brought persons captured in combat zones to these facilities, while others were brought in by the Sanski Most MUP on the basis of operational information.[1255] All persons who were captured and brought in were operatively processed of which official record were made.[1256] After this process, 902 persons were sent to Manjaca, **621 persons were set free**, while 74 persons were still being processed in *Krings* and 17 in the Sanski Most SJB.[1257]

596. The report also stated that 21 persons died while they were in the assembly centres or being transported to Manjaca and 20 persons escaped,[1258] without explaining the manner in which these people died. The reader could gain an impressions that out of 1500 or more men, these 21 people could die in a natural way, or shot when trying to escape during their transport to Manjaca, or could draw some other reasonable inference. While the Banja Luka CSB chief was reading the report, he must have noticed that over six hundred people were released and the ones sent to Manjaca were the people for whom there was criminal evidence, and thus had reasons to escape. If there had been a state plan to torture, kill and exterminate Muslims, why would the authorities have released **six hundred and twenty one** men?

597. The Banja Luka CSB was further informed that the premises used had adequate lighting, toilets and washrooms, and the prisoners had at their disposal a sufficient amount of beds and blankets.[1259] In *Betonirka* food for the prisoners was organised by the army, and in the sports hall and in *Krings* food was brought to the prisoners by their families and partially by the Red Cross.[1260] In all the facilities, medical protection was provided for the persons who had been brought in.[1261]

[1254] D0470, p. 7
[1255] D0470, p. 7
[1256] D0470, p. 7
[1257] D0470, p. 7 (Emphasis added)
[1258] D0470, p. 7
[1259] D0470, p. 7
[1260] D0470, p. 7
[1261] D0470, p. 7

598. Therefore, this and similar reports tell us several important things: (1) most importantly that not even the regional, let alone the republican authorities knew what was going on in the municipalities during the first months of the war, or otherwise, why would they have requested the reports in the first place? (2) the reports either truly recounted the events in the municipalities which was definitely not a reason for any kind of alarm, bearing in mind that the reports discussed a state of civil war rather than a peaceful society, and bearing in mind that no crimes were mentioned or (3) the people drafting the report were misinformed by the local sources of information or otherwise deliberately produced a report containing false information with the same result, i.e. the regional and republican authorities did not receive the information about the alleged crimes.

599. It was reported that about 3000 persons had moved away from Sanski Most since the beginning of the armed conflicts, but that the Sanski Most SJB did not have precise data since these persons left the area without unregistering their official places of residence.[1262] Another 12000 persons, mainly of Muslim ethnicity, applied to Sanski Most SJB to unregister their place of residence, declaring that they wished to leave the municipality, but "have not yet left the municipality, and it is not known when or how they will leave".[1263] Does this sound as forcible transfer?

600. The information regarding Bosanski Novi were as follows: no investigation centres were set up during the armed conflict and as a result of the hostilities, about 4000 Muslim citizens assembled in the central part of the village of Blagaj Japra.[1264] On 2 June 1992, members of the army brought in Muslim citizens to the *Mlakve* stadium for their own protection, no operative processing of these persons was carried out and **they were set free** three days later, on 5 June 1992, apart from 17 persons of security interest who were detained in the premises of the military police.[1265] This does not sound as persecution either.

601. On 11 June 1992, the army quartered and provided security in the *Mlakve* stadium for 652 Muslim men fit for military service, whom the army had sent back from

[1262] D0470, p. 8
[1263] D0470, p. 8
[1264] D0470, p. 9
[1265] D0470, p. 9(Emphasis added)

Doboj.[1266] Both *Mlakve* and Doboj are within Republika Srpska, and if the Muslims had been expelled, they were expelled from Republika Srpska to - Republika Srpska.

602. It appears that there had been some confusion, but whatever the reasons may have been for the quartering of these Muslim men, on the order of the Bosanski Novi Executive Committee "**all persons were released** from the *Mlakve* **reception centre**, and this centre stopped working".[1267] The problem, if there was one in the first place, was dealt with successfully by the local authorities and had been resolved long before the higher authorities even received the information about it. The report also stated that "while the citizens were staying in the *Mlakve* reception centre, they were allowed to use sporting and social premises of the football club, they were regularly supplied with food and water, and health care was organised as well."[1268]

603. Finally, the CSB commission informed that a total of 6880 persons with proper documents left the municipality on 23 July 1992, and emigrated **with the assistance of UNPROFOR and the High Commission for Refugees** to Croatia, Slovenia and Western Europe.[1269] The report does not state what happened to those Muslim citizens who did not have proper documents, and the most reasonable conclusion must be that they had stayed in the municipality.

604. Those who left stated it was voluntary and indicated the status of their immovable and moveable property, while men liable to military service obtained exemptions from military service.[1270] As we can see, a lot of state administration and bureaucracy was involved which would have simply been unreasonable and unrealistic if the local authorities were engaged in expelling people. One should not forget that the authorities at all levels had scarce resources and would certainly not have conducted forcible transfers together with the UNPROFOR and the High Commission for Refugees. In fact, this issue was regluated by the ICRC.

605. Dragan Kalinic, as a representative of President Karadzic, signed an agreement with the Muslim and Croat sides under the auspicies of the ICRC which stipulated that

[1266] D0470, p. 9
[1267] D0470, p. 9(Emphasis added)
[1268] D0470, p. 9
[1269] D0470, p. 10 (Emphasis added)
[1270] D0470, p. 10

> The Civilians who desire to leave temporarily the territory controlled by one party to reach the territory controlled by another party should be entitled to do so[...]The civilians should be able to leave in an organized transfer under international supervision and, if necessary, protection. Its security will be guaranteed by each party on the territory it controls.[1271]

606. Let us not turn to another commission that was formed by the Government for the same purpose.[1272] On 9 August 1992, the Government established two Commissions for the Inspection of Collection Centres and other Facilities for Prisoners.[1273] The task of the Commissions was to gain insight into the status of persons located in the above facilities in accordance with international convention, and to speed up the procedure of categorising such persons.[1274] A week later, on 17 August 1992, the first Commission sent its report to the Government which contained the same information as the report separately compiled by the MUP Commission.[1275] There was nothing illegal in the report. On the contrary, it was, *inter* alia, reported that the movement of Trnopolje residents was in no way restricted.[1276] that the detainees in Omraska and Keraterm belonging to the third category of persons, i.e. not of security interest but who were taken prisoner in zones of armed operations **were released** or transferred Trnopolje, **as they wished**.[1277]

607. The first Commission also visited Sanski Most and reported surprisingly good conditions there,[1278] which were in striking contrast with the picture that the Prosecution is trying to create.

608. In relation to Manjaca, the Government's first Commission reported that the prisoners were treated in accordance with the regulations of the Geneva Conventions, were fed and that the food was the same as the food given to Serbian soldiers and officers.[1279] Two meals a day were provided.[1280] Since 15 June 1992, the *Merhamet* organisation visited the camp five times and brought food and medicine, while the International Red Cross had inspected the camp twice.[1281] Seven foreign teams of

[1271] D1141, p. 2; D1603
[1272] D0466, pp. 1-3
[1273] D0466, p. 2
[1274] D0466, p. 2
[1275] P3549, p. 1
[1276] P3549, p. 3
[1277] P3549, p. 4(Emphasis added)
[1278] P3549, p. 6
[1279] P3549, p. 5
[1280] P3549, p. 5
[1281] P3549, p. 5

journalists had also visited the camp and medical care and sufficient medicines were provided to the inmates.[1282]

609. However, the first Commission made its general observation that the accommodation of prisoners was still not satisfactory and that there was a lack of suitable regulations regarding the treatment of civilian refugees.[1283] The first Commission proposed that the competent organs in the municipalities provided appropriate rooms to ensure better living conditions in facilities, which were covered by international conventions.[1284]

610. On 19 August 1992, two days after the first Commission filed its report, the Government discussed the report and assessed that it realistically described the situation in these buildings.[1285] The Government also concluded that it would regularly follow the situation through its commissions and would assess the state of faciltiies and the treatment of the people kept there.[1286] The Government stated it would try to arrange that "competent organs in municipalities ensure suitable premises and accommodation which will enable better living conditions in these buildings, all in accordance with the provisions defined by international conventions.[1287]

611. Regarding the accommodation conditions in Manjaca, especially cramped conditions and an increasing number of new POWs, the Ministry of Defence was given the task of taking immediate measures to improve the accommodation in this facility.[1288] Regarding the difficult situation in the provision of food supplies and the approaching winter, competent ministries and organs were tasked with taking adequate measures in order to resolve this issue successfully.[1289] The issue of Trnopolje was to be resolved as soon as possible and in a way which would enable the quickest possible departure from that area. Finally, the Ministry of Defence and the Ministry of the Interior were tasked

[1282] P3549, p. 5
[1283] P3549, p. 7
[1284] P3549, p. 7
[1285] D0472, p. 1
[1286] D0472, p. 1
[1287] D0472, p. 1
[1288] D0472, p. 1
[1289] D0472, p. 1

with drafting regulations on the treatment of POW accommodated in the collection or investigation centres.[1290]

612. Here we have an **immediate response** of the Government, two days after its first Commission filed its report and one day after the MUP Commission reported on its findings on 18 August 1992. The Government addressed all the problems raised by the first Commission. It is a fine example of how responsible authorities treated the problems of its citizens of different nationality.

613. On 22 August 1992, the Government's second Commission also filed its report.[1291] It can be seen from this report that the local authorities were acting in accordance with the international laws of war and international conventions.[1292] Slobodan Avlijas, who headed this second Government's Commission, testified that until then "we did not have any information about the events that took place the length and breadth of Republika Srpska. It was routinely the Muslim side that conducted propaganda and exercised pressure on international organizations, which would then inform President Karadzic at international meetings, and President Karadzic would in turn proceed conscientiously and responsibly to urge the Government and other authorities to check the allegations put to him."[1293] On 12 September 1992, the Government accepted the second Commission's report on the visit to Herzegovina.[1294]

614. The Government's and the MUP's commissions sent more or less the same reports. Those reports shaped the states of mind of the republican authorities who then reacted as described above. Their reactions were their *actus reus*. There is nothing criminal in either their minds or their actions.

615. The information sent from the field to the higher authorities did not mention any illegal activities regarding the moving out of the non-Serb population. It simply stated that the non-Serbs moved out voluntarily. The reports were internal documents, not written for propaganda or The Hague Court purposes or to mislead the international public. If they were misleading, which Dr. Karadzic claims they were not, then the

[1290] D0472, p. 2
[1291] D3109, p. 1
[1292] D3109; D3105, para 57
[1293] D3105, para 57
[1294] P3099, p. 5

reports mislead the recipients of the documents - the Government and the MUP/Banja Luka CSB.

616. We shall now briefly examine the issue of voluntariness. What could make the Muslims leave those municipalities controlled by the Serbs? Dobrislav Planojevic testified that in January 1993 he was sent on President Karadzic's request to Trebinje in order to determine why Muslims wanted to leave the Trebinje area as an organized group and whether there was a way to prevent it, and found out that the president of the Trebinje municipality did everything he could to prevent the resettlement, but also that he failed due to the interference of SDA politics.[1295] One must not forget the members of the genuine JCE in Bosnia, the Young Muslims, ex-convicts and SDA fundamentalists, who before the war began announced that

> A people which was asleep could be awakened only by blows, and whoever wished the Muslim community well would not try to spare it struggle, danger and misfortune.[1296]

617. That is exactly what the SDA did in the mixed municipalities. It started fighting and killings between the Serbs and Muslims, causing danger for everybody, including the Muslim community. The SDA then consciously and deliberately further exacerbated the position of the Muslim community ordering it to leave their homes and become refugees, thus bringing misfortune on its own people. One of the examples of this criminal policy of the SDA is the letter of the SDA Secretary Hasan Cengic sent on 20 January 1993 to the Muslim people of Trebinje instructing them to move out from this municipality "especially after the acceptance of the Geneva documents by Karadzic and his clique in Pale" and ordering them to undertake urgently the following measures

> The rousing by our activists of all Moslems, especially the prominent and the propertied, to leave Trebinje as soon a possible[...]**Selling-off of property**, both moveable and non-moveable[...]Not to hold back from **exerting pressure**, even the **use of force, against** those **Moslems** who do not follow this order[...]On arrival in Montenegro, to make contact with the SDA, Merhamet and our people in the Liberal Alliance of Montenegro where they will receive **instructions for further action**[...]Restitution will be made for all of your property when we achieve our goal and we know how to put the right price on **your sacrifice**, a sacrifice which all of the **Moslems in the world expect from you**[...]Secretary SDA Hasan Cengic[1297]

[1295] D3197, para 35
[1296] D0075, p. 47 (Emphasis added)
[1297] D0471, pp. 1-2

618. This is a blatant example of criminal Islamic fundamentalism and terrorism against own people for political purposes, i.e. to destroy peace negotiations. It is also a reasonable inference that the Chamber has to draw in relation to the moving out of non-Serb population from the Serb-controlled municipalities. The Chamber should not conclude that this order applies only to Trebinje, and that there is no similar evidence for other municipalities. Because, to begin with, there *is* more evidence about other municipalities.

619. In October 1992, General Tolimir noted that "the Muslims in the Cazin Krajina have called on all Muslims in Bosanska Dubica and Bosanska Gradiska to leave their houses.[1298] It was also clear to President Karadzic that it was the Muslim leadership who decided whether the Muslim population would stay or move out.[1299] Prime Minister Lukic testified that the Catholic Bishop Komarica told Croats to leave RS territory in order to provoke a crisis and increase inter-ethnic tensions, and that Muslim organisations did the same.[1300]

620. Therefore, the Trebinje SDA document is not a proof of a single instruction to a single municipality, of some random, individual activity. As is obvious from the text of the document, more instructions were underway. This document is the evidence of a **policy**. It is the evidence of the Islamic declaration put into practice.

621. The RS Government's Commission that toured the field in August 1992, noted that each person residing at Trnopolje was allowed to leave but that the residents feared reprisals from Muslim and Croatian extremists[1301]

622. It is also probable that the war itself was a reason enough for Muslim citizens to temporarily leave the Serb areas. The Banja Luka CSB report noted that the security situation in the municipalities was burdened with a number of problems such as the existence of extreme Serb and non-Serb armed groups and individuals, and the fact that the authorities did not establish a full control over the territory.[1302]

[1298] P1481, p. 79
[1299] P1485, p. 70
[1300] D3563, para 86; D3596, D3597, D3598
[1301] P3549, p. 3
[1302] D0470, p. 12

623. As an Englishman, would Judge Morrison stay on comfortably living in Berlin during the Second world war? Or Judge Kwon in Pyongyang during the Korean civil war? The reasoning of a simple person, a civilian, a Muslim in this case must have been to save his/her head first in the chaos around him/herself. Protective orders of the authorities are fine, but there are so many angry, grieved, mentally unstable, criminal or otherwise disturbed individuals that no order could guarantee one's personal safety. By the time the perpetrators have been found and prosecuted and the rule of law re-established, one has already been killed, robbed, maltreated, massacred. Does one want to wait for the re-establishment of the legal order? No, thanks. *That* is only human and could only be prevented by *not causing the civil war in the first place.* Dr. Karadzic's words uttered in October 1991, never more than now sounded more reasonable and important, but unfortunately also prophetic

> How will you stop everyone from killing everyone in Bosnia and Herzegovina?[...]chaos is not in anyone's hands[...]We can thus say there will be no war, we can thus guarantee that there will be no chaos because order is in our hands. Chaos is no longer in anyone's hands.[1303]

624. The war broke out, and with it the chaos, and everyone started killing everyone. Whatever happened during the war is a product of the war itself.[1304] No JCE plan was necessary for the mutual killings and no matter how hard he tried, as we will see, President Karadzic could not stop it.

625. On 19 August 1992, the day when the information from the field reached the Government in Pale, President Karadzic re-issued his order of 13 June 1992 demanding that

> All protagonists should fulfil their obligation to observe international humanitarian law, especially the Third and Fourth Geneva Conventions;
>
> 1. All soldiers and employees of the Ministry of the Interior should be instructed to respect captured persons, civilians, medical institutions, private and public places, the Red Cross symbol and UN personnel and equipment;
>
> 2. Forcible resettlement and other illegal measures against the civilian population should be prevented, and any certificates of sale of property or statements that refugees will not return shall be considered as legally invalid and are declared null and void;
>
> 3. Measures to improve conditions in all prisons in the Serbian Republic should be taken immediately, in accordance with recommendations made by the Red Cross during visits to those

[1303] D1270, p. 117
[1304] Krajisnik, T. 43372

> places. Pursuant to the previous Decision, all prisoners of war in poor health, who will not soon be rejoining enemy armies, should simply be released;
>
> 4. The International Red Cross should be informed immediately of all prisons in the Serbian Republic and accurate lists of persons detained in those prisons forwarded to them;
>
> 5. All members of the army and police of the Serbian Republic shall provide assistance to members of the International Red Cross, the United Nations High Commissioner for Refugees and other humanitarian organisations. These persons must be provided with total security and access to all prisons where prisoners of war are held.
>
> General position:
>
> In case of any suspicion or sign that international humanitarian rights have been violated, all organs of the Army and Police shall conduct energetic investigation in the zone of responsibility.[1305]

626. Other governmental organs also showed serious efforts in getting the correct information from the field in order to establish the rule of law. On 24 August 1992, the Ministry of Health, through the MUP, requested data about prisons, collection centres and detention camps asking who ordered that the institution in question be established, and when, as well as who gave the order for people to be brought in.[1306] The final deadline for delivering the information was 30 August 1992.[1307] The response received from the field, such as the one from Prijedor, was that there simply were no collection centres and that all captured persons were at the Manjaca Camp.[1308] Again, this was an internal communication, not meant for the public.

627. The state of mind of President Karadzic in relation to war crimes in detention units or elsewhere is mirrored in his December 1992 Assembly speech when he stated that

> We have[...]released a large number of prisoners of war, **there were no civilians in our prisons, no institution which inspected all our prisons found any civilians in them**[...]We reported all our prisoners. On 13 June we issued an order on the observance of the Geneva Convention, when we saw that it was war and that war had been declared, and that there would indeed be war, **and we respected that Convention,** we captured a large number of enemy's men, and having captured them we had to hold them somewhere for **the Serbian army does not kill its prisoners.**[1309]

[1305] D0101, pp. 1-2
[1306] D0475, p. 1
[1307] D0475, p. 1
[1308] D0476, p. 1
[1309] P1364, p. 8(Emphasis added)

c. Public and International Sources About Alleged Crimes

628. President Karadzic was often mistaken, when he would believe foreign sources more than his own officers, which in turn made him often critical of the Army with no real reason.[1310] It would only later turn out that foreign representatives or media were completely inaccurate.[1311] False media reporting was even admitted to President Karadzic by international mediators. For example, David Owen, behind the closed doors, told President Karadzic in December 1992 that

> As for rape, in the coming months you'll encounter serious difficulties with the mass media. The press is making money from sensational stories[1312]

629. Nevertheless, whenever the Republican authorities received information from international sources about possible abuses of human rights, they immediately reacted.[1313]

630. When in October 1992, President Karadzic received reports from international factors that the situation in the prisons in the territory of RS was critical[1314] Avlijas was tasked with veryfing the information and produced a report in this regard.[1315]

631. Avlijas set out from Sarajevo and ended his journey in Prijedor.[1316] In Vlasenica he saw for himself that there were no prisons or prisoners. [1317] The SJB commander told him that the prisoners of war had already been exchanged, and did not mention Susica. [1318] In Zvornik, Avlijas found 64 prisoners of war arrested during combat activities, and compiled a list telling the warden of the centre to protect them.[1319]

632. In Brcko, Avlijas was told that about 250 people had been killed in street fighting, and was given a list of 36 identified people.[1320] In the written report, Avijas asked that the locations, where 250 victims were buried, be marked and protected, and he also asked

[1310] D3695, para 108
[1311] D3695, para 108
[1312] P1481, p.350-351
[1313] D3105, paras 21-2, 26 and 58
[1314] D3105, paras 26,58
[1315] P1607, p.1
[1316] D3105, para 26
[1317] D3105, para 26; P1607, p. 2
[1318] D3105, para 26; P1607, p. 2
[1319] D3105, para 26; P1607, p. 3
[1320] D3105, para 27; P1607, p. 3

that a neutral international mediator be invited to determine the origin and identity of the victims and how they were killed. [1321]

633. In Prijedor, Avlijas was told that all the prisoners from all remand centres were transferred to Manjaca and that in the territory of Prijedor there were no other remand centres or prisons.[1322]

634. Regarding Sanski Most Avlijas was informed that there had been only four prisoners there who were transferred to Manjaca.[1323] Avlijas did not know nor was he told that there were any prisoners in the SJB building in Sanski Most or in the *Hasan Kikic* school or in the sports hall.[1324]

635. Although the Government adopted a decision on 4 July 1992 on founding a correctional institution in Foca,[1325] Avlijas testified that the prison in Foca was under local military control, and that he was not allowed to conduct inspection.[1326] Foca Tactical Group acted completely independently of the central authorities.[1327]

636. The accommodation conditions in Ilidza were reported to be satisfactory. [1328]

637. When Avlijas arrived in Hadzici, the local Serbs who had fled from the Muslim part of Hadzici showed great deal of animosity towards Avlijas because a notorious prison camp for Serbs existed in Tarcin, where they were tortured, while at the same time many Muslims from the area of Hadzici who were transferred to Kula were ultimately released.[1329]

638. Avlijas was afraid of reprisals against Muslims in the sports centre, so the Defence Minister sent a letter to the presidents of municipal assemblies that these people be protected since various paramilitary groups were on the rampage in the municipalities of Ilidza and Hadzici.[1330] Once in the centre, Avlijas embraced the Muslim men, who told him about the difficulties and the problems at the hands of the members of various

[1321] D3105, para 27; P1607, p. 3-4
[1322] D3105, para 28; P1607, p. 4
[1323] D3105, para 29; P1607, p. 5
[1324] D3105, para 29; P1607, p. 5
[1325] P1098, p. 4
[1326] D3105, para 33-5
[1327] D3105, para 60; D1689
[1328] P1607, p. 6
[1329] D3105, para 31; P1607, p. 7
[1330] D3105, para 32

paramilitary groups that kept coming to Hadzici.[1331] These municipalities were gripped by absolute chaos and were totally out of control.[1332] In the end the Muslims from the sports centre were transferred to Planjina Kuca in Vogosca after the Hadzici Crisis Staff issued a decision to that effect. [1333]

639. Finally, Avlijas reported that it was necessary to delineate the jurisdictions of the civilian and military prisons, adding that in the cases of Zvornik, Hadzici and Ilidza, SJBs kept people in custody longer than three days as provided by law.[1334] Approximately at the same time, the Defence Minister and President Karadzic were introducing a military rule in these three municipalities, along with other nine municipaities across Republika Srpska, as part of the state combat against active paramilitary formations and quasi-state organs and institutions.[1335]

640. Such drastic measures were indeed necessary because the local authorities behaved as absolute power holders. When a representative of the ICRC suggested to the President of the Prijedor municipal Red Cross, Srdic, that President Karadzic had ordered that Trnopolje be closed, Srdic slapped the table and said, "We call the shots here; I am a deputy in the Assembly, not Karadzic."[1336]

641. As could be seen from this chapter, information sent to or gathered by the central authorities hardly ever mentioned illegal activities at the local level, and when problems were noticed, the Pale authorities reacted immediately showing great responsibility and care for Republika Srpska citizens regardless of their nationality or faith.

5. Central Authorities Took All Possible Measures to Prevent Crimes Against Non-Serbs

642. We have seen that the central authorities instructed the local governments to upkeep the law and legal order and adhere to international humanitarian and war law. We

[1331] Avlijas, T. 35177-9
[1332] D3105, para 32
[1333] D3105, para 32
[1334] P1607, p. 7
[1335] D0458, P. 2
[1336] D3105, para 59

shall now turn to the efforts of the Pale authorities to prevent crimes in general, and against non-Serbs in particular.

643. The government and the Presidency took all sorts of measures in order to prevent the violation of international norms and violations of human rights.[1337] On 15 April 1992 Minister Stanišić ordered that persons committing looting and appropriation of other people's property were to be identified and subjected to the most rigorous responsibility, including arrest and detention.[1338] Two days later, on 17 April 1992, Stanisic issued another order warning CSBs and SJBs that "cases of unlawful appropriation of moveable and immoveable property[...]which have been carried out by members of these services have been recorded in certain public security stations. In future the most stringent measures will be taken against such individuals(termination of employment, criminal prosecution, etc.)"[1339]

644. On 2 June 1992, the Government pointed out that all the measures should be undertaken to prevent instances of robbery and looting.[1340] On 8 June 1992 President Karadzic issued an urgent appeal demanding that all prisoners be treated humanely and **renewing** the call for the ICRC to protect civilians of all ethnic groups and of prisoners

> 1. We ask **all our local authorities and prominent individuals** to ensure protection and care of all wounded and ill individuals, **no matter what side they belong to**,
> 2. To **treat all prisoners humanely**
> 3. To **spare the civilian population from all attacks**,
> 4. To offer **protection** and **all possible aid to refugees**,
> 5. To respect the emblem of the Red Cross [...]
> [...]We renew our call for the International Committee of the Red Cross to begin work again **protecting civilians of all nations as well as prisoners.**[1341]

645. Despite President Karadzic's June 1992 appeal, and many other orders that were yet to follow, the Prosecution's case is that the prisoners "continued to languish in detention facilities in the Krajina and elsewhere throughout June, throughout July, and *it wasn't until August* when the international community gained access to Omarska and publicised it that any action was taken"[1342] by the RS authorities.

[1337] M.Mandić, T. 4993
[1338] D0404, p.1
[1339] D1671, p.1
[1340] D0414, p.1
[1341] D0426, pp. 1-2(Emphasis added)
[1342] Krajisnik, T.43928(Emphasis added)

646. In addition, it was the Serb leadership who asked the international community to help them identify the camps which had been frequently mentioned in the propaganda war against the Serbs by the Muslim Presidency in Sarajevo. [1343]

647. On 13 June 1992, Dr. Karadžić issued an order on the observance of International Law of War in the Serb Republic of Bosnia-Herzegovina army, which stipulated that

> 1. In an armed conflict, the Army[and]Ministry of Internal Affairs shall apply and respect the rules of the international law of war.
> The rules of the international law of war[...]include:
> - the international treaties signed, ratified or joined by the former Socialist Federal Republic of Yugoslavia;
> - the customary international law of war;
> - the generally accepted principles of the international law of war.
> 2. Commanders of all units, as well as each member of the army or other armed formation who takes part in combat activities, are responsible for the application of the rules of the international law of war. It is the duty of the competent superior officer to initiate proceedings for legal sanctions against individuals who violate the rules of the international law of war.
> 3. The Minister of Defence of the Serbian Republic of Bosnia and Herzegovina is authorised to prepare instructions on the treatment of captured persons.
> 4. The army should be regularly instructed in the rules of the international law of war.[1344]

648. President Karadžić also ordered the Minister of Defence to issue instructions on the treatment of captured persons,[1345] which Minister Subotić executed on the same day.[1346] Subotic's instructions envisaged that "In no event shall a captures person be subjected to repressive measures. Captured persons must be treated humanely and protected from acts of violence, abuse and intimidation[...]Military personnel shall ensure that sick and wounded captured persons receive medical attention."[1347] Minister Subotic further prescribed that "conditions in the prison camps shall be as favourable as those for our units billeted in the same area" and that "captured persons shall receive food in accordance with standard nutrition tables", and also that "special attention shall be devoted to hygiene and medical care and facilities in the prison camp".[1348] Finally, representatives of the ICRC and other humanitarian organisation "shall be enabled to visit and assist captured persons."[1349] Minister Subotić also prescribed a POW card that was to

[1343] P1099, p.1
[1344] D0434, p.1
[1345] Mandić, T.5081
[1346] P1134, p. 1; M.Mandić, T. 5083
[1347] P1134, p.1
[1348] P1134, p.1
[1349] P1134, p. 2

be filled out, and which was compulsory documentation accompanying each and every prisoner.[1350]

649. Minister Subotic made regular checks on military commands and personally saw that military commands had these instructions and that Corps Commanders issued their own orders and instructions on how these rules should be implemented.[1351] There was also another short order which was addressed directly to presidents of municipalities ordering implementation of these instructions.[1352]

650. Minister Stanisic underlined the need for the MUP to co-operate and act in co-ordination with military organs to prevent and detect a rising number of crimes.[1353] On 23 June 1992, the Serb Presidency issued an anti-war statement, declaring it would provide the bare necessities for the families of all people of good will irrespective of their nationality.[1354]

651. In early summer of 1992, President Karadzic continued to order to all local civilian and police authorities to comply with the provisions of the international law, allowing the representatives of international organisations to visit all prisons, including military camps and police stations under the Serb control, emphasising that soldiers who did not comply with these instructions would be punished.[1355]

652. On 11 July 1992, the Presidency emphasised that the Geneva Conventions stated that civilians living in areas affected by war must be allowed to leave the area, but that emigration could only be voluntary; therefore, it could not be either obstructed or encouraged.[1356] The Presidency further proclaimed that all citizens of Croat and Muslim ethnicity were guaranteed all rights ensured by a state based on the rule of law.[1357]

653. The Presidency was convinced that the Serb authorities were neither forcibly detaining citizens in war zones nor forcing them to emigrate, as that would be "ethnic cleansing".[1358] The Presidency ordered that "all refugees from the territory of the Serbian

[1350] P1134, p. 2; M. Mandić, T. 5085
[1351] D3698, D3695, para 192
[1352] D3695, para 193
[1353] D4281, p. 2
[1354] D2244, p. 2
[1355] D0477, p. 1; M.Mandic, T. 5273
[1356] D0445
[1357] D0445
[1358] D0445

Republic of Bosnia and Herzegovina will be allowed to return without suffering any consequences".[1359] Criminals, not civilians, were subject to legal sanctions. [1360]

654. On the same day, 11 July 1992, the Government decided that

> The Ministry of Information is entrusted with informing[...]the parents whose children are captured on the territory of our republic, that they will be tried according to our regulations; that full lawfulness will be secured, and their rights and freedom will be respected; that international rules will be respected, and that adequate regulations have already been passed regarding this matter.[1361]

655. It was the Prime Minister's position that "we should honour the international conventions, agreements, and that we should have respect for the rights of citizens and human rights" [1362] The Government formed a working group to prepare a set of regulations on the treatment of Muslims and other nations on the territory of the Serb Republic of BH. [1363] The Government stressed that

> Constitutional rights and obligations, international conventions on human rights and freedoms that oblige us have to be taken into consideration.[1364]

656. Also on 11 July 1992, there was a meeting of senior MUP officials in Belgrade discussing their activities hitherto and outlines of its future activities.[1365] The meeting was held in Belgrade because it was not possible for Minister Stanisic and his CSB chiefs to have any physical contact in the territory of Republika Srpska.[1366]

657. In paragraph 109 of its pre-trial brief, the Prosecution quotes this meeting in a completely misleading way, claiming that "following the take-overs, the MUP took a lead role in disarming, arresting, rounding up, detaining, beating, killing, and expelling Muslims and Croats." However, what actually happened during this meeting was completely the opposite. The MUP officials shared serious problems that they were facing and discussed the solutions for those problems. They behaved responsibly and confirmed their dedication to law and order.

[1359] D0445
[1360] D0445
[1361] D0446, p. 6
[1362] Djeric, T.27938; D0092, p. 26
[1363] D0446, p. 6
[1364] D0446, p. 6
[1365] D0447, p. 1
[1366] Stanisic, T.46367

658. At the meeting, Zupljanin complained "the army and Crisis Staffs/Wartime Presidencies demand gathering as many Muslims as possible and leave such non-defined camps to the Internal Affairs. The conditions in these camps are poor: there is no food, some individuals do not comply with the international standards because, among other things, the concentration centres are not appropriate or for other reasons." [1367] He complained that the military judiciary was not functioning, judges had either not been elected, or were afraid and threatened; in some municipalities, the courts were not functioning and inveterate criminals were being released from prisons, which affected the establishment and functioning of a law-governed state and the Internal Affairs Institutions. [1368] Zupljanin's words do not sound as bolstering or encouraging crimes. The chief of a CSB was identifying problems and making efforts to insure that they were rectified.[1369]

659. Andrija Bjelosevic, another chief of a CSB, complained that the people arrested by the Army were brought in groups and left without any documents regarding reasons for the arrest, proposing that the Army should take care of war prisoners, and complaining that "besides the enemy's crimes now we have crimes committed by Serbs, mostly all kinds of looting. There are soldiers and reserve policemen among those who commit the crimes[...]When they are stopped at checkpoints or police officers try to prevent this, they would draw guns in order to obstruct the police officers in carrying out their duty-to prevent looting." [1370]

660. Krsto Savic, also a head of a CSB, complained that "neither the civilian nor the military prosecution is functioning on this territory. It is impossible to get paramilitary formations out of Trebinje for example, so there is a need to demand either that they be put under the command of the Army of the Serb Republic or that they leave the territory."[1371]

[1367] D0447, p. 8
[1368] D0447, pp. 8-9
[1369] M.Mandić, T.5141-2
[1370] D0447, p.10
[1371] D0447, p.12

661. Aleksandar Pantic, the head of Bijeljina CSB complained that paramilitary units were present in Bijeljina and that the members of the Red Berets launched two attacks on the police station in Brcko but were later disarmed.[1372]

662. Having heard all the complaints, Minister Stanisic emphasised that "the Government, the Assembly and the Presidency are always, with full right, talking about the need to stop the plundering, to maintain public law and order, the security of civilians[...]the basic thing from which we will not retreat is that the MUP is a professional organisation[...]without the influence of politics[...]our work is professional[...]aimed at creating a state of law and making it functional[...]We have opted[...]to protect the personal property and legal security of civilians, to prevent and discover criminal acts and their perpetrators, to maintain public law and order[...]In order to achieve full constitutionality and legality and in order to implement sub-legal acts we have decided to prevent the criminal acts not only of civilians but also those committed by soldiers and seniors in the Army, by active and reserve policemen[...]and their seniors, for whom it is determined that they committed any kind of criminal offence."[1373] *That* was the official and actual position of the Serb authorities.

663. The senior MUP officials concluded that regardless of the complexity of the situation, the insufficient number of personnel, and the inclusion of the police force in combat activities, the priorities "include above all gathering information on enemy operations, on war crimes, on serious forms of criminal offences, especially looting and war profiteering, etc."[1374] The deadline for this task was ongoing.

664. The same permanent deadline was also given for the prevention and documenting of war crimes[...](on-site investigations, photo and phono-documentation, expert opinions, medical reports, eye witnesses' statements and other statements, etc) and the pressing of criminal charges[...]regardless of the perpetrators."[1375]

665. The most senior MUP officials took "legal and other measures to remove staff from amongst ourselves for whom it is proved that they committed criminal acts or

[1372] D0447, p.13
[1373] D0447, pp.15-6
[1374] D0447, p.21
[1375] D0447, p. 24

disqualified themselves in any other way as members of the MUP."[1376] The police was constantly working on improving their own efforts and reinforcing the rule of law.[1377]

666. Six days after this meeting, on 17 July 1992, the MUP leadership sent its "Report on Some Aspects of the Work Done to Date and the Tasks Ahead" addressed to the President of the Presidency and the Prime Minister.[1378] The RS leadership was informed by the MUP that the tasks that the MUP would insist on was prevention of crime, irrespective of who the perpetrators may be, [1379] and on prevention and documenting of war crimes.[1380] The Presidency was thus informed in the briefest terms about the MUP position on crimes and the means of combating them.[1381]

667. Stanisic testified that the position of the MUP was that the "war crimes are the gravest crimes which needed to be prevented and perpetrators identified. One must understand that the conditions under which the MUP operated were more than the worse possible. It was for those reasons that we were aware that not all of the measures could be undertaken in such conditions. However, we set apart and insisted that such measures be carried out at least to gather a minimum of evidence in case of such crimes which could serve as a good basis for further processing and in order to have such crimes sanctioned."[1382]

668. The Presidency did not have at its disposal any instruments of investigation.[1383] Only the Government had two ministries that could implement decisions and carry out investigations.[1384]

669. Based on the document in question[1385], the Prosecution alleges that "Stanisic sought clarification from Karadzic as to whether the MUP or the Ministry of Justice had jurisdiction over civilians who had been rounded up and detained"[1386] However, here is what the MUP exactly stated in the document

[1376] D0447, p. 28
[1377] M.Mandić, T.5165
[1378] P1096, p. 1
[1379] P1096, p. 5
[1380] P1096, p. 6
[1381] M.Mandić, T.5168
[1382] Stanisic, T.46358-9
[1383] Krajisnik, T.43317
[1384] Krajisnik, T.43317
[1385] P1096, pp. 1-7
[1386] Prosecution Pre-Trial brief, para 115

> It is also necessary to hold a joint meeting in order to address the problems of co-operation between the MUP and judicial organs in preventing crime and the shortage of judges for criminal cases, to reach an agreement on initiating proceedings for changing the duration of pre-trial detention (the Presidency should uphold the provision according to which detention can last up to 31 days) and to resolve more quickly the issue of investigating judges, investigating crimes, prisons and, especially, round-up centres and the related issue of jurisdiction so that the MUP, in compliance with the Law on Criminal Procedure and the Law on Internal Affairs can deal with individuals only until their trial or handover to judicial organs, which are products of the MUP-s activity.[1387]

There is not a single word about illegally detained civilians.

670. The MUP did refer to the problem of the Army, crisis staffs and war presidencies requesting that the Army round up or capture as many Muslim civilians as possible, and that "they leave such undefined camps to internal affairs organs. The conditions in some of these camps are poor: there is no food, individuals sometimes do not observe international norms etc."[1388] However, the reasons for "rounding-up" of population are not stated. There could be a variety of reasons, both legal and illegal ones. The most probable one was that the population was moved from or arrested in a combat zone and that the selection of genuine civilians from those who took part in the fighting had yet to take place.

671. What this document testifies to is exactly the chaos that prevailed in the field due to the collapse of the state system and the fact that a new one had not been established. The MUP is complaining, rather than informing the Presidency and the Government that some alleged JCE plan is being carried out.

672. This is obvious from the remainder of the text of the same document where the state policy is clearly set out: "The Minister particularly pointed out the determination to take action to ensure full constitutionality and legality by preventing crimes from being committed not only by citizens but also by Army soldiers and officers, active-duty and reserve police and members of internal affairs organs and their superior officers who have committed crimes of any kind."[1389] The MUP also informed the President of the Presidency and the Government that "**documents are also provided for war crimes committed by Serbs**", stressing that "the circumstances in which we work and live are

[1387] P1096, p. 6
[1388] P1096, p. 3
[1389] P1096, p. 4

very difficult. The Presidency and Government of the Serbian Republic of Bosnia and Herzegovina are forced to prioritise".[1390]

673. Let us stop here for a moment and consult the ICTY jurisprudence. In the *Krajisnik* case, while discussing Krajisnik's participation in the JCE, the Trial Chamber found it important, if not crucial, whether the leading members of the JCE were informed of crimes, whether they took effective measures to prevent their recurrence, and whether they persisted in the implementation of the common objective.[1391]

674. Therefore, it is crucial to see if and when President Karadzic learned about irregularities, what were his next step(s). This is critical to establish whether he went from being merely aware of the crimes to intending them. Leaving aside the issue of effective control, power and influence over the events in the field, we shall consider here the question whether President Karadzic *überhaupt,* at all, took measures to prevent the recurrence of crimes?

675. If not earlier, than certainly no more than six days after the information about "rounding-up" of Muslim civilians was purportedly conveyed to President Karadzic, he issued an order on 23 July 1992 that stated

> 1. **The Serbian authorities must act in accordance with the law and the Geneva Convention towards the civilian population of any ethnicity**
> 2. All inhabitants who surrender weapons and agree to live peacefully and in keeping with the law **must be enabled to remain in their own homes and enjoy our protection**.
> 3. Any inhabitants who wish to move temporarily or permanently from combat operations zones to other areas must be enabled to do so. The date and route to be used by the population must be agreed, and complete security must be provided for the civilians moving.[1392]

676. This order of President Karadzic clearly and squarely proves that he did not have the *mens rea* to commit *any* crimes against the non-Serb civilian population, let alone support for "rounding-up" of non-Serb civilians. President Karadzic's state of mind was also crystal clear to those in the field since on 14 July 1992, only three days before he was allegedly informed about the problem of "crisis staffs and war presidencies requesting that the Army round up or capture as many Muslim civilians as possible" President Karadzic ordered the presidents of municipalities that "all villages where Croat

[1390] P1096, p. 3 (Emphasis added)
[1391] Krajisnik AJ, paras 170-1,193
[1392] D0096, p. 1 (Emphasis added)

and Muslim population surrender their weapons and do not intend to fight against us must enjoy full protection by our Serbian state of Bosnia and Herzegovina."[1393] And three days prior to that, on 11 July 1992, President Karadzic publicly addressed the Serb officials stating that

> The state, which we, the Serbs are creating must rest on the rule of rights and humanity[...]I ask of all members and representatives of the Serbian Democratic Party to constantly monitor our behaviour, so that the glory of our just battle would not be tarnished by inhumane actions. Special attention should be given to just behaviour towards civilians of other nationalities within our Republic. Similarly, towards our defeated counterparts, we need to not only honour the Clauses of the Geneva Convention, but we also need to show our Orthodox Christian mercy.[1394]

677. President Karadzic was not the only one to react to the MUP information of 17 July 1992. On the very same day, 17 July 1992, the Government produced an operational programme of measures to prevent social disruptions in conditions of a state of war.[1395] The Government demanded precise identification of activities of the organs of internal affairs and the justice system in order to establish law and order, envisaging a review of moral and professional responsibility of each employee in these organs.[1396] The Government asked that in cooperation with the state justice organs, military judicial organs and organs of the military police, activities of discovering and arresting perpetrators of criminal offences be intensified.[1397] The Ministry of Interior and its services were tasked with making special provision for an organised approach to work related to data collection and processing and the documentation of genocide perpetrated against the civilian population.[1398]

678. The Government ordered the appointment of a State Commission for the Identification of Crimes and Genocide Against the Civilian Population and of Victims of War that was obliged to establish cooperation with international organisations and international courts and with United Nations agencies.[1399] It was a general provision that

[1393] D0095, p. 1
[1394] D0094, p. 1
[1395] D0448, p. 1
[1396] D0448, p. 12
[1397] D0448, p. 12
[1398] D0448, p. 13
[1399] D0448, p. 15

included crimes regardless of the nationality of the victims and concerned the territory of Republika Srpska.[1400]

679. The very next day, on 18 July 1992, Minister Stanisic further urged the Prime Minister to undertake the necessary measures to direct the war-time activities of the Army, groups and individuals according to international law and international law of war, in order to prevent breaches of the approved provisions of international law which may result in consequences resembling genocide or war crimes.[1401] The minister criticized the Prime Minister for not sufficiently opposing war crimes and insisted that the Government disassociate itself even more from all the groups and individuals with criminal intentions.[1402] The Minister emphasised that

> We are working on the collection and documentation of war crimes. i.e. genocide regardless of the perpetrators and their ethnicity. [1403]

680. This same person, Mico Stanisic, according to the Prosecution, played a critical role in the organised detention and expulsion of Muslims and Croats.[1404] This allegation does not get further from the truth, does it?

681. On 19 July 1992, Minister Stanisic informed all CSBs that the MUP and the Army needed to resolve "the problems of jurisdiction of which we have become aware", and ordered that the CSBs submit detailed data regarding problems with "paramilitary units, especially in cases where crimes have been committed", "problems related to the prevention and detection of crimes and perpetrators", and "procedures and jurisdiction in the treatment and custody of prisoners, persons evacuated from the combat-operation zones, collection camps into which the Army brings Muslim residents without any documents that might state reasons for such action and then leaves these undefined camps to the organs of the interior."[1405]

682. As any responsible state official would do, Minister Stanisic was confronting problems and reacted as soon as problems would reach him. He did not know why the

[1400] Mandic, T.5171
[1401] D0449, p. 1
[1402] D0449, p. 2
[1403] D0449, p. 3
[1404] Prosecution Pre-Trial brief, para 114
[1405] D0450, p. 1

Army had brought Muslim residents without documents. The Army could have had valid reasons for it. Prosecution/Chamber witness Mandic testified that he was not aware of a single case of rounding up the civilian population, except for the case with combat zones.[1406]

683. The Banja Luka CSB sent the requested information back to the Ministry the following day, on 20 July 1992, informing the Minister that during the months of April, May, June and July of 1992, in the wider area of ARK there were armed conflicts between the Serb army and Muslim-Croat forces.[1407] During these conflicts, Zupljanin continued, the Army and the police arrested a great number of citizens of Muslim and Croat nationality who were, depending on the circumstances in the field, sent to various buildings like schools, centres, factory facilities, open spaces and so on.[1408]

684. We see here that in late July 1992, Zupljanin was explaining Stanisic what had happened in the previous months, how and why so many people had ended up in detention and where they had actually been placed. This is inconsistent with the Prosecution's theory, according to which Stanisic played a critical role in the organised detention and expulsion of Muslims and Croats.[1409] Why would have Zupljanin informed Stanisic about something that Stanisic had already known and planned?

685. Zupljanin continued his reporting by stating that it involved several thousand men mostly of military age, who were subject to operational procedure by the army, the national and public security services, who determined three categories. The first and second categories were of security interest for whom the services had documented proof of their criminal responsibility and for whom Zupljanin suggested pressing criminal charges and turning them over to the appropriate organs. [1410]

686. Zupljanin added that the third category was composed of adult men about whom the service did not have any information of security interest **thus far** and could be treated as "hostages". [1411] Zupljanin suggested that these men of military age should be

[1406] M.Mandic, T. 5181
[1407] P1097, p. 1
[1408] P1097, p. 1
[1409] Prosecution's Pre-Trial brief, para 114
[1410] P1097, pp. 1-2
[1411] P1097, p.2(Emphasis added)

exchanged for citizens of Serbian nationality who have been detained in camps held by Muslim-Croatian forces.[1412]

687. Leaving aside the fact that none of the Muslim or Croat leaders stood trial in The Hague for illegally detaining Serb civilians in Bosnia, Zupljanin's proposal seemed pragmatic at the time, aimed at saving countless lives of innocent Serb citizens. However, there is **no evidence** that this proposal was ever accepted by either the Minister, the Government or the Presidency. As we will see, three weeks later Kovac will send a different proposal to the Presidency. [1413]

688. As soon as the RS Assembly was able to convene on 24-26 July 1992, President Karadzic expressed his criticism and disapproval of crimes, condemning and threatening those committing them and encouraging non-Serbs to remain living in the Serbian republic

> I must say that the Serb people[...]have found a number of traitors among themselves, inhumane people who are committing inhumane acts, ones that we shall try and punish by law. From the most sever acts to the smallest[...]War has changed some people so much that there are individuals among them who are very keen on other people's property, both Muslim and Serb property.[1414][...]The Serbs and others live freely there. I must say that sadly the Muslims in Podrinje[1415] do not want peace, except in Bijeljina, in Pale, where they form 20 percent of the population, where nobody bothers them or considers them as second class citizens. On the contrary our government officials are communicating with them to persuade them that they have nothing to fear. Therefore, in Serb BiH the Serbs have accomplished their state, their freedom, and a state big enough for all. [1416][...]In the state that we are building, we have to ensure that they have all the rights that we have[1417][...]Many Muslims are coming and asking to be converted to Christianity, we don't do that, that cannot be done in a war[1418]

689. The very next day, on 27 July 1992, Minister Stanisic, in accordance with the order by the President, ordered all CSBs that all members of the MUP must perform the duties in the most serious and responsible manner, for the purpose of providing

[1412] P1097, p.2
[1413] P1100
[1414] D0092, p. 17
[1415] Podrinje is a territory bordering with Serbia, along the Valley of the River Drina, from Foca to Bijeljina, the towns are Zvornik, Bratunac, Srebrenica, Ljubinje, Ljubija, Foca, Visegrad and others(*See* M.Mandic, T. 5278)
[1416] D0092, p. 21
[1417] D0092, pp. 86-7
[1418] D0092, p. 88

preventive protection and personal, property and legal security for civilians, as well as preventing and detecting crimes and their perpetrators.[1419]

690. [redacted]. [1420] It was decided to strengthen the police department in Janja which was a predominantly Muslim settlement and to have a visible police presence in this area to prevent attacks on Muslim families.[1421]

691. During the session of 6 August 1992, the Presidency discussed the issue of prisoners of war. It concluded that the prisoners should be divided into three categories: those captured on the front; those who took part in arming and operations of the Territorial Defence of BH; and those who assisted and financed Alija's Army.[1422] The Presidency did not mention any civilian prisoners.[1423] Instead it pointed out that

> We should abide by international conventions on the treatment of prisoners of war. To that end, completely humane treatment of prisoners of war is advised because they are in prisons and not concentration camps. In wartime, payments for their food, clothes, hygiene, guarding, etc. are made at our expense. [1424]

692. The Presidency ordered the Ministry of the Interior to examine through its municipal branches the behaviour of all civilian authorities and individuals guarding prisoners of war and send the information back to the Presidency.[1425] Although the Prosecution carefully studied this document and quoted it only to support its allegations that President Karadzic in his leadership role over the Presidency[1426] possessed the power to investigate suspected criminal activity or potential criminal activity, and to have people arrested,[1427] it never cared to mention that the President did exactly what the Prosecution claims he did not.

[1419] D4273, p. 1
[1420] [redacted]
[1421] [redacted] Andan, T.40861
[1422] D0465, p. 2
[1423] Mandic, T. 5236
[1424] D0465, p. 2
[1425] D0465, p. 2
[1426] Prosecution Pre-Trial brief, para 273
[1427] Prosecution Pre-Trial brief, para 269

693. Based on the abovementioned order of the President of the Republic, the MUP informed the SJBs through the CSBs that the Presidency "has adopted a decision that the Ministry of the Interior and the Ministry of Justice shall prepare a report on the Serbian authorities' treatment of and conduct towards prisoners of war and the living conditions of prisoners in prisons in applicable municipalities."[1428] The MUP further ordered the CSBs to "release civilian-category persons immediately, which implicitly entails all persons, irrespective of age, who have not been members of enemy formations, i.e. to allow them free movement".[1429] Finally, the Ministry asked the CSBs and SJBs of municipalities where there were no such prisons to send a memo confirming that fact.[1430] The MUP also requested the Army to cooperate and send the information on the treatment of prisoners.[1431]

694. Based on the same order of the President of the Republic, the Government set up two commissions to examine the situation in the detention centres and prisons in Manjaca and Bileca.[1432] Avlijas testified that in Bileca and Trebinje it was fully justified to isolate the Muslims population because there were paramilitary groups that were confronting the authorities.[1433] Avlijas found the conditions to be satisfactory and was told by the Muslim men that none of them was mistreated.[1434]

695. Notwithstanding Avlijas' assessment, on 7 August 1992, President Karadzic sent a letter to Prime Minister Djeric informing him that he had received copies of the reports regarding the state of the prisons in Manjaca and Bileca asking that

> The Government, through the ministries of Law and Internal Affairs, based on these reports take immediate measures for the improvement of the living conditions in the jails that are operated by civilian authorities on our territory.[1435]

696. The following day, on 8 August 1992, Deputy Minister of the Interior Tomo Kovac sent a letter to the Presidency and the Government with the aim to resolve

[1428] D3795, p. 1; D3796, p.1
[1429] D3795, p. 2; D3796, pp. 1-2
[1430] D3795, p. 2; D3796, pp. 1-2
[1431] D3817, p. 1
[1432] D3105, para 55
[1433] D3105, para 55
[1434] D3105, para 55
[1435] D0100, p. 1; P3758, p. 1

problems arising from the detention of non-Serbs in the zones of war activity, apart from the measures already taken by the Government and its authorised ministries.[1436] Kovac proposed that the status of these people be legally changed in compliance with international conventions on refugees and prisoners of war.[1437] The basic problem in the field was the fact that not all authorised organs were involved in the process of accommodating these people or in their further treatment. [1438]

697. Kovac pointed to another, more important problem in the field where people were not properly categorised in the facilities or collection centres, i.e. civilians and prisoners of war who had committed criminal acts. [1439] Kovac stated that the POWs must receive special treatment in accordance with international conventions, meaning physical integrity, nourishment, hygiene etc, while the civilian population may only have refugee status under the intensified control of the Serb MUP and that only humanitarian organisations and certain local authorities could accommodate them. [1440] The civilians were to be provided basic conditions of life depending on the financial position of the local authorities, and if they wished to leave the territories controlled by the Serb Republic, they were to be granted passage, as well as transport vehicles, and if it concerned a longer trip, they were also to be given certain quantities of food.[1441]

698. The following day, on 9 August 1992, as we have already seen, the Government acted promptly and established two Commissions for the inspection of collection centres and other facilities for prisoners.[1442] The task of the Commissions was to gain insight into the status of persons located in the facilities in accordance with international convention and to speed up the procedure of categorising such persons, and of determining their responsibility and sanctions. [1443]

699. The very next day, on 10 August 1992, Minister Stanisic sent a dispatch to all CSBs' chiefs ordering that

[1436] P1100, p. 1; D3966, p. 1; D3960, para 84
[1437] P1100, p. 1
[1438] P1100, p. 1
[1439] P1100, p. 1
[1440] P1100, p. 1
[1441] P1100, p. 2
[1442] D0466, p. 2; D3967, p. 1; D3960, para 85
[1443] D0466, p. 2

> Detention and holding measures shall be applied exclusively within existing regulations. You shall be personally responsible for the lives of people who are being held and detained, and for preventing any form of abuse in that area. The premises where people are being held or detained must fulfil basic hygiene and health requirements[...]Apply disciplinary and, if needed, other measures against anyone who does not obey this ORDER.[1444]

700. On 17 and 19 August 1992, Minister Stanisic issued two identical orders to all MUP employees

> I order again that all CSBs, SJBs and their organisational units, and all MUP officers, when dealing with prisoners of war and civilians - refugees, act in strict compliance with the law, within the competence of the MUP and according to the standards of the laws of war and international conventions regulating this matter. You are immediately to inform this Ministry of the existence of any alleged "underground" prisons, camps or similar, or of instances of individuals treating prisoners of war or refugees contrary to the legal standards and international conventions. If any person violates the existing regulations and acts contrary to our legal standards and the international standards in this field, whether they be civilians or members of the MUP or the Army, it is necessary to proceed immediately with gathering information and documentation in order to submit a criminal report to the competent office of the prosecutor.[1445]

701. These orders by Mico Stanisic are in an incredibly striking contradiction with the description of the same man in paragraph 93 of the Prosecution's Pre-Trial brief that describes Stanisic as one of the two most powerful Government ministers – and those most involved in the detention of Muslim and Croat civilians.

702. The other minister allegedly involved in criminal activities against non-Serbs mentioned by the Prosecution is Momcilo Mandic, the Minister of Justice. However, in June 1992 when information about alleged crimes against the non-Serbs in Ilidza reached Mandic, he immediately reacted telling the President of Ilidza Nedeljko Prstojevic that

> It has come to our attention and that of the Government that you are issuing ultimatums to some Turks; evicting people from certain settlements and people respond badly to it[...]please **do not do anything like it**[...]**We cannot ethnically cleanse Ilidza or any other place. At least that is the attitude of the Government and political leadership**[1446]

703. Prstojevic wondered "but where did I say this?" and emphasised that "that's not our politics."[1447] It will appear from the further text dealing with the Ilidza events that the information that reached the Government was not true, but what is relevant here is the

[1444] D0467
[1445] D0474; D0469,pp. 1-3;D4280
[1446] P1110, pp. 3-4(Emphasis added)
[1447] P1110, pp. 3-4

reaction of the Government to the unconfirmed information about crimes against non-Serbs.

704. It is also worth repeating that Prstojevic, just as any other local politicians, could have only been dismissed from work by the local municipal administration.[1448] Presidents of the municipalities were elected and appointed by the MPs of the local Parliament, and the local parliamentarians elected Prstojevic as the president of Ilidza municipality.[1449] In addition, Prstojevic was a deputy to the Assembly and enjoyed immunity, thus not falling under the powers of the Executive Branch of government.[1450]

705. The senior MUP officials continued to meet and address the problems in the Republic. On 20 August 1992, they met in Trebinje where Minister Stanisic stressed that "there must be a critical analysis of the implementation of decisions made at the last meeting in Belgrade on 11 July 1992" reiterating the need to "immediately and without exception implement the order to remove those individuals who, by their professional and moral qualities, are not worthy of belonging to the Service."[1451]

706. The Sarajevo CSB Chief stated that the crime prevention service significantly increased its productivity by filing 366 reports of serious crime, and that "the efficiency regarding war crimes has been especially improved."[1452] The MUP leadership concluded that

> All our activities in general must be lawful and the principles of the relevant international law regulations must be respected. Our individuals and groups shall bear full responsibility under the law for any other behaviour(genocide, creation of camps, etc.)[1453]

707. On 15 September 1992 President Karadzic addressed the deputies and yet again emphasised the state policy towards the POWs

> We don't need Manjaca. If only all the green berets had been killed with a rifle in their hand, but once they have been captured, then **we must abide by the Geneva Conventions.**[1454]

[1448] Mandic, T. 4687
[1449] Mandic, T. 4689-90
[1450] Mandic, T. 4688
[1451] D0473, p.3
[1452] D0473, p.9
[1453] D0473, p. 15
[1454] D0456, p. 54

708. Throughout the entire war, republican organs continously insisted that the work on introducing the rule of law on the ground and the protection of all citizens regardless of ethnicity must continue.[1455]

709. In conclusion, the evidence overwhelmingly shows that the Presidency, the Government and its ministries of Interior and Justice, made maximum efforts to prevent crimes against the non-Serb civilian population and POWs. If and when crimes in the field occurred against these two groups, they were certainly not a product of the state policy, but rather isolated, individual acts that the Pale leadership tried to prevent.

6. Central Authorities Investigated, Prosecuted and Punished Crimes Against Non-Serbs

710. Paragraph 273 of the Prosecution's Pre-Trial Brief alleges that President Karadžić ensured that only crimes against Serbs were actively investigated, referring in the related footnotes to the Presidency's decision on establishment of a State Documentation Centre to gather documents on crimes committed against Serbs[1456] and President Karadžić's decree on forming Center for Investigating War Crimes against Serb people, formed on 17 June 1992.[1457] It is true that this commission had nothing to do with the investigation of crimes against non-Serbs. But it is also true that other state organs dealt with this issue.

711. Already on 16 April 1992, the NSC met and decided to set up a commission for the establishment of war crimes.[1458] The Prosecution quoted this document in paragraphs 66-68 when discussing various alleged authorities of the NSC, but the creation of the war crimes commission was never mentioned, although the war crimes are the reason for having this trial.

712. These war crimes commission had nothing to do with the institution that was created later in June 1992 to document crimes committed against Serbs in Muslim controlled Bosnia and Herzegovina. The latter institution, headed by Miroslav Toholj, did

[1455] P1469, p. 3; P3106, p.1; P3139, p. 8; D0515, pp. 3-7; D3568, pp. 3-4;D3606, p. 2;D3613, p. 2;D3601; D3563, paras 18-9, 27, 41, 50, 72, 92
[1456] P3064, pp. 1-2
[1457] D3990, pp. 1-3
[1458] D0405, p. 2

not undertake any investigations.[1459] The task of Toholj's commission was to document crimes against the Serb civilians *outside of RS*.[1460] Although President Karadzic issued a decree on forming Toholj's Center on 17 June 1992, it did not begin operating for months.[1461]

713. In contrast, the investigation of the criminal and legal aspects of crimes *in the RS territory* continued to be carried out by the investigation organs of the police, of the military police and of the civilian police.[1462] The MUP, the Ministry of Justice, and the army were the three main institutions which were given the task to investigate the issues, to establish the truth, and to punish the perpetrators.[1463]

714. Once it is established that a crime was committed, the investigating judge was in charge of the on-site investigation.[1464] He compiles a record of the on-site investigation and submits it to the prosecutor.[1465] The MUP could not influence the course of the investigation because the judiciary was separate from the executive.[1466]

715. Investigations that were carried out and were within the remit of SJBs and CSBs could only exceptionally on minister's orders be conducted by the inspectors from republic MUP crime prevention administration who would go to CSBs or stations to assist with particular cases.[1467] The MUP could not carry out all the usual activities to investigate a crime if there was ongoing combat.[1468]

a. MUP Removed its Members Engaged in Criminal Activities

716. As in every war, there were individuals who instead of representing the state appropriately, abused the authority and engaged in criminal activities. Therefore, parallel

[1459] M. Mandić, T.4968
[1460] M.Mandić, T.4969
[1461] D0465, p. 2
[1462] M.Mandić, T. 4968
[1463] Krajisnik, T. 43317
[1464] Stanisic, T. 46355-6
[1465] Stanisic, T. 46355-6
[1466] Stanisic, T. 46355-6
[1467] Macar, T.39522
[1468] D3197, para 24

with investigations of crimes, the MUP was purging its own ranks from individuals undeserving of police uniform.[1469]

717. In April 1992, Minister Stanisic wrote to CSBs and SJBs that "it has been observed that a number of persons[...]are committing thefts[...]sometimes in collaboration with our workers[...]You must without fail hold such persons legally responsible, return the property taken from them to its owners"[1470]

718. The situation in the MUP during the first months of the war was so chaotic that the MUP in June 1992 had no data for employees in individual CSBs and SJBs.[1471] Oversights were evident in the process of nominating candidates for specific posts[1472] and the Ministry demanded that they be corrected and be in accordance with the legal procedure.[1473] The MUP also ordered that the issuing of standard decisions bearing the Minister's signature ceased immediately. [1474]

719. Mico Stanisic testified that in case active-duty or reserve policemen committed crimes, criminal reports were filed to the competent prosecutor's office, in addition to being removed from the records.[1475]

720. [redacted][1476] [redacted][1477] [redacted][1478]

721. In July 1992, Minister Stanisic ordered all CSBs "immediately to remove from the Ministry of Interior individuals who have been held criminally responsible for crimes that are officially prosecuted[...]and individuals who committed crimes during the war in the former Bosnia and Herzegovina but against whom, for known reasons, criminal

[1469] D3197, para 25
[1470] D1671, p. 2
[1471] P6634, p. 1
[1472] P6634, p. 3
[1473] P6634, p. 5
[1474] P6634, p. 5
[1475] Stanisic, T. 46365
[1476] [redacted]
[1477] [redacted]
[1478] [redacted]

proceedings have still not been initiated."[1479] The deadline for the execution of this order was 3 August 1992.[1480]

722. Indeed, on 3 August 1992, the MUP Administration for the police duties and affairs sent a report to the Minister on the realisation of his order, informing him that in the majority of the SJB staff members who manifested a tendency towards committing crime during the war, was eliminated from the service and that "this task stays, as the permanent one for the next period and its realisation will be continually followed up"[1481]

723. On 30 October 1992, Minister Stanisic proudly stated that "we have a very responsible approach with regard to behaviour of members of our service[...]we are the only ministry some members of which have been expelled from our ranks", adding that "we want a ministry without a single member who would disregard the legal norms of Republika Srpska"[1482]

724. In its report covering the period April-December 1992, the MUP stated that "210 employees were dismissed from the MUP, criminal reports brought against 29, and 59 employees were suspended".[1483]

725. The subsequent MUP Minister, Ratko Adzic, continued to reorganise the MUP in order to get rid of staff who were not up to the tasks.[1484]

726. Also President Karadzic contributed by ordering the Main Staff and the MUP to "confiscate uniforms from all persons who are not members of the Army and the Police and who commit crimes and engage in other unlawful activities in uniform and thereby tarnish the reputation of the Army and the Police."[1485]

b. Central Authorities Did Not Use Special Police Units to Persecute Non-Serbs

727. It seems that the Prosecution alleges that President Karadzic encouraged perpetrators of crimes by awarding MUP Special Police members.[1486] However, there is

[1479] D4273, para 2
[1480] D4273, para 10
[1481] D1076, p. 2
[1482] D4274, p. 2
[1483] P2761, p. 27
[1484] D3568, p. 2; D3563, para 27
[1485] D4790, para 6
[1486] Footnote 738-of the Prosecution's Pre-Trial brief

no evidence that President Karadzic ever commended those members of special units who allegedly committed crimes, if there were such members at all.

728. A difference must be made at the outset between the official MUP special unit and other "special units" formed at the local level.[1487] The unit was a regular MUP unit, with all the insignia of police units. It had its own coat of arms and the title Special Brigade of the MUP of Republika Srpska.[1488] The Commander of the official special unit, Milenko Karisik, never received any kind of order directly from President Karadzic.[1489]

729. One of the tasks that the unit carried out was to establish law and order and to prevent crimes in municipalities.[1490] This official special unit under Karisik's command acted in line with the rules of service and the rules of war, as well as the Geneva Conventions, and it never committed a single crime.[1491] Also, no one ever asked Karisik or demanded from him, as the commander of the special unit, to commit a war crime, and if someone had asked him to do that, he would never have done it. [1492] In 1994, Karisik was appointed Deputy Minister of the Interior and also Chief of the Public Security Department.[1493]

730. Therefore, the special units that were awarded commendations by President Karadzic were not the same, disbanded special units.[1494] President Karadzic commended that unit commanded by Mr. Karisik. [1495]

731. The authorities made sure that all other special units formed during the war in areas of security services centres were disbanded.[1496] Minister Stanisic made sure that his order was overseen in all CSBs.[1497]

[1487] D3749, para 28
[1488] D3749, para 30
[1489] D3749, para 58; Macar, T. 39517; Planojevic, T. 36284
[1490] D3749, paras 32,57
[1491] D3749, para 32
[1492] D3749, para 57
[1493] D3749, para 33
[1494] Macar, T. 39516
[1495] Macar, T. 39517
[1496] D4273, p. 1
[1497] D4273, p. 6

c. Civil Authorities Investigated and Prosecuted (War) Crimes

732. Between April and June 1992, the Ministry of Interior formed crime fighting departments at the CSBs and SJBs, whose primary task was to collect information on perpetrators on general, economic and war crimes.[1498] On several occasions, MUP inspectors visited CSBs to provide professional assistance and set up crime fighting departments.[1499] When objective difficulties made it impossible for the Ministry to carry out its functions in a timely fashion (conducting on-site investigations, detaining suspects and filing criminal reports) efforts were made to overcome these problems.[1500] By July 1992, the Ministry had only incomplete information that a total of 1885 crimes had been reported and that criminal reports for war crimes had been filed for 24 persons.[1501]

733. The MUP asked its operatives to focus on, inter alia, war crimes.[1502] In this regard, the Ministry emphasised that an even higher degree of coordination with the judicial and military organs was required, especially in providing documentation on war crimes.[1503]

734. Although criminal groups and armed individuals were so dangerous, sometimes even better equipped than the police and the army, and although the MUP staff did not have adequate training to operate in wartime conditions,[1504] particular attention was still paid to the investigation of war crimes.[1505] There was no bias with regard to the ethnic background of the perpetrator or victim.[1506]

735. In June 1992 the Government decided to start the procedure of establishing war crimes, adding that this should be done by the MUP and the Government War Crimes Commission.[1507] On 5 June 1992, Assistant Minister for Crime Prevention and Detection Planojevic sent a dispatch to all SJB asking them to

[1498] P2760, p. 5
[1499] P2760, p. 5
[1500] P2760, p. 6
[1501] P2760, p. 6
[1502] P2760, p. 6
[1503] P2760, p. 6
[1504] D3663, para 24
[1505] D3663, para 27
[1506] D3663, para 27; Planojevic, T. 36258, T. 36297
[1507] D0415, p. 3

> **Pay special attention to discovering the perpetrators of war crimes**, documenting the criminal activities of individual and groups, arresting them and bringing them to justice. When carrying on-site investigations of mutilated bodies, make video recordings or photographs of the bodies, among other things, and conduct autopsies whenever possible. In your fight against crime in the current war situation you will encounter a series of obstacles, including the inability to take appropriate measures, and in such cases record all information in official noted so **that necessary measures can be taken, that is, criminal prosecution can be brought subsequently. We also wish to point out to you that in treating civilians and prisoners of war you must strictly observe the provisions of the international laws of war.** [1508]

736. The dispatch was, among others, received by Župljanin, who forwarded it to subordinated SJBs with a remark

> You are requested to inform all authorised SJB employees of the contents of this dispatch, and to conform with the instructions in this dispatch in your further activities.[1509]

737. The Prosecution alleges that "Karadzic in his leadership role over the Presidency, Government and Ministry of the Interior, ensured that only crimes against Serbs were actively investigated."[1510]

738. However, whenever the Serb authorities wanted specific investigation of crimes against Serb civilians, they would always state it clearly and loudly.[1511] If the "Serb" adjective was not included in the orders, the only inference one could draw is that documents applied to investigations of crimes against civilians as such, regardless of their nationality. The Minister of the Interior was clear on this issue

> We are working on the collection and documentation of war crimes. i.e. genocide regardless of the perpetrators and their ethnicity. [1512]

739. The MUP informed the President and the Government that "documents are also provided for **war crimes committed by Serbs**".[1513] Prosecution's own witness, Branko Djeric, testified that the crimes committed against the non-Serbs by the Serbs were prosecuted.[1514]

[1508] D0425; D1527 (Emphasis added)
[1509] D0425, p. 2
[1510] Prosecution Pre-Trial brief, para 273; Stanisic, T. 46538
[1511] P2715, pp.1-4; P6641, p. 1; P6642, p. 1
[1512] D0449, p. 3
[1513] P1096, p. 3 (Emphasis added)
[1514] Djeric, T.28047-8

740. When crimes against Serbs were occasionally emphasised by the Serb authorities, it concerned crimes against the Serbs in the Muslim/Croat territory.[1515] Among the tasks of the NSC was the collection of information about war crimes against Serbs in the territory controlled by Muslims and Croats, while the crime police were charged with the collection of information about war crimes and other criminal offences committed against the non-Serbian population in the territory of the RS.[1516]

741. When the MUP wanted to gather information specifically about the crimes against Serbs, it would specify so in its documents. For instance, on 26 May 1992, Minister Stanisic asked all CSBs to provide "the information about offences against people and property within the territory of the Serbian Republic of Bosnia and Herzegovina",[1517] without referring to any nationality. The Minister then stated that "it is **also** necessary to list the cases of serious crimes committed against the Serbs living in the territory under control of the MUP of the former Socialist Republic of Bosnia and Herzegvina, should you have the relevant information".[1518]

742. In July 1992, President Karadzic tasked the MUP to "collect and process the data and material on the crimes committed and of genocide over civilian population" as well as to "intensify activities on detecting and arresting perpetrators of misdemeanours and criminal acts".[1519] Again, it concerned civilian population irrespective of its ethnic background.[1520]

743. On 5 July 1992, Minister Stanisic asked the Command of the East Bosnian Corps to help prevent and detect crimes and their perpetrators, particularly "if the perpetrators should happen to be members of the Serbian army" and "to take forceful measures against possible perpetrators of crimes from among your ranks."[1521]

744. Prosecution witness Mico Davidovic testified that after this letter, he and Petar Salapura from the VRS Military Security Service, arrested and prosecuted military personnel.[1522]

[1515] Stanisic, T.46539-40
[1516] D4143, para 28
[1517] P6240, p. 1
[1518] P6240, p. 3 (Emphasis added)
[1519] D3111, p. 4
[1520] Stanisic, T.46580
[1521] D1408, pp. 1-2
[1522] Milorad Davidovic, T. 15608-9

745. Many trials after the war were conducted on the basis of criminal reports that were filed by Serb organs during the war.[1523] If there had been a plan to cover-up crimes, the MUP would certainly not have recorded them. War crime trials will be covered later.

746. At a meeting of the senior MUP officials of 11 July 1992, Planojevic stressed that "the documenting of war crimes is a priority and along with the documentation (on-site investigation reports, photographs, expert opinions, medical reports) it is necessary to compile lists of war criminals which are to be exchanged in the centres".[1524]

747. At the same meeting, Simo Tusevljak, the Head of the Sarajevo CSB Crime Department, emphasised that "criminal charges are pressed against everyone. In Vlasenica, for example, of the 73 criminal charges 23 were pressed against Serbs. The documenting of war crimes and the pressing of criminal charges is primary work for now. War crimes are documented even if they are committed by Serbs."[1525]

748. On 8 August 1992, Mico Davidovic, who was sent by the Serb authorities to the field to establish the rule of law,[1526] informed his superiors about the activities in this regard.[1527] Davidovic reported that the population, regardless of ethnic affiliation, was mistreated and terrorised, and that paramilitaries used the disorganisation of the existing organs of authority to set about forming their own parallel authorities.[1528] Resultantly, large numbers of both Muslim and Serbian inhabitants left the areas of Bijeljina, Brcko and Zvornik municipalities.[1529]

749. When testifying for the Prosecution, Mico Davidovic conceded that he arrested paramilitaries and criminals at the orders of President Karadzic and Minister Stanisic.[1530] The state organs and the army re-established the rule of law and protected all citizens regardless of nationality. [1531] The report concluded that

> While carrying out the action to neutralise, disarm and break up the paramilitary formations, the Special Unit showed an exceptional degree of expertise, efficiency and responsibility, **for which**

[1523] M. Mandić, T. 5048
[1524] D0447, p. 19
[1525] D0447, p. 20
[1526] Milorad Davidovic, T. 15644
[1527] D1412, pp. 1-2
[1528] D1412, p. 2 (Emphasis added)
[1529] D1412, p. 3 (Emphasis added)
[1530] Milorad Davidovic, T. 15580-81
[1531] D1412, p. 6

> **they received commendations from the responsible political organs** and were in these places greeted as liberators of Bijeljina, Brcko and Zvornik.[1532]

750. These facts squarely contradict the Prosecution's allegations that "Karadzic is criminally liable for planning the crimes"; or that Karadzic "provoked, prompted or otherwise induced others to commit the crimes"; or that "Karadzic is criminally liable for ordering the crimes" because he "issued instructions, directives and orders to the Serb political, civilian and military organs and individuals, resulting in crimes"; and also allegedly aided and abetted the crimes.[1533]

751. Prosecution's "smoking gun" witness Mico Davidovic, who was called to support the Prosecution's theories, when confronted with contemporaneous documents, praised President Karadzic's war-time acts and conduct

> My hat is off to you, and I congratulate you on having done that.[1534][...]You wanted people who were doing such things to be arrested. So I'm not contesting at any time the efforts that you were making in that direction.[1535][...]I reflected about this frequently, whether you knew all this or whether you couldn't prevent it, but objectively speaking, there was great chaos [...]I must say that up until today or yesterday, I didn't know that you wrote so many orders and requested that legal measures be taken, and your name was always mentioned in any context. Whatever anyone did, he always claimed to have the approval of President Karadzic. [...]I must admit that sometimes I wondered why did he invite us to come over when all that was happening and taking place?[...]If I had known of this support, I would have returned from Serbia to the MUP and I would have placed myself at your disposal, and you may be sure that you wouldn't be sitting here today.[1536]

752. Believers would argue "Yet ye shall know the truth, and the truth shall make you free."[1537] Less believing would simply say that the truth may be slow but cannot perish.

753. *Ex officio*, nobody was supposed to inform the President about crimes.[1538] According to procedure, it was important to report that to institutions that were in charge of these issues.[1539] If an institution were passive or refused to take measures, then those providing the information would have the right to inform the Prime Minister, the Government, even the President as the highest executive body.[1540] Investigation was the

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[1532] D1412, pp. 9-10 (Emphasis added)
[1533] Prosecution's Pre-Trial brief, paras 260-3
[1534] Milorad Davidovic, T.15677
[1535] Milorad Davidovic, T.15735
[1536] Milorad Davidovic, T.15793
[1537] Jesus in *John* 8:32
[1538] Krajisnik, T.43934
[1539] Krajisnik, T.43934
[1540] Krajisnik, T.43935

task of the Ministry of Justice and the MUP, through the prosecutor's office and through courts of law. [1541]

754. In its report covering the period April-December 1992, the MUP stated that questionnaires had been drafted with guidelines for gathering information on war crimes and crimes against humanity and international law, on the victims of the crimes and on the perpetrators.[1542] The MUP intended to carry on fighting against the war crimes and its basic program guidelines for 1993 included prevention, detection and documentation of crimes against humanity and international law. [1543]

755. The MUP recognised that the most severe form of crime which appeared in the first year of the war were crimes against humanity and international law.[1544] It also recognised the fact that the number of these crimes was surely much greater than the available information suggested, but the Ministry stated that the collection of documents is a **difficult and long-term task**.[1545] By the time of this report, the MUP had registered 101 crimes against humanity and international law. [1546]

756. The MUP complained that in spite of taking various measures, the documentation of crimes against humanity and international law was not satisfactory.[1547] Therefore, a special meeting was held regarding these issues and detailed questionnaires drawn up to collect data on war criminals and victims of crimes.[1548] The MUP considered that the number of criminal reports was still small, especially for unknown perpetrators.[1549] As 93 criminal reports were filed for 321 persons, these tasks obtained priority in the subsequent period.[1550]

757. Even though the MUP was quite critical towards own work, there had still been numerous operational and investigative activities with the goal of collecting information and documenting crimes.[1551] A total of 2500 forensic analyses were carried out and more

[1541] Krajisnik, T.43936
[1542] P2761, p. 22
[1543] P2761, p. 30
[1544] P2761, p. 14
[1545] P2761, p. 14 (Emphasis added)
[1546] P2761, p. 14
[1547] P2761, pp. 16-17
[1548] P2761, pp. 16-17
[1549] P2761, pp. 16-17
[1550] P2761, pp. 16-17
[1551] P2761, p. 17

than 8000 on-site investigations carried out, with more than 2000 searched and wanted circulars issued and almost 27000 interviews conducted.[1552] If the number of criminal reports against the non-Serbs was insufficient, there was also a negligible number of criminal reports that were filed for crimes against the Serbs.[1553]

758. President Karadzic never asked Minister Stanisic at any point in time not to have crimes investigated, especially crimes against Croats and Muslims.[1554] He personally insisted that every crime must be prosecuted, regardless of the ethnicity of the perpetrator and regardless of whether the enemy side prosecuted crimes against the Serbian people.[1555] There was no cover up of crimes in the MUP.[1556]

759. The second war-time Prime Minister, Vladimir Lukic, stressed the demand for judicial and prosecution organs to carry out investigations and said that criminals should not be forgiven.[1557] This government programme had President Karadzic's full support.[1558] In 1993 and 1994 Lukic's Government continued with the efforts to detect, document, investigate and punish (war) crimes regardless of the ethnicity of the victims and perpetrators.[1559] In 1994, also President Karadzic demanded taking of vigorous measures and actions on documentation of war crimes and prosecution of the perpetrators, regardless of the ethnicity of the victim and the perpetrator, expressing dissatisfaction with the slow pace in this area.[1560]

760. Finally, the Government of the third war-time Prime Minister, Dusan Kozic, continued the fight against war crimes by giving powers to the MUP and the Ministry of Justice to collect information on crimes against humanity and international law.[1561] This related to victims of all nationalities, and the Government had the support of President Karadzic for this decision.[1562]

[1552] P2761, p. 17
[1553] Stanisic, T. 46540
[1554] Stanisic, T. 46398
[1555] D3563, para 26
[1556] Macar, T. 39525; Planojevic, T. 36297; Kljajic, T. 42239-40
[1557] D3060, p. 8; D3563, para 21
[1558] D3563, para 21
[1559] D3577; D3563, paras 40, 60, 91; P3142, p. 12; D3595, p. 1
[1560] D3663, para 31; Macar, T. 39524
[1561] D3373, p. 2; D3364, para 18
[1562] D3364, para 18

7. Central Authorities Did Not Create Climate of Impunity that Furthered Crimes Against Non-Serbs

761. The Prosecution alleges that President Karadzic created a policy of not investigating or prosecuting crimes against non-Serbs, and thus created a climate of impunity that furthered the crimes. In support of its claims, the Prosecution argues that several trials for crimes against non-Serbs were held after the war, omitting to add, as we will see in this chapter, that those trials were held on the basis of the investigative and other evidence collected by the Republika Srpska authorities during the war. We shall now examine why not all crimes against non-Serbs were tried during the war.

a. Republika Srpska Judicial Organs Did Not Have Capacity and Sufficient Time to Try All Cases of Crimes Against Non-Serbs During the War

762. In the summer of 1992, Novak Todorovic was told by the Main Staff that they had problems with the establishing the military justice system because the officers who worked at the Military Prosecutor's Office in Sarajevo left for Serbia when the war started.[1563] Todorovic was asked to report to the VRS Main Staff in order to assist with the urgent establishment of military courts and military prosecutor's offices.[1564] At the time, the civilian justice system was in chaos, while the military justice system did not exist.[1565] Soon thereafter, Todorovic received a decree from the President on his appointment to the duty of President of the Supreme Military Court(SMC).[1566]

763. Upon taking up office, Todorovic had only one associate who had been appointed Military Prosecutor.[1567] The two men had no office supplies.[1568] The Court gradually filled in the vacant post of judges and prosecutors and in early 1993 its work intensified, with between three to five judges in a first instance military court.[1569] There was one

[1563] D2986, para 2
[1564] D2986, para 2
[1565] D2986, para 3
[1566] D2986, para 3
[1567] D2986, para 4
[1568] D2986, para 4
[1569] D2986, para 6

prosecutor and two deputy prosecutors in a military court.[1570] When the war ended, there were five judges in the SMC.[1571]

764. Todorovic instructed the judges to prepare the guidelines for criminal prosecution with special emphasis observing the Geneva Conventions, as well the need for criminal prosecution of everyone who committed a crime, regardless of ethnicity.[1572]

765. Savo Bojanovic, a judge of the Bijeljina Military Court, testified that judges were selected and nominated by the VRS solely on the basis of moral and professional qualifications. [1573] All candidates for military judges and prosecutors underwent mandatory checks.[1574]

766. [redacted]. [1575] [redacted]. [1576] [redacted] [1577] [redacted]. [1578]

767. In August 1992, General Gvero wrote to Prime Minister Djeric that the VRS, in accordance with the decision of the Presidency, established first-instance military courts and prosecutor's offices and urgently requested personnel.[1579] [redacted]. [1580] [redacted]

[1570] D2986, para 6
[1571] D2986, para 6
[1572] D2986, para 7
[1573] D3076, para 4
[1574] D3076, para 6
[1575] [redacted]
[1576] [redacted]
[1577] [redacted]
[1578] [redacted]
[1579] D1752
[1580] [redacted]

[redacted][1581]

768. From its inception, the prosecutor's office encountered many problems in its work that prevented it from acting more efficiently.[1582] Even under such difficult circumstances, by September 1992 the military prosecutors had prepared several thousand cases.[1583]

769. In his report on the work of the military courts, the SMC President Todorovic summarized all the problems that the military judiciary had to deal with: the lack of basic accommodation for the judges and court employees;[1584] everyone carried weapons; inadequate staffing of military and civilian police organs;[1585] jurors avoided invitations to attend sessions, because they did not want to get on the wrong side of the accused, principally if the juror and the accused were from the same area;[1586] non-appearance of witnesses;[1587] lack of experts from various fields;[1588] accused were not accessible to the law-enforcement organs;[1589] chronic lack of fuel hindering their apprehension;[1590] etc. The perpetrators of crimes were usually people who came to the VRS as volunteers and the policy of the military judiciary was to prosecute them rigorously and pass severer sentences due to their danger to society.[1591]

770. Military prosecutors also worked under extremely difficult conditions, as set out by the 1. KK Prosecutor Jovicinac, who told the Assembly that the prosecutors had to be safeguarded by a platoon of military police during trials for serious offences.[1592] In December 1994 there were still problems and confusion about the territorial jurisdiction of Military Courts, which was cleared up by an order from President Karadzic.[1593]

[1581] [redacted]
[1582] D1755, p. 1; [redacted]
[1583] P3605, p. 2
[1584] D2987, p. 4
[1585] D2987, p. 4
[1586] D2987, p. 4
[1587] D2987, p. 5
[1588] D2987, p. 5
[1589] D2987, p. 7
[1590] D2987, p. 10
[1591] D2987, p. 16
[1592] P1381, p. 74
[1593] D1492

771. This dire situation is the main reason for not completing all trials during the war that, from a judicial perspective, lasted "only" three and a half years. Unlike the RS judiciary, The Hague Prosecution and Trial Chambers have **everything** that is necessary for expeditious trials: sufficient staff, financial and material resources, know-how, technology, and above all, peaceful work environment. None of which was available to the RS judges and prosecutors. Nevertheless, ICTY indictees spend years in prison before the trial begins.

772. For example, Seselj spent **four and a half years in detention**. His time in detention alone is longer than the entire war in Bosnia. The Prosecution has been investigating crimes in Bosnia since 1995, including the chief Prosecutor in this case. Despite all the time and resources available for the ICTY organs, Seselj still does not know whether he is convicted or not after **11 years in detention**. Nevertheless, the Prosecution has the audacity to reprimand the RS (local) authorities which, in time of chaos and civil war, held non-Serbs in detention **longer than three days.** This is called double standards. Another ICTY prisoner was Momcilo Krajisnik, who spent **four years** in the pre-trial detention and **nine years** in the UN Detention Unit before his case was completed. Therefore, the judges in this case should put themselves in the RS judges' shoes before they endeavour to adjudicate this issue.

b. Military Judiciary was Independent

773. Novak Todorovic testified that there were no interventions or interference in his work from the military or civilian authorities.[1594] Todorovic monitored the work of the military prosecutor's offices.[1595]

774. Savo Bojanovic testified that the work of a military court was independent and no interference from the outside was allowed by anyone, whether civilian or military authorities.[1596] None of the judges was a member of the SDS.[1597] Bojanovic and his colleagues were never ordered by anyone as to how to judge a case.[1598]

[1594] D2986, para 11
[1595] D2986, para 11
[1596] D3076, paras 8,21

775. [redacted][1599] [redacted][1600] [redacted].[1601] [redacted].[1602]

776. [redacted][1603] [redacted][1604]

777. Petar Skrbic testified that military courts were independent in their work in terms of any influence from the commands or other authorities.[1605]

778. Military judges could only act upon a request filed by the prosecutor who was acting on the basis of a criminal report made by the police, either civilian or military.[1606] If the prosecution launches a case, the case is taken over by an investigating judge.[1607] After the investigating judge completes his investigation, the case is sent back to the prosecutor who may decide to discontinue the prosecution, bring an indictment or request an additional investigation.[1608] After having launched a case, the prosecutor may at any time decide to discontinue the prosecution resulting in the discontinuing of proceedings.[1609]

779. General Subotic testified that the military courts issued about 300 judgements for crimes against Muslims or Croats.[1610] Around 90 per cent involved convictions.[1611] Subotic testified that he never attempted to exert influence or advise military judges or prosecutors, including Prosecutor Jovicinac, how to conduct trials, and that President

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[1597] D3076, para 6
[1598] D3076, para 17
[1599] [redacted]
[1600]
[1601]
[1602]
[1603]
[1604]
[1605] Skrbic, T. 26034
[1606] D2986, para 13
[1607] D2986, para 13
[1608] D2986, para 13
[1609] D2986, para 13
[1610] D3695, para 208
[1611] D3695, para 210

Karadzic also never exerted any pressure on military courts or the Office of the Prosecutor. [1612]

c. Releasing From Detention Did Not Depend on Ethnicity

780. Article 190 (2) and (3) of the SFRY Law on Criminal Proceedings which was in force in Republika Srpska, stipulated that the duration of custody must be kept to the shortest necessary time and that throughout proceedings custody shall be terminated as soon as the grounds on which it was ordered cease to exist.[1613] Article 197 (3) stated that if the indictment is not brought before the expiration of the custody period, the accused shall be released.[1614] Article 198 envisaged that "in the course of the investigation, the investigating judge may terminate pre-trial custody in agreement with the public prosecutor when proceedings are being conducted on his petition, unless pre-trial custody is terminated because the period of its duration has expired."[1615]

781. Releasing someone from custody does not mean that proceedings (prosecution) have been discontinued. [1616] For example, in a murder and theft case where the perpetrators were Serbs and the victims Muslims, one of the co-accused, Rade Novakovic, spent in custody from 5 March to 27 April 1995, and was subsequently in 1995 convicted for a crime of murder as aider and sentenced to a term of imprisonment of three years.[1617] Another co-accused in the same case, Zlatan Tomic spent in custody merely three days, from 5 until 8 March 1994, but was in the end convicted for a crime of aggravated theft and sentenced to a term of imprisonment of one year.[1618] Also, is it not true that the ICTY released from detention persons charged with the crimes against humanity to await their trials at home?[1619]

[1612] D3695, para 212
[1613] P6178
[1614] P6178, p.5
[1615] P6178, p.5
[1616] D2986, para 14
[1617] D1467; D1468, pp. 1-3
[1618] D1467
[1619] For instance, Halilovic, Hadzihasanovic, Oric, Haradinaj, Sainovic, Ojdanic, Miletic, Gvero, Mico Stanisic, Simatovic

782. President Karadzic never influenced the length of custody in any one case.[1620] [redacted][1621] If anything, when he learned about oversights relating to the release of persons detained, President Karadzic demanded immediate inspection of the work of the military prosecutor's office and detection of any possible errors or crimes of omission.[1622]

783. [redacted][1623] [redacted][1624] although they were suspected for organising and arming forces that killed six members of the VRS, throwing a number of them into a well and burning others.[1625]

784. [redacted][1626] [redacted][1627] [redacted][1628] [redacted][1629].

[1620] N. Todorovic, T. 34104
[1621] [redacted]
[1622] D1419
[1623] [redacted]
[1624] [redacted]
[1625] D1896
[1626] [redacted]
[1627] [redacted]
[1628] [redacted]
[1629] [redacted]

d. Pressure On The Judiciary Was Individual and Not Result of State Efforts

785. Dr. Karadzic does not claim that there had been absolutely no pressures on the judiciary, but such pressures were not the result of a state policy to create a climate of impunity for crimes against non-Serbs.

786. [redacted] Novak Todorovic testified that if there was pressure on the military judiciary, it could only come from the relatives and friends of indictees or comrades-in-arms who either threatened that they would attack the Military Court, asking in exchange for the detainees to be released, or forcefully took away the convicted person from prison.[1630] [redacted][1631] [redacted][1632]

787. [redacted][1633] [redacted][1634] [redacted][1635] There were proceedings against the VRS members for crimes against non-Serbs or POWs.[1636]

788. The VRS Main Staff Military Prosecutor's office issued clear guidelines to military prosecutor offices and courts regarding criteria for criminal prosecution, instructing them to work strictly in accordance with the law.[1637] Having informed the subordinate offices in detail about the legal qualifications and examples of crimes against humanity and international law[1638] the Military Prosecutor ordered all commands of the VRS units to work on uncovering all cases of war crimes.[1639] These instructions were

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[1630] [redacted] D2986, paras 15-16; D1801, p. 2
[1631]
[1632]
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[1634]
[1635]
[1636] D2995, p. 5
[1637] P3606, p. 1
[1638] P3606, pp. 7-8
[1639] P3606, p. 9

intended for all organs obligated by law to identify and report the perpetrators of crimes and authorised to initiate and conduct criminal proceedings.[1640] Already in August 1992, the VRS Main Staff Military Prosecutor instructed subordinated prosecutor's offices to give priority to crimes against humanity and international law.[1641]

e. Military Judiciary was Impartial and Non-Discriminatory

789. [redacted][1642] [redacted][1643] [redacted][1644] [redacted]

790. [redacted][1645]

791. Novak Todorovic testified about cases against Serbs for crimes committed against non-Serbs, such as the murder of a Czech civilian in Grbavica and the rape of a Muslim woman by members of the VRS, who were both sentenced to long prison sentences.[1646]

792. Savo Bojanovic testified that the Bijeljina Military Court in its work did not discriminate on the basis of religion or ethnic background of either the accused or victims.[1647] There were many cases involving the release of Muslims due to insufficient evidence.[1648]

793. If a Serb killed a Serb he was sentenced to the same or similar sentence as a Serb who killed a Muslim or a Croat, for the same crime.[1649] The case against Jovo Pejanovic,

[1640] P3606, p. 9
[1641] P3627, p. 4
[1642] [redacted]
[1643]
[1644]
[1645]
[1646] D2986, para 18
[1647] D3076, paras 10, 21
[1648] D2990; D2991; D2992; D2986, para 17
[1649] D2986, para 19; N. Todorovic, T. 34082

where the victim was a Muslim, is an example that all witnesses were treated equally, regardless of their ethnicity.[1650] The SMC held that "it is not possible to accept as a valid reason[...]that the truthfulness of statements of witness Ramusovic Suada cannot be trusted because this is a witness of Moslem nationality. Authenticity of evidence can in no case be assessed on the basis of national belonging, and should be determined on the basis of objective criteria."[1651]

794. As regards sentencing policy, there was nothing the President could do.[1652] Not even the president of the SMC could provide any suggestions in this regard because every Chamber had their direct access to their respective cases, and only they could try according to their own professional conscience.[1653]

795. There was no hushing up in any single case.[1654] [redacted][1655] [redacted][1656] [redacted][1657]

796. [redacted].[1658] [redacted].[1659] [redacted][1660] but unlike the Serbs, non-Serbs were freed from criminal prosecution by President Karadzic's decision on amnesty, even when they committed war

[1650] D3000; D3001
[1651] D3000, p. 2; D2986, para 24
[1652] N. Todorovic, T. 34105
[1653] N. Todorovic, T. 34106
[1654] Bojanovic, T. 34829
[1655] [redacted]
[1656]
[1657]
[1658]
[1659]
[1660]

crimes.[1661] [redacted]

[redacted][1662]

f. President Karadzic Did Not Exert Pressure on the Military Justice System

797. President Karadzic insisted on the independence of the justice system.[1663] Neither President Karadzic personally nor anyone from the Presidency or from his office, called to intervene in a case or on someone's behalf.[1664] President Karadzic insisted on the need to write and talk about the military justice system and its judgements so that people would be aware of the existence of the system and that the law must be obeyed, and in general, to achieve a preventive effect on the commission of crimes.[1665]

798. President Karadzic did not interfere in the work of the Military Prosecutor's Office of the 1st KK or any other corps.[1666] The prosecutors were not members of any party, including the SDS.[1667] There were proposals by some SDS officials for the prosecutors to become members of the SDS, but this did not meet with support of either President Karadzic or General Mladic.[1668] If President Karadzic had contacts with the Military Courts or the Prosecution, it was only to request that the proceedings be expedited and judgements rendered, such as was the case with the *Valter* group consisting of soldiers who committed the crime of murder against the Muslims in Prijedor.[1669]

799. President Karadzic continually insisted that the judiciary had to be effective, just and that it had to rule in accordance with the law. An example is a letter from President Karadzic to the SMC.[1670] President Karadzic insisted that the perpetrators of crimes, regardless of the ethnicity of the perpetrator and victim, must be remanded in custody.

[1661] D1770; D1771, pp.1-2; [redacted]
[1662] [redacted]
[1663] D2986, para 8
[1664] D2986, para 8
[1665] P1381, p. 85; D2986, para 8
[1666] D2986, para 9
[1667] D2986, para 9
[1668] D2986, para 9
[1669] D3695, para 297
[1670] D2993

Such requests were forwarded to first instance military courts[1671] which depicts the efforts of the authorities and judicial organs to tighten the criteria for release of suspects from custody.[1672] Whenever President Karadzic received information about omissions of the justice system, he would react promptly, urging immediate corrections of omissions and strict adherence to the law. [1673]

800. [redacted][1674][redacted][1675]

801. [redacted][1676][redacted][1677][redacted][1678][redacted][1679]

802. [redacted][1680][redacted][1681]

[1671] D2994; D2995
[1672] D2986, para 10
[1673] D2997; D2998; D2986, para 10
[1674] [redacted]
[1675] [redacted]
[1676] [redacted]
[1677] [redacted]
[1678] [redacted]
[1679] [redacted]
[1680] [redacted]
[1681] [redacted]

803. [redacted][1682] [redacted][1683] [redacted].[1684] [redacted][1685] [redacted][1686] These are serious allegations with no supporting evidence. In fact, the evidence clearly shows that Latkovic was a Serb,[1687] [redacted][1688] [redacted]

[redacted][1689]

[redacted][1690]

805. [redacted][1691] However, on 22 September 1993 President Karadzic put the SMC and the Prosecutor's Office temporary under his direct jurisdiction until the final adoption of regulations on the organisation and the work of military disciplinary courts,[1692] which were accepted with the adoption of the Law on Military

1682 [redacted]
1683 [redacted]
1684 [redacted]
1685 [redacted]
1686 [redacted]
1687 D1909, pp. 1,4
1688 [redacted]
1689 [redacted]
1690 [redacted]
1691 [redacted]
1692 P3776

Prosecutor's Offices and Courts on 31 December 1993.[1693] [redacted][1694]

806. In addition, the President of the Republic had authority over military prosecutor's offices and courts in matters regarding military disciplinary measures, which to a certain extent encroach upon matters of criminal law.[1695]

807. Another reason for devoting special attention to the SMC and the Military Prosecutor's Office was a VRS rebellion in Banja Luka and a danger of a military coup.[1696] After the situation calmed down, only five days after President Karadzic's 22 September 1993 order, the Government adopted on 27 September 1993 the draft of a new Law on Military Courts and Prosecutor's Offices.[1697] The draft law ensured quicker resolution of cases, both in military and regular courts.[1698]

808. Finally, President Karadzic himself explained in the Assembly the reasons for his decision to temporarily place the SMC and the military prosecutor's offices under his limited authority

> The civilian authority, except me, has no possibility to control the Army[...]The Police is under the competency of the Commands although it should be under the competency of the Ministry. The courts are under the competency of the Commands. The Supreme Court is the only one under the competency of the Main Headquarters while the others are under the competency of these Commands. When I realised that, I have ordered that they would be directly under my competence until[...]the complete military judiciary become subordinated to the Supreme Court of the Republika Srpska[1699]

[1693] D1756; D2986, para 25; [redacted]
[1694] [redacted]
[1695] D2986, paras 25-37;P2602, p. 2; P2603, pp. 9-10, 16-17, 24; D3002, p. 4; D1756, pp. 1-2,4,6; P2603, pp. 10, 13-15; D1756, pp. 1-2,4, 6
[1696] D2986, para 33; [redacted]D1907, p.1; D1878, p. 4; D1908
[1697] P3141, pp. 4-5
[1698] D2986, para 34
[1699] P1379, p. 427

g. Civilian Judiciary Did Not Create Climate of Impunity for Crimes Against Non-Serbs

809. [redacted].[1700] [redacted].[1701] When the military courts started to operate, jurisdiction between the military and civilian courts was disputed as was the question of jurisdiction over the perpetrators of criminal offences.[1702] In 1993, the position was taken that military courts should try perpetrators who committed criminal offences while on duty, and that regular courts should have jurisdiction for all other criminal offences.[1703]

810. Jevto Jankovic, a Banja Luka investigative judge, performed his duties on the basis of moral and professional qualities and during the war was not a member of any political party.[1704] The judges of the Banja Luka Lower Court worked solely on the basis of the law and were never influenced by anyone on how to conduct investigations or punish crimes.[1705] The perpetrators of crimes were treated the same regardless of their ethnicity or religion, and the Serbs were tried for crimes committed against non-Serbs.[1706]

811. Vedran Mandic, together with others, was tried for crimes against non-Serbs in Banja Luka and was in the end killed in the attack on the Police Station in Banja Luka.[1707] During the attack, a Serb State Security member, Goran Bijelic, was also killed.[1708]

812. Bosko Bavarcic, a Serb, was convicted for murder of two Muslims and sentenced on 30 April 1993 to five years in prison.[1709] The Deputy Public Prosecutor appealed the conviction, requesting the Banja Luka High Court to impose a longer sentence of imprisonment on the accused.[1710] The appeal of the Banja Luka Public Prosecutor was

[1700] [redacted]
[1701] [redacted]
[1702] D3076, para 16
[1703] D3076, para 16; Bojanovic, T. 34845
[1704] D4235, para 2
[1705] D4235, para 7
[1706] D4235, para 7
[1707] D4235, para 7; D4077, para 41
[1708] J. Jankovic, T. 46023; D4077, para 41
[1709] D4240, pp. 14-15; D4235, para 7; J. Jankovic, T. 45956-7
[1710] D4240, pp.10-1

partially upheld on 13 July 1993 and the sentence was increased to a term of imprisonment of eight years. [1711]

813. On 23 February 1993, a Serb called Sredo Aleksic, was tried and convicted for the crime of attempted aggravated robbery and sentenced to a prison term of one year.[1712] The injured party was a Muslim woman.[1713] The Court heard evidence of expert Dr. Sead Jufufbegovic, also a Muslim.[1714] The Banja Luka Public Prosecutor appealed the decision, requesting the Banja Luka High Court to sentence the accused to a longer prison term.[1715] Finally, after the war, on 6 October 1999, the Banja Luka District Court upheld the appeal and sentenced Aleksic to one year and six months in prison.[1716]

814. As could be seen from this example, the fact that some trials were concluded after the war, had nothing to do with some non-existent policy to not try Serbs for crimes committed against non-Serbs. Similarly, in other cases, as we will see, extensive investigative actions were conducted during the war and the fact that the accused was tried or convicted after the war had only to do with the problem of time or resources. Investigative actions were taken in order not to destroy evidence which could not be obtained at a later date.[1717]

815. In 1993, President Karadzic was urging the Assembly that the institutions "are obliged to bring every case to an end" and asked "if anyone from the top has ever stopped any procedure, some previous action, and some investigation".[1718] He further warned that "the courts and their promptness are to watched over constantly, as well as the legality of their work[...]All abuses of power and other criminal acts that were committed in the Ministry of the Interior are to be investigated and punished by law[...]we have to do it that way[…]Legal state exists when one is not allowed to intervene when a person is to be prosecuted. This person is to be prosecuted automatically and it goes without saying in legal state."[1719]

[1711] D4240, p.3
[1712] D4239, p. 8
[1713] D4239, p. 9; D4235, para 7
[1714] D4239, p. 9
[1715] D4239, p. 7
[1716] D4239, p. 3
[1717] J. Jankovic, T. 45949
[1718] P1379, p. 407
[1719] P1379, p. 408

816. In May 1994, President Karadzic attended a Government meeting together with Prime Minister Lukic during which reports of threaths received by judges presiding over cases against Serbs were discussed.[1720] It was concluded that the safety in work of these judges should be guaranteed.[1721] Nobody in Republika Srpska was above the law. Proceedings were even initiated against Prime Minister Lukic, who in the end was acquitted by the Banja Luka court.[1722]

h. Specific Cases Show that there was No Climate of Impunity for Crimes Against Non-Serbs

817. The Prosecution alleges that there were cases of Serb soldiers for committing crimes of murder under Article 36 against Muslims and Croats, but that none of them were concluded or properly prosecuted during the war unless the case also involved Serb victims.[1723] As we will see in the further text, this allegation is contradicted by the evidence in this case.

1. Banja Luka Military Court Cases

a. Miladin Vranjes Case

818. On 18 July 1993, Miladin Vranjes, a Serb,[1724] was indicted for committing a murder, when he came to the house of the injured party Dzemil Abdic, a Muslim,[1725] looking for his son Hamo, and then upon not finding him he fired two bullets in his head.[1726]

819. [redacted][1727] [redacted]

[1720] P3134; D3563, para 84
[1721] D3563, para 84
[1722] P3134; P3131; D3563, para 81
[1723] N. Todorovic, T. 34077-8
[1724] N. Todorovic, T. 34096
[1725] N. Todorovic, T. 34096; [redacted]
[1726] D1757, pp. 1-2
[1727] [redacted]

[redacted][1728] [redacted][1729] This case is only one of several dozens of murder cases against Serbs registered in the Banja Luka Military Court Register.[1730]

820. [redacted][1731] [redacted][1732] [redacted] This judgment was confirmed by the SMC.[1733] [redacted][1734]

821. [redacted][1735] [redacted]

822. In March 1993, the Banja Luka Military Prosecutor indicted two Serbs, members of the VRS for killing a Serb of a same surname.[1736] [redacted][1737] [redacted][1738]

1728 [redacted]
1729 [redacted]
1730 P3607, p. 59
1731 [redacted]
1732 [redacted]
1733 D1762 p.2
1734 [redacted]
1735 [redacted]
1736 D1764
1737 [redacted]
1738 [redacted]

b. Danilusko Kajtez (Skrljevita) Case

823. [redacted][1739][redacted][1740][redacted][1741]

824. [redacted][1742]

825. [redacted][1743][redacted][1744] In the case of Kajtez, there was no sentence at all when the accused were released from detention.

826. [redacted][1745] Kajtez was not freed from criminal responsibility.

827. [redacted]

1739 [redacted]
1740 [redacted]
1741 [redacted]
1742 [redacted]
1743 [redacted]
1744 [redacted]
1745 [redacted]

[redacted][1746][redacted]

[redacted][1747] However, Kajtez' threats were in vain.

828. On 2 June 1993, the Military Prosecutor issued an indictment against Kajtez and Maksimovic for committing multiple murders of nine Croats from Skrljevita requesting the Banja Luka Military Court to hold a trial and call the representatives of families whose family members had been killed.[1748] The Prosecutor stated that the defence of the accused was completely unacceptable because not a single victim had been armed, nor were any of them[...]members of any paramilitary formation[...]This case is specifically a case of ruthless revenge[...]the prosecution charges them with the crime of multiple murder with premeditation."[1749]

829. The language used by the VRS Prosecutor clearly does not suggest a state policy of persecutions of non-Serbs. The Prosecution also proposed a hearing of the only surviving witnesses because it would establish who was the original initiator of the murders.[1750] There can be no doubt that the VRS Prosecutor in this case acted responsibly. On 9 July 1993, the Military Court ordered a pre-trial detention of the accused in the interest of conducting proceedings without interruption.[1751]

830. [redacted][1752][redacted]

[redacted][1753]

[1746] [redacted]
[1747] [redacted]
[1748] P3519
[1749] P3519, pp. 2-3
[1750] P3519, p. 3
[1751] P3520
[1752] [redacted]
[1753] [redacted]

[redacted][1754][redacted]

831. [redacted]

[redacted][1755]

832. [redacted]

[redacted].[1756][redacted]

[redacted][1757]

833. [redacted]

[redacted][1758][redacted]

[redacted][1759][redacted]

[redacted].

834. [redacted]

[redacted][1760]

[redacted][1761][redacted]

[redacted][1762]

835. [redacted]

[redacted][1763][redacted]

[redacted]

1754 [redacted]
1755 [redacted]
1756 [redacted]
1757 [redacted]
1758 [redacted]
1759 [redacted]
1760 [redacted]
1761 [redacted]
1762 [redacted]
1763 [redacted]

[redacted][1764] On the same day, the Court suspended detention of the accused who were detained from the moment of their arrest until the completion of the trial.[1765] [redacted]

[redacted][1766]

836. In making the decision on release from detention the Court acknowledged the fact that the accused had been in detention for a considerable time and that the deputy military prosecutor had proposed to present additional evidence, but that it was uncertain when this evidence could be collected, or in other words, when it would be possible to schedule the trial again, which certainly did not mean that the accused would not be criminally prosecuted.[1767] [redacted]

[redacted].[1768] [redacted]

[redacted][1769] [redacted][1770]

837. Back in December 1992, there was a separate trial for the same criminal offence conducted against an underage man called Todo Vokic.[1771] The murder was not committed as part of a military operation and for this reason it was characterized as a multiple murder.[1772] [redacted]

[redacted][1773]

c. Gvozden (Sasina) Case

838. On 5 December 1992, the Military police filed a criminal report to the Banja Luka Military Prosecutor's office against five Serbs for avenging their deceased cousin by killing a number of citizens of Croat nationality.[1774] The scene was secured and on-site

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[1764] [redacted]
[1765] P3521
[1766] [redacted]
[1767] P3521, p. 2; [redacted]
[1768] [redacted]
[1769] [redacted]
[1770] [redacted]
[1771] D1793; [redacted]
[1772] D1793, p. 33; [redacted]
[1773] [redacted]
[1774] D1794

investigation conducted.[1775] [redacted] [1776]

839. The 1. KK also informed the VRS Main Staff on 6 December 1992, under heading "Unusual incidents" that "killings were committed by a still unidentified group of people. It is known that a man called Gvozden was a member of that group. It is assumed that the motive for the killings was revenge, because, according to witnesses, Gvozden's brother was killed on the front a couple of days ago. Investigation is underway and the results will be sent to you."[1777]

840. [redacted][1778] Again, the case itself was not abandoned. In October 1993, the Military Court inquired with the Sanski Most brigade about the whereabouts of the accused and was informed in November 1993 that they fled to Serbia.[1779] In October 1994, the Military Court addressed the Minister of Justice of Serbia sending him the indictment, detention order and bring-in order for the accused in this case.[1780] [redacted] [1781]

d. Goran Amidzic (Velagici) Case

841. On 5 June 1992, the Military Police filed a criminal report against Amidzic and another 11 Serbs for the murder of non-Serbs in Velagici.[1782] A week later, the detained soldiers wrote a complaint to General Talic explaining that "at one point, it was pitch dark and all prisoners suddenly started running towards us to take our weapons. We had to shoot to defend ourselves because these men were the most extreme-oriented Muslims".[1783] There is no evidence whether General Talic received, read or responded to this appeal.

[1775] D1794, p. 2
[1776] [redacted]
[1777] D3909, p. 2
[1778] [redacted]
[1779] D1795, pp.1-2
[1780] D1796, p.1
[1781] [redacted]
[1782] P3613
[1783] P3614, p. 2

842. The crime took place at the beginning of the war when the courts were still not operational.[1784] Therefore, the whole situation was in a kind of a limbo, because one could not keep the suspects in custody forever without having them tried. Once the military courts were established, on 8 March 1993, the Military Prosecutor requested the Investigating Judge to conduct an investigation against Amidzic and another 11 Serbs for the murder of 80 non-Serb civilians, and asked that evidence be collected and detention ordered for the suspects.[1785] [redacted][1786]

843. [redacted][1787]

844. On 29 July 1993, the Military Prosecutor proposed to temporarily "stop the investigative proceedings against Goran Amidzic and the other suspects."[1788] The Prosecutor explained that his proposal was the result of the fact that the majority of the suspects were inaccessible to the prosecuting organs and because of the situation that arose when the two suspects were brought in and placed under custody.[1789] The situation was so serious that even the deputy Prime Minster and the chairman of the Kljuc Executive Committe suggested that the proceedings should temporarily be suspended.[1790]

845. [redacted][1791] The Military Court did as proposed by the Prosecutor.[1792]

[1784] N. Todorovic, T.34071
[1785] P3513
[1786] [redacted]
[1787] [redacted]
[1788] P3616; [redacted]
[1789] P3616
[1790] P3616
[1791] [redacted]
[1792] P6143

846. [redacted][1793] But the question posed by Judge Kwon and the answer given by the witness would have entirely been spot on if the proceedings had taken place under normal circumstances. However, this is a case of a classical *force majeure*. There was a state of anarchy, where an entire brigade rebelled threatening the stability and security of an entire municipality, and possibly a civil war within the Serbian people. The Trial Chamber should not expect the impossible from the weak authorities that were being established during the time of war. As soon as the conditions allowed it, the investigation resumed in May 1996.[1794] **At that time, the same political party and the same people** were in power in Republika Srpska. Therefore, this case cannot be the evidence of a state discriminatory policy.

e. *Kalajdzija Case*

847. In September 1992, Goran Kalajdzija, a Serb, shot several Muslim citizens from Sipovo.[1795] The Serb authorities arrested Kalajdzija several days later, and took statements from the Muslims involved in the case.[1796] On 10 February 1993, the Military Prosecutor issued an indictment against Kalajdzija for the crime of attempted murder and involuntary manslaughter, and, *inter alia*, requested that Muslim witnesses be heard.[1797] The motive for the crime was revenge, because Kalajdzija had previously been beaten by the relatives of the injured parties.[1798] President of the SMC reported that Goran Kalajdzija was in detention from 1 September 1992 to 22 October 1992, that the last hearing was held on 16 August 1994, and that an order to bring him in was issued.[1799]

848. When the crime was committed, the Serb authorities did everything that was in their power for a trial to be conducted at some point. There was an on-site inspection by the Ministry of the Interior, with a crime technician who was involved, and all the

[1793] [redacted]
[1794] P3774
[1795] D4278, p. 1; [redacted]
[1796] D4278, pp. 2-3
[1797] D1799, pp. 1-2; [redacted]
[1798] D1799, p. 3
[1799] D2995, p. 20

evidence was gathered.[1800] Eventually the Trial Judgement was founded on the evidence gathered at the time when the crime was committed. [1801]

f. Ljubomir Stankovic Case

849. [redacted][1802].

850. [redacted][1803] [redacted][1804] [redacted][1806] [redacted].[1807] The trial of Stankovic alone is sufficient for dismissing The Hague Prosecution's allegations that non-Serbs were denied access to the Republika Srpska's judicial system.

851. [redacted][1808] [redacted]

[1800] Stanisic, T.46393
[1801] Stanisic, T.46393
[1802] [redacted]
[1803]
[1804]
[1805]
[1806]
[1807]
[1808]

[redacted][1809]

852. [redacted][1810]. [redacted][1811]

853. [redacted][1812] [redacted][1813]

854. [redacted][1814] [redacted][1815].

855. [redacted][1816] [redacted][1817]

1809 [redacted]
1810 [redacted]
1811 [redacted]
1812 [redacted]
1813 [redacted]
1814 [redacted]
1815 [redacted]
1816 [redacted]
1817 [redacted]

g. Dragan Djordjevic a.k.a. Crni Case

856. [redacted][1818]

857. [redacted][1819] [redacted][1820] [redacted].[1821] This is a good example that releasing accused from detention had nothing to do with the ethnicity of the injured party, because the Serbs were also victims of the crime in this case. The fact that the accused fled after they had been released also had nothing to do with the nationality of the victims, i.e. there was no plan by the Court based on an ethnic basis to release the Serbs in order to let them flee before the proceedings were concluded, because, as already pointed out, the victims of the crime included Serbs.

h. Sugic (Bastasi) Case

858. On 15 August 1992, five citizens of Muslim nationality were murdered in the village of Bastasi.[1822] The authorities made an on-site investigation report,[1823] a criminal report was filed,[1824] the suspects were arrested and escorted into custody,[1825] where they remained due to a flight risk,[1826] Muslim witnesses were called to identify the perpetrators,[1827] forensic medical examinations were carried out of the victims' bodies,[1828] photo documentation made,[1829] indictment issued,[1830] as well as many other investigative activities conducted. If the authorities had had a plan to cover up crimes against non-

[1818] [redacted]
[1819] [redacted]
[1820] [redacted]
[1821] [redacted]
[1822] D1798, p.2
[1823] D1798, p. 2
[1824] D1798, p. 4
[1825] D1798, p. 6
[1826] D1798, p. 19
[1827] D1798, p. 20
[1828] D1798, pp. 32-41
[1829] D1798, p. 44
[1830] D1798, p. 48

Serbs, they would have certainly omitted all the investigative activities mentioned above. [redacted][1831]

859. Again, the motive for these murders was revenge,[1832] and not a state policy directed against the non-Serbs. In fact, as soon as President Karadzic received indications that five civilians of Muslim ethnicity had been murdered in Bastasi, he ordered on 19 August 1992 that the most thorough investigation be conducted and that the perpetrators be identified and brought to justice, and that the Banja Luka and Čelinac police must undertake all measures to protect the civilian population of Čelinac Municipality.[1833]

2. Bijeljina Military Court Cases

a. Salko Kukic Case

860. [redacted][1834] On 2 June 1992, Kukic was killed and on the same day, the investigating judge made an on-site investigation report and the crime scene was photographed.[1835] In July 1992, the police made a report "on solving the murder for gain of Salko Kukic."[1836] On 3 August 1992, the SJB Bijeljina made a ruling on detention of the suspects,[1837] and on the same day filed a criminal report against four Serbs for the crime of murder.[1838] It was a murder for personal gain.[1839] For reasons unknown, their trial did not ensue directly after these events, but the documentation that was gathered in 1992 was re-activated after the war and these individuals are currently serving their sentences for that particular case.[1840]

[1831] [redacted]
[1832] D1798, p. 42
[1833] D0102
[1834] [redacted]
[1835] D3784, p.2
[1836] D3787
[1837] D3785; D3813; D3814
[1838] D3786
[1839] Andan, T. 40824
[1840] Andan, T. 40824

861. [redacted][1841] The Prosecution uses this case to show that there was an organized state persecution of non-Serbs, but it fails to explain (a) why would the state investigate murders of persons it allegedly wanted to persecute, (b) why would the state kill its own military commander (Kukic), and (c) plan to kill its own police official (Jesuric), and, as the Prosecution claims, the paramilitary leader (Mauzer)? Finally, why would the state waste scarce resources on thorough and extensive investigation,[1842] instead of simply covering up the crime as if it never happened? Instead, it made it public and recorded it, because the persecution of non-Serbs was never a policy of the RS state.

b. Cvjetkovic and Jurosevic Case

862. In this case also, the perpetrators were Serbs, and the victims were Muslims. On 29 October 1992, the Military Prosecutor Drinic issued a request for the conduct of an investigation against Cvetkovic and Jurosevic on reasonable grounds for suspicion that they committed a murder of two Muslims on 13 September 1992.[1843] After Dragomir Jurosevic was brought in, he was beaten all night in the civilian police station, but was not beaten a day before he gave a statement to the investigating judge.[1844] So the person who was suspected for killing the non-Serbs was beaten by the Serb police, that same police that was, according to the Prosecution, part of a system that pursued persecutory policies against non-Serbs? No, the Prosecution's case runs against common sense and is simply wrong.

863. On 30 October 1992, the Military Prosecution Drinic requested an expansion of the investigation because the SJB Brcko in the meantime, submitted a new criminal report against Cvetkovic for rape of two Muslim women.[1845] Judge Bojanovic interviewed the suspects and took statements from the victims as witnesses,[1846] who

[1841] [redacted]
[1842] P2930
[1843] D1481, p.2
[1844] D1482, pp. 4-5; [redacted]
[1845] D1483; [redacted]
[1846] D1482; D1484; [redacted] D3076, para 11

thanked judge Bojanovic for his professional attitude and conduct during the taking of the statement.[1847]

864. On 20 November 1992, the Military Court ruled that the detention of the accused be extended for two months until 21 January 1993.[1848] Bojanovic ordered that suspects be remanded in custody and continued conducting the investigation in this case.[1849]

865. On 17 December 1992, the Military Court ordered that witnesses, who were non-Serbs, be interviewed, because they did not respond to the previous summons.[1850] The Court further issued an order to provide expertise on the mental state of the accused, which was compulsory in the case of such serious crimes.[1851] If there had been illegal tendencies to set the accused free, then this would have been *the* opportunity to do so. Just proclaim him mentally unfit to stand the trial, and the problem is solved. However, the state system did not fail and instead the medical expert concluded that the accused at the time of the crime was in a state of diminished capacity, but not significantly.[1852]

866. On 22 January 1993, the remand in custody, which had already been extended once, was rescinded because it expired the previous day.[1853] That did not mean relief from criminal responsibility. It simply meant that the legally prescribed requirements were met for releasing these persons from custody, but also that criminal proceedings continued.[1854] It did not mean automatically that a person would have to remain in custody until the trial started even when the crime of murder is involved.[1855]

867. On 28 January 1993, the investigating judge informed the prosecutor that the court had completed an investigation on Cvetkovic and Jurosevic suspected of committing a crime under Article 36, and sent it back to the prosecution for further action.[1856]

868. However, because the suspects were not members of the army, which was established during the investigation, the military court did not have jurisdiction, and the

[1847] D3076, para 11
[1848] D1485
[1849] D3076, para 12
[1850] D1486; [redacted]
[1851] D1487;
[1852] D1488, p. 4
[1853] D3078, p.2
[1854] Bojanovic, T. 34812
[1855] Bojanovic, T. 34833
[1856] P6181; Bojanovic, T. 34842

case was transferred to the civilian judicial authorities in Brcko, where the offence had been committed.[1857] The Public Prosecutor sent an indictment against Cvetkovic and Jurosevic to the Brcko Lower Court and asked that they be summoned and after the completion of the trial be pronounced guilty and sentenced according to the law.[1858] That is the complete story based on the evidence in this case.

c. Rade Mihajlovic Case

869. [redacted][1859] The Military Prosecutor of the Military Court in Bijeljina, Predrag Drinic, informed the Investigating Judge that a murder had taken place on 27 September 1992 in the Bijeljina barracks, and the Investigating Judge went with the Military Prosecutor immediately to the scene in order to compile an on-site investigation report.[1860]

870. [redacted][1861] The Investigating Judge ordered Military Police to interview the suspect and the persons who were present at the time of the commission of the crime.[1862] The photo-documentation of the scene and the body of the murder victim, as well as the report on the external examination constituted an integral part of the on-site investigation report.[1863]

871. The military police filed a criminal report to the Military Prosecutor on 29 September 1992. [1864] Photographic documentation and the record of scene-of-crime investigation were collected,[1865] and on 30 September 1992, the request for investigation by the Military Prosecutor followed after the criminal report.[1866]

[1857] [redacted] D3076, para 12
[1858] D1490, p. 2; [redacted]
[1859] [redacted]
[1860] D1470, p. 1
[1861] [redacted]
[1862] D1470, p. 2
[1863] D1470, p. 3
[1864] D1471; [redacted]
[1865] D1472; [redacted]
[1866] D1473; [redacted]

872. [redacted][1867].

873. [redacted][1868]

However, on the same day, 5 January 1993, the military prosecutor re-issued the indictment against Mihajlovic,[1869] and the case was again on.

874. On 30 January 1993, the Military Court requested the special brigade of the VRS Eastern Bosnian Corps to provide data for the accused Mihajlovic in connection with his scheduled trial,[1870] [redacted][1871]

875. On 21 February 1993, the Bijeljina Military Court issued an order for wanted circular to be sent out for accused Mihajlovic, because the Court twice scheduled hearings for which the accused failed to appear and did not respond to court summons.[1872] The Court was informed that the Accused fled to Switzerland.[1873] The judge who made the decision to release Mihajlovic from custody pending trial did not know that he would flee.[1874]

876. In 2001 Mihajlovic was sentenced to ten years in prison on the basis of the 5 January 1993 Indictment, which was still in force when he was apprehended.[1875] The judgment was confirmed on appeal.[1876] Since the accused person was a fugitive and returned after the war when the military courts were abolished, the case was deferred to a regular court that passed the judgement convicting Mihajlovic to ten years in prison.[1877]

[1867] [redacted]
[1868] [redacted]
[1869] D1476
[1870] D1477
[1871] [redacted]
[1872] D1478, pp.1-2; D3076, para 14 (Bojanovic)
[1873] D1478, pp.1-2
[1874] Bojanovic, T. 34838
[1875] D1479; [redacted]
[1876] D1480, p. 2
[1877] D1479, p.6; Bojanovic, T. 34815

d. Matovic and Tomic (Cehajic/Aleksic) Case

877. [redacted][1878] [redacted][1879]

878. The RS authorities made official records,[1880] on-site investigations,[1881] photo documentation,[1882] reports on external examination,[1883] took witness statements[1884] and all of this in relation to the Cehajic case only. Since the killing of the Serbs happened subsequent to the killing of the Muslims, the military prosecutor filed a joint request for investigation of both killings (Aleksic and Cehajic),[1885] and the Bijeljina Military Court conducted an investigation into the accused for both killings.[1886] The Military Prosecution then issued an indictment against the accused for both killings of the Serb and the Muslim families.[1887]

879. [redacted][1888]

e. Radovan Micanovic Case

880. On 17 August 1993, the Military Prosecutor issued an indictment against Radovan Micanovic, a Serb, who murdered Hajrija Kazic, a Muslim, after she swore at his Chetnik

[1878] [redacted]
[1879] [redacted]
[1880] P2931, p. 1
[1881] P2931, p. 3
[1882] P2931, p. 7
[1883] P2931, p. 10
[1884] P2931, p. 20
[1885] P2931, p. 34
[1886] P2931, p. 51
[1887] P2931, pp. 54-5
[1888] [redacted]

mother.[1889] On 22 March 1995, the Bijeljina Military Court found Micanovic guilty and convicted him to several years in prison.[1890]

f. Other Cases

881. There were many other cases against Serbs for crimes committed against non-Serbs, such as the case against two Serbs Mile and Nikica Zgonjanin, who committed war crimes against Muslims.[1891] The public prosecutor's office presented to the Trial Chamber the evidence gathered by Bosanski Novi SJB in October 1992,[1892] that also interviewed witnesses of Muslim nationality[1893] and the judgement that was passed after the war was based on the evidence that was collected in 1992. [1894]

882. When a killing of two POWs in Ekonomija in Bijeljina took place, judge Bojanovic recorded all of the facts of the case in the onsite investigation report, with photographic documentation as an integral part of the report and issued a decision for an investigation to be conducted as well as an arrest warrant for an unidentified perpetrator.[1895] The military court reported all this to the ICRC as they were supervising the *Ekonomija* centre. [1896]

883. Further, the Military Court in Bijeljina convicted four members of the VRS for crimes of robbery, rape and indecent acts. In all cases, the injured parties were Muslims. Judge Bojanovic and the criminal chamber ordered detention of the accused until the conclusion of the trial[1897] and when the judgment was rendered, the first accused was found guilty and sentenced to three years in prison, whereas the other three accused received prison sentences between one and two and a half years.[1898]

884. In January 1994, Obrad Tasovac, a Serb, was tried, convicted and sentenced to four years and six months in prison by the Bijeljina Military Court for the murder of a

[1889] D1465; [redacted]
[1890] D1466;
[1891] D4279
[1892] D4279, p. 4
[1893] D4279; Stanisic, T. 46396
[1894] Stanisic, T. 46395
[1895] D3076, para 18
[1896] D3076, para 18
[1897] D3080; D3079
[1898] D3076, para 23; Bojanovic, T. 34818

Croat, Ante Kamenjasevic.[1899] In May 1994, on appeal by the prosecution, the SMC upheld the appeal of the Military Prosecutor and revised the sentence, whereupon the accused was sentenced to a prison term of nine years.[1900]

885. In June 1993, Bora Zigic, a Serb, was found guilty and sentenced to four months in prison for unlawfully misappropriating a motor vehicle in May 1992 from a Muslim from Brcko.[1901] The sentence was suspended in lieu of one year and six months on probation.[1902]

886. There were many cases of theft in which the injured parties were Muslims or Croats and where guilty verdicts against Serbs were handed down, such as against Dragan Stojanovic and Brana Ilic on 27 August 1993,[1903] Bozidar Petrovic on 11 October 1993,[1904] Brano Lukic on 16 September 1993,[1905] Dusan Arsenic on 9 March 1993,[1906] Milan Peric on 22 June 1993,[1907] Cviko and Milorad Radovanovic on 17 June 1993[1908] etc. In all cases of theft, the goods were returned to the owners, if the owner was known.[1909]

887. In the case against Djuric, Pantic et al, who had agreed to take a number of Muslims to the Drina and kill them, all the main accused were found guilty and convicted for the crime of murder.[1910] In the first instance Djuric was sentenced to 14 years in prison but the Bijljina High Court increased the sentence to 20 yeras in prison; Pantic who was originally convicted to 10 years in prison was convicted by the Higher Court to 12 years in prison, while all the others were sentenced up to six years of imprisonment.[1911] [redacted][1912]

888. Other cases involving criminal prosecution of Serbs for the crimes of murder of Muslims before the Military Court in Bijeljina were the cases of Mile Simanic and Milan

[1899] D3081; D3076, para 24
[1900] D3077
[1901] D3082
[1902] D3082, p. 3; D3076, para 25
[1903] D3083; D3076, para 26
[1904] D3084; D3076, para 27
[1905] D3085; D3076, para 27
[1906] D3086; D3076, para 27
[1907] D3087; D3076, para 27
[1908] D3088; D3076, para 27
[1909] Bojanovic, T. 34827
[1910] D1467; D1468; [redacted]
[1911] D1467, pp. 1-3
[1912] [redacted]

Micic,[1913] Marko Filipovic,[1914] while many other cases such as the cases against Marinkovic and Filipovic,[1915] Kostic and Todorovic,[1916] Protic,[1917] Goricanac and Panic,[1918] were deferred to other courts. [redacted][1919]

i. What did President Karadzic Know About Criminal Cases for Crimes Against Non-Serbs?

889. The evidence shows that President Karadzic was informed by the President of the SMC in September 1994 about some of the specific cases discussed above.

890. President Karadzic was informed that Rade Mihajlovic was accused for the crime of murder, that a trial was scheduled to which nobody responded, that it was later established that the accused had gone to Switzerland and that an order for an arrest warrant was issued and a ruling to order detention passed.[1920] There is no information to President Karadzic who the victims of this crime were or that anything illegal had been done by the authorities.

891. Judge Todorovic further informed President Karadzic that accused Obrenko and Miladin Sugic were both in detention from 18 January 1992 to 15 February 1993,[1921] that accused Kajtez and Maksimovic were in detention,[1922] that accused Gvozden was currently free but that an arrest warrant had been issued and that accused Zoran Zigic was also in detention.[1923] Finally, President Karadzic was reported that accused Goran Kalajdzija was in detention from 1 September 1992 to 22 October 1992, that the last hearing was held on 16 August 1994, and that an order to bring him in was issued.[1924]

[1913] D1468, p. 2; [redacted]
[1914] D1469, p. 4
[1915] D1469, p. 5
[1916] D1469, pp. 5-6
[1917] D1469, p. 6
[1918] D1469, p. 6
[1919] [redacted]
[1920] D2995, p. 7
[1921] D2995, p. 17
[1922] D2995, p. 19
[1923] D2995, p. 19
[1924] D2995, p. 20

892. None of the information sent to President Karadzic indicated that illegal activities had been done by the judicial organs, or suggest that the state pursued discriminatory policies against non-Serbs through the judicial organs. This is not odd if one bears in mind that President Karadzic invested serious efforts to help the RS judiciary operate in accordance with the law and prevent or correct omissions that were inherent to any new state system.[1925]

893. It is worth emphasising that President Karadzic especially fought against "numerous flaws, which primarily refer to the release from custody of persons detained under reasonable suspicion of having committed grave criminal offences carrying severe penalties" and that "such omissions have contributed to the deterioration of the general security",[1926] suggesting that "the judicial system should not allow persons accused of murder to await trial at liberty, nor[...]should it allow a full fifteen months to elapse from the time of a murder until the beginning of trial."[1927] Prosecution witness Mico Davidovic confirmed that "this is an effort to restore the rule of law.[1928]

894. President Karadzic also promulgated the Law on the Mandatory Submission of Information on Crimes against Humanity and International Law,[1929] and ordered the VRS units when submitting a criminal report to " list the evidence known to them and take measures to preserve traces of the crime[...]security organs must take the necessary measures to find the perpetrator of the crime, to prevent the perpetrator or the accessory from hiding or fleeing, to secure traces of the crime and items which may serve as evidence, and to collect all information which may be useful for the successful conduct of the criminal proceedings[1930] Mico Davidovic concluded that there was no room for any improvisation and that these were all activities which were envisaged for criminal prosecution. [1931]

895. Finally, in March 1995, President Karadzic proposed measures to the Assembly to improve the situation in the domain of penal policy, suggesting that "all courts (regular and military) shall be required to step up their work on all cases, especially in criminal

[1925] D1419; D1420; D1421; D1423; D1425
[1926] D1419
[1927] D1422
[1928] Milorad Davidovic, T. 15682, T. 15685,T.15680
[1929] D1424
[1930] D1426, p. 2
[1931] Milorad Davidovic, T. 15698

cases" and that "the Ministry of the Interior shall intensify its work on discovering the perpetrators of criminal offences and the timely submission of criminal reports."[1932] Mico Davidovic testified that the President of the Republic did not have other tools at his disposal except to suggest to the Government and the Assembly certain measures that he believed should be taken.[1933]

j. Post-War Proceedings

896. All criminal cases launched during the war continued after the war, and on the basis of these (war-time) criminal reports many judgements were rendered, including judgements of the SMC against Serbs for crimes committed against Muslims or Croats.[1934] Had the RS state policy been selective, of not trying Serbs for crimes committed against Muslims and Croats, there would not have been any criminal reports which would have enabled proceedings after the war.[1935] As already explained, the only reason why all proceedings against all accused Serbs were not completed during the war was a shortage of staff, time and material conditions, or temporary unavailability of accused persons who had fled.[1936] It is noteworthy that the pre-war Bosnian judicial system was even slower.[1937]

897. The RS judiciary was not inefficient. The military judges lived in their offices and practically worked round-the-clock, much more than in peace time.[1938] During the war, there were between **30 and 50 judges** in the RS military justice system and there were **tens of thousands of cases** which could not be processed during the **three and a half years** of war.[1939] Overall, the RS military courts received **33519 cases** during the phase of criminal investigation and completed **12462**, while during the phase after criminal

[1932] D1427, p. 2
[1933] Milorad Davidovic, T. 15701
[1934] D2986, para 20
[1935] D2986, para 20
[1936] D2986, para 20
[1937] D2986, para 20
[1938] D2986, para 20
[1939] D2986, para 20

indictments had been filed a total of **3151 cases** were received and **2274 cases completed**.[1940]

898. On the other hand, during its **21 years of existence**, the ICTY with its annual budget of some **250 million US dollars** and **760 staff members** indicted **161 persons** and managed to conclude **141 trials**.[1941] Accepting that the first accused was transferred to The Hague in 1995, this means that 760 ICTY staff members managed to complete some **7.5 trials per year**. The RS judiciary, that was working against all odds, was extremely efficient.

8. President Karadzic Did Not Control Other RS Organs

a. War-time Assembly Was Not a Party Body Under President Karadzic's Control

899. Paragraph 81 of the Prosecution's Pre-Trial Brief alleges that "as essentially a party body, the Assembly carried out its legislative powers in accordance with the policy charted by the SDS, and of course Krajisnik and Karadzic were its proponents". The Prosecution's Pre-Trial Brief in paragraph 268 alleges that President Karadzic exercised extensive control and influence over the RS Assembly and its deputies.

900. The evidence shows that MPs were very independent in their thinking and influenced decision-making.[1942] President Karadzic never forced his ideas on the MPs.[1943] For example, he advocated that peace plans must be shown to the RS Assembly.[1944]

901. Sometimes the state leadership had to intervene during the sessions, to tone down extremist discussions, but all MPs from all parties enjoyed equal treatment in terms of the freedom of speech.[1945] Some deputies expressed particularly extreme views in their discussions, even on the subject of other ethnicities, but such opinions never found a

[1940] D2987, pp. 18-9 (For numbers see BCS original)
[1941] http://www.icty.org/sid/24 and http://www.icty.org/sid/325
[1942] Krajisnik, T. 43359-61; D3671, para 19
[1943] D3364, para 28
[1944] P5039, pp. 9-10;
[1945] Krajisnik, T. 43364-5

place in the official policy of the leadership or official documents of the RS Assembly.[1946]

902. Paragraph 83 of the Prosecution's Pre-Trial brief alleges that "the Assembly was an important centralised forum for the promulgation of policy and instructions and their dissemination to the field." However, the Assembly could not influence any of the authorities at municipal level.[1947] There is no evidence that the Assembly ever issued instructions to commit crimes.[1948]

903. President Karadzic unequivocally recognized that

> the RS National Assembly is the only place where policies were tailored[...]The rest of us were mere executors[...]We think this is the correct way because the deputies were elected by the people[...]There isn't a single other place where RS policies were conducted.[1949]

b. Branko Djeric's Government Was Not Subject to President Karadzic's Authority

904. According to the Prosecution's theories "the Government, like the Council of Ministers before it, was subject to the authority of Karadzic and Krajisnik".[1950] The Prosecution further alleges that "although the Constitution provided that the President of the Government-designate was to propose ministers to the Assembly for approval, Djeric was told by Karadzic whom to appoint, and his role was limited to formally nominating them. Mico Stanisic and Momcilo Mandic, the two most powerful Government ministers[...]reported to and took orders from Karadzic and Krajisnik."[1951]

905. In real life, the government was answerable to the Serbian Assembly.[1952] President Karadzic and Prime Minister Branko Djeric had not known each other before the multi-party system was introduced and were on official terms.[1953] Djeric was not a party member.[1954]

[1946] D4086, para 51; Dodik, T. 36858-9
[1947] Krajisnik, T. 43366
[1948] Krajisnik, T. 43367
[1949] P1407, p. 115
[1950] Prosecution's Pre-Trial brief, para 92
[1951] Prosecution's Pre-Trial brief ,para 93
[1952] Krajisnik, T. 43358
[1953] Djeric, T. 27908
[1954] Djeric, T. 27909

906. Prime Minister Djeric began forming his government on 24 March 1992. He told the deputies that "I can propose two candidates for two departments[...]For the minister of internal affairs, Mico Stanisic[...]These two men have greatly contributed to the affirmation of the Serbian national interests in these difficult times."[1955] Djeric never mentioned President Karadzic's name, let alone him influencing the governmental appointments. The Presidency concluded on 25 June 1992 that the Prime Minister proposed the reshuffling of the government.[1956]

907. On 12 August 1992, Prime Minister Djeric addressed the RS Assembly in relation to the reconstruction of his government, proposing various individuals to the positions in the Cabinet.[1957] During his testimony in The Hague, Djeric insisted that it was President Karadzic who obstructed the removal of Ministers Stanisic and Mandic.[1958] His recollection of events was not accurate. During the same Assembly session Prime Minister Djeric told the deputies that

> It is not time for any radical changes[...]**all the ministers voluntarily signed to be on disposal**. Neither personnel changes, nor additions of any kind could have been made if they had not done so.[1959]

908. Djeric then testified that all ministers tendered their resignations, but the reconstruction had to be discussed at the meeting of the Assembly.[1960] If it concerns all ministers, it certainly concerns Mandic and Stanisic. The Assembly voted on Prime Minister's proposals and Djeric failed to receive sufficient number of votes.[1961] The Assembly President concluded that " we haven't elected the Cabinet and that the Government is in the process of resignation. The Government will keep on working until the next election."[1962]

909. After the parliamentary defeat, Prime Minister Djeric addressed the deputies in the following way

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[1955] P1354, p. 5
[1956] D0437
[1957] D0422, p. 38-40
[1958] Djeric, T. 27947-8
[1959] D0422, p. 54-5 (Emphasis added)
[1960] Djeric, T. 27955
[1961] D0422, p. 65-6
[1962] D0422, p. 65-6

> Gentlemen, the Government collapses if the Assembly gives a vote of no confidence and not because of the problems with some candidates or similar things.[1963]

910. The Prime Minister was dismissed because the Assembly voted against the Prime Minister and his Government. In August 1992, this was crystal clear to everyone. Aleksa Buha had no doubts that "the Assembly and the deputies are the ones to evaluate the work of the Government[...]we should accept the voting results, and conclude that the Government hasn't received a vote of confidence by the Parliament."[1964]

911. Minister Mandic calmly accepted that "the new Cabinet of the Prime Minister was not accepted[...]The old Government works until the election of the new Government."[1965]

912. After a thorough cross-examination on this matter, witness Djeric finally accepted that everyone in the government was on the same page, including the prime minister and the ministers and that the procedure was fully legitimate.[1966]

913. However, despite the lack of confidence in the Assembly, the Government continued to work in the same composition.[1967] During the next Assembly session, the issue of the non-functional Government was again raised. Minister Subotic proposed that the Assembly discussed the restructuring of the Government.[1968]

914. Prime Minister Djeric concluded that "this was not the time for an overall Government reconstruction[...]the Prime Minister has the right to nominate a member or members who should be dismissed" and went on to nominate various individuals in the Government.[1969] Djeric proposed to keep Ministers Bozidar Antic and Momcilo Mandic as Ministers without Portfolio.[1970] The Prime Minister struggled to stay in power and told the deputies that

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[1963] D0422, p. 67
[1964] D0422, p. 70
[1965] D0422, p. 76
[1966] Djeric, T. 27960
[1967] Djeric, T. 27962
[1968] D0456, p. 10
[1969] D0456, p. 130
[1970] D0456, p. 131

> It is not standard procedure to contest proposals made by the Prime Minister for a simple reason: he has the right to form his own Cabinet and to be responsible for its work[...]it would be much better to adopt the Prime Minister's proposals and have the Assembly control the work of the Government.[1971]

915. Again, there was no mentioning of President Karadzic. The dispute was obviously between the Prime Minister and the Assembly. The Assembly Speaker, Momcilo Krajisnik, who allegedly co-controlled the Government and its key ministers, put Prime Minister Djeric's proposal to vote

> Who is in favour of relieving Momcilo Mandic of the post of Minister of Justice?[...] 31 votes in favour. Anyone against? One against[...]The proposal to relieve Momcilo Mandic from the post of Minister of Justice has not been accepted. Now we can't appoint him as a Minister without Portfolio.[1972]

916. Djeric's testimony in The Hague gradually changed from his original position that it was President Karadzic who "did not accept to have Mandic and Stanisic removed from their position"[1973] to a new position that "a proposal was made for Mandic to be replaced and the deputies did not vote in favour of that so he retained his position. That's a fact."[1974]

917. Prime Minister Djeric could have forgotten the exact course of events and he should not be admonished for it. After all, the events in question took place 22 years ago. However, the Prosecution and its expert Donia, unlike witness Djeric, analysed all Assembly sessions[1975] and knew that President Karadzic did not control the Government.

918. During the following session in October 1992, a group of deputies made a proposal that a vote of confidence to the Government be carried out.[1976] At the same time, the Prime Minister gave his resignation to his position.[1977] The Assembly concluded that these issues would be discussed at another session.[1978] Again, these was no mentioning of either President Karadzic or Assembly Speaker Krajisnik interfering with the issue in any way.

[1971] D0456, p. 132
[1972] D0456, p. 135
[1973] Djeric, T. 27947-8
[1974] Djeric, T. 27973
[1975] P0972
[1976] P1468, p. 9
[1977] P1468, p. 9
[1978] P1468, p. 9

919. Finally, on 23-24 November 1992, the crisis in - and of - the Government was resolved in the RS Assembly. Prime Minister Djeric alleged that "a long time ago, five months ago, in May, in late May, I raised the issue of the work of the Ministry of the Interior and the Ministry of Justice."[1979] However, this could not have been the case since during the 19th Assembly session on 12 August 1992 the Prime Minister proposed that the Minister of the Interior continued working in the Government.[1980]

920. Prime Minister's comment provoked a reaction from Minister Mandic who informed the Assembly that not a single meeting of the Government discussed the work of the Ministry of Justice or that of the Ministry of Interior. [1981]

921. If the President Karadzic really protected the two Ministers, they would have continued working in the government that followed the Djeric's one. However, when the new government was formed, it did not include either Stanisic or Mandic.[1982]

922. Instead, Minister Mandic told the Assembly that "if this Assembly determines that I am not cut out to work in the /Ministry of/ Justice and Administration, which did not go through last time and it was neither Radovan Karadzic nor Momo Krajisnik who prevented me from leaving the post of Minister of Justice and Administration, but you[...]you voted against my being a minister without a portfolio."[1983]

923. Finally, and for the first time, President Karadzic addressed the gathering in relation to the work of the Government

> I can tell you that there is no conflict between the Presidency and the Prime Minister. We have the best opinion about the Prime Minister as a man[...]I would like to take this opportunity, first of all, to give credit to Mr. Djeric and extend our gratitude for what he has been doing so far[...]we did not consult each other about the new mandatary because we did not know the outcome of all of this.[1984]

924. Prime Minister Djeric and the rest of the leadership ultimately parted in a friendly manner. Djeric thanked the gathering for their cooperation and expressed his hope that a

[1979] P1362, p. 12
[1980] D0422, p. 40
[1981] P1362, p. 14
[1982] Djeric, T. 27975;T. 28015-6
[1983] P1362, p. 15
[1984] P1362, p. 61

new government would be formed promptly,[1985] while the Assembly Speaker, Krajisnik, thanked "this government regardless of who will be in the government, whether or not it will be the same mandatary and the same ministers".[1986]

925. The entire process and history of the governmental crisis and its fall clearly contradicts the Prosecution's allegations that the government was subject to the authority of Karadzic and Krajisnik and that Karadzic considered himself to be the government.[1987] In fact, it was Djeric who demanded at a Presidency session that the Presidency ensured a "closer cooperation with the Government departments " and who "did not agree with the statement that little had been done in the Presidency."[1988]

926. It was also not true, as the Prosecution alleges, that "the minister of justice, Momcilo Mandic, and the minister of interior, Mico Stanisic, largely bypassed the government and reported directly to Mr. Karadzic.[1989] Neither the ministers, nor the President bypassed the Prime Minister. In August 1992, President Karadzic wrote to the Prime Minister that he expected the government to take prompt action **through** the ministries of justice and the interior.[1990]

927. It is also not true that the two "key" ministers, Mandic and Stanisic, were President Karadzic's men. In 1993, Nikola Koljevic, a member of the Presidency, was appointed President of the State commission by President Karadzic to investigate whether there was any evidence of possible illegal activities on the part of Momcilo Mandic, Mico Stanisic and Tomo Kovac.[1991] One would certainly not establish a State commission to investigate one's "closest associates" especially if those associates "reported to and took orders from Karadzic and Krajisnik", as the Prosecution alleges in its Pre-Trial brief paragraph 93. The fact is that all prime ministers retained control over the MUP throughout the war.[1992]

928. Therefore, as Defence Minister Subotic testified

[1985] P1362, p. 63
[1986] P1362, p. 63-4
[1987] Prosecution Pre-Trial brief, para 92
[1988] D0440, p. 2
[1989] Djeric, T. 27905
[1990] P3758, p. 1(Emphasis added)
[1991] D1672
[1992] D3581; D3563, para 53; D3368; D3369

> The President of the RS did not interfere[...]in the work of the Government presided over by Professor Djeric. No one dictated to Djeric how he should lead the Government, nor did anyone revoke the authority that he had. [1993]

929. The reason why Djeric's Government resigned was its inability to resolve the myriad of problems caused by the war under extremely difficult work circumstances.[1994]

c. Vladimir Lukic's Government Was Independent Vis-à-Vis President Karadzic

930. The Prosecution's Pre-Trial brief's paragraph 92 alleges that President Karadzic noted to the Assembly in 1993 that "the Government is mine. I am responsible for its functioning. I appoint and propose the Government mandator. I have a brilliant relationship with [then President of the Government, i.e., Prime Minister] Vlado Lukic; we are often together; he often comes to my cabinet." The Trial Chamber is mislead to believe that President Karadzic tightly controlled all state bodies, including the Government.

931. President Karadzic also said during the same Assembly session that "I do not see the Government. I attended Government sessions twice"[1995] and "I have no idea who might be the Prime Minister[...]I did not have the Prime Minister in my pocket. Lukic was not my man, not an acquaintance of mine, none of you is my man, and none of the ministers is my man. I have not appointed my people anywhere. And in the joint Government with Muslims, I was not asking whether he is a member of the party. If he was a good expert and an honourable man, he went to the Government. And I cannot be imputed that I have the Prime Minister in my pocket. I do not, and I am not interested."[1996]

932. When Vladimir Lukic had a meeting with President Karadzic, he was told to form a government as he saw fit and said that no one would interfere in the work.[1997] Lukic

[1993] D3695, para 78
[1994] D3695, para 83
[1995] P1379, p. 255
[1996] P1379, p. 280
[1997] D3563, para 17

described President Karadzic as a genuine democrat.[1998] President Karadzic never attended government meetings in order to tell the Government what to.[1999]

d. President Karadzic Did Not Control Dusan Kozic's Government

933. The third war-time President of the Government Dusan Kozic and his ministers took care that conditions for the independent work of the Government were ensured.[2000] Kozic testified that in its work the Government was indeed independent and that President Karadzic attended the Government session only a few times, without participating in its work.[2001]

e. President Karadzic Did Not Control JNA or TO and There Was No JCE Among Them

934. The JNA was the legitimate military force in Bosnia and Herzegovina until 19 May 1992.[2002] While the JNA was still in Bosnia, the Serb authorities considered the Serb TO a part of the single defensive system of Yugoslavia under the command of the JNA.[2003]

935. On 4 April 1992, the day when the war broke out, JNA General Kukanjac issued an unambiguous order to all JNA units

> In all their activities, JNA units and members must protect and defend endangered citizens from **all ethnic groups** from the terrorism and attacks of paramilitary formations.[2004]

936. The order in question evidently refutes the Prosecution allegations in its Pre-Trial brief paragraphs 126, 128 and 131 which erroneously state that the JNA "transformed from an army whose purpose it was to protect all peoples in the former Yugoslavia into an army which solely protected the interests of the Serbian people"; and "when the take-

[1998] D3563, para 17
[1999] D3563, para 27
[2000] P3115, p. 2; D3364, para 17
[2001] D3364, para 17
[2002] Mandić, T. 4970
[2003] D0406; M.Mandić, T. 4973-4
[2004] D3679 (Emphasis added)

overs began in BiH, the JNA was aligned with the Bosnian Serbs"; and that "JNA units participated in the attacks on towns, villages and non-Serb settlements in the municipalities." In reality, General Kukanjac ordered his units to strengthen links with the people who accept the army as theirs and do not allow incidents or conflicts.[2005]

937. On 11 April 1992, JNA General Muharem Fetahagic, a Muslim, accused the Muslim BiH Presidency for blessing the terror by Muslim and Croatian extremists towards the citizens of Serbian nationality and members of JNA and their family members.[2006] The report also criticized the former President of the Srpska Krajina, Milan Babić, for working on forming Chetniks' brigade in Knin. [2007]

938. On 1 May 1992, the JNA's Legal Administration sent a report to the subordinated units regarding the commitments of the JNA towards the application of rule of humanitarian law, particularly noting that fulfilment of these obligations "does not depend on reciprocity or an assessment of whether the other side is fulfilling its obligations or not. This is an international commitment undertaken by Yugoslavia and the JNA, and failure by the other side to fulfil it cannot be taken as an excuse for not fulfilling it."[2008]

939. The Serb side was very disappointed and upset when it realised that the JNA was to take up a neutral position because it was expected that the Yugoslav state and its institutions would protect their right to remain within Yugoslavia.[2009]

940. Paragraph 267 of the Prosecution's Pre-trial brief alleges that between 27 March and 12 May 1992, Karadzic presided over the NSC, which oversaw and directed the TO and civilian authorities involved in the crimes during the first several weeks of the conflict.

941. Before 12 May 1992 TO which was on the territory of the Serbian Republic of BH was separated from the BiH TO.[2010] The Serbian TO was operating within the constitutional system of the SFRY.[2011]

[2005] D3821, p. 2
[2006] D3676, p. 1
[2007] D3676, p. 2
[2008] D3677, p. 3
[2009] Skrbic, T. 26021
[2010] D3695, para 58
[2011] D3671, para 4

942. No TO General Staff had been formed, and effectively it was under nobody' s command until the SRBH army was formed.[2012] Nobody really knew how many local units had been formed.[2013] In essence, the TO units were self-organised.[2014] Before 12 May 1992 the President had not even formal control of the military.[2015]

943. President Karadzic also lacked control through the party structures. A JNA report noted in February 1992 that

> The past events in BH have confirmed that the SDS is not in full control of the situation.[2016]

944. The Serb TO grew into the VRS and it originally consisted of reserve soldiers from the area of Bosnia-Herzegovina in the function of the TO which had already been mobilised by the JNA.[2017]

945. No weapons from outside came in to arm the Serbs. The weapons that happened to be in Bosnia and Herzegovina were taken by all three sides.[2018]

946. Defence Minister Subotic testified that between 8 April and 12 May 1992, he participated in meetings with President Karadzic and that there were no decisions regarding military operations.[2019] The small self-organised units were unable to conduct operations, just local defensive operations on a small scale.[2020]

947. When the war broke out, the municipalities, their municipal staffs and municipal units of the TO were the only kind of military organisation that provided security to the population, and that were able to prevent a total chaos and anarchy.[2021]

948. The TO was not a centralised military and territorial organisation. These forces were not linked together from the base to the top of the Republic. They were joined by

[2012] D3695, para 58
[2013] D3695, para 58
[2014] D3695, para 59
[2015] D3695, para 60
[2016] D3713, p. 3
[2017] Stanisic, T. 46472
[2018] D3695, para 18
[2019] D3695, para 61
[2020] D3695, para 61
[2021] B. Subotic, T. 40021-2

elements of the JNA as it disintegrated. President Karadzic had no control authority over the parts of the TO. [2022]

949. At the session of the NSC and the Government on 15 April 1992, it was agreed that the Minister of Defence should organise and supervise the TO until the appointment of the commander.[2023] It was a chaotic period with events happening fast and out of control, so this was an effort to establish some sort of command over the units which was not successfully achieved.[2024]

950. On 16 April 1992, Minister Subotic issued a decision on establishment of a Serb Republic TO, and asked all the TO members who wanted to protect their territory and people, regardless of their ethnicity, to join the newly formed TO. [2025] This was a necessary document so that some kind of force be created.[2026] Although Subotic issued the order to mobilise the Serb TO, he could not order the combat engagement of the units because this was within the exclusive purview of the JNA.[2027]

951. Considering that this was only the beginning of the creation of a defence force the central authority failed to establish control over the TO. [2028] One of the efforts to centralize the command over the TO units was the appointment of Colonel Vidoje Lukic as Chief of the Serb Republic TO by the Government.[2029]

952. On 18 April 1992, the Minister of Defence issued another decision placing the TO under the command and control of municipal, district and regional staffs and the Republican TO Staff.[2030] The focus was on placing the conscripts at the disposal of the municipal authorities because the leadership of the Republic did not have an insight into the situation on the ground.[2031]

953. On 22 April 1992, since both the TO Commander and the Minister of Defence were unsuccessful in trying to coordinate the TO, it was concluded that President

[2022] D3864, para 78
[2023] P3050, p. 2;
[2024] D3695, para 266
[2025] P2412; D3695, para 264
[2026] D3695, para 264
[2027] D4114, para 13
[2028] D3695, para 264
[2029] D3709; D3695, para 265
[2030] D3703
[2031] D3695, para 267

Karadzic should coordinate the commanding of the TO forces.[2032] However, the TO Staff was still supposed to appoint the commanders of the staffs in the regions, municipalities and towns.[2033] The issue of a single command over the Serbian units, at least in theory, was only resolved with the formation of the VRS.[2034]

954. On 27 April 1992, the NSC and the Government concluded that TO units that did not have an organized structure and command were attached to the JNA units in their respective areas.[2035] The situation in the TO was dreadful due to the lack of personnel in the TO units.[2036]

955. On 28 April 1992, the NSC and the Government attempted to meet the basic needs of the TO units by trying to find uniforms for TO members.[2037] All these actions on the part of the central authorities were aimed at providing logistical support for the TO units and not commanding with them.[2038]

956. Banja Luka TO Commander Milorad Sajic[2039] testified that his commander was the commander of the Banja Luka district TO staff, whose superior was the commander of the republican TO staff of BH, and that above the republican TO, the engagement of units was the responsibility of the JNA General Staff.[2040]

957. Until mid-June 1992 and the reorganisation of TO units into VRS brigades, the chain of command over TO units in Krajina went only as far as the ARK, because the ARK was cut off with no links with Pale.[2041] Resultantly, Sajic was not able to report to Subotic on his work, nor did he receive instructions from the Minister of Defence.[2042] When the corridor was established, the VRS had already been organised and TO had ceased to exist. [2043]

958. On 14 May 1992, the NSC and the Government proposed to the Presidency that in order to ensure the efficiency of the constitutional role of command and control it was

[2032] P3051
[2033] P3051
[2034] D3695, para 268
[2035] D0406; D3695, para 270
[2036] P5565
[2037] P2627; D3695, para 272
[2038] D3695, para 272
[2039] D4114, para 4
[2040] D4114, para 6
[2041] D4114, para 12
[2042] D4114, para 17
[2043] D4114, para 17

necessary to ensure direct and continuous presence of members of the Presidency so that efficient and timely decisions could be made particularly regarding the function of the supreme commander.[2044]

959. However, already at the next session of the NSC and the Government of 15 May 1992, it was clear that there was a significant lack of commanding staff in the VRS, which affected the efficient control over subordinated units.[2045] On 18 May 1992, the same two state organs continued working on the legal framework governing armed forces and defence.[2046] The lack of staff in the Government and the Presidency of the SRBH influenced the inability to create an army and a proper command system.[2047]

960. President Karadzic did not have effective command and control over the TO units between 1 April 1992 until the creation of the VRS on 12 May 1992 because the TO Municipal Staffs had organised the protection of the Serbian population on their territories, either alone or in cooperation with the JNA.[2048]

f. Crisis Staff Were Not Utilised by Central Authorities to Take Over Power and Effect the Forcible Removal of Muslims and Croats

961. Prosecution expert Hanson testified that that the Crisis Staffs were carrying out the expulsion of the non-Serb population.[2049] She then made a subtle, but telling distinction, that the Crisis Staffs saw themselves as executing the policies of the leadership, and did not claim that there were specific orders from the leadership on the expulsion.[2050] Why? Because there were no such orders. Moreover, she also endeavoured to judge the credibility of authentic documents[2051], excluding exculpatory parts and selectively quoting only those parts that fitted into the Prosecution's case.[2052]

962. This expert's conclusions are not only selective; they are also entirely wrong. The most telling example is Hanson's conclusion that Kotor Varos was a **municipality that witnessed some of the worst violence**, and that as far as the action concerning the hand-

[2044] P3079; D3695, para 276
[2045] P3080, p. 1; D3695, para 277
[2046] P2625; D3695, para 278
[2047] D3695, para 278
[2048] D3695, para 118
[2049] Hanson, T. 14593
[2050] Hanson, T. 14593
[2051] Hanson, T. 14604
[2052] Hanson, T. 14599-604 and T. 14606-7; P2642

over of arms and **moving people out of the municipality** is concerned, all activities in general were **carried out on the order of the Government and Presidency**.[2053] She was then cross-examined by Dr. Karadzic, who confronted witness Hanson with 25 documents relating to Kotor Varos that proved the opposite.[2054]

963. Dr. Karadžić had to spend two and a half Court sessions to prove that Hanson's conclusion in paragraph 147 of her report, i.e. that Kotor Varos was the municipality that witnessed some of the worst violations, is not correct.[2055] Along the way she would timidly concede that "it seems to be here that [non-Serbs] are not being forced to move out." [2056] Hanson stated that she did not make her conclusions on the basis of contemporaneous documents but on her understanding of the events on the ground.[2057] It remains unclear how else she, as an expert and not a factual witness, could otherwise form an opinion if not on the basis of contemporaneous documents. Anyhow, Hanson indirectly recognized her superficial method of work

> So the "worst violations" phrase, I agree, is not -- is not supported by the documents there.[2058]
> Perhaps the phrase "some of the worst" is too rhetorical.[2059]
> I did not, as you see, try and examine each crime base and connect each crisis staff to each crime base. I was more describing, in general, what crisis staffs did.[2060]

Hanson's answer deserves no further comments. Her report must be rejected in its entirety.

964. In conclusion, the crisis staffs were not meant to ethnically cleanse non-Serbs. The very name suggests that these bodies were formed because there was a crisis and no government. [2061] They were meant to assist the population while going through a transitional period of a few months until the state system became operational.[2062] Finally,

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[2053] P2589, para 147 (Emphasis added)
[2054] D1294; D1295;D1296; D1297;D1298; D1299; D1301; D1302, pp. 2-3; D1303, p. 2; D1304; D1305, p. 1; D1306;D1310, pp. 2-6;D1313;D1314;D1315, p. 1;D1316;D1318, p. 1;D1320;D1321, p. 1; D1322;D1323, pp.1, 3 and 12-13;D1324;D1326, p. 1;D1334
[2055] Hanson, T. 14688
[2056] Hanson, T. 14684
[2057] Hanson, T. 14689
[2058] Hanson, T. 14688
[2059] Hanson, T. 14691
[2060] Hanson, T. 14691
[2061] D3695, para 56
[2062] D3695, para 56

we have already seen that the Croat and Muslim authorities had established such staffs before the Serbs.[2063]

965. In July 1992, General Subotic organised a press conference and called for the abolishment of the Crisis Staffs, wherever it was possible, because there were municipalities where the situation had still not been ripe for the abolishment of the Crisis Staffs. [2064] As the institutions were being set up, Crisis Staffs were no longer necessary.[2065]

9. Non-Indictment Municipalities Show That There Was No Persecutory Policy Against Non-Serbs

966. Another indicator that there was no systematic expulsion of non-Serbs from RS municipalities is the fact that the Prosecution first focused on 27 and then on 20 RS municipalities, but disregarding the majority of other, 35 municipalities of Republika Srpska. Did the RS authorities pursue completely different policies in different municipalities, since the majority of municipalities are not part of the indictment?

967. Presidents of non-Indictment municipalities did their best to protect their non-Serbs. Nebojsa Ivastanin, president of the Gradiska municipality, made maximum efforts to protect non-Serbs, and was never punished for his efforts.[2066] Rather he was appointed ambassador to Russia, as the cadre that followed the policy of the SDS.[2067] Also the mayor of Banja Luka Predrag Radic constantly tried and did everything possible to protect the non-Serb population.[2068] Milos Milincic, the president of Srbac, had the same position as Radic.[2069]

968. In Mrkonjic Grad, a great number of Muslims continued to live there until the end of the war. [2070] The situation was similar in Dubica, Drvar, Grahovo and Glamoc, where

[2063] D3715; D3695, para 287
[2064] D3715; B. Subotic, T. 40038
[2065] B. Subotic, T. 40037
[2066] Krajisnik, T. 43310; Dodik, T. 36852
[2067] Krajisnik, T. 43310
[2068] Krajisnik, T. 43308-10; Dodik, T. 36852
[2069] Krajisnik, T. 43312; Dodik, T. 36852
[2070] Krajisnik, T. 43311-2

Serbs were in the majority, and where care was taken to provide maximum protection to minority populations. [2071]

969. The Doboj Crisis Staff supplied and assisted the population.[2072] Muslims and Croats were living in the town centre and they were on regular work detail, just like the Serbs. Their pensioners continued to receive pensions and had access to hospitals and public services.[2073]

970. Bosanski Kobas was inhabited mostly by Muslims, and did not see an exodus of its Muslim inhabitants who remained throughout the war in their homes. [2074]

971. The same was true for Muslim villages of Renovica, Vraca, and the Muslim villages around Sokolac,[2075] Muslim villages in Prnjavor,[2076] and Laktasi.[2077] These are just a few examples of Muslim communities that stayed throughout the war under the same authorities as those Muslims who chose to leave.

972. Therefore, taking only 20 Indictment municipalities as sample is absolutely not representative.[2078] The same problem had Prosecution demographic expert Ewa Tabeau who testified that if she added new municipalities to her analysis "the numbers must change obviously because the calculation will be done for a new area that is different from the 27 municipalities."[2079] It should be also noted that Tabeau confirmed that she did not study causes of migration.[2080] It is highly disputable whether her report serves any purpose, because it disregards so many possible scenarios in relation to population movements.

973. If one group had not left and the other group increased its numbers, this will be reflected in the population structure of that area.[2081] For example, when Serbs moved into Serb areas, that could also have changed the share of Muslims in the general population, and not necessarily mean that the Muslims left. Tabeau did not establish what the factors

[2071] Krajisnik, T. 43311-2
[2072] D3733, para 23
[2073] D3733, para 24 (
[2074] [redacted] Dodik, T. 36852
[2075] M.Mandić, T. 5134
[2076] Kupresanin, T. 43537
[2077] Dodik, T. 36852
[2078] Pasalic, T. 35381
[2079] Tabeau, T. 28312
[2080] Tabeau, T. 28311
[2081] Tabeau, T. 28318

were that had an impact on the decrease of the percentage of Muslims in the municipalities referred to in the indictment. [2082]

974. It is also striking that percentage wise more non-Serbs left Banja Luka during the 1995-1997 period when they could freely choose where to live, than throughout the entire war when such freedom allegedly did not exist.[2083] This factor also suggests that there was no state policy of forcible expulsions of non-Serbs during the war.

975. It is very important to note that, according to Tabeau, approximately 57 per cent of Muslims were displaced people from the Indictment municipalities, and **43 per cent are those who stayed**.[2084] Tabeau also confirmed that throughout the entire war less than 3 per cent of the Muslim population lost their lives.[2085] If there was a Serb policy of ethnic cleansing, it was a very inefficient one. However, more reasonable conclusion is that, again as Tabeau suggested, "the population movements were having the opposite direction[...]people, in order to feel safe, were[...]going to their own people."[2086]

976. When Dr. Karadzic put his case to Tabeau that what actually happened in Bosnia was a civil war, and that it was not that the Serbs persecuted others and nothing happened to the Serbs, and finally that the percentage of Serbs and non-Serbs killed was equal to their share in the overall population, the Prosecution expert's response was

> So -- so -- what -- what I need to say, for me, it is, if you want to calculate the shares, you can calculate the shares, but I don't think ... yeah, I don't know what to say. Sorry[2087]

977. Tabeau is another superficial expert whose report should be rejected in the same fashion as it was done by the Prlic Chamber that observed that the periods covered by the sources used in Tabeau Report, namely the Census of 1991 and the Voter Registers of 1997-1998, provide data for the years 1991 and 1997-1998 but none for the period covered by the Indictment. Accordingly, the Chamber held that the use of sources too removed in time from the temporal scope of the Indictment, the complete lack of information on the dates of the changes of residency between 1991 and 1997-1998, the

[2082] Tabeau, T. 28328
[2083] Tabeau, T. 28353
[2084] Tabeau, T. 28329 (Emphasis added)
[2085] Tabeau, T. 28412
[2086] Tabeau, T. 28349
[2087] Tabeau, T. 28403

underlying reasons explaining the population movements during this period and the statistical methods Tabeau used precluded the Chamber from assigning any probative value to Tabeau Report.[2088]

978. Unlike the Prosecution's expert, Defence expert Pasalic included in his analysis all relevant and realistic factors that could and would affect population movements. He concluded that the population wanted to avoid uncertainty and to feel safe.[2089] These were spontaneous migrations, rather than expulsions and persecutions.[2090] Pasalic did not deny that there were extremist or paramilitary formations that acted differently.[2091] There could also be temporary movements due to combat activities.[2092]

979. Pasalic testified that ethnic territorial homogenisation was a process that was happening during the war and also after the war and could be motivated by different factors.[2093] All ethnic groups were involved in migrations in all areas of BiH.[2094]

10. Central Authorities Did Not Persecute Non-Serbs Through Property Rights Restrictions

980. Paragraph 105 of the Prosecution's Pre-Trial brief *inter alia* alleges that Crisis Staffs implemented persecutory measures against the Muslim and Croat populations that furthered the common criminal purpose by implementing criteria regarding the moving out of the Muslim population, that including the provision of statements declaring that they were permanently leaving and the assignment of their property rights to the authorities.

981. Already on 2 May 1992, Prime Minister Djeric issued a decree prohibiting the buying and selling of apartments because the war conditions would give way to illegal trade in apartments that belonged to others.[2095]

[2088] Prlic TJ, para 355; For other Tabeau report deficiencies, D3125
[2089] Pasalic, T. 35406
[2090] Pasalic, T. 35406
[2091] Pasalic, T. 35406
[2092] Pasalic, T. 35463
[2093] Pasalic, T. 35403
[2094] D3125, p. 5
[2095] D2245; Djeric, T. 28026

982. The same policy was pursued by President Karadzic who on 23 August 1992 concluded that

> It has become common for local people to move into empty flats instead of refugees, and they sometimes even retain some kind of "right" to several flats.
> The occurrence of abandoned flats is a war issue, and so are the refugees. This means that both occurrences are **temporary**.

and asked that all presidents of municipalities strictly observe the following instructions

> 1. **Temporarily abandoned flats** can be given for **temporary** use to refugees only, not to local people.
> 2. Accurate records are to be kept on both the temporarily abandoned flats and the refugees. The temporarily abandoned flats can be given for use by a commission only, which issues the decision on the **temporary use**.
> 3. Any abuse, nepotism and failure to observe these instructions entails not only political responsibility, but also **criminal prosecution**.[2096]

983. The government concluded that citizens whose apartments or houses had been destroyed may obtain only **temporary** permission to move into deserted houses or apartments, and it took upon itself the obligation to find a permanent solution to the issue of providing for citizens whose houses or apartments have been destroyed.[2097] The government acted to prevent the misuse of abandoned property.[2098]

984. In June 1992 the Government decided to regulate moving in of Serb people who are left without accommodation into deserted houses and flats.[2099] The regulations were to state that these decrees were temporary, and that before moving in, a committee would make a list of all property that should be taken care of.[2100]

985. A distinction must be made between domicile or permanent address, which is where someone is permanently residing, and a place of residence, which is a place where someone is registered and stays for a while.[2101] If someone asked for the change of residence, that meant a temporary relocation.[2102]

[2096] D0111 (Emphasis added)
[2097] D0416 (Emphasis added)
[2098] M.Mandić, T. 5017
[2099] D0427, p. 2
[2100] D0427, p. 2
[2101] Mandić, T. 5060
[2102] Mandić, T. 5061

986. In August 1992, Prime Minister Djeric issued a decree on the temporary use of abandoned agricultural land and buildings.[2103] The Decree stipulated that a temporary user of abandoned property must maintain it or the competent municipal bodies would terminate his right to use the abandoned property.[2104] More importantly, if the previous owner or user of abandoned land reclaimed the property before the expiry of the period for which the property was allocated to a temporary user, the competent municipal bodies "shall pass a decision - terminating his right ot use the abandoned land".[2105]

987. The following Prime Minister Lukic insisted that all property acquired by illegal means must be returned to its owners, regardless of ethnicity.[2106] The Government instructed municipalities that refugees could be only temporarily accommodated in flats and houses, without affecting the rights of owners.[2107] If the owner of the residential property were to reappear, the property would be instantly returned to the owner and the refugee's accommodation would be regulated in some other way.[2108] Lukic's Government continously protected property rights of non-Serbs.[2109]

988. During the Assembly session of 27-29 August 1993, President Karadzic unambiguously explained the state policy towards the property of non-Serbs

> In our Republic the housing has to be temporary problem, for we have to accept international law and documents, as well as international standards. We have to respect the property of those who have it[2110][...]Republics have to compensate each other, property of the people who had left and settled in another Republic, and after that, Republics have to pay indemnity to their citizens.[2111]

11. Central Authorities Did Not Persecute Non-Serbs Through Prohibiting Refugees to Return

[2103] D2246; Djeric, T. 28031
[2104] D2246, p. 3
[2105] D2246, p. 3
[2106] P3106, p. 5; D3563, para 19
[2107] D3570; D3563, para 29
[2108] D3563, para 29
[2109] D3061, p. 10-1; P3137, p. 9; D3563, paras 45,88; V. Lukic, T. 38842
[2110] P1379, p. 162
[2111] P1379, p. 163

989. Paragraph 4 of the Prosecution's Pre-Trial brief claims that throughout the Indictment period, President Karadzic and his associates prevented the return of expelled non-Serbs.

990. Krajsinik testified that the Republican authorities always sustained the position that upon the cessation of war operations, everybody should be given a right to return from where they had come.[2112] Mandic testified that President Karadzic always advocated that refugees could return to those places that were free of combat and that their property would be restored to them.[2113]

991. In January 1993, Prime Minister Lukic presented the programme of the Government and said that the Serbian side must immediately create conditions for citizens who had left their homes due to war operations or fears for their safety and the safety of their property to return to the territory of Republika Srpska and guarantee all citizens of other ethnicities all rights under the laws and constitution.[2114]

992. The Government concluded that all citizens of RS, regardless of ethnicity, must be guaranteed freedom to move, stay, take up residence, leave, but also return according to their freely expressed will,[2115] and called for the return of refugees who had left RS territory because of war operations. This government position had the absolute support of President Karadzic.[2116]

993. The Prosecution claims that the Republika Srpska's state policy was "populating the areas of Republika Srpska that have been emptied of Muslims and Croats with ethnic Serbs"[2117] selectively quoting Minister Ostojic who discussed demographic policy in one of the Assembly sessions. It should be noted at the outset that there were thousands upon thousands upon thousands of expelled Serbs from Bosnia and Croatia who ended up in Republika Srpska and had to be accommodated somewhere.[2118]

994. Secondly, the demographic policy discussed by Ostojic never concerned expelling the non-Serbs and replacing them by the Serbs. Like in every war, and especially in civil wars, population migrate. Ostojic worried about uncontrolled processes that had taken

[2112] Krajisnik, T. 43782-3
[2113] Mandić, T. 5266
[2114] D3060, pp. 6-7; D3563, para 21
[2115] D3565; D3563, para 23
[2116] P3129, p. 8; P3112, pp. 10-1; P3113, pp. 15-7; D3563, paras 23, 33, 46,49
[2117] V. Lukic, T. 38789
[2118] V. Lukic, T. 38790

place and the need for the Government to know who was settling and where in order to avoid extreme pressures on one or two towns while there were areas that could accommodate refugees with much less problems. That is what Ostojic had in mind when he said that "almost of 2/3 of the population that had migrated, had already been accommodated somewhere, **in a quite unorganised and chaotic way**[...]the people migrate, and there is compulsory one, the forcible one, caused by the war, because the **population migrates in an unorganised manner, uncontrolled manner**[...]no one wants to go to Bratunac, no one wants to go to Kotor Varoš. They just want to go to Bijeljina and Banja Luka[...]**the rule of law must be really engaged here. We cannot displace** rural population **by using the political means** and relocate them to the empty[...]villages."[2119]

995. Prime Minister Lukic testified about "a lot of cases where we put up Croats and Muslims in a different apartment while we were waiting for his own apartment to be vacated. And it was not easy to vacate any of the apartments because everybody carried arms at the time."[2120]

996. "According to the international law", President Karadzic told the Assembly, "we have no right to ban the return of the refugees. In principle, all refugees can return, but I would just add one sentence: "This also has to be a two-way process". The Muslims and the Croats accepted the two-way process[...]when the Serbs from Zvornik return to Zenica, then the Muslims from Prijedor will return to Prijedor, therefore, it must be a two-way process. In accordance with the international law, we cannot declare a ban on the return on refugees."[2121]

997. The Prosecution suggests that "this was Dr. Karadzic's cunning way of limiting the return of Muslims and Croats to the RS."[2122] Firstly, as seen from the speech, the Muslims and the Croats accepted the two-way process suggested by President Karadzic, meaning that everybody could return to his/her home. Secondly, what is wrong with insisting that the Serbs had the right to go back to their homes? Should only the non-Serbs have that right? Let us apply the Prosecution's suggestion and see what would have

[2119] P1388, pp. 168-170
[2120] V. Lukic, T. 38792
[2121] P1385, p. 132
[2122] V. Lukic, T. 38795

happened in reality. A Muslim, originally from Zvornik, comes back from Zenica to Zvornik and asks a Serb, who originates from Zenica, to move out from his apartment. The Serb moves out, and cannot go back to Zenica because the Serb leadership did not make sure that the process was two-way. Another Muslims returns to Zvornik, and then another one, until a thousand Muslim citizens are back to Zvornik and a thousand Serbs live in the street, because they have nowhere to go. Is that the policy that President Karadzic should have pursued?

998. The Trial Chamber must have a **realistic** view of the civil war, and the **actual limited** possibilities that the leaders had at their disposal. If the RS authorities pursued a demographic policy of ethnic cleansing, it is certain that the Bosnian Croat leader, Jadranko Prlic, would never have stated that

> The majority of Croats remained in Banja Luka, which is a result of a positive attitude of the Republika Srpska.[2123]

999. Finally, the most telling evidence of President Karadzic's genuine wish that non-Serb refugees came back to their homes, and also evidence that the information of non-Serb population departures were not ignored, as the Prosecution claims,[2124] is found in a meeting of the MUP leadership in August 1992, that noted "**the arrival of Muslim refugees and the return of those who had left Bijeljina before, influenced by Mr. Karadzic's**[...]**recent statements**."[2125]

12. Central Authorities Did Not Persecute Non-Serbs Through Dismissals From State Organs

1000. Paragraph 105 of the Prosecution's Pre-Trial brief *inter alia* alleges that Crisis Staffs implemented persecutory measures against the Muslim and Croat populations that furthered the common criminal purpose by dismissing them from municipal positions and firms.

[2123] D3621
[2124] Prosecution Pre-Trial brief, para 155
[2125] D0473, p. 10 (Emphasis added)

1001. Mandic testified that the authorities always counted on Muslims and Croats living among us, and that they would be proportionately represented in the government bodies.[2126] In most regions and local communities, there was not any particular resistance concerning government instructions regarding proportionate representation of non-Serbs.[2127]

1002. Krajisnik testified that judges and prosecutors would normally be appointed by the Assembly.[2128] However, when the Assembly could not be convened, the Presidency would make the appointments, but later the Assembly had to confirm the decision.[2129]

1003. In the Ministry of Justice, the process of appointing judges and prosecutors was conducted in such a way that candidates would be proposed by the regional centres, who also informed the ministry of the ethnic make-up of the regional municipality from which the candidates came.[2130] For example, Bijeljina sent its list of judicial candidates in June 1992, among which one-third were of non-Serb ethnicity.[2131]

1004. The Ministry of Justice would then collect the proposals from local authorities and send them to the Assembly, or the President of the Republic if the Assembly could not meet, and the MPs then had to confirm or reject it at their next session, which was regulated by Article 81, paragraph 2 of the RS Constitution.[2132]

1005. The evidence in this case is that, as proposed by the local authorities, through the Ministry of Justice, the President of the Republic appointed all proposed Serb and non-Serb candidates for the RS judiciary.[2133] This decision was then published in the state *Official Gazette*.[2134] In June and July 1992, President Karadžić, using his constitutional powers while the Assembly was unable to convene, appointed some 40 citizens of Muslim or Croat ethnicity to the judicial positions,[2135] ensuring that the non-Serbs from

[2126] M.Mandić, T. 5018
[2127] M.Mandić, T. 5019
[2128] Krajisnik, T. 43319
[2129] Krajisnik, T. 43319
[2130] M.Mandić, T. 5018; D0417
[2131] M.Mandić, T. 5019; D0417
[2132] M.Mandić, T. 5020
[2133] D0418; Djeric, T. 28024
[2134] D0418; M.Mandić, T. 5021
[2135] D0418; D0419; D0420; D0421; M.Mandić, T. 5021-8

their municipalities of origin were proportionally represented in accordance with the **ethnic ratio before the war**.[2136]

1006. From a peaceful anno 2014 perspective, President Karadžić's decision may be seen as an ordinary conduct that any president should have and would have done. However, one must not forget that President Karadžić's decision was made during a civil, religious and ethnic war. He appointed members of the enemy nations to the most sensitive positions in the country, while bodies of dead Serbs killed by the Muslim and Croatian Army were incessantly arriving. Imagine the English authorities appointing Germans as judges and prosecutors while they were at war with Hitler.

1007. Did President Karadžić encounter resistance to his actions? Of course he did. There was resistance in some parts of the Republic, and even at the Assembly sessions[2137], certain MPs voiced their dissatisfaction at the fact that President Karadžić signed the appointment of officials who were non-Serbs.[2138]

1008. On 12 August 1992, the RS Assembly met to, *inter alia,* discuss decisions that President Karadžić had made while it was unable to convene.[2139] Minister of Justice Mandić proposed the inclusion on the agenda of the item of election and appointment on the election of judicial officials.[2140]

1009. Vito Popovic, the president of the Lower Court in Banja Luka,[2141] insisted that at least 50 per cent of the judges and prosecutors be elected in order for the judicial system to be able to function, because there were already quite a few people in detention who needed to be processed.[2142] Popovic reminded that in appointing judges of other nationalities "one must bear in mind that some of those judges have been on the battlefield since day one, even though they have a different nationality" and that "in the same way, there are judges of Serbian nationality who have deserted".[2143]

1010. During the debate on the non-Serb officials, there was quite a fight among the deputies, who refused to elect many non-Serbs, but still appointing some, as well as

[2136] M.Mandić, T. 5025 (Emphasis added)
[2137] Krajisnik, T. 43320
[2138] M.Mandić, T. 5031
[2139] D0422
[2140] D0422, p. 1
[2141] Mandic, T.5032
[2142] D0422, pp. 12-3; Mandic, T.5032-3
[2143] D0422, p. 13

rejecting to appoint a number of Serbs.[2144] The MP resistances were often not motivated ethnically, but rather were on a personal basis.[2145] However, having seen that almost all of his decisions appointing Muslims and Croats to the judicial positions had been reversed by the deputies, President Karadzic came forward and addressed the Parliament

> As far as other nations are concerned, we have to have a percentage, a proportion participating in the municipal authorities. We have to be responsible, as we are creating a state. You are the organ creating it. The state must be created swiftly and in the best way. The state must have all its elements in order to survive and remain as a state[...]I think that the Serbian people know how to make a state. And because we know how to make a state, we need to make it with all the elements.[2146]

1011. President Karadzic bravely advocated that the national mix should be adequate at all levels of authority in the Republika Srpska.[2147]

1012. Immediately after President Karadžić's speech, the President of the Assembly, Krajišnik, interpreted the position of the Assembly deputies to be that the Muslim and Croat judges and prosecutors were not rejected because they were not good or because they were Muslims or Croats, but simply because there was a state of civil war and as soon as the war was over they would be re-elected.[2148] However, Krajišnik's own position was that the Republican authorities should talk to those MPs who withheld their consent for non-Serbs and have ethnic mix reflected adequately in the judicial system.[2149]

1013. Branko Djeric confirmed that it was easier when President Karadzic was in a position to sign Government's decisions rather than when they were sent to 83 MPs.[2150]This session faithfully reflected that the Assembly was entirely independent of the President.[2151]

1014. Muslim and Croat judges and prosecutors were not the only non-Serb state officials supported by the leadership. During a MUP parade in Banja Luka in May 1992, the chief of the Banja Luka CSB declared before 50,000 gathered people that he was glad to be able to point out that a great number of professionals of other ethnicities signed the

[2144] D0422; M.Mandic, T.5033-4
[2145] Mandic, T.5034
[2146] D0422, pp. 18-9
[2147] Mandic, T.5035
[2148] D0422, p. 19; Krajisnik, T.43320-1
[2149] M.Mandic, T.5036; Krajisnik, T.43321
[2150] Djeric, T.28025
[2151] M.Mandic, T.5036-7

solemn declaration and remained to work in the CSB.[2152] Zupljanin was applauded for his words.[2153]

1015. President Karadzic added that "we are proud to say that Muslims and Croats are not and will not be endangered on the territory of Serbian Republic of Bosnia and Herzegovina", also receiving applause for his words.[2154]

1016. When in February 1993, the Government received a complaint that pensions were not being paid to non-Serbs in Novo Sarajevo, it immediately responded ensuring that pensions were paid to non-Serbs.[2155]

13. Central Authorities Did Not Expel Non-Serbs Through Commissions for Exchange of Prisoners

1017. In paragraph 94 of its Pre-Trial brief, the Prosecution alleges that the Government established a Central Exchange Commission with a network of regional and municipal exchange bodies, that operated as a vehicle for removal of non-Serbs from Serb-claimed territories.

1018. On 28 April 1992, Jerko Doko formed a Muslim-Croatian state commission for the exchange of prisoners of war, persons deprived of liberty, the wounded and bodies of persons killed.[2156] The Muslim side was the first to give this name to the commission for exchange.[2157] Doko envisaged that lists for exchange could contain the names of people captured in combat, abducted and person taken away.[2158]

1019. The NSC and the Government discussed on 24 April 1992 the exchange of prisoners of war and there was no mention at all of persons deprived of liberty or bodies of persons killed as was the case with the Commission set up by Jerko Doko.[2159]

1020. After the formation of the Muslim-Croatian Exchange Commission, the Serbian Commission for the exchange of prisoners of war, persons deprived of liberty and bodies

[2152] D0494, p. 3; M.Mandic, T.5333; Krajisnik, T.43305
[2153] D0494, p. 3; M.Mandic, T.5333; Krajisnik, T.43305
[2154] D0494, p. 5
[2155] D3569, p. 10; D3563, para 28
[2156] P4857; D3105, para 39
[2157] D3105, para 39
[2158] P4857; D3105, para 39
[2159] P1087, p. 1; D3105, para 40

of persons killed, was established on 8 May 1992 and it bore the same name as the Muslim-Croatian commission.[2160] It was elected at the proposal of the Prime Minister.[2161]

1021. Unlike the Muslim-Croat Commission, the Serbian side considered persons deprived of liberty to be persons presumed to have been involved in the military or in some other way assisted the ABiH.[2162] The Serbian Commission considered the term "persons deprived of liberty" in the criminal legal sense to refer to persons caught in the war zone and reasonably suspected of having committed criminal offences and subject to a criminal investigation.[2163]

1022. In fact, this category of "persons deprived of liberty" was another name for the POWs because the conflict in Bosnia was of an *internal* nature. On 1 May 1992, the JNA's Legal Administration sent a report to the subordinated units regarding the obligation to fully respect the Geneva conventions and international humanitarian law, noting that "since this is an internal armed conflict, there can be no talk of prisoners of war but only of persons detained in connection with the armed conflict".[2164] The same obligations and responsibility were taken by the VRS as of date of its establishment.[2165]

1023. On 10 May 1992, the NSC and the Government held a meeting during which a commission for the exchange of prisoners and bodies of fatalities is appointed.[2166] Again, there is no mention of persons deprived of liberty at all.

1024. On 6 June 1992, the President of the Serb central commission for the exchange of prisoners, Rajko Colovic, issued an order providing rules regarding treatment of prisoners.[2167] The order provided that employees engaged in safeguarding of facilities where prisoners of war or detainees were located "shall keep evidence of all the persons who have been brought in".[2168] Facilities or premises where detainees or persons deprived of liberty were accommodated must comply with minimum of technical and hygienic standards, such as a WC, running water accessible for all detainees, day-light, sufficient

[2160] P1088; D3105, para 41
[2161] Mandic, T. 5057
[2162] D3105, para 41
[2163] P1100 pp.1-2; D3105, para 41
[2164] D3677, p. 3
[2165] D3671, para 48
[2166] D0409, p. 2; D3105, para 42
[2167] P1090
[2168] P1090, p. 1

air flow as well as other conditions necessary for dignified accommodation of humans.[2169] The order further stated that all sick detainees "shall be offered necessary medical aid and medications" and prohibited use of detainees and their work for the military purposes.[2170]

1025. Finally, the order stated that

> All women whose detention or deprivation of liberty is not related to the war or war activities, all the children and minors up to 16 years of age, old and helpless persons should be released immediately and **ensure their return according to their own free will without setting any conditions to them or *exchanging them*.** The treatment of detainees and persons deprived of liberty shall have to be humane and appropriate. Any treatment other than that represents violation of humanitarian law and customs of war and war crime.[2171]

1026. At the outset it must be noted that the quotation above shows that the Exchange Commission did not serve as a vehicle for the removal of non-Serbs since it clearly prohibited exchanges of civilians, ordering their release.

1027. Secondly, the fact that the men were not mentioned in this paragraph of the order did not mean that the male civilians, if there were such cases, were supposed to remain in custody. The RS Government and the Presidency never issued instructions for civilians of any ethnic background to be arrested the purpose of exchange.[2172] However, there was always a danger, as in any civil war, of uncontrolled groups detaining persons who did not have the status of prisoners of war.[2173] The order quoted above concerned all civilians, and not only women, children and the elderly, as is apparent from the further text of the order that states that **all persons**, thus suggesting also adult male civilians, had to be allowed unhindered and safe migration, relocation or movement as per their expressed wishes.[2174]

1028. If able-bodied men were not immediately released, it was because they had to be checked by the competent organs whether they had violated the war of law or participated in the fighting or otherwise been active in the conflicts. Once these checks

[2169] P1090, pp. 2-3
[2170] P1090, p. 3
[2171] P1090, p. 3 (Emphasis added)
[2172] D3105, para 43
[2173] D3105, para 43
[2174] P1090, p. 3 (Emphasis added)

were done, they would be released and/or exchanged, depending on the results of the investigation.[2175]

1029. Mandic testified that quite a few of the members of the Muslim Army in Bosnia-Herzegovina did not have uniforms, [2176] which is corroborated by Hasan Efendic's order for active operations by police reserve forces and **armed civilians**.[2177] Who were those armed civilians? Plain reading of this document suggests that virtually anybody could be considered as a combatant, and therefore, be subjected to investigation to determine whether s/he participated in combat.[2178]

1030. Prime Minister Djeric testified that "there was some abuse" and that "civilians were brought in, pretending to be prisoners of war" but Djeric also unambiguously testified that "this was not done by the legal authorities".[2179]

1031. The question who was to be released was further clarified in an agreement signed by President Karadzic with the UNPROFOR and the Muslim side that stipulated that

> Participants of the agreement accept that civilian population, *in particular* decrepit *elderly* and sick persons, *women and children* will be unconditionally released from the detention and imprisonment through the Commissions.[2180]

1032. The UNPROFOR thus envisaged release of all civilians, but particularly emphasised women, children and elderly, just as Rajko Colovic previously did in his order of 6 June 1992.

1033. Given that all sorts of rumours were reaching the President from all over the place, and especially from the Muslim media, President Karadzic responded timely by offering and signing an agreement on the unconditional release of civilians,[2181] making no difference between men and women.[2182] All the norms of international law were

[2175] M.Mandic, T.5063
[2176] M.Mandic, T.5063
[2177] D0222, p. 2 (Emphasis added)
[2178] M.Mandic, T.5063-4
[2179] Djeric, T.28046-7
[2180] P1131, p. 3 (Emphasis added)
[2181] D3105, para 43
[2182] M.Mandic, T.5066

woven into this agreement.[2183] This agreement was in effect an instruction on the treatment of civilians to complement all other orders and instructions that the President had issued on this matter.[2184]

1034. The RS Government and the Commission for exchange took seriously the abovementioned agreement signed by President Karadzic with a view to exchanging "all for all" and unconditionally releasing civilians,[2185] which the other side never wanted to accept despite the undertakings made in the peace treaty of London.[2186] Nevertheless, Muslim civilians were unconditionally released.[2187]

1035. A further proof that Colovic's order was aimed at facilitating compliance with international humanitarian law is to be found in the position of the Government which supported Colovic's order, adding that the treatment and exchange of prisoners of war were a serious matter and that all, especially **international rules must be abided by**.[2188] At this session the government instructed four ministries to prepare an instruction that would incorporate international and domestic regulations.[2189]

1036. Based on President Karadzic's order of 13 June 1992, Defence Minister Subotic issued the Instruction on the treatment of prisoners of war, which made it clear in item 2 that the government considered prisoners of war to include **members of the enemy armed forces** and not civilians: "Captured persons shall be taken to mean the members of enemy armed forces who have surrendered and laid down their arms or have been overpowered in or out of combat."[2190]

1037. On 15 June 1992 the Government established a working group that was supposed to find a solution to the situation concerning prisoners of war **taking into account** BH regulations and **international conventions** governing this matter.[2191]

1038. However, no one denies that there may have been omissions in the field beyond the control of the Pale authorities. Slobodan Avlijas testified that due to the interrupted

[2183] D3105, para 43
[2184] D3105, para 43
[2185] D448, p. 14
[2186] D3105, para 44
[2187] P4861; D3105, para 44
[2188] P1091, p. 2 (Emphasis added)
[2189] P1091, p. 2
[2190] P1134
[2191] P1095, p. 4 (Emphasis added)

communications, the central commission never had any contact with local municipal commissions for exchange.[2192] This is why the central commission did not supervise the local commissions.[2193]

1039. In addition, every larger VRS unit had its own commission for exchange, operating independently of the central commission which, most of the time, was not even informed about the prisoners of war or the exchanges.[2194] The central commission was essentially doing the job that was supposed to be done by the local commission from Sarajevo and Pale.[2195] In all other areas outside Sarajevo, exchanges were conducted by the municipal commission established by the crisis staffs.[2196] Local municipal commissions were completely independent in their work.[2197]

1040. In order to improve the functioning of the Republican Exchange Commission, the Minister of Justice appointed Nenad Vanovac, an English teacher, as its Chairman, because he could communicate directly with members of the international community who were assisting in the exchanges.[2198]

1041. The Muslim authorities continued to pursue their deceitful policies and in June 1992, BiH President of the Exchange Commission Filip Vukovic misinformed the international mediators that they were unconditionally releasing civilians, claiming that the Serbs were conducting ethnic cleansing.[2199] Only a month later, in July 1992, the Commander of the BiH Armed Forces, Sefer Halilovic ordered that

> The lists of **all elderly, sick and infirm individuals and women** who currently find themselves **in prisons** and who have not committed any grave crimes, nor are there reasonable grounds to suspect them in this regard, **are to be submitted immediately** to the State Commission for the exchange of prisoners and to the Republican Supreme Command Staff **in order to carry out an organized exchange of prisoners** in agreed places **under the supervision and control of the Republican Commission for Exchange of Prisoners**.[2200]

[2192] D3105, para 48
[2193] D3105, para 48
[2194] P3241; D3105, para 53
[2195] D3105, para 48
[2196] D3105, para 48
[2197] D3105, para 48
[2198] P1130; D0430, p. 6; D3105, para 49
[2199] P1129, p. 5
[2200] D0433

1042. The President of the BH Republican Commission for Exchange of Prisoners mentioned in Halilovic's letter was the very same Filip Vukovic who disingenuously advocated the position that "once released, the detainees should be sent to their places of residence".[2201] That was the very same person who was the subject of a discussion between Mandic and Krajisnik described in paragraph 97 of the Prosecution's Pre-Trial brief, and whom Krajisnik labelled a traitor. The evidence presented above shows that Vukovic was not only a traitor, but a criminal as well. Still, it remains unclear what Krajisnik had in mind when he called Vukovic a traitor, since the latter was a Croat.[2202]

1043. Anyhow, this criminal policy of the Muslim authorities was known to the Serb leadership who disappointedly concluded in October 1992 that "the other side had brought elderly women and men for the exchange"[2203]

1044. The Serb civilian and military authorities on the other hand were strongly against exchanges of civilians. In October 1992, SRK commander Galic prohibited occurrences of collecting women, children and old people of Muslim nationality and transferring them to the Corps Command, demanding that they be treated correctly, and further ordering that **only prisoners from combats**, who were to be treated pursuant to international agreements, should be sent to the Corps Command in order to be exchanged.[2204]

1045. The Government had previously in August 1992 demanded that the process of classifying individuals and determining their status be accelerated so that any civilians captured in error could be released unconditionally.[2205]

1046. In March 1993, the Government continued trying to prevent unlawful and private prisoner exchanges, as there was a danger of this turning into people trafficking.[2206] In addition, there was talk of establishing a new state commission to deal with the exchange of "civilian prisoners of war", which is the category of people

[2201] P1129, p. 5
[2202] D3105, para 50
[2203] D0431, p. 1
[2204] D0432
[2205] P1138, p. 4; D3105, para 56
[2206] P3129, pp. 10-1; D3105, para 62; D3563, para 33

reasonably suspected of having committed criminal offences,[2207] or otherwise helped the war effort of the ABiH.[2208]

1047. The Government resolutely asked the MUP to suppress private and illegal exchanges and to produce a list of persons who had been exchanged on the private basis.[2209] This particular position of the Government was reaffirmed in June 1993.[2210]

1048. In April 1993, the Government elected a new exchange commission that was called the Central Commission for the Exchange of Prisoners of War, Arrested Persons and Dead Bodies.[2211] The term arrested or detained persons implied persons who were reasonably suspected of committing crimes.[2212] One of the Commission members, Branko Dakic,[2213] when implementing the instructions of the Government made sure that civilians had to be allowed to choose where they would live or to be temporarily relocated if that was what they wanted.[2214]

1049. Finally, the Prosecution claims that the VRS was involved in the exchanges of civilians because in 1994 Tolimir informed his subordinates that "in the exchanges we received captured soldiers of the Republika Srpska while we mostly give them civilians."[2215] However, it is more realistic that Tolimir simply made a distinction between the prisoners of war who were under the jurisdiction of the Army and the civilian convicts under the jurisdiction of the Ministry of Justice, meaning persons convicted by Courts.

1050. This is evident from the same document, where Tolimir states that all prisoners would be transferred from "our prisons to Kula prison[...]in order to have the exchange conducted simultaneously"[2216] The evidence in this case shows that the Kula prison accommodated not only prisoners of war, but also convicted persons.[2217] Taking into account the entirety of evidence presented in this chapter and the final brief, the Chamber

[2207] P3129, pp. 10-1; D3105, para 62; D3563, para 33
[2208] D3105, para 62
[2209] P3129, pp. 10-1; D3105, para 62
[2210] P3113, p. 16; D3105, para 62
[2211] D3107; D3563, para 42
[2212] D3107; D3563, para 42
[2213] P3138, p. 8
[2214] D0429; D3105, para 64
[2215] P2684
[2216] P2684
[2217] D3331, para 10

should not conclude that the Prosecution proved beyond reasonable doubt that the VRS exchanged civilians, let alone that President Karadzic gave such an instruction.

1051. The only instruction President Karadzic gave was the one contained in the Defence Minister's Instruction on the treatment of prisoners of war, which made it clear that prisoners of war were only members of the enemy armed forces,[2218] never civilians. The bottom line is, as Trial Chamber/Prosecution's own witness Momcilo Mandic testified, that the Exchange commission was not involved in the exchange of civilians.[2219]

14. Central Authorities Did Not Support or Use Paramilitaries to Implement Common Plan

1052. The Prosecution's theory states that paramilitary formations participated in the implementation of the common plan and that President Karadzic, being aware of the criminal propensity of paramilitary units, continued to use them.[2220]

1053. Dragan Andan, acting chief of the CSB,[2221] and a co-ordinator between the RS MUP and the FRY MUP,[2222] testified that there was an instruction issued by the Minister of the Interior to set up a team that would intervene in all crisis areas governed by the paramilitaries.[2223]

1054. Paramilitary units from Serbia and other places had come to RS and taken over towns such as Zvornik, Bijeljina and Brcko and the local authorities were unable to control them.[2224] Simply speaking, the state was not functioning in those areas. [2225]

1055. In May 1992, Minister Stanisic sent Dragan Andan to the Brcko SJB to help consolidate it.[2226] In May and June 1992, Andan also conducted inspections in Bijeljina and Zvornik SJBs.[2227] Andan helped constitute police organs in these municipalities,

[2218] P1134
[2219] M.Mandic, T.4549
[2220] Prosecution Pre-Trial brief, para 133
[2221] Milorad Davidovic, T.15744
[2222] Milorad Davidovic, T.15602
[2223] Andan, T.40862
[2224] D3960, para 79
[2225] D3960, para 79
[2226] D3778
[2227] D1436

which then gradually started operating and collecting information of interest to the crime investigation service, homicide, rape, murder, etc.[2228]

1056. On 17 June 1992, Andan reported that there was pressure on the Brcko SJB by paramilitary formations headed by certain Goran Jelisic and that there were attempts of armed attack on SJB Brcko, adding that "certain Goran Jelisic had committed crimes of rape and murder of innocent Muslims[...]police employees[...]are in fear of him pulling a weapon at them, because he is, as they say, unpredictable and it is enough for a policeman to look at him the wrong way for a conflict to break out".[2229]

1057. This document alone refutes the allegations that there existed a JCE between President Karadzic and this individual called Jelisic, or that President Karadzic, or anyone else from the republic or local level leaderships used Jelisic as a physical perpetrator to commit crimes in Brcko. Instead, Andan suggested that all paramilitary formations should be expelled from the Brcko area in order for the SJB to function freely.[2230]

1058. Andan found a similar situation in Zvornik where paramilitaries threatened that they would carry out attacks on the SJB Zvornik, and actually attacking the President of the Zvornik government.[2231] Does that suggest that there was a JCE between members of the government bodies and leaders of paramilitary forces as alleged by Indictment paragraph 10?

1059. Finally, Andan noted that the situation in Bijeljina was more or less the same and that 550 Chetniks wanted to destroy the security building in Bijeljina using surface-to-surface missiles and other infantry and light artillery weapons.[2232] Andan proposed that a strong stand should be taken regarding the problem of paramilitary formations.[2233] There were thus *five hundred and fifty* members of a random Chetnik formation only, without counting other paramilitaries. How many men did Andan have?

[2228] D1436, p. 2
[2229] D1436, p. 3
[2230] D1436, p. 3
[2231] D1436, p. 5
[2232] D1436, p. 6
[2233] D1436, p. 7

1060. [redacted].[2234] [redacted].[2235]

1061. Milorad Davidovic testified that after Andan had compiled this "good report showing that he did have knowledge and professionalism" he was appointed in the CSB for the entire region,[2236] [redacted].[2237] In other words, he was **promoted for not agreeing with crimes** being committed against the non-Serbs. This fact is in direct opposition to the Prosecution's allegations that President Karadzic promoted officials "following the cleansing of Muslims".[2238]

1062. Dragan Andan testified that

> During my tenure, I enjoyed the support of Mr. Stanisic, and not only I, everybody else. Just take a look at the dispatches sent by Mr. Stanisic during his term of office.[2239]

1063. On 3 July 1992, The Presidency issued an order to the MUP of the Serbian Republic to conduct an investigation into the activities of paramilitary units on the territory of Gacko and Nevesinje municipalities.[2240] It was said at the session that the Presidency was receiving unreliable reports that uncontrolled groups on that territory were terrorising and taking vengeance on the civilian population.[2241] The MUP was, therefore, given the task of investigating and preventing the activities of these independent groups.[2242]

1064. On 20 July 1992, Dragan Andan sent another report regarding the situation in Brcko, informing the MUP that the Red Berets arrested the Chief of Staff of the VRS Brcko garrison and the municipal political leaders, demanding the release of three of their

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2234 [redacted]
2235 [redacted]
2236 Milorad Davidovic, T.5751
2237 [redacted]
2238 T.520; T.669
2239 Andan, T.40900
2240 D0438, p. 1
2241 D0438, p. 1
2242 D0438, p. 1; D0439

members who were under arrest for a number of criminal offences.[2243] The Special MUP unit intervened releasing the hostages.[2244]

1065. On the same day, Prime Minister Djeric had a meeting with Milorad Davidovic and Andan, giving them full support in forming the legitimate authorities and asking the two men to persevere to the end.[2245] The position of the authorities was that once the SJB was established, the police and the Army were to disarm all paramilitary formation, bring criminal charges against their members and turn over to the Army only those members who had not been incriminated.[2246] In disarming paramilitary formations, terrorist and other criminal groups, the police was allowed to use everything that was at its disposal, including firearms and other equipment, in keeping with the Law on the MUP.[2247]

1066. On 27 July 1992, Mico Stanisic, in accordance with the order by the President, ordered all CSBs to remove all groups and individuals that are not under the control of the VRS, collect information about those who committed crimes, and hand them over to competent institutions.[2248] The deadline for the execution of this order was 3 August 1992.[2249]

1067. On 3 August 1992, the Minister was informed that "a special problem in certain areas is the paramilitary formations, groups and individuals that make war as they please[...]they were responding and helping the units of the Serbian Army and police, but obviously they have some special motives for the war[...]when leaving as a group, they make problems for the local Public Security Stations, ignoring them or even threatening to attack the policemen at the checkpoints."[2250]

1068. This is a good example of how legal volunteers turned into paramilitary forces. The volunteers were never called to come and commit crimes. They were supposed to join the legal formations and put themselves under the single VRS command. However, as soon as they would get weapons, they would become renegades and start doing other

[2243] D3788
[2244] D3788
[2245] D3789, p. 2
[2246] D3789, p. 14
[2247] D3789, p. 14
[2248] D4273, p. 2;D1534
[2249] D4273, p. 2
[2250] D1076, p. 2

things.[2251] That is why the republican inspector suggested to the Minister that a special order should be issued to the Ilidza SJB to "remove all the paramilitary formations from that area, because there was sufficient manpower for it, if they are put under command of the Serbian Army of BiH."[2252]

1069. Units such as Brne's men in Ilidza, acted independently, although according to the local SJB chief they did not make any problems, at least during the first period of war.[2253] They participated as members of the Serb TO units in defending the territory.[2254] Brne was originally a volunteer, and as such, he was allowed to use facilities in Ilidza for the training of other volunteers.[2255] The status of volunteers was legally regulated first in the JNA and then later on in the VRS.[2256] Nevertheless, the republican MUP inspector still insisted, according to the Minister's order of 27 July 1992, that Brne's men should either be put under unitary command or they should leave the area of Ilidza.[2257]

1070. Brne and his men refused to do so and became renegades. Brne even planned liquidation of the VRS Igman Brigade commander, and he and his men came to be on very bed terms with the civilian authorities and the MUP.[2258]

1071. There were also other units outside of the central control. The Pale SJB informed the republican inspector that "about 20 Arkan's men were staying in their area[...]and that they would discuss with them leaving the area of Pale, and they were convinced there shouldn't be any problems about it."[2259] The Minister was also informed that in other municipalities there were no paramilitary units.

1072. Momcilo Mandic testified that the authorities arrested paramilitary groups from Nevesinje, the Yellow Wasps in Zvornik, Chetniks from the Jewish cemetery in Sarajevo, or people who called themselves Seselj's men, and that there were very often clashes between the army troops and the paramilitary units which did not wish to put themselves under the command of the regular army.[2260]

[2251] Stanisic, T.46520
[2252] D1076, p. 6
[2253] D1076, pp. 2-3
[2254] P6640
[2255] P2302
[2256] Stanisic, T.46556
[2257] D1076, p. 3
[2258] P2305
[2259] D1076, p. 3
[2260] M.Mandic, T.5147-8

1073. In July 1992, Minister Stanisic wrote to all CSBs asking them about "problems related to activities of paramilitary units, especially in cases where crimes have been committed" requesting them to propose measures for resolving these problems.[2261]

1074. The evidence in this case shows that Biljana Plavsic advocated that volunteer units assisted the defence of Serbs in Bosnia-Herzegovina. Mico Stanisic and Momcilo Mandic were against it, because such units would often become paramilitaries which then the police had to arrest. The misunderstanding between the RS officials culminated in a clash between Biljana Plavsic and Mico Stanisic.[2262]

1075. This does not mean that Biljana Plavsic supported crimes against non-Serbs. The evidence shows that she called the volunteers to come and help the Serbs in Bosnia, not that she instructed them to become paramilitaries and commit crimes against Muslims and Croats, as confirmed by her contemporaneous statement in the Assembly

> I'd like to respond to Minister Stanisic[...]My intention was to gather anyone willing to fight for the Serbian cause[...]You talk about paramilitary and non-paramilitary formations, you will have to excuse me, *that has nothing to do with me. I was looking for the people who are willing to fight for the Serbian cause*, who are willing to fight in the territory of Republika Srpska[...]Minister, it's not hearsay, I did do it, and you can condemn me if you want"[2263]

a. Arkan

1076. Another issue in this trial was the presence of Arkan in Bosnia. Video footages tendered by the Defence show that the Bijeljina local leadership called Arkan because the Serbs were under attack, and that Arkan did not commit any crimes in Bijeljina.[2264]

[redacted]

[redacted][2265]

[redacted][2266]

[redacted][2267]

[2261] D0450
[2262] M.Mandic, T.4625-6; Stanisic, T.46385-6
[2263] P1105, p. 20 (Emphasis added)
[2264] D1459
[2265] [redacted]
[2266]
[2267]

1077. Arkan publicly guaranteed safety to both the Serb and Muslim populations and angrily reacted to false allegations that he had anything against the Muslims.[2268] Arkan personally visited Muslims in Bijeljina, who thanked him for bringing them medicines and food.[2269] The Trial Chamber is invited to carefully watch this video and establish whether there was *any* fear on the faces of the Muslims visited by Arkan.

1078. [redacted][2270] [redacted][2271] Did Biljana Plavsic kiss Arkan? Irrelevant, because there is no evidence that (a) Arkan committed any crimes, (b) Plavsic knew of any crimes being committed and (c) that she kissed Arkan because he had committed crimes.

1079. President Karadzic told a Slovenian newspaper that he had not invited Arkan to come to Bijeljina at the beginning of the war.[2272] [redacted][2273]

1080. The relationship between Arkan and the Pale authorities was anything but cordial. In April 1992, Arkan told certain Rada Kalaba that he had pulled his men out of Zvornik,[2274] that he "talked to that guy Stanisic", swearing at the Pale leadership "Fuck them, how should I know what they are doing?"[2275] and calling President Karadzic "kind of an official representative now".[2276]

1081. In 1995, during the Muslim-Croat 1995 offensive, Muslim-Croat forces torched houses and killed civilians.[2277] The second presence of Arkan and his men in Republika Srpska occurred during that offensive when the official Serb forces were in a great military disadvantage, loosing Serb territories and more importantly, when the Serb

[2268] D1461
[2269] D1462
[2270] [redacted]
[2271]
[2272] D1464, p. 2 (Emphasis added)
[2273] [redacted]
[2274] P1109, p. 6
[2275] P1109, p. 8
[2276] P1109, p. 10
[2277] D4158

civilian population was killed and expelled in biblical numbers. Arkan's presence was dictated by *vis major*.

1082. Neither Arkan nor his unit were active in the RS from their time in Bijeljina until the Muslim-Croat armies attacked the western parts of the RS.[2278] When the municipalities of Bosnian Krajina started falling one after the other, the deputies from Krajina called an extraordinary sitting of the Assembly, wanting to compel President Karadzic to explain what was going on. At some point during the sitting, Arkan barged in, swearing at the deputies for holding a sitting, while Serbian people were being killed and demanded of deputies to force the republican authorities to authorise him to defend the municipalities, because the VRS did not manage to defend the areas.[2279]

1083. Also General Milovanovic met with Arkan in the presence of President Karadzic, because Arkan appeared in the combat zone for which Milovanovic was responsible and because several VRS officers were beaten up by Arkan.[2280] Arkan was given an ultimatum by Mladic and Milovanovic to leave Republika Srpska, which he did via Bijeljina.[2281] President Karadzic was silent on this issue, and did not interfere or obstruct the VRS' removal of Arkan.[2282]

1084. The evidence further shows that President Karadzic was filmed in Bijeljina thanking Arkan for defending people.[2283] Arkan's units successfully protected the civilians against the Muslim attacks in the area of Prijedor and Bosanski Novi.[2284]

1085. **This is as far as the evidence on this issue goes**. There is no evidence that Arkan ever committed or ordered crimes, or that President Karadzic had learned about Arkan's crimes before thanking him for defending Serb civilians in 1995. Momcilo Mandic testified that Arkan was arrested by the Croatian authorities in 1991, who did not file a criminal complaint against him because there was no criminal offence. He was released and returned to Belgrade. From 1991 to 1995, there was not a single criminal complaint filed against Arkan.[2285]

[2278] D4143, para 65
[2279] D4011, para 51
[2280] Milovanovic, T.25455-6
[2281] Milovanovic, T.25456, T.25459-60
[2282] Milovanovic, T.25458
[2283] P2858
[2284] D4011, para 51
[2285] M.Mandic, T.5148

1086. If the Chamber is reluctant to believe its own witness who was originally called by the Prosecution, it should believe Prosecution witness Mico Davidovic, who testified that prior to war in Bosnia, Arkan was on the front line in Serb Krajina, in Croatia, when he was taken prisoner by the Croatian authorities, and was released without having stood trial at all.[2286] President Karadzic called neither of the two witnesses, and their evidence in relation to Arkan's criminal record, or rather the lack of it, cannot now be ignored.

1087. Therefore, the only reasonable conclusion must be that President Karadzic, just as the Croatian authorities before him, had no evidence that Arkan had committed crimes either against civilians or combatants, and neither is there evidence that the men who called themselves "Arkan's men"[2287] were in actual fact people under Arkan's command, just as "Šešelj's men" were not Šešelj's at all.[2288]

1088. Once Arkan left the RS in early 1992, there may have existed groups which claimed that they were Red Berets, something similar to Arkan, but Arkan was not present in Republika Srpska.[2289]

b. Yellow Wasps

1089. [redacted][2290]

1090. The MUP realized that it did not have the potential to deal with these groups on their own, so the FRY Minister Petar Gracanin sent Mico Davidovic from the special brigade of the federal MUP. Davidovic, his unit and a platoon of RS MUP members arrived in Bijeljina with Stanisic's clear and unequivocal order that all paramilitary groups were to be eliminated and arrested. Those paramilitaries who had not committed

[2286] Milorad Davidovic, T.15719
[2287] P2411; P2229
[2288] D3665, para 72
[2289] Krajisnik, T.43336
[2290] [redacted]

crimes should be expelled, while those who had committed crimes should be prosecuted.[2291]

1091. [redacted].[2292]

1092. In the course of 29 and 30 July 1992, at the initiative of President Karadzic and the Prime Minister,[2293] the MUP staff in cooperation with the VRS disarmed and arrested 100 members of paramilitary formations in the territory of the Serbian municipality of Zvornik, who had put up armed resistance.[2294]

1093. The Yellow Wasps were neither indicted nor convicted because they stopped Ministers Ostojic or Stanisic,[2295] but because of the crimes they had committed.[2296] The victims of this paramilitary unit were also of Muslim ethnicity.[2297] [redacted][2298]

1094. [redacted].[2299] Since a number of paramilitaries were citizens of Serbia, the RS MUP in cooperation with the Serbian authorities submitted criminal reports and notified the competent prosecutor's office and the competent court in Bijeljina.[2300] Items that the paramilitaries stole from non-Serbs were returned to the owners.[2301]

1095. On 4 August 1992, the MUP collected information that indicated that Dusan Vuckovic, aka Repic, committed "massacre - genocide over citizens of the Serb Republic

[2291] Stanisic, T.46377-9, T. 46553; D3749, para 31; Milorad Davidovic, T.15554
[2292] [redacted]
[2293] M.Mandic, T.5289
[2294] D0480
[2295] Stanisic, T.46554; Andan, T.40907
[2296] M.Mandic, T.5153
[2297] Stanisic, T.46554; D3663, para 29
[2298] [redacted]
[2299] [redacted]
[2300] Stanisic, T.46380
[2301] D3816; Andan, T.40830-1

Bosnia Herzegovina of the Muslim ethnicity" and that verification and materialisation of these information was being taken care of by the VRS Military police.[2302] This report was sent to the MUP Minister.[2303]

1096. According to the agreement between the representatives of the MUP and the military police, information that the MUP obtained regarding war crimes were forwarded to the military police.[2304]

1097. 13 August 1992, Dragan Andan, acting as the Bijeljina SJB chief, submitted to the Zvornik SJB documents, money, gold and various other items confiscated in the Zvornik area during the arrest of the *Zuco* paramilitary unit, adding that "since most of these people reside in your area, you need to return their personal belongings to them".[2305]

1098. On 28 August 1992, Bijeljina Investigating Judge released from detention some of the Yellow Wasps members, because "the length of time the accused can be detained pursuant to Article 197, paragraph 1 of the Criminal Code will have expired."[2306] Release from detention concerned accused Vojin Vuckovic who was charged with the crimes theft. The charge of murder was filed with the Military Prosecutor's Office.[2307]

1099. Simultaneously, the RS authorities issued a list of 42 persons who were banned from entering the Serb Republic, among whom were Vojin Vuckovic, aka Zuco, and Dusan Vuckovic, aka Repic,[2308] although some of the expelled members attempted to come back to Republika Srpska but were prevented.[2309]

1100. On 14 September 1992 the Basic Public Prosecutor's Office in Bijeljina wrote to the investigating judge in Bijeljina, requesting an expansion of the investigation against Dusko Vuckovic, also known as Repic.[2310] The request was made to expand the investigation into aggravated theft.[2311] The Military Prosecutor's Office returned this criminal report to the civilian prosecutor, explaining that the reported person, Dusko

[2302] P2904, p. 3
[2303] P6386
[2304] Macar, T.39507
[2305] D3793
[2306] P2905
[2307] Milorad Davidovic, T.15652
[2308] D1418
[2309] D3664
[2310] D1413
[2311] Milorad Davidovic, T.15655

Vuckovic, cannot be treated as a member of the VRS, unlike other persons named in the report.[2312]

1101. On 30 October 1992 Minister Stanisic explained that the primary task of the MUP in relation to paramilitary formations who plundered and terrorised the local population in Zvornik, and were subsequently arrested, was their "expuslion from the territory of Republika Srpska (if they are not from our territory), or putting before court of justice of those who have already committed some crimes."[2313]

1102. On 16 November 1992, the same Bijeljina Lower Court Investigating Judge Simeunovic, who had previously released some members of the Yellow Wasps, continued with the case, inviting expert witnesses to be heard in the case of Vuckovic et al.[2314] The same court and the same judge would later in 1993 write to the 1st Municipal Court in Belgrade, requesting to question one of the accused, because it also conducted own criminal proceedings against the Yellow Wasps.[2315]

1103. On 14 December 1992, the Republic of Serbia State Security stated that a week earlier it had informed the RS State Security about extremist activities of Vojin Vuckovic in the area of Podrinje, and other operative information,[2316] meaning that the two State Securities co-operated and exchanged information about the Yellow Wasps group. The Republic of Serbia State Security, then filed a criminal report with the District Prosecutor's Office in Sabac in Serbia, against Vuckovic, Dusan, aka Repic, and Vojin Vuckovic, aka Zuco, because there was grounds to suspect that as co-perpetrators, they committed war crimes against Muslim civilians under Article 142 of the Criminal Code of the FRY, and also Dusan Vuckovic individually committed the crime of rape, unlawful arrest and grave robbery. [2317]

1104. The Yellow Wasps members were prosecuted in Serbia because they were citizens of Republic of Serbia.[2318] As such they were indicted and tried before the courts of Serbia in April 1994. [redacted]

[2312] D1413, p.2
[2313] D4274, p. 6
[2314] D1414
[2315] D1415
[2316] D1416
[2317] D1417
[2318] M.Mandic, T.5290

[redacted][2319]

[redacted][2320]

1105. Marko Pavlovic, the commander of the Zvornik TO staff was also arrested and handed over to the national security service, but since he had epilepsy, and had a seizure during detention in Sokolac, he was transported and hospitalised in Serbia.[2321]

1106. The District Attorney proposed that the detention of the accused Dusko Vuckovic be extended until the trial was concluded and consequently Vuckovic was not released.[2322] Following an appeal by the accused and the Prosecution, the Supreme Court of Serbia sentenced Dusan Vuckovic to ten years in prison for committing a war crime against the civilian population and a crime of rape.[2323] Before, during and after this trial, Slobodan Milosevic was the President of the country that convicted Dusko Vuckovic for war crimes against Muslims.

1107. Milorad Davidovic testified that the Vuckovic brothers were arrested in Sabac by the Republika Srpska official Dragan Andan and three other members of the federal SUP.[2324] Andan testified that Dusko Vuckovic Repic was tried and convicted "on the basis of the documents that we provided to the court. I can categorically say that we provided the documents in 1992".[2325] Therefore, it was a Serbia-Republika Srska "joint enterprise" to arrest and punish a war criminal.

1108. Yet, the Prosecution asserts that the Yellow Wasps were receiving weapons from Pale SJB chief Malko Koroman.[2326] However, it appears that the signature in the document in question in the original version bears the word "za" or "for", meaning that someone else signed the document instead of Koroman.[2327] Otherwise, why would the MUP have the Yellow Wasps arrested and prosecuted? Minister Stanisic testified that

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[2319] [redacted]
[2320] [redacted]
[2321] Andan, T.40894
[2322] [redacted]; M.Mandic, T.5292
[2323] D0482, p. 1
[2324] Milorad Davidovic, T.15791
[2325] Andan, T.40859-60
[2326] Mico Stanisic, T.46524; P3174
[2327] P3174

disciplinary proceedings were initiated against Koroman and checks were carried out and the conclusion reached was that it was not true that Koroman supplied weapons to paramilitaries.[2328]

1109. Even if Koroman had signed the document, another reasonable inferences could be drawn. Koroman had no idea that (a) the person to whom he issued weapons was a member of any paramilitary unit, (b) Koroman thought that the person in question, Vuckovic, was a member of some official special unit "Igor Markovic"[2329], and (c) there is no evidence that Koroman had any idea about any of the crimes committed by the Yellow Wasps, that were arrested by the very same MUP to whom Koroman belonged and by whom he was appointed to other duties in the MUP.[2330]

1110. When one of the leaders of the Yellow Wasps paramilitary group, visited Defence Minister Subotic in Pale in July 1992, the Minister told him that there were not going to be any paramilitary armies, and only later learned that the MUP arrested the Yellow Wasps, because they were involved in some criminal activities.[2331] At the time of this visit, Minister Subotic had no information that the Yellow Wasps had committed crimes against members of any ethnicity.[2332] The only information he had was that members of the Yellow Wasps had been involved in the theft of some jewellery.[2333]

1111. When representatives of Zvornik municipality addressed Minister Subotic about the issue of volunteer units in the VRS, he told them that there was no question about including in the VRS anyone from the volunteer units who was found to have been involved in a crime.[2334]

1112. After the Yellow Wasp operation, Minister Stanisic arrived in Zvornik, called a meeting with the people who participated in the operations, and ordered that a similar operation against any paramilitary or parapolice groups were to be continued. The MUP unit was transferred to Visegrad and Rudo and continued its work.[2335]

[2328] Stanisic, T.46524
[2329] P3174 (*See original BCS*)
[2330] P6637
[2331] D3695, para 205
[2332] D3695, para 206
[2333] D3695, para 205
[2334] D3705; D3695, para 293
[2335] Stanisic, T.46382; D4275

1113. The Republican authorities publicly denounced armed individuals who stayed in towns and villages and used weapons to disturb the public peace and order,[2336] naming them rascals who used the war and the uniform in order to cover up their illegal and looting activities.[2337] The RS leadership consistently insisted that all units must be placed under the single command and was concerned that Mauzer's and Blagojevic's groups suspended the civilian authorities in Bijeljina.[2338]

1114. In 1994, when Presiden Karadzic received information that in several municipalities, Teslic, Petrovo, Knezevo, Vogosca, and Ilijas, attempts were being made to set up paramilitary units he immediately asked the MUP, VRS and municipalities to take the strictest measures against such groups.[2339]

c. Prosecution Witness Milorad Davidovic

1115. Milorad Davidovic testified that he arrested members of Arkan's units, and other paramilitaries and criminals at the orders of President Karadzic and Minister Stanisic, and that Jovo Miskin, a government representative from Pale, supported Davidovic in his efforts to establish the rule of law.[2340]

1116. Still, Davidovic claimed that he allegedly informed Mico Stanisic that the Bijeljina local authorities had made a plan to expel the non-Serbs in summer of 1992, and that the MUP members were responsible for the killings of three Muslim families in Bijeljina.[2341] However, when interviewed by the Hague Prosecution in 2008, Davidovic said that he did not know anything about these incidents.[2342]

1117. Davidovic also alleged that Drago Vukovic, the head of the National Security Service, carried out expulsions of non-Serbs, although Vukovic was in the post-Dayton period an adviser in the Joint BH Presidency and had to go through very thorough clearance by the international community.[2343]

[2336] D3717
[2337] D3717
[2338] P1478, p. 220
[2339] D1446; D1447; D1448; D1454
[2340] Milorad Davidovic, T.15579-81
[2341] Milorad Davidovic, T.15583-7
[2342] D1407, p. 2; Milorad. Davidovic, T.15589
[2343] Milorad. Davidovic, T.15591-2

1118. The contemporaneous evidence shows that in August 1992, Milorad Davidovic reported on the joint activities of his Special Unit, the RS MUP and the VRS, and their war with the Serb paramilitary forces.[2344] All paramilitary formations were disarmed, their members who had been involved in criminal activities were arrested and would face criminal prosecution, while the others were returned to the FRY if they were citizens of that country,[2345] such as was the case with the leaders of the Yellow Wasps.[2346]

1119. Although Davidovic testified that Dragan Andan was allegedly suspended because he had good intentions towards Muslims,[2347] the evidence shows that Andan was suspended for disciplinary reasons, which Davidovic conceded in the end.[2348]

1120. Davidovic also originally testified that President Karadzic had said that there should be no arrests of Serbs,[2349] and that President Karadzic ordered the release of the Yellow Wasps,[2350] although Davidovic had previously given a statement that "between April and September 1992, at the order of the Republika Srpska leadership, I participated in the identification and capture of Serbian war criminals and the disarming of various Serbian paramilitary formations."[2351]

1121. Similarly, Milorad Davidovic testified that neither he nor Dragan Andan ever received any support or recognition for the work they were doing,[2352] but Davidovic knew that Andan had sent a report to President Karadzic about his and Davidovic's activities to which President Karadzic replied "Keep enforcing order and the rule of law".[2353]

1122. Bearing in mind the insecurity of Milorad Davidovic's testimony, the Trial Chamber should accept only those parts that are corroborated by contemporaneous evidence and/or the evidence of other high profile insiders who could have had the same information, such as Dragan Andan, Mico Stanisic, Momcilo Mandic, or Milenko Karisik. Davidovic had a personal reason to blame the RS authorities in this case. He was

[2344] D1412, pp. 6-9
[2345] D1412, p. 9
[2346] Milorad Davidovic, T.15647
[2347] Milorad Davidovic, T.15628
[2348] D1409; D1410; Milorad Davidovic, T.15630
[2349] Milorad Davidovic, T.15636
[2350] Milorad Davidovic, T.15614
[2351] D1406, p. 3
[2352] Milorad Davidovic, T.15638
[2353] P2900, p. 6; Milorad Davidovic, T.15638, T.15642

removed form the service when he over-stepped his authority, both in terms of real jurisdiction and in terms of the degree of using force, as well as when he got involved in financial wrong-doing, during and after the war.[2354]

d. Vojkan Djurkovic

1123. Milorad Davidovic testified that Krajisnik authorised Djurkovic to expel Muslims from Bijeljina and that he and Dragan Micic, an MP from Bijeljina, were deeply unhappy about it.[2355] Davidovic even claimed that President Karadzic personally promoted Vojkan Djurkovic and awarded him the rank of major,[2356] that "Djurkovic paid a certain percentage of money collected for each group of people expelled to Radovan Karadzic and Momcilo Krajisnik"[2357], and that Davidovic was going "to collect statements from persons involved, and I'm going to send them."[2358] No statement in this regard has ever been provided to the Defence either by Davidovic or the Prosecution. Davidovic also claimed that he made an official note about these events, which he allegedly presented to the OTP, or maybe it was "destroyed during the bombing".[2359] In any event, no such official note was presented to the Court.

1124. The contemporaneous documents tell a different story. Firstly, that very same Bijeljina MP Micic, who was allegedly deeply unhappy about the expulsion of Muslims, was appointed war commissioner for Bijeljina by President Karadzic, in order to assist the local authorities.[2360] That same Dragan Micic filed a request with the Bijeljina police to bring in under custody and institute proceedings against Vojkan Djurkovic for taking away by force of about 50 Muslims and for threatening deputy Micic who was filing the request.[2361] If Vojkan Djurkovic had been working together with the Pale authorities, he would certainly not have been "molested" by President Karadzic's commissioners.

[2354] D1401; D1402; D1403; D1404; D1405; D1406; Milorad Davidovic, T.15556-7; P2808
[2355] P2848, para 158
[2356] Milorad Davidovic, T.15712
[2357] P2848, para 165
[2358] Milorad Davidovic, T.15723
[2359] Milorad Davidovic, T.15729
[2360] D1428; Milorad Davidovic, T.15703
[2361] D1429

1125. In addition, President Karadzic addressed the Assembly in August 1994 and, *inter alia*, condemned criminal activities against members of the VRS carried out by Vojkan Djurkovic and the group around him.[2362] President Karadzic then on 31 August 1994 formed a high-level working group to resolve problems of Muslim inhabitants in Bijeljina, particularly in relation to the treatment of Muslim members of the VRS.[2363] Several days later, on 5 September 1994, President Karadzic made it known to the ICRC and UNHCR representatives that

> We are not (repeat: not) conducting a policy of ethnic cleansing, nor are our local authorities in any way implicated in what has been going on. However, we recognise that the problem existed and it is my firm intention to solve it. A start has already been made: the regional police head has been replaced. I am also taking certain other steps to deal with this matter, but I ask you to be patient and let me get on with this. Finally, I ask you to remember similar events in the Prijedor area some time ago. We had the same problem of extremists taking law in their own hands. We addressed that problem and solved it soon thereafter. The same will be true of Bijeljina and Janja.[2364]

1126. Let us now remind ourselves of the Prosecution's Pre-Trial brief paragraphs 271-273 that incorrectly alleges that "members of the international community, notified Karadzic and other members of the BSL or their subordinates of the crimes" but Karadzic and the "BSL denied that crimes were being committed and sought to cover them up". No further comment is necessary.

1127. We have seen that in his letter to the international officials, President Karadzic referred to the "similar events in the Prijedor area some time ago". These events took place in April 1994, when President Karadzic ordered the MUP and the Army

> In accordance with our obligations to international humanitarian law, I order the following:
> 1) Investigation steps to be taken in order to shed light on the crimes committed in the Republic of Srpska, with particular urgency in Prijedor;
> 2) Any other necessary action to be taken in the fight to reduce extremism and to ensure the safety of national minorities members who wish to remain in our Republic.[2365]

1128. Although originally claiming that the Serb authorities were pursuing a policy of ethnic cleansing, Prosecution witness Milorad Davidovic subsequently conceded "I must

[2362] D1432, p. 7
[2363] D1430
[2364] D1431
[2365] D1138; D4151; D4816

say when I came to Bijeljina and restored peace to some extent[...]I could see at that time that some Muslims were returning to their homes, believing that combat had stopped."[2366] It should be added that Davidovic conceded this when confronted with President Karadzic's appeal to Bijeljina Muslims to return to their homes.[2367]

1129. Finally, Davidovic confessed that President Karadzic let him deal with the paramilitaries as he saw fit

> I have told the Prosecution that I did not have any prohibition, any restrictions or anything else. I was completely autonomous when planning activities and operations, arresting, bringing people in. No one ever told me don't do that or didn't allow me to carry out anything.[2368]

e. Veljko Milankovic's Wolves

1130. Milankovic's group was a self-organised unit that was eventually incorporated into the regular army.[2369] Tolimir mentioned this unit as a unit under the command of the 1. KK whose members were looting and attacking and arresting VRS personnel.[2370] It is obvious that individual members of this unit had problems with discipline, not the entire unit,[2371] but it is also clear that no crimes against civilians were committed by this unit. In fact, many of them were true patriots,[2372] and as such were commended by Krajisnik.[2373]

1131. Finally, let there be no doubt about the state policy towards the paramilitaries. On 28 July 1992, General Mladic issued an order that summarised the problem we have been discussing in this chapter

> Paramilitary formations exist in areas of responsibility of all the corps and are mainly located behind the lines of combat activities, in the rear and in inhabited areas. They rarely eneter the area of combat activities and then usually follow SR BiH Army units when liberating parts of the territory and inhabited areas, and are mainly motivated by looting[...]I order that all paramilitary formations and their leaders, if they really have honest intentions of placing themselves in the service of the just struggle for the survival of the Serbian people, are to be invited to join regular SR BiH Army units[...]**Individuals and groups that have committed atrocities, looting and other types of criminal acts are not to be included into units. They are to be disarmed, arrested and criminal proceedings are to be initiated against them** in SR BiH Army courts,

[2366] D1428; Milorad Davidovic, T.15732
[2367] D0473, p. 10
[2368] Milorad Davidovic, T.15735
[2369] Grahovac, T.44045-6
[2370] P2855, p. 4
[2371] Grahovac, T.44047
[2372] Grahovac, T.44048
[2373] P3001

> regardless of their citizenship. Paramilitary formations, groups and individuals belonging to them and who refuse to be placed under unified SR BiH Army command, are to be disarmed and arrested in cooperation with the SR BiH MUP and criminal proceedings are to be initiated against them for crimes committed."[2374]

15. Authorities Did Not Persecute Muslim and Croat Soldiers in VRS

1132. Would Germans serving in the British army during WW II, if there were any, be suspicious to Field Marshall Alan Brooke?

1133. Whether Muslims in the VRS were suspicious to General Mladic or not, the VRS had an entire battalion called the Mesa Selimovic Battalion, whose members were exclusively of Muslim ethnicity.[2375] In Trebinje, there was a VRS brigade that consisted of ethnic Muslims.[2376] In Bijeljina and Janja, there were VRS soldiers of Muslim ethnicity.[2377] There were also Croats VRS officers at Pale, who remained there throughout the war.[2378]

1134. Banja Luka TO that was reorganised into infantry brigades, consisted of Serbs, Muslims and Croats, and 50% of people who worked in the TO staff in May and June 1992 were non-Serbs.[2379] In the Ljubinje Battalion, half of the fighters were Muslims.[2380]

1135. VRS members taking the oath swore to defend RS peoples.[2381] The wording of the oath was made to be acceptable for the members of all ethnic communities.[2382] The Republic political and military authorities prohibited any sectarian attitude towards other ethnic groups.[2383]

1136. The Government introduced an obligation for mobilisation and participation in defence of the state for everyone who was liable, regardless of ethnicity, because all citizens were treated equally under the law.[2384]

[2374] P1500(Emphasis added)
[2375] Milovanovic, T.25556
[2376] M.Mandic, T.5136
[2377] M.Mandic, T.5280
[2378] M.Mandic, T.5281
[2379] D4114, para 10
[2380] Kozic, T.37028
[2381] D4004
[2382] Krajisnik, T.43370
[2383] D3846, p. 5
[2384] D3606, p. 3; D3576; D3563, paras 39,41

1137. Finally, President Karadzic's policies towards the non-Serbs in the VRS are reflected is his instruction to the VRS Main Staff

> We do not have the right to reject Muslim recruits and their desire to defend the Serbian Republic. Furthermore, we find their desire to fight against the Croatian Ustashas rather than on some other front understandable. Therefore, please ensure proper political conditions for accepting and treating the Muslim soldiers with dignity[2385]

16. Authorities Did Not Persecute Non-Serbs Through Destruction of Sacred Sites

1138. Contrary to Indictment paragraph 60 (j) alleging that the wanton destruction of cultural monuments and sacred sites was part of the JCE, the evidence shows that the RS authorities ordered care and protection of cultural and religous monuments.

1139. Unfortunately, the tradition of destroying and defacing religious buildings has a long history in the Balkans and particularly in BH. In 1992, it began with the destruction of Orthodox churches and monasteries in the Neretva valley, after which everything got out of control. The RS authorities condemned destruction of religious buildings, and that investigations be conducted.[2386]

1140. The problem was that Islamic buildings were often used for military purposes, and that Islamic religious society was often abused for the transport of weapons.[2387] For example, the heaviest Muslim attack on the JNA Command in Sarajevo was carried out from the mosque on Trg 6. aprila Square.[2388] Even Prosecution expert Brown noticed that the Muslim religious leaders could not explain why they had kept illegal weapons or why the SDA and the Merhamet humanitarian organisation caused armed conflicts.[2389]

1141. Other cases of destructions of religious buildings involved uncontrolled retaliation, such as in Srebrenica where the Orthodox church was demolished by the Muslims and turned into a barn for the cattle and chicken, full of excrement.[2390] When the

[2385] D0479
[2386] D3578; D3563, para 44; D4086, para 111
[2387] D3714; D3695, para 44
[2388] D3671, para 9
[2389] P3914, para 2162
[2390] Ristic, T.15402-5 and T.15420;Zivanovic, T.42663-4

Serb soldiers entering Srebrenica saw that sight, nothing and nobody could prevent them from destroying the mosque, although there was no order for doing it.[2391]

1142. The Prosecution tried its best to show that there was systematic destruction of mosques and Catholic churches. However, the best that Prosecution expert Riedlmayer could come up with in his expert report was to establish the time when a religious building was damaged but could not establish whether it was the authorities that were behind the destructions.[2392] This is not surprising bearing in mind that the authorities did *everything* in their power to protect, prevent and investigate cases of such destructions.[2393] General Talic several times ordered protection of religious buildings and forbade harassment of clerics.[2394]

1143. In 1993, President Karadzic ordered that all places of worship in Banja Luka and its surroundings be secured and protected from increased terrorist activity by means of reinforced Banja Luka Security Services Centre patrols,[2395] and in 1994 ordered the Army to refrain to the utmost from retaliating against the provocations of the Muslim army during the days of *Bairam.*[2396]

17. Central Authorities Did Not Persecute Non-Serbs Through ARK Authorities

1144. The Prosecution's Pre-Trial brief in paragraph 268 alleges that President Karadzic exercised *de jure* and *de facto* authority and control over the SAOs involved in the crimes, while paragraph 156 alleges that as soon as the Bosnian Serb authority over the ARK municipalities was established, the Bosnian Muslims and Croats were persecuted, killed or forcibly. The evidence presented in this chapter shows that neither the Republican authorities controlled the events in the ARK, nor the ARK authorities controlled the events in the ARK municipalities. The evidence also shows that the ARK authorities did not persecute, killed or forcibly removed the ARK non-Serbs.

[2391] Zivanovic,T.42663-4
[2392] Riedlmayer, T.22558
[2393] D1736
[2394] D1979; D1980
[2395] D0106
[2396] D4610

a. Republican Authorities Ordered Application of Geneva Conventions but Did Not Control ARK Authorities because AR Krajina was Functioning as a State Within a State

1145. ARK leaders testified that the ARK was *de facto* a state within a state.[2397] In previous chapters, we have seen the history of the Krajina separatism vis-à-vis the Pale government. When the war broke out, new reasons for Krajina's independence emerged. Given that all Serbian areas were attacked by the Muslims and the Croats, the ARK Assembly made the decision in April 1992 to form a National Defence Council of the ARK,[2398] and a special purposes police detachment.[2399] This decision had nothing to do with Pale or President Karadzic.[2400]

1146. In May 1992, the ARK Executive Council formed the ARK Crisis Staff,[2401] which was not in line with the decisions of the Government. In April 1992, Prime Minister Djeric sent instructions for the establishment of crisis staffs in municipalities, but not in the region.[2402] The ARK Assembly ignored the instructions issued by the Prime Minister.[2403] Resultantly, the ARK Crisis Staff was not supported by the central Republican authorities in Pale,[2404] and no one from the Republican leadership controlled the crisis staffs in the territory of Krajina.[2405]

1147. The leadership in Pale never attended any meeting of the ARK crisis staff, nor viewed the ARK crisis staff favourably.[2406] Pale never gave the ARK any instructions as to who should be members of the ARK War Staff.[2407] The ARK Crisis Staff operated independently.[2408] Radoslav Brdjanin, the ARK Crisis Staff President, testified that he did not receive any instructions from Pale or President Karadzic about his work or the work of the ARK Crisis Staff while it existed, and that there was no interest by the central

[2397] D4011, para 38; D4114, para 53; D4086, para 71
[2398] D4011, para 38; D4017
[2399] P5454; D4011, para 39
[2400] D4011, para 38
[2401] P3924
[2402] D0407; P3459; D4034, paras 4, 10; D4086, para 35
[2403] D4114, para 44; D0407; D4011, para 25
[2404] D4034, para 6
[2405] D3695, para 57
[2406] D4114, para 47; D4011, para 40
[2407] D4086, para 37
[2408] D4037; D4086, paras 45-6

authorities for the work of the ARK Crisis Staff.[2409] Pale's influence on Krajina was non-existent because the central authorities were not present in these areas.[2410] President Karadzic and Brdjanin were in constant conflict.[2411]

1148. The crisis staffs were not formed in order to expel the non-Serbian population.[2412] Krajina was cut off from the rest of the Serbian Republic of BH until 28 June 1992 when a corridor was opened.[2413] The consequences of this isolation remained in the following months.[2414] The break between Pale and Banja Luka rendered communication extremely difficult.[2415] It was physically impossible for the ARK to establish links with Pale because the territory was cut off in Posavina and the ARK was surrounded.[2416] The power and the phone lines were down for months.[2417] and there was a total breakdown of all forms of communication, money flows,[2418] and roads.[2419]

1149. On rare occasions when President Karadzic had an opportunity to meet with the ARK leadership, during the Assembly session in Banja Luka on 12 May 1992 and on 2 June 1992, he criticized the regional leadership for not managing to make the civilian authorities function properly.[2420] He was informed that the ARK authorities fought against the paramilitaries but also that they were against sending agents from the republican level to control the work of the regional authorities. He was also told that there was a problem of Krajina and 14500 Muslims.[2421]

1150. During the meeting of 2 June 1992, the ARK requested the republican position in relation to POWs and refugees because many people who participated in the war were not familiar with Geneva Conventions.[2422] Although President Karadzic and the Government had previously ordered the implementation of the Geneva Conventions

[2409] D4034, para 9
[2410] D4114, para 49 ; P1481, p. 62
[2411] Kupresanin, T.43503
[2412] D4011, para 40; D4086, para 12
[2413] D4034, para 9
[2414] D4034, para 9
[2415] D4034, para 9
[2416] Kupresanin, T.43553; D4077, para 8; Dodik, T.36851; D4086, para 32
[2417] Kupresanin, T.43554
[2418] D4086, para 29
[2419] D4088; D4086, para 42
[2420] P1478, p. 53
[2421] P1478, p. 54-5; Brdjanin, T.43681
[2422] P1478, p. 54; Brdjanin, T.43691-3

before this meeting,[2423] already on 8, 9, 12 and 13 June 1992, he, the Presidency, the VRS and the Minister of Defence again unambiguously ordered protection of civilians and POWs in accordance with the Geneva conventions and international humanitarian law in general.[2424]

1151. No crimes were mentioned during the meeting of 2 June 1992, which happened in passing and was publicized in the news.[2425] On the same day, 2 June 1992, the 1. KK wrote to the VRS Main Staff that "certain divisions in the SDS leadership are transferring themselves to the troops in our units. This is particularly noticeable in the relations between AR Krajina and SR BH".[2426]

1152. On 14 June 1992, the 1. KK reported that "the Bosnian Krajina AR, its leadership, in its public statements and concrete political actions, maintain an **independent attitude** towards the Serbian Republic BH government".[2427]

1153. On 14 July 1992, the 1. KK reported that "in the ranks of the government organs of the Serbian Republic of Bosnia and Herzegovina there is an ongoing power struggle and jockeying for influence on military organisation. The existence of **parallel ministries** of the Serbian Republic of Bosnia and Herzegovina and the **Autonomous Reigon of Krajina** [...] are contributing to this".[2428]

1154. On 17 July 1992, the 1. KK Command noted that "certain officials of the Autonomous Region of Krajina are working intensively on the creation of the so-called **state of Krajina**, which could have negative consequences for the unity of the Serbian people in BH".[2429]

1155. On 24 July 1992, the 1. KK Command reported that "several leaders of several parties in the AR of Krajina are clashing more and more with the official government of the SR BH. A boycott of deputies from this region attending the SR BH Assembly has been announced, and it had been demanded as an imperative that only Banja Luka can be the seat of the SR BH Government."[2430]

[2423] D0406, p. 2;D0407
[2424] D0426; D0428; D0434; D1849; D1848; P1134
[2425] D4056
[2426] P3927, p. 2
[2427] P3664, p. 3 (Emphasis added)
[2428] D1942, p. 2 (Emphasis added)
[2429] D1941, p. 2 (Emphasis added)
[2430] D3844

1156. On 10 August 1992, the Command of the 1. KK noted that "the AR Krajina wishes to elevate itself above the Government of the SRBiH."[2431]

1157. The ARK authorities regulated a variety of issues that would have normally been under the jurisdiction of the Republic authorities, so that, to all intents and purposes, the ARK operated as a state in which all branches of government existed; the executive, the judiciary, and the legislative.[2432]

1158. Although the Presidency decided to crush Krajina separatism in July 1992,[2433] the evidence shows that the ARK existed until at least October 1992.[2434]

1159. The relationship between Pale and Banja Luka was full of intolerance and antagonism throughout the entire war.[2435] The Krajina separatism culminated in September 1993, when the Bosnian Krajina deputies insisted that the RS government moved to Banja Luka. When the leadership decided to prevent this, the Army rebellion *September 93* was organized.[2436] For the Pale leadership, it was a sign that Banja Luka was not a safe place for the seat of the government and it continued to sit in Pale.[2437]

1160. One of the main reasons for Prime Minister Kozic's resignation in October 1995 was the fact that *Krajisnici* asked that one of the three leading figures of Republika Srpska came from that region.[2438] And so it was, the prime minister who replaced Kozic was from Banja Luka.[2439]

b. ARK Authorities Did Not Control Municipal Authorities

1161. The municipal crisis staffs were independent from the Krajina Crisis Staff, especially because the functioning of the ARK was dependent on the funds provided by the municipalities.[2440] The ARK Assembly could not dismiss any of the municipal

[2431] D4051, p. 3
[2432] D1307; D1309; D4035; D4095; D4097; D4098; D4099; D4100; D4101; D4102; D4103; D4104; D4105; D4086, paras 32, 39, 41, 60, 62-1; D4063, paras 12 and 16; D4115; D4114, para 53; Mandic, T.5106, T.5140; D3695, para 248
[2433] D0440, p. 1
[2434] P3722
[2435] D4093; D4086, para 54; D4011, para 50
[2436] D4077, para 45
[2437] D4077, para 45
[2438] Kozic, T.37010
[2439] Kozic, T.37014
[2440] D4011, para 40

presidents.[2441] The municipalities were so independent that they could and did stop earmarking funds for the work of the ARK.[2442]

1162. There was no subordination and hierarchy in the relationship between the ARK Crisis Staff and the municipal crisis staffs.[2443]Although the ARK Crisis Staff tried to force itself on the municipal crisis staffs,[2444] the municipalities independently decided whether they would or would not implement the conclusions and decisions of the ARK Crisis Staff.[2445] Some municipalities implemented the decisions of the ARK, others did not, while others implemented them only in part, and nothing could be done to punish municipal organs if they failed to implement ARK decisions,[2446] or when they failed to respond to requests of the ARK authorities.[2447]

1163. For example, the Prijedor crisis staff decided not to apply decisions issued by the ARK Crisis Staff and the ARK Government.[2448] The ARK had no control over municipalities like Prijedor that often blackmailed the ARK Government into appointing their people to the ARK Government.[2449]

1164. Municipalities of the Sana–Una area (Krupa, Petrovac, Bosanski Novi, Bosanska Dubica, Prijedor and Sanski Most) were in principle against the work and decisions of the ARK Crisis Staff and they openly insisted on changing its members.[2450] The Sana-Una municipalities were not controlled by the ARK authorities.[2451] Therefore, it is not surprising that municipalities such as Sanski Most issued decisions completely independently without any input from the ARK authorities,[2452] or criticising the ARK Crisis Staff for passing important decisions at the level of Banja Luka municipality that affected the entire territory of the ARK.[2453]

[2441] D4011, paras 40, 49
[2442] D4011, para 40
[2443] D4034, para 20 ; Kupresanin, T.43513
[2444] P5415
[2445] D4034, para 20 ; D4086, para 14
[2446] D4034, para 20; Brdjanin, T.43653, T.43656; D4114, para 55; D4086, paras 77, 81, 84, 94; P3645; Erceg, T.44095
[2447] D4107
[2448] D4057; D4114, para 60; D4086, para 82
[2449] D4114, para 60; P3536, p. 30
[2450] P6437, p. 3; D4034, para 22; D4011, para 42; D4086, para 86
[2451] D4086, para 86
[2452] D4108; D4086, para 86
[2453] P2732, p. 2

1165. In conclusion, it can be said that the ARK municipalities distanced themselves from the ARK in the same way as the ARK distanced itself from Pale.[2454]

c. ARK Authorities Did Not Control or Supervise Detention Centres

1166. Radoslav Brdjanin, Milorad Sajic and Nikola Erceg testified that the ARK Crisis Staff did not have any information about crimes in the collection and investigation centres and that ARK authorities had nothing to do with these centres.[2455] They were rather told that Muslims had been sheltered to be protected from Serb and Muslim extremist groups.[2456] Radic criticized the local authorities because there were many people in Omarska.[2457] Brdjanin later informed the state leadership that there was only a collection centre in Prijedor.[2458]

1167. Erceg was informed by the Prijedor authorities that individuals suspected of having taken part in combat operations were being held at Omarska and Keraterm, while a part of the population from war-torn areas who could not return home remained in the Trnopolje open type camp.[2459] The only time Erceg happened to visit Tronopole he found the conditions to be satisfactory.[2460]

d. ARK Authorities Did Not Persecute Non-Serbs Through Personnel Loyalty Policy

1168. On 8 May 1992, it was concluded that all management posts in enterprises must be held by persons absolutely loyal to the Serbian Republic, without specifying nationality.[2461] This conclusion was reiterated on 13 May 1992 again without referring to ethnicity.[2462] There is nothing wrong with the demand that only people loyal to the state

[2454] D4114, para 61
[2455] D4034, para 52; D4114, paras 57-58; D4086, para 89
[2456] Brdjanin, T.43696
[2457] Brdjanin, T.43696
[2458] Brdjanin, T.43697
[2459] D4109, p. 1; D4086, para 90
[2460] D4086, para 89
[2461] D4043, p. 2
[2462] D4041, p. 1

could occupy sensitive state positions. No country would allow non-loyal citizens to hold key positions during the peace time, let alone in war.

1169. On 18 May 1992, the ARK Crisis Staff concluded that it expected citizens of other nationalities to become part of the legal armed formations and that they must defend their centuries-old homesteads under the banner of the Serbian Republic "because peace must be a common interest" adding that "the loyalty of other peoples to the Serbian Republic of Bosnia and Herzegovina should be more than just a declaration".[2463]

1170. Approximately a month after this meeting, the ARK authorities ascertained that their security situation was undermined and sensitive information leaked to the enemy forces.[2464]

1171. As a result, the ARK Crisis Staff decided on 22 June 1992 to appoint Serbs who unconditionally accepted the newly-formed state structures to sensitive top positions from where information could be leaked.[2465] These measures were temporary, adopted for the duration of the civil war.[2466]

1172. The temporary loyalty requirement also excluded disloyal Serbs,[2467] and had nothing to do with the Prosecution's allegations that this was part of a persecutorial campaign of non-Serbs. One week after the temporary loyalty decision, on 30 June 1992, the ARK Government guaranteed "the rights of all people, regardless of their religious or ethnic affiliation".[2468]

1173. Even though the ARK Crisis Staff issued decisions that executive posts involving a likely flow of information may only be held by personnel of Serbian nationality,[2469] in practice many Muslims and Croats remained working in the public security centre and the TO staff,[2470] and other public offices.[2471] But even the decision referred to by the Prosecution as an example of dismissals of non-Serbs states that employees may not be dismissed or removed without finding appropriate solutions for

[2463] D4038; D4034, para 15
[2464] D4034, para 15
[2465] D4039; D4040; D4034, para 15
[2466] D4034, para 15
[2467] D4039; D4086, para 98
[2468] D4042, p. 1
[2469] P6533, p. 1
[2470] Sajic, T.44140-1
[2471] Bojinovic, T.44730

their reassignment to duties and work.[2472] Replacements are not the same thing as dismissals.[2473]

1174. Andjelko Grahovac dismissed employees who did not come to work, but one was fired on account of being Muslim or Croat, and there were also Serbs who did not come to work, and they too were dismissed.[2474]

1175. The Defence does not dispute that there may have been individual incidents of people being dismissed from work, but this had nothing to do with alleged persecutions.[2475]

1176. In the end, Muslims and Croats were still represented in the ARK municipal governments,[2476] which would not have been possible if there had been a discriminatory policy pursued by the ARK.

e. ARK Authorities Did Not Persecute Non-Serbs Through Disarmament and Seizure of Illegal Weapons

1177. At the outset it must be noted that this is one of the most difficult Prosecution's arguments to understand, i.e. that the authorities disarmed the Muslim and Croat population.[2477] Should the authorities have armed the Muslims and Croats while there was a civil war going on and reports were coming in stating that Serbian corpses were found impaled on a spit and roasted?[2478]

1178. The ARK Crisis Staff insisted on disarming all citizens, regardless of their nationality, who were in possession of illegal weapons,[2479] and fought against all paramilitary formations, regardless of their ethnic composition.[2480]

1179. Disarming had to be done so as not to provoke fighting.[2481] ARK Crisis Staff informed the public that strict measures would be taken against persons who misused the

[2472] P6533, p. 2
[2473] Sajic, T.44171-2
[2474] D4077, para 42
[2475] D4114, para 41; D4110; D4086, para 101
[2476] D4111; D4086, para 102
[2477] Prosecution Pre-Trial brief, para 105
[2478] P3662
[2479] P3694; D4034, para 26; D4086, para 108
[2480] D4038; D4034, para 15; D4114, para 40
[2481] D4049

uniforms they wore.[2482] The first paramilitary formation that was disarmed was Veljko Milanković's group "Wolves", and a group called "Mice" - both Serb paramilitary formations.[2483]

f. ARK Authorities Did Not Persecute Non-Serbs Through Forcible Transfer or Deportation

1180. The ARK policy towards departures of non-Serbs from ARK evolved over time and depended on the situation on the ground, but it never involved expulsion of Muslims.[2484]

1181. On 13 May 1992 the ARK Crisis Staff concluded that individuals who were leaving the ARK must have a certificate of departure.[2485] These certificates served as proof that a person was voluntarily leaving.[2486]

1182. On 18 May 1992 the ARK Crisis Staff concluded that there should be reciprocity with regard to the relocation of people throughout the Serbian Republic of BH, and this pertained to people who wanted to voluntarily leave their place of residence.[2487]

1183. On 20 May 1992 the ARK Crisis Staff concluded that there were no reasons for people of any nationality to leave the ARK.[2488]

1184. On 28 May 1992 the ARK Crisis Staff concluded that if Muslims and Croats wanted to leave the ARK, the other side must also enable Serbs to leave the Muslim/Croat territory.[2489] Why would anyone who pursued a policy of ethnic cleansing make departure of non-Serbs more difficult? This ARK conclusion emphasised the voluntariness of departure by using the language "wish to leave or move out".

1185. The same language was again used on 29 May 1992 when the ARK again concluded that all Muslims and Croats **who so wish** should be enabled to leave the ARK

[2482] D4050
[2483] D4034, para 24
[2484] D4011, para 60; D4086, para 95; D4077, para 8
[2485] D4041
[2486] D4034, para 23 (a)
[2487] D4038; D4034, para 23 (b)
[2488] D1309
[2489] D4044, p. 2; D4034, para 23 (d)

on condition that Serbs residing outside Serbian regions should also be allowed to depart.[2490] This is the third conclusion which stated that if the Serbs are not allowed to leave the Muslim areas, then the Muslims are not allowed to leave the Serb regions. Therefore, although there may have been individual calls for coercive actions against the Muslims,[2491] there can be only one conclusion - that there was no ARK policy of ethnic cleansing.

1186. On 7 June 1992, a meeting was held of the sub-regional level that adopted a conclusion which was in complete contradiction to the conclusions of the ARK.[2492] The sub-regional representatives sent their conclusions to the ARK Crisis Staff that Muslims and Croats from their municipalities should leave and settle in Muslim-controlled territory, but the next day, on 8 June 1992, the ARK Crisis Staff rejected the sub-regional request because this was contrary to the ARK policy.[2493]

1187. On 10 June 1992, the ARK Crisis Staff further concluded that only women, children and the elderly could leave the ARK voluntarily, and that their departure should be effected in cooperation with humanitarian organisations.[2494] This decision did not refer to non-Serbs and it was primarily made to prevent Serb men of military age deserting from the VRS.[2495] However, it could also be applied to non-Serb men wishing to leave the ARK, because the police first wanted to check whether they had been involved in combat operations against the Serbian armed forces or possibly committed a crime.[2496]

1188. On 26 May 1992 the ARK Crisis Staff decided to form an agency to work on problems related to the departure of people.[2497] On 12 June 1992 the ARK Crisis Staff established an agency for the departure of people and exchange of goods[2498] and appointed Milos Bojinovic to head the agency.[2499] The motive to establish the agency was humanitarian while the ethnicity of those who used its services was not important, and the work of the agency focused on providing assistance for the departure of all three

[2490] D4045
[2491] P3662, p. 2; D3848, pp. 37-9
[2492] P2641
[2493] D4034, para 23 (e) (Brdjanin)
[2494] D4046
[2495] D4047
[2496] D4034, para 23 (f) (Brdjanin)
[2497] D4178, p. 29
[2498] P2718
[2499] P2719

ethnic communities.[2500] At the beginning it was only Serbs who applied for the Agency's assistance because they were the ones who were refugees.[2501]

1189. [redacted].[2502] It also facilitated moving out to Western countries.[2503]

1190. Bojinovic never saw police officers or citizens maltreat passengers getting on the bus, or attempting to extort money or property from passengers that were leaving.[2504] People who were leaving did not need a certificate stating that they were signing over their property to the municipality which they were leaving. [2505]

1191. Pursuant to the SFRY Law on Foreign Exchange Transactions, those leaving the ARK could take DEM 300 with them or an equivalent amount in another currency. However, they could also take with them bigger amounts with proper receipts from authorised banks operating in the ARK.[2506]

1192. When the ARK authorities were unable to help the Muslim and Croatian civilians, they addressed international organisations so that they would help the Muslim civilians who had set out.[2507] Although by August 1992 pressure, requests and organised emigration on the part of Muslims and Croats from the wider area of Krajina were increasing, some of the émigrés were also returning to Krajina, and were even joining the enemy ranks.[2508]

1193. In 1994, the Croatian humanitarian organisation *Caritas* and the Muslim humanitarian organisation *Merhamet* were operating without any hindrance. [2509]

1194. Finally, if the Trial Chamber is minded to use public speeches of Brdjanin against the ARK authorities, it must also take into account that none of his harsh speeches were ever transformed into official documents or decisions as a consequence of what he

[2500] D4048; D4176, pp. 25-26 (Bojinovic)
[2501] D4176, p. 26 (Bojinovic)
[2502] [redacted]
[2503] D4176, p. 40-41 (Bojinovic)
[2504] D4176, pp. 49-50
[2505] D4176, p. 141
[2506] D1307
[2507] P3820; Kupresanin, T.43555
[2508] D3833, p. 2
[2509] D4118, p. 2; D4086, para 104

said,[2510] and that there are many examples of Brdjanin's speeches in which he defended the rights of non-Serbs.[2511]

1195. It should also be bore in mind that the *Brdjanin* Trial Chamber found that "the public utterances of the Accused[...]were not shown to have prompted the physical perpetrators to commit any of the crimes[...]Moreover, neither the public utterances of the Accused nor the decisions of the ARK Crisis Staff were specific enough to constitute instructions by the Accused to the physical perpetrators to commit any of the killings or deportations charged."[2512]

1196. In any event, none of Brdjanin's speeches had *anything* to do with President Karadzic.

g. ARK Authorities Did Not Persecute Non-Serbs Through Housing Policy

1197. Very few people owned apartments in SFRY, meaning that in 1992 the overwhelming majority of citizens lived in their apartments based on the tenancy right. Apartments subject to tenancy rights were owned by companies and insitutions.[2513] Therefore, if one abandoned one's apartment, one did not lose the ownership right because one never had this right in the first place. However, one retained the tenancy right when and if one returned to the territory of the municipality in question.[2514] Many Serbs also abandoned apartments, houses and other property they used but which was the property of socially-owned companies.[2515]

1198. For example, the Kotor Varos Crisis Staff decided on two requests of Muslim citizens for return to sealed apartments. The Crisis Staff allowed one of them to move back into his apartment, but denied such permission to other Muslim citizen because he was not a tenancy right holder.[2516]

[2510] D4034, para 33
[2511] D4034, para 33 (Brdjanin) referring to D0082, P1357, P1379, P1405
[2512] Brdjanin TJ, paras 468, 573
[2513] D3831; D3848, p. 50
[2514] D3848, p. 48
[2515] D3831; D3848, p. 50
[2516] D1302, p. 2; D3848, p. 49

1199. Also, the variety of decisions at the local level testifies about the **lack of uniform approach** towards this issue, which in turn testifies that there was **no systematic** solution for the problem.[2517]

1200. If the non-Serbs were evicted from their apartments, it was not done by the authorities.[2518]

h. Muslim Systematic Attacks in ARK

1201. Paragraph 154 of the Prosecution Pre-Trial brief incredibly alleges that there were VRS attacks on disarmed and defenceless villages, and that the VRS forces under the command of General Talic rounded up civilians and participated in the administration, coordination and logistics of detention facilities. The evidence shows that this was not the case.

1202. Muslim armed activities were coordinated in the wider area of the Bosnian Krajina. The centre of the rebellion was located in Kozarac in Prijedor municipality and its intention was to spread in all directions: towards Banja Luka, Bosanski Novi, Sanski Most and Ključ. The rebellion was to have been synchronised in the valley of the rivers Sana and Una where over 120,000 Muslims live.[2519]

1203. The 1. KK report of 1 June 1992 stated that heaviest battles were fought in the area of Hambarine, Prijedor and Kozarac.[2520] Prijedor units arrested over 2,000 members of the Green Berets.[2521] Also, the VRS put the number of armed Muslims and Croats in Kotor Varoš municipality at 5000-7000.[2522] On the same day, the 1. KK reported that its units conducted mopping up operations in Prijedor, Ključ and Sanski Most successfully, and caught about 7000 members of enemy paramilitary formations.[2523]

1204. On 1 June 1992, the 1st Krajina Corps informed the Main Staff that "in the area of Prijedor the mopping up of Greent Berets and HOS /Croatian Defence Forces/ is continuing[...]There are many prisoners (about 7000) including many of their leaders,

[2517] P3462; D1295; D1343
[2518] Grahovac, T.44038-9
[2519] D1352, pp. 4-5; D3848, p. 14
[2520] P3656, pp. 1-2
[2521] P3656, p. 2
[2522] P3656, p. 2; D3848, p. 17
[2523] P5407

such as the Commander for Central Bosnia."[2524] We have previously seen that Brdjanin complained to President Karadzic on 2 June 1992 that there was a problem of the Krajina with 14.500 Bosnian Muslims and wanted a position about prisoners from the highest level.[2525] It is now clear that it concerned the POWs.

1205. On 9 June 1992, the 1. KK noted that the entire Muslim and Croat **population** is active together with their armed forces and that "the enemy is using between seven and eight[...]brigades, **local inhabitants** fit for combat[...]numbering altogether about 20.000 men, 15 tanks, 10 to 13 armoured personnel carriers, 50 to 60 anti-aircraft pieces, 60 to 70 mortars, 19 anti-armour guns, 25 to 30 artillery pieces and between two and four multiple rocket-launchers."[2526] The war was **civil** in the true sense of the word and in accordance with Hasan Efendic's instructions to **armed civilians**.[2527] The VRS suffered heavy losses.[2528]

i. 1st Krajina Corps Did Not Persecute Krajina Non-Serbs

1206. Let us now verify the abovementioned Prosecution's allegation that General Talic rounded up civilians and assisted in their detention. Already on 24 April 1992, General Talic, then the JNA commander of the 5th Corps, ordered prevention of attacks, maltreatment and forced eviction of people regardless of their ethnic or religious background.[2529]

1207. On 14 May 1992, General Talic ordered prevention of crimes such as "robbery, theft and looting of private property, rape and maltreatment of the local population **regardless of their ethnic background**. Anyone who has committed such crimes should be named, publicly exposed and arrested (unless this has been done already) in front of all the troops. They should be taken to prison under an armed escort and held there until trial. Should these persons offer resistance during their arrest or attempt to escape, apply the toughest physical methods, including the use of firearms."[2530]

[2524] P5398, p. 1
[2525] P1478, at pp. 55-61
[2526] D3829, pp. 4-5 (Emphasis added)
[2527] D0222, p. 2 (Emphasis added)
[2528] D3848, p. 18; D1352, pp. 6-7; D3916, p. 2
[2529] D3826
[2530] D3828, p. 1 (Emphasis added)

1208. General Talic further ordered prompt exclusion from the unit of anyone showing tendency to war crime.[2531] General Talic also ordered his units to establish contact with the local people **regardless of their ethnic origin** and build up mutual trust.[2532]

1209. Three days later, on 17 May 1992, General Talic ordered his units to collect information about the soldiers and officers who engaged in criminal acts in order to initiate proceedings against them.[2533] On 21 May 1992, General Talic yet again strictly prohibited looting or other criminal acts on the ground.[2534]

1210. On 4 June 1992 the 1.KK noted that unauthorised reprisals and improper behaviour towards prisoners and civilians in liberated areas had been occurring and ordered that inhumane treatment of POWs and civilians be prevented.[2535] Also on 7 June 1992, it was ordered to soldiers to behave towards POWs in a dignified way, and to provide accommodation, sustenance and medical care in accordance with the provisions of international war law.[2536]

1211. On 9 June 1992, General Talic strictly prohibited any mistreatment of the unarmed civilian population and ordered that prisoners were to be treated in accordance with the spirit of the Geneva Conventions. [2537]

1212. On 20 June 1992, the 1. KK wrote to the superior command that

> We have been recently faced with increasingly blatant examples of maverick behaviour by individuals and groups bent on looting, war profiteering and speculation. **All unit commands, security organs, the military police and public officials have been ordered to uncover and prevent such crimes.** Some groups have **already been arrested and proceedings have been instituted** against them.[2538]

1213. On 23 June 1992 General Talic ordered preventing the desecration of religious buildings, in accordance with the views of the VRS Main Staff. [2539] The 1. KK commander ordered that his units ensure at all levels of command that "fire may be

[2531] D3828, p. 1
[2532] D3828, pp. 1-2 (Emphasis added)
[2533] D3836
[2534] P3920, p. 3
[2535] P3914, para 2.84; D3848, pp. 19-20
[2536] P3914, para 2.85; D3848, pp. 19-20
[2537] D3829, p. 15; D3848, pp. 19-20
[2538] D0436, p. 3; M,Mandic, T.5096
[2539] D1979

opened on religious buildings only when our forces are being engaged from such buildings or when it has been determined that they house an armed enemy who refuses to surrender. The intensity of fire and the type of weapons used should be such as to destroy or neutralise only enemy personnel, without destroying the building."[2540] General Talic reiterated that members of the Corps must fight the war against the enemy honourably, consistently abiding by the provisions of the Geneva Conventions.[2541]

1214. In early August 1992, General Talic re-issued the same order because of instances of demolition of places of worship and warned all unit commanders to prevent such irresponsible acts: "Failure to abide by my order represents a criminal act and shall be dealt with accordingly. You are required to submit a detailed report and an explanation whenever a place of worship is demolished."[2542]

1215. The 1. KK criticized attempts to expel the Muslims and Croats and considered their position as the most difficult.[2543] The Corps' continued position was that irresponsible individuals were disturbing the civilian non-Serb population while the Corps' policy had been and remained to protect civilians.[2544] Indeed, the Corps Command was taking all measures to substantially reduce all forms of crime.[2545]

1216. When reprisals by soldiers on leave from the front against the enemy prisoners[2546], the 1. KK took forceful actions through its Military Police to put an end to such behaviour.[2547]

1217. Also the **1. KK subordinated units** pursued the same protectionist policy towards the non-Serbs, preventing interethnic conflicts and "acts of genocide between the peoples and the Serbian population",[2548] most strictly forbidding mistreatment of the civilian population and captured soldiers who had to be treated in accordance with the Geneva Conventions.[2549] They ordered protection of "refugees and innocent people, and treat the surrendering enemy according to the international laws on the treatment of

[2540] D1979
[2541] D1979
[2542] D1980
[2543] P3664, p. 3
[2544] D3835
[2545] P5395, p. 3
[2546] P6463
[2547] D3848, p. 34
[2548] D3830, p. 3
[2549] D3830, p. 7

prisoners-of-war" further orderinf talking of "the most drastic legal and other measures up to and including physical liquidation against those violating this order". [2550] Subordinated units reported on population exchanges "on the principle of allowing people to choose freely where they will live".[2551]

1218. 1. KK **Superior Command** supported protection of Krajina non-Serbs repeatedly forbidding retaliation against innocent people simply because they were not Serbs.[2552] 1. KK units were ordered to take the most effective measures to prevent unbecoming conduct.[2553] 1. KK also forwarded the letter from the VRS Main Staff that ordered action against violence, looting and other forms of unauthorised conduct, asking that perpetrators be uncovered and prosecuted.[2554]

1219. Finally, President Karadzic ordered all VRS Corps, including the 1. KK and its subordinated units, that "members of the Army shall abide by the provisions of international humanitarian law, treat wounded and captured enemy troops humanely, and protect the population in the zone of combat operations."[2555]

18. President Karadzic Is Not Criminally Responsible Pursuant to Any Mode of Liability

a. President Karadzic and Alleged JCE Members Lacked Required Mens Rea for All Forms of Criminal Liability

1220. The required *mens rea* for the first form of JCE, is that it must be shown that "the JCE participants, including the accused, had a common state of mind, namely the state of mind that the statutory crime(s) forming part of the objective should be carried out." [2556] The shared intent that the crimes involved in the common objective be carried out is what matters[2557]

[2550] D0576
[2551] P3914, para 2.141; D3848, p. 61
[2552] D3825
[2553] D3825
[2554] D3837, p. 1
[2555] D3834, p. 8
[2556] Krajisnik AJ, para 200
[2557] Krajisnik AJ,,para 707

1221. JCE requires that the accused intended to participate and contribute to a criminal purpose, while an accused may be found responsible for planning, instigating or ordering a crime if he intended that the crime be committed or acted with the awareness of the substantial likelihood that a crime would be committed. In terms of *actus reus*, planning and instigating consists of acts "substantially contributing" to the perpetration of a certain specific crime and ordering means "instructing" a person commit an offence. By contrast, JCE requires that the accused contributes to the common purpose in a way that lends a significant contribution to the crimes.[2558]

1222. Aiding and abetting means assisting or encouraging another to commit a crime.[2559] The assistance or encouragement or must substantially contribute to the commission of the crime[2560] The *mens rea* of aiding and abetting requires the Prosecutor to prove that the accused knew that his acts would assist in the commission of the crime and that he made a conscious decision to provide his assistance.[2561]

1223. In the case of President Karadzic it does not really matter what form of liability one speaks about, because the very basis of all liability forms, namely the intent (or lesser states of mind) is absent. He never wanted, wished, intended, deliberated, sought, hoped, expected or desired *any* harm to be done against the citizens of different nationality, let alone the ICTY statutory crimes. He was not part of any JCE that did not exist in the first place. Here are a couple of examples that prove this assertion.

1224. In a July 1992 meeting with General Mladic and the RS civil leadership, Koljevic proposed that "we should take a stand - discuss law-abiding versus national state and make our policy known".[2562] We have here **all alleged JCE participants** behind the closed doors, far away from public eyes: President Karadzic, Krajisnik, Koljevic, Plavsic, Mladic and other civil and military leaders,[2563] making **their policy towards the non-Serbs**. So this must be it, the key evidence that a JCE plan indeed existed. *Alas*, President Karadzic told the alleged JCE members that "unlike the Muslims and Croats **we are**

[2558] Krajisnik AJ, para 662
[2559] Simic AJ, para 85; Blaskic AJ, para 45
[2560] Tadic AJ, para 229; Blaskic AJ, para 46
[2561] Kunarac TJ, para 392; Aleksovski TJ, para 61
[2562] P1478, pp. 313-4
[2563] P1478, p. 309

going to build a law-abiding rather than an ethnically clean state."[2564] *And indeed*, **the position was taken that the RS was going to be a law-abiding state.**[2565] As clear as it can be.

1225. Another example of the Prosecution's selective approach is the 31 March 1995 session of the Supreme Command, during which the issue of freedom of movement was discussed, because on the orders from General Mladic, the VRS military police had stopped buses with non-Serbs, who wanted to cross the border and leave Republika Srpska and which had previously been approved by the civilian leadership.[2566] The Prosecution suggested that the RS political leaders organized population transfers in order to ethnically cleanse the non-Serbs. This is what Krajisnik said at the meeting

> **If** the Muslims want to go from our territory, then we enable them to leave our area, **without coercion, because we do not have the right to do that, nor should anyone take on himself their ethnic cleansing**, but there would be no crying if they left from here. In connection with that, I was not up on who organized, organized a convoy[...]An order had gone out from the Main Staff from General Mladic that had forbidden the passage of that convoy.[2567]

1226. If the Prosecution's case was correct about the overarching JCE Mladic would not have prevented departure of non-Serbs, and Krajisnik would not have stated **at a meeting behind the closed doors**, that the policy was against ethnic cleansing.

1227. Mladic and the VRS were afraid that the non-Serb men would leave the RS territory and then join the ABiH. President Karadzic was aware of Mladic's concerns and suggested that "five thousand Muslims by the line in Teslic are waiting for an attack to join in and to slaughter our people. Five thousand, of whom 1000 to 1500 are Muslims fit for combat, that is why we had to say that they should be pulled in the depth to guard them like civilians".[2568] President Karadzic also said that the state could not deal with the individual movements of citizens because it could be accused of ethnic cleansing, and that out of 100 Muslims who went to Europe, only ten would come back because they were not patriotic enough.[2569] It is clear that also President Karadzic worried about

[2564] P1478, p. 313 (Emphasis added)
[2565] P1478, p. 314 (Emphasis added)
[2566] Milovanovic, T.25535
[2567] P3149, p. 28 (Emphasis added)
[2568] P3149, p. 65
[2569] P3149, p. 65

Muslim men leaving the RS and then coming back as members of ABiH. If there is any doubt about this, the following reply by Krajisnik clearly explains that

> Our policy is such as President Karadzic said, and I think that we want that, **not to ethnically cleanse them**.[2570]

1228. The evidence of all leading RS officials, who testified as the Prosecution, Chamber or Defence witnesses, and who were the **only** witnesses who had **insiders'** information about the true policies of President Karadzic, unquestionably show that President Karadzic was never a member of any JCE.

1229. **Branko Djeric** testified that he "never perceived the rights of my people to be something to be exercised at the expense of other peoples in Bosnia-Herzegovina. I was always in favour of equality[...]I know for sure that Mr. Karadzic was on the same wavelength."[2571] The RS leadership strived towards preserving the equality of people who remained in their original places of residence[2572] and made a commitment to have all human rights be respected without exception.[2573] The Republican authorities insisted on implementing international conventions, and preserving everyone's right.[2574]

1230. **Momcilo Krajisnik** testified that President Karadzic never, ever intended to destroy the Bosnian Muslims and Bosnian Croats.[2575]

1231. **Mico Stanisic** testified that the Serb leadership had no joint plan or understanding aimed at expelling Muslims and/or Croats from the Serb territories.[2576]

1232. **Momcilo Mandic** testified the authorities took steps to prevent violations of the Geneva Conventions. [2577]

1233. **Vladimir Lukic** testified about the RS leaderships' efforts to achieve peace.[2578] The Presidency headed by Radovan Karadzic never took decisions that would result in crimes.[2579]

[2570] P3149, p. 66 (Emphasis added)
[2571] Djeric, T.27997
[2572] Djeric, T.28017
[2573] Djeric, T.28018
[2574] Djeric, T.28066-7
[2575] Krajisnik, T.43294
[2576] Stanisic, T.46352
[2577] M.Mandic, T.4556-7
[2578] D3587; D3590; D3563, paras 67, 73

1234. **Dusan Kovacevic** testified that the policy of the civilian authorities was to create Republika Srpska which would be inhabited by all ethnic groups that would enjoy the same rights.[2580] The Minister of the Interior was instructed by the President of the Republic to protect all citizens regardless of their ethnicity, to prevent crime and destruction of property and to enable those who so wished to remain or move out of their own free will.[2581]

1235. **Slobodan Avlijas** testified that he never established that the Presidency or President Karadzic supported ethnic cleansing.[2582]

1236. **Manojlo Milovanovic** testified that he never heard about a project to expel the Muslims or Croats.[2583]

1237. **Cedo Kljajic** testified that he never heard from any the civilian and military authorities that Muslims or Croats should be expelled.[2584] Kljajic never heard from President Karadzic or from his closest associates anything unfavourable about Muslims or Croats, especially that they should be expelled or discriminated against, nor any of Kljajic's acquaintances or associates in the MUP inform him that they heard something to that effect.[2585]

1238. **Dobrislav Planojevic** testified that he met with President Karadzic several times during the war, and that each time he insisted that the law had to be observed.[2586]

1239. **Dragan Kijac** testified that he understood that President Karadzic's position was that crimes against non-Serbs should be prevented and punished.[2587]

1240. **John Zametica** testified that he knew President Karadzic very well

> and I don't think you had anything, even approaching in you that we could call ethnic hatred or feeling of ethnic superiority vis-à-vis the Muslims or the Croats[...]I certainly think that you had no plans, schemes, in that direction at all. You were always going to be happy if Muslims and Croats stayed on the territory of Republika Srpska. You appointed[...]quite a few people in the judiciary system of Republika Srpska[...]who had Muslim or Croat background. You appointed me as your principal aide in foreign affairs. I had a Muslim background.[2588]

[2579] V. Lukic, T.38796
[2580] D3671, para 41
[2581] D3671, para 41
[2582] Avlijas, T.35194
[2583] Milovanovic, T.25758-9
[2584] D3917, para 10; Kljajic, T.42212
[2585] Kljajic, T.42237
[2586] D3197, para 33
[2587] D4143, para 47
[2588] Zametica, T.42470-1

1241. **Radovan M. Karadzic** testified that President Karadzic ordered that no form of violence may be applied against civilians regardless of their ethnicity or religion, and that when he had the information about incidents, he condemned them and replaced the officers, and the direct perpetrators were processed.[2589]

1242. **Gordan Milinic** testified that the permanent removal of Bosnian Muslims and Croats from the Serb territories through genocide, expulsions, extermination, killing of forcible relocation was never the policy of the SDS.[2590] President Karadzic was not an autocrat or dictator, but rather a great democrat.[2591]

1243. **Milorad Sajic** testified that the Republican leadership never had the goal of expelling Muslims or Croats from the territory of Republika Srpska. [2592]

1244. [redacted].[2593]

1245. **Milorad Dodik** testified that

> With full responsibility and under oath, I can say here that I never had the occasion at any meeting or when I met personally with Mr. Karadzic[...]the request being made to anyone to commit any crime. Rather, I can repeat that Mr. Karadzic resolutely tried to find a way to resolve the conflicts peacefully and that the responsibility for crimes which were committed by certain paramilitaries in the territory of Republika Srpska, that they needed to be taken to responsibility for that.[2594]

1246. **Ranko Vukovic** testified that there was no instance where President Karadzic ordered anything that would be contrary to law and legal provisions.[2595] Instead, Vukovic transmitted President Karadzic's orders to each individual, from the very last private up until to the highest officer, to be aware of the laws on war and the Geneva Conventions.[2596]

[2589] D3861, para 11
[2590] D3682, para 5
[2591] D3682, para 7
[2592] D4114, para 54; Sajic, T.44152
[2593] [redacted]
[2594] Dodik, T.36914
[2595] R. Vukovic, T.15140
[2596] R. Vukovic, T.15139

1247. [redacted][2597]. [redacted][2598].

b. President Karadzic Did Not Form JCE with General Mladic or Others and Had No Effective Control Over VRS

1248. Contrary to paragraphs 6-8 of the Indictment, the overwhelming evidence shows the **non-existence of mutual agreement** or anything "joint" between the alleged key JCE participants, President Karadžić and General Mladić. The overwhelming evidence also shows that, contrary to the Indictment paragraph 33 and Pre-trial brief paragraphs 121 and 265, President Karadzic did not have the ultimate or effective control over the Bosnian Serb Forces and General Mladic.

1249. The touchstone of the superior responsibility doctrine is the ability of the superior to exercise effective control over his subordinate(s).[2599] Effective control requires the "ability to maintain or enforce compliance of others with certain rules and orders,"[2600] In *Kordic* the Trial Chamber found that despite having extensive influence and power as a political leader, the Prosecutor failed to prove that Kordic had effective control.[2601] The evidence shows that President Karadzic, although having influence as a political leader, lacked the power to exercise effective control over General Mladic, and resultantly over the VRS.

1250. At the outset it should be noted that the overwhelming evidence proves that President Karadzic ordered the protection of civilians and POWs in accordance with the Geneva Conventions and international humanitarian law. If any crimes were committed by members of the VRS, they could not be attributed to General Mladic who also ordered adherence to the rules of international law. President Karadzic did not learn about alleged

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[2597] [redacted]
[2598] [redacted]
[2599] Kayishema & Ruzindana TJ, para 229
[2600] Delalic et al TJ, para 354
[2601] Kordic & Cerkez, paras 838-40

VRS crimes, if any were indeed committed, other than those prosecuted by the military judicial organs. He did not receive such information because President Karadzic did not control either Mladic or the VRS. Even if President Karadzic, hypothetically speaking, had learned of a VRS crime, that was not prevented or punished by Mladic, President Karadzic could not have dismissed him, as illustrated by this chapter. Finally, the evidence clearly shows that there was nothing "joint" between President Karadzic and Mladic and that they never formed a JCE.

1251. **Momcilo Krajisnik** testified that joint criminal enterprise with the objective of creating an ethnically pure Serb unit or Serb state did not exist.[2602] The political and idelogical differences among the alleged JCE members were enormous.[2603] The military strongly resisted any kind of influence at local levels and further up.[2604]

1252. **Momcilo Mandic** testified that from the very beginning, there was mistrust and lack of co-operation, and no one was able to replace or dismiss General Ratko Mladic because there would have been a military coup, a military take-over, and he would have abolished all the civilian institutions.[2605] President Karadžić asked for his functions to be separated from those of General Mladić.[2606] The army disobeyed President Karadzic, although he was their commander-in-chief.[2607] General Mladic did not respect the orders issued by the President of Republika Srpska or any member of the Presidency.[2608] Mladic even arrested ministers and members of the government contrary to the standpoint of the President.[2609] President Karadzic made efforts to have these people released, but Mladic paid no attention to it.[2610] It was only when General Mladic decided that they should be released that they were released.[2611]

1253. **Bogdan Subotic** testified about a vast number of examples of military disobedience of the Supreme Commander, President Karadzic.[2612] President Karadzic

[2602] Krajisnik, T.43267
[2603] Krajisnik, T.43293
[2604] Krajisnik, T.43977
[2605] Mandic, T.5341
[2606] Mandic, T.4980
[2607] Mandic, T.5104
[2608] Mandic, T.5340
[2609] Mandic, T.5340
[2610] Mandic, T.5340
[2611] Mandic, T.5340
[2612] D3695, paras 122-88

was only officially the Supreme Commander, but Mladic was the real commander of the army.[2613]

1254. **Vladimir Lukic** testified about conflicts between the MUP and the army, which was a part of the general misunderstandings between the military and civilian authorities.[2614]

1255. **Tomo Kovac** testified that ever since the founding of the VRS, the civilian authorities and officers of the Main Staff were in a conflict.[2615] As the war progressed, problems in relations between the civilian and military leadership mounted, and one could see that some senior army officers were increasingly eager to get involved in the political struggle and completely take power.[2616] There were attempts to dismiss the Commander of the Main Staff, however, General Mladic did not accept decisions of the President of the Republic. Consequently, there were even proposals to arrest General Mladic, but the majority was aware that this would certainly lead to civil war among the Serbian people.[2617]

1256. **Dragan Kijac** testified that the relations between the civilian and military leaderships were not good.[2618] The military intelligence services kept President Karadzic under surveillance from dusk till dawn.[2619]

1257. **Dusan Kovacevic** testified there was a permanent conflict between the civilian government and the military establishment.[2620] The civilian authorities were afraid to declare a state of war because they feared that the Army would take over.[2621] General Mladic went so far to even threaten the Minister of Defence that he would kill both him and President Karadzic.[2622]

1258. There were several unsuccessful attempts by President Karadzic to dismiss Mladic.[2623] President Karadzic complained to the Minister that Mladic was fighting for

[2613] D3695, para 115
[2614] D3614; D3563, para 68
[2615] D3960, para 91
[2616] D3960, para 96
[2617] D3960, para 99
[2618] D4143, para 59
[2619] Kijac, T.44317-8; D4159
[2620] D3671, para 29
[2621] D3671, para 32
[2622] D3671, para 33
[2623] D3671, para 34

power and "trying to move me out of the way".[2624] Strikingly, Mladic arrested the Minister of Defence.[2625]

1259. **Milan Ninkovic** testified that the relationship between President Karadzic and General Mladic was unbearable.[2626] In 1993, before the military operation in Srebrenica, President Karadzic called Mladic and asked him, "What are you doing down there? Have you lost your mind?" Mladic replied, "What the fuck do you care? This is a military, not a civilian matter".[2627] General Mladic even arrested Defence Minister Ninkovic because the latter had proposed a new law on the Army and Defence, which envisaged a Chief of the Main Staff in place of a Commander, and which eliminated duality of command.[2628]When the Minister of Defence issued an order pursuant to a document of the Supreme Commander, President Karadzic, General Mladic annulled it and issued a decision that only he could perform the tasks listed in the Minister's order.[2629]

1260. **John Zametica** testified that President Karadzic was a weak president who did not have the control over the army.[2630] The army was insubordinate all the time and it was preparing a military putsch in August 1995.[2631] Zametica testified that the VRS was a force unto itself and that the chain of command did not exist, or rather it existed only when it suited the VRS to obey some order or instruction by Dr. Karadzic, but otherwise, the VRS did what it liked.[2632]

1261. **Gordan Milinic** testified that President Karadzic did not command the VRS, that the VRS Main Staff did not respect the President of RS, nor was he Supreme Commander in their eyes, and that the Supreme Command sessions were held purely formally and had no influence on the conduct of the VRS.[2633] At sessions of the Supreme Command, officers were shouting and banging their fists on the table, while RS Vice-President Koljevic trembled with fear, saying that "the army would kill us all."[2634]

[2624] D3671, para 34
[2625] D. Kovacevic, T.39669
[2626] D3733, para 29
[2627] D3733, para 29
[2628] D3733, para 29
[2629] D3733, para 39
[2630] Zametica, T.42453-4
[2631] Zametica, T.42505
[2632] Zametica, T.42524
[2633] D3682, paras 11-2; Milinic, T.39799
[2634] D3682, para 11

President Karadzic had been trying since as early as 1993 to dismiss General Mladic, but without success, as the VRS had the power.[2635] Even after the war, in 1996, when Biljana Plavsic attempted to dismiss Mladic, he arrested half the Government of RS and did not want to hand over his duties.[2636]

1262. **Vojislav Kupresanin** gave evidance that President Karadzic could not influence the army, because General Mladic and he were on bad terms[2637] and because Mladic placed himself above the Supreme Commander.[2638] President Karadzic had only *de jure* control over Mladic but not *de facto*.[2639]

1263. **Manojlo Milovanovic** testified that President Karadzic was not directly responsible for the actions of the military, but was indirectly responsible through Ratko Mladic, or rather, through the Main Staff.[2640] When Mladic and Milovanovic planned military operations, President Karadzic would not interfere and would simply say that these were affairs of the Main Staff.[2641] When in 1993 President Karadzic tried to interfere, Milovanovic received diametrically opposite orders from President Karadzic and Mladic

> And you said then, Stop. Mladic was with you in the room and I could overhear him saying, behind you probably, no stopping, just move into Srebrenica. And then I asked you to talk to him and decide by the next morning what you wanted me to do because one of you was a supreme commander and the other one was the commander of the army[...]the next morning. You had no decision yet, and I decided to stop; **not because of your order** or Mladic's order, but I learned from Morillon that there was some 64.000 refugees in Srebrenica.[2642]

The same problem arose again during the Igman operation when Mladic issued orders that contradicted President Karadzic's commands.[2643]

1264. These are striking examples of President Karadzic's lack of control over the army, that not only disobeyed and disregarded his orders at the level of the Commander of the VRS and his Chief of Staff respectively, but *in his presence* issued conflicting

[2635] D3682, para 12
[2636] D3682, para 12
[2637] D4011, para 44
[2638] D4011, para 52
[2639] D4011, para 52:Kupresanin, T.43519
[2640] Milovanovic, T.25445
[2641] Milovanovic, T.25482
[2642] Milovanovic, T.25592 (Emphasis added)
[2643] Milovanovic, T.25638; D3871; Radinovic, T.41605

orders. Mladic was so inflexible that in his conversations with President Karadzic "he would never budge an inch."[2644] President Karadzic complained to General Milovanovic that he never knew where Mladic was, nor Mladic deemed it necessary to inform President Karadzic about his whereabouts.[2645]

1265. The Assembly appointed General Mladic as the commander of the Main Staff and authorised him to appoint his assistants.[2646] According to Milovanovic, that was the reason why attempts made by the Supreme Command and President Karadzic to have Mladic replaced were not successful because it was only the Assembly that could have him dismissed.[2647] Another reason was that a night before Mladic would become the VRS Commander, he and his comrades in arms from the Main Staff expressed loyalty in one another, promising that if one of them was replaced, then the rest would follow, and all corps commands said that they would do the same thing.[2648] If the President wanted to replace anyone, he would no longer have any commanding personnel.[2649]

1266. **Petar Skrbic** testified that the President of the Republic could not have direct control over the army without acting through the Main Staff and its commanders.[2650]

1267. **Milenko Zivanovic** testified that the relationship between President Karadzic and Mladic was not good and that Mladic often made his own decisions without waiting for directives from President Karadzic.[2651]

c. Chronological Evidence of President Karadzic's Lack of Effective Control Over VRS and Non Existence of the JCE with General Mladic

1268. By the decision of the Assembly and the Law on the Army, General Mladic was explicitly appointed Commander of the VRS Main Staff acquiring a role in the system of strategic command which is substantially different from that of the similar bodies that exist in other armies in the modern world. The Main Staff incorporated both the staff

[2644] Milovanovic, T.25642
[2645] Milovanovic, T.25642-3
[2646] Milovanovic, T.25431
[2647] Milovanovic, T.25628
[2648] Milovanovic, T.25631
[2649] Milovanovic, T.25631-2
[2650] Skrbic, T.26025
[2651] D3932, para 9

function and the function of the supreme command body that commands the army during combat operations. In this manner, the control authority of President Karadzic was effectively and formally significantly reduced and limited mainly to political control [2652]

1269. This issue is important for an understanding of the essence of the control authority of President Karadzic in the system of strategic command because it suspended the principle of unity of command and introduced the principle of dual command, with the army *de facto* having two supreme commanders.[2653] This military organisation, in which there were two commanders, remained throughout the war.[2654]

1270. In his decision on the Organisation of the Army of Serbian Republic of BiH from 15 June 1992, President Karadzic transferred the authority for the operational commanding to the Main Staff

> The control and command of operative groups in the front shall be performed by the Main Staff of the Army of the SR of Bosnia and Herzegovina, which shall be directly subordinated to the Presidency of the SR of Bosnia and Herzegovina.[2655]

1271. By this document, the President transferred to the Main Staff all the powers, except from the strategic commanding, which was limited to the conclusions of the Supreme Command about what really needed to be defended.[2656] The Supreme Command did not have any role or responsibility with respect to the approving of military operations.[2657]

1272. In 1993, the VRS Main Staff refused to implement proposal to reorganize the Army by Minister Kovacevic and President Karadzic.[2658] On 1 October 1993, 19 months into the war, President Karadzic noted in the Assembly that "the army has to get used to the fact that they are under the command and the control of the civilian authorities. We have to do that if we want to be a proper state." [2659]

[2652] D3864, p. 5
[2653] D3864, p. 6
[2654] D3733, para 21
[2655] P3035, p. 3; D3695, para 120; D. Kovacevic, T.39689
[2656] P3035, p. 4; D3695, para 120
[2657] D3733, para 27
[2658] D3671, para 31
[2659] P1379, p. 428

1273. The VRS Main Staff members did not take President Karadzic's orders seriously.[2660] The most telling episode about the true relationship between President Karadzic and the VRS was the Sanski Most Assembly in April 1995. President Karadzic protested that "a senior officer who got his rank from me says Karadzic is not my supreme commander[...]The army is not, and cannot be a structure above the state."[2661] He asked that the deputies not allow "have any structure, including the Main Staff, feel that it is above the state[…]the greatest resistance that I met with and the one that upset me the most is that I asked for a transformation of the army and it was not carried out in a satisfactory manner."[2662]

1274. Mladic did not yield and responded to "Mr. Karadzic" that

> As for your presidential right you can forget about addressing Ratko Mladic in the manner you did at Supreme Command and yesterday after my expose[2663][...]Mr. Minister, tell me where I can take over this ammunition from you, Prime Minister and Supreme Commander, and then I will answer whether I am loyal to you or to the President, Supreme Commander"[2664]

1275. President Karadzic could not believe

> The arrogant, denigrating and belittling attitude of active-duty officers towards the civilian structures[…]The government, the political leadership, that is, the Party and the State have been undermined from the beginning. What kind of a State is this[2665][...]There is a tendency in our army to control all and everything.[2666] Gentlemen, **I have realized that I do not have control over the Army**[…]But who will control the Main Staff?[2667][...]We have many officers who drink and who derogate, who say: "Karadzic is not my supreme commander, I don't give a damn about Karadzic." [2668] [...]There is a threat in the air in this hall made by General Mladic[…]There's not a single parliament in the world in which you will find **a subordinate threatening a superior**[...]we are very lucky that the people can't hear us."[2669]

1276. Several days after the Sanski Most Assembly session, President Karadzic wrote to the VRS Main Staff and all the commanders of the VRS Corps expressing his disbelief and fear about

[2660] D3874; D3875; D3878; D3876; D3877; D3883; D3884; P2924, pp. 1-2; D3687
[2661] P0970, p. 102
[2662] P0970, pp. 109-10
[2663] P0970, p. 243
[2664] P0970, p. 245
[2665] P0970, pp. 323-4
[2666] P0970, p. 325
[2667] P0970, p. 328 (Emphasis added)
[2668] P0970, p. 332
[2669] P0970, p. 363 (Emphasis added)

> A possible military coup in Republika Srpska[...]there is a long-festering uncoordinated conduct of the civilian and military structures[...]General Mladic's latest meetings with the command staff[...]were openly putschist[...]Any thought of a military coup, or of the slightest interference in the competences of the state organs by the military structures, and that is already happening to a large degree, would be a complete catastrophe for our people and our state[...]I plead with you and order you to take measures to prevent anything unconstitutional and illegal[2670]

1277. A President who begs his army is certainly not controlling it. Three times during the war President Karadzic tried to remove Mladic and asked Milovanovic to take over the role of the VRS Commander, and three times he was unsuccessful.[2671] In May 1995, President Karadzic ordered retiring of Generals Gvero, Djukic and Tolimir and Colonel Beara, again unsuccessfully.[2672] A VRS Corps even issued orders contrary to the President's orders.[2673]

1278. The Prosecution uses one of Milosevic's statement to support its weak case that Krajisnik's alleged position was to have all Muslims and Croats dead.[2674] However, Milosevic's statement at the peak of his fight with Pale in the second half of 1994 is in fact evidence of a non-existing JCE between Milosevic and the Bosnian Serb leadership. It is also evidence of Milosevic's siding with Mladic in the fight with President Karadzic. During the meeting with Mladic, Milosevic showed extreme hatred towards President Karadzic, calling him "crazy doctor",[2675] or "that lunatic from Pale",[2676] and telling Mladic that the VRS Main Staff should follow decisions made in Belgrade, not Pale,[2677] which Mladic accepted.[2678]

1279. In another meeting with Milosevic, Mladic was told that the main danger for the VRS is coming from the RS political leadership,[2679] and that Mladic's "political

[2670] D2155, pp. 2-3
[2671] Milovanovic, T.25632; Skrbic, T.26027-8; Milinic, T.39727
[2672] Milovanovic, T.25645
[2673] D2151; D2153
[2674] P1487, p. 17
[2675] P1487, p. 26
[2676] P1487, p. 32
[2677] P1487, p. 32
[2678] P1487, p. 33
[2679] P1487, p. 84

leadership is here, not in Moscow or in Pale."[2680] As noted in Mladic's diary, President Karadzic did not know what to do with General Mladic. [2681]

1280. Milosevic went so far to actively propagate against President Karadzic. In an intercept with General Mladic, Milosevic was convincing Mladic to turn his back on the RS political leadership and to engage in political solving with him

> **Milosevic:** [...]You have a completely mad political leadership[...]
> **Mladic:** [...]I do not care about a certain individual from any leadership here[2682]

1281. In August 1995, Milosevic completely ignored and bypassed Karadzic when discussing the war in Bosnia with Izetbegovic and Mladic[2683] placing his weight behind Ratko Mladic, who at the time was planning a coup d'etat against President Karadzic.[2684]

1282. Zametica testified that President Karadzic should consider himself lucky to be still alive, because Milosevic was looking for ways to get rid of him, either politically or even physically

> I would say that in Milosevic you had a very formidable enemy [...]The idea of some kind of joint criminal enterprise between yourself and Mr. Milosevic is absurd.[2685]

1283. On 2 August 1995, President Karadzic tried to rename the Main Staff into General Staff[2686] and on 4 August 1995, President Karadzic tried to appoint General Mladic his special advisor for the co-ordination of joint defence, which was a factual replacement from the position of the VRS commander.[2687] However, Mladic did not agree with the President's decree.[2688] He organized a meeting with the Corps Commanders, which President Karadzic attempted to prevent[2689] and subsequently sent a letter to the VRS Corps informing them that President Karadzic had decided to rename the VRS Main Staff as the General Staff that would be headed by the President

[2680] P1489, p. 223
[2681] P1487, p. 125
[2682] D3681, p. 4
[2683] D3718; D3719; B. Subotic, T.40209
[2684] B. Subotic, T.40211
[2685] Zametica, T.42468-9
[2686] D3879
[2687] D2157; Milovanovic, T.25670; D3880
[2688] D3695, para 99
[2689] D3881; Radinovic, T.41618

himself.[2690] After a lot of criticism of the civil authorities, General Mladic informed the entire VRS and the public that he could not accept "the wilfulness of the President of RS, the abuse of office and an act that is unconstitutional".[2691]

1284. On 6 August 1995, the Government supported the changes in the VRS undertaken by President Karadzic.[2692] However, the group of generals asked the Assembly to annul President Karadzic's decision, guided by the principle that the Assembly appointed Mladic and only the Assembly could relieve him of his duty.[2693] The 18 most senior VRS Generals declared that they could not accept or implement President Karadzic's decision.[2694] A couple of days later, President Karadzic had no choice but to withdraw his decision.[2695] In October 1995, the Main Staff made it again clear that no removals of generals from the Main Staff would be accepted.[2696] The conflict lasted until the end of the war.[2697]

1285. The bottom line is the fact that President Karadzic, when push came to shove, was powerless and *de facto* lacked authority vis-à-vis the VRS Main Staff and its Commander.

d. Six Strategic Goals Were Not a Basis For Furtherance of the Common Criminal Purpose

1286. The Prosecution suggests that the underlying JCE plan for the expulsion and destruction of non-Serbs in Republika Srpska was based on a document called the six strategic goals, enunciated at the Assembly session of 12 May 1992.[2698]

1287. It should be noted at the outset that even the Krajisnik Trial Judgment concluded that it would be wrong to "place these goals on a pedestal, as the Prosecution

[2690] D2158
[2691] D2158, p. 2; D3882
[2692] P3108
[2693] Milovanovic, T.25672; D3695, para 99
[2694] D2159; Skrbic, T.26028
[2695] D2160
[2696] D3366, p. 6; D3364, para 33
[2697] P3146, p. 9; D3364, paras 26-7; D3353; P3114, pp. 4-5; P1489, p. 100; D3366
[2698] Prosecution Pre-Trial brief, paras 45-8

does, for in the final analysis they are anodyne statements"[2699] and that "an anachronistic reading of the May goals misses the point".[2700]

1288. The Prosecution alleges in paragraph 48 of its Pre-Trial brief that these goals a deepest secret. However, they were published in the RS Official Gazette, so that literally anyone could read them.[2701] The Presidency even decided that the strategic goals be sent to the European Community.[2702]

1289. 74 full weeks passed between the period when President Karadzic read them out in the Assembly on 12 May 1992 and the day when they were officially promulgated on 26 November 1993,[2703] which negates any urgent nature of the document.

1290. The strategic goals were not the military tasks of the army either.[2704] General Milovanovic stated several times that the tasks put before the military by the political leadership were to save people from genocide and to keep the territory until a political solution is found.[2705] Even the Prosecution made a Freudian slip

> Dr. Karadzic "reiterated the strategic objectives with comments and explanations." And he ends by saying: "We have to **protect our** territories militarily.[2706]

1291. Minister Subotic understood the strategic goals to be a document that reflected Serbs wishes and not a criminal plan to commit crimes against members of other ethnic groups.[2707]

1292. Prime Minister Lukic testified that the strategic goals were not in any way a plan to drive out any population on any side, but political goals that had to be realised through negotiations with the other two sides and the international community.[2708]

1293. The Prosecution alleges that "seven fundamental directives for VRS military operations were issued commencing with Mladic's military formulation of the strategic

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[2699] Krajišnik TJ, para 995
[2700] Krajišnik TJ, para 995
[2701] P0781
[2702] D0428
[2703] P0781
[2704] Krajisnik, T.43301-2; T.43768
[2705] D1598;Milovanovic, T.25744
[2706] Krajisnik, T.43803 (Emphasis added)
[2707] D3695, para 247
[2708] D3563, para 94; D3604

goals on 6 June 1992".[2709] If one is to believe the Prosecution that the first strategic goal calling for separation in fact meant genocide and ethnic cleansing of non-Serbs,[2710] then why would Mladic "militarily formulate" strategic goals on 6 June 1992 in such a way to order that

> maltreating of civilian unarmed population is strictly forbidden and prisoners must be treated pursuant to Geneva convention".[2711]

e. President Karadzic did not direct the VRS through Directives to commit crimes against non-Serbs

1294. Paragraphs 123 and 262 of the Prosecution's Pre-Trial brief allege that President Karadzic is criminally liable for issuing directives, main documents used to regulate the utilisation of forces, that resulted in crimes charged in the Indictment.

1295. Firstly, although President Karadzic stated in the Assembly that he had "examined, approved and signed seven Directives"[2712] this was not the case. Out of seven directives referred to by President Karadzic, merely two bear his signature[2713] whereas all the other directives were signed by the VRS Main Staff.[2714] President Karadzic stated this in the Assembly because of his fight with the Main Staff, so that the public would not be familiar with the rift, and cause divisions among the people.[2715] When previously arguing with Mladic in the Assembly, President Karadzic noted that

> We are very lucky that the people can't hear us[2716]

1296. Secondly, directives were not meant to direct the armed forces to commit crimes against non-Serbs. The first directive explicitly ordered that "maltreating of civilian unarmed population is strictly forbidden and prisoners must be treated pursuant to

[2709] Prosecution Pre-Trial brief, para 49
[2710] Prosecution Pre-Trial brief, paras 27, 46, 161
[2711] D0232, p. 5
[2712] P1415, p. 84
[2713] P3039; P0838
[2714] D0232; D0593; D0235; P0976; P0977; D3688
[2715] Milinic, T.39792
[2716] P970, p. 363 (Emphasis added)

Geneva convention".[2717] The second directive stated that the VRS eliminated most of corrupted authorities organs and different paramilitary formations[2718] and that the VRS units must "restrain as much as possible and act only in self-defence and protect human lives."[2719]

1297. Directives were the most general form of command communications,[2720] and directives that the RS President, rather than the Main Staff, created and signed were short and dealt with humanitarian matters rather than combat.[2721]

1298. Since the Prosecution does not allege that there was anything wrong with directives 1, 2, 3, 5, and 6, we shall now turn to directives 4 and 7.

f. Directive 4 did not direct VRS to expel non-Serbs

1299. Indictment paragraphs 12 and 14, *inter alia,* allege that President Karadzic significantly contributed to achieving the objective of the permanent removal of non-Serbs by facilitating and/or encouraging Bosnian Serb Governmental Organs to commit crimes and that members of the JCE included members of Bosnian Serb government. Logically, at the top of the Government was the Prime Minister. Consequently, if the Prime Minister and the President ever discussed the faith of non-Serbs they must have advocated their removal. The evidence indeed shows that in the middle of the war, in March 1993, President Karadzic and Prime Minister Lukic discussed the treatment of non-Serbs

> K - Here the newspapers are full of Cerska
> L - [...]it is obvious that it is only a farce in Cerska, be assured that there are no civilians, therefore they only struggle to feed their army.
> K - That's right, therefore there are no civilians[...]
> L - Certainly not, they are not hungry and another important thing, we agreed to give all their elderly civilians and children a way out in whatever direction they want.
> K- Yes, yes,
> L - **Those who want to stay there and live can put down their weapons and there will be no problems.**

[2717] D0232, p. 5
[2718] D0593, p. 1
[2719] D0593, p. 2
[2720] D3864, p. 6
[2721] D0104; B. Subotic, T.40181-4

> K - [...]**all Muslim civilians may stay where they are or go where they want** but armed gangs must put down their weapons.
> L - Those with weapons must put them down and in fact we said that those who bloodied their hands should even be tried by an international tribunal, we do not have to trial them.
> K - Fine[...]we will give amnesty to all ordinary combatants[...]suspected war criminals would be trialled in accordance with the law and that the international tribunal should be present and have the international institutions take part and the **civilians can stay and have no need to flee**[...]
> L - Therefore they neither care about humanitarian aid or anything else but only to create incidents so they can present themselves to the world as victims, etc.[2722]

1300. This conversation obviously strongly stands in the Prosecution's way and there is no way around it. This is an intercepted conversation, not meant for the public or propaganda purposes, a very instructive insight into President Karadzic's mind. This conversation directly refutes the allegations made in the Prosecution's Pre-Trial brief paragraphs 196-201 claiming that President Karadzic wanted permanent removal of the Bosnian Muslim population from the area in and around Srebrenica. It also refutes the allegations that the goal of Directive 4 of 24 November 1992 was to force the Muslim local population to abandon the area of Cerska, Zepa, Srebrenica and Gorazde, as claimed by paragraph 199 of the Prosecution's Pre-Trial brief.

1301. Based on this intercepted conversation, the Chamber simply cannot conclude that President Karadzic, as the Prosecution suggests through the testimony of General Milovanovic, approved Directive 4 with the aim of executing forcible transfer of the non-Serbs from the Drina Valley. Milovanovic testified that he had asked President Karadzic to "have a look" at Directive 4, and to sign it, and that he then received a response that President Karadzic approved the directive, but since it was something that concerned the military structure alone, President Karadzic said that General Mladic should sign the directive.[2723]

1302. If President Karadzic had "had a look at it" at all and had approved Directive 4, it would have been only for the legitimate military purposes, as is **clearly** and **unambiguously** seen in the quoted intercept which took place subsequent to Directive 4. There is no better way to understand what President Karadzic intended than to listen to his words in their entirety.

[2722] D3571, pp. 2-5 (Emphasis added)
[2723] Milovanovic, T.25518-9

1303. In the end, because of Directive 4 that he created, Milovanovic was considered a suspect in 2005[2724] but was never prosecuted or indicted for it. Why, if it was a fundamental document for the JCE plan to expel the Podrinje Muslims?

1304. Milovanovic testified that he wanted the Muslim Army to leave with the population that had already been on the move.[2725] Approximately two weeks prior to Directive 4, the same had been the case in Vecici in Kotor Varos, when the non-Serb population wanted to leave, but the enemy forces would not allow it.[2726] In Directive 4, Milovanovic wanted the Muslim Army to leave the Drina Valley because from May 1992 onwards, it destroyed 156 Serb villages and hamlets, and killed over 1300 Serbs.[2727] **No one** was held responsible for those crimes by the Hague Tribunal. In the three months in the Bratunac municipality alone, some 780 Serbs were killed.[2728]

1305. Milovanovic's evidence that President Karadzic allegedly approved directive 4 is insufficient to conclude that President Karadzic possessed the necessary *mens rea* for - or that he significantly contributed to - the forcible transfer crimes. Neither could General Milovanovic have testified about General Zivanovic's *mens rea* or what he had in mind when acting upon Directive 4.[2729] Only Zivanovic could have testified about it what was going on in his mind, and he clearly explained it.

1306. Zivanovic, who pursuant to Directive 4 created an order to allegedly carry out ethnic cleansing of Muslims,[2730] explained that in fact after numerous atrocities committed by the Muslim forces against Serbian civilians in the areas around Cerska, Zepa, Srebrenica and Gorazde, as a result of which tens of thousands of Serbian civilians were expelled from their houses and their land, Zivanovic decided that the Drina Corps had to force the Muslim army to withdraw from the above-mentioned Serbian areas, and that the Muslim civilians who had unlawfully occupied the Serbian villages and farms would have to be made to leave the Serbian properties so that the rightful owners could regain their possessions[2731]

[2724] Milovanovic, T.25522
[2725] Milovanovic, T.25523
[2726] D2146; Milovanovic, T.25601
[2727] Milovanovic, T.25523
[2728] Milovanovic, T.25523
[2729] P2085
[2730] P2085
[2731] D3932, para 15

> When people who were Serbs tried to enter their own village, they would be killed[...]That population that was in our areas was supposed to leave those areas, to my mind it is understandable to this day. If my brother returns[...]to the burned remains of his home, he has this Muslim waiting there for him, in his house, on his field. I'm not going to send my brother to a Muslim village, I'm going to send him to his own village. [2732]

1307. Zivanovic made it clear that the only target of his forces were the Muslim forces who had massacred the Serbian civilians in Kamenica, Cerska, Bratunac, Kravica and many other places.[2733]

1308. The Prosecution also asked Krajisnik about Directive 4.[2734] However, the President of the Assembly could not have known the core issues arising from military documents and was merely offering his layman's views on those portions of the document selected by the Prosecution. There is no probative value in Krajisnik's answers in relation to Directive 4.

1309. Krajisnik testified that he did not "think that it's decent for me to interpret somebody's thoughts"[2735] and warned about answering the questions for which he was not qualified to answer.[2736] In 1995 he stated that he had never been consulted about VRS matters.[2737] Therefore, the Chamber cannot base any conclusions on Krajisnik's evidence in relation to Directive 4.

1310. Additionally, Krajisnik testified that "we have seen how many telephone conversations were recorded. It should have been mentioned in some telephone conversation[...]that Momcilo Krajisnik or Radovan Karadzic said: Let's expel somebody".[2738] We have just see one of those telephone conversations between President Karadzic and Prime Minister Lukic.

1311. We have also seen, and will be seing, dozens of orders by President Karadzic demanding that the VRS respect the international humanitarian law. It is simply not logical or possible that President Karadzic would possess a discriminatory or other

[2732] Zivanovic, T.42596
[2733] D3932, paras 15, 17
[2734] Krajisnik, T.43823
[2735] Krajisnik, T.43823
[2736] Krajisnik, T.43824
[2737] P3149, p. 9
[2738] Krajisnik, T.43826

criminal state of mind only in November 1992 or March 1995, when directives 4 and 7 were respectively issued, and not possessed it before or throughout the war in Bosnia.

1312. Directive 4 was a part of a broader operation under the code name "Proboj". The group for co-ordinating activities of "Proboj" was headed by Colonel Miladin Prstojevic, who was an operations officer in the corps command.[2739] Two-three weks after Directive 4 and Zivanovic's follow-up order, General Zivanovic issued a new order for liberation of villages in the Drina Valley, describing the enemy forces and putting Colonel Prstojevic in charge of coordinating activities.[2740] On 18 December 1992, Colonel Prstojevic, on behalf of the Drina Corps command, issued urgent Information on the need to adhere to international norms in war

> The realisation of the aims of the Serbian people's struggle obliges us to adhere to the norms of behaviour and humanity even **towards our enemies, especially towards the wounded and the civilian population which is not taking part in the fighting**. The basis of these norms is respect for the human being and human dignity, regardless of how cruel the reality of war is. The behaviour of the Croatian and Muslim army is an example of the most shameless violation of all the norms of the international laws of war[...]**take measures to prevent and suppress any abuse on our side**[...]which includes **observing the international norms of war** as contained in the 1949 Geneva Conventions relative to the protection of the victims of war and the 1977 Additional Protocols[...]Prepare more extensive information on this topic based on the International Red Cross brochure entitled "Resume of the Geneva Conventions of 12 August 1949 and the Additional Protocols". **We sent you the brochure earlier. If you do not have it, inform us so that we can provide it for you**[...]**Circulate this information to all officers and soldiers in your unit and explain to them that any mistreatment of the civilian population and the wounded by us, even if minor, may have fatal consequences** for our men who have been captured by the enemy and for the Serbian people under occupation[2741]

1313. If Zivanovic had intended to ethnically cleanse Podrinje Muslims, he would not have appointed Prstojevic coordinator of all combat activities in the Drina Valley. He would also have prevented instructions quoted above to reach **all** units.

1314. After the "Proboj" operation, there were other combat activities under the code name "Pesnica" that followed in January 1993, and again the combat operations were co-ordinated by Miladin Prstojevic.[2742] The operation was directed against the Muslim armed forces, and not the civilian population.[2743]

[2739] D2135, p. 1; Milovanovic, T.25557-8
[2740] D1597, pp. 1-2
[2741] D2136 (Emphasis added)
[2742] D2137
[2743] D2137

1315. In September 1993, General Zivanovic analyzed the post-Directve 4 events.[2744] During the execution of tasks stemming from Directives 4 and 5, the Drina Crops had 1092 casualties[2745] which could not have been the result of an attack against an unarmed Muslim civilian population.[2746] After the Directive 4 operation and the liberation of the area, mass graves were uncovered[2747] full of butchered Serbs who, after the outbreak of war in April 1992, had not escaped the area inhabited by "unarmed Muslim civilians".[2748]

1316. In conclusion, Directive 4 and the subsequent orders related exclusively to eliminating the Muslim armed units that terrorized the Serb civilians in the Drina Valley,[2749] while the non-Serb population was not targeted,[2750] but rather continued to receive humanitarian aid that enabled its survival.[2751] The Supreme Command meeting of 21 January 1993, discussed only the Muslim military threat to the Serb civilians.[2752]

1317. Most importantly, President Karadzic personally ordered the VRS to stop the forces, prevent their entry into Srebrenica as well as facilitate the passage of all humanitarian convoys both entering and leaving Srebrenica and treat all Muslim soldiers like all other civilians.[2753] If the Directive 4 was aimed against the civilian population, the VRS Main Staff would never have ordered the Drina Corps in April 1993 that "the civilian population has **complete freedom to decide whether to remain in Srebrenica or to leave**. No party may hinder the freedom of movement of civilians. Muslim combatants are to be tretaed as civilians after being disarmed."[2754] and repeated its order in May 1993 that "members of the so-called Army of BH, once the weapons are handed over are to be tretaed like other civilians, and **freedom of movement** is to be secured for all, so that if they wish they can leave the said regions, or **remain there**".[2755] Prosecution

[2744] D2138
[2745] D2138, p. 24
[2746] Milovanovic, T.25575
[2747] D2138, pp. 34-5
[2748] D0045; D0046; D0047; D0048; Milovanovic, T.25576-7; D4772
[2749] D2139, p. 1
[2750] D2141; Milovanovic, T.25586
[2751] D2140; D2142; Milovanovic, T.25583
[2752] P1482, pp. 79-80
[2753] D0043
[2754] D2144, p. 3 (Emphasis added)
[2755] D2145, p. 2 (Emphasis added)

witness Milovanovic testified that civilians did not suffer any consequences as the result of directive 4.[2756]

1318. The Prosecution further showed to General Milovanovic three documents: P3161, P03162 created by Svetozar Andric and P5261 Intercept involving General Zivanovic, and claimed that the two men produced negative consequences for Muslim civilians, especially in the village of Gobelji[2757] Both men testified in the Defence case. General Zivanovic testified that the houses destroyed by the VRS mentioned in P5261 were combat strongholds of the enemy army[2758]

1319. General Andric testified that fighting with the Muslim forces took place in the villages of Gobelji, Paljevina and others.[2759] There were no civilians in these villages. The Muslim forces used them as strongholds included in their system of defence, which is why Gobelji village was demolished during the fighting.[2760] The Muslim units kept on coming from that sector, entering Serbian villages where they burnt and killed civilians, and then returning to the said strongholds.[2761]

1320. In March 1993, Andric reported to the Drina Corps Command that one of its brigades destroyed the village of Gobelji and that "at the entry into the village our soldiers found weapons and other military equipment as well as food and cattle which the enemy left behind when fleeing from our forces."[2762] The enemy did not have enough time to take their weapons from the trenches.[2763] Even General Milovanovic, who was not a participant in these events, presumed that Gobelji was a fortified village which became a military facility.[2764]

1321. The Prosecution also alleges that the commander of the Bratunac Brigade implemented Directive 4 with the aim of expelling Muslims from the Srebrenica enclave.[2765] However, it again omits to analyze documents in its entirety skipping crucial parts, as explained by General Zivanovic during his testimony

[2756] Milovanovic, T.25596
[2757] Milovanovic, T.25769, T.25777-8; P3162
[2758] Zivanovic, T.42598 and .42605-6
[2759] D3886, para 8; S. Andric, T.41697
[2760] D3886, para 8; S. Andric, T.41700; Zivanovic, T.42600-2
[2761] S. Andric, T.41711
[2762] P3161
[2763] S. Andric, T.41701
[2764] Milovanovic, T.25779
[2765] P4075, pp. 2-3; Zivanovic, T.42617-8

> But it's not quite as you just read it out. You passed lightly over the place where he says that they have to be defeated militarily[...]Let us not extract things from documents like you extract teeth from somebody's jaws. There was a latent danger for us to disappear officially when the 28th Division was to launch an attack against our positions, together with Gorazde, together with Sarajevo, together with Zepa, together with Tuzla, and what was I supposed to do? To let them kill us all to the last one? [2766]

1322. When read in its entirety, it is clear that the Bratunac Brigade document referred to the Muslim forces in Srebrenica, not the Muslim civilians. This is further clarified in General Zivanovic's diary when he wrote that enclaves were turning into areas for launching air raids with powerful military formations, and hence must disappear.[2767]

1323. Going back to the beginning of the Directive 4 story. Prior to this directive, the Drina Corps was established in November 1992 with the main purpose to prevent complete destruction of the Serbian population in the Drina valley.[2768] By January 1993, 157 individual Serb settlements had been destroyed by the Muslim forces,[2769] and 2000 Serb civilians killed.[2770] By late 1995, that number increased to 3240 dead Serbs.[2771]

g. Republican authorities did not modulate level of terror by restricting humanitarian aid and flow of critical utilities

1324. All Bosnian Serb organs took care that humanitarian convoys reached the non-Serb civilians without obstruction.[2772] The VRS Main Staff frequently received orders bearing the President's signature instructing that certain convoys be let into and out of the enclaves.[2773] President Karadzic always intervened whenever he found out that the security of members of international humanitarian organisations might be jeopardised, a practice that continued well into November 1995—months after the issuing of Directive

[2766] Zivanovic, pp. 42618-9
[2767] P6482; Zivanovic, pp. 42625-6
[2768] Zivanovic, T.42578-81; D3954
[2769] Zivanovic, T.42580; D3954
[2770] S. Andric, T.41707
[2771] S. Andric, T.41707
[2772] Kralj, T.36535-6; D0440, p. 3; Krajisnik, T.43322,T.43756; D3245, T.29233-4, T.29295; P4444, T.11963; P0970, p. 256; D3061, p. 8; D3563, paras 45, 52, 60, 66, 71, 76, 79; D3591; D3592; D3580; D3589; D3593; D3061, p. 8; P2627; D3586; P3142, D3305; D3306; D3609; P3140; D3304
[2773] Kralj, T.36554-7; D2172; D2166

7.[2774] In March 1995, around the time of the issuing of Directive 7, the Asembly confirmed UNPROFOR's mandate in RS despite.[2775]

1325. The approval of the passage of UNPROFOR military convoys (as opposed to civilian humanitarian convoys) was the prerogative of the army.[2776] The Main Staff adopted numerous measures granting safe, free and unhindered passage to UNPROFOR teams and humanitarian convoys delivering aid to non-Serbs.[2777] Care was taken to assign only the best personnel members to tasks relating to humanitarian aid convoys and UNPROFOR.[2778] The VRS took all relevant measures to ensure the normal operations and movement of UNPROFOR and other international organizations and to investigate and punish cases of VRS units' misconduct.[2779]

h. Directive 7 did not restrict humanitarian aid to non-Serbs

1326. Only a week after the issuing of Directive 7, General Milovanovic informed President Karadzic that the number of lorries transporting humanitarian aid to the enclaves had increased.[2780] The alleged intention of the political leadership to reduce humanitarian aid was never discussed at the Main Staff.[2781] The controversial portion of Directive 7 was never applied in practice.[2782] The policy of unimpeded passage of convoys and delivery of humanitarian aid remained the same after March 1995.[2783]

1327. Furthermore, a simple comparison of the number of convoys and the amount of aid delivered in the pre- and post-Directive 7 period proves that there were no reductions

[2774] D3684; D3682, para 32; D3304
[2775] D3305; D3306
[2776] Kralj, T.36535; D3245, pp.8-9, 70; P4444, p.38
[2777] D2162; D3563, paras 51,55; D3309; D2161; D2163; D3312; D3312; Kralj, T.36564;T.36543-4, T.36560; D3311; D3245; D3579; D2161; D2127; D2126; D3303
[2778] D2163; Kralj, T.36545-6; D2165
[2779] D2161, p. 2; D2167; D3311; D2163; D2164; D3305; D3306
[2780] D2121, p. 2; Obradovic, T.25268
[2781] Obradovic, T.25270; P4444, p.89
[2782] D3932, para 26; Kralj, T.36536
[2783] D2125;D2127;D2126;D3305;D3306;D2115;D2116;D2068;P4452;D3308;D3286;D2117;D2118;D2119; D2120;D3313; D3956;D2115; D2173

of humanitarian aid as a result of Directive 7.[2784] The Eastern enclaves were even better supplied than other non-Indictment enclaves.[2785]

1328. If the non-Serb population in the enclaves did not receive the aid, it was because the Muslim Army misappropriated it for military purposes or for profiteering on the booming black market.[2786] After the establishment of the Srebrenica safe zone the area turned into an illegal arms market, with weapons and various other undeclared goods being smuggled via humanitarian convoys.[2787]

1329. UNPROFOR cooperated with the Muslim Army,[2788] and humanitarian convoys of various organisations were used to smuggle food, weapons, ammunition and other equipment of potential strategic and military importance for the needs of the ABiH.[2789] Any shortages in supply for the UNPROFOR were due to the fact that UNPROFOR shared its supplies with the ABiH.[2790] Because of the numerous instances of blatant abuse of humanitarian aid on the part of the Muslim forces and the UNPROFOR, the Main Staff adopted a policy of allowing only as much supplies that were truly needed in the enclaves.[2791]

i. VRS did not create fait accompli for the civilian leadership

1330. The Prosecution's case is that the VRS was actively engaged in creating a factual situation that would ultimately resolve the conflict.[2792] It suggests that the Serb leadership pursued a policy of *fait accompli.* The Prosecution claims that Ambassador Cutileiro warned President Karadzic on 12 June 1992 that the international community would not endorse a policy of *fait accompli* and that territorial claims pursued by force were totally unacceptable.[2793]

[2784] D3947; D3957; Obradovic, T.25259; Zivanovic, T. 42684-8
[2785] D3245, Russlle, T.29375-7
[2786] Kralj, T.36588-90; D3932, para 26; Zivanovic, T.42665, T.42680-1; D3313, p. 1; D3956, p. 7
[2787] Zivanovic, T.42674; Zametica, T.42462; D3928; Krajisnik, T.43322; P4444; Glavas, T.12026;D2124
[2788] D2168; D2170
[2789] D3563, para 38; Kralj, T.36535-6, T.36584; Obradovic, T.25272; D3575; D3245, Maksimovic, T.29303; D3303; D3302; D2123; D2122; D3307; D3286; D2123, p. 2; D3245, [redacted]; D3308; D4145, p. 3
[2790] Kralj, T.36569-72; D3245, Maksimovic, T.29310-1
[2791] Kralj, T.36536; D3245, Maksimovic, T.29311
[2792] Krajisnik, T.43779
[2793] P0952

1331. However, on 22 April 1992, **fifty days** before Ambassador Cutileiro sent his letter, President Karadzic issued a public appeal calling for a

> Public commitment by all the parties in BH that they will **not accept a policy of fait accompli**[...] and that **territorial advantages gained by means of force will not be recognized**.[2794]

1332. Ambassador Cutileiro sent his letter to the wrong address. He should have sent it to the SDA and Hasan Efendic, who merely one day after President Karadzic's public appeal, on 23 April 1992, issued their infamous directive ordering attacks on the JNA and the Serbs.[2795]

1333. On the same day, President Karadzic advocated that the "notion of territory is entirely relative[...]At present, people are killing and being killed for nothing, because at the end of the day, all the territories occupied by force will have to be handed back to their inhabitants".[2796]

j. President Karadzic did not promote alleged perpetrators of crimes

1334. The Prosecution alleges that many municipal and regional leaders and officers were promoted, praised or rewarded by President Karadzic following the alleged cleansing of Muslims in their areas.[2797]

1335. There is no evidence that President Karadzic *knew* of a crime and still promoted, praised or rewarded the perpetrator. In fact, President Karadzic hardly ever even knew who he was promoting, because proposals for promotion would come from the field and would go to the Minister or the President of RS, depending on the rank of the promotion.[2798] The President fully respected the system of military subordination and if the lower units proposed promotions, President Karadzic carried out the promotions as asked of him. [2799]

[2794] D0220
[2795] D0222
[2796] D1591
[2797] Prosecution opening statement, T.520, T.669
[2798] D3682, para 28
[2799] D3682, para 28

1336. The similar procedure was followed in the civilian organs of authority. If the ARK authorities proposed their candidates for the RS Government positions, the appointments done had nothing to do with President Karadzic.[2800] Sometimes, political circumstances dictated appointments. One of the reasons for appointing Brdjanin and Erceg to ministerial posts was an attempt of the central authorities to assuage Krajina's tendency towards autonomy.[2801] However, even these appointments were not done by President Karadzic, but by Prime Minister Djeric.[2802] In early 1995, Brdjanin was relieved from all duties in the Government and Party.[2803]

1337. Another suggestion by the Prosecution is that Drljaca was decorated for crimes in Prijedor.[2804] It is unclear on what basis the Prosecution claims that Drljaca committed crimes for which he was awarded. On the same occasion, another 20 people were decorated.[2805] Were all of them decorated for war crimes?

1338. President Karadzic did not know why people were decorated, because it was the chiefs and commanders who were supposed to provide their input as to whether somebody deserved to be decorated or not.[2806] Was President Karadzic supposed to investigate each and every decoration proposed to him?

1339. President Karadzic would not have ordered strict application of the rules of the international law of war, and sanctioning of individuals who violated those rules,[2807] and at the same time decorated perpetrators of crimes. [redacted][2808] [redacted].

1340. Moreover, President Karadzic's nominations were very rarely accepted, as he complained in the Assembly.[2809]

[2800] D4026; Kupresanin, T.43560
[2801] D4090; D4086, para 47
[2802] D0422, p. 40
[2803] D4034, para 1
[2804] P4261
[2805] P4261
[2806] B. Subotic, T.40110
[2807] D0434
[2808] [redacted]
[2809] P1379, p. 316

1341. Other problem with the Prosecution's theory is that officials who, for instance, strove to improve conditions in detention facilities were promoted.[2810] The state certailny did not promote both the perpetrators of crimes *and* those who prosecuted them.

1342. In conclusion, President Karadzic simply received proposals from the Army or the police and automatically signed promotions and awards. He explained as much during a 1995 meeting of the Supreme Command

> How did General Mladic make promotions; he received proposals from the field, isn't that so, therefore that is still now how it happens. You process proposals, the proposals go to the ministry or to me, depending on what the rank in question is, the one that is promoted, and that is the way it has been till now.[2811]

19. President Karadzic did not remove evidence from RS Presidential archives

1343. Having faced the truth that there is no evidence against President Karadzic, the Prosecution started arguing that President Karadzic organized destruction of evidence, despite disclosing to him over 2 million pages of evidentiary material. However, the Prosecution's own evidence shows that it was them who selectively and disingenuously worked on the evidence in this case.

1344. [redacted][2812] [redacted][2813].

1345. [redacted][2814]. [redacted][2815].

[2810] Avlijas, T.35195
[2811] P3149, p. 17
[2812] [redacted]
[2813]
[2814]
[2815]

[redacted][redacted][redacted][

supported by - the state authorities. This chapter, in the form of a chronological narrative of contemporaneous documents, is a final tribute to President Karadzic's heroic efforts to protect the rights of his citizens of other ethnicity.

1350. In April 1992, President Karadzic asked that "wishes for a happy Easter should be sent to Catholics'[2821] and issued his Platform for the solution of crisis calling for unconditional and immediate cease-fire and obligation that no advantage achieved by force should be justified.[2822]

1351. In May 1992 President Karadzic issued an appeal to Muslim citizens for cessation of hostilities stating that "you are to enjoy the same rights as Serbs do[...]you have no one who is closer to you than the Serbs[...]We want you to live peacefully at home[...]become civilians, in order to enjoy the protection of civilians stipulated by the Geneva Convention. In accordance with that convention, we shall secure for your safety at your home. According to the same convention, we shall let you pass with all your property in the direction of your own choosing and we shall allow you to return when the war is over.[2823]

1352. In June 1992, in a private meeting with General Mladic, President Karadzic said that "we must not put the pressure to have people displaced"[2824] and sent another appeal, this time to all powerholders in the country "to enable the protection and care of all persons wounded and sick, regardless of which side they are on[...]To treat all prisoners humanely[...]To spare the civilian population from all attacks[...]To respect the emblem of the Red Cross[...]We do not live off hatred of others, but off love of our people and our country."[2825] He also ordered the application of the rules of the international law of war[2826] and put a ban on formation and operations of armed groups and individuals, asking for a "strict respect for the provisions of the International Military Law".[2827]

1353. In July 1992, President Karadzic ordered the harshest measures against perpetrators of criminal offences and persons spreading panic among the population.[2828]

[2821] P3077, p. 2
[2822] D1587
[2823] D0119
[2824] P1478, p. 98
[2825] D0426
[2826] D0434
[2827] D0093
[2828] D0438

He addressed the public calling for the rule of law and humanism and demanding that "particular attention should be paid to treating fairly the civilian population of our republic who are of different ethnicity"[2829] President Kardzic ordered that non-Serb civilian villages must enjoy full.[2830] He told General Mladic in a private meeting that he was going to sign an agreement that "all refugees are allowed to return to their homes"[2831] which he did as promised.[2832] President Karadzic ordered that "the Serbian authorities must act in accordance with the law and the Geneva Convention towards the civilian population of any ethnicity"[2833] and protested when media falsely informed the public.[2834] Still, he told General Mladic that "UN, EC, and ICRC observers must be treated with maximum politeness, as must journalists."[2835]

1354. In August 1992 President Karadzic ordered that forcible resettlement and other illegal measures against the civilian population should be prevented, and any statements that refugees would not return would be considered as legally invalid and declared null and void.[2836] He again publicly warned that "we shall prevent ethnic cleansing" and "we shall carry out investigations into all cases of doubt about forceful transfer of the civilian population and shall punish all responsible persons"[2837]

1355. In September 1992 President Karadzic, in a private military-political consultation meeting, reiterated the state policy towards the Muslims and said that "we must have ethnic minorities in the state as well"[2838] He also reminded the presidents of all municipalities concerning the respect of international humanitarian law with regard to the treatment of prisoners of war, and warned them that they "are personally responsible for everything that happens in your municipalities. I would also like to remind you that civilians who have not committed a crime must not be kept in prisons and collection centres against their will[...]You are also bound to abide by the Geneva Convention both

[2829] D0094
[2830] D0095
[2831] P1478, pp. 358-9
[2832] P1479, p. 17
[2833] D0096
[2834] P3778
[2835] P1479, p. 110
[2836] D0101
[2837] D0109
[2838] P1479, p.156

in the way you treat prisoners and in terms of keeping records of them."[2839] President Karadzic yet again publicly warned that "any forcible removal of people is ethnic cleansing which must not be allowed and supported and which must be condemned".[2840]

1356. In October 1992, in a meeting of the political and military leaderships, President Karadzic said that "there was a lot of discussion about ethnic cleansing. The authorities of Srpska do not take part in ethnic cleansing anywhere. We find it important to make a distinction between what is done by irresponsible individuals and what is done by the authorities. I have undertaken the obligation that civilians do not leave their places. [2841] President Karadzic ordered the VRS and the Ministries of the Interior and Justice to "inform all your subordinate officers that the authorisation for the IRCC representatives affixed with my signature must absolutely be respected. I shall order a thorough investigation of all cases of failure to comply with this demand.[2842]

1357. In November 1992 President Karadzic ordered all local, civilian and political authorities to facilitate safe passage for the ICRC, to provide the necessary information on prisoners and facilitate ICRC visits "Any soldier who fails to obey these instructions will be punished".[2843] He duly responded to international institutions that inquired about the well-being of civilians.[2844]

1358. In December 1992 President Karadzic assisted the UNPROFOR with the transportation of humanitarian relief.[2845]

1359. In March 1993 President Karadzic issued a directive to the VRS Main Staff to enable the unhindered passage of aid "to the civilian population of the opposing side" and to observe the Geneva Conventions and their Additional Protocols, as well as the 1907 Hague Convention on the Laws and Customs of War on Land and other conventions of the international law of war.[2846]

1360. In May 1993, during the Supreme Command meeting, President Karadzic ordered that the enemy civilian population must be protected and that maximum respect

[2839] D3241
[2840] P0809
[2841] P1481, p. 49
[2842] D0103
[2843] D4740
[2844] D4749; D4753; D4756; [redacted]
[2845] D4761
[2846] D0104

must be shown towards the humanitarian organisations.[2847] He also ordered the Army to "make possible the unhindered supply of humanitarian aid to the territories of the opposing side."[2848]

1361. In July 1993, President Karadzic ordered that "humanitarian aid convoys must pass without any delays."[2849]

1362. In the autumn of 1993, President Karadzic denied the allegations made by an Assembly deputy that refugees would not be able to return or that mosques had been razed to the ground.[2850] On 22 October 1993 President Karadzic signed a declaration that "all people who have left their homes because of the civil war will have the right to return to their homes if they so wish".[2851]

1363. In December 1993, President Karadzic ordered that the normal functioning of humanitarian organisations must be ensured, as well as the unobstructed passage of all humanitarian aid convoys.[2852]

1364. In January 1994 President Karadzic reiterated his previous orders in relation to the unhindered work of humanitarian organisations and all other providers of humanitarian aid.[2853] He also offered to widen the corridor for the flow of humanitarian aid to Muslims, whereby the quantity of aid would be doubled.[2854] President Karadzic endeavoured to try "to ensure an increase in humanitarian aid delivered through our corridors, as our aim is to lessen the suffering of civilians as much as possible."[2855]

1365. In March 1994 President Karadzic informed the UN that a VRS Colonel was dismissed and an investigation was ordered, because of an incident involving the UNHCR, adding that "I hope that this is the last time there has been such an incident."[2856]

1366. In April 1994 President Karadzic ordered the VRS to "implement agreements with the UN promptly" and to make sure that UNHCR, ICRC, Médecins sans Frontières

[2847] P1493, p. 91
[2848] D0105
[2849] P2812
[2850] P1379, p. 25
[2851] D4807
[2852] D690
[2853] D2172
[2854] D0693
[2855] D0691
[2856] D3495

and Handicap International carried out their work without hindrance.[2857] He also ordered to "allow humanitarian convoys to pass through and do not hinder them".[2858]

1367. In May 1994 President Karadzic expressed his deep gratitude to the humanitarian organisation headed by Dr Andolina Marino, and particularly for the fact that in its noble work it made no discrimination regarding the religious and national identity of the children.[2859]

1368. In July 1994 President Karadzic ordered municipal authorities that they "are duty-bound publicly to condemn all cases of assaults on non-Serbs and to maintain law and order at any cost and bring the perpetrators of incidents to justice. Please transmit my order to the public security station and the Serb army namely that they are urgently to step up protection measures for all citizens and all their property, including also the property of those who had left their homes earlier or were killed in the war."[2860]

1369. In August 1994 President Karadzic ordered improvement of relations with UNPROFOR and UNHCR and other international organisations "notwithstanding the frequent cases of misconduct and dishonourable acts committed by these organisations, which resulted in their direct siding with our enemies and caused the former to lose neutrality as one of their hallmarks."[2861] He also ordered that all humanitarian activities in Republika Srpska be conducted in accordance with international humanitarian law" adding that "violations of international humanitarian law and the obstruction of international humanitarian activities are directly counter to the vital interests of our state."[2862]

1370. In September 1994 President Karadzic instructed the VRS that "we are obliged to approve medical evacuations in accordance with the Geneva Conventions" and that "any kind of interference brings us in collision with international humanitarian law"[2863]

1371. In October 1994 President Karadzic demanded the opening of land corridors and immediate approval of all humanitarian convoys to Muslim enclaves.[2864]

[2857] P4447
[2858] D4822
[2859] D3006
[2860] D4213
[2861] D0698
[2862] D0701
[2863] D3521
[2864] D4832

1372. In March 1995 President Karadzic asked for unimpeded passage of the UNHCR.[2865]

1373. In July 1995 President Karadzic publicly denounced ethnic cleansing that "was never part of our policy" reassuring that "the authorities are protecting our citizens, irrespective of whether they are Muslim or Croatian".[2866] On another occasion, he stated that "the Serbian authorities did not participate in ethnic cleansing. In fact, we are trying to stop it. Such acts are being perpetrated only by groups of Serbs or by individuals, but they certainly do not originate from the Serbian authorities".[2867] President Karadzic also ordered unobstructed movement of humanitarian aid".[2868]

1374. In October 1995 President Karadzic ordered the MUP to "take all necessary measures at all locations to protect and provide security for personnel and vehicles of the UNHCR and UNHCP, at their places of accommodation and during movement."[2869]

1375. The evidence presented in this chapter, taken together with all other President Karadzic's orders, instructions, appeals, and statements quoted throughout this final brief, is a testimony to his enormous efforts to ameliorate lives and alleviate pain of both Serb and non-Serb civilian population and prisoners of war. It is the evidence that cannot be brushed under the carpet.

1376. If the Trial Chamber is, by any chance, minded to convict President Karadzic, it has to explain for **each and every one contemporaneous document** mentioned in this final brief **why and on what basis** the Chamber is disregarding the evidence that squarely support President Karadzic's innocence. The Trial Chamber would also has to explain **why and on what basis** it rejects the **evidence of over two hundred Defence witnesses** and several others called by the Prosecution, that were able to credibly testify about President Karadzic's *mens rea* and *actus reus*. For **each and one** of them. Any conviction of President Karadzic would have nothing to do with the law anymore. It would be a continuation of political convictions and a demonization of a man who deserves freedom, just as much as he fought for other people's freedom during the three

[2865] D3876
[2866] P2564
[2867] P5596
[2868] D2619
[2869] D1171

and a half years long brutal civil war. It would confirm President Karadzic's prophecy made at the Assembly session in February 1996

> We had intelligence information immediately before the beginning of the war[...]about the necessity of setting up an international court for the Serbs[...]We can clearly notice that the tribunal[...]does not treat the crimes against peace, because it is clear that the greatest crime is the incitement of the war in Yugoslavia, and in Bosnia and Herzegovina the war was incited by Alija Izetbegovic and Warren Zimmerman. We have accepted the Lisbon paper, and today we have a result very similar to that from Lisbon[...]we have had three and a half years of war, and again we have the Lisbon result[...]those who caused the Lisbon proposal to be rejected[...]are responsible for the war. To give them the pleasure of taking me or anyone else there, bringing on false witnesses and telling nonsense would truly be a mistake, your good intentions notwithstanding, because this is not a time of justice, this is a time of lynch. We have all seen American movies, we could see how easily they convict a person, that is to say, a people, and then lynch them. We are dealing here with an attempt at lynching a people.[2870]

[2870] P1421, pp. 104-6

Chapter 2

II. FACTUAL FINDINGS ON THE CRIMES

Part 1

A. Municipalities component

1. North- Eastern Bosnia

a. Bijeljina

1377. In 1991, Bosnian Serbs held the majority in Bijeljina;[2871] which was reflected in the results of the first multi-party elections in 1990 when the SDS won the majority.[2872]

1378. A Crisis Staff was never established within the municipality;[2873] throughout the conflict the Municipal Assembly retained control, maintaining vital government functions[2874] and establishing the municipal TO.[2875]

1. Forcible Transfer

1379. In March 1992, rifles and other military equipment were seen being brought into SDA premises.[2876] The SJB was prevented from carrying out an on-site investigation by the SDA.[2877] After the explosion on 27 March 1992, weapons were transferred from the SDA premises to a nearby mosque.[2878]

1380. [redacted][2879] [redacted]

[redacted][2880]

[2871] The Census reflected 61% Bosnian Serb, 30% Bosnian Muslim and 9% other; P4994, pp. 28-9
[2872] The SDS won 55 seats, the SDA 18 and other parties won the remaining 27; D3090 pp. 1-7
[2873] D3133, para 42; Filipovic, T.35807-9; D3089, para 27
[2874] D3136
[2875] Blagoje Gavrilovic, Zivan Filipovic and Vasilije Andric were named as the core of the command; Filipovic, T.35807-9; D3144, para 11
[2876] D3141, para 9
[2877] D3141, para 9
[2878] D3141, para 9
[2879] [redacted]
[2880] [redacted]; [redacted]

The speed with which these barricades were erected indicates prior planning[2881] and an overarching plan to establish power in the municipality.[2882]

1381. Within Bijeljina, there were two key Bosnian Muslim paramilitary organizations, the Black Swans and Patriotic League.[2883] In their attempts to take-over Bijeljina, the paramilitaries blockaded SJB officers within their homes to prevent them from attending to their duties.[2884] Also present within the municipality was the Serbian National Guard, which was a self-organised Serbian TO force. Commanded by Mauzer, the Guard acted independent of government control[2885] and was later placed under the command of the Eastern Bosnian Corps.[2886] This concentration of paramilitary groups the authorities established an additional SJB in Janja to protect its residents.[2887]

1382. From 1 April 1992, the Serbian Volunteer Guard, commanded by Arkan began operating out of the municipality.[2888] Witnesses testified that Arkan and his Guard took advantage of the chaotic situation.[2889] Without the support of Pale, Arkan held meetings with local civilian and military leadership, on 3 and 4 April, in an attempt to gain control over army barracks.[2890] After being informed of these meetings, President Karadzic requested the President of the Municipality's dismissal, due to his hesitance to refuse Arkan's request.[2891]

1383. Following public proclamations calling for the cessation of violence, a number of Bosnian Muslims agreed to hand over firearms and a large number of mines and explosives.[2892] The following day, SDS and Bosnian Muslim representatives met in the

[2881] D3133, para 22; D3141, para 11
[2882] D3140, paras 7-8; D3137, para 4; D1608
[2883] C. Simic, T.35640; D1608
[2884] D3141, para 11
[2885] C. Simic, T.35698-9
[2886] C. Simic, T.35698-9
[2887] Andan, T.40815
[2888] Biljana Plavsic had never seen or heard of Arkan until 4 April 1992; D. Spasojevic, T.35838; [redacted]; S. Mihajlovic, T.35723, T.35725
[2889] D3137, para 8
[2890] The following day, Arkan met with Zlatko Jokovic, President of the Municipality, in a second attempt to gain control. Yet again, he was unsuccessful; Filipovic, T.35805-6
[2891] Filipovic, T.35805-6
[2892] On 31 March 1992; D3141, para 15

Municipal Assembly.[2893] However, due to their belief that they had gained control of the municipality, the SDA refused to negotiations for peace within the municipality.[2894]

1384. In response to the growing conflict within the municipality, exacerbated by a lack of information in the media, a delegation of the Presidency of BiH was sent to establish the facts surrounding recent events.[2895] Following this visit, the Bijeljina authorities invited UN Representative Cyrus Vance and President Karadzic to come and support the authorities in their attempts to restore peace.[2896] President Karadzic and the RS leadership appointed inspector Dragan Andan to rebuild command stuctures within the local SJB[2897] and to help the army carry out investigations within its competence.[2898] Andan and Milorad Davidovic helped the local authorities to identify, arrest and prosecut several criminal and paramilitary groups for the crimes committed against all ethnicities.[2899]

1385. During April 1992, Bosnian Muslim and Bosnian Serb citizens fled villages within the municipality due to the actions of paramilitaries and the presence of snipers in high buildings around the town.[2900]

1386. [redacted][2901], [redacted][2902]

1387. The Prosecution allege that Vojkan Djurkovic, aided by the Serb Voluntary Guard, forcibly transferred thousands of non-Serb civilians from Bijeljina.[2903] Evidence regarding Vojkan Djurkovic is based on the suspicion he forcibly transferred a group of 50 Bosnian Muslims to Majevica on 22 July 1995; a request to initiate criminal

[2893] D3133, para 27; C. Simic, T.35675
[2894] For example, the SDA President refused to immediately remove Bosnian Muslim barricades; D3133, para 27; C. Simic, T.35675; D3140, para 12
[2895] The delegation consisted of: Biljana Plavsic, Fikret Abdic, Jerko Doko, and Vitomir Zepinic; Filipovic, T.35806; Krajisnik, T.43336
[2896] Fax dated 16 April 1992; D1463
[2897] Andan, T.40814; P2848, para 97; Milorad Davidovic, T.15735
[2898] P2881; D1408
[2899] D1412
[2900] Andan, T.40815; D3141, paras 13-4
[2901] [redacted]
[2902]
[2903] Including extorting money; Adjudicated fact 2262

proceedings was filed against Djurkovic.[2904] This accusation was proven to be false and he was acquitted by the BiH court.[2905]

2. Persecution

a. Killings in Bijeljina Town cannot be attributed to Bosnian Serb authorities

1388. Between 1 and 2 April 1992, at least 48 civilians were alleged to have been killed.[2906] Evidence shows that there was paramilitary activity prior to the event listed in **Schedule A1.1**, with armed provocations originating from the town.[2907] Witnesses state that the people who attacked the town were armed but wore civilian clothing.[2908] The largest number of victims fell around the Bosnian Muslim barricade, indicating that the town was host to well-armed Bosnian Muslim resistance forces.[2909] Local civilian and police forces did not receive orders to take part or initiate this attack; as such the participants were members of paramilitary forces.[2910] At the time of this incident, local and military police forces were in a state of disarray and had no clear chain of command and so were helpless to prevent the incident from occurring.[2911] A criminal report was filed against those perpetrators of the attack who could be identified.[2912]

b. Batkovic Camp was not the site of cruel and inhuman treatment:

1389. Batkovic Camp [2913] was established in accordance with international humanitarian law on 2 July 1992, as a Prisoner of War Camp.[2914]

1390. Prisoners were registered and issued with registration cards by the ICRC between August and September 1992. [2915] Camp authorities maintained direct and

[2904] D1429
[2905] D. Spasojevic, T.35812
[2906] Schedule A1.1
[2907] D1608
[2908] D3133, para 39; D3140, para 22
[2909] D3140, para 22
[2910] D3141, para 17; P6221, p.6
[2911] Andan, T.40814
[2912] The report lists Hasan Tiric and 161 co-perpetrators; D3142
[2913] Schedule C2.1
[2914] P2890; Milorad Davidovic, T.15786; D1449; D3239
[2915] P0058, p. 12

continuous communication and cooperation with the ICRC, through the POW Exchange Commission of the East Bosnia Corps.[2916]

1391. Camp authorities only received one complaint from ICRC representatives regarding the conditions of the camp.[2917] This complaint was quickly resolved and the detainees were soon able to shower without limitation.[2918]

1392. The killing of six men in Batkovic Camp[2919] is refuted by Gojko Cekic. Cekic stated that he only heard of the killing of two detainees; these detainees, under the influence of alcohol, attacked a guard who killed them in self-defence.[2920] This incident was investigated by the legal authorities.[2921]

c. Mosques listed in Schedule D2 were not destroyed by Bosnian Serb forces

1393. Bearing in mind the presence of paramilitaries and chaos described above, there is no evidence that the mosques listed within **Schedule D2** were destroyed by either the local authorities, or the VRS.

b. Bratunac

1394. In Bratunac the Bosnian Muslims were the majority;[2922] the spread of Bosnian Muslim nationalism led to a divide in the municipality and a large number of the Bosnian Serb population relocating to Serbia.[2923]

1. Forcible transfer

1395. In late 1991 Alija Delimustafic, the head of the MUP, ordered the mobilisation of the reserve police force.[2924] This mobilisation resulted in the arming of 64 per cent of the Bosnian Muslims in Bratunac.[2925] Incidents of civil disobedience by Bosnian Muslims

[2916] D3236, para 11; D4124, pp.43-5
[2917] This complaint regarded insufficient shower facilities; D3236, para 23
[2918] D3236, para 23
[2919] Schedule B2.1
[2920] D3236, para 18
[2921] D3236, para 18
[2922] 64% Bosnian Muslim, 34% Serb and 2% other; D3398, para 4; D3126, para 28
[2923] D3194, para 7; D3398, para 7
[2924] D3194, para 18
[2925] D3194, para 18

became more frequent from this point; with many entering into conflict with Bosnian Serbs.[2926] Bosnian Muslims misappropriated TO weapons and illegally obtained others from Sandzak and Sarajevo. As a result, Bosnian Serbs began arming themselves for protection.[2927]

1396. The Municipal Crisis Staff was established in April 1992, as a reaction to the deteriorating security situation and the growing mistrust and fear amongst the local population.[2928]

1397. On 9 April 1992, the Bratunac police station was split along ethnic lines.[2929]

1398. Due to the potential threat posed by the significant number of illegal weapons in the municipality, the Crisis Staff, JNA and TO adopted a decision to disarm all citizens in possession of illegal firearms. This decision applied with equal force to all those who were not members of the armed forces, regardless of their ethnicity.[2930] The Bratunac SJB was tasked with informing the residents of several villages to disarm.[2931] This operation was met with significant armed resistance and was subsequently cancelled.[2932]

1399. [redacted],[2933] [redacted][2934] The leadership of Bratunac did not encourage the arrival the paramilitaries, nor did they cooperate with them;[2935] these paramilitary groups constantly disobeyed orders.[2936] The arrival of these groups prompted the breaking-off of agreements between the Bosnian Serb and Bosnian Muslim authorities.[2937] After paramilitaries mistreated detainees at the *Vuk Karadzic* school, the Crisis Staff chose to

[2926] D3194, paras 19-23
[2927] D3194, para 24
[2928] D3126, para 33
[2929] The Bosnian Muslim police continued to occupy the police building, whilst Bosnian Serbs relocated to the old primary school; D3115, paras 15-6; D3194, para 34; [redacted]; [redacted]; S. Davidovic, T.24377
[2930] D3126, para 38
[2931] The first settlement to be disarmed on 9 May 1992 was Glogova, followed by Suha, Selista and Mihaljevici; D3115, para 26; D3118, para 24
[2932] D3115, para 21
[2933] S. Davidovic, T.24371-2
[2934] [redacted]
[2935] D3194, para 31; S. Davidovic, T.24439
[2936] D3118, para 18; P3264, pp. 1-4
[2937] D3126, para 36

expel all paramilitaries from the municipality.[2938] Civilian and military police attempts at their expulsion were unsuccessful.[2939]

1400. The presence of these paramilitaries scared local Bosnian Muslims, some of whom left the municipality.[2940] Nijaz Dubicic, President of the Municipal Assembly, organised a travel pass for Bosnian Muslims who wanted to leave the municipality to ensure safe passage through checkpoints.[2941] After news of his intention spread, a large number of Bosnian Muslims gathered, asking to be escorted to Konjevic Polje; they were provided with police escort.[2942]

2. Persecution

a. No killings perpetrated or planned by Bosnian Serb authorities:

1401. Between 2 and 3 May 1992, Bosnian Muslims in Hranca attacked a JNA column.[2943] Hearing of this attack, vounteers and paramilitary groups from Bratunac joined the fighting, resulting in casualties of all ethnicities.[2944] There is no evidence that the SJB participated in killings in the village of Hranca between 3 and 9 May 1992.[2945]

1402. On 3 May 1992, Djukanovic learned that people from Hranca were detained in the hangar of the *Vuk Karadzic* elementary school. He later heard rumours that some of these detainees had been killed.[2946] At that time the school was under the control of the paramilitary volunteer guard who were not controlled by the legal authorities.[2947]

1403. On 8 May 1992, Judge Goran Zekic[2948] was killed in a Bosnian Muslim ambush.[2949] At a meeting of the municipal authorities,[2950] Miroslav Deronjic, President of the Bratunac Municipal Board, announced that Glogova would be disarmed to ensure that

[2938] D2060, pp. 1, 3-4; D3118, paras 25-6; D3194, para 45; Katanic, T.24532-3
[2939] D3118, para 26
[2940] S. Davidovic, T.24450
[2941] D3194, para 32
[2942] D3194, para 33
[2943] The JNA column was withdrawing from Croatia through Central Bosnia en route to Serbia; Schedule A3.1; D3115, paras 22-3; D3118, paras 23, 46; D3126, para 43; D3174, para 13; D3194, para 39; D3398, para 56; Stevic, T.36031
[2944] D3115, paras 22-3; D3118, paras 23, 46; D3194, para 39
[2945] D3115, paras 22-3
[2946] D3194, para 40; D3398, para 59; Djukanovic, T.36145-6
[2947] Schedule B4.1; [redacted]; A.Tesic, T.35291-2, T.35331-3
[2948] Chairman of the Srebrenica SDS Municipal Board; D3194, para 41
[2949] D3194, para 41; Stevic, T.36031-2
[2950] D3398, para 57

the paramilitaries did not repeat such an attack.[2951] Further, it would secure the passage from Glogova to Kravica,[2952] unblock communication channels and "make it safe"[2953] for the withdrawal of JNA columns.[2954] It was made clear that the goal of the Crisis Staff was to disarm the civilians in Glogova, and not harm or kill anyone.[2955]

1404. Vujadin Stevic,[2956] was sent to Glogova with his unit to complete the task and was explicitly instructed not to harm or attack anyone unless in self-defence.[2957] At sunrise, Stevic heard gunshots and saw smoke coming from Glogova and presumed that the locals were resisting the disarmament;[2958] his unit being ordered to advance.[2959] Stevic received reports that there were approximately 200 Bosnian Muslims in the nearby woods.[2960] En route, they encountered a group of 20 Bosnian Muslims; taking this group with them to the centre of town.[2961] Stevic gave orders to his unit that they should warn large Bosnian Muslim groups not to shoot a them whilst they made their way to the centre of town.[2962] After the arrival of his superior, Stevic's unit was dismissed, and the group of Bosnian Muslims were handed over.[2963] Stevic and his unit then returned to Bratunac.[2964]

1405. Stevic noticed an unknown group of soldiers moving through the village;[2965] Djukanovic confirms that paramilitaries were involved in the incident.[2966] Casualties were reported, however these were not planned by anyone from the Serb civilian or military leadership.[2967] An allegation, by Musan Talovic, of the shooting of 20 men is strongly refuted by Stevic, who stated that their orders were solely to disarm Bosnian

[2951] D3398, paras 57-8
[2952] Schedule A3.2; D3398, paras 57-8; Stevic, T.36031-2
[2953] B. Tesic, T.35260; D3115, para 25
[2954] D3194, para 41; D3174, para 15
[2955] Djukanovic, T.36146
[2956] The Commander of the unit from Slapasnica
[2957] The SJB were not involved in this operation; Stevic, T.36032; B. Tesic, T.35259
[2958] D3174, para 16
[2959] D3174, para 17
[2960] D3174, para 18
[2961] D3174, para 19
[2962] D3174, para 19
[2963] D3174, para 21
[2964] D3174, para 21
[2965] D3174, para 20
[2966] D3194, para 42
[2967] D3194, para 42; J. Nikolic, T.35479

Muslims and secure the road.[2968] Stevic also disagreed with Talovic's allegation that Stevic received orders from Najdan Mladjenovic, whom he did not know.[2969]

1406. Following the disarmament operation in Glogova, members of the paramilitary volunteer guard gathered the Bosnian Muslim population of Bratunac at the local stadium, singling out some men and taking them to the *Vuk Karadzic* school building.[2970] [redacted].[2971] Miroslav Deronjic asked the commander of the volunteer guard to release the remaining Bosnian Muslims.[2972] Despite negotiations ending positively, Djukanovic and Deronjic later saw members of the guard maltreating Bosnian Muslims at the school.[2973] When trying to reason with members of the guard, Djukanovic and Deronjic were thrown out of the school.[2974] At a Crisis Staff meeting, the actions of the paramilitary guard were condemned and a decision was issued to disarm and expel them from Bratunac.[2975] In order to save them, the Crisis Staff bussed the Bosnian Muslims held at the school to Pale;[2976] illustrating the concern of municipal authorities for the protection of the Bosnian Muslims.[2977]

b. No plan to perpetrate cruel or inhuman treatment at detention facilities

1407. Bosnian Muslims form Suha and Selista were detained in the Bratunac football stadium,[2978] guarded by the paramilitary volunteer guard.[2979] [redacted].[2980] Ljubislav Simic stated that Bosnian

[2968] Stevic, T.36038-9
[2969] Stevic, T.36036-41
[2970] The others were boarded on trucks and buses and were transported to Kladanj and Tuzla at their request; Schedule B4.1; D3398, para 59
[2971] [redacted]
[2972] D3398, para 60
[2973] D3398, para 62
[2974] D3398, para 62
[2975] A. Tesic, T.35291-2, T.35332; D3118, para 25
[2976] Approximately 400 people were transferred; D3118, para 26; D3194, para 46
[2977] D3118, paras 25-6; D3126, para 49; D3194, para 45; [redacted]; Katanic, T.24532-3
[2978] Schedule C6.1; D3194, para 43; Djukanovic, T.36146
[2979] D3194, para 43; D3398, para 59; Djukanovic, T.36146
[2980] [redacted]

Muslims at the stadium were later taken to the *Vuk Karadzic* School.[2981] No evidence was introduced of cruel or inhuman treatment at the stadium.

1408. The *Vuk Karadzic* School[2982] was under the control of the paramilitary volunteer guard. Its members maltreated Bosnian Muslim detainees, prompting the leadership to attempt to expel them from the municipality.[2983] On 1 May 1992, the Crisis Staff issued a decision outlawing paramilitary forces in Bratunac.[2984] However, these measures were unsuccessful.[2985]

c. No plan for destruction of cultural property:[2986]

1409. The town mosque in Bratunac was destroyed in 1992 after the paramilitary guard took control of the town.[2987] The Glogova mosque and the Qu'ran school were destroyed in the same period.[2988] There is insufficient evidence to conclude that forces under President Karadzic's control participated in the destruction of the aforementioned cultural and religious sites. It remains unclear who committed those crimes.

c. Brcko

1410. In 1991, Bosnian Muslims were the majority in Brcko.[2989]

1411. While Serbs responded to the JNA calls for mobilisation, the Croat and Bosnian Muslim recruits boycotted the army and the Yugoslav idea.[2990] In March and April 1992, the Brcko JNA command attempted to persuade Bosnian Muslim and Croats to mobilise; but the newly appointed Bosnian Muslim and Croat leaders obstructed this.[2991]

[2981] Others were boarded on buses and trucks and driven in the direction of Tuzla and Kladanj, at their request; D3398, para 59
[2982] Schedule C6.2
[2983] D2060; D3118, para 26; D3194, para 45; Katanic, T.24532-3
[2984] The only military formations permitted were that of the JNA and TO; D2060, pp. 3-4
[2985] D3118, para 26; P3264, pp. 1-4
[2986] Schedule D6
[2987] P4070, p. 70
[2988] P4070, pp. 70, 72
[2989] 20.8% Serbs; 25.4% Croats; 44.4% Bosnian Muslims; P2888, p. 1
[2990] P0058, p. 2; Ristanic, T.16766
[2991] D3073, paras 11, 16; O. Markovic, T.34875

1412. From mid-1991 Bosnian Muslims and Croats began illegally arming and established joint checkpoints by order of the SDA.[2992] These checkpoints prevented the passage of Bosnian Serbs on roads and in villages within the municipality.[2993] By March 1992, Bosnian Muslim paramilitaries were so well organised and trained that they managed to disarm and arrest a large group of JNA personnel.[2994]

1413. The JNA found itself unable to provide protection to those Bosnian Serbs who lived in settlements surrounded by Bosnian Muslim and Croat villages.[2995] This prompted Bosnian Serbs to organise local guards in Bosnian Serb villages.[2996]

1414. In April 1992, the municipality was divided into three parts, a process which was agreed upon by all three parties in an attempt to reach a peaceful solution to the crisis state.[2997] In addition to the division of the municipality, ethnically mixed patrols of civilian and military police were set up in cooperation with the JNA and posted around the municipality.[2998] Witnesses attest to the fact that the JNA only armed its own recruits;[2999] however, in an attempt to preserve the peace the JNA armed Bosnian Muslims in Brezovo Polje, tasking them with the protection of their village.[3000]

1415. The municipality, located along the Sava River and the North-eastern border with the Republic of Croatia, had the only functional bridge over the Sava River.[3001] The war started on 30 April 1992 after the bridge over the Sava River was blown up by Croat forces.[3002] After the bridge fell, Bosnian Muslim and Croat police officers abandoned the SJB, taking with them all police vehicles and equipment.[3003] From this point the SJB was unable to function, as only a small fraction of its personnel reported for duty.[3004] In May 1992 paramilitary groups led by Goran Jelisic, blockaded and broke into the SJB on

[2992] These arms were procured from Sarajevo and Croatia; D3073, para 9; O. Markovic, T.34777
[2993] D3073, para 9
[2994] D3072, para 12
[2995] D3073, para 7
[2996] D3073, para 13
[2997] D1582, pp. 5-8; D3072, para 33
[2998] Gasi, T.16674
[2999] This is evidenced by the slaughter of Bosnian Serb civilians in Bukvik in February 1992; D3003, para 30; D3072, para 32; D3073, para 34
[3000] Ristanic, T.16814
[3001] P2888, p. 1; P3002, p. 2
[3002] [redacted] D3003, para 11; D3072, para 11; D3073, para 17
[3003] D3003, para 19; [redacted]; Ristanic, T.16785
[3004] D1574, p. 1; [redacted]; Kaurinovic, T.34145; Ristanic, T.16798

several occasions, arresting, disarming and assaulting policemen.[3005] Dragan Veselic, Chief of Police, struggled to regain control of the police or resolve the problem with the paramilitaries.[3006]

1416. People of all ethnicities fled the town, with the exception of those involved in the town's defence structures.[3007] On 1 May 1992 Bosnian Muslim paramilitaries attacked the town of Brcko.[3008] During and following this attack the town and surrounding civilian settlements were indiscriminately shelled by Croat and Bosnian Muslim forces.[3009] Following the attack, a blockade was imposed by Bosnian Muslim and Croat groups that made normal life impossible.[3010] After the takeover of control by Bosnian Muslim paramilitary groups, serious crimes were perpetrated against Bosnian Serbs in several villages.[3011]

1417. Local Bosnian Serb and TO forces had a minimal presence in the area and were unable to defend themselves against the paramilitaries.[3012] From 30 April until mid-May there was no government in Brcko.[3013] Criminals and paramilitaries used this state of lawlessness to gain control of the town.[3014] As such, the Brcko War Presidency requested assistance from Bijeljina.[3015] The reinforcements sent to Brcko consisted of TO and reserve police officers and were tasked with protecting property and stabilising the area.[3016] The War Presidency in Brcko had no control over the military or its actions;[3017] paramilitary groups were never at its disposal.[3018]

[3005] D3003, para 23; D1436, p. 3; [redacted]
[3006] D1436, p. 1; D1574, p. 1; [redacted]
[3007] O. Markovic, T.34779; P. Markovic, T.34748; Ristanic, T.16753
[3008] D3072, para 18; D3073, para 22; Ristanic, T.16711-2
[3009] D3003, paras 18, 29; D3072, para 23
[3010] D3003, para 18
[3011] Such as Bukvik, Bukovac, Bitanovici, Bijela and Cerik; D3073, para 20
[3012] D3072, para 20; D3073, para 29; Ristanic, T.16711-2
[3013] Neither the War Presidency nor the Crisis Staff had any de facto power and, due to the conflict, were only able to meet a few times; D3003, para 21; D3072, paras 20, 30; Kaurinovic, T. 34119-20; P. Markovic, T. 34724-5
[3014] D3003, paras 21, 24; D3072, para 20; D3073, para 29; M. Davidovic, T.15478; Ristanic, T.16720
[3015] D3073, para 30; P. Markovic, T.34734; Ristanic, T.16711-2
[3016] P2763; D3144, para 8
[3017] D1582, p. 13
[3018] D3072, para 35

1418. In order to re-establish order within Brcko, the RS leadership sent Milorad Davidovic and a special group of police officers to Brcko in June 1992.[3019] Davidovic took control of the MUP organs;[3020] imposing a curfew, setting up checkpoints and putting an end to arbitrary arrests.[3021] Davidovic stated that the situation in the municipality was not safe, encouraging at risk groups to seek protection.[3022] In these efforts the local Crisis Staff supported him.[3023] After Davidovic's arrival Jelisic and his paramilitaries disappeared from the area; the subsequent removal of paramilitaries lasted until the beginning of August 1992.[3024] [redacted].[3025]

1419. The War Presidency tried to identify the victims of crimes in order to persecute the perpetrators, but these were not always successful.[3026] All crimes committed were personal acts and not done at the behest of the government.[3027]

1. Persecution

a. No plan to commit killings or perpetrate cruel and inhuman treatment at Luka Camp[3028]

1420. Luka camp appears to have been established during the period of chaos when the War Presidency did not control the municipality. It is not clear when or at whose initiative Luka camp was set up.[3029] [redacted][3030] and Major Vojkan Djurkovic[3031] claimed to hold ultimate control, treating detainees in vastly differing manners.[3032] Jelisic was never ordered to kill detainees.[3033]

[3019] D3003, para 24; D3073, para 30; [redacted]; Kaurinovic, T.34135, T.34147-8; Ristanic, T.16800
[3020] M. Davidovic, T.15544
[3021] P2848, para 111; M. Davidovic, T.15544
[3022] M. Davidovic, T.15544
[3023] P2848, para 111
[3024] Kaurinovic, T.34151-2
[3025] [redacted]
[3026] Ristanic, T.16736
[3027] Mladjenovic, T.36702
[3028] Schedules B5.1 & C7.2
[3029] D3072, para 30
[3030] [redacted]
[3031] Gasi, T.16691
[3032] D1568, p. 2; Gasi, T.16691
[3033] P0416, pp. 94-5

1421. The War Presidency returned to Brcko on 4 May 1992 and learned about Luka Camp a few days later.[3034] Upon learning of the camp, the Presidency agreed to investigate the camp.[3035] An investigative team were sent to identify and release the detainees on the 7 or 8 May 1992.[3036] Travel passes issued by the War Presidency allowed those who had not committed crimes to move freely within and outside of the municipality. These were issued from the 9 May 1992 and handed out to Luka Camp detainees.[3037]

1422. On 14 or 15 May 1992 Djurkovic, accompanied by several guards, announced that the killing and mistreatment of the detainees was expressly prohibited.[3038] Following this announcement, on 19 May 1992, Jelisic was removed from the camp and replaced by Konstantin Simonovic. Witness testimony shows that guards at Luka camp actively and forcefully prevented Jelisic's entry to the camp from this point on.[3039] Jelisic was only able to re-enter the premises when he was accompanied by his armed paramilitary unit.[3040] Once municipal authorities had consolidated, and Davidovic was given the task of arresting Jelisic, he disappeared from the region.[3041] It is alleged that certain paramilitary groups were involved in the camp command structures and in the mistreatment of detainees.[3042] Neither the War Presidency nor the police had any authority over Jelisic or other people at the Luka Camp.[3043]

d. Vlasenica

1423. The population of Vlasenica was majority Bosnian Muslim in 1991.[3044] This is reflected in the formation of the SDA in early 1990, which used its inaugural session as a

[3034] Ristanic, T.16712-3, T16715
[3035] Ristanic, T.16715
[3036] D3003, para 25; P0058, p. 8
[3037] D1578; D1579; [redacted]; P3025; P. Markovic, T.34733; Ristanic, T.16716, T.16810-2
[3038] The mistreatment and killings of detainees completely stopped after Veselic's visit to the camp on 19 May; [redacted]; P0416, pp. 20-1
[3039] [redacted]; Gasi, T.16692-3
[3040] Most Police were afraid to intervene as he was 'unpredictable' and violent; D1436, p. 3; P0416, pp. 80-1; D3003, paras 26
[3041] D3003, para 34; Kaurinovic, T.34114; Milorad Davidovic, T.15749, T.15707
[3042] These groups included Arkan's men, the Red Berets and the Bozic Brothers; D1569, p. 4; Milorad Davidovic T.15543-4
[3043] [redacted]; Ristanic, T.16718
[3044] 55.3-67% Bosnian Muslim, 42.5% Bosnian Serb; P3189, p. 2; P3212, paras 6-7; P4994, p. 35

platform for anti-Bosnian Serb rhetoric.[3045] Many SDA candidates were unqualified for their positions; however, SDA central officials ensured their appointment.[3046]

1. Forcible transfer

1424. Bosnian Muslim ministers in the BiH Government instructed that only Bosnian Muslims could be appointed to managerial positions in the departments and institutions under their command.[3047]

1425. [redacted].[3048] In mid-1991, civilians began setting up night watches.[3049] Initially, these were jointly manned but as mutual mistrust grew watches split along ethnic lines.[3050] Until the outbreak of the war the only restriction on civilian liberty was a curfew.[3051]

1426. In 1991 the Bosnian Muslims began to rapidly arm themselves.[3052] The Patriotic League and Green Berets were also established, and their members sent to Croatia for military training; the BiH MUP and SDA coordinated these activities.[3053] At a rally in September 1991, it was publicly announced that Bosnian Muslims had 250 soldiers ready for war.[3054] Bosnian Muslims started openly carrying automatic weapons, passing through Bosnian Serb villages, terrorising the population.[3055]

1427. Bosnian Muslim paramilitary forces attempted to take over the SJB in April 1992, after this attempt Bosnian Muslim police did not return to the station.[3056] The joint TO split along ethnic lines in mid-April 1992, following the orders of the SDA

[3045] The SDS did not come about until much later, in August 1990; D2932, paras 5-6
[3046] D2932, para 10
[3047] Four of the six managerial positions in the Vlasenica SJB were occupied by Bosnian Muslims; D2932, para 11
[3048] [redacted]
[3049] D2922, para 7
[3050] D2922, para 7
[3051] Osmanovic, T.17984
[3052] D2932, para 16; D2944, para 19
[3053] D2932, para 20
[3054] D2932, para 22
[3055] D2932, para 25
[3056] D3093, para 25

leadership.[3057] Commander Ferid Hodzic withdrew the Bosnian Muslim staff to the outskirts of Drum village, forming his own armed unit.[3058]

1428. In an attempt to calm the situation, representatives of both ethnicities initiated a division of the municipality along ethnic lines;[3059] the Municipal Assembly adopted an agreement on the division on 13 April 1992.[3060] The agreement allowed civilians the choice to remain in their homes or move between the municipalities; as such, there was no intention to create ethnically pure municipalities.[3061] This division was thwarted when Bosnian Muslims walked away from negotiations under instruction from their leadership.[3062]

1429. On 19 April 1992, the Crisis Staff declared the existence of an imminent threat of war due to: the impossibility of convening the Municipal Assembly; the departure of Bosnian Muslims; and the illegal arming of the remaining Bosnian Muslims.[3063] In response to these issues, the Crisis Staff took over Municipal assembly functions.[3064] On 21 April, Bosnian Serb municipal authorities received information that the Bosnian Muslims, under direction of the central SDA, were planning an attack on Vlasenica. In response, the Vlasenica TO was mobilised, entering the town with JNA forces.[3065] As these units were tasked with protecting public institutions and private property[3066] there was no fighting.[3067] The Bosnian Serb forces treated all civilians fairly.[3068]

1430. In early May, Bosnian Muslim forces began attacking nearby Serb settlements; killing civilians, torching and looting property.[3069] Bosnian Serb forces acted only in defence of their territory.[3070] Separation lines were established spontaneously in early

[3057] D2982, para 43
[3058] D2982, para 43
[3059] D2982, para 14; Stanic, T.34041-2
[3060] The tri-partite division provided for a Bosnian Muslim Municipality, a Serb Municipality and a Municipality of Milici; D2982, para 14
[3061] Stanic, T.34042
[3062] Stanic, T.34042
[3063] D3093, paras 18-20
[3064] D3093, para 21
[3065] D2932, para 37; D3093, para 14
[3066] D2932, para 37
[3067] D3093, para 14
[3068] P3189, p. 51
[3069] D2922, para 30
[3070] D2922, para 30

1992, following the mass relocation of civilians.[3071] The defensive nature of the war is evidenced by the static position of these lines.[3072]

1431. Throughout May 1992, Bosnian Muslim paramilitaries ambushed and sabotaged Bosnian Serb transports resulting in Bosnian Serb civilian casualties.[3073] Bosnian Muslim civilians were the victims of massacres at the hand of their own forces,[3074] with Bosnian Serb forces stepping in to provide them with protection. Paramilitary groups of both ethnicities would exact revenge on acts carried out by the other side.[3075]

1432. When the Crisis Staff adopted a disarmament decision, people of all ethnicities handed over their weapons voluntarily.[3076] However, a large number of Bosnian Muslims refused.[3077] On 27 August, the TO and security organs ordered that all illegal weapons be seized; ordering that this be done peacefully and without repressive measures.[3078] The police complied with these orders and there were no casualties or incidents;[3079] if any weapons were discovered their owners were subject to criminal report.[3080] However, a large number of weapons remained concealed.[3081] In Cerska, the large number of armed Bosnian Muslims constituted a sufficient threat to TO forces; disarmament negotiations failed.[3082]

1433. In April 1992, armed conflict in neighbouring municipalities caused a mass exodus of civilians from Vlasenica, seeking refuge in more secure towns.[3083] By mid-April 1992, the majority of Bosnian Muslims had left the town at their own initiative.[3084] On 14 April 1992, the remaining Bosnian Muslim assemblymen asked municipal authorities to persuade those that had fled to return. After their meeting with the refugees, Stanic concluded that one of the Muslim leaders, Redzic, did not support the return of

[3071] D2922, para 29
[3072] D2922, para 29
[3073] D2932, paras 50-3
[3074] D2932, para 54
[3075] D2932, para 99
[3076] D3093, para 22
[3077] D3093, paras 22, 45-7
[3078] Djuric, T.35012-3
[3079] Djuric, T.35013
[3080] Over 108 criminal reports for illegal possession were filed; D3093, paras 46-7
[3081] Djuric, T.35013-4
[3082] Djuric, T.35015
[3083] D2982, para 17
[3084] D2982, para 19

Bosnian Muslims.[3085] Stanic states that the SDA deliberately and systematically tried to displace the Bosnian Muslims of Vlasenica for political purposes.[3086]

1434. On 21 April 1992, Bosnian Serb refugees expelled from Kladanj, Olovo and Gorazde sought refuge in Vlasenica.[3087] Bosnian Muslims from neighbouring villages followed suit; requesting the municipal authorities' aid in reaching Tuzla, Kladanj and Olovo.[3088] With the influx of refugees, the authorities were faced with severe accommodation issues.[3089] Refugees were initially housed in the TO premises, the school, local hotel and abandoned properties.[3090] This temporary solution was intended to protect them until they could be transported to the destination of their choice.[3091] To prevent possible mistreatment of the remaining Bosnian Muslim population, they were offered temporary accommodation in the Susica collection centre, which most of them accepted.[3092]

2. Persecution

a. There exists no evidence linking the perpetration of cruel and inhuman treatment and killings to President Karadzic

1435. In Zaklopaca, there were organised Muslim armed forces offering resistance.[3093] On 16 May 1992, Bozidar Trisic was walking home, in Zaklopaca, when he heard shooting erupt.[3094] Trsic had two encounters with soldiers that day; on both occasions the soldiers exhibited no intention to harm him, walking away and ceasing fire on his request.[3095] Not a single house was set alight or destroyed.[3096] After the incident, local

[3085] Milenko Stanic and Izet Redzic, the Chairman of the Municipal Assembly, met with the refugees but failed to persuade them to return; D2982, para 19
[3086] Stanic has information that Alija Izetbegovic had instructed Redzic to give Bosnian Serbs the false impression that they would accept the municipal division giving Bosnian Muslims more time to depart; D2982, para 20
[3087] Many were assisted in their relocation to Serbia; D2982, paras 23, 27; Celikovic, T.33563-4
[3088] D2932, paras 40-1; D2982, paras 23, 27; D3093, para 19
[3089] D2982, para 23-4
[3090] Celikovic, T.33563-4
[3091] D2922, paras 26-7; Celikovic, T.33566
[3092] D2922, paras 26-7
[3093] D2943, p.6
[3094] Schedule A15.2; D3048, para 14
[3095] D3048, paras 12, 15-6; Trisic, T.34497, T.34501-2
[3096] D3048, para 24

Bosnian Serbs began patrolling the village, guarding both Bosnian Serb and Bosnian Muslim property.[3097] Bosnian Muslim women and children were given shelter in houses along the main road, while the men joined the patrol.[3098] Trsic believes that the incident was in retaliation to the killing of three Milici TO members,[3099] but testifies that the soldiers could not have been SJB members as there was not a single police officer in the area.[3100] The Zaklopaca incident confused residents, because they were unsure whether it was a Bosnian Serb or Bosnian Muslim attack;[3101] both Bosnian Serb and Bosnian Muslims were equally endangered in the attack.[3102]

1436. Around 2 June 1992, a number of men were killed in Drum Village.[3103] The men were alleged to have been killed during a Bosnian Serb TO and JNA joint operation.[3104] In early 1992, Ferid Hodzic and his Bosnian Muslim paramilitary unit established a checkpoint at the entrance of Drum village; searching all who wished to pass.[3105] The soldiers manning the checkpoint often opened fire towards Vlasenica.[3106] Prior to the incident, Bosnian Serb forces had received information that Hodzic was storing large quantities of illegally obtained weapons in Drum.[3107] This information classified Drum as a legitimate military target. Both Mane Djuric and Milenko Stanic testify that they were unaware of this incident until after the event[3108] Djuric was only made aware of this incident when Beric, a local Bosnian Muslim, arrived at the SJB office requesting SJB protection during the burial of the bodies.[3109] Stanic stated he had no authority over the soldiers that took part in that operation.[3110] There has been no evidence led that President Karadzic had knowledge of or control over the event. [redacted]

[3097] D3048, para 21
[3098] D3048, para 21
[3099] D3048, para 27
[3100] Zoran Durmic, testifies the SJB was engaged in Milici that day; D3048, para 26; Durmic, T.33860-1; Trisic, T.34505-6
[3101] D2944, para 31; D3048, para 14
[3102] D2932, paras 63, 65; D3048, para 23
[3103] Schedule A15.1
[3104] Djuric, T.35006
[3105] D2932, para 58
[3106] Djuric, T.3505-6
[3107] Schedule A15.1
[3108] Djuric, T.35006; D2982, para 37
[3109] The SJB provided this protection, ensuring the bodies were buried correctly; Djuric, T.35006
[3110] D2982, para 37

[redacted][3111]

1437. Susica Camp was a holding centre for people of all ethnicities who were awaiting transportation to safe areas.[3112] [redacted][3113] while others voluntarily sought protection in the centre in the evenings, returning home in the morning.[3114] The civilians in the centre were not forced to work, but were provided with better quality and quantity of food if they did.[3115] The ICRC visited Susica on several occasions, but no RS officials ever entered the Camp.[3116] Originally, the police provided security at Susica, until they were later replaced by the army.[3117] [redacted][3118] [redacted].[3119] [redacted].[3120] [redacted].[3121] [redacted][3122] [redacted].[3123]

1438. [redacted].[3124] [redacted]

[3111] [redacted]

[3112] D3093, paras 50-2

[3113] [redacted]; [redacted]

[3114] D3093, para 50

[3115] [redacted] KDZ603, T.18167

[3116] D2967, para 21; Deuric, T.33924

[3117] The guards often got drunk; Deuric, T.33921

[3118] [redacted]

[3119] [redacted]

[3120] [redacted]

[3121] [redacted]; [redacted]

[3122] [redacted]; [redacted]; [redacted]; [redacted]

[3123] Deuric, T.33927, T.33932

[3124] [redacted], [redacted]

[redacted][3125] [redacted][3126] At no time in his speech did President Karadzic incite hatred or call for revenge.[3127] [redacted].[3128] These were impulsive acts of revenge and did not come about as a result of President Karadzic's visit or speech.

1439. The evidence presented by the Prosecution confirms that a man was killed at the SJB Building on or about 22 May 1992.[3129] No evidence was introduced regarding cruel and inhuman treatment at the Building.[3130] No evidence has been introduced which links the killings to anyone at the Republican level.

1440. The Civil Defence Building was the site of a number of killings, on or around 21 May 1992.[3131] Members of the paramilitary group White Eagles guarded this centre, perpetrating beatings and cruel and inhuman treatment.[3132] Other guards at the centre encouraged Bosnian Muslim detainees to maintain hope because these guards would soon be replaced.[3133] Therefore, responsibility for this incident lies with the members of the White Eagles and not with the SUP authorities.

e. Zvornik

1441. In 1991, Bosnian Muslims were the majority in Zvornik.[3134] From 1990, the SDA had exhibited nationalistic and separatist policies expressed through party rallies and propaganda.[3135] By mid-1991 the SDA leaders were intentionally outvoting the Bosnian Serbs in the local assembly.[3136]

[3125] [redacted], [redacted]

[3126] [redacted]; [redacted]

[3127] D2982, para 41
[3128] Schedule B18.2; [redacted]
[3129] Schedule B18.3
[3130] Schedule C25.1
[3131] Schedule B18.4
[3132] P3263, para 32
[3133] P3263, para 32
[3134] 55% Bosnian Muslim, 42% Serb and 3% other; P4994, pp.32, 38, 41
[3135] D3692, paras 4-5
[3136] D3692, para 10; D3724, para 8

1. Forcible transfer

1442. Under instruction from the central SDA in Sarajevo, Bosnian Muslim commanding officers of the Zvornik SJB began forming reserve SJB stations in early 1991.[3137] The SDA placed party members in leading positions in the SJB, forming a Bosnian Muslim police force.[3138] From 1991, the SDA began arming Bosnian Muslims; with weapons procured via illegal weapons channels form Sarajevo and Tuzla.[3139] At this time, the Green Berets and Patriotic League were established;[3140] the Patriotic League actively engaged in fighting from 17 October 1991.[3141]

1443. Bosnian Serbs did not form units outside of the legitimate armed forces.[3142] However, by December 1991, the danger represented by Bosnian Muslims was such that a Bosnian Serb Crisis Staff was formed.[3143] The SDA also established their Crisis Staff in December 1991.[3144]

1444. The first barricades were erected by Bosnian Muslims in early April 1992.[3145] On 4 April, Izetbegovic ordered a general mobilisation in BiH.[3146] The following day, armed Bosnian Muslims, coordinated by the SDA, took control of the town;[3147] blocking all roads leading through the municipality.[3148] By the morning of 6 April, Zvornik was under a total blockade by armed Bosnian Muslim forces;[3149] [redacted].[3150] [redacted].[3151]

[3137] D3692, para 12; D3693, para 13; D3724, para 12
[3138] D3724, para 12
[3139] D3693, para 14
[3140] P3380, p.95; KDZ555, T.17246; Panic, T.19156-7
[3141] D3724, para 11
[3142] D3692, para 13; D3724, para 11
[3143] This was only operational from 6 to 10 April 1992, until the interim government in Zvornik was established; D3723, paras 13-4
[3144] KW317, T.39411
[3145] [redacted]; D3693, para 21; Panic, T.19160
[3146] D3724, para 23; Bell, T.9942-3
[3147] D3692, para 15
[3148] D3724, para 23
[3149] D3692, para 16; D3693, para 23; D3724, para 28
[3150] [redacted]
[3151] [redacted]

1445. On 7 April 1992, Bosnian Serbs arranged a meeting between representatives of the two sides in an attempt to calm the situation.[3152] It was agreed that tensions would be eased;[3153] however, the meeting was interrupted by Arkan and his men[3154] From this point, Arkan exercised absolute power over the municipality[3155] [redacted][3156] There is no evidence that Arkan commited crimes, or that he authorised anyone to do so in his name.

1446. On 9 April 1992, the Bosnian Serb Crisis Staff met, establishing an interim government that would act as the only legitimate authority.[3157]

1447. On 17 June 1992, President Karadzic appointed a War Commission for Zvornik, disbanding the interim government and restoring the Municipal Assembly.[3158]

1448. On 29 July 1992, Special Forces from the RS MUP and units of the military police entered Zvornik and arrested Vojin Vuckovic (Zuco) and his unit of 100 paramilitaries.[3159] [redacted].[3160]

1449. Due to the military strength of Bosnian Muslims in the region, Bosnian Serbs fled first; Bosnian Muslims only left the area with the arrival of various paramilitaries.[3161] People fled the municipality due to the fear caused by paramilitaries.[3162] The interim government did not coerce people to leave;[3163] in fact in May 1992, Bosnian Muslims from Kozluk and Klisa demanded their help in organising transport to Bosnian Muslim settlements.[3164] The Crisis Staff made arrangements with Bosnian Muslim leaders

[3152] D3692, para 20
[3153] D3692, para 20
[3154] Arkan and his men men called the Bosnian Serb negotiators traitors and mistreated all of them; D3692, para 21-2
[3155] D3692, para 24
[3156] [redacted]
[3157] This interim government suspended all republican and federal laws and announced that only its decisions would be valid; [redacted]; Milorad Davidovic, T.15650
[3158] [redacted]; D3657
[3159] P2903, pp.1-2; D3693, para 44; D3724, para 42
[3160] [redacted]
[3161] Bell, T.9891
[3162] KW317, T.39405-6
[3163] KW317, T.39405-6
[3164] D3724, para 47; KDZ555, T.17402

regarding this transportation.[3165] The 1,822 people who fled Kozluk stated they did so of their own volition.[3166]

2. Persecution

1450. On 9 April 1992, armed groups detained around 35 people in Zvornik town.[3167] [redacted].[3168] The Prosecution has presented no information linking this event or these paramilitary groups to RS leadership.

1451. [redacted].[3169] Zuca's men and other paramilitary groups had made it impossible to reach Drinjaca School directly from Zvornik.[3170] The police were afraid to deal with these paramilitaries;[3171] as such, no official reports were made about this incident.

1452. Between May and June 1992, a number of people were detained in the Dom Kulture in Drinjaca.[3172] [redacted][3173] [redacted][3174] [redacted].

1453. Between May and June 1992, detainees were held at the Karakaj Technical School,[3175] [redacted].[3176] Pivarski ordered guards to beat the detainees; guards who did not comply were threatened.[3177] In early June 1992, approximately 160 men are alleged to have been killed at the School.[3178]

[3165] P3380, p. 32; Panic, T.19188
[3166] P0106
[3167] Schedule A16.1
[3168] [redacted]
[3169] [redacted]; [redacted]
[3170] Through the laying of explosive in tunnels; Panic, T.19182
[3171] Panic, T.19183
[3172] Schedule C27.5 [redacted]
[3173] [redacted]
[3174] [redacted]
[3175] Schedule C27.2
[3176] [redacted]; Panic, T.19183
[3177] D. Vidovic, T.17759
[3178] Schedule B20.3

[redacted][3179] o[redacted], [3180] [redacted].[3181]

1454. Witnesses have confirmed that several paramilitary groups were active in Alhos on or about 9 April 1992.[3182] [redacted].[3183] So-called Arkan's men conducted interrogations and beatings;[3184] however, mistreatment was not carried out by policemen or active-duty military personnel.[3185]

1455. Prisoners were alleged to have been held at the Celopek Dom Culture between May and June 1992.[3186] A number of Bosnian Muslim men are alleged to have been killed by a man named "Repic" who was linked to paramilitary groups.[3187] The Dom Kulture was guarded by reserve police officers from the Zvornik MUP, who never reported incidents to their superiors.[3188] Furthermore, a report to the RS Presidency, dated 22 October 1992, does not identify Celopek Dom Culture as a prison or collection centre.[3189] When the RS and FRY authorities learned about the crimes in the Celopek Dom Culture, perpetrators were arrested, prosecuted and convicted.[3190]

1456. On 12 May 1992, Jusuf Avdispahic was taken to *Ekonomija Farm*[3191] where he, and other detainees, were beaten by soldiers wearing White Eagle and Kobra insignia.[3192] Nedzad Hadziefendic witnessed the death of an old man who succumbed to injuries sustained through these beatings.[3193] Both Avdispahic and Hadziefendic, identify the

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[3179] [redacted]
[3180] [redacted]
[3181] [redacted]
[3182] These include Arkan, Peja, Zuca, Pivarski, Crni and Niski; Schedule C27.3; D3724, para 50; [redacted]
[3183] [redacted]
[3184] P0067, p.4
[3185] [redacted]; Panic, T.19178
[3186] Schedule C27.1
[3187] Schedule B20.2
[3188] D3693, para 46
[3189] The only prison identified as existing within the Zvornik municipality was that which was under the supervision of the Zvornik SJB; P1607, pp.2-3
[3190] D2943, p.6, [redacted]; D0482
[3191] Schedules B20.4 and C27.6
[3192] P0070, pp.10, 12-4
[3193] P0062, p.11; P0070, p.12

perpetrators as originating from Loznica, Republic of Serbia.[3194] This death was not reported to Bosnian Serb authorities.

1457. Between May and June 1992, these Loznica and Niski groups are alleged to have perpetrated beatings at the *Ciglana* Brick Factory.[3195] Throughout the existence of the detention centre at Ciglana, a number of paramilitary groups came to guard the centre, and subsequently perpetrated beatings against detainees.[3196] Around 18 May 1992, the Ciglana factory was taken over by the Kobras.[3197] The abuse of the detainees points to arbitrary actions on the part of various paramilitary groups whose members received no coordination or communication from legal authorities. No official report was ever compiled or sent to the higher authorities.

1458. [redacted].[3198] [redacted].[3199] The evidence presented does not indicate the presence of any high level municipal officials and does not disclose the origin of any orders received for the burials.

1459. Cruel and inhuman treatment is alleged to have occurred at Standard Factory in 1992.[3200] The presence of several armed soldiers at the scene,[3201] as well as an unclear chain of command, concludes that there was not any cohesion or cooperation between them.

1460. The destruction of cultural property under **Schedule D22**, cannot be attributed to Bosnian Serb forces. [redacted][3202] Given the high-level of paramilitary activity within Zvornik, there is no

[3194] P0062, p.8; P0070, p.10
[3195] Schedule C27.4
[3196] These include: paramilitaries from Trsic and Celopek, White Eagles from Loznica, Zuco's men and White Eagles from Trsic, Celopek and Tabanci; P0070, pp.18-20
[3197] P0070, p.19
[3198] [redacted]
[3199] [redacted]
[3200] Schedule C27.7
[3201] P0062, pp.5-7
[3202] [redacted]

reliable indication to point to the possible state officials as perpetrators of the destruction of the mosques.[3203]

2. North-Western Bosnia

a. Banja Luka (Manjaca)

1461. The camp was opened by the JNA on 15 May 1992[3204] in Banja Luka.[3205] The camp commander was Lieutenant Colonel Bozidar Popovic, a retired officer of the JNA.[3206]

1462. The number of detainees who passed through the camp totaled 4,403 people.[3207] Most detainees were Muslims (over 85%)[3208], with some Croats and a few Serbs.[3209]

1463. The camp had both external and internal security. Internal security was provided by a platoon of military policemen from the 1st KK.[3210] [redacted][3211] the civilian police was in charge of external security.[3212] The civilian police could enter the camp only when bringing in new prisoners and only as far as the room that served exclusively as the prisoner reception room. At other times they were not allowed in.[3213] [redacted].[3214] None of the guards within the camp were armed.[3215]

[3203] D3724, para 71; Grujic, T.40392-3
[3204] P0534, para 38
[3205] D4204, para 2
[3206] D4204, para 5
[3207] KDZ163, T.20769
[3208] Radinkovic, T.45312
[3209] [redacted]; D4204, para 22
[3210] D4204, para 6
[3211] [redacted]
[3212] D4204, para 7
[3213] D4204, para 8
[3214] [redacted]
[3215] P0712, p. 36; [redacted]; [redacted]

1. Persecution

a. Killings

1464. On 6 June 1992,[3216] a number of prisoners were transported from Hasan Kikic elementary school to Manjaca.[3217] Upon arriving at Manjaca the detainees were made to wait in the truck.[3218] Once the detainees were released, 6 men were separated from the group. Two men were taken approximately 20 metres from the truck and beaten to death by 4-5 soldiers from their convoy.[3219] The witness identified two of these soldiers as Milan Camber and 'Kajtez'.[3220] The guards of Manjaca had left their command posts and were unaware of these killings.[3221]

1465. On 7 July 1992, a group of 64 prisoners arrived at the camp in locked trailers.[3222] A number of men died of suffocation during the transport, because "somebody wasn't considerate enough to provide for enough air".[3223] [redacted].[3224] In this case, witnesses agree, "nobody killed them…these weren't killings that anyone committed. These were simply the circumstances".[3225] Vinko Nikolic testified, "the trucks and the security were probably not ready for a transport of that kind."[3226] [redacted].[3227]

1466. The 6 August 1992 convoy was part of an 'emptying process' whereby Omarska camp would be closed.[3228] The prisoners arrived at the camp late in the evening escorted by members of the Intervention Platoon. Because they had arrived without the

[3216] P0700, p. 10
[3217] The number of people aboard the bus differs between 140 and 150. Schedule B1.1; Adjudicated fact 583; P0701, p. 6
[3218] P0700, p. 29
[3219] P0700, p. 30; P0701, p. 7
[3220] P0700, p. 27; P0701, p. 7
[3221] In Muhic's written statement to the court he alleges that there were 10 armed soldiers standing at the command post, however in his testimony in the *Brdjanin* case he stated that there were no soldiers at the command post: "they had all left… They'd gone down to the stable". P0700, p. 41; P0701, p. 7
[3222] Schedule B1.2; Zulic, T.1134
[3223] Radinkovic, T.45334
[3224] [redacted]
[3225] Radinkovic, T.45334
[3226] Nikolic, T.45451
[3227] [redacted]
[3228] Schedule B1.3

proper paperwork,[3229] [redacted].[3230] [redacted]. [3231] [redacted] [3232] [redacted]. [3233]

1467. Assertions of 10 additional deaths[3234] [redacted]. [3235] The murders referred to were those of Omer Filipovic and Esad Bender, who were killed by a number of guards on the 28 July 1992.[3236] [redacted]. [3237] Further investigation was requested; occurring on the 30 July 1992 and led by Jevto Jankovic, the Investigating Judge.[3238] The investigation established that 'a group of military policemen had, on their own initiative and without orders from anyone, physically beaten two Muslim detainees'.[3239] These guards were dismissed and were tried for the crime in 2007,[3240] for the reasons explained in the paragraphs discussing the military judiciary.

1468. [redacted].[3241]

1469. Many detainees claimed that people were called out of their accommodation in groups of up to 5 or 10, never to return, many assuming that these prisoners were killed. [redacted]

[3229] D4204, p. 11 para 12
[3230] [redacted]
[3231] [redacted]
[3232] [redacted]
[3233] [redacted]
[3234] Schedule B1.4
[3235] [redacted]; [redacted]
[3236] P0701, p. 9; P0718, para 123; [redacted]
[3237] [redacted]
[3238] D4235, para 7
[3239] D4235, para7
[3240] D4204 at para 30; D4235, para 7; [redacted]
[3241] [redacted]

[redacted]". [3242] [redacted]
[redacted]. [3243]

b. Cruel and inhuman treatment[3244]

1470. Throughout the operation of the camp, authorities sought to act, as much as possible, within the boundaries laid out in the Geneva Conventions; Colonel Popovic, the Commander, was well-versed in the Conventions.[3245]

1471. Prisoners were beaten during the early stages of the camp.[3246] [redacted]
[redacted] [3247]
Those individuals who were found guilty would then be removed from their positions and replaced by others who would act as per the regulations.[3248] Once removed these guards would either be sent to the front line[3249] or transferred to military prison[3250] and "replaced by someone else who was able to do their job".[3251] [redacted]
[redacted]. [3252]

1472. [redacted]
[redacted]. [3253] Witnesses confirmed in testimony that when the more violent of the guards were removed from office the discipline improved.[3254]

1473. The detainees were housed in structures that were originally cattle sheds that were adapted "especially to accommodate prisoners of war". [3255] Each shed accommodated 700-800 men.[3256] Every prisoner received at least two blankets,[3257] one to

[3242] [redacted]
[3243] [redacted]
[3244] Schedule C1.2
[3245] P0534, paras 3-8
[3246] Radinkovic, T.45331
[3247] [redacted]; [redacted]
[3248] Radinkovic, T.45331-2
[3249] Radinkovic, T.45332
[3250] Radinkovic, T.45333
[3251] Radinkovic, T.45331-2
[3252] [redacted]; D4204, pp. 3, 5-6, 9-10, 11
[3253] [redacted]
[3254] The guards named 'Bula', 'Zoka' and 'Spaga'; P0718, para 129
[3255] Radinkovic, T.45313
[3256] Radinkovic, T.45314
[3257] The witness stated that in the winter the detainees could have as many blankets as they wanted; P0700, p. 74; P3303, p. 178

cover themselves and the other to lie on.[3258] Straw from the grounds was used to cover the floor and prisoners were allowed to access it without limitation.[3259]

1474. The food for the camp was collected from the Kozara barracks in Banja Luka every day. The Corps would collect food rations depending on the number of POWs interred.[3260] [redacted].[3261] Officials at the camp freely admit that the food was inadequate; however they assert that detainees received the same amount of food that was sent to the soldiers on the front lines and that the guards themselves received; "**they shared the fate of the people and the army**".[3262]

1475. Radinkovic asserts that the guards and the prisoners drank the same water, as there was no other water source.[3263] [redacted].[3264]

1476. NGOs visited the camp from June 1992 and were allowed to bring supplies to the detainees. On one occasion Merhamet supplied 1,500 kilograms of food, medicine and clothing to the inmates.[3265] [redacted].[3266] [redacted][3267] and from that point the detainees had adequate food made available to them.[3268]

1477. There were two doctors present "throughout the existence of the camp".[3269] Prisoners were able to access them when needed; a total of 8,034 examinations took place over the life of the camp.[3270] The ICRC stated that the medical care given at Manjaca was 'competent and conscientious' but suffered from limited medications and sparse

[3258] Radinkovic, T.45317
[3259] D4204, p. 11; Radinkovic, T.45317
[3260] KDZ163, T.20798
[3261] [redacted]
[3262] KDZ163, T.20798; Radinkovic, T.45316
[3263] Radinkovic, T.45316
[3264] [redacted]
[3265] D1861; [redacted]
[3266] [redacted]
[3267] [redacted]
[3268] [redacted] P0700, p. 46; P0718, para 111
[3269] Muslim detainees with medical experience were trusted to treat their fellow detainees and receive medical supplies. D1870, pp. 1-5; [redacted]; P0712, p. 37; KDZ163, T.20816-7
[3270] D1871, pp. 1-10; KDZ163, T.20818

facilities.[3271] Prisoners were regularly transported off camp premises for further treatment.[3272]

1478. In conformity with Article 2 of the Geneva Conventions; each pavilion elected their own representative who could address violations of prisoner rights.[3273] The stable representatives would also refer ill inmates to the hospital.[3274] Charles McLeod reported that access to each of the compounds was actually controlled by the detainees, "they themselves were controlling access through the internal doors".[3275]

1479. Prisoners were used to perform manual labour, such as cutting wood, cleaning stables, feeding cattle[3276] and "farm work basically, digging potatoes, chopping firewood".[3277] However, this was done in accordance with international law as the work was voluntary and not of a military nature.[3278]

c. Unlawful detention

1480. Once detainees arrived at the camp, a certain procedure of admittance was followed.[3279] The camp was a Prisoner of War Camp and as such the authorities took steps to assess whether this status applied to their prisoners.[3280] [redacted][3281] If camp authorities could find no evidence that detainees had committed crimes or determined they were not a threat then they would take steps to release those detainees.[3282] [redacted][3283]

[3271] P3758, p. 7
[3272] Some were transported as far as Geneva or England; P0718, para 135; [redacted]; Radinkovic, T.45318
[3273] P0534, para 4; [redacted]
[3274] P3488, para 105; Dzafic, T.19743
[3275] P0712, p. 36
[3276] P0718, para 127
[3277] KDZ163, T.20821
[3278] D1873; [redacted]; KDZ163, T.20821-2
[3279] They were received by a commission consisting of two military policemen, one doctor, one record-keeper and one representative of the security organ. Admitted in groups of 10 and inspected by police and doctors, respectively. After that, detainees would be taken to their assigned accommodation in the facility. D4204, para 18; [redacted]; P3303, p. 188; [redacted]
[3280] P0534, para 3-4
[3281] [redacted]
[3282] [redacted] Radinkovic, T.45317-8
[3283] [redacted]

1481. Detainees were supposed to arrive with an Official Note[3284] [redacted][3285] [redacted]. [redacted].[3286]

1482. Although most of the detainees were in civilian clothes, this did not signify much as attire did not always reflect status.[3287]

1483. The camp was often visited by the humanitarian organizations, in particular the ICRC and Merhamet. The ICRC started visiting camp in mid-July,[3288] with visits occurring up to twice monthly.[3289] Merhamet, a local Muslim charity, was permitted to visit Manjaca to provide the prisoners with aid. International persons were also allowed to visit the camp, with visits by Daniel Shiffer and Mr. Viesel; Mr. Shiffer visited the camp so many times that "we even symbolically gave him the key of the Manjaca camp once it was disbanded"[3290]. A number of journalists also visited the camp, throughout its operation, and were allowed to enter the pavilions and make 'direct contact with the prisoners'.[3291]

1484. In December 1992 the camp was closed and the remaining detainees were released to the ICRC.[3292]

b. Bosanski Novi

1485. Bosanski Novi consisted of around 41,500 citizens with Bosnian Muslims making up the majority of the population.[3293] The Serbian SDS emerged from the 1991 elections with a majority of seats, closely followed by the SDA.[3294] A member of the

[3284] D3913
[3285] [redacted]
[3286] [redacted]
[3287] KDZ163, T.20790
[3288] P3725
[3289] D1875, pp. 1, 7
[3290] KDZ163, T.20781
[3291] P5472, p. 3
[3292] Adjudicated fact 582
[3293] Bosnian Muslims constituted 59% of the population, Serbs 35%, Yugoslavs 5% and Croats 1%, D1913, p. 1
[3294] D3849, para 5

SDS was appointed Chairman of the Executive Committee; while the other offices were shared according to the proportion of votes won.[3295]

1. Forcible transfer

1486. Bosnian Muslims did not respond to the mobilization for the war in Croatia.[3296]

1487. In 1991, Bosnian Muslims and Serbs patrolled their own areas.[3297] It was stated there was no possibility for mixed police in many villages because "**the Serbs did not dare go on patrol**" there.[3298] In February 1992 Muslim police set up their own checkpoint between Bosanski Krupa and Bosanski Novi;[3299] while the JNA only established checkpoints in April of that year.[3300] Dorothea Hanson confirmed that Bosnian Muslims were arming themselves;[3301] Pasic asserts they were purchased from the Republic of Croatia and from Serbs in the RSK.[3302] Local Muslim paramilitary formations reportedly consisted of over seven hundred members.[3303] These members hid amongst the civilian population, hiding weapons and disguising themselves as civilians.[3304]

1488. It was clear that the SDA was unwilling to comply with the ARK disarmament policy with the party openly admitting they retained arms.[3305] As a show of defiance, 5000 people from various Muslim villages presented bags full of empty shells and toy rifles.[3306] Searches were performed by mixed patrols of police, TO and military police[3307] and large quantities of weapons and military equipment were seized.[3308] Bosnian

[3295] D3849, para 5
[3296] P0687, p. 10; Hanson, T.14841-2
[3297] KDZ011, T.21216-7
[3298] P3800, p. 65 (Emphasis added)
[3299] D3849, para 7
[3300] P3800, p. 9
[3301] Hanson, T.14841-2
[3302] D3849, para 7
[3303] D1913, p. 1
[3304] Pasic, T.41103-5
[3305] Pasic credits Bosnian Muslim arming to their mistrust in the official armed forces, this stemmed from their refusal to mobilize or work in the police force; excluding them from legal organs, leading to feelings of insecurity, Pasic, T.41020. P2632, p. 4
[3306] P3819, p. 4 ; D3849, para 12
[3307] Pasic, T.41071
[3308] D3849, para 12

Muslims reported that searches were conducted correctly and respectfully.[3309] Parts of the Serb population were also found to be illegally armed.[3310]

1489. From May 1992 'extreme individuals and groups' entered Bosanski Novi carrying out raids that 'continuously destabilized the security situation in the municipality'.[3311] The Commander of the municipal TO stated that he was unable to control the municipality and that some TO personnel had begun acting contrary to his command and under their own initiative.[3312] This lack of control resulted in looting, the murder of people and livestock and the destruction of property in the municipality.[3313]

1490. On 26 and 27 May 1992, the Mayors of Dvor and Bosanski Novi met with Charles Kirudja in an attempt to arrange safe passage for Bosnian Muslim citizens fleeing the region.[3314] The Bosanski Novi delegation[3315] stated that 5,000 of the 13,000 Muslims in Bosanski Novi had requested the government's support and protection in leaving the region.[3316] While the Bosnian Muslims had been offered transport to more peaceful areas of the Republic this offer had been refused.[3317] Both Pasic and Kirudja agreed that considerable **pressure on the Muslim population to leave came from armed Serbian irregulars**.[3318] The government feared that without UN supervision these irregulars would harm those wishing to leave,[3319] and so requested that international television crews film the passage and that UNPROFOR and ICRC provide protection for the group during transit.[3320] "For us to force someone to leave that would have meant that somebody was resisting that… These people just asked us as representatives of the authorities to help us find the most adequate, painless, and best solutions to leave".[3321]

1491. Muslims stated they wished to leave for both economic and safety reasons: "we fear reprisals each time Serbs are killed at the confrontation line. **So far, the Serbian**

[3309] P3800, pp. 15-6
[3310] Pasic, T.41024
[3311] D1912; D3849, paras 39-41
[3312] P2632, pp. 5, 8
[3313] P2632, pp. 8-9
[3314] P3804, paras 40, 45
[3315] This delegation included Pasic, Rade Palija a member of the Municipal Executive Committee and the Bosanski Novi Chief of Police; P3804, para 45
[3316] P3804, para 45
[3317] D3849, para 15; P3804, para 45 (Emphasis added)
[3318] P3804, paras 46; P3815, p. 3; Kirudja, T.21283 ; Pasic, T.41047
[3319] D3849, para 15
[3320] P3804, para 40
[3321] Pasic, T.41058

authorities have managed to prevent such reprisals. Today's movement should not be considered ethnic cleansing; it should be considered in the context of a life-threatening situation".[3322] On 18 August, **a mixed delegation of Serbs, Muslims and regional organizations met with Kirudja and UNHCR to express their desire to evacuate** and to try and persuade the UN to change its mind about not supporting the evacuations.[3323]

1492. The 11 July Crisis Staff order obliged all those departing the municipality to sign a statement indicating they were leaving voluntarily and that they had sold, exchanged or donated their immovable property to someone else.[3324] The decision must have been taken 'without any duress and influence from the municipal authorities'.[3325] This order reflected the law of the time and was only effective until the cessation of the conflict.[3326]

1493. Therefore, the evidence shows that forcible transfer did not occur within the municipality of Bosanski Novi. The municipality was the site of a large-scale movement of Muslim citizens that the officials of the region were forced to manage the best they could, with the aid of international agencies. As we have seen, the municipality was characterized by chaos making it unsurprising that a large number of unarmed civilians would wish to leave.

2. Persecution

1494. Neither the local police, nor the Republic organs discriminated on the basis of ethnicity in the investigation of crimes.[3327] This is shown through criminal reports from the period and was not limited to physical attacks, but also extended to the prosecution of Serbians who robbed Muslims.[3328]

[3322] P3804, para 109 (Emphasis added)
[3323] Kirudja, T.21336 (Emphasis added)
[3324] D3849, para 60; P3804, para 84
[3325] D3849, para 19
[3326] D3849, para 60; Pasic, T.41086
[3327] D1360; Hanson, T.14845-6; Pasic, T.41119
[3328] D3851; Pasic, T.41119-20, T.41130

a. No cruel and inhuman treatment at Mlakve football stadium[3329]

1495. On 2 June 1992, around 300 predominantly Muslim people were brought by TO forces to Mlakve stadium[3330]. They were held for security reasons while their settlement was searched for illegal weapons.[3331] This was confirmed to Kirudja by Pasic[3332] and two Muslim men he interviewed.[3333] Upon their release, the reception centre was dismantled; 17 people, who were considered to be of security interest, were then detained on the premises of the military police.[3334] According to official sources not only did the detainees have 'access to the football club's sports and social facilities', they also 'received water and food regularly'.[3335]

1496. 700 men of military age, from Blagaj, were detained by military police at the Stadium on the 11 June 1992.[3336]

1497. KDZ011 testified that the detainees were subject to verbal intimidation[3337] and required to perform some physical labour[3338] but were **never beaten or physically mistreated**.[3339] In fact, the guards at the stadium protected the detainees from passing troops who attempted to harm the detainees.[3340] When attacks of this kind occurred, the guards "would try to give us cover" under the stands while they repelled the intruders.[3341]

1498. During his detention, KDZ011 slept under the spectator stands or in the player locker rooms.[3342] [redacted].[3343] This restriction on movement, however, could have resulted from the actions of the detainees.

[3329] Schedule C4.1
[3330] D0470, p.18; P3804, para 56
[3331] D0470, p. 18; P2632, p. 9; P3804, para 63
[3332] D3849, para 13
[3333] P3804, para 61
[3334] D0470, p.18; P3804, para 63
[3335] D0470, p. 18; D1921, p. 2
[3336] P3800, p. 46
[3337] Being called *balijas* and once being told they would be taken to the front line as a human shield; P3800, p. 50
[3338] Dragging a roller around the stadium to smooth the path and plucking grass from the paths; P3800, p. 50
[3339] P0687, pp. 15, 24; P3800, p. 50 (Emphasis added)
[3340] P3800, p. 50
[3341] P3800, p. 50; [redacted]
[3342] P3800, p. 47
[3343] [redacted]

1499. The evidence regarding food varies significantly, to the point where there is no easily explained solution for such inconsistency. Accounts vary from a quarter loaf of bread and one pack of liver paste on the first day, to be shared between four men,[3344] watery tea,[3345] and two meals a day of bread and unsalted and poor quality broth.[3346] Pasic however, asserts that the detainees received three meals a day and that the food was prepared in the same kitchen as that used for military and TO staff; adding that detainees could receive food from outside.[3347] Danish patrols in Dvor reported seeing "100 women and children being brought into the stadium…carrying plastic bags";[3348] Kirudja concluded that, as all detainees were male, the women were probably bringing food and other supplies to them.[3349] As we could see in other municipalities, the shortage of food was great.

1500. It is alleged there was insufficient access to water, with no facilities for showering or washing clothes.[3350] [redacted].[3351]

1501. Official sources state that the detainees had 'at their disposal the use of the football field', were occasionally permitted to have family visits and were regularly provided with food.[3352] According to need, medical help was also provided.[3353] This evidence is supported by a report of the Bosanski Novi Crisis Staff who stated that they had 'incurred high costs for the holding period in security, food and lodging'.[3354]

1502. Pursuant to the 14 July 1992 order of the Executive committee of Bosanski Novi, the Mlakve Reception centre was closed on 23 July 1992.[3355] The men were then released to UNPROFOR who transported them to Croatia.[3356]

[3344] P3800, p. 47; [redacted]
[3345] P3800, p. 48
[3346] P0687, p. 24
[3347] D3849, para 62
[3348] P3804, para 58; P3815, p. 3
[3349] D1921, p. 1; P3804, para 59; P3815, p. 3
[3350] P3800, p. 48
[3351] [redacted]
[3352] One cooked meal a day; D0470, p. 19; D1921, p. 2
[3353] D0470, p. 19; D1921, p. 2
[3354] P2632, p. 10
[3355] D1921, p. 2
[3356] P3800, p. 61

b. No Destruction of Bosnian Muslim Cultural Property by Municipal Authorities[3357]

1503. During the war the Mosques listed under Schedule D4 were destroyed. The graveyard of the Town Mosque remained intact.[3358] There is no evidence that the official authorities ordered or otherwise participated in the destruction of the Mosques.

c. Kljuc

1504. Before the war, Bosnian Serbs were the majority in Kljuc.[3359] The results of the multi-party elections reflected the ethnic composition in Kljuc. [redacted].[3360] [redacted][3361] Although the SDS won the multi-party elections, all executive positions in the local authority were divided equally between all ethnicities.[3362]

1. Forcible transfer

1505. [redacted].[3363]

1506. Due to the lack of response to mobilisation by Bosnian Muslims and Bosnian Croats many policemen from the SJB were sent to the war in Croatia, leaving civilians

[3357] Schedule D4 charges Dr. Karadzic with the destruction of the mosques in Stara Suhaca mosque and the Suhaca mosque, the mosque in Blagaj Japra, the mosques in Prekosanje, Urije, Gornji Agici, the old wooden mosque in Blagaj Rijeka, the town mosque in Bosanski Novi (Gradska Dzamija) and the Vidorjie mosque between March and June 1992.
[3358] P4070, p. 37
[3359] According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Kljuc municipality was 18,534 (49 per cent) Serbs, 17,679 (47 per cent) Muslims, 336 (1 per cent) Croats, 549 Yugoslavs, and 205 persons of other or unknown ethnicity; Adjudicated fact 1160; D1352, part I; P3450, p. 1
[3360] [redacted]
[3361] [redacted]
[3362] D4169, paras 4-5; [redacted]
[3363] [redacted]

and reservists in the police force in Kljuc.[3364] As a result, the police could not effectively keep crime under control in Kljuc,[3365] [redacted].[3366]

1507. From late January 1992, Bosnian Muslim had established their own unofficial Municipal Assembly and TO in Kljuc.[3367] The Bosnian Muslim TO '**system of command and control functioned very efficiently. An order given by a superior officer was immediately carried out**'.[3368] [redacted],[3369] the majority of checkpoints were jointly manned until 20 May 1992.[3370]

1508. The Municipal Assembly split on 25 May 1992, and from then on 'Kljuc was controlled by two, not just the Serbian authorities, but also the Muslim authorities'.[3371]

1509. Prior to the war there was large-scale arming and military training of Bosnian Muslims in Kljuc.[3372] From early 1992 there were incidents involving Bosnian Muslim extremists in Kljuc.[3373] These extremists possessed illegally obtained weapons, acquired from Croatia[3374] and Bosnian Muslim SJB employees.[3375]

1510. The Kljuc Crisis Staff held negotiations with Bosnian Muslim extremists, whose position was that 'they did not wish civilian victims, but they wouldn't give up at any cost, and they'd rather die in battle than give in their weapons'.[3376] The Kljuc Crisis Staff tried to keep peace,[3377] but Bosnian Muslim extremists posed a danger to all citizens, and created a climate of fear in Kljuc.[3378] The SJB struggled to control all paramilitaries, and strongly condemned their actions.[3379]

[3364] Civilian authorities could not issue orders to military authorities; [redacted]; Jurisic, T.47105
[3365] Jurisic, T.47105
[3366] [redacted]
[3367] D1352, parts II para 4, VII para 4; D1730, p. 1; D1731; D4165, para 3; [redacted]; P3450, p. 1; Adamovic, T.44482; [redacted]
[3368] D1352, part V (Emphasis added)
[3369] [redacted]
[3370] Adamovic, T.44454
[3371] Adamovic, T.44480
[3372] D1352; D1730; [redacted]
[3373] D1737
[3374] D1352, part VII paras 5-6
[3375] D1352, part VII para 7
[3376] P3450, p. 2; Kevac, T.46246
[3377] Kevac, T.46246
[3378] Kevac, T.46280
[3379] Kevac, T.46276

1511. From 17 May 1992, Colonel Galic attempted to negotiate a peace with the Bosnian Muslim Paramilitary Commander, Omer Filipovic. Expecting military back up from Bihac, Filipovic rejected this offer, threatening to unleash a truck filled with explosives on Kljuc.[3380]

1512. On 6 July 1992, the Kljuc Crisis Staff issued a decision that those who did not belong to a military formation had to disarm and return their uniforms and arms.[3381]

1513. From 1992-1993, about 3,000 Bosnian Muslims stayed in Kljuc.[3382] Many citizens left Kljuc voluntarily for security, economic and unemployment reasons.[3383] Prior to the war, there were over 5,000 unemployed citizens in Kljuc municipality. Many Bosnian Muslims moved to Croatia, Slovenia and other European countries as part of preparations for war.[3384]

1514. The Kljuc Crisis Staff decision of 30 July 1992 required those wishing to leave the municipality to state they were leaving permanently[3385] [redacted][3386] [redacted][3387]

1515. Between September and October 1992, the municipal Crisis Staff organized convoys to Travnik, at the request of Bosnian Muslims.[3388]

1516. 'The political leadership of Kljuc offered all the people, regardless of their affiliation and ethnic background, to stay in Kljuc'.[3389]

2. Persecution

a. Killings during and after takeovers

1517. On 28 May 1992, the Kljuc Municipality Crisis Staff issued an ultimatum to Bosnian Muslims to surrender their weapons in Pudin Han.[3390] Before the ultimatum

[3380] Galic cooperated with Filipovic's request to be escorted to Kljuc by Vinko Kondic; D4169, para 8
[3381] D1739, para 2
[3382] D4165, para 6; Adamovic, T.44491
[3383] Jurisic, T.47094-6; Kalabic, T.44539
[3384] D4165, para 3
[3385] Jurisic, T.47097
[3386] [redacted]
[3387] [redacted]
[3388] Adjudicated fact 955; D4363, paras 31, 32
[3389] D1309; D4165, para 6

expired, Pudin Han was shelled. At a minimum, three civilians died.[3391] The evidence shows that the shelling of Pudin Han did occur, but was not done by Bosnian Serb military. The VRS had no interest in shelling since thay had information that the Bosnian Muslim extremists who remained armed had left for Bihac; joining a stronger Bosnian Muslim formation.[3392] Only those who surrendered their weapons remained in Kljuc.[3393]

1518. An attack on Prhovo commenced on 1 June 1992 with heavy shooting[3394] after a platoon of Bosnian Serb military police entered the village.[3395] Some of the Bosnian Serbs wore JNA camouflage uniforms, but others were masked armed civilians.[3396] Bosnian Muslim extremists opened fire on the platoon from a nearby forest, killing one member of the platoon. After this, because of panic and fear, the Bosnian Serb soldiers opened fire randomly in the direction from which the fire came.[3397] After the shooting, 30 Muslim men were ordered to form a column and walk to the nearby village of Peci. Before the column reached Peci, a total of 18 men were killed.[3398] The local authorities were informed that a number of civilians were killed during the fihting in Prhovo.[3399]

b. Killings related to detention

1519. A number of people were killed in Velagici following a clash on 1 June 1992 between illegally armed Bosnian Muslims and the Serb military.[3400] It was identified that Serb paramilitary forces killed these people.[3401] Following the incident, a Bosnian Serb investigative judge was sent to make a record of the crime.[3402] The guards responsible were not members of the VRS or police from Kljuc.[3403] The 12 guards responsible for the killings were arrested and proceedings were conducted against them.[3404]

[3390] Adjudicated fact 919; D4363, para 20
[3391] Schedule A7.1; Adjudicated fact 921
[3392] D4363, para 21
[3393] D4268, para 15
[3394] Schedule A7.2
[3395] Adjudicated fact 922
[3396] Adjudicated fact 922
[3397] Adjudicated fact 926
[3398] Adjudicated fact 926
[3399] D4363, para 23
[3400] Schedule B10.1, Adjudicated fact 2446
[3401] The perpetrators were arrested and proceedings brought against them; Adamovic, T.44452
[3402] Adjudicated fact 2447; D1751
[3403] Adamovic, T.44452
[3404] Adamovic, T.44490

1520. In another attack in Velagici on 1 June 1992, two Bosnian Serb soldiers killed a number of civilians[3405] in retaliation for an attack on a JNA convoy the day before.[3406] Bodies of the victims were transported from the scene of the crime. After an official inquiry by Bosnian Serb authorities, steps were taken to apprehend the perpetrators.[3407]

1521. On 10 July 1992, a group of VRS soldiers rounded up a group of Muslim men, suspected of criminal activity, and brought them to Biljani primary school[3408] for interrogation on suspicion they were members of paramilitary forces.[3409] In the morning hours, paramilitaries broke through army and police control, raided the school, and killed a number of the Bosnian Muslims. Bosnian Serb investigating authorities conducted an on-site investigation, and arrested those responsible. Proceedings were conducted against them.[3410]

c. Detention Facilities

1522. Those that were brought to interrogation centres were done so under the suspicion that they had committed a crime, possessed illegal weapons, or threatened the safety of citizens in Kljuc.[3411] No one was brought there without reason; people only continued to be detained under suspicion for the illegal possession of weapons or committing criminal acts.[3412]

1523. The SJB building was staffed and operated by the Bosnian Serb police who conducted interrogations there.[3413] Those arrested where then held in cells inside the SJB, and subject to beatings and verbal abuse during and outside interrogations.[3414] The perpetrators of these beatings were Bosnian Serb police officers and local civilians who kept guard.[3415]

[3405] Schedule C15.3, Adjudicated fact 947
[3406] 31 May 1992
[3407] D1751
[3408] Schedule A7.3, Adjudicated fact 2439
[3409] D4169, para 19
[3410] D4268, paras 9, 23
[3411] D4268, para 24; D4363, para 24
[3412] D4165, para 19
[3413] Schedule C15.1; Adjudicated facts 933-4
[3414] Adjudicated facts 937, 940
[3415] Adjudicated fact 937

1524. When the SJB facilities became full, citizens were taken to the Nikola Mackic School for further interrogation and processing.[3416] The school was staffed by civilian policemen.[3417] These detainees were interrogated because they endangered the safety of all citizens in Kljuc.[3418] Some detainees refused food in protest.[3419] Detainees were beaten and verbally abused by guards at the School. On some occasions Bosnian Serb civilians took part in these beatings.[3420] The guards who mistreated detainees were arrested and turned over to the Banja Luka Prosecutor's Office. All reported incidents of abuse were dealt with by authorities in Kljuc. [3421]

1525. Due to the road blockages and lack of electricity and water during the war, detainees at the facilities were not provided with adequate food and living conditions.[3422]

d. Plunder and destruction of private property and cultural monuments

1526. Between 1 April 1992 and 31 December 1992, houses belonging to Bosnian Muslims were looted and destroyed through arson.[3423] The Kljuc Crisis Staff attempted to protect all property in the municipality.[3424] The municipal Crisis Staff called for all stolen items be handed back to authorities, otherwise sanctions would be taken.[3425] There was no plan for systematic destruction or plunder of Bosnian Muslim property because each abandoned house was needed to accommodate refugees and displaced Serbs from majority Muslim areas.[3426]

1527. Most of the looting and torching was done by rogue individuals and members of the army and police who were out of control and sought personal gain; but were later arrested.[3427] This damage was not done by Bosnian Serb army or police forces.[3428] [redacted]

[3416] Schedule 15.2; D4363, para 24
[3417] Adjudicated fact 938; D4363, para 25
[3418] D4268, para 24
[3419] P3614, p. 3
[3420] Adjudicated fact 939; P3488, para 87
[3421] D4268, para 33
[3422] D1738, p.4; Adamovic, T.44452, T.44494; Jurisic, T.47120; [redacted]
[3423] Adjudicated fact 948; D1738, pp. 2-3
[3424] Kalabic, T.44608; [redacted]
[3425] D1739, para 3
[3426] D4169, para 26; Kalabic, T.44539, T.44608
[3427] D1738, pp. 2-3; Adamovic, T.44452
[3428] D4363, at para 30

[redacted]. [3429]

1528. One Catholic Church and at least four Muslim monuments in Kljuc municipality, including the Atik mosque in the town of Kljuc, were either destroyed or heavily damaged by fire and explosives allegedely set by Serb forces during 1992.[3430] The evidence shows that there was no systematic plan or order[3431] for the destruction of such property.[3432] Bosnian Serb teams investigated all reported incidents of destruction and damage, and filed a report for each incident.[3433] These were not the only properties damaged or destroyed in Kljuc during the war.[3434]

1529. In some villages within Kljuc municipality "there were no conflicts at all",[3435] 'there was no destruction. In these regions not a single bullet was fired'.[3436]

d. Prijedor

1530. Prijedor Municipality had a total population of 112,000. On 14 September 1990, Prijedor Municipal Assembly stated that Bosnian Serbs were the majority in the municipality;[3437] while the 1991 Census found that Bosnian Muslims constituted a slim majority.[3438] Slavko Budimir stated that irregularities occurred in the collection of data for the 1991 Census.[3439] In the 1990 elections the SDA won the majority and formed government with members of the SDS and HDZ.[3440]

[3429] [redacted]
[3430] Schedule D13: The destruction of the town mosque, Biljani-Dzaferagici mosque, Pudin Han mosque, Velagici mosque, Donji Budelj mosque, Humici mosque, Krasulje mosque, Sanica mosque, Ticevici mosque, Town Catholic Church at least between May and August 1992. Adjudicated fact 2450; P4070, pp. 149-75
[3431] D4169, para 13
[3432] D4363, para 41
[3433] D1735; D1736; D4366; [redacted]
[3434] P4070, pp.152, 161, 164, 166
[3435] The villages of Dubocani, Velecevo, Zgon and Crljeni, "despite the fact that these villages bordered on Serbian villages with almost 100 per cent Serbian population"; [redacted]
[3436] Villages of Sehici, Egrlici, Velecevo, Dubocani and Zgon settlement; D1351; P3450, p. 4; Kevac, T.46251
[3437] D3620, article 6
[3438] [redacted]
[3439] D4463, pp. 15-6
[3440] Adjudicated fact 1005; D4195, para 4

1. Forcible transfer

1531. [redacted].[3441] With the war in Croatia encroaching on the municipality, tensions rose and a large influx of Serbian refugees began.[3442]

1532. From autumn 1991, there was information that Bosnian Muslim's began illegally arming and establishing paramilitary forces.[3443] Sefer Halilovic[3444] began recruiting in Prijedor in September 1991, where the local SDA showed considerable support.[3445] In October 1991, he returned with concrete plans regarding the evacuation of the Bosnian Muslim population and the establishment of a defence force;[3446] this was done in a number of Bosnian Muslim villages.[3447] The municipal Bosnian Muslim leadership declared general mobilisation on 2 May 1992.[3448] A Bosnian Muslim SJB was formed in Ljubija.[3449]

1533. There were checkpoints established across the municipality, but from May 1992 these split by ethnicity.[3450]

1534. The takeover of power in Prijedor was accomplished without a single bullet fired; none of the inhabitants were killed or wounded.[3451] Prior attempts to divide power within the municipality had failed, creating tension among the peoples.[3452] This takeover was not planned, but was a reaction to the order to commence combat operations by the BiH Presidency.[3453] Through this takeover the Serb authorities attempted to preserve peace and avoid armed conflict.[3454] In May 1992, a curfew was proclaimed and

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[3441] [redacted]
[3442] D4195, paras 9, 15
[3443] D4138, para 3 D4195, paras 10, 15; [redacted]
[3444] [redacted]
[3445] [redacted] Mujadzic, T20644-5
[3446] [redacted] Mujadzic, T20658-9
[3447] Ljubija, Donja Ljubija, Rizvanovici, Hambarine, Biscani, Carakovo, Kozarac, Kozarusa and Trnoplje; D1839, para 1; D1841; D4681, pp. 1-3; Mujadzic, T20609-1
[3448] D1831, pp. 2-3, 7
[3449] D1742, p. 15
[3450] [redacted]; Sejmenovic, T.20592
[3451] D4195, para 16
[3452] D4206, para 14; [redacted]
[3453] D0400; D4229, para 23; [redacted] D4195, para 16
[3454] P3530 1-3; D4195, para 17

checkpoints established; these applied regardless of ethnicity and were to protect all citizens.[3455] [redacted].[3456]

1535. Disarmament occurred in Prijedor and applied to all ethnicities.[3457]

1536. On 30 May 1992, an attack by Bosnian Muslim forces was launched against the Serb held Prijedor. The attackers were dressed in civilian clothing.[3458] 17 Serb soldiers and policemen were killed and several civilians wounded.[3459]

1537. From February and March 1992, the citizens of Prijedor began moving out of the municipality.[3460] The municipality was marked by constant fighting, looting, hyperinflation and the lack of basic food items and fuel left many to live 'below any standard of human dignity'.[3461] As conflict began within the municipality and clashes intensified, requests for departure increased.[3462] The Bosnian Muslims and, to a lesser extent, Serbs and Croats left the municipality voluntarily, without any external pressure.[3463] While there was an established protocol for those seeking to leave the municipality,[3464] many left without Municipal approval.[3465] Nobody was prevented from returning to their homes.[3466]

1538. During late August 1992, a delegation of Croats from Brisevo sought approval to leave the troubled area; Stakic offered them temporary accommodation in Biscani where the houses were in a better shape.[3467] The Muslim people of Kevljani took refuge in the Serb village of Petrov Gaj and the Muslim village of Donji Jakupovici was under the protection of the Omarska police station.[3468] Croats who lived in Ljubija joined the VRS and remained until the end of the war.[3469] Many predominantly Croat and Bosnian

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[3455] D4199; [redacted]; D4195, para 17
[3456] [redacted]
[3457] D2265, pp. 53-4; D4195, para 36
[3458] D4195, para 19
[3459] D4138, para 38
[3460] D1357, p. 3; D4195, para 25
[3461] D4010, p. 3; D4229, para 9; D4226, para 6; D4195, para 26
[3462] D4195, para 25
[3463] D4010, p. 3; P3672, pp. 95-6; [redacted]
[3464] D4463, pp. 226, 331
[3465] D4463, p. 333; [redacted]
[3466] P3528, para 63
[3467] P3672, pp. 95-6
[3468] D4138, p. 35
[3469] D4226, para 19; D4242, para 1

Muslim villages remained occupied throughout the war and their residents resided there without any problems.[3470]

1539. There was no requirement to leave fixed property to the Government of the RS;[3471] this only applied to people who lived in socially owned housing.[3472] Many citizens who departed the area left property with their neighbours for safekeeping, but some abandoned them. The authorities were unable to establish control over abandoned property, and so established regional staffs with the goal of registering this property.[3473] Abandoned property placed under state control, temporarily. This prevented looting of property and its destruction, and was used to temporarily accommodate refugees.[3474] Property belonging to all nationalities was damaged during the conflict.[3475]

1540. There were no dismissals for reasons of ethnicity; those that occurred met legal and regulatory conditions of dismissal.[3476] After the takeover, many Muslims stopped going to work.[3477] [redacted].[3478]

1541. All organs of administration in the municipality were accessible to all citizens, regardless of their ethnicity; there was no plan for a single-ethnicity municipality.[3479]

1542. As the conflict escalated, Radio Prijedor announced that family homes, should hang white cloth from their windows, to signify "no fight would be forthcoming."[3480] The allegations that Bosnian Muslims were made to wear white armbands while in town, are false.[3481]

[3470] These villages included the Bosnian Croat villages of Tisova, Ovanjska and Ravska; and the Bosnian Muslim villages of Gornja Ljubija and Cela; D4228, para 8; D4269, para 6
[3471] D4463, pp. 226, 339; [redacted]
[3472] D4463, p. 339
[3473] D4229, para 13
[3474] D4010, p. 4; D4195, para 29
[3475] D4010, pp. 2-3; D4195, para 51
[3476] D4195, para 28; [redacted]; P3883; Merdzanic, T.21415-8
[3477] D4463, pp. 178-9; [redacted]
[3478] [redacted]
[3479] This included the medical centres and hospitals; D4195, para 28; [redacted]
[3480] Mesanovic, T.19833-4
[3481] D4195, para 41; D4229, para 26; [redacted]

2. Persecution

a. Killings unrelated to the detention facilities

1543. On 24 May 1992, an army column was attacked in Forici, on the Banja Luka – Prijedor road.[3482] The attack originated from the direction of Kozarac.[3483] There were more than five Muslim checkpoints around Kozarac;[3484] these were manned by armed Bosnian Muslim extremists, [3485] [redacted]. [3486] The checkpoints were established in locations, where it was not safe for military convoys to pass through them.[3487]

1544. After the take over of Prijedor the entire population of Kozarac was mobilised into a well-armed Bosnian Muslim TO.[3488] [redacted][3489]

1545. [redacted]. [3490] [redacted][3491] The injured from Kozarac were treated at the Prijedor hospital.[3492] After the conflict, Bosnian Muslim extremists scattered to Mt Kozara, mixing with civilians and representing a threat to the security of Prijedor. Throughout 1992 and 1993, these extremists raided Serbian villages at night, killing civilians and setting fire to their houses and farms.[3493]

1546. On 22 May 1992[3494] five or six VRS soldiers, three of whom were wearing JNA uniforms,[3495] were travelling from Prijedor to Ljubija. Two of them were Croats.[3496] In

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[3482] Schedule A10.1; [redacted]
[3483] D4195, para 18
[3484] D1838, p. 1; [redacted]; Mujadzic, T.20699
[3485] D4138, para 3
[3486] [redacted]
[3487] D4138, para 3; [redacted]
[3488] Arms included hand-held rocket launcher; D4869, p. 2; [redacted]
[3489] [redacted]
[3490] [redacted]
[3491] [redacted]
[3492] D4138, para 33
[3493] D4138, para 3; D4229, para 10
[3494] Schedule A10.2; D4269, para 3
[3495] D4010, p. 2; D4269, para 4
[3496] D4269, para 3

Hambarine, they were stopped by a Bosnian Muslim checkpoint;[3497] manned by approximately 30 well-armed men, either in uniform or in civilian clothes. The soldiers were stopped and Aziz Aliskovic confiscated their military IDs and weapons. The guards at the checkpoint opened fire upon the vehicle; two of the soldiers were killed and the rest were wounded.[3498] [redacted][3499]

1547. As Prijedor police were not allowed to enter the village of Hambarine, they called for the surrender of those responsible for the killings and the return of the bodies of the killed soldiers and their weapons.[3500] The Bosnian Muslims returned the bodies but refused to surrender the perpetrators or remove their checkpoints within the deadline given. On 23 May, Serbian forces attempted to dismantle the checkpoint, but were met with strong resistance. By evening the Bosnian Muslim extremists had withdrawn and moved to the Kurevo and Zecovi woods.[3501] [redacted][3502] [redacted][3503]

1548. On 26 May 1992, a tank was attacked in the village of Kamicani.[3504] [redacted][3505] [redacted][3506] [redacted][3507]

[3497] One lane was blocked by anti-tank hedgehog barriers; the checkpoint was mounted with an M53 light machine gun and sand bags surrounding the checkpoint acted as a defence. D4269, para 3
[3498] D4269, para 3
[3499] [redacted]
[3500] The Police were also unable to enter other villages which were 100% Bosnian Muslim; D4219, para 18
[3501] D4229, para 14
[3502] [redacted]
[3503] [redacted]
[3504] Schedule A10.3; P5528, p. 6
[3505] [redacted]
[3506] [redacted]
[3507] [redacted]

1549. At least eight Bosnian Muslim men were shot and killed when, on 14 June 1992, Bosnian Serb soldiers entered the village of Jaskici.[3508] The Prosecution only introduced evidence for this incident through Senija Elkasovic's 92bis statement.[3509]

1550. Following several demands for the disarmament of Carakovo,[3510] Bosnian Serb tanks attacked the village on 23 July 1992. Allegedly, during the operation, at least 16 civilians were killed,[3511] three were shot dead in front of their houses.[3512] [redacted][3513] Witness Vujic testified that his unit sustained causalities during this fighting.[3514] It is, therefore, reasonable to infer that the civilians were also casualties of the fighting.

1551. [redacted][3515] [redacted].[3516] [redacted];[3517] [redacted].[3518]

1552. A number of men were held at Ljubija football stadium on or around 25 July 1992.[3519] [redacted].[3520] There is no evidence that either the VRS or police were responsible, or that the higher command either ordered the killings or was informed about them.

[3508] Schedule A10.4; Adjudicated fact 1064
[3509] They led no further evidence and this incident was withdrawn in *Prosecutor vs. Milomir Stakic Judgement (31 July 2003), para 255 (d)*; P0690, pp. 7-20
[3510] [redacted]
[3511] Schedule A10.5
[3512] Adjudicated fact 1069
[3513] [redacted]
[3514] D4242, para 7
[3515] [redacted]
[3516] [redacted]
[3517] [redacted]
[3518] [redacted]
[3519] Schedule A10.7
[3520] [redacted]

1553. On or around 25 July 1992, approximately 90 Bosnian Muslim detainees were transported to Kipe mine, under the guard of 10 Serb soldiers.[3521] [redacted]. [3522] Men were made to get off the bus in groups of three to unload the dead, and were then fired upon.[3523] There is no evidence that the higher command either ordered the killings or was informed about them.

1554. In May 1992, the Serbs received misinformation that the village of Brisevo was armed.[3524] On 24 July 1992, Serb forces entered Brisevo.[3525] Ivo Atlija hid in a cellar with six other people. Serb soldiers demanded weapons, before sending them home and continuing on towards the Catholic Church.[3526] One witness described the soldiers as "Chetniks";[3527] Kupresanin described the soldiers as a renegade group of the 6th Sana Brigade.[3528] 68 people were killed and 36 others were taken to *Krings* in Sanski Most. They were all released after 2 months.[3529]

b. Detention facilities

1555. The SJB building in Prijedor was used as a detention facility between 24 May and September 1992, with cells in the courtyard.[3530] The cells were used as holding facilities prior to the conflict.[3531] [redacted] [3532] By 26 May 1992, a number of persons of mixed ethnicities had already been detained at the SJB building, on suspicion of procuring firearms and preparation for a 'large-scale disturbance of public law and order'.[3533] KW609 believes these detainees were brought in by members of the Public Security Station.[3534] SJB officers began interrogations of detainees from the 27 May.[3535] They utilised the SJB building for two

[3521] Schedule A10.8
[3522] [redacted]
[3523] P0651, p. 45
[3524] P3672, pp. 20-3; Atlija, T.20344-5
[3525] Schedule A10.9; P3672, p. 31
[3526] P3672, p. 33
[3527] He described the soldiers as not wearing the regular JNA uniform; P3672, pp. 35-6
[3528] P3672, p. 89
[3529] P3672, pp. 55-6
[3530] Schedule C20.1; P3528, para 22
[3531] D4463, p. 136
[3532] [redacted]
[3533] D4246, pp. 6-7
[3534] D4246, p. 7
[3535] D4246, p. 7

days in total, but given the large number of detainees, 'the conditions were not good for us to operate there' so they moved to Keraterm.[3536]

1556. [redacted];[3537] [redacted] Mesanovic testified that no one was beaten during the day.[3538] [redacted][3539]

1557. People were held in Miska Glava Dom between 21 and 25 July 1992.[3540] Housed in over-crowded rooms and given little food; one witness testified that his room was given a single loaf of bread and a pack of sweets to share between all 114 detainees.[3541] Detainees allegedly earned their water by singing songs about greater Serbia,[3542]and that beatings occurred;[3543] Nermin Karagic stated that he was forced to dig at least two graves at the Dom.[3544] Miska Glava Dom was guarded by men wearing JNA uniforms.[3545] Nermin Karagic stated that a man committed revenge killings in retaliation for the murder of his son.[3546]

1558. People were held at Ljubija Stadium around the 25 July 1992.[3547] Although some detainees were allegedly killed or beaten.[3548] or maltreated in other way[3549] [redacted][3550]

1559. People were held at the Prijedor Barracks in May and June 1992.[3551] The holding cells utilised to hold suspects had existed prior to the war.[3552] [redacted]

[3536] D4246, p. 8
[3537] [redacted]
[3538] P3528, para 22
[3539] [redacted]
[3540] Schedule C20.5
[3541] This lasted for three days; P0651, p. 18
[3542] P0651, p. 19
[3543] P0651, pp. 19-22
[3544] P0651, pp. 62-4
[3545] The witness thinks it could have been the Miska Glava TO; P0651, p. 18
[3546] He could not see if the man was uniformed; P0651, p. 20
[3547] Schedule C20.6
[3548] P0651, pp. 27, 34-5
[3549] The driver of the bus is allegedly responsible for walking on the detainees' fingers; he was also accused of forcing detainees to sing Serbian songs in exchange for water, to impress a woman. P0651, pp. 34-5, 40-1
[3550] [redacted];
[3551] [redacted]; Schedule C20.7 [redacted]
[3552] D4226, para 27

[redacted].[3553] Slavko Budimir would go from time to time to the barracks but he didn't notice any civilians.[3554]

1560. Slavko Budimir, testified that as a member of the Crisis Staff, he did not have any information about the establishment of detention facilities.[3555]

Omarska Collection and Investigation Centre

1561. The *Omarska* Collection and Investigation Centre was established at the beginning of June 1992 by order of Simo Drljaca.[3556] Throughout its operation approximately 3,400 detainees passed through the centre;[3557] including around 30 women who had been active in the armed rebellion.[3558] Around half of the detainees were released.[3559] Members of 'various units' protected the camp.[3560] The outer ring was secured by TO forces,[3561] mainly comprised of 'elderly ones [troops] with reduced fitness for combat'.[3562] Security within the centre was provided by the reserve police formation of Omarska,[3563] reinforced by fifteen members of the TO.[3564] The police force was composed of a small number of professional policemen and a large number of reservists who had as little as 2 months experience.[3565] In the first three weeks of the camp, the special police units of the Banja Luka CSB also provided security.[3566] At some point clearance passes were introduced, without which a person could not enter the premises.[3567] The civilian police provided security for the camp until it closed.[3568]

[3553] [redacted]
[3554] D4463, p. 135
[3555] D4463, pp. 137, 140
[3556] Schedule C20.2; D4138, para 3; D4388, para 3; P2640
[3557] D4138, para 5; Mejakic, T.44216
[3558] D4388, para 11
[3559] Mejakic, T.44216
[3560] D4388, para 5
[3561] D4219, para 38
[3562] D4388, para 5
[3563] D4388, para 5
[3564] The internal security was deployed in three shifts of 12 hours, ordered by the pattern: duty, stand-by then rest; D4138, para 13; D4388, para 5
[3565] D4138, para 13
[3566] D4388, para 5
[3567] D4219, para 32; Gruban, T.47494
[3568] D4246, p. 56

1562. Detainees were not delivered to the centre by the municipal police.[3569] They were brought in because they had been 'found in the combat zone', were suspected of involvement in armed conflict[3570] or had been discovered with weapons.[3571] Mejakic maintains that only five to ten people were ever brought to the camp arbitrarily.[3572] The rest had been arrested as a result of intelligence operations.[3573]

1563. On arrival, the camp guards searched the detainees; the shift duty officers did their best to ensure no ill treatment occurred during this procedure.[3574] Members of the Public Security Service would then escort the new detainees to an interrogation room.[3575] New detainees would be interrogated by teams of inspectors, who came from a mixed force of inspectors of the military, state and public security.[3576] Interrogations were predicated on intelligence received that detainees had committed crimes such as armed rebellion, murder, causing public danger and unlawful possession of weapons.[3577] During interrogation the inspectors would draft 'Official Notes'; [redacted].[3578] These notes would then be written into a statement which would be signed by the interviewing inspector and the detainee.[3579] During interrogation, the camp authorities categorised the detainees into three groups.[3580] First, were those who participated in the 'armed rebellion'; the second, those who had financed and assisted the rebellion; and the third, those who were not involved.[3581] People were allocated to the third group if further investigation and intelligence revealed that charges against them could not be proven.[3582] The third group were originally allowed to

[3569] Gruban, T.47504
[3570] D4138, para 8; D4388, para 4
[3571] D4138, para 26; D4246, p. 172; Gruban, T.47504
[3572] Mejakic, T.44299
[3573] Mejakic, T.44299
[3574] D4388, para 15
[3575] D4246, p. 28; D4219, para 51; D4138, para 10
[3576] Military investigators were only utilised when questioning people 'somehow related to military officers'; D4138, paras 9, 10; D4219, para 50; [redacted]; D4388, para 6; P2640, para 3
[3577] D4246, p. 82
[3578] On some occasions, Gruban would bring in the detainee to make an additional statement, clarifying points from the Official Notes. These would then be cross-referenced with information received from other individuals in order to determine the truth of the matter. In some cases people would be interviewed multiple times; D4246, pp. 88-9, 94-5
[3579] D4246, pp. 88-9
[3580] Gruban, T.47507-8
[3581] D4219, para 52; [redacted]; D4246, p. 29; Gruban, T.47474
[3582] D4246, p. 82

return home;[3583] however, release from the camp was soon forbidden as several of those released returned to join hostile activities.[3584] [redacted]. [3585] Despite this ban, more than 1,700 people were released from the camp.[3586] Based on the information gathered during interrogations, further individuals would be brought in to the centre for detention and questioning.[3587]

1564. People of all ethnicities were detained in the camp; the Serbs who were in *Omarska* were there because they had committed a crime.[3588]

1565. Detainees were brought to the Omarska as there were no other locations within Prijedor where large groups of people could be held.[3589] Since there were more detainees in the rooms than there would have been under normal circumstances,[3590] to deal with this issue, a number of detainees were required to spend their day outdoors and sleep in the restaurant, instead of cells.[3591] Those who remained outdoors, on the *pista*, could seek shade under the workshop building.[3592] Detainees accommodated inside demanded and requested to use the *pista*.[3593] When the camp was at its fullest, some prisoners were obliged to sleep in the hangar (workshop) area.[3594] The condition of the hangar was described as adequate, with its major fault being a lack of beds.[3595] It was not possible to obtain enough beds for the population in the centre.[3596] Once the centre was closed, Serb soldiers and refugees used the same rooms and facilities without making any improvements.[3597]

[3583] [redacted]; D4388, paras 4, 13; Gruban, T.47461-2, T.47517, T.47520
[3584] Gruban, T.47508; Mejakic, T.44298; [redacted]
[3585] [redacted]
[3586] Gruban, T.47526
[3587] [redacted]; Gruban, T.47513-4; Mejakic, T.44300
[3588] D4388, para 12; Kvocka, T.45635-6
[3589] Gruban, T.47432; Mejakic, T.44216
[3590] D4388, para 16
[3591] D4388, paras 8, 27
[3592] D4388, para 27
[3593] Kvocka, T.45604
[3594] D4388, para 44
[3595] Kvocka, T.45611
[3596] KW609, T.46137
[3597] D4388, para 17

1566. The detainees had access to water and toilets and were able to wash their face and freshen up in the showers in their rooms.[3598] Most rooms had several taps for water; those that did not were provided with water in bottles or canisters.[3599] In one area alone, there were five toilets, four urinals and twenty-five showers, with more on other floors.[3600] However, due to the large number of people utilising these facilities, they were not always in the best condition.[3601] The water for Omarska was sourced from two deep wells situated in Donja Lamovita village;[3602] there was sufficient drinking water but long queues for its use.[3603] On the *pista* there was a row of taps that flowed constantly, which were often used for bathing.[3604] While the prosecution alleges the water was not potable,[3605] the guards drank the same water as the detainees.[3606] Mejakic testified that the water used by the detainees was drinkable.[3607] Guards did not prevent people from accessing these resources and detainees were free to walk around the premises, during some shifts.[3608]

1567. Meals were had at the on-site restaurant and were distributed by the detainees themselves, under the supervision of two chefs.[3609] Detainees ate in shifts,[3610] but were allowed to eat their meal at ease.[3611] The same food was distributed to both the guards and the detainees.[3612] Both groups received one meal per day, which consisted of a plate of cooked food and a quarter of a loaf of bread.[3613] The wounded that were unable to attend meals in the restaurant, had their food delivered to them by other detainees.[3614] Gruban testified that they had difficulties in the preparation of food, due to the regular

[3598] D4388, paras 8, 17
[3599] D4388, para 20; Gruban, T.47488
[3600] Gruban, T.47429
[3601] D4219, para 36; Kvocka, T.45586; Mejakic, T.44223
[3602] D4388, para 21
[3603] D4138, para 14; Kvocka, T.45611
[3604] Kvocka, T.45612-3
[3605] Adjudicated fact 1147; D4388, para 21
[3606] Gruban, T.47488
[3607] Mejakic, T.44223
[3608] Gruban, T.47487-8
[3609] D4388, para 8
[3610] Gruban, T.47437
[3611] D4388, para 18
[3612] Gruban, T.47436, T.47490
[3613] Gruban, T.47436; Mejakic, T.44223
[3614] D4388, para 19

power cuts.[3615] They also experienced shortages in food and medicine as Prijedor was cut off from the rest of BiH.[3616] When food was short, some of the guards would share their food with the detainees;[3617] on some occasions, the guards would all share a single slice of pie.[3618] There was also a possibility for detainees to receive items from home.[3619] Only when a corridor was created in June 1992 "did it become possible to deliver food, medicines and other necessities".[3620]

1568. Medical staff came to Omarska in order to disinfect detainees' rooms.[3621] A physician, ambulance and a nurse, were present at the camp to provide assistance to detainees; [3622] technicians also visited. [3623] The Prijedor Medical Centre provided assistance and control within their area of competence.[3624] There was only one case of disease while Gruban was at Omarska. The sick individual was taken to hospital in Banja Luka were he was treated.[3625]

1569. The majority of detainees were transferred to Manjaca and Trnopolje on 5 August 1992. From that point on the conditions in the camp improved, with more food available and improved access to bedding.[3626]

1570. In early August 1992, a delegation of foreign journalists and ICRC teams visited the centre.[3627] The Red Cross delegation was permitted to access the whole complex,[3628] but the foreign journalists were limited to the cafeteria.[3629] It appears that this limitation was in contradiction of the invitation by President Karadzic.[3630]

1571. Defence witnesses concede that conditions in the centre were not of peacetime standard, but this was due to objective wartime circumstances.[3631]

[3615] D4138, para 48; Gruban, T.47436
[3616] D4138, paras 6, 14; Gruban, T.47436; Mejakic, T.44285
[3617] D4138, para 27; D4219, para 35; Gruban, T.47436-7, T.47491
[3618] Kvocka, T.45614
[3619] D4219, paras 40, 43; [redacted]
[3620] Gruban, T.47436
[3621] D4388, para 23; Gruban, T.47429-30, T.47489
[3622] D4138, para 27; Gruban, T.47486; Kvocka, T.45614-5; Mejakic, T.44285
[3623] D4246, p. 24; Kvocka, T.45614-5
[3624] D4246, p. 24
[3625] Gruban, T.47430
[3626] Mejakic, T.44273-4
[3627] Adjudicated fact 2488; D4138, para 25; D4246, p. 58; D4388, para 43
[3628] D4138, para 25
[3629] Mejakic, T.44271
[3630] Mejakic, T.44271-3
[3631] D4138, para 14; D4388, para 23; Kvocka, T. 45613; Mejakic, T.44223

1572. The 15 to 18 women detained at Omarska sometimes washed the dishes in the restaurant. Kvocka reports that they often complained of boredom and this was why they were permitted to aid in the distribution of food and the cleaning of dishes.[3632] No other form of 'forced labour' was discussed.

1573. The camp officials received no 'concrete orders regarding the treatment of the detainees', but agreed to 'help these men as much as possible within our power'.[3633] Daily instructions were issued to guards and inspectors on how to treat the detainees.[3634] As a result, beatings were an exception, not a rule; "we can't say they didn't happen. But it was far from being the rule or a regular situation".[3635] Shift leaders tried to prevent beatings from occurring.[3636] During Gruban's shift treatment of detainees was humane by many of the guards, thanking them for it.[3637]

1574. Mejakic stated that physical abuse was primarily perpetrated by members of paramilitary formations who forcibly entered the centre, seeking personal vengeance.[3638] These paramilitary groups targeted the white house in particular, beating and killing the detainees there.[3639] The camp was not entirely fenced,[3640] meaning that despite their best efforts, guards were unable to resist these well-armed paramilitaries as they had inadequate numbers to hold such a large area.[3641]

1575. The CSB special unit sent to guard the camp, also perpetrated acts of violence.[3642] Their commander, Strazivuk, lost control over his troops,[3643] who began 'arbitrarily arresting, interrogating and abusing the prisoners' for the purpose of robbing them.[3644] The perpetrators were removed from service on the premises[3645] and the unit was eventually disbanded.[3646]

[3632] D4219, para 44
[3633] D4388, para 7
[3634] D4219, para 32; D4246, p. 85
[3635] Kvocka, T.45654-5, T.45657
[3636] Kvocka, T.45658
[3637] D4388, para 7
[3638] [redacted]; D4219, paras 31, 57; D4388, para 25; Gruban, T.47493; Mejakic, T.44217
[3639] Mejakic, T.44233
[3640] D4219, para 36; D4138, para 15; Gruban, T.47494; Mejakic, T.44235
[3641] Some were stopped and disarmed, then turned over to either the civilian or military police; D4388, para 25; Gruban, T.47494; Mejakic, T.44235
[3642] D4219, para 49
[3643] D4139
[3644] D4219, para 47; D4138, para 15; D4139; D4246, pp. 14-15

1576. Defence witnesses testified to hearing raised voices, the use of derogatory ethnic terms and on occasion screams coming from the interrogation rooms.[3647] Most instances of physical abuse took place after the superior investigators had left for the day;[3648] and were generally perpetrated by the new inexperienced members of the interrogation squad.[3649] Because of their differing functions, 'Mejakic could not issue any orders to the investigators' nor vice versa.[3650] Beatings were not the norm however, and 'in most cases the detained persons themselves told me that the interrogation had been correct, and some of them had even been offered coffee and cigarettes'.[3651] KW609 heard rumours of incidents of violence, but only saw one incident occurring.[3652]

1577. The witnesses discussed two occasions of beatings that occurred outside of interrogation. The first occurred in the first week of the camp, when military policemen formed a gauntlet through which the detainees had to pass. Those who passed had to sing nationalistic songs and slap each other in the face.[3653] The guards, a mixture of military and civilian police, beat the detainees as they passed through.[3654] This only happened the once.[3655] The second occasion, witnessed by Kvocka involved a member of the camp guard striking incoming detainees during a search.[3656]

1578. Guards and inspectors were required to report regularly to the head of police security; Mejakic.[3657] He in turn then reported to the Chief of Police on a daily basis,[3658] providing information relating to their activities of the previous day and the information gathered.[3659] Mejakic stated that he had no 'intention whatsoever of defending some individual unauthorised acts of individuals'.[3660] If a crime occurred, the perpetrators

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[3645] D4138, para 15; D4139; D4219, para 49; Kvocka, T.45651-2
[3646] Mejakic, T.44219-20
[3647] D4246, p. 30; D4388, para 9; Kvocka, T.45599-600; Mejakic, T.44224-5
[3648] D4246, p. 85
[3649] D4219, para 53
[3650] D4219, para 46
[3651] D4388, para 9
[3652] [redacted]; D4246, pp. 85-6
[3653] D4219, para 64
[3654] Kvocka, T.45583-4
[3655] Kvocka, T.45584
[3656] Kvocka, T.45584-5
[3657] D4388, para 6
[3658] As did Mirko Jesic and Ranko Mijic; D4138, para 18
[3659] D4138, para 18; [redacted]; Mejakic, T.44231-2
[3660] D4138, para 26

would be punished and many were later prosecuted.[3661] [redacted]. [3662] However, the people present at the camp did not have the authority to remove perpetrators from work.[3663] They could only intervene personally while the abuse was happening.[3664]

1579. Some witnesses gave evidence that the guards at the camp actively stopped other guards from mistreating them.[3665] Mejakic puts this down to the very small number of professional policeman and the loose requirements for the selection of people for the reserve police force.[3666] A lot of beatings happened as a result of a revenge.[3667]

1580. Incidents of rape are strenuously denied by Gruban who stated that at the time "there were no such cases in my shift and at the time I didn't hear that such things took place during other shifts".[3668] There were guards posted at the doors where the women were held, to protect them from violence.[3669] [redacted].[3670] Kvocka denies any knowledge of sexual assault occurring while he was at the camp.[3671]

1581. Upon their arrival at the camp, Mejakic and Kvocka confirm they saw three dead bodies.[3672] Kvocka states that he was informed that the men had tried to escape and guards had opened fire to prevent this.[3673] Once the camp had opened, guards continued to be authorised to use live fire to prevent escape attempts, however no one was killed.[3674]

1582. An outsider who entered the premises perpetrated another reported incident of killing, on the 31 May 1992. The man, distraught and under the influence of alcohol,

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[3661] D4138, paras 23, 26; Mejakic, T.44298
[3662] [redacted]
[3663] Mejakic, T.44283
[3664] Mejakic, T.44284
[3665] D4219, para 62; Kvocka, T.45588; Mejakic, T.44236
[3666] Mejakic, T.44296
[3667] [redacted]; P3528, p. 50
[3668] D4388, para 29
[3669] Gruban, T.47482
[3670] [redacted]
[3671] Kvocka, T.45602
[3672] D4219, para 58; Mejakic, T.44242-3
[3673] D4219, para 58
[3674] D4138, para 16; Mejakic, T.44238

entered the premises and shot at the detainees as they were disembarking from a bus.[3675] He was immediately disarmed and arrested by the guards.[3676] Five or six detainees were seriously wounded and some lost their lives in this attack.[3677] An ambulance arrived at the centre and the wounded detainees and policemen were taken to the hospital.[3678]

1583. [redacted]

1584. Every time an incident occurred, Mejakic would report it to his superiors, pursuant to regulations.[3683] He gave evidence that he knew of 12 killings within the camp.[3684] Due to killings by paramilitaries at night, guards often saw dead bodies when they returned in the morning.[3685] However individual bodies were occasionally found.[3686] This is confirmed by KW609 who described the deaths at the camps as 'isolated incidents'.[3687] Gruban denies the targeting of inmates with 'a special professional background', stating that 'no one was targeted on the basis of their education'.[3688]

1585. On 5 August two busloads of detainees arrived in Omarska from Keraterm camp.[3689] Upon arrival the driver told Mejakic that the detainees would not stay for long,[3690] giving no reasons for suspicion. Later that night the Keraterm detainees and Dr Esad Sadikovic were removed from the camp; their bodies were later exhumed from a mass grave in Hrastova Glavica.[3691] The area where the bodies were found was between

[3675] D4219, para 59
[3676] D4219, para 59
[3677] D4219, para 60
[3678] D4219, para 61
[3679] [redacted]
[3680]
[3681]
[3682]
[3683] Mejakic, T.44245
[3684] Mejakic, T.44245
[3685] D4388, paras 32-5, 38, 41; Mejakic, T.44242
[3686] Gruban, T.47496
[3687] D4246, p. 41
[3688] D4388, para 42
[3689] Schedule B15.3; Mejakic, T.44258
[3690] Mejakic, T.44258
[3691] Mejakic, T.44258-9

150 and 200 kilometres from the camp and so was not killed within the camp's range of authority.[3692] Gruban testified that he was told that those removed from the camp were to be exchanged. [3693] Neither he nor Mejakic were aware of their deaths until after the war.[3694]

1586. Throughout the camp's existence, it was common that drivers would arrive with lists of people to collect.[3695] The guards at the centre never knew when people would be taken, or what would be done with them once they left.[3696] This resulted in a large number of individuals who were 'last seen alive' at Omarska, but does not mean they were necessarily killed there or removed for the purposes of execution.[3697] As Gruban testified, many of those removed from the camp survived.[3698] Therefore, other reasonable inference is that they were exchanged.

1587. Zeljko Mejakic denies that **Schedule B15.4** occurred.[3699]

Keraterm Camp[3700]

1588. The Keraterm camp began operating on 25 May 1992 and allegeldy held up to 1,500 prisoners crowded into a number of large rooms or halls;[3701] this number is disputed by Radetic who stated not so many people could fit into the premises.[3702] Keraterm camp held mostly Bosnian Muslim and Bosnian Croat men.[3703] Detainees were eventually transferred to Omarska or Trnopolje.[3704]

1589. [redacted].[3705] [redacted][3706] Witnesses could not provide information about who was responsible for

[3692] Gruban, T.47480
[3693] D4388, para 40
[3694] D4388, para 4l Mejakic, T.44259
[3695] Gruban, T.47461; Mejakic, T.44257
[3696] Gruban, T.47460-2, T.47480
[3697] Mejakic, T.44246-7
[3698] Gruban, T.47459
[3699] Mejakic, T.44250
[3700] Schedule C20.3
[3701] Adjudicated fact 1196; Adjudicated fact 1198; P0680, p. 9
[3702] D4226, para 36
[3703] Adjudicated fact 1197
[3704] Adjudicated fact 1197
[3705] [redacted]
[3706] [redacted]

the beatings.[3707] Radetic denies ever witnessing any beatings, or observing any detainees with visible injuries.[3708]

1590. Individual guards were known to beat prisoners at whim, with a number of guards individually identified as abusing both the Serbian and Bosnian Muslim population.[3709] Even the military police were afraid of such people when they were in big groups.[3710] These people were prosecuted for a variety of crimes committed.[3711]

1591. Detainees were only interrogated in relation to armed clashes.[3712] During the 15 days that Radetic was at Keraterm camp, about 50 people were interviewed; all of whom were adult men.[3713]

1592. The entire of Prijedor faced serious problems with electricity restrictions. Water supply was problematic for both the Bosnian Muslims and the Serbs.[3714] As such, detainees could never bathe although, occasionally, they could wash a little with cold water.[3715]

1593. [redacted].[3716]

1594. The quality and quantity of food provided to the army was poor, reflecting the shortages in the municipality.[3717]

1595. In the early evening of 25 July 1992, the detainees of Room 3 were locked in their room. A short burst of fire was opened at their windows and a canister of teargas was thrown into the room.[3718] The armed men warned the detainees not to leave the room;[3719] light machine guns and other infantry weapons fired upon those that tried to escape.[3720] Some detainees were allegedly forced to move the bodies into a truck.[3721]

[3707] They never saw anyone ordering them; P0680, p. 13; [redacted]
[3708] D4226, paras 43, 45
[3709] These guards included Dusko Knezevic, Zoran Vokic and Zoran Zigic. P0693, p. 19; D4226, para 50
[3710] D4226, para 50
[3711] D1925, pp. 2-3; D1926; D4226, para 50
[3712] D4226, para 42
[3713] There were no minors, women or elderly people. D4226, para 31
[3714] D4226, para 39; D4227
[3715] Adjudicated fact 1200
[3716] [redacted]
[3717] D4226, para 41
[3718] Schedule B15.1; [redacted]
[3719] [redacted]; P0693, p. 14
[3720] [redacted]; P0693, p. 14
[3721] [redacted]; P0693, pp. 15-6

Camp authorities received information that the killings occurred in response to a rebellion of the prisoners from Room 3 and their attempts to escape.[3722] Stakic testified that this incident was perpetrated by members of Serbian armed forces, who acted outside of control and in vengeance.[3723]

Trnopolje

1596. During the fighting in Kozarac and Prijedor,[3724] a number of civilians sought refuge in the town. To accommodate these refugees, the Sports Hall and Secondary School were opened; those who could not be accommodated were directed towards Trnopolje.[3725] Trnopolje camp was established to accommodate those people forced to leave their homes and other refugees from the area of combat.[3726] Some extremists also entered the camp and disguised themselves as civilians.[3727] Because of the overwhelmingly civilian nature of the camp, the refugees were not searched upon arrival[3728] and not everyone was interrogated.[3729]

1597. Trnopolje camp consisted of a school, shop and depot and due to its civilian nature was only partially enclosed by a fence.[3730] The camp was never fully surrounded by soldiers, nor were there machine-gun nests or fire points aimed at the camp.[3731] [redacted].[3732] Mevludin Sejmenovic testified that he was twice able to enter and exit the camp unobserved, illustrating the low-level of security at the camp.[3733]

1598. The Red Cross was present from the late May in Trnopolje;[3734] guaranteeing the refugees free arrival and departure from the camp and issuing them with the necessary documents.[3735] [redacted].[3736]

[3722] D4226, para 49; D4242, para 8
[3723] D4195, para 24
[3724] Puhalic, T.43452
[3725] Puhalic, T.43452; D4195, para 22
[3726] D3110; D4008, para 6; Puhalic, T.43454-5
[3727] Puhalic, T.43452
[3728] [redacted]
[3729] Merdzanic wasn't beaten during the interrogation, [redacted]; Merdzanic, T.21465-6
[3730] D4008, para 15; [redacted]; Sejmenovic, T.20491, T.20581
[3731] D4008, para 21; [redacted]; Puhalic, T.43425-6
[3732] [redacted]
[3733] Sejmenovic, T.20487-88
[3734] D3110; [redacted]; Merdzanic, T. 21413

1599. [redacted][3737]. Rapes were reported to camp authorities and on-site medical staff.[3738] Those who reported such incidents were transferred to Prijedor Hospital for examination and necessary medical care.[3739] Perpetrators were investigated and arrested.[3740] [redacted][3741]

1600. The El Maniakos perpetrated many of these rapes. [redacted][3742] Later, when one of their members was arrested for rape, they threatened to - and attacked the military barracks releasing their member.[3743]

1601. Puhalic stated that outsiders perpetrated beatings in the camp.[3744] Those who were injured were given medical care.[3745]

1602. Major Kuruzovic asked everyone at the camp to act in accordance with International Humanitarian law.[3746] He warned his subordinates to discharge their duties in the best way possible, but he would not have known everything that went on in the camp.[3747] In accordance with this order, security of the camp was increased to protect the refugees from outsiders.[3748]

1603. As the camp had been spontaneously established, its capacity was limited. There was not large enough to accommodate all refugees, as such people were forced to sleep in the school and the club and in cars, tractors and trailers.[3749] The field kitchen could only prepare a limited number of meals and food was distributed to those who needed it

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[3735] D4008, paras 7, 9; [redacted]; Sejmenovic, T.20489-90, T.20580
[3736] [redacted]
[3737] [redacted]
[3738] [redacted] Puhalic, T.43422
[3739] [redacted] Puhalic, T.43422
[3740] Merdzanic, T.21480; Puhalic, T.43423
[3741] [redacted]
[3742] [redacted]
[3743] Merdzanic, T.21480; Puhalic, T.43423
[3744] [redacted] Puhalic, T.43450
[3745] Puhalic, T.43450
[3746] Puhalic, T.43395
[3747] Puhalic, T.43395-6
[3748] Puhalic, T.43428
[3749] D4008, para 11; [redacted]; [redacted]

most.[3750] As such, some refugees cooked their own food.[3751] [redacted][3752] Refugees were permitted to leave the camp in search of further supplies and to visit friends and families[3753]

1604. Present at the camp were two doctors and two or three nurses, of mixed ethnicity, who treated detainees in the infirmary and makeshift clinic.[3754] There were inadequate medical supplies;[3755] guards and medical staff would search nearby houses for further supplies.[3756] [redacted].[3757]

1605. Throughout the camps operation a number of people lost their lives.[3758] These incidents were reported to military authorities.[3759] Those remaining were released to the ICRC and UNHCR on 2 October 1992.[3760]

1606. On 21 August, a convoy of 4 buses organised by the Crisis Staff and the Red Cross arrived in Trnopolje.[3761] The Prijedor Security Station escort, made up mainly of Intervention Platoon members, guarded this convoy.[3762] Due to the wartime circumstance, this Intervention Platoon was established without regular procedure or training.[3763] It was composed of those civilians who were willing to immediately mobilise to the front line.[3764]

1607. [redacted].[3766] It is alleged that 150 to 200 Muslim refugees were executed at

[3750] D4008, para 11
[3751] D4008, para 11
[3752] [redacted]
[3753] [redacted]; [redacted]; Puhalic, T.43430-1; Sejmenovic, T.20489-90, T.20580
[3754] D4008, para 11; Merdzanic, T.21405-6, T.21470; Puhalic, T.43425, T.43395
[3755] Puhalic, T.43425
[3756] [redacted]; Merdzanic, T.21470
[3757] [redacted]
[3758] Schedule B15.5; Puhalic, T.43408
[3759] Puhalic, T.43408
[3760] D3110
[3761] Schedule B15.6; Jankovic, T. 47299-300
[3762] P2969; Jankovic, T.47300-1
[3763] Jankovic, T.47305
[3764] Jankovic, T.47305
[3765] [redacted]
[3766] [redacted]

Koricanske Stijene; the victims' bodies were later found in the nearby canyon.[3767] The Prijedor police members that committed the crime were motivated by personal financial gain[3768] and acting independently.[3769] [redacted][3770] [redacted].[3771]

1608. The authorities called for the arrest and prosecution of the escort detail;[3772] however, the Platoon escaped to Kozara, evading arrest.[3773] On the day of the crime, Bosko Peulic[3774] suggested the formation of a commission which would conduct an on-site investigation with the CSB.[3775] Between 24 and 30 of August, a number of meetings were held by local and Republican authorities, which condemned the crime and discussed how best to proceed.[3776]

1609. The leadership proceeded with an investigation, as per the law of the time;[3777] ordering that Prijedor municipality conduct an on-site investigation and arrest and prosecute those responsible.[3778] While the on-site investigation faced a lack of resources and manpower and difficulties retrieving the bodies, due to location; however, they carried out investigations the best that they could and complied with regulations.[3779] The Public Security Station, Prosecutor's Office and High Court were all involved in the investigation of this incident.[3780]

1610. A survivor of the crime was found in the local area and handed over to the Swiss Red Cross to ensure no harm came to him.[3781]

1611. Eventually, the Intervention Platoon as a unit was disbanded.[3782]

[3767] D2040
[3768] Komljenovic, T.20924-5; Krejic, T.20857
[3769] Komljenovic, T.20924-5
[3770] [redacted]
[3771] [redacted]
[3772] Jankovic, T.47303
[3773] Jankovic, T.47303-4; [redacted]
[3774] Commander of the 1st Krajina Corps (KK)
[3775] D2040
[3776] D4379, paras 18-21; Krejic, T.20858, T.20868
[3777] D2044, pp. 1-2; Jankovic, T.47303; Krejic, T.20868
[3778] Examinations of the bodies were conducted by pathologists, with Jevto Jankovic presiding as Investigating Judge. D2043; D2044; D4379, paras 18-24; P3768, para 4; Jankovic, T.47342, T.47348-9; Komljenovic, T.20928; Krejic, T.20858-9, T.20868
[3779] P6644; [redacted]
[3780] D2042; Jankovic, T.47303-4
[3781] Jankovic, T.47304; [redacted] Krejic, T.20862-3
[3782] P2969; Jankovic, T.47303

c. No concerted plan to destroy cultural property.[3783]

1612. There was no plan by the legal authorities of Prijedor to destroy cultural property.[3784] Cultural sites were destroyed during combat operations,[3785] or by persons outside of municipal control.[3786] Damage occurred to property belonging to all nationalities, not just the Bosnian Muslims.[3787] The municipal leadership condemned vandalism[3788] and conducted on-site investigations into individual incidents.[3789]

e. Sanski Most

1613. Sanski Most consisted of 60,000 inhabitants, the majority of whom were Bosnian Muslim.[3790] Prior to the war, the municipality struggled economically, with over 5,000 unemployed in February 1992.[3791] In the multi-party elections the SDS gained the majority of votes, assuming power in the Municipal Assembly.[3792]

1. Forcible transfer

1614. The Green Berets were formed following the 1991 referendum; these units were incredibly disciplined and well-organised,[3793] wearing their uniforms openly about town.[3794] The local SDA began collecting funds for the purchase of weapons;[3795]

[3783] Schedule D4 alleges the destruction of Kozarusa mosque, Stari Grad mosque, Carakovo mosque, Hambarine old mosque, Carsijska mosque - town of Prijedor, Zagrad mosque - town of Prijedor, Biscani mosque, Gornja/Donja Puharska mosque, Rizvanovici mosque, Brezicani mosque, Alisici mosque, Zecovi mosque, Cejreci mosque, Gomjenica mosque, Kevljani mosque, Kamicani mosque, Kozarac-Mutnik mosque, Prijedor town Catholic church, Briševo church mosque between March and June 1992.
[3784] D4229, para 21
[3785] D4229, para 21
[3786] D4242, paras 9-11
[3787] D4195, para 51
[3788] D4195, para 50
[3789] D4381; D4382; D4383; D4384; D4385; D4386; D4242, para 11
[3790] In the 1991 census the population was 40 per cent Serbs, 40.09 per cent Bosnian Muslim, 9 per cent Croats and 5 per cent Yugoslavs; D4214, para 4; P6548, p. 6
[3791] P3303, p. 225
[3792] The SDS gained 23 seats, the SDA 22 and the HDZ 4, the remaining seats were independent; D4233, para 4; P3303, p. 6
[3793] D4170, para 7
[3794] D4163, paras 3, 21(d)
[3795] D1677, pp. 7, 10

distributing these through Islamic communities in Zagreb.[3796] There was information that Bosnian Muslims and Bosnian Croats stored weapons in sacred sites.[3797]

1615. In March 1992, mixed checkpoints were erected in the town and villages of Sanski Most.[3798] At the same time, Bosnian Muslims established separate barricades and checkpoints to control the passage of Bosnian Serbs through majority Bosnian Muslim towns.[3799] The following month, police reported they could not 'exercise control in the domain of law and order… for security reasons' referring primarily to territory populated by Bosnian Muslims.[3800]

1616. On 19 April 1992, Bosnian Muslim extremists and former police officers entered the Municipal building with the intention of seizing power.[3801] The Serbian authorities called on them to return their weapons and leave the building, and when they did not, ordered the TO and SJB to disarm the extremists.[3802] After conducting an on-site investigation, the police found weapons, improvised mines and explosives.[3803]

1617. The period of disarmament began on the 10 May and continued until 25 May 1992.[3804] Following the refusal of many Bosnian Muslims and Bosnian Croats to disarm, the municipality began searching populated places.[3805] Often, these searches would be met with violence.[3806] No civilians were harmed in these raids.[3807] Those found to be illegally armed, were arrested and interviewed by the officers of the Public Security Station.[3808] Bosnian Serbs were also required to surrender any illegally obtained weaponry.[3809]

[3796] Funding originated from the Federal Republic of Germany and Croatia, weapons were 'intensively acquired in January and February 1992'; purchased from Croatia, the Ministry of the Interior in Sarajevo and directly from Serb citizens and soldiers. D1677, pp. 7, 10-1; D4170, para 7; P0718, para 13
[3797] D4170, para 7
[3798] D4294, para 64
[3799] A Bosnian Serb was killed at a barricade in Trnovi and in Trnava two Serbian civilian police officers were stripped as a message to the Serbian people; D4163, para 20; D4214, para 5; D4387, para 3
[3800] D3911, p. 4
[3801] D4214, para 29; D4233, para 18; D4294, para 54; D4387, para 6
[3802] D4170, para 6; D4214, para 9; D4294, para 54; D4387, para 7
[3803] D4170, para 6
[3804] D4170, para 7; D4214, para 13; P3928
[3805] D4233, para 21; D4387, paras 8-9
[3806] By the end of May six soldiers of the 6 Krajina Brigade had been killed with one of the dead exhibiting signs of torture; in Caplje and Hrustovo seven soldiers were killed; D4163, para 2; D4294, para 12
[3807] D4214, para 32; D4294, paras 55, 56
[3808] D4170, paras 7, 11; D4233, paras 19, 24; D4294, para 32; D4387, paras 19, 22
[3809] D3907, pp. 1-2; D3908, p. 1; Keserovic, T.42136, T.42139

1618. Throughout May 1992, different units passed through the municipality, causing chaos and damaging property.[3810] These groups included the SOS, White Eagles, so-called Seselj's Men, military Reservists and regular JNA.[3811] The period between June and August 1992 was characterized by a high level of paramilitary activity by groups who had left the army command and were committing crimes for their own benefit.[3812] This paramilitary activity led to many villages building their own barricades and checkpoints for protection.[3813] It was reported that paramilitary units had infiltrated the police and the army, posing as soldiers, operating outside the knowledge of command.[3814]

1619. Even before the outbreak of war the Bosnian Muslim population began leaving Sanski Most.[3815] On 31 May 1992, a proclamation was issued stating that citizens were permitted to voluntarily leave the municipality.[3816] The Red Cross and Serbian civil protection provided aid to those who chose to leave.[3817] From June 1992 the Serb municipal authorities and Bosnian Muslim representatives met to arrange convoys for the safe passage of Bosnian Muslims from the area.[3818] From 2 July 1992 no one could depart the municipality without a signed statement indicating that they were leaving the area permanently and that they had either exchanged, sold or surrendered their immovable property.[3819] Those houses that were surrendered or abandoned were to be looked after and temporarily allocated to Serb refugees from Croatia and other towns.[3820] Throughout the war, several thousand Muslims remained within Sanski Most.[3821]

[3810] Including groups of Serbian refugees who tried to forcibly take property, D4214, para 11; D4294, para 65
[3811] Adjudicated Fact 2526; P0718, para 11
[3812] D1681, para a.
[3813] D4214, para 10
[3814] D1681, para a; [redacted]
[3815] While many able-bodied men remained; women and children were often sent to other places in BiH, Croatia, Slovenia or elsewhere in Europe; D4170, para 8; D4214, para 16; D4387, para 13
[3816] Adjudicated Fact 2550; D4170, paras 8-9; D4214, paras 16, 18
[3817] D4214, para 17
[3818] Adjudicated Fact 1359
[3819] Those leaving were also permitted to ask their neighbours to care for it in their absence. Adjudicated Fact 2556; D0470, p. 8; D4294, para 74; D4387, para 13; P3307, p. 1
[3820] As of 16 August 1992, the SJB had approved 12,000 applications for departure from the municipality. Adjudicated Fact 2557; D0470, p. 8; D4170, para 10; D4387, para 12
[3821] The 1993 census of Sanski Most showed that 4,390 Muslims and 1,247 Croats had remained; D4214, paras 12, 24, 38; D4294, para 76; D4387, para 14; P6548, p. 6

2. Persecution

a. No plan to perpetrate killings by official Serbian authorities

1620. On 31 May 1992, Serb soldiers entered Begici, rounding up its Bosnian Muslim inhabitants.[3822] Between 20 and 30 men were led to Vrhpolje Bridge by Jadranko Palija,[3823] who killed four men on the way to the bridge.[3824] Upon arrival, the remaining Bosnian Muslim men were ordered to jump off the bridge one by one, as the soldiers opened fire upon them. The incident was investigated and an on-site investigation was conducted.[3825] A Prosecution witness testified that the soldiers were reserve forces, rather than professionals.[3826]

1621. On 31 May 1992, soldiers in JNA uniforms, referring to themselves as the 'Serbian Army', came to the Bosnian Muslim village Hrustovo.[3827] Around this time Bosnian Serb authorities received evidence from prominent Bosnian Muslims that within the village there were 430 strong and well-armed Muslim extremists,[3828] 'with the strength of one battalion'.[3829] Before the army entered the village they appealed for 'women, children and old people to come out of their houses', so the search could be done safely. These women were escorted to the FC 'Podgrmec' stadium for safety reasons.[3830] The Prosecution alleges that killings occurred on this occasion, but no evidence was led to prove this.

1622. On or around 27 June 1992, armed Serbs arrived in the Muslim hamlet of Kenjari.[3831] [redacted].[3832] 20 Bosnian Muslim men were arrested and interrogated before being led to a house in Blazevici. The soldiers threw explosives

[3822] Schedule A12.1, Adjudicated Fact 1303
[3823] Adjudicated Fact 1304, 1305
[3824] D4387, para 21
[3825] D4387, para 21
[3826] P0692, p. 6
[3827] Schedule A12.2; Adjudicated fact 1307
[3828] D4233, para 20
[3829] In a disarmament campaign in May 1992, Seven Serb soldiers were killed; D4294, para 12; D4233, para 22
[3830] D4294, para 12
[3831] Schedule A12.3, Adjudicated Fact 2531
[3832] [redacted]

into the house, firing on those trying to escape.[3833] [redacted][3834]

1623. On 1 August 1992, Serb soldiers attacked Budin and killed 14 unarmed members of the Alibegovic family.[3835] [redacted][3836]

1624. On 2 November 1992, Serb paramilitary forces in the Glamosnica forest rounded up seven Croats from Skrljevita.[3837] The paramilitaries claimed to belong to the group which called itself 'Seselj's Army'[3838]. After searching their victims, they executed the Bosnian Croats.[3839] Grgo Stojic confirmed that there were no official military operations in Skrljevita in November 1992.[3840] In this instance, even the Prosecution asserts that the perpetrators were paramilitaries, outside of the 'military command and the civilian command'.[3841] Danilusko Kajtez, one of the perpetrators, was known to be unstable.[3842] An investigation into these crimes was conducted immediately, with the perpetrators arrested and incarcerated.[3843]

1625. On 22 June 1992, around 20 detainees from Betonirka were taken to Kriva Cesta, where they were ordered at gunpoint to dig their own graves.[3844] Seventeen of these men had allegedly their throats slit by Simo Simetic.[3845] Prosecution witness Ahmet Zulic knew Simetic from his village; stating that he was not a mentally healthy person.[3846] He also claimed that local officials headed by Rasula were present.[3847] However, Zulic's credibility is very low since he was contradicted by contemporaneous document on many issues, especially regarding military organizing of Muslims.[3848] Also,

[3833] Adjudicated Fact 2532
[3834] [redacted]
[3835] Schedule A12.4, Adjudicated Fact 1315
[3836] [redacted]
[3837] Schedule A12.5; Adjudicated Fact 1317
[3838] Adjudicated Fact 1318; P3515, p. 17; Stojic, T.19771
[3839] Adjudicated Fact 1319
[3840] P3515, p. 37
[3841] P3515, pp. 37-8
[3842] Referring to himself as a 'Chetnik' throughout high school, P0700, pp. 34-35; P0701, p. 7
[3843] Dobrijevic, T.44656; Keserovic, T.42024, 42144; Tadic, T.44415
[3844] Schedule B17.1; Adjudicated Facts 1347, 2541
[3845] P0718, para 80
[3846] P0718, para 80
[3847] P0718, para 81
[3848] D0005; D0006; D0007

contemporaneous documents showing that the local authorities and Rasula supported humane treatment of civilians and prohibition of expulsions refute Zulic's allegations.[3849]

b. No plan to perpetrate cruel and inhuman treatment in investigation centres

1626. There were no prisons or camps in Sanski Most, just investigation and processing centres.[3850] People were not brought in randomly, but were detained for the possession of weapons or military equipment or for acts that threatened public safety.[3851] People were processed in the SJB building, but the ever-increasing number of perpetrators of criminal offences meant these facilities became overcrowded.[3852] The original investigation centres were reported to have adequate lighting, electricity and access to water, food and beds.[3853]

1627. The guards at the investigation centres generally treated all detainees humanely and within the limits of their power.[3854] Any reported cases of abuse were investigated and perpetrators were removed and prosecuted.[3855]

1628. Between 26 May and August 1992, Bosnian Muslim and Croat civilians were detained in the SJB Building in Sanski Most.[3856] People of all ethnicities were brought in for possession of weapons, interrogated and then usually removed from the centre.[3857] The cells had washbasins and faucets, from which the town's water supply could be accessed.[3858] While the cells were often overcrowded,[3859] some had beds.[3860] Food appears to have consisted of two meals a day.[3861] Armed uniformed persons guarded the building, but wore various insignia.[3862] A number of witnesses attest to receiving beatings

[3849] D1680; p. 3
[3850] D4170, para 11; D4214, paras 21, 25
[3851] D0470, pp. 7-8; D4170, para 11; D4214, paras 20-21; D4233, para 25; [redacted]; D4387, paras 23-4
[3852] D4214, para 19; D4233, para 24; D4387, para 20
[3853] In the sports halls, *Betornirka* and *Krings*; D0470, p. 7
[3854] D4170, para 13
[3855] D4170, para 13
[3856] Schedule C22.1; Adjudicated Fact 1320
[3857] P0135 pp. 54, 60; D4387, para 22
[3858] P0135, pp. 56, 136
[3859] P0135, p. 54; [redacted]
[3860] P3303, p. 219
[3861] A slice of bread and some soup; P0135, p. 59; [redacted]
[3862] P3303, p. 88-9

at the centre.[3863] Cruel treatment is contradicted with the fact that the ICRC visited the prisoners from July 1992[3864] and families could visit every Saturday in July and August providing detainees with food and clothing.[3865]

1629. The only forced labour alleged was the cleaning of two toilets within the SJB facility.[3866] Sometimes witnesses would be called to clean out the canteen after meals.[3867] One witness attested to being happy to do the work.[3868]

1630. Around 120 Bosnian Croat and Bosnian Muslim men were allegedly detained at Betonirka factory garages.[3869] The length of detention varied between three days to over a month.[3870] It is alleged that at one point the garages were so crowded that detainees slept sitting up, there was insufficient ventilation and food and sanitary conditions were inadequate.[3871] Detainees received two to four decilitres of water a day and received food, boiled potatoes or macaroni once a day.[3872] Beatings were alleged to have been carried out by the facility's guards or Serb outsiders.[3873] There were no medical facilities available for treatment of injuries at Betonirka.[3874] The guards wore a mix of various uniforms and civilian clothing.[3875]

1631. [redacted][3876] [redacted]. [3877] [redacted] [redacted] [3878] [redacted]. [3879] [redacted]

[3863] P0135, pp. 60-1; P0718, paras 58, 62; [redacted]
[3864] P0135, pp. 64-5; P3303, pp. 110, 242
[3865] P0135, pp. 65-6; [redacted]
[3866] P0135, p. 55
[3867] P0135, p. 58
[3868] P0135, pp. 55-6
[3869] Schedule C22.2; Adjudicated Fact 1333
[3870] Adjudicated Fact 1334
[3871] P0718, paras 57-8
[3872] P0718, paras 58, 68
[3873] Adjudicated Fact 1342; [redacted]; P0718, paras 64-9, 71-4
[3874] Adjudicated Fact 1343
[3875] P0718, para 51
[3876] [redacted]
[3877] [redacted]
[3878] [redacted]
[3879] [redacted]

[redacted].[3880] [redacted]
[redacted].[3881]

1632. 500-600 individuals were allegedly detained in the gymnasium of the Hasan Kikic Elementary School; their length stay was three to four days.[3882] The Prosecution alleges that the gymnasium was staffed by guards in police and camouflage uniforms[3883] and the beatings in the gymnasium were brutal.[3884] However, Sakib Muhic stated that no one was beaten while he was there.[3885] While there was no bedding and only minimal health care available,[3886] the detainees could receive food from the outside.[3887]

1633. Between May and July 1992, approximately 600 Bosnian Muslims were held in Krings Hall.[3888] [redacted].[3889] [redacted].[3890] Originally the Hall was guarded by Serb soldiers, who ensured that '**no one touched us, no one beat us, no one mistreated us**'.[3891] However, these guards were replaced by reservist policemen who beat the detainees.[3892]

1634. Four men were allegedly beaten by soldiers outside a Serb army position in Magarice.[3893] Faik Bisecevic stated he was detained with two other people for 30 hours, all three were given a plateful of food while there,[3894] which creates reasonable doubt about cruel treatment.

[3880] [redacted] P0718, para 63; P3303, p 175
[3881] [redacted]
[3882] Dusan Mundrinic states the gymnasium could not have fit that many people; Schedule C22.3; Adjudicated Fact 1350; D4387, para 25
[3883] Adjudicated Fact 1351
[3884] Adjudicated Fact 1352
[3885] P0701, p. 5
[3886] P0701, p. 5
[3887] P0701, p. 6
[3888] Schedule C22.4; Adjudicated Fact 2543
[3889] [redacted]
[3890] [redacted] KDZ052, T.19117
[3891] P0691, p. 39; [redacted]
[3892] **Note:** In the Brdjanin case, the Trial Chamber found that the treatment of detainees at the Krings factory detention facility did not meet the threshold of serious body or mental harm; Brdjanin TJ, para 743; [redacted]
[3893] Schedule C22.5; P0135, pp. 31-33
[3894] P0135, p. 41

c. No plan to destroy cultural and personal property

1635. There was no plan, by the Bosnian Serb authorities, to destroy personal property. In 1992 alone, there were 20 explosions on citizen's properties which 'were not ethnically focused'.[3895]

1636. Looting occurred throughout the duration of the war, with Croats, Muslims and Serbs all falling victim to the plunder.[3896] [redacted].[3897] Checkpoints were unable to prevent the removal of looted possessions.[3898] Prosecution witness, Zulic, states that 'the SOS were the ones in charge of all the destruction that occurred in the town'.[3899] [redacted].[3900] The Public Security Station formed teams to protect abandoned property against looting and destruction.[3901] The Civilian Protection Staff provided victims with stoves and furniture.[3902]

1637. There was no plan to destroy personal property as the property abandoned by those who left the area was used to **temporarily** house Serb refugees from Croatia;[3903] thus saving the property from decay and theft.[3904]

1638. At least seventeen Muslim villages were not destroyed in the war,[3905] In Sehovci a few houses were torched but there was no combat or destruction.[3906] Muslim neighbourhoods and villages of Mahala, Muhici, Begici, Hrustovo and Vrhpolje were alleged to be subject to wanton destruction and looting.[3907] However, frequent explosions

[3895] P3303, p.225
[3896] D4294, para 48; [redacted]
[3897] [redacted]
[3898] D1681, para c
[3899] P0718, para 11
[3900] [redacted]
[3901] D4170, para 10
[3902] D3902, p. 4
[3903] D4214, para 18; D4387, para 12
[3904] D4294, para 37
[3905] V.Nikolic, T.45469-71
[3906] V.Nikolic, T.45471
[3907] Adjudicated Fact 1356

and provocations originated from these villages.[3908] These villages, with the exception of Begici, were also listed as the locations of the 'first organised resistance' and were thus legitimate military targets.[3909]

1639. Damage down to cultural property within Sanski Most,[3910] was done exclusively at night by unknown perpetrators.[3911] The police in Sanski Most fully investigated all crimes; "we never had any instructions not to investigate or prosecute crimes committed by Serbs against non-Serbs".[3912] Only one witness, Rajif Begic, actually saw a mosque being destroyed.[3913] In Pobrijezje and Stari Majdan, the only official actions taken were to clear the debris from religious buildings which had been destroyed, as a matter of health and safety.[3914] The church was only insignificantly damaged.[3915]

3. Sarajevo area

a. Hadzici

1640. The crimes alleged to have occurred in Hadzici municipality are limited to forcible transfer and persecution. No killings are charged in this municipality.

1. Forcible transfer

1641. Before the war, Bosnian Muslims represented 62.5 per cent of 19.498 people in Hadzici.[3916] Bosnian Muslim authorities indoctrinated the reserve policemen and the population with the idea that Bosnian Serbs are the only obstacle for them to remain in privileged position in BiH, thus creating the root cause of violence between the two

[3908] D4214, para 5; D4294, para 12
[3909] D1677, p. 12
[3910] Schedule D19: destruction of the Town mosque and the mosques in Pobrijezje, Hrustovo-Kukavice, Hrustovo-Keranovici, Vrhpolje, Šehovci, Trnova, Stari Majdan (Palanka), Stari Majdan (Utriska), Dzevar, Husimovci, Donji Kamengrad, Skucani Vakuf, Lukavice, Tomina, Caplje and the, Town Catholic Church at least between May and December 1992.
[3911] D4387, para 26
[3912] D4170, para 21; P3303, p. 23
[3913] P0692, p. 6
[3914] D3902, p. 2
[3915] P0691, p. 39; [redacted] Note: in the *Brdjanin* case, the Trial Chamber found insufficient evidence of the destruction or willful damage to the Sanski Most town Catholic Church: *Prosecutor v Brdjanin*, No. IT-96-33-T, *Judgement* (1 September 2004) at para. 641
[3916] P4994, p. 30

ethnic groups.[3917] Bosnian Serbs only formed their own municipality after they were excluded from power in the common municipality[3918] and observed Bosnian Muslims preparing themselves for war.[3919] Bosnian Muslim Crisis Staff became operational already in 1991.[3920] A large part of Bosnian Muslim population left Hadzici on the order of Bosnian Muslim Crisis Staff prior to the shelling by their side; approximately 2000-3000 Bosnian Muslims were evacuated with only about 200-300 remaining in Hadzici.[3921]

1642. The Serbian Municipality of Hadzici covered only parts where Bosnian Serbs were in majority and Bosnian Muslims had their own authorities in the parts of municipality where they were in majority.[3922] No plan to divide along ethnic lines or persecute ever existed in Hadzici. Bosnian Serbs were in majority in about 20 percent of the territory of Hadzici and no step was ever taken to change the situation, as it had existed in 1991.[3923]

1643. On 22 April 1992, there was a major attack by Bosnian Muslims on Ilidza, a municipality contiguous to Hadzici.[3924] On 8 May 1992, the Bosnian Muslims fired on the surrounding settlements and, on 11 May 1992, they launched first attack on the centre of Hadzici.[3925] From this date onwards there was fire opened on Hadzici on a daily basis and Bosnian Muslims encircled that whole area except for the route that led to Ilidza.[3926]

1644. Bosnian Muslim authorities took a number of tough measures against Bosnian Serbs.[3927] On 12 May 1992 they captured Krupska Rijeka barracks, which were used as prison facilities for Bosnian Serbs until 1993.[3928] The employees of the SJB Hadzici received an order from the Bosnian Muslim TO on 1 July 1992 to "/b/ring in all men of

[3917] Glavas, T.11818-9
[3918] D1066, p. 1; D02917, pp. 1-4; D2915, paras 20, 36-7; Glavas, T.11963; D3856, para 34; D3062, para 7
[3919] D1067, p. 1; D2919, pp. 1-2; D3857, p. 2; D2915, paras 22-3, 29, 32-4, 36-7, 69; Glavas, T.11812-3, T.11815, T.11818, T.11821, T.11941; D2490, paras 5-7, 11
[3920] Glavas, T.11940
[3921] Adjudicated fact 2567; D2915, para 46; Glavas, T.11926, T.11939
[3922] D3856, para 32; [redacted]
[3923] Banduka, T.33494
[3924] Glavas, T.11947
[3925] D2915, paras 44, 46 ; Banduka, T.33493; Glavas, T.11964
[3926] Glavas, T.11964
[3927] D3856, para 32
[3928] Glavas, T.11964

Serbian ethnicity".[3929] In addition, the movement of Bosnian Serb population was restricted to their houses, all gatherings prohibited, night-time blackouts and the obligation to shut all windows introduced, and the searches of Bosnian Serb houses and facilities carried out.[3930]

1645. Acting in self-defence, Bosnian Serbs responded to Bosnian Muslim actions. Following the attack on Ilidza and after receiving reliable information about the upcoming attack on Hadzici, mobilization papers and weapons were distributed to Bosnian Serbs.[3931] Other measures were also undertaken such as the ultimatum demanding that the Bosnian Muslim police, TO and members of the SO leave the municipality, all in response to Bosnian Muslim preparations for war.[3932] Furthermore, Bosnian Serb women and children were evacuated and checkpoints set up.[3933] As a result of information obtained by the SJB about the Muslim military organization as well as constant fire coming from the village, Bosnian Serbs shelled Musici between 15 and 20 May 1992 and confiscated weapons from the villagers.[3934] The seizure of unlawfully obtained weapons was in accordance with the law.[3935]

1646. Without the consent of local authorities, Bosnian Serb paramilitary forces included White Eagles, Gavrilovic's men, and purported Arkan's and Seselj's men.[3936]

1647. The evidence shows that Bosnian Muslims were not forcibly expelled from Hadzici. In view of the difficult political and security situation in Hadzici, people of all ethnicities were moving to the areas where their respective ethnicity was in majority.[3937] Still, a number of Bosnian Muslims remained in Hadzici until the end of war.[3938]

1648. Therefore, the crime of forcible transfer was not committed in Hadzici.

[3929] D2493, p. 1
[3930] D2493, p. 1
[3931] P0134, p. 2; P0041, p. 5; P2296, para 22
[3932] Adjudicated fact 2565; P0134, p. 3
[3933] Adjudicated fact 2568; P0134, p. 4
[3934] Adjudicated fact 2569; P2296, paras 33-5, 37-40; Glavas, T.11965-7
[3935] P2296, para 18
[3936] P0161, p. 1; P2296, para 53
[3937] D2915, paras 81, 85; Pandurevic, T.30669; D3062, para 15
[3938] D3062, para 15; D3063, paras 8, 12

2. Persecution

1649. Charges of persecution in Hadzici arise from the alleged mistreatment of persons in detention at the garage of the Hadzici Municipal Assembly building[3939] and the Hadzici Culture and Sports Centre (KSC).[3940]

1650. The mistreatment of detainees did occur at these locations, but the crimes were committed by paramilitaries and private parties outside of the control of the local authorities.

1651. The detention of people in Hadzici was in accordance with law. The garage of the Hadzici Municipal Assembly Building was the room for the detention of prisoners, after Bosnian Muslims set the police station on fire.[3941] Persons who committed a crime were detained there as well as persons under the influence of alcohol that were causing trouble.[3942] Not only Bosnian Muslims but also Bosnian Serbs were detained.[3943] The persons who were found guilty were kept in the detention at the municipality building until it was possible to transfer them to Kula prison where the appropriate authorities could prosecute them.[3944] If they were not found guilty they were taken to the KSC.[3945] The KSC was a centre intended to ensure the safety of the Bosnian Muslim inhabitants from uncontrolled individuals, as well as the detention centre for delinquents.[3946]

1652. The garage of the Hadzici Municipal Assembly Building served as a detention unit for the police and was governed by the law.[3947] Records were maintained on all individuals, regardless of ethnicity.[3948] Some people were detained for more than lawfully permitted 3 days, but solely for the reasons of ongoing war situation and inability of police to turn people over to the proper authorities.[3949] Some civilians in the KSC were there on the voluntary basis. People came every day, as they felt safer there than in their

[3939] Schedule C11.1
[3940] Schedule C11.2
[3941] P6110, p. 3; D2915, para 57; D3063, para 13
[3942] D2915, para 57
[3943] Tolj, T.34646-47
[3944] Banduka, T.33539
[3945] Banduka, T.33539
[3946] P6110, p. 1; P2296, para 45; D3063, para 9
[3947] D1074, p. 5
[3948] P0161, p. 2; D3063, para 14
[3949] Tolj, T.34634-5

homes, due to the guards.[3950] Some people did not arrive voluntarily but were brought in by the police or persuaded to come because it was impossible for police to guard every Bosnian Muslim home, because some of the policemen acted on their own or because those people were suspected of committing a crime or possessing illegally obtained weapons.[3951]

1653. At the beginning of the war, the detained people were eating the same as everyone else and were treated well.[3952] During the war, however, the conditions in the municipality worsened for everybody, since Hadzici had neither water nor electricity because the Bosnian Muslims had cut off the supply.[3953]

1654. Mehmet Music stated that the living conditions in the KSC were really poor, however, his credibility is highly disputable due to the significant discrepancy between his statements in front of different courts.[3954]

1655. While in the KSC, Bosniam Muslim were abused by members of paramilitary units,[3955] including the so-called Arkan's men.[3956] and a group of hooligans[3957] Other incident occurred when the men who called themselves Seselj's men abused and beat the people in the KSC; the Chief of the SJB, Tihomir Glavas, prevented them to do the same in the garage of the Municipal Assembly Building.[3958] Defence Witness Mladen Tolj testified to an incident when a group of Bosnian Serbs whose family members were detained in the Silos camp came to the KSC on a personal vendetta and maltreated people there.[3959]

1656. Therefore, crimes were committed in Hadzici municipality by persons whom the local authorities could not control. In addition to this, the acts arising out of personal vendetta are not part of a widespread or systematic attack.[3960]

[3950] D2915, para 56
[3951] Banduka, T.33512-3; P2296, para 45
[3952] P2296, para 64
[3953] Tolj, T.34634
[3954] P2304, para 56; Mehmed Music, T.12840-50, T.12853-77, T.12903
[3955] Adjudicated fact 2616
[3956] P0161, pp. 1-2
[3957] D2915, para 55
[3958] P0161, pp. 1-2; P2296, para 53
[3959] D3063, para 11
[3960] Haradinaj et al, TJ, para 12

b. Ilidza

1657. The crimes alleged to have occurred in Ilidza are forcible transfer and persecution including the killings of detainees in the KP Dom Butmir.

1. Forcible transfer

1658. Before the war, Bosnian Muslims made up 42.9 per cent of the population in Ilidza.[3961] The Bosnian Serbs only formed their own municipality after they were excluded from power in the common municipality[3962] and observed the Bosnian Muslims arming themselves[3963] and preparing for war.[3964] Thousands of buildings were illegally built in Sokolovic Kolonija with the aim to change the ethnic structure of the population of Ilidza.[3965]

1659. Bosnian Muslims carried out the first attack on Ilidza. In early March 1992, Bosnian Muslim forces seized the joint police base near Krtelj and on the same night, carried out an attack on Bosnian Serb settlement of Vojkovici near Krtelj.[3966] Well organized and armed, on 22 April 1992, Bosnian Muslim forces staged an all out attack on Ilidza.[3967] The defence of Ilidza was conducted solely by local people.[3968]

1660. When the attack on 22 April 1992 was carried out, UNPROFOR helped Bosnian Muslim side.[3969] The UNPROFOR forces informed Bosnian Muslims about Bosnian Serb weak points, which were later used for offensive actions.[3970] Humanitarian workers used combat vehicles to shield Bosnian Muslims from Hrasnica and abused humanitarian vehicles and services for military purposes and strategic offences in order to aid Bosnian Muslims.[3971] Under the auspices of the international community, Bosnian Muslims used

[3961] Defence Witness Momcilo Ceklic stated that Bosnian Serbs composed 37%, Bosnian Croats 10% and others 10% of population in Ilidza (D3112, para 6).
[3962] D3112, para 7; D1182, p. 5
[3963] D3112, para 9; Prstojevic, T.12961
[3964] D3112, para 9; KDZ601, T.18601
[3965] D3112, para 10; D2773, para 13; P2526, para 29; Kezunovic, T.13894, T.13926
[3966] D3112, para 17; D3960, para 50
[3967] D3112, para 25; Ceklic, T.35214-5; Glavas, T.11947; D3960, paras 52-3; Mijanovic, T.32403; D1203, p.1
[3968] Prstojevic, T.13690
[3969] D3112, paras 26, 34; D3960, para 69
[3970] D2852, p. 4
[3971] D1204, p. 1; Prstojevic, T.13698; D2852, p. 2; D2855, p. 3

Butmir airport for launching their offensive actions.[3972] Bosnian Serbs were not allowed to do so even for humanitarian or medical relief.[3973]

1661. After the attack, Sarajevo was under blockade and the attack had grave consequences on interethnic relations.[3974] For the duration of war, Ilidza was completely encircled and subjected to constant Bosnian Muslim attacks.[3975] In addition, the Bosnian Muslim side was reporting falsely and manipulating about the number of murdered, imprisoned and expelled Bosnian Muslims.[3976] From the Bosnian Muslim section of the city, there was indiscriminate fire and the killing of children from sharpshooters.[3977] The firing often came from civilian facilities, schools, buildings, hospitals, kindergartens and banks.[3978] The Bosnian Muslims also held 266 Serbs as hostages including minors, pregnant women and children.[3979]

1662. Acting in self defence, Bosnian Serbs responded to the Bosnian Muslim actions. In early April 1992, Himzo Selimovic sent members of the Green Berets and trucks to the Sarajevo brewery to collect the weapons from the MUP depot in Rakovica.[3980] The Ilidza SJB, under Tomislav Kovac's command, put the depot under blockade and on that occasion seized between 5000 and 10.000 firearms.[3981] This was how most of the Bosnian Serbs in the area were armed, including the Serbian TO.[3982]

1663. Bosnian Serb paramilitaries included Milorad Ulemek aka Legija's men[3983], the so called Arkanovci[3984], Branislav Gavrilovic's men[3985], Bokan's Chetniks[3986], the Oljaca Group[3987] and Sinisa Milic aka Mongo.[3988] There were problems with these paramilitary forces carrying out criminal activities. For example, Milorad Ulemek ordered his group to

[3972] D2852, p. 4 ; D2855 p.2; D2870, p. 1; D2881, p.4; D2882, p. 5
[3973] D2852, p. 4; Prstojevic, T.13676; M.Mandic T.5146
[3974] D3960, paras 55, 72
[3975] D3112, para 35
[3976] D2852, pp. 2-3
[3977] D2852, pp. 5, 7
[3978] D2852, p. 5; D2877, pp. 1-5; D2878, p. 2; D2879, pp. 1-3; D2880, pp. 1-2
[3979] Prstojevic, T.13701
[3980] D3960, para 60
[3981] D3960, para 60
[3982] D3960, para 60
[3983] D3112, para 45; P2296, para 71; D3960, paras 71, 73
[3984] P2296, paras 71-2; Prstojevic, T.12979
[3985] P2296, para 74; Kezunovic, T.13914; Sehovac, T.33048; D3665, para 58
[3986] P2296, para 73
[3987] KDZ601, T.18585-6
[3988] D3960, para 76

kill 250 to 300 Bosnian Muslims in the health centre.[3989] Tomislav Kovac, who led the SJB, heard the order and subsequently expelled Legija's men from Ilidza.[3990] Bokan and his group behaved badly and some of them were alcoholics and drug addicts causing lots of trouble.[3991] The Oljaca unit were sanctioned by their own commander.[3992] Branislav Gavrilovic's unit was involved in crimes in Ilidza such as thefts and looting, and the criminal personality of the group can be seen from the fact that 30 per cent of his men were drug addicts.[3993] The Ilidza brigade commander Popadic threatened that he would disarm the militia by force and drive away Serb volunteers.[3994]

1664. The evidence shows that Bosnian Muslims were not forcibly expelled from Ilidza. It is clear that the population movements in Ilidza in 1992 were the consequence of civil war.[3995] During the war, people fled Ilidza in panic and fear, not only the Bosnian Muslims and Bosnian Croats, but Bosnian Serbs as well.[3996] There was no organized or forced expulsion or ethnic cleansing.[3997] After the fighting, some came back so there were both Bosnian Muslims and Bosnian Croats in Ilidza and they stayed there for the duration of the war.[3998]

1665. The Ilidza SJB was also very tolerant with respect to freedom of movement.[3999] After the establishment of the Serbian authorities and Bosnian Serb SJB in Bosnian Serb parts of Ilidza municipality, nearly all the Bosnian Muslims and Croats remained in their flats and houses.[4000] The Bosnian Muslims and Bosnian Croats continued their everyday lives and work and no one disturbed them.[4001] However, following the attack on Ilidza and the death of Bosnian Serb policemen, the Serbian TO members and Bosnian Serb civilians, more non-Serbs left.[4002] No one was expelled or forced to leave the area.[4003] In

[3989] D3960, para 73
[3990] D3960, para 73
[3991] P0133, para 43
[3992] KDZ601, T.18586
[3993] P2296, paras 74-5; Glavas, T.11803, P2305, pp1-2; Sehovac, T.33026, T.33048
[3994] P6639, p. 3
[3995] D3960, paras 57, 58
[3996] D3112, para 27; D2773, para 6; Prstojevic, T.13778
[3997] D3112, para 27; Ceklic, T.35218
[3998] D3112, para 27; D2773, para 6
[3999] D3960, para 58
[4000] D3960, para 58
[4001] D3960, para 58
[4002] D3960, para 58
[4003] D3960, para 58

conjunction with this, the authorities and organs of the RS did not issue any instructions or orders to expel the non-Serbian inhabitants or ethically cleanse the territory of Ilidza, or to limit or take away their human rights and freedoms, or for any other inhumane conduct by the Serbian authorities.[4004]

1666. Due to the high influx of Bosnian Serb refugees who were coming in from the Bosnian Muslim part of the town of Sarajevo and Central Bosnia, it was necessary to place the issue of flats and accommodation under the control of the municipality.[4005] It was a big problem finding accommodation for refugees therefore abandoned flats were allocated on a temporary basis.[4006] After the war, everyone's tenancy rights were recognized and people were allowed to buy and sell these flats in accordance with the law.[4007]

1667. Therefore, the crime of forcible transfer was not committed in Ilidza.

2. Persecution

1668. Alleged acts of persecution in Ilidza arise from the alleged mistreatment of persons in detention in the KPD Butmir. Charges of killings arise from the alleged killings of at least two detainees in KP Dom Butmir on or about 7 May 1992, and the killings of 3 detainees while performing forced labour at KP Dom Butmir between 23 July and 24 November 1992.[4008]

1669. The prisoners in the KPD were treated as well as possible in the wartime conditions and there was an ongoing effort at the Butmir KPD to improve conditions.[4009] It is clear from looking at the workings of the KPD that all prisoners were treated the same regardless of ethnicity.[4010] Moreover, there was no institution in the RS that had better accommodation or food than the KPD.[4011] Among other rules, prisoners had to be treated humanely and mental health had to be looked after.[4012] Prisoners were given

[4004] D2773, para 6
[4005] D2773, para 8
[4006] D3973, p.1; D1226, pp. 4-5; D1241, pp. 1-7; Prstojevic, T.13767, T.13807-8
[4007] D2773, para 15
[4008] Indictment Schedule B 13.1 and B13.3
[4009] D3331, para 38; D3335, p. 1
[4010] D3331, para 50; D3362, pp .1-16
[4011] Skiljevic, T.36952
[4012] D3333 pp. 1-6; D3337, pp. 1-15; D3331, paras 14, 33

access to the medical assistance and basic amenities[4013] and medical assistance was provided in a timely manner.[4014] The KPD Butmir had good co-operation with the closely located Kasindol hospital.[4015]

1670. Everyone was given food regardless of religious or ethnic affiliation.[4016] Three meals were served a day and there were no complaints about the quality or quantity of food.[4017] It can be seen that Bosnian Muslim POWs in the municipality performed the same work as Bosnian Serb convicts. They worked together in the same areas, such as the kitchen, canteen, warehouse, car workshop, farm, library and concrete plant.[4018] Bosnian Serbs, Croats and Muslims worked together and there was no discrimination.[4019] Interrogations were carried out in the KPD on some prisoners and during these interrogations there was no cruel or inhumane treatment.[4020]

1671. The Butmir KPD also facilitated exchange of the POWs.[4021] Co-operation was continuous with the exchange commission in order to facilitate these exchanges.[4022] One problem that resulted in the KPD, was the problem of accommodation as a result of the high number of prisoners that could not be exchanged.[4023] In mid-December 1992, 130 POWs were brought to the Butmir KPD solely for the purpose of exchange which for a long time could not be done,[4024] due to the poor and dangerous wartime conditions. Almost all correctional institutions struggled because of the lack of funds, organizational and security problems.[4025]

1672. International humanitarian organizations were allowed to visit the Butmir KPD and deliver humanitarian aid.[4026] All of the representatives who visited the KPD made positive assessments in terms of proper treatment of the convicts and detainees under

[4013] Skiljevic, T.36784, T.36802
[4014] D3331, para 9; D3354, p. 1
[4015] Skiljevic, T.36784, T.36802
[4016] Skiljevic, T.36948
[4017] D3331, paras 8, 31
[4018] D3331, para 50; D3362, pp. 1-16
[4019] Skiljevic, T.36805; D3363, pp.1-7
[4020] Mehmet Music, T.12880
[4021] D3331, para 46; D3349, pp.1-6; D3350, pp.1-12; D3358, pp.1-8
[4022] Skiljevic, T.36782
[4023] D3331, para 15; P1126, pp. 1-2
[4024] D3331, para 15; D3334, p.1
[4025] D3105, para 9
[4026] D3331, para 31; D3334, p.1-2

both military and civilian jurisdiction.[4027] They never had any complaints.[4028] The prisoners of war were visited on a number of occasions by representatives of the ICRC who brought them clothes, shoes, toiletries and other supplies.[4029]

1673. Prosecution Witness Mehmet Music testified to the beatings of detainees in Kula.[4030] His evidence however suggests that it was done by members of a paramilitary unit.[4031] It must be emphasized that Mehmet Music's credibility is highly disputable due to the significant discrepancy between his statements in front of different courts.[4032]

a. Killings

1674. Although Mirsad Smajs stated that all newcomers to the KPD were beaten so badly that Zlatan Salcinovic died in his arms[4033] no further evidence from the OTP has been brought to this crime. Slobodan Avlijas, who worked at the KPD,clarified that they had problems with cases of drunk or drugged paramilitaries who approached the facility as it was not fenced.[4034] It was easy for them to jump over on either side to get to the prisoners.[4035]

1675. Sometimes prisoners were requested to perform work because there were severe labour shortages.[4036] Most of the people requested voluntarily to be sent to work because in this way they passed the time and heard that they would be given cigarettes.[4037] In order to avoid exposing the prisoners to risk, most of the work done took place at night.[4038] Muslim and Serb prisoners and policemen were killed or wounded in the shelling of the area around the KPD and the farm or sniping from Bosnian Muslim side.[4039] Wounded in this attacks were always taken to hospitals.[4040] The army took care of this and kept the necessary records.[4041]

[4027] D3331, paras 20, 37; D3334, p.1
[4028] D3331, paras 20, 37; D3334, p.1
[4029] D3331, para 13; Skiljevic, T.36932
[4030] P2403, para 69
[4031] P2403, para 70
[4032] Music, T.12840-77, T.12903
[4033] P0043, p. 2
[4034] D3105, para 18
[4035] D3105, para 18
[4036] D3331, para 51; D3351 pp.1-4 ; D3352, pp.1-9
[4037] D3331, para 7
[4038] D3331, para 52
[4039] D3331, para 14; Skiljevic, T.36962; D3363, pp.1-6

1676. Therefore, crimes in Ilidza municipality were committed by persons whom the local authorities could not control.

c. Novo Sarajevo

1677. The crimes alleged to have occurred in Novo Sarajevo are forcible transfer and persecution. No killings are charged for this municipality.

1. Forcible transfer

1678. Before the war, Bosnian Muslims represented 36 per cent of 78,632 people in Novo Sarajevo.[4042] Bosnian Serbs created separate authorities only in response to the threat coming from the Bosnian Muslim side and after observing the Bosnian Muslims arming themselves[4043] and preparing for war.[4044]

1679. From the beginning of the war, Bosnian Muslim snipers fired at Serbian territory and the number of civilian victims was particularly large.[4045] In May 1992, Bosnian Muslim forces launched heavy attacks on JNA units, in which several dozen JNA members were killed, many more injured and several hundreds taken prisoners.[4046] On 16 May 1992, the Bosnian Muslim forces launched a powerful attack on Pofalici in the Serbian part of Sarajevo.[4047] Many civilians and able-bodied civilians were killed.[4048]

1680. Without the consent of local authorities, Bosnian Serb paramilitary forces included the so called Seseljevci.[4049] Furthermore, at the start of the war, nine men in Grbavica created major problems for the Bosnian Muslims and Bosnian Croats in the area by maltreating and harassing them.[4050] Veselin Vlahovic aka Batko, was among

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[4040] D3331, para 14
[4041] D3331, para 14
[4042] P4994, p.30
[4043] D2549, para 6; D2673, para 11; D2683, para 12
[4044] D2379, para 5; D2379, para 6; D2673, paras 11, 13
[4045] D2379, paras 14, 17; D2651, para 5
[4046] D2379, para 21
[4047] D2379, para 23
[4048] D2379, para 23; D2549, para 16
[4049] P1148, pp. 1-3; P2523, pp. 1-4; P5706, p. 2; P5707, pp. 1-2
[4050] D2549, para 13; Radan, T.31095; KDZ310, T.9275

these nine men and he introduced a reign of terror.[4051] He looted and plundered in Grbavica in June and July 1992.[4052]

1681. With the outbreak of the war, it must be emphasized that citizens of all ethnicities went where they thought was safer away from the horrors of war.[4053] Radomir Neskovic stated that in July and August 1992, Bosnian Muslims from Grbavica II, which was a military position, were driven out.[4054] Radomir Neskovic testified that he wasn't sure whether a 3rd battalion was involved but he testified that there were certain groups and bandits present.[4055] He also noted the presence of various bandits and illegal groups, who committed crimes and maltreated individuals,[4056] including Veselin Vlahovic – Batko.[4057]

1682. Although Radomir Neskovic implied a 3rd Battalion might have been present throughout the expulsions, this vague assertion can be countered through the presence of the numerous criminal groups and bandits present in the area. More so, Radomir Neskovic's evidence must be taken in light of his bitterness when the leadership replaced him in May 1993.[4058] He was angry and left Sarajevo and moved to Teslic and then Banja Luka.[4059] Radomir Neskovic also testified that Army Major Dragan Petkovic treated the Bosnian Muslims very correctly in Grbavica.[4060] Later around August 1992, one group of men in uniforms expelled some Bosnian Muslims in Grbavica I from their homes and made them cross over to the other side but Radomir Neskovic was not aware of who these groups were.[4061]

1683. [redacted].[4062] In light of the evidence regarding expulsions it is however important to note that Veselin

[4051] Radan, T.31096 ; D1278, p. 41; D3563, para 7
[4052] Adjudicated fact 2586
[4053] D2673, para 30; D2683, para 26
[4054] P2568, p. 113
[4055] P2568, p. 113
[4056] P2568, p. 113
[4057] P2568, p. 113
[4058] Neskovic, T.14345
[4059] Neskovic, T.14345
[4060] P2568 p. 113
[4061] P2568, p. 113
[4062] [redacted]

Vlahovic and other criminals were known to wear uniforms.[4063] [redacted] [4064] However, Witness KDZ354 testified how Veselin Vlahovic and the paramilitaries changed uniforms all the time,[4065] which clearly suggests that they did not belong to the regular VRS or police units.

1684. As far as the official authorities are concerned, nothing was done under coercion when Bosnian Muslims left Novo Sarajevo.[4066] It is emphasized that the majority of Bosnian Muslims requested to leave Novo Sarajevo because they did not feel safe.[4067] Moreover, many Bosnian Muslims and Bosnian Croats, especially in the urban part of the Serbian Municipality of Novo Sarajevo stayed to live together with the Serbian inhabitants until the end of the war.[4068] According to some estimates, between 1350 and 1500 non-Serb inhabitants remained in Novo Sarajevo and they enjoyed the same rights in terms of humanitarian aid, medical assistance and security.[4069]

1685. Neither Serbian nor non-Serbian civilians had complete freedom of movement due to the danger caused by continuous sniper and shell fire.[4070] In the last year of the war, Bosnian Muslims and Bosnian Croats could cross safely over to the part of the city of Sarajevo under the control of the Bosnian Muslim authorities and people from that part could cross over to the Serbian side.[4071]

1686. On 30 September 1992, 300 Bosnian Muslims, who were living on the front lines in Jevrejsko Groblje, Gornji Kovacici and Dinji Kovacici, left Novo Sarajevo.[4072] There was shooting, firing and shelling in that area on a daily basis and therefore it was safer for the population to move.[4073] No pressure was exerted upon them.[4074]

1687. Therefore, the crime of forcible transfer was not committed in Novo Sarajevo.

[4063] [redacted]; Radan, T.31109
[4064] [redacted]
[4065] KDZ354, T.13225
[4066] Radan, T.31098
[4067] P2568, p. 113
[4068] D2673, para 30; D2683, para 25; Radan, T.31100
[4069] Radan, T.31099
[4070] D2673, para 30; D2683, para 25
[4071] D2673, para 30
[4072] Radan, T.31098, T.31128
[4073] Radan, T.31098
[4074] Radan, T.31098

2. Persecution

1688. Charges of persecution in Novo Sarajevo arise from cruel and inhumane treatment in Slavisa Vajner Cica barracks in Lukavica. The Prosecution has not lead any evidence supporting the persecutory acts apart from the adjudicated facts.[4075] This military barrack was in the SRK zone of responsibility. [redacted][4076] Therefore, any acts of persecution were done outside of the SRK chain of command or higher authorities.

d. Novi Grad

1689. The crimes alleged to have occurred in Novi Grad municipality are forcible transfer and persecution, including the killings during the takeover of the municipality and killings related to detention facilities and destruction of Ahatovic mosque.

1. Forcible transfer

1690. In 1991, 49.5 per cent out of 112,618 people were Bosnian Muslims.[4077] [redacted].[4078] The village of Ahatovici was a part of Dobrosevici Local Commune (MZ) together with the villages Bojnik, Mihaljevici, and Dobrosevici, which were predominantly Serbian.[4079] [redacted][4080] frequently visited Ahatovici.[4081]

1691. Novi Grad was relatively peaceful comparing to neighbouring municipalities, however after the murder of the wedding guest in Sarajevo in March 1992, night guards

[4075] Adjudicated fact 2630-2632
[4076] [redacted]
[4077] P4994, p. 30; D2387, para 6
[4078] [redacted]
[4079] D2387, paras 5, 7
[4080] [redacted]
[4081] D2387, para 8

started to be organized in the Dobrosevici MZ as a sign of precaution and mistrust.[4082] Bosnian Serbs erected the first barricades on the Bosnia River where initially people could pass through freely, but after a while there were regular checks[4083] [redacted]. [4084] In early March 1992, the Bosnian Muslim MUP seized Novi Grad and Novo Sarajevo police stations.[4085]

1692. At the initiative of two Bosnian Serbs meetings were held at the MZ where all the problems were discussed peacefully.[4086] These meetings stopped after 27 May 1992 when Hasan Mujkic entered the MZ with two escorts with camouflage uniforms, handheld radios, automatic pistols and green berets.[4087] Hasan Mujkic called on all Bosnian Muslims to depart from the meeting and they did so.[4088]

1693. At the end of May 1992, a convoy of women, children and elderly left Ahatovici for the nearby Municipality of Visoko, but were intercepted and sent back to Ahatovici by Bosnian Serb soldiers.[4089] The reason that they were not allowed to pass was that Bosnian Serbs suspected that this could be a preparation for an attack on Bosnian Serb settlements because Bosnian Serb authorities in Rajlovac thought that if the women and children were evacuated the Bosnian Muslims could do whatever they wanted.[4090]

1694. Additionally at the end of May 1992 the residents of the village of Ahatovici started digging trenches and building bunkers around the village.[4091] They also had three automatic weapons in three trenches pointed towards the village of Dobrosevici.[4092]

1695. On 29 May 1992, Bosnian Muslims attacked Krstac hill, north of Ahatovici.[4093] Furthermore, there were Green Berets and other paramilitary formations that attacked parts of the MZ, but they were repelled and encircled in Ahatovici. The VRS issued an

[4082] D2387, para 9
[4083] P2314, para 17
[4084] [redacted]
[4085] D3112, para 17
[4086] D2387, para 11
[4087] D2387, para 12
[4088] D2387, para 12
[4089] Adjudicated fact 2608
[4090] D2387, para 14
[4091] Dzino, T.29902; KDZ041, T.12080
[4092] Mujkic, T.12432
[4093] D2387, para 15

ultimatum for them to surrender.[4094] During 29 and 30 May 1992, fire was opened on Bosnian Serb side from 82-millimetre mortars.[4095] In the beginning of June 1992, the Green Berets attacked the villages of Dobrosevici, Mihaljevici and Golubuvoci.[4096] They were fought in the village of Ahatovici, where the HOS members from Kiseljak aided them.[4097] At the end Bosnian Serb forces defeated the Green Berets and liberated the village.[4098]

1696. A very small number of Bosnian Muslim combatants that were caught or killed around Ahatovici were locals.[4099] The ones that were caught were given first aid and everything during that period was carried out according to the Geneva Conventions.[4100] The captives that were taken to Rajlovac were provided with food and accommodation in the new part of the Tehnogas - Kiskana building where members of the local police station secured them.[4101] The Centre for social work was tasked with providing documents to all captured persons and all of them were prescribed an ICRC family parcel.[4102] [redacted].[4103]

1697. After the hostilities in Ahatovici there were further Bosnian Muslim attacks on Serb settlements like Brijesce and Bijesko Brdo in the Municipality of Rajlovac.[4104] There was constant danger from continuous Bosnian Muslim sniper fire which was aimed at everything that moved.[4105]

1698. After the takeover of Ahatovici most of the Bosnian Muslim citizens were evacuated.[4106] There were also people that remained.[4107] There were some civilians that wished to be taken to Sarajevo.[4108] There were Bosnian Muslim and Bosnian Croat

[4094] P2331
[4095] Dzino, T.29902
[4096] P2333
[4097] P2333
[4098] P2333
[4099] D2387, para 27
[4100] D2387, para 29
[4101] P5484, pp.1-2
[4102] P5484
[4103] [redacted]
[4104] P2644
[4105] P2644
[4106] Dzino, T.29871-2
[4107] Dzino, T.28973
[4108] Dzino, T.29872

families that remained through the entire war in the municipality and some even joined the VRS on a voluntary basis.[4109]

1699. Therefore the crime of forcible transfer was not committed in Novi Grad.

2. Persecution

1700. Charges of persecution in Novi Grad arise from alleged killing of at least 15 men after they were captured fleeing from the village of Ahataovici on or about 29 May 1992. Furthermore the charges of persecution arise from the alleged mistreatment of prisoners in the detention facility Rajlovac barracks, killing of a number of men from the cisterns near the Rajlovac barracks, between 1 and 14 June 1992, killing of at least 47 men taken from the Rajlovac camp near Srednje in Ilijas municipality on or about 14 June 1992 and destruction of Ahatovici mosque.

a. Killings during or after takeover

1701. [redacted]. [4110] While they were trying to make a breakthrough to a nearby forest that lead to Visoko, fire was opened on them resulting in some men getting killed and some wounded.[4111] [redacted][4112] [redacted][4113] [redacted].[4114]

[4109] D2387, para 68
[4110] [redacted]
[4111] KDZ041, T.12064-5
[4112] [redacted]
[4113]
[4114]

b. Mistreatment of prisoners at the Rajlovac barracks

1702. [redacted].[4115] [redacted] [4116] [redacted] [4117] [redacted] [4118] It is alleged that in the cisterns there was around 15 cm waters that accumulated because it rained, which meant that the detainees could not sleep, or sit.[4119]

1703. This alleged detention facility was in the SRK zone of responsibility. [redacted] [4120] Therefore, any acts of persecution were done outside of the SRK chain of command or higher authorities. Mile Stojanovic, one of the commanders of the camp, was a part of the military police that caused problems. The military police was disbanded and changed as a result.[4121] The same argument refutes other alleged crimes in this, or any other facility in the SRK zone of responsibility.

c. The killing of a number of men from the cisterns near Rajlovac barracks

1704. [redacted].[4122] The commander of the guards at the cistern and the person in charge of exchanges was Mile Stojanovic.[4123] [redacted].[4124] Two people were allegedely killed

4115 [redacted]
4116 [redacted]
4117 [redacted]
4118 [redacted]
4119 KDZ041, T.12068-9
4120 [redacted]
4121 D3602, pp.1-3
4122 [redacted]
4123 KDZ041, T.12064; [redacted]
4124 [redacted]

at the cistern due to past feuds and personal problems between the cistern personnel and detainees.[4125] The alleged maltreatment continued throughout 14 June 1992.[4126]

1705. Most of the torture and beatings of detainees was done by Sok, Zuti and other men who belonged to paramilitary groups.[4127] Mile Stojanovic was the head of the military police that caused huge problems and it had to be disbanded.[4128] For the reasons stated previously about the SRK policy regarding POWs, these incidents were done outside of the chain of command.

d. The killing of at least 47 men taken from Rajlovac camp near Srednje in Ilijas municipality

1706. [redacted][4129][redacted][4130][redacted][4131][redacted][4132]

1707. [redacted][4133] Boro Radic was a man that often acted out of his own initiative and had psychological problems.[4134]

1708. KDZ601 testimony suggests that Brne's group led by Branislav Gavrilovic carried out the massacre.[4135] This was a paramilitary group and acted on its own behalf.[4136] The military, political and police ministry ordered for this unit to be disbanded, or even liquidated because they were involved in crimes such as thefts and

[4125] KDZ041, T.12069-70
[4126] [redacted]
[4127] [redacted]
[4128] D3602, pp.1-3
[4129] [redacted]; KDZ041, T.12071
[4130] [redacted]
[4131] [redacted]
[4132] [redacted]
[4133] [redacted]
[4134] D2678, paras 15, 18
[4135] KDZ601, T.18590-1
[4136] KDZ601, T.18575

looting.[4137] A part of this unit was using drugs, drinking alcohol excessively and committing crimes.[4138]

1709. There is evidence that suggests that the attack on the bus was carried out by Bosnian Muslim forces thinking that the bus was full of Serbs.[4139] Bosnian Muslim forces in the region possessed zoljas[4140] that were used in the attack on the bus.

1710. Due to the said contradicting evidence, it is impossible to the identity of the perpetrators. However, it is certain that the authorities did not order this crime to be committed.

e. Destruction of Ahatovici mosque

1711. The mosque in Ahatovici was destroyed in June 1992.[4141]

1712. There is no evidence that indicates who blew up the mosque. The OTP did not present any evidence regarding this incident. Stojan Dzino testified to the inner explosion caused by the storage of explosives in the mosque.[4142] Consequently if the mosque was used for military purposes it automatically lost its protection awarded by Article 3(d) of the ICTY statute.[4143]

1713. Therefore the crimes committed in Novi Grad Municipality were committed outside of the chain of command by rouge elements or Bosnian Muslims themselves.

e. Pale

1714. The ethnic composition of Pale was approximately 60% Serbs, 33-36% Bosnian Muslims and 5% Croats.[4144] The SDS won the 1990 general elections, receiving 65% of the votes for the Municipal Assembly; the SDA 20% and the League of Communists of

[4137] P2296, para 74
[4138] Sehovac, T.33026
[4139] D1088
[4140] D2387, para 27
[4141] Dzino, T.29866
[4142] Dzino, T.29867
[4143] Strugar TJ, para.32
[4144] P0733, para 11

Bosnia and Herzegovina about 15% of the votes.[4145] An inter-party agreement on the division of power was created, reflecting the ethnic composition of Pale.[4146]

1. Forcible transfer

1715. From 1991 the SDA formed paramilitary organizations causing fear and anxiety among the Serbs.[4147] Bosnian Muslims in Pale and its environs began illegally procuring weapons.[4148] Religious institutions and persons were also used to procure weapons.[4149] The JNA security organs discovered the theft of weapons, mines and explosives from their barracks in Renovica.[4150] The perpetrators were JNA sergeants and Bosnian Muslims, who wished to arm their paramilitary formations.[4151]

1716. In violation of the inter-party agreement, the SDA appointed one of its own as Commander of the Pale SJB. Done in an attempt to secure control over municipal security structures, this move was met with widespread criticism.[4152]

1717. Sometime in early 1992, all Serbian policemen in the Sarajevo Stari Grad SJB were disarmed and expelled, relocating to Pale SJB.[4153] During the same period, Bosnian Muslim employees of the Pale SJB started leaving voluntarily.[4154]If the Chamber is minded to conclude that they were removed, it must be inferred that it was done in retaliation for the expulsion of the Serb Stari Grad policemen. However, some of them expressed a wish to temporarily cease employment due to the problems that had arisen in the Sarajevo.[4155] Their request was approved on the condition they return their badge and personal official weapon and were permitted to retain their private weapons.[4156]

[4145] D4368, para 32; P0733, para 12
[4146] D4368, para 33
[4147] D4368, para 35
[4148] D2850, para 14; Hrsum, T.32957
[4149] D2850, para 14
[4150] D2850, paras 14, 18; Hrsum, T.32956
[4151] D2850, para 14; D4368, paras 36; Hrsum, T.32956
[4152] D4368, paras 34
[4153] D2850, para 11; Hrsum, T.32952
[4154] Hrsum, T.32923
[4155] Hrsum, T.32923
[4156] Hrsum, T.32924

1718. After 4 April 1992, Bosnian Muslim paramilitary units blockaded Pale municipality from all sides, leaving only the road to Sokolac open.[4157] The same units attacked the Serbian settlement of Lapisnica, expelling its inhabitants and plundering their property; wounding a driver who tried to pass along the Sarajevo-Pale road.[4158] After this, the Pale SJB intervened to protect the local Serbian population.[4159] Some Serbian families fled the area when their property was looted and destroyed.[4160]

1719. From 22 May 1992, the SJB launched an operation to disarm groups, and impose public law and order in the Renovica and Praca area.[4161] Local Bosnian Muslim representatives agreed with the Chief of the Pale SJB to hand over their illegal weapons peacefully.[4162] Despite this agreement, police came under strong fire during the disarmament process in the Renovica area.[4163] Police arrested about 30 armed persons and seized a large quantity of weapons and ammunition.[4164] After these events, Malko Koroman, visibly distressed with tears in his eyes, publicly called the armed Bosnian Muslims in the area of Pale to surrender illegal weapons to the Serbian authorities by 23 May 1992.[4165]

1720. Bosnian Muslims requested permission to leave the municipality, through their elected representatives and by filing individual applications.[4166] Bosnian Muslims wrote to the Pale municipal authorities and held talks with representatives of the RS organs.[4167] There was information that Bosnian Muslims did this under directive from the Bosnian Muslim authorities in Sarajevo, in order to better facilitate their hostile takeover.[4168]

1721. In order to prevent the departure of the Bosnian Muslims, Serbian authorities guaranteed the civic rights of all people, especially the safety of people and their property

[4157] D2850, para 13
[4158] D2850, para 13
[4159] D4368, para 39
[4160] D0019; D2850, para 18
[4161] D0015; D2850, para 19; D4368, para 43; Hrsum, T.32956
[4162] D2850, para 19; D4368, para 43
[4163] Two policemen were killed and five sustained gunshot wounds. D0015; D0016; D2850, para 19; D4368, para 43; Hrsum, T.32956
[4164] D2850, para 19
[4165] In response 180 hunting rifles, 70 hunting carbines, 71 hand guns and 3500 bullets of different calibers were surrendered to the police station in Pale. Crncalo, T.1217;D0016; D0017; D0018; D2850, para 19
[4166] D2533, pp. 1-2; D2850, para 22
[4167] D2850, para 22
[4168] D2850, para 22; D4368, para 47

regardless of ethnic or religious affiliation.[4169] Bosnian Muslims continued to demand that the municipal authorities facilitate their departure. The Pale Municipal Assembly issued a decision establishing conditions governing the change of place of residence; acknowledging citizens constitutional right to freedom of movement and residence.[4170] Following this decision, the Pale Security Station granted requests of citizens of Pale to be allowed to move out.[4171] Individual property records were made of each applicant so that available housing could be given to Serbian refugees for temporary use[4172] and protected by the authorities.[4173] The Serbian local and republican authorities treated the move as temporary.[4174] These policies also applied to those Bosnian Serbs who moved from Pale municipality.[4175]

1722. Those Bosnian Muslims whose requests had been approved were transported in convoys to the line of separation in the surroundings of Sarajevo; these convoys were escorted by police and arrived without incident.[4176]

1723. On 15 May 1992, a convoy of several trucks, containing about 400 Bosnian Muslim men, arrived in Pale, escorted by police from Bratunac.[4177] The men were accommodated at the gym in Pale, due to lack of alternate accommodation,[4178] where they stayed for three to four days.[4179] The Serbian Pale authorities and the Red Cross provided them with food and blankets.[4180] There was "no record or information that these citizens had been abused"[4181] nor had any repressive measures been applied against any individual by the police.[4182] Not wanting to return them to an active war zone against their will, Prime Minister Djeric offered the men freedom of choice regarding their

[4169] D0028; D4368, para 47
[4170] D0031, p. 4-5; D2530, para 6; D2850, para 22; D4368, para 48; P5090; Hrsum, T.32928, 32960
[4171] A report of the Pale Public Security Station, compiled on 6 July 1992, showed that of the 4,356 Bosnian Muslims who lived in Pale municipality, 1,594 Bosnian Muslims had left after the 18 June 1992 decision. D2534; D4368, para 48; P5428
[4172] D2850, para 22; D4369, pp. 1-2
[4173] D0034, p. 1; D2535; D4369; D4701; D4737
[4174] D0033; D4368, para 48; Hrsum, T.32961
[4175] D4368, para 48
[4176] D2530 para 6; D4368, para 48; P5428
[4177] D2850, para 17; D4368, para 41
[4178] Sarac, T.47148
[4179] D4368, para 41
[4180] Sarac, T.47148
[4181] D2850, para 17
[4182] Hrsum, T.32939

movements.[4183] The men chose to leave and were transported under police escort to the line of disengagement in Visoko municipality, controlled by the Bosnian Muslim forces.[4184] The Pale authorities never discovered why these people were transferred to Pale.[4185]

1724. There were a large number of Serbian refugees in Pale.[4186] The Crisis Staff for the Acceptance of Refugees, together with the Red Cross, started distributing food despite shortages in the municipality.[4187] The refugees were placed in schools, holiday and private homes and resting places.[4188]

1725. After the war, all immoveable property was returned to its original owners, regardless of ethnicity.[4189]

1726. In some villages, the entirety of the Bosnian Croat and Bosnian Muslim population chose to remain throughout the war.[4190]

2. Persecution

a. No concerted plan to kill or perpetrate cruel and inhuman treatment at the Culture Centre/Dom Culture (referred to as the 'Gym')

1727. Between May and August 1992, a number of men were allegedly held in the Culture Centre in Pale.

1728. In early June 1992, contrary to the agreement with the ABiH regarding freedom of movement in the zone of Zepa, about 45 VRS soldiers originating from Pale were ambushed and killed by the Muslim forces. When their bodies arrived in Pale, tensions arose.[4191]

[4183] Djeric, T.28044-6
[4184] D2850, para 17; D4368, para 41
[4185] D4368, para 41
[4186] At 20 May 1992, 2500 families or 15000 people were registered as refugees, D0009; D0010; D0011
[4187] D0009; D0010; D0012
[4188] D0009; D0010; D0012
[4189] D2530 para 10; D4368, para 48
[4190] D4368, para 49
[4191] Crncalo, T.1239-42; D2850, para 20; D2530, para 4

1729. Hajrudin Karic,[4192] a detainee, stated that the police 'always treated [the detainees] correctly'.[4193] Clarifying that those who beat the detainees were 'men dressed in military uniforms or reserve policemen' who would enter the gym,[4194] these men "were not proper soldiers" but were "just looking for anybody just to take it out on them."[4195] He was beaten either once or twice; on the second occasion it was prevented by Milomir Tepes, a guard.[4196] Smajs claims that drunken soldiers who would come into the gym at night beat prisoners,[4197] adding that both Malko Koroman and Ratomir Kojic protected Bosnian Muslims from abuse.[4198] [redacted].[4199] [redacted].[4200]

1730. Hajrudin Karic claims to have witnessed the deaths of 3 individuals.[4201] He testified that they were killed by beatings perpetrated by the paramilitary unit known as 'Kusic's specials'.[4202] However, Karic is the only witness who testified that these killings occurred at the gym. When Karic arrived at the gym, he estimated he was detained with around 100 others; when he left (for Kula Prison), only 34 individuals remained.[4203] His belief that people were purposely killed at the gym is based on pure assumption, stating that when people were taken from the gym 'most of the times, they never returned in to the room.'[4204] Considering the enormous number of orders by the Pale authorities demanding protection of non-Serbs, as discussed previously, a more reasonable reference is that these people were exchanged.

[4192] Arrested due to his close relationship with his brother-in-law who had committed crimes against civilians in Bukvice; P2839, para 23
[4193] P2839, para 28
[4194] P2839, para 28
[4195] Karic, T.15367
[4196] P2839, paras 33-34; Karic, T.15304
[4197] P0043, p. 10
[4198] P0043, p. 6
[4199] [redacted]
[4200] [redacted]
[4201] Nasko Smajic, Smail Pandzic and Alija Jusufvic, who were beaten on the 6 of July 1992; Pandzic and Jusufvic died that day, while Smajic succumbed to his injuries two days later. P2839, paras 38-40
[4202] He identified some members of the team as Srdan Knezevic, owner of Australija Café, Dragan Vukovic, Captain of the JNA, an individual known as 'Joja' and Lazar Kusic. Schedule B14.1; P2839, para 43
[4203] P2839, para 30
[4204] P2839, para 30

1731. Karic claimed that the food provided to prisoners was a little as one slice of bread per day;[4205] another detainees testimony oscillates between being provided with nothing and provided with water and sandwiches regularly.[4206] However, Hrsum refuted these claims testifying that the same food was being delivered to the policemen on duty in the station, as was delivered to the detainees at the gym.[4207]

1732. Smajs stated that there was one toilet and two beds for every 10 people at the gym, claiming that prisoners could only use the bathroom if given permission.[4208] This evidence is contradicted by Karic who stated that there was 'a toilet and sink in a room attached to the gym that they were allowed to use' them,[4209] making no reference to seeking permission.

1733. One witness testified that they were unwell upon arrival at the gym and was immediately provided with care, from the medical staff present in the gym. [4210]

1734. Claims about harsh conditions and lack of food are strenuously denied by Sarac.[4211]

1735. Except the events described above regarding the Dom Culture in Pale there were no other prisoners at the sport complex.[4212] In August 1992 there were no prisoners in Pale.[4213]

b. No destruction of Cultural Property by Serb authorities[4214]

1736. Zdravko Cvoro stated that property was "preserved as long as I was in power and while the Bosnian Muslim population was still present". There was significant conflict in the areas where the mosques were located.[4215] The local Catholic Church

[4205] P2839, para 25
[4206] P0043, pp. 6, 10
[4207] Hrsum, T.32940-1
[4208] P0043, p. 10
[4209] P2839, para 25
[4210] KW012, T.44748
[4211] D4368, para 56
[4212] D4368, para 56
[4213] D4368, paras 41, 58
[4214] Schedule D4: the destruction of Praca, Podvitez and Bogovici mosques.
[4215] Cvoro, T.30959

remained intact.[4216] There is no evidence that the local authorities either ordered or participated in other way in the destruction of the mosques.

f. Vogosca

1737. The crimes alleged to have occurred in Vogosca municipality comprise of forcible transfer and persecution, including the alleged killings related to detention facilities.

1. Forcible transfer

1738. Before the war, Bosnian Muslims presented 49.4 per cent of 19.970 people living in Vogosca.[4217]

1739. Bosnian Serbs formed their own authorities due to the discrimination in the common organs, as well as the unwillingness of the Bosnian Muslim political representatives for compromise.[4218] The Serbian Municipality of Vogosca was constituted in March 1992; the legal basis for its formation was the BiH Constitution, and the laws governing the field.[4219]

1740. Both Bosnian Serbs and Bosnian Muslims were in control of areas where they were in majority, respectively.[4220]

1741. In mid-April 1992, the Bosnian Muslim forces surrounded, completely unprovoked, the unarmed Bosnian Serb residents in Grahoviste, who are still unaccounted for.[4221] This was followed by an attack on the Pretis munitions factory by Bosnian Muslim forces.[4222]

1742. The war started on 2 May 1992.[4223] On numerous occasions, Bosnian Muslim forces shelled predominantly or exclusively Bosnian Serb parts of Vogosca, wounding and killing civilians.[4224]

[4216] D2530, para 15
[4217] P4994, p. 32
[4218] D2678, paras 3, 21
[4219] D2678, paras 4, 8
[4220] D2540, para 4
[4221] D2678, para 7
[4222] D2678, para 7
[4223] P2361, para 11
[4224] D2678, para 22; D2540, paras 10-1, 22

1743. As a result of the breakdown in security, lack of trust and fear, barricades and checkpoints were set up throughout Vogosca by both sides.[4225] Out of the fear for their lives, Bosnian Serbs organized guards in the village of Grahoviste.[4226] [redacted].[4227]

1744. Without the consent of local authorities, Bosnian Serb paramilitary forces included the so-called Seselj's men, Boro Radic's group and Berovic's unit.[4228]

1745. There is no evidence that Bosnian Muslims were forcibly expelled from Vogosca. Seeing that the differences between Bosnian Serbs, Bosnian Muslims and Bosnian Croats will not be solved by agreement, people began to relocate on their own accord to the areas where they were in majority and where they thought they would be safer.[4229] "Population relocation took place on all sides throughout the war, but this was solely a result of the security problems arising from the chaos".[4230] All citizens, regardless of their nationality, made their own decisions whether to remain living in the municipality or to move out.[4231]

1746. Incidents, however, did occur,[4232] but they were committed by paramilitaries outside of the control of local authorities.

1747. After 21 May 1992, permits to leave the municipality of Vogosca had to be obtained prior to the departure of people to the area under the control of Bosnian Muslims.[4233] It is reasonable to infere that the intention of this measure was to keep track the population movement and to ensure that the departures were officially registered, which would enable easier return of the refugees after the end of war.

2. Persecution

1748. Charges of persecution in Vogosca arise from the alleged killings and mistreatment of persons in detention in Planjo's house in Svrake and "Bunker" in

[4225] D4027, para 3
[4226] D2540, para 9
[4227] [redacted]
[4228] P2361, paras 14, 16; KDZ020, T.12625
[4229] D4027, para 4
[4230] D4027, para 5
[4231] D4028, p. 5
[4232] P2361, paras 14, 47, 70, 85
[4233] P2365, p. 1

Vogosca, appropriation or plunder of property, and destruction of cultural monuments and sacred sites.

a. Killings

1749. According to Eset Muracevic, the prison staff and the paramilitaries were allegedly involved in several killings.[4234]

1750. He also alleged that the guards selected people for forced labour and to act as human shields, some of which resulted in deaths.[4235]

b. Mistreatment

1751. As for the living conditions in the detention centres, the allegations are that they were harsh. However, there was general poverty and misery and it was impossible to ensure better conditions for the detainees.[4236] Those imprisoned shared the harsh fate of the Bosnian Serb population and army.[4237]

1752. It is also alleged that prison guards, as well as the so-called Seselj's men and weekend Chetniks were involved in the maltreatment of prisoners,[4238] as well as that guards and members of Boro Radic's group were involved into sexual abuses and forcing women into prostitution.[4239]

1753. There is no evidence that the killings or the mistreatment was either ordered to the paramilitaries or the guards or that they reported about them to their superiors.

c. Appropriation or plunder of property

1754. By signing documents, transferring ownership to the Bosnian Serb authorities in order for them to be permitted to leave the municipality it was intended for the property to be preserved by preventing its misuse by the problematic individuals and organized armed groups.[4240] This condition also suggests that there were no explusions, because

[4234] P2361, para 14, 56, 70, 83, 85-7
[4235] P2361, paras 49, 53, 55-6, 74, 85
[4236] D4027, para 11
[4237] D4027, para 11
[4238] Adjudicated facts 2654; P0124, p. 8; P2361, paras 44-6, 87; R. Mujkic, T.12385
[4239] P2361, paras 29-30
[4240] D4027, para 14

non-Serbs could otherwise not leave the municipality. As soon as this regulation ceased to be valid, its consequences were annulled and all abandoned property returned to the original owners.[4241] The inventory of all vacant facilities that was made helped immensely in returning the houses to people upon their return to Vogosca.

1755. Individual incidents of appropriation or plunder of property, did occur,[4242] but they were committed by people outside of control of local and republican authorities

d. Destruction of cultural monuments and sacred sites

1756. The Prosecution failed to provide evidence as to the destruction of Ugorsko mosque, Karauka-Donja Vogosca mosque and Semizovac church.

4. South-Eastern Bosnia

a. Foca

1757. There were approximately 21,500 Bosnian Muslims in Foca Municipality, amounting to 52% of the total population.[4243]

1. Forcible transfer

1758. Due to tensions within the municipality local Bosnian Serbs lodged a request before the BiH Constitutional Court to ban the registration of nationalist parties; this was unsuccessful.[4244] After the founding of the SDA on 25 August 1990,[4245] party rallies were held which were marked by extremist anti-Serb rhetoric.[4246] The SDS was not formed until 1 September 1991;[4247] party rallies, attended by President Karadzic and other

[4241] D4027, para 14
[4242] P2361, p 19
[4243] KDZ239, T.18937-8
[4244] Pljevaljcic, T.32289-90
[4245] Mladjenovic, T.36707-8
[4246] D2767, para 2; D3314, para 6; D3320, pp. 3-4; Mladjenovic, T.36708-10
[4247] D2767, para 3; D3314, para 16; Mladjenovic, T.36624

Bosnian Serb leaders, promoted a spirit of tolerance.[4248] Prominent SDA activists were invited as guests of honour and given an opportunity to address the audience.[4249]

1759. From 1989, Bosnian Muslims began storing weaponry on the premises of the company *Focatrans*; dismissing the majority of Bosnian Serb employees, who went on strike.[4250] On 11 September 1990 police officers were sent from Sarajevo, these officers used extreme violence to disperse the Serb protesters, resulting in many casualties.[4251] Inter-ethnic relations drastically deteriorated after the so-called *Focatrans* affair.[4252]

1760. Foca was one of centres for general Muslim arming.[4253] Cengic and Sahinpasic, an SDA deputy from Foca, procured weapons.[4254] Already on 1 August 1990, the SDA had armed formations.[4255]

1761. Bosnian Muslims began appropriating weapons from depots in Gorazde and Ustikolina, smuggling in large quantities of weapons and storing large quantities of weapons and ammunition in a nearby abandoned railway warehouse.[4256] They also assembled hand-made weapons in a local wire-manufacturing company.[4257]

1762. Bosnian Muslims continued establishing paramilitary formations and conducting intensive military training in public and religious buildings throughout 1991.[4258] The first Serb casualty in the war was killed from the Aladza mosque.[4259] The formations were under the command of the ABiH;[4260] achieving a high level of military organization through the recruitment of prior JNA officers, MUP personnel and members of foreign military formations.[4261] These formations were said to be the best organised, trained and equipped in BiH.[4262]

[4248] D2767, para 3; D3314, para 16; Mladjenovic, T.36624-5
[4249] D2767, para 3; Mladjenovic, T.36624, T.36707
[4250] Pljevaljcic, T.32293-5; Vujicic, T.32125
[4251] P6079, pp. 1-2; D2767, para 4; Vujicic, T.32117-8
[4252] D3314, para 9; Mitar Rasevic, T.46762
[4253] D0246 p. 6
[4254] D0246 p. 7
[4255] D0246 p. 7
[4256] D0299, pp. 2-4; Pljevaljcic, T.32291-2; Vujicic, T. 32124-5
[4257] Pljevaljcic, T.32292
[4258] Such as the Green Berets; D2767, paras 22-4
[4259] Pljevaljcic , T.32304
[4260] D2767, para 23
[4261] D2739, p. 1
[4262] Numbering up to 2,000 men; D2739, p. 3

1763. Bosnian Serbs began arming themselves with hunting rifles and light weapons, in order to protect their families from the impending conflict.[4263] The only Bosnian Serb artillery weapons were the defective weapons left behind in the JNA depots.[4264] The first Serb units were formed in April 1992.[4265] Around 15 April, approximately 60 volunteers from Belgrade arrived to defend civilians in Foca; these volunteers withdrew with the JNA.[4266]

1764. Due to the SDA's persistent obstruction of the Municipal Assembly,[4267] the municipality Executive Board took over the decision-making functions for a short period.[4268] As clashes became more frequent, the Crisis Staff replaced the Executive Board on 3 April 1992.[4269] They were tasked with protection of citizens, preservation of resources and organization and management of supplies.[4270] The SJB was divided on 7 April 1992.[4271]

1765. In early April 1992 the Bosnian Muslims took control of Radio Foca and used it to disseminate anti-Serb propaganda.[4272] Bosnian Muslim barricades were established around the municipality,[4273] resulting in a complete blockade on 7 April 1992.[4274] In response to this threat, Bosnian Serbs established guard around important Bosnian Serb locations and institutions.[4275]

1766. Inter-party negotiations on the division of the municipality were concluded on 8 April 1992.[4276] The agreement provided for joint police patrols and observer groups, the removal of barricades, a division-working group, a ban on armed units, looting and robberies and the introduction of a ceasefire.[4277] Both municipalities were to have their own administration and police, and no one was to be expelled. All villages, regardless of

[4263] Vujicic, T.32124-5
[4264] D2767, para 27
[4265] Vujicic, T.32126-7
[4266] D3314, para 43
[4267] D3314, para 20; Mladjenovic, T.36626-7, T.36684
[4268] D3314, para 20
[4269] D3314, para 20; P3333, p. 39
[4270] D1684; D3314, para 26
[4271] Adjudicated fact 732
[4272] V. Maric, T.35625
[4273] Pljevaljcic, T.32286, T.32305
[4274] Pljevaljcic, T.32286-7
[4275] e.g. in the neighbourhood of Cerezluk, where the Crisis Staff and Orthodox Church were located; Pljevaljcic, T.32329
[4276] D3314, para 50; D3317; Mladjenovic, T.36607
[4277] D3317

ethnicity, were to be protected and their rights guaranteed; relocation was not seen as necessary[4278]

1767. The war started on 8 April 1992,[4279] prior to this date there had been a number of exchanges of fire resulting in Bosnian Serb casualties.[4280] On this date, Bosnian Muslims took control of the hills surrounding the town and launched a heavy shelling attack on the Bosnian Serb areas where the Serb Crisis Staff and the Orthodox Church were located.[4281] The municipal authorities introduced emergency measures to promote a calming of tensions, but were unsuccessful.[4282] Foca was freed by Bosnian Serb forces after 10 days and was defended by local,[4283] self-organised non-professional personnel.[4284] They did not receive outside help until the founding of the VRS.[4285]

1768. There was a large numbers of Bosnian Muslim and Bosnian Serb paramilitaries in Foca; however, the Bosnian Serb paramilitaries did not cooperate with the civilian or military authorities, which declared that no paramilitary groups were welcome in Foca.[4286] Bosnian Serb paramilitary units were more interested in looting than fighting;[4287] which was condemned by local authorities.[4288] Also present within the municipality, were the Bosnian Serb White Eagles. This group committed arson against a Bosnian Serb village near Foca who were forced to leave under the threat of arrest.[4289] In July 1992, paramilitaries detained and abused Serb municipal and police officials outside the Foca SUP building.[4290] Local authorities had limited success in expelling paramilitary groups.[4291]

[4278] D3314, para 50
[4279] Adjudicated fact 739
[4280] Tensions had skyrocketed after the publications of the results of the BiH independence referendum on 6 April 1992 and rumours that Bosnian Muslims intended to liquidate prominent Serbs; [redacted] ; KDZ379, T.18877; Pljevaljcic, T.32137
[4281] Utilising hand-held projectiles, hand-made multi-rocket launchers and mortars and focusing on the Crisis Staff building and the Orthodox Church; D2767, paras 5, 26, 29; D3319; Mladjenovic, T.36704; Vujicic, T.32122
[4282] D3314, para 24; Mladjenovic, T.36634-5, T.36704
[4283] Adjudicated fact 745
[4284] Mitar Rasevic, T.46816; Pljevaljcic, T.32288, T.32306-7, T.32342
[4285] Support was limited due to the difficulties in reaching Foca through Bosnian Muslim-held Gorazde; Mitar Rasevic, T.46816; Pljevaljcic, T.32288, T.32306-7, T.32327-8, T.32342, T.32347-8
[4286] D2767, para 9; Vujicic, T.32124
[4287] D2767, para 10; D3314, paras 42-3
[4288] D3314, para 43
[4289] KDZ379, T.18889-90
[4290] D3314, para 44; Mitar Rasevic, T.46813
[4291] Mitar Rasevic, T.46811-5; Pljevaljcic, T.32314; Vujicic, T.32124

1769. Fighting spread to villages within the municipality;[4292] Bosnian Serb forces only engaged in defensive action.[4293] Superiors instructed conscripts on how they were expected to behave.[4294] The Serb municipal authorities advised civilians to take shelter in the *Partizan* sports hall in Foca for their own safety, and many followed that advice.[4295] The wider municipal territory was liberated in a matter of months.[4296]

1770. On 19 April the civilian authorities returned[4297] and made great efforts to improve the living conditions of all ethnicities. A republican Commissioner was tasked with helping re-establish the local government.[4298] Refugees of both ethnicities were provided with accommodation and convoys were organized for those who wished to leave the municipality.[4299] None were forcefully driven away and those who had left during the conflict were invited to return.[4300] Buildings were transformed into safe houses for civilians of both ethnic groups; the municipal authorities set up guards and rallied Serb volunteers to protect them.[4301] Measures were taken to protect abandoned properties.[4302] The hospital admitted patients for treatment regardless of ethnicity both during and after the fighting.[4303]

2. Persecution

a. Killings

1771. Jelec village[4304] was a major Bosnian Muslim and Patriotic League stronghold, from which frequent terrorist attacks were launched, making the village a legitimate military target.[4305] Several attempts at peace negotiations were unsuccessful; as such, the Bosnian Serb TO was forced to attack Bosnian Muslim units in order to liberate the

[4292] Vujicic, T.32096
[4293] Vujicic, T.32133
[4294] Vujicic, T.32133
[4295] Vujicic, T.32096
[4296] Pljevaljcic, T.32306-7
[4297] Mladjenovic, T.36636
[4298] D3314, para 20
[4299] P2642, pp. 1, 2; Mladjenovic, T.36693; Pljevaljcic, T.32303
[4300] KDZ379, T.18874
[4301] Pljevaljcic, T.32303-4, T.32315
[4302] D3314, para 32; Mladjenovic, T.36615-6, T.36679, T.36697-8
[4303] D3128, paras 11-4, 17-8, 26; D3130; D3132, p. 1; P6080; Veljko Maric, T.35607-8, T.35571, T.35576, T.35625
[4304] Schedule A5.2 between 1 and 5 May 1992
[4305] D3314, para 41

village.[4306] Jelec's status as a major enemy stronghold and legitimate military target means that the resulting casualties were collateral damage in a lawful military operation.

1772. On 24 April 1992 the Bosnian Muslims of the village of Trosanj signed an agreement to surrender their weapons to the Serb Municipality of Foca,[4307] but soon violated it. In response to the violation of this agreement, local Bosnian Serb soldiers attacked the village in early July 1992.[4308] It is reasonable to infer that the alleged victims were collateral damage in a lawful military operation.

b. Killings[4309] and cruel and inhuman treatment[4310] at KP Dom Foca

1773. After the outbreak of the war, the KPD was placed under Army control.[4311] The KPD and its personnel were regulated by a strict set of internal rules and legal provisions;[4312] these were reinforced by Mitar Rasevic, Chief of Security service,[4313] who personally instructed the guards in this regard.[4314] Failure to adhere to these regulations resulted in disciplinary action; serious breaches were punished with solitary confinement.[4315] Rasevic regularly checked on detainees in solitary confinement; none of who complained of maltreatment[4316] or inadequate living conditions.[4317] The cases of those in solitary confinement were regularly re-examined.[4318]

1774. The detention, interrogation, release, removal and exchange of detainees was strictly regulated[4319] and conditional on authorization from military command the completion of necessary paperwork.[4320] As per the regulations, only those convicted or

[4306] D3314, para 41
[4307] It was the obligation of the Bosnian Serb armed forces to collect these weapons from all ethnicities and return them to their owners, after the cessation of conflict; Schedule A5.4; D3316; Mladjenovic, T.36656
[4308] Adjudicated fact 2398; Mladjenovic, T.36655
[4309] Schedule B8.1
[4310] Schedule C10.1
[4311] D3314, para 48
[4312] D4307, para 7
[4313] D4307, para 1
[4314] Mitar Rasevic, T.46751
[4315] D4307, paras 8, 22
[4316] D4307, para 21; P6656, p.8
[4317] Each isolation cell contained a bed, a toilet and a sink; D4307, para 21
[4318] This is especially the case for those confined for minor breaches or for long periods of time; D4307, para 21
[4319] No detainees were permitted under the age of 18 and over 60; D4307, para 43
[4320] D4307, para 15

suspected of committing a criminal act could be detained at the KPD; these detentions were subject to periodic review.[4321] New detainees could only be accepted if accompanied by their ID documents and necessary military paperwork reflecting reasons for their arrest.[4322] Upon arrival the detainees were interviewed by KPD staff who evaluated the legitimacy of their arrest.[4323] Military personnel could not enter the KPD without prior authorisation from the military command.[4324]

1775. No distinction was made between POW and civilian detainees.[4325] Mitar Rasevic testified that he never noticed prisoners going missing, to his knowledge no one was ever killed on the premises.[4326] Prisoners were interrogated and were not mistreated.[4327] Interrogation lists were compiled by the military and provided to the duty officer.[4328] Nightime interrogations were banned in late May or June 1992 and no mass interrogations took place after July/August 1992.[4329] The ICRC and UNPROFOR were given access to the KPD.[4330]

1776. [redacted][4331] more serious cases were transferred to Foca hospital.[4332] There was a nurse on duty at all times and medical personnel from the hospital attended the KPD two or three times a week.[4333] The prison administration strove to provide the detainees with optimal nutrition, heating and sanitary conditions in the circumstances;[4334] however the boiler room had been severely damaged in a shelling attack.[4335] Until this damage was repaired, temporary measures were put in place.[4336] Dormitories were only overcrowded in the first

[4321] D4307, para 43
[4322] D4307, para 43
[4323] D4307, para 43
[4324] Adjudicated fact 840
[4325] Mitar Rasevic, T.46753
[4326] D4307, para 35; Mitar Rasevic, T.46785
[4327] [redacted]; P3568, p.51; D4307, para 32
[4328] D4307, para 27
[4329] D4307, para 26
[4330] D4307, para 39; Mitar Rasevic, T.46810
[4331] [redacted]
[4332] D4307, para 18; Veljko Maric, T.35598-600
[4333] D4307, para 18
[4334] For example, in the winter of 1992 it was impossible to fetch firewood form the nearby forests due to war operations; D4307, para 19
[4335] D4307, para 17; Mitar Rasevic, T.46756-7, T.46759-60
[4336] Water was heated in cauldrons and brought to the detainees for bathing and stoves were placed in the dormitories; D4307, para 17

month of the war, after which bunk beds and extra mattresses were provided.[4337] Detainees testify that from late 1992, they had all necessary sanitary conditions.[4338]

1777. Throughout 1992 it was difficult to comply with nutritional requirements; the KPD administration requested the army to deliver greater quantities of food, reduced the food ratios of prison personnel, sold furniture to raise funds for food and requested humanitarian aid.[4339] The KPD also produced certain foodstuffs in its farm.[4340] No one was denied food on the basis of ethnicity;[4341] all food was made in a single cauldron making it impossible to discriminate.[4342]

1778. Abundant evidence indicates that detainees were released or exchanged on a regular basis.[4343] Lists of detainees to be released were compiled by military personnel and released by the duty officer.[4344] On these lists were those against whom no criminal charges had been proven or those detainees in poor health.[4345]

c. Cruel and inhuman treatment in detention centres within Foca

1779. On 7 April 1995, President Karadzic transferred Radovan Stankovic, the man in charge of Karaman's house, together with 56 other soldiers from the VRS to the MUP.[4346] In 2006, Stankovic was convicted for the rape and abuse that occurred at the Karaman house.[4347] Radojica Mladjenovic testified that President Karadzic could not have been aware of the behaviour of the men in the house, or he would not have transferred Stankovic.[4348]

[4337] D4307, para 17
[4338] P3568, p. 212
[4339] Mitar Rasevic, T.46757-8, T.46761, T.46794-5
[4340] Mitar Rasevic, T.46757
[4341] Mitar Rasevic, T.46757-8
[4342] Mitar Rasevic, T.46757-8, T.46794-5
[4343] D1687; D1689; D1691; D4307, paras 33-4, 39, 41; P3346, p. 1; P3568, p.127, p.151; P5539, p. 1; P5540, p. 1; P6206; P6265, p. 4; Mladjenovic, T.36668
[4344] This Duty Officer would subsequently submit a report on these exchanges to the warden and the deputy warden; D4307, paras 37-8
[4345] Some detainees were required to subsequently report to an SJB station; D1688, p. 1; D3318; P5526; P5539; P5540; Mladjenovic, T.36669
[4346] Schedule C10.2; P6267
[4347] Mladjenovic, T.36652
[4348] Mladjenovic, T.36653

1780. The Partizan Hall operated as a facility during 1992.[4349] Milutin Vujicic, a guard at the centre, gave evidence that it was his duty to use any necessary force to prevent outsiders from entering the facility.[4350] Regarding the inhuman treatment, "the perpetrators were processed and punished. They were sick people, ready to shoot at both the civilian authorities and the army. The civilian authorities and the military command together resolved the problem with *Partizan*".[4351]

d. No plan to destroy cultural property listed under Schedule D10:

1781. Throughout the conflict, Bosnian Muslims used town mosques to store explosives and weapons;[4352] training Green Berets on the premises and opening fire from their minarets.[4353] The Pilar mosque in the Donje Polje neighbourhood was used exclusively for the training of Bosnian Muslim extremists.[4354] By using the mosques for military purposes the Bosnian Muslim forces effectively rendered them legitimate military targets.

b. Rogatica

1782. Bosnian Muslims were the majority in Rogatica Municipality;[4355] reflecting this, the SDA won the 1991 elections.[4356] The SDA refused to implement an inter-party agreement on the allocation of executive posts, preventing the appointment of Bosnian Serbs.[4357]

1. Forcible Transfer

1783. Already in 1990, municipal authorities feared illegal arming of the population. As such, to prevent their theft, the weapons of the Rogatica TO were moved to JNA

[4349] Schedule C10.5
[4350] D2767, para.11
[4351] D3314, para 49
[4352] Vujicic, T.32136
[4353] Vujicic, T.32136
[4354] Vujicic, T.32136
[4355] Making up between 57-66% of the population; D2930, para 5; P0059, p. 2; [redacted]
[4356] The SDA in Rogatica advocated separatism and resorted to coercive practices; P0059, pp. 54-5; [redacted]
[4357] D2909, para 12; D2950, para 7; Veselinovic, T.33875

barracks in Han Pijesak.[4358] These weapons were then issued to reservists during the 1991 mobilisation.[4359] In early 1991 Bosnian Muslims began nationalist provocations, including biased media coverage, obstructing JNA exercises, assaulting Bosnian Serb at barricades and extremist speech.[4360] Attempts were made to separate Muslim settlements from Han Pijesak Municipality and attach them to Rogatica or Vlasenica.[4361]

1784. Bosnian Muslims boycotted two JNA mobilizations' increasing ethnic tensions, thwarting political dialogue.[4362] Despite SDS-driven efforts to calm the situation, tensions grew after the independence referendum.[4363] From late 1990 the SDA sent Bosnian Muslims to Croatia for military training; upon their return they organised paramilitary units armed with automatic rifles and pistols.[4364]

1785. In reaction to such provocations, Bosnian Serbs began to set up village guards arming themselves with personal weapons.[4365] From February 1992, a Bosnian Serb TO was formed in agreement with staff of the joint TO.[4366] This TO was composed of non-professional troops, whose task was to protect Bosnian Serb villages.[4367] This TO joined the JNA on 3-4 March 1992 and was later reorganised as the Rogatica Brigade of the VRS.[4368] People from Serbia began arriving in Rogatica, in order to defend civilians there. Subsequently groups of paramilitaries became more common within the municipality.[4369]

1786. The SDS Crisis Staff was established in late 1991, but did not have executive powers until 15 April 1992.[4370] However, due to a lack of communication between the RS

[4358] D2930, para 17; D3038, para 7; [redacted]
[4359] P0059, p. 7; D2930, para 17
[4360] D2351, para 8; D2909, paras 5, 17; D2958, pp. 1-2; D3031, para 5; Ujic, T.33441-2; Veselinovic, T.33876
[4361] D1374, pp. 1-2
[4362] D2351, para 10; D2909, paras 8-9, 37; D2930, paras 7-10; D2954, pp. 1-2; P0127, p. 3; [redacted]; Batinic, T.33676; Milosevic, T.32495-7; Veselinovic, T.33900-1
[4363] D3038, para 5
[4364] All SDA members were issued pistols, and most of the Muslim villages were armed with modern infantry weapons; D2351, para 5; D2909, paras 10, 12, 30; D2930, para 11; D3031, paras 6-7; D3038, paras 4, 7; Ujic, T.33440-1
[4365] The JNA did not distribute weapons to the Serbs; it only issued weapons to the new conscripts; D3038, para 6; Veselinovic, T.33898-9
[4366] This TO was formed pursuant to relevant legal provisions; Lelek, T.34373-4; Veselinovic, T.33877-8
[4367] Mostly elderly and young men who had not completed their military service; D2930, para 14; D3031, para 7; [redacted]; Batinic, T.33674, T.33676-7; Lelek, T.34374; Veselinovic, T.33896
[4368] D3031, para 15; P2828, paras 56, 58; Veselinovic, T.33912-3
[4369] D3031, para 8; P6104, p. 5
[4370] D2950, para 13; Batinic, T.33712

Presidency and the SDS Main Board, its work was greatly obstructed[4371] and was eventually replaced by an expanded, non-partisan Serb Crisis Staff.[4372] The expanded Crisis Staff, protected civilians and abandoned properties, accommodated refugees and distributed aid equally to people of all ethnicities.[4373]

1787. By early 1992 the SDS and SDA had agreed that the division of the Municipality was the only way to preserve peace.[4374] In March 1992, the SJB was separated by mutual agreement;[4375] however, the SDA obstructed the division of the Municipality,[4376] because of Izetbegovic's withdrawal from the Lisbon Agreement in March 1992.[4377] [redacted].[4378] The Bosnian Serbs continued to seek a mutually acceptable solution.[4379]

1788. In April 1992, Mehmed Agic established a Bosnian Muslim TO[4380] and Bosnian Muslims set up village guards.[4381]

1789. The war broke out on 22 May 1992 after Bosnian Muslims forces ambushed and killed a Bosnian Serb, refusing to return his body; this provoked a Bosnian Serb TO retrieval operation.[4382] From this point there was mutual exchange of fire between Bosnian Serb forces and the large concentration of Bosnian Muslim units in the area.[4383] In order to neutralise enemy fire and open a corridor for the infantry, the Bosnian Serb

[4371] Batinic, T.33712-3
[4372] Which functioned until late June 1992; D2930, para 18; D2950, paras 13-14; P2835, pp. 1-9; Veselinovic, T.33877
[4373] D2930, para 18; Ujic, T.33463-4
[4374] Negotiations surrounding the separation took place between March and May 1992; D2909, paras 21-2; D2930, paras 16, 20; D2950, para 12; [redacted]
[4375] D2909, para 23; D2930, para 20; [redacted]; KDZ607, T.18494; Ujic, T.33437, T.33442-3
[4376] This agreement had twice been adopted by the Bosnian Muslim dominated Municipal Assembly; D2909, para 22; D2930, para 16; [redacted]; Veselinovic, T.33878
[4377] Leading to the siege of Rogatica by Bosnian Muslim and Bosnian Serb forces and the resignation of key SDS members; D2950, para 14; P3271; P6105; Batinic, T.33674-5; Ujic, T.33452-3; Veselinovic, T.33877, T.45112-3
[4378] [redacted]
[4379] D2930, para 19; [redacted] Ujic, T.33437-9; Veselinovic, T.45112-3
[4380] Lelek, T.34374
[4381] P3267, para 2
[4382] D2909, para 24; D2930, para 23; D2950, para 15; D3031, para 14; P3265; Batinic, T.33696-8; Lelek, T.34383-4; Ujic, T.33459; Veselinovic, T.33903-5, T.45104-5
[4383] The latter encircled and "practically butchered" a Serb family; Batinic, T.33698-9; Lelek, T.34383-4, T.34401, T.34435; Ujic, T.33459

utilised mortars and their only anti-aircraft gun.[4384] Bosnian Serb forces attempted to liberate villages under Bosnian Muslim control,[4385] limiting themselves to return of fire and sparing those villages that surrendered.[4386]

1790. After the beginning of the war chaos reigned throughout the municipality, there was constant exchange of fire and both sides erected barricades.[4387] In this period most Bosnian Muslim civilians fled and neither side fully controlled the town.[4388] From April to July 1992, Bosnian Muslim extremists controlled a majority of the municipality;[4389] Bosnian Muslim forces sought to expand their control through attacks on Bosnian Serb positions.[4390] Almost every day from March until June 1992 groups of armed Bosnian Muslims toured Muslim villages.[4391]

1791. Bosnian Serb settlements and vehicles were attacked and Bosnian Serb civilians were ambushed and killed.[4392] Bosnian Serbs asked Bosnian Muslim villages to surrender their weapons, giving security guarantees to those who surrendered or expressed loyalty.[4393]

1792. Due to Bosnian Muslim attacks in the villages of Zakomo, Strmac and Mader, the residents were forced to evacuate and asked Bosnian Serbs to transfer them to collection centres for their protection.[4394] Villages that did not surrender remained in the war zone.[4395]

1793. Rogatica was liberated on 23 July 1992.[4396] It was only then that the Serb authorities re-entered the town; until then they were unaware of what was going on in the town or the wider municipal area.[4397]

[4384] P2832, p. 3; Batinic, T.33698-9; Lelek, T.34400-3, T.34434-5; Ujic, T.33459-61
[4385] P2832, p. 3; Veselinovic, T.45106; Ujic, T.33461
[4386] The Serbs did not shell the urban area, as there were still civilians living there at the time [redacted]; Lelek, T.34403, T.34433-4; Ujic, T.33461; Veselinovic, T.45105-6
[4387] D2930, para 22; Batinic, T.33682
[4388] Batinic, T.33682, T.33697-8
[4389] D2909, para 24; D2912; P3275, p. 1; D3031, para 14; Veselinovic, T.33910
[4390] Batinic, T.33699-700; Veselinovic, T.33911
[4391] D3031, para 6
[4392] P2832, p. 3; D2909, paras 30-1; D2965; D2351, para 9; D3038, para 9; Lelek, T.34429-30
[4393] From March until July 1992 Babljak, Berkovici, Burati, Gazije, Osovo, Okruglo, Satorovici, Strmac and Tmurni Do surrendered and enjoyed full protection; Kosovo did not offer any resistance; D0095; D2909, paras 30, 32; D2911; D2930, para 29; D3038, para 9; [redacted]; Batinic, T.33689-90, [redacted]; Hurko, T.18368-9; Lelek, T.34377; Ujic, T.33463-4
[4394] Bosnian Serbs protected their property, while they were away; Lelek, T.34378-9, T.34381, T.34438
[4395] Batinic, T.33699
[4396] D2909, para 35; Veselinovic, T.33883-4

2. Persecution

1794. *Veljko Vlahovic* School was used as a safe house for unarmed civilians between May and August 1992.[4398] The centre housed people of all ethnicities[4399] who had sought shelter at the school voluntarily.[4400] Guards from the Rogatica Brigade[4401] were posted to ensuring the safety of civilians by preventing intruders from entering the school, and often prevented paramilitaries from attempting to kidnap Bosnian Muslims from the school.[4402] There were no complaints regarding the guards' conduct at the school.[4403] The people at the centre were not maltreated and had adequate living conditions, and everyone received three meals a day.[4404] Civilians were transported by police escort to destinations of their choice.[4405] Throughout its operation, there were never more than 250 people at the school.[4406] The school operated until August 1992 and the remaining civilians were given the choice to remain in Rogatica.[4407] During its operation, the school was never turned into a detention centre.[4408]

1795. The *Rasadnik* military remand facility was used to detain soldiers or other individuals suspected of crimes or disciplinary violations between August 1992 and October 1994.[4409] Most of the detainees were Serbs arrested for violations of military discipline.[4410] Upon transfer to the facility, the allegations against each suspect were investigated by a Judge.[4411] Accused were tried, and if found guilty, were assigned

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[4397] Batinic, T.33682-3
[4398] The municipal authorities were unaware of the school until July 1992; Schedule C21.1; D2909, para 27; D2930, para 24; D2933; D2950, para 18; D3035, p. 1; D3038, para 16; P5485; Batinic, T.33682, T.33702, T.33706, [redacted] Lelek, T.34384-5, T.34429; Ujic, T.33461-3, T.33465
[4399] D2909, paras 27, 43; D2930, para 26
[4400] Those housed at the school were not treated as detainees or prisoners, and could leave at any time; D2930, paras 24, 26; Lelek, T.34384-6, T.34388, T.34429; Ujic, T.33463, T.33477
[4401] Batinic, T.33685
[4402] D2909, para 42; D2930, para 31; Batinic, T.33682; Lelek, T.34389; Ujic, T.33468
[4403] D2909, para 28
[4404] These meals were the same as those provided to the army; D2909, para 27; D2914, p. 1; Lelek, T.34386, T.34388; Ujic, T.33463-4
[4405] D2914, p.1; D2930, para 26; D2950, para 18; Lelek, T.34386; Ujic, T.33462, T.33478-9
[4406] Lelek, T.34389
[4407] D2909, para 41; Lelek, T.34386, T.34389; Ujic, T.33461-2
[4408] D2930, para 25
[4409] Schedule C21.3; D2909, para 29; D2950, para 19; D3031, para 19; Lelek, T.34426-7; N. Andric, T.34458
[4410] D2930, para 32
[4411] D2950, para 19

compulsory work obligations at the facility.[4412] At no time were civilians detained at the military detention facility,[4413] although there was one Bosnian Muslim civilian who requested to stay at the facility for protection.[4414] No detainees were maltreated, and the living conditions were adequate.[4415] The detainees received the same food as the *Rasadnik* staff and the soldiers of the brigade.[4416]

1796. On 15 August 1992, 27 detainees were taken from the Rasadnik facility to repair a defence line and clear a road.[4417] In response to their failure to complete the task, Dragoje Paunovic, the commander of the escorting Rogatica Brigade unit, had them shot.[4418] He was later convicted.[4419] Municipal authorities trained Bosnian Serb soldiers in international humanitarian law, however, "it was impossible to persuade certain individuals to abide by these rules."[4420]

1797. On 14 August 1992, following the killings of Serbs in Ristici and the burning of the Serb village of Dobromerovici, the Bosnian Serbs launched a counter-attack on Mader.[4421] During the search of the village, Serb soldiers found pistols and bullets in the possession of Fejzo and Sefik Hurko, who were arrested.[4422] The soldiers were described as "professional" and followed orders regarding the treatment of the detainees.[4423] Following their arrest, their family was taken to the garage of Miodrag Andric in Kosovo village[4424] to protect them from retaliation by local Bosnian Serbs.[4425] The garage was not locked, and the other people in the garage were served coffee. After 20 minutes they

[4412] D3038, para 17; Ujic, T.33470
[4413] After the school building was no longer available to house civilians, the school was relocated to the *Rasadnik* compound, but was separate to the military prison; N. Andric, T.34457-8; T.34479; Lelek, T.34413, T.34415, T.34419-20
[4414] Ujic, T.33478-9
[4415] There was enough light, and toilet facilities and warm water were provided; D2909, para 29; D2930, para 32
[4416] D3038, para 17
[4417] Schedule B16.2; Ujic, T.33470
[4418] Ujic, T.33470, T.33476
[4419] P6107, pp. 1-3; Ujic, T.33470-1, T.33476
[4420] Ujic, T.33475
[4421] Schedule C21.2; D3038, para 10
[4422] D3038, para 10; N. Andric, T.34454
[4423] P3267, para 7; Hurko, T.18364
[4424] D3038, para 10; P3267, para 8; Hurko, T.18226; N. Andric, T.34447
[4425] Both Fejzo and Sefik Hurko worked with Bosnian Serbs in their village, in the school and Rasadnik facility. Due to their cooperation with Bosnian Serbs, they were prevented from re-entering their village by Bosnian Muslim police; D3038, paras 10-12; N. Andric, T.34447, T.34454-6

were transferred to *Rasadnik* facility,[4426] since they suspects for participation in armed conflict. They were caught with bulllets in their pockets.[4427]

1798. Bosnian Serb authorities repeatedly instructed their troops not to damage religious sites,[4428] despite the fact that SDA and Green Berets used mosques for military purposes.[4429] A tank shell hit one of the mosques in an attempt by Bosnian Serbs to destroy anti-tank mines stored inside. Another was accidentally hit by a mortar shell intended to neutralise a machine-gun nest some 10 metres away.[4430] The mosques in Vragolovi fell victim to collateral damage during operations against Bosnian Muslim forces in the area.[4431] The Catholic church in Bosnian Serb territory, remained intact.[4432]

c. Sokolac

1799. Bosnian Serbs were the majority in Sokolac municipality.[4433] This was reflected in the results of the first multi-party elections in 1990, where the SDS won the majority of seats.[4434] An inter-party agreement was formed between the two parties, distributing key positions between both ethnicities.[4435]

1. Forcible transfer

1800. From 1991, Bosnian Muslims began illegally arming and forming paramilitary units with the support of the SDA,[4436] and establishing their own military structure.[4437]

[4426] The family was not mistreated whilst at the garage. Later Fejzo and Sefik Hurko were reported to have given false testimony regarding their treatment in attempt to redeem themselves with Bosnian Muslims; D3038, paras 10, 12; N. Andric, T.34447, T.34454-7
[4427] Lelek, T.34412-3
[4428] Schedule D18; Lelek, T.34395
[4429] Storing anti-tank mines and acting as sniper and machine-gun nests; D2909, para 38; Lelek, T.34392; Veselinovic, T.33885-7
[4430] D2963; Lelek, T.34391-3; Veselinovic, T.33886-7
[4431] Lelek, T.34392-4, T.34435
[4432] D2930, para 33
[4433] According to the 1991 census, the population was comprised of approximately 66% Bosnian Serbs, 33% Bosnian Muslims and 1% other; D3206, para 20; P5238, p. 3
[4434] The SDS won 29 seats, whereas the SDA won 13 seats; D3175, para 2; D3206, para 20
[4435] D3206, para 20; D3175, para 3
[4436] These paramilitary groups were the Patriotic League and the Green Berets; D3175, para 5; Bjelica, T.36412;
[4437] Bjelica, T.36412

The Patriotic League and other paramilitary units were organised by a member of the Security Service of the Main Staff of the Army of BiH, which received arms from a high ranking official.[4438]

1801. In 1992, Bosnian Muslims followed the SDA's instruction and boycotted the call to mobilise.[4439] A large number of Bosnian Muslims volunteered to fight against Serbs at the fronts in Croatia; returning from the fronts with their weapons.[4440] By January 1992, the Patriotic League included 868 men, had a fully-functioning and well-developed communications system, illustrating the Bosnian Muslims' preparedness for war.[4441]

1802. The independent Crisis Staff in Sokolac made several attempts to maintain peace within the municipality,[4442] but cooperation with Bosnian Muslim leaders was unsuccessful.[4443] With a position of co-habitation, the RS sent a telegram to several municipalities, including Sokolac, promoting the protection of all citizens who had surrendered their weapons.[4444] A TO, followed by the 2nd Romanija Brigade, was established in Sokolac.[4445] The Crisis Staff and Brigade did not coordinate with the 2nd Romanija Brigade, fearing they could no longer protect citizens.[4446]

1803. Many Bosnian Muslims stayed in Sokolac during the conflict;[4447] those that left did so of their own accord.[4448] The Crisis Staff made several attempts to persuade the return of citizens who left the municipality.[4449]

1804. In response to several attacks by Bosnian Muslims on Bosnian Serbs,[4450] the VRS Brigade Command called for the surrender of illegal weapons.[4451] Bosnian Muslims failed to disarm, with Bosnian Muslim units resisting VRS-led demilitarisation.[4452]

[4438] D3175, para 6; D3206, para 38; D3224; Bjelica, T.36412-5
[4439] D3175, para 8; D3206, para 24
[4440] D3206, paras 24
[4441] D3206, para 39
[4442] D3175, paras 11-2; D3176; D3177; D3179; D3185; D3206, paras 28-9, 33-6; D3207; D3211; D3222; D3223; D3225, pp.1-2; D3227; D3228; D3230; D3231; P5240, para 6
[4443] With Bosnian Muslims provoking incidents within the municipality; D3175, para 11; D3206, para 36
[4444] D0095; D3190; D. Obradovic, T.36121-3
[4445] D3175, para 14; D3206, para 14; P5238, pp.62, 67, 110
[4446] P5238, pp. 66-9
[4447] Bosnina Muslims continued to live in Novoseoci, Vrhbarje, Micivode, Kuti, Knezina, Kaljina, Sahbegovici and Meljine; D3206, para 37; D. Obradovic, T.36083
[4448] Bosnian Muslims voluntarily left Tocionik, Perise, Kalimanici and Donje Babine; D3175, paras 17-8, 30; D3206, para 31
[4449] D3175, para 12; D. Obradovic, T.36070-1

1805. The SJB attempted to maintain peace in the region.[4453] The SJB thoroughly investigated killings that it had information about and criminal reports were filed.[4454] Up until the second half of 1992 the SJB was able to protect citizens in Sokolac.[4455] Also, after this period patrols were formed to protect people.[4456]

1806. Due to heightened ethnic tensions in the Sokolac SJB, Bosnian Muslims were placed on a paid leave of absence for their personal safety and security.[4457] Bosnian Muslims retained their weapons and uniform, through an order of the Sokolac SJB.[4458]

1807. Many used this period of chaos and conflict to form groups which attacked property and looted for personal gain.[4459] There are no reports of Bosnian Serb paramilitaries or para-police units in Sokolac prior or during the conflict.[4460]

2. Persecution

a. Killings

1808. In April 1992, the Uzice Corps was mobilised in Visegrad to help calm ethnic tensions.[4461] When they left the area on 18 May 1992, paramilitaries, known as the so-called Seselj's and Arkan's men, quickly moved into the area and started committing crimes.[4462] On 13 June 1992, Bosnian Serbs organised a convoy for people of all

[4450] D3175, paras 7, 14-5, 17, 30; D3186; D3188; D3206, paras 44, 52; P5238, pp.84-5; D. Obradovic, T.36079-81, T.36124
[4451] D3206, para 41
[4452] According to Tupajic, there were no civilian casualties. The SJB did not participate in disarmament operations; D3206, para 48; P5238, pp. 90-2
[4453] D. Obradovic, T.36078
[4454] Those brought to the SJB for interrogation were not beaten or abused; D3175, para 21; D3180, pp.1-2; D3193, pp.1-5; D. Obradovic, T.36068, T.36102-3, T.36136-7
[4455] D3175, para 13
[4456] D3206, para 23
[4457] D3175, para 28; D3206, paras 42, 62
[4458] D3175, para 28; D3206, para 62; D. Obradovic, T.36090
[4459] D3206, para 53; D3234, pp.1-3; Bjelica, T.36397-8; D. Obradovic, T.36134-5
[4460] D3175, paras 10, 29; D3185, para 4; D3206, paras 53, 63
[4461] Schedule A14.2; P0060, p. 5; P0061, p.7
[4462] P0060, p. 6; P0061, pp.7-10

ethnicities to leave Visegrad.[4463] The following day, approximately 150 Bosnian Muslims gathered to join the convoy.[4464]

1809. The convoy left, but instead of reaching Skopje, it arrived at Isarica Brdo, were soldiers in camouflage uniforms surrounded the convoy.[4465] The elderly, women and children were separated from the men, and sent in different directions.[4466] The men were taken towards Rogatica by bus.[4467] and killed.[4468] The witnesses had identified the presence of paramilitary groups in the region.[4469] Any reference to Milan Lukic cannot hold ground due to the witness' speculative statement surrounding his identification.[4470] There is no evidence that the local authorities either ordered the killings or were informed about them, especially given the location of the crime.[4471] Also, there was no structure or organization in relation to the incident nor any communication to the higher republican authorities.[4472] In addition, the Prosecution, pursuant to Rule 92 *bis*, presented this evidence without the opportunity for cross-examination, and as such, cannot base a finding of facts against the accused.[4473]

1810. It is alleged that at least 40 men were killed in the village of Novoseoci on 22 September 1992,[4474] when armed soldiers in olive green military clothing arrived and rounded up the villagers in an area known as "Metaljka".[4475] Momcilo Pajic, who appeared to be in charge of the soldiers,[4476] stated that he was ordered to search the area for illegal weapons.[4477] Pajic then stated that men were to be separated and transported by

[4463] P0060, pp.6-7; P0061, p.13-6
[4464] The soldiers present were said to not resemble any kind of organisation in respect of their behaviour and uniforms; P0060, pp.7-8; P0061, p.19
[4465] P0060, p.8
[4466] Told they would be exchanged. The men were taken to Rogatica, where they were stripped of their personal belongings; P0061, pp. 26-9, 34
[4467] P0060, p.9; P0061, p.35
[4468] Some men were able to escape; P0060, p.11-2; P0061, p.44-8
[4469] After the war this incident was made public, and a group of Bosnian Serb youths were said to be responsible for the killings; D3206, para 58
[4470] P0061, pp. 74-5, 92, 99-101
[4471] D03206, para. 58
[4472] P0061, pp. 85, 91, 98; D3206, para 58
[4473] *Blagojevic & Jokic*, TJ at para 567; see also Judge Kwon opinion in *Popovic et al,* TJ at paras 42-3; P0061, pp.85, 91, 98
[4474] Schedule A13.1
[4475] There were approximately 44 men gathered; P3295, paras 8, 19; P5238, pp. 106-7
[4476] P3295, para 12
[4477] Selmanovic, T.18557

bus to Sarajevo.[4478] As this was a military area, the local authorities had no authority to investigate the incident.[4479]

1811. Indeed, the Commander of the 2nd Rmtbr Krstic, informed the superior command that his units and the Serb civilian population had been attacked from the area to which also Novoseoci belonged, and that they were looking for the groups that escaped.[4480]

1812. Sokolac SJB was not involved in the alleged incident, and there is no evidence of civilian authorities being informed of the incident.[4481] Dragomir Obradovic did not inform his superior at the CSB (Security Services Centre),[4482] and was not aware of any reports by civilian authorities.[4483] The perpetrators of the crimes were never identified.[4484] Witness testimony on the incident is conflicted and hearsay.[4485] This ambiguity is reiterated by Milan Tupajic who believes that the incidents in Novoseoci remain a taboo subject with no real evidence that the crime was committed by the 2nd Romanija Brigade.[4486] Any information received by the Crisis Staff was based on rumors.[4487]

b. Cruel and Inhuman treatment not perpetrated by order of local or RS authorities

1813. It is alleged that the Slavisa Vajner Cica elementary school was used as an interrogation centre from July to October 1992.[4488] It is also alleged that the former elementary school in Cavarine was used as a military detention unit during October 1992 and March 1993.[4489] There were no prisons or detention camps operating in Sokolac municipality during the conflict, nor was there ever an instruction or order from municipal authorities to establish such places.[4490] Those brought to the school were suspected of terrorist activities, and once interviewed were placed on a list of the

[4478] P3295, para 17; P5238, pp. 107-8; Selmanovic, T.18558, T.18561-3
[4479] D3175, para 20; D. Obradovic, T.36096, T.36103
[4480] D3192, p. 2; D3191; P5438, p. 2; D. Obradovic, T.36124-33
[4481] D3175, para 20
[4482] D3175, para 20
[4483] D3175, para 20; D. Obradovic, T.36094
[4484] D. Obradovic, T.36129
[4485] P0131, pp.7-8; D3206, para 57
[4486] P0131, pp.7-8; D3206, para 57; P5238, p.106
[4487] P5238, pp.106-7
[4488] Schedule C23.2
[4489] Schedule C23.1; D3175, para 25; Bjelica, T. 36448-9, T.36454
[4490] D3175, para 23; D3206, para 54

Exchange Commission.[4491] There were no reports regarding conditions or treatment at these facilities,[4492] as the purpose of these facilities was not envisaged,[4493] efforts were made to improve their conditions.[4494] Those held for interrogation were given the same food as soldiers.[4495] There were no VRS reports of incidents or maltreatment, and all those brought for interrogation were treated humanely.[4496]

c. No plan to destroy religious or cultural property by local or RS authorities

1814. It is alleged that cultural and religious property was destroyed during April and September 1992.[4497] These mosques were destroyed during the war without knowledge of either municipal or RS leadership.[4498] Their destruction can be attributed to individuals and groups who illegally obtained explosives in wartime conditions, and used the situation of chaos for their own gain.[4499] Further, these mosques were knowingly used by the SDA and Bosnian Muslim paramilitaries to hide weapons and conduct their military agenda.[4500] Expert witness report P4070 relies on the testimony of Milan Tupajic in *Prosecutor v. Momcilo Krajisnik*, which states that engineers of the VRS 2nd Romanija Brigade were responsible for the destruction of the Novoseoci mosque.[4501] However, any destruction or damage that occurred during the chaos was done without the knowledge or approval of the municipal, SJB or RS authorities.[4502]

[4491] At this point, the assessment was in the hands of the Exchange Commission; D3206, para 54; P6255, pp.1-3; Bjelica, T.36452-4
[4492] P5238, pp. 88-90
[4493] D3206, para 54; Bjelica, T.36449
[4494] This included installing toilets and showers, particularly as more people were brought to these facilities for interrogations. Hygeine levels were improved for those held; D3206, para 65; Bjelica, T.36449-50
[4495] D3206, para 65; Bjelica, T.36449
[4496] D3206, paras 54, 65; Bjelica, T.36449-50
[4497] It is alleged that Krusevci mosque, Knezina mosque, Kalkina mosque, Novoseoci mosque and Kostica mosque were destroyed; Schedule D20
[4498] D3206, para 55
[4499] D3206, para 55
[4500] D3206, para 55; D. Obradovic, T.36068
[4501] This expert witness relies on information provided by the Islamic Community, thus afflicting bias to the report; P4070, pp.312-22; P5238, pp.108-9
[4502] D3175, para 26; D3206, para 55

Chapter 2

FACTUAL FINDINGS ON THE CRIMES

Part 2

B. Sarajevo component

COUNTS 9 – 10: TERROR, UNLAWFUL ATTACKS

1815. The Prosecution alleges that all the crimes committed in Sarajevo during three and a half years of the civil war were caused by the first and fifth strategic goals,[4503] as a policy. However, there would be no "strategic objectives" of the Serb people had the Muslim side not initiated a unilateral, unlawful and violent secession from Yugoslavia. The OTP neglects the entire context that caused, determined and finally influenced the Serb political, and later military conduct, as if it is presumed that the Serbs in BH had to accept an imposed unlawful and anti-constitutional solution, i.e. denial of the rights of freedom and political life, of self-governance, enjoyment of their resources, and other rights guaranteed by the International Covenants on Human Rights. If the Serbs had not been deprived of the said rights, then there would not have been any alleged JCE in the Serb defensive attitude from the beginning of the crisis to the end of the war. Ultimate self-defense cannot be a criminal enterprise. This is especially true of the Serbs in the Sarajevo battlefield.

1816. [redacted], [4504] [redacted] [4505] the Serb side accepted the EC plan to transform BH into "Switzerland" and make Sarajevo resembles Brussels, or become a district under the EC supervision. The Serb side gave other concessions within the accepted Lisbon plan, even during the war, *inter alia,* proposing a total demilitarization and putting Sarajevo under the UN

[4503] Prosecution Pre-trial brief, paras 157-192

[4504] [redacted]

[4505] [redacted]

administration. Yet, the Prosecution asserts that everything that happened in Sarajevo was planned by the Serb "members of JCE" without considering what would have happened if the permanent and numerous Serb peaceful offers had been accepted.

1817. The Serb side had too many reasons to assume that this regime, established and imposed upon them without the equality and freedom safeguards, would be detrimental for their very survival. Even if this fear is to be considered as baseless and irrational, it was still as powerful as any other real fears, and hence has to be taken into account. Nobody can say to a nation that its concerns are not justified, since it is the deepest onto-genetic feeling based on a collective memory and shared among millions. The reality of those fears did not even originate from the previous wars, which always had a fratricidal, civil-war component. The fear was real and it was caused by the existence of a formidable secret army, Patriotic league and Green Berets, merged with the state police system, led by a high police officials. This fear was further intensified when the SDA-HDZ leadership declared a war against Bosnian Serbs and even the JNA. On the very eve of the war, having denounced the Lisbon agreement, the SDA, through its military paramilitary units Green Berets and Patriotic League introduced terror in Sarajevo. This forced the local population in Sarajevo neighborhoods to establish defense lines at the outskirts of their areas, which later became the frontline. The frontline was, thus, created long before the SRK was established, and did not change during the war.[4506] It had nothing to do with the otherwise legitimate and lawful creation of new or reorganization of the already existing municipalities.[4507] Neither did it have anything to do with a possible division by military means.[4508]

[4506] Mole,T.5859
[4507] Prosecution Pre-Trial brief para 158
[4508] Prosecution Pre-Trial brief para 158

1. Strategy of SRK for Sarajevo

a. The 1st ABiH Corps Presence in the City of Sarajevo During the Period April 1992 and December 1995 and its Size

1818. In the period from April 1992 to December 1995, the 1st ABiH Corps were in the city of Sarajevo under the control of Bosnian Muslim authorities.[4509]

1819. The 1st ABiH Corps had a huge numerical advantage to the SRK.[4510] They had huge potential in terms in troops.[4511] The estimated numerical strength of the 1st ABiH Corps was more than three times that of the SRK.[4512] Throughout the war it varied and ranged from 40.000 to 100.000 men, deployed on the inner and outer rings in Sarajevo.[4513] Considering that the Sarajevo's geographical area is 52.5 km^2, the 1st ABiH Corps covered the entirety of the territory of Sarajevo.[4514] The ABiH Corps encompassed 14 brigades and each brigade had three battalions with each battalion composed of three companies.[4515]

b. SRK Was Surrounded on the Outer Region

1820. The SRK was in a double encirclement, internally and externally.[4516] According to their positions, the 1st ABiH Corps attacked from the inner ring, and the 2nd, 3rd and 4th ABiH Corps attacked from the outer ring, in coordination.[4517] The SRK units were conscious that the 2nd, 3rd and 4th ABiH Corps were surrounding them on the outer region, since they were engaged in combat with them.[4518]

[4509] D2331, para 6; D2375, para 22; D2484, para 6; D2519, para 10; D2562, para 4; D2633, para 3; [redacted]; D2686, para 14
[4510] D2516, paras 8, 16; D2519, para 10 D2524; M. Indjic, T.32451
[4511] D. Sarenac, T.34926
[4512] D2484, para 6; D2658, para 24; [redacted]
[4513] D2331, para 6; D3516; D2562, paras 4-5; D2633, para 3-4; D2686, paras 14, 17; P5989; Dzambasovic, T.15190; Galic, T.37344-5; Radinovic, T. 41402l; Tusevljak, T.29933
[4514] D2774, para 109
[4515] Galic, T.37188-9
[4516] D2341, para 12; D2412, para 14; D2451, para 4; D2562, para 6; [redacted]; D2686, para 14; P5978
[4517] D2383, paras 7, 14; D2562, para 4; D2658, paras 23, 26; S. Gengo, T.29838; Lucic, T. 30793-4
[4518] D2383, paras 7, 14; D2553, para 47; Lucic, T.30793-4; S. Gengo, T.29838; Milosevic, T.32534

c. The Size of the SRK and Understanding about the SRK's Strategy and Goals for Sarajevo

1821. The SRK had a strength that varied between 22.000 and 25.000 soldiers, depending on the period of war, of which 10.000-12.000 were engaged in combat.[4519] The SRK was comprised of approximately 9000 troops opposing the 12th Division of the 1st ABiH Corps directly deployed in Sarajevo.[4520] The SRK itself consisted of ten brigades between 1.000-3000 troops each.[4521] The SRK had a serious manpower shortage when compared to the ABiH forces.[4522]

1822. The strategy of the SRK was to, through decisive defence, protect the people and territory in villages with the majority Bosnian Serb population, such as Vogosca, Ilijas, Hadzici, Lukavica and Ilidza, as well as in the part of the city under the control of Bosnian Muslim authorities.[4523] The strategy was not to seize all of BiH but to defend the parts, which ethnically belonged to Bosnian Serb people.[4524] Failure to do so would have resulted in continuous military pressure by the ABiH with the goal of placing the entire state under the control of Alija Izetbegovic and establishing the Islamic state of Bosnia-Herzegovina.[4525]

1823. The Serbs, having no intentions to advance towards the city, practiced containment strategy, maintaining the status quo in Sarajevo and not trying to significantly alter the position of the front lines.[4526] The priority goal of the SRK was to prevent Bosnian Muslims from breaking through Sarajevo and use these forces on other battlefields in BiH.[4527] It further meant to "prevent /…/ the taking over of special purpose industrial facilities," such as Pretis, Orao, Famos and TRZ and to prevent the 1st ABiH from linking up with the 3rd and 4th ABiH Corps on the outer ring."[4528]

[4519] D2562, para 6; [redacted]
[4520] Galic, T.37343-4; Milosevic, T.32528
[4521] D2331, para 7; D2562, para 6; P6302, pp. 2-3; Galic, T.37343-4
[4522] D2432; D2434; D2437
[4523] D2331, para 9; D2351, para 2; D2412, para 14; D2562, para 7; D2633, para 4; D2658, para 22; Galic, T.37177
[4524] D2658, para 22; [redacted]; [redacted]; Zurovac, T.30290-1
[4525] D2658, para 22; D. Sarenac, T.34926; Zurovac, T.30295, T.30321
[4526] Mole, T.5825
[4527] D2331, para 9; D2484, para 6; D2516, para 9; D2562, para 7; D2633, para 4; D2686, para 17; D2774, para 9; [redacted]; S.Gengo, T.29842
[4528] [redacted]; D2686, para 16; P5989, p. 3; Lucic, T.30827

1824. The fact that the Serb strategy in Sarajevo was defensive, and the Muslim strategy was offensive, was very known to everyone who wanted to know. Witness KDZ185 agreed[4529] with General Wilson's analysis of the objectives of the warring sides.[4530] The Serb side was maintaining defensive activities, while the Muslim side kept trying to break through the Serb lines.

1825. SRK units were aware of this through orders of decisive defence that they received, which among other specifically called for the prevention of "the de-blocking of Sarajevo" or "incursion of enemy forces".[4531]

1826. If the 1st ABiH Corps were to break through from Sarajevo, the course of war in the entire BiH would have been austerely affected.[4532] It would have had a catastrophic impact on the war operations in BiH,[4533] and would have been fatal to the Bosnian Serb population and its soldiers because the 1st ABiH forces would have proceeded across the Romanija plateau to connect with their units in the upper and middle Drina valley and linked up with Sandzak, and Central Bosnia.[4534] In this way the ABiH would have obtained significant military advantage.[4535]

1827. The situation at the fronts would have drastically changed to the detriment of the VRS, as the RS would have been divided and the Herzegovina Corps of the VRS isolated.[4536] [redacted] [4537] 80.000-100.000 men would have been liberated if the 1st ABiH Corps had broken through and this would have had disastrous consequences for the, already undermanned, SRK forces in other fronts.[4538] In short, should the ABiH have broken through, it would have overwhelmed the entire territory of the BiH.[4539]

[4529] KDZ185, T.4320-21
[4530] D336
[4531] P5989, pp. 3-6
[4532] D2331, para 10; D2341, para 12; D2412, para 14; D2484, para 7; D2516, para 9; D2562, para 9; D2633, para 5; [redacted]
[4533] Milosevic, T.32576
[4534] D2516, para 9; Milosevic, T.32576; N. Mijatovic, T.30702
[4535] D2331, para 10; D2774, para 9; D2562, para 8; D2633, para 5; [redacted]
[4536] D2331, para 10; D2633, para 5
[4537] [redacted]
[4538] D2341, para 12; D2351, para 22; D2412, para 14; D2633, para 5; N. Mijatovic, T.30702; S. Simic, T.30031
[4539] Milosevic, T.32576

d. The SRK Mainly Involved in Defensive Actions

1828. The strategy for the SRK was clearly a defensive one. The task of the SRK was to defend the area where they were deployed.[4540] There was no mention of offensives among strategies of the SRK and orders or other communications bore terms such as "active defence."[4541] The orders for defensive activities, aimed amongst other things, to preserve areas that the SRK controlled and also to prevent the link up of Bosnian Muslim forces.[4542] General Milosevic on 15 July 1993 pursuant to an order of President Karadzic commanded that all units are "forbidden to fire on Sarajevo proper, unless defending the VRS positions".[4543] The standing order from the GS VRS for Sarajevo was the so-called persistent defence, which stood for preventing the enemy from breaking through.[4544]

1829. To add to this, the shortage of manpower and perpetual exposure to fire from the Bosnian Muslim side did not allow the SRK to launch offensive operations.[4545] As a result, the SRK units with few exceptions conducted only defensive operations.[4546]

1830. On the other side, the ABiH was always on the offensive and often employed warfare of provocation by frequently opening short bursts of fire on the SRK positions.[4547]

e. SRK Offensive Combat Operations and Their Purpose

1831. Particularly regarding the urban areas of the city, there were very few SRK offensives were oriented at the improvement of tactical positions, liberation of Bosnian Serb villages and/or neutralisation of Bosnian Muslim forces. No matter what type of

[4540] D2389, para 24; D3403, p.1; D3404, p.1; D3409, p.1; D2527, paras 22, 27; Galic, T.37243, T.37339-41; Milosevic, T.32576; Rasevic, T.30906-7
[4541] D2383, paras 9, 12;P5989; Zurovac, T.30326, T.30298-9
[4542] D2331, para 9; D2444, para 16; P5968, pp. 4-5; S. Gengo, T.29835
[4543] P0836; Trifunovic, T.30388
[4544] Galic, T.37906
[4545] D2387, para 37; D2391, para 12; D2516, para 10
[4546] D2331, paras 4, 8; D2341, para 12; D2344, paras 11, 16, 20; D2351, para 22; D2412, para 15; D2418, para 16; D2444, para 16; D2451, para 7; D2479, paras 8, 20; D2484, para 7; D2516, para 20; D2519, paras 13, 15, 39; D2527, para 21; D2553, paras 29-31; D2562, para 9; D2622, para 12; D2633, para 6[redacted]; D2686, para 18; D2774, paras 2, 9; D2894, para. 17; D2931, para 21; Dzida, T.29602; V. Dunjic, T.30537; S. Gengo, T.29833; D. Maletic, T.30841; Sehovac, T.31344; D. Skrba, T.29118; B. Tomic, T.30166-7, T.30195-6
[4547] D2432; D2434; D2436; D2437; D2440; Zurovac, T.30274

combat activity occurred, the SRK never received orders to engage in offensive operations in the inner town areas of Sarajevo.[4548] The SRK units were ordered to start offensive operations with the goal preventing the ABiH forces to free enormous potential of human and military potential encircled in the city of Sarajevo.[4549]

1832. The offensive operations were carried out in the SRK corps z/o in order to improve the tactical positions, such as the so-called operation Lukavac 93.[4550] Its aim was for the Herzegovina Corps and the SRK to be joined, which would ensure safe and reliable communications between the southeastern and southern parts of the RS.[4551]

1833. Whenever the SRK engaged in combat operations, whether it opened fire or responded to fire from Sarajevo city, it did not consider that as a widespread or systematic attack on civilians.[4552]

f. No Goal to Deliberately Disable the Bosnian Muslim Government from Controlling Living Conditions of Civilians in the City

1834. The SRK did not consciously make it impossible for the Bosnian Muslim government in Sarajevo to control the conditions of life of the civilians in the city which it controlled.[4553] Bosnian Muslims were the ones who did not allow the civilians to leave the city and who had absolute control over the conditions of life in the city under their control.[4554] Had Sarajevo been demilitarized, there would not have been any problems for any civilian activity.

g. SRK Units Not Aware That the Ultimate Goal of the Bosnian Serb Authorities was the Division Of Sarajevo

1835. The SRK was focused on maintaining the territory that was under its control and there was no such activity representing the division of Sarajevo, particularly as this would entail huge losses and casualties on both sides.[4555]

[4548] S. Gengo, T.29837; Trifunovic, T.30391
[4549] P6302, pp. 2, 5
[4550] D2331, para 11; D2341, para 12; D2412, para 15; D2562, para 9; D2633, para 6; D2774, para 2; P5981, p. 3; Trifunovic, T.30391
[4551] D2412, para 15; S. Simic, T.30038, T.30041, T.30043
[4552] D2383, para 11; D2484, para 7; D2562, para 10; D2633, para 7; [redacted]; D2686, para 19
[4553] D2562, para 10; [redacted]; D2686, para 20
[4554] D2562, para 10
[4555] Milosevic, T.33099-100

1836. The SRK units had no knowledge to the effect that the ultimate objective of Bosnian Serb authorities for Sarajevo was a division of the city.[4556] Commander Milosevic received no such order to carry out certain combat actions for the purpose of dividing Sarajevo.[4557]

1837. Though tasks of the SRK may have included the tasks to maintain and improve the position of the SRK, this was not a military task for the division of Sarajevo. The positioning of the troops did not represent any division.[4558] On the contrary, it was the Muslim government and ABiH who wanted to drive Bosnian Serbs away from Sarajevo.[4559]

h. SRK Units Had Knowledge that the Main Staff and Civil Authorities had Made Offers for the City Of Sarajevo to be Fully Demilitarised

1838. [redacted].[4560] Izetbegovic, on the other hand, was against demilitarisation of the city.[4561] General Fraser testified that had Sarajevo been demilitarized, as the Serbs proposed, it would have ameliorated the suffering within the city.[4562] SRK units had knowledge that the GS VRS and the RS civil authorities had extended offers for the city of Sarajevo to be fully demilitarised and that the heavy weapons are put under the control of the UN.[4563] General Mladic, at a meeting at Sarajevo Airport, offered the demilitarisation of Sarajevo, but the Bosnian Muslim side refused immediately because they would have lost political support if the conflict around Sarajevo had ceased.[4564]

1839. The SRK units had information about offers by the superior commands, the GS and the civilian authorities for all heavy weaponry on both sides to be placed under the UN control.[4565] The position of the Bosnian Serb authorities was always that heavy

[4556] D2331, para 15; D2516, para 12; [redacted]; D2686, para 20
[4557] Milosevic, T.33100-1
[4558] Milosevic, T.33103
[4559] D2331, para 15
[4560] [redacted]
[4561] Rose, T. 7293; P1638, para 30
[4562] Fraser, T. 8095
[4563] D2331, para 15; D2516, para 12; D2633, para 8; [redacted]
[4564] D2774, para 115; M. Indjic, T.32444
[4565] D2331, para 16; P2120, P1641; M. Indjic, T.32446-7

weapons of the ABiH that were found in the city and along the outer ring should be included in the agreement.[4566] A proposal of General Milosevic indicates the attempt to follow the request of the UNPROFOR yet in a manner that would not let the SRK forces suffer in return.[4567]

1840. Heavy weaponry was indeed placed under the UN control but only by Bosnian Serbs.[4568] Already in 1992, under the control of General Mackenzie's team, all PVO weapons were removed from the vicinity of Sarajevo airport so that aircrafts could land safely.[4569] At a later stage of the war, all 80-mm and higher calibre weapons were removed 20 km from Sarajevo and controlled by the UNPROFOR.[4570]

1841. The SRK units possessed knowledge that artillery weapons were registered and placed under UNPROFOR monitoring.[4571] In fact, upon the GS VRS decision to put heavy weapons under UN control, SRK units needed to be prepared for a possible evacuation.[4572] SRK units therefore believed that the Bosnian Serb leadership had a sincere intention to remove weapons with higher calibres from the area around Sarajevo, rather than undermining the effectiveness of these agreements by deceiving UN monitors, as the Prosecution argues.[4573]

a. There were many misunderstandings, since UN officers would often misunderstand the UNPROFOR mandate in Sarajevo, which allowed the Serb side to use weapons if attacked. For example, General Rose testified that he had explained the UNPROFOR mandate to his subordinates to which the sides to the conflict had given their consent: "The delivery of humanitarian aid; the creation of conditions for a political settlement of the war; and the prevention of the spreading of the conflict to neighboring territories,"[4574] persistently underlining impartiality as a basic precondition "that is so essential to any peacekeeping mission,"[4575] as well as opposition to any attempt to involve the UN forces into the armed conflict, being aware that they would become combatants and would be treated as enemy of the assaulted side.

[4566] D2562, para 13
[4567] P1641, p. 1; M. Indjic, T.32448
[4568] D2331, para 16
[4569] D2331, para 16
[4570] D2331, para 16
[4571] Lucic, T.30794-5
[4572] Lucic, T.30792
[4573] Lucic, T.30792
[4574] P1638, para 27
[4575] Harland, T.2231; D0162

b. On the other hand, Harland testified that there was no need for any consent from the sides, particularly the Serbs. He was convicted that pursuant to the mandate, which he described as "relatively obscure",[4576] the UN forces could use "all necessary means" to bring the war to an end by force. He believed that the Security Council resolutions called "for the withdrawal of all forces except Bosnian government forces,"[4577] in spite of the fact that it was clearly provided in Security Council Resolution 998 that the demilitarization had to be carried out.

c. Harland was also convinced that the Security Council mandate did not ask of UNPROFOR to remain impartial, and was therefore much more supportive of and attractive to the Bosnian government than the Bosnian Serbs.[4578] This is exactly the reason why the VRS was suspicious about the UN intentions, and source of President Karadzic's quarrels with the VRS commanders on this subject. President Karadzic usually took a public stance in favor of the UN agencies, because of which he now feels deceived.

d. Although it was their task to know their mandate and the structure, deployment and strength of the warring armies, several Prosecution UN witnesses did not know this. For that reason they sometimes behaved as an occupational force. Harland,[4579] Banbury[4580] Witness KDZ 185,[4581] [redacted][4582] were convinced that the Serbs did not have any rights to influence and control the movement of the foreign forces on their territory, convoys, transported goods, and had a clear bias in favor of the Muslim Government. They behaved as if the Serbs were some kind of illegal rebels, or aggressors coming from elsewhere.

1842. The Prosecution further claims that not all heavy weapons were put under the UNPROFOR's control. While this might be the case in the initial stages due to the mistrust among the Bosnian Serb forces, ultimately all SRK artillery was placed under UNPROFOR control.[4583]

1843. Moreover, there were cases where the GS VRS faced difficulties when trying to comply with the said agreements, as local civilian authorities obstructed the withdrawal of heavy weapons. For example, as the representatives of Hadzici municipality and the

[4576] Harland, T. 2134
[4577] Harland, T2128, T2134
[4578] T.2231, Harland
[4579] P0820, paras 38-40; Harland, T. 2290
[4580] P2451, para 34
[4581] P6060, pp. 6-7
[4582] [redacted]
[4583] P6016: Indjic T.326445

VRS met, the former expressed their fear in removing heavy weapons, since Hadzici was practically under siege by Bosnian Muslim forces in Ilidza.[4584] They asked to conceal the weapons and the representatives of the VRS were unable to convince them to respect the recommendations of the Supreme Commander.[4585] A warning of strong measures in case of obstruction of the withdrawal of heavy weapons was issued.[4586]

1844. The SRK made geniune efforts to withdraw heavy weapons away from Sarajevo successfully, even though the ABiH continously abused the SRK withdrawal to attack.[4587]

i. Airport Placed under the UN Control in June 1992 for Humanitarian Purposes Despite the Military Disadvantage

1845. The Bosnian Serb political leadership repeatedly requested and pressed for the Sarajevo airport to be handed over to the forces of the international community.[4588] The JNA officers were against the request of surrendering the airport because they were conscious that it was a serious strategic error.[4589] It meant cutting communications between settlements such as Ilidza, Hadzici and Rajlovac, and other Bosnian Serb territories, thereby placing a large part of Bosnian Serb population in a very unfavourable position.[4590]

1846. Similarly, the decision to surrender the airfield was not welcomed by the Bosnian Serb people who had remained in the double encirclement in Ilidza, Hadzici, Rajlovac, Vogosca and Ilijas because they were separated from the remainder of the Bosnian Serb territory.[4591] These people, as was later confirmed, found themselves in a hopeless situation, since they were not allowed to cross through the airfield, and at the same time the Bosnian Muslim forces became linked with the forces on the outer ring.[4592]

1847. Despite the opposition, the Bosnian Serb political leadership surrendered the airport to the international community in June 1992 to facilitate humanitarian aid to the

[4584] Lucic, T.30820-1
[4585] D2517
[4586] D2517
[4587] D2800; D2801; D2802; D2803
[4588] D2658, para 14; D2686, para 21; [redacted]
[4589] D2658, para 15
[4590] D2658, para 15
[4591] D2686, para 21
[4592] D2686, para 21

civilians on both sides of the line of demarcation.[4593] These efforts were undertaken primarily in order for war to be calmed down and life in Sarajevo normalised.[4594]

1848. Regardless of the handing over to UNPROFOR however, the airport was abused for the manoeuvres of the ABiH from Sarajevo towards Igman and backwards, and the tunnel below the airport was also dug at the time.[4595] Even the UNPROFOR forces were helping with the digging of the tunnel and assisted the ABiH war effort it other ways as well.[4596]

1849. Lt. Col. Mole testified that the Serbs had abandoned their significant tactical advantage by turning over the airport. He added that the Serb military advantage was frequently interpreted as aggression.[4597] Before the Sarajevo airport was handed over to the UNPROFOR, General Mladic had opposed the handover, having a heated argument in Serbian with President Karadzic.[4598]

j. SRK Units Informed by Superior Command and Civil Authorities on the Provisions of International Humanitarian Law and the Laws of War

1850. President Radovan Karadzic insisted on soldiers to act in accordance with the Geneva Conventions and the other provisions of the international law of war and humanitarian war.[4599] From the start of the war to its end, President Radovan Karadzic, the GS VRS and the SRK Command issued many orders to this effect.[4600] The VRS also laid down a code of conduct for combatants on the battlefield and imposed the obligation to comply with the provisions of the international law of war.[4601]

1851. [redacted].[4602] For instance, commands of battalions insisted upon battalion commanders to pass this relevant information down through their company commander and ultimately plain soldiers so that they would not commit such

[4593] D2451, para 8; D2516, para 12; D2562, para 12; D2633, para 9; Galic, T.37552; M. Indjic, T.32410
[4594] D2331, para 15; [redacted]
[4595] Galic, T.37565
[4596] Galic, T.37565; Indjic, T.32422; D2820, p. 2; Milosevic, T.32805
[4597] Mole, T. 5853-4
[4598] P1029, para. 134
[4599] D2633, para 13
[4600] D2383, para 15; D2519, para 18; D2658, para 16
[4601] D2516, para 21
[4602] [redacted]

mistakes.[4603] Superior commands issued orders to the lower units that all the 1949 Geneva Conventions, including Protocols I and II, must be adhered to.[4604] It has to be born in mind, though, that in war situation not every soldier could be reached and trained.[4605]

1852. Commanders were also constantly in contact with those who could inform them of the fact that a particular course of action would be inhumane and not in accordance with the provisions of the Geneva Conventions.[4606] As a result, soldiers also received training on the topic.[4607] The SRK carried out a number of training courses and seminars concerning the rules and laws of war.[4608] The objective of the trainings were to train the superior commanders who would then pass the knowledge on to their troops.[4609]

1853. There are numerous examples of when the Bosnian Serb army were made aware of the importance of adhering to the humanitarian law of war. In a warning to all commanders, on 3 June 1992 General Galic ordered that at all costs, it was necessary to prevent looting, arson and private wars in the zone of responsibility in the division.[4610] He furthermore stated that it was necessary to protect refugees and innocent people and treat the surrendering enemy according to international laws on the treatment of prisoners of war.[4611] [redacted][4612] Pursuant to the RS Presidency directive and the GS VRS order, General Galic ordered all his units on 15 May 1993 to adhere to the Geneva and Hague Conventions and other international legal regulations in carrying out their activities.[4613]

k. Reasons why Commander General Tomislav Sipcic left the SRK

1854. [redacted]

[4603] D2562, para 15; Milosevic, T.32842-3; S. Galic, T.37190
[4604] Galic, T.37193
[4605] Galic, T.37193
[4606] Milosevic, T.32843
[4607] Milosevic, T.32844; D2633, para 13
[4608] Dragicevic, T.31435
[4609] Dragicevic, T.31345
[4610] D0576, p.1; [redacted]
[4611] D0576, p.1; [redacted]
[4612] [redacted]
[4613] D3482, p. 2

[redacted][4614] [redacted][4615]. [redacted]

[redacted]"[4616] [redacted]

[redacted][4617] [redacted]

[redacted]

[redacted][4618]

1855. In a meeting on 2 July 1992, the 'unresolved status' of the witness was discussed amongst the Presidency and General Mladic.[4619] It was noted in the diary that President Karadzic stated, "I think we should give Sipcic a decree and appointment."[4620] General Tolimir was noted to have replied, "As soon as Sipcic receives a rank and appointment he will go. He has a reserve homeland."[4621]

2. Strength, Weapons and Positions of the 1st ABiH Corps

a. SRK Units had Knowledge and Information About the z/o of the 1st Abih Corps that Opposed Them

1856. The SRK was aware of the deployments, the engagement, the combat fighting, objectives and intentions of the 1st ABiH Corps, relying on intelligence and data collection together with an observation system which could confirm enemy movements, measures and actions.[4622]

1857. The 1st ABiH Corps were responsible for the zone of Sarajevo during the war,[4623] where in 1994, it transitioned into the 12th, 14th and 16th Division, whereby the

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[4614] [redacted]
[4615]
[4616]
[4617]
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[4619] P1478, p.279
[4620] P1478, p.280
[4621] P1478, p.280
[4622] Milosevic, T.32504-5
[4623] D3383, p. 1

12th Division of the ground forces was directly deployed in Sarajevo.[4624] An order for decisive defence by the commander of the 12th Division of the 1st ABiH Corps expressed the deployment of his forces to this effect.[4625] The line of contact between the SRK and the 12th Division was approximately 50 km and no area on the map could be considered as a no-fighting zone.[4626] The 14th Division covered Igman, Hrasnica, Sokolovic Kolonija, Butmir, Kotorac, and Donji Kotorac.[4627]

1858. In general terms, the ABiH held the area of Grdonj, Pasino Brdo, Velika and Mala Kapa to Debelo Brdo, which separated the area towards Trebevic and Hresa. As a result Sarajevo could only be seen from certain positions by the VRS.[4628] Furthermore, the ABiH held Mount Igman and the area of Otes was also under its control until 10 December 1992.[4629] The ABiH also held Dobrinja 1, 2 and 3, as well as Dobrinja C5 settlements.[4630] [redacted][4631] [redacted]

[redacted][4632]

1859. Bosnian Muslim forces held parts of Grbavica,[4633] including the eastern end of the MIS building and the Unioninvest building, which had a clear line of sight to the streets on the other side of the Miljacka river, as well as the UNPROFOR checkpoint and the Vrbanja Bridge,[4634] together with the Djure Danicica street to the Zmaja od Bosne Street.[4635] A line of sight also existed between Muslim positions at the Unioninvest buildings known as Momo and Zel before the war and the Holiday Inn hotel and the Executive Council and Marin Dvor.[4636]

[4624] Milosevic, T.32506
[4625] D2791, Milosevic, T.32527
[4626] Milosevic, T.32515-6
[4627] D2789; Milosevic, T.32509
[4628] Galic, T.37184
[4629] Galic, T.37159-63
[4630] D3445, pp. 2-3; D3446, p. 1; D3454, p. 1; Galic, T.37498
[4631] [redacted]
[4632]
[4633] D2516, para 13
[4634] D2622, para 9; D2623; D2624; D2625; D2626; D2627; Bambarez, T.31300-2, T.31306, T.31308
[4635] D2622, para 10
[4636] D2622, para 10; D2624; Bambarez, T.31304

1860. The ABiH units held positions up to about 100 m from the Bosnian Serb defence line at Spicasta Stijena.[4637]

1861. In the southeast, the area controlled by Bosnian Muslim forces was all the way up to below the Lukavica-Pale communication road. It is an area of rather steep slopes and Bosnian Muslim units and trenches were situated around their houses.[4638] To the contrary, Bosnian Serb forces concerned in this area were stationed in the Osmice boarding house only.[4639]

1862. ABiH support was provided by the 12th Division Artillery Group with its command post being situated at Astra, in the middle of town. The forward command post was placed in the sector of Sokolje, dominating Rajlovac.[4640] The artillery group of the division with its command post was situated in the sector of the Ramiz Slacin barracks.[4641] The artillery group 12 had a command post in the sector of the Blagoje Parovic School. The forward command post was in the Orlic sector.[4642]

1863. The 105th Brigade had its forward command post at the Kosevo Hospital. The 152nd Brigade had its command post in the area of Vratnik, a neighbourhood above Bascarsija.[4643] Firing positions were also located in the sectors of Hum, Busca, Mojmilo, Zrak and Orlovaca. The command post of the 12th DAG was in the sector of Velesici and its forward command post in the sector of Hum.[4644]

b. Maps and Photographs Displaying Positions

1864. A marked map displays the disposition and deployments of the brigades of the 1st ABiH Corps, and the extent to which they engaged in combat and opened fire. Starting from the 101st Mountain Brigade in the east and moving to the 155th Brigade in the west, the map identifies the activities of the brigades and marks the places whe re the units had physical contact.[4645] An additional map marks the area of responsibility of the

[4637] D2383, para 13; D2384; Gengo T.29764
[4638] D2632; Bambarez, T.31330
[4639] D2630; D2631; D2632; Bambarez, T.31330
[4640] Milosevic, T.32540
[4641] Milosevic, T.32540
[4642] Milosevic, T.32541
[4643] Milosevic, T.32542
[4644] Milosevic, T.32543
[4645] D2790; Milosevic, T.32523-4

SRK and the 1st ABiH Corps surrounding them, and also depicts the area of responsibility of all three divisions.[4646]

1865. Exhibit P1494 reveals the positions of the Serb forces and Bosnian Muslim forces in June 1992.[4647]

c. The SRK Units had Knowledge About the Dominant Elevated Positions of the Opposing 1st Abih Corps in and around the City Under Bosnian Muslim Control

1866. The SRK units were aware of the dominant elevated positions held by the 1st ABiH Corps in and around the city under Bosnian Muslim control.[4648] The ABiH held dominant positions in Zuc, Orlic, Grdonj, Brijesce Brdo and Sokolje.[4649] The ABiH also held positions on Mount Igman, Mount Bjelasnica, Hum hill, the Jajce barracks, Mojmilo hill, Zlatiste, Colina Kapa, Pofalici, Velesici, Arcedoli, Stup, and Alipasino Polje.[4650] From these locations the ABiH fired at Vraca, Lukavica, eastern Ilidza, and the entire Krupac-Lukavica-Vraca-Trebevic road.[4651]

1867. Stup Hill, Sokolje hill, Bistrik, Kula, Debelo Brdo, Hresa, Mt Trebevic and, partially, Zlatiste were also under the control of the ABiH.[4652] The highest elevation between Vogosca and Sarajevo was the Hum Hill and then Zuc Hill.[4653] Brigades of the 12th Division held the z/o over Mojmilo Hill which dominate Lukavica.[4654] This position offered coverage and protection in the form of a 3.5km long topographical feature, approximately 620m above sea level.[4655]

1868. The ABiH also held several dominant positions in the Kosevo hill area.[4656] These Bosnian Muslim artillery positions were near the Faculty of Physical Education, the Kosevo hill tunnel, Kosevo stadium, Kosevo hospital and in the Nemanja Vlatkovic school yard.[4657]

[4646] D2789; Milosevic, T.32514-5
[4647] P1494; [redacted]
[4648] D2686, para 24
[4649] D2351, para 27; D2484, para 8; [redacted]; D2686, para 24
[4650] D0582, p.1; D2351. para 27; D2516, para 15; [redacted]; Galic, T.37190; [redacted]
[4651] D2516, para 15
[4652] D2389, para 21
[4653] Galic, T.37471; Trifunovic, T.30461
[4654] Milosevic, T.32519
[4655] D2389, para 21; Galic, T.37466; Milosevic, T.32519
[4656] D2665, para 21
[4657] D2527, para 23

1869. The elevated positions held by Bosnian Muslim forces also comprised of particular buildings which would provide advantageous military positions. Such positions included multi-storey houses from which the ABiH could fire unhindered at civilians and soldiers.[4658] Operations were also conducted from the east side of the Jewish cemetery, the north bank of the Miljacka River towards Vrace, from the Assembly building, the Bristol Hotel, and the area surrounding the Faculty of Mechanical Engineering towards Bratstvo-Jedinstvo Bridge and around the JNA barracks.[4659] In the Grbavica area, the ABiH held positions on the skyscrapers on the right bank of Miljacka River.[4660]

1870. From the direction of the Assembly, Bosnian Muslims also opened fire at the Jewish cemetery with infantry weapons and mortars as well as with 90-mm handheld rocket launchers.[4661]

1871. The Bosnian Muslims held a line of approximately 6km in a built up area, towering over the 2nd Slpbr with a distance of 250-300m in altitude.[4662]

d. Snipers

1872. Bosnian Muslim forces occupied buildings of 10 to 12 floors high that towered above Nedzarici and consequently fared much better in terms of positions.[4663] In fact, in Dobrinja C5, the ABiH forces occupied residential buildings, offices and cellars and transformed lower floors into bunkers whilst using the higher floors as observation posts and sniper and machine-gun nests.[4664]

1873. Sniper nests were, *inter alica,* located in the Faculty of Mechanical Engineering, the student's halls of residence, the Stupska Petlja overpass, the high-rise near the Pofalici petrol station, the so-called Momo and Uzeir buildings, the red high-rises in Hrasno, the Elektroprivreda building, the Bristol building, Debelo Brdo and Trebevic, as well as along the majority of the front line,[4665] and from places where incidents took place, as will be discussed later.

[4658] D2443, paras 14-15; D2418, para 9
[4659] D2665, para 21;D0606, p.1
[4660] Galic, T.37190
[4661] D0606, p.1
[4662] M.Sehovac, T.31344
[4663] D2553, para 36; Guzina, T.31193
[4664] D2553, para 46
[4665] D2519, para 20; Galic, T.37471

1874. Bosnian Muslim snipers also overlooked the Petrovici and Sarajevo-Pale road.[4666] From these positions, Bosnian Muslims opened fire on Grbavica, Vrace, Petrovacka Street, as well as the Sarajevo-Pale road.[4667] Enemy snipers had been conducting operations from Sokolje against the settlement of Dvor, from Mojmilo against Lukavica, from Dobrinja I against the Aerodrom settlement and from the village of Ugorsko against Hotonj.[4668]

e. Deployment of Specific Abih Forces at the Dominant Elevated Positions

1875. The 1st mbr of the ABiH held the area towards Zuc.[4669] This feature was overlooking the whole area, covering Vogosca, Rajlovac and the valley of the entire River Bosnia.[4670] Intensive fire against the SRK positions was coming from the axis Zuc-Vogosca and Zuc-Rajlovac.[4671]

1876. The 101st bbr was located behind Asimovo Hill, stretched across Ozrenska Street reaching Miljacka River and all the way up to Marin Dvor.[4672] It held the elevation points of Mojmilo Brdo and Hrasno Brdo.[4673] The 101st bbr also dominated the positions towards Milinkladska Street and opened fire from all buildings and roofs.[4674]

1877. The 102nd brigade held the Hladnjaca refrigerator facility, which towered over the Ilidza Brigade's positions,[4675] the hosiery factory, also a towering facility and the Oslobodenje newspaper building.[4676]

1878. The 104th brigade was deployed on Igman, from where they had telescopic vision of all parts of Ilidza.[4677] The 155th brigade was deployed in Mojmilo Brdo from where they controlled all approaches to the settlements of Nedzarici and Aerodromsko

[4666] D2350
[4667] D2344, para 8
[4668] D3438, p.1
[4669] Galic, T.37183
[4670] Galic, T.37183
[4671] Galic, T.37190
[4672] Milosevic, T.32520; Zurovac, T.30306
[4673] Milosevic, T.32566
[4674] Zurovac, T.30286
[4675] D2479, paras 7, 9
[4676] D2562,para 17; D2479, para 9
[4677] D2562,para 17; D2633, para 17

Naselje.[4678] They were also positioned in tall buildings, student dormitories and high-rise buildings.[4679]

1879. The 105th bbr held the Grdonj hill, which is a dominant position above Sedrenik,[4680] and had a view over the city of Sarajevo.[4681] SRK positions, however, were at the level of Mala Kula to the north of Grdonj hill, and were far inferior.[4682]

1880. The 111th bbr of the ABiH covered the highest elevations in Sarajevo, Orlic, Zuc, Vis and all the way to the area of Sokolje; a position dominant over Rajlovac and the Sarajevo field. Orlic hill was also under the control of the 112th division.[4683]

1881. The 115th bbr were situated at Debelo Brdo and Colina Kapa.[4684]

1882. The adversary units held Colina Kapa, Debelo Brdo and Vranjaca, towered over Grbavica.[4685] The Kralj Tvrtko Brigade controlled high-rise structures such as the Executive Council building, Unis and Bristol Hotel, from which Grbavica was completely under control.[4686] It was deployed along the axis Wood Processing School-Sumaprojekt facilities-Mechanical Engineering Faculty-Unioninvest; these were all facilities along the right bank of the River Miljacka.[4687] The configuration of the terrain made it impossible to fire at zones behind the enemy's frontlines.[4688]

f. SRK Units had Information or Knowledge about the Quantity and Type of Weaponry (including heavy weaponry) Deployed by the 1st ABiH Corps

1883. [redacted][4689] This information was obtained through the discovery and direct observation of ABiH firing positions[4690] and the capture of ABiH army barracks within the Sarajevo

[4678] D2562,para 17; D2633, para 17
[4679] D2562,para 17
[4680] S. Maksimovic, T.29306; D2354, para 5
[4681] S. Maksimovic, T.29306; D2354, para 5; D2366; D2367
[4682] D2358; S. Maksimovic, T.29306
[4683] D2794; Milosevic,T.32521–2
[4684] Milosevic, T.32566
[4685] D2331, para 19
[4686] D2331, para 19
[4687] D2519, para 22
[4688] D2519, para 25
[4689] [redacted]
[4690] Milosevic, T.32562

area.[4691] The examination of fragments of shells found after attacks on SRK positions, also enabled the SRK to determine the types of weapons possessed by ABiH forces.[4692] The ABiH possessed a number of weapons that the SRK did not thus rendering the ABiH superior in force, in terms of both weaponry and personnel.[4693] ABiH units were armed with infantry and heavy weaponry, including anti-armour rockets and vehicles, self-propelled weapons, howitzers and tanks.[4694]

1884. The Bosnian Muslim forces had skilfully deployed their artillery around the city, ensuring maximum impact of their weaponry.[4695] Large calibre artillery was set up in parks and other areas; whereas mortars were established on rooftops, beneath retractable roofs, enabling easy camouflage amongst civilian areas.[4696] Mortars were set up on the cargo platforms of vehicles, enabling ABiH forces to change their firing positions quickly[4697] and avoid return fire.[4698]

1885. Fire was often opened against SRK units at night, proving that ABiH soldiers possessed equipment for night-time operations.[4699] The ABiH also utilised chemically filled shells against the SRK.[4700] These, and other weapons, were smuggled to the Bosnian Muslim side through illicit channels as the ABiH was known to receive international shipments carrying weaponry such as multiple rocket-launcher rockets and aerial bombs.[4701]

1886. Furthermore, the ABiH received weapons from Croatia and Slovenia which were stored in military compounds until their capture.[4702] Weaponry included several calibres of howitzers and NORA howitzers; PVO anti-aircraft defence weapons; mortars; T-55 and T-34 tanks; armoured personnel carriers; M-80 infantry combat vehicles with

[4691] D2665, para 19
[4692] D2516, para 16
[4693] D2341, para 10; D2344, para 6; D2383, paras 17-8, 23; D2387, para 40; D2562, para 18; D2665, para 19; D2686, para 25; D2774, para 110; Milosevic, T.32521, T.32765; Zurovac, T.30285
[4694] D2516, para 16; D2665, para 19
[4695] D2412, para 16
[4696] D2412, para 16
[4697] D3525, pp. 1-2; D2412, para 16; Galic, T.37176; Milosevic, T.32564; Zurovac, T.30286
[4698] Zurovac, T.30286
[4699] D2443, para 10
[4700] D3428, p. 1; Galic, T.37416
[4701] D2331, para 20; D2816, pp. 2-3; Milosevic, T.32766-7
[4702] Milosevic, T.32559

mounted 20-mm guns, 76-mm guns, T-12 100-mm guns, recoilless cannons, Sagger anti-tank missile Maljutka and anti-tank rocket launchers Fagot.[4703]

1. 1st Sarajevo Mechanised Brigade

1887. The ABiH units opposed to the 1st Smbr had howitzers, long-range guns and mortars stationed at Hum and Mojmilo,[4704] in addition to tanks and large calibre artillery situated around the city.[4705]

1888. The 10th bbr of the ABiH possessed assorted infantry weapons, hand-held rocket launchers and mortars of various calibres.[4706] Whilst the 101st bbr possessed similar weapons, in addition to assorted small arms, rifle grenades and tanks.[4707]

1889. The ABiH brigades that opposed the 4th Company of the Second Battalion were active in their use of sniper fire, as evidenced by the large number of sniper casualties sustained by the 4th Company.[4708] The ABiH brigades opened fire from the skyscrapers on Pero Kosorica Street, which offered unobstructed sights of the SRK positions.[4709] In addition to snipers, these brigades utilised mortars and incendiary rifle grenades.[4710]

2. Romanija Brigade

1890. In the Grbavica area, Bosnian Muslim forces were armed with snipers with silencers,[4711] mobile mortars mounted on off-road vehicles, tanks operating from the settlement of Pofalici, and recoilless guns shooting at night from the Kosevo Hospital.[4712] The 7th Battalion was opposed by Bosnian Muslim units armed with light[4713] and

[4703] D2331, para 3; Milosevic, T.32559-60
[4704] D. Sarenac, T.34928
[4705] D2412, para 16; D. Sarenac, T.34928-9; Galic, T.37172
[4706] D2331, para 21; D2344, para 6
[4707] D2389, paras 4, 6, 16
[4708] Zurovac, T.30325
[4709] D2441; Zurovac, T.30325, T.30282-83
[4710] D2391, para 15; D2434; D2441; D2440; Zurovac, T.30285
[4711] D2516, para 25
[4712] D2516, para 14
[4713] D2341, para 10; D2383, para 17

heavy[4714] weaponry, as well as snipers;[4715] these units were reported to utilise mortars mounted on mobile trailers, hiding them behind schools, kindergartens and hospitals.[4716]

1891. The units opposing the Rogatica Battalion of the 216th bbr also possessed a vehicle on rails, which transported two mortars along the railway tracks to the station building near Velesici.[4717] These units stored two tanks and mobile artillery weapons within the tunnel at Ciglane; occasionally drawing the weapons out to fire, before returning them to safety.[4718]

3. Vogosca (3) Brigade

1892. Bosnian Muslim forces had in their possession artillery, mortar, 76-mm guns, tanks, 122-mm Gvozdika self-propelled guns and 1107-mm VBRs,[4719] **and controlled a half of the municipal territory, i.e all the Muslim settlements such as Zuc, Kobilja Glava and other dominant positions.**

4. Rajlovac Brigade

1893. The 1st ABiH Corps units directed at Ahatovici possessed 60-mm mortars, 90-mm hand-held rocket launchers (Osa), 64-mm hand-held rocket launchers (Zolja), M76 7.9-mm calibre Yugoslav made semi-automatic army sniper rifles, semi-automatic NATO sniper rifles, small calibre MGV (sub-machine guns), flack jackets and camouflage uniforms.[4720]

1894. In terms of heavy weapons, the ABiH 1st Corps had at its disposal: 82-mm mortars, which fired at Ahatovici throughout the war, tanks, and 105-mm howitzers.[4721]

[4714] D2341, para 10; D2383, paras 18, 23; [redacted]
[4715] D2354, para 10
[4716] D2527, para 23; B. Rasevic, T.30915-6
[4717] D2665, paras 18, 22
[4718] D2665, paras 18, 23; D2774, para 110
[4719] D2484, para 8
[4720] D2387, para 27
[4721] D2387, para 40

5. Ilidza Brigade

1895. In the area of Ilidza, Bosnian Muslim forces held 82-mm mortars; hand-held rocket launchers and grenades; Brownings; and infantry weapons along all lines of disengagement.[4722]

1896. The 3rd mtbr of the ABiH had mortars, infantry weapons, rifle grenades and snipers and held support in the form of howitzers and a 130-mm gun at Mt Igman.[4723] The brigade also used barrels filled with explosives and nails.[4724] The 130-mm cannon was very destructive and its non selective use inflicted huge losses on the Ilidza Brigade forces.[4725]

1897. The 101st brigade and 102nd brigade of the 1st ABiH Corps possessed infantry weapons, 82-mm and 120-mm mortars, guns that remained after the withdrawal of the JNA from the Jusuf Dzonlic barracks, T-55 tanks as well as anti tank missiles, hand held launchers and recoilless guns, armoured personnel carriers with 14.7-mm anti-aircraft guns mounted on them, hand-held launchers LPGs, rifle grenades, mines and modified projectiles "water heaters" filed with explosives.[4726]

1898. The 102nd brbr also possessed four known sniper positions, five 120-mm mortars, nine 82-mm mortars and three 60-mm mortars.[4727] These Bosnian Muslim brigades also fired on the Ilidza brigade with PAT /anti-aircraft guns/ and PAM /anti-aircraft machine-guns/, as well as guided missiles.[4728]

1899. [redacted][4729].[4730] [redacted][4731] [redacted].[4732]

1900. The very well-equipped 105th bbr of the 1st ABiH Corps was a large powerful unit and was stronger than a third of the SRK.[4733]

[4722] D2554, p.1
[4723] Galic, T.37171-2, T.37174; Radojcic, T.31232
[4724] Galic, T.37173
[4725] Radojcic, T.31232
[4726] D2479, para 10
[4727] [redacted]; D2562, para 19
[4728] D2511
[4729] [redacted]
[4730]
[4731]
[4732]

6. 2nd Sarajevo Brigade

1901. The 2nd Slpbr faced the 104th brigade and the 155th brigade of the 1st ABiH Corps, which possessed the strength of one battalion.[4734] [redacted].[4735] [redacted] [4736] In addition they held 105-mm and 155-mm howizters and mountain guns.[4737] By way of illustration, these two brigades returned five shells to one shell, reflecting their strength particularly in the second half of the war.[4738]

1902. The flat part of Sarajevsko Polje enabled better use by the ABiH of the firing capabilities of infantry weapons from the high rise buildings, the roofs of houses and balconies, which was not the case on Bosnian Serb side.[4739] This was especially used for sniper fire of all calibres, machine guns, light machine guns, 12.7-mm machine guns, 20-mm anti aircraft guns and artillery for direct fire against armoured equipment, fortified firing positions and bunkers.[4740] They also had mortars in the populated area of Hrasnica itself.[4741]

7. Igman Brigade

1903. The ABiH forces targeted the centre of Hadzici with shells calibre 105-mm and 120-mm.[4742]

[4733] Milosevic, T.32521
[4734] D2633, para 18
[4735] [redacted]
[4736]
[4737] D2633, para 19
[4738] D2633, para 19
[4739] D2633, para 20
[4740] D2633, para 20
[4741] D2633, para 21
[4742] D2474, p. 1

3. Proportionality And Selectivity Of Fire

a. The SRK units did not have knowledge or information about the location of zones and objects that were exclusively civilian in the 1st ABiH Corps' z/o

1904. The nature of the conflict meant "the entire city of Sarajevo was at the same time a civilian area and a military area".[4743] Any military action was undertaken in a civilian zone, because ABiH forces opened fire from such positions, turning them into a legitimate military target.[4744]

1905. The SRK command was unable to conclusively designate any areas as exclusively civilian as frequent enemy attacks originated from the zones, which had previously been designated as such.[4745]

b. SRK units took precautionary measures to prevent opening fire on civilian objects that were located in the 1st ABiH Corps' z/o

1906. JNA training required soldiers to ensure that civilians not be the target of attacks and civilian casualties be avoided wherever possible.[4746] UNPROFOR members were on duty with many SRK units to ensure that civilian objects were not targeted.[4747]

1907. From SRK-held positions, given the distance, it was not possible to differentiate between Serb and Muslim civilians in territory under Muslim control.[4748] It was impossible to distinguish between civilians and combatants by their clothing in general, regardless of their ethnicity, particularly during the first year and a half of the war as everybody wore civilian camouflage clothing.[4749] The only exception was the distinction between the older women due to the traditional clothing they wore.[4750] Nevertheless, only observed military targets were fired at.[4751] There was no need to differentiate between civilians as they were all treated the same.[4752]

[4743] D2774, para 113
[4744] Galic, T.37937
[4745] Such as the z/o of the 101st and 102nd Brigade of the 1st ABiH Corps; D2622, para 18; D2398, para 14; D2479, paras 11, 19; D2516, para 17
[4746] D2622, para 12; Dzino, T.29885
[4747] D2341, para 14
[4748] D2516, para 28
[4749] Guzina, T. 31151-2, T.31192
[4750] D2519, para 36
[4751] D2331, para 32
[4752] D2516, para 28

1908. Since unit commanders from both the Bosnian Muslims and Bosnian Serb side had the obligation to remove civilians from the frontline,[4753] and only 30% of Muslims forces wore uniforms, SRK forces had to assume that any person venturing near the front lines and within range of infantry weapons constituted a threat and could be a potential target.[4754] It was thus the decision of the soldier in his position to assess whether his position was under threat and whether to fire.[4755]

1909. Various SRK protective measures for civilians were implemented. One basic measure was to not allow civilians to remain in an area where there were artillery assets and combat positions.[4756] Both the civilian population and adjacent SRK units were informed to avoid unnecessary losses when the enemy fired.[4757] It could reasonable be expected that the enemy forces would do the same.

1910. The Ilidza Brigade observation and intelligence units were in place to ensure that all SRK units had knowledge as to whether civilians were present at proposed targets.[4758] This knowledge also ensured that fire was never opened unless in response to enemy fire on SRK positions.[4759] Orders to prohibit open fire on civilians and civilian facilities were made on numerous occasions.[4760]

1911. Several brigades reported taking every possible precautionary measure to avoid firing on civilians.[4761] These precautionary measures included observation, returning fire only on observed positions and verifying data from the operations centre.[4762] Members of the Smbr units were not permitted to approach hardware, use firing data or set sights.[4763] Artillery observation posts were established in dominant elevated positions, and 24-hour observation was in place to ensure fire was only opened on observed enemy military

[4753] Guzina, T. 31172
[4754] Guzina, T. 31170-1
[4755] Guzina, T. 31172
[4756] Milosevic, T.32751
[4757] D2814, p. 2; Milosevic, T.32750
[4758] D2562, para 23
[4759] S. Gengo, T.29781
[4760] D2444, para 18
[4761] D2341, para 14; D2484, para 9; D2562, para 23; D2633, para 23; D2686, para 27
[4762] D2484, para 9
[4763] D2341, para 14

targets and firing positions.[4764] These artillery scouts had constant and reliable communication with division command.[4765]

c. SRK units did not have an intention, during combat, to cause civilian casualties or to spread terror among the civilians located in the Muslim controlled part of the city

1912. SRK units during combat did not have the intention to cause civilian casualties or to spread terror among the civilians located in the part of the city controlled by the Bosnian Muslim authorities, since such actions would only have been detrimental to the SRK.[4766]

1913. Upon the "neutralisation" of a target, rendering it quiet, shelling would cease. When a target was hit directly, it did not constitute terror and when exposed to fire, commanders would implement direct hits as a matter of necessity.[4767]

1914. The SRK units allow for the possibility of collateral civilian casualties, since there was a lot of bullet dispersion on both sides, but there was no intention or orders to subordinate units to open fire on civilians.[4768] It sometimes happened that civilians turned up near the first lines, despite the warnings and prohibitions.[4769] In such cases, civilians may have been hit by mistake, but the SRK units never intentionally opened fire on them.[4770]

1915. The presence of Bosnian Serb civilians in the Bosnian Muslim part of the city was not a factor in using fire selectively only at military targets, as no distinction was made between civilians on ethnic grounds; such distinction was impossible at the distance existing at the time between Bosnian Serb and Bosnian Muslim parts of the city.[4771] [redacted].[4772]

[4764] D2341, para 14; D2412, para 18
[4765] D2412, para 18
[4766] D2341, para 15; D2383, para 20; D2387, para 44; D2391, para 20; D2412, para 20; D2484, para 9; [redacted]; D2516, para 18; D2562, para 25; D2622, para 13; D2633, para 24; [redacted]; D2686, para 28; Golic, T.31555; Z. Kovacevic, T.30611
[4767] Milosevic, T.32748-9
[4768] Guzina, T.31151; D2633, para 24
[4769] D2553, para 39; Guzina, T.31151
[4770] Guzina, T.31192
[4771] D2331, para 42
[4772] [redacted]

1916. Civilians were often seen on the battlefield but were never fired at.[4773] SRK units did not open fire on civilians from Bosnian Muslim control areas who often collected fruits and cut wood.[4774] Members of the 1st platoon of the 4th company of the 2nd battalion of the 1st Smbr were careful not to target civilian objects in the zone of responsibility of the 1st ABiH Corps that they fought against.[4775] Members of the 7th battalion of the 1st Rbr never opened fire on civilians or civilian buildings because they posed no threat.[4776] Members of the 3rd battalion of the 1sr Smbr were aware that foreign intervention might have befallen the Bosnian Serb army if indiscriminate fire was opened on civilian targets.[4777]

d. SRK units were not aware that members of SRK units, either at subordinate or superior command, had the intention during combat to cause civilian casualties or spread terror among civilians located under Muslim control

1917. SRK units were not aware that members, either at subordinate or superior command, had the intention during combat to cause civilian casualties or spread terror among civilians located under Muslim control.[4778] The subordinate units acted preventatively through orders, training and education of soldiers and officers to avoid civilian casualties on the other side.[4779]

1918. No attacks by SRK units were aimed at terrorising civilians.[4780] No atmosphere was created to create terror among the people and evidence to the contrary was a ploy to portray the SRK's conduct as a campaign of terror.[4781] General Galic never ordered or received orders to carry out attacks aimed at terrorising civilians.[4782]

[4773] D2391, para 22; [redacted]
[4774] D2383, para 34
[4775] D2391, para 19
[4776] D2375, para 19
[4777] D2331, para 27
[4778] D2331, para 25; D2341, para 15; D2387, para 45; D2389, para 9; D2412, para 20; D2418, para 17; D2479, para 13; D2484, para 9; [redacted]; D2562, para 25; D2622, para 13; D2633, para 25; [redacted]; D2686, para 29
[4779] D2633, para 25
[4780] Galic, T.37408-9
[4781] Milosevic, T.33144-5
[4782] Galic, T.37408-9

1919. There were no elements of firing or objectives that constituted the terrorising of civilians.[4783] This was supported by a combat report written by Colonel Manojlovic, Chief of Artillery to the Command of the 4th Mixed Artillery regiment. The report showed that fires were planned as noted in the "firing tasks" which stated objectives such as "prevent enemy attacks from Sarajevo aiming to lift the blockade of Sarajevo by firing in the following sectors: Humsko Brod, Pofalici, Velesici, Jarcedoli, Colina Kapa and so on".[4784]

e. No intention to create a particular psychological effect on civiliasns

1920. SRK units, either at subordinate or superior command, did not have the intention during combat or ceasefire of exerting a particular psychological effect on civilians under the control of the Bosnian Muslim authorities.[4785] [redacted][4786]

1921. Individuals and groups behaving irresponsibly were most severely condemned by the SRK command in its order from 22 May 1993.[4787]

1922. Civilians in Bosnian Serb controlled-territory were in a state of fear as they felt their lives were endangered due to frequent shelling and combat attacks.[4788] SRK units were concerned about the civilian population in Nedzarici, Lukavica, Trapare, Vogosca, Rajlovac and Ilijas. The SRK was aware that the situation was difficult and that these people had to be protected.[4789]

1923. The fear among civilians under the Serb control emanated from the fact that many public buildings were targeted, as well as privately owned houses through daily sniper, mortar and artillery fire.[4790] For instance, in the Ilidza municipality alone there

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[4783] D0582, p.1; [redacted]
[4784] D0582, p.1
[4785] D2331, para 25; D2387, para 46; D2389, para 9; D2418, para 17; D2479, para 13; D2562, para 25; D2622, para 13; D2633, para 26; [redacted]; D2686, para 30
[4786] [redacted]
[4787] D3484, pp. 1-2
[4788] D2383, para 22; D2389, para 10; D2484, para 9; D2519, para 26; D2562, para 26; D2622, para 14; [redacted] Radojcic, T.31270
[4789] Milosevic, T.32717
[4790] D2389, para 10; D2633, para 26

were approximately 500 civilian casualties.[4791] Bosnian Muslim shelling on Ilidza usually targeted the school, the hospital and outpatient clinics and health centres, destroying both healthcare centres in the process.[4792] On 14 July 1994, the hospital compound in Ilidza was shelled from all directions, including Sokolovic Kolonija, Butmir and Igman, where rapid deployment forces and UNPROFOR were stationed.[4793] On one occasion, during a mass gathering, fire was opened from Igman and other towering points which resulted in numerous civilian casualties.[4794]

1924. Such civilian casualties created a big psychological pressure on the civilian population resulting in the issuance of warnings preventing major gathering, by civilian and military authorities.[4795]

f. SRK units were not uncertain as to whether fire was being open on civilians, or continued to fire where there was danger for civilians

1925. The SRK strongly opposed opening fire on civilian targets, especially where it was known that there was a danger of civilian casualties.[4796] Some SRK units opened fire at the first front lines, where members of the ABiH were deployed. These targets were only fired upon when the SRK had reliable information regarding opposing commands, and artillery positions.[4797] SRK units were not uncertain as to whether fire was being directed towards civilians. If there was such a possibility fire would not continue.[4798]

1926. [redacted]. [4799] The situation became even more complicated due to the armed units within the Bosnian Muslim areas. These units wore civilian clothes; not uniforms, so that they could not be distinguished from civilians.[4800]

1927. Assuming that the Bosnian Muslims took precautionary measures for civilians when opening fire, the SRK units only returned fire at the position from which they were

[4791] N. Mijatovic, T.30701
[4792] N. Mijatovic, T.30696
[4793] N.Mijatovic, T.30765-6
[4794] D2562, para 26
[4795] D2562, para 26
[4796] D2633, para 26
[4797] D2562, para 27
[4798] D2484, para 10; [redacted]
[4799] [redacted]
[4800] P1866, p. 5; P2291, p 3531; Hajir, T.8813

attacked.[4801] Although SRK units only fired at military targets; however, the possibility of civilian casualties could not always be excluded.[4802] However, SRK units never engaged military targets which were near civilian buildings without accurate information.[4803]

1928. [redacted].[4804] [redacted]

[redacted][4805]

1929. Doctors in Muslim hospitals were only able to classify their patients as civilians or soldiers, based on whether they were carrying a weapon.[4806] On this basis, Dr. Youssef Hajir's stated that only 3% of the injured at Dobrinja hospital were soldiers.[4807]

g. SRK units were never ordered by superior command or civil authorities (verbally or in writing) to carry out attacks on civilians in the city under Muslim control

1930. No oral or written orders to the effect of targeting civilians or civilian objects in the part of the city under the control of Bosnian Muslim authorities were ever issued by the higher commands or the civilian authorities.[4808]

1931. It was for the senior officer to decide whether he would fire a target or not as there had to be a number of indicators present to estimate whether there would be any civilian victims or not. If there was any chance that there would be civilian casualties, then there would be no opening of fire.[4809]

1932. General Galic was very restrictive and strict in the orders he issued in terms of limiting behaviour that was not legitimate in combat. Warnings and orders were constantly issued to commanders that they must not engage in such behaviour. On 31 October 1992 an order was issued to all SRK units, strictly forbidding the use of weapons

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[4801] S. Gengo, T.29781-2, T.29828
[4802] Sladoje, T.30573-4
[4803] D2375, para 19
[4804] [redacted]
[4805] [redacted]
[4806] Hajir, T.8813
[4807] Hajir, T.8812
[4808] D2331, para 28; D2344, para 9; D2351, para 15; D2387, para 49; D2389, para 11; D2391, para 20; D2418, para 18; D2479, para 15; D2484, para 10; D2527, para 21; D2553, para 39; D2562, para 28; D2622, para 15; D2633, para 27; [redacted]; D2686, para 31; Galic, T.37472
[4809] Milosevic, T.32584-5

with a calibre greater than 12.7mm without the permission of the Corps Commander.[4810] This prohibition was also fortified through a Command of the SRK issued by Commander Galic and was delivered to all brigades, regiments and independent battalions.[4811]

1933. When the VRS Main Staff received rumours that local units, in presence of the SRK commander, planned to confiscate heavy technical equipment under the control of UNPROFOR and to shell civilian targets in Sarajevo with heavy weapons, General Mladic immediately sent his order forbidding such activity, showing great responsibility and care that fire was not opened on civilian targets in any event.[4812]

1934. In addition, Dragomir Milosevic categorically denied these rumours and stated that no action was ever followed and no intention on the part of the corps commander ever existed to that effect.[4813] General Mladic also issued a warning to Lieutenant-Colonel Sehovac which forbad any action in connection to the blockade of UNPROFOR, the conduct of any offensive combat activities and the use of weapons of bigger calibre on civilian targets.[4814]

1935. President Karadzic and General Mladic issued warnings to prohibit any targeting of civilians by sniping or shelling.[4815]

h. SRK units were never issued verbal or written orders to carry out attacks on civilians in the city under Muslim control

1936. No oral or written orders to the effect of attacking civilians or civilian objects in the part of the city under the control of Bosnian Muslim authorities were ever issued by the SRK units.[4816] Dragomir Milosevic did not issue any orders to open unlawful fire on the city of Sarajevo or its citizens.[4817]

[4810] D2810; Milosevic, T.32721-3
[4811] D2567
[4812] D2633, para 65
[4813] P2420; Milosevic, T.32733-4
[4814] P2420; Milosevic, T.32733-4
[4815] Milosevic, T.33115-6
[4816] D2331, para 28; D2344, paras 9, 11; D2354, para 9; D2387, para 49; D2389, para 11; D2391, para 19; D2418, para 18; D2479, para 15; D2484, para 10; D2527, para 21; D2553, para 39; D2562, para 28; D2622, para 15; D2633, para 27; [redacted]; D2686, para 32
[4817] Milosevic, T.32734

1937. SRK units did not fire at the Kosevo Hospital, schools, nurseries or commercial buildings.[4818] Any decision to fire on such buildings would have taken into account the surroundings, the presence of any civilians, whether the building was a military target and whether or not it posed a danger.[4819]

1938. In Bascarsija, an old part of the city that was studded with cultural and historical monuments, SRK received strict orders that that area was never to be shelled even though there were military targets in the area.[4820]

i. SRK units never conveyed verbal or written information to higher command that attack against civilians in the city under Muslim control had been carried out

1939. No information to the effect that civilian targets had been fired upon were ever received.[4821] [redacted].[4822]

1940. Defence witness Milenko Indjic who was a liaison officer in the main staff of the SRK never received any protests about deliberate or indiscriminate targeting of civilians.[4823] Operative documentation of the corps from mixed artillery regiment and mixed artillery groups contained precise information regarding on which day, at which hour and minute something was fired, and at which target.[4824]

j. SRK units were never ordered by superior command or civil authorities (verbally or in writing) to carry out attacks on public transport (such as trams and buses) in the city under Muslim control

1941. General orders or instructions issued by superior command or civil authorities were restricted to military targets and firing positions.[4825] SRK units never received written or verbal orders to attack means of transportation, such as trams or buses, in parts

[4818] Milosevic, T.33136-8
[4819] Milosevic, T.33136-8
[4820] D2351, para 26; Veljovic, T.29279
[4821] D2354, para 9
[4822] [redacted]
[4823] D2774, para 126
[4824] D2774, para 125
[4825] D2562, para 30

of the city under the control of Muslim authorities.[4826] Civilians and civilian facilities could not be fired at.[4827]

1942. On the contrary, brigades were consistently informed through written and oral orders, issued by superior command and the civil authorities, that firing at civilians, civilian facilities and means of public transport was strictly prohibited.[4828] Such orders were announced by President Karadzic at several VRS meetings.[4829]

1943. The prohibition was a lesser burden for those units that did not have public transportation running through their zone of responsibility.[4830] For others, it was more difficult. The tram track was situated behind the rear of Bosnian Muslim forces, and it could not be ruled out that a bullet might have accidentally hit a tram during combat. In such cases, the incident was publicised as the deliberate targeting by Bosnian Serb forces of trams.[4831]

k. SRK units received general orders or instructions from superior command or civil authorities as to when and against whom fire was to be opened

1944. To avoid or reduce civilian casualties, SRK was ordered to only fire at visible artillery points which were inflicting losses to the army and civilians on the Serb side.[4832] [redacted].[4833] Often SRK units would receive orders prohibiting the opening of fire for a period of time, especially during ceasefires.[4834] SRK engaged direct military objectives and positions that obstructed the passage of vehicles on the Vogosca-Pale communications road.[4835] At every mandatory daily Brigade Command briefing, it was reiterated that the opening of

[4826] D2331, para 28; D2387, para 50; D2484, para 10; D2562, para 29; D2622, para 16; D2633, para 27; [redacted]; D2686, para 32; D. Maletic, T.30889; Galic, T.37528
[4827] Galic, T.37528
[4828] D2351, para 20
[4829] D2562, para 29
[4830] D2633, para 27
[4831] D2331, para 13
[4832] Order often referring to destroying or neutralising visible enemy firing positions; D2484, para 11; D2562, para 89; D2622, para 17; D2658, para 30; D2659; [redacted]; Lucic, T.30792
[4833] [redacted]; [redacted]
[4834] D2519, para 27; Lucic, T.30792
[4835] D2665, para 31; S. Gengo, T.29772

fire was banned, except for cases of self-defence.[4836] Orders reiterated the fact that civilians were not to be targeted.[4837]

1945. For troops to be granted permission to open fire, every target had to be marked and described in terms of specific information regarding of its size, locations and what kind of enemy assets there were.[4838] These requirements were reflected in an order from General Milosevic that 'continuous observation' was needed in order to open fight on 'sighted targets';[4839] Milosevic strictly stated that arbitrary and uncontrolled opening of fire was impermissible.[4840] When return fire was permitted to occur, SRK Commanders were required to supervise their troops [4841] to ensure that the response was proportionate[4842] and that only those selected targets were fired upon.[4843]

1946. The methods utilised to neutralise enemy fire were dependent on the position from which such fire originated.[4844] It was ordered that ammunition be used in an economic manner.[4845] The only occasion when a soldier was permitted to decide unilaterally to open fire, was when he or his facility was under direct attack and there was no other method to repel such an attack.[4846]

1947. As per these orders, Battalions were not permitted to fire in depth, preventing the injury of civilians, women and children in the city.[4847]

1948. Trained officers, who understood what locations were legitimate military targets, commanded the SRK.[4848] At every meeting, SRK Units and Commands were reminded what constituted a military target and that such targets could only be engaged when SRK positions were under attack.[4849] SRK Command would often debate the

[4836] D2331, para 23; D2433; D2479, paras 12, 17, 20; D2516, para 36; D2686, para 32; S. Simic, T.30140
[4837] An order reiterated in speeches by General Mladic; D2931, paras 21, 28; D2562, para 91; D2580, pp. 1-4; D2665, paras 25, 31
[4838] D2665, paras 15-17; D.Skrba, T.29108
[4839] D2562, para 90; D2617, p. 1
[4840] D2417, p. 1; S. Simic, T.30140
[4841] S. Gengo, T.29841
[4842] D2562, para 89; D2580, pp. 1-4
[4843] D2353, pp. 1-2; D2479, paras 12, 17; D2562, para 91
[4844] Enemy sniper fire from the city could be responded to with 12.7 machine gun or mortars, whereas mortars were always used in retaliation to sniper fire coming from thick forest; S. Gengo, T.29784-5
[4845] D2479, para 20; D2562, para 89; D2665, para 25; B. Tomic, T.30188
[4846] D2420, p. 1; D2553, para 38
[4847] B. Tomic, T.30181-2
[4848] D2562, para 89
[4849] Lucic, T.30786, T. 30817

necessity to respond to small-scale attacks.[4850] Approval to open fire on positions was denied several times throughout the war.[4851]

1949. The superior command's position regarding civilian targets can be seen in an order from Ratko Mladic that prohibited the planning and carrying out of offensive combat operations without the approval of the Main Staff, and the firing of large calibre weapons on targets in Sarajevo without his approval.[4852] All Commanders were personally responsible for the implementation of this order.[4853] Vladimir Radojcic stated that this order demonstrates the responsibility of superior command for checking legality of decisions made by subordinate commands.[4854]

1950. The orders of the superior command contained a provision on the need to respect international humanitarian law.[4855] President Karadzic repeatedly stated that any violation of international humanitarian law would have harmful consequences on the history of the Serbian people and chivalry of the Serbian soldiers, and that it did not befit Serbian soldiers to wage war against civilians.[4856] **Had it ever been a plan to terrorize civilians and not respect the humanitarian laws and conventions, somebody would certainly have disobeyed President Karadzic orders mentioned above, and would have reminded the President that it had been differently agreed.**

l. SRK units ordered (verbally or in writing) that civilians in the city under Bosnian Muslim control were not to be targets of attack

1951. SRK units had standing orders not to open fire on civilians or civilian features.[4857] In various meetings, what constituted a military target was explained repeatedly to SRK soldiers and command.[4858] [redacted]

[4850] Lucic, T.30787
[4851] S. Simic, T.30049
[4852] The order, dated 6 November 1994, also forbade all activities aimed at the blockade of UNPROFOR and the seizure of heavy weapons under their control without his specific order and approval; P2419, pp. 1-2
[4853] P2419, p. 2
[4854] D2562, para 106
[4855] D2562, para 31
[4856] D2562, para 31
[4857] D2331, para 28; D2341, para 16; D2479, para 17; D2484, para 11; [redacted]; D2562, paras 28, 31; D2633, para 28; [redacted]
[4858] D2516, para 18

[redacted][4859] Commanders of numerous brigades would ensure that written and verbal orders issued by higher command, ordering that civilians could not be targets of attacks, were passed on to troops.[4860]

1952. [redacted][4861] Brigades were prohibited from firing on such targets to avoid civilian casualties in areas such as Hrasno and Bascarsija, and the hospital.[4862]

m. SRK units were aware that there were military targets located in the depth of the opposing forces' territory (e.g. military units, installations, command posts, weaponry, including heavy weaponry and communication resources) and that civilian objects were being abused for military purposes by the opposing forces

1953. SRK had information of military targets deep in the territory of the 1st ABiH Corps, including military installations, command headquarters, heavy weapons, and communications equipment.[4863] SRK obtained this information through operative means and observations of the movement of forces and military trucks.[4864] Enemy units and heavy weapons also often changed positions and locations.[4865]

1954. SRK had both general and detailed information that ABiH units had heavily armed positions in civilian zones, and that civilian features were being misused for military purpose.[4866] This information was available to the SRK commanders before or during combat operations.[4867]

1955. The ABiH Corps abused for military purposes premises of civilian and protected buildings, such as hospitals, schools, university buildings and faculties, museums, UNMO observation posts and UN headquarters, day-care centres, educational institutions, and important cultural, social, historical, health and commercial facilities,

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[4859] [redacted]
[4860] Rajlovac Brigade, Milorad Sehovac's Brigadem the Rogatica Battalion of the 216th Mountain Brigade, 3rd Battalion of the 1st Smbr, the 2nd Infantry Battalion of the 1st Smbr, the Ilidza Brigade and the 2nd Battalion of the 1st Sarajevo Mechanised Brigade; D2331, para 28; D2389, para 12; D2391, para 21; D2484, para 11; D2562, para 31; D2633, para 28; D2665, para 25; D2686, para 33
[4861] [redacted]
[4862] Veljovic, T.29282
[4863] D2331, paras 22, 29; D2484, para 12; D2633, para 29; D2686, para 34; D2931, para 22; [redacted]
[4864] D2391, para 22
[4865] D2665, para 23; D2686, para 34
[4866] D2562, para 20; [redacted]; D2686, para 35; D. Skrba, T.29164
[4867] D2633, para 29; [redacted]

trauma clinics, business premises, shopping centres, bus and railway stations, private housing facilities, factories, institutes, water and electricity supply buildings, sports hall, nurseries, governmental buildings and the Assembly, pubs, kindergartens etc.[4868]

n. SRK units warned opposing forces (i.e. by protesting to the UN or in any other way) during combat and opening of fire on military targets located in civilian zones

1956. SRK frequently protested to UNPROFOR about the use of civilian facilities for military purposes.[4869] SRK brigades informed the superior command that lodged protests with the UN, but there was no response to the protests.[4870] The opposing forces would sometimes also be directly warned through messages from the Corps Command.[4871] UNPROFOR and others were also alerted to the difficulty in distinguishing between soldiers from civilians, as not all soldiers wore uniforms and some misused UNPROFOR and VRS uniforms.[4872] SRK units were aware that the protests made to UNPROFOR were passed onto ABiH.[4873]

1957. While combat action was being carried out or fire opened at military targets situated in civilian zones, brigades sent warnings to the enemy through the UN.[4874] Vladimir Radojcic personally warned them about this on several occasions.[4875] No feedback was received and it did not appear that this had any impact on the forces of the ABiH.[4876]

[4868] D0585; D0586; D0589; D2418, para 19; D2351, para 18; D2479, para 18; D2482, p. 1; [redacted]; D2519, paras 21, 23, 28; D2527, para 23; D2562, para 21; D2665, para 27; D2795, p. 2; D2658, para 29; D3429, p. 1; D2516, para 19; D3138, p. 4; B.Rasevic, T.30915-6; D3513; P4498, Galic, T.37419-20, T.37194; [redacted] Milosevic, T.32580-3; Sladoje, T.30570-2
[4869] D2383, para 24; D2516, para 20; Galic, T.37194-5
[4870] D2331, para 31; D2479, para 19; D2633, para 29; [redacted]
[4871] D2686, para 36
[4872] Galic, T.37193-4
[4873] N. Mijatovic, T.30731
[4874] D2562, para 35
[4875] D2562, para 35
[4876] D2331, para 31; D2562, para 35

o. SRK units took precautionary measures to reduce civilian collateral damage during combat and opening of fire on military targets located in civilian zones

1958. SRK knew that Bosnian Muslims were misusing civilian buildings for military purposes, and SRK took care when returning fire to avoid endangering civilian lives.[4877]

1959. Necessary assessments were conducted prior to any shelling campaign in order to ascertain the possibility of collateral damage.[4878] Once fire was opened against SRK positions, commanders would receive a report about the sector from which the attack was launched and from artillery observers.[4879] Even after the order was given, SRK forces were only permitted to retaliate proportionally.[4880] In such cases if losses were to be incurred from heavy fire in that area, the locality would only be targeted if there were minimal collateral damage among civilians.[4881] During periods of open fire provoked by ABiH Corps, SRK units continuously reviewed the situation.[4882] This observer structure allowed the commanding officer to make an assessment based on accurate information, including whether civilians populated the area.[4883]

1960. When considering which weapons to use, the Bosnian Serbs always considered the impact on civilians.[4884] When returning fire in urban areas, SRK used more precise and less damaging weapons.[4885] Artillerymen in the SRK units only launched shells to hit specific targets.[4886] Units implemented an order that in the heavily populated areas of Hrasnica, Butmir and Dobrinja 4, the use of mortars, artillery and small arms fire was prohibited when civilians were on the streets, intersections and squares.[4887] When returning fire to densely populated areas, the SRK on occasion responded only with half strength.[4888] **When the SRK fired a small number of shells only to stop the enemy**

[4877] D2516, para 19
[4878] Milosevic, T.32582
[4879] D2412, para 29; D. Skrba, T.29111, T.29119
[4880] I.e. if two shells were fired at RSK positions, they would only be permitted to return two shells; D. Skrba, T.29121-2
[4881] Milosevic, T.32753
[4882] Milosevic, T.32701-2
[4883] Milosevic, T.32701-2
[4884] An exception to this was emergency circumstances, when Bosnian Muslims attacked SRK positions, or when observers were killed; N. Mijatovic, T. 30744-5
[4885] D2412, para 29; D3425, p. 1; Galic, T.37411; S. Simic, T.30046
[4886] Milosevic, T.32753
[4887] D2633, para 30
[4888] D3411, p. 2; Galic, T.37358-9

fire, thus showing restraint, this was sometimes characterized by UN observers as a harassing or terrorizing fire against civilians, only because it was not concentrated.

1961. SRK had trained target analysts, topographers, crews, signallers and scouts within units to ensure that their fire was as fast and precise as possible, further preventing civilian casualties and damage to civilian property.[4889]

1962. UN observers never asked the Bosnian Serbs to cease fire, nor did they report illegal use of artillery fire.[4890]

1963. In SRK z/o, units complied with their obligation to evacuate civilians from combat zones.[4891] SRK officers prevented civilians from gathering around weapons before they were fired.[4892] SRK officers also removed civilians from the front lines.[4893] Military observers had optical sights, laser devices to measure distance, devices to determine the target where it was in relation to the observation post and had good communication with the unit command.[4894] These observers informed about the nature of the target.[4895] They always took care to protect civilians and avoid civilian casualties.[4896] Civilian casualties were reduced by establishing the boundaries of the target.[4897]

p. Examples where SRK units withdrew from combat or firing because the risk of civilian casualties was disproportionately higher to the military objective that needed to be accomplished

1964. If the SRK command received information during an attack that there were civilian casualties, the attack was suspended or called off immediately.[4898] Serb units often ceased fire when they observed Bosnian Muslim shift changes and movement amongst civilian homes.[4899]

[4889] D2341, paras 26, 28
[4890] After the fire was ceased, the UN observers noted the number of fired shells; D2341, para 28
[4891] D2553, para 39; B. Rasevic, T.30910; Guzina, T.31172; N. Mijatovic, T.30760
[4892] N. Mijatovic, T.30760; S. Gengo, T.29828
[4893] Guzina, T.31152
[4894] S. Simic, T.30057
[4895] S. Simic, T.30058
[4896] S. Simic, T.30059
[4897] For example; the surface area of the target, and then reducing this to the specific military target; D2484, para 12
[4898] [redacted]; Galic, T.37194, T.37805
[4899] D2622, para 17

1965. The SRK units refrained from returning fire on 3 June 1993 while being targeted from Dobrinja and other areas, since this would probably result in unnecessary civilian losses.[4900]

1966. Vladimir Radojcic stated his brigade abstained from engaging in combat activities or opening fire if the threat that the number of civilian casualties could be disproportionately higher than the military aim.[4901] They abstained from fighting for Dobrinjska Street because they noticed a large number of children and women there.[4902] Vladimir Radojcic again abstained from taking hold of Butmir because he had verified information that a large number of civilians were there, and the activity of their artillery was likely to cause substantive losses amongst them..[4903]

1967. Zoran Kovacevic of the Vogosca Brigade stated that his unit on more than one occasion, abandoned combat or fire operations because of the danger of civilian casualties being disproportionately greater than the military objective to be achieved.[4904]

4. Indictment Schedules

Who wanted the Sarajevo civilians to feel terrified?

a. Bosnian Muslims provoked foreign intervention by targeting own population

1968. At the outset it should be said that there was political need on Bosnian Muslim side to fire mortar launchers on their own people.[4905] [redacted] [4906] Colonel Richard Gray was similarly convinced that the killing of their own citizens was part of the strategy of the Bosnian Muslim government to

[4900] Galic, T.37488-9
[4901] D2562, para 37
[4902] D2562, para 37
[4903] D2562, para 37
[4904] D2484, para 12
[4905] D2774, para 150
[4906] [redacted]

provoke international intervention.[4907] Such opening of the fire was confirmed by the UNPROFOR.[4908]

1969. [redacted]. [4909] However, civilians on both sides of the confrontation line felt terrified, as it is always the case in civil wars and street fights. In fact, it was a three-sided exchange of heavy weapons fire that sometimes reached an average number of 1200 shells on the city per day, which created a climate of terror.[4910] This was alleged without specifying the source of those shells.

1970. Therefore, it is fundamental to establish by whose will and decision Sarajevo was turned into and kept as a battlefield. The Serbs did not declare the war against the Muslim-Croat coalition, but vice versa. The Serbs did not initiate fighting and violations of ceasefires, nor had any benefit from the civilian sufferings. All of that was the responsibility of the Serbs' adversaries. Harland accepted it as possibility that in February, March and April 1994 the Muslim forces violated the cease-fire 318 times.[4911]

1971. In January 1994, General Rose obtained a consent of President Karadzic for opening the airfield in Tuzla as long as Serb inspectors could be part of the UN operation so as to prevent arms smuggling to Bosnian Muslims.[4912] However, Bosnian Muslims refused to accept the presence of Serb inspectors at the airfield.[4913] President Izetbegovic later stated that he was prepared to see 10,000 Bosnians die of starvation rather than accept a single Serb on Bosnian territory.[4914] Bosnia was Bosnian Serb's homeland too.

1972. Fraser even remembered that some French soldiers came across a Muslim TV crew filming a staged attack with children, preparing to use it on TV against the Serbs.[4915] He recalled hearing that the French had a video footage showing Muslim

[4907] D2398, para 14
[4908] D2774, para 150
[4909] [redacted]
[4910] KDZ185, T.4188
[4911] Harland, T.2121
[4912] P1638, para 28
[4913] Rose, T. 7337; P1638, para. 28
[4914] P1638, para 28
[4915] Fraser, T. 8051; P1762, p. 79

snipers firing at their own people to blemish the Serbs.[4916] He acknowledged the contents of a French report (Exhibit D770) of a sniping incident where a Muslim woman confirmed that shots came from a Muslim-held building opposite the PTT.[4917] Fraser does not ever recall hearing that the Serbs would target their own civilians in order to lay blame it on the other side.[4918] Fraser's assessment was that the Muslim authorities were guilty of targeting civilians with their own professional marksmen and snipers.[4919]

1973. Hamill was assisted by Dr. Karadzic's cross-examination to remember that he and other UN staff, during briefings, had been warned that Muslim forces could have placed dead bodies in crime scenes.[4920] In Hamill's opinion, the Bosnian side took political advantage of incidents and that incidents frequently occurred at the same time as various international conferences were convened.[4921]

1974. The Serbs had no interest in suffering of Sarajevo civilians. It was the Muslim extreme leaders, with an influence on senior politicians,[4922] who benefited from "the worse, the better" policy and had an interest to worsen the civilian life [4923] in order to keep Sarajevo on the front pages and headlines of the world media[4924] and to provoke an international military intervention on their side.[4925] General Razek testified that civilians were facing food deprivation and shelling and, thus, they wanted international community to step in.[4926] In order to achieve this objective, the Muslim side committed horrible crimes against their own people which they blamed on the Serbs.[4927]

1975. In an excerpt from General Mladic's diary, on 18 August 1992, it was noted that Bosnian Muslims were seeking international intervention by killing their own people.[4928] In a directive from General Mladic to the GS VRS, issued on 22 July 1992, it was noted

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[4916] Fraser, T. 8051
[4917] Fraser, T. 8052-3
[4918] Fraser, T. 8053-4
[4919] Fraser, T. 8054
[4920] Hamill, T. 9743
[4921] Hamill, T. 9744
[4922] KDZ467,T.5876
[4923] Harland, T.2074-5
[4924] KDZ465;T.3953;KDZ185,T.4229,T.2103; P1558,p.16; KDZ280, T.8052
[4925]KDZ465,T.4084;KDZ185,T.2072-3; KDZ108,T.6821;T.6807; P1558,p.21; KDZ280,p.8122; [redacted]; D568;KDZ344,T.5560;T.5580;D507; Razek, T.1634; Exhibit P788 @ R0164203
[4926] KDZ344,T.5533
[4927] KDZ280,T.8112; D775; [redacted]
[4928] P1479, p.72

that the BIH Presidency tried to provoke foreign intervention with all available means, even by targeting their own people.[4929]

1976. [redacted][4930]

Several such incidents took place.[4931] The 1st ABiH Corps also shelled civilian facilities to have it portrayed as if Bosnian Serbs had done to provoke the SRK fire and to justify foreign intervention.[4932]

1977. [redacted].[4933]

1978. Neither side was free of obligation to take care of civilians by avoiding opening fire on them, or minimizing collateral civilian damage when targeting military targets, however, the main responsibility for civilian victims lies with the side who unnecessarily kept the war in Sarajevo alive for 43 months. There is no evidence that the Serbs wanted, let alone planned or ordered, civilians to feel terrified. The Serbs did not have any benefit from the sufferings of civilians in Sarajevo; quite opposite. It is obvious who did.

1979. Taking into account the evidence presented, it is obvious that no general assertions about "shelling" or "sniping" should or could be given any credit. The Prosecution is obliged to prove its allegations through valid investigations, instead of leaving it to the Defence to prove that the general statements to this effect are wrong.

[4929] D0593, p.2
[4930] [redacted]
[4931] D2398, para 15; Gray, T.29981; [redacted]; Milosevic, T.33275-6
[4932] D3411, p. 3; D3424, p. 3; D3442, p. 2; D. Sarenac, T.34945; Galic, T.37232-3, T.37409-10, T.37486-7; [redacted]; Milosevic, T.33275-6
[4933] [redacted]

5. Indictment Schedule G - Individual Shelling Incidents

a. Incident G-1: Heavy shelling of city of Sarajevo (on or about 28 May 1992)

1980. It is unclear which particular incident, if any, is alleged to have taken place within the ambit of Incident G-1, as the Indictment fails to make a specific reference both temporally and geographically. The only incident in that period was the one that took place on 27 May 1992 in Vase Miskina Street.

1981. The totality of the evidence analysed and presented by the Defence ballistic experts [4934] in relation to this incident undoubtedly proves the following:

1982. It is alleged that the impact in the Incident G-1 resulted from a single 82-mm mortar shell in the immediate vicinity of a large number of persons queuing for bread in front of a shop. However, there are many unproven and inconsistent facts, from the number of casualties and calibre of the mortar to the distance from which the shell was fired.

1983. Based on the contradictory official data, it is impossible to determine the number of persons who died and were wounded in the incident. Allegedly, two TV crews were present during the evacuation of the casualties and had filmed sniper fire during the evacuation. However, in light of the distance between the scene of the incident and the RTV BiH building, the presence of these crews at the scene during the evacuation borders to impossible.

1984. According to the results of the police investigation, a single 82-mm mortar shell hit Vase Miskina Street, yet this claim is not documented in any way. Based on TV footage, either an 81-mm or 82-mm calibre shell exploded there. After the Sarajevo CSB completed their on-site investigation, the BiH Public Prosecutor attended the scene, but the photographs and data concerning the crater contained in his report bear no resemblance to the crater photographed by war correspondent Roger Richards and during the on-site investigation by the Sarajevo CSB investigators. Thanks to the photograph taken by the war correspondent Roger Richards, most likely in September 1992, it may

[4934] D3542, pp.27-52

be stated with a high degree of probability that the craters depicted in the Bosnian Muslim official photo files, were made after September 1992.

1985. Since tall buildings surround the area where the incident occurred, and bearing in mind the distance and position of the Bosnian Serb units, it is absolutely impossible that it may have been targeted by snipers operating from the Bosnian Serb positions.

1986. Furthermore, all the ranges from which the shell could have been fired were under the control of the ABiH forces. This was further proven by the fact that the stabiliser was found outside of the crater. Had the shell been fired using charges 4 through 6 (which was necessary in order to make a claim that the shell was fired from the VRS positions) the stabiliser would have become embedded in the surface in the crater.

1987. Thus, based on the technical specifications of the relevant weapon, the marks that are incontrovertible and the characteristics of the scene of the incident, an 81-mm or 82-mm shell that exploded in Vase Miskina Street, was most probably fired from a position at a range of between 100-120 metres, with an azimuth of 175 degrees, from the territory under the control of the ABiH.[4935]

1988. Upon receiving the information by international representatives about this incident President Karadzic contacted the army, which undoubtedly said the shell was not fired by the VRS. To establish the truth, President Karadzic immediately sent out a demand to conduct an inquiry involving a ballistics expert.[4936]

1989. The SRK conducted an investigation, which found that Bosnian Serbs were not involved in the Incident G-1.[4937]

1990. [redacted][4938]

1991. In June 1992, the MUP in an internal document wrote that the factors contributing to the worsening of the overall security situation included **the staging and utilization of various events affecting the mood of the citizens, e.g. the planting of**

[4935] D3542, pp.27-52
[4936] Krajisnik, T.43333-34
[4937] N. Mijatovic, T.30706
[4938] [redacted]

explosives on Vase Miskina and Marsala Tita Streets in Sarajevo and the staging of situations aimed at proving the 'brutality' of Serbian forces".[4939]

1992. [redacted][4940]

1993. When Witness Vladimir Lukic started working as the RS representative attached to the UNPROFOR, he was similarly told by the UNPROFOR members that the incident in Vase Miskina Street was the work of Bosnian Muslim saboteurs.[4941]

1994. [redacted]".[4942]

1995. The Prosecution suggests that in three intercepts on 28 and 29 May 1992 with Vukasinovic and Potpara, Mladic ordered indiscriminate shelling of Sarajevo and alleged civilian neighbourhood of Velesici.[4943] However, on 23 May 1992, in another intercept, Mladic told his troops that "it is not my intention to destroy the town and kill innocent people. Those who want to fight[...]should pull out the civilians[...]It would be better to fight in the mountains than in the town".[4944]

1996. After Mladic allegedly told Vukasinovic on 28 May 1992, and Potpara on 29 May 1992, to shell the city, Mladic had another conversation with Potpara on 29 May 1992, in which he denied that he ordered fire on the city "I ordered as soon as I came last night...it was an all out attack against the units and you. There was shooting, and somehow I managed to calm the people here, to put everything under control, to stop the fire" and complained that the Muslims produced fake intercepts with "his" voice: "They probably have pantomime performers, some good imitators who are able to imitate our voices properly. I mean your voice, my voice and anyone's voice".[4945] Mladic then told

[4939] P2760, p. 3 (emphasis added)
[4940] [redacted]
[4941] D3563, para 15
[4942] [redacted]
[4943] P1518; P1521; P1522
[4944] P1041, p. 4
[4945] D0207, p. 8

Potpara "let them deceive and delude their people. You are to pass on this information to every single soldier[...]we will not shell the town".[4946]

1997. However, even if Mladic had ordered fire on Velesici, it would not have been illegal, since this area was packed with ABiH military hardware and personnel.[4947] [redacted].[4948]

b. Incident G-2: Bombardment of the city (on or about 6 June 1992)

1998. It is unclear which particular incident, if any, is alleged to have taken place within the ambit of Incident G-2, as the Indictment fails to make specific reference both temporally and geographically.

1999. The extremely broad nature of this indictment charge, encompassing the entire war situation in Sarajevo around 6 June 1992, prevents the Defence from effectively refuting the allegation. With the absence of clarification as to what President Karadzic ought to materially defend, the Defence can only offer a holistic approach in providing an account of the situation on the ground as of 6 June 1992.

2000. In a directive issued by the GS VRS on the respective date, general offensive by the ABiH forces in the direction of Sarajevo is referred to.[4949] In protecting the population from the ensuing danger, the VRS never received the task to engage civilian targets.[4950] On the contrary, the VRS Main Staff ordered the units that "maltreating of civilian unarmed population is strictly forbidden and prisoners must be treated pursuant to Geneva convention".[4951]

2001. Furthermore, in the report from the SRK to the GS VRS on the respective date, it was noted that the ABiH had carried out several attacks, including from Hrasnica, Sokolovic-Kolonija and Butmir, firing artillery weapons and attempting to penetrate

[4946] D0207, p. 8
[4947] D0585; D0586; D2516, para 15; D2665, para 22; Milosevic, T.32543
[4948] D0580; D0603; [redacted]
[4949] D0232, p. 1
[4950] D0232, pp.1-5
[4951] D0232, p. 5

Grbavica.[4952] Bosnian Muslims also shelled redeployment areas of the 1st Rbr in the Vrace sector.[4953] The combat operations carried out by the SRK were directed at repelling the ABiH attacks.[4954] The ratio of forces was between 1:5 and 1:9 to the detriment of Bosnian Serbs.[4955]

c. Incident G-4: Dobrinja IIIB football game (1 June 1993)

2002. The totality of the evidence analysed and presented by the Defence ballistic experts [4956] in relation to this incident undoubtedly proves the following:

2003. The Incident G-4 did not in fact occur at the spot where the investigation was conducted, i.e., the match was not played on the parking lot but on a five-a-side pitch located near the parking lot. The incident was first investigated two and a half years after the incident, on 21 November 1995. On that occasion, the investigators found a single crater in the parking lot.

2004. Prosecution witness John Hamill was at the site in 2001, and he saw and recorded two craters in the asphalt surface. On 17 September 2010, the defence team saw and recorded two craters filled with a red substance in the same places that were recorded by Prosecution investigator Barry Hogan. Prosecution expert Richard Higgs visited the scene of the incident in 2001 and on that occasion he too saw that there were two craters in the parking lot. No one has furnished an explanation as to how this was possible.

2005. All the facts stated above indicate that there was just one crater in the parking lot on 21 November 1995 and that the second crater was most probably made by hand after 21 November 1995, because this was the period after the signing of the Dayton Agreement and from that time on, there was practically no fighting.

2006. The evidence further shows that there was no line of sight from the parking area where the incident purportedly occurred to the VRS positions. The area where the incident allegedly occurred is not in conformity with the recordings made by TV BiH on the day of the incident. UN Captain Houdet, who investigated the incident, provided the

[4952] D0577, p. 1
[4953] D0577, p. 1
[4954] D0577, p. 1
[4955] D0577, p. 1
[4956] D3542, pp.52-74

grid reference for the scene of the incident which corresponds to a location 200 metres away from the scene of the incident (parking lot) and he also stated that both shells hit a macadam surface, which is absent in the vicinity of the scene of the incident.

2007. The evidence further shows that the shell could only have been fired from a distance between 79 and 464 m with a primary charge, whereas the nearest VRS position was at a distance of 400 m (or rather, a minimum of 425 m). However, the angle of descent in that case is smaller than the angle recorded at the scene, and this fact rules out the possibility that the shell in question was fired from a VRS position.

2008. Finally, it has been established that on 21 November 1995, the investigation team wrongly determined the incoming azimuth of the shell. The key evidence presented by the Prosecution regarding this incident is based on the testimony of witness Ismet Fazlic, but it has been established that he did not speak the truth. In his various statements given at various times, he made untrue claims and presented a great number of contradictory facts.[4957]

2009. At the time of Incident G-4, a ceasefire was in force.[4958] From the report of the command of the SRK to the GS VRS on 1 June 1993 at 1700 hours it is evident that the SRK completely respected the ceasefire in force at the time and did not respond to enemy provocation.[4959] General Galic testified that he never received or issued an order to open fire in the area Dobrinja IIIB nor received a report that fire had been opened there.[4960]

2010. No protests pertaining to the shelling of the football game were received in early June 1993.[4961]

2011. Finally, close to the place of incident, there was an atomic shelter used to shelter soldiers and material from the recoilless guns, which were withdrawn towards Mojmilo including the PAMs and other pieces of equipment and troops,[4962] and was therefore a legitimate military target.[4963]

[4957] D3542, pp. 52-74
[4958] Galic, T.37368
[4959] Galic, T.37362
[4960] Galic, T.37373
[4961] D2774, para 130
[4962] D0193, p.2; Galic, T.37368, T.37980
[4963] D0340, p. 3; Galic, T.37369-70

d. Incident G-5: Dobrinja water queue in Spasenije Cane Babovic (12 July 1993)

2012. The totality of the evidence analysed and presented by the Defence ballistic experts [4964] in relation to this incident undoubtedly proves the following:

2013. On 12 July 1993, an 82 mm calibre shell exploded in front of the house at *Spasenije Cane Babovic* 6, killing 12 and injuring 15 persons in a water queue. The scene of the incident was in the immediate vicinity of the demarcation line and the entrance to the tunnel under the airport. About 100 metres from the scene of the incident, there was a command post of a BH Army unit.

2014. The citizens in the water queue were warned by a police patrol of the danger only 12 minutes before the shell hit. There is a plethora of evidence showing unequivocally that the shell was fired from the territory controlled by the BH Army. The police investigating organs and UNPROFOR referred to the evidence at the scene, yet their conclusions ran counter to what the evidence showed, resulting in the erroneous conclusion that the VRS was responsible for the incident.

2015. The shell exploded as it hit the body of a victim, leaving marks characteristic for such cases. The evidence at the scene showed the position of the victim, the deformations on the car, the fragment marks on the bumper, the pattern on the asphalt surface, which all indicated that the shell had been fired from the north-northeast (positions held by the ABiH) rather than from the west-northwest as determined by the investigating organs.

2016. It is particularly striking that although investigator Hamdija Čavčić implies that the reports of the Bosnian police and UNPROFOR were made independently of each other, UNPROFOR's report lists the names of the members of the Bosnian investigation team present there, and it is clear that the reports used the same data probably given by the Bosnian investigators to UNPROFOR, which means that these were not two independent reports whose results match.[4965]

2017. No order was ever issued to open fire at Spasenije Cane Babovic Street, and no information received to this effect either.[4966]

[4964] D3542, pp.74-92
[4965] D3542, pp.74-92
[4966] D2562, para 110

2018. No orders were issued to the 1st battalion of the Ilidza Brigade particularly because the location of Incident G-5 was not visible from the positioning of the battalion.[4967]

2019. There is no mention of Dobrinja in the order from the SRK command to the SRK units on 12 July 1993, although several other places that the VRS was to liberate on that day were explicitly named.[4968]

2020. Chief of Artillery Savo Simic testified that the shells were fired from the Butmir sector under the ABiH control.[4969]

e. Incident G-6: Alipasino Polje in Cetinjska and Klare Cetkin Street (22 January 1994)

2021. The totality of the evidence analysed and presented by the Defence ballistic experts [4970] in relation to this incident undoubtedly proves the following:

2022. Three shells were fired in this incident. There is a veritable confusion in the available documents regarding the sites where the shells fell, the number of casualties, the type of shells used, and even the actual number of shells. Proceeding from the information available, the first shell hit a park in *Rade Koncara* Square, the second hit an area in front of the building at *Cetinjska* Street no. 3, and the third hit an area in front of the building at *Klare Cetkin* Street no. 4. Two are grouped in line with the usual dispersion range for mortar munitions. The shells that fell in *Klare Cetkin* Street and in *Cetinjska* Street were about 200 m apart, which is a very big deviation according to the firing tables.

2023. It is important to note that the range dispersion of these shells was about 15 m, which is much less than the range dispersion listed in the firing tables. The fact that the range dispersion is so small rules out the possibility that one of the shells may have deviated because of a defect or mistake. When the deviation is as large as it is in this case, the range of the shell would definitely be substantially smaller. This indicates that there was a fire correction, an assumption supported by the rate of fire. In this instance, it

[4967] D2479, para 26; D2483, p. 1; D2562, para 110; Sladoje, T.30575-6
[4968] D3419, pp. 1-2; Galic, T.37392-3
[4969] D2412, para 26
[4970] D3542, pp.92-111

must be borne in mind that the two shells landed in the immediate vicinity of two groups of children, which were about 200 metres apart.

2024. The explosion site at *Klare Cetkin* Street no. 4 was investigated by a team from the Sarajevo CSB; they determined that three shells had fallen and exploded in this incident: two 82 mm calibre shells and one 120 mm calibre shell. Their finding is diametrically opposed to the finding of the forensic technician who was conducting the on-site investigation together with them, and who notes in his report that two 120 mm shells impacted at *Cetinjska* Street no. 3 and at *Klare Cetkin* Street no. 4, and runs counter to the findings of the UNPROFOR investigation team, headed by Verdy, who claims in his report that three 120 mm shells exploded in the incident. Bearing in mind the discrepancies, it is impossible to draw any conclusions as to the calibre of shells used in this incident without the relevant data about the size and shape of the crater.

2025. The shell that impacted and exploded at *Klare Cetkin* Street no. 4, hit the kerb. That is why the central crater does not resemble the usual crater caused by an explosion on a level surface, but it is still possible to measure the diameter of the central crater at 60 cm. The Bosnian Muslim police determined that the radial marks fanned out to the length of 120 cm from the central crater, but this was found not to be correct, and the radial marks were seen to fan out almost to the middle of the road, i.e. to the length of about 3m.

2026. The shell that impacted and exploded in front of the building at *Cetinjska Street* no. 3 fell approximately in the middle of the road. The CSB determined an 82 mm calibre shell fell and exploded there, whereas the forensic technician tasked with collecting and logging evidence at the scene stated that it was a 120 mm calibre shell. In light of the size of the crater, it can be assumed that the forensic technician and Captain Verdy were correct when they found that a 120 mm calibre shell exploded there.

2027. Conclusions also differ as to the incoming direction. The Sarajevo CSB ballistics specialists determined that the shell that impacted at *Klare Cetkin* Street no. 4 had come in from the direction slightly north in relation to the west, stating that this is the direction of Nedzarici and the Institute for the Blind. The Official Report states that the shell was fired from the west, from Nedzarici - the Institute for the Blind. According to the ballistics specialists' report, the shell was fired from the direction slightly north in

relation to the west, which should mean that the bearing is greater than 270 degrees; according to the Official Report, the bearing is west, which means around 270 degrees.

2028. The actual azimuth of the line leading from *Klare Cetkin* Street no. 4 to the Institute for the Blind is 266 degrees. Prosecution witness Mirza Sabljica agreed that according to the map the line from *Klare Cetkin* Street no. 4 to the Institute for the Blind corresponds to the southeast, which shows that the police investigators did not use any of the methods available to determine the direction, for instance the central axis method.

2029. Captain Verdy found that the shell that impacted at *Klare Cetkin* Street no. 4 had been fired from an azimuth of 236 degrees, and the point of impact at *Cetinjska* Street no. 3 was 239 degrees. In the course of the site visit, the Defence established that the bearing of the central axis was 238 degrees. This azimuth was re-checked by a different method and the azimuth obtained was 237 degrees. It was therefore concluded that the azimuth of the incoming trajectory for this shell was determined with a ±5 margin of error, and Prosecution ballistics specialist Mirza Sabljica concurred.

2030. Based on the facts presented above, it can be concluded with a high degree of certainty that the Bosnian Muslim police failed to determine the incoming direction of the shell that impacted at *Klare Cetkin* Street no. 4, i.e., that the shell did not come in from Nedzarici, the Institute for the Blind, but from a point about 30 degrees due south.

2031. Both the CSB report and Official Report about the incoming direction of the shell that landed at *Cetinjska* Street no. 3 stated that the shell flew in from the west, allegedly from the direction of Nedzarici, the Institute for the Blind. However, Captain Verdy measured the azimuth of the shell that impacted at *Cetinjska* Street no. 3 at 239 degrees, which contradicted the conclusion of the Sarajevo investigators. During the on site visit, there were no explosion marks because the road had been resurfaced, but the marks that had been filmed by Prosecution investigator Barry Hogan in 2001 give us a plethora of information both about the size of the marks and the direction from which the shell had come, and these data were used to verify the azimuth measured by Captain Verdy.

2032. It was, therefore, established that the Sarajevo CSB ballistics specialists made erroneous findings that the central crater was much smaller than it actually was, and it was also possible to determine the incoming direction of the shell. The approximate

azimuth of the incoming trajectory of the shell was measured at slightly less than 240 degrees, which rules out the possibility that the shell was fired from the direction of the Institute for the Blind in Nedzarici and tallies almost perfectly with the azimuth measured by Captain Verdy.

2033. The evidence shows that both shells came in from the southwest, which matches the measurements obtained by Captain Verdy. However, as Captain Verdy was measuring the azimuths, he made an error switching the targets; the azimuth measured at *Cetinjska* Street no. 3 was applied to the image depicting the explosion site at *Klare Cetkin* Street no. 4 and vice versa, thus mixing up the measured azimuths. The range dispersion for all three shells is within the normal limits of dispersion for mortar munitions, which shows that all three shells were fired from the same mortar. This means that both lines determined by Captain Verdy, with the corrections of the error he made, must intersect in a single point due southwest, which was under the control of the BH Army, near the *UPI Institute*.[4971]

2034. The Serb Chief of Artillery, Savo Simic, believed the shells to have been fired from the Butmir sector under the ABiH control.[4972] The incoming trajectory of the alleged 120-mm mortar shell had been southwest, most probably from the Butmir agricultural estate as this was ideal for mortars.[4973] Butmir agricultural estate is a different name for the *UPI Institute.*

2035. On 24 January 1994, after the ABiH deputy commander complained about the UNPROFOR statement related to a massacre on Alipasino Polje, General Soubirou said that they could not determine the exact position the grenades were coming from on the basis of their traces.[4974]

2036. No order was issued to fire on Alipasino settlement or Alipasino Polje at the time.[4975] Incident G-6 was not referred to in the regular daily report on 23 January 1994.[4976]

[4971] D3542, pp.92-111
[4972] D2412, para 26
[4973] D2341, para 20
[4974] D3432, p. 2
[4975] D2479, para 27; D2562, para 111; Galic, T.37436
[4976] D2806, pp. 1-3; Galic, T.37437

2037. Moreover, the 1st battalion of the Ilidza Brigade did not have any mortars at the Institute for the Blind, as the facility was on the line of disengagement thus providing no convenient locations to position such mortar.[4977]

2038. Finally, Alipasino Polje was part of the z/o of the 1st ABiH Corps and their units were stationed in that area, such as Kulin Ban.[4978]

f. Incident G-7: Dobrinja humanitarian aid (4 February 1994)

2039. The totality of the evidence analysed and presented by the Defence ballistic experts [4979] in relation to this incident undoubtedly proves the following:

2040. On 4 February 1994, at around 1130 hours, three, as claimed by the investigators, or four 120 mm calibre shells, as claimed by witnesses and supported by physical evidence at the scene, impacted and exploded in Dobrinja, in *Oslobodilaca Sarajeva* Street and the playground in the immediate vicinity of this street. Although a person called Sabahudin Ljusa was listed both as dead and wounded in the report made by the investigating judge, he testified in 1994 and took part in the recording of the footage made by Prosecution investigator Barry Hogan. According to the witness statements and most of the documents, this incident occurred in *Oslobodilaca Sarajeva* Street and in the playground between the buildings in *Oslobodilaca Sarajeva* Street and *Mihajla Pupina* Street. However, some police reports state that the incident occurred in *Džavarharl Nehrua* Street.

2041. The evidence shows that the first shell hit and exploded at the edge of the playground, on which occasion the shrapnel generated by the shell dug up the soil between the playground and the footpath. The blast produced by the shell that exploded subsequently on the footpath hurled the loose soil, mostly in the direction of its incoming trajectory: hence the visible soil traces on the playground. This evidence indicates that the shell came in from an azimuth of between 220 and 230 degrees, perhaps even smaller, which runs counter to the azimuth findings made by the investigators.

[4977] D2479, para 27
[4978] Galic, T.37436
[4979] D3542, pp.111-139

2042. According to the official Bosnian Muslim report, three shells came in from the east (Lukavica, Energoinvest complex), and the UNPROFOR, through its own investigation, determined that the shells had been fired from the east, i.e. from the territory controlled by the Republika Srpska Army, from a position at a range of about 1,500 m. However, during the on-site investigation, the investigating organs produced a sketch of the scene of the incident marking the north therein as being perpendicular to *Oslobodilaca Sarajeva* Street, i.e. the north was marked with an error of about 60 degrees. None of the investigators provided an explanation for this deviation, and yet this error in the orientation resulted in the erroneous conclusions about the direction from which the shells had come in.

2043. According to the report of the investigating judge, the first shell impacted at *Oslobodilaca Sarajeva* Street no. 8. Although ballistics specialists did not examine the site, the investigating judge stated that the shell had come in from the east, southeast. During the site visit the shrapnel marks were still visible on the facade of the building showing that the shell had a large angle of descent, which is why there are no shrapnel marks above the window height; the marks on the side wall were caused by the rear end of the shell, which also shows that the shell had flown over the part of the building where the side wall is, or very close to it. This direction shows that the direction determined by UNPROFOR is not correct.

2044. The site of the impact of the second shell is debatable, because the Sarajevo investigating judge, Prosecution witness Mirza Sabljica and a member of the UNPROFOR investigating team, all suggested different places. However, the material evidence shows that the shell undoubtedly exploded in front of the concrete sub-wall at *Mihajla Pupina* Street no. 3. Taking into account the pattern of shell fragment dispersion and the damage on the building at *Mihajla Pupina* Street no. 3, it follows that the shrapnel marks at the scene of the incident show that the shell that exploded next to *Mihajla Pupina* Street no. 3 had been fired from BH Army positions. This was confirmed by the soot marks in the snow caused at the moment of the explosion. Based on the physical evidence at the scene, the claim made by Mirza Sabljica that the stabiliser recovered at the scene confirmed that the shell had come in from the *Energoinvest* complex was also debunked, because of the incontrovertible fact that the stabiliser had

certainly changed its direction after the explosion, which is visible in the deformations on the fins.

2045. According to the report of the Sarajevo investigating judge, the third shell hit the footpath and the stabiliser became embedded in the asphalt surface. In his report, Mirza Sabljica claims that the shell had been fired from the east, which would correspond to the location of the *Energoinvest* complex, because according to his findings, the stabiliser and the radial marks in the asphalt all point in this direction. Thanks to the visible places where the adjoining elements of the footpath kerb meet, it was possible to make a rough estimate of the direction from which the shell was fired: around 240 degrees. It is important to note that the soil traces in the case of the third shell match the incoming direction of the shell that impacted next to the building at *Mihajla Pupina* Street no. 3, indicating that they were fired from the same position. Based on the evidence shown above, it may be stated that all the physical evidence indicates that the shell that exploded on the footpath between the playground and the garage was most likely fired from the BH Army positions. Finally, the footage broadcast by TV BiH showed a part of the designation on the primary charge, which was the letter N in the Roman alphabet in Arial font. The VRS did not have shells with markings in the Roman alphabet, yet another piece of evidence showing that the shell was fired from the BH Army positions.

2046. Therefore, based on the evidence of two eyewitnesses and all the other elements presented above, the timeline of the events was probably as follows. The first shell impacted and exploded next to the building at *Mihajla Pupina* Street no 3, followed by the shell that impacted and exploded at *Oslobodilaca Sarajeva* Street no. 8. A few minutes later, when the people who had fled from the playground after the first explosion came back to pick up their things, a shell impacted at the edge of the playground. It was followed a while later by the fourth shell that hit the footpath between the playground and the public parking garage. It may be claimed with a high degree of certainty that four 120 mm mortar shells fell in Dobrinja, in *Oslobodilaca Sarajeva* Street and its immediate vicinity on 4 February 1994 were fired from the BH Army positions.[4980]

[4980] D3542, pp.111-139

2047. No fire had been opened on 4 February 1994 at the respective area.[4981]

2048. The SRK units did not prepare any offensive as a ceasefire was in place at the time. SRK units simply reinforced their positions and did not open fire during the period between 4 and 10 February 1994.[4982] No commands were issued nor received to this effect.[4983]

2049. All artillery weapons of the 1st Smbr, including 120-mm MBs were under the control of UNPROFOR, where officers were on permanent duty at all firing positions at the time.[4984]

2050. General Galic received information about Incident G-7 and issued order to the subordinate units to report on what happened and whether they had opened fired at the target at the time.[4985]

2051. Colonel Kosovac launched investigation and determined that no such fire had been opened in Dobrinja by the SRK.[4986]

2052. The UNPROFOR did not send any kind of protest to the Group for Co-Operation in connection with the alleged incident.[4987]

2053. After it was established that no fire had been opened at the sector of Dobrinja, an official denial was issued by the RS news media in accordance with the instructions by the GS VRS.[4988]

g. Incident G-8: Markale 1 (5 February 1994)

1. Investigations concluded that it could not be determined which party fired the shell that exploded on the market place

2054. On 5 February 1994, between 1210 and 1215, a 120-mm mortar allegedly exploded at a crowded marketplace in Sarajevo killing and wounding many people.[4989]

[4981] D2341, para 21; D2412, para 27; D. Skrba, T.29153
[4982] D2807, pp. 1-2; Milosevic, T.32712-3
[4983] D2341, para 21; Galic, T.37442
[4984] D2412, para 27
[4985] Galic, T.37442
[4986] D1515, p. 2; Milosevic, T.32711-2
[4987] D1515, p. 2
[4988] D1515, p. 2
[4989] P1441, p. 11

2055. Bosnian investigators were the first on the scene. They noticed the tail fin of the mortar embedded in the ground at the point of impact. They photographed the scene and awaited the arrival of the UN personnel.[4990]

2056. Subsequently, the officers of the UNPROFOR French Battalion arrived on the scene and one of the respective officers used a knife to dig the tail fin out of the crater.[4991] In extracting the tail fin, he had to scrape and chip away the asphalt lip around the mouth of the crater and enlarge the actual hole formed by the penetration of the tail fin.[4992] Unfortunately, no efforts were made to calculate the angle of descent of the projectile before the crater was disturbed by removal of the tail fin.[4993] The UN investigators later stated that "in extracting the tail fin assembly from the crater, the Frebat 4 team (unavoidably) disturbed the integrity of the crater for any purpose which followed".[4994]

2057. A second French battalion team arrived on the scene later in the afternoon. However, its leader, Captain Verdy, did not attempt to measure the angle of descent because the previous team had disturbed the crater.[4995]

2058. Major Russell, a UN Military Advisor with an artillery background in the Canadian Army, was tasked by the UNPROFOR Brigadier Ramsay to go to the scene of the explosion, where he arrived between 1615 and 1630 on 5 February 1994.[4996] Major Russell examined the crater and was struck by the steepness of angle that the round must have come in from to clear the large building adjacent to the crater. This led him to believe that the round had come from a location close to the crater.[4997] Although Major Russell officially stated that "based on the evidence available at the site, the minimum and maximum range at which the weapon system could have been fired straddles the confrontation line /and/ it is therefore impossible to determine with certainty on which side of the confrontation line the round was fired",[4998] he wrote in his personal diary that day that he believed that the Bosnian Muslims had fired it.[4999]

[4990] P1966, p. 8
[4991] Sabljica, T.7700
[4992] P1441, pp. 40-1
[4993] P1708, pp.1-2; Sabljica, T.7913
[4994] P1441, p. 17
[4995] P1441, p. 16
[4996] D2364, para 12
[4997] D2364, para 22
[4998] P1441, p. 63
[4999] D2364, para 33; D2366

2059. [redacted][5000] [redacted].[5001]

2060. On 11 February 1994, the UN appointed a team of experts to conduct an investigation to determine who fired the mortar. Canadian Colonel Gauthier led the investigation, directed at determining both the direction and the distance the mortar had been fired from.[5002] Measurements were taken of the direction in which it appeared the projectile had come from. With the exception of some mathematically flawed calculations by the French Battalion, these measurements remained consistent throughout the various investigations. It was concluded that the projectile had been fired from a location northeast of the market, at about 18 degrees.[5003]

2061. It was also determined that both parties controlled territory in the direction from which the mortar had been fired. In that direction, the ABiH side of the confrontation line was approximately 2300 meters from the point of explosion, whereas the VRS side approximately 2600 meters.[5004] Therefore, determination of which side had fired the projectile depended upon the knowing the distance that the mortar had travelled.

2062. A mortar is fired with the aid of between 1 and 6 'charges'. The charges burn up during the explosion, thus, there are no remnants at the scene to indicate how many charges were used to propel a particular mortar.

2063. While firing tables provide the distance that a mortar will travel in the air depending on the number of charges used, it is not possible to calculate the distance between the point of fire and point of impact without knowing the angle of descent. That is because a mortar on charge 3, for example, can travel 3000 meters. At a steep angle, such as almost a perpendicular 90 per cent, the mortar travels most of that distance vertically and would theoretically land in the same place that it was fired from. At a low

[5000] [redacted]
[5001] [redacted]
[5002] P1441, p.13
[5003] P1441, pp. 11, 19; P1708, p.2; Sabljica, T.7918
[5004] P1441, p. 11

angle, such as 45 per cent, the mortar would travel most of the distance horizontally and would land far away from the point of origin. Therefore, without knowing the angle of descent, a mortar fired on charge 3 would travel 3000 meters, but might have been fired from a location close to or far away from the point of impact.

2064. Furthermore, the UN expert team tried to determine the angle of descent. Two members of the team made estimates of the angle of descent when they visited the crater on 11 February 1994. John Hamill estimated 950-1100 mils, but considering that several days elapsed between the impact and the analysis and the crater had been disturbed,[5005] Hamill concluded that "it is not possible to state where the round was fired from, as it could have been fired at one of a number of different charges giving a different range".[5006] Major Khan estimated 1000-1100 mils[5007] and similarly noted that "the crater analysis has been conducted seven days after the incident. The crater formed by the bomb has been tempered [sic] time and again by various personnel. The exact fuse tunnel or place where nose of the fins was buried cannot be ascertained. Therefore, it was not possible to work out accurately the angle of descent and thus the range bracket to the mortar position. However, an approximate angle of descent has been worked out from the approximate location of the fins in the crater. In view of this, the direction to the firing position can be fairly accurate and the angle of descent measured should only be taken as a guideline".[5008]

2065. Major Russell had also estimated the angle of descent, but his estimate was 1200-1300 mils.[5009] Colonel Gauthier had no recollection that his investigation team rejected the measurements taken by Major Russell.[5010]

2066. Other members of the team had declined to attempt to measure the angle of descent at all. Jose Grande considered himself unable to give an estimate of the angle of descent because "when I arrived at the spot (6 days after the incident) the crater had been excavated and slightly enlarged as we were informed by the previous analyst teams".[5011]

[5005] P1441, p. 25
[5006] P1441, p. 25
[5007] P1441, p. 17
[5008] P1441, p. 23
[5009] D2364, para 21; P1441, p. 17
[5010] Gauthier, T.29411
[5011] P1441, p. 27

Sergeant Dubant similarly stated that calculating the angle of descent became impossible since the hole had been re-dug in order to extract the tail fin.[5012]

2067. [redacted].[5013]

2068. [redacted].[5014]

2069. The UN investigation team collectively and officially concluded that "by the time the team conducted its analyses, six days had elapsed since the explosion. It is reasonable to suspect that the crater was thoroughly excavated by the local authorities during that period. Hence the angles measured on 11 February are not beyond suspicion. To ensure accuracy, the angle must be measured when the tail fin and fuse are in the ground and this was not done on 5 February. Accordingly, it is assessed that the results measured on 11 February are not sufficiently accurate to be used as a basis for a finding".[5015]

2070. The UN investigation team was well aware that the tail fin had been found embedded in the crater, as opposed to having been ejected at the time of impact. Neither the experts on that team nor Major Russell were aware of any way to determine the distance a mortar had travelled from the fact of its penetration into the crater or by measuring the depth of penetration.[5016] Prosecution witness John Hamill, a member of the UN team, testified that the velocity of the shell "isn't terribly relevant"[5017] and that there

[5012] P1441, p. 29
[5013] [redacted]
[5014] [redacted]
[5015] P1441, p. 19
[5016] D2364, paras 24-7; [redacted]; Gauthier, T.29411
[5017] P1994, p. 133

is no method from examining the point of impact to determine what the initial velocity was when the mortar was fired.[5018]

2071. In addition to examining the crater, the UN investigative team conducted other investigation in an effort to determine which side had fired the 120-mm mortar, which exploded on the market. They determined that both sides were known to have 120-mm mortars and the bombs to go along with them. Therefore, there was nothing from the type of weapon used that allowed them to conclude which side had fired it.[5019]

2072. The team was unable to locate any sites on either side of the confrontation line from which the mortars may have been fired. They reported that the UNMO team did not have access to the Bosnian Serb gun sites in the northeast at that time.[5020] They also did not know whether there were any Bosnian Muslim mortars in the direction of fire. They noted that the Bosnian Muslims used their mortars in a highly mobile manner, bringing them in and out of a location.[5021]

2073. On 15 February 1994, the UN investigation team concluded that "there was insufficient physical evidence to prove that one party or another fired the mortar bomb. The mortar bomb in question could have been fired by either side".[5022]

2074. The team's findings were reviewed at UNPROFOR headquarters in Zagreb by Colonel Joudry, a Canadian crater analysis instructor, serving as a staff officer for the UNPROFOR in Zagreb. He concurred with the team's conclusion that the angle of descent could not be reliably measured because the first UN team had reportedly removed the tail fin and disturbed the crater without measuring the angle of descent.[5023] He also concluded that, if using the flawed data, the projectile was likely fired from an area which slightly straddled the confrontation line northeast of Sarajevo, but 95% of which was on the Bosnian government side.[5024]

[5018] P1994, p. 133
[5019] P1441, p. 11
[5020] P1994, p. 50
[5021] P1994, p. 51
[5022] P1441, p. 11
[5023] D2363, para 23
[5024] D2363, para 24

2075. When testifying as a defence witness in 2012, Colonel Gauthier testified that he has no information that would cause him to change the findings of his investigation team.[5025]

2076. In 2001, the Prosecution retained an artillery expert, Richard Higgs, to review the findings of the investigators in several shelling cases, including that of the Markale I Higgs reviewed the reports of the BiH and the UN investigations and testified that he could make no additional observations as to the distance that the mortar travelled.[5026] He noted that there is a higher percentage chance of the stabilizer lodging in the ground when a mortar is fired on a higher charge and therefore arriving in the ground at a higher velocity. However, there was no accurate angle of descent recorded and therefore no way to validly determine which side had fired the mortar.[5027]

2. The belated conclusion of Berko Zecevic is unreliable and incorrect

2077. The only information that Bosnian Serbs were responsible for the mortar that landed on Markale on 5 February 1994 is the belated conclusion of reluctant Prosecution expert witness Berko Zecevic.

2078. Dr. Zecevic disobeyed a court order to testify in this case and only testified after having been charged with contempt of court, arrested in Sarajevo, and transported to the UNDU in The Hague.[5028]

2079. Dr. Zecevic was not an unbiased expert, as he was working for the Bosnian government at the time of the shelling. When he heard that investigators had concluded that it was impossible to determine the origin of fire, he volunteered his services, presumably believing that he could help establish that the Bosnian Serbs were responsible.[5029]

2080. Prosecution witness John Hamill testified that the UN investigation team refused to allow persons from either side to participate in the investigation and refused to

[5025] Gauthier, T.29419
[5026] P1437, p. 11
[5027] Higgs, T.5983
[5028] *In the Contempt Case of Berko Zecevic*, No. IT-95-5/18-R77.1, *Order in Lieu of Indictment* (4 February 2011)
[5029] Zecevic, T.12158

accept fragments offered to them by the Bosnian Muslim side as evidence.[5030] If the investigators themselves declined to trust the conclusions and work of those from the Bosnian government, this Trial Chamber must likewise exercise great caution in relying on evidence from someone like Dr Zecevic.

2081. Dr. Zecevic proceeded to the scene on 6 February 1994. He took out a few little stones that had fallen into the hole made by the tail fin and then re-inserted the tail fin in the hole. He then took out the tail fin and measured the depth of the hole, which amounted to about 220 centimetres. He then re-inserted the tail fin and tried to work out the angle of descent.[5031] For the purpose Dr. Zecevic utilised artillery square, which is a device that they use to determine the angle of a barrel of a weapon or some other element. He placed it at the front side of the tail fin, and he set the angle of 60 degrees. Since it was possible that there was some kind of motion during penetration, he took the value to be the range between 55 to 65 degrees.[5032] During his testimony, Dr. Zecevic acknowledged that this was not a standard method of measuring the angle of descent.[5033]

2082. Using this calculation, Dr. Zecevic was still unable to conclude that the shell came from Bosnian Serb territory, as one possible location was within Bosnian Muslim territory. He submitted a report to this effect on 7 February 1994.[5034]

2083. Dr. Zecevic testified that after he had included in his original report that it was possible for the shell to have been fired from one ABiH position, an order was given to assassinate him.[5035]

2084. In 2002, Dr. Zecevic served as an expert witness for the Prosecution in the Galic case. As part of his work on that case, he was asked to provide a counter-analysis to a report of a defence expert that relied upon velocity as part of its conclusions. Perhaps seeking an opportunity to hoist the defence expert on his own petard, Dr. Zecevic claims that he suddenly realized that the fact that the tail fin was imbedded in the crater, rather

[5030] Hamill, T.9681, T.9725
[5031] Zecevic, T.12160
[5032] Zecevic, T.12168
[5033] Zecevic, T.12340
[5034] P2317, p. 8
[5035] Zecevic, T.12342

than found in the vicinity, led him to conclude that it had to be fired with at least 4 charges.[5036]

2085. Dr. Zecevic reasoned that by calculating the velocity of the incoming projectile at 200 metres per second, the launching zones must have been 5.000, 5.400 or 6.400 metres away from the place of the explosion in order for the projectile to have been embedded in the ground.[5037] Therefore, the shell could have come from one of only three areas, and all were on the Bosnian Serb side of the confrontation line.[5038]

2086. Dr. Zecevic could not explain why ten different investigators from the UNPROFOR concluded that the distance that the shell travelled could not be determined, and it could not be ruled out that the shell was fired from the ABiH positions, and yet he is the only one to have concluded that the shell could only have been fired from the Bosnian Serb positions.[5039] He testified that "any expert would have to admit" that in order for the stabilizer to have been embedded in the ground, the shell had to come from some 5 to 6.5 kilometres away.[5040] Dr. Karadzic got an expert to test that theory.

2087. Dr. Derek Allsop taught ballistics and design of small and medium range weapons at the United Kingdom's Royal Military College for 25 years. He also provided technical advice and support on small and medium range weapon systems to the United Kingdom's Ministry of Defence.[5041] He was asked to provide an opinion on whether it was possible from the fact that the tail fin of a mortar was embedded in the ground to predict the impact velocity of the mortar and also the impact angle of the mortar, with a view to predicting back to see where the mortar may have been fired from. His opinion was that it was not possible.[5042]

2088. Dr. Allsop stated that the measure of calculating the ejection velocity of the stabilizing tail boom from the rear of the mortar bomb used by Dr. Zecevic was over-simplistic and not capable of coping with the complexity of the geometry of the construction of the mortar bomb to give a reliable answer.[5043] He pointed out a number of

[5036] Zecevic, T.12174
[5037] Zecevic, T.12169
[5038] Zecevic, T.12303-04
[5039] Zecevic, T.12360
[5040] Zecevic, T.12352
[5041] D2369, pp.1-5; Allsop, T.29424-26
[5042] D2372, p.9; Allsop, T.29428
[5043] D2372. p.9

flaws in Dr. Zecevic's approach and conclusion. First, his calculation of the depth of penetration of the tail fin was not reliable because it failed to consider the penetration of the fuse, which would have preceded the penetration of the tail fin and made the hole deeper.[5044] This would make Dr. Zecevic's measurement of the depth of the hole not an accurate predictor of the velocity of the projectile.[5045]

2089. Dr. Allsop further testified that it would be almost impossible to predict from the depth of the mortar what the impact velocity of the tail fin would have actually been because of the different factors such as soil content, moisture, and the yaw angle of the projectile.[5046] In addition, the figures used by Dr. Zecevic to calculate the velocity from the depth of penetration of the tail fin were not designed for calculating the velocity of a 120-mm mortar. Trials would have to be conducted in order to determine what figures should be used.[5047]

2090. Finally, while the faster the mortar bomb is falling, i.e. the greater the altitude that the projectile reached before it starts to fall back to the Earth, the more likely it is that the tail boom will be found embedded in the ground, the distance the mortar has travelled can only be determined by knowing the angle of trajectory.[5048] Because of many factors operating on the stabilizer, it cannot be said that the angle of the stabilizer as it was embedded in the ground was the same as the angle of trajectory at the time of impact.[5049]

2091. Therefore, simply as a matter of science, Dr. Zecevic's conclusion that the mortar had to be fired from the Bosnian Serb side of the confrontation line is unsound.

2092. The Prosecution had the opportunity to fully cross-examine Dr. Allsop during the trial. It failed to point to any lack of neutrality or qualifications, which would bear upon the credibility of his testimony, and failed to provide Dr. Allsop or the Trial Chamber with any reason to question his findings.

2093. The Prosecution also had the opportunity to bring an independent expert of its own in rebuttal. It did not do so, leaving the Trial Chamber no reason to doubt the

[5044] D2372, pp.6, 9; Allsop, T.29461-62
[5045] D2372, pp.8-9
[5046] D2372, pp.6-7; Allsop, T.29460
[5047] D2372, pp. 5, 9
[5048] Allsop, T.29442
[5049] D2372, pp.3-4; Allsop T.29452-53

findings of Dr. Allsop and hence no grounds to find beyond reasonable doubt that the mortar was fired by the Bosnian Serbs.

2094. Aside from Dr. Allsop's findings on velocity, even if the mortar was fired on 4, 5 or 6 charges, the only way to determine the place from where it was fired would be to know the angle of descent. A mortar fired on charge 4 at an 85º angle could have been fired from well within ABiH territory, while a mortar fired at a 55º angle on charge 4 would have been fired well within from Bosnian Serb territory.

2095. Yet every investigator who went to the scene, from Major Russell to the UN investigation team members, all agree that once the French battalion had removed the tail fin without taking measurements, it was not possible to calculate the angle of descent.

2096. Therefore, Dr. Zecevic's premise is faulty on two counts: (1) one cannot determine where the mortar was fired from by the fact that it was embedded in the crater and (2) even if the mortar was fired on a high charge, one could not determine the distance to the firing point because the angle of descent could not be reliably measured.

2097. While a majority of the Trial Chamber in the Galic case accepted Dr. Zecevic's evidence and convicted General Galic of the Markale I shelling,[5050] Dr. Karadzic has brought a plethora of other evidence not available to the Galic Chamber casting doubt upon Dr. Zecevic's assertion that the mortar was fired by the Bosnian Serbs.[5051]

2098. There was evidence that at the time of the explosion, the Bosnian Muslims had a motive to create an incident to blame the Bosnian Serbs to galvanize international support for their side. The UN Special Representative Yasushi Akashi reported that, just four days earlier, on 1 February 1994, President Izetbegovic expressed his increasing distrust of the Geneva peace process and complained of international pressure on the Bosnian Muslims to accept a partitioned Bosnia. Prime Minister Haris Silajdzic also expressed the discontent of the Bosnian Muslims with the Geneva peace process and threatened it might be the last time the Bosnian Muslims attend the negotiations.[5052]

2099. In early February 1994, Witness KW586 [redacted], personally heard President Izetbegovic discussing what could happen if a

[5050] *Galic* TJ, paras. 85-97
[5051] Factual findings made in a case at the Tribunal are binding only for that individual accused in that specific case. *Prosecutor v Mladic*, No. IT-09-92-AR73.4, *Decision on Defence Interlocutory Appeal from the Trial Chamber Rule 98 bis Decision* (24 July 2014) at para. 28
[5052] D3492, p.3

shell were to fall on Markale when it was full of people. Two or three days after this meeting, the shell impacted at the market. According to Witness KW586, a location near Mrkovici village was chosen as the place from which to launch the mortar to make it appear that it had come from Bosnian Serbs.[5053]

2100. Edin Garaplija, a member of the Bosnian Security Service, testified that the Bosnian Muslim side had, on at least two occasions, committed crimes against their own people in order to make it appear that Bosnian Serbs were responsible. This included planting an explosive device in the home of General Sefer Halilovic,[5054] and shooting a French UNPROFOR soldier from a position where it would appear that the shot had come from Bosnian Serb side.[5055]

2101. Witness KDZ185, [redacted], testified that on another occasion, a crater analysis of an explosion near the site of the Markale market revealed that the projectile had been launched from Bosnian Muslim territory.[5056]

2102. [redacted].[5057]

2103. [redacted]

[5053] KW586, T.47224
[5054] D2908, pp.1-2; Garaplija, T.33393-7
[5055] D2906; D2907, pp.1-3; Garaplija, T.33387-92
[5056] KDZ185, T.4229-30
[5057] [redacted]

[redacted][redacted][redacted][

2108. On 5 February 1994, Slavko Gengo was in command of the battalion in Hresa, 7 km from Mrkovici. He did not hear any launcher activity nor did anyone report on that fact from his battalion.[5066]

2109. Assistant Battalion commander Milorad Dzida testified that on 5 February 1994 no shell was fired from any firing position in the zone of responsibility of his battalion.[5067]

2110. Blasko Rasevic, Commander of the Mrkovici company, testified that after the incident that took place in February 1994 at Markale, there was a firm conviction in his unit that Bosnian Serb forces had not fired the mortar, and especially not the forces from Mrkovici, because someone would have had to know about it and such information would have certainly leaked in his units.[5068]

2111. General Galic testified that he did not issue an order for a shell to be fired at the Markale market on 5 February and that there was never any report from subordinate units that contained information that a lower-ranked commander ordered this fire.[5069]

2112. The VRS insisted to President Karadzic and even their own colleagues that they had not fired the mortar. Gordan Milinic, Security Advisor to President Karadzic, similarly testified that the VRS told the President that it had not fired the shells, which landed on Markale market.[5070]

2113. Momir Bulatovic, the President of Montenegro, testified that the shelling of the Markale Market in Sarajevo on 5 February 1994 was discussed at the Supreme Defence Council meeting of 7 February 1994. General Perisic, the Chief of Staff of the Yugoslavian National Army, said that "over there in Republika Srpska they say that they are certainly not the ones who did it, and the likelihood is small".[5071] Based upon the information presented by General Perisic, President Bulatovic did not believe that the Bosnian Serbs were responsible for the shelling.[5072]

[5066] D2383, para 36
[5067] D2375, para 18
[5068] D2527, para 29
[5069] Galic, T.37444
[5070] D3682, para 15
[5071] D3051, para 32
[5072] D3051, para 35

2114. For all these reasons, the belated conclusion of Berko Zecevic that the Bosnian Serbs were the ones who fired the mortar that landed on Markale on 5 February 1994 is unreliable and incorrect.[5073]

2115. The Prosecution failed to prove beyond a reasonable doubt that the Bosnian Serbs fired the mortar that landed on Markale. As a result, President Karadzic cannot be held responsible for this tragic event.

h. Incident G-9: Bascarsija flea market (22 December 1994)

2116. The totality of the evidence analysed and presented by the Defence ballistic experts[5074] by in relation to this incident undoubtedly proves the following:

2117. There were two explosions at the flea market in Baščaršija, Sarajevo, on 22 December 1994, on which occasion two persons were killed and seven wounded. The second explosion followed mere seconds after the first explosion. According to the witness statements, the Bosnian Muslim police and BH Army personnel arrived at the scene immediately after the explosion and barred access to the scene of the incident. Apart from the police, the incident was investigated by UNMOs, and there is evidence showing that an investigation was conducted by the personnel of the French Battalion of UNPROFOR, but their findings remain unknown.

2118. The police investigators and UNMOs reached an almost identical conclusion, that the shells had been fired at an azimuth of 159 degrees and 160 degrees respectively. This is a direction due south, and passes through both BH Army and Republika Srpska Army positions. The Bosnian Muslim Anti-Terrorist Department determined that the explosions were caused by two contact-fuse 76 mm rounds, although this conclusion runs counter to the situation at the scene of the incident after the explosion and to the observations made by some witnesses.

[5073] Since the Bosnian Serbs didn't fire on the market, President Karadzic does not know, nor does he have to prove, how it was actually done by the Bosnian Muslims. While it is possible that the explosion was staged, as believed by Dr. Subotic (D3551, p.126), or resulted from a bomb being thrown from the roof, as Colonel Joudry (D2363, paras 20-5) and Witness KW554 (D2762, paras 10-1) indicated, President Karadzic simply relies upon the fact that there is insufficient evidence to establish that the Bosnian Serbs fired the mortar.
[5074] D3542, pp.139-154

2119. The crater at the site of the first explosion is too deep to have been caused by a 76 mm round, and the crater at the second explosion site is relatively shallow, but covers too large a surface to have been caused by a 76 mm round that came in at an angle of descent. When the sites of two explosions are compared, one must bear in mind that the azimuths of the two rounds are the same, which means that their angles of descent are roughly the same, meaning in turn that the conditions for the explosions in the both cases were almost the same. If the conditions for the explosions were approximately the same, then the craters at the explosion sites must have been approximately the same, which was not the case. It must be conclude, therefore, that the round that exploded at the first site is not the same as the round that exploded at the second site.

2120. Furthermore, a lot of physical evidence at the scene shows that a 76 mm round did not explode at the site marked by the police as the site of the first explosion, but that the crater had been dug manually. The scene of the incident was altered and the earth around the crater that had been dug by hand was moved. Finally, as there was no evidence of the fragmentation effect of the round at the site of the explosion, and since no damage was caused to the wall of the building around the window, the metal shutters on the windows on a nearby building were most likely pierced by hand, because the laws of physics preclude the fragment stream from hitting just the metal shutters and not the wall.

2121. The evidence further shows that a 76 mm round did not land at the site of the second explosion, at *Petra Kocica* Street no. 3, but that a stationary round was set off. This is incontrovertibly proven by the fact that the fuse without the detonator remained intact and that in the explosion it was hurled in the direction opposite the incoming trajectory of the round, which is absolutely impossible.[5075]

2122. In the *Prosecutor v Milosevic* case, the Appeals Chamber analysed the evidence concerning the flea market shelling. It noted that the evidence clearly showed that both shells were fired from the direction of southeast.[5076] The same evidence was introduced in Dr. Karadzic's case.[5077] The Appeals Chamber concluded that this evidence was insufficient to establish that the source of fire was the Bosnian Serb side rather than Bosnian Muslim side, as both armies had positions south-east of the flea market and it

[5075] D3542, pp.139-154
[5076] Milosevic AJ, para 229
[5077] Adjudicated fact 3032; P1276, paras 45, 47

was impossible to determine the distance from which the shell was fired.[5078] No additional evidence of the distance was introduced in Dr. Karadzic's case.[5079]

2123. In the *Prosecutor v Perisic* case, the Trial Chamber was also unable to conclude beyond a reasonable doubt that the two shells that hit the flea market originated from the VRS-held positions.[5080]

2124. Therefore, there is no basis upon which this Trial Chamber can conclude that the Bosnian Serbs were responsible for the shelling in relation to Incident G-9.

i. Incident G-19: Markale 2 (28 August 1995)

2125. The totality of the evidence analysed and presented by the Defence ballistic experts[5081] in relation to this incidentundoubtedly proves the following:

2126. Based on documents, material evidence, video recordings, witness statements and checks carried out based on scientific and professional methods it is possible to reconstruct the events. On 28 August 1995, a 120 mm mortar shell exploded at 1110 hours in *Mula Mustafe Baseskije* Street in front of the City Market Hall at a distance of 4.75 m from the Market Hall building and 3.3 m away from the middle of the entrance to the City Market Hall. On that occasion a large number of persons were killed or slightly or seriously wounded. Based on traces of blood at the scene it is evident that most people were at the entrance to the City Market Hall at the time of the explosion.

2127. In the immediate vicinity of the centre of the explosion, one to two meters from the centre of the explosion, there were persons who were alive and asking for helpwhile sitting in a position which is not aligned with the direction of propagation of the detonation wave. A man with a very large chest wound is slung over the fence across the street from the Market Hall, with very little blood beneath him to match the size of the wound. This person is not in the photos of dead persons compiled by the CSB. On the pavement right at the corner of the Market Hall there was a man lying on the ground with

[5078] Milosevic AJ, para 230
[5079] In fact, even less evidence was introduced in Dr. Karadzic's case than in the *Milosevic* case, which featured the testimony of Witness W-12 that from the sound of the shell, he concluded that it must have been fired from Bosnian Serb controlled territory. See Milosevic AJ, para 230.
[5080] *Perisic* TJ, para 366
[5081] D3551, pp.122-164

a bag on his right side. It is technically inexplicable that there is a whole spattering of shrapnel of equal circular shape on this man's back and the bag. It is equally inexplicable how it is possible that almost all of the glass from the shattered windows was on the pavement if most of it should be inside the Market Hall as a result of the detonation wave. Everything indicates that the joint investigation of the local police and UN military observers was carried out at the request of the chief of the Bosnian police.

2128. The number of victims in this incident must also be questioned. There are different data on the number of dead and wounded from different sources. The final list contains 43 dead persons and 75 wounded (118), police investigators registered 35 dead and 78 wounded (113), and the Ministry of Health claims that there were 33 dead and 64 wounded persons (97).

2129. According to the data received by UN observers, the total number of victims is 93. It has been found that the investigating teams which investigated this case did not determine the final number of victims in this incident. In particular the report which the Security Services Centre sent to the State Security Service states that 21 wounded and 2 dead persons were received in the State Hospital, while the director of this hospital, Bakir Nakas, testified that he had seen 80 persons brought from Markale that day. By analysing the cases of the dead and wounded persons, it was found that three cases of persons were killed by small arms. One of them was registered as a dead BH Army member.

2130. According to official reports, before the explosion in front of the City Market Hall, four 120 mm mortar shells landed and exploded in an area 235 m away from the City Market Hall, item 89, Figure 94. The impact of these mortar shells was analysed, the CSB determined the angle of the incoming trajectory to be 240º±5, and the team of UN military observers determined an angle of between 220º and 240º. It is not disputed that four 120 mm mortar shells landed and exploded in that area, but the evidence indicates that those mortar shells did not explode immediately before the explosion in front of the Market Hall at Markale.

2131. The police took 71 statements from eyewitnesses and persons wounded in the explosion in front of the City Market Hall. None of the questioned persons stated that they had heard any explosions before the explosion in front of the City Market Hall. Policeman Nedzib Djozo testified that he had heard just one explosion in front of the City

Market Hall at Markale and UN military observers at observation points Sedrenik and OP-1 on Trebevic did not hear any of the four explosions. Only UN military observers on Mali Hum, who were at a meeting with a BH Army liaison officer at 1100 hours on the same day, stated that they registered five explosions.

2132. A video recorded by the police shows the scene of the explosion before the street was cleaned, with the point of impact and the splinter pattern around it barely visible. This means that the splinter pattern in the asphalt was so shallow indicating that at the moment of impact the mortar shell had low velocity, meaning that it was not fired with a charge larger than charge 2, or that it was activated in static conditions. This also follows from the fact that the stabiliser was not found near the crater.

2133. In determining the incoming trajectory, different results were obtained. The joint investigating team of the local police and UN military observers determined that the angle of the incoming trajectory of the mortar shell was 170º±5º. The team from the 4th French Battalion obtained somewhat different results – 157.5. However, in their report, they stated that the angle was 160º, and the report of the team from the 4th French Battalion included a topographic map in which a trajectory with the minimum azimuth and a trajectory with the maximum azimuth are drawn (154º and 164º), so that it can be considered that the team from the 4th French Battalion determined the angle of the incoming trajectory to be 160º±5º.

2134. The final and comprehensive UNPROFOR report states that the French engineers determined an angle of 2850 mils, and that UN military observers determined an angle of 170º, while the summary of this report states that all the projectiles were fired at an angle of 220º to 240º and that all the shells came from the same weapon and were part of the same salvo.

2135. However, it is clear from 75 witness statements that these four mortar shells did not explode on the same day as the mortar shell in front of the Market Hall. In addition, the difference in the trajectories of these four mortar shells and the mortar shell which exploded in front of the City Market Hall is 50º to 70º. This was explained by the claim that the projectile hit a building and that the stabiliser was deformed due to that, which resulted in a different pattern on the asphalt. However, if this projectile had been fired from the same weapon and as part of the same salvo, it certainly could not have had a

range which was 220 m longer than that of the four other projectiles, and if it had hit a building it would have exploded, and if not, it would probably have fallen in such a way that it would not have been activated and it certainly would have left a visible trace on the building, but no-one registered such a trace.

2136. Although the investigating teams determined the angle of the incoming trajectory of the projectile to be 160º±5º and 170º±5º, the Prosecution investigated the area of Trebevic to determine the location from which the projectile could have been fired and in doing so they took the angle of fire to be 171º±5º. It was then determined that there is a position at an angle of 176º from which it was possible to fire a mortar. Once again, the local police and the UN determined the angle to be 170º±5º and the team from the 4th French Battalion determined 160º.

2137. Richard Higgs checked these results for the Prosecution, and determined that the angle of the incoming trajectory was 175º, which is supposed to confirm the findings of the police and the UN. It has been noticed that Higgs, although he used an acceptable methodology, when determining the azimuth of the kerb of the street in which the mortar shell landed, made an error of 20º, and when this error is taken into account, using the methodology used by Higgs, we get an angle of 155º for the incoming trajectory. This angle falls within the margins of angles determined by the team from the 4th French Battalion.

2138. Also, on the basis of the damage to the kerb caused by the detonation wave, and the fact that the measuring tape was at an approximately right angle to the kerb, it was calculated that the azimuth of the incoming trajectory was less than 160º or close to it, again matching the azimuth measured at the scene by a member of the 4th French Battalion, confirming that the team from the 4th French Battalion correctly determined the angle of the incoming trajectory to be 160º±5º.

2139. The various investigations at the time produced different values of the angle of descent. The Sarajevo CSB determined that the minimum angle of descent of the projectile at the scene of the explosion in front of the City Market Hall was 67º. This angle was determined based on the condition that the mortar shell passed over a building in its flight path at the defined azimuth The team from the 4th French Battalion obtained the same result. The stabiliser was found on the pavement next to an entrance to a

building 29 m away from the point of impact. The stabiliser of a mortar shell in a normal explosion cannot be found 29 m laterally to the incoming trajectory. The stabiliser could have penetrated the asphalt, remained at the point of impact or could have been propelled back in the approximate direction from which it came. It has also been observed that the stabiliser had an unusual deformation, which could not have appeared as a result of the explosion.

2140. By studying the documents and video recordings, it has been determined that there are discrepancies among the stabilisers which were presented.[5082] There was a stabiliser with traces of erosion on the material of the stabiliser that could not have appeared in a normal explosion, and there was another stablisier with no traces of erosion of material. There are also no such traces on the stabiliser which is at the ICTY.

2141. It has been determined that there are also discrepancies in the area where the stabiliser fractured. It is obvious that there were two different 120 mm mortar shell stabilisers at the scene, which is also confirmed by another piece of evidence – in the drawing of the scene there is a stabiliser marked with the number 12, and in the video which was also recorded by the police there is another stabiliser in a different place marked with the number 13 that was later not shown in the photo documentation. The fact about the existence of two stabilisers was evidently also ignored by UN military observers who were in the joint investigating team, although they can be seen standing in the immediate vicinity of the place where stabiliser no. 13 is located.

2142. The final and comprehensive UNPROFOR report states that the Cymbeline radar did not detect any projectiles at the time of the incident. It also provides an incredible explanation of the reason it did not detect any projectiles. By analysing the characteristics of the Cymbeline radar and characteristics of the 120 mm mortar system, and in view of the physical traces at the scene and the minimum angle of descent, it has been established that an error was made in the explanation.

2143. The trajectory mentioned in the explanation does exist, but it does not attain the minimum angle of descent. Since the technical parameters under which the radar could have detected the projectile are known, there was a way to determine reliably whether the projectile which exploded in front of the market at Markale could have passed under the

[5082] *See* also D3555

beam or whether it had to pass through the beam. It was enough to determine the minimum angle of descent, which the investigating organs did, and based on that angle, to determine from the firing tables the location from which the fire came and the angle of fire for all six charges. Since the firing tables also include graphical firing tables showing the trajectories, it was very simple to determine whether the trajectory passes under the radar beam or not.

2144. It has been observed that UNPROFOR made another important error in its analysis by taking the distance from the line of separation to the scene of the incident to be 1050 m. All data indicate that the line of separation was about 2000 m from the scene of the incident. Based on the fact that the minimum angle of descent was 67º, that the maximum angle of descent was 70º, and the necessary elevation angles and ranges have been determined from firing tables for each mortar shell charge, it has been explicitly shown that the radar could and would have detected each mortar shell fired from VRS positions. Since it is not disputed that the radar did not detect any mortar shells, the only possible conclusion is that the mortar shell was not fired from VRS positions.

2145. Although it has been shown beyond any doubt that not a single mortar shell was fired from VRS positions on 28 August 1995, item 110, the Defence have presented the possible positions from which a mortar shell could have been fired from bearing in mind that the angle of the incoming trajectory could have been only 160º±5º, and certainly not 170º±5º. Taking into account the pattern of dispersion on the ground and the fact that the crater is shallow and that the stabiliser did not penetrate the asphalt at the point of impact rules out the possibility that charges 3, 4, 5 or 6 were used, i.e that ot was fired from the VRS positions. It must be emphasised that in the incident of 5 February 1994 (G-8) the Prosecution's main evidence for the large distance and the choice of charge 3 to charge 6 was that the stabiliser of the same mortar shell allegedly penetrated the asphalt.

2146. Prosecution expert Richard Higgs estimated that the mortar shell could have been fired from a distance of 3000 m, so with charge 3 at most. At possible distances of positions when using charge 3 (2863 m, 3167 m) and at firing positions for charge 4 (3742 m to 4113 m) there are no suitable places for firing a 120 mm mortar, because this area is very hilly and wooded and is the least convenient for positioning any large weapons. The same is true for an angle of 170º. The only possible firing position was at

an angle of 175º, from a distance of around 3800 m, but this location must also be ruled out as a possible firing position, because the traces at the location do not indicate that the mortar shell was fired even approximately from this direction. [5083]

2147. On 28 August 1995, Colonel Demurenko visited Markale market two hours after the alleged shelling incident, spending about 30 minutes at the site.[5084] He observed the crater that had resulted from the blast.[5085] On his return to headquarters, he learned that Lt. Colonel Konings, the UNPROFOR spokesperson, had already stated at a press conference that the attack was just another example of an atrocity committed by the VRS and that they need to be punished and condemned as enemies of humanity.[5086] Colonel Demurenko gathered a group of experts, which conducted an investigation.[5087]

2148. Colonel Demurenko personally visited all potential firing positions.[5088] The investigation included an inspection of the four possible firing positions on the Bosnian Serb side, and photo documentation of the locations.[5089] It was not limited to the immediate areas of the firing positions but conducted over a much broader area.[5090] A margin of deviation of ±5 was taken into consideration, which included a radius of up to 315 meters.[5091] An area starting from 160º onwards was inspected.[5092] Not only possible locations shown on the map were explored but thousands of square miles across the entire slope of the mountain.[5093]

2149. The investigation concluded that the firing positions were either not suitable for mortar use or that there was no trace of mortar use.[5094] The investigation concluded that the VRS could not have fired the shell in that incident.[5095]

2150. Colonel Demurenko also concluded that it was almost impossible for one shell to hit the Markale market from the distance where Bosnian Serb position were located,

[5083] D3551, pp.122-64
[5084] D2270, para 43
[5085] D2270, para 43
[5086] D2270, para 43
[5087] D2270, paras 44, 51
[5088] D1010; Smith, T.11520-6
[5089] D2270, para 51, 57, 90, 106, 118; Demurenko, T.28913
[5090] D2270, para 98; Demurenko, T.28914.
[5091] D2270, para 122, 123
[5092] Demurenko, T.28991
[5093] Demurenko, T.28927
[5094] D2270, paras 57, 90, 106; Demurenko, T.28913
[5095] D2270, para 52

bearing in mind the size of the streets between the buildings at Markale and the distance of the Bosnian Serb positions.[5096] Colonel Demurenko stated that hitting a nine-meter-wide street from a distance of 3-4 km would be a million to one chance.[5097]

2151. Colonel Demurenko was told that his report would not be published because the conclusions differed from those presented to the public by the UNPROFOR spokesperson.[5098]

2152. General Smith did not take into account the conclusions of Colonel Demurenko's investigation, even though he stated he was confident that Sector Sarajevo had carried out a proper investigation.[5099]

2153. Disregarding the differing conclusions by Sarajevo Sector, General Smith at 1000 hours on 29 August 1995 informed General Mladic that the UNMO team had established beyond reasonable doubt that the shells had come from Bosnian Serb territory.[5100] However, according to P0906, a telegram between Kofi Annan and General Janvier at 1036 hours proves that the investigation to determine the distance to the firing point was still ongoing and the determination of the firing positions for mortar rounds was very difficult, as it was impossible to determine the level of charge used to fire the projectiles.[5101]

2154. General Mladic requested that the incident be investigated by a joint commission, but General Smith was not inclined to agree to that.[5102]

2155. General Smith stated that the UN central in Zagreb, the BiH government and the NATO headquarters in Naples exerted enormous pressure on him to make a prompt decision as to the origin of the shelling and whether the attack necessitated a NATO air-strike.[5103] The full truth is that he had already in May 1995 decided to violate the UN mandate given to him and to move from confrontation to conflict, which was "a fight, a battle, an engagement".[5104]

[5096] D2270, para 60
[5097] D1014; Smith, T.11549-50
[5098] D2270, para 51
[5099] D1010; Smith, T.11520-6
[5100] Smith, T.11511-12
[5101] P0906; Smith, T.11512-13
[5102] Smith, T.11454-8, T.11531
[5103] Smith, T.11530
[5104] Smith, T. 11493-4; D1009, p. 14

2156. According to Exhibit P0150, the UNMO team "tried very hard" to prove that the attack had come from the Bosnian Serb side but provided no hard proof. The bearings, in combination with the estimated angle of impact, could give no evidence as to the origin of the fire, as it could not be established with which charge the projectile had been fired.[5105]

2157. Paul Conway, the UNMO for the former Yugoslavia, who had as one of the assignments to man and observe post in the hills south of Sarajevo known as OP-1[5106], did not agree with the fact that if someone at OP-1 had not heard the sound of outgoing mortar fire that the fire must have come from the Bosnian Serb side of confrontation line.[5107]

2158. Furthermore, in December 1995 or January 1996, Paul Conway located an ABiH mortar position south of Sarajevo with at least four mortars, which were pointed towards the city of Sarajevo.[5108] The mortar position of the ABiH appeared to be well established and to have existed for a considerable period of time.[5109]

2159. Mr Prvoslav Davinic, the UN official for disarmament and security issues, learned of Incident G-19 during a briefing by the Under Secretary General for Political Affairs, Marrack Goulding on 28 August 1995.[5110]

2160. The next morning a brief report submitted by the director of the Security Council Affairs Division, Ms Neylan Bali, emphasized that the aim of the investigation on the ground was to prove that the attack had been carried out by Bosnian Serb forces.[5111]

2161. A few days later, Mr Davinic had a brief conversation with a Greek colleague working at the Department of Peacekeeping Operations, who stated that the political reasons had outweighed in the investigation on the ground, which had been tasked with proving at all cost that the attack had come from the Bosnian Serb side.[5112]

[5105] P0150; Smith, T.11510-1
[5106] D2329, para 4-6
[5107] D2329, para 15
[5108] D2329, para 17-21
[5109] D2329, para 22
[5110] D4217, para 5
[5111] D4217, para 7
[5112] D4217, para 8

2162. In a non-public meeting between the political and military leadership of the FRY and the RS on 30 August 1995, Generals Tolimir and Mladic were convinced that the shells that landed in Markale in August 1995 arrived from the Bosnian Muslim positions, and that the plan of the West was to remove the Bosnian Serb artillery from Sarajevo in order to facilitate the easy manoeuvre of NATO and UNPROFOR, and that this was the reason why the UNPROFOR was not agreeing to the unbiased expert report of a joint commission of representatives of the UN, Bosnian Muslims and VRS.[5113]

6. Snipers

2163. Probably the most important witness supposed to prove the Prosecution's theory that there was a VRS policy of sniping civilians in Sarajevo is their sniping expert Patrick van der Weijden. His credibility is, however, highly questionable. Van der Weijden, an architect who attended several military courses[5114] and who had never appeared as an expert witness in any trials outside of the ICTY,[5115] was only in "very broad lines" aware of the deployment of forces and the confrontation lines within the city of Sarajevo,[5116] but not in relation to the specific scheduled incidents.[5117]

2164. The 'method' used by Van der Weijden was to establish where the shot "might have come from",[5118] i.e. a possible origin of the shot.[5119] Based on such inexact method, fire might or might have not originated from Bosnian Serb positions.

2165. When going out to the field, Van der Weijden was given coordinates of the incident site by the Prosecution investigator, whereas the site of the origin of fire was stated in the short description of the incident and/or by witness reports furnished by the Prosecution.[5120] In the absence of the information about the position of the victim and the wound channel, Van der Weijden would reach his conclusion "purely by looking at the

[5113] D3364, para 28; P5039, p. 12
[5114] P1611
[5115] Van der Weijden, T.7003
[5116] Van der Weijden, T.6965
[5117] Van der Weijden, T.6996
[5118] Van der Weijden, T.6966
[5119] Van der Weijden, T.6972
[5120] Van der Weijden, T.6969

layout of the incident site".[5121] Even upon the opportunity to see in person an entry/exit wound related to one of the Indictment incidents, he omitted to do so.[5122]

2166. To the least, Van der Weijden recognized that the information provided by the BiH police was not helpful, because it was incomplete.[5123]

2167. In conclusion, the expertise of Patrick van der Weijden is seriously undermined. It was never established that any shot was fired by a sniper.[5124] In fact, Van der Weijden was never able to reach a definitive conclusion about the exact location from which the bullet had come from.[5125] This evidence alone is sufficient to dismiss the Prosecution's sniping case in its entirety.

a. SRK units did not have trained professional snipers in units

2168. The SRK units did not have professional snipers in their units.[5126] Sniper posts were assigned to a handful of untrained men, as sniper precision could only be conducted through extensive training.[5127] Furthermore, these so-called snipers were insufficiently equipped and inexperienced.[5128] A number of brigades did not have any sniper rifle silencers or usable infrared device at their disposal, and others merely possessed old Yugoslav rifles, which needed sights in order to function as sniper rifles.[5129]

2169. Due to the lack of well-trained, organized and stronger sniper groups, sniper activity had been insufficiently exhibited for military tasks.[5130] This rendered their use inefficient and many SRK units did not opt for them, largely because of the short distances between separation lines and the fact that their use was designed for salient targets at greater distances.[5131]

[5121] Van der Weijden, T.6969-70
[5122] Van der Weijden, T.6999-7000
[5123] Van der Weijden, T.6971
[5124] Van der Weijden, T.6967-8
[5125] Van der Weijden, T.6972
[5126] D2331, para 36; D2344, para 16; D2387, para 56; D2389, para 16; D2391, para 25; D2444, para 6; D2451, para 8; D2527, para 29; D2562, para 43; D2633, para 36; D2686, para 42; B. Kovacevic, T.29049-51; Gengo, T.29794; Guzina, T.31157, T.31166; Lucic, T.30814; M Skrba, T.29186-8; Zurovac, T.30317
[5127] P6014; Dzino, T. 29882-3, Lucic, T.30814
[5128] D2351, para 16; P5945; P6014; Radojcic, T.31224; Zurovac, T. 30326
[5129] D2351, para 16; P5945; P6014; Radojcic, T.31224; Zurovac, T. 30326
[5130] D2633, para 36 ; P5945; pp. 1-2
[5131] D2331, para 36; B Kovacevic, T.29049-50; Guzina, T.31157; Zurovac, T. 30326

2170. Those in possession of sniper rifles conducted combat operations exclusively where their purpose could be used to the best advantage, mainly on the slopes of Mount Igman, Rozice, Bjelasnica and Treskavica mountains.[5132] However, though the SRK possessed some sniper rifles it did not hold any permanent sniper units.[5133]

b. SRK units were aware that the task of the snipers was not to open sniper fire against civilians in the city under Muslim control

2171. It was never the task of the SRK snipers to open fire on civilians in the city under Muslim control.[5134] As general practice, sniping by SRK forces was strictly and exclusively military on military.[5135] The recognition that civilians casualties occurred during the course of the war through uncontrolled sniper is not hidden by the defence, however, there was an attempt by the whole combat structure of the SRK to not operate in a way which would constitute a harmful situation to civilians.[5136]

2172. Moreover, the main tasks of sniper marksmen in the SRK involved being patient to enable them to identify ABiH sharpshooters as well as to detect other targets that were of significance to the ABiH and could pose a threat to the SRK.[5137] These shooters were never issued an order to open fire on civilians and such incidents thus never occurred.[5138] On the contrary, orders were given by the command of the SRK to units to *only* (emphasis added in combat report) open sniper fire on targets observed to be a threat to SRK soldiers.[5139]

2173. To this effect, an anti-sniping agreement was signed on 15 August 1994 by General Milosevic. However, sniper fire on the Serbian side was contingent upon the cessation of fire from the ABiH, as the SRK only ever responded to Bosnian Muslim fire.[5140]

[5132] Sehovac T.31347
[5133] Galic, T.37192, T.37840-2, T.37838
[5134] D2562, para 43; D2633, para 36; [redacted]
[5135] Galic, T.38060
[5136] Milosevic, T.33199-201
[5137] Milosevic, T.32821, T.32833
[5138] Milosevic, T.32821, T.32833
[5139] D2827, p. 3; Milosevic, T.32836-7
[5140] D2503; D2504; P0861, pp. 1-4; Milosevic, T.32839-40; Sehovac, T.31348

c. SRK units had knowledge that there were snipers in the opposing units of the 1st ABiH Corps

2174. SRK units knew there were snipers in the ABiH 1st Corps because they were being attacked by sniper fire.[5141] The number of ABiH snipers in Sarajevo approximated 500.[5142] Muslims fired were reported to have fired from numerous positions, such as Donji Kotorac, Igman, Dobrinja, Butmir, Hum, the tobacco factory and the towers under Zlatiste on Grbavica, Sucura Kuce, the Vraca Memorial Park, Sokolovic Kolonija, Stojcevac, Stupsko Brdo etc.[5143] Such reports were submitted daily and served as information regarding the enemy's intention.[5144] Other locations included Faculty of Mechnical Engineering, the Assembly Building, the Government and Bristol Hotel sector.[5145]

2175. In the Grbavica area, Muslims were using snipers from the tall residential buildings on the other side of the Miljacka River, as well as from hills on Alipasino Polje.[5146] In the area around Hrasno Brdo, snipers of the ABiH units facing the 1st Sarajevo Brigade were very active,[5147] and opened fire from the skyscrapers at Pero Kosoric Street.[5148]

2176. Muslim snipers also fired from Pofalici, the so-called Momo and Uzeir buildings, the red high-rises in Hrasno, the Elektroprivreda building, the Bristol building, Debelo Brdo and Trebevic.[5149]

2177. Given the increasing intensity of ABiH sniper fire,[5150] the SRK demanded UNPROFOR involvement for a complete ceasefire including sniper fire particularly because the ABiH was failing to respect any ceasefire agreement in place.[5151] However, the proposal for UNPROFOR involvement was only implemented two years after the

[5141] D0608, p.1; D2331, para 36; D2375, para 23; D2389, para 16; D2391, para 15; D2506; D2513; D2519, para 32; D2527, para 25; D2622, para 20; D2633, para 37; D2686, para 43; D2825, p. 1; D3526, p. 1; Sarenac, T.34948-9
[5142] Galic, T.37172, T.37468, T.37497
[5143] D2819, pp. 1-2; Milosevic, T.32802-4
[5144] Milosevic, T.32804
[5145] D0580, p.1; Milosevic, T.32821-2
[5146] D2418, para 9; D2516, para 14; D2519, para 20; D2665, paras 26-7; Galic, T.37172, T.37174
[5147] D2441
[5148] Zurovac, T.30283
[5149] D2519, para 20
[5150] Zurovac, T.30283
[5151] D2825, p. 3; Milosevic, T.32828

proposal. This was due to the fact that the ABiH was constantly engaging in provocations in order to draw fire and brand themselves as the side in danger during the conflict.[5152]

d. SRK units had knowledge that the snipers in the opposing 1st ABiH Corps were opening fire on civilians in the city under Serb control

2178. ABiH units opened fire at civilians in the part of the city under the control of Bosnian Serb authorities.[5153] Information was received by those who fled to Bosnian Serb territory which also corresponded to the assessments of military organs.[5154]

2179. ABiH forces would regularly fire at those travelling along roads such as the Lukavica-Pale communications road,[5155] and the Vogosca-Hresa-Pale road,[5156] resulting in the death of many civilians.[5157] The ABiH forces would not distinguish between civilians and military objects, simply targeting anything in sight,[5158] though mainly focusing on Bosnian Serbs fleeing to Serb territory.[5159] This caused the death of a large number of civilians, including women and children.[5160]

2180. Evidence supporting the fact that ABiH forces were responsible for the above-mentioned killings has also been presented by hospitals. A large number of civilians received treatment at the *Zica* hospital.[5161] The patients were both Bosnian Serbs and other civilians who were the victims of snipers or shelling from the Bosnian Muslim positions.[5162] Additionally, medics in the VRS in Nedzarici also dealt with civilians who had been injured by sniper fire from Bosnian Muslim soldiers.[5163]

[5152] D2826, p. 1; Milosevic, T.32829
[5153] D2331, paras 37-8; [redacted]
[5154] D2331, para 38
[5155] D2622, para 21
[5156] D2375, paras 23, 31; D2383, para 28
[5157] D2444, para 11; [redacted]
[5158] Zurovac, T.30283
[5159] D2516, para 25
[5160] D2389, para 16; D2391, para 15; D2418, para 10; D2513; D2562, para 44; D2633, para 38; D2665, para 28; Pikulic, T.30638-9; Zurovac, T.30283
[5161] D2538, paras 24, 26
[5162] D2538, para 24
[5163] D2443, para 15

e. SRK units had knowledge that the snipers in the opposing 1st ABiH Corps were opening fire on civilians in the city under Bosnian Muslim control

2181. SRK units possessed knowledge of the fact that the 1st ABiH Corps opened fire on civilians in areas under Bosnian Muslim control.[5164] [redacted]. [5165] Information was also received from civilians who crossed over to the Serb territory.[5166]

7. Indictment Schedule F - Individual Sniping Incidents

a. Incident F-1: Anisa Pita in Zagrucu Street in Sirokaca (13 December 1992)

2182. [redacted] [5167] [redacted]:

2183. [redacted]

2184. [redacted]

[5164] D2387, para 58; D2633, para 38
[5165] [redacted]
[5166] D2387, para 58
[5167] [redacted]

[redacted]

2185. [redacted][5168]

2186. [redacted]

2187. *Stijena Baba* lay in the z/o of the 2nd Battalion of the 1st Smbr, however, there were no sharpshooters present in this Battalion throughout the war and furthermore, no orders were ever issued to open fire on civilians.[5169] There were also no snipers present in the platoons at or near the *Stijena Baba* feature.[5170] This is exemplified by the fact that a goat herder worked throughout the war in a clearing below the feature and was never targeted by Bosnian Serb units.[5171]

[5168] [redacted]
[5169] D2344, para 11
[5170] D2622, para 11
[5171] D2622, para 11

b. Incident F-2: 9 year old girl in Sedrenik (17 April 1993)

2188. [redacted][5172] [redacted]:

2189. [redacted].

2190. [redacted].[5173]

2191. Furthermore, the very well-equipped 105th Mountain Brigade of the 1st ABiH Corps consisted of seven battalions and held a great proportion of Sedrenik.[5174]

2192. The Prosecution alleged that the shot fired which caused the injuries in Incident F-2 came from the direction of positions of the Mrkovici Company of the 1st Romanjia Brigade. However, the hilltop seen at distance from the alleged position of the incident, from which the bullets were allegedly fired, did not belong to the z/o of the Mrkovici

[5172] [redacted]
[5173] [redacted]
[5174] Milosevic, T.32521

Company.[5175] The Mrkovici Company was located in the woods,[5176] and its positions remained the same throughout the war.[5177] Furthermore, units of the Mrkovici Company were comprised of local people who were not trained for sniper fire and who opened fire exclusively when its positions were attacked, aiming only at enemy positions.[5178] At the time of the incident, General Galic did not receive, nor did he impart, information or reports to order the firing upon of civilians in Sedrenik.[5179]

2193. Moreover, the allegation is not plausible given the distance between the alleged firing and impact locations. The Mrkovici Company possessed 7.62-mm automatic rifles, of which the ultimate hit distance was approximately 800m, holding a lower true quality efficiency range of 300-400m.[5180] The possibility remains that the firing could have emanated from the main street leading to Mrkovici,[5181] which was quite a distance (800-1000m) from the line of the Mrkovici Company,[5182] thus ruling out the possibility that the incident occurred through a deliberate hit fired from positions of the Mrkovici Company.[5183]

c. Inicident F-3: Munira Zametica collecting water in Dobrinja (11 July 1993)

2194. [redacted] [5184] [redacted]:

2195. [redacted]

[5175] S. Maksimovic, T.29300
[5176] D2355; D2358
[5177] D2354, para 7
[5178] D2354, paras 4, 8,10; D2359; S. Maksimovic, T. 29297
[5179] Galic, T.37478-9
[5180] P2207, p. 2; S. Maksimovic, T.29301
[5181] P2193; S. Maksimovic, T.29306
[5182] S. Maksimovic, T.29305
[5183] S. Maksimovic, T.29306
[5184] [redacted]

[redacted]

2196. [redacted][5185]

2197. Prosecution "sniping" expert Van der Weijden testified that the bullet was not retrieved and that there was no data about the calibre,[5186] and that he did not know which side the victim was facing at the moment she was hit.[5187] Van der Weijden also did not know how many shots the victim sustained because he did not have the medical records.[5188]

2198. General Galic did not receive or issue any reports to open fire in relation to the incident at the time of its occurrence.[5189] This targeting could not have occurred as a result of an issuance of such a task nor by instruction by a superior.[5190] Moreover, the regular daily report from 11 July 1993 did not refer to incident F-3.[5191] SRK forces in the area at the time were deployed for operation Lukavac 93 which was taking place on the other side of the airport.[5192]

[5185] [redacted]
[5186] Van der Weijden, T. 7156
[5187] Van der Weijden, T. 7157
[5188] Van der Weijden, T. 7159
[5189] Galic, T.37495-6
[5190] Milosevic, T.33118
[5191] D3418; Galic, T.37499
[5192] Galic, T.37499-500

d. Incident F-4: Nafa and Elma TARIĆ, Ivana Krndelja Street (3 September 1993)

2199. [redacted] [5193] [redacted]:

2200. [redacted].

2201. [redacted]. [5194]

[5193] [redacted]

[5194]

2202. Prosecution "sniping" expert Van der Weijden concluded that the *Ozrenska* Street was at the distance of 1104 metres and that the bullet could come from approximately 200 metres to 1100 metres.[5195] He could not draw a conclusion that the shooting came from the Serbian side.[5196]

2203. As the area southward of the location of the alleged incident is a hilly terrain[5197] known as Hrasno Brdo,[5198] no clear line of sight existed for the 4th Company of the 2nd Battalion of the 1st Smbr deployed,[5199] which was located 900m from the Ivana Krndelja crossroads.[5200] It was impossible to fire at such a large distance with automatic weapons.[5201]

2204. The alleged firing position, as shown in two photos, from which Ivana Krndelja Street was clearly visible,[5202] was not taken from the z/o of the 4th Company.[5203] From the positions of the 4th Company one could only see *Tranzit* which was used by ABiH forces to transport manpower and equipment.[5204] Given these obstructions, it was impossible for SRK units to see the location of the alleged incident.[5205]

2205. Furthermore, dominant and active ABiH positions constrained any possible sniper activities in the area.[5206] Moreover, Asimovo Brdo, which lies approximately 900m from the alleged incident, was controlled by the ABiH and dominated both Serb positions.[5207] ABiH trenches, on the other hand, were situated closer to, and were visible from, the location of the alleged incident.[5208]

2206. General Galic did not order combat activity directed against the area of *Ivana Krndelja* Street.[5209] In the regular daily report from 3 September 1993, Incident F-4 is not

[5195] Van der Weijden, T. 7125
[5196] Van der Weijden, T. 7132
[5197] Zurovac, T.30255
[5198] Zurovac, T.30254
[5199] D2391, para 25; D2428; Zurovac, T.30250, 55
[5200] D2427; Zurovac, T.30249-50
[5201] Zurovac, T.30263
[5202] D2430; D2431; Zurovac, T.30260
[5203] Zurovac, T.30262
[5204] D2428; Zurovac, T.30250-1, T.30255
[5205] D2428; Zurovac, T.30254
[5206] D2441; Zurovac, T.30283
[5207] D2429; Zurovac, T.30258
[5208] Zurovac, T.30259
[5209] Galic, T.37506

referred to, although other incidents are reported in detail.[5210] Incident F-4 has also not been referred to in the regular daily reports from 4 September 1993 and 5 September 1993.[5211]

e. Incident F-5: Ramiza KUNDO, Briješko Brdo / Bulbulistan (2 November 1993)

2207. [redacted] [5212] [redacted]:

2208. [redacted]

2209. [redacted]

2210. [redacted]

[5210] D3448; Galic, T.37506-7
[5211] D3429; D3449; Galic, T.37508, T.37510
[5212] [redacted]

[redacted]

2211. [redacted][5213]

2212. ABiH had forces deployed in Brijesce Brdo which was the dominant position in the area.[5214] However, the scene of the incident was not sufficiently visible from SRK positions, which were in the area of Azici on the respective date, at the foot of Brijesce Brdo.[5215]

f. Incident F-6: Sanija DŽEVLAN, Nikolje Demonja Street in Dobrinja (6 January 1994)

2213. [redacted][5216]:

2214. [redacted]

[5213] [redacted]
[5214] Galic, T.37514-6
[5215] Galic, T.37514-5
[5216] [redacted]

[redacted]

2215. [redacted]

2216. [redacted]

2217. [redacted]

[redacted] [5217]

2218. Prosecution "sniping" expert Van der Weijden agreed that there were possibilities other than intentional targeting of civilians in this case,[5218] and that the lack of evidence such as the bullet or the calibre resulted in speculation about the origin of fire.[5219]

2219. Furthermore, General Galic received no reports about Incident F-6 at the time of its occurrence nor did he issue any orders to any subordinate units to this effect.[5220] A regular daily report of 6 January 1994 also does not refer to Incident F-6.[5221]

g. Incident F-7: Bus Nikolje Demonje in Dobrinja (25 May 1994)

2220. [redacted] [5222] [redacted]:

2221. [redacted]

[5217] [redacted]
[5218] Van der Weijden, T. 7138
[5219] Van der Weijden, T. 7139
[5220] Galic, T.37517-8
[5221] D3452; Galic, T.37519, T.37521-2
[5222] [redacted]

[redacted]

2222. [redacted]

2223. [redacted]

2224. [redacted].

2225. [redacted].

2226. Prosecution "sniping" expert Van der Weijden testified that although his report says that the alleged shooting position was the Faculty of Theology in Nedzarici, he did not determine that the shot came from the School of Theology, because I" do not know where the Faculty of Theology actually is".[5223]

2227. Mile Sladoje and Svetozar Guzina confirmed that that neither the site of incident F-7 nor the buildings in its environs could be seen from there.[5224] The opening in the Faculty of Theology was the observation post for the 1st Nedzarici Battalion.[5225]

2228. The distance between the alleged point of firing and the alleged point of impact was greater than the range that can be successfully attained by any sniper rifle of the VRS

[5223] Van der Weijden, T. 7063-64
[5224] D2479, para 29; D2553, para 44; Guzina, T.31192
[5225] D2479, para 29; D2562, para 116 ; Sladoje, T.30577

arsenal.[5226] Moreover, the 1st Battalion present did not have sniper activities from the Faculty of Theology.[5227]

2229. Furthermore, no orders were issued to the 1st lpbr, nor to the 1st battalion of the Ilidza Brigade, to open fire at the junction of the Bulevar Avnoja and Nikole Demonje Streets and no feedback was received to this effect.[5228] General Galic did not receive reports about Incident F-7.[5229] Incident F-7 is not referred to in the report from the GS VRS to the President of the VRS from 25 May 1994.[5230]

h. Incident F-8: Tram on Zmaja od Bosne near Holiday Inn (19 June 1994)

2230. [redacted][5231] [redacted]

[redacted]:

2231. [redacted]

[redacted].

2232. [redacted]

[redacted]

[5226] D2479, para 29; D2553, para 44; D2562, para 116; Sladoje, T.30577
[5227] Guzina, T.31164
[5228] D2479, para 29; D2562, para 116
[5229] Galic, T.37523
[5230] D3453; Galic, T.37524-5
[5231] [redacted]

[redacted]

2233. [redacted]

2234. [redacted]

2235. [redacted]

[redacted][5232]

2236. Furthermore, in the daily combat report on 18 June 1994, a day before Incident F-8, the SRK command instructed that the implementation of the agreement on the cessation of combat activities was to be continued.[5233] Based on this report, no shooting at public transportation could be expected the next day.[5234] In the daily report on 19 June 1994, on the day of Incident F-8, the SRK command similarly instructed that the implementation of the agreement on the cessation of combat activities was to be continued.[5235] Consequently no orders had been issued to this effect.[5236] Incident F-8 was also not referred to in any report.[5237] Any information received by the SRK command regarding the shelling of public transportation vehicles would certainly have be included in the report to the GS VRS.[5238]

i. Incident F-9 Sanela Muratovic in Dzure Jaksica (26 June 1994)

2237. [redacted][5239] [redacted]:

2238. [redacted]

[5232] [redacted]
[5233] D3454, p. 3
[5234] Galic, T.37531
[5235] D2668, pp.1-3
[5236] Galic, T.37528; Milosevic, T.33209-10
[5237] D2668, p. 2
[5238] Galic, T.37532
[5239] [redacted]

[redacted].

2239. [redacted].

2240. [redacted].[5240]

2241. Prosecution "sniping" expert Van der Weijden testified that the range between the victim and the possible place from which the bullet was fired was 270 degrees, and that he did not have any information about the position of the girl's body when the bullet entered the body, how the bullet travelled, and where it exited,[5241] or the calibre.[5242]

2242. Exhibits P2190 and P2204 relate to Incident F-9 depicting the position of the Institute of the Blind as well as the position of the victim when shot.[5243] Prosecution

[5240] [redacted]
[5241] Van der Weijden, T. 7148
[5242] Van der Weijden, T. 7151
[5243] P2190, p. 2; P2204; Hogan, T.11205, T.11214-5

allegations based on photos of present day configurations of the area, however, are not reliable as a new building had been built in place of the former School of the Blind.[5244]

2243. During the night between 25 and 26 June 1994 and during 26 June 1994, active combat took place in the area,[5245] during which Bosnian Muslim units fired infantry weapons provocatively on all the lines of disengagement of the Ilidza Brigade.[5246] Given the proximity of the incident in relation to the front line the alleged incident may be attributed to these battle activities.[5247]

2244. Moreover, it is not logical to assume the presence of civilians across a military field,[5248] particularly during fierce combat activities.[5249] Inhabitants in Alipasino Polje were aware of the immediacy of danger in the vicinity, arising from the conflict and that the area was not safe for civilians.[5250] Therefore, given the fact that this was the first line of combat, SRK units could and did not expect, civilians, and particularly not a little girl to be present in the area.[5251]

2245. No order to attack civilians was issued nor were any reports received to this effect.[5252] In the daily combat report from 24 June 1994, the SRK command reported to the GS VRS that the agreement on the cessation of hostilities in force on 24 June 1994 had been consistently implemented.[5253] In order to ensure that units were not opening fire, the unit commanders had physically controlled the front lines.[5254] Furthermore, in the daily combat report from 26 June 1994 the SRK command instructed that the strict implementation of the ceasefire agreement was to be continued and combat operations to be refrained from.[5255]

[5244] D2560; Guzina, T.31193-4
[5245] D2553, para 45; Guzina, T.31175
[5246] D2553, para 45; D2554, p. 1
[5247] D2553, para 45
[5248] [redacted]; D2553, para 45; Guzina, T.31168
[5249] Guzina, T.31169
[5250] Guzina, T.31168
[5251] D2479, para 30
[5252] D2479, para 30; D2562, para 117; Galic, T.37533
[5253] D3455, p. 5
[5254] D3455, p. 2; Guzina, T.31172
[5255] D2554, p. 5; Galic, T.37534

j. Incident F-10: Miljenka Cvitkovica Street (Ferde Hauptmana) (22 July 1994)

2246. [redacted][5256] [redacted]:

2247. [redacted].

2248. [redacted].

2249. [redacted]

[5256] [redacted]

[redacted]

2250. [redacted]

2251. [redacted]

2252. [redacted]

2253. [redacted]

2254. [redacted]

[redacted][5257]

2255. In relation to this, the 112th Brigade of the 1st ABiH Corps, possessing a very powerful artillery component and key firing positions, covered the area all the way from the Miljacka River to Dzemala Bijedica Street.[5258]

2256. SRK witnesses confirmed that there was no line of sight between the location of the alleged incident and the positions of the SRK units in the area.[5259] The z/o of the 4th Company of the 2nd Battalion of the 1st Smbr was located at least 1.5km from the location of the alleged incident.[5260] The closest firing position of the unit the from which the alleged incident could be seen was at 1,250m from the location of the alleged incident.[5261] It was thus impossible to target the location of the alleged incident with automatic rifles from the SRK positions in Ozrenska Street.[5262]

2257. Moreover, the activeness of Bosnian Muslim snipers, who often opened fire from the skyscrapers at Pero Kosoric in the area, rendered impossible any sniping activity of SRK units.[5263] In addition, General Galic did not receive any reports regarding Incident F-10 during the war nor was he aware of it at the time.[5264]

2258. The Green Berets, the HVO and the ABiH presence in Cengic Villa was extremely strong.[5265]

2259. In the regular daily combat report from 22 July 1994, only the 3rd Spbr was reported responding to the enemy fire.[5266] The 3rd Spbr was deployed in the opposite part

[5257] [redacted]
[5258] Milosevic, T.32522
[5259] D2931, para 25
[5260] D2427; D2931, para 25; Zurovac, T.30249
[5261] D2427; D2931, para 25; Zurovac, T.30253
[5262] D2931, para 25; Zurovac, T.30263
[5263] D2441; Zurovac, T.30251, T.30283
[5264] Galic, T.37538
[5265] D3513; D3514; D3515, p. 2; Galic, T.37975-77, T.37537-9, T.37837
[5266] D3456, p. 1

of the town from Cengic Villa hence its combat activities could not result in incident F-10.[5267]

k. Incident F-11: Tram on Zmaja od Bosne & Alma Cutuna (8 October 1994)

2260. [redacted][5268] [redacted]:

2261. [redacted].

2262. [redacted].

[5267] Galic, T.37539-40

[5268] [redacted]

2263. [redacted]

2264. [redacted]

2265. [redacted]

2266. [redacted]

[redacted]. [5269]

2267. Therefore, had the fire come from the positions of the Army of Republika Srpska, this angle would have to be less than 4 or 5 degrees,[5270] while the minimum angle calculated by the French soldiers was 9 degrees horizontal.[5271] However, from the Executive Council building, one could fire from the ground floor and from upstairs, so the angle of descent could be a 2-degree angle or an 80-degree angle, depending on the height from which one fired because the Executive Council building was very close and because of the close proximity the angle is very big.[5272]

2268. Neither could Prosecution "sniping" expert Van der Weijden conclude that the Serbs fired in this incident,[5273] confirming that conclusions could be drawn from the spread of the dust.[5274]

2269. Moreover, in a meeting with General Rose, General Mladic denied that the VRS opened fire in this incident.[5275]

l. Incident F-12: Dzenana Sokolovic & her son, Zmaja od Bosne (18 November 1994)

2270. [redacted][5276] [redacted]:

2271. [redacted]

[5269] [redacted]
[5270] Poparic, T. 39262
[5271] Poparic, T. 39261; P2421
[5272] Poparic, T. 39263
[5273] Van der Weijden, T. 7009
[5274] Van der Weijden, T. 7053
[5275] P0867, p. 2
[5276] [redacted]

[redacted].

2272. [redacted].

2273. [redacted].

2274. [redacted].

2275. [redacted]

[redacted].

2276. [redacted].

2277. [redacted].

2278. [redacted].

2279. [redacted]

[redacted].[5277]

2280. Furthermore, soldiers of the 2nd Battalion of the 1st Romanija Infantry Brigade that held positions in Grbavica were positioned in shelters dug out on the riverbanks.[5278] Snipers of the battalion were therefore not positioned in the tall buildings situated near the river and did not have a line of sight of the streets on the side of the river Miljacka.[5279] Moreover, confrontation lines were only 30-50m apart.[5280]

2281. Positions held by the ABiH, however, included the eastern end of the MIS building and the Unioninvest building, which enjoyed a clear line of sight to the streets on the other side of the Miljacka River,[5281] particularly the Djure Danicica and Zmaja od Bosne Streets.[5282] From these positions, Bosnian Muslim forces were able to fire with all infantry weapons, including sniper rifles, across the Miljacka River.[5283]

m. Incident F-14: Tram on Zmaja od Bosne & Karacic/Sabanic (23 November 1994)

2282. [redacted][5284] [redacted]:

2283. [redacted]

[5277] [redacted]
[5278] Lucic, T.30814
[5279] D2623; Lucic, T.30814
[5280] Lucic, T.30814
[5281] D2623; Bambarez, T.31300-2
[5282] D2622, para 10
[5283] D2627; Bambarez, T.31328-9
[5284] [redacted]

[redacted]

2284. [redacted]

2285. [redacted]

2286. [redacted]

[redacted]

2287. [redacted]

[redacted][5285]

2288. Bosnian Serb units did not open sniper fire onto the Zmaja od Bosne road. The Bosnian Serb unit in question did not have any snipers.[5286] Given the position of Serb units in Grbavica, there was no line of sight to the streets on the other side of the Miljacka River.[5287] On the contrary, positions held by Bosnian Muslim forces, including the eastern end of the MIS building and the Unioninvest building, enjoyed a clear line of sight to the streets on the other side of the Miljacka River,[5288] particularly the Djure Danicica and Zmaja od Bosne Streets.[5289] From these positions, Bosnian Muslim forces were able to fire with all infantry weapons, including sniper rifles, across the Miljacka

[5285] [redacted]
[5286] Bambarez, T.31311
[5287] D2623
[5288] D2623; Bambarez, T.31300-2
[5289] D2622, para 10

River.[5290] Furthermore, given the positions held by each side, a Bosnian Muslim sniper taking action would not be exposed to the Bosnian Serbs who were in the same building.[5291] The argument presented in this paragraph is also valid for Incidents F-15 and F-16.

n. Incident F-15: Tram on Zmaja od Bosne & Alma Cehajic (27 February 1995)

2289. [redacted][5292] [redacted] [redacted][5293] [redacted]:

2290. [redacted]

2291. [redacted]

[5290] D2627; Bambarez, T.31328-9
[5291] Bambarez, T.31310
[5292] [redacted]
[5293] [redacted]

[redacted][5294].

o. Incident F-16: Tram on Zmaja od Bosne & Alen Gicevic (3 March 1995)

2292. [redacted][5295] [redacted]:

2293. [redacted]

2294. [redacted]

2295. [redacted]

5294 [redacted]

5295 [redacted]

[redacted]

2296. [redacted][5296]

p. Incident F-17: Tarik Zunic in Sedrenik (6 March 1995)

2297. [redacted][5297] [redacted]:

2298. [redacted]

[redacted]

5296 [redacted]

5297 [redacted]

2299. [redacted].

2300. [redacted].[5298]

2301. Moreover, though the SRK may have had a view of Sedrenik,[5299] provided it was not obstructed by anyone,[5300] Spicasta Stijena was not an ideal location to place a sniper unit due to the constant enemy crossfire from Hresa and Borovo.[5301] The Mrkovici Company deployed in the area was located in the woods[5302] at the level of Mala Kula to the north of Grdonj hill,[5303] and aimed exclusively at enemy positions[5304] very close to

[5298] [redacted]
[5299] Gengo, T.29786
[5300] Gengo, T.29787
[5301] D2354, para 8; Gengo, T.29787
[5302] D2358
[5303] D2354, para 7; S. Maksimovic, T.29306
[5304] S. Maksimovic, T.29297

that of the Mrkovici Company,[5305] specifically, Muslim trenches oriented towards Bosnian Serb positions at a distance of around 20m.[5306]

2302. Given the location of the point of impact, the Prosecution allegation is implausible. The location of Incident F-17 was beneath Grdonj,[5307] which is a dominant position above Sedrenik[5308] and not under the control of the 1st Romanija Brigade.[5309] Furthermore, the location of F-17 was not a visible location from the positions of the Mrkovici Company.[5310] Meanwhile, the 105th Mountain Brigade of the 1st ABiH Corps held the top of the Grdonj Hill,[5311] overlooking Sedrenik,[5312] and had a view over the city of Sarajevo.[5313].

2303. Moreover, given that the location of the incident is up to 1000-1200m away from Spicasta Stijena,[5314] and the difference in altitude is 270m,[5315] it was impossible that a sniper fire from Spicasta Stijena could have effectively hit a target in Sedrenik even in peacetime conditions, let alone under war conditions.[5316] The 7.62mm automatic rifles used by SRK units had an ultimate hit distance of around 800m, whereas the true quality efficiency range was at 300-400m.[5317] Additionally, the SRK battalion in the area did not have trained sniper shooters.[5318] The units were comprised of local people who were not trained for sniper fire.[5319] Also, civilians from areas under Bosnian Muslim control were often in the forest from Spicasta Stijena towards Sedrenik and were not fired upon by the 1st Romanija Brigade.[5320] In short, opening sniper fire towards Sedrenik was not possible due to the distance and field configuration.[5321]

[5305] D2354, para 4
[5306] D2354, para 10; D2359
[5307] P2193; S. Maksimovic, T.29306
[5308] S. Maksimovic, T.29306
[5309] S. Maksimovic, T.29306
[5310] S. Maksimovic, T.29306
[5311] S. Maksimovic, T.29306
[5312] S. Maksimovic, T.29306
[5313] D2354, para 5; D2366; D2367
[5314] Gengo, T. 29787
[5315] Gengo, T. 29787
[5316] Gengo, T.29787
[5317] S. Maksimovic, T.29301
[5318] D2354, para 8; D2383, para 35
[5319] D2354, para 8
[5320] D2383, para 34
[5321] D2383, para 35

q. Sniping Incidents show that there was no policy of terror against Sarajevo citizens

2304. As shown, there is no evidence that the VRS was responsible for any one of the incidents scheduled in the Indictment. It is also important to note that in the plethora of material, there was not a single forensic medical report made by the BiH authorities at the times of incidents.[5322] If we had forensic medical documentation then it would be possible to determine for each of the cases who fired at the victims.[5323]

2305. Prosecution "sniping" expert Van der Weijden could not explain how come the Serbs were killing people in front of the Holiday Inn, where there were so many journalists, and when the civilians were right in front of them they would not kill anyone despite the fact that the place was hidden from the journalists.[5324]

8. Notice of Crimes-International witnesses

2306. The totality of evidence undeniably proves that numerous international actors, experts and organizations were not aware about what was actually going on in the theatre of Sarajevo. UNPROFOR was not able to adequately monitor and report on overall activities.[5325] The limited number of soldiers deployed by UNPROFOR restricted their ability to assess and understand the situation.[5326] Often unclear, untrue and misrepresentative reporting procedures were deeply embedded within the monitoring regime. UN officers would simply forward on information received from ABiH to the VRS without review and reports were often incomplete.[5327] Exaggerations in reporting were evident and misrepresented the situation on the ground.[5328] UNMO reports were even less reliable. Even the UNPROFOR commanders believed that the UNMOs misreported and gave "a false impression as to the realities on the ground."[5329]

[5322] Poparic, T. 39298
[5323] Poparic, T. 39300
[5324] D0910; Van der Weijden, T. 7170
[5325] D2774, para 77 (Indjic); D2774, paras 84, 86 (Indjic); Galic, T.38008
[5326] D2774, para 77 (Indjic)
[5327] D2774, paras 80, 84, 86 (Indjic)
[5328] Milosevic, T.33293-4; D2562, para 101 (Radojcic)
[5329] Rose, T. 7381

2307. Various incidents demonstrate the inherent lack of international forces to adequately report on the situation as it was at the time. Colm Doyle, a member of the European Community Monitoring Mission, testified about the incident in April 1992, regarding the shelling of the TV building but he did not have any knowledge about where military units were deployed.[5330] This is a clear indication of the shortcomings of reporting procedures. Furthermore another deficiency can be seen in May 1992, upon the outset of the next shelling crisis, where General Wilson, a UNMO stated he was not able to observe firing positions that day.[5331] Even more, General Wilson recalled how it was possible that there were more weapons that he did not see and did not know about.[5332]

2308. However, even if and when the international observers learned about the ABiH tricks or their military positions, such information would hardly ever find place in UN official reports presented by the Prosecution. Instead they would misrepresent to President Karadzic that the Serbs were indiscriminately shelling and sniping the city, and attacking UN forces. Still, during Dr. Karadzic's cross-examinations, many international witnesses "suddenly" recalled a different version of the Sarajevo war.

2309. They remembered that the Bosnian Muslim side portrayed a false imagery to international media and organizations in order to make the international community step in[5333] and also keep Sarajevo on the frontlines of the media.[5334] The Muslim and international media, extremely biased against the Serbs, had been an important source that influenced the high officials of the international community present in Bosnia.[5335] KDZ185 testified that "in order to make up for their inferiority, in military terms, the Bosnian government would carry out a kind of media war."[5336] He was told, and personally witnessed, incidents that the Muslim side staged to dramatize the situation in the city.[5337] Bosnian Muslims were very clever in moving the mortars into residential

[5330] Doyle, T.2721
[5331] P1029, para 44 (Wilson)
[5332] Wilson, T.3942
[5333] KDZ465, T.4084; KDZ185, T.2072-3; P1558, para 93 (Thomas); Thomas, T.6820-1, T.6807, T.6825; KDZ280, T.8122; [redacted],-KDZ344, T.5560, T.5580-1; D0507; Okun, T.1634; P0788, p. 35
[5334] KDZ465, T.3953; KDZ185,T.4229; Harland, T.2103; P1558, p.15-6 (Thomas);
[5335] KDZ467, T.5878
[5336] KDZ185, T.4229
[5337] KDZ185, T.4229

areas.[5338] Even a horrible weapon such as a mobile multiple rocket-launcher in possession of the ABiH was moved around different parts of the city,[5339] and set up in the vicinity of a UN location,[5340] to provoke the Serbs.

2310. On one occasion, French soldiers came across a Muslim TV crew filming a staged attack with children and were preparing to use it on TV against the Serbs.[5341] Another time, Bosnian Muslims masked as Serbs fired upon the UNPROFOR commander for Bosnia-Herzegovina.[5342] Similarly, and contrary to the testimonies of Witnesses KDZ182 and KDZ450, the Muslims conducted a major attack on Grbavica wearing French-style helmets and French-style flak-jackets,[5343] which was eye-witnessed by Colonel Thomas who was 10 feet away from them.[5344]

2311. In order to achieve the objective of provoking foreign intervention, the Muslim side committed horrible crimes against their own people which they blamed on the Serbs.[5345] They also carried out activities to provoke the Serbs into firing at civilian facilities which included drawing Serb fire near spots including UN headquarters and civilian zones.[5346] The Bosnian Muslims were very clever in moving the mortars into residential areas and often abused civilian locations, such as Kosevo Hospital, by placing their own artillery pieces there. [5347] They also turned some former schools and kindergartens in Sarajevo into military facilities.[5348] The purpose of this was to attract Serb fire in order to have the Serbs accused.[5349] Also Fraser recalled the Bosnian Muslims using this tactic to put blame on the Serbs.[5350] He remembered that Sarajevo was 'chock-full' of installations required for a large number of units,[5351] factories in the context of mortars and mortar shells,[5352] with the General Staff of the ABiH and Supreme

[5338] Thomas, T. 6882
[5339] KDZ185, T. 4227.
[5340] KDZ185, T. 4229.
[5341] Fraser, T.8051; P1762, p. 79 (Fraser)
[5342] Thomas, T.6813
[5343] Thomas, T.6825
[5344] Thomas, T.6826
[5345] KDZ280, T.8111-2; D0775; [redacted]
[5346] Fraser, T.8062-3; KDZ467, T.5893-4
[5347] Thomas, T.6882
[5348] Wilson, T.4149
[5349] KDZ467, T.5891-2
[5350] Fraser, T.8056
[5351] Fraser, p 8091
[5352] Fraser, p 8091-2

Command Staff located in the very centre of Sarajevo, as were the 1st Corps Command and the staff units.[5353]

2312. General Fraser testified that, in order to provoke the Serb response, the Muslims frequently shot mortars from the area of the PTT building and UN installations,[5354] and from civilian areas in order to draw fire into those areas.[5355] The last page of Exhibit D99 is consistent with the oral reports that General Wilson received from Sarajevo,[5356] remembering that observed Presidency forces established a mortar position near the PTT building and also used a mobile mortar.[5357] Fraser, Thomas and Mole all remembered that civilians were used as shields and that this was as illegitimate as using civilians for ABiH war effort purposes; the Muslims had an obligation to evacuate civilians out of the war area before opening fire from civilian locations in order to allow combat to go on with legitimate combatant parties.[5358]

2313. The false picture presented by the Muslims, was a contributing factor to an apparent lack of objectivity by UNPROFOR.[5359] UNPROFOR representatives did not treat Bosnian Serbs and Bosnian Muslims equally.[5360] Quite often UNPROFOR was considered as the extended arm of the ABiH.[5361] UNPROFOR facilitated and took part in the smuggling of weapons or military equipment to the Bosnian Muslims.[5362] UNPROFOR serviced the ABiH forces and enabled them to carry out their offensives more powerfully.[5363]

2314. Therefore, the evidence is clear that the international observers were either victims of the Muslim side's deception or were themselves party to the conflict.

[5353] Fraser, p 8089
[5354] Fraser, T. 8061
[5355] Fraser, T. 8062-63
[5356] Wilson, T. 3948-49
[5357] Wilson, T. 3938, T. 3943
[5358] Fraser, T. 8083; Mole, T. 5891-92; Thomas, T. 6841-42
[5359] Rose, T.7290
[5360] Galic, T.37585
[5361] D2776, pp. 1-3; Indjic, T.32427-8
[5362] Rose, T.7425-26; D00688, p.4 (Rose)
[5363] Milosevic, T.33241, T.32798

9. Investigation And Punishment

a. SRK units received orders (verbal or written) by superior command or civil authorities, that if fire was opened on civilians in the city under Muslim control, an investigation had to be conducted and the perpetrators had to be punished

2315. SRK unit members had an affirmative duty to report the commission of a crime to the commander of the unit.[5364] If SRK received information that a particular incident had taken place, an investigation would be conducted.[5365] SRK unit members were aware of the consequences of the commission of crimes, in terms of investigation and punishment.[5366]

2316. Each area of responsibility of a corps had its own military court and military prosecutor's office.[5367] All units were issued with copies of the Law on Military Courts and the Law on Military Prosecutors' Offices, together with the forms and instructions necessary for the application of those laws. The military justice system was organised in a similar way as in peacetime. Within the Main Staff of the Army of RS, there was also a legal service which continued to operate.[5368]

2317. Orders issued by SRK command warned commanders of pending criminal charges should they violate the rules or act irresponsibly. If officers were aware of contraventions and took no measures to prevent or punish the contraventions, they would be held responsible and answerable for the criminal offences in question.[5369]

2318. Such orders were issued to divisions within the SRK by superior commands or civilian authorities.[5370] If there was firing on civilians in the city under the control of Muslim authorities, an investigation would be carried out and the perpetrators punished.[5371]

[5364] Dzida, T.29562
[5365] Milosevic, T.32833-4
[5366] Dzida, T.29562
[5367] Milosevic, T.32859
[5368] D2831, p. 2; Milosevic, T.32858-60, T.33213-4, T.33277
[5369] P0191, p. 8; Dzida, T.29563
[5370] D2331, para 33 ; D2633, para 31; D2665, para 25
[5371] D2331, para 33; D2633, para 31; D2665, para 25

b. SRK units issued orders (verbal or written) that if fire was opened on civilians in the city under Muslim control, an investigation had to be conducted and the perpetrators had to be punished

2319. Orders from superior command were passed on to subordinates both orally and in written form notifying units that in the event fire was opened on civilians in the city under the control of Bosnian Muslim authorities, an investigation would be conducted and the perpetrators punished.[5372] Disciplinary action was taken against those who violated the rules and regulations.[5373]

2320. Assistant Commander for Morale and Legal Affairs, Colonel Kosovac, issued Guidelines for determining the criteria for prosecution, including the relevant provisions of international law, which were to be relayed to all officers.[5374]

2321. Appropriate measures were taken against perpetrators of all crimes.[5375] Private and adhoc investigation commissions were established and inspections carried out by UNPROFOR and brigade representatives.[5376] In cases of individual breaches, such as the opening of random fire without the knowledge of command, legally prescribed measures were undertaken.[5377] Approximately 70 criminal reports were submitted for further procedure and military prosecutors gave instructions to contact soldiers in order to notify them of the proceedings.[5378]

2322. Commander Dunjic of the Igman Brigade, and battalion commander Radivoje Grkovic from Nedzarici were removed from their positions because they had used disproportionate force.[5379]

2323. There were many criminal proceedings in the SRK.[5380]

2324. The Military Prosecutor of the SRK Command visited units of the Corps as there were shortcomings in reports.[5381] There was never any attempt to cover up any instances of crimes taking place.[5382]

[5372] D2331, para 33; D2633, para 31
[5373] D2562, para 137; D2610, p.1
[5374] D2833, pp. 1-10; Milosevic, T.32861-2
[5375] Lucic, T.30785
[5376] Gengo, T.29830-1
[5377] D2331, para 34; B. Kovacevic, T.29075-6
[5378] Milosevic, T.32859-60
[5379] Galic, T.37811-4, T.37895-7
[5380] D0596, pp.1-9; D2832, p. 3; D2834, p. 3; D2836, pp. 1-3 Lucic, T.30804; Milosevic, T.32860-9
[5381] D2836, pp. 3-4; Milosevic, T.32869-70

10. Control And Command

a. Relationship between Republic and SRK

2325. [redacted]. [5383] As Commander of the SRK, General Milosevic did not receive any orders or instructions from the Presidency of the RS that would be issued exclusively to the SRK. Any information arriving from the Presidency applied across the board to the VRS.[5384]

2326. Endorsing this position, General Galic also did not receive direct operative orders by President Karadzic.[5385]

2327. In one period of the war, the relationship between the SRK and the republican authorities was tense.[5386] Tensions existed between military and civilian structures.[5387] Tensions came to a head in terms of refusal to obey orders issued by the Supreme Command.[5388]

2328. Neither the civilian authorities of the RS nor the SDS or its leaders ever influenced General Milosevic's command, since they did not interfere in military matters.[5389]

b. Command and control in SRK

2329. Members of SRK units as well as other Serb units were local men and did not comprise of any professional officers. A serious lack of training within the SRK branded the SRK a people's army and when situations permitted, soldiers and officers were trained in the skills of war, in the handling of certain weapons and equipment, and in establishing professionalism in commanding throughout the war[5390] Most command

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[5382] D2836, pp. 3-4; Milosevic, T.32869-70
[5383] [redacted]
[5384] Milosevic, T.32904
[5385] Galic, T.37597
[5386] D2633, para 51
[5387] D2155, pp. 1-3; Milosevic, T.33264
[5388] Milosevic, T.33266
[5389] Milosevic, T.32815
[5390] D2331, para 35; D2341, para 16; D2351, para 16; D2354, para 4; D2383, para 25; D2387, para 52, 54; D2389, para 14; D2412, para 11; D2418, para 12; D2444, para 14; D2451, para 5; D2484, para 13; D2516,

positions were filled by local non-professionals whereby commanders of units did not graduate from military academy and did not have any previous war experience.[5391] Fewer than 50% of the officers in the SRK were professionals, and in some brigades this dropped to fewer than 10%.[5392]

2330. The shortage of professional commanding staff had a significant impact on the quality of command and control in the SRK Brigades.[5393] The VRS faced problems in achieving effective control over the members of their units.[5394] There were frequently problems with discipline and failing to abide by orders.[5395]

c. Situation in regard to ammunition, particularly artillery, in SRK units

2331. The SRK units did not have enough ammunition from the very beginning.[5396] Ammunition stocks were problematic, with many SRK units only possessing light infantry and low calibre weapons and very little or no heavy artillery weapons.[5397]

2332. There were numerous reports to the higher command regarding the shortage of ammunition.[5398] The SRK certainly had problems with supplying ammunition for artillery weapons, since their zone of responsibility was very wide.[5399] For example, in December 1992 the SRK units were out of 60mm, 82mm, 120mm and 122mm artillery shells on 6 December 1992.[5400]

2333. The ammunition level was critical, ammunition was spared, replenishment was irregular and the units fired on military targets restrictively.[5401] Orders from superior

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para 22; D2553, paras 1, 28-30, 35; D2562, para 39-40; D2622, paras 1-3, 19; D2633, para 32; D2658, para 22; D2686, para 40; D2707, pp.1-2; Sarenac T.34923; Zurovac, T.30264-5

[5391] D2331, para 35; D2383, para 26; D2389, para 14; D2418, para 12; D2479, para 20; D2516, paras 4, 22; D2553, paras 1, 28, 29, 30, 34-5; D2527, para 29; D2562, paras 33, 40; D2622, paras 1-3; Guzina, T. 31182

[5392] [redacted]; D2774, para 10

[5393] D2331, para 35; D2389, para 14; D2562, para 41; D2633, para 34; D2686, para 41

[5394] D2516, para 23; [redacted]

[5395] D0612; D2383, para 26; [redacted]; D2686, para 41

[5396] [redacted]; D2658, para 23; Galic, T.37988, T.38012; S. Gengo, T.29825

[5397] D2331, para 35; D2344, para 9; D2389, paras 15, 22; D2391, para 13; D2396, pp. 1-2; D2418, para 8; D2444, para 6; D2484, para 4-5, 13; D2524; D2686, para 42; M. Skrba, T.29187-8; Tusevljak, T.29935; Z. Kovacevic, T.30599

[5398] D0572, p. 1; D0577, p.3; D0610, p.1; D3392; D3436, pp. 1-2; D3452, p. 2

[5399] Galic, T.38012

[5400] D3392

[5401] D2633, para 35; D2658, para 23; P1501, pp. 1-2; M. Sehovac, T.31385; S. Gengo, T.29825

commands on ammunition expenditure stated that fighting units should save ammunition and refrain from firing for no reason.[5402] Therefore, spending vast quantities of ammunition firing at inhabited settlements where there were no combat activities[5403] was unlawful and unacceptable.[5404]

11. Humanitarian Issues

2334. The general stance of the superior command of the VRS, President Karadzic and the civilian authorities of the RS was not to prevent but rather to enable the humanitarian organizations to deliver humanitarian aid to the civilians under Muslim control.[5405] The position of the corps command was the same.[5406]

2335. SRK units were very much aware that military equipment for the needs of the ABiH had been brought to Sarajevo under the guise of humanitarian aid, with the help of UNPROFOR.[5407] There are numerous examples where the misuse of humanitarian convoys occurred, including the abuse by UNPROFOR of its mandate.[5408]

a. SRK units aware of the existence of a black market in the Muslim-controlled part of the city on which goods from humanitarian convoys were sold

2336. SRK units were aware of the existence of a black market on which the goods from the humanitarian convoys were sold in the city under the control of the Bosnian Muslim authorities or ended up in logistics bases of the ABiH.[5409]

[5402] D2331, para 35; D2389, para 15; D2479, para 20; D2484, para 13; D2562, para 42; D2622, para 19; D2633, para 35; P1501, pp. 1-2; Lucic, T. 30797; Z. Kovacevic, T.30606
[5403] Lucic, T. 30797
[5404] Lucic, T. 30798
[5405] D2516, para 26; D2562, para 46; D2633, para 39; [redacted]; D2845, pp. 1-2; D3466, pp. 1-2; D3482, p. 1; Galic, T.37605-6, T.38025; Milosevic, T.32894-5
[5406] D2561, p. 1; D2562, paras 46, 97; D2584, pp. 1-2; D2588, p. 1; D2686, para 44; D2806, p. 2; D2849, pp. 1-2; Lucic, T.30812; Milosevic, T.32899; Trifunovic, T.30376
[5407] D2331, paras 40, 50; D2336, p. 1; D2387, para 59; D2444, para 20; [redacted]; D2562, para 47; D2633, para 40; [redacted]; D2686, para 44; Galic, T.37573; Milosevic, T.32893-4
[5408] D2451, paras 14-15; D2512, pp. 1-2; D2513; D2516, para 26; D2538, para 22; D2605; D2606; D2652, paras 87, 132, 134; N.Mijatovic, T.30764-5, T.30767
[5409] D2331, para 40; D2519, para 33; D2562, para 48; D2633, para 41; [redacted]; Radojcic, T.31278

b. Superior command and civil authorities did not obstruct civilians to use water, electricity and gas in the Muslim-controlled part of the city

2337. SRK units were aware that it was the position of their superior commands and civilian authorities to ensure water, electricity and gas supply to civilians in the city under Muslim control.[5410] Efforts were made to enable the flow of electricity, gas and water to civilians in Sarajevo.[5411] Throughout the war, the Presidency of RS coordinated and cooperated with UNPROFOR in issues regarding distribution of electricity and water to Muslim parts of Sarajevo.[5412] The Presidency sent delegations of experts to attend regular meetings at the Sarajevo airport with UNPROFOR representatives and Bosnian Muslim delegations to discuss the distribution of electricity and water and repair works.[5413]

2338. The ministries of the RS government undertook measures to facilitate repair works and ensure supply of Sarajevo.[5414] During the war, both sides often did not have enough spare parts to carry out repair work, and the Bosnian Serb transmission engineers lacked, in particular, fuels, cables, transformer oil, insulators, switches, distribution devices and protection devices.[5415]

2339. Nobody from the municipal or republican level, civilian or military authorities, ever ordered, orally or in writing, to cut off electric power supply to any part of Sarajevo and this would not have been done even if such instructions were given.[5416]

2340. A number of documents, including ones signed by President Karadzic,[5417] confirm that both electricity and water were regularly sent to the Bosnian Muslim part of Sarajevo;[5418] the Bosnian Serb side never intentionally cut off electricity or water unilaterally, and where repairs were needed, they tried to make things operational as quickly as possible.[5419] Radovan Karadzic decisively forbade any abuse of water, electricity or gas.[5420]

[5410] [redacted]; D2516, para 27; D2622, para 22; D2633, para 42; D2686, para 46
[5411] D2331, para 41; D2389, para 18; D2633, para 42; Trapara, T.29925
[5412] D2544, pp. 1-5; Lubura, T.31044
[5413] D2544, pp. 1-5; D2547, pp. 1-2; D2548, pp. 1-4; Lubura, T.31044, T.31049
[5414] Lubura, T.31082
[5415] D2548, p. 2; Lubura, T.31046, T.31082
[5416] D2541, para 17; Lubura, T.31062, T.31073; Skoko, T.36735-6
[5417] D0116, pp. 1-2
[5418] D0104; D0116, pp. 1-2; Lubura, T.31083
[5419] D0104; Lubura, T.31082
[5420] D2562, para 49

2341. Contrary to the RS government's efforts to ensure electricity supply, the Bosnian Muslim authorities often obstructed repair works.[5421]

c. SRK units' facilitated civilian use of water, gas and electricity in the Muslim-controlled part of the city

2342. SRK Corps and its units facilitated the supply of critical utilities to to Muslim parts of Sarajevo.[5422]

2343. On the other hand, Bosnian Muslim forces actively and deliberately obstructed electricity and water supply, thorugh war operations, attacks or otherwise.[5423]

12. Freedom Of Movement Of Civilans

2344. Supreme commands, SRK and civilian authorities took a liberal stance with regard to the freedom of movement of civilians toward the city and out of the city under Bosnian Muslim control.[5424]

2345. On the contrary, it is a notorious fact that the Bosnian Muslim authorities did not allow civilians to leave the territory under their control in order to portray themselves as victims.[5425] A large number of Bosnian Serbs remained in the area of the city under Bosnian Muslim control and were not allowed to leave.[5426]

2346. In addition, SRK units were aware of the criminals who became high-ranking officers overnight in the ABiH in Sarajevo,[5427] and were, together with the Bosnian Muslim authorities responsible for terrorising the captured Serbs.[5428]

[5421] D2541, paras 12-13; D2548, pp. 1-4; [redacted]; D3321, paras 14, 24, 27; Lubura, T.31070; [redacted]; Skoko, T.36735
[5422] D2383, para 29; D2386; D2391, para 23; D2686, para 46; D3478, p. 2; Galic, T.37608-9, T.37612; Gengo, T.29796
[5423] D0116, pp. 1-2; [redacted]; D2510, p. 1; D2541, paras 9, 15-16; D2562, para 49; D2622, para 22; D3479, p. 1; D3481, p. 1; Galic, T.37613, T.37616; Lubura, T.31075-6, T.31082-3
[5424] D2331, para 41; D2383, para 30; D2516, para 28; D2553, para 41; D2562, para 50; D2633, para 43; [redacted]; D2686, para 48; P1866, p. 10; Hajir, T.8826; M. Indjic, T.32432
[5425] D2516, para 28; D2562, para 50; D2774, para 49; D2777, pp. 1-13; M. Indjic, T.32431
[5426] D2331, para 42; D2375, para 25; D2383, para 31; D2516, para 28; D2519, para 35; D2562, paras 44, 51; [redacted]; D2686, para 49
[5427] D2331, para 18; D2562, para 53; [redacted]; D2686, para 50; Zurovac, T.30290
[5428] D2331, para 18; D2519, para 37; [redacted]

13. Modified Air Bombs

2347. Paragraph 190 of the Prosecution Pre-Trial brief alleges that by at least 1995 the SRK had added the inherently inaccurate modified air-bomb to its arsenal, unable to be precisely guided against any military target and that the purpose of these weapons was to further terrorize the civilian population. However, the evidence in this case shows that none of these claims made by the Prosecution is correct.

a. Reasons why modified air-bombs would be used to engage targets on the ground

2348. Due to sanctions against RS, the supply of ammunition came to a halt in 1994 and 1995.[5429] As a result, VRS forces suffered from a terrible shortage of artillery and mortar ammunition.[5430] Due to this, an attempt was made to use the existing stock of air-bombs and modifying them for use against military targets on the ground.[5431] Furthermore, as the ABiH grew increasingly in manpower and equipment, a greater need was felt to resist these forces with the weapons that were available.[5432] As to their use, air-bombs were used on the ground. Thus, reasons for modifying air bombs to shoot at targets on the ground were defensive, as modified air-bombs were used as a last resort.[5433]

b. Accuracy of modified air-bombs

2349. The rocket engines and the entire air-bomb kit of the modified air bombs were tested and their precision was satisfactory.[5434] Air bombs had a similar deviation to that of mortars.[5435]

[5429] [redacted]; D2658, para 23; S. Gengo, T.29825; Milosevic, T.32762
[5430] [redacted]; D2510; D2562, para 54
[5431] D2412, para 22; D2484, para 14; [redacted]; D2562, para 54; Milosevic, T.32769; S. Simic, T.30091; Soja, T.7220
[5432] D2562, para 54
[5433] D2412, para 22; D2484, para 14; [redacted]
[5434] D2562, para 55; [redacted]
[5435] D2412, para 21; D2562, para 55

2350. Subsequent to the successful testing of expert engineers of the launcher and mounting of engines that fuelled aerial bombs, they were then ready to be used in combat.[5436] The testing of the precision of the modified air-bombs took place in areas with no residential buildings in the vicinity, such as Zuc and Kalinovic.[5437] The experts who worked on the assets practically perfected the weapon to the point at which it could be considered precise.[5438]

2351. To ensure accuracy of the modified air bombs, the professional overseeing of the precision of fire would not even proceed to firing point unless he could rely on a nuanced and detailed calculation to hit the target.[5439]

c. Control over the trajectory of the air-bomb once it was launched

2352. [redacted].[5440] After being launched, the air-bombs travelled over SRK forces which was yet as additional reason as to why imprecision was reduced to the greatest degree possible, and potential faults and deviation from their trajectory kept to a minimum.[5441]A great deal of caution and precision was exercised if there were residential areas on the axis of the bombs.[5442]

d. Possible deviation in metres between the intended target and the landing of the modified air-bomb

2353. As with any type of weapon, modified air bombs had a chance of minimum deviation due to meteorological conditions, however, the deviation of air-bombs was minimal in relation to the recorded elements.[5443] Prior to launch, engineers would conduct

[5436] Milosevic, T.32770-1
[5437] Milosevic, T.32773; Soja, T.7217
[5438] Milosevic, T.32773, T.33185-6
[5439] Milosevic, T.33166
[5440] [redacted]
[5441] D2562, para 55
[5442] Milosevic, T.32774
[5443] D2412, para 21; S. Simic, T.30097; [redacted]; Radojcic, T.31252

all necessary checks to verify that the engines of the air-bombs were functioning.[5444] Sighting mechanisms were used to aim and hit the targets.[5445]

e. Type and quality of rocket engines used to propel modified air-bombs

2354. Modified air bombs were powered by four rocket engines attached to the rear of an air-bomb together with specific rocket gunpowder activated by electricity.[5446] The rocket motors were also regular motors which were used for anti-Hale rockets and these motors could not be improvised.[5447] [redacted].[5448] [redacted][5449]

f. Non-existence of aerosol bombs in the arsenal of the SRK

2355. It has been confidently claimed that the SRK did not have aerosol bombs in its arsenal or in the JNA before that.[5450]

g. SRK units had knowledge that the goal of using modified air-bombs wasn't terrorising the civilian population in the city under Muslim control

2356. It was not the intention of the SRK units nor the corps command to terrorize civilians in parts of the city controlled by the ABiH.[5451] The modified air bombs were not used to terrorize the local population in the city under control of the Muslim authorities but rather quite the opposite; to target exclusively the most important military targets and facilities.[5452]

[5444] N. Mijatovic, T.30750
[5445] S. Simic, T.30097
[5446] [redacted]; P5982; S. Simic, T.30092; Veljovic, T.29284-5
[5447] Soja, T.7218
[5448] [redacted]
[5449]
[5450] [redacted]; D2562, para 57; [redacted]
[5451] [redacted]; [redacted]; D2686, para 53
[5452] D2562, para 58; P1201; Milosevic, T.32784, T.32793-4

h. SRK units had knowledge about the opposing 1st ABiH Corps forces modifying and using projectiles to engage targets on the ground

2357. There was information from VRS intelligence sources that the Bosnian Muslim side also used modified aerial bombs.[5453] [redacted] [5454]

2358. Around 18 or 22 April 1992, the special forces of the MUP, commanded by Dragan Vikic, entered the Pretis factory and began the removal of certain quantities of ammunition, including the stock of air bombs that were placed in the warehouses thus resulting in the ABiH having a certain number of air bombs at its disposal.[5455] There was also an incident in the location of the national park at Vrace, where three air bombs were dropped yet remained unexploded by the ABiH.[5456]

14. Incidents Schedule G- Individual MAB Incidents

a. Indicent G-10: Hrasnica in Alekse Šantića MAB, 7 April 1995 - G-10

2359. The totality of the evidence analyzed and presented by the Defence ballistic experts in relation to this incident[5457] undoubtedly proves the following:

2360. The evidence shows that the Incident G-10 that occurred on 7 April 1995 was as a response by the SRK to the violation of the truce by the ABiH. The target of the SRK was the *Aleksa Santic* school, which at the time of the attack, was a building used by the 4th Motorised Brigade of the ABiH 1st Corps. The building that was hit by the SRK was located 20 meters from the *Aleksa Santic* school, and the incoming trajectory of the bomb passed over the school. The 20-metre distance falls within the normal dispersion of rocket projectiles for the specified range, which means that the building was hit by accident. The command of the Bosnian Muslim 4th Motorised Brigade prevented members of the UNPROFOR from access to the scene directly after the incident, which is further

[5453] [redacted]; D0562, para 59
[5454] [redacted]
[5455] Milosevic, T.32762-3
[5456] Milosevic, T.32764
[5457] D3540, pp. 44-57

evidence that the Muslim forces wanted to hide traces of a military presence at the location in question. Based on the effects at the scene, and the fact the people who were in the building that was hit survived, it was established that in this incident there was instantaneous action by a modified FAB-100 aircraft bomb, rather than a fuel-air bomb as claimed by Prosecution expert witness Zecevic, and that the explosion happened outside of the house.[5458]

2361. The SRK received information long before that the building of the Aleksa Santic School and the post office in Hrasnica were legitimate military targets as they were being use for the production of shells and lethal assets for the needs of units of the ABiH.[5459] Moreover, the centre of Sokolovic Kolonija was packed with military targets and firing positions of the ABiH 104th Brigade.[5460] [redacted][5461] [redacted],[5462] [redacted]. [5463] [redacted] [redacted][5464] [redacted] [redacted].[5465]

2362. It was General Milosevic who ordered the launch by an order to the Ilidza Brigade.[5466] The order itself contained neutral language and was understood by the Ilidza Brigade to open fire at military targets only.[5467] This was axiomatic due to the fact that the Brigade was subject to artillery fire almost daily by the ABiH and also because the SRK command had frequently issued orders to not open fire at civilian targets.[5468] Consequently, the order did not possess any potential to be misinterpreted and was clear to state to open fire at a sighted military target.[5469] The decision to hit the target with the use of an air-bomb was taken by the Ilidza Brigade commander himself as it was the most

[5458] D3540, pp. 44-57
[5459] D2353, pp. 1-2; D2562, para 108; D2633, para 63; M. Sehovac, T.31366; Milosevic, T.32795-6; Veljovic, T.29288
[5460] D2562, para 108; D2633, para 63; M. Sehovac, T.31366; Milosevic, T.32565, T.33160-2
[5461] [redacted]
[5462] [redacted]
[5463] N. Mijatovic, T.30749
[5464] [redacted]
[5465] [redacted]
[5466] D2562, para 108; D2633, para 63; M. Sehovac, T.31366; P1201
[5467] D2562, para 108
[5468] D2562, para 108; D2633, para 63
[5469] D2562, para 108

profitable option at the time.[5470] The possibility of error and causing civilian casualties was minimal.[5471] Moreover, all regulations were observed concerning the use of air-bombs to ensure that security and safety measures were put in place to not jeopardise the civilian population. [5472]

b. Indicent G-11: Safeta Zajke MAB, 24 May 1995

2363. The totality of the evidence analyzed and presented by the Defence ballistic experts in relation to this incident[5473] undoubtedly proves the following:

2364. A modified FAB-100 aircraft bomb with a solid TNT explosive was involved in this incident, rather than a fuel air bomb. Evidence indicates that there was firce combat in the Sarajevo theatre of war that day, 24 May 1995. The most likely target was the *Zica* factory, located in a large industrial complex, and which used by the ABiH as a command post of the 102nd Motorised Brigade and as a military canteen. A deviation of 100 m from the target can be expected with this type of projectiles, and the incoming trajectory was such in order to for the projectile to pass over the least populated part of the city. In addition, the Prosecution presented a series of conflicting and unproven documents and official reports made by the BH authorities that fabricated evidence in order to create a trajectory that corresponded with the location of the VRS forces. In fact, the location where the projectile exploded could have been hit from three directions, which went over the *Zica* factory. Also, the Bosnian Muslim authorities and the Prosecution presented conflicting evidence in relation to the number of motors used to propel the projectile. [5474]

2365. General Milosevic testified that the ABiH had situated six 120mm mortars to cover Nedzarici and parts of Ilidza with strong artillery and brought forces closer to Stupsko Brdo in an attempt to use artillery fire so that the ABiH infantry could move in. General Milosevic therefore acknowledged that the use of an air bomb on behalf of the SRK neutralised the six mortars and prevented this from happening.[5475]

[5470] Radojcic, T.31262-3
[5471] Radojcic, T.31263
[5472] Milosevic, T.33171-4
[5473] D3540, pp. 58-68
[5474] D3540, pp. 58-68
[5475] Milosevic, T.32776-7

c. G-12: Majdanska Street bb MAB, 24 May 1995

2366. The totality of the evidence analyzed and presented by the Defence ballistic experts in relation to this incident [5476] undoubtedly proves the following:

2367. A FAB-100 modified aircraft bomb with solid TNT explosive had exploded at Majdanska Street bb on 24 May 1995 and that the correct direction cannot be established with certainty because the Bosnian Muslim investigative organs produced various conflicting directions without a proper explanation. The target of the attack was most probably the transformer station located in the city's industrial zone and that was hit within the projectile's accuracy range, that is, within the expected error range for unguided rocket projectiles. [5477]

2368. The transformer station was located in the city's industrial zone, packed with military installations, units and targets and close to the point of impact also held a forward command post of the 102nd Brigade of the ABiH, accommodated in the building of *Pavle Goranin* School.[5478] This therefore renders the transformer station a legitimate military target. Moreover, this incident also occurred in the middle of a fierce ABiH offensive.[5479]

2369. The SRK units were targeting a position that was a danger to them and were attempting neutralise the fire emanating from the ABiH. The air bomb was considered to be far enough away from the residential building to be considered safe[5480] and persons further than 100m away from the impact of the bomb were not considered to be in danger.[5481]

d. Incident G-13: Safeta Hadžića Street MAB, 26 May 1995

2370. The totality of the evidence analyzed and presented by the Defence ballistic experts in relation to this incident[5482] undoubtedly proves the following:

[5476] D3540, pp. 68-72
[5477] D3540, pp. 68-72
[5478] D2562, para 112
[5479] D2562, para 112
[5480] Milosevic, T.32778
[5481] Milosevic, T.33151
[5482] D3540, pp. 74-106

2371. A modified FAB-100 aircraft bomb, rather than an area bomb, fell at Safeta Hadzica Street 52. The fact that there were surviving witnesses who were in the centre of the explosion is conclusive proof that it was an explosion of a bomb filled with solid explosive. The evidence further shows that the most likely target was not the building where the bomb fell, but the TV building which was also hit in this attack, and the projectile that hit the house in Safeta Hadzica Street actually ricocheted, having first hit the TV building. According to the police reports, ten more projectiles were fired that same day, after the aircraft bomb that landed at Safeta Hadzica. The evidence, however, shows that these projectiles either did not land in this area on that day or that these were staged cases or that there was simply no evidence for the conclusions made by the police reports.

2372. For example, there were differences in the description of the location where the projectile landed, differences in the size of the crater, traces of projectiles suggested guns which were not in the possession of the VRS, or in other cases some of the damage was caused by an anti-aircraft gun of the ABiH, some craters were dug by hand, others involved projectiles from the Second World War, some projectiles were not even mentioned in the police photo-file and the police often made conclusions without offering a single piece of material evidence. In view of the above, the entire report on ten projectiles that struck after the modified air bomb must be rejected. [5483]

2373. The Ilidza Brigade Commander Radojcic testified that he never issued an order to open fire against this target to any unit of his brigade, and that he never received any feedback information about this alleged.[5484]

e. Incident G-14: Dositejeva street MAB, 16 June 1995

2374. The totality of the evidence analyzed and presented by the Defence ballistic experts in relation to this incident[5485] undoubtedly proves the following:

2375. Based on the material evidence at the site, the effects at the target and the theoretical calculations made, it can be concluded that a FAB-100 modified aircraft bomb

[5483] D3540, pp. 74-106
[5484] D2562, para 113
[5485] D3540, pp. 106-115

charged with solid explosive landed on the building at Dositejeva Street 4a on 16 June 1995. This building that housed the offices of the BH Ministry of Defence and the Helicopter Units Command, was in the immediate vicinity of the facilities used by the the Sarajevo CSB, the 1st Corps Command, the 105th Mountain Brigade Command and just 80 metres from the BH Presidency building. The direction of fire, that is the trajectory, passed over the narrowest part of the residential area, minimizing the risk for the civilian population to the lowest possible level.

2376. Prosecution expert witness Zecevic insubstantially disagreed with the findings of the BH investigating organs offering a different azimuth. However, the site where the rocket motors were found is much closer to the trajectory determined by the police investigators than the one determined by Zecevic. Finally, Zecevic's claim that the incident involved a fuel air bomb is impossible, because, *inter alia*, not a single fragment of a fuel air bomb casing was found at the scene of the incident. [5486]

2377. Miladin Trifunovic testified that no MAB was ever fired from the zone of responsibility of his brigade or from *Pretis*.[5487] Both Trifunovic and Kovacevic testified that the SRK was not responsible for the air bomb fired at Dositejeva Street, in the centre of Sarajevo.[5488] General Milosevic testified that the command of the 1st Corps was headquartered in the vicinity of Dositejeva Street.[5489]

f. Incident G-15: Trg Medjunarodnog Prijateljstva MAB, 16 June 1995

2378. The totality of the evidence analyzed and presented by the Defence ballistic experts in relation to this incident[5490] undoubtedly proves the following:

2379. A a FAB-250 modified aircraft bomb with classic explosive and three *Grad* rocket motors landed near *Trg medjunarodnog prijateljstva 10* on 16 June 1995. The Prosecution and its expert witness attempted to create the impression that the bomb was a device intended exclusively for the mass destruction of civilians by, *inter alia*, determining the incoming trajectory on the basis of the trajectories of two different

[5486] D3540, pp. 106-115
[5487] D2444, para 22
[5488] D2444, para 22; D2484, para 23
[5489] Milosevic, T.32780
[5490] D3540, pp. 115-122

aircraft bombs, of which one landed twenty days earlier and the other twelve days later. The police encountered a series of inconsistencies in terms of the sketch of the site not matching the accompanying text, through rotating North by 57º. The most probable target was the *Bitumenka* factory, which was crossed by the actual incoming trajectory, and which was 140 metres away from the building that was hit. Finally, if Prosecution expert witness Zecevic was right that it was an area bomb that had exploded, the witnesses who had been standing metres from the point of impact would not have survived. [5491]

2380. Also, a major ABiH offensive was underway at the time of this incident and the ABiH in Sarajevo was engaging a huge force in order to link with other brigades.[5492]

2381. It was in the *Bitumenka* factory where in June 1995 Bosnian Muslim forces were deployed in depth together with ABiH mortars.[5493] Moreover, the building of the *Prvo Maj* school accommodated the command post of one of the units of the 102nd Brigade.[5494] The Ilidza Brigade Commander Radojcic testified that he never issued an order to open fire against this target to any unit of his brigade, and that he never received any feedback information about this alleged. [5495]

g. Modified air bomb Incidents show that there was no policy of terror against Sarajevo citizens

2382. Modified aircraft bombs fell in five neighbourhoods of the city that were mainly unpopulated parts of the city with commercial facilities or facilities that were important for the BH Army's military operations and production. [5496] The assessment of accuracy carried out by comparing the deviation of the points of impact from the most probable target in relation to the table deviations showed that fifteen of the sixteen projectiles fully met the general exterior ballistics demands for unguided projectiles.[5497] The projectile that, on the face of it, did not meet the ballistics demands, and that concerned a non-

[5491] D3540, pp. 115-122
[5492] D2562, para 114 ; Milosevic, T.32782
[5493] D2562, para 114
[5494] D2562, para 114
[5495] D2562, para 114
[5496] D3540, p. 202
[5497] D3540, p. 203

Indictment incident, in actual fact would have also been below table dispersion had it not along its trajectory unpredictably hit a corner of the high-rise building at an altitude of 40 metres.[5498]

2383. The most probable targets were not randomly selected. Each of the targets had some military purpose. Two of the targeted facilities which at first glance are not military targets stand out: the business and commercial centre in Sokolović Kolonija and the *Aleksa Šantić* elementary school in Hrasnica. However, both buildings had military purposes since the start of the conflict, because they were used for accommodation and training of the Bosnian Muslim forces and for military production. [5499]

2384. None of the civilian buildings which were hit had been targeted intentionally, in both the Indictment-scheduled and non-scheduled incidents. The collateral damage was neither the consequence of a poor quality of modified aircraft bombs nor poor features of the bombs, because very precise hits were achieved in cases where clear landmarks existed, such as was the case of the transformer station at Majdanska Street bb, with a large power line tower. Modified bombs were less accurate in cases where it was more difficult to select good landmarks or where visibility was poor, while two civilian buildings were hit by accident as a consequence of ricochet, or because it was not technically possible to predict an obstacle (high-rise building) anywhere at the level of the trajectory coordinate. [5500]

2385. Considering the effects at the target, it was established that in nine cases FAB-100 bombs were used, in four cases FAB-250 bombs and in three cases the information is missing. This shows that when selecting aircraft bombs, the size and construction of target were taken into account, which resulted in fewer victims in case the target was missed.[5501] Modified aircraft bombs which were used in the analysed incidents satisfied all the tactical and technical requirements of rocket artillery weapons. This was expected since the components fitted into the system (FAB-100 and FAB-250 aircraft bombs and 122 mm *Grad* rocket motors) were manufactured in accordance with exacting military regulations, tested, commissioned into the arsenal of weapons and exported before the

[5498] D3540, p. 203
[5499] D3540, pp. 203-4
[5500] D3540, p. 204
[5501] D3540, p. 204

war. Furthermore, the VRS had the personnel and equipment to assemble these components.[5502]

2386. Before and during the war in Republika Srpska there were was a large testing ground known as Kalinovik where artillery weapons and rockets could be tested.[5503] Also, not a single piece of equipment could be used in the JNA, unless it had been seriously and extensively tested at the Technical Testing Centre.[5504] As known, during the war in Bosnia the VRS used the equipment manufactured and tested in the JNA. Contemporaneous firing tables for the modified air bomb systems existed, and a colleague of Defence expert Poparic worked on these tables.[5505] The precision of the modified air-bombs discussed above would not have been possible without the firing tables;[5506] therefore, they certainly must have existed based on the results on the ground. [5507] In addition, rocket engines were also tested.[5508]

2387. Many deficiencies were discovered in the work of Prosecution experts Zecevic and Higgs. [5509] Unlike Prosecution's ballistic expert Zecevic, who, when analyzing physical evidence, made his conclusions based on his personal choices,[5510] the Defence ballistic experts based their conclusions on the laws of physics and ballistics characteristics of the weapons used.

2388. According to the effects at the target, and based on the unequivocal evidence that there are surviving witnesses who were right at the site of the incident, it was established that no area modified aircraft (fuel air) bomb exploded in the Sarajevo area. This conclusion is supported by the fact that 60 fuel air FAB-275 aircraft bombs were made before the war, of which 58 were destroyed after the war. The presented documents do not provide any evidence that area (fuel air) bombs were used in or around Sarajevo.[5511] This conclusion was also reached by the Defence expert for explosives.[5512]

[5502] D3540, p. 204
[5503] Andjelkovic-Lukic, T. 31528; Z. Subotic, T. 38232
[5504] Andjelkovic-Lukic, T. 31493
[5505] Poparic, T. 39053
[5506] Z. Subotic, T. 38231, T. 38523
[5507] Z. Subotic, T. 38528
[5508] D3559; Z. Subotic, T. 38636
[5509] D3644, pp. 1-147; P6348, pp. 1-5
[5510] D1092; Zecevic, T. 12252
[5511] D3540, p. 204
[5512] D2662, para 6.77

2389. None of the specific Indictment incidents analyzed and discussed by Defence expert witness Zorica Subotic in her report was the topic of the Prosecution's cross-examination. Instead, the Prosecution engaged in futile theoretical discussions with Ms. Subotic about different sorts of projectiles, without posing her a single question in relation to the specific alleged crimes involving modified air-bombs.

2390. Finally, and most importantly, in all sixteen attacks, **ten persons were killed** according to one set of information, and **eleven** according to another, **four** sustained serious injuries and **thirty** minor injuries.[5513] This is the most compelling evidence that the modified air bombs were not used in order to terrorise the civilian population in Sarajevo. By way of comparison, The US-led attack using "precise" air-to-surface bombs on Federal Republic of Yugoslavia that lasted from 24 March to 10 June 1999, resulted in **several thousands** of civilian fatalities.

15. Laws of physics contradict Prosecution's case

2391. Finally, during the cross-examination of all three Defence expert witnesses (ballistics and explosives) the Prosecution was simply beating about the bush. It did not address properly any of the **main** Defence expert evidence that was based in the laws of physics, physical evidence on the ground and ballistics characteristics of weapons. The Prosecution will certainly continue to beat about the bush and claim that the Defence ballistics experts have no formal training in criminal investigation or forensic pathology, never served as a sniper in a combat environment, that they were not in Bosnia during the war, or that they have never been to the scene of a mortar explosion in the minutes after it detonated. However, all these and similar "arguments" cannot make the **main** Defence evidence disappear. Advocacy cannot override the laws of physics, or make up for the lack of evidence.

16. No other army could have waged the war in Sarajevo differently

[5513] D3540, p. 204

2392. There was an enormous number of military targets in Sarajevo containing an enormous variety of military hardware and units.[5514] Taken together with the evidence presented above, there was hardly *any* neighbourhood in Sarajevo that was not militarized.

2393. There is a massive amount of evidence showing the offensive nature of the 1st ABiH Corps that throughout the entire war utilised all kinds of military hardware to carry out constant attacks and provocations against the SRK, making life miserable for both the Serb and non-Serb civilians.[5515] Under the heading "The Enemy" the SRK was reporting the type of fire and the locations of the ABiH units in Sarajevo. Fire was coming from **everywhere, the entire city.**[5516] Without these attacks, there would have been no SRK responses.

2394. There is also a plethora of evidence showing that the Bosnian Army was guilty of an enormous number of breaches of ceasefires.[5517] These documents also show ABiH

[5514] D0120; D0585, pp. 1-4; D0674; D0675; D2331, para 44; D2341, para 18; D2383, para 18; D2387, para 48; D2398, paras 9, 11, 12, 23; D2412, para 23; D2479, para 25; D2484, para 17; [redacted]; D2498; D2499; D2500, p. 1; D2516, paras 14, 17; D2562, paras 63-5, 89; D2622, para 18; D2686, para 60; [redacted]; D3138, para 4; P1521, pp. 1-3; D. Skrba, T.29125, T.29146; Gengo, T.29773, T.29780; [redacted]; KW570, T.32263; Simic, T.30076; Sladoje, T. 30584; Soja, T.7211-7214

[5515] D0195, pp. 1-2; D0573, p. 1; D0579, p. 1; D2331, para 24 ; D2341, para 29; D2344, para 12; D2387, para 64; D2389, para 27; D2391, paras 9, 12, 15; D2392, p.1; D2393, p. 1; D2398, para 11; D2412, para 24; D2418, para 21; D2425, pp. 1-5; D2434; D2479, para 23; D2516, para 17; D2519, paras 39-40; D2527, para 26; D2538, para 15; D2553, para 28; D2562, para 121; D2658, paras 25, 29; D2665, paras 21, 29; [redacted]; D2792, pp. 2-3; D3138, paras 7-8; D3392; D3406, p. 1; D3407; D3436, p. 1; P1478, p. 122; B. Kovacevic, T.29079, T.29086; [redacted]; Milosevic, T.32532-3; Pikulic, T.30628-9; T.30633; Rasevic, T.30907; Sehovac, T.31345; Simic, T.30137; Tusevljak, T.29951-2; Zurovac, T.30269-70, T.30306

[5516] D0324, p. 1; D0338, pp. 1-3; D0340, pp. 1-2; D0628, p. 1; D0769, pp. 1-2; D0771, pp. 1-2; D0836, p. 1; D0837, p. 1; D0838, pp. 1-2; D0960, pp. 1-2; D1515, p. 1; D2554, pp. 1-2; D2672, pp. 1-2; D2801, p. 1; D2802, p. 1; D2820, pp. 1-2; D3385, p. 1; D3391, p. 1; D3392, p. 1; D3394, p. 1; D3395, pp. 1-2; D3397, p. 1; D3403, p. 1; D3405, p. 1; D3408, p. 1; D3410, p. 1; D3411, p. 1; D3412, pp. 1-2; D3413, pp. 1-2; D3416, p. 1; D3417, pp. 1-2; D3421, pp. 1-2; D3422, pp. 1-2; D3425, pp. 1-2; D3427, p. 1; D3428, pp. 1-2; D3429, p. 1; D3433, pp. 1-2; D3434, p. 1; D3435, p. 1; D3438, p. 1; D3440, pp. 1-2; D3441, p. 1; D3443, p. 1; D3445, pp. 1-5; D3446, p. 1; D3447, pp. 1-2; D3450, pp. 1-2; D3451, p. 1; D3454, p. 1; D3455, pp. 1-2; D3457, p. 1; D3465, p. 1; D3457, p. 1; D3470, p. 1; D3471, pp. 1-3; D3475, p. 1; D3479, p. 1; D3519, pp. 1-2; D4563, p. 1; D4565, p. 1; D4567, p. 1; D4568, p. 1; D4569, pp. 1-2; D4570, pp. 1-2; D4571, pp. 1-2; D4572, pp. 1-2; D4573, p. 1; D4574, pp. 1-2; D4575, pp. 1-2; D4576, pp. 1-2; D4577, p. 1; D4578, p. 1; D4579, p. 1; D4580, p. 1; D4581, p. 1; D4582, pp. 1-2; D4583, pp. 1-2; D4584, pp. 1-2; D4585, p. 1; D4588, p. 1; D4589, pp. 1-2; D4590, p. 1; D4592, pp. 1-2; D4593, p. 1; D4594, p. 1; D4595, pp. 1-2; D4596, p. 1; D4597, p. 1; D4598, p. 1; D4599, p. 1; D4600, p. 1; D4601, p. 1; D4602, p. 1; D4603, p. 1; D4604, pp. 1-2; D4605, p. 1; D4606, pp. 1-2; D4607, p. 1; D5971, p. 1; D5973, p. 1

[5517] D0717, p. 2; D2502; D2507; D2571, pp. 1-2; D2572 , p. 1; D2574, pp. 1-2; D2575, pp. 1-2; D2576, p. 1; D2578, p. 1; D2579, pp. 1-3; D3388, p. 5; D3405, pp. 1-2; D3408, p. 1; D3411, p. 3; D3412, pp. 1-4; D3416, p. 1; D3422, pp. 1-2; D3424, pp. 1-3; D3426, pp. 1-2; D3427, p. 1; D3429, p. 1; D3431, pp. 1-2;

locations and their directions of attacks. Although the SRK refrained from responding on many occassions, without the ABiH breaches of CFs, again, there would have been no responses by the SRK.

2395. There was simply no other way to wage the war in Sarajevo than the way forced upon the SRK.

D3435, p. 1; D3438, p. 1; D3440, p. 1; D3443, p. 1; D3444, p. 1; D3447, p. 1; D3448, p. 1; D3453, p. 2; D3454, p. 1; D3455, p. 1; D3457, p. 1; D3468, p. 1; D3470, p. 1; D3474, p. 1; D3475, p. 5; D3478, p. 1; D3519, p. 1; P2711, pp. 1-4

Chapter 2
FACTUAL FINDINGS ON THE CRIMES
Part 3

C. Srebrenica Component

1. The military action to take Srebrenica was not a crime

2396. On 9 July 1995, when informed that the ABiH was not defending the town, President Karadzic authorized the VRS to enter Srebrenica, and directed that full protection be afforded to the civilian population.[5518]

2397. Prosecution expert witness **Richard Butler** testified that given the fact that the ABiH military forces in the enclave were armed and conducted military operations out of the enclave, under military doctrine, the VRS had a legitimate right to engage in military operations against the 28th Infantry Division there.[5519] Defence expert witness **General Radovan Radinovic** also stated that the entry into Srebrenica was legitimate from a military standpoint.[5520]

2398. This is consistent with Article 60(7) of Additional Protocol I, which provides that in the event of a material breach of the provisions of the demilitarized status, the other Party shall be released from its obligations under the agreement conferring upon the zone the status of demilitarized zone.

2399. While United Nations Resolutions 819 and 824 (1993) designated Srebrenica as a demilitarized safe area and required compliance by the warring parties, the failure to respect these resolutions are a matter of state responsibility, not individual criminal liability. If violation of a UN resolution was a crime, those members of the international community who violated the arms embargo to the former Yugoslavia should all be in the dock.

[5518] P2276
[5519] T27713
[5520] D3864, para 31

2400. There is no dispute that crimes were committed during the events following the takeover of Srebrenica. However, the military operation approved by President Karadzic to enter Srebrenica was not a crime.[5521]

2. The crime of forcible transfer was not committed at Srebrenica

2401. It is undisputed that in about a 24-hour period from the afternoon of 12 July to the afternoon of 13 July, the vast majority of the civilian population of Srebrenica was transported from Potocari to Bosnian Muslim territory near Kladanj. Whether this event constituted the crime of forcible transfer is highly disputed.

a. There was no plan for forcible transfer

2402. Even before the Bosnian Serbs decided to enter Srebrenica, the Bosnian Muslim authorities in the town expressed the preference for the population to leave Srebrenica if the town fell to the Serbs. Shortly after a session of the Srebrenica municipal presidency at 1900 hours on 9 July, Osman Suljic, the Municipal President sent an urgent request to President Izetbegovic and General Rasim Delic requesting that they arrange a meeting with the Bosnian Serbs to explore the possibility of opening a corridor and move the population to the nearest free BiH held territory.[5522]

2403. On 11 July, shortly after the Serbs entered Srebrenica and found the town undefended, President Karadzic appointed a civilian commissioner and ordered him to ensure that "the civilian population can freely choose where they will live or move to."[5523]

2404. When ordering the formation of the Srebrenica Public Security Station on that same day, President Karadzic reiterated that civilians "will be free to choose their place of residence or place of emigration."[5524]

2405. Defence expert witness **General Radovan Radinovic** concluded that in his order to set up a police station in Srebrenica, Dr. Karadzic even

[5521] *Blagojevic & Jokic* TJ, para.140: "the attack on the enclave itself is not the subject-matter of this case"
[5522] P4150
[5523] D2055,at para. 4
[5524] P2994,at para. 4

> ordered that the civilians be protected, expecting even then that a large number of civilians would decide to remain in their town. Knowing these facts, it is utterly incomprehensible that Prosecution documents hold the VRS and Dr. Karadzic, as its head, responsible for adopting the decision to move the population out, and even of planning it in advance, and carrying it out by force. None of this is true. Our research and analysis have established beyond doubt that the decision to move people out was made by the UN apparatus at the request of the head of the municipal administration, that the same request was made by representatives of the civilian population and the civilian authorities in Srebrenica and that the VRS hastily prepared the operation and carried it out from 12 July to 13 July 1995.[5525]

2406. At 1800 hours, in an intercepted telephone conversation with UNPROFOR General Herve Gobillard, General Gvero indicated that "the refugees who come over to our side will be totally safe. We will protect those civilians and they can come over to our side and they will be safe.[5526]

2407. Therefore, as of the afternoon of 11 July, the Bosnian Serb leadership was not committed to any forcible transfer of the population, although it appeared that the Bosnian Muslim leadership in the town were in favor of its citizens leaving Srebrenica.

b. The suggestion to transport the population from Potocari was made by the United Nations and not the Bosnian Serbs

2408. [redacted]…[5527]

2409. That is exactly what happened at the first encounter between Dutchbat Commander Karremans and General Mladic, which took place at the Fontana Hotel at 2000 hours on 11 July. Because that meeting was video recorded, it is possible to know exactly who proposed what.[5528]

2410. At the outset of the meeting, which had been requested by Colonel Karremans, General Mladic said, "you asked for the meeting, what do you want?"

2411. Colonel Karremans replied that:

> I had a talk with General Nikolai two hours ago, and also with the national authorities about the request on behalf of the population. It's a request because

[5525] D3864,at para. 33
[5526] P4679, p.2
[5527] [redacted]
[5528] The Trial Chamber denied Dr. Karadzic's request for a subpoena for Colonel Karremans, finding that it was not necessary to hear from him in light of the other evidence about his contacts with the VRS. *Decision on Accused's Motion to Subpoena Thomas Karremans* (29 May 2013) at para. 14

> I'm not in a position to demand anything. We… the Command in Sarajevo has said that the enclave has been lost and that I've been ordered by BH Command to take care of all the refugees. And are now approximately 10,000 women and children within the compound of Potocari, and the request of the BH Command is to… let's say, to negotiate or ask for the withdrawal of the battalion and withdrawal of those refugees, and if there are possibilities to assist that withdrawal. There are some women who are able to speak English, and what I've heard from all the soldiers who are now working to … let's say, ease the pain for the population…. A lot of people, a lot of persons, women said:
> "We are waiting for the buses and can we leave the enclave?"
> Because they are sick, they are tired, they are very scared…[5529]

2412. General Mladic asked, "what is your proposal for a resolution of the situation?[5530] Colonel Karremans replied:

> In my opinion this is the end of the enclave. And for the sake of the population…I should assist the population as much as possible to get out of the enclave to I don't know where they like to go. I think that most of them would like to go to Tuzla…and in my opinion they have a better way of living than what I've seen in the enclave. They are living in a very miserable way.[5531]

General Mladic asked, "now what?"

Colonel Karremans replied:

> General Nikolai asked me to ask for the release of the civilian population…I would like to leave…with the population, those people who would like to leave the enclave. He asked me to go after I received permission for the civilian population, not to leave them.[5532] Everybody likes to have a status quo situation and leave the enclave…and that's on behalf of the civilian population.[5533]

2413. General Mladic assured Colonel Karremans that "the Muslim population is not the objective of my operations…[5534] I want to help that Muslim population because they are not responsible for what has happened." He asked Colonel Karremans to bring

[5529] P4202, pp. 210-11
[5530] P4202, at p. 212
[5531] P4202, at pp. 212-3
[5532] P4202, at p. 216-7
[5533] P4202, at p. 218
[5534] P4202, at p. 220

representatives of the civilian population to a meeting, saying "I would work out an arrangement with them. You can all leave, all stay, or all die here."[5535]

2414. At no time during this meeting did General Mladic indicate that the Bosnian Serbs intended to forcibly transfer the civilian population from Srebrenica. Even when Colonel Karremans suggested the transfer of the population on behalf of the United Nations, indicating that the population itself requested to leave, General Mladic did not seize upon that idea, but requested a further meeting.

2415. The fact that the Bosnian Serbs had no pre-disposition to forcibly transfer the civilian population of Srebrenica was confirmed at a meeting held at approximately the same time by UN official John Ryan with Vice President Nikola Koljevic at the UNHCR office in Pale. As indicated in Ryan's report, Koljevic stated that the Bosnian Serb authorities would endeavor to create the necessary security environment that would enable the civilian population to remain in Srebrenica.[5536]

2416. Communications among UN officials from Srebrenica to Zagreb to New York confirmed that the United Nations saw the transfer of the civilian population as the best solution for Srebrenica. In a code cable sent at 21:34 from UN Special Representative Akashi to UN headquarters in New York, he indicated that

> UNHCR reports that 80-90% of the population of Srebrenica (total pop is 40,000) are displaced persons who fled fighting earlier in the war, thus they do not have long-standing ties to homes and property in the area and will probably be interested in leaving for Tuzla. A UNHCR local staff member in Srebrenica reported today that virtually everyone in the enclave wants to leave.

Mr. Akashi continued that:

> Following consultations with the Bosnian government and in order to avoid a continuing humanitarian catastrophe, agreement will be solicited from the Bosnian Serbs to allow all residents of Srebrenica, including all men, to leave for Tuzla if they so wish.[5537]

2417. Mr. Akashi informed UN headquarters that:

> UNHCR will immediately begin negotiations with the Bosnian Serbs for …(ii) the safe, rapid, and orderly departure of all those

[5535] P4202, at p. 221
[5536] P5203, at p, 5
[5537] D1039, para. 2(b)

> people, including men of military age, for Tuzla…Although modalities for determining the free will of people for the departure are yet to be decided, they will in any case be rough and approximate, perhaps as simple as anyone coming to a bus and stating they want to leave…UNHCR advises that it would face substantial practical difficulties caring for 40,000 people in the conditions that now exist in Srebrenica and is of the opinion that the population would prefer to leave for Tuzla and would be much better cared for there.[5538]

2418. Mr. Akashi ended his report by suggesting a resolution from UN Security Council that "all those wishing to leave Srebrenica for Tuzla must be allowed to do so under UNHCR care."[5539]

2419. Mr. Akashi reiterated this message in a cable the following day in response to the concern expressed by some Security Council members that ethnic cleansing might be occurring in Srebrenica:

> "according to UNHCR, a great majority of the residents of Srebrenica do not wish to remain there. They are already displaced residents from elsewhere and will wish to move on. UNHCR is also not certain that it can support the complete population given the increased lack of space and housing that now prevails in the enclave."[5540]

2420. At the second meeting at the Fontana Hotel, at approximately 2300 on 11 July, Colonel Karremans followed the UN script to a tee. He began the meeting by saying that they had put down some ideas for evacuation of the population on paper,[5541] proceeded to outline those ideas.

2421. Colonel Karremans indicated that he had called UNHCR in Belgrade and that they have 30 vehicles that they could bring in promptly if agreed.[5542] He added that he could ask through military channels for more buses but he didn't know what he could get.[5543]

2422. Based upon these two meetings, it was made clear to the Bosnian Serbs that both the United Nations and the civilian population wanted the people of Srebrenica to be

[5538] D1039, para. 3(a)
[5539] D1039, para. 4(e)
[5540] D3401
[5541] P4202, at p. 230
[5542] P4202, at p. 235
[5543] P4202, at pp. 237-8

transported from the enclave, and that the United Nations did not have at its disposal sufficient numbers of buses to accomplish this.

2423. Therefore, when General Mladic put in motion on the following morning the mobilization of buses to arrive in Srebrenica, he was acceding to the request of the United Nations and the civilians in Srebrenica that they be transported out of the enclave, not implementing some pre-arranged plan to forcibly transfer the population.

2424. Prosecution Witness **Srbislav Davidovic**, President of the Bratunac municipality executive board, who attended a meeting with General Mladic at the Bratunac Brigade headquarters in the early morning of 12 July, confirmed this [redacted].[5544]

2425. Mr. Davidovic testified that General Mladic never suggested to the Muslims that they had to leave the region and that the first option was always for them to stay in Srebrenica. [redacted].[5545] He was not aware until the morning of 12 July after the Muslims had made it clear that they wanted to leave that there would be any evacuation of the population.[5546]

2426. At the third meeting at the Fontana Hotel meeting at 1000 on 12 July, General Mladic told the civilian representatives

> "Upon surrendering the weapons, you may choose to stay in the territory or, if you so wish, go wherever you want. The wish of every individual will be observed no matter how many of you there are…It is your choice to leave –and I don't want to influence this—I don't care anyhow."[5547]

[5544] [redacted]
[5545] [redacted]; [redacted]
[5546] T24405
[5547] P4202, at p. 248-9

c. The Bosnian Serbs forced no one to leave Srebrenica

2427. When General Mladic proceeded to Potocari after the meeting, it was clear that the civilian population wanted to leave. However, General Mladic continued to express the position that anyone who wanted to stay was welcome to do that. When interviewed by a journalist in Potocari, he said, "Anyone who wishes to stay can stay. Anybody who wishes to leave this territory can leave this territory."[5548]

2428. This understanding was confirmed in an intercepted telephone conversation between two VRS officers at 1240 on 12 July. Although the speakers are not identified, it is clearly a conversation between a superior and a subordinate. The superior, who was likely General Mladic, given his personal reference to having talked to the civilian population and the fact that he is calling "Panorama"—the Main Staff headquarters,[5549] orders the subordinate to:

"…[redacted]."[5550]

2429. Therefore, even as the evacuation commenced, the position of the Bosnian Serbs remained that those Srebrenica residents who preferred to stay were free to do so.

2430. [redacted][5551][redacted]"[5552]

2431. The report of this intercepted conversation stands alone as an outlier to the clear and consistent information that the Bosnian Serbs had no intention of forcing any civilians to leave Srebrenica. Given these circumstances, and the fact that no audio exists of this intercept, which was hand recorded during a chaotic and stressful time, it is possible that a mistake was made in the report. By simply omitting one word, the

[5548] P4202, at p. 254
[5549] T27437
[5550] [redacted]
[5551] [redacted]
[5552] [redacted]

original statement by General Mladic, consistent with his earlier statements, that we'll evacuate all those who want to leave and accommodate those who don't want to, may have well been misinterpreted or misunderstood. It would be unsafe for the Trial Chamber to base any conclusion as to the forcible transfer charge solely on the report of this intercepted conversation.

2432. There is not a single report of any Bosnian Serb soldiers or policeman forcing anyone to board the buses at Potocari in the 24 hours that the transportation of the population took place. Witnesses who were present confirmed that the Muslims were not forced onto the buses.[5553] Conversely, they are condemned for refusing to let some of the men board the buses to be transported out of the enclave.

2433. Defence expert witness **General Radovan Radinovic** analysed all of the documents and reports of the evacuation of the population from Srebrenica and concluded that there was no forcible transfer of the population. He explained

> As a rule, when an army leaves an area, the civilian population follows in their suit and they join the army. This is a rule that pertains to every conflict, particularly civil wars, because the population wants to go tothe same territory where their army is going.[5554]

2434. Therefore, the evidence shows that the transportation of the population of Srebrenica was not a forcible transfer initiated by the Bosnian Serbs, but was done at the request of the population and United Nations.

d. The alleged perpetrators lacked the mens rea for forcible transfer

2435. The Appeals Chamber in the *Stakic* case has defined the *actus reus* of forcible transfer as the displacement of persons by force, carried out by expulsion or other forms of coercion such that the displacement is involuntary in nature, and the relevant persons had no genuine choice in their displacement.[5555] The *mens rea* has been said to be an intent to forcibly displace the person.[5556]

2436. Even if it can be said that some members of the civilian population were transferred from Srebrenica in the absence of a genuine choice, and that therefore the *actus reus* of forcible transfer has been established, there is insufficient evidence that

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[5553] [redacted];Lj.Simic T.37265
[5554] Radinovic, T.41434-5
[5555] *Stakic* AJ, para. 279
[5556] *Stakic* AJ para. 317; *Krajisnik* TJ, para. 726; *Milutinovic et al* AJ, vol I, para. 164; *Popovic et al,* TJ para. 904; *Tolimir* TJ, para. 801

anyone on the Bosnian Serb side had the intention to transfer members of the population against their will. The facts described above are starkly to the contrary.

2437. Trial Chambers that have analysed the issue of forcible transfer from Srebrenica have focused on the coercive effect of earlier events on members of the population, such as convoy restrictions, shelling of civilians, burning of property, and fear of revenge.[5557] However, the transportation of the civilians did not take place until after they and the United Nations had specifically requested it.

2438. Had the civilian population sheltered in place at their homes instead of leaving their homes and descending on Potocari, had the United Nations re-enforced its capacity to protect and care for the refugees there, or had the population or United Nations simply requested that they be allowed to stay in Srebrenica, there is no evidence that the Bosnian Serbs would have nevertheless transported the population out of Srebrenica.

2439. Therefore, whatever the "coercive" impact the earlier events may have had on the members of the population, their clear and consistent requests for transportation out of the enclave precludes any finding that by complying with those requests, the Bosnian Serbs had the *mens rea* required for forcible transfer.

2440. The anomaly of finding that the crime of forcible transfer was committed in the face of these requests can be seen by analyzing the potential criminal liability of Colonel Karremans for instigating forcible transfer or the liability of other members of Dutchbat who helped load the people on the buses for aiding and abetting. Colonel Karremans and the members of Dutchbat were well aware of all of these "coercive" circumstances. If the transportation of the population on 12 and 13 July from Potocari constituted the crime of forcible transfer, those who instigated and aided and abetted the transportation are guilty of the crime themselves. That cannot be right or just.

2441. While an agreement concluded by military commanders or other representatives of the parties in a conflict, or carried out with the assistance of international humanitarian agencies per se cannot make a displacement the lawful product of a genuine choice on the part of the members of the population,[5558] a request by such persons that the civilian

[5557] *Popovic et al* TJ, para. 917; *Tolimir* TJ, para. 809; *Blagojevic & Jokic* TJ, para. 617
[5558] *Simic et al* TJ, paras. 127,180; *Natelic & Martinovic* TJ, para. 523; *Popovic et al.* TJ, para. 897; *Tolimir* TJ, para. 796; *Stakic* AJ, para. 286

population be transported can certainly undermine a finding of intention to forcibly transfer on behalf of those who accede to such a request.

2442. As Judge Nyambe expressed in her dissenting opinion in the *Tolimir* case, in light of the expressions of the population's desire by the Bosnian Muslim leadership, members of the population themselves, and representatives of the United Nations, a finding that the Bosnian Muslim civilian population of Srebrenica was forcibly transferred out of Potocari was not the only reasonable conclusion that could be reached from these events.[5559]

2443. It can also be reasonably concluded from the actions of United Nations officials and the Bosnian Muslims themselves that the civilian population left Srebrenica out of a desire to live in an area controlled by the Bosnian Muslims and to join their husbands and fathers there, and not to live with Serb returnees who would have been bitter and revengeful, and that no matter how gingerly the VRS took Srebrenica, the population would have left *en masse*.

2444. This was the evidence of prosecution witness **Milenko Katanic**, who served as technical secretary of the SDS party in Bratunac.[5560] Mr. Katanic stated:

> I was asked whether the Muslim population had a real choice whether to remain in Srebrenica. I think if I were in the shoes of Muslims in Potocari, I would also leave because it was risky to stay in the town of Srebrenica in conditions that were prevailing after the entrance of the Serb army. **I am convinced that there would have been a will by the police bodies to protect the Muslim population who would have stayed in Srebrenica.** But despite this will, I do not believe that the police would have been in a position to offer a guarantee that the Muslim population would have been safe and secure.[5561]

2445. Mr. Katanic testified that after three years of atrocities against Serbs by Muslims in the Srebrenica and Bratunac area, he believed that the strongest reason why the population of Srebrenica wanted to leave was their fear of revenge by Serb citizens.[5562]

[5559] *Tolimir* TJ, paras. 31-46
[5560] P4374 para. 13; M. Katanic T.24463
[5561] P4374, para. 77
[5562] M. Katanic, T.24544

2446. Under similar circumstances, the Eritrean-Ethiopian Claims Commission has concluded that the fact that civilians left areas taken over by the other party to the war did not make their flight the result of forcible transfer.[5563]

2447. Furthermore, the United Nations cannot on the one hand request the Bosnian Serbs to transport the population out of Srebrenica, and then turn around and prosecute the Bosnian Serbs for having the intent to commit a crime when complying with their request.

2448. For all of these reasons, the Trial Chamber should find that the crime of forcible transfer was not committed at Srebrenica.

3. There was no plan to execute prisoners prior to the Kravica warehouse mutiny

2449. The Indictment alleges that the plan to kill the men of Srebrenica began "within days of the attack."[5564] The United Nations report on the fall of Srebrenica stated that "information from Serb sources appears to suggest that the decision to kill the men of Srebrenica may have been taken only after the fall of Srebrenica."[5565] Prior judgements on the Srebrenica events have concluded that the plan was devised between 11 and 13 July,[5566] at least by 10 am on 12 July 1995,[5567] and by the morning of 12 July 1995.[5568]

2450. President Karadzic contends that a plan to kill the prisoners did not exist until after the incident at Kravica warehouse around 1730 hours on 13 July when Muslim prisoners killed one policeman and injured another in an attempted mutiny and escape.

2451. The issue of when the plan to kill the men of Srebrenica was formed is not crucial to the criminal responsibility of Radovan Karadzic, since the evidence has shown that he was not aware of, or a participant in such a plan, at any time. However, the fact that the plan to execute the prisoners arose only after the incident at the Kravica warehouse is relevant to the Trial Chamber's determination of whether the killings were done with the intent to destroy the group. In addition, if the killings are found to have

[5563] See Abere, "Displacement of Civilians During Armed Conflict in light of the Case Law of the Eritrea-Ethiopia Claims Commission", 22 *Leiden Journal of International Law* 823,848-49 (2009)
[5564] Indictment, at para. 45
[5565] P2284, at para. 345
[5566] *Krstic* TJ, paras 87,573
[5567] *Popovic et al* TJ, para. 1051
[5568] *Tolimir* TJ, para. 1046

emerged as a reaction, however inappropriate, to the events at Kravica warehouse, it makes it less likely that President Karadzic planned, instigated, or ordered them.

2452. The principal evidence of the existence of a plan to execute the prisoners prior to the Kravica incident comes from the testimony of Momir Nikolic.

a. Momir Nikolic is Not a Credible Witness

2453. President Karadzic is aware of the proposition that a Trial Chamber is not prohibited from relying on parts of the testimony of a witness who is shown to have given false or unreliable testimony as to other parts. Most witnesses who lie under oath at the Tribunal do not fabricate their entire testimony, but shape bits and pieces of it to fit their self-interest.

2454. Besides stating the obvious principle that such testimony must be viewed with caution, the Trial Chamber must require a high degree of corroboration for any parts of the testimony of such a witness that it relies upon.[5569] Someone wanting to eat a piece of a rotten fruit should probably discard the whole fruit, but if s/he is going to eat a piece, s/he must examine it very carefully to be sure that it is not rotten.

2455. The testimony of Momir Nikolic that indicates that a plan existed prior to the evening of 13 July 1995 to execute the prisoners is uncorroborated, and in fact vastly contradicted. It would be not only an error, but an injustice, for the Trial Chamber to rely on that part of Nikolic's testimony.

1. Nikolic lied about his conversation with Popovic and Kosoric outside Hotel Fontana

2456. **Momir Nikolic** testified that on 12 July 1995, before the 10 am meeting at the Fontana Hotel began, he had a conversation with Vujadin Popovic and Lt. Colonel Kosoric, the Drina Corps Chief of Intelligence. He asked Popovic what would happen to the men who would be separated at Potocari and claims that Popovic said that they

[5569] *Blagojevic & Jokic* TJ, para. 472

should be killed.[5570] This was in the presence of Kosoric also.[5571] They had a discussion about where the people should be killed and the Ciglane factory and Sase mine were mentioned.[5572] Nikolic claims that Popovic said that all Balijas ought to be killed, every one of them.[5573]

2457. Nikolic stated that there was a conversation a little later between Kosoric, himself, and the interpreter Petar Uscumlic where Kosoric repeated the same things that Popovic had said.[5574]

2458. While it is true that Nikolic and Popovic were both outside of the Hotel Fontana on 12 July, as can be seen in the video footage, Nikolic's testimony about what was said between them is uncorroborated by any other evidence. During the defence case, the testimony about these conversations was specifically refuted by all of the other alleged participants, **Vujadin Popovic**,[5575] **Colonel Kosoric**,[5576] and **Petar Uscumlic**.[5577] Neither Popovic nor Uscumlic have never testified.[5578]

2. Nikolic informed no one of the alleged plan

2459. The falsity of Nikolic's testimony about the existence of a plan to kill the men from 12 July is further corroborated by the fact that he didn't inform his superiors or his subordinates. Not a single superior or subordinate has confirmed his account of a plan to kill the prisoners before the Kravica warehouse event.

2460. Although Nikolic claimed to have informed his superior, Colonel Vidoje Blagojevic, of the plan on the evening of 12 July,[5579] **Colonel Blagojevic** testified that he was never so informed.[5580] Colonel Blagojevic had never testified before.

[5570] T24621
[5571] T24622
[5572] T24622-3
[5573] T24647-8
[5574] T24623
[5575] D3993, at para. 18
[5576] D3562, at paras. 6-8
[5577] D3552, at para. 7
[5578] Significantly, the prosecution never challenged Popovic on this aspect of his evidence.
[5579] D2081, at para.6
[5580] D4189, at paras. 7-8

2461. [redacted][5581]

2462. Nikolic spent part of the day on 13 July [redacted] and Mile Petrovic in an APC on the Bratunac-Konjevic Polje road, and they took prisoners together. Yet he never informed either of them of a plan to kill prisoners.[5582]

2463. Nikolic's account of taking six prisoners who were murdered by **Mile Petrovic** is also firmly contradicted by the testimony of Witness KW582[5583] and Petrovic[5584] and is yet another manifestation of his willingness to falsely incriminate people.

2464. The evidence of Witness KW582 and Petrovic was not available to the *Popovic* Trial Chamber.

2465. Another subordinate of Nikolic, Bratunac Brigade military policeman **Mile Janjic**, testified that while he was in Potocari in the late afternoon of 13 July 1995, Momir Nikolic told him and his colleagues that the Muslim men would be taken by bus to Bratunac, remain there overnight, and then be taken to Kladanj and Muslim territory the next morning. He ordered them to guard the buses in Bratunac. Momir Nikolic gave no indication that the prisoners were to be killed.[5585]

2466. [redacted].[5586] Given that his Commander,Vinko Pandurevic, had attended a meeting with General Mladic on the evening of 12 July, it would be reasonable for him to have been aware of such a plan if it had existed at that time. In addition, no reference to any such plan is made in the notes of that meeting taken by Colonel **Mirko Trivic**.[5587]

[5581] D4291, at pp. 3628, 3681
[5582] D4291, at pp. 3681; D4218
[5583] D4291
[5584] D4218
[5585] D2262, at para 11
[5586] [redacted]
[5587] D3747, at p. 16 (F)(3); D3748, at pp.4-6

3. Arrangements at Batkovici Contradict Nikolic

2467. Nikolic's testimony that a plan existed to kill the prisoners prior to the Kravica warehouse is flatly contradicted by two additional pieces of evidence.

2468. At 1125 on 13 July 1995, Colonel Beara was intercepted ordering vehicles to Nova Kasaba to transport the prisoners to Batkovici where they would be screened for war criminals.[5588] This is irreconcilable with the claim that a decision had already been taken to execute the men.

2469. **Milenko Todorovic**, Chief of Security of the East Bosnia Corps, in whose zone of responsibility Batkovici camp is located, testified that he received a call from the VRS Main Staff to prepare to receive a large number of prisoners from Srebrenica at Batkovici. Two or three days later the instruction was cancelled.[5589] This indicates that the plan to kill prisoners did not exist at the time the VRS started taking prisoners on the evening of 12 and morning of 13 July.

4. Why search for or register war criminals if you're going to kill them all?

2470. Momir Nikolic's testimony that he had been informed on 12 July of a plan to kill the prisoners is also belied by his own efforts and those of others to screen prisoners for war crimes.

2471. Nikolic testified that after speaking with Popovic that morning, it was his impression that a legitimate military screening operation was going to occur.[5590] Judge Kwon asked how he could think that there would be a legitimate military screening operation if Popovic had said that the men should be killed.[5591] Nikolic answered that the statement about killing the prisoners was the kind of statement he had heard others and Popovic make before, so he didn't believe that he meant it.[5592] However, the prosecutor

[5588] D2197
[5589] D4124, pp.112934, 19238-9, 12941
[5590] T24645
[5591] T24647
[5592] T.24648

pointed out that, according to Nikolic, after Popovic made that statement, there was a discussion of specific locations where the Muslims would be killed.[5593]

2472. It appears that Judge Kwon caught Nikolic in a lie. If Popovic had truly made the statement, and went to the lengths of discussing the execution sites, there would have been no reason for Nikolic to expect legitimate military screening in Potocari. This shows that in fact, Nikolic is making up this aspect of his evidence.

2473. Other evidence shows that Nikolic did in fact look for suspected war criminals among the men in Potocari. On 12 July 1995, a "List of War Criminals known to the command of the Bratunac Brigade"was drawn up.[5594] **Joseph Kingori** testified that Nikolic even came back on 13 July with a list of war criminals to see if any of the men in Potocari were on the list.[5595] Dutch Battalion officer **Johannes Rutten** also testified that he heard about a list of suspected war criminals being used in Potocari, and about an interrogation room in the White House where Muslim men were being questioned.[5596]

2474. The fact that war criminals were being screened was confirmed in a telegram sent in the name of Popovic at 1730 on 12 July.[5597] In a telegram sent by Tolimir at 2200 on 12 July, it was ordered that the prisoners be registered.[5598] Prisoners were registered as late as the afternoon of 13 July 1995 at the Nova Kasaba football field.[5599] Reports from the screening of Muslim men were made.[5600]

2475. If the intention to kill all the prisoners existed on 12 and during the daytime of 13 July 1995, why would the Bosnian Serbs be looking for war criminals among the prisoners and creating a record of their being in Bosnian Serb custody?

2476. Indeed, Nikolic testified that a suspected war criminal, Resid Senanovic, was separated from the prisoners at Konjevic Polje and that he arranged for Senanovic to be transported to Bratunac to be processed as a war crimes suspect.[5601] If there had been an

[5593] T24648
[5594] D1957
[5595] P4140, at para. 187
[5596] P3948, at paras. 50,62
[5597] P4388
[5598] P4940
[5599] P4342, at T3024-5; D3918, at para.55
[5600] P4914, at paras.6.21,6.43
[5601] T24658

intention to kill all the prisoners, it makes no sense that he would spare the worst war criminals and process them through the justice system.

2477. Prosecution witness **Zlatan Celanovic**, whose testimony was admitted pursuant to Rule 92 *bis*, stated that he was approached by Colonel Beara on the evening of 12 July and told that he should find out if anyone who was mentioned in a book about crimes committed against the Serbs in the Bratunac/Srebrenica area was in custody and that he should prosecute those people as war criminals.[5602] It was around 2100 hours.[5603] Why would Beara want to select the war criminals for prosecution if there was a plan to kill all the prisoners?

2478. Celanovic also encountered Beara again on the evening of 13 July, before the Kravica incident was known in Bratunac, and Beara told him that the prisoners were going to Kladanj the next day.[5604]

2479. While the screening and registration was haphazard and disorganized, the mere existence of these efforts shows that the existence of a plan to kill the prisoners from 12 July is certainly not the only reasonable inference to be drawn from the evidence. The failure to screen or register the prisoners before the Kravica warehouse incident in a more systematic manner can also be reasonably attributed to the fact that VRS and MUP members were overwhelmed with other duties given the large number of civilians present at Potocari and the large number of persons taken prisoner on 12 and 13 July.

2480. All of these facts show that Nikolic's testimony about his conversation with Popovic and Kosoric is untrue, unreliable, and illogical, and that the more reasonable inference is that there was no plan to execute the prisoners until after the Kravica incident.

5. General Mladic's gesture

2481. **Momir Nikolic** testified that after General Mladic spoke to the prisoners at Konjevic Polje on 13 July 1995, he asked General Mladic what was going to happen to

[5602] P0377, at pp. 6629, 6631-2
[5603] P0377, at p. 6693
[5604] P0377, at pp. 6640-1

the prisoners. General Mladic made a sign with his right hand at his waist, moving his hand across left to right.[5605]

2482. There is absolutely no corroboration for this testimony, despite the fact that General Mladic was accompanied by bodyguards and would not be expected to be alone, particularly in a combat area. No other member of General Mladic's entourage has testified that he ever indicated on 12 or 13 July that the Muslims were to be killed.[5606]

2483. In addition, given General Mladic's nature and Nikolic's low rank, it seems highly unlikely that Nikolic would have dared to approach General Mladic and ask him what was going to happen to the prisoners. And there is no explanation or reason why Nikolic would approach the feared General Mladic and ask him such a question if Popovic had already told him that the prisoners would be killed.

2484. Nikolic's testimony about Mladic's gesture appears to be part of his effort to put incriminating statements in the mouths of OTP's targets so as to obtain a favorable plea agreement for himself.

6. Nikolic lied about the brick factory

2485. **Momir Nikolic's** testimony about the Ciglane brick factory was contradictory and contradicted.

2486. In his statement accompanying his plea agreement, Nikolic claimed that Popovic and Kosoric spoke with him about two potential execution sites on the morning of 12 July, including the Ciglane brick factory.[5607] He further claimed that he had later heard that officers had gone to the brick factory on 12 or 13 July (before the Kravica warehouse incident) to check it out as a possible execution site.[5608] He emphatically denied ever going to the brick factory himself with or without Colonel Beara.[5609]

[5605] T24656-57
[5606] Borivoje Jakovljevic, who was part of the group of soldiers guarding General Mladic at Nova Kasaba, testified at the *Blagojevic* trial (T9946-48) that Nikolic never approached General Mladic there, but the Trial Chamber refused to admit his evidence in this case. *Decision on Accused's Motion to Admit Statements Pursuant to Rule 92 bis* (*Srebrenica Component*) (29 November 2013) at para. 18; *Decision on Accused's Motion to Admit Testimony of Borivoje Jakovljevic Pursuant to Rule 92 quater* (25 February 2014)
[5607] D2081, at p.2
[5608] T24876
[5609] T24876-77

2487. The testimony of the director of the brick factory, **Nedo Nikolic**, was clear and unequivocal. It was on the morning of 14 July that the brick factory was first visited by VRS officers. And the officers who were present were Colonel Beara and none other than Momir Nikolic, who Nedo Nikolic knew very well.[5610]

2488. Therefore, Momir Nikolic lied about both the timing and his presence at the brick factory. The testimony of Nedo Nikolic, which has not been heard at any other trial in this Tribunal, provides further reason not to rely on Momir Nikolic's testimony.

2489.

7. Prisoners at the Luka School

2490. [redacted].[5611] Had there been a plan to kill all the men from 12 July, as Nikolic claimed, there was no reason to delay the killing of the men from the Luka School.

2491. The timing of the killings at the Luka School further contradict Nikolic's testimony about the plan to kill prisoners, and is entirely consistent with the proposition that the plan to kill prisoners only emerged after the Kravica incident.

2492.

8. Cerska Valley killings

2493. The Trial Chambers in *Krstic,*[5612] *Blagojevic,*[5613] *Popovic,*[5614] and *Tolimir*[5615] found that the killings in Cerska Valley took place on 13 July and thus before the Kravica incident. However, the prosecution has now conceded that the killings at Cerska Valley may well have taken place on 17 July, given the identification numerous persons who

[5610] D3690, at paras.18A-C
[5611] [redacted]
[5612] *Krstic* TJ, at para. 201
[5613] *Blagojevic & Jokic* TJ, at para. 294
[5614] *Popovic et al.* TJ, *at* para. 414 and fn. 3465
[5615] *Tolimir*, TJ at para. 352

were seen alive on 16 July.[5616] Therefore, there is insufficient evidence to establish beyond a reasonable doubt that the Cerska Valley killings took place prior to the events at the Kravica warehouse.[5617] The incorrect findings of the earlier Trial Chambers also undermine their findings as to when the plan to kill the prisoners was formed.

9. Jadar River killings

2494. The evidence of the killings by the banks of the Jadar River comes from one witness, **KDZ065**, whose testimony was admitted pursuant to Rule 92 *bis*.[5618] In the *Blagojevic & Jokic* case, the Trial Chamber found that this untested evidence, in and of itself, could not lead to a conviction and declined to make a finding based upon this event.[5619] The same result is required here.

2495. In any event, the testimony of Witness KDZ065 is unsupported by any physical or forensic evidence and is contradicted by the testimony of the only three persons who he named as being involved in those events. His accusation that **Nenad Deronjic** took part in the executions is contradicted by the testimony of Mr. Deronjic himself,[5620] the testimony of **Witness KW558,**[5621] **Mirko Peric**,[5622] **Branimir Tesic**,[5623] as well as the Srebrenica Police log book.[5624]

2496. The Jadar River incident is also further evidence of Momir Nikolic's intentional effort to corroborate the prosecution's case, even when it is wrong. Just like he claimed to have been present at the Kravica warehouse when the prosecution insisted that it had a photograph of him there,[5625] **Nikolic** claimed to have seen Nenad Deronjic working at the Konjevic Polje checkpoint on 13 July 1995 with Mirko Peric.[5626] However, as noted above, that evidence is contradicted by the testimony of **Peric**, **Deronjic**, and **Witness**

[5616] T27044-5; T27805; T42048
[5617] T27059—Janc: First executions were at Kravica warehouse.
[5618] P0336
[5619] *Blagojevic & Jokic* TJ, para. 567: see also Judge Kwon opinion in *Popovic et al.* TJ paras. 42-43 re Kravica Supermarket
[5620] D3760, at p. 8192
[5621] D3764, at p. 6554
[5622] D3852, at paras. 29-30
[5623] D3115, at para. 41
[5624] P6431
[5625] P4385;T24560-61; T24880-81
[5626] T24666

KW558, as well as the Srebrenica Police log book. **Witness KW582**, who was present at Konjevic Polje on 13 July 1995 with Nikolic, also did not see Deronjic there.[5627]

2497. If the Jadar River killings were found to have been carried out on the morning of 13 July 1995, in spite of all of the evidence to the contrary, at most they would have been opportunistic killings and not part of any plan to execute prisoners. There is no evidence that Deronjic or members of the PJP Second Company participated in any other killings and no reason why only 16 of the hundreds of prisoners surrendering along the Konjevic Polje road would have been killed at that time.

10. Sandici meadow killings

2498. In the *Popovic* case, the Trial Chamber found that events at Sandici Meadow illustrated that the destiny of the Bosnian Muslim men was predetermined already; when the buses ran out, an order came for the remaining men to be shot on site.[5628]

2499. [redacted].[5629] Therefore, it is an equally reasonable inference that the decision to execute prisoners arose from the Kravica incident and was not part of a plan from 12 July.

11. Deployment of 10th Sabotage Detachment

2500. **Frank Kos** testified that he had not heard of any plan to kill prisoners until the incident with the prisoner grabbing the gun of a policeman and killing him at Kravica warehouse. It was only after that that the 10th Sabotage Detachment was deployed to kill prisoners.[5630] If there was a plan to kill the prisoners from the morning of 12 July 1995, one would have expected the 10th Sabotage Detachment to be deployed earlier to begin the killings.

[5627] D4291 at p. 3534
[5628] *Prosecutor v Popovic et al,* No. IT-05-88-T, *Judgement* (10 June 2010) at para. 1059
[5629] [redacted]
[5630] T42425

12. Nikolic's motive for self-incrimination

2501. In the *Popovic* judgement, the Trial Chamber reasoned that Nikolic had no motive to claim that a plan to kill the men existed from the outset of the Srebrenica operation and that therefore such a claim was likely true.[5631] However, as can be seen from his false admission of responsibility for killings in Sandici meadow and Kravica, Nikolic was operating under the impression that he had to confirm the prosecution's theory in order to get the benefit of a plea agreement. Someone who was willing to confess to ordering more than a thousand murders that he never ordered would have no problem claiming that someone else's idea for the killings arose earlier than it actually did. To have told the truth that the killings stared with the uprising at Kravica would have fatally undermined the prosecution's genocide theory and the Appeals Chamber's judgement in *Krstic*.

2502. [redacted][5632]

2503. Therefore, it is not inconceivable that Momir Nikolic would exaggerate his own crimes if that's what it took to get his plea agreement.

2504. For any and all of the above reasons, the uncorroborated and often contradicted testimony of Momir Nikolic cannot support a finding that the plan to kill the Muslim men was formed prior to the incident at Kravica warehouse.

b. The Conditions of Detention Were Not Indicative of Execution

2505. The conditions of detention of the men in Potocari do not lend support to the existence of a plan to kill them. It is an equally reasonable inference that the conditions were the result of a negative attitude towards the men of Srebrenica from the 28th

[5631] *Prosecutor v Popovic et al,* No. IT-05-88-T, *Judgement* (10 June 2010) at para. 280
[5632] [redacted]

Division's savage attacks launched against Serb civilians from the enclaves, as well as the chaotic conditions in Potocari which required temporary, improvised detention places.

2506. The difficult conditions for the population in Potocari were already in place when the Serbs first arrived there on 12 July, and only improved after their arrival with the provision of food and water and arrival of buses. Persons who were present in Potocari on 12 and 13 July 1995 and who observed the conditions under which the men were separated and detained did not draw the inference from those conditions that the men would be killed.

2507. Lt. **Vincentus Egbers** entered the White House on 13 July, saw the conditions of the men, but did not conclude from those conditions that they would be executed. He explained to the men that he had escorted a convoy of women to Kladanj the day before and believed that the men would be transported there as well.[5633]

2508. UNMO **Joseph Kingori**, who also entered the White House and spoke to the men, also testified that "we really did not know [what would happen to the men], other than what we had been told that they would take the Muslims to Tuzla."[5634]

2509. **Petar Uscumlic**, who served as an interpreter for the UNMOs, was present in Potocari, saw that men were being separated, but did not conclude that they were to be killed.[5635]

2510. Prosecution witness **Mile Janjic**, a military policeman of the Bratunac Brigade, stated that during the two days that he spent in Potocari on 12 and 13 July 1995, he never saw any signs that there was a plan to kill the Muslim men.[5636]

2511. Nor is it the only reasonable inference from the separation of the refugees from their belongings on 12 and 13 July that there was a plan to execute them. While the prisoners were separated from their bags and sacks, as one would expect when persons are detained, as such bags might contain weapons, there is no evidence of systematic confiscation of their identification documents. Two survivors who had been separated at Potocari testified that their identification documents were not confiscated from them at

[5633] P0331 at pp. 2750-51
[5634] P4140 at para.176
[5635] T38512-13
[5636] D2262 at para.9

Potocari.[5637] The video of persons surrendering at Sandici Meadow does not show any instance of prisoners being separated from their personal identification documents.

2512. It can also not be said that the only inference to be drawn from the burning of the belongings of the men at the white house was that they were to be killed. In the *Blagojevic* case, the Appeals Chamber specifically noted that "one such inference could be that burning personal items of Bosnian Muslim men was an attempt to further disorient, demoralize, and/or dehumanize the prisoners."[5638] Another inference is that the belongings of both men and women who left Srebrenica were burned and there was nothing about the burning which indicated the fate of the person whose belongings were being burned.

2513. Therefore, it is not the only inference from the conditions of detention of the men that it had already been decided that they would be executed.

c. Restricting Access to Prisoners was not Indicative of Execution

2514. On 13 July around 2 pm, General Mladic issued an order, based upon a proposal by General Tolimir, type-signed by General Savcic, which ordered that entry of journalists be prevented to the area of combat operations and that information not be given on the overall activities in the area, particularly on prisoners of war, evacuated civilians, and escapees.[5639]

2515. These instructions concerning how prisoners were to be detained were standard procedure and not indicative of any plan or preparations to execute the prisoners.[5640] A similar telegram was sent in connection with Zepa despite the fact that prisoners from Zepa were not executed.[5641] These same procedures were part of military manuals for handling of prisoners.[5642]

2516. **General Milomir Savcic** testified that there was no intention behind the telegram to conceal the prisoners because they would be executed.[5643]

[5637] P3940 at pp.17315, 17379 (KDZ039) and [redacted]
[5638] *Blagojevic* TJ at para. 293
[5639] P0168, P4407
[5640] D3918 at paras. 74,81
[5641] P5107
[5642] D3925 at para.190
[5643] D3918, at para.74

2517. Therefore, it cannot be said that a plan to execute the prisoners is the only reasonable inference that could be drawn from the Mladic telegram. It is equally or more reasonable that the VRS wanted to restrict access to the area of combat operations as a standard security measure, made all the more necessary by the presence of a large column of Muslim men in the immediate area.

d. Conclusion

2518. Based upon all of these facts, the prosecution has not established beyond a reasonable doubt that a plan to execute the men of Srebrenica existed before the attempted escape and death of a policeman at the Kravica warehouse on 13 July at around 1700 hours. Because the executions that followed were the result of conduct by persons reacting to events on the ground, it cannot be said that they were committed with intent to destroy the Muslims as such.

4. The number of persons who were executed has been exaggerated

2519. The prosecution contends that the number of persons executed is at a minimum equal to the number of bodies found in the mass graves. This argument is fallacious, as it fails to account for the commingling of bodies of persons killed in combat with those who were executed.

2520. Dr. Karadzic contends that it is not possible to determine the number of persons executed after the fall of Srebrenica. He believes that it is counterproductive for the Trial Chamber to engage in such an exercise, as it perpetuates a myth rather than represents a reliable finding of fact. He urges the Trial Chamber to refrain from engaging in such speculation, which only certify a war propaganda of one of the warring sides.

2521. However, given that every Trial Chamber who has examined the Srebrenica events has undertaken to establish the number of persons executed, and that in the *Popovic* judgement, the Trial Chamber held that such a number was "relevant, particularly to the crime of genocide and extermination, a crime against humanity",[5644] Dr. Karadzic cannot afford to ignore this issue in his final submissions.

[5644] *Popovic* TJ para 607

a. The Number of Executed Cannot Exceed The Difference Between the Number of People Before and After the Fall of Srebrenica

2522. One way of evaluating the figures presented by the prosecution as representing the number of persons executed after the fall of Srebrenica is to compare the number of people who were in Srebrenica at the beginning of July 1995 and the number who arrived in Tuzla on and after 12 July 1995. The number of persons executed cannot reasonably be correct if it exceeds the difference between the population of Srebrenica before its fall and the number of people from the enclave of Srebrenica who arrived in Muslim territory or elsewhere after the fall of Srebrenica.

2523. At a session of the Presidency of Bosnia and Herzegovina on 11 August 1995, it was stated that the total number of people in Srebrenica on the eve of its liberation was less than 37,000.[5645] This figure corresponds to a report of the Bosnian Statistics Institute received from the Srebrenica authorities in January 1994.[5646] Because people did not arrive in the enclave after January 1994, and some indeed departed or died, the figure of 37,000 is probably higher than the actual number of persons present in Srebrenica on 11 July 1995.

2524. During the war, the Muslims exaggerated the number of persons present in the enclave in order to obtain more humanitarian aid. Therefore, the figures of some 45,000 people in the enclave are not an accurate measurement of the actual number of persons present there, given that three of the most relevant Muslim institutions (the Presidency, the Bosnian Statistic Institute and the Srebrenica local authorities) are in accord that the number of inhabitants was about 37.000 a year and a half before the fall of Srebrenica. The assessment of number of the refugees in Potocari compound vary from 15,000 up to 30,000, but the most frequent estimate was about 20,000.[5647]

2525. The estimate of the number of people that reached Kladanj is around 23,000. This does not include Srebrenica evacuees who remained in Kladanj and proceeded to Zivinice, Kalesija and other neighbouring municipalities before the registration, and were therefore not counted.[5648]

[5645] D2238, at p.6
[5646] D2065
[5647] *Popovic* TJ, at para. 272
[5648] D2238

2526. The estimate of the number of people in the column is from 12,000 to 15,000.[5649] When added to the 20,000 civilians in Potocari, this makes between 32,000 and 35,000 total, which is in line with the estimate of the Presidency of BH.[5650]

2527. The first report of the State security of ABiH dated 17 July 1995 indicates that until 16 July, up to 10,000 members of the 28th Division reached the Tuzla region under the BiH control.[5651] Although the number may vary, it is undisputed that the vast majority from the column of 12,000 to 15,000 people reached Tuzla, including those who passed through the corridor that had been opened by General Pandurevic.

2528. At the BH Presidency session on 11 August 1995, it was concluded that around 5,000 people from Srebrenica were unaccounted for, representing the difference between 31,000 who reached Tuzla and 36,000 people who were in Srebrenica as of 11 July.[5652] This would have included those who were bused to Kladanj and proceeded onward to Tuzla, as well as those persons who had broken through in the column.

2529. Among the 5,000, some 700 have been said to have escaped to Zepa, and about 1000 escaped to Serbia. [redacted][5653] Such were the conclusions of the most relevant state body of Bosnia four weeks after the fall of Srebrenica.

2530. To recap:

a) a year after the establishment of the safe zone there were about 37,000 people in Srebrenica, permanent residents, combatants, and refugees from the neighboring municipalities who had taken shelter there;

b) until July 1995 this number decreased to be between 35.000 and 36.000;

c) around 20,000 civilians took refuge in the Potocari UN compound and were evacuated towards Kladanj and Tuzla. Many of them didn't reach Tuzla, because they joined their relatives before any registration.

[5649] [redacted] KDZ045, T.22632
[5650] D2238, at p.6
[5651] D1998, at p.1
[5652] D2238, at pp.6-7 (at the very same session it had been stated by the President of Presidency Mr. Izetbegovic that in the worst case 3,000 people had been killed.).
[5653] [redacted]

d) 12,000 to 15,000 left Srebrenica, forming a mixed military-civilian column and went through the Serbian territory. Until 16 July at least 10,000 of people from this column reached Tuzla;

e) the Bosnian Presidency concluded at the session on 11 August 1995 that 31,000 of the Srebrenica people, military and civilians reached Tuzla; in addition to this figure there were many of them who went to join their relatives and thus being unregistered; also some 600 to 1,000 escapees to Zepa and Serbia had not been registered in Tuzla;

f) at the same session it was stated that many of those unaccounted were still trying to break through the Serb lines.

g) thus, there are about 4,000 persons who didn't reach Tuzla, nor Zepa and Serbia, who may be considered as persons unaccounted-for after the fall of Srebrenica.[5654]

b. The Number of Prisoners Transported from Bratunac to Zvornik confirms that the Prosecution's Figures are Inflated

2531. The total number of persons taken prisoner by the VRS after the fall of Srebrenica can be calculated from testimony of those who were involved in the transportation of the prisoners from Bratunac to Zvornik. No additional prisoners were taken in Zvornik, so, when added to the opportunistic killings in Bratunac municipality and those killed in the Kravica warehouse incident, this should represent the total number of persons taken prisoner. The number of executed persons certainly cannot exceed the number of prisoners.

2532. On 13 July, around noon, Colonel Beara asked for four buses and a truck that would be used to transport the prisoners from the Nova Kasaba football field.[5655] It is an easy task to count out how many prisoners were on the football field at that time by the capacity of the vehicles needed to transport them. Twenty buses would be needed for 1000 prisoners and forty buses would be needed for 2000 prisoners, taking into account that for security reasons the buses could not be crowded, and the front seats could not be occupied.

[5654] D2238
[5655] P5376, at p. 3

2533. In the afternoon of 13 July, Lt. Colonel Vujadin Popovic saw about 800 prisoners at the football pitch in Nova Kasaba, with soldiers making lists of the prisoners.[5656] After he left, he saw 200 to 300 prisoners being guarded by police at Sandici.[5657] The convoy that he accompanied to Zvornik consisted of 30 buses, 3 trailer trucks and 1 articulated bus.[5658]

2534. Popovic arrived in Orahovac at around 1:00 pm, and saw that the prisoners, totaling about 400-500, had been placed in the sports hall, with some sitting, some walking and some standing.[5659] He was told that about 100 had been brought to the school the previous night.[5660] Popovic stated that when he came to the school, he arrived with 10 buses and one longer bus. He did not observe that the hall was crowded and he did not believe the allegations that 2,500 people were placed in there.[5661]

2535. Popovic went to Rocevic School after Orahovac, where he stayed for about 20 minutes and saw the prisoners, numbering between 200 and 300, in the sports hall.[5662] He stated that it was impossible to fit more than 3 or 4 people into a square metre and that he saw only 200 to 300 people in the hall, walking around.[5663]

2536. Lt. Vincentius Egbers of DutchBat saw "between 100 and 200 men" lined up on the field "sitting on their knees with their hands in their neck" on 12 July.[5664] On 13 July, he passed by the field again in the morning and saw "there were still men on the football field and men who were brought towards the football field at the day before" he estimated their number to be "a few hundred".[5665] This testimony supports the aerial photos, closer than any other assumptions.

2537. [redacted].[5666]

[5656] Popovic, T.43013, 40; D3993 at para 35
[5657] D3993, at para 36
[5658] D3993, at para 46
[5659] D3993 para 50
[5660] D3993 para 51
[5661] Popovic, T.43064
[5662] D3993 para 52
[5663] Popovic, T.43068 – 9
[5664] P0331, pp.20 – 1
[5665] P0331, pp.27, 33 – 4
[5666] [redacted]

2538. The capture of these prisoners had taken place in several locations.

1. Potocari

2539. The number of prisoners captured in Potocari by Bosnian-Serb forces has been estimated to be about 1,000 men.[5667]

2. Nova Kasaba

2540. The *Krstic* Trial Chamber estimated 1,500 to 3,000 men captured from the column were held prisoner on the Nova Kasaba football field on 13 July 1995.[5668] This estimate was based upon information provided by two of the prisoners who were held captive on the field: "Witness P" and "Witness Q".

2541. However, this range is too wide to support a finding in a criminal case. An average football field is 40 m by 80 m, i.e. 3.200 m^2, but this provincial field was significantly smaller. The group of POWs seen on the aerial photo[5669] on 13th July at 2 PM occupied less than ¼ of the field, i.e. between 600 and 700 m^2, taking into account that no more than one to 1.2 man could be sitting on a 1m^2. Therefore, there could have not been more than 700 POWs.

3. Sandici

2542. In the *Popovic* case, the Sandici Meadow group of POWs were estimated by those detained on the meadow to be between 900 and 2,000 prisoners.[5670] In the *Krstic* case, it was estimated that "between 1,000 and 4,000 Bosnian Muslim prisoners taken along the Bratunac-Konjevic Polje road were detained in the Sandici Meadow on 13 July 1995."[5671] The *Krstic* estimate was based upon interpretation of VRS radio communications intercepted by the ABiH. However, even if the ABiH accurately reported the communications, bragging and imprecision common in informal conversations among soldiers may well have been a factor in these numbers. These

[5667] *Krstic* TJ para 66
[5668] *Krstic* TJ at para 177
[5669] P.4308, p.36
[5670] *Popovic* TJ fn. 1299
[5671] *Krstic* TJ para 177

imprecise estimates should not be relied upon, particularly since the aerial photos[5672] suggest quite the opposite.

4. Konjevic Polje

2543. On the evening of 13 July, two busloads of prisoners held at an agricultural warehouse in Konjevic Polje were sent to Bratunac.[5673] The buses were not completely full and stopped to pick up prisoners at Sandici Meadow on their way.[5674] Even relying on such revolutionary figures comfortably mentioned by Prosecution witnesses, this would comprise around 1,000 prisoners captured in Potocari, another 1,000 to 1,200 at the Nova Kasaba football field, 700 to 800 at Sandici Meadow, plus another 350 from other locations. This adds up to 3,050 to 3,837 prisoners that could have been captured, not the 7,000 to 8,000 that have been alleged by the Prosecution.

2544. Colonel Vujadin Popovic testified that he was in charge of forming and conveying a convoy with the POWs from Bratunac to Zvornik, which happened in the early afternoon of 14 July 1995. Colonel Popovic stated that, once formed, the convoy consisted of 30 buses, 3 trailer trucks and 1 articulated bus.[5675] Additionally, there was a smaller convoy of nine buses with around 400 people that was transported to the Zvornik area apart from the one confirmed by Colonel Popovic.

2545. It is very easy to count how many people could have been transported in this kind of convoy. Had all the seats in buses been occupied, which was not the case, at least for the two front rows, there would be between 1.500 and 1.700 men in the bigger convoy and approximately 400 in the smaller convoy. This total is close to what the civil commissioner reported in the intercepted conversation on the evening of 13 July 1995.

2546. In addition to the available information about capacity of the transport vehicles, this horrible mathematics has to include the pace of executing the prisoners of war, with the highest respect of the victims. In his testimony Drazen Erdemovic testified that they arrived at the Branjevo farm later than was alleged previously.[5676] How he described the pace of taking the groups of the POWs and escorting them a hundred meters to the site of

[5672] P207
[5673] P350, p.31-4
[5674] P0350 p. 898
[5675] D3993 para 46
[5676] Erdemovic, T.25385 – 6

execution[5677] and taking into account the time they spent in executing the people, it is completely unlikely that the number of prisoners claimed by the prosecution to have been executed at Branjevo Farm could physically be correct.

2547. To recap:

a) If one considers the number of prisoners who could have been transported from Bratunac to Zvornik and then adds all of the alleged deaths in Kravica, Cerska, Bratunac, Jadar River, and Potocari, the number of persons who died as POWs cannot be anywhere close to the 7000 figure claimed by the Prosecution.

b) The overwhelming evidence admitted in this case, starting from the number of persons living in Srebrenica before its fall, and then subtracting the number of persons who reached Tuzla, Kladanj, Zepa and Serbia, according to the Bosnian Presidency, the Statistic institute and the local Srebrenica authorities and to the testimonies of witnesses and survivors, the most frequent figure of the persons missing after the fall of Srebrenica is around 3.000.

c) The inflated figures of 7000 are the result of malignant propaganda by Muslim extremists, aimed to plant evil seeds for the future. This should not be accepted in any court.

c. The 4,000 Unaccounted-for Persons from Srebrenica were not all Executed

1. Persons Killed in Combat

2548. Many of the missing died during the forceful conflict through the Serbian territory. The first numerous victims died from the minefield at the beginning of the route of column, and soon after the column sustained very heavy artillery fire and many casualties, estimated in the several hundreds. [redacted][5678] [redacted]

[5677] Erdemovic. T.25385
[5678] [redacted]

[redacted][5679]. [redacted][5680], [redacted]. [redacted].

2549. [redacted]:

(a) [redacted]

(b) [redacted]

(b) [redacted]

(c) [redacted]

(d) [redacted]

(e) [redacted]

(f) [redacted][5681]

2550. [redacted][5682].

2551. [redacted][5683].

2552. [redacted][5684].

2553. [redacted][5685].

2554. [redacted][5686].

2555. [redacted][5687].

5679 [redacted]

5680 [redacted]

5681 [redacted]

5682 [redacted]

5683 [redacted]

5684 [redacted]

5685 [redacted]

5686 [redacted]

2556. Therefore, it is established that not only three, but more mass graves contained bodies of persons who were killed in combat throughout the entire war and in July 1995 and therefore not executed.

2557. It is undisputed that the number of people who died in combat after the fall of Srebrenica was large. Prosecution witness KDZ071 testified that he saw many people either wounded or killed that he could not count them.[5688] This was the same version given by many persons from the column when they reached Tuzla.

2558. The most frequent figure of those who died during the breakthrough is 3.000. Members of UNPROFOR were able to interview a number of persons who were part of the column, and report their accounts to the mission's leadership. The men interviewed estimated that from 2,000 up to 3,000 of the 12,000 to 15,000 in the column had died during combat. In the UNMO daily sitrep for 17 July 1995, it was reported that the column of 12,000 to 15,000 left the enclave, and that up to 3,000 were believed to have been killed in minefields, ambush, and sniper conflicts with the VRS, adding suicides among the Muslim soldiers.[5689] In the UN headquarters it was accepted that a number of the Muslims from the column died in combat with the VRS or when crossing over mines, while an undetermined number among them had also surrendered to the VRS.[5690]

2559. [redacted][5691] This was inconsistent with the conclusions of Prosecution expert witness Richard Butler, who estimated that there were 2-3000 bodies found on the battlefield in Pobudje.[5692] Even taking the most conservative number, and even if no bodies found on the surface were buried, the 1.000 surface remains must be subtracted from the total of 4.000 missing in July 1995.

2560. Defence witness Tomislav Savkic testified that when Muslims broke through the 1st Milici Battalion on the 11th of July 1995 there were many casualties on both sides,

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5687 [redacted]
5688 KDZ071, T28530 – 28531,35,37
5689 D1999
5690 P2284, para 387
5691 [redacted]
5692 *Popovic* TJ fn. 2256

including the Muslim side.[5693] It appeared that these people had been dead for about 2 days.[5694] He saw a group of Muslim corpses in Bokčin Potok,[5695] and in another direction he saw more than 2,000 Muslim corpses, mainly dressed in military camouflage and Civil Defence uniforms.[5696]

2561. Ines Miska, a Lithuanian ICRC representative, confirmed this information when she told Mr. Savkic in 1998 that 2,600 corpses or body parts were found and taken to the abandoned Lipnica mine near Tuzla.[5697]

2562. Throughout the area many single and small group graves (up to 5 bodies) were found. These were not the product of any execution. Prosecution investigator Dusan Janc simply couldn't explain how it happened that many bodies had been found in smaller graves, solitary (individual) graves, or on the surface, all those that had been found in places that he couldn't categorize, because he was uncertain what it would represent,[5698] since the understanding of the Prosecution's expert witnesses was in accord with its theory that every remain found in the area represented a person who was executed after the fall of Srebrenica.

2563. It should also be considered that the Prosecution, unlike the Defence, enjoyed very good cooperation from the Bosnian Muslim institutions. It was able to obtain a document "**regarding exhumations and identification carried out in the period 1996 - 2007 in the area of Srebrenica, including the municipalities of Srebrenica, Bijeljina, Bratunac, Han Pijesak, Kalesija, Kladanj, Rogatica, Šekovići, Vlasenica and Zvornik. The information relates to 4,415 identified victims."**[5699]

2564. **The part pertaining to persons exhumed in the area of Zvornik municipality comprised 2299 persons.** Out of those 2299 exhumed 799 persons died and were buried much earlier than July 1995. This was indicated by the OTP witnesses such as Mr. Janc, who concluded that there were remains not connected to the Srebrenica events.[5700] In this official report, it is confirmed that 4.415 people were identified, and

[5693] Savkic, T.33793 – 4
[5694] Savkic, T.33816 - 22
[5695] D2932, para 92
[5696] D2932 para. 93
[5697] D2932, para 94; Savkic, T.33820
[5698] Janc, T.26932
[5699] P4841, p. 2
[5700] *Popovic* TJ para 650, fn. 2352 P4841, p.1-68

discounting those 799 from the previous years, the total is close to 3.000. The rest of the 1500 had been found to be the Srebrenica related remains. Specifying the way those people were killed, the Bosnian Federal Commission for Missing Persons (FCMP) established that 1200 out of those 1.500 died during the breakthrough towards Tuzla, while 300 had been specified to have gone missing at several places known to the participants in this trial as the places of surrender.

2565. How could those who died in the forceful breakthrough be considered anything but the combat casualties? If the court certificates of deaths,[5701] containing specific definitions such as "died in an ambush," or "died on a military task" are taken into consideration, a much more accurate estimate of the number of people who were executed can be reached.

2566. The prosecution's theory failed to account for the only rational explanation, that there had been multiple burials throughout the wartime in the combat area where the "Srebrenica Related Graves" had been located.

2. Persons killed other than in combat

2567. Some number of the people killed in the aftermath of the prisoner mutiny at the Kravica warehouse on 13 July should be excluded from the total of persons who were the victims of crime because their killing was provoked by the attempt of the prisoners to escape. Apart from this, any unlawful killings that followed the mutiny at Kravica were opportunistic in nature. Estimates of the number of people killed at the Kravica warehouse varies between 200 and 350,[5702] 600-1,000,[5703] and "at least 1,000 people".[5704]

2568. There were also several tens of victims who died as a result of opportunistic killings connected with the Bratunac sites, such as the Vuk Karadzic school, stadium etc. as well as killings of people from a specific villages or called out by certain persons, which should be considered as personal revenge killings not associated with the alleged joint criminal enterprise to destroy the Muslims of Srebrenica.

[5701] D3815, D3893, p. 31
[5702] A Tesic, T.35325
[5703] *Tolimir* TJ para 376
[5704] *Popovic* TJ para 443, Karadzic Indictment Schedule E.3.1

2569. Bodies of the nine Muslim men found near the UN compound in Potocari were held, in the *Tolimir* case, not to be linked with the "Bosnian Serb Forces" and should also be excluded.[5705]

2570. Similarly, the killing of a Bosnian man in Potocari committed by four Serb "soldiers" who hid in the woods after their crime, was not an execution that could be attributed to any joint criminal enterprise to destroy the Muslims of Srebrenica, they were concealing their crime from the Serb forces already controlling the area.[5706]

3. Conclusion: The Number of Victims Must be Reduced to Account for those Killed in Combat and Opportunistic Killings

2571. There is considerable evidence that many of those who joined the column died during the breakthrough. The figure most frequently mentioned by the relevant sources is 2.000 to 3.000 casualties. The ways and modes of their deaths vary from killings in minefields, artillery fire, direct skirmishes of the two Army infantries, inter-Muslim skirmishes and suicide. Even if none of the combat casualties were buried, the number couldn't be less than 1.000. Since there is evidence that there were burials of the combat casualties, this number must inevitably be higher. This significant number must be subtracted from the number of those that didn't reach either Tuzla, or Kladanj, Zepa and Serbia after the fall of Srebrenica, and that were supposedly executed, because they hadn't been executed at all.

2572. Those killed during the Kravica mutiny, and opportunistic killings in Bratunac and Potocari, must also be subtracted from the number of victims of the alleged joint criminal enterprise.

d. General Forensic Evidence Failed to Confirm that all Bodies in Mass Graves Were the Victims of Executions

2573. Richard Wright, a professor of archaeology, was engaged by the Prosecution as an expert in the detection and exhumation of mass graves, and examining gravesites.[5707]

[5705] *Tolimir* TJ para 308, fn.1329
[5706] Groenevegen, T.23005
[5707] P3999, pp. 3 – 4

His work was designed to be complementary to what pathologists and forensic anthropologists do in morgues. Mr. Wright determined which gravesite was "primary" and which was "secondary", and made an estimate of the total number of bodies likely to be found in graves that were probed but not yet exhumed. The basis of his information was received from morgues,[5708] which were under Muslim control and without any insight from the Serb side. Therefore, he entirely depended on what the morgues after completing a body sent him,[5709] not what he established himself. It was possible that persons found in these graves had been killed in 1992, but he had never been informed to expect remains of people killed in 1992.[5710] Therefore, his estimated number of 3.474 people buried in the graves cannot be equated with the number of people executed after the fall of Srebrenica.

2574. It has to be noted that Mr. Wright included all the casualties buried in this area, since he considered all of them died after the fall of Srebrenica,[5711] although there are Muslim documents reporting thousands of casualties prior to the July 1995 events, and one of them dated 3 April 1995 reported 1.607 killed, 654 heavily and 2.501 lighter wounded and 225 missing combatants.[5712] At least all of those missing and a vast majority of those who got killed remained on the Serb territory, because no such fighting with a high number of losses, ever occurred on the Muslim territory which was under the UN protection, as it would be reported to the UN HQ and to the public as well.

2575. Another Prosecution witness, anthropologist Fredy Peccerelli, oversaw the exhumation of the Lazete 1 on behalf of the OTP, but with a lack of the basic knowledge about the circumstances of events, except for those obtained by the OTP investigators. The OTP investigators told the witness that Serbian forces came and exhumed or robbed or moved the bodies from the original graves at Lazete 1. Mr. Peccerelli did not discover this from his own investigation, but was presented with a ready-made opinion as a fact. Mr. Peccerelli did not seek primary information from any witnesses or informants.

2576. No wonder this witness created senseless conclusions, such as the following: the basis to conclude that there were no burials of combatants were: (1) uniform profiles and

[5708] R. Wright, T.22263,
[5709] R. Wright, T.22314
[5710] Wright, T.22309
[5711] Wright, T.22291
[5712] D3897

the bottom of the grave; (2) bodies displaced in a uniform manner and clumped together; (3) continuum of edges of the grave and equipment used to create the grave seen; (4) bodies laid on top of each other only with small pieces of soil among them.

2577. In cross examination, Mr. Peccerelli added other reasons suggesting that the bodies were not victims in combat: (1) the way the bodies were placed and the top-soil among the bodies suggest that they were pushed in with machinery; (2) no markings were found on headbands; (3) no weapons were found.

2578. However, all information suggests that there was a burial close to the rules for sanitation of a battlefield after battle, rather than an execution. Remains after a battle are not handled without machinery, and it doesn't happen immediately after a battle, but rather several days later. The very next answer of the witness corroborated the possibility of sanitation, because he admitted that it cannot be ruled out that bodies were gathered from other locations and transported to the graves, and there is evidence that proves the existence of shooting on the surface of the grave (which was denoted by a number of casing, 456, and bullets, 19) and the fact that the location of the grave is isolated suggests logically that the bodies came directly from the surface.

2579. There was no explanation as for why the bodies executed somewhere else would be gathered and transported to Lazete 1 for the first burial. While the most logical explanation was that combat casualties were compiled and buried in the nearest grave site. Mr. Peccerelli recognized that there was a turf below and above the bodies, and that he couldn't exclude the possibility that the bodies hadn't necessarily been pushed, but also collected with machinery and brought to the grave, concluding that those bodies in the grave came from the surface.[5713] He admitted that there was a possibility that bodies came from different locations: "I guess the possibility does exist, however remote it might seem contemplating the whole investigation."[5714]

2580. However, another clarification by Mr. Peccerelli was significant for the whole case of the Lazete grave site. Namely, four years before Mr. Peccerelli did his work, there were at least two official and possibly some unauthorized excavations with certain physical manipulations. Peccerelli acknowledged when questioned by Judge Baird that he

[5713] Peccerelli, T.22763-4
[5714] Peccerelli, T.22764

couldn't testify on the original content of the grave, that the grave had been disturbed several times before he performed the excavation, and that the findings would have been different had he been the first one who did excavation.[5715]

2581. Another prosecution expert witness, Dr. William Haglund, never even considered the possibility that the difference in decomposition between Lazete 2A and 2B could have been due to the fact that one was the result of an execution and the other a "battlefield cleanup". The Prosecution experts suggested that the primary mass graves were almost without exception at an execution spot or very close to it.

2582. Not only did OTP personnel give the information that directed their expert witnesses to come to a particular conclusion, but Prosecution Senior Trial Attorneys helped in the drafting of these conclusions. Peter McCloskey took part in the drafting process of the conclusions from the first excavation.[5716] The Trial Chamber should not even consider evidence obtained in this way?

2583. To determine what Mr. Peccerelli did and did not know about from the OTP, let us see how he treated the artifacts found in the Lazete 1. Out of a total 129 bodies, 89 bodies in Lazete 1 were found to have strips of pink material tied around the head and placed over the face. It was concluded that the strips were probably blindfolds include: (1) the grave was with no clear funerary practices; (2) bodies were disorganized; (3) pieces of cloth showed uniformity and generally covered the eyes; (4) pink is not the colour to use as headband in combat situation.[5717] 37 other similar strips were found believed to have fallen off the bodies.[5718] 34 strips were found in Lazete 2C.[5719]

2584. It was not the witness' understanding that such bands are used during religious burial ceremonies,[5720] which is not the defence position. Those bands were used during combat, not during burials. Had the bodies been buried by their relatives and priests, they would have been removed. Since sanitation burials occur after a certain time, the beginning of decomposition, nobody removed them.

[5715] Peccerelli, T. 22773-4
[5716] Peccerelli, T.22774
[5717] Peccerelli, T.22746-7, Clark, T.22742
[5718] Peccerelli, T.22746-7
[5719] Peccerelli, T.22747
[5720] Peccerelli, T.22748

2585. This witness was unaware that wearing such headbands was customary among the Islamic fighters.[5721] The word "probable" was used referring to the certainty of the conclusion that the strips of material were blindfolds because: (1) some of the bands were not placed over the eyes and had been moved; (2) 37 strips of the same features were found not on the bodies.[5722] The witness was not aware that under circumstances when people cannot be differentiated, combatants attached such ribbons to their bodies to prevent friendly fire.[5723]

2586. With many unknown facts, it was a wonder that there was any report from this witness at all, and why the OTP had to help create the conclusion.[5724] 830 artefacts were found in and around the grave at Lazete 2, and there were more shell cases (671) than live rounds (46).[5725] Mr. Peccerelli could not rule out that the area was a defensive position.[5726] He was not aware that it was standard military practice in most armies, and an obligation under VRS regulations,[5727] that a POW could not have any valuables or personal documents because they could be used to bribe guards and to escape, yet he agreed that the victims had a certain number of wrist-watches, pocket-watches, documents and some personal belongings.[5728]

2587. At Lazete 1, out of 593 artifacts, there were 456 shell cases, 9 live rounds and 19 bullets.[5729] The witness did not have an explanation for the difference between the number of shell casings and the number of bullets.[5730] However, it was obvious that somebody fired out from this place, otherwise there would have been the same number of bullets as shell casings found at site. Why were only 19 bullets found fired out of so many (456) shell cases.[5731] Where are the missing 437 bullets?

[5721] Peccerelli, T.22749
[5722] Peccerelli, T.22750
[5723] Peccerelli, T.22751
[5724] Peccerelli, T.22774
[5725] Peccerelli, T.22781
[5726] Peccerelli, T.22781
[5727] D2243
[5728] Peccerelli, T.22782
[5729] Peccerelli, T.22782
[5730] Peccerelli, T.22784
[5731] Peccerelli, T.22784

2588. This conveys how an unbiased expert couldn't produce an accurate report, because he didn't have relevant information, and further he was "assisted" by the Prosecution and its prominent trial lawyers such as Mr. McCloskey.[5732]

2589. The Prosecution's treatment of the hundreds, if not thousands, of surface remains is fallacious. While they have conceded that these people likely died in combat and have discounted them from the total number of persons believed to have been executed, they have failed to explain how the number of executed persons could have exceeded the number of prisoners, or been greater than the difference between the number of combatants killed in action subtracted from the number of missing persons, even if all of them had been executed, which we already know was not the case.

2590. However, not only those found on the surface in Bratunac municipality died in combat. The majority of the surface remains were found in the area southern from Konjevic Polje, in the Pobudje area, Bratunac municipality, where it was reported that many died in the minefields and from artillery.[5733] [redacted].[5734] In spite of that fact, the Prosecution assumes that all those bodies recovered from the northern gravesites (Branjevo, Orahovac, Petkovci, and Kozluk) were victims of executions.

2591. The Prosecution's assertion that all of those found in mass graves must have been executed since they "don't have any evidence that people other than those executed are in those graves,"[5735] stands the burden of proof on its head.

2592. The Prosecution has many documents that indicate multiple burials took place. The Prosecution document showing the total of exhumations depicts the number and structure of 4.415 persons exhumed and identified in the period 1996 -2007 in the area of Srebrenica, including the municipalities of Srebrenica, Bijeljina, Bratunac, Han Pijesak,

[5732] Peccerelli, T.22774
[5733] P4770
[5734] [redacted]
[5735] Janc, T.27046

Kalesija, Kladanj, Rogatica, Sekovici, Vlasenica and Zvornik.[5736] Out of those exhumed and identified, 2933 persons had been identified as having gone missing in 1995, 1.426 remains of persons that disappeared in 1992, 46 in 1993 and 9 in 1994.

2593. All of those had been found intermingled in the same gravesites, which is first class evidence of multiple burials. It is evident that there was a high rate of Muslim casualties in Podrinje in 1992. There were only 55 in 1993 and 1994, while 2907 casualties were exhumed in 1995. Even if all 2907 people from 1995 had been executed, it is far from 8.000. The same document allocates 281 casualties to the Kravica warehouse incident, which is consistent with the aerial photos and testimonies, and at the same time far from the OTP allegations about 1.300 casualties.

2594. But, let us see what this document says about those who were exhumed in Zvornik: out of 2299 exhumed in the Zvornik municipality, it is found that about 1500 (65,3%) went missing in July 1995 and is understood to be related to the fall of Srebrenica. Another 799 (34,7%) of the total of exhumed had died and been buried before July 1995.

2595. Specifying the way in which those persons were killed in 1995, the Bosnian Federal Commission for Missing Persons (FCMP)[5737] established that 1200 (80%) of those 1.500 missing in July 1995 died during the breakthrough towards Tuzla, while the remaining 300 (20%) had been found to have gone missing at several locations where Muslims surrendered or were taken prisoner. In all ten municipalities, out of 2.907 victims from July 1995, the BH Federal commission found 2.558 had died during the combat break towards Tuzla.

2596. The common insinuation amongst experts employed by the Prosecution was that the missing people whose remains had been found in the SRGs were executed. They were careful not to use the term "executions", since it was not their role to determine whether the deaths were executions or not. The figure at the time was 7,000, and that the current figure is 6,000 and increasing.[5738] How many Prosecution employees should be contacted and asked to correct their arbitrary assertions? No wonder the general public

[5736] P4841
[5737] P4841
[5738] Haglund, T.23910

has the impression that 7.000 people had been executed. It is not the Defence duty to prove who wasn't executed, it is the OTP obligation to prove who was.

2597. The prosecution's theory is particularly undercut given that it is undisputed that there were "mixed graves" in which remains not connected to the Srebrenica events were buried together with the remains of people reported missing after the fall of Srebrenica in the very same graves.[5739] Mr. Janc confirmed that the Bljeceva 1 gravesite contained bodies of persons who died in 1992.[5740] Mr. Janc also confirmed that victims of the opportunistic killings associated with the school in Bratunac, those picked up from Konjevic Polje, along the Konjevic Polje-Bratunac road, and those lying dead next to the road,[5741] had been collected and buried in the Glogova grave site along with the victims from the Kravica warehouse mutiny.

2598. The other northern grave sites like Kozluk also had a number of remains buried after the July 1995 combats, for which Mr. Janc, regardless that they had been found on surface, considered to be executed only on the bases of a fact that they had been found "adjacent to the execution site Kozluk".[5742]

2599. What Mr. Janc confirmed about collecting the bodies along the roads and burying them in the existing graves is sanitation carried out pursuant to orders of the authorities.[5743] [redacted].[5744] [redacted].[5745] [redacted].[5746] [redacted].[5747] It was only later

[5739] Janc, T.26933, T.27016-7
[5740] Janc, T.27016-7
[5741] Janc, T.27045-6
[5742] Janc, T.26932
[5743] D2216
[5744] [redacted]
[5745] [redacted]
[5746] [redacted]
[5747] [redacted]

that they couldn't identify and register and bury people properly because of the wartime conditions and the fact that ther were so many casualties.[5748]

2600. It is unacceptable that the fact of obligatory sanitation of the battlefield was not known to the experts who dealt with exhumations in an area where there had been three and a half years of fierce combat among armies and civilians.

2601. [redacted].[5749]

2602. Prosecution witness Drazen Erdemovic also testified that a guard at Branjevo had informed him that there were burials there prior to the executions on 16 July.[5750]

2603. Since it is obvious that the combat killings happened along the route of the column, the most logical conclusion would be that those casualties had been buried in the vicinity of this confrontation line, where we indeed have seen many gravesites. However, the Prosecution claims that all of those gravesites ought to be considered as a "secondary graves", which would mean that all the recovered bodies had been already buried somewhere, and re-buried along the route. This is illogical and unsupported by any evidence.

2604. Contrary to this understanding, there is evidence that in the mass graves there were found many bodies of those who hadn't been executed, as well as of those who died in events that couldn't be associated with the fall of Srebrenica 1995. In the *Krstic* case, the Trial Chamber held that it could not exclude the possibility that a percentage of the bodies in the mass graves may have been of men killed in combat.[5751]

2605. As a matter of fact, the prosecution didn't even try to clarify whether these people were recovered from so called secondary graves which couldn't be connected to any primary grave, leaving it to be understood that all in secondary graves had been executed and buried first in a primary. [redacted]

[5748] [redacted]; T24506-8 (Katanic)
[5749] [redacted]
[5750] Erdemovic, T.25387-8
[5751] Krstic TJ, para 80

[redacted].[5752] Therefore, for the more than 90% of bodies this wasn't proven to be a secondary grave, and since it wasn't "associated" to any other execution site, they must be coming from another events and maybe other times.

2606. In the Prosecution exhibit there is additional list of 502 unmatched cases,[5753] and in another interim report there are two additional lists of "cases inconclusively associated" and "cases excluded as associated" with the cases found in the Srebrenica Related Graves, but reported by the families as missing since dated prior to July 1995, and marked as "not 1995 event". Regardless of the exact number, it is obvious that many persons buried in the mass graves were not the victims of executions.

2607. The issue of the primary/secondary graves is crucial in inflating the total number of the missing persons whose remains had been recovered from the graves in Podrinje, i.e. on the territory of Srebrenica and the neighboring municipalities. For instance, Mr. Janc in his Report from March 2009 notes that on the basis of 96 established connections between Kravica and the secondary graves should be understood that all 724 remains found in so called secondary graves come from primary graves connected with Kravica; or, on the basis of 49 established connections between Orahovac and secondary graves, all 403 remains found in those secondary graves were moved from primary graves of the Orahovac victims; the same would be with 9 established connections between secondary graves and the primary graves from the Petkovci Dam that all 787 bodies found in those secondary graves had been moved from primary graves connected with the Petkovci Dam; or on the basis of 52 established connections between some secondary graves and primary graves connected with Kozluk it should be understood that all 708 bodies found in those secondary graves originate from Kozluk; the same is with 54 DNA connections between secondary graves and the primary graves connected to Pilica-Branjevo farm, and all of 707 bodies found in those graves meant to be exclusively secondary came from primary grave of the Branjevo victims.

2608. Thus it would mean that all 4049 bodies found in so called secondary graves are to be considered as removed victims of executions primarily buried in one of those six primary graves on the basis of the established connection between those secondary and

[5752] [redacted]
[5753] P5914

alleged primary graves for 310 cases.[5754] The Prosecution and its experts and investigators didn't feel any obligation to explain where the rest of the 3.739 bodies came from, i.e. more than 90% of the total exhumed. This should not be acceptable in a criminal case in a serious court. The only reasonable conclusion is that those "secondary" graves were not really secondary, or not secondary for most of the bodies found, but rather mainly primary graves for those who died in combat along the column's route. Instead of proving who was executed, the Prosecution, through this maneuver, brought the burden of proof back to the Defence, which is now to prove who, out of thousands of victims of the 45 month-long war, were not executed.

2609. The testimony of the Prosecution's demographer Ewa Tabeau also supports the position of President Karadzic that the number of persons executed is not equal to the number of persons found in mass graves. Ms. Tabeau acknowledged that when comparing the Prosecution's list of missing and dead with the ABiH military records, 220 people in the military records had died long before or significantly after the fall of Srebrenica.[5755]

2610. Ms. Tabeau frankly admitted certain "uncertainties" and "…because there is a lot of uncertainty in measuring or reporting victims of war,[5756] and the uncertainty "about how well they represent our victims between these two lists"[5757] those 281 plus 213, i.e. 494 bodies (between 5.555 exhumed and 5.061 meant to belong to the events connected with the fall of Srebrenica) are excluded from the analysis. But from the Defence standpoint it cannot be put aside, because all of those 494 remains comprised in the total of 2.692 unrelated to the Srebrenica fall were found in the Srebrenica Related Graves (SRG). This corroborates the Defence position that the victims recovered from the mass graves did not all die after the fall of Srebrenica in July 1995, much less that those 5.061 were killed in executions.

2611. The entire number of persons missing after the fall of Srebrenica who remain unidentified—2,137, added to the 494, means 2.692 people reported as missing that cannot be confirmed; are to be connected with the Srebrenica fall in 1995.

[5754] D3893
[5755] D2217, p. 1-5
[5756] Tabeau, T.28241
[5757] Tabeau, T.28242

2612. There are also 116 victims identified by the ICMP, that hadn't been included, because they appear on the ICMP list only,[5758] which means they were recovered from the SRG, or the ICMP did identify the remains that hadn't been connected to Srebrenica at all, neither had been registered on the ICRC lists. Nobody had reported these people missing after the fall of Srebrenica. Who, when and why buried them in the very same Srebrenica mass graves where those who were executed in 1995 were found? Is it the ultimate number, or there may be more of them? The existence of persons in the mass graves who were not reported missing by their families after the fall of Srebrenica further supports the position of President Karadzic that the mass graves do not only contain persons executed after the fall of Srebrenica and that this criterion for accounting for the number of executed should be abandoned forever, and instead bring this obligation of proof back to the Prosecution.

2613. Similiarly another 260 remains, which appeared on the 2009 ICMP list and were removed from all of lists, somewhere in space, without a valid explanation.[5759] In the additional list to the ICMP Integration 2012 list – exclusions and inconclusive there are 30 cases found in the Srebrenica Related Graves, and finally nine of them are excluded because they had been proven to be reported as missing in 1992, 1993 and 1994, while 21 of them are inconclusive. Regardless of the number, the case is significant because it corroborates the Defence assertion that there were multiple burials in the same graves throughout the wartime of 45 months, and therefore the number of executed has to be established in a positive manner, not by a fallacious formula that exhumed equals executed.

2614. President Karadzic's position is also supported by the Prosecutor's expert witness Dr. William. Haglund. When asked by Judge Kwon if it was possible that combat casualties could have been buried in secondary graves along with massacre victims exhumed from primary graves admitted, "That's possible, yeah."[5760]

2615. Dr. Haglund was aware that there was fighting in the area of the graves and did not doubt that at times warring parties may have buried enemy soldiers in mass

[5758] Tabeau, T.28258
[5759] Janc, T.26992-3
[5760] Haglund, T.23953

graves.[5761] He did not doubt that up to 85% of Muslim soldiers did not wear uniforms. He also did not doubt that during the first year of the war up to March 1993 in the Muslim controlled area of Bosnia there were over 1,200 Serbian people killed and buried in over 50 mass graves and recovered in the presence of General Morillon and other UN personnel.

2616. Dr. Haglund was never told about a site where soldiers had been buried after combat. He considers that if he had dug them up then they would probably have had uniforms on.[5762] Dr. Haglund stated that there was nothing that led him to believe that the bodies had been placed in the graves as a result of the cleaning of the former combat ground and removing casualties from the site after combat.[5763]

2617. It was Dr. Haglund's job to exclude this possibility and establish "the only way," but instead relied on his beliefs, as well as crippled and insufficient information from the Prosecution or the Muslim hosts. He considered that they are non-combatants when they are blindfolded, have their hands tied behind their backs, are intermixed and the deaths occurred in the same kind of time period.[5764] Everyone would accept the standpoint on the blindfolds and ligatures, but it has to be established what cloth were blindfolds and ligatures, because the number of those undoubtedly executed had to be established, which it has not so far.

2618. The part of Dr. Haglund's assertion about the deaths occurring in the same kind of time period is in contradiction with everything that the pathologists in this case said about establishing time of death. Another Prosecution witness, Jose Baraybar, testified that in a naked-eye examination of a body, be it decomposed or preserved, it is not possible to say when that person died.[5765] Dr. Haglund didn't report that he did something more than a naked-eye examination. In spite of Dr. Hugland's beliefs that there was no "sanitation", he himself described sanitations and concluded that in some graves as Kasaba there were the remains of a man which had been in an advanced stage of

[5761] Haglund, T.23915-6
[5762] Haglund, T.23916
[5763] Haglund, T.23951
[5764] Haglund, T.23952
[5765] Baraybar, T.22384

decomposition and he considered that he could have been found decomposed somewhere and put in that grave.[5766]

2619. For other places, Dr. Haglund notes in his report that bodies may have been collected from the surface with the help of machines. They would have been scooped up off the ground and out in a pile. He notes that they could have been tumbled and maybe torn apart in the process.[5767] And this feature we call "asanacija" i.e. sanitation of battlefield, and it was an obligation under the law, and it happened always when combat happened. Why would someone execute people all over an area and collect and transport them with machines to bury them?

2620. The testimony of prosecution expert witness Jose Baraybar also supports President Karadzic's position. Mr. Baraybar found that some bodies were complete and some bodies were fragmented, prior to being placed in the primary grave.[5768] How could bodies in a primary grave be fragmented before burial, and still be considered as executed? The only reasonable explanation is that those remains spent some time on the surface, perhaps were torn apart by animals or simply started to decompose, advanced in this process and then were buried. This was not the fate of those who were executed.

2621. Dusan Janc explained that there were remains of individuals found in the Srebrenica mass graves were not associated with any missing person, and these didn't have names.[5769] These remains weren't identified, since they were not reported as missing in July 1995, and their DNA profile couldn't be compared with any sample from the families that were looking for their deceased. No matter whether those are included in the data or not, it strongly indicates that the graves were the subject of multiple burials in the past, and can not be neglected, since they confirm the presence of different remains from different events and times in the Srebrenica Related Graves.

2622. The Chamber's clarifications[5770] enabled us to learn that there were many more, hundreds, of unique DNA profiles that in one report were included on the list and then in another report, excluded, as being unmatched yet, and now do not appear on any list.[5771]

[5766] Haglund, T.23929
[5767] Haglund, T.23922
[5768] Baraybar, T.22410
[5769] Janc, T.26957-9
[5770] Janc, T.26959
[5771] Janc, T.26960

That couldn't happen if an independent institution wouldn't feel obliged to adjust its findings to the Prosecution's purpose. Mr. Janc, honestly or accidentally, confessed that his job was aimed to corroborate what was already known to the OTP.[5772,] This explains why so many remains disappeared from some lists and reports, because their existence would indicate the multiple burials and deny the thesis that all persons found in the mass graves were executed. Simply, they had been removed from the lists, since their number and existence strongly corroborates the Defence position that exhumations do not equal executions.

2623. Mr. Janc didn't deal with the possible different burial times in the range from 1992 to July 1995. Instead, he relied upon the ICMP reports, stating that such a discrepancies or indications of differences between certain deposits in the same grave would be spotted.[5773] However, he admitted that the experts who attended the exhumations haven't explicitly noted that kind of conclusion.[5774] Rather, he undertook to explain the big scale of differences in stages of decomposition with other reasons, much less believable than the obvious reason: multiple burials at different times.

2624. The Prosecution's investigator didn't take into account burials of the combat casualties in July 1995, believing it didn't happen, on the basis of a fact that by the date all mass graves had been closed judging on the bases of the aerial images.[5775] However, the aerial images didn't register the status on a daily basis, but rather after some time. Thus the changes in the area of Glogova gravesite hadn't been noticed and reported, despite the fact that there were many phases of burials as Mr. Janc confirmed.

2625. Equating exhumed bodies with executed persons caused the prosecution's employees like Mr. Janc to approach their investigation backwards. They came to the conclusion first, then investigated. When the facts got in the way, they excluded them. For example, Mr. Janc excluded several hundreds of cases connected to Ravnice 1 and Ravnice 2, which are both primary graves.[5776] If he hadn't excluded it, it would alarm us that something with the method was wrong. Otherwise, how does one explain the same person's remains found in two primary undisturbed graves besides the fact that those

[5772] Janc, T.26961, T.27010
[5773] Janc, T.27017
[5774] Janc, T.27018
[5775] Janc, T27048-9
[5776] Janc, T.26979

remains spent time on the surface where they decomposed and were buried. The bodies were already fragmented before being buried in two primary graves independently.

2626. In fact, Janc prepared an expert report in 2009 in which he concluded that the remains of 1,374 individuals had been found in primary and secondary graves associated with the Kravica Warehouse killings.[5777] Such a conclusion is impossible given the size of the Kravica warehouse.

2627. Similar "anomalies" with the prosecution's theory occurred in the several Glogova graves, the Liplje grave and surface remains. Janc simply excluded them when they undermined the prosecution's theory.[5778] Taking into account other "illogical" features that occurred during this investigation,[5779] the process of examining the remains in a morgue, rather than onsite, and intermingled not only among persons, but among sites and different burial times too, may have also contributed to the lack of reliability of the prosecution's data. This can be seen from the fact that the same person was re-buried in one secondary grave, a "secondary, secondary grave[5780], and several times in more than two or three secondary graves. Why would someone disturb a secondary grave and hide already hidden remains elsewhere? What was "illogical" to the Prosecutor is very indicative to the Defence, indicating mistakes in establishing the number of even exhumed, and executed in particular. Excluding "illogical" and "unusual" material is no substitute for questioning the correctness of the wrongheaded conclusion that exhumed bodies equals executed people.

2628. Among those illogical matters the Branjevo Farm holds a very high position. The grave site known as Pilica or the "Branjevo Military Farm" contained a minimum of 132 bodies, as it was estimated later at the morgue.[5781] These bodies occupied only 14% of the grave, and were discovered with difficulties at the end of the search, since the remaining 86% of the grave space didn't contain a single part that would confirm the presence of the remains. There was no explanation as to how it was possible not to find anything that belonged to the more than 1.000 bodies that were allegedly buried in this 86% of the grave space, neither tissues, nor bones, nor personal belongings, textile,

[5777] P4772, p. 40-1
[5778] Janc, T.26979, T.26981
[5779] Janc. T.26980
[5780] Janc, T, 26969
[5781] Haglund, T.23894

shoes, hair, nothing. Was there really a thousand or more bodies, and where is the evidence for that?

2629. To put together all the evidence pertaining to the Branjevo Military Farm incident, one has to count how many buses and other vehicles would be needed to transport the number of the POWs alleged by the Procesution, and how much time it would consume to convey a small groups of 5 to 10 blindfolded POWs to an execution site a hundred or two hundred meters away. When doing so, the alleged number of executed sounds like a fantasy, and certainly several times over-exaggerated. The number of 132 bodies as estimated later at the morgue,[5782] is several times more probable than the number alleged by the Prosecution. But the Prosecution doesn't have any embarrassment if they get caught in a contradiction, because they asked the Bosnian Muslim authorities and got an additional "explanation," as in the case of H.D. Smajlovic, who was presented as executed and found in a mass grave, while he committed suicide.[5783]

2630. A similar case with an attempted post festum explanation involves discrepancies of the dates of death of some 142 missing persons, recorded on the ICMP list as having gone missing 11 July 1995 while the official archives of the Army of BH recorded them as going missing in all of months in 1992, 1993 and 1994. These people were buried in almost all of the SRG-s alleged to contain only the July 95 executed persons.[5784] How could this fact be "corrected" simply by a correspondence between the OTP and ABIH, which is supposed to deny a contemporaneous official record of the losses of combatants of their own? This looks like a patchwork which shouldn't even be attempted before any court.

2631. Therefore, in retrospect, it appears that a massive operation of identifying and exhuming of the gravesites in the area of Podrinje, was organised, called the Srebrenica Related Graves (SRG). The operation was organized by the Prosecution of the ICTY and carried out by teams overseen by OTP experts and composed of the forensic archeologists, forensic anthropologists, pathologists, who were supposed to finish the work in the morgues and issue the autopsy reports for which they had been personally responsible. The OTP teams carried out the exhumations until 2001, after which point it

[5782] Haglund, T.23894
[5783] D3895
[5784] D2217

was handed over to the Bosnian Federation institutions, without any participation or even insight by Serb experts.

2632. The main purpose of the entire endeavor was to find out the destiny of the persons that went missing after the fall of Srebrenica and then to identify who of them had been found in the SRGs. On the basis of this entire work, the Prosecution meant to establish the number of the executed persons.

2633. The first finding of 857 remains in a six mass graves was a basis of an assumption that in the remaining 21 graves should be expected to exhume around 3.474 remains. 3.000 is the figure that appears the most frequently in counts of the missing in July 1995. However, only properly exhumed remains should be counted, particularly in a criminal case. Prior to the moment when the Bosnian Muslim institutions took over the exhumations from the ICTY Prosecution, the total minimal number of individuals recovered between 1996 and 1999, added up to 1883.

2634. The Prosecution's experts were not supplied with basic information about what they should expect to find, but rather misled. Particularly remarkable was the lack of information about possible casualties from the previous years and months of war, as well as combat casualties during the very same events in July 1995. They learned about this for the first time during the Karadzic trial. On the contrary, the experts had been instructed that they are to find a victims of the alleged executions that took place in July 1995, and therefore they didn't have to bother about the time of deaths and burials, and had to deal with the manner and modes of deaths. It was understood that it had to be a violent cause of death, because they died somehow and got buried in the mass graves. Thus, for the Prosecution experts, the number of exhumed meant the number of the executed in July 1995 is connected with the fall of Srebrenica.

2635. With such a lack of relevant information, the experts encountered many confusing and illogical facts that in no way fit in the picture they were expected to confirm in their reports. None of the confusing and illogical matters would appear had the experts been informed about the combat activities in the area over the previous 40 months. They resolved this problem of illogical features simply by leaving it without explanations, or by removing confusing facts, i.e. a hundreds of names of missing

persons whose remains had been found where it hadn't been expected, out from the totality of evidence.

2636. Other confusing and illogical matters have been overcome in other ways. Lawyers from the Prosecutor's trial team formulated the final reports. This fact, taken together with the conviction of some experts that their task was to confirm the Prosecution's theory, calls into question the reliability and viability of the entire endeavor for use a criminal case. In addition, the existence of at least 1.000 surface remains confirmed that there were significant combat casualties. These were allegedly excluded from the total list of executed, but this was not entirely true, because there is evidence that even those who died in an artillery attack had been found in the mass graves, as well as that there had been a sanitation process carried out after the previous years' combat.

2637. Several Prosecution witnesses stated that the possibility of burials of victims of combat which took place in July 1995 and in previous years couldn't be excluded. This alone is sufficient to create a reasonable doubt as to whether the Prosecution has proven who was really executed and who died in combat. In any democratic national judiciary, had a Prosecutor come up with a number of victims that is so exaggerated, he would run an enormous risk to have the entire case dismissed.

2638. Apart from the unburied remains on the surface, there were many remains recovered from the mass graves, including those of people who went missing in the 1992, 1993, 1994, and prior to July 1995, as well as those who died in the minefields, artillery attacks or the combat skirmishes, ambushes, inter-Muslim conflicts, suicides in July 1995. The number of executed persons should have only been established by the Prosecution by competent evidence, not conjecture. Instead, the Prosecution didn't make a single effort to differentiate between the missing persons who died in combat and those who were allegedly executed, falsely assuming that all persons whose bodies were found in the SRGs were executed.

2639. The issue of a differing degrees of decomposition of the bodies in the same graves was not explained convincingly, particularly since a possibility of a multiple burials couldn't be excluded by the OTP experts. But, the most flagrant element that could have served in establishing the number of executed missing persons, like blindfolds and ligatures, were not determined in their number and nature without reasonable doubt.

Particularly significant number of blindfolds hadn't been differentiated from the headbands that certainly existed in the both armies. Taking into account the existence of alleged blindfolds without knots, and made of a very luxurious material, the number of executed could not be established solely though the existence of such artifacts which only may, or may not be, blindfolds. The number of ligatures could be linked more directly with executions than blindfolds, however that number doesn't exceed several hundreds, and could only prove that there were executions that took place, but not the exact number, and certainly not even close to the number alleged by the Prosecution.

e. Autopsies and Pathology Facts Established that Equating Exhumations with Executions is Erroneous

2640. The prosecution also failed to properly inform its pathologists about the possibility that there would be bodies from earlier fighting in the graves they were exhuming. Dr. Lawrence was told only that the graves contained the bodies of prisoners who were executed.[5785] The same was true for Dr. Clark, who accepted the possibility that some of the remains originated from previous years, but stated that there was the general assumption thatthese bodies all related to the same incidents.[5786] Dr. Clark testified that it was possible that at least some of these bodies could have been from other incidents prior to Srebrenica, but that proposition had never been put to him before his testimony in this case [5787]. No wonder he didn't consider this possibility in his report, which is now entirely in jeopardy, as well as the reports of other Prosecution witnesses that hadn't been properly acquainted with the underlying material upon which to apply their expertise.

2641. The Srebrenica 1995 events were not the only events in the area that could result in casualties, but rather a sad and tragic end of a long chain of bloody events that lasted for 45 months, which left thousands of dead on both sides. So, the time of death appears crucial in differentiating the number of victims related to the Srebrenica 1995 events from those that died before the fall of Srebrenica. In the absence of an accurate military record of casualties the pathologist findings appear to be of a decisive

[5785] Lawrence, T.22493
[5786] Clark, T22711-2
[5787] Clark, T22712

importance for the finding out the number of the victims related to the fall of Srebrenica in July 1995.

2642. In contradiction to the tradition that the responsibilities of an individual forensic scientist are personal[5788] and not corporate, not all forensic pathologists involved presented verbal evidence to the court in The Hague, but only the senior chief forensic pathologist of the team appeared to give evidence, and in some cases even investigators employed in the Prosecution office, who were not pathologists at all. (Ruez, Manning, Janc) Janc conceded that if some time elapsed one cannot find conclusions about time of death in a report of pathologists.[5789] The chief forensic pathologist, Dr. Lawrence, confirmed this.[5790]

2643. Another limitation admitted by Dr. Lawrence was the distance from which the bullet wounds were sustained,[5791] making it impossible to conclude whether it was during combat, or execution. For the Kozluk site, Dr. Clark testified that it remained certainly possible that the people at Kozluk were killed by fire from a distance much further than one could expect if they were executed.[5792]

2644. There were more troubles with the autopsy reports that would be, had they been public, of a scandalous nature. A chief forensic pathologist in Bosnia in 1996, Dr. Kirschner, was widely criticized by several very prominent experts in the field for unacceptable conduct.[5793] An expert panel found that Dr. Kirschner had acted inappropriately by changing the cause of death in some of the autopsy reports without consulting the pathologist who had conducted the autopsy.[5794]

2645. The Office of the Prosecutor prevented Dr Kirschner's actions from invalidating or tainting the autopsy reports by submitting the reports back to the original physicians for their certification of cause and manner of death, hopefully rectifying not only some, but all of the cases.[5795] Prosecution Trial Attorney Peter McCloskey personally facilitated

[5788] Lawrence, T.22467
[5789] Janc, T.27015
[5790] Lawrence, T.22459
[5791] Lawrence, T.22487
[5792] Clark, T.22721
[5793] Ruez, T.23881
[5794] Ruez, T.23879
[5795] Ruez, T.23881-2

the "finalization of cause and manner of death as well as editing of final autopsy reports" together with the pathologists concerned.[5796]

2646. When explaining these events, Prosecution expert Dr. William Haglund testified that he felt a need to include this note because he wanted readers to be aware that Mr. McCloskey did not make any changes, but rather took the report to the doctors that were involved and made sure that they were comfortable with it. Mr McCloskey did not change, sign or determine anything in the report.[5797]

2647. This explanation by Dr. Hagland doesn't help, but rather calls for more caution. Concluding that Dr. Kirschner did not cause any permanent injury to the validity of the autopsy reports,[5798] the Expert panel concluded that the evidence of war crimes at each of the sites investigated is overwhelming.[5799] But all of this is not about whether there were crimes or not. The main issue is how many deceased died in a criminal way and how many in a legitimate combat actions and when. The experts of the Prosecution didn't even deal with the issue, but rather some of them tried to please the Prosecution. Otherwise, what would be the motive of an experienced pathologist such as Dr. Kirschner to do the things that should never be done?

2648. There was also some criticism of Dr. Haglund's work, but he dismissed it on a basis that the critics were younger and less experienced.[5800] An expert panel found that the criticisms of Dr. Haglund's work did not jeopardize its scientific validity,[5801] regardless of his admission that there was some speeding up in exhumination and collection the materials for investigation. These irregularities should cause the Trial Chamber to be cautious when entering the muddy waters of determining the number of persons executed on the basis of forensic evidence. In the domestic judiciaries of the democratic countries that support this Tribunal, such evidence would likely be inadmissible.

2649. Instead of finding more accurate data about the date of death, Mr. Janc advised the use of aerial photos and "other conclusions which are important for investigation to

[5796] Ruez, T.23882; Haglund, T.23939
[5797] Haglund, T.23940
[5798] Haglund, T.23881-2
[5799] Haglund, T.23883
[5800] Haglund, T.23962-3
[5801] Haglund, T.23879

ascertain or to find out what happened."[5802] However, in establishing whether some casualties are connected with the fall of Srebrenica or not, the main issue about the remains is not only what happened, but when it happened. So, without the correct knowledge about previous combat in the area, as well as about combat earlier in July 1995, the Prosecution experts and investigators left unanswered the main question: who of the remains died in the executions after the fall of Srebrenica in July 1995, and who died in combat the same month and the previous years? "Illogical" and "unusual"[5803] findings, unacceptable in a criminal case in any judicial system, remain unexplained.

2650. A similar response was obtained from J. R. Ruez, when asked: "Where were the combat casualties buried in July 1995?" Mr. Ruez answered, "This I don't know. I repeat, we were not looking for combat casualties but to identify the detention sites, the nearby execution sites, and the successive burial places of these prisoners."[5804] That myopic view of the situation is exactly what was wrong with the Prosecution's approach and the lack of basic information of the Prosecution's experts.

2651. Prosecution witness Jose Baraybar concluded that the missing persons had been found in gravesites that were in vicinity of disappearance, not detentions and the executions sites as suggested by the Prosecution. This implies that those recovered from the graves along the route were combat casualties that had been buried in the nearest grave site.[5805] The same witness confirmed that when saying "killed in 1995 in Eastern Bosnia-Herzegovina", he did not know who were possibly unlawfully killed and those who were killed in combat.[5806]

2652. Mr. Baraybar was not able, based on his own observations, to determine the nature of people being buried, meaning whether they were killed in combat or not.[5807] But, he assumed that these persons could have died only in the presence of a barrel pointed in their heads, no matter whether they died from a bullet or from a heart attack because of the threat: "I think that one of the things we do is to determine the most probable cause of death. In other words, certainly you do not know, and you will never

[5802] Janc, T.27015
[5803] Lawrence, T.22482
[5804] Ruez, T.24001
[5805] P4034, p.3
[5806] Baraybar, T.22382
[5807] Baraybar, T.22382-3

know, whether the person died of a heart attack when he saw the gun and -- and died and then you shot a dead body.[5808] "Therefore in this case, what you are reconstructing is the most probable, not the most possible scenario."[5809] Mr. Baraybar therefore assumes that every recovered body died in an execution, no matter from a bullet or a heart attack because of stress. That is the result of a complete ignorance of the facts that there were 45 months of a fierce combat prior to the fall of Srebrenica with many casualties.

2653. Accepting that the combat operations occurred close to the Srebrenica Related Graves (specifically at Ravni Buljim, Kamenica, Sandici and Konjevic Polje and Udrc), Mr. Janc founded his opinion that the persons killed in this combats hadn't been buried in the SRG-s because – in particular in the Nova Kasaba and Cerska graves – evidence of ligatures and blindfolds had been found in some graves, attached to some remains. Yet there were those without blindfolds or ligatures buried in that same grave. Mr. Janc ignored the facts that there were many other graves closer to those combat areas, and that a majority of those buried there didn't have either ligatures or blindfolds.

2654. Defence expert Dr. Dusan Dunjic, Professor of University and pathologist with a remarkable experience in forensics and thousands of appearances before courts, contested most of the pathological findings for very good reasons, since the results couldn't be verified. This is the "condition sine qua non": that any expert at any time will come to the same conclusion on the basis of an expert report of autopsies.

2655. Dr. Dunjic contested the validity of the Prosecution expert reports particularly concerning the time of death. In the *Popovic* case, the Trial Chamber undermined Dr. Dunjic's assertions on the basis that it was not such important to establish a precise time of death for each of the thousands of exhumed from the SRG. However, the charges against President Karadzic concern alleged unlawful killings between 12 and 23 July 1995, not legitimate combat killings or deaths from other causes during 1992, 1993, 1994, and during July 1995.

2656. Since a number of exhumed remains undoubtedly resulted from regular combat during the previous years and months, what could be more relevant for the Indictment than a time of death? Dr. Dunjic didn't have a task of establishing an exact number of

[5808] Baraybar, T.22399
[5809] Baraybar, T.22400

individuals executed, while the OTP experts did. Dr. Dunjic found that the prosecution's evidence didn't support the conclusions the prosecution wants the Trial Chamber to reach.

2657. Dr. Dunjic's task was not to establish the exact time of death of the missing persons, of burials, or of the ways they died, but to find out whether the work of the prosecution's experts was done in a scientific way that could be verified from their reports. He concluded that the reports didn't meet that standard. His work must not be diminished on the basis of an assumption that the precise time of death is not important.

2658. The time of death may not be important in establishing a demographic loses of the war, but it is crucial in establishing the liability of the accused for a specific part of the victims within a time frame clearly delineated in the indictment, i.e. in establishing what bodies undoubtedly were a consequence of the alleged executions. The importance if the issue extends to the fate of one accused man and also the fate of many people and the entire region's future.

2659. The *Popovic* Trial Chamber thought that Dr. Dunjic's report and testimony on this issue showed no consideration of the multiple mass executions that took place in and around Srebrenica in July 1995. This reasonable sensitivity of the Chamber and real events also requires that the prosecution's evidence be considered in the light of 45 month-long military combat activity. The possibility that perhaps even a majority of the casualties in the area of exhumations may belong to those events, instead of the executions after the fall of Srebrenica, was never even considered by the prosecution's experts.

2660. The same Chamber considered the exhumation reports together with the other evidence before the Trial Chamber. However "the other evidence before the Trial Chamber" was not complete, since neither the Prosecutor nor some other participants obtained the essential parts of the puzzle. The deficiencies alleged by the *Popovic* Trial Chamber in Dr. Dunjic's evidence is much more appropriately directed to the Prosecution and its experts.

2661. The fact that the OTP experts, without proper information, were supposed to conclude when a recovered body had died, before or after the fall of Srebrenica, is illustrative from the response of Dr. Richard Wright:" Now, my understanding of the

history is that people were taken away from Srebrenica, and all the people that I excavated were taken away from Srebrenica, and I don't think for that reason that they died before the fall of Srebrenica."[5810] This approach ignored the fact that thousands of persons leaving Srebrenica with the aim to fight had died in combat during the years of war prior to the fall of Srebrenica as well as the fact that thousands of them died during the July 1995 combat.

2662. In addition to the document from the FCMP and BH Army,[5811] another document of the same provenance[5812] depicting the number and structure of the gravesites from which 8.831 people had been exhumed in the period 1995 -2006 in the same area of the ten municipalities as P4841. In the mass graves (more than five bodies) in the entire region there had been exhumed 7.503 remains out of which 1.518 were found in the graves that hadn't been in connection with the Srebrenica July 1995 events. An additional 1.313 were found in individual (one body) graves, which obviously had no connection with any executions; 15 bodies had been recovered from "common" graves (up to five bodies), also not connected to Srebrenica 1995 event. Simple mathematics shows that those 1.518 and 1.317 plus 15 make sum of 2.846 persons that had been recovered from the gravesites which hadn't any connection with Srebrenica, while the remaining 5985 people had been found in the graves that contained bodies of people buried throughout the entire war, among which some from Srebrenica too. Even if none of them died in 1992, 1993, 1994 and before July 1995, and even if all who died in July 1995 died in executions, it wouldn't be 7.000 or 8.000.

2663. Dr. John Clark acknowledged difficulties in establishing whether the injuries found in the remains had occurred in life, but he drew an inference that those people had been found in the mass graves, they must have died somehow, even from poisoning, suffocation etc, and even if it was not predominantly from violence, then it must be from some causes that are no longer present. However, he concluded that all of them sustained shots, no matter during life or after death.[5813] First of all, this couldn't be concluded without tissues and traces on bones. Further, this confusion comes only from the lack of

[5810] Wright, T.22291
[5811] P4841, pp. 1-71
[5812] D2229, pp. 1-14
[5813] P04105, p.3; *Popovic et al,* TJ at para 615, fn. 2248

proper information on what had happened in the area during several years of war. Had the witnesses had a single clue that there could be victims from combat at a different times, there would be no anomalies in their reports.

2664. More accurate answers have been given by the pathologists themselves when asked if they could determine the time of death from the bodies recovered in the ground. The Prosecution experts conceded that they found in every mass grave a large variation in the degree of degradation of bodies in the same grave – some bodies were completely skeletonised and others were fleshed.[5814] The most likely explanation for this is that the persons died and were buried at different times.

2665. However, Prosecution witnesses attempted to explain such a wide scale of differences in degradations of remains by a "micro-environment" It was explained that if a body was closer to the surface and had access to oxygen or soil conditions, it would decompose differently.[5815] However, after being confronted with other possibilities Dr. John Clark acknowedged that he was also willing to accept that an alternative possibility for some of them could be that they were put in a grave at a different time or they were from a different period of time.[5816]

2666. After being informed for the first time during his testimony in this case about the long lasting combat activities in the area, Dr. Clark testified that it was possible that during clean-up of bodies from the terrain, certain graveyards were topped up rather than new ones being dug. He further acknowledged that digging up and filling up of graves in a subsequent clean-up of the terrain would have also contributed to fractures of older skeletons.[5817] Such re-openings of graves (with an aim to bury new combat casualties) would be one way of damaging skeletons or damaging bodies already in a grave.[5818]

2667. Some thought that the different stages of decomposition of bodies within the same grave could be because of different conditions in primary and secondary graves, not the difference in time that had elapsed from the death involved.[5819] However, they had no evidence of the existence of such variable conditions in a single grave, or that all bodies

[5814] Manning, T.25882
[5815] Manning, T.25883
[5816] Clark, T.22712
[5817] Clark, T 22714
[5818] Clark, T.22714
[5819] Lawrence, T.22505-6

from that part had the same degree of decomposition. There was no evidence which bodies had been recovered from which part of a grave, and only that would help the theory, if at all.

2668. To his credit, Dr. Lawrence confirmed that this is one explanation, but there are other possible explanations.[5820] He further confirmed that it wasn't possible to establish how long a body spent on surface between death and burial,[5821] which would certainly have an impact on the time of degradation. Therefore, the theory about different times of death and burials remains the most logical conclusion, and could certainly not be excluded.

2669. Overseeing examination of the remains in the Visoko morgue, where they delivered in bags, the experts were in a position to speculate from where the remains left so long on the surface came from. They concluded that they must have been from Kozluk, because it was inappropriate to leave surface remains there until the following year.[5822] However, nobody informed the experts that there were combat casualties as well. So they had to speculate with every unusual finding--being "unusual" because it didn't fit in the model established by the Prosecution. Plausible explanations existed in the range of decomposition from relatively well preserved with skin to completely skeletonised bodies they found at the Dam and Liplje sites. Instead of speculating that the Dam site and the Liplje were unusual in that they were very coarse material and there seemed to be an awful lot of damage to the material, hence the disarticulation and decomposition, the prosecution's experts could have accounted for the differences more easily had they been informed that combat had taken place in the area.[5823]

2670. However, in the total absence of cooperation of the OTP experts with investigators with the Republika Srpska,[5824] the one-sided investigation led to illogical conclusions.

2671. As an example, the Bljeceva mass grave, for which even Mr. Janc admitted to be with the multiple burials, is sufficiently significant to rebut this pattern in the Prosecution expert reports. In the Bljeceva grave 120 remains were exhumed of persons

[5820] Lawrence, T.22509
[5821] Lawrence, T.22500
[5822] Lawrence, T.22447-8
[5823] Lawrence, T.22512
[5824] Lawrence, T.22465; Clark, T.22725

who went missing in different months of 1992, mainly in April, May and June, and only 32 remains of the people that went missing in July 1995.[5825] Not only was there a new burial or burials in 1995, but in the 1992 there were many separate burials on different days and months in the same grave. Had the Prosecution experts been properly informed, they would have found these results less "peculiar".

2672. How the OTP investigators and experts acted in darkness is completely evident from the description of the exhumation of smaller, solitary (one body) or group (up to five bodies) graves, which evidently couldn't be associated with any execution. For instance, the site known as Nova Kasaba 08 (NK-08), Jose Baraybar's team formulated the following hypothesis: people were shot in that area close to the roads and then were removed mechanically from there to a grave., Having found willow tree leaves associated with the bodies, they concluded that those bodies were, "for whatever reason", in contact with the only willow tree found in that area. They went along the stream, far from the grave, found the only willow trees, and concluded that this person died there and was transported to the grave.[5826]

2673. "By whatever reason" is not a satisfactory explanation, and there would not be any confusion if Mr. Baraybar just for a moment took into account the possibility that "people were shot in that area" during a combat, and then buried in the closest known grave site, which is much more realistic than the alleged execution somewhere far from the grave, and then transporting the body to be buried.

2674. The site of Nova Kasaba 7 looked to be an open unfilled trench excavated by a front loader and was exhumed on the 22 of August 1999.[5827] A male between 31 and 65 years of age was recovered as well as a number of shelling casings of smaller weapons and bullets.[5828] It was obvious that this was a trench from which somebody fired and one of the combatants got killed, and was buried at the spot. The OTP experts found small graves even in the courtyard of a private home, with only two bodies. Was it a result of the alleged executions? The same goes to all of these small graves throughout the area, along the routes of the two armies' excursions before, as well as during July 1995.

[5825] P4853, pp. 2-6
[5826] P4029, pp. 48-50
[5827] P4029 p. 42
[5828] P4029 pp. 42-3

2675. In the *Popovic* case, the Trial Chamber acknowledged that the "forensic reports do not generally imply a precise time of death of those buried in the SRG-s".[5829] The degree of decomposition of bodies, which at a same grave differed from an initial saponification to a complete skeletonisation, can be explained by understanding that the time of death and burial differed too. [redacted].[5830] By understanding that the bodies exhumed from the mass graves may have been 1992 fatalities, the difference in the degree of decomposition can be easily understood. It is only when blindly adhering to the formula that exhumed equals executed that one confronts anomalies which cannot be explained.

2676. This would be the most natural and probable reason for such big differences, found in almost every single grave, since there was a continuing struggle between the 28th Division and the VRS brigades throughout the war time of 45 months. The bodies of those who died in the open battles from the first day of the war, as well as in numerous excursions of the Muslim forces into the Serb territory, had to be either exchanged or buried. It wouldn't be likely that anybody would bury an enemy soldier on his own property rather than in an already existing grave. [redacted].[5831]

2677. Dr. Lawrence confirmed other limitations of the findings, making it impossible to conclude whether a body was that of a fighter or non-fighter on the basis of the injuries, direction of fire,[5832] time of death and other elements. He also agreed that it was impossible to ascertain if a certain wound was inflicted by fire-arms before or after death.[5833] He allowed as how there could be more than one cause of death in many cases,[5834] particularly in a case of divided individuals, when a cause of death was

[5829] D03893,p121; *Popovic et al,* TJ Vol. 1 at para 610
[5830] [redacted]
[5831]
[5832] Lawrence, T.22498-9
[5833] Lawrence, T.22495-6
[5834] Lawrence, T.22496

established for a body bags rather than each individual.[5835] Fixing the cause of death was also complicated when some changes to bones happened, during their exhumation or during the reburial process.[5836]

2678. Other anomalies, such as why some persons had on the lower parts of bodies more clothing than it is normal for the middle of July,[5837] could also be explained by the fact that these graves held the bodies of people who had died earlier in the war. The prosecution certainly can't rule out the possibility that many persons found in the mass graves died in the previous years.[5838] The doctrine of "*in dubio pro reo*" makes it impossible that the Prosecution benefits from all these uncertainties and requires that the Trial Chamber adopt a conclusion that exhumation does not necessarily equal execution.

2679. The location of artifacts found among the remains, such as identification documents, military materials, money and other valuables also indicates that the individuals were probably not prisoners when killed, since it was standard procedure to remove personal property from prisoners. According to VRS regulation about possession of personal belongings by a prisoner of war, or any prisoner, was forbidden.[5839]

2680. According to VRS regulation regarding the procedure during the detention or arrest of persons, all personal items should be seized, apart from clothing and footwear.

2681. Identification documents were confiscated from prisoners because they could have enabled a POW to escape and easily pass any control. Valuables, such as money, jewels, and decorations, were confiscated from prisoners because they could have been used to bribe somebody.

2682. However, at many of the mass graves, all kinds of identification documents and valuables were found. For example, Dr. Lawrence confirmed that there were pens, razor blades, cigarette lighters, notes, glasses, papers, handkerchiefs, watches, keys, a metal box, purses, jewellery, personal papers. prayer beads, a knife, coins, earrings, flint stone, and a ring.[5840] None of these things would be in their possession had the persons been

[5835] Lawrence, T.22496
[5836] Lawrence, T.22502
[5837] Lawrence, T.22493-4
[5838] Lawrence, T.22514
[5839] D2243, p. 2
[5840] Lawrence, T.22496

captured prior to the time they died. The only inference for those with personal belongings is that they hadn't been a prisoner before they died.

2683. Dr. Wright also registered a range of items found in mass graves exhumed by his team. There were more than 50 bodies that possessed personal valuables such as cigarette tins, paper cards, documents, photographs, expensive watches, and religious articles.[5841]

2684. The dates shown on watches found in the mass graves were not indicative of the time their owners died. Out of ten watches, two of them didn't show a date and day consistent with the probable day of death, and it was explained as a process of changing date and day in the automatic watches had not been completed. That would mean that a watch adjusted the date, but for some reason not the day. Mr. Bayabar claimed that was more a malfunction of the watch than something else, but it is unlikely that those dates belonged to different years.[5842] It is not convincing evidence, since the two watches displayed as if a Tuesday was 13 and Friday the 8, which is not even close to be consistent with dates in July 1995.

2685. With respect to alleged blindfolds found in some of the graves, the Prosecution expert witness found that the blindfolds were roughly 60 millimeters wide, and the circumference around 550 millimeters, some of them were recovered around the head or eyes, some in vicinity of bodies. The material it had been made of was described as "Pink embossed, scalloped edges," and that it was a shiny material that did not have a flat surface, and had the unusual tassels of a squared shape.[5843] The majority didn't have knots, except a few - the rest seemed to have been made of one piece.[5844] The witness-expert agreed that the blindfold material appear to be a fabric of some luxury, an expensive one.[5845] This makes it less likely to be blindfolds improvised at spot, but more likely to have been headbands.

2686. The prosecution's expert was not acquainted with the customs of war and religious and cultural customs in the area. He was unaware of the practice of soldiers to carry a cloth designation of sorts that was normally placed on the upper arm in order to

[5841] P4000, pp. 29-32
[5842] Baraybar, T.22391
[5843] Lawrence, T.22469-73
[5844] Lawrence, T.22473
[5845] Lawrence, T.22474

avoid friendly fire. If found next to a body, this armband could look like a blindfold or a ligature.

2687. The prosecution's expert was also unaware of the practice of wearing headbands. Islamic fighters wore this sort of luxurious fabric as ribbons and headbands. [5846] When watching a video depicting the Muslim soldiers, the expert confirmed the presence of headbands on the soldiers.[5847]

2688. The recovery of a ready-made ribbon (without knots) made of a luxurious fabric, pink color of salmon, shiny like satin with multi-colored floral pattern, light blue material akin to satin, embossed and with an unusual tassels –strongly indicates that the cloth was used as a headband rather than a blindfold.

2689. Significantly, in the case of the two photos of one individual, while the body was at the site, in a grave, the cloth was tightly attached to his head. But when the same body was brought in a morgue, the headband was moved on his eyes, in order to present it as a blindfold.[5848]

2690. Dr. Clark concluded that definite blindfolds were present in 44 individuals (13% of cases), and possibly two more. All were from grave KK3, no other sites.[5849] Even if all of the cloths were blindfolds, the fact that 87% of the remains didn't have any, strongly indicates that the persons in the grave died at different times. The only logical inference is that the so-called "blindfolds" could not be used in establishing the number of possibly executed out of the total of recovered bodies.

2691. The ligatures found to be binding both wrists, not on one hand only, and not on an upper part of arms, where it could have been an identification band against a friendly fire, could be the most reliable indicator as to how many people had been executed. Dr. Clark found that the ligatures for binding the hands together were present in 140 individuals (41 % of cases) with a further 3 possibles; they were present also in 13 of the separate body parts,[5850] most probably those were bands for marking affiliation.

[5846] Lawrence, T.22475
[5847] Lawrence, T.22477
[5848] D2189, Manning, T.25878-1
[5849] P4103, p. 7
[5850] P4103, p. 7

2692. We can see that the same lack of fundamental information provided to the experts for exhumations existed with the Prosecution experts for pathology. They also had been informed only about the Srebrenica `95 related casualties, and not even about a possibility that among those were combat casualties. Prosecution expert witnesses heard about pre-July 1995 combat and combat casualties for the first time in the courtoom during this trial. Thus they had been limited in even probing, and consequently concluding about the causes, manners and times of events that resulted in these casualties. Working mainly in the morgues where the remains were delivered in plastic bags, the pathologists sometimes made a report pertaining to a bag, not a person.

2693. While cross-examining the few pathologists themselves, particularly on the cases they examined personally, the Defence was able to obtain certain clarifications. There was no use of examining Prosecution investigators who testified about the findings of other experts in pathology, since every pathologist is the only one responsible for the job done by himself. The reports of those who didn't testify were read, analyzed and interpreted by the investigators of the Prosecution, some of whom had no medical experience or professional qualifications.

2694. The autopsy reports didn't determine the data about years, months or any parameter concerning the time of deaths, time of burials, the manner of death in terms of combat/non-combat casualties, but rather concluded that those people died somehow, almost certainly on a violent way, the most probably from a firearms, shells, grenades, and almost certainly connected to the fall of Srebrenica 1995, because the Prosecution experts hadn't been properly informed about all the possibilities and circumstances of the deaths of those deceased and recovered. Rather, they had been misled to expect that the remains they explored belonged only to the prisoners executed in July 1995. Thus working in a "camera obscura", the experts confronted many illogical features, confusing facts and "impossible missions" to finalize their reports with moral and professional integrity. Some of them even didn't bother about that at all.

2695. There had been many irregularities and unusual procedures that compromise a large part of the pathology findings, such as Dr. Kirschner's irregular and unacceptable conduct that led to an investigation by an expert panel, as well as repeated involvement of Trial Attorney Peter McCloskey in the finalization of cause and manner of death as well

as editing of final autopsy reports. Dr. Haglund, himself, came under criticism, which he explained away by the fact that the critics were younger and less experienced. For the Defence, there are too many sensitive and peculiar happenings in such an important part of this criminal case. President Karadzic can only imagine how many similar things happened when the job was entrusted to the Bosnian Muslim institutions.

f. Conclusion : Exhumations do not Equal Executions

2696. Dr. Karadzic strongly condems any executions which took place after the fall of Srebrenica. Those who perpetrated such executions were traitors to Republika Srpska and everything it stood for.

2697. Dr. Karadzic does not know how many prisoners were executed after the fall of Srebrenica, and neither does the Prosecution. As seen above, there are more holes in the proposition that exhumations equal executions than in a piece of Swiss cheese.

2698. The number of persons who were executed is limited by the number of persons taken prisoner by Bosnian-Serb forces. Simply put, Serbian forces could not execute who they did not capture. The prosecution has failed to adduce any reliable evidence to establish that the number of prisoners captured by Bosnian-Serb forces was anywhere near the number that they allege were executed.

2699. The thesis that an exhumed body equals an executed prisoner does not hold. The *Krstic* Trial Chamber, and even the OTP's own forensic experts, have admitted the possibility that some of the men killed in combat may have been buried in Srebrenica related graves. As shown above, this Trial Chamber has heard evidence from a Bosnian Muslim who testified for the prosecution that he saw specific individuals killed in combat, and this trial chamber has seen DNA evidence from the ICMP proving that the remains of those same specific individuals were found in both primary and secondary Srebrenica related mass graves, which proves that the remains of soldiers killed in action and the remains of prisoners that were executed are co-mingled together in the graves.

2700. The numbers do not add up. Paragraph 47(a) of the indictment wrongly asserts that Bosnian Serb forces executed "over 7,000 Bosnian-Muslim men and boys." There is absolutely no reliable evidence to suggest that the Serbs ever captured anywhere close to that many prisoners. Moreover, there are reports from the UN that at least 3,000 men were killed in combat. Over 7,000 executed prisoners added to 3,000 combatants killed in

battle should add-up to more than 10,000 missing persons, but there were nowhere near that many people reported missing.

2701. Further doubt about the numbers is cast by the fact that 34,341 refugees from Srebrenica were registered by the WHO in Tuzla on 29 July 1995. Yet, according to various internal reports compiled by the Muslim civilian authorities in Srebrenica, and by the Bosnian Government in Sarajevo, the population of Srebrenica was somewhere around 37,000 people in 1995. They admit in their own documents that a population of 45,000 people was an exaggeration for the international community. The difference between the 34,341 refugees registered in Tuzla and Srebrenica's population of 37,000 is only about 3,000 people. Granted, these numbers are only estimates, but they still undermine the Prosecution's assertion that "over 7,000 Muslim men and boys" were executed into question.

2702. The Trial Chamber would be unwise and unfair to make a finding as to the number of persons executed after the fall of Srebrenica on the basis of such an uncertain evidence full of peculiarities that will be discussed for decades. Accepting and codifying an unrealistically inflated number would also be detrimental for life in the region. Such a finding is unecessary. The Prosecution itself has made this point when responding to challenges to the Trial Chamber's findings of the number of persons executed in the *Popovic* appeal.[5851] To embark upon this exercise would be a political, rather than a judicial, function. The Trial Chamber should simply conclude that the number of persons executed is simply not capable of determination beyond a reasonable doubt.

5. The Srebrenica Events Do Not Constitute Genocide

2703. The new facts developed during this trial that undermine the conclusion of a pre-existing plan to execute the men also undermine previous findings that the crimes of Srebrenica were committed with intent to destroy the Bosnian Muslims as such.

[5851] *Prosecution's Response to Popovic Appeal* (4 April 2011) at para. 273.

2704. The Trial Chamber in the *Krstic* case considered, as part of its determination of genocidal intent, the forcible transfer of the women and children and mass killings which it believed took place on 13 July, including those in Cerska Valley and on the banks of the Jadar River.[5852]

2705. On appeal, the Appeals Chamber also accepted that the genocidal plan had been in existence at the time of the forcible transfer of the women and children. It explained that "the international attention focused on Srebrenica combined with the presence of the UN troops in the area, prevented those members of the VRS Main Staff who devised the genocidal plan from putting it into action in the most direct and efficient way."[5853] It upheld that Trial Chamber's conclusion that evidence of the forcible transfer supported the finding that some members of the VRS intended to destroy the Bosnian Muslims in Srebrenica.[5854]

2706. However, as set forth above, we now know that there was no plan to execute the men at the time of the forcible transfer on 12-13 July, there were no killings in Cerska Valley during the day on 13 July, there is insufficient evidence as to the existence and participants of any killings at the banks of the Jadar River during the day of 13 July, and that the plan to kill the men only materialized after the Kravica warehouse mutiny. This changes everything.

2707. The facts upon which the Appeals Chamber called the events in Srebrenica by their "proper" name in 2004[5855] are now more developed with the passage of time. The Trial Chamber is therefore not bound by the Appeals Chamber's fact-based conclusion in *Krstic* that genocide occurred in Srebrenica.

2708. In addition, the standard employed by the Appeals Chamber was one of whether a reasonable Trial Chamber could have found an intent to destroy on those facts.[5856] The standard for this Trial Chamber is the reverse—whether the only reasonable conclusion from the facts is that there was an intent to destroy the group. A finding by this Trial Chamber on the evidence presented in this case that one reasonable conclusion is that the transfer and killings were not part of a plan to destroy the group, but were, in retrospect, a

[5852] *Krstic* TJ at paras. 573,595
[5853] *Krstic* AJ at para. 32
[5854] *Krstic* AJ at para. 33
[5855] *Krstic* AJ at para. 37
[5856] *Krstic* AJ at para. 40

series of improvised events culminating in the execution of prisoners, is not inconsistent with the Appeals Chamber decision in *Krstic*. All that decision held was that the Trial Chamber's different conclusion on the evidence in that case was not unreasonable.

2709. That different conclusions can be reached when employing different standards to the same facts is illustrated by the proceedings at the International Criminal Court concerning the situation in Darfur.

2710. The Report of the International Commission of Inquiry on Darfur presided over by former ICTY President Antonio Cassese, found no intent to destroy in Darfur. After finding that "[s]ome elements emerging from the facts … could be indicative of the genocidal intent", the Darfur Commission significantly considered that "there are other more indicative elements that show the lack of genocidal intent." The Commission went on to hold that "[t]he fact that in a number of villages attacked and burned by both militias and Government forces the attackers refrained from exterminating the whole population that had not fled, but instead selectively killed groups of young men, is an important element." The Commission also found that the fact that "the populations surviving attacks on villages … [were] not killed outright, so as to eradicate the group [but that] they [were] rather forced to abandon their homes and live together in areas selected by the Government" was also indicative ofthe absence of genocidal intent."[5857]

2711. In its first decision on the ICC Prosecutor's application for a warrant of arrest against President Al-Bashir of Sudan, the ICC Pre-Trial Chamber found that "the existence of reasonable grounds to believe that the GoS acted with genocidal intent is not the only reasonable conclusion of the alleged commission by GoS forces". The fact that "GoS forces did not attempt to prevent civilians belonging to the Fur, Masalit and Zaghawa groups from crossing the border to go to refugee camps in Chad " militated against genocidal intent. It declined to confirm the genocide charges.[5858]

2712. The ICC Appeals Chamber found that the Pre-Trial Chamber acted erroneously at the stage of considering an Arrest Warrant on the basis that "the existence of [...]

[5857] *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary General* (25 January 2005) http://www.un.org/News/dh/sudan/com_inq_darfur.pdf at paras. 513-18
[5858] *Prosecutor v Al-Bashir*, No. ICC-02/05-01/09, *Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al-Bashir* (4 March 2009) at paras.196-98

genocidal intent is only one of several reasonable conclusions available."[5859] Consequently, the Pre-Trial Chamber reversed its decision but held that, on the basis of its First Al-Bashir Decision, *one* of the conclusions was that there were reasonable grounds to believe that Al-Bashir harboured genocidal intent.[5860]

2713. Therefore, on the same facts, a Chamber can consistently find that the conclusion that there was an intent to destroy the group was not an unreasonable one, but that it was not the only reasonable conclusion. In that situation, an accused may be charged with genocide, but must be acquitted of it.

2714. A review of ICTY Trial Chamber decisions subsequent to *Krstic*, while not binding on this Trial Chamber, also shows that its finding of genocide rests on the erroneous assumptions of a pre-existing plan to execute the men at the time of the forcible transfer, and at the time when most of them were captured, and executions at Cerska Valley and Jadar River on 13 July.

2715. In the *Blagojevic* case, the Trial Chamber found that the forcible transfer and killings were all part of a single operation executed with the intent to destroy the Bosnian Muslim population of Srebrenica.[5861] The Appeals Chamber reversed Blagojevic's genocide complicity conviction on other grounds.[5862]

2716. In the *Popovic* case, the Trial Chamber's findings of genocidal intent rested heavily on its conclusion that the plan to murder the men was in existence before the final meeting at the Fontana Hotel on the morning of 12 July. It found genocidal intent from the "frenzied efforts to forcibly remove the remainder of the population",[5863] the "staggering" number of killings on 13 July, including Jadar River and Cerska Valley,[5864] and concluded that "the murder operation—from the separations to detention to execution and burial—was a carefully orchestrated strategy to destroy aimed at the Muslim population of Eastern Bosnia."[5865]

[5859] *Prosecutor v Al-Bashir*, No. ICC-02/05-01/09, *Judgment on the Appeal of the Prosecutor against the Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al-Bashir* (2 March 2010) at para. 39
[5860] *Prosecutor v Al-Bashir*, No. ICC-02/05-01/09, *Second Decision on the Prosecution's Application for a Warrant of Arrest* (12 July 2010) at para.4.
[5861] *Blagojevic & Jokic*, TJ para. 677
[5862] *Blagojevic,* AJ at para.123
[5863] *Popovic et al,* TJ at para. 862
[5864] *Popovic et al,* TJ at para. 859
[5865] *Popovic et al,* TJ at para. 861

2717. When the facts are viewed in light of the evidence in our case, it is one reasonable conclusion that the idea for the executions of the men from Srebrenica only arose after the Kravica warehouse mutiny and that there was no pre-existing plan to destroy the Bosnian Muslims as a group. The transfer of the women and children had been completed by the time the idea arose and were therefore not part of a plan to destroy the group. The capture of every last Muslim man had been completed by the time the idea arose to execute the men and was therefore not indicative of an intent to destroy the group.

2718. Stripped of these elements, what happened after the fall of Srebrenica must be evaluated in an entirely new light.

6. Conclusion

2719. The execution of prisoners from Srebrenica was a horrible act that Dr. Karadzic condemns in the strongest terms. Nothing was more detrimental to the people of Republika Srpska and its leadership than those executions.

2720. Nevertheless, it is not the only reasonable conclusion from the evidence that the executions were committed with an intent to destroy the Bosnian Muslims as such. Therefore, the elements of genocide have not been established.

Chapter 2
FACTUAL FINDINGS ON THE CRIMES
Part 4

D. Hostages Component

1. Hostage taking facts

2721. On 15 May 1995, the Bosnian Muslims launched a massive attack in Sarajevo.[5866] The Bosnian Serbs withdrew heavy weapons from the United Nations collection points in order to repel this attack. As of 24 May, the UN reported seven violations of the heavy weapons exclusion zone by the Bosnian Muslims and 18 violations by the Bosnian Serbs.[5867] The Bosnian Serbs contended that they did not violate the weapons exclusion zone agreement because the weapons were needed for self-defence.[5868]

2722. The UN threatened to call in NATO air strikes against the Bosnian Serbs if the weapons were not returned.[5869] No such threats were made against the Bosnian Muslims, who also had weapons within the exclusion zone, but had the backing of the United States.[5870] The Bosnian Serb leadership, including President Karadzic, responded that if air strikes were launched only against the Bosnian Serbs, it would consider the UN to have entered the war on the side of the Bosnian Muslims and would detain UN personnel as prisoners of war.[5871]

2723. On 25 May 1995, at the request of the UN, NATO conducted an air strike against a Bosnian Serb ammunition depot.[5872] This air strike had a serious impact on Bosnian Serb efforts to repel attacks from Sarajevo.[5873] No air strikes were carried out against the Bosnian Muslims,[5874] who also had weapons outside the weapons collection points.[5875]

2724. As a result of the air strike, the UN and NATO were no longer impartial peacekeepers, but were in conflict with the Bosnian Serbs.[5876] **General Rupert Smith**

[5866] KDZ304, T.10496, T10529; Konnings, T.9913; KDZ182, T13061; [redacted]; D1118; KDZ196 T10732
[5867] Banbury, T13532; D1176, p.29
[5868] D717, p.4 para 1
[5869] Smith, T11367-68; P2267
[5870] T13534; D1176 p.33
[5871] T11151-52,55-56 ;D958; D988; T11355; P2264; T11884; P2451 at para.115
[5872] T11368
[5873] T13540; D1176 at p.61; D2762 at para.23
[5874] T11868
[5875] T11867; D1051
[5876] T11866; T11874; T11494

conceded that the air strikes against the Pale ammunition depot were not in self-defence.[5877]

2725. When the air strikes resumed the next morning, the VRS detained UN personnel on their territory, including three UNMOs in the liaison office in Pale.[5878] One of the VRS soldiers, Nicholas Ribic, spoke with UNMO and then UNPROFOR headquarters, threatening that if the bombing continued the VRS would start executing the UNMOs.[5879] Ribic made similar threats when detaining other UN personnel.[5880] Colonel Indic also communicated to UNPROFOR that the hostages would be killed if more targets were attacked.[5881] General Mladic told General Smith that he expected further air attacks and that it was his attention to use "hripe" as his answer.[5882]

2726. There is no evidence that President Karadzic either ordered or expected that such threats would be made.

2727. After the air strikes, **John Zametica** and **Momcilo Krajisnik** issued public statements that the UN had taken the side of their enemy and they had to treat the UN accordingly.[5883] President Karadzic also made statements indicating that the UN personnel had been detained as prisoners of war, but none of the statements contained any threats to the well being of the UN personnel.[5884]

2728. The VRS also considered the UN personnel as prisoners of war,[5885] and notified them that they were being treated as such.[5886]

2729. [redacted].[5887] [redacted]

[redacted]

[5877] T11873
[5878] T11085
[5879] T11088-89; P2170 at paras.27-28; T11372
[5880] T10750; T10835; P0049 at p.4; [redacted]
[5881] T11372
[5882] P2268 at p. 4, para. 3
[5883] T11885; D1055
[5884] T9917-18; D928; T13539; D1176 at p.60; T11886-88; D1056-57
[5885] T25713,21-22; P2137
[5886] [redacted]; [redacted]; T10766; T10822; T11116; T11163-64,67-68, 71-72,74; D989; P2178
[5887] [redacted]
[5888] [redacted]

[redacted][5889]

2730. Negotiations to exchange the Serb prisoners took place.[5890] The UN decided that the four BSA soldiers taken prisoner by the UN would not be released until UN prisoners were released.[5891] UN personnel were released between 3 and 18 June 1995.[5892] [redacted][5893]

2. Elements of Hostage taking

2731. President Karadzic is charged in Count 11 with hostage taking as a war crime in violation of Article 3 of the Statute.

Article 3 of the ICTY statute provides that:

> The International Tribunal shall have the power to prosecute persons violating the laws or customs of war…

2732. Article 3 of the ICTY Statute has been held to include the protections afforded by Common Article 3 of the Geneva Conventions.[5894]

Common Article 3 of the Geneva Conventions of 1949 provides in pertinent part:

> In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
>
> (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ' hors de combat ' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
>
> To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

5889 [redacted]
5890 [redacted]; P2269
5891 T11664; D1034
5892 P2156
5893 [redacted]
5894 *Prosecutor v Tadic*, No. IT-94-1-A, *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction* (2 October 1995) at para. 89, *Delalic* AJ at para.136; *Kunarac* AJ at para. 68

…
(b) taking of hostages

2733. Article 1 of the International Convention Against the Taking of Hostages provides:

> (1) Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage taking") within the meaning of this Convention.

2734. The Appeals Chamber has ruled in this case that the crime of hostage taking applies not only to civilians, but also to all persons not taking an active part in the hostilities.[5895]

2735. The Appeals Chamber has also ruled in this case that the crime of hostage taking applies to all persons who are the subject of threats after having been detained regardless of whether they were combatants or civilians,[5896] and that an accused's belief that UN personnel taken hostage were persons taking an active part in the hostilities was not a defence, but a mistake of law.[5897]

2736. The specific elements of hostage taking under Article 3 have yet to be addressed by this Tribunal.[5898] However, the elements of hostage taking at the International Criminal Court are:

> (1) the perpetrator seized, detained or otherwise held hostage one or more persons;
> (2) the perpetrator threatened to kill, injure or continue to detain such person or persons;
> (3) the perpetrator intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting

[5895] *Decision on Appeal of Trial Chamber's Decision on Preliminary Motion to Dismiss Count 11 of the Indictment* (9 July 2009)
[5896] *Prosecutor v Karadzic*, No. IT-95-5/18-AR73.9, *Decision on Appeal of Denial of Motion for Judgement of Acquittal for Hostage Taking* (11 December 2012) at para. 21
[5897] *Prosecutor v Karadzic*, No. IT-95-5/18-AR73.9, *Decision on Appeal of Denial of Motion for Judgement of Acquittal for Hostage Taking* (11 December 2012) at para. 22
[5898] *Decision on the Accused's Application for Binding Order Pursuant to Rule 54 bis (Federal Republic of Germany)* (19 May 2010) at para. 27; *Oral Decision on Accused's Motion for Judgement of Acquittal* (28 June 2012) at T28734

as an explicit or implicit condition for the safety or the release of such person or persons;

(4) such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities;

(5) the perpetrator was aware of the factual circumstances that established this status;

(6) the conduct took place in the context of and was associated with an armed conflict not of an international character;

(7) the perpetrator was aware of factual circumstances that established the existence of an armed conflict.[5899]

2737. In its *Decision on Six Preliminary Motions Challenging Jurisdiction* (28 April 2009), the Pre-Trial Chamber held that unlawful detention was also an element of the offence of hostage taking under Article 3 of the Statute.[5900] Unlawful detention is defined as the arbitrary deprivation of a person's liberty.[5901]

2738. President Karadzic contends that this element of unlawful detention has not been proven because the Bosnian Serbs were lawfully entitled to detain UN personnel as prisoners of war after they had become combatants by virtue of the NATO air strikes on the ammunition depot.[5902]

2739. The Pre-Trial Chamber was of the view that the element of unlawful detention could be established by the fact that the persons were detained for the reason of gaining an advantage or obtaining a concession.[5903] President Karadzic believes that this *dictum* was erroneous, because it entirely duplicates the third element of hostage taking, as mentioned above. If all that is required were that the perpetrator intended to detain the victim to gain an advantage or obtain a concession, the element of unlawful detention would be completely redundant and unnecessary.

2740. Likewise, the Pre-Trial Chamber's view that threats to injure or kill the victims, or acts of violence against them, could render the detention unlawful, appears unfounded. Whether a person has been taken hostage does not depend on how they are treated during their detention. Would a perpetrator be not guilty of hostage taking if he detained UN

[5899] International Criminal Court, *Elements of Crime,* section 8(2)(c)(iii)
[5900] Para. 65
[5901] *Kordic* AJ at para.116
[5902] For a discussion of the reasons why UN personnel became combatants, see *Appeal from Denial of Judgement of Acquittal for Hostage Taking* (25 July 2012),paras.43-51
[5903] Para. 65

personnel and conditioned their release upon an act by a third party, yet treated the UN personnel well in detention? The lawfulness of detention cannot depend on the treatment of the victim after they are detained. Mistreatment of a detained person is a separate crime and has nothing to do with whether one is guilty of hostage taking.

2741. Absent the element of unlawful detention, legitimate negotiations to exchange or release prisoners would constitute hostage taking. Such negotiations inherently threaten the continued detention of the prisoner unless a third party agrees to some condition. The UN's own conduct in detaining four Serb soldiers at the Vrbanja Bridge and threatening to detain them until UN personnel were released would fulfill all the elements of hostage taking. Therefore, it must also be established that at the time of detention, the perpetrator was not entitled under the law to detain the victim. If the perpetrator is so entitled, then there is no hostage taking. Mistreatment of the victim while in detention, such as use as human shields, forced labor, or assaults, are subject to prosecution as other forms of war crimes.

2742. After engaging in offensive air strikes, UN personnel became combatants and were lawfully detained as prisoners of war. Therefore, the element of unlawful detention was not met and the crime of hostage taking was not committed.

3. The Defence of Reprisals

2743. Even if the Trial Chamber finds that the elements of hostage taking have been established, the conduct of the Bosnian Serbs was justified by the defence of reprisals. The prosecution has the burden of establishing beyond a reasonable doubt that the defence of reprisals does not apply.[5904]

The Trial Chamber in *Martic* held that:

> In the law of armed conflict, belligerent reprisals are acts resorted to by one belligerent which would otherwise be unlawful, but which are rendered lawful by the fact that they are taken in response to a violation of that law committed by the other belligerent.[5905]

[5904] *Limaj* AJ at para 63(alibi); *United States v. Krupp, et al.,* in *Vol. IX, Trials of the Major War Criminals before the Nuremberg Military Tribunals under Control Council Law No.10, Nuremberg, October 1946-April 1949* (Washington: United States Government Printing Office, 1950), p.1436
[5905] *Martic* TJ at para. 465, *aff'd Martic* AJ at paras.263-69

The elements of the defence of reprisals are:

1. There must have been a prior violation of the law of armed conflict

2. A formal warning must be given prior to the act constituting a reprisal

3. The decision to take the act constituting a reprisal must be taken at the highest political or military level

4. The act constituting a reprisal must be proportionate to the initial violation of the law of armed conflict of the opposite party; and

5. The act constituting a reprisal must be exercised, to the extent possible, with the principle of protection of the population and the general prohibition of targeting civilians[5906]

2744. [redacted]”[5907] (emphasis added)

2745. General Smith admitted that the bombing of the Pale ammunition depot in May 1995 was not in self-defence.[5908] Therefore, this use of force by a peacekeeping operation was a violation of the law of armed conflict.

2746. President Karadzic also provided a formal warning that UN personnel would be targeted in the event of air strikes in a 9 May 1995 meeting with General Smith.[5909] President Karadzic operated at the highest level of the political leadership of Republika Srpska. The detaining of UN personnel was a proportionate response with the goal of ending the unlawful air strikes—which they did. No civilians were impacted by the detention of UN personnel, all of whom were military personnel on active duty.[5910]

2747. Therefore, all of the elements of the defence of reprisals have been met.

[5906] *Martic* TJ at paras. 466-67; *Kupreskic* TJ at para.535
[5907] [redacted]
[5908] T11873
[5909] P2264
[5910] T11882-83

2748. The prosecution claims that there are two additional elements to the defence of reprisals: (1) that the prior violation of the law of armed conflict be a violation of *jus in bello*, and not *jus ad bellum*, and (2) that the reprisals do not involve acts against detained persons.[5911]

2749. Neither of these elements appeared in the *Martic* and *Kupreskic* cases when the elements of the defence of reprisals were enumerated. Had these requirements for the defence of reprisals existed, they would presumably have been included in those elements. Therefore, there is no authority for the existence of the additional elements proposed by the prosecution.

2750. No case involving reprisals has ever limited the defence to prior violation of *jus in bello*. The plain text of the elements set forth in the *Martic* and *Kupreskic* cases apply to prior violation of "the law of armed conflict".

2751. Reprisals in response to *jus ad bellum* violations are not prohibited under international law. One of the primary reasons argued by the United Kingdom, in defending their recourse to reprisals against Germany in WWII, was Germany's invasion and occupation of the territory of peaceful States.[5912] In *Re Rauter*, the Netherlands Special Court of Cassation dealt with *the jus ad bellum* implications on the issue of reprisals. The court acknowledged that in general belligerents can resort to reprisals provided that they are of permissible nature, but further specified that the war waged by Germany on the Netherlands was aggressive. Therefore, the Netherlands was fully justified in applying reprisals against Germany.[5913]

2752. A more recent case, the *Preibke case* tried by the Military Tribunal of Rome in 1996 stated that reprisals "are to carry out an act in order to bring a violation to an end or to deter the commission of other violations [of international law]." It further stated that "a reprisal is based on the need to recognize the injured State a means of self-help allowing it to attack any interest of the offending State" and that the aim of reprisals is "for the

[5911] *Prosecution's Submission re: Notice of Special Defence as to Count 11: Reprisals* (5 March 2013)
[5912] *See* The Order in Council of 31 July 1940, pmbl.
[5913] *Re Rauter*, Holland, Special Court of the Hague, (4 May 1948), 15 AD 539–540.

cessation or non-repetition of an illegitimate injurious act."[5914] No limitation on reprisals to *jus in bello* acts was required.[5915]

2753. To lend further credence to this view, Professor Yoram Dinstein notes, "a State confronted with an armed attack is entitled to put in effect measures of defensive armed reprisals."[5916] Dinstein writes: "if Arcadian troops invade the territory of Utopia, it would be 'no less self-defense' for the Utopian armed forces to occupy an area belonging to Arcadia (in order to divert the military attention of the aggressor) than to resist the invading troops."[5917]

2754. Currently there is no widespread or uniform state practice that limits reprisals to *jus in bello* violations. For instance, France's LOAC Manual defines reprisals with the objective to "obtain the cessation of a violation committed by the enemy".[5918] Germany's Soldier Manual defines reprisals as "measures of retaliation, as such adverse to international public law, which a State may, as an exception, use against another State in order to induce the latter to stop the violation of international public law."[5919] Italy's IHL Manual writes "[t]he purpose of a reprisal is to induce the enemy to respect its obligations under international law."[5920] Switzerland's Basic Military Manual states that reprisals may be taken "to punish unlawful acts committed by the enemy Power and to bring them to a halt."[5921] Togo's Military Manual states that reprisals "are permitted to counter an unlawful act of warfare."[5922] Ukraine's IHL Manual states that reprisals may

[5914] Italy, Military Tribunal of Rome, *Priebke case*, Judgment in Trial of First Instance, (1 August 1996), Section 71
[5915] See also Italy, Military Tribunal of Rome, Hass and Priebke case, Judgement in Trial of First Instance, (22 July 1997), Section 4.
[5916] Yoram Dinstein, *War, Aggression and Self-Defence* 198 (3d ed. 2005)
[5917] *Id.* at 200 (citing W. Wengler, "Public International Law. Paradoxes of a Legal Order", 66 A.J.I.L 586, 591 (1972).
[5918] France, Manuel de droit des conflits armés, Ministère de la Défense, Direction des Affaires Juridiques, Sous-Direction du droit international humanitaire et du droit européen, Bureau du droit des conflits armés, 2001, p. 108.
[5919] Germany, Taschenkarte, Humanitäres Völkerrecht in bewaffneten Konflikten – Grundsätze, Bearbeitet nach ZDv 15/2, Humanitäres Völkerrecht in bewaffneten Konflikten – Handbuch, Zentrum Innere Führung, June 1991, p. 2.
[5920] Italy, Manuale di diritto umanitario, Introduzione e Volume I, Usi e convenzioni di Guerra, SMD-G-014, Stato Maggiore della Difesa, I Reparto, Ufficio Addestramento e Regolamenti, Rome, 1991, Vol. I, § 23.
[5921] Switzerland, Lois et coutumes de la guerre (Extrait et commentaire), Règlement 51.7/II f, Armée Suisse, 1987, Article 197(1).
[5922] Togo, Le Droit de la Guerre, III fascicules, Etat-major Général des Forces Armées Togolaises, Ministère de la Défense nationale, 1996, Fascicule III, p. 13.

be taken "in response to violations by the enemy State in order to stop unlawful actions by the opponent party to the conflict."[5923] The UK's LOAC Pamphlet states that "reprisals are permitted to counter unlawful acts of warfare."[5924] The US Air Force Commander's Handbook states that a "reprisal is an otherwise illegal act committed to persuade the enemy to cease some illegal activity."[5925]

2755. The Court of International Justice in *The Case of the SS Lotus* created a principle that State action is unlimited unless it directly contravenes an explicit prohibition of international law.[5926] There being no explicit or implicit limitation on the use of reprisals in response to a *jus ad bellum* violation, the recourse to reprisals was legitimate.

2756. The distinction between unlawful acts committed *jus ad bello* and *jus in bellum* is not applicable in this case because both were violated. The use of force by peacekeepers, who were present on the territory with the consent of the Bosnian Serbs, was a violation of *jus in bello* because it constituted a perfidious abuse of the cloak of neutrality in which UNPROFOR gained access to Bosnia.

2757. The Prosecution's argument that prisoners may never be the subject of reprisals is also unsupported in international law. In the original drafts of the Additional Protocols to the Geneva Conventions, Article 74 unconditionally prohibited reprisals against any persons or things protected by the Protocol.[5927] However, fierce opposition from a large number of countries led to the demise of such a broad provision in favor of specific prohibitions.[5928] Protocol I specifically prohibits reprisals against: the wounded, sick and shipwrecked;[5929] civilian population;[5930] civilian objects;[5931] cultural objects and places of

[5923] Ukraine, Manual on the Application of IHL Rules, Ministry of Defence, 11 September 2004, § 1.2.18.
[5924] United Kingdom, The Law of Armed Conflict, D/DAT/13/35/66, Army Code 71130 (Revised 1981), Ministry of Defence, prepared under the Direction of The Chief of the General Staff, 1981, Section 4, p. 17, §§ 14, 15 and 17.
[5925] United States, Air Force Pamphlet 110-34, Commander's Handbook on the Law of Armed Conflict, Judge Advocate General, US Department of the Air Force, 25 July 1980, § 8-4(b).
[5926] *The Case of the SS Lotus,* International Court of Justice Case No. 248 (1927), at para. 46
[5927] *See* Stanislaw E. Nahlik, Belligerent Reprisals as Seen in the Light of the Diplomatic Conference on Humanitarian Law, Geneva, 1974-1977, 42 *Law and Contemporary Problems* 36-66 (Spring 1978).
[5928] *See* 7 O.R. pp.109:CDDH/SR.51, para. 16. *See also* F. Kalshoven (1990). Belligerent Reprisals Revisited. Netherlands Yearbook of International Law, 21, pp 43-80. The general prohibition was rejected by 41 votes to 20, with 22 abstentions.
[5929] Article 20
[5930] Article 51
[5931] Article 52

worship;[5932] objects indispensable to the survival of the civilian population; the natural environment;[5933] and works and installations containing dangerous forces.[5934]

2758. While persons *hors de combat* are prevented from being "made the object of attack" under Article 41, there is no specific provision prohibiting reprisals against them. This lack of protection granted to persons *hors de combat* was not lost on those who drafted the Protocols. The representative of Poland, lamenting the ultimate failure of a general ban on reprisals, named to the Diplomatic Conference the categories of persons and objects not covered by a prohibition of reprisals and specifically mentioned enemies *hors de combat*.[5935] "The chief reason the Polish delegation insisted so vigorously on the inclusion of a *general* prohibition in Protocol I was to exclude the possibility of any such interpretation" that would allow unprotected people to become the objects of reprisals.[5936] However, the Polish delegate's proposal was voted down, thus evidencing an intent by the drafters that there be no prohibition on reprisals against persons *hors de combat*.

2759. The prosecution's argument also overlooks the fact that the gravamen of the offence is **taking** persons as hostages—conditioning their release and well being on the act of a third party. Even if reprisals were not available for various forms of mistreatment of prisoners—assault, use as human shields, and forced labor—President Karadzic is not charged with any of those crimes.

2760. Therefore, the prosecution has failed to meet its burden of establishing that the defence of reprisals does not apply to the crime of hostage taking as charged in Count 11.

4. Conclusion

[5932] Article 53(c)
[5933] Article 55
[5934] Article 56(4)
[5935] *See* Stanislaw E. Nahlik, Belligerent Reprisals as Seen in the Light of the Diplomatic Conference on Humanitarian Law, Geneva, 1974-1977, 42 *Law and Contemporary Problems* 56-57 (Spring 1978)
[5936] *Id.* at 57

2761. The Trial Chamber should re-affirm the decision of the Pre-Trial Chamber in this case that unlawful detention is an element of hostage-taking, and find that this element has not been proven beyond a reasonable doubt.

2762. Should the Trial Chamber find that the elements of hostage taking have been proven beyond a reasonable doubt, it should find that the defence of reprisals has not been ruled out.

2763. Therefore, President Karadzic should be acquitted of hostage taking as charged in Count 11.

Chapter 3

III. INDIVIDUAL RESPONSIBILITY OF RADOVAN KARADZIC

Part 1

A. Municipalities Component

1. Count One-genocide

a. President Karadzic is Not Guilty of Genocide in the Municipalities

2764. On 28 June 2012, at the close of the prosecution's case, this Trial Chamber, in an oral decision, granted Dr. Karadzic's motion for judgement of acquittal on Count One.

2765. The Chamber found that there was no evidence that the 1992 events in the municipalities were committed with an intent to destroy in whole or in part the Bosnian Muslims and/or Bosnian Croats.[5937] The Trial Chamber concluded that there was no evidence, even taken at its highest, which could be capable of supporting a conviction for genocide in the municipalities as charged under Article 4(3) of the Statute. It therefore entered a judgement of acquittal on Count One.[5938]

2766. On 11 July 2013, the Appeals Chamber issued its judgement reversing the Trial Chamber's acquittal on Count One. With respect to the *mens rea* of genocide, the Appeals Chamber held that since a non-JCE member committing genocidal acts need not possess genocidal intent, "it is the genocidal intent of Karadzic and other alleged JCE members, not the physical perpetrators of the underlying alleged genocidal acts, that is determinative for purposes of JCE I."[5939] The Appeals Chamber went on to hold that there was evidence in the trial record which, taken at its highest, could indicate that President Karadzic and other JCE members possessed genocidal intent.[5940]

2767. Now, at the conclusion of the case, when the burden of proving genocidal intent is beyond a reasonable doubt, there is no reason for the Trial Chamber to come to any other conclusion but that the evidence is insufficient.

[5937] T28768-69
[5938] T28769-70
[5939] *Judgement* (11 July 2013) at para. 79
[5940] *Judgement* (11 July 2013) at para. 100

2768. Evidence admitted in the defence case after the Appeals Chamber decision only re-enforces the Trial Chamber's earlier acquittal.

2769. **Miladin Nedic**, the member of Parliament whose address had been cited by the prosecution as an example of genocidal intent,[5941] testified that he could not understand how someone can make such a wrong interpretation of his speech as that proposed by the prosecution. He insisted that he never advocated the execution of Muslims.[5942] Mr. Nedic pointed to a later portion of his address not cited by the prosecution at which he explicitly stated "let us not kill women and children for wearing dimijas/Turkish trousers/, or whatever. I told a colonel that I am for a knightly warfare and not for genocide…"[5943] Mr. Nedic also stated that President Karadzic never gave any indication whatsoever of being in favour of destroying the Bosnian Muslims in whole or in part.[5944]

2770. **Sveto Veselinovic**, whose alleged statement to Witness KDZ051 was relied upon by the Appeals Chamber as evidence of possible genocidal intent,[5945] testified that he never made such a statement.[5946] He also testified that he never had a conversation with Dr. Karadzic in which it was stated that one-third of Muslims would be killed, one third would be converted to the Orthodox religion, and a third would leave on their own,[5947] and that those sentiments do not represent what he understood to be President Karadzic's views in any way, shape, or form.[5948] He testified that he never had any indication, directly or indirectly, that President Karadzic favored the destruction of the Bosnian Muslims in whole or in part.[5949]

2771. Nothing in the defence case, nor in the Rule 98 *bis* judgement of the Appeals Chamber, warrants the Trial Chamber to change its mind about genocide in the municipalities. Applying the standard of proof beyond a reasonable doubt, President Karadzic should be found not guilty on Count One.

[5941] D0092 at pp. 40-41
[5942] D4232 at para. 5
[5943] D4232 at para. 6 quoting D0092 at pp. 59-61
[5944] D4232 at para. 9
[5945] *Judgement* (11 July 2013) at para. 97
[5946] D4192 at para. 4
[5947] D4192 at para. 5
[5948] D4192 at para. 6
[5949] D4192 at para. 7

2. Count Three-persecution

a. There was no Criminal Objective to the Common Purpose of the Bosnian Serb leadership

2772. The charge of persecution in Count Three, as well as the charges in Counts Four through Eight, rests on a narrow bridge between two worlds. On one side of the bridge is a large and diverse group of Serb leaders alleged to have acted with a common purpose. On the other side of the bridge is a large group of Bosnian Muslim and Croats who fled or were expelled from Serb areas during the civil war in Bosnia.

2773. The narrow bridge is the allegation that the common purpose or objective of the Serb leaders was criminal—to forcibly transfer or deport Bosnian Muslims and Croats from Serb-held areas of Bosnia. As demonstrated in earlier sections of this brief, that was not the objective at all.

2774. The prosecution needs that narrow bridge in order to sustain the charges.

2775. If it is not established beyond a reasonable doubt that the Serb leaders had the objective that the crimes of forcible transfer and deportation be committed, then President Karadzic must be acquitted.

2776. If there are two reasonable interpretations of what the objective of the Serb leaders were, and one of them is consistent with innocence, then President Karadzic must be acquitted.

2777. From the origination of the JCE doctrine at the ICTY, in the *Tadic* case, it has been a requirement that the 'common plan, design or purpose', which is the object of the JCE, must amount to or involve the 'commission of a crime provided for in the Statute.'[5950]

2778. In the *Krajisnik* case, the Appeals Chamber held that the Trial Chamber had correctly required proof that "the JCE participants, including the accused, had a common state of mind, namely the state of mind that the statutory crimes forming part of the objective should be carried out." The Appeals Chamber emphasised that under this standard, there is no room to argue that JCE liability can attach for mere adherence to a lawful objective. The "bridge" that must be established between the JCE's objective and the crimes which were committed on the ground consisted of the fact that the common

[5950] *Tadic* AJ at para 227

objective involved the commission of crimes under the ICTY Statute and that the accused intended that those crimes be carried out.[5951]

2779. In the *Brdjanin* case, the Appeals Chamber emphasised that a person cannot be convicted under the JCE mode of liability without sharing the intent to commit a crime punishable under the ICTY statute. It held that a Chamber can only find that the accused has the requisite intent to commit a crime under the Statute if this is the only reasonable inference on the evidence."[5952]

2780. The Appeals Chamber held that:

> "Where all these requirements for JCE liability are met beyond a reasonable doubt, the accused has done far more than merely associate with criminal persons. He has the intent to commit a crime, he has joined with others to achieve this goal, and he has made a significant contribution to the crime's commission."[5953]

2781. Trial Chambers have acquitted the accused when the common objective of the accused's group was not established to have been the commission of crimes.

2782. In the *Haradinaj* case, the Trial Chamber held that the direct evidence before it was insufficient to conclude that there existed a joint criminal enterprise the objective of which was to commit the crimes charged in the Indictment.[5954] With respect to the alleged objective of forcible transfer, the Trial Chamber stated that it could not draw any conclusion with regard to the movements of the population because "in addition to those who fled out of fear, grounded or not, of being attacked by the KLA there were also those who fled out of general fear of being caught up in the armed conflict between Serbian forces and the KLA."[5955]

2783. In the *Limaj* case, the Trial Chamber held that the existence of a criminal object of the JCE, such as to mistreat detainees, had not been proven beyond a reasonable doubt. The Trial Chamber held that inasmuch as some of the perpetrators of the crimes came to the camp on an *ad hoc* basis and mistreated prisoners for personal reasons or revenge, the

[5951] *Krajisnik* AJ at para. 707
[5952] *Brdjanin* AJ at para. 429
[5953] *Brdjanin* AJ at para. 431
[5954] *Haradinaj* TJ at para. 475
[5955] *Haradinaj* TJ at para. 477

crimes could reasonably be the result of such motives, rather than a common objective among the authorities to mistreat the prisoners.[5956]

2784. Likewise, President Karadzic contends that the crimes of forcible transfer and deportation, which are alleged as the objective of the JCE in his case, were not the result of a common objective by Serb leaders, as charged in the indictment, but were the result of the preference of persons to live in areas controlled by their own ethnic groups, mixed with individual cases of forced expulsion based upon hatred or revenge.

3. Count Four—extermination

a. Extermination was Never the Object of any Joint Criminal Enterprise (JCE I)

2785. Extermination is the act of killing on a large scale. This element of "massiveness" is what distinguishes the crime of extermination from the crime of murder. The *mens rea* of extermination requires the intention of the perpetrator "to kill on a large scale or to systematically subject a large number of people to conditions of living that would lead to their deaths.[5957]

2786. The indictment charges extermination was one of its objectives of the Municipalities and Srebrenica JCEs, but not the Sarajevo JCE.[5958]

2787. In order to be found guilty of extermination under the JCE I form of liability, the prosecution must prove that President Karadzic had or shared the objective of killing Bosnian Muslims or Croats on a large scale. As set forth in the sections of this brief relating to Counts 1 and 2, there is simply no evidence that President Karadzic desired or agreed that non-Serbs be killed on a large scale—either in the municipalities or in Srebrenica.

2788. In the *Brdjanin* case, the Trial Chamber found that the joint criminal enterprise to expel Muslims and Croats did not include extermination as one of its objectives. Therefore, it found that Brdjanin could not be liable for extermination under JCE I.[5959]

[5956] *Limaj* TJ at para. 669
[5957] *Lukic* AJ at para.536
[5958] *Indictment* at paras.9,15,20
[5959] *Brdjanin* TJ at para.489

Likewise, even if the Trial Chamber finds that President Karadzic was a member of a joint criminal enterprise, extermination cannot be said to have been one of its objectives.

2789. In the *Krajisnik* case, the Appeals Chamber reversed Krajisnik's conviction for extermination under the JCE I theory of liability. It held that the Trial Chamber's failure to specifically find when and how extermination had become an objective of a policy of expulsion warranted Mr. Krajisnik's acquittal.[5960] In our case, the leap from expulsion to extermination simply can't be made on the evidence.

b. Extermination was not Reasonably Foreseeable to President Karadzic (JCE III)

2790. In the *Stanisic & Zupljanin* case, the Trial Chamber considered whether the crimes of extermination which occurred in eight municipalities were foreseeable to the accused. It found that they were foreseeable to the accused Zupljanin, who was on the ground in Banja Luka and had knowledge of the murders committed by some of his subordinate forces against the non-Serb civilian population and nevertheless continued to task these forces for operations involving the non-Serb population. However, it found that acts of extermination were not foreseeable to Minister of Interior Mico Stanisic, who was based in Pale.[5961]

2791. In the *Brdjanin* case, the Appeals Chamber considered whether it was foreseeable to Brdjanin that large scale killings would take place as a result of his actions as President of the ARK Crisis Staff, including issuance of decisions on disarmament of non-Serbs or his implementation of the Six Strategic Goals. The Appeals Chamber upheld the decision of the Trial Chamber that such crimes were not foreseeable to Brdjanin. If such crimes were not foreseeable to someone like Brdjanin, who was much closer to the events and the perpetrators, or to Stanisic, who as Minister of Interior had a duty to investigate crimes, then they certainly could not be foreseeable to President Karadzic.

[5960] *Krajisnik* AJ at paras.176-77
[5961] *Stanisic&Zupljanin* TJ at para.775

c. President Karadzic had no Knowledge of any Perpetrator's Intent to Exterminate (Aiding & Abetting)

2792. In the *Brdjanin* case, the Trial Chamber acquitted Brdjanin of extermination, finding that he was not aware that implementation of the Six Strategic Goals would necessarily include extermination.[5962] The Appeals Chamber upheld the acquittal because the Prosecution's claim that Brđjanin was aware that large-scale killings would occur and that his acts assisted the crime of extermination was "without basis".[5963]

2793. In the *Stanisic & Zupljanin* case, the Trial Chamber found that Stanisic was not criminally responsible for aiding and abetting the crime of extermination because despite the involvement of the police in the commission of extermination in some instances, there was no evidence that Stanisic was aware of the perpetrators intent to commit the crime of extermination. If such crimes were not known to Brdjanin or to Stanisic then it is more than reasonable to conclude that they were not known to President Karadzic in advance of their commission.

d. President Karadzic had no Reason to Know that Extermination Occurred or that it Went Unpunished (Superior Responsibility)

2794. In the *Stanisic & Zupljanin* case, the Trial Chamber found that there was no evidence to show that Stanisic knew or had reason to know that the crime of extermination was about to be, was being, or had been committed in the municipalities except with regard to the incident at Koricanske Stijene.[5964] For that incident, it found that Stanisic ordered an investigation into the crime at Koricanske Stijene shortly after having learned of the crime and had no reason to suspect that the investigation of that crime was not genuine. Therefore, it found that the Prosecution had not proved that Stanisic failed to take necessary and reasonable measures to punish the perpetrators of the extermination committed at Koricanske Stijene.[5965]

2795. In our case, there is no evidence that President Karadzic knew about any large scale killings in the municipalities except for Koricanske Stijene. With respect to that incident, the evidence is that upon learning of that incident, President Karadzic called the

[5962] *Brdjanin* TJ at para.477
[5963] *Brdjanin* AJ at para.495
[5964] *Stanisic & Zupljanin* TJ at para.788
[5965] *Stanisic & Zupljanin* TJ at paras.795-97

President of the Executive Board of Skender Vakuf, Vladimir Glamocic, from London on the night of the massacre. President Karadzic was enraged and demanded answers as to who was responsible for the massacre.[5966] Like Stanisic, he had no reason to believe that the authorities, including the Ministry of Interior or Ministry of Defence, if necessary, would not fully investigate. There is no evidence that anyone complained to him or put him on notice that there were any lapses in the investigation or prosecution of this crime. Therefore, like Stanisic, he cannot be found to have failed in whatever duty he may have had to punish the perpetrators of this crime.

e. Conclusion

2796. There is no evidence that President Karadzic planned, instigated, or ordered extermination. As for the other forms of liability, President Karadzic never contemplated that killings on a large scale would be committed and never condoned such killings. Even if the Trial Chamber were to find that a policy to expel Muslims and Croats existed, large scale killings cannot be shown to have been foreseeable from such a policy. This rationale resulted in the acquittals of Momcilo Krajisnik, Mico Stanisic, and Radislav Brdjanin for extermination, and compels the acquittal of President Karadzic on Count Four.

4. Counts Five and Six—murder

2797. President Karadzic's individual responsibility for murder is discussed in the section below concerning the individual municipalities.

5. Count Seven—deportation

2798. Deportation differs from forcible transfer in that it requires that the forced displacement of persons be across a *de jure* state border or, in certain circumstances, a *de facto* border.[5967] President Karadzic's responsibility for expulsions is discussed in the section relating to Count Eight. The focus of this section is whether international expulsions were contemplated or forseeable.

[5966] T20926
[5967] *Krajisnik* AJ at para.304

a. Deportation was Never the Object of any Joint Criminal Enterprise (JCE I)

2799. Even if the prosecution's allegation that President Karadzic participated in a joint criminal enterprise whose objective was the permanent removal of Muslims and Croats from Bosnian Serb-claimed territory were proven, there is no evidence that this objective included removing Muslims and Croats out of Bosnia. Indeed, the prosecution's case is that the Bosnian Serb leadership's goals were to divide Bosnia so that the Serbs, Muslims, and Croats each had their own territory within Bosnia. Therefore, the prosecution has failed to prove that the crime of deportation, as opposed to forcible transfer, was an objective of the joint criminal enterprise.

b. Deportation was not Reasonably Foreseeable to President Karadzic (JCE III)

2800. The prosecution has also failed to prove that it was foreseeable to President Karadzic that expulsions of Muslims and Croats to Serbia or Croatia would occur. Indeed, of the more than 200,000 Muslims who were allegedly expelled from Republika Srpska,[5968] organized expulsions across a border occurred on only two occasions. This demonstrates that expulsions across a border were insignificant and incidental and were not reasonably foreseeable.

c. President Karadzic had no Knowledge of any Deportations (Aiding & Abetting)

2801. The only instances of organized deportation for which evidence was adduced in this trial were the transfer of 1,800 Bosnian Muslims from Kozluk village in Zvornik municipality to Serbia in June 1992 and the transfer of 11,000 Bosnian Muslims from Bosanski Novi to Croatia in July 1992.

2802. There is no evidence that President Karadzic knew about these transfers in advance, and therefore he could not have aided and abetted these deportations.

[5968] P5010 at p.3

d. President Karadzic had no Reason to Know that Deportation Occurred or that it Went Unpunished (Superior Responsibility)

1. Kozluk

2803. [redacted].

2804. At that meeting, according to General Mladic's notebook, Marko Pavlovic, Commander of the Zvornik TO, allegedly said that they had expelled Muslims from Kozluk.[5969]

2805. President Karadzic ordered an investigation. The result of the investigation, as reported to him, was that the Muslims had demanded to be allowed to leave, otherwise they would consider themselves as hostages. [redacted][5970]

2806. [redacted].[5971] As described more fully in the section on Zvornik municipality, President Karadzic took steps to have those paramilitaries arrested and prosecuted. He requested the help of Prime Minister Milan Panic,[5972] and the special unit of the Yugoslavian MUP, to come Republika Srpska in July 1992 and arrest and expel the paramilitaries from Zvornik.[5973]

2807. Therefore, with respect to the deportation of Muslims from Kozluk to Serbia, President Karadzic cannot be said to have failed in his duty to punish the perpetrators. He requested an investigation and received the results, which exonerated the local officials. With respect to the paramilitaries who had been threatening the Muslims in Kozluk, Dr. Karadzic requested and received assistance from Yugoslavian federal

[5969] P1478 at p.254
[5970] [redacted]
[5971] [redacted]
[5972] P2848 at para.73
[5973] T15794

authorities that led to the arrest and expulsion of the paramilitaries in Zvornik within a month of the Kozluk expulsions.

2. Bosanski Novi

2808. There is no evidence that deportations from Bosanski Novi were ever called to President Karadzic's attention. Nor is there any evidence from which it can be inferred that he should have known of them. Reports from Bosanski Novi indicated that Muslims and Croats were going to Croatia under the auspicies of the UNHCR.[5974] Therefore, President Karadzic cannot be expected to have punished anyone in Bosanski Novi for deportation.

e. Conclusion

2809. There is no evidence that President Karadzic planned, instigated, or ordered deportation. As for the other forms of liability, Dr. Karadzic must be acquitted of deportation because he never agreed, contemplated, planned, instigated, ordered, aided and abetted, or condoned the expulsion of Muslims or Croats across a *de jure* or *de facto* border.

6. Count Eight—forcible transfer

2810. President Karadzic's individual responsibility for forcible transfer is discussed in the section below concerning the individual municipalities.

7. North-Eastern Bosnia

a. Bijeljina

2811. The crimes committed in Bijeljina municipality cannot be attributed to President Karadzic because they were acts committed without his knowledge, against his policies and by people outside of his control.

2812. There was no evidence that President Karadzic was informed of the killings of people in Bijeljina town, cruel and inhuman treatment in Batkovic Camp or the destruction of cultural property.

[5974] D0470, p. 10

2813. As the problems with crime and paramilitaries persisted, the Bijeljina Assembly passed a conclusion "to uphold the decision of the government and the Ministry of the Interior of the Serbian Republic of Bosnia and Herzegovina to send Special Police Units to Bijeljina to protect law and order in co-operation with the Bijeljina public security station in keeping with the regulations".[5975] At the time when the 48 alleged killings were committed, President Karadzic was not in a position of governmental authority and was not capable of taking any preventive or prosecutorial actions towards the suspects for these crimes.

2814. During the clashes with the extremists in Bijeljina, SDS and SJB personnel were instructed to guard public facilities and not to take part in the conflict.[5976] Efforts were made to stabilise life for all citizens regardless of their ethnicity.[5977]

2815. Immediately after the chaos in Bijeljina subsided, the BiH Presidency sent a delegation to establish all relevant facts and maintain peace, law and order.[5978] The RS authorities, under President Karadzic's directive, sent inspectors and delegations to help restructure the Bijeljina MUP.[5979] Protesting against the inefficient judicial system,[5980] President Karadzic dismissed officials and appointed people who supported law and order and the establishment of a multi-ethnic community.[5981]

2816. The paramilitaries acting on the territory of Bijeljina were not connected to any of the political parties.[5982] The structure and leadership of the Municipal Assembly, and the SJB remained unchanged and functioned independently of any influence from Arkan or other local paramilitaries.[5983] As President Karadzic did not tolerate paramilitary formations,[5984] the RS attempted to bring paramilitary groups under the command of the army, however this was met with resistance.[5985]

[5975] Milorad Davidovic, T.15770
[5976] P2629, pp.1-2
[5977] D3133, para 35
[5978] Filipovic, T.35806
[5979] D1428; P1478; Milorad Davidovic, T.15582, T.15702, T.15773-4
[5980] D1422; D1423; Milorad Davidovic, T.15680-2
[5981] D3089, para 19; Filipovic, T.35806; Kicanovic, T.34911
[5982] P2855, pp.1-6
[5983] D3141, para 21
[5984] D1433; D1446; D1447; D1448; P1478; P2855, pp.1-6; D3133, para 35; Milorad Davidovic, T.15478, T.15737, T.15771, T.15773-4, [redacted]; D. Spasojevic, T.35822
[5985] "At one point in time, there was a lack of respect for [President Karadzic's] order to have [Mauzer] re-subordinated to the [VRS]"; Milorad Davidovic, T.15813

2817. President Karadzic was not aware of crimes committed in Batkovic Camp in April 1992, as no reports were filed on the crimes that were alleged to have occurred.

2818. There is substantial evidence that President Karadzic took appropriate steps to prevent the destruction of Islamic places of worship by introducing a ban on their destruction in 1992 and later.[5986]

2819. President Karadzic continuously insisted on ensuring the protection of all citizens in Bijeljina on an equal basis and regardless of ethnicity.[5987] Through open investigation of the situation in Bijeljina[5988] and informing the international community of the steps taken, President Karadzic evidenced a concern for all citizens within the municipality.[5989] Further, President Karadzic visited the hospital in Bijeljina pleading for equal treatment of patients.[5990]

2820. In August 1992, the MUP leadership noted "the arrival of Muslim refugees and the return of those who had left Bijeljina before, influenced by Mr. Karadzic's[...]recent statements."[5991]

2821. In conclusion, President Karadzic is not responsible for any of the alleged crimes committed in Bijeljina during the war.

b. Bratunac

2822. The crimes committed in Bratunac municipality cannot be attributed to President Karadzic because they were acts committed without his knowledge, against his policies and by people outside of his control.

2823. Members of the Executive Board in Bratunac were never aware of Variants A and B, nor was it adopted.[5992]

2824. There was no evidence that President Karadzic was informed or could have prevented the killings that occurred, the mistreatment of detainees in the detention centres of Bratunac, or the destruction of cultural property.

[5986] D0106; D1979, pp.1-2; D1980, pp.1-2
[5987] D1428; P1478; Milorad Davidovic, T.15702, T.15773
[5988] D1430; D3145
[5989] D3145, p.1
[5990] D3089, paras 15, 20
[5991] D0473, p. 10 (Emphasis added)
[5992] D3194, para 27

2825. Miroslav Deronjic, Ljubisav Simic and other members of the Bratunac political leadership often invoked the name of President Karadzic; however, Deronjic, the President of the SDS,[5993] was known to adopt decisions of his own falsely claiming they were under President Karadzic's instruction.[5994]

2826. On 9 December 1992 President Karadzic personally visited Bratunac. He spoke with the battalion and company commanders in the Bratunac Brigade and representatives of the civilian authorities.[5995] He then addressed the local people, advising them to permit the passage of a humanitarian convoy heading to Srebrenica.[5996]

2827. Witnesses attest to the fact that President Karadzic and the authorities in Pale were not aware of the incidents that were happening in Bratunac.[5997] There were problems with internal communication within Bratunac, let alone that between the municipality and the RS leadership.[5998] Even when communication could be established, it was irregular and inadequate.[5999]

2828. Witnesses confirm that there were no written or oral orders given by the RS leadership or President Karadzic that would endanger the safety of Bosnian Muslims.[6000]

c. Brcko

2829. The crimes committed in Brcko municipality cannot be attributed to President Karadzic because they were acts committed without his knowledge, against his policies and by people outside of his control.

2830. There was no evidence that President Karadzic was informed of the mistreatment or killing of detainees in Luka Camp.

2831. The lack of effective government in Brcko resulted in paramilitaries gaining control over the town and fostering chaos from early May 1992.[6001] The situation was

[5993] Gusic, T.17792-3
[5994] He would use non-existent decisions to appoint people; D3126, para 29; J. Nikolic, T.35485-6
[5995] D3119
[5996] This convoy had previously been stopped by grieving mothers, who wished to prevent supplies from reaching the enemy; President Karadzic explained that these supplies were "intended for hungry children, women[,] elderly and weak who have no influence on their leadership[,] which has reduced them to […] suffering and misery." D3119; D3126, para 62; D3398, para 81; A. Tesic, T.35294
[5997] D3194, para 46; J. Nikolic, T.35480
[5998] D3194, para 51; Djukanovic, T.36198
[5999] D3194, para 51
[6000] D3194, para 51; D3398, para 81; Djukanovic, T.36147, T.36169-70; J. Nikolic, T.35480

intensified by the complete failure of communication between the municipality and the RS.[6002] Due to this communication breakdown, there was no possible way that Vojinovic, the President of the Brcko SDS, could have regularly reported to and received instructions from the leadership. [6003] The SJB experienced similar difficulties communicating with the Ministry of the Interior, due to the breakdown in telephone communication.[6004]

2832. It was not until mid-May that the local authorities could contact and ask the Republican organs for help.[6005] In response, the Republican organs sent Dragan Andan and Milorad Davidovic to help them regain control.[6006] Prior to their arrival, no reports were sent to the RS and no orders came from the RS to the municipality instructing them how to handle the paramilitaries or the Luka camp.

2833. The SJB officers testify that Jelisic, who committed most of the cruel and inhuman treatment at the camp, was not a member of the police force.[6007] Policemen were in great fear of him.[6008] Therefore, Andan suggested that all paramilitary formations should be expelled from the Brcko area in order for the SJB to function freely. [6009]

2834. There is no evidence that President Karadzic was present within Brcko municipality during the conflict; as such, the demonstrated lack of communication means that President Karadzic would not have been aware of the events unfolding at Luka Camp. Once communication was re-established and the municipal authorities' regained control, conditions in the camp drastically improved and it was soon disbanded.

[6001] D3003, para 21; D3072, para 20; D3073, para 29
[6002] P2763; D1582, p. 17
[6003] Ristanic stated that all communication with the republican level went through Vojinovic, who, due to his introverted personality, was not very fond of writing or talking with his associates about the things he would learn in Sarajevo; D1582, pp. 8, 17; Ristanic, T.16732-3
[6004] P2763; Ristanic, T.16750
[6005] D3073, para 30
[6006] [redacted]; Kaurinovic, T.34135, T.34147-8; Ristanic, T.16800
[6007] D3003, para 26
[6008] D1436, p. 3
[6009] D1436, p. 3

d. Vlasenica

2835. The crimes committed in Vlasenica municipality cannot be attributed to President Karadzic because they were acts committed without his knowledge, against his policies and by people outside of his control.

2836. The RS authorities did not enforce Variants A & B on the municipal authorities in Vlasenica, instead there "was a strong grassroot initiative" due to the difficulties faced by local leadership.[6010]

2837. There was no evidence that President Karadzic was informed of the mistreatment or killings of Bosnian Muslims in Vlasenica.

2838. The breakdown of communication in Vlasenica was the result of the destruction of telephone lines and the absolute domination of paramilitary forces in the region.[6011] Bosnian Muslim paramilitary units successfully implemented a total blockade of Vlasenica, through the destruction of bridges, roads and power lines leading to the municipality.[6012] This chaos led the Vlasenica Crisis Staff to make decisions independent of the authorities in Pale and Sarajevo.[6013] The few communications received by municipal authorities in Vlasenica emphasized the need to respect human rights and international conventions.[6014]

2839. People from the RS leadership rarely visited Vlasenica.[6015] [redacted][6016] [redacted][6017] Municipal authorities never heard President Karadzic order the mistreatment of Bosnian Muslims.[6018] In autumn of 1992, Djuric attended a RS meeting in Pale where President Karadzic spoke about the need to uphold the law, saying that the Serbs had to show the world that they were a humane and peace-loving people and that they were only

[6010] Stanic, T.34041
[6011] D2982, para 40; D3093, para 11
[6012] D2932, para 54
[6013] D3093, para 11
[6014] D2982, para 39
[6015] [redacted] D2982, para 41
[6016] [redacted]
[6017] [redacted]
[6018] D2967, para 28

defending their homes.[6019] President Karadzic reiterated that it was not the fault of the Bosnian Muslim and the Bosnian Croats that their leaderships had dragged them into war.[6020]

2840. It is evident that were serious failures in communication through the chain of command. The crimes were not committed at the orders of the superior command but at the initiative of individuals.

e. Zvornik

2841. The crimes committed in Zvornik municipality cannot be attributed to President Karadzic because they were acts committed without his knowledge, against his policies and by people outside of his control.

2842. The Serb leadership in Zvornik received the Variants A and B instructions around 20 December 1991.[6021] [redacted].[6022]

2843. There was no evidence that President Karadzic was informed of the mistreatment or killings of Bosnian Muslims in Zvornik, nor was he made aware of the destruction of cultural property.

2844. The extensive presence of uncontrolled paramilitary forces in Zvornik created a complete state of chaos where all forms of communication between the local and the central leadership were severely disrupted. Paramilitaries were the ruling force in Zvornik.[6023] Local Bosnian Serb authorities were powerless to oppose them[6024] as law-enforcement organs were in total disarray.[6025] President Karadzic did not possess any effective control over these paramilitary groups, nor did he have knowledge of their crimes.[6026] This has been explained earlier when discussing the JCE and President Karadzic's poisition vis-à-vis paramilitary forces in Zvornik, Bijeljina and Brcko.

[6019] In Vlasenica, municipal authorities only ordered actions that were defensive or liberating in nature; D3093, paras 59-1
[6020] D3093, para 60
[6021] D3658, p.2
[6022] [redacted]
[6023] KDZ610, T.27199
[6024] D3693, para 34
[6025] D3692, para 25
[6026] Bell, T.9787-9

2845. Local leadership had no contact with the neighbouring municipalities or the Serb leadership in Pale, as communications had been interrupted and the roads blocked. [6027] Communication with police at checkpoints was organised through couriers.[6028] People were afraid to submit reports.[6029] Zvornik was physically isolated until June 1992, when a corridor was opened.[6030]

2846. [redacted],[6031] prevented President Karadzic from gaining insight into the situation on the ground. Prosecution documents, alleging to prove President Karadzic's control of Zvornik are described as differing remarkably from the actual situation on the ground.[6032] It was not possible for the national authorities to gain insight into, let alone control developments on the ground.[6033] [redacted].[6034]

2847. [redacted].[6035] [redacted][6036]

8. North-Western Bosnia

a. Banja Luka (Manjaca)

2848. The crimes committed in Manjaca camp cannot be attributed to President Karadzic because they were committed without his knowledge, against his policies and by people outside of his control.

[6027] Until late July 1992, the only way of reporting to Bijeljina and Pale was by physically going there; D3693, para 32; D3724, para 39; Panic, T.19188-90
[6028] D3693, para 32
[6029] Panic, T.19190
[6030] However it was only possible to pass under military escort; Stanisic, T.46531
[6031] [redacted]
[6032] Bell, T.9931-6
[6033] Bell, T.9809-10
[6034] [redacted]
[6035]
[6036]

2849. President Karadzic was not informed of the killings of Bosnian Muslims or the cruel and inhuman treatment within the camp. Until June 1992, communication between the camp and the eastern part of the RS, Sarajevo and Pale did not exist due to the "corridor between us, so the lines were not up and running".[6037] As a result, "decisions had to be made at these local levels; in this case, at corps level".[6038] [redacted].[6039]

2850. In August 1992, President Karadzic wrote to the ICRC requesting further support in the form of food and hygiene products, admitting that '**help of that kind is more than necessary**'.[6040] Once the ICRC and Merhamet began regular visits, conditions improved.[6041]

2851. On the 13 June 1992, President Karadzic ordered that all soldiers in the VRS comply with international humanitarian law.[6042] Testimony from camp officials stated that their superiors regularly confirmed that the Geneva Conventions must be adhered to.[6043] [redacted];[6044] [redacted]

2852. In fact, in September 1992, President Karadzic repeated his 13 June 1992 order, ordering the local authorities to abide by the Geneva conventions both regarding the treatment of prisoners and keeping records of them for ICRC purposes.[6046]

2853. Many of those people not categorised as Prisoners of War were forced to remain within the camp because the region was characterised by active combat.[6047] Many of those who were released re-entered military service.[6048]

[6037] KDZ163, T.20788
[6038] KDZ163, T.20823
[6039] [redacted]
[6040] P3758, p.3 (Emphasis added)
[6041] P3303, p.123; KDZ163, T.20754
[6042] D1849; D0456, p.55; KDZ163, T.20775-6
[6043] KDZ163, T.20754, T.20774
[6044] [redacted]
[6045] [redacted]
[6046] D3241
[6047] In his testimony, Herbert Okun specifically stated that both the ICRC and the UNHCR found, by September 1992, that even when prisoners in Manjaca were released "the whole area is hostile, that even when the prisoners of the Bosnian Serbs are allowed out, they're in trouble, and the reason for that is that the area was largely populated by these people from Croatia, and it's to be expected that they were hostile"; Okun, T.1667

2854. In order to ensure the appropriate treatment of detainees, President Karadzic ordered that the Red Cross be given unrestricted access to Manjaca camp. President Karadzic reaffirmed this order on 7 August, stating 'we shall enable approach to your [ICRC] delegates on every location on our territory where there are persons detained'.[6049] Those who obstructed the ICRC would be fully investigated.[6050]

2855. The killings listed under **Schedule B1.1-3** were perpetrated by escorting police officers, and as such cannot be attributed to President Karadzic.[6051] Camp guards could not intervene in situations outside of the camp because they had an exclusive military duty towards the prisoners inside the camp. Those outside were not considered prisoners of war until the entered the gates and were admitted.[6052] The regulations did not entitle, permit, or enable them to intervene in the incident under military law.[6053] Military police were only permitted to intervene when "civilian police or any other unit attacked the camp, physically, militarily".[6054]

2856. **Schedule B1.4** is the only instance of wilful killing to take place within the camp. These deaths occurred in contradiction to the orders of President Karadzic and the senior management of the camp. As such, cannot be attributed to President Karadzic.

2857. There is no evidence that President Karadzic was informed about any of the killings.

[6048] KDZ163, T.20781
[6049] Unrestricted access was also granted to all other camps on RS territory; D1850; KDZ163, T.20778; P3758, p. 3
[6050] On the 22nd of October 1992, the Presidency issued a second order stating that they were aware that "some local police, military, and civilian authorities are completely ignoring this document and are obstructing' the ICRC, going on to 'demand that you immediately inform all your subordinate officers that the authorisation for the IRCC [sic] representatives affixed with my signature must absolutely be respected"; D0103
[6051] Escorting police officer Danilusko Kajtez, in Schedule B1.1, was known to be an incredibly unstable individual, who acted outside of official command and for his own benefit; [redacted]; Radinkovic, T.45334
[6052] Radinkovic, T.45337-8
[6053] Radinkovic, T.45337
[6054] [redacted]; Radinkovic, T.45340

b. Bosanski Novi

2858. The crimes committed in Bosanski Novi municipality cannot be attributed to President Karadzic because they were acts committed without his knowledge, against his policies and by people outside of his control.

2859. The Crisis Staff of Bosanski Novi had not been established on the basis of Variants A and B,[6055] although they were familiar with the document.[6056]

2860. Throughout the war, there was a lack of resources in Bosanski Novi leading to 'shortages of food supplies, electrical power cut offs, fuel shortages, irregular water supplies and so on'.[6057] There was no access to a regular phone service, leading the local government to resort to radio communication.[6058] As Pasic stated, "**nobody was in the position to know about this from the top echelons of the RS because all the communications lines were down**".[6059] He also confirmed that "there was no communication with higher authorities… **there was very little subordination between the local level and the republican level" during the war**.[6060] This lack of communication is reflected in the UN's conclusion that Banja Luka exercised the balance of military power in the region.[6061] There was no evidence that President Karadzic was informed of the mistreatment of detainees in the interrogation centres of Bosanski Novi or the destruction of cultural property. The Republic communications that did reach Bosanski Novi ordered that Bosnian Muslim citizens and prisoners were to be treated as per the Constitution.[6062]

2861. Pasic stated that "not for a single moment did legal authorities… [demonstrate] a willingness among them to forcibly remove people from their own houses".[6063] Not all Muslim villages in the municipality were attacked,[6064] excluding any possibility of a government plan to forcibly expel Muslims. "I don't see a reason why Serbs, if they were

[6055] Pasic, T.41012
[6056] Pasic, T.41013
[6057] D3849, para 15
[6058] Pasic, T.41036
[6059] In reference to the movement of Bosnian Muslim inhabitants in Bosanski Novi; Pasic, T.41074 (Emphasis added)
[6060] Pasic, T.41099 (Emphasis added)
[6061] P3860, para 11
[6062] P2632, p 8
[6063] Pasic, T.41049
[6064] For example, Blagaj Japra village remained intact; D3849, para 53

destroying, would make a selection to destroy one Muslim village and would leave the other villages?"[6065] The voluntary departure of Bosnian Muslims from Bosanski Novi confirms that there was no policy of forcible transfer.[6066]

2862. Groups of paramilitaries in the region acted outside of the control of the central authorities. Armed persons were instructed to either disarm or enlist within legal organs; these calls were repeatedly ignored and efforts of the TO and police to undermine these groups came to no avail.[6067]

2863. With the legal forces, instances of lack of discipline or misconduct were severely punished[6068] but could not be totally prevented.[6069] Due to the growing chaos in the region, Pasic found it was impossible for the government "**to ensure the safety of Muslims because there was no safety either for me or other Serbs**".[6070]

2864. The Municipal Assembly ordered that conduct towards detainees at Mlakve Stadium be humane and in line with established regulations on prisoners.[6071]

2865. Pasic stated that all mosques had been set on fire by unknown perpetrators that were not controlled by the government.[6072] He explained that the municipality construction workers brought down the minaret of the town mosque for safety reasons, as it had been badly damaged in previous attacks by unknown perpetrators.[6073]

2866. Within Mlakve Stadium, the fact of detention does not amount to cruel or inhuman treatment under Article 3,[6074] nor does the failure to provide adequate medical treatment. As such failure was not intended to cause serious mental or physical injury.[6075] While the conditions within the Stadium were bad, they were of a similar standard as that of the general population; the entire of Bosanski Novi experienced food and water shortages and the prosecution did not lead any evidence which would suggest

[6065] D3849, para 53
[6066] KDZ011, T.21329.
[6067] P2632, pp. 2, 9; Hanson, T.14839-41; Pasic, T.41040-1
[6068] P2632, p. 6
[6069] P2632, p. 8-9
[6070] D3849, para 17 (Emphasis added)
[6071] D1916, para 2
[6072] D3849, paras 43-5
[6073] D3849, para 43
[6074] *Mrksic et al.* TJ, para 524
[6075] *Mrksic et al.* TJ, para 517

otherwise.[6076] The Prosecution has not established that conditions within Mlakve Stadium caused serious mental harm, physical suffering, injury or constituted a serious attack on human dignity.

2867. The Prosecution has not drawn any evidence which illustrates that President Karadzic had knowledge of the events, nor have they demonstrated that he could have known. Throughout the trial, the court heard clear evidence that there was little to no communication between this municipality and the republic during the war. Furthermore, the Prosecution has failed to prove that a policy of persecution existed within the municipality. As such, the court cannot find President Karadzic guilty of the indicted crimes in Bosanski Novi.

c. Kljuc

2868. The crimes committed in Kljuc municipality cannot be attributed to President Karadzic because they were acts committed without his knowledge, against his policies and by people outside of his control.

2869. [redacted][6077]

2870. There was no evidence that President Karadzic was informed that the treatment of non-Serbs was not in accordance with the law.[6078] Nor has the Prosecution proved that he had knowledge of the destruction of property or of any plan to forcibly transfer the civilian population.

2871. The corridor to Kljuc was cut off so all communication and the supply of necessities ceased.[6079] The breakdown of roads, passages, communication lines, water and electricity made it hard for Kljuc authorities to function.[6080] In this chaos, it was difficult for the municipal authorities to know everything that was going on;[6081] the

[6076] *Hadzihasanovic & Kubura* TJ, paras 36-7
[6077] [redacted]
[6078] D4169, para 34
[6079] D4165, para 6 ; Jurisic, T.47120; [redacted]
[6080] D1738, p.4; Adamovic, T.44452, T.44494; Jurisic, T.47120; [redacted]
[6081] Jurisic, T.47129

Municipal Assembly could not participate in any business at the municipal level, nor could they perform their share of duties within the Ministry of Defence.[6082]

2872. During the war there were never direct links with the RS.[6083] [redacted][6084] and the Municipal Assembly of Kljuc never sent reports to the RS during the war.[6085] [redacted][6086] President Karadzic never had influence over the officials or bodies in the municipality.[6087]

2873. There was no plan to forcibly transfer non-Serbs out of Kljuc municipality. Those convoys that left Kljuc were organised by the private ROPS transport company,[6088] with police used for security reasons.[6089] As such, any harm that befell these convoys was a result of the actions of the private contractors and cannot be attributed to President Karadzic.

2874. **Schedules A7.2-3** did not reflect an order of the municipal authorities or President Karadzic. Following these events, the Crisis Staff held a meeting to discuss the murder of innocent Bosnian citizens.[6090]

2875. The killings, beatings and torture related to the interrogation centres were committed by individuals who were out of control, and who were punished for their misdeeds.[6091] The guards at the centres were often reservists and civilians,[6092] so their skills and training were inadequate to prevent crimes. President Karadzic never ordered or allowed such treatment to occur; nor did the municipal authorities devise or implement any plans against the non-Serb population.[6093]

[6082] Jurisic, T.47055
[6083] Jurisic, T.47119
[6084] [redacted]
[6085] D4169, para 15
[6086] [redacted]
[6087] The municipal organisations of the SDS did not meet during the war; D4169, paras 13, 15
[6088] D4165, para 13
[6089] D4165, para 13; D4169, para 27
[6090] D4363, para 23; Schedule A7.2
[6091] Adjudicated fact 937; D4268, para 23; Jurisic, T.47052-3; Kevac, T.46201
[6092] Adjudicated fact 938; D4363, para 25
[6093] D4169, para 13; Kalabic, T.44539

2876. There was no plan by the RS or Kljuc Crisis Staff to destroy religious buildings or personal property. Such acts were the work of extreme individuals, and were investigated and condemned.[6094]

2877. Throughout the war, there were various paramilitary groups present in Kljuc. These uncontrolled paramilitary groups were responsible for crimes against Bosnian Muslims and Bosnian Croats in Kljuc.[6095] Many of their actions were motivated by vengeance and personal gain.[6096] There were reports that in Velagici, Sanica, Humici and Peci, military personnel, police and local Bosnian Serbs who were not under the control of Bosnian Serb authorities, had appropriated Muslim property and begun combat operations against Bosnian Muslims in the area.[6097] These crimes were not ordered by Kljuc military command, and reported incidents were investigated and dealt with.[6098] The authorities condemned these actions[6099] and there were continued attempts by Bosnian Serb forces to gain control over paramilitaries and enforce discipline.[6100] In response to this lack of control, the Bosnian Serb civilian police were ordered to hold round-the-clock guard duty in settlements that had a predominantly Bosnian Croatian and Bosnian Muslim population for their protection.[6101]

2878. Within the army there was a lack of control and communication; [6102] "commanding officers showed a lack of responsibility in carrying out their daily assignments."[6103] There is evidence that Colonel Galic lost control as Commander over the military police, resulting in beatings and killings by rogue officers.[6104] Perpetrators of these crimes were arrested and prosecuted.[6105] The Kljuc Crisis Staff and the army were supposed to work together, however they functioned separately in practice.[6106] This is due

[6094] D1738, p.6; D4169, para 13; D4366; [redacted]
[6095] D4363, para 20
[6096] Adamovic, T.44452
[6097] D1738, p.2
[6098] P6143; Adamovic, T.44490-1; Jurisic, T.47053, T.47080; Kalabic, T.44586; Kevac, T.46200-1
[6099] Kalabic, T.44540; Kevac, T.46276
[6100] Jurisic, T.47113
[6101] Jurisic, T.47052
[6102] D1738, p.1; P6550, p.7
[6103] D1738, p.1
[6104] Kalabic, T.44580
[6105] Adamovic, T.44490-1; Jurisic, T.47053, T.47080; Kalabic, T.44586; Kevac, T.46200-1
[6106] Kalabic, T.44572

to insufficient coordination and cooperation between the Kljuc authorities, army command, military police and the civilian police.[6107]

2879. Perpetrators of crimes were identified and investigated, and rogue military personnel were handed over to the military security organs.[6108] Atif Dzafic confirmed that, in his experience, there were no cover-ups and ethnically mixed investigative teams investigated the crimes.[6109]

2880. President Karadzic never ordered, committed or aided and abetted war crimes against non-Serbian population of BiH during the war[6110]. There is no evidence of a widespread or systematic attack on non-Bosnian Serbs in Kljuc, which is necessary factor for a crime against humanity.[6111]

d. Prijedor

2881. The crimes committed in Prijedor municipality cannot be attributed to President Karadzic because they were acts committed without his knowledge, against his policies and by people outside of his control.

2882. The Crisis Staff was not established on the basis of Variants A and B; it was formed on a temporary basis and as a consequence of the inability of the Municipal Assembly to coordinate the organs of the municipality.[6112] Prijedor authorities did not acknowledge the ARK as a body whose decisions should be binding on them.[6113] As such, Variants A and B could also not be binding, nor was there a requirement to implement them.[6114]

2883. There was no evidence that President Karadzic was informed of the mistreatment or killings of detainees in the reception facilities,[6115] the destruction of cultural property or of any alleged plan to forcibly transfer the non-Serb population.

[6107] D1738, p.1; D1740, p.1
[6108] D1734; D1744; D4268, para 23
[6109] Former Commander of the Kljuc SJB; D1733; Dzafic, T.19657, T.19714-5
[6110] D4169, para 16; Jurisic, T.47053
[6111] Indictment, para 60
[6112] P3536; D4195, para 20; D4463, p.70
[6113] D4195, para 13; D4206, para 12
[6114] D4195, para 12
[6115] Miska Glava Dom, Ljubija football stadium, Ljubija iron ore mine Kipe, Omarska camp, Keraterm camp and Trnopolje camp; Schedules B-C

2884. The situation in Prijedor municipality was chaotic. All telephone lines had been cut,[6116] there was no electricity or water,[6117] roads were closed and the corridor to Serbia cut off.[6118] As a result, medicine and food was in short supply.[6119]

2885. The breakdown in communication between President Karadzic and legislative authorities in Prijedor led the Municipal Assembly and Crisis Staff to act independently.[6120] Those Republic decisions that did reach the municipality were followed only when considered appropriate;[6121] in all other cases decisions were made autonomously.[6122] There was no contact person between the Crisis Staff and the Republic.[6123]

2886. The prosecution failed to establish that forcible transfer of the Bosnian Muslim population in Prijedor occured. The chaos and lack of resources within the municipality endangered the lives of civilians and made life in Prijedor difficult for all. This led to a large number of people, of all ethnicities, leaving the municipality voluntarily.[6124] Despite the established departure protocol[6125] many left without Municipal approval,[6126] but nobody was prevented from returning to their homes.[6127] The municipal authorities received instructions regarding the right of the population to move freely within and outside of the municipality.[6128] The leadership of the Republic urged all citizens to remain within the municipality.[6129]

2887. Paramilitary groups contributed to the chaos and panic amongst the civilian population; carrying out actions motivated by revenge and personal gain.[6130] These groups targeted people of all ethnicities, threatening even the officials in Prijedor.[6131]

[6116] The problems in communication were such that neither Banja Luka nor Sarajevo could be reached by phone; [redacted]; Mesanovic, T.19829-30
[6117] Adjudicated fact 1098; D4229, para 30
[6118] D4138, paras 4-6; D4229, paras 15-6
[6119] D1928; D4138, paras 4-6; D4226, para 6
[6120] D1357, p. 6; D4195, para 14; D4206, para 12; D4229, para 22
[6121] P3528, p.10
[6122] D1357, p. 6; D4229, para 22
[6123] D2265, p.51
[6124] D4195, para 26; D4226, para 6; D4242, para 16; D4463, p.331
[6125] D4463, p.331
[6126] D4463, p.333
[6127] P3528, p. 68; D4138, para 35; Puhalic, T.43455
[6128] Krejic, T.20868
[6129] Krejic, T.20868
[6130] This included some Serbian paramilitary groups such as the *Suva Rebra* /Smoked Ribs/ unit; D4242, paras 14-5

2888. The armed forces were characterized by a loss of command and control and struggled to bring undisciplined perpetrators under control.[6132] The Army, TO and Police were unable to work together.[6133] Senior members of the police force who held control throughout the area,[6134] ignored Crisis Staff attempts to bring them under municipal control[6135] and causing fear amongst the other military police. [6136]

2889. The perpetrators of cruel and inhuman treatment and killings under **Schedules A and B** were paramilitaries and military and police personnel who acted contrary to orders by President Karadzic to respect human rights and obey International Humanitarian Law.[6137] Keraterm and Omarska Camps were established in response to the large number of crimes committed within the municipality;[6138] however the establishment of these camps was not discussed in Crisis Staff meetings.[6139] When municipal and republican authorities were made aware of killings, these were investigated.[6140]

2890. President Karadzic ordered that the ICRC be permitted to openly visit collection centres throughout August 1992. [6141] However, his policy of openness met with considerable opposition from local police forces who acted contrary to instruction.[6142] President Karadzic promoted the release of civilians held in reception centres, with the help of the ICRC,[6143] and this was supported by a number of local politicians.[6144] There is no evidence that President Karadzic was informed about the alleged crimes in Omarska or Keraterm.

2891. The crime at Koricanske Stijene was committed whilst President Karadzic was in London.[6145] Upon receiving a report on the incident, he convened an emergency

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[6131] D4010, pp.2-3; D4138, para 27; D4195, para 27
[6132] [redacted]; D2265, p.47
[6133] B. Subotic, T.40138-41
[6134] D4226, para 50
[6135] D4195, para 24; Mandic, T.45755
[6136] D4226 para 50
[6137] D0456, p.55; D1849; KDZ163, T.20776
[6138] P2640; D4195, para 23
[6139] D4463, pp. 137, 140
[6140] D4138, para 20; D4195, para 24; Mejakic, T.44284-5
[6141] D4138, para 25
[6142] For example, when journalists came at Omarska camp they stressed their approval from President Karadzic to access the whole mine complex. Simo Drljaca responded, "I don't care about that approval, you will visit what I tell you, and you can complain to Karadzic."; D4138, para 25
[6143] D2265, p.36; P3672, pp.55-6; Gruban, T.47508, T.47526
[6144] E.g. Stojan Zupljanin who ordered Simo Drljaca to dismantle Omarska; D4138, para 25
[6145] Schedule B15.6; B. Subotic, T.40173

session of the Presidency on an *ad hoc* basis. On 30 August 1992, President Karadzic ordered General Subotic to hold a meeting in Banja Luka.[6146] The Presidency ordered them to take immediate investigative action;[6147] entrusting the investigation to the appropriate authorities.[6148] The large number of national and international organisations involved ensured that no elements of the crime could be covered up.[6149] As shown earlier, thorough investigation followed,[6150] after which the President's role ended.

2892. The destruction of cultural monuments under **Schedule D** was carried out on an individual basis and resulted from combat operations in the region.[6151] Cultural property belonging to all ethnicities was damaged[6152] and the municipal leadership conducted on-site investigations into individual incidents.[6153]

2893. The crimes committed in Prijedor were not planned by the Serb leadership;[6154] but were perpetrated by individuals and groups which the authorities were unable to place under control. The chaos in the region resulted in a lack of consistent communication between municipal and republic authorities, leading to a large amount of independence. When the Presidency was informed of incidents, investigations were ordered and perpetrators sought for prosecution. As such, President Karadzic cannot be held responsible for any crimes committed in Prijedor municipality.

e. Sanski Most

2894. The crimes committed in Sanski Most municipality cannot be attributed to President Karadzic because they were acts committed without his knowledge, against his policies and by people outside of his control.

2895. There was no evidence that President Karadzic was informed of the killings of Bosnian Muslims, destruction of property, cruel and inhuman treatment in the interrogation centres or of any plan to forcibly transfer the civilian population.

[6146] Among those present at the meeting were prosecutors, judges and chiefs of police; Krejic, T.20867
[6147] D3695, para 242
[6148] B. Subotic, T.40108-9
[6149] B. Subotic, T.40174
[6150] D3105, para 37; P3763; D1881; Macar, T. 39496-7; P3764
[6151] D4229, para 21
[6152] The Kozarac orthodox church was also damaged; D4138, para 42
[6153] D4195, para 50; D4381; D4382; D4383; D4384; D4385; D4386
[6154] D2265, p.50; D4226, para 6; D4138, para 6

2896. The encirclement of Sanski Most led to shortages in food, electricity, medicine and medical supplies.[6155] These issues were exacerbated by power outages in the region[6156] and the cutting of postal and telegraph services, telephone lines and roads.[6157] [redacted].[6158] The Crisis Staff was forced to act independently for much of the war, and once communication was restored President Karadzic continued to insist upon the upholding of international humanitarian law.[6159]

2897. While the war was raging in all of BiH, the authorities of Sanski Most were still negotiating with the Bosnian Muslims.[6160] There was no plan to permanently remove non-Serbs from Sanski Most.[6161] Local members of the SDS testified that they never heard of any plan or order to commit crimes against Bosnian Muslim citizens at either a local or Republic level.[6162] The orders that were issued were for the protection of Bosnian Muslims.[6163]

2898. The general mobilisation enacted by the Crisis Staff led to a large number of untrained and inappropriate men being admitted to the armed forces.[6164] These men were commanded by others who had little to no experience or training, leading to the lack of control prevalent throughout the region.[6165] [redacted][6166] It was these uncontrolled groups who perpetrated the crimes alleged in

[6155] D4163, para 5
[6156] D4387, para 10
[6157] D4294, para 27
[6158] [redacted]
[6159] D4163, para 9; D4387, para 16
[6160] As noted by The Staff of the Supreme Command of the Armed Forces in Sarajevo. On 16 April 1992, the Bosnian Serbs offered to peacefully separate the municipality into Bosnian Muslim and Serb parts; the Bosnian Muslims refused; [redacted]; D3904, p. 1; D4214, paras 9-10; D4294, paras 15, 21; D4387, para 5
[6161] D4163, para 38; D4294, para 43
[6162] D4387, para 15
[6163] D4170, para 15
[6164] D4163, paras 10, 12; [redacted]
[6165] In January and February 1992 alone, 85 men had their wartime assignment annulled for being 'undisciplined' or refusing or evading obligations. Many reservists also refused their ranks; [redacted]; D3911, p.11
[6166] [redacted] SOS ; [redacted]; [redacted]

Schedule A and who inflicted the plunder and wanton destruction of property alleged by the prosecution. During this period of 'anarchy',[6167] a number of Bosnian Muslims from outlying villages sought shelter in the sports halls and school of Sanski Most, and were protected by the civilian police.[6168]

2899. During the conflict the existence of paramilitary groups and shortages within the region led to large portions of the population to leaving Sanski Most. There was no plan to permanently remove non-Serbs from this region as all those who wished to remain were permitted to do so, as evidenced by the 1993 Census.[6169]

2900. Throughout the war period, the municipal authorities attempted to prevent, report and prosecute those responsible for crimes, regardless of ethnicity.[6170] Members of the army openly advocated the punishment of soldiers who committed crimes against non-Serbs.[6171] No one ethnic group suffered from the hard conditions and poverty of war more than another[6172] and humanitarian aid was distributed equally to all who needed it regardless of their ethnicity or religion.[6173]

9. Sarajevo area

a. Hadzici

2901. The crimes committed in Hadzici municipality cannot be attributed to President Karadzic because they were acts committed without his knowledge, against his policies, and by persons outside of his control.

2902. There was no evidence that President Karadzic was informed of the mistreatment of detainees in the two facilities in Hadzici or of the alleged forcible transfer of Bosnian Muslims from Hadzici municipality.

[6167] D4294, para 65
[6168] There were no prisons or camps in Sanski Most; D4170, para 12; D4214, para 25; D4294, para 67; D4387, para 11
[6169] D4294, para 43; D4387, para 18; P6548
[6170] D3909, para 5; D3911, pp. 6-7; D4170, para 22; Keserovic, T.42141-2
[6171] D4163, para 39
[6172] D4163, para 44
[6173] D4163, para 40

2903. To the contrary, the evidence established that communication during the war between the local crisis staff in Hadzici and the republican authorities in Pale was very limited. In addition to technical problems, Hadzici was physically cut off from Pale because Bosnian Muslims destroyed the road towards it.[6174] The local organs were left to their own devices.[6175] It was impossible to get into contact with the Presidency in Pale.[6176] The organization of the SDS Hadzici was shattered and there was very limited communication with the central organs of the party.[6177] Similarly, the VRS could not receive orders from the RS leadership.[6178]

2904. Prosecution Witness Tihomir Glavas, the Chief of the Serb SJB, testified that "there /were/ obvious problems with the information transmission from the SJB level to the MUP level, in all lines of work. The system of communication /was/ broken".[6179]

2905. Even when the local authorities received instructions from the central organs, they had severe problems implementing them on the ground.[6180]

2906. Persons holding the highest positions in Hadzici testified that they never met President Karadzic in person or talked to him, and that neither he nor his political associates ever came to Hadzici.[6181] The Hadzici local leadership was never informed of the Variants A and B document.[6182]

2907. Mehmet Music testified that he saw President Karadzic in Hadzici on several occasions, however, his credibility is highly disputable due to the significant discrepancy between his statements in front of different courts.[6183]

2908. During a meeting in Pale attended by representatives of Hadzici municipality in first half of 1993, President Karadzic underlined that the municipal authorities had to look after every citizen, regardless of their nationality and party affiliation.[6184]

[6174] D3063, para 18
[6175] Glavas, T.11949, T.11954; D3063, para 18
[6176] Glavas, T.11974
[6177] Glavas, T.11954, T.11974
[6178] D2915, para 68
[6179] D1076, pp. 6-7
[6180] P2296, para 80; Glavas, T.11949
[6181] D2915, para 83; P2296, paras 4, 80; Pandurevic, T.30655-6; D3063, para 19
[6182] D2915, para 66; Samoukovic, T.34594
[6183] P2403, para 56; Music, T.12840-50, T.12853-77, T.12903
[6184] D3062, para 21

2909. Therefore, President Karadzic cannot be held responsible for any crimes committed in Hadzici municipality.

b. Ilidza

2910. The crimes committed in Ilidza municipality cannot be attributed to President Karadzic because they were acts committed without his knowledge, against his policies, and by persons outside of his control.

2911. There was no evidence that President Karadzic was informed of the mistreatment of detainees in the KPD Butmir or of the alleged forcible transfer of Bosnian Muslims from Ilidza municipality. During a visit to the KPD Butmir on 9 August 1992, no one informed President Karadzic about a criminal offence or object or complained about the way they were being treated.[6185]

2912. It is clear that paramilitaries operated at a local level and the government authorities did not support them.[6186] President Karadzic opposed any military formations apart from the army.[6187] Even though some of the paramilitaries were put under the auspices of the VRS, the paramilitaries were not tolerated by either the army or the MUP, and the MUP struggled to oppose the paramilitaries.[6188]

2913. The evidence establishes that communication during the war between the local crisis staff in Ilidza and the republican authorities in Pale was very limited. From April 1992, until the end of the year, the communications were practically severed so the RS leadership could not issue instructions.[6189] Communication between the local and central authorities was practically non-existent.[6190] The telephone lines on the entire southern area were cut off by the Bosnian Muslims and this remained the case until the end of the war.[6191] Moreover, the seat of the Government authorities changed frequntly so it was also difficult to communicate with them.[6192]

[6185] Skiljevic, T.36781
[6186] P2296, para 75; Glavas, T.12017
[6187] Kezunovic, T.13924; D1251, p. 4
[6188] D3112, para 45
[6189] D2852, p. 16
[6190] Glavas, T.11948; D3112, para 42;D2852, p. 16
[6191] Prstojevic, T.13813-4
[6192] Prstojevic, T.13759

2914. The Crisis Staff and War Commissioner in Ilidza acted independently. The tasks issued by crisis staffs very often differed from instructions and tasks received from the Ministry headquarters. [6193] There were a great number of meetings at a lower level since there was poor communication with the government and central authorities demonstrating the detachment of President Karadzic from the CS.[6194] Moreover, Nedeljko Prstojevic testified that on his own initiative, they established a War Commission without consulting anyone.[6195]

2915. Furthermore, President Karadzic issued several instructions to the local authorities about the necessity of lawful conduct.[6196] President Karadzic through mass media ordered that non-Serbs must not be abused and maltreated and if the same should happen that the perpetrators should be found without fail and answer for their misdeeds.[6197] Moreover, in a meeting on 17 April 1992 held at the Ilidza CS, President Karadzic emphasized that no citizen of Ilidza should be harmed in any way.[6198] Despite this, little of President Karadzic's instructions could be implemented in the field.[6199]

2916. When the RS did become aware of illegal activities, they attempted to stop them through the chain of command. An example can be seen when President Karadzic formed a state commission to investigate cases where employees of the SJB were known to unlawfully appropriate moveable and immoveable property. [6200] The investigation itself was in the hands of the MUP and the justice system and not in the hands of President Karadzic. [6201]

2917. Therefore, President Karadzic cannot be held responsible for any crimes committed in Ilidza municipality.

[6193] D3960, para 68
[6194] Prstojevic, T.13769
[6195] Prstojevic, T.13760; D01230, pp. 1-3
[6196] D3960, para 83
[6197] D2852, p. 15
[6198] Prstojevic, T.13672
[6199] D3960, para 83; P2296, para 80; Glavas, T.11949
[6200] D1671, pp. 1-2; Vujicic, T.18629
[6201] KDZ601, T.18631

c. Novo Sarajevo

2918. The crimes committed in Novo Sarajevo municipality cannot be attributed to President Karadzic because they were acts committed without his knowledge, against his policies, and by persons outside of his control.

2919. There was no evidence that President Karadzic was informed of the mistreatment of citizens in Novo Sarajevo by criminal groups. The high-ranking officials at Pale had not been informed of Veselin Vlahovic.[6202] President Karadzic and Momcilo Krajisnik never supported neither Veselin Vlahovic nor any other criminal.[6203] Moreover, on 5 June 1992, when Radomir Neskovic gave President Karadzic a report on the overall situation in Grbavica, it made no specific reference to Veselin Vlahovic himself.[6204]In fact, President Karadzic was informed that the local authorities were doing their utmost in protecting the non-Serbs.[6205]

2920. The evidence shows that due to the wartime chaos, communication was very much limited, if not completely broken.[6206] There were very few telephone lines that could be used to communicate with Pale.[6207] Moreover, the telephone lines to Pale were constantly overcrowded.[6208]

2921. There was no link between the Novo Sarajevo CS and the central authorities. Radomir Neskovic was in the CS from 10 April 1992 to 10 May 1992, when the Serbian forces took Grbavica 1 and he did not report to anyone in this period.[6209] The CS acted independently and did not care for the government instructions.[6210]

2922. No plan or instructions to divide along ethnic lines or persecute existed in Novo Sarajevo. The local leadership was not informed of the Variant A and B document[6211] and there were no contacts or any visits from government to Novo Sarajevo.[6212] Radomir

[6202] Neskovic, T.14318
[6203] D2651, para 3
[6204] D1278, p. 34; P2568, p. 126
[6205] D0885, p.3; Neskovic, T.14289-90
[6206] D1278, p. 32
[6207] Salipur, T.31656
[6208] Salipur, T.31656
[6209] D1278, p. 32
[6210] Neskovic, T.14278
[6211] D2651, para 2; Radan, T.31104; D2673, para 5; Salipur, T.31628;
[6212] Neskovic, T.14273

Neskovic testified that no one came to Sarajevo.[6213] No instructions, directions, or guidelines were given to municipalities from the higher levels of the party in late 1991 or early 1992.[6214]

2923. Local politicians such as Budimir Obradovic wanted to tackle crimes and improve discipline in the municipality, risking his life and was assassinated by the criminals.[6215]

2924. President Karadzic insisted that all those individuals who instigated or committed heinous crimes would be arrested and tried.[6216] He reacted with incredible anger to crimes that were committed in the whole city of Sarajevo.[6217] This shows that President Karadzic did not have a *mens rea* to transfer Bosnian Muslims out of Serbian parts of Novo Sarajevo.

2925. Therefore, President Karadzic cannot be held responsible for the crimes committed in Novo Sarajevo municipality.

d. Novi Grad

2926. The crimes committed in Novi Grad municipality cannot be attributed to President Karadzic because they were acts committed without his knowledge, against his policies, and by persons outside of his control.

2927. Due to the chaotic war state and the lack of organization, and evidence presented by the Prosecution, it is impossible to establish that there was a plan, or instructions to divide the population among ethnic lines and persecute individuals based on their ethnic group.

2928. As a result of the overlapping institutions of Novi Grad and Rajlovac, communication and organization between the local and republican organs was made even harder. The limited connection that did exist was used by the republican authorities, and

[6213] Neskovic, T.14273
[6214] Neskovic, T.14274
[6215] Radan, T.31098; D2673, para 31; Neskovic T.14319
[6216] D3563, para 9
[6217] D3563, para 9

specifically Momcilo Krajisnik to instruct the Rajlovac civilian leadership not to do anything dishonest with the captured men.[6218]

2929. Furthermore it was reported back that as many women, children and old men as possible were accommodated and that the military police were carrying out investigations.[6219] Additionally Momcilo Krajisnik instructed other soldiers as well that no one could do anything wrong to the Bosnian Muslims.[6220] Therefore, there could not have persued the implementation of a common objective against non-Serbs on this territory.

2930. Therefore, President Karadzic cannot be held responsible for the crimes committed in Novi Grad municipality.

e. Pale

2931. The crimes committed in Pale municipality cannot be attributed to President Karadzic because these acts were committed without his knowledge, against his policies and by people outside of his control.

2932. The Pale Crisis Staff was unaware of the Variants A and B instruction; as such nobody in Pale municipality implemented these instructions, nor did they act in accordance with them.[6221]

2933. During the war, in particular the period from April to December 1992, there were problems with communication routes in Pale.[6222] On 26 April 1992, the telegraph and telephone building in Vojvode Putnika Street was intentionally destroyed to prevent the municipal authorities communicating with the outside world.[6223] These problems were compounded on 29 April 1992 when, as a consequence of terrorist attacks on phone and fax lines, Pale experienced a complete information blockade.[6224]

2934. The prosecution failed to establish that forcible transfer of Bosnian Muslims from Pale occurred. The local and Republican authorities did all they could to convince

[6218] P2334 p.2
[6219] P2334 p.2
[6220] P2334 p.4
[6221] D2530, para 11
[6222] Vukovic, T.15115
[6223] D2531
[6224] D2532

non-Serbs that their departure was not necessary.[6225] President Karadzic stated on 26 July 1992, "nobody is touching them there, nor does anyone consider them to be second-rate citizens. But, on the contrary, our state officials are communicating with them trying to persuade them that they have no reason for fear and anxiety".[6226]

2935. Witnesses, who testified about beatings at the Culture Centre, testified that they were perpetrated by members of paramilitary units who managed to enter the gym during the night. All witnesses confirmed that Malko Koroman[6227] and the police treated the detainees humanely and tried to protect them. Thus, the prosecution has failed to prove that they were connected with the will of the municipal organs or the Republic.

f. Vogosca

2936. Crimes committed in Vogosca municipality cannot be attributed to President Karadzic because they were acts committed without his knowledge, against his policies, and by persons outside of his control.

2937. There was no evidence that President Karadzic was informed of the killings and mistreatment of detainees in the two facilities in Vogosca nor the appropriation or plunder of property and destruction of cultural monuments and sacred sites or the alleged forcible transfer of Bosnian Muslims from Vogosca municipality.

2938. To the contrary, the evidence shows that due to the difficult security situation, communication between the local and central authorities was very limited.[6228] Between the first armed clashes and mid-1993, Vogosca had no electricity or telephone.[6229] Contact with Pale was extremely difficult also because Bosnian Muslims placed road-blocks and attacked the vehicles on the only path connecting the municipalities.[6230] Later a road through Poljina, Vucija Luka and Sumbulovac to Pale was opened, but was also

[6225] D4368, para 47
[6226] Crncalo, T.1247
[6227] Chief of Pale SJB
[6228] D2678, para 8
[6229] D4027, para 7
[6230] D2678, para 8

risky because Muslim forces bombed it daily from their positions on Kobilja Glava.[6231] As a result, the local organs were left on their own.[6232]

2939. Defence Witness Nikola Poplasen, who was an adviser to the RS Presidency and the Commissioner in Vogosca, had several formal and informal meetings with President Karadzic between 1990 and 1995, hence being familiar with his political opinion and activity.[6233] He testified that no one ever conceived, organised or issued tasks for anyone to be persecuted based on their ethnicity.[6234] During their meetings, President Karadzic expressed the need to preserve peace and prevent interethnic bloodshed within the existing state framework.[6235] He persistently worked for that goal on the national as well as the multilateral level.[6236] He insisted on the abolishment of the single-party system in order to express all the various ethnic interests, as well as on the role of the existing law of the former Yugoslavia.[6237] Position of the republican organs, including Radovan Karadzic, was to treat members of all ethnic communities equally.[6238] All the measures that were implemented, such as the work obligation, applied equally to everyone, regardless of their ethnicity.[6239]

2940. Measures were taken by the central authorities to improve the situation on ground. In mid-July 1992, the Government undertook decision to send its delegation to Vogosca.[6240] The President of the Court and the Prosecutor formed a group, which went to a meeting in Vogosca and Ilijas with the task of setting up a detention ward for the purposes of the Lower Court in Ilidza.[6241] The delegation also had the task of setting up a misdemeanours court in Vogosca and Ilijas.[6242] Pursuant to the instructions by the Government, the presidents of the municipalities were familiarised with the instructions issued by President Karadzic concerning the treatment of the POWs.[6243] The delegation

[6231] D2678, para 8
[6232] D4027, para 22
[6233] D4027, para 18
[6234] D04027, para 5
[6235] D4027, paras 18, 19
[6236] D4027, paras 18, 19
[6237] D4027, paras 18, 19
[6238] D4028, p. 5; D4027, para 22 ; Poplasen, T.43621
[6239] D4031, p. 1; D4027, para 15
[6240] D3105, para 11 (Avlijas)
[6241] D3105, para 11 (Avlijas)
[6242] D3105, para 11 (Avlijas)
[6243] D3105, para 12 (Avlijas)

noted that the conditions in regard to the facility where the POWs were held were poor, and that they have to be improved in order to be compliant with the Law on Criminal Procedure and the Rules of Enforcement of Detention, as well as with minimum conditions prescribed by international conventions.[6244]

2941. Therefore, President Karadzic cannot be held responsible for any crimes committed in Vogosca municipality.

10. South-Eastern Bosnia

a. Foca

2942. The crimes committed in Foca municipality cannot be attributed to President Karadzic because they were acts committed without his knowledge, against his policies and by people outside of his control.

2943. There is no evidence that President Karadzic was informed of or permitted the mistreatment of detainees in the KPD or other places of detention within Foca, nor did he order the killing of Bosnian Muslims or the destruction of their cultural property.

2944. The municipal authorities never took part in the commission of any crimes on the territory of Foca Municipality. No orders to this effect were sent on behalf of the republican authorities.[6245] All crimes committed in Foca Municipality were individual acts of violence.[6246] These individuals took advantage of the inexperience of the municipal officials. The departure of Ostojic[6247] left Foca in the hands of the war commissioners and local leaders, none of whom were experienced in wartime governance.[6248] Ostojic later stated, "Foca was run by the Crisis Staff".[6249]

2945. Mitar Rasevic testified that from 1992 until 1993 Foca was totally isolated, both in terms of traffic and communications.[6250] On the second day of conflict, Bosnian Muslims cut the central power transmission line, effectively severing the communication

[6244] D3105, para 13 (Avlijas)
[6245] Mladjenovic, T.36700-1
[6246] Mladjenovic, T.36702
[6247] The only experienced municipal official left Foca; Mladjenovic, T.36636-8
[6248] Mladjenovic, T.36637
[6249] P6265, p. 6
[6250] M. Rasevic, T.46811

between Foca and the outside world.[6251] Regular power supply was only re-established in 1994.[6252] Telephone communication to Sarajevo was possible until the 22 April 1992, after which reports could no longer be sent or received.[6253] From September 1992, a fax machine provided the only means of communication between Foca and the outside world. The bulk of communications received were instructions and warnings from President Karadzic regarding the importance of respecting the Geneva Conventions.[6254] Pursuant to such instructions, the local military command would instruct their troops on the need to safeguard international humanitarian norms.[6255] The location of the KPD and the conditions of the roads meant neither the Ministry of Justice nor the RS was in a position to inspect the KPD.[6256]

2946. The civilian and military authorities and President Karadzic repeatedly issued instructions on the importance of respecting international humanitarian law.[6257]

2947. The ICRC and UNPROFOR had access to Foca; President Karadzic personally granted free movement to the ICRC throughout the Serb-controlled BiH territory.[6258]

b. Rogatica

2948. The crimes committed in Rogatica municipality cannot be attributed to President Karadzic because they were acts committed without his knowledge, against his policies and by people outside of his control.

2949. There was no evidence that President Karadzic was informed of the mistreatment of detainees in the collection centres of Rogatica; nor is there evidence of a concerted plan for the destruction of cultural property or the killing of Bosnian Muslims.

2950. After the outbreak of the war, communication between Rogatica and Pale was virtually non-existent due to the dilapidated state of the infrastructure and communication lines.[6259] These problems were exacerbated when the Bosnian Muslim forces torched the

[6251] Mladjenovic, T.36612; Pljevaljcic, T.32322
[6252] Mladjenovic, T.36617
[6253] KDZ379, T.18869-70
[6254] Mladjenovic, T.36612
[6255] Mladjenovic, T.36612
[6256] M. Rasevic, T.46811
[6257] Mladjenovic, T.36612
[6258] D1692
[6259] D2909, para 39; Batinic, T.33677

transformer station in July 1992. As a result Rogatica was left without electricity for five months.[6260] These factors made communication with the outside world near to impossible. Communication within the municipality was also poor, with the TO and ABiH spread misinformation in an attempt to subordinate the Rogatica SJB. The constant pressure placed on the SJB led it to function ineffectively.[6261]

2951. When the Rogatica municipality was finally able to reach President Karadzic, he emphasized the need for the municipal authorities to "negotiate, negotiate, negotiate" with the Bosnian Muslim forces.[6262] Following multiple messages from President Karadzic on the importance of respecting international humanitarian law,[6263] the municipal authorities took measures to improve the living conditions of the population.[6264]

2952. President Karadzic visited Rogatica in the autumn of 1993,[6265] when he met with the local leadership, but was not informed about any crimes committed against civilians.[6266]

2953. Throughout the war, Bosnian Serb municipal authorities repeatedly instructed the Rogatica Brigade to protect civilians, private and state property, to safeguard law and order and to respect all relevant international norms.[6267] On 22 October and 25 November 1992, the SRK and RS Presidency reiterated orders outlining the importance of respecting international humanitarian law and ordering troops to provide food and safety guarantees to Bosnian Muslims.[6268] The Bosnian Serb TO command was well versed in relevant legal provisions and instructed their troops accordingly.[6269] The Rogatica Brigade ensured authorities that they had respected the Geneva Conventions from the first day of combat.[6270]

[6260] D2909, para 35; D2930, para 25; Veselinovic, T.33912
[6261] P3275, p. 1
[6262] Batinic, T.33677
[6263] Ujic, T.33478
[6264] D2930, para 27
[6265] D2950, para 23
[6266] [redacted]; D2950, para 23; [redacted]
[6267] D2930, para 28; D2931, pp. 1-3; Batinic, T.33684
[6268] D2910, pp. 1-2; D2913
[6269] Lelek, T.34428
[6270] D2914; Ujic, T.33480

2954. The BiH State Court convicted several members of the Rogatica Brigade for crimes committed against Bosnian Muslims.[6271] These men had acted arbitrarily and in the absence of any orders from their superiors and "especially not from President Karadzic."[6272]

2955. In regards to **Schedule B16.2** while Dragoje Paunovic's guilt has been established, the evidence shows that President Karadzic and the RS leadership in Pale or the SRK were not aware of the incident.

c. Sokolac

2956. The crimes committed in Sokolac municipality cannot be attributed to President Karadzic because they were acts committed without his knowledge, against his policies and by people outside of his control.

2957. There was no evidence that President Karadzic was informed or permitted the killings or forcible transfer of Bosnian Muslims in Sokolac, nor did he order the destruction of their cultural property.

2958. During the conflict the Crisis staff never received instructions from the RS and had no obligation to report to higher authorities.[6273]

2959. From 27 July to 23 September 1992, a number of combat reports were sent by Commander Radislav Krstic,[6274] to the Main Staff of the VRS.[6275] These reports did not mention the killing of any innocent civilians. Active combat operations were aimed against armed Muslim extremists.[6276] The term "cleansed/mopped up" was only used in *combat* reports and when interpreted within its context, holds the presumption of counter attacks against these extremists.[6277] There is no evidence that President Karadzic ever received information about the alleged crime in Novoseoci.

2960. Also, President Karadzic never received information regarding the severe lack of cooperation and considerable friction between local civilian authorities and the

[6271] P6106, pp. 1-4; P6107
[6272] Veselinovic, T.45108
[6273] D3206, para 30
[6274] Commander of the 2nd Romanija Brigade
[6275] D1667; D3191; D3192; P5438; D. Obradovic, T.36131
[6276] Only deaths of Bosnian Serbs soldiers resulting from the conflict; D1667; D3191; D3192; P5438
[6277] D1667; P5438, para 1b; D3192, para 1c

Brigade Command.[6278] In contradiction, President Karadzic was assured that cooperation between the Brigade and civilian authorities was satisfactory.[6279]

2961. Under Article 7(3) of the ICTY Statute, President Karadzic's lack of knowledge and the absence communication illustrates that he was not aware of the occurrence of these incidents, and therefore cannot be held responsible.

[6278] D3206, para 59; Bjelica, T.36391-3
[6279] D3232

Chapter 3
INDIVIDUAL RESPONSIBILITY OF RADOVAN KARADZIC
Part 2

B. Sarajevo Component

COUNTS 9 AND 10: TERROR, UNLAWFUL ATTACKS

1. Radovan Karadzic is not guilty of crimes of terror and unlawful attacks under any of the modes of liability

a. President Karadzic was not adequately informed of the crimes of terror and unlawful attacks

2962. During the war, the effective two-way communication between the republican and military authorities on the ground was disrupted. Power cuts were frequent and telephone lines were often down.[6280] Moreover, the system of command and control did not work well due to the obsolete technical equipment at the disposal of the SRK. Roads also played an obstacle in communication and not everybody could receive orders due to large distances and weak communication.[6281]

2963. Consistent efforts were undertaken by the SRK and the GS VRS to improve the communication, since the functioning of the system in terms of providing and receiving information has been of the utmost importance.[6282] Notwithstanding this, the problems within the system of command and control persisted until the very end of the war.[6283] For these reasons, the communication from, as well as to, President Karadzic must also be considered in light of the chaos.

[6280] D3695, para 230
[6281] Milosevic, T.32871-2
[6282] D2839; D2840, p. 1; P1763, p. 1; Milosevic, T.32875-7
[6283] D2841; Milosevic, T.32878-9

2964. The SRK units never conveyed verbal or written information to higher commands to the effect that attacks against civilians in the city under Bosnian Muslim control had been carried out.[6284]

2965. The communication between General Galic and President Karadzic was limited to the TEZ agreement, Markale I incident and humanitarian issues, and practically non-existent in terms of carrying out combat activities.[6285]

2966. The daily combat reports from the SRK Command to the GS VRS were very detailed; nevertheless, information regarding the scheduled indictment incidents was not included in the reports for the corresponding dates.[6286] Similarly, in the report from the GS VRS to President Karadzic from 25 May 1994, Incident F-7 is not referred to.[6287] These reports were strictly confidential military documents, thus it can be safely assumed that their substance is a genuine indicator of the knowledge of their source, and correspondingly recipient.

b. President Karadzic did not contribute to achieving the objective of spreading terror among the civilian population of Sarajevo through a campaign of sniping and shelling

2967. Whenever the SRK engaged in combat operations, opened fire or responded to fire from Sarajevo city, it did not consider that as a widespread or systematic attack on civilians.[6288]

2968. SRK units were not aware of a Bosnian Serb policy of persecution, murder, or discrimination based on ethnic, religious, or other differences in regard to Sarajevo.[6289]

2969. President Karadzic prohibited the targeting of civilians by sniping or shelling.[6290]

[6284] D2354, para 9
[6285] Galic, T.37882
[6286] D2554; D2668; D2806; D3418; D3419; D3429; D3436; D3448; D3449; D3452; D3456; Galic, T.37393, T.37362, T.37437, T.37476, T.37499, T.37506-8, T.37510, T.37519, T.37521-2, T.37534, T.37539-40
[6287] D3453; Galic, T.37524-5
[6288] D2383, para 11; D2484, para 7; [redacted]; D2562, para 10; D2633, para 7; D2686, para 19
[6289] D2331, para 45; D2516, para 33; D2633, para 50; D2686, para 61
[6290] Milosevic, T.33115-6

2970. The SRK units were not aware that members, either at subordinate or superior command, had the intention to cause civilian casualties or spread terror among civilians located in the parts of Sarajevo under Bosnian Muslim control.[6291] General Galic never received orders to carry out attacks aimed at terrorising civilians.[6292]

2971. In a private telephone conversation, President Karadzic told his interlocutor that

> **We don't want the shells landing in the city** just like that**. Strictly forbid them falling in the city**.[6293]

c. President Karadzic did not further the objective of the JCE by obtaining, facilitating, encouraging and/or supporting the participation of Serbian paramilitary forces

2972. The higher authorities vigorously opposed the paramilitaries.[6294] The superior command endeavoured to resolve the problem of paramilitary units by disarming and expelling them or placing them under a unified command individually only if they had not committed a crime.[6295] The members of the paramilitaries, who committed crimes, were handed over to courts.[6296]

2973. President Karadzic's position was strongly against informal armed formations.[6297] Colonel Galic ordered that informal groups be identified, their activities condemned and that necessary measures be taken to prevent and punish them.[6298] General Galic strictly prohibited any form of paramilitary organising and issued an urgent order to all subordinate commanders to arrest, eliminate and, in case of resistance, physically liquidate all individual groups and potential units, which existed under no one's authority.[6299] General Milosevic testified that due to the efforts of General Galic, no

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[6291] D2622, para 13; D2387, para 45; D2331, para 25; D2484, para 9; [redacted]; [redacted] D2562, para 25; D2633, para 25; D2412, para 20; D2341, para 15; D2479, para 13; D2418, para 17; D2389, para 9; D2686, para 29; Milosevic, T.33144-5
[6292] Galic, T.37408-9
[6293] D4510 (Emphasis added)
[6294] D2562, para 61; D2633, para 49
[6295] D2774, para 34; D2519, para 38; Milosevic, T.32849
[6296] Galic, T.37627
[6297] D0611; [redacted]
[6298] D3485, p. 1
[6299] D3484, p. 3

paramilitaries were operating in the z/o of the SRK from the moment that he became its commander.[6300]

d. President Karadzic ordered adherence to the international laws of war and protection of civilians

2974. President Karadzic's position was consistent in that the international humanitarian and military law are to be adhered to at all times. He repeatedly stated that any violation of international humanitarian law would have harmful consequences on the history of the Bosnian Serbian people and chivalry of the Bosnian Serbian soldiers.[6301] He insisted that soldiers act in accordance with the Geneva Conventions and the other provisions of the international law of war and humanitarian war.[6302] From the start of the war to its end, President Karadzic, the GS VRS and the SRK Command issued many orders to this effect.[6303] Such instructions were then issued further down the command, up until the foot soldiers.[6304]

2975. For example, in April 1992, in an intercepted telephone conversation, President Karadzic agreed to the destruction of a sport's hall utilized by the Green Berets' main staff to store weapons and looted goods, on the condition that no civilians were present, demanding that "the important that there are no people there, that there won't be any civilians killed".[6305]

2976. John Zametica, President Karadzic's advisor for international relations of Muslim nationality,[6306] testified that sniping and shelling in general was disapproved of by President Karadzic.[6307] President Karadzic spoke of the responsive nature of SRK attacks, which were only to be used in response to heavy artillery utilized by the ABiH. The position was that any fire on behalf of the SRK was to neutralize military targets.[6308]

[6300] Milosevic, T. 32864-5
[6301] D2562, para 31
[6302] D2383, para 15; D2519, para 18; D2633, para 13; D2658, para 16; D4614, p.1
[6303] D2383, para 15; D2519, para 18; D2658, para 16; [redacted]; D3482
[6304] D2812; Milosevic, T.32735-6, T.32842-3
[6305] D0331, pp. 2-3
[6306] Zametica, T.42441
[6307] Zametica, T.42459
[6308] P1274, p. 2

2977. In a meeting with General Rose, President Karadzic labelled the alleged shelling in Sarajevo as "senseless" and expressed his desire for its termination.[6309] However, President Karadzic was also aware that it was the ABiH that shelled own population as discussed with General Milovanovic in an intercepted telephone conversation

> **M:** There was some shooting aroung Sarajevo this morning again. They. I mean **we are inactive, but they are pounding the entire Sarajevo**,
> **K:** **They are hitting the entire Sarajevo?**
> **M:** **Yes.**
> **K:** Please, take the UNPROFOR observers to our positions, so that they can see this.
> **K:** [...] **all the activities; no matter where they attack us; counter-offensives; everything should be halted**.[6310]

2978. Ronald Hatchett, a member of the Lord Byron Foundation for Balkan Studies, was struck by President Karadzic's efforts and willingness to put an end to the fighting whilst preserving civilian lives.[6311]

2979. Orders by President Karadzic to reduce open fire to a minimum only in case of military necessity and on military objects, were relayed to brigade commanders through meetings, consultations and orders.[6312] No oral or written orders to the effect of targeting civilians or civilian objects in the city were ever issued by the higher commands or the civilian authorities.[6313]

2980. The SRK units never received written or verbal orders to attack means of transportation, such as trams or buses, in parts of the city under the control of Muslim authorities.[6314] Conversely, brigades were consistently informed through written and oral orders, issued by superior command and the civil authorities, that firing at civilians, civilian facilities and means of public transport was strictly prohibited.[6315] President Karadzic announced such orders at several VRS meetings.[6316]

[6309] D0691; P1638, paras 26, 30-1
[6310] D4508, pp. 1-2 (Emphasis added)
[6311] D2741, para 10
[6312] Galic, T.37888
[6313] D2622, para 15; D2387, para 49; D2553, para 39; D2331, para 28; D2484, para 10; [redacted]; D2562, para 28; D2527, para 21; D2344, para 9; D2479, para 15; D2633, para 27; D2418, para 18; D2389, para 11; D2391, para 20; D2351, para 15; D2686, para 31; Galic, T.37472
[6314] D2331, para 28; D2387, para 50; D2484, para 10; D2562, para 29; D2622, para 16; D2633, para 27; [redacted]; D2686, para 32; D. Maletic, T.30889; Galic, T.37528
[6315] D2351, para 20
[6316] D2562, para 29

2981. Furthermore, orders were issued to all SRK units strictly forbidding the use of weapons with a calibre greater than 12.7mm without the permission of the commander or his deputy.[6317] Decisions to fire at a target remained in the ambit of senior officers who were to assess the possibility of disproportionate collateral damage. If such a chance existed, then an order to open fire would not be issued.[6318]

2982. The concepts of proportionality and the minimization, to every extent possible, of the risk of damage to civilians, was relayed from the higher command to SRK units.[6319] In February 1994, the VRS Chief of Staff General Milovanovic, pursuant to an order of President Karadzic, ordered all units to "enforce the most strict control of retaliation to provocation" and to "respond only when we are in danger and when it is militarily justified". The order also stated to "fire only at military targets and only at the commander's order; respond adequately to provocation in a ratio of 1:1".[6320] President Karadzic believed "it is very important /.../ to get the UN involved in Sarajevo as much as possible and to pacify it in this manner".[6321]

2983. Finally, in a telephone conversation with two VRS officers, President Karadzic ordered

> In the strongest terms that **no mine must go towards town** at any price, even if they shoot at us from down there[…] we must take revenge there, because, pursuant to the laws of war, that is our right. Wherever they attack, they must be punished, only, **we must preserve the civilian targets and towns. Not a single mine must fall there.**[6322]

e. President Karadzic did not further the objective of the JCE by restricting humanitarian aid

2984. The general stance of the RS civilian authorities, President Karadzic, VRS and SRK was not to prevent but rather to enable the humanitarian organisations to deliver humanitarian aid to the civilians in the parts of Sarajevo under Bosnian Muslim

[6317] D2567
[6318] Milosevic, T.32584-5
[6319] D2341, para 14; D2418, para 18; D2444, para 18; D2451, para 10; D2562, para 23; B. Tomic, T.30181
[6320] P4493
[6321] P1478, p. 311
[6322] P4804, p. 2 (Emphasis added)

control.[6323] President Karadzic's cooperative nature, amenability and understanding for international organisations is confirmed by several international witnesses.[6324]

2985. The RS took all relevant measures to ensure the normal operations and movement of UNPROFOR and other international organizations.[6325] The VRS sought to maintain good relations with the international organizations by reprimanding individual criminal activity committed by Serb soldiers, and allowing for the easy and safe passage of convoys through the RS.[6326] President Karadzic and the VRS took strict measures to prohibit and punish criminal activities by individual Serb soldiers against the UNPROFOR.[6327]

2986. Notwithstanding instances where UNPROFOR cooperated with the Muslims,[6328] President Karadzic insisted that all relevant organs establish a single system for the unhindered work of humanitarian aid organizations.[6329] The cooperation with foreign observers and units from the lower brigades attests this position.[6330]

2987. Finally, although NATO bombings against the RS between April 1994 and September 1995 deteriorated relations,[6331] the RS authorities still ordered unit commands to enable all UNPROFOR members to carry out their work as they did before the NATO air strikes.[6332]

2988. In a meeting behind closed doors with "key JCE members" Plavsic, Krajisnik, Mladic, Djeric, Gvero, Djukic and Tolimir, President Karadzic noted that

> We should take an initiative to **save Sarajevo so it can survive the winter**[6333] adding that the **town should not be fired on**." [6334]

[6323] D0690, pp. 1-2; D2619, pp. 1-2; D2686, para 46; D2845, pp. 1-2; D3328, pp. 1-2; D3482,p. 1; D3582, p. 1; D4643, p.1; D4561; D4611; D4615; D2516, para 26; D3563, para 54; [redacted] ; Milosevic, T.32894-5; D2562, para 46; D2633, para 39
[6324] D2398, para 33; D4217, para 4
[6325] D2161, p. 2; D2162
[6326] D2163; D2164
[6327] D2165; D2167; Milovanovic, T.25681
[6328] D2168; D2170
[6329] D0698, p.1; D2172
[6330] D2341, para 8; D2412, para 13; D2774, para 93; S. Simic, T.30063, T.30065, T.30068
[6331] Milovanovic, T.25713
[6332] D2176
[6333] P1481, p. 50-51 (Emphasis added)
[6334] P1481, p. 59 (Emphasis added)

f. President Karadzic did not further the objective of the JCE by restricting provision of electricity, water and gas

2989. President Karadzic, as well as the RS political leadership, took a consistent stance in ensuring that the flow of critical utilities could reach civilians in Sarajevo. Similar to his opinion on the movement of humanitarian aid, President Karadzic and the RS government held regular discussions in an effort to restore these supplies to all areas.[6335] The allegation that RS authorities deliberately cut off electricity supplies is also unfounded due to the fact that the RS itself did not have enough electricity to meet the needs of its own citizens.[6336]

2990. Despite the illegal actions of the Bosnian Muslims to obstruct the flow of utilities to their own citizens,[6337] the RS government refrained from taking any reciprocal measures taking into consideration the detrimental effect this would have on the civilian population.[6338] President Karadzic made huge efforts to enable the unhindered supplies of water, electricity and gas to Bosnian Muslim controlled parts of Sarajevo.[6339]

2991. President Karadzic explicitly told Prime Minister Vladimir Lukic that Bosnian Serbs do not have any intention of waging a war with humanitarian aid, water or electricity that all citizens need as a bare necessity.[6340]

2992. As electrical supplies continued to wane,[6341] the RS Government accepted a plan for the restoration and construction of electricity stations and the grid so as to ensure deliveries of electricity to the citizens of RS.[6342] Furthermore, President Karadzic informed Andjelko Grahovac that he was "not allowed to shut off the gas and water supplies to Sarajevo because these were humanitarian issues".[6343]

2993. President Karadzic's position was consistent in trying to improve the situation with regard to electricity, as testified by Defence Minister Subotic.[6344] This position was reiterated by President Karadzic to Yusushi Akashi, that although the RS "do/es/ not want

[6335] D0515, p. 6; D3563, paras 24, 28; D3569, pp. 3-7
[6336] D3605; D3563, para 47; P3141
[6337] D3330
[6338] P3139, p. 7; D3563, para 50
[6339] D3328; D3582, pp. 1-2; D3563, para 54; P3139
[6340] V. Lukic, T. 38749-50
[6341] D3563, para 61
[6342] D3706; D3563, para 78
[6343] D4077, para 46
[6344] D3695, para 230

to impose any sanctions against Muslims /.../ we feel that we are entitled to keep the commercial sanctions against Muslims. As you know, however, this policy does not cover gas, water and electricity supplies to the Muslims."[6345] Ministries of the RS government also undertook measures to facilitate repair works and ensure supply to Sarajevo.[6346] During the war, due to the lack of resources to conduct repair works,[6347] the RS government provided fuel and salaries in an attempt to improve the situation.[6348]

2994. President Karadzic assured that his standpoint was communicated to the SRK units so that they were aware of the position of their superior commands and civilian authorities, to ensure water, electricity and gas supply to civilians in the city under Bosnian Muslim control.[6349] This resulted in continued efforts by SRK units to enable the flow of electricity, gas and water to civilians in Sarajevo.[6350]

2995. Contrary to the Prosecution allegations, leaders of the Bosnian Serbs never ordered the cessation of electricity or water to areas of Sarajevo under Bosnian Muslim control.[6351] The provision of electricity and water to these parts of Sarajevo was regularly documented and reflects the true intention of President Karadzic, in strictly forbidding any abuse of water, electricity and gas.[6352]

2996. In a telephone conversation with General Gvero, President Karadzic ordered the VRS that the TV signal for the Muslims should be turned on

> The same as the **water, gas and electricity, whatever we can**. They know here that it wasn't us who turned off the gas, they know this for sure – O told them it wasn't us; the Muslims turned it off somewhere to wreck the negotiations[…] /we/ need to call UNPROFOR to all the gas stations to check that the **Serbs are keeping this open**[…] I ask of you that all this be done, nowhere around Sarajevo, there must be nothing firing anywhere. [6353]

[6345] D0703
[6346] Lubura, T.31082
[6347] D2548, p. 2; Lubura, T.31046, T.31082
[6348] Lubura, T.31082
[6349] [redacted]; D2516, para 27; D2622, para 22; D2633, para 42; D2686, para 46
[6350] D2331, para 41; D2633, para 42; D2389, para 18; Trapara, T.29925
[6351] Skoko, T.36735-6
[6352] D0104; D0116; D2562, para 49; Lubura, T.31082-3
[6353] D4512, pp. 1-3 (Emphasis added)

g. President Karadzic took measures to investigate and punish crimes in circumstances where he possessed the requisite knowledge

2997. President Karadzic took measures to ensure investigations were carried out and sanctions given in the event of any potential criminal activities.[6354] The SRK units were aware of their duty to carry out an investigation if fire was to be opened on civilians, and several examples exist to this effect.[6355]

2998. Upon receiving the information by international representatives about the landing of a shell in Vase Miskina Street, President Karadzic contacted the army, which undoubtedly said the shell was not fired by the VRS. Despite their assertions, President Karadzic immediately sent out a demand to conduct an inquiry involving a ballistics expert.[6356] The same procedure was followed in relation to other incidents, primarily Markale I and II and several shellings in Dobrinja.[6357]

2999. On 6 February 1994, Akashi reported that President Karadzic adamantly denied that Bosnian Serbs had fired at the Markale market.[6358] On 7 February 1994, General Rose met with President Karadzic in Belgrade and reported that the latter repeatedly denied that Bosnian Serbs had anything to do with the incident.[6359] Those denials were well founded. The VRS insisted to President Karadzic that they had not fired the mortar. Gordan Milinic, Security Advisor to President Karadzic, testified that the VRS told the President that it had not fired the shells, which landed on Markale market.[6360]

3000. In November 1994, during an Assembly session, President Karadzic demonstrated that he was doing everything in his power to prevent the illegal shelling of the city and have such incidents investigated

> I call General Galic and ask him whether the members of the Corps are shooting at Sarajevo. He tells me that they are not. I ask him how does he know that and he answers that he did not issue the order. I ask him could it be done without the order and he says it should not be like that. I tell him to check it out. It happened that he did not issue the order but some idiot gave himself a right to waste the shells, which cost 500 German marks each. These acts do not make us look like a

[6354] Lucic, T.30785
[6355] D0327, p. 1; D2832, p. 3; D2835; D2836, pp. 1-3; Galic, T.37811-4, T.37895-7; Milosevic, T.32859-61, T.32865-6. T.32868-9
[6356] Krajisnik, T.43333-4
[6357] Krajisnik, T.43333-4
[6358] D3489, p. 44
[6359] P1638, para 41
[6360] D3682, para 15

military or even like the people. This does not mean that I am attacking the soldiers but this is a request to improve the situation.[6361]

[6361] P1403, p. 324

Chapter 3
INDIVIDUAL RESPONSIBILITY OF RADOVAN KARADZIC
Part 3

C. Srebrenica Component

1. Count Two—President Karadzic is Not Guilty of Genocide in Srebrenica

3001. Count Two charges President Karadzic with genocide in Srebrenica.

3002. President Karadzic is accused of eliminating the Bosnian Muslims of Srebrenica by killing the men and boys of Srebrenica and forcibly removing the women, young children and some elderly men. The accompanying intent is alleged to have been to destroy the Bosnian Muslims in Srebrenica, as part of the Bosnian Muslim national, ethnical, and/or religious group.[6362]

3003. Individual criminal responsibility is alleged under all possible modes of liability. The Prosecution alleges individual criminal responsibility under Article 7(1) of the Statute, whereby President Karadzic planned, instigated, ordered, and/or aided and abetted these crimes.[6363] The Prosecution further alleges that he committed these crimes as part of a joint criminal enterprise to eliminate the Bosnian Muslims in Srebrenica (JCE 1).[6364]

3004. The Prosecution also alleges individual criminal responsibility as a superior pursuant to Article 7(3) of the Statute.[6365]

3005. As an alternative, President Karadzic is charged with genocide arising as a foreseeable consequence of an overarching joint criminal enterprise to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory (JCE 3).[6366]

[6362] Indictment at para. 42
[6363] Indictment at para. 41
[6364] Indictment at para. 20
[6365] Indictment at para. 41
[6366] Indictment at para. 43

3006. The Prosecution has failed to adduce any evidence that President Karadzic *instigated, planned, or ordered* the killing of prisoners. As a result, the discussion is confined to commission (in the form of joint criminal enterprise), aiding and abetting, and superior responsibility.

3007. The Appeals Chamber has held that "genocide is one of the worst crimes known to humankind, and its gravity is reflected in the stringent requirement of specific intent. Convictions for genocide can be entered only where that intent has been unequivocally established."[6367]

3008. To establish the requisite intent, the Prosecution must prove beyond a reasonable doubt what President Karadzic knew and when he knew it.

a. President Karadzic had no Knowledge of Genocidal Killings

3009. All forms of JCE and aiding and abetting require knowledge of the genocidal killings on the part of President Karadzic. If there is a reasonable doubt that President Karadzic knew about the genocidal executions of the prisoners, he must be acquitted under all of those forms of liability.

3010. The doctrine of superior responsibility requires the Prosecution to establish beyond a reasonable doubt that, at a minimum, President Karadzic had reason to know of the genocidal execution of the prisoners by his subordinates.

3011. President Karadzic approved the initial plan to shrink the Srebrenica enclave and thereafter to take the undefended town of Srebrenica. This plan never contemplated the execution of Muslim prisoners.

3012. In fact, President Karadzic took steps to ensure the safety of civilians in Srebrenica. As expressed by General Tolimir in a telegram on the evening of 9 July, President Karadzic's authorization for the VRS to enter the town included specific orders that the Muslim civilian population and war prisoners were to be treated in accordance with the Geneva Conventions. Those orders further specified that civilians be guaranteed safety in event of their cross-over into the territory of Republika Srpska.[6368]

3013. Furthermore, President Karadzic has brought, sometimes by compulsion, numerous witnesses who were in his company during the period charged in the

[6367] *Krstic* AJ at para.134
[6368] P2276

indictment. They have unanimously testified that President Karadzic was never informed of the genocidal executions of prisoners from Srebrenica.

3014. Despite having unprecedented access to thousands of intercepted conversations, written communications of the Republika Srpska military, police, and political organs, and speeches and interviews of President Karadzic, there is not a single piece of evidence that President Karadzic knew that genocide would be, was being, or had been committed after the fall of Srebrenica. In sum, the Prosecution has failed to adduce sufficient evidence that President Karadzic knew of the genocidal executions of the men from Srebrenica. The absence of such evidence creates a reasonable doubt of the guilt of President Karadzic for genocide in Srebrenica.

3015. A detailed examination of the evidence adduced by both parties demonstrates that President Karadzic was never part of any joint criminal enterprise to commit genocide and was not aware of the genocidal execution of the men from Srebrenica.

1. President Karadzic was not Informed of Genocidal Executions During Meetings and Conversations

a. Conversation with General Mladic on 13 July

3016. The killings of prisoners began with the Kravica warehouse incident at about 1730 on 13 July.[6369]

3017. The undisputed evidence suggests that sometime between 1700 and 1840 on 13 July, President Karadzic spoke on the telephone with someone from the VRS who informed him about the military situation in Srebrenica.

3018. However, the evidence is conflicting as to whether President Karadzic spoke to General Mladic on this call. **Slavica Ristic** and **Tomislav Premovic**, who were present in President Karadzic's office at the time, believed it was General Mladic.[6370] However,

[6369] T27549
[6370] T26073, T27406

Srda Trifkovic, who was also present and had planned to speak with General Mladic, testified that it was not Mladic on the telephone.[6371]

3019. Prosecution witness General **Manojlo Milovanovic** testified that from 1 July to 3 August 1995, President Karadzic communicated with the Army only through him. He had to communicate Karadzic's order to Mladic and wait for Mladic's reply.[6372] Therefore, the 13 July 1995 phone conversation between President Karadzic and General Mladic could not have taken place.

3020. However, even if General Mladic was on the other end of this 13 July phone conversation, the witnesses were unanimous in their testimony that no information about a plan to execute prisoners was conveyed during this conversation.

3021. **Slavica Ristic** testified that President Karadzic was adamant that civilians in Srebrenica should be well treated and that these orders should be strictly adhered with, to prevent Serbs from being accused of mistreating people. It made her feel good to hear that.[6373] She also testified that during her time in Pale, there were no discussions of prisoners or executions.[6374] Given what she heard, it was illogical to think that the prisoners in Srebrenica would be executed.[6375] She found it impossible that someone among the people she met in Pale would make a decision of that sort.[6376]

3022. **Tomislav Premovic** testified that while he was meeting with President Karadzic, he heard no discussion regarding prisoners.[6377] He first learned of allegations about the events in Srebrenica when he returned home to the USA. It was completely contrary to what was being discussed in Pale.[6378]

3023. **Srda Trifkovic** testified that during this conversation, President Karadzic was insistent that civilians not be mistreated and the conduct of the Serbs in Srebrenica be above reproach so that any misconduct could not be used against the Serbs in the media.

[6371] D2905 at para. 31; T33356, T33361
[6372] T25648
[6373] T26078-79, 26081
[6374] T26080
[6375] T26081
[6376] T26082
[6377] T27406
[6378] T27410-11

There was no discussion concerning prisoners. He further testified that he would find it hard to believe that President Karadzic would condone executing prisoners.[6379]

3024. There can be no inference drawn from this conversation on 13 July that President Karadzic knew that prisoners from Srebrenica had been, were being, or would be executed.

b. Conversation with Miroslav Deronjic on 13 July

3025. [redacted][6380]

3026. [redacted].

3027. Even though the VRS was screening men from Srebrenica for war crimes, this did not indicate that they would be killed. Both the Appeals Chamber and Trial Chamber in the *Krstic* case found that "the decision to screen was neither criminal nor unreasonable."[6381] The Appeals Chamber also found that there was nothing from the fact that the prisoners were transported to Bratunac that would lead to the conclusion that they were to be executed.[6382]

c. Meeting with General Skrbic on 14 July

3028. General **Petar Skrbic** met with President Karadzic on 14 July at 1215. He testified that at his meeting with President Karadzic, during which President Karadzic

[6379] D2905 at paras. 32, 34
[6380] [redacted]
[6381] *Krstic* AJ at para. 87
[6382] *Krstic* AJ at para. 100

signed documents for the retirement of General Zivanovic and the promotion of General Krstic, no mention was made of Srebrenica,[6383] or of prisoners or crimes.[6384]

3029. General **Bogdan Subotic**, who was present at meetings in the President's office during that period, confirmed that no one informed President Karadzic of the execution of prisoners.[6385]

d. Meeting with Miroslav Deronjic on 14 July

3030. On 14 July, President Karadzic met in his office with Miroslav Deronjic from 1240 to 1310.[6386] The Prosecution alleges that by that time, Deronjic was aware both of the killings at Kravica warehouse and of Colonel Beara's intention to execute the remaining prisoners. It is the Prosecution's case that this information was relayed to President Karadzic.

Kravica Warehouse Incident

3031. The evidence establishes that Deronjic had been told in the evening of 13 July by **Witness KDZ107**[6387] and **Ljubomir Borovcanin**,[6388] that a Muslim prisoner at the warehouse had grabbed the rifle from a policeman killing him and that a number of Muslim prisoners had been killed in return. On the evening of 13 July, Deronjic had also participated in discussions about arrangements to bury the bodies of the prisoners who had been killed.[6389] Deronjic had also been informed by **Jovan Nikolic** of additional killings carried out at the warehouse on the morning of 14 July.[6390]

3032. There is some evidence that Deronjic may have informed President Karadzic of the Kravica killings. **Ljubislav Simic** testified that Deronjic later told him that he had informed someone in Pale about what had happened at the Kravica warehouse.[6391] **Milenko Katanic** testified that although he had no knowledge of what had been

[6383] P4523 at pp.15580-81
[6384] T26038-39
[6385] D3695 at para.237
[6386] P2242 at p. 91
[6387] P0345 at p. 9364, 9529
[6388] D3659 at paras. 35-36
[6389] P0345 at p. 9367; [redacted]
[6390] D3126 at para. 58
[6391] T37293, T37307

discussed between Deronjic and President Karadzic, he thought that Deronjic would have likely reported it to President Karadzic.[6392]

3033. **Ljubislav Simic** testified that he did not know that Deronjic informed President Karadzic about the Kravica incident.[6393] **Milenko Katanic** also did not know the content of what, if anything, Deronjic told President Karadzic, about the incident.[6394] **Jovan Nikolic** testified that

> The killings at Kravica and the killings elsewhere, I'm sure were not properly relayed to President Karadzic. It is my conviction, bearing in mind his attitude towards the war and the prisoners of war, he would have reacted differently and initiated an investigation to find the perpetrators of these crimes.[6395]

3034. That Deronjic informed President Karadzic of the killings at the Kravica warehouse is not the only inference open on the evidence. It is reasonably possible that Deronjic did not report the incident because there were other more pressing issues concerning administrative organization of Srebrenica to discuss in a short period. It is also reasonably possible that Deronjic did not inform President Karadzic because the incident did not require action by President Karadzic, or because Deronjic did not want to acknowledge a negative incident that had occurred on his watch in light of the power struggle he was engaged in with the Skelani leaders over control of Srebrenica.

3035. Even if the Trial Chamber were to find that the only inference to be drawn was that the Kravica warehouse incident was reported to President Karadzic by Miroslav Deronjic at their meeting of 14 July, there was nothing about that incident that would have indicated that the crime of genocide had occurred or might occur. It is reasonably possible that the information was presented to President Karadzic in such a way as to indicate that it was a small scale event and that the military and police authorities were handling the matter.

3036. That the information may have been conveyed to President Karadzic in this way is demonstrated by the fact that the incident was not discussed at the meeting that followed with the Skelani leaders, nor did President Karadzic mention it to his closest

[6392] P4374 at para. 72
[6393] T37310
[6394] P4374 at para. 72
[6395] T35536-37

advisors. **Dane Katanic**, who knew about the Kravica warehouse incident when he attended the meeting, also did not consider it significant enough to mention to President Karadzic.[6396]

3037. The spontaneous nature of the incident would not have indicated that genocide had occurred or was about to occur. The incident was known to have started when a prisoner mutinied and killed a policeman. While the killings that ensued exceeded the force reasonably necessary for self-defence, there is no indication that the killings at the warehouse were committed with the intention to destroy the Muslims as a group.

3038. In the *Popovic* case, the Trial Chamber acquitted Borovcanin of genocide and aiding and abetting genocide. It found that his knowledge of the Kravica warehouse killings did not mean that he was aware that the killings were committed with genocidal intent.[6397] The same result must apply to President Karadzic.

Colonel Beara's Intentions

3039. There is also some evidence that prior to his meeting with President Karadzic, Miroslav Deronjic knew that Colonel Beara intended for the remaining prisoners to be executed. This evidence comes from the testimony of Prosecution witness **Momir Nikolic**. Nikolic testified that in the early hours of 14 July, Colonel Beara informed Deronjic of his plan to murder the prisoners.[6398]

3040. As detailed earlier in this brief, Momir Nikolic's testimony is unworthy of belief and certainly cannot be accepted without corroboration. According to Nikolic, Dragomir Vasic was also present at the meeting at which Colonel Beara allegedly informed Deronjic about the murder plans.[6399] However, Vasic was never called as a Prosecution witness.

3041. **Witness KDZ107** and [redacted] were also present with Colonel Beara and Deronjic in the SDS offices in the early morning hours of 14 July. Both testified as

[6396] T38669, T38685
[6397] *Popovic* TJ at paras. 1588-89
[6398] T24678
[6399] T24676

Prosecution witnesses, yet neither testified that Colonel Beara proposed to execute the remaining prisoners.[6400]

3042. Every other leader from Bratunac who was involved in the discussions on 13 and 14 July and who testified at the trial, including **Ljubislav Simic** and **Jovan Nikolic**, was unaware of Colonel Beara's alleged intention to murder the remaining prisoners.

3043. Prosecution witness **Milenko Katanic** testified that Colonel Beara's issue was where the prisoners would be detained, not their murder.[6401] When the prisoners left Bratunac, the authorities did not know they would be murdered.[6402]

3044. [redacted]. [6403]

3045. **Nedo Nikolic** met with Colonel Beara at the Ciglane brick factory on the morning of 14 July. Mr. Nikolic testified that:

> As the director of the brick factory and the person whom the officers came to see on 14 July 1995, I can state that no one made any reference to an execution site or to killings. Based upon the conversation they had with me, and particularly their interest in the semi-open area of the factory, not a closed area, and the request to provide drinking water, I do not believe that anyone there was considering executions at the brick factory.[6404]

3046. There is insufficient evidence upon which the Trial Chamber could safely conclude that Deronjic knew of Colonel Beara's intention to kill the remainder of the prisoners when he met with President Karadzic on 14 July. There is an absence of evidence that Deronjic informed President Karadzic of any such intention on the part of Colonel Beara.

3047. Even if the Trial Chamber found that Deronjic had informed President Karadzic of Beara's plans, there is no evidence to suggest that such killings would be done with the specific intent of destroying, in whole or in part, the Bosnian Muslim ethnic group.

[6400] P0345 at p. 9369; [redacted]
[6401] T24495, 24501
[6402] T24505
[6403] [redacted]
[6404] D3690 at para. 18C

3048. From 1425 to 1825, President Karadzic met with Deronjic, Momcilo Krajisnik, Vice President Koljevic, and the leaders of Skelani municipality, including Dane Katanic.[6405]

3049. **Dane Katanic** testified that there was no discussion of the execution of prisoners at their joint meeting.[6406] **Momcilo Krajisnik**, who also attended the meeting, confirmed that there was no discussion of the execution of prisoners.[6407]

e. Meeting with journalist Bob Djurdjevic on 14 July

3050. President Karadzic met with journalist **Bob Djurdjevic** later that afternoon.[6408] Djurdjevic wrote that during the meeting, President Karadzic received a call from a field commander in Srebrenica telling him that there was a lot of fighting between Konjevic Polje and Kasaba and that the Muslims were trying to break through to Tuzla.[6409] During his meetings in Pale on 13-14 July, Djurdjevic did not hear anything about prisoners in Srebrenica being killed.[6410] He testified that:

> Based on everything I have known about President Karadzic and my opinions I've formed on him, and specifically what I have seen and witnessed on July 13th and 14th, 1995, in my visits there in Bosnia, I cannot conceive a circumstance where President Karadzic would be party to any such crimes."[6411]

f. Meetings with Deputy Minister of Interior Tomo Kovac

3051. Deputy Interior Minister **Tomislav Kovac** testified that he met with President Karadzic on 13, 14, 15, and 18 July and never informed him about any executions of prisoners from Srebrenica.[6412] During these meetings, President Karadzic never gave any indication that he was aware of such executions.[6413]

3052. When he met with President Karadzic on 15 July, Kovac was aware of the incident at the Kravica warehouse. Ljubomir Borovcanin had informed him that when

[6405] P2242 at p. 91; P4382
[6406] D3561 at para. 8
[6407] T43352
[6408] P2242 at p.91
[6409] P4514
[6410] T25956
[6411] T25957
[6412] P2242 at pp.91-93; D3960 at para.130
[6413] D3960 at para.130

Muslim prisoners overpowered the policemen who were guarding them, one policeman had been killed and a detachment commander had been injured in an incident in Kravica. Thereafter, a number of Muslim prisoners were killed when members of the police and Bratunac Brigade opened fire.[6414]

3053. Kovac testified that he was not informed of the number of prisoners who had been killed, even though Borovcanin had seen between 20-30 bodies.[6415] He further testified that the incident was not reported to President Karadzic.[6416] He explained that:

> I did not report to you about that. I did not know about the weight of Kravica except for the killing of a policeman and the wounding of another policeman, and I had the report of Ljubisa Borovcanin that several prisoners were killed. That incident did not give me cause to report to you.[6417]

3054. On the evening of 14 July or morning of 15 July, Kovac had also been informed by Mane Duric that he and Dragomir Vasic were concerned that Colonel Beara might have the intention of abusing or possibly liquidating some prisoners in Zvornik.[6418] However, Mr. Kovac did not report this information to President Karadzic because he did not believe that any executions of prisoners were being planned. Although he knew that President Karadzic had other sources of information, such as Deronjic, about the events in Srebrenica, he did not have any information that these sources had in fact informed President Karadzic of the executions.[6419]

3055. While Kovac had provided a variety of prior statements speculating that others might have informed President Karadzic about the executions, he consistently maintained during his trial testimony and in all of his prior statements and testimony that he had not informed President Karadzic that prisoners from Srebrenica would be, were being, or had been executed.

[6414] D3960 at para. 122
[6415] D3659 at para. 27
[6416] D3960 at para. 123
[6417] T42856
[6418] D3960 at para. 124; T42792
[6419] T42851

g. Meeting with Trifkovic, Zametica, and Ristic on 14 July

3056. President Karadzic's agenda shows that he was visited in his office by **Srda Trifkovic** and **John Zametica** in the late evening of 14 July.[6420] **Slavica Ristic** was also present for a short time. All three have testified that there was no discussion about prisoners in Srebrenica.[6421]

h. Meeting with Zvonko Bajagic on 15 July

3057. **Zvonko Bajagic**, was in President Karadzic's cabinet from 0035 to 0125 on the early morning of 15 July. He testified that he did not inform President Karadzic about the event at the Kravica warehouse.[6422] He also testified that during their short encounter, President Karadzic never said anything that would indicate that he had knowledge of the execution of prisoners, and that President Karadzic would never desire or condone such a thing.[6423]

i. Other meetings

3058. The fact that President Karadzic was not informed about the execution of prisoners from Srebrenica in any other meetings is confirmed by persons with whom he met during the relevant period, as discussed below.

3059. **Dragan Kapetina**, who was State Secretary of the RS Ministry of Defence, testified that he met President Karadzic on 13 July from 1845 to 2130 hours along with Momcilo Krajisnik, Deputy Prime Minister Rosic, Minister of Finance Pejic; the governor of the National Bank of RS, Mrs. Petra Markovic; the director of *Pretis*, Motika; and Assistant Minister of Defence Orasinin.[6424] The meeting discussed the issues of the military budget, funding the special purposes industry, and the logistics of the army in general. There was no discussion of Srebrenica and certainly no information of execution of prisoners.[6425]

[6420] P2242 at p.91
[6421] D2905 at paras. 34D and 34E (Trifkovic); T26080 (Ristic); T42483 (Zametica)
[6422] P2242 at p.91; D3853 at para. 36B; T41211
[6423] D3853 at paras. 36D and E
[6424] P2242 at p.91
[6425] D3856 at para.46

3060. **Professor Radovan Karadzic**, who served as an advisor to President Karadzic, met with President Karadzic and Minister Velibor Ostojic on the evening of 15 July to discuss economic and development issues.[6426] He testified that President Karadzic never said anything that would indicate that he had knowledge of the execution of prisoners from Srebrenica, and that President Karadzic would never desire or condone such a thing.[6427]

3061. **Vladimir Matovic**, an aide to former Yugoslavian President Dobrica Cosic, testified that when he went to Pale in July 1995 after the Srebrenica events had commenced, President Karadzic appeared to have little information of what was going on in Srebrenica and was getting his information from CNN.[6428]

3062. **Yves Bataille**, who met with President Karadzic on 17 July,[6429] testified that although they discussed the events in Srebrenica during his visit, there was no indication that any prisoners had been executed there.[6430]

3063. **Milan Ninkovic**, who was Minister of Defence in July 1995, testified that he met with President Karadzic, Tomo Kovac, and Maxim Stanisic on 18 July.[6431] At that meeting, which dealt with the crisis around Sarajevo, there was no discussion concerning Srebrenica or the execution of any prisoners.[6432]

3064. **Milan Lesic** testified that on 18 July, he met President Karadzic in Pale as part of a group from Canada with Ned Krajisnik.[6433] He never heard talk of any killings in Srebrenica.[6434]

j. Persons from President Karadzic's staff

3065. Persons who worked in President Karadzic's cabinet gave unequivocal testimony that as far as they knew, President Karadzic was never informed of the execution of prisoners from Srebrenica.

[6426] P2242 at p.92
[6427] D3861 at paras.9-11,14; T41348
[6428] T44921-27
[6429] P2242 at p.93
[6430] D3669 at para. 11
[6431] P2242 at p.93
[6432] D3733 at para.30; T40502
[6433] P2242 at p.93; T25040
[6434] T25066

3066. **Gordan Milinic**, who saw President Karadzic regularly during this period as Counselor of National Security to the Presidency, testified that neither he nor President Karadzic were informed that prisoners had been killed in Srebrenica.[6435]

3067. **John Zametica**, who saw President Karadzic on a daily basis, discussed the events in Srebrenica with him, and issued public statements about the Srebrenica events on President Karadzic's behalf,[6436] also testified that neither he nor President Karadzic were informed that prisoners had been killed in Srebrenica.[6437]

3068. General **Bogdan Subotic**, who served as President Karadzic's military advisor and met with him daily during this period, also testified that neither he nor President Karadzic were informed that prisoners had been killed in Srebrenica.[6438]

3069. **Mile Dmicic**, the Secretary General of the President's office, met President Karadzic on the evening of 17 July.[6439] They discussed the fax received from Miroslav Deronjic that day indicating that the evacuation of Muslims from Srebrenica had been carried out properly. He never heard President Karadzic say anything that would indicate that he had been informed about the execution of prisoners.[6440]

k. Civilians in Contact with President Karadzic

3070. Assembly President **Momcilo Krajisnik** was in regular contact with President Karadzic during July 1995. President Karadzic's appointment agenda shows that Krajisnik attended part of the 14 July meeting with Deronjic and Skelani officials.[6441] Krajisnik is also recorded as meeting with President Karadzic on 13,15,18, and 19 July.[6442] He testified that neither he nor President Karadzic had any information that prisoners from Srebrenica would be, were being, or had been executed.[6443]

3071. Vice President Nikola Koljevic kept a diary, which displays a record of his thoughts during the war, including his contacts with President Karadzic. Although

[6435] D3682, at para.17
[6436] D3931
[6437] T42483
[6438] D3695 at para.237
[6439] P2242 at p.93
[6440] D3977 at para. 21
[6441] P2242 at p.91
[6442] P2242 at pp.91-94
[6443] T43353

Koljevic could see President Karadzic without an appointment, the President's appointment book shows that they spent almost 5 hours together on 14 July and that Koljevic attended the meeting with Deronjic and the Skelani leaders.[6444]

3072. From a review of Koljevic's diary, it is evident that he also had no information that prisoners from Srebrenica would be, were being, or had been executed. Even well after the fact, Koljevic believed that accusations that prisoners had been executed after the fall of Srebrenica were completely false.[6445]

3073. President Karadzic's appointment book also shows that he met with Professor Koljevic for an hour on 15 July and 40 minutes on 18 July.[6446] Despite these visits, Koljevic remained convinced throughout 1995 that allegations of executions after the fall of Srebrenica were lies.[6447]

3074. State Security Director **Dragan Kijac** testified that he met with President Karadzic on 19 July.[6448] He never informed President Karadzic about any executions of prisoners from Srebrenica and President Karadzic never gave any indication that he was aware of such executions.[6449]

3075. Director of Public Security for the Ministry of Interior **Milenko Karisik** is not recorded as having had any meetings with President Karadzic during the 13-20 July period. They may have spoken on the telephone, although he did not recall it. He testified that he never informed President Karadzic that prisoners had been executed, as he did not have that information himself.[6450]

1. VRS officers

3076. General **Zdravko Tolimir** testified that he never informed President Karadzic that prisoners from Srebrenica would be, were being, or had been executed.[6451] His testimony went un-contradicted and un-challenged by the Prosecution.

[6444] P2242 at p.92
[6445] T42561-62
[6446] P2242 at p.92-93
[6447] T42563-64
[6448] P2242 at p.94; D4143 at paras.54-55
[6449] D4143 at paras.54-55
[6450] D3749 at para.63
[6451] T45063

3077. General **Milenko Zivanovic**, Commander of the Drina Corps, testified that he never informed President Karadzic that prisoners from Srebrenica would be, were being, or had been executed, and that he did not have that information himself.[6452]

3078. General **Radislav Krstic**, whose testimony was admitted pursuant to Rule 92 *quater*, denied any knowledge of the execution of prisoners from Srebrenica.[6453] Therefore, he could not have informed President Karadzic of any such executions.

3079. Colonel **Petar Salapura**, chief of the VRS Main Staff intelligence organ, testified that he never informed President Karadzic of the execution of prisoners from Srebrenica.[6454]

3080. [redacted].[6455]

m. Conclusion

3081. There is insufficient evidence for the Trial Chamber to conclude beyond reasonable doubt that President Karadzic was informed, at meetings or by telephone, during this period of any facts from which he could conclude that genocide would be, was being, or had been committed after the fall of Srebrenica.

2. President Karadzic was not Informed of Genocidal Executions in Written Reports

3082. The evidence demonstrates that written reports that reached President Karadzic made no reference to the execution of prisoners from Srebrenica.

a. VRS Daily Combat Reports

3083. The VRS main staff forwarded daily combat reports to the President every morning. A review of these reports indicates that there was no mention of any killings of prisoners.

[6452] D3932 at paras.A6-8
[6453] D4136
[6454] D3720 at para.23
[6455] [redacted]

3084. General **Bogdan Subotic**, who read the reports coming from the VRS main staff, testified that there was no information about execution of prisoners in any of those reports.[6456]

3085. Prosecution military expert **Richard Butler** acknowledged that the reports of the VRS to the President that he reviewed did not contain any information about the execution of prisoners.[6457] Defence military expert General **Radovan Radinovic** also confirmed this fact.[6458]

b. VRS Intelligence and Security Reports

Existence of the reports

3086. Prosecution expert **Richard Butler** testified that the Republic Communications Center log for 13-17 July indicates that every day the VRS security and intelligence organ sent reports to the President. The prosecution never recovered these reports.[6459]

3087. The communications log shows reports being received from the VRS Security Organ on the following dates and times:

14 July	0410
15 July	0715
16 July	0525
	1620
17 July	0520[6460]

3088. That log shows that the same reports were distributed to the President, Ministry of Defence, and to Dragan Kijac of State Security.

3089. The prosecution's inability to locate these reports does not permit the inference that the reports were deliberately concealed, or that they contained information about the killing of civilians. Copies of the reports could have existed at numerous places—the VRS Main Staff administration, the VRS Main Staff Security and Intelligence Section, the Ministry of Defence, and the State Security office of the Ministry of Interior at a

[6456] D3695 at paras. 236-38
[6457] T27565,74,85; T27807-08; P4457, 4460, 4464
[6458] T41435
[6459] T27613; P2989
[6460] P2989

minimum. The prosecution has not adduced evidence of efforts to retrieve and destroy reports in these organs.

3090. [redacted].[6461] None of the letters between President Karadzic and Milos Vukasinovic, who was in charge of compiling the documents for the OTP, indicate any intention to conceal documents related to Srebrenica.[6462] In fact, in one letter, President Karadzic wanted to make sure they provided OTP with his order appointing Deronjic as civilian commissioner for Srebrenica.[6463]

Content of the reports

3091. [redacted][6464]

3092. There is no other evidence before the Trial Chamber to suggest these reports contained information about the executions.

3093. The Assistant Commander of the Security and Intelligence Service, General **Zdravko Tolimir**, testified that these reports were sent to some 20 recipients and that they did not contain any information about execution of prisoners.[6465] The Prosecution did not cross-examine nor contest his evidence.

3094. The Chief of the Intelligence Section, Colonel **Petar Salapura**, also testified that the VRS security organ written reports to the President never contained any information about the execution of prisoners.[6466]

3095. **Svetozar Kosoric**, Chief of Intelligence for the Drina Corps, also indicated that he had never seen the execution of prisoners from Srebrenica referred to in any reports.[6467]

[6461] [redacted]
[6462] [redacted]; P6399
[6463] P6399 at p.1
[6464] [redacted]
[6465] T45066
[6466] D3720 at para.23

3096. Lt. Colonel **Vujadin Popovic,** Chief of Security of the Drina Corps, testified that he was not aware of any reference to the execution of prisoners in any reports. Despite being aware of the executions, he never put anything in writing.[6468]

3097. Colonel **Vidoje Blagojevic**, Commander of the Bratunac Brigade, testified that the execution of prisoners was not mentioned in any report that he had seen.[6469]

3098. Likewise, **Mirko Trivic**, another Brigade Commander who participated in the Srebrenica events, testified that he had no information that prisoners would be or had been executed.[6470]

3099. General **Bogdan Subotic**, whose job it was to read these VRS reports also confirmed that the reports contained no information concerning the execution of prisoners.[6471]

3100. **Dragan Kijac**, who received the very same reports as those sent to the President from the VRS Security and Intelligence organ, also testified that there was no mention of executions of prisoners in any of those reports.[6472]

c. Ministry of Interior Reports

3101. Reports of the Srebrenica events were written by various organs of the Ministry of Interior, particularly the CSB Zvornik and the State Security organ. These reports were addressed to the Minister of Interior and not the President. Prosecution expert **Richard Butler** testified that he could not say that any of these reports reached the President.[6473]

3102. Deputy Minister of Interior **Tomo Kovac** testified that compilations of these reports were forwarded to the President's office.[6474] However, he testified that none of these reports contained any information about the execution of prisoners.[6475]

3103. **Dragan Kijac**, chief of the State Security organ of the Ministry of Interior also testified that no mention of execution of prisoners was contained in any reports of his

[6467] T38736-37
[6468] D3993 at para.90
[6469] D4189 at p. 4
[6470] D3747 at p.16
[6471] D3695 at paras.236-38
[6472] D4143 at para.56
[6473] T27744
[6474] D3960 at para.128
[6475] T42851

organ.[6476] In a report of 21 July 1995 sent by Kijac to President Karadzic, no mention is made of execution of prisoners.[6477]

3104. Director of Public Security for the Ministry of Interior **Milenko Karisik** also stated that there was no mention of execution of prisoners in any of the reports that he read.[6478]

3105. **Ljubomir Borovcanin**, the Deputy Commander of the MUP Special Police Brigade, who became aware of the killing of prisoners at Kravica warehouse on 13 July, testified that there was no mention of the killing of prisoners from Srebrenica in any written reports that he authored or read.[6479]

3106. **Dusan Kozic**, who was Prime Minister at the time of the Srebrenica events, testified that he never saw any written reports indicating that prisoners had been executed at Srebrenica.[6480]

3107. **Gordan Milinic**, whose job it was to review such reports for the President, also testified that he never saw any written reports indicating that prisoners had been executed at Srebrenica. [6481]

d. Reports about Prisoner Exchanges

3108. There is nothing contained in the reports about planned or potential prisoner exchanges that informed President Karadzic that prisoners from Srebrenica had been executed or were unaccounted for.

3109. In an intercepted conversation with Daniela Sremac from Washington and Dr. Karadzic on 25 July, Dr. Karadzic said that the Red Cross would be given access to the prisoners from Srebrenica within 14 days, subject to the Muslims also giving them access to Serb prisoners.[6482]

3110. [redacted]

[6476] D4143 at para.56
[6477] P6538
[6478] D3749 at para.63
[6479] D3659 at para. 47
[6480] T37022
[6481] D3682 at para.18
[6482] D4509 at p. 4

[redacted]. [6483] From this it can be inferred that the execution of prisoners was concealed from President Karadzic.

3111. In mid-August, President Karadzic's office received a copy of correspondence from the Exchange Commission indicating that there were a large number of Muslim prisoners in the custody of the VRS, exchanges of prisoners were planned and that prisoners from Srebrenica were to be included in the exchanges.[6484] Therefore, he had no reason to know from the written correspondence he received concerning prisoner exchanges that a significant number of persons taken prisoner after the fall of Srebrenica had been executed.

e. Conclusion

3112. There is simply no evidence that President Karadzic was informed in any written reports during this period that prisoners from Srebrenica would be, were being, or had been executed. In the *Bagosora* case, the ICTR Appeals Chamber held that, in the absence of proof that the accused had received reports of the crimes, it was erroneous to speculate that such reports must have reached the accused.[6485] The same is true in this case.

3. Statements of Third Parties do not Indicate that President Karadzic had Knowledge of Genocidal Executions

3113. The Prosecution has had access to thousands of intercepted conversations. However, it has failed to adduce any evidence that President Karadzic had been informed of the executions. This point must be underscored. Had President Karadzic been a member of the JCE to murder the prisoners, or merely been informed of the executions, there should have been at least some evidence of that in the intercepts. There is none. Therefore, reasonable doubt exists as to whether President Karadzic had knowledge of the executions.

[6483] [redacted]
[6484] P4975
[6485] *Bagosora* AJ at para. 657; see also *Augustin Bizimungu* AJ at para. 146

3114. Prosecution **Witness KDZ320** testified that Colonel Beara said they had to get rid of these prisoners.[6486] Beara said that order was from two Presidents.[6487] [redacted][6488] [redacted][6489] [redacted][6490] [redacted][6491] [redacted][6492]

3115. Likewise, **Franc Kos** testified that he heard Colonel Beara say to the soldiers while drunk in Pilica that the State would be grateful to them.[6493] However, he never heard any reference whatsoever to President Karadzic having ordered the killings that his unit was involved in.[6494]

3116. When he returned from Bosnia, [redacted] **Witness KW554**, undertook a review of highly classified intelligence information concerning the events in Srebrenica in July 1995. He was seeking to determine if there was any information that President Karadzic had been involved in or informed about the executions that had taken place after the fall of Srebrenica. He testified that he found no information connecting President Karadzic to those events. Given the level of information in the material he reviewed, Witness KW554 believed that had President Karadzic been involved in or informed about the executions, it would have been reflected in those materials.[6495]

[6486] P4990 at p.7942
[6487] P4990 at p.7944
[6488] [redacted]
[6489]
[6490]
[6491]
[6492]
[6493] T42414
[6494] T42426
[6495] D2762 at para. 30

3117. In September 1995, at the request of Jovica Stanisic, Minister of Interior **Tomislav Kovac** conducted an informal investigation into the Srebrenica events.[6496] He did not find any information which might indicate that President Karadzic played a role in planning, instigating, ordering, or aiding and abetting the liquidation of prisoners from Srebrenica, or that he was aware about the existence of a plan to liquidate the prisoners.[6497]

3118.

4. Events after July Indicate President Karadzic was Not Informed of Genocidal Executions

a. Visit to Srebrenica on 4 August

3119. President Karadzic visited the church in Srebrenica on 4 August. One of his bodyguards, **Nebojsa Ristic** testified as a Prosecution witness that during their visit, they received no information of any unlawful actions that had occurred in Srebrenica. They returned without knowledge of any killings in Srebrenica.[6498] **Dane Katanic**, a leader from Skelani municipality who saw President Karadzic on this occasion, also confirmed that there was no talk about the killing of prisoners from Srebrenica with President Karadzic.[6499]

3120. The Prosecution presented no evidence that President Karadzic was informed of the killing of prisoners during this trip.

b. Statements taking credit for Srebrenica

3121. The fact that in early August, President Karadzic sought to take credit for the Srebrenica events makes it inconceivable that he knew that genocide had been committed there.

[6496] D3960 at para. 135
[6497] D3960 at para. 137
[6498] T15421
[6499] D3561 at para. 9

3122. In a television interview on 4 August, President Karadzic said that a legend should not made out of General Mladic for his success at Srebrenica and that General Krstic had planned the Srebrenica operation in front of President Karadzic.[6500]

3123. In an interview published in the *Telegraf* on 16 August, President Karadzic said that he was very pleased with how quickly General Krstic had occupied Srebrenica.[6501]

3124. These statements were made at a time when President Karadzic was intently trying to dismiss General Mladic. Defence Minister **Milan Ninkovic** testified that had President Karadzic learned of crimes committed by the VRS he would have used this as a reason to dismiss General Mladic, as they could hardly wait to pin something on him.[6502] Prosecution expert witness **Richard Butler** testified that he could find no information that President Karadzic referred to any killings of prisoners as part of his effort to dismiss General Mladic.[6503]

3125. In a speech at the Assembly on 15 October, President Karadzic said that he personally supervised the plan for Srebrenica. He explained that he happened to run into General Krstic and advised him to go straight into town and to pronounce the fall of Srebrenica. "I approved an immediate task and a radical task and I don't regret it," he said.[6504]

3126. There is no evidence that at the time he made these statements President Karadzic had any information that genocide had been committed after the fall of Srebrenica.

3127. Indeed, the actions taken by President Karadzic himself in connection with the Srebrenica events were exemplary. His 9 July order insisted on adherence to humanitarian law.[6505] His appointment of the civilian commissioner was designed to protect the civilian population.[6506] His order establishing a public security station in Srebrenica ordered that all citizens should be treated according to international law conventions.[6507] When declaring a state of war in the area on 14 July, he ordered that

[6500] P4555
[6501] P6407 at p.8
[6502] T40510
[6503] T27879-80
[6504] P1415 at p.86
[6505] P2276
[6506] D2055
[6507] P2995

provisions of international law and conventions be observed.[6508] He ordered that the civilians who worked with the UN in Srebrenica should be unharmed.[6509] He issued orders prohibiting looting in Srebrenica,[6510] and instructed General Krstic to let humanitarian convoys pass.[6511]

3128. President Karadzic's conduct during and after the Srebrenica operation demonstrates that he had no participation in, or knowledge of, the genocidal execution of prisoners.

c. International and Media Reports of Killings

3129. Beginning in late July, media reports and members of the international community made allegations about missing men from Srebrenica. The Prosecution seeks to rely on news media reports, such as those written by Robert Block, which did not come to President Karadzic's attention. In the *Bizimungu* case, the ICTR Appeals Chamber held that where there was no evidence that the accused was alerted to statements from international sources, these did not establish his knowledge of the crimes.[6512]

3130. Material addressed directly to his office may not have been seen by him. For example, on 24 July, UN Human Rights Rapporteur for Bosnia Tadeusz Mazowiecki wrote to President Karadzic and expressed concern that several thousand individuals from Srebrenica were unaccounted for and it was feared they were killed or detained.[6513]

3131. Another letter was received in President Karadzic's absence from Special Representative Akashi on 12 August expressing grave concern that many persons from Srebrenica were unaccounted for and the existence of a mass grave identified by the United States.[6514] President Karadzic's appointment agenda indicates that he was touring remote regions of the Krajina that were under heavy attack during the period from 10-18 August.[6515]

[6508] P4553 at para. 5
[6509] P4390
[6510] P4967
[6511] P4968
[6512] *Augustin Bizimungu* AJ at para. 150
[6513] P6396
[6514] P2288
[6515] P2242 at pp.105-07

3132. Those reports that he did become aware of failed to provide reason for President Karadzic to believe that the men had been executed. President Karadzic was repeatedly told that this was false propaganda and that no significant number of executions of people from Srebrenica had taken place. He was informed that the reports of persons unaccounted for from Srebrenica were due to the fact that the Muslims had exaggerated the number of persons living in Srebrenica for purposes of getting more humanitarian aid and that many men had been killed in the fierce combat after the fall of Srebrenica.[6516]

3133. President Karadzic received a document from Miroslav Deronjic on 17 July signed by the Muslim civilian representative in Srebrenica and by the Dutchbat commander indicating that the evacuation had been carried out correctly and that there had been no violations of the Geneva Conventions.[6517]

3134. Previous false accusations of atrocities lend credence to President Karadzic's distrust of reports of atrocities in Srebrenica. In 1993, for instance, similar claims of atrocities were leveled at the VRS concerning events in Cerska.

3135. Colonel **Pyers Tucker** testified that in March 1993 President Izetbegovic had told General Morillon that Cerska had fallen and that there were 700 injured people in need of immediate evacuation.[6518] The Bosnian commander in Tuzla had told Morillon that a large number of civilians in Cerska had been killed by locking them in their houses and burning the houses to the ground.[6519] His diary reflects that on 3 March 1993, Vice President Ganic advised Morillon that there were 1500 wounded in Cerska, and 18,000 civilians.[6520]

3136. When General Morillon reached Cerska on 6 March, he reported that there was no visible evidence of any burned houses or of any massacres in Cerska.[6521] There were only about 75 wounded who needed evacuation, military and civilian, and not the 700 they had been told in Sarajevo.[6522] Naser Oric accepted this figure, although he had believed it was higher.[6523]

[6516] D4490 at p.4
[6517] P3997
[6518] T23254; P4203 at para.160
[6519] T23254; P4203 at para.161
[6520] T23254; D2026
[6521] T23255-56; P4203 at para.162
[6522] P4203 at para.163
[6523] P4203 at para.164

3137. In a document of the British Army dated 13 March 1993, it was noted that Larry Hollingsworth (UNHCR), on return from the Cerska area, confirmed that the situation was not as bleak as previously painted. There were no overt signs of a massacre, no obvious cases of malnutrition and some fuel was available.[6524]

3138. Given this experience with Cerska, and assurances he received from his subordinates, reasonable doubt exists as to whether President Karadzic believed the claims about atrocities committed after the fall of Srebrenica.

3139. Members of President Karadzic's staff, such as **General Subotic**[6525], **Gordan Milinic**,[6526] and **John Zametica**[6527] confirmed that President Karadzic and his staff considered the reports to be mere propaganda. This was also the view of Assembly President **Momcilo Krajisnik**.[6528]

d. ICTY Indictment

3140. On 14 November 1995, in the midst of the Dayton peace negotiations, and at a time when a possible amnesty from prosecution for President Karadzic and General Mladic was discussed, the ICTY Prosecutor issued an indictment concerning Srebrenica. Since President Karadzic knew that he had not "planned, instigated, ordered, or otherwise aided and abetted" the execution of prisoners, it is reasonable that he considered the indictment as yet another attempt by the international community to remove him from power. It would give him no confidence that the allegations that prisoners had been executed were true.

3141. In an interview with CNN on 28 November 1995, President Karadzic stated that he considered that the indictment was "a matter of political pressure" and "completely unfounded".[6529]

3142. President Karadzic's lack of knowledge of the Srebrenica executions and belief that the allegations were anti-Serb propaganda continued for years after the events. In a letter written to John Zametica in 2001, President Karadzic contended that Republika

[6524] T23258; D2027 at para.2b
[6525] D3695 at para.237
[6526] T39769-70
[6527] T42487
[6528] T43342-43
[6529] D4490 at p. 3

Srpska had nothing to do with the executions at Srebrenica.[6530] If President Karadzic and Zametica had been aware of the executions when they worked together in 1995, President Karadzic would not have written these views in confidential letters.

e. Efforts to Investigate and Prosecute

3143. In the spring of 1996, President Karadzic ordered an investigation into Srebrenica.

3144. This is confirmed by an entry dated 22 March 1996 in General Mladic's notebook. General Mladic notes that after the visit of U.S. Secretary of State Madeline Albright, President Karadzic informed him that he had decided to form a joint commission with the UN to investigate all the deaths and killings around Srebrenica during the war. Mladic's notebook also indicates that President Karadzic said he had been informed of the allegations of "those two" in Belgrade.[6531] The reference to "those two" appears to refer to media reports of allegations made by Drazen Erdemovic and another person in Belgrade about their participation in the execution of prisoners.

3145. On 23 March 1996, President Karadzic issued an order that a commission be formed to investigate the bodies discovered during the visit by Secretary Albright. The order's reference to the "biased and arbitrary conclusions" of Secretary Albright and media "experts" reflects his state of mind that he still did not believe the allegations of large-scale executions in March 1996.[6532]

3146. On 1 April 1996, President Karadzic issued an order for an investigation of all of the Srebrenica events.[6533] He left office before that investigation was completed.

f. Letters seized from President Karadzic

3147. At the time of his arrest, the police seized President Karadzic's computer. It contained hundreds of pages of private, confidential letters that he had sent to his closest associates including Momcilo Krajisnik and John Zametica. In some of those letters he

[6530] D3930 at pp.2-3
[6531] P1490 at p.47
[6532] P3163 at p.8
[6533] P164

refers to the Srebrenica events.[6534] It is clear from those candid and confidential letters that President Karadzic had no information about executions of a significant number of people from Srebrenica and believed those allegations to be false.

5. Conclusion—President Karadzic had no Knowledge of Genocidal Executions

3148. In the *Krstic* case, the Appeals Chamber held that there must be an evidentiary basis for finding that an accused had the requisite knowledge—inferring such knowledge from contact with others who had such knowledge was not enough.[6535] The Prosecution has failed to establish an evidentiary basis upon which it can be determined beyond reasonable doubt that President Karadzic knew or had reason to know that the crime of genocide had been committed in Srebrenica. The facts show that President Karadzic did not have such knowledge.

3149. The Prosecution contends that President Karadzic must have known of the executions because he had several lines of communication available to him during the Srebrenica events. In the *Bizimungu* case, the ICTR Appeals Chamber held that the Trial Chamber had erred in concluding that the accused had knowledge from various means of communication available to him without specific information as to the fact that the crimes were reported to him through one of these means. The Prosecution's argument in this case must therefore be rejected.

b. Radovan Karadzic is Not Guilty of Genocide under any of the Modes of Liability

3150. The Appeals Chamber has determined that when the Prosecution seeks to draw an inference as proof of the accused's state of mind, that inference must be the only reasonable inference available on the evidence. Further, the benefit of the doubt must always go to the accused.[6536]

[6534] D3930
[6535] *Krstic* AJ at para.98
[6536] *Kvocka* AJ at para.237

1. Radovan Karadzic was not a Member of any Joint Criminal Enterprise—JCE I

a. actus reus

3151. The Appeals Chamber has held that the *actus reus* of the basic form of joint criminal enterprise (JCE I) comprises the following three elements; (1) a plurality of persons; (2) the existence of a common plan, design or purpose which amounts to or involves the commission of a crime provided for in the Statute; and (3) the participation of the accused in the common plan involving the perpetration of one of the crimes provided for in the Statute.[6537]

President Karadzic never agreed to the commission of genocide

3152. To be a member of a joint criminal enterprise, it is necessary that a person form an agreement with others that a crime will be carried out.[6538] The Prosecution must prove that the agreement was not only to murder, or exterminate the men of Srebrenica, but that it was to commit genocide—to destroy the Bosnian Muslim group in whole or in substantial part.

3153. Even if some persons in the VRS agreed to commit genocide, there is no evidence that President Karadzic agreed to such a plan.

President Karadzic never contributed to the execution of a genocidal plan

3154. The Appeals Chamber has held that a person's participation in a JCE need not involve commission of a specific crime under one of those provisions (murder, extermination, torture, rape, etc.), but may take the form of assistance in, or contribution to, the execution of the common plan or purpose.[6539]

3155. The contribution of the accused to the common plan must be significant, although it need not be necessary or substantial.[6540]

[6537] *Krnojelac* AJ at para.117
[6538] *Krnojelac AJ* at para.82
[6539] *Krnojelac* AJ at para.117
[6540] *Brdjanin* AJ at para.430

3156. The Prosecution alleges that a positive contribution was to authorize the military attack on Srebrenica and to take the town once it was determined to be undefended. However, this cannot qualify as a contribution to the JCE. The evidence demonstrates that any common plan to kill prisoners was not in existence at the time President Karadzic authorized the taking of Srebrenica.

3157. Even if the Prosecution's evidence was taken at its highest and the plan to execute the prisoners was formed as early as on the morning of 12 July, the last contribution from President Karadzic was on 9 July, well before the formation of a JCE to commit genocide.

President Karadzic did not contribute to any common plan for genocide by omission

3158. While, in theory, it may be possible for the significant contribution element to be satisfied by an omission, the Appeals Chamber has held that the *actus reus* for "commission by omission" is a higher standard than for aiding and abetting by omission, namely, the accused must exert "concrete influence" on the perpetration of the crime.[6541]

3159. An example of this might be a security guard who is part of a JCE to rob his store, who looks the other way while his accomplices rob it. However, mere failure of a public official to exercise the general duty to punish crimes cannot constitute a significant contribution by omission. Otherwise JCE liability would attach automatically to every such person and would subsume the conduct prohibited by Article 7(3) into JCE liability.

3160. Therefore, any alleged omission by President Karadzic to punish persons for genocide in Srebrenica cannot constitute the significant contribution required for JCE. The element that President Karadzic made a significant contribution to a common plan to commit genocide has not been satisfied.

Conclusion—no actus reus for JCE I

3161. It has not been established beyond reasonable doubt that President Karadzic was among a plurality of persons who formed a common plan to commit genocide or that he made a significant contribution to any such plan. Therefore, the *actus reus* for his liability under JCE I has not been established.

[6541] *Mrksic* AJ at para.156

b. mens rea

3162. For JCE I, the *mens rea* requirement is that the accused acting pursuant to a common design with other JCE members, possesses the same criminal intention required for the crime.[6542]

3163. Where the criminal object consists of a crime requiring specific intent, the Prosecution must not only prove that the accused shared with others the general intent to commit the underlying offence—for example, "killing members of the group" as an underlying offence of genocide—but also that he shared with the other joint criminal enterprise members the specific intent required of the crime or underlying offence.[6543]

Other Srebrenica accused with more knowledge were found not to have shared genocidal intent

3164. In the *Krstic* case, the Appeals Chamber established that in order to be guilty of genocide under JCE I, an accused must share the genocidal intent of the other members.[6544] It was found that General Krstic's knowledge of the executions did not support an inference that he had genocidal intent.[6545]

3165. In the *Popovic* case, the Trial Chamber, noting the "stringent test for specific intent" for genocide, found that Drago Nikolic was not found to have shared the intent to destroy, despite having found that he had extensive personal involvement in the execution operation.[6546] Nor did Ljubomir Borovcanin's knowledge of the executions at Kravica warehouse support a finding that he had genocidal intent.[6547] General Pandurevic, who was found to have been aware of the executions of thousands of prisoners in his area of responsibility, nevertheless was not shown to have shared the intent to destroy.[6548] Persons more remote from the crimes, but not as remote as

[6542] *Tadic* AJ at para.196.
[6543] *Milutinovic* TJ at vol. 1, para.109
[6544] *Krstic* AJ at para.79
[6545] *Krstic* AJ at paras.121,129
[6546] *Popovic* TJ at para.1414
[6547] *Popovic* TJ at para.1589
[6548] *Popovic* TJ at paras 2087

President Karadzic, such as Generals Gvero and Miletic, were not even charged with genocide.

3166. In the *Tolimir* case, it was facts above and beyond General Tolimir's knowledge and active participation in concealing the murder operation that convinced the Trial Chamber that he had the intent to destroy the group required for a JCE I conviction for genocide. Specifically, the Trial Chamber emphasised Tolimir's promotion of the use of derogatory and dehumanizing language and his suggestion to use chemical weapons on refugees fleeing from Zepa.[6549] No such facts exist for President Karadzic.

President Karadzic never shared a genocidal intent

3167. In this case, Count Two charges, and the Prosecution is required to prove, not only an intention on the part of President Karadzic that the prisoners be killed, but also the specific intention to destroy the Bosnian Muslims as such, in whole or in part. As shown in the "knowledge" section above, there is no evidence that President Karadzic intended either that the prisoners be killed or that the Muslims be destroyed as a group.

3168. Indeed, there is positive evidence that President Karadzic had no such intent. For example, while the Trial Chamber in *Popovic* has inferred genocidal intent from the efforts by some VRS officers to hunt down every Muslim male and kill him,[6550] President Karadzic affirmatively ordered that Muslim men serving as UN local staff be allowed to leave Srebrenica with the UN personnel well after the killing operation was underway.[6551]

3169. Therefore, President Karadzic's *mens rea* for JCE I has not been established.

2. Genocide Was Not Foreseeable to President Karadzic—JCE III

3170. As an alternative, President Karadzic is charged with genocide arising as a foreseeable consequence of the joint criminal enterprise to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory (JCE III).[6552]

[6549] *Tolimir* TJ at paras.1168-72
[6550] *Popovic* TJ at paras.860
[6551] P4390
[6552] Indictment at paras.10,43

3171. JCE III involves a common design to pursue one course of conduct where one of the perpetrators commits an act that, while outside the common design, was nevertheless a natural and foreseeable consequence of the effecting of that common purpose.[6553]

3172. The elements that must be established for JCE III are that: (a) crimes outside the common purpose have occurred; (b) these crimes were a natural and foreseeable consequence of effecting the common purpose and (c) the participant in the joint criminal enterprise was aware that the crimes were a possible consequence of the execution of the common purpose, and with that awareness, he nevertheless acted in furtherance of the common purpose.[6554]

a. President Karadzic was not a member of a common plan to displace Srebrenica civilians

3173. In order to convict President Karadzic of genocide under JCE III, it must first be proven beyond a reasonable doubt that he was a member of a joint criminal enterprise to forcibly transfer the Bosnian Muslims from Srebrenica.[6555] As demonstrated in the submissions related to Count Eight, President Karadzic was never a member of any such joint criminal enterprise.

3174. President Karadzic is not charged with genocide under JCE III as a foreseeable consequence of a common plan to commit murder. JCE III is only charged as a foreseeable consequence of a common plan to commit forcible transfer.[6556]

b. Genocide at Srebrenica was not foreseeable to President Karadzic

3175. Even assuming that the crime of genocide occurred in Srebrenica, there is no evidence or logic that suggests genocide would be a natural and foreseeable consequence of forcible transfer of the Muslim population from Srebrenica. In the three years of war in Bosnia, there had never been mass executions during or after the movement of the

[6553] *Tadic* AJ at para.204.
[6554] *Stakic* AJ at para.87
[6555] See *Popovic* TJ at para.1564 (Borovcanin)
[6556] Indictment at paras.10.43

population when territory changed hands. Therefore, there was no reason for President Karadzic or anyone else to foresee that genocide would occur if the Muslim population were forcibly transferred from Srebrenica.

3176. The Appeals Chamber has held in determining foreseeability, the knowledge of any kind of risk, however low, does not suffice for the imposition of criminal responsibility. An awareness of a higher likelihood of risk and a volitional element must be incorporated into the legal standard.[6557]

3177. The JCE III *mens rea* standard requires that the possibility a crime could be committed must be "sufficiently substantial" as to be foreseeable to the accused.[6558]

3178. It must be proven beyond a reasonable doubt that it was foreseeable to President Karadzic that the specific crime of genocide, including the element that killings and serious harm would be inflicted with the intention to destroy ethnic Muslims in whole or in substantial part, would be committed. Foreseeing that "devastating consequences" would occur is not enough.[6559]

3179. The Appeals Chamber of the ICTR has held that whether it is proven that the crimes of a perpetrator were foreseeable to the accused may be affected by structural and geographical distance.[6560]

3180. First, the UN Srebrenica report noted that "almost all of the individuals interviewed in the context of this report said that they simply did not expect, or even imagine, the possibility of such barbarity."[6561] Expert witness **General Radovan Radinovic** indicated in his report that the detention or release of prisoners, rather than their execution, was "how it was done throughout the war."[6562]

3181. Furthermore, President Karadzic was at odds with the leadership of the VRS at the time of the executions of the prisoners and therefore there was real structural distance between them. General Milovanovic described that on 13 April 1995, at a meeting of the Supreme Command in Banja Luka, the deteriorating relationship between the civilian authorities and Main Staff came to a head. It was agreed that General Mladic would read

[6557] *Blaskic* AJ at para.41
[6558] *Sainovic* AJ at para. 1081
[6559] *Krajisnik* AJ at para.168
[6560] *Karemera et al v Prosecutor,* No. ICTR-98-44-AR72.5&6, *Decision on Jurisdictional Appeals: Joint Criminal Enterprise* (12 April 2006) at para. 17
[6561] P2284 at para.371
[6562] D3864 at para. 26

his exposé at the Assembly Session of 15-16 April 1995 at Sanski Most. The distrust between the Main Staff and Supreme Command became very pronounced after that Assembly Session. Each side attempted to undermine the other.[6563]

3182. On 29 April 1995, President Karadzic sent a letter to the 14 Generals of the Army accusing them of plotting a coup d'etat.[6564] In May 1995, President Karadzic issued an order for the retirement of Generals Gvero, Djukic, and Tolimir, and Colonel Beara. However, the Army did not implement that order.[6565] From 1 July to 3 August 1995, President Karadzic communicated with the Army only through General Milovanovic. General Milovanovic had to communicate President Karadzic's order to Mladic and await Mladic's reply.[6566]

3183. On 3 August, President Karadzic replaced Mladic as VRS Commander and assigned him to a post of special advisor; Mladic refused to assume those duties. On 4 August, President Karadzic issued a written order.[6567] Mladic again refused to obey President Karadzic's order.[6568] 21 Generals signed a petition in support of Mladic.[6569] President Karadzic then withdrew his decision, as he was unable to implement it.[6570]

3184. In addition to the structural distance, there was geographical distance, as President Karadzic was in Pale during the entire period of the executions, more than 100 kilometers from Zvornik where most of the killings took place.

3185. Neither the United Nations,[6571] Dutchbat,[6572] VRS leaders or soldiers,[6573] nor officials of the Ministry of Interior[6574] had any idea that prisoners would be executed in Srebrenica. There is no evidence that President Karadzic could reasonably foresee that genocide was a possible consequence of forced displacement of the Muslim population in Srebrenica, even if the evacuation of the population was considered involuntary.

[6563] T25657-58
[6564] T25659
[6565] T25645
[6566] T25648
[6567] T25670; D2157
[6568] T25672
[6569] T25673-77; D2158-59
[6570] T25679; D2160
[6571] P2284 at para.486
[6572] P2284,para.473
[6573] D2257 at paras.13-14 (KDZ407); P332 at p.10971, T25380 (Erdemovic); D3927 at p.25 (Kos); T40306 (Salapura), D3932 at para.A6 (Zivanovic)
[6574] D3749 at para.63 (Karisik); D3960 at para.113 (Kovac), D4143 at para. 53 (Kijac)

3186. Finally, JCE III requires that President Karadzic's conduct, in furtherance of the common purpose of forcible transfer, be committed at a time when the accused was aware that genocide was a possible consequence of the forcible transfer. Before 9 July, no one foresaw that the Muslims would leave Srebrenica undefended and that the VRS would have control over the civilian population of Srebrenica. Therefore, no act committed prior to 9 July, such as the signing of Directive 7 in March, or encouraging the VRS to launch a military operation to separate the Srebrenica and Zepa enclaves, can satisfy this requirement.

3187. The only possible culpable act President Karadzic committed during this period was his approval for the VRS to enter Srebrenica. However, that approval was accompanied by instructions to treat the Muslims in accordance with the Geneva Conventions.[6575] Even if it were foreseeable that individuals in that area might commit opportunistic killings out of revenge, there is simply no evidence that at the time of that approval, it was foreseeable to President Karadzic or anyone else that genocide would be committed.

3188. In the *Popovic* case, the Trial Chamber found that some accused could be liable for murder under JCE III for opportunistic killings committed as a foreseeable consequence of a JCE to remove the Muslims from Srebrenica. Judge Kwon dissented from this finding, stating that it was not foreseeable from a plan to remove the population that such killings would occur.[6576] However, the Trial Chamber held that only the killings that occurred in Potocari were foreseeable consequences of the forcible removal of the population.[6577] If the execution of prisoners in Kravica and Zvornik was not a foreseeable consequence of a JCE to remove the population from Srebrenica, then the crime of genocide cannot be said to have been foreseeable.

3189. Even the opportunistic killings at Potocari were found not to be foreseeable to General Gvero, because he was not involved in any of the logistical aspects of the transfer operation.[6578] Consequently, he was acquitted of murder, and not charged with genocide. There is no reason to apply a different result to President Karadzic, who was

[6575] P2276
[6576] *Popovic* TJ *Dissenting and Separate Opinions of Judge Kwon* at para.27
[6577] *Popovic* TJ at para.1088
[6578] *Popovic* TJ at para. 1830

furtherremoved from logistical aspects than General Gvero, and who is charged with foreseeing not only murder, but genocide.

3190. Therefore, the Prosecution has failed to prove beyond a reasonable doubt that President Karadzic is guilty of genocide under JCE III.

3. President Karadzic is Not Guilty of Aiding and Abetting

3191. The Prosecution has charged President Karadzic with aiding and abetting genocide. Aiding and abetting requires a three-step test: (1) the participant commits a crime punishable under the statute; (2) the accused aids and abets the participant in the commission of the crime; and (3) the accused acts with the awareness that his acts will assist the participant in the commission of the crime.[6579]

3192. As set forth in the section on the Srebrenica events, President Karadzic contends that genocide was not committed in Srebrenica. Therefore, he cannot be convicted of aiding and abetting a crime that was not committed.

3193. Should the Trial Chamber find that persons did commit genocide at Srebrenica, the remaining elements of President Karadzic's individual responsibility for aiding and abetting have not been proven beyond a reasonable doubt.

a. actus reus

3194. The *actus reus* for aiding and abetting is that the accused carried out an act that consisted of practical assistance, encouragement or moral support to the principal. The assistance must have had a "substantial effect" on the commission of the crime. The assistance may be provided by either an act or by an omission.[6580] It remains unclear whether the assistance must be "specifically directed" to the commission of the crime.[6581]

[6579] *Oric* TJ at para. 269
[6580] *Blagojevic* TJ at para.726; *Limaj* TJ at para.517
[6581] *Perisic* AJ at para.36; *Sainovic* AJ at para. 1650

No act of President Karadzic assisted in the commission of genocide

3195. The Prosecution has not established that any act of President Karadzic that assisted in the execution of the prisoners, let alone had a "substantial effect" on the commission of the crime. The acts of encouraging a military operation to separate the enclaves and approving the VRS to enter Srebrenica are too remote from the execution of prisoners to constitute an act of practical assistance to those who carried out genocide. If such decisions are considered to be acts of practical assistance to crimes, then every President who authorizes his troops to a military engagement satisfies this element of the *actus reus* for aiding and abetting.

3196. The Trial Chamber in the *Milutinovic* case found President Milutinovic not guilty of aiding and abetting various crimes committed in Kosovo. President Milutinovic had made morale-boosting speeches to officials in Kosovo and sat on the Supreme Defence Council, where he approved decisions concerning military and police operations in Kosovo that led to widespread crimes. The Trial Chamber found that in the context of such a large case with a multiplicity of players, these acts could not be said to have had a substantial effect on the commission of the crimes.[6582] The same is true in this case, where President Karadzic's encouragement to commence the Srebrenica military operation and enter the town were of no practical assistance to the commission of genocide.

President Karadzic's acts did not have a substantial effect on the crime of genocide

3197. Even if the acts of encouraging a military operation to separate the enclaves and approving the VRS to enter Srebrenica were considered to be of practical assistance to the perpetrators of genocide, they did not have a "substantial effect" on the commission of the crime.

3198. A similar situation arose in the *Strugar* case. There, the Trial Chamber found that even though the accused had ordered forces under his command to take the town of

[6582] *Milutinovic* TJ at vol.3, para.281

Srd, this order did not have a substantial effect on the illegal shelling the next day in the Old Town of nearby Dubrovnik. Therefore, his conduct did not satisfy the *actus reus* for aiding and abetting.[6583] Likewise, on 9 July, President Karadzic's approval to enter Srebrenica could not have had a substantial effect on the crime of genocide, the idea for which did not even develop until at least three days later.

If specific direction or "purpose" is required, no act of President Karadzic qualifies

3199. The Appeals Chamber has previously held in the *Perisic* case that in addition to the requirements that the accused's acts were of practical assistance to the perpetrators and had a substantial effect on the crime, the accused's acts must be specifically directed to commission of the crime.[6584] While President Karadzic approved the attack on Srebrenica and the taking of the town, these acts were also not specifically directed to the crime of murder, let alone genocide. The alleged murder plan was not even in existence at the time of those acts.

3200. In the *Stanisic & Zupljanin* case, the Trial Chamber found that there was no evidence that Minister of Interior Stanisic's acts or omissions were specifically directed to assist, encourage, or lend moral support to the perpetration of 19 separate instances of extermination in 1992 despite the fact that police under his Ministry perpetrated those crimes.[6585] By the same logic, President Karadzic's acts were not specifically directed to the perpetration of genocide in Srebrenica.

3201. While the continuing validity of the specific direction requirement is now unsettled in light of the *Sainovic et al* judgement, President Karadzic wishes to preserve this issue in the event that a differently composed Appeals Chamber finds that specific direction is a requirement of aiding and abetting.

3202. President Karadzic also contends that for aiding and abetting it must be shown that the accused shared the purpose of the crime with the perpetrator, and that he never shared the purpose of genocide with anyone. While the Appeals Chamber has heretofore rejected this "purpose test",[6586] President Karadzic contends that there are cogent reasons,

[6583] *Strugar* TJ at para.354
[6584] *Perisic* AJ at para.36
[6585] *Stanisic & Zupljanin* TJ at para.786
[6586] *Mrksic* AJ at para.159

in light of the abandonment of the "specific direction" requirement, to require a "purpose" standard for *mens rea* for aiding and abetting and wishes to preserve this issue for appeal.

No omission of President Karadzic furthered the crime of genocide

3203. In some limited cases, the Appeals Chamber has held that aiding and abetting may also be committed by omission. The *actus reus* of aiding and abetting by omission is established when the accused failed to perform a legal duty and that failure "assisted, encouraged or lent moral support to the perpetration of the crime," and had a "substantial effect" on the commission of the crime. Aiding and abetting by omission also requires that the accused had the ability to act, such that there were means available to the accused to fulfill his duty.[6587]

3204. With respect to President Karadzic's alleged failure to take steps to investigate or prosecute the crime of genocide, any such omission cannot satisfy the *actus reus* of aiding and abetting for several reasons.

3205. Firstly, President Karadzic did not know that the crime of genocide had been committed. The Appeals Chamber has held that omissions can count toward the *actus reus* only if the accused "had the ability to act but failed to do so."[6588] President Karadzic did not have the ability to punish perpetrators of genocide when he had no information that genocide had been perpetrated.

3206. Secondly, to be culpable for aiding and abetting by acting after the commission of the crimes, it must be shown that there was a prior agreement between the accused and the principals who committed the crimes.[6589] There is no evidence of any prior agreement of President Karadzic to not punish the principals.

3207. Thirdly, President Karadzic took several steps to ensure that crimes were not committed against the population of Srebrenica. His 9 July order insisted on adherence to humanitarian law.[6590] He appointed a civilian commissioner and ordered him to protect

[6587] *Mrksic* AJ at para.49
[6588] *Mrksic* AJ at paras.82,99
[6589] *Blagojevic* TJ at para.731;*Prosecutor v Sesay et al*, No. SCSL-04-15-T, *Judgement* (2 March 2009) at para.278; *Strugar* TJ at para.355; *Report of the I.L.C.*, on the work of its forty-eighth session, G.A. Supp. No. 10 (A/51/10) 1996, p.24; cited in *Furundžija* TJ at para. 229
[6590] P2276

the civilian population.[6591] His order establishing a public security station, in Srebrenica ordered that all citizens should be treated according to international conventions.[6592] He ordered that the civilians who worked with the UN in Srebrenica should be unharmed.[6593] He issued orders prohibiting looting in Srebrenica,[6594] and instructed General Krstic to let humanitarian convoys pass.[6595]

3208. In the *Strugar* case, the Trial Chamber found that an order for a ceasefire, which may not have even been communicated to the accused's troops, was sufficient to negate an inference that the accused aided and abetted the crimes by omission.[6596] Given the far greater efforts by President Karadzic to ensure that crimes were not committed in Srebrenica, any omission on his part could not be found to have constituted the *actus reus* of aiding and abetting.[6597]

3209. The *Strugar* Trial Chamber also found that the accused did not initiate or ensure that his subordinates initiated an effective investigation into the events and did not take steps towards the discipline and the punishment of the perpetrators. The Trial Chamber did not find that this satisfied the *actus reus* of aiding and abetting. It was "not satisfied that conduct of this nature, well after the offences were committed, could have a direct and substantial effect on the commission of the offences."[6598]

3210. Likewise, in the *Mrskic* case, it was Sljivancanin's failure to act *before* the crime that satisfied the *actus reus* for aiding and abetting.[6599] In the *Popovic* case, the Trial Chamber specifically found that Borovcanin's liability for aiding and abetting by omission stemmed from the fact that his failure to protect the Bosnian Muslim prisoners then still detained, substantially contributed to the full-scale execution which took place later at the Kravica Warehouse.[6600]

[6591] D2055
[6592] P2995
[6593] P4390
[6594] P4967
[6595] P4968
[6596] *Strugar* TJ at para.355
[6597] Affirmative orders to ensure compliance with humanitarian law cannot be used to infer *mens rea*. *Blaskic* AJ at para.602
[6598] *Strugar* TJ at para.355
[6599] *Mrksic & Sljivancanin* AJ at para. 97, later overturned in *Prosecutor v Sljivancanin*, No. IT-95-13/1-R.1, *Review Judgement* (8 December 2010)
[6600] *Popovic* TJ at para. 1559

3211. No accused person at this Tribunal or the ICTR has been convicted of aiding and abetting for failing to punish the perpetrators after the fact. Likewise, President Karadzic's alleged after-the-fact failure to punish the perpetrators of the Srebrenica executions cannot satisfy the *actus reus* requirement of aiding and abetting as this had no direct or substantial effect on the commission of the crime of genocide.

3212. Further, any general failure of the Republika Srpska justice system since 1992 could not be said to have assisted, encouraged or lent moral support to the perpetration of the crime, or had a substantial effect on the commission of the offence. This is because no one had committed the crime of genocide in the past such as to encourage others to commit these acts in the future.

3213. In the *Sainovic* case, the Appeals Chamber held that no reasonable Trial Chamber could have concluded that General Lazarevic's failure to punish crimes committed by his troops in Kosovo in 1998 had a substantial effect upon the commission of the crimes of a greater scale in 1999.[6601]

3214. Likewise, there is simply no basis to conclude that any deficiencies in the Republika Srpska justice system attributable to President Karadzic in 1992-94 had a substantial effect upon the commission of the crime of genocide at Srebrenica in 1995. There is no evidence that those who participated in the executions, such as members of the 10th Sabotage Detachment or the Skorpions, believed that they could commit such crimes with impunity. Two members of each unit testified in this trial, and none of them indicated that they were encouraged to participate in the executions by a failure to punish past crimes.

3215. President Karadzic's acts and omissions have not been shown to satisfy the requirements for *actus reus* of aiding and abetting genocide.

b. mens rea

3216. President Karadzic contends that the proper test for the *mens rea* of aiding and abetting is "purpose" and not "mere knowledge". However, even under the lower "knowledge" standard, the *mens rea* for aiding and abetting requires that the accused act with the awareness that his acts will assist the participant in the commission of the

[6601] *Sainovic* AJ at para. 1682

crime.[6602] Since the evidence demonstrates that President Karadzic had no knowledge that the men from Srebrenica would be, were being, or had been executed, let alone executed with genocidal intent, he cannot have been aware that his acts or omissions would assist anyone in committing genocide.

3217. It is firmly established that to satisfy the *mens rea* requirement for aiding and abetting, it must be shown that the aider and abettor knew that his acts or omissions assisted the commission of *the specific crime* by the principal, and that the aider and abettor was aware of the essential elements of the crime which was ultimately committed, including the intent of the principal perpetrator.[6603]

3218. Therefore, in order to be guilty of aiding and abetting genocide, it must be proven beyond reasonable doubt that President Karadzic was aware that genocide (not murder or extermination) was being committed after the fall of Srebrenica.

3219. In the *Blagojevic* case, the accused was found to have had knowledge of many facts of the forcible transfer operation. However, the Appeals Chamber held that without knowledge of the mass killings, the accused was not aware of the principal perpetrators' genocidal intent.[6604] The same is true for President Karadzic, who was further away from the events and had even less knowledge of them than Blagojevic.

3220. It has not been established beyond reasonable doubt that President Karadzic had the *mens rea* required for aiding and abetting genocide. One can reasonably infer from all the evidence that President Karadzic was not aware of the executions of the men from Srebrenica. Even if the Trial Chamber were to find that he was aware of some executions, there is no evidence that President Karadzic knew that they were committed with genocidal intent.

3221. The Prosecution has failed to prove both the *actus reus* and *mens rea* for aiding and abetting genocide.

[6602] *Kupreskic* AJ at para.248; *Oric* TJ at para. 269
[6603] *Sainovic* AJ at para. 1772
[6604] *Blagojevic* AJ at para.123

4. Radovan Karadzic is Not Responsible for Genocide as a Superior—Article 7(3)

3222. To hold a commander responsible for the crimes of his subordinates, it must be established beyond reasonable doubt that: (1) a superior-subordinate relationship existed between the superior and the perpetrator of the crime; (2) the superior knew or had reason to know that the criminal act was about to be or had been committed; and (3) the superior failed to take the necessary and reasonable measures to prevent the criminal act or to punish the perpetrator thereof.[6605]

3223. When the commander is the President, special caution is warranted. In the *High Command* case, the Tribunal held that:

> "The President has the right to assume that details entrusted to responsible subordinates will be legally executed. The President of the United States is Commander-in-Chief of its military forces. Criminal acts committed by those forces cannot in themselves be charged to him on the theory of subordination. The same is true of other high commanders in the chain of command. Criminality does not attach to every individual in this chain of command from that fact alone. There must [be] a personal dereliction…It must be a personal neglect amounting to a wanton, immoral disregard of the actions of his subordinates amounting to acquiescence. Any other interpretation of international law would go far beyond the basic principles of criminal law as known to civilised nations."[6606]

3224. President Karadzic was confronted with a huge crisis in Republika Srpska during the summer and fall of 1995, jeopardizing the very existence of the Bosnian Serb State. His actions with respect to allegations about events in Srebrenica cannot be examined in isolation 19 years after these events. They must be viewed in the context of what was reasonable in the midst of a spiraling military and political conflict at the time.

3225. When assessing superior responsibility, the failure to prevent and the failure to punish are not only legally distinct[6607] but are factually distinct in terms of the type of knowledge that is involved for each basis of superior responsibility. The failure to punish and failure to prevent involve different crimes committed at different times: the failure to punish concerns past crimes committed by subordinates, whereas the failure to prevent concerns present or future crimes of subordinates.[6608] The duty to prevent arises for a

[6605] *Perisic* AJ at para.86
[6606] *United States v. Wilhelm von Leeb et al.*, Judgement of 27 October 1948, Military Tribunal V, Law Reports of the Trials of War Criminals, vol. XI
[6607] *Hadzihasanovic* AJ at para.259; *Ndahimana* AJ at para.79
[6608] *Blaskic* AJ at para.83; *Ndahimana* AJ at para.79

superior from the moment he knows or has reason to know that a crime is about to be committed, while the duty to punish arises only after the commission of the crime.[6609]

a. Failure to Prevent

3226. As discussed above, President Karadzic had no actual knowledge that prisoners from Srebrenica would be or were being executed, let alone of an intent by some perpetrators to commit genocide. Therefore, he could not have acted to prevent the crime of genocide.

President Karadzic had no Reason to Know that Genocide was being Committed

3227. When assessing whether President Karadzic had "reason to know", it is important to keep in mind that in order for President Karadzic to be liable for superior responsibility, it must be proved beyond reasonable doubt that he had reason to know that genocide was about to be, or was being, committed, and not simply that he had reason to know of murders.

3228. In the *Krnojelac* case, the Appeals Chamber held that:

> "It may not be inferred…that where one offence (the "first offence") has a material element in common with another (the "second offence"), but the second offence contains an additional element not present in the first, it suffices that the superior had alarming information regarding the first offence in order to be held responsible for the second on the basis of Article 7(3) of the Statute (such as for example, in the case of offenses of cruel treatment and torture where torture subsumes the lesser offence of cruel treatment). Such an inference is not admissible with regard to the principles governing individual criminal responsibility. In other words, and again using the above example of the crime of torture, in order to determine whether an accused had reason to know that his subordinates had committed or were about to be committing acts of torture, the court must ascertain whether he had sufficiently alarming information (bearing in mind that…such information need not be specific) to alert him to the risks of acts of torture being committed , that is of beatings being inflicted not arbitrarily but for one of the prohibited purposes of torture. Thus, it is not enough that an accused has sufficient information about beatings inflicted by his subordinates; he must also have information-- albeit general—which alerts him to the risk of beatings being inflicted for one of the purposes provided for in the prohibition against torture."[6610]

[6609] *Hadzihasanovic* AJ at para.260

3229. In the *Hadzihasanovic* case, the Trial Chamber relied on Kubura's knowledge of and failure to punish his subordinates' past acts of plunder. However, the Trial Chamber made no such findings with respect to any past acts of wanton destruction by Kubura's subordinates. Thus, while there was a sufficient evidentiary basis for the Trial Chamber to conclude that Kubura had knowledge of the acts of plunder in Vareš, the Appeals Chamber held that it was also reasonable for it to conclude that his knowledge as regards the acts of wanton destruction was not established beyond reasonable doubt.[6611]

3230. In the *Popovic* case, the Trial Chamber held that Borovcanin incurred superior responsibility for the killings of prisoners on a bus outside of the Kravica warehouse.[6612] But it acquitted him of genocide, finding that he did not know of the genocidal intent of the perpetrators.[6613] Similarly, that Chamber also held that Pandurevic incurred superior responsibility for the killing of prisoners by members of the Zvornik Brigade.[6614] The Chamber acquitted him of genocide, finding that he did not know of the genocidal intent of the perpetrators.[6615]

3231. In the Special Court of Sierra Leone, the Trial Chamber acquitted the accused Fofana of superior responsibility for inflicting terror. This arose in circumstances where Fofana knew of murders, but had no reason to know that crimes would be committed with the primary purpose of spreading terror.[6616]

3232. Since the duty to prevent a crime arises only when the accused knew or should have known of the crime before it is completed, the Prosecution must prove beyond a reasonable doubt that President Karadzic knew or should have known in July that genocide, and not simply murder, would be or was being committed.

[6610] *Krnojelac* AJ at para.155
[6611] *Hadzihasanovic* AJ at para.295
[6612] *Popovic* TJ at para. 1576
[6613] *Popovic* TJ at paras. 1587-89
[6614] *Popovic* TJ at paras. 2050-51
[6615] *Popovic* TJ at paras.2087-88
[6616] *Fofana & Kondewa,* TJ at para.823

President Karadzic Received no Information that Genocide was being committed in Srebrenica

3233. A superior's position alone is insufficient to prove actual or constructive knowledge of the crimes committed by his subordinates.[6617] An accused's position of authority cannot lead to an automatic presumption, beyond reasonable doubt, that he or she knew or had reason to know of the crimes for which a conviction is sought.[6618]

3234. Instead, factual information that should have provided a reason for the superior to avail himself of further knowledge is required. This specific, subjective element makes the "reason to know" standard one of more than mere negligence or an objective test for which strict liability could be found. The Appeals Chamber has emphatically rejected negligence as the basis for a finding that a superior had reason to know of the crimes of his subordinates.[6619]

3235. Mere knowledge that enemy soldiers are detained does not presume knowledge of the mistreatment of those detainees.[6620] This is particularly true in this case, where despite the taking of prisoners by the VRS on many prior occasions during the 3-½ year war, genocide was never committed. Cases in which a superior has been held responsible for failure to prevent a crime have usually involved the superior's knowledge of prior instances of a similar crime such as to put him on notice that such crimes may be repeated.[6621] However, even failure to punish prior crimes by the same unit does not, in itself, provide reason to know that they will commit the same crime in the future.[6622] In addition, it is submitted that it must also be shown that the accused's prior failure to punish was a cause of the commission of the offence.[6623]

3236. The Prosecution cannot point to any factual information received by President Karadzic in July 1995 that provided reason for him to know that genocide was about to occur or was occurring in connection with the events in Srebrenica.

[6617] *Oric* TJ at para. 319
[6618] *Delalic* AJ at para 313.
[6619] *Blaskic* AJ at para.63
[6620] *Hadzihasanovic* TJ at para. 1291
[6621] *Strugar* AJ at paras.305-06
[6622] *Hadzihasanovic* AJ at para.265
[6623] See Mettraux, *The Law of Command Responsibility* (Oxford 2009), pp.82-89

3237. To the contrary, on 17 July, President Karadzic received a document signed by the Muslim civilian representative from Srebrenica and by the Dutchbat commander in Srebrenica confirming that no crimes had been committed during the events in Srebrenica.[6624]

3238. Since President Karadzic lacked the actual or constructive knowledge that genocide was being committed before or during the crime, he cannot be liable for failure to prevent the crime of genocide.

b. Failure to Punish

3239. President Karadzic is not liable for failure to punish genocide for a number of reasons: (1) he lacked actual knowledge or reason to know that his subordinates had committed genocide; (2) he lacked effective control over the perpetrators; and (3) he took necessary and reasonable measures to punish the perpetrators.

After-the-fact Allegations do not Provide Reason to Know of Genocide

3240. In order to hold a superior liable for having "reason to know" of crimes committed in the past by his subordinates, it must be established that the superior had information sufficiently alarming so as to justify further inquiry.[6625] For Count Two, it must be proved beyond reasonable doubt that the information indicated that the crime of genocide had been committed.

3241. While allegations of men from Srebrenica being executed or unaccounted for began to come to President Karadzic's attention in August 1995, principally through the news media, President Karadzic and those around him did not consider the reports credible. He believed that the Muslims were once again creating propaganda to encourage the intervention of the international community on their side of the war.

3242. In an interview with CNN on 28 November 1995, President Karadzic indicated that he had ordered an investigation and that it was reported to him that UNPROFOR had

[6624] P3997
[6625] *Strugar* AJ at para. 298

monitored the "whole affair" in Srebrenica and that there were no mass killings. He added that the alleged number of people missing from Srebrenica was due in part to the fact that the Muslims had exaggerated the population figures for the enclaves.[6626]

3243. In December 1995, FRY Foreign Minister Vladislav Jovanovic reported to the UN Security Council that his government had been informed by officials of Republika Srpska that the reason for the deaths of Muslim men from Srebrenica was fighting among their own ranks. He said, "This situation was abused by the Bosnian Muslim Government to further its propaganda campaign on the alleged mass killing and disappearances of the Muslims from the area."[6627]

3244. Minister Jovanovic asserted that a number of international journalists had been granted access to the area of alleged mass graves, under the auspices of civilian commissioner Miroslav Deronjic, and had found nothing to confirm the existence of those mass graves. He indicated that the Republika Srpska authorities were willing to allow experts from the United States and UN investigators to examine the alleged sites.[6628]

3245. This is what President Karadzic was told about Srebrenica by his subordinates—that allegations of mass killings were nothing more than Muslim propaganda.

3246. In the *Hadzihasanovic* case, the Trial Chamber held that "information relating to mere rumours circulating in the streets does not suffice to constitute the *mens rea* of command responsibility within the meaning of Article 7(3) of the Statute." However, it found that information provided by an investigative judge was sufficient.[6629]

3247. Indeed, in the Massachusetts Articles of War of 1775, the Provisional Congress of Massachusetts Bay noted that a commander could be held responsible in relation to crimes committed by subordinates where he refuses or omits to act "upon due proof" that they have committed crimes.[6630]

3248. In the *Oric* case, the Trial Chamber held that the duty to punish commences only if, and when, the commission of a crime by a subordinate can be reasonably

[6626] D4490; P6202
[6627] D3019, p.3
[6628] D3019,pp.3-4
[6629] *Hadzihasanovic* TJ at paras.1223-25
[6630] W. Parks, "Command Responsibility for War Crimes", 62 *Military Law Review* 1,5 (1973)

suspected.[6631] A superior must be aware of sufficient indications that the crime had occurred.[6632] Here, President Karadzic had no concrete information that genocide had been committed after the fall of Srebrenica from a reliable source such as a judge, or even from his police or military organs. Minister of Interior Tomo Kovac testified that he did not bring information about killings to President Karadzic's attention because his department had been unable to substantiate them through investigation.[6633]

3249. President Karadzic's subordinates steadfastly claimed that the crimes alleged by the Muslims and reported by the news media had not occurred.[6634] The general allegations of executions and unaccounted for men from Srebrenica were not of sufficient credibility to require him to take action during 1995.

3250. To hold otherwise would impose superior responsibility every time allegations are made. Should U.S. President Clinton have been on notice of crimes committed by his subordinates in Kosovo by the convening of a court in Belgrade that accused them of war crimes? Should U.K. Prime Minister Tony Blair have been on notice of crimes committed by his subordinates in Iraq by the convening of private war crimes tribunals that accused them of war crimes? Finding, for the first time at this Tribunal, the requisite knowledge from allegations made by the Bosnian Muslims and their supporters during the war would create an unrealistic and impractical standard of "reason to know" for superior responsibility.

3251. Furthermore, responsibility can be imposed upon a superior for deliberately refraining from finding out about crimes, but not for negligently failing to find out.[6635] The Prosecution has presented insufficent evidence from which it can be concluded that President Karadzic deliberately refrained from finding out about genocide in Srebrenica.

3252. A review of the information available to President Karadzic, even from those sources he believed to be unreliable, demonstrates that there was no information to believe that genocide—killing with the intent to destroy the Bosnian Muslim ethnic group in whole or in part-- had occurred.

[6631] *Oric* TJ at para. 336
[6632] *Oric* TJ at para.577
[6633] T42864
[6634] P2280 (Mladic statements to General Smith)
[6635] *Blaskic* AJ at para.406

3253. On 25 July 1995, Special Rapporteur for the Commission on Human Rights sent President Karadzic a letter that referred to several thousand persons missing or detained. No mention was made of genocide and no facts were presented in the letter.[6636]

3254. In a letter dated 12 August, Special Representative Akashi claimed that many former inhabitants of Srebrenica were unaccounted for and that the United States had alleged the existence of a mass grave. No mention was made of genocide or of any facts indicating that killings may have occurred with the intention to destroy the Bosnian Muslims as a group.[6637]

3255. In any event, President Karadzic did not receive this letter as he was in remote areas of the Krajina during this time, a fact confirmed by his appointment book,[6638] and by the report of UN Civil Affairs Director Anthony Pedauye who mentioned the letter to President Karadzic on 21 August and was told that he had been preoccupied with the crisis in the Krajina.[6639] However, even if President Karadzic had been acquainted with the contents of this letter, it would not have provided him reason to know that genocide, as opposed to murder or extermination, had occurred.

3256. The Prosecution completely failed to adduce any evidence that President Karadzic had reason to know of the genocidal intent of any of the perpetrators of crimes against the men from Srebrenica.

3257. In the *Krstic* case, the Trial Chamber found that the fact that the VRS sought to kill every Muslim man it could find, civilian or military, was indicative of an intent to destroy the group.[6640] There is no evidence from which it can be inferred that President Karadzic knew that the VRS had sought to kill every man from Srebrenica. In fact, he was informed that the VRS had opened a corridor so that the men from Srebrenica could proceed to Muslim territory.[6641]

3258. The *Krstic* Trial Chamber also based its finding of an intent to destroy the group on the concealment of the bodies and the prevention of proper burials for those who were

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[6636] P6396
[6637] P2288
[6638] P2242, pp. 105-07 (9-19 August)
[6639] P2287,p.3. President Karadzic had declared a state of emergency on 26 July 1995 and all able-bodied personnel were being mobilized to deal with the situation in the Krajina. D3741.
[6640] *Krstic* TJ at paras.594-95
[6641] D2002

killed.[6642] There is no evidence of any of this being brought to President Karadzic's attention.

3259. On appeal, the *Krstic* Appeals Chamber held that "the finding that some members of the VRS Main Staff devised the killing of the male prisoners with full knowledge of the detrimental consequences it would have for the physical survival of the Bosnian Muslim community in Srebrenica further supports the Trial Chamber's conclusion that the instigators of that operation had the requisite genocidal intent."[6643] There was no information provided to President Karadzic from which he knew or had reason to know that some members of the VRS Main Staff had devised the killing of male prisoners or what reason they had for doing so.

3260. The *Krstic* Appeals Chamber also found that the VRS officers who devised the plan hid their intentions from the international community and this explained the failure to also kill the women and children who instead were bused to safety.[6644] The evidence showed that the clandestine killing of the men was also kept secret from President Karadzic.

3261. When discussing the issue of General Krstic's knowledge, the Appeals Chamber found that such knowledge could not be inferred from his contacts with General Mladic, participation in the Hotel Fontana meeting,[6645] his presence in Potocari,[6646] his order to secure the road where men were removed from buses,[6647] and the participation of members of the Drina Corps in the executions.[6648] President Karadzic did not have any of these contacts in Srebrenica and therefore had even less reason to know of the genocidal intent of some VRS officers.

3262. The Appeals Chamber inferred General Krstic's knowledge of genocidal acts from his conversation with Colonel Beara in which he angrily stated "you guys fucked me up so much…fuck it, now I'll be the one to blame." The Chamber found that this conversation lent itself to the interpretation that prior to the conversation Krstic had no knowledge of the executions and was angry that the responsibility would now be attached

[6642] *Krstic* TJ at para. 596
[6643] *Krstic* AJ at para.29
[6644] *Krstic* AJ at para.31
[6645] *Krstic* AJ at para.91
[6646] *Krstic* AJ at para.96
[6647] *Krstic* AJ at para.97
[6648] *Krstic* AJ at para.101

to him.[6649] There was no such evidence against President Karadzic, or anything remotely indicating his knowledge that the prisoners were being executed.

3263. In the *Blagojevic* case, the Trial Chamber inferred that Blagojevic knew of the genocidal intent of those participating in the executions primarily from his knowledge of the transfer of the women and children, the executions in Bratunac town and that his forces were trying to capture Muslim men and prevent them from reaching Muslim territory.[6650] However, the Appeals Chamber reversed this finding, concluding that without knowledge of the mass killings, Blagojevic did not have knowledge of the principal perpetrators' genocidal intent.[6651]

3264. President Karadzic had even less information than Colonel Blagojevic. He did not know of murders that were carried out by the Bratunac Brigade in Bratunac town and did not know of efforts to prevent Muslims from reaching their territory. As noted above, President Karadzic was informed that a corridor was being opened to allow the Muslim men to reach their territory. Therefore, the *Blagojevic* case supports a finding that the evidence is insufficient to infer knowledge of genocide by President Karadzic.

3265. In the *Popovic* case, the Trial Chamber found that only Colonel Beara and Lt. Colonel Popovic had genocidal intent. When determining the superior responsibility of Colonel Vinko Pandurevic for genocide, the Trial Chamber found that Pandurevic had insufficient reason to know that the crimes were committed with genocidal intent.

3266. The Trial Chamber found that despite Pandurevic's direct knowledge of the murder operation there was no evidence that he knew of the key features of the operation indicating genocidal intent--the indiscriminate separations in Potocari, the vigorous pursuit of every last Muslim male along the Bratunac–Konjevic Polje Road, the large component of civilians amongst the prisoners, the details of the executions, or the systematic nature of the operation.[6652]

3267. Likewise, President Karadzic did not know Beara or Popovic nor did he have any contact with them. None of the information he received after the fact indicated that there had been indiscriminate separations in Potocari, vigorous pursuit of every last

[6649] *Krstic* AJ at para.104
[6650] *Blagojevic* TJ at para.786
[6651] *Blagojevic* AJ at para. 123
[6652] *Popovic* TJ at para.2088

Muslim male, or failure to distinguish between civilians and soldiers. Therefore, he had no reason to know any of the facts indicating the killings had been perpetrated with genocidal intent.

3268. The *Popovic* Trial Chamber also found that Drago Nikolic participated in the murder operation. When determining whether he had knowledge of the intent to destroy the group, it found that Nikolic did not initially know of the key features of the operation indicating genocidal intent-- indiscriminate separations in Potocari, the vigorous pursuit of victims on the Konjevic Polje road, or that the intended victims included a significant component of civilians.[6653] The Trial Chamber found that it was only when Nikolic later personally met with Beara and Popovic and saw the executions for himself that he acquired sufficient knowledge of the intent to destroy.[6654]

3269. With respect to Borovcanin, the *Popovic* Trial Chamber found that he had no reason to know of the genocidal intent with which the crimes were committed despite his being on the scene and having actual knowledge of the Kravica warehouse killings.[6655] The information brought to President Karadzic's attention after the fact was not as encompassing or specific as that possessed by Nikolic and Borovcanin. Therefore, he had no reason to know that genocide had been perpetrated after the fall of Srebrenica.

3270. The findings in the *Blagojevic* and *Popovic* cases demonstrate that general, public allegations of mass killings are not enough to establish the requisite after-the-fact knowledge required for superior responsibility. Surely, Blagojevic, Pandurevic, and Borovcanin were exposed to the same kind of media reports and allegations that President Karadzic was, as well as the ICTY mid-Dayton indictment of President Karadzic and General Mladic. Neither the Appeals Chamber in *Blagojevic* nor the Trial Chamber in *Popovic* found that these sources provided the kind of information that would allow for the conclusion that the accused knew or had reason to know that genocide had been perpetrated at Srebrenica.

3271. In the *Tolimir* case, the Trial Chamber pointed to the pattern of verbal abuse about Islamic inflicted by Bosnian Serb Forces on the Bosnian Muslims in Potocari,

[6653] *Popovic* TJ at para.1403
[6654] *Popovic* TJ at paras.1404-06
[6655] *Popovic* TJ at para.1589

Bratunac and Zvornik as a factor indicating genocidal intent.[6656] Information about such abuse was never brought to the attention of President Karadzic.

3272. The *Tolimir* Trial Chamber found that General Tolimir was the direct supervisor of those who acted with genocidal intent and knew of their intent by virtue of his being directly responsible for POW matters and personal involvement in the Srebrenica events.[6657] It found that his encouragement of the use of derogatory language when referring to Bosnian Muslims, and his proposal to use chemical weapons in Zepa, was evidence of Tolimir's own genocidal intent.[6658] By contrast, there is no evidence that President Karadzic had information about such conduct.

3273. Therefore, when examining the Tribunal's own jurisprudence, it is safe to conclude that the information available to President Karadzic on the evidence was not sufficient to provide reason to know that genocide had been committed.

3274. Indeed, even 6 years after the event, experts on genocide, such as Professor William Schabas, hold the view that the crimes in Srebrenica were not genocide.[6659] How could President Karadzic be expected to have reason to know in 1995 that genocide had been committed?

3275. Therefore, the Prosecution has failed to prove beyond a reasonable doubt that President Karadzic knew or should have known that genocide had been committed in connection with the fall of Srebrenica.

President Karadzic lacked Effective Control to Punish the Srebrenica Perpetrators

3276. While President Karadzic occupied the post of Supreme Commander during and after the Srebrenica events, he lacked the effective ability to punish the perpetrators at the time.

[6656] *Tolimir* TJ at para.773
[6657] *Tolimir* TJ at para.1166
[6658] *Tolimir* TJ at paras.1169-71
[6659] William A. Schabas, *Was Genocide Committed in Bosnia and Herzegovina? First Judgments of the International Criminal Tribunal for the Former Yugoslavia*, 25 FORDHAM INT'L L.J. 23, 47 (2001)

3277. A commander vested with *de jure* authority who does not, in reality, have effective control over his or her subordinates does not incur criminal responsibility pursuant to the doctrine of command responsibility.[6660]

3278. The issue is not whether the superior was in command or exercising control at any given moment but rather whether he or she had the material ability to prevent or punish the perpetrators of the crimes.[6661] Indicators of effective control are more a matter of evidence than of substantive law and those indicators are limited to showing that the accused had the power to prevent or punish.[6662] Substantial influence that falls short of such effective control is not sufficient.[6663]

3279. Although *de jure* authority may imply a material ability to prevent or punish criminal acts of subordinates, such authority may be neither necessary nor sufficient in itself to prove such ability and establish the existence of effective control. For example, a person may have the authority to issue commands, but they may not be followed. Accordingly, not every position of authority and influence necessarily leads to Article 7(3) liability.[6664] Proof is required that the superior was not only able to issue orders but that his orders were actually followed.[6665]

3280. In *Perisic*, the Appeals Chamber found an indicator of lack of effective control in the fact that Perisic advised against the shelling of Zagreb, but the military officer did it anyway on the orders of Martic.[6666] Likewise, given Colonel Beara's disobedience of President Karadzic's order, conveyed through Miroslav Deronjic, that the prisoners be placed in Batkovici camp, President Karadzic lacked effective control over the perpetrators of the executions. In this case, Karadzic ordered that the prisoners from Srebrenica be taken to Batkovici camp, but the VRS took them to Zvornik and executed them.

[6660] *Hadzihasanovic* AJ at para.21,fn.55
[6661] *Boskovski* AJ at para.230
[6662] *Perisic* AJ at para.87
[6663] *Limaj* AJ at para.273
[6664] *Stanisic & Zupljanin* TJ at para.112 citing *Oric* AJ at paras. 91-92; *Halilovic* AJ at para.207; *Kvocka* AJ at para.144.
[6665] *Blaskic* AJ at para.69
[6666] *Perisic* AJ at para.101

3281. Indeed, President Karadzic had ordered Colonel Beara to be retired in May 1995, but the VRS refused to obey this order.[6667] Therefore, Colonel Beara's very presence during the July 1995 Srebrenica events was a violation of the President's order.

3282. In *Blagojevic*, the Appeals Chamber affirmed the finding that although Colonel Blagojevic had *de jure* control over Momir Nikolic, in light of the actual facts on the ground, including the fact that Nikolic was obeying orders from Colonel Beara and the VRS security organ, Blagojevic lacked effective control over Momir Nikolic. Blagojevic could not, therefore, be liable for failure to prevent or punish Nikolic's crimes under Article 7(3).[6668]

3283. In *Hadzihasanovic*, the Appeals Chamber found that the refusal of the Mujahedin to release an ABiH soldier when ordered demonstrated that the accused lacked effective control over the Mujahedin.[6669]

3284. Additionally, if an accused lacked effective control over the perpetrators at the time of the offence, he cannot be liable for failure to punish them at a later time. In the *Perisic* case, the Appeals Chamber held that:

> The Appeals Chamber notes the possibility that Perisic could have punished the Zagreb Perpetrators after they rejoined the VJ chain of command following the fall of the RSK. The Appeals Chamber recalls, however, that an accused may not be held liable under Article 7(3) of the Statute for failure to punish crimes committed by a subordinate before the accused assumed command over the subordinate. Thus, the fact that, after the shelling of Zagreb, Perisic may eventually have acquired the power to punish the Zagreb Perpetrators does not expose him to liability for failure to punish the Zagreb Crimes.[6670]

3285. Similarly, given the refusal of the VRS leadership to obey his order to dismiss General Mladic on 4 August[6671], President Karadzic also lacked effective control to punish VRS members for the crimes in Srebrenica even after these events.[6672] This was confirmed by Minister of Interior Tomislav Kovac, who testified that the Army leadership was so powerful at that time that any official investigation into the Srebrenica events was impossible.[6673]

[6667] T25645
[6668] *Blagojevic* AJ at para. 302
[6669] *Hadzihasanovic* AJ at paras.225-28
[6670] *Perisic* AJ at paras.110,117-18
[6671] D2157, rescinded on 11 August (D2160)
[6672] See also P4536 (letter to General Gvero on 17 July 1995) and P4537 (reply from General Gvero dated 18 July 1995)
[6673] T42863

3286. Therefore, the Prosecution has failed to prove beyond a reasonable doubt that President Karadzic had the effective ability to punish the perpetrators of genocide.

President Karadzic Did Not Willfully Fail to Take Necessary and Reasonable Measures

3287. Whether a superior took "necessary and reasonable" measures to punish a subordinate is more a matter of evidence than substantive law.[6674]

3288. "Necessary" measures are the measures appropriate for the superior to discharge his obligation (showing that he genuinely tried to prevent or punish) and "reasonable" measures are those reasonably falling within the material powers of the superior.[6675]

3289. As President Karadzic had neither investigative nor prosecutorial organs in his cabinet, the only measure he could take to punish crimes by VRS members was to ensure that competent authorities were investigating.[6676] He had no authority or ability to be the one administering the punishment or discipline.[6677]

3290. In the *Hadzihasanovic* case, the Appeals Chamber held that the accused's awareness that one prosecutorial organ (civilian prosecutor in Bugojno) was investigating was sufficient to discharge his obligation to take "necessary and reasonable measures" to punish the crime, even though the matter had not been referred to a more appropriate prosecutorial organ (district military prosecutor in Travnik).[6678]

3291. Likewise, where Dr. Karadzic knew as of August 1995 that the ICTY was investigating the alleged crimes in Srebrenica, his failure to refer the matter to Republika Srpska organs to conduct a parallel investigation was not a failure to take necessary and reasonable measures to punish the perpetrators.[6679] Article 9(2) of the ICTY Statute provides that the ICTY had primacy over proceedings before national courts. A recent report to the United Nations by an International Law Commission Working Group

[6674] *Boskovski* AJ at para.259
[6675] *Halilovic* AJ at para.63
[6676] *Boskovski* AJ at para.230
[6677] *Stanisic & Zupljanin* TJ at para.117
[6678] *Hadzihasanovic* AJ at para.154
[6679] See also *Bagosora* AJ at para. 688 where the accused was found not liable for failure to punish where his subordinate had ordered an investigation.

concluded that a State's obligation to prosecute may be satisfied by Prosecution by an international criminal tribunal.[6680]

3292. In the *Strugar* case, Judge Shahabuddeen noted that the power of a commander to punish may be displaced by a decision of a higher command to exercise that power, including a power to make any necessary investigation.[6681] Judges Meron and Kwon, in a dissenting opinion, rejected the Prosecution's suggestion as "unacceptable" that an officer retains his obligation to investigate where a legitimate ongoing investigation is already being conducted.[6682]

3293. This was confirmed by Prosecution witness Predrag Drinic, a VRS prosecutor, who testified that he did not believe the information about Srebrenica crimes when he first heard of the allegations. When he did start to believe it, the ICTY was already investigating and he was told not to hinder their investigations.[6683]

3294. In November 1995, after the ICTY indicted President Karadzic for the Srebrenica events, he no longer was required to request an investigation as such a request emanating from an accused person may well have been perceived as an effort to obstruct justice and influence witnesses.

3295. Nevertheless, in March 1996, after concrete information about killings in Srebrenica surfaced with the discovery of a body and statements by an alleged perpetrator in Serbia, President Karadzic did order an investigation. He relinquished the powers of the Presidency in May 1996 at a time when the investigation was not completed. Therefore, he took steps to punish the perpetrator that were reasonable, even though not strictly necessary. The steps he took were well within any statute of limitations for prosecuting such crimes and therefore constitute reasonable measures within his competence.

3296. In the *Stanisic & Zupljanin* case, the Trial Chamber held that it was reasonable for Minister of Interior, Mico Stanisic, to expect that the investigation into the crime at Koricanske Stijene was being conducted in accordance with the relevant law, from the

[6680] International Law Commission, *Final Report: Working Group on the Obligation to Extradite or Prosecute* (4 June 2014) at paras, 19-20 (UN Doc A/CN.4/L.844)
[6681] Shahabuddeen concurring opinion in *Strugar* AJ at para.3
[6682] Dissenting opinion in *Strugar* AJ at para.3
[6683] P374, p.T10890

time of his order on 31 August until the time of his resignation at the end of 1992.[6684] The same is true for President Karadzic.

3297. In the *Blaskic* case, the Appeals Chamber held that where reports were made to the appropriate authorities by the accused, the failure of authorities to conduct a serious investigation could not be attributed to the accused. He had discharged his duty to punish by having the matter reported to the competent authorities. Therefore, he could not be held criminally responsible pursuant to Article 7(3) for failure to punish.[6685]

3298. In addition, it has not been shown that President Karadzic deliberately or willfully failed to punish the perpetrators of genocide. During and after the killings of men from Srebrenica, President Karadzic was no longer in control of the military. International actors, such as President Milosevic and Akashi were meeting with General Mladic without President Karadzic's knowledge after having assessed that the real power lied with Mladic.[6686] President Karadzic's effort to dismiss Mladic had failed. The front lines in the Krajina had collapsed in the wake of Operations Flash and Storm and hundreds of thousands of refugees were streaming into Republika Srpska. NATO planes were bombing Republika Srpska facilities in the wake of the Markale II incident. The fate of Republika Srpska was being decided at Dayton, where it was agreed that President Karadzic could no longer hold public office.

3299. In the *Bagilishema* case, the ICTR Appeals Chamber held that a superior's failure to prevent or punish crimes cannot be due to negligence, but must be the product of a deliberate failure or willful disregard of one's duties.[6687] The Prosecution failed to establish this volitional element in Dr. Karadzic's case.[6688]

3300. For any and all of the above reasons, President Karadzic cannot be liable for failure to punish genocide.

c. Conclusion—Radovan Karadzic is Not Guilty of Genocide

3301. The Prosecution's case is that given that he was the President, and as the executions after the fall of Srebrenica were extensive, President Karadzic must have

[6684] *Stanisic & Zupljanin* TJ at para.797
[6685] *Blaskic* AJ at para.420
[6686] D3512
[6687] *Bagilishema* AJ at para.35
[6688] See Mettraux,pp.78-79

known of them. In the *Bizimungu* case, the ICTR Appeals Chamber held that finding that it was "highly unlikely" that crimes would have escaped the accused's attention does not reflect the accepted standard for assessment of circumstantial evidence.

3302. The truth is that President Karadzic simply never participated in, or knew of, genocide in Srebrenica. He is not guilty of genocide under any theory of liability.

2. Count Three—persecution

3303. In Count Three, Radovan Karadzic is charged with murder, cruel and inhuman treatment, and forcible transfer from Srebrenica as acts of the crime against humanity of persecution. As demonstrated above, President Karadzic never instigated, planned, ordered, aided and abetted, or participated in a joint criminal enterprise to commit crimes related to Srebrenica. Such crimes were not foreseeable to him. He had no knowledge or reason to know of such crimes, and therefore cannot be liable for failing to prevent or punish them. Therefore, he is not guilty of persecution as charged in Count Three.

3. Count Four—extermination

3304. In Count Four, Radovan Karadzic is charged with extermination related to Srebrenica. As demonstrated above, President Karadzic never instigated, planned, ordered, aided and abetted, or participated in a joint criminal enterprise to exterminate people from Srebrenica. Extermination was not foreseeable to him. He had no knowledge or reason to know that extermination would occur or had occurred, and therefore cannot be liable for failing to prevent or punish such crimes.

3305. In the *Perisic* case, even the Trial Chamber that convicted General Perisic acquitted him of aiding and abetting extermination, finding that the evidence was insufficient to conclude that General Perisic knew that the systematic killing of thousands of Bosnian Muslims would probably be committed.[6689] Even VRS Brigade Commanders Pandurevic and Blagojevic were acquitted of aiding and abetting extermination.[6690] Therefore, President Karadzic cannot be said to have aided and abetted the extermination

[6689] *Perisic* TJ at para.1647
[6690] *Blagojevic* TJ at para.751; *Popovic* TJ at para. 2078

of Muslim prisoners from Srebrenica as he neither knew that the crime would be committed nor made a substantial contribution to that crime.

3306. President Karadzic is not guilty of extermination as charged in Count Four.

4. Counts Five and Six—Murder

3307. In Counts Five and Six, President Karadzic is charged with murder as a crime against humanity and as a war crime. As demonstrated above, President Karadzic never instigated, planned, ordered, aided and abetted, or participated in a joint criminal enterprise to murder people from Srebrenica. Murder was not foreseeable to him. He had no knowledge or reason to know that murders would occur or had occurred, and therefore cannot be liable for failing to prevent or punish such crimes. Therefore, he is not guilty of murder as charged in Counts Five and Six.

5. Count Eight—Forcible Transfer

3308. In Count Eight, President Karadzic is charged with the forcible transfer of the population from Srebrenica.[6691] It is alleged that President Karadzic was a member of two joint criminal enterprises that had among their objectives the forcible transfer of the civilian population of Srebrenica.[6692] However, the evidence has failed to establish that President Karadzic was a member of any such joint criminal enterprise.

3309. In March 1995, President Karadzic signed Directive 7, a 24 page single spaced document prepared by the VRS, that set forth the objectives of the VRS for the coming months. Buried in the list of tasks for one of the six corps of the VRS was a sentence that read "By planned and well thought out combat operations, create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Zepa."[6693]

3310. It is the defence case that President Karadzic signed Directive 7 without reading the above-quoted passage. President Karadzic's practice of signing documents after being

[6691] Deportation is only charged for the municipalities, and not Srebrenica. When describing the displacement of people from Srebrenica, the indictment describes it as acts of "forcible transfer.". Indictment at para. 75
[6692] Indictment at paras. 70, 74-75
[6693] P838, p.10

briefed on their contents, but without reading them, was confirmed by members of his staff such as his secretary Mira Mihajlovic[6694] and his security advisor Goran Milinic.[6695] General Bogdan Subotic, who advised President Karadzic on military matters, stated that:

> A few days after his return from the Main Staff, I asked the President about what was discussed at the Main Staff. He told me it was about drafting and signing a directive and a large number of other documents. I reminded him of our agreement and the principle of not signing documents of military content without my presence and knowledge about their content, to which he replied: "Well, General, who am I supposed to trust if not the generals at the Main Staff?". Having worked with the President for more than two years before Directive number 7 was drafted, I state and will continue to state that the President would never knowingly put his signature under that disputable text of Directive number 7.[6696]

3311. The presence of the VRS seal, rather than the President's seal, over President Karadzic's signature on Directive 7, confirms that the document was not processed in the office of the President.[6697]

3312. While a person may be liable in a civil action simply by virtue of having signed a document, this is not the case in a criminal Prosecution where an individual's *mens rea* must be established beyond a reasonable doubt.

3313. A similar situation arose in the *Popovic* case, where the Prosecution alleged that an April 1995 report signed by Colonel Vinko Pandurevic that called for the removal of the Bosnian Muslims from the area of Eastern Bosnia was indicative of his intent to forcibly transfer the population of Srebrenica. The Trial Chamber rejected that argument stating that:

> Ultimately, responsibility for this document lies in a formal sense with Pandurevic as the signatory of the document and generally as the Commander of the Brigade from which it was produced. However, in the absence of additional information, Pandurevic raised a reasonable doubt as to whether the document was in fact written by him and thus specifically reflected his own personal views. In addition, the Trial Chamber views the report as a propaganda document written for the purpose of strengthening the morale of the troops and thus finds the report to be unconvincing as evidence of Pandurevic's alleged intent in this

[6694] T24338
[6695] D3682, para.22; T39758
[6696] D3695, para. 233
[6697] D3682 at para. 21

> respect. Accordingly, for the purposes of evaluating criminal responsibility, the Trial Chamber considers the report to be an insufficient basis on which to conclude that Pandurevic possessed the necessary criminal intent to carry out the common purpose.[6698]

3314. The same conclusion must be drawn with respect to President Karadzic's signature on Directive 7 in March 1995. The evidence that President Karadzic did not read the Directive, as well as the fact that he never expressed those sentiments in five years of public addresses and private intercepted conversations, supports this conclusion. The mere existence of the language of Directive 7 calling for the creation of an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Zepa is an insufficient basis on which to conclude that President Karadzic possessed the intent to forcibly transfer the Muslim population of Srebrenica in July 1995.

3315. President Karadzic's actions with respect to the Srebrenica operation are also indicative that he never possessed the intent or desire that the population be forcibly transferred.

3316. On 5 March 1993, President Karadzic spoke with Prime Minister Vladimir Lukic about the events that were taking place around Cerska during that time. In that conversation, Dr. Karadzic specifically told Prime Minister Lukic, that he had instructed General Mladic, that all Muslim civilians "can stay where they are of go where they want". He emphasized that civilians "can stay and have no need to flee."[6699]

3317. This is a private, intercepted conversation, not meant for the public or propaganda purposes. It provides a very instructive insight into President Karadzic's state of mind. It shows that President Karadzic never wanted the permanent removal of the Bosnian Muslim population from the area in and around Srebrenica as claimed by the Prosecution. Based on this conversation between President Karadzic and Prime Minister Lukic, the Chamber simply cannot conclude that President Karadzic had the intention to forcibly transfer the Bosnian Muslim population from the Srebrenica area or that he had knowledge that his instructions, even going back to 1993, to allow those who wanted to remain to do so, were not being obeyed.

[6698] *Popovic* TJ at para. 2003
[6699] D3571, p.3

3318. In late June, 1995, President Karadzic encouraged General Krstic to undertake an operation to separate the enclaves of Srebrenica and Zepa.[6700] At that time there was no plan or expectation of taking the town of Srebrenica.

3319. The opportunity to take the town of Srebrenica first presented itself on the late evening of 9 July when it appeared that the Muslims had decided not to defend it. President Karadzic gave his approval to the VRS to enter Srebrenica. At that time, there was no intention to expel the civilians. In fact, at the same time he gave his approval, President Karadzic ordered that humanitarian law and the rights of civilians were to be respected.[6701]

3320. President Karadzic also took significant steps to ensure that the civilians could remain in Srebrenica and would be safe. On 11 July, shortly after the Serbs entered Srebrenica and found the town undefended, President Karadzic appointed a civilian commissioner and ordered him to ensure that "the civilian population can freely choose where they will live or move to."[6702]

3321. When ordering the formation of the Srebrenica Public Security Station on that same day, President Karadzic reiterated that civilians "will be free to choose their place of residence or place of emigration."[6703]

3322. President Karadzic asked Vice President Koljevic to personally go to Srebrenica to encourage the civilians to remain and ensure them that they would be treated properly.[6704] On the evening of 11 July 1995 at around 8 p.m., Vice President Koljevic met with UN representative John Ryan at the UNHCR office in Pale. According to Ryan's report, Koljevic stated that the Serbian authorities would endeavor to create the necessary security environment that would enable the civilian population to remain in Srebrenica. Koljevic assured Ryan that a municipal authority would be established there on the following day and would be responsible for the safety of the civilian population. Professor Koljevic further stated that full freedom of movement and every assistance

[6700] P1415, p.86
[6701] P2276
[6702] D2055 at para. 4
[6703] P2994 at para. 4
[6704] P4513 at p. 22; T25935 (Djurdjevic); T26079-80 (Ristic); D2905 at para.26 (Trifkovic)

would be provided to humanitarian organisations that wished to assist the civilian population.[6705]

3323. In a broadcast on SRT television on 12 July 1995, President Karadzic stated:

> "There is, as affairs settle down, an activity of the refugees who want to leave. In fact, the majority, the vast majority of these refugees declared that they want to go to Tuzla. It is probable that some of them would declare that they want to go to Abdic. And we are completely willing to satisfy their wish, as we have signed an agreement which states that each citizen has the right to freely choose their place of residence, **although we think that they do not need to go and that they should not go**…**If they want to accept the authorities of Republika Srpska, and become its citizens they don't have to go.** However, it turns out that the overwhelming majority wishes to go and they are mainly going to Tuzla." (emphasis added)[6706]

3324. Upon viewing television footage of the people in Srebrenica, President Karadzic commented that "here, the inhabitants are being simply taken care of and, of course, **if they want to stay they may**."[6707]

3325. Jeremy Bowen reported that same evening on BBC that President Karadzic had said on television that as for the people who were leaving Srebrenica, nobody was forcing them to go.[6708] John Zametica conveyed the same message in a radio interview with BBC on the next day.[6709]

3326. In an interview with *El Pais* magazine on the evening of 13 July, President Karadzic stated that:

> "Unfortunately, very few Muslims may stay in Srebrenica because now they are aware that Srebrenica is going to belong to the Serbian state and since it is clear Muslims want to live in a Muslim state and they expressed their own willingness to go to the Muslim State, to the part of Bosnia that is under Bosnian control.[6710]

3327. When asked if there was ethnic cleansing in Srebrenica, President Karadzic replied that "anyone who wanted to stay could stay. But from the experience we know that…both Serbs and Muslims don't want to stay in the area which is going to be Serb or

[6705] P5203 at p, 5
[6706] P4202, pp. 261-262
[6707] P4202, p. 263 (emphasis added)
[6708] P2081
[6709] P6467 at pp. 2-3; T42093-94
[6710] P4359 at p. 4

Muslim state. Serbs want to leave Muslim state and Muslims want to leave Serb state."[6711]

3328. In an interview with David Frost on 17 July 1995, President Karadzic stated that "those civilians have been offered either to stay or to leave…they wanted to leave once their own combatants had lost Srebrenica. They haven't been ready to stay on Serbian territory, and they haven't been willing to wait for the Serbian refugees."[6712]

3329. On that same day, John Zametica issued a statement published by AFP saying that "stories that civilians were driven out are completely false since their evacuation was agreed in advance with the representatives of the Muslim civilian authorities. These civilians had requested evacuation because of the fear of the Serbs returning to their homes in Srebrenica—given that the Muslims have in the past committed appalling atrocities against Serb civilians in the region."[6713]

3330. Also on 17 July, President Karadzic was provided with a document signed by a civilian representative of the Muslims and a representative of UNPROFOR that the evacuation had been voluntary and had been carried out properly.[6714]

3331. President Karadzic's belief that the Muslims of Srebrenica left because they preferred to live in territory under the control of the Muslim authorities was not only subjectively genuine, but was objectively reasonable. As **Srda Trifkovic** testified:

> It is my assessment from the empirical evidence of the wars of Yugoslav succession, that the ethnic group that is faced with the sudden change of authority in a given territory will do its best to depart the territory because it does not trust the other side. It has been a regular feature of warfare in that part of the world for a very long time. When, for instance, the Croat troops came into Western Herzegovina and the Neretva river valley, the Serbs from Mostar ran away to Trebinje or Nevesinje; when the Muslims overran parts of central Bosnia, the Croats – sometimes even using Serbian territory – escaped to Croatia; and the Muslims, when the Serbian army advanced in Srebrenica, felt more comfortable going to Tuzla or Zenica than staying put..[6715]

3332. Defence expert witness General **Radovan Radinovic** confirmed this widely-held view, testifying that:

[6711] P4359 at p. 5
[6712] P5235 at p. 2
[6713] D3931
[6714] P3997
[6715] D2905 at para.36

> As a rule, when an army leaves an area, the civilian population follows in their suit and they join the army. This is a rule that pertains to every conflict, particularly civil wars, because the population wants to go to the same territory where their army is going.[6716]

3333. President Karadzic's security advisor, **Gordan Milinic**, confirmed the understanding that there was no forced removal and that the Muslims asked to be evacuated to Tuzla because they did not want to live in territory controlled by the other side of the conflict.[6717] Likewise, advisor **John Zametica** testified that it was his understanding that the Muslim civilians were asked whether they wanted to stay or not, but that most of them wanted to leave because they feared local Serb revenge because of the events taking place in the period before the capture of Srebrenica if they stayed on after Srebrenica had been captured by the Bosnian Serb forces.[6718]

3334. Therefore, there is no reason to believe that President Karadzic was ever part of a joint criminal enterprise to forcibly transfer Bosnian Muslims from Srebrenica or that he desired that such a transfer take place.

3335. President Karadzic also did not aid and abet any forcible transfer in Srebrenica. None of the acts which he did, from authorizing the taking of the town, to appointing a civilian commissioner, to establishing a police station, significantly contributed to the expulsion of the population. To the contrary, all of his acts were designed to facilitate those Muslims who wished to remain.

3336. In the *Popovic* case, the Trial Chamber held that Colonel Beara was not guilty of forcible transfer because, although aware of a plan to forcibly transfer the population, he did not make a significant contribution to it.[6719] Likewise, President Karadzic cannot be found to have made a substantial contribution to the forcible transfer for aiding and abetting purposes, as he was further removed from the events than Beara and had no knowledge that the evacuation of the population was forced.

3337. President Karadzic also did not have the *mens rea* for aiding and abetting. He had no knowledge that the VRS was expelling the Muslims. Rather, he believed that it was the Muslims who wanted to leave Srebrenica. Given that the United Nations was

[6716] T41434-35
[6717] T38768
[6718] T42537
[6719] *Popovic* TJ at para. 1308

encouraging the evacuation, and assisting in it, there was no reason for President Karadzic to believe that there was anything forcible or unlawful about the evacuation.

3338. [redacted]. [6720] Even if such a statement was made, which President Karadzic doubts, it was not in accordance with President Karadzic's instructions and expectations.

3339. The conclusion that the departure of the population from Srebrenica did not appear to be involuntary was reached by Judge Kwon with respect to Ljubomir Borovcanin in the *Popovic* case. Judge Kwon found that it was reasonable to infer that Borovcanin believed the evacuation was a voluntary one, citing the fact that the transport out of the enclave was conducted at the request of the UN and the Muslims themselves.[6721]

3340. Although the Prosecution has access to all of the reports, correspondence, orders, and even intercepted private communications of President Karadzic during 1995, there is not a single item that indicates he had any information about shellings, the setting of fires, or acts of intimidation by the VRS in the Srebrenica area that have been cited as reasons why the departure of the civilians from Srebrenica may not have represented a genuine choice.[6722] Therefore, the belief that the evacuation was a voluntary one is an even more reasonable inference with respect to President Karadzic, who was not on the ground to make any observations himself.

3341. In the *Gotovina* case, both the Trial and Appeals Chambers were unwilling to make findings of forcible transfer or deportation in the absence of evidence of unlawful shelling.[6723] The Trial Chamber specifically found it reasonable that the departures of the Serbs were based upon fears of what would happen when the territory changed hands to the Croats.[6724] Likewise, President Karadzic could reasonably have believed that the Muslims preferred to leave when Srebrenica changed hands to the Serbs.

[6720] [redacted]
[6721] *Popovic* TJ *Dissenting and Separate Opinions of Judge Kwon* at para.31
[6722] See *Popovic* TJ at para. 147
[6723] *Gotovina* TJ at paras.1754-55; *Gotovina* AJ at para.96
[6724] *Gotovina* TJ at para.1754

3342. Similarly, although the Prosecution has access to all of the reports, correspondence, orders, and even intercepted private communications of President Karadzic during 1995, there is not a single item that indicates he had any information about enhanced restrictions on humanitarian aid to the Srebrenica enclave that has also been cited as reasons why the departure of the civilians from Srebrenica may not have represented a genuine choice.[6725]

3343. In contradiction to the language of Directive 7, President Karadzic consistently took steps to ensure that humanitarian aid reached the citizens of Srebrenica. When the international community complained that the VRS was not allowing humanitarian aid to enter the enclaves, President Karadzic issued an order establishing a civilian commission, headed by Vice President Koljevic, to manage the approval process for humanitarian convoys.[6726] That commission approved over a hundred different humanitarian convoys to deliver goods to Srebrenica in the period March through July 1995.[6727]

3344. On 13 June 1995, President Karadzic re-enforced the power of this commission by issuing an order to the VRS stating that "a positive opinion shall be immediately given for all notifications that arrived through the Co-ordination Body for Humanitarian Operations attached to the State Committee…"[6728]

3345. [redacted].[6729] General Zivanovic further testified that the Drina Corps did not reduce nor restrict deliveries of food to Srebrenica after March 1995.[6730]

3346. Prosecution Witness General **Ljubomir Obradovic** testified that he was unaware of any instructions from the President to further restrict humanitarian aid to the enclaves.[6731] Likewise, Defence Witness **Slavko Kralj**, who processed the convoy

[6725] See *Popovic* TJ at para. 767
[6726] D3279
[6727] D3286-87; T36583-84; D3308; D2115-20; P4452; D2068; P839; D3957
[6728] P832
[6729] [redacted]
[6730] T42687
[6731] T25270

requests for the VRS, testified that President Karadzic made it clear that humanitarian aid must reach the civilian population.[6732]

3347. President Karadzic took all these steps even though he knew that the ABiH was using humanitarian aid for military purposes in the enclave. During a meeting on 30 April 1995, he protested this fact to Yasushi Akashi and General Rupert Smith.[6733] A document compiled by the ABiH after the fall of the enclave documented numerous instances where humanitarian aid brought in by UNHCR and UNPROFOR was appropriated and sold by Naser Oric and other members of the ABiH 28th Division.[6734] A January 1996 Bosnian State Security report found that "quite a large quantity of goods from humanitarian aid was set aside for the 28th Division."[6735] Prosecution Witnesses **David Harland**,[6736] **Anthony Banbury**,[6737] and **Momir Nikolic**,[6738] all agreed that humanitarian aid was diverted to the ABiH forces or to the black market.

3348. Therefore, although President Karadzic was not aware of any increased restrictions on humanitarian aid to Srebrenica in the period March-July 1995, such restrictions would have been fully justified. The existence of such restrictions therefore cannot be used to claim that when the civilian population decided that they preferred to leave Srebrenica on 11-12 July 1995, such a decision was forced upon them by the Serbs.

3349. President Karadzic also cannot be liable under Article 7(3) for failure to prevent the crime of forcible transfer because he did not know or have reason to know that such a crime was taking place. He cannot be liable for failing to punish the forcible transfer after the fact because he was assured by the Muslim and UN representatives that the evacuation was the choice of the Muslims and was carried out correctly.[6739] Any misgivings of Major Franken in signing the 17 July document stating that the evacuation was carried out correctly were not made known to President Karadzic.[6740] To this day,

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[6732] T36555-56
[6733] P2262 at para. 12
[6734] D3313; T36590
[6735] D3956, at p. 4
[6736] T2171
[6737] T13493
[6738] T24769
[6739] P3997
[6740] T42896-97 (Dmicic); T42485, T42536 (Zametica)

President Karadzic believes that there was no forcible transfer of the Muslims from Srebrenica.

3350. For all of the above reasons, President Karadzic is not guilty of forcible transfer as charged in Count Eight.

Chapter 3
INDIVIDUAL RESPONSIBILITY OF RADOVAN KARADZIC
Part 4

D. Hostages Component

1. President Karadzic is Not Guilty of Hostage Taking

3351. It is clear from all of the evidence that President Karadzic considered the United Nations personnel, detained after the NATO bombing on 25-26 May 1995, to be lawfully detained as prisoners of war.[6741] However, the Appeals Chamber has characterised this as a "mistake of law" and held that it is not a valid defence.[6742]

3352. President Karadzic recognises that the Trial Chamber is bound by this decision. Therefore, he has concentrated his argument on the prosecution's failure to prove his *mens rea* for another essential element of the offence.

2. President Karadzic Never Agreed that Threats Would be Made (JCEI)

3353. President Karadzic is charged with participating in a joint criminal enterprise, the objective of which was to take United Nations personnel hostage in order to compel NATO to refrain from conducting air strikes against Bosnian Serb military targets.[6743]

3354. In order to be found guilty under the basic form of JCE, the prosecution must prove that President Karadzic agreed to the commission of the crime of hostage taking. While President Karadzic agreed that UN personnel should be detained in the wake of the NATO air strikes, he never agreed that threats should be made against the detained UN personnel.

3355. Nowhere in the mass of intercepted conversations, orders, correspondence, and public statements is there any evidence that the plan to detain UN personnel upon the launching of NATO air strikes contemplated that threats would be made to harm the

[6741] See *Appeal from Denial of Judgement of Acquittal for Hostage Taking* (25 July 2012) at para. 57
[6742] *Denial on Appeal from Denial of Judgement of Acquittal for Hostage Taking* (11 December 2012) at para. 22
[6743] Indictment at para.25

detained UN personnel. President Karadzic never agreed to or contemplated such conduct and never made or condoned any such threats.

3356. This was confirmed by **John Zametica**, who testified that no threats to UN personnel were envisaged.[6744]

3357. During the Rule 98 *bis* proceedings in this case, the prosecution has conceded that "the operative threats for Count 11 purposes are not the Accused's pre-detention warnings that he would treat UN personnel as enemies if NATO conducted air-strikes, but rather the post-detention threats against UN personnel."[6745]

3358. Those threats were also not part of orders coming down the chain of command. The VRS order which indicated that deployment of UN personnel to sites where air strikes might take place had been approved by the President also ordered the VRS to "make sure that they are treated properly with military respect."[6746] The use of UN personnel as human shields, while possibly constituting a separate crime, did not constitute a "threat" within the meaning of the hostage taking statute.

3359. While there is evidence that threats of bodily harm were made by VRS soldier Nicholas Ribic, and other VRS personnel, there is no evidence that President Karadzic contemplated, agreed to, or even knew about these threats. President Karadzic's public and private statements never contained any threats of bodily harm to UN personnel, nor did her ever condition the continued detention of UN personnel on the cessation of air strikes.

3360. The crime of hostage taking requires as an essential element that "the perpetrator threatened to kill, injure, or continue to detain such person or persons."[6747] Since this element was never part of any agreement entered into by President Karadzic, he cannot be found guilty of hostage taking under the basic form of joint criminal enterprise.

3361. The acquittal of Tihomir Blaskic of hostage taking by the Appeals Chambers supports President Karadzic's position. In *Blaskic*, the Appeals Chamber overturned the

[6744] T42476
[6745] *Prosecution Response to Appeal from Denial of Judgement of Acquittal for Hostage Taking* (6 August 2012) at para.12; *Prosecution Submissions re: Notice of Special Defence as to Count 11: Reprisals* (5 March 2013) at para. 10
[6746] P2137 at para.4
[6747] International Criminal Court, *Elements of Crime,* section 8(2)(c)(iii)

finding of the Trial Chamber that Blaskic's order to defend Vitez necessarily resulted in his subordinate's illegal threat. The Appeals Chamber held that it does not follow, by virtue of his legitimate order to defend an installation of military value, that Blaskic incurred criminal responsibility for his subordinate's unlawful choice of how to execute the order.[6748]

3362. Likewise, President Karadzic's statement that UN personnel would be detained in the event of NATO air strikes did not require that UN personnel be threatened with death, injury, or continued detention. President Karadzic therefore, like Blaskic, does not incur responsibility for threats made by VRS personnel.

3363. The acquittal of Mario Cerkez of hostage taking by the Appeals Chamber likewise supports President Karadzic's position. In the *Kordic* case, the Appeals Chamber overturned the conviction of Cerkez after finding that there was insufficient evidence that he was the one who had made the threat to kill the prisoners. The Appeals Chamber held that since a threat was an element of the crime of hostage taking, the failure to establish that Cerkez had made the threat required reversal of his conviction.[6749] Likewise, President Karadzic made no threats to kill, injure, or continue to detain the UN personnel and it has not been proven that the plan to detain UN personnel required or contemplated that they would be threatened.

3364. The acquittal of the accused in the *Sesay* case of hostage taking by the Appeals Chamber of the Special Court of Sierra Leone also supports President Karadzic's position. The Appeals Chamber refused to find the accused Sesay and Kallon liable for the threats to UN peacekeepers made after the arrest of their leader Sankoh. It held that such threats did not form part of a concerted plan of action, but were the "personal reactions" of the RUF fighters.[6750] Likewise, President Karadzic cannot be held responsible for threats made by VRS soldiers that were not contemplated as part of the plan to detain UN personnel. As with Sesay and Kallon, President Karadzic did not have sufficient knowledge of the personal reactions of VRS soldiers to the NATO air strikes to be held responsible for their actions.

[6748] *Blaskic* AJ at para. 644
[6749] *Kordic* AJ at paras.936-38
[6750] *Prosecutor v Sesay et al,* No. SCSL-04-15-A, *Judgement* (26 October 2009) at paras.604,607

3365. Additionally, it is an element of hostage taking that the perpetrator was aware of the factual circumstances that established the protected status of the victim. Since President Karadzic never agreed or contemplated that threats would be made to UN personnel after they were detained, he was not aware of any facts that established that crimes would be committed against UN personnel who would be *hors de combat* by virtue of detention. Rather, he expected and ordered that UN personnel who were combatants would be lawfully detained as prisoners of war and not mistreated while in detention.

3. President Karadzic never foresaw that threats would be made (JCE III)

3366. President Karadzic is also charged in Count 11 with liability under the extended form of joint criminal enterprise. In order to be liable for hostage taking under this form of JCE, the prosecution must prove that it was foreseeable to President Karadzic that in the course of detaining UN personnel after the NATO air strikes, threats to kill, injure, or continue to detain the UN personnel would be made.

3367. There is no evidence that President Karadzic should have foreseen the making of such threats. Indeed, UN personnel had been detained by the Bosnian Serbs in 1994 in the wake of NATO air strikes, and no such threats were reported to have been made.[6751] VRS members were ordered to treat UN personnel with military respect.[6752] There was nothing about the circumstances of the 1995 detention of UN personnel that would have made it foreseeable to President Karadzic that such threats would be made.

3368. Since the threats were not foreseeable to President Karadzic, he cannot be found guilty of hostage taking under the extended form of joint criminal enterprise.

4. President Karadzic was not aware that threats would be made (Article 7(1))

3369. President Karadzic is also alleged to be liable for planning, instigating, ordering, and aiding and abetting the crime of hostage taking. While he had a role in the decision to detain UN personnel in the wake of the NATO air strikes,[6753] there is no evidence that he planned, instigated, or ordered that threats be made to UN personnel. Since there is

[6751] P1638 at paras.90,172
[6752] P2137 at para.4
[6753] P1410 at p. 329-30

also no evidence that he knew that Ribic or others would threaten the UN personnel with death, injury, or continued detention, he also cannot be liable for aiding and abetting their crime.

5. President Karadzic had no Reason to Know that Threats Would be or had been Made (Article 7(3))

3370. There is no evidence that President Karadzic knew that Ribic or anyone else would threaten the detained UN personnel with death, injury, or continued detention. Therefore, he cannot be liable for failing to prevent the crime of hostage taking. Likewise, since there is no evidence that it was reported to President Karadzic that Ribic or someone else had threatened the UN personnel, and there was no sufficiently alarming information from which he could have suspected that such threats had been made, he cannot be liable for failure to punish those responsible for the crime of hostage taking.

6. Conclusion

3371. There is no dispute that President Karadzic agreed that UN personnel should be detained as prisoners of war in the wake of NATO's unlawful air strikes against the Bosnian Serb ammunition depot. He explicitly warned the UN that this would be the consequence of its decision to launch the air strikes. However, this course of action never contemplated nor required that threats be made to the UN personnel after they were detained.

3372. While the UN personnel may have been subject to other crimes, such as their use as human shields, President Karadzic has not been charged with those crimes. Therefore, he cannot be found guilty of hostage taking based upon post-detention conduct that he neither contemplated nor condoned.

3373. Because it has not been proven beyond a reasonable doubt that President Karadzic agreed to, foresaw, or was aware that the UN personnel would be, were being, or had been threatened, he must be found not guilty of hostage taking.

Chapter 4

IV. SENTENCING

1. Mitigating Circumstances Should be Considered If a Sentence is Imposed Upon President Karadzic

3374. If the Trial Chamber were to find President Karadzic guilty on any of the counts of the indictment, it should consider a number of mitigating circumstances when imposing sentence. Such mitigating circumstances need only be established on a balance of probabilities.[6754]

a. Ex Post Facto Considerations

3375. Article 24(1) of the ICTY Statute provides that "in determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia."

3376. The jurisprudence of the Appeals Chamber provides that while a Trial Chamber must take into account the sentencing practices of the former Yugoslavia when determining the appropriate sentence to be imposed, it is not bound by such practices.[6755] Under the law in effect at the time of the offenses, the maximum sentence that could be imposed on President Karadzic upon conviction of all charges in this case would be 20 years.[6756]

3377. Article 75 §4(c) of Additional Protocol I to the Geneva Conventions provides that:

> No one shall be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

[6754] *Mrskic* AJ at para.352
[6755] *Tadic* SJ at para. 21
[6756] Articles 38(1) and (2) and 142(1) of the SFRY Criminal Code (1977)

3378. In *Maktouf and Damjanović v.Bosnia and Herzegovina,* the Grand Chamber of the European Court of Human Rights held that it was unlawful to impose a sentence greater than the maximum in effect at the time of the offenses.[6757] The ICTY Statute, which allows a maximum penalty of life imprisonment, was adopted on 25 May 1993. To the extent that President Karadzic is found guilty of crimes occurring before that date, the Trial Chamber should consider, as a mitigating factor, that at the time of any such offenses, the maximum penalty was 20 years imprisonment.

b. The Holbrooke Agreement

3379. President Karadzic contends that he has established upon a balance of probabilities that on 18-19 July 1996, he resigned from public and political party office and withdrew from public life in reliance on an agreement by United States Special Envoy Richard Holbrooke, on behalf of the international community, that President Karadzic would not be prosecuted at the ICTY.

3380. During the trial, President Karadzic has introduced substantial evidence to support this contention.

3381. **Momcilo Krajisnik**, who was present at the meeting at which Ambassador Holbrooke made the agreement, testified that Holbrooke had indeed represented that President Karadzic would not be prosecuted in The Hague if he fulfilled the conditions of their agreement—withdrawal as President of Republika Srpska and the SDS party and from public life.[6758]

3382. Mr. Krajisnik's testimony was corroborated by a cable dated 22 July 1996 by United States Ambassador to Bosnia John Menzies. When reporting on his meeting of that day with Krajisnik and Republika Srpska Minister of Foreign Affairs Aleksa Buha, who had also attended the meeting with Holbrooke, Menzies noted that both Krajisnik and Buha had stated to him that Ambassador Holbrooke had promised that The Hague Tribunal would no longer be of concern for President Karadzic.[6759]

3383. The existence of the agreement was also confirmed by another participant in the Holbrooke meeting—Montenegran President **Momir Bulatovic.** President Bulatovic

[6757] Applications nos. 2312/08 and 34179/08 (18 July 2013) at p.7
[6758] T43383-84
[6759] D4007 at paras. 10,14

testified that he was present during the negotiations in Belgrade in July 1996 when Holbrooke came to Belgrade to negotiate for the resignation of Radovan Karadzic as part of the implementation of the Dayton Peace Agreement. He personally heard Richard Holbrooke say that he had the guarantee of the United States President that Karadzic would not be prosecuted at The Hague Tribunal if he resigned and withdrew from politics.[6760]

3384. President Bulatovic testified that Holbrooke said at the meeting that they could not put this in writing, but that it had the backing of the President of the United States. President Bulatovic was present when Jovica Stanisic returned from Pale with the signed document from President Karadzic agreeing to resign and withdraw from public life.[6761]

3385. [redacted].[6762]

3386. **Gordan Milinic** testified that in July 1996, President Karadzic told him that Holbrooke had promised him that no criminal proceedings would be maintained against him.[6763]

3387. **Gojko Klickovic**, who was Prime Minister of Republika Srpska in July 1996, testified that he was informed that pursuant to an agreement with Richard Holbrooke, President Karadzic would not be prosecuted in The Hague. This was confirmed to him by a friend, Dr. Ajdukovic, who said that he had been told this directly by Strobe Talbott of the United States Department of State.[6764]

3388. The prosecution never sought to contradict or challenge any of this evidence during the trial.

3389. Additional evidence supporting the existence of the Holbrooke Agreement was admitted by the Trial Chamber.

[6760] D3051 at para. 47
[6761] D3051 at para. 48. The written document which was executed is D4424
[6762] [redacted]
[6763] D3682 at para. 23
[6764] D4313 at paras. 14-15

3390. In a signed statement, Republika Srpska Minister of Foreign Affairs **Aleksa Buha,** who was present at the meeting with Holbrooke, confirmed that Holbrooke had represented that President Karadzic would not be prosecuted at the Tribunal.[6765]

3391. **Professor Radomir Lukic**, who was present in President Karadzic's office in Pale and participated in the discussions that evening about the agreement, confirmed that President Karadzic was told that Holbrooke had represented that he would not be prosecuted in The Hague.[6766]

3392. Three high-ranking officials of the U.S. State Department have confirmed the existence of this agreement to Purdue University Professor **Charles Ingrao**, author of *Confronting the Yugoslav Controversies: A Scholars' Initiative* (2009).[6767]

3393. **Muhamed Sacirbey**, Minister of Foreign Affairs of Government of Bosnia and Herzegovina, has stated that he was informed of the agreement shortly after it was entered into during a conversation with American diplomat Robert Frowick (now deceased), who was in charge of the Bosnian elections of 1996.[6768]

3394. **John Petrie**, a British Army Major and Deputy Provost Marshal for IFOR in July 1996, provided a statement that in July 1996 he was present at IFOR in Sarajevo at a meeting at which Richard Holbrooke informed the High Representative and his staff that President Karadzic would not be prosecuted at the ICTY.[6769]

3395. Former *New York Times* Washington correspondent **David Binder** and Washington consultant **Obrad Kesic** provided statements that in September 1996, they were told directly by President Karadzic that Holbrooke had agreed that he would not be prosecuted in The Hague.[6770]

3396. Three men who were present in President Karadzic's office in Pale on the evening of 18 July 1996, **Punisa Lucic, Viktor Ben-Cnaan, and Walter Hein** also confirmed that President Karadzic related to them that he had been promised by Richard Holbrooke that he would not be prosecuted in The Hague.[6771]

[6765] D4436 at p. 3
[6766] D4425
[6767] D4426
[6768] D4431
[6769] D4423
[6770] D4432 and D4433
[6771] D4434 and D4435

3397. President Karadzic's wife **Ljiljana Zelen-Karadzic**, daughter **Sonja Karadzic-Jovicevic**, son-in-law **Branislav Jovicevic**, and a close family friend, **Dragan Draskovic,** also confirmed in written statements that President Karadzic informed them of the promise by Holbrooke that he would not face prosecution in The Hague.[6772]

3398. The Trial Chamber is requested to make a factual finding that Richard Holbrooke represented to President Karadzic that he would not be prosecuted by the ICTY if he resigned as President of Republika Srpska, President of the SDS, and withdrew from public life.

3399. The Appeals Chamber has held that the agreement by Holbrooke was not legally binding on the Tribunal and therefore refused to dismiss the indictment. However, the Appeals Chamber agreed with the Trial Chamber that the Holbrooke Agreement may be considered as a mitigating factor for sentencing.[6773]

3400. The evidence is relevant to sentencing in two ways.

3401. First, the jurisprudence of the Tribunal demonstrates that the character and acts of the accused subsequent to the conflict may be a mitigating factor in sentencing.[6774] The Appeals Chamber has noted that in light of the mandate of the International Tribunal under Chapter VII of the UN Charter, an attempt to further peace in the former Yugoslavia is in general relevant as a mitigating circumstance.[6775] The Appeals Chamber in the Kordic case considered voluntarily stepping down from office a mitigating factor.[6776] The Trial Chamber in the *Prlic* case also considered promoting compliance with the Dayton Accords as a mitigating circumstance.[6777]

3402. In the *Plavsic* case, the Trial Chamber was satisfied that Mrs. Plavsic was instrumental in ensuring that the Dayton Agreement was accepted and implemented in Republika Srpska. As such, she made a considerable contribution to peace in the region and Trial Chamber gave it significant weight as a mitigating circumstance.[6778]

[6772] D4427-D4430
[6773] *Decision on Karadzic Appeal of Trial Chamber Decision on Alleged Holbrooke Agreement* (12 October 2009) at para. 55
[6774] *Miodrag Jokić* SJ at paras 90-91,103; *Plavsic* SJ at paras. 85-95; *Delic* TJ at paras.584-85; *Blagojevic* AJ at paras.328-30; *Bralo,* AJ at para.73; *Oric* TJ at para.765
[6775] *Babic* AJ at paras.59-61
[6776] *Kordic* AJ at para.1054
[6777] *Prlic* TJ at vol. 4, para. 1322
[6778] *Plavsic* SJ at para.94

3403. President Karadzic's resignation as President of Republika Srpska in 1996 was one of his contributions to implementation of the Dayton Peace Agreement. He went further by resigning as President of the SDS party and all public functions, and withdrawing from public life. These circumstances warrant consideration when imposing sentence in his case.

3404. Second, the evidence of the Holbrooke Agreement is relevant to consideration of a reduction of sentence as a remedy for violation of the rights of the accused.[6779] President Karadzic relied upon the agreement he had with Richard Holbrooke that he would not be prosecuted at the Tribunal if he resigned from office and withdrew from public life—an agreement he kept to his detriment, but one that the Tribunal refused to honor.[6780]

3405. Given the fact that it was the Tribunal's indictment of President Karadzic that required his resignation pursuant to the Dayton Accords, the Holbrooke Agreement and its breach constitutes a mitigating circumstance in the absence of any other remedy.

3406. For either or both of these reasons, the Trial Chamber is requested to consider the Holbrooke Agreement as a mitigating circumstance.

c. Prosecution's Violation of its Disclosure Obligations

3407. Under the same principle that a reduction of sentence may be granted as a remedy for violation of the rights of the accused, President Karadzic requests that the Trial Chamber consider the prosecution's violations of its disclosure obligations throughout his process as a mitigating circumstance warranting a reduction of sentence.

3408. Those violations have been extensively documented in 92 disclosure violation motions filed by President Karadzic. The Trial Chamber has made findings that the prosecution violated its disclosure obligations in 73 of its decisions on those motions.[6781]

3409. The Trial Chamber has consistently found that President Karadzic was not prejudiced by the individual violations because of the nature of the information that was contained in the withheld documents or because of steps taken by the Trial Chamber,

[6779] *Kajelijeli* AJ at para.320; *Nahimana* AJ at para. 1088
[6780] *Decision on Karadzic Appeal of Trial Chamber Decision on Alleged Holbrooke Agreement* (12 October 2009) at para. 55
[6781] *Second Motion for New Trial for Disclosure Violations* (30 July 2014) at para. 5

such as adjourning the trial or admitting the documents. Nevertheless, the cumulative prejudice to President Karadzic's ability to defend himself by properly preparing for the trial, not having to divert his resources during trial to uncovering and documenting the violations, and reviewing hundreds of thousands of documents in the middle of his trial, is apparent. In addition, President Karadzic was prejudiced by the undue delay in his trial caused by necessary adjournments to remedy the prosecution's disclosure violations.

3410. If prosecutors know that their violations of their disclosure obligations may result in a reduced sentence, they will be motivated to ensure that such violations do not occur. This can only benefit the Trial Chambers and the interests of justice.

3411. While it may not have risen, in the Chamber's view, to the level warranting exclusion of the prosecution's evidence, the unprecedented number of disclosure violations in this case warrants consideration for reduction of sentence as a mitigating circumstance.

d. President Karadzic's Conduct during the War

3412. Instances where an accused has provided **assistance or humanitarian aid to victims or detainees** have been considered as a mitigating circumstance.[6782] This includes the signing of cease-fire or other peace agreements.[6783] The evidence in this case is replete with instances in which President Karadzic ordered and insisted upon the provision of humanitarian aid to Bosnian Muslims and Croat civilians, where he ordered air and land routes be cleared so that such aid could pass, and where he ordered that prisons be closed and that treatment of civilians and prisoners be in accordance with international human rights standards. In addition, President Karadzic agreed to the Historic Muslim and Serb agreement and Cutileiro peace plan before the war, and the Vance-Owen, Owen-Stoltenberg, and Dayton peace plans after the war started.

3413. For example, **Dr. Marino Andolina,** a doctor from Trieste, Italy testified that in 1993, he began traveling to the former Yugoslavia to provide medical assistance to children in need of bone marrow treatment. During one trip, he traveled to Republika Srpska where he met with President Karadzic. Dr. Andolina proposed to treat patients in

[6782] *Sikirica* SJ at paras 195, 229; *Popovic* TJ at paras.2194, 2220-22; *Krajisnik*AJ at paras.816-17,1162-63; *Blagojevic* TJ at para.854; *Brdjanin* TJ at paras.1119,1126; *Blaskic* AJ at para.709; *Krstic* AJ at paras.272-73; *Obrenovic* SJ at para.134
[6783] *Dragomir Milosevic* TJ at para.1003

need of bone marrow transplants in Bosnia. President Karadžić agreed. Soon, he was personally driving trucks and caravans full of medicines into Pale and through the territory of Republika Srpska as well. On the way back, he was taking children into Italy in order to provide them with medical care.

3414. This project lasted for approximately six years. During that time, he met with President Karadzic about 4 to 7 times. President Karadzic agreed to facilitate Dr. Andolina's work by allowing him to freely assist children of Bosnian Muslim ethnicity and to transport them across the territory of the Republika Srpska. During 1994, Dr. Andolina was asked by the ABiH 5th Corps to help children in the municipality of Bihac. To reach Bihac he had to pass through Serbian territories. He asked permission from President Karadzic. President Karadzic gave him such an authorization. As a result of President Karadzic's efforts, the lives of several children were saved.[6784]

3415. Another example is information provided by United States Congressman **Tony Hall**. In July 1995, Congressman Hall met with members of humanitarian organizations in Sarajevo and was informed that they had been trying to get a food shipment into Sarajevo for a long time, but the shipment was blocked by the Bosnian Serb forces. On 30 July 1995 Congressman Hall met with President Karadzic, who agreed to let the food convoy through to Sarajevo**.** About two years later Congressman Hall learned that the convoy had indeed reached Sarajevo. [6785]

3416. It has been held that a Trial Chamber may credit an accused for **preventing the commission of crimes**.[6786] Throughout the war, President Karadzic acted to prevent the commission of crimes by ordering the Army to withdraw from various offensive actions in places like Srebrenica (March 1993), Mt. Igman (August 1993), Gorazde (1994), and in ordering that local staff of the UN be safely evacuated with Dutchbat troops from Srebrenica in 1995.

3417. Trial Chambers have also considered the fact that an accused was not trained or prepared for war,[6787] as well as the **difficulties faced by the accused in exercising**

[6784] D3005
[6785] *Stipulation of Facts: Ambassador Tony Hall* (30 January 2013)
[6786] *Blagojevic* AJ at para.342; *Kupreškić* AJ at para.430; *Hadzihasanovic* TJ at para.2090
[6787] *Hadzihasanovic* AJ at para.333

command as mitigating circumstances.[6788] President Karadzic was a physician, poet, and anti-Communist dissident with no military training. He was thrust into the position of Commander in Chief of Republika Srpska's armed forces due to the circumstances of the war. He had to create a State from nothing, and experienced extreme difficulties during 1992, when most of the crimes were being committed, in communicating with and controlling the persons who were committing crimes. Later, he faced difficulties in exerting his authority over the Army and was unable to replace General Mladic. These are circumstances that should be considered in mitigation.

3418. A mitigating circumstance that has been recognized by the jurisprudence of this Tribunal is the fact that the accused had only **indirect participation in the offenses** for which he is convicted.[6789] Convictions for aiding an abetting attract a lesser sentence than responsibility as a perpetrator.[6790] President Karadzic's indirect participation in the offenses should also be considered as a mitigating circumstance.

e. President Karadzic's Personal Circumstances

3419. Trial Chambers have also considered as mitigating factors the **personal and family circumstances** of the accused.[6791] President Karadzic is married, has two children and four grandchildren. Because current United Nations policy does not allow him to be incarcerated in the former Yugoslavia, his family is unlikely to be able to visit him on regular occasions during the service of any sentence imposed.

3420. Another mitigating circumstance in President Karadzic's case is the fact of his **good character** and no prior criminal convictions. This has been accepted as a mitigating circumstance in the jurisprudence of the Tribunal.[6792] President Karadzic's exhibition of good character during his lifetime is evidence that he need not be rehabilitated by the imposition of a long prison sentence.[6793]

[6788] *Delic* TJ at para.589; *Hadzihasanovic* TJ at para.2081; *Oric* TJ at paras.769-72
[6789] *Krstic* AJ at para. 273.
[6790] *Mrskic* AJ at para. 407; *Blagojevic* AJ at para.334; *Krstic* AJ at para.268
[6791] *Kunarac* AJ at paras 362, 408; *Simic* TJ at para.1088; *Erdemović,* SJ at para.16(i); *Popovic* TJ at para.2200; *Delic* TJ at para.587; *Krajisnik* TJ at para.1164
[6792] *Kupreškić* AJ at para.459; *Erdemović,* SJ at para.16(i); *Popovic* TJ at para.2156; *Hadzihasanovic* TJ at para.2080, *Dragomir Milosevic* TJ at para.1003
[6793] *Hadzihasanovic* TJ at para.2080

3421. The **advanced age** of an accused has also been considered as a mitigating circumstance by Trial Chambers.[6794] The Trial Chamber in the *Plavsic* case noted that physical deterioration associated with advanced years makes serving the same sentence harder for an older than a younger accused and that an offender of advanced years may have little worthwhile life left upon release. For those above reasons, the Trial Chamber considered the advanced age of the accused as a mitigating factor.[6795]

3422. Advanced age was also considered in the *Krajisnik* case, where it was pointed out that for instance, the accused in the *Stakić* case was born in 1962 and was ultimately sentenced to 40 years. If he were to serve his entire sentence, he would only be released in 2041 at the age of 79. If Krajisnik were to serve his entire sentence, he would only be released in 2027 at the age of 82.[6796]

3423. President Karadzic will be 70 years old by the time the Trial Chamber issues its judgement. Any sentence greater than 10 years will mean that he would be in his eighties before he completed service of that sentence.

f. President Karadzic's Conduct at the Tribunal

3424. The **good behaviour of an accused during the trial proceedings** has also been considered a mitigating circumstance.[6797] In this case, President Karadzic has conducted himself respectfully and professionally throughout the trial and has cooperated with the Chamber and prosecution in ensuring that the proceedings were conducted without rancor or disruption.

3425. **Good behavior while in detention** has also been considered as a mitigating circumstance.[6798] As indicated in the letter from the Commanding Officer of the UNDU, President Karadzic has behaved properly at all times during his detention.[6799]

3426. The **duration of detention** awaiting completion of the protracted proceedings at this Tribunal has also been recognized as a mitigating circumstance.[6800] By the time

[6794] *Miodrag Jokić* SJ at para.100; *Plavsic* SJ at para.106; *Popovic* TJ at para.2169; *Krajisnik,* TJ at para.1164
[6795] *Plavsic* SJ at paras.105-06
[6796] *Krajisnik* AJ at para.783, fn.2011
[6797] *Tolimir* TJ at para.1230; *Popovic* TJ at para.2155; *Hadzihasanovic* AJ at para.325; MilutinovicTJ at vol.3,para.1178; *Oric* TJ at para.766
[6798] *Miodrag Jokić* SJ at para. 100; *Nikolić* SJ at para. 268; *Kordic* AJ at para.1091
[6799] D4422
[6800] *Blaskic* AJ at para.728

Appeals Chamber proceedings will have been completed in this case, if convicted, President Karadzic will have been incarcerated for some 10 years awaiting a final judgement in his case.

3427. **Expressions of regret or sympathy** for the victims of the crimes charged in the indictment may be considered as a mitigating factor when they are sincere.[6801] There is no requirement that an accused admit his own participation in a crime in order to have his expression of regret considered as a mitigating circumstance.[6802]

3428. President Karadzic expresses his deep regret and sympathy to the victims of the crimes charged in his indictment and to their families. Regardless of the issue of his individual criminal responsibility for those crimes, he understands that as President of Republika Srpska, he bears moral responsibility for any crimes committed by citizens and forces of Republika Srpska. He knows that any expression of regret or sympathy is inadequate to compensate for the suffering that took place during the war. Nevertheless, he offers his heartfelt expression of regret and sympathy to the victims and their families.

2. The Appropriate Sentence

3429. In addition to the mitigating circumstances presented above, the Trial Chamber should take into consideration the imposition of sentences in **related cases** to ensure consistency in its judgements. President Karadzic notes that President Momcilo Krajisnik was sentenced to 20 years and President Biljana Plavsic was sentenced to 11 years in prison for their roles in the same crimes for which he stands accused.

3430. President Karadzic respectfully requests that all of these matters be taken in consideration by the Trial Chamber in imposing sentence should he be convicted of any of the counts in which he is charged.

[6801] *Strugar* AJ at para.366; *Lukic* AJ at para.662
[6802] *Strugar* AJ at paras.365-66; *Oric* TJ at para.752; *Brdjanin* TJ at para.1139