

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

**Case No. IT-05-88/2-PT**

**IN THE PRE-TRIAL CHAMBER**

Before: Judge Carmel Agius, Presiding  
Judge O-Gon Kwon  
Judge Kimberly Prost

Registrar: Mr. John Hocking

Date Filed: 29 September 2009

**THE PROSECUTOR**

**v.**

**ZDRAVKO TOLIMIR**

**PUBLIC**

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

The Office of the Prosecutor:

Peter McCloskey

The Accused:

Zdravko Tolimir

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1. The Prosecution hereby submits this public version of its Pre-Trial Brief which was filed under seal on 28 November 2008 pursuant to Rule 65ter(E)(i) of the Rules of Procedure and Evidence.

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Peter McCloskey  
Senior Trial Attorney

Dated this 29<sup>th</sup> day of September 2009  
The Hague, The Netherlands

## Table of Contents

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>II.</b>	<b>GENERAL FACTUAL ALLEGATIONS .....</b>	<b>3</b>
<b>(A)</b>	<b>BACKGROUND TO THE CONFLICT AND THE BEGINNING OF ETHNIC CLEANSING.3</b>	<b>3</b>
<b>(B)</b>	<b>THE ATTACK ON AND FALL OF THE SREBRENICA ENCLAVE.....</b>	<b>7</b>
<b>(C)</b>	<b>OVERVIEW &amp; STRUCTURE OF THE VRS MAIN STAFF .....</b>	<b>10</b>
<b>(D)</b>	<b>THE MAIN STAFF SECTOR FOR INTELLIGENCE AND SECURITY AFFAIRS .....</b>	<b>12</b>
<b>(E)</b>	<b>OVERVIEW &amp; STRUCTURE OF THE DRINA CORPS AND ZVORNIK, BRATUNAC AND ROGATICA BRIGADES.....</b>	<b>13</b>
<b>III.</b>	<b>SUMMARY OF EVIDENCE REGARDING THE CHARGED CRIMES....</b>	<b>17</b>
<b>(A)</b>	<b>OPERATION TO MURDER THE ABLE-BODIED BOSNIAN MUSLIM MEN OF SREBRENICA .....</b>	<b>17</b>
1.	LARGE-SCALE & ORGANISED KILLINGS: 13 JULY 1995 THROUGH AUGUST 1995 ..	17
a)	13 July Murders .....	17
b)	14 July Murders .....	22
c)	15 July Murders .....	29
d)	16 July Murders .....	31
e)	July - August 1995 Murders .....	34
2.	REBURIAL OPERATION .....	36
3.	DESTRUCTION OF THE WOMEN AND CHILDREN .....	41
<b>(B)</b>	<b>OPERATION TO FORCIBLY TRANSFER OR DEPORT THE BOSNIAN MUSLIM POPULATIONS OF SREBRENICA AND ŽEPA .....</b>	<b>42</b>
1.	OPERATION TO FORCIBLY REMOVE THE BOSNIAN MUSLIM POPULATION OF SREBRENICA .....	42
a)	Bosnian Serb dealings with the UN and Internationals .....	42
b)	Three meetings at Hotel Fontana.....	44
c)	Separations and forcible removal of the Bosnian Muslim population.....	46
2.	“OPPORTUNISTIC” KILLINGS WHICH WERE A FORESEEABLE CONSEQUENCE OF THE FORCIBLE REMOVAL OF THE BOSNIAN MUSLIM POPULATION FROM SREBRENICA ...	49
3.	OPERATION TO FORCIBLY REMOVE THE BOSNIAN MUSLIM POPULATION OF ŽEPA. 52	
a)	The Attack on the Žepa “Safe Area” .....	52
b)	The forcible removal of the Bosnian Muslim population from Žepa .....	58
4.	UNCHARGED KILLINGS: MURDER OF THE BOSNIAN MUSLIM LEADERS FROM ŽEPA. 60	
<b>IV.</b>	<b>LIABILITY OF THE ACCUSED UNDER ART. 7(1) OF THE STATUTE. 61</b>	<b>61</b>
<b>(A)</b>	<b>CONTRIBUTIONS TO THE JOINT CRIMINAL ENTERPRISE TO MURDER THE ABLE-BODIED MEN FROM SREBRENICA .....</b>	<b>62</b>
<b>(B)</b>	<b>CONTRIBUTIONS TO THE JOINT CRIMINAL ENTERPRISE TO FORCIBLY TRANSFER OR DEPORT THE BOSNIAN MUSLIM POPULATIONS FROM SREBRENICA AND ŽEPA.....</b>	<b>66</b>
1.	LIMITING UNPROFOR’S LOGISTICS SUPPLY AND RESTRICTING AID TO THE BOSNIAN MUSLIMS IN ORDER TO CREATE CONDITIONS FOR THE ELIMINATION OF THE ENCLAVES .....	66
2.	INVOLVEMENT IN THE ATTACK ON THE SREBRENICA ENCLAVE AND MOVING OUT THE CIVILIAN POPULATION FROM SREBRENICA .....	67

3.	INVOLVEMENT IN THE ATTACK ON THE ŽEPA ENCLAVE AND MOVING OUT THE CIVILIAN POPULATION FROM ŽEPA .....	68
<b>V.</b>	<b>OTHER KEY MEMBERS OF THE JOINT CRIMINAL ENTERPRISES..</b>	<b>71</b>
1.	RADIOVOJE MILETIĆ: DEPUTY CHIEF OF THE VRS MAIN STAFF AND CHIEF OF OPERATIONS AND TRAINING .....	71
2.	MILAN GVERO: VRS MAIN STAFF ASSISTANT COMMANDER FOR MORAL, RELIGIOUS AND LEGAL AFFAIRS.....	76
3.	LJUBIŠA BEARA: CHIEF OF THE VRS MAIN STAFF SECURITY ADMINISTRATION ....	78
4.	VUJADIN POPOVIĆ: DRINA CORPS ASSISTANT COMMANDER FOR SECURITY .....	81
5.	DRAGO NIKOLIĆ: ZVORNIK BRIGADE ASSISTANT COMMANDER FOR SECURITY .....	86
<b>VI.</b>	<b>APPLICABLE LEGAL PRINCIPLES .....</b>	<b>89</b>
<b>(A)</b>	<b>ARTICLE 4, GENOCIDE .....</b>	<b>89</b>
1.	THE MATERIAL ELEMENT OF THE OFFENCE ( <i>ACTUS REUS</i> ), CONSTITUTED BY ONE OR SEVERAL ACTS ENUMERATED IN ARTICLE 4(2) .....	90
a)	Article 4(2)(a): Killing Members of the Group.....	90
b)	Article 4(2)(b): Causing Serious Bodily or Mental Harm to One or More Persons.....	91
c)	Article 4(2)(c): Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part .....	92
d)	Article 4(2)(d): Imposing measures intended to prevent births within the group .....	93
2.	THE MENS REA OF THE OFFENCE, CONSISTING OF THE SPECIFIC INTENT TO DESTROY, IN WHOLE OR IN PART, A NATIONAL, ETHNICAL, RACIAL OR RELIGIOUS GROUP, AS SUCH .....	94
a)	The degree or quality of the requisite mental state: “with intent to destroy” .....	94
b)	The scope of the requisite mental state: “a... group, as such”.....	95
c)	The term “in whole or in part” .....	96
d)	Means to infer the requisite intent under Article 4.....	98
<b>(B)</b>	<b>ARTICLE 4, CONSPIRACY TO COMMIT GENOCIDE.....</b>	<b>101</b>
<b>(C)</b>	<b>ARTICLE 5, CRIMES AGAINST HUMANITY .....</b>	<b>106</b>
1.	COMMON TO ALL CHARGED OFFENCES UNDER ARTICLE 5 .....	106
2.	ELEMENTS OF SPECIFIC CRIMES .....	109
a)	Article 5(a): Murder.....	109
b)	Article 5(b): Extermination.....	111
c)	Article 5(d): Deportation .....	112
d)	Article 5(h): Persecution.....	114
e)	Article 5(i): Other Inhumane Acts (Forcible Transfer).....	117
<b>(D)</b>	<b>ARTICLE 3, VIOLATIONS OF THE LAWS OR CUSTOMS OF WAR.....</b>	<b>117</b>
1.	THERE WAS A NEXUS BETWEEN THE MURDER AND AN ARMED CONFLICT .....	118
2.	THE VICTIM OR VICTIMS WERE PERSONS TAKING NO ACTIVE PART IN HOSTILITIES .....	119
<b>(E)</b>	<b>MODE OF INDIVIDUAL CRIMINAL RESPONSIBILITY: ARTICLE 7(1), DIRECT CRIMINAL RESPONSIBILITY .....</b>	<b>119</b>
a)	“committed” .....	121
b)	“planned” .....	121
c)	“instigated” .....	121
d)	“ordered” .....	123
e)	“aided and abetted” .....	123
f)	Joint Criminal Enterprise.....	125
<b>VII.</b>	<b>CONCLUSION .....</b>	<b>127</b>
	<b>TABLE OF ABBREVIATIONS USED IN THE PRE-TRIAL BRIEF .....</b>	<b>128</b>

## I. INTRODUCTION

1. The Army of the Republika Sprska (“VRS”) launched a major offensive operation against the Srebrenica and Žepa enclaves in July 1995. The purpose was twofold: to separate the enclaves and thereby stop the 28<sup>th</sup> Division of the Army of Bosnia and Herzegovina (“ABiH”) from launching attacks from the enclaves; and to force the Bosnian Muslim population into the urban areas around the towns of Srebrenica and Žepa, thereby creating a humanitarian disaster which would force the Bosnian Muslim population to leave the Srebrenica and Žepa enclaves.
2. On 9 July 1995, with the ABiH collapsing and the United Nations forces failing to mount any serious obstacle to the VRS attack, the VRS proposed expanding the operation to take over the entire Srebrenica enclave. The same day, General Zdravko **TOLIMIR** issued a communication to VRS Generals Gvero and Krstić at the forward command post for the Srebrenica operation, in which he explained that President Karadžić had agreed to change the objective of the attack to include the take-over of Srebrenica.<sup>1</sup> Two days later, on 11 July 1995, Bosnian Serb forces took over the Srebrenica enclave. Over the next few days, they systematically destroyed a community of well over 30,000 Bosnian Muslims through forcible transfers and wide-scale murders.
3. On 12 and 13 July 1995, the Bosnian Serb authorities completed the forcible transfer of over 20,000 Bosnian Muslim refugees from the Srebrenica enclave to territory held by the ABiH.
4. From 13 July through until at least 23 July 1995, the Bosnian Serb military and police forces murdered over 7,000 Bosnian Muslim men and boys who were either separated from their families in Potočari or captured whilst attempting to flee from the enclave to ABiH-held territory. Murders of Bosnian Muslims trying to flee from the Srebrenica enclave to ABiH-held territory continued until approximately 1 November 1995. As of 3 June 2008, 4,575 of these murder victims have been identified in Srebrenica-related mass graves.<sup>2</sup>

<sup>1</sup> VRS Main Staff Order 12/46-501/95, Conduct of Combat Operations around Srebrenica, dated 9 July 1995.

<sup>2</sup> Confidential Report from the International Commission for Missing Persons containing DNA matching information regarding persons who were reported missing after the fall of Srebrenica in July 1995, 3 July 2008 (ERN: D000-2372-D000-2372) (“ICMP 3 July 2008 Report”). This report shows a total of 5195 individuals identified in Srebrenica-related graves. From this total, the Prosecution has subtracted 620 individuals whose remains were identified on the surface: See BiH Federal Commission for Missing Persons letter from 28 December 2007 with attached tables, which include data of surface remains,

5. The forcible transfers and murders demanded a high degree of co-ordination on the part of the Bosnian Serb authorities. The forcible transfer operation alone required hundreds of vehicles and thousands of litres of scarce fuel. The VRS security organs played the central role in co-ordinating the forcible transfer of the Bosnian Muslim population and the murder of the able-bodied men, and securing the necessary human and material resources to carry out these operations.
6. The VRS security organs, under the direction of General Zdravko **TOLIMIR**, oversaw and managed these operations under the orders of their commanding officers, who included the Commander of the Main Staff of the VRS, General Ratko Mladić, and the Supreme Commander, Radovan Karadžić. The Ministry of Interior (“MUP”) supported the operations by providing additional troops and assets, as did the local Bosnian Serb civilian authorities.
7. During the time period relevant to the events described in the Indictment, Zdravko **TOLIMIR** was the Assistant Commander for Intelligence and Security Affairs of the VRS Main Staff.<sup>3</sup> In this position, **TOLIMIR** was the head of the Main Staff Sector for Intelligence and Security Affairs, and was one of seven Assistant Commanders who reported directly to the Commander of the Main Staff, General Ratko Mladić.
8. The Accused Zdravko **TOLIMIR** and others, including President Radovan Karadžić, General Ratko Mladić, General Milan Gvero, General Radivoje Miletić, General Radislav Krstić, Colonel Ljubiša Beara, Lt. Colonel Vujadin Popović, Colonel Vinko Pandurević, Colonel Vidoje Blagojević, Major Dragan Obrenović and Major Dragan Jokić were among the most powerful individuals responsible for these crimes. VRS brigade security officers Captain Momir Nikolić, Lt. Drago Nikolić and Captain Milorad Trbić also played significant roles in the commission of the crimes charged in the Indictment. Each was an integral participant in a campaign of terrorisation, expulsion and murder.
9. As the Prosecution will prove, the crimes charged would not have been possible without the active involvement and support of the command, staff, security organs, soldiers and resources of the VRS Main Staff, Drina Corps, Bratunac Brigade, Zvornik Brigade and the MUP police forces.

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discovered between 1996 and May 2007, related to the fall of Srebrenica in 1995 (ERN: X018-9696-X018-9781). See also *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T (“*Popović Trial*”), 5 November 2008, cross-examination of Professor Dušan Dunjić, T.27868-27873.

<sup>3</sup> Also known as Chief of Administration for Intelligence and Security Affairs.

## II. GENERAL FACTUAL ALLEGATIONS

### (A) BACKGROUND TO THE CONFLICT AND THE BEGINNING OF ETHNIC CLEANSING

10. As early as 1992, Bosnian Serb authorities expressed their clear intention to separate the Bosnian Muslim and Bosnian Croat populations from the Bosnian Serb population in Bosnia. This policy of forcible removal of the Bosnian Muslim and Bosnian Croat populations, known as “ethnic cleansing”, became the driving force upon which much of the RS military activity was based. This was particularly true in the area of Eastern Bosnia known as the Birač region, where Srebrenica was located. The area around Srebrenica was also known as the “Podrinje” and the “Drina River Valley.”
11. On 12 May 1992, Momčilo Krajišnik, President of the RS National Assembly, executed the following “*Decision on Strategic Objectives of the Serbian People in Bosnia and Herzegovina*”, which was published in the Official Gazette of the Republika Srpska on 26 November 1993:

The strategic objectives or priorities of the Serbian people in Bosnia and Herzegovina are to:

1. Establish State borders separating the Serbian people from the other two ethnic communities.
  2. Set up a corridor between Semberija and Krajina.
  3. Establish a corridor in the Drina river valley, that is, eliminate the Drina as a border separating Serbian States.
  4. Establish a border on the Una and Neretva rivers.
  5. Divide the city of Sarajevo into Serbian and Bosnian Muslim parts and establish effective State authorities in both parts.
  6. Ensure access to the sea for Republika Srpska.<sup>4</sup>
12. Strategic Objectives 1 and 3 reflected the policy to remove the Bosnian Muslim population from the Drina Valley region. These objectives were largely completed with the removal of the Bosnian Muslim population from the Srebrenica and Žepa enclaves in July 1995. Only the Goražde enclave survived intact until the end of the war.
13. After armed conflict erupted in the Republic of Bosnia and Herzegovina (“BiH”) in the spring of 1992, Bosnian Serb and Yugoslav National Army (“JNA”) military and paramilitary forces attacked and occupied cities, towns and villages in the eastern part of the country, including Bijeljina and Zvornik, and participated

<sup>4</sup> Minutes of the 16th Session of the Assembly of the Serbian People in BH held on 12 May 1992 in Banja Luka (ERN: 0084-7711-0084-7761 (BCS); 0091-3501-0091-3562 (Eng)); RS Decision 386 02-130/92 from Official Journal 1993 (ERN: 0114-6063-0114-6063 (BCS); 0114-6063-0114-6063-ET).

in an ethnic cleansing campaign which resulted in the mass flight of Bosnian Muslim civilians to enclaves in Srebrenica, Goražde and Žepa.

14. After driving the Bosnian Muslim population from Bijeljina and Zvornik in the spring of 1992, the Bosnian Serb forces continued their advance southward and targeted the Bosnian Muslim communities between Zvornik and Bratunac. Bosnian Muslim forces in the area engaged the Serb forces and by late 1992 had made significant gains in the areas around Srebrenica and Bratunac.
15. On 19 November 1992, General Ratko Mladić, the Commander of the VRS Main Staff, issued Operational Directive 4.<sup>5</sup> This Directive, in part, ordered the Drina Corps to:

[I]nflct the heaviest possible losses on the enemy, and force him to leave the Birač, Žepa and Goražde areas *together with the Bosnian Muslim population*. First, offer the able-bodied and armed men to surrender, and if they refuse, destroy them (emphasis added).<sup>6</sup>

16. In the spring of 1993, the successful advance of the Bosnian Serb forces in this area drove the Bosnian Muslim population southward, where they crowded into the town of Srebrenica and the surrounding villages and hamlets. Prior to the war, at the time of the 1991 census, the Srebrenica municipality had a population of 37,000, of which 73% were Bosnian Muslims and 25% were Bosnian Serbs.<sup>7</sup> By March 1993, the number of residents and refugees totalled roughly 50,000 to 60,000 people.<sup>8</sup>
17. Overcrowding, a lack of basic food and necessities and attacks by the VRS on the Bosnian Muslim population produced dire living conditions in the Srebrenica area. On two occasions in March 1993, Bosnian Muslims desperate to escape their inhumane circumstances by boarding empty UNHCR trucks, died as a result of stampedes to the trucks and exposure. In April 1993, in response to the situation, the United Nations passed United Nations Resolution 819, which declared the enclave a “safe area”.<sup>9</sup> Resolution 819 was designed to create a

<sup>5</sup> VRS Main Staff Order 02/5-210, Operational Directive No.4, 19 November 1992 (ERN: 0087-6272-0087-6287 (BCS); 0190-0424-0190-0431(Eng)).

<sup>6</sup> *Id.*

<sup>7</sup> Report of the Secretary-General Pursuant to General Assembly Resolution 53/35: The fall of Srebrenica, UN Doc.A/54/549, 15 November 1999, para.33 (“Secretary-General’s Report”) (ERN: 0090-7954-0090-8066).

<sup>8</sup> Secretary-General’s Report, para.37.

<sup>9</sup> Resolution 819 (1993) adopted by the Security Council at its 3199<sup>th</sup> meeting on 16 April 1993 (“Resolution 819”), S/RES/819 (1993).

demilitarised area for Srebrenica town and the surrounding villages and hamlets.<sup>10</sup> Shortly thereafter, lightly armed United Nations Protection Force (“UNPROFOR”) troops arrived in Srebrenica.

18. The enclave, however, was never completely demilitarised. The 28<sup>th</sup> Division of the ABiH, led by Naser Orić, regularly led raids on the outlying Bosnian Serb villages surrounding the enclave to gather food, supplies and weapons and in an organized effort to tie down VRS units from the Sarajevo front.<sup>11</sup>
19. On 8 March 1995, Radovan Karadžić issued Operational Directive 7.<sup>12</sup> In this Directive, Karadžić directed the VRS (specifically the Drina Corps) to:
 

[C]omplete the physical separation of the Srebrenica and Žepa enclaves as soon as possible, preventing even communication between individuals between the two enclaves. By planned and well-thought-out combat operations, create an unbearable situation of total insecurity, with no hope of further survival or life for the inhabitants of Srebrenica or Žepa.<sup>13</sup>
20. This Directive was a clear order to deprive the Bosnian Muslim population of Srebrenica and Žepa of the necessities for survival and to create a humanitarian disaster that would force the Bosnian Muslim population to leave Srebrenica and Žepa in order to survive.
21. From March 1995 through July 1995, the VRS deliberately restricted the delivery of supplies, materials and men to the UNPROFOR units in the Srebrenica and Žepa enclaves, which limited UNPROFOR’s ability to function effectively.<sup>14</sup> During this period, the VRS also deliberately restricted humanitarian aid and relief supplies to the Bosnian Muslim inhabitants of Srebrenica and Žepa as part of the organised effort to make life impossible for the Bosnian Muslims and remove them. Zdravko **TOLIMIR**, General Ratko Mladić, General Radivoje Miletić and other officers and personnel of the Main Staff played a central role in organising and facilitating the effort to restrict supplies to UNPROFOR and aid to the

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<sup>10</sup> *Id.*

<sup>11</sup> See 28th Infantry Division Situation Report No. 04-114/95, 30 June 1995 (ERN: 0084-2157-0084-2158 (BCS); 0088-2838-0088-2839 (Eng)).

<sup>12</sup> VRS Main Staff Order 2/2-11, Operational Directive 7, 8 March 1995 (ERN: 0082-3159-0082-3182 (BCS); 0081-7121-0081-7135 (Eng)).

<sup>13</sup> *Id.*

<sup>14</sup> *Popović* Trial, 27 September 2006, evidence of Leendert Van Duijn, T.2260-2263; 16 October 2006, evidence of witness Robert Franken, T.2445–2450; 26 October 2006, evidence of Eelco Koster, T.3033-3035; 29 November 2006, evidence of witness Johannes Rutten T.4807-4808; 29 November 2007, evidence of witness Cornelis Nicolai, T.18452-18459. See also UNPROFOR Sector Sarajevo Weekly Situation Report of Civil Affairs Officer David Harland, 3 June 1995 (ERN: 0327-9228-0327-9232).

Bosnian Muslim population of the Srebrenica and Žepa enclaves, as will be described *infra*.

22. Continuing in March 1995 through the fall of the enclaves in July 1995, the VRS shelled and sniped various civilian targets in the Srebrenica and Žepa enclaves, as part of the effort to make life for the Bosnian Muslims in the enclaves impossible and thereby remove them.
23. On 3 June 1995, VRS forces attacked United Nations observation post (“OP”) Echo as a prelude to the major attack on the enclave.<sup>15</sup> On 2 July 1995, the Drina Corps issued an operational order for an attack on the Srebrenica enclave entitled “Krivaja 95”. The order from General Milenko Živanović, Commander of the Drina Corps, stated that the attack on the enclave should result in “reducing the enclave to its urban area.”<sup>16</sup> The purpose of reducing the enclave to its urban area was to force the Bosnian Muslim population into the small town of Srebrenica and thereby create conditions in which it would be impossible for the entire Bosnian Muslim population to sustain itself, replicating the humanitarian disaster of 1993, and thus require its departure from the area.
24. On 2 July 1995, the size of the Srebrenica enclave was approximately 58 square kilometres. The urban area of the enclave was about two square kilometres. Large numbers of the Bosnian Muslim population of the enclave lived outside the urban area of Srebrenica prior to 2 July 1995.
25. The attack on the Srebrenica enclave had two additional, legitimate military objectives: to ensure demilitarisation of the enclave, thereby preventing the 28<sup>th</sup> Division from attacking outside the enclave; and to completely sever all contact between the Srebrenica and Žepa enclaves. However, the larger objective to create conditions making life impossible for the inhabitants of Srebrenica and Žepa, with the intention for complete elimination of the enclaves, amounted to a serious violation of international criminal law. The presence of a legitimate military motive cannot, and does not, negate the highly illegal objective to forcibly drive out the civilian population.

<sup>15</sup> Bratunac Brigade report no. 433-1 entitled “Analysis of the combat readiness of the 1.BrIpbpr from 1 January-30 June 1995,” 4 July 1995 (ERN: 0067-5739-0067-5772 (BCS); 0071-6533-0071-6554 (Eng)).

<sup>16</sup> Drina Corps Command Order 04/156-2, Operations Order No.1, 2 July 1995 (ERN: 0088-3593-0088-3602 (BCS); 0084-7289-0084-7294 (Eng)).

**(B) THE ATTACK ON AND FALL OF THE SREBRENICA ENCLAVE**

26. On 6 July 1995, units of the VRS Drina Corps launched an attack upon the Srebrenica safe area. The attack included the shelling of civilians and civilian targets in the enclave. On 9 July 1995, the VRS proposed expanding the operation to take over the entire Srebrenica enclave. Zdravko **TOLIMIR** communicated President Karadžić's agreement with the VRS's proposal to Generals Gvero and Krstić and various VRS commands in a communication dated 9 July 1995.<sup>17</sup>
27. On 10 July 1995, RS MUP police forces under the command of Ljubiša Borovčanin were sent to the Srebrenica area by Tomislav Kovač, the RS MUP Staff commander, to reinforce the operation against Srebrenica.<sup>18</sup>
28. Srebrenica fell to the Bosnian Serb forces on 11 July 1995.<sup>19</sup>

Late in the afternoon of 11 July 1995, General Mladić, accompanied by General Živanović (then Commander of the Drina Corps), General Krstić (then Deputy Commander and Chief of Staff of the Drina Corps, in operational command of the attack on Srebrenica) and other VRS officers, took a triumphant walk through the empty streets of Srebrenica town.<sup>20</sup>

29. At one point during his walk through Srebrenica, General Mladić turned to the TV camera following him and stated:

Here we are, on 11 July 1995, in Serb Srebrenica. On the eve of yet [another] great Serb holiday, we give this town to the Serb people as a gift. Finally, after the Rebellion against the Dahis, the time has come to take revenge on the Turks in this region.<sup>21</sup>

30. The Bosnian Muslims who were in Srebrenica after the beginning of the VRS attack took two courses of action. One group of thousands of women, children and men fled to the UNPROFOR compound in Potočari, located within the enclave of Srebrenica, and sought the protection of the UNPROFOR Dutch Battalion ("DutchBat") based there. These refugees remained in and around Potočari from 11 July until 13 July 1995. A second group of approximately 15,000 Bosnian Muslim men, with some women and children, gathered at Šušnjari village, approximately seven kilometres northwest of Srebrenica, during the

<sup>17</sup> VRS Main Staff Order 12/46-501/95, 9 July 1995 (ERN: 0086-9096-0086-9096 (BCS); 0089-2590-0089-2590 (Eng)).

<sup>18</sup> RS MUP Order 64/95, signed by Tomislav Kovač, 10 July 1995 (ERN: 0216-3049-0216-3050 (BCS); 0306-3289-0306-3289 (Eng)).

<sup>19</sup> Secretary-General's Report, para.304.

<sup>20</sup> See *The Prosecutor v. Radislav Krstić, Judgement*, Case No.IT-98-33-T, 2 August 2001 ("Krstić Trial Judgement"), para.36.

<sup>21</sup> Video compilation of Srebrenica-related footage from 1995 (ERN: V000-4458).

evening of 11 July 1995 and fled, in a huge column, through the woods towards Tuzla. Approximately one-third of this group consisted of armed Bosnian Muslim military personnel, most of whom were located towards the front of the column. The rest were unarmed military personnel and civilians.

31. By the evening of 11 July 1995, approximately 20,000 to 25,000 Bosnian Muslim refugees were gathered in Potočari. Late in the evening of 11 July 1995, or in the early morning of 12 July 1995, President Karadžić, General Mladić, General Krstić and others developed a plan to forcibly transfer to Kladanj (approximately fifty-five kilometres northwest of Srebrenica) the Bosnian Muslim women and children from the Srebrenica enclave, and to execute the roughly 1,000 Bosnian Muslim men and boys who had fled to Potočari seeking the protection of UNPROFOR.
32. The Bosnian Muslims who sought shelter at the UN base in Potočari were terrorised by members of the VRS and the MUP. Beginning in the early afternoon of 12 July, the Serb forces began the process of transporting the Bosnian Muslim population from Potočari. VRS and MUP personnel separated the Bosnian Muslim men and some boys from the women and children. The women and children were transported by buses and trucks under the control of the VRS to areas outside the enclave.<sup>22</sup>

Within a few days, approximately 25,000 Bosnian Muslims, most of them women, children and elderly people who were living in the area, were uprooted and, in an atmosphere of terror, loaded onto overcrowded buses by the Bosnian Serb forces and transported across the confrontation lines into Bosnian Muslim-held territory.<sup>23</sup>
33. The separation of men from their families was overseen by, *inter alia*, VRS security officers Colonel Vujadin Popović, the Drina Corps Assistant Commander for Security, and Captain Momir Nikolić, the Bratunac Brigade Assistant Commander for Intelligence and Security. Colonel Radoslav Janković, Main Staff Intelligence Administration, and Lt. Colonel Svetozar Kosorić, the Drina Corps Chief of Intelligence, were also in Potočari during this period.
34. On 12 and 13 July, the men and boys who had been separated from their families in Potočari by the VRS and MUP personnel were detained in and around Potočari

<sup>22</sup> “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.” *Krstić Trial Judgement*, para.48.

<sup>23</sup> *Krstić Trial Judgement*, para.1.

before being transported to temporary detention sites in Bratunac, ten kilometres north of Srebrenica, to await transfer to various execution sites.

35. On 13 July, the soldiers of the 28<sup>th</sup> Division who, along with large numbers of civilians, tried to escape to BiH territory through the forest, were met by RS MUP forces who had been deployed along the Bratunac-Konjević Polje road in order to intercept them. Some of the armed members of the retreating column of Bosnian Muslims engaged in combat with the Bosnian Serb forces, which were supported by armoured personnel carriers, tanks, artillery and anti-aircraft guns. Thousands of Bosnian Muslims from the column were captured by, or surrendered to, the Bosnian Serb forces. Over 6,000 Bosnian Muslim prisoners captured on 13 July were transported to temporary detention sites in Bratunac and Kravica, where they awaited transfer to various execution sites in the Zvornik area.
36. Beginning on 12 and 13 July 1995, and continuing through until about 1 November 1995, VRS and MUP forces executed more than 7,000 Bosnian Muslim men and boys who were separated from their families in Potočari or captured from the column of Bosnian Muslim men retreating from Srebrenica. These were organised, large-scale and systematic executions. Colonel Ljubiša Beara, Chief of the Main Staff Security Administration, was tasked with the organisation of these large-scale and systematic executions. He was assisted in this task by, *inter alia*, Lt. Colonel Vujadin Popović, Captain Momir Nikolić, Lt. Drago Nikolić, Chief of Security for the Zvornik Brigade, and Captain Milorad Trbić, Administrator for Security for the Zvornik Brigade.
37. In addition to these organised, large-scale and systematic executions, a number of Bosnian Muslim men were murdered by Bosnian Serb forces during the forcible transfer operation at sites in Potočari, Kravica and Bratunac. Men were also murdered at detention sites in the Zvornik Brigade area of responsibility where they were being detained prior to the large-scale and systematic executions. These “opportunistic” killings were the natural and foreseeable result of both the forcible transfer operation and the organised murder operation.
38. During and after the opportunistic killings and organised executions, VRS forces participated in a systematic and comprehensive effort to conceal these crimes by burying the bodies of the victims *en masse* in isolated locations scattered over a wide area. When it became apparent that the international community had learned of the killings and executions arising from the attack on the Srebrenica safe area,

VRS forces engaged in a second attempt to conceal the killings by exhuming the bodies from the initial mass grave sites and transferring them to secondary grave sites in more remote areas. In total, at least 17 primary gravesites and 37 secondary gravesites were utilised. The reburial operation was organised and facilitated by VRS security officers Ljubiša Beara, Vujadin Popović, Momir Nikolić, Drago Nikolić and Milorad Trbić.<sup>24</sup>

39. Through a combination of mass executions, opportunistic killings and forcible transfers, VRS and MUP personnel deliberately and systematically eliminated the Bosnian Muslim population of the Srebrenica enclave. These crimes were committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.
40. As described in the Indictment, Zdravko **TOLIMIR** participated, with others, in two Joint Criminal Enterprises, whose objectives and common purposes were to: (1) forcibly transfer or deport the Bosnian Muslim population from the Srebrenica and Žepa enclaves;<sup>25</sup> and (2) capture, detain, summarily execute and bury thousands of able-bodied Bosnian Muslim men and boys from the Srebrenica enclave. Zdravko **TOLIMIR** and other members of the Joint Criminal Enterprises described in the Indictment are responsible for these crimes. Each member of the JCEs participated in the planning, instigating or ordering of each of these crimes, or otherwise aided and abetted in their planning, preparation or execution.

**(C) OVERVIEW & STRUCTURE OF THE VRS MAIN STAFF**

41. Within the hierarchy of the Army of the Republika Srpska, the VRS Main Staff directed the operations of the subordinate units. Key personalities from the Main Staff involved in the crimes charged in the Indictment include: Colonel-General Ratko Mladić, Commander of the Main Staff; Lieutenant-General Colonel

<sup>24</sup> *Popović* Trial, 27 September 2007, evidence of witness PW-168, T.15922-15928; 29-30 August 2007, evidence of Damjan Lazarević, T.14429-14534. See also VRS Main Staff Order 03/ 4-2341, 14 September 1995 (ERN: 0082-2150-0082-2150 (BCS); 0084-4368-0084-4368 (Eng)); and 1<sup>st</sup> Bratunac Brigade notes of Command Staff meeting, 16 October 1995, p.11. Momir Nikolić reported that his Brigade was involved in “asanacija” on the orders of the VRS Main Staff (ERN: 0067-1466-0067-1529 (BCS); 0070-6671-0070-6671 (Eng)).

<sup>25</sup> For the avoidance of doubt, the Prosecution alleges that the entire Bosnian Muslim population was forcibly transferred or deported from the Srebrenica and Žepa enclaves, including those Bosnian Muslims who were bused out of the Srebrenica and Žepa enclaves; Bosnian Muslims who fled the Srebrenica enclave through the woods as part of the column; Bosnian Muslims who fled the Žepa enclave and crossed the Drina River into Serbia; and Bosnian Muslims who were taken prisoner in Potočari, the woods or along the Bratunac-Konjević Polje-Milići road, and forcibly transferred to detention and execution sites in the Bratunac and Zvornik areas.

Manojlo Milovanović, Chief of the Main Staff; the Accused Major-General Zdravko **TOLIMIR**, Assistant Commander for Intelligence and Security Affairs; Major-General Radivoje Miletić, Deputy Chief of the Main Staff and Chief of Operations; Lieutenant-Colonel General Milan Gvero, Assistant Commander for Moral, Religious and Legal Affairs; Colonel Ljubiša Beara, Chief of the Main Staff Security Administration; Colonel Petar Salapura, Chief of the Main Staff Intelligence Administration; Colonel Radoslav Janković, Main Staff Intelligence Administration; Lieutenant Colonel Dragomir Keserović, Main Staff Security Administration; and Colonel Nedo Trkulja, Main Staff Operations Department, Chief of Armoured Units.

42. General Mladić relied on Generals Milovanović, **TOLIMIR**, Gvero and Miletić as his principal advisors. These were men Mladić could rely upon to ensure that his orders were carried out. During the war it was common for General Mladić to assign one of these trusted generals to actually oversee a particular military operation in the field. For example, during 1995, including in the months of June, July and August 1995, Mladić assigned General Milovanović to the Krajina area of Bosnia to deal with the major Croatian offensive operation that became known as "Operation Storm". General Gvero was assigned to oversee the Srebrenica operation on 9 July 1995 and was present at that time at the forward command post of Pribičevac, just south of Srebrenica. On 12 July, General **TOLIMIR** was assigned to oversee Žepa operations from a position in a forward command post in the village of Borike.
43. While each of these generals was carrying out his responsibilities in the field, General Miletić remained at the Main Staff HQ in Crna Rijeka and played a key role in coordinating and controlling the activities of the Main Staff and its subordinate units from the HQ. Generals Mladić, Milovanović, **TOLIMIR**, Gvero and Miletić were career JNA officers before the war in Bosnia. They knew each other well and worked closely together throughout the entire war. The VRS Main Staff was small, and its Assistant Commanders were frequently detached forward to command or oversee operations in the field.<sup>26</sup>

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<sup>26</sup> Minutes of the RS National Assembly's 52nd Session held on 6 August 1995 (ERN: 0215-4171-0215-4296).

**(D) THE MAIN STAFF SECTOR FOR INTELLIGENCE AND SECURITY AFFAIRS**

44. As Assistant Commander for Intelligence and Security, **TOLIMIR** supervised both the Security Administration and the Intelligence Administration of this organ of the Main Staff.
45. The Security Organs had two primary responsibilities: counter intelligence and military police / criminal legal tasks. Counter intelligence responsibilities involved identifying threats to the RS and VRS from within the RS and VRS, such as plots to assassinate leaders, or any other threat that would undermine the safety and security of the RS and VRS from within. Military police tasks involved professional supervision of military police units and their activities including capture, detention and treatment of POWs and other issues relating to military police work. Criminal/legal tasks involved supervising and directing the investigation and prosecution of criminal conduct by VRS soldiers and officers.
46. The Intelligence Organs were primarily responsible for monitoring the enemy and collecting information on its movements and intentions and communicating that information to the command. Under instructions from General Mladić, intelligence and security organs at all levels were to spend approximately 80% of their time in intelligence / counter intelligence work, and the remaining 20% in criminal/legal and military police tasks.<sup>27</sup>
47. The two most senior officers in the Main Staff Intelligence and Security Administrations were Colonel Ljubiša Beara, Chief of the Security Administration, and Colonel Petar Salapura, Chief of the Intelligence Administration. Officers under the supervision of Colonel Beara included Lt. Colonel Dragomir Keserović, Chief of Section for Military Police Affairs, and Major Dragomir Pećanac. Officers under the supervision of Colonel Salapura included Colonel Radislav Janković. As the superior of these officers, **TOLIMIR** could directly issue orders and commands to them, and could also pass on orders from his own superiors, President Karadžić and General Mladić. In turn, these officers would advise **TOLIMIR** on relevant issues, make proposals to **TOLIMIR**, carry out and supervise the implementation of **TOLIMIR**'s orders, and keep him informed about the activities related to the performance of their duties.

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<sup>27</sup> See VRS Main Staff order 18/20-414/94, 24 October 1994 (ERN: DA01-0961-DA01-0963 (BCS); 0308-9290-0308-9292 (Eng)).

48. The professional activities of the security organs at all levels of the VRS also fell within the purview of the Main Staff Sector for Intelligence and Security Affairs. Security organs were directly commanded by the commander of the unit or institution to which they were assigned; however, their professional activities were supervised their immediate superior security organ, and ultimately, by the Main Staff Sector for Intelligence and Security Affairs.<sup>28</sup> For example, Colonel Beara, as Chief of the Security Administration, supervised the work of the Drina Corps security organ (led by Vujadin Popović), which in turn supervised the security organs of the Zvornik and Bratunac Brigades (led by Drago Nikolić and Momir Nikolić, respectively), which in turn supervised the security organs of their battalions. Through this professional supervision, the Main Staff Sector for Intelligence and Security Affairs led and governed much of the work of lower-level security organs.<sup>29</sup>
49. None of the crimes charged in the Indictment involved intelligence or counter intelligence work in any way. The crimes in the Indictment related to the treatment of prisoners and detainees involved military police work and the associated tasks of capturing, detaining and treating prisoners. As such, these tasks fell within the defined responsibility of the security organs in directing and overseeing the work of the military police in dealing with prisoners. The Commanders of the VRS from General Mladić commanding General **TOLIMIR** and Colonel Beara, General Krstić commanding Lt. Colonel Popović, Colonel Pandurević and Major Obrenović commanding Drago Nikolić and Colonel Blagojević commanding Momir Nikolić, ordered or passed on orders to their respective security officers to carry out the job of transporting, detaining and executing thousands of Muslim prisoners.

**(E) OVERVIEW & STRUCTURE OF THE DRINA CORPS AND ZVORNIK, BRATUNAC AND ROGATICA BRIGADES**

*The Drina Corps*

50. The Drina Corps, one of six corps units making up the VRS, was formed in 1992. Its headquarters were established at Vlasenica, 28.5 km northwest of Srebrenica.

<sup>28</sup> See VRS Main Staff order 18/20-414/94, 24 October 1994 (ERN: DA01-0961-DA01-0963 (BCS); 0308-9290-0308-9292 (Eng)). See also Richard Butler, *VRS Main Staff Command Responsibility Report*, 9 June 2006, para.2.15 (“Butler Main Staff Report”) (ERN: 0600-6255-0600-6283-BCST; 0600-6255-0600-6283 (Eng)). See also *Blagojević Trial*, 10 June 2004, evidence of Dragomir Keserović, T.10628; and *Popović Trial*, 14 January 2008, evidence of Richard Butler, T.19635-19636.

<sup>29</sup> *Popović Trial*, 12-13 September 2007, evidence of Milomir Savčić, T.1526:20-21.

The Corps Command and its eight subordinate brigades, the officers of which were made up primarily of former JNA personnel,<sup>30</sup> adopted structures and procedures directly from former JNA operating methodologies.<sup>31</sup> By 1995, the Drina Corps and its component units were an efficient and experienced military organisation, responsible for all combat operations within its area of responsibility.<sup>32</sup> After the fall of Srebrenica, the Drina Corps Command played an active part in coordinating the commission of crimes by two of its subordinate units, the Zvornik and Bratunac Brigades, including the forcible transfer of the Bosnian Muslim population and the killing of over 7,000 Bosnian Muslim men and boys.<sup>33</sup>

51. On the evening of 13 July 1995, General Radislav Krstić assumed command of the VRS Drina Corps from General Živanović.<sup>34</sup> Prior to this appointment, General Krstić was the Corps Chief of Staff, a position to which he was appointed in August 1994. Lieutenant Colonel Vujadin Popović was the Drina Corps' Assistant Commander for Security during the relevant period of July through November 1995.

***The Zvornik, Bratunac and Rogatica Brigades***

52. The Zvornik, Bratunac and Rogatica Brigades each operated within their respective zones of responsibility as the principal units for pursuing organised and integrated offensive and combat operations.<sup>35</sup> Orders were passed, and

<sup>30</sup> SRBH Main Staff Request 02/5-10, 26 May 1992 (ERN: 0091-6290-0091-6291(BCS); 0091-7180-0091-7181 (Eng)); 1st Krajina Corps Command Ops.466-4 & 466-4/1 (OTP English translation), 27 & 28 May 1992 (ERN: 0091-6292-0091-6300 (BCS); 0091-7182-0091-7188 (Eng)). The request asks for comments and submissions on the proposal of the Main Staff for reorganising the army (Army of the Serbian Republic of Bosnia Herzegovina ("SRBH"), later the VRS), and the 1<sup>st</sup> Krajina Corps Command responses recommend organising in the same manner as the JNA Corps was structured.

<sup>31</sup> Richard Butler, *VRS Corps Command Responsibility Report (Revised)*, 31 October 2002, section 2 ("Butler Corps Command Responsibility Report") (ERN: 0307-9270-0307-9308 (BCS); 0113-4250-0113-4289 (Eng)); Drina Corps Order 01/17-2, Combat Training in 1995, 12 January 1995 (ERN: 0068-4984-0068-5030 (BCS); 0084-7336-0084-7361 (Eng)); Drina Corps Order 01/4-218-1, "Shield 95", 29 November 1995 (ERN: 0063-2749-0063-2855 (BCS); 0069-6907-0069-7110 (Eng)). *See also*, 1st Krajina Corps Order 520-3, 20 June 1992 (ERN: 0090-0792-0090-0795 (BCS); 0300-7832-0300-7834 (Eng)).

<sup>32</sup> General Staff of the Armed Forces of SFRY, *Rules of Land Forces Corps (Provisional)*, (OTP English translation), 11 April 1990, para.5, (ERN: 0114-5728-0114-5932 (BCS); 0079-7104-0079-7232 (Eng)).

<sup>33</sup> Federal Secretariat for National Defence, *Regulations Regarding the Responsibility of Corps Command of the Ground Forces during Peacetime*, 1990, art.6 (ERN: 0114-7056-0114-7095 (BCS); 0090-9994-0091-0027 (Eng)) (noting that "the right to command units and institutions of the organic Corps (formation) is under the exclusive responsibility of the Commander"); 1<sup>st</sup> Bratunac Brigade Combat Report 03-253-94, 04 July 1995 (ERN: 0067-5415-0067-5418 (BCS); 0071-6500-0071-6500 (Eng)).

<sup>34</sup> Drina Corps Order 05/2-293, 13 July 1995 (ERN: 0202-8668-0202-8668 (BCS); 0300-7385-0300-7385 (Eng)).

<sup>35</sup> JNA General Staff, *Brigade Rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades) 1984*, ch.5, Combat Conditions (ERN: 0114-7096-0114-7391 (BCS); 0303-0230-0303-0415 (Eng)).

compliance reported, in accordance with long-established regulations adopted from the JNA. The brigades utilised communications technology linking each field unit to a central command. In the established military hierarchy, the Brigade Commander or, in his absence, the Chief of Staff, had primacy over all units within the Brigade, including the engineering unit, the security organ and each combat battalion.<sup>36</sup>

53. At the time, the Zvornik Brigade was the best-equipped brigade in the Drina Corps, consisting of approximately 4,300-4,700 personnel.<sup>37</sup> Its area of responsibility stretched from the Drina River west to the VRS/ABiH confrontation line (approximately 12 km), and from the Drinjača River in the south to Pilica in the north (more than 30 km), and included the area outside Zvornik where the Bosnian Muslim column engaged VRS forces after the fall of Srebrenica.<sup>38</sup>
54. Separate and apart from the ongoing combat activity, thousands of Bosnian Muslim prisoners, transported from the Bratunac area approximately 40 km to the south of Zvornik, were detained and executed at five known execution sites within the Zvornik Brigade area of responsibility. Vinko Pandurević was commander of the Zvornik Brigade at all times relevant to the Indictment.<sup>39</sup> However, from about 2 July through until midday on 15 July 1995, Pandurević was outside the zone of responsibility of the Zvornik Brigade commanding a Tactical Group which was part of the assault operations for both the Srebrenica and Žepa operations. During the absence of Pandurević, Chief of Staff and Deputy Commander, Major Dragan Obrenović, was in operative command of the Zvornik Brigade in the Zvornik Brigade zone of operations. The Chief of Security was Lieutenant Drago Nikolić. He worked in close cooperation with his subordinate, Captain Milorad Trbić, Administrator for Security.

<sup>36</sup> The security organ within the Brigade functioned under the Commander and was responsible for gathering and securing prisoners of war. Drina Corps Command Order 04/156-2, Operations Order No.1, 2 July 1995, p.7 (ERN: 0084-7289-0084-7294 (BCS); 0088-3593-0088-3602 (Eng)). Decisions regarding the detention and handling of prisoners, functions of the security organ, were within the power of Brigade Commanders. Drina Corps Order 03/156-11 (changed by hand to 03/156-12), 13 July 1995 (ERN: 0084-7295-0084-7296 (BCS); 0088-3603-0088-3605 (Eng)).

<sup>37</sup> See Richard Butler, *VRS Brigade Command Responsibility Report*, 31 October 2002 (ERN: 0307-9270-0307-9308 (BCS); 0113-4250-0113-4289 (Eng)).

<sup>38</sup> Map: Krivaja 95 (seized by OTP), (ERN: 0082-7577-0082-7578).

<sup>39</sup> Richard Butler, *Srebrenica Military Narrative (Revised)*, 1 November 2002, p.19 (hereafter "Butler Srebrenica Narrative") (ERN: 0307-2366-0307-2514 (BCS); 0113-4290-0113-4427 (Eng)).

***Temporary units in the Drina Corps zone***

55. In addition to the above-listed organic formations, it was not uncommon for the VRS to create temporary units or formations. Within the context of the former JNA, and by extension the VRS, there was an inherent flexibility to tailor command and control of specific units between organisations in order to effectively achieve the optimum military force required to deal with a situation in a given geographical area. This tailoring was accomplished through the practice of “resubordinating” units on a temporary basis (“privremeno potčinjavanje”). In most cases, this involved either the creation of “tactical” or “battle” groups, consisting of multiple formations under unified command, or simply the temporary resubordination of a formation from one headquarters to another.
56. Under these circumstances, the overall commander controlled the activities of these units, at least for the duration of the time and in the circumstances under which control was granted. Under these temporary groupings, command and control relationships were defined on a “case-by-case” basis.<sup>40</sup>
57. For the period of July 1995, four temporary command relationships pertaining to the VRS Drina Corps existed. These included temporary command relationships with units normally assigned to the Main Staff, *i.e.*, the 65<sup>th</sup> Motorized Protection Regiment<sup>41</sup> and the 10<sup>th</sup> Sabotage Detachment;<sup>42</sup> as well as the MUP police forces<sup>43</sup> and a temporary formation under the command of another Corps.<sup>44</sup> Each

<sup>40</sup> Federal Secretariat for National Defence, *Regulations Regarding the Responsibility of Corps Command of the Ground Forces during Peacetime*, 1990, art.6 (ERN: 0114-7056-0114-7095 (BCS); 0090-9994-0091-0027 (Eng)).

<sup>41</sup> See Butler Srebrenica Narrative at 24-25. (“The 65<sup>th</sup> Protection Regiment was one of the better-equipped and manned large formations of the VRS during the war. This unit, commanded by Lieutenant Colonel Milomir Savčić, was a direct holdover from the former JNA structure (being assigned directly to the Military District headquarters). On or about 15 July 1995, this unit is believed to have fallen under the control of the Commander of the Bratunac Brigade, and by extension, the Commander of the VRS Drina Corps.”)

<sup>42</sup> See Butler Srebrenica Narrative at 25. (“The 10<sup>th</sup> Sabotage Detachment was organised on 14 October 1994, as a VRS Main Staff asset for wartime sabotage and reconnaissance missions. In July 1995, the unit was commanded by Lieutenant Milorad Pelemiš. On 10-12 July 1995, both platoons of the 10th Sabotage Detachment participated with VRS Drina Corps units in the actual capture of Srebrenica. Later, elements of one platoon of the unit were present and participated in the executions of Bosnian Muslim men at the Branjevo Farm.”)

<sup>43</sup> MUP Cabinet of the Minister, Order No: 64/95, 10 July 1995 (ERN: 0216-3049-0216-3050 (BCS); 0306-3289-0306-3289 (Eng)). This order designated Ljubomir Borovčanin as the “Commander of the MUP units” which were sent to the Srebrenica sector, consisting of “2<sup>nd</sup> Special police detachment from Šekovići, the 1<sup>st</sup> company of the PJP of the Zvornik SJB, a mixed company of joint RSK, Serbian and RS MUP forces and a company from the training camp at Jahorina.”

<sup>44</sup> See VRS Main Staff strictly confidential order 03/4-1654, 15 July 1995 (ERN: 0340-1472-0340-1472); 1<sup>st</sup> Krajina Corps Order No. 264-1/95, 16 July 1995 (ERN: 0084-5119-0084-5120).

of these operated as a part of, and subordinate to, the VRS Drina Corps at various times in July 1995.

### **III. SUMMARY OF EVIDENCE REGARDING THE CHARGED CRIMES**

#### **(A) OPERATION TO MURDER THE ABLE-BODIED BOSNIAN MUSLIM MEN OF SREBRENICA**

58. The Srebrenica genocide was staggering in its dimensions. In terms of murdered victims alone, it was the largest killing operation in Europe since World War II. The genocide involved at least ten separate mass executions of over 7,000 men and boys, over one hundred opportunistic killings, a campaign of terrorisation, and the forcible transfer of thousands of Bosnian Muslims from their homes. In just a few days, Bosnian Serb forces irreparably destroyed the lives of over 30,000 Bosnian Muslim victims.

#### **1. Large-Scale & Organised Killings: 13 July 1995 through August 1995**

##### **a) 13 July Murders**

##### ***Jadar River***

59. At about 11:00 hours on 13 July 1995, a small squad of VRS and/or MUP soldiers captured approximately 16 Bosnian Muslim men from the column of men retreating from the Srebrenica enclave, near Konjević Polje, 21 km west of Bratunac, along the Bratunac-Konjević Polje road. After being stripped of their identification, clothing and money, interrogated and beaten by their captors, the prisoners were transported to an isolated area on the bank of the Jadar River and summarily executed.<sup>45</sup> The sole survivor was shot and fell into the river. The shooters continued to fire at him, but he was carried away by the current and managed to escape. The victim recognised one member of the execution squad, Nenad Deronjić, who was a member of the 2<sup>nd</sup> PJP Company from the Zvornik CJB.<sup>46</sup>

<sup>45</sup> See *Krstić* Trial, 23 May 2000, evidence of Witness S, T.3235-3292; admitted under Rule 92ter in the *Popović* Trial, 30 October 2006, evidence of Witness PW-112, T.3199-3292.

<sup>46</sup> There were nine public security centres (“Centar Javne Bezbjednosti” or “CJB”) throughout the RS in July 1995, one of which was based in Zvornik. The primary functions of the CJB related to law enforcement and public safety. As such, the municipal police force was part of the CJB structure. The municipal police force could also be mobilized for combat-related operations in so-called “separate police units” (“posebne jedinice policije” or “PJP”). These PJP units were separate from the MUP’s Special Police Brigade, an elite anti-terrorism and combat force deployed throughout Bosnia during the war.

### ***Cerska Valley***

60. At about 14:00 hours on 13 July 1995, VRS/MUP soldiers transported about 150 Bosnian Muslim men to an area along a dirt road in the Cerska Valley, about three kilometres from Konjević Polje. The buses were escorted by an armoured personnel carrier (“APC”) and an excavator. The VRS/MUP soldiers then summarily executed the prisoners and, using heavy equipment, covered them with dirt. A Bosnian Muslim male, who had fled with the column of men retreating from Srebrenica, witnessed the buses arriving and, some ten minutes later, heard the firing of light arms and machine guns echoing through the valley. After half an hour, the shooting stopped and the buses returned along the same road, empty of the Bosnian Muslim male prisoners. The APC followed immediately, while the excavator remained before returning in the same direction.<sup>47</sup>
61. In 1996, OTP investigators discovered a mass grave in the general area described by the witness. Upon exhumation in 1996, the grave was found to contain 150 male victims, 147 of which died as a result of gunshot wounds.<sup>48</sup> The number of victims found corroborates the account of the witness. Forty-eight ligatures were recovered from the grave, including 24 binding the arms of the victims behind their backs.<sup>49</sup> All victims were clad in civilian clothing. To date there have been 132 positive identifications of victims listed as missing from Srebrenica.<sup>50</sup> Evidence at the grave shows an excavator was used to bury the victims. There are no known survivors of this execution and the unit responsible for the executions has never been identified.

### ***Kravica Warehouse***

62. On 13 July 1995, between 1,000 and 1,500 Bosnian Muslim men surrendered<sup>51</sup> or were captured from the column and detained at the Sandići Meadow, 14.4 km west of Bratunac along the Bratunac-Konjević Polje road. During the afternoon of 13 July, these men were bussed and marched approximately 1.2 kilometres to the Kravica Warehouse. MUP units were present in Kravica at the time and

<sup>47</sup> *Krstić* Trial, 12 April 2000 evidence of witness M, 2736-2777; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T (“*Blagojević* Trial”), re-named witness P-109, (92bis (D) testimony admitted without cross-examination 12 June 2003); *Popović* Trial, re-named witness PW-120, transcript and exhibits accepted under Rule 92bis on 12 September 2006.

<sup>48</sup> See *Popović* Trial, 15 March 2007, evidence of William Haglund, T. 8910. See also reports by William Haglund entitled “Forensic Investigation of the Cerska Grave Site,” Volumes I-V (ERNs: 0149-3690-0149-3761; 0149-3762-0149-3977; 0149-3978-0149-4182; 0149-4183-0149-4377; and 0149-4378-0149-4607).

<sup>49</sup> *Id.*

<sup>50</sup> ICMP 3 July 2008 Report.

<sup>51</sup> *Popović* Trial, 8 February 2007, evidence of witness PW-156, T.7085–7093.

participated in the capture, detention and transfer of Bosnian Muslims to the Kravica Warehouse.<sup>52</sup>

63. Once the prisoners had been packed inside the warehouse, the MUP units outside, aided by members of the army, opened fire using guns and hand grenades.<sup>53</sup> Intensive shooting and grenade fire continued after nightfall. Men who tried to escape out the windows of the warehouse were shot. One survivor describes the incident as follows:

There were rifles, grenades, bursts of gunfire and it was -- it got so dark in the warehouse that we couldn't see anything. People started to scream, to shout, crying for help. And then there would be a lull, and then all of a sudden it would start again. And they kept shooting like that until nightfall in the warehouse.... And there was blood underneath and I couldn't take it any longer. I pulled a dead body over me, and this is how I remained for about 24 hours in the warehouse.<sup>54</sup>

The following night, this survivor crawled across the dead bodies covering the concrete floor and escaped from the warehouse.

64. Another survivor recalls that there was no space between the men inside the warehouse and that the atmosphere was filled with fear and panic.<sup>55</sup> He described the executions as follows:

When they opened fire I was lying down. Immediately I fell down on my stomach on the ground, and I don't know how long the shooting went on for. I continued to lie down. After some time there was a break, a pause; it was quiet. There was no more shooting. Then all I could hear were moans and shouts and people calling out the names of their parents, their close relatives, people who were still not dead. They had survived, they were alive, but they were heavily wounded, perhaps. And then during the night there were several such breaks. I continued to lie down. They would make a break, rest, then come in again and shoot. However they -- however long they wanted to. Then when they stopped they would just then throw in a series of hand-grenades inside through the windows, one of these bombs fell three or four metres close to me and it injured me.<sup>56</sup>

65. The accounts of the survivors of the Kravica Warehouse executions are corroborated by aerial images taken on 13 July 1995, which show two buses

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<sup>52</sup> See *Popović* Trial, 6, 7 and 8 February 2007, evidence of witness PW-111, T.6973-7068 and T.7143-7156. See also 9 July 2007, evidence of witness Milenko Pepić, T.13549:21-13560; 28 June 2007, evidence of witness Predrag Čelić, T.13477-13480; and 5-6 September 2007, evidence of witness PW-100, T.14780-14909.

<sup>53</sup> See *Popović* Trial, 8 February 2007, evidence of witness PW-156, T.7094-7097.

<sup>54</sup> *Krstić* Trial, 7-10 April 2000, evidence of Witness J, T.2463-2464. Witness J also testified on 8 February 2007 in the *Popović* Trial under the pseudonym PW-156, T.6970-7155.

<sup>55</sup> See *Popović* Trial, 7 February 2007, evidence of witness PW-111, T.6990-7003.

<sup>56</sup> *Id.*, T.7000:4-17.

parked at the Kravica Warehouse.<sup>57</sup> They are also corroborated by video footage taken by a journalist travelling in a car with RS MUP commander Ljubomir Borovčanin which shows a pile of dead bodies in front of the Kravica Warehouse in the afternoon of 13 July. Gunshots can be heard on the videotape as the bodies are filmed.<sup>58</sup>

66. These accounts are further corroborated by forensic investigations conducted at the warehouse, which revealed that small arms, machine guns and grenades inflicted substantial damage; indeed, such damage is readily apparent to the naked eye and is depicted in photographic evidence.<sup>59</sup> These investigations yielded samples of human tissue and blood, samples of explosive residue, shell cases, bullets, hand grenade handles and personal identification and belongings of victims.<sup>60</sup>
67. Evidence from Ostoja Stanojević, a Zvornik Brigade Engineering Company driver, also confirms the survivors' evidence of mass executions at the Kravica Warehouse. On 15 July 1995, Stanojević was ordered to take his truck to the Kravica Warehouse, where four men were loading bodies into a municipal truck using an excavator. Stanojević's truck was similarly loaded with bodies from the warehouse and he was then ordered to take the bodies to Glogova for burial. He made several trips between the Kravica Warehouse and Glogova that day.<sup>61</sup> The burials at Glogova were organised by Colonel Ljubiša Beara.<sup>62</sup>
68. An aerial image dated 17 July 1995 shows excavation work ongoing at the site of the Glogova mass graves.<sup>63</sup> Evidence indicating that burial work at Glogova continued through 19 July 1995 is found in a Bratunac Brigade Military Police

<sup>57</sup> Aerial images showing warehouse, 13 July 1995 (ERN: R041-0713-R041-0714).

<sup>58</sup> Video compilation of Srebrenica-related footage from 1995 (ERN: V000-4458).

<sup>59</sup> See, e.g., Photo of view of front of warehouse with circle made on west entrance and arrow indicating east (ERN: 0046-1251-0046-1251); panoramic photo of Kravica warehouse (ERN: 0219-8692-0219-8692); image of interior of warehouse (ERN: 0040-9927-0040-9927); image of inside west part of warehouse with blood stains on wall (ERN: 0040-9936-0040-9936); image of ceiling of west part with blood on ceiling (ERN: 0040-9693-0040-9693); image of inside east part of warehouse, with bullet holes in wall (ERN: 0040-9684-0040-9684); image of rear of warehouse with remnants of cornfield (ERN: 0219-8693-0219-8693); video of Kravica Warehouse area (ERN: V000-3123-V000-3123); photograph of live grenade found in front of the Kravica Warehouse (ERN: 0219-8694-0219-8694).

<sup>60</sup> A.D.Kloosterman, Statement and Report on Detection of Human Blood in Samples Collected from Grbavci School, Kravica Warehouse, and Pilica Dom, 20 December 1999 (ERN: 0091-2231-0091-2250 (BCS); 0090-8077-0090-8097 (Eng)); Dean Manning, Summary of Forensic Evidence - Execution Points and Mass Graves, 15 May 2000, Annex A, p.5 (ERN: 0096-7377-0096-7520 (BCS); 0095-0901-0095-1041 (Eng)) ("Manning, Summary of Forensic Evidence").

<sup>61</sup> *Blagojević* Trial, 4-5 December 2003, evidence of witness Ostoja Stanojević, T.5673-5702; admitted under Rule 92ter in the *Popović* Trial on 10 July 2007.

<sup>62</sup> See *Popović* Trial, 23 March 2007, evidence of witness PW-162, T.9368-T.9372.

<sup>63</sup> Aerial with excavation work on-going, 17 July 1995 (ERN: R041-0718-R041-0718).

Platoon orders book, which contains a notation that a Military Police detachment from the Brigade provided security to Bratunac municipal workers at Glogova on 19 July.<sup>64</sup> The mass gravesite at Glogova is located less than 400 metres from the former command post of the Bratunac Brigade.

***Sandići***

69. Throughout the day of 13 July 1995, Bosnian Muslim prisoners were captured and detained in the Sandići area by RS MUP forces. The prisoners were held at the Sandići Meadow, 14.4 km west of Bratunac along the road, until the late afternoon or early evening, when they were taken from the meadow to other locations, including the Kravica Warehouse.<sup>65</sup> By dark, there were approximately 10-15 Bosnian Muslim prisoners remaining at the Sandići Meadow. A MUP deputy platoon commander received and passed on an order to “eliminate” the remaining 10-15 prisoners. Shortly thereafter, the Bosnian Muslim prisoners were summarily executed.<sup>66</sup>

***Luke School near Tišća***

70. Throughout the day on 12 and 13 July 1995, VRS and/or MUP soldiers transported Bosnian Muslim women and children who had been separated from male members of their families in Potočari to the tiny village of Luke near the town of Tišća. Near Tišća, the VRS soldiers from the Vlasenica Brigade of the Drina Corps identified and separated some remaining Bosnian Muslim men and boys from their families and took them to the nearby Luke School, while the rest of the group had to walk the remaining few kilometres to ABiH-held territory.
71. On or about the evening of 13 July 1995 or the pre-dawn hours of 14 July 1995, VRS and/or MUP soldiers loaded approximately 25 Bosnian Muslim men at the Luke school onto a truck, drove them to an isolated pasture nearby and summarily executed them with automatic weapons.
72. One Bosnian Muslim witness survived this execution.<sup>67</sup> The survivor stated that on the morning of 13 July, in the vicinity of Tišća, he was taken off of a bus filled with women and children transported from Potočari. He was separated from his

<sup>64</sup> Bratunac Brigade Military Police Daily Log, 1-21 July 1995 (ERN: 0066-3910-0066-4145 (BCS); 0070-6682-0070-6701 (Eng)).

<sup>65</sup> *Popović* Trial, 2 November 2006, evidence of witness PW-127, T.3523-3548.

<sup>66</sup> *Popović* Trial, 5 September 2007, evidence of witness PW-100, T.14830-13835.

<sup>67</sup> *Krstić* Trial, 24-27 March 2000, evidence of Witness D, T.1244-1340; transcript admitted under Rule 92bis in the *Popović* Trial on 12 September 2006, appeared for cross-examination on 1-2 November 2006 under pseudonym PW-118, T.3403-3491.

family by Bosnian Serb soldiers and transported by these soldiers to the Luke elementary school, where his hands were bound.

73. The survivor stated that throughout the day of 13 July, more men were brought to the school in the same manner, amounting to a total of approximately 22 men by the end of the day. At nightfall, this group was brought inside the school into a classroom. There, approximately ten soldiers guarding the men began to interrogate and beat them. Shortly after midnight, the prisoners were loaded onto a truck by Bosnian Serb soldiers and driven to an isolated meadow nearby and removed from the truck, whereupon soldiers opened fire on the prisoners. The surviving witness managed to escape by freeing his hands from the ligature that bound them and then running into the adjacent forest.
74. Part of this survivor's testimony is corroborated by that of a DutchBat officer, Major Pieter Boering, who witnessed Bosnian Muslim men being separated from women and children on buses at Tišća during the day of 12 July and taken away by soldiers of the VRS. Major Boering recognised one of the VRS soldiers.<sup>68</sup> While the fate of the Bosnian Muslim men who Major Boering witnessed being separated near Tišća on 12 July is not known, the survivor of the 13 July execution near Tišća recalled his executioners being directed by a superior to take the prisoners "up there where they took the people before."<sup>69</sup>

**b) 14 July Murders**

***Movement of prisoners from Bratunac to the Zvornik area***

75. By the afternoon of 13 July 1995, the Bosnian Serb forces had in their custody thousands of Bosnian Muslim men who had surrendered in the areas of Nova Kasaba, Konjević Polje and Sandići. Later that afternoon, over 1,000 men were taken from Sandići to the Kravica Warehouse and executed there. Others were executed at Jadar River, Cerska and Sandići. The remaining men were taken from Nova Kasaba, Konjević Polje and Sandići to Bratunac, where they were detained in buses, trucks, the Vuk Karadžić School and the hanger behind the Vuk Karadžić School, along with the Bosnian Muslim men who had been brought to Bratunac after being separated from their families in Potočari.

<sup>68</sup> See Popović Trial, 22 September 2006, T.2022-2023.

<sup>69</sup> Krstić Trial, 24-27 March 2000, evidence of Witness D, T.1293; transcript admitted under Rule 92bis in Popović Trial, on 12 September 2006, appeared for cross-examination on 1-2 November 2006 under pseudonym PW-118, T.3403-3491.

76. In the late afternoon or evening of 13 July 1995, the senior VRS and RS command decided to transport these men to the Zvornik area, approximately 40 km to the north of Bratunac, for mass execution. It is the Prosecution's position that the VRS reached the decision to execute the Bosnian Muslim prisoners in the Zvornik area due to the difficulty of concealing such large executions in the Bratunac area, which had a large international presence including UN Military Observers, hundreds of Dutch UNPROFOR troops, and staff from UNHCR and Doctors Without Borders ("MSF").
77. Most of the Bosnian Muslim prisoners remained detained on buses and in schools throughout Bratunac town on the night of 13/14 July. However, the Zvornik Brigade MP vehicle log details that a Zvornik Brigade MP vehicle went to Orahovac on 13 July,<sup>70</sup> and according to survivor testimony, the first prisoners from Bratunac left on the evening of 13 July and arrived at the school in Orahovac late that night.<sup>71</sup> An intercepted conversation between President Karadžić and Miroslav Deronjić, President of the Bratunac SDS, on the evening of 13 July dealt specifically with the subject of ensuring that the thousands of Bosnian Muslim prisoners in Bratunac were moved to areas outside Bratunac.<sup>72</sup> Zvornik Military Police acknowledge that they were ordered to the school in Orahovac on the evening of 13 July to guard several hundred Bosnian Muslim prisoners there.<sup>73</sup> On the morning of 14 July, the vast majority of prisoners detained in and around Bratunac were transported in a huge convoy to the Zvornik area.<sup>74</sup>

***Orahovac (near Lažete)***

78. In the late evening hours of 13 July and during the day of 14 July 1995, personnel from the Military Police Company of the Zvornik Brigade and the Military Police Platoon of the Bratunac Brigade, with authorisation from Major Dragan Obrenović and under the supervision of security officers Ljubiša Beara, Vujadin Popović, Drago Nikolić and Milorad Trbić, all of whom were under orders from

<sup>70</sup> Vehicle Log for Opel Rekord P-4528, 1-31 July 1995 (ERN: 0069-4699-0069-4704 (BCS); 0087-5657-0087-5662 (Eng)).

<sup>71</sup> *Krstić* Trial, 13 April 2000, evidence of witness N, T.2819-2820. Witness N also testified on 1-2 November 2007 in the *Popović* Trial under the pseudonym PW-169, T.17327-17328.

<sup>72</sup> Intercept dated 13 July 1995, 20:10 hrs (ERN: 0072-7600-0072-7600).

<sup>73</sup> *See, e.g., Popović* Trial, 16-18 April 2007, evidence of witness Lazar Ristić, T.10062; 23-24 April 2007, evidence of witness Tanacko Tanić, T.100329; 7 May 2007, evidence of Milorad Birčaković, T.11024; 30 August 2007, evidence of Dragoje Ivanović T.14539; 22-23 February 2007, evidence of witness PW-101, T.7570-7572; 1 May 2007, evidence of witness Stanoje Birčaković, T.10743; 30 January 2007, evidence of witness PW-143, T.6827; and 29 January 2007, evidence of witness PW-142, T.6641.

<sup>74</sup> *Popović* Trial, 24 August 2006, evidence of witness PW-110, T.674-679.

their respective commands, organised and facilitated the transportation of hundreds of Bosnian Muslim males from in and around Bratunac to the school in Orahovac,<sup>75</sup> with knowledge that those prisoners were to be collected and summarily executed.

79. On the afternoon of 14 July 1995, mass executions of Bosnian Muslim prisoners took place at a field in the village of Orahovac, less than 5 km northwest of Zvornik. One survivor of this execution had been transported by Bosnian Serb soldiers from a detention site in Bratunac to the school in Orahovac during the night of 13 July and early morning hours of 14 July, along with approximately 1,000 other men who had been captured from the column or separated at Potočari. According to the witness, the masses of Bosnian Muslim male prisoners at the school were detained in the gym, guarded and blindfolded by Bosnian Serb soldiers who would occasionally shoot at the walls and ceiling in order to control their captives.<sup>76</sup>
80. In the late morning or early afternoon of 14 July, Zvornik Brigade Military Police officers removed at least two Bosnian Muslim prisoners from the school and summarily executed them by automatic rifle fire.<sup>77</sup>
81. According to one of the survivors, small groups of Bosnian Muslim prisoners were taken from the school by the VRS personnel, given water, blindfolded, loaded onto vehicles and transported a short distance by TAM military trucks to a nearby field.<sup>78</sup> There, VRS personnel, including members of the 4<sup>th</sup> Battalion of the Zvornik Brigade, ordered the prisoners off the trucks and summarily executed them with automatic weapons. Approximately 1,000 Bosnian Muslim males were killed.
82. This survivor and his group arrived at the field and he could see, by looking under his blindfold, dead men on the ground. The witness and his group were lined up and the firing began almost immediately. As he lay there pretending to be dead, he heard the other soldiers referring to their leader as “Gojko”. He recognised the voice of a Bosnian Serb former co-worker named Gojko Simić who, investigation

<sup>75</sup> *Popović* Trial, 8-9 November 2006, evidence of witness PW-138, T.3837-3844. PW-138 escorted a convoy to the Orahovac school with Popović on 14 July 1995.

<sup>76</sup> *Popović* Trial, 24 August 2006, evidence of witness PW-110, T.698– 699.

<sup>77</sup> *Popović* Trial, 24 August 2006, evidence of witness PW-110, T.703 (execution of two prisoners); 29 August 2006, evidence of Mevludin Orić, T.945-947 (execution of one prisoner); 1-2 November 2007, evidence of witness PW-169, T.17333-17334 (execution of one prisoner); 23 April 2007, evidence of Tanacko Tanić, T.10336 (who saw two dead bodies when he arrived at the Grbavci School).

<sup>78</sup> *Popović* Trial, 24 August 2006, evidence of witness PW-110, T.708-725.

has revealed, served in the Orahovac Company, 4<sup>th</sup> Battalion of the Zvornik Brigade.<sup>79</sup> At some time after nightfall, an excavator and a loader arrived, both with lights on. The witness subsequently heard the commotion surrounding the escape attempt of another Bosnian Muslim man, and during this commotion the witness made his own escape by moving into the woods.<sup>80</sup>

83. Two other surviving witnesses corroborate the first witness's account of the killings that day.<sup>81</sup> One of them recalled that he was transported, in a TAM military truck full of other Bosnian Muslim prisoners, from the school to a field. Almost immediately upon arrival, the soldiers opened fire on the rows of men. The witness was not hit, but he fell to the ground and remained still. He watched as truckload after truckload of Bosnian Muslim prisoners were unloaded and executed; this process continuing into the night. While the executions were in progress, the witness saw an excavator digging a mass grave. After the soldiers finished the killing operation, they left the field, and the surviving witness and another Bosnian Muslim man who had survived the executions made their way into the woods together.
84. The recollections of two surviving witnesses that Bosnian Serb soldiers fired shots in the gym of the Grbavci School are corroborated by bullet holes found in the gymnasium.<sup>82</sup> A blindfold found at the school further supports the parallel stories of these witnesses.<sup>83</sup>
85. Relevant documents, including Zvornik Brigade vehicle records from July of 1995, the Commander's Daily Orders Journal for the Engineering Company of the Zvornik Brigade, and the fuel disbursement log of the Zvornik Brigade, corroborate the accounts of the surviving witnesses that excavators, loaders and TAM military trucks were used in Orahovac on 14 and 15 July 1995.<sup>84</sup> According to these

<sup>79</sup> *Popović* Trial, 24 August 2006, evidence of witness PW-110, T.715-725. Simić's presence is corroborated by Milorad Birčaković, who saw him at the Orahovac school that day. See *Popović* Trial, 7-9 May 2007, evidence of witness Milorad Birčaković, T.11038-11040.

<sup>80</sup> *Popović* Trial, 24 August 2006, evidence of witness PW-110, T.712-725.

<sup>81</sup> *Popović* Trial, 28-31 August 2006, evidence of Mevludin Orić, T.859-1133; 1-2 November 2007, evidence of witness PW-169, T.17335-17342.

<sup>82</sup> Photograph of window showing bullet holes (ERN: 0040-9651-0040-9651); photograph of metallic ceiling showing bullet hole (ERN: 0040-9660-0040-9660).

<sup>83</sup> Photo of blindfold found at school (ERN: 0040-9890-0400-9890).

<sup>84</sup> Vehicle Log dated 14 July 1995 for Tam 75 (ERN: 0069-4993-0069-4993 (BCS); 0087-5949-0087-5950 (Eng)); Vehicle Log dated 14 July 1995 for Torpedo excavator (ERN: 0069-5032-0069-5032 (BCS); 0087-5991-0087-5992 (Eng)); Zvornik Brigade Engineering Log dated 15 July 1995 (ERN: 0082-2610-0082-2803 (BCS); 0084-6762-0084-6762 (Eng)); Vehicle Log for ULT 220 (ERN: 0069-5109-0069-5109 (BCS); 0087-6069-0087-6070 (Eng)); Vehicle Log for Mercedes 2626 truck (ERN: 0069-5101-0069-5101 (BCS); 0087-6065-0087-6068 (Eng)); Zvornik Brigade Vehicle Log for Rovakopac (C-3117) (ERN: 0069-5083-



99, *infra*, for discussion of the detention of Bosnian Muslim prisoners at the Ročević School.

88. Furthermore, a logbook entry from the Zvornik Brigade Rear Services Branch recording a food shipment to police in Orahovac late on the night of 13 July 1995 confirms the presence of the Military Police detachment at Orahovac during this period.<sup>92</sup> There was no combat activity at Orahovac at that time, nor was there any other legitimate military purpose justifying the presence of military police in this small hamlet on these dates.

### ***The Petkovci School***

89. On 14 July 1995, VRS and/or MUP personnel, under the supervision of security officers Ljubiša Beara and Vujadin Popović, transported approximately 1,000 Bosnian Muslim males from detention sites in and around Bratunac to the “new” school at Petkovci, near Zvornik. On the afternoon and evening of 14 July and during the early morning hours of 15 July 1995, VRS and/or MUP personnel struck, beat, assaulted and shot with automatic weapons Bosnian Muslim males detained at the Petkovci school.<sup>93</sup>
90. The recollection of a survivor that there was shooting inside the classroom in which he was held at the Petkovci School is supported by the finding of impacts on the blackboard, consistent with bullet ricochets.<sup>94</sup>

### ***The Petkovci Dam***

91. On the night of 14 July and the early morning hours of 15 July 1995, mass executions of Bosnian Muslim prisoners held at the Petkovci School took place at the Dam near Petkovci, approximately 7 km north of Zvornik. Two survivors of this execution recall that on 14 July 1995, they were transported by Bosnian Serb soldiers from detention sites in Bratunac to an elementary school near Petkovci

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677: Dutch Forensic Analysis Report, 15 November 1995 (ERN: 0090-2699-0090-2703 (BCS); 0090-2058-0090-2062 (Eng)).

<sup>92</sup> Zvornik Brigade Rear Services Delivery Book, 2 December 1994 to 31 December 1995 (ERN: 0114-8682-0114-8884 (BCS); 0092-2757-0092-2773 (Eng)). See also *Popović* Trial, 22-23 February 2007, evidence of PW-101, T.7547-7725.

<sup>93</sup> *Popović* Trial, 31 October 2006, evidence of witness PW-113, T.3331; 26 June 2007, evidence of witness Marko Milosević, T.13307; 16-17 May 2007, evidence of witness Ostoja Stanisić, T.11600– 11601 and 11608.

<sup>94</sup> Photograph of impacts on blackboard (ERN: 0219-8669-0219-8669).

along with approximately 1,000 other Bosnian Muslim male prisoners who had either been captured from the column or separated at Potočari.<sup>95</sup>

92. These survivors recall that they arrived at the school and were placed in a classroom packed with other prisoners.<sup>96</sup> During this time, the prisoners in the school were not given water, and men drank their own urine or the urine from the floor to sustain themselves.
93. After nightfall and continuing for several hours, soldiers began to take small groups of prisoners from the classrooms out to the front of the school. Bursts of gunfire could be heard emanating from outside the school. At some point around midnight on the night of 14 July, the many hundreds of remaining prisoners at the school were taken two by two and loaded onto a truck.<sup>97</sup>
94. After a short ride, the truck stopped sometime in the very early morning hours of 15 July 1995 at a place that one of the survivors later identified as the Dam near Petkovci. The Bosnian Muslim men were lined up outside the truck and Bosnian Serbs opened fire on the group. The evidence provided by the two survivors about the ordeal at the Petkovci School, as well as the location and method of the executions at the Dam, corroborate each other entirely.
95. The Petkovci Dam execution site and primary gravesite is located within the Zvornik Brigade zone of responsibility, and is less than two kilometres from the command post of the Zvornik Brigade's 6<sup>th</sup> Battalion.<sup>98</sup> Records from the Commander's Daily Orders for the Engineering Company of the Zvornik Brigade indicate that on 15 July, the Engineering Company was given the following assignments: Assignment #6, to work with an ULT (a large loader) in Petkovci; and Assignment #7, to work with an excavator in Petkovci.<sup>99</sup> Ostoja Stanišić, Commander of the 6<sup>th</sup> Battalion of the Zvornik Brigade, also had to release a truck to collect dead bodies from the Petkovci School following complaints by local residents.<sup>100</sup>

<sup>95</sup> *Blagojević* Trial, 21-22 July 2003, evidence of witness PW-111, T.1379-1426; admitted under Rule 92ter in the *Popović* Trial, on 31 October 2006. See also *Krstić* Trial, 14 April 2000, evidence of Witness P, T.2940-3014; admitted under Rule 92bis in the *Popović* Trial on 12 September 2006.

<sup>96</sup> *Blagojević* Trial, 21-22 July 2003, evidence of witness PW-111, T.1379-1426; admitted under Rule 92ter in the *Popović* Trial, on 31 October 2006.

<sup>97</sup> *Id.*

<sup>98</sup> *Popović* Trial, 16 May 2007, evidence of witness Ostoja Stanišić, T.11594:11-14; Map: Krivaja 95: military map seized by OTP (ERN: 0082-7577-0082-7578).

<sup>99</sup> Zvornik Brigade Engineering Company Daily Orders Log, 1-31 July 1995 (ERN: 0082-2610-0082-2803 (BCS); 0084-6748-0084-6819 (Eng)).

<sup>100</sup> *Popović* Trial, 16 May 2006, evidence of witness Ostoja Stanišić, T.11610-11611.

96. There was no combat activity in the vicinity of Petkovci on 15 July 1995, nor was there any other legitimate military purpose for the use of excavation equipment in that area on that date.<sup>101</sup> According to vehicle logs from the 6<sup>th</sup> Battalion of the Zvornik Brigade, a TAM military transport truck made four trips from the Dam to the Engineering Company headquarters during the day of 15 July, in order to provide personnel, fuel or other support to the operation.<sup>102</sup>

**c) 15 July Murders**

***Ročević School***

97. On or about 14 July 1995, Bosnian Serb soldiers detained approximately 1000 Bosnian Muslim males in the school in Ročević, three km south of Branjevo, and 17 km north of Zvornik. According to an encrypted telegram sent from the Zvornik Brigade Duty Officer to the 2<sup>nd</sup> Battalion of the Zvornik Brigade, a group of volunteers was to be assembled and taken to the Ročević School in order to execute the prisoners.<sup>103</sup> A second encrypted message was later sent, repeating the instruction that men be assembled to execute the prisoners.<sup>104</sup>
98. A Zvornik Brigade vehicle, which began a series of trips starting on 13 July 1995 to locations which were used for the detention of Bosnian Muslim males from Srebrenica, visited Ročević once on 13 July, twice on 14 July, and again on 16 July.<sup>105</sup>
99. On 15 July, several Bosnian Muslim prisoners were shot and killed at the Ročević School by the soldiers guarding them. In the afternoon of 15 July, the remaining hundreds of Bosnian Muslim prisoners were removed from the school<sup>106</sup> and executed at an isolated site on the bank of the Drina River, near Kozluk.

<sup>101</sup> *Krstić* Trial, 28 June 2000, evidence of Richard Butler, T.5024. See also *Popović* Trial, 14 January 2008 – 1 February 2008.

<sup>102</sup> Zvornik Brigade Vehicle Log for TAM 75 (M-5329), 1-31 July 1995, (ERN: 0069-4848-0069-4848 (BCS); 0087-5807-0087-5807 (Eng)). That same day, another TAM 80 truck (license plate M-5300) made a total of six trips between Petkovci and the Dam. See Zvornik Brigade Vehicle Log for TAM 80 (M-5300), 1-31 July 1995 (ERN: 0069-4844-0069-4844 (BCS); 0087-5801-0087-5801 (Eng)).

<sup>103</sup> *Popović* Trial, 20-22 June 2007, evidence of witness Srećko Aćimović, T.12981-13158; 26-27 June 2007, evidence of witness Mitar Lazarević, T.13356-13442.

<sup>104</sup> *Id.*

<sup>105</sup> Vehicle Log for Opel Rekord P-4528, 1-31 July 1995 (ERN: 0069-4699-0069-4704 (BCS); 0087-5657-0087-5657 (Eng)).

<sup>106</sup> *Popović* Trial, 29 January 2007, evidence of witness PW-142, T.6460-6465; 30 January 2007, evidence of witness PW-143, T.6542-6546.

### ***Kozluk***

100. On or about 15 July 1995, Bosnian Serb soldiers transported an estimated 1000 Bosnian Muslim males from the Ročević School to an isolated place near Kozluk, eleven km north of Zvornik, and summarily executed them with automatic weapons. Members of the 2<sup>nd</sup> Battalion of the Zvornik Brigade assisted in transporting Bosnian Muslim victims to the execution site in Kozluk.<sup>107</sup> The executed men had been captured from the column of men retreating from the Srebrenica enclave or had been separated from their families in Potočari. There are no known survivors of this execution.
101. According to vehicle records from the Zvornik Brigade, an excavator-loader was sent from the base to Kozluk on 16 July 1995, where it operated for a total of eight hours before returning to the base.<sup>108</sup> On the morning of 16 July, Miloš Mitrović was sent to Kozluk to operate the excavator.<sup>109</sup> When he arrived, he saw piles of dead Bosnian Muslim men near small pits that had been previously created, indicating that the killing took place the day before he arrived.<sup>110</sup> Zvornik Brigade vehicle records further indicate that a TAM 75 truck made two trips between Orahovac and Kozluk during the day of 16 July 1995.<sup>111</sup> On-site investigation of the site near Kozluk also confirmed that a mass execution occurred there (*see* paragraph 133, *infra*).

### ***Kula School near Pilica***

102. On or about 14 and 15 July 1995, VRS and/or MUP personnel transported approximately 1200 Bosnian Muslim males from detention sites in Bratunac to the school at the village of Kula near Pilica.<sup>112</sup> On or about 14 and 15 July 1995, VRS military personnel with automatic weapons summarily executed some of the Bosnian Muslim males who had been transported to the school.<sup>113</sup>

<sup>107</sup> *Popović* Trial, 29 November 2007, evidence of witness PW-142, T.6464-6465; 21 November 2007, evidence of witness Dragan Jović, T.18047-18068; 26 November 2007; evidence of Veljko Ivanović, T.18170-18213.

<sup>108</sup> Zvornik Brigade Vehicle Log for Rovokopač “Torpedo” – from Birač-Holding, 1-31 July 1995 (ERN: 0069-5032-0069-5032 (BCS); 0087-5991-0087-5992 (Eng)).

<sup>109</sup> *Blagojević* Trial, 3-4 December 2003, evidence of Miloš Mitrović, accepted under Rule 92*bis* in the *Popović* Trial on 12 September 2006. *See also* *Popović* Trial, 29 August 2007, evidence of Damjan Lazarević, T.14454-14458.

<sup>110</sup> *Id.*

<sup>111</sup> Zvornik Brigade Vehicle Log for TAM 75 (M-5329), 1-31 July 1995 (ERN: 0069-4848-0069-4848 (BCS); 0087-5807-0087-5807 (Eng)).

<sup>112</sup> *Popović* Trial, 6-7 September 2006, evidence of Ahmo Hasić, T.1171-1293.

<sup>113</sup> *Id.*

**d) 16 July Murders**

***Branjevo Farm***

103. Between the hours of approximately 10:00 and 16:00 on 16 July 1995, Bosnian Muslim prisoners were transported from the Kula School to the nearby Branjevo Farm near the village of Pilica, and summarily executed by soldiers of the VRS Main Staff's 10<sup>th</sup> Sabotage Detachment and others. Two survivors of this execution report that they were detained at the Pilica School from 14 July until 16 July along with many hundreds of other Bosnian Muslim male prisoners who had been either captured from the column or separated from their families at Potočari.<sup>114</sup>
104. The accounts of these surviving witnesses are corroborated by the testimony of Dražen Erdemović, a VRS soldier in the 10<sup>th</sup> Sabotage Detachment.<sup>115</sup> On 16 July 1995, Erdemović and seven other colleagues in his unit travelled to the Zvornik Brigade Headquarters. They were met there by a VRS Lt. Colonel and informed that buses carrying Bosnian Muslim prisoners were on their way to meet them and that upon their arrival, Erdemović and his colleagues were to execute them. Erdemović and his colleagues then travelled to the Branjevo Farm.
105. When the first group of prisoners arrived at the Branjevo Farm, Erdemović and his fellow soldiers lined up opposite them and, upon receiving the order, opened fire into their backs. This scene was repeated throughout the entire day, from about 10:00 to about 16:00, during which time Erdemović estimates that approximately 15 to 20 buses full of prisoners arrived and that 1,000 to 1,200 prisoners were executed. In the early afternoon, soldiers from Bratunac, wearing VRS uniforms, arrived to relieve them. From that point onward, the soldiers from Bratunac took over the killing operation, recognising and terrorising many of the Bosnian Muslim men before executing them.
106. On 15 or 16 July, Cvijetin Ristanović, an excavator operator from the engineering unit of the Zvornik Brigade, was sent to the Branjevo Farm, where he was ordered by the Platoon Commander, Damjan Lazerević, to dig a pit for the executed prisoners. Ristanović saw many bodies all over the field. A ULT loader was at

<sup>114</sup> *Krstić* Trial, 14 April 2000, evidence of Witness Q, T.3034-3043, admitted under Rule 92bis in the *Popović* Trial on 12 September 2006; *Popović* Trial, 6-7 September 2006, evidence of Ahmo Hasić, T.1171-1293.

<sup>115</sup> *Popović* Trial, 4-5 May 2007, T.10922-11005.

the site to push the corpses into the pit and cover them up, although Ristanović did not see this take place.<sup>116</sup>

107. Vehicle records of the Zvornik Brigade corroborate Ristanović's evidence. These records establish that a ULT 220 excavator was in use at the Branjevo execution and burial site for eight-and-one-half hours on 17 July for the stated purpose of "digging trenches in Branjevo."<sup>117</sup> These records further indicate the presence of a BG-700 excavator at the site on the same day.<sup>118</sup> The Fuel Disbursal Log of the Zvornik Brigade notes that on 16 July, 500 litres of fuel were sent to Lt. Colonel Popović at Pilica and on 17 July, 100 litres of diesel fuel were allocated to a BGH-700.<sup>119</sup> No combat activity was occurring in this area during the relevant time period and there was no legitimate military purpose necessitating the use of engineering equipment in Branjevo on 17 July 1995.<sup>120</sup> The evidence of the fuel dispatches and closely corroborated telephone intercepts<sup>121</sup> leads to the conclusion that Lt. Colonel Vujadin Popović was directing the murder and burial of these particular victims.

### ***Pilica Cultural Centre***

108. On 16 July 1995, after the Branjevo Farm executions, Bosnian Serb military personnel travelled a short distance to the village of Pilica, where they executed approximately 500 Bosnian Muslim male prisoners inside the Pilica Cultural Centre. There are no known survivors of this execution. However, according to Dražen Erdemović, a Lt. Colonel from the Drina Corps ordered Erdemović's 10<sup>th</sup> Sabotage Detachment unit, along with men from Bratunac who had participated in the Branjevo executions, to go and execute 500 Bosnian Muslim prisoners from Srebrenica held nearby.

<sup>116</sup> *Blagojević* Trial, 1 December 2003, evidence of Cvijetin Ristanović, T.5358-5429; admitted under Rule 92ter in the *Popović* Trial on 10 July 2007; *Popović* Trial, 29 August 2007, evidence of Damjan Lazarević, T.14459-14465.

<sup>117</sup> Zvornik Brigade Vehicle Log for ULT 220 "from Birač-Holding," 1-31 July 1995 (ERN: 0069-5109-0069-5109 (BCS); 0087-6069-0081-6069 (Eng)).

<sup>118</sup> Zvornik Brigade Vehicle Log for Mercedes 2626 (M-5195), 1-31 July 1995 (ERN: 0069-5101-0069-5101 (BCS); 0087-6065-0087-6065 (Eng)).

<sup>119</sup> Zvornik Brigade Fuel Disbursal Log 7 February 1994-14 May 1996 (ERN: 0327-6548-0327-6719 (BCS); 0096-5591-0096-5591 (Eng)). See also *Popović* Trial, 18 June 2008, evidence of Branko Bogičević, T.22352-22413, who testified that he took 500 litres of fuel to Pilica on 16 July 1995.

<sup>120</sup> *Krstić* Trial, 17 July 2000, testimony of Richard Butler, T.5134-5135. See also *Popović* Trial, 14 January 2008 – 1 February 2008.

<sup>121</sup> Zvornik Brigade dispatch order 21/1-2140, 16 July 1995 (ERN: 0075-6045-0075-6045); Intercept dated 16 July 1995 at 13:58 (ERN: 0080-1265-0080-1267).

109. The Pilica Cultural Centre is located in the zone of responsibility of the Zvornik Brigade, 1<sup>st</sup> Battalion. Confirmation of the involvement of Bratunac Brigade troops in Pilica is found in the Daily Work Log of the Bratunac Brigade Military Police Platoon. A 17 July 1995 entry notes that on the previous day, a police patrol “remained in Pilica to secure and guard the Bosnian Muslims.”<sup>122</sup> A Bratunac Brigade MP has also verified the presence of MPs at Pilica.<sup>123</sup>
110. Vehicle logs establish that a TAM-130 truck operated by Milenko Tomić, a member of the “R” Battalion of the Zvornik Brigade, made a total of five trips between Zvornik, Pilica and Kula on 17 July 1995, during which it carried no recorded cargo or personnel.<sup>124</sup> Both Pilica and Kula are known execution sites: Pilica is the location of the Pilica Cultural Centre and Kula is the location of the Pilica School. Further supporting the vehicle logs is an aerial photograph dated 17 July 1995 which shows a truck backed up outside the doorway to the Pilica Cultural Centre.<sup>125</sup>
111. Milenko Tomić testified that on 17 July 1995 he drove to Pilica with an empty TAM-130 truck, upon the instructions of the Zvornik Brigade Head of Logistics Transport Service, Radislav Pantić. Upon arrival in Pilica, Tomić was informed by a soldier that he was driving dead bodies. Tomić made several trips between Pilica, where soldiers loaded bodies on to the truck, and Branjevo, where the bodies were unloaded.<sup>126</sup>
112. In 1996, investigators from the US Naval Criminal Investigations Service and the ICTY conducted examinations at the Pilica Cultural Centre, finding copious amounts of evidence to corroborate Erdemović’s account of the executions that occurred there, including impacts of numerous bullet strikes; residue from explosives; spent bullets and shell cases; and samples of human blood, hair, bone and tissue adhering to the walls and floors.<sup>127</sup> The damage to the inside of the building from gunfire and explosives, as well as the presence of material

<sup>122</sup> Bratunac Brigade Military Police Daily Log, 30 June 1995-29 April 1996 (ERN: 0066-3910-0066-4145 (BCS); 0070-6682-0070-6701 (Eng)).

<sup>123</sup> See *Popović* Trial, 9 November 2006, evidence of witness PW-138, T.3860-3862.

<sup>124</sup> Zvornik Brigade Fuel Dispursal Log, 7 February 1994 -14 May 1996 (ERN: 0327-6548-0327-6719 (BCS); 0096-5591-0096-5591 (Eng)); Zvornik Brigade Vehicle Log for TAM 130 truck from “Metalno” Company (ERN: 0069-5125-0069-5125 (BCS); 0087-6085-0087-6085 (Eng)).

<sup>125</sup> Aerial photograph with vehicle and tire tracks circled, 17 July 1995 (ERN: R041-0730-R041-0730).

<sup>126</sup> *Popović* Trial, 5 February 2008, T.20996-21028.

<sup>127</sup> Manning, Summary of Forensic Evidence, Annex A, p.2-3.

forensically determined to constitute human blood, hair, bone and tissue, is further documented in a series of photographs and a video.<sup>128</sup>

e) **July - August 1995 Murders**

***Nezuk***

113. On 19 July 1995, VRS soldiers from the 16<sup>th</sup> Krajina Motorized Brigade, subordinated to the Zvornik Brigade,<sup>129</sup> captured approximately ten Bosnian Muslims males fleeing from the Srebrenica enclave, transported them to a place near Nezuk, approximately 15 km northwest of Zvornik, and executed them with automatic rifles.<sup>130</sup> According to one of two survivors, the soldiers first interrogated the prisoners, beat them, stripped them of their valuables and then removed each prisoner from the group individually and executed him.<sup>131</sup> This survivor recalls that two of the victims were young boys not of military age, including one who had been disabled since childhood.<sup>132</sup>
114. The second survivor of the Nezuk executions stated that, as a soldier, he was the only man spared execution, as his captors said he could be exchanged for captured Bosnian Serb soldiers. Zvornik Brigade MPs took this survivor to the Zvornik Military Police Headquarters, where they interrogated and beat him before sending him to a prison camp where he was released five months later.<sup>133</sup>

***Execution of Four Branjevo Farm Survivors***

115. On 18 July 1995, two soldiers from the Zvornik Brigade provided food and clothing to four Bosnian Muslim males, including a 14-year old boy, who were fleeing the Srebrenica enclave.<sup>134</sup> On or about 19 July 1995, these same four Bosnian Muslim men, who had survived the Branjevo Farm executions, were captured by VRS and/or MUP forces who encountered them in the Zvornik Brigade zone of responsibility and turned over to Zvornik Brigade security personnel. Zvornik Brigade military-legal documents establish that the two

<sup>128</sup> Video of Pilica Cultural Centre (ERN: V000-6972-V000-6972).

<sup>129</sup> *Popović* Trial, 6 November 2006, evidence of witness PW-139, T.3680:20-21. See also VRS Main Staff strictly confidential order 03/4-1654, 15 July 1995 (ERN: 0340-1472-0340-1472); and 1<sup>st</sup> Krajina Corps Order No. 264-1/95, 16 July 1995 (ERN: 0084-5119-0084-5120).

<sup>130</sup> *Krstić* Trial, 23 May 2000, evidence of Witness R, T.3186-3233, admitted under Rule 92bis in *Popović* Trial, on 12 September 2006. See also OTP witness statement of PW-139, 18 May 2000 (ERN: 0095-3447-0095-3455), admitted under Rule 92ter in the *Popović* Trial on 6 November 2006.

<sup>131</sup> *Krstić* Trial, 23 May 2000, evidence of Witness R, *supra* fn. 130.

<sup>132</sup> *Id.*

<sup>133</sup> OTP witness statement of PW-139, *supra* fn. 130.

<sup>134</sup> Zvornik Brigade Military Police Record: Judgement against Neško Đokić and Slobodan Đokić, 25 July 1995 (ERN: 0071-0363-0071-0382 (BCS); 0304-9501-0304-9502 (Eng)).

Zvornik Brigade soldiers were disciplined for these actions on charges of collaborating with the enemy.<sup>135</sup>

116. According to Zvornik Brigade Military Police records, the four Bosnian Muslims provided statements against the two Zvornik Brigade soldiers,<sup>136</sup> and then identified the accused collaborators in a line-up.<sup>137</sup> A judgement against the two accused Zvornik Brigade soldiers found them guilty and sentenced them to up to three days in prison.<sup>138</sup> These four Bosnian Muslim men remain on the list of those missing from the fall of Srebrenica.<sup>139</sup>

***Execution of injured Bosnian Muslims from the Milići Hospital***

117. On approximately 13 July, 19 Bosnian Muslim men from Srebrenica were wounded as they tried to escape from the Srebrenica enclave. These men surrendered or were captured on about 13 or 14 July and were admitted to the Milići Hospital and treated. On about 14 July, eleven of the wounded Bosnian Muslim prisoners from Srebrenica were transferred from the Milići Hospital to the Zvornik Hospital on orders from the Main Staff.<sup>140</sup>
118. A few days later, those Bosnian Muslim prisoners were transferred from the Zvornik Hospital to the infirmary of the Zvornik Brigade. On or shortly after 20 July 1995, those eleven Bosnian Muslim men were removed from the Zvornik Brigade Headquarters by Lt. Colonel Vujadin Popović and summarily executed by the VRS.<sup>141</sup>

<sup>135</sup> Zvornik Brigade Report from Command security organ to Bijeljina Military Prosecutor, 26 July 1995 (ERN: 0071-0335-0071-0346 (BCS); 0085-0107-0085-0108 (Eng)).

<sup>136</sup> Zvornik Brigade Military Police Records: Statement of Sakib Kivirić, 23 July 1995 (ERN: 0071-0391-0071-0398 (BCS); 0081-8051-0081-8052 (Eng)); Statement of Emin Mustafić, 23 July 1995 (ERN: 0071-0407-0071-0414 (BCS); 0081-8047-0081-8048 (Eng)); Statement of Fuad Đozić, 26 July 1995 (ERN: 0071-0383-0071-0390 (BCS); 0081-8043-0081-8044 (Eng)); Statement of Almir Halilović, 23 July 1995 (ERN: 0071-0399-0071-0406 (BCS); 0081-8049-0081-8050 (Eng)).

<sup>137</sup> Zvornik Brigade Military Police Record: Line-up Identification of Neško Đokić and Slobodan Đokić, 25 July 1995 (ERN: 0071-0325-0071-0334 (BCS); 0081-8041-0081-8042 (Eng)). *See also Popović Trial*, 24 April 2004, evidence of Nebojša Jeremić, T.10427-10440.

<sup>138</sup> Zvornik Brigade Military Police Record: Judgement against Neško Đokić and Slobodan Đokić, 25 July 1995 (ERN: 0071-0363-0071-0382 (BCS); 0304-9501-0304-9502 (Eng)).

<sup>139</sup> ICTY Report: *Srebrenica Missing - Persons Reported Missing after the Take-Over of the Srebrenica Enclave by the Bosnian Serb Army on 11 July 1995* (ERN: 0103-9876-0104-0148).

<sup>140</sup> Note related to the release of injured persons to the hospital in Zvornik pursuant to the order of Chief of Medical Services of the VRS, signed by Dr. Radomir Davidović, 20 July 1995 (ERN: 0117-6023-0117-6023); Patient files, Sveti Nikola Hospital, Surgery Ward, 13-14 July 1995 (ERN: 0117-6055-0117-6133 (BCS); 0307-4271-0307-4313 (Eng)).

<sup>141</sup> *Popović Trial*, 27 September 2007, evidence of witness PW-168, T.15912-15916; Zvornik Brigade Duty Operations Officer Notebook for period 29-05-95 through 27-07-95, entry on 23 July 1995 states that Popović will arrive by 17:00 hours (ERN: 0293-5619-0293-5806 (BCS); 0308-9333-0308-9378 (Eng)).

### ***Snagovo Execution***

119. On or about 22 July 1995, several Bosnian Muslim men who had been travelling northwards through the woods since fleeing Srebrenica with the column were captured by MUP PJP forces in the area of Snagovo who were working with the VRS to scour the terrain. The Muslim men were summarily executed, but one young Muslim man was spared by a PJP officer. Prior to being deployed to the Snagovo area to participate in the search of the terrain, the PJP officer was told by his commander not to permit any Muslims to leave the area alive.<sup>142</sup>

### ***Execution of six Bosnian Muslim men and boys near the town of Trnovo***

120. Sometime between 12 and 25 July 1995, six Muslim men and boys from Srebrenica were transported by the Scorpions Unit to an area near the town of Trnovo, southeast of Sarajevo. The Scorpions were a combat unit of the Serbian Ministry of Interior that had operated in various areas of Bosnia and Herzegovina in June and July 1995.<sup>143</sup> During this period of time, the Scorpions recorded some of their activities on videotape, including the detention, abuse and execution of the six men and boys by automatic rifle.<sup>144</sup> All six victims have been identified by DNA matching and were last seen in the Srebrenica enclave at the time of its takeover by Bosnian Serb forces.<sup>145</sup>

## **2. Reburial Operation**

121. From about 1 August 1995 through about 1 November 1995, VRS personnel, coordinated by the VRS security organs,<sup>146</sup> participated in an organised and comprehensive effort to conceal the killings and executions in the Zvornik and Bratunac Brigade zones of responsibility by exhuming bodies from initial (primary) mass graves at Glogova, Lažete (Orahovac), the “Dam” near Petkovci, Branjevo Farm and Kozluk, and transferring them to secondary graves at Zeleni Jadar (seven sites containing bodies from Glogova), Budak (two sites containing

<sup>142</sup> *Popović* Trial, 15 and 16 November 2007, evidence of PW-106; 16, 17 and 20 November 2007, evidence of PW-107.

<sup>143</sup> In June 1995, the Scorpions were under the command of Ljubiša Borovčanin. See Dispatch No. 118/95, Special Police Brigade Deputy Commander Ljubiša Borovčanin, 1 July 1995 (ERN: ET 0297-0836-0297-0836).

<sup>144</sup> See V000-5095.

<sup>145</sup> ICMP 3 July 2008 Report.

<sup>146</sup> See, e.g., *Popović* Trial, 27 September 2007, evidence of witness PW-168, T.15922-15928; 29-30 August 2007, evidence of Damjan Lazarević, T.14429-14534. See also VRS Main Staff Order 03/ 4-2341, 14 September 1995 (ERN: 0082-2150-0082-2150 (BCS); 0084-4368-0084-4368 (Eng)); and 1<sup>st</sup> Bratunac Brigade notes of Command Staff meeting, 16 October 1995 (ERN: 0067-1466-0067-1529 (BCS); 0070-6671-0070-6671 (Eng)).

bodies from Glogova), Blječeva (three sites containing bodies from Glogova), Hodžići Road (seven sites containing bodies from Orahovac), Liplje (four sites containing bodies from the Petkovci Dam), and Čančari Road (twelve sites containing bodies from Branjevo Farm and Kozluk).

122. This reburial operation was a natural and foreseeable consequence of the execution and original burial plan conceived by the Joint Criminal Enterprise and was done on the orders of the VRS Main Staff with the knowledge and assistance of, *inter alia*, the VRS security organs and the Accused Zdravko **TOLIMIR**.

***Glogova 1 and 2 primary graves (Kravica Warehouse executions) to the Zeleni Jadar, Budak and Blječeva secondary graves***

123. A variety of evidence including soil and pollen samples,<sup>147</sup> a comparison of shell cases collected from mass graves and execution points,<sup>148</sup> and DNA connections,<sup>149</sup> indicates that the primary graves at Glogova (GL-1 and 2) and the secondary graves at Zeleni Jadar, Budak and Blečeva are connected.<sup>150</sup> In the cases of Zeleni Jadar 5 and 6, this connection is also apparent through the distinctive nature of the debris found in the filling of the graves, which included pieces of barbed wire, car parts, bricks, tiles, china and hay.<sup>151</sup> Some of these items have been identified as having originated from the Kravica Warehouse.
124. On the basis of soil and pollen samples, GL-1 and GL-2 have been determined to be the primary graves to the secondary mass graves of Zeleni Jadar 5 and 6, and to contain at least some of the individuals executed at the Kravica Warehouse.<sup>152</sup> Numerous artefacts found at the GL-1 gravesite positively indicate that this site, too, was associated with the Kravica Warehouse as an additional primary gravesite. These artefacts include broken pieces of the wall and door of the warehouse.<sup>153</sup> GL-1 was also determined to contain fragments of grenades and

<sup>147</sup> Manning, Summary of Forensic Evidence, Annex A, p.56.

<sup>148</sup> Conducted by the U.S. Bureau of Alcohol, Tobacco and Firearms.

<sup>149</sup> DNA matching has identified the remains of certain individuals in one of the Glogova graves and also in one of the Budak / Blječeva / Zeleni Jadar graves. DNA connections exist between: GL-1 and Budak 1 and Blječeva 3; GL-2 and Blječeva 1 and 2; Zeleni Jadar 3 and Blječeva 3 and Zeleni Jadar 5; and Zeleni Jadar 5 and Zeleni Jadar 6.

<sup>150</sup> Manning, Summary of Forensic Evidence, Annex A, pp.56-59.

<sup>151</sup> *Id.*, p.57.

<sup>152</sup> *Id.*, p.52. See also Dean Manning, "Srebrenica Investigation, Summary of Forensic Evidence– Execution Points and Mass Graves 2001," 24 August 2003, p.4 (ERN: 0308-8545-0308-8566).

<sup>153</sup> Report on Excavations and Exhumations at the Glogova 1 Mass Grave in 2000, Report to ICTY, Richard Wright, (ERN: 0306-1533-0306-1568 (BCS); 0084-8214-0084-8396 (Eng)).

shrapnel, consistent with the survivor accounts and other evidence of grenade and RPG fire at the Kravica Warehouse execution.<sup>154</sup>

125. As of 3 July 2008, DNA matching by the ICMP has identified a total of 998 persons who were reported missing after the fall of Srebrenica in July 1995 and whose remains were exhumed from the Glogova, Zeleni Jadar, Budak and Blječeva graves.<sup>155</sup>

***Lažete 1 and 2 primary graves (Orahovac executions) to the Hodžići Road secondary graves***

126. The primary mass graves known as Lažete 1 and 2 (LZ-1 and LZ-2) correspond with the Orahovac execution site. Aerial images establish that an initial disturbance of the earth at these sites occurred between 5 and 19 July 1995,<sup>156</sup> and that a further disturbance occurred between 7 and 27 September 1995.<sup>157</sup> Several witnesses corroborate the planning and implementation of a scheme to exhume and transport the bodies contained in these graves, including a former member of the Zvornik Brigade who was ordered to manage the disbursal of fuel necessary to complete the operation.<sup>158</sup>
127. Investigation of the secondary grave sites of Hodžići Road 2-7 indicates that these sites are associated with the Lažete 2 primary grave. Evidence supporting the conclusion that Lažete 2 was dug up and that some bodies from there were deposited in these secondary sites includes soil and pollen samples, similar blindfolds and ligatures, matched shell cases, DNA connections and aerial images of creation and disturbance dates. According to aerial imagery, these secondary sites were excavated prior to 2 October 1995.<sup>159</sup>
128. As of 3 July 2008, DNA matching by the ICMP has identified a total of 608 persons who were reported missing after the fall of Srebrenica in July 1995 and

<sup>154</sup> *Id.*, p.16-17.

<sup>155</sup> See ICMP 3 July 2008 Report.

<sup>156</sup> Aerial titled "Site of Mass Execution," 5 July 1995 (ERN: R041-0646-R041-0646).

<sup>157</sup> Aerial titled "Disturbed Earth, Orahovac" (with markings LZ-01 and LZ-01), 7 September 1995 and 27 September 1995 (ERN: R041-0648-R041-0648); Aerial titled "Disturbed Earth, Orahovac" (with markings LZ-02 and LZ-02) 7 September 1995 (ERN: R041-0647-R041-0647).

<sup>158</sup> See *Popović* Trial, 27 September 2007, evidence of witness PW-168, T.15922-15928. See also VRS Main Staff Order 03/4-2341, 14 September 1995 (ERN: 0082-2150-0082-2150 (BCS); 0084-4368-0084-4368 (Eng)).

<sup>159</sup> Manning, Summary of Forensic Evidence, Annex A, p.23.

whose remains were exhumed from the Lazete 1 and 2 and Hodžići Road 2-7 graves.<sup>160</sup>

***The Petkovci Dam primary grave to the Liplje secondary graves***

129. Aerial imagery indicates that the primary grave at the Dam was first dug between 5 and 27 July 1995.<sup>161</sup> Despite the observations of the surviving witnesses that some bodies were driven away after the execution, OTP investigators have not yet located what they suspect to be another primary gravesite for victims of this execution.
130. Aerial images establish that the known primary gravesite at the Dam was again disturbed between 7 and 27 September 1995.<sup>162</sup> Exhumation of the site revealed that this disturbance was comprehensive, such that all that remained in the grave were various disarticulated body parts reflecting a minimum number of 46 individuals.<sup>163</sup> Aerial images show that the associated secondary sites of Liplje 1-4 were created prior to 2 October 1995.<sup>164</sup> An additional secondary grave site (Liplje 7) is also associated with the Dam primary grave site. Evidence linking these secondary gravesites to the Dam primary site includes matching soil and clay samples, characteristics of the bodies, DNA connections and the presence of large, unweathered blocks of limestone at Liplje 2.
131. The accounts of both Dam execution survivors that the hands of the prisoners were bound with some type of string or rope is corroborated by the finding of one twine ligature at the primary Dam gravesite and 23 twine ligatures at the secondary Liplje 2 gravesite.<sup>165</sup> At least 750 shell cases were recovered from the surface of the Dam site during the exhumation, and the shape of 464 skull

<sup>160</sup> See ICMP 3 July 2008 Report.

<sup>161</sup> Aerial titled "Site of Mass Execution," 5 July 1995 (ERN: R041-0646-R041-0646).

<sup>162</sup> Aerial titled "Disturbed Earth, Petkovci Dam," 7 September 1995 and 27 September 1995 (ERN: R041-0645-R041-0465); Aerial image of the Dam, 5 July 1995 and 27 July 1995 (ERN: R041-0708-R041-0708).

<sup>163</sup> Manning, Summary of Forensic Evidence, Annex A, p.39.

<sup>164</sup> Aerial titled "Snagovo-Liplje Road Segment" (with markings LP-1 to LP-4) (ERN: R041-0676-R041-0676); Aerial titled "Two Areas of Disturbed Earth, Snagovo" (no markings), 7 September 1995 (ERN: R041-0677-R041-0677); Aerial titled "Two Areas of Disturbed Earth, Snagovo" (with markings LP-1 & LP-2), 2 October 1995 (ERN: R041-0678-R041-0678); Aerial titled "Two Areas of Disturbed Earth, Snagovo" (with markings LP-3), 2 October 1995 (ERN: R041-0679-R041-0679); Aerial titled "Two Areas of Disturbed Earth, Snagovo" (no markings), 7 September 1995 (ERN: R041-0680-R041-0680); Aerial titled "Two Areas of Disturbed Earth, Snagovo" (with markings LP-4), 2 October 1995 (ERN: R041-0681-R041-0681); Photo taken of Liplje from the air (ERN: 0219-8722).

<sup>165</sup> Manning, Summary of Forensic Evidence, Annex A, Annex D.

fragments located during the exhumation is consistent with those seen in gunshot wounds.<sup>166</sup>

132. As of 3 July 2008, DNA matching by the ICMP has identified a total of 756 persons who were reported missing after the fall of Srebrenica in July 1995 and whose remains were exhumed from the Dam and Liplje 1-4 and 7 graves.<sup>167</sup>

***Kozluk primary graves to the Čančari Road secondary graves***

133. On-site investigation of the site near Kozluk confirmed that a mass execution occurred there. Aerial imagery indicates that the Kozluk mass gravesite was created between 5 and 17 July 1995.<sup>168</sup> Additional aerial images indicate a further disturbance to the site on or before 27 September 1995.<sup>169</sup> The primary gravesite at Kozluk has been shown to be linked with the secondary gravesites of Čančari Road 1, 2, 3, 5, 7 and 13. Evidence definitively linking these graves includes the presence at both sites of fragments of green glass bottles and bottle labels known to have originated at the Vitinka bottling factory near the Kozluk mass grave, as well as soil samples and matching shell cases<sup>170</sup> and DNA connections. Aerial imagery establishes that these related secondary mass graves were created between 27 September and 2 October 1995.<sup>171</sup>
134. As of 3 July 2008, DNA matching by the ICMP has identified a total of 303 persons who were reported missing after the fall of Srebrenica in July 1995, and whose remains were exhumed from the Kozluk graves. The remains of an additional 634 persons have been identified in the Čančari Road 1, 2, 3, 5, 7 and 13 secondary graves associated with the Kozluk primary grave site.<sup>172</sup>

***Branjevo Farm primary graves to the Čančari Road secondary graves***

135. Aerial images taken of the Branjevo Farm on 17 July 1995 show a large number of bodies lying on the field near the farm, as well as an excavator engaged in the

<sup>166</sup> *Id.*, Annex A, p. 39.

<sup>167</sup> See ICMP 3 July 2008 Report.

<sup>168</sup> Aerial photo from Kozluk split in two frames showing disturbed earth, main area circled A, pit area marked B (ERN: R041-0727-R041-0728).

<sup>169</sup> Aerial titled "Disturbed Earth, Kozluk" (no markings), 7 September 1995 and 27 September 1995 (ERN: R041-0643-R041-0643).

<sup>170</sup> Manning, Summary of Forensic Evidence, Annex A, p.45, 48.

<sup>171</sup> Aerial titled, "Disturbed Earth, Zivkovici" (no markings), 7 September 1995 (ERN: R041-0683-R041-0683); Aerial titled, "Disturbed Earth, Zivkovici" (with marking CR-1), 2 October 1995 (ERN: R041-0684-R041-0684); Aerial titled, "Disturbed Earth, Ravne" (with marking CR-3), 2 October 1995 (ERN: R041-0688-R041-0688); Aerial titled, "Disturbed Earth, Čančari" (with marking C-12), 2 October 1995 (ERN: R041-0707-R041-0707).

<sup>172</sup> See ICMP 3 July 2008 Report.

digging of a large pit.<sup>173</sup> Further images dated 27 September 1995 show the disturbance of the mass gravesite, including a newly excavated trench at the site.<sup>174</sup> In these images, a backhoe and a front loader can be seen parked at the farm. Soil and pollen samples indicate that the gravesite known as Čančari Road 12 is a secondary grave to the Branjevo Farm mass grave.<sup>175</sup> DNA connections show that the Čančari Road 10 and 11 gravesites are connected to the Čančari Road 12 gravesite;<sup>176</sup> thus Čančari Road 10 and 11 are also related to the Branjevo Farm primary grave.

136. Gunshot wounds accounted for the death of the victims in these graves. Significant numbers of bullets and shell cases were collected during the exhumation and autopsy processes.<sup>177</sup> The discovery of 83 ligatures at the Branjevo Farm primary gravesite and 16 ligatures at the associated Čančari Road 12 secondary gravesite corroborates the recollections of both surviving witnesses that their hands were bound prior to the execution.<sup>178</sup>
137. As of 3 July 2008, DNA matching by the ICMP has identified a total of 108 persons who were reported missing after the fall of Srebrenica in July 1995 and whose remains were exhumed from the Branjevo Farm graves. The remains of an additional 575 persons have been identified in the Čančari Road 10, 11 and 12 secondary graves associated with the Branjevo Farm primary graves.<sup>179</sup>

### 3. Destruction of the Women and Children

138. The forcible transfer of the women and children as described in the Indictment and this brief created conditions known to the Accused Zdravko **TOLIMIR** which would contribute to the destruction of the entire Bosnian Muslim population of Eastern Bosnia, including but not limited to the failure in part, of the population to live and reproduce normally.<sup>180</sup> See Section (B), *infra*, on the operation to forcibly transfer or deport the Bosnian Muslim population of Srebrenica and Žepa.

<sup>173</sup> Aerial photo from the Branjevo area without annotations, 5 July 1995 (ERN: R041-0731-R041-0732); Aerial titled "Branjevo State Farm," 17 July 1995 (ERN: R041-0642-R041-0642).

<sup>174</sup> Aerial titled "Excavation Activity," 27 September 1995 (ERN: R041-0709-R041-0709).

<sup>175</sup> Manning, Summary of Forensic Evidence, Annex A, p.20.

<sup>176</sup> ICMP 3 July 2008 Report.

<sup>177</sup> *Id.*, p.17, 21.

<sup>178</sup> *Id.*, p.17, 21.

<sup>179</sup> See ICMP 3 July 2008 Report.

<sup>180</sup> *Krstić* Trial, Witness DD, 26 June 2000, T.5759-5761, admitted under Rule 92*bis* in the *Popović* Trial, on 12 September 2006; 27 July 2000, evidence of witness T. Ibrahimfendić, T.5804-5863, admitted under Rule 92*bis* in the *Popović* Trial on 12 September 2006.

**(B) OPERATION TO FORCIBLY TRANSFER OR DEPORT THE BOSNIAN MUSLIM POPULATIONS OF SREBRENICA AND ŽEPA**

**1. Operation to Forcibly Remove the Bosnian Muslim Population of Srebrenica**

**a) Bosnian Serb dealings with the UN and Internationals**

139. The VRS began the attack against the enclave on 6 July 1995.<sup>181</sup> On 8 July 1995, refugees began arriving from the Swedish Shelter Project towards Srebrenica in a mounting panic, as shots aimed at the civilian houses came from the VRS Bratunac Brigade positions. The streets of Srebrenica were overflowing with people during this time, there was not enough food or drink for the masses of people, and mortars were being fired into the crowds from the VRS positions.<sup>182</sup>
140. On 9 July 1995, General **TOLIMIR** issued a communication from President Karadžić to the Drina Corps Forward Command Post and Generals Gvero and Krstić personally, in which General **TOLIMIR** explained that President Karadžić had agreed to expand the objective of the attack to include the take-over of Srebrenica.<sup>183</sup>
141. From the beginning of the attack on the Srebrenica enclave, the VRS shelled civilian targets in the Srebrenica enclave, which helped to instil fear in the civilian population.<sup>184</sup> On the evening of 10 July 1995, the local Bosnian Muslim military forces gathered in the village of Šušnjari with many civilians in order to discuss the situation. The aim was to break out from the enclave and to take the most direct route towards Bosnian Muslim held territory near Tuzla.<sup>185</sup> In reaction to this decision, the remaining women, children and elderly made their way towards the UN base at Potočari.<sup>186</sup> The men feared that the Serbs would harm the able-bodied men of the enclave.<sup>187</sup> These men fled towards the woods outside of Srebrenica.

<sup>181</sup> See Butler Srebrenica Narrative.

<sup>182</sup> *Popović* Trial, 19 September 2006, evidence of Pieter Boering, T.1931-1932.

<sup>183</sup> VRS Main Staff Order 12/46-501/95, 9 July 1995 (ERN: 0086-9096-0086-9096 (BCS); 0089-2590-0089-2590 (Eng)).

<sup>184</sup> UNMO report dated 6 July 1995 (ERN: 0052-7524-0052-7526-BCSDT; 0052-7524 -0052-7526 (Eng)); UNMO report dated 7 July 1995 (ERN: 0052-7533-0052-7535-BCSDT; 0052-7533-0052-7535 (Eng)); UNMO report dated 8 July 1995 (ERN: 0052-7539-0052-7539-BCSDT; 0052-7539-0052-7539 (Eng)).

<sup>185</sup> See Butler Srebrenica Narrative.

<sup>186</sup> *Popović* Trial, 24 August 2006, evidence of PW-110, T.640-641; 2-3 November 2006, evidence of PW-127, T.3496-3582.

<sup>187</sup> See *Popović* Trial, 2-3 November 2006, evidence of PW-127, T.3496-3582.

142. On 11 July 1995, the Serb forces shelled the urban area of Srebrenica intensively.<sup>188</sup> By this date, there were no more military targets in either Srebrenica or Potočari.<sup>189</sup>
143. Apart from the shelling and sniping of the Bosnian Muslim population from outside the enclave, the VRS made life difficult for the Bosnian Muslim population and DutchBat forces. The living conditions inside the enclave were very poor, with a shortage of basic goods for both the Bosnian Muslim population in the enclave as well as the DutchBat soldiers, due to the restriction of the humanitarian aid by the VRS.<sup>190</sup>
144. In the preceding months, the VRS had interfered with the delivery of supplies, materials and men to the DutchBat soldiers at the UN Compound at Potočari, thereby significantly degrading UNPROFOR's operational ability.<sup>191</sup> On 12 July, VRS and MUP soldiers started to steal DutchBat vehicles, weapons and communications sets during the DutchBat escort of refugees from Srebrenica. Major Franken testified that these actions were sanctioned by the VRS leadership and done in order to take away the "eyes and ears" of the DutchBat based at the UN Compound at Potočari.<sup>192</sup>
145. In addition to shelling, the Serb soldiers also looted houses and set them on fire. Serb soldiers were seen entering houses on their way from Bratunac to Potočari, looting the houses, and taking livestock from the fields. Shortly after the soldiers left the houses, the houses caught fire.<sup>193</sup> On 11 July 1995, exhausted and fearful refugees began arriving at the UN Compound at Potočari, rising to thousands in numbers by the morning of 12 July 1995. Many of the women, children and elderly fled to Potočari seeking protection of the UNPROFOR forces.

<sup>188</sup> *Popović* Trial, 16 October 2006, evidence of Robert Franken, T.2473 and 2479-2481; 12-14 December 2007 and 10-11 January 2008, evidence of Joseph Kingori, T.19151-19543.

<sup>189</sup> *Popović* Trial, 27 September 2006, evidence of Leendert Van Duijn, T.2267-2272; 16 October 2006, evidence of Robert Franken, T.2477-2481.

<sup>190</sup> *Popović* Trial, 19 September 2006, evidence of Pieter Boering, T.1891-1906; 27 September 2006, evidence of Leendert Van Duijn, T.2260-2263.

<sup>191</sup> *Popović* Trial, 16 October 2006, evidence of witness Robert Franken, T.2445-2452; 29 November 2006, Johannes Rutten, T.4807-4808; 29 November 2007, Cornelis Hendrik Nicolai, T.18452-18459; UNPROFOR Sector Sarajevo Weekly Situation Report of Civil Affairs Officer David Harland, 3 June 1995 (ERN: 0327-9228-0327-9232).

<sup>192</sup> *Popović* Trial, 16 October 2006, evidence of witness Robert Franken, T.2494-2495; 29 November 2006, evidence of Johannes Rutten, T.4806-4807.

<sup>193</sup> See *Krstić* Trial, 28 March 2000, testimony of Raymond Dorst, T.1496-1498, admitted under Rule 92bis in *Popović* Trial, on 12 September 2006; *Blagojević* Trial, 10 July 2003, evidence of Paul Groenewegen, T.1023, admitted under Rule 92ter in the *Popović* Trial, on 25 October 2006.

146. As thousands of Bosnian Muslims in Srebrenica fled the city on 11 July 1995, the VRS engaged in an effort to force them to the main UN base at Potočari. Escorted by members of UN Bravo Company (based in Srebrenica town), a large column of women, children, and elderly walked the four kilometres from Srebrenica to Potočari. The VRS frequently fired shells at or near the fleeing civilians.<sup>194</sup>

**b) Three meetings at Hotel Fontana**

147. On the evening of 11 July and morning of 12 July 1995, three meetings took place at the Hotel Fontana between representatives of the VRS, the Bosnian Muslims and DutchBat. The first meeting took place around 20:00 on 11 July, and was attended by General Mladić, General Živanović and other VRS officers who met with Lieutenant Colonel Karremans. At this meeting, Mladić threatened the DutchBat officers, inquiring menacingly about who had ordered NATO strikes and threatening to harm the DutchBat soldiers.<sup>195</sup> Lt. Col. Karremans realised that “the enclave ha[d] been lost,”<sup>196</sup> the refugees required “humanitarian support” and wanted to leave the enclave<sup>197</sup> with most of them wishing to go to Tuzla.”<sup>198</sup> General Mladić told Colonel Karremans that his actions were not aimed at the UNPROFOR forces or the civilian Bosnian Muslim population.<sup>199</sup>

148. General Mladić’s claims were simply made for propaganda purposes. Indeed, after the first NATO air strikes on 11 July 1995, General Mladić had threatened that he would kill the captured DutchBat soldiers and shell the civilian population at Potočari unless the air strikes ceased.<sup>200</sup> The meeting concluded with General Mladić instructing Colonel Karremans to bring civilian representatives of the Bosnian Muslim population and a representative of the ABiH forces in Srebrenica to a second meeting at the Hotel Fontana later that evening.<sup>201</sup>

<sup>194</sup> *Popović* Trial, 18 October 2006, evidence of Vincentius Egbers, T.2717-2718; 16 October 2006, evidence of Robert Franken, T.2479-2481.

<sup>195</sup> Video of Meeting 1 at the Hotel Fontana (ERN: V000-1921 and V000-4161); *Popović* Trial, 21 September 2006, evidence of Pieter Boering, T.1945-1946.

<sup>196</sup> Transcript of Meeting 1 at the Hotel Fontana, p.10 (ERN: 0087-4165-0087-4201 (BCS); 0096-5132-0096-5168 (Eng)).

<sup>197</sup> *Id.*, p.12.

<sup>198</sup> *Id.*, p.15.

<sup>199</sup> *Id.*, p.25.

<sup>200</sup> Secretary-General’s Report, para.302. In addition, the UN forces feared being used as human shields against the air strikes. See also *Popović* Trial, 16 October 2006, evidence of Robert Franken, T.2485; 29-30 November 2007, evidence of Cornelis Nicolai, T.18481-18487 and 18563-18564.

<sup>201</sup> Video compilation of Srebrenica-related footage from 1995 (ERN: V000-4458-V000-4458). See also Transcript to compilation video (ERN : L009-2397-L009-2474).

149. Colonel Karremans returned to the Hotel Fontana later that night for the second meeting with General Mladić and brought Nesib Mandžić as a representative of the Bosnian Muslim civilians in Potočari. General Mladić created an atmosphere of intimidation. At the beginning of the meeting, they opened a window so that Mandžić and the Dutch soldiers could hear the screams of a pig being slaughtered.<sup>202</sup> After this Colonel Karremans and Mandžić explained the humanitarian needs of the population.<sup>203</sup> General Mladić claimed that all Bosnian Muslim soldiers who lay down their arms would be treated in accordance with international conventions. He then said menacingly that “the destiny of these people...is in your hands,” and gave Mandžić an ultimatum of either their survival or “disappearance.”<sup>204</sup>
150. Mladić ended the meeting and insisted on having another meeting the next day. He ordered Nesib Mandžić to “bring people who can secure the surrender of weapons and save your people from destruction.”<sup>205</sup> General Mladić again demanded the surrender of the Bosnian Muslim troops, believing they were still in the area. However, that evening and the next morning it became clear that the Bosnian Muslim army would not be surrendering *en masse*.
151. Representatives of the Bosnian Serbs, DutchBat and the Bosnian Muslim refugees reconvened at the third Hotel Fontana meeting at 10:00 hours on 12 July 1995. Those present included General Mladić, General Krstić, Colonel Janković, Lt. Col. Kosorić and Lt. Col. Popović from the VRS and Colonel Karremans with Nesib Mandžić, Ibro Nuhanović and Čamila Omanović representing the Bosnian Muslim refugees.<sup>206</sup>
152. General Mladić repeated his threat from the second meeting that the Bosnian Muslims could either “survive or disappear.”<sup>207</sup> He informed the Bosnian Muslim representatives that all Bosnian Muslims had to lay down their arms as a condition for survival. He also made several comments about the Bosnian Muslims leaving the enclave, sometimes adding that they could choose to remain in Srebrenica.<sup>208</sup>

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<sup>202</sup> Popović Trial, 29 September 2006, evidence of Pieter Boering, T.1953.

<sup>203</sup> Video compilation of Srebrenica-related footage from 1995 (ERN: V000-4458-V000-4458). See also Transcript to compilation video (ERN : L009-2397-L009-2474).

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

153. Notably, General Mladić announced that all the men between the ages of 16 and 60 would be separated, purportedly so that they could be screened for war crimes.<sup>209</sup> This was the first time General Mladić mentioned screening, which necessarily required the separation of the men from the women. Shortly thereafter, the separation of Bosnian Muslim men from their families began in Potočari. However, it was clear from the beginning of the process that no “screening” for war criminals was being done. All of the men between the ages of 16 and 60, including many who were 12 to 15 years old and even more above the age of 60 and 70, were separated.

**c) Separations and forcible removal of the Bosnian Muslim population**

***Violence and Terror in Potočari***

154. On the evening of 11 July 1995 after the fall of Srebrenica, 20,000 to 25,000 Bosnian Muslim refugees from the enclave had gathered in and around the UN DutchBat headquarters in Potočari.<sup>210</sup> The conditions for these refugees in Potočari, which began as deplorable on 11 July, continued to degenerate on 12 and 13 July. Throughout this period, there was no meaningful access to food, water, basic medical treatment or toilet facilities.<sup>211</sup> Moreover, those refugees gathered outside the UN compound were continually subjected to sniping attacks by units of the VRS.<sup>212</sup>

155. In addition to the generally dire living conditions and the random shelling and sniper attacks on the civilian refugee population as a collective whole, various specific refugees at Potočari were singled out for individual terrorisation and intimidation. Such episodes, which included murder, beatings and other particularised methods of physical cruelty, were witnessed by DutchBat personnel and by other Bosnian Muslim refugees throughout 12 and 13 July.

***Forcible transfer of women, children and elderly***

156. Bosnian Serb soldiers and police abused, murdered and terrorised the Bosnian Muslim population in Potočari on 12 and 13 July 1995 and, ultimately, forcibly

<sup>209</sup> *Popović* Trial, 21 September 2006, evidence of Pieter Boering, T.1969.

<sup>210</sup> *See Krstić* Trial Judgement, para.37.

<sup>211</sup> *See Popović* Trial, 16 October 2006, evidence of witness Robert Franken, T.2511.

<sup>212</sup> *See, e.g., Popović* Trial, 16 October 2006, evidence of Robert Franken, T.2440-41 and T.2486. *See also Krstić* Trial, 3 April 2000, evidence of Mirsada Malagić, accepted in the *Popović* Trial under Rule 92bis on 12 September 2006.

transported them out of the area. Evidence from DutchBat officers<sup>213</sup> and Bosnian Muslim survivors establishes that Bosnian Serb forces terrorised the Bosnian Muslims into leaving Srebrenica and then Potočari. The Bosnian Serb soldiers left the Bosnian Muslim population with no real option to stay in the Srebrenica area.

157. In the afternoon of 12 July 1995, in the presence of Ratko Mladić, Radislav Krstić, Vujadin Popović, Svetozar Kosorić and others, approximately 50 to 60 buses and trucks arrived near the UN military compound in Potočari. At this time and continuing throughout the entire day of 13 July, thousands of Bosnian women, children and elderly men were loaded on to buses and trucks and transported by the Bosnian Serb forces from Potočari to the confrontation line near Kladanj, where they were released and walked the approximately five kilometres to ABiH-held lines outside Kladanj.

#### ***Separation of the Men***

158. On the afternoon of 12 July, as the Bosnian Muslim women, children and men started to board the buses and trucks, MUP forces under the command of the VRS began to separate Bosnian Muslim men from the women and children in and around Potočari.<sup>214</sup>
159. Shortly after midday, transportation began arriving to deport the mass of terrified people from Potočari. As the men stepped forward to board buses, they were separated and taken to the White House where, as detailed below, they were beaten and abused.<sup>215</sup> The Serb forces also searched for Bosnian Muslim men and separated them from their families in the bus compound.<sup>216</sup> The separation process, conducted in clear view of everyone inside the UN compound, continued until about 20:00 hours on 12 July.<sup>217</sup>

<sup>213</sup> *Popović* Trial, 18 October 2006, evidence of Vincentius Egbers, T.2719; 29 November 2006, evidence of Johannes Rutten, T.4797.

<sup>214</sup> *Popović* Trial, 1-2 November 2006, evidence of witness PW-118, T.3408-3409; 22 September 2006, evidence of Pieter Boering, T.2014-2016; 16 October 2006, evidence of Robert Franken, T.2496. *See also* *Krstić* Trial, 3 April 2000, evidence of Mirsada Malagić, T.1966, accepted in the *Popović* Trial under Rule 92bis on 12 September 2006.

<sup>215</sup> Photograph of White House (ERN: 0046-0533-0046-0533); *Krstić* Trial, 3 April 2000, evidence of Mirsada Malagić, T.1966, accepted in the *Popović* Trial under Rule 92bis on 12 September 2006. *See also* *Popović* Trial, 16 October 2006, evidence of Robert Franken, T.2496-2500; 22 September 2006, evidence of Pieter Boering, T.2008-2016; 29 November 2006, evidence of Johannes Rutten, T.4801-4802; 27 September 2006, evidence of Leendert Van Duijn, T.2302-2304. *See also* Aerial photo of Potočari showing area of Blue Factory (ERN: R041-0608-R041-0608).

<sup>216</sup> *Popović* Trial, 1 November 2006, evidence of PW-118, T.3407-3408 and 3459-3461.

<sup>217</sup> *Popović* Trial, 27 September 2006, evidence of Leendert Van Duijn, T.2295.

160. During the evening of 12 July, Major Franken decided to assemble a list of Bosnian Muslim men who were inside the UN compound, in an attempt to protect them. Major Franken believed this list might act as a deterrent to the soldiers who thought their crimes would go unpunished.<sup>218</sup> Mirsada Malagić testified that her son's name, Elvir Malagić, was on Major Franken's list. Her son has not been seen since the day Srebrenica fell, when he was seen heading towards Potočari.<sup>219</sup> His name is now included on the ICRC list of persons missing from Srebrenica.<sup>220</sup>
161. The forcible removal process resumed the next morning. Initially that morning, men were allowed on the buses with their families. However, when MUP forces led by a commander called "Mane" reappeared, the separation of the men began again.<sup>221</sup>
162. The separation of men and boys from their families was marked by fear, force and distress.<sup>222</sup> The men who were separated were mainly between 17 and 50 to 60 years of age,<sup>223</sup> though boys as young as 13 years old were taken away. They were not distinguishable as soldiers; they all wore civilian clothes.<sup>224</sup>

### *The White House*

163. Beginning 12 July, the Bosnian Muslim men were taken to the building known as the "White House," across from the UNPROFOR compound."<sup>225</sup> The men were forced to leave their belongings, including information documents, outside, on the ground.<sup>226</sup> In the end, there was a big mound of belongings around the White House.<sup>227</sup> After the men were forcibly transferred out of Potočari, all of the men's

<sup>218</sup> *Popović* Trial, 16 October 2006, evidence of Robert Franken, T.2500; hand-written list of 239 names of Bosnian men within the DutchBat Compound (ERN: R013-5806-R013-5815)

<sup>219</sup> *Krstić* Trial, 3 April 2000, evidence of Mirsada Malagić, T.1984-1985, accepted in the *Popović* Trial under Rule 92bis on 12 September 2006.

<sup>220</sup> ICTY Report – Srebrenica Missing – Persons reported missing after the take-over of the Srebrenica enclave by the Bosnian-Serb Army on 11 July 1995 (ERN: 0501-5985-0501-6177).

<sup>221</sup> *Popović* Trial, 29 September 2006, evidence of Leendert Van Duijn, T.2300-2301.

<sup>222</sup> *Krstić* Trial, 3 April 2000, evidence of Mirsada Malagić, T.1966-1967, accepted in the *Popović* Trial under Rule 92bis on 12 September 2006.

<sup>223</sup> *Popović* Trial, 22 September 2006, evidence of Pieter Boering, T.2010, 2012; *Krstić* Trial, 21 March 2000, evidence of Witness B, T.932, admitted under Rule 92bis in the *Blagojević* Trial.

<sup>224</sup> *Krstić* Trial, 21 March 2000, evidence of Witness B, T.932, admitted under Rule 92bis in the *Blagojević* Trial.

<sup>225</sup> *Popović* Trial, 19 October 2006, evidence of Vincentius Egbers, T.2749-2752; 27 September 2006, evidence of Leendert Van Duijn, T.2302-2304; 16 October 2006, evidence of Robert Franken, T.2496-2497; 22 September 2006, evidence of Pieter Boering, T.2012-2016 and 2018. See also Photograph of White House, without annotation (ERN: 0046-0533-0046-0533).

<sup>226</sup> *Popović* Trial, 16 October 2006, evidence of Robert Franken, T.2497; and 27 September 2006, evidence of Leendert Van Duijn, T.2302-2304. See also *Krstić* Trial, 3 April 2000, evidence of Mirsada Malagić, T.1966, 1973-1974, accepted in the *Popović* Trial under Rule 92bis on 12 September 2006.

<sup>227</sup> *Popović* Trial, 27 September 2006, evidence of Leendert Van Duijn, T.2302-2304; 22 September 2006, evidence of Pieter Boering, T.2012-2013; 29 November 2006, evidence of Johannes Rutten, T.4801; *Krstić*

belongings that had been left outside the White House were set on fire.<sup>228</sup> The confiscation of the Bosnian Muslim men's identification papers, starting on 12 July and continuing through 13 July, clearly demonstrates that the Bosnian Serb forces were aware, from at least 12 July, that the men being separated would not be interrogated as POWs<sup>229</sup> but would ultimately be killed.<sup>230</sup>

164. The looming plan to kill off the Bosnian Muslim men is also supported by the abuse the Bosnian Serb forces inflicted on the prisoners in the White House. Their actions demonstrated that the soldiers believed they could act with impunity, without fear of disciplinary measures. When the Bosnian Muslim men entered the White House, the soldiers interrogated them violently and abusively.<sup>231</sup> Most of them were never seen again.<sup>232</sup> There were beatings, shootings and arbitrary executions.<sup>233</sup> According to Major Franken, there appeared to be an escalation of the violence at the White House over time. Initially, he sent UNMOs to monitor the situation at the White House and received reports that the VRS were not friendly, but that nothing serious was happening. However, later in the afternoon of 12 July, the situation became more violent and, as events progressed, he was no longer able to send a patrol. Franken assumed that the VRS was trying to make sure there would be no witnesses,<sup>234</sup> which implies that the Bosnian Serb forces were aware that the activity going on therein was illegal and had to be kept hidden.

## 2. **“Opportunistic” killings which were a foreseeable consequence of the forcible removal of the Bosnian Muslim population from Srebrenica**

165. During and after the campaign of forcible transfer and organised executions, the opportunistic killing of captured Bosnian Muslim men from the Srebrenica enclave by VRS and MUP personnel continued through July and August. These opportunistic killings were the natural and foreseeable consequence of the Joint Criminal Enterprise to forcibly transfer the population of Srebrenica. They were

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Trial, 3 April 2000, evidence of Mirsada Malagić, T.1966, 1974, accepted in the *Popović* Trial under Rule 92bis on 12 September 2006.

<sup>228</sup> *Popović* Trial, 16 October 2006, evidence of Robert Franken, T.2512.

<sup>229</sup> *Popović* Trial, 22 September 2006, evidence of Pieter Boering, T.2018.

<sup>230</sup> *Popović* Trial, 27 September 2006, evidence of Leendert Van Duijn, T.2302-2304.

<sup>231</sup> *Popović* Trial, 19 October 2006, evidence of Vincentius Egbers, T.2749-2752.

<sup>232</sup> *Krstić* Trial, 3 April 2000, evidence of Mirsada Malagić, T.1955, accepted in the *Popović* Trial under Rule 92bis on 12 September 2006.

<sup>233</sup> *Popović* Trial, 22 September 2006, evidence of Pieter Boering, T.2012-2016; 16 October 2006, evidence of Robert Franken, T.2505-2506.

<sup>234</sup> *Popović* Trial, 16 October 2006, evidence of Robert Franken, T.2496-2500.

also the natural and foreseeable consequence of the Joint Criminal Enterprise to murder all the able-bodied Bosnian Muslim men from Srebrenica.

### ***Potočari***

166. Numerous opportunistic killings of Bosnian Muslims occurred in Potočari on 12 and 13 July. Major Boering testified that a soldier led a group of Bosnian Muslim men behind a house.<sup>235</sup> He then heard shooting and made the assumption that they were indeed an execution squad.<sup>236</sup>
167. On 12 July, the dead bodies of nine Bosnian Muslim men were found by DutchBat officers in a creek across the road from the Potočari compound.<sup>237</sup> All these bodies appeared to have been shot in the back.<sup>238</sup> Aerial images establish that between 17 and 27 July 1995, an area of disturbed earth appeared within metres of where the Dutchbat officers saw these nine bodies.<sup>239</sup> In 2005 and 2006, a total of nine bodies were exhumed from this same area of disturbed earth.<sup>240</sup>

### ***Bratunac***

168. On 12 and 13 July, many of the Bosnian Muslim men who had been separated and detained in Potočari or captured from the column of men retreating from the Srebrenica enclave were transported to locations in and around Bratunac, where they were held in schools, buildings and vehicles parked along the road. Between 12 July and the evening of 13 July, large numbers of these men were killed in an opportunistic manner by Bosnian Serb forces.
169. On the evening of 13 July, a Bosnian Muslim survivor was detained in a large truck filled with other Bosnian Muslim men.<sup>241</sup> The truck was parked near a garage in Bratunac, along with additional trucks and buses also filled with

<sup>235</sup> *Popović* Trial, 22 September 2006, T.2012-2013.

<sup>236</sup> *Id.*

<sup>237</sup> *Popović* Trial, 25 October 2006, evidence of Eelco Koster, T.3027-3029; [REDACTED] 29 November 2006, evidence of Johannes Rutten, T.4803-4812.

<sup>238</sup> *Id.*

<sup>239</sup> Aerial image titled, "Possible Gravesite Potočari, Bosnia and Herzegovina," dated 17 July 1995 (ERN: R092-1397-R092-1397); Aerial image titled, "Probable Disturbed Earth, Potočari, Bosnia and Herzegovina," dated 27 July 1995 – markings made by provider (ERN: R092-1398-R092-1398); Comparison of probable disturbed earth and DutchBat testimony re location of nine bodies at Potočari (ERN: R065-2777-R065-2777).

<sup>240</sup> Exhumation report No. 1466/05 for Potočari dated 27 July 2005 (ERN: X019-0104-X019-0105); Tuzla Canton Prosecutor's Office exhumation report KTA no. RZ-22/06 dated 25 April 2006, related to exhumation in Potočari (ERN: X018-9793-X018-9794); Sketch of exhumations in Potočari on 25 July 2005, location no. SR POT-01 (ERN: X020-3832-X020-3835); Sketch of an exhumation site in Potočari on 25 April 2006, location no. POT 01 SRE (ERN: X021-7671-X021-7671); ICMP 3 July 2008 Report.

<sup>241</sup> *Popović* Trial, 24 August 2006, evidence of witness PW-110, T.662-674.

prisoners. Throughout the night, Bosnian Serb soldiers called out the names of people from villages around Srebrenica. After these selected people exited the trucks and buses, the survivor could hear thuds, screams and shots. At approximately 21:30 that night, two men from the survivor's truck were taken to a garage and shot. They did not return.

170. Another Bosnian Muslim survivor states that on the evening of 13 July, he witnessed the execution of a fellow prisoner who was mentally retarded.<sup>242</sup> The prisoners were detained on three buses parked in front of the Vuk Karadžić school in Bratunac. The mentally retarded man was removed from the witness' bus by three Bosnian Serb military policemen and shot with an automatic rifle at close range.
171. During the day of 13 July, a Bosnian Muslim survivor watched as a fellow prisoner inside the Vuk Karadžić school was grabbed by a member of the Bosnian Serb forces and beaten about the head with a rifle until the prisoner's face and shirt were covered with blood.<sup>243</sup> An hour later, this prisoner was summoned to exit the school, and when he did, the remaining prisoners inside could hear the man's screams and moans of pain grow fainter.
172. From the evening of 13 July until the morning of 14 July, this same survivor witnessed the summary execution of four young Bosnian Muslim males in the area of the Vuk Karadžić school. Additionally, he witnessed the selection of men, from among the Bosnian Muslim prisoners packed into a room at the Vuk Karadžić school, to be taken out and executed. This occurred frequently and consistently over the two-day period.
173. On 14 July, the VRS requested from a witness a truck to dispose bodies from the hangar behind the Vuk Karadžić school. The witness said he saw only five to six bodies around the main school. A driver told him "a lot more" bodies were earlier disposed of.<sup>244</sup> Another witness sent to the school to help remove bodies testified that he saw 40-60 bodies at the school.<sup>245</sup> The witness said the Army performed

<sup>242</sup> *Popović* Trial, 28 August 2006, evidence of witness Mevludin Orić, T.911.

<sup>243</sup> *Popović* Trial, 6 September 2006, evidence of witness Amho Hasić, T.1180.

<sup>244</sup> *Popović* Trial, 23, 26-27 March 2007, evidence of witness PW-161, T.9389-9391.

<sup>245</sup> *Popović* Trial, 19 November 2007, evidence of witness PW-170, T.17852.

the reburials in Glogova at night. The witness also testified that the burials at Glogova were organised by Colonel Ljubiša Beara.<sup>246</sup>

***Kravica Supermarket***

174. During the night between 13 July and 14 July near a supermarket in Kravica, a VRS or MUP soldier placed his rifle barrel into the mouth of a Bosnian Muslim prisoner and summarily executed the man.<sup>247</sup>

***Grbavci School at Orahovac, Petkovi School, Ročević School and the Kula School near Pilica***

175. A number of Bosnian Muslim men were murdered at detention sites in the Zvornik Brigade area of responsibility where they were being detained prior to the organised, large-scale and systematic executions. These included murders at the Grbavci School at Orahovac (*see* paragraph 80 *supra*), the Petkovci School (*see* paragraph 89 *supra*), the Ročević School (*see* paragraph 99 *supra*) and the Kula School near Pilica (*see* paragraph 102 *supra*). These murders were the natural and foreseeable result of both the forcible transfer operation and the organised killing operation.

***July – August 1995: additional opportunistic killings***

176. The opportunistic killing of captured Bosnian Muslim men from the Srebrenica enclave by VRS and MUP personnel continued through July and August.<sup>248</sup> These opportunistic killings were the natural and foreseeable consequence of the Joint Criminal Enterprise to forcibly transfer the population of Srebrenica. They were also the natural and foreseeable consequence of the Joint Criminal Enterprise to murder all the able-bodied Bosnian Muslim men from Srebrenica.

**3. Operation to Forcibly Remove the Bosnian Muslim Population of Žepa**

**a) The Attack on the Žepa “Safe Area”**

177. As discussed above, the VRS attacked the Srebrenica enclave in July 1995 to, in part, advance the RS government’s goal of creating a “Greater Serbia” across the

<sup>246</sup> *Popović* Trial, 23, 26-27 March 2007, evidence of witness PW-161, T.9362-9372. *See also* 23 March 2007, evidence of witness PW-162, T.9368-T.9372.

<sup>247</sup> *Krstić* Trial, 14 April 2000, evidence of witness P, T.2960-2961, admitted as PW-116 in the *Popović* Trial under Rule 92bis(D) on 12 September 2006.

<sup>248</sup> *See, e.g.*, 1st Podrinje Light Infantry Brigade (1.PLPBR) regular combat report to the Drina Corps Command, 8 August 1995 (ERN: 0440-9844-0440-9844) refers to ten “Balijas” from Žepa and one 24 year old “Ustasha” from Srebrenica who were “liquidated.” The unarmed 24 year old from Srebrenica provided information to his VRS captors before he was killed.

Drina River in eastern Bosnia. Approximately twenty kilometres to the southwest of Srebrenica, the predominantly Bosnian Muslim enclave of Žepa was targeted for the same reason. Indeed, the fates of both enclaves had been joined since the beginning of the war, their geographical proximity to each other and the Drina River rendering them of great strategic value to the objective of “eliminat[ing] the Drina as a border separating Serbian states.”<sup>249</sup>

178. The strategic value of the enclaves was not lost on the Bosnian Muslim forces, who had been operating vigorously to hold and link the enclaves since 1992. Consequently, not only defeating the ABiH forces, but removing the Bosnian Muslim population from Bosnia’s eastern enclaves became a necessary component of the RS government’s objective in the region, which was to “inflict the heaviest possible losses on the enemy, and force him to leave the Birać, Žepa and Goražde areas together with the Muslim population.”<sup>250</sup> Thus, like Srebrenica, Žepa came under an intense VRS counter-offensive in 1993, resulting in an influx of refugees to Srebrenica and Žepa, siege conditions and a concomitant humanitarian crisis.<sup>251</sup>
179. On 6 May 1993, in response to the severely deteriorating conditions on the ground in the eastern enclaves, the UN Security Council adopted UNSCR 824, calling for establishment of four “safe areas,” including Žepa.<sup>252</sup> Three days later, on 9 May 1993, a company of Ukrainian UN peacekeepers (“UKRCoy”) from the UNPROFOR battalion in Goražde (“UKRBat”) established a base in the town of Žepa, setting up nine observation posts (“OPs”) encircling the town’s perimeter.
180. Despite this, the RS government continued to pursue its strategic objective of eliminating the enclaves of both Žepa and Srebrenica. In addition to its combat operations “to create an unbearable situation of total insecurity, with no hope of future survival or life for the inhabitants of Srebrenica or Žepa,” the RS government successfully undertook sustained efforts, pursuant to Operational Directive 7 (drafted by General Miletić), to “reduce and limit the logistics support of UNPROFOR to the enclaves and the supply of material resources to the Bosnian Muslim population, making them dependent on our good will.”<sup>253</sup>

<sup>249</sup> Decision on Strategic Objectives, *supra* note 4.

<sup>250</sup> Operational Directive No.4, *supra* note 5.

<sup>251</sup> Secretary-General’s Report, para.37.

<sup>252</sup> S.C.Res.824, U.N.SCOR, 48th Year, U.N.Doc.S/INF/49 (1993). The other safe areas were Tuzla, Goražde and Bihać. Srebrenica had been declared a U.N. “safe area” on 16 April.

<sup>253</sup> Operational Directive 7, *supra* note 12.

181. These efforts to strangle and starve the enclaves had very concrete debilitating effects, as the VRS consistently prevented UNPROFOR and other humanitarian aid organisations from getting essential supplies such as food and fuel into the enclaves from the beginning of 1995.<sup>254</sup> Thus, like their Dutch counterparts, whose ammunition had become out of date and who had been reduced to living off of their limited supply of combat rations, the Ukrainian peacekeepers had not been permitted a fuel delivery between 7 March and 3 June, resulting in their inability to run refrigerators and consequently having to subsist on a remaining few days' dry rations from three to two meals a day.<sup>255</sup>
182. By March 1995, the RS government planned that should "the UNPROFOR forces leave Žepa and Srebrenica, the DK [Drina Corps] command shall plan an operation name *Jadar* with the task of breaking up and destroying the Bosnian Muslim forces in these enclaves and definitively liberating the Drina valley region."<sup>256</sup> Thus, the attack plan dated 2 July and code-named "Krivaja 95" continued to regard the fates of the two enclaves as linked, its objectives being to "split apart the enclaves of Žepa and Srebrenica, and to reduce them to their urban areas," and "to create conditions for the elimination of the enclaves."<sup>257</sup>
183. The VRS began firing on U.N. positions around Žepa on 7 July, a day after its attack commenced on Srebrenica. The VRS attack continued throughout the week with intermittent artillery, mortar and heavy machinegun fire aimed at the enclave's population centres, including the town of Žepa and the villages of Ribioći and Pripečki.<sup>258</sup> On 9 July, a report was sent to the ABiH General Staff by Col. Avdo Palić, Žepa's commander, noting that civilians had been wounded by

<sup>254</sup> *Popović* Trial, 16 October 2006, evidence of witness Robert Franken, T.2445–2450; 29 November 2006, evidence of witness Johannes Ruten T.4807– 4808; and 29 November 2007, evidence of witness Cornelis Nicolai, T.18452-18459.

<sup>255</sup> UNPROFOR Sector Sarajevo Weekly Situation Report of Civil Affairs Officer David Harland, 3 June 1995 (ERN: 0327-9228-0327-9232).

<sup>256</sup> Operational Directive 7, *supra* note 12.

<sup>257</sup> Drina Corps Command Order 04/156-2, Operations Order No. 1, 2 July 1995 (ERN: 0088-3593-0088-3602 (BCS); 0084-7289-0084-7294 (Eng)).

<sup>258</sup> UNPROFOR Sector Sarajevo Weekly Situation Report of Civil Affairs Officer David Harland, 15 July 1995 (ERN: 0327-9250-0327-9254); UNPROFOR Sector Sarajevo SitRep, 20H00B 9th of July 1995 (VRS tank rounds fired at OP9 and village; OP9 struck by VRS shell) (ERN: R0433-3921-R0433-3931). In fact, the VRS had shelled most of the UKRCoy OPs on 27 June, the local VRS commander having delivered to the UKRCoy commander the ultimatum that "the attacks would continue until UNPROFOR agreed to leave the pocket altogether," UNPROFOR Sector Sarajevo Weekly Situation Report of Civil Affairs Officer David Harland, 2 July 1995 (ERN: R002-4213-R002-4218).

VRS mortar shelling, two of whom were children, and that “over 30 houses had been destroyed” in the surrounding villages.<sup>259</sup>

184. On 10 July, “[a]s a result of the newly arisen situation around the Srebrenica enclave and the VRS success in that part of the front, separation of the enclaves and narrowing the area around Srebrenica, and in order to close the Žepa enclave and improve the tactical position of our forces around the enclave,” Mladić issued an order to the Drina Corps to plan and launch an offensive on Žepa on 12 July.<sup>260</sup>
185. As Srebrenica fell on 11 July, Bosnian Serb media announced that Mladić expected Bosnian Muslim units in Žepa to capitulate within 48 hours.<sup>261</sup> Žepa was in a state of panic.<sup>262</sup> On 13 July 1995, the VRS, represented by the Accused Zdravko **TOLIMIR**, presented an ultimatum to a delegation of Žepa’s Bosnian Muslims to agree by 14:00 hours the next day to evacuate the entire population with buses “in the same way that it had taken place in Srebrenica,” or face military action.<sup>263</sup> The Bosnian Muslim representatives returned to Žepa and conferred with the War Presidency, including its President, Mehmed Hajrić, and commander Palić. Partly because of stories they had heard about people being taken off the buses at Potočari, they rejected the Serbs’ demand.<sup>264</sup>
186. On 14 July the local VRS commander also demanded that UNPROFOR evacuate its OPs and that an assault would begin at 14:00.<sup>265</sup> When the deadline expired without agreement from the Bosnian Muslims, Drina Corps troops commanded by General Krstić attacked Žepa at 15:00 hours that afternoon.
187. Later that day, General **TOLIMIR** advised General Miletić that “[i]n order to monitor combat activities around Žepa and have complete review of the Drina Corps Command radio network with brigade commands,” it would be necessary to incorporate the Main Staff into the Drina Corps Command’s communication system with appropriate equipment for crypto-protection.<sup>266</sup> This proposal

<sup>259</sup> ABiH 285<sup>th</sup> Brigade document No. 08-22-143/95, typesigned by Avdo Palić, 9 July 1995 (ERN: DA18-3146-DA18-3146 (BCS); ET DA18-3146-DA18-3146).

<sup>260</sup> VRS Main Staff Order No.03/4-1807, 10 July 1995 (ERN: 0425-7963-0425-7965).

<sup>261</sup> Secretary-General’s Report, para.394.

<sup>262</sup> UNPROFOR Sector Sarajevo Weekly Situation Report of Civil Affairs Officer David Harland, 15 July 1995 (ERN: 0327-9250-0327-9254).

<sup>263</sup> *Popović* Trial, 30 March 2007, evidence of witness Hamdija Torlak, T.9723-9727.

<sup>264</sup> *Popović* Trial, 30 March 2007, evidence of witness Hamdija Torlak, T.9726-9728.

<sup>265</sup> UNPROFOR Sector Sarajevo Weekly Situation Report of Civil Affairs Officer David Harland, 15 July 1995 (ERN: 0327-9250-0327-9254); Secretary-General’s Report, *supra* note 7, para.397.

<sup>266</sup> VRS Main Staff Report No.04-520-56/95, from **TOLIMIR** “personally to General Miletić,” dated 14 July 1995 (ERN: 0425-8558-0425-8558).

underscored the Main Staff's deep involvement in the operation to take the eastern enclaves.

188. On the morning of 15 July, Vinko Pandurević and his troops were withdrawn from Žepa and redeployed to assist in defending Zvornik from the threat posed by the advancing column of Bosnian Muslim men breaking out from Srebrenica. During this time and over the next days through 18 July, the VRS surrounded and directly targeted UKRCoy positions. Blocked into their OPs, UKRCoy personnel were subjected to direct fire, capture and death threats by both VRS and ABiH forces. The Serbs threatened to shoot the peacekeepers if NATO called in air strikes, while the Bosnian Muslims threatened to shoot them if NATO failed to call in air strikes or otherwise defend them against the VRS.<sup>267</sup> As the OPs were finally overtaken and abandoned, the peacekeepers fell back into the town of Žepa itself.
189. The second meeting between the VRS and two Bosnian Muslim representatives of the enclave occurred on the afternoon of 19 July at an UKR Bat checkpoint. Mladić, **TOLIMIR** and Krstić met with Hamdija Torlak, a member of the War Presidency, and Dr. Benjamin Kulovac.<sup>268</sup> Mladić dictated the terms and insisted on an all-for-all prisoner exchange. However, with their recently acquired information concerning the fate of the Srebrenica population, the Bosnian Muslims did not believe Mladić. When the Bosnian Muslims did not accept Mladić's terms, the VRS assault resumed even stronger than before.<sup>269</sup>
190. On 20 July 1995, General Miletić reported that various Drina Corps elements were "engaged in the destruction of groups of individuals breaking through to Kladanj from Žepa."<sup>270</sup> On 21 July, Zdravko **TOLIMIR** recommended to General Miletić that the "most propitious means of their destruction would be usage of chemical weapons or aerosol grenades and bombs."<sup>271</sup> **TOLIMIR** added that "we could force Bosnian Muslims to surrender sooner if we could destroy groups of Bosnian Muslims [sic] refugees fleeing in the direction of Stublić,

<sup>267</sup> UNPROFOR Sector Sarajevo SitRep 20H00B, 14 July 1995 (ERN: R043-3907-R043-3920); UNPROFOR Memorandum (Update SitRep), 13-14 July 1995 (ERN: R043-4163-R043-4164); UNPROFOR Memorandum (Update SitRep), 16-17 July 1995 (ERN: R043-3991-R043-3992); UNPROFOR UKRBAT-1 SINCREP, 18 July 1995 (ERN: R043-4808-R043-4808).

<sup>268</sup> *Popović* Trial, 30 March 2007, evidence of witness Hamdija Torlak, T.9728-9731.

<sup>269</sup> *Popović* Trial, 30 March 2007, evidence of witness Hamdija Torlak, T.9731-9732. UNPROFOR Sector Sarajevo SitRep, 20H00B, 21 July 1995 (ERN: R043-4097-R043-4111).

<sup>270</sup> VRS Main Staff Report No.03/3-201, dated 20 July 1995, p.5 (ERN: 0410-8281-0410-8285).

<sup>271</sup> VRS Main Staff Report No.04-520-61/95, from **TOLIMIR** "personally to General Miletić," dated 21 July 1995 (ERN: 0425-8568-0425-8568).

Radava and Brloška Planina.”<sup>272</sup> Nevertheless, the Bosnian Muslim forces in Žepa maintained their resistance, leading UNPROFOR to observe that “it seems that the BiH would rather continue to fight with the odds against them than to become POW’s,” and that the “BiH appear poised to defend the pocket unless they get the terms they want for the evacuation. This is likely linked to the reported bad results of the evacuation of Srebrenica (mainly the soldiers and men of Srebrenica).”<sup>273</sup>

191. The third meeting between the VRS and the Žepa Bosnian Muslims took place on 24 July 1995. The only Bosnian Muslim representative that day was Torlak, who met with Mladić and **TOLIMIR**. At approximately 18:30, Torlak signed an agreement which provided for an immediate cease-fire, demilitarisation, registration of the male population for a prisoner exchange, and transportation for the civilian population.<sup>274</sup> Mladić told Torlak that **TOLIMIR** would be in charge of the evacuation.<sup>275</sup> When presented with the agreement, BiH Prime Minister Muratović denied that Torlak possessed the authority to negotiate on behalf of the government and insisted that any evacuation be performed by UNPROFOR.<sup>276</sup>
192. The Main Staff remained involved in the negotiations, not only via **TOLIMIR**’s leadership in the field, but by his consultations with other Main Staff officers such as Generals Gvero and Miletić, who were also actively participating in the Žepa operation. For example, in the morning on 25 July, **TOLIMIR** wrote to Generals Gvero and Miletić concerning how the issue of war prisoner exchange was being complicated by the Bosnian Muslims’ “bringing up the issue of prisoners from Srebrenica.”<sup>277</sup> In addition, a caller in an intercepted conversation later that morning asked “Where’s Miletić?” and was told “He went to see Gvero.” The caller then said “Tell Gvero to be with that girl at 11:30 where he’s supposed to meet Smith.”<sup>278</sup> The “Smith” referred to in the call is Gen. Rupert Smith,

<sup>272</sup> *Id.*

<sup>273</sup> UNPROFOR HQ Sarajevo SitRep for Period 210001B to 212359B Jul 95, 21 July 1995 (ERN: R011-0222-R011-0235).

<sup>274</sup> *Popović* Trial, 30 March 2007, evidence of witness Hamdija Torlak, T.9733-9737; “Agreement on Disarmament of the Military-Able Population in the Enclave of Žepa,” dated 24 July 1995 (ERN: R005-0067-R005-0070).

<sup>275</sup> *Popović* Trial, 30 March 2007, evidence of witness Hamdija Torlak, T.9736.

<sup>276</sup> [REDACTED] Secretary-General’s Report, *supra* note 7, para.421 (“There will be no repeat of Srebrenica; no people being pulled off buses ...”); Notes of meeting between Smith and Sacirbey and Muratović, 23 July 1995 (ERN: R001-1431-R001-1433).

<sup>277</sup> VRS Main Staff Report No.04-520-63:95, from **TOLIMIR** “personally to General Gvero or General Miletić,” dated 25 July 1995 (ERN: 0425-8578-0425-8578).

<sup>278</sup> Intercept dated 24 July 1995 at 10:35 (ERN: 0072-7961-0072-7961).

UNPROFOR BiH Commander, who met in Žepa that day at 12:30 with Mladić and Gvero to continue negotiations.<sup>279</sup>

193. Following the agreement signed by Torlak, VRS forces entered the town of Žepa on 25 July 1995. Shortly thereafter, the removal of the Bosnian Muslim population began.<sup>280</sup>

**b) The forcible removal of the Bosnian Muslim population from Žepa**

194. **TOLIMIR** was in direct control of the forcible transfer of the Žepa population between 25 and 28 July.<sup>281</sup> An UNPROFOR Civil Affairs Officer observed that the civilians were clearly terrified of being left alone with the VRS troops.<sup>282</sup> The VRS had requisitioned a number of buses, which for the following two days transported the Bosnian Muslims -- with UNPROFOR troops aboard -- to a point seven kilometres from the confrontation line, from which they walked to safety.<sup>283</sup> By the evening of 27 July, approximately 5,000 Žepa Bosnian Muslims had arrived in Kladanj.

195. Meanwhile, as Torlak's authority to negotiate on behalf of the Bosnian Muslim authorities in Sarajevo had been disputed, another meeting between Bosnian Muslim representatives and the VRS was held on 27 July, at which Torlak, Mehmed Harjić and Amir Imamović met with Mladić and Smith. Despite Smith's advice that they not do so, the three representatives signed an agreement setting forth the terms of surrender and exchange of military-aged men.<sup>284</sup>

<sup>279</sup> Meeting Notes General Smith/General Mladic 25 July, Lt.Col.J.R.J. Baxter, dated 26 July 1995 ("the girl" is believed to be an interpreter at the meeting) (ERN: R001-1439-R001-1140, part of ERN range, R001-1363-R001-1453). General Smith would meet again with Mladić and Gvero on 31 July "in order to resolve the situation in Žepa" (ERN: R001-1441-R001-1443, part of ERN range R001-1363-R001-1453); *See also* Main Staff Report No.12/45-936 from Lt.Col. Jovica Karanović, signing "For the Chief," to **TOLIMIR**, referring to conversation he had with General Miletić concerning the Žepa negotiations, dated 25 July 1995 at 20:45 (ERN: 0425-8577-0425-8577-EDT).

<sup>280</sup> Secretary-General's Report, *supra* note 7, para.424.

<sup>281</sup> *Popović* Trial, 15 October 2007, evidence of witness Thomas Dobb, T.16290-16291; 23 August 2007, evidence of witness Edward Joseph, T.14189-10-14196 and T.14200; 6 November 2007, evidence of witness Rupert Smith, T.17553 and T.17580.

<sup>282</sup> *Popović* Trial, 24 August 2007, evidence of witness Edward Joseph, T.14335-14336; 15 October 2007, evidence of Thomas Dobb, T.16285-16286.

<sup>283</sup> Secretary-General's Report, *supra* note 7, para.425; Drina Corps request 22/249, 19 July 1995, requesting vehicles for transportation of Muslim population of Žepa on 20 July 1995 (ERN: 0430-3497-0430-3497).

<sup>284</sup> Code Cable from Akashi to Annan, 28 July 1995 (ERN: R008-1387-R008-1389). Note: title of document is actually "Baxter memo, The situation at Žepa, Summary as at 08:00 hours, dated 28 July 95"; *Popović* Trial, 27-28 November 2007, evidence of witness Louis Fortin, T.18282-T.18285 and T.18372; 6 November 2007, evidence of Rupert Smith, T.17553-17556.

196. In any event, Žepa's fighting age men did not surrender, instead exfiltrating to the hills surrounding the enclave, or heading east to cross the Drina to Serbia. In fact, hundreds of mostly able-bodied Bosnian Muslim men, fearing that they would be harmed or killed if they surrendered to the VRS, fled to the Drina River and swam to Serbia, where many of them were registered by the International Committee for the Red Cross ("ICRC") and eventually released.<sup>285</sup>
197. The Main Staff's hands-on involvement in the Žepa forced movement is exemplified by **TOLIMIR**'s personal participation in the seizure on 27 July of approximately 36 men -- including a group of approximately a dozen wounded -- from a bus headed to Kladanj.<sup>286</sup> **TOLIMIR** had initially refused, and then personally assured an UNPROFOR Civil Affairs Officer that the men would be allowed to leave.<sup>287</sup> When confronted by Gen. Herve Gobillard and Maj. Louis Fortin on 28 July about the reasons for removing the men from the last two convoys on the evening of 27 July, **TOLIMIR** replied that he had cross-referenced their vehicles' manifests with a list of military aged males and determined they had lied about their age to try to escape and would be taken to Rogatica, registered by the ICRC, and exchanged.<sup>288</sup> After these men were removed from the last bus in the column, they were placed on another bus, and taken to the Rogatica prison.<sup>289</sup>
198. By 2 August, UNPROFOR evacuated all its personnel from Žepa. As noted by an UNPROFOR Civil Affairs Officer, "[t]he village of Žepa is empty except for a few Serb soldiers. It has been looted by Serb soldiers (who were seen carting off refrigerators, domestic animals etc), and most of the houses have been burnt."<sup>290</sup> Indeed, U.N. personnel during this time also observed VRS soldiers looting and burning homes under the apparent direction of the local VRS commander.<sup>291</sup>

<sup>285</sup> *Popović* Trial, 5 February 2007, evidence of witness PW-155, T.6833-6891.

<sup>286</sup> BiH Ministry of the Interior, Interview of Meho Džebo, 7 February 1996 (ERN: 0335-8245-0335-8250).

<sup>287</sup> *Popović* Trial, 24 August 2007, evidence of witness Edward Joseph, T.14142-14345; 15-16 October 2007, evidence of witness Thomas Dibb, T.16291. *See also* 7 February 2007, evidence of PW-111, T.7018.

<sup>288</sup> *Popović* Trial, 27 November 2007, evidence of witness Louis Fortin, T.18289-T.18290. *See also* *Popović* Trial, 15-16 October 2007, evidence of witness Thomas Dibb, T.16291.

<sup>289</sup> *Popović* Trial, 7 February 2007, evidence of PW-111, T.7023-7025; 28 March 2007, evidence of witness Meho Džebo, T.9596. *See also* BiH Ministry of the Interior, Interview of Meho Džebo, 7 February 1996 (ERN: 0335-8245-0335-8250).

<sup>290</sup> "The situation in Žepa as of 2 August," UNPROFOR Civil Affairs Officer David Harland, 2 August 1995 (ERN: R002-4191-R002-419).

<sup>291</sup> *Popović* Trial, 15 October 2007, evidence of witness Thomas Dibb, T.16294-16295; 27 November 2007, evidence of witness Louis Fortin, T.18285-T.18286.

#### 4. Uncharged killings: murder of the Bosnian Muslim leaders from Žepa

##### *Avdo Palić*

199. Avdo Palić, who had worked with UNPROFOR and the VRS to ensure the evacuation was orderly, was observed in the UKR Bat compound on 25 July and then again meeting with Mladić and Smith on 26 July.<sup>292</sup> Edward Joseph, an UNPROFOR Civil Affairs Officer who had seen Palić throughout the deportation process and had several discussions with him, saw Palić for the last time at about the time the transfer was completed. While making a satellite phone call to UNPROFOR HQ in Zagreb, he observed Palić being seized from inside the U.N. compound by two Serb soldiers resembling those normally with Mladić. He was 20-30 metres from Palić and could not hear what was being said, but he understood that they were arresting Palić and may have pointed their guns at him. He immediately reported this to UNPROFOR HQ in Zagreb. Palić did not appear to resist and was placed in a Serb vehicle, which Joseph tried to follow but lost.<sup>293</sup>
200. Of note is that the Military Assistant to Gen. Smith last saw Palić in the custody of Lt. Col. Radomir Furtula, who said that Palić had once worked for him and not to worry about him.<sup>294</sup> The next morning Joseph spoke with Mladić over a poor radio line, but he understood Mladić telling him that Palić was killed while trying to escape. This was confirmed later in the day by Mladić's interpreter.<sup>295</sup> VRS Main Staff documents, however, indicate that Palić was alive for some time in VRS custody. For example, a 28 July report from **TOLIMIR** described mine locations they learned during "the conversation with Avdo Palić."<sup>296</sup> Ominously, a report filed by Furtula on 28 July indicates that a "group commanded by Avdo Palić was liquidated during combat operations. The whole group headed by Colonel Palić was liquidated."<sup>297</sup>

##### *Mehmed Hajrić and Amir Imamović*

201. Hamdija Torlak, Mehmed Hajrić and Amir Imamović were also seized by VRS soldiers. They were all taken to Hotel Borike where they were interrogated and then transferred to a prison in Rogatica. Torlak was exchanged in January 1996;

<sup>292</sup> *Popović* Trial, 23 August 2007, evidence of Edward Joseph, T.14189-14190; Secretary-General's Report, para.424.

<sup>293</sup> *Popović* Trial, 23 August 2007, evidence of Edward Joseph, T.14196-14198.

<sup>294</sup> *Popović* Trial, 15 October 2007, evidence of witness Thomas Dibb, T.16296-T.16297.

<sup>295</sup> *Popović* Trial, 23 August 2007, evidence of Edward Joseph, T.14206-14207.

<sup>296</sup> Main Staff Report No.18-250-1/1, dated 28 July 1995 (ERN: 0425-8567-0425-8567).

<sup>297</sup> 5th Podrinje Light Infantry Brigade Report No.296?-1, dated 28 July 1995 (ERN: 0438-3770-0438-3770).

however, after being removed suddenly from their room in the prison, the other two men have not been seen again.<sup>298</sup> In November 2001, the remains of Mehmed Hajrić and Amir Imamović were found in a mass grave at Vragolovi, Rogatica Municipality.<sup>299</sup>

#### IV. LIABILITY OF THE ACCUSED UNDER ART. 7(1) OF THE STATUTE

202. The evidence submitted at trial will establish beyond a reasonable doubt that Zdravko **TOLIMIR** is individually criminally responsible, under Article 7(1) of the Statute, for the crimes described above in Section III. Below is a summary of the acts and omissions upon which the criminal liability of the Accused is based.
203. Zdravko **TOLIMIR** was an experienced JNA officer who was appointed to the 2<sup>nd</sup> Military District Staff in early 1992 upon the withdrawal of the JNA from Bosnia.<sup>300</sup> The 2<sup>nd</sup> Military District later became the nucleus of the Main Staff of the VRS,<sup>301</sup> the organization at the core of the RS war effort.<sup>302</sup> **TOLIMIR** became a member of the VRS on or around 20 May 1992.<sup>303</sup>
204. During the time period relevant to the events described in the Indictment, the Accused, Zdravko **TOLIMIR**, was the Assistant Commander for Intelligence and Security of the VRS Main Staff. In this position, **TOLIMIR** was one of seven Assistant Commanders who reported directly to the Commander of the Main Staff, General Ratko Mladić, and one of three Assistant Commanders who managed the specialized branches of the Main Staff on behalf of General Mladić.
205. During the war, **TOLIMIR** was a close associate of the senior RS and VRS leadership and a frequent attendee of the Bosnian Serb Assembly Sessions.<sup>304</sup> As such, **TOLIMIR** would have been familiar with the “*Decision on Strategic Objectives of the Serbian People in Bosnia and Herzegovina*”, including the objectives to “establish State borders separating the Serbian people from the other

<sup>298</sup> *Popović* Trial, 30 March 2007, evidence of witness Hamdija Torlak T.9749-9752.

<sup>299</sup> ICMP 3 July 2008 Report.

<sup>300</sup> 5th Corps Command Order 436-2, 12 May 1992 (ERN: 0102-9868-0102-9869); Butler Main Staff Report at p.4.

<sup>301</sup> *Id.*, at p.6.

<sup>302</sup> *Id.*, at p.10.

<sup>303</sup> On 18 May 1992, **TOLIMIR** authored a document entitled 2nd Military District, Security Section report (15-21) (ERN:0419-2291-0419-2291). On 20 May 1992, **TOLIMIR** authored a document entitled GŠ Army SRBiH Intelligence & Security report (15-28) (ERN: 0419-2292-0419-2293). Therefore, it appears that **TOLIMIR** moved from the 2<sup>nd</sup> Military District to the SRBiH, or VRS, around 20 May 1992.

<sup>304</sup> *See, e.g.*, Minutes of the 46<sup>th</sup> Session of the Assembly of Serb People in Bosnia and Herzegovina, 9-11 and 23 November 1994 (ERN: 0215-3243-0215-3549); Minutes of the 53<sup>rd</sup> Session of the Assembly of Serb People in Bosnia and Herzegovina, 28 August 1995 (ERN: 0215-4299-0215-4440).

two ethnic communities” and to “eliminate the Drina as a border separating Serbian States.”<sup>305</sup> Moreover, **TOLIMIR** would have been intimately acquainted with Operational Directive 4 and Operational Directive 7,<sup>306</sup> which were drafted by the VRS Main Staff and which outlined, *inter alia*, the objective of the RS and VRS to forcibly remove the Muslim population from the Drina Valley Region in furtherance of the Strategic Objectives.

206. Through his acts and omissions, a summary of which appears below, **TOLIMIR** was part of the Joint Criminal Enterprises to forcibly transfer or deport the Bosnian Muslim populations from Srebrenica and Žepa and to murder the able-bodied Bosnian Muslim men from Srebrenica.

**(A) CONTRIBUTIONS TO THE JOINT CRIMINAL ENTERPRISE TO MURDER THE ABLE-BODIED MEN FROM SREBRENICA**

207. On the evening of 12 July 1995, from the Žepa operations forward command post which was located in the village of Borike, near Rogatica, Zdravko **TOLIMIR** sent a communication to, *inter alia*, the Intelligence and Security Departments and Command of the Sarajevo-Romanija Corps and the Eastern Bosnia Corps, General Krstić at the forward command post in Pribićevac and Lt. Col. Popović at the Bratunac forward command post.<sup>307</sup> In this communication, **TOLIMIR** directed the security organs to propose to the Brigade Commands that they take “all measures” to capture the “enemy soldiers” from Srebrenica. **TOLIMIR** also stated:

The Muslims wish to portray Srebrenica as a demilitarised zone with nothing but a civilian population in it. That is why they ordered all armed men fit for military service to illegally pull out from the area, cross RS territory, and reach the Muslim-controlled area so that they could accuse the VRS of an unprovoked attack on civilians in a safe haven.

Although it is very important to arrest as many members of the shattered Muslim units as possible, or liquidate them if they resist, it is equally important to note down the names of all men fit for military service who are being evacuated from the UNPROFOR base in Potočari.<sup>308</sup>

208. The Prosecution’s position is that at the time this communication was sent, **TOLIMIR** was unaware of the plan, which had been developed by General

<sup>305</sup> See paragraph 11 *supra*.

<sup>306</sup> See, *inter alia*, paragraphs 15-22 *supra*.

<sup>307</sup> Drina Corps Command Intelligence Report 17/897, 12 July 1995 (ERN: 0293-5542-0293-5543).

<sup>308</sup> *Id.*

Mladić, General Krstić and others on the night of 11/12 July 1995, to murder all the able-bodied Bosnian Muslim men and boys. Had he been informed of the plan at this time, he would not have proposed that the names of the able-bodied Bosnian Muslim men of Srebrenica be placed on a list. However, this document shows that **TOLIMIR** was closely monitoring the movement of the Bosnian Muslim men from Srebrenica, and directing the security organs to propose “all” measures to the Brigade Commanders commanders so as to arrest as many Bosnian Muslim men as possible.

209. Shortly after this communication was sent, **TOLIMIR** sent a further communication to the Intelligence and Security Sector of the Main Staff, the Intelligence Administration of the Drina Corps (to General Krstić personally), the Drina Corps IKM (to Lt. Colonel Popović personally) and to the chiefs of intelligence of the subordinate brigades of the Drina Corps.<sup>309</sup> In this report, **TOLIMIR** stated that the MUP had been informed about the column of Bosnian Muslim men who were fleeing from Srebrenica through the woods, and directed the intelligence organs to propose measures to their commands to:

[P]revent armed Bosnian Muslims from illegally reaching Tuzla and Kladanj, such as *setting up ambushes along the routes they use in order to arrest them* and prevent possible surprises against civilians and our combat units along those routes” (emphasis added).<sup>310</sup>

210. **TOLIMIR** also stated that the commands of the Bratunac, Zvornik and Milići brigades, in cooperation with the MUP, should regulate the movement of traffic along the Bratunac-Milići-Vlasenica and Zvornik-Konjević Polje-Vlasenica roads, and should only allow VRS and MUP vehicles on official or combat business to pass.<sup>311</sup> This document again shows that **TOLIMIR** was closely monitoring the movement of the Bosnian Muslim men from Srebrenica, and that he was directing the work of the intelligence organs (as well as the security organs) in proposing measures to block and capture the Bosnian Muslim men.
211. On 13 July 1995, at 14:00 hours, Zdravko **TOLIMIR** sent a proposal (under the signature block of the commander of the 65<sup>th</sup> Motorized Protection Regiment, Milomir Savčić) to the commander of the Main Staff, General Mladić, and for the information of General Gvero, in which he noted:

<sup>309</sup> Drina Corps Command Intelligence Report 17/896, dated 12 July 1995, type-signed by General Major **TOLIMIR** (ERN: 0293-5553-0293-5554 (BCS); 0308-8211-0308-8212 (Eng)).

<sup>310</sup> *Id.*

<sup>311</sup> *Id.*

There are over 1000 members of the former 28<sup>th</sup> Division of the so-called BiH Army captured in the area of Dušanovo (Kasaba). Prisoners are under the control of the Military Police Battalion of the 65<sup>th</sup> Zmtp.<sup>312</sup>

212. **TOLIMIR** proposed that access be prohibited to “all unauthorised individuals, filming and photographing of the prisoners;” that United Nations vehicles be prohibited from travelling along the road from Zvornik to Vlasenica (next to where the prisoners were being held); and that the Commander of the Military Police Battalion “take measures to remove the war prisoners from the main Milići-Zvornik road, place them somewhere indoors or in the area protected from sighting from the ground or the air.”<sup>313</sup>
213. It is clear from this document that by 14:00 hours on 13 July, **TOLIMIR** was fully aware that large numbers of Bosnian Muslim men from Srebrenica had been captured along the Nova Kasaba-Konjević Polje road. It is also clear that his proposal to General Mladić to “place them somewhere indoors or in the area protected from sighting from the ground or the air” was designed to prevent the UNPROFOR forces on the ground and the NATO forces, who were the only force to have unhindered daylight access to air travel, from knowing of the existence of the prisoners. The only logical reason to prevent the international forces from knowing about the prisoners was to facilitate the murder of those prisoners without anyone knowing about it. On 13 July, organised executions were already occurring on the ground near Nova Kasaba at Jadar River, Cerska Valley and the Kravica Warehouse.
214. In the later afternoon or early evening of 13 July, soldiers from the 65<sup>th</sup> Motorized Protection Regiment escorted prisoners from Nova Kasaba to Bratunac, where they were detained in facilities along with thousands of other Bosnian Muslim men arrested along the Bratunac-Konjević Polje-Milići road or separated from their families in Potočari. On 13 July 1995, the Military Police Battalion of the 65<sup>th</sup> Motorized Protection Regiment of the VRS was under the professional supervision of Zdravko **TOLIMIR**.<sup>314</sup>
215. On 13 July 1995, at around 22:30 hours, **TOLIMIR** sent another communication, to the attention of General Gvero personally, regarding the accommodation of

<sup>312</sup> IKM 65.ZMTP order typesigned Lt. Colonel Milomir Savčić, 13 July 1995 (ERN: 0425-8580-0425-8580 (BCS); 0425-8580-0425-8580-EDT).

<sup>313</sup> *Id.*

<sup>314</sup> *See, e.g., Popović Trial*, 10 June 2008, evidence of Milomir Savčić, T.15271-15272.

prisoners from Srebrenica.<sup>315</sup> **TOLIMIR** suggested that if Gvero was unable to find adequate accommodation for all prisoners of war from Srebrenica, space for 800 prisoners had been arranged in the area of the 1<sup>st</sup> Podrinje Light Infantry Brigade. **TOLIMIR** also stated that “it would be best if this is a new group which has not been in contact with the other r/zs [prisoners of war].”<sup>316</sup> In this document, **TOLIMIR** proposed the use of 800 of the many thousands of Muslim prisoners captured on 13 July, for agricultural work. Significantly, **TOLIMIR** insisted that the 800 chosen for agricultural work had not been in contact with the many hundreds of other prisoners. The only reasonable inference from this proposal is that **TOLIMIR** did not want the 800 prisoners chosen for work to be able to report on the existence of hundreds of other prisoners who would soon be executed and thus give away the murder operation.

216. Zdravko **TOLIMIR**, as Assistant Commander for Intelligence and Security of the Main Staff, was involved in the arrest and detention of thousands of Bosnian Muslim prisoners taken after the fall of the Srebrenica enclave. These prisoners were later killed in mass executions organised and co-ordinated by VRS security officers including Colonel Ljubiša Beara, Lt. Colonel Vujadin Popović, Captain Momir Nikolić, Lt. Drago Nikolić and Captain Milorad Trbić. In September and October 1995, these same VRS security officers co-ordinated a massive reburial operation, where several Srebrenica-related mass-graves were exhumed and the bodies transferred to more remote sites in an effort to conceal the crimes.<sup>317</sup>
217. Therefore, through his own personal contributions and the contributions of VRS security officers and VRS units under his professional supervision, Zdravko **TOLIMIR** was involved in, and responsible for, the execution of all of the Bosnian Muslim prisoners taken after the fall of the Srebrenica enclave.

<sup>315</sup> 1.Plpbr Message 04-520-51/95 from General Major **TOLIMIR**, dated 13 July 1995 (ERN: 0293-5555-0293-5556 (BCS); 0308-3803-0308-3804 (Eng)).

<sup>316</sup> *Id.*

<sup>317</sup> *See, e.g., Popović Trial*, 27 September 2007, evidence of witness PW-168, T.15922-15928; 29-30 August 2007, evidence of Damjan Lazarević, T.14429-14534. *See also* VRS Main Staff Order 03/ 4-2341, 14 September 1995 (ERN: 0082-2150-0082-2150 (BCS); 0084-4368-0084-4368 (Eng)); and 1<sup>st</sup> Bratunac Brigade notes of Command Staff meeting, 16 October 1995 (ERN: 0067-1466-0067-1529 (BCS); 0070-6671-0070-6671 (Eng)).

(B) **CONTRIBUTIONS TO THE JOINT CRIMINAL ENTERPRISE TO FORCIBLY TRANSFER OR DEPORT THE BOSNIAN MUSLIM POPULATIONS FROM SREBRENICA AND ŽEPA**

1. **Limiting UNPROFOR's logistics supply and restricting aid to the Bosnian Muslims in order to create conditions for the elimination of the enclaves**

218. On 8 March 1995, Radovan Karadžić issued Operational Directive 7, which directed the VRS as follows:

The relevant State and military organs responsible for work with UNPROFOR and humanitarian organisations shall, through the planned and unobtrusively restrictive issuing of permits, reduce and limit the logistics support of UNPROFOR to the enclaves and the supply of material resources to the Bosnian Muslim population, making them dependent on our good will while at the same time avoiding condemnation by the international community and international public opinion.<sup>318</sup>

219. From March 1995 through July 1995, the VRS deliberately restricted the delivery of supplies, materials and men to the UNPROFOR soldiers in the Srebrenica and Žepa enclaves.<sup>319</sup> Also, from March 1995 through July 1995, the VRS deliberately restricted humanitarian aid and relief supplies from UNHCR to the Bosnian Muslim inhabitants of Srebrenica and Žepa as part of the organised effort to make life impossible for the Bosnian Muslims and remove them from the enclaves.

220. Requests from UNPROFOR and UNHCR were sent to the VRS Main Staff, where a staff officer, typically Colonel Miloš Đurđić, would make recommendations as to whether those resupply / aid convoys should be approved. These recommendations were then approved or rejected by a senior officer, most often General Ratko Mladić, the Accused Zdravko **TOLIMIR** or General Radivoje Miletić.<sup>320</sup> The Main Staff then sent a response to UNPROFOR detailing whether the requests had been approved or declined, and sent a corresponding report to the relevant Corps describing those convoys which were allowed to pass and those which were to be blocked.<sup>321</sup> The UNPROFOR responses, and the reports to the

<sup>318</sup> VRS Main Staff Order 2/2-11, Operational Directive 7, dated 8 March 1995 (ERN: 0082-3159-0082-3182 (BCS); 0081-7121-0081-7135 (Eng)).

<sup>319</sup> *Popović* Trial, 27 September 2006, evidence of Leendert Van Duijn, T.2260-2263; 16 October 2006, evidence of witness Robert Franken, T.2445-2450; 26 October 2006, evidence of Eelco Koster, T.3033-3035; 29 November 2006, evidence of witness Johannes Rutten T.4807-4808; 29 November 2007, evidence of witness Cornelis Nicolai, T.18452-18459. *See also* UNPROFOR Sector Sarajevo Weekly Situation Report of Civil Affairs Officer David Harland, 3 June 1995 (ERN: 0327-9228-0327-9232).

<sup>320</sup> *Popović* Trial, 14 November 2008, testimony of Ljubo Obradović, T.28253-28267.

<sup>321</sup> *See, e.g.* GŠ VRS report (06/18-108) addressed to DK, regarding humanitarian aid convoys, 8 March 1995 (0425-4122-0425-4124); GŠ VRS report (06/18-260) addressed to the SRK and DK Commands, regarding humanitarian aid convoys, 1 July 1995 (ERN: 0438-0610-0438-0611).

Corps, were typically sent under the signature block of General Miletić, Standing in for the Chief of Staff.

221. Zdravko **TOLIMIR**, General Ratko Mladić, General Radivoje Miletić, Colonel Miloš Đurđić and other officers and personnel of the Main Staff played a central role in organising and facilitating the effort to restrict aid and supplies to the Srebrenica and Žepa enclaves.

**2. Involvement in the attack on the Srebrenica enclave and moving out the civilian population from Srebrenica**

222. On 6 July 1995, units of the VRS Drina Corps commenced an attack upon the Srebrenica safe area with the purpose of separating the Srebrenica and Žepa enclaves and thereby stopping the ABiH from launching attacks from the enclaves. The VRS also planned to force the Bosnian Muslim population into the urban areas around the towns of Srebrenica and Žepa, thereby creating a humanitarian disaster that would force the Bosnian Muslim population to leave the Srebrenica and Žepa, and creating the situation for the elimination of the enclaves as envisioned by Directive 7.

223. As described above at paragraphs 2 and 26 *supra*, on 9 July 1995, VRS combat successes in the Srebrenica operation led the VRS to propose the expanding of the operation to include the attack on the entire Srebrenica enclave and take-over of the enclave. The same day, Zdravko **TOLIMIR** issued a communication to Generals Gvero and Krstić personally at the Drina Corps IKM, in which **TOLIMIR** explained that President Karadžić had agreed to change the objective of the attack to include the take-over of Srebrenica.<sup>322</sup> The Drina Corps attack continued until 11 July 1995, when forces from the Zvornik Brigade, the Bratunac Brigade, the 10<sup>th</sup> Sabotage Detachment and other units of the VRS entered Srebrenica.<sup>323</sup> The communication by **TOLIMIR** to the commanders on the ground in charge of the attack was a crucial part in ensuring the successful attack and take-over of the enclave.

224. During the attack on the enclave, **TOLIMIR** was involved in preventing and controlling outside international protection of the enclaves, including air strikes

<sup>322</sup> VRS Main Staff Order 12/46-501/95, Conduct of Combat Operations around Srebrenica, dated 9 July 1995.

<sup>323</sup> See Butler Srebrenica Narrative.

and international monitoring.<sup>324</sup> **TOLIMIR** also assisted in disabling UNPROFOR in the attack on Srebrenica through his communications with UNPROFOR, specifically by lying to UNPROFOR and coordinating lies with subordinate units.<sup>325</sup>

225. A number of **TOLIMIR**'s direct subordinates, and subordinates along professional lines, were key players in the forcible removal of the Bosnian Muslim population from Srebrenica. For example, Colonel Radislav Janković of the Main Staff Intelligence Administration, Lt. Colonel Vujadin Popović, the Drina Corps Assistant Commander for Security, Lt. Colonel Svetozar Kosorić, Drina Corps Chief of Intelligence and Captain Momir Nikolić, Bratunac Brigade Chief of Intelligence and Security were present at the meetings with UNPROFOR and the Bosnian Muslim representatives at Hotel Fontana. Lt. Colonel Popović, Lt Colonel Kosorić and Captain Momir Nikolić were also present in Potočari on 12 and 13 July 1995, co-ordinating the movement of the Bosnian Muslim population out of the enclave and overseeing the separation of the men from their families.

### 3. Involvement in the attack on the Žepa enclave and moving out the civilian population from Žepa

226. In early July 1995, the VRS made preparations to attack the Žepa enclave and force the Bosnian Muslim population from the enclave. General **TOLIMIR** was assigned by General Mladić to oversee the Žepa operations from a position in a forward command post in the village of Borike. As a result, during the time period described in the Indictment, the Accused was present in or around the VRS HQ Command at Crna Rijeka or the forward command post in and around Žepa, including the area of Borike.

227. **TOLIMIR** was a key participant in three separate meetings which took place between the VRS and Bosnian Muslim representatives of the Žepa enclave, during which VRS representatives sought to force the population to leave the enclave

<sup>324</sup> *Popović* Trial, 7 November 2007, evidence of Rupert Smith, T.17598-17603; 26 November 2007, evidence of Louis Fortin, T.18250-18252 and 18255-18256; 29 November 2007, evidence of Cornelis Nicolai, T.18464-18467 and 18469-18476. *See also* Intercepted conversation between Nicolai and **TOLIMIR**, 9 July 1995 at 17:50 hours (ERN: R013-4718-R013-4736); Intercepted conversation between Nicolai and **TOLIMIR**, 9 July 1995 at 19:30 hours (ERN: R013-4718-R013-4736); Intercepted conversation between **TOLIMIR** and Janvier, 9 July 1995 at 23:10 hours (ERN: 0086-9264-0086-9265 (BCS); 0092-4928-0092-4929 (Eng)); Drina Corps Command document No. 04/156-5, 8 July 1995 (ERN: 0091-7867-0091-7867 (BCS); 0092-0254-0092-0254 (Eng)).

<sup>325</sup> *Id.* *See also* intercepted conversation between Nicolai and **TOLIMIR**, 9 July 1995 at 12:30 hours (ERN: R013-4718-R013-4736).

under threat of military attack. At the first round of meetings, on 13 July 1995, **TOLIMIR** and the Rogatica Brigade Commander, Colonel Rajko Kušić, met with the local Bosnian authorities at the established Ukrainian UNPROFOR checkpoint overlooking Žepa. The Bosnian Serbs said that “Srebrenica had fallen and [that] it was Žepa’s turn now.”<sup>326</sup>

228. As the representative of the VRS, **TOLIMIR** offered the Bosnian Muslim representatives of Žepa two alternatives: either the entire population could be “evacuated” in the same manner as Srebrenica, or the Bosnian Serbs would take military action.<sup>327</sup> When the Bosnian Muslims did not respond to this ultimatum, the VRS command launched a full scale attack on the Žepa enclave in the morning of 14 July 1995.<sup>328</sup>
229. On 14 July 1995, **TOLIMIR** was working to convince UNPROFOR to consolidate its personnel in two locations which were under VRS control, as a means of “...controlling the work and reporting of UNPROFOR to their superiors.”<sup>329</sup>
230. **TOLIMIR** advised General Miletić later that day that “[i]n order to monitor combat activities around Žepa and have complete review of the Drina Corps Command radio network with brigade commands,” it would be necessary to incorporate the Main Staff into the Drina Corps Command’s communication system with appropriate equipment for crypto-protection.<sup>330</sup>
231. On 19 July 1995, the Bosnian Serbs ceased shelling and firing on Žepa to permit **TOLIMIR**, Colonel Indjić and General Mladić to hold a meeting with UNPROFOR General Rupert Smith at Han-Kram. At the meeting, they discussed Srebrenica, including the withdrawal of DutchBat, the situation at Žepa, and the freedom of movement for UNPROFOR and UNHCR.
232. Later that day, at the second meeting with the Žepa Muslim representatives, **TOLIMIR** and Mladić met with Hamdija Torlak and Benjamin Kulovac at the Ukrainian checkpoint. Though the Bosnian Serbs ceased shelling and firing on

<sup>326</sup> *Popović* Trial 30 March 2007, evidence of Hamdija Torlak, T.9725.

<sup>327</sup> *Id.*, T.9723-T.9724.

<sup>328</sup> UNPROFOR Sector Sarajevo Weekly Situation Report of Civil Affairs Officer David Harland, dated 15 July 1995, (ERN: 0327-9250-0327-9254); Secretary-General’s Report, para. 397.

<sup>329</sup> *Id.*

<sup>330</sup> VRS Main Staff Report No.04-520-56/95, dated 14 July 1995, from **TOLIMIR** “personally to General Miletić” (ERN: 0425-8558-0425-8558 (BCS); 0425-8558-0425-8558-EDT).

Žepa to permit this meeting, when the parties reached no agreement, the VRS resumed its attack on Žepa on 21 July 1995.

233. On 21 July, in response to General Miletić's report of 20 July that various Drina Corps elements were "engaged in the destruction of groups of individuals breaking through to Kladanj from Žepa,"<sup>331</sup> **TOLIMIR** recommended to General Miletić that the "most propitious means of their destruction would be usage of chemical weapons or aerosol grenades and bombs."<sup>332</sup> **TOLIMIR** added that "we could force Bosnian Muslims to surrender sooner if we could destroy groups of Bosnian Muslims [*sic*] refugees fleeing in the direction of Stublić, Radava and Brloška Planina."<sup>333</sup>
234. At the third meeting, on 24 July 1995, **TOLIMIR**, Mladić and Rajko Kušić met with Hamdija Torlak, who signed an agreement regarding Žepa which provided for an immediate cease-fire, demilitarisation, registration of the male population for a prisoner exchange, and transportation for civilian population.<sup>334</sup> Mladić told Torlak that **TOLIMIR** would be in charge of the evacuation.<sup>335</sup>
235. The Main Staff remained involved in these negotiations, not only via **TOLIMIR**'s leadership in the field, but by his consultations with other Main Staff officers such as Generals Gvero and Miletić. For example, in the morning of 25 July, **TOLIMIR** wrote to Generals Gvero and Miletić concerning how the issue of war prisoner exchange was being complicated by the Bosnian Muslims' "bringing up the issue of prisoners from Srebrenica."<sup>336</sup>
236. **TOLIMIR** was in direct control of the forcible transfer of the Žepa population between 25 and 28 July.<sup>337</sup> **TOLIMIR** coordinated and gave orders related to the forcible transfer of men, including civilians, from the Srebrenica and Žepa

<sup>331</sup> VRS Main Staff Report No.03/3-201, dated 20 July 1995, p.5 (ERN: 0426-1302-0426-1305 (BCS); ET 0426-1302-0426-1305).

<sup>332</sup> VRS Main Staff Report No. 04-520-61/95, dated 21 July 1995, from **TOLIMIR** "personally to General Miletić" (ERN: 0425-8568-0425-8568 (BCS); ET 0425-8568-0425-8568).

<sup>333</sup> *Id.*

<sup>334</sup> *Popović* Trial, 30 March 2007, evidence of witness Hamdija Torlak T.9733:12-21; "Agreement on Disarmament of the Military-Able Population in the Enclave of Žepa," dated 24 July 1995 (ERN: R005-0067-R005-0070).

<sup>335</sup> *Popović* Trial, 30 March 2007, evidence of witness Hamdija Torlak, T.9736.

<sup>336</sup> VRS Main Staff Report No. 04-520-63:95, dated 25 July 1995, from **TOLIMIR** "personally to General Gvero or General Miletić" (ERN: 0425-8578-0425-8578).

<sup>337</sup> *Popović* Trial, 15 October 2007, evidence of witness Thomas Neason Dibb, T.16290-16291; 23 August 2007, evidence of witness Edward Joseph, T.14189-14200; 5-13 November 2007, evidence of witness Rupert Smith, T.17461-17828.

enclaves.<sup>338</sup> **TOLIMIR** was also directly involved in assisting to organise the transportation of the population of Žepa, including assembling the buses and loading people onto the buses.<sup>339</sup>

237. On 27 July, **TOLIMIR** personally participated in the seizure of approximately 36 men, including a group of approximately a dozen wounded, from a bus headed to Kladanj.<sup>340</sup> After **TOLIMIR** personally assured an UNPROFOR Civil Affairs Officer that the men would be allowed to leave,<sup>341</sup> these men were placed on another bus and taken to the Rogatica prison.<sup>342</sup>
238. On 29 July, **TOLIMIR** passed instructions to ensure that combat operations continued against the 1<sup>st</sup> Žepa Brigade until the Bosnian Muslims abided by the 24 July agreement and that any Bosnian Muslims captured should not be registered or reported to international organizations before the ceasefire takes effect.<sup>343</sup> **TOLIMIR** also monitored the exfiltration of Žepa males across the Drina River to Serbia.<sup>344</sup>

## V. OTHER KEY MEMBERS OF THE JOINT CRIMINAL ENTERPRISES

### 1. Radivoje Miletić: Deputy Chief of the VRS Main Staff and Chief of Operations and Training

239. During July 1995, and at all times relevant to the crimes charged in the Indictment, Miletić held the rank of Chief of Operations and Training and Deputy Chief of Staff. During much of 1995, including in July and August 1995, Miletić was Standing in for the Chief of Staff of the VRS Main Staff. The position of Chief of Operations and Training was held concurrently by regulation with the

<sup>338</sup> *Popović* Trial, 6 November 2007, evidence of Rupert Smith, T.17553, 17580; 27 November 2007, evidence of Louis Fortin, T.18289-18290, 18322-18323; 15 October 2007, evidence of Thomas Dibb, T.16283, 16290-16293, 16297; 30 March 2007, evidence of Hamdija Torlak, T.9723-9725, 9736; 1<sup>ST</sup> Podrinje Light Infantry Brigade document No. 04-250-51/95, signed by **TOLIMIR**, dated 13 July 1995.

<sup>339</sup> *Popović* Trial, 7-8 November 2007, evidence of Rupert Smith, T.17631, 17730; 15 October 2007, evidence of Thomas Dibb, T.16291, 16297; 30 March 2007, evidence of Hamdija Torlak, T.9738.

<sup>340</sup> *Popović* Trial, 28 March 2007, evidence of Meho Džebo, T.9596-9597; BiH Ministry of the Interior, Interview of Meho Džebo, 7 February 1996 (ERN: 0335-8245-0335-8250).

<sup>341</sup> *Popović* Trial, 24 August 2007, evidence of witness Edward Joseph T.14142-14345; 15-16 October 2007, evidence of witness Thomas Dibb, T.16290-16291.

<sup>342</sup> *Popović* Trial, 28 March 2007, evidence of Meho Džebo, T.9596-9597; BiH Ministry of the Interior, Interview of Meho Džebo, 7 February 1996 (ERN: 0335-8245-0335-8250).

<sup>343</sup> Main Staff Intelligence & Security report, 29 July 1995 (ERN: 0425-8566-0425-8566 (BCS); 0425-8566-0425-8566 EDT).

<sup>344</sup> Command of the 1<sup>st</sup> Plpbr, Strictly Confidential No. 18/250-2, Report of Capt. Dragomir Pećanac, 29 July 1995 (ERN: 0425-9565-0425-8565).

position of Deputy Chief of Staff.<sup>345</sup> As Standing in for the Chief of Staff, he was the principal advisor to Commander General Ratko Mladić in the absence of the regular Chief of Staff, General Milovanović.<sup>346</sup>

240. As Chief of Operations and Training of the Main Staff of the VRS, Miletić reported to the Chief of the Main Staff, General Manojlo Milovanović. The duties of the Chief of Operations and Training were to monitor the situation, study the course of combat operations and prepare proposals for operations for the Chief of the Main Staff and the Commander.<sup>347</sup> Other duties Miletić held included formulating combat documents, planning and organizing movements of the command, and studying information received before notifying both the Commander and Chief of Staff of important information and essential proposals.<sup>348</sup> The Chief of Operations is also required to perform all other tasks assigned to him by the Commander of Chief of Staff.<sup>349</sup> As the Chief of Operations and Training, Miletić was required to be at the command post during combat operations.<sup>350</sup>
241. As Deputy Chief of Staff and Standing in for the Chief of Staff, Miletić was the principal advisor to Mladić. He was also the primary facilitator through which the Commander's intent, orders and directives were organised and processed for execution by the Staff and subordinate units. Responsibilities of the Chief of Staff, which the Deputy Chief would take over upon the Chief of Staff's absence, include "organizing the work in the Command, directly commanding the Headquarters Command (Main staff and branch bodies), units of the headquarters, and ... coordinat[ing] the activities of the command bodies in the spirit of the Commander's decisions and orders."<sup>351</sup> As such, the Chief of Staff is the principal means by which the Commander exercises effective command and control of both the Main Staff and subordinate formations. By fulfilling his duties, Miletić was required to take on all rights and duties previously mentioned.

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<sup>345</sup> JNA 4<sup>th</sup> Corps, *Instructions to the 4<sup>th</sup> Corps Command on Carrying Out Priority Assignments in Peacetime and Wartime*, Sec.IV, para.2. (ERN: 0038-7487-0038-7541, in particular, 0038-7502).

<sup>346</sup> Federal Secretariat for National Defense, *Regulations on the Responsibilities of the Land Army Corps Command in Peacetime*, 1990, Sec.II, Art.11 (ERN: 0114-7056-0114-7095 (BCS); 0090-9994-0091-0027 (Eng)).

<sup>347</sup> JNA 4<sup>th</sup> Corps,, *Instructions to the 4<sup>th</sup> Corps Command on Carrying Out Priority Assignments in Peacetime and Wartime*, Sec.IV, pp 17-18 (ERN: 0038-7487-0038-7541, in particular, 0038-7502).

<sup>348</sup> *Id.*

<sup>349</sup> *Id.*

<sup>350</sup> *Id.*

<sup>351</sup> Federal Secretariat for National Defense, *Regulations on the Responsibilities of the Land Army Corps Command in Peacetime*, 1990, Sec.II, Art.11 (ERN: 0114-7056-0114-7095, in particular, 0114-7065 (BCS); 0090-9994-0091-0027 (Eng)).

242. Miletić was an essential figure in the Joint Criminal Enterprise and operation to remove the Bosnian Muslim population from Srebrenica and Žepa. Miletić drafted Directive 7, which was issued by RS President Radovan Karadžić on 8 March 1995 (*see* para. 19 above).
243. Under the command of General Mladić, Miletić played a central role in organizing and implementing the effort to create an unbearable situation for survival in the enclaves. From March 1995 through July 1995 the VRS deliberately restricted humanitarian and aid supplies to the Bosnian Muslim inhabitants of the two enclaves as the beginning of the effort to remove them.<sup>352</sup> At the same time, the VRS restricted resupply to DutchBat and prevented rotation of fresh DutchBat personnel.<sup>353</sup>
244. Miletić played a vital role in the effort to defeat Bosnian Muslim forces militarily. As soon as Srebrenica fell, Miletić monitored the state of the Bosnian Muslim forces before, as well as after, their defeat, reporting this information to his superiors, including President Karadžić, and to his subordinates. During this time Miletić also monitored the activities of VRS units and communicated this information to his superiors, his subordinates and President Karadžić.<sup>354</sup> On 12 July and 16 July, the Drina Corps requested from the Main Staff via Miletić fuel for buses and trucks leaving for Bratunac and transporting prisoners to schools near Zvornik.<sup>355</sup> These orders came from Drina Corps Commander General Radislav Krstić, who was active in organizing and directing the transportation of the Bosnian Muslim civilian population. Throughout this period, Miletić

<sup>352</sup> *See* VRS Main Staff Order 2/2-11, Operational Directive 7, 8 March 1995 (ERN: 0081-7121-0081-7135 (BCS); 0082-3159-0082-3182 (Eng)).

<sup>353</sup> *Popović* Trial, 27 September 2006, evidence of Leendert Van Duijn, T.2260-2263; 16 October 2006, evidence of witness Robert Franken, T.2445–2450; 26 October 2006, evidence of Eelco Koster, T.3033-3035; 29 November 2006, evidence of witness Johannes Rutten T.4807-4808; 29 November 2007, evidence of witness Cornelis Nicolai, T.18452-18459. *See also* UNPROFOR Sector Sarajevo Weekly Situation Report of Civil Affairs Officer David Harland, 3 June 1995 (ERN: 0327-9228-0327-9232).

<sup>354</sup> *See* Daily reports to the President of Republika Srpska and the VRS commanders, 12 July 1995 (“the population is being taken out from Srebrenica enclave to Kladanj in an organized manner. It is estimated that on this day, there are about 10 000 Bosnian Muslims to be transported.”) (ERN: 0366-0749-0366-0752); and 13 July 1995 (“the enemy is in a total state of disarray and the troops are surrendering in large numbers to the VRS.... There is an organized and planned transfer of the population from Srebrenica to the territory under the Bosnian Muslim control.”) (ERN: 0366-0753-0366-0756). These daily reports continue through 14-16 July, as well as 24 July.

<sup>355</sup> Intercepted military telephone conversation between “X” and “Y” 12 July 1995 at 12:20 (ERN: 0086-9293-0086-9294); Intercepted military telephone conversation between “Bašević” and “Y” 16 July 1995 at 19:12 (ERN: 0093-5982-0093-5982); *Blagojević* Trial, 11 December 2003, evidence of Richard Butler.

deployed subordinates within the Main Staff to assess the progress and status of the Zvornik Brigade.<sup>356</sup>

245. Miletić demonstrated control of the movement of people out of the enclave of Srebrenica by monitoring the progress of the transfer of the civilians by the VRS. On 14 July late evening, Dragan Obrenović, Deputy Commander and Chief of Staff of the Zvornik Brigade, informed Miletić about the column and requested to open the column.<sup>357</sup> Later that night, Ljubiša Beara spoke to Chief of Engineering of the Zvornik Brigade, Dragan Jokić.<sup>358</sup> At this time the column of Bosnian men had broken through Brigade defenses. In this intercept, Jokić expressed the need to speak to Miletić about “problems with a parcel”<sup>359</sup> (parcel being a code word for prisoners). Nearly one hour later Jokić is recorded saying to Miletić that “...Obrenović is really maxed out, we’re all used to the max, believe me. The thing that destroyed us the most was the parcel...”<sup>360</sup> Miletić then ordered to mobilise the police to “cut it off.”<sup>361</sup> Less than ten minutes later, Zoran Malinić, commander of the Military Police Battalion of the 65<sup>th</sup> Motorized Protection Regiment, was recorded telling Milomir Nastić, commander of the Milići Brigade, that he spoke to General Miletić and to “take it into your own hands and to not let anything happen, er somebody get away...”<sup>362</sup>
246. On 15 July, Miletić organised the deployment of a unit of soldiers from the 16<sup>th</sup> Krajina Motorized Brigade to the Zvornik Brigade.<sup>363</sup> Miletić was also involved in the deployment of 50 MUP soldiers to Zvornik on or around the same date.<sup>364</sup> The soldiers from the 16<sup>th</sup> Krajina Motorized Brigade, who were sent to the

<sup>356</sup> *Popović* Trial, 10 September 2007, evidence of Nedo Trkulja, T.15105-15119; 27 August 2007, evidence of Bogdan Sladojević, T.14366-14380.

<sup>357</sup> *Popović* Trial, 26 September 2007, evidence of PW-168 T.15874.

<sup>358</sup> Intercepted military telephone conversation between Jokić and Beara, 14 July 1995 at 21:02 (ERN: 0077-9705-0077-9707 (BCS) 0104-3213-0104-3213 (Eng)).

<sup>359</sup> *Id.* Miletić is referred to by his Main Staff telephone extension number, “155” (*see* Telephone Book of the VRS Main Staff, ERN: 0505-9682-0505-9825). Jokić says, “There are big problems. Well with the people, I mean, with the parcel.” For more intercepts involving “155” *see* intercepted military telephone conversation between Miletić and “DO,” 10 September 1995 at 17:10 (ERN: 0321-0344-0321-0344 (BCS); 0321-0344-0321-0344-EDT (Eng)). *See also* Zvornik Brigade Duty Operations Officer Notebook, entry on 14 July 1995, “Beara to call 155” (ERN: 0293-5619-0293-5806).

<sup>360</sup> Intercepted military telephone conversation between “Vilotić” and Jokić, 14 July 1995 at 22:27 (ERN: 0080-6349-0080-6350 (BCS); 0092-4950-0092-4952 (Eng)). Both Obrenović and Richard Butler have testified that “Vilotić” means Miletić. Also, in this intercept, police are referred to as “blue ones.”

<sup>361</sup> *Id.*

<sup>362</sup> Intercepted military telephone conversation between “Malinić” and “Nastić,” 14 July 1995 at 22:41 (ERN: 0077-9709-0077-9712 (BCS); 0096-6081-0096-6083 (Eng)).

<sup>363</sup> *Popović* Trial, 6 November 2006, evidence of witness PW-139, T.3680:20-21. *See also* VRS Main Staff strictly confidential order 03/4-1654, 15 July 1995 (ERN: 0425-7983-0425-7983); and 1<sup>st</sup> Krajina Corps Order No. 264-1/95, 16 July 1995 (ERN: 0084-5119-0084-5120).

<sup>364</sup> *See* handwritten comment on VRS Main Staff strictly confidential order 03/4-1654, 15 July 1995 (ERN: 0425-7983-0425-7983).

Zvornik Brigade on 16 July, later captured approximately ten Bosnian Muslims males fleeing from the Srebrenica enclave, transported them to a place near Nezuk, approximately 15 km northwest of Zvornik, and executed them with automatic rifles.<sup>365</sup> On 21 July, Miletić ordered that this unit be withdrawn from the Zvornik area and sent to the Trnovo front.<sup>366</sup>

247. On 15 July as prisoners were held at the Branjevo Farm, Miletić continued to be an organizer and coordinator in the operation. Miletić ordered material to be sent to Zvornik Brigade Commander, Vinko Pandurević.<sup>367</sup> Intercepts continued the following day in which Miletić is cited to have either ordered or been made aware of field activity.<sup>368</sup> Miletić at one point sent an urgent message to General Zdravko **TOLIMIR**, who was to make a decision with Mladić.<sup>369</sup> On the morning of 17 July, Miletić deployed Chief of Armoured Mechanized Services Nedeljko Trkulja and the Officer of Operations and Training Bogdan Sladojević to assess the situation of the column.<sup>370</sup>
248. The evidence also illustrates that Miletić was a central figure in the effort to defeat the Bosnian Muslim men of Žepa. On 17 July Commander Mladić ordered General Krstić to find Miletić and to go “full steam ahead.”<sup>371</sup> As the VRS attacks continued and meetings continued regarding Žepa, Miletić demonstrated control of the movement of people out of the enclave as a coordinator between the Commander, Chief of Staff and his subordinates in the efforts of the VRS to search and clear Žepa for any remaining Bosnian Muslims.<sup>372</sup>

<sup>365</sup> *Krstić* Trial, 23 May 2000, evidence of Witness R, T.3186-3233, admitted under Rule 92bis in *Popović* Trial, on 12 September 2006. See also OTP witness statement of PW-139, 18 May 2000 (ERN: 0095-3447-0095-3455), admitted under Rule 92ter in the *Popović* Trial on 6 November 2006.

<sup>366</sup> Main Staff Order No. 03/4-1724, dispatch of a motorised company from the 16th Krajina Motorised Brigade to the area of Trnovo, signed by Maj Gen Radivoje Miletić, 21 July 1995 (ERN: 0627-9937-0627-9937).

<sup>367</sup> Intercepted military telephone conversation between “X” and “Baki,” 15 July 1995 at 22:26 (ERN: 0080-4649-0080-4650 (BCS); 0080-4649-0080-4650-ET (Eng)).

<sup>368</sup> Intercepted military telephone conversation between “X” and “Y,” 15 July 1995 at 22:28 (ERN: 0080-4649-0080-4650-ET-1(Eng)); Intercepted military telephone conversation between “X” and “Y,” 16 July 1995 at 17:02 (ERN: 0080-0630-0080-0630 (BCS); ET 0080-0630-0080-0630 (Eng)); Intercepted military telephone conversation between “Bašević” and “Y,” 16 July 1995 at 19:12 (ERN: 0072-7666-0072-7666 (BCS); 0093-5982-0093-5982 (Eng)).

<sup>369</sup> Intercepted military telephone conversation from the Bratunac Brigade switchboard to Colonel Janković 17 July 1995 at 20:55 (ERN: 0107-7841-0107-7841).

<sup>370</sup> Trkulja Interview, p.9; See also OTP Interview of Bogdan Sladojević, 11 October 2000, pp.4-6 (ERN: L006-6795-L006-6823).

<sup>371</sup> Intercepted military telephone conversation between Mladić and Krstić, 17 July 1995 at 19:50 (ERN: 0080-4554-0080-4554 (BCS); 0091-2669-0091-2669 (Eng)).

<sup>372</sup> Intercepts include coordination between Miletić, Krstić, **TOLIMIR**, Pandurević, Gvero, Borovčanin, Beara and Popović. Intercepted military telephone conversation between Dragan and Cerović, 20 July 1995 at 18:02 (ERN: 0080-0666-0080-0667 (BCS); 0080-0666-0080-0667-ET); Intercepted military telephone

## 2. Milan Gvero: VRS Main Staff Assistant Commander for Moral, Religious and Legal Affairs

249. In July 1995, Milan Gvero was the Assistant Commander for Moral, Legal and Religious Affairs of the Main Staff of the VRS. In this position, General Gvero was one of seven Assistant Commanders who reported directly to General Mladić. Gvero was promoted from Lt. General to the rank of Lt. Colonel General on 14 June 1995 by presidential decree.<sup>373</sup> The VJ Supreme Defense Council agreed to the promotion the day before in a session at which one council member commented that Gvero is “an exceptionally positive individual who is the cohesive force between the VRS and us.”<sup>374</sup>
250. In his position as Assistant Commander for Moral, Legal and Religious Affairs of the Main Staff of the VRS, Gvero was the head of the department responsible for the monitoring, analysis, planning and organisation of morale, political work, psychological and propaganda-related activities, legal affairs, self-protection, and co-operation with the appropriate bodies and organisations of socio-political communities and organisations.<sup>375</sup> Throughout the conflict, Gvero was also in charge of disciplinary matters.<sup>376</sup>
251. Gvero was present as General Mladić’s personal representative at the Drina Corps forward command post at Pribičevac on 9 July 1995,<sup>377</sup> a critical point during the Krivaja 95 operation. He served in many respects as “the public mouthpiece of the army of Republika Srpska.”<sup>378</sup> Gvero communicated with not only Republika Srpska and UNPROFOR but also with the media. Gvero released false statements

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conversation between “Duty Off” and “Krstić,” 23 July 1995 at 09:04 (ERN: 0072-7881-0072-7881); Intercepted military telephone conversation between **TOLIMIR** and “X,” 24 July 1995 at 19:54 (ERN: 0080-4350-0080-4350); Intercepted military telephone conversation between “X” and “Ljubo” 25 July 1995 at 07:09 (ERN: 0080-1416-0080-1418); Intercepted military telephone conversation between “Rajko” and Cerović, 25 July 1995 at 11:25 (ERN: 0080-4359-0080-4359); Intercepted military telephone conversation between Borovčanin and Zelenović, 1 August 1995 at 13:00 hours (ERN: 0078-1631-0078-1633); Intercepted military telephone conversation between Krstić and Popović, 2 August 1995 at 13:00 hours (ERN: 0108-5009-0108-5010 (BCS); 0190-6486-0190-6486 (Eng)).

<sup>373</sup> Gvero Personnel File: Milan Gvero promoted to the rank of Lt Col General by SFRY Presidential decree 1/2-01-001/95-19, 13 June 1995 (ERN: 0422-3207-0422-3207 from 0422-3199-0422-3326).

<sup>374</sup> Transcript of 37<sup>th</sup> Session of the Supreme Defense Council held on 13 June 1995 (ERN: 0345-8308-0345-8339).

<sup>375</sup> JNA 4<sup>th</sup> Corps., *Instructions on How the 4<sup>th</sup> Corps Command Is To Operate When Carrying Out Priority Assignments in Peacetime and Wartime*, Doc.No.01/15-62, 29 August 1991, p.21 (ERN: 0038-7487-0038-7541 (BCS); 0085-0000-0085-0057 (Eng)).

<sup>376</sup> Decree on the Responsibilities and Recruitment of the Organ for Moral Guidance, Religious and Legal Affairs, issued by General Ratko Mladić on 10 February 1995, in which the responsibilities, including the disciplinary responsibilities, are set out in detail (ERN: 0362-9264-0362-9272).

<sup>377</sup> Intercept between Gvero and Karadžić, 11 July 1995 at 16:23 (ERN: 0086-9276-0086-9277); Intercept between Gvero and Karadžić, 11 July 1995 at 16:45 (ERN: 0320-1098-0320-1099).

<sup>378</sup> Intercept between Gvero and Karadžić, 11 July 1995 at 16:23 (ERN: 0086-9276-0086-9277).

to the media, the concerned international organizations, including the ICRC, and the public concerning the attacks on the enclaves in order to assist in the take-down of the Srebrenica enclave and the subsequent murder operation.<sup>379</sup>

252. One of Gvero's primary responsibilities was overseeing the relationship of the VRS with UNPROFOR in the enclaves.<sup>380</sup> Gvero personally contributed to the military disabling of the local UN forces. Gvero assisted in denying access and supplies to the enclaves in the months leading up to the take-over of Srebrenica. In an April 1995 meeting with Bosnian Serb officials in April, Gvero told UNPROFOR commander General Rupert Smith that the VRS was denying fuel to UNPROFOR based on intelligence that UNPROFOR had adequate fuel reserves and accusations that UNPROFOR was providing fuel to the ABiH.<sup>381</sup>
253. On 9 July 1995, Assistant Commander for Intelligence and Security Affairs Zdravko **TOLIMIR** sent a confidential communication to Generals Gvero and Krstić reporting that the President of Republika Srpska was pleased with combat operations around Srebrenica and had agreed with the continuation of operations for take-over of Srebrenica.<sup>382</sup> Gvero assisted in the attack on the Srebrenica enclave from the Drina Corps Forward Command Post on 9 July 1995 and advised General Krstić on the ongoing operation.<sup>383</sup> On 11 July 1995, after assuring RS President Radovan Karadžić that "everything was going according to plan,"<sup>384</sup> Gvero reported to RS President Radovan Karadžić that a "Serbian flag is flying" in Srebrenica.<sup>385</sup>
254. Gvero assisted in the attack on Srebrenica knowing that one of the main objectives was to force the Bosnian Muslim population to leave Srebrenica by lying to UNPROFOR about Bosnian Muslim attacks, in particular on UN OPs, and VRS

<sup>379</sup> *Popović* Trial, 29 November 2007, evidence of Cornelis Nicolai, T.18484-18485, 18495-18496. See ICRC update, Msg.No.COMREX/FIN 95/1305, 17 July 1995 (ERN: 0460-0758 from 0460-0747-0460-0807). (Noting that on 16 July, "the ICRC delegates in Pale then had a meeting with General Gvero of the BSA, who ensured them that the ICRC would be given access to all detainees once security conditions in the area allowed.") By this time thousands of Bosnian Muslim men from the Srebrenica enclave had already been executed by the VRS and MUP forces.

<sup>380</sup> See, e.g., GŠ VRS Report 07/21-236, 30 May 1995 (ERN: 0345-8308-0345-8839); GŠ VRS Report 03/4-1617 (OTP English translation) 11 July 1995 (ERN: 0190-2752-0190-2752); Intercept between Gvero and Svetlana (Nicolai's interpreter), 11 July 1995 at 16:10 (ERN: 0320-1098-0320-1099); Secretary-General's Report, paras.311, 378.

<sup>381</sup> *Popović* Trial, 5 November 2007, evidence of Rupert Smith, T.17492-17493.

<sup>382</sup> GŠ VRS Report 12/46-501/95, 9 July 1995 (ERN: 0089-2590-0089-2590) (regarding agreement for continuation of operations for the take-over of Srebrenica).

<sup>383</sup> Butler Srebrenica Narrative at 86, 96.

<sup>384</sup> Intercept between Gvero and Karadžić, 11 July 1995 at 16:23 (ERN: 0086-9276-0086-9277).

<sup>385</sup> Intercept between Gvero and Karadžić, 11 July 1995 at 16:45 (ERN: 0320-1098-0320-1099).

intentions and actions with respect to the enclave.<sup>386</sup> Gvero kept RS President Karadžić informed of his communication with the international forces.<sup>387</sup>

255. Gvero acted to prevent and control outside international protection of the enclaves, including air strikes and international monitoring. On 11 July, he threatened an UNPROFOR commander in an attempt to stop further NATO air strikes in the midst of the conflict.<sup>388</sup> After the fall of the Srebrenica enclave, he lied to international representatives in order to block the access of the UN and other international organisations to Srebrenica.<sup>389</sup>
256. Gvero actively participated in, and exercised control over, the movement of people out of the enclaves. He helped to organise and coordinate the capture and detention of Bosnian Muslim men from Srebrenica, signing order 03/4-1629 on 13 July directing units to prevent the escape of Bosnian Muslim groups from the enclave.<sup>390</sup> He facilitated and oversaw the movement of wounded Bosnian Muslims from Srebrenica.<sup>391</sup>
257. On Thursday, 20 July 1995, a Radio Deutche Welle Interview was broadcasted at 4:30 p.m., stating, among other things “that early this week an oral agreement was reached with Gen. Milan Gvero in Pale, according to which the ICRC delegates are in principle authorised to visit the Srebrenica Moslems detained by the BSA [VRS] when it took over this UN protected area.”<sup>392</sup> By 20 July 1995, Gvero knew that most of the Bosnian Muslim men detained by the VRS after the fall of Srebrenica were no longer living, but was deliberately obfuscating the truth.

### 3. Ljubiša Beara: Chief of the VRS Main Staff Security Administration

258. During the time period relevant to the events described in this Indictment, Ljubiša Beara was a Colonel and the Chief of Security of the Main Staff of the VRS. As

<sup>386</sup> *Popović* Trial, 29 November 2007, evidence of Cornelis Nicolai, T.18466-18467, 18469-18473, 18484-18485, 18515-18516. Nicolai noted that in the course of his numerous conversations with the VRS Main Staff, both **TOLIMIR** and Gvero made false statements, such as denying that the VRS had attacked UNPROFOR positions or the enclave itself.

<sup>387</sup> Intercept between Gvero and Karadžić, 11 July 1995 at 16:23 (ERN: 0086-9276-0086-9277); Intercept between Gvero and Karadžić, 11 July 1995 at 16:45 (ERN: 0320-1098-0320-1099).

<sup>388</sup> *Popović* Trial, 29 November 2007, evidence of Cornelis Nicolai, T.18486-18492, 18512-18517.

<sup>389</sup> Intercept between Gvero and Nicolai, 12 July 1995 at 14:45 (ERN: 0086-9296-0086-9297). Gvero assures Nicolai that wounded will be treated in hospitals and that UNPROFOR will be safe.

<sup>390</sup> GŠ VRS Order 03/4-1629, 11 July 1995 (ERN: 0293-5564-0293-5566), re: prevention of passage of Bosnian Muslim groups towards Tuzla and Kladanj, typesigned by Assistant Commander, Lt Gen Milan Gvero; Butler Srebrenica Narrative at 120.

<sup>391</sup> Intercept between Beara, Lučić and Zoka, 13 July 1995 at 10:09 (ERN: 0091-2593-0091-2595).

<sup>392</sup> See message from spokesman of the ICRC Belgrade office Josue Anselmo to ICRC Geneva concerning “ICRC Interview to Deutche Welle Broadcasted Today (20.07), 20 July 1995 (ERN: 0460-0760-0460-0807).

Chief of Security he reported to his superior, Zdravko **TOLIMIR**. As part of his job he was, *inter alia*, responsible for managing the Main Staff units of the military police, including the Military Police Battalion of the 65<sup>th</sup> Motorized Protection Regiment, and proposing ways to utilise the military police.<sup>393</sup> He was also responsible, in general, for co-ordinating with the bodies of the MUP in the six VRS Corps “zones of responsibility”.

259. At the time that the Srebrenica enclave fell, Beara was in the Bratunac area, based at the Hotel Fontana.<sup>394</sup> On 12 July 1995, Beara was present at the SDS Headquarters in Bratunac. On 13 July, Beara was present in the area of Nova Kasaba, co-ordinating the capture and surrender of Bosnian Muslim men by VRS and MUP forces, including the Military Police Battalion of the 65<sup>th</sup> Motorized Protection Regiment of the Main Staff.
260. Beara also planned, organised and assisted in the gathering together, detention, transportation and execution of Bosnian Muslim men from Srebrenica along the Konjević Polje - Milići road on 13 July 1995. In the morning hours of 13 July 1995, Beara asked Lučić whether he knows that 400 “balijas”<sup>395</sup> have shown up in Konjević Polje, and after verifying that they had been “rounded up, disarmed, everything,” directed Lučić to “shove them all on the playground, who gives a fuck about them?” and recommended that they be lined up in “4-5 rows.”<sup>396</sup> It is the Prosecution’s position that the “Lučić” Beara spoke with is Aleksandar Lučić, the Deputy Commander of the Military Police Battalion of the 65<sup>th</sup> Protection Regiment, who was present in Nova Kasaba on 13 July 1995.<sup>397</sup>
261. On 13 July, the Zvornik Brigade Duty Operations Officer Notebook bears a notation that “President of the municipality Mitrović called and asked that the flat-bed trailer (Colonel Beara) be sent to Bratunac to bring a bulldozer. Colonel Beara passed on the message.”<sup>398</sup>

<sup>393</sup> *Popović* Trial, 10 June 2008, evidence of Milomir Savčić, T.15271-15272.

<sup>394</sup> *Popović* Trial, 8 November 2006, evidence of witness PW-138, T.3802-3803. *See also* Approval for Col. Ljubiša Beara to use a room in the Hotel Fontana from 13 July 1995 to 16 July 1995, signed for Bratunac Brigade Commander Vidoje Blagojević, dated 25 July 1995 (ERN: 0635-9316-0635-9316).

<sup>395</sup> Derogatory term for Bosnian Muslims.

<sup>396</sup> Intercept between Beara and Lučić, 13 July 1995 at 10:09 (ERN: 0091-2593-0091-2595). *See also* *Blagojević* Trial, 10 June 2004, evidence of Dragomir Keserović, T.10703. Keserović testified that Major Zoran Malinić told him on 17 July 1995 that Beara had ordered that the prisoners be collected at the stadium in Nova Kasaba.

<sup>397</sup> *Popović* Trial, 1 September 2008, testimony of Bojan Subotić, T.25015-25016.

<sup>398</sup> Zvornik Brigade Duty Operations Officer Notebook, 13 July 1995 entry (ERN: 0293-5619-0293-5806).

262. The majority of the prisoners captured from the column on 13 July 1995 were taken to the same temporary detention sites in and around Bratunac as those men separated at Potočari. Beara assisted in the transportation and organisation of Bosnian Muslim men from Bratunac to detention centres in the Zvornik area; specifically, the schools at Orahovac, Petkovci, Ročević and Kula, as well as the Pilica Cultural Centre, from 13 through about 16 July 1995, and oversaw and supervised their summary execution.<sup>399</sup> Beara was also identified as being involved in the burials at Glogova.<sup>400</sup>
263. Intercepts and witnesses establish Beara's important role in the handling of prisoners and in securing additional troops to take part in executions. Dragan Jokić, the Zvornik Brigade HQ Duty Officer, wrote in the Zvornik Brigade Duty Operations Officer Notebook on that date that "Colonel Salapura called – Drago and Beara are to report to Golić."<sup>401</sup> At 15:00, he made the note:
- "1500hrs – Colonel Beara is coming  
in order to Orovoc [sic] Petkovci Ročević Pilica"<sup>402</sup>
264. Beara told a witness on 14 July that Bosnian Muslim men in schools would be killed and that help was needed from the community in order to bury them.<sup>403</sup> Around 17:00 to 18:00 on 14 July, Jokić called the 6<sup>th</sup> Battalion Commander looking for Beara. The Commander later reported back that Beara had been found at the Petkovci School and given the message to contact Brigade Headquarters.<sup>404</sup>
265. At 21:02 on 14 July, Jokić spoke personally with Beara and advised him that there are "big problems with the people, I mean, with the parcel."<sup>405</sup> Jokić also advised

<sup>399</sup> In an interview following the publication of the indictment against him, Beara stated that he did not know that the operation of the Serbian forces entering Srebrenica was being prepared. "My assignment was not to participate in preparing military operations. I was involved in intelligence work. I was a counterintelligence officer." He then continued: "One day when I was taking mail to General Mladić, I saw a large number of buses on the road leading from Bratunac to Žepa and Srebrenica. The vehicles were sent from all over Bosnia to transfer the Bosnian Muslims to Tuzla via Kalesija. An UNPROFOR convoy was providing security." Sredoje Simić, *Svedok, I am not ashamed of any of my actions; if they need to try me, let them try me in my own country*, 29 October 2002 (ERN: 0364-5622-0364-5623).

<sup>400</sup> *Popović* Trial, 23 March 2007, evidence of witness PW-162, T.9368-T.9372.

<sup>401</sup> Zvornik Brigade Duty Operations Officer Notebook, 14 July 1995 entry (ERN: 0293-5619-0293-5806).

<sup>402</sup> *Id.* 14 July 1995 entry at 15:00.

<sup>403</sup> *Popović* Trial, 28 February 2007, evidence of witness PW-104, T.7941-T.7944.

<sup>404</sup> *Popović* Trial, 26 June 2007, evidence of witness Marko Milošević, T.13297-T.13354; 16 May 2007, evidence of witness Ostoja Stanišić, T.11600-11605.

<sup>405</sup> Intercept between Beara and Jokić, 14 July 1995 at 21:02 (ERN: 0077-9705-0077-9707). As noted in various other intercepts, the phrase "parcel or package" refers in general to prisoners or people. For example, in an intercept from 2 August 1995 at 12:40, which took place while Bosnian Muslim prisoners were continuing to be captured by the VRS, General Krstić is told that someone "went up there because we had some parcels, to check what they know." Intercept between Krstić and Popović, 2 August 1995 at 12:40 (ERN: 0107-7952-0107-7953).

Beara that he should call number 155 back since the caller had asked for Beara's call urgently. As noted previously, "155" was the extension used by General Miletić at the Main Staff.

266. On 15 July 1995, Beara and General Živanović spoke about the need for additional men in order to carry out "the task".<sup>406</sup> A few minutes later, Beara contacted General Krstić to secure additional troops to take part in the executions in Zvornik, and complained that an intervention platoon had not arrived.<sup>407</sup> Krstić advised Beara to "check with Blagojević, take his Red Berets."<sup>408</sup> Beara further complained that he had 3,500 parcels to distribute and had no solution.<sup>409</sup>
267. On 16 July, the Zvornik Brigade Duty Operations Officer Notebook bears a notation "Beara to call Panorama 155 at 0930hrs."<sup>410</sup> A few hours later, a conversation took place among Cerović, Trbić and Beara.<sup>411</sup> The Duty Officer Log book from the same date indicates: "At 1115 hrs. It was reported from *Zlatar* that a triage of wounded and prisoners must be carried out (It was reported to Beara)."<sup>412</sup>
268. Beara also participated in the effort by General Krstić and others to capture Bosnian Muslim men fleeing from the Žepa enclave over the Drina River to Serbia on about 1 and 2 August 1995.

#### 4. Vujadin Popović: Drina Corps Assistant Commander for Security

269. During July 1995, Popović held the rank of Lieutenant Colonel and was the Assistant Commander for Security of the Drina Corps. He reported directly to the Commander of the Drina Corps.<sup>413</sup>
270. In his position as Chief of Security, Popović had a wide range of powers and duties, many of which overlapped between the fields of intelligence and police work. These included "organising and implementing security measures and

<sup>406</sup> Intercept between Beara and Živanović, 15 July 1995 at 09:54 (ERN: 0080-0616-0080-0617).

<sup>407</sup> Intercept between Beara and Krstić, 15 July 1995, at 10:00 (ERN: 0080-4535-0080-4537).

<sup>408</sup> The Bratunac Brigade has a reconnaissance platoon called the Red Berets.

<sup>409</sup> *Krstić* Trial Judgment, para.384 (discussion of conversation between Beara and Krstić).

<sup>410</sup> Zvornik Brigade Duty Operations Officer Notebook (ERN: 0293-5619-0293-5806).

<sup>411</sup> Intercept between "C" (Cerović) and "B" (Beara), 16 July 1995 at 11:11 hours, regarding "trriage" on the prisoners (ERN: 0080-1263-0080-1263).

<sup>412</sup> Zvornik Brigade Duty Operations Officer Notebook, 16 July 1995 entry at 11:15 (ERN: 0293-5619-0293-5806).

<sup>413</sup> Federal Secretariat for National Defence, *Rules of Service of Security Organs in the Armed Forces of the Socialist Federative Republic of Yugoslavia*, 1984, Ch.II, para.16 (ERN: 0092-0099-0092-0131).

undertaking other specialised work in the field of Security ...”<sup>414</sup> In addition, as Assistant Commander of Security, Popović was required to “control the units of the Military Police, and propose ways to use them.... also, to coordinate with the bodies of the MUP in the Corps sector.”<sup>415</sup>

271. The evidence demonstrates that Popović exercised this power and authority in the field by ensuring that prisoners were efficiently detained, secured, and then transported to pre-arranged execution sites where they were then executed. Popović was heavily engaged in the logistical and security issues concerning the confinement and execution of captured prisoners. Later, he was a central figure in the effort to conceal the crimes through the massive re-burial of the victims.
272. From the very beginning of the fall of Srebrenica and Žepa, Popović played a central and crucial role in the crimes enumerated in the Indictment. He accompanied General Ratko Mladić during Mladić’s triumphant entry into Srebrenica following the fall of the enclave on 11 July 1995.<sup>416</sup> The following day, Popović attended as a VRS representative the third and final meeting between the VRS, DutchBat Command and Bosnian Muslim representatives at the Hotel Fontana.<sup>417</sup> This was the meeting at 10:00 hours, during which Mladić reiterated the ultimatum to the Bosnian Muslims of Srebrenica that they could “survive or disappear”, and stated that he would provide vehicles to transport the population.<sup>418</sup> During this period, Popović was staying at the Hotel Fontana.<sup>419</sup>
273. On the afternoon of 12 July, directly after the third meeting at the Hotel Fontana, Popović could be seen in Potočari, along with other senior Drina Corps personnel, including, (then) Corps Commander Živanović; Corps Chief of Staff, Krstić; Corps Assistant Commander for Rear Services, Colonel Lazar Aćamović; and Corps Chief of Intelligence, Lieutenant Colonel Svetozar Kosorić.<sup>420</sup> Mladić, Popović and the other senior VRS personnel oversaw the process of mass

<sup>414</sup> *Regulations on the Responsibility of the Land Army Corps Commander in Peacetime*, Art.29 (ERN: 0090-9994-0091-0027).

<sup>415</sup> *Rules of Land Forces Corps (Provisional)*, para.73; JNA 4<sup>th</sup> Corps, *Instructions on How the 4<sup>th</sup> Corps Command Is To Operate When Carrying Out Priority Assignments in Peacetime and Wartime*, Doc.No.01/15-62, (OTP English translation), 29 August 1991, pp.21-22 (ERN: 0085-0000-0085-0057).

<sup>416</sup> Video compilation of Srebrenica-related footage (ERN: V000-4458-V000-4458).

<sup>417</sup> *Id.*, Republika Srpska Civilian Affairs Committee for Srebrenica, Statement by Representatives of the Civilian Authorities of the Srebrenica Enclave Regarding the Implementation of the Agreement on the Evacuation of the Civilian Population from the Enclave, 07-27/95, 17 July 1995 (ERN: 0088-2988-0088-5864).

<sup>418</sup> Video compilation of Srebrenica-related footage (ERN: V000-4458-V000-4458); Transcript of Meeting 3 at Hotel Fontana (from video), p.9 (ERN: 0090-4996-0090-5000).

<sup>419</sup> Hotel Fontana Receipts for 11 and 12 July 1995 (ERN: 0089-8521-0089-8539).

<sup>420</sup> Video compilation of Srebrenica-related footage (ERN: V000-4458-V000-4458).

expulsion, captured on video, as the first bus convoys departed removing the Bosnian Muslim women and children from the Republika Srpska. Simultaneously, the men were separated and detained by VRS and MUP personnel, while logistical arrangements were being put in place to murder them by the thousands.

274. By this time, it was clear that all the men and boys of Srebrenica, other than the very old and young, were marked for execution. Captain Momir Nikolić met with Popović in front of the Hotel Fontana on the morning of 12 July, and when Nikolić asked Popović what was going to happen to all the Bosnian Muslim men once they were separated, Popović responded that “all balijas needed to be killed.”<sup>421</sup>
275. Soon after the completion of the separation at Potočari, Popović was actively engaged in the transportation of the Bosnian Muslim male prisoners to detention sites. On 14 July, Popović led a convoy of able-bodied Bosnian Muslim men from Bratunac to a school in the Zvornik area.<sup>422</sup> Later that same day, because of the huge amount of prisoners who had been transported and detained in Zvornik, reinforcements and machine operators were sent to Orahovac to assist in the guarding, killing and burial of prisoners under the control of Popović and Drago Nikolić.<sup>423</sup>
276. On 16 July 1995 the mass executions continued. In a systematic process, Bosnian Muslim prisoners were transported from the Pilica School and taken to the Branjevo Farm, where they were executed. Later that same day, Bosnian Muslim men held in the Pilica Cultural Centre were executed. At around noon on the 16<sup>th</sup>, senior officers fitting the description of Popović and Beara arrived with VRS soldiers at the Pilica School in Kula.<sup>424</sup> The prisoners were then removed to the execution site at the Branjevo Farm.
277. Popović contributed to the smooth operation of the executions on 16 July. Specifically, he made sure that sufficient fuel was available so that the mass murder could continue. Popović’s request for fuel is recorded in the Zvornik Brigade Duty Operations Officer Notebook on 16 July: “- At 1400 hrs Popović

<sup>421</sup> *Blagojević* Trial, 22 September 2003, evidence of Momir Nikolić, T.1676.

<sup>422</sup> *Popović* Trial, 8-9 November 2006, evidence of witness PW-138, T.3842-T.3852.

<sup>423</sup> *Popović* Trial, 27 September 2007, evidence of witness PW-168, T.15887-15888.

<sup>424</sup> *Popović* Trial, 11 May 2007, evidence of witness Slavko Perić, T.11409-T.11415.

- requested a bus with a full tank and 500 litres of D2/Diesel/. *Zlatar* Duty Officer and Golić informed.”<sup>425</sup>
278. Beginning at approximately 14:00 hours, four conversations dealing with fuel supplies at a location where executions were known to have been occurring at the time were intercepted.<sup>426</sup> The subject of these communications was the urgent need to supply Popović with 500 litres of diesel fuel at Pilica, “otherwise his work will stop.” During the time frame of these conversations, Bosnian Muslim prisoners were being transported from detention centre(s) at Pilica to the Branjevo Farm, where they were executed and buried.
279. The intercepts regarding Popović’s activities on 16 July are corroborated by service records of the Zvornik Brigade, which contain references to these urgent requests for fuel. First, there is a form “MP-20” (Material List for Dispatch), dated 16 July 1995,<sup>427</sup> that states that 500 litres of D2 (diesel) fuel were disbursed to the Command of the Drina Corps, for Lieutenant Colonel Popović, on 16 July 1995. This form MP-20 also notes that 140 litres of D2 were later returned. Item 1 of the form reflects this transaction listed as 21/1-2140. Second, there is the corresponding technical material disbursement logbook, which notes this transaction under item 2140. This log also reflects that 500 litres of D-2 went to the Drina Corps Command on 16 July 1995.<sup>428</sup>
280. Later, on the evening of 16 July, Popović attempted to call Krstić to report that the work was finished. Krstić was unavailable, so Popović left a message, stating that he had “...finished the job, and that he will come there tomorrow, so tell the General.”<sup>429</sup> From the context of the conversation, it is clear that Lieutenant Colonel Popović was calling from the Zvornik Brigade HQ.
281. The Drina Corps vehicle record log or “trip ticket” for the blue Golf vehicle assigned to Popović indicates that he was travelling extensively in the field on 16

<sup>425</sup> Zvornik Brigade Duty Operations Officer Notebook (ERN: 0293-5619-0293-5806).

<sup>426</sup> Zvornik Brigade dispatch order 21/1-2140, 16 July 1995 (ERN: 0075-6045-0075-6045); Intercept dated 16 July 1995 at 13:58 (ERN: 0080-1265-0080-1267).

<sup>427</sup> Zvornik Brigade Dispatch Order 21/1-2140, 16 July 1995 (ERN: 0084-4508-0084-4508); *see also*, 1.Zvpbr Dispatch Order 21/1-2150, (Original in BCS) 16 July 1995, request for fuel from Drina Corps to Zvornik Brigade (ERN: 0075-6041-0075-6041) (Dispatch Order corresponds to the intercepted military telephone communication on 16 July 1995 between “B” Basević, “X” unknown and “P” Palma Duty Officer, 16 July 1995, at 13:58) (ERN: 0080-1265-0080-1267).

<sup>428</sup> Technical Material Disbursement Logbook, 4 January 1994 to 17 September 1995, p.172 (ERN: 0096-5590-0096-5590); *See also* Zvornik Brigade Duty operations officer notebook (ERN 0293-5766-0293-5766).

<sup>429</sup> Intercept between Popović, Rasić and Zlatar Duty Officer at Operations Centre, 16 July 1996 at 21:16 (ERN: 0072-7669-0072-7669).

- July 1995. That day, 40 litres of diesel fuel was allocated to Popović, and the Golf assigned to him covered 168 kilometres.<sup>430</sup>
282. The following day, at 12:42 hours on 17 July 1995, Krstić, Popović's commander, called Major Pavle Golić, a Drina Corps Intelligence Officer, looking for Popović. Golić told Krstić that "Popović was still in Zvornik, but would be back in the afternoon." Krstić instructed Golić to "find Popović, and have him call the Forward Command Post immediately."<sup>431</sup> There immediately followed two telephone conversations, as attempts were made to convey the message to Popović.<sup>432</sup>
283. During the afternoon, at 16:22 hours on 17 July 1995, Popović was recorded in a conversation with an unidentified individual, whom he refers to as "boss". Only one side of the conversation (Popović as the speaker) was intercepted. Popović told the "boss" that the "job" was done, that it all "gets an A", and that everything was "OK."<sup>433</sup>
284. Vehicle records of the Zvornik Brigade establish that a ULT 220 excavator was in use at the Branjevo Farm execution and burial site for over eight hours on 17 July for the stated purpose of "digging trenches in Branjevo."<sup>434</sup> These records further indicate the presence of a BG-700 excavator at the site on the same day.<sup>435</sup> The Fuel Disbursal Log of the Zvornik Brigade notes that, in addition to the 16 July delivery of 500 litres of fuel to Popović at Pilica, that on 17 July, 100 litres of diesel fuel were allocated to a BGH-700.<sup>436</sup>
285. There were no significant combat operations underway in Pilica or Branjevo on 16 to 17 July. Nor was there any plausible military justification for digging trenches in Branjevo. The evidence taken as a whole is conclusive: the "job" which Popović reported to Krstić deserved an "A" grade was the murder and burial of the Bosnian Muslim men and boys over 16 to 17 July.

<sup>430</sup> Drina Corps Vehicle Log, Golf P-7065, (Original in BCS), 1-31 July 1995 (ERN: 0427-0610-0427-0610; 0427-0612-0427-0612).

<sup>431</sup> Intercept between "MG" Major Golić and "G" General at Zlatar 01, 17 July 1995 at 12:42 (ERN: 0080-4678-0080-4679).

<sup>432</sup> Intercept between Trbić and "X" unknown, 17 July 1995 at 12:44 (ERN: 0080-0639-0080-0639); intercepted military telephone communication between "T" Trbić and "X" unknown, 17 July 1995 at 12:49 (ERN: 0080-0640-0080-0640).

<sup>433</sup> Intercept between Popović and unidentified individual, 17 July 1995 at 16:22 (ERN: 0080-1468-0080-1469).

<sup>434</sup> Vehicle Log for ULT 220 (from Birač-Holding), 1-31 July 1995 (ERN: 0087-6069-0087-6070).

<sup>435</sup> Vehicle Log for Mercedes 2626 (license no.: M-5195), 1-31 July 1995, (ERN: 0087-6065-0087-6068).

<sup>436</sup> 1<sup>st</sup> Zvornik Brigade Fuel Disbursal Log, 7 February 1994 to 14 May 1996 (ERN: 0327-6548-0327-6719).

286. From approximately August through November 1995, there was a massive re-burial operation undertaken, in an effort to conceal the murders of thousands of Bosnian Muslims. One of the principal directors of this cover-up operation was Popović, who coordinated the necessary logistics of digging up and transporting thousands of corpses to selected secondary mass graves.<sup>437</sup> General Mladić personally authorised the distribution of fuel for this operation, which was sent to Captain Milorad Trpić [*sic*] at the Zvornik Brigade,<sup>438</sup> with the assistance of a representative of the Drina Corps.<sup>439</sup>

##### **5. Drago Nikolić: Zvornik Brigade Assistant Commander for Security**

287. Lieutenant Nikolić joined the JNA in 1976 and then became a member of the VRS in 1992. He was first appointed to the post of Assistant Commander of Security with the Zvornik Brigade on 27<sup>th</sup> March 1993.<sup>440</sup> By July 1995 and all times relevant to the crimes charged in the Indictment, he held the rank of 2<sup>nd</sup> Lieutenant and his post was Chief of Security of the Zvornik Brigade.<sup>441</sup> He reported directly to the Commander of the Zvornik Brigade, Vinko Pandurević.<sup>442</sup> He directly supervised Milorad Trbić, even though Trbić as a reserve Captain outranked him.

288. Nikolić's powers and duties were virtually identical under VRS regulations to those incumbent upon Drina Corps Chief of Security, Vujadin Popović, albeit at the Brigade level. In addition, as Chief of Security, Nikolić was required to ensure the proper interrogation of prisoners of war.<sup>443</sup> Nikolić was responsible at the Brigade level for logistic and security issues relating to the detention and murder of prisoners. Later, like his colleague Vujadin Popović, he worked to cover up the crimes through the re-burial of the victims.

289. On 13 July 1995, thousands of prisoners were being shipped to Bratunac for detention, along the Konjević Polje road. The next day, thousands of prisoners were transported from detention centres in the Bratunac area to be executed in the Zvornik area.

<sup>437</sup> *Popović* Trial, 27 September 2007, evidence of witness PW-168, T.15922-15928.

<sup>438</sup> VRS Main Staff Order 03/ 4-2341, 14 September 1995 (ERN: 0082-2150-0082-2150).

<sup>439</sup> VRS Main Staff Order 10/34/2-3-701, 14 September 1995 (ERN: 0082-2152-0082-2152).

<sup>440</sup> PVL (Professional Military File) for Drago Nikolić (ERN: 0075-9950-0075-9951 (BCS); 0306-9738-0306-9738 (Eng)).

<sup>441</sup> Zvornik Brigade Report on Confession of Đokić, Neško, 29 July 1995 (ERN: 0071-0335-0071-0346 (BCS); 0085-0107-0085-0108 (Eng)).

<sup>442</sup> Federal Secretariat for National Defense, *Rules of Service of Security Organs in the Armed Forces*, 1984, Ch.II, para.16 (ERN: 0090-9817-0090-9843 (BCS); 0092-0099-0092-0131 (Eng)).

<sup>443</sup> JNA Regulation, *SFRY Manual for Intelligence Support to the Armed Forces*, 1987, paras.198-20 (ERN: 0113-2537-0113-2680 (BCS); 0304-7987-0304-8102 (Eng)).

290. In order to secure his participation in the murder operation, Nikolić was relieved from the Zvornik Brigade Forward Command Post at approximately 23:00 on 13 July.<sup>444</sup> [REDACTED]  
[REDACTED]  
[REDACTED]<sup>445</sup> Nikolić was then taken by his driver to the Zvornik Brigade HQ for a meeting with Beara and Nikolić.<sup>446</sup> Following the meeting, Nikolić waited for the busloads of prisoners to arrive in Zvornik near the Hotel Vidikovać. The buses arrived and were directed to the Orahovac School, where the prisoners were detained prior to execution.
291. Early on 14 of July, the prisoners began to arrive at the Grbavci School in Orahovac, as well as other areas in the zone of the Zvornik Brigade. Over 500 prisoners were held at the school. The arrival of the prisoners at the school in Orahovac, their detention and execution, is detailed in paragraphs 78-88 *supra*.
292. At the school, a mixture of Zvornik Brigade soldiers and MPs directed the prisoners off the buses and into the school, where they were detained for the night. Nikolić was the officer in charge of this operation, ordering the soldiers where to go and what to do.<sup>447</sup> On 14 July, Zvornik Brigade MPs removed at least two Bosnian Muslim prisoners from the school and summarily executed them by automatic rifle fire.<sup>448</sup>
293. Later that day, in the early afternoon, TAM trucks backed up to the school gym and the Brigade MPs handed out blindfolds and loaded the prisoners onto the trucks.<sup>449</sup> The MPs then escorted the prisoners to a water point near the school, where they were executed by firing squads.<sup>450</sup> Nikolić accompanied these convoys to the killing site and was present at the killing site. Even from the school, volleys of gunshots could be heard as hundreds of prisoners were systematically

<sup>444</sup> *Popović* Trial, 25-27 April 2007, evidence of Mihajlo Galić, T.10491-10672; Zvornik files: Operational Diary/IKM Logbook, 13 July entry at 23:00 (ERN: 0076-0275 from 0076-0268-0076-0316 (BCS); 0084-2270-0084-2313 (Eng)).

<sup>445</sup> [REDACTED]  
<sup>446</sup> *Popović* Trial, 7 May 2007, evidence of Milorad Birčaković, T.11014.

<sup>447</sup> *Popović* Trial, 30 January 2007, evidence of witness PW-143, T.6523-6615.

<sup>448</sup> *Popović* Trial, 24 August 2006, evidence of witness PW-110, T.703 (execution of two prisoners); 29 August 2006, evidence of Mevludin Orić, T.945-947 (execution of one prisoner); 1-2 November 2007, evidence of witness PW-169, T.17333-17334 (execution of one prisoner); 23 April 2007, evidence of Tanacko Tanić, T.10336 (who saw two dead bodies when he arrived at the Grbavci School).

<sup>449</sup> *Popović* Trial, 24 August 2006, evidence of witness PW-110, T.708-712.

<sup>450</sup> *Popović* Trial, 24 August 2006, Witness PW-110, T.708-725; 22-23 February 2007, testimony of PW-101, T.7548-7725; 31 October - 1 November 2007, evidence of witness PW-169, T.17335-17342; *Blagojević* Trial, 1 December 2003, evidence of Cvijetin Ristanović, T.5358-5429; admitted under Rule 92ter in the *Popović* Trial, on 10 July 2007.

murdered. The events of the massacre at Orahovac are recounted in paragraphs 78-88 *supra*.

294. In addition to his participation at the scene of the crimes in Orahovac, Nikolić made a trip to Petkovci on 14 July to assess the security situation regarding the prisoners at the school. Nikolić conferred with Beara at the school, during the afternoon of 14 July.<sup>451</sup>
295. The next day, during the afternoon of 15 July, Nikolić was seen passing through a checkpoint on the way to the school in Ročević,<sup>452</sup> another site where Bosnian Muslim men and boys were detained and murdered. Nikolić was accompanied by his Deputy, Milorad Trbić, on the way to the Ročević school.<sup>453</sup> Corpses were observed lying around the school that day.<sup>454</sup>
296. Intercepts provide additional evidence that the security organs at all levels, including that of the Zvornik Brigade, headed by Nikolić, managed the murder operation in co-ordination and cooperation with the regular Command structures. The activities of the security organs were based at the Zvornik Brigade HQ and relied heavily on the Brigade Duty Operations Officer to relay vital information and orders regarding the murder operation, including execution orders.<sup>455</sup> As one example, the Brigade Duty Operations Officer transmitted an encrypted message to the 2<sup>nd</sup> Battalion to assemble an execution squad in order to execute the prisoners at Ročević school.<sup>456</sup> After negative responses from the Battalion, Nikolić personally relayed the order.<sup>457</sup>
297. Entries in the Duty Operations Officer Notebook also demonstrate Nikolić's involvement, such as the 14 July first notation of the day by the Duty Officer Dragan Jokić that "Colonel Salapura called – Drago and Beara are to report to Golić."<sup>458</sup> Later in the day, there is another notation stating, "from Beara – Drago to report."<sup>459</sup> On 15 July, he was again requested to report to Major Golić, this time together with Lieutenant Colonel Popović, and further down the page there is

<sup>451</sup> *Popović* Trial, 26 June 2007, evidence of Marko Milošević, T.13302-13306.

<sup>452</sup> *Popović* Trial, 3-4 April 2007, evidence of PW-165, T.9901-10012.

<sup>453</sup> *Id.*

<sup>454</sup> *Popović* Trial, 29 January 2007, evidence of PW-142, T.6434-6492.

<sup>455</sup> Intercept between Beara and an unidentified party, 15 July 1995 at 09:52 (ERN: 0080-0616-0080-0616); Intercept between Živanović and Beara, 15 July 1995 at 09:54 (ERN: 0080-0616-0080-0617); Intercept between Krstić and Beara, 15 July 1995 at 10:00 (ERN: 0080-4535-0080-4537).

<sup>456</sup> *Popović* Trial, 20-22 June 2007, evidence of Srećko Aćimović, T.12928-13158.

<sup>457</sup> *Id.*, T.12949-12947.

<sup>458</sup> Zvornik Brigade Duty operations officer notebook, 14 July entry (ERN: 0293-5744 from 0293-5619-0293-5806).

<sup>459</sup> *Id.*, (ERN: 0293-5752 from 0293-5619-0293-5806).

a request for gasoline and crates of ammunition for soldiers in Kula (*i.e.*, Pilica School).<sup>460</sup>

## VI. APPLICABLE LEGAL PRINCIPLES

### (A) ARTICLE 4, GENOCIDE

298. In Count 1 of the Amended Indictment, the Accused, Zdravko **TOLIMIR**, is charged with genocide under Article 4(3)(a) of the Statute of the Tribunal. The Accused is charged on the basis of individually liability under Article 7(1).

299. The offence of genocide under Article 4(2) of the Statute comprises two components. First, a conviction for genocide requires the *actus reus* or material element of the offence, consisting of one or more of the acts enumerated under Article 4(2). Second, a conviction for genocide requires the *mens rea* of the offence, consisting of an “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”<sup>461</sup>

300. Relevantly, the *Krstić* Appeals Chamber held:

Among the grievous crimes this Tribunal has the duty to punish, the crime of genocide is singled out for special condemnation and opprobrium. The crime is horrific in its scope; its perpetrators identify entire human groups for extinction. Those who devise and implement genocide seek to deprive humanity of the manifold richness its nationalities, races, ethnicities and religions provide. This is a crime against all of humankind, its harm being felt not only by the group targeted for destruction, but by all of humanity.

The gravity of genocide is reflected in the stringent requirements which must be satisfied before this conviction is imposed.... Where these requirements are satisfied, however, the law must not shy away from referring to the crime committed by its proper name. By seeking to eliminate a part of the Bosnian Muslims, the Bosnian Serbs committed genocide. They targeted for extinction the forty thousand Bosnian Muslims living in Srebrenica, a group which was emblematic of the Bosnian Muslims in general. They stripped all the male Bosnian Muslim prisoners, military and civilian, elderly and young, of their personal belongings and identification, and deliberately and methodically killed them solely on the basis of their identity. The Bosnian Serb forces were aware, when they embarked upon this genocidal venture, that the harm they caused would continue to plague the Bosnian Muslims. ***The Appeals Chamber states unequivocally that the law condemns, in appropriate terms, the deep and lasting***

<sup>460</sup> *Id.*, (ERN: 0293-5761 from 0293-5619-0293-5806).

<sup>461</sup> *Krstić* Trial Judgement, para. 542; *see also Prosecutor v. Goran Jelisić*, Case No. IT-95-10-T, T.Ch., Trial Judgement, 14 December 1999 (“*Jelisić* Trial Judgement”), para. 62.

*injury inflicted, and calls the massacre at Srebrenica by its proper name: genocide.*<sup>462</sup>

**1. The material element of the offence (*actus reus*), constituted by one or several acts enumerated in Article 4(2)**

301. The definition of genocide in Article 4(2) is taken *verbatim* from Article II of the Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948 (“Genocide Convention”):<sup>463</sup>

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

302. The *actus reus*, or genocidal conduct, with which the Accused is charged in the Indictment falls within each of the acts listed in Article 4(2)(a)-(d).<sup>464</sup>

**a) Article 4(2)(a): Killing Members of the Group**

303. According to its terms, Article 4(2)(a) comprises three specific elements: first, that the Accused killed one or more persons; second, that such person or persons belonged to a particular national, ethnical, racial or religious group; and third, that the Accused intended to kill the person or persons.

304. The *Akayesu* Judgement held that “killing,” as enumerated in the crime of genocide, is broader than “murder” and includes all forms of intentional killing.<sup>465</sup> Similarly, the International Law Commission advises that “killing” is broader than “murder” and was “selected to correspond to the French word ‘*meurtre*’, which

<sup>462</sup> *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, App.Ch., Judgement, 19 April 2004 (“*Krstić* Appeal Judgement”), paras 36-37 (emphasis added).

<sup>463</sup> See *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, No. IT-02-60, Trial Judgement, 17 January 2005, para. 639 (“*Blagojević* Trial Judgement”).

<sup>464</sup> See Second Amended Indictment paras 18-24.

<sup>465</sup> *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, T.Ch., Judgement, 2 September 1998 (“*Akayesu* Trial Judgement”), para. 500.

implies more than 'assassinat'.<sup>466</sup> Under the French *Code Pénal*, “*meurtre*” covers all forms of voluntary killing,<sup>467</sup> whereas “*assassinat*” covers only premeditated murder.<sup>468</sup>

305. The Appeals Chamber has recently clarified that, whilst “killings” as referred to in Article 4(2)(a) have been equated to murder under the Statute of this Tribunal,<sup>469</sup> the killings need not necessarily be premeditated, however, they must be intentional.<sup>470</sup>

306. Accordingly, the Prosecution submits that all forms of voluntary killings, whether or not such killings are premeditated, satisfy the requirements of the term “killing” under Article 4(2)(a). This Tribunal has found that 7,000 Bosnian Muslim men were killed during the time period alleged in this Indictment.<sup>471</sup>

307. The Prosecution further asserts that killings include the burial and reburial operations that followed the killings.

**b) Article 4(2)(b): Causing Serious Bodily or Mental Harm to One or More Persons**

308. The term “serious bodily or mental harm” is not defined in the Statute.<sup>472</sup> However, according to its terms, Article 4(2)(b) comprises three specific elements: first, that the Accused caused serious bodily or mental harm to one or more persons; second, that such person or persons belonged to a particular national, ethnical, racial or religious group; and third, that the Accused intended to cause harm to the person or persons.

309. The Prosecution adopts from the *Krstić* Trial Judgement the following definition of “serious bodily or mental harm” as used in Article 4(2)(b):

Serious bodily or mental harm for purposes of Article 4 *actus reus* is an intentional act or omission causing serious bodily or mental

<sup>466</sup> Report of the International Law Commission on the work of its Forty-Eighth session, 6 May-26 July 1996, at 91, n. 122 (English version).

<sup>467</sup> Article 221-1 of the French Penal Code.

<sup>468</sup> Article 221-3 of the French Penal Code.

<sup>469</sup> The Trial Chamber in *Krajišnik* found that “killing” is “to be understood as *murder* of the members of those groups,” para. 859, citing *Prosecutor v. Clement Kayishema and Oben Ruzindana* ICTR-95-1-A, Appeal Judgement 1 June 2001, (“*Kayishema and Oben Ruzindana* Appeal Judgement”), para. 151.

<sup>470</sup> In the *Kayishema and Oben Ruzindana* Appeal Judgement, the Appeals Chamber found that “*meurtre*” meant “intentional but not necessarily premeditated murder,” para. 151; *Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-T, Judgement and Sentence, 13 December 2005 (“*Simba* Trial Judgement”), paras 414-415, (“Killing members of the group requires a showing that the principal perpetrator intentionally killed one or more members of the group, without the necessity of premeditation”).

<sup>471</sup> *Krstić* Appeal Judgement, para. 2 (citations omitted).

<sup>472</sup> *Blagojević* Trial Judgement, para. 645.

suffering. The gravity of the suffering must be assessed on a case by case basis and with due regard for the particular circumstances. In line with the *Akayesu* Judgement, the Trial Chamber states that serious harm need not cause permanent and irremediable harm, but it must involve harm that goes beyond temporary unhappiness, embarrassment or humiliation. It must be harm that results in a grave and long-term disadvantage to a person's ability to lead a normal and constructive life. In subscribing to the above case-law, the Chamber holds that inhuman treatment, torture, rape, sexual abuse and deportation are among the acts which may cause serious bodily or mental injury.<sup>473</sup>

310. This definition was not challenged on appeal. The Prosecution also incorporates into its definition other acts recognised by the Tribunal that may cause serious bodily or mental harm<sup>474</sup> including “harm ... that causes disfigurement or serious injury,”<sup>475</sup> “interrogations combined with beatings”<sup>476</sup> and “threats of death.”<sup>477</sup>

311. The *Krstić* Trial Chamber found that “the wounds and trauma suffered by those few individuals who managed to survive the mass executions,” perpetrated subsequent to the fall of the Srebrenica enclave, constituted serious bodily and mental harm within the meaning of Article 4(2)(b).<sup>478</sup>

**c) Article 4(2)(c): Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part**

312. The *Akayesu* Trial Chamber construed the words “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” to mean “the methods of destructions by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seek their

<sup>473</sup> *Krstić* Trial Judgement, para. 513 (citations omitted). See also *Akayesu* Judgement, paras 502, 504; *Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR 95-1-T, T.Ch., Judgement, 21 May 1999, (“*Kayishema and Ruzindana* Trial Judgement”), paras 108-109.

<sup>474</sup> See *Blagojević* Trial Judgement, para. 645. “The Trial Chamber in the *Katishema and Ruzindana* case found that bodily harm refers to harm that seriously injures the health, causes disfigurement or causes any serious injury to the external organs or senses. The Tribunal’s case law has specified that the harm need not be permanent or irremediable but “[it] must be harm that results in a grave and long term disadvantage to a person’s ability to lead a normal and constructive life.” The *Semanza* Trial Judgement has specified that mental harm refers to more than minor or temporary impairment of mental faculties. Furthermore, the harm must be inflicted intentionally.”

<sup>475</sup> *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-T, T.Ch., Trial Judgement, 1 September 2004 (“*Brdanin* Trial Judgement”), para. 690.

<sup>476</sup> *Blagojević* Trial Judgement, para. 646.

<sup>477</sup> *Blagojević* Trial Judgement, para. 646.

<sup>478</sup> *Krstić* Trial Judgment, para. 514. See also the decision of the Trial Chamber in *Blagojević*, paras 647, 650, who found that “there is sufficient evidence to establish beyond reasonable doubt that the trauma and wounds suffered by those individuals who managed to survive the mass executions does constitute serious bodily and mental harm. The fear of being captured, and, at the moment of separation, the sense of utter helplessness and extreme fear for their family and friends’ safety as well as for their own safety, is a traumatic experience from which one will not quickly – if ever – recover... Furthermore, the Trial Chamber is convinced that the forced displacement of women, children, and elderly people was itself a traumatic experience, which, in the circumstances of this case, reaches the requisite level of causing serious mental harm under Article 4(2)(b).”

physical destruction.”<sup>479</sup> This destruction must be material, and can be either physical or biological.<sup>480</sup> However, proving a violation of Article 4(2)(c) does not require evidence of the physical destruction in whole or in part of the targeted group.<sup>481</sup> The group upon which the conditions are inflicted must be protected under the Genocide Convention and the conditions must be inflicted deliberately.<sup>482</sup> No specific time frame or proportionality is required, but courts have considered length of time and scale of the conditions in determining whether Article 4(2)(c) is satisfied.<sup>483</sup>

313. Article 4(2)(c) seeks to punish methods of destruction apart from direct killings and the creation of circumstances that would lead to a slow death.<sup>484</sup> The jurisprudence of the Tribunals establishes that the systematic expulsions of members of the group from their homes,<sup>485</sup> the lack of proper housing,<sup>486</sup> subjection to a subsistence diet<sup>487</sup> or denial of proper clothing, hygiene, and medical care<sup>488</sup> constitute conditions of life calculated to bring about physical destruction of a group in whole or in part.

**d) Article 4(2)(d): Imposing measures intended to prevent births within the group**

314. To satisfy the terms of Article 4(2)(d), the Accused must impose measures on one or more members of the group, the measures must be imposed intentionally, and the measures must be intended to prevent births within the group. The measures may be physical or mental.<sup>489</sup> The forced separation of the males and females of a

<sup>479</sup> *Akayesu* Trial Judgement, para. 505.

<sup>480</sup> *Brdanin* Trial Judgement, para. 694; *Krstić* Appeals Judgement, para. 25; Report of the International Law Commission on the Work of its Forty-Eighth Session, 6 May-26 July 1996, UN Doc.A/51/10, pp. 90-91.

<sup>481</sup> *Brdanin* Trial Judgement, para. 691; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24, Trial Judgement, 31 July 2008, (“*Stakić* Trial Judgement”), para. 517.

<sup>482</sup> *Brdanin* Trial Judgement, para. 692.

<sup>483</sup> *Kayishema and Ruzindana* Trial Judgement, para. 548. In this case the Tribunal found that the time periods during which these deprivations occurred were not of sufficient length or scale to bring about the destruction of the group.

<sup>484</sup> *Brdanin* Trial Judgement, para. 691; *See also Stakić* Trial Judgement, para. 517, *Akayesu* Trial Judgement, paras 505-506, *Prosecutor v. Rutaganda*, Judgement and Sentence, Case No. ICTR-96-3-T, T.Ch.I, 6 December 1999, para. 50 (“*Rutaganda* Judgement”), *Kayishema* Trial Judgement, paras 115-116.

<sup>485</sup> *Brdanin* Trial Judgement, para. 691, *Rutaganda* Trial Judgement, para. 52, *Akayesu* Trial Judgment, para. 506.

<sup>486</sup> *Brdanin* Trial Judgement, para. 691, *Kayishema and Ruzindana* Trial Judgement, paras 114-116.

<sup>487</sup> *Brdanin* Trial Judgement, para. 691, *Rutaganda* Trial Judgement, para. 52, *Akayesu* Trial Judgment, para. 506.

<sup>488</sup> *Brdanin* Trial Judgement, para. 691, *Kayishema and Ruzindana* Trial Judgement, paras. 114-116, *Akayesu* Trial Judgment, para. 506.

<sup>489</sup> *Akayesu* Trial Judgement, para. 508.

group constitutes a “measure intended to prevent births within the group.”<sup>490</sup> The measures need not actually prevent births so long as they are intended to do so.

**2. The mens rea of the offence, consisting of the specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such**

315. In addition to establishing the *actus reus* or genocidal conduct of an Accused pursuant to Article 4(2), the Prosecution in a genocide case must prove beyond a reasonable doubt that such conduct was committed with the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.” According to its terms, this intent requirement has three specific components: first, the degree or quality of the requisite mental state; second, the scope of the requisite mental state; and third, the term “in whole or in part.” Moreover, it is necessary to consider the means of proof by which the requisite intent is established.

316. The broader, objective context in which the genocidal conduct of the Accused occurred should not be confused with the mental state element or any of its components. The objective context is, however, normally an essential and inherent part of any genocide case under the Statute or the 1948 Genocide Convention. In this case, the Prosecution will lead evidence showing that there was a broader context amounting to a manifest pattern of persecution and that the genocidal conduct charged in the Indictment was an integral part of that pattern.

317. The Prosecution is required to prove genocidal intent, but need not prove genocidal motive. Motive is not a constituent element of the crime.<sup>491</sup>

318. The existence of a plan or policy is not a legal ingredient of the crime.<sup>492</sup>

319. The third category of Joint Criminal Enterprise (the natural and foreseeable consequences category, see paragraph 112 below) and the crime of genocide are compatible.<sup>493</sup>

**a) The degree or quality of the requisite mental state: “with intent to destroy”**

320. In evaluating the culpability of a principal perpetrator and architect of a plan to commit genocide, the *Krstić* Trial Chamber subscribed to a definition of genocidal

<sup>490</sup> *The Prosecutor v. Rutaganda*, Case No. ICTR-96-3-T, Judgement, 21 May 1999, para. 53; *see also Akayesu* Trial Judgement, para. 507 (citing “separation of sexes”).

<sup>491</sup> *Jelišić* Appeal Judgement, para. 49.

<sup>492</sup> *Jelišić* Appeal Judgement, para. 48, citing *Tadić* Appeal Judgement, para 269.

<sup>493</sup> *Brdanin* Decision on Interlocutory Appeal, paras 9-10.

intent encompassing those acts “committed with the *goal* of destroying all or part of a group.”<sup>494</sup> However, the Trial Chamber cautioned that genocidal acts need not be premeditated over a long period; rather, the goal of destruction of a group might be formulated at some later point during the implementation of a military operation whose primary objective was totally unrelated to the fate of the group.<sup>495</sup>

321. Applying the Judgement of the *Kvočka* Trial Chamber, a person “knowing that [genocide is] being committed within a system and knowingly participating in that system in a way that substantially assists or facilitates the commission” of the genocide has met the mental standard applicable to participation in a Joint Criminal Enterprise.<sup>496</sup>

**b) The scope of the requisite mental state: “a... group, as such”**

322. The Trial Judgements of *Krstić*,<sup>497</sup> *Akayesu*,<sup>498</sup> and *Kayishema and Ruzindana*<sup>499</sup> endorse and adopt the following definition of a “group, as such,” set forth by the Draft Code of the International Law Commission:

The group itself is the ultimate target or intended victim of this type of massive criminal conduct. [...] the intention must be to destroy the group “as such,” meaning as a separate and distinct entity.<sup>500</sup>

323. As the *Krstić*<sup>501</sup> and *Jelisić*<sup>502</sup> Trial Judgements further note, the element pertaining to groups “as such” makes genocide an exceptionally grave crime which is distinct from other serious crimes, such as persecution, where the perpetrator selects his victims because of their membership in a specific community, but does not necessarily seek to destroy the community as a distinct entity.

<sup>494</sup> *Krstić* Trial Judgement, para. 571.

<sup>495</sup> *Krstić* Trial Judgement, para. 572.

<sup>496</sup> *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-T, Judgement, 2 November 2001 (“*Kvočka* Trial Judgement”), para. 312.

<sup>497</sup> *Krstić* Trial Judgement, para. 552.

<sup>498</sup> *Akayesu* Trial Judgement, para. 521-522.

<sup>499</sup> *Kayishema and Ruzindana* Trial Judgement, para. 98.

<sup>500</sup> *Draft Code of the International Law Commission*, 1996, at 88.

<sup>501</sup> *Krstić* Trial Judgement, para. 553.

<sup>502</sup> *Jelisić* Trial Judgement, para. 79.

324. The Appeals Chamber defined the term “as such” in *Niyitegeka*,<sup>503</sup> holding that it drew a clear distinction between mass murder and crimes in which the perpetrator targeted a specific group because of its nationality, race, ethnicity or religion:

In other words, the term “as such” clarifies the specific intent requirement. It does not prohibit a conviction for genocide in a case in which the perpetrator was also driven by other motivations that are legally irrelevant in this context. Thus the Trial Chamber was correct in interpreting “as such” to mean that the proscribed acts were committed against the victims *because of* their membership in the protected group, but not *solely* because of such membership.

325. In *Stakić* the Appeals Chamber held that the term “as such” has “great significance, for it shows that the offence requires intent to destroy a collection of people who have a particular group identity.”<sup>504</sup>

**c) The term “in whole or in part”**

326. To be liable under Article 4, a perpetrator of genocide need not have sought to destroy the entire group. Determining what proportion of a group an Accused must have intended to destroy before the requirement of “in part” is satisfied will depend both on the scope or geographical expanse of the group and on the subjective perception of the perpetrator as to the nature of the targeted group as a distinct entity. According to the *Krstić* Trial Chamber, perpetrators of genocide “must view the part of the group they wish to destroy as a distinct entity which must be eliminated as such.”<sup>505</sup>

327. One manner in which a part of a group may be perceived as a distinct entity is by concentration within a limited geographic area. The *Jelisić*<sup>506</sup> and *Akayesu*<sup>507</sup> Trial Judgements both held that genocide can specifically target a small geographic zone. Similarly, the *Krstić* Trial Judgement found that:

[t]he killing of all members of the part of a group located within a small geographical area, although resulting in a lesser number of victims, would qualify as genocide if carried out with the intent to destroy the part of the group as such located in this small

<sup>503</sup> *Eliezer Niyitegeka v. The Prosecutor*, No. ICTR-96-14-A, Appeal Judgement, 9 July 2004, (“*Niyitegeka* Appeal Judgement”), para. 53.

<sup>504</sup> *Stakić* Appeal Judgement, para. 20.

<sup>505</sup> *Krstić* Trial Judgement, para. 590.

<sup>506</sup> *Jelisić* Trial Judgement, para. 83.

<sup>507</sup> *Akayesu* Trial Judgement.

geographical area. Indeed, the physical destruction may target only a part of the geographically limited part of the larger group because the perpetrators of the genocide regard the intended destruction as sufficient to annihilate the group as a distinct entity in the geographic area at issue. In this regard, it is important to bear in mind the total context in which the physical destruction is carried out.<sup>508</sup>

328. Moreover, the intent of an Accused to target a particular group must not be confused with the extent of destruction actually achieved against the targeted population. Genocide does not imply the actual extermination of the targeted group in its entirety; rather, it occurs once any of the acts enumerated in the Statute is committed with the requisite specific intent.
329. The term “in part” can be further understood to reference a sociologically discrete segment of a targeted group. In *Jelišić*, the Trial Chamber stated that a portion of a targeted group could be the subject of genocidal intent if the intent sought to eliminate “the most representative members of the targeted community.”<sup>509</sup> In such an instance, the genocidal intent would seek the destruction of a finite number of persons purposefully selected for the impact that their disappearance would have on the survival of the group as such. The UN Commission of Experts for the former Yugoslavia concurs with this conclusion, opining that “in part” may include a portion of the group limited to, for instance, its leadership.<sup>510</sup> In finding a genocidal intent to destroy in part the Srebrenica Bosnian Muslim population, the Trial Chamber in *Krstić* noted that the selective destruction of the male members of this group would have far-reaching consequences for the group as a whole. Specifically, the intended destruction of the male members of this traditionally patriarchal society, in conjunction with the forcible transfer of the remainder of the population, was calculated to “inevitably result in the physical disappearance of the Bosnian Muslim population at Srebrenica.”<sup>511</sup>
330. In the *Krstić* Appeal Judgement the Chamber held:

The numeric size of the targeted part of the group is the necessary and important starting point, though not in all cases the ending point of the inquiry. The number of individuals targeted should be evaluated not only in absolute terms, but also in relation to the overall size of the entire group. In addition to the numeric size of the targeted portion, its prominence within the group can be a useful consideration. If a specific part of the group is emblematic of the

<sup>508</sup> *Krstić* Trial Judgement, para. 590.

<sup>509</sup> *Jelišić* Trial Judgement, para. 82.

<sup>510</sup> UNCOE Final Report, para. 94.

<sup>511</sup> *Krstić* Trial Judgement, para. 595.

overall group, or is essential to its survival, that may support a finding that the part qualifies as substantial within the meaning of Article 4.<sup>512</sup>

331. Therefore, intended destruction “in part” refers to either a substantial part of the group in proportional terms, within the relevant geographical context, or to a significant part of the group such as its sociological leadership, including male members of a traditionally patriarchal society.

**d) Means to infer the requisite intent under Article 4**

332. As a matter of practical necessity, specific intent must be inferred from certain facts and circumstances, including, among other things, the general context of the perpetration of other genocidal acts, and whether or not those acts were committed by the Accused or by others. Recognising this, the Trial Chamber in *Akayesu* observed that:<sup>513</sup>

...intent is a mental factor which is difficult, even impossible to determine. This is the reason why, in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact.

333. The Trial Chamber in *Kayishema and Ruzindana* also endorsed this approach:<sup>514</sup>

Regarding the requisite intent the Trial Chamber acknowledges that it may be difficult to find explicit manifestations of intent by the perpetrators. The perpetrator’s actions, *including circumstantial evidence*, however may provide sufficient evidence of intent.

334. The Appeals Chamber in *Kayishema and Ruzindana* affirmed the Trial Chamber’s approach:<sup>515</sup>

As noted by the Trial Chamber, explicit manifestations of criminal intent are, for obvious reasons, often rare in the context of criminal trials. In order to prevent perpetrators from escaping convictions simply because such manifestations are absent, the requisite intent may normally be inferred from relevant facts and circumstances.

335. The Commission of Experts in the Final Report on the Situation in Rwanda, noting the practical necessity of inferring specific intent, suggested the requisite

<sup>512</sup> *Prosecutor v. Radislav Krstić*, No. IT-98-33, Appeal Judgement 19 April 2004, para. 12.

<sup>513</sup> *Akayesu* Trial Judgement, para. 523.

<sup>514</sup> *Kayishema and Ruzindana* Trial Judgement, para. 93 (emphasis added).

<sup>515</sup> *Kayishema and Ruzindana*, Case No. ICTR-95-1-A, Appeal Judgement (Reasons), 1 June 2001, para. 159.

specific intent could be inferred from sufficient facts, such as the number of victims from the group.<sup>516</sup>

336. However, the Trial Chamber in *Blagojević* held that “it is not sufficient that the perpetrator simply knew that the underlying crime would inevitably or likely result in the destruction of the group. The destruction, in whole or in part, must be the aim of the underlying crime(s).”<sup>517</sup>
337. The two International Criminal Tribunals have determined that the specific intent for genocide may be inferred from facts such as:
- (i) the seriousness of discriminatory acts;<sup>518</sup>
  - (ii) the gravity of the “ethnic cleansing;”<sup>519</sup>
  - (iii) the general political doctrine giving rise to the acts;<sup>520</sup>
  - (iv) acts which violate or which the perpetrators themselves consider to violate the very foundation of the group;<sup>521</sup>
  - (v) the destruction or attacks on cultural and religious property and symbols of the targeted group;<sup>522</sup>
  - (vi) destruction or attacks on houses belonging to members of the group;<sup>523</sup>
  - (vii) the desired destruction of a more limited number of persons selected for the impact that their disappearance would have on the survival of the group as such which would constitute an intention to destroy the group “selectively;”<sup>524</sup>

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<sup>516</sup> *Final Report of the Commission of Experts established pursuant to Security Council Resolution 935 (1994)*, Annex to the Letter from the Secretary-General to the President of the Security Council transmitting the final report of the Commission of Experts, UN Doc.S/1994/1405, 9 December 1994, paras 160-168. See also *Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide*, UN Doc.E/CN.4/Sub.2/1985/6, para. 29 (“relative proportionate scale of the actual or attempted destruction of a group, by any of the means listed in Articles II and III of the Convention, is certainly strong evidence to prove the necessary intent to destroy a group, in whole or in part.”)

<sup>517</sup> *Blagojević* Trial Judgement 17 January 2005, para. 656.

<sup>518</sup> *Nikolić*, Rule 61 Decision, para. 34.

<sup>519</sup> *Karadžić and Mladić*, Rule 61 Decision, para. 94.

<sup>520</sup> *Karadžić and Mladić*, Rule 61 Decision, para. 94; *Sikirica* Trial Judgement, paras 46 and 61.

<sup>521</sup> *Karadžić and Mladić*, Rule 61 Decision, para. 94.

<sup>522</sup> *Krstić* Trial Judgement, paras 580 and 595.

<sup>523</sup> *Krstić* Trial Judgement, para. 595.

<sup>524</sup> *Jelišić* Trial Judgement, para. 82.

- (viii) the perpetration of other acts systematically directed against the same group,<sup>525</sup> whether these acts were committed by the same offender or by others;<sup>526</sup>
- (ix) the scale of atrocities committed, their general and widespread nature, in a region or a country;<sup>527</sup>
- (x) systematically targeting victims on account of their membership of a particular group while excluding the members of other groups;<sup>528</sup>
- (xi) the repetition of destructive and discriminatory acts;<sup>529</sup>
- (xii) the existence of a plan or policy;<sup>530</sup>
- (xiii) the scale of the actual or attempted destruction;<sup>531</sup>
- (xiv) the methodical way of planning the killings;<sup>532</sup>
- (xv) the systematic manner of killing<sup>533</sup> and disposal of bodies;<sup>534</sup>
- (xvi) the discriminatory nature of the acts;<sup>535</sup>
- (xvii) the discriminatory intent of the accused;<sup>536</sup>
- (xviii) all acts or utterances of the accused,<sup>537</sup> in particular the use of derogatory language towards members of the targeted group;<sup>538</sup>
- (xix) a pattern of purposeful action;<sup>539</sup> and

<sup>525</sup> *Jelišić* Appeal Judgement, para. 47; *Akayesu* Trial Judgement, para. 520 and para. 519; para. 728 and para. 726.

<sup>526</sup> *Akayesu* Trial Judgement, paras 523, 728.

<sup>527</sup> *Akayesu* Trial Judgement, para. 523. *See also* *Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-A, Trial Judgement, 27 January 2000, (“*Musema* Trial Judgement”) para. 166; *Prosecutor v. Georges Anderson Nderubmwe Rutaganda*, Case No. ICTR-36-3, Trial Judgement, 6 December 1999, (“*Rutaganda* Trial Judgement”) paras 61 and 398; *Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1-A, Trial Judgement, 7 June 2001, (“*Bagilishema* Trial Judgement”) para. 62; *Prosecutor v. Dusko Sikirica, Damir Dosen and Dragan Kolundzija*, Case No. IT-95-8-T, Trial Judgement, 3 September 2001, (“*Sikirica* Judgement”), paras 46, 61.

<sup>528</sup> *Akayesu* Trial Judgement, para. 523 (hard copy version) and para. 522 (electronic version). *See also* *Musema* Trial Judgement, para. 166; *Rutaganda* Trial Judgement, paras 61 and 398; *Bagilishema* Trial Judgement, para. 62.

<sup>529</sup> *Jelišić* Appeal Judgement, para. 47; *Karadžić and Mladić*, Rule 61 Decision, para. 94.

<sup>530</sup> *Jelišić* Appeal Judgement, para. 48.

<sup>531</sup> *Id.*

<sup>532</sup> *Sikirica* Trial Judgement, paras 46 and 61; *Kayishema and Ruzindana*, Trial Judgement, para. 93.

<sup>533</sup> *Sikirica* Trial Judgement, paras 46 and 61.

<sup>534</sup> *Id.*

<sup>535</sup> *Id.*

<sup>536</sup> *Sikirica* Trial Judgement, paras 46 and 61.

<sup>537</sup> *Akayesu* Trial Judgement, para. 728; *Kayishema and Ruzindana*, Trial Judgement, paras 93 and 527; *Bagilishema* Trial Judgement, para. 63.

<sup>538</sup> *Kayishema* Trial Judgement, para. 93.

<sup>539</sup> *Kayishema* Trial Judgement, para. 527; *Bagilishema* Trial Judgement, para. 63.

(xx) the weapons employed and the extent of bodily injury.<sup>540</sup>

**(B) ARTICLE 4, CONSPIRACY TO COMMIT GENOCIDE**

338. Zdravko **TOLIMIR** is charged in Count 1 of the Amended Indictment with Conspiracy to Commit Genocide under Article 4(3)(b) of the Statute of the Tribunal. The Accused is charged with violations of 4(3)(b) on the basis of individual liability under Article 7(1).
339. Conspiracy to commit genocide is a substantive offence, enumerated under Article 4(3)(b) of the Statute of the International Criminal Tribunal for the Former Yugoslavia.<sup>541</sup>
340. “[C]onspiracy to commit genocide is to be defined as an agreement between two or more persons to commit the crime of genocide.”<sup>542</sup> The list of punishable acts in Article 4(3) of the Statute reproduce exactly the enumerated acts of the 1948 Genocide Convention. According to the *travaux préparatoires* of the Genocide Convention, the objective of including conspiracy was to make “mere agreement to commit genocide punishable.”<sup>543</sup> As noted by the ICTR Appeals Chamber, “the *travaux préparatoires* make clear that the Contracting Parties sought to ensure that all persons involved in a campaign to commit genocide, at whatever stage, were subject to criminal responsibility.”<sup>544</sup> The *Musema* Trial Chamber reasoned that the rationale of the Contracting Parties in “including such an offence was to ensure, in view of the serious nature of the crime of genocide, that the mere agreement to commit genocide should be punishable even if no preparatory act has taken place.”<sup>545</sup>

<sup>540</sup> *Kayishema* Trial Judgement, para. 93.

<sup>541</sup> See ICTY Statute, Article 4(3) “The following *acts* shall be punishable...conspiracy to commit genocide...” (emphasis added). See also Article 4(1) of the ICTY Statute, “The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this Article or of committing any of the other acts enumerated in paragraph 3 of this Article.”

<sup>542</sup> *Musema* Trial Judgement, paras 191-194. See also *The Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T, para. 423.

<sup>543</sup> Summary Records of the Meetings of the Sixth Committee of the United Nations General Assembly, 21 September to 10 December 1948. Official Records of the General Assembly. See also *Andre Rwamakuba v. The Prosecutor*, Case No. ICTR-98-44-AR72.4, Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide, 22 October 2004 (“Rwamakuba Appeals Decision”), para. 27 (discussing the extent to which acts in preparation of genocide were punishable under the 1948 Genocide Convention and quoting the *travaux préparatoires*, “The representative of the United States observed ...genocide should be punished "at all stages preceding the commission of the material act, not only at the stage of perpetration of the act itself but at the successive stages of incitement, conspiracy and attempt.”)

<sup>544</sup> *Rwamakuba* Appeals Decision, para. 27.

<sup>545</sup> *Musema* Trial Judgement, para. 185.

341. In *Musema*, the ICTR Trial Chamber defined the *actus reus* of conspiracy to commit genocide as an agreement between two or more persons to commit the crime. The Chamber concluded that the mens rea is the same as that required for the substantive offence, the *dolus specialis* of genocide.<sup>546</sup>
342. Conspiracy to commit genocide requires that the agreement seeks “to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”<sup>547</sup> The plan or agreement the conspirators make will seek that end whether or not the conspirators themselves execute the plan. Thus, “the requisite intent for the crime of conspiracy to commit genocide is, *ipso facto*, the intent required for the crime of genocide, that is the *dolus specialis* of genocide. It emerges from this definition that, as far as the crime of conspiracy to commit genocide is concerned, it is, indeed, the act of conspiracy itself, in other words, the process (“*procede*”) of conspiracy, which is punishable and not its result.”<sup>548</sup>
343. While conspiracy to commit genocide has never been charged at this Tribunal, the offence has been charged several times at the ICTR.<sup>549</sup> The ICTR Appeals Chamber surveyed customary international law for the purposes of establishing the appropriateness of applying Joint Criminal Enterprise liability to the crime of genocide and, in so doing, addressed the status of conspiracy.<sup>550</sup> The Appeals Chamber drew heavily on Article 6 of the Charter of the International Military Tribunal which provided that those who “participated in the formulation or execution of a Common Plan or Conspiracy to commit crimes against peace, war crimes, or crimes against humanity are responsible for all acts performed by any person in execution of such plan.”<sup>551</sup> The Judgement of the International Military Tribunal notes that the Charter did not create a “new and separate crime” of conspiracy to commit crimes against humanity.<sup>552</sup> Rather, the Charter did not

<sup>546</sup> *Id.*, para. 192.

<sup>547</sup> ICTY Statute Article 4(2).

<sup>548</sup> *Musema* Trial Judgement, para. 193 and 193; *See also Prosecutor v. Juvenal Kajelijeli*, No. ICTR-99-54, Trial Judgement 1 December 2003, para. 788; *Prosecutor v. Athanase Seromba*, No. ICTR-2001-6-I, Trial Judgement 13 December 2006, para. 345

<sup>549</sup> *See e.g., The Prosecutor v. Jean-Paul Akayesu, The Prosecutor v. Ignace Bagilishema, The Prosecutor v. Jean-Bosco Barayagwiza, The Prosecutor v. Jean Kambanda, The Prosecutor v. Clement Kayishema, The Prosecutor v. Alfred Musema, The Prosecutor v. Ferdinand Nahimana, Hassan Ngeze, Eliezer Niyitegeka, Georges Ruggiu, The Prosecutor v. George Anderson Nderubumwe, The Prosecutor v. Obed Ruzindana, The Prosecutor v. Omar Serushago.*

<sup>550</sup> *Rwamukuba* Appeals Decision, paras 14-29. *Note* because the ICC Statute does not include conspiracy to commit genocide, one view is that in this respect the Rome Statute is out of line with customary international law. *See* Antonio Cassese, “Genocide, in *The Rome Statute of the International Criminal Court: A Commentary*”, vol.1, pp. 347 (Antonio Cassese et al., eds., 2002).

<sup>551</sup> *Id.*, para. 23, *see also* paras 15-24.

<sup>552</sup> *Id.*, para. 23.

recognise conspiracy as a separate offence except in the case of “conspiracy to commit acts of aggressive war.”<sup>553</sup>

344. Similarly, the ICTR Appeals Chamber has clarified that “Joint Criminal Enterprise does not create a separate crime of participating through the means identified in that doctrine.”<sup>554</sup> However, it is clear from the text of Article 4(3) of the Statute, that conspiracy to commit genocide is a distinct, enumerated offense.<sup>555</sup> The Prosecution submits that conspiracy to commit genocide is a separate, inchoate offense and punishable, even if the underlying genocide is never perpetrated.<sup>556</sup>
345. The jurisprudence of cumulative convictions has been inconsistently applied to genocide and conspiracy to commit genocide in the ICTR. In *Musema*, the Trial Chamber found that an Accused “cannot be convicted of both genocide and conspiracy to commit genocide.”<sup>557</sup> This differs from the common law approach, however it was adopted in *Musema* for the reason that it is the definition most favourable to the Accused and the court failed to find a purpose in convicting for both substantive crimes.<sup>558</sup> On the other hand, in *Kambanda*, the ICTR Appeals Chamber upheld a conviction of both genocide and conspiracy to commit genocide and allowed the defendant’s sentence to incorporate both crimes.<sup>559</sup>
346. The cumulative conviction jurisprudence of this Tribunal is more in line with the *Kambanda* holding. As the Appeals Chamber recently confirmed in *Stakić*, the test for cumulative convictions adopted by the *Čelibići* Appeal Chamber is the well-settled jurisprudence of both the ICTY and the ICTR. The two-part test

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<sup>553</sup> *Id.*

<sup>554</sup> *Rwamukuba* Appeals Decision, para. 30.

<sup>555</sup> ICTY Statute Article 4(3).

<sup>556</sup> See *Musema* Trial Judgement paras 193-98 and also n. 37, quoting *Akayesu* Trial Judgement, para. 52.

<sup>557</sup> *Musema* Trial Judgement, para. 198 (“In the instant case, the Chamber has adopted the definition of conspiracy most favourable to *Musema*, whereby an accused cannot be convicted of both genocide and conspiracy to commit genocide on the basis of the same acts. Such a definition is in keeping with the intention of the Genocide Convention. Indeed, the “*Travaux Préparatoires*” show that the crime of conspiracy was included to punish acts which, in and of themselves, did not constitute genocide. The converse implication of this is that no purpose would be served in convicting an accused, who has already been found guilty of genocide, for conspiracy to commit genocide, on the basis of the same acts.”)

<sup>558</sup> *Id.*

<sup>559</sup> *The Prosecutor v. Jean Kambanda*, Case No. ICTR 97-23-S, Judgement and Sentence, 4 September 1998 (“*Kambanda* Trial Judgement”), s.IV; *Jean Kambanda v. The Prosecutor*, Case No. ICTR 97-23-A, Appeal Judgement, 19 October 2000, (“*Kambanda* Appeal Judgement”), para. 112. “The Appellant pleaded guilty to six counts under Article 2 (Genocide) and Article 3 (Crimes against humanity) of the Statute, for which he was subsequently convicted. These acts were carried out in Rwanda during a specific time period (1994) and formed part of a single set of crimes related to the widespread and systematic attack against the Tutsi civilian population of Rwanda, the purpose of which was to kill them. The Appeals Chamber finds that this was therefore a case in which it was appropriate to impose a single sentence for the multiple convictions.”

seeks to accord fairness to the Accused by ensuring that it is only distinct crimes which justify multiple convictions. The two-part test requires that:

[M]ultiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other.

Where this test is not met, the Chamber must decide in relation to which offence it will enter a conviction. This should be done on the basis of the principle that the conviction under the more specific provision should be upheld. Thus, if a set of facts is regulated by two provisions, one of which contains an additional materially distinct element, then a conviction should be entered only under that provision.<sup>560</sup>

347. In the case of genocide and conspiracy to commit genocide, the test is satisfied because each offense has an element the other does not. The *actus reus* of genocide is satisfied by any of the enumerated acts in Article 4(2): killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent birth within the group, or forcibly transferring children of the group to another group. Conspiracy to commit genocide does not require that any of those acts be done by the conspirators. Conspiracy to commit genocide, however, does require a “concerted intent” to commit genocide.<sup>561</sup> Conversely, such “concerted intent” is not required to establish the crime of genocide. As held by the ICTY Appeals Chamber, “the existence of a plan or policy is not a legal ingredient of the crime” of genocide.<sup>562</sup>
348. While the facts underlying genocide and conspiracy to commit genocide may often be quite similar, the the *Stakić* Appeals Chamber reiterated that “whether the same conduct violates two distinct statutory provisions is a question of law.”<sup>563</sup> Convictions for genocide and conspiracy to commit genocide can co-exist on the basis of the same acts and omissions in this case because (1) those acts and

<sup>560</sup> *Čelibići* Appeal Judgement, para. 412-413. See also *Stakić* Appeal Judgement, para. 357, stating that where the test is clear, it is “unnecessary to deal with the peripheral submissions of the parties concerning tests in domestic jurisdictions on the underlying social values and interests reflected in particular crimes.”

<sup>561</sup> *Musema* Trial Judgement, para. 192.

<sup>562</sup> *Krstić* Appeal Judgement, para. 225, quoting *Jelišić* Appeal Judgement, para. 48.

<sup>563</sup> *Stakić* Appeal Judgement, para. 356, citing *Kordić* Appeal Judgement, para. 1032. Cf. *Musema* Trial Judgement, para. 195-198.

omissions violate multiple distinct provisions of the Statute (Articles 4(3)(a) and (b)); (2) the statutory provisions contain materially distinct elements (enumerated acts in Article 4(2)(a)-(e) versus the existence of a plan or policy); and (3) those distinct elements inherently require a proof not required by the other offence.<sup>564</sup> This satisfies the first of the “twin aims” of ensuring that the Accused is convicted only for distinct offences and that the convictions fully reflect his criminality.<sup>565</sup> The second aim is certainly best served by allowing convictions to reflect culpability for not only participating in a plan but also serving as an architect of the plan.<sup>566</sup>

349. The Trial Chamber of the ICTR in *Prosecutor v. Juvenal Kajelijeli* found that “the agreement in a conspiracy is one that may be established by the prosecutor in no particular manner, but the evidence must show that an agreement had indeed been reached. The mere showing of a negotiation in process will not do.”<sup>567</sup> The ICTR Trial Chamber in *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze* held that “an agreement can be inferred from concerted or coordinated action on the part of the group of individuals. A tacit understanding of the criminal purpose is sufficient.”<sup>568</sup> “Conspiracy to commit genocide can be inferred from coordinated actions by individuals who have a common purpose and are acting within a unified framework.”<sup>569</sup>
350. In *Niyitegeka* the Tribunal outlined a number of circumstances where it had inferred the existence of a conspiracy to commit genocide based on circumstantial evidence such as the accused’s participation and attendance at meetings to discuss the killings; the accused’s planning of attacks; the accused’s promise and distribution of weapons to attackers to be used in attacks; the accused’s leadership role in conducting and speaking at the meetings.<sup>570</sup> Furthermore, the Appeals Chamber “is of the opinion that in certain cases the existence of a conspiracy to

<sup>564</sup> See *Čelebići/Kordić* test cited in *Stakić* Appeal Judgement, para. 356.

<sup>565</sup> *Id.*

<sup>566</sup> *Id.*

<sup>567</sup> *Prosecutor v. Juvenal Kajelijeli*, No. ICTR-99-54, Trial Judgement and Sentence 1 December 2003, para. 787.

<sup>568</sup> *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze*, No. ICTR-99-52-T, Trial Chamber Judgement 3 December 2003, para. 1045.

<sup>569</sup> *Ibid.*, para. 1047.

<sup>570</sup> *Prosecutor v. Eliezer Niyitegeka*, No. ICTR-96-14-T, Trial Judgement and Sentence 16 May 2003, para. 427-428.

commit genocide between individuals controlling institutions could be inferred from the interaction between those institutions.”<sup>571</sup>

351. The Appeals Chamber has stressed that while the agreement to commit genocide “need not be a formal one” and a tacit agreement will suffice,<sup>572</sup> it is fundamental that “the existence of a conspiracy to commit genocide must be the only reasonable inference based on the totality of the evidence.”<sup>573</sup>

**(C) ARTICLE 5, CRIMES AGAINST HUMANITY**

**1. Common to All Charged Offences Under Article 5**

352. In addition to the existence of an armed conflict,<sup>574</sup> five elements must be satisfied in order to establish a crime against humanity:

- “(i) There must be an attack;
- (ii) The acts of the perpetrator must be part of the attack;
- (iii) The attack must be directed against any civilian population;
- (iv) The attack must be widespread or systematic; and
- (v) The perpetrator must know that his acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population and know that his acts fit into such a pattern.”<sup>575</sup>

353. The armed conflict may be internal or international.<sup>576</sup> However, Article 5 does not impose any substantive connection between the crime charged and the armed conflict.<sup>577</sup> It is sufficient that the acts coincide geographically and temporally with the armed conflict.<sup>578</sup> The concept of “attack” is distinct from “armed conflict.”<sup>579</sup> As a crime against humanity, an “attack” may involve a “commission

<sup>571</sup> *Ferdinand Nahimana, Jean-Bosco Narayagwias, Hassan Ngeze v. The Prosecutor*, No. ICTR-99-52-A, Appeal Judgement 28 November 2007, para. 907.

<sup>572</sup> *Ibid.*, para. 898.

<sup>573</sup> *Ibid.*, para. 896.

<sup>574</sup> *Brdanin* Trial Judgement, para. 130-131; *Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23 and 23/1-T, Judgement, 22 February 2001 (“*Kunarac* Trial Judgement”), para. 411; *Prosecutor v. Kupreškić*, Case No. IT-95-16-T, Judgement, 14 January 2000 (“*Kupreškić* Trial Judgement”), para. 546; *Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999 (“*Tadić* Appeal Judgement”), para. 249.

<sup>575</sup> *Kunarac* Appeal Judgement, para. 85 (citations omitted).

<sup>576</sup> *Tadić* Jurisdiction Decision, para. 142; *see also Prosecutor v. Kvočka*, Case No. IT-98-30/1-T, Judgement (“*Kvočka* Trial Judgement”), para. 127.

<sup>577</sup> *Tadić* Appeal Judgement, paras 249-251; *see also Prosecutor v. Galić*, Case No. IT-98-29-T, Judgement, 5 December 2003 (“*Galić* Trial Judgement”), para. 139; *Kunarac* Trial Judgement, para. 413.

<sup>578</sup> *Stakić* Trial Judgement, para. 623; *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, Judgement, 31 March 2003 (“*Naletilić* Trial Judgement”), para. 233; *Kunarac* Appeal Judgement, para. 86.

<sup>579</sup> *Stakić* Trial Judgement, para. 623; *Kunarac* Trial Judgement, para. 86.

of acts of violence” “not limited to armed combat.”<sup>580</sup> An “attack” may include mistreatment of people inactive in hostilities, such as a detainee. An “attack” may be “composed of conduct causing physical or mental injury, as well as acts preparatory to such conduct.”<sup>581</sup> Retaliation is not a defence nor a substitute for “attack.” The Trial Chamber in *Kunarac* stated, “[w]hen establishing whether there was an attack upon a particular civilian population, it is not relevant that the other side also committed atrocities against its opponent’s civilian population.”<sup>582</sup>

354. The “attack” need not be both “widespread” and “systematic,” either of the two alternatives is sufficient.<sup>583</sup> The term “widespread” means acts committed on a “large scale” and “directed at a multiplicity of victims,”<sup>584</sup> regardless of geographic scope. Also, “since a widespread attack targeting a large number of victims generally relies on some form of planning or organisation,”<sup>585</sup> the fact that an attack was widespread could itself be evidence of the attack’s systematic nature.<sup>586</sup> The term “systematic” “signifies the organised nature of the acts of violence and the improbability of their random occurrence.”<sup>587</sup> Proof of an overall plan or policy to victimise a population is not an element required of crimes against humanity,<sup>588</sup> and while evidence of policy could support the determination of a systematic attack, other factors could indicate a widespread or systematic attack such as the consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities and identifiable patterns of crimes.<sup>589</sup>

<sup>580</sup> *Brdanin* Trial Judgement, para. 131; *Galić* Trial Judgement, para. 141; *Naletilić* Trial Judgement, para. 234; *Krnjelac* Trial Judgement, para. 54; *Kunarac* Trial Judgement, paras 415-416.

<sup>581</sup> *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Judgement, 27 September 2006 (“*Krajišnik* Trial Judgement”) para. 706, *Prosecutor v. Ramuš Haradinaj et. al*, Case No. IT-04-84-T, Judgement, 3 April 2008 (“*Haradinaj* Trial Judgement”) para. 104.

<sup>582</sup> *Kunarac* Trial Judgement, paras 87, 97.

<sup>583</sup> *Kordić* Trial Judgement, para. 178.

<sup>584</sup> *Kunarac* Trial Judgement, para. 428; *Blaškić* Trial Judgement, para. 206; *see also Krnjelac* Trial Judgement, para. 57.

<sup>585</sup> *Blaškić* Trial Judgement, para. 207.

<sup>586</sup> *Tadić* Trial Judgement, para. 653.

<sup>587</sup> *Kunarac* Trial Judgement, para. 429; *see also Prosecutor v. Simić, et al*, Case No. IT-95-9-T, Judgement, 29 October 2003 (“*Simić* Trial Judgement”), para. 43; *Stakić* Trial Judgement, para. 625; *Naletilić* Trial Judgement, para. 236; *Kunarac* Appeal Judgement, para. 94; *Krnjelac* Trial Judgement, para. 57; *Tadić* Trial Judgement, para. 648.

<sup>588</sup> *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004 (“*Blaškić* Appeal Judgement”), paras 100, 120; *Simić* Trial Judgement, para. 44; *Naletilić* Trial Judgement, para. 234; *Vasiljević* Trial Judgement, para. 36; *Kunarac* Appeal Judgement, para. 98.

<sup>589</sup> *Stakić* Trial Judgement, para. 625; *Kunarac* Appeal Judgement, paras 94-96.

355. The term “civilian population” corresponds to the definition of civilians and civilian population contained in Article 50 of Additional Protocol I.<sup>590</sup> The condition that the attack be directed against any civilian population requires that the population “must simply be 'predominantly civilian in nature.’”<sup>591</sup> A population may be considered “civilian” even if individuals actively participating in hostilities as well as persons *hors de combat* are present.<sup>592</sup> The *Martić* Appeals Chamber established that “the status of victims of a crime against humanity is not restricted to 'civilians’”<sup>593</sup> and expanded the category of victims of a crime against humanity to persons *hors de combat*, with the requirement that all conditions under the chapeau of Article 5 of the Statute are met.<sup>594</sup>
356. To determine whether the civilian population was the primary object of the attack, the Trial Chamber in *Simić* and *Kunarac* took into consideration “the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied with or attempted to comply with the precautionary requirements of the laws of war.”<sup>595</sup> In addition, the Chamber must be satisfied that, “the attack was in fact directed against a civilian population and not only against a limited number of individuals who were randomly selected.”<sup>596</sup>

<sup>590</sup> See *Prosecutor v. Milan Martić*, Case No. IT-95-11-A, Judgement, 8 October 2008, (“*Martić* Appeal Judgement”) paras 297, 302.

<sup>591</sup> *Kordić* Trial Judgement, para. 643; see also *Naletilić* Trial Judgement, para. 235; *Krnojelac* Trial Judgement, para. 56; *Kunarac* Trial Judgement, para. 425; *Tadić* Trial Judgement, para. 638; see also *Prosecutor v. Bagilishema*, Case No. ICTR-95-1A-T, Judgement, 7 June 2001 (“*Bagilishema* Trial Judgement”).

<sup>592</sup> See *Kupreškić* Trial Judgement, para. 549 (“Thus the presence of those actively involved in the conflict should not prevent the characterisation of a population as civilian and those actively involved in a resistance movement can qualify as victims of crimes against humanity.”) See also *Blaškić* Appeal Judgement, paras 113-115; *Kunarac* Trial Judgement, para. 425.

<sup>593</sup> *Martić* Appeal Judgement, para. 309.

<sup>594</sup> *Ibid.*, para. 313. See also *Stakić* Trial Judgement, para. 623 (an attack “is not limited to the use of armed force, it encompasses any mistreatment of the civilian population”); *Kunarac* Trial Judgment, para. 416 (“in the context of a crime against humanity, ‘attack’ is not limited to the conduct in hostilities. It may also encompass situations of mistreatment of persons taking no active part in hostilities, such as someone in detention”); *Kunarac* Appeal Judgment, para. 86 (“the attack in the context of a crime against humanity is not limited to the use of armed force; it encompasses any mistreatment of the civilian population”); *Prosecutor v. Muhimana and 7 others*, Case No. ICTR-95-1B-T, Judgement, 6 July 2000 (“*Muhimana* Trial Judgement”), para. 529 (“the attack must be directed against a civilian population. The presence of certain individuals within the civilian population who do not all fall within the definition of civilians does not change the civilian character of this population”).

<sup>595</sup> *Galić* Trial Judgement, para. 142; *Simić* Trial Judgement, para. 42; *Kunarac* Appeal Judgement, para. 91.

<sup>596</sup> *Stakić* Appeal Judgement, para. 247, (quoting *Kunarac* Appeal Judgement, para. 90); *Simić* Trial Judgement, para. 42; *Naletilić* Trial Judgement, para. 235.

357. As implied by the term “related to,” some nexus between the acts of the Accused and the attack is also required to obtain convictions for crimes against humanity under Article 5.<sup>597</sup> “Acts of the accused need to be objectively part of the ‘attack’ against the civilian population, but need not be committed when that attack is at its height. These acts must not be isolated, but must form part of the attack.<sup>598</sup> A crime committed several months after, or several kilometres away from, the main attack against the civilian population could still, if sufficiently connected, be part of that attack.”<sup>599</sup>
358. A conviction under Article 5 requires that the mental state of the Accused encompass the wider context in which his conduct occurs. This component mandates that “the acts of the accused must comprise part of a pattern of widespread or systematic crimes” and the “accused must have known that his acts fit into such a pattern.”<sup>600</sup> However, it is well established that “the accused need not know the details of the attack, nor share the motive, intent, or purpose of those involved in the attack.”<sup>601</sup> It is sufficient to show that the accused had a “knowledge of certain events, not necessarily every attack” in order for the Trial Chamber to conclude that “the perpetrator had notice of the wider context and nature of crimes.”<sup>602</sup>

## 2. Elements of Specific Crimes

359. For all the specific crimes discussed below, criminal liability attaches if the Accused acted wilfully, that is, deliberately, and not by accident. This *mens rea* includes not only the Accused’s intent to cause the result, but also acting with reckless disregard of whether the result would occur.<sup>603</sup>

### a) Article 5(a): Murder

360. The elements of murder in violation of Article 5(a) are: (a) the death of one or more persons; (b) substantially caused by the accused’s act or omission; with (c)

<sup>597</sup> *Kunarac* Appeal Judgement, para. 99.

<sup>598</sup> *Brdanin* Trial Judgement, para. 132; *Kunarac* Appeal Judgement, para. 100.

<sup>599</sup> *Krnjelac* Trial Judgement, para. 55 (citations omitted).

<sup>600</sup> *Kunarac* Appeal Judgement, para. 84(iv); *Tadić* Appeal Judgement, 15 July 1999, para. 248.

<sup>601</sup> *Simić* Trial Judgement, para. 45; *see also* *Kordić* Appeal Judgement, para. 99; *Blaškić* Appeal Judgement, para. 124; *Kunarac* Appeal Judgement, para. 103; *Vasiljević* Trial Judgement, para. 37.

<sup>602</sup> *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Judgement, 12 December 2007, (“*Dragomir Milošević* Trial Judgement”) para. 929.

<sup>603</sup> ICRC Commentary to Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, (Additional Protocols), para. 3474.

the accused's intention to kill or inflict serious injury in reckless disregard of human life.<sup>604</sup>

***The conduct of the Accused caused the death of one or more persons***

361. The Trial Chamber in *Čelebići* noted that omissions as well as actions can satisfy the *actus reus* for murder, and that the conduct of the Accused must be a "substantial cause" of the death of the victim.<sup>605</sup> In other words, the circumstances certainly need not be such that the offence would not have occurred but for the Accused's participation.<sup>606</sup> In cases involving multiple Accused or high level perpetrators, if each Accused carried out complementary and distinct parts of a criminal plan, the *actus reus* of murder may be attributed to each individual Accused.<sup>607</sup> Conclusive proof of the victim's death may be proved either directly or circumstantially.<sup>608</sup> By such conduct, the Accused intended to kill, or to inflict serious injury in reckless disregard of human life.
362. The *mens rea* requirement for murder under Article 5 of the Statute is met where the victim's death was not an accidental or negligent consequence of the acts or omissions of the Accused, but rather where the Accused intended to kill or to inflict serious injury in reckless disregard of human life.<sup>609</sup> This intent may be inferred from the circumstances, for instance, if death is a foreseeable consequence of the acts or omissions of the Accused or if the recklessness of the Accused is demonstrated by the taking of an excessive risk.<sup>610</sup>

<sup>604</sup> *Čelebići* Trial Judgement, paras 424, 439. See also *Limaj* Trial Judgement, para. 241; *Brdanin* Trial Judgement, para. 381; *Stakić* Trial Judgement, para. 584; *Vasiljević* Trial Judgement, para. 205; *Kvočka* Trial Judgement, para. 132; *Krstić* Trial Judgement, para. 485; *Kordić* Trial Judgement, para. 236; *Čelebići* Appeal Judgement, para. 423; *Blaškić* Trial Judgement, para. 153; *Kupreškić* Trial Judgement, paras 560-61; *Prosecutor v. Jelišić*, Case No. IT-95-10-T, Judgement, 14 December 1999 ("*Jelišić* Trial Judgement"), para. 35.

<sup>605</sup> *Čelebići* Trial Judgement, para. 424. See *Brdanin* Trial Judgement, para. 382.

<sup>606</sup> *Tadić* Appeal Judgement, para. 199, citing the Trial of *Feurstein and others*, Proceedings of a War Crimes Trial held at Hamburg, Germany, 4-24 August 1948, Judgement of 24 August 1948.

<sup>607</sup> *Tadić* Appeal Judgement, paras 190-229.

<sup>608</sup> ICTY jurisprudence has taken into consideration the impossibility of providing death certificates or even bodies to prove death, *Krnjelac* Trial Judgement, paras 326-327. See also *Tadić* Trial Judgement, para. 240.

<sup>609</sup> See *Strugar* Trial Judgement, para. 236; *Krnjelac* Trial Judgement, paras 433, 439; see also *Akayesu* Trial Judgement, para. 589.

<sup>610</sup> *Krnjelac* Trial Judgement, para. 324; *Blaškić* Trial Judgement, para. 217; *Čelebići* Trial Judgement, para. 437; *Akayesu* Trial Judgement, para. 589.

**b) Article 5(b): Extermination**

363. Extermination under Article 5(b) “can be said to be murder on a massive scale.”<sup>611</sup> The elements of extermination are: (a) that Accused or his subordinates participated in the killing of persons on a massive scale;<sup>612</sup> and (b) that “the act or omission was done with the intention to kill or the intention to cause serious bodily injury to the victim, which the perpetrator must have reasonably foreseen was likely the result in death.”<sup>613</sup>
364. The offence of extermination, as distinguished from the offence of murder, necessarily requires mass destruction.<sup>614</sup> The term “mass” or “on a large scale” does not command a numerical imperative but may be determined on a case-by-case basis using a common sense approach.<sup>615</sup> The *Krstić* Trial Judgement held that “extermination” could also be applied to the commission of a crime which is not “widespread” but “nonetheless consists of eradicating an entire population,” resulting in a further finding that “while extermination generally involves a large number of victims, it may be constituted even where the number of victims is limited.”<sup>616</sup> More recently, the *Stakić* Appeal Judgement found that customary law does not require an intent to kill “a certain threshold number of victims.” This finding is in accordance with the prior decision by the *Ntakirutimana* Appeal Chamber and is consistent with the fact that the act of killing “on a large scale” does not suggest a numerical minimum.<sup>617</sup> In other words, the *Stakić* Appeal Judgement made clear that the crime of extermination does not require “the intent to kill thousands in order to meet the threshold of severity and gravity of the crime.”<sup>618</sup>

<sup>611</sup> *Prosecutor v. Elizaphan and Gerard Ntakirutimana*, Case No. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004 (“*Ntakirutimana* Appeal Judgement”), para. 516; *Kayishema* Trial Judgement, para. 142. See also *Akayesu* Trial Judgement, para. 591 (extermination differs from murder in imposing a requirement of mass destruction).

<sup>612</sup> *Brdanin* Trial Judgement, IT-99-36-T, para. 388; *Kayishema* Trial Judgement, para. 145; *Akayesu* Trial Judgement, para. 592.

<sup>613</sup> *Stakić* Appeal Judgement, para. 260, citing *Ntakirutimana* Appeal Judgement, para. 522; *Brdanin* Trial Judgement, para. 388; *Krstić* Trial Judgement, para. 595. The *Kayishema* Trial Chamber held that “gross negligence” may also suffice, *Kayishema* Trial Judgement, para. 143, 146.

<sup>614</sup> *Akayesu* Trial Judgement, para. 591.

<sup>615</sup> The *Krstić* Trial Chamber emphasised the requirement of a significantly large number of victims, or at least the link between a particular killing and an intended mass destruction, para. 501; *Kayishema* Trial Judgement, para. 145.

<sup>616</sup> *Krstić* Trial Judgement, para. 501; *Stakić* Appeal Judgement, para. 261; *Ntakirutimana* Appeal Judgement, para. 516.

<sup>617</sup> *Stakić* Appeal Judgement, para. 260; see also *The Prosecutor v Elizaphan Ntakirutimana and Gerard Ntakirutimana*, Cases Nos. ICTR-96-10-A and ICTR-96-17-A, Appeals Judgment, 13 December 2004 (“*Ntakirutimana* Appeals Judgement”).

<sup>618</sup> *Id.*, para. 261.

365. Extermination requires that the victims be “certain named or described persons,” meaning simply any group of individuals categorised in a certain way by the perpetrator.<sup>619</sup> Apart from the requirement that the victims be members of a civilian population, “described” individuals need not share common characteristics, and may comprise groups that exist as groups only in the mind of the perpetrator.<sup>620</sup> This definition is substantially broader than the category of national, ethnic, racial and religious groups protected by the Convention on Genocide. Furthermore, extermination, as distinguished from genocide, can occur in situations where “the offender need not have intended to destroy the group or part of the group to which the victims belong.”<sup>621</sup>

**c) Article 5(d): Deportation**

366. Deportation under Article 5(d) is defined under the jurisprudence of the Tribunal as:<sup>622</sup> (a) the unlawful displacement of a population; (b) from an area which the population lawfully resided to an area outside of State borders; (c) with the Accused’s intention to deport the population.<sup>623</sup>

367. For the displacement of a population to be unlawful, it must be shown that there was an absence of choice thereby making the deportation involuntary.<sup>624</sup> “Force” is not limited to direct physical violence. The Tribunal has found it necessary to examine the context and take into account the situation or prevailing atmosphere to include other factors, such as: illegal detentions, the burning of civilian property, threats or intimidating acts, the use of force, other forms of coercion

<sup>619</sup> See for example *Akayesu* Trial Judgement, para. 313.

<sup>620</sup> *Ntakirutimana* Appeals Judgement, para. 521 (“It is not an element ... that a precise identification of ‘certain named or described persons’ be established”).

<sup>621</sup> *Brdanin* Trial Judgement, para. 390; *Vasiljević* Trial Judgement, para. 222, 227; *Stakić* Trial Judgement, para. 639.

<sup>622</sup> *Prosecutor v. Milošević*, IT-02-54-T, Decision on Motion for Judgement of Acquittal, 16 June 2004 (“*Milošević* Decision on Motion for Judgement of Acquittal”), para. 45; *Simić* Trial Judgement, paras. 122-124; *Naletilić* Trial Judgement, para. 670; *Krnjelac* Trial Judgement, para. 476; *Krstić* Trial Judgement, paras 521, 531-532.

<sup>623</sup> In *Stakić*, the Trial Chamber noted the division in Tribunal jurisprudence on whether *mens rea* for deportation and forcible transfer require further the intention to “permanently remove” the population. The Appeals Chamber held it does not, paras 304, 307, 317. For case law requiring a finding of intent to deport permanently see *Milošević* Decision on Motion for Judgement of Acquittal, para. 78; *Prosecutor v. Krnjelac*, Case No. IT-97-25-A, Judgement, 17 September 2003, (“*Krnjelac* Appeal Judgement”), paras. 209-225; *Krstić* Trial Judgement, paras. 519-532. For case law requiring the finding for intent to include permanent removal see *Brdanin* Trial Judgement, para. 545; *Simić* Trial Judgement, para. 134; *Naletilić* Trial Judgement, para. 520; *Stakić* Trial Judgement, para. 687.

<sup>624</sup> *Stakić* Appeal Judgement, para. 279, citing *Krnjelac* Appeal Judgement, para. 229; *Brdanin* Trial Judgement, para. 543; *Milošević* Decision on Motion for Judgement of Acquittal, paras 60, 73; *Simić* Trial Judgement, para. 125.

such as fear of violence and vulnerability of detainees.<sup>625</sup> Voluntary consent cannot be proven if induced by force or the threat of force.<sup>626</sup> In *Krstić* the Trial Chamber held that, “despite the attempts made by the VRS to make it look like a voluntary movement, the Bosnian Muslims of Srebrenica were not exercising a genuine choice to go, but reacted reflexively to a certainty that their survival depended on their flight.”<sup>627</sup>

368. The *actus reus* for deportation includes the destination of displacement. Under 5(d) it must be proven that the destination of the displacement was across a national border.<sup>628</sup> This emphasis requiring the deportation across a national border is based on customary law.<sup>629</sup> The national border may be either an internationally recognised border or a *de facto* border.<sup>630</sup>
369. An occupying power may carry out the lawful movement of a population “if the security of the population or imperative military reasons so demand.”<sup>631</sup> A population may be evacuated from an area “in danger as a result of military operations,” or where “intense bombing” may occur<sup>632</sup> and the presence of protected persons would hamper military operations, but “real necessity must exist; the measures taken must not be merely an arbitrary infliction or intended simply to serve in some way the interests of the Occupying Power.”<sup>633</sup> Moreover, evacuees must be transferred back to their homes as soon as hostilities in the area have ceased.<sup>634</sup> Even under these circumstances, transfer should only be within national boundaries unless it is impossible, and people must be transferred humanely, with “satisfactory conditions of hygiene, health safety and nutrition.”<sup>635</sup>

<sup>625</sup> *Milošević* Decision on Motion for Judgement of Acquittal, paras 75-76; *Krnjelac* Appeal Judgement, paras 126, 229; *Naletilić* Trial Judgement, para. 519.

<sup>626</sup> *Stakić* Appeal Judgement, para. 279; *Krnjelac* Appeal Judgement, para. 475, n.1435.

<sup>627</sup> *Krstić* Trial Judgement, para. 530.

<sup>628</sup> *Milošević* Decision on Motion for Judgement of Acquittal, para. 61; *Stakić* Trial Judgement, para. 671.

<sup>629</sup> See *Stakić* Appeal Judgement, paras 289-299, (finding support in customary law including WWII-related jurisprudence, the Geneva Conventions and Additional Protocols, the ILC Draft Code, ICRC studies and the Tribunal’s own jurisprudence). *Brdanin* Trial Judgement, para. 542.

<sup>630</sup> *Stakić* Appeal Judgement, para. 300; *Prosecutor v. Krnjelac*, Case No. IT-97-25-A, Separate Opinion of Judge Schomburg, 17 September 2003, paras 15-16; *Stakić* Trial Judgement; para. 679.

<sup>631</sup> Article 49(2) of Geneva Convention IV.

<sup>632</sup> ICRC Commentary (GC IV) at 280.

<sup>633</sup> ICRC Commentary (GC IV) at 283.

<sup>634</sup> *Stakić* Appeal Judgement, para. 284; *Krnjelac* Trial Judgement, para. 475 n.1436 (citing Article 49, Geneva Convention IV).

<sup>635</sup> *Stakić* Appeal Judgement, para. 287; *Kunarac* Trial Judgement, para. 529 n.1289 (citing Article 17 of Additional Protocol II).

**d) Article 5(h): Persecution**

370. Persecution under Article 5(h) requires that: (a) the Accused committed acts or omissions against a victim or victim population violating a basic or fundamental human right; (b) the Accused's conduct was committed on political, racial, or religious grounds, and (c) the Accused's conduct was committed with requisite discriminatory mental state.<sup>636</sup>

371. Acts or omissions<sup>637</sup> constituting persecutory conduct can occur in many forms.<sup>638</sup> In *Kupreškić*, the Trial Chamber described persecutions as “gross or blatant denials, on discriminatory grounds, of a fundamental right, laid down in international customary or treaty law.”<sup>639</sup> Although persecutory acts are not limited to those acts enumerated in the Statute,<sup>640</sup> all persecutory acts must rise to the same level of gravity as other acts under crimes against humanity.<sup>641</sup> A persecutory act punishable under Article 5(h) may involve the deprivation of a wide variety of rights, including attacks on political, social, and/or economic rights.<sup>642</sup> Acts which constitute persecutions include non-physical acts of an economic or judicial nature<sup>643</sup> as well as physical acts (such as extermination, killings, beatings, torture, enslavement, imprisonment, and deportation).<sup>644</sup> Destruction of property may also be considered a persecutory act.<sup>645</sup> For example, the *Krstić* Trial Chamber found that “the burning of homes in Srebrenica and

<sup>636</sup> *Stakić* Appeal Judgement, paras 327-28; *Blaškić* Appeal Judgement, para. 131; *Vasiljević* Appeal Judgement, para. 113; *Krnjelac* Appeal Judgement, para. 185; *Kupreškić* Trial Judgement, para. 621; *Tadić* Trial Judgement, para. 697.

<sup>637</sup> The act or omission must be committed deliberately, that is, with intention to produce the achieved consequences, *Blaškić* Appeal Judgement, para. 131; *Kordić* Trial Judgement, para. 212.

<sup>638</sup> *Krnjelac* Trial Judgement, para. 431.

<sup>639</sup> *Kupreškić* Trial Judgement, para. 621. The *Krstić* Trial Judgement refers to this passage in the *Kupreškić* Trial Judgement as a definition, and seems to accept it, see para. 534. See also *Tadić* Trial Judgement, para. 697.

<sup>640</sup> *Kordić and Čerkez* Appeal Judgement, para. 671; *Blaskić* Appeal Judgement, para. 135; *Krstić* Trial Judgement, para. 535.

<sup>641</sup> *Blaškić* Appeal Judgement, para. 138; *Krstić* Trial Judgement, para. 621.

<sup>642</sup> *Krstić* Trial Judgement, paras 615, 614.

<sup>643</sup> *Tadić* Trial Judgement, paras 704-710 (discussing acts found to constitute persecution by the International Military Tribunal at Nuremberg); see also *Kupreškić* Trial Judgement, paras 610-613. For example, the *Krajišnik* Trial Chamber held that the denial of freedom of movement; denial of employment through the removal from positions of authority in local government institutions and the police and the general dismissal from employment; invasion of privacy through arbitrary search of homes; denial of the right to judicial process; and denial of equal access to public services, are the acts to amount to underlying acts of persecution, *Krajišnik* Trial Judgement, paras 736, 741 (citations omitted).

<sup>644</sup> *Blaskić* Appeal Judgement, para. 143, *Krnjelac* Appeal Judgement, paras 221-22; *Kupreškić* Trial Judgement, para. 594 (discussing acts found to constitute persecution by the International Military Tribunal at Nuremberg and the subsequent trials under Control Council Law No.10). See also *Kupreškić* Trial Judgement, para. 601.

<sup>645</sup> *Kordić* Trial Judgement, para. 205. See also *Blaškić* Trial Judgement, para. 227; 1991 International Law Commission Report, at 268.

- Potočari” constituted persecutory acts.<sup>646</sup> Although “persecution usually refers to a series of acts, a single act may be sufficient.”<sup>647</sup>
372. The discriminatory intent necessary for the offence of persecution must be able to be characterised as either political, racial, or religious.<sup>648</sup> Furthermore, the requirement of discriminatory intent is intended as an objective element, requiring the existence of discrimination “in fact.”<sup>649</sup> In addition to discriminatory intent towards a defined group, discriminatory intent against a group negatively defined, such as “non-Croat” (*Blaškić*), and “non-Serb” (*Tadić*), will satisfy the “grounds” requirement under Article 5 as well.<sup>650</sup>
373. The requisite discriminatory intent, in addition to being within the scope of the grounds enumerated in the Statute, must also rise to a degree slightly higher than the intent required of other crimes against humanity.<sup>651</sup> In order to satisfy the *mens rea* requirement for persecution, the Accused “must consciously intend to discriminate.”<sup>652</sup> It “is not sufficient for the accused to be aware that he is in fact acting in a way that is discriminatory.”<sup>653</sup> The discriminatory intent “need not be the primary intent with respect to the act, it must be a significant one.”<sup>654</sup> There “is no requirement under persecution that a discriminatory policy exist or that, in the event that such a policy is shown to have existed, the accused has taken part in the formulation of such discriminatory policy or practice by a governmental authority.”<sup>655</sup>
374. Persecution under Article 5(h) has been charged in Count 6 of the Amended Indictment to encompass murder and forcible transfer, which are covered by other

<sup>646</sup> *Krstić* Trial Judgement, para. 537.

<sup>647</sup> *Krnjelac* Trial Judgement, para. 433.

<sup>648</sup> *Kvočka* Trial Judgement, para. 194. *Kordić* Appeal Judgement, para. 110; *Blaskić* Appeal Judgement, para. 164 (affirming *Krnjelac* Appeal Judgement, para. 184 and *Prosecutor v. Vasiljević*, Case No. IT-98-32-A, 25 February 2004 (“*Vasiljević* Appeal Judgement”), para. 113).

<sup>649</sup> See *Naletilić* Trial Judgement, para. 636; *Krnjelac* Trial Judgement, para. 432; Cf. *Kvočka* Trial Judgement, para. 195, “persons suspected of being members of these religious, political or ethnic groups are also covered as possible victims of discrimination,” and “the discrimination element is met even if the suspicion proves inaccurate”.

<sup>650</sup> *Kvočka* Trial Judgement, para. 195; *Tadić* Trial Judgement, para. 717, “accused’s role in [...] beatings and killings described above clearly constituted an infringement of the victims’ enjoyment of their fundamental rights and these acts were taken against *non-Serbs* on the basis of religious and political discrimination” (emphasis added).

<sup>651</sup> *Kupreškić* Trial Judgement, paras 632-636.

<sup>652</sup> *Brdanin* Trial Judgement, para. 996; *Krnjelac* Trial Judgement, para. 435.

<sup>653</sup> *Krnjelac* Trial Judgement, para. 435.

<sup>654</sup> *Krnjelac* Trial Judgement, para. 435.

<sup>655</sup> *Krnjelac* Appeal Judgement, para. 184, (“Discriminatory intent maybe inferred from such a context as long as, in view of the facts of the case, circumstances surrounding the commission of the alleged acts substantiate the existence of such intent.”); see also *Krnjelac* Trial Judgement, para. 435.

Counts in the Indictment. Persecution has also been charged to include cruel or inhumane treatment;<sup>656</sup> terrorising;<sup>657</sup> and the destruction of personal property and effects.<sup>658</sup> These forms of persecution are addressed below.

375. Committing cruel and inhumane treatment<sup>659</sup> means that the Accused, or a subordinate, participated in an act or omission causing serious mental or physical suffering or injury, or constituting a serious attack on human dignity.<sup>660</sup> Inhumane (and hence cruel) treatment encompasses all acts which “violate the basic principle of humane treatment, particularly the respect for human dignity.”<sup>661</sup>
376. Terrorisation<sup>662</sup> involves establishing, through unlawful acts, physical and psychological conditions designed to create an atmosphere of terror or panic among a civilian population. Such conditions may include selective acts of beating, torture, rape and murder, as well as verbal abuse, threats and intimidation; shelling and shooting in and around the population centre; separations of family members; deprivation of the population’s basic needs such as food, water, and medical treatment; burning of homes and other property around the population centre.<sup>663</sup>
377. To prove the destruction of personal property requires that property is damaged or destroyed; and that the damage or destruction is unlawful or without military necessity.<sup>664</sup>

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<sup>656</sup> Indictment para. 34 b.

<sup>657</sup> Indictment para. 34 c.

<sup>658</sup> Indictment para. 34 d.

<sup>659</sup> Inhumane acts includes: “mutilation and other types of severe bodily harm,” “beatings and other acts of violence” (*Tadić* Trial Judgement, paras 729-730) and “serious physical and mental injury” (*Blaškić* Trial Judgement, para. 239). Cruel treatment includes acts of severe beatings, forced drinking of urine, infliction of burns and acts of sexual violence (*Čelebići* Trial Judgement, paras 1018, 1058-59, 1066), the use of human shields (*Blaškić* Trial Judgement, paras 742-743), beatings and trench-digging (*Kordić* Trial Judgement, paras 777-778, 836), sexual mutilations, forced eating of grass, prolonged isolation and forced lack of communication (solitary confinement for a year) (*Krnjelac* Trial Judgement, paras 183, 236).

<sup>660</sup> *Čelebići* Trial Judgement, para. 544.

<sup>661</sup> *Id.*

<sup>662</sup> The Prosecution notes that its use of terrorisation as a form of persecution is distinct from the charged offence of terrorisation in the *Galić* case (see *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-PT, Prosecutor’s Pre-Trial Brief, 23 October 2001, paras 139-151.).

<sup>663</sup> See, e.g., *Krstić* Judgement at para. 537 (finding that the humanitarian crisis in Potočari, the burning of homes in Srebrenica and Potočari, the terrorisation of Bosnian Muslim civilians, the murder of thousands of Bosnian Muslim civilians, in Potočari or in carefully orchestrated mass scale executions, and the forcible transfer of the women, children and elderly out of the territory controlled by the Bosnian Serbs, constitute persecutory acts).

<sup>664</sup> Destruction is only justified if “rendered absolutely necessary by military operations” (Geneva Convention IV, Article 53).

**e) Article 5(i): Other Inhumane Acts (Forcible Transfer)**

378. Sharing the same substantial elements as the crime of deportation under 5(d) forcible Transfer as “other inhumane act”<sup>665</sup> punishable under Article 5(i) comprises the following elements: (a) the Accused with the requisite mental state; (b) forcibly transferred one or more persons from an area in which they were lawfully present without grounds permitted under international law; (c) by force or other coercive acts. The distinction between deportation and forcible transfer is the requirement for forcible transfer that the unlawful transfer be within the state border.<sup>666</sup>

**(D) ARTICLE 3, VIOLATIONS OF THE LAWS OR CUSTOMS OF WAR**

379. In Count 5 of the Indictment, the Accused is charged with murder as a violation of the laws or customs of war, under Article 3 of the Statute. Article 3 of the Statute is a residual clause which, in addition to conferring jurisdiction over the enumerated offences, provides a vehicle by which to prosecute all serious violations of the laws or customs of war not covered elsewhere in the Statute.<sup>667</sup> Violations of the rules contained in Article 3(1)(a), common to the four 1949 Geneva Conventions (“common Article 3”), qualify as serious violations of the laws or customs of war within the meaning of Article 3 of the Statute.<sup>668</sup>

380. Murder as a violation of common Article 3<sup>669</sup> comprises the same requisite elements of murder as a crime against humanity.<sup>670</sup> In addition to the requisite

<sup>665</sup> *Kupreškić* Trial Judgement, para. 566; *see also Krstić* Trial Judgement, para. 523-532.

<sup>666</sup> *Brdanin* Trial Judgement, para. 540, *Milošević* Decision on Motion for Judgement of Acquittal, para. 63; *Simić* Trial Judgement, paras 123, 124. For a distinction between requirements of border crossing for deportation and internal displacement, *see supra* section titled “Article 5(d): Deportation.”

<sup>667</sup> *Prosecutor v. Duško Tadić*, Case No. IT-94-1, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 (“*Tadić* Jurisdiction Decision”), paras 87, 89, 91, 94. *See also Prosecutor v. Zejnil Delalić, et al*, Case No. IT-96-21-A, Judgement, 20 February 2001 (“*Čelebići* Appeal Judgement”), paras 125, 136; *Prosecutor v. Naser Orić*, Case No. IT-03-68-T, Judgement, 30 June 2006, para. 252 (“*Orić* Trial Judgement”).

<sup>668</sup> *Stakić* Trial Judgement, para. 584; *Prosecutor v. Kvočka, et al*, IT-98-30/1-T, Judgement, 2 November 2001 (*Kvočka* Trial Judgement) para. 132; *Prosecutor v. Radislav Krstić*, Case No.98-IT-33-T, Judgement, 2 August 2001 (“*Krstić* Trial Judgement”), para. 485; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Judgement, 3 March 2000 (“*Blaškić* Trial Judgement”), para. 217; *Tadić* Jurisdiction Decision, paras 102, 127, 129, 134.

<sup>669</sup> *See Prosecutor v. Limaj, et al*, Case No. IT-03-66-T, Judgement, 30 November 2005 (“*Limaj* Trial Judgement”), para. 241; *Prosecutor v. Vasiljević*, Case No. IT-98-32-T, Judgement, 29 November 2002 (“*Vasiljević* Trial Judgement”), para. 241; *Kvočka* Trial Judgement, para. 132; *Krstić* Trial Judgement, para. 653 (finding Accused guilty of murder under Article 3 of the Statute); *Prosecutor v. Zejnil Delalić, et al*, Case No. IT-96-21-T, Judgement, 16 November 1998 (“*Čelebići* Trial Judgement”), paras 420, 423.

<sup>670</sup> *See Orić* Trial Judgement, paras 346 (“The elements defining murder under Article 3 of the Statute are identical to those required for ‘wilful killing’ as a grave breach of the 1949 Geneva Conventions under Article 2 of the Statute and murder as a crime against humanity Article 5 of the Statute”). *See also id.*, paras 347-348.

elements, there must also be a nexus between the murder and an armed conflict and proof that the victim or victims were persons taking no active part in the hostilities.<sup>671</sup>

## 1. There was a nexus between the murder and an armed conflict

381. “An armed conflict exists whenever there is a resort to armed force between States or protracted violence between governmental authorities and organised armed groups or between such groups within a State.”<sup>672</sup> Some degree of organization is necessary to establish the existence of an armed conflict.<sup>673</sup> This determination depends upon an examination of the specific circumstances of each case.<sup>674</sup> The required nexus between such an armed conflict and the murder is not a particularly tight one,<sup>675</sup> either in temporal or in geographic terms. The temporal scope of international humanitarian law reaches beyond the cessation of hostilities up to the general conclusion of peace or a peaceful settlement.<sup>676</sup> Moreover, common Article 3 applies outside the narrow geographical context of the actual theatre of combat operations, and it is sufficient that the murder is “closely related” to hostilities occurring in other parts of the territories controlled by the parties to the conflict.<sup>677</sup> Other factors taken into account going towards the nexus include the combatant status of the victim and perpetrator, membership of the victim in an opposition party, whether the act was the goal of a military campaign and if the crime committed was part of the perpetrator’s official duties.<sup>678</sup>

<sup>671</sup> *Prosecutor v. Strugar*, Case No. IT-01-42-T, Decision on Defense Motion Requesting Judgement of Acquittal Pursuant to 98bis, 21 June 2004 (“*Strugar 98 bis* Decision”), para. 32; *Stakić* Trial Judgement, para. 581; *Kordić* Appeal Judgement, para. 37, *Čelebići* Appeal Judgement, para. 423.

<sup>672</sup> *Stakić* Trial Judgement, para. 568; *Krstić* Trial Judgement, para. 481; *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-T, Judgement, 26 February 2001 (“*Kordić* Trial Judgement”), para. 24; *Blaškić* Trial Judgement, para. 63-64; *Prosecutor v. Alekovski*, Case No. IT-95-14/1-T, Judgement, 25 June 1999 (“*Alekovski* Trial Judgement”), paras 43-44; *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998 (“*Furundžija* Trial Judgement”), para. 59; *Tadić* Trial Judgement, paras 561-571; *Celebići* Trial Judgement, para. 182-192; *Tadić* Jurisdiction Decision, para. 70; *Prosecutor v. Ramush Haradinaj, Idriz Balaj, Lahi Brahimaj*, Case No. IT-04-84-T, Judgement, 3 April 2008, para. 60 (“*Haradinaj* Trial Judgement”).

<sup>673</sup> *Limaj* Trial Judgement, para. 89, *see also Orić* Trial Judgement, para. 254.

<sup>674</sup> *Orić* Trial Judgement, para. 254.

<sup>675</sup> The armed conflict “need not have been casual to the commission of the crime, but the existence of an armed conflict must, at minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. *Krunac* Appeal Judgement para. 58, *see also Prosecutor v. Milan Martić*, Case No. IT-95-11-T Judgement, 12 June 2007 para. 43.

<sup>676</sup> *Kunarac* Appeal Judgement, para. 57; *Tadić* Jurisdiction Decision, para. 70.

<sup>677</sup> *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgement, 22 March 2006 (“*Stakić* Appeal Judgement”), para. 342; *Kunarac* Appeal Judgement, paras 57-59; *Tadić* Jurisdiction Decision, paras 68-70.

<sup>678</sup> *Kunarac* Appeal Judgement, para. 59.

382. The jurisprudence of the Tribunal has established that the following four conditions (“four *Tadić* conditions”) must be met for an offence to fall within the scope of Article 3 of the Statute.<sup>679</sup>

- i. the violation must constitute an infringement of a rule of international humanitarian law;
- ii. the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met;
- iii. the violation must be serious, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim; and
- iv. the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.

## **2. The victim or victims were persons taking no active part in hostilities**

383. The class of persons taking no active part in the hostilities<sup>680</sup> includes civilians as well as members of the armed forces who have laid down their arms or who have been placed *hors de combat* by sickness, wounds, detention, or other cause.<sup>681</sup> By the terms of this definition, it is clear that persons who have been arrested or detained are not taking an active part in the hostilities. Furthermore, the perpetrator of the crime must have known or should have been aware that the victim was taking no active part in the hostilities.<sup>682</sup> It is the specific situation of the victim at the moment the crime was committed that must be taken into account in determining the victim’s protection under common Article 3.<sup>683</sup>

### **(E) MODE OF INDIVIDUAL CRIMINAL RESPONSIBILITY: ARTICLE 7(1), DIRECT CRIMINAL RESPONSIBILITY**

384. For each count of the Amended Indictment, the Accused, Zdravko **TOLIMIR**, is charged with direct criminal responsibility under Article 7(1) of the Statute.

385. The Accused is charged with all forms of participation enumerated in Article 7(1), that he committed, planned, instigated, ordered, and otherwise aided and abetted in the planning, preparation, and execution of the crimes charged. Additionally,

<sup>679</sup> *Tadić* Jurisdiction Decision, para. 94; *see also Orić* Trial Judgement, para. 257.

<sup>680</sup> *Čelebići* Appeal Judgement, para. 420; *Tadić* Trial Judgement, para. 615, *see also Martić*, Trial Judgement, para. 47.

<sup>681</sup> Article 3(1) common to the 1949 Geneva Conventions.

<sup>682</sup> *Halilović* Trial Judgement, para. 36; *Tadić* Trial Judgement, para. 615; *see also Martić* Trial Judgement, para. 47.

<sup>683</sup> *Tadić* Trial Judgement, paras 615-616; *Halilović* Trial Judgement, paras 33-34. *See also* ICRC Commentary on Geneva Convention III, p. 39: “a man who has surrendered individually is entitled to the same humane treatments he would receive if the whole army to which he belongs had capitulated. The important thing is that the man in question will be taking no further part in the fighting.” *See also Martić* Trial Judgement, para. 47.

the Accused is charged with committing these crimes by participating, with known and unknown co-perpetrators, in a Joint Criminal Enterprise.<sup>684</sup>

386. The Prosecution submits that the Trial Chamber's discretion is not limited by the classification of the mode of liability under Article 7(1), and that it is appropriate for a Trial Chamber to make findings as to the proper head of responsibility where multiple heads have been charged.<sup>685</sup>
387. The intention of Article 7 is to assign individual criminal responsibility at different levels for superiors as well as subordinates.<sup>686</sup> This reflects the underlying principle of Article 7, which is that an individual is responsible for his or her acts and omissions.<sup>687</sup> Thus, an individual may be held criminally responsible for the direct commission of a crime, whether as an individual or jointly,<sup>688</sup> or through his omissions for the crimes of subordinates when under an obligation to act.<sup>689</sup>
388. In addition, Article 7(1) "covers first and foremost the physical perpetration of a crime by the offender himself, or the culpable omission of an act that was mandated by a rule of criminal law."<sup>690</sup> The Prosecution submits that a State official's wilful failure to protect persons in official custody from unreasonable harm constitutes a form of omission liability under Article 7(1) of the Statute.
389. All forms of criminal participation under Article 7(1) must be performed with either: direct intent; or, indirect intent (*dolus eventualis*), meaning that the Accused is aware of the substantial likelihood that his or her acts will produce the relevant consequence, and willingly accepts that risk.<sup>691</sup>

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<sup>684</sup> See Indictment.

<sup>685</sup> *Krstić* Trial Judgement, para. 602; *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-T, Trial Judgement, 10 December 1998 (*Furundžija* Trial Judgement), para. 189; *Kunarac* Trial Judgement, para. 388.

<sup>686</sup> Report of the Secretary-General pursuant to Paragraph 2 of Security Council Resolution 808 (1993), S/25704, 3 May 1993 (UN Report) at paragraph 53-58; see *Kordić* Trial Judgement, para. 364.

<sup>687</sup> *Tadić* Appeals Chamber Judgement, para. 186; *Kordić* Trial Judgement, para. 364.

<sup>688</sup> *Tadić* Appeal Judgement, paras 220, 227-228; *Furundžija* Trial Judgement, para. 216; *Kordić* Trial Judgement, para. 364. Thus, Articles 2-5 should be read as "anyone – or those who jointly – commit crime."

<sup>689</sup> *Čelebići* Appeal Judgement, para. 215-268; *Kordić* Trial Judgement, para. 364; *Aleksovski* Trial Judgement, paras 69-81.

<sup>690</sup> *Tadić* Appeal Judgement, para. 188.

<sup>691</sup> *Kordić* Trial Judgement, para. 386 (emphasis added) citing *Blaškić* Trial Judgement, para. 278, ("proof is required that whoever planned, instigated or ordered the commission of a crime possessed the criminal intent, that is, that he directly or indirectly intended that the crime in question be committed.") See also *Kvočka* Trial Judgement, para. 251, ("The requisite *mens rea* is that, as in other forms of criminal participation under Article 7(1), the accused acted in the awareness of the substantial likelihood that a criminal act or omission would occur as a consequence of his conduct."), citing *Tadić* Trial Judgement, para. 688; *Čelebići* Trial Chamber Judgement, para. 327.

**a) “committed”**

390. “Committing” covers physically perpetrating a crime or engendering a culpable omission in violation of criminal law,” whether alone or jointly with co-perpetrators.<sup>692</sup> Several perpetrators may “commit” the same crime if each individual fulfils the requisite elements of the substantive offence.<sup>693</sup>

391. The Accused may also bear individual criminal liability when he commits a crime as a co-perpetrator in a joint criminal operation, as discussed below.

**b) “planned”**

392. “Planning” implies that “one or more persons design the commission of a crime at both the preparatory and execution phases.”<sup>694</sup> It may also include organising.<sup>695</sup>

393. The Accused will be responsible for “planning” even where the crimes committed are not integral parts of the original plan, so long as there was substantial likelihood that the crime committed would be a consequence of carrying out the plan. An Accused may be criminally responsible for “planning” a crime even where the persons executing the plan do not possess the *mens rea* required for conviction under the Statute.<sup>696</sup> In addition, individual responsibility for “planning” may be incurred at many levels of command.<sup>697</sup> The existence of a plan can be proven through circumstantial evidence.<sup>698</sup>

**c) “instigated”**

394. “Instigation” requires that the Accused provoked,<sup>699</sup> prompted or otherwise induced the conduct of another.<sup>700</sup> The conduct of the Accused must have been “a clear contributing factor to the conduct of the other person(s).”<sup>701</sup> However, it is not necessary to prove that the crime would not have been committed at all if the

<sup>692</sup> *Krstić* Trial Judgement, para. 601; *Kunarac* Trial Judgement, para. 390.

<sup>693</sup> *Kunarac* Trial Judgement, para. 390.

<sup>694</sup> *Krstić* Trial Judgement, para. 601; *Blaškić* Trial Judgement para. 279.

<sup>695</sup> *Akayesu* Trial Judgement, para. 473.

<sup>696</sup> *Blaškić* Trial Judgement, para. 279.

<sup>697</sup> See *Kupreškić* Trial Judgement, para. 862, where a commander that has been held criminally liable for passing orders from his superiors to his subordinates is also considered to have “assisted in the strategic planning of the whole attack.”

<sup>698</sup> *Blaškić* Trial Judgement, para. 279.

<sup>699</sup> Instigation can be performed by any means, both by express or implied conduct, as well as by acts or omissions, provided that, in the latter case the instigator is under a duty to prevent the crime from being brought about. As regards the way in which the perpetrator is influenced, instigation to the crimes included in the Statute needs neither be direct and public nor require the instigator’s presence at the scene of the crime. See *Orić* Trial Judgement, para. 273.

<sup>700</sup> See *Kvočka* Trial Judgement, para. 252; *Krstić* Trial Judgement, para. 601.

<sup>701</sup> *Kvočka* Trial Judgement, para. 252; *Blaškić* Trial Judgement, para. 278, 280.

Accused had not instigated it.<sup>702</sup> The Accused must also have intended to “bring about” the commission of the crime, or have been aware of the substantial likelihood that the commission of a crime would be a consequence of his or her conduct.<sup>703</sup>

395. Instigation can be a mode of criminal liability where the Accused provoked, prompted or induced the actions of another, regardless of whether there was any relationship of authority between him and the physical perpetrator. Thus, the Accused’s acts or statements directed at those over whom he had no authority to order, may also be considered instigation. A superior’s failure to punish past crimes may be a basis for instigating future crimes.<sup>704</sup>
396. It is not necessary that the Accused instigated the conduct of all the perpetrators, nor is it necessary that any of the perpetrators carrying out the *actus reus* possess the *mens rea* requisite for conviction under the Statute.<sup>705</sup> The Trial Chamber in *Orić* recently stated that in “regard to the participant’s state of mind, the acts of participation must be performed with the awareness that they will assist the principal perpetrator in the commission of the crime.”<sup>706</sup> In addition to the conduct characterised as obvious incitement, any conduct of the Accused, intended to cause another person to act in a particular way and having that result, constitutes instigation.<sup>707</sup> Thus, instigation can take the form of promises of financial, or other advantage, or bribery, or threats or menaces.<sup>708</sup> However, if the principal perpetrator is an “*omnimodo facturus*” meaning that he has definitely decided to commit the crime, further encouragement or moral support may still qualify as aiding and abetting.<sup>709</sup>
397. In accordance with general principles, proof of the Accused’s intention may be shown by circumstantial or direct evidence.

<sup>702</sup> *Kvočka* Trial Judgement, para. 252; *Kordić* Trial Judgement, para. 386.

<sup>703</sup> *Kvočka* Trial Judgement, para. 252; *Blaškić* Trial Judgement, para. 278, 280.

<sup>704</sup> *Blaškić* Trial Judgement, para. 337.

<sup>705</sup> This is also true of a conviction for “planning” as discussed above. See *Orić* Trial Judgement, para. 269 (“with regard to the participant’s state of mind, the acts of participation must be performed with the awareness that they will assist the principal perpetrator in the commission of the crime”).

<sup>706</sup> *Orić* Trial Judgement, para. 269.

<sup>707</sup> *Blaškić* Trial Judgement, para. 280.

<sup>708</sup> *Blaškić* Trial Judgement, para. 280; see, for example, Rwandan Penal Code, Article 89(1), which treats equally those who by promises, threats, or abuse of power, directly provoke a crime.

<sup>709</sup> *Orić* Trial Judgement, para. 271.

**d) “ordered”**

398. “Ordering’ entails a person in a position of authority using that position to convince another to commit an offence.”<sup>710</sup> There must either exist a *de jure* superior-subordinate relationship, or the Accused must hold a position of a *de facto* nature.<sup>711</sup> The actual giving of the order may be proved circumstantially, and there is no requirement of direct evidence that the order was given.<sup>712</sup> Furthermore, an order to commit a crime within the jurisdiction of the Tribunal may be express or implied,<sup>713</sup> and there is no requirement that the order be in any particular form.<sup>714</sup> The order at issue need not be given by the Accused directly to the person or persons who perform the *actus reus*, and a person knowingly relaying illegal orders from superiors to subordinates is also individually responsible for the crime ordered.<sup>715</sup>
399. Finally, the Accused must, at the time of issuing the order, possess all the requirements of the *mens rea* of the ordered offence. It is unnecessary to prove that the subordinates who executed the order also had the same *mens rea*.<sup>716</sup>

**e) “aided and abetted”**

400. Aiding and abetting is a form of accomplice liability, and applies to all contributions to the criminal event that are not captured by “planning, instigating, ordering or committing.”<sup>717</sup> Aiding and abetting requires that the *actus reus* of the

<sup>710</sup> *Krstić* Trial Judgement, para. 601; *Akayesu* Trial Judgement, para. 483. See also *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Appeal Judgement, 30 November 2006, para. 176, (“the Appeals Chamber recalls that the *actus reus* of ordering has been defined as a person in position of authority instructing another person to commit an offence; a formal superior-subordinate relationship between the accused and the actual physical perpetrator not being required”).

<sup>711</sup> *Čelebići* Trial Judgement, para. 354; *Akayesu* Trial Judgement, para. 483.

<sup>712</sup> See International Military Tribunal for the Far East, Judgement, quoted in *Law Reports of Trials of War Criminals*, Volume XV, London, 1949, p.65. See also, *Trial of Brigadeführer Meyer (the Abbaye Ardenne Case)* IV Law Reports 97, at 108: “if you find that *the only reasonable inference* is that an order that the prisoners be killed was given by the Accused at the time and place alleged, and that the prisoners were killed as a result of that order, you may properly find the accused guilty” (emphasis added). See also, *Blaškić* Trial Judgement, para. 281.

<sup>713</sup> *Id.*

<sup>714</sup> *Blaškić* Trial Judgement, para. 281.

<sup>715</sup> *Kupreškić* Trial Judgement, para. 862. See *Kupreškić* Appeal Judgement at para. 451.

<sup>716</sup> Kai Ambos, Commentary to Article 25, in Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court*, p. 480.

<sup>717</sup> Examples of behaviour constituting aiding and/or abetting include: supplying the Accused with the weapon or other instruments used in the commission of the crime (*Tadić* Trial Judgement, paras 680, 684), keeping watch while the perpetrators commit the crime (*Čelebići* Trial Judgement, para. 842), driving the perpetrators to the scene of the crime (*Furundžija* Trial Judgement, paras 200-303), failing to prevent others from perpetrating crimes upon the victim, in circumstances where the Accused is under a legal obligation to protect a victim (*Tadić* Trial Judgement, para. 686), instructing subordinates to hide corpses in remote areas and/or attempting to disguise crimes committed as lawful actions (See Fletcher, *Rethinking Criminal Law*,

crime has been performed by a person or persons other than the Accused.<sup>718</sup> Aiding or abetting comprises any conduct, including mere presence at the scene of a crime, that has an encouraging effect on the perpetrators,<sup>719</sup> or gives them moral support,<sup>720</sup> psychological support,<sup>721</sup> or “a significant legitimising or encouraging effect on the principals.”<sup>722</sup> The conduct of the Accused need not be a *conditio sine qua non* of the crime’s occurrence; rather, the conduct must have a “direct and substantial effect on the commission of the offence.”<sup>723</sup> Furthermore, the relevant act of assistance may be removed both in time and place from the actual commission of the offence.<sup>724</sup>

401. There is no requirement that the Accused share the *mens rea* of the perpetrator(s); it is sufficient that he has knowledge that his actions will assist the perpetrator(s) in the commission of a crime.<sup>725</sup> In cases of special intent crimes, such as persecutions, the Accused aider or abettor must also be aware that the crimes being assisted or supported are committed with a discriminatory intent. The aider or abettor of persecution does not need to *share* the discriminatory intent, but must be *aware* of the broader discriminatory context.<sup>726</sup> It is not necessary that the aider and abettor “know the precise crime that was intended or which was actually committed,”<sup>727</sup> but the aider and abettor must “be aware of the essential elements of the crime ultimately committed by the principal, including his state of mind.”<sup>728</sup>

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pp.645 *et seq*). The aiding and abetting contribution must further, or at least facilitate, the commission of the crime, *See Orić* Trial Judgement, para. 284.

<sup>718</sup> The aider and abettor must at least be aware of the type and the essential element(s) of the crime to be committed; *see Orić* Trial Judgement, para. 288.

<sup>719</sup> *Tadić* Trial Judgement, paras 689-692 (*see also* paras 678-687).

<sup>720</sup> *Akayesu* Trial Judgement, paras 546-548; *Furundžija* Trial Judgement, paras 232-235.

<sup>721</sup> *Čelebići* Trial Judgement, para. 327-328.

<sup>722</sup> *Furundžija* Trial Judgement, paras 205-209, 232-235. Such encouragement may consist of a tacit approval of a person in a position of authority and physically present at the crime scene, even where he had no duty to act. *See, e.g., Prosecutor v. Ljube Bošković and Jovan Tarčulovski*, Judgement, Case No. IT-04-82-T, 10 July 2008, para. 402 (“*Bošković* Trial Judgement”).

<sup>723</sup> *Tadić* Trial Judgement, paras 689-692; *Čelebići* Trial Judgement, para. 326 (footnotes omitted) (also para. 329).

<sup>724</sup> *Tadić* Trial Judgement, para. 687; *Čelebići* Trial Judgement, paras 327-328.

<sup>725</sup> *Furundžija* Trial Judgement, para. 245; *Čelebići* Trial Judgement, paras 327-328; *Kunarac* Trial Judgement, para. 392.

<sup>726</sup> *Kvočka* Trial Judgement, para. 262 (emphasis added). That also applies to aiders and abettors to a Joint Criminal Enterprise, para. 288.

<sup>727</sup> *Kvočka* Trial Judgement, para. 255. *See also Blaškić* Trial Judgement, para. 287 *citing Furudžija* Trial Judgement, para 246. (“If he is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he has intended to assist or facilitate the commission of that crime and is guilty as an aider and abettor”).

<sup>728</sup> “While it has been held that it need not be shown that the aider and abettor was aware of the specific crime that was intended or committed, provided that he was aware that one of a number of crimes would probably be committed, and one of those crimes is in fact committed, (*Blaškić* Appeals Judgement, para. 50, *citing Blaškić* Trial Judgement, para. 287; *Furundžija* Trial Judgement), the Appeals Chamber recently

## f) Joint Criminal Enterprise

402. The notion of a common criminal plan, design or purpose, i.e., a Joint Criminal Enterprise, articulates a mode of individual criminal responsibility encompassed by Article 7(1) of the Statute,<sup>729</sup> in which the acts of one person can give rise to the criminal culpability of another where both participate in a common criminal plan.<sup>730</sup>
403. The *actus reus* of a Joint Criminal Enterprise requires three elements. First, there must be a plurality of persons involved in the commission of a crime.<sup>731</sup> These persons do not need to be organised in a military, political or administrative structure.<sup>732</sup>
404. Second, there must be a common purpose which amounts to or involves the commission of a crime.<sup>733</sup> This purpose or plan need not be previously arranged or formulated<sup>734</sup>, but may “materialise extemporaneously and be inferred from the fact that a plurality of persons acting in unison to put into effect a Joint Criminal Enterprise.”<sup>735</sup> Thus, the plan can be agreed upon either from the beginning or can develop through the acts performed by the persons involved. A Joint Criminal Enterprise may be “vast” and encompass “other subsidiary criminal enterprises.”<sup>736</sup> Its objective may also escalate over time.<sup>737</sup>

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confirmed that this ruling does not extend the definition of *mens rea* of aiding and abetting,” *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Judgement, Case No. IT-04-82-T, 10 July 2008, para. 403 *citing Blagojević Appeals Judgement*, para. 222.

para 246; *Brdanin Trial Judgement*, para 272.

<sup>729</sup> *Tadić Appeal Judgement*, para. 220; *Krstić Trial Judgement* para. 601. The Appeals Chamber has held that the Joint Criminal Enterprise existed as mode of individual criminal responsibility in customary international law at the time of the events in the former Yugoslavia. *See Martić Trial Judgement*, para. 126

<sup>730</sup> *Tadić Appeal Judgement*, para. 185, 196, 222-223-, 228; *Krstić Trial Judgement* para. 602, fn 1349.

<sup>731</sup> *Prosecutor v. Stakić*, Case No. IT-97-24-A, Judgement, 22 March 2006 (“*Stakić Appeal Judgement*”), para. 64, *citing Tadić Appeal Judgement*, para. 227.

<sup>732</sup> *Tadić Appeal Judgement*, para. 227.

<sup>733</sup> *Stakić Appeal Judgement*, para. 64. *See also Kvočka et al. Appeal Judgement*, paras 115-119; *Brdanin Appeal Judgement*, para. 418.

<sup>734</sup> The second Joint Criminal Enterprise element does not presume preparatory planning or explicit agreement among Joint Criminal Enterprise participants, or between Joint Criminal Enterprise participants and third persons, *Haradinaj Trial Judgement*, para. 138. *See also Kvočka Appeal Judgement*, paras 115-119; *Brdanin Appeal Judgement*, para. 418.

<sup>735</sup> *Tadić Appeal Judgement*, para. 227. *See also Stakić Appeal Judgement*, para. 64. Those involved in a criminal enterprise must be shown to act together, or in concert with each other, in the implementation of a common objective, if they are to share responsibility for the crimes committed through the Joint Criminal Enterprise, *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Judgement, 27 September 2006, para. 884.

<sup>736</sup> *Kvočka Trial Judgement*, para. 307.

<sup>737</sup> *See Krstić Trial Judgement*, paras 619, 633 (objective of Joint Criminal Enterprise escalated from the forcible transfer to the destruction of Srebrenica’s Bosnian Muslim military-aged male community).

405. Third, the Accused must participate in the common design involving the perpetration a crime. This participation need not involve the commission of a specific crime, but may take the form of assistance in, or contribution to, the execution of the common plan or purpose.<sup>738</sup> It is sufficient for the participant to perform acts that in some way are directed to the furthering of the plan or purpose.<sup>739</sup>
406. The principal perpetrators of the crimes, which form part of the common purpose, do not need to be members of a Joint Criminal Enterprise. An accused or another member of the Joint Criminal Enterprise may use the principal perpetrator to carry out the *actus reus* of a crime. However, “an essential requirement in order to impute to any accused member of the Joint Criminal Enterprise liability for a crime committed by another person is that the crime in question “*forms part of a criminal purpose.*” This may inferred *inter alia*, from the fact that “the accused or any other member of the Joint Criminal Enterprise closely cooperated with the principal perpetrator in order to further the common criminal purpose.”<sup>740</sup>
407. Tribunal case law regarding Joint Criminal Enterprise has so far elicited three different situations, for which the mental state differs.<sup>741</sup> All three situations may be applicable in the same case.<sup>742</sup>
408. In the first situation, the Accused intends to commit a certain crime, this intent being shared by all members of the Joint Criminal Enterprise.<sup>743</sup> Thus, all the perpetrators, acting pursuant to a common design, possess the same criminal intention, although their roles in the enterprise may differ. To prove liability, the Prosecutor must show that the Accused “voluntarily participated” in one aspect of the common design” and the Accused, “even if not personally effecting the [criminal act], must nevertheless intend this result.”<sup>744</sup> Where this is the case, all the Accused will be considered to have jointly “committed” the crime as co-perpetrators.

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<sup>738</sup> *Ibid.*

<sup>739</sup> *Tadić* Appeal Judgement, para. 229 (iii).

<sup>740</sup> *Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Judgement 12 June 2007, para. 438; *see also Prosecutor v. Ramush Haradinaj, Idriz Balaj, Lahi Brahimaj*, Case No. IT-04-84-T, Judgement, 3 April 2008, para. 138 (“*Haradinaj* Trial Judgement”).

<sup>741</sup> *Tadić* Appeal Judgement, para. 227-228.

<sup>742</sup> *Kvočka* Trial Judgement, para. 268.

<sup>743</sup> *Tadić* Appeal Judgement, paras 220, 228. *Stakić* Appeal Judgement, para. 65; *Krajišnik* Trial Judgement, para. 879.

<sup>744</sup> *Tadić* Appeal Judgement, para. 196.

409. In the second situation,<sup>745</sup> not applicable here, the Accused has knowledge of a system of ill-treatment, such as a concentration camp, and intends to further this system. Knowledge may be established expressly or reasonably inferred from the position of authority held by the Accused at the relevant time. The Accused need only know the nature of the system and intend to further the common design of ill-treatment.<sup>746</sup> Further, “there is no specific legal requirement that the Accused make a substantial contribution to the Joint Criminal Enterprise,” in other words, “the Prosecutor need not demonstrate that the Accused’s participation is a *sine qua non*, without which the crimes could or would not have been committed.”<sup>747</sup>
410. In the third situation, one of the participants in the Joint Criminal Enterprise commits a crime “other than the one agreed upon in the common plan.”<sup>748</sup> The Accused may be held responsible for that crime if, under the circumstances, it was “natural and foreseeable” that such a crime might be perpetrated by some member of the group and the Accused knew of and willingly took that risk.<sup>749</sup> The Accused must intend to participate in, and further the criminal activity or plan agreed upon, and “contribute to the Joint Criminal Enterprise, or in any event to the commission of a crime by the group.”<sup>750</sup>

## VII. CONCLUSION

411. The evidence summarised above will establish that the Accused, Zdravko **TOLIMIR** is guilty of the crimes with which he is charged.

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<sup>745</sup> *Tadić* Appeal Judgement, para. 228. See also *Prosecutor v. Kvočka*, IT-98-30/1-A, 28 February 2005 (“*Kvočka* Appeal Judgement”), para. 82; *Prosecutor v. Krnojelac*, IT-97-25-A, 17 Sept.2003 (“*Krnojelac* Appeal Judgement”), para. 96.

<sup>746</sup> *Kvočka* Appeal Judgement, paras 97-98 (citations omitted).

<sup>747</sup> *Kvočka* Appeal Judgement, paras 97-98 (citations omitted). Accordingly, the Appeal Chamber rejected that argument that an Accused did not participate in the Joint Criminal Enterprise for the reason that he was easily replaceable.

<sup>748</sup> *Tadić* Appeal Judgement, para. 228, *Stakić* Appeal Judgement, para. 65.

<sup>749</sup> *Krstić* Trial Judgement, para. 613; *Kvočka* Appeal Judgement, para. 86, *Stakić* Appeal Judgement, para. 65.

<sup>750</sup> *Tadić* Appeal Judgement, paras 228, 220.

Table of Abbreviations used in the Pre-Trial Brief

<b>Term</b>	<b>English</b>	<b>B/C/S</b>
ABiH	Army of the Republic of Bosnia and Herzegovina	Armija Bosna i Hercegovina
CJB	Public Security Centre	Centar javne bezbednosti
CSB	Security Services Centre	Centar službi bezbjednosti
ICMP	International Commission on Missing Persons	
ICRC	International Committee of the Red Cross	
IKM	Forward Command Post	Istureno komandno mesto
KM	Command Post	Komandno mesto
MUP (existed at both the federal and municipality levels)	Ministry of Internal Affairs/ Police (this consisted of two separate parts known as the JB and DB)	Ministarstvo unutrašnjih poslova
OTP	Office of the Prosecutor	
PJP	Special Police Unit	Posebna Jedinica Policije
RS	Republika Srpska	Republika Srpska
RSK	Republic of Serbian Krajina	Republika Srpske Krajine
SOP	Special Police Detachment	Specijalni odred policije
VRS	Bosnian Serb Army	Vojska Republike Srpske