

UNITED
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IT-02-60-T
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19 DECEMBER 2003

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

Case No. IT-02-60-T
Date: 19 December 2003
Original: English

IN TRIAL CHAMBER I, SECTION A

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

Registrar: Mr. Hans Holthuis

Decision: 19 December 2003

PROSECUTOR

v.

**VIDOJE BLAGOJEVIĆ
DRAGAN JOKIĆ**

**DECISION ON PROSECUTION'S MOTION FOR JUDICIAL
NOTICE OF ADJUDICATED FACTS AND
DOCUMENTARY EVIDENCE**

The Office of the Prosecutor:

Mr. Peter McCloskey

Counsel for the Accused:

Mr. Michael Karnavas and Ms. Suzana Tomanović for Vidoje Blagojević
Mr. Miodrag Stojanović and Ms. Cynthia Sinatra for Dragan Jokić

I. INTRODUCTION

1. **TRIAL CHAMBER I, SECTION A**, (“Trial Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Tribunal”) is seised of the “Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence,” filed on 23 June 2003 (“Motion”). Pursuant to Rule 94 (B) of the Rules of Procedure and Evidence (“Rules”), the Prosecution requests that the Trial Chamber take judicial notice of 419 facts from the Trial Chamber Judgement in *Prosecutor v. Radislav Krstić* (IT-98-33-T), as well as over 165 pieces of documentary evidence from the same case.

2. On 7 July 2003, the Accused, Vidoje Blagojević filed “Vidoje Blagojević’s Response to Prosecutor’s Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence” (“Blagojević Response”). The Blagojević Response objected to the Motion on multiple grounds related primarily to alleged infringements of the rights of the accused.¹ However, it did not set forth specific objections to specific proposed facts or documents. Additionally, the Blagojević Response indicated that the Prosecution and the Defence did not meet on the list of proposed facts prior to it being filed to determine whether agreement could be reached as to any of the facts.

3. On 14 July 2003, the Accused, Dragan Jokić filed “Dragan Jokić’s Response to Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence” (“Jokić Response”). The Jokić Response expressly adopted the position and arguments of the Blagojević Response. Furthermore, the Jokić Response objected to judicial notice of any factual findings of the *Krstić* Judgement on the grounds that they could not be considered “adjudicated” until a decision has been rendered in the *Krstić* appeal. Additionally, the Jokić Response indicated that the Jokić Defence intends to challenge the validity of all intercept communications by the Army of Bosnia-Herzegovina (“ABiH”) during the days critical to the Indictment. Finally, the Jokić Defence objected to specific pieces of documentary evidence and proposed facts but did not specify any particular grounds for its objection.

4. At the request of the Trial Chamber, the Parties met to discuss the proposed facts and documents, and on 6 August 2003 the Prosecution filed “Prosecution’s Notice Regarding the Agreement of the Parties on Judicial Notice,” (“Prosecution’s Notice”). The Prosecution’s Notice

¹ Specifically, the Blagojević Defence asserts that by not providing the specific basis or proof in support of each proposed adjudicated fact, the Prosecution is effectively shifting the burden of proof to the Accused, thereby violating the presumption of innocence. See, Blagojević Response, paras 16-17, 23.

indicated the facts and documentary evidence proposed in the Motion on which the Parties had agreed that the Trial Chamber could take judicial notice.² Furthermore, the Prosecution's Notice indicated the specific facts and documents to which each Defence team objected.³ The Prosecution's Notice also indicated that the Jokić Defence maintained its objection to judicial notice of any factual findings of the *Krstić* Judgement on the grounds that they could not be considered "adjudicated" until a decision has been rendered in the *Krstić* appeal.

5. On 6 November 2003, the Senior Legal Officer of the Trial Chamber convened a meeting with the Parties pursuant to Rule 65 *ter* (D) of the Rules, in order to foster further agreement among the Parties, and to clarify the objections of the Parties as to specific proposed facts. During the conference, the Parties reached agreement on some additional facts, and left the remainder of the facts for the Trial Chamber to decide upon. The additional points of agreements reached by the Parties are as follows:

- a. The Prosecution withdrew proposed fact number 94 from consideration.
- b. The Blagojević Defence withdrew its objections to proposed fact numbers 36, 80, 108, 167, and 191, and Rule 65 *ter* exhibit numbers 435, 479.
- c. The Jokić Defence withdrew its objections to proposed fact numbers 240, 241, 244, and 379-383, and Rule 65 *ter* exhibit numbers 435 and 661.
- d. The Parties were able to reach agreement as to proposed fact numbers 15, 42-43, 45, 52-53, and 95 subject to alterations in the language originally proposed by the Prosecution. The final agreed language of these paragraphs is set forth in Annex A.
- e. The Parties noted that additional agreement may be reached with regard to proposed fact numbers 54, 198, 200, 201, 202, and 210, and 65 *ter* exhibit numbers 657 and 658 after the testimony of Richard Butler. Therefore, the Parties agreed to consult and inform the Trial Chamber of any agreement among the Parties with regard to the proposed facts two days after his testimony is completed.

² Prosecution's Notice, para. 3. The Parties agreed that the Trial Chamber could take judicial notice, as phrased in the Motion, to proposed facts: 1-14, 16-28, 30, 32, 34-35, 37-40, 44, 46-47, 49, 51, 55-58, 60-63, 66-74, 77, 79, 82-84, 86-93, 96, 98-99, 101-103, 105-106, 109-118, 120-124, 126-130, 133-138, 140, 142-144, 146-148, 150-151, 153, 155-160, 162-163, 165-166, 168, 175, 188-190, 192-194, 197, 199, 203-208, 214-219, 229-231, 233-236, 238, 263-268, 270, 293-295, 297, 300-302, 317-319, 321-323, 334-339, 341, 346-347, 356-370, 373-376, 378, 403-404, 406-407.

³ Both the Jokić and the Blagojević Defence objected to facts: 223-224, 239, 245, 273-283, 303-307, 328-331, 349-355, 371-372, 392-402, 408-409. Only the Blagojević Defence objected to facts: 15, 29, 31, 33, 36, 41-43, 45, 48, 50, 52-54, 59, 64-65, 75-76, 78, 80-81, 85, 94-95, 97, 100, 104, 107-108, 119, 125, 131-132, 139, 141, 145, 149, 152, 154, 164, 167, 169-174, 176-187, 191, 195-196, 198, 200-202, 209-213, 220-221, 348, 377, 384-391, 405, and 410-419. Only the Jokić Defence objected to facts 222, 225-228, 232, 237, 240-244, 246-262, 269, 271-272, 284-292, 296, 298-299, 308-316, 320, 324-327, 332-333, 340, 342-345, and 379-383.

II. APPLICABLE LAW

6. Rule 65 *ter* (H) of the Rules provides, "The pre-trial Judge shall record the points of agreement and disagreement on matters of law and fact. In this connection, he or she may order the parties to file written submissions with either the pre-trial Judge or the Trial Chamber." Rule 65 *ter* (M) permits the Trial Chamber to also fulfil this function.

7. Rule 94 ("Judicial Notice") of the Rules provides:

- (A) A Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.
- (B) At the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from the other proceedings of the Tribunal relating to matters at issue in the current proceedings.

8. These two Rules must be read in conjunction with Article 21 ("Rights of the accused") of the Statute of the Tribunal, which reads, in relevant part:

1. All persons shall be equal before the International Tribunal.
2. In the determination of the charges against him, the accused shall be entitled to a fair and public hearing subject to article 22 of the Statute.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

[...]

- (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

III. DISCUSSION

A. Proposed Facts

9. The Rules of the Tribunal include multiple methods by which the parties may present evidence other than through live witness testimony and tendering of documents during trial. These procedures include: permitting the parties to agree to facts pursuant to Rule 65 *ter* (H); permitting the parties to submit prior witness testimony or a written statement pursuant to Rule 92 *bis*; permitting the parties to submit the reports of expert witnesses in lieu of oral testimony pursuant to

Rule 94 *bis*; and permitting the Trial Chamber, at the request of the parties or *proprio motu*, to take “judicial notice” of adjudicated facts and documentary evidence adduced in previous trials pursuant to Rule 94 (B). This last method has been the subject of some debate, particularly as to its relationship with other Rules and as to its application in light of the rights of the accused.

10. Until a recent decision of the Appeals Chamber,⁴ the Trial Chambers were split as to the appropriate procedural consequence of taking judicial notice of an adjudicated fact pursuant to Rule 94 (B). This issue has been settled, as will be addressed briefly below. However, several issues related to the taking of judicial notice still remain open. The jurisprudence of this Tribunal has not always distinguished between the acceptance of agreed facts pursuant to Rule 65 *ter* (H) and the taking of judicial notice pursuant to Rule 94 (B). The Trial Chamber therefore finds it necessary to comment on the differences between these Rules, and assess the Motion in light of its findings.

1. Agreement under Rule 65 *ter* (H)

11. Rule 65 *ter*, which sets out the scope of the authority and duties of the pre-trial Judge, is contained in Part V of the Rules, which is concerned with pre-trial proceedings. This Rule, therefore, is intended to promote agreement between the parties at an early stage of the proceedings. This procedure enables the Trial Chamber to narrow the scope of factual and legal issues that will be litigated to those points to which the parties are in disagreement or dispute.

12. By permitting the opposing parties to voluntarily agree to relevant points on matters of law or fact, Rule 65 *ter* (H) removes those points from the sphere of judicial enquiry during trial. They are accepted into the proceedings and the matter to which the agreed fact relates ceases to be a disputed issue.⁵

13. Although the language of Rule 65 *ter* (H) directs itself to the pre-trial phase, Rule 65 *ter* (M) permits the Trial Chamber to fulfil any of the functions listed in Rule 65 *ter*. The Trial Chamber finds, therefore, that there is no barrier to it recording points of agreement once the proceedings have entered the trial phase. The Trial Chamber further finds that the recording of points of

⁴ *Prosecutor v. Milošević*, IT-02-54-AR73.5, “Decision on Prosecution’s Interlocutory Appeal against the Trial Chamber’s 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts,” 28 October 2003 (“*Milošević* Appeal Decision”).

⁵ See, *Prosecutor v. Milošević*, IT-02-54-AR73.5, “Separate Opinion of Judge Shahabuddeen Appended to the Appeals Chamber’s Decision dated 28 October 2003 on the Prosecution’s Interlocutory Appeal Against the Trial Chamber’s 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts,” 31 October 2003, at paras 25 and 30. (“Judge Shahabuddeen’s Separate Opinion”). See also, *Black’s Law Dictionary*, 7th Ed. (Minnesota: West Group, 1999) definition for ‘stipulation’: “2. A voluntary agreement between opposing parties concerning some relevant point [...] A stipulation relating to a pending judicial proceeding, made by a party to the proceeding or the party’s attorney, is binding without consideration.”

agreement during the trial phase results in the acceptance of those agreed points as evidence under Rule 89 (C).

14. The Trial Chamber observes that while Rule 92 *bis* and Rule 94 (B) prohibit the admission of evidence which goes to the acts and conduct of the accused as charged in the indictment, such facts may be agreed to under Rule 65 *ter* (H) and admitted into evidence. An accused may agree to a prejudicial or incriminating fact. In such cases, particularly where the fact may have direct impact on establishing the guilt of an accused, the Trial Chamber, as guarantor of the rights of the accused, may find it necessary to enquire whether the accused has made such an admission voluntarily and understands the possible consequences of such an admission.

2. Judicial Notice Under Rule 94 (B)

15. Rule 94 (B) permits the Trial Chamber to take judicial notice of “adjudicated facts” and documentary evidence “from other proceedings of the Tribunal relating to matters at issue in the current proceedings.” Rule 94 (B) permits the Trial Chamber to take judicial notice of relevant previously adjudicated facts, after having heard the parties, even if a party objects to the taking of judicial notice of a particular fact.⁶

16. In order to ensure that the application of the Rule is in accordance with the rights of the accused, the Trial Chamber must satisfy itself that the proposed facts meet several criteria before it takes judicial notice of the non-agreed fact.⁷ These factors include:

- (i) the fact must be distinct, concrete and identifiable;
- (ii) the fact must represent the factual findings of a Trial Chamber or the Appeals Chamber, which means that it must not include legal findings or characterizations and it must not be based on a plea agreement or facts voluntarily admitted in a previous case;
- (iii) the fact must be “truly adjudicated”, which means that the fact itself has not been contested on appeal, or the fact has been finally settled on appeal;
- (iv) the fact must be in the same or substantially similar form as it was expressed by the Trial or Appeals Chamber;
- (v) the fact must not attest, either directly or indirectly, to the criminal responsibility of the accused.

⁶ Judge Shahabuddeen’s Separate Opinion, at para. 30.

⁷ See, e.g., *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-PT, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses pursuant to Rule 92 *bis*, 28 February 2003 (“*Krajišnik* Decision”); *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 10 April 2003 (“10 April 2003 *Milošević* Decision”), p. 3.

17. The recent *Milošević* Appeals Decision has resolved the split of authority regarding the legal consequences of taking judicial notice of adjudicated facts.⁸ However, the Appeals Chamber did not address the appropriate test that should be used to determine whether a Trial Chamber may take judicial notice of a particular fact.⁹ In particular, the majority of the Appeals Chamber did not specifically address whether a proposed fact must be beyond reasonable dispute in order for judicial notice to be taken thereof. The Trial Chamber does not address this question in the instant decision because the Trial Chamber's findings make it unnecessary for it to do so.

18. The Trial Chamber recalls its responsibility pursuant to Article 20 of the Statute to ensure that the accused receives a fair and expeditious trial and that the trial is conducted with full respect for the rights of the accused. Among the rights which this Trial Chamber must protect are the right of the accused to examine the evidence against him, and the right to be presumed innocent, as enshrined in Article 21 of the Statute of the Tribunal.

3. Assessment

19. The Jokić Defence has withheld final agreement as to any of the Prosecution's proposed facts on the grounds that the facts could not be considered adjudicated until a final decision had been rendered on the *Krstić* appeal. The Jokić Defence has nonetheless set forth many facts to which he will agree contingent upon the final resolution of the *Krstić* appeal. The Trial Chamber finds that this is not a relevant objection to the admission of agreed facts pursuant to Rule 65 *ter* (H); as stated above, the essential element of Rule 65 *ter* (H) is agreement among the Parties and the question of whether they have been finally "adjudicated" is irrelevant. However, in order to remove the condition upon which the Jokić Defence has given its agreement on a number of facts, the Trial Chamber will address this objection. Judge Shahabuddeen's Separate Opinion clarifies that in cases where an appeal of a trial judgement is pending, those facts that have not specifically been appealed may be deemed "adjudicated" facts within the meaning of Rule 94 (B).¹⁰ Therefore, there is no basis for the Jokić Defence objection to the taking of judicial notice of facts derived from the *Krstić* Judgement. Accordingly, the Trial Chamber considers that the Jokić Defence has agreed to the proposed facts indicated in paragraph 3 of the Prosecution's Notice.

20. In this case, the Parties have reached agreement on many of the proposed adjudicated facts, as set out in paragraph 3 of the Prosecution's Notice and as listed in paragraph 5 of this Decision. While these facts were proposed in the form of a motion pursuant to Rule 94 (B), the Trial Chamber

⁸ "[B]y taking judicial notice of an adjudicated fact, a Chamber establishes a well-founded presumption for the accuracy of this fact, which therefore does not have to be proven again at trial, but which, subject to that presumption, may be challenged at trial." *Milošević* Appeal Decision, at p. 4.

⁹ See, *Milošević* Appeal Decision, pp. 3-4 on the basis for Rule 94(A) and (B).

finds that as these proposed facts have been agreed to by the Parties, it is most appropriate for the Trial Chamber to admit these facts as points of agreement pursuant to Rule 65 *ter* (H),¹¹ rather than under Rule 94 (B), as has been the practice in other trial chambers of this Tribunal.¹² It is their status as having been agreed by the Parties which makes these facts appropriate for admission under Rule 65*ter* (H), rather than Rule 94(B).¹³ The Trial Chamber notes that the status of the proposed facts as derived from the text of a judgement is irrelevant to the characterisation of the facts under Rule 65 *ter* (H).

21. The Trial Chamber finds that the agreed facts were arrived at voluntarily and that the consequences of such agreement was understood by the Blagojević Defence and the Jokić Defence when each team voluntarily met with the Prosecution and when the Parties participated in the Rule 65 *ter* (D) conference. Accordingly, the Trial Chamber accepts as agreed facts, under Rule 65 *ter* (H), all of the facts indicated in paragraph 3 of the Prosecution's Notice. The Trial Chamber also accepts, under the same rule, those facts as indicated in paragraph 5 above, to which the Accused withdrew their objections or agreed subject to the language reflected in Annex A, during the 6 November 2003 conference.

22. With regard to the non-agreed facts, the Trial Chamber notes that despite multiple requests by the pre-trial Judge,¹⁴ the Parties came to no agreement during the pre-trial phase. The Motion was brought after the commencement of trial proceedings. Since that time, the Trial Chamber has heard or admitted a significant amount of evidence, related to the facts that the Prosecution has proposed that the Trial Chamber take judicial notice of. The Trial Chamber notes that both defendants have vigorously cross-examined many of the Prosecution's witnesses on points related to the non-agreed facts proposed by the Prosecution.

23. Given that at this point the evidence is at an advanced stage, the Trial Chamber considers that it would be inappropriate to take judicial notice of the remaining facts proposed by the Prosecution. Therefore, in the interests of justice, the Trial Chamber exercises its discretion and declines to take judicial notice of the remaining facts proposed in the Motion, preferring to make its

¹⁰ Judge Shahabuddeen's Separate Opinion, at para. 34. See also, *Krajišnik* Decision, para. 14.

¹¹ The Trial Chamber notes that at least one decision of the International Criminal Tribunal for Rwanda also has declined to judicially notice facts agreed by the parties, preferring rather to consider the facts points of agreement. *Prosecutor v. Ntakirutimana*, ICTR-96-10-T and ICTR-96-17-T, "Decision on the Prosecutor's Motion for Judicial Notice of Adjudicated Facts," 22 November 2001.

¹² E.g. *Prosecutor v. Kvočka*, "Decision on Judicial Notice," 8 June 2000 ("*Kvočka* Decision"); *Prosecutor v. Sikirica et al.*, "Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts," 27 September 2000 ("*Sikirica* Decision"); 10 April 2003 *Milošević* Decision. The Trial Chamber further notes while all of the facts were proposed under Rule 94 (B), some of the facts may have been better suited for admission under Rule 94 (A).

¹³ See, Judge Shahabuddeen's Separate Opinion at para. 30.

¹⁴ See, e.g., *Prosecutor v. Blagojević et al.* IT-02-60-PT, Status Conference, 27 November 2002, T. 2058; Status Conference, 27 March 2003, T. 32.

own determination of these facts based on the evidence presented, rather than to adopt as rebuttable presumptions the findings of a previous trial chamber.

24. The Trial Chamber notes that it has admitted the former testimony of more than thirty witnesses in the *Krstić* trial into evidence in this case pursuant to Rule 92 *bis* (D). Thus, while the Trial Chamber has declined to take judicial notice of adjudicated facts from the *Krstić* Judgement, it has utilised one of the tools available to it to ensure that this trial is both fair and expeditious.

B. Documentary Evidence Proposed by the Prosecution

25. The Rules provide no express reference to procedures for admission of documentary evidence pursuant to agreement of the parties. However, as Rule 89 (B) provides, "In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence [that] will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law." Given that Rule 65 *ter* (H) permits agreement of facts and points of law between the parties, and that it is the general practice of this Tribunal during trial proceedings to admit relevant documentary evidence to which there is no objection from the parties, the Trial Chamber finds that it may admit documentary evidence to which the parties agree.

26. The Trial Chamber notes that the Parties have agreed that the Trial Chamber may accept the documents listed in Tab B of the Prosecution's Notice and further agreed at the 6 November conference, as having met the requisite standards for admission of evidence, but have not agreed that the content of the documents is true and accurate.¹⁵ Therefore, the Trial Chamber will accept these documents into evidence, in accordance with the agreement of the Parties. Although, the Trial Chamber will admit the documents into evidence, it will not presume that the contents of the documents are true, accurate, or complete. The Trial Chamber will weigh these documents as it weighs all other evidence.

27. With regard to the non-agreed documents, consistent with the Trial Chamber's reasoning above,¹⁶ the Trial Chamber declines to take judicial notice of these documents.

¹⁵ See, e.g., *Prosecutor v. Blagojević et al.*, IT-02-60-T, 6 November 2003, T. 243.

¹⁶ *Supra*, paras 22-23.

IV. DISPOSITION

For the forgoing reasons, the Trial Chamber:

ADMITS paragraphs 1-14, 16-28, 30, 32, 34-40, 44, 46-47, 49, 51, 55-58, 60-63, 66-74, 77, 79-80, 82-84, 86-93, 96, 98-99, 101-103, 105-106, 108-118, 120-124, 126-130, 133-138, 140, 142-144, 146-148, 150-151, 153, 155-160, 162-163, 165-168, 175, 188-194, 197, 199, 203-208, 214-219, 229-231, 233-236, 238, 240-241, 244, 263-268, 270, 293-295, 297, 300-302, 317-319, 321-323, 334-339, 341, 346-347, 356-370, 373-376, 378-383, 403-404, and 406-407 of Annex A of the Motion as agreed facts pursuant to Rule 65ter(H);

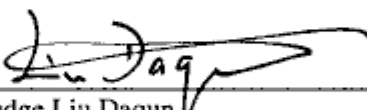
ADMITS the additional facts set forth in Annex A to this Decision as agreed facts pursuant to Rule 65ter(H);

ADMITS the documents set forth in Tab B to the Prosecution's Notice,¹⁷ as well as 65ter exhibit numbers 435, 479 and 661 into evidence;

AND OTHERWISE DENIES the Prosecution's Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence;

AND FURTHER ORDERS the Parties to inform the Trial Chamber if agreement was reached on any facts listed in paragraph 5(e) of this Decision, following the conclusion of the testimony of Richard Butler.

Done in French and English, the English version being authoritative.



Judge Liu Daqun
Presiding

Dated this nineteenth day of December 2003,
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁷ Tab B of the Prosecution's Notice is attached to this decision as Annex B.

ANNEX A

The following paragraphs are facts upon which the Parties agreed at the 65^{ter} (D) conference on 6 November 2003. The paragraph numbers correspond to the paragraph numbers as originally put forth by the Prosecution, but the language is in the form finally agreed by the Parties.

15. In May 1992, however, a group of Bosnian Muslim soldiers under the leadership of Naser Orić managed to recapture Srebrenica. Over the next several months, Orić and his men pressed outward in a series of raids.¹⁸

42-45. In March 1995, Radovan Karadžić, President of the Republika Srpska ("RS"), reacting to pressure from the international community to end the war and ongoing efforts to negotiate a peace agreement, issued a directive to the VRS concerning the long-term strategy of the VRS forces in the enclave. The directive, known as "Directive 7," specified that the VRS was to:

[C]omplete the physical separation of the Srebrenica from Žepa as soon as possible, preventing even communications between individuals in the two enclaves. BY planned and well-thought out combat operations, create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica.

Blocking aid convoys was also part of the plan:

The relevant State and military organs responsible for work with UNPROFOR and humanitarian organisations shall, through planned and unobtrusively restrict issuing of permits, reduce and limit the logistics support of UNPROFOR to the enclaves and the supply of material resources to the Muslim population, making them dependant on our good will while at the same time avoiding condemnation by the international community and international public opinion.

Just as envisaged in this decree, by mid-1995, the humanitarian situation of the Bosnian Muslim civilians and military personnel in the enclave was extremely grave. In early June 1995, a series of reports issued by the 28th Division reflected the urgent pleas of ABiH forces in the enclave for the humanitarian corridor to be deblocked and, when this failed, the tragedy of civilians dying from starvation.¹⁹

52. The plan for Kravaja 95 was aimed at reducing the "safe area" of Srebrenica to its urban core and was a step towards the larger VRS goal of plunging the Bosnian Muslim population

¹⁸ *Prosecutor v. Blagojević et al.*, IT-02-60-T, 6 November 2003, T. 239-40, 245.

¹⁹ The defendants agreed to paragraphs 42 and 43 of the Prosecution Motion, which are derived from paragraph 28 of the *Krstić* Judgement, only if all of paragraph 28 was admitted. The Prosecution had no objection to this. The Trial Chamber notes that the entirety of paragraph 28 of the *Krstić* Judgement also encompasses paragraphs 44 and 45 of the Motion, to which the parties also agreed, with minor changes of language. Therefore, the entire paragraph 28 of the

into humanitarian crisis, and, ultimately, eliminating the enclave. On its face, however, the plan for Krivaja 95 certainly did not include a VRS scheme to bus the Bosnian Muslim civilian population out of the enclave, nor to execute all the military aged Bosnian Muslim men, as ultimately happened following the take-over of Srebrenica.²⁰

53. The Drina Corps of the VRS was formed in November 1992, with the specific objective of protecting and “improving” the situation of the Bosnian Serb people living in the Middle Podrinje region, of which Srebrenica was an important part.²¹

95. Bosnian Serb forces from outside the Srebrenica area had also been brought in.²²

Krstić Judgement is accepted as an agreed fact, with the changes of language as agreed by the parties. *Prosecutor v. Blagojević et. al.*, IT-02-60-T, 6 November 2003, T. 244-46.

²⁰ *Prosecutor v. Blagojević et. al.*, IT-02-60-T, 6 November 2003, T. 248-49.

²¹ *Prosecutor v. Blagojević et. al.*, IT-02-60-T, 6 November 2003, T. 250.

²² *Prosecutor v. Blagojević et. al.*, IT-02-60-T, 6 November 2003, T. 258-59.