UNITED NATIONS

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

Case No.: IT-05-88-T

Date: 26 September 2006

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IN TRIAL CHAMBER II

Before: **Judge Carmel Agius, Presiding**
Judge O-Gon Kwon
Judge Kimberly Prost
Judge Ole Bjørn Støle – Reserve Judge

Registrar: **Mr. Hans Holthuis**

Decision of: **26 September 2006**

PROSECUTOR

v.

VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVČANIN
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ

DECISION ON PROSECUTION MOTION FOR JUDICIAL NOTICE OF ADJUDICATED FACTS WITH ANNEX

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Mr. Aleksandar Lazarević and Mr. Miodrag Stojanović for Ljubomir Borovčanin
Ms. Natacha Fauveau Ivanović for Radivoje Miletić
Mr. Dragan Krgović and Mr. David Josse for Milan Gvero
Mr. Peter Haynes and Mr. Đorđe Sarapa for Vinko Pandurević

TRIAL CHAMBER II 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", filed on 5 May 2006 ("Prosecution Motion" or "Motion"), and hereby renders its decision thereon.

I. PROCEDURAL BACKGROUND

1. The Prosecution filed the Motion on 5 May 2006, requesting the Trial Chamber to take judicial notice, pursuant to Rule 94(B) of the Rules of Procedure and Evidence of the Tribunal ("Rules"), of 534 facts it claims were adjudicated in one or more of three prior judgements of Chambers of this Tribunal:[1] the *Krstić* Trial Judgement of November 2001,[2] the *Krstić* Appeal Judgement of April 2004,[3] and the *Blagojević and Jokić* Trial Judgement of January 2005.[4] Six of the seven Accused in Case No. IT-05-88-PT (collectively, "Accused")[5] filed responses to the Prosecution Motion (collectively, "Defence Responses") in a timely manner:[6] Vujadin Popović on 29 June 2006;[7] Drago Nikolić on 22 June 2006;[8] Ljubomir Borovčanin on 30 June 2006;[9] Radivoje Miletić on 30 June 2006;[10] Milan Gvero on 30 June 2006;[11] and Vinko Pandurević on 30 June 2006.[12] Ljubiša Beara filed his response on 11 July 2006,[13] together with a request for leave to

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[1] Prosecution Motion, para. 1.

[2] *Prosecutor v. Krstić*, Case No. IT-98-33-T, Judgement, 2 August 2001 ("*Krstić* Trial Judgement").

[3] *Prosecutor v. Krstić*, Case No. IT-98-33-A, Judgement, 19 April 2004 ("*Krstić* Appeal Judgement").

[4] *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-T, Judgement, 17 January 2005 ("*Blagojević and Jokić* Trial Judgement").

[5] In an order of 26 June 2006, the Trial Chamber severed Milorad Trbić from Case No. IT-05-88 pursuant to Rule 82(B) of the Rules. *See Popović et al.*, Decision on Severance of Case against Milorad Trbić with Confidential and *Ex Parte* Annex, 26 June 2006, p. 3. In an order of 15 August 2006, it severed Zdravko Tolimir from Case No. IT-05-88 pursuant to the same Rule. *See Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Tolimir, Miletić, Gvero, Pandurević, and Trbić*, Case No. IT-05-88-PT ("*Popović et al.*"), Order on Operative Indictment and Severance of Case against Zdravko Tolimir, 15 August 2006, p. 2.

[6] At the Status Conference of 4 April 2006, the Pre-Trial Judge, acting pursuant to Rule 127 of the Rules, ordered each Accused to file his response, if any, to the anticipated motion for judicial notice of adjudicated facts "by not later than one month from the date of the decision of the Trial Chamber on the form of the indictment". *Popović et al.*, Transcript of Status Conference, T. 129 (4 April 2006). The Trial Chamber issued its "Decision on Motions Challenging the Indictment pursuant to Rule 72 of the Rules" on 31 May 2006.

[7] *Popović et al.*, Response on behalf of Vujadin Popović to Prosecution Motion for Judicial Notice of Adjudicated Facts, 29 June 2006 ("Popović Response").

[8] *Popović et al.*, [Confidential] Defence Response on behalf of Drago Nikolić to Prosecution Motion for Judicial Notice of Adjudicated Facts, 22 June 2006 ("Nikolić Response").

[9] *Popović et al.*, Borovčanin Defence Response to Prosecution's Motion for Judicial Notice of Adjudicated Facts, 30 June 2006 ("Borovčanin Response").

[10] *Popović et al.*, Response of General Miletic to the Prosecution Motion for Judicial Notice of Adjudicated Facts, 30 June 2006 ("Miletić Response").

[11] *Popović et al.*, General Gvero's Response to Prosecution's Motion for Judicial Notice of Adjudicated Facts, 30 June 2006 ("Gvero Response").

[12] *Popović et al.*, Defence Response on behalf of Vinko Pandurević to Prosecution Motion for Judicial Notice of Adjudicated Facts, 30 June 2006 ("Pandurević Response").

make the late filing.[14] The Prosecution filed a consolidated reply to the Defence Responses on 7 July 2006.[15] The Trial Chamber considers that its decision is aided by consideration of the Beara Response and the Prosecution Reply, and therefore recognises the Beara Response as validly filed under Rule 127, and grants leave under Rules 126 *bis* for the Prosecution Reply to be filed.

2. The parties disagree regarding several aspects of the legal test to be applied when determining whether a given proposed fact may be judicially noticed by a Trial Chamber. In addition, the Accused object to the admissibility of a number of the proposed facts, claiming that they fail to meet the requirements of this test in one or more respects. The Trial Chamber has reviewed and considered the submissions of the parties in arriving at the present decision, and will address specific points raised in them only where necessary for a proper and thorough understanding of the Chamber's reasoning. All references in this Decision to a specific proposed fact are identified by the number assigned to that fact in Annex A of the Prosecution Motion.

II. APPLICABLE LAW

3. Judicial notice of facts is governed by Rule 94, which provides as follows:

> (A) A Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.
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> (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 other proceedings of the Tribunal relating to matters at issue in the current proceedings.

Rule 94(A) concerns judicial notice of facts of common knowledge, while Rule 94(B) allows a Trial Chamber to take judicial notice of relevant facts adjudicated in a previous trial or appeal judgement ("original judgement"),[16] after having heard the parties, even if a party objects to the

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[13] *Popović et al.*, Defendant, Ljubiša Beara's Response to the Prosecution's Motion for Judicial Notice of Adjudicated Facts, 10 July 2006 ("Beara Response").

[14] *Popović et al.*, Defendant, Ljubiša Beara's Request for Leave to File Response to the Prosecution's Motion for Judicial Notice of Adjudicated Facts, 11 July 2006, p. 3.

[15] *Popović et al.*, Prosecution's Consolidated Reply to Defence Responses to the Prosecution's Motion for Judicial Notice of Adjudicated Facts, 7 July 2006 ("Prosecution Reply" or "Reply").

[16] The Trial Chamber notes that the Appeals Chamber is authorised in certain circumstances to make its own factual findings. *See, e.g.*, Rule 115 of the Rules. Moreover, the Tribunal's jurisprudence on judicial notice of adjudicated facts makes no distinction between the factual findings of a Trial Chamber and those of the Appeals Chamber, and at least one Trial Chamber has made specific reference to judicial notice of facts adjudicated by the Appeals Chamber. *See Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-T, Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence, 19 December 2003 ("*Blagojević and Jokić* Trial Decision"), para. 16. Accordingly, the Trial Chamber rejects the contention of Gvero that judicial notice cannot be taken of adjudicated facts from the *Krstić* Appeal Judgement "because the Appeals Chamber, unlike the Trial Chamber, is not a finder of fact". Gvero Response, para. 16.

taking of judicial notice of a particular fact.[17] Where the requirements of Rule 94(A) are met in respect of a given fact, the Trial Chamber must take judicial notice of that fact. By contrast, Rule 94(B) confers a discretionary power on the Trial Chamber to determine whether or not to take judicial notice of an adjudicated fact.[18]

4. Accordingly, the assessment of whether a purported adjudicated fact may be judicially noticed pursuant to Rule 94(B) is a two-step process. First, the Trial Chamber must determine whether the fact fulfils a number of admissibility requirements that have been set forth in the jurisprudence of the Tribunal. Second, for each fact that fulfils these requirements, the Chamber must determine whether, in its discretion, it should nonetheless withhold judicial notice, on the ground that judicially noticing the fact in question would not serve the interests of justice. The Trial Chamber will now discuss these two steps in turn.

III. DISCUSSION

A. Admissibility requirements for taking judicial notice of a purported adjudicated fact[19]

1. The fact must have some relevance to an issue in the current proceedings

5. A Trial Chamber must withhold judicial notice of any purported adjudicated fact that, in its consideration, has no relevance to any issue in the proceedings before it. While a factual finding of the original Chamber may have resulted from evidence viewed by that Chamber as relevant to an

[17] *See Prosecutor v. Kupreškić, Kupreškić, Kupreškić, Josipović, and Šantić*, Case No. IT-95-16-A, Decision on the Motions of Drago Josipović, Zoran Kupreškić and Vlatko Kupreškić to Admit Additional Evidence pursuant to Rule 115 and for Judicial Notice to Be Taken pursuant to Rule 94(B), 8 May 2001 ("*Kupreškić et al.* Appeal Decision"), para. 6; *Blagojević and Jokić* Trial Decision, *supra* note 16, para. 15.

[18] *Prosecutor v. Karemera, Ngirumpatse, and Nzirorera*, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006 ("*Karemera et al.* Appeal Decision"), para. 41; *Prosecutor v. Milošević*, Case No. IT-02-54-AR73.5, Decision on the 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"), pp. 3–4; *Prosecutor v. Prlić, Stojić, Praljak, Petković, Ćorić, and Pušić*, Case No. IT-04-74-PT, Decision on Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B), 14 March 2006 ("*Prlić et al.* Pre-Trial Decision"), para. 9.

[19] While older jurisprudence is inconsistent on whether a requirement exists that the purported adjudicated fact not be in dispute between the parties, the Prosecution is correct in stating that there is nothing in either Rule 94(B) of the Rules, nor in the currently binding or persuasive jurisprudence construing it, that prevents a Trial Chamber from taking judicial notice of facts that are in dispute. *See* Prosecution Reply, paras. 4–5. As noted by Judge Shahabuddeen, the phrase "at issue" in Rule 94(B) has been authoritatively defined to embrace issues over which the parties are in active dispute. *Milošević* Appeal Decision, *supra* note 18, Separate Opinion of Judge Shahabuddeen, paras. 26–30. This Trial Chamber joins the Trial Chambers in *Krajišnik* and *Prlić* in endorsing this interpretation of Rule 94(B). *Prlić et al.* Pre-Trial Decision, *supra* note 18, para. 10 ("As a party may challenge, at trial, a fact that has been judicially noticed, it follows that a Chamber is not restricted to taking judicial notice of facts that are not the subject of dispute between the parties."); *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, Decision on Third and Fourth Prosecution Motions for Judicial Notice of Adjudicated Facts, 24 March 2005 ("*Krajišnik* March 2005 Trial Decision"), para. 14 n. 45. The contentions of several of the Accused to the contrary are accordingly without merit. *See* Nikolić Response, para. 12; Borovčanin Response, para. 8; Pandurević Response, para. 10; Miletić Response, paras. 7, 11.

issue in those proceedings, the Chamber seised of the motion for judicial notice may consider that the fact lacks sufficient relevance in the current proceedings. Since judicially noticing an adjudicated fact has the effect of admitting that fact into evidence,[20] taking judicial notice of irrelevant facts holds the danger of overburdening the evidentiary record. As the Appeals Chamber has held, "Rule 94 of the Rules is not a mechanism that may be employed to circumvent the ordinary requirement of relevance and thereby clutter the record with matters that would not otherwise be admitted."[21]

2. The fact must be distinct, concrete, and identifiable

6. A Trial Chamber must withhold judicial notice of a purported adjudicated fact if it is not distinct, concrete and identifiable in the findings of the original judgement.[22] In order to determine whether a purported fact is distinct, concrete, and identifiable, the Chamber must examine the purported fact in the context of the original judgement, "with specific reference to the place referred to in the judgement and to the indictment period of that case".[23] The Chamber must also deny judicial notice where a purported fact is inextricably commingled either with other facts that do not themselves fulfil the requirements for judicial notice under Rule 94(B), or with other accessory facts that serve to obscure the principal fact.[24]

3. The fact as formulated by the moving party must not differ in any substantial way from the formulation of the original judgement

7. A Trial Chamber must withhold judicial notice of a purported adjudicated fact if the moving party's formulation of the fact is not the same as, or at least substantially similar to, the formulation used by the Trial or Appeals Chamber in the original judgement.[25] Facts altered in a substantial way

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[20] *See infra* para. 21.

[21] *Semanza v. Prosecutor*, Case No. ICTR-97-20-A, Judgement, 20 May 2005, para. 189. *Accord Nikolić v. Prosecutor*, Case No. IT-02-60/1-A, Decision on Appellant's Motion for Judicial Notice, 1 April 2005 ("*Nikolić* Appeal Decision"), para. 52; *Krajišnik* March 2005 Trial Decision, *supra* note 19, para. 17, p. 10.

[22] *See Prlić et al.* Pre-Trial Decision, *supra* note 18, para. 12; *Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-T, Decision on Judicial Notice of Adjudicated Facts Following the Motion Submitted by Counsel for the Accused Hadžihasanović and Kubura on 20 January 2005, 14 April 2005 ("*Hadžihasanović and Kubura* Trial Decision"), p. 5; *Krajišnik* March 2005 Trial Decision, *supra* note 19, para. 14; *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses pursuant to Rule 92*bis*, 28 February 2003 ("*Krajišnik* February 2003 Trial Decision"), para. 15; *Blagojević and Jokić* Trial Decision, *supra* note 16, para. 16. *Accord* Nikolić Response, para. 12; Pandurević Response, para. 10.

[23] *Krajišnik* March 2005 Trial Decision, *supra* note 19, para. 14 n. 44. *Accord Hadžihasanović and Kubura* Trial Decision, *supra* note 22, p. 6.

[24] *See Prlić et al.* Pre-Trial Decision, *supra* note 18, para. 12.

[25] *See Krajišnik* March 2005 Trial Decision, *supra* note 19, para. 14; *Blagojević and Jokić* Trial Decision, *supra* note 16, para. 16. *Accord* Nikolić Response, para. 12; Pandurević Response, para. 10. The Trial Chamber declines to endorse the apparent holding of the *Prlić* Trial Chamber that the moving party must reproduce the formulation of the

by the moving party cannot be considered to have been truly adjudicated.[26] Nevertheless, this Trial Chamber considers that if the moving party's formulation contains only a minor inaccuracy or ambiguity as a result of its abstraction from the context of the original judgement, the Chamber may, in its discretion, correct the inaccuracy or ambiguity *proprio motu*. In such circumstances, the correction should introduce no substantive change to the proposed fact, and the purpose of such correction should be to render the formulation consistent with the meaning intended by the original Chamber.[27] The fact corrected in this manner may then be judicially noticed, as long as it fulfils all the other admissibility requirements of Rule 94(B).[28]

4. The fact must not be unclear or misleading in the context in which it is placed in the moving party's motion

8. A Trial Chamber must withhold judicial notice of a purported adjudicated fact if it is unclear or misleading in the context in which it has been placed in the moving party's motion. As the Appeals Chamber has held, "[a] Trial Chamber can and indeed must decline to take judicial notice of facts if it considers that the way they are formulated—abstracted from the context of the judgement ... whence they came—is misleading or inconsistent with the facts actually adjudicated in the cases in question."[29] In this Trial Chamber's view, however, a given fact cannot be examined in isolation when evaluating its clarity and accuracy. The Chamber should instead have regard to the surrounding proposed facts in the motion,[30] and must deny judicial notice if the fact in question

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original judgement "exactly". *See Prlić et al.* Pre-Trial Decision, *supra* note 18, para. 16 (excluding three purported adjudicated facts because the Prosecution in its motion "d[id] not use *exactly* the same language as used in the original language of [the relevant] Judgements") (emphasis added). The claim of Miletić that an exact reproduction is required is accordingly dismissed. *See* Miletić Response, para. 18.

[26] For example, proposed fact 426, which is based on language in paragraph 246 of the *Krstić* Trial Judgement, has been altered in a substantial way and cannot be judicially noticed. Crucially, the Prosecution's formulation omits the words "Mr. Butler argued that", and therefore fails to reveal that the purported fact was not a finding of the Trial Chamber. *See Krstić* Trial Judgement, *supra* note 2, para. 246. The Trial Chamber considers additionally that proposed fact 129 has been substantially and impermissibly altered by removing the name of Popović from the original judgement's list of persons present at the place in question. *See Krstić* Trial Judgement, *supra* note 2, para. 143; *Blagojević and Jokić* Trial Judgement, *supra* note 4, para. 159. By contrast, proposed fact 80, which similarly removes Popović's name from a list of persons, does not substantially alter the original judgement's formulation because that paragraph merely lists the positions of various Drina Corps officers. *See Krstić* Trial Judgement, *supra* note 2, para. 99.

[27] See paragraph 25 of the present Decision for a list of adjudicated facts reformulated by the Trial Chamber in accordance with this principle.

[28] *Cf. Prosecutor v. Stanković*, Case No. IT-96-23/2-PT, Decision on Prosecution's Motion for Judicial Notice pursuant to Rule 94(B), 16 May 2003 ("*Stanković* Pre-Trial Decision"), para. 16 & p. 8 nn. 20–25 (examining the *Kunarac* Trial and Appeal Judgements to determine whether instances of the term "Foča" in certain of the Prosecution's proposed adjudicated facts referred to the town of Foča or the municipality of Foča, and supplying the missing qualifications *proprio motu*).

[29] *Karemera et al.* Appeal Decision, *supra* note 18, para. 55.

[30] For instance, the Trial Chamber considers proposed fact 59 to be inadmissible in the manner it has been set forth in the Prosecution Motion, because the meaning of "difficult" is excessively vague: "During this time Momir Nikolić became the principal contact within the VRS for DutchBat but he proved to be a *difficult* contact" (emphasis added).

is unclear or misleading in this context, or if it will become unclear or misleading because one or more of the surrounding purported facts will be denied judicial notice.[31]

5. The fact must be identified with adequate precision by the moving party

9. A Trial Chamber must withhold judicial notice of a purported adjudicated fact if the moving party has not identified the fact with adequate precision.[32] As the Appeals Chamber has held, "[a] request must specifically point out the paragraph(s) or parts of the judgment of which [the moving party] wishes judicial notice to be taken".[33] In this Trial Chamber's view, where the moving party has formulated a purported fact in an identical or substantially similar way to the formulation of the original judgement, but has mistakenly cited the wrong paragraph of the judgement, the Trial Chamber may still judicially notice the fact, provided the proximity of the intended factual finding to the mistakenly cited paragraph makes it reasonable that the non-moving party should have understood which factual finding was intended,[34] and the other admissibility requirements for judicial notice of an adjudicated fact pursuant to Rule 94(B) have been fulfilled.

Similarly, proposed fact 390 is inadmissible because, removed from the context of the judgement in which it is described, the term "unbearable" is too vague. *See Blagojević and Jokić* Trial Judgement, *supra* note 4, para. 283.

[31] For example, proposed fact 225, which is derived from paragraph 206 of the *Blagojević and Jokić* Trial Judgement, states as follows: "In particular, the Declaration read that the Serb side had 'adhered to all regulations of the Geneva Convention and international war law.'" Proposed fact 226, also derived from *Blagojević and Jokić* paragraph 206, states that "Major Franken added by hand to this statement 'as far as convoys actually escorted by UN forces are concerned.'" Although an examination of paragraph 206 reveals that this was a Declaration specifying that the transfer of the Bosnian Muslim civilians out of Potočari "was voluntary, supervised and escorted by UNPROFOR and carried out by the VRS without any irregularities", it is impossible from the context of the proposed facts surrounding facts 225 and 226 to determine the nature of this Declaration. *Blagojević and Jokić* Trial Judgement, *supra* note 4, para. 206. Moreover, the Trial Chamber cannot insert the missing information *proprio motu* into fact 225 pursuant to the principle set forth in paragraph 7 of this Decision, because such a correction would introduce a substantive change to that proposed fact. For this reason, proposed facts 225 and 226—as well as 227—cannot be judicially noticed. The Chamber notes additionally that proposed fact 225 could not be judicially noticed in any event because it is based, at least in part, on agreed facts between the parties to *Blagojević and Jokić*. *See infra* para. 11.

[32] *See Kupreškić et al.* Appeal Decision, *supra* note 17, para. 12; *Nikolić* Appeal Decision, *supra* note 21, paras. 47, 56; *Prosecutor v. Bizimungu, Mugenzi, Bicamumpaka, and Mugiraneza*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza's First Motion for Judicial Notice pursuant to Rule 94(B), 10 December 2004, para. 13 (holding that a blanket reference to adjudicated facts set out in specific paragraphs of a judgement will not be entertained).

[33] *Kupreškić et al.* Appeal Decision, *supra* note 17, para. 12.

[34] For example, proposed fact 24 describes the visit of Philippe Morillon to Srebrenica in March 1993. This language is nearly identical to that of paragraph 15 of the *Krstić* Trial Judgement, but the Prosecution Motion cites as its authority paragraph 14 of that Judgement. Other proposed facts similarly citing the incorrect paragraph include 83, 99, 100, 101, 104, 114, and 115. These mistakenly refer to paragraphs 99, 31, 32, 32, 33, 33, and 33 of the *Krstić* Trial Judgement, respectively, instead of the correct paragraphs 100, 32, 33, 33, 34, 34, and 34. *See Krstić* Trial Judgement, *supra* note 2, paras. 32–34, 100. The Prosecution's formulation is identical or substantially similar to the language of *Krstić* in all these instances. The Trial Chamber finds that, for these facts, the proximity of the correct paragraphs to the mistakenly cited paragraphs makes it reasonable that the Accused should have understood which factual finding was intended. These facts may consequently be judicially noticed, provided they fulfil the other admissibility requirements.

6. The fact must not contain characterisations of an essentially legal nature

10. A Trial Chamber may only judicially notice a purported adjudicated fact where it represents the factual—and not the legal—findings of a Trial Chamber or the Appeals Chamber.[35] This Trial Chamber endorses the position of the Trial Chamber in *Krajišnik* that judicial notice must be denied where the fact contains characterisations that are of an "essentially" legal nature: "[M]any findings have a legal aspect, if one is to construe this expression broadly. It is therefore necessary to determine on a case-by-case basis whether the proposed fact contains findings or characterizations which are of an *essentially* legal nature, and which must, therefore, be excluded."[36]

7. The fact must not be based on an agreement between the parties to the original proceedings

11. A Trial Chamber must withhold judicial notice of a purported adjudicated fact if the finding in the original judgement is based on an agreement between the parties to those proceedings.[37] Such agreed facts may, for example, be the result of a plea agreement under Rules 62 *bis* and 62 *ter*, or an agreement between the parties on matters of fact in accordance with Rule 65 *ter*(H). In this Trial Chamber's view, if a Chamber cannot readily determine, from an examination of the citations in the original judgement, that the fact was not based on an agreement between the parties, it must deny judicial notice of the fact.[38] Such would be the case where the structure of the relevant footnote in the original judgement cites the agreed facts between the parties as a primary source of authority.[39] Where the moving party has formulated a given fact in a manner substantially similar to the formulation of one trial judgement, but has also cited the paragraph of a second trial judgement containing a similar factual finding that is at least partially based on an agreement between the

[35] *Prlić et al.* Pre-Trial Decision, *supra* note 18, para. 12; *Krajišnik* March 2005 Trial Decision, *supra* note 19, para. 14; *Blagojević and Jokić* Trial Decision, *supra* note 16, para. 16; *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 10 April 2003 ("*Milošević* April 2003 Trial Decision"), p. 3; *Krajišnik* February 2003 Trial Decision, *supra* note 22, para. 15. *Accord* Nikolić Response, para. 12; Pandurević Response, para. 10.

[36] *Krajišnik* March 2005 Trial Decision, *supra* note 19, para. 15 (emphasis in original). *Accord Prosecutor v. Mejakić, Gruban, Fuštar, and Knežević*, Case No. IT-02-65-PT, Decision on Prosecution Motion for Judicial Notice pursuant to Rule 94(B), 1 April 2004 ("*Mejakić et al.* Pre-Trial Decision"), p. 4 ("Trial Chambers may take judicial notice of factual findings in other cases but not the legal characterisation of such facts").

[37] *See Milošević* April 2003 Trial Decision, *supra* note 35, p. 3 (considering that, "[f]or a fact to be capable of admission under Rule 94(B)[,] it should have been the subject of adjudication and not based on an agreement between parties in previous proceedings"). *Accord Mejakić et al.* Pre-Trial Decision, *supra* note 36, p. 4; *Krajišnik* February 2003 Trial Decision, *supra* note 22, para. 15.

[38] *See Krajišnik* March 2005 Trial Decision, *supra* note 19, para. 14 n. 46.

[39] For example, proposed fact 141, which comes from paragraph 178 of the *Blagojević and Jokić* Trial Judgement and concerns an address that Ratko Mladić gave to a crowd of refugees, provides as support for this fact the following footnote: "Agreed Facts para. 86; Nesib Mandžić, T. 800–01." *Blagojević and Jokić* Trial Judgement, *supra* note 4, para. 178 n. 633. In the Trial Chamber's view, this fact cannot be judicially noticed because it is based, at least in part, on agreed facts between the parties in *Blagojević and Jokić*. Other proposed facts for which judicial notice must be withheld for this reason include 143 and 150.

parties, the Trial Chamber may judicially notice the fact as adjudicated in the first judgement, provided the other admissibility requirements for judicial notice of an adjudicated fact have been fulfilled.[40]

8. The fact must not relate to the acts, conduct, or mental state of the accused

12. A Trial Chamber must withhold judicial notice of any purported adjudicated fact relating to "the acts, conduct, and mental state of the accused".[41] As the Appeals Chamber has recently explained, this "complete exclusion" "strikes a balance between the procedural rights of the [a]ccused and the interest of expediency", as judicially noticing such facts may impermissibly infringe the accused's right to hear and confront the witnesses against him or her.[42] Moreover, the factual findings of another Chamber bearing on the acts, conduct, and mental state of a person not on trial before it may not be reliable as evidence in that person's trial, as the accused in the previous proceedings may have had significantly less incentive to contest those facts, or indeed may have expressed agreement with them in an attempt to allow the blame to fall on someone else.[43]

13. This exclusion focuses narrowly on the deeds, behaviour, and mental state of the accused—that is, on the conduct of the accused fulfilling the physical and mental elements of the form of responsibility through which he or she is charged with responsibility.[44] It does not apply to the conduct of other persons for whose criminal acts and omissions the accused is alleged to be responsible through one or more of the forms of responsibility in Articles 7(1), 7(3), and 4(3)(e) of

[40] *See Stanković* Pre-Trial Decision, *supra* note 28, para. 9. For instance, the Trial Chamber is not precluded from judicially noticing proposed fact 149, which is based on the language of paragraph 42 of the *Krstić* Trial Judgement, even though the Prosecution Motion also cites paragraph 162 of *Blagojević and Jokić* as authority. Although the relevant passage of *Blagojević and Jokić* cites agreed facts between the parties as a primary source of authority, the relevant passage of *Krstić* appears to be based on the testimony of a *viva voce* witness. *See Krstić* Trial Judgement, *supra* note 2, para. 43 n. 71; *Blagojević and Jokić* Trial Judgement, *supra* note 4, para. 164 n. 561.

[41] *Karemera et al.* Appeal Decision, *supra* note 18, paras. 47, 51–52 (quotation at para. 52).

[42] *Ibid.* para. 51. On this ground, the Trial Chamber denies judicial notice to proposed facts 190 to 202 and 228, which concern the 12 July 1995 meeting at the Hotel Fontana at which Popović is alleged to have been present. As this Chamber has observed in a previous decision, these meetings appear to play a prominent role in the Prosecution's theory of the case; the events at the 12 July 1995 meeting, in particular, surely implicate the acts, conduct, and especially the mental state of Popović. *See Popović et al.*, Indictment, 4 August 2006, paras. 41, 79; *Popović et al.*, Decision on Prosecution's Confidential Motion for Admission of Written Evidence in Lieu of *Viva Voce* Testimony pursuant to Rule 92 *bis*, 12 September 2006, paras. 57, 75.

[43] *Ibid. See also* Gvero Response, para. 35 (noting this concern).

[44] *Karemera et al.* Appeal Decision, *supra* note 18, para. 52 (citing *Prosecutor v. Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92*bis*(C), 7 June 2002 ("*Galić* Appeal Decision"), para. 9). *See also Prosecutor v. Milošević*, Case No. IT-02-54-PT, Decision on Prosecution's Request to Have Written Statements Admitted under Rule 92*bis*, 21 March 2002, para. 22 ("The phrase 'acts and conduct of the accused' in Rule 92*bis* is a plain expression and should be given its ordinary meaning: deeds and behaviour of the accused. No mention is made of acts and conduct by alleged co-perpetrators, subordinates or, indeed, anybody else.").

the Statute.[45] Such persons may include, for instance, alleged subordinates whose criminal conduct the accused is charged with failing to prevent or punish,[46] persons said to have participated with the accused in a joint criminal enterprise,[47] and persons the accused is alleged to have aided and abetted.[48]

9. The fact must clearly not be subject to pending appeal or review

14. A Trial Chamber may only judicially notice a purported adjudicated fact if that fact itself is clearly not subject to pending appeal or review proceedings.[49] In other words, a fact may only be judicially noticed where the original judgement has not been appealed or subjected to review pursuant to Rule 119; where the judgement has been finally settled on appeal or review; or, if an appeal or request for review is pending in respect of the judgement, the fact itself is clearly not among, or inextricably commingled with, those findings that have been challenged by a party.[50] In

[45] *See Karemera et al.* Appeal Decision, *supra* note 18, para. 52. For example, proposed fact 142, stating that "upon the arrival of Serb forces in Potočari, the Bosnian Muslim refugees taking shelter in and around the compound were subjected to a terror campaign comprised of threats, insults, looting and burning of nearby houses, beating, rapes, and murders", does not, contrary to the contentions of Popović, clearly relate to the acts, conduct, or mental state of Popović or any of the Accused. *See* Popović Response, para. 71.

[46] Accordingly, the objections of Pandurević that a number of the proposed facts relate to the acts and conduct of his alleged subordinates in the Zvornik Brigade are unfounded. *See* Pandurević Response, para. 12.

[47] Accordingly, the objections of Gvero that a number of the proposed facts relate to the acts and conduct of Ratko Mladić are unfounded. *See* Gvero Response, paras. 28–32.

[48] *Karemera et al.* Appeal Decision, *supra* note 18, para. 52. The *Karemera* Appeals Chamber drew a distinction between adjudicated facts going to the "acts, conduct, and mental state of the accused" and all those facts merely bearing on the accused's criminal responsibility in some way. As the purpose of a criminal trial is to adjudicate the criminal responsibility of the accused, "judicial notice under Rule 94(B) is in fact available *only* for adjudicated facts that bear, at least in some respect, on the criminal responsibility of the accused." *Ibid.*, para. 48 (emphasis in original). The arguments to the contrary in the Defence Responses are thus entirely without merit. *See* Pandurević Response, para. 10; Nikolić Response, para. 12; Miletić Response, para. 6; Popović Response, para. 6; Borovčanin Response, para. 7; Gvero Response, paras. 3, 28–32.

[49] *See Kupreškić et al.* Appeal Decision, *supra* note 17, para. 6; *Prlić et al.* Pre-Trial Decision, *supra* note 18, paras. 12, 15. *Accord* Nikolić Response, para. 12; Pandurević Response, para. 10. Of the three judgements relied upon in the Prosecution Motion, only *Blagojević and Jokić* is subject to pending appeal. *See Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Third Amended Appellate Brief of Dragan Jokić, 6 July 2006; *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Amended Appeal Brief of Dragan Jokić, 1 December 2005; *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Appeal Brief of Dragan Jokic, 4 October 2005; *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Defence of Accused Mr. Vidoje Blagojević Brief on Appeal, 20 October 2005; *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Prosecution's Brief on Appeal, 9 May 2005. The *Krstić* Appeal Judgement was rendered on 19 April 2004 and review proceedings in respect of it were not initiated within the one-year time limit set forth in Rule 119 of the Rules.

[50] *See Prlić et al.* Pre-Trial Decision, *supra* note 18, para. 15 (holding that "only those facts which are clearly not under appeal ... may ... be considered as having been finally adjudicated by the Trial Chamber"); *Hadžihasanović and Kubura* Trial Decision, *supra* note 22, pp. 5–6; *Krajišnik* March 2005 Trial Decision, *supra* note 19, para. 14; *Mejakić et al.* Pre-Trial Decision, *supra* note 36, p. 4; *Krajišnik* February 2003 Trial Decision, *supra* note 22, para. 14; *Blagojević and Jokić* Trial Decision, *supra* note 16, paras. 16, 18–19; *Prosecutor v. Ljubičić*, Case No. IT-00-41-PT, Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts, 23 January 2003 ("*Ljubičić* Pre-Trial Decision"), pp. 5–6. Therefore, as correctly stated by the Prosecution and contrary to the claims of Gvero and Beara, the mere fact that the *Blagojević and Jokić* Trial Judgement has been appealed does not automatically render inadmissible all the proposed facts in the Prosecution Motion that are based solely on *Blagojević and Jokić*. *See* Prosecution Motion, para. 11; Gvero Response, paras. 6–14; Beara Response, para. 5.

this Trial Chamber's view, where the moving party has formulated a given fact in a manner substantially similar to the formulation of one trial judgement, but has also cited the paragraph of a second trial judgement containing a similar factual finding that may be subject to pending appeal or review proceedings, the Trial Chamber may judicially notice the fact as adjudicated in the first judgement, provided the other admissibility requirements of Rule 94(B) have been fulfilled.[51]

B. Considerations for determining whether taking judicial notice of an adjudicated fact will serve the interests of justice

15. Where a Trial Chamber determines that a purported adjudicated fact meets all nine of the admissibility requirements set forth above, it may take judicial notice of it.[52] Nevertheless, as the power of judicial notice under Rule 94(B) is discretionary, the Chamber always retains the right to withhold judicial notice of any adjudicated fact, even if it fulfils all of the admissibility requirements, if the Chamber determines that taking such notice would not serve the interests of justice.[53] This Trial Chamber has examined the admissible adjudicated facts in the Prosecution Motion having full regard to this principle, and has decided to deny judicial notice to a number of facts because taking such notice of them would not further the interests of justice. The following discussion highlights some of the considerations the Chamber has had in mind in performing this portion of the analysis.

16. The Trial Chamber's paramount duty is to ensure that the conduct of trial proceedings in this case is both fair and expeditious, and that the rights of the Accused are preserved in accordance with Articles 20 and 21 of the Statute of the Tribunal. In this regard, a key factor the Chamber has considered when determining whether to take judicial notice of the Prosecution's proposed adjudicated facts is whether taking such notice will achieve judicial economy while still preserving

[51] *Cf. Stanković* Pre-Trial Decision, *supra* note 28, para. 9 ("Even if different fact-finders might reach different conclusions with respect to the same facts, the application of Rule 94(B) as provided for by the Rules is not impeded."). In its Reply, the Prosecution offers to withdraw proposed fact 204, the admissibility of which has been challenged by Gvero, because it is arguably subject to appeal in *Blagojević and Jokić*. *See* Prosecution Reply, paras. 7–8; Gvero Response, para. 13, p. 11. However, as the formulation of the fact is based on the language of the *Krstić* Trial Judgement, and *Blagojević and Jokić* is cited only as additional support, the Trial Chamber may and does judicially notice the fact as adjudicated by the *Krstić* Chamber notwithstanding the possibility that it may be subject to appeal in *Blagojević and Jokić*. *See Krstić* Trial Judgement, *supra* note 2, para. 137; *Blagojević and Jokić* Trial Judgement, *supra* note 4, para. 180.

[52] *See Prlić et al.* Pre-Trial Decision, *supra* note 18, para. 12.

[53] *See Karemera et al.* Appeal Decision, *supra* note 18, para. 41; *Krajišnik* March 2005 Trial Decision, *supra* note 19, para. 12; *Milošević* Appeal Decision, *supra* note 18, pp. 3–4.

the right of the Accused to a fair, public, and expeditious trial.[54] As held by the *Krajišnik* Trial Chamber, judicial notice may advance judicial economy by "condens[ing] the relevant proceedings to what is essential for the case of each party without rehearing supplementary allegations already proven in past proceedings".[55] However, because taking judicial notice of an adjudicated fact establishes a presumption of its accuracy that may be rebutted by the non-moving party at trial,[56] the Trial Chamber has been mindful of the possibility that anticipated attempts at rebuttal by one or more of the Accused may consume excessive time and resources, consequently frustrating the principle of judicial economy.[57] The principle of judicial economy is more likely to be frustrated in this manner where the judicially noticed adjudicated facts are unduly broad, vague, tendentious, or conclusory.[58] Moreover, the Trial Chamber has also had regard to whether the volume or type of evidence the Accused can be expected to produce in rebuttal may place such a significant burden on them that it jeopardises their right to a fair trial. With these principles in mind, the Chamber has denied judicial notice to a number of the Prosecution's proposed adjudicated facts.

17. The Trial Chamber has also come to the conclusion that judicially noticing various of the proposed adjudicated facts would not serve the interests of justice because, in the Chamber's view, the facts are inadequate or unclear in the original judgement. In these instances, the Chamber has denied judicial notice to the fact even though the Prosecution may have formulated the fact in the same way and in the same context as it appears in the original judgement.[59] Furthermore, the Trial

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[54] *See Karemera et al.* Appeal Decision, *supra* note 18, paras. 39, 41; *Krajišnik* March 2005 Trial Decision, *supra* note 19, para. 12; *Mejakić et al.* Pre-Trial Decision, *supra* note 36, p. 5. *Accord* Popović Response, para. 5; Miletić Response, para. 8; Pandurević Response, paras. 6–7.

[55] *Krajišnik* February 2003 Trial Decision, *supra* note 22, para. 11.

[56] *Karemera et al.* Appeal Decision, *supra* note 18, para. 42. *See also infra* paras. 20–21 (setting forth in greater detail the legal consequences of taking judicial notice of an adjudicated fact).

[57] *See Krajišnik* March 2005 Trial Decision, *supra* note 19, para. 16; *Mejakić et al.* Pre-Trial Decision, *supra* note 36, p. 5; *Prosecutor v. Milošević*, Case No. IT-02-54-T, Final Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 16 December 2003 ("*Milošević* December 2003 Trial Decision"), paras. 11–12, 19.

[58] *Mejakić et al.* Pre-Trial Decision, *supra* note 36, p. 5; *Milošević* December 2003 Trial Decision, *supra* note 57, paras. 12, 14.

[59] For example, proposed fact 401, which reproduces *verbatim* the language of paragraph 229 of the *Krstić* Trial Judgement, states that "[o]ne ligature was located on the surface of the grave and one 'possible' blindfold was found loose in the grave." *Krstić* Trial Judgement, *supra* note 2, para. 229. As the import of the term "possible" placed between quotation marks is unclear even in the context of the original judgement, the Trial Chamber decides in its discretion to deny judicial notice to this fact. Another example is proposed fact 409, which tracks the language of paragraph 231 of the *Krstić* Trial Judgement: "The Zvornik Brigade was much in view in the area of Petkovci and the Dam on 15 July." *See Krstić* Trial Judgement, *supra* note 2, para. 231. Because this Trial Chamber is unable to fully discern what the *Krstić* Trial Chamber meant by "much in view", it opts to deny this fact judicial notice in its discretion.

Chamber has deemed it appropriate to deny judicial notice to several of the proposed adjudicated facts taken from one trial judgement where a factual finding on the same subject in a second trial judgement is fundamentally inconsistent with the fact, even though the fact is in all other respects capable of being judicially noticed.[60] The Trial Chamber has regarded an inconsistency as fundamental where the respective factual findings in the relevant original judgements cannot both be reasonably regarded as true.[61]

18. The Trial Chamber has additionally determined that the admission of numerous other proposed adjudicated facts would not advance the interests of justice because, due to a lack of specificity in the original judgement, the Chamber has been unable readily to discern that the fact in question does not refer to the acts, conduct, or mental state of one of the accused before it,[62] or that it does not derive directly from evidence that implicates the acts, conduct, or mental state of one of the accused.[63]

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[60] To the extent that he intends to suggest the permissibility of applying this principle, Miletić is correct in noting that "significant" differences between the factual findings of two judgements may constitute valid grounds for the denial of judicial notice on discretionary grounds. *See* Miletić Response, paras. 17, 21. *See also Stanković* Pre-Trial Decision, *supra* note 28, para. 9 ("Even if different fact-finders might reach different conclusions with respect to the same facts, the application of Rule 94(B) as provided for by the Rules is not impeded.").

[61] The Trial Chamber considers a discrepancy between a specified number of victims listed in the factual findings of two or more judgements to be a fundamental inconsistency justifying the denial of judicial notice in the Chamber's discretion. For this reason, the Chamber does not take judicial notice of proposed fact 435. In accordance with paragraph 238 of the *Krstić* Trial Judgement and when read in conjunction with proposed fact 434, fact 435 states that the bodies of 174 individuals were uncovered from the Čančari Road gravesite. *See Krstić* Trial Judgement, *supra* note 2, para. 238. This number of bodies differs from that found by the *Blagojević and Jokić* Trial Chamber to have been uncovered—that is, 177. *See Blagojević and Jokić* Trial Judgement, *supra* note 4, para. 354. For the same reason, the Trial Chamber withholds judicial notice of proposed fact 357 ("some" victims killed versus two victims shot) and, in conjunction with the principle discussed in paragraph 25 of this Decision, the component fact comprising the final sentence of proposed fact 375 (184 victims versus 178 victims).

[62] *See Karemera et al.* Appeal Decision, *supra* note 18, para. 52. *See also supra* paras. 13–14 (describing the prohibition on admitting facts relating to the acts, conduct, or mental state of the accused). A number of the proposed adjudicated facts refer to the acts and conduct of groups of persons of whom one or more of the Accused were or may have been a part, and the Trial Chamber accordingly denies certain of them judicial notice in its discretion. Proposed fact 116, for instance, states that "General Mladić, accompanied by General Živanović ..., General Krstić ... *and other VRS officers*, took a triumphant walk through the empty streets of Srebrenica town" (emphasis added). Proposed fact 127 states that General Mladić "as well as other [VRS] Main Staff officers" were present in and around the Potočari compound on 12 and 13 July 1995, when Bosnian Muslim women, children, and elderly were being evacuated. Examples of similar proposed facts include 128, 136, 156, and 169. Indeed, the Trial Chamber considers proposed fact 128 to be especially objectionable, as the sentence of the *Krstić* Trial Judgement from which it is taken contains a cross-reference to an earlier paragraph specifying that Popović was among the Drina Corps officers whose acts and conduct are referred to in the sentence. *See Krstić* Trial Judgement, *supra* note 2, paras. 150 n. 325 (referring to *ibid.*, para. 143). *See also* Miletić Response, para. 19. Another proposed fact that the Trial Chamber declines to judicially notice for this reason is fact 255, which states that Drina Corps subordinate brigades "were continuously reporting to the Drina Corps Command about matters relating to the column between 12 and 18 July", as this fact could implicate the mental state of Pandurević.

[63] For instance, the Trial Chamber decides, in its discretion, to deny judicial notice to proposed fact 88, which states that "[t]he term 'parcel' was a reference to captured Bosnian Muslims." The prosecution derived this fact from paragraph 76 of the *Krstić* Appeal Judgement, which itself cites a factual finding of the Trial Chamber in paragraph 383 that the

19. Finally, some of the proposed adjudicated facts go to issues which are at the core of this case. In balancing judicial economy with the Accused's right to a fair and public trial, the Trial Chamber is of the view that a number of these facts should be excluded in the interests of justice.[64]

C. The legal effect of judicially noticing an adjudicated fact

20. The Appeals Chamber in *Milošević* established the legal effect of judicially noticing an adjudicated fact: "[B]y taking 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 that trial".[65] This holding was recently reaffirmed by the Appeals Chamber in *Karemera*: "In the case of judicial notice under Rule 94(B), the effect is only to relieve the Prosecution of its initial burden to produce evidence on the point; the defence may then put the point into question by introducing reliable and credible evidence to the contrary."[66]

21. The logical implication of the *Karemera* Chamber's language is that when a Trial Chamber judicially notices an adjudicated fact, that fact is admitted into evidence.[67] Like all rebuttable evidence, judicially noticed adjudicated facts remain subject to challenge by the non-moving party during the course of trial. Moreover, the Trial Chamber in future relevant deliberations, and particularly in those relating to the final judgement, retains the obligation to assess the facts' weight, "taking into consideration the evidence in the ... case in its entirety".[68] Perhaps most importantly, while the burden of producing evidence is shifted to the accused when the Chamber

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meaning of the term "parcel" became known by examining intercepts between VRS officers, including Beara and Popović. *See Krstić* Appeal Judgement, *supra* note 3, para. 76; *Krstić* Trial Judgement, *supra* note 2, para. 383.

[64] Proposed facts included within this group are the following: 14, 73, 81, 140, 157–163, 229–239, 241–244, 287–288, 290, 292–308, 310, 317–319, 321–324, 326–327, 335, 338, 340–363, 377–389, 391–398, 412–416, 418–422, 424–425, 427–430, 440–445, 447, 449–451, 457, 460, 467–470, 472, 487, 489–492, 494–495, 514–533.

[65] *Milošević* Appeal Decision, *supra* note 18, p. 4 (footnote removed). Popović objects to the accuracy or truthfulness of several proposed facts. *See, e.g.*, Popović Response, paras. 22, 25–26, 35, 37–38, 40, 58, 64, 68, 76, 80, 86–90, 93, 118, 128. Borovčanin also appears to contest the accuracy or truthfulness of certain facts, and proposes his own reformulations to render them "suitable for judicial notice". *See* Borovčanin Response, para. 13. Nevertheless, since any challenge to the accuracy or truthfulness of an adjudicated fact may be made at trial, a challenge on either of these grounds in a response to the motion seeking judicial notice of the fact will ordinarily not suffice, on its own, to justify denial of such notice.

[66] *Karemera et al.* Appeal Decision, *supra* note 18, para. 42 (footnotes removed). *Accord Prlić et al.* Pre-Trial Decision, *supra* note 18, para. 10; *Krajišnik* February 2003 Trial Decision, *supra* note 22, paras. 16–17.

[67] *See Krajišnik* March 2005 Trial Decision, *supra* note 19, p. 10.

[68] *Ibid.*, para. 17. *Accord Prlić et al.* Pre-Trial Decision, *supra* note 18, para. 11 ("Adjudicated facts that are judicially noticed by way of Rule 94(B) of the Rules remain to be assessed by the Trial Chamber to determine what conclusions, if any, can be drawn from them, which will require their consideration together with all of the evidence brought at trial.").

judicially notices an adjudicated fact proposed by the Prosecution, the burden of persuasion—that is, proof beyond a reasonable doubt—always remains on the Prosecution.[69]

IV. CONCLUSION

22. With the foregoing considerations in mind, the Chamber has decided to withhold judicial notice of the following purported adjudicated facts because they do not fulfil at least one of the admissibility requirements established in the jurisprudence of the Tribunal:

(a) Purported facts the formulation of which in the Prosecution Motion differs in a substantial way from their formulation in the original judgement: 89, 129, 275, 320, 325, 339, 370, 411, 417, 423, 426, 471, 479, and 534.

(b) Purported facts that are unclear or misleading in the context in which they are placed in the Prosecution Motion: 59, 225–227, and 390.

(c) Purported facts that may be based, at least in part, on an agreement between the parties to the original proceedings: 25, 141, 143, 150–151, 179–180, 214, 250, 254, and 266.

(d) Purported facts that relate to the acts, conduct, or mental state of one ore more of the Accused: 190–202 and 228.

(e) Purported facts that are or may be subject to pending appeal: 54, 74, 90–91, 98, 117, 135, 148, 240, 289, and 291.

23. In addition, the Trial Chamber exercises its discretion to withhold judicial notice of the following proposed adjudicated facts because, in the circumstances, judicially noticing them would not serve the interests of justice: 13–16, 28, 43, 45, 56, 73, 81, 88, 92, 111, 116, 126–128, 134, 136–137, 139–140, 142, 147, 156–164, 167, 169, 185, 212, 216, 220, 222, 229–239, 241–244, 255, 262, 267, 269, 273, 283, 287–288, 290, 292–308, 310, 317–319, 321–324, 335, 338, 340–363, 377–389, 391–398, 401, 409, 412–416, 418–422, 424–425, 427–430, 435, 440–445, 447, 449–451, 457, 460, 466–470, 472, 487, 489–492, 494–495, 499, and 514–533.

24. The Trial Chamber holds that the remainder of the proposed adjudicated facts are suitable for judicial notice, subject to the reformulations and typographical corrections implemented in the Annex to this Decision. These facts meet all nine of the admissibility requirements discussed above. Moreover, the Chamber considers that judicially noticing these facts, both individually and as a group, will further the interests of justice while not jeopardising the Accused's right to a fair,

[69] *Karemera et al.* Appeal Decision, *supra* note 18, para. 49. The Prosecution correctly states the law on this point, and the contention of Miletić that "judicial notice shifts the Prosecution's burden of proof to the Defence, which runs

public, and expeditious trial. In addition to the facts listed in paragraph 25 below, these facts are the following: 1–4, 6–12, 17–24, 26–27, 31–33, 34–42, 44, 47–53, 55, 57–58, 60–66, 69–72, 75–80, 82–87, 94–97, 100, 103–110, 112–115, 118–122, 124–125, 130–133, 138, 144–146, 149, 152–155, 165–166, 168, 170–178, 181–184, 186–189, 203–211, 213, 215, 217–219, 223–224, 245–249, 251–253, 256–261, 263–265, 268, 271–272, 274, 276–282, 285–286, 309, 311–316, 326–334, 336–337, 364–369, 371–373, 376, 399–400, 403, 405–408, 410, 431–432, 434, 436–439, 446, 448, 452–456, 458–459, 461–465, 473–478, 480–486, 488, 493, 496–498, and 500–513.

25. The Chamber recalls its holding in paragraph 7 above that, where the moving party's formulation of a given fact contains only a minor inaccuracy or ambiguity as a result of its abstraction from the context of the original judgement, the Chamber may, in its discretion, correct the inaccuracy or ambiguity, provided the correction introduces no substantive change to the proposed fact. Consistent with this principle, the Chamber has altered the language of facts 29, 30, 46, 68, 93, 99, 102, 123, 270, 374, 402, 404, and 433. Furthermore, the Trial Chamber is of the view that where the moving party's formulation of a given factual finding actually contains two or more distinct facts not all of which are suitable for judicial notice, the Chamber may judicially notice only those facts that are suitable and withhold judicial notice of the rest. The Chamber has accordingly reformulated facts 5, 67, 101, 221, 284, and 375 to remove those component facts within them the admission into evidence of which would not serve the interests of justice.

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contrary to the general principles of criminal law" is patently unfounded. *See* Prosecution Motion, para. 15; Miletić Response, paras. 9–11 (quotation at para. 11).

V. DISPOSITION

26. Pursuant to Rules 54, 94(B), 126 *bis*, and 127 of the Rules, the Trial Chamber hereby grants the Prosecution Motion in part, and decides as follows:

(a) The Trial Chamber takes judicial notice of the adjudicated facts in the Annex, in the manner formulated therein.

(b) The remaining proposed adjudicated facts in the Prosecution Motion are denied judicial notice.

(c) The Trial Chamber grants leave to Beara to file the late Beara Response, and to the Prosecution to file the Prosecution Reply.

27. All submissions contained in the Prosecution Motion, the Defence Responses, and the Prosecution Reply are denied in all other respects.

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

Carmel Agius
Presiding

Dated this twenty-sixth day of September 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

ANNEX

As explained in the Disposition, the adjudicated facts set forth below have been judicially noticed and admitted into evidence. The following abbreviations are used for relevant prior judgements of the Tribunal:

KJ: *Krstić* Trial Judgement[70]

KA: *Krstić* Appeal Judgement[71]

BJJ: *Blagojević and Jokić* Trial Judgement[72]

A. THE TAKEOVER OF SREBRENICA AND ITS AFTERMATH

I. 1991 to 1992: The Break-Up of the Former Yugoslavia

Fact 1 From 1945 until 1990, Yugoslavia was composed of six Republics: Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia. Certain Republics were populated predominantly by one ethnic group, for example, Serbs in Serbia and Croats in Croatia. KJ 7; BJJ 92 n. 297

Fact 2 Bosnia and Herzegovina ("Bosnia") was the most multiethnic of all the Republics, with a pre-war population of 44 percent Muslims, 31 percent Serbs, and 17 percent Croats. KJ 7; BJJ 92

Fact 3 The Second World War was a time of particularly bitter strife in the former Yugoslavia, with accusations of atrocities emanating from all quarters. Marshal Tito's post-war government discouraged ethnic division and nationalism with a focus on the unity of the communist state. Thus, relative calm and peaceful interethnic relations marked the period from 1945 until 1990. Nevertheless, the various groups remained conscious of their separate identities. KJ 8; BJJ 92

Fact 4 In the late 1980s, economic woes and the end of communist rule set the stage for rising nationalism and ethnic friction. KJ 9; BJJ 92

Fact 5 The Republics of Slovenia and Croatia both declared independence from the Federal Republic of Yugoslavia in June 1991. KJ 9; BJJ 92

Fact 6 Macedonia broke off successfully in September 1991. KJ 9; BJJ 92

Fact 7 Bosnia began its journey to independence with a parliamentary declaration of sovereignty on 15 October 1991. KJ 10; BJJ 92

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[70] *Krstić* Trial Judgement, *supra* note 2.

[71] *Krstić* Appeal Judgement, *supra* note 3.

[72] *Blagojević and Jokić* Trial Judgement, *supra* note 4.

Fact 8 The Republic of Bosnia and Herzegovina was recognised by the European Community on 6 April 1992 and by the United States the following day. International recognition did not end the matter, however. A fierce struggle for territorial control ensued among the three major groups in Bosnia: Muslim, Serb and Croat. In the eastern part of Bosnia, which is close to Serbia, the conflict was particularly fierce between the Bosnian Serbs and the Bosnian Muslims. KJ 10; BJJ 92–93

II. 1992 to 1993: Conflict in Srebrenica

Fact 9 The town of Srebrenica is nestled in a valley in eastern Bosnia, about 15 kilometres from the Serbian border. KJ 11; KA 2; BJJ 94

Fact 10 Srebrenica town is one kilometre wide and two kilometres long. BJJ 119

Fact 11 Before the war, many of Srebrenica's residents worked in the factories at Potočari, a few kilometres north of Srebrenica, or in the zinc and bauxite mines to the south and northeast of the town. KJ 11; BJJ 94

Fact 12 In 1991, the population of the municipality was 37,000, of which 73 percent were Muslim and 25 percent were Serb. KJ 11; BJ 94; KA 15 n. 25

Fact 17 On 12 May 1992, Momčilo Krajišnik, the President of the National Assembly of the Serbian People of Bosnia and Herzegovina, signed the "Decision on Strategic Objectives of the Serbian People", which includes one objective relating to the area of Srebrenica, namely, to "establish a corridor in the Drina river valley, that is, eliminate the Drina as a border separating Serbian States." BJJ 96

Fact 18 By September 1992, Bosnian Muslim forces from Srebrenica had linked up with those in Žepa, a Muslim-held town to the south of Srebrenica. KJ 13

Fact 19 In November 1992, General Ratko Mladić issued Operational Directive 4, which outlined further operations of the Bosnian Serb Army ("VRS"). Included in the Directive are orders to the Drina Corps to defend "Zvornik and the corridor, while the rest of its forces in the wider Podrinje region shall exhaust the enemy, inflict the heaviest possible losses on him and force him to leave the Birač, Žepa, and Goražade areas together with the Muslim population. First offer the able-bodied and armed men to surrender, and if they refuse, destroy them." BJJ 97

Fact 20 By January 1993, the enclave had been further expanded to include the Bosnian Muslim-held enclave of Čerska located to the west of Srebrenica. At this time the Srebrenica enclave reached its peak size of 900 square kilometres, although it was never linked to the main area of Bosnian-held land in the west and remained a vulnerable island amid Serb-controlled territory. KJ 13

Fact 21 In January 1993, Bosnian Muslim forces attacked the Bosnian Serb village of Kravica. Over the next few months, the Bosnian Serbs responded with a counter-offensive, eventually capturing the villages of Konjević Polje and Čerska, severing the link between Srebrenica and Žepa, and reducing the size of the Srebrenica enclave to 150 square kilometres. KJ 14

Fact 22 Bosnian Muslim residents of the outlying areas converged on Srebrenica town and its population swelled to between 50,000 and 60,000 people. KJ 14; KA 15 n. 26; BJJ 98

Fact 23 The advancing Bosnian Serb forces had destroyed the town's water supplies and there was almost no running water. People relied on makeshift generators for electricity. Food, medicine, and other essentials were extremely scarce. KJ 15; BJJ 98

Fact 24 By March 1993, when French General Philippe Morillon, the Commander of the UN Protection Force ("UNPROFOR"), visited Srebrenica, the town was overcrowded and siege conditions prevailed. Before leaving, General Morillon told the panicked residents of Srebrenica at a public gathering that the town was under the protection of the UN and that he would never abandon them. KJ 15

Fact 26 Between March and April 1993, approximately 8,000 to 9,000 Bosnian Muslims were evacuated from Srebrenica under the auspices of the UN High Commissioner for Refugees ("UNHCR"). The evacuations were, however, opposed by the Bosnian Muslim government in Sarajevo as contributing to the "ethnic cleansing" of the territory. KJ 16; BJJ 99, 101

Fact 27 The Security Council stated in Resolution 819 that it "condemns and rejects the deliberate actions of the Bosnian Serb party to force the evacuation of the civilian population from Srebrenica and its surrounding areas ... as part of its abhorrent campaign of ethnic cleansing". BJJ 101

III. April 1993: The Security Council Declares Srebrenica a "Safe Area"

Fact 29 On 16 April 1993, the UN Security Council passed Resolution 819, declaring that "all parties and others treat Srebrenica and its surroundings as a 'safe area' that should be free from armed attack or any other hostile act." At the same time, the Security Council created, with Resolution 824, two other UN protected enclaves, Žepa and Goražde. KJ 18; KA 2, 16, n. 29; BJJ 100

Fact 30 Resolution 819 further called for "the immediate cessation of armed attacks by Bosnian Serb paramilitary units against Srebrenica and their immediate withdrawal from the areas surrounding Srebrenica." BJJ 100

Fact 31 The town of Srebrenica was the most visible of the "safe areas" established by the UN Security Council in Bosnia. By 1995 it had received significant attention in the international media. KA 16

Fact 32 This guarantee of protection was reaffirmed by the commander of UNPROFOR. KJ 15, 19–20; KA 16

Fact 33 When the "safe area" of Srebrenica was established, the Security Council called upon the Secretary-General to "take immediate steps to increase the presence of the United Nations Protection Forces in Srebrenica and its surroundings." BJJ 102

Fact 34 UNPROFOR commanders negotiated a cease-fire agreement signed by General Sefer Halilović and General Ratko Mladić (the Commander of the Main Staff of the VRS) which called for the enclave to be disarmed under the supervision of UNPROFOR troops. KJ 19; BJJ 102 n. 319

Fact 35 However, there was discord about the precise boundaries of the territory subject to the agreement, specifically, whether the agreement covered only the urban area of Srebrenica. KJ 19

Fact 36 On 18 April 1993, the first group of UNPROFOR troops arrived in Srebrenica. KJ 20; BJJ 102

Fact 37 Fresh troops were rotated approximately every six months after 18 April 1993. KJ 20

Fact 38 The peacekeepers were lightly armed and at any one time numbered no more than 600 men (a much smaller force than had been originally requested). KJ 20; BJJ 107–108

Fact 39 They established a small command centre (the "Bravo Company compound") in Srebrenica itself and a larger main compound about five kilometres north of the town in Potočari. KJ 20

Fact 40 In addition, the UNPROFOR peacekeepers manned 13 observation posts ("OPs") marking the perimeter of the enclave. KJ 20; BJJ 109

Fact 41 Most of the time, groups of Bosnian Serb and Bosnian Muslim soldiers also maintained shadow positions near these outposts. KJ 20

Fact 42 In January 1995, a new set of UNPROFOR troops (a battalion from the Netherlands, referred to as "DutchBat") rotated into the enclave. KJ 20; BJJ n. 320

Fact 44 The VRS was organised on a geographic basis and Srebrenica fell within the domain of the Drina Corps. Between 1,000 and 2,000 soldiers from three Drina Corps Brigades were deployed around the enclave. KJ 21

Fact 46 Reconnaissance and sabotage activities were carried out by the 28th Division of the Army of Bosnia and Herzegovina ("ABiH") on a regular basis against the VRS forces in the area. KJ 21; BJJ 114–115

Fact 47 Both parties to the conflict violated the "safe area" agreement. KJ 22; BJJ 115, 117

Fact 48 The Bosnian Serbs deliberately tried to limit access to the enclave by international aid convoys. DutchBat personnel were prevented from returning to the enclave by Bosnian Serb forces, and equipment and ammunition were also prevented from getting in. KJ 22; BJ 111

Fact 49 Insofar as the ABiH was concerned, immediately after signing the "safe area" agreement, General Halilović ordered members of the ABiH in Srebrenica to pull all armed personnel and military equipment out of the newly established demilitarised zone. He also ordered that no serviceable weapons or ammunition be handed over to UNPROFOR. Accordingly, only old and dysfunctional weapons were handed over and anything that was still in working order was retained. KJ 23

Fact 50 Bosnian Muslim helicopters flew in violation of the no-fly zone; the ABiH opened fire toward Bosnian Serb lines and moved through the "safe area"; the 28th Division was continuously arming itself; and at least some humanitarian aid coming into the enclave was appropriated by the ABiH. KJ 24

Fact 51 Despite these violations of the "safe area" agreement by both sides to the conflict, a two-year period of relative stability followed the establishment of the enclave, although the prevailing conditions for the inhabitants of Srebrenica were far from ideal. KJ 25

IV. 1995: The Situation in the Srebrenica "Safe Area" Deteriorates

Fact 52 By early 1995, fewer and fewer supply convoys were making it through to the Srebrenica enclave. KJ 26; BJJ 111–112

Fact 53 The already meagre resources of the civilian population dwindled further, and even the UN forces started running dangerously low on food, medicine, fuel, and ammunition. KJ 26; BJJ 111–112

Fact 55 Eventually, the peacekeepers had so little fuel that they were forced to start patrolling the enclave on foot. KJ 26; BJJ 112

Fact 57 In March and April 1995, the Dutch soldiers noticed a build-up of Bosnian Serb forces near two of the observation posts, OP Romeo and OP Quebec. KJ 27; BJJ 116

Fact 58 New Bosnian Serb soldiers were arriving in the area and they had new rifles, complete uniforms, and were younger. BJJ 116

V. Spring 1995: The Bosnian Serbs Plan to Attack the Srebrenica "Safe Area"

Fact 60 In March 1995, Radovan Karadžić, President of Republika Srpska ("RS"), issued a directive to the VRS concerning the long-term strategy of the VRS forces in the enclave. KJ 28; BJJ 106

Fact 61 This directive, referred to as "Directive 7", specified that the VRS was to "complete the physical separation of Srebrenica from Žepa as soon as possible, preventing communication between individuals in the two enclaves." KA 88; BJJ 106

Fact 62 The directive specified that the VRS was to "create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of both enclaves." KJ 28; KA 88; BJJ 106

Fact 63 Blocking aid convoys was a part of the plan. KJ 28; KA 89

Fact 64 By mid-1995, the humanitarian situation of the Bosnian Muslim civilians and military personnel in the enclave was catastrophic. KJ 28; BJJ 111

Fact 65 On 31 March 1995, the VRS Main Staff issued Directive 7.1, signed by General Mladić. Directive 7.1 was issued "on the basis of Directive No. 7" and directed the Drina Corps, *inter alia*, to conduct "active combat operations ... around the enclaves." KJ 29; KA 89; BJJ 106

Fact 66 On 31 May 1995, Bosnian Serb forces captured OP Echo, which lay in the southeast corner of the enclave. KJ 30; BJJ 118

Fact 67 A raiding party of Bosniacs attacked the nearby Serb village of Višnjica, in the early morning of 26 June 1995. Although it was a relatively low-intensity attack, some houses were burned and several people were killed. KJ 30

Fact 68 Following this attack on Višnjica, the then-commander of the Drina Corps, General-Major Milenko Živanović, signed two orders on 2 July 1995, laying out the plans for the attack on the enclave and ordering various units of the Drina Corps to ready themselves for combat. The operation was code-named "Krivaja 95." KJ 30; BJJ 120

a. The Objective of Krivaja 95

Fact 69 Krivaja 95 included specific orders to the Drina Corps' subordinate units of the Bratunac Brigade, the Zvornik Brigade, the Milići Brigade, and parts of the Skelani Brigade. BJJ 120

Fact 70 The initial Krivaja 95 plan did not include taking the town of Srebrenica. An assessment had been made by the VRS command that conditions were not right at that moment for capturing Srebrenica town. KJ 119

Fact 71 The plan for Krivaja 95 specifically directed the Drina Corps to "split apart the enclaves of Žepa and Srebrenica and to reduce them to their urban areas". KJ 120; BJJ 120

Fact 72 The plan also referred to "reducing the enclaves in size", and specified that the Drina Corps was to "improve the tactical positions of the forces in the depth of the area, and to create conditions for the elimination of the enclaves." KJ 120

b. Background to the Drina Corps

Fact 75 The Drina Corps of the VRS was formed in November 1992, with the specific objective of "improving" the situation of Bosnian Serb people living in the Middle Podrinje region, of which Srebrenica was an important part. KJ 98; BJJ 38

Fact 76 It was organised along the lines of the former JNA Corps and, as was the case with the VRS generally, JNA operating methodologies were almost completely adopted. KJ 98

Fact 77 The Drina Corps Headquarters was established first in Han Pijesak and were later moved to Vlasenica. KJ 98; BJJ 38

Fact 78 General Živanović assumed the role of Drina Corps Commander at the time of its formation. KJ 99; BJJ 38

Fact 79 In addition to the Commander, the Drina Corps also had a Chief of Staff and three Assistant Commanders. KJ 99; BJJ 38

Fact 80 In July 1995, General Radislav Krstić was the Chief of Staff of the Drina Corps until his appointment as Corps Commander. Colonel Slobodan Cerović was Assistant Commander for Moral, Legal, and Religious Affairs; and Colonel Lazar Aćamović was Assistant Commander for Rear Services (or Logistics). KJ 99; BJJ 38

Fact 82 Krstić was to command the Krivaja 95 operation. BJJ 120

Fact 83 In July 1995, the Drina Corps was composed of the following subordinate Brigades: Zvornik Brigade; 1st Bratunac Light Infantry Brigade ("Bratunac Brigade"); 1st Vlasenica Light Infantry Brigade ("Vlasenica Brigade"); 2nd Romanija Motorised Brigade ("2nd Romanija Brigade") 1st Birać Infantry Brigade ("Birać Brigade"); 1st Milići Light Infantry Brigade ("Milići Brigade"); 1st Podrinje Light Infantry Brigade ("1st Podrinje Brigade"); 5th Podrinje Light Infantry Brigade ("5th Podrinje Brigade"); and 1st Skelani Separate Infantry Battalion ("Skelani Battalion"). These Brigades had combat capabilities and were supported by the 5th Mixed Artillery Regiment, the 5th Engineers Battalion, the 5th Communications Battalion and the 5th Military Police battalion. KJ 100

Fact 84 The Drina Corps came under the Command of the Main Staff of the VRS, along with the 1st and 2nd Krajina Corps, the East Bosnia Corps, the Hercegovina Corps and the Sarajevo-Romanija Corps. KJ 101

Fact 85 Two units were also directly subordinated to the Main Staff: the 10th Sabotage Detachment (a unit primarily used for wartime sabotage activities), and the 65th Protective Regiment (a unit created to provide protection and combat services for the Main Staff). KJ 101

Fact 86 In July 1995, the Commander of the Main Staff was General Mladić. In turn, the Main Staff was subordinate to President Karadžić, the Supreme Commander of the VRS. KJ 101

c. Codes and Numbers Used by the Drina Corps in July 1995

Fact 87 The code names used to refer to relevant Drina Corps subordinate Brigades, as well as the Drina Corps Headquarters, were as follows: "Palma" was the Zvornik Brigade, "Badem" was the Bratunac Brigade, and "Zlatar" was the Command of the Drina Corps. KJ 103

VI. 6 to 11 July 1995: The Takeover of Srebrenica

Fact 93 In the days following 6 July 1995, the five UNPROFOR observation posts in the southern part of the enclave fell one by one in the face of the advance of the Bosnian Serb forces. KJ 31; BJJ 127

Fact 94 Soldiers at the OPs were detained and forced to hand over their equipment, including in one case an armoured personnel carrier ("APC"). BJJ 127

Fact 95 Some of the Dutch soldiers retreated into the enclave after their posts were attacked, but the crews of the other observation posts surrendered into Bosnian Serb custody. KJ 31

Fact 96 The DutchBat soldiers who were detained were taken to Bratunac and Milići. BJJ 128

Fact 97 Simultaneously, the defending ABiH forces came under heavy fire and were pushed back towards the town. KJ 31

Fact 99 Once the southern perimeter began to collapse, about 4,000 Bosnian Muslim residents, who had been living in a nearby Swedish housing complex for refugees, fled north into Srebrenica town. KJ 32; BJJ 129

Fact 100 By the evening of 9 July, the VRS had pressed four kilometres deep into the enclave, halting just one kilometre short of Srebrenica town. KJ 33

Fact 101 Late on 9 July, President Karadžić issued a new order authorising the VRS to capture the town of Srebrenica. KJ 32; BJJ 130

Fact 102 When President Karadžić sent the order for the VRS to take the enclave on 9 July, it came with instructions that it be delivered "personally" to General Krstić. KJ 334

Fact 103 Shelling continued on 10 and 11 July. KJ 122; BJJ 125

Fact 104 On the morning of 10 July, the situation in Srebrenica town was tense. Residents, some armed, crowded the streets. KJ 34

Fact 105 By 10 July some 30,000 refugees from the surrounding area had gathered around the UN Base in Srebrenica town and at the UNPROFOR Headquarters in Potočari. BJJ 129

Fact 106 On 10 July, shells fired by the VRS hit a hospital where 2,000 civilians had gathered for refuge, and six of them were killed. KJ 122

Fact 107 On 11 July, the VRS entered the town of Srebrenica. BJJ 1

Fact 108 Thousands of residents, desperate for protection, crowded around the UNPROFOR Bravo Company compound in Srebrenica, eventually forcing their way inside. KJ 123; BJJ 132, 141

Fact 109 The chaotic scene was exacerbated when mortar shells landed inside the compound around noon on 11 July, wounding several people. KJ 123; BJJ 141

Fact 110 Following the shelling of Bravo Company and with the encouragement of the DutchBat troops, Bosnian Muslim residents from Srebrenica began to move north towards Potočari. KJ 123; BJJ 132

Fact 112 Many of the Bosnian Muslim men decided to take to the woods in the northwestern part of the Srebrenica enclave. BJJ 142

Fact 113 DutchBat Commander Colonel Thomas Karremans sent urgent requests for NATO air support to defend the town, but no assistance was forthcoming until around 14:30 on 11 July, when NATO bombed VRS tanks advancing towards the town. KJ 34

Fact 114 NATO planes also attempted to bomb VRS artillery positions overlooking the town, but had to abort the operation due to poor visibility. KJ 34

Fact 115 NATO plans to continue the air strikes were abandoned following VRS threats to kill Dutch troops being held in the custody of the VRS, as well as threats to shell the UN Potočari compound on the outside of the town, and surrounding areas, where 20,000 to 30,000 civilians had fled. KJ 34

Fact 118 On 11 July, President Karadžić appointed Miroslav Deronjić as the Civilian Commissioner of the "Serbian Municipality of Srebrenica". His tasks included revitalising the area for the return of dislocated Serbs. BJJ 135

Fact 119 Upon their arrival in Srebrenica town, members of the 10th Sabotage Detachment were calling on the few people who remained there to leave their houses. The approximately 200 people whom they found were mostly civilians. BJJ 145

VII. The Crowd at Potočari

Fact 120 Faced with the reality that Srebrenica had fallen under the control of Bosnian Serb forces, thousands of Bosnian Muslim residents from Srebrenica fled to Potočari seeking protection within the UN compound. KJ 37; BJJ 141, 143

Fact 121 The refugees fleeing to Potočari were shot at and shelled. BJJ 144

Fact 122 By the end of 11 July, an estimated 20,000 to 25,000 Bosnian Muslims were gathered in Potočari. Several thousand had pressed inside the UN compound itself, while the rest were spread throughout the neighbouring factories and fields. KJ 37; BJJ 146

Fact 123 There was very little food or water in Potočari from 11 to 13 July and the July heat was stifling. KJ 38; BJJ 147

Fact 124 The small water supply available was insufficient for the 20,000 to 30,000 refugees who were outside the UNPROFOR compound. BJJ 147

Fact 125 The standards of hygiene within Potočari had completely deteriorated. Many of the refugees seeking shelter in the UNPROFOR headquarters were injured and there was a dramatic shortage of medical supplies. BJJ 147

VIII. The Presence of Drina Corps Officers in Potočari on 12 and 13 July 1995

Fact 130 On 12 July, a DutchBat soldier spoke to Colonel Svetozar Kosorić about arranging for DutchBat troops to accompany a convoy of Bosnian Muslim refugees from Potočari. KJ 143

Fact 131 These escorts were tolerated by the VRS for the first convoys on 12 July. Thereafter, the VRS stopped the escorts. BJJ 184

Fact 132 Members of the Bratunac Brigade also were present in Potočari at the time when the women, children, and elderly were moved out. One of these, Major Momir Nikolić (the Bratunac Brigade Assistant Commander for Intelligence and Security), was known to soldiers and UN Military Observers in the area as a liaison officer prior to the takeover of Srebrenica. KJ 143

Fact 133 Major Nikolić was seen in Potočari on both 12 and 13 July. KJ 143; BJJ 172

Fact 138 A person who identified himself as Captain Mane from the police and his commander, who went by the code name of "Stalin", were also present in Potočari. KJ 151

IX. 12 to 13 July: Crimes Committed in Potočari

Fact 144 The refugees in the compound could see Serb soldiers setting houses and haystacks on fire. KJ 41; BJJ 162

Fact 145 As a result, the inhabitants were forced to flee from their houses to the UN compound. BJJ 163

Fact 146 As a consequence of the threatening atmosphere, several refugees committed suicide, or attempted to do so. BJJ 166

Fact 149 Throughout the afternoon of 12 July, Serb soldiers mingled in the crowd. KJ 42; BJJ 164

Fact 152 At all times, the lawn in front of the White House held large numbers of visibly frightened men, who were taken into the White House at regular intervals. BJJ 169

Fact 153 DutchBat patrols attempted to monitor the situation but the VRS did not allow them to enter the White House. BJJ 169, BJJ 171

Fact 154 One Dutch officer was removed from the premises at gunpoint. BJJ 171

Fact 155 In the afternoon of 12 July, UNMO Colonel Joseph Kingori, alarmed at reports that Bosnian Muslim men were being taken behind the White House and shot, asked General Mladić to explain the situation. KJ 365

X. Transport of Bosnian Muslims Out of Potočari

a. Meeting at the Hotel Fontana on 11 July 1995 at 20:00

Fact 165 The DutchBat delegation, consisting of Colonel Karremans, Major Pieter Boering, and other officers, was accompanied to the Hotel Fontana by Captain Momir Nikolić of the Bratunac Brigade. BJJ 150

Fact 166 Upon arrival at the hotel, the DutchBat delegation saw several of their own soldiers held as hostages in a room in the hotel. BJJ 150

Fact 168 General Mladić led the meeting, which lasted approximately one hour. KJ 126; BJJ 151

Fact 170 Colonel Karremans sought assurances that DutchBat and the Bosnian Muslim population would be allowed to withdraw from the area, and General Mladić stated that the Bosnian Muslim civilian population was not the target of his actions. KJ 126; KA 86; BJJ 152

Fact 171 General Mladić stated that the goal of the meeting was to work out an arrangement with the representatives, but immediately thereafter said "you can all leave, all stay, or all die here." BJJ 152

Fact 172 During the meeting, General Mladić asked the UNPROFOR leaders to put him in contact with a representative of the ABiH, as well as Bosnian Muslim civilian representatives. KJ 127; BJJ 152

Fact 173 At the Hotel Fontana meetings on the evening of 11 July, General Mladić asked UNPROFOR to organise the buses for the transport of the Bosnian Muslim refugees out of the enclave. KJ 360; KA 86; BJJ 152

Fact 174 Like General Mladić, however, Colonel Karremans had no idea how to get in contact with military or civilian leaders of Srebrenica. KJ 127

Fact 175 The meeting concluded with General Mladić telling Colonel Karremans to return later that same evening at 23:00 for a second meeting. KJ 127; BJJ 152

b. Meeting at the Hotel Fontana on 11 July 1995 at 23:00

Fact 176 As General Mladić had directed, the second meeting at the Hotel Fontana took place around 23:00 that same evening. KJ 128; BJJ 154

Fact 177 General Mladić again presided at the meeting. KJ 128

Fact 178 This time General Živanović was not present but General Krstić was. Colonel Kosorić and Major Momir Nikolić from the Drina Corps were also in attendance at this meeting. KJ 128; KA 85; BJJ 154

Fact 181 General Krstić represented the Drina Corps and he sat next to General Mladić, although he did not speak. KJ 339

Fact 182 The DutchBat representatives arrived with a schoolteacher named Nesib Mandžić, an unofficial Bosnian Muslim representative who was plucked from the crowd in Potočari. KJ 128; BJJ 154

Fact 183 As the meeting began, the death cries of a pig being slaughtered just outside the window could be heard in the meeting room. KJ 128; BJJ 155

Fact 184 General Mladić then placed the broken signboard from the Srebrenica Town Hall on the table. KJ 128; BJJ 155

Fact 186 General Mladić stated that he would provide the vehicles to transport the Srebrenica refugees out of Potočari. KJ 129; BJJ 158

Fact 187 General Mladić demanded that all ABiH troops within the area of the former enclave lay down their arms and made it clear that, if this did not happen, the survival of the Bosnian Muslim population would be in danger. He said he wanted a clear position on whether the Bosnian Muslims wanted to "survive, stay, or disappear". KJ 130; BJJ 156

Fact 188 Mr. Mandžić pleaded with General Mladić that he did not know where the 28th Division was, and in any event had no power to commit the ABiH to any course of action, nor did he have the authority to negotiate on behalf of the civilian population. KJ 130

Fact 189 General Mladić scheduled a follow-up meeting for the next morning. KJ 130

d. Organisation of the Buses

Fact 203 By around noon on 12 July 1995, dozens of buses and trucks were arriving in Potočari to collect the Bosnian Muslim women, children, and elderly. KJ 135; BJJ 180

Fact 204 Early in the morning of 12 July, General Živanović signed an order addressed to all the subordinate units of the Drina Corps directing that "all buses and mini-buses belonging to the VRS be secured for use by the Drina Corps," arrive at the Bratunac stadium by 16:30, and follow instructions about locations for fuel distribution. KJ 137; BJJ 180

Fact 205 The order further stated that the Drina Corps Command had sent a message to the RS Ministry of Defence asking for private buses to be mobilised. KJ 137; BJJ 180

Fact 206 The same morning, the RS Ministry of Defence sent three orders to its local secretariats directing them to procure buses and send them to Bratunac. KJ 137

Fact 207 The Bratunac Brigade was monitoring fuel disbursements to buses and trucks on 12 and 13 July. KJ 139

e. 12 to 13 July 1995: The Transport of the Bosnian Muslim Women, Children, and Elderly from Potočari

Fact 208 On 12 and 13 July 1995, the women, children, and elderly were bussed out of Potočari, under the control of VRS forces, to Bosnian Muslim-held territory near Kladanj. KJ 48; BJJ 183–185

Fact 209 Four to five buses at a time would stop to be loaded in front of the UNPROFOR compound's main entrance. BJJ 183

Fact 210 Members of the Bratunac Brigade Military Police coordinated the boarding of the buses by the Bosnian Muslim refugees. BJJ 183

Fact 211 While it was agreed that the injured would be transported first, the VRS refused to adhere to this agreement. When Colonel Karremans complained to General Mladić, Mladić stated that the organisation of the transport would be determined by the VRS. BJJ 182

Fact 213 Along the road, some village residents taunted the passengers with the three-fingered Serb salute. Others threw stones at the passing buses. KJ 49

Fact 215 Most of the women, children, and elderly arrived safely at Tišća. KJ 49

Fact 217 DutchBat soldiers attempted to escort the buses carrying the Bosnian Muslim civilians out of Potočari. They succeeded in accompanying the first convoy of refugees on 12 July, but thereafter they were stopped along the way and their vehicles were stolen at gunpoint. KJ 50; BJJ 184

Fact 218 The VRS stole 16 to 18 DutchBat jeeps, as well as around 100 small arms, which rendered further DutchBat escorts impossible. BJJ 184

Fact 219 The removal of the Bosnian Muslim civilian population from Potočari was completed on the evening of 13 July by 20:00. KJ 51; BJJ 191

Fact 221 On the evening of 13 July, General Krstić issued his order directing units of the Drina Corps to search the area of the former Srebrenica enclave for Bosnian Muslims. KJ 376

Fact 223 On 14 July, the UN Security Council expressed concern about the forced relocation of civilians from the Srebrenica "safe area" by the Bosnian Serbs, asserting it was a clear violation of their human rights. KJ 148

Fact 224 On 17 July, in the face of growing international condemnation, Major Robert Franken, the Deputy Commander of DutchBat, met with a VRS delegation to discuss the situation of wounded Bosnian Muslims in the area of the former enclave. KJ 148; BJJ 204

XII. The Column of Bosnian Muslim Men

Fact 245 As the situation in Potočari escalated towards crisis on the evening of 11 July 1995, word spread through the Bosnian Muslim community that the able-bodied men should take to the woods, form a column together with members of the 28th Division of the ABiH, and attempt a breakthrough towards Bosnian Muslim-held territory in the north. KJ 60; BJJ 218

Fact 246 At around 22:00 on the evening of 11 July, the "division command", together with the Bosnian Muslim municipal authorities of Srebrenica, made the decision to form the column. KJ 60; BJJ 218

Fact 247 The column gathered near the villages of Jaglici and Šušnjari and began to trek north. KJ 61; BJJ 219

Fact 248 The group consisted predominately of boys and men who were between the ages of 16 and 65. BJJ 220

Fact 249 A small number of women, children, and elderly travelled with the column in the woods. KJ 61; BJJ 220

Fact 251 As the Bosnian Muslim column attempted to break out of the enclave, it first moved through the area of responsibility of the Bratunac Brigade. KJ 164

Fact 252 Leaving the area of the Bratunac Brigade, the column moved up towards the Zvornik Brigade's zone of responsibility. KJ 165

Fact 253 The Drina Corps' subordinate Brigades, particularly the Bratunac and Zvornik Brigades, engaged in combat with the column as it attempted to break through to Bosnian Muslim-held territory. KJ 166; BJJ 223

Fact 256 Around one third of the men in the column were Bosnian Muslim soldiers from the 28th Division, although not all of the soldiers were armed. The head of the column was comprised of units of the 28th Division, then came civilians mixed with soldiers, and the last section of the column was the Independent Battalion of the 28th Division. KJ 61

Fact 257 At around midnight on 11 July, the column started moving along the axis between Konjević Polje and Bratunac. KJ 62; BJJ 220

Fact 258 In the days following the 11 and 12 July meetings at the Hotel Fontana, VRS units, including units of the Drina Corps that were not engaged in the Žepa campaign, were assigned to block the column. KJ 162

Fact 259 In addition to these Drina Corps units, non-Drina Corps units, including the MUP Special Police Brigade, elements of the Military Police Battalion of the 65th Protection Regiment, and subsequently elements of the municipal police, also took action to block the column. KJ 162

Fact 260 On 12 July, Bosnian Serb forces launched an artillery attack against the column that was crossing an asphalt road between the area of Konjević Polje and Nova Kasaba en route to Tuzla. KJ 62; BJJ 221

Fact 261 Only about one third of the men successfully made it across the asphalt road and the column was split in two parts. KJ 62

Fact 263 By the afternoon or early evening of 12 July 1995, the Bosnian Serb forces were capturing large numbers of these men in the rear. KJ 63

Fact 264 Ambushes were set up and, in other places, the Bosnian Serbs shouted into the forest, urging the men to surrender and promising that the Geneva Conventions would be complied with. KJ 63; BJJ 227

Fact 265 In some places, Bosnian Serb forces fired into the woods with anti-aircraft guns and other weapons, or used stolen UN equipment to deceive the Bosnian Muslim men into believing that the UN or the Red Cross were present to monitor the treatment accorded to them upon capture. KJ 63; BJJ 227, 229

Fact 268 The largest groups of Bosnian Muslim men from the column were captured along the road between Bratunac and Konjević Polje on 13 July. KJ 64, 171; BJJ 227

Fact 270 The soldiers guarding the men in the Sandići Meadow forced them to drop their belongings into big piles and to hand over their valuables. KJ 171; BJJ 240

Fact 271 Late in the afternoon of 13 July, General Mladić visited the meadow and told the men that they would not be hurt, but would be exchanged as prisoners of war, and that their families had been transported safely to Tuzla. KJ 171; BJJ 240

Fact 272 The Bosnian Serb forces on the scene began shepherding the men out of the meadow. Some were put on buses or marched towards the nearby Kravica Warehouse. Others were loaded on buses and trucks and taken to Bratunac and other nearby locations. KJ 171; BJJ 243

Fact 274 As in the Sandići Meadow, the men at Nova Kasaba were forced to turn over their valuables and abandon their belongings. KJ 171; BJJ 253

Fact 276 The Bosnian Muslim men who had surrendered or had been captured were also detained in buses and trucks. In Kravica, some trucks stopped by a supermarket on 13 July. Around 119 men were detained in one truck. BJJ 256

Fact 277 When the last escorted convoy returned towards Potočari on 13 July, the football field was empty, apart from the body of a dead man and a pile of burning personal belongings. BJJ 185

Fact 278 General Mladić visited that field in the afternoon of 13 July as well. KJ 171; BJJ 254

Fact 279 On 13 July, the column continued its journey up along the Kalesija-Zvornik road, where they too were caught in ambushes and suffered further casualties. After one unsuccessful attempt to move forward to the Bosnian Muslim front lines on 15 July, the head of the column finally managed to break through to Bosnian Muslim-held territory on 16 July. KJ 65

Fact 280 ABiH forces attacking from the direction of Tuzla assisted by piercing a line of about one-and-a-half kilometres for the emerging column. KJ 65

XIII. Capture of Prisoners during Drina Corps Sweep Operation in the Former Enclave

Fact 281 Pursuant to an order issued by General Krstić on 13 July 1995, Drina Corps units were also involved in conducting sweep operations in the area of the former enclave. KJ 192; BJJ 225

Fact 282 Three subordinate units of the Drina Corps, namely, the Bratunac Brigade, the Skelani Separate Battalion and the Milići Brigade, were directed to conduct search operations in and around the former enclave for Bosnian Muslim stragglers, and to report back to General Krstić by 17 July 1995 on their efforts. KJ 192

Fact 284 Colonel Ignjat Milanović, the Drina Corps Chief of Anti-Aircraft Defence, reported back to General Krstić on the situation within the zones of the Bratunac Brigade, the Milići Brigade, and the Skelani Separate Battalion on 15 July. KJ 192

Fact 285 Colonel Milanović wrote that he had acquainted himself with the situation to the east of the Milići-Konjević Polje-Bratunac road, and that large groups of enemy soldiers were still present in this area. He indicated that the Bratunac Brigade was still searching this terrain. KJ 192

Fact 286 Colonel Milanović proposed, in the absence of available personnel from the Drina Corps Command, the appointment of the Commander of the Bratunac Brigade, Colonel Vidoje Blagojević, as the commander of the forces engaged in sweeping the terrain. General Krstić subsequently accepted this proposal. KJ 192

B. THE EXECUTION OF THE BOSNIAN MUSLIM MEN FROM SREBRENICA

II. 13 July 1995: Čerska Valley

Fact 309 Between 7 and 18 July 1996, investigators from the Office of the Prosecutor, in conjunction with a team from Physicians for Human Rights, exhumed a mass grave to the southwest of the road through the Čerska Valley from the main road from Konjević Polje to Nova Kasaba. KJ 202

Fact 311 One hundred and fifty bodies were recovered from a mass grave near Čerska, and the cause of death for 149 was determined to be gunshot wounds. KJ 202; BJJ 295, 567

Fact 312 All of the bodies exhumed were male, with a mean age from 14 to 50. KJ 202

Fact 313 Of the bodies exhumed, 147 were wearing civilian clothes. KJ 202; BJJ 295

Fact 314 Forty-eight wire ligatures were recovered from the grave, about half of which were still in place binding the victims hands behind their backs. KJ 202; BJJ 295

Fact 315 Experts were able to positively identify nine of the exhumed bodies as persons listed as missing following the takeover of Srebrenica. All nine were Bosnian Muslim men. KJ 202

Fact 316 The Čerska Valley road is in the zone of operations of the Drina Corps, specifically either the Milići Brigade or the Vlasenica Brigade. KJ 203

III. 13 July 1995: Kravica Warehouse

Fact 326 The Glogova 2 gravesite was exhumed by the Office of the Prosecutor between 11 September and 22 October 1999. A minimum number of 139 individuals was found. KJ 209

Fact 327 The gender of the victims exhumed at Glogova 2 could be determined in 109 cases and all were male. KJ 209; BJJ 312

Fact 328 Most of the victims exhumed at Glogova 2 died of gunshot wounds and in 22 cases there was evidence of charring to the bodies. No ligatures or blindfolds were uncovered. KJ 209; BJJ 312

Fact 329 Broken masonry and door frames and other artefacts found at the primary gravesite of Glogova 1 also matched the Kravica Warehouse. KJ 210

Fact 330 The primary graves in Glogova contained the bodies of victims who had been injured as a result of an explosive blast in the form of grenades and shrapnel. BJJ 312

Fact 331 Exhumations were conducted at Glogova 1 between 7 August and 20 October 2000. KJ 210

Fact 332 The bodies of at least 191 individuals were located at Glogova 1. KJ 210; BJJ 312

Fact 333 In one of the sub-graves at Glogova 1, 12 individuals bound with ligatures were found, along with evidence of blindfolds on three bodies. KJ 210

Fact 334 The primary gravesite at Glogova 1 is less than 400 metres from the command post of the 1st Infantry Battalion of the Bratunac Brigade. KJ 212

Fact 336 The Office of the Prosecutor exhumed the Zeleni Jadar 5 site between 1 and 21 October 1998. KJ 209

Fact 337 Of at least 145 individuals in the grave, 120 were determined to be male, with the remainder undetermined. The predominant cause of death was gunshot wounds. Two ligatures were recovered, but no blindfolds were found. KJ 209

VI. 14 July 1995: Grbavci School Detention Site and Orahovac Execution Site

Fact 364 Two primary mass graves were uncovered in the area, and were named "Lazete 1" and "Lazete 2" by investigators. KJ 222; BJJ 336

Fact 365 The Lazete 1 gravesite was exhumed by the Office of the Prosecutor between 13 July and 3 August 2000. KJ 222

Fact 366 All of the 130 individuals uncovered in Lazete 1 for whom gender could be determined were male. KJ 222

Fact 367 One hundred and thirty-eight blindfolds were uncovered in the Lazete 1 grave. KJ 222

Fact 368 Identification material for 23 individuals, listed as missing following the fall of Srebrenica, was located during the exhumations at this site. KJ 222

Fact 369 The gravesite Lazete 2 was partly exhumed by a joint team from the Office of the Prosecutor and Physicians for Human Rights between 19 August and 9 September 1996 and completed in 2000. KJ 222

Fact 371 One hundred and forty-seven blindfolds were located in the Lazete 2 grave. One victim also had his legs bound with a cloth sack. KJ 222

Fact 372 Twenty-one individuals, listed as missing following the takeover of Srebrenica, were positively identified during the first exhumation of the Lazete 2 gravesite. All of them were Bosnian Muslim men. Identification documents for a further four men listed as missing following the fall of Srebrenica were uncovered during the exhumations at this site in 2000. KJ 222

Fact 373 On 11 April 1996, investigators from the Office of the Prosecutor uncovered numerous strips of cloth in a "rubbish" site on the grounds of the Grbavci School next to the gymnasium. These cloth strips were indistinguishable from the blindfolds uncovered during the exhumation of the Lazete 2 gravesite. KJ 222

Fact 374 Forensic analysis of soil/pollen samples, blindfolds, ligatures, shell cases, and aerial images of creation/disturbance dates further revealed that bodies from the Lazete 1 and Lazete 2 graves were removed and reburied at secondary graves named Hodžići Road 3, 4, and 5. Aerial images show that these secondary gravesites were created between 7 September and 2 October 1995, and all of them were exhumed by the Office of the Prosecutor in 1998. KJ 223; BJJ 336

Fact 375 Following a similar pattern to the other Srebrenica-related gravesites, the overwhelming majority of bodies at Hodžići Road 3, 4, and 5 were determined to be male and to have died of gunshot wounds. Although only one ligature was located during exhumations at these three sites, a total of 90 blindfolds were found.

Fact 376 Orahovac is located within the zone of responsibility of the 4th Battalion of the Zvornik Brigade. KJ 224; KA 123

VII. 14 to 15 July 1995: Petkovci School Detention Site and Petkovci Dam Execution Site

Fact 399 A team of investigators from the Office of the Prosecutor exhumed a gravesite at the Petkovci Dam between 15 and 25 April 1998. KJ 229

Fact 400 The minimum number of individuals located within this grave was 43, but only 15 could be identified as male, with the remainder undetermined. Six body parts showed definite gunshot wounds, with a further 17 showing probable or possible gunshot wounds. KJ 229; BJJ 346

Fact 402 Forensic tests show that a mass gravesite known as Liplje 2 is a secondary gravesite associated with the primary gravesite at Petkovci Dam. KJ 230; BJJ 346

Fact 403 The Liplje 2 gravesite was exhumed by the Office of the Prosecutor between 7 and 25 August 1998. KJ 230

Fact 404 Aerial images reveal that Liplje 2 was created between 7 September and 2 October 1995. KJ 230

Fact 405 Traces of mechanical teeth marks and wheel tracks show the grave was dug by a wheeled front loader with a toothed bucket. KJ 230

Fact 406 A minimum number of 191 individuals were located in this grave, with 122 determined to be male and the remainder undetermined. KJ 230; BJJ 346

Fact 407 Where cause of death could be determined, gunshot wounds predominated. KJ 230

Fact 408 While 23 ligatures were uncovered at Liplje 2, no definite blindfolds were found. KJ 230

Fact 410 The execution site at the Petkovci Dam is located less than two kilometres from the command post of the Zvornik Brigade's 6th Infantry Battalion in Baljkovica. KJ 231

VIII. 14 to 16 July 1995: Pilica School Detention Site and Branjevo Military Farm Execution Site

Fact 431 The Branjevo Military Farm gravesite (also known as the Pilica gravesite) was exhumed between 10 and 24 September 1996 by the Office of the Prosecutor and a team from Physicians for Human Rights. KJ 237

Fact 432 Where the gender of the bodies could be determined it was male, and where cause of death could be determined it was by gunshot wounds. KJ 237; BJJ 354

Fact 433 Eighty-three ligatures and two cloth blindfolds were located in this grave. Positive identification was made for 13 individuals who were missing following the takeover of Srebrenica. All of them were Bosnian Muslim men. KJ 237; BJJ 354

Fact 434 A gravesite known as Čančari Road 12 was determined to be a secondary grave associated with the primary site at Branjevo Military Farm. Aerial images show this secondary grave was created between 7 and 27 September 1995 and backfilled prior to 2 October 1995. KJ 238; BJJ 354

Fact 436 Where the cause of death could be determined, it was by gunshot. KJ 238

Fact 437 Sixteen ligatures and eight blindfolds were also uncovered in this grave. KJ 238

Fact 438 One individual was positively identified as a Bosnian Muslim man listed as missing following the takeover of Srebrenica. KJ 238

Fact 439 The Branjevo Farm itself was under the direct authority and control of the 1st Infantry Battalion of the Zvornik Brigade. KJ 241

IX. 16 July 1995: Pilica Cultural Dom

Fact 446 The Office of the Prosecutor sent a team of experts to conduct a forensic examination of the Pilica Dom between 27 and 29 September 1996, and again on 2 October 1998. KJ 245

Fact 448 The Pilica Cultural Centre is in the Drina Corps zone of responsibility. KJ 246

X. 15 to 16 July 1995: Kozluk

Fact 452 In 1999, the Office of the Prosecutor exhumed a grave near the town of Kozluk. KJ 249

Fact 453 The minimum number of bodies uncovered from the Kozluk grave was 340, and all the individuals for whom gender could be determined were male. KJ 250; BJJ 362

Fact 454 Gunshot wounds were the overwhelming cause of death for those bodies in which a cause could be ascertained. KJ 250

Fact 455 A number of bodies exhumed at Kozluk showed signs of pre-existing disability or chronic disease, ranging from arthritis to amputations. KJ 250

Fact 456 Fifty-five blindfolds and 168 ligatures were uncovered at the Kozluk grave. KJ 250

Fact 458 Plant specimens found in the grave proved that the executions of the victims occurred around the middle of July. BJJ 362

Fact 459 The Kozluk primary grave is linked with the secondary grave at Čančari Road 3, which was exhumed by the Office of the Prosecutor between 27 May and 10 June 1998. KJ 251; BJJ 362

Fact 461 In addition to the usual analyses of soil, material, and shell cases, the link between the two graves was established by the presence at both sites of fragments of green glass bottles and bottle labels known to have come from the Vetinka bottling factory near the Kozluk mass grave. KJ 251; BJJ 362

Fact 462 All of the bodies for which gender could be determined were male, and gunshot wounds were the predominant cause of death for those individuals for which a cause could be ascertained. KJ 251

Fact 463 Eight blindfolds and 37 ligatures were located during the exhumation. KJ 251

Fact 464 All the victims that were found in the primary and secondary graves wore civilian clothing. BJJ 362

Fact 465 The Kozluk execution site is located within the zone of responsibility of the Zvornik Brigade. KJ 252

C. FORENSIC EVIDENCE OF THE EXECUTIONS AND REBURIALS: SUMMARY

Fact 473 Office of the Prosecutor investigators were first allowed to visit the area in January 1996. BJJ 381

Fact 474 Commencing in 1996, the Office of the Prosecutor conducted exhumations of 21 gravesites associated with the takeover of Srebrenica: four in 1996 (at Čerska, Nova Kasaba, Orahovac (also known as Lazete 2) and Branjevo Military Farm (Pilica)); eight in 1998 (Petkovci Dam, Čančari Road 12, Čančari Road 3, Hodžići Road 3, Hodžići Road 4, Hodžići Road 5, Lipje 2, and Zeleni Jadar 5); five in 1999 (Kozluk, Nova Kasaba, Konjević Polje 1, Konjević Polje 2, and Glogova 2); and four in 2000 (Lazete 1, Lazete 2C, Ravnice, and Glogova 1). KJ 71

Fact 475 Of the 21 gravesites exhumed, 14 were primary gravesites, where bodies had been put directly after the individuals were killed. Of these, eight were subsequently disturbed and bodies were removed and reburied elsewhere, often in secondary gravesites located in more remote regions. Seven of the exhumed gravesites were secondary burial sites. KJ 71

Fact 476 As a result of ballistics, soil analysis, and materials analyses, links were discovered between certain primary gravesites and certain secondary gravesites. KJ 71

Fact 477 Among the identity documents and belongings found in the mass graves were license cards and other papers with references to Srebrenica. KJ 74

Fact 478 Some bodies were positively identified in the graves as former Srebrenica residents, on the basis of distinctive personal items found with the bodies such as jewellery, artificial limbs, and photographs. KJ 74

Fact 480 The gender distribution of the persons listed as missing from Srebrenica on the ICRC list (cross-referenced with other sources) correlates with the gender distribution of the bodies exhumed from the graves. KJ 74

Fact 481 The overwhelming majority of people registered as missing from Srebrenica are men. Only one of the 1,843 bodies for which gender could be determined was female. KJ 74

Fact 482 There is a correlation between the age distribution of persons listed as missing and the bodies exhumed from the Srebrenica graves: 26.4 percent of persons listed as missing were between 13 to 24 years, and 17.5 percent of bodies exhumed fell within this age group; 73.6 percent of persons listed as missing were over 25 years of age, and 82.8 percent of bodies exhumed fell within this age group. KJ 74

Fact 483 Investigators discovered at least 448 blindfolds on or with the bodies uncovered during the exhumations at ten separate sites. KJ 75

Fact 484 At least 423 ligatures were located during exhumations at 13 separate sites. Some of the ligatures were made of cloth and string, but predominately they were made of wire. KJ 75

Fact 485 The overwhelming majority of victims located in the graves for whom a cause of death could be determined was killed by gunshot wounds. KJ 75

Fact 486 Some of the victims were severely handicapped. KJ 75

Fact 488 Forensic tests have linked certain primary gravesites and certain secondary gravesites, namely: Branjevo Military Farm and Čančari Road 12; Petkovci Dam and Liplje 2; Orahovac (Lazete 2) and Hodžići Road 5; Orahovac (Lazete 1) and Hodžći Road 3 and 4; Glogova and Zeleni Jadar 5; and Kozluk and Čančari Road 3. KJ 78

D. THE REBURIALS

Fact 493 All of the primary and secondary mass gravesites associated with the takeover of Srebrenica located by the Office of the Prosecutor were within the Drina Corps area of responsibility. KJ 257

Fact 496 The longest distance between primary and secondary gravesites (Branjevo Farm to Čančari Road) was 40 kilometres. KJ 260

E. WIDESPREAD KNOWLEDGE OF THE CRIMES

Fact 497 As early as 14 July 1995, reports of missing Bosnian Muslim men from Srebrenica began to surface in the international media. KJ 88; BJJ 380

Fact 498 A series of meetings were held with President Slobodan Milošević and General Ratko Mladić between 14 and 19 July 1995 to negotiate access for UNHCR and the ICRC to the area. Despite an agreement being reached, the VRS continued to refuse entry to the areas where the Bosnian Muslim men were being detained. BJJ 380

Fact 500 Shortly thereafter, the missing Bosnian Muslim men became a factor in the negotiations between the VRS and the ABiH at Žepa, the other UN "safe area" that had come under attack by the VRS on 14 July 1995, following the takeover of Srebrenica. KJ 89

Fact 501 During the course of negotiations between the opposing parties at Žepa, Bosnian Muslim representatives wanted guarantees that the men who were evacuated would be transported in safety and specifically cited the missing men of Srebrenica as an example of why the Bosnian Serb authorities could not be trusted. KJ 89

Fact 502 The Bosnian Muslim representatives refused Bosnian Serb demands for an "all for all" prisoner exchange until the Bosnian Serbs accounted for the 6,800 men they believed were missing from Srebrenica at that time. KJ 89

Fact 503 From 20 July, a preliminary report from UNPROFOR investigators in Tuzla and reports from DutchBat personnel indicated that grave human rights abuses had taken place. BJJ 380

Fact 504 On 10 August, following the presentation of aerial photographs showing the existence of mass graves near Konjević Polje and Nova Kasaba, the UN Security Council passed Resolution 1010, demanding that the Bosnian Serb authorities allow UN and ICRC observers to enter into Srebrenica. BJJ 380

F. THE IMPACT OF THE CRIMES ON THE BOSNIAN MUSLIM COMMUNITY OF SREBRENICA

Fact 505 In a patriarchal society such as the one in which the Bosnian Muslims of Srebrenica lived, the elimination of virtually all the men has made it almost impossible for the Bosnian Muslim women who survived the takeover of Srebrenica to successfully re-establish their lives. KJ 91; KA 28

Fact 506 Often the women have been forced to live in collective and makeshift accommodations for many years, with a dramatically reduced standard of living. KJ 91

Fact 507 The vast majority of Bosnian Muslim women refugees have been unable to find employment. Women forced to become the head of their households following the takeover of Srebrenica have great difficulties with the unfamiliar tasks of conducting official family business in the public sphere. KJ 91

Fact 508 The adolescent survivors from Srebrenica face significant hurdles as they enter adulthood. Few are employed, and returning to Srebrenica is not something these young people even talk about. KJ 92

Fact 509 Younger children who survived the takeover of Srebrenica have also developed adjustment problems, such as low levels of concentration, nightmares, and flashbacks. The absence of male role models is another factor that will inevitably have significant implications for Bosnian Muslim children from Srebrenica in years to come. KJ 92

Fact 510 The survivors of Srebrenica have unique impediments to their recovery. KJ 93

Fact 511 For Bosnian Muslim women it is essential to have a clear marital status, whether widowed, divorced, or married. A woman whose husband is missing does not fit within any of these categories. KJ 93; KA 28 n. 48

Fact 512 With the majority of the men killed officially listed as missing, their spouses are unable to remarry and, consequently, to have new children. KA 28

Fact 513 Moreover, on a psychological level, these women are unable to move forward with the process of recovery without the closure that comes from knowing with certainty what has happened to their family members and properly grieving for them. KJ 93