



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: 2 June 2008  
Original: English

**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:** 2 June 2008

**PROSECUTOR**

v.

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

**PUBLIC**

**DECISION ON POPOVIĆ'S MOTION FOR JUDICIAL NOTICE OF  
ADJUDICATED FACTS WITH ANNEX**

**Office of the Prosecutor**

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Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić for Radivoje Miletić  
Mr. Dragan Krgović and Mr. David Josse for Milan Gvero  
Mr. Peter Haynes and Mr. Đorđe Sarapa for Vinko Pandurević

**THIS TRIAL CHAMBER** of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”), is seised of the “Vujadin Popović’s Motion for Judicial Notice of Adjudicated Facts”, filed on 1 May 2008 (“Motion”), and hereby renders its decision thereon.

## I. SUBMISSIONS OF THE PARTIES

1. Popović filed the Motion 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 66 facts adjudicated in the *Prosecutor v. Momčilo Krajišnik* Trial Judgement (“*Krajišnik* Trial Judgement”) and the *Prosecutor v. Naser Orić* Trial Judgement (“*Orić* Trial Judgement”), (“Proposed Adjudicated Facts”).<sup>1</sup>

2. Popović submits that:

- a) the Proposed Adjudicated Facts annexed to the Motion fulfil the requirements set by the jurisprudence for taking judicial notice of adjudicated facts;<sup>2</sup>
- b) given the nature of the Proposed Adjudicated Facts it is in the interests of justice and of judicial economy to take judicial notice of them,<sup>3</sup> and
- c) taking judicial notice of them would “best safeguard Mr. Popović’s right to obtain the attendance of witnesses on his behalf”, as set forth in Article 21(4)(e) of the Statute, because he would be able to manage the time he has to present his case better in that he can focus on evidence concerning his acts and conduct;<sup>4</sup>

3. The Prosecution filed the “Prosecution Response to Vujadin Popović’s Motion for Judicial Notice of Adjudicated Facts’ with Appendix” (“Prosecution Response”) on 15 May 2008. The Prosecution requests the Trial Chamber to deny judicial notice of 52 of the 66 Proposed Adjudicated Facts because they are misleading, irrelevant or cumulative to the instant case.<sup>5</sup> The Prosecution submits that:

<sup>1</sup> *Krajišnik* Trial Judgement, Case No. IT-00-39-T, 27 September 2006; *Orić* Trial Judgement, Case No. IT-03-68-T, 30 June 2006.

<sup>2</sup> Motion, paras. 12–14.

<sup>3</sup> *Ibid.*, para. 15.

<sup>4</sup> *Ibid.*, para. 16.

<sup>5</sup> Prosecution Response, para. 1.

- a) 52 of the Proposed Adjudicated Facts which focus largely on the early role of the Serbian Democratic Party (“SDS”), the pre-1994 conditions in Srebrenica and the pre-1995 conflict between Bosnian Serbs and Bosnian Muslims do not merit judicial notice;<sup>6</sup>
- b) the majority of the Proposed Adjudicated Facts fail to satisfy one or more of the legal requirements,<sup>7</sup> and
- c) the interests of justice weigh against the admission of many of the Proposed Adjudicated Facts and judicial notice of adjudicated facts need not necessarily reduce the length of the proceedings and promote judicial economy, since they can still be rebutted by the non-moving party;<sup>8</sup> that some of the Proposed Adjudicated Facts are cumulative to evidence that the Trial Chamber has already taken judicial notice of in the “Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex” of 26 September 2006 (“September 2006 Decision”), to evidence adduced during trial, or agreed to by the Prosecution.<sup>9</sup>

4. Popović filed the “Vujadin Popović’s Request for Leave to Reply and Reply to the Prosecution’s Response to Vujadin Popović’s Motion for Judicial Notice of Adjudicated Facts” (“Reply”) on 22 May 2008. Popović requests leave to reply, leave to exceed the word limit and requests the Trial Chamber to reject the Prosecution Response and take judicial notice of all the Proposed Adjudicated Facts. He argues that:

a) The Proposed Adjudicated Facts from the *Krajišnik* Trial Judgement which the Prosecution Response deems irrelevant are relevant because:

- i. the political background and tensions that grew after the demise of the former Yugoslavia and before the war broke out are intricately linked to the alleged joint criminal enterprise as well as its underlying common plan;<sup>10</sup>
- ii. a number of Proposed Adjudicated Facts that the Prosecution does not object to concern the same issues referred to by the rest of the Proposed Adjudicated

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<sup>6</sup> *Ibid.*, para. 3.

<sup>7</sup> *Ibid.*, paras. 5–6.

<sup>8</sup> *Ibid.*, para. 8.

<sup>9</sup> *Ibid.*, para. 10.

<sup>10</sup> Reply, paras. 2, 6.

Facts it objected to as irrelevant; all the Proposed Adjudicated Facts are in the same chapter of the *Krajišnik* Trial Judgement;<sup>11</sup> the Prosecution's selection of the Proposed Adjudicated Facts which it objects to on the basis of irrelevance is in fact a choice of convenience,<sup>12</sup> and

iii. the Prosecution intends to minimise the violence against Bosnian Serb, by attributing it to some small, disorganized groups.<sup>13</sup>

b) With regard to the *Orić* Trial Judgement, Popović submits that:

i. the attacks constantly carried out against the Bosnian Serb population are relevant to the Indictment "at a minimum" for the *mens rea* of the crimes charged;<sup>14</sup>

ii. the Prosecution is inconsistent as it characterises some of the Proposed Adjudicated Facts as both irrelevant and cumulative,<sup>15</sup> and

c) With regard to the Prosecution's arguments that some Proposed Adjudicated Facts are misleading, Popović submits that the Prosecution selectively and erroneously quoted other parts of the *Krajišnik* Trial Judgement in support of its submission.<sup>16</sup>

## II. DISCUSSION

5. Judicial notice of adjudicated facts is governed by Rule 94(B), which provides as follows:

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.

This Trial Chamber has already pointed out that Rule 94(B) allows a Trial Chamber to take judicial notice of relevant facts adjudicated in a previous trial or appeal judgement, after having heard the parties, even if a party objects to the taking of judicial notice of a

<sup>11</sup> *Ibid.*, paras. 3–5.

<sup>12</sup> *Ibid.*, para. 6.

<sup>13</sup> *Ibid.*, paras. 7–11.

<sup>14</sup> *Ibid.*, para. 12.

<sup>15</sup> *Ibid.*, paras. 12–13.

<sup>16</sup> *Ibid.*, paras. 14–19.

particular fact.<sup>17</sup> Rule 94(B) confers a discretionary power on the Trial Chamber to determine whether or not to take judicial notice of an adjudicated fact.<sup>18</sup>

6. The assessment of whether a purported adjudicated fact could be judicially noticed pursuant to Rule 94(B) is a two-step process:<sup>19</sup> first, the Trial Chamber must determine whether the fact fulfils a number of admissibility requirements (“Admissibility Requirements”) that have been set forth in the jurisprudence of the Tribunal; second, for each fact that fulfils these requirements, the Trial Chamber must determine whether, in its discretion, it should nevertheless withhold judicial notice on the ground that taking judicial notice of the fact in question would not serve the interests of justice.<sup>20</sup> The Admissibility Requirements are the following:

- a) The fact must have some relevance to an issue in the current proceedings;
- b) The fact must be distinct, concrete, and identifiable;
- c) The fact as formulated by the moving party must not differ in any substantial way from the formulation of the original judgement;
- d) The fact must not be unclear or misleading in the context in which it is placed in the moving party’s motion;
- e) The fact must be identified with adequate precision by the moving party;
- f) The fact must not contain characterisations of an essentially legal nature;

<sup>17</sup> See September 2006 Decision, para. 3; *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, para. 6; *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, para. 15; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Prosecution’s Catalogue of Agreed Facts with Dissenting Opinion of Judge Harhoff (“*Milošević* April Decision”), 10 April 2007, para. 23.

<sup>18</sup> See September 2006 Decision, para. 3; *Prosecutor v. Karemera, Ndirumpatse, and Nzirorera*, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice, (“*Karemera* Appeals Decision”), 16 June 2006, para. 41; *Prosecutor v. Slobodan 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, pp. 3–4; *Prosecutor v. Prlić, Stojić, Praljak, Petković, Čorić, 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, para. 9.

<sup>19</sup> September 2006 Decision, para. 4.

<sup>20</sup> *Milosević* April Decision, paras. 27–28; *Prosecutor v. Rasim Delić*, Case No. IT-04-83-PT, Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Joint Motion Concerning Agreed Facts, 9 July 2007 (“*Delić* Decision”), para. 11.

- g) The fact must not be based on an agreement between the parties to the original proceedings;
- h) The fact must not relate to the acts, conduct, or mental state of the accused; and
- i) The fact must clearly not be subject to pending appeal or review.<sup>21</sup>

7. The Trial Chamber notes that the Proposed Adjudicated Facts from the *Krajšnik* Trial Judgement generally relate to the political situation in the early 1990s and the early days of the SDS whereas those from the *Orić* Trial Judgement relate to the situation and fighting in the Srebrenica area in 1992-1993. As such, they refer to the background to the political situation that led to the conflict in Bosnia and Herzegovina and to the events described in the Indictment.

8. The Trial Chamber has assessed the Proposed Adjudicated Facts in the framework of the Indictment and the evidence on the record and is of the opinion that Proposed Adjudicated Facts 2, 5-18, 21-22, 26-33, 37, 40-42, and 46-66 are relevant to the background of the instant case and to a possible Popović defence strategy. They furthermore meet all the other Admissibility Requirements laid down by the Tribunal jurisprudence and taking judicial notice of them serves the interests of justice.<sup>22</sup>

9. With regard to Proposed Adjudicated Facts 4, 35-36 and 38, the Trial Chamber is of the opinion that the relevance to the Indictment is too tenuous or even non-existent and as a result, they do not meet at least one of the Admissibility Requirements. The Proposed Adjudicated Facts do not assist in understanding the background to the instant case. Moreover, since taking judicial notice of an adjudicated fact has the effect of admitting that fact into evidence,<sup>23</sup> 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

<sup>21</sup> September 2006 Decision, paras. 5-14; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-AR73.1, Decision on Interlocutory Appeals against Trial Chamber's Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts and Prosecution's Catalogue of Agreed Facts", 26 June 2007, paras. 16-17, 21-22; *Milošević* April Decision, para. 27; *Delić* Decision, para. 10; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on Appeals Chamber Remand of Judicial Notice of Adjudicated Facts with Separate Opinion of Judge Robinson", 18 July 2007, para. 11; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on Defence Request for Judicial Notice of Adjudicated Facts", 29 August 2007, p. 2; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on the Prosecution Motion to Take Judicial Notice of Facts under Rule 94(B) of the Rules of Procedure and Evidence, 14 December 2007 (English translation), 10 December 2007 (French original), para. 9.

<sup>22</sup> See *supra* para. 6.

<sup>23</sup> September 2006 Decision, para. 5.

admitted.”<sup>24</sup> Accordingly, the Trial Chamber will not take judicial notice of irrelevant Proposed Adjudicated Facts.

10. Furthermore, the Trial Chamber considers that Proposed Adjudicated Facts 1, 3, 19–20, 24, 39, and 43–45 are either unclear, or have been selectively quoted or quoted out of context and it will not take judicial notice of them. 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.”<sup>25</sup> As already stated by this Trial Chamber, when evaluating the clarity and accuracy of a given fact, the examination cannot be done in isolation and regard should be given to the surrounding Proposed Adjudicated Facts.<sup>26</sup> A Trial Chamber must deny judicial notice if the fact in question 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.<sup>27</sup>

11. Though Proposed Adjudicated Facts 23, 25, and 34 meet the Admissibility Requirements set out in the Tribunal jurisprudence, the Trial Chamber exercises its discretion and does not take judicial notice of them because they are already part of the trial record.

### III. DISPOSITION

12. For the foregoing reasons, pursuant to Rule 94(B) of the Rules, the Trial Chamber hereby **GRANTS** the Motion in part, and decides as follows:

- a) to grant Popović leave to file the Reply and to exceed the word limit;
- b) to take judicial notice of Proposed Adjudicated Facts 2, 5–18, 21–22, 26–33, 37, 40–42, and 46–66, and
- c) not to take judicial notice of Proposed Adjudicated Facts 1, 3–4, 19–20, 23–25, 34–36, 38–39, and 43–45.

<sup>24</sup> *Semanza v. Prosecutor*, Case No. ICTR-97-20-A, Judgement, 20 May 2005, para. 189; *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, para. 17.

<sup>25</sup> *Karemera Appeals Decision*, para. 55.

<sup>26</sup> September 2006 Decision, para. 8.

<sup>27</sup> *Ibid.*

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



Carmel Agius  
Presiding

Dated this second day of June 2008  
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:

**KJ** *Krajišnik* Trial Judgement

**OJ** *Orić* Trial Judgement

**M** Motion

<b><i>A. Krajišnik</i> Trial Judgement</b>	
Fact 1 (M 2)	In 1990 and 1991 the SDS was funded by voluntary contributions and enjoyed the support of the overwhelming majority of Bosnian Serbs. KJ 26
Fact (M 5)	In early 1991, Serbs at the Pobjeda explosives factory in Goražde, where the witness worked, were systematically replaced by Muslims. An explosion in October 1991 at the house of a Muslim Pobjeda employee helped spread fears that Muslims were appropriating explosives from the factory. KJ 35
Fact 3 (M 6)	There was fear among Bosnian Serbs that Muslims and Croats would engage in extreme violence against them. Several factors were seen to support this belief. First, some Bosnian Serbs had memories of crimes committed against Serbs during the Second World War, and of injustices suffered during, and immediately after, World War I. Second, some Bosnian Muslims and Bosnian Croats expressed extreme and aggressive messages, even hinting at the physical annihilation of Serbs in Croatia and Bosnia-Herzegovina. Third, armed gangs perpetrated crimes against Serbs or federal institutions – often viewed as “Serb-dominated” – based on ethnic motives. KJ 43
Fact 4 (M 7)	This type of action fuelled fear and mutual distrust. Fourth, the SDS leadership did not discourage such fears, but rather shared them and made them public, thus exacerbating the mutual distrust among the ethnicities. In the face of a growing divide between the SDA and the HDZ, on the one side, and the SDS, on the other, Bosnian Serbs experienced instances of “outvoting” by the other two main parties both at the central and the local levels, and feared for the future. Moreover, Bosnian Croats and Bosnian Muslims, supported by their leaders,

	often did not respond to mobilization for the conflict in Croatia, and this deepened the rift between the national parties. KJ 43
Fact 5 (M 8)	Thus, by autumn 1991, two political options for the settlement of the “Bosnian question” openly competed in the Assembly of Bosnia-Herzegovina. One option, espoused by the SDA and the HDZ as well as the majority of opposition parties, envisaged sovereign and internationally recognized statehood for Bosnia-Herzegovina. The other option, preferred by the SDS and some of the smaller parties, was that Bosnia-Herzegovina should remain within Yugoslavia. Each side radically opposed the other’s option, and the SDS was ready to have “Serb” territories secede from an independent Bosnia-Herzegovina if that was the only way for Serbs to remain in Yugoslavia. KJ 62
Fact 6 (M 9)	By October 1991, the three-party coalition was crumbling. The SDA and HDZ pressed the Bosnia-Herzegovina Assembly to discuss a declaration of sovereignty of Bosnia-Herzegovina, which would pave the way for the republic to assert its independence from Yugoslavia. The SDS protested that such a declaration would be unconstitutional as it would infringe on the rights of one nationality recognized by the Bosnia-Herzegovina constitution, namely the Serbs, and it had not been vetted by the Council for Ethnic Equality. KJ 63
Fact 7 (M 10)	In the course of the debate on whether to vote on such a declaration of sovereignty, during the night of 14 and 15 October 1991, Radovan Karadžić expressed strong opposition and warned that the SDS would make use of constitutional mechanisms to prevent a vote. When the other parties decided to proceed with the vote, the Accused, as President of the Assembly, adjourned the session to the next morning. KJ 64
Fact 8 (M 11)	The SDS deputies, as well as most Serb deputies not in the SDS, left the hall. However, the vice-president of the Assembly then reconvened the session and the declaration was adopted. KJ 64
Fact 9 (M 12)	On 15 October 1991 the SDS Political Council met to assess the situation. Addressing the meeting, the Accused suggested that, since the decision to adopt the declaration was illegal and unconstitutional, the SDS had to find a method of denouncing it. During this and other meetings, the idea emerged that the SDS should form its own institutions, which would function in parallel to those of Bosnia-Herzegovina. On 16 October the SDS’s “Announcement to the Serbian

	people” stated that the SDA and HDZ had breached the constitutional order. It reiterated the SDS’s support for federal institutions, including the JNA. At the SDS Deputies’ Club meeting of 18 October the SDS leadership decided to hold a plebiscite on the question of secession from Yugoslavia. KJ 65
Fact 10 (M 13)	On 24 October 1991 the SDS deputies convened separately and established the Assembly of the Serbian People of Bosnia-Herzegovina (Bosnian-Serb Assembly). KJ 67
Fact 11 (M 14)	During the same session, Bosnian-Serb deputies passed a resolution that “the Serbian people of Bosnia-Herzegovina shall stay in the joint state of Yugoslavia together with Serbia, Montenegro, SAO Krajina, SAO Slavonija, Baranja, Western Sirmium [Zapadni Srem], and others who may declare that they wished to stay,” subject to confirmation by a plebiscite. KJ 68
Fact 12 (M 15)	The plebiscite was held on 9 and 10 November 1991. Although all ethnicities were allowed to vote in the plebiscite, ballots were of different colours depending on the ethnicity of the voter. Few non-Serbs participated. The figures reported at the Bosnian-Serb Assembly on 21 November were: 99.9 per cent of the 1,162,032 Serbs who voted and 99.1 per cent of the 49,342 non-Serbs who voted, voted in favour of remaining in Yugoslavia. KJ 73
Fact 13 (M 16)	On 21 November 1991 the Bosnian-Serb Assembly proclaimed as part of the territory of federal Yugoslavia all those municipalities, communes, and settlements where a majority of registered citizens of Serb nationality had voted in favour of remaining in Yugoslavia. If the majority in one municipality had voted to remain within Yugoslavia, the whole of that municipality would remain. Municipalities where the majority of people had not participated in the plebiscite (and were, thus, presumably, non-Serb-majority municipalities), the SDS proposed to look at single communes or settlements: if local communities had voted to remain, then only that community would be considered part of Yugoslavia, while the rest of the territory of the municipality would be allowed to join an independent Bosnia-Herzegovina. KJ 74
Fact 14 (M 17)	Also on 21 November, the Bosnian-Serb Assembly adopted a resolution declaring full support for the JNA in defence of the common state of Yugoslavia and in conducting mobilization of the Serb people in Bosnia-Herzegovina, in

	order to reinforce military units. The resolution added: "Serbian people and other people who wish to preserve Yugoslavia are called upon to respond to military call-ups" KJ 75
Fact 15 (M 18)	On 9 January 1992 the Bosnian-Serb Assembly unanimously proclaimed "the Republic of the Serbian People of Bosnia and Herzegovina" to be:  "a federal unit of the Yugoslav federal state in the territories of the Serbian autonomous areas in the region and of other Serbian ethnic entities in Bosnia-Herzegovina, including the regions in which the Serbian people remained in minority due to the genocide conducted against it in World War II, and on the basis of the plebiscite held on 9 and 10 November 1991, at which the Serbian people decided to remain in the joint state of Yugoslavia." KJ 103
Fact 16 (M 21)	On 11 March 1992 the Bosnian-Serb Assembly decided to continue international negotiations on a confederative arrangement for the three national groups, albeit on its own terms. The Accused, Karadžić, Koljević, Plavšić, Buha, and Maksimović remained members of the negotiating delegation. In response to an invitation from José Cutileiro, international mediator, to continue the multi-party negotiations, the Bosnian-Serb Assembly unanimously rejected a draft of constitutional arrangements in Bosnia-Herzegovina. During that session, the Accused tabled a proposal that the Bosnian-Serb delegates would continue the negotiations, subject to the restriction that the negotiators, at a minimum, seek to preserve Yugoslavia or pursue "three sovereign national states which may be linked up on the confederal principle." Both the proposal and the restriction were adopted by the Assembly. KJ 124
Fact 17 (M 22)	On 18 March 1992 the negotiators once again reported to the Bosnian-Serb Assembly. The new draft proposal, they explained to the deputies, aimed at a division of Bosnia-Herzegovina into three constituent units based not only on nationality, but also on economic and geographic considerations. Each component nation would moreover be allowed special ties with other states. The proposal was marked as "basis for further negotiations." During the 18 March session, Karadžić also predicted the imminent withdrawal of Bosnian Serbs from the Bosnia-Herzegovina MUP. KJ 125

	<b>B. Oric Trial Judgement</b>
Fact 18 (M 26)	In November 1991, the outcome of a Bosnian Serb plebiscite reflected support for BiH to remain within the SFRY. From 29 February to 1 March 1992, however, an overwhelming majority of Bosnian Muslims and Bosnian Croats voted for the independence of BiH. On 3 March 1992, the government of BiH declared the republic's independence. This was followed on 27 March 1992 by the formal proclamation of the Serbian Republic of BiH, later renamed Republika Srpska. OJ 81
Fact 19 (M 27)	Prior to the conflict, Srebrenica formed part of the Tuzla region and the Zvornik subregion. Srebrenica municipality was divided into 17 local communes and had an overall population of 37,000. According to the 1991 census, 73% of the population living in the municipality of Srebrenica were Bosnian Muslim and 25% Bosnian Serb. The town of Srebrenica had a population of approximately 3,500 with the same ethnic composition percentage. While the town of Srebrenica was ethnically mixed, in the surrounding villages and hamlets there was usually one ethnic group that dominated. OJ 89
Fact 20 (M 28)	Mutual distrust continued to rise. Bosnian Muslims and Bosnian Serbs alike started to form village guards to protect their property. Barricades and checkpoints were set up at village entrances. Water supplies and television broadcasts were interrupted. People left their homes and headed for places where they felt safer. Incidents of shooting occurred, causing the sporadic killing of members of both ethnic groups. By mid-April 1992, people were already fleeing Srebrenica <i>en masse</i> in anticipation of an armed clash between the two sides. OJ 96
Fact 21 (M 29)	While the Bosnian Serbs enjoyed military superiority, they were outnumbered by the Bosnian Muslims who adopted a type of guerrilla warfare, which in the second half of 1992 and up to early 1993 was quite successful. Between June 1992 and March 1993, Bosnian Muslims raided a number of villages and hamlets inhabited by Bosnian Serbs, or from which Bosnian Muslims had formerly been expelled. One of the purposes of these actions was to acquire food, weapons, ammunition and military equipment. According to the Bosnian Serbs, these actions resulted in considerable loss to Bosnian Serb life and property. OJ 104

Fact 22 (M 30)	For the Bosnian Serbs, these Bosnian Muslim raids were of great concern, not least because they tied down a considerable amount of their armed forces, making them unavailable for combat activity elsewhere. During meetings with international observers, Bosnian Serb leaders vigorously expressed their anger over these actions. OJ 105
Fact 23 (M 31)	Hygienic conditions throughout the Srebrenica enclave were appalling. There was a total absence of running water. Most people were left to drink water from a small river which was polluted. Infestation with lice and fleas became widespread among the population. OJ 113
Fact 24 (M 32)	As there was no electricity available, people used makeshift power sources and candles. A small water-wheel generator behind the Srebrenica post office ("PTT building") provided about two or three kilowatts per hour, which was mainly used to provide light to the hospital and to sterilise equipment. People used whatever they could find, such as ordinary sheets cut into pieces, to clothe themselves. OJ 115
Fact 25 (M 33)	As almost all educated people had left Srebrenica in the early days of the conflict, government bodies ceased to function and public life came to a standstill. OJ 116
Fact 26 (M 37)	In Srebrenica town, electricity was cut off in late June or early July 1992. At the end of April 1992, telephone lines between Srebrenica and Tuzla were severed by Bosnian Serb forces, and in early July 1992, between Srebrenica and Sarajevo. Over time, ingenious methods were devised to make up for the lack of electricity and to partially power communications equipment. After demilitarisation, half-a-dozen makeshift power plants were set up throughout Srebrenica. OJ 192
Fact 27 (M 40)	The Srebrenica War Presidency was involved in various activities ranging from law enforcement to humanitarian matters. While it was initially envisaged to deal with civilian issues, some of its members occasionally participated in joint meetings with the Srebrenica Armed Forces Staff where matters of a military and civilian nature were discussed. Despite shortcomings, the Srebrenica War Presidency generally strove to achieve its objectives. OJ 214

Fact 28 (M 41)	On 1 July 1992, the Civilian Protection Staff of Srebrenica was established and Jusuf Halilović was appointed its commander. It was composed of several units whose tasks included fire-fighting, public utility maintenance and building construction. While this body seems to have been increasingly active from 1993 to 1995, its work, as all activity in the Srebrenica enclave, was hindered by the circumstances. OJ 220
Fact 29 (M 42)	Throughout the second half of 1992 and into 1993, a number of individuals were members of both the Srebrenica War Presidency and the Srebrenica Armed Forces Staff. At times, this led to a rather unclear line of demarcation between the respective areas of competence which sometimes overlapped. OJ 247
Fact 30 (M 46)	Both Prosecution and Defence witnesses, who gave evidence with respect to the Bosnian Muslim attacks on the Bosnian Serb villages, distinguished between two categories of participants, using terms which reflect their own perception of the events. As such, participants in the first category were characterised as 'soldiers', 'citizen soldiers who take up arms', 'armed people' and 'fighters'. Participants in the second category were characterised as 'civilians', 'refugees', and ' <i>torbari</i> '. Notwithstanding the different terms used, the Trial Chamber will adopt the term 'fighters' to describe the first category and 'civilians' when referring to the second category. OJ 591
Fact 31 (M 47)	The Bosnian Muslim fighters who attacked Ratkovići were followed by a crowd of Bosnian Muslim civilians who were mostly refugees from Bosnian Muslim villages near Ratkovići. OJ 598
Fact 32 (M 48)	Following the attack, Gornji Ratkovići, Polimići and part of Dvorište were ablaze and smoke was seen in Ratkovići. After taking cattle out of the stables, Bosnian Muslim fighters and civilians set fire to all barns and outbuildings in the fields near Polimići, which is approximately one kilometre southeast of Ratkovići. Bosnian Muslim fighters then withdrew in anticipation of a counter-attack, whereas civilians stayed behind looking for food. OJ 600
Fact 33 (M 49)	The Trial Chamber finds that at the time of the attack, the property destroyed in Ratkovići was neither of a military nature, nor was it used in a manner such as to make an effective contribution to the military actions of the Bosnian Serbs. In Gornji Ratkovići, although there was an exchange of fire between Bosnian

	Muslims and Bosnian Serbs, most of the destruction occurred after the Bosnian Serbs had withdrawn. As a consequence, the destruction of property in Ratkovići, including Gornji Ratkovići, was not required for the attainment of a military objective. OJ 607
Fact 34 (M 50)	The Bosnian Muslim fighters who attacked Brađevina were followed by a crowd of Bosnian Muslim civilians. OJ 611
Fact 35 (M 51)	Bosnian Muslim civilians joined fighters in torching stables and burning livestock in the meadows between Brađevina and Magudovići. Eventually, all the buildings of Brađevina, except those used for storing grain and food, were set on fire. Bosnian Muslim civilians remained in the area after the attack, searching for food and other goods. OJ 613
Fact 36 (M 52)	Around noon on 8 August 1992, Bosnian Muslims attacked Ježestica. OJ 623
Fact 37 (M 53)	The Bosnian Muslim fighters who attacked Ježestica were followed by a crowd of Bosnian Muslim civilians, in all likelihood refugees from nearby Bosnian Muslim villages. OJ 624
Fact 38 (M 54)	A number of Bosnian Muslims, some in uniforms, set fire to houses. Ježestica and the surrounding hamlets were engulfed in smoke and numerous houses were burning. OJ 626
Fact 39 (M 55)	Later on the same day, Bosnian Serbs launched a counter-attack, causing the Bosnian Muslims to withdraw. By the end of the day, approximately half of the houses in Ježestica had been burned down. OJ 627
Fact 40 (M 56)	On the early morning of 14 December 1992, Bosnian Muslims attacked Bjelovac and Sikirić. OJ 649
Fact 41 (M 57)	The Bosnian Muslim fighters were armed, some wearing uniforms or civilian clothes. Further, some fighters were also wearing a coloured bandana around their heads. (...).The Bosnian Muslim fighters who attacked the area of Bjelovac were followed by thousands of civilians. OJ 650



Fact 42 (M 58)	During the attack, several houses in the vicinity of Bjelovac and Sikirić began to burn. One witness heard a Bosnian Muslim fighter in camouflage uniform telling others to "set the house on fire immediately". Another witness saw smoke coming out of houses that Bosnian Muslims in uniforms and civilian clothes had come out from. OJ 653
Fact 43 (M 59)	On 14 December 1992, at least 15 houses in Bjelovac and 15 houses in Sikirić were burned. The majority of houses had been burned by 18 December 1992. OJ 655
Fact 44 (M 60)	In the early morning of the 7 January 1993, Orthodox Christmas day, Bosnian Muslims attacked Kravica, Ježestica and Šiljkovići. OJ 662
Fact 45 (M 61)	The Bosnian Muslim fighters who participated in the attack were preceded and followed by several thousand Bosnian Muslim civilians, who were mostly refugees. OJ 663
Fact 46 (M 62)	Houses in the entire area of Kravica, Šiljkovići and Ježestica, as well as cowsheds and barns in Ježestica, were burning on 7 January 1993. In both Ježestica and Kravica, Bosnian Muslim fighters and civilians entered houses, searching for food and other items. OJ 666
Fact 47 (M 63)	On 8 January 1993, Bosnian Muslims attacked the hamlets of Popovići and Čolakovići, driving away the cattle and burning houses. OJ 667
Fact 48 (M 64)	Between January and March 1993, the area of Kravica and Ježestica remained under Bosnian Muslim control. Thousands of Bosnian Muslim civilians continued to flood in and out of this area, searching for food and building material. Some of them set fire to houses and haystacks. OJ 668
Fact 49 (M 65)	In Ježestica, on 7 January 1993, more than 60 houses were burned. In Kajici, a hamlet of Kravica, six houses out of 15 were burned on 7 January 1993. By 8 January 1993, an indeterminate number of houses in Kravica were burned. OJ 669
Fact 50	There is abundant evidence that the crowd of civilians present before, during and after attacks was massive and beyond control. OJ 684

(M 66)	
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