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JUDGEMENT SUMMARY

TRIAL CHAMBER

(Exclusively for the use of the media. Not an official document)

The Hague, 12 December 2012

Judgement Summary for Zdravko Tolimir

Please find below the summary of the Judgement read out today by Judge Flügge.

This Chamber is sitting today to pronounce the Judgement in the trial against the Accused in this case, Mr. Zdravko Tolimir. To this end, it will provide a summary of its findings of the charges against the Accused before coming to its disposition. The Chamber emphasises that this summary is not part of the Judgement. The only authoritative account of the Chamber's findings is to be found in the written Judgement, copies of which will be made available to the parties at the conclusion of this sitting.

Mr. Tolimir was first indicted in 2005. In that year, his case was joined with that of the accused in the Popović *et al.* case. On 15 August 2006—with the Accused remaining at large—his case was severed from the joint case and a separate Indictment was filed against him later that same month.

On 31 May 2007, the Accused was arrested and transferred to the Tribunal the next day. Following his refusal to identify himself, and to enter a plea at his initial appearance before the Chamber on 4 June 2007, a plea of not guilty was entered on his behalf on 3 July 2007 in accordance with the Rules of Procedure and Evidence of the Tribunal. The operative Indictment against the Accused in this case was filed on 4 November 2009. The trial in this case commenced on 26 February 2010. The Accused elected to represent himself, but had the assistance of legal staff, including his legal adviser, Mr. Aleksandar Gajić, who had a limited right of audience before this Chamber. The case ended earlier this year with the parties' closing arguments held from 21 to 23 August.

The Chamber sat for a total of 242 trial days, producing over 19,000 transcript pages. It admitted nearly 3,500 exhibits into evidence. The Prosecution adduced the evidence of 183 witnesses; the Defence presented four witnesses.

I take this opportunity to reiterate our appreciation to the parties for their professional and respectful attitude towards one another, which no doubt contributed to this trial moving along so efficiently. I also want to thank again all those who have been working behind the scenes for the last—nearly three—years, without whom none of the proceedings before this Tribunal would be possible.

The Chamber will now set out the charges against the Accused, and will then move on to summarise its main findings.

The Charges

Mr. Zdravko Tolimir was one of the Assistant Commanders of the Main Staff of the Army of the Republika Srpska, and Chief of the Sector for Intelligence and Security Affairs within the

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Main Staff. In this capacity, he is charged as being a member of two joint criminal enterprises. The first: a joint criminal enterprise to murder the able-bodied Bosnian Muslim men from the enclave of Srebrenica, between approximately 11 July and 1 November 1995. The second: a joint criminal enterprise to forcibly remove and deport the Bosnian Muslim population from the enclaves of Srebrenica and Žepa, which allegedly commenced with the issuance of Directive 7 in March of 1995 and culminated in the actual removal of the populations from these enclaves from July to August 1995.

The Chamber shall refer to the Army of Republika Srpska as the VRS, and to the alleged joint criminal enterprises in shortened forms, as the JCE to Murder, and the JCE to Forcibly Remove, throughout this summary.

The Accused is further charged with criminal responsibility pursuant to the extended form of JCE, referred to as JCE III. These charges allege the opportunistic killings of smaller groups of able-bodied men from Srebrenica, (as a foreseeable consequence of both JCEs), the foreseeable targeted killings of three Bosnian Muslim leaders of Žepa (as a foreseeable consequence of the JCE to Forcibly Remove), and other persecutory acts (as a foreseeable consequence of both JCEs). The Prosecution alleges that it was foreseeable to the Accused that these acts would be carried out by Bosnian Serb Forces by virtue of his membership in the respective JCEs.

The Accused is not only charged with commission of these crimes, including through his alleged membership in the two JCEs, but also, pursuant to Article 7(1) of the Statute, with planning, instigating, ordering, and otherwise aiding and abetting in the planning, preparation, and execution of the charged crimes.

These crimes set out in the Indictment covered in eight Counts with which the Accused is charged. These are: Count 1, Genocide; Count 2, Conspiracy to Commit Genocide; Counts 3, 4, and 6 through 8, the crimes against humanity of murder, extermination, persecutions, inhumane acts through forcible transfer, and deportation; and Count 5, murder as a violation of the laws or customs of war.

On the basis of these charges and the evidence it has presented, the Prosecution has requested a sentence of life imprisonment.

The Accused has taken the position that there is no credible evidence on the basis of which this Chamber could find the Accused criminally responsible beyond reasonable doubt, and that, therefore, he should be acquitted.

Summary of the findings - Factual

I first turn to the Chamber's factual findings in this case. For the most part, these are the findings made by the Majority. A dissenting opinion by Judge Nyambe follows the main text of the Judgement.

The crimes charged in the Indictment relate to the months of March through November 1995, in a relatively small area of eastern Bosnia and Herzegovina. In particular, the crimes concern the enclaves of Srebrenica and Žepa, which had been declared safe havens by United Nations Security Council Resolutions in the spring of 1993. At the outset, it must be noted that the alleged crimes cannot be considered in a vacuum. They followed years of armed conflict in Bosnia and Herzegovina. The Chamber has remained aware of this context throughout the case. The Chamber's task, however, is not to decide on the legitimacy of the war that took place between the Bosnian Serbs and Bosnian Muslims in this region. The Chamber emphasizes that its role is limited to the determination of the individual criminal responsibility of the Accused, Mr. Zdravko Tolimir, for genocide, crimes against humanity, and war crimes that took place within the context of this war.

The Majority has found that already in 1992, there was a policy in place at the highest levels of Republika Srpska which sought to remove the Bosnian Muslim population from eastern Bosnia and Herzegovina, among other locations. This policy was reaffirmed by Directive 7 issued in March of 1995, a directive signed by the President of the Republika Srpska, Radovan Karadžić, who was assisted in its drafting by various sectors within the VRS Main Staff. This included the Sector of Intelligence and Security Affairs, headed by the Accused.

This Directive, in relevant part, called for the creation of “an unbearable situation of total insecurity with no hope of further survival for the inhabitants of Srebrenica and Žepa” to be achieved through “planned and well-thought out combat operations”. This Directive further called for the reduction and limitation of logistics support to the United Nations Protection Force, abbreviated as UNPROFOR, in the enclaves as well as, “the material resources for the Muslim population, making them dependant on our good will while at the same time avoiding condemnation by the international community and international public opinion”. The Majority has found, Judge Nyambe dissenting, that the issuance of Directive 7 in March of 1995 signified the start of an intensive period of activities by Bosnian Serb Forces—comprising both the VRS and the Ministry of Interior—aimed at achieving the goals set out therein.

The Majority has found that immediately following the issuance of Directive 7, the VRS engaged in a system of restrictions on humanitarian aid and UNPROFOR re-supply convoys to both the Srebrenica and Žepa enclaves. These restrictions had the intended effect of making life for the Bosnian Muslims inside the enclaves unbearable. Concurrent with the steady increase of restrictions as of early spring 1995, by June that year, the VRS had surrounded the Srebrenica enclave. While much of the VRS efforts targeted members of the Army of Bosnia and Herzegovina, abbreviated as the ABiH, who were operating from within the enclave, the Majority has found that these military activities were also aimed at civilian targets and were intended to terrorise the Bosnian Muslim population. By early July 1995, a devastating humanitarian situation engulfed both enclaves. Also by this time, the VRS attacks on the Srebrenica enclave became more overt as it launched an operation called Krivaja 95 to “create conditions for the elimination of the enclaves”, a goal that was expanded with the capture of Srebrenica town within a matter of days. The Majority, Judge Nyambe dissenting, has found that the VRS activities against the enclave, set out in full detail in the written Judgement, were intended to remove both the Bosnian Muslim military, and the civilian population from the enclave and were consistent with the goals set out in Directive 7 to make life unbearable with no hope of survival for the enclaves’ inhabitants. Through its simultaneous restriction of humanitarian aid and its military attacks on the civilian population, the VRS achieved these goals.

On 11 July, Srebrenica fell. The VRS met with no resistance. High ranking VRS officers and members of the 10th Sabotage Detachment of the Main Staff took a triumphant walk through the town. VRS Main Staff Commander Mladić declared that “the time has come to take revenge on the Turks in this region” and “we give this town to the Serb people as a gift”. A column of thousands of able-bodied Bosnian Muslim men, with some women and children, had already started making its way through the woods towards villages north-west of Srebrenica. From there, a decision was made by the Bosnian Muslims to form a column and attempt a breakthrough to Tuzla, in ABiH held territory. The column was comprised of some 10,000 to 16,000 Bosnian Muslims and was several kilometres long, with a concentration of armed men heading the column in an attempt to provide security for the civilians, including women and children. Meanwhile, thousands of women, children, and elderly, instead of joining the column, made their way to seek refuge at the UN compound in Potočari hoping for protection there; the road along which they walked was shelled by the VRS. The Majority, Judge Nyambe dissenting, has found this shelling to have been intended to further terrorise an already frightened and vulnerable population.

Against the backdrop of these events, two meetings were held on the evening of 11 July 1995 at Hotel Fontana in Bratunac. VRS representatives attending these meetings included

Mladić and Main Staff Intelligence officer Radoslav Janković. On the UNPROFOR side, representatives of the Dutch Battalion, abbreviated as DutchBat, Commander Karremans and officer Boering attended. The meetings were intended to discuss the fate of the Bosnian Muslim civilian population taking shelter at the UN compound in Potočari. The Majority has found, however, Judge Nyambe dissenting, that the meetings were a false demonstration of a good-faith effort by the VRS to find a solution for the population.

The Majority has found that these meetings were held in a threatening and intimidating atmosphere created by the VRS. Mladić, who led the meetings, told a Bosnian Muslim school teacher who had been requested to attend as a representative of the population, that the Bosnian Muslim population could either “survive or disappear”. Mladić conditioned the survival of the population upon the disarming of the members of the ABiH in the enclave.

A third meeting was held at Hotel Fontana on the morning of 12 July. Mladić repeated his threat made the night before, telling the frightened Bosnian Muslim representatives “[a]s I told this gentleman last night, you can either survive or disappear”. Also at this meeting, the VRS made clear their intention to “screen” the men amongst the crowd in Potočari for their alleged participation in war crimes. Following this meeting, Karremans and Boering approached Chief of Intelligence and Security of the Bratunac Brigade, Momir Nikolić, and Svetozar Kosorić, Chief of Intelligence of the Drina Corps, seeking clarification as to what was meant with the proposed screening of men. Momir Nikolić told them that they should get lost, that everything had already been agreed on and that the transportation of the Bosnian Muslims from Potočari had already started.

By the end of 12 July, a total of approximately 25,000 to 30,000 Bosnian Muslim civilians, mainly women, children and elderly, had sought refuge at the UN compound in Potočari. On the morning of 12 July, Bosnian Serb Forces took over Potočari, disarming members of DutchBat and mingling amongst the crowd, cursing, mocking, and mistreating Bosnian Muslim civilians. Some were handing out bread and water while being filmed by a Serb camera crew. The moment the camera crew stopped filming, the forces stopped handing out bread, and even took some of it back. As the Bosnian Muslim women and children boarded the buses arranged by the VRS, their male family members, including young boys as well as elderly and infirm men, were separated and detained at several locations near the UN compound, most notably, in a house known as “the White House”.

The Majority has found that by the end of 12 July, 9,000 Bosnian Muslims had been forcibly transferred by bus from Potočari to Kladanj. Those that remained, awaiting their forcible transfer on the next day, endured a night that was described as hell; moans and screams resonated amongst the crowd. Gunshots pierced the evening and members of the Bosnian Serb Forces continued to take Bosnian Muslim men away, as they had done throughout the day. Some men did not return. Conditions there were so miserable that several Bosnian Muslim civilians committed suicide or attempted to do so. By the morning of 13 July, everyone was desperate to leave Potočari. The Majority has found, Judge Nyambe dissenting, that under these appalling circumstances, the Bosnian Muslim population gathered in Potočari had no choice but to leave.

The Bosnian Muslim men and boys who were separated from the crowds in Potočari became the subject of the second joint criminal enterprise alleged in this Indictment. The Majority has found that early in the morning of 12 July, just before the start of the third meeting at Hotel Fontana, members of the security organs, under the Accused’s professional command, referred to a plan to murder these men, discussing possible locations for the planned executions. The Majority, Judge Nyambe dissenting, has found that in keeping with this plan, at least 1,000 men and boys, having been forced to leave behind their belongings and identification documents, were detained at the White House by Bosnian Serb Forces. There, they were kept in horrid conditions, some of them physically mistreated, before being transported by bus to Bratunac. The Majority has found that the plan to murder them had already begun to materialise by this time.

In Bratunac, on 12 and 13 July, the men and boys from Potočari were joined by thousands of Bosnian Muslim men from the column that had started moving towards Tuzla, who had been captured by, or surrendered to, the Bosnian Serb Forces. These men were detained in buildings and buses throughout Bratunac where they suffered physical and verbal abuse. Some of the men were murdered in Bratunac town and the Bratunac area.

On the morning of 14 July, following the massive logistical operation to procure vehicles and fuel, thousands of Bosnian Muslim men were transported north to Zvornik municipality where they were detained for a short period of time before meeting their ultimate fate at the hands of Bosnian Serb Forces. The Chamber feels compelled to highlight a number of such killing incidents.

In the late afternoon of 13 July, hundreds of Bosnian Muslim men were transported from a meadow in Sandići by bus, and some directed by foot, to a one storey building known as the Kravica Warehouse, in the Bratunac area. When the warehouse was packed full, Bosnian Serb Forces started firing at the men inside, using machineguns as well as hand and rocket propelled grenades. They fired for hours, with intermittent lulls in the shooting in which the wounded moaned and called out names. These executions continued into the morning of 14 July. The Accused's immediate subordinate, Beara, was directly involved in the burial operation of between 600 and 1,000 Bosnian Muslim men who the Chamber found had been murdered at the warehouse between 13 and 14 July 1995.

On the evening of 13, and morning of 14 July, hundreds of Bosnian Muslim men were transported by bus to a school in Grbavci located near Orahovac. There, they were crammed into the gymnasium of the school building. In the afternoon of 14 July, they were transported by bus to two separate killings sites nearby. Upon disembarking, they were shot by Bosnian Serb Forces. Some of the wounded prisoners were cursed, and left to suffer in agony before they were finally killed. One of the groups of prisoners included a boy of approximately five to six years old, who, after being shot at, stood up from the pile of bodies and called out for his father. Up to 2,500 Bosnian Muslim men were murdered at Grbavci school on this day. They, too, were buried in a mass grave.

On the morning of 16 July, hundreds of Bosnian Muslim men who had been detained at a school near the village of Pilica were transported to a plot of land known as the Branjevo Military Farm. Upon arrival at this location, they were led down a path to a meadow, where they were shot at by Bosnian Serb Forces. After each round of shooting, the forces asked whether there were any survivors; those who answered were shot in the head. The executions lasted until the late afternoon of 16 July, killing approximately 1,000-1,500 Bosnian Muslim men. Following this massive execution, another approximately 500 Bosnian Muslim men were executed by Bosnian Serb Forces inside a Cultural Centre in Pilica; there are no known survivors of this execution. These bodies were transported to Branjevo Military Farm, where over the course of the next day, they were buried together with the bodies of people killed at the Farm. At least 1,656 Bosnian Muslim men were murdered at the Branjevo Military Farm and Pilica Cultural Center.

The Chamber has found that the suffering these men went through in the moments leading up to their deaths must have been unbearable. On many occasions, those who were waiting to be shot saw others before them executed. The few survivors who lived to provide their testimony before the Chamber gave harrowing accounts of what they had to endure.

Following this murderous operation and the burial of the thousands of bodies in mass graves, in September and October, Bosnian Serb Forces, triggered by a Main Staff order, took measures to conceal these crimes. A massive reburial operation was set in place. The victims from Kravica Warehouse, those killed in Orahovac, Petkovci dam, Kozluk, Branjevo Farm and Pilica that had been buried after their murder were disinterred and buried again in secondary gravesites at, to name a few, Hodžići road, the Snagovo-Lipje road, and a total of 12 sites along Čančari Road. Several of the Accused's subordinates, including Beara and Popović, played a central role in this operation.

The Majority, Judge Nyambe dissenting, has found that from 13 July to sometime in August 1995, at least 4,970 Bosnian Muslim men who are the subject of the charges in the Indictment were murdered during the implementation of the JCE to murder. The Majority emphasizes that this is a conservative calculation of the minimum number. The Majority finds Judge Nyambe dissenting, that the total number of Bosnian Muslim men from Srebrenica who were killed is, at a minimum, closer to 6,000.

Following the forcible removal of the women, children, and elderly from Potočari on 12 and 13 July, and concurrent with the start of the implementation of the JCE to Murder by that same time, the VRS made preparations to launch an operation against the nearby enclave of Žepa. This attack followed the same pattern and course as the attack on the Srebrenica enclave just days prior and included some of the same forces. The Bosnian Muslim population from Žepa, in panic with the news of the forcible removal from Potočari having started to spread, sought refuge in the hills above Žepa. On 13 July, a meeting was held between the VRS and representatives of the Bosnian Muslim War Presidency of Žepa, at which the Accused informed them that the only alternative to the “evacuation” of the population was the use of military force by the VRS. Attacks by the VRS against surrounding villages in the weeks prior had already resulted in the destruction of at least 30 Bosnian Muslim homes, further instilling fear in the Bosnian Muslim population.

On 14 July, following the refusal of this alleged “evacuation” on the terms imposed by the Accused, the VRS shelled the centre of the enclave and took control of UNPROFOR observation posts. In the days thereafter, the VRS exerted pressure on the civilians hiding in the woods to return to Žepa in order to be transported out of the enclave. Following the failure of a second meeting held on 19 July, on 24 July, the Bosnian Muslim representatives were forced to sign an agreement concerning the disarmament of the ABiH in the enclave, and the “evacuation” of the civilian population. From 25 to 27 July, under the direct authority of the Accused who was present in the enclave throughout the entire operation, nearly 4,400 Bosnian Muslim women, children, and elderly were forcibly removed from Žepa enclave. As with the Bosnian Muslim population that had taken refuge in Potočari, the Majority has found, Judge Nyambe dissenting, that they did not have a choice; their fate was decided for them. Mladić appears on video-footage entering many of the buses of tired, hungry, and frightened Bosnian Muslims telling them that he was giving them their life as a gift. Meanwhile, with the news of the fate of the men of Srebrenica having spread, the able-bodied men from the Žepa enclave remained in hiding in the woods, with some of them making their way across the Drina River into Serbian territory in fear for their lives.

Summary of findings - Legal

The Chamber now turns to a brief summary of its legal findings.

The Chamber has found that there was a state of armed conflict in Bosnia and Herzegovina at the time the crimes were committed, and that these crimes were connected to this conflict. The Chamber has also found that there was a widespread and systematic attack directed against the Bosnian Muslim populations of the Srebrenica and Žepa enclaves, and the Majority, Judge Nyambe dissenting, has found that the acts of the Accused were a part of that attack. As such, the jurisdictional requirements set out in Articles 3 and 5 of the Statute have been met. On the basis of the factual findings summarized above, the Majority, Judge Nyambe dissenting, has, moreover, found beyond reasonable doubt that the two joint criminal enterprises charged in the Indictment existed.

The Majority recalls, Judge Nyambe dissenting, that at least 4,970 men and boys subject of the charges of the Indictment were murdered by Bosnian Serb Forces. The Chamber has found that these forces carried out the murders with discriminatory intent so as to constitute persecutions. During their mistreatment, detention, and up to the moment of their murder, these men were cursed and mocked, and often beaten for their affiliation to the Islamic faith. Some were forced to sing Serb songs or sing pro-Serb slogans immediately

before their death. The Chamber has found that the harm inflicted upon these men rises to the level of serious bodily and mental harm and constitute acts of genocide.

Turning to the murders of the three Bosnian Muslim leaders of Žepa – Mehmed Hajrić, Avdo Palić and Amir Imamović – the Majority has found that these murders, similarly, constitute acts of genocide. These three men were members of Žepa’s war presidency and important and prominent leaders within the enclave. They were arrested shortly after the completion of the operation to forcibly remove the Bosnian Muslims from Žepa. They were held in detention for many days separately from others. The Majority, Judge Nyambe dissenting, has found that sometime in the middle of August 1995, Bosnian Serb Forces killed them and buried them in the same mass grave. The Majority has found that while they were only three in number, in view of the size of Žepa enclave, these three men constituted the core of its civilian and military leadership. It has found that the killing of Avdo Palić, given his status as a defender of Žepa’s Bosnian Muslim population, had a symbolic purpose, signifying that there was no hope of survival for this population in the enclave. The Majority has also taken into account the fate of the remaining population of Žepa. Their forcible transfer immediately prior to the killing of three of Žepa’s most prominent leaders is a factor which supports the Majority’s finding of genocidal intent. The Majority has found that in the case of Žepa, removing its Bosnian Muslim civilian population, destroying their homes and their mosque, and killing three of their most prominent leaders was done with the purpose of ensuring that the Bosnian Muslim population of this enclave would not be able to reconstitute itself. As such, the Majority has found that Mehmed Hajrić, Avdo Palić and Amir Imamović were killed with the intention to destroy this population.

The Majority has found, further, that the suffering of the women, children and elderly who were forcibly transferred from the Srebrenica and Žepa enclaves rises to the level of serious bodily or mental harm so as also to amount to genocide.

In its determination of whether the Bosnian Serb Forces deliberately inflicted conditions of life that were calculated to bring about the destruction of the Bosnian Muslims in Eastern Bosnia and Herzegovina, the Majority, Judge Nyambe dissenting, has considered the overall effect of not only the forcible transfer operations of the women and children but also the killing of the men. The Majority finds that the combined effect of the forcible removal and murder operation had a devastating effect on the physical survival of the Bosnian Muslim population of Eastern Bosnia and Herzegovina and is satisfied that these operations were aimed at destroying this population.

In conclusion, the Majority, Judge Nyambe dissenting in part, finds beyond reasonable doubt that the crimes of Genocide, Conspiracy to Commit Genocide, Extermination, Persecutions, Inhumane Acts through Forcible Transfer, and Murder have been established. The Chamber, however, did not find that the crime of deportation was proved beyond a reasonable doubt. Its reasons in this regard are set out in detail in the written Judgement.

Summary of Findings - Responsibility

I now turn to the summary of the Majority’s findings on the Accused’s responsibility for the crimes charged.

Mr. Tolimir was the Chief of the Sector for Intelligence and Security Affairs of the Main Staff of the VRS, a position to which he had been appointed already in 1992, following almost 20 years of experience in this area of work. In June of 1994, he was promoted to General Major. He was one of the seven Assistant Commanders in the Main Staff and directly responsible to Main Staff commander Mladić, with whom he had a particularly close relationship. Mladić often consulted the Accused before taking a decision, and considered him to be a part of his “inner core”. Witnesses who testified before the Chamber referred to the Accused as Mladić’s “right hand”, his “eyes and ears” and “closer to being “an equal” to Mladić than a subordinate. The Chief of Staff of the VRS Main Staff, Milovanović, testified that the Accused was the best informed officer of the VRS, and that he “always knew more”

than his immediate subordinates, the Chief of the Intelligence Administration Petar Salapura and the Chief of the Security Administration Ljubiša Beara.

Mr. Tolimir was responsible for implementing all security and intelligence related orders issued by Mladić, and monitored this implementation through his supervision of all subordinates in the security and intelligence organs at the Corps and Brigade levels. One of his most significant tasks was to prevent the leakage of information and, as described by one witness, to “cover up the intentions of the VRS”. He was responsible for the assignments issued to the Military Police, which fell under the professional command of the security organs, and was duty bound to control the implementation of these assignments. He was kept informed of the work of the Military Police units on the ground. He was also responsible for the treatment and detention of prisoners of war. He oversaw the work of the Main Staff affiliated units, including the 10th Sabotage Detachment and the 65th Protection Regiment.

The Chamber has found that there was an efficient reporting system in place within the VRS and that the Accused received daily reports, both written and oral, from the subordinate intelligence and security organs. He took part in daily meetings attended by the inner circle of command of the VRS, at which the most important decisions would be taken. These meetings were attended by corps commanders when decisions concerning activities on the operational level would be made. At these meetings, Mr. Tolimir gave briefings on the security situation in the Republika Srpska, provided intelligence information, and made proposals for counter-actions. He was kept apprised of any orders that Mladić gave directly to security and intelligence officers under his professional command. Mr. Tolimir was, moreover, capable of exercising general military command and could be dispatched to a command position, as occurred in Žepa at the end of July where he assumed control over the operation to forcibly remove the Bosnian Muslim population of the enclave. He was one of the central contact persons for UNPROFOR with regard to convoy matters relating to both enclaves and he was the counterpart of UN generals Nicolai, Janvier, Smith, and Gobilliard.

The Majority has considered the Accused’s specific role in the VRS Main Staff when analyzing his acts and conduct. The Majority, Judge Nyambe dissenting, has found that the Accused was a member of the JCE to forcibly remove the Bosnian Muslim population from the enclaves from March 1995 onwards, and became a member of the JCE to murder the able-bodied men from Srebrenica at the latest in the afternoon of 13 July. He had full knowledge of the despicable criminal operations envisioned by these two enterprises and shared the intent to further their goals. The basis of his knowledge and his contributions to these JCEs is set out in full in the written Judgement.

For the purposes of this summary, the Majority shall highlight some of the Accused’s actions from which it has inferred that the Accused shared the intent with other members of the JCE to Murder and the JCE to Forcibly Remove, and furthered these criminal operations. It must be stressed that this is by no means an exhaustive list.

From March 1995 onwards, the Accused, and his subordinates in the security organ, were closely involved in the process of approving or rejecting UNPROFOR re-supply convoys and humanitarian aid convoys into the enclaves of Srebrenica and Žepa which contributed to the steadily increasing unbearable situations in the enclaves.

In communications with UNPROFOR in the days leading up to the takeover of Srebrenica by VRS forces, he denied the VRS attacks on the enclave, stalled communication on this issue and made false claims that the VRS would do its best to calm the situation, while at the same time forwarding to the Drina Corps on 9 July 1995 Karadžić’s order to continue operations to takeover Srebrenica.

The Accused’s subordinate, Main Staff Intelligence officer Radoslav Janković, took part in the Hotel Fontana meetings held on the night of 11 and the morning of 12 July 1995. The Majority has found that the Accused was informed and had knowledge of the discussions

held at these meetings. Janković was present on the ground during the forcible removal of the Bosnian Muslim population from Potočari on 12 and 13 July.

In the afternoon of 13 July, the Accused proposed that Bosnian Muslim men who had been captured in the Kasaba area and who were being detained along the main Milići-Zvornik road, be placed indoors to remove them from sight. This proposal was followed up by an order by Mladić in line with the Accused's proposal. The Majority has found that the Accused's proposal was made with a view to concealing the murder plan.

Also on 13 July, with full knowledge of the gathering of approximately 25,000 to 30,000 Bosnian Muslim civilians at the UN compound in Potočari, and of the separation of able-bodied men, the Accused informed Chief of Intelligence and Security of the East Bosnia Corps Milenko Todorović that the preparations for the arrival of 1,000 to 3,000 Bosnian Muslim men at a prison facility in Batković should cease. The Majority has found that the Accused, in ordering that the preparations should be stopped, had knowledge of the fact that these men would be murdered instead.

Following the completion of the forcible removal operation in Potočari, at a meeting in Bokšanica on the outskirts of Žepa enclave on 13 July, the Accused stated to those present that "Srebrenica has fallen and now it's Žepa's turn", adding that the only alternative to the "evacuation" of Žepa's population was the use of military force. Late that same evening, he proposed that Žepa be captured within 21 hours in order to "avoid the condemnation and reaction by the international community".

On 21 July 1995, following days of intense shelling of Žepa by the VRS, and aware of the fact that the civilian population of Žepa had already sought refuge in uninhabited places, the Accused proposed that in order to accelerate the surrender of ABiH forces, groups of fleeing Bosnian Muslim civilians should be "destroyed".

From 25 to 27 July 1995, he was present in Žepa and commanded the forcible removal operation of the Bosnian Muslims as they were packed into buses and driven to Kladanj, walking around with his pistol pointing up at the sky, intimidating this vulnerable group of mainly women, children and elderly.

Through his position as Chief of Intelligence and Security, he had the legal duty to protect prisoners of war. Despite being able to do, he did not. Following the commission of crimes by Bosnian Serb Forces, including by his subordinates, he failed to take any action against them, he did not distance himself from their crimes, and instead, assisted in the cover up of the thousands of murders committed by Bosnian Serb Forces.

Findings on the Counts

I will now turn to the Majority's findings on the Counts.

In its determination of the findings on the counts charged, the Majority particularly took into account Mr. Tolimir's position within the Main Staff of the VRS and his capacity as Chief of the Sector for Intelligence and Security Affairs. The Majority has, in addition, taken into account his education, experience as an officer, and his general capabilities with respect to his duties and responsibilities, stemming from his specific professional position.

The Majority has found that Mr. Tolimir had extensive knowledge of the situation on the ground from March 1995 and onwards. The Majority reiterates its finding that the Accused significantly contributed to both of the JCEs charged, including through his failure to protect prisoners of war. The crimes that were committed were massive in scale, severe in their intensity, and devastating in their effect. The implementation of the two JCEs occurred over a very short period of time in a small geographical area. The Accused played a coordinating and directing role throughout the entirety of this period. The Majority finds that he had knowledge of the genocidal intent of other JCE members, including that of his

security and intelligence organs, who the Majority has found were extensively involved in carrying out the JCEs. The Accused encouraged the use of derogatory terms, thereby provoking ethnic hatred among members of the Bosnian Serb Forces, and sending out a message that Bosnian Muslims were human beings of a lesser value. On 21 July 1995, the Accused proposed to destroy “groups of Muslim refugees” with a view to accelerating the surrender of the ABiH in Žepa. The Majority finds that this proposal manifests the Accused’s own determination to destroy the Bosnian Muslim population.

The only reasonable inference that the Majority can draw on the totality of the evidence is that the Accused not only had knowledge of the genocidal intent of others, but also possessed it himself. He is therefore responsible for the crime of genocide. He is also responsible, pursuant to JCE III, for the murders of the three Bosnian Muslim men from Žepa, which the Majority has found constituted genocide. The Accused’s involvement, and that of his subordinates, in the arrest and detention of these three men, on the basis of which the Chamber has made its finding of his responsibility, are set out in detail in the written Judgement.

Having found that there was an agreement between two or more people to commit the crime of genocide, and that the Accused entered into this agreement by the latest on the afternoon of 13 July 1995, the Majority also finds the Accused responsible for the crime of conspiracy to commit genocide, with respect to the murder of the able-bodied men from Srebrenica.

Having found, in addition, that a single, organised, and large-scale operation to murder Bosnian Muslim males existed with the requisite intent to kill on a massive scale; that the Accused had knowledge of the scale and scope of this operation and that he consciously and deliberately supported the objective of this operation, the Majority finds beyond reasonable doubt, that the Accused is responsible for the crime of extermination.

The Majority is, moreover, satisfied beyond reasonable doubt, that through his participation in the JCE to Murder, including his failure to protect the prisoners of war, the Accused had the requisite intent to murder the able-bodied men from Srebrenica and is therefore responsible for the crime of murder, as charged. The Majority further finds the Accused criminally responsible for a number of murders that were pleaded as opportunistic and foreseeable targeted killings, on the basis that they were reasonably foreseeable to him, pursuant to a mode of liability referred to as JCE III.

With respect to the crime of Persecutions, the Majority recalls its findings that the murders of the able-bodied Bosnian Muslim males, the cruel and inhumane treatment of the Bosnian Muslim population, the terrorisation of the civilian population, the destruction of homes of the Bosnian Muslims, and the mosques, in Srebrenica and Žepa, and the forced removal of women, children, and elderly out of the enclaves were all committed with the intent to discriminate on political, racial or religious grounds and amount to persecutions. The Majority concludes, beyond reasonable doubt, that the Accused possessed the requisite discriminatory intent as he furthered the goal of the two JCEs, resulting in the crimes that have been established.

Finally, the Majority recalls its finding that the Accused, having been found to be a member of the JCE to Forcibly Remove from its inception in March of 1995, shared the intent with other members of the JCE to remove the Bosnian Muslim populations from the enclaves, and significantly contributed to the realisation of this common purpose. The Majority finds that the Accused possessed the requisite intent to forcibly displace the Bosnian Muslim population within a national border, and is therefore criminally responsible for inhumane acts, through forcible transfer, as a crime against humanity.

The Chamber did not find, however, that the transfer of Bosnian Muslim males to Bratunac and Zvornik, as charged, constituted the crime of forcible transfer, nor, as it indicated

before, that the movement of the Bosnian Muslim men from Žepa to Serbia constituted the crime of deportation, for reasons set out in full in the written Judgement.

Sentencing Considerations

Before turning to its disposition, the Majority summarizes, in short, the main factors it considered when determining the sentence. Bound by the Statute and the Rules, the Majority determined the gravity of the offences of which the Accused has been found guilty, as well as any aggravating or mitigating circumstances. In assessing the gravity of the offence, the Majority has considered, in particular, the Accused's contribution to the horrific mass execution of thousands of men and boys as part of an organized operation aimed at destroying the Bosnian Muslim population. It has, furthermore, considered the extreme suffering of the approximately 30,000-35,000 women and children forcibly removed from both enclaves, and their inability to live a normal and constructive life, to this day. The irreparable impact of these crimes on the victims, and the Accused's responsibility for their suffering, have to be taken into account.

With respect to aggravating circumstances, the Majority has considered in particular the Accused's high rank and central position within the VRS Main Staff; his duty, and failure, to ensure the safety of the thousands of prisoners of war following the fall of Srebrenica; his deliberate and active involvement and pivotal role in two JCEs; and the Accused's abuse of his position in covering up the crimes that were committed.

The Majority considered several factors in mitigation, none of which it placed any weight on, save for the Accused's good behaviour in detention and following the start of the trial phase. The Majority notes, however, that this sort of behaviour should be commonplace and, viewed with the Accused's obstructive behaviour during the pre-trial proceedings, gives this good behaviour little weight.

Disposition

This completes the summary of findings. I shall now read out the disposition.

Mr. Zdravko Tolimir, would you please stand.

The Chamber, by Majority, Judge Nyambe dissenting, finds you, Zdravko Tolimir,

GUILTY, pursuant to Article 7(1) of the Statute, through commission of the following crimes:

Count 1: Genocide under Article 4(3)(a) of the Statute;

Count 2: Conspiracy to Commit Genocide under Article 4(3)(b) of the Statute;

Count 3: Extermination, a crime against humanity under Article 5(b) of the Statute;

Count 5: Murder, a violation of the laws or customs of war under Article 3 of the Statute;

Count 6: Persecutions, a crime against humanity under Article 5(h) of the Statute;

Count 7: Inhumane Acts through forcible transfer, a crime against humanity under Article 5(i) of the Statute.

In relation to the following count, on the basis of the principles relating to cumulative convictions, the Majority does not enter a conviction:

Count 4: Murder, a crime against humanity under Article 5(a) of the Statute.

The Chamber finds you, Zdravko Tolimir, NOT GUILTY and thus acquits you of the following count:

Count 8: Deportation, a crime against humanity under Article 5(d) of the Statute.

The Majority has set out in the written Judgement the factors it has taken into account in its determination of the sentence.

Zdravko Tolimir, you are hereby sentenced to life imprisonment. You are entitled to credit for the time served in detention until the day of this Judgement, and the period pending the finalisation of arrangements for your transfer to the State where you will serve your sentence. You shall remain in the custody of this Tribunal until the day of your transfer. You may be seated.

The Registry shall now hand out copies of the Judgement to the parties.

This concludes the proceedings. We adjourn.