



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

Case No. IT-99-36-T  
Date: 1 September 2004  
Original: English

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**IN THE TRIAL CHAMBER II**

**Before:** Judge Carmel Agius, Presiding  
Judge Ivana Janu  
Judge Chikako Taya

**Registrar:** Mr. Hans Holthuis

**Judgement of:** 1 September 2004

**PROSECUTOR**

v.

**RADOSLAV BRĐANIN**

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**JUDGEMENT**

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## I. SUMMARY OF THE CHARGES

1. Radoslav Brdanin (“Accused”) is charged under the Sixth Amended Indictment (“Indictment”), dated 9 December 2003, with 12 Counts.<sup>1</sup>

2. The Prosecution alleges that, as it became apparent that Bosnia and Herzegovina (“BiH”) would declare its independence from the Socialist Federal Republic of Yugoslavia (“SFRY”), the Serbian Democratic Party (“SDS”) began the creation of a separate Serbian entity within BiH. On or about 16 September 1991, the Association of Bosanska Krajina Municipalities was transformed into the Autonomous Region of Krajina (“ARK”), which came to include (amongst others) the following municipalities: Banja Luka, Bihać-Ripač, Bosanska Dubica, Bosanska Gradiška, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Čelinac, Donji Vakuf, Ključ, Kotor Varoš, Prijedor, Prnjavor, Sanski Most, Šipovo and Teslić.<sup>2</sup> A separate Assembly of the Serbian People in Bosnia and Herzegovina (“SerBiH Assembly”) was established on 24 October 1991, dominated by the SDS. On 9 January 1992, that Assembly adopted a declaration on the Proclamation of the Serbian Republic of Bosnia and Herzegovina. The geographical area comprising the ARK thus became part of the proclaimed Serbian Republic of Bosnia and Herzegovina (“SerBiH”).<sup>3</sup>

3. The Prosecution alleges that SDS leaders viewed the significant Bosnian Muslim and Bosnian Croat populations that lived in areas being claimed as part of the SerBiH as a major impediment to the creation of that proclaimed state, thus necessitating the permanent removal, or ethnic cleansing, of nearly all the Bosnian Muslims and Bosnian Croats from those areas.<sup>4</sup>

4. The Prosecution alleges that, beginning in 1991, the leadership of Bosnian Serb nationalists (including the SDS) in the ARK promoted and disseminated propaganda that portrayed the Bosnian Muslims and Bosnian Croats as fanatics intending to commit genocide on the Serbian people of BiH.<sup>5</sup>

5. The Prosecution alleges that, on 19 December 1991, the SDS issued instructions for the “Organisation and Activity of the Organs of the Serbian People in Bosnia and Herzegovina in

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<sup>1</sup> A Glossary of Terms is included in Annex A of this Judgement.

<sup>2</sup> Charges pertaining to these 16 municipalities were set out by the Prosecution in the Indictment. The Prosecution later withdrew the charges in respect of Bihać-Ripač, Bosanska Dubica and Bosanska Gradiška municipalities (*see* part A of Appendix C to the “Prosecutor’s Response to the ‘Motion for Judgement of Acquittal – Rule 98bis’”, 2 October 2003). The charges in counts 1-12 are therefore based on acts related to the remaining 13 municipalities. For the purposes of this Judgement, all decisions, orders and decisions, unless otherwise specified, pertain to the case of *Prosecutor v. Radoslav Brdanin & Momir Talić*, Case No. IT-99-36-PT/T prior to Decision on Prosecution’s Oral Request for the Separation of Trials, 20 September 2002 and to *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-T, after that date.

<sup>3</sup> On 12 August 1992, the name of the SerBiH was changed to Republika Srpska (“RS”).

<sup>4</sup> Indictment, para. 6.

<sup>5</sup> Indictment, para. 7.

Extraordinary Circumstances”, which provided the blueprint for SDS take-overs in the municipalities.<sup>6</sup>

6. The Prosecution alleges that, from March 1992 onwards, army, paramilitary, territorial defence, police units and civilians armed by those forces (collectively “Bosnian Serb forces”) seized control of those municipalities comprising the ARK.<sup>7</sup>

7. The Prosecution alleges that Crisis Staffs were created at the regional and municipal levels as the bodies that would be responsible for the coordination and execution of most of the operational phase of the plan to ethnically cleanse the SerBiH and assume authority over the administration of the regions and municipalities. On 5 May 1992, the formation of the ARK Crisis Staff was announced, with the Accused as President. On 26 May 1992, the ARK Crisis Staff declared itself the highest organ of authority in the ARK and stated that its decisions were binding for all municipal Crisis Staffs. On the order of Radovan Karadžić, President of the Presidency of the SerBiH, the Crisis Staffs were later re-designated as War Presidencies and then War Commissions.<sup>8</sup>

8. The Prosecution alleges that, on 12 May 1992, the SerBiH Assembly met with the Accused in attendance and decided to create the Army of the Serbian Republic of Bosnia and Herzegovina (“VRS”), effectively transforming the units of the Yugoslav People’s Army (“JNA”) remaining in BiH into commands of the new VRS army. The VRS retained strong links with the JNA (then known as the VJ (Army of the Federal Republic of Yugoslavia (“FRY”))).<sup>9</sup>

9. The Prosecution alleges that the Accused, as First Vice-President of the Assembly of the Association of the Bosanska Krajina Municipalities, as President of the ARK Crisis Staff and as a prominent member of the SDS, played a leading role in the campaign designed to permanently remove by force, or fear, the non-Serb population from the ARK. It is alleged that he facilitated the ethnic cleansing by securing all instruments of state power for the governing bodies and those persons committed to an ethnically pure Serbian state. He played a leading role with respect to the propaganda campaign. The Accused signed decisions and orders issued by the ARK Crisis Staff, which in turn directed and instigated the action taken in the municipal Crisis Staffs, some members of which had direct involvement in the commission of the offences alleged.<sup>10</sup>

10. The Prosecution alleges that the Accused participated in a joint criminal enterprise (“JCE”), the purpose of which was the permanent forcible removal of Bosnian Muslim and Bosnian Croat

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<sup>6</sup> *Ibid.*

<sup>7</sup> Indictment, para. 8.

<sup>8</sup> Indictment, para. 10.

<sup>9</sup> Indictment, para. 12.

<sup>10</sup> Indictment, paras 14, 16-17.

inhabitants from the territory of the planned Bosnian Serb state by the commission of the crimes alleged in Counts 1 through 12 of the Indictment. The JCE came into existence no later than the establishment of the SerBiH Assembly on 24 October 1991 and continued throughout the period of the conflict in BiH until the signing of the Dayton Accords<sup>11</sup> in 1995. The Prosecution further alleges that the Accused and other members of the JCE shared the state of mind required for the commission of each of the crimes charged and, more particularly, that each was aware that his or her conduct occurred in the context of an armed conflict and was part of a widespread and systematic attack directed against a civilian population. Participants in the JCE included the Accused, Momir Talić, other members of the ARK Crisis Staff, the leadership of the Serbian Republic and the SDS, including Radovan Karadžić, Momčilo Krajišnik and Biljana Plavšić, members of the ARK Assembly and the Assembly's Executive Committee, the Serb Crisis Staffs of the ARK municipalities, the army of the Republika Srpska, Serb paramilitary forces and others. After the official dissolution of the ARK on 15 September 1992, the Accused continued with the implementation of this enterprise in his position in the Bosnian Serb political power structure as Minister for Construction, Traffic and Utilities and acting Vice-President of the Government of the RS.<sup>12</sup>

11. In the alternative to the first category of JCE, the Prosecution alleges that the Accused is individually responsible for the crimes committed in COUNTS 1 to 7 inclusive and COUNTS 10, 11 and 12 on the basis that these crimes were natural and foreseeable consequences of the acts described under COUNTS 8 and 9 (deportation and inhumane acts (forcible transfer)), and that the Accused was aware that these crimes were the possible consequences of the acts described in COUNTS 8 and 9. The Prosecution alleges that, despite his awareness of these possible consequences, the Accused knowingly and wilfully participated in the JCE and therefore bears individual criminal responsibility for these crimes under Article 7(1) of the Statute.

12. In addition to his participation in a JCE, the Prosecution alleges that the Accused is responsible under Article 7(1) for having planned, instigated, ordered or otherwise aided and abetted in the planning, preparation, or execution of these crimes.

13. The Prosecution also alleges that the Accused is responsible as a superior for the acts of his subordinates pursuant to Article 7(3) of the Statute. In relation to the crimes charged in the Indictment, committed by members of the municipal Crisis Staffs or by members of the armed forces under the control of the leadership of the Bosnian Serbs and for whom logistical support was

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<sup>11</sup> General Framework Agreement for Peace in Bosnia-Herzegovina, initiated in Dayton on 21 November 1995, signed in Paris on 14 December 1995 ("Dayton Accords").

<sup>12</sup> On 15 September 1992, the Accused was appointed to these two positions.

provided through the medium of the Crisis Staffs, the Accused knew or had reason to know that such crimes were about to be committed, or had been committed, and failed to take the necessary and reasonable measures to prevent such acts or punish the perpetrators thereof.

14. The Accused is charged under COUNT 1 with genocide pursuant to Article 4(3)(a) of the Statute, and under COUNT 2 with complicity in genocide pursuant to Article 4(3)(e) of the Statute. It is alleged that between about 1 April 1992 and 31 December 1992 the Accused, acting individually or in concert with others in the Bosnian Serb leadership, planned, instigated, ordered, committed<sup>13</sup> or otherwise aided and abetted in the planning, preparation or execution of a campaign designed to destroy Bosnian Muslims and Bosnian Croats, in whole or in part, as national, ethnical, racial or religious groups, as such, in the relevant ARK municipalities.<sup>14</sup> It is further alleged that, during this period, the Accused knew or had reason to know that Bosnian Serb forces under his control were about to commit such acts or had done so, and he failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. The campaign included

- (a) the killing of Bosnian Muslim and Bosnian Croat non-combatants by Bosnian Serb forces (including units of the 5<sup>th</sup> Corps/1<sup>st</sup> Krajina Corps) in villages and non-Serb areas; in camps and other detention facilities; and during deportations and forcible transfers;
- (b) causing serious bodily or mental harm to Bosnian Muslim and Bosnian Croat non-combatants, during their confinement in camps, other detention facilities, and during their interrogations at police stations and military barracks when detainees were continuously subjected to or forced to witness inhumane acts including murder, rape, sexual assault, torture and beatings; and
- (c) detaining Bosnian Muslims and Bosnian Croat non-combatants under conditions calculated to bring about the physical destruction of a part of those groups through beatings or other physical maltreatment as described above, starvation rations, contaminated water, insufficient or non-existent medical care, unhygienic conditions and lack of space.

15. The Accused is charged under COUNT 3 with persecutions as a crime against humanity pursuant to Article 5(h) of the Statute. It is alleged that between about 1 April 1992 and 31

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<sup>13</sup> The Trial Chamber notes that the use of the word “committing” in the Indictment was not intended by the Prosecution to suggest that the Accused personally physically perpetrated any of the crimes charged. *See* Indictment, para. 33.

<sup>14</sup> For the purposes of this summary, the phrase “the relevant ARK municipalities” refers to the 13 municipalities in relation to which the Prosecution is alleging acts amounting to the crimes charged in the Indictment. *See supra* para. 2; fn. 2.

December 1992 the Accused, acting individually or in concert with others in the Bosnian Serb leadership, planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of persecutions on political, racial or religious grounds of the Bosnian Muslim and Bosnian Croat population in the relevant ARK municipalities. It is further alleged that, during this period, the Accused knew or had reason to know that Bosnian Serb forces under his control were about to commit such acts or had done so, and he failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. It is alleged that the planning, preparation and execution of persecutions included

- (a) the killing of Bosnian Muslims and Bosnian Croats by Bosnian Serb forces (including units of the 5th Corps/1st Krajina Corps) in villages and non-Serb areas, in detention camps and other detention facilities;
- (b) torture, physical violence, rapes and sexual assaults, constant humiliation and degradation of Bosnian Muslims and Bosnian Croats;
- (c) destruction, wilful damage and looting of residential and commercial properties in the parts of towns, villages and other areas inhabited predominantly by a Bosnian Muslim and Bosnian Croat population, and destruction of or wilful damage to Bosnian Muslim and Bosnian Croat religious and cultural buildings;
- (d) the deportation or forcible transfer of Bosnian Muslims and Bosnian Croats from areas within the relevant ARK municipalities to areas under the control of the legitimate government of Bosnia and Herzegovina (Travnik) and to Croatia (Karlovac); and
- (e) the denial of fundamental rights, including the right to employment, freedom of movement, right to proper medical care or right to proper judicial process.

16. The Accused is charged under COUNT 4 with extermination as a crime against humanity pursuant to Article 5(b) of the Statute, and under COUNT 5 with wilful killing as a grave breach of the Geneva Conventions of 1949<sup>15</sup> pursuant to Article 2(a) of the Statute. It is alleged that between about 1 April 1992 and 31 December 1992 the Accused, acting individually or in concert with others in the Bosnian Serb leadership, planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a campaign designed to exterminate

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<sup>15</sup> Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of the Armed Forces in the Field, 12 August 1949, 75 UNTS 31 (“Geneva Convention I”); Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 UNTS 85 (“Geneva Convention II”); Geneva Convention Relative to the Treatment of Prisoners of War, 12 August

members of the Bosnian Muslim and Bosnian Croat population in the relevant ARK municipalities. It is further alleged that, during this period, the Accused knew or had reason to know that Bosnian Serb forces under his control were about to commit such acts or had done so, and he failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. As part of this campaign, a significant number of the Bosnian Muslims and Bosnian Croats were killed by Bosnian Serb forces in villages and non-Serb areas, in camps and other detention facilities and during the deportations or forcible transfers.

17. Under COUNT 6 and COUNT 7 the Accused is charged with torture as a crime against humanity pursuant to Article 5(f) of the Statute and as a grave breach of the Geneva Conventions of 1949 pursuant to Article 2(b) of the Statute. It is alleged that between about 1 April 1992 and 31 December 1992 the Accused, acting individually or in concert with others in the Bosnian Serb leadership, planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation, or execution of a campaign of terror designed to drive the Bosnian Muslim and Bosnian Croat population from the relevant ARK municipalities. It is further alleged that, during this period, the Accused knew or had reason to know that Bosnian Serb forces under his control were about to commit such acts or had done so, and he failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. The execution of this campaign is alleged to include the intentional infliction of severe pain or suffering on Bosnian Muslim or Bosnian Croat non-combatants by inhumane treatment including sexual assaults, rape, brutal beatings and other forms of severe maltreatment in camps, police stations, military barracks and private homes or other locations, as well as during transfers of persons and deportations.

18. The Accused is charged under COUNT 8 with deportation as a crime against humanity pursuant to Article 5(d) of the Statute, and under COUNT 9 with inhumane acts (forcible transfer) as a crime against humanity pursuant to Article 5(i) of the Statute. It is alleged that between about 1 April 1992 and 31 December 1992 the Accused, acting individually or in concert with others in the Bosnian Serb leadership, planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation, or execution of a campaign designed to eliminate the Bosnian Muslim and Bosnian Croat population from the relevant ARK municipalities. It is further alleged that, during this period, the Accused knew or had reason to know that Bosnian Serb forces under his control were about to commit such acts or had done so, and he failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. Beginning in early April 1992, Bosnian Serb police forces and other Bosnian Serb municipal organs acting at the

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1949, 75 UNTS 135 (“Geneva Convention III”); Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 2 (“Geneva Convention IV”).

direction of the Crisis Staffs deported or forcibly transferred Bosnian Muslims and Bosnian Croats from the relevant ARK municipalities to areas under the control of the legitimate government of Bosnia and Herzegovina (Travnik) and to Croatia (Karlovac). It is further alleged that in many cases non-Serbs were required to sign documents stating that they were relinquishing all of their property to the SerBiH in order for the Bosnian Serb authorities to allow them to leave or to release them from detention facilities.

19. The Accused is charged under COUNT 10 with unlawful and wanton extensive destruction and appropriation of property not justified by military necessity as a grave breach of the Geneva Conventions of 1949 pursuant to Article 2(d) of the Statute; under COUNT 11 with wanton destruction of cities, towns or villages or devastation not justified by military necessity as a violation of the laws or customs of war pursuant to Article 3(b) of the Statute; and under COUNT 12 with destruction or wilful damage done to institutions dedicated to religion as a violation of the laws and customs of war pursuant to Article 3(d) of the Statute. It is alleged that between about 1 April 1992 and 31 December 1992 the Accused, acting individually or in concert with others in the Bosnian Serb leadership, planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation, or execution of a campaign of these activities in the relevant ARK municipalities. It is further alleged that, during this period, the Accused knew or had reason to know that Bosnian Serb forces under his control were about to commit such acts or had done so, and he failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.



## II. GENERAL CONSIDERATIONS REGARDING THE EVALUATION OF EVIDENCE

20. For the purposes of the trial, evidence has been taken to mean the information which has been put before the Trial Chamber in order to prove the facts at issue and which may take the following forms: a) testimony, b) documents produced for the inspection of the Trial Chamber, c) real evidence, *i.e.*, exhibits and other material objects, and d) admissions of fact. In its final exercise of evaluating the entire evidence the Trial Chamber has divided it under a) direct and indirect evidence, b) original and hearsay evidence, c) primary and secondary evidence, and d) circumstantial evidence. Hearsay and circumstantial evidence have been considered as indirect evidence with the understanding that such evidence is as much evidence as direct evidence. With regard to primary and secondary evidence, although in the Trial Chamber's mind primary evidence is the best which can be given while secondary evidence is any other inferior evidence of a relevant document, both types have been admitted where reliability was not in question.

21. The evidence in this case has been assessed by the Trial Chamber in accordance with the Tribunal's Statute and its Rules of Procedure and Evidence ("Rules") and, where no guidance is given by those sources, in such a way as will best favour a fair determination of the case and which is consistent with the spirit of the Statute and the general principles of law, including the principle of *in dubio pro reo*, according to which, doubt must be resolved in favour of the accused.<sup>16</sup> Every criminal trial involves two issues: first, that the crimes charged have been committed and, second, that an accused is responsible for those crimes. The object of evidence is to ascertain the truth of the facts with respect to these two issues, in order to enable the Trial Chamber to arrive at a conclusion, because its duty is to decide the issues solely upon the evidence before it.

22. The Accused is entitled by Article 21(3) of the Statute to a presumption of innocence. This presumption places on the Prosecution the burden of establishing the guilt of the Accused, *i.e.* the burden of proving all the facts and circumstances which are material and necessary to constitute the crimes charged and the Accused's criminal responsibility. That burden remains upon the Prosecution throughout the entire trial; it never changes. In accordance with Rule 87(A) of the Rules, the Prosecution must establish the Accused's guilt beyond reasonable doubt. The approach taken by the Trial Chamber has been to determine whether the ultimate result of the whole evidence is weighty and convincing enough to establish beyond reasonable doubt the facts alleged and, ultimately, the guilt of the Accused, as charged in the Indictment.

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<sup>16</sup> Rule 89(B) of the Rules.

23. In determining whether the guilt of the Accused has been established to this standard with respect to each particular count in the Indictment, the Trial Chamber has been careful to consider whether there is any reasonable explanation of the evidence accepted by it other than the guilt of the Accused.<sup>17</sup> This is so because any ambiguity must accrue to the Accused's advantage. As stated by the Appeals Chamber, if there is another conclusion which is also reasonably open from that evidence, and which is as consistent with the innocence of an accused as with his or her guilt, he or she must be acquitted.<sup>18</sup>

24. The fact that the Defence has not challenged certain factual allegations contained in the Indictment does not imply that the Trial Chamber has accepted these alleged facts to be proved. For each individual fact alleged by the Prosecution the burden of proof remains with it.<sup>19</sup> Article 21(4)(g) of the Statute provides that no accused shall be compelled to testify against himself. In this case, the Accused made use of his right to remain silent and did not give evidence or any statement. No unfavourable inference was drawn therefrom. The Trial Chamber acknowledges that silence by the Accused may not be used as evidence to prove guilt and may not be interpreted as an admission.

25. In evaluating the evidence of the witnesses that gave evidence *viva voce*, the Trial Chamber has considered their demeanour, conduct and character as far as this was possible. With regard to all witnesses, it has also considered the probability, consistency and other features of their evidence, including the corroboration which may be forthcoming from other evidence and the circumstances of the case. The Trial Chamber has been conscious throughout that the credibility of witnesses depends upon their knowledge of the facts upon which they give evidence, their disinterestedness, their integrity, their veracity and the fact that they are bound to speak the truth in terms of the solemn declaration taken by them. The Trial Chamber has also kept in mind that the fact that a witness gives evidence honestly is not in itself sufficient to establish the reliability of that evidence. The issue is not merely whether the evidence of a witness is honest; it is also whether the evidence is objectively reliable.<sup>20</sup> The Trial Chamber has been conscious, throughout, that evidence about facts that occurred ten or more years prior to giving evidence, involves inherent uncertainties due to

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<sup>17</sup> *Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka "Pavo"), Hazim Delić and Esad Landžo (aka "Zenga")*, Case No. IT 96-21-A, Judgement, 20 February 2001 ("Čelebići Appeal Judgement"), para. 458.

<sup>18</sup> Čelebići Appeal Judgement, para. 458.

<sup>19</sup> *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. IT-96-23-A &IT-96-23/1-A, Judgement, 12 June 2002 ("Kunarac Appeal Judgement"), paras 63 and 65.

<sup>20</sup> See, e.g., Čelebići Appeal Judgement, paras 491, 506; *Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović and Vladimir Šantić (aka "Vlado")*, Case No. IT-95-16-A, Judgement, 23 October 2001 ("Kupreškić Appeal Judgement"), paras 34-40; *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. IT-96-23-T &IT-96-23/1-T, Decision on Motion for Acquittal, 3 July 2000 ("Kunarac Rule 98bis Decision"), para. 8; *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. IT-96-23-T &IT-96-23/1-T, Judgement, 22 February 2001 ("Kunarac Trial Judgement"), paras 561-562.

the vagaries of human perception and recollection. The lack of detail in relation to peripheral matters was in general not regarded as necessarily discrediting their evidence.<sup>21</sup>

26. The Trial Chamber has also taken into account the extent of any inconsistency between the oral evidence of the witnesses at trial and their respective statements given prior to trial, if such statements, or parts thereof were admitted into evidence. The Trial Chamber accepts that in some instances a witness' oral evidence will not be identical to the information given in such statement. The reason for this is that a witness may be asked questions at trial not previously asked or may, through questioning, remember details previously forgotten. In general, the Trial Chamber has not treated minor discrepancies between the evidence of various witnesses, or between the evidence of a particular witness and a statement previously made by that witness, as discrediting their evidence where that witness had nevertheless recounted the essence of the incident charged in acceptable detail.<sup>22</sup>

27. In some cases, only one witness has given evidence of an incident with which the Accused is charged or otherwise involving the Accused. The Appeals Chamber has held that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration.<sup>23</sup> Still, in such a situation, the Trial Chamber has scrutinised the evidence of such witnesses with circumspection and in some instances decided not to rely on such evidence.<sup>24</sup>

28. As regards hearsay evidence, the Trial Chamber reiterates that it is well settled in the practice and jurisprudence of this Tribunal that hearsay evidence is admissible. The approach taken by the Trial Chamber has been that, since such evidence is admitted to prove the truth of its contents,<sup>25</sup> it ought to be satisfied that such evidence is reliable for that purpose, in the sense of being voluntary, truthful and trustworthy, as appropriate. For this purpose, the Trial Chamber has considered both the content of the hearsay statement and the circumstances under which the evidence arose,<sup>26</sup> or, as Judge Stephen described it, considered that the probative value of a hearsay statement will depend upon the context and character of the evidence in question.<sup>27</sup> The absence of

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<sup>21</sup> *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T, Judgement, 15 March 2002 (“*Krnojelac* Trial Judgement”), para. 69; *Kunarac* Trial Judgement, para. 564.

<sup>22</sup> *Krnojelac* Trial Judgement, para. 69.

<sup>23</sup> *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 March 2000 (“*Aleksovski* Appeal Judgement”), para. 62; *Krnojelac* Trial Judgement, para. 71.

<sup>24</sup> *Krnojelac* Trial Judgement, para. 71.

<sup>25</sup> *Tadić* Decision on Defence Motion on Hearsay, 5 August 1996 (“*Tadić* Decision on Defence Motion on Hearsay”) paras 15-19; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Decision on the Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability, 21 January 1998 (“*Blaškić* Decision on the Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability”), para. 10.

<sup>26</sup> *Tadić* Decision on Defence Motion on Hearsay, paras 15-19.

<sup>27</sup> *Prosecutor v. Duško Tadić* (aka "Dule"), Case No. IT-94-1, Separate Opinion of Judge Stephen on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses, 10 August 1995 (“Separate Opinion of Judge Stephen on Tadic Protective Measures Motion”), p. 3.

the opportunity to cross-examine the person who made the statements, and whether the hearsay is "first-hand" or more removed, have also been considered relevant to the probative value of the evidence.<sup>28</sup> The approach adopted by the Trial Chamber has been to consider that the fact that a piece of evidence is hearsay does not necessarily deprive it of probative value, but it is acknowledged that the weight or probative value to be afforded to that evidence will usually be less than that given to the testimony of a witness who has given it under a form of oath and who has been cross-examined, although even this will depend upon the infinitely variable circumstances which surround hearsay evidence.<sup>29</sup>

29. In the present case, the documentary evidence has been voluminous and is of particular importance. Where any factual question has arisen as to the admissibility of a piece of evidence, the Trial Chamber has adopted the principle that the burden of proof lies on the party seeking to introduce that evidence to prove to the satisfaction of the Trial Chamber that it is admissible. In addition, the Trial Chamber has, throughout the entire exercise, followed the principle that the Prosecution must prove the admissibility of such evidence beyond reasonable doubt, whereas the Defence is only required to prove the admissibility of its evidence on a balance of probabilities.<sup>30</sup>

30. In the course of the trial, several documents were tendered in evidence by the Prosecution which were contested by the Defence. Some of these objections were made by way of written motion,<sup>31</sup> while others were orally objected to during sittings. Similarly, there were a small number of documents tendered into evidence by the Defence which were contested by the Prosecution. Almost all these documents were admitted with the *caveat* that the Trial Chamber, in its final deliberations, would consider the respective submissions of the parties, the reliability of these documents and ultimately their probative value in the overall context of the evidence received before deciding what weight to give them, if any at all. The first exercise carried out by the Trial Chamber in the whole process of maturing its final decision was to examine each and every document objected to by the parties with a view to deciding on their reliability and probative value. Since the reasons for the various objections vary according to the type of document challenged, the applicable criteria vary too. The criteria applied are set out in the following section.

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<sup>28</sup> *Blaškić* Decision on the Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability, para. 12.

<sup>29</sup> Separate Opinion of Judge Stephen on Tadic Protective Measures Motion, pp. 2-3.

<sup>30</sup> *Vasiljević* Trial Judgement, para. 282. See also *R. v. Matthey* [1995] 2 Cr App R 409; *Rush v. DPP* [1994] RTR 268.

<sup>31</sup> See, e.g., Objection to OTP Exhibits, Bosanski Petrovac Municipality, 19 May 2003; Objection to OTP Exhibits, Čelinac Municipality, 6 June 2003; Objection to OTP Exhibits, Teslić Municipality, 26 May 2003; Objection to OTP Exhibits, Bosanska Krupa Municipality, 30 June 2003.

31. The Defence submits that a document “for which there is no evidence of authorship or authenticity” is unreliable and can carry no weight.<sup>32</sup> In particular, the Defence contests the admissibility of all those documents tendered by the Prosecution which do not bear a signature and/or a stamp and/or a date or are in any other manner devoid of an element required for their authenticity. The fact that a document is unsigned, undated or unstamped does not necessarily render that document non-authentic. Consequently, the Trial Chamber did not consider unsigned, undated or unstamped documents, *a priori*, to be void of authenticity. Keeping in mind at all times the principle that the burden of proving authenticity remains with the Prosecution, the Trial Chamber reviewed all these documents, one by one, and is satisfied that the Prosecution has proved their authenticity beyond reasonable doubt. In order to assess the authenticity of documents, the Trial Chamber considered them in light of evidence as to their source and custody and other documentary evidence and witness testimony. In addition, even when the Trial Chamber was satisfied of the authenticity of a particular document, it did not automatically accept the statements contained therein to be an accurate portrayal of the facts. Indeed, the Trial Chamber evaluated these statements in light of the entire evidence before it.<sup>33</sup>

32. The Defence also contests the reliability of all those documents which originate from the Agency for Investigation and Documentation (“AID”) and local Public Security Service (SDB) offices in BiH, particularly those in Sarajevo and Bihać. In this context, the Defence made several submissions including allegations against AID and the SDB in BiH in general as being unreliable sources, and against a particular officer of AID, a certain Zijad Ibrić, who took statements from several witnesses or was present during some statements, to several of which he appended his signature. The Defence has suggested that the content of some of these statements may have been fabricated or altered by Zijad Ibrić, who may have also forged the signature of one or more persons on such statements. It was also suggested that AID itself engaged in forging documents. Of course, the Defence does not carry the onus of proving that any of these documents are forged, unreliable or inadmissible: the onus rests at all times with the Prosecution that these documents are authentic, reliable and admissible. The Trial Chamber has examined all these documents one by one and has come to the conclusion that there is nothing in the evidence which sheds serious doubt on these documents and that the Prosecution has proved beyond reasonable doubt not only their authenticity but also their reliability. The Defence, although it carries no burden of proof, has made reference to some court proceedings in Sarajevo against senior AID officials involving also some alleged forgeries and suggested that the signatures of some witnesses may have have been forged. But these matters were not pursued any further, and the Trial Chamber does not consider that the

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<sup>32</sup> Defence Final Brief (confidential), pp. 2-3.

<sup>33</sup> See, e.g., Order on the Standards Governing the Admission of Evidence, paras 18-20.

Prosecution's proof of authenticity of the relevant documents has been shaken by them. The Trial Chamber has also considered that the *viva-voce* witnesses, whose signatures supposedly had been forged, excluded this possibility.

33. The Defence objects to all newspaper articles and reports introduced into evidence by the Prosecution, submitting that they are unreliable, that they amount to hearsay, that some of them come from hostile sources prone to propaganda and that the Accused has not been given the possibility of cross-examination or confrontation of evidence.<sup>34</sup> Regarding newspaper reports, the Defence also submits that a newspaper article is a witness statement and is not admissible in accordance with Rule 92*bis*.<sup>35</sup> The Trial Chamber does not agree that a newspaper article is a witness statement or that such evidence has been tendered as such. Consequently, the Trial Chamber, at no time, has treated the newspaper reports and articles as witness statements but merely as newspaper reports and articles admissible as documentary evidence under the procedural practice of this Tribunal, particularly that relating to hearsay evidence but with the limitations set out above.<sup>36</sup> The same applies to several unauthored scripts of what were allegedly radio and/or television news broadcasts. The Trial Chamber considers that, when reliable, newspaper reports and articles and similar items of evidence challenged may be important not only because they originate from the time of the events they report upon but also because they very often corroborate the information provided by other evidence and confirm that the facts referred to are public and generally known. As such, they can be an appropriate instrument for verifying the truth of the facts of a case.<sup>37</sup>

34. The Defence also challenges the admissibility of the intercepted telephone conversations between various persons, including in a number of instances the Accused himself, which the Prosecution has tendered into evidence. This Trial Chamber already dealt with several aspects of admissibility relating to these documents in its decision of 3 October 2003, admitting them and reserving for its final deliberation, decisions as to whether there are any intercepts tendered in evidence the authenticity of which has not been proved beyond reasonable doubt and which should, therefore, be excluded and decisions as to the probative value to give to each of the intercepts that remain. Having gone through all the evidence relating to their origin, custody and other facts relevant for the purpose of establishing reliability, as well as other evidence on persons and events to which they relate, the Trial Chamber is satisfied that the Prosecution has proved beyond

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<sup>34</sup> Defence Final Brief (confidential), pp. 7-8; *See, e.g.*, Objection to OTP Exhibits, Čelinac Municipality, 6 June 2003; Objection to OTP Exhibits, Teslić Municipality, 26 May 2003.

<sup>35</sup> *See, e.g.*, Objection to OTP Exhibits, Čelinac Municipality, 6 June 2003.

<sup>36</sup> *See* para. 28 *supra*.

<sup>37</sup> The newspaper reports and articles that the Trial Chamber has made use of for the purposes of its deliberations are those the authenticity of which could not in any way be doubted.

reasonable doubt the authenticity of all these intercepts and the reliability of the source from which they originate.<sup>38</sup> The Trial Chamber is also satisfied beyond reasonable doubt of their reliability even though the chain of custody was not perfect. In reaching its conclusion the Trial Chamber made an allowance for this, as well as for the fact that there is evidence that these intercepts, or most of them, were in some way edited, allegedly to remove material which was personal and not relevant to the authorities that had ordered the interception. In assessing the probative value of these documents, the Trial Chamber has also kept in mind the fact that they were obtained by the Muslim leadership in BiH, although this fact does not render them unreliable. Because of all this, the Trial Chamber decided to apply caution in evaluating the probative value of each of these intercepts before finally deciding they presented absolutely no real problem as to their authenticity and therefore proceeded to make use of them in its deliberations. The Trial Chamber also finds that there is a sufficient explanation for some discrepancies in the dates of some of the tapes which does not in any way affect their reliability.

35. The Trial Chamber considered circumstantial evidence as being such evidence of circumstances surrounding an event or offence from which a fact at issue may be reasonably inferred.<sup>39</sup> Since crimes are committed very often when witnesses are not present, and since in criminal trials, especially in cases like the ones before this Tribunal, the possibility of establishing the matter charged by the direct and positive testimony of eye-witnesses or by conclusive documents is problematic or unavailable, circumstantial evidence may become a critical ingredient not only for the Prosecution but also for an accused. The individual items of such evidence may by themselves be insufficient to establish a fact, but, taken together, their collective and cumulative effect may be very revealing and sometimes decisive.<sup>40</sup> The Trial Chamber has embraced the principle that “it is no derogation of evidence to say that it is circumstantial.”<sup>41</sup> Consequently, the Trial Chamber has not considered circumstantial evidence to be of less substance than direct evidence. In evaluating circumstantial evidence, the Trial Chamber has taken notice of the definition arrived at by the Trial Chamber in the *Krnjelac* case, namely: “Evidence of a number of different circumstances which, taken in combination, point to the existence of a particular fact upon which the guilt of the accused depends because they would usually exist in combination only

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<sup>38</sup> The Trial Chamber refers in particular to the evidence of Predrag Radić in which he identifies the voices of Radovan Karadžić, Radislav Vukić, the Accused and himself: Predrag Radić, T. 22156-22157, ex. P2382.13, “Intercept”.

<sup>39</sup> May, R., *Criminal Evidence*, 3<sup>rd</sup> Edition, (Sweet & Maxwell Ltd), London, 1995.

<sup>40</sup> “[...] Thus it may be in circumstantial evidence - there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than a mere suspicion, but the whole taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of”: *Exall* (1866) 4 F. & F. 922, 929.

<sup>41</sup> *Taylor, Weaver and Donovan* (1928) 21 Cr. App. R. 20, 21.

because a particular fact did exist.”<sup>42</sup> The Trial Chamber added that such a conclusion must be the *only* reasonable conclusion available.<sup>43</sup>

36. Finally, the Trial Chamber has taken into consideration the evidence given against the former co-accused Momir Talić, whose case was severed from that of the Accused and who subsequently passed away, as far as it is relevant to the case against the Accused. Moreover, the findings by the Trial Chamber in relation to other individuals named in the evidence as well as in the Indictment have been based on the evidence given in this trial and were made for the purpose of this trial. They have not been made for the purpose of entering criminal convictions against those other individuals who are not in any way bound by the findings made in this trial, and will be able to challenge fully any evidence given in this trial that may implicate them.

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<sup>42</sup> *Krnjelac* Trial Judgement, para. 67.

<sup>43</sup> *Krnjelac* Trial Judgement, para. 67 (emphasis in original). The *Krnjelac* Trial Chamber referred to the *Čelebići* Appeal Judgement, para. 458.



### III. PRELIMINARY ISSUES RAISED BY THE DEFENCE

37. The Defence Final Brief raises a number of preliminary issues. These can be broadly grouped into four different categories. The first category concerns submissions on the weight of documents admitted in evidence in this case, and as such these Defence submissions involve considerations regarding the evaluation of documentary evidence which have already been addressed elsewhere in this judgement.<sup>44</sup>

38. The Defence Final Brief then goes on to enumerate a series of “factors impacting the application of the burden of proof beyond reasonable doubt”.<sup>45</sup> The Defence requests the Trial Chamber to consider these factors “to insure that the burden [of proof] is fairly applied and the [P]rosecution is strictly held to its burden”.<sup>46</sup> The first of these factors, the Defence submits, is the danger that the Trial Chamber may have developed an unintentional bias against Serbs that may have an impact upon the Trial Chamber’s deliberations.<sup>47</sup> The second of these factors is the need for the Trial Chamber to view the events from 1990 to 1992 in the former Yugoslavia “from a Balkan perspective”, for the reason that, “to a large extent the events of that time were shaped by the history, politics, and culture of the region”.<sup>48</sup> Finally, the Defence Final Brief also mounts a challenge to the Indictment, and argues that the Prosecution has failed to properly plead its case against the Accused.

#### A. Unintentional Bias against Serbs

39. The Defence submits that there is a danger that the Trial Chamber’s deliberations may be informed by an unintentional bias against Serbs, as a result of “the nature of the allegations raised not only in this trial but in other cases before this Tribunal and in the international press and community”.<sup>49</sup>

40. The Defence submission is difficult to comprehend. Rule 15(B) lays down the procedure for a party to apply for the disqualification and withdrawal of a Judge or Judges for lack of impartiality. It is obvious that the Defence is abundantly aware of this Rule because it has already made use of it in this case.<sup>50</sup> For this reason, the Trial Chamber does not understand the Defence to be applying for

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<sup>44</sup> Defence Final Brief (confidential), pp. 2-3, 7-8. *See* II *supra*, “General considerations regarding the evaluation of evidence”.

<sup>45</sup> Defence Final Brief (confidential), pp. 3-10.

<sup>46</sup> Defence Final Brief (confidential), p. 3.

<sup>47</sup> Defence Final Brief (confidential), pp. 3- 4.

<sup>48</sup> Defence Final Brief (confidential), p. 4.

<sup>49</sup> Defence Final Brief (confidential), pp. 11-21.

<sup>50</sup> *See* Joint Motion to Disqualify the Trial Chamber Hearing the Brđanin-Talić Trial, filed jointly on 25 April 2002 by the Defence for the Accused and the Defence of his then co-Accused Momir Talić pursuant to Rule 15(B) of the Rules; *see* also Decision on Joint Motion to Disqualify the Trial Chamber Hearing the Brđanin-Talić Trial, 3 May 2002;

the disqualification of the Judges of the Trial Chamber pursuant to Rule 15(B). The Defence is instead “challeng[ing]” the Trial Chamber “to decide this case upon the law and facts and to dispel this ubiquitous concern that a Serb cannot get a fair trial”.<sup>51</sup>

41. The source of the supposed bias against Serbs alleged by the Defence is not clear. The Defence argues that, in this case as in other cases before the Tribunal, the majority of the atrocities are attributed to Bosnian Serbs, who, in addition, face public opprobrium, and that these factors may result in the Trial Chamber developing an unintentional bias against Serbs.<sup>52</sup>

42. The Defence submission is misconceived and unfortunate for a number of reasons. In the first place, the Trial Chamber does not need to be “challenged” or reminded to decide the case against the Accused on the basis of the law as it stood at the time relevant to the Indictment and on the evidence before it. It is its duty to do so, and the Judges of the Trial Chamber, being professional judges, are constantly aware of this duty. Article 21(2) of the Statute guarantees the Accused a “fair and public hearing”, an integral component of which is the fundamental right of the accused to be tried before an independent and impartial tribunal. The Statute also requires judges to be “persons of high moral character, impartiality and integrity”.<sup>53</sup> Before taking up their duties, each judge must make a solemn declaration committing himself or herself to performing those duties “honourably, faithfully, impartially and conscientiously”.<sup>54</sup> It is the duty of the Trial Chamber to decide what, if any, is the individual criminal responsibility to be ascribed to an accused, irrespective of nationality, religion, ethnicity or other grounds. As stated in the jurisprudence of this Tribunal,

Judges in every domestic system of justice need to put aside any identification with a particular group based on religion, ethnicity, gender or other traits, characteristics or grounds. Similarly, they must put aside any of these bases of identification in relation to any accused who appear before them. Their ability to do so, and to consider nothing but the evidence presented to them in deciding on an individual’s guilt, constitute a touchstone of their role as judges. So it is at the International Tribunal.<sup>55</sup>

43. The Tribunal functions on the basis of a presumption of impartiality of any judge sitting on the bench.<sup>56</sup> Whilst the Accused is entitled to challenge this impartiality, the Defence has not advanced any grounds that would substantiate or justify such challenge, while at the same time it

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Decision on Application for Leave to Appeal Against Judge Schomburg’s Decision on the Disqualification of a Judge Dated 3 May 2002, 20 June 2002, wherein a bench of the Appeals Chamber rejected Talić’s application for leave to appeal.

<sup>51</sup> Defence Final Brief (confidential), p. 4.

<sup>52</sup> *Ibid.*

<sup>53</sup> Article 13 of the Statute.

<sup>54</sup> Rule 14 (A) of the Rules.

<sup>55</sup> *Prosecutor v. Šešelj*, Case No.IT-03-67-PT, Decision on Motion for Disqualification, 10 June 2003 (“Šešelj Disqualification Decision”), para. 3.

presents this concern about anti-Serb bias as a ubiquitous one. For this reason, the Trial Chamber finds that the Defence submission is groundless, because it amounts to nothing else but an uncalled-for repetition of the absolute unsupported suggestion that the Trial Chamber may be biased against the Serbs. The Trial Chamber also considers it to be irresponsible. The Defence overlooks that the Security Council intended the establishment of the Tribunal, *inter alia*, as a means to “contribute to the restoration and maintenance of peace”.<sup>57</sup> As stated by Trial Chamber I,

by holding *individuals* responsible for the crimes committed, it was hoped that a particular ethnic or religious group (or even political organisation) would not be held responsible for such crimes by members of other ethnic or religious groups, and that the guilt of the few would not be shifted to the innocent.<sup>58</sup>

The Trial Chamber firmly upholds this view. The Defence submission is therefore rejected.

### **B. The need to view events from a historical and cultural perspective**

44. The Defence submits that a number of considerations of this nature should inform the Trial Chamber’s deliberations, notably, the political culture in the former Yugoslavia, the danger that the evidence given at trial may have been the object of “partisan distortion to further one’s cause or settle a score”, the confusion that in many respects shrouded the events of 1990-1992 so that “things [were] not always what they appear”, the fact that weapons defined power and authority, calling into question the very existence of accountable government, and the impact on the events of 1990 to 1992 of “historical events and the individual and collective memories of World War II” and of similar instances of ethnic cleansing elsewhere in the territory of the former Yugoslavia.<sup>59</sup>

45. This submission may be addressed in brief. Under normal circumstances, the fact that the Judges of the Trial Chamber were not intimately familiar with the events of 1990 to 1992 in the territory of the former Yugoslavia, might create a situation in which the submission of the Defence would have carried some weight. In this case, however, the Trial Chamber has been greatly assisted in assessing the evidence before it, with due regard for the relevance of the particularities of the time and place of the events alleged, by the reports and testimonies of the expert witnesses Robert Donia and Paul Shoup, appearing for the Prosecution and the Defence respectively, and by the

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<sup>56</sup> Decision on Joint Motion to Disqualify the Trial Chamber Hearing the Brđanin-Talić Trial, 3 May 2002, para. 26; *see also* *Čelebići* Appeal Judgement, para. 697.

<sup>57</sup> UN Security Council Resolution 808, S/RES/808 (22 February 1993).

<sup>58</sup> *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-S, Sentencing Judgement, 2 December 2003 (“*Momir Nikolić* Sentencing Judgement”), para. 60. *See also* Provisional *Verbatim* Record of the 3217<sup>th</sup> Meeting of the Security Council, 25 May 1993, Statement by the Representative of the United States: “Truth is the cornerstone of the rule of law, and it will point towards individuals, not peoples, as perpetrators of war crimes. And it is only the truth that can cleanse the ethnic and religious hatreds and begin the healing process”.

<sup>59</sup> Defence Final Brief (confidential), pp. 4-9. The Defence includes the unreliability of newspaper articles within this enumeration. As stated earlier, however, the Trial Chamber has dealt with this submission: *see* II *supra*, “General considerations regarding the evaluation of evidence”.

thorough coverage of the relevant events by both the Prosecution and the Defence. In addition, the site visit to several locations charged in the Indictment has enabled the Trial Chamber to assess better the terrain, locations, distances and other topological aspects. The remaining Defence submissions on this ground quite simply amount to submissions on the sufficiency of the evidence. The Trial Chamber will therefore not entertain them here since they are properly addressed in the factual findings elsewhere in this judgement. The Defence submissions on this ground are therefore rejected.

### **C. Challenge to the Indictment**

46. The Defence submits that the Prosecution's repeated failure to comply with the decisions on the form of the Indictment in this case and with the pleading practice of the Tribunal must be fatal to its attempt to secure a conviction against the Accused based upon responsibility pursuant to Article 7(1) and 7(3).<sup>60</sup> According to the Defence, as a result of the defects in the form of the Indictment, all allegations on these bases must be dismissed because the Prosecution has failed to inform the Accused promptly and in detail of the nature and cause of the charge against him.<sup>61</sup>

47. The Prosecution responds that "[t]he issue of the sufficiency of the Indictment has been fully and finally litigated between the [p]arties", and that "[u]nder the principles of *res judicata* and the doctrine of laches, the [Trial] Chamber should not revisit this issue".<sup>62</sup> In addition, it submits that "[b]y any standard, the Indictment is legally sound".<sup>63</sup>

48. Defects in the form of the Indictment are brought to the Trial Chamber's attention by way of preliminary motions. These are governed by Rule 72, according to which they shall be disposed of "before the commencement of the opening statements provided for in Rule 84".<sup>64</sup> As stated by the Appeals Chamber, "[n]ormally, an allegation pertaining to the vagueness of an indictment is dealt with at the pre-trial stage by the Trial Chamber, or, if leave to pursue an interlocutory appeal has been granted, under Rule 72(B)(ii), by the Appeals Chamber".<sup>65</sup> The Defence has failed to put forward any convincing reason why the Trial Chamber should exceptionally deal with alleged defects in the form of the Indictment at this late stage. On the contrary, the Defence was given ample opportunity to raise these during the pre-trial phase, which lasted well over two years.<sup>66</sup> For

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<sup>60</sup> Defence Final Brief (confidential), pp. 11-17.

<sup>61</sup> Defence Final Brief (confidential), pp. 16, 20-21.

<sup>62</sup> Prosecution's Response to Defence Final Brief, 16 April 2004 ("Prosecution's Response") (confidential), paras 1, 5.

<sup>63</sup> Prosecution's Response (confidential), para. 6.

<sup>64</sup> Rule 72(A)(ii) of the Rules.

<sup>65</sup> *Kupreškić* Appeal Judgement, para. 79; see also *Prosecution v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004 ("*Blaškić* Appeal Judgement"), para. 223.

<sup>66</sup> See Annex B, "Procedural background", *infra*.

the sake of illustrating this point, it is worth recounting this aspect of the pre-trial phase of proceedings in some detail.

49. The original Indictment against the Accused and then co-Accused Talić was confirmed on 14 March 1999.<sup>67</sup> On 16 December 1999, the Prosecution filed an Amended Indictment that considerably expanded the range of charges against the two.<sup>68</sup> On 8 February 2000, the Talić Defence filed a motion alleging defects in the form of the Amended Indictment.<sup>69</sup> In its decision on the form of the Amended Indictment, the Trial Chamber recounted some of the general pleading principles of the Tribunal and ordered the Prosecution to file a further amended indictment complying with those pleading principles.<sup>70</sup> At this time, the Defence for the Accused also filed a motion challenging the form of the Amended Indictment.<sup>71</sup> In determining this motion, the Trial Chamber reiterated its order that the Prosecution file a further amended indictment complying with the pleading principles set out in its previous decision. In addition, the Prosecution was ordered to plead, with greater specificity, the precise nature of the individual criminal responsibility of the two accused.<sup>72</sup> The Prosecution's Further Amended Indictment was filed on 12 March 2001,<sup>73</sup> to which the Talić Defence again filed an objection.<sup>74</sup> A decision on the form of the Further Amended Indictment was rendered on 26 June 2001.<sup>75</sup> The Prosecution's Third Amended Indictment was

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<sup>67</sup> Indictment, 14 March 1999.

<sup>68</sup> Amended Indictment, 16 December 1999.

<sup>69</sup> Motion for Dismissal of the Indictment, 8 February 2000. However, no decision about the form of the Amended Indictment was forthcoming until February 2001. In the meantime, however, the Pre-trial Judge drew the Prosecution's attention to the "very apparent lack of particularity in the Amended Indictment", and warned it to start work: Status Conference, 17 November 2000, T. 214 *et seq.* The reasons for the delay are explained in the decision itself: Decision on Objections by Momir Talić to the Form of the Amended Indictment, 20 February 2001, paras 4-8.

<sup>70</sup> *Ibid.*, para. 55.

<sup>71</sup> Motion Objecting to the Form of the Amended Indictment, 5 February 2001. On 31 August 1999, the Defence for the Accused had filed a pleading entitled "Motion to Dismiss Indictment", which addressed the sufficiency of the supporting material submitted for confirmation of the Indictment against the Accused, and which the Trial Chamber subsequently dismissed. *See* Decision on Motion to Dismiss Indictment, 5 October 1999. The Defence for the Accused filed an interlocutory appeal against that decision: Interlocutory Appeal from Decision on Motion to Dismiss Indictment, 12 October 1999. This was rejected by the Appeals Chamber as improperly filed: Decision on Interlocutory Appeal from Decision on Motion to Dismiss Indictment Filed Under Rule 72, 16 November 1999. In addition, on 2 May 2001, the Defence for the Accused filed a further motion in which it sought the dismissal of the Indictment, but not for alleged defects in its form. Instead, it raised the issue of the resources at its disposal and complained about inequality of arms: Motion to Dismiss the Indictment, 2 May 2001. This motion was dismissed by the pre-trial Judge: Decision on Second Motion by Radoslav Brdanin to Dismiss the Indictment, 16 May 2001.

<sup>72</sup> Decision on Objections by Radoslav Brdanin to the Form of the Amended Indictment, 23 February 2001, para. 18.

<sup>73</sup> Further Amended Indictment, 12 March 2001.

<sup>74</sup> Preliminary Motion Based on the Defects in the Form of the Indictment Dated 12 March 2001, 5 April 2001. At the Status Conference held on 18 May 2001, the Pre-trial Judge foreshadowed his view that the Prosecution had failed to properly plead the intent requirement for a "common purpose" crime and advised the Prosecution to file an additional response to the Talić Defence motion dealing with this issue: Status Conference, 18 May 2001, T.313-316. The Prosecution subsequently filed a supplementary response together with a request for leave to amend the Further Amended Indictment in relation to the "common purpose" allegation: Prosecution's Supplementary Response to "Preliminary Motion Based on the Defects in the Form of the Indictment Dated 12 March 2001" Filed by the Accused Momir Talić and Request for Leave to Amend the Further Amended Indictment, 22 May 2001.

<sup>75</sup> Decision on the Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001. The Trial Chamber granted the Prosecution leave to make the amendments it had requested, and, in addition, the Prosecution was ordered to make a series of other changes, some of which were directed towards further clarifying the joint criminal

filed on 16 July 2001.<sup>76</sup> Once again, the Talić Defence filed an objection to the form of the indictment and the Trial Chamber issued a corresponding decision on 21 September 2001, where it ordered the Prosecution to amend this indictment further.<sup>77</sup> The Prosecution's Fourth Amended Indictment was filed on 5 October 2001.<sup>78</sup> The Talić Defence filed yet another objection to the form of this indictment,<sup>79</sup> which on this occasion was rejected in the Trial Chamber's decision of 23 November 2001.<sup>80</sup> The Prosecution complied with the pre-trial Judge's order that the Prosecution file a corrected version of the Fourth Amended Indictment on 10 December 2001.<sup>81</sup>

50. The Talić Defence were unsuccessful in seeking leave to appeal the Trial Chamber's decision of 23 November 2001 and sought to raise again the issue of defects in the form of the Indictment by way of motion.<sup>82</sup> As a result, on 22 January 2002, before the commencement of trial proceedings in this case,<sup>83</sup> the Trial Chamber issued a decision stating, *inter alia*, that it did not consider it appropriate to revisit the adequacy of the Fourth Amended Indictment, since in its view all the challenges made to the Fourth Amended Indictment had been finally determined in the Trial Chamber's Decision of 23 November 2001.<sup>84</sup> Thus, on 22 January 2002, the Trial Chamber held as follows:

[The Fourth Amended Indictment] stands and Talić's argument that it has not yet been finalised cannot be sustained.

It is true that the [P]rosecution has been required to make numerous amendments to the indictment in this case so as to clarify the nature of its case against each of the accused and to ensure that the [i]ndictment conforms with the pleading practices of this [Trial] Chamber and the Tribunal more generally. Far from infringing the rights of the accused, the Trial Chamber has rigorously upheld his right to know and understand the case that he must meet at trial.

The second argument raised by Talić is that the [i]ndictment is vague. As rightly pointed out in the Prosecution Response, Talić's complaints about the vagueness of the [i]ndictment have already

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enterprise pleaded in the Indictment. This decision was modified on 2 July 2001: Decision Varying Decision on Form of Further Amended Indictment, 2 July 2001.

<sup>76</sup> Third Amended Indictment, 16 July 2001.

<sup>77</sup> Preliminary Motion Based on the Defects in the Form of the Indictment of 16 July 2001, 30 July 2001; Decision on Form of Third Amended Indictment, 21 September 2001.

<sup>78</sup> Prosecutor's Fourth Amended Indictment and Request for Leave to Amend, 5 October 2001. The Prosecution had, in fact, already made the amendments in the Fourth Amended Indictment and sought retrospective permission from the Trial Chamber for these.

<sup>79</sup> Preliminary Motion Based on the Defects in the Form of the Indictment of 5 October 2001, 22 October 2001. Indictment related issues were the subject of lengthy discussions during the Status Conference held on 6 September 2001.

<sup>80</sup> Decision on Form of Fourth Amended Indictment, 23 November 2001. The Prosecution was permitted to retain some of the amendments that were the subject of its motion for leave to amend, but others were struck from the Fourth Amended Indictment. The Trial Chamber refused the Prosecution leave to amend the Indictment with respect to Stara Gradiška.

<sup>81</sup> Order (regarding the form of Fourth Amended Indictment), 7 December 2001; Corrected Version of Fourth Amended Indictment, 10 December 2001.

<sup>82</sup> Request for Dismissal, 29 November 2001.

<sup>83</sup> Trial proceedings began on 23 January 2002.

<sup>84</sup> Decision on "Request for Dismissal" filed by Momir Talić on 29 November 2001, 22 January 2002, para. 11; *see also* Decision on Form of Fourth Amended Indictment, 23 November 2001.

been extensively litigated before the Trial Chamber. The Trial Chamber will not re-open those debates.<sup>85</sup>

51. This position continues to apply at present.<sup>86</sup> The Defence for the Accused was given the opportunity to challenge the form of the indictment during the pre-trial phase of the case, and in fact did so on one occasion. By way of contrast, the Talić Defence made extensive use of this opportunity. It is accordingly not now open to the Defence to allege defects in the form of the Indictment. If, as now suggested, the Defence remained dissatisfied with the Indictment despite the Trial Chamber's Decisions in this regard as a result of the manner in which the Prosecution implemented the Trial Chamber's instructions, it should have pursued the matter when it was open to it to do so, *i.e.*, at the pre-trial stage.<sup>87</sup>

52. Additionally, even if the Trial Chamber were to entertain the Defence submissions at this late stage, the Trial Chamber is satisfied that the Defence challenges to the form of the Indictment are unjustified. The Trial Chamber is embarking on this exercise solely because of its concern to ensure in any case that the Accused has not been tried or found guilty on the basis of a vague indictment. In the first place, the alleged defects of form that the Defence now seeks to raise resemble to a very large extent those that it raised earlier, in the only instance when it challenged the form of the Indictment. Then, as now, the Defence was challenging the specificity of pleading in the Indictment of the Accused's alleged responsibility pursuant to Article 7(1) and Article 7(3).<sup>88</sup> As illustrated above, these challenges were addressed, fully litigated and finally decided upon by the Trial Chamber at the pre-trial stage of proceedings.<sup>89</sup> In the second place, the Trial Chamber finds that the material facts regarding the alleged responsibility of the Accused pursuant to Article 7(1) and 7(3) have been set out throughout the Indictment with enough detail to have informed the Accused of the nature and cause of the charges against him. The material facts are properly pleaded

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<sup>85</sup> Decision on "Request for Dismissal" filed by Momir Talić on 29 November 2001, 22 January 2002, paras 7-8.

<sup>86</sup> In the meantime, during the trial phase, the Indictment was amended twice more, but those amendments do not concern the issue at hand. *See* Annex B, "Procedural background" *infra*.

<sup>87</sup> In addition, the Defence were on notice as early as February 2001 that the Trial Chamber held the view that "[i]t is *not* the function of a Trial Chamber to check for itself whether the form of an indictment complies with the pleading principles which have been laid down. It is, of course, entitled *proprio motu* to raise issues as to the form of an indictment but, unless it does so, it waits until a *specific* complaint is made by the accused before ruling upon the compliance with the indictment with those pleading principles. This is fundamental to the primarily adversarial system adopted for the Tribunal by its Statute": Decision on Objections by Momir Talić to the Form of the Amended Indictment, 20 Feb 2001, para. 23 (footnotes omitted).

<sup>88</sup> Motion Objecting to the Form of the Amended Indictment, 5 February 2001, paras 3-13. Reply to Prosecution's Response to "Motion Objecting to the Form of the Amended Indictment" filed by the Accused Brđanin on 5 February 2001, 12 February 2001.

<sup>89</sup> *Inter alia*, Decision on Objections by Radoslav Brđanin to the Form of the Amended Indictment, 23 February 2001, para. 18, where the Prosecution was ordered to file an amended indictment which would comply with the pleading principles previously announced by the Trial Chamber and plead, as material facts, the precise role of both accused and the nature of the alleged individual criminal responsibility of both. Furthermore, many of the challenges subsequently mounted by Talić were successful and lead to the gradual refinement and eventual finalisation of the Indictment with respect to the two accused.

in the Indictment. The sufficiency of the evidence is addressed in the factual findings elsewhere in this judgement. The Defence submission is therefore rejected.



## IV. GENERAL OVERVIEW

### A. Background to the armed conflict in Bosnia and Herzegovina

53. Following the occupation of the Kingdom of Yugoslavia in 1941 by the German Nazi regime, the independent State of Croatia, which included BiH, was established. The State was governed by a group of extreme Croat nationalists, known as Ustaša. The Ustaša regime was particularly brutal in the Bosnian Krajina, where tens of thousands of Serbs, Jews and Roma were systematically killed in extermination camps because of their religion and ethnicity.<sup>90</sup> A significant number of members of the Bosnian Muslim community collaborated with the Ustaša and the Germans during the war.<sup>91</sup>

54. After the Second World War, the People's Republic of Bosnia and Herzegovina, later renamed Socialist Republic of Bosnia and Herzegovina ("SRBH")<sup>92</sup> was created as one of the six republics in the Socialist Federal Republic of Yugoslavia ("SFRY"), the successor state of the Kingdom of Yugoslavia. The SRBH was the only republic without a single majority nationality. It was populated primarily by Bosnian Serbs, Bosnian Muslims and Bosnian Croats.<sup>93</sup> While there were differences in their cultural heritage and religious tradition, the three groups had much in common and peacefully coexisted for most of the time.<sup>94</sup>

55. Marshal Tito's death in 1980 and the disintegration of the ruling League of Communists of Yugoslavia in the first months of 1990 resulted in a power vacuum and the emergence of nationalist parties throughout the country.<sup>95</sup> The Party for Democratic Action ("SDA"), established by Bosnian Muslims, was formed in early spring 1990 as the first of the three main nationalist parties of the SRBH.<sup>96</sup> The Croatian Democratic Union ("HDZ") and the Serbian Democratic Party ("SDS") were

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<sup>90</sup> Robert Donia, T. 832-833, 1203-1204; ex. P53, "Expert Report of Robert Donia", pp. 21-23; Jovica Radojko, T. 20069; ex. DB376, "Expert Report of Paul Shoup", pp. 10-11.

<sup>91</sup> Ex. P53, "Donia Report", p. 21.

<sup>92</sup> While the abbreviation BiH refers to a territorial unit, the acronym SRBH refers to a political unit.

<sup>93</sup> In 1953, the ethnic composition of BiH was as follows: Muslims constituted 31.3% of the population, Serbs constituted 44.4% of the population and Croats constituted 23.0% of the population. According to the 1991 census, during which it was possible to declare "Yugoslav" as an ethnicity, the ethnic composition of BiH has changed to some extent: Muslims constituted 43.7% of the population, Serbs constituted 31.4% of the population and Croats constituted 17.3% of the population of BiH: Ex. DB1, "The War in Bosnia and Herzegovina", book co-written by Paul Shoup, p. 27. The Trial Chamber recognises that the terms "ethnic identity" or "ethnicity" may not describe the distinguishing features of Bosnian Muslims, Bosnian Croats and Bosnian Serbs in their entirety, since other factors, such as religion and nationality, are of importance. Nevertheless, for the sake of brevity and following the trend of other Trial Chambers of the Tribunal, this Trial Chamber has opted for this term for the purposes of this judgement.

<sup>94</sup> Robert Donia, T. 824-827, 1207, 1313; ex. P53, "Expert Report of Robert Donia", pp. 23-24; BT-19, T. 20696 (closed session).

<sup>95</sup> Robert Donia, T. 822-823; ex. P53, "Expert Report of Robert Donia", pp. 25-26.

<sup>96</sup> The Constitution of SRBH was amended in 1989 and 1990 to allow for the holding of multi-party elections. In the early months of 1990, the SRBH Parliament approved the formation of political parties, but prohibited the organisation of parties on the basis of nationality or religion. However, in June 1990, this restriction was deemed unconstitutional by the SRBH Constitutional Court: Robert Donia, T. 839-840, 1215-1216; Patrick Treanor, T. 20881-20890.

formed later that spring.<sup>97</sup> These three parties agreed not to politically attack each other and to join their efforts to exclude the League of Communists from power.<sup>98</sup>

56. In November 1990, the first multi-party elections were held in BiH, whereby the people voted for the Assembly of the SRBH, the Presidency of the SRBH and the municipal and local Assemblies in all the municipalities in BiH.<sup>99</sup> The SDA, SDS and HDZ collectively won an overwhelming majority of the votes.<sup>100</sup> The vote accurately portrayed the polarisation amongst the ethnic communities taking place in BiH at the time.<sup>101</sup> Pursuant to a power sharing agreement reached prior to the elections, the SDA, having obtained a majority at the republican level, was allowed to designate the President of the seven person Presidency. Alija Izetbegović was appointed to this position. The SDS designated the President of the Assembly of the SRBH, Momčilo Krajišnik, and the HDZ designated the President of the Executive Council, *i.e.*, the Prime Minister, Jure Pelivan.<sup>102</sup>

57. Cooperation among the three nationalist parties was initially good, even enthusiastic, in the euphoria that followed the defeat of the League of Communists. However, the break-up of the SFRY commencing in 1991 resulted in the deterioration of both the situation in BiH in general and the relations between the ethnicities in particular.<sup>103</sup> On 25 June 1991, the Parliaments of Slovenia and Croatia respectively issued declarations of independence, which led to armed conflicts in both these break-away republics. In Slovenia, the JNA withdrew after a 10-day war. In Croatia, the war lasted longer. The Croatian army was opposed by the JNA and by local paramilitary groups organised by Croatian Serbs and Serbs from the Republic of Serbia.<sup>104</sup> On 2 January 1992, the hostilities in Croatia came to a provisional halt with a ceasefire agreement between the JNA and Croatia. UN forces (United Nations Protection Force – “UNPROFOR”) were deployed to maintain

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<sup>97</sup> Robert Donia, T. 841-842, 1216; Patrick Treanor, T. 20881-20890. As to the structure of the SDS, it had a Main Board and Municipal Boards that responded to the Main Board. In mid-1991, a regional structure was set up, which lasted until September 1992: Predrag Radić, T. 22114.

<sup>98</sup> Robert Donia, T. 842; ex. P53, “Expert Report of Robert Donia”, p. 38.

<sup>99</sup> Patrick Treanor, T. 18701-18703.

<sup>100</sup> Robert Donia, T. 845, 1222; ex. P35, “Expert Report of Robert Donia”, p. 40. In the Chamber of Citizens of the SRBH, out of the 130 seats, the SDA obtained 43 seats, the SDS 34 seats and the HDZ 21 seats. The remaining 32 seats went to the SK-SDP (11), the SRSJ (11), the SK-SDP/DSS (4), the DSS (1), the MBO (2) the SRS/DP-Mostar (1) and the SSO-DS/EKO (2). In the Chamber of Municipalities of the SRBH, out of the 110 seats, the SDA obtained 43 seats, the SDS obtained 38 seats and the HDZ obtained 23 seats. The remaining 6 seats went to the SK-SDP (3), the SRSJ (1), the SK-SDP/DSS (1) and the SPO (1): ex. DB1, “The War in Bosnia and Herzegovina”, book co-written by Paul Shoup, p. 54.

<sup>101</sup> Ex. DB376, “Expert Report of Paul Shoup”, p. 15.

<sup>102</sup> Robert Donia, T. 846, 1222-1223; ex. P53, “Expert Report of Robert Donia”, pp. 40-41.

<sup>103</sup> BT-19, T. 20696 (closed session); ex. DB376, “Expert Report of Robert Donia”, p. 15.

<sup>104</sup> Robert Donia, T. 835.

peace.<sup>105</sup> On 15 January 1992, the European Community recognised the new states of Slovenia and Croatia.<sup>106</sup>

58. The war and the secession of Slovenia and in particular of Croatia had a significant impact on the socio-political situation in BiH.<sup>107</sup> From late summer 1991, many military aged men from BiH were mobilised to join the JNA in order to fight in Croatia. A large number of Bosnian Serbs responded, but Bosnian Muslims and Bosnian Croats, supported by their respective leaders, generally did not.<sup>108</sup> This led to increased tension between the ethnicities, especially in the Bosnian Krajina region bordering Croatia.<sup>109</sup>

59. As from the autumn of 1991, another source of anxiety and stress for the people in the Bosnian Krajina was the demeanour of the soldiers returning from the battlefields in Croatia. These soldiers often behaved in a threatening manner towards Bosnian Muslims and Bosnian Croats. They would insult people and fire their guns at houses, shops or religious buildings.<sup>110</sup> In some municipalities, shops or private homes belonging to Bosnian Muslims or Bosnian Croats were blown up or set on fire.<sup>111</sup> There were several incidences in which returning Bosnian Serb soldiers killed Bosnian Muslims.<sup>112</sup>

60. In addition, the influx of Serb refugees from Croatia in large numbers caused housing problems in the Bosnian Krajina. Their stories about the war in Croatia and how they were dismissed from their jobs and expelled from their homes contributed to the build-up of fear amongst Bosnian Serbs and to the rise of tensions between the ethnic communities.<sup>113</sup> Furthermore, the conflict in Slovenia and Croatia had a disastrous impact on the economy of BiH. The flow of goods

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<sup>105</sup> Robert Donia, T. 837.

<sup>106</sup> Robert Donia, T. 1142-1143.

<sup>107</sup> BT-19, T. 20696 (closed session); Asim Egrlić, T. 10524-10525; Vahid Mujkanović, ex. P1980, 92*bis* statement, 2299903; Naum Golić, T. 23468; Mirko Dejanović, T. 23148-23149.

<sup>108</sup> Indeed, Alija Izetbegović encouraged the Bosnian Muslims not to respond to mobilisation calls: Idriz Merdžanić, ex. P1148, T. 7719; Mirsad Mujadžić, T. 13341-13343; Muharem Murselović, ex. P1542, T. 2685-2686, 2830-2833; Asim Egrlić, T. 10525; ex. P858, "Announcement" by the Ključ SDA; BT-90, T. 17039-17040 (closed session); BT-21, T. 8230-8232 (closed session); BT-30, ex. P1541, T. 5730 (under seal); BW-1, T. 23309-23310 (closed session).

<sup>109</sup> BT-13, T. 4583 (closed session); Amir Džonlić, T. 2308-2309; BT-7, T. 3104-3105 (closed session); Mirsad Mujadžić, T. 3773; Atif Džafić, ex. P1123, 92*bis* statement, 2004672; Husein Čajić, T. 8978; Muhamed Filipović, T. 9363; Asim Egrlić, T. 10525; ex. P1138, "Minutes" of Ključ SDS meeting dated 20 September 1991; BT-79, T. 11368 (closed session); Vahid Mujkanović, ex. P1980, 92*bis* statement, 2299903; BT-90, T. 17040-17041 (closed session); BT-23, T. 6409, 6438; BT-21, T. 8230-8232 (closed session), Faik Bišćević, T. 7014-7015; Jovica Radojko, T. 20039-20040; Adil Osmanović, T. 16546.

<sup>110</sup> Muharem Krzić, T. 1439-1440; BT-7, T. 3041-3042 (closed session); BT-22, T. 4407; Jusuf Arifagić, ex. P554, T. 7056-7057; Atif Džafić, ex. P1123, 92*bis* statement, 2004677; BT-26, T. 9101 (closed session); Muhamed Filipović, T. 9362; Samir Dedić, T. 10455-10456; Asim Egrlić, T. 10525; BT-23, T. 6409; Grgo Stojić, T. 6766; Faik Bišćević, T. 7014-7017, 7113.

<sup>111</sup> Adil Osmanović, T. 16555; Atif Džafić, ex. P1123, 92*bis* statement, 2004677; Naum Golić, T. 23490-23495.

<sup>112</sup> Muhamed Filipović, T. 9400-9401; Atif Džafić, ex. P1123, 92*bis* statement, 2004677-2004678; BT-26, T. 9112 (closed session).

between the republics was interrupted and the whole of the SFRY was affected by hyperinflation.<sup>114</sup>

61. In this atmosphere of tension the three main nationalist parties, having separate national agendas with conflicting interests, failed to reconcile their differences and started moving in opposite directions. Most importantly, they disagreed on the question of the constitutional status of BiH. While the SDA and the HDZ promoted the secession of the SRBH from the SFRY, the SDS strongly advocated the preservation of Yugoslavia as a state, in order to ensure that the Serbs would continue to live together in a single state, and would not become a minority in an independent Bosnian state.<sup>115</sup> On 15 October 1991, SDS President Radovan Karadžić made an impassioned speech before the Assembly of the SRBH in Sarajevo, indicating the possibility that Bosnian Muslims could disappear as a group if they declared the independence of the SRBH from the SFRY. SDA President Alija Izetbegović responded that Karadžić's threatening message and its method of presentation illustrated why the SRBH might be forced to separate from the SFRY.<sup>116</sup> After the Republican Assembly of the SRBH had adjourned for the day and the SDS delegation had departed, HDZ and SDA delegates reconvened without them and passed a "Declaration of Sovereignty", a measure that moved the SRBH a step closer to independence.<sup>117</sup>

62. On 24 October 1991, the SDS Deputies in the Assembly of the SRBH, in a meeting of their club, established a separate Assembly of the Serbian People in Bosnia and Herzegovina ("SerBiH Assembly") and elected Momčilo Krajišnik as its President.<sup>118</sup> The SerBiH Assembly authorised a plebiscite of the Serbian people of BiH on the question of whether or not they wanted BiH to

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<sup>113</sup> Muharem Krzić, T. 1572; Zijahudin Smailagić, T. 2103, 2140; BT-20, T. 5292-5295 (closed session); BT-13, T. 4744 (closed session); BT-42, ex. P564, T. 2033-2035 (under seal); BT-79, T. 11351-11352 (closed session); BT-21, T. 8649 (closed session); BT-92, T. 19786-19787, 19881 (private session); BT-19, T. 20707, 20754 (closed session).

<sup>114</sup> Mevludin Sejmenović, T. 12236-12237; Paddy Ashdown, T. 12387-12389; Muharem Murselović, T. 12625-12626; BT-96, T. 17667-17671 (closed session); BT-92, T. 19881-19884 (closed session); Jovica Radojko, T. 20230-20232; BT-7, T. 2975-2976 (closed session); Mirko Dejanović, T. 23144-23145; BT-19, T. 20719, 20745 (closed session).

<sup>115</sup> BT-79, T. 11441, 11449, 11659 (closed session); Mirsad Mujadžić, ex. P1601, T. 3629; BT-104, T. 18634 (private session); BT-19, T. 20601-20604, 20696-20703 (closed session). See also ex. DB376, "Expert Report of Paul Shoup", p. 12: "The Serbs of Bosanska Krajina were, of necessity, deeply attached to Yugoslavia, given their ethnically isolated position in Bosnia. They were recruited into the ranks of the Partisan movement for this reason. For this reason as well, they were one of the centres of resistance to the formation of an independent Bosnian state in 1991 and 1992 when Yugoslavia disintegrated".

<sup>116</sup> Ex. P2656.1, "Extract of transcript of session of the SRBH Assembly", dated 15 October 1992, Radovan Karadžić addressing Alija Izetbegović: "This is the road that you want Bosnia and Herzegovina to take, the same highway of hell and suffering that Slovenia and Croatia went through. Don't think you won't take Bosnia and Herzegovina to hell and Muslim people in possible extinction. Because, Muslim people will not be able to defend itself if it comes to war here"; ex. P53, "Expert Report of Robert Donia", p. 59; Robert Donia, T. 1113-1114; Patrick Treanor, T. 18709, 18741; ex. DB376, "Expert Report of Paul Shoup", p. 18.

<sup>117</sup> Ex. P53, "Expert Report of Robert Donia", p. 59.

<sup>118</sup> Ex. P21, "Stenograph", taken at the constituting session of the Assembly of the Serbian People of BiH on 24 October 1991; Robert Donia, T. 1114-1117; Patrick Treanor, T. 18709, 18741; ex. 2351, "Expert Report of Patrick Treanor", p. 96.

remain within Yugoslavia. On 9 and 10 December 1991, the Bosnian Serbs voted overwhelmingly to remain a part of the SFRY.<sup>119</sup>

63. In early 1992, the SDA increased the pressure to secure independence of the SRBH from the SFRY.<sup>120</sup> A referendum on the question of independence was held on 29 February and 1 March 1992. It was largely boycotted by the Bosnian Serbs and yielded an overwhelming majority of votes in favour of the independence of BiH.<sup>121</sup> In view of the result of the referendum, on 6 April 1992, the European Community recognised BiH as an independent state. Recognition by the US followed on 7 April 1992.<sup>122</sup>

64. The referendum and subsequent recognition by the international community of BiH as an independent state increased the tension between Bosnian Serbs on the one hand and Bosnian Muslims and Bosnian Croats on the other hand. The armed conflict in BiH broke out shortly after.<sup>123</sup>

### **B. The political agenda of the Bosnian Serb leadership**

65. During the second half of 1991, it already appeared increasingly unlikely that the SRBH would remain within the SFRY. The Trial Chamber is satisfied beyond reasonable doubt that during this period, the Bosnian Serb leadership, including the members of the Main Board of the SDS and other members of the SDS, as well as Bosnian Serb representatives of the armed forces, formed a

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<sup>119</sup> Ex. P1817, "Radio Bosanski Petrovac Broadcast"; Robert Donia, T. 1121-1122; Muharem Krzić, T. 1754-1755. Non-Serbs were allowed to vote, but they did so on separate coloured ballots that were counted separately. Very few Croats and Muslims did vote: Robert Donia, T. 1118-1121.

<sup>120</sup> On 15 January 1992, the European Community's Badinter Commission recommended that a referendum be held on the question of independence of the SRBH: Robert Donia, T. 1143, 1227-1228; Patrick Treanor, T. 20962-20965; ex. DB161, "Opinion on Recognition". On 17 December 1991, the foreign ministers of the European Community approved the procedure for allowing the SFRY's republics to apply for independence, and created a commission to assess any applications received. The Badinter Advisory Commission to the European Community thereafter invited applications from these republics in order to evaluate their applications based on adherence to certain guidelines such as the existing legal provisions in place for the respect of individual and minority rights: ex. P53, "Expert Report of Robert Donia", p. 62. The idea of a referendum was energetically opposed by the SDS, which called all Serbs to boycott the referendum, while the SDA and the HDZ leaders urged a vote in favour of Bosnian independence: Robert Donia, T. 1237-1239; ex. P53, "Expert Report of Robert Donia", p. 62; Muharem Krzić, T. 1754; BT-9, T. 3664-3665 (closed session); Patrick Treanor, T. 20920-20924; BT-19, T. 20607 (closed session); Mirko Dejanović, T. 23220. The SDS favoured the 'Cutileiro Plan', which provided for the cantonisation of the SRBH: Robert Donia, T. 1241-1242; ex. DB1, "The War in Bosnia and Herzegovina", book co-written by Paul Shoup, pp. 111, 113; ex. P53, "Expert Report of Robert Donia", p. 70. With respect to the involvement of the international community in the BiH affairs, *see* ex. DB376, "Expert Report of Paul Shoup", p. 19.

<sup>121</sup> Robert Donia, T. 1154; Patrick Treanor, T. 20920-20924; Muharem Krzić, T. 1447.

<sup>122</sup> Robert Donia, T. 1155; ex. P53, "Expert Report by Robert Donia", p. 70; ex. DB1, "The War in Bosnia-Herzegovina", book co-written by Paul Shoup, pp. 94-98. BiH was admitted into the United Nations on 22 May 1992: *see* UN General Assembly Resolution A/RES/46/237 of 22 May 1992; Mirsad Mujadžić, ex. P1601, T. 3626.

<sup>123</sup> Adil Draganović, T. 4897; BT-19, T. 20600-20601 (closed session); Zijahudin Smailagić, T. 1947-1948; Robert Donia, T. 1135-1137. "On 6 April the Serbs began shelling Sarajevo. On April 7 and 8, following the international recognition of Bosnia-Herzegovina, Serb forces crossed the Drina from Serbia proper and lay siege to the Muslim cities of Zvornik, Višegrad, and Foča. By mid-April all of Bosnia was engulfed in war": ex. DB1, "The War in Bosnia and Herzegovina", book co-written by Paul Shoup, p. 129.

plan to link Serb-populated areas in BiH together, to gain control over these areas and to create a separate Bosnian Serb state, from which most non-Serbs would be permanently removed (“Strategic Plan”). The Bosnian Serb leadership knew that the Strategic Plan could only be implemented by the use of force and fear.

66. On 15 October 1991, the SDS Party Council discussed strategies on how to set up a Serbian government, which included establishing parallel government bodies, the regionalisation of BiH and organising militarily.<sup>124</sup>

67. During the first session of the SerBiH Assembly, held on 24 October 1991, Radovan Karadžić made it clear that the Bosnian Serbs were prepared to use force and fear to achieve their ends if they were otherwise unsuccessful.<sup>125</sup>

68. In a speech given on the occasion of the “Plebiscite of the Serb People” in Sarajevo in November 1991, Radovan Karadžić instructed SDS members representing the municipalities to impose complete Bosnian Serb authority in their respective municipalities, regions and local communities.<sup>126</sup> On 11 December 1991, the SerBiH Assembly voted to recommend the establishment of separate Serbian municipalities. The declared aim of this decision was “to break up the existing municipalities where Serbs are not in a majority”.<sup>127</sup>

69. On 19 December 1991, the Main Board of the SDS issued a document entitled “Instructions for the Organisation and Activity of Organs of the Serbian People in Bosnia and Herzegovina in Extraordinary Circumstances” (“Variant A and B Instructions”). These instructions provided for the conduct of specified activities in all municipalities in which Serbs lived, and essentially mapped out the take-over of power by Bosnian Serbs in municipalities where they constituted a majority of the population (“Variant A”) and where they were in a minority (“Variant B”).<sup>128</sup> The stated purpose of

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<sup>124</sup> Ex. P2464, “Speech” by Radovan Karadžić before the SRBH Assembly on 14 October 1991; ex. P20, “Minutes” of a meeting held on 15 October 1991.

<sup>125</sup> Ex. P21, “Stenograph”, taken at the constituting session of the Assembly of the Serbian People of BiH on 24 October 1991, according to which Radovan Karadžić stated: “War will start here only if someone attempts to force the Serbs to do something they do not want to do”.

<sup>126</sup> Ex. P2466, “Speech” by Radovan Karadžić on 1 November 1991, in which he stated: “I am kindly asking you..., you should seize power completely and energetically... to get ready and establish your authority in your territories; in municipalities, regions, local communities”.

<sup>127</sup> See ex. P24, “Transcript” of the 3<sup>rd</sup> session of the SerBiH Assembly, pp. 13, 25; Robert Donia, T. 1293-1295.

<sup>128</sup> Ex. P25, “Instructions for the Organisation and Activity of Organs of the Serbian People in BiH in extraordinary circumstances” (“Variant A and B Instructions”). The Document was published in full in *Slobodna Bosna* newspaper on 12 March 1992, ex. P122. It was distributed to the SDS municipal boards, Predrag Radić, T. 22167-22168, 22335; Rajko Kalabić, T. 22576-22577, and it was discussed in the municipalities, including those not in the ARK, by the SDS Municipal Boards and/or the Crisis Staffs. The SerBiH Assembly discussed the second phase of implementation of the Variant A and B Instructions: ex. P102, “Conclusions of the SerBiH Assembly regarding the validity of the referendum on the status of BiH”, p. 30; ex. P2470, “Transcript of 6<sup>th</sup> meeting of the SerBiH Assembly”, 26 January 1992. So did the SDS Main Board, where amongst others, Radovan Karadžić took the floor: ex. P2383.14, “Speech” by Radovan Karadžić, 14 February 1992. See also ex. P2351, “Expert Report of Patrick Treanor”, p. 22.

the Variant A and B Instructions was “to carry out the results of the plebiscite at which the Serbian people in Bosnia and Herzegovina decided to live in a single state” and to “increase mobility and readiness for the defence of the interests of the Serbian people”.<sup>129</sup>

70. The Variant A and B Instructions included, amongst others, the directive that the SDS Municipal Boards should form Crisis Staffs of the Serbian people in their respective municipalities.<sup>130</sup> The “tasks, measures and other activities” referred to in the Variant A and B Instructions were to be carried out exclusively at the order of the President of the SDS.<sup>131</sup>

71. In early 1992, while international negotiations to resolve the question of the status of BiH were ongoing, the Bosnian Serb leadership enforced its plan to separate the territories claimed by them from the existing structures of the SRBH and to create a separate Bosnian Serb State. On 9 January 1992, the SerBiH Assembly proclaimed the SerBiH, which on 12 August 1992 was renamed Republika Srpska (“RS”).<sup>132</sup> It was composed of so-called Serbian autonomous regions and districts, which included the ARK.<sup>133</sup>

72. The discussions held in the SerBiH Assembly during the following couple of months illustrated the continued determination of the Bosnian Serb leadership to establish a state in which there would be no place for non-Serbs. In order to achieve this aim, it was foreseen that force and fear would be used to permanently remove non-Serbs from the territory of the proclaimed

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<sup>129</sup> Ex. P25, “Variant A and B Instructions” section I, paras 1-2. The Bosnian Serb leadership was fully aware that the establishment of Bosnian Serb authority, especially in areas where Bosnian Serbs were in a minority, would necessarily entail the use of force and fear: At the 4<sup>th</sup> session of the SerBiH Assembly, held on 21 December 1991, Radovan Karadžić made the following statement: “As rational beings, we know what civil war means; the experience of Croatia tells us exactly what civil war has done to us. Apart from causing the deaths of several hundred thousand people and complete destruction of several hundred towns, a civil war in Bosnia and Herzegovina would also result in massive and rapid population movements; in other words, it would lead to population homogenisation”, ex. P2467. At the same session, Radislav Vukić stated: “If the European Community goes on with its threats to recognise BiH as an independent state, or as part of a future Independent State of Croatia, [...] there will be another Serbian uprising and there will be massive bloodshed in which some nations, that have been subsequently created, will disappear altogether”, ex. P2467. See also ex. DB376, “Expert Report of Paul Shoup”, pp. 6-7: “In Bosnia, the outbreak of violence could only mean, if history was any guide, an inexorable descent into bloodshed and excess”.

<sup>130</sup> Ex. P25, “Variant A and B Instructions”, Instruction 3. The creation of Crisis Staffs in wartime was already envisaged in the law of the SRBH. The extraordinary aspects of the Crisis Staffs provided for by the Variant A and B Instructions was that they were Crisis Staffs of the *Serbian* people, bodies established by a political party to be composed of officials of that party and nominees of that party for various administrative functions: Patrick Treanor, T. 18801.

<sup>131</sup> Ex. P25, “Variant A and B Instructions”, section III.3. See also ex. P2475, “Transcript” of the 14<sup>th</sup> session of the SerBiH Assembly, held on 27 March 1992, during which Radovan Karadžić told the delegates: “The moment you arrive in your municipalities, you must urgently form crisis staffs”. Later in his speech he repeated his exhortation, requesting that they do this “with the full authorisation of the [SerBiH] Assembly”.

<sup>132</sup> For ease of reference, Republika Srpska (proclaimed only on 12 August 1992) will be referred to as SerBiH throughout the judgement.

<sup>133</sup> Ex. P2469, “Transcript of the 5<sup>th</sup> session of the SerBiH Assembly”, held on 9 January 1992; Robert Donia, T. 1143; Patrick Treanor, T. 20960. See also, VLA.1, “The establishment of the ARK”.

SerBiH.<sup>134</sup> The Bosnian Serb leadership expressed this intention also outside SerBiH Assembly meetings.<sup>135</sup>

73. At the end of March 1992, the Bosnian Serb leadership, aiming to implement the Strategic Plan, took the necessary measures to separate the Bosnian Serb police forces from the non-Serb police forces and to put the Bosnian Serb police under the Bosnian Serb civilian command.<sup>136</sup> On 27 March 1992, the SerBiH Assembly established the Serbian Ministry of Internal Affairs (“MUP”).<sup>137</sup> On 16 April 1992, the Ministry of National Defence of the SerBiH issued a decision

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<sup>134</sup> At the 8<sup>th</sup> session of the SerBiH Assembly, held on 25 February 1992, Radovan Karadžić made it clear that BiH “would not be a unitary state but would consist of constituent parts... Croats say: a state community. Muslims would say: a common state, while we say: a community of states... The Serbian people will not rest until they have attained what they had in the time of the Nemanjić’s: their own state”, ex. P33. Vojo Kuprešanić stated: “I am against any kind of joint institution with the Muslims and Croats of BiH. I personally consider them to be our natural enemies. You already know what natural enemies are and that we can never again live together”, ex. P33. See also BT-19, T. 20718 (closed session). At the 10<sup>th</sup> session of the SerBiH Assembly, held on 11 March 1992, Radovan Karadžić made it clear that nothing could succeed if something was done against the will of one ethnic community and stated that such action “could lead only to uncontrolled processes and chaos, the result of which would be a bloody civil war with hundreds of thousands dead and hundreds of destroyed cities... it must be assumed that the forcible and bloody removal of minority peoples from one region to another would be carried out on a large scale in a civil war”, ex. P2473. At the 11<sup>th</sup> session of the SerBiH Assembly, held on 18 March 1992, Radovan Karadžić stated: “Rest assured, there will be no signing before we have achieved what we want, and you all know our strategic plans. Once we have attained an independent Serbian Bosnia and Herzegovina, independent both of the remaining two and of the central organs, the possibility will open to us for establishing state, economic, cultural and any other links that we want. We do not have to say everything yet. The fact is that all the telescopes are now pointed at Yugoslavia, at Bosnia and Herzegovina. The ultimate strategic goal must still remain a secret”, ex. P2474. Momčilo Krajišnik took the floor and stated that: “[i]n this respect, it would be good if we could do one thing for strategic reasons: if we could start implementing what we have agreed upon, the ethnic division on the ground. That we start determining the territory, and once the territory is determined, it remains to be established in additional negotiations, whose authorities are to function and in what way”, ex. P2474. Biljana Plavšić added that: “Regarding what has been said earlier, this must be made reality on the ground...”, ex. P2474. Also during this session, Miroslav Vještica (deputy from Bosanska Krupa) discussed the establishment of the Serbian MUP and national defence and stated that “we must take possession of all our Serbian territories, physically, with our own territorial defence, our Serbian police”, ex. P2474. At the 12<sup>th</sup> session of the SerBiH Assembly, held on 24 March 1992, Radovan Karadžić made it clear that not only was there a plan to take over the territory, but also that it was ready to be put into effect: ex. P26, “Stenograph”.

<sup>135</sup> On 15 October 1991, the same day when SDS President Radovan Karadžić made an impassioned speech before the Republican Assembly of the SRBH in Sarajevo, indicating the possibility that Muslims could disappear as a group if they declared the independence of the SRBH from the SFRY, at a meeting of the SDS Party Council, one of its members noted that “[t]his evening we must shed the illusion that a form of co-existence with the Muslims and Croats can be found”, see speech of Tudor Dutina, ex. P20, “Minutes” of meeting held on 15 October 1991. On 28 February 1992, at a meeting of the SDS Deputies Club, Radovan Karadžić stated: “Muslims cannot live with others. We must be clear on that. They could not live with the Hindu, who are as peaceful as sheep... There can be no discussion here. Yes, they set up the Bosnian Krajina there, and in two years’ time you would have problems again to separate each and every village there because they will overwhelm you with their birth-rate and their tricks. We cannot allow that to happen”, ex. P34, “Transcript”, p. 36. On 6 March 1992, the ARK Regional Board of the SDS gave a press conference at which it was stated that it was “justified and necessary to consolidate ethnic territories in Bosnia and Herzegovina” and that if talks failed “the Serbian people will have no other solution but to take up arms and use them to protect its territory”, ex. P121.

<sup>136</sup> At the 12<sup>th</sup> session of the SerBiH Assembly, held on 24 March 1992, Radovan Karadžić stated that: “At a desired moment ... we can form whatever we want. There are reasons why this could happen in two or three days... At that moment, all the Serbian municipalities, both the old ones and the newly established ones, would literally assume control of the entire territory of the municipality concerned... Then, at a given moment... there will be a single method used and you will be able to apply it in the municipalities you represent, including both things that must be done as well as how to do them. How to separate the police force, take the resources that belong to the Serbian people and take command. The police must be under the control of the civilian authority, it must obey it, there is no discussion about that – that’s the way it must be”, ex. P26, “Stenograph”.

<sup>137</sup> On 31 March 1992, Momčilo Mandić, Assistant Minister of Internal Affairs in BiH, sent a telex to all security centres and all the public security stations around the SerBiH, informing them of the establishment of the Serbian



on the establishment of the Territorial Defence (“TO”) as an army of the SerBiH, putting the command and control of the TO with municipal, district and regional staffs, as well as the staff of the SerBiH TO. In the same decision the Ministry of National Defence of the SerBiH declared an imminent threat of war and ordered public mobilisation of the TO in the entire territory of the SerBiH. Moreover, the formation of TO staffs in the newly established Bosnian Serb municipalities was ordered.<sup>138</sup>

74. In April 1992, Radovan Karadžić and Nikola Koljević showed a map of the future BiH, according to which seventy per cent of the territory of BiH would be covered by the SerBiH. A few months later this map was a reality, as the Bosnian Serb forces controlled exactly those areas which according to the map would constitute the territory of the SerBiH.<sup>139</sup>

75. During the 16<sup>th</sup> session of the SerBiH Assembly that took place on 12 May 1992, at a time when the armed conflict had already begun, Radovan Karadžić articulated the six strategic goals of the Serbian People of Bosnia and Herzegovina.<sup>140</sup> The first and most fateful goal was the “separation from the other two national communities – separation of states”.<sup>141</sup> The other goals concerned the establishment of a corridor between Semberija and Krajina; the establishment of a corridor in the Drina Valley; the establishment of a border on the Una and Neretva rivers; the division of the city of Sarajevo into Serb and Muslim sectors; and, finally, securing access to the sea for the SerBiH.<sup>142</sup>

76. In essence, these strategic goals constituted a plan to seize and control territory, establish a Bosnian Serb state, defend defined borders and separate the ethnic groups within BiH.<sup>143</sup>

77. The Trial Chamber is satisfied beyond reasonable doubt that the first strategic goal entailed the permanent removal of a significant part of the non-Serb population from the territory of the

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Ministry of Internal Affairs (MUP), decision taken at a meeting of the SerBiH Assembly, held on 27 March 1992, at which the Constitution of the SerBiH was ceremonially promulgated, ex. P2366. *See also* Patrick Treanor, T. 18781.

<sup>138</sup> Ex. P153, “Decision of the SerBiH Ministry of Defence”, signed by Bogdan Subotić, dated 16 April 1992. On 4 May 1992, the Regional Secretariat for National Defence, headed by Lieutenant Colonel Milorad Sajić, ordered full mobilisation in the ARK: ex. P167, “Decision”. *See also* BT-21, T. 8356-8358 (closed session); Dobrivoje Vidić, T. 23068-23071.

<sup>139</sup> BT-19, T. 20635 (closed session).

<sup>140</sup> Ex. P50, “Minutes” of the 16<sup>th</sup> session of the SerBiH Assembly, held on 12 May 1992 in Banja Luka. The Preamble to the speech states as follows: “The Serbian side in Bosnia and Herzegovina, the President, the Government, the Council for National Security, which we have set up, have formulated strategic priorities, that is to say, the strategic goals for the Serbian people”.

<sup>141</sup> Ex. P50, “Minutes”, pp. 13-14: “Separation from the other two national communities – separation of states. Separation from those who are our enemies and who have used every opportunity, especially in this century, to attack us, and who would continue with such practices if we were to continue to stay together in the same state”. *See also* Ewan Brown, T. 19235.

<sup>142</sup> Ex. P50, “Minutes”, pp. 13-14.

<sup>143</sup> Ewan Brown, T. 19233. *See also* ex. P2416, “Expert Report of Ewan Brown”, p. 25.

planned Bosnian Serbian state.<sup>144</sup> When the policy discussions at the 16<sup>th</sup> session of the SerBiH Assembly on the movement of population are seen in connection with the inflammatory,<sup>145</sup> combative<sup>146</sup> and derogatory<sup>147</sup> comments towards the non-Serb population of Bosnia and Herzegovina made during that same session, it becomes evident that non-Serbs were viewed as a constant threat and that significant numbers of them were to be permanently removed from the territory claimed by the Bosnian Serbs. A comment by Dragan Kalinić, a delegate from Sarajevo and later SerBiH Health Minister, is of note: “Have we chosen the option of war or the option of negotiation? I say this with a reason, and I must add that, knowing who our enemies are, how perfidious they are, how they cannot be trusted until they are physically, militarily destroyed and crushed, which of course implies eliminating and liquidating their key people”.<sup>148</sup>

78. The 16<sup>th</sup> session of the SerBiH Assembly represents the culmination of a political process. At this session, not only were the strategic goals of the Serbian people of Bosnia and Herzegovina articulated, but the SerBiH Assembly also took a fundamental step towards the implementation of these goals: the establishment of the Army of the Serbian Republic of Bosnia and Herzegovina (“VRS”),<sup>149</sup> which was put under the supreme command of the Presidency of the SerBiH.<sup>150</sup> General Lieutenant Colonel Ratko Mladić accepted the position as Commander of the Main Staff of the VRS,<sup>151</sup> in the obvious knowledge that the policy expressed during the 16<sup>th</sup> session of the

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<sup>144</sup> Ex. P50, “Minutes” of the 16<sup>th</sup> session of the SerBiH Assembly, held on 12 May 1992 in Banja Luka, during which Radovan Karadžić stated: “We do not want to get a state which has a huge number of those who are against that state”, p. 16. Miroslav Vještica (deputy from Bosanska Krupa), on the same occasion, stated that already there were “no more Muslims in the Serbian municipality of Bosanska Krupa... Will they have a place to return to? I think it is unlikely after our President told us the happy news that the right bank of the Una river was the border”. See also comments from other delegates to that effect: Trifko Radić, p. 20, and Aleksa Milojević, p. 35. See further Ewan Brown, T. 19236, 19241-19242; ex. 2416, “Expert Report of Ewan Brown”, pp. 25-26; Paul Shoup, T. 24562-24563.

<sup>145</sup> Ex. P50, “Minutes”, pp.8, 12. For example, references by Radovan Karadžić to “Militant Islamic fundamentalism” and Bosnia becoming “a stronghold of Islamic, primarily Turkish, interests in Europe”.

<sup>146</sup> Ex. P50, “Minutes”, p. 33. For example, comment by Dušan Kozić that “the enemy – Ustašas and Mujahedin – must be defeated by whatever means are necessary”.

<sup>147</sup> Ex. P50, “Minutes”, p. 27. For example, the comment by Milan Novaković that Muslims “co-operate best when there is Serbian rule, that is what they react to best, when there is Serbian authority, there is peace in the house”.

<sup>148</sup> Ex. P50, “Minutes”, p. 22. During the same session of the SerBiH Assembly, the comment of Dragan Kalinić was positively approved by the Accused: *ibid.*, p. 29; Milorad Dodik, T. 20484; Mevludin Sejmenović, T. 12111-12112.

<sup>149</sup> When SerBiH was renamed Republika Srpska on 12 August 1992, the denomination of the army also changed from “Army of the Serbian Republic of BiH” to “Army of the Republika Srpska” (VRS). For ease of reference, the Trial Chamber will use ‘VRS’ throughout the judgement, even when it refers to events prior to 12 August 1992.

<sup>150</sup> Ex. P50, “Minutes”, p. 60, Ewan Brown, T. 19232-19133; ex. P 2416, “Expert Report of Ewan Brown”, pp. 32-35; Mirko Dejanović, T. 23210-23212; Osman Selak, T. 12905-12908, 13262-13267; Muharem Murselović, T. 12292. The composition of the Presidency of the SerBiH changed several times during the first year, and the number of members varied from two to five, but consisted of persons from the same group of people throughout the period: Radovan Karadžić, Nikola Koljević, Biljana Plavšić, Momčilo Krajišnik and Branko Đerić: ex. P2352, “Addendum to Expert Report of Patrick Treanor”, pp. 99-100. During the 16<sup>th</sup> session of the SerBiH Assembly, Ratko Mladić noted that “command was to be exercised from the President through the Main Staff to subordinate units, that there was to be a unified political and military command and control system, that the framework of the army was to consist of Corps and that absolute obedience was to be implemented and discipline established through legal measures”, ex. P50, “Minutes”; see also ex. P2416, “Expert Report of Ewan Brown”, p. 32. The Army of the Serbian Republic of BiH, later renamed VRS, was formally established on 19 May 1992.

<sup>151</sup> Ratko Mladić was appointed Chief of the VRS Main Staff as from 12 May 1992, see ex. P2416, “Expert report of Ewan Brown”, p. 33, note 97.

SerBiH Assembly would necessarily involve the massive forcible permanent removal of the non-Serb population from the territory of the proclaimed SerBiH, and accepting that the VRS would be instrumental in implementing this policy. In fact, he affirmed that he shared the views of the Bosnian Serb political leadership.<sup>152</sup> General Lieutenant Colonel Ratko Mladić and his immediate subordinates transformed these political strategic goals into operational imperatives for the VRS.<sup>153</sup>

79. The Trial Chamber is convinced that the six strategic goals of the Serbian People of Bosnia and Herzegovina articulated at the 16<sup>th</sup> session of the SerBiH Assembly were far from political rhetoric. They constituted the political manifesto of the Bosnian Serb leadership and turned out to be the driving factor behind the actions of the Bosnian Serb armed forces, shaping the events in BiH from May 1992 onwards.<sup>154</sup>

### **C. The implementation of the Strategic Plan in the Bosnian Krajina**

80. Prior to the outbreak of the armed conflict, the SDS started waging a propaganda war which had a disastrous impact on the people of all ethnicities, creating mutual fear and hatred and particularly inciting the Bosnian Serb population against the other ethnicities. Within a short period of time, citizens who had previously lived together peacefully became enemies and many of them, in the present case mainly Bosnian Serbs, became killers, influenced by a media, which by that time, was already under the control of the Bosnian Serb leadership.<sup>155</sup> The use of propaganda was an integral part of the implementation of the Strategic Plan and created a climate where people were prepared to tolerate the commission of crimes and to commit crimes.

81. As far as the Bosnian Krajina in particular is concerned, in August 1991, a paramilitary group, known as the 'Wolves of Vujčak' and supported by the SDS, took over the TV transmitter

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<sup>152</sup> Ex. P50, "Minutes" of the 16<sup>th</sup> session of the SerBiH Assembly, held on 12 May 1992 in Banja Luka, pp. 41, 47, during which Ratko Mladić stated: "...the head of the dragon of fundamentalism lies beneath our hammer. The enemy has attacked with all its might from all directions. And it is a common enemy, regardless whether it is the Muslim hordes or Croatian hordes. It is our common enemy. What is important now is either to throw both of them out employing political and other moves, or to organise ourselves and throw out one by force of arms, and we will be able to deal with the other... We are creating an army which will defend, successfully, the traces of our fathers have left behind and protect our children from the conquering ambitions of Nazi mercenaries". Ratko Mladić further stated that he understood the forcible removal of the Muslims to mean genocide, ex. P2416, "Expert report of Ewan Brown", p. 26.

<sup>153</sup> See ex. P2419, "Analysis of Combat Readiness and Activities of the VRS 1992", issued by VRS Main Staff in April 1993, p. 159: "...the strategic objectives of our war which were promptly defined and set before the Main Staff of the Army of the SerBiH, the Commanders and the units, served as a general guideline upon which we planned the actual operations... The main staff of the Army translated the set objectives and tasks into general and individual missions of the army of the SerBiH and of the individual operational and tactical formations... with the goals being specifically defined...". See also ex. P2416, "Expert Report of Ewan Brown", pp. 29-32. As to the influence of the SDS on all levels of command, see ex. P 2419, "Analysis of Combat readiness and activity of VRS in 1992", issued by VRS Main Staff in April 1993. See also. VI.C.3, "The authority of the ARK Crisis Staff with respect to the army".

<sup>154</sup> Ex. P2416, "Expert Report of Ewan Brown", pp. 29, 32.

<sup>155</sup> BT-19, T. 20654 (closed session); Ivo Atlija, ex. P1527, T. 5549; BT-94, T. 17997, 18165-18166; BT-9, T. 3305-3306 (closed session); ex. P121, "News item" regarding a press conference by the SDS Regional Board of the ARK, 6 March 1992; ex. DB376, "Expert Report of Paul Shoup", p. 6.

on Mount Kozara.<sup>156</sup> The frequencies were redirected and, consequently, most municipalities in the Bosnian Krajina could no longer receive TV and radio programmes from Sarajevo, but only programmes from Belgrade and occasionally from Croatia and, from March 1992 onwards also from Banja Luka.<sup>157</sup> Bosnian Muslim and Bosnian Croat employees of TV and radio stations as well as of most newspapers were dismissed and replaced by Bosnian Serbs.<sup>158</sup>

82. Beginning from that period, the tenor of the message spread by the SDS through the media was that the Bosnian Serbs were threatened with persecution and genocide by the Bosnian Muslims and Bosnian Croats and that they had to protect themselves in order to avoid the repetition of crimes committed against the Serbs during the Second World War.<sup>159</sup> Several political figures of the SDS appeared in the media on a regular basis making discriminatory speeches, insulting and degrading Bosnian Muslims and Bosnian Croats, with the obvious aim of creating fear and hatred amongst the ethnic groups and inciting the Bosnian Serbs against other ethnicities.<sup>160</sup> Pictures of mutilated soldiers were published and rumours that crimes were committed against Bosnian Serbs were spread.<sup>161</sup> Some Bosnian Serb intellectuals and members of the Serb Orthodox Church also

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<sup>156</sup> In August 1994, during the celebration of the third anniversary of the take-over of Mt. Kozara, Vojo Kuprešanić stated: "We knew even back then that a state cannot be a state without its radio, TV, and other media, and without its currency. We, in the assembly of the former Bosnia and Herzegovina, knew that nothing could be achieved with the Muslims and Croats, the anti-Serbian coalition, and we were happy to part ways with them. We began the parting with the Autonomous Region and continued with the takeover of the relay", ex. P1532, "Videotape". See also Dobrivoje Vidić, T. 23043-23046; Mevludin Sejmenović, T. 12239-12245, 12315.

<sup>157</sup> BT-9, T. 3216-3217, 3255, 3642 (closed session); BT-11, T. 3878-3879, 4138-4139 (closed session); BT-7, T. 3119 (closed session); Mevludin Sejmenović T. 12239-12243; Muhamed Filipović, T. 9295-9296, 9347-9348; Muhamed Sadiković, T. 18346-18347; Ahmet Hidić, T. 16300-16303. Asim Erglić, T. 10644, dates the disappearance of Sarajevo TV to mid-April 1992. See also ex. P543, "Glas newspaper article", dated 16 October 1991, reporting about the takeover of the transmitter.

<sup>158</sup> Witness BT-9, T. 3305-3306, 3319-3327, 3678-3680 (closed session). Exceptionally, the composition of the staff of the newspaper *Oslobođenje* was multi-ethnic throughout the conflict, Muharem Krzić, T. 1449-1450.

<sup>159</sup> BT-11, T. 3915, 4135, 4149 (closed session); Muharem Krzić, T. 1440; BT-9, T. 3512-3513 (closed session); BT-94, T. 17997; see also ex. P2326 (under seal); Atif Džafić, ex. P1123, 92bis statement, 2004677; ex. P855, "Radio Ključ Broadcast", Joint Announcement by the Serb Orthodox Church and the SDS; Muhamed Filipović, T. 9318; Adil Draganović, T. 5741; Mevludin Sejmenović, ex. P1533, T. 4552; Muharem Murselović, ex. P1542, T. 2687. The Trial Chamber bears in mind that by this time, the Bosnian Serbs were not yet at war with the Bosnian Muslims.

<sup>160</sup> BT-22, T. 4410-4411; BT-9, T. 3199-3200, 3265, 3431 (closed session); Amir Džonlić, T. 2308. Muslims were described by the media as Islamic fundamentalists, extremists or fanatics, as 'Green Berets', 'Turks' or 'Balijas', while the Croats were referred to as 'Ustašas': ex. P2326 (under seal); Amir Džonlić, T. 2307; Muharem Krzić, T. 1469; Nurset Sivac, ex. P1547, T. 6658.

<sup>161</sup> As an example of such a picture, see ex. P510; BT-9, T. 3494-3495 (closed session). A well-known such rumour was the one involving the death of twelve Bosnian Serb babies in the hospital in Banja Luka due to the lack of oxygen, BT-20, T. 5335-5337 (closed session). The Defence contends that the death of the twelve Serbian babies was not a rumour, but an established fact. The Trial Chamber attaches more importance that this fact, true or untrue, was taken advantage of by the Serb propaganda machine for incitement of Serbs against Muslims. Another rumour concerned the so-called monster doctor, Dr. Sikora, who was said to be sterilizing Serb women in Prijedor. Yet another rumour said that certain construction holes in Prijedor would serve as mass graves for Serbs, BT-106, T. 21123-21125 (closed session); Ivo Atljija, ex. P1527, T. 5549-5551; Mirsad Mujadžić, T. 13323-13329; Mirsad Mujadžić, ex. P1601, T. 3706; BT-42, ex. P564, T. 1819-1820. See also ex. P1605, "Kozarska Vjesnik newspaper article", dated 28 June 1992; ex. 1606, "Kozarska Vjesnik newspaper article", dated 12 June 1992; BT-106, T. 21123-21125 (closed session); Ivo Atljija, ex. P1527, T. 5549-5551; Mirsad Mujadžić, ex. P1601, T. 3706; BT-42, ex. P564, T. 1819-1820 (under seal).

participated in the propaganda campaign.<sup>162</sup> In the late spring of 1992, propaganda became even more aggressive, suggesting that non-Serbs should move out from Bosnian Serb territory,<sup>163</sup> and that only a small percentage of non-Serbs could remain in the area.<sup>164</sup> Once the armed conflict had broken out, on some occasions the media openly incited people to kill non-Serbs.<sup>165</sup>

83. The propaganda campaign achieved its goals with respect to both the Bosnian Serb and the non-Serb inhabitants of the Bosnian Krajina. While influencing the Bosnian Serb population to perceive and treat the non-Serb inhabitants as enemies and preparing the Bosnian Serb population for the crimes that were committed later, it also instilled fear among the non-Serb population and created an atmosphere of terror, which contributed to the subsequent massive exodus of non-Serbs.<sup>166</sup>

84. One of the measures taken with a view to implementing the Strategic Plan was the dismissal of Bosnian Muslims and Bosnian Croats from key positions in the army, the police and other public institutions and enterprises. This process had already started during the war in Croatia when the refusal of non-Serbs to respond to mobilisation had resulted in their dismissal. It escalated during the period relevant to the Indictment resulting in the dismissals of almost all Bosnian Muslims and Bosnian Croats from their positions, thus depriving them of their livelihood. Undoubtedly, the worsening economic situation also accounted for the dismissal of several non-Serbs, as well as of Bosnian Serb employees. However, this represents only one part of the picture. The evidence clearly establishes a discriminatory pattern of dismissals of non-Serbs pursued by the Bosnian Serbian authorities. These discriminatory dismissals were in no way justified by the impact that the war in Croatia had on the economy in the Bosnian Krajina.<sup>167</sup>

85. In the spring of 1992, all employees in local Public Security Services (“SJBs”) and other public services were required to sign an oath of loyalty to the Bosnian Serbian authorities.<sup>168</sup>

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<sup>162</sup> Osman Selak, T. 13544-13546. The Trial Chamber is satisfied that some Serb intellectuals spoke out against the policy of the SDS and warned against the consequences of such policy. One of the most forceful amongst them was Vladimir Srebrov, professor at the Faculty of Philosophy at Sarajevo University: ex. DB376, “Expert Report of Paul Shoup”, p. 7; ex. P2725, “Bora newspaper article”, written by Vladimir Srebrov, dated 2 April 1992: “Death Follows in Your Wake”.

<sup>163</sup> Muharem Krzić, T. 1483-1484.

<sup>164</sup> BT-11, T. 3990, 4059 (closed session); Zijahudin Smailagić, T. 1942; Ibrahim Fazlagić, T. 4273; BT-22, T. 4410; BT-13, T. 4603 (closed session); Muharem Krzić, T. 1547-1548; Amir Džonlić, T. 2303.

<sup>165</sup> On 30 May 1992, ‘Četnik’ songs were played on the radio, calling for the killing of ‘Turks’ and other non-Serbs. Moreover, there were announcements read out to inform the Serb people about the Muslim extremists led by Slavko Ecimović having attacked Prijedor. The announcement called for all Serbs to defend the town and destroy Ecimović and his group: Nurset Sivac, ex. P1547, T. 6573. Between 10 and 20 June 1992, there were appeals addressed to Serbs to lynch all non-Serbs: *ibid.*, T.6619.

<sup>166</sup> BT-94, T. 17997, 18165-18166; Ivo Atlia, ex. P1547, T. 5551.

<sup>167</sup> See the following paragraphs.

<sup>168</sup> BT-9, T. 3339-3340 (closed session); BT-11, T. 3959-3960, 3980-3984 (closed session); BT-94, T. 18067; BT-27, ex. P1529, T. 4272 (under seal); Muharem Murselović, ex. P1542, T. 2698; Atif Džafić, ex. P1123, 92*bis* statement, 2004682; BT-26, T. 9102 (closed session); Muhamed Filipović, T. 9402, 9477-9478; Bešim Islamčević, T. 7431;

Bosnian Muslims and Bosnian Croats who refused to sign the declaration of loyalty were dismissed.<sup>169</sup> Those who accepted to sign could remain within the service. However, by June 1992, the policy changed. To start, all non-Serbs holding managerial positions were fired and replaced by Bosnian Serbs.<sup>170</sup> Bosnian Muslims and Bosnian Croats were dismissed from the judiciary, local enterprises, the media, hospitals, the police forces and the army.<sup>171</sup> By the end of 1992, almost the entire Bosnian Muslim and Bosnian Croat community had been dismissed from their jobs.<sup>172</sup> Many people who showed up for work during this period were turned back and denied access to their workplace.<sup>173</sup> Generally speaking, people were sent home, told not to come back, and then fired soon thereafter.<sup>174</sup>

86. Bosnian Serb authorities exerted undue pressure on Bosnian Muslims and Bosnian Croats in an organised manner to make them leave the area. Non-Serbs did not receive the same attention and medical treatment at hospitals as Bosnian Serbs did. Their freedom of movement was severely restricted in the form of checkpoints and curfews, in contrast to the freedom of movement enjoyed by Bosnian Serbs. Non-Serbs were regularly mistreated at Bosnian Serb manned checkpoints.<sup>175</sup> Moreover, they were not protected against harassment and abuse from Bosnian Serb armed individuals. Bosnian Muslims and Bosnian Croats were oppressed and pressurised so that living in the Bosnian Krajina became unbearable for them.<sup>176</sup>

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Mirzet Karabeg, T. 6104; Adil Draganović, T. 4924; BT-17, T. 7652 (closed session); Adil Osmanović, T. 16566-16567. See also ex. P141, "Press statement"; ex. P142, "Transcript" of a press conference held on 8 April 1992; Bekir Delić, T. 7939-7940; Adil Osmanović, T. 16566-16567; Mirko Dejanović, T. 23160-23161; Nikola Vračar, T. 23872.

<sup>169</sup> Muharem Murselović, ex. P1542, T. 2698; BT-26, T. 9102 (closed session); Mirzet Karabeg T. 6104; BT-17, T. 7652 (closed session); Adil Draganović, T. 4924.

<sup>170</sup> See ex. P227, "ARK Official Gazette", Conclusions of 8 May 1992: "Only personnel absolutely loyal to the Serbian Republic of Bosnia and Herzegovina may hold managerial posts". See ex. P254/P255, "Decision of the ARK Crisis Staff", dated 22 June 1992, stipulating that "only personnel of Serbian nationality" may hold "leading positions, positions involving the access to information, protection of public property and other positions of importance for the functioning of the economy". See also IX.F.2, "Right to employment".

<sup>171</sup> Muharem Krzić, T. 1463-1464, 1629; Amir Džonlić, T. 2334; Adil Draganović, T. 4946-4948; Bešim Islamčević, T. 7547-7548; Jovica Radojko, T. 20132-20133; BT-9, T. 3208-3209 (closed session); Asim Egrlić, T. 10548; BT-13, T. 4702 (closed session); BT-17, T. 7651-7652 (closed session); Jasmin Odobašić, T. 15116; BT-26, T. 9102 (closed session). For the army, see *infra* para. 91.

<sup>172</sup> Amir Džonlić, T. 2470-2471; BT-11, T. 3981-3982 (closed session); Mevludin Sejmenović, ex. P1533, T. 4559; Muhamed Filipović, T. 9402; Muharem Murselović, ex. P1542, T. 2692, 2698, 2824-2826, 2908; Kerim Mesanović, ex. P1131, T. 5151; BT-33, ex. P1544, T. 3917 (under seal); BT-34, ex. P558, T. 1056-1057, 1144-1145, 1219 (under seal); Adil Draganović, T.4914-4915, 5643, 5961-5963; Faik Biščević, T. 7193-7194; ex. P619, "Decision" of the Serb Municipality of Sanski Most Crisis Staff, dated 21 April 1992; BT-104, T. 18508-18509 (private session); Midho Družić, T. 16755-16756; BT-81, T. 13777, 13790-13791; BT-82, T.13961, 14025; BT-83, T. 14045-14046, 14098-14099.

<sup>173</sup> Ibrahim Fazlagić, T. 4208; BT-81, T. 13790; Muhamed Filipović, T. 9517; BT-17, T. 7705 (closed session); Husein Čajić, T. 8986.

<sup>174</sup> Muhamed Filipović, T. 9494-9495; BT-81, T. 13789-13790; Midho Družić, T. 16756-16757.

<sup>175</sup> Muharem Krzić, T. 1458-1459; Zijahudin Smailagić, T. 2164; Mevludin Sejmenović, ex. P1533, T. 4595; Husein Čajić, T. 8996; Mirzet Karabeg, T. 6099, 6282; Ahmed Zulić, T. 6855; Rajif Begić, T. 6333; BT-23, T. 6411; BT-16, T. 8050-8051; BT-21, T. 8692-8693 (closed session). See also ex. P2326 (under seal).

<sup>176</sup> Amir Džonlić, T. 2594; Ibrahim Fazlagić, T. 4300-4301; Muharem Krzić, T. 1778; Zijahudin Smailagić, T. 1962-1963; BT-20, T. 5249 (closed session). See also IX.F.2, "Denial of fundamental rights".

87. In September 1990, the JNA had ordered that weapons be removed from the depots under control of local TO units and moved to its own armouries. Therefore, when the tension between the ethnic groups increased, local communities throughout BiH did not have a significant number of weapons at their disposal.<sup>177</sup> However, in late 1991 and early 1992, all three national parties began arming themselves.<sup>178</sup>

88. The SDS received substantial support from the JNA and had access to a military factory, which was under Bosnian Serb control.<sup>179</sup> The JNA systematically supplied light arms to local SDS committees in Bosnian Serb claimed municipalities of the Bosnian Krajina as well as to Serbian paramilitary groups.<sup>180</sup> Distribution to Bosnian Serb civilians was carried out by the local communes and was supervised by the SDS, with the support of the JNA and the local police.<sup>181</sup> The arming of Bosnian Serb villages was well-organised and involved the use of trucks and occasionally even helicopters.<sup>182</sup> The JNA also engaged in redistributing weapons to Serbian TO units in predominantly Bosnian Serb populated areas.<sup>183</sup>

89. Muslims were also preparing for a war and correspondingly arming themselves. In June 1991, SDA leaders formed the 'Council for National Defence of the Muslim Nation' with the Patriotic League as its paramilitary arm.<sup>184</sup> However, the Bosnian Muslims' efforts to procure and distribute weapons were nowhere near as successful as those of the Bosnian Serbs, both in terms of the number and the quality of the obtained weapons. This was due in part to the fact that Bosnian Muslims mainly procured their weapons on an individual basis. Some obtained their weapons by

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<sup>177</sup> Osman Selak, T. 13220-13222; Mirsad Mujadžić, ex. P1601, T. 3605; Senad Alkić, T. 15020; ex. P53, "Expert Report of Robert Donia", p. 56.

<sup>178</sup> Robert Donia, T. 1243-1244; BT-7, T. 2842 (closed session); BT-11, T. 3946-3948 (closed session); ex. P15, "Note"; ex. P53, "Expert Report of Robert Donia", pp. 55-57.

<sup>179</sup> BT-11, T. 3884-3885, 3891 (closed session); Ibrahim Fazlagić, T. 4254; Osman Selak, T. 13154-13156; BT-36, T. 10977-10978 (closed session). See also ex. P1596, "Video", in which a Bosnian Serb Colonel states during a ceremony that the 5<sup>th</sup> Kozara Brigade had prepared and armed the Serbian people.

<sup>180</sup> Robert Donia, T. 1109; BT-17, T. 7688 (closed session); Adil Draganović, T. 4917; BT-21, T. 8207-8212, 8655 (closed session); BT-104, T. 18511-18512 (private session); Muhamed Sadiković, T. 19198-19199; Ahmet Hidić, T. 16187-16188; Jadranko Šaran, T. 17218.

<sup>181</sup> BT-11, T. 3885 (closed session); Ibrahim Fazlagić, T. 4253-4256, 4360-4362; BT-36, T. 10962-10965, 10976-10977 (closed session); BT-93, T. 20380, 20407-20408, 20413 (closed session); Mirsad Mujadžić, ex. P1601, T. 3606; BT-79, T. 11500-11501 (closed session); Muharem Filipović, T. 9354, 10064; Jadranko Šaran, T. 17278; BT-21, T. 8218 (closed session); Jovica Radojko, T. 20040-20043; ex. P865, "Minutes" of SDS Ključ meeting held on 23 December 1991; ex. P335, "Presentation", made by Major General Milan Gvero of the VRS Main Staff at the 34<sup>th</sup> session of the SerBiH Assembly, held on 29 September 1993.

<sup>182</sup> Jusuf Arifagić, ex. P554, T. 7059, 7152-7153; Mevludin Sejmenovic, T. 12284-12288; Atif Džafić, ex. P1123, 92bis statement, 2004672; Husein Čajić, T. 8983-8984; BT-26, T. 9109 (closed session); Muhamed Filipović, T. 9354-9356; 9368-9370; ex. P887, "List" with the names of 149 Bosnian Serb individuals that had been provided with weapons; Besim Islamčević, T. 7422-7423; Midho Alić, T. 13863-13864; BT-82, T. 13966-13967; BT-50, ex. P1641, T. 14330 (under seal); Jasmin Odobašić, T. 15112-15113; Jadranko Šaran, T. 17218; BT-19, T. 20608 (closed session).

<sup>183</sup> Osman Selak, T. 12882, 12925-12929, 13234-13244; Mirsad Mujadžić, ex. P1601, T. 3606; ex. P1573, "Note"; ex. DB116, "Order" for the delivery of weapons, dated 5 May 1992.

<sup>184</sup> In April 1992, the TO units in Muslim-led municipalities were placed under a unified command and eventually became the Army of Bosnia and Herzegovina (ABiH): ex. P53, "Expert Report of Robert Donia", pp. 55-56; ex. DB376, "Expert Report of Paul Shoup", p. 26.

buying them from Bosnian Serbs returning from the front line in Croatia.<sup>185</sup> On a number of occasions, Bosnian Muslims purchasing weapons in this way were identified and later arrested.<sup>186</sup> Equally, the Bosnian Croat population's endeavours to arm themselves fell far short of the arming efforts conducted by the Bosnian Serbs.<sup>187</sup>

90. While the arming operations were taking place, public announcements were made through the media that illegally possessed weapons had to be returned to the TO staffs or to the local police by a certain deadline. While some of these announcements were formulated in a neutral manner, asking all paramilitary groups and individuals of all ethnicities to return illegally possessed weapons, on other occasions only Bosnian Muslims and Bosnian Croats were urged to hand in their weapons.<sup>188</sup> In some cases it was announced that deadlines for the return of weapons would be followed by house searches.<sup>189</sup> Some announcements went so far as to threaten that villages would be attacked or that people would be killed in the event that weapons were found during such searches.<sup>190</sup> The Trial Chamber is satisfied that even though some of the announcements called for the surrender of all illegally owned weapons or the disarmament of all paramilitary groups, in the Bosnian Krajina in fact these calls were intended to address only the Bosnian Muslim and Bosnian Croat population.<sup>191</sup>

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<sup>185</sup> BT-11, T. 3898-3902 (closed session); Muharem Krzić, T. 1525; Mirsad Mujadžić, ex. P1601, T. 3660; Mevludin Sejmanović, T. 12168; BT-36, T. 10973-10974, 10984 (closed session); Muhamed Filipović, T. 9374-9378; Asim Egrlić, T. 10553-10554; Midho Alić, T. 13865-13866; BT-19, T. 20698 (closed session); Muharem Murselović, T. 12626-12628; Nurset Sivac, T. 12800-12801; Husein Čajić, T. 8985; Adil Draganović, T. 4918; BT-69, T. 17688-17690, 17760-17762; Mehmet Tenić, T. 16916-16918.

<sup>186</sup> Husein Čajić, T. 8985; Muharem Murselović, T. 12626-12628; Adil Draganović, T. 4918-4920; Mehmet Tenić, T. 16916-16918.

<sup>187</sup> BT-13, T. 4584-4585, 4679-4680, 4735 (closed session); ex. P53, "Expert Report of Robert Donia", p. 56.

<sup>188</sup> BT-34, ex. P558, T. 1057-1061 (under seal); BT-30, ex. P1541, T. 5723-5724 (under seal); Hasan Salihović, ex. P550, 92*bis* statement, 2109326; Husein Čajić, T. 8989-8990; BT-26, T. 9106 (closed session); Ramiz Subašić, T. 10468; Asim Egrlić, T. 10559; Grgo Stojić, T. 6768-6769; Ahmet Zulić, T. 6858; Faik Biščević, T. 7022; Adil Draganović, T. 5518-5519; BT-17, T. 7682-7683 (closed session); BT-14, T. 7230 (closed session); Rajif Begić, T. 6333; BT-16, T. 8052; Ahmet Hidić, T. 16189-16192; Midho Družić, T. 16757-16758; BT-81 T. 13764, 13770-13774; Midho Alić, T. 13871-13873; BT-49, T. 14219-14221 (closed session); Jasmin Odabašić, T. 15125-15127; BT-91, T. 15863-15865; Rusmir Mujanić, T. 15991-15996; Adil Osmanović, T. 16570-16571; ex. P639, "Conclusions" of the Sanski Most Crisis Staff, dated 22 May 1992.

<sup>189</sup> BT-12, T. 4179; BT-11, T. 4070 (closed session); BT-30, ex. P1541, T. 5723-5724 (under seal); BT-31, T. 13709-13711; BT-90, T. 17086 (closed session); BT-17, T. 7681 (closed session); BT-83, T. 14049-14050; BT-84, T. 14122; BT-20, T. 5237 (closed session); BT-30, ex. P1541, T. 5723-5724; Bajro Hadžić, ex. P552, 92*bis* statement, 521138; Jahid Mujkanović, ex. P1980.1, 92*bis* statement, 2299904; BT-17, T. 7682-7683 (closed session); Ahmet Hidić, T. 16189-16192; Midho Družić, T. 16757-16758; BT-81, T. 13772-13774; Jasmin Odabašić, T. 15125-15127; BT-92, T. 19823-19824 (private session). See also ex. P1207, "Dispatch"; ex. P1221, "Dispatch"; ex. P1222, "Dispatch"; ex. P1243, "Order".

<sup>190</sup> BT-23, T. 6411; BT-13, T. 4615-4619 (closed session); Ivo Atljija, ex. P1527, T. 5562-5565; Ramiz Subašić, T. 10468; Rajif Begić, T. 6333; BT-50, ex. P1641, T. 1434-14337 (under seal).

<sup>191</sup> Amir Džonlić, T. 2411; BT-12, T. 4179-4180; BT-26, T. 9107 (closed session); BT-104, T. 18512, 18680 (private session); Mirzet Karabeg, T. 6133; Adil Draganović, T. 5690; Midho Družić, T. 16757-16758; Jovica Radojko, T. 20050, 20347; ex. P1833, "Minutes" of a meeting of the Petrovac Crisis Staff held on 16 June 1992; BT-81, T. 13773-13774; BT-84, T. 14197-14200; Adil Osmanović, T. 16570-16571; BT-64, T. 16959, 17007-17008; BT-92, T. 19906 (private session); Milrad Sajić, T. 23683, 23721-23722. See also ex. P50, "Minutes", 16<sup>th</sup> session of the



91. In BiH, the JNA gradually changed from being the Yugoslav Peoples' Army and representing all ethnic groups and nationalities in the SFRY to becoming a *de facto* Serbian army. Already by early 1991, some ninety per cent of high ranking officers were Serbs and Montenegrins and not a single general was of Muslim ethnicity.<sup>192</sup> When on 12 May 1992, the JNA was transformed into the VRS, non-Serbs were first dismissed from positions of command and soon after almost all non-Serb officers serving in the army were laid off.<sup>193</sup> Bosnian Muslims and Bosnian Croats who had proved themselves in combat action and who agreed to sign an oath of loyalty to the SerBiH could remain with the VRS.<sup>194</sup>

92. At the same time, an international arms embargo was in force with respect to BiH.<sup>195</sup> This embargo affected the Bosnian Muslims the most, as the Bosnian Croats managed to illegally procure weapons through neighbouring countries and the Bosnian Serbs had access to JNA and later VRS weaponry.<sup>196</sup> Considering Bosnian Serb military superiority, it is not surprising that, once the armed conflict had broken out, the Bosnian Serb forces achieved a quick military victory.<sup>197</sup>

93. Between the end of December 1991 and April 1992, the SDS increased its preparations to take over political power at the municipal level in areas ear-marked for incorporation into the new Bosnian Serb state. On 11 December 1992, the SerBiH Assembly adopted the recommendations on

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SerBiH Assembly, held on 12 May 1992: "Bosanski Novi is sealed off. An ultimatum has been issued, and a deadline set for the Muslims to surrender their weapons".

<sup>192</sup> Osman Selak, T. 12888-12890, 13202-13203; Mirsad Mujadžić, ex. P1601, T. 3589-3590. As the JNA withdrew from Slovenia and Croatia, on 5 December 1991, Slobodan Milošević ordered that Bosnian-born recruits serving in other republics of the SFRY be transferred to BiH, while soldiers in BiH who were natives of other republics be deployed close to home: ex. P53, "Expert Report by Robert Donia", p. 31. According to Osman Selak, this only applied to soldiers and not to officers and resulted in large desertion rates, T. 13260-13261.

<sup>193</sup> Osman Selak, T. 12920-12924, 13049-13050, 13061; BT-11, T. 3966-3967 (closed session); ex. P1582, "Report", sent by Colonel Vukić to the Main Staff of the VRS, dated 9 June 1992, stating that "within the units of 1<sup>st</sup> Krajina Corps ... there are 67 officers of Muslim or Croat nationality. An ultimatum was issued requesting removal of these persons from vital and command posts by the 15<sup>th</sup> of June 1992, or they will take over the control of the armed forces...The 1<sup>st</sup> Krajina Corps command should make the decision as to which staff members from the ranks of Muslims and Croats may still be temporarily kept and at what posts."; ex. P1583, "Document", sent by the VRS Main Staff to Colonel Ranković, head of the personnel department: "Officers of Muslim or Croatian nationality must be sent on leave immediately. Take action at once to refer them to the army of the FRY in order to resolve their status in the service"; ex. P1584, "Document", sent by the Command of the 30<sup>th</sup> Partisan Brigade to the Command of the 1<sup>st</sup> Partisan Brigade, dated 21 June 1992: "Soldiers of non-Serb nationality are to be released from your units at their own request by applying one of the procedures set forth below. Soldiers of non-Serb nationality who wish to serve in the army of the SerBiH are to be kept in the units on less important duties and put under the necessary supervision." Osman Selak gave evidence that this procedure was followed in all units of the 5<sup>th</sup> Krajina Corps, T. 13065-13067, 13078, 13120-13121. See also ex. P138, "Glas newspaper article", dated 5 April 1992, quoting Colonel Vukić, publicly asking for dismissal of non-Serbs from the army. See also ex. P2416, "Expert Report of Ewan Brown", pp. 7, 55-59; ex. P383, "Regular combat report", sent by the 1<sup>st</sup> Krajina Corps Command to the SerBiH Army Staff, dated 13 June 1992, para. 6: "The purging of officers on an ethnic basis remains a topic of discussion because of the danger that it may very soon result in deficiencies in the units, but it is proceeding in the spirit of the order received".

<sup>194</sup> Muharem Krzić, T. 1461; BT-11, T. 4132 (closed session).

<sup>195</sup> Ex. DB1, "The War in Bosnia and Herzegovina", book co-written by Paul Shoup, p. 85.

<sup>196</sup> Mirsad Mujadžić, T. 3651.

<sup>197</sup> Ex. DB376 "Expert Report by Paul Shoup", p. 27. On the Serb military superiority, see also Zoran Jokić, T. 24029; ex. P2727, "Videotape", including an interview with Velibor Ostojić, Information Minister in the SerBiH Government. Velibor Ostojić stated that Bosnian Muslims and Bosnian Croats did not stand a chance against the Serbs.

the establishment of municipal assemblies of the Serbian people in BiH in those municipalities where Bosnian Serbs were in a minority,<sup>198</sup> and on 19 December 1991, the SDS Main Board issued the Variant A and B Instructions.<sup>199</sup> Consequently, the existence of ‘Serbian municipalities’ was declared even in municipalities where the SDS did not have overall control (“Variant B municipalities”).<sup>200</sup>

94. The Constitutions of the SFRY and the SRBH provided that in state of war or imminent threat of war, emergency governments could be established at both the republic and municipal level. These emergency governments, called Crisis Staffs or War Presidencies, would take over the functions of the Assembly if the latter was unable to sit.<sup>201</sup> Pursuant to the Variant A and B Instructions and to subsequent instructions for the work of the municipal Crisis Staffs issued by the Bosnian Serb Government on 26 April 1992,<sup>202</sup> SDS controlled Crisis Staffs were established both in municipalities where the SDS had a majority and in those where it was in a majority.<sup>203</sup> These Crisis Staffs eventually played a leading role in the SDS take-over of power in numerous localities, allowing for co-ordination among party, government, police and armed forces at the municipal level and, later when a regional Crisis Staff was established, also at the regional level.<sup>204</sup>

95. The composition of the municipal Crisis Staffs in 1992 was designed to ensure that they not only had authority in the eyes of the general public, but also that they were able to ensure implementation of their decisions. Members included the respective President of the Municipal Assembly or the President of the Municipal Executive Committee (Variant A) or the President of the SDS Municipal Board (Variant B), the commander of the Municipal TO staff, and the Chief of

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<sup>198</sup> The recommendation, signed by Momčilo Krajišnik, states that “the Deputies Clubs of the SDS in municipal assemblies in BiH, in which decisions contrary to the interests of the Serbian people are imposed by majority vote, adopt decisions on establishing municipal assemblies of the Serbian people. The municipal assemblies of the Serbian people would consist of deputies of the SDS and other deputies of Serbian nationality who state their wish to join the assembly”, ex. P2360. See also Patrick Treanor, T. 18743.

<sup>199</sup> See *supra*, para. 69.

<sup>200</sup> See, e.g., decisions of individual municipalities: ex. P27 (Bihac); ex. P28 (Prijeedor); ex. P29 (Kotor Varoš); ex. P30 (Donji Vakuf); ex. P610 (Sanski Most). On 13 March 1992, the President of the SDS Executive Board in Sarajevo, Rajko Dukić, requested the Municipal SDS Boards to inform the Main Board whether they were able to establish a “Serbian municipality”, ex. P125.

<sup>201</sup> Patrick Treanor, T. 18706-18708; ex. P2351, “Expert Report of Patrick Treanor”, pp. 18-20; Amir Džonlić, T. 2322.

<sup>202</sup> Ex. P157, “Excerpt from instructions for the work of the municipal crisis staffs of the Serbian people”, signed by Prime Minister Branko Đerić, which states, *inter alia*: “1. In a state of war, the Crisis Staff shall assume all prerogatives and functions of the municipal assemblies, when they are unable to convene... 3. The Crisis Staff coordinates the functions of authorities in order to ensure the defence of the territories, the safety of the population and property, the establishment of government and the organisation of all other areas of life and work. In so doing, the Crisis Staff provides the conditions for the Municipal Executive Committee to exercise legal executive authority, run the economy and other areas of life... 7. The Crisis Staff shall convene a meeting of the Municipal Assembly as soon as circumstances permit to have its work conclusions and decisions verified”. See also Patrick Treanor, T. 18785; ex. P2351, “Expert Report of Patrick Treanor”, pp. 23-25.

<sup>203</sup> Patrick Treanor, T. 18802; BT-92, T. 19784 (private session).

<sup>204</sup> Ex. P2351, “Expert Report of Patrick Treanor”, pp. 18, 31-36.

the police.<sup>205</sup> In addition, municipal Crisis Staff meetings were regularly attended by representatives of the army.<sup>206</sup> The municipal Crisis Staffs thus resembled SDS shadow governments, as they included SDS members for most leading positions in the municipalities.<sup>207</sup>

96. On 4 April 1992, Radovan Karadžić, as President of the Serb National Security Council (“SNSC”), ordered the activation of Crisis Staffs under certain conditions,<sup>208</sup> and on 26 April 1992, after the Ministry of National Defence of the SerBiH had declared an imminent threat of war,<sup>209</sup> the Bosnian Serb Government issued follow up instructions for the work of the municipal Crisis Staffs and defined their functions.<sup>210</sup> By virtue of these instructions, Crisis Staffs were recognised by the SerBiH as governing bodies of the SerBiH, rather than as SDS bodies. Nevertheless, SDS control over the Crisis Staffs did not cease.<sup>211</sup> On 5 May 1992, a Crisis Staff of the ARK was formally established.<sup>212</sup>

97. By the spring of 1992, a number of Serb paramilitary groups had been formed in BiH or had arrived from Serbia. Some of these paramilitary groups were trained and equipped by the JNA and were closely associated with it or with the SDS.<sup>213</sup> At first, their existence and training was kept secret.<sup>214</sup> The paramilitaries created an atmosphere of fear and terror amongst the non-Serb inhabitants of the Bosnian Krajina by committing crimes against Bosnian Muslims and Bosnian

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<sup>205</sup> Ex. P157, “Excerpt from instructions for the work of the municipal crisis staffs of the Serbian people”, signed by Prime Minister Branko Đerić, which adopted a considerable revision with respect to the composition of the Crisis Staff compared to the Variant A and B Instructions (*see ex. P25*).

<sup>206</sup> *See, e.g.*, ex. P1010, “Report” (Ključ).

<sup>207</sup> Ex. P2351, “Expert Report of Patrick Treanor”, p. 23.

<sup>208</sup> Ex. P2370, “Announcement”.

<sup>209</sup> The Ministry of National Defence of the SerBiH declared the imminent threat of war on 16 April 1992, which gave the President of the SerBiH emergency powers, meaning that all powers that fell within the scope of the Assembly could be exercised by the President during that period: Patrick Treanor, T. 18785; ex. P2351, “Expert Report of Patrick Treanor”, p. 23. *See also ex. P153*, “Decision of the SerBiH Ministry of Defence”, dated 16 April 1992, on the establishment of the TO of the SerBiH as an armed force of the SerBiH, declaring a state of imminent threat of war.

<sup>210</sup> Ex. P157, “Excerpt from instructions for the work of the municipal crisis staffs of the Serbian people”, signed by Prime Minister Branko Đerić; Patrick Treanor, T. 18785; ex. P2351, “Expert Report of Patrick Treanor”, pp. 23-25.

<sup>211</sup> Ex. P2351, “Expert Report of Patrick Treanor”, pp. 24-25.

<sup>212</sup> Ex. P227, “ARK Official Gazette”, decision of 5 May 1992. *See also VI.B*, “The Crisis Staff of the Autonomous Region of Krajina”.

<sup>213</sup> BT-104, T. 18492; Osman Selak, T. 12932-12935, 12956-12959, 12964-12966, 12973-12974, 12978-12979; BT-21, T. 8224-8229, 8386-8387 (closed session); Ahmed Zulić, T. 6856; Bekir Delić, T. 7935-7937; BT-17, T. 7639 (closed session); BT-94, T. 18037; Jasmin Odošić, T. 15107-15109; BT-11, T. 3873-3874, 3890-3897, 4100-4101 (closed session); Amir Džonlić, T. 2393-2394, 2425-2428; Bešim Islamčević, T. 7464; Mehmed Tenić, T. 16854-16855, 16923-16926; Muhamed Filipović, T. 9440; Adil Draganović, T. 4927, 5656; BT-91, T. 15866-15867; Jadranko Šaran, T. 17223; BT-13, T. 4669 (closed session). *See also ex. P1594*, “Video”, containing a reporter statement to the effect that: “The liberation of this area [in the Posovina Corridor] was commanded by Colonel Milan Novaković and the legendary Milan Martić with the collaboration of the Wolves from Vujčak under the command of Lieutenant Milanković”. *See also Osman Selak*, T. 13140-13143; Dobrovoje Vidić, T. 22997-23001, 23023-23033; ex. P766, “Report”; ex. P1785, “Report”; ex. DB376, “Expert Report by Paul Shoup”, p. 31. *See also ex. P15*, “Note” from Colonel Stoja Dejanović, Commander of the Bosanska Krajina Volunteer Units to Municipal Staffs of Volunteer Units, dated 24 August 1991: “the JNA does not have sufficient forces to cover and protect all inhabited places ... In view of historical memory and real danger, this people must organise their own volunteer units for their own defence and to protect lives”. *See further Osman Selak*, T. 12962-12966.

<sup>214</sup> BT-106, T. 21051-21056 (closed session); Amir Džonlić, T. 2425-2428.

Croats and their property including rape, murder, plunder and the destruction of property.<sup>215</sup> They engaged in war profiteering and looting.<sup>216</sup> Serbian paramilitary groups also participated in combat operations of the 1<sup>st</sup> Krajina Corps of the VRS throughout the ARK,<sup>217</sup> and from mid June 1992 onwards, they were formally incorporated into the structure of the VRS and put under its command.<sup>218</sup> The Trial Chamber is satisfied that both the army as well as the SDS used paramilitary groups as an operative tool that contributed to the implementation of the Strategic Plan.<sup>219</sup>

98. By way of illustration, on 3 April 1992, the Serbian Defence Forces (“SOS”), an armed formation composed of disgruntled soldiers returning from the front in Croatia as well as local thugs and criminals, surrounded the municipal building of Banja Luka and set up barricades in town.<sup>220</sup> An announcement was made through the media, introducing the SOS as a “group of Serbian patriots, JNA members, reservists, volunteers and citizens of Banja Luka” who were taking action “because of the false peacemaking of the SDA, the HDZ and opposition parties, which have besmirched the memories of the dead citizens of Banja Luka and Krajina”. The SOS requested that the President of Banja Luka municipality<sup>221</sup> establish a Crisis Staff for the purpose of negotiating a number of demands made by the SOS.<sup>222</sup> On the same day, a Crisis Staff was established.<sup>223</sup> After

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<sup>215</sup> Osman Selak, T. 12956-12959; ex. P2326 (under seal).

<sup>216</sup> Ex. P400, “Report on Paramilitary Formations in the Territory of the SerBiH”, issued by the VRS Main Staff on 28 July 1992.

<sup>217</sup> Ex. P400, “Report on Paramilitary Formations in the Territory of the SerBiH”, issued by the VRS Main Staff on 28 July 1992; Rusmir Mujanić, T. 15998-16014; Amir Džonlić, T. 2393-2394; BT-13, T. 4669 (closed session).

<sup>218</sup> See, e.g., ex. P1802, “Order from the 1<sup>st</sup> KK Command”, signed by Major General Momir Talić, dated 5 June 1992: “1. The battalion from the Prnjavor Territorial Defence Command on Mt. Vučjak, is hereby transferred to the command of the 327<sup>th</sup> Motorized Brigade and fully incorporated. 2. I appoint Lieutenant Veljko Milanković as battalion commander who will carry out and receive all orders from the commander of the 327<sup>th</sup> Motorised Brigade...”; ex. P1803, “Dispatch from the 1<sup>st</sup> KK Command”, dated 23 June 1992, proposing the decoration of several people, including Veljko Milanković [the leader of the Wolves of Vujčak]; ex. P1590, “War diary of Osman Selak”, p. 59, entry of 8<sup>th</sup> July: “Vojo Kuprešanin said: ‘that the Serbian government of BiH would do all it could to ensure that our army was organised and integrated as a unified armed force with a unified command and without paramilitary formations’”; Osman Selak, T. 13114. Adil Draganović gave evidence that all Serb paramilitary forces, including the SOS, were under the control of the military command of the army, T. 5656.

<sup>219</sup> See VI.C.4, “The authority of the ARK Crisis Staff with respect to Serbian paramilitary units”.

<sup>220</sup> Ibrahim Fazlagić, T. 4256; ex. P2326, entry of 3 April 1992 (under seal); BT-94, T. 18136-18137; BT-9, T. 3326-3331 (closed session); BT-13, T. 4609 (closed session); BT-7, T. 2870-2871, 3062-3063 (closed session); Zijahudin Smailagić, T. 1950-1951; BT-11, T. 4054-4056 (closed session); BT-21, T. 8226-8229 (closed session); Adil Draganović, T. 4899-4901; Predrag Radić, T. 22215-22220. See also ex. DB55, “Glas newspaper article”.

<sup>221</sup> Predrag Radić was at the time the President of the Banja Luka municipality: Predrag Radić, T. 21943-21946.

<sup>222</sup> Ex. P134, “Announcement” on Radio Banja Luka, 3 April 1992. The SOS requested as follows: “1. That the Law on Internal Affairs of the Republic of the Serbian People in Bosnia and Herzegovina be immediately implemented on the territory of Banja Luka and afterwards of Bosanska Krajina, that insignia be changed immediately and that all employees who have shown through their work that they are destroyers of Yugoslavia and enemies of the Serbian people be fired. 2. We are requesting of the Supreme Command and Presidency of Yugoslavia not to break up the Banja Luka Corps and not even think about moving its assets to other places. At the same time, we are praising the honourable Serbian officers and soldiers of the Banja Luka Corps from the lowest to the highest, telling them that the most important thing for them is the support of the Serbian people. ...3. We request the arrest of war profiteers and the publication of their activities and names. 4. We request replacements in the banks *Jugobanka* in Banja Luka and the *Privredna banka – Banjalučka banka d.d.* in order to prevent a monetary shock. 5. We request replacements in the post office, where management positions are occupied by those who voted against Yugoslavia, and who cannot, therefore, work in a united Yugoslavian PTT. 6. We request that the work of municipal organs be re-examined because it emerged that there have been abuses. 7. That extraordinary sessions of the Assembly of the municipality and of the Krajina be

only a few hours of negotiations attended by members of the SOS, as well as representatives of the Banja Luka TO and the Banja Luka Corps of the JNA, all the demands of the SOS were accepted by the Banja Luka Crisis Staff and within a short period of time they were implemented.<sup>224</sup>

99. Considering that the nature of the demands made by the SOS coincides with the instructions that the SDS in Banja Luka received from the SDS in Pale,<sup>225</sup> that no attempt was made by either the army or the police to remove the barricades or to arrest the members of the SOS,<sup>226</sup> that the head of the SOS (Nenad Stevandić) was also a member of the SDS who was in direct contact with Radovan Karadžić,<sup>227</sup> and that the demands of the SOS were indeed readily implemented, the Trial Chamber is satisfied beyond reasonable doubt that the establishment and the action of the SOS was orchestrated by the SDS as one of its tools to put into effect the Strategic Plan.<sup>228</sup>

100. When the armed conflict broke out in BiH, the scale of crimes committed against the non-Serb civilian population in the Bosnian Krajina escalated. These crimes came about through close co-operation between the Bosnian Serb police, the army and Serbian paramilitary groups.<sup>229</sup> The clearly recognisable pattern of criminal activity allows for only one reasonable conclusion, namely that these crimes were committed with the aim of implementing the Strategic Plan of the Bosnian Serb leadership to take control of the territory claimed for the Serbian State within BiH and to permanently remove most non-Serbs from this territory.

101. The following is by no means a complete overview of the crimes that were committed in execution of the Strategic Plan in the Bosnian Krajina during the period relevant to the Indictment,

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scheduled, at which the Crisis Staff would appoint its representatives to expedite these requests and at which the rights of soldiers, returnees from the front and families of fallen soldiers would be adopted". See also BT-9, T. 3326-3331 (closed session); BT-11, T. 3957-3958 (closed session).

<sup>223</sup> Predrag Radić, T. 21946-21948.

<sup>224</sup> Predrag Radić, T. 21946-21948, 22215-22220, 22254-22255; BT-11, T. 3958-3962 (closed session); BT-9, T. 3331-3341, 3963 (closed session). See also ex. P137, "Glas newspaper article", dated 4 April 1992, under the heading "SOS Demands Accepted". See further ex. P147, "Public announcement", 3 April 1992: "Banja Luka is quiet this evening... most important public buildings in the city still guarded by the SOS, but no more barricades... after a meeting of the Banja Luka Crisis Staff at which all seven requests were accepted... it was explained that these requests were made because of the anti-Serbian policy being conducted in BiH... and the immediate motive for today's events according to what Pedrag Radić... said... is the letter from the Minister of Defence in the BiH government, Jerko Koko, in which the conducted mobilisation is considered illegal and no rights of JNA soldiers and reservists are recognised. The Banja Luka municipality Crisis Staff has accepted all the requests of the Serbian Defence Forces..."; ex. P483, "Radio Banja Luka", emission of 3 April 1992: "After a three hour discussion the Banja Luka Municipal Crisis Staff granted all the requests of the Serbian Defence Forces organisation." The Accused publicly supported the demands of the SOS: ex. P137, "Transcript of press conference", 5 April 1992, during which the Accused and Radislav Vukić made statements; BT-94, T. 24759, 24812-24816; ex. P2326, entry of 5 April 1992 (under seal).

<sup>225</sup> Predrag Radić, T. 22245-22249.

<sup>226</sup> Predrag Radić, T. 22215-22220, 22245-22249; Milorad Sajić, T. 23773-23781.

<sup>227</sup> See ex. P2383.2; ex. P2383.11; ex. P2383.13: all intercepted telephone conversations between Radovan Karadžić and Nenad Stevandić in the time period between 31 August 1991 and 11 January 1992. See also ex. P141, "Glas newspaper article", dated 4 April 1992; Milorad Dodik, T. 20482. See also ex. P168, "Official Gazette", entry no. 15; ex. P400, "Report on paramilitary formations", demonstrating that Nenad Stevandić was the head of the SOS.

<sup>228</sup> See for example, Milorad Sajić, T. 23798-23800.

<sup>229</sup> See IX, "Charges and Findings".

but demonstrates a pattern of conduct of the Serb forces throughout the ARK municipalities during that period.<sup>230</sup>

102. In Sanski Most, the SDS took control over the municipality on 19 April 1992 through an armed attack on the municipality building conducted by the JNA's 6th Krajina Brigade, TO forces and members of a Bosnian Serb paramilitary group known as the Red Berets.<sup>231</sup> At the end of May 1992, after calls for disarmament had been made, attacks were launched on the Bosnian Muslim neighbourhoods and villages of Mahala, Muhići, Begići, Hrustovo, Vrhpolje and some other small villages. These attacks were planned well in advance by the army and the municipal Crisis Staff,<sup>232</sup> and were carried out by the army acting jointly with the SOS.<sup>233</sup> The attacks followed a similar pattern. Heavy shelling from outside the targeted neighbourhoods or villages caused severe damage and people were killed. The shelling forced the inhabitants of these villages to flee. After the troops had entered the villages, a number of people who had not fled were killed. Houses were looted and people fleeing were deprived of the valuables that they were carrying with them. Upon the armed attack by Bosnian Serb soldiers on the hamlet of Begići, between 20 and 30 Bosnian Muslim men were taken towards the Vrhpolje bridge which spans the Sana River where they were ordered to jump off the bridge. Once in the water, the soldiers opened fire upon them. The Trial Chamber finds that a total of at least 28 persons were killed in this event.<sup>234</sup> In the villages of Hrustovo and Vrhpolje, armed Bosnian Muslim forces, as well as the Patriotic League, were present and put up light resistance to the Bosnian Serb attackers.<sup>235</sup>

103. The armed attack on Bosanska Krupa took place on 21 April 1992 after negotiations between SDS members and the civilian authorities of Bosanska Krupa had failed.<sup>236</sup> An ultimatum had been previously issued by Bosnian Serb authorities from Jasenica to non-Serbs that all barricades, mounted after rumours of a Bosnian Serb attack on the town,<sup>237</sup> be dismantled and

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<sup>230</sup> For a complete analysis of crimes charged in the Indictment, see IX.A.2, "The killing of a number of men between Begići and Vrhpolje bridge".

<sup>231</sup> BT-21, T. 8678-8683 (closed session); Ahmed Zulić, T. 6856, 6941; Enis Šabanović, T. 6469; Faik Biščević, T. 7148-7149; BT-17, T. 7861-7862 (closed session); Bekir Delić, T. 7996; Mirzet Karabeg, T. 6110, 6115.

<sup>232</sup> BT-21, T. 8473-8477, 8703-8704 (closed session); Mirzet Karabeg, T. 6136-6139; Adil Draganović, T. 5657-5660. See also ex. P759.1, "Diary", p. 37; ex. P638, "Order".

<sup>233</sup> BT-21, T. 8473-8482, 8707-8708 (closed session); Enis Šabanović, T. 6687; Rajif Begić, T. 6334-6338.

<sup>234</sup> Nicolas Sébire, ex. P2008, "Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003", 02927939-02927940; ex. P791, "Record on the Investigation and Exhumation of Bopdies of Bosniaks from Mass Graves by the Bridge in Vrhpolje, Sanski Most Municipality", issued by the Lower Court in Sanski Most on 7 May 1996; Adil Draganović, T. 5590; Nicholas Sébire, T. 16714. Ex. P744, "Details of Services rendered", is a handwritten log book from an unknown source. It contains information on burials between May 1992 and December 1993 and contains, under item 4, an entry about the burial of 25 people recovered from the Sana River on 1 and 2 June 1992; see BT-21, T. 8520-8521 (closed session).

<sup>235</sup> BT-21, T. 8513-8516, 8751 (closed session). See also ex. P745, "War history of the 6<sup>th</sup> Infantry Brigade", para. 6.

<sup>236</sup> Jadranko Šaran, T. 17245.

<sup>237</sup> BT-55, T. 17539-17541.

citizens moved out from the left bank of the Una River.<sup>238</sup> Almost the entire Bosnian Serb population had left by then.<sup>239</sup> On 22 April 1992, Bosnian Muslims attempted to improvise a defence of the town with automatic rifles, semi-automatic rifles and some grenades but the Bosnian Serb infantry entered town after mortar shells were launched from Bosnian Serb positions.<sup>240</sup> The armed attack lasted until 25 April 1992.<sup>241</sup>

104. In Prijedor Municipality, on 30 April 1992, the army and the police physically took control of the municipality buildings and other vital buildings in town.<sup>242</sup> Between May and July 1992, the predominantly Bosnian Muslim and Bosnian Croat inhabited areas and villages of Hambarine, Kozarac, Kamičani, Biščani, Čarakovo, Briševo and Ljubija were attacked by the Bosnian Serb army acting jointly with the police and paramilitary groups. These attacks mostly started after the expiry of a deadline for non-Serbs to surrender their weapons. Sometimes an incident caused by non-Serbs would be used as a pretext. Attacks were conducted by intensive shelling with heavy army weaponry. Houses in Muslim villages and neighbourhoods were targeted and shelled indiscriminately, resulting in extensive destruction and civilian casualties. Many of the survivors fled the villages and sought shelter in the surrounding forests. After the shelling, armed soldiers entered the villages, looted and torched houses, and expelled or killed some of the villagers who remained behind. In some instances, women were raped.<sup>243</sup> The Bosnian Muslim and Bosnian Croat

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<sup>238</sup> BT-55, T. 17541.

<sup>239</sup> Jadranko Šaran, T. 17248.

<sup>240</sup> Jadranko Šaran, T. 17289.

<sup>241</sup> Jadranko Šaran, T. 17248; BT-55, T. 17539-17541; BT-56, T. 17450.

<sup>242</sup> Nusret Sivac, ex. P1547, T. 6568, 6572-6574; Muharem Murselović, ex. P1542, T. 2844; Mevludin Sejmenović, ex. P1533, T. 4557-4558; Mirsad Mujadžić, ex. P1601, T. 3669; BT-42, ex. P564, T. 1822-1823 (under seal). *See also* ex. P1168, "Report" by the Prijedor Public Security Station to the Banja Luka Security Services Centre about the peaceful take-over of Prijedor, dated 30 April 1992; ex. P1169 "Report" by a certain 'Miloš' concerning the take-over of Prijedor.

<sup>243</sup> **Hambarine:** Muharem Murselović, ex. P1542, T. 2700-2701, 2850; Ivo Atlija, ex. P1527, T. 5556-5558; Emsud Garibović, ex. P 1538, T. 12453, 12457-12458; BT-33, T. 12649, 12654 (closed session); BT-33, ex. P1544, T. 3981-3920, 3927-3928, 4009, 4024, 4035-4041 (under seal); Elvedin Našić, T. 12686-12687; Mirsad Mujadžić, ex. P1601, T. 3718-1719; BT-37, ex. P555, T. 2498 (under seal); BT-34, ex. P558, T. 1050-1052 (under seal); Nerim Karagić, ex. P559, T. 5206-5207, 5290; BT-78, ex. P562, T. 6856-6858 (under seal); BT-42, ex. P564, T. 1844 (under seal); BT-36, T. 11007-11008 (closed session). *See also* ex. P1128.42, "Photo"; ex. P1128.43, "Photo". **Kozarac and Kamičani:** Mevludin Sejmenović, T. 12193, 12289-12292, 4612; Mevludin Sejmenović, ex. P1533, T. 4673-4674, 4680, 4723-4724; Muharem Murselović, T. 12590-12591; Muharem Murselović, ex. P1542, T. 2701; Idriz Merdžanić, T. 11797-11801; Idriz Merdžanić, ex. P1148, T. 7722-7724, 7731-7738, 11795-11799, 7825; Mirsad Mujadžić, ex. P1601, T. 3840; BT-38, ex. P556, T. 1601, 1607-1608, 1610-1618, 1631-1632 (under seal); BT-29, ex. P560, T. 6213-6216 (under seal); BT-2, ex. P561, T. 2620 (under seal); Samir Poljak, T. 11882; Samir Poljak, ex. P1521, T. 6328-6334, 6342-6346, 6384-6390; Nusret Sivac, ex. P1619, T. 6764-6768; Osman Selak, T. 13091-13093, 13253-13257, 13084-13088; BT-27, T. 12016-12017; BT-27, ex. P1529, T. 4273-4277, 4282 (under seal); BT-36, T. 10990-10992, 10997-11003, 11009-11011, 11014-11017, 11054-11055 (closed session); Jusuf Arifagić, ex. P554, T. 7071-7075, 7123-7124, 7128, 7148; Emsud Garibović, T. 12459. *See also* ex. P1416, "Report"; ex. P1226, "Report"; ex. P1415, "Combat report". **Biščani:** BT-78, ex. P562, T. 6858-6869 (under seal); BT-32, T. 11864, 11867-11869 (closed session); BT-32, ex. P1515, T. 5883-5884, 5901-5903, 5908-5925, 5931-5951, 5962, 6000-6001 (under seal); BT-106, T. 21074-21088 (closed session). *See also* ex. P1515 (under seal); ex. P1516 (under seal); ex. P1517 (under seal). **Čarakovo:** BT-30, T. 12540-12550, 12555 (partly private session); BT-30, ex. P1541, T. 5727-5738 (under seal); BT-106, T. 21082-21087 (closed session). **Briševo:** Ivo Atlija, T. 11932-11933, 11965, 11989-11991; Ivo Atlija, ex. P1527, T. 5562-5565, 5571-

population of Prijedor Municipality was not able to set up any efficient resistance to these armed attacks. They were not adequately organised and they did not have sufficient weapons with which they could oppose the attackers.<sup>244</sup>

105. In Bosanski Petrovac, a predominantly Bosnian Serb municipality, violence broke out in early May 1992, when a number of soldiers arrived from different fronts<sup>245</sup> and Serbian paramilitary groups managed to infiltrate the community.<sup>246</sup> In late May 1992, chemical shells were used on Bosnian Muslim houses and other similar attacks followed in early June 1992.<sup>247</sup> Meanwhile, Bosnian Muslim property was systematically destroyed and vehicles were confiscated, allegedly for the use of the army.<sup>248</sup> The two mosques in the centre of town were destroyed during the attack.<sup>249</sup> There was no apparent resistance in this area.<sup>250</sup>

106. In Bosanski Novi Municipality, on 12 May 1992, the Bosnian Muslim village of Blagaj Japra was shelled for the first time by the army acting jointly with some Bosnian Serbs, following a call for the village's inhabitants to surrender their weapons. During the following months, other Bosnian Muslim villages in the Japra valley, including Suhača, Hodžići and Gornji Agići, were also intensively shelled and the villagers were forced to move in their thousands towards Blagaj Japra. On 9 June 1992, Bosnian Muslim men, women and children were expelled from Blagaj Japra after Bosnian Serb forces entered the village. As they left, Bosnian Muslims were deprived of any valuables they were carrying with them. Their houses were looted. At least ten Bosnian Muslims from Blagaj Japra were killed by the Bosnian Serb soldiers during this operation.<sup>251</sup> The Bosnian Muslim population did not resist the Bosnian Serb attacks in any significant way.<sup>252</sup> The political

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5580, 5582, 5585-5586, 5589, 5597-5616. See also ex. P1524/S185.2-S185.8, "Photos"; ex. P1526/S58, "Video". **Ljubija:** BT-33, ex. P1544, T. 3928-3931, 3991-3994, 4056-4057 (under seal).

<sup>244</sup> **Hambarine:** Ivo Atlija, ex. P1527, T. 5661; Elvedin Našić, T. 12688-12689, 12720-12721. **Kozarac** and **Kamičani:** Idriz Merdžanić, ex. P1148, T. 7722-7723; Idriz Merdžanić, T. 11795-11799; Jusuf Arifagić, ex. P554, T. 7137-7138; BT-44, ex. P565, T. 3197 (under seal); BT-36, T. 10997-11003, 11013 (closed session). See also ex. P1227, "Transcript" of news broadcast of 27 May 1992 regarding combat activities. **Briševo:** Ivo Atlija, ex. P1527, T. 5571.

<sup>245</sup> Jovica Radojko, T. 20024, 20061; Ahmet Hidić, T. 16158-16159.

<sup>246</sup> Jovica Radojko, T. 20245.

<sup>247</sup> Ahmet Hidić, T. 16251.

<sup>248</sup> Ahmet Hidić, T. 16251-16254.

<sup>249</sup> Ahmet Hidić, T. 16254; Jovica Radojko, T. 20194.

<sup>250</sup> Ahmet Hidić, T. 16225.

<sup>251</sup> Midho Alić, T. 13872-13876, 13882-89, 13894, 13896-97, 13917; BT-50, ex. P1641, 92bis statement, 672858-672859; BT-81, T. 13788; BT-86, T. 14290 (closed session); BT-86, ex. P1639, 92bis statement, 943011 (under seal); BT-87, ex. P1643, 92bis statement, 942600 (under seal); BT-49, T. 14228-14229 (closed session); BT-82, T. 13967-13969, 14027; BT-50, ex. P1641, 92bis statement, 672858-672859 (under seal); BT-83, T. 14055. See also IX.A.2, "The killing of a number of people during the expulsion of Bosnian Muslims from the village of Blagaj Japra and the surrounding areas".

<sup>252</sup> BT-83, T. 14055.



take-over of power by the SDS in Bosanski Novi Municipality took place in early June 1992 in form of a coup.<sup>253</sup>

107. In Donji Vakuf, a predominantly Bosnian Muslim municipality, a Bosnian Serb armed formation called ‘White Eagles’ arrived in April 1992.<sup>254</sup> This paramilitary group was responsible for shooting, intimidating the non-Serb population and looting. The population was requested to hand in weapons.<sup>255</sup> On 21 May 1992, in a joint operation of Bosnian Serb forces, including the police, the inhabitants of the Bosnian Muslim village of Korenići were expelled and their houses plundered and set on fire. After the attack, no Bosnian Muslims were left in the village.<sup>256</sup> On 3 June 1992, Torlakovac, another Bosnian Muslim village, was attacked.<sup>257</sup> On 11 July 1992, the VRS carried out a similar operation in two other predominantly Bosnian Muslim villages, Oborci and Seher. In late summer of 1992, an armed Bosnian Serb formation went around Bosnian Muslim villages, such as Doganovci, and opened fire. Many houses were burnt to the ground. There was no armed resistance from the Bosnian Muslims.<sup>258</sup>

108. Events in the Ključ Municipality were distinguished by a more effective Bosnian Muslim resistance. When the town of Ključ was taken over by the Bosnian Serbs,<sup>259</sup> members of the Bosnian Muslim resistance retreated to the Bosnian Muslim village of Pudin Han.<sup>260</sup> On 27 May 1992, the resistance fighters attacked a Bosnian Serb military column in the area of Pudin Han. On the same day, the deputy commander of the Ključ SJB, Dušan Stojaković, was killed.<sup>261</sup> The following day, the Ključ Municipality Crisis Staff issued a final ultimatum to Bosnian Muslims to surrender their weapons, failing which “thorough measures [would] be undertaken to disarm them, which [could] have disastrous consequences for their personal safety and for their property”.<sup>262</sup> Prior to the expiration of the ultimatum, the Bosnian Serb army started shelling Pudin Han, followed by Velagići, Prhovo and other Bosnian Muslim villages in the Ključ municipality.<sup>263</sup> A number of inhabitants of Pudin Han and Prhovo died as a consequence of this attack.<sup>264</sup> During the

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<sup>253</sup> BT-81, T. 13748, 13838 (closed session).

<sup>254</sup> Alija Verem, ex. P1695, 92*bis* statement, 02061788 (under seal).

<sup>255</sup> Senad Alkić, T. 14986-14987.

<sup>256</sup> Senad Alkić, T. 14993-14994.

<sup>257</sup> Senad Alkić, T. 14995; ex. P1757, “Report on the setting up of a Serbian SJB and police participation in the war”.

<sup>258</sup> Senad Alkić, T. 14990-14991; Dževad Došlić, T. 14835-14836.

<sup>259</sup> Ex. P850, “SDS Municipal Civil Defence Plan”; Muhamed Filipović, T. 9408, 9438-9439.

<sup>260</sup> Ex. DT24, “Official Record” of a police interview, dated 31 May 1992.

<sup>261</sup> Muhamed Filipović, T. 9529, 10075-10076, 10082; BT-79, T. 11665-11666 (closed session); Atif Džafić, ex. P1123, 92*bis* statement, 2004685; BT-26, T. 9206-9209, 9239-9245 (closed session). *See also* ex. P644, “Regular Combat Report”, issued by the 1<sup>st</sup> KK Command, dated 28 May 1992, p. 2.

<sup>262</sup> Ex. P916, “Order” to surrender illegal weapons issued on 28 May 1992 by the Ključ Crisis Staff.

<sup>263</sup> BT-26, T. 9117, 9209 (closed session); Muhamed Filipović, T. 9541. *See also* ex. P 949, “Public Announcement”.

<sup>264</sup> BT-26, T. 9118 (closed session); Nisvet Tičević, T. 10739-10740; Ajiz Begić, ex. P549, 92*bis* statement, 2109337; Hasan Salihović, ex. P550, 92*bis* statement, 2109327; BT-77, T. 10341-10343; Bajro Hadžić, ex. P552, 92*bis* statement, 521139.

following days, the killings continued with major killing incidents occurring on the road to Peći and at the Velagići school.<sup>265</sup>

109. In the municipality of Prnjavor, the most serious attack took place against the Bosnian Muslim village of Lišnja at the end of May 1992. After weapons had been handed in, the village was surrounded by the VRS, the police and a paramilitary group from the area, the ‘Wolves of Vujčak’.<sup>266</sup> The Bosnian Muslim inhabitants were ordered to leave the village and told that if they did not, they would be considered as enemies. They had to gather at the sawmill where they were fenced in and detained until noon the next day.<sup>267</sup> The village of Lišnja was shelled. Houses were burnt down and livestock was killed.<sup>268</sup> There was no resistance from the Bosnian Muslims.<sup>269</sup>

110. In Teslić municipality, the ‘Miće’ paramilitary group sowed terror by looting, killing and raping.<sup>270</sup> After the army blocked all the roads leading out of Teslić, the Bosnian Muslim village of Stenjak was shelled on 4 June 1992 following the expiration of a deadline issued to the inhabitants to surrender their weapons.<sup>271</sup> The Bosnian Serb army and the police, assisted by paramilitary groups, searched houses belonging to Bosnian Muslims for hidden weapons.<sup>272</sup> Houses were looted and burnt.<sup>273</sup> There was no resistance from the non-Serb population in Teslić.<sup>274</sup>

111. In Kotor Varoš Municipality, the take-over of power by the SDS was achieved in June 1992 through attacks by Bosnian Serb armed forces on the town of Kotor Varoš and the villages of Večići, Hrváčani, Ravne, Hanifići and other villages, all of which were inhabited by Muslims or Croats. During these attacks, a number of people were killed. Most inhabitants of these villages eventually fled to neighbouring areas.<sup>275</sup> In the village of Večići, the Bosnian Serb forces faced considerable Bosnian Muslim armed resistance and fighting continued for months.<sup>276</sup> Bosnian Serb forces shelled Večići on a regular basis until October 1992 and also attacked the village from the air, using cluster bombs and napalm.<sup>277</sup> The criminal acts carried out in support of the power take-

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<sup>265</sup> See IX.A.2, “The killing of a number of people in Prhovo village and a number of men on the road to Peći”.

<sup>266</sup> Rusmir Mujanić, T. 16014, 16075-16079; BT-91, T. 15867-15874.

<sup>267</sup> Rusmir Mujanić, T. 16001-16014; BT-91, T. 15990-15991; ex. P 657, “Combat Report”, dated 2 June 1992.

<sup>268</sup> Rusmir Mujanić, T. 16015-16017.

<sup>269</sup> Rusmir Mujanić, T. 16001-16010; BT-91, T. 15897-15898.

<sup>270</sup> BT-95, T. 19550-19551 (closed session).

<sup>271</sup> Mehmed Tenić, T. 16864; BT-64, T. 16959-16960.

<sup>272</sup> Mehmet Kopic, ex. P1964, 92bis statement, 1034036.

<sup>273</sup> BT-68, ex. P1967, 92bis statement, 943115-943116 (under seal).

<sup>274</sup> Adil Osmanović, T. 16599.

<sup>275</sup> Elvedin Pašić, T. 19396-19400; BT-96, T. 17695-17700, 17769-17771, 17774-17775 (closed session); BT-71, T. 17635-17637. As to the take-over of power by the SDS, see ex. P234, “Report”; BT-96, T. 17693-17694 (closed session); Muhamed Sadiković, T. 18220-18223.

<sup>276</sup> BT-96, T. 17697-17700, 17747-17748, 17769-17771 (closed session).

<sup>277</sup> Muhamed Sadiković, T. 18334-18343; Zoran Jokić, T. 24046-24047.

over in Kotor Varoš Municipality culminated in the massacre at Grabovica school, where a large number of Bosnian Muslim men fleeing from the hostilities were killed.<sup>278</sup>

112. In Šipovo, a predominantly Bosnian Serb municipality,<sup>279</sup> houses in villages largely inhabited by Bosnian Muslims, such as Bešnjivo, were set on fire by Bosnian Serb forces.<sup>280</sup> The mosques in Staro Šipovo, Bešnjovo and Pljeva were destroyed on 7 August 1992 by Bosnian Serb forces.<sup>281</sup>

113. In Čelinac municipality, where Bosnian Serbs formed an overwhelming majority of the population, on 6 August 1992, Bosnian Serb soldiers ordered the inhabitants of the Bosnian Muslim hamlet of Basići to leave the area as they could not guarantee their safety.<sup>282</sup> During the same month, several Bosnian Muslim villages were attacked by Bosnian Serb forces.<sup>283</sup> Bosnian Muslim houses were set on fire and by October 1992, many of them had been destroyed while Bosnian Serb homes remained intact.<sup>284</sup> In Čelinac town, two mosques, the Imam's house and a Roman Catholic church were destroyed during the attack.<sup>285</sup> Other non-Serbs from Čelinac town then started to organise themselves and requested to leave.<sup>286</sup> They were told to form a column in the direction of Banja Luka but were later prevented from proceeding by the military police because of security reasons.<sup>287</sup> They were taken to Čelinac Elementary School and kept there between seven and fifteen days.<sup>288</sup> Upon their release, they were allowed to return to what was left of their homes.<sup>289</sup>

114. On 3 April 1992, the SOS arrived in Banja Luka municipality, set up barricades and demanded that a number of their requests be met through the establishment of a Crisis Staff.<sup>290</sup> In Banja Luka municipality, violence was not as pervasive as in other municipalities as it was under

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<sup>278</sup> See IX.A.2, "The killing of a number of men in the school in Grabovica".

<sup>279</sup> BT-92, T. 19781.

<sup>280</sup> BT-105, T. 19112-19114 (closed session).

<sup>281</sup> BT-105, T. 19103(closed session); ex. P2404, "Official Note", dated 9 October 1992.

<sup>282</sup> Vahid Mujkanović, ex. P1980, 92bis statement, 2299907, stating that on 6 August 1992, the Bosnian Muslim population of Basići had to walk 10 km to Karanovac (in Banja Luka) where they stayed three days in an old school building, after which local Bosnian Serb military forces ordered them to leave and go back to their municipality. They drove them in three buses and made them spend the night in Čelinac town, inside the buses guarded by Bosnian Serb reservists, as their safety could not be guaranteed otherwise. They were later released.

<sup>283</sup> Vahid Mujkanović, ex. P1980, 92bis statement, 2299902.

<sup>284</sup> Vahid Mujkanović, ex. P1980, 92bis statement, 2299902.

<sup>285</sup> Ex. P1788, "Note"; ex. P2005.1, "Photo"; BT-90, T. 17073-17074, 17100-17102 (closed session).

<sup>286</sup> BT-90, T. 17097 (closed session).

<sup>287</sup> BT-90, T. 17098 (closed session).

<sup>288</sup> BT-90, T. 17179-17182, 17100 (closed session).

<sup>289</sup> BT-90, T. 17097 (closed session); Mehmet Talić, T. 24148, 24151, 24153. By April 1993, seven hundred and seventy out of more than one thousand and sixty Bosnian Muslims were left in Čelinac municipality (ex. P1981, "Document regarding figures showing the ethnic structures of the municipality of Čelinac before and after the war broke out, Security Service Centre, Banja Luka, 30 April 1993"). See also X.C.3, "Benevolent treatment of Bosnian Muslim population in Čelinac".

<sup>290</sup> For a more detailed account of the events of 3 April 1992 in Banja Luka, see *supra*, paras 98-99.

the scrutiny of the international community.<sup>291</sup> Incidents of destruction of Bosnian Muslim property were nonetheless recurrent.<sup>292</sup> The predominantly Bosnian Muslim villages of Mehovci, Bastasi, Hadrovici and Vranic were shelled.<sup>293</sup>

115. In the spring of 1992, camps and other detention facilities were established throughout the territory of the Bosnian Krajina in army barracks and compounds, factories, schools, sport facilities, police stations and other public buildings. These camps and detention facilities were set up and controlled by the Bosnian Serb army, civilian authorities or the Bosnian Serb police.<sup>294</sup> Non-Serb civilians were arrested *en masse* and detained in these camps and detention facilities. For example, in Prijedor Municipality, after the armed attacks on non-Serb villages by Bosnian Serb armed forces, women and children were separated from the men before they were all loaded onto buses and taken to Trnopolje, Omarska or Keraterm.<sup>295</sup> While prominent members of the SDA and the HDZ were among the first to be arrested,<sup>296</sup> the overwhelming majority were normal citizens arrested solely because of their ethnicity.<sup>297</sup> The conditions in the camps and some detention facilities were particularly harsh. Inmates were interrogated, beaten, subjected to inhuman and degrading conditions of life and tortured. Women were raped and killings occurred on a regular basis.<sup>298</sup> The tragic peak of killings inside these camps was reached with a massacre in “Room 3” of the Keraterm camp, perpetrated by Bosnian Serb army personnel, during which at least one hundred and ninety Bosnian Muslims from the Brdo area in Prijedor Municipality were killed.<sup>299</sup>

116. Already before the outbreak of the armed conflict in BiH, Bosnian Muslims and Bosnian Croats living in the Bosnian Krajina were feeling increasingly insecure and started leaving the region in convoys.<sup>300</sup> As the events in the Bosnian Krajina developed, from the spring of 1992 onwards, active and systematic repression and expulsion of Bosnian Muslims and Bosnian Croats was carried out by the Bosnian Serb authorities throughout the Bosnian Krajina. Convoys of buses and trains were organised by the Bosnian Serb authorities to drive tens of thousands of men, women

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<sup>291</sup> Amir Džonlić, T. 2485-2486.

<sup>292</sup> BT-11, T. 3865 (closed session); BT-22, T. 4484.

<sup>293</sup> BT-12, T. 4175-4181.

<sup>294</sup> Ex. P2649, “Map of detention camps in the Autonomous Region of Krajina”.

<sup>295</sup> Nurset Sivac, ex. P1547, T. 6574-6576, 6720-6721; Emsud Garibović, T. 12458-12463; BT-27, T. 12018-12019; BT-36, T. 11009-11011 (closed session); Samir Poljak, ex. P1521, T. 6342-6346; Jusuf Arifagić, ex. P554, T. 7074-7081; BT-1, ex. P1619, T. 4736-4737 (under seal); BT 30, ex. P1541, T. 5728-2730, 5745-5750 (under seal); Idriz Merdžanić, T. 11793-11795; BT-106, T. 21097, 21105-22106 (closed session).

<sup>296</sup> Adil Draganović, T. 5574-5575, 5581-5582, 5827, 5878-5885; Mirzet Karabeg, T. 6089-6091, 6140; Enis Šabanović, T. 6470, 6604-6605; Bekir Delić, T. 7950-5951, 8010; Jakov Marić, T. 10823-10824; Sakib Muhić, T. 8100-8105; BT-17, T. 7742-7743, 7887 (closed session). See also ex. P759, “Diary”; ex. P667, “List”; ex. P697, “Telegram”; ex. P790, “List”.

<sup>297</sup> See IX.F.2, “Right to freedom of movement”.

<sup>298</sup> See IX.E.2, “Deliberately inflicting upon the group conditions calculated to bring about physical destruction”.

<sup>299</sup> See IX.A.2, “The killing of a number of men in ‘Room 3’ at Keraterm camp – Prijedor municipality”.

<sup>300</sup> Muharem Murselović, ex. P1542, T. 2840-2841; BT-81, T. 13782; BT-95, T. 19537-19538 (closed session); Senad Alkić, T. 14986-14987; BT-92, T. 19854, 19869 (private session).

and children out of Bosnian Serb claimed territory to either Bosnian Muslim held territory within BiH or to Croatia.<sup>301</sup> On 12 June 1992, the Agency for Population Movement and Exchange of Material Wealth was established in Banja Luka, assisting in the implementation of the policy of ethnic cleansing.<sup>302</sup> Trnopolje became a transfer facility for the expulsion of the non-Serb population from the Bosnian Krajina. Many people from Prijedor were taken to Trnopolje after their villages had been attacked by the Bosnian Serb forces and others came to Trnopolje on their own initiative, from where they were driven out of the area in convoys of buses.<sup>303</sup> The non-Serb population often sought to leave, and requested the convoys, which were then organised by the Bosnian Serb authorities. However, they did not leave of their own free will, but were forced to do so as a result of the conditions imposed on them.<sup>304</sup> Moreover, in many instances the Bosnian Serb authorities made them sign documents stating that they renounced claims to all the property that they left behind in favour of the SerBiH.<sup>305</sup> The Trial Chamber is satisfied that this measure was intended to dissuade the Bosnian Muslims and the Bosnian Croats leaving the territory from returning at a later stage.

117. At the same time, the cleansed areas in northern Bosnia that had been emptied of Bosnian Muslims and Bosnian Croats were re-populated by resettling Serbian refugees coming from Croatia.<sup>306</sup>

118. The Trial Chamber is satisfied beyond reasonable doubt that the crimes that were committed in the Bosnian Krajina from April 1992 until the end of December 1992, the period relevant to the

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<sup>301</sup> BT-19, T. 20643, 20658, 20660 (closed session). *See also* ex. P2670 (under seal); ex. P2671 (under seal); ex. P2676 (under seal); ex. P2677 (under seal); ex. P2678 (under seal). Paul Shoup, a witness testifying for the Defence, suggested that all three groups engaged in ethnic cleansing. He admitted, however, that “the Serbs engaged in ethnic cleansing to a greater degree than either the Croats or Muslims. How much more remains a subject of debate. Above and beyond the question of numbers, there was the issue of the brutality with which ethnic cleansing was carried out, the destruction of cultural monuments and artefacts, and the plundering of the homes and villages of the departed... in the case we are concerned with, ethnic cleansing was not associated with the physical liquidation of entire populations, but rather their hasty removal, accompanied by the excesses of rape, pillaging and murder”, ex. DB376, “Expert Report of Paul Shoup”, pp. 33, 37.

<sup>302</sup> Ex. P227, “ARK Official Gazette”, Item 17, Decision of the ARK Crisis Staff, para. 6: “An agency shall be established to work on the problem of population resettlement”; BT-19, T. 20641 (closed session); Nusret Sivac, ex. P1547, T. 6770-6771; Adil Draganović, T. 5648, 5676; Grgo Stojić, T. 6771-6772; Bešim Islamčević, T. 7470-7472; Amir Džonlić, T. 2458. *See also* ex. P242, “ARK Crisis Staff Decision”, dated 12 June 1992, which is entitled “Decision to found an agency for population movement and exchange of material wealth for the Autonomous Region of Krajina”. *See also* ex. P2661 (under seal); ex. P218, “Decision” of the Sanski Most Crisis Staff, dated 30 May 1992.

<sup>303</sup> Nusret Sivac, ex. P1547, T. 6767-6768; Emsud Garibović, T. 12458-12463; Jusuf Arifagić, ex. P554, T. 7075; BT-78, ex. P562, T. 6866-6869 (under seal); BT-30, ex. P1541, T. 5727-5750 (under seal); BT-30, T. 12564-12565; Idriz Merdžanić, T. 11814-11815.

<sup>304</sup> Bešim Islamčević, T. 7470-7479, 7555-7558. *See also* IX.C, “Deportation and forcible transfer”.

<sup>305</sup> Nusret Sivac, ex. P1547, T. 6696; Ivo Atlija, ex. P1527, T. 5655-5656; Idriz Merdžanić, T. 11787; BT-34, ex. P558, T. 1104 (under seal); Jakov Marić, T. 10840; BT-23, T. 6434; Bešim Islamčević, T. 7430; BT-21, T. 8587 (closed session); Muhamed Sadiković, T. 18260-18263, 18273-18277; BT-33, ex. P1544, T. 3975 (under seal).

<sup>306</sup> BT-19, T. 20748 (closed session); BT-9, T. 3428-3430 (closed session); BT-21, T. 8562-8563 (closed session). *See also* ex. P214, “Transcript” of radio broadcast, dated 29 May 1992; P690, “Decision” by the Sanski Most Crisis Staff, dated 23 June 1992, para. 2. The Agency for the Movement of People and Exchange of Properties was also responsible for such resettlement, *see* BT-19, T.20641 (closed session). *See also* IX.C, “Deportation and forcible transfer”.

Indictment, occurred as a direct result of the over-arching Strategic Plan. The ethnic cleansing was not a by-product of the criminal activity; it was its very aim and thus an integral part of the Strategic Plan.<sup>307</sup> The conditions of life imposed on the non-Serb population of the Bosnian Krajina and the military operations against towns and villages which were not military targets were undertaken for the sole purpose of driving people away.<sup>308</sup> Many people were kept in detention centres under horrendous conditions. As it was intended to permanently remove these people from the territory of the SerBiH, many of their homes were destroyed in order to prevent them from returning. Bosnian Muslim homes that were not destroyed were allocated to Serb refugees from Croatia and other parts of BiH. The deliberate campaign of devastation of the Bosnian Muslim and Bosnian Croat religious and cultural institutions was just another element of the larger attack. The final objective, however, was the removal of the population and the destruction of their homes.<sup>309</sup> By August 1992, the consistent application of such a discriminatory policy was obvious.<sup>310</sup> The evidence shows a consistent, coherent and criminal strategy of cleansing the Bosnian Krajina of other ethnic groups implemented by the SDS and the Bosnian Serb forces.<sup>311</sup>

119. The Trial Chamber is satisfied beyond reasonable doubt that during the implementation of this policy, effective control over the Bosnian Serb military, police and civilian structures was exercised variously by political leaders from the Bosnian Serb Supreme Command and other governmental authorities of the SerBiH. The impact of so-called uncontrolled elements was marginal.<sup>312</sup> It is also satisfied beyond reasonable doubt that it was impossible to implement a systematic policy of this magnitude, just by spontaneous action or by criminal actions by isolated radical groups.<sup>313</sup> Moreover, the Trial Chamber is convinced that the actual methods used to implement the Strategic Plan were controlled and coordinated from a level higher than the

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<sup>307</sup> BT-19, T. 20635-20657, 20708 (closed session); BT-20, T. 5247-5249.

<sup>308</sup> BT-19, T. 20620 (closed session).

<sup>309</sup> Ex. P1883.1, "Report on the Damaging and Destruction of Islamic and Roman Catholic Sacral Buildings in the Municipalities of Bosanski Novi, Donji Vakuf, Ključ, Kotor Varoš, Prijedor and Sanski Most in the 1992-95 War", with specific reference to 1992, p. 12. See also BT-19, T. 20634 (closed session).

<sup>310</sup> BT-19, T. 20635. (closed session). BT-19 also stated that in his view it was clear that this was not due to uncontrolled activities of irregulars who were acting on their own. It was impossible to plan, organise and implement a systematic policy of this magnitude by spontaneous or criminal actions of isolated radical groups: T. 20636 (closed session). As to the discriminatory nature of the policy, see BT-19, T. 20636, 20619 (closed session), indicating that 80 – 90 per cent of the displaced persons were Muslims.

<sup>311</sup> BT-19, T. 20620-20622, 20636 (closed session). The ethnic cleansing operations were linked to the implementation of the first strategic goal, *i.e.*, to separating the people on the ground: Milorad Sajić, T. 23762-23764. Paul Shoup wrote the following: "Did ethnic cleansing in Bosnia follow a pattern? The answer is yes, if we recognise the strategic motives behind ethnic cleansing – reinforcing claims to territory acquired in the course of the fighting": ex. DB376, "Expert Report of Paul Shoup", p. 35.

<sup>312</sup> Barnabas Mayhew, T. 13575-13576; ex. P1617/S217, "ECMM Report", dated 29 August – 4 September 1992, p. 9; ex. DB376, "Expert Report of Paul Shoup", p. 28, quoting a CIA study, called *Balkan Battlegrounds*, Vol. II, pp. 154, xiii.

<sup>313</sup> BT-19, T. 29635-20657 (closed session).

respective municipalities, even though some municipalities distinguished themselves by taking certain initiatives.<sup>314</sup>

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<sup>314</sup> At a Prijedor SDS meeting held on 9 May 1992, Milan Kovačević, the President of the Executive Committee, summed up that “the functioning of government at the level of Krajina can now be felt, instructions and decisions are now being forwarded from the top”: ex. P1195, “Minutes”. *See also*, VI.C, “The authority of the ARK Crisis Staff”.

## V. GENERAL REQUIREMENTS FOR THE CRIMES ALLEGED IN THE INDICTMENT

120. The Accused is charged with crimes under Articles 2, 3, 4 and 5 of the Statute. The application of Articles 2, 3 and 5 requires that a number of general requirements be fulfilled.<sup>315</sup>

### A. Article 2 of the Statute: Grave Breaches of the 1949 Geneva Conventions

121. There are four preconditions to the applicability of Article 2 of the Statute: (i) the existence of an armed conflict; (ii) the establishment of a nexus between the alleged crimes and the armed conflict; (iii) the armed conflict must be international in nature; and (iv) the victims of the alleged crimes must qualify as protected persons pursuant to the provisions of the 1949 Geneva Conventions.

122. It is settled in the jurisprudence of this Tribunal that an armed conflict exists “whenever there is resort to armed forces between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State”.<sup>316</sup>

123. In linking the offences to the armed conflict, it is not necessary to establish that actual combat activities occurred in the area where the crimes are alleged to have occurred. Rather, “[i]t is sufficient that the alleged crimes were *closely related* to the hostilities occurring in other parts of the territories controlled by the parties to the conflict.”<sup>317</sup>

124. Clearly, an armed conflict is international in nature if it takes place between two or more States. In addition, an internal armed conflict may become international if (i) another State intervenes in that conflict through its troops, or, alternatively, (ii) some of the participants in the internal armed conflict act on behalf of that other State.<sup>318</sup> There are three different tests, specific to the circumstances, to determine the degree of control that a foreign State has over armed forces fighting on its behalf.<sup>319</sup> For armed forces, militias or paramilitary units acting as *de facto* organs of

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<sup>315</sup> The law specifically applicable to Article 4 of the Statute is described further in IX.E., “Genocide”, *infra*.

<sup>316</sup> *Prosecutor v. Duško Tadić (aka “Dule”)*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 (“*Tadić* Jurisdiction Decision”), para. 70; endorsed in *Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka “Pavo”), Hazim Delić and Esad Landžo (aka “Zenga”)*, Case No. IT-96-21-T, Judgement, 16 November 1998 (“*Čelebići* Trial Judgement”), para. 183; *Prosecutor v. Radoslav Krstić*, Case No. IT-98-33-T, Judgement, 2 August 2001 (“*Krstić* Trial Judgement”), para. 481; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Judgement, 29 October 2003 (“*Stakić* Trial Judgement”), para. 568.

<sup>317</sup> *Tadić* Jurisdiction Decision, para. 70 (emphasis added); endorsed in *Čelebići* Trial Judgement, paras 193-195; *Prosecutor v. Mladen Naletilić (aka “Tuta”) and Vinko Martinović (aka “Štela”)*, Case No. IT-98-34-T, Judgement, 31 March 2003 (“*Naletilić* Trial Judgement”), para. 177.

<sup>318</sup> *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999, (“*Tadić* Appeal Judgement”), para. 84.

<sup>319</sup> *Tadić* Appeal Judgement, paras 117-124 describing the three different tests: 1) For single private individuals or groups, not militarily organised, acting as a *de facto* organ of the State., it is necessary to ascertain that the said State



the State, the establishment of the overall character of the control suffices.<sup>320</sup> The control required by international law may be deemed to exist when a State (or, in the context of an armed conflict, the Party to the conflict) has a role in (i) organising, coordinating or planning the military actions of the military group, in addition to (ii) financing, training and equipping or providing operational support to that group.<sup>321</sup> These two elements must both be satisfied.

125. Each of the four 1949 Geneva Conventions respectively sets out the conditions under which a person or property is protected by its provisions.<sup>322</sup> Persons not entitled to protection under the first three Geneva Conventions, necessarily fall within the ambit of Geneva Convention IV, which applies to civilians, provided that the requirements of Article 4 of Geneva Convention IV are satisfied.<sup>323</sup> Geneva Convention IV defines “protected persons” as those “in the hands of a party to the conflict or Occupying Power of which they are not nationals”,<sup>324</sup>. The criterion of nationality might exclude certain victims of crimes from the category of protected persons. However, it is settled jurisprudence of this Tribunal that protected persons should not be defined by the strict requirement of nationality, as opposed to more realistic bonds demonstrating effective allegiance to a party to a conflict, such as ethnicity.<sup>325</sup> This Trial Chamber agrees with and will follow this approach.

### **B. Article 3 of the Statute: Violations of the Laws or Customs of War**

126. Article 3 of the Statute refers to a broad category of offences, namely all "violations of the laws or customs of war".<sup>326</sup> It has thus been interpreted as a residual clause covering all violations of humanitarian law not falling under Articles 2, 4 or 5 of the Statute, more specifically : (i) violations of the Hague law on international conflicts; (ii) infringements of provisions of the Geneva Conventions other than those classified as “grave breaches ” by those Conventions; (iii)

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has issued specific instructions concerning the commission of that particular act or that it has publicly endorsed or approved the unlawful act *ex post facto*; 2) for armed forces, militias or paramilitary units acting as *de facto* organs of the State, the establishment of the overall character of the control suffices and 3) private individuals who are assimilated to State organs on account of their actual behaviour within the structure of the State may be regarded as *de facto* organs of the State, regardless of any possible requirement of State instructions.

<sup>320</sup> *Tadić* Appeal Judgement, paras 117-145.

<sup>321</sup> *Tadić* Appeal Judgement, para. 145.

<sup>322</sup> *Tadić* Jurisdiction Decision, para. 81: “For the reasons set out above, this reference is clearly intended to indicate that the offences listed under Article 2 can only be prosecuted when perpetrated against persons or property regarded as “protected” by the Geneva Conventions under the strict conditions set out by the Conventions themselves. This reference in Article 2 to the notion of “protected persons or property” must perforce cover the persons mentioned in Articles 13, 24, 25 and 26 (protected persons) and 19 and 33 to 35 (protected objects) of Geneva Convention I; in Articles 13, 36, 37 (protected persons) and 22, 24, 25 and 27 (protected objects) of Geneva Convention II; in Article 4 of Convention III on prisoners of war, and in Articles 4 and 20 (protected persons) and Articles 18, 19, 21, 22, 33, 53, 57, etc. (protected property) of Convention IV on civilians.”

<sup>323</sup> *Čelebići* Appeal Judgement, para. 271.

<sup>324</sup> Article 4 (1) of Geneva Convention I.

<sup>325</sup> *Tadić* Appeal Judgement, paras 164-168; *Blaškić* Appeal Judgement, paras 172-176; *Čelebići* Appeal Judgement, paras 83, 98; *Naletilić* Trial Judgement, para. 207.

violations of common Article 3 of the Geneva Conventions (“common Article 3”) and other customary rules on internal armed conflicts, and (iv) violations of agreements binding upon the parties to the conflict, considered *qua* treaty law, *i.e.*, agreements which have not turned into customary international law.<sup>327</sup>

127. The application of Article 3 of the Statute presupposes that the alleged acts of the accused have been committed in an armed conflict.<sup>328</sup> It is immaterial whether this conflict was internal or international in nature.<sup>329</sup>

128. A close nexus must exist between the alleged offence and the armed conflict.<sup>330</sup> This is satisfied when the alleged crimes are “closely related to the hostilities”.<sup>331</sup>

129. The jurisprudence of this Tribunal has established four additional conditions which must be fulfilled for an offence to be prosecuted under Article 3 of the Statute: (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.<sup>332</sup> Some of the prerequisites for the application of Article 3 of the Statute may differ depending on the specific basis of the relevant charges brought under this Article.<sup>333</sup>

### **C. Article 5 of the Statute: Crimes Against Humanity**

130. Article 5 of the Statute enumerates offences which, if committed in an armed conflict, whether international or internal in character, and as part of a widespread or systematic attack directed against any civilian population, will amount to crimes against humanity. It is settled

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<sup>326</sup> *Tadić* Jurisdiction Decision, para. 87.

<sup>327</sup> *Tadić* Jurisdiction Decision, paras 89-91; *Krnjelac* Trial Judgement, para. 52; *Kunarac* Trial Judgement, para. 401; *Naletilić* Trial Judgement, para. 224.

<sup>328</sup> *Kunarac* Appeal Judgement, paras 57 and 58.

<sup>329</sup> *Čelebići* Trial Judgement, para. 303; *Čelebići* Appeal Judgement, paras 140, 150; *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998 (“*Furundžija* Trial Judgement”), para. 132; *Blaškić* Trial Judgement, para. 161.

<sup>330</sup> *Tadić* Jurisdiction Decision, para. 70; *Kunarac* Trial Judgement, para. 402; *Krnjelac* Trial Judgement, para. 51.

<sup>331</sup> *Tadić* Jurisdiction Decision, para. 70 endorsed in *Krnjelac* Trial Judgement, para. 51; *Naletilić* Trial Judgement, para. 225.

<sup>332</sup> *Tadić* Jurisdiction Decision, para. 94; *Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać*, Case No. IT-98-30/1-T, Judgement, 2 November 2001 (“*Kvočka* Trial Judgement”), para. 123; *Krnjelac* Trial Judgement, para. 52; *Kunarac* Trial Judgement, para. 403; *Kunarac* Appeal Judgement, para. 66.

<sup>333</sup> *Kunarac* Trial Judgement, para. 404; *Krnjelac* Trial Judgement, para. 52.

jurisprudence of this Tribunal that the following elements must be met for an offence to constitute a crime against humanity:<sup>334</sup>

- (a) there must be an ‘attack’;<sup>335</sup>
- (b) the acts of the accused must be part of the attack;<sup>336</sup>
- (c) the attack must be directed against any civilian population;<sup>337</sup>
- (d) the attack must be widespread or systematic;<sup>338</sup>
- (e) the accused 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>339</sup>

131. An “attack” for the purpose of Article 5 is described as a “course of conduct involving the commission of acts of violence”.<sup>340</sup> In the context of a crime against humanity, an “attack” is not limited to the use of armed force; it also encompasses any mistreatment of the civilian population.<sup>341</sup> The concepts of “attack” and “armed conflict” are distinct and independent from each other. The attack could precede, outlast or continue during the armed conflict, without necessarily being part of it.<sup>342</sup> To establish whether there was an attack, it is not relevant that the other side also committed atrocities against its opponent’s civilian population.<sup>343</sup> Each attack against the other side’s civilian population would be equally illegitimate and crimes committed as part of such attack could, all other conditions being met, amount to crimes against humanity.<sup>344</sup>

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<sup>334</sup> *Kunarac* Appeal Judgement, para. 85; *Kunarac* Trial Judgement, para. 410; *Krstić* Trial Judgement, para. 482; *Kvočka* Trial Judgement, para. 127; *Krnojelac* Trial Judgement, para. 53; *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-T, Judgement, 29 November 2002 (“*Vasiljević* Trial Judgement”), para. 28. For jurisprudence of the ICTR, see *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998 (“*Akayesu* Trial Judgement”), paras 565-584; *Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Judgement, 27 January 2000 (“*Musema* Trial Judgement”), paras 199-211; *Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, Judgement and Sentence, 6 December 1999 (“*Rutaganda* Trial Judgement”), paras 64-76; *Prosecutor v. Clement Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T, Judgement, 21 May 1999 (“*Kayishema* Trial Judgement”), paras 119-134; *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgement, 1 June 2001 (“*Akayesu* Appeal Judgement”), paras 460-469.

<sup>335</sup> *Tadić* Appeal Judgement, para. 251; *Kunarac* Appeal Judgement, paras 85-89.

<sup>336</sup> *Tadić* Appeal Judgement, para. 248; *Kunarac* Appeal Judgement, paras 85, 99-100.

<sup>337</sup> *Kunarac* Appeal Judgement, paras 85, 90-92.

<sup>338</sup> *Kunarac* Appeal Judgement, paras 85, 93-97.

<sup>339</sup> *Tadić* Appeal Judgement, para. 248; *Kunarac* Appeal Judgement, paras 85, 102-104.

<sup>340</sup> *Kunarac* Trial Judgement, para. 415; *Kunarac* Appeal Judgement, paras 86, 89.

<sup>341</sup> *Kunarac* Appeal Judgement, para. 86.

<sup>342</sup> *Tadić* Appeal Judgement, para. 251; *Kunarac* Appeal Judgement, para. 86; *Krnojelac* Trial Judgement, para. 54.

<sup>343</sup> *Kunarac* Trial Judgement, para. 580; *Kunarac* Appeal Judgement, para. 87.

<sup>344</sup> *Kunarac* Appeal Judgement, para. 87.

132. The acts of the accused need to objectively “form part” of the attack by their nature or consequences,<sup>345</sup> as distinct from being committed in isolation, but they do not need to be committed in the midst of the attack. For instance, the *Kunarac* Trial Chamber found that a crime committed several months after, or several kilometres away from the main attack could still, if sufficiently connected otherwise, be part of that attack.<sup>346</sup>

133. Article 5 of the Statute provides that a crime against humanity requires that it be “committed in armed conflict”. This is a jurisdictional requirement. The Appeals Chamber in *Kunarac* held that this is not equivalent to the requirement contained in Article 3 of the Statute, where a 'close relationship' between the acts of the accused and the armed conflict is required.<sup>347</sup> By contrast, according to the Appeals Chamber, the nexus with the armed conflict under Article 5 is

... a purely jurisdictional prerequisite which is satisfied by proof that there was an armed conflict and that objectively the acts of the accused are linked geographically as well as temporally with the armed conflict.<sup>348</sup>

134. The armed conflict can be international as well as internal in nature.<sup>349</sup> The civilian population must be the primary object of the attack.<sup>350</sup> It is not required that every single member of that population be a civilian – it is enough if it is predominantly civilian in nature, and may include, *e.g.*, individuals *hors de combat*.<sup>351</sup> Further, the presence of soldiers, provided that they are on leave and do not amount to “fairly large numbers”, within an intentionally targeted civilian population does not alter the civilian nature of that population.<sup>352</sup> In order to determine whether the attack may be said to have been directed against a civilian population, the means and methods used in the course of the attack may be examined, the number and status of the victims, 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 or attempted to comply with the precautionary requirements of the laws of war.<sup>353</sup> It is also not necessary that the entire civilian population of the geographical entity in which the attack is taking place be targeted by the attack. It must, however,

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<sup>345</sup> *Tadić* Appeal Judgement, para. 248; *Kunarac* Appeal Judgement, paras 85, 99-101.

<sup>346</sup> *Kunarac* Trial Judgement, para. 417 *et seq.*

<sup>347</sup> *Kunarac* Appeal Judgement, paras 57-60, 83.

<sup>348</sup> *Kunarac* Appeal Judgement, para. 83.

<sup>349</sup> *Prosecutor v. Goran Jelisić*, Case No. IT-95-10-T, Judgement, 14 December 1999 (“*Jelisić* Trial Judgement”), para. 50.

<sup>350</sup> *Kunarac* Appeal Judgement, para. 91.

<sup>351</sup> *Jelisić* Trial Judgement, para. 54; *Blaškić* Appeal Judgement, paras 111-113. For ICTR jurisprudence, see *Akayesu* Trial Judgement, para. 582; *Kayishema* Trial Judgement, para. 128.

<sup>352</sup> *Blaškić* Appeal Judgement, para. 115.

<sup>353</sup> *Kunarac* Appeal Judgement, para. 91.

be shown that the attack was not directed against a limited and randomly selected number of individuals.<sup>354</sup>

135. The requirement that the attack be “widespread” or “systematic” is disjunctive rather than cumulative.<sup>355</sup> For an attack to be “widespread”, it needs to be of a large-scale nature, which is primarily reflected in the number of victims,<sup>356</sup> whereas the term “systematic” refers to the organised nature of the acts of violence and the non-accidental recurrence of similar criminal conduct on a regular basis.<sup>357</sup> Only the attack as a whole, not the individual acts of the accused, must be widespread or systematic.<sup>358</sup> Consequently, even a single or relatively limited number of acts on his or her part could qualify as a crime against humanity, unless these acts may be said to be isolated or random.<sup>359</sup>

136. The jurisprudence of this Tribunal has identified some factors to be considered in determining whether an attack is widespread or systematic: (i) the consequences of the attack upon the targeted population, (ii) the number of victims, (iii) the nature of the acts, and (iv) the possible participation of officials or authorities or any identifiable patterns of crimes.<sup>360</sup>

137. There is no requirement under customary international law that the acts of the accused need to be supported by any form of policy or plan. The existence of a policy or plan may evidentially be relevant to the requirements of a widespread or systematic attack and the accused’s participation in the attack, but it is not a legal element of the crime.<sup>361</sup>

138. In addition to the intent to commit the underlying crime, the accused must be aware that there is an attack on the civilian population and that his or her acts form part of that attack.<sup>362</sup> This requirement does not imply knowledge of the details of the attack.<sup>363</sup> In addition, the accused need not share the ultimate purpose or goal underlying the attack: the motives for his or her participation

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<sup>354</sup> *Kunarac* Appeal Judgement, para. 90.

<sup>355</sup> *Kupreškić* Trial Judgement, para. 544; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-T, Judgement, 26 February 2001 (“*Kordić* Trial Judgement”), para. 178; *Blaškić* Appeal Judgement, para. 101.

<sup>356</sup> *Kunarac* Trial Judgement, para. 428; *Blaškić* Appeal Judgement, para. 101; *Akayesu* Trial Judgement, para. 580.

<sup>357</sup> *Kunarac* Trial Judgement, para. 429; *Kunarac* Appeal Judgement, para. 94 ; *Blaškić* Appeal Judgement, para. 101.

<sup>358</sup> *Kunarac* Trial Judgement, para. 431; *Kunarac* Appeal Judgement, para. 96; *Blaškić* Appeal Judgement, para. 101.

<sup>359</sup> *Kunarac* Appeal Judgement, para. 96; *Simić* Trial Judgement, para. 43; *Blaškić* Appeal Judgement, para. 101.

<sup>360</sup> *Kunarac* Appeal Judgement, para. 95.

<sup>361</sup> *Kunarac* Appeal Judgement, paras 98-101; *Simić* Trial Judgement, para. 44; *Blaškić* Appeal Judgement, para. 120.

<sup>362</sup> *Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić ( aka “Vlado”)*, Case No. IT-95-16-T, Judgement, 14 January 2000 (“*Kupreškić* Trial Judgement”), para. 556; *Blaškić* Appeal Judgement, para. 126; *Kunarac* Trial Judgement, para. 434; *Kunarac* Appeal Judgement, para. 102.

<sup>363</sup> *Kunarac* Trial and Appeal Judgements, *ibid.*

in the attack are irrelevant, and a crime against humanity may even be committed exclusively for personal reasons.<sup>364</sup>

#### **D. Findings in respect of the General Requirements for Articles 2, 3 and 5 of the Statute**

##### **1. Findings in respect of the general requirements common to Articles 2, 3 and 5**

139. The application of Articles 2, 3 and 5 of the Statute is subject to the existence of an armed conflict and a nexus between the alleged offences and the armed conflict.

140. The Defence does not dispute that an armed conflict existed at the time and place relevant to the Indictment.<sup>365</sup> On the basis of the findings of fact set out above in the General Overview, the Trial Chamber is satisfied beyond reasonable doubt that there was an armed conflict between 1 April and 31 December 1992 in the ARK.<sup>366</sup>

141. The Chamber is satisfied beyond reasonable doubt that the crimes with which the Accused is charged were committed in the course of the armed conflict in the ARK. Although the Accused did not take part in any fighting, his acts were closely related to the conflict. Indeed, the Accused was a prominent member of the SDS and later also President of the ARK Crisis Staff<sup>367</sup>, a regional body vested with both executive and legislative powers within the ARK where the armed conflict was taking place.<sup>368</sup> Its effective powers extended to the municipal authorities of the ARK and the police and its influence encompassed the army and paramilitary organisations.<sup>369</sup> In the following Chapter of this judgement, the Trial Chamber will establish the ARK Crisis Staff's involvement in the implementation of the Strategic Plan.<sup>370</sup> The Trial Chamber will later establish that, after the ARK Crisis Staff was abolished and throughout the period relevant to the Indictment, the Accused continued to wield great power and acted in various positions at the republican level in the course of the armed conflict.<sup>371</sup>

142. The Trial Chamber is thus satisfied that the general requirements common to Articles 2 and 3 of the Statute are fulfilled.

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<sup>364</sup> *Tadić* Appeal Judgement, paras 248, 252; *Kunarac* Appeal Judgement, para. 103; *Blaškić* Appeal Judgement, para. 124.

<sup>365</sup> Defence Final Brief, p. 41(confidential).

<sup>366</sup> See paras 64, 75 *supra*.

<sup>367</sup> See VIII., "The Accused's Role and his Responsibility in General", *infra*.

<sup>368</sup> See VI.C., "Authority of the ARK Crisis Staff", *infra*.

<sup>369</sup> See paras 173-175 *infra*.

<sup>370</sup> See VII., "Individual Criminal Responsibility", *infra*.

<sup>371</sup> See VIII., "The Accused's Role and his Responsibility in General", *infra*.

143. Consequently, the Trial Chamber is satisfied that the lower threshold applicable to Article 5, that of the "geographical and temporal link of the acts of the accused with the armed conflict", is also met.

## 2. Findings in respect of the general requirements specific to Article 2

144. In order to establish that the armed conflict in the present case was international in nature, the Trial Chamber needs to be satisfied that, between 1 April 1992 and 31 December 1992, the FRY<sup>372</sup> authorities either intervened directly in the armed conflict or had overall control over Bosnian Serb forces. The Trial Chamber is satisfied that from 1 April 1992 to 19 May 1992, when the JNA officially withdrew from BiH, that the JNA intervened directly in the armed conflict occurring on the territory of BiH<sup>373</sup> and that the armed conflict was thus international during this period.<sup>374</sup> Hence, the period of concern to the Trial Chamber is 19 May to 31 December 1992, during which time there is no evidence of direct foreign intervention.

145. After 19 May 1992, the FRY provided the VRS with three main types of operational support: logistics,<sup>375</sup> personnel and training. The Trial Chamber is satisfied that the FRY provided considerable quantities of military equipment, fuel and ammunition to the VRS and that the latter was almost entirely dependent on this procurement. Not only did the VRS repeatedly emphasise the critical state of its material reserves and request the assistance of the FRY<sup>376</sup>, but the latter responded and sent the requested material support.<sup>377</sup>

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<sup>372</sup> The FRY came into existence on 27 April 1992. On that date, a joint session of the National Assembly of the Republic of Serbia and the Assembly of the Republic of Montenegro proclaimed a new constitution for the Federal Republic of Yugoslavia: Constitution of FRY, 27 April 1992, Official Gazette of SRFY no. 34/92 (English translation in Blaustein, A. P., Flanz, G. H. (eds.), *Constitutions of the Countries of the World*, (Oceana Publications), Dobbs Ferry, New-York, March 1994.

<sup>373</sup> For a chronology of the events leading to the independence of BiH, see para. 63 *supra*.

<sup>374</sup> Ex. DB374, "CIA, *Balkan Battlegrounds: A Military History of the Yugoslav Conflict*, Washington DC: CIA, Office of Russian and European Analysis, 2003 ("CIA, *Balkan Battlegrounds*"), Annex 22", p.240 stating that a significant number of JNA troops were on the ground when the independence of BiH was recognised by the European Union and the United States respectively on 6 and 7 April 1992; ex. DB376, "Expert Report of Paul Shoup", p.16: The JNA was particularly active in the Bosnian Krajina, using the area as a base of attack Western Slavonija and to prepare Serb TO's for the coming war; ex. DB376, "Expert Report of Paul Shoup", p.26, (citing CIA, *Balkan Battlegrounds*): There were approximately 100,000 to 110,000 JNA troops at the start of the war; ex. P53, "Expert Report of Robert Donia", p.70: In some areas the JNA's heavy artillery and tanks were directly engaged along with Serb paramilitaries and TO units. In mid-April and May, JNA troops aided by local Serbian leaders seized key towns along the Sava River on BiH's northern boundary with Croatia); see also para. 87 *supra*.

<sup>375</sup> The term "logistics" is being given the meaning attributed to it in the Oxford English Dictionary, 2<sup>nd</sup> ed., (Oxford University Press), Oxford, 1989 ("Oxford English Dictionary"): "the organisation of moving, lodging and supplying troops and equipment".

<sup>376</sup> Ex. P2501, "1<sup>st</sup> Krajina Corps Command Letter No. 18/5-27 of 5 August 1992" underlining "the need for rigorous saving of ammunition and fuel because reserves of these resources are minimal and the sources of supply are limited and located in the FRY"; ex. P2504, "1<sup>st</sup> Krajina Corps Message No. 18/5-29 of 14 September 1992" stating the critical ammunition situation in the reserves of the 14<sup>th</sup> Logistics Base; ex. P2515, "Order No.16/28 of 9 March 1993" regarding the increasing difficulties of the VRS in ensuring material supplies for its troops.

<sup>377</sup> Ex. P2498, "Order No.18/1-28 of 9 July 1992 by the Assistant Commander for Logistics for transport of materiel and equipment from Belgrade to Banja Luka"; ex. P2499, "Ban of 29 July 1992 on issuing fuel to any vehicle that is not

146. Further, throughout the period covered in the Indictment, after the JNA had officially withdrawn from BiH and the VRS had been formally established, FRY continued to provide support to the Bosnian Serb armed forces through the payment of salaries and pensions and the sending of troops.<sup>378</sup>

147. The FRY, through the VJ, assisted the VRS by maintaining a significant role in the training of VRS military personnel throughout the armed conflict.<sup>379</sup> It also trained and equipped a number of paramilitary groups closely associated with the SDS and other Bosnian Serb forces.<sup>380</sup>

148. The Trial Chamber is thus satisfied that the support the FRY provided to the VRS after 19 May 1992 fulfils the requisites of the first part of the “overall control” test.

149. The Trial Chamber now turns to the second part of the test, namely to consider the FRY participation in the organisation, coordination or planning of VRS military actions after 19 May 1992.

150. From 1991 onwards, the main objective of the SDS, as well as of the authorities in Belgrade, was to preserve SFRY as a State and to ensure that Serbs would continue to live in a single State.<sup>381</sup>

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part of VJ/RS BiH/SAO Krajina except when permission has been issued by GS VJ due to fuel problems”; ex. P2503, “1<sup>st</sup> Krajina Corps Command Report”, concerning the approval for the transfer of 225 tons of ammunition (in addition to 220 tons to be transferred later on) from the General Staff of the Army of FRY to the VRS on 13 September 1992; ex. P2505, “List depicting the quantity of ammunition received by Doboj Operational Group from 5 August to 14 September 1992”; ex. P2506, “List of material delivered from 5 August to 14 September 1992 from Serbia and Montenegro”; ex. P2510, “Report of the UN Secretary General of 3 December 1992” stating that “Bosnian Serb forces allegedly continue to receive supplies and support from elements in the FRY”; ex. P2512, “1<sup>st</sup> Krajina Corps daily logistics report No. 16/1-1 to the General Staff of VRS of 1 January 1993”, reporting that 29 trailers trucks have been sent to transport materiel from FRY under the ‘Izvor 3’ plan; ex. DB37, “CIA, *Balkan Battlegrounds*, Annex 24”, p.290, referring to various 1<sup>st</sup> KK and VRS Main Staff documents presented in *Prosecutor v. Slobodan Milošević: Prosecution’s Second Pre-Trial Brief (Croatia and Bosnia Indictments)*, 31 May 2002: “At the 50<sup>th</sup> Session of the National Assembly of Republika Srpska in April 1995, General Mladić provided a consumption review of weapons and other equipment used by the VRS from the start of the war until 31 December 1994. After initially obtaining roughly 40% of the infantry, artillery and anti-aircraft ammunition it was to use from another JNA stocks, the VRS received at least another 34% of the total amount of each of these items it consumed before 31 December 1994 from the VJ”.

<sup>378</sup> Ex. P2494, “Clarification note from the Command of 5<sup>th</sup> Corps relating to a SFRY presidential decision of 5 May 1992”, stating that all JNA personnel remaining in BiH or transferred to BiH would retain the same rights as other JNA personnel; ex. P2497, “VRS BiH General Staff Circular to all units of 10 June 1992”, providing a general explanation to them in regard to the rights and status of active soldiers temporarily serving outside their duty station and stating that the Federal Secretariat for National Defence Personnel Administration shall make payments for personnel dispatched directly from Belgrade garrisons and reserve (retired) senior officers receive their remuneration according to the instructions on payment of reserve soldiers during duty assignments in the Armed Forces of SFRY under conditions of imminent threat of war; ex. P2514, “1<sup>st</sup> KK Command Report on the analysis of activities according to elements of combat readiness in 1992”, p.13: “that all institutions of the Army of FRY be advised not to send us men who leave the VRS after two or three months of getting versed to the job”; ex. DB371, “CIA, *Balkan Battlegrounds*, Annex 24”, p.274, stating that “this structure, with former JNA professional officers filling the army’s most important slots, particularly in staff and technical positions, would make the VRS a tough, resilient and efficient force at the strategic and operational levels.”

<sup>379</sup> Ex. P2514, “1<sup>st</sup> KK Command Report on the analysis of activities according to elements of combat readiness in 1992”, p.16-17.

<sup>380</sup> See paras 97-99 *supra*; BT-106, T. 21051-21056 (closed session); Amir Džonlić, T. 2394, 2395; Osman Selak, T. 12973-12974.

<sup>381</sup> BT-104, T. 18634; BT-79, T. 11441, 11449 (closed session); see paras 67-76 *infra*.



The secession of BiH was expected to have a consequential impact on the SFRY and the Bosnian Serbs who would find themselves in a minority and without a unified territory linked to the Republic of Serbia. The importance given to the Posavina Corridor linking the Bosnian Serbs of the Bosnian Krajina to the FRY indicates the significance of the ties between the former and the latter.<sup>382</sup>

151. The Trial Chamber is satisfied that, in the months preceding the period covered in the Indictment, the SFRY was already making preparations to cover-up the “overall control” it planned to exercise on the Bosnian Serb Army once BiH gained independence and that this plan needed to be put in place as international pressure on Belgrade mounted. From the early stages of the war, the authorities in Belgrade expected further disintegration of the SFRY.<sup>383</sup> As President of the Republic of Serbia, Slobodan Milošević made arrangements to ensure that Bosnian Serb forces could retain personnel and arms by ordering, on 5 December 1991, that soldiers who were native of BiH be transferred to BiH and that those in BiH who were native of other republics be moved out.<sup>384</sup> On 25 December 1991, a JNA commander reported to Milošević that these transfers were 90% complete.<sup>385</sup> According to the diary notes of Borislav Jović (President of the SFRY Presidency), Milošević anticipated that several Yugoslav republics would soon be recognised as independent States, and the Serbian President wanted to be sure that the JNA in BiH could qualify as an indigenous Bosnian fighting force.<sup>386</sup> Throughout 1991 and into 1992, the Bosnian Serb leadership communicated with the SFRY leadership on strategic policy in the event that BiH would become independent.<sup>387</sup> The Trial Chamber is satisfied that these factors coupled with the continued

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<sup>382</sup> Ex. P2514, “1<sup>st</sup> KK Command Report on the analysis of activities according to elements of combat readiness in 1992”, p.24: “After the opening of the corridor towards FRY and the securing of basic and consumer goods, there was a positive effect on overall combat readiness, reinforcement and capability of units to carry out further tasks”; ex. DB371, “CIA, *Balkan Battlegrounds*, Annex 24”, p.268; ex. P1738, “30<sup>th</sup> Partisan Division Report on the political and security situation, 19 July 1992”, presented during Ewan Brown’s testimony, T. 21517-21518; Osman Selak, T. 13136-13148; ex. P1494.2, “Transcript of a videotape interview with Talić and Simić”, where Talić stated that the second goal of this operation was to open a corridor towards Serbia.

<sup>383</sup> Ex. P31, “Minutes of 11<sup>th</sup> Session of the Assembly of the ARK, 8 January 1991”, p. 4, at which it was decided that a commission be dispatched to Belgrade to discuss directly with Milošević; ex. P53, “Expert Report of Robert Donia”, p.58, stating that in the first half of 1991, Tuđman and Milošević repeatedly met to discuss a possible partition of BiH.

<sup>384</sup> Robert Donia, T. 1110; ex. P53, “Expert Report of Robert Donia”, p.57, referring to Borislav Jović, *Poslednji dani SFRJ (drugo izdanje)* (Kragujevac: Prizma, 1996), p.421.

<sup>385</sup> *Ibid.*: “JNA Commander Kadrijević reported to Milošević and Jović that these transfers were 90% complete.”

<sup>386</sup> *Ibid.* at p. 420.

<sup>387</sup> Robert Donia, T. 1140-1141: At the 11<sup>th</sup> Session of the ARK Assembly, the Assembly decided to dispatch a commission to Belgrade and speak directly to Milošević as opposed to mediating in the Assembly of Serbian People of the Bosnian Serb Republic; Phone intercepts admitted into evidence pursuant to *Prosecution v. Radoslav Brdanin*, Case No. IT-99-36-T, Decision on the Defence “Objection to intercept evidence”, 3 October 2003: ex. P2382.2, “Conversation between Brdanin and Karadžić on 2-3 July 1991”; ex. P2382.4, “Conversation between Karadžić and Miroslav from Banja Luka on 28 July 1991”; ex. P2382.8, “Conversation between Karadžić and Brdanin on 18 September 1991”; ex. P2383.6, “Conversation between Karadžić and Milošević on 23 September 1991”; ex. P2382.9, “Conversation between Brdanin and Karadžić on 25 September 1991”; ex. P2383.8, “Conversation between Radovan Karadžić and Gojko Đogo on 12 October 1991”; ex. P2382.10, “Conversation between Brdanin and Ljuba Grković on 16 October 1991”; ex. P2383.13, “Conversation between Karadžić and Nenad Stevandić on 11 January 1992”; ex. P2383.15, “Speech by Karadžić at the Assembly of the Serbian People on 14 February 1992”.

payment of the salaries of the VRS officers by Belgrade indicate that, after 19 May 1992, the VRS and the VJ did not constitute two separate armies<sup>388</sup> and that their aims and objectives remained the same, namely to expand the territory which would form part of the SerBiH and prevent it from being incorporated in an independent BiH which would have also isolated the Bosnian Serbs. The Trial Chamber also comes to the conclusion that the FRY, despite the purported withdrawal of its armed forces, at the very least, maintained its support of the Bosnian Serbs and the VRS while exerting influence over their operations.<sup>389</sup> The Trial Chamber is satisfied that, despite the change of name from JNA to Army of the SerBiH after 19 May 1992, and subsequently to VRS, no consequential material changes actually occurred. While the change in name did not point to any alteration of military objectives and strategies, the equipment, the officers in command, the infrastructures and the sources of supply also remained the same.<sup>390</sup> In addition, the JNA military operations under the command of Belgrade that had already commenced by 19 May 1992 did not cease immediately and the same elements of the VJ continued to be directly involved in them.<sup>391</sup> Further, active elements of what had been the JNA remained in BiH after the purported 19 May 1992 withdrawal.<sup>392</sup> The Trial Chamber is satisfied that while the evidence may not have disclosed the exact details of how the VRS related to the main command in Belgrade, it is nevertheless important to bear in mind that a clear intention existed to mask the commanding role of the FRY:

Undue emphasis upon the ostensible structures and overt declarations of the belligerents, as opposed to a nuanced analysis of the reality of their relationships, may tacitly suggest to groups who are in *de facto* control that responsibility or the acts of such forces can be evaded merely by resort to a superficial restructuring of such forces or by a facile declaration that the reconstituted forces are henceforth independent of their erstwhile sponsors.<sup>393</sup>

The Trial Chamber is thus satisfied that the steps taken to create a VRS independent of the JNA were merely a ploy to fend off any potential accusations that the FRY was intervening in the armed conflict taking place on the territory of BiH and to appease the requests of the international community to cease all involvement in the conflict.

152. Despite these attempts at a cover-up by the authorities of the FRY, the United Nations Security Council, General Assembly and Secretary General repeatedly acknowledged the continued involvement and control of Belgrade over the Bosnian Serb Army and demanded the cessation of all forms of outside interference. In its Resolution 757 of 30 May 1992,<sup>394</sup> the Security Council

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<sup>388</sup> *Tadić* Appeal Judgement, para. 157.

<sup>389</sup> *Čelebići* Trial Judgement, para. 224.

<sup>390</sup> Muharem Murselović, T. 12637; Osman Selak, T. 13260-13261.

<sup>391</sup> For instance, the take-over operations in Prijedor Municipality commenced before 19 May 1992 and were not completed until after that date. Further, the attack on Kozarac was continued by the same JNA unit restyled as a 1<sup>st</sup> KK unit and with the same officers in command.

<sup>392</sup> See the UN Resolutions mentioned hereunder.

<sup>393</sup> *Ibid.*

<sup>394</sup> Ex. P2496 “UN Security Council Resolution S/RES/757 (30 May 1992)” (“UN Security Council Resolution 757”).

deplored the non-compliance with the demands it had made in Resolution 752 of 15 May 1992<sup>395</sup> regarding the immediate cessation of outside interference and the withdrawal of the JNA from BiH. The Security Council further decided that trade sanctions would be imposed until effective measures had been adopted to fulfil the requirements of Resolution 752.<sup>396</sup> Pursuant to Rule 94(A) of the Rules,<sup>397</sup> the Trial Chamber takes judicial notice of the adoption of United Nations General Assembly Resolution A/RES/46/242 of 25 August 1992<sup>398</sup> whereby the General Assembly reiterated the demand for cessation of outside interference of the JNA from the territory of BiH. The report of the United Nations Secretary General issued on 3 December 1992<sup>399</sup> further indicates that these resolutions had not yet been complied with by that date.

153. The Trial Chamber is further satisfied that the conclusion of the Dayton Accords provides an *ex post facto* confirmation that from the very beginning of, and throughout, the armed conflict, the FRY wielded general control over the SerBiH and the Bosnian Serbs. The Trial Chamber does not hold that the Dayton Accords constitute direct proof of the nature of the link that existed between the VRS and the VJ after 19 May 1992 or of the overall control exercised by the latter over the former but rather that

[t]he Dayton-Paris Accords may be seen as the culmination of a long process. This process necessitated a dialogue with all political and military forces wielding actual power on the ground (whether *de facto* or *de jure*) and a continuous response to the shifting military and political fortunes of these forces. [...] Thus, the Dayton-Paris Accords may *indirectly* shed light upon the realities of the command and control structure that existed over the Bosnian Serb army at the time the VRS and the VJ were ostensibly delinked, and may also assist the evaluation of whether or not control continued to be exercised over the Bosnian Serb army by the FRY army thereafter.<sup>400</sup>

In this context, the Trial Chamber highlights that not only Slobodan Milošević was authorised to represent the RS and signed the Dayton Accords but he also guaranteed the respect of the obligations of the RS.<sup>401</sup>

154. The Trial Chamber thus concludes that the armed conflict that took place in the ARK throughout the entire period of the Indictment was international in nature.

155. With respect to the requirement that victims be protected persons, the Trial Chamber notes that the victims of the alleged crimes did not owe allegiance to the State on whose behalf the

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<sup>395</sup> Ex. P2495 “UN Security Council Resolution S/RES/752 (15 May 1992)”.

<sup>396</sup> Ex. P2496 “UN Security Council Resolution 757”, para.3: “[The Security Council] decides that all States shall adopt the measures set out below, which shall apply until the Security Council decides that the authorities in FRY (Serbia and Montenegro), including the Yugoslav People’s Army (JNA), have taken effective measures to fulfil the requirements of Resolution 752 (1992).

<sup>397</sup> Rule 94 (A) of the Rules: A Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.

<sup>398</sup> UN General Assembly Resolution A/RES/46/242 (25 August 1992).

<sup>399</sup> Ex. P2510 “Report of the UN Secretary General of 3 December 1992”.

<sup>400</sup> *Tadić* Appeal Judgement, para. 157.

Bosnian Serb armed forces were fighting. The Trial Chamber is thus satisfied, in conformity with the jurisprudence of the Tribunal, that the victims of the crimes alleged in the Indictment were persons "protected" by the Geneva Conventions of 1949.<sup>402</sup>

156. On these bases the Trial Chamber is satisfied that the requirements for the application of Article 2 of the Statute are met.

3. Findings in respect of the general requirements specific to Article 3 of the Statute

157. In the present case, the charges alleging the wanton destruction of cities, towns or villages, or devastation not justified by military necessity (Count 11) and destruction or wilful damage done to institutions dedicated to religion (Count 12) arise directly out of paragraphs (b) and (d) of Article 3 of the Statute. More specifically, Articles 3(b) and 3(d) are based on Articles 23 and 27 of the Hague Convention (IV) of 1907 and its annexed Regulations ("Hague Regulations").<sup>403</sup> In his Report S/25704 of 3 May 1993,<sup>404</sup> the UN Secretary General considered that the Hague Regulations, as interpreted and applied by the International Military Tribunal in Nuremberg ("IMT"), provide the basis for Article 3 of the Statute.<sup>405</sup> The Trial Chamber is satisfied that, as stated by the Secretary General,<sup>406</sup> the Hague Regulations have become part of customary international law. Further, it is settled jurisprudence that the expression "violations of the laws and customs of war" prohibited under Article 3 of the Statute covers serious violations of international humanitarian law.<sup>407</sup> Therefore, the violations under Counts 11 and 12 of the Indictment, charged pursuant to Article 3(b) and (d) of the Statute, are indeed "serious". Article 6 of the Charter of the International Military Tribunal in Nuremberg ("Nuremberg Charter") established individual criminal responsibility for war crimes, including wanton destruction of cities, towns and villages.<sup>408</sup>

158. Hence, the Trial Chamber is satisfied that the general requirements for Article 3 are met.

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<sup>401</sup> For a more in-depth analysis, see *Tadić* Appeal Judgement, paras 159-161.

<sup>402</sup> See para. 125 *supra*.

<sup>403</sup> Hague Convention (IV) respecting the Laws and Customs of War on Land and the Regulations annexed thereto, 18 October 1907 ("Hague Regulations"), Article 23: "In addition to the prohibition provided by special Conventions, it is specially forbidden (...) to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war"; Article 27: "The property of municipalities, that of institutions dedicated to religion, charity and education, the acts of sciences, even when State property, shall be treated as private property. All seizure, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden and should be made the subject of legal proceedings."

<sup>404</sup> UN Secretary General Report S/25704 pursuant to paragraph 2 of Security Council Resolution 808 (1993), 3 May 1993 ("Secretary General Report").

<sup>405</sup> Secretary General Report, para. 44; *Tadić* Jurisdiction Decision, para. 86; *Čelebići* Appeal Judgement, para. 126.

<sup>406</sup> Secretary General Report, para. 44.

<sup>407</sup> *Tadić* Jurisdiction Decision, para. 90.

<sup>408</sup> London Agreement and Annexed Charter of the International Military Tribunal for the Prosecution and Punishment of the German Major War Criminals, Berlin, 8 August 1945, ("Nuremberg Charter"), Article 6.

#### 4. Findings in respect of the general requirements specific to Article 5 of the Statute

159. The Trial Chamber is satisfied beyond reasonable doubt that there was a widespread or systematic attack against the Bosnian Muslim and Bosnian Croat civilian population in the Bosnian Krajina during the period relevant to the Indictment. The attack took many forms. By the end of 1992, nearly all Bosnian Muslims and Bosnian Croats had been dismissed from their jobs in, amongst others, the media, the army, the police, the judiciary and public companies.<sup>409</sup> Numerous crimes were committed against Bosnian Muslims and Bosnian Croats, including murder, torture, beatings, rape, plunder and the destruction of property.<sup>410</sup> Villages were shelled, houses were torched and looted.<sup>411</sup> In the spring of 1992, a number of detention camps where Bosnian Muslim and Bosnian Croat civilians were arrested and detained *en masse* were established throughout the ARK.<sup>412</sup> In several instances, mass killings of civilians took place.<sup>413</sup> Moreover, a policy of "ethnically cleansing" the ARK of its non-Serb population was systematically implemented by the Bosnian Serbs. Indeed, tens of thousands of Bosnian Muslims and Bosnian Croats were forcibly expelled from the ARK by the Bosnian Serbs and taken in convoys of buses and trains to Bosnian Muslim held territory in BiH or to Croatia. On the basis of the pattern of conduct by which these crimes were committed throughout the Bosnian Krajina, the Trial Chamber is satisfied that they were mostly perpetrated with a view to implement the Strategic Plan<sup>414</sup>

160. The Trial Chamber is satisfied beyond reasonable doubt that the Accused knew of the attack. The evidence pertaining to this requirement will be presented in Chapter VIII of this judgement regarding the Accused's role and his responsibility in general.

161. The Chamber is further satisfied beyond reasonable doubt that the acts committed by the Accused were part of this widespread or systematic attack against the Bosnian Muslim and Bosnian Croat civilian population in the area and that the Accused knew that his acts were part of this pattern of widespread or systematic attack. The evidence pertaining to this requirement will be presented in Section VIII of this Judgement regarding the Accused's role and in responsibility in general.

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<sup>409</sup> See paras 84-86 *infra*.

<sup>410</sup> The following chapters of this Judgement develop each of these specific crimes.

<sup>411</sup> IX.D., "Destructions", will develop Count 10 (Unlawful and wanton extensive destruction and appropriation of property not justified by military necessity), Count 11 (Wanton destruction of cities, towns or villages or devastation not justified by military necessity) and Count 12 (Destruction or wilful damage done to institutions dedicated to religion).

<sup>412</sup> The establishment of detention camps for civilians will be developed in several sections of Chapter IX of this Judgement, namely Sections A, "Extermination and Wilful Killing", B, "Torture", and E, "Genocide".

<sup>413</sup> Count 4 (Extermination) and Count 5 (Wilful killing) will be developed in IX.A. of this judgement.

<sup>414</sup> IX.C., "Deportation and Inhumane Acts" *infra* will specifically develop Count 8 (Deportation) and Count 9 (Inhumane Acts) of the Indictment.

162. The Trial Chamber is thus satisfied that all the requirements for the application of Article 5 of the Statute are met.

## VI. THE REGIONAL LEVEL OF AUTHORITY

### A. The Autonomous Region of Krajina

#### 1. The establishment of the ARK

163. Although the law applicable in the SRBH did not provide for any intermediate level of government between the republican level and the municipal level,<sup>415</sup> the Constitution allowed for regional associations of municipalities to be formed for limited purposes, such as that of economic cooperation.<sup>416</sup>

164. In early 1991, the SDS embarked on a programme of regionalisation, the ultimate object of which was the implementation of the Strategic Plan. The SDS established Bosnian Serb controlled areas by linking Bosnian Serb populated municipalities together and by establishing parallel government bodies, with a view to removing that territory from the effective control of the authorities of the SRBH. In this way the foundations for an ethnically pure Bosnian Serb state were laid.<sup>417</sup>

165. On 7 April 1991, the SDS Regional Board decided to create the Community of Municipalities of Bosnian Krajina (“ZOBK”).<sup>418</sup> Vojo Kuprešanin was elected President of the ZOBK Assembly, while the Accused was elected First Vice-President and Dragan Knežević was elected Second Vice-President.<sup>419</sup> The ZOBK was composed of sixteen municipalities from the Bosnian Krajina, all of which, except Ključ, had substantial Bosnian Serb majorities.<sup>420</sup> The purported purpose behind the establishment of the ZOBK was to rectify the economic neglect of and discrimination against the municipalities in the Bosnian Krajina by the Bosnian authorities in

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<sup>415</sup> Patrick Treanor, T. 18709-18710.

<sup>416</sup> There was no allowance for associations on the basis of nationality. Prior to 1990, there were two regional associations: Banja Luka and Bihać; Robert Donia T. 851; Patrick Treanor, T. 18709-18711; BT-7, T. 3097 (closed session); BT-13, T. 4591 (closed session).

<sup>417</sup> Robert Donia, T. 850, 1177-1178; ex. P53, “Expert Report of Robert Donia”, p. 41; Mevludin Sejmenović, T. 12098, 12136-12142; BT-95, T. 19492-19493 (closed session); Milorad Dodik, T. 20466; Patrick Treanor, T. 18710-18712; Boro Blagojević, T. 21856; Mirsad Mujadžić, ex. P1601, T. 3631-3633; ex. P13, “Transcript of a meeting of the SDS of BiH, held on 12 July 1991”; ex. P20/P2464, “Minutes of SDS Party Council session”, 15 October 1991; ex. P17, “Minutes of 2<sup>nd</sup> session of Assembly of Serbian People of Bosnia-Herzegovina”, 21 November 1991; ex. P24, “Transcript of the 3<sup>rd</sup> session of the Assembly of the SerBiH”, 11 December 1991.

<sup>418</sup> The Founding Assembly of the ZOBK was held on 25 April 1991: Robert Donia, T. 1083-1084; ex. P53, “Expert Report of Robert Donia”, p. 44. See also ex. P160, “*Oslobodenje* newspaper article”, including speeches of the Accused and Vojo Kuprešanin at the Founding Session of the ZOBK.

<sup>419</sup> Ex. P66, “Decision on the election of the president of the ZOBK Assembly”; ex. P67, “Decision on the Election of the First Vice-President of the ZOBK Assembly”; ex. P68, “Decision on the Election of the Second Vice-President of the ZOBK Assembly”; Robert Donia, T. 1089.

<sup>420</sup> The founding members of the ZOBK were the municipalities of Banja Luka, Bosanska Dubica, Bosanska Gradiška, Bosanski Petrovac, Bosansko Grahovo, Čelinac, Glamoč, Kupres, Ključ, Laktaši, Mrkonjić Grad, Prnjavor, Titov Drvar, Skender Vakuf, Šipovo and Srbac. See ex. P2354, “Statute of the ZOBK”, Article 1; Robert Donia, T. 1083-1085; ex. P53, “Expert Report of Robert Donia”, pp. 46-48.

Sarajevo. However, there is no evidence to suggest that there was in fact any significant difference in the economic positions of the Bosnian Krajina and the rest of SRBH.<sup>421</sup> Rather, both the agreement on the formation of the ZOBK as well as the Statute of the ZOBK adopted during the second session of the Assembly of the ZOBK, held on 14 May 1991,<sup>422</sup> show that the ZOBK was intended to be more than simply an economic association. Unlike the Banja Luka Community of Municipalities (“ZOBL”) which had existed previously,<sup>423</sup> the ZOBK’s mandate included a strong defence component.<sup>424</sup> Decisions of the ZOBK Assembly and minutes from its meetings show that this was an association intended to co-ordinate all major areas of administrative government in the municipalities that joined the ZOBK, and that its agenda was a political one.<sup>425</sup>

166. At its 7<sup>th</sup> session, held on 16 September 1991, the ZOBK Assembly transformed itself into the Autonomous Region of Krajina (“ARK”). The decision in question states that the ARK was being established “as an inseparable part of the Federal State of Federative Yugoslavia and an integral part of the Federal Unit of BiH”.<sup>426</sup> On the same date, the Statute of the ARK, which was

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<sup>421</sup> Robert Donia, T. 854; BT-13, T. 4811-4812 (closed session).

<sup>422</sup> Ex. P11, “Minutes of the 2<sup>nd</sup> session of the ZOBK Assembly”, dated 14 May 1991; ex. P2354, “The Statutes of the ZOBK”. See also Robert Donia, T. 1091; Mevludin Sejmenović, T. 12149-12150; Patrick Treanor, T. 18710-18711.

<sup>423</sup> The ZOBL had a co-ordinating role on certain economic projects. It did not have a political purpose and its decisions were not binding on the municipalities: Branko Cvijić, T. 21400-21401.

<sup>424</sup> Ex. P69, “Agreement on the Formation of a Community of Bosnian Krajina Municipalities”, dated 29 April 1991, Article 8: “in performing its function the Community of Municipalities shall: (...) co-ordinate policy in the following areas: (...) people’s defence, civilian protection, social self-protection and as necessary in other areas as well (...)”. Article 9: “In the area of all-people’s defence and social self-protection in its territory, the Community of Municipalities shall: ensure unity of preparation and the efficiency of the system of all-people’s defence and social self-protection in the territory of the Community of Municipalities in accordance with the organisation, preparations and plans of the SRBH and JNA; take organisational, material and other measures for exercising the rights and duties of citizens in preparations for all-people’s defence and their participation in armed fighting and other forms of resistance in time of war, under the imminent threat of war and other extraordinary circumstances in the territory of the Community of Municipalities; in time of war or under the imminent threat of war, organise all-people’s defence in the territory of the Community of Municipalities; and in time of war or under the imminent threat of war, organise all-people’s defence in the territory of the Community of the Municipalities and lead it”. Ex. P2354 “Statute of the ZOBK”, Article 16: “The Association of Municipalities shall monitor the situation and co-ordinate activities for the organisation and implementation of preparations for All Peoples’ Defence in accordance with the Law, municipal defence plans and the republican defence plan”. See also Boro Blagojević, T. 21815-21816; Robert Donia, T. 1178.

<sup>425</sup> See, e.g., ex. P72, “Conclusions from the 30 May 1991 meeting of the ZOBK”: “ZOBK will not accept (...) Bosnia and Herzegovina as an independent and completely sovereign state”. See also ex. P11, “Minutes of the 2<sup>nd</sup> session of the ZOBK Assembly”, dated 14 May 1991, where the Accused proposed that “the Assembly propose to the Municipal Assemblies to cancel their subscription to RTV Sarajevo”. The Accused further proposed that the ZOBK establish several institutions: “public companies, information, Chamber of the Economy, the regional SUP, the judiciary, the prosecutor’s office, (...) the SDK 9 (Public Auditing Service), the PTT, the University, forestry, agriculture, and electric power industry”. His proposal was adopted with only one dissenting vote, see Robert Donia, T. 1092; ex. P53, “Expert Report of Robert Donia”, p. 50. Ex. P74, “Decision of the ZOBK dated 8 July 1991” that the ZOBK will not pay taxes to the SRBH. Ex. P14, “Announcement of the ZOBK of 6 August 1991”, discussing the Mt. Kozara transmitter: “(...) an unofficial report that the BiH Ministry of the Interior was sending operative units to take control of the TV relay on Kozara was considered”. In this context, see *supra*, para. 81. Ex. P16, “Minutes of the ZOBK Assembly of 6 September 1991”, followed by an announcement issued in the Accused’s name by the Secretariat for Information (ex. P2356) that “in each and every municipality a preparation for mobilisation order be passed, (...) it is our holy duty to defence the Serbian people first and foremost”. On 27 June 1991, the ZOBK Assembly held a joint meeting with the Assembly of the Republic of Serbian Krajina (RSK), and adopted a declaration on the union of the two Krajina’s; Robert Donia, T. 1093.

<sup>426</sup> Ex. P81, “Decision on the Proclamation of the ARK as an Inseparable Part of the Federal State of Federative Yugoslavia and an Integral Part of the Federal Unit of BiH”, Patrick Treanor, T. 18728. The term of “SAO (Serbian



almost identical to the ZOBK Statute, was adopted.<sup>427</sup> Like the ZOBK, the ARK had its seat in Banja Luka.<sup>428</sup>

167. In the autumn of 1991, four other Serbian Autonomous Districts were created in SRBH. These were the Serbian Autonomous District of Herzegovina, the Serbian Autonomous District of Romanija-Birač, the Serbian Autonomous District of Semberija and the Serbian Autonomous District of Northern Bosnia.<sup>429</sup> On 21 November 1991, the creation of the ARK and the other four Serbian Autonomous Districts was ratified by the SerBiH Assembly during its 2<sup>nd</sup> session.<sup>430</sup> By virtue of this ratification, the ARK and the other four Serbian Autonomous Districts became constituent parts of the SerBiH.<sup>431</sup> The SerBiH Assembly appointed Jovan Čizmović, a member of the Ministerial Council of the SerBiH Assembly,<sup>432</sup> as the co-ordinator of the governments of the ARK and the other Serbian Autonomous Districts.<sup>433</sup> The Trial Chamber is satisfied that the establishment of the ARK and the other Serbian Autonomous Districts and their co-ordination by the authorities of the SerBiH was a crucial and vital step towards the implementation of the Strategic Plan.<sup>434</sup>

168. The ARK was comprised of both the municipalities that were members of the ZOBK and a number of new municipalities. In most of these new municipalities the Serbs were in a minority.<sup>435</sup> While it is difficult to precisely define which municipalities belonged to the ARK at any given

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Autonomous District) Krajina”, which was on occasion employed interchangeably with “ARK”, will not be used because it might be confused with the Bosnian Croatian SAO Krajina adjacent to the ARK in BiH.

<sup>427</sup> Patrick Treanor, T. 18729; ex. P80, “Statute of the ARK”.

<sup>428</sup> Ex. P2354, “ZOBK Statute”, Article 6; ex. P80, “ARK Statute”, Article 6.

<sup>429</sup> Robert Donia, T. 1099-1100, 1106-1107; BT-95, T. 19491-19500 (closed session).

<sup>430</sup> Ex. P2359, “Decision on ratification of the proclaimed Serbian autonomous districts in Bosnia and Herzegovina passed by the SerBiH Assembly on 21 November 1991”, signed by Momčilo Krajišnik as its President; ex. P17, “Shorthand notes of the 2<sup>nd</sup> session of the SerBiH Assembly”, held on 21 November 1991. Robert Donia, T. 1289; Patrick Treanor, T. 18744.

<sup>431</sup> Mirko Dejanović, T. 23213-23214; Patrick Treanor, T. 18742. In this decision, the SerBiH Assembly explicitly stated that “[t]he Autonomous Regions and Districts (...) are part of Bosnia and Herzegovina, as Federal Units in the Joint State of Yugoslavia”. See ex. P2359, “Decision on ratification of the proclaimed Serbian autonomous districts in Bosnia and Herzegovina passed by the SerBiH Assembly on 21 November 1991”, signed by Momčilo Krajišnik as its President, item II.

<sup>432</sup> Ex. P2362, “Official Gazette of the Serbian People of Bosnia and Herzegovina”, 15 January 1992 - item 22: Decision on the Establishment and Election of the Ministerial Council of the Assembly of the Serbian People in Bosnia-Herzegovina. Jovan Čizmović was elected minister without portfolio. See also Patrick Treanor, T. 18750.

<sup>433</sup> Ex. P2363, “Official Gazette of the Serbian People of Bosnia and Herzegovina”, Decision of 21 Dec 1991, decision on the appointment of the co-ordinator of the governments/executive bodies of the Serbian autonomous districts and the Autonomous Region of Krajina: “Jovan Čizmović is hereby appointed co-ordinator of the executive bodies of Serbian autonomous districts and the ARK”. See Patrick Treanor, T. 18750, 18791; BT-95, T. 19637 (closed session).

<sup>434</sup> For example, on 26 January 1992, at a session of the SerBiH Assembly, Jovan Čizmović called for the implementation of the second phase of the Variant A and B Instructions: ex. P2470, “Transcript of the 6<sup>th</sup> Session of the SerBiH Assembly”, held on 26 January 1992. See also ex. P2367, “Intercepted telephone conversation between Jovan Čizmović and Radovan Karadžić on 22 January 1992”, agreeing, *inter alia*, on the fact that “the objective must be carried out, instructions must be carried out”, p. 7; Patrick Treanor, T. 18744-18745.

<sup>435</sup> Ex. P60, “Results of the census in Bosnia and Herzegovina of 1991”: Bosanski Novi (absolute Bosnian Serb majority); Kotor Varoš (relative Bosnian Serb majority). In Bihać-Ripač, Bosanska Krupa, Bugojno, Donji Vakuf, Jajce, Livno, Prijedor and Sanski Most, the Bosnian Serbs were in a minority. See also Robert Donia, T. 1324.

time,<sup>436</sup> the Trial Chamber is satisfied that all thirteen municipalities addressed in the Indictment were members of the ARK during the period relevant to the instant case.<sup>437</sup>

169. According to its Statute, the ARK had an Assembly (“ARK Assembly”), which was its main organ of authority. It consisted of members delegated by the Municipal Assemblies of the member municipalities of the ARK.<sup>438</sup> Replicating the power structures in the ZOBK Assembly, Vojo Kuprešanin was elected President of the ARK Assembly, while the Accused and Dragan Knežević became First and Second Vice-Presidents respectively.<sup>439</sup> The ARK Assembly had four permanent working bodies.<sup>440</sup> Moreover, the ARK Statute enabled the ARK Assembly to elect an Executive Council (“ARK Executive Council”).<sup>441</sup>

## 2. The nature and the authority of the ARK

170. The Trial Chamber is satisfied beyond reasonable doubt that the ARK was a regional body vested with both executive and legislative powers within its area of jurisdiction. It acted as an intermediate level of authority between the SerBiH and the municipalities. The ARK’s principal role was that of co-ordinating the implementation by the municipalities of the instructions issued by the SerBiH and the SDS BiH Main Board.<sup>442</sup> Although a number of municipalities initially

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<sup>436</sup> Robert Donia, T. 1106-1107. Ex. P61, “List of representatives in the ARK Assembly”- not dated: the following municipalities were represented in the ARK Assembly: Banja Luka, Bihać-Ripač, Bosanska Dubica, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Bugojno, Čelinac, Donji Vakuf, Glamoč, Jajce, Kotor Varoš, Kupres, Ključ, Livno, Laktaši, Prijedor, Prnjavor, Sanski Most, Skender Vakuf, Titov Drvar and Šipovo, Srbac. In addition ex. P80, “Statute of the ARK”, adopted on 16 September 1991, Article 1 mentions that Bosanska Gradiška, Bosansko Grahovo and Mrkonjić Grad are amongst the municipalities forming the ARK. However, the Statute of the ARK does not include the municipalities of Bihać-Ripač, Bosanska Krupa, Bosanski Novi, Bugojno, Donji Vakuf, Jajce, Kotor Varoš, Livno, Prijedor and Sanski Most. See ex. P2359, “Decision on ratification of the proclaimed Serbian autonomous districts in Bosnia and Herzegovina passed by the SerBiH Assembly on 21 November 1991”, signed by Momčilo Krajišnik as its President, item I: The Autonomous Region of Krajina consists of the following municipalities: Banja Luka, Bosanski Petrovac, Bosansko Grahovo, Čelinac, Glamoč, Ključ, Kotor Varoš, Kupres, Laktaši, Mrkonjić Grad, Prijedor, Prnjavor, Sanski Most, Skender Vakuf, Srbac, Šipovo, Titov Drvar and the Bosnian Serb municipality of Bosanska Krupa, as well as parts of the Donji Vakuf municipality and other municipalities from this region with a majority Bosnian Serb population. See also Patrick Treanor, T. 18742.

<sup>437</sup> As to the municipalities relevant to the Indictment, see *supra*, para. 2.

<sup>438</sup> Ex. P80, “ARK Statute”, Articles 16-23; Amir Džonlić, T. 2750-2751; BT-7, T. 2825, 3006 (closed session); BT-13, T. 4816 (closed session).

<sup>439</sup> Patrick Treanor, T. 18730; Mevludin Sejmenović, T. 12147; Ex. P80, “ARK Statute”, Art. 18.

<sup>440</sup> These permanent working bodies were the Political Council, the Economic Council, the Ecological Council and the Peoples’ Defence Council: ex. P80, “ARK Statute”, Articles 26-27.

<sup>441</sup> Ex. P80, “ARK Statute”, Articles 18, 24-25. The ARK Executive Council was headed by Nikola Erceg: Robert Donia, T. 1271-1272; Patrick Treanor, T. 18710-18711.

<sup>442</sup> Predrag Radić, T. 22115-22124, 22290-22291. Predrag Radić also gave evidence that “the policy had to start from the top. It is at the top that the general principles are defined and then transmitted down the chain of command. This is how it was done within the federation and elsewhere during the war. This is not something new”, T. 22123-22124, 22139. See also BT-95, T 19517 (closed session).

questioned the ARK's authority, the ARK did eventually exercise this co-ordinating function in practice.<sup>443</sup>

171. The ARK Statute provided that other municipalities could join the ARK,<sup>444</sup> and that each member municipality could leave the ARK.<sup>445</sup> Even though the Accused, during the 2<sup>nd</sup> session of the ZOBK Assembly, expressed his opposition to creating an association of municipalities on a voluntary basis,<sup>446</sup> the Trial Chamber is satisfied that the ARK in terms of its Statute was a voluntary association.<sup>447</sup> In this context the Trial Chamber notes that in the municipalities where the Bosnian Serbs enjoyed a majority, the respective decision to join the ARK was in fact taken only by the Bosnian Serb municipal delegates of these municipalities, with the SDA and the HDZ delegates either opposed to this idea or unaware that such a decision was being taken.<sup>448</sup> In the municipalities where the Bosnian Serbs were in a minority, the decision by the respective municipalities to join the ARK was taken either without the majority of votes provided for by the law or by the Assemblies of the newly established Bosnian Serb Municipalities.<sup>449</sup>

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<sup>443</sup> Predrag Radić, T. 22115-22124, 22290-22291. *See* C.1, *infra*, "The authority of the ARK Crisis Staff with respect to the municipal authorities".

<sup>444</sup> Ex. P80, "ARK Statute", Article 10: "Other municipalities may join the Autonomous Region of Krajina. A municipality wishing to join shall submit a request to do so to the Assembly of the Autonomous Region of Krajina. Before deciding, the Assembly of the Autonomous Region of Krajina shall obtain the opinion of all member municipalities".

<sup>445</sup> Ex. P80, "ARK Statute", Article 11: "Each member municipality may leave the Autonomous Region of Krajina. A municipality wishing to leave the Autonomous Region of Krajina shall so inform the Assembly of the Autonomous Region of Krajina and the assemblies of member municipalities. A municipality may separate from the Autonomous Region of Krajina only after the end of the calendar year. A request to leave the Autonomous Region of Krajina must be submitted at least six months before the end of the calendar year has ended. A municipality wishing to separate from the Autonomous Region of Krajina is required to fulfil its obligations towards the Autonomous Region of Krajina".

<sup>446</sup> Robert Donia, T. 1091; ex. P11, "Extract of the minutes of the second session of the ZOBK Assembly", held on 14 May 1991, item 2: "I propose that the statute be adopted today as it stands because we cannot have ZOBK on a voluntary basis. We cannot wait for public debate in the municipal assemblies and convene the community assembly every month".

<sup>447</sup> Patrick Treanor, T. 20915. As to the voluntary nature of the ZOBK, *see* ex. P2354, "ZOBK Statute", Article 11; Patrick Treanor, T. 20907-20908.

<sup>448</sup> In some instances, the SDS delegates took the decision without even informing the other parties. For **Kotor Varoš** Municipality, *see* Muhamed Sadiković, T. 18193-18194; Muris Hadžiselimović, ex. P2043, 92*bis* statement, 02082660-02082661; For **Ključ** Municipality, *see* Asim Egrlić, T. 10544; Muhamed Filipović, T. 9304-9305, 9315; ex. P860, "SDA Ključ public statement of 21 September 1991", item 4: "We resolutely reject the proclamation of the so-called Autonomous District of Krajina, with its headquarters in Banja Luka, as a successor to the Banja Luka community of municipalities and judge the act of its proclamation to be completely unconstitutional and unacceptable to any of the peoples living in these areas (...) We would like to remind the public that neither the regionalisation issue nor the question of the joining of this commune to the Banja Luka community of municipalities have ever been on the agenda of the Ključ Municipal Assembly, just as the assembly has never adopted any decision which could be interpreted as its consent to the act of joining the Autonomous District of Krajina (...) Members of the Assembly which declared autonomy are not the legitimate representatives of Ključ Municipal Assembly because they have not been elected by that Assembly". For **Prijedor** Municipality, *see* Mirsad Mujadžić, ex. P1601, T. 3634, 3641. For **Sanski Most**, *see* Mirzet Karabeg, T. 6103.

<sup>449</sup> In **Banja Luka** Municipality, the SDS leadership did not have the two-thirds majority required by the Municipality Statute. Moreover, an agreement reached between the three ethnic parties prior to the elections required an agreement amongst these parties. The SDS took the decision to join the ZOBK without fulfilling these requirements; Robert Donia, T. 1086-1087; Muharem Krzić, T. 1463. In **Kotor Varoš** Municipality, on 7 February 1992, the Bosnian Serb Municipality of Kotor Varoš took the decision to join the ARK, "pursuant to the results of the vote in the referendum of

172. Despite the provisions in Articles 4 and 5 of the ARK Statute, suggesting that the ARK was a multi-ethnic institution,<sup>450</sup> the ARK was in practice a Serbian organisation. Out of the 189 delegates to the ARK Assembly, only a negligible number were of Bosnian Croat or Bosnian Muslim ethnicity.<sup>451</sup> Moreover, while no senior SDA or HDZ politician ever participated in any session of the ARK Assembly, senior SDS members at the level of the SerBiH, including Radovan Karadžić, as well as high ranking officers of the army, took a vital interest in the work of the ARK and participated in a number of sessions of the ARK Assembly.<sup>452</sup> The Serbian nature of the ARK manifested itself most clearly through the work of its bodies. As the evidence discussed in the following chapters demonstrates, the ARK authorities not only had the potential to be a tool for the implementation of the Strategic Plan, but this was in fact their primary concern.<sup>453</sup>

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the Serbian people of Kotor Varoš held on 9 and 10 November 1991, item II of the Decision to Found the Bosnian Serb Municipality of Kotor Varoš and item I of the Decision on ratification of declared Serbian Autonomous Districts in BiH”: ex. P29, “Decision to join the Autonomous District of Krajina”, dated 7 February 1992, signed by Nedjeljko Djekanovic, President of the Assembly of the Bosnian Serbian People of Kotor Varoš. *See* Robert Donia, T. 1136, 1140; BT-96, T. 17672-17673 (closed session); Muhamed Sadiković, T. 18193-18194. In **Donji Vakuf** Municipality, the decision to join the ARK was taken by the Assembly of the Bosnian Serb Municipality of Donji Vakuf, ex. P30, “Request for Membership”. The decision was taken pursuant to Article 4 of the Variant A and B Instructions (Donji Vakuf was a Variant B municipality). A similar procedure was followed in Bosanska Krupa and Olovo: Robert Donia, T. 1139-1140. In **Prijedor** Municipality, the Assembly of the Bosnian Serb People of Prijedor Municipality unanimously adopted the decision to join the ARK on 17 January 1992; ex. P1155, “Decision to join the Autonomous Region of Krajina”. In **Ključ** Municipality, the decision to join the Autonomous Region was taken by representatives of one people only, the Bosnian Serbs: Muhamed Filipović, T. 9650. In **Sanski Most** Municipality, on 3 April 1992, the Serbian People’s Assembly approved a decision on the Serbian Municipality of Sanski Most to become part of the ARK: ex. P610, “Decision to Become Part of the Autonomous Region of Krajina”. *See* also Mirzet Karabeg, T. 6103.

<sup>450</sup> Ex. P80, “ARK Statute”, Article 4 “In performing tasks within the jurisdiction of the Autonomous Region of Krajina, all peoples and nationalities in the Autonomous Region of Krajina shall have equal rights and duties, without distinction as to race, sex birth, language, nationality, religion, political or other beliefs, education, social background, wealth, and any other personal qualities”. Article 5, “The official language of the Autonomous Region of Krajina organs shall be Serbo-Bosnian Croatian and Bosnian Croato-Serbian, using the Cyrillic or Latin alphabets”.

<sup>451</sup> Ex. P61, “List of representatives in the ARK Assembly”. Boro Blagojević gave evidence that the representatives did not change over the period relevant to the Indictment. He further identified Mehmed Šabić from Prnjavor Municipality, Stjepan Kozjan, Edib Bišćević and Dževdet Kozarčanin, all from Bosanska Gradiška Municipality, Nezir Karahodžić from Glamoč Municipality and Bakir Karabegović from Bosanska Dubica Municipality to be the only non-Serb delegates: Boro Blagojević, T. 21818-21820.

<sup>452</sup> Ex. P23, “Extract from the minutes of the 9<sup>th</sup> session of the ARK Assembly”, held on 6 November 1991. The session was attended by Lieutenant General Nikola Uzelac, commander of the 5<sup>th</sup> Corps of the JNA, President of the Deputies Club of the Serbian Assembly Dr. Vojo Maksimović and deputy to the Serbian Assembly Dr. Aleksa Buha: ex. P31, “Extract from the minutes of the 11<sup>th</sup> session of the ARK Assembly”, held on 8 January 1992. The session was attended by Lieutenant General Vladimir Vuković, commander of the 5<sup>th</sup> Corps of the JNA. *See* also Ex. P35, “Extract from the minutes of the 14<sup>th</sup> session of the ARK Assembly”, held on 29 February 1992. The session was attended by Radovan Karadžić, president of the SerBiH and President of the SDS, Momčilo Krajišnik, President of the SerBiH Assembly, Nikola Koljević, member of the SerBiH Presidency, and Velibor Ostojić, Information Minister in the SerBiH Government. *See* further Ex. P285, “Extract from the minutes of the 18<sup>th</sup> session of the ARK Assembly”, held on 17 July 1992; at this session all decisions and conclusions adopted by the ARK Crisis Staff were ratified. The session was attended by General Major Momir Talić, Commander of the 1<sup>st</sup> Krajina Corps; Goran Hadžić, President of the Serbian Republic of Krajina (SRK); Milan Martić, Minister of Interior of the SRK; Bogdan Subotić, SerBiH Minister of Defence; Velibor Ostojić, SerBiH Minister of Information; Dragan Kalinić, SerBiH Minister of Health and VRS General Živorad Ninković. *See* also Robert Donia, T. 1152-1153; Dobrivoje Vidić, T. 23061-23063.

<sup>453</sup> With respect to the work of the ARK Assembly, *see* ex. P23, “Extract from the minutes of the 9<sup>th</sup> session of the ARK Assembly”, held on 6 November 1991. The following issues were on the agenda: Implementation by the municipalities of the conclusions adopted at the session held on 26 October 1991; mobilisation; and organizing and holding a plebiscite. *See* also ex. P31, Extract from the minutes of the 11<sup>th</sup> session of the ARK Assembly, held on 8 January 1992. Amongst others, the following issues were on the agenda: The Bosnian Krajina as a constituent part of the new

173. The ARK possessed authority over a wide range of issues. It was a political body vested with powers that belonged to the municipalities, including powers in the area of defence.<sup>454</sup> Pursuant to its Statute, the ARK was in charge, *inter alia*, of the realisation of socio-political objectives.<sup>455</sup> In the legal parlance of the former Yugoslavia, socio-political communities were meant to denote governmental units. A regional association of municipalities, as provided for by the law, was not a governmental unit, and could therefore not have jurisdiction over defence matters, which were reserved to socio-political communities, including the republican and the municipal authorities.<sup>456</sup>

174. The ARK did have jurisdiction in the area of defence. Its Statute provided that the ARK “shall monitor the situation and co-ordinate activities for the organisation and implementation of preparations for All Peoples’ Defence in accordance with the Law, municipal defence plans and the republican defence plan”.<sup>457</sup> The ARK Statute also included a provision to the effect that the ARK Assembly shall have a permanent “Political Council” dealing with “issues of development of the political system” and a permanent “Peoples’ Defence Council” dealing with “issues from the area of peoples’ defence which are relevant to the Autonomous Region of Krajina”.<sup>458</sup> Lieutenant Colonel Milorad Sajić, a member of the ARK Crisis Staff, gave evidence that in his capacity as the

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Yugoslav Federation; discussing the formation of a regional staff for the reception of refugees. *See* further ex. P35, “Extract from the minutes of the 14<sup>th</sup> session of the ARK Assembly”, held on 29 February 1992. During this session, attended by Radovan Karadžić and other senior SDS members, the political and security situation in the ARK was discussed. After the discussion, the ARK Assembly adopted the following conclusions: 1. The deputies in the Assembly of the ARK accept the Constitution of the SerBiH in full; 2. The status of the ARK will be incorporated into the Constitution of the SerBiH in accordance with its practical needs in order to achieve its free economic development; and 3. Establish immediately strict control of the territory of the ARK. With respect to the work of the ARK Crisis Staff, *see*, D., *infra*, “The role of the ARK Crisis Staff in the implementation of the Strategic Plan”.

<sup>454</sup> Dobrivoje Vidić, T. 23058-23060; BT-95, T. 19517 (closed session). Patrick Treanor also gave evidence that law applicable in the SRBH provided that the defence is organised exclusively by socio-political communities; T. 20897-20903, 20907-20909. *See* also ex. P80, “ARK Statute”, Articles 16, 26-27.

<sup>455</sup> Ex. P80 “ARK Statute”, Article 15, “In pursuit of its socio-political objectives, the Autonomous Region of Krajina shall: - co-ordinate and take positions on issues of common interests, and particularly on the position of the citizens in socio-political communities; - consider issues of establishing and implementing common policies, especially in the enforcement of regulations; - consider issues of and initiatives for the development of all forms of inter-municipal and international cooperation of member municipalities; - encourage the establishment of joint organs of administration”. *See* also ex. P2354 “ZOBK Statute”, Article 15.

<sup>456</sup> Patrick Treanor gave evidence that the Constitutional Court of the SRBH specifically ruled on 1 November 1991 that defence is organised only by socio-political communities, that is, by the republican and the municipal authorities and not by communities of municipalities because they lack that characteristic, T. 20903, 20907-20909.

<sup>457</sup> Ex. P80 “ARK Statute”, Article 16. Boro Blagojević gave evidence that the language of Article 16 of the ARK Statute did not appear in the statute of earlier associations of municipalities that were entities for only economic purposes, T. 21815.

<sup>458</sup> Permanent working bodies were in charge of monitoring the situation in the area for which they are responsible and proposing to the ARK Assembly the introduction of appropriate measures: ex. P80 “ARK Statute”, Articles 26-27; Patrick Treanor, T. 18716. The Peoples’ Defence Council at the ARK level is a body equivalent to the Defence Council attached to the Municipal Assemblies; BT-13, T. 4825 (closed session).

Secretary for National Defence of the ARK, he acted as a link between the republican and the municipality authorities.<sup>459</sup>

175. In addition, the ARK had *de facto* authority over the police.<sup>460</sup> On 4 March 1992, the ARK Assembly during its 15<sup>th</sup> session adopted a decision to form the Security Services Centre of the ARK (“CSB”) with its seat in Banja Luka.<sup>461</sup> Stojan Župljanin was appointed Chief of the CSB.<sup>462</sup> On 27 April 1992, the ARK Assembly issued a decision to establish a “Special Purpose Police Detachment” within the CSB.<sup>463</sup>

### 3. The dispute between the ARK and the authorities of the SerBiH on the status of the ARK

176. At a certain point in time, a number of leading politicians at the level of the ARK, including the Accused, Vojo Kuprešanin and Predrag Radić, supported the idea that the ARK should secede from SerBiH and form an autonomous federal unit within Yugoslavia.<sup>464</sup> According to Radovan Karadžić, these politicians were largely driven by their desire for increased personal status and power.<sup>465</sup>

177. The decision of the ZOBK Assembly on the proclamation of the ARK, dated 16 September 1991, was a first expression of the region’s secessionist aspirations.<sup>466</sup> The Accused stated that this

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<sup>459</sup> Milorad Sajić also gave evidence that this decision was passed down to the municipalities and that it was a binding decision, set out by him as the Secretary of the Secretariat for National Defence; T. 23698-23701, 23596-23599. On 4 May 1992, the Secretariat for National Defence of the ARK ordered full mobilisation on the entire territory of the ARK: ex. P167, “Decision of the Regional Secretariat for People’s Defence of the Autonomous Region Bosanska Krajina”. See also ex. P227, “ARK Official Gazette”, Decision of 4 May 1992; Milorad Sajić, T. 23606-23607, 23698-23701; BT-79, T. 11522-11523 (closed session); Muhamed Filipović, T. 9481-9482. On the appointment of Lieutenant Colonel Milorad Sajić to the position of Secretary for National Defence of the ARK, see Milorad Sajić, T. 23596-23599.

<sup>460</sup> See in this context, see C.2., *infra*, “The Authority of the ARK Crisis Staff with respect to the police”.

<sup>461</sup> Ex. P120/P2365, “Extract from the minutes of the 15<sup>th</sup> session of the ARK Assembly, held on 4 March 1992”. Patrick Treanor gave evidence that on 4 March 1992, there was no Ministry of Internal Affairs of the SerBiH. The legislation did not come into effect until the 31 March 1992, when a Minister was appointed, who answered to the SerBiH Assembly. The police structure, having regional centres, was under the jurisdiction of the Ministry of Internal Affairs. T. 18774-18775, 18779-18780. In this context it is relevant to note that at the 12<sup>th</sup> session of the SerBiH Assembly, held on 24 March 1992, Radovan Karadžić stated that: “the police must be under the control of the civilian authority, it must obey it, there is no discussion about that – that’s the way it must be”: ex. P26.

<sup>462</sup> Atif Džafić, T. 10865-10866; BT-11, T. 4004 (closed session); BT-7, T. 2849-2850 (closed session).

<sup>463</sup> Ex. P159, “Decision” of the ARK Assembly on the formation of a Special Purpose Police Detachment, dated 27 April 1992. Dobrovoje Vidić gave evidence regarding the formation of the Special Purpose Police Detachment (SPPD); T. 23064-23067. See also Boro Blagojević, T. 21825-21827.

<sup>464</sup> Robert Donia, T. 1245. See also following footnotes.

<sup>465</sup> Ex. P33, “Transcript of the 8<sup>th</sup> session of the Assembly of SerBiH”, held on 25 February 1992; Radovan Karadžić stating, *inter alia*, that: “I cannot allow five people with personal ambitions to destroy our chances. We are very close to achieving our strategic objectives” (p. 44). In this context, Radovan Karadžić referred to “power grabbers”, “power-grabbing impulses” and the “little Napoleons who are trying to do things to harm the Serbian people”; ex. P13, “Transcript of a meeting of the SDS of SRBH”, held on 12 July 1991, pp. 25, 28.

<sup>466</sup> Ex. P81, “Decision of the ZOBK Assembly on the proclamation of the ARK”, dated 16 September 1991: “Pursuant to every nation’s right to self determination, including the right to secession, based upon its freely expressed will and in accordance with its historical aspirations to live united in the federal state of Federative Yugoslavia which is an alliance of free and equal nations, the Assembly of the ZOBK reached the decision (...). Article 1: The Alliance of the Bosanska Krajina municipalities declared the Autonomous Region of Krajina an autonomous democratic unit of sovereign

decision would ensure the region's independence.<sup>467</sup> This secessionist movement gave rise to tensions between the ARK and the central government of the SerBiH, as well as between the Accused and Radovan Karadžić.<sup>468</sup> Radovan Karadžić believed that the autonomy of the ARK would obstruct the implementation of the Strategic Plan. In this context he stated before the SerBiH Assembly:

Of course, the Serbian Republic of Bosnia and Herzegovina will have its regions with full freedom to act according to the interests of the Serbian people. However, I promise you, Bosnian Krajina must not become an issue. If it becomes an issue we will lose the Knin Krajina. Alija is praying to God that we secede, that we screw up. They will send in UN forces, create Zone A and Zone B and we are certain to lose one of them. And the other will be part of an independent BiH, with all sorts of conditions imposed (...). We cannot allow that five people with personal ambitions destroy our chances. We are very close to achieving our strategic objectives.<sup>469</sup>

178. The secessionist proposal of the ARK Assembly was discussed at the meeting of the SDS Deputies' Club, held in Sarajevo on 28 February 1992, during which it was made clear that the party leadership would not tolerate any deviation from its plan.<sup>470</sup>

179. The dispute between the central government and the ARK was solved on 29 February 1992, during the 14<sup>th</sup> session of the ARK Assembly, attended by Radovan Karadžić and other delegates from the SerBiH,<sup>471</sup> at which the deputies of the ARK Assembly accepted the Constitution of the

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citizens and peoples and an inseparable part of the Federative Yugoslavia as a federal state which consists of the republics of Serbia and Montenegro and other federal units which have expressed their free will to remain in this federal state. Article 5: The Assembly of the Autonomous Region of Krajina will reach a temporary decision on the government of the autonomous region of Krajina and on organisation and competence of regional administrative bodies and other federal organs and organisations. Article 6: The Assembly of the Autonomous Region will enact the constitution of the autonomous region within 30 days (...). Article 8: If the constitutional-legal position of BiH in Federal State of Yugoslavia changes, the Assembly of the Autonomous Region of Krajina will decide to form a separate republic on its own or together with other republics, which would become a federal republic and a part of the federal state of Yugoslavia". The Trial Chamber interprets this decision in the context of the events taking place in the break-away Republics of Slovenia and Bosnian Croatia, *see* Patrick Treanor, T. 20911-20924.

<sup>467</sup> Ex. P12, "Extract from the minutes of the 7<sup>th</sup> session of the Assembly of the ZOBK", held on 16 September 1991.

<sup>468</sup> *See, e.g.*, ex. P2383-2389, "Intercepted telephone conversation between Radovan Karadžić and Vojo Kuprešanić", dated 9 November 1991, Radovan Karadžić complaining about the Accused spreading panic; ex. P2383.13, "Intercepted telephone conversation between Radovan Karadžić and Nenad Stevandić", dated 11 January 1992, Radovan Karadžić complaining about the "separatist bastards" in Banja Luka and stating that if someone makes his own politics, he will be thrown out of the party; ex. P33, "Transcript of the 8<sup>th</sup> session of the Assembly of SerBiH", held on 25 February 1992; Radovan Karadžić stating, *inter alia*, that: "Neither Brdo nor anyone else can act out of step with this Assembly. They may if they resign or until we reach a decision. Once we reach a decision, no one has a right to sabotage it" (p. 71); "I cannot allow five people with personal ambitions to destroy our chances. We are very close to achieving our strategic objectives" (p. 44). *See also* BT-100, T. 19041 (closed session); BT-94, T. 24703 (closed session); Milorad Dodik, T. 20518.

<sup>469</sup> Ex. P33, "Transcript of the 8<sup>th</sup> session of the Assembly of SerBiH", held on 25 February 1992, p. 44.

<sup>470</sup> Ex. P34, "Transcript of the meeting of the SDS Deputies' Club", held in Sarajevo on 28 February 1992, Radovan Karadžić stating, *inter alia*, that: "We are in power and we should exercise that power for the good of the people. We can and we must renounce everyone who refuses to work the way that we have agreed. Brdo and all the rest. When Brdo appears somewhere, he is like a bomb; he blows everything up (...). Then he winks at him and I won't allow it as a psychiatrist and as the party leader. He's crazy, he's not normal. He doesn't know what he can do and what he can't do" (p. 36); *see also* statement of Marinko Kontić (pp. 28-29).

<sup>471</sup> Ex. P35, "Extract from the minutes of the 14<sup>th</sup> session of the ARK Assembly", held on 29 February 1992. The other members of the government of the SerBiH who were present included Momčilo Krajišnik (President of the SerBiH Assembly), Nikola Koljević (member of the Presidency of the SerBiH) and Velibor Ostojić (Minister for Information of the SerBiH).

SerBiH in full and decided that the status of the ARK would be incorporated into the Constitution of the SerBiH.<sup>472</sup> During the following session, the ARK Assembly discussed the putting into effect of the Constitution and the laws of the SerBiH.<sup>473</sup>

#### 4. The role of the ARK in general

180. The Trial Chamber is satisfied that the ARK as an intermediate level of government was established to co-ordinate the implementation by the municipalities of the Strategic Plan.

181. On 29 October 1991, the Accused, in his role as the “Co-ordinator for Implementing Decisions”, sent a telex addressed to the presidents of the municipal assemblies of all ARK municipalities.<sup>474</sup> This telex referred to an order of the SDS Sarajevo that was fully accepted by the “ARK Presidency” and the “ARK Government” and consisted of a number of specific instructions to the municipalities.<sup>475</sup> Amongst others, the telex included the following orders:

1. Immediately form a command of the town and set up round-the-clock duty.
2. Establish full mobility of the TO.
3. Form units for the front and designate their replacements.
4. All men under the age of 40 to be reassigned from Civilian Protection to the TO, and the TO to be re-subordinated to the Corps as wartime units.
5. Take over management in public enterprises, the post office Public Auditing Service, bank, judiciary and, by all means, the media.
6. Proclaim a wartime programme schedule on radio stations.

[...]

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<sup>472</sup> Ex. P35/P118, “Extract from the minutes of the 14<sup>th</sup> session of the ARK Assembly”, dated 29 February 1992. During the discussion on this issue, Jovan Čizmović, the co-ordinator of the governments of the ARK and the autonomous and districts for the government of SerBiH, recalled that the ARK can draw its autonomy from the recently-adopted Constitution of the SerBiH. Vojo Kuprešanin pointed out that at the previous session the deputies in the ARK Assembly had adopted a position with five points that the SerBiH was made up of the sum of regions in the territory of Bosnia and Herzegovina, which give legitimacy to the SerBiH as its constituent elements. The Accused also recalled that the deputies of the ARK Assembly had reached an agreement at the previous session on the integrity of the SerBiH, but with a different viewpoint compared to the one offered to the people of the Krajina from the centre in Sarajevo (ex. P35/P118). *See* Boro Blagojević, T. 21828-21836; Predrag Radić, T. 22196-22200, 22326-22327; Dobrivoje Vidić, T. 23061-23064; Mirko Dejanović, T. 23100-23101; Rajko Kalabić, T. 22593-22595.

<sup>473</sup> Ex. P120/P2365, “Extract from the minutes of the 15<sup>th</sup> session of the ARK Assembly”, held on 4 March 1992; Patrick Treanor, T. 18780.

<sup>474</sup> Although there is no document in evidence establishing the formal appointment of the Accused to the position of “Co-ordinator for Implementing Decisions”, the Trial Chamber is satisfied that the Accused exercised this function.

<sup>475</sup> Ex. P89/P22, “Telex referring to orders of the SDS Sarajevo”: The telex reveals that the order in question was made public during a meeting on 26 October 1991 of all municipal presidents, chaired by Radovan Karadžić. *See* also Jovica Radojko, T. 20028-20031; Asim Egrić T. 10530-10534, 10630; BT-80, T 15338-15339 (closed session). The present telex was intercepted in Ključ by the Bosnian Bosniak Organisation, who denounced the contents of the telex as an instigation to war: ex. P90, “Official Statement of the Bosnian Bosniak Organisation, SDA Ključ”, dated 31 October 1991. *See* Asim Egrić, T. 10529.



10. All weapons and equipment to be collected from deserters.

[...]

12. Para-military formations, if they exist, to be disbanded immediately and reassigned to the TO – this must be carried out without fail.

[...]

14. Request Radio Banja Luka to broadcast one hour of programme time daily on the war events in Bosnian Croatia.

182. The Trial Chamber is satisfied that the instructions contained in this document are clearly aimed at the implementation of the Strategic Plan on the territory of the ARK. The way it was distributed to the municipalities, lends credence to the ARK's co-ordinating role in implementing the Strategic Plan.

183. It eventually became clear, however, that the instructions referred to in the telex sent by the Accused could not be implemented in the municipalities where the Bosnian Serbs did not have the overall control.<sup>476</sup> As a result, the Accused conveyed these difficulties to Radovan Karadžić on behalf of the ARK Assembly.<sup>477</sup> On 19 December 1991, the Main Board of the SDS issued the Variant A and B Instructions.<sup>478</sup> Pursuant to these instructions and in view of a prior recommendation of the SerBiH Assembly to establish municipal assemblies of the Serbian people in those municipalities where Bosnian Serbs were outnumbered,<sup>479</sup> between the end of December 1991 and April 1992, the leaders of the municipalities where the Bosnian Serbs did not have overall control declared the existence of Serb municipalities which subsequently joined the ARK.<sup>480</sup>

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<sup>476</sup> Ex. P23, "Extract from the minutes of the 9<sup>th</sup> session of the ARK Assembly", held on 6 November 1991. Item one of the agenda was the implementation of conclusions adopted at the session held on 26 October 1991: "After a discussion in which a number of assembly members took part, it was established that the Presidents of Municipalities had failed to fully carry out the conclusions we adopted together at the last session. It was also noted that in some municipalities (Sanski Most, Kotor Varoš, Prijedor, Bosanska Krupa, Bihać) it was impossible to implement these conclusions at all because they can only be carried out within the party. The main reasons for the failure to implement some of the points of the conclusions adopted on 26 October 1991 are as follows: Members of the other parties (SDP, SDA and HDZ) occupy leading positions in public and other companies in almost all municipalities and SDS leadership have so far shown very little ability to change this situation". See also Predrag Radić, T. 22181-22182.

<sup>477</sup> Ex. P23, "Extract from the minutes of the 9<sup>th</sup> session of the ARK Assembly", held on 6 November 1991: "Based on the above, it was decided that the Vice-President of the Assembly of the Autonomous Region of Krajina, Radoslav Brdanin, should inform President of the BiH SDS Radovan Karadžić as to the implementation of the conclusions adopted at the session of the Assembly of the Autonomous Region of Krajina".

<sup>478</sup> Ex. P25, "Instructions for the Organisation and Activity of Organs of the Serbian People in Bosnia and Herzegovina in Extraordinary Circumstances", issued by the SDS Main Board on 19 December 1991. See *supra*, para. 69.

<sup>479</sup> Ex. P2360, "Recommendation on establishing municipal assemblies of the Serbian People in Bosnia and Herzegovina", signed by Momčilo Krajišnik, dated 11 December, 1991 from the third session of the SerBiH Assembly, held on 11 December 1991. Paragraph 1 of the recommendation calls on the SDS clubs of assemblymen in the municipal assemblies to found a separate Bosnian Serb assembly in those municipalities in which they are outvoted by the other members of the municipal assembly, resulting in the imposition by majority vote of decisions contrary to the interests of the Serbian people; see Patrick Treanor, T. 18743.

<sup>480</sup> See *supra*, paras 68-69. See, e.g., ex. P27, "Decision" (Bihać); ex. P28, "Decision" (Prijedor); ex. P29, "Decision" (Kotor Varoš); ex. P30, "Request" (Donji Vakuf); ex. P610, "Decision" (Sanski Most).

184. Further proof of the co-ordinating function of the ARK is provided by the decision of the Executive Committee of the SDS Main Board, dated 24 February 1992, appointing Radislav Vukić as the “member-in-charge co-ordinator” for the ARK. His duties were set out to include a) co-ordinating and taking responsibility for the activities of the municipal boards of the SDS in the ARK; b) ensuring the implementation of decisions, conclusions and attitudes of the assembly of the Serbian People of Bosnia and Herzegovina and its Ministerial Council, in cooperation with the President of the Assembly and the ARK Government; c) taking part in the work of the ARK Crisis Staff; and d) keeping the Executive Committee of the SDS of Bosnia and Herzegovina duly and comprehensively informed.<sup>481</sup>

185. On 29 February 1992, the ARK Assembly concluded that it was necessary “to establish immediately strict control of the territory of the ARK”.<sup>482</sup> The Trial Chamber is satisfied that this particular conclusion is a clear expression of the ARK’s involvement in the implementation of the Strategic Plan.<sup>483</sup>

186. Finally, the role of the ARK can also be established on the basis of the intercepted telephone conversations between senior representatives of the SDS, the ZOBK and the ARK with Radovan Karadžić. During these conversations that took place between June of 1991 and February of 1992, issues regarding the implementation of the Strategic Plan, such as military mobilisation, the creation of Bosnian Serb municipalities, the constitutional position of the Bosnian Krajina and the dismissals of non-Serbs from employment were discussed and instructions to that effect were issued by Radovan Karadžić.<sup>484</sup>

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<sup>481</sup> This decision was copied to all Municipal Boards of the SDS of the ARK as well as to the Presidents of the SerBiH Assembly and the ARK government: Ex. P116, “Decision of the SDS Executive Board”, dated 24 February 1992. *See* also Boro Blagojević, T. 21846-21847.

<sup>482</sup> Ex. P35/P118, “Extract from the minutes of the 14<sup>th</sup> session of the ARK Assembly”, attended by Radovan Karadžić and other delegates from the SerBiH, dated 29 February 1992.

<sup>483</sup> The Trial Chamber notes that none of the defence witnesses who had attended this session was prepared to explain to the Trial Chamber what this decision meant in practice: Boro Blagojević, T. 21828-21836; Predrag Radić, T. 22195-22200, 22326-22327; Dobrivoje Vidić, T. 23061-23064; Mirko Dejanović, T. 23100-23101; Rajko Kalabić, T. 22593-22595.

<sup>484</sup> Ex. P2382-2384, “Intercepted telephone conversation between Radovan Karadžić and the Accused”, dated 28 July 1991, conferring on constitutional status of SRBH; ex. P2355, “Intercept telephone conversation between Radovan Karadžić and Nenad Stevandić”, dated 17 August 1991, talking of the involvement of the Accused, Vojo Kuprešanin and Anđelko Grahovac in the work of the ARK and their respective roles, the activity of municipalities, and Radovan Karadžić giving an order on behalf of the SDS Main Board; ex. P2382-2383, “Intercepted telephone conversation between Radovan Karadžić and the Accused”, dated 6 September 1991, Karadžić ordering the Accused to come to a meeting where he “will receive instructions, very important decision will be made”; ex. P2382-2383, “Intercepted telephone conversation between Radovan Karadžić and the Accused”, dated 6 September 1991, the Accused reporting to Radovan Karadžić that he had been in contact with military officers, organised military mobilisation, and suggesting that the readiness must be raised at least one step; ex. P2383-2384, “Intercepted telephone conversation between Radovan Karadžić and Trifko Komad, Secretary of the SDS Executive Board”, dated 18 September 1991, Radovan Karadžić ordering the latter to put in charge Vojo Kuprešanin, the Accused, Radislav Vukić and others regarding mobilisation; ex. P2382-2388, “Intercepted telephone conversation between Radovan Karadžić and the Accused”, dated 18 September 1991, conferring on the issue of military mobilisation in Bosnian Krajina for the war in Bosnian Croatia

187. The ARK was vital for the implementation of the Strategic Plan, especially between April 1992 and the end of June 1992 when the Posavina Corridor was closed as a consequence of the fighting and the lines of communication between the Bosnian Krajina and the headquarters of the Bosnian Serb government in Pale broke down. During this period, the chain of command to the republican level of government was not functioning.<sup>485</sup> In mid-September 1992, after the Bosnian Serb army had secured its control over the Posavina Corridor, the ARK and the other four Serbian Autonomous Districts were abolished as territorial units of the SerBiH by way of an amendment of the Constitution of the SerBiH.<sup>486</sup>

### **B. The Crisis Staff of the Autonomous Region of Krajina**

188. The Variant A and B Instructions included the directive that the SDS Municipal Boards should form Crisis Staffs of the Serbian people in their respective municipalities.<sup>487</sup> Although the

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and the Accused stating that he is in charge of that and that it is being done well; ex. P2382.11, "Intercepted telephone conversation between Radovan Karadžić and the Accused", dated 18 October 1991; Radovan Karadžić instructing the Accused on issues related to the implementation of the SDS strategy in Krajina and the Accused responding positively to all instructions); ex. P2382.9, "Intercepted telephone conversation between Radovan Karadžić and the Accused", dated 25 September 1991; discussing about cooperation with the army, encouraging the morale of reservists, and making sure that volunteers and reservists are available in order to assist the army; ex. P2382.10, "Intercepted telephone conversation between Radovan Karadžić and the Accused", dated 16 October 1991; discussing about the plebiscite, getting a certain percentage of territory and that the leaders of the ARK that are not loyal to the clearly defined policy of the party will be replaced; ex. P2357, "Intercepted telephone conversation between Radovan Karadžić and the Accused", dated 31 October 1991; Radovan Karadžić instructing the Accused that he could make more decisions without consulting the party leadership and that he should exercise the power that he has in the Bosnian Krajina; ex. P2383.9, "Intercepted telephone conversation between Radovan Karadžić and Vojo Kuprešanin", dated 9 November 1991, Radovan Karadžić insisting that the decisions of the SDS and the Assembly of the SerBiH must be obeyed; ex. P93 / ex.P2382.13, "Intercepted telephone conversation between Radovan Karadžić, the Accused, Radislav Vukić and Predrag Radić", dated 18 November 1991; discussing the creation of municipalities with Bosnian Serb majority and the policy of dismissals of non-Serb directors; ex. P2383.11, "Intercepted telephone conversation between Radovan Karadžić and Nenad Stevandić", dated 13 December 1991; discussing the implementation of the policy of dismissals; ex. P2383.12, "Intercepted telephone conversation between Radovan Karadžić and Vojo Kuprešanin", dated 27 December 1991; discussing the recruitment of soldiers for the army and to tell Colonel Talić to prepare and equip these men; ex.P2383.13, "Intercepted telephone conversation between Radovan Karadžić and Nenad Stevandić", dated 11 January 1992; Karadžić discussing the constitutional position of the Krajina and informing Stevandić that the Accused and Vojo Kuprešanin know him and that they can always "pick up the phone". In the context of the secessionist movement of some leaders of the ARK, including the Accused, Radovan Karadžić stated that "they can't do a thing without my approval or the approval of the SerBiH Assembly; ex.P2367, "Intercepted telephone conversation between Radovan Karadžić and Jovan Čizmović", dated 22 January 1992; the latter informing Radovan Karadžić that a Crisis Staff has been established and that "the objective must be carried out"; ex.P2382.2, "Intercepted telephone conversation between Radovan Karadžić and the Accused", dated 2/3 July 1992, discussing the setting up of a Bosnian Serb army and the designation of commanders in the municipalities.

<sup>485</sup> Predrag Radić gave evidence that the chain of command was republic-regional-municipal, and that sometimes the regional would get skipped, but that when there was fighting in the corridor (up to the end of June 1992), the chain of command was not functioning, T. 22139-22140. See also ex. P2326, which contains a *Glas* newspaper article dated 9 September 1992: "'We cannot establish telephone communications with the Government in Pale, let alone any other form of communication', said the representative of the road construction and repair company. Therefore, the Government of ARK must take a clear and legally-based attitude towards the prevailing situation" (under seal). See also Paddy Ashdown, T. 12387-12389.

<sup>486</sup> Ex. P2351, "Expert Report of Patrick Treanor", p. 31; BT-95, T. 19619 (closed session).

<sup>487</sup> Ex. P25, "Variant A and B Instructions", issued by the SDS Main Board on 19 December 1991, instruction 3. The creation of crisis staffs in wartime was already envisaged in the law of the SRBH. Variations to that law provided by the Variant A and B Instructions, included that they were to be crisis staffs of the Serbian people, bodies established by a

document does not make any reference to the establishment of crisis staffs at the regional level, a first regional crisis staff of the ARK was covertly formed on 22 January 1992.<sup>488</sup>

189. On 16 April 1992, the Ministry of National Defence of the SerBiH declared an imminent threat of war.<sup>489</sup> Consequently, on 26 April 1992, the Bosnian Serb Government issued follow up instructions for the work of the municipal Crisis Staffs and defined their functions (“26 April Instructions”).<sup>490</sup> Again, there was no specific mention of regional Crisis Staffs.<sup>491</sup>

190. On 5 May 1992, the ARK Executive Council, headed by Nikola Erceg, issued a decision on the formation of the ARK Crisis Staff.<sup>492</sup> It has been suggested that it was the ARK Assembly rather than the ARK Executive Council that would be the competent organ to establish the ARK Crisis Staff.<sup>493</sup> The Trial Chamber acknowledges that legally this is probably right, but is fully

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political party, the SDS, to be composed of officials of that party and nominees of that party for various administrative functions: Patrick Treanor, T. 18801.

<sup>488</sup> Ex. P2367, “Intercepted telephone conversation between Radovan Karadžić and Jovan Čizmović, the co-ordinator of the governments of the ARK and the autonomous and districts for the Council of Ministers of the SerBiH”, dated 22 January 1992: Čizmović: “Tonight we also established the crisis staff, which will act when nobody can get together, when they can assemble more quickly”. Karadžić: “Excellent”. Čizmović: “So, that’s working. Because the objective must be carried out, the instructions must be carried out”. Karadžić: “Yes, that’s right”. Patrick Treanor gave evidence that the reference to the instructions is quite likely a reference to the Variant A and B Instructions, T. 8791. See also ex. P2367, “Intercepted telephone conversation between Radovan Karadžić and Jovan Čizmović”, dated 22 January 1992; BT-9, T. 3718-3720 (closed session). On 24 February 1992, the Executive Committee of the SDS Main Board appointed Radislav Vukić as the “in-charge co-ordinator” for the ARK and instructed him, *inter alia*, to take part in the work of the ARK Crisis Staff: ex. P116, “Decision of the SDS Executive Board”, dated 24 February 1992. This decision was copied to all Municipal Boards of the SDS of the ARK as well as to the Presidents of the SerBiH Assembly and the ARK government: Boro Blagojević, T. 21846-21847.

<sup>489</sup> The Ministry of National Defence of the SerBiH declared the imminent threat of war on 16 April 1992, which gave the President of the Republic emergency powers, meaning that all powers that fell within the scope of the Assembly could be exercised by the President during that period. Patrick Treanor, T. 18785; ex. P2351, “Expert Report of Patrick Treanor”, p. 23. See also ex. P153, “Decision of the SerBiH Ministry of Defence”, dated 16 April 1992, on the establishment of the TO of the SerBiH as an armed force of the SerBiH, declaring a state of imminent threat of war.

<sup>490</sup> Ex. P157, “Excerpt from instructions for the work of the municipal crisis staffs of the Bosnian Serb people”, signed by Prime Minister Branko Đerić, which states, *inter alia*: “1. in a state of war, the Crisis Staff shall assume all prerogatives and functions of the municipal assemblies, when they are unable to convene (...). 3. The Crisis Staff co-ordinates the functions of authorities in order to ensure the defence of the territories, the safety of the population and property, the establishment of government and the organisation of all other areas of life and work. In so doing, the Crisis Staff provides the conditions for the Municipal Executive Committee to exercise legal executive authority, run the economy and other areas of life (...). 7. The Crisis Staff shall convene a meeting of the Municipal Assembly as soon as circumstances permit to have its work conclusions and decisions ratified”. See also Patrick Treanor, T. 18785; ex. P2351, “Expert Report of Patrick Treanor”, pp. 23-25.

<sup>491</sup> On 4 April 1992, Radovan Karadžić, as President of the Serb National Security Council (“SNSC”), ordered the activation of Crisis Staffs under certain conditions. The order does not distinguish between municipal and regional Crisis Staffs. It refers to Crisis Staffs in those areas where TO, Civilian Protection or reserve police units respond to the invitation of the SRBH Presidency to be raised: ex. P2370, “Public Announcement”.

<sup>492</sup> Ex. P168, “Decision of the ARK Executive Council on the establishment of the ARK Crisis Staff”, dated 5 May 1992. This Decision was published in the ARK Official Gazette, ex. P227, “ARK Official Gazette”. See also Patrick Treanor, T. 18811; Zijahudin Smailagić, T. 1965; Amir Džonlić, T. 2418.

<sup>493</sup> Patrick Treanor, T. 20941; BT-7, T. 2828 (closed session); Mevludin Sejmenović, ex. P1533, T. 4572; BT-70, T. 11672. See also BT-94, suggesting that “the ARK Crisis Staff did not have a legal founding and was simply a case of copying something that the Ustaša created and introduced into Croatian practice”, T. 18125.

satisfied that this formal deficiency in no way undermined the authority of the ARK Crisis Staff in practice.<sup>494</sup>

191. The decision on the formation of the ARK Crisis Staff did not specify the body's functions or powers. However, by comparing its composition with that of the municipal crisis staffs, the Trial Chamber is satisfied that the ARK Crisis Staff was formed along the same lines as those municipal bodies. Analogously to the municipal crisis staffs, the ARK Crisis Staff considered itself to be fulfilling the role allotted by the Constitutions of the SFRY and the SRBH to the Presidencies of socio-political communities during a state of war or imminent threat of war, assuming all powers and functions of the ARK Assembly and, therefore, becoming the highest organ of civilian authority of the ARK. In a decision of 26 May 1992, the ARK Crisis Staff stated:

The work of the Crisis Staff of the Autonomous Region of Krajina has absolute support, since it is now the highest organ of authority in the Autonomous Region of Krajina, as the Assembly of the Autonomous Region of Krajina cannot function due to objective and subjective circumstances.<sup>495</sup>

192. The Trial Chamber is satisfied that, as with municipal Crisis Staffs in their respective areas of jurisdiction, the ARK Crisis Staff was established primarily to ensure the cooperation between the political authorities, the army and the police at the regional level, with a view to co-ordinating the implementation by the different authorities of the Strategic Plan.<sup>496</sup>

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<sup>494</sup> See, C., *infra*, "Authority of the ARK Crisis Staff".

<sup>495</sup> Ex. P2351, "Expert Report of Patrick Treanor", p. 37. See in particular ex. P227, "ARK Official Gazette", ARK Crisis Staff decision of 26 May 1992, item 1, stating that "Decisions of the Crisis Staff shall be submitted for ratification to the Assembly of the Autonomous Region of Krajina as soon as it is able to convene". See also Amir Džonlić, T. 2322; Predrag Radić, T. 22266-22268. The ARK Executive Council, however, continued to operate during the period of existence of the ARK Crisis Staff: Amir Džonlić, T. 2620-2623. See also ex. P227, "ARK Official Gazette", decisions of the ARK Executive Council of 9 May, 13 May, 27 May, 28 May and 5 June 1992; ex. P258, "ARK Official Gazette", decisions of the ARK Executive Council of 8 June, 9 June, 15 June and 19 June 1992.

<sup>496</sup> Ex. P2475, "Transcript of the 14<sup>th</sup> session of the SerBiH Assembly", held on 27 March 1992. Radovan Karadžić told the delegates: "The moment you arrive in your municipalities, you must urgently form crisis staffs". Later in his speech he repeated his exhortation, requesting that they do this "with the full authorisation of the Assembly". In relation to the military he stated that: "You must try to organise the people so that they can defend themselves. Find a number of reserve officers for those staffs and have them register everyone who owns weapons as well as units. They should organise territorial defence and if the JNA is there, they must be placed under its command". See also ex. P157, "Excerpt from instructions for the work of the municipal Crisis Staffs of the Serbian people", signed by SerBiH Prime Minister Branko Đerić, stating, *inter alia*: "1. in a state of war, the Crisis Staff shall assume all prerogatives and functions of the municipal assemblies, when they are unable to convene (...). 3. The Crisis Staff co-ordinates the functions of authorities in order to ensure the defence of the territories, the safety of the population and property, the establishment of government and the organisation of all other areas of life and work. In so doing, the Crisis Staff provides the conditions for the Municipal Executive Committee to exercise legal executive authority, run the economy and other areas of life (...). 4. The command of the TO and police forces is under the exclusive authority of the professional staff, and therefore any interference regarding the command of the TO and/or the use of the police forces must be prevented (...). 8. The Crisis Staff has the obligation to provide working and living conditions for JNA members (...)". See also ex. P1265, "Decision on the establishment of the Prijedor Crisis Staff": "(...) The Crisis Staff of Prijedor is established in order to co-ordinate government, for the defence of the territory of the municipality (...)". See also ex. P1010, "Report on the work of the Ključ Crisis Staff in the period from 15 May 1992 to July 1992", p. 3: "During the armed conflict, representatives (commanders) of the VRS regularly attended the Crisis Staff and War Presidency meetings. They commanded and carried out the war activities for the defence of the territory and citizens of the Ključ Municipal Assembly against Bosnian Muslim extremists. They cooperated and co-ordinated everything very well with the Crisis Staff of the Ključ Municipal Assembly. All important and significant issues in the military and

193. The ARK Crisis Staff had 15 core members with the Accused appointed as President.<sup>497</sup> Among the members of the ARK Crisis Staff were the political<sup>498</sup> and military<sup>499</sup> leadership of the ARK, as well as persons holding key public positions in the ARK<sup>500</sup> and individuals linked to paramilitary organisations.<sup>501</sup> In addition to these core members, ARK Crisis Staff meetings were attended on a weekly basis by the Presidents of the member municipalities or their representatives.<sup>502</sup>

194. On 9 July 1992, the ARK Crisis Staff renamed itself the ARK War Presidency, while retaining the same scope of authority.<sup>503</sup>

195. The municipalities as well as the general public were made aware of the content of the decisions taken and conclusions adopted by the ARK Crisis Staff. These were published in the

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police domain were not resolved outside the Crisis Staff of the Municipal Assembly. This period could be described as a period of very successful co-operation between the Crisis Staff and military bodies in defeating the armed resistance of Bosnian Muslim extremists". See also ex. P2416, "Expert Report of Ewan Brown", pp. 44-46.

<sup>497</sup> Ex. P168, "Decision of the ARK Executive Council on the formation of the ARK Crisis Staff", dated 5 May 1992: "The War Staff of the Autonomous Region of Krajina consists of the following people: 1. Radoslav Brdanin (President); 2. Lieutenant Colonel, Milorad Sajić (vice-President); 3. Vojo Kuprešanin (member); 4. Nikola Erceg (member); 5. Predrag Radić (member); 6. Dr. Radislav Vukić (member); 7. Dr. Milovan Milanović (member); 8. General Momir Talić (member); 9. Major Zoran Jokić (member); 10. Stojan Župljanin (member); 11. Dr. Rajko Kuzmanović (member); 12. Milan Puvačić (member); 13. Jovo Rosić (member); 14. Slobodan Dubočanin (member); 15. Nenad Stevandić (member)". Rajko Kuzmanović was replaced by Dragoljub Mirjanić.

<sup>498</sup> The political leaders that were members of the ARK Crisis Staff included the Accused, Vojo Kuprešanin (Deputy of the Assembly of the SerBiH and President of the ARK Assembly), Nikola Erceg (President of the ARK Executive Council), Predrag Radić (President of the Banja Luka Municipal Assembly and the Banja Luka Crisis Staff), Radislav Vukić (Co-ordinator of the ARK for the SDS Main Board) and Milan Milanović (Deputy of the SerBiH Assembly); Boro Blagojević, T. 21876-21880). According to the version of the decision on the establishment of the ARK Crisis Staff that was published in the ARK Official Gazette: ex. P227; Đuro Bulić and Nedeljko Kesić were also members of the ARK Crisis Staff.

<sup>499</sup> The military leaders that were members of the ARK Crisis Staff included General Major Momir Talić (Commander of the 1<sup>st</sup> Krajina Corps based in Banja Luka, the biggest corps within the VRS), Lieutenant Colonel Milorad Sajić (head of the Secretariat for National Defence of the ARK) and Major Zoran Jokić (Member of the VRS Air Force): Boro Blagojević, T. 21876-21880.

<sup>500</sup> Stojan Župljanin was the head of the Banja Luka CSB; Rajko Kuzmanović was the rector of the Banja Luka University; his replacement, Dragoljub Mirjanić, was later appointed acting rector of the Banja Luka University; Amir Džonlić, T. 2433-2438; ex. P227 "ARK Official Gazette", decision of 3 June 1992; Milan Puvačić was the Public Prosecutor in Banja Luka and Jovo Rosić was the judge in charge of the Banja Luka Court; Boro Blagojević, T. 21876-21880.

<sup>501</sup> Nenad Stevandić was the head of the SOS and Slobodan Dubočanin was also connected with the SOS and the Special Intervention Squad: Predrag Radić, T. 21948; Milorad Sajić, T. 23798-23800 (closed session); Boro Blagojević, T. 21880 (closed session).

<sup>502</sup> Boro Blagojević, T. 21887-21888; BT-80, T. 15453-15453 (closed session); BT-92, T. 19804-19806, 19809 (closed session); Milorad Sajić, T. 23650, 23674-23675; BT-95, T. 19528 (closed session); BT-79, T. 11432-11433, 11509-11510, 11578 (closed session); ex. P168, "Decision of the ARK Executive Council", dated 5 May 1992, on the formation of the ARK Crisis Staff: this copy of the decision on the formation of the ARK Crisis Staff included an handwritten addition mentioning that the presidents of the municipalities are members of the ARK Crisis Staff. Ex. P2371 (another version of this decision) and ex. P227 ("ARK Official Gazette", decision of 5 May 1992, do not contain this hand-written addition: Patrick Treanor, T. 18805.

<sup>503</sup> Ex. P2351, "Expert Report of Patrick Treanor", p. 29; ex. P278, "Glas newspaper article", dated 10 July 1992. In some municipalities of the ARK, the municipal Crisis Staffs renamed themselves "municipal War Presidency". In regard to the range of activity or scope of authority, the War Presidencies considered themselves to be the same bodies that had earlier been known as municipal Crisis Staffs: ex. P2351, "Expert Report of Patrick Treanor", pp. 33-34.

ARK Official Gazette.<sup>504</sup> In addition, the decisions of the ARK Crisis Staff were sent to the Banja Luka Radio Station to be read out on air, as well as to the newspaper *Glas* for publication.<sup>505</sup>

196. The ARK Crisis Staff exercised the powers and functions of the ARK, with the proviso that its decisions had to be ratified by the ARK Assembly.<sup>506</sup> On 17 July 1992, all decisions and conclusions adopted by the ARK Crisis Staff and the ARK War Presidency were ratified by the ARK Assembly at its 18<sup>th</sup> session.<sup>507</sup> There is no indication that the ARK War Presidency was disbanded at this time. On the contrary, the ARK War Presidency continued to meet at least until 8 September 1992, just one week prior to the adoption of the SerBiH constitutional amendment that abolished the ARK as a territorial unit of the SerBiH.<sup>508</sup> However, the trial record does not include any decision or reference to a decision of the ARK Crisis Staff issued after 17 July 1992 and the Trial Chamber is satisfied that by this date, in practice, the ARK Crisis Staff had stopped exercising its powers and functions.

### C. Authority of the ARK Crisis Staff

197. The Trial Chamber is satisfied that between 5 May 1992 and 17 July 1992, when the ARK Crisis Staff/War Presidency stopped functioning, the ARK Crisis Staff and later the ARK War Presidency<sup>509</sup> were organs of authority in the ARK with *de facto* authority over the municipalities and the police and with great influence over the army and Serb paramilitary groups. The extent and limits of this authority and influence will be discussed below.

198. In the view of the Trial Chamber, one of the most important indicators of the ARK Crisis Staff's authority lies in its composition and the attendance of meetings by representatives of municipal authorities.<sup>510</sup> This composition and attendance not only secured the ARK Crisis Staff's authority and influence over the various bodies represented on it, but also made sure that in the eyes of the public the ARK Crisis Staff was seen to be vested with such authority and influence.

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<sup>504</sup> Boro Blagojević, T. 21894, 21893-21902; ex. P227, "ARK Official Gazette"; ex. P258, "ARK Official Gazette".

<sup>505</sup> Ex. P491, "Transcript of radio broadcast of ARK Crisis Staff conclusions", dated 10 May 1992; ex. P492 "*Glas* newspaper article", referring to ARK Crisis Staff decisions, dated 11 May 1992.

<sup>506</sup> Ex. P227, "ARK Official Gazette", ARK Crisis Staff decision, dated 26 May 1992, item 1: "Decisions of the Crisis Staff are binding for all crisis staffs in the municipalities. These decisions of the Crisis Staff shall be submitted for ratification to the Assembly of the Autonomous Region of Krajina as soon as it is able to convene".

<sup>507</sup> Ex. P285, "Extract from the minutes of the 18<sup>th</sup> session of the ARK Assembly", held on 17 July 1992: of the 99 Assembly Members present, 98 voted in favour of this decision and one voted against. *See also* Patrick Treanor, T. 21007-21008; Dobrivoje Vidić, T. 23079-23082.

<sup>508</sup> Ex. P2351, "Expert Report of Patrick Treanor", pp. 30-31, note 107. In mid-September 1992, after the VRS had secured its control over the Posavina Corridor, the ARK and the other four Serbian Autonomous Districts were abolished as territorial units of the SerBiH by way of an amendment of the Constitution of the SerBiH: ex. P2351, "Expert Report of Patrick Treanor", p. 31; BT-95, T. 19619 (closed session).

<sup>509</sup> References to the ARK Crisis Staff in the present and in the following chapters also include the ARK War Presidency.

<sup>510</sup> *See* para. 193 *supra*.

199. Evidence tends to indicate that the meetings of the ARK Crisis Staff were more or less conducted in an informal manner and without many procedural concerns.<sup>511</sup> The Trial Chamber is satisfied that this informality did not affect the executive and binding force of the decisions and the authority of the ARK Crisis Staff. Moreover, the fact that not all core members of the ARK Crisis Staff were present at each and every meeting<sup>512</sup> and the fact that most of the members of the ARK Crisis Staff were from Banja Luka or based in Banja Luka, does not detract from the authority of the ARK Crisis Staff.

1. The authority of the ARK Crisis Staff with respect to municipal authorities

200. The ARK Crisis Staff, assuming all powers and functions of the ARK Assembly, acted as an intermediate level of authority between the SerBiH and the municipalities. Within the area of the ARK's jurisdiction and the framework of the instructions received from the SerBiH, the ARK Crisis Staff exercised *de facto* authority over the municipalities and co-ordinated their work.<sup>513</sup> Although no single document from the SDS SerRBiH leadership or the SerBiH authorities was produced at trial that explicitly addresses the normative relationship between the ARK Crisis Staff and municipal authorities, one document issued by the SDS Main Board's Executive Committee specifically refers to the role of the ARK Crisis Staff as set out above.<sup>514</sup>

201. It is noted that a number of municipalities, including Prijedor, Bosanska Krupa and Sanski Most, had started implementing certain aspects of the Strategic Plan even before the ARK Crisis Staff was established and before it issued instructions aimed at the implementation of the Strategic Plan.<sup>515</sup> The Trial Chamber is of the view that this fact did not diminish the authority of the ARK Crisis Staff to co-ordinate the municipalities following its establishment. Similarly, the Trial

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<sup>511</sup> Dobrivoje Vidić, T. 23072; Predrag Radić, T. 22074; Boro Blagojević, T. 21787; Boro Blagojević, the secretary of the ARK Crisis Staff, also gave evidence that no minutes of ARK Crisis Staff meetings were kept; T. 21728, 21808, 21887-21890. Other witnesses testified to the contrary that minutes were kept: Predrag Radić, T. 22074-22076; Branko Cvijić, T. 21442.

<sup>512</sup> Milorad Sajić, T. 23627-23630; Boro Blagojević, T. 21736-21738; Zoran Jokić, T. 23964-23967.

<sup>513</sup> In this context, *see also* A., *supra*, "The Autonomous Region of Krajina".

<sup>514</sup> On 24 February 1992, the Executive Committee of the SDS Main Board appointed Radislav Vukić as the "in-charge co-ordinator" for the ARK. The decision sets out his duties: a) to co-ordinate and take responsibility for the activities of the municipal boards of the SDS in the ARK; b) to ensure the implementation of decisions, conclusions and attitudes of the assembly of the Serbian People of Bosnia and Herzegovina and its Ministerial Council, in cooperation with the presidents of the assembly and the ARK government; c) to take part in the work of the ARK Crisis Staff and d) to keep the Executive Committee of the SDS of Bosnia and Herzegovina duly and comprehensively informed. This decision was copied to all Municipal Boards of the SDS of the ARK as well as to the Presidents of the SerBiH Assembly and the ARK government: ex. P116, "Decision of the SDS Executive Board", dated 24 February 1992.

<sup>515</sup> For example, the Prijedor Crisis Staff enforced dismissals of non-Serbs before any such decision by the ARK Crisis Staff: ex. P1174-P1176, "Decisions of the Prijedor Crisis Staff on dismissals"; Predrag Radić, T. 22046-22053. The Sanski Most Crisis Staff issued decisions regarding dismissals and disarmament before 5 May 1992: ex. P621, "Decision of the Sanski Most Crisis Staff"; ex. P626, "Decision of the Sanski Most Crisis Staff". The take-over of Bosanska Krupa began on 21-22 April 1992, well before the formation of the ARK Crisis Staff: BT-56, T. 17449; BT-55, T. 17536; *see also* ex. DB118, "Order of the Bosanska Krupa War Presidency"; ex. P2077, "Order of the Bosanska Krupa Crisis Staff on the evacuation of the population". For Bosanski Petrovac, *see* Jovica Radojko, T. 20357.



Chamber is convinced that the fact that some municipal leaders had close connections to and direct interaction with the authorities at the republican level<sup>516</sup> did not detract from the ARK Crisis Staff's role in co-ordinating the implementation of the Strategic Plan by the municipalities.

202. Article 35 of the ARK Statute provided that decisions and conclusions of the ARK Assembly were binding for the member municipalities "only after they had been approved by the assemblies of the respective municipalities".<sup>517</sup> On 15 June 1992, the ARK Crisis Staff amended this article to the effect that decisions and conclusions of the Assembly "must be respected by the municipalities".<sup>518</sup> The amendment of this article did not follow the procedure provided for by the ARK Statute<sup>519</sup> and thus, the above decision of the ARK Crisis Staff was legally *ultra vires*.<sup>520</sup> Nevertheless, as will be shown in the following paragraphs, the Trial Chamber is satisfied that the municipalities accepted the authority of the ARK Crisis Staff to issue decisions that were directly binding on them, regardless of the original wording of Article 35 of the ARK Statute.

203. From the moment the ARK Crisis Staff was established, it was repeatedly affirmed that it was a body superior to municipal authorities. At a press conference, held on 6 May 1992, the Accused stated that the decisions of the ARK Crisis Staff "must be followed unconditionally and unquestioningly"<sup>521</sup> and that these decisions "must be implemented, without objections, in the 38 ARK municipalities".<sup>522</sup> On 9 May 1992, the ARK Crisis Staff issued a decision stating that "[a]ll decisions and conclusions of the Crisis Staff of the ARK are binding for all the municipalities" and that "[o]bjections to or appeals against decrees from the previous paragraph will not delay their implementation".<sup>523</sup> Again, on 26 May 1992, the ARK Crisis Staff concluded that it had "absolute support" and declared itself "the highest organ of authority in the Autonomous Region of Krajina, as the Assembly of the Autonomous Region of Krajina cannot function due to objective and subjective circumstances". It further concluded that "[d]ecisions of the Crisis Staff are binding for all crisis staffs in the municipalities".<sup>524</sup>

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<sup>516</sup> BT-104, T. 18498, 18501 (closed session); Jovica Radojko, T. 20236-20238.

<sup>517</sup> Ex.P80, "ARK Statute", Article 35, second paragraph.

<sup>518</sup> Ex. P258, "ARK Official Gazette", decision of 15 June 1992.

<sup>519</sup> Article 38 of the "ARK Statute" provided as follows: "Proposals to amend the Statute of the Autonomous Region of Krajina may be submitted by the Assembly, the assemblies of the member municipalities and the Executive Council. A proposal referred to in the preceding paragraph shall be communicated to the assemblies of the member municipalities for consideration in order to obtain their opinions. After the opinions have been obtained or after the given deadline has expired, the Assembly shall consider the draft proposal for amendment of the Statute and transmit it to the assemblies of the member municipalities to obtain their consent. Having obtained the consent referring in the preceding paragraph, the Assembly shall declare the amendment to the Statute adopted", ex. P80, "ARK Statute".

<sup>520</sup> Patrick Treanor, T. 20949; Branko Cvijić, T. 21415; Boro Blagojević, T. 21769.

<sup>521</sup> Ex. P177, "Glas newspaper article", dated 7 May 1992.

<sup>522</sup> Ex. P2326 (under seal); BT-94, T. 18158.

<sup>523</sup> Ex. P182, "Decision of the ARK Crisis Staff", dated 9 May 1992, item 1.

<sup>524</sup> Ex. P277, "ARK Official Gazette", conclusions of 26 May 1992, p. 29, item 1. See also ex. P2326, which contains a Glas newspaper article dated 17 July 1992 (under seal). The Accused stated in the context of the ratification of the ARK

204. The *de facto* authority over the municipal authorities that the ARK Crisis Staff exercised in its co-ordinating role was not unlimited, especially since the ARK Crisis Staff could not enforce its decisions.<sup>525</sup> There was no formally established mechanism for imposing sanctions on the municipalities in case of failure to implement ARK Crisis Staff decisions.<sup>526</sup> In some instances, this allowed some municipal authorities to act independently.<sup>527</sup>

205. With the exception of Prijedor municipality, all ARK municipalities unquestionably accepted the authority of the ARK Crisis Staff to issue instructions that were binding upon them. For that reason the municipalities maintained communications with the ARK Crisis Staff commensurate with such a relationship.<sup>528</sup> A strong indicator of the ARK Crisis Staff's authority

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Assembly of all decisions of the ARK Crisis Staff that "these decisions are passed by the ARK Presidency, by all the members of the ARK Presidency and all the presidents of the municipal War Presidencies. Therefore, there could not be a more legitimate organ than that. All presidents across 30-38 municipalities and the complete official ARK leadership".

<sup>525</sup> The Trial Chamber reached this conclusion mainly on the basis of the available evidence of communication between the municipal Crisis Staffs on the one hand and the ARK Crisis Staff and the ARK War Presidency on the other hand, as well as the available evidence on implementation by the municipal bodies of the decisions issued by the regional body. *See, e.g.*, ex. P2351, "Expert Report of Patrick Treanor", pp. 26, 40-62, 71-72. Predrag Radić gave evidence that "the Crisis Staff and the ARK is not something that just turned up... they had received some sort of *de jure* authority. But as to whether they had authority to force someone to implement something like that, I am not aware of this", T. 21976, 21983.

<sup>526</sup> Patrick Treanor, T. 20958-24959; Dobrivoje Vidić, T. 22969. Jovica Radojko, however, gave evidence that there were two informal mechanisms exerting pressure on municipal authorities to implement ARK Crisis Staff decisions – one was through the people: "They would apply various methods to start hounding us, to start protesting against what we did, on various occasions armed men broke into our offices"; the second mechanism was through the army that constantly exerted pressure on the municipal authorities, T. 20132-20133, 20139-20140, 20152.

<sup>527</sup> For example, Predrag Mitaković, a member of the Banja Luka War Presidency stated that "We believe that we have jurisdiction over our municipality, although we do respect hierarchy. That is why we have suspended the decisions of the ARK Crisis Staff in two cases only": ex. P2326, entry of 2 July 1992 (under seal). Ibrahim Fazlagić gave evidence that the decision of the ARK Crisis Staff, dated 9 May 1992, stating that "due to abuses of work, the *Atlas* travel agency is prohibited from further work", has not been implemented, without further consequences, T. 4303-4306; ex. P227 "ARK Official Gazette", decision of 9 May, item 6.

<sup>528</sup> In his expert report, referring to the communication between the ARK Crisis Staff and the ARK municipalities, Patrick Treanor concluded that, with the exception of Prijedor municipality, "explicit references by municipal crisis staffs or war presidencies to a lack of communication, or to an inability or failure to communicate, either upward or downward, are absent" and that "statements by municipal crisis staffs or war presidencies denying a need or obligation to communicate, either upward or downward, are absent", further that "statements by municipal crisis staffs or war presidencies denying an obligation to implement directives of the ARK Crisis Staff or War Presidency (and thus implicitly denying an obligation to communicate), are absent": ex. P2351, "Expert Report of Patrick Treanor", p. 61. *See* Jovica Radojko, the Secretary of Bosanski Petrovac municipality, who considered some of the decisions of the ARK Crisis Staff to be illegal, gave evidence that decisions of the ARK Crisis Staff were formally binding on the municipality and that it would have been very dangerous for the president or for the entire municipal Crisis Staff not to accept or observe the decisions of the ARK Crisis Staff, T. 20151-20152, 20346. *See also* ex. P1879, "Document from the Bosanski Petrovac Crisis Staff", outlining which of the instructions from the ARK Crisis Staff have been implemented. BT-92 gave evidence that the municipal Crisis Staff had to implement the decisions adopted by the ARK Crisis Staff. He stated that decisions of municipal crisis staffs were not taken outside the framework of the decisions of the ARK Crisis Staff, T. 19784-19785, 19908 (closed session). BT-79 gave evidence that in most instances the instructions of the regional level of authority were carried out, T. 11509-11510 (closed session). Amir Džonlić gave evidence that the decisions of the ARK Crisis Staff were binding on the Assembly of Banja Luka Municipality, T. 2473-2475; Predrag Radić gave evidence that the ARK Crisis Staff had direct control over some of the municipalities within the ARK. Depending on the people in the respective municipalities, the extent of this control varied, T. 22266-22268; BT-13, T. 4613-4614 (closed session); ex. P196, "Minutes from the session of the Ključ Crisis Staff" held on 13 and 14 May 1992; ex. P1010, "Report on the work of the Ključ Crisis Staff in the period from 15 May 1992 to July 1992", p. 4: "At every meeting, the Crisis Staff of the Municipal Assembly considered the conclusions of the Banja Luka Regional Crisis Staff which were binding as regards all issues connected with life and work in the Municipality".

over the municipalities is the fact that the ARK Crisis Staff controlled appointments of personnel to municipal governments.<sup>529</sup>

206. On 7 June 1992, seven municipalities of the ARK, in a joint statement, made a number of demands to the ARK Crisis Staff, the leadership of the SerBiH and the 1<sup>st</sup> KK.<sup>530</sup> Although these demands demonstrate a certain frustration with the ARK Crisis Staff at the municipal level, they are also a clear expression of the willingness of the municipalities in question to implement the Strategic Plan under the co-ordination of the ARK Crisis Staff.<sup>531</sup> In a second joint statement that followed one week later, a group of municipalities including most of those referred to above, expressed their dissatisfaction with the lack of efficiency of the operation conducted by the ARK Crisis Staff. They were apparently motivated by the fact that the ARK Crisis Staff did not pay sufficient attention to the problems in all constituent ARK municipalities. The second joint statement suggested personnel changes within the ARK Crisis Staff, demanding in particular the replacement of the Accused as President of the ARK Crisis Staff.<sup>532</sup> Despite their concerns, these

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*See ex. P171, "Public announcement of the Ključ Crisis Staff": "Citizens of the Ključ Municipality know that the municipal Assembly reached the decision about the Ključ Municipality joining the Autonomous Region of Bosanska Krajina and since this is a part of the Serbian Republic, the Ključ municipality will automatically be obliged to implement laws and decisions reached by the Assembly of the Serbian Republic of Bosnia and Herzegovina and the Assembly of the Autonomous Region of Bosanska Krajina" (...) "The Crisis Staff considers that after the implemented changes, the authorities in the municipal assembly should continue with the regular work. But it is noted that all decisions will be reached and all jobs carried out in accordance with the regulations and decisions of the authorities of the Autonomous Region of Bosanska Krajina and the Serbian Republic of Bosnia and Herzegovina"; ex. P196, "Minutes of a meeting of the Ključ Crisis Staff", dated 13/14 May 1992, adopting conclusions pursuant to decisions of the ARK Crisis Staff. *See also* ex. P196, "Minutes of the session of the Ključ Crisis Staff", held on 13 and 14 May 1992; ex. P630, "Conclusion of the Sanski Most Crisis Staff", dated 7 May 1992, referring to the implementation of the decisions of the "ARK War Staff". *See also* ex. P635, "Conclusions of the Sanski Most Crisis Staff"; ex. P690, "Conclusions of the Sanski Most Crisis Staff"; ex. P218 "Conclusions of the Sanski Most Crisis Staff".*

<sup>529</sup> On 17 June 1992, the ARK Crisis Staff appointed both Dobrivoje Vidić and Nikola Kisin, deputies of the Assembly of the SerBiH, as commissioners responsible for creating organs of civilian government in the Serbian Municipality of Derventa and Donji Vakuf respectively: ex.P1725 – appointment of Dobrivoje Vidić; ex. P258 – appointment of Nikola Kisin. On 4 July 1992, the ARK Crisis Staff appointed Milorad Đekanović co-ordinator in charge of the Kotor Varoš Crisis Staff on behalf of the ARK Crisis Staff: ex. P258, "Official Gazette of the ARK", issue no. 3. The Sanski Most Crisis Staff appointed Vlado Vrkeš as their Deputy-President upon request of the ARK Crisis Staff; ex.P635, "Conclusions", item 7. *See also* BT-92, T. 19816 (closed session).

<sup>530</sup> Ex. P229, "Conclusions" dated 7 June 1992, adopted by the municipalities of Bihać, Bosanski Petrovac, Bosanska Krupa - referred to as 'Srpska Krupa' - Sanski Most, Prijedor, Bosanski Novi and Ključ.

<sup>531</sup> The document is addressed to the ARK Crisis Staff, the leadership of the SerBiH and the First Krajina Corps of VRS. Amongst others, the demands read as follows: "(...) 5. We absolutely demand that within the next three days the leadership of the Autonomous Region of Krajina clearly define the borders of the Autonomous Region of Krajina. We find this necessary from the military point of view in order to avoid disorganisation of the Serbian people in the Autonomous Region of Krajina. Clear political goals and clearly defined state border would mean a lot to boost the morale of the Army of the Serbian Republic of BiH. 6. All seven municipalities in our sub-region agree that Bosnian Muslims and Bosnian Croats should move out of our municipalities until a level is reached where Serbian authority can be maintained and implemented on its own territory in each of these municipalities. In this respect, we request that the Crisis Staff of the Autonomous Region of Krajina provide a corridor for the resettlement of Bosnian Muslims and Bosnian Croats to Central Bosnia and Alija's independent state of BiH because they voted for it. If the leadership of the Autonomous Region of Krajina in Banja Luka fails to solve this issue, our seven municipalities will take all Bosnian Muslims and Bosnian Croats under military escort from our municipalities to the centre of Banja Luka (...)"

<sup>532</sup> Ex. P247, "Inter-municipal agreement, Sansko-Unska Area", dated 14 June 1992. This agreement was not stipulated by exactly the same municipalities that issued the requests of 7 June 1992. The Municipalities stipulating this agreement were Bosanska Krupa (referred to as Srpska Krupa), Bosanski Petrovac, Bosanski Novi, Bosanska Dubica, Prijedor and

municipalities did not question the authority of the ARK Crisis Staff. On the contrary, they expressly stated that the decisions of the ARK Crisis Staff had to be implemented.<sup>533</sup> It is of note that in this same statement, the municipalities point out that most of their previous proposals to the ARK Crisis Staff “have been adopted and have been incorporated into the official positions of the Crisis Staff taken at its 8 June 1992 session”.<sup>534</sup>

207. As stated, the sole apparent exception to the municipalities’ adherence to the authority of the ARK Crisis Staff is that of Prijedor municipality, where an open dispute between the municipal and the regional Crisis Staffs seems to have occurred.<sup>535</sup> On 23 June 1992, the Prijedor Crisis Staff issued a decision in which it rejected, and claimed to be invalid, decisions of the ARK Crisis Staff enacted prior to 22 June 1992. Yet this same decision stated that the Prijedor Crisis Staff would implement ARK Crisis Staff acts enacted after 22 June 1992.<sup>536</sup> On 25 June 1992, the Prijedor Crisis Staff also challenged the authority of the ARK Government.<sup>537</sup>

208. The Trial Chamber is satisfied that the position of the Prijedor Crisis Staff *vis-à-vis* the authorities of the ARK in general and the ARK Crisis Staff in particular, resulted from a dispute concerning the composition of the ARK Crisis Staff, on which the authorities of Prijedor municipality felt they were underrepresented.<sup>538</sup> Notwithstanding this dispute, the Prijedor Crisis Staff decided to implement the decisions of the ARK Crisis Staff.<sup>539</sup> According to the decision on the establishment of the Prijedor Crisis Staff, dated 20 May 1992, the decisions of the responsible organs of the ARK are explicitly accepted to be one of the foundations for the work of the Prijedor Crisis Staff.<sup>540</sup> On 9 May 1992, four days after the ARK Crisis Staff was officially established,

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Sanski Most. As to the impact of this document on the Accused, *see* VIII., “The Accused’s role and his responsibility in general”. As to the foundation of the request expressed in this documents, *see* also VI.D., “The role of the ARK Crisis Staff in the Implementation of the Strategic Plan”.

<sup>533</sup> Ex. P247, “Inter-municipal agreement, Sansko-Unska Area”, dated 14 June 1992. Referring to the 8<sup>th</sup> session of the ARK Crisis Staff, the document states: “We request that concrete and clear replies be given to each of the conclusions reached at this session and that individuals in charge of these conclusions be held personally accountable for their implementation”.

<sup>534</sup> Ex. P247, “Inter-municipal agreement, Sansko-Unska Area”, dated 14 June 1992.

<sup>535</sup> In this context it is of note that Prijedor was amongst the municipalities issuing the joint statements referred to in the previous paragraph.

<sup>536</sup> Ex. P1261, “Extract from the Prijedor Official Gazette, decision 116, conclusion of the Prijedor Crisis Staff”, dated 25 June 1992.

<sup>537</sup> Ex. P1267, “Extract from the Prijedor Official Gazette, decision 119, conclusion of the Prijedor Crisis Staff”, dated 25 June 1992: “The Crisis Staff of Prijedor Municipality shall not implement enactments adopted by the Government of the Autonomous Region of Krajina until the Assembly of the Autonomous Region of Krajina has elected all members of the Government, respecting the principle of equal representation of municipalities through the election of their candidates for members of the Government”.

<sup>538</sup> Ex. P2351, “Expert Report of Patrick Treanor”, pp. 59, 62.

<sup>539</sup> Prijedor Municipality is one of the seven municipalities referred to in the previous paragraph. Hence, the remarks made in relation to that group also apply to Prijedor Municipality in particular.

<sup>540</sup> Ex. P1268, “Prijedor Official Gazette”, decision 18, dated 20 May 1992, Article 11: “The provisions of the Constitution, the law and decisions adopted by the Assembly, the Presidency and the Government of the Serbian Republic of BiH and the responsible organs of the Autonomous Region of the Banja Luka Krajina have been and shall remain the foundation for the work of the Prijedor Municipal Crisis Staff”. Article 12 of the same decision states: “The

Milan Kovačević, the President of the Prijedor Municipal Assembly Executive Committee, remarked during a meeting of the Prijedor SDS Municipal Board that “the functioning of the government at the level of Krajina can now be felt” and that “instructions and decisions are being forwarded from the top”.<sup>541</sup> Moreover, evidence shows that the municipal authorities of Prijedor did in fact implement decisions of the ARK Crisis Staff enacted prior to 22 June 1992,<sup>542</sup> and maintained regular communication with the ARK Crisis Staff before that date.<sup>543</sup>

209. The Trial Chamber notes the submission by the Defence<sup>544</sup> and evidence suggesting that the municipalities of Prijedor, Sanski Most, Bosanski Petrovac, Ključ and Bosanska Krupa were “renegade municipalities” governed by strong individuals who acted independently and ignored not only the authorities of the ARK but also the directives of the SerBiH Government and the SDS BiH Main Board.<sup>545</sup> These municipalities contain the sites where some of the most serious crimes charged in the Indictment were committed. The Trial Chamber is satisfied beyond reasonable doubt that, rather than being the product of the criminal activity of “renegade municipalities”, these crimes are nothing less than a clear manifestation of the implementation of the Strategic Plan in these municipalities. They followed the general pattern of conduct envisaged for the implementation of the Strategic Plan, a plan that originated from the top level of the Bosnian Serb leadership and whose implementation by the municipalities was co-ordinated by the regional authorities of the ARK.<sup>546</sup>

210. Documentary evidence produced at trial on the basis of which the implementation of ARK Crisis Staff decisions by the municipalities can be examined is limited. Those documents only constitute a sampling of all such documents issued by the thirteen municipalities.<sup>547</sup> However, there is significant convincing evidence that in three key areas, ARK Crisis Staff decisions were implemented by the municipalities. These areas are a) dismissals of non-Serb professionals; b)

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Crisis Staff shall gather all relevant information on the situation on the ground, report and consult with the competent organs of the Autonomous Region of the Banja Luka Krajina and with those of the Serbian Republic of BiH whenever required or possible”. A similar provision can be found in the “Instructions on the Establishment, Composition and Tasks of the Local Crisis Staffs in the Prijedor Municipality”, issued by the Prijedor Crisis Staff in June 1992: ex. P1278, “Instructions”.

<sup>541</sup> Ex. P1195, “Minutes of the SDS Municipal Board meeting”, held on 9 May 1992.

<sup>542</sup> See, e.g., ex. P1217, “Notification by the Prijedor Crisis Staff” to all commercial and social enterprises regarding the introduction of the permanent operational duty in accordance with the ARK Crisis Staff Decision on introduction of permanent operational duty.

<sup>543</sup> Ex. P2351, “Expert Report of Patrick Treanor”, pp. 58-62.

<sup>544</sup> Defence Final Brief (confidential), pp. 128-138.

<sup>545</sup> Milorad Dodik, T. 20496, 20520, 20546; Kerim Mesanović, T. 11254; Predrag Radić, T. 22280, 22328, 22964.

<sup>546</sup> See IV.C., “The implementation of the Strategic Plan in the Bosnian Krajina”.

<sup>547</sup> “Implementation” refers to the execution or putting into effect of enactments issued by the ARK Crisis Staff, taking into consideration the implementation through various channels: 1. local institutions of 13 relevant municipalities; 2. Banja Luka CSB; 3. economic enterprises; 4. publication in the ARK official gazette and media broadcast; ex. P2351, “Expert Report of Patrick Treanor”, p. 63. The thirteen municipalities examined are Ključ, Bosanski Petrovać, Kotor Varoš, Šipovo, Bosanska Krupa, Sanski Most, Teslić, Konji Vakuf, Prijedor, Bosanski Novi, Banja Luka, Čelinac and Prnjavor.

disarmament of paramilitary units and individuals who illegally possess weapons, selectively enforced against non-Serbs; and c) resettlement of the non-Serb population.<sup>548</sup> The available evidence demonstrates a pattern of conduct, which, in the view of the Trial Chamber, allows for only one reasonable inference to be drawn: the municipalities systematically implemented ARK Crisis Staff decisions in at least these three key areas.<sup>549</sup> In the view of the Trial Chamber, these areas were crucial and vital to the success of the over-all plan of ethnic cleansing.<sup>550</sup>

## 2. The authority of the ARK Crisis Staff with respect to the police

211. At the end of March 1992, the Bosnian Serb leadership, aiming to implement the Strategic Plan, took the necessary measures to separate the Bosnian police force and to put the Bosnian Serb police under Bosnian Serb civilian command.<sup>551</sup> On 27 March 1992, the SerBiH Assembly established the Serbian Ministry of Internal Affairs (“MUP”).<sup>552</sup> The legislation on the MUP came into effect on 31 March 1992, when a Minister was appointed who answered to the SerBiH Assembly.<sup>553</sup> During the spring and summer of 1992, most non-Serbs were dismissed from the police force. In doing so, the police was transformed into a Bosnian Serb force.<sup>554</sup>

212. At all times relevant to the Indictment, the police force maintained a chain of command which led to the MUP.<sup>555</sup> The CSB co-ordinated the work of the Public Security Stations (“SJBs”)<sup>556</sup> of the municipalities that were members of the ARK, and the SJBs reported to the CSB.<sup>557</sup> Hence, the ARK Crisis Staff did not possess any *de jure* power to issue orders to the police.<sup>558</sup>

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<sup>548</sup> Ex. P2351, “Expert Report of Patrick Treanor”, pp. 63-73, Appendices 4-10.

<sup>549</sup> See also Predrag Radić, T. 22279-22287; Jovica Radojko, T. 20137-20138, 20295-20298, 20334.

<sup>550</sup> See V.I.D., “The Role of the ARK Crisis Staff in the implementation of the Strategic Plan”.

<sup>551</sup> At the 12<sup>th</sup> session of the SerBiH Assembly, held on 24 March 1992, Radovan Karadžić stated that: “at a desired moment (...) we can form whatever we want. There are reasons why this could happen in two or three days (...). At that moment, all the Serbian municipalities, both the old ones and the newly established ones, would literally assume control of the entire territory of the municipality concerned (...). Then, at a given moment (...) there will be a single method used and you will be able to apply it in the municipalities you represent, including both things that must be done as well as how to do them. How to separate the police force, take the resources that belong to the Serbian people and take command. The police must be under the control of the civilian authority, it must obey it, there is no discussion about that – that’s the way it must be”: ex. P26.

<sup>552</sup> On 31 March 1992, Momčilo Mandić, Assistant Minister of Internal Affairs in SRBH, sent a telex to all security centers and all the public security stations around the Republic, informing them of the establishment of the Serbian Ministry of Internal Affairs (MUP), decision taken at a meeting of the SerBiH Assembly, held on 27 March 1992, at which the Constitution of the SerBiH was ceremonially promulgated: ex. P2366. See also Patrick Treanor, T. 18781.

<sup>553</sup> Patrick Treanor, T. 18774-18775, 18779-18780.

<sup>554</sup> BT-17, T. 7651-7652 (closed session); Jasmin Odošević, T.15116; BT-26, T. 9102 (closed session).

<sup>555</sup> Prior to 31 March 1992, the police forces maintained a chain of command which led to the Ministry of Interior of the SRBH: Patrick Treanor, T. 18774-18775, 18779-18780; BW-1, T. 23304-23306 (closed session); Milenko Savić, T. 22361-22364.

<sup>556</sup> The SJBs and the CSB are collectively referred to as “the police”.

<sup>557</sup> Ex. P202, “Conclusions reached at the expanded meeting of the Centre Council”, held on 6 May 1992. The meeting was attended by the Chief of the National Security Service (SNB) and Chief of the CSB and the Chiefs of all departments of the CSB, as well as the Chiefs of all the SJBs in the region, except Jajce. Amongst others, Stojan

213. In practice, however, the authorities of the ARK in general and the ARK Crisis Staff in particular, had *de facto* authority over the police and co-ordinated the actions taken by the police.<sup>559</sup> Stojan Župljanin, the Chief of the CSB, was a member of the ARK Crisis Staff.<sup>560</sup> The Chiefs of the municipal SJBs were members of the municipal Crisis Staffs.<sup>561</sup> The ARK Crisis Staff had *de facto* authority to issue instructions to the police. On 6 May 1992, one day after the establishment of the ARK Crisis Staff, Stojan Župljanin stated in the presence of the Chiefs of the SJBs of the ARK municipalities that “in all our activities, we are obliged to observe all measures and apply all procedures ordered by the Crisis Staff of the Autonomous Region”.<sup>562</sup>

214. Although it was not provided for by law, the ARK Crisis Staff issued orders to the police force. These orders concerned, *inter alia*, a) dismissals of non-Serb professionals; b) disarmament of paramilitary units and individuals who illegally possess weapons, selectively enforced against non-Serbs; and c) resettlement of the non-Serb population.<sup>563</sup> The evidence shows that the CSB passed orders issued by the ARK Crisis Staff down to the SJBs and instructed the SJBs to implement them.<sup>564</sup> On occasion, the police sought instructions from the ARK Crisis Staff.<sup>565</sup>

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Župljanin, addressing the Chiefs of the SJBs, suggested the following conclusion (item 3.4): “All my orders conveyed orally, as well as those I may forward by dispatch, must be carried out: they are your law. The chain of command, commanding and executing are clearly distinguished in this service. If any one of your staff should refuse to act upon an order, just inform him that he is fired, we have to get rid of the old ideology and concepts not suited to the present moment”.

<sup>558</sup> See, e.g., ex. P157, “Excerpt from instructions for the work” of the municipal crisis staffs of the Serbian people, signed by Prime Minister Branko Đerić, stating *inter alia*: “(...) 4. The command of the TO and police forces is under the exclusive authority of the professional staff, and therefore any interference regarding the command of the TO and/or the use of the police forces must be prevented”. Ex. DB164, “Official Gazette of the Serbian people in BiH”, year 1, issue 4, p 48; law on internal affairs, Article 32): “A municipal assembly and its Executive Council may submit their proposals and opinions to the ministry's head office and make motions regarding issues pertinent to security on the territory of the municipality and to the work of their security services centre and public security station. The ministry's head office is obligated to consider the proposals, opinions, and motions of the Municipal Assembly and its Executive Council and to reply to them, stating its stances and measures taken”.

<sup>559</sup> Jovica Radojko gave evidence that whatever the legal position may or may not have been, the police did carry out certain instructions of the assembly and the crisis staffs, T. 20055. See also Muhamed Sadiković, T. 18215, 18351; BT-72, T. 18445 (closed session); Amir Džonlić, T. 2408-2411.

<sup>560</sup> Ex. P168, “Decision of the ARK Executive Council on the formation of the ARK Crisis Staff”, dated 5 May 1992.

<sup>561</sup> Ex. P157, “Except from instructions for the work of the municipal crisis staffs of the Serbian people”, signed by Prime Minister Branko Đerić, which adopted a considerable revision with respect to the composition of the Crisis Staff compared to the Variant A and B Instructions (ex. P25).

<sup>562</sup> Ex. P202, “Conclusions reached at the expanded meeting of the Centre Council”, held on 6 May 1992, item 23.

<sup>563</sup> Ex. P227, “ARK Official Gazette”; ex. P258, “ARK Official Gazette”; ex. P238, “Conclusion of the ARK Crisis Staff, dated 10 June 1992; ex. P243, “Decision of the ARK Crisis Staff”, dated 12 June 1992; ex. P265, “Conclusions of the ARK Crisis Staff”, dated 29 June 1992. See also BT-80, T.15455-15456 (closed session). See, e.g., ex. P240, “CSB document”, dated 12 June: the Chief of the CSB ordered all the SJBs to implement an ARK Crisis Staff decision dated 10 June 1992 which provided: “Only children, women and old people may voluntarily, that is, of their own free will, leave the Autonomous Region of Krajina. [...] The above mentioned activities should be carried out in cooperation with humanitarian organisations”.

<sup>564</sup> See, e.g., ex. P195, “Dispatch issued by Stojan Župljanin”, dated 14 May 1992, sent to all local SJBs in the region, ordering to follow the decision of the ARK, regarding the surrender of illegally-owned weapons and ammunition; ex. P240, “Dispatch issued by the CSB”, dated 12 June 1992, forwarding to all SJBs the decision of the ARK Crisis Staff of 10 June 1992; ex. P272, “Dispatch of the CSB to all SJBs”, dated 1 July 1992, disseminating the ARK Crisis Staff decision of 22 June 1992, ordering the dismissal of all non-Serbs from key positions, with specific instructions that the measure should be implemented by all SJBs; ex. P294, “Dispatch issued by the CSB”, dated 31 July 1992,

Eventually, as shown by the evidence, the police implemented decisions of the ARK Crisis Staff in the three key areas referred to in this paragraph.<sup>566</sup>

215. The Prosecution alleged that the authority of the ARK Crisis Staff over the police had also been established on the basis of the Accused's ability to dismiss Stojan Župljanin, the Chief of the CSB. The Trial Chamber acknowledges that on 31 October 1991, the Accused was told by Radovan Karadžić that he had the power to dismiss Stojan Župljanin if he was not pleased with him.<sup>567</sup> However, the Trial Chamber is not satisfied beyond reasonable doubt that the Accused retained this power during the time relevant to the Indictment. A reasonable doubt arises in that on 27 March 1992, the SerBiH Assembly established the MUP<sup>568</sup> and at all times relevant to the Indictment, the police maintained a chain of command which led to the Ministry of Interior of the SerBiH.<sup>569</sup>

### 3. The authority of the ARK Crisis Staff with respect to the Army

216. In the spring of 1992, the JNA in BiH was transformed into the VRS, which became an army representing only one ethnic group, the Bosnian Serbs.<sup>570</sup> With the exception of Bosanski Petrovac municipality, the area of responsibility of the 1<sup>st</sup> Krajina Corps of the VRS ("1<sup>st</sup> KK"), formerly the 5<sup>th</sup> Krajina Corps of the JNA, expanded to cover the ARK area from early June 1992 either through direct geographical responsibility or through the operation of certain units of the 1<sup>st</sup> KK.<sup>571</sup> The Supreme Command of the armed forces was the Presidency of the SerBiH.<sup>572</sup>

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forwarding to all SJBs a decision taken by the ARK Crisis Staff on 3 June 1992, together with some executive instructions and ordering its implementation.

<sup>565</sup> BT-92, T. 19809 (privatde session).

<sup>566</sup> Ex. P2351, "Expert Report of Patrick Treanor", pp. 63-73, Appendices 4-10. The term "implementation" used in the Expert Report of Patrick Treanor refers to the execution or putting into effect of decisions issued by the ARK Crisis Staff, taking into consideration, *inter alia*, the implementation through the CSB; ex. P2351, "Expert Report of Patrick Treanor", p. 63. *See, e.g.*, ex. P1288, "Dispatch sent by the Prijedor SJB to the CSB", dated 5 July 1992, stating that "in the wake of the order of the Crisis Staff of the Autonomous Region of Krajina, two M-48 rifles, two automatic rifles (...) were returned"; ex. P699, "Dispatch sent by the Sanski Most SJB to the CSB", dated 10 July 1992, stating that "following the order of the Crisis Centre of the ARK on disarmament, these weapons were returned to the army, TO, and SJB units (...)".

<sup>567</sup> Ex. P 2357, "Intercepted telephone conversation" between Radovan Karadžić and the Accused, dated 31 October 1991. Patrick Treanor interpreted this conversation to mean that Radovan Karadžić is encouraging the Accused to take charge of the situation, T. 18732.

<sup>568</sup> On 31 March 1992, Momčilo Mandić, Assistant Minister of Internal Affairs in SRBH, sent a telex to all security centers and all the public security stations around the Republic, informing them of the establishment of the Serbian Ministry of Internal Affairs (MUP), decision taken at a meeting of the SerBiH Assembly, held on 27 March 1992, at which the Constitution of the SerBiH was ceremonially promulgated: ex. P2366. *See also* Patrick Treanor, T. 18781. The legislation on the MUP came into effect on 31 March 1992, when a Minister was appointed who answered to the SerBiH Assembly: Patrick Treanor, T. 18774-18775, 18779-18780.

<sup>569</sup> Prior to 31 March 1992, the police forces maintained a chain of command which led to the Ministry of Interior of the SRBH: Patrick Treanor, T. 18774-18775, 18779-18780; BW-1, T. 23304-23306 (closed session); Milenko Savić, T. 22361-22364.

<sup>570</sup> *See* IV.B., "The political agenda of the Bosnian Serb leadership"; IV.C., "The implementation of the Strategic Plan in the Bosnian Krajina".

<sup>571</sup> Ex. P2416, "Expert Report of Ewan Brown", pp. 39-44; ex. P2514, "Analysis of activities according to elements of combat readiness in 1992", issued by the 1<sup>st</sup> KK; ex. DB267, "1<sup>st</sup> KK Analysis".



Command was exercised by the Supreme Command through the Main Staff to subordinate units.<sup>573</sup> Hence, the civilian authorities of the ARK and the municipalities did not have any *de jure* or *de facto* authority over the armed forces.<sup>574</sup>

217. The Trial Chamber is satisfied that, in the formation and functioning of the 1<sup>st</sup> KK, emphasis was placed on substantial co-operation with civilian bodies at the various levels of command.<sup>575</sup> This co-operation was based on the shared ideology with respect to the implementation of the Strategic Plan.<sup>576</sup> Upon the establishment and the mobilisation of the VRS, General Major Momir Talić emphasised that units had to establish the “closest possible cooperation with the people and legal authorities within their zones of responsibility”.<sup>577</sup>

218. At the municipal level, commanders of TO units, which later became Light Infantry Brigades either were permanent members of municipal Crisis Staffs,<sup>578</sup> or *ex officio* members who attended meetings in order to brief Crisis Staffs or other governmental bodies on the current military situation and the development of combat operations.<sup>579</sup> Decisions taken by the crisis staffs were communicated to the military.<sup>580</sup>

219. At the municipal level, civilian and military hierarchies *de facto* interacted very closely.<sup>581</sup> There is ample evidence that the Crisis Staffs influenced the army to a large extent.<sup>582</sup> Municipal

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<sup>572</sup> Ex. P50, “Minutes of the 16<sup>th</sup> session of the SerBiH Assembly”, held on 12 May 1992, p. 60; Ewan Brown, T. 19232-19133; ex. P2416, “Expert Report of Ewan Brown”, pp. 32-35; Mirko Dejanović, T. 23210-23212; Osman Selak, T. 12905-12908, 13262-13267; Muharem Murselović, T. 12292.

<sup>573</sup> Ex. P2416, “Expert Report of Ewan Brown”, p. 5; ex. P2419, “Analysis of Combat readiness and activity of VRS in 1992”, issued by VRS Main Staff in April 1993.

<sup>574</sup> Osman Selak, T. 13540-13543; Muharem Murselović, T. 12292; BT-79, T. 11575-11576 (closed session). Municipal or regional political leaders could not issue orders to the military units or direct the policy of the units. The only civilian authority which could set policy and issue orders was the commander in chief of the Republika Srpska: Osman Selak, T. 13262-13263.

<sup>575</sup> The importance placed in this co-operation is, amongst other factors, expressed in the establishment of the position of Assistant Commander for Civilian Affairs within the 1<sup>st</sup> KK. This position was a novelty for the JNA and the VRS and unique within the JNA/VRS. It was filled by Colonel Gojko Vujnović: ex. P2416, “Expert Report of Ewan Brown”, p. 44. See also BT-79, T. 11642 (closed session); BT-95, T. 19526 (closed session); ex. P1004 “Excerpt from the minutes of the session of the Ključ Crisis Staff”, held on 28 July 1992. See also ex. P902, “Letter of the 1<sup>st</sup> KK Corps Command to the President of the ARK Assembly”.

<sup>576</sup> Osman Selak gave evidence that the political aims that the army and the SDS were seeking to achieve were the same. It was a common goal to create ‘Republika Srpska’. There could only be a divergence on how to achieve it, but the goal was a common one, T. 12917-12918, 13173-13174. See also BT-103, T. 19918-19997 (closed session); BT-80, T. 15538-15539; BT-104, T. 18480-18682 (closed session); BT-21, T. 8182-8235 (closed session); ex. P355, “Presentation by Major General Milan Gvero of the VRS Main Staff at the 34<sup>th</sup> session of the SerBiH Assembly”, held on 29 September 1993.

<sup>577</sup> Ex. P1597, “Order from the 1<sup>st</sup> KK on general mobilisation”, dated 21 May 1992.

<sup>578</sup> E.g., Sanski Most: ex. P218, “Decision”; ex. P686, “Conclusion”.

<sup>579</sup> E.g., Čelinac: ex. P1988 (under seal).

<sup>580</sup> Ex. P2416, “Expert Report of Ewan Brown”, p. 47. See also ex. P1988 (under seal); ex. P665 “Conclusions by the Sanski Most Crisis Staff”.

<sup>581</sup> BT-80, T. 15387, 15811-15812 (closed session). Osman Selak gave evidence that there was no need to report but only to inform as there was an equal level between the army and the municipalities. The President of the Municipality would know the aims of the units, he would be informed of their aims. In grave cases the Municipality would ask the army for assistance in carrying out certain tasks, T. 12909-12012, 13040-13043.

Crisis Staffs were involved in decisions and other matters relating to the military including assisting in the mobilisation and the establishment of new Light Infantry Brigades,<sup>583</sup> financing and procurement matters,<sup>584</sup> discussions and decisions concerning detention facilities,<sup>585</sup> the issuing of instructions relating to deadlines for the handing over of weapons,<sup>586</sup> the allocation of abandoned houses and apartments to Crisis Staff, military and other personnel,<sup>587</sup> decisions relating to war booty and movable property,<sup>588</sup> the transfer of detainees to camps and the removal of non-Serbs from municipalities.<sup>589</sup>

220. In addition, municipal Crisis Staffs as well as local SDS offices exerted great influence on local TO units and Light Infantry Brigades, which initially operated outside the formal chain of command of the VRS.<sup>590</sup> These units were eventually subordinated to the command of the VRS and were recognised by the VRS Main Staff as having contributed to the formation and success of the Bosnian Serb army.<sup>591</sup>

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<sup>582</sup> BT-80, T. 15466 (closed session).

<sup>583</sup> Ex. P637, "Decisions of the Sanski Most Crisis Staff"; ex. P1771 (under seal).

<sup>584</sup> Ex. P2195, "Decision of the Kotor Varoš War Presidency".

<sup>585</sup> Ex. P1237, "Order of the Prijedor SJB" regarding the institution of Omarska collection centre; ex. P1238, "Decision of the Prijedor Crisis Staff" on the release of persons from Omarska camp and Keraterm camp; ex. P2194, "Excerpt of the minutes of the session of the Kotor Varoš Crisis Staff", dated 8 July 1992, regarding a saw mill in Kotor Varoš Municipality; ex. P683, "Order from Sanski Most Crisis Staff" regarding the release of inmates from the Sports Hall.

<sup>586</sup> Ex. P921, "Order of Ključ Crisis Staff", dated 28 May 1992.

<sup>587</sup> Ex. P2270, "List of abandoned apartments" located in Kotor Varoš (not dated).

<sup>588</sup> Ex. P381, "SerBiH Government decree on war booty", dated 2 June 1992.

<sup>589</sup> Ex. P717, "CSB report on collection centres", dated 18 August 1992; ex. P661, "Decision of Sanski Most Crisis Staff", dated 4 June 1992. In the context of this paragraph, *see also* ex. P2416, "Expert Report of Ewan Brown", pp. 46-48; ex. P1607, "Extract from the minutes of the 36<sup>th</sup> session of the Kotor Varoš Crisis Staff", dated 24 June 1992; ex. P735, "Decision of Municipal Assembly of Sanski Most", dated 17 November 1992; ex. P746, "Document issued by the Sanski Most Crisis Staff", dated 28 August 1992.

<sup>590</sup> BT-80 gave evidence that "the evolution of TO units after socialism depended on the political leadership in their municipality. Those in Serb majority areas tended to come under SDS control and they were eventually subordinated to the JNA or its successor, the Bosnian Serb Army (...)". BT-80 also stated that Light Infantry Brigades were municipal brigades. Although they fought via the Corps Command, municipalities financed and equipped these brigades and decided who their commander would be, T. 15289-15293, 15473-15474 (closed session). As to the army's strategy of allowing armed forces to operate outside the formal chain of command, *see* ex. P355, "Presentation by Major General Milan Gvero of the VRS Main Staff at the 34<sup>th</sup> session of the SerBiH Assembly", held on 29 September 1993. *See also* ex. P53, "Expert Report of Robert Donia". The following exhibits demonstrate how the Sanski Most Crisis Staff controlled the municipal units in order to pursue the implementation of the Strategic Plan: ex. P637, "Decision of the Sanski Most Crisis Staff", dated 22 May 1992; ex. P638, "Order of the Sanski Most Crisis Staff", addressed to the local TO Staff; ex. P650, "Order of the Sanski Most Crisis Staff", addressed to the local TO Staff; ex. P658, "Order by the Commander for Civilian Protection in Sanski Most". For Prijedor Municipality, *see* ex. P1268, "Decisions of the Prijedor Crisis Staff"; ex. P1282, "Report of Prijedor SJB to Prijedor Crisis Staff", dated 1 July 1992. For Ključ Municipality, *see* ex. P208, "Conclusion of the Ključ Crisis Staff", 27 May 1992, item 10: "The relationship of the military authorities to the civilian authorities should be such that the military will execute the orders of the civilian authorities while the civilian authorities will not interfere with the way these orders are carried out". *See also* Ewan Brown, T. 21691; BT-106, T. 21067-21068 (closed session). The Accused boasted in October 1991 that he had troops in Čelinac and offered to send them to the front, T. 15331-15336 (closed session).

<sup>591</sup> Ex. P2419, "Analysis of Combat readiness and activity of VRS in 1992", issued by VRS Main Staff in April 1993: "In the past year, 1992, from self-organised units at the local level, the Army of the Republika Srpska has grown into the highest strategic organisational formation of the Serbian people in former BiH, capable of realizing the strategic and other objectives assigned to it by the Supreme Command and the President of the Republika Srpska as the Supreme Commander. At the same time, the Main Staff of the Army of the Republika Srpska, together with its Army, by relying on the Serbian people, the Serbian Orthodox Church, and the SDS has grown into a strategic level High Command, and

221. Cooperative links between the military and civilian authorities were also established at the regional level. These links were concentrated in the ARK Crisis Staff, of which General Major Momir Talić, Lieutenant Colonel Milorad Sajić and Major Zoran Jokić were all members.<sup>592</sup> At one point or another, all three attended ARK Crisis Staff meetings.<sup>593</sup> In addition, on 13 May 1992, the ARK Crisis Staff authorised two of its members, Vojo Kuprešanin and Predrag Radić, “to deal with all military and political issues in the territory of the ARK”.<sup>594</sup>

222. On 6 May 1992, the Accused gave a press conference presenting the main policy lines of the newly created ARK Crisis Staff and introducing himself as its President. He referred to relevant military issues, amongst others, such as the order for general mobilisation and on-going negotiations with the JNA.<sup>595</sup>

223. General Major Momir Talić briefed the ARK Assembly on military operations<sup>596</sup> and informed his subordinate officers within the 1<sup>st</sup> KK of the decisions of the ARK Crisis Staff.<sup>597</sup> Moreover, ARK Crisis Staff members, particularly the Accused himself, visited the front lines regularly, where they were briefed by military personnel in order to gain an understanding of the situation<sup>598</sup> and they informed the ARK Crisis Staff about the military campaign.<sup>599</sup>

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equipped itself to control and command operational, tactical, and other formations in the armed struggle and war in general (...). The swift development of the Army of the Republika Srpska and of its organisation and capability to conduct combat operations in a religious, ethnic and civil war was achieved primarily thanks to the quick self organizing and adjustment of remnants of the TO to the local conditions of struggle, and the protection of the Serbian people; it was also achieved thanks to the guidance of the SDS, which after its electoral victory led the Serbian people in a just struggle against the Muslim-Bosnian Croat forces”. See also ex. DT23, “Decision signed by General Major Momir Talić”, dated 28 May 1992, ordering the subordination of TO units to the army.

<sup>592</sup> Lieutenant Colonel Milorad Sajić was the head of the Secretariat for National Defence of the ARK, and Major Zoran Jokić was a member of the VRS Air Force: Boro Blagojević, T. 21876-21880; Milorad Sajić, T. 23576-23579, 23595-23596; Zoran Jokić, T. 23953. Zoran Jokić gave evidence that part of his obligations as squadron commander was to make contact with civilian structures in Banja Luka, T. 23938-23939. In addition, General Ninković, Commander of the VRS Airforce, was in direct contact with the political leadership in Banja Luka: Zoran Jokić, T. 24089; BT-80, T. 15488-15490 (closed session).

<sup>593</sup> When General Major Momir Talić could not attend personally, he sent Colonel Gojko Vujnović, the Assistant Commander for Civilian Affairs within the 1<sup>st</sup> KK, or another senior officer in his place to take notes and brief him: BT-80, T. 15436-15437, 15452-15453 (closed session); Milorad Sajić, T. 23741-23742, 23760; Boro Blagojević, T. 21740-21742; BT-92, T. 19806 (closed session); Osman Selak, T. 13511; Zoran Jokić, T. 23952, 23963-23964. See also ex. P2416, “Expert Report of Ewan Brown”, p. 49.

<sup>594</sup> Ex. P192, “ARK Crisis Staff conclusions”, dated 13 May 1992, item 7.

<sup>595</sup> Ex. P177, “*Glas* newspaper article”, dated 7 May 1992. The Accused also expressed his support for the appointment of General Major Ratko Mladić as top military commander of the Serbian armed forces.

<sup>596</sup> Ex. P285, “Extract from the minutes of the 18<sup>th</sup> session of the ARK Assembly”, held on 17 July 1992.

<sup>597</sup> Osman Selak, T. 13078-13079; ex. P1600, “Osman Selak’s official notebook”, entry of 18 May 1992.

<sup>598</sup> Ex. P1598, “Extract from Krajina TV”; ex. P1590, “1<sup>st</sup> KK Forward Command Post War Diary”; ex. P1725, “Conclusions of the ARK Crisis Staff”, dated 17 June 1992, item 1; Osman Selak, T. 13111.

<sup>599</sup> Ex. P1725, “Conclusions of the ARK Crisis Staff”, dated 17 June 1992, item 1; ex. P510, “Videotape”; ex. P510.1, “Transcript of videotape”. During a television appearance in Kotor Varoš, the Accused told the interviewer “let me tell you, my duty, as the President of the Crisis Staff of the Autonomous Region, is to visit all front (...) every Monday I must inform the presidents of the crisis staffs about the political situation in this area”.

224. At the regional level the interaction between civilian and military hierarchies was also close, which allowed the ARK Crisis Staff to exercise great influence over the 1<sup>st</sup> KK of the army.<sup>600</sup> Decisions and discussions of the ARK Crisis Staff impacted on military activity such as the mobilisation of military conscripts,<sup>601</sup> deadlines concerning the surrender of weapons,<sup>602</sup> the forceful confiscation of weapons once deadlines issued by the ARK Crisis Staff had expired,<sup>603</sup> the removal of non-Serbs from the army,<sup>604</sup> and the formation of civilian government in Donji Vakuf Municipality, which was run by a military administration.<sup>605</sup> Moreover, a prominent member of the ARK Crisis Staff was granted access to military detention facilities.<sup>606</sup>

225. Although the relationship between the army and the civilian authorities was not always a “seamless one”,<sup>607</sup> there were relatively few tensions and problems of cooperation between them, as they pursued the same goal, namely the implementation of the Strategic Plan.<sup>608</sup> The SerBiH Government supported co-operation between the ARK Crisis Staff and the army and the fact that

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<sup>600</sup> BT-80, T. 15387, 15811-15812 (closed session).

<sup>601</sup> Ex. P227, “ARK Official Gazette”, ARK Crisis Staff decision dated 15 May 1992; ex. P177, “*Glas* newspaper article”, dated 7 May 1992.

<sup>602</sup> Ex. P227, “ARK Official Gazette”, ARK Crisis Staff decision dated 11 May 1992.

<sup>603</sup> Milorad Sajić, T. 23270-23271; ex. P227, “ARK Official Gazette”, Conclusions, dated 18 May 1992, item 3: “Illegally obtained weapons will be taken away by members of the military and civilian police”; ex. P227, “ARK Official Gazette”, Conclusions, dated 9 May 1992, item 5: “We appeal again to the presidents of the National Defence Councils to take immediate steps to disarm paramilitary formations and individuals who illegally own weapons and ammunition”. Ex. P196, “Minutes of the session of the Ključ Crisis Staff”, held on 13 and 14 May 1992; ex. P921, “Order issued by the Ključ Crisis Staff”, dated 28 May 1992; ex. P924, “Ključ Infantry Brigade Combat Report”, dated 28 May 1992. See also ex. P921, “Order of Ključ Crisis Staff”, dated 28 May 1992; ex. P924, “1<sup>st</sup> Infantry Brigade Command, Combat Report”, dated 28 May 1992; ex. P654, “1<sup>st</sup> KK Combat Report”, dated 1 June 1992.

<sup>604</sup> On 8 June 1992, the Accused stated that “the army and police must get rid of the people in leading positions, Selak, Čamić, et cetera”, T. 15455-15456, 15762-15762 (closed session). Ex. P1582, “Report on the ARK Crisis Staff” sent by Colonel Vukić to the Main Staff of the VRS, dated 9 June 1992, stating that “within the units of 1<sup>st</sup> Krajina Corps (...) there are 67 officers of Bosnian Muslim or Bosnian Croat nationality. An ultimatum was issued requesting removal of these persons from vital and command posts by the 15<sup>th</sup> of June 1992, or they will take over the control of the armed forces (...). The 1<sup>st</sup> KK command should make the decision as to which staff members from the ranks of Bosnian Muslims and Bosnian Croats may still be temporarily kept and at what posts”; ex. P1583, “Document” sent by Main Staff to Colonel Ranković, head of the personnel department: “Officers of Bosnian Muslim or Bosnian Croats nationality must be sent on leave immediately. Take action at once to refer them to the army of the FRY in order to resolve their status in the service”; ex. P1584, “Document from the Command of the 30<sup>th</sup> Partisan Brigade to the Command of the 1<sup>st</sup> Partisan Brigade”, dated 21 June 1992: “Soldiers of non-Serb nationality are to be released from your units at their own request by applying one of the procedures set forth below. Soldiers of non-Serb nationality who wish to serve in the army of the SerBiH are to be kept in the units on less important duties and put under the necessary supervision”. See also Milorad Sajić, T. 23747; Ewan Brown, T. 19292-19293.

<sup>605</sup> Ex. P1725, “Conclusions of the ARK Crisis Staff”, dated 17 June 1992, item 7: “Nikola Kisin, deputy in the Serbian Assembly of Bosnia and Herzegovina, shall be appointed commissioner responsible for forming civilian organs of government in the Serbian municipality of Donji Vakuf”. This decision was implemented, T. 19994-19995 (closed session).

<sup>606</sup> On 8 August 1992, Vojo Kuprešanin visited Manjača camp and spoke to the prisoners: ex. P410, “1<sup>st</sup> KK Regular Combat Report”, dated 9 August 1992. On 23 August 1992, during the visit to Manjača camp by Tadeusz Mazowiecki (UN Special Rapporteur on Human Rights in the former Yugoslavia), the ARK Crisis Staff assisted organising the visit and members of the ARK accompanied during the visit: ex. P1777 “Report to the 1<sup>st</sup> KK on a UN visit”. Muharem Krzić gave evidence that Vojo Kuprešanin, a member of the ARK Crisis Staff, forced the SDA president for the region to take part in negotiations for the surrender of the resistance fighters in Kotor Varoš, by threatening to have him put in Manjača military camp if he refused, T. 1508-1511.

<sup>607</sup> Ex. P2416, “Expert Report of Ewan Brown”, p. 51.

<sup>608</sup> Osman Selak, T. 13543.

the ARK Crisis Staff could influence the 1<sup>st</sup> KK's activity. On 27 July 1992, SerBiH Defence Minister Bogdan Subotić was quoted by the *Glas* newspaper stating that "all decisions passed by the Crisis Staffs and War Presidencies, that is Brđanin's and Radić's camarilla, are still implemented without any hindrance".<sup>609</sup>

#### 4. The authority of the ARK Crisis Staff with respect to Serbian paramilitary units

226. By the spring of 1992, a number of Serbian paramilitary organisations had been formed in BiH or had come to the ARK from Serbia. Some of these paramilitary groups were trained and equipped by the JNA and were closely associated with the army or the SDS.<sup>610</sup> Amongst the paramilitary forces acting in the ARK were the SOS,<sup>611</sup> the White Eagles,<sup>612</sup> the Wolves of Vujčak,<sup>613</sup> the Miće,<sup>614</sup> the Red Berets,<sup>615</sup> Šešelj's Forces,<sup>616</sup> and Arkan's Men.<sup>617</sup> It was not always easy to tell one from another on the ground.<sup>618</sup>

227. Although some of the paramilitary groups were associated with Serbian opposition parties,<sup>619</sup> the SOS at a minimum was closely associated to the SDS and to the ARK Crisis Staff who used the SOS as an operative tool that contributed to the implementation of the Strategic Plan.<sup>620</sup> Nenad Stevandić and Slobodan Dubočanin, respectively the head and a member of the SOS, were members of the ARK Crisis Staff.<sup>621</sup> In addition, other members of the ARK Crisis

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<sup>609</sup> Ex. P2326, "*Glas* newspaper article", entitled "Every Time is the Time for Freedom", dated 27 July 1992, p. 11.

<sup>610</sup> BT-104, T. 18492 (closed session); Osman Selak, T. 12932-12935, 12956-12959, 12964-12966, 12973-12974, 12978-12979; BT-21, T. 8224-8229, 8386-8387 (closed session); Ahmed Zulić, T. 6856; Bekir Delić, T. 7935-7937; BT-17, T. 7639 (closed session); BT-94, T.18037; Jasmin Odošević, T. 15107-15109; BT-11, T. 3873-3874, 3890-3897, 4100-4102 (closed session); Amir Džonlić, T. 2393-2394, 2425-2428; Bešim Islamčević, T. 7464; Mehmed Tenić, T. 16854-16855, 16923-16926; Muhamed Filipović, T. 9440; Adil Draganović, T. 4927, 5656; BT-91, T. 15866-15867; Jadranko Šaran, T. 17223; BT-13, T. 4669 (closed session); Osman Selak, T. 13140-13143; Dobrivoje Vidić, T. 22997-23001, 23023-23033. See also ex. P766, "Report"; ex. P1785, "Intelligence Report on the situation in Prnjavor"; ex. DB376, "Expert Report of Paul Shoup", p. 31.

<sup>611</sup> See paras 98-99 *supra*.

<sup>612</sup> Alija Verem, ex. P1695, 92bis statement, 02108579; Muhamed Filipović, T. 9440; Adil Draganović, T. 4927; Ahmet Zulić, T. 6856; BT-91, T. 15866-15867; Jadranko Šaran, T. 17223.

<sup>613</sup> BT-11, T. 3873-3874, 3890-3897, 4100-4101 (closed session); Jasmin Odošević, T. 15081-15082, 15095-15110; Rusmir Mujanić, T. 15983-15986.

<sup>614</sup> Mehmed Tenić, T. 16854-16855, 16923-16929; BT-95, T. 19543-19544, 19550-19551; BT-64 T. 16982-16983; ex. P1935, "*Glas* newspaper article".

<sup>615</sup> BT-21, T. 8678-8683 (closed session); Ahmed Zulić, T. 6856, 6941; Enis Šabanović, T. 6469; Faik Biščević, T. 7148-7149; BT-17, T. 7861-7862 (closed session); Bekir Delić, T. 7996; Mirzet Karabeg, T. 6110, 6115; Alija Verem, ex. P1695, 92bis statement, 02108579.

<sup>616</sup> Amir Džonlić, T. 2393-2394, 2425-2428; Bešim Islamčević, T. 7464.

<sup>617</sup> Ex. P400, "Report on Paramilitary Formations in the Territory of the SerBiH", issued by the VRS Main Staff on 28 July 1992.

<sup>618</sup> BT-9, T. 3343-3344 (closed session).

<sup>619</sup> Ex. P400, "Report on Paramilitary Formations in the Territory of the SerBiH", issued by the VRS Main Staff on 28 July 1992.

<sup>620</sup> Ex. P154, "*Glas* newspaper article", dated 21 April 1992. The Accused, in addition to naming specific individuals who needed to be dismissed, issued the following threat: "if individual people in the Banja Luka companies who have been asked to withdraw do not do so in a period of three days, then members of the SOS will come onto the scene".

<sup>621</sup> Predrag Radić, T. 21948; Milorad Sajić, T. 23798-23800 (private session); Boro Blagojević, T. 21880 (private session).

Staff, including the Accused, had contacts with paramilitary organisations even prior to the establishment of the ARK Crisis Staff.<sup>622</sup>

228. Paramilitary groups participated in combat operations of the 1<sup>st</sup> KK throughout the ARK.<sup>623</sup> From early June 1992 onwards, these paramilitary groups acting in the ARK, including the SOS, were formally put under the command and the control of the VRS.<sup>624</sup>

229. The Trial Chamber is satisfied that the ARK Crisis Staff had great influence over the SOS. As for the other paramilitary groups participating in combat operations with the 1<sup>st</sup> KK and later being put under the command the control of the VRS, the ARK Crisis Staff, by exercising great influence over the army, had indirect influence on these groups.

#### **D. The role of the ARK Crisis Staff in the implementation of the Strategic Plan**

##### **1. ARK Decisions implementing the Strategic Plan**

230. The implementation of the Strategic Plan led to the widespread commission of crimes against non-Serbs in the Bosnian Krajina during the period relevant to the Indictment. The Trial Chamber is satisfied that the ARK Crisis Staff, acting as the highest civilian authority in the region, played a leading role in the implementation of the Strategic Plan by directing and coordinating the activities of the police, the army and the municipal authorities within the ARK.<sup>625</sup> As set out above,

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<sup>622</sup> The Trial Chamber has evidence that in August 1991 a delegation, including the Accused, Stojan Župljanin and military officers visited the training camp in Gornji Podgradci in Bosanska Gradiška Municipality, where Serb paramilitary units were trained. While before the trainees did not have enough equipment and food before the visit of this delegation, from that day onwards, they were given sufficient food, weapons, ammunition, and uniforms, T. 21061-21064 (closed session).

<sup>623</sup> Ex. P400, “Report on Paramilitary Formations in the Territory of the SerBiH”, issued by the VRS Main Staff on 28 July 1992. Rusmir Mujanić, T. 15998-16014; Amir Džonlić, T. 2393-2394; BT-13, T. 4669 (closed session). Jasmin Odošić gave evidence that although the groups were not part of the armed forces they participated in the combat operations of the 1<sup>st</sup> KK, T. 15103.

<sup>624</sup> See, e.g., ex. P1802, “Order from the 1<sup>st</sup> KK Command”, signed by Major General Momir Talić, dated 5 June 1992: “1. The battalion from the Prnjavor Territorial Defence Command on Mt. Vučjak, is hereby transferred to the command of the 327<sup>th</sup> Motorized Brigade and fully incorporated. 2. I appoint Lieutenant Veljko Milanković as battalion commander who will carry out and receive all orders from the commander of the 327<sup>th</sup> Motorised Brigade (...)”; ex. P1803, “Dispatch from the 1<sup>st</sup> KK Command”, dated 23 June 1992, proposing the decoration of several people, including Vjelko Milanković; Vjelko Milanković was the head of the Wolves of Vujčak; BT-11, T. 2373-3874; ex. P971, “Decision of the Ključ Crisis Staff”, dated 16 June 1992: “Armed civilians are part of the brigade and are to be given IDs”. See further ex. P1590, “War diary of Osman Selak”, p. 59, entry of 8<sup>th</sup> July: “Vojo Kupresanin said: ‘that the Serbian Government of BiH would do all it could to ensure that our army was organised and integrated as a unified armed force with a unified command and without paramilitary formations’”; Osman Selak, T.13114. Adil Draganović gave evidence all Serb paramilitary forces, including the SOS were under the control of the military command of the army, T. 5656. See also ex. DB384, “Report on the state of combat morale in units of the 1<sup>st</sup> KK”, issued by the 1<sup>st</sup> KK Command to the VRS Main Staff, dated 1 July 1992: “Offer all paramilitary formations and their leaders (...) to join the regular VRS units (...). Do not include individuals who have been involved in crimes. Disarm and arrest them and bring criminal charges against them (...). I forbid the existence of any paramilitary units in the SerBiH”. See also ex. P355, “Presentation by Major General Milan Gvero” of the VRS Main Staff at the 34<sup>th</sup> session of the SerBiH Assembly, held on 29 September 1993, talking about the integration of paramilitary formations into the VRS.

<sup>625</sup> See A.4., *supra*, “The role of the ARK in general”.

the ARK Crisis Staff had *de facto* authority over the municipal authorities and the police and exercised great influence over the army.<sup>626</sup>

231. Once established, the ARK Crisis Staff formulated orders, decisions and other regulations in pursuit of the Strategic Plan.<sup>627</sup> The evidence shows that these decisions were directed to the municipal Crisis Staffs, to the police and on occasion to the army. The CSB passed orders issued by the ARK Crisis Staff down to the SJBs and instructed the SJBs to implement them.<sup>628</sup> The municipal bodies also implemented the ARK Crisis Staff decisions in certain key areas.<sup>629</sup> Moreover, the ARK Crisis Staff's decisions had great influence on the activity of the 1<sup>st</sup> KK.<sup>630</sup>

232. The Trial Chamber has found evidence of implementation of the Strategic Plan in the following three areas: a) dismissals of non-Serb professionals; b) disarmament of paramilitary units and individuals who illegally possess weapons, selectively enforced against non-Serbs; and c) resettlement of the non-Serb population.<sup>631</sup> The Trial Chamber is satisfied that the decisions of the ARK Crisis Staff in these three areas were issued in pursuit of the Strategic Plan and substantially contributed to the commission of the crimes.

(a) Dismissals of non-Serb professionals

233. One of the first measures towards the implementation of the Strategic Plan was the dismissal of non-Serb professionals. The evidence shows that the ARK Crisis Staff initially issued orders to dismiss non-Serbs from holding key posts in public enterprises and institutions.<sup>632</sup> Subsequently the orders to dismiss non-Serbs concerned "all posts important for the functioning economy". As a result, a large number of Bosnian Muslims and Bosnian Croats in the Bosnian Krajina were

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<sup>626</sup> See also ex. P35/P118, "Extract from the minutes of the 14<sup>th</sup> Session of the ARK Assembly", dated 29 February 1992. One of the conclusions adopted in this session was "to establish strict control of the territory of the Autonomous Region of Krajina".

<sup>627</sup> Pursuant to Article 15 of the ARK Statute, the ARK was in charge of establishing and implementing common policies (especially in the enforcement of regulations) "in pursuit of its socio-political objectives".

<sup>628</sup> For example ex. P195, "Dispatch issued by Stojan Župljanin", dated 14 May 1992, sent to all local SJBs in the region, ordering to follow the decision of the ARK, regarding the surrender of illegally-owned weapons and ammunition; ex. P240, "Dispatch issued by the CSB", dated 12 June 1992, forwarding to all SJBs the decision of the ARK Crisis Staff of 10 June 1992; ex. P272, "Dispatch of the CSB to all SJBs", dated 1 July 1992, disseminating the ARK Crisis Staff decision of 22 June 1992, ordering the dismissal of all non-Serbs from key positions, with specific instructions that the measure should be implemented by all SJBs; ex. P294, "Dispatch issued by the CSB", dated 31 July 1992, forwarding to all SJBs a decision taken by the ARK Crisis Staff on 3 June 1992, together with some executive instructions and ordering its implementation. See, C.2. *supra*, "The authority of the ARK Crisis Staff with respect to the police".

<sup>629</sup> See C.1., *supra*, "The authority of the ARK Crisis Staff with respect to municipal authorities"; ex. P2351, "Expert Report of Patrick Treanor", pp. 63-73, Appendices 4-10.

<sup>630</sup> See para. 224 *supra*.

<sup>631</sup> Ex. P2351, "Expert Report of Patrick Treanor", pp. 63-73, Appendices 4-10. The majority of enactments issued by the ARK Crisis Staff were "conclusions" which "appear to be the verbatim summary of the deliberations of the Crisis Staff, of purported normative value"; ex. P2351, "Teator Repor"t, p. 64.

<sup>632</sup> See, e.g., Amir Džonlić, T. 2581; Muharem Murselović, T. 2692; Kerim Mešanović, T. 5151; Adil Draganović, T. 4914-4915, 5961-5963; BT-104, T. 18508-18509; BT-81, T. 13790-13791.

replaced by Bosnian Serb personnel, thus guaranteeing an overall Bosnian Serb control over public and private enterprises and institutions throughout the ARK.<sup>633</sup>

234. On 8 May 1992, the ARK Crisis Staff issued a decision providing that “only personnel absolutely loyal to the Serbian Republic of Bosnia and Herzegovina may hold managerial posts”.<sup>634</sup> This decision was reiterated during other Crisis Staff sessions.<sup>635</sup> In compliance with these decisions, municipal organs in the ARK dismissed non-Serbs holding key positions in public enterprises and institutions.<sup>636</sup>

235. In mid 1992, the objective pursued by the ARK Crisis Staff became more explicit. In a decision adopted on 22 June 1992 and directed to all the municipal Crisis Staffs,<sup>637</sup> the ARK Crisis Staff held that *all posts important for the functioning of the economy may only be held by personnel of Serbian ethnicity*. In addition, Bosnian Serb personnel were expected to have “confirmed their Serbian nationality” in the plebiscite<sup>638</sup> and expressed their loyalty to the SDS. The decision held:

I. All executive posts, posts involving a likely flow of information, posts involving the protection of public property, that is, *all posts important for the functioning economy, may only be held by the personnel of Serbian nationality*.<sup>639</sup>

This refers to all socially-owned enterprises, joint-stock companies, state institutions, public utilities, Ministries of Interior (as printed) and the Army of the Serbian Republic of Bosnia and Herzegovina.

These posts may not be held by employees of Serbian nationality who have not confirmed by Plebiscite or who in their minds have not made it ideologically clear that the Serbian Democratic Party is the sole representative of the Serbian people.

II. The deadline for the implementation of the tasks from Article I of this decision is 1500 hrs Friday, 26 June 1992, on which the presidents of the municipal crisis staffs shall report to this Crisis Staff.<sup>640</sup>

Further, the ARK Crisis Staff threatened to dismiss all those responsible for failing to implement this decision.<sup>641</sup>

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<sup>633</sup> See, e.g., Muharem Murselović, T. 2824-2826.

<sup>634</sup> Ex. P227, “ARK Official Gazette”, Conclusions of 8 May 1992.

<sup>635</sup> Ex. P227, “ARK Official Gazette”, Conclusions of 11 May 1992; ex. P227, “ARK Official Gazette, Conclusions of 13 May 1992”; ex. P227, “ARK Official Gazette”, Conclusions of 26 May 1992.

<sup>636</sup> For example, ex. P1199, “Decision of the Executive Committee of Prijedor”, dated 13 May 1992; ex. P1201, “Decision of the Executive Committee of Prijedor”, dated 13 May 1992; ex. P1205, “Ruling of the Executive Committee of Prijedor”, dated 14 May 1992; ex. P1212, “Ruling of the Executive Committee of Prijedor”, dated 18 May 1992; see, e.g., “Decisions”: ex. P1334, ex. P1335, ex. P1337, ex. P1271, ex. P1274, ex. P1252, ex. P1249.

<sup>637</sup> The recipients are indicated in handwriting. The document was sent for immediate delivery to the President of each Municipal Crisis Staff.

<sup>638</sup> The Trial Chamber interprets this as meaning having voted against the independence of Bosnia and Herzegovina from the SFRY during the referendum that took place in BiH in 1992.

<sup>639</sup> Emphasis added.

<sup>640</sup> Ex. P254/P255, “Decision of the ARK Crisis Staff of 22 June 1992”.

<sup>641</sup> Ex. P254/P255, “Decision of the ARK Crisis Staff of 22 June 1992”.



236. The ARK Crisis Staff decision of 22 June 1992 was forwarded by the Chief of the CSB, Stojan Župljanin to all SJB's for its immediate implementation within the ARK.<sup>642</sup> In accordance with the decision, numerous municipalities dismissed non-Serb personnel.<sup>643</sup> Ultimately, by the end of 1992, almost the entire Bosnian Muslim and Bosnian Croat community had been dismissed from their jobs.<sup>644</sup>

(b) Disarmament of paramilitary units and individuals who illegally possessed weapons, selectively enforced against non-Serbs

237. The implementation of the Strategic Plan involved the adoption of other measures, including the disarmament of non-Serbs in the ARK. The ARK Crisis Staff demanded such disarmament through public announcements, orders and decisions.<sup>645</sup> Calls for disarmament usually involved the issuance of an ultimatum to hand in illegally owned weapons.<sup>646</sup> The ARK decisions on disarmament were implemented by the municipal civilian authorities, the CSB and the SJBs, and also by the army. Although these calls were directed to all “paramilitary units and individuals who illegally possess weapons”, they were selectively enforced against non-Serbs.<sup>647</sup> The disarmament of Bosnian Muslims and Bosnian Croats throughout the ARK created an imbalance of arms and weapons favouring the Bosnian Serbs in the Bosnian Krajina, a situation amplified by the fact that the evidence proves that the Bosnian Serb population was arming itself at the same time on a massive scale.<sup>648</sup> The disarmament of the non-Serbs guaranteed Bosnian Serb control over the population of villages, towns and cities throughout the ARK rendering the Bosnian Muslims and Bosnian Croats more vulnerable, facilitating as a result the implementation of the Strategic Plan.

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<sup>642</sup> P272, “Document from the CSB to all SJBs”, dated 1 July 1992.

<sup>643</sup> For example, ex. P1837, “Decision from the Petrovac Municipal Crisis Staff”, dated 29 June 1992; *e.g.*, “Employees of Muslim nationality, defined in Item I of this Decision, were sacked earlier on from their jobs in the Municipal Assembly Administration organs [...]”; ex. P1879, “Implementation of Steps and Decisions Set in the Crisis Staff Session of 22 June 1992, issued by the Petrovac Municipal Crisis Staff”, dated 25 June 1992; ex. P1282, “Document from the Prijedor SJB to the Prijedor Crisis Staff”: this document confirms the implementation of the ARK Crisis Staff decision dated 22 June 1992 in its area of jurisdiction; *see, e.g.*, ex. P973-P974, ex. P978 (lists of non-Serb employees sent by the enterprises in Ključ to the Municipal Crisis Staff).

<sup>644</sup> Amir Džonlić, T. 2470-2471; BT-11, T. 3981-3982 (closed session); Mevludin Sejmenović, ex. P1533, T. 4559; Muhamed Filipović, T. 9402; Muharem Murselović, ex. P1542, T. 2698, 2692, 2824-2826, 2908; Kerim Mešanović, ex. P1131, T. 5151; BT-33, ex. P1544, T. 3917 (under seal); BT-34, ex. P558, T. 1056-1057, 1144-1145, 1219 (under seal); Adil Draganović, T.4914-4915, 5643, 5961-5963; Faik Bišćević, T. 7193-7194; ex. P619, “Decisions”; BT-104, T. 18508-18509 (closed session); Midho Družić, T. 16755-16756; BT-81, T. 13777, 13790-13791 (closed session); BT-82, T.13961, 14025; BT-83, T. 14045-14046, 14098-14099.

<sup>645</sup> *See* para. 90 *supra*.

<sup>646</sup> Ewan Brown, T. 19296, 19302-19309; *see, e.g.*, ex. P2416, “Military Developments in the Bosanska Krajina - A Background Study prepared by Ewan Brown, Military Analyst”.

<sup>647</sup> *See* para. 90 *supra*.

<sup>648</sup> *See* paras 87-92 *supra*.

(i) 4 May 1992 decision<sup>649</sup>

238. The Ministry of National Defence of the SerBiH declared an imminent threat of war and ordered general public mobilisation of the TO in the entire territory of the republic on 16 April 1992.<sup>650</sup> The ARK Secretariat for National Defence, an organ of the ARK Assembly that had jurisdiction over defence, carried out this instruction on 4 May 1992 in the ARK<sup>651</sup> and implemented specific measures, such as the disarmament of those who illegally possessed weapons. Its decision of 4 May 1992 provided that:

All paramilitary formations and individuals who illegally possess weapons and ammunition are to immediately, and by 1500 hours on 11 May 1992 at the latest, surrender them to the Municipal Headquarters of the Territorial Defence or to the nearest public security station. After this deadline, competent bodies shall carry out a search and confiscate weapons and ammunition with the application of the most rigorous sanctions.<sup>652</sup>

239. The decision of 4 May 1992 was forwarded by the Chief of the CSB, Stojan Župljanin to all SJB's for its immediate implementation. Stojan Župljanin instructed the chiefs of the SJB's to undertake the necessary measures in order to carry out the above mentioned decision and report back to the CSB.<sup>653</sup>

240. The ARK Secretariat for National Defence further instructed the Presidents of the National Defence Councils to report back on any actions taken to disarm paramilitary units and individuals possessing illegal weapons and ammunition.<sup>654</sup>

241. Municipal organs within the ARK discussed the decision of 4 May 1992 and called for its implementation.<sup>655</sup>

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<sup>649</sup> Although this decision was not issued by ARK Crisis Staff, the Trial Chamber deems its analysis important since the ARK Secretariat for National Defence was an organ of the ARK Assembly and the ARK Crisis Staff took over all functions of the ARK Assembly in mid 1992.

<sup>650</sup> Ex. P153, "Decision of the Ministry of National Defence of the SerBiH", dated 16 April 1992.

<sup>651</sup> Ex. P227, "ARK Official Gazette", Decision dated 4 May 1992, pp. 1-2.

<sup>652</sup> Ex. P227, "ARK Official Gazette", Decision dated 4 May 1992, pp. 1-2. The President of each Municipal Crisis Staff was responsible for the implementation of the mobilisation and disarmament within their area of jurisdiction.

<sup>653</sup> Ex. P166, "CSB document forwarding ARK decision of 4 May to all SJBs", dated 4 May 1992.

<sup>654</sup> Ex. P227, "ARK Official Gazette", Conclusions reached at the ARK Crisis Staff meeting held on 8 May 1992, pp. 5-6. The National Defence Council of the Municipal Assembly of Prijedor, for example, adopted the following conclusion during its 2<sup>nd</sup> session held on 5 May 1992: "All paramilitary units and individuals who possess weapons and ammunition illegally are called upon to surrender them immediately and not later than 11 May 1992 at 1500 hours, to the Public Security Station in Prijedor or to its nearest office. After this period, the relevant organs will start searches and seizures of any such weapons and ammunition, and will apply the most rigorous sanctions": ex. P1190, "Minutes of the 2<sup>nd</sup> session of the National Defence Council of the Municipal Assembly of Prijedor of 5 May 1992.

<sup>655</sup> The Teslić Crisis Staff, during a meeting held on 6 May 1992, also adopted the 4 May 1992 decision and concluded: "All paramilitary formations and individuals illegally possessing arms and ammunition are called upon to hand them over to the Municipal TO Staff, or to the nearest military unit immediately and no later than 1500 hours on 11 May 1992. After the expiry of this deadline, responsible organs will search and confiscate arms and ammunition, applying the most rigorous sanctions...Responsible: Military and Civilian Police": ex. P1925, "Agenda of 6 May 1992". In Bosanski Petrovac, the disarmament of paramilitary formations and of citizens who illegally possess weapons was discussed during the 18th Session of the Municipal Crisis Staff. The municipal SJB, the TO and the Petrovac Brigade if

(ii) 9 May 1992 decision

242. Once established, the ARK Crisis Staff, on 9 May 1992, instructed the Presidents of the National Defence Councils to take action in the disarmament process:

We appeal again to the presidents of the National Defence Councils to take immediate steps to disarm paramilitary formations and individuals who illegally own weapons and ammunition. The weapons should be turned over to the nearest Public Security Station by 1500 hours on 11 May at the latest. *Firm action* shall be taken against those who refuse to return weapons.<sup>656</sup>

243. The deadline of 11 May 1992 for the surrender of illegally owned weapons set by the 4 May and 9 May 1992 decisions respectively was extended until 14 May 1992 by the ARK Crisis Staff.<sup>657</sup> As a result, the deadline for the surrender of weapons was correspondingly extended in the ARK municipalities.<sup>658</sup>

(iii) 13/14 May 1992 decisions

244. During the ARK Crisis Staff sessions held on 13 and 14 May 1992, the CSB was officially instructed to implement the ARK Crisis Staff decisions on disarmament.<sup>659</sup> As a result, on 14 May 1992 the Chief of the CSB, Stojan Zupljanin, directed the SJBs to make plans for the seizure of illegally owned weapons, ammunitions and explosives. These plans had to be sent back to the CSB for approval. In addition, daily reports on the results of the disarmament campaign had to be sent to the CSB. With respect to the execution of the plans, the order specified that the disarmament decision could be enforced only by authorised officials and the military police of the Banja Luka Corps.<sup>660</sup>

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necessary, were called upon to be in charge of the disarmament: ex. P1808, "Minutes of the 18th Session of the Bosanski Petrovac Crisis Staff of 23 May 1992". See, e.g., ex. P1190, "Minutes of the 2nd session of the National Defence Council of the Municipal Assembly of Prijedor of 5 May 1992"; ex. P190, "Conclusions of the Crisis Staff of Sanski Most", adopted on 11 May 1992; ex. P.196, "Minutes of a meeting of the Ključ SO Crisis Staff held on 13, 14 May 1992".

<sup>656</sup> Emphasis added. See, e.g., ex. P227, "ARK Official Gazette", Conclusions reached at the ARK Crisis Staff meeting held on 9 May 1992, pp. 13-14.

<sup>657</sup> Ex. P227, "ARK Official Gazette, Conclusions reached at the ARK Crisis Staff meeting held on 11 May 1992", pp. 15-16.

<sup>658</sup> For example, ex. P196, "Minutes of a meeting of the Ključ Crisis Staff held on 13, 14 May 1992", item 1; ex. P1406, "CSB dispatch to all SJBs, dated 11 May 1992"; ex. P631, "Regular Combat Report of the 5<sup>th</sup> Corps Command dated 12 May 1992".

<sup>659</sup> Ex. P227, "ARK Official Gazette", Conclusions reached at the ARK Crisis Staff meeting held on 13 and 14 May 1992, pp. 17-20.

<sup>660</sup> Ex. P195, "Order from the Banja Luka CSB to the SJBs", dated 14 May 1992; on 25 May 1992, the CSB sent a reminder of the order to all the SJBs: "We hereby remind you urgently to carry out the obligations ordered in our dispatch of the above number and date/delivery of plans for the confiscation of illegally-owned weapons and ammunition and daily reporting on the results of the activities planned": ex. P1221.

245. In compliance with these decisions, plans and reports on the implementation of the disarmament within the ARK municipalities were drafted by SJB's and sent to the CSB.<sup>661</sup>

(iv) 18 May 1992 decision

246. As seen above, the 4 and 9 May 1992 decisions on disarmament were expressly directed at "paramilitary formations" and "individuals who illegally possess weapons". On 18 May 1992, the ARK Crisis Staff further clarified which individuals had to be disarmed:

All formations that are not in the Army of the Serbian Republic of Bosnia and Herzegovina or the Banja Luka Security Services Centre and are in the Autonomous Region of Krajina, are considered paramilitary formations and must be disarmed.

All those who are not part of the armed forces of the Serbian Republic of Bosnia and Herzegovina or its police must return their weapons.<sup>662</sup>

This decision also instructed the CSB to write instructions for the disarming of paramilitary formations.<sup>663</sup> The military and civilian police were responsible for the implementation. In accordance with this decision, the chief of the CSB, Stojan Župljanin, ordered all SJBs to report back to the CSB on the disarmament operations. The order contained detailed instructions on the expected contents of the report.<sup>664</sup> The municipal SJBs, as ordered, reported back to the CSB on the operations implemented in their respective areas of control.<sup>665</sup>

247. Although the 4, 9 and 18 May 1992 decisions on disarmament were not expressly restricted to non-Serbs, the disarmament operations were selectively enforced on them.<sup>666</sup> Also, at the municipal level, the disarmament deadlines were usually used as a pretext to attack non-Serb villages in order to guarantee Bosnian Serb control throughout the ARK.<sup>667</sup>

(c) Resettlement of the non-Serb population

248. Another measure taken in furtherance of the Strategic Plan was the resettlement of the non-Serb population. This entailed the permanent expulsion of non-Serb inhabitants from the ARK and

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<sup>661</sup> Ex. P717, "Report" of the collection centres in Bosanski Novi Municipality"; ex. P1209, "Minutes of the 4<sup>th</sup> meeting of the Council for National Defence of the Prijedor Municipal Assembly", held on 15 May 1992; ex. P1288, "Document from the Prijedor SJB to the CSB", dated 5 July 1992; ex. P1214, "Document from the Prijedor SJB to the CSB", dated 18 May 1992; ex. P680, "Report on the Process of disarming paramilitary formations in the Sanski Most SJB", dated 15 June 1992. *See, e.g.*, ex. P1309, "Document from the Prijedor SJB to the CSB", dated 2 August 1992; ex. P1226, "Document from the Prijedor SJB to the CSB", dated 26 May 1992.

<sup>662</sup> Ex. P227, "ARK Official Gazette", Conclusions reached at the ARK Crisis Staff meeting held on 18 May 1992, pp. 21-22, item 4.

<sup>663</sup> Ex. P227, "ARK Official Gazette", Conclusions reached at the ARK Crisis Staff meeting held on 18 May 1992, pp. 21-22, item 5.

<sup>664</sup> Ex. P271, "Document of the CSB to all the SJBs of 1/month illegible/1992".

<sup>665</sup> Ex. P699, "Document of the SJBs", dated 10 July 1992.

<sup>666</sup> *See* para. 90 *supra*.

<sup>667</sup> *See* IX.D.2., "Destructions". *See also* para. 104 *supra*.

the re-population of the area with Bosnian Serb refugees coming from other parts of Bosnia and Herzegovina and Croatia.<sup>668</sup> The resettlement policy within the territory of the Bosnian Krajina was coordinated at the regional level by the ARK Crisis Staff. The ARK Crisis Staff's decisions on the resettlement of non-Serbs are indicative of its involvement in the furtherance of the Strategic Plan. The following analysis supports this finding.

249. The resettlement policy advocated by the ARK Crisis Staff was set out in two decisions issued in May 1992. On 28 May 1992, the ARK Crisis Staff stated:

If Muslims or Croats or SDA and HDZ members wish to move out of the ARK they must enable endangered Serbs to move into their places.<sup>669</sup>

The following day, on 29 May 1992, the ARK Crisis Staff stated:

It has been decided that all Muslims and Croats, who so wish, should be able to move out of the area of the Autonomous Region of Krajina, but on condition that Serbs living outside the Serbian autonomous districts and regions are allowed to move into the territories of the Serbian Republic of Bosnia and Herzegovina and the Autonomous Region of Krajina. In this manner, a resettlement of people from one part of the former SRBH/Socialist Republic of Bosnia and Herzegovina/to another would be carried out in an organised manner.<sup>670</sup>

250. Municipal organs within the ARK discussed the ARK Crisis Staff decision of 29 May 1992 and called for its implementation. The Petrovac Municipal Assembly decided on 3 June 1992 to form a board for the implementation of the decision.<sup>671</sup> On 4 June 1992, the Ključ Municipal Assembly issued a decision on the criteria and conditions under which all citizens wishing to leave the municipality would be permitted to leave.<sup>672</sup> On 23 June 1992, the Sanski Most Crisis Staff stated that municipal representatives in charge of the resettlement of population had to report back to the ARK leadership:

Every municipality on the territory of the Autonomous Region of Krajina, shall appoint one representative for issues connected to removal and exchange of population and prisoners and report/the name/ by fax to Vojo Kuprešanin.<sup>673</sup>

251. According to a report submitted to the CSB by the Commission for the Inspection of the municipalities and the Prijedor, Bosanski Novi and Sanski Most SJBs, the resettlement of Bosnian Muslims and Bosnian Croats from the Bosnian Krajina occurred in furtherance of both the ARK

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<sup>668</sup> See IX.C.2., "Deportation and Inhumane Acts".

<sup>669</sup> See, e.g., ex. P211, "ARK Crisis Staff Decision" of 28 May 1992.

<sup>670</sup> Ex. P227, "ARK Official Gazette", Conclusions reached at the ARK Crisis Staff meeting held on 29 May 1992, p. 41, Item 1; According to Ex. P240, the ARK Crisis Staff issued another decision on 10 June 1992 which provided: "Only children, women and old people may voluntarily, that is, of their own free will, leave the Autonomous Region of Krajina. [...] The above mentioned activities should be carried out in cooperation with humanitarian organisations": ex. P240, "CSB document dated 12 June ordering all the SJBs to implement an ARK Crisis Staff decision dated 10 June 1992".

<sup>671</sup> Ex. P1869, "Minutes of the 24<sup>th</sup> Session of the Crisis Staff of Petrovac Municipality", dated 3 June 1992.

<sup>672</sup> Ex. P957, "Statement of the Ključ Municipal Assembly of 4 June 1992".

<sup>673</sup> Ex. P690, "Conclusions of the Sanski Most Crisis Staff adopted at a session held on 23 June 1992".

Crisis Staff decisions on resettlement and the subsequent municipal decisions implementing this policy. The report explained that the Prijedor, Bosanski Novi and Sanski Most SJBs implemented these decisions by issuing certificates for departure and by cancelling the residency of those leaving the territory of the Bosnian Krajina.<sup>674</sup>

252. The report of the 1<sup>st</sup> KK dated 1 June 1992 confirms the implementation of the ARK Crisis Staff's exchange policy in the area:

In the Banja Luka region [...] A portion of the Muslim and Croatian population is moving out, and the Region of the Bosnian Krajina has issued a decision to facilitate such departures, providing that the Serbs from Central Bosnian and places with predominantly Muslim and Croatian populations were also allowed to move out. Those departing will not be allowed to return.<sup>675</sup>

253. On 3 June 1992, the ARK Crisis Staff adopted a decision providing that people were not permitted to leave the ARK with more than three hundred German marks.<sup>676</sup> As a result, the CSB instructed all SJBs to seize from people leaving the ARK, money exceeding this amount.<sup>677</sup>

254. On 12 June 1992, the ARK Crisis Staff established in Banja Luka an Agency for the Movement of People and Exchange of Properties, aiding in the implementation of the resettlement policy.<sup>678</sup> At the municipal level other agencies were established.<sup>679</sup> The municipal agencies throughout the ARK, along with other competent institutions, were charged with establishing the resettlement procedures.<sup>680</sup> Departures of non-Serbs from the ARK had to be authorised by these competent institutions. In order to obtain permits to leave the territory of the ARK, Bosnian Muslims and Bosnian Croats usually had to "deregister" from their places of residence and either

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<sup>674</sup> Ex. P717, "Report concerning the situation as found and questions relating to prisoners, collection centres, resettlement and the role of the SJB in connection with these activities to the CSB".

<sup>675</sup> Ex. P380, "Report on current political and security situation from the 1<sup>st</sup> KK to the Command", dated 1 June 1992.

<sup>676</sup> "All natural persons leaving the Autonomous Region of Krajina may take out a maximum of 300 DM, or corresponding amounts in other currencies which may not exceed this limit", ex. P227, "ARK official Gazette, Decision", 3 June 1992.

<sup>677</sup> Ex. P294, "CSB dispatch", dated 31 July 1992. *See, e.g.*, ex. P226, "Radio announcement".

<sup>678</sup> Ex. P242, "Decision to found an Agency for Population Movement and Exchange of Material Wealth for the ARK", dated 12 June 1992; *see, e.g.*, "An agency shall be established to work on the problem of population resettlement": ex. P227, "ARK Official Gazette", ARK Crisis Staff Decision of 26 May 1992, Item 5; *see, e.g.*, ex. P288, "Draft news story"; ex. 292, "Glas newspaper article", dated 28 July 1992. The Chief of the Agency was appointed by the ARK Crisis Staff: ex. P241, "Decision to appoint Professor Miloš Vojinović from Glamoč as chief of the Agency for Population Movement and Exchange of Material Wealth of the Autonomous Region of Krajina", dated 12 June 1992. *See also* IX.C.2., "Deportation and Inhumane Acts".

<sup>679</sup> Ex. P1856, "Decision from the Petrovac Municipal Assembly", 28 October 1992; ex. P1844, "Minutes of the 45<sup>th</sup> Session of the Board of Commissioners of the Petrovac Municipal Assembly", dated 3 August 2003; *see* ex. P221, "Extract from Minutes of the 37<sup>th</sup> session of the Kotor Varoš War Presidency of 26 July 1992"; ex. P2219, "Conclusions of the Kotor Varoš War Presidency", dated 25 July 1992; ex. P2217, "Bulletin of the War Presidency of Kotor Varoš Municipality", dated 24 July 1992. The Agency for the Movement of People and Exchange of Properties was known as 'Brđanin's Agency' and was headed by 'Perka': *see* para. 552 *infra*. *See also* Amir Džonlić, T. 2458.

<sup>680</sup> According to the report to the CSB submitted by the Commission for the Inspection of the municipalities and the Prijedor, the SJBs in Bosanski Novi and Sanski Most issued certificates for departure and cancelled the residency of those leaving the territory of the Bosnian Krajina.

relinquish their property to the SerBiH without compensation or in a minority of cases exchange their property for property located outside the ARK.<sup>681</sup>

255. The ARK Crisis Staff decisions on resettlement ensured the permanent removal of non-Serbs from the territory of the ARK. Although the ARK decisions called for voluntary compliance and reciprocity, the resettlement of non-Serbs was in part a result of the intolerable conditions imposed on them by the Bosnian Serb authorities, including the shelling, looting and destruction of non-Serb towns and houses, the dismissals from posts and the other crimes carried out against non-Serbs in pursuit of the Strategic Plan.<sup>682</sup>

## 2. Conclusions

256. The dismissals of non-Serb professionals, the disarmament of non-Serbs and the resettlement of the non-Serb population were operational measures taken in furtherance of the Strategic Plan. The Trial Chamber is fully satisfied that the ARK Crisis Staff was responsible for directing and co-ordinating the execution of these measures within the territory of the ARK. The execution of these measures ensured Bosnian Serb control throughout the ARK and facilitated the implementation of the Strategic Plan in the area. Accordingly, the Trial Chamber is satisfied beyond reasonable doubt that the decisions of the ARK Crisis Staff in the three above mentioned areas substantially contributed to the commission of crimes against non-Serbs in the Bosnian Krajina during the period relevant to the Indictment.

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<sup>681</sup> Ex. P1855, “Decision” from the Petrovac Municipal Assembly”, dated 28 October 1992; ex. P1843, “Statement” from the Petrovac Municipal Assembly”; ex. P1006, “Record”, relating to the Departure of Population from Ključ Municipality, 31 July 1992; ex. P1007, “Decision” on criteria required in order to move out of Ključ Municipality, adopted by the Ključ Municipal Assembly at its session held on 30 July 1992; ex. P696, “Decision on the Criteria for the Possibility of Departure from the Municipality”, dated 2 July 1992.

<sup>682</sup> See IX.A.2., “Exterminatin and Wilful Killing”; IX.B.2., “Torture”; IX.D.2., “Destructions”.

## VII. INDIVIDUAL CRIMINAL RESPONSIBILITY

257. The Prosecution cumulatively charges the Accused for the crimes in counts 1 through 12 under different modes of liability. These are:

1. Responsibility pursuant to Article 7(1) of the Statute for:
  - (i) knowingly and wilfully participating in a JCE,<sup>683</sup> and
  - (ii) planning, instigating, ordering or otherwise aiding and abetting in the planning, preparation, or execution of the crimes charged in the Indictment;<sup>684</sup> and
2. Responsibility pursuant to Article 7(3) of the Statute for the crimes committed by the Accused's subordinates whilst he was holding positions of superior authority.<sup>685</sup>

### A. Responsibility under Article 7(1) of the Statute

#### 1. Joint Criminal Enterprise

258. Although Article 7(1) of the Statute does not make explicit reference to JCE, the Trial Chamber is satisfied that, in line with the jurisprudence of the Tribunal, persons who contribute to the commission of crimes in execution of a common criminal purpose are subject to criminal liability as a form of 'commission' of a crime pursuant to Article 7(1) of the Statute, subject to certain conditions.<sup>686</sup> There are three distinct categories of JCE set out in the jurisprudence of this Tribunal.<sup>687</sup>

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<sup>683</sup> Indictment, paras 27.1-27.4. In its Rule 98bis Decision, the Trial Chamber found that there was no case to answer with respect to count 1 (genocide) in the context of the third category of JCE, *see*, para. 30, paras 55-57. The Prosecution appealed this finding and the Appeals Chamber reversed the decision of the Trial Chamber to acquit the Accused of count 1 of the Indictment (genocide) with respect to the third category of JCE liability: Decision on Interlocutory Appeal, 19 March 2004, para. 12. – The phrases "common purpose" doctrine on the one hand and "joint criminal enterprise" on the other hand, have been used interchangeably as they refer to the same form of liability. The latter term - joint criminal enterprise - is preferred, *see Prosecutor v. Milan Milutinović, Nikola Šainović & Dragoljub Ojdanić*, IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – *Joint Criminal Enterprise*, 21 May 2003, para. 36 ("*Ojdanić* Appeal Decision on Motion Challenging Jurisdiction").

<sup>684</sup> Indictment, para. 33, para. 27.4.

<sup>685</sup> Indictment, para. 34.

<sup>686</sup> *Tadić*, Appeal Judgement", para. 190; *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-A, Judgement, 25 February 2004 ("*Vasiljević* Appeal Judgement"), para. 95; *Ojdanić* Appeal Decision on Motion Challenging Jurisdiction, para. 20; *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Judgement, 17 September 2003 ("*Krnojelac* Appeal Judgement"), paras 28-32, para.73.

<sup>687</sup> According to the Appeals Chamber, the first category of JCE consists of "[c]ases where all co-defendants, acting pursuant to a common design, possess the same criminal intention; for instance, the formulation of a plan among the co-perpetrators to kill, where, in effecting this common design (and even if each co-perpetrator carries out a different role within it), they nevertheless all possess the intent to kill. The objective and subjective prerequisites for imputing criminal responsibility to a participant who did not, or cannot be proved to have, effected the killing are as follows: (i) The accused must voluntarily participate in one aspect of the common design (for instance, by inflicting non-fatal violence upon the victim, or by providing material assistance to or facilitate the activities of his co-perpetrators), and (ii)



259. The Trial Chamber reiterates the finding in its Rule 98*bis* Decision that the pleading in the Indictment was limited to an alternative pleading of the first and the third categories of JCE only.<sup>688</sup> It will, therefore, only address these two categories of JCE.

260. For both the first and the third categories of JCE the Prosecution must prove:<sup>689</sup>

1. a plurality of persons;
2. the existence of a common plan, design or purpose (“common plan”) that amounts to or involves the commission of a crime provided for in the Statute; and
3. the participation of the accused in the common plan involving the perpetration of one of the crimes provided for in the Statute.

261. The plurality of persons need not be organised in a military, political or administrative structure.<sup>690</sup>

262. A common plan amounting to or involving an understanding or an agreement between two or more persons that they will commit a crime must be proved.<sup>691</sup> It need not have been previously arranged but may materialise extemporaneously and be inferred from the fact that a plurality of

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The accused, even if not personally effecting the killing, must nevertheless intend the result.”: *Tadić* Appeal Judgement, para. 196.

The second category of JCE “is in many respects similar to that set forth above, and embraces the so-called “concentration camp” cases. The notion of common purpose was applied to instances where the offences charged were alleged to have been committed by members of military or administrative units such as those running concentration camps; i.e., by groups of persons acting pursuant to a concerted plan.”: *Tadić* Appeal Judgement, para. 202.

The third category of JCE “concerns cases involving a common design to pursue one course of conduct where one of the perpetrators commits an act which, while outside the common design, was nevertheless a natural and foreseeable consequence of the effecting of that common purpose. An example of this would be a common, shared intention on the part of a group to forcibly remove members of one ethnicity from their town, village or region (to effect “ethnic cleansing”) with the consequence that, in the course of doing so, one or more of the victims is shot and killed. While murder may not have been explicitly acknowledged to be part of the common design, it was nevertheless foreseeable that the forcible removal of civilians at gunpoint might well result in the deaths of one or more of those civilians. Criminal responsibility may be imputed to all participants within the common enterprise where the risk of death occurring was both a predictable consequence of the execution of the common design and the accused was either reckless or indifferent to that risk”: *Tadić* Appeal Judgement, para. 204. See also *Vasiljević* Appeal Judgement, paras 95-101.

<sup>688</sup> Rule 98*bis* Decision, para. 24.

<sup>689</sup> *Tadić* Appeal Judgement, para. 227; *Vasiljević* Appeal Judgement, paras 95-101.

<sup>690</sup> *Tadić* Appeal Judgement, para. 227.

<sup>691</sup> *Vasiljević* Trial Judgement, para 66; *Vasiljević* Appeal Judgement, paras 97 and 99; *Krnjelac* Trial Judgement, paras 80-82. The Trial Chamber interprets the *Krnjelac* Appeal Judgement (paras 95-97) to requiring an agreement between an accused and the principal offenders for the first and the third category of JCE, while not requiring proof that there was a more or less formal agreement between all the participants in the second category of JCE as long as their involvement in a system of ill-treatment has been established. *Simić* Trial Judgement, para. 158; *Tadić* Appeal Judgement, paras 196-198, 204-205; Decision on Form of Further Amended Indictment and Prosecution Application to Amend, para. 44;

persons acts in unison to put the plan into effect.<sup>692</sup> In addition, the common plan need not be express and may be inferred from all the circumstances.<sup>693</sup>

263. Individual criminal responsibility for participation in a JCE does not arise as a result of mere membership in a criminal enterprise. In order to incur criminal liability, the accused is required to take action in contribution of the implementation of the common plan.<sup>694</sup> Participants in a JCE may contribute to the common plan in a variety of roles. Indeed, the term participation is defined broadly and may take the form of assistance in, or contribution to, the execution of the common plan.<sup>695</sup> Participation includes both direct participation and indirect participation. An accused's involvement in the criminal act must form a link in the chain of causation.<sup>696</sup> This means that the Prosecution must at least establish that the accused took action in furtherance of the criminal plan. However, it is not necessary that the participation be a *conditio sine qua non*, or that the offence would not have occurred but for the accused's participation.<sup>697</sup>

264. The *mens rea* requirements for liability under the first and the third categories of JCE are different. The first category of JCE requires that all participants in the JCE share the same criminal intent.<sup>698</sup> The Trial Chamber accepts that, while a JCE may have a number of different criminal objects, it is not necessary for the Prosecution to establish that every participant agreed to every one of the crimes committed.<sup>699</sup> However, it is necessary for the Prosecution to prove that, between the member of the JCE physically committing the material crime charged and the person held responsible under the JCE for that crime, there was a common plan to commit at least that particular crime.<sup>700</sup> To establish responsibility under the first category of JCE, it needs to be shown that the

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<sup>692</sup> *Tadić* Appeal Judgement, para. 227.

<sup>693</sup> *Krnjelac* Trial Judgement, para. 80.

<sup>694</sup> *Simić* Trial Judgement, para. 158, referring to *Ojdanić* Appeal Decision on Motion Challenging Jurisdiction, paras 23, 26.

<sup>695</sup> *Tadić* Appeal Judgement, para. 227. The Trial Chamber reiterates its finding in the Rule 98bis Decision, para. 26, that "the submission by the Defence that one of the requirements to establish a JCE is to prove the 'hands-on' role of an accused is not supported by the jurisprudence of this Tribunal".

<sup>696</sup> *Tadić* Appeal Judgement, para. 199, referring to the *Ponzano* case (Trial of *Feurstein and others*, Proceedings of a War Crimes Trials held at Hamburg, Germany, Judgement of 24 August 1948).

<sup>697</sup> *Ibid.*

<sup>698</sup> *Tadić* Appeal Judgement, para. 196; *Krnjelac* Appeal Judgement, para. 84; *Simić* Trial Judgement, para. 160, referring to Separate Opinion of Judge David Hunt to *Ojdanić* Appeal Decision on Motion Challenging Jurisdiction, para. 29.

<sup>699</sup> Decision on Form of Further Amended Indictment and Prosecution Application to Amend, para. 44; Trial of the Major War Criminals Before the International Military Tribunal, Nuremberg, 14 November 1945 – 1 October 1946 ("Nuremberg Judgement"), Vol. XXII, p. 468.

<sup>700</sup> Decision on Form of Further Amended Indictment and Prosecution Application to Amend, para. 44. If an Accused entered into an agreement with one person to commit a specific crime and with another person to commit another crime, it would be more appropriate to speak about two separate JCEs. Upon request of the Trial Chamber to the parties to address this question, both the Prosecution and the Defence agreed with this conclusion: Prosecution Final Trial Brief, Appendix A, para. 2; Defence Final Trial Brief, pp. 117-118.

accused (i) voluntarily participated in one of the aspects of the common plan, and (ii) intended the criminal result, even if not physically perpetrating the crime.<sup>701</sup>

265. Responsibility under the third category of JCE, that is for a crime other than the one agreed upon in the common plan perpetrated by one or more other members of the JCE, arises only if (i) the crime charged was a natural and foreseeable consequence of the execution of that enterprise, and (ii) the accused was aware that such a crime was a possible consequence of the execution of that enterprise, and, with that awareness, participated in that enterprise.<sup>702</sup> The first is an objective element of the crime, and does not depend upon the state of mind of the accused. The second is the subjective state of mind of the accused which the Prosecution must establish.<sup>703</sup>

## 2. Other modes of liability under Article 7(1) of the Statute

266. The Trial Chamber notes that the Accused has not been charged with ‘committing’ the crimes alleged in counts 1 through 12 of the Indictment outside the context of his alleged participation in a JCE,<sup>704</sup> and therefore limits its discussion to the other modes of liability set out under Article 7(1) of the Statute.

267. In order to establish individual criminal responsibility for planning, instigating, ordering and otherwise aiding and abetting in the planning, preparation or execution of a crime referred to in

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<sup>701</sup> *Tadić* Appeal Judgement, para. 196.

<sup>702</sup> Decision on Form of Further Amended Indictment and Prosecution Application to Amend, para. 30. The *Tadić* Appeals Chamber identified the relevant state of mind in various ways. The first statement was in these terms: “Criminal responsibility may be imputed to all participants within the common enterprise where the risk of death occurring was both a predictable consequence of the execution of the common design and the accused was either reckless or indifferent to that risk”: *Tadić* Appeal Judgement, para. 204. The relevant state of mind is subsequently summarised in these terms: “What is required is a state of mind in which a person, although he did not intend to bring about a certain result, was aware that the actions of the group were most likely to lead to that result but nevertheless willingly took that risk. In other works, the so-called *dolus eventualis* is required (also called “advertent recklessness” in some national legal systems)”: *Tadić* Appeal Judgement, para. 220. The third passage summarises the relevant state of mind in these terms: “[...] responsibility for a crime other than the one agreed upon in the common plan arises only if, under the circumstances of the case, (i) it was *foreseeable* that such a crime might be perpetrated by one or other members of the group and (ii) the accused *willingly took that risk*”: *Tadić* Appeal Judgement, para. 228 (emphasis in original). In this respect, *see* also Separate Opinion of Judge David Hunt to *Ojdanić* Appeal Decision on Motion Challenging Jurisdiction, para. 9. *See* also *Krnojelac* Appeal Judgement, para. 32.

<sup>703</sup> Decision on Form of Further Amended Indictment and Prosecution Application to Amend, para. 31: “The state of mind of the accused to be established by the Prosecution differs according to whether the crime charged (a) was *within* the object of the joint criminal enterprise, or (b) went *beyond* its object, but was nevertheless a natural and foreseeable consequence of that enterprise. If the crime charged fell within the object of the joint criminal enterprise, the Prosecution must establish that the accused shared with the person who personally perpetrated the crime the state of mind required for that crime. If the crime charged went beyond the object of the joint criminal enterprise, the Prosecution need only establish that the accused was aware that the further crime was a possible consequence of the execution of that joint criminal enterprise and that, with that awareness, he or she wilfully participated in and furthered that enterprise”.

<sup>704</sup> *See* Indictment, para. 33.

Articles 2 to 5 of the Statute, proof is required that the crime in question has actually been committed by the principal offender(s).<sup>705</sup>

(a) Planning

268. Planning implies that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases.<sup>706</sup> Moreover, it needs to be established that the accused, directly or indirectly, intended the crime in question to be committed.<sup>707</sup> Where an accused is found guilty of having committed a crime, he or she cannot at the same time be convicted of having planned the same crime.<sup>708</sup> Involvement in the planning may however be considered an aggravating factor.<sup>709</sup>

(b) Instigating

269. Instigating means prompting another to commit an offence.<sup>710</sup> Both acts and omissions may constitute instigating, which covers express as well as implied conduct.<sup>711</sup> The *nexus* between instigation and perpetration requires proof.<sup>712</sup> It is not necessary to demonstrate that the crime would not have been perpetrated without the accused's involvement;<sup>713</sup> it is sufficient to prove that

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<sup>705</sup> For 'planning', see *Akayesu* Trial Judgement, para. 473; *Blaškić* Trial Judgement, para. 278; *Kordić* Trial Judgement, para. 386. For 'instigating', see *Akayesu* Trial Judgement, para. 482; *Blaškić* Trial Judgement, para. 280; *Krstić* Trial Judgement, para. 601; *Kordić* Trial Judgement, para. 387. For 'ordering', implicitly, see *Stakić* Trial Judgement, para. 445. For 'aiding and abetting', implicitly, see *Tadić* Appeal Judgement, para. 229; *Aleksovski* Appeal Judgement, para. 164; *Čelebići* Appeal Judgement, para. 352; *Furundžija* Trial Judgement, paras 235, 249; *Vasiljević* Trial Judgement, para. 70; *Naletilić* Trial Judgement, para. 63; *Simić* Trial Judgement, para. 161.

<sup>706</sup> *Akayesu* Trial Judgement, para. 480, reiterated in *Krstić* Trial Judgement, para. 601; in *Blaškić* Trial Judgement, para. 279; in *Kordić* Trial Judgement, para. 386; and in *Naletilić* Trial Judgement, para. 59.

<sup>707</sup> *Blaškić* Trial Judgement, para. 278; *Kordić* Trial Judgement, para. 386.

<sup>708</sup> *Kordić* Trial Judgement, para. 386.

<sup>709</sup> *Stakić* Trial Judgement, para. 443.

<sup>710</sup> *Akayesu* Trial Judgement, para. 482; *Blaškić* Trial Judgement, para. 280; *Krstić* Trial Judgement, para. 601, *Kordić* Trial Judgement, para. 387.

<sup>711</sup> *Blaškić* Trial Judgement, para. 280.

<sup>712</sup> *Blaškić* Trial Judgement, para. 280.

<sup>713</sup> *Kordić* Trial Judgement, para. 387; *Galić* Trial Judgement, para. 168.

<sup>714</sup> *Kordić* Trial Judgement, para. 387; *Kvočka* Trial Judgement, para. 252.

<sup>715</sup> *Kvočka* Trial Judgement, para. 252.

<sup>716</sup> *Krstić* Trial Judgement, para. 601; *Galić* Trial Judgement, para. 168.

<sup>717</sup> *Akayesu* Trial Judgement, para. 483; *Blaškić* Trial Judgement, paras 281-282; *Kordić* Trial Judgement, para. 388.

<sup>718</sup> *Blaškić* Trial Judgement, para. 281.

<sup>719</sup> *Blaškić* Trial Judgement, para. 282.

the instigation was a factor clearly contributing to the conduct of other persons committing the crime in question.<sup>714</sup> It has further to be demonstrated that the accused intended to provoke or induce the commission of the crime, or was aware of the substantial likelihood that the commission of a crime would be a probable consequence of his acts.<sup>715</sup>

(c) Ordering

270. Responsibility for ordering requires proof that a person in a position of authority uses that authority to instruct another to commit an offence.<sup>716</sup> It is not necessary to demonstrate the existence of a formal superior-subordinate relationship between the accused and the perpetrator; it is sufficient that the accused possessed the authority to order the commission of an offence and that that authority can be reasonably implied.<sup>717</sup> The order does not need to be given in any particular form,<sup>718</sup> nor does it have to be given by the person in a position of authority directly to the person committing the offence.<sup>719</sup> The person ordering must have the required *mens rea* for the crime with which he or she is charged<sup>720</sup> and he or she must also have been aware of the substantial likelihood that the crime committed would be the consequence of the execution or implementation of the order.<sup>721</sup>

(d) Aiding and abetting

271. An accused will incur individual criminal responsibility for aiding and abetting a crime under Article 7(1) where it is demonstrated that the accused carried out an act that consisted of practical assistance, encouragement or moral support to the principal offender of the crime.<sup>722</sup> The acts of the principal offender that the accused is alleged to have aided and abetted must be established.<sup>723</sup> The act of assistance need not have caused the act of the principal offender, but it must have had a substantial effect on the commission of the crime by the principal offender.<sup>724</sup> The assistance may consist of an act or omission, and it may occur before, during, or after the act of the principal offender.<sup>725</sup> An individual's position of superior authority does not suffice to conclude from his mere presence at the scene of the crime that he encouraged or supported the crime. However, the presence of a superior can be perceived as an important *indicium* of encouragement or

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<sup>720</sup> *Blaškić* Trial Judgement, para. 282.

<sup>721</sup> *Blaškić* Appeal Judgement, paras 41-42.

<sup>722</sup> *Tadić* Appeal Judgement, para. 229; *Aleksovski* Appeal Judgement, paras 163-164; *Čelebići* Appeal Judgement, para. 352; *Furundžija* Trial Judgement, para. 235, para. 249; *Vasiljević* Trial Judgement, paras 70-71; *Vasiljević* Appeal Judgement, para. 102; *Naletilić* Trial Judgement, para. 63; *Simić* Trial Judgement, para. 161.

<sup>723</sup> *Aleksovski* Appeal Judgement, para. 165. The Appeals Chamber held that the principal offender may not even be aware of the accomplice's contribution: *Tadić* Appeal Judgement, para. 229.

<sup>724</sup> *Vasiljević* Appeal Judgement, para. 102; *Furundžija* Trial Judgement paras 223, 224, 249; *Aleksovski* Trial Judgement, para. 61; *Kunarac* Trial Judgement, para. 391; *Kordić* Trial Judgement, para. 399, *Vasiljević* Trial Judgement, para. 70.

support.<sup>726</sup> An accused may be convicted for having aided and abetted a crime which requires specific intent even where the principal offender has not been tried or identified.<sup>727</sup>

272. The *mens rea* of aiding and abetting consists of knowledge – in the sense of awareness – that the acts performed by the aider and abettor assist in the commission of a crime by the principal offender.<sup>728</sup> It is not necessary that the aider and abettor has knowledge of the precise crime that was intended or that was actually committed, as long as he was aware that one of a number of crimes would probably be committed, including the one actually perpetrated.<sup>729</sup>

273. In addition, the aider and abettor must be aware of the essential elements of the crime committed by the principal offender, including the principal offender's state of mind. However, the aider and abettor need not share the intent of the principal offender.<sup>730</sup>

274. The fact that the aider and abettor does not share the intent of the principal offender generally lessens his criminal culpability *vis-à-vis* that of an accused acting pursuant to a JCE who does share the intent of the principal offender.<sup>731</sup>

## **B. Superior Criminal Responsibility under Article 7(3) of the Statute**<sup>732</sup>

### **1. Responsibility pursuant to Article 7(3) in general**

275. The Appeals Chamber has held that “[t]he principle that military and other superiors may be held criminally responsible for the acts of their subordinates is well-established in conventional and customary law.”<sup>733</sup> This applies both in the context of international as well as internal armed

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<sup>725</sup> *Blaškić* Appeal Judgement, para. 48; *Kunarac* Trial Judgement, para. 391; *Blaškić* Trial Judgement, para. 285; *Naletilić* Trial Judgement, para. 63; *Simić* Trial Judgement, para. 162; *Kvočka* Trial Judgement, para. 256.

<sup>726</sup> *Aleksovski* Trial Judgement, para. 65. The *Akayesu* Trial Chamber found a mayor guilty of abetting by considering his passive presence next to the scene of the crime in connection with his prior encouraging behaviour: *Akayesu* Trial Judgement, para. 693.

<sup>727</sup> *Krstić* Appeal Judgement, para. 143.

<sup>728</sup> *Vasiljević* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, para. 49.

<sup>729</sup> *Blaškić* Appeal Judgement, para. 50; *Naletilić* Trial Judgement, para. 63; *Kvočka* Trial Judgement, para. 255; *Furundžija* Trial Judgement, para. 246.

<sup>730</sup> *Aleksovski* Appeal Judgement, para. 162; *Kunarac* Trial Judgement, para. 392.

<sup>731</sup> *Vasiljević* Trial Judgement, para. 71.

<sup>732</sup> The Trial Chamber uses the term ‘superior criminal responsibility’ instead of ‘command responsibility’ so as to make clear that the doctrine applies to civilian as well as to military superiors.

<sup>733</sup> *Čelebići* Appeal Judgement, para. 195. In the present case, it is not alleged that the Accused was a military superior, but a civilian superior. Consequently, the Trial Chamber views the statement of law in the *Čelebići* Appeal Judgement, para. 195, in the context of Article 86(2) of Additional Protocol I to the 1949 Geneva Conventions, rather than Article 87(3), which refers to military superiors. In addition, the Trial Chamber notes that it is Article 86(2) that deals with the requirement of the failure to act.

conflicts.<sup>734</sup> The jurisprudence of the Tribunal has established the following three-pronged test for criminal liability pursuant to Article 7(3) of the Statute:

1. the existence of a superior-subordinate relationship between the superior (the accused) and the perpetrator of the crime;
2. the accused knew or had reason to know that the crime was about to be or had been committed; and
3. the accused failed to take the necessary and reasonable measures to prevent the crime or punish the perpetrator thereof.<sup>735</sup>

276. The existence of a superior-subordinate relationship is characterised by a formal or informal hierarchical relationship between the superior and subordinate.<sup>736</sup> The hierarchical relationship may exist by virtue of a person's *de jure* or *de facto* position of authority.<sup>737</sup> The superior-subordinate relationship need not have been formalised or necessarily determined by formal status alone.<sup>738</sup> Both direct and indirect relationships of subordination within the hierarchy are possible<sup>739</sup> whilst the superior's effective control over the persons committing the offence must be established.<sup>740</sup> Effective control is defined as the material ability to prevent or punish the commission of the

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<sup>734</sup> *Prosecutor v. Enver Hadžihasanović, Mehmed Alagić and Amir Kubura*, Case No. IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003 (“*Hadžihasanović et al. Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility*”), paras 13 and 31; see also, *Prosecutor v. Enver Hadžihasanović, Mehmed Alagić and Amir Kubura*, Case No. IT-01-47-PT, Decision on Joint Challenge to Jurisdiction, 12 November 2002 (“*Hadžihasanović et al. Decision on Joint Challenge to Jurisdiction*”), paras 178-179.

<sup>735</sup> *Čelebići* Trial Judgement, para. 346; *Čelebići* Appeal Judgement, paras 189-198, 225-226, 238-239, 256, 263. The Trial Chamber's conclusions as to the first two elements of the test were upheld by the Appeals Chamber. The third element of the test did not form part of the appeal. See also *Aleksovski* Trial Judgement, para. 69; *Blaškić* Trial Judgement, para. 294; *Kordić* Trial Judgement, para. 401; *Kunarac* Trial Judgement, para. 395; *Krstić* Trial Judgement, para. 604, *Kvočka* Trial Judgement, para. 314; *Galić* Trial Judgement, para. 173.

<sup>736</sup> *Čelebići* Appeal Judgement, para. 303. See also ICRC Commentary on Additional Protocol I, para. 3544. Under the jurisprudence of the Tribunal, circumstantial evidence of “actual knowledge” has been found to include the number, type and scope of the illegal acts; the period over which the illegal acts occurred; the number and type of troops involved; the logistics involved, if any; the geographical location of the acts; the widespread occurrence of the acts; the speed of the operations; the *modus operandi* of similar illegal acts; the officers and staff involved; and the location of the superior at the time: *Čelebići* Trial Judgement, para. 386 (citing Final Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992), (U.N. Document S/1994/674), p. 17). Considering geographical and temporal circumstances, this means that the more physically distant the superior was from the commission of the crimes, the more additional indicia are necessary to prove that he knew of them. On the other hand, if the crimes were committed next to the superior's duty-station this suffices as an important *indicium* that the superior had knowledge of the crimes, and even more so if the crimes were repeatedly committed: *Aleksovski* Trial Judgement, para. 80.

<sup>737</sup> According to the *Čelebići* Appeal Judgement, para. 193, a formal letter of commission or appointment is not necessary. A *de facto* superior must “wield substantially similar powers of control over subordinates” as a *de jure* superior: *Ibid.*, para. 197. See also *Aleksovski* Appeal Judgement, para. 76.

<sup>738</sup> *Čelebići* Trial Judgement, para. 370.

<sup>739</sup> *Čelebići* Appeal Judgement, para. 252.

<sup>740</sup> *Čelebići* Appeal Judgement, para. 197.

offence.<sup>741</sup> Substantial influence over subordinates that does not meet the threshold of effective control is not sufficient under customary law to serve as a means of exercising superior criminal responsibility.<sup>742</sup> A superior vested with *de jure* authority who does not actually have effective control over his or her subordinates would not incur criminal responsibility pursuant to the doctrine of superior responsibility, whereas a *de facto* superior who lacks formal letters of appointment or commission but does, in reality, have effective control over the perpetrators of offences might incur criminal responsibility.<sup>743</sup>

277. In all circumstances, and especially when an accused is alleged to have been a member of collective bodies with authority shared among various members, “it is appropriate to assess on a case-by-case basis the power or authority actually devolved on an accused,”<sup>744</sup> taking into account the cumulative effect of the accused’s various functions.<sup>745</sup>

278. As regards the mental element of superior responsibility, it must be established that the superior knew or had reason to know that his subordinate was about to commit or had committed a crime. Superior responsibility is not a form of strict liability.<sup>746</sup> It must be proved that the superior had: (i) actual knowledge, established through either direct or circumstantial evidence, that his subordinates were about to commit or had committed crimes within the jurisdiction of the Tribunal, or (ii) constructive knowledge, meaning that the superior had in his or her possession information that would at least put him or her on notice of the present and real risk of such offences, such information alerting him or her to the need for additional investigation to determine whether such crimes were about to be committed or had been committed by his or her subordinates.<sup>747</sup> Knowledge may be presumed if a superior had the means to obtain the relevant information of a crime and deliberately refrained from doing so.<sup>748</sup>

279. Finally, it must be established that the superior failed to take the necessary and reasonable measures to prevent or punish the crimes of his or her subordinates. The measures required of the superior are limited to those within his power, that is, those measures that are within his material possibility.<sup>749</sup> The superiors’ duty to prevent and punish their subordinates’ crimes includes at least an obligation to investigate the crimes to establish the facts and to report them to the competent

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<sup>741</sup> *Čelebići* Trial Judgement, para. 378, affirmed in *Čelebići* Appeal Judgement, para. 256.

<sup>742</sup> *Čelebići* Appeal Judgement, para. 266.

<sup>743</sup> *Čelebići* Appeal Judgement, para. 197.

<sup>744</sup> *Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-A, Judgement, 3 July 2003 (“*Bagilishema* Appeal Judgement”), para. 51, endorsing the finding in the *Musema* Trial Judgement, para. 135.

<sup>745</sup> *Stakić* Trial Judgement, para. 494.

<sup>746</sup> *Čelebići* Appeal Judgement, para. 239.

<sup>747</sup> *Čelebići* Appeal Judgement, paras 223, 241.

<sup>748</sup> *Čelebići* Appeal Judgement, para. 226.

<sup>749</sup> *Čelebići* Trial Judgement, para. 395.



authorities, if the superior does not have the power to sanction himself.<sup>750</sup> A superior is not obliged to perform the impossible.<sup>751</sup> However, he has a duty to exercise the measures reasonably possible under the circumstances,<sup>752</sup> including those that may be beyond his formal powers.<sup>753</sup> What constitutes such measures is not a matter of substantive law but of evidence.<sup>754</sup> The failure to take the necessary and reasonable measures to prevent an offence of which a superior knew or had reason to know cannot be remedied simply by subsequently punishing the subordinate for the commission of the offence.<sup>755</sup>

280. Notwithstanding the central place assumed by the principle of causation in criminal law, causation has not traditionally been postulated as a *conditio sine qua non* for the imposition of criminal liability on superiors for their failure to prevent or punish offences committed by their subordinates. Hence, it is not necessary that the commander's failure to act caused the commission of the crime.<sup>756</sup>

## 2. Responsibility of Civilian Superiors Pursuant to Article 7(3)

281. Article 7(3) is applicable both to military and civilian leaders, be they elected or self-proclaimed, once it is established that they had the requisite effective control over their subordinates.<sup>757</sup> As in the case of military superiors, civilian superiors will only be held liable under the doctrine of superior criminal responsibility if they were part of a superior-subordinate relationship, even if that relationship is an indirect one.<sup>758</sup> A showing that the superior merely was an influential person will not be sufficient; however, it will be taken into consideration, together with other relevant facts, when assessing the civilian superior's position of authority.<sup>759</sup> Nevertheless, the concept of effective control for civilian superiors is different in that a civilian superior's sanctioning power must be interpreted broadly.<sup>760</sup> It cannot be expected that civilian superiors will have disciplinary power over their subordinates equivalent to that of military superiors in an analogous command position. For a finding that civilian superiors have effective control over their subordinates, it suffices that civilian superiors, through their position in the

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<sup>750</sup> *Kordić* Trial Judgement, para. 446.

<sup>751</sup> *Čelebići* Trial Judgement, para. 395.

<sup>752</sup> *Krnjelac* Trial Judgement, para. 95.

<sup>753</sup> *Čelebići* Trial Judgement, para. 395.

<sup>754</sup> *Blaškić* Appeal Judgement, para. 72. For example, it is a superior's degree of effective control - his material ability - that may guide a Trial Chamber in determining whether he reasonably took the measures required either to prevent the commission of a crime or to punish the perpetrator thereof. Under some circumstances, a superior may discharge his obligation to prevent or punish by reporting the matter to the competent authorities, *Blaškić* Trial Judgement, para. 335.

<sup>755</sup> *Blaškić* Appeal Judgement, paras 78-85; *Blaškić* Trial Judgement, para. 336.

<sup>756</sup> *Čelebići* Trial Judgement, para. 398; *Kordić* Trial Judgement, para. 447.

<sup>757</sup> *Čelebići* Appeal Judgement, paras 195-196, 240; *Aleksovski* Appeal Judgement, para. 76.

<sup>758</sup> *Kordić* Trial Judgement, para. 415.

<sup>759</sup> *Ibid.*

<sup>760</sup> *Aleksovski* Trial Judgement, para. 78.

hierarchy, have the duty to report whenever crimes are committed, and that, in light of their position, the likelihood that those reports will trigger an investigation or initiate disciplinary or criminal measures is extant.<sup>761</sup> In situations of armed conflict, it is often the case that civilian superiors assume more power than that with which they are officially vested. In such circumstances, *de facto* authority may exist alongside, and may turn out to be more significant than, *de jure* authority.<sup>762</sup> The capacity to sign orders will be indicative of some authority; it is necessary to look to the substance of the documents signed and whether there is evidence of them being acted upon.<sup>763</sup>

282. The *mens rea* requirement for liability pursuant to Article 7(3) has been applied uniformly in cases before this Tribunal and the ICTR to both civilian and military superiors, in the sense that the same state of knowledge to establish superior criminal responsibility pursuant to Article 7(3) of the Statute is required for both civilian and military superiors.<sup>764</sup>

283. Civilian superiors are under similar obligations to prevent their subordinates' crimes and to punish the perpetrators thereof as military superiors. Depending on the effective *de jure* or *de facto* powers enjoyed, one would need to consider whether these include an ability to require the competent authorities to take action.<sup>765</sup>

### 3. Relationship between Article 7(1) and Article 7(3)

284. While there have been cases where a conviction has been entered for the same count pursuant to both Article 7(1) and Article 7(3),<sup>766</sup> there have been others where a Trial Chamber exercised its discretion to enter a conviction under only one of these heads of responsibility, even when it was satisfied that the legal requirements for entering a conviction pursuant to the second head of responsibility were fulfilled.<sup>767</sup> In such cases, the Trial Chamber entered a conviction under the head of responsibility that it believed better characterised the criminal conduct of the accused.<sup>768</sup>

285. The provisions of Article 7(1) and Article 7(3) of the Statute connote distinct categories of criminal responsibility. However, in relation to a particular count, it is not appropriate to convict under both Article 7(1) and Article 7(3) of the Statute.<sup>769</sup> Where both Article 7(1) and Article 7(3)

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<sup>761</sup> *Ibid.*

<sup>762</sup> *Kordić* Trial Judgement, para. 422.

<sup>763</sup> *Čelebići* Trial Judgement, para. 672, *Kordić* Trial Judgement, para. 421.

<sup>764</sup> *Čelebići* Appeal Judgement, paras 223-226; *Krnjelac* Trial Judgement, para. 94; *Musema* Trial Judgement, paras 147-148.

<sup>765</sup> *Kordić* Trial Judgement, para. 446.

<sup>766</sup> *Kordić* Trial Judgement, paras 830-831, 836-837, 842-843 with respect to Mario Čerkez.

<sup>767</sup> *Krstić* Trial Judgement, para. 652, *Krnjelac* Trial Judgement, para. 496.

<sup>768</sup> *Krnjelac* Trial Judgement, paras 173, 316, 496.

<sup>769</sup> *Stakić* Trial Judgement, paras 465-467.

responsibility are alleged under the same count, and where the legal requirements pertaining to both of these heads of responsibility are met, a Trial Chamber should enter a conviction on the basis of Article 7(1) only, and consider the accused's superior position as an aggravating factor in sentencing.<sup>770</sup>

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<sup>770</sup> *Čelebići* Appeal Judgement, para. 745; *Blaškić* Appeal Judgement, paras 89, 91.

## VIII. THE ACCUSED'S ROLE AND HIS RESPONSIBILITY IN GENERAL

### A. Positions held by the Accused

286. The Trial Chamber is satisfied beyond reasonable doubt that during the period covered in the Indictment and already before then, the Accused was a leading political figure in the ARK and held key positions. He played a significant political role on all three levels of the Bosnian Serb leadership: municipal, regional and republic.

287. The Accused joined the SDS before the first multi-party elections in Bosnia and Herzegovina, held in November 1990.<sup>771</sup>

288. At the municipal level, the Accused was appointed President of the Executive Board for Čelinac on 19 December 1990.<sup>772</sup> On 13 May 1992, the Čelinac Municipal Assembly appointed the Accused member of the Čelinac Crisis Staff.<sup>773</sup> Following the take-over of Banja Luka by the SOS in early April 1992, the Banja Luka Crisis Staff was formed and the Accused became a member thereof, representing the ARK Assembly.<sup>774</sup> Within the Banja Luka Crisis Staff, the Accused was appointed head of the Commission for Standardisation of Personnel.<sup>775</sup>

289. At the regional level, upon the formation of the ZOBK on 26 April 1991, the Accused was appointed First Vice-President of the ZOBK Assembly.<sup>776</sup> In July 1991, he also became a member of a "Personnel Commission" within the ZOBK.<sup>777</sup> On 16 September 1991, the ZOBK transformed itself into the ARK and, by virtue of his previous position within the ZOBK, the Accused became First Vice-President of the ARK Assembly.<sup>778</sup> On 29 October 1991, the Accused represented

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<sup>771</sup> Ex. P758, "Official Gazette of the SerBiH", no. 42, 19 December 1990, p. 1249; Muhamed Filipović, T. 9307.

<sup>772</sup> Ex. DB151, "Decision regarding the election of president of the Executive board of the Municipal Assembly Čelinac, signed by the President of the Čelinac Municipal Assembly", dated 19 December 1990; *see* also Boro Mandić, T. 21251. The Accused was subsequently dismissed from this post on 12 June 1992: ex. DB153, "Decision regarding the dismissal of the president of the Executive board of the Municipal Assembly Čelinac", dated 12 June 1992.

<sup>773</sup> Ex. P1993, "Decision of the Čelinac Municipal Assembly on the appointments to the Crisis Staff of Čelinac", dated 13 May 1992; ex. P1999, "Extract from the minutes of the 15<sup>th</sup> session of the Čelinac Municipal Assembly", held on 31 May 1992, p. 21.

<sup>774</sup> Ex. P137, "Glas newspaper article", dated 4 April 1992, p. 6.

<sup>775</sup> Ex. P154, "Glas newspaper article", dated 21 April 1992. The Commission for Standardisation of Personnel was established by the Banja Luka Crisis Staff for the purpose of meeting one of the main demands of the SOS and achieving one of the main tasks of the Banja Luka Crisis Staff, namely the removal of non-Serbs from positions of responsibility in public institutions and companies. *See* also BT-7, T. 2829, 2871 (closed session).

<sup>776</sup> Ex. P67, "Decision on the Election of the First Vice-President of the Assembly of the Community of Bosnian Krajina Municipalities", 26 April 1991.

<sup>777</sup> Ex. P77, "Decision taken at a joint session of the SDS Regional Board for the municipalities covered by the Banja Luka CSB and the ZOBK", dated 1 August 1991; Patrick Treanor, T. 18720-18721.

<sup>778</sup> Ex. P81, "Decision on the Proclamation of the ARK as an Inseparable Part of the Federal State of Federative Yugoslavia and an Integral Part of the Federal Unit of BiH", 16 September 1991; Patrick Treanor, T. 18730; ex. P12, "Extract from the minutes of the 7<sup>th</sup> session of the Assembly of the ZOBK", held on 16 September 1991.

himself to the ARK municipal authorities as “Co-ordinator for Implementing Decisions”.<sup>779</sup> On 5 May 1992, the ARK Crisis Staff was formally created and the Accused was appointed as its President.<sup>780</sup> On 13 May 1992, the Accused was appointed by the ARK Crisis Staff to the ARK Executive Council as Secretary of the Secretariat for Traffic and Communications, Construction and Spatial Planning and the Fund for Highways and Regional Roads.<sup>781</sup> On 9 July 1992, the ARK Crisis Staff renamed itself the ARK War Presidency, while retaining the same scope of authority. The Accused then became President of the ARK War Presidency.<sup>782</sup>

290. As far as the Accused’s positions at the republican level are concerned, in the first multi-party elections he was elected to the SRBH Assembly as an SDS deputy from Čelinac Municipality.<sup>783</sup> Upon the withdrawal of the SDS from the multi-party SRBH Assembly on 24 October 1991 and the establishment of the SerBiH on 9 January 1992, the Accused became a member of the SerBiH Assembly.<sup>784</sup> On 15 September 1992, after the ARK was abolished as a territorial unit of the SerBiH, the Accused was appointed by the SerBiH Assembly to the Government of the SerBiH as Acting Deputy Prime Minister for Production.<sup>785</sup> On the same day he was also appointed Minister for Construction, Traffic and Utilities in the Government of the SerBiH.<sup>786</sup>

### **B. De jure and de facto power of the Accused**

291. The Trial Chamber is satisfied that between mid 1991 and the end of 1992, the Accused possessed *de jure* and *de facto* power that made him one of the most significant political figures in the ARK. The sources of the Accused’s power are twofold. In the first place, the Accused possessed power by virtue of the political positions that he occupied at the municipal, regional and republican levels. In the second place, he was entrusted with political power directly by the Bosnian Serb leadership, including Radovan Karadžić. The Accused already enjoyed a great measure of power before the creation of the ARK Crisis Staff. His power was consolidated with his appointment as

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<sup>779</sup> Ex. P22/ex. P89, “Telex referring to orders of the SDS Sarajevo”. See also para. 181 *supra*. Although there is no document in evidence establishing the formal appointment of the Accused to the position of “Co-ordinator for Implementing Decisions”, the Trial Chamber is satisfied that the Accused exercised this function.

<sup>780</sup> Ex. P168, “Decision of the ARK Executive Council on the establishment of the ARK Crisis Staff, dated 5 May 1992”. See also ex. P176, “Telephone numbers of members of the ARK War Staff”, 6 May 1992.

<sup>781</sup> Ex. P277, “ARK Official Gazette”, decision of 13 May 1992, item 8.

<sup>782</sup> Ex. P2351, “Expert Report of Patrick Treanor”, pp. 29, 33-34; ex. P278, “Glas newspaper article”, dated 10 July 1992, in which the Accused gave an explanation for the change of name.

<sup>783</sup> Ex. P758, “Official Gazette of the SerBiH”, no. 42, 19 December 1990, p. 1249; Patrick Treanor, T. 18702-18703.

<sup>784</sup> Ex. P2469, “Transcript of the 5<sup>th</sup> session of the SerBiH Assembly”.

<sup>785</sup> Ex. P323, “Decision of the SerBiH Assembly”, signed by Momčilo Krajišnik, dated 15 September 1992; Ahmet Krzić, T. 1812; Patrick Treanor, T. 18842-18843; Pedrag Radić, T. 22125-22127.

<sup>786</sup> BT-103, T. 19944 (closed session); Mevludin Sejmenović, T. 12144-12145.

President of the ARK Crisis Staff and continued and even increased after the ARK Crisis Staff ceased to exist.<sup>787</sup>

292. The Trial Chamber, having carefully examined all the evidence concerning the scope of the power of the Accused, is satisfied that the Accused, although he was not part of the top leadership of the SerBiH, was situated near the highest echelons of the SerBiH leadership and wielded great power in the ARK.<sup>788</sup>

1. The power of the Accused before the creation of the ARK Crisis Staff

293. Already before the establishment of the ARK Crisis Staff, the Accused held a number of political positions at the municipal, regional and republican levels, which made him one of the most powerful politicians in the municipality of Čelinac and in the ARK and gave him access to the top leadership at the republican level.<sup>789</sup>

294. The Accused was in direct contact with Radovan Karadžić and other Bosnian Serb leaders from whom he received instructions.<sup>790</sup> The Accused's close contact with the top leadership of the SerBiH is also demonstrated by the fact that during meetings of the SerBiH Assembly, he was sitting in the front row among the most senior members of the SDS.<sup>791</sup>

295. The top leadership of the SerBiH granted the Accused a high degree of authority and autonomy in areas of fundamental political importance, which is indicative of the trust the Accused enjoyed at the highest political level.<sup>792</sup> In a telephone conversation on 31 October 1991, Radovan Karadžić assured the Accused that he had all the power in the Krajina and indicated that he should

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<sup>787</sup> BT-94 gave evidence that in the context of the ARK, the Accused was "certainly quite a big player". BT-94 also stated that at the republican level, the Accused was "near the very top", T. 18169.

<sup>788</sup> BT-94, T. 18169. See also BT-94, T. 24723. Predrag Radić gave evidence that the Accused "was a very powerful man. I said that his authority wasn't a result of him being the president of the crisis staff, it was a result of him having a role of a minister", T. 22127. BT-103 agreed that the Accused "was ambitious, enjoyed power and was successful in accumulating power in 1992", T. 19945 (closed session).

<sup>789</sup> See, A supra, "Positions of authority held by the Accused".

<sup>790</sup> Ex. P2382.2, "Intercepted telephone conversation between Radovan Karadžić and the Accused", dated 2/3 July 1991: "Everything will be under a single command and you will be in direct contact with us and you will also be in contact with others"; ex. P2383.13, "Intercepted telephone conversation between Radovan Karadžić and Nenad Stevandić", dated 11 January 1992: Radovan Karadžić stated that "I do not know any of these people but Brđanin and Kuprešanin know me and can always pick up the phone and ask Doctor or President, what is your position on this and that". See also ex P22/ex. P89, "Telex referring to orders of the SDS Sarajevo": The telex reveals that the order in question was made public during a meeting on 26 October 1991 of all municipal presidents, chaired by Radovan Karadžić.

<sup>791</sup> Ex. P2469, "Transcript of the 5<sup>th</sup> session of the SerBiH Assembly", held on 9 January 1992. The transcript indicates that the Accused was sitting in the front row next to Biljana Plavšić (member of the SerBiH Presidency), Nikola Koljević (member of the SerBiH Presidency), and Velibor Ostojić (Information Minister in the SerBiH Government). As to the Accused's senior position within the SDS, see also, Ibrahim Fazlagić, T. 4358-4359; BT-13, T. 4805 (closed session); BT-81, T. 13832 (closed session); BT-91, T. 15937; Muharem Murselović, T. 12612; BT-90, T. 17187 (closed session).

<sup>792</sup> Asim Egrlić gave evidence that the Accused was highly respected in the SDS and that he was deeply appreciated, T. 10531.

take more decisions without consulting the party leadership.<sup>793</sup> Moreover, in a conversation between Radovan Karadžić and a certain Miroslav on 7 January 1992, the Accused was identified as a mature and politically strong personality, who would be able to take power.<sup>794</sup>

## 2. The power of the Accused as President of the ARK Crisis Staff

296. When the ARK Crisis Staff was created on 5 May 1992, assuming all powers and functions of the ARK Assembly and thus becoming the highest organ of civilian authority in the ARK, the Accused became its President.<sup>795</sup> Vojo Kuprešanić as President of the ARK Assembly would have been the most obvious candidate to become the President of the ARK Crisis Staff. Nonetheless, it was the Accused, having the support of Radovan Karadžić, who was chosen for this position.<sup>796</sup>

297. The Trial Chamber is satisfied that the Accused not only formally represented the ARK Crisis Staff as its President, but was in fact at the very heart of the ARK Crisis Staff as its key figure.<sup>797</sup> It was up to the Accused to organise or summon people to attend a meeting whenever he felt the need.<sup>798</sup> During ARK Crisis Staff meetings the Accused played a crucial and central role. It was the Accused who set the agenda,<sup>799</sup> chaired the meeting<sup>800</sup> and very often proposed conclusions.<sup>801</sup> Before decisions of the ARK Crisis Staff were published in the Official Gazette of the ARK they were signed either by the Accused or by someone else on the Accused's behalf.<sup>802</sup> The Trial Chamber is of the view that whether or not the Accused actually personally signed the

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<sup>793</sup> Ex. P2357, "Intercepted telephone conversation between Radovan Karadžić and the Accused", dated 31 October 1991, during which Radovan Karadžić stated: "Call me about something that you cannot resolve. You have all the power in the Krajina. Why don't you exercise this power? ... Brdo, if Stojan Župljanin is no good, dismiss him". See also Patrick Treanor, T. 18732.

<sup>794</sup> Ex. P2358, "Intercepted telephone conversation between Radovan Karadžić and a certain Miroslav", dated 7 January 1992.

<sup>795</sup> See, VI.B, "The Crisis Staff of the Autonomous Region of Krajina".

<sup>796</sup> See ex. P2358, "Intercepted telephone conversation between Radovan Karadžić and a certain Miroslav", dated 7 January 1992: "*Karadžić*: Find a political personality who will be able to take power. Give us a political figure who will be able to take power. *Miroslav*: Then it would have to be Brđanin, I think. (...) *Karadžić*: Go ahead, choose a mature personality, one that is politically strong and will be able to create. *Miroslav*: Tell me... you know what? I think that Brđanin, but Brđanin is a bit, how should I say, hot-headed... *Karadžić*: All right, but he's Vice-chairman of the Assembly...it would be difficult for him to... *Miroslav*: Yes, yes but I don't know how they planned to do it? *Karadžić*: Yes...then he'd have to leave the Assembly and someone else would have to be elected to the Assembly. *Miroslav*: ... Generally, someone would have to. Would you perhaps speak to Vojo and Brđanin? *Karadžić*: Please, please...you call them. Call them and tell them to discuss things. I think that Jakšić is not appropriate at this moment, because, because a person with political...would suit you better now. *Miroslav*: ...strong politically, yes". See also Patrick Treanor, T. 18734-18737.

<sup>797</sup> BT-94, T. 18096. Milorad Sajić, T. 23673, 23676. Boro Blagojević, T. 21892-21893; Zoran Jokić, T. 24090.

<sup>798</sup> Milorad Sajić, T. 23676.

<sup>799</sup> BT-95, T. 19523-19524 (closed session); Zoran Jokić, T. 24090.

<sup>800</sup> Milorad Sajić, T. 23673; Boro Blagojević, T. 21846.

<sup>801</sup> Boro Blagojević, T. 21892; Milorad Sajić, T. 23649.

<sup>802</sup> Boro Blagojević gave evidence that "s.r". next to the signature block on decisions/conclusions in the Official Gazette meant that the person appearing on the signature block had signed the document, T. 21893-21902. See also Boro Blagojević, T. 21788-21798. The Defence stipulated that the Accused personally signed three decisions: ex P254/P255 "Decision of the ARK Crisis Staff of 22 June 1992"; ex. P47, ex. P198 "Decision of the ARK Crisis Staff of 15 May 1992": Defence Final Brief (confidential), p. 33.

original decisions is irrelevant. The important thing was that for these decisions to carry authority they had to appear to bear the signature of the President of the ARK Crisis Staff.<sup>803</sup> There is no indication that, at the time, the Accused ever contested the signature on the ARK Crisis Staff decisions to be his own.

298. The Accused's public speeches on behalf of the ARK Crisis Staff, examined below,<sup>804</sup> as well as the fact that other members of the ARK Crisis Staff did not bother to attend all its meetings,<sup>805</sup> are additional proof that he was the driving force behind the major decisions issued by the ARK Crisis Staff.<sup>806</sup>

299. In addition, the Trial Chamber is of the view that the fact that in the eyes of the public, it was the Accused who personified the power of the ARK Crisis Staff is a further important indication that he was indeed the driving force behind the decisions of the ARK Crisis Staff.<sup>807</sup>

300. On 14 June 1992, a number of ARK municipalities issued a joint statement, expressing their dissatisfaction with the efficiency of the operation conducted by the ARK Crisis Staff and openly criticising the Accused, demanding his replacement as President of the ARK Crisis Staff.<sup>808</sup> As noted earlier, the Trial Chamber is of the view that the municipalities in question were motivated by the fact that the ARK Crisis Staff did not pay sufficient attention to the problems in all constituent ARK municipalities. Despite their concerns, these municipalities did not question the authority of the ARK Crisis Staff. On the contrary, they expressly stated that the decisions of the ARK Crisis Staff had to be implemented.<sup>809</sup> Moreover, the Trial Chamber is satisfied that, despite the municipalities' personal criticism of the Accused, they did not actually question his authority. In fact, they continued to implement the ARK Crisis Staff's decisions despite the fact that the Accused was never replaced.<sup>810</sup>

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<sup>803</sup> Boro Blagojević, T. 21900.

<sup>804</sup> See, C.5, *infra*, "The Accused's propaganda campaign".

<sup>805</sup> Milorad Sajić, T. 23625-23630; Boro Blagojević, T. 21736-21738; Zoran Jokić, T. 23964-23967.

<sup>806</sup> See, C.5, *infra*, "The Accused's propaganda campaign".

<sup>807</sup> BT-94, T. 24725.

<sup>808</sup> Ex. P247, "Inter-municipal agreement", Sansko-Unska Area, dated 14 June 1992. The Municipalities stipulating this agreement were Bosanska Krupa (referred to as Srpska Krupa), Bosanski Petrovac, Bosanski Novi, Bosanska Dubica, Prijedor and Sanski Most. The agreement includes the following statement: "We think that the work of the [ARK] Crisis Staff has been unsatisfactory and it has been serving the local interests of Banja Luka. We are of the opinion that the Crisis Staff should be composed of the municipal assemblies and the representatives of the Serbian Democratic Party from all the constituent municipalities of the ARK. (...) Accordingly, personnel changes should be made in the Crisis Staff of the ARK".

<sup>809</sup> Ex. P247, "Inter-municipal agreement", Sansko-Unska Area, dated 14 June 1992. Referring to the 8<sup>th</sup> session of the ARK Crisis Staff, the document states: "We request that concrete and clear replies be given to each of the conclusions reached at this session and that individuals in charge of these conclusions be held personally accountable for their implementation".

<sup>810</sup> See VI.C.1, "The authority of the ARK Crisis Staff with respect to municipal authorities".



301. The Trial Chamber is satisfied that the Accused, driven by his personal creed, strived to secure and succeeded in securing the obedience of the institutions over which the ARK Crisis Staff exercised *de facto* authority or in relation to which the ARK Crisis Staff had great influence:

I am a man who abides by two principles: I obey and respect those who are above me, all those who are under my command must obey me.<sup>811</sup>

302. By virtue of his position as President of the ARK Crisis Staff and particularly as a result of the fact that the Accused was the key figure of the ARK Crisis Staff and the driving force behind its decisions, he exercised *de facto* authority over the municipal authorities and the police and had great influence over the 1<sup>st</sup> KK.<sup>812</sup> In the view of the Trial Chamber, the fact that international monitors and negotiators on the ground between 1991 and 1992 were not in contact with the Accused in no way detracts from his powers.<sup>813</sup>

### 3. The power of the Accused after the abolishment of the ARK Crisis Staff

303. On 15 September 1992, after the ARK was abolished as a territorial unit of the SerBiH, the Accused was appointed by the SerBiH Assembly to the Government of the SerBiH as Acting Deputy Prime Minister for Production.<sup>814</sup> On the same day he was also appointed Minister for Construction, Traffic and Utilities in the Government of the SerBiH.<sup>815</sup> The Trial Chamber is satisfied that the Accused's appointment to the Government of the SerBiH is proof that the top leadership of the SerBiH and the Accused shared the same political views, and considers the Accused's promotion to the SerBiH Government with the said portfolios as a sign of approval and reward by the top leadership of the SerBiH for the work performed by the Accused at the level of the ARK.

304. By virtue of his positions in the Government of the SerBiH, the Accused consolidated his political power in the Bosnian Krajina and extended his power at the republican level, thus reaching the peak of his political career.<sup>816</sup> The Trial Chamber is satisfied that, between mid-September 1992

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<sup>811</sup> Ex. P2611, "Stenogram taken at the session of the BiH SDS", held in Sarajevo on 12 July 1991, p. 38.

<sup>812</sup> See V.I.C., "The authority of the ARK Crisis Staff". From establishment of the ARK Crisis Staff until the establishment of the VRS, the ARK Crisis Staff exercised great influence over the 5<sup>th</sup> Krajina Corps of the JNA.

<sup>813</sup> The Trial Chamber comes to this conclusion bearing in mind the overall evidence before it. The Trial Chamber reiterates that the Accused's position as vice-President of the ARK Assembly and as President of the ARK Crisis Staff did not happen by chance but was the result of a decision taken at the highest political level and was meant to be effective at the most crucial period of the Strategic Plan, mainly the initial period of the take-over of the ear-marked territory and the massive displacement of the unwanted ethnic groups.

<sup>814</sup> Ex. P323, "Decision of the SerBiH Assembly", signed by Momčilo Krajišnik, dated 15 September 1992; Ahmet Krzić, T. 1812; Patrick Treanor, T. 18842-18843; Pedrag Radić, T. 22125-22127.

<sup>815</sup> BT-103, T. 19944 (closed session); Mevludin Sejmenović, T. 12144-12145.

<sup>816</sup> Pedrag Radić gave evidence that the Accused "was a very powerful man. I said that his authority wasn't a result of him being the president of the crisis staff, it was a result of him having a role of minister, etcetera, and that is where he derived his authority from", T. 22127.

and the end of December 1992, the Accused was nearest to the most senior and powerful members of the Bosnian Serb leadership and wielded great power in the Bosnian Krajina.

### C. The Accused's participation in the implementation of the Strategic Plan

#### 1. The Accused's espousal of the Strategic Plan

305. The Trial Chamber is satisfied beyond reasonable doubt that the Accused shared with the Bosnian Serb leadership support for the Strategic Plan, intended to link Serb-populated areas in BiH together, to gain control over these areas and to create a separate Bosnian Serb state, from which most non-Serbs would be permanently removed. The Accused knew that the Strategic Plan could only be implemented by the use of force and fear.

306. The Accused's espousal of the Strategic Plan and his acceptance of the use of force and fear for its implementation is abundantly clear from a review of a number of intercepted telephone conversations between Radovan Karadžić and the Accused or other political leaders,<sup>817</sup> the acts and conduct of the Accused,<sup>818</sup> his public speeches<sup>819</sup> and his speeches during Assembly sessions of the ARK and the SerBiH, attended by the Accused as a delegate.<sup>820</sup>

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<sup>817</sup> Ex. P2382.3, "Intercepted telephone conversation between Radovan Karadžić and the Accused", dated 8 July 1992; ex. P2382.4, "Intercepted telephone conversation between Radovan Karadžić and the Accused", dated 28 July 1991; ex. P2355, "Intercept telephone conversation between Radovan Karadžić and Nenad Stevandić", dated 17 August 1991; ex. P2382.8, "Intercepted telephone conversation between Radovan Karadžić and the Accused", dated 18 September 1991; ex. P2358, "Intercepted telephone conversation between Radovan Karadžić and a certain Miroslav", dated 7 January 1992.

<sup>818</sup> See, C.3, *infra*, "The Accused's participation in the implementation of the Strategic Plan as the President of the ARK Crisis Staff". See also BT-94, T. 24723; ex. P2597, "Glas newspaper article", dated 16 March 1992. The article refers to an SDS public gathering in Banja Luka on 15 March 1992, which was attended by Radovan Karadžić and during which the Accused advocated for the "urgent need" to form a firm link to Serbia and Montenegro.

<sup>819</sup> E.g., ex. P508, an interview by "Serbian Radio and Television" conducted in late 1992 (after 15 September 1992), during which the Accused stated: "They must all realise that we have to create a Serbian national state and I don't think that our people would furnish fertile ground for those who think that we should pardon our common Muslim and Croat enemy for a third time. We are not a wild people. However, I only wish we had put up barbed wire between us, the Croats and the Muslims back in 1918, since in that case this third massacre and attack on the Serbian people would not have taken place". See also, C.5, *infra*, "The Accused's propaganda campaign".

<sup>820</sup> A telling example of his support occurred during the 16<sup>th</sup> session of the SerBiH Assembly, held on 12 May 1992, during which Radovan Karadžić articulated the six strategic goals of the Serbian People of Bosnia and Herzegovina and the decision to establish the VRS was taken. One of the most virulent speeches during this session was given by Dragan Kalinić, a delegate from Sarajevo and later SerBiH Health Minister. He is recorded as stating: "Have we chosen the option of war or the option of negotiation? I say this with a reason and I must instantly add that knowing who our enemies are, how perfidious they are, how they cannot be trusted until they are physically, militarily destroyed and crushed, which of course implies eliminating and liquidating their key people. I do not hesitate in selecting the first option, the option of war". The Accused began his own speech by applauding the speech made by Dragan Kalinić: "I would like to say a heart-felt bravo to Mr. Kalinić. In all my appearances in this joint Assembly, it has never crossed my mind that though he seems to be quiet, while I seem hawkish, his opinions are the closest to mine. I believe that this is a formula and we should adhere to this formula", ex. P50, pp. 22, 29-30. The Trial Chamber is satisfied beyond reasonable doubt that, contrary to the Defence submission, the Accused ultimately endorses the war option, as suggested by Dragan Kalinić, and not the negotiation option. See also ex. P12, "Extract from the minutes of the 7<sup>th</sup> session of the Assembly of the ZOBK", held on 16 September 1991, during which the ZOBK transformed itself into the ARK. The Accused stated during this meeting: "We are for peace, but we do not want that peace to be implemented over our heads". See ex. P21, "Stenograph of the constituting session of the SerBiH Assembly", held on 24 October

307. Although the Accused agreed with the Strategic Plan and its eventual implementation by force and fear and despite the fact that the Accused pursued these objectives through his deeds and speeches, it has not been established that the Accused actually participated in formulating the content of the Strategic Plan. The Trial Chamber is of the view that the Strategic Plan was defined by Radovan Karadžić and a number of the Bosnian Serb political and military leaders at the highest level.<sup>821</sup>

2. The Accused's participation in the implementation of the Strategic Plan before the establishment of the ARK Crisis Staff

308. The Trial Chamber is satisfied that the Accused, by virtue of the power conferred upon him by the Bosnian Serb leadership and the trust placed in him by the same leadership, as well as by virtue of his political positions, made a crucial and substantial contribution to the implementation of the Strategic Plan. The Accused, holding authority primarily at the regional level, was an essential link between the leadership at the republican level on the one hand and the ARK municipalities on the other hand.

309. Amongst the political figures in the Bosnian Krajina, it was the Accused who was identified as best representing the interests of the SerBiH. He was chosen by the leadership of the SerBiH to play a leading role in co-ordinating the implementation of the Strategic Plan in the ARK.<sup>822</sup> During

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1991. During this session, Radovan Karadžić made it clear that the Bosnian Serbs were prepared to use force and fear to achieve the goal of creating a Serbian state within BiH. The Accused was reported stating: "A dream is coming true today, a dream I was criticism [sic] for during the campaign (...) that Krajina was actually Western Serbia (...) Western borders will be drawn where it would be suitable for the Serbian people, and not where it would be to the detriment of any other people". See ex. P2467, "Minutes of the 4<sup>th</sup> session of the SerBiH Assembly", held on 21 December 1991, in which the decision to establish the SerBiH was adopted and the Accused made the following statement: "We know very well that the Serbian people want a state ruled by law (...) we can see for ourselves that Europe does not recognise that. Since Europe apparently only understands force, I think force must be responded to with force. So I urge us to stop pledging ourselves to Serbdom and instead I call upon the Serbs in Sarajevo, SAO Romanija and Northern Bosnia to heed the call for mobilisation so that we can defend our western border. Once we have secured our borders Europe will accept the facts!". See ex. P2469, "Minutes of the 5<sup>th</sup> session of the SerBiH Assembly", held on 9 January 1992. During this session, the declaration to proclaim the SerBiH was adopted. It was also decided that the ARK would henceforth be part of the SerBiH. During this meeting, the Accused was seated in the front row among the SDS top leadership, and made the following statement: "Let us not kneel in front of someone all the time. No Serb has the right to do that (...) We have enough of defensives (...)".

<sup>821</sup> BT-94 gave evidence that the Accused was not the political mastermind, the one who conceived of all of this. Rather, according to BT-94, the Accused stood behind this self-defeating policy, T. 24778. Ex. P2383.13, "Intercepted telephone conversation between Radovan Karadžić and Nenad Stevandić, dated 11 January 1992", during which Radovan Karadžić stated that the SDS policy had been tailored by the 200 most intelligent Serbs.

<sup>822</sup> Ex. P2355, "Intercepted telephone conversation between Radovan Karadžić and Nenad Stevandić, dated 17 August 1991", recording Nenad Stevandić stating: "Since we put Brdanin into the picture, he is not letting Vojo [Kuprešanin – President of the ARK Assembly and future member of the ARK Crisis Staff] and Anđelko [Grahovac – President of the ARK Government] do anything stupid. However, all of them have now turned against Brdanin. Zoran, Anđelko and Vojo, not because of jealousy, but because they wanted to become involved in this part of the work for reasons that I don't even know". See ex. P2383.6, "Intercepted telephone conversation between Radovan Karadžić and Slobodan Milošević", dated 23 September 1991, mentions the Accused as one of the persons that would implement their common plan in the Bosnian Krajina; see also ex. P2383.11, "Intercepted telephone conversation between Radovan Karadžić and Nenad Stevandić", dated 13 December 1991, during which Nenad Stevandić was recorded

a speech made in November 1991 in the presence of the presidents of the ARK municipalities, Radovan Karadžić ensured that the municipal authorities would accept this role of the Accused, by ordering them to follow the instructions of the Accused.<sup>823</sup>

310. The Trial Chamber is satisfied that, as from mid-1991 onwards, Radovan Karadžić discussed with and relied on the Accused, amongst others, to set up civilian commands to ensure Territorial Defence and Civilian Protection,<sup>824</sup> to liaise with military officers and prepare for the mobilisation of the Bosnian Serb military,<sup>825</sup> and to implement the policy of dismissing non-Serbs from their jobs.<sup>826</sup>

311. In spite of the fact that a number of senior SDS members, including Radovan Karadžić, were critical of the manner in which the Accused sometimes acted, and especially of his

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saying: “we shall do that through Brdanin and Marković” and Radovan Karadžić agreed. *See ex. P2358*, “Intercepted telephone conversation between Radovan Karadžić and a certain Miroslav, dated 7 January 1992, in which the Accused was identified as a mature and politically strong personality, who would be able to take power; *see further ex. P2382.4*, “Intercepted telephone conversation between Radovan Karadžić and the Accused”, dated 28 July 1991, discussing the implementation of the Strategic Plan in the ARK in case of a declaration of independence of Bosnia from the SFRY; *see ex. P2382.10*, “Intercepted telephone conversation between Radovan Karadžić and the Accused”, dated 16 October 1991, in which Karadžić instructed the Accused to stop the movement towards a union of the Croatian and Bosnian Krajinas; *see ex. P2382.11*, “Intercepted telephone conversation between Radovan Karadžić and the Accused”, dated 18 October 1991, during which the Accused stated that: “I am pursuing the policies from headquarters, and they are being implemented here”. As to power entrusted with the Accused by the SerBiH leadership, *see also*, B.1, *supra*, “The power of the Accused before the creation of the ARK Crisis Staff”.

<sup>823</sup> *Ex. P2466*, “Speech of Radovan Karadžić at the Plebiscite of the Serb People”, held in Sarajevo on 1 November 1991 in the presence of the leaders of the ARK municipalities, p. 10. Radovan Karadžić is quoted saying: “You, presidents of municipalities, you have to do this job. (...) and also in Krajina, especially where the war is going on, everything that Brdanin has written for you. Usually, there are forgeries, but this time, this is not a forgery. Whatever Brdanin wrote to you: Apply everything, we are at war! They have attacked us, we are at war!”.

<sup>824</sup> *Ex. P2382.2*, “Intercepted telephone conversation between Radovan Karadžić and the Accused”, dated 2/3 July 1991, during which Radovan Karadžić instructed the Accused: “But, everything must be under a single command and you will also be in contact with others” and “please, please set up in one day those commands within municipalities, of this Civilian Protection”. The Accused replied positively to Karadžić’s specific requests.

<sup>825</sup> *Ex. P2382.3*, “Intercepted telephone conversation between Radovan Karadžić and the Accused”, dated 8 July 1991, in which the Accused reported to Radovan Karadžić that he had organised mobilisation and been in contact with military officers, stressing that “we must raise our readiness one step, at least one step up”. In addition, Radovan Karadžić ordered the Accused by phone to come to a meeting because “you will receive written instructions, very important decisions will be made”. *See also ex. P2382.8*, “Intercepted telephone conversation between Radovan Karadžić and the Accused”, dated 18 September 1991, in which Karadžić and the Accused confer over the phone on the issue of military mobilisation in Bosnian Krajina for the war in Croatia. With respect to military mobilisation, the Accused was recorded stating: “I am in charge of that” and “the part that we’re doing is going well”. *See further ex. P2383.4*, “Intercepted telephone conversation between Radovan Karadžić and Trifko Komad, SDS Executive Board Secretary”, dated 18 September 1991, in which Radovan Karadžić ordered Trifko Komad to gather Vojo Kuprešanin, Radislav Vukić, Predrag Radić and the Accused in order to deal with issues regarding mobilisation.

<sup>826</sup> *Ex. P2382.1*, “Intercepted telephone conversation between Radovan Karadžić and the Accused”, dated 17/18 June 1991, in which the Accused complained to Karadžić because a number of Muslims and Croats had not been removed from managerial positions in media and private companies: “not a single man has been replaced”. Karadžić expressed his support to the Accused and agreed on the need to remove non-Serbs from managerial positions as part of the SDS policy. *See also ex. P.2382.4*, “Intercepted telephone conversation between Radovan Karadžić and the Accused”, dated 28 July 1991, with respect to the issue of how to remove non-Serb managers. *See also ex. P2382.13*, “Intercepted telephone conversation between Radovan Karadžić on the one hand and Radislav Vukić, Predrag Radić and the Accused on the other hand”, dated 18 November 1991, during which, *inter alia*, the SDS policy of dismissals was discussed. Karadžić referred in that respect to a public statement made by the Accused regarding dismissals of those who had not taken part in the plebiscite, and told the Accused: “well it has to be done but you mustn’t say that”. *See also Pedrag Radić, T. 22159-22161; ex. P93, “Oslobodenje newspaper article”.*

endorsement of the secessionist ARK movement and of his lust for power,<sup>827</sup> Radovan Karadžić continued to rely on the Accused as a critical link between the republican level leadership and the ARK municipalities. This was because the conflict between them was resolved on 29 February 1992, during the 14<sup>th</sup> session of the ARK Assembly.<sup>828</sup> As a result, the Accused's political career continued to develop and grow after this date.<sup>829</sup> The Trial Chamber views the fact that the Accused did not merely follow orders but that he dared to pursue his own agenda and to openly confront Radovan Karadžić as an indication of the extent of his political power.<sup>830</sup>

312. The position and the role of the Accused as described above were consolidated by his appointment to a number of political positions at the regional level.<sup>831</sup>

313. Even before becoming President of the ARK Crisis Staff, the Accused was an active participant in discussions about war preparation and mobilisation to consolidate power in the Bosnian Krajina.<sup>832</sup> At one time, describing himself as “Vice-President for Defence of the ZOBK Assembly”, he issued a public “requirement” that “all municipalities should adopt decisions to prepare for mobilisation and form and organise volunteer detachments to defend the Yugoslav territory together with the JNA”.<sup>833</sup> In addition, the Accused used his position of authority to give support to Serbian paramilitary organisations.<sup>834</sup>

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<sup>827</sup> See, e.g., ex. P2383.9, “Intercepted telephone conversation between Radovan Karadžić and Vojo Kuprešanin”, dated 9 November 1991, during which Radovan Karadžić complains about the Accused spreading panic; see ex. P2383.13, “Intercepted telephone conversation between Radovan Karadžić and Nenad Stevandić”, dated 11 January 1992, during which Radovan Karadžić complains about the “separatist bastards” in Banja Luka and stating that if someone makes his own politics, he will be thrown out of the party; see ex. P33, “Transcript of the 8<sup>th</sup> session of the Assembly of SerBiH”, held on 25 February 1992, which records Radovan Karadžić stating, *inter alia*, that: “Neither Brdo nor anyone else can act out of step with this Assembly. They may if they resign or until we reach a decision. Once we reach a decision, no one has a right to sabotage it”, p. 71, “I cannot allow five people with personal ambitions to destroy our chances. We are very close to achieving our strategic objectives”, p. 44. See also BT-94, T. 24703; Milorad Dodik, T. 20518. See further ex. P34, “Transcript of the meeting of the SDS Deputies’ Club”, held in Sarajevo on 28 February 1992, recording Marinko Kontić referring to the Accused: “There is a sickness in that man who always wants to be the boss and he’s interested only in power”, pp. 28-29, and Radovan Karadžić stating, *inter alia*, that: “We are in power and we should exercise that power for the good of the people. We can and we must renounce everyone who refuses to work the way that we have agreed. Brdo and all the rest. When Brdo appears somewhere, he is like a bomb, he blows everything up (...). Then he winks at him and I won’t allow it as a psychiatrist and as the party leader. He’s crazy, he’s not normal. He doesn’t know what he can do and what he can’t do”, p. 36.

<sup>828</sup> See VI.A.3, “The dispute between the ARK and the authorities of the SerBiH on the status of the ARK”.

<sup>829</sup> See A, *supra*, “Positions held by the Accused”.

<sup>830</sup> See, e.g. BT-94, T. 24723.

<sup>831</sup> The Accused himself, in a telex circulated to all ARK municipalities, signed as “Co-ordinator for Implementing Decisions”, ex. P22/P89, and afterwards he was appointed as President of the ARK Crisis Staff. See, A, *supra*, “Positions held by the Accused”; B, *supra*, “De jure and de facto power of the Accused”.

<sup>832</sup> BT-80 gave evidence that by October 1991, the Accused was personally involved in the mobilisation of Serb recruits in close co-operation with the JNA, T. 15331-15335, 15353-15355 (closed session); ex. P1768.1 (under seal).

<sup>833</sup> Ex. P132, “Decision issued by the Secretariat for Information of the ZOBK Assembly”, undated. Although there is no document in evidence establishing the formal appointment of the Accused to the position of “Vice President for Defence of the ZOBK Assembly”, the Trial Chamber is satisfied that the Accused, as Vice President of the ZOBK Assembly exercised functions in the area of defence inherent to the ZOBK. See also ex. P2382.8, “Intercepted telephone conversation between Radovan Karadžić and the Accused”, dated 18 September 1991, in which they confer

314. During the spring of 1992, the Accused began to advocate vociferously the dismissal of non-Serbs as part of the Strategic Plan to permanently forcibly displace most of the Bosnian Muslim and Bosnian Croat population from the ARK. He did so as Vice-President of the ARK Assembly and, after the take-over of Banja Luka by the SOS in April 1992, as a member of the Banja Luka Crisis Staff and as the head of the Commission for Standardisation of Personnel of the Crisis Staff of Banja Luka. The task of this commission was to systematically implement the policy of dismissing non-Serb personnel from managerial positions in public enterprises and institutions in Banja Luka. At the same time, the Accused started publicly calling upon the non-Serb population to leave the Bosnian Krajina.<sup>835</sup>

3. The Accused's participation in the implementation of the Strategic Plan as President of the ARK Crisis Staff

315. During the period of operation of the ARK Crisis Staff, the Accused as its President continued to substantially contribute to the implementation of the Strategic Plan in the ARK.

316. The Trial Chamber has previously established that the ARK Crisis Staff exercised *de facto* authority over the municipal authorities and over the police, both at the level of the CSB and of the SJBs. The municipal authorities and the police accepted the authority of the ARK Crisis Staff and implemented its decisions in three key areas: a) dismissals of non-Serb professionals; b) disarmament of paramilitary units and individuals who illegally possess weapons, selectively enforced against non-Serbs; and c) resettlement of the non-Serb population.<sup>836</sup>

317. The Trial Chamber has also established that the ARK Crisis Staff, sharing a joint approach with respect to the implementation of the Strategic Plan with the Command of the 1<sup>st</sup> KK of the VRS, closely co-operated with the 1<sup>st</sup> KK.<sup>837</sup> Decisions and discussions of the ARK Crisis Staff impacted on military activity such as the mobilisation of military conscripts, deadlines concerning the surrender of weapons, the forceful confiscation of weapons, the removal of non-Serbs from the

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over the phone on the issue of military mobilisation in Bosnian Krajina for the war in Croatia. With respect to military mobilisation, the Accused was recorded stating: "I am in charge of that" and "the part that we're doing is going well".

<sup>834</sup> The Trial Chamber has evidence that in August 1991 a delegation, including the Accused, Stojan Župljanin and military officers, visited the training camp in Gornji Podgradci in Bosanska Gradiška Municipality, where Serb paramilitary units were trained. Whereas before the visit of this delegation, the trainees did not have enough equipment and food, from that day onwards they were given sufficient food, weapons, ammunition, and uniforms, T. 21061-21064 (closed session).

<sup>835</sup> See, C.5, *infra*, "The Accused's propaganda campaign".

<sup>836</sup> See, VI.C.1, "The authority of the ARK Crisis Staff with respect to municipal authorities"; VI.C.2, "The authority of the ARK Crisis Staff with respect to the police"; VI.D, "The role of the ARK Crisis Staff in the implementation of the Strategic Plan".

<sup>837</sup> From establishment of the ARK Crisis Staff until the establishment of the VRS, the ARK Crisis Staff closely co-operated with the 5<sup>th</sup> Krajina Corps of the JNA.

army and the formation of a civilian government in Donji Vakuf Municipality, which was run by a military administration.<sup>838</sup>

318. Moreover, the ARK Crisis Staff had substantial influence over the SOS, one of the paramilitary groups operating in the ARK and responsible for creating an atmosphere of fear and terror amongst the non-Serb inhabitants of the Bosnian Krajina by committing crimes against Bosnian Muslims and Bosnian Croats including murder, rape, plunder and the destruction of property, including religious buildings.<sup>839</sup> The ARK Crisis Staff used the SOS as an operative tool that contributed to the implementation of the Strategic Plan.<sup>840</sup>

319. The Trial Chamber has also found that the Accused was not only formally representing the ARK Crisis Staff as its President, but was in fact at the very heart of the ARK Crisis Staff and was its key figure, being the driving force behind the major decisions issued by the ARK Crisis Staff.<sup>841</sup> The Trial Chamber is satisfied that the Accused was appointed as President of the ARK Crisis Staff precisely to fulfil this role and because he was considered as the most suitable for it in the circumstances. In the view of the Trial Chamber, the decisions of the ARK Crisis Staff can, therefore, be attributed to the Accused. The Trial Chamber is convinced that those decisions and the Accused are inseparable and the submission of the Defence that the Accused should not be held accountable for them is unfounded.

320. The Trial Chamber has already found that the ARK Crisis Staff issued decisions that substantially contributed to the implementation of the Strategic Plan and ultimately to the commission of crimes.<sup>842</sup> The Trial Chamber is satisfied that the Accused in his capacity as President of the ARK Crisis Staff personally made a substantial contribution to the implementation of the Strategic Plan in the ARK. The decisions of the ARK Crisis Staff reflected the ideas and strategies which the Accused had been advocating since 1991. By virtue of these decisions, and the *de facto* authority and influence exercised by the ARK Crisis Staff, the Accused was able to give effect to his ideas.<sup>843</sup>

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<sup>838</sup> See, VI.C.3, “The authority of the ARK Crisis Staff with respect to the army”.

<sup>839</sup> See, IV.C, “The implementation of the Strategic Plan in the Bosnian Krajina”. See also Osman Selak, T. 12956-12959; ex. P2326, entry of 8 October 1992 (under seal). See also BT-104, T. 18492; Adil Draganović, T. 4899, 4901; Besim Islamčević, T. 7423, 7510, 7541-7542; Zijahudin Smailagić, T. 1951. The Trial Chamber has already found that the head of the SOS and another member, Nenad Stevandić and Slobodan Dubočanin respectively, were members of the ARK Crisis Staff, *see*, para. 193 *supra*.

<sup>840</sup> See, VI.C.4, “The authority of the ARK Crisis Staff with respect to Serbian paramilitary units”.

<sup>841</sup> See, B.2, *supra*, “The power of the Accused as President of the ARK Crisis Staff”.

<sup>842</sup> See VI.D, “The role of the ARK Crisis Staff in the implementation of the Strategic Plan”.

<sup>843</sup> As to the Accused’s political ideas, *see* also, C.5, *infra*, “The Accused’s propaganda campaign”.

4. The Accused's participation in the implementation of the Strategic Plan after the abolishment of the ARK Crisis Staff

321. The ARK Crisis Staff stopped exercising its power and functions when, on 17 July 1992, all decisions and conclusions adopted by the ARK Crisis Staff and the ARK War Presidency were ratified by the ARK Assembly.<sup>844</sup> The Trial Chamber is satisfied that, after this date, the Accused not only maintained his political power in the Bosnian Krajina, but extended his power at the republican level, thus reaching the peak of his political career.<sup>845</sup>

322. During this period, the Accused, as one of the most senior political figures in the Bosnian Krajina and as a member of the Government of the SerBiH, continued to meet with high ranking military and civilian officials, to discuss issues concerning the implementation of the Strategic Plan.<sup>846</sup> He also continued to make threatening public statements, advocating the dismissal from employment of the limited number of Bosnian Muslims and Bosnian Croats who were still employed, and that were designed to terrify the remaining Bosnian Muslims in order to get them to leave the Bosnian Krajina.<sup>847</sup> In so doing, the Accused continued to make a substantial contribution to the implementation of the Strategic Plan in the area relevant to the Indictment.

5. The Accused's propaganda campaign

323. The Accused made one of his most substantial contributions to the implementation of the Strategic Plan by way of a propaganda campaign against Bosnian Muslims and Bosnian Croats, which he conducted before, during and after holding the position of President of the ARK Crisis Staff, and which merits separate examination. The Trial Chamber is satisfied that the Accused intentionally and systematically made inflammatory statements on the radio, television and print, using the media as a tool to further the implementation of the Strategic Plan.

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<sup>844</sup> See, VI.B, "The Crisis Staff of the Autonomous Region of Krajina".

<sup>845</sup> See, B.3, *supra*, "The power of the Accused after the abolishment of the ARK Crisis Staff".

<sup>846</sup> On 18 August 1992, the Accused attended a high-level political/police/military meeting in General Talić's office. One of the matters discussed at this meeting was the closure of Omarska camp, BT-80, T. 15488-15494 (closed session); ex. P1768 (under seal). On 24 September 1992, the Accused attended a meeting in Čelinac with General Talić, Stojan Župljanin, Slobodan Dubočanin and the President of the Kotor Varoš Crisis Staff, discussing political and military issues arising out of the situation in Kotor Varoš, BT-80, T.15542-15543 (closed session); ex. P1768 (under seal).

<sup>847</sup> See, e.g., ex. P291, "Glas newspaper article", dated 26 July 1992. At the end of August 1992, the Accused appeared on television to state: "Those who are not loyal are free to go and the few loyal Croats and Muslims can stay. As Šešelj said about the 7000 Albanians in Kosovo, they will be treated like gold and this is exactly how we are going to treat our 1.200 to 1.500 Muslims and Croats (...) If Hitler, Stalin and Churchill could have working camps so can we. Oh come on, we are in a war after all": ex. P2326 (under seal). On 26 October 1992 the Accused publicly stated: "I am surprised that the Muslims are rushing to buy firewood for the winter. It seems they believe they are going to spend the winter here": ex. P2326 (under seal).



324. By virtue of his positions of authority, the Accused had access to the media.<sup>848</sup> Indeed among the leaders at the regional level, he was the one who appeared in the media most often.<sup>849</sup> Due to his position of authority, his public statements were attributed more weight in the eyes of both the Serbs and the non-Serbs.<sup>850</sup> Although the Accused was not the only SDS exponent to use inflammatory and derogatory language during this period, he was singled out as holding and expressing the most extremist views amongst the Bosnian Serb leaders in the Bosnian Krajina.<sup>851</sup>

325. By his public statements the Accused created fear and hatred between Bosnian Serbs on the one hand and Bosnian Muslims and Bosnian Croats on the other hand, inciting the ethnic groups against each other.<sup>852</sup> The Accused repeatedly used derogatory language to refer to non-Serbs, calling them “Balijas” (Muslims), “Ustaša” (Croats), “Šiptar” (Albanians), “vermin”, “scum”, “infidel” and “second rate people”.<sup>853</sup>

326. From early April 1992 onwards, the Accused openly and repeatedly advocated the dismissal of Bosnian Muslims and Bosnian Croats from managerial positions. His public statements to this

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<sup>848</sup> Predrag Radić, T. 22308.

<sup>849</sup> BT-94, T. 18096-18097, 18166-18167.

<sup>850</sup> BT-94, T. 24721.

<sup>851</sup> BT-104 gave evidence that he saw the Accused very often on TV and read about him in the press. He added: “However, my source of information about him is much more reliable. When I spoke to Muslims and Croats, his name was always in their stories, he was pointed out as the most extremist person”, T. 18632. Because of their political views and their deeds, BT-94 referred to the Accused, Vojo Kuprešanin, Radoslav Vukić and Predrag Radić as the “Four Horsemen of the Apocalypse”. He stated that amongst them, Radislav Vukić was the most primitive, the Accused was the most aggressive, Predrag Radić was the vilest and Kupresanin was an ambiguous personality, T. 18166. BT-94 added that the most fatal decisions were taken among the four and that the Accused was the one who would normally present the decision to the public, T. 24725. *See also* Mirko Dejanović, T. 23197; Branko Cvijić, T. 21421; Predrag Radić, T. 22006.

<sup>852</sup> On 26 July 1992, the Accused was recorded as saying: “I am inviting all those (...) intellectuals who think that living together with Muslims is still possible to come and watch the video footage from Kozarac. I have proof that in Kozarac, preparations were underway for total genocide against the Serbian people. Mujahedins were going to have all Serbian male children up to the age of three circumcised, and the other slaughtered”, ex. P2326 (under seal). *See ex. P508*, an interview conducted by “Serbian Radio and Television” in late 1992 (after 15 September 1992), during which the Accused, referring to the implementation of the Strategic Plan, stated: “They must all realise that we have to create a Serbian national state and I don’t think that our people would furnish fertile ground for those who think that we should pardon our common Muslim and Croat enemy for a third time. We are not a wild people. However, I only wish we had put up barbed wire between us, the Croats and the Muslims back in 1918, since in that case this third massacre and attack on the Serbian people would not have taken place”. During a press conference on 10 July 1992, the Accused stated: “The only way the Serbian people can be unified is through the promotion of the Serbian movement for liberation, and destruction of the Ustaša”, ex. P2326 (under seal). During a large public rally in Banja Luka in 1993, the Accused made the following statement: “The leftists who are offering us again to live together must know that the obligation of the Serbs for the next hundred years is to wipe the shoes of this non-Christian scum who /unintelligible/ this country of ours”, ex. P509, video tape segment of a public speech of the Accused in 1993. Although this statement was made outside the time period relevant to the Indictment, the Trial Chamber accepts the content of the statement as being indicative of the Accused’s state of mind during the time relevant to the Indictment. BT-9 commented on this video footage, stating that: “this was well-known terminology that Mr. Brđanin used, particularly in 1992 and 1993, while I was in Banja Luka”, T. 3481 (closed session). *See also* Zijahudin Smailagić, T. 1927-1928, 1933; BT-9, T. 3203, 3388 (closed session); BT-11, T. 3971-3972 (closed session); BT-13, T. 4600-4601 (closed session); BT-22, T. 4409; BT-94, T. 18009-18011; BT-104, T. 18487-18489, 18632-18633 (private session).

<sup>853</sup> Amir Džonlić, T. 2305; BT-7, T. 2834; BT-22, T. 4410; ex. P509, video tape segment of a public speech of the Accused in 1993. Although the statements in ex. P509 were made outside the time period relevant to the Indictment, the Trial Chamber accepts the content of the statement as being indicative of the Accused’s state of mind during the time relevant to the Indictment.

effect were not only limited to the general public, but also targeted specific individuals holding key positions in public enterprises and institutions. While in some public statements the Accused spoke out in favour of the dismissal of individuals not loyal to the SerBiH, eventually the Accused called for dismissals on a purely ethnic basis, participating in and accelerating the process of depriving many Bosnian Muslims and Bosnian Croats of their livelihood.<sup>854</sup>

327. The Accused, in unambiguous terms and in a frightening manner, also called upon the non-Serb population to leave the Bosnian Krajina.<sup>855</sup> He indicated repeatedly that only a small

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<sup>854</sup> Ex. P137, “*Glas* newspaper article”, dated 4 April 1992. *Glas* published the demands of the SOS and the persons appointed to the Crisis Staff, the creation of which was one of the demands of the SOS, and reported that: “During the negotiations another resolution was reached. The Crisis Staff entrusted a working group consisting of Radoslav Brđanin [and two others] to make arrangements by 15 April this year for initiating legal procedure for the dismissal of all key officials in Banja Luka enterprises who are pursuing an anti-Serbian policy”; see Pedrag Radić, T. 21946-21971; ex. P2326 (under seal); ex. P138, “Newspaper article”, dated 5 April 1992, according to which the Accused stated at a press conference that the Banja Luka Crisis Staff “is resolute in its implementation of all the demands that have so far been decided upon. All the changes in personnel will be decided upon by April 15, so that it is proposed that meetings are held in the vital enterprises of Banja Luka, both public ones and the joint stock companies, and that the boards of directors themselves decide upon replacements for the existing management personnel. (...) Specifically, in the Post Office, we cannot have those people working in telecommunications who voted at the referendum and who are against the interests of the Serbian people. (...) The bank must be headed by a Serb, because it is necessary to prevent monetary shocks”; ex. P139, “Newspaper article”, according to which, on 5 April 1992, the Accused and Radislav Vukić held a press conference to discuss the SOS requests already accepted and stated: “Their requests proved to be justified, especially now [...] because their objective is to protect the Serbian people from possible repetitions of the scenario from Bijeljina and Bosanski Brod”; ex. P154, “*Glas* newspaper article”, dated 21 April 1992, in which the Accused as head of the “Commission for Standardisation of Personnel” of the Banja Luka Crisis Staff explained to what extent the policy of “ethnic levelling of personnel” has already been implemented and what changes could be expected in the future. The Accused specifically referred to the dismissals of Meho Halimić, Đevad Osmančević, Asim Skorup and others, amongst them a few Serbs. See further ex. P2590, “*Glas* newspaper article”, dated 24 April 1992, in which the Accused issued a public statement as Vice-President of the ARK Assembly and member of the Banja Luka Crisis Staff reporting that the Crisis Staff had already completed “personnel changes” in managerial positions; ex. P2598, “*Glas* newspaper article”, dated 28 April 1992, in which the Accused, as Vice-President of the ARK Assembly and “member of the Banja Luka Crisis Staff’s committee responsible for the carrying out of the demands of the Serb Defense Forces” was reported stating: “If any company director refuses to comply with the committee’s demands to resign from their position, they will be forcefully replaced because they will no longer tolerate for Banja Luka companies to be run by people who work against the interests of Krajina and the people”; ex. P163, “*Glas* newspaper article”, dated 29 April 1992, in which the Accused stated that: “Those Serbs or other personnel who are not loyal to Krajina, who do not agree to transfer to the Serbian Territorial Defence, must leave immediately and seek other employment”; ex. P165, “*Glas* newspaper article”, dated 30 April, 1 and 2 May 1992, in which the Accused, giving a press conference speaking as Vice-President of the ARK Assembly and member of the Commission for Levelling of Personnel of the Crisis Staff of Banja Luka, stated: “It has finally become clear that only people loyal to the Serbian Republic of Bosnia and Herzegovina can hold managing positions in Banja Luka and the Bosnian Krajina. [...] the Crisis Staff has no choice, and it must unconditionally meet requests for ethnic-based personnel changes, because that is the only way to preserve peace in this area”. In the present statement, the Accused specifically referred to the dismissals of Ilija Zeljković, Ibrahim Fazlagić and Rudolf Karajdžić, all three being Muslim directors. See also ex. P169, “*Glas* newspaper article”, dated 5 May 1992, in which the Accused, as member of the Banja Luka Crisis Staff and of the Commission for Ethnic Levelling of Staff in the Banja Luka Companies, was reported stating that managers who had “voted for a sovereign BiH” should “leave their positions in the shortest possible time. Otherwise they will be withdrawn by force and by members of the Serbian Defence Forces”; ex. P172, “*Oslobodenje* newspaper article”, dated 6 May 1992; ex. P291, “*Glas* newspaper article”, dated 26 July 1992.

<sup>855</sup> Ex. P2326, entry of 29 August 1992, recalling that the Accused appeared on television to state: “Those who are not loyal are free to go and the few loyal Croats and Muslims can stay. As Šešelj said about the 7000 Albanians in Kosovo, they will be treated like gold and this is exactly how we are going to treat our 1200 to 1500 Muslims and Croats (...) If Hitler, Stalin and Churchill could have working camps so can we. Oh, come on, we are in a war after all” (under seal). BT-7 gave evidence that the Accused stated in public that “we would cleanse the area of this vermin”, T. 2834 (closed session). The Accused told the non-Serb population in unambiguous terms that they had nothing to seek in that area, and that they should all move away, BT-7, T. 2833-2835 (closed session). The Accused also publicly stated that non-Serbs should not store food because they would not need it, BT-21, T. 8557 (closed session); Amir Džonlić, T. 2303.

percentage of non-Serbs would be allowed to stay in the new Bosnian Serb state.<sup>856</sup> According to the Accused, the tiny number that remained would be used for menial work and to perform physical labour generally.<sup>857</sup> Although the evidence relating to the Accused's public utterances calling upon the non-Serbs to leave the Bosnian Krajina is not specific as to dates, the Trial Chamber is satisfied that these statements were at the very heart of the Accused's propaganda campaign and that he made these statements at the same time when he publicly advocated the dismissals of non-Serbs from employment, thus from early April 1992 onwards, until the end of 1992 when the process of dismissals was practically complete.

328. The Accused spoke openly against mixed marriages and on one occasion went as far as to suggest that children of mixed marriages could be thrown into the Vrbas River and those who swam out would be Serbian children.<sup>858</sup>

329. Moreover, he publicly suggested a campaign of retaliatory ethnicity-based murder, declaring that two Muslims would be killed in Banja Luka for every Serb killed in Sarajevo.<sup>859</sup>

330. The Accused's public statements had a disastrous impact on people of all ethnicities. They incited the Bosnian Serb population to commit crimes against Bosnian Muslims and Bosnian Croats. The Trial Chamber is satisfied that the Accused intentionally made a substantial contribution towards creating a climate where people were prepared to tolerate the commission of crimes and to commit crimes,<sup>860</sup> and where well meaning Bosnian Serbs felt dissuaded from extending any kind of assistance to non-Serbs.<sup>861</sup>

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BT-9, referring to the speeches of the Accused, stated that: "The messages were very clear and unambiguous, that the Muslims and Croats had nothing to look for there any more, nothing to do, that this was about displacement of population, movement of population", T. 3271 (closed session). During a TV interview, the Accused stated: "I am in favour of migrations of people, I am in favour of acceptance of the factual situation", ex. P463, "Video footage".

<sup>856</sup> Mirsad Mujadžić, T. 13307-13308; Ibrahim Fazlagić, T. 4273; BT-106, T. 21125 (closed session); BT-7, T. 2833-2835, (closed session); BT-22, T. 4410; BT-95, T. 19695-19696 (closed session).

<sup>857</sup> BT-11, T. 3990 (closed session).

<sup>858</sup> Ex. P2326, which contains a *Glas* newspaper article dated 11 August 1992 (under seal). An extract from this article reads as follows: "In Čelinac, Muslims are allowed to move around for not more than four hours a day, and people in mixed marriages are also in disfavour. A Serbian woman married to a Muslim will be fired. The best illustration of the atmosphere in this town is the fact that for a long time their political leader was the former President of the Municipality, Radoslav Brđanin. He is the same person who, without as much as blinking an eye, said to one of his associates here in Banja Luka: "We shall throw them into the Vrbas and those who swim out are certainly Serbs". This was his reply to the question as to what to do with the children from mixed marriages. The politics created by such a man must inevitably bring such results as we find there these days". Predrag Radić, when asked about the worst statements of the Accused, referred to those about mixed marriages, T. 22314.

<sup>859</sup> BT-20, T. 5237 (closed session); BT-94, T. 18118 (private session).

<sup>860</sup> BT-19 stated that "it was terrible (...) to see normal people living together and without (...) any criminal instinct, to become killing machines in a period of weeks and months, through the terrible power of the media, completely under control and used as a propaganda instrument to disseminate hatred", T. 20654 (closed session). BT-94 gave evidence that "it was necessary to demonise the opposite side for – in order to convince me that my neighbours with whom I had lived for years are now my enemies", T. 24673. BT-94 also stated that "the media were not calling for genocide, but were creating an atmosphere which led to the misfortune that occurred", T. 18166. "You could not hear anyone say: "Let's go and kill everyone in the village. Let's raze Srebrenica to the ground. Let's destroy them." (...) Similarly, in

331. The non-Serb population of the Bosnian Krajina understood the Accused's public statements as direct threats to leave the areas under Bosnian Serb occupation, and many of them did so in fear for their lives. A number of witnesses gave evidence that the Accused's public statements constituted the main reason why they left the area.<sup>862</sup>

332. The Trial Chamber is satisfied that the fact that the Accused's public statements might have been motivated at least in part by his drive towards self-advancement and in order to further his

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this earlier example related to the unfortunate Sanski Most, it wasn't the presenter who would call upon the people to do what eventually happened, but by addressing the people in a savage way, addressing their lower savage senses, instincts, this created a psychosis, a climate that favoured the atrocious events that happened. They did not try to ease the tensions, to calm things down, to tell people to stop for a second and think about it", BT-94, T. 24685. "What they wanted to create was ethnic herds which would then set out to conquer whatever one thought belonged to him. This was the purpose that these programmes served, to transform the people into a herd that will follow its leader", BT-94, T. 24785. Milorad Sajić stated that the perpetrators of the crimes that have been committed mostly "must have been people who were inclined to commit such crimes. And they would always ask for some justification for the things they carried out, they committed, justification from someone else. So which means that such comments were quite useful for them, were welcome", T. 23690. BT-11 gave evidence that the public statements of the Accused "were a very clear message for various criminal elements to do as they please", T. 3998 (closed session). BT-11 also stated that the Accused's statements "furthered a negative sentiment on the part of the Serbs towards Muslims and Croats", T. 3974 (closed session). BT-17 stated: "I was thinking about what Mr. Brdanin had said over the media and these were invitations to a lynching", T. 2866 (closed session). For the general impact of the media on the events in the Bosnian Krajina, see also BT-9, T. 3305-3306 (closed session); ex. P121, "Draft news story"; ex. DB376, "Expert Report of Paul Shoup", p. 6.

<sup>861</sup> Milenko Savić, T. 22477-22484.

<sup>862</sup> BT-104 stated: "Mr. Brdanin, his appearances on TV, and in newspapers. Let me clarify. I didn't know Mr. Brdanin personally but very often I saw him on TV, I often read about him in the press. However my source of information about him is much more reliable source. When I spoke to Muslims and Croats, his name was always in their stories, he was pointed out as being the most extremist person, and the reason why they were leaving Banja Luka... In my conversations with them, they would always emphasise the name of Mr. Brdanin as the main reason for which they were leaving Banja Luka. For them his statements, given and heard on TV, meant that they started packing their bags and leaving. But since Mr. Brdanin was also a member of the SDS, I fully believe that he voiced the SDS policy (...) At the beginning of my testimony, I spoke about the fear that reigned in Banja Luka amongst the non-Serbs, and this was even increased once Mr. Brdanin appeared on the scene, once he started giving statements on TV and in newspapers, T. 18632-18633. BT-7 stated: "I listened to Mr. Brdanin on many occasions, either on the television or on the radio. He made various comments and gave various statements. I can responsibly state that Mr. Brdanin was the most prominent person. He was a master in charge of life and death in that area. He used the media a lot and I can say that many people, after his appearances on television and radio, were unable to sleep. During a certain period of time, many people, a vast number of people, would decide to flee the following morning or decide how to - - how to get away, following the statements that Mr. Brdanin made and the comments that he made", T. 2832 (closed session). BT-7 added that "all his messages were so transparent, so forceful, so arrogant, that they provoked a sort of psychosis. They provoked a fear that I have spoken about, the inability to sleep", T. 2835 (closed session). Amir Džonlić gave evidence that the Accused's statements caused "great fear und uncertainty among all the citizens who were of non-Serb nationality in Banja Luka", T. 2305. BT-11 commented on the Accused's statements as follows: "As for Muslims and Croats, it instilled fear, because it created a very big dilemma for that part of the population, whether to leave or to stay", T. 3974 (closed session). Zijahudin Smailagić confirmed this account stating that "those statements were very detrimental for us, very intimidating, and instilled fear, not only amongst the Muslim population but amongst the Croats as well (...) We knew, as early as that, that horrible things would happen and they did indeed happen subsequently", T. 1935-1936. BT-9 gave evidence that "in all the programmes, and especially on television [the Accused] publicly frightened people, and after that, people would leave Banja Luka and ethnic cleansing took place. I can say with certainty for Mr. Brdanin that he was the alpha and omega of these programmes", T. 3264 (closed session). Branko Cvijić gave evidence that the statements of the Accused "could incite fear in other people", T. 21421. Ibrahim Fazlagić, talking about the percentages mentioned by the Accused stated: "5 to 6 per cent, which means that 95 per cent would have to leave their native land (...) and I had to leave my town, a town that I had given everything to. And I am wondering why, why I left. What did I actually do?", T. 4273.

political career<sup>863</sup> does not detract from their gravity, the fact that they were undoubtedly intentional and the effect that they had on both the Serb and the non-Serb population of the Bosnian Krajina.

6. The Accused's knowledge that crimes were being committed

333. The Trial Chamber is satisfied that the Accused had detailed knowledge that, during the time and in the area relevant to the Indictment, crimes were being committed in execution of the Strategic Plan.

334. The Accused received reports during ARK Crisis Staff meetings from the representatives of municipal Crisis Staffs on the actions they were taking and the problems they were encountering in implementing the ARK Crisis Staff decisions.<sup>864</sup> The Accused would in turn brief the Presidents of the ARK municipalities attending ARK Crisis Staff meetings on what was happening on the front line.<sup>865</sup> The Accused himself made it clear, when interviewed by Banja Luka TV in July 1992 in Kotor Varoš municipality, where some of the worst crimes had been committed, that he had to keep himself informed of events. He stated that "being the President of the Crisis Staff of the Autonomous Region, it is my responsibility to tour all the frontlines [...] the reason for this visit, is that every Monday I must inform Presidents of the Crisis Staffs about the political situation in this region."<sup>866</sup> At the "frontlines", the Accused was briefed by military personnel in order to gain an understanding of the situation.<sup>867</sup>

335. Also during July 1992, the Accused, together with others, including Predrag Radić, visited the Prijedor area making "a tour of the combat area and collection centres". In this context, on 17 July 1992, the Accused visited Omarska camp. The Accused publicly stated that "what we have seen in Prijedor is an example of a job well done", adding that "it is a pity that many in Banja Luka, are not aware of it yet, just as they are not aware of what might happen in Banja Luka in the very near future."<sup>868</sup>

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<sup>863</sup> BT-94 stated: "I am inclined to believe that most of the things that [the Accused] did so, he did them for his own advancement, that this was his priority", T. 24702. Branko Cvijić gave evidence that especially during election campaign, the Accused was capable of saying anything and that he was competing with other SDS members in who would use more abusive language, T. 21421. See also Predrag Radić, T. 22006.

<sup>864</sup> Predrag Radić, T. 22271; Milorad Sajić, T. 23684-23685.

<sup>865</sup> Predrag Radić, T. 22271.

<sup>866</sup> Ex. P1598, video footage containing an interview by Banja Luka TV with the Accused. See also ex. P1590, "1<sup>st</sup> KK Forward Command Post War Diary Number 1", dated 24 June – 30 August 1992, which is a diary of events from the 1<sup>st</sup> Krajina Corps forward command post and related to 'Operation Corridor 92'. An entry dated 1 July 1992 notes that at 15:00 hrs, the Accused was coming with his escort to visit the Command of the 'Corridor 92' Operations Group.

<sup>867</sup> Ex. P 1590, "1<sup>st</sup> KK Forward Command Post War Diary"; ex. P1725, "Conclusions of the ARK Crisis Staff", dated 17 June 1992, item 1; Osman Selak, T. 13111.

<sup>868</sup> Ex. P284, "Kozarski Vjesnik newspaper article", entitled "Representatives of the Krajina in Prijedor: It is not easy for anyone", dated 17 July 1992; Predrag Radić, T. 21996-22008.

336. In addition, the fact that the highest representatives of the police and the army in the ARK were members of the ARK Crisis Staff, and the *de facto* authority and close co-operation that the ARK Crisis Staff had with respect to the police and the army respectively is another indicator that the Accused was aware of the actions undertaken by the police and the army.<sup>869</sup>

337. The Accused's knowledge of the criminal activity that was taken place is also proved by his statements. He publicly spoke out against mass lootings in Mehoveci<sup>870</sup> and war profiteering.<sup>871</sup>

338. Finally, the Trial Chamber is satisfied that the nature of the crimes committed in the ARK during the time relevant to the Indictment, including the large scale forcible displacement of the non-Serb civilian population and the armed attacks on non-Serb villages and towns, as well as the extent of the criminal activity throughout the ARK, allow for only one reasonable inference to be drawn, that is that it was common knowledge among the general public in the ARK that these crimes were being committed. The Trial Chamber is satisfied that the Accused, who held the positions of authority described above, who presided over the body in charge of coordinating the implementation of the Strategic Plan and who had access to information and kept himself informed through the municipal authorities, the police and the army, had an even more detailed knowledge of the crimes committed than the general public.<sup>872</sup>

#### **D. The Accused's criminal responsibility in general**

339. The Prosecution cumulatively charged the Accused for the crimes in Counts 1 through 12 under different modes of liability.<sup>873</sup> In order to avoid significant repetition, the Trial Chamber will at this point make general findings in relation to the relevant modes of liability, while specific

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<sup>869</sup> See, VI.B, "The Crisis Staff of the Autonomous Region of Krajina"; VI.C.2, "The authority of the ARK Crisis Staff with respect to the police"; VI.C.3, "The authority of the ARK Crisis Staff with respect to the army". The CSB received reports from the SJBs informing on the events within their municipality and on the actions they were taking to implement the ARK Crisis Staff decisions: ex. P717, "Reports from Prijedor, Bosanski Novi and Sanski Most SJBs to commission set up by Stojan Župljanin, the head of the CSB and member of the ARK Crisis Staff", dated 18 August 1992.

<sup>870</sup> BT-80, T. 15477 (closed session).

<sup>871</sup> BT-94, T. 24835; BT-11, T. 4037 (closed session).

<sup>872</sup> See in this context, VI.C, "The Authority of the ARK Crisis Staff". On 18 August 1992, the Accused attended a high-level political/police/military meeting in General Talić's office. One of the matters discussed at this meeting was the closure of Omarska camp, BT-80, T. 15488-15494 (closed session); ex. P1768 (under seal). On 24 September 1992, the Accused attended a meeting in Čelinac with General Talić, Stojan Župljanin, Slobodan Dubočanin and the President of the Kotor Varoš Crisis Staff, discussing political and military issues arising out of the situation in Kotor Varoš, BT-80, T. 15542-15543 (closed session); ex. P1768 (under seal). See also ex. P1598, video footage containing an interview by Banja Luka TV with the Accused, containing the following statement: "Being the President of the Crisis Staff of the Autonomous Region, it is my responsibility to tour all the frontlines [...] the reason for this visit, is that every Monday I must inform Presidents of the Crisis Staffs about the political situation in this region". The Trial Chamber is satisfied that by traveling to the front, the Accused saw the result of the destruction perpetrated by the Bosnian Serb forces. Moreover, the Accused was involved in the discussions aimed at resolving the problems caused by the Miće paramilitary group in Teslić Municipality: BW-1, T. 23323-23325 (closed session).

<sup>873</sup> For the crimes and the modes of liability charged in the indictment, see I., "Summary of the Charges".

findings in relation to the crimes charged will be addressed below in the sections dealing with these charges.

### 1. Joint Criminal Enterprise

340. In the Indictment, the Prosecution alternatively pleads the Accused's individual criminal responsibility pursuant to the first and third categories of JCE.<sup>874</sup> With respect to the first category of JCE the Prosecution alleges that “[t]he purpose of the joint criminal enterprise was the permanent forcible removal of Bosnian Muslim and Bosnian Croat inhabitants from the territory of the planned Serbian state by the commission of the crimes alleged in Counts 1 through 12”.<sup>875</sup> The alternative pleading of the third category of JCE reads as follows: “[The Accused] is individually responsible for the crimes enumerated in Counts 1 to 7 inclusive and Counts 10, 11 and 12 on the basis that these crimes were natural and foreseeable consequences of the acts described in paragraphs 58 and 59 *infra*.”<sup>876</sup> Paragraphs 58 and 59 relate to Count 8 (deportation) and Count 9 (forcible transfer).

341. For both the first and the third categories of JCE the Prosecution must, *inter alia*, prove the existence of a common plan that amounts to, or involves, an understanding or an agreement to commit a crime provided for in the Statute (“Common Plan”).<sup>877</sup> The Common Plan pursuant to the first category of JCE charged in the Indictment would amount to, or involve, an understanding or an agreement between the members of the JCE to commit the crimes charged in Counts 1 through 12, while the Common Plan pursuant to the third category of JCE charged in the Indictment would amount to, or involve, an understanding or an agreement between the members of the JCE to commit the crimes charged in Counts 8 and 9. In the context of the third category of JCE, it is alleged that the crimes charged in Counts 1 to 7 inclusive and Counts 10, 11 and 12 were natural and foreseeable consequences of the crimes charged in Counts 8 and 9.

342. While the Common Plan necessarily has to amount to, or involve, an understanding or an agreement between two or more persons that they will commit a crime within the Statute, the underlying purpose for entering into such an agreement (*i.e.*, the ultimate aim pursued by the commission of the crimes) is irrelevant for the purposes of establishing individual criminal responsibility pursuant to the theory of JCE.

343. The Prosecution alleges that in addition to the Accused, “[a] great many individuals participated in this joint criminal enterprise, including [...] Momir Talić, other members of the ARK Crisis Staff, the leadership of the SerBiH and the SDS, including Radovan Karadžić, Momčilo

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<sup>874</sup> Rule 98*bis* Decision, para. 24.

<sup>875</sup> Indictment, para. 27.1.

<sup>876</sup> Indictment, para. 27.4.

Krajišnik and Biljana Plavšić, members of the Assembly of the Autonomous Region of Krajina and the Assembly's Executive Committee, the Serb Crisis Staffs of the ARK municipalities, the army of the Republika Srpska, Bosnian Serb paramilitary forces and others.”<sup>878</sup>

344. The Prosecution did not allege that the Accused physically perpetrated any of the crimes charged in the Indictment.<sup>879</sup> Therefore, in order to hold the Accused criminally responsible for the crimes charged in the Indictment pursuant to the first category of JCE, the Prosecution must, *inter alia*, establish that between the person physically committing a crime and the Accused, there was an understanding or an agreement to commit that particular crime.<sup>880</sup> In order to hold him responsible pursuant to the third category of JCE, the Prosecution must prove that the Accused entered into an agreement with a person to commit a particular crime (in the present case the crimes of deportation and/or forcible transfer) and that this same person physically committed another crime, which was a natural and foreseeable consequence of the execution of the crime agreed upon.<sup>881</sup>

345. The evidence does not show that any of the crimes charged in the Indictment were physically perpetrated by Momir Talić, other members of the ARK Crisis Staff,<sup>882</sup> the leadership of the SerBiH and the SDS (including Radovan Karadžić, Momčilo Krajišnik and Biljana Plavšić), members of the ARK Assembly and the Assembly's Executive Committee and the Serb Crisis Staffs of the ARK municipalities. As it has not been established that these persons carried out the *actus reus* of any of the crimes charged in the Indictment, the Trial Chamber will not examine the existence of a JCE between the Accused and these individuals. The *actus reus* of the crimes charged in the Indictment that have been established beyond reasonable doubt was perpetrated by members of the army,<sup>883</sup> the Bosnian Serb police, Serb paramilitary groups, Bosnian Serb armed civilians or unidentified individuals (“Physical Perpetrators”). While the names of the perpetrators have been established in a relatively small number of cases, in most cases the Physical Perpetrators have only been identified by the group they belonged to.

346. During the pre-trial stage of this case, the Trial Chamber ruled that if individual criminal responsibility pursuant to the theory of JCE is charged, the indictment must inform the accused, *inter alia*, of the identity of those engaged in the enterprise so far as their identity is known, but at

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<sup>877</sup> The second category of JCE is somehow different, but will not be discussed in this Judgement.

<sup>878</sup> Indictment, para. 27.2.

<sup>879</sup> Indictment, para. 33.

<sup>880</sup> Decision on Form of Further Amended Indictment and Prosecution Application to Amend, para. 44. If an Accused entered into an agreement with one person to commit a specific crime and with another person to commit another crime, it would be more appropriate to speak about two separate JCEs. *See also*, para. 264 *supra*.

<sup>881</sup> The Trial Chamber chooses to use the term “physical perpetrators of crimes” in order to refer to the person(s) who carried out the *actus reus* of the crime(s) in question.

<sup>882</sup> The Prosecution has alleged that Nenad Stevandić and Slobodan Dubočanin physically perpetrated some of the crimes charged in the Indictment. The Trial Chamber is not satisfied beyond reasonable doubt that this is the case.



least by reference to their category as a group.<sup>884</sup> In the present Indictment, apart from the individuals for which the evidence does not show that they physically perpetrated any of the crimes charged, a JCE is alleged between the Accused and “the army of the Republika Srpska, Serb paramilitary forces and others”. The Indictment does not expressly plead a JCE between the Accused and members of the police. The Trial Chamber is satisfied that the general term “others” used in the Indictment cannot be invoked to include groups that are not specifically identified, as this term does not meet the requirement of specificity in pleading. Accordingly, the Trial Chamber concludes that no JCE between the Accused and the police has been pleaded. For the same reason, the Trial Chamber will not entertain any examination of a JCE between the Accused and Serb armed civilians and unidentified individuals.

347. What remains is an alleged JCE between the Accused and members of the army and Serb paramilitary forces (“Relevant Physical Perpetrators”). The Trial Chamber in this context emphasises that for the purposes of establishing individual criminal responsibility pursuant to the theory of JCE it is not sufficient to prove an understanding or an agreement to commit a crime between the Accused and a person in charge or in control of a military or paramilitary unit committing a crime. The Accused can only be held criminally responsible under the mode of liability of JCE if the Prosecution establishes beyond reasonable doubt that he had an understanding or entered into an agreement with the Relevant Physical Perpetrators to commit the particular crime eventually perpetrated or if the crime perpetrated by the Relevant Physical Perpetrators is a natural and foreseeable consequence of the crime agreed upon by the Accused and the Relevant Physical Perpetrators.<sup>885</sup>

348. In order to examine the alleged understanding or agreement between the Accused and the Relevant Physical Perpetrators to commit any of the crimes charged in the Indictment, the Trial Chamber makes reference to the Strategic Plan identified earlier in this Judgement.

349. The Trial Chamber has already established that during the second half of 1991, the Bosnian Serb leadership, including the members of the Main Board of the SDS and other members of the SDS, as well as Serb representatives of the armed forces, elaborated the Strategic Plan, aimed at linking Serb-populated areas in BiH together, gaining control over these areas and creating a separate Bosnian Serb state, from which most non-Serbs would be permanently removed. The

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<sup>883</sup> The army includes members of the JNA and later the VRS, the TO and military police units.

<sup>884</sup> Decision on Objections by Momir Talić to the Form of the Amended Indictment, para. 21, quoting from *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25, Decision on Form of Second Amended Indictment, 11 May 2000, para 16.

<sup>885</sup> Upon request of the Trial Chamber to the parties to address this legal question, both the Prosecution and the Defence agreed with the present conclusion, Prosecution Final Trial Brief, Appendix A, para. 2; Defence Final Trial Brief, pp. 117-118.

Bosnian Serb leadership was aware that the Strategic Plan could only be implemented by the use of force and fear, thus by the commission of crimes.

350. During the following months and throughout the period relevant to the Indictment, a large number of individuals, including the Accused and many of the Relevant Physical Perpetrators, espoused the Strategic Plan and acted towards its implementation. The Trial Chamber is satisfied that all individuals espousing the Strategic Plan had the requisite *mens rea* for at least the crimes charged in Count 8 (deportation) and Count 9 (forcible transfer), *i.e.*, they intended to wilfully participate in expulsions or other coercive conduct to forcibly deport one or more person to another State without grounds permitted under international law (deportation) and to force persons to leave their territory without ground permitted under international law (forcible transfer).<sup>886</sup>

351. However, the Trial Chamber is of the view that the mere espousal of the Strategic Plan by the Accused on the one hand and many of the Relevant Physical Perpetrators on the other hand is not equivalent to an arrangement between them to commit a concrete crime. Indeed, the Accused and the Relevant Physical Perpetrators could espouse the Strategic Plan and form a criminal intent to commit crimes with the aim of implementing the Strategic Plan *independently from each other* and without having an understanding or entering into any agreement between them to commit a crime.

352. Moreover, the fact that the acts and conduct of an accused facilitated or contributed to the commission of a crime by another person and/or assisted in the formation of that person's criminal intent is not sufficient to establish beyond reasonable doubt that there was an understanding or an agreement between the two to commit that particular crime. An agreement between two persons to commit a crime requires a *mutual* understanding or arrangement with each other to commit a crime.

353. The Trial Chamber is satisfied that there is no direct evidence to establish such an understanding or agreement between the Accused and the Relevant Physical Perpetrators and will therefore examine whether an understanding or agreement to that effect between the Accused and the Relevant Physical Perpetrators can be inferred from the fact that they acted in unison to implement the Strategic Plan.<sup>887</sup> In order to draw this inference, it must be the only reasonable inference available from the evidence.

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<sup>886</sup> The Trial Chamber comes to this conclusion considering the evidence as a whole and particularly the evidence discussed in the following Chapters: IV., "General Overview"; VI., "The Regional Level of Authority"; C.1., *supra*, "The Accused espousal of the Strategic Plan"; IX., "Charges and Findings". This evidence establishes a pattern of criminal conduct which leads to these inferences.

<sup>887</sup> Pursuant to the *Tadić* Appeal Judgement, "[t]he common plan or purpose may materialise extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect a joint criminal enterprise", para. 227.

354. The Trial Chamber is satisfied that the acts and conduct of the Accused, in particular his public speeches and the decisions of the ARK Crisis Staff, which can be attributed to the Accused, were aimed at the implementation of the Strategic Plan and facilitated the commission of crimes by the Relevant Physical Perpetrators. However, given the physical and structural remoteness between the Accused and the Relevant Physical Perpetrators and the fact that the Relevant Physical Perpetrators in most cases have not even been personally identified, the Trial Chamber is not satisfied that the only reasonable conclusion that may be drawn from the Accused's and the Relevant Physical Perpetrators' respective actions aimed towards the implementation of the Common Plan is that the Accused entered into an agreement with the Relevant Physical Perpetrators to commit a crime. Indeed, the Trial Chamber is satisfied that the evidence allows for other reasonable inferences to be drawn. For example, one such reasonable inference would be that both the Accused and the Relevant Physical Perpetrators, all holding the requisite *mens rea* for a particular crime and driven by the same motive to implement the Strategic Plan, furthered the commission of the same crime, without, however, entering into an agreement between them to commit that crime. Yet another reasonable inference to be drawn would be that the Relevant Physical Perpetrators committed the crimes in question in execution of orders and instructions received from their military or paramilitary superiors who intended to implement the Strategic Plan, whereby the Relevant Physical Perpetrators did not enter into an agreement with the Accused to commit these crimes.

355. The Trial Chamber is of the view that JCE is not an appropriate mode of liability to describe the individual criminal responsibility of the Accused, given the extraordinarily broad nature of this case, where the Prosecution seeks to include within a JCE a person as structurally remote from the commission of the crimes charged in the Indictment as the Accused.<sup>888</sup> Although JCE is applicable in relation to cases involving ethnic cleansing, as the *Tadić* Appeal Judgement recognises, it appears that, in providing for a definition of JCE, the Appeals Chamber had in mind a somewhat smaller enterprise than the one that is invoked in the present case.<sup>889</sup> An examination of the cases tried before this Tribunal where JCE has been applied confirms this view.<sup>890</sup>

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<sup>888</sup> The Trial Chamber refers to its previous finding that the Accused was both physically remote from the Physical Perpetrators and the latter were not subject to the structure over which the Accused exercised *de facto* authority.

<sup>889</sup> *Tadić* Appeal Judgement, para. 204: "An example of [the third category of JCE] would be a common, shared intention on the part of a group to forcibly remove members of one ethnicity from their town, village or region (to effect "ethnic cleansing") with the consequence that, in the course of doing so, one or more of the victims is shot and killed. While murder may not have been explicitly acknowledged to be part of the common design, it was nevertheless foreseeable that the forcible removal of civilians at gunpoint might well result in the deaths of one or more of those civilians. Criminal responsibility may be imputed to all participants within the common enterprise where the risk of death occurring was both a predictable consequence of the execution of the common design and the accused was either reckless or indifferent to that risk. Another example is that of a common plan to forcibly evict civilians belonging to a particular ethnic group by burning their houses; if some of the participants in the plan, in carrying out this plan, kill civilians by setting their houses on fire, all the other participants in the plan are criminally responsible for the killing if

356. For the foregoing reasons, the Trial Chamber, considering all the circumstances, dismisses JCE as a possible mode of liability to describe the Accused's individual criminal responsibility.

## 2. Planning

357. As contended by the Prosecution, the Accused in the present case did not physically perpetrate any of the crimes established.<sup>891</sup> Responsibility for 'planning' a crime could thus, according to the above definition, only incur if it was demonstrated that the Accused was substantially involved at the preparatory stage of that crime in the concrete form it took, which implies that he possessed sufficient knowledge thereof in advance. This knowledge requirement should not, however, be understood to mean that the Accused would have to be intimate with every detail of the acts committed by the physical perpetrators.

358. Although the Accused espoused the Strategic Plan, it has not been established that he personally devised it.<sup>892</sup> The Accused participated in its implementation mainly by virtue of his authority as President of the ARK Crisis Staff and through his public utterances. Although these acts may have set the wider framework in which crimes were committed, the Trial Chamber finds the evidence before it insufficient to conclude that the Accused was involved in the immediate preparation of the *concrete crimes*. This requirement of specificity distinguishes 'planning' from other modes of liability. In view of the remaining heads of criminal responsibility, some of which more appropriately characterise the acts and the conduct of the Accused, the Trial Chamber dismisses 'planning' as a mode of liability to describe the individual criminal responsibility of the Accused.

## 3. Instigating

359. Many of the decisions of the ARK Crisis Staff for which the Accused bears responsibility requested that certain acts amounting to crimes be carried out. Most of the decisions did not take immediate effect and required implementation by, *e.g.*, municipal organs. In this context, it is immaterial whether the physical perpetrators were subordinate to the instigator, or whether a number of other persons would necessarily have to be involved before the crime was actually committed, as long as it can be shown that there was a causal link between an act of instigation and

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these deaths were predictable." See also, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, paras 44-45.

<sup>890</sup> ICTY cases have applied JCE to enterprises of a smaller scale, limited to a specific military operation and only to members of the armed forces (*Krstić* Trial Judgement, para. 610); a restricted geographical area (*Simić* Trial Judgement, paras 984-985); a small group of armed men acting jointly to commit a certain crime (*Tadić* Appeal Judgement, paras 232 *et seq.*; *Vasiljević* Trial Judgement, para. 208); or, for the second category of JCE, to one detention camp (*Krnjelac* Trial Judgement, para. 84).

<sup>891</sup> Indictment, para. 33.

the commission of a particular crime. Causality needs to be established between all acts of instigation and the acts committed by the physical perpetrators, even where the former are the public utterances of the Accused.

360. The Trial Chamber has found that decisions of the ARK Crisis Staff regarding the disarmament, dismissal and resettlement of non-Serbs were systematically implemented by the municipal Crisis Staffs, the local police, and the military. Moreover, it has been abundantly proved that the Accused made several inflammatory and discriminatory statements, *inter alia*, advocating the dismissal of non-Serbs from employment, and stating that only a few non-Serbs would be permitted to stay on the territory of the ARK. In light of the various positions of authority held by the Accused throughout the relevant time, these statements could only be understood by the physical perpetrators as a direct invitation and a prompting to commit crimes. Against this background, the Trial Chamber is satisfied that the Accused instigated the commission of some crimes charged in the Indictment.

361. The relation of this mode of liability to individual crimes will be analysed below in the sections dealing with the responsibility of the Accused for the specific crimes.

#### 4. Ordering

362. The Trial Chamber has already found that the ARK Crisis Staff became the highest organ of civilian authority in the ARK, to which the municipal authorities were *de facto* subordinated. Municipal authorities maintained a clear line of communication with the ARK Crisis Staff commensurate with such a relationship: ARK Crisis Staff meetings were attended on a weekly basis by the Presidents of the member municipalities or their representatives.

363. The ARK Crisis Staff repeatedly stated that its decisions were binding on all municipalities. In addition, the municipal authorities accepted the authority of the ARK Crisis Staff to issue decisions that were directly binding on them.

364. That a number of municipalities had started implementing certain aspects of the Strategic Plan even before the ARK Crisis Staff issued instructions does not detract from the fact that, following its establishment, the ARK Crisis Staff had the authority to issue binding decisions and in fact did so, and that the municipal authorities acted pursuant to these decisions. Furthermore, the Trial Chamber is satisfied that these decisions were binding on municipal authorities even if there was no *formally* established mechanism for imposing sanctions on the municipalities in case of failure to implement ARK Crisis Staff decisions, and even if in some occasions municipal

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<sup>892</sup> See, C.1, *supra*, “The Accused’s espousal of the Strategic Plan”.

authorities disregarded these decisions and acted independently, because the municipal authorities did not challenge the authority of the ARK Crisis Staff to issue these decisions or their binding nature.

365. The Trial Chamber has also found that the ARK Crisis Staff, as the highest civilian authority of the ARK, exercised *de facto* authority over the police in the ARK, and that through its decisions it in fact issued orders which the CSB passed down to the SJBs with the instruction to implement them.

366. As shown, ARK Crisis Staff decisions were systematically implemented by the municipal authorities and by the police in three key areas: a) the disarmament of “paramilitary groups” and confiscation of weapons; b) the dismissals of non-loyal/non-Serb professionals; and c) the resettlement of the non-Serb population. The Trial Chamber has also found that the decisions of the ARK Crisis Staff can be attributed to the Accused. Whether the ARK Crisis Staff decisions in these key areas amounted to orders to commit crimes charged in the Indictment is analysed for each crime under the heading of the responsibility of the Accused.

#### 5. Aiding and abetting

367. The Trial Chamber is satisfied that the ARK Crisis Staff practically assisted the commission of crimes by the army, the police and paramilitary organisations by, *inter alia*, demanding the disarmament of non-Serbs through announcements and decisions setting deadlines concerning the surrender of weapons and providing for the eventual forceful confiscation of weapons. These announcements and decisions not only facilitated the Bosnian Serb armed take-over of individual municipalities but on many occasions were used as the pretext for such take-overs. The Trial Chamber has also found that the decisions of the ARK Crisis Staff can be attributed to the Accused.

368. In addition, some of the inflammatory and discriminatory statements made by the Accused, in light of the positions of authority that he held, amount to encouragement and moral support to the physical perpetrators of crimes. Moreover, the Accused made threatening public statements which had the effect of terrifying non-Serbs into wanting to leave the territory of the ARK, thus paving the way for their deportation and/or forcible transfer by others. The establishment by the ARK Crisis Staff of an Agency for the Movement of People and Exchange of Properties in Banja Luka further assisted in this regard.

369. The Trial Chamber is thus satisfied that the Accused carried out acts that consisted of practical assistance, encouragement or moral support to the principal offenders of the crimes, and that he did so in his capacity as member of the SerBiH Assembly and the ARK Assembly before the

ARK Crisis Staff was established, as President of the ARK Crisis Staff, and after it ceased to exist in his capacity as a minister in the RS Government. Whether these acts had a substantial effect on the commission of crimes charged in the Indictment by the principal offenders is analysed for each crime under the heading of the responsibility of the Accused.

#### 6. Superior Criminal Responsibility under Article 7(3) of the Statute

370. In order to hold the Accused criminally responsible pursuant to Article 7(3) of the Statute, the Prosecution must in the first place prove a superior-subordinate relationship between the Accused and the physical perpetrators of the crimes in question. As noted above, the Physical Perpetrators committing the crimes charged in the Indictment that have been established beyond reasonable doubt include members of the Bosnian Serb military,<sup>893</sup> the Bosnian Serb police, Serb paramilitary groups, Bosnian Serb armed civilians and unidentified individuals. Municipal authorities were involved in the commission of the crimes charged.

371. Due to lack of specific evidence, it is not possible to examine whether a superior-subordinate relationship existed between the Accused and Bosnian Serb armed civilians or unidentified individuals. Therefore, the Trial Chamber will only look into whether the Accused had such a relationship with members of the Bosnian Serb military, the Bosnian Serb police and Serb paramilitary groups.

372. As far as the relation between the Accused and the army is concerned, the Trial Chamber is satisfied that, although the ARK Crisis Staff closely co-operated with the army and had great influence over it, the Accused as President of the ARK Crisis Staff or in any of his other positions between April and December 1992 did not have effective control over members of the army, which would entail his material ability to prevent or punish the commission of crimes by these individuals.<sup>894</sup>

373. Similarly, the Trial Chamber is not satisfied that, in spite of the substantial influence he exercised, the Accused as President of the ARK Crisis Staff or as a member of the Banja Luka Crisis Staff was in a superior-subordinate relationship with members of the SOS or other Serb paramilitary organisations.<sup>895</sup>

374. With regard to the police, the Trial Chamber has already found that the Accused, to whom the decisions of the ARK Crisis Staff can be attributed, had *de facto* authority to issue instructions

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<sup>893</sup> The army includes members of the JNA and later the VRS, the TO and military police units.

<sup>894</sup> See, VI.C.3, "The authority of the ARK Crisis Staff with respect to the army".

<sup>895</sup> See, VI.C.4, "The authority of the ARK Crisis Staff with respect to Serbian paramilitary units".

to the police.<sup>896</sup> However, the Trial Chamber is satisfied that the Accused's *de facto* authority to direct the action of the police is not indicative of his alleged material ability to prevent or punish the commission of crimes by members of the police.

375. The Prosecution alleged that the superior-subordinate relationship between the Accused and the police has been established on the basis of the Accused's conferred power to dismiss Stojan Župljanin, the Chief of the CSB. The Trial Chamber acknowledges that on 31 October 1991, the Accused was told by Radovan Karadžić that he had the power to dismiss Stojan Župljanin if he was not pleased with him.<sup>897</sup> However, the Trial Chamber is not satisfied beyond reasonable doubt that the Accused had this power during the time relevant to the Indictment. A reasonable doubt arises in that on 27 March 1992, the SerBiH Assembly established the MUP<sup>898</sup> and at all times relevant to the Indictment, the police maintained a chain of command which led to the Ministry of Interior of the SerBiH.<sup>899</sup> Moreover, the Trial Chamber is satisfied that, in view of the implementation by the police of the Strategic Plan, it is difficult to understand that the Accused's power to dismiss Stojan Župljanin was intended by Radovan Karadžić to be used for the purposes of preventing or punishing the commission of crimes by the police. Therefore, the Trial Chamber concludes that during the time relevant to the Indictment, the Accused did not have effective control over the police which would translate into his material ability to prevent or punish the commission of crimes. There is also no concrete evidence that the Accused at any time between April and December 1992, had the duty to report crimes as explained in paragraph 281 *supra*.

376. As far as the municipal authorities are concerned, the Trial Chamber has already found that, although the ARK Crisis Staff exercised *de facto* authority over the municipal authorities, there was no formally established mechanism for imposing sanctions on the municipalities in case of failure to implement ARK Crisis Staff decisions and that in some instances, this allowed some municipal authorities to act independently.<sup>900</sup> Moreover, the Trial Chamber is not satisfied beyond reasonable doubt that the *de facto* authority that the ARK Crisis staff had over the municipal authorities was

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<sup>896</sup> See, VI.C.2, "The Authority of the ARK Crisis Staff with respect of the police".

<sup>897</sup> Ex. P2357, "Intercepted telephone conversation between Radovan Karadžić and the Accused", dated 31 October 1991. Patrick Treanor interpreted this conversation to mean that Radovan Karadžić is encouraging the Accused to take charge of the situation, T. 18732. In this context, see also, VI.C.2, "The authority of the ARK Crisis Staff with respect to the police"; VI.C.1, "The authority of the ARK Crisis Staff with respect to municipal authorities".

<sup>898</sup> On 31 March 1992, Momčilo Mandić, Assistant Minister of Internal Affairs in SerBiH, sent a telex to all security centers and all the public security stations around the Republic, informing them of the establishment of the Serbian Ministry of Internal Affairs (MUP), decision taken at a meeting of the SerBiH Assembly, held on 27 March 1992, at which the Constitution of the SerBiH was ceremonially promulgated, ex. P2366. See also Patrick Treanor, T. 18781. The legislation on the MUP came into effect on 31 March 1992, when a Minister was appointed who answered to the SerBiH Assembly, Patrick Treanor, T. 18774-18775, 18779-18780.

<sup>899</sup> Prior to 31 March 1992, the police forces maintained a chain of command which led to the Ministry of Interior of the SerBiH, Patrick Treanor, T. 18774-18775, 18779-18780; BW-1, T. 23304-23306 (closed session); Milenko Savić, T. 22361-22364.

<sup>900</sup> See, VI.C.1, "The authority of the ARK Crisis Staff with respect to municipal authorities".



sufficient to prevent the municipal authorities from being involved in the commission of the crimes charged.

377. For the foregoing reasons the Trial Chamber dismisses superior criminal responsibility under Article 7(3) of the Statute as a possible mode of liability to describe the individual criminal responsibility of the Accused.

## IX. CHARGES AND FINDINGS

### A. Extermination (count 4) and Wilful Killing (count 5)

378. In Counts 4 and 5 of the Indictment, the Accused is charged with extermination as a crime against humanity and with wilful killing as a grave breach of the Geneva Conventions of 1949, punishable respectively under Articles 5(b) and 2(a) of the Statute.

#### 1. The law

379. The Trial Chamber will first define the elements<sup>901</sup> of the crime of wilful killing, before turning to the elements specific to the crime of extermination.<sup>902</sup>

#### (a) Wilful killing

380. It is clear from the Tribunal's jurisprudence that the elements of the underlying crime of wilful killing under Article 2 of the Statute are identical to those required for murder under Article 3 and Article 5 of the Statute.<sup>903</sup>

381. Save for some insignificant variations in expressing the constituent elements of the crime of murder and wilful killing, which are irrelevant for this case, the jurisprudence of this Tribunal has consistently defined the essential elements of these offences as follows:

1. The victim is dead;
2. The death was caused by an act or omission of the accused, or of a person or persons for whose acts or omissions the accused bears criminal responsibility; and
3. The act was done, or the omission was made, by the accused, or a person or persons for whose acts or omissions he bears criminal responsibility, with an intention:
  - to kill, or

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<sup>901</sup> The concept 'elements' is restricted to constituent elements of these offences. The Trial Chamber is satisfied that the general requirements for crimes against humanity and grave breaches of the Geneva Conventions have been met, *see* V.D., "Findings in Respect of General Requirements for Articles 2, 3 and 5 of the Statute".

<sup>902</sup> The Trial Chamber is aware that this approach does not follow the sequence of the counts as charged in the Indictment, but believes that this structure serves better the purpose of a clear and sound analysis.

<sup>903</sup> *See* *Čelebići* Appeal Judgement, paras 422-423; *Čelebići* Trial Judgement, para. 422, which make this finding with respect to wilful killing under Article 2 of the Statute and murder under Article 3 of the Statute. *See* *Krstić* Trial Judgement, para. 485; *Krnjelac* Trial Judgement, para. 323; *Vasiljević* Trial Judgement, para. 205; *Stakić* Trial Judgement, para. 631, which make this finding with respect to murder under Article 3 and 5 of the Statute. *See* *Kordić* Trial Judgement, para. 236; *Naletilić* Trial Judgement, para. 248, which make this finding with respect to wilful killing under Article 2 and murder under both Article 3 and 5 of the Statute. *See* V.A., "Article 2 of the Statute: Grave Breaches of the 1949 Geneva Conventions".

- to inflict grievous bodily harm or serious injury, in the reasonable knowledge that such act or omission was likely to cause death.<sup>904</sup>

382. The *actus reus* consists in the action or omission of the accused resulting in the death of the victim.<sup>905</sup> The Prosecution need only prove beyond reasonable doubt that the accused's conduct contributed substantially to the death of the victim.<sup>906</sup>

383. The Trial Chamber concurs with the *Tadić* Trial Chamber that:

Since these were not times of normalcy, it is inappropriate to apply rules of some national systems that require the production of a body as proof to death. However, there must be evidence to link injuries received to a resulting death.<sup>907</sup>

384. A similar position was taken by a Trial Chamber of the ICTR rejecting a defence motion to have witness testimony struck off the record, on the basis that there was no proof of *corpus delictus* (proof of death). The Trial Chamber held that the ICTR Statute did not have any

... rule or requirement or practice for the production of the body, or the body of the crime, particularly not in the light of the crimes for which the ICTR was created; particularly genocide, crimes against humanity and violations of Article Three common to the Geneva Convention.<sup>908</sup>

385. In *Krnjelac*, the Trial Chamber held that:

Proof beyond reasonable doubt that a person was murdered does not necessarily require proof that the dead body of that person has been recovered. [T]he fact of a victim's death can be inferred circumstantially from all of the evidence presented to the Trial Chamber.<sup>909</sup>

The Trial Chamber added that a victim's death may be established by circumstantial evidence provided that the *only* reasonable inference is that the victim is dead as a result of the acts or omissions of the accused.<sup>910</sup>

386. With respect to the requisite *mens rea* of wilful killing under Article 2 of the Statute, the Trial Chamber notes that there has been some debate within the jurisprudence of this Tribunal and the ICTR regarding the question whether the *mens rea* threshold for murder, and *mutatis mutandis*

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<sup>904</sup> For jurisprudence of this Tribunal, see *Čelebići* Appeal Judgement, paras 422-423; *Čelebići* Trial Judgement, paras 424-439; *Blaškić* Trial Judgement, para. 217; *Kupreškić* Trial Judgement, paras 560-561; *Kordić* Trial Judgement, paras 235-236; *Krstić* Trial Judgement, para. 485; *Kvočka* Trial Judgement, para. 132; *Krnjelac* Trial Judgement, para. 324; *Vasiljević* Trial Judgement, para. 205; *Naletilić* Trial Judgement, para. 248; *Stakić* Trial Judgement, para. 747 with reference to paras 631, 584-587. For ICTR jurisprudence, see *Kayishema* Trial Judgement, para. 140; *Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-T, Judgement, 7 June 2001 ("*Bagilishema* Trial Judgement"), para. 84-85.

<sup>905</sup> *Čelebići* Trial Judgement, para. 424; *Kordić* Trial Judgement, para. 229; *Kupreškić* Trial Judgement, para. 560, in the context of murder under Article 5 of the Statute.

<sup>906</sup> *Čelebići* Trial Judgement, para. 424.

<sup>907</sup> *Tadić* Trial Judgement, para. 240.

<sup>908</sup> *Prosecutor v. Hassan Ngeze*, Case No. ICTR-97-27, Oral Decision, 21 June 2001.

<sup>909</sup> *Krnjelac* Trial Judgement, para. 326.

<sup>910</sup> *Ibid.* In the context of prison camp cases, the *Krnjelac* Trial Chamber listed several examples of circumstantial fact from which it may be inferred that the victim died: *ibid.*, para. 327.

wilful killing, requires a mental element of premeditation.<sup>911</sup> The Trial Chamber finds that the *mens rea* for murder and wilful killing does not require premeditation.<sup>912</sup> In this respect it endorses the *Stakić* Trial Chamber findings that:

[B]oth a *dolus directus* and a *dolus eventualis* are sufficient to establish the crime of murder [...] The technical definition of *dolus eventualis* is the following: if the actor engages in life-endangering behaviour, his killing becomes intentional if he ‘reconciles himself’ or ‘makes peace’ with the likelihood of death. [...]<sup>913</sup>

The threshold of *dolus eventualis* thus entails the concept of recklessness, but not that of negligence or gross negligence.<sup>914</sup> To satisfy the *mens rea* for murder and wilful killing, it must be established that the accused had an intention to kill or to inflict grievous bodily harm or serious injury in the reasonable knowledge that it would likely lead to death.<sup>915</sup>

387. In addition, the Trial Chamber notes that the *mens rea* may also be inferred either directly or *circumstantially* from the evidence in the case.<sup>916</sup>

#### (b) Extermination

388. The jurisprudence of this Tribunal and the ICTR has consistently held that, apart from the question of scale, the core elements of wilful killing (Article 2) and murder (Article 3 and Article 5) on the one hand and extermination (Article 5) on the other are the same.<sup>917</sup> In addition to the

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<sup>911</sup> Based upon a comparison between the English (murder) and French (*assassinat*) provision of the Statute with respect to crimes against humanity, some Trial Chambers held that murder as a crime against humanity includes the act of murder, and need not reach the level of ‘*assassinat*’, meaning that premeditation is not required. See *Akayesu* Trial Judgement, para. 588; *Rutaganda* Trial Judgement, para. 79; *Musema* Trial Judgement, para. 214; *Kupreškić* Trial Judgement, para. 561; *Blaškić* Trial Judgement, para. 216; *Kordić* Trial Judgement, para. 235. Other Trial Chambers were of the opinion that murder as a crime against humanity requires a higher mental element and therefore only premeditated murder (*assassinat*) constitutes a crime against humanity. See *Bagilishema* Trial Judgement, para. 84; *Kayishema* Trial Judgement, para. 139; *Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgement and Sentence, 15 May 2003 (“*Semanza* Trial Judgement”), paras 338-339.

<sup>912</sup> ‘Killings’ as underlying act of the charge of genocide under Article 4(2)(a) are also understood to refer to intentional but not necessarily premeditated murder, see *Kayishema* Appeal Judgement, para. 151.

<sup>913</sup> The *Stakić* Trial Chamber adopted this approach in its findings with respect to murder under Article 3 of the Statute. As the constitutive requirements of murder and wilful killing under the different provisions of the Statute are the same, this formulation applies *mutatis mutandis* to the offence of wilful killing under Article 2 and murder under Article 5 of the Statute. See *Stakić* Trial Judgement, paras 587, 747.

<sup>914</sup> *Ibid.*, para. 587.

<sup>915</sup> *Čelebići* Appeal Judgement, para. 422.

<sup>916</sup> *Čelebići* Trial Judgement, para. 437; *Krnojelac* Trial Judgement, para. 326, with respect to the crime of murder under Articles 3 and 5 of the Statute.

<sup>917</sup> See *Akayesu* Trial Judgement, paras 591-592, which for the first time addressed the legal definition of extermination within the jurisprudence of the ICTR and this Tribunal. This approach has been endorsed by the jurisprudence of the Trial Chambers within this Tribunal and the ICTR. For jurisprudence of this Tribunal, see *Krstić* Trial Judgement, para. 492; *Vasiljević* Trial Judgement, para. 226; *Stakić* Trial Judgement, para. 638. For ICTR jurisprudence, see *Kayishema* Trial Judgement, para. 142; *Rutaganda* Trial Judgement, para. 82; *Bagilishema* Trial Judgement, para. 86; *Prosecutor v. Elizaphan and Gerard Ntakirutimana*, Case No. ICTR-96-10 & ICTR-96-17-T, Judgement, 21 February 2003 (“*Ntakirutimana* Trial Judgement”), para. 813; *Prosecutor v. Eliezer Niyitegeka*, Case No. ICTR-96-14-A, Judgement, 9 July 2004 (“*Niyitegeka* Trial Judgement”), para. 450; *Prosecutor v. Juvenal Kajelijeli*, Case No. ICTR-98-44A-T, Judgement and Sentence, 1 December 2003 (“*Kajelijeli* Trial Judgement”), paras 886 (with respect to murder under Article 5), 891 (with respect to extermination); *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and*

preconditions which must be established for a finding of a crime against humanity under Article 5 of the Statute,<sup>918</sup> the elements of the crime of extermination under Article 5(b) are the following:

1. the killing of persons on a massive scale (*actus reus*), and
2. the accused's intention to kill persons on a massive scale or to create conditions of life that lead to the death of a large number of people (*mens rea*).<sup>919</sup>

389. The *actus reus* of the crime of extermination consists of any act, omission or combination thereof which contributes directly or indirectly to the killing of a large number of individuals.<sup>920</sup> An act amounting to extermination may include the killing of a victim as such as well as conduct which creates conditions provoking the victim's death and ultimately mass killings, such as the deprivation of food and medicine, calculated to cause the destruction of part of the population.<sup>921</sup>

390. Criminal responsibility for extermination can also be established in situations where the accused's participation in mass killings is remote or indirect.<sup>922</sup> This Trial Chamber also recalls that, although "the charge of extermination seems to have been restricted to individuals who, by reason of either their position or authority, could decide upon the fate or had control over a large number of individuals"<sup>923</sup>, the Prosecution is not required to prove that the accused had *de facto* control over a large number of individuals because of his position or authority.<sup>924</sup> Moreover, it should be noted that extermination "must be collective in nature rather than directed towards singled out individuals. However, in contrast to genocide, the offender need not have intended to destroy the *group* or part of the group to which the victims belong."<sup>925</sup>

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*Hassan Ngeze*, Case No. ICTR-99-52-T, Judgement, 3 December 2003 ("*Nahimana* Trial Judgement"), para. 1061; *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-95-54A-T, 22 January 2004 ("*Kamuhanda* Trial Judgement"), paras 686 (with respect to murder under Article 5), 691 (with respect to extermination). The difference between the ICTR Statute and the Statute of this Tribunal with respect to the crime of extermination lies in the requirement that offences under Article 3 of the ICTR Statute (crimes against humanity) be committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds (see *Akayesu* Appeal Judgement, paras 460-469). Article 5 of the Statute of this Tribunal does not prescribe that the enumerated crimes as a crime against humanity be committed on discriminatory grounds.

<sup>918</sup> See V.C., "Article 5 of the Statute: Crimes Against Humanity".

<sup>919</sup> *Stakić* Trial Judgement, paras 638, 641.

<sup>920</sup> See, e.g., *Vasiljević* Trial Judgement, para. 229. This definition was accepted by this Trial Chamber in its Rule 98bis Decision, para. 72.

<sup>921</sup> See *Krstić* Trial Judgement, para. 498, citing Article 7(2)(b) of the Statute of the International Criminal Court, which elaborates in more detail the definition of the legal term 'extermination'. The *Kayishema* Trial Judgement clarified for the first time what is meant by the 'creation of conditions of life that lead to mass killings': "imprisoning a large number of people and withholding the necessities of life which results in mass death; introducing a deadly virus into a population and preventing medical care which results in mass death.", see *ibid.*, para. 146. See also *Bagilishema* Trial Judgement, para. 90.

<sup>922</sup> *Vasiljević* Trial Judgement, para. 227. See also *Ntakirutimana* Trial Judgement, para. 813; *Niyitegeka* Trial Judgement, para. 450.

<sup>923</sup> *Vasiljević* Trial Judgement, para. 222.

<sup>924</sup> See Rule 98bis Decision, para. 74.

<sup>925</sup> *Vasiljević* Trial Judgement, para. 227; *Stakić* Trial Judgement, para. 639 (emphasis added).

391. The question has often arisen whether the element of killings on a massive scale implies a numerical requirement. The Trial Chamber agrees with the approach adopted by the *Krstić* Trial Chamber that:

The very term ‘extermination’ strongly suggests the commission of a massive crime, which in turn assumes a substantial degree of preparation and organisation. [...] [W]hile extermination generally involves a large number of victims, it may be constituted even where the number of victims is limited.<sup>926</sup>

Furthermore, the Trial Chamber recalls that the element of massiveness of the crime allows for the possibility to establish the evidence of the *actus reus* of extermination on an accumulation of separate and unrelated incidents, meaning on an aggregated basis.<sup>927</sup> The Trial Chamber in that respect agrees with the finding of the *Stakić* Trial Chamber, which clarified that the requirement of massiveness as a constitutive element of the *actus reus* of extermination has to be determined on a case-by-case analysis of all relevant factors.<sup>928</sup>

392. The *mens rea* of the crime of extermination has not been defined consistently in the jurisprudence of this Tribunal and of the ICTR. In general, three approaches can be differentiated.<sup>929</sup> The first approach was articulated by the *Kayishema and Ruzindana* Trial Chamber, which stated that extermination may encompass intentional, reckless or grossly negligent killing.<sup>930</sup> The second approach was formulated by the *Krstić* Trial Judgement in which the mental elements of murder (not necessarily premeditated) and extermination were linked. The *Krstić* Trial Chamber held that:

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<sup>926</sup> *Krstić* Trial Judgement, para. 501. This finding was endorsed by the *Stakić* Trial Chamber (see *Stakić* Trial Judgement, para. 640). The *Vasiljević* Trial Chamber rightly indicated that the finding of the *Kayishema* Trial Chamber that only one single killing could qualify as extermination if it forms part of a mass killing event, is not based on state practice (see *Vasiljević* Trial Judgement, para. 227, fn. 586, with reference to *Kayishema* Trial Judgement, para. 147; see also *Semanza* Trial Judgement, para. 335). However, this Trial Chamber agrees with the *Kayishema* Trial Chamber’s finding that “[t]he term ‘mass’, which may be understood to mean ‘large scale’, does not command a numerical imperative, but may be determined on a case-by-case basis using a common sense approach.” (see *Kayishema* Trial Judgement, para. 145; *Bagilishema* Trial Judgement, para. 87). In this context, the Trial Chamber also recalls the *Vasiljević* Trial Chamber, which “is not aware of cases which, prior to 1992, used the phrase ‘extermination’ to describe the killing of less than 733 persons. The Trial Chamber does not suggest, however, that a lower number of victims would disqualify that act as ‘extermination’ as a crime against humanity, nor does it suggest that such a threshold must necessarily be met.” (*Vasiljević* Trial Judgement, fn. 587).

<sup>927</sup> See Rule 98bis Decision, para. 73.

<sup>928</sup> *Stakić* Trial Judgement, para. 640. See also *Bagilishema* Trial Judgement, para. 87; *Kayishema* Trial Judgement, para. 142; *Kajelijeli* Trial Judgement, para. 891; *Kamuhanda* Trial Judgement, para. 692. The *Kajelijeli* and *Kamuhanda* Trial Chambers both state with respect to the charge of extermination that “the Chamber may consider evidence under this charge relating to the murder of specific individuals as an illustration of the extermination of the targeted group”, which supports the aggregated basis upon which the ‘large scale’ element of extermination could be assessed (see *Kajelijeli* Trial Judgement, para. 893; *Kamuhanda* Trial Judgement, paras 692, 694).

<sup>929</sup> This Trial Chamber already highlighted this inconsistency in its Rule 98bis Decision and indicated that, in the absence of settled jurisprudence, it favoured the definition of *mens rea* as identified in the *Vasiljević* Trial Judgement. See Rule 98bis Decision, paras 75-78.

<sup>930</sup> *Kayishema* Trial Judgement, para. 146. See also *Rutaganda* Trial Judgement, para. 80; *Musema* Trial Judgement, para. 218; *Bagilishema* Trial Judgement, para. 89.

The offences of murder and extermination have a similar element in that they both intend the death of the victims. They have the same *mens rea*, which consists of the intention to kill or the intention to cause serious bodily injury to the victim which the perpetrator must have reasonably foreseen was likely to result in death.<sup>931</sup>

The *Stakić* Trial Chamber has refined this second approach by finding that, in accordance with the character of the crime of extermination and with the construction of Article 5, the intent required for the crime of extermination should be the same as the *mens rea* of murder as a crime against humanity, namely *dolus directus* or *dolus eventualis*.<sup>932</sup>

393. The third approach was adopted by the *Vasiljević* Trial Chamber. The threshold for *mens rea* of extermination was defined as follows:

The offender must intend to kill, to inflict grievous bodily harm, or to inflict serious injury, in the reasonable knowledge that such an act or omission is likely to cause death, or otherwise intends to participate in the elimination of a number of individuals, in the knowledge that his action is part of a vast murderous enterprise in which a large number of individuals are systematically marked for killing or killed.<sup>933</sup>

The question arises whether the *mens rea* for extermination entails an additional element vis-à-vis the second approach formulated by the *Krstić* and *Stakić* Trial Chambers, namely the requirement to prove ‘knowledge of a vast murderous enterprise’.

394. The Trial Chamber recalls what it had stated in its Rule 98bis decision regarding the elements required for the crime of extermination, namely, that the *Vasiljević* approach was being preferred for the sole purpose of the Rule 98bis exercise because it is more beneficial to the accused.<sup>934</sup> Since then, the *Krstić* Appeal Judgement has crystallised the legal position on the matter in stating that for the purpose of extermination, no proof is required of the existence of a plan or policy to commit that crime.<sup>935</sup> In its decision, the Appeals Chamber added that the presence of such a plan or policy may be important evidence that the attack against a civilian population was widespread or systematic.<sup>936</sup> In view of this pronouncement, the Trial Chamber makes it clear that the *Vasiljević* “knowledge that his action is part of a vast murderous enterprise in which a larger number of individuals are systematically marked for killing or killed”<sup>937</sup>, if proven, will be

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<sup>931</sup> *Krstić* Trial Judgement, para. 495, endorsed by the *Semanza* Trial Judgement, para. 341.

<sup>932</sup> *Stakić* Trial Judgement, para. 642. It is important to note that within the ICTR jurisprudence, the *Kajelijeli* and *Kamuhanda* Trial Chambers adopted an *intermediate* approach by stating that: “We do not interpret *Bagilishema* and *Kayishema and Ruzindana* to suggest that a person may be found guilty of a Crime against Humanity if he or she did not possess the requisite *mens rea* for such a crime, but rather to suggest that reckless or grossly negligent conduct are indicative of the offender’s *mens rea*. Understood in that way, the *Semanza* position is not at odds with the *Bagilishema* and *Kayishema and Ruzindana* judgements.” (see *Kajelijeli* Trial Judgement, para. 894; *Kamuhanda* Trial Judgement, para. 696). This Trial Chamber however does not support this approach.

<sup>933</sup> *Vasiljević* Trial Judgement, para. 229 (Emphasis added).

<sup>934</sup> See Rule 98bis Decision, para. 78.

<sup>935</sup> *Krstić* Appeal Judgement, para. 225.

<sup>936</sup> *Ibid.*

<sup>937</sup> *Vasiljević* Trial Judgement, para. 229.

considered as evidence tending to prove the accused's knowledge that his act was part of a widespread or systematic attack against a civilian population, and not beyond that.

395. The Trial Chamber thus endorses the *mens rea* formulation as identified in the *Krstić* and *Stakić* Trial Judgements as the correct legal one for the final determination of the factual findings in this case.<sup>938</sup> The *mens rea* standard for extermination is the same as the *mens rea* required for murder as a crime against humanity with the difference that “extermination can be said to be murder on a massive scale”.<sup>939</sup> The Prosecution is thus required to prove beyond reasonable doubt that the accused had the intention to kill persons on a massive scale or to create conditions of life that led to the death of a large number of people.<sup>940</sup> The *mens rea* standard required for extermination does not include a threshold of negligence or gross negligence: the accused's act or omission must be done with intention or recklessness (*dolus eventualis*).<sup>941</sup>

396. It is in the light of the constitutive elements of wilful killing and extermination as described above that the evidence relating to each of the alleged acts of killings is assessed and the appropriate conclusions are reached in the section below.

## 2. The facts and findings

397. The Trial Chamber heard testimony from a large number of Prosecution witnesses about killings that occurred in various municipalities of the ARK. As a preliminary matter, the Trial Chamber finds that evidence was adduced with respect to a number of killings which were not charged in the Indictment.<sup>942</sup> While such evidence may support the proof of the existence of an armed conflict or a widespread or systematic attack on a civilian population, no finding of guilt for the crimes of wilful murder or extermination may be made in respect of such uncharged incidents.

398. With respect to those killings that were alleged in the Indictment, the Trial Chamber finds that the following incidents were not proved beyond reasonable doubt:

- The killing of a number of men in Lišnja on or about 1 June 1992 - Prnjavor municipality;<sup>943</sup>

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<sup>938</sup> See *Krstić* Trial Judgement, para. 495; *Stakić* Trial Judgement, para. 642. The Trial Chamber in this respect accepts the Prosecution submission (Prosecution Final Brief, paras 670-685) and dismisses the Defence submission that the *Vasiljević* approach should not be followed (Defence Final Brief (confidential), pp. 98-99).

<sup>939</sup> *Stakić* Trial Judgement, para. 638.

<sup>940</sup> *Stakić* Trial Judgement, paras 638, 641.

<sup>941</sup> See *Stakić* Trial Judgement, para. 587: “The technical definition of *dolus eventualis* is the following: if the actor engages in life-endangering behaviour, his killing becomes intentional if he ‘reconciles himself’ or ‘makes peace’ with the likelihood of death”.

<sup>942</sup> Such evidence has been included in the General Overview section where appropriate.

<sup>943</sup> Rusmir Mujanić, T. 16017, to whom the Prosecution Final Brief (fn. 881) refers, merely mentions a Serb called Tito Potok who boasted about the killing of a number of Muslims from Lišnja. See, ex. P657, “Regular Combat Report”



- The killing of a number of men in the village of Vrbanjci on 25 June 1992 - Kotor Varoš municipality;<sup>944</sup>
- The killing of a number of men on the way from Kukavice and surrounding areas in Kotor Varoš on or about 25 June 1992 - Kotor Varoš municipality;<sup>945</sup>
- The killing of a number of men in Dujo Banović's house in Kenjari on or about 27 June 1992 - Sanski Most municipality.<sup>946</sup>

399. The Trial Chamber is, however, satisfied beyond reasonable doubt that the killings described below did occur. In the Indictment, the Prosecution chose to divide the killings into two separate categories, depending on whether they related to 1.) a municipality or to 2.) a civilian/military camp or detention facility. The Trial Chamber maintains that distinction for the purpose of the following analysis.

(a) Killings related to municipalities (para. 38 of the Indictment)

(i) Banja Luka

a. The killing of a number of people in the village of Ćulum-Kostić

400. The Trial Chamber is satisfied that, on 15 August 1992, five members of a Bosnian Muslim family were killed while sitting in front of their house in the village of Ćulum near Banja Luka.<sup>947</sup> Three individuals, two of whom were armed with automatic rifles and dressed in camouflage

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issued by the 1<sup>st</sup> KK Command on 2 June 1992, which states that "Muslim extremists" in Lišnja have been *captured* and *expelled* (emphasis added). With no other evidence available, the Trial Chamber is unable to reach a conclusion beyond reasonable doubt that the incident occurred as alleged in the Indictment.

<sup>944</sup> The evidence on this incident depends solely on the testimony of Prosecution witness Rašim Ćirkić (Prosecution Final Brief, fn. 888), who, after testifying in chief, never returned to the Tribunal for cross-examination by the Defence because of ill-health. Because the Defence has not had an opportunity to cross-examine the witness on these events, and there being absolutely no other evidence on them, the Trial Chamber has not considered it safe to rely only on his evidence.

<sup>945</sup> BT-97, T. 17904-17920, to whom the Prosecution Final Brief (fn. 889) (confidential) refers, offers no evidence that killings occurred *on the way from Kukavice*. As this reference also concerns the killing of a number of men in front of the medical centre in Kotor Varoš (see para. 428 *infra*), the Trial Chamber is unable to reach a conclusion beyond reasonable doubt that the incident occurred as alleged in the Indictment.

<sup>946</sup> BT-16, T. 8059-8065, 8071-8072, to whom the Prosecution Final Brief (fn. 890) refers, gave evidence regarding the killing of a number of people in Dujo Banović's house, which is located in *Blaževići*, not in *Kenjari*. BT-21, T. 8585-8586 (closed session) witnessed the killing of a number of people in *Kenjari* in a hut, but not at Dujo Banović's house as charged. Finally, there is information to suggest that the dead bodies of a massacre that occurred in Kasapnica were dumped in Dujo Banović's house: ex. P2008, "Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003", 02927946. Against this background, the Trial Chamber is unable to reach a conclusion beyond reasonable doubt that the incident occurred as alleged in the Indictment.

<sup>947</sup> BT-12, T. 4186-4187 (closed session); ex. P2008, "Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003", 02927928.

uniforms, approached the house and opened gunfire on the family.<sup>948</sup> The perpetrators were later identified as the Šugić brothers.<sup>949</sup>

(ii) Prijedor

a. The killing of a number of people in Hambarine<sup>950</sup>

401. On the evening of 22 May 1992, a shooting incident occurred at a checkpoint of the TO near Hambarine, a village predominantly inhabited by Bosnian Muslims.<sup>951</sup> On that night, a car with six soldiers was stopped. Following a request by the checkpoint personnel to hand over their weapons, shooting broke out. It is unclear exactly what happened: one source states that a Bosnian Serb soldier was shot dead,<sup>952</sup> while another claims that two of the checkpoint guards were killed.<sup>953</sup> Following this incident, Bosnian Serb authorities in Prijedor issued an ultimatum to the residents of Hambarine to surrender the checkpoint commander involved in the incident and to surrender all weapons.<sup>954</sup> As no action to that effect was taken, on 23 May 1992 at noon, the indiscriminate shelling of Hambarine started.<sup>955</sup> Tanks fired at the village, and a large number of Bosnian Serb soldiers participated in the attack.<sup>956</sup> The Trial Chamber is satisfied that during the onslaught on Hambarine, at least three civilians died.<sup>957</sup>

b. The killing of a number of people in Kozarac<sup>958</sup> and the surrounding areas

402. After the attack on Hambarine, Bosnian Serb authorities issued a similar ultimatum to the inhabitants of Kozarac, another town with a majority of Bosnian Muslim inhabitants.<sup>959</sup> Negotiations were held during which the town was completely blocked off.<sup>960</sup> The attack on Kozarac started on 24 May 1992 with intensive shelling.<sup>961</sup> It lasted for two days.<sup>962</sup>

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<sup>948</sup> BT-12, T. 4186-4187 (closed session).

<sup>949</sup> BT-12, T. 4218-4219 (closed session); ex. P531 (under seal).

<sup>950</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>951</sup> Mirsad Mujadžić, ex. P1601, T. 3626.

<sup>952</sup> Muharem Murselović, ex. P1542, T. 2700.

<sup>953</sup> Mirsad Mujadžić, ex. P1601, T. 3700.

<sup>954</sup> Muharem Murselović, ex. P1542, T. 2700; BT-44, ex. P565, T. 3196 (under seal).

<sup>955</sup> Muharem Murselović, T. 12590; Muharem Murselović, ex. P1542, T. 2700-2701; BT-33, T. 12648 (closed session); Nermin Karagić, ex. P559, T. 5290.

<sup>956</sup> Ivo Atlija, ex. P1527, T. 5556-5557.

<sup>957</sup> BT-33, ex. P1544, T. 3926 (under seal); BT-33, T. 12648-12650 (closed session).

<sup>958</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>959</sup> Mevludin Sejmenović, ex. P1533, T. 4672-4673; Mirsad Mujadžić, ex. P1601, T. 3583.

<sup>960</sup> Idriz Merdžanić, T. 11753-11754.

<sup>961</sup> Mevludin Sejmenović, ex. P1533, T. 4673; BT-38, ex. P556, T. 1610 (under seal); Samir Poljak, ex. P1521, T. 6333.

<sup>962</sup> BT-38, ex. P556, T. 1610 (under seal).

403. The Trial Chamber is satisfied that at least 80 Bosnian Muslim civilians were killed when Bosnian Serb soldiers and police<sup>963</sup> entered the villages of the Kozarac area.<sup>964</sup> Killings occurred randomly,<sup>965</sup> and the population that had not yet fled was threatened that they would also be killed.<sup>966</sup> A number of Bosnian Muslim employees of the Kozarac police station were killed.<sup>967</sup> Patients at the medical centre in Kozarac died as a result of shelling wounds and other injuries when the centre was shelled.<sup>968</sup> When a doctor tried to negotiate the evacuation of two injured children, one of whom had her legs completely shattered, he was told over the radio "Die, balijas, we're going to kill you anyway".<sup>969</sup>

404. When the fighting broke out, a group of approximately 100 Bosnian Muslims and Bosnian Croats from the Kevljani area tried to escape on foot across the Kozara mountain range.<sup>970</sup> After a night in the woods, the group was arrested by armed Bosnian Serbs wearing different kinds of uniforms.<sup>971</sup> One man was shot dead after a Croatian passport was found on him.<sup>972</sup> The group was brought to the Benkovac training grounds<sup>973</sup> which, prior to the conflict, were used for military purposes.<sup>974</sup> These grounds had been turned into a detention camp run by the military.<sup>975</sup> The detained group was ordered to line up in front of a building, and a Bosnian Serb soldier with the last name of Romanić singled out four persons. They were taken to one of the rooms inside the building and shot dead, apparently in retaliation for Romanić's brother who had been killed in Croatia.<sup>976</sup> A religious leader known as the 'Hodža' was beaten to death by the soldiers.<sup>977</sup> In the course of the day, 60 individuals were taken to the woods in groups, from where one could hear bursts of gunfire.<sup>978</sup> The Trial Chamber finds that these persons were killed. Those not killed at the Benkovac barracks were put on buses and taken to Omarska camp.<sup>979</sup>

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<sup>963</sup> Mevludin Sejmenović, ex. P1533, T. 4709.

<sup>964</sup> Ex. P1416, "Report on Elimination of Green Berets in the Wider Area of Kozarac Village", is a strictly confidential report from the 1<sup>st</sup> KK Command of 27 May 1992. It claims that following the onslaught on Muslim villages in the Prijedor region by the 343<sup>rd</sup> Motorised Brigade, "... the area was entirely freed of Green Berets". The report states that between 80-100 'Green Berets' were killed during the operation.

<sup>965</sup> Mevludin Sejmenović, ex. P1533, T. 4709-4710, 4680-4682; Idriz Merdžanić, T. 11760.

<sup>966</sup> Mevludin Sejmenović, ex. P1533, T. 4709.

<sup>967</sup> Nusret Sivac, ex. P1547, T. 6764; BT-44, ex. P565, T. 3197 (under seal).

<sup>968</sup> BT-38, ex. P556, T. 1613-1614 (under seal).

<sup>969</sup> Idriz Merdžanić, T. 11755.

<sup>970</sup> Samir Poljak, ex. P1521, T. 6338-6341.

<sup>971</sup> Samir Poljak, ex. P1521, T. 6342-6344.

<sup>972</sup> Samir Poljak, ex. P1521, T. 6345-6346.

<sup>973</sup> BT-35, ex. P563, T. 6815 (under seal).

<sup>974</sup> BT-35, ex. P563, T. 6809 (under seal).

<sup>975</sup> BT-35, ex. P563, T. 6813 (under seal); Samir Poljak, ex. P1521, T. 6353. According to BT-44, ex. P565, T. 3197 (under seal), the grounds were under the command of Radmilo Zeljaja, whereas BT-35, ex. P563, T. 6814 (under seal) claims that the camp commander was Radovan Ciganović ('Cigo').

<sup>976</sup> BT-35, ex. P563, T. 6821-6823 (under seal); Samir Poljak, ex. P1521, T. 6347-6349.

<sup>977</sup> BT-35, ex. P563, T. 6826-6827 (under seal).

<sup>978</sup> BT-35, ex. P563, T. 6823, 6827 (under seal).

<sup>979</sup> BT-35, ex. P563, T. 6830-6831 (under seal); Samir Poljak, ex. P1521, T. 6353-6354.

c. The killing of a number of people in Mehmed Šahurić's house in Kamičani<sup>980</sup>

405. The village of Kamičani was predominantly inhabited by Bosnian Muslims.<sup>981</sup> From 24 to 26 May 1992, the village was attacked by Bosnian Serb military.<sup>982</sup> At least eight Bosnian Muslims were hiding during that period in the basement of Mehmed Šahurić's house. These persons were shot dead by Bosnian Serb soldiers after their place of refuge was discovered.<sup>983</sup> Their bodies have subsequently been retrieved and identified.<sup>984</sup>

d. The killing of a number of men in the village of Jaskići

406. The Trial Chamber finds that at least eight Bosnian Muslim men were shot and killed<sup>985</sup> when on 14 June 1992, Bosnian Serb soldiers entered the village of Jaskići.<sup>986</sup> The bodies of those men have been exhumed and identified.<sup>987</sup>

e. The killing of a number of men in the village of Biščani

407. The village of Biščani comprises the hamlets of Mrkalji, Hegići, Ravine, Sredići and Duratovići.<sup>988</sup> On 20 July 1992, Bosnian Serb forces conducted an onslaught on the entire Brdo area, of which Biščani forms part.<sup>989</sup> They consisted of military and police and were wearing different kinds of uniforms.<sup>990</sup> The Bosnian Muslim population of Biščani was told to gather at various collection points throughout the village. One collection point was at a coffee bar in Biščani.<sup>991</sup> The Trial Chamber is satisfied that on that location, five unarmed men were shot dead by Bosnian Serb soldiers.<sup>992</sup>

408. On the same day, Bosnian Serb soldiers lined up between 30 and 40 Bosnian Muslim residents of Mrkalji at a nearby clay pit.<sup>993</sup> There were military vehicles, including an armoured

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<sup>980</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>981</sup> BT-29, ex. P560, T. 6209 (under seal).

<sup>982</sup> BT-29, ex. P560, T. 6209 (under seal).

<sup>983</sup> BT-29, ex. P560, T. 6237-6248 (under seal).

<sup>984</sup> Ex. P2006.2, "Exhumations and Proof of Death, Municipality of Prijedor, Nicolas Sébire, 28 August 2002", 01843975-01843976; BT-29, ex. P560, T. 6244-6245 (under seal).

<sup>985</sup> Senila Elkašović, ex. P566, T. 4612-4614; Draguna Jaškić, ex. P567, T. 4505-4506.

<sup>986</sup> Senila Elkašović, ex. P566, T. 4602.

<sup>987</sup> Senila Elkašović, ex. P566, T. 4612-4614; ex. P2006.2, "Exhumations and Proof of Death, Municipality of Prijedor, Nicolas Sébire, 28 August 2002", 01843977-01843978.

<sup>988</sup> BT-32, ex. P1515, T. 5880 (under seal).

<sup>989</sup> BT-78, ex. P562, T. 6859 (under seal); BT-32, ex. P1515, T. 5884 (under seal).

<sup>990</sup> BT-78, ex. P562, T. 6862 (under seal).

<sup>991</sup> BT-78, ex. P562, T. 6860-6861 (under seal).

<sup>992</sup> BT-78, ex. P562, T. 6862-6864 (under seal).

<sup>993</sup> BT-32, ex. P1515, T. 5884 (under seal).

personnel carrier, and more than 20 soldiers in camouflage uniforms with them.<sup>994</sup> None of the Mrkalji residents at the clay pit wore a uniform.<sup>995</sup> The Trial Chamber is satisfied that all of them were executed with rifles by the Bosnian Serb soldiers present.<sup>996</sup>

409. The Trial Chamber is further satisfied that a large number of other killings of Bosnian Muslims and Bosnian Croats occurred in the Brdo area around 20 July 1992 as a result of the campaign conducted by Bosnian Serb forces.<sup>997</sup> In an orchard in Hegići, 12 persons were lined up and shot dead with rifles.<sup>998</sup> Around 20 individuals were killed at a bus stop between Alagići and Čemernica.<sup>999</sup> After the end of the massacre, a number of Bosnian Muslim men had to collect the dead bodies from the roads under the supervision of the Bosnian Serb military.<sup>1000</sup> Between 300 and 350 bodies were loaded on trucks, almost all Bosnian Muslims, with a few Bosnian Croats.<sup>1001</sup>

f. The killing of a number of people in the village of Čarakovo

410. Prior to 1992, almost the entire population of the village of Čarakovo were Bosnian Muslims.<sup>1002</sup> On 23 July 1992, Bosnian Serb tanks attacked Čarakovo, after several demands that residents should hand in weapons had been issued.<sup>1003</sup> The Trial Chamber finds that during the raid, at least 16 civilians were killed. Three of them were shot dead in front of their houses.<sup>1004</sup> Drago Tintar, one of the Bosnian Serb soldiers, killed Hasib Simbegović with his rifle when the latter was about to board a bus.<sup>1005</sup> Bosnian Serb soldiers also took Bosnian Muslim and Bosnian Croat civilians from Čarakovo to the Žeger bridge on the Sana River,<sup>1006</sup> where a number of them were shot dead. Their bodies were thrown into the river.<sup>1007</sup>

g. The killing of a number of people in the village of Briševo

411. Briševo is a village belonging to the local commune of Ljubija. Prior to the conflict, it was inhabited mainly by Bosnian Croats.<sup>1008</sup> On 27 May 1992, the village was shelled with mortars

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<sup>994</sup> BT-32, ex. P1515, T. 5890-5894 (under seal); BT-32, T. 11849 (closed session).

<sup>995</sup> BT-32, ex. P1515, T. 5894-5895 (under seal).

<sup>996</sup> BT-32, ex. P1515, T. 5893-5894 (under seal); BT-32, T. 11867-11869 (closed session).

<sup>997</sup> BT-32, ex. P1515, T. 5903-5933 (under seal).

<sup>998</sup> BT-32, ex. P1515, T. 5919 (under seal); BT-32, T. 11851 (closed session).

<sup>999</sup> BT-32, T. 11851 (closed session).

<sup>1000</sup> BT-32, ex. P1515, T. 5910-5912, 6002-6004 (under seal); BT-32, T. 11852-53 (closed session).

<sup>1001</sup> BT-32, ex. P1515, T. 5966-5968 (under seal); BT-32, T. 11864 (closed session).

<sup>1002</sup> BT-30, ex. P1541, T. 5720 (under seal).

<sup>1003</sup> BT-30, ex. P1541, T. 5727, 5730 (under seal).

<sup>1004</sup> BT-30, ex. P1541, T. 5732-5734 (under seal).

<sup>1005</sup> BT-30, T. 12555 (private session); BT-30, ex. P1541, T. 5748 (under seal).

<sup>1006</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1007</sup> BT-33, ex. P1544, T. 3947-3949 (under seal).

<sup>1008</sup> Ivo Atljija, ex. P1527, T. 5545-5547.

coming from the direction of Rasavci and Oštra Luka, two predominantly Bosnian Serb villages east of Briševo.<sup>1009</sup> Before the shelling, Bosnian Serb authorities in the area had requested that all weapons in the village be surrendered. Weapons were handed over to the Bosnian Serbs in Rasavci, despite there only being legally owned hunting rifles and pistols.<sup>1010</sup>

412. In the early morning hours of 24 July 1992, Bosnian Serb military launched an attack on Briševo.<sup>1011</sup> Mortar shells landed on the houses, and the residents hid in cellars.<sup>1012</sup> The shelling continued throughout the day and, on the next day, infantry fire joined the artillery. On the evening of 25 July 1992, Bosnian Serb infantry entered Briševo.<sup>1013</sup> The soldiers wore JNA uniforms with red ribbons around their arms or helmets. Some had 'Četnik' insignia such as 'Šubara' hats.<sup>1014</sup> Pero Dimač, an elderly Bosnian Croat, was forced to take off his clothes, was hit with a bible, and was eventually shot in the head by Bosnian Serb soldiers.<sup>1015</sup> The Trial Chamber is satisfied that during the attack on Briševo, at least 68 persons were killed, 14 of whom being women.<sup>1016</sup>

h. The killing of a number of men at the Ljubija football stadium<sup>1017</sup>

413. In July 1992, Bosnian Muslim civilians detained in Miška Glava were transferred to the Ljubija football stadium, located in Gornja Ljubija.<sup>1018</sup> Many civilians were already confined inside the stadium, guarded by Bosnian Serb policemen and members of an intervention platoon.<sup>1019</sup> A police officer known as 'Stiven' executed Irfan Našić with a pistol from a close distance, and another Bosnian Muslim detainee, Muharem Petrovac, was split into two when a guard nicknamed 'Duča' fired a gun at him.<sup>1020</sup> Two men were singled out and taken to the other side of the stadium, where they were killed.<sup>1021</sup> Detainees then were ordered to remove the dead bodies and put them in a bus.<sup>1022</sup> The Trial Chamber finds that, at a minimum, 15 detainees were killed in the stadium.<sup>1023</sup>

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<sup>1009</sup> Ivo Atlija, ex. P1527, T. 5559-5561.

<sup>1010</sup> Ivo Atlija, ex. P1527, T. 5562-5563.

<sup>1011</sup> Ivo Atlija, ex. P1527, T. 5571; Ivo Atlija, T. 11933.

<sup>1012</sup> Ivo Atlija, ex. P1527, T. 5571-5573.

<sup>1013</sup> Ivo Atlija, ex. P1527, T. 5573.

<sup>1014</sup> Ivo Atlija, ex. P1527, T. 5575, 5577-5578.

<sup>1015</sup> Ivo Atlija, ex. P1527, T. 5579-5580.

<sup>1016</sup> Ivo Atlija, ex. P1527, T. 5597-5599; Ivo Atlija, T. 11967.

<sup>1017</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1018</sup> Nermin Karagić, ex. P559, T. 5225-5228; Elvedin Našić, T. 12696.

<sup>1019</sup> Elvedin Našić, T. 12696-12698.

<sup>1020</sup> Elvedin Našić, T. 12699-12700.

<sup>1021</sup> Nermin Karagić, ex. P559, T. 5233-5234.

<sup>1022</sup> Nermin Karagić, ex. P559, T. 5237.

<sup>1023</sup> Elvedin Našić, T. 12698-12701; Nermin Karagić, ex. P559, T. 5233-5237; BT-33, ex. P1544, T. 3930-3931 (under seal).

i. The killing of a number of men at the Ljubija iron ore mine

414. Thereafter on the same day, around 50 detainees from the Ljubija football stadium were put on a bus provided by the local public transport company and taken to an iron ore mine south-west of Ljubija, locally referred to as 'Kipe'.<sup>1024</sup> Persons were called out from the bus and executed by Bosnian Serb soldiers in groups of three.<sup>1025</sup> The bodies were thrown into a depression in the ground.<sup>1026</sup> The Trial Chamber finds that, save Elvedin Našić and Nermin Karagić, who managed to escape, all persons travelling on that bus were killed.<sup>1027</sup>

j. The killing of a number of people in Tomašica

415. Tomašica is a village south of Prijedor where, prior to the conflict, both Bosnian Croats and Bosnian Serbs lived. The latter formed a majority of the population.<sup>1028</sup> On 2 December 1992, Bosnian Serb soldiers took male Bosnian Croat residents from Tomašica to the surrounding forests in order to cut wood.<sup>1029</sup> They stayed out for three consecutive days.<sup>1030</sup> On 5 December 1992, Mile Topalović, who was returning from the woods, was shot dead at Franjo Salić's house by Bosnian Serb soldiers later identified as Mile Gvozden and Zoran Simčić.<sup>1031</sup> The Trial Chamber is persuaded that these men were also responsible for the killing of another six Bosnian Croat civilians on the same day.<sup>1032</sup>

(iii) Sanski Most

a. Killing of a number of men between Begići and Vrhpolje bridge

416. The hamlet of Begići belongs to the village of Kljevci. Prior to the conflict, it was inhabited by Bosnian Muslims.<sup>1033</sup> On 31 May 1992, Bosnian Serb soldiers entered Begići and rounded up its

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<sup>1024</sup> Nermin Karagić, ex. P559, T. 5241; Elvedin Našić, T. 12697, 12702.

<sup>1025</sup> Elvedin Našić, T. 12702-12705; Nermin Karagić, ex. P559, T. 5245-5246.

<sup>1026</sup> Elvedin Našić, T. 12703.

<sup>1027</sup> Nermin Karagić, ex. P559, T. 5244-5247; Ex. P2006.2, "Exhumations and Proof of Death, Municipality of Prijedor, Nicolas Sébire, 28 August 2002", 01843986-01843987.

<sup>1028</sup> BT-31, T. 13705-13706 (private session).

<sup>1029</sup> BT-31, T. 13712.

<sup>1030</sup> BT-31, T. 13712.

<sup>1031</sup> BT-31, T. 13713-13715, 13727.

<sup>1032</sup> See ex. P739, a "Combat Report" authored by the 1<sup>st</sup> KK of 6 December 1992. Under the heading 'Unusual Incidents', the report acknowledges the killing of seven Croat civilians in Tomašica by Mile Gvozden, who apparently wanted to take revenge for his own brother's death at the frontline.

<sup>1033</sup> Rajif Begić, T. 6331-6332.

inhabitants.<sup>1034</sup> Men were separated from women and children. Between 20 and 30 men were taken towards the Vrhpolje bridge<sup>1035</sup> where they were supposed to be put on buses.<sup>1036</sup>

417. Jadranko Palija was in charge of leading the column of men to Vrhpolje bridge, which spans the Sana River.<sup>1037</sup> The Trial Chamber is satisfied that four Bosnian Muslim men were killed by Jadranko Palija on the way to the bridge.<sup>1038</sup> Upon arrival, the other men were ordered to take off their clothes and line up. Many Bosnian Serb soldiers in different uniforms were present.<sup>1039</sup> One of them said that 70 Bosnian Muslims had to be killed in retaliation for the death of seven Bosnian Serb soldiers in the area.<sup>1040</sup> Then, the Bosnian Muslim men were ordered to jump off the bridge into the Sana River one by one. Once in the water, the soldiers opened fire upon them.<sup>1041</sup> Rajif Begić survived as he was swimming under water for about 100 metres downstream. From the place where he was hiding, he was able to observe the executions at the bridge.<sup>1042</sup> The Trial Chamber finds that a total of at least 28 persons were killed in this event.<sup>1043</sup>

b. The killing of a number of members of Merdanović's family in the hamlet of Kukavice, Hrustovo village

418. On 31 May 1992, soldiers in JNA uniforms, who referred to themselves as the 'Serbian Army'<sup>1044</sup>, came to the village of Hrustovo,<sup>1045</sup> which was inhabited by Bosnian Muslims.<sup>1046</sup> Prior to their arrival, there had been announcements on the local radio on behalf of the 'Serbian Republic' demanding that Bosnian Muslims surrender their weapons.<sup>1047</sup> At the hamlet of Jelečević, the local population was ordered to leave their homes and to go to another village so the soldiers could search their houses for weapons. In Kukavice, another hamlet of Hrustovo, Bosnian Muslims from

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<sup>1034</sup> Rajif Begić, T. 6336-6337.

<sup>1035</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1036</sup> Rajif Begić, T. 6338.

<sup>1037</sup> Rajif Begić, T. 6339.

<sup>1038</sup> Rajif Begić, T. 6340-6343.

<sup>1039</sup> Rajif Begić, T. 6351-6352, 6389.

<sup>1040</sup> Rajif Begić, T. 6352.

<sup>1041</sup> Rajif Begić, T. 6353-6356.

<sup>1042</sup> Rajif Begić, T. 6354-6355.

<sup>1043</sup> Nicolas Sébire, ex. P2008, "Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003", 02927939-02927940; ex. P791, "Record on the Investigation and Exhumation of Bodies of Bosniaks from Mass Graves by the Bridge in Vrhpolje, Sanski Most Municipality", issued by the Lower Court in Sanski Most on 7 May 1996; Adil Draganović, T. 5590; Nicholas Sébire, T. 16714. Ex. P744, "Details of Services rendered", is a handwritten log book from an unknown source. It contains information on burials between May 1992 and December 1993 and contains, under item 4, an entry about the burial of 25 people recovered from the Sana River on 1 and 2 June 1992; *see* BT-21, T. 8520-8521 (closed session).

<sup>1044</sup> BT-14, T. 7225-7226 (closed session) and BT-15, T. 7248 (closed session).

<sup>1045</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1046</sup> BT-14, T. 7207; BT-15, T. 7248 (closed session).

<sup>1047</sup> BT-14, T. 7230 (closed session); BT-15, T. 7246-7247 (closed session).



various hamlets gathered in a garage adjacent to Ibrahim Merdanović's house.<sup>1048</sup> Out of 30 persons inside the garage, there was only one man, Husein Merdanović, the rest being women and children.<sup>1049</sup>

419. At one point, Bosnian Serb soldiers came to the garage and started shouting. Shots were fired, and the people inside the garage panicked. Husein Merdanović walked out of the garage and was shot dead immediately.<sup>1050</sup> Then, the soldiers started to fire into the garage randomly.<sup>1051</sup> Some people left the garage and tried to escape, but the soldiers continued to shoot at them as they fled.<sup>1052</sup> The Trial Chamber finds that, at a minimum, 15 members of the Merdanović family were killed.<sup>1053</sup>

c. The killing of a number of people near the Partisan cemetery in Sanski Most

420. Kriva Cesta is the name of an area located near the Partisan cemetery in Sanski Most.<sup>1054</sup> On 22 June 1992, Bosnian Serb soldiers in olive-grey and camouflage uniforms ordered around 20 Bosnian Muslim men to dig a hole in a stream flowing below Kriva Cesta.<sup>1055</sup> The Trial Chamber is satisfied that all but three of these men did not finish with the work because their throats were slit by Simo Simetić, one of the uniformed men.<sup>1056</sup> During the operation, the other soldiers pointed their guns at the men to prevent any kind of resistance.<sup>1057</sup>

d. The killing of a number of members of the Alibegović family in Budim

421. The hamlet of Budim belongs to the village of Lukavica. Before 1992, it was nicknamed 'Alibegović' because the majority of its Bosnian Muslim inhabitants shared that surname.<sup>1058</sup> The Trial Chamber finds that on 1 August 1992, Bosnian Serb soldiers attacked Budim and executed 14 members of the Alibegović family, all of whom were unarmed civilians.<sup>1059</sup> The victims were shot

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<sup>1048</sup> BT-14, T. 7207-7210 (closed session).

<sup>1049</sup> BT-14, T. 7212 (closed session).

<sup>1050</sup> BT-14, T. 7213-7214 (closed session).

<sup>1051</sup> BT-14, T. 7216 (closed session).

<sup>1052</sup> BT-14, T. 7217 (closed session).

<sup>1053</sup> BT-14, T. 7220-7222 (closed session) and BT-15, T. 7250-7252 (closed session). Nicolas Sébire, ex. P2008, "Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003", 02927941-02927942. See also ex. P797, an "Official Report" by the Federation of Bosnia and Herzegovina Ministry of Interior of 22 October 1996 on an exhumation in Kukavice.

<sup>1054</sup> Ahmet Zulić, T. 6901.

<sup>1055</sup> Ahmet Zulić, T. 6903-6905.

<sup>1056</sup> Ahmet Zulić, T. 6908-6909.

<sup>1057</sup> Ahmet Zulić, T. 6909.

<sup>1058</sup> BT-23, T. 6406-6407 (private session).

<sup>1059</sup> BT-23, T. 6430-6431 (private session); Nicolas Sébire, ex. P2008, "Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003", 02927948-02927949.

from a close distance with automatic weapons.<sup>1060</sup> The survivors were allowed to bury their relatives only in the presence of a Bosnian Serb.<sup>1061</sup>

e. The killing of a number of men near the village of Škrljevit

422. The village of Škrljevit had a majority Bosnian Croat population.<sup>1062</sup> On 2 November 1992, seven Bosnian Croats from Škrljevit were rounded up by Bosnian Serb paramilitary forces at the Glamošnica forest.<sup>1063</sup> The Bosnian Serb paramilitaries claimed to belong to ‘Šešelj’s Army’.<sup>1064</sup> One of them was wearing a military police belt and camouflage uniform, another had Serb insignia carved into his rifle butt.<sup>1065</sup> After having body-searched their victims, the Bosnian Serbs, among them a certain Daniluško Kajtez, executed seven Bosnian Croats.<sup>1066</sup>

(iv) Ključ

a. The killing of a number of people in Pudín Han<sup>1067</sup>

423. Pudín Han is a village in the Ključ municipality which prior to the conflict had approximately 900 inhabitants, almost all of whom were Bosnian Muslims.<sup>1068</sup> When Ključ was taken over by Bosnian Serbs, the Territorial Defence of Ključ retreated to Pudín Han.<sup>1069</sup> On 28 May 1992, the Ključ Crisis Staff issued an ultimatum demanding that all citizens in the municipality owning illegally acquired weapons hand them over.<sup>1070</sup> During a meeting at the youth centre, the vast majority of inhabitants of Pudín Han were in favour of surrendering their weapons. Those who disagreed left for Bihać.<sup>1071</sup> Even before the ultimatum expired, the shelling of Pudín Han from locations controlled by Bosnian Serbs started.<sup>1072</sup> The Trial Chamber is convinced that, at a minimum, three civilians from Pudín Han died as a consequence of the shelling.<sup>1073</sup>

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<sup>1060</sup> BT-23, T. 6432 (private session).

<sup>1061</sup> BT-23, T. 6431 (closed session).

<sup>1062</sup> Grgo Stojić, T. 6764.

<sup>1063</sup> Grgo Stojić, T. 6774.

<sup>1064</sup> Grgo Stojić, T. 6777.

<sup>1065</sup> Grgo Stojić, T. 6797.

<sup>1066</sup> Grgo Stojić, T. 6776-6778; Nicolas Sébire, ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927952-02927953.

<sup>1067</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1068</sup> Nisvet Tičević, T. 10720.

<sup>1069</sup> Ex. DT24, “Official Note” by the Ključ SJB of 31 May 1992.

<sup>1070</sup> Ex. P921, undated “Order” by the Ključ Crisis Staff.

<sup>1071</sup> Nisvet Tičević, T. 10737.

<sup>1072</sup> BT-26, T. 9117, 9209 (closed session).

<sup>1073</sup> BT-26, T. 9118 (closed session); Nisvet Tičević, T. 10739-10740. See also Ajiz Begić, ex. P549, 92bis statement, 02109337; Hasan Salihović, ex. P550, 92bis statement, 2109327.

b. The killing of a number of people in Prhovo village and a number of men on the road to Peći<sup>1074</sup>

424. On 26 May 1992, a number of masked and armed Bosnian Serbs arrived at the village of Prhovo. They rounded up the local Bosnian Muslim population and ordered them to surrender their weapons, which they did.<sup>1075</sup> An attack on Prhovo commenced on 1 June 1992 with heavy shooting.<sup>1076</sup> Marko Adamović, a Bosnian Serb from Humići, was in command of the operation.<sup>1077</sup> Some of the Bosnian Serbs wore JNA camouflage uniforms, but there were also masked armed civilians.<sup>1078</sup> Residents were ordered to gather in front of Karanfil Osmanović's house.<sup>1079</sup> Four Bosnian Muslim men were called out by name, told to run away, and then shot dead.<sup>1080</sup> The Trial Chamber finds that at least seven Bosnian Muslim civilians were killed during the attack on Prhovo, including a man who was dragged to death by a truck,<sup>1081</sup> as well as two women who died because their hands or legs had been blown off.<sup>1082</sup>

425. Later on, about 30 Bosnian Muslim men from Prhovo were ordered to form a column and walk to the nearby village of Peći.<sup>1083</sup> Bosnian Serb soldiers killed three Bosnian Muslim men after they had failed to drag out from the mud a military vehicle.<sup>1084</sup> The Trial Chamber finds that before the column reached Peći, a total of 18 men were killed, reducing the number of those that survived to 12.<sup>1085</sup> Sulejman Medanović, having survived the walk, died during the following night as a result of beatings.<sup>1086</sup>

426. The Trial Chamber is satisfied that at least 33 persons died in Prhovo village and on the road to Peći.<sup>1087</sup>

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<sup>1074</sup> The Prhovo-Peći road was sighted by the Trial Chamber and the Parties on a helicopter flight during the site visit which took place in March 2004.

<sup>1075</sup> BT-77, T. 10337-10338.

<sup>1076</sup> Bajro Hadžić, ex. P552, 92bis statement, 00521139.

<sup>1077</sup> Bajro Hadžić, ex. P552, 92bis statement, 00521139; BT-77, T. 10346.

<sup>1078</sup> BT-77, T. 10341.

<sup>1079</sup> *Ibid.*

<sup>1080</sup> BT-77, T. 10342-10343; ex. P2008, "Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003", 02927964-02927965.

<sup>1081</sup> BT-77, T. 10341; Bajro Hadžić, ex. P552, 92bis statement, 00521139.

<sup>1082</sup> Bajro Hadžić, ex. P552, 92bis statement, 00521139.

<sup>1083</sup> BT-77, T. 10343, 10351.

<sup>1084</sup> BT-77, T. 10344; ex. P2008, "Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003", 02927964-02927965.

<sup>1085</sup> BT-77, T. 10351-10352.

<sup>1086</sup> BT-77, T. 10353. *See* also exhibits P1107, P1108, P1109, records of autopsies and exhumations of mass graves in Ključ and Prhovo, dated 13 May 1997, 24 September 1999, 25 September 1999.

<sup>1087</sup> Ex. P2008, "Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003", 02927964-02927965.

c. The killing of a number of men in front of the school in Velagići<sup>1088</sup>

427. During the evening of 1 June 1992, Bosnian Serb police from the checkpoint at Velagići sent a man to the predominantly Bosnian Muslim hamlets of Vojići, Nežići, Hašići, Častovići and Hadžići. He informed the local population that they were obliged to come to Velagići to obtain a permit in order to be allowed to move around freely.<sup>1089</sup> In the old primary school in Velagići, located in the immediate vicinity of the Bosnian Serb checkpoint, around a hundred residents from these hamlets were confined.<sup>1090</sup> Both Bosnian Serb policemen and soldiers were present.<sup>1091</sup> Zoran Dvizac, a man in an olive-grey uniform, took down the names of all present.<sup>1092</sup> Shortly before midnight, people were taken out from the school and ordered to line up in front of the building. Then, two Bosnian Serb soldiers armed with automatic rifles opened fire on them.<sup>1093</sup> The soldiers continued firing until every person had fallen down. Thereafter, they shot at those who still appeared to be alive.<sup>1094</sup> A witness described that one person survived the massacre.<sup>1095</sup> The Trial Chamber is satisfied that at least 77 civilians were killed in this incident.<sup>1096</sup>

(v) Kotor Varoš

a. The killing of a number of men in front of the Medical Centre in Kotor Varoš<sup>1097</sup>

428. On 25 June 1992, Bosnian Serb soldiers and police lined up a group of Bosnian Muslims and Bosnian Croats in front of the hospital in Kotor Varoš.<sup>1098</sup> Duško Vujičić, a police officer, asked Miralem Avdić, one of the detainees, whether he had participated in the founding assembly of the SDA in Sarajevo. Vujičić then killed Miralem Avdić with two shots from his pistol from a close distance.<sup>1099</sup> The other men were then ordered to take Avdić's body to a place where there were

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<sup>1088</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1089</sup> BT-26, T. 9120-9121 (closed session); Ajiz Begić, ex. P549, 92*bis* statement, 2109338.

<sup>1090</sup> BT-26, T. 9127 (closed session).

<sup>1091</sup> BT-26, T. 9123 (closed session).

<sup>1092</sup> BT-26, T. 9123-9124 (closed session).

<sup>1093</sup> BT-26, T. 9129 (closed session).

<sup>1094</sup> BT-26, T. 9129 (closed session).

<sup>1095</sup> BT-26, T. 9129, 9150-9151 (closed session).

<sup>1096</sup> Ex. P2008, "Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003", 02927969-02927971.

<sup>1097</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1098</sup> BT-97, T. 17907, 17910.

<sup>1099</sup> BT-97, T. 17910-17912.

already other dead bodies.<sup>1100</sup> The Trial Chamber is convinced that on that day in front of the hospital in Kotor Varoš, at least two detainees were killed.<sup>1101</sup>

b. The killing of a number of men in Dabovci

429. The Trial Chamber is satisfied that at least three Bosnian Muslim men from Dabovci were killed after Bosnian Serb soldiers had destroyed their village in mid-August of 1992. The men, all civilians, were taken to a nearby place and were summarily executed by the soldiers.<sup>1102</sup>

c. The killing of a number of men in the mosque in Hanifići<sup>1103</sup>

430. The Trial Chamber is satisfied that at least eight Bosnian Muslim civilians were killed in the village of Hanifići in mid-August of 1992. Bosnian Serb forces had rounded up these persons and shot them dead in the local mosque, which was subsequently set on fire.<sup>1104</sup> Eight bodies have been retrieved and identified from the site of the mosque.<sup>1105</sup>

d. The killing of a number of people in Edhem Ćirkić's house in Ćirkino Brdo<sup>1106</sup>

431. The Trial Chamber is satisfied that, in mid-August of 1992, Bosnian Serb forces set on fire the Bosnian Muslim village of Ćirkići, in the course of which six women and one man were killed.<sup>1107</sup>

e. The killing of a number of men in the school in Grabovica<sup>1108</sup>

432. In November 1992, a group of 200 Bosnian Muslim men, women and children from the Kotor Varoš area<sup>1109</sup> fled from the hostilities. From Večići, they decided to walk to Travnik during

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<sup>1100</sup> BT-97, T. 17912.

<sup>1101</sup> BT-97, T. 17915-17920 (T. 17916 in private session); ex. P2008, "Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003", 02927984-02927985.

<sup>1102</sup> Elvedin Pašić, T. 19413; Fikret Đikić, ex. P2042, 92bis statement, 0338686.

<sup>1103</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1104</sup> Idriz Alekić, 92bis statement, ex. P1895, 02119431.

<sup>1105</sup> Ex. 2018, "Exhumation Record", Cantonal Court Zenica, 18 August 1999; ex. P2008, "Exhumations and Proof of Death "Autonomous Region of Krajina", Nicolas Sébire, 16 May 2003", 02927987-02927988.

<sup>1106</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1107</sup> Ex. P2008, "Exhumations and Proof of Death "Autonomous Region of Krajina", Nicolas Sébire, 16 May 2003", 02927989-02927999; Rasim Ćirkić, T. 17862.

<sup>1108</sup> The outside of this location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1109</sup> Elvedin Pašić, T. 19426-19428, 19451.

the night because they were afraid of the Bosnian Serbs.<sup>1110</sup> Early in the morning, the group was ambushed by Bosnian Serbs soldiers. The group surrendered, following which they were taken to the school building in Grabovica and confined in classrooms.<sup>1111</sup>

433. The following day, women and children were separated from the men and put on buses.<sup>1112</sup> Still today, there is no clue as to the whereabouts of the men that stayed behind at the Grabovica school. The Trial Chamber is however satisfied that they were all killed,<sup>1113</sup> even though not a single body has been recovered. As to the number of victims, the Trial Chamber can only rely on the evidence before it, which indicates that 40 Bosnian Muslims were killed.<sup>1114</sup>

(vi) Bosanski Novi

a. The killing of a number of people during the expulsion of Bosnian Muslims from the village of Blagaj Japra and the surrounding areas

434. Bosnian Serb forces attacked Bosanski Novi at the beginning of June 1992.<sup>1115</sup> The village of Blagaj is within the municipality of Bosanski Novi, and it is divided by the river Sana into Blagaj Japra and Blagaj Rijeka.<sup>1116</sup> On 11 May 1992, the inhabitants of Blagaj Japra, all of them Bosnian Muslims, were requested to surrender all weapons in their possession.<sup>1117</sup> The village was subsequently shelled a number of times.<sup>1118</sup> During the following month, several thousand Bosnian Muslims from other villages fled to Blagaj Japra because their homes had been destroyed by Bosnian Serb artillery.<sup>1119</sup> On 9 June 1992, Bosnian Serb soldiers entered Blagaj Japra, rounded up people and killed some of them randomly. The Trial Chamber finds that at least 12 individuals were killed in these events.<sup>1120</sup>

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<sup>1110</sup> Elvedin Pašić, T. 19424-19425.

<sup>1111</sup> Elvedin Pašić, T. 19427-19433.

<sup>1112</sup> Elvedin Pašić, T. 19434.

<sup>1113</sup> See ex. P2301, a “Combat report” by the 1<sup>st</sup> KK Command dated 4 November 1992, which states that “... Green Berets pulling out of Večići fell into our ambush. Forty of them were killed during the clash. ...”. The Trial Chamber finds that the term ‘Green Beret’ was used to designate *all* military-aged Muslim males. See also Ewan Brown, T. 19323.

<sup>1114</sup> Even though the number of Bosnian Muslim men that were killed in this particular incident may be significantly higher, the Trial Chamber had to exclusively rely on ex. P2301 (*see supra*), which is the only evidence available.

<sup>1115</sup> BT-81, T. 13785-13786 (closed session).

<sup>1116</sup> Midho Alić, T. 13856.

<sup>1117</sup> Midho Alić, T. 13872.

<sup>1118</sup> Midho Alić, T. 13873-13876.

<sup>1119</sup> Midho Alić, T. 13882.

<sup>1120</sup> Midho Alić, T. 13888-13890, 13894, 13896-13897; BT-49, T. 14228-14229 (closed session); BT-82, T. 13979, 13985; ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927931-02927933.

b. The killing of a number of men in the village of Alići

435. On 23 June 1992, six Bosnian Serbs drove with a tractor into the village of Alići. Some of these men wore uniforms, but others were also dressed in civilian clothes.<sup>1121</sup> In the evening, Bosnian Serb forces rounded up local Bosnian Muslims and gathered them at the local orthodox cemetery. Around midnight, a burst of gunfire could be heard, followed by the singing of Serb songs.<sup>1122</sup> The Trial Chamber finds that at least 27 persons were killed by armed Bosnian Serbs during this incident.<sup>1123</sup> The Trial Chamber is also convinced that equipment from the public utilities company in Bosanski Novi was used to bury the dead bodies in mass graves.<sup>1124</sup>

(b) Killings related to camps and detention facilities (para. 41 of the Indictment)

(i) The killing of a number of men in Manjača<sup>1125</sup> between 1 June and 18 December 1992 – Banja Luka municipality

436. In mid-May 1992, Bosnian Serb authorities set up a camp on the Manjača mountain outside the city of Banja Luka.<sup>1126</sup> The camp held almost exclusively civilians of Bosnian Muslim and Bosnian Croat ethnicity, mainly from the areas of Kozarac<sup>1127</sup> and the Sana river valley.<sup>1128</sup> The camp was run by Bosnian Serb military police under the command of the 1<sup>st</sup> KK,<sup>1129</sup> and Colonel Božidar Popović was the camp commander.<sup>1130</sup>

437. Inside the camp, some inmates were beaten to death.<sup>1131</sup> Omer Filipović, a prominent detainee from Ključ, was beaten on a daily basis and died on 28 July 1992<sup>1132</sup> as a result of the severe beatings.<sup>1133</sup>

438. Upon his arrival at Manjača camp, Esad Bender was already covered with bruises and other signs of beatings.<sup>1134</sup> One night on or around 28 June 1992, he was called out from the stable where

<sup>1121</sup> BT-84, T. 14135-14137 (private session).

<sup>1122</sup> BT-84, T. 14140-14145 (private session in part).

<sup>1123</sup> BT-84, T. 14155-14158 (private session); ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927934; ex. P1681, “Record of Exhumation”, Cantonal Court Bihać, 28 October 1998.

<sup>1124</sup> BT-84, T. 14152.

<sup>1125</sup> The administration building and the stables at this location were visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1126</sup> BT-104, T. 18531-18533 (private session); P841.5, “Note” by the CSCE Rapporteur Mission to Banja Luka, 3 September 1992.

<sup>1127</sup> BT-104, T. 18533 (private session).

<sup>1128</sup> Enis Šabanović, T. 6462, 6487.

<sup>1129</sup> BT-104, T. 18531 (private session).

<sup>1130</sup> BT-104, T. 18531-18532 (private session); Ahmet Zulić, T. 6922; Adil Medić, T. 2216.

<sup>1131</sup> Adil Draganović, T. 5082.

<sup>1132</sup> Enis Šabanović, T. 6518-6520; Muhamed Filipović, T. 9621.

<sup>1133</sup> Ex. P2015a and P2015b, “Reports on the autopsy of the bodies of Esad Bender and Omer Filipović”.

the detainees were housed. Shortly after his return in the morning,<sup>1135</sup> Esad Bender died as a result of the beatings inflicted on him during that night.<sup>1136</sup>

439. A Bosnian Croat soldier from the HVO was taken to the camp's isolation cell, from where the other inmates could hear his screams and the sound of beatings. Then a shot was fired, following which everything was silent. Detainees were ordered to wrap his dead body in a blanket.<sup>1137</sup>

440. The Trial Chamber is satisfied that between June and November 1992, at least 10 prisoners died inside Manjača camp as a result of beatings or of sporadic killings.<sup>1138</sup>

(ii) The killing of a number of people at Omarska camp<sup>1139</sup> between 28 May and 6 August 1992 – Prijedor municipality

441. As of late May 1992, a camp was set up at Omarska, where evidence shows that several hundred Bosnian Muslim and Bosnian Croat civilians from the Prijedor area were detained, and where killings occurred on a massive scale.<sup>1140</sup>

442. A lot of the killings at Omarska camp were committed at the building known as the 'White House'. Incoming detainees recount that dead bodies were lying around there on various occasions, and the inside of the 'White House' was covered with blood.<sup>1141</sup> Killings also occurred at the 'Red House'.<sup>1142</sup> Detainees were deprived of their lives in various ways. Many of them were so severely beaten that they died from their injuries.<sup>1143</sup> Others were riddled by bullets, jumped on by camp guards, or strangled.<sup>1144</sup> A large number of detainees were called out from the rooms in which they were detained and never returned.<sup>1145</sup> If detainees were told that they should take their belongings with them, it meant that they would not return and were, in all likelihood, going to be killed.<sup>1146</sup>

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<sup>1134</sup> Enis Šabanović, T. 6657.

<sup>1135</sup> Sakib Muhić, T. 8139; Muhamed Filipović, T. 9623.

<sup>1136</sup> Atif Džafić, ex. P1123, 92*bis* statement, 2004688; Enis Šabanović, T. 6657.

<sup>1137</sup> BT-36, T. 11066 (closed session).

<sup>1138</sup> Enis Šabanović, T. 6522; Adil Draganović, T. 5093; BT-36, T. 11064, 11066 (closed session).

<sup>1139</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1140</sup> Muharem Murselović, ex. P1542, T. 2904.

<sup>1141</sup> BT-3, ex. P1135, T. 6200-6205 (under seal); BT-1, ex. P1619, T. 4770 (under seal).

<sup>1142</sup> BT-3, ex. P1135, T. 6231-6233 (under seal).

<sup>1143</sup> Muharem Murselović, ex. P1542, T. 2743, 2767; BT-34, ex. P558, T. 1098-1099 (under seal); BT-2, ex. P561, T. 2734-2739 (under seal); BT-42, ex. P564, T. 1918 (under seal).

<sup>1144</sup> Kerim Mesanović, T. 11189, BT-1, ex. P1619, T. 4766-4767 (under seal); BT-34, ex. P558, T. 1099-1100 (under seal).

<sup>1145</sup> BT-42, ex. P564, T. 1910-1917 (under seal).

<sup>1146</sup> BT-42, ex. P564, T. 1888 (under seal); Nusret Sivac, ex. P1547, T. 6687; Kerim Mešanović, T. 11186-11187.



443. Inmates were unofficially grouped into three categories.<sup>1147</sup> Category one comprised intellectuals and political leaders from the Bosnian Muslim and Bosnian Croat communities, who were earmarked for elimination. Persons who associated themselves with those from the first category would fall into the second category, and the third category encompassed detainees that were in the view of the Bosnian Serb authorities the least ‘guilty’, and eventually were to be released.<sup>1148</sup> However, in practice, people from all three categories were kept detained in the camp.<sup>1149</sup>

444. Around 29 May 1992, detainees from the Benkovac military barracks were transferred to the camp.<sup>1150</sup> Upon arrival, around 120 persons were crammed into a garage for several days. Two young men suffocated to death as a result of the conditions inside the garage.<sup>1151</sup>

445. Prominent members of the Bosnian Muslim and Bosnian Croat local communities were imprisoned in Omarska camp,<sup>1152</sup> such as Professor Muhamed Čehajić, the mayor of Prijedor prior to the Bosnian Serb take-over. He formerly taught literature at Prijedor high school and was a well-liked man. On 27 July 1992, he was called out from the room in which he was detained and taken out of the camp.<sup>1153</sup> Muhamed Čehajić did not return and was never seen again.<sup>1154</sup> Dr. Esad Sadiković, a physician, had previously worked for the UNHCR and was described as a charismatic and deeply humane person.<sup>1155</sup> In Omarska, he helped other detainees wherever he could, and was regarded as a ‘moral and spiritual authority’.<sup>1156</sup> One night, a camp guard appeared and said: “Dr. Eso Sadiković, come out and take your stuff with you.” The other detainees knew that this meant he would not return. Everybody stood up and bid him farewell.<sup>1157</sup> The Trial Chamber is satisfied beyond reasonable doubt that both Muhamed Čehajić and Esad Sadiković were taken out to be killed and were actually killed.

446. At the end of July 1992, the killing of inmates with a special professional background started. One night, lawyers were targeted, following which policemen and physicians were marked

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<sup>1147</sup> Ex. P1237, “Note”, 31 May 1992. “A mixed group consisting of national, public and military security investigators shall be responsible for the work and categorisation of detainees.” See also ex. P1305, “List of 1<sup>st</sup> category persons” dated 28 July 1992, containing 174 names of Muslim men.

<sup>1148</sup> Kerim Mesanović, T. 11183-11186.

<sup>1149</sup> Kerim Mesanović, T. 11186.

<sup>1150</sup> Samir Poljak, ex. P1521, T. 6353. See para. 404 *supra*.

<sup>1151</sup> Samir Poljak, ex. P1521, T. 6357; Samir Poljak, T. 11891.

<sup>1152</sup> Mevludin Sejmenović, T. 12309-12311; Nusret Sivac, ex. P1547, T. 6628, 6630, mentioning Silvije Sarić – the HDZ President of Prijedor, and former Bosnian Muslim mayor Muhamed Čehajić.

<sup>1153</sup> Muharem Murselović, ex. P1542, T. 2710-2711; Nusret Sivac, ex. P1547, T. 6629-6630.

<sup>1154</sup> Nusret Sivac, ex. P1547, T. 6629-6630.

<sup>1155</sup> Nusret Sivac, ex. P1547, T. 6686.

<sup>1156</sup> BT-42, ex. P564, T. 1838 (under seal).

<sup>1157</sup> Nusret Sivac, ex. P1547, T. 6687.

for killing.<sup>1158</sup> In one night at the end of July 1992, a large number of detainees from the recently cleansed Brdo area were killed.<sup>1159</sup>

447. A yellow truck frequently came by to take away the dead bodies. The vehicle returned empty after about 30-45 minutes.<sup>1160</sup> Detainees were often ordered to help with the loading. Some of the bodies had been mutilated.<sup>1161</sup>

448. Following the visit of foreign journalists in early August 1992, Omarska camp was closed.<sup>1162</sup> The Trial Chamber is unable to precisely identify all detainees that were killed at Omarska camp. It is satisfied beyond reasonable doubt however that, at a minimum, 94 persons were killed, including those who disappeared.

(iii) The killing of a number of men in Trnopolje camp between 28 May and October 1992 – Prijedor municipality

449. Following the Bosnian Serb attack on Kozarac at the end of May 1992, residents of that area were brought to the school and community centre in Trnopolje. They were mainly women and children, with only a few military-aged men.<sup>1163</sup> The camp commander was Slobodan Kuruzović, and the guards were Bosnian Serb soldiers from Prijedor.<sup>1164</sup>

450. The Trial Chamber finds that numerous killings occurred in Trnopolje camp. A number of detainees died as a result of the beatings received by the guards.<sup>1165</sup> Others were killed by camp guards with rifles.<sup>1166</sup> The Trial Chamber also finds that at least 20 inmates were taken outside the camp and killed there.<sup>1167</sup> Trnopolje camp was officially closed down at the end of September 1992, but some of the detainees stayed there longer.<sup>1168</sup>

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<sup>1158</sup> Nusret Sivac, ex. P1547, T. 6633, 6680-6688; Nusret Sivac, T. 12787-12788; Mirsad Mujadžić, ex. P1601, T. 3737.

<sup>1159</sup> Kerim Mešanović, ex. P1131, T. 5195; Kerim Mešanović, T. 11188.

<sup>1160</sup> Muharem Murselović, ex. P1542, T. 2766-2768.

<sup>1161</sup> BT-27, ex. P1529, T. 4307-4308 (under seal).

<sup>1162</sup> Samir Poljak, ex. P1521, T. 6375-6376.

<sup>1163</sup> Idriz Merdžanić, ex. P1148, T. 7756.

<sup>1164</sup> Emsud Garibović, ex. P1538, T. 5823; Nusret Sivac, ex. P1547, T. 6688; Idriz Merdžanić, ex. P1148, T. 7749-7750, 7861-7862.

<sup>1165</sup> Idriz Merdžanić, ex. P1148, T. 7785.

<sup>1166</sup> Idriz Merdžanić, ex. P1148, T. 7786. BT-78, ex. P562, T. 6882-6883 (under seal); BT-38, ex. P556, T. 1664-1665. (under seal).

<sup>1167</sup> Idriz Merdžanić, ex. P1148, T. 7786-7787; BT-33, ex. P1544, T. 3998-3999 (under seal); BT-37, ex. P555, T. 2524-2525 (under seal).

<sup>1168</sup> Idriz Merdžanić, ex. P1148, T. 7800.

(iv) The killing of a number of men after their transportation from Hasan Kikić elementary school and from Betonirka detention facility in Sanski Most<sup>1169</sup> to the Manjača camp – Sanski Most/Banja Luka municipality

451. As of early June 1992, Bosnian Muslim civilians from Sanski Most and the surrounding area were brought to Manjača camp on a large scale. Civilian and military police from both Banja Luka and Sanski Most were in charge of putting together and escorting the convoys.<sup>1170</sup>

452. On 6 June 1992, several buses with around 150 mainly Bosnian Muslim prisoners left the Hasan Kikić Elementary School in Sanski Most, to arrive at Manjača camp on the same evening.<sup>1171</sup> On 7 July 1992, a second group of around 64 mainly Bosnian Muslim prisoners arrived at Manjača camp in locked trailers.<sup>1172</sup> This transport originated from the Betonirka detention facility in Sanski Most, where those people had been detained since the end of May 1992.<sup>1173</sup> Drago Došenović ('Maca') and a camp warden called 'Špaga' organised the second transport.<sup>1174</sup> In both transports, prisoners had to stand in extremely cramped conditions and were not provided with sufficient water to drink during the nine hours of the journey, despite the hot weather.<sup>1175</sup> The Trial Chamber finds that as a consequence of these conditions, more than 20 prisoners died during the second transportation.<sup>1176</sup> Upon arrival of the first group at Manjača camp, at least six prisoners were beaten and subsequently killed by policemen from Sanski Most.<sup>1177</sup>

(v) The killing of a number of men in front of the Manjača camp after their transportation from Omarska – Banja Luka municipality

453. When the camp in Omarska was closed down, detainees from that camp were transferred to Manjača camp.<sup>1178</sup> One transport of prisoners took place on 6 August 1992. The journey lasted the whole day. After arrival at Manjača camp, detainees were made to spend the entire night in the locked bus.<sup>1179</sup> The Trial Chamber finds that during the night, three men were called out from the bus by the Bosnian Serb policemen accompanying the transport. On the next day, the dead bodies

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<sup>1169</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1170</sup> BT-21, T. 8546-8547 (closed session); Ahmet Zulić, T. 6972; BT-104, T. 18533 (private session); ex. P663, "Note" of 6 June 1992.

<sup>1171</sup> Ex. P666, "Order" of 6 June 1992 to evacuate 150 detainees from the Hasan Kikić elementary school in Sanski Most to Manjača. *See also* Sakib Muhić, T. 8122-8123; Enis Šabanović, T. 6488. The Trial Chamber is not satisfied that killings occurred either during the transportation or upon arrival at the Manjača camp as alleged in the Indictment, *see* Enis Šabanović, T. 6489.

<sup>1172</sup> Ahmet Zulić, T. 6915-6916.

<sup>1173</sup> Adil Draganović, T. 5094.

<sup>1174</sup> Bekir Delić, T. 7974.

<sup>1175</sup> Ahmet Zulić, T. 6915-6923; Bekir Delić, T. 7972-7975.

<sup>1176</sup> Ahmet Zulić, T. 6918-6920; Bekir Delić, T. 7972-7974; Adil Draganović, T. 4868; Jakov Marić, T. 10814-10815.

<sup>1177</sup> Sakib Muhić, T. 8124-8128; Enis Šabanović, T. 6501-6502.

<sup>1178</sup> BT-36, T. 11062 (closed session).

<sup>1179</sup> BT-36, T. 11063 (closed session); Muharem Murselović, T. 12607.

of these three men were seen.<sup>1180</sup> Before the prisoners were allowed to enter the camp, one of them was stabbed by a policeman, and a bystanding man was ordered to beat the dead body with a tractor's wheelcap.<sup>1181</sup>

(vi) The killing of a number of men taken from the Keraterm and Omarska [camps] in the area called Hrastova Glavica – Sanski Most municipality

454. The Trial Chamber is satisfied that on 5 August 1992, detainees from the Keraterm and Omarska camps were put on buses which headed towards Sanski Most.<sup>1182</sup> On the way, unidentified Bosnian Serbs shot dead a number of them. Some of their bodies have been found in an area called Hrastova Glavica.<sup>1183</sup>

(vii) The killing of a number of men in ‘Room 3’ at Keraterm camp<sup>1184</sup> – Prijedor municipality

455. On 20 or 21 July 1992, camp inmates from room 3 at the Keraterm camp were relocated to other rooms in the camp. Room 3 was subsequently filled with residents from the recently cleansed Brdo area.<sup>1185</sup> Approximately 200 persons were crammed into room 3.<sup>1186</sup> On one of the following days, detainees were ordered to go into their rooms, face the wall, and stay calm. After dark, Bosnian Serb army personnel entered the camp.<sup>1187</sup> A machine-gun was placed on a table outside room 3.<sup>1188</sup> At around 11:00 p.m., gun shots from light and heavy weaponry could be heard. There was the sound of breaking metal and shattered glass, and human cries. The turmoil lasted for half an hour.<sup>1189</sup>

456. The next morning, dead bodies were piled outside room 3, and the entire area was covered with blood.<sup>1190</sup> A truck arrived to carry away the bodies. When the truck left, blood could be seen dripping from it. Finally, a fire engine cleaned room 3 and the surrounding area from the traces of the massacre.<sup>1191</sup> The exact number of those who died at room 3 has not been, and probably will

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<sup>1180</sup> Muharem Murselović, T. 12606-12607; BT-42, ex. P564, T. 1839 (under seal).

<sup>1181</sup> Witness BT-36, T. 11064 (closed session).

<sup>1182</sup> BT-37, ex. P555, T. 2523, 2527 (under seal).

<sup>1183</sup> Adil Draganović, T. 5606; Nicolas Sébire, T. 17410-17411 ; ex. 2006.2, “Exhumations and Proof of Death, Municipality of Prijedor, Nicolas Sébire, 28 August 2002”, 01843990-01843992.

<sup>1184</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1185</sup> Jusuf Arifagić, ex. P554, T. 7095-7096.

<sup>1186</sup> BT-37, ex. P555, T. 2516 (under seal).

<sup>1187</sup> Jusuf Arifagić, ex. P554, T. 7097.

<sup>1188</sup> Jusuf Arifagić, ex. P554, T. 7101.

<sup>1189</sup> Jusuf Arifagić, ex. P554, T. 7097-7098; BT-37, ex. P555, T. 2510-2516 (under seal).

<sup>1190</sup> BT-37, ex. P555, T. 2517 (under seal).

<sup>1191</sup> Jusuf Arifagić, ex. P554, T. 7099.

never be established. Bearing this in mind, the Trial Chamber finds that, on the basis of the number of persons detained in room 3, at a minimum, 190 persons were killed.

(viii) The killing of a large number of men from the Trnopolje camp in the Vlašić mountain, the area of Korićanske stijene<sup>1192</sup> – Skender Vakuf municipality

457. On 21 August 1992, four buses comprised only of men set off from Trnopolje camp.<sup>1193</sup> By that time, women and children had already left the camp.<sup>1194</sup> At a junction near Kozarac, the buses from Trnopolje were joined by other buses full of prisoners that came from Tukovi.<sup>1195</sup> The convoy was accompanied by members of a special police unit of the Prijedor SJB.<sup>1196</sup> A large amount of money, jewellery and other valuables was taken from the passengers by the Bosnian Serb policemen.<sup>1197</sup>

458. Two of the buses headed via Banja Luka and Skender Vakuf towards Travnik. There were approximately 100 men in each bus.<sup>1198</sup> On the way, the convoy passed various checkpoints without delay, obviously because the guards manning the checkpoints had been informed about the transport.<sup>1199</sup>

459. Towards late afternoon, before reaching the line of separation between Bosnian Serb and Bosnian Muslim controlled territory, shortly after Skender Vakuf and nearby Mount Vlašić, the convoy stopped.<sup>1200</sup> On one side of the road, there was a deep gorge, on the other side, a steep face of rock. The area is referred to as Korićanske Stijene.<sup>1201</sup> The men from the buses were taken in a column to the edge of the cliff and ordered to kneel down.<sup>1202</sup> The police officer in charge said: "Here we exchange the dead for the dead and the living for the living."<sup>1203</sup> Before the victims were executed, they cried and pleaded for their lives.<sup>1204</sup> Then the shooting started. The dead bodies fell into the abyss or were pushed over the edge, sometimes by other Bosnian Muslims prior to their

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<sup>1192</sup> This location was sighted by the Trial Chamber and the Parties on a helicopter flight during the site visit which took place in March 2004.

<sup>1193</sup> BT-78, ex. P562, T. 6886 (under seal); BT-106, T. 21135 (closed session); Emsud Garibović, T. 12471.

<sup>1194</sup> BT-78, ex. P562, T. 6886.

<sup>1195</sup> BT-106, T. 21134 (closed session).

<sup>1196</sup> BT-78, ex. P562, T. 6896 (under seal); BT-106, T. 21068 (closed session).

<sup>1197</sup> BT-106, T. 21136-21138, 21150 (closed session); Emsud Garibović, T. 12476.

<sup>1198</sup> BT-78, ex. P562, T. 6898 (under seal).

<sup>1199</sup> BT-106, T. 21136 (closed session).

<sup>1200</sup> BT-78, ex. P562, T. 6900 (under seal).

<sup>1201</sup> BT-106, T. 21138 (closed session).

<sup>1202</sup> BT-106, T. 21141-21142 (closed session); BT-78, ex. P562, T. 6902 (under seal).

<sup>1203</sup> BT-78, ex. P562, T. 6902-6903 (under seal); Emsud Garibović, T. 12480.

<sup>1204</sup> BT-106, T. 21143 (closed session).

own execution. Grenades were thrown into the gorge to make sure no one would survive.<sup>1205</sup> The entire operation lasted not more than half an hour.<sup>1206</sup>

460. The Trial Chamber is convinced that, at a minimum, 200 men were killed on this day at Korićanske Stijene.<sup>1207</sup>

(ix) The killing of a number of men in the Petar Kočić elementary school – Bosanska Krupa municipality

461. On 22 April 1992, fighting between Bosnian Muslims and Bosnian Serb forces broke out in Bosanska Krupa.<sup>1208</sup> Bosnian Muslims from the region were detained at the Petar Kočić school in Bosanska Krupa.<sup>1209</sup> They were guarded by local Bosnian Serbs, who before the outbreak of conflict occupied civilian professions.<sup>1210</sup> The Trial Chamber is satisfied that numerous detainees were killed at the Petar Kočić school. One of them was beaten to death.<sup>1211</sup> At least seven detainees were killed in a school room with an automatic rifle by a Bosnian Serb called Jojo Plavanjac.<sup>1212</sup> A Bosnian Serb military squad under the command of Milorad Kotur was responsible for the death of three detainees during trench-digging on a hill above the Petar Kočić school.<sup>1213</sup>

(x) The killing of a number of men in Biljani<sup>1214</sup> – Ključ municipality

462. In the village of Biljani, the hamlets of Brkići, Džaferagići, Botonići and Jakubovac were exclusively inhabited by Bosnian Muslims.<sup>1215</sup> On 10 July 1992, Bosnian Serb special police and soldiers in JNA uniforms rounded up Bosnian Muslim men and women from the Biljani hamlets at the local school building.<sup>1216</sup> Between 120 and 150 men were confined in two classrooms, and their names were written down by a Bosnian Serb named Petar Mihić.<sup>1217</sup> The men were then called out

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<sup>1205</sup> BT-106, T. 21142-21143 (closed session).

<sup>1206</sup> BT-106, T. 21143 (closed session).

<sup>1207</sup> Ex. P2326, entry of 4 September 1992 (under seal).

<sup>1208</sup> BT-56, T. 17449-17450.

<sup>1209</sup> BT-56, T. 17470-17471.

<sup>1210</sup> BT-56, T. 17474.

<sup>1211</sup> BT-56, T. 17481-17482.

<sup>1212</sup> BT-56, T. 17488-17490.

<sup>1213</sup> The Trial Chamber reached this finding despite of assertions that the detainees were *accidentally* killed by shots fired from nearby ABiH positions: BT-56, T. 17482-17484; Mirsad Palić, ex. P2040, 92bis statement, 844636-844637.

<sup>1214</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1215</sup> Husein Čajić, T. 8976.

<sup>1216</sup> BT-25, T. 9065-9066 (closed session); Husein Čajić, T. 8994.

<sup>1217</sup> BT-25, T. 9068-9070 (closed session); Husein Čajić, T. 9004-9005.

five by five.<sup>1218</sup> Thereafter, bursts of gunfire could be heard.<sup>1219</sup> The Trial Chamber finds that at least 144 men were killed in Biljani on that day.<sup>1220</sup>

(xi) The killing of a number of men on the premises of the Public Security Service and the Territorial Defence building in Teslić, and in the Pribinić prison – Teslić municipality

463. Beginning on 3 June 1992, Bosnian Serb soldiers and reserve policemen brought between 100 and 120 Bosnian Muslim and Bosnian Croat men from the surrounding villages into Teslić.<sup>1221</sup> They were first detained at the SUP building, and subsequently transferred to the warehouse of the TO building.<sup>1222</sup> The guards at the TO warehouse were Bosnian Serb policemen and members of the ‘Miće’ paramilitary group, amongst them Tomo Mihajlović and Milorad Panić.<sup>1223</sup> Many of the detainees were called out and subsequently killed.<sup>1224</sup> The Trial Chamber finds that 40 Bosnian Muslim and Bosnian Croat civilians were killed by members of the ‘Miće’ paramilitary group.<sup>1225</sup>

464. At the same time, a prison for Bosnian Muslim men from the region was set up in the ‘Apoteka’ building in Pribinić, which prior to the outbreak of conflict had been used for storage purposes.<sup>1226</sup> Dragan Babić, a local Bosnian Serb and a military police officer, was in command of the prison facility.<sup>1227</sup> The number of prisoners varied between 7 and 25 at a given time.<sup>1228</sup> The Trial Chamber finds that at least five detainees succumbed to their injuries as a result of the beatings received at the ‘Apoteka’ building in Pribinić.<sup>1229</sup>

(c) Conclusion on killings

465. In sum, the Trial Chamber is satisfied beyond reasonable doubt that, considering all the incidents described in this section of the judgement, at least 1669 Bosnian Muslims and Bosnian Croats were killed by Bosnian Serb forces, all of whom were non-combatants. The Trial Chamber is

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<sup>1218</sup> BT-25, T. 9070 (closed session).

<sup>1219</sup> Husein Čajić, T. 9015.

<sup>1220</sup> Asim Egrić, T. 10615; BT-25, T. 9080 (closed session); ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927972-02927981. The mass gravesite at Lanište from which these bodies were exhumed was visited by the Trial Chamber and the Parties during the site visit in March 2004.

<sup>1221</sup> Mehmed Tenić, T. 16857-16860.

<sup>1222</sup> Mehmed Tenić, T. 16867.

<sup>1223</sup> BT-61, ex. P1976, 92bis statement, 02978916 (under seal); Mehmed Kopic, ex. P1964, 92bis statement, 01034038-01034039.

<sup>1224</sup> Mehmed Tenić, T. 16874, 16877-16878.

<sup>1225</sup> Ex. P1931, “Report”, is a document issued by the Public Security Station in Teslić on 8 July 1992, which states that “About 40 Muslims and Croats have been massacred in the Teslić municipality by a group of criminals from Doboje.” See also ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927982-02927983.

<sup>1226</sup> BT-64, T. 16967, 16969.

<sup>1227</sup> BT-64, T. 16968.

<sup>1228</sup> BT-64, T. 16972.

<sup>1229</sup> BT-64, T. 16976.

further satisfied that these killings fulfil the element of massiveness for the crime of extermination. It is also proven that the direct perpetrators had an intention to kill or to inflict serious injury, in the reasonable knowledge that their acts or omissions were likely to cause the death of the victim.

### 3. The Responsibility of the Accused

466. The Trial Chamber has already dismissed JCE, planning and superior criminal responsibility under Article 7(3) of the Statute as possible modes of liability to describe the individual criminal responsibility of the Accused.<sup>1230</sup>

467. There is no evidence to establish that the Accused ordered or instigated the commission of the crimes of extermination and/or wilful killing charged under Counts 4 and 5 of the Indictment.

468. The Trial Chamber is not satisfied that the public utterances of the Accused, in particular his statements with respect to mixed marriages and those suggesting a campaign of retaliatory ethnicity-based murder<sup>1231</sup> prompted the physical perpetrators to commit any of the acts charged under Counts 4 and 5 of the Indictment, because the *nexus* between the public utterances of the Accused and the commission of the killings in question by the physical perpetrators has not been established. Moreover, neither the public utterances of the Accused nor the decisions of the ARK Crisis Staff are specific enough to constitute instructions by the Accused to the physical perpetrators to commit any of the killings charged.

#### (a) Wilful killing (Count 5)

469. The Trial Chamber recalls its previous finding that the decisions of the ARK Crisis Staff can be attributed to the Accused.<sup>1232</sup> It also found that between 9 May 1992 and 18 May 1992, the ARK Crisis Staff issued a number of decisions demanding the disarmament of “paramilitary formations” and of “individuals who illegally possess weapons”, specifying that “[a]ll formations that are not in the Army of the Serbian Republic of Bosnia and Herzegovina or the Banja Luka Security Services Centre and are in the Autonomous Region of Krajina, are considered paramilitary formations and must be disarmed.” Moreover, the Trial Chamber has found that, although these decisions on disarmament were not expressly restricted to non-Serbs, the disarmament operations were selectively enforced against them by the municipal civilian authorities, the CSB and the SJBs, and by the army.<sup>1233</sup>

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<sup>1230</sup> See VIII.D., “The Accused’s criminal responsibility in general”.

<sup>1231</sup> See paras 328-329 *supra*.

<sup>1232</sup> See para. 319 *supra*.

<sup>1233</sup> See VI.D., “The role of the ARK Crisis Staff in the implementation of the Common Plan”.



470. The disarmament of Bosnian Muslims and Bosnian Croats throughout the ARK created an imbalance of arms and weapons favouring the Bosnian Serbs in the Bosnian Krajina, a situation amplified by the fact that the evidence establishes beyond reasonable doubt that the Bosnian Serb population was arming itself at the same time on a massive scale.<sup>1234</sup> The ARK Crisis Staff's decisions on disarmament and their implementation further rendered the Bosnian Muslim and Bosnian Croat civilians more vulnerable, preventing or limiting their ability to defend themselves and giving practical assistance to the Bosnian Serb forces attacking non-Serb towns, villages and neighbourhoods. Moreover, at the municipal level, where ARK Crisis Staff decisions with respect to disarmament were implemented, the disarmament deadlines were on occasion used as a pretext to attack non-Serb villages.<sup>1235</sup>

471. For the foregoing reasons, the Trial Chamber is satisfied that the ARK Crisis Staff decisions on disarmament constituted practical assistance to the attacks of the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods. During and immediately after these attacks members of the Bosnian Serb forces committed a number of killings. Through the ARK Crisis Staff decisions on disarmament, the Accused had a substantial effect on the commission of these killings. However, the Trial Chamber is not satisfied that the ARK Crisis Staff decisions on disarmament had a substantial effect on those killing incidents charged under Count 5 of the Indictment that were not committed in context of the armed attacks by the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods.

472. The Trial Chamber is also not satisfied that any other decisions of the ARK Crisis Staff or the public utterances or acts of the Accused had a substantial effect on the commission of any of the killing incidents charged under Count 5 of the Indictment.

473. The Trial Chamber has previously found that the Accused espoused the Strategic Plan and that he was aware that it could only be implemented by the use of force and fear.<sup>1236</sup> Bearing in mind that the attacks by the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods constituted an essential part of the implementation of the Strategic Plan in the ARK; that the Accused held the position of President of the ARK Crisis Staff, the highest political authority in the ARK; his direct link with Radovan Karadžić and his close contact with the General Major Momir Talić, the commander of the 1<sup>st</sup> KK of the VRS, and with Stojan Župljanin, the head of the CSB, and with other military and political leaders at the level of the ARK and the municipalities of the ARK; the Trial Chamber is satisfied beyond reasonable doubt that the only reasonable inference

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<sup>1234</sup> See IV., "General Overview".

<sup>1235</sup> See IX.D., "Destructions".

<sup>1236</sup> See VIII.C.1., "The Accused's espousal of the Strategic Plan".

that may be drawn is that, when the ARK Crisis Staff decisions on disarmament were issued, the Accused was aware that the Bosnian Serb forces were to attack non Serb towns, villages and neighbourhoods and that through the ARK Crisis Staff decisions on disarmament he rendered practical assistance and a substantial contribution to the Bosnian Serb forces carrying out these attacks.

474. Moreover, the Trial Chamber is satisfied that the Accused was aware that during these armed attacks the Bosnian Serb forces would commit a number of crimes including the crime of wilful killing of a number of non-Serbs and that the members of the Bosnian Serb forces carrying out the killings in question had the required intent to kill or to inflict grievous bodily harm or serious injury, in the reasonable knowledge that it was likely to cause death.

475. For the above reason, the Trial Chamber is satisfied that the Accused aided and abetted in the killing committed by the Bosnian Serb forces in context of the armed attacks of the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods after 9 May 1992, the date when the ARK Crisis Staff issued its first decision on disarmament.

476. The Accused aided and abetted members of the Bosnian Serb forces in the commission of the following crimes amounting to wilful killing: the killing of at least 3 Bosnian Muslim civilians in Hambarine on 23 May 1992;<sup>1237</sup> the killing of about 140 Bosnian Muslim and Bosnian Croat civilians in Kozarac and the surrounding areas around 24 May 1992;<sup>1238</sup> the killing of at least 8 Bosnian Muslims in Mehmed Šahurić's house in Kamičani between 24 and 26 May 1992;<sup>1239</sup> the killing of 8 Bosnian Muslim men in the village of Jaskići on 14 June 1992;<sup>1240</sup> the killing of at least 300 Bosnian Muslim and Bosnian Croat men in the village of Biščani on 20 July 1992;<sup>1241</sup> the killing of at least 16 civilians in the village of Čarakovo on 23 July 1992;<sup>1242</sup> the killing of at least 68 persons, 14 of them being women in the village of Briševo between 24 and 27 May 1992;<sup>1243</sup> the killing of at least 28 men from the village of Begići on the way to or at the Vrhpolje bridge on 31 May 1992;<sup>1244</sup> the killing of 15 members of the Merdanović family in the hamlet of Kukavice on 31 May 1992;<sup>1245</sup> the killing of 14 unarmed Bosnian Muslim civilians in the village of Budim on 1 August 1992;<sup>1246</sup> the killing of at least 3 civilians from Puđin Han on 28 May 1992;<sup>1247</sup> the killing

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<sup>1237</sup> See "The killing of a number of people in Hambarine" *supra*.

<sup>1238</sup> See "The killing of a number of people in Kozarac and the surrounding areas", *supra*.

<sup>1239</sup> See "The killing of a number of people in Mahmed Šahurić's house in Kamičani", *supra*.

<sup>1240</sup> See "The killing of a number of men in the village of Jaskići", *supra*.

<sup>1241</sup> See "The killing of a number of men in the village of Biščani", *supra*.

<sup>1242</sup> See "The killing of a number of people in the village of Čarakovo", *supra*.

<sup>1243</sup> See "The killing of a number of people in the village of Briševo" *supra*.

<sup>1244</sup> See "The killing of a number of men between Begići and Vrhpolje bridge", *supra*.

<sup>1245</sup> See "The killing of members of the Merdanović's family in the hamlet of Kukavice, Hrstoovo village", *supra*.

<sup>1246</sup> See "The killing of a number of members of the Alibegović family in Budim", *supra*.

of at least 40 Bosnian Muslim men and women in Prhovo village or on the road from Prhovo to Peći on 1 June 1992;<sup>1248</sup> the killing of at least 2 Bosnian Croats and/or Bosnian Muslims in front of the hospital in Kotor Varoš on 25 June 1992;<sup>1249</sup> the killing of at least 3 Bosnian Muslim in the village of Dabovci in mid-August of 1992;<sup>1250</sup> the killing of at least 8 Bosnian Muslim civilians in the village of Hanifići in mid-August of 1992;<sup>1251</sup> and the killing of at least 12 Bosnian Muslim civilians in the village of Blagaj Japra on 9 June 1992.<sup>1252</sup>

(b) Extermination (Count 4)

477. The Trial Chamber has previously found that the crime of extermination was committed in the ARK during the time relevant to the Indictment. The Trial Chamber has also found that the Accused espoused the Strategic Plan. The Trial Chamber notes that the very nature of the Strategic Plan was to create a separate Bosnian Serb state, from which most non-Serbs would be permanently removed. Although it was clear that the Strategic Plan could only be implemented by the use of force and fear, the Trial Chamber is not satisfied beyond reasonable doubt that it was clear that the crimes that were intended to be perpetrated with a view to implementing the Strategic Plan in the ARK would necessarily include extermination.

478. The Trial Chamber is not satisfied that the evidence establishes beyond reasonable doubt that the Accused was aware that by issuing ARK Crisis Staff decisions on disarmament he would be assisting in the killings on a massive scale such as to amount to the crime of extermination. Nor has it been established beyond reasonable doubt that the Accused knew that the members of the Bosnian Serb forces intended to commit killings on a massive scale such as to amount to the crime of extermination.

479. Accordingly, the Accused's responsibility for aiding and abetting the crime of extermination charged under Count 4 of the Indictment has not been established and the Accused is acquitted of the charge of extermination in Count 4 of the Indictment.

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<sup>1247</sup> See "The killing of a number of people in Pudin Han", *supra*.

<sup>1248</sup> See "The killing of a number of people in Prhovo village and a number of men on the road to Peći", *supra*.

<sup>1249</sup> See "The killing of a number of men in front of the Medical Centre in Kotor Varoš", *supra*.

<sup>1250</sup> See "The killing of a number of men in Dabovci", *supra*.

<sup>1251</sup> See "The killing of a number of men in the mosque in Hanifići", *supra*.

<sup>1252</sup> See "The killing of a number of people during the expulsions of Bosnian Muslims from the village of Blagaj Japra and the surrounding areas", *supra*.

## B. Torture (counts 6 and 7)

480. Torture is charged in counts 6 and 7 pursuant to Articles 2(b) and 5(f) of the Statute.<sup>1253</sup>

### 1. The law

481. Both this Tribunal and the ICTR have adopted a definition of the crime of torture along the lines of that contained in the Convention against Torture (“CAT”),<sup>1254</sup> which comprises the following constitutive elements:

1. the infliction, by act or omission, of severe pain or suffering, whether physical or mental;<sup>1255</sup>
2. the act or omission must be intentional;<sup>1256</sup> and
3. the act or omission must have occurred in order to obtain information or a confession, or to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person.<sup>1257</sup>

482. The definition of “torture” remains the same regardless of the Article of the Statute under which the Accused has been charged.<sup>1258</sup> The *mens rea* as set out above is not controversial in the jurisprudence of the Tribunal. However, a number of issues regarding the *actus reus* may usefully be addressed.

#### (a) Severity of pain or suffering

483. The seriousness of the pain or suffering sets torture apart from other forms of mistreatment.<sup>1259</sup> The jurisprudence of this Tribunal and of the ICTR has not specifically set the

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<sup>1253</sup> Indictment, paras 53-56. The Trial Chamber is satisfied that the general requirements for grave breaches of the Geneva Conventions and crimes against humanity have been met, *see V.*, “General Requirements for the Crimes Alleged in the Indictment”.

<sup>1254</sup> *See* Article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, UNTS Vol. 1465, (“CAT”), p. 85.

<sup>1255</sup> *Furundžija* Trial Judgement, para. 162; *Čelebići* Trial Judgement, para. 468; *Semanza* Trial Judgement, para. 343.

<sup>1256</sup> *Furundžija* Trial Judgement, para. 162; *Akayesu* Trial Judgement, para. 594.

<sup>1257</sup> *Kunarac* Trial Judgement, para. 497; *Krnjelac* Trial Judgement, paras 179, 186. According to both Trial Chambers, “humiliation” is not a purpose of torture acknowledged under customary international law, which has been stated so by the *Furundžija* and *Kvočka* Trial Chambers in their judgements (paras 162 and 141 respectively). This approach has subsequently been confirmed by the *Furundžija* Appeals Chamber (para. 111 of the *Furundžija* Appeal Judgement). *See also Naletilić* Trial Judgement, para. 338, and *Semanza* Trial Judgement, para. 343.

<sup>1258</sup> *Krnjelac* Trial Judgement, para. 178; *Furundžija* Trial Judgement, para. 139; *Kunarac* Trial Judgement, para. 497; *Kvočka* Trial Judgement, para. 158.

<sup>1259</sup> Article 1(2) of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 9 December 1975, G.A. Res. 3452, annex, 30 U.N. GAOR Supp. (No. 34) at 91 U.N. Doc. A/10034 (1975) states: “Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment”.

threshold level of suffering or pain required for the crime of torture, and it consequently depends on the individual circumstances of each case.<sup>1260</sup>

484. In assessing the seriousness of any mistreatment, the objective severity of the harm inflicted must be considered, including the nature, purpose and consistency of the acts committed. Subjective criteria, such as the physical or mental condition of the victim, the effect of the treatment and, in some cases, factors such as the victim's age, sex, state of health and position of inferiority will also be relevant in assessing the gravity of the harm.<sup>1261</sup> Permanent injury is not a requirement for torture;<sup>1262</sup> evidence of the suffering need not even be visible after the commission of the crime.<sup>1263</sup>

485. The criteria mentioned in the previous paragraph will be used by this Trial Chamber in assessing whether the treatment alleged by the Prosecution in counts 6 and 7 amounts to severe pain or suffering. Some acts, like rape, appear by definition to meet the severity threshold. Like torture, rape is a violation of personal dignity and is used for such purposes as intimidation, degradation, humiliation and discrimination, punishment, control or destruction of a person.<sup>1264</sup> Severe pain or suffering, as required by the definition of the crime of torture, can be said to be established once rape has been proved, since the act of rape necessarily implies such pain or suffering.<sup>1265</sup>

(b) Prohibited purpose

486. Acts of torture aim, through the infliction of severe mental or physical pain, to attain a certain result or purpose.<sup>1266</sup> Thus, in the absence of such purpose or goal, even a very severe infliction of pain would not qualify as torture for the purposes of Article 2 and Article 5 of the Statute.<sup>1267</sup>

487. The prohibited purposes mentioned above<sup>1268</sup> do not constitute an exhaustive list, and there is no requirement that the conduct must *solely* serve a prohibited purpose.<sup>1269</sup> If one prohibited purpose is fulfilled by the conduct, the fact that such conduct was also intended to achieve a non-listed purpose is immaterial.<sup>1270</sup>

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<sup>1260</sup> *Čelebići* Trial Judgement, para. 469; *Kunarac* Trial Judgement para. 476.

<sup>1261</sup> *Kvočka* Trial Judgement, para. 143; *Krnojelac* Trial Judgement, para. 182.

<sup>1262</sup> *Kvočka* Trial Judgement, para. 148.

<sup>1263</sup> *Kunarac* Appeal Judgement, para. 150.

<sup>1264</sup> *Akayesu* Trial Judgement, para. 597.

<sup>1265</sup> *Kunarac* Appeal Judgement, para. 151; *Čelebići* Trial Judgement, paras 480 *et seq.*, which quotes reports and decisions of organs of the UN and regional bodies, in particular, the Inter-American Commission on Human Rights and the European Court of Human Rights, stating that rape may be a form of torture.

<sup>1266</sup> See para. 481 above (third element of the torture definition).

<sup>1267</sup> *Krnojelac* Trial Judgement, para. 180.

<sup>1268</sup> See para. 481 above.

<sup>1269</sup> *Čelebići* Trial Judgement, para. 470; *Kunarac* Appeal Judgement, para. 155.

<sup>1270</sup> *Kunarac* Appeal Judgement, para. 155.

(c) Official sanction not required

488. Even though the CAT envisages that torture be committed “with the consent or acquiescence of a public official or other person acting in an official capacity”<sup>1271</sup>, the jurisprudence of this Tribunal does not require that the perpetrator of the crime of torture be a public official, nor does the torture need to have been committed in the presence of such an official.<sup>1272</sup>

489. In this context, the Trial Chamber notes that the definition of the CAT relies on the notion of human rights, which is largely built on the premises that human rights are violated by States or Governments. For the purposes of international criminal law, which deals with the criminal responsibility of an individual, this Trial Chamber agrees with and follows the approach of the *Kunarac* Trial Chamber that

the characteristic trait of the offence [under the Tribunal’s jurisdiction] is to be found in the nature of the act committed rather than in the status of the person who committed it.<sup>1273</sup>

2. The facts and findings

490. The Trial Chamber was confronted with an overwhelming amount of evidence regarding ill-treatment of Bosnian Muslims and Bosnian Croats in the relevant municipalities of the ARK. However, the Prosecution has charged the Accused with specific acts of torture only with respect to the incidents listed and summarised in paragraph 55 of the Indictment. The Trial Chamber has accordingly restricted its analysis to the events set out below. It also notes that the Prosecution has withdrawn in its Final Brief all allegations of torture with respect to the municipality of Donji Vakuf.<sup>1274</sup>

(a) Bosanska Krupa

(i) Jasenica school

491. On 21 April 1992, the Bosnian Serb population of Bosanska Krupa left the town, leaving behind its Bosnian Muslim and Bosnian Croat inhabitants.<sup>1275</sup> At Jasenica, a village at a distance of 18 kilometers from Bosanska Krupa, Bosnian Serb policemen detained approximately 60 Bosnian Muslims and a few Bosnian Croats in the local school building<sup>1276</sup> at the orders of the Bosanska

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<sup>1271</sup> See, e.g., *Furundžija* Trial Judgement, para. 162.

<sup>1272</sup> *Kunarac* Trial Judgement, paras 488-496; *Kunarac* Appeal Judgement, para. 148; *Simić* Trial Judgement, para. 82.

<sup>1273</sup> *Kunarac* Trial Judgement, para. 495; *Kunarac* Appeal Judgement, para. 148.

<sup>1274</sup> Prosecution Final Brief, para. 690 d), fn. 1526.

<sup>1275</sup> BT-56, T. 17449.

<sup>1276</sup> BT-56, T. 17451, 17455, 17459. Ex. P2081, “List of Persons Detained on 21 and 22 April 1992 in Armed Conflict in Bosanska Krupa”.

Krupa War Presidency.<sup>1277</sup> On 24 April 1992, ten members of a paramilitary group known as 'Suha Rebra' entered the school. They asked the detainees "Do you want a state of your own?", pricked them with knives on their legs, beat them with handcuffs, and stamped on them until some of them fainted.<sup>1278</sup> A few days later, Bosnian Serb paramilitaries known as 'Šešelj's men' entered the school building and beat up the detainees with rifle butts.<sup>1279</sup> The Trial Chamber is satisfied that in these instances, the Bosnian Muslim detainees were singled out for this ill-treatment because the perpetrators wanted to punish them.

(ii) Petar Kočić school

492. At the beginning of May 1992, detainees from Jasenica school were transferred to the Petar Kočić school on the outskirts of Bosanska Krupa.<sup>1280</sup> At least 50 Bosnian Muslims were detained at the school.<sup>1281</sup> In a small room, detainees were given electroshocks. Wires from a car battery were attached through clamps to the fingers and toes of detainees, and the electricity was turned on and off for periods of five minutes.<sup>1282</sup> Bosnian Serb policemen administered this treatment on a number of Bosnian Muslim detainees during interrogations in order "to make them sing".<sup>1283</sup> At least one of the detainees still suffers from the consequences of this treatment today.<sup>1284</sup> The Trial Chamber finds that ill-treatment was inflicted on the victims in order to obtain information.

(b) Bosanski Novi

493. On 10 June 1992,<sup>1285</sup> a large group of Bosnian Muslims from Blagaj Japra was detained at a compound in Blagaj Rijeka, on the other bank of the Sana river. One of them, Sulejman Burzić was shot dead in cold blood by Zare Janjetović, one of the Bosnian Serb guards, in the presence of all the detainees who watched the incident from behind the barbed wire fence.<sup>1286</sup> Thereafter, railway carriages entered the compound, and detainees were ordered to board them.<sup>1287</sup> Mićo Dolić and Ranko Gvozden were amongst the two Bosnian Serb soldiers present.<sup>1288</sup> Some of the soldiers wore helmets with the inscription "Guard 92".<sup>1289</sup> While the detainees were boarding the railway carriages, one of the soldiers called out Hasan Merzihić's name, who acknowledged his presence.

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<sup>1277</sup> Ex. P2030 (under seal); ex. P2029 (under seal).

<sup>1278</sup> BT-56, T. 17461-17462, 17465; Mirsad Palić, ex. P2040, 92*bis* statement, 00844635.

<sup>1279</sup> BT-56, T. 17463-17464.

<sup>1280</sup> BT-56, T. 17465, 17470.

<sup>1281</sup> BT-56, T. 17465-17466.

<sup>1282</sup> BT-56, T. 17476-17480 (partly in private session).

<sup>1283</sup> BT-56, T. 17479.

<sup>1284</sup> BT-56, T. 17480.

<sup>1285</sup> BT-82, T. 13998.

<sup>1286</sup> Midho Alić, T. 13894, 13939-13940.

<sup>1287</sup> Midho Alić, T. 13895-13896; BT-49, T. 14231 (closed session).

<sup>1288</sup> Midho Alić, T. 13896.

<sup>1289</sup> BT-82, T. 13995.

He took Hasan Merzihić towards a nearby bridge, and shot him dead in cold blood. The killing was seen by other detainees. Some of the persons on one of the carriages closed the doors because they did not want the children to see more killings. Other names were being called out by the soldiers, but no one responded.<sup>1290</sup> This was the atmosphere and state of affairs when the convoy set off.

494. The railway carriages were tightly packed with people, and there was no space left.<sup>1291</sup> The train set out comprised of at least 10 carriages. It stopped outside Doboj, where men were separated from women and children.<sup>1292</sup> The latter group was transferred to territory held by the Bosnian government.<sup>1293</sup> The men were taken by train to Banja Luka, where they had to spend the night in the carriages. The following day, the train arrived in Bosanski Novi from where the men were transferred to the Mlavke stadium.<sup>1294</sup> No food or water had been given to them during the entire period spent in the carriages.<sup>1295</sup> On board of these railway carriages, there was an absolute lack of any hygienic facilities.

495. The Trial Chamber finds that the treatment of these detainees, including many children, when they were packed and transported in these railway carriages, including the separation of the male detainees from the women and children, was inflicted to discriminate against them because of their ethnicity.

(c) Bosanski Petrovac

(i) Bosanski Petrovac town

496. Prior to the conflict, the municipality of Bosanski Petrovac had a majority population of Bosnian Serbs, whereas the town of Bosanski Petrovac was mostly inhabited by Bosnian Muslims.<sup>1296</sup> At the beginning of June 1992, the town of Bosanski Petrovac was shelled and taken over by Bosnian Serb forces.<sup>1297</sup> The Trial Chamber is satisfied that there were many instances of severe beatings of Bosnian Muslim civilians by Bosnian Serb policemen and other armed Bosnian Serbs during and after the takeover.<sup>1298</sup> In one case, a Bosnian Muslim called Sead Husagić was beaten up and wounded so severely that he succumbed to his injuries a few days later.<sup>1299</sup> The Trial

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<sup>1290</sup> Midho Alić, T. 13896-13897.

<sup>1291</sup> Midho Alić, T. 13897; BT-49, T. 14231 (closed session).

<sup>1292</sup> Midho Alić, T. 13897-13898; BT-49, T. 14232 (closed session).

<sup>1293</sup> BT-49, T. 14232 (closed session).

<sup>1294</sup> Midho Alić, T. 13898-13900.

<sup>1295</sup> Midho Alić, T. 13898; BT-82, T. 13998; BT-49, T. 14232 (closed session).

<sup>1296</sup> Ahmet Hidić, T. 16148; ex. P60, "Population of Bosnia and Herzegovina".

<sup>1297</sup> Ahmet Hidić, T. 16251-16252.

<sup>1298</sup> Ahmet Hidić, T. 16261.

<sup>1299</sup> Ahmet Hidić, T. 16259.



Chamber is satisfied that this ill-treatment was inflicted on the victim in order to intimidate him and because of his ethnicity.

(ii) Kozila camp

497. On 1 July 1992, around 30 Bosnian Muslims from the town of Bosanski Petrovac were taken by bus to the working site of the timber company "Kozila", at a distance of approximately 20 km, near the village of Drinić.<sup>1300</sup> At least 80 Bosnian Muslims were detained at Kozila camp at that time.<sup>1301</sup> There was barbed wire around the wooden shack where the detainees were housed. Around 20 Bosnian Serbs in camouflage uniform served as camp guards, and at least one machine gun nest with two soldiers was placed right outside the camp.<sup>1302</sup>

498. Detainees at Kozila were frequently interrogated and ill-treated by the camp commander, who was either Mišo Zorić or Milan Kresoje,<sup>1303</sup> and by the camp guards, including Željko Branković, Zoran Salasa and Milan Knežević.<sup>1304</sup> On 6 July 1992, Midho Družić, one of the detainees, was taken to the camp administration office. Mišo Zorić and a few other guards present called him by pejorative names, including 'Balijsa' and 'Mujahedin'. They asked him where he had hidden his weapons. Then they kicked him in the genitals and beat him all over his body for about an hour.<sup>1305</sup> On another occasion, Midho Družić was cut under his chin with a bayonet because he had refused to kiss the four Serbian S's on the soldier's bayonet.<sup>1306</sup> On yet another occasion, Midho Družić was ordered to lick up blood from a table, which came from Šaban Spahić, a detainee who had been beaten up before. When he refused, one of the guards grabbed Družić's head and used his face to wipe the blood off.<sup>1307</sup> Zijad Ramić was beaten during interrogations and a pistol was put against his temple. He was told to write down the names of local SDA leaders.<sup>1308</sup>

499. The Trial Chamber finds that many more instances of beatings and various forms of ill-treatment took place at Kozila camp.<sup>1309</sup> Sometimes Bosnian Muslim detainees were ordered to beat each other.<sup>1310</sup> On 14 July 1992, after having been interrogated and beaten at the administration

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<sup>1300</sup> Midho Družić, T. 16761-16763; Džemil Fazlić, ex. P1978, 92bis statement, 00942941.

<sup>1301</sup> Midho Družić, T. 16774.

<sup>1302</sup> Midho Družić, T. 16763; Džemil Fazlić, ex. P1978, 92bis statement, 00942941.

<sup>1303</sup> Midho Družić, T. 16773, 16782-83; Zijad Ramić, ex. P1979, 92bis statement, 1029882.

<sup>1304</sup> Midho Družić, T. 16773, 16782-16783.

<sup>1305</sup> Midho Družić, T. 16781-16782.

<sup>1306</sup> Midho Družić, T. 16784.

<sup>1307</sup> Midho Družić, T. 16785-16786.

<sup>1308</sup> Zijad Ramić, ex. P1979, 92bis statement, 01029884-01029885.

<sup>1309</sup> Midho Družić, T. 16787-16802.

<sup>1310</sup> Zijad Ramić, ex. P1979, 92bis statement, 01029884.

office, a Bosnian Muslim detainee was forced to crawl back to the detention building. The camp guards opened fire on him, but deliberately directed their bullets to miss him.<sup>1311</sup>

500. The Trial Chamber is satisfied that the cruel treatment set out above, when inflicted during interrogations, was aimed at obtaining information. Other ill-treatment was aimed at intimidating and discriminating against the victims because of their ethnicity.

(d) Kotor Varoš

501. Throughout June 1992, Bosnian Muslim civilians from villages in the Kotor Varoš municipality were rounded up by Bosnian Serb forces and taken to various places of detention.<sup>1312</sup> On 25 June, in front of the Kotor Varoš hospital, Bosnian Serb soldiers in camouflage uniforms let loose a German shepherd on Enez Terzić, one of the detainees. Terzić was injured, but survived the attack.<sup>1313</sup> Also in front of the hospital, a Bosnian Serb soldier from Mahovljani beat a number of detainees with a log until they fell to the ground unconscious.<sup>1314</sup> During the beating, he cursed their 'balija mothers'.<sup>1315</sup> A Bosnian Serb soldier nicknamed 'Mama' also participated in the beatings and ordered detainees to beat each other.<sup>1316</sup>

502. The Trial Chamber is satisfied that Bosnian Serbs inflicted this treatment in order to intimidate and discriminate against the detainees, who were all Bosnian Muslims.

(e) Prijedor<sup>1317</sup>

(i) Executions of Bosnian Muslim non-combatants in front of others

503. In July 1992, at the Ljubija football stadium, Bosnian Serb policemen asked detained Bosnian Muslims whether they had any weapons. A police officer known as 'Stiven' fired a pistol at Irfan Nasić and killed him in front of the group, which included his cousin. One of the Bosnian Serb policemen then severed Irfan Nasić's head from his body with an automatic rifle. He said: "Look at this. The man even didn't have any brains."<sup>1318</sup>

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<sup>1311</sup> Zijad Ramić, ex. P1979, 92bis statement, 01029884-01029885.

<sup>1312</sup> Rašim Čirkić, T. 17808-17809.

<sup>1313</sup> BT-97 gave evidence about Enez Terzić at T. 17917.

<sup>1314</sup> BT-97, T. 17918-17919 (private session).

<sup>1315</sup> BT-97, T. 17918-17919, 17930 (private session).

<sup>1316</sup> BT-97, T. 17929-17930 (private session).

<sup>1317</sup> The Prosecution has also alleged as torture that "Beginning in May 1992, Bosnian Muslim non-combatants were beaten by police and regular and irregular forces at Serb check-points in the [Prijedor] municipality." (Indictment, para. 55). The Trial Chamber finds that the evidence adduced (Prosecution Final Brief, fn. 1528(A) (confidential)) does not deal with beatings (see BT-33, ex. P1544, T. 3957-3958 (under seal)), or that it does not go to prove the infliction of pain or suffering serious enough to constitute torture (see Jusuf Arifagić, ex. P554, T. 7080-7081).

<sup>1318</sup> Elvedin Našić, T. 12699-12700.

504. A Bosnian Serb military unit from Prijedor under the command of Rade Bilbija came to the hamlet of Čermenica near Bišćani on 20 July 1992. They lined up 35 to 40 Bosnian Muslims next to the local cemetery. A Bosnian Serb soldier with the last name of Gligić shot dead Muhamed Hadžić, one of the residents of Čermenica, in front of the others.<sup>1319</sup>

505. Hasib Simbegović, a Bosnian Muslim, was killed by a Bosnian Serb soldier, Drago Tintar, when he was about to board a bus in the village of Čarakovo on 23 July 1992.<sup>1320</sup> His killing was witnessed by everyone who was sitting in the bus.<sup>1321</sup>

506. In June or July 1992, at Omarska camp, a Bosnian Serb camp guard in camouflage uniform kicked Rizo Hadžalić with his heavy army boots and struck him with his rifle butt. The guard jumped all over Rizo Hadžalić's body until he was dead.<sup>1322</sup> The incident was witnessed by other camp inmates.<sup>1323</sup> Another detainee with the last name Sulić was also beaten to death in the daytime in front of the camp restaurant.<sup>1324</sup>

507. The Trial Chamber is satisfied that many Bosnian Muslim non-combatants were indeed executed while others, of the same ethnicity, were forced to watch. The Trial Chamber finds that all this was aimed at intimidating the victims.

(ii) Those left alive were made to collect the bodies of their neighbours and friends and bury them

508. After the cleansing of the Brdo area in July 1992, a number of Bosnian Muslim men were ordered to assist the Bosnian Serb forces in collecting the dead bodies. They loaded between 300 and 350 bodies on trucks with their own hands.<sup>1325</sup> There was an appalling stench coming from the bodies that had been lying around for some time. Some of the bodies were riddled with maggots.<sup>1326</sup>

509. In July 1992, at the Ljubija football stadium, Bosnian Muslim prisoners were made to carry away the dead bodies of those Bosnian Muslims previously executed. One of them did not have a head, while another body had an eye hanging out and the head had been smashed in.<sup>1327</sup>

510. At Trnopolje camp, detainees were also forced to dig graves and bury the bodies of those killed in the camp between May and October 1992.<sup>1328</sup>

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<sup>1319</sup> BT-32, T. 11850 (closed session); BT-32, ex. P1515, T. 5901-5906 (closed session).

<sup>1320</sup> BT-30, T. 12555; BT-30, ex. P1541, T. 5748 (under seal).

<sup>1321</sup> BT-30, ex. P1541, T. 5771 (under seal).

<sup>1322</sup> BT-1, ex. P1619, T. 4766 (under seal).

<sup>1323</sup> BT-3, ex. P1135, T. 6236 (under seal).

<sup>1324</sup> BT-3, ex. P1135, T. 6233-6234 (under seal).

<sup>1325</sup> See para. 409 *supra*.

511. The Trial Chamber, by majority, finds that the coercing of these Bosnian Muslim non-combatants to collect the bodies of other members of the ethnic group, particularly those of their neighbours and friends, and bury them, in the circumstances in which this took place, could not but cause severe pain and suffering. The Trial Chamber, by majority, also finds that this was done in order to intimidate the victims.

(iii) Rapes and sexual assaults

512. In June or July 1992, at Keraterm camp, a number of other guards raped a female inmate on a table in a dark room until she lost consciousness. The next morning, she found herself lying in a pool of blood.<sup>1329</sup> Other women in the camp were also raped.<sup>1330</sup>

513. In August 1992, Slobodan Kuruzović, the commander of Trnopolje camp, personally arranged for a Bosnian Muslim woman to be detained in the same house in which he had his office.<sup>1331</sup> During the first night, Kuruzović entered her room with a pistol and a knife. He took his clothes off and told the woman that he wanted to see “how Muslim women fuck”. She replied “You better kill me.” When the woman started screaming, Kuruzović said “You are screaming in vain. There’s nobody here who can help you.” He started raping her, and when she started screaming, Kuruzović warned her: “You better keep quiet. Did you see all these soldiers standing outside? They will all take their turns on you.” He left saying “See you tomorrow”. The woman was bleeding and spent the whole night crying, wanting to kill herself.<sup>1332</sup> Kuruzović raped that woman nearly every night for about a month. On two occasions, he stabbed her shoulder and her leg with his knife because she resisted against being raped.<sup>1333</sup>

514. There were many more incidents of rape at the Trnopolje camp between May and October 1992. Not all of the perpetrators were camp personnel. Some were allowed to visit the camp from the outside.<sup>1334</sup> Soldiers took out girls aged 16 or 17 from the camp and raped them on the way to Kozarac on a truck.<sup>1335</sup> In one case, a 13 year old Bosnian Muslim girl was raped.<sup>1336</sup> One rape

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<sup>1326</sup> BT-32, ex. P1515, T. 5917-5923 (under seal).

<sup>1327</sup> Nermin Karagić, ex. P559, T. 5237-5238.

<sup>1328</sup> BT-38, ex. P556, T. 1666. (under seal).

<sup>1329</sup> BT-3, ex. P1135, T. 6198-6199 (under seal).

<sup>1330</sup> BT-3, ex. P1135, T. 6200, 6217, 6226-6230 (under seal).

<sup>1331</sup> BT-33, ex. P1544, T. 3960 (closed session).

<sup>1332</sup> BT-33, T. 12663-12664 (closed session); BT-33, ex. P1544, T. 3965-3968 (closed session).

<sup>1333</sup> BT-33, ex. P1544, T. 3968-3971 (closed session).

<sup>1334</sup> Idriz Merdžanić, T. 11819; Idriz Merdžanić, ex. P1148, T. 7761; BT-29, ex. P560, T. 6255 (under seal).

<sup>1335</sup> BT-38, ex. P556, T. 1667 (under seal).

<sup>1336</sup> BT-38, ex. P556, T. 1668 (under seal).

victim was told by a member of the camp staff that it was wartime and nothing could be done about these things.<sup>1337</sup>

515. The Trial Chamber also finds that at Omarska camp, there were frequent incidents of sexual assault and rape.<sup>1338</sup> Female detainees were often called out by camp guards and the camp commander. When they returned, those women looked absent-minded and kept silent.<sup>1339</sup>

516. On 26 June 1992, Omarska camp guards tried to force Mehmedalija Sarajlić, an elderly Bosnian Muslim, to rape a female detainee. He begged them “Don’t make me do it. She could be my daughter. I am a man in advanced age.” The guards laughed and said “Well, try to use the finger.” A scream and the sound of beatings could be heard, and then everything was silent. The guards had killed the man.<sup>1340</sup> The Trial Chamber, by majority, finds that the threat of rape constituted a sexual assault *vis-à-vis* the female detainee.

517. On an unknown date after May 1992, an armed man entered the Omarska camp restaurant where detainees were eating. He uncovered the breast of a female detainee, took out a knife, and ran it along her breast for several minutes. The other detainees were holding their breath because they thought he might cut off the breast at any second. Bystanding camp guards laughed and obviously enjoyed watching this incident.<sup>1341</sup>

518. The Trial Chamber concludes that rapes and sexual assaults were commonplace throughout the camps in the Prijedor area. It is satisfied that in all these incidents, the male perpetrators aimed at discriminating against the women because they were Muslim.

(f) Teslić

(i) Beatings

519. After 3 June 1992, Bosnian Muslim men detained at the SUP building in Teslić were beaten by policemen with batons, bats and other items.<sup>1342</sup> Severe beatings also occurred at the TO warehouse building, where a large number of Bosnian Muslims were detained by Bosnian Serb police and by members of the “Miće” paramilitary group.<sup>1343</sup> Detainees were called out at night and

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<sup>1337</sup> BT-38, ex. P556, T. 1668 (under seal).

<sup>1338</sup> BT-1, ex. P1619, T. 4777-4783 (under seal); BT-3, ex. P1135, T. 6228-6230 (under seal); Nusret Sivac, ex. P1547, T. 6679.

<sup>1339</sup> BT-1, ex. P1619, T. 4775-4776 (under seal).

<sup>1340</sup> BT-42, ex. P564, T. 1901 (under seal).

<sup>1341</sup> BT-1, ex. P1619, T. 4769 (under seal).

<sup>1342</sup> Ferid Mahalbašić, ex. P1962, 92*bis* statement, 01034060; Mehmed Kopic, ex. P1964, 92*bis* statement, 01034036-01034037.

<sup>1343</sup> BT-61, ex. P1976, 92*bis* statement, 02978916 (under seal); Mehmed Kopic, ex. P1964, 92*bis* statement, 01034038. See also para. 463 *supra*.

ordered to face a wall with their hands up. Then they were beaten with wooden batons, cords, boards, and other objects.<sup>1344</sup> No detainee was exempted from the beatings. Once, detainees were beaten so hard that they could not stand on their feet any more.<sup>1345</sup>

520. A Bosnian Muslim man was arrested by Bosnian Serbs and taken to the village of Gornja Radnja. During interrogation, he was beaten until he bled from his nose and mouth.<sup>1346</sup>

521. A community building in Pribinić, 15 kilometres out of Teslić, was converted into a detention centre for local Bosnian Muslim and Bosnian Croat residents.<sup>1347</sup> Dragan Babić, a military policeman, was in command of the detention facility.<sup>1348</sup> He was later replaced by Aleksa Jović.<sup>1349</sup> The Trial Chamber finds that, in many instances, detainees were severely beaten.<sup>1350</sup> During an interrogation with the camp commander, a Bosnian Muslim man was kicked until he lost consciousness.<sup>1351</sup> Detainees received beatings from the guards every morning when they were called out for breakfast.<sup>1352</sup>

522. The Trial Chamber is satisfied that beatings occurred during interrogations in order to obtain information. Other ill-treatment was aimed at intimidating the victims, as well as at discriminating against them because of their ethnicity.

(ii) Rapes

523. Over the period of July to October 1992, a number of Bosnian Muslim women were raped by members of the Bosnian Serb police and the VRS in Teslić municipality.<sup>1353</sup> The Trial Chamber finds that all this was intrinsically discriminatory against these women.

(g) Conclusion

524. The Trial Chamber is satisfied that the treatment described above constituted severe pain and suffering amounting to torture, inflicted intentionally on the victims, who were all non-combatants.

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<sup>1344</sup> Mehmed Tenić, T. 16871.

<sup>1345</sup> Mehmed Tenić, T. 16873.

<sup>1346</sup> BT-64, T. 16963-16965.

<sup>1347</sup> BT-95, T. 19556-19557 (closed session).

<sup>1348</sup> BT-64, T. 16968-16969.

<sup>1349</sup> BT-64, T. 16980.

<sup>1350</sup> BT-64, T. 16977-16979. Ex. P1941, "Official Note", dated 22 September 1992, confirms that very severe beatings occurred at Pribinić camp.

<sup>1351</sup> BT-64, T. 16969.

<sup>1352</sup> BT-64, T. 16975.

<sup>1353</sup> BT-67, ex. P1965, 92bis statement, 00943111-00943112 (under seal); BT-68, ex. P1967, 92bis statement, 00943117-00943118 (under seal); BT-63, ex. P1968, 92bis statement, 00963794 (under seal); BT-63, ex. P1968, 92bis statement, 01002844-01002847 (under seal).

### 3. The Responsibility of the Accused

525. The Trial Chamber has already dismissed JCE, planning and superior criminal responsibility under Article 7(3) of the Statute as possible modes of liability to describe the individual criminal responsibility of the Accused.<sup>1354</sup>

526. There is no evidence to establish that the Accused ordered or instigated the commission of any of the underlying acts of the crime of torture charged under Counts 6 and 7 of the Indictment.

527. The Trial Chamber is not satisfied that the public utterances of the Accused prompted the physical perpetrators to commit any of underlying acts of torture charged under Counts 6 and 7 of the Indictment, because the *nexus* between the public utterances of the Accused and the commission of the killings in question by the physical perpetrators has not been established. Moreover, neither the public utterances of the Accused nor the decisions of the ARK Crisis Staff are specific enough to constitute instructions by the Accused to the physical perpetrators to commit any of the underlying acts of torture charged.

528. The Trial Chamber recalls its previous finding that the decisions of the ARK Crisis Staff can be attributed to the Accused.<sup>1355</sup> It also found that between 9 May 1992 and 18 May 1992, the ARK Crisis Staff issued a number of decisions demanding the disarmament of “paramilitary formations” and of “individuals who illegally possess weapons”, specifying that “[a]ll formations that are not in the Army of the Serbian Republic of Bosnia and Herzegovina or the Banja Luka Security Services Centre and are in the Autonomous Region of Krajina, are considered paramilitary formations and must be disarmed.” Moreover, the Trial Chamber has found that, although these decisions on disarmament were not expressly restricted to non-Serbs, the disarmament operations were selectively enforced against them by the municipal civilian authorities, the CSB and the SJBs, and by the army.<sup>1356</sup>

529. The disarmament of Bosnian Muslims and Bosnian Croats throughout the ARK created an imbalance of arms and weapons favouring the Bosnian Serbs in the Bosnian Krajina, a situation amplified by the fact that the evidence establishes beyond reasonable doubt that the Bosnian Serb population was arming itself at the same time on a massive scale.<sup>1357</sup> The ARK Crisis Staff’s decisions on disarmament and their implementation further rendered the Bosnian Muslim and Bosnian Croat civilians more vulnerable, preventing or limiting their ability to defend themselves and giving practical assistance to the Bosnian Serb forces attacking non-Serb towns, villages and

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<sup>1354</sup> See VIII.D., “The Accused’s criminal responsibility in general”.

<sup>1355</sup> See para. 319 *supra*.

<sup>1356</sup> See VI.D., “The role of the ARK Crisis Staff in the implementation of the Common Plan”.

neighbourhoods. Moreover, at the municipal level, where ARK Crisis Staff decisions with respect to disarmament were implemented, the disarmament deadlines were on occasion used as a pretext to attack non-Serb villages.<sup>1358</sup>

530. For the foregoing reasons, the Trial Chamber is satisfied that the ARK Crisis Staff decisions on disarmament constituted practical assistance to the attacks of the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods. During and immediately after these attacks members of the Bosnian Serb forces committed a number of underlying acts of torture. Through the ARK Crisis Staff decisions on disarmament, the Accused had a substantial effect on the commission of these acts. However, the Trial Chamber is not satisfied that the ARK Crisis Staff decisions on disarmament had a substantial effect on those underlying acts of torture charged under Counts 6 and 7 of the Indictment that were not committed in context of the armed attacks by the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods.

531. The Trial Chamber is also not satisfied that any other decisions of the ARK Crisis Staff had a substantial effect on the commission of any of the underlying acts of torture charged under Counts 6 and 7 of the Indictment.

532. The Trial Chamber has previously found that the Accused espoused the Strategic Plan and that he was aware that it could only be implemented by the use of force and fear.<sup>1359</sup> Bearing in mind that the attacks by the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods constituted an essential part of the implementation of the Strategic Plan in the ARK; that the Accused held the position of President of the ARK Crisis Staff, the highest political authority in the ARK; his direct link with Radovan Karadžić and his close contact with the General Major Momir Talić, the commander of the 1<sup>st</sup> KK of the VRS and with Stojan Župljanin, the head of the CSB, and with other military and political leaders at the level of the ARK and the municipalities of the ARK; the Trial Chamber is satisfied beyond reasonable doubt that the only reasonable inference that may be drawn is that, when the ARK Crisis Staff decisions on disarmament were issued, the Accused was aware that the Bosnian Serb forces were to attack non Serb towns, villages and neighbourhoods and that through the ARK Crisis Staff decisions on disarmament he rendered practical assistance and a substantial contribution to the Bosnian Serb forces carrying out these attacks.

533. Moreover, the Trial Chamber is satisfied that the Accused was aware that during these armed attacks the Bosnian Serb forces would commit a number of crimes including the crime of torture of a number of non-Serbs and that the members of the Bosnian Serb forces carrying out the

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<sup>1357</sup> See IV., “General Overview”.

<sup>1358</sup> See IV., “General Overview” and IX.D., “Destructions”.



underlying acts of torture in question had the required *mens rea* for the commission of the crime of torture.

534. For the above reason, the Trial Chamber is satisfied that the Accused aided and abetted in the torture committed by the Bosnian Serb forces in context of the armed attacks of the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods after 9 May 1992, the date when the ARK Crisis Staff issued its first decision on disarmament.

535. The Accused thus aided and abetted members of the Bosnian Serb forces in the commission of the following crimes amounting to torture: the torture of Bosnian Muslim civilians during and after the takeover of Bosanski Petrovac town in early-June 1992;<sup>1360</sup> the torture of a number of Bosnian Muslim civilian during and after the armed attack on Kotor Varoš throughout June 1992;<sup>1361</sup> the torture of at least 35 Bosnian Muslims in the hamlet of Čermenica near the village of Bišćani on 20 July 1992;<sup>1362</sup> the torture of a number of Bosnian Muslim civilians in the village of Čarakovo on 23 July 1992;<sup>1363</sup> the torture of a number of Bosnian Muslim men in the area around the village of Bišćani;<sup>1364</sup> and the torture of a Bosnian Muslim woman in Teslić in July 1992.<sup>1365</sup>

536. In addition the Trial Chamber is satisfied that the Accused further aided and abetted the commission of the underlying acts of torture in camps and other detention facilities throughout the ARK by Bosnian Serb forces. It has been established beyond reasonable doubt that, with the exception of the Jasenica Elementary School and the Petar Kočić Elementary School, all the camps and detention facilities mentioned in the evidence came into being once the ARK Crisis Staff had been established. There is ample evidence that the setting up of these camps and detention facilities formed an integral part of the Strategic Plan. The Trial Chamber is convinced that the Accused was fully aware of this and equally knew that such camps and detention facilities were mushrooming everywhere in the ARK for which he was made responsible as President of the ARK Crisis Staff.<sup>1366</sup> The reported appalling conditions<sup>1366</sup> in some of these camps and detention facilities, especially those of Manjača, Omarska and Trnopolje attracted the attention of international agencies and organisations as well as of the international press. The situation in the camps and detention

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<sup>1359</sup> See VIII.C.1., “The Accused’s espousal of the Strategic Plan”.

<sup>1360</sup> See section on “Bosanski Petrovac town”, *supra*.

<sup>1361</sup> See section on “Kotor Varoš”, *supra*.

<sup>1362</sup> See section on “Executions of Bosnian Muslim non-combatants in front of others”, *supra*.

<sup>1363</sup> *Ibid.*

<sup>1364</sup> See section on “Those left alive were made to collect the bodies of their neighbours and friends and bury them”, *supra*.

<sup>1365</sup> See section on “Rapes”, *supra*.

<sup>1366</sup> See VIII.C.6., “The Accused’s knowledge that crimes were being committed”. The Trial Chamber is satisfied that the Accused had this knowledge from the moment he became the President of the ARK Crisis.

facilities was discussed during ARK Crisis Staff meetings<sup>1367</sup> and the accused visited Omarska camp and also made public statements about these camps and detention facilities.<sup>1368</sup> There is evidence that on one occasion Vojo Kuprešanin visited Manjača camp.<sup>1369</sup> There is evidence that Adil Medić complained with General Talić about the conditions in Manjača camp.<sup>1370</sup> There are several reports that refer to so-called “collection centres” and which were compiled at the instance of Stojan Župljanin, the Chief of the CSB.<sup>1371</sup> There is conclusive evidence that at least in the case of the atrocities committed in Teslić at the hands of the Mice, the Accused was not only informed of those events but also became involved in the solution finding process.<sup>1372</sup>

537. The Trial Chamber has not a shadow of doubt in its mind that the only reasonable conclusion that may be drawn is that the Accused was aware of the nature of these camps and detention facilities and that inmates were tortured therein.<sup>1373</sup> There is also ample evidence that throughout the entire period when the Accused was President of the ARK Crisis Staff, not only did the Accused not take a stand either in public or at the meetings of the ARK Crisis Staff but that he adopted a *laissez-faire* attitude.<sup>1374</sup> Although the Accused did not actively assist in the commission of any of the crimes committed in these camps and detention facilities, in the light of his position as the President of the ARK Crisis Staff, the Trial Chamber is satisfied beyond reasonable doubt that his inactivity as well as his public attitude with respect to the camps and detention facilities constituted encouragement and moral support to the members of the army and the police to continue running these camps and detention facilities in the way described to the Trial Chamber throughout the trial. This complete inactivity combined with the public attitude on the part of the Accused

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<sup>1367</sup> Milorad Sajić, T. 23684-23685.

<sup>1368</sup> During July 1992, the Accused, together with others, including Predrag Radić, visited the Prijedor area making “a tour of the combat area and collection centres”. In this context, on 17 July 1992, the Accused visited Omarska camp. While Predrag Radić was very upset seeing how people were treated in the camp, the Accused publicly stated that “what we have seen in Prijedor is an example of a job well done”, adding that “it is a pity that many in Banja Luka, are not aware of it yet, just as they are not aware of what might happen in Banja Luka in the very near future.”: ex. P284, “Kozarski Vjesnik newspaper article”, entitled “Representatives of the Krajina in Prijedor: It is not easy for anyone”, dated 17 July 1992; Predrag Radić, T. 21996-22008. See also ex. P291, “Glas newspaper article”, dated 26 July 1992. At the end of August 1992, the Accused appeared on television to state: “Those who are not loyal are free to go and the few loyal Croats and Muslims can stay. As Šešelj said about the 7000 Albanians in Kosovo, they will be treated like gold and this is exactly how we are going to treat our 1.200 to 1.500 Muslims and Croats (...) If Hitler, Stalin and Churchill could have working camps so can we. Oh come on, we are in a war after all”: ex. P2326 (under seal).

<sup>1369</sup> Enis Šabanović, T. 6577; Adil Draganović, T. 5114; Jakov Marić, T 10833-10834.

<sup>1370</sup> Adil Medić, T.2232-2236.

<sup>1371</sup> Ex. P1134, “Report on the Commission on the Inspection of Collection Centres and Other Facilities for Captives in the Autonomous Region of Krajina”, issued by the SerBiH Government’s “Commission for Inspecting Collection Centres and Other Facilities for Captives in the Serbian Republic of Bosnia and Herzegovina” on 17 August 1992; ex. P717, “Report on the Reception Centres in the Municipality of Prijedor”, issued by the Prijedor SJB pursuant to a decision of the CSB of 14 August 1992; ex. DB113, “Report on the Reception Centres in the Municipality of Prijedor”, issued by the Prijedor SJB pursuant to a decision of the CSB of 14 August 1992.

<sup>1372</sup> BW-1, T. 23323-23325 (closed session).

<sup>1373</sup> The Trial Chamber is not satisfied that the evidence establishes beyond reasonable doubt that the Accused knew that people were killed inside these camps and detention facilities except those relating to Teslić Municipality committed by the Miće group which, in the circumstances, is not enough to render him responsible for aiding and abetting killings.

could only serve the purpose of leaving no doubt in the mind of those running the camps and detention facilities that they enjoyed the full support of the ARK Crisis Staff and its President. The Trial Chamber is satisfied that this fact had a substantial effect on the commission of torture in the camps and detention facilities throughout the ARK.

538. Therefore, the Accused aided and abetted members of the Bosnian Serb forces in the commission of the following crimes amounting to torture in camps and detention facilities:<sup>1375</sup> the torture of a number of Bosnian Muslim civilians in the Kozila camp in early July 1992;<sup>1376</sup> the torture of a number of Bosnian Muslim women in the Keraterm camp in July 1992;<sup>1377</sup> the torture of a number of Bosnian Muslim women in the Trnopolje camp between May and October 1992;<sup>1378</sup> the torture of a number of Bosnian Muslim women in the Omarska camp in June 1992;<sup>1379</sup> the torture of a number of Bosnian Muslim men in the SUP building in Teslić;<sup>1380</sup> and the torture of a number of Bosnian Muslim and Bosnian Croat civilians in the community building in Pribinić in June 1992.<sup>1381</sup>

### **C. Deportation (count 8) and Inhumane Acts (forcible transfer) (count 9)**

#### **1. The law**

539. Counts 8 and 9 of the Indictment charge the Accused with deportation and inhumane acts (forcible transfer) pursuant to Article 5(d) and (i) of the Statute. As these two crimes are largely defined in relation to each other, the Trial Chamber will address their definitions together.

#### **(a) Actus reus**

540. It is well established in the jurisprudence of this Tribunal that both ‘deportation’ and ‘forcible transfer’ consist of the forced displacement of individuals from the area in which they are lawfully present without grounds permitted under international law.<sup>1382</sup> Traditionally, the distinction between the *actus reus* of ‘deportation’ and ‘forcible transfer’ is identified with the destination to which individuals are displaced. The Trial Chamber notes that the majority of trial judgements from

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<sup>1374</sup> Milorad Sajić, T. 23684-23685.

<sup>1375</sup> The Trial Chamber limits the Accused’s responsibility over torture in camps and detention facilities to those incidents that occurred after the date of the establishment of the ARK Crisis Staff and those that did not involve killings, as the Trial Chamber has found that the Accused’s knowledge that killings took place in detention camps has not been established beyond reasonable doubt.

<sup>1376</sup> See section on “Kozila camp”, *supra*.

<sup>1377</sup> See section on “Rapes and sexual assaults”, *supra*.

<sup>1378</sup> *Ibid.*

<sup>1379</sup> *Ibid.*

<sup>1380</sup> See section on “Beatings”, *supra*.

<sup>1381</sup> *Ibid.*

this Tribunal that have addressed the issue have held that under customary international law, ‘deportation’ consists of the forced displacement of individuals *beyond* internationally recognised state borders.<sup>1383</sup> In contrast, ‘forcible transfer’ may consist of forced displacement *within* state borders.<sup>1384</sup>

541. The Trial Chamber in the *Stakić* case took a different approach, finding that

... Article 5 (d) of the Statute must be read to encompass forced population displacements both across internationally recognised borders and *de facto* boundaries, which are not internationally recognised. The crime of deportation in this context is therefore to be defined as the forced displacement of persons by expulsion or other coercive acts for reasons not permitted under international law from an area in which they are lawfully present to an area under the control of another party.<sup>1385</sup>

542. The Trial Chamber by a majority vote is unable to agree with the *Stakić* approach. Significant evidence has been advanced in previous judgements of this Tribunal to the effect that, under customary international law, ‘deportation’ requires that an internationally recognised border be crossed.<sup>1386</sup> While the *Stakić* Trial Judgement (and the Prosecution’s Final Brief in the instant case<sup>1387</sup>) may advance excellent policy arguments in favour of dispensing with a cross-border element for the crime of deportation, the Trial Chamber is not convinced that this reflects customary international law as it stood at the relevant time. It is customary international law, and not policy, which the Trial Chamber is bound to apply. The Trial Chamber therefore maintains the cross-border element as a criterion in order to distinguish between ‘deportation’ and ‘forcible transfer’.

543. It is essential for both ‘deportation’ and ‘forcible transfer’ that the displacement takes place under coercion.<sup>1388</sup> The essential element in establishing coercion is that the displacement be

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<sup>1382</sup> *Blaškić* Trial Judgement, para. 234; *Krstić* Trial Judgement, para. 521; *Krnjelac* Trial Judgement, para. 474; *Stakić* Rule 98bis Decision, para.183; *Simić* Trial Judgement, para. 121; *Krnjelac* Appeal Judgement, para. 218.

<sup>1383</sup> *Krstić* Trial Judgement, para. 521; *Krnjelac* Trial Judgement, para. 474 with fn. 1429 containing further references; *Stakić* Rule 98bis Decision, para.130; *Simić* Trial Judgement, paras 122-123; *Naletilić* Trial Judgement, para. 670; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Motion for Judgement of Acquittal, 26 June 2004 (“*Milošević* Rule 98bis Decision”), para. 68. The Trial Chamber notes that this issue has not yet been addressed by the Appeals Chamber. The *Krnjelac* Appeal Judgement expressly did not pronounce on the definition of the crimes of ‘deportation’ and ‘forcible transfer’; see paras 214-215.

<sup>1384</sup> *Krstić* Trial Judgement, paras 521, 531; *Krnjelac* Trial Judgement, para. 474 and fn. 1429; *Naletilić* Trial Judgement, para. 670; *Simić* Trial Judgement, paras 122-123; *Milošević* Rule 98bis Decision, para. 68. The *Krstić* Trial Judgement and the *Milošević* Rule 98bis Decision restrict the scope of ‘forcible transfer’ to within state borders.

<sup>1385</sup> *Stakić* Trial Judgement, para. 679. The only other Tribunal jurisprudence supporting this view is *Prosecutor v. Dragan Nikolić (aka “Jenki”)*, Case No. IT-94-2-R61, Decision on the Review of the Indictment pursuant to Rule 61 of the Rules, 25 October 1995 (“*Nikolić* Rule 61 Decision”), para. 23. However, this decision did not cite any authority for its view, and was consequently rejected by the *Krnjelac* Trial Judgement, fn. 1430.

<sup>1386</sup> See fn. 1392 *supra*. The Trial Chamber refers in particular to the authorities cited in the *Krnjelac* Trial Judgement, para. 474, fn. 1429, and in the *Milošević* Rule 98bis Decision, paras 49-57.

<sup>1387</sup> The Prosecution argues in the Prosecution Final Brief at para. 701 that “[g]ood policy reasons exist for not confining deportation as a crime against humanity to cases involving cross-border transfers”.

<sup>1388</sup> *Krnjelac* Trial Judgement, para. 475; *Naletilić* Trial Judgement, para. 519; *Stakić* Trial Judgement, para. 682.

involuntary in nature,<sup>1389</sup> where the persons concerned had no real choice.<sup>1390</sup> In addition, the displacement must be unlawful.<sup>1391</sup>

544. The Trial Chamber by a majority vote is satisfied that the *actus reus* of ‘deportation’ under Article 5(d) of the Statute consists of the forcible displacement of individuals across a State border from the area in which they are lawfully present without grounds permitted under international law, whereas such displacement within the boundaries of a State constitutes ‘forcible transfer’, punishable as ‘other inhumane acts’ pursuant to Article 5(i) of the Statute.

(b) Mens rea

545. With regard both to deportation and forcible transfer as crimes against humanity, the Prosecution needs to prove beyond reasonable doubt that the Accused acted with the intent that the removal of the person or persons be permanent.<sup>1392</sup>

2. The facts and findings

546. The Trial Chamber was confronted with a great deal of evidence regarding the deportation or forcible transfer of Bosnian Muslims and Bosnian Croats within or from the relevant municipalities of the ARK. However, the Prosecution has, in paragraph 59 of the Indictment, charged the Accused with acts of deportation or forcible transfer of a large proportion of the Bosnian Muslim and Bosnian Croat population from the relevant municipalities of the ARK to areas under control of the legitimate government of Bosnia and Herzegovina (Travnik) and to Croatia (Karlovac). In view of the specificity<sup>1393</sup> with which the charges were pleaded, the Trial Chamber is precluded from making any finding of guilt under Counts 8 and 9 with respect to incidents where the transfer destination was to locations other than to Travnik or Karlovac.<sup>1394</sup> The

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<sup>1389</sup> *Krstić* Trial Judgement, para. 528; *Krnjelac* Trial Judgement, para. 475; *Naletilić* Trial Judgement, para. 519; *Simić* Trial Judgement, para. 125.

<sup>1390</sup> *Krnjelac* Trial Judgement, para. 475; *Simić* Trial Judgement, para. 125; *Milošević* Rule 98bis Decision, paras 73-74.

<sup>1391</sup> *Krstić* Trial Judgement, para. 524; *Krnjelac* Trial Judgement, para. 475; *Stakić* Rule 98bis Decision, para.130.

<sup>1392</sup> *Naletilić* Trial Judgement, para. 520; *Simić* Trial Judgement, paras 132-134.

<sup>1393</sup> The same specificity occurs in the Indictment, para. 47.

<sup>1394</sup> The Trial Chamber notes the following incidents of deportations and forcible transfers to locations other than to Travnik or Karlovac. In **Banja Luka**, carriages made for transporting livestock but transporting people passed through Banja Luka in the summer of 1992 on at least two separate occasions, at both of which the military was present: Muharem Krzić, T. 1489-1491. The police were also present: Amir Džonlić, T. 2420. Those transported in this manner were forced to travel in intolerable conditions: Muharem Krzić, T. 1488-1491; Amir Džonlić, T. 2420. Nikola Erceg, President of the Executive Council of the ARK Crisis Staff, was informed of a specific convoy during which 11 people died: *Ibid.* Convoys of the Agency for Population Movement and the Exchange of Material Wealth for the ARK left for Travnik twice a week, towards Croatia via Okučani and Novska, and in a third direction towards Belgrade: Amir Džonlić, T. 2397. For evidence regarding other departures organised by the resettlement agency, see BT-94, T. 18004-18005 (closed session). Prior to the closure of Manjača camp in December 1992, approximately 500 detainees were transferred to Batkovići Camp in North-Eastern Bosnia: Adil Medić, T. 2269. Following their release from Manjača camp, the detainees would be transferred to other countries: Amir Džonlić, T. 2384. In **Prijedor**, the systematic

incidents alleged in relation to Karlovac and Travnik will thus be examined to determine whether they amount to deportation (in the case of transfers to Karlovac) or to forcible transfer (in the case of transfers to Travnik).

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expulsion of Bosnian Muslims and Bosnian Croats included their busing in large numbers to Croatia: Adil Medić, T. 2269. A convoy left from Trnopolje to ABiH-controlled areas around June 1992: Mevludin Sejmenović, ex. P1533, T. 4742. Security was provided by the commander of public security, the police and the military for a number of convoys that transported people from Trnopolje camp to Doboj prior to 21 August 1992: BT-106, T. 21130 (closed session); Emsud Garibović, T. 12460-12461. This included a convoy of approximately 2000 people, including women, children and entire families jammed into roughly 20 rail cars that left Trnopolje towards Doboj in August 1992: BT-106, T. 21126-21130 (closed session). In **Sanski Most**, 1080 refugees were expelled from Podbriježje, and later transported under civilian police escort, in the direction of Velika Kladuša: Besim Islamčević, T. 7473, 7559. See also BT-21, ex. P218, T. 8511-8513 (closed session). See also ex. P218, "Decisions of Sanski Most Crisis Staff", 30 May 1992. A convoy also transported over 1000 Muslim men, women, children and elderly to Gračanica: Besim Islamčević, T. 7470-7473. There were numerous convoys with Bosnian Muslims and Bosnian Croats out of **Ključ**: Samir Dedić, T. 10444; Nisvet Tičević, T. 10786. In **Kotor Varoš**, a number of convoys transported Bosnian Muslims and Bosnian Croats moving out of Kotor Varoš prior to the discussion by the War Presidency to organise and secure the departure of a convoy on 23 August 1992: BT-71, T. 17644-17645 (closed session). See also ex. P2244, "Excerpt from minutes of the 60<sup>th</sup> Session of the War Presidency", 22 August 1992. A convoy in which there were two Bosnian Serb policemen or armed soldiers in each bus driven by Bosnian Serbs transported approximately 500 Bosnian Muslims and Bosnian Croats to Skender Vakuf on or about 22 August 1992: BT-71, T. 17644-17651 (closed session). In **Bosanski Novi** in June 1992, there was a convoy of ten to fifteen railroad cars of men, women and children that left for Prijedor, Banja Luka and Doboj. In the village of Stanari, the men were separated from the women and children and were transported back to Bosanski Novi, where they then walked to Mlavke Football Stadium. The women and children continued on to Zagreb: Midho Alić, T. 13943. Upon their release from the stadium, detainees were transported by bus to Dvor na Uni (Croatia): BT-82, T. 14017-14018; ex. P1663 "Information regarding the security situation in Bosanski Novi", 7 June 1992. See also BT-50, ex. P1641, 92bis statement, 00672858-00672862 (under seal); BT-87, ex. P1643, 92bis statement, 00942601-00942602 (under seal); ex. P1662, "UNPROFOR Memorandum regarding Displaced Persons from Bosanski Novi, 6 June 1992"; ex. P1668, "Document from UNHCR to UNPROFOR Zagreb entitled *Humanitarian disaster in the making in Bihać and along the Bosnia border*", 16 June 1992; ex. P1669, "UNPROFOR document regarding people held at Bosanski Novi football stadium", 22 June 1992; Charles Kirudja, T. 14451-14561, 14474-14481. In **Prnjavor**, authorities organised dozens of buses that transported people to the Hungarian border. Those leaving were not permitted to go to Bosnian Muslim held territory for fear that they would probably have joined ABiH forces: Jasmin Odošić, T. 15121-15122. The police took Bosnian Muslims and Bosnian Croats from their homes and off the street; they then were taken to various camps in Prnjavor, including the Sloga Factory and the 'Mlin' Mill: BT-51, ex. P1784, 92bis statement, 00635473. Following the surrounding of Lišnja and the surrender of Muslims to Veljko Milanković, approximately 300 men were transported by buses to Prnjavor: Rusmir Mujanić, T. 16002. See also ex. P657, "Regular combat no. 44-1/158 issued to SerBiH Army Main Staff", 2 June 1992. People fled to Konjhovci and had to report to the police station in Prnjavor, whereupon approximately 32 men, including a fourteen year-old child, were then bussed to the Sloga camp: Rusmir Mujanić, T. 16029-16032. In **Teslić**, three or four men in a red van, one Bosnian Serb dressed in civilian clothes and the others dressed in Serb camouflage uniforms, ordered people to the driving school in Teslić on 25 October 1992. At the driving school, they had to turn in their identification cards and 100 Muslim names were then called out. Two Bosnian Serbs escorted them by bus to Vrela, where they were told to walk across the confrontation line: BT-68, ex. P1967, 92bis statement, 00943119-00943120 (under seal). In **Šipovo**, Muslims moved away from the Šipovo area, including two buses full of women and children that left in the direction of Jajce in May 1992. A group of Bosnian Muslims, as there were no buses at the bus station, also set out on foot in the direction of Jajce: ex. P2396, "1<sup>st</sup> Partisan Brigade command combat report", 22 May 1992; ex. P2397, "1<sup>st</sup> Infantry Brigade command combat report", 27 May 1992. See also ex. P2400, "Minutes from Šipovo Crisis Staff", 9 June 1992. In **Bosanska Krupa**, authorities issued instructions for the evacuation of residents and refugees from Arapuša, a Bosnian Muslim commune, to Agić: BT-55, T. 17554-17556. See also ex. P2094, "Instructions on evacuating local inhabitants from Arapuša and refugees from Bosanska Krupa", 1 May 1992; ex. P2077, "Order issued by the Bosanska Krupa Crisis Staff on evacuation of population", 05 April 1992. Those leaving in this convoy were ordered to leave their homes and on 1 May 1992, were transported to Sanski Most: BT-55, T. 17541, 17551, 17555-17556. On 6 June 1992, civilians from the areas of Bosanska Krupa and Sanski Most who had stayed on the right side of the Una river in Bosanska Krupa were transferred across the Željezni Bridge to the left bank of the Una river: Jadranko Šaran, T. 17249-17250. Bosnian Muslims who remained on the right side of the Una river were captured and later transferred by Bosnian Serbs either towards the Bihać area or further abroad: Jadranko Šaran, T. 17207. For evidence regarding the co-operation and co-ordination between the Bosnian Serb military, police and civilian bodies in relation to the movement of detainees to and from camps and detention centres, see Ewan Brown, ex. P2416, "Expert Report of Ewan Brown", para. 2.106, p. 100.

547. For ease of reference, the Trial Chamber will first address the forcible nature of the population displacements, the permanent nature of the transfers and the unlawfulness of the transfers. The Trial Chamber will then consider the relevant incidents.

(a) Forcible nature of transfers

548. The Trial Chamber is satisfied beyond reasonable doubt that there was a coherent, consistent strategy of ethnic cleansing against Bosnian Muslims and Bosnian Croats by the Bosnian Serb police and other Bosnian Serb authorities.<sup>1395</sup> This policy to forcibly displace Bosnian Muslims and Bosnian Croats from the area was carried out throughout the ARK and was implemented by several means.

549. Military operations were carried out against towns and villages that were not military targets. Bosnian Serb forces carried out attacks in Prijedor, Sanski Most, Bosanski Novi, Ključ, Teslić, and Kotor Varoš, among others.<sup>1396</sup> Such military operations were undertaken with the specific purpose to drive Bosnian Muslim and Bosnian Croat residents away.<sup>1397</sup> The evidence shows that the displacement of persons was not simply the consequence of military action, but the aim of it.<sup>1398</sup> Following attacks on towns and villages, Bosnian Muslim and Bosnian Croat men, women and children were rounded up and often separated.<sup>1399</sup>

550. Subsequently, most of them were confined to camps and detention centres for varying lengths of time.<sup>1400</sup> Most of these were then deported or forcibly transferred, some of them immediately, by Bosnian Serb soldiers. The expulsion of Bosnian Muslims and Bosnian Croats was often accompanied by a widespread destruction of their homes<sup>1401</sup> and institutions dedicated to religion.<sup>1402</sup> This process of ethnic cleansing accelerated in October 1992, when in the

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<sup>1395</sup> See paras 77, 118 *infra*. For evidence regarding the strategy of ethnic cleansing of other national groups by the SDS and by the Bosnian Serb army, see BT-19, T. 20620, 20622, 20669-20671 (closed session); ex. P2659 (under seal).

<sup>1396</sup> See paras 104-114 *infra*. BT-19, T. 20620, 20622 (closed session); ex. P2659 (under seal).

<sup>1397</sup> *Ibid.*

<sup>1398</sup> BT-19, T. 20635-20637, 20708 (closed session). The witness gave evidence that this was true of basically all sides. See also, BT-21, T. 8226; BT-20, T. 5247-5249.

<sup>1399</sup> Charles McLeod, T. 7325-7326. Following the attack on Hambarine in Prijedor, Bosnian Serb soldiers divided the women from the men and at least one bus transported the men to the Trnopolje camp: Emsud Garibović, T. 12458-12460. In Kozarac, conditions of a cease-fire included the surrender of mainly Bosnian Muslim civilians to Bosnian Serb authorities and their subsequent expulsion by uniformed soldiers: Nerim Karagić, ex. P559, T. 5210-5215, and by the police: Nusret Sivac, ex. P1547, T. 6768. This expulsion included that of women and children, and their transfer to Keraterm, Omarska and Trnopolje camps: Jusuf Arifagić, ex. P554, T. 7075. Following the take-over of Prijedor, people either left or were escorted by Bosnian Serb soldiers and a tank to places where people with white stripes on their arms, were bussed to Keraterm, Omarska and Trnopolje camps: Nusret Sivac, ex. P1547, T. 6575. Following the attacks on Bišćani and on Čarakovo, civilians were forced to leave their villages and were told to gather at various collection points, from which approximately a couple of thousand of them were then bussed to the Keraterm, Omarska and Trnopolje camps: BT-106, T. 21075-21081 (closed session).

<sup>1400</sup> See for example, para. 559 *infra* regarding Trnopolje; para. 558 *infra* regarding Manjača Military Camp.

<sup>1401</sup> See IX.D., "Destructions", *infra*.

<sup>1402</sup> *Ibid.*

municipalities of Prijedor, Ključ and Kotor Varoš, there was an active and systematic repression and expulsion of people.<sup>1403</sup> The Trial Chamber notes that in North-Western BiH, and in the municipalities of Ključ, Sanski Most and Bosanski Petrovac in particular, the situation significantly worsened in November 1992.<sup>1404</sup>

551. The Trial Chamber is satisfied beyond reasonable doubt both that the expulsions and forcible removals were systematic throughout the ARK, in which and from where tens of thousands of Bosnian Muslims and Bosnian Croats were permanently displaced,<sup>1405</sup> and that this mass forcible displacement was intended to ensure the ethnic cleansing of the region. These people were left with no option but to escape. Those who were not expelled and did not manage to escape were subjected to intolerable living conditions imposed by the Bosnian Serb authorities,<sup>1406</sup> which made it impossible for them to continue living there and forced them to seek permission to leave. Bosnian Muslims and Bosnian Croats were subjected to movement restrictions, as well as to perilous living conditions;<sup>1407</sup> they were required to pledge their loyalty to the Bosnian Serb authorities<sup>1408</sup> and, in at least one case, to wear white armbands.<sup>1409</sup> They were dismissed from their jobs and stripped of their health insurance.<sup>1410</sup> Campaigns of intimidation specifically targeting Bosnian Muslims and Bosnian Croats were undertaken.<sup>1411</sup>

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<sup>1403</sup> BT-19, T. 20658, 20667 (closed session). *See also* ex. P2670 (under seal).

<sup>1404</sup> BT-19, T. 20670 (closed session). *See also* ex. P2675 (under seal).

<sup>1405</sup> For evidence regarding the forcible displacement of more than one million people throughout BiH, *see* BT-19, T. 20662 (closed session). *See also* ex. P2675 (under seal). Regarding **Prijedor**, **Sanski Most** and **Bosanska Krupa**, *see* Charles Kirudja, T. 14660. Regarding **Prijedor**, *see* Charles McLeod, T. 7325-7326, 7388. Regarding **Kotor Varoš**, *see* BT-71, T. 17649 (private session). Regarding **Bosanski Novi**, *see* Charles Kirudja, T. 14660-14661. Regarding **Prnjavor**, *see* BT-91, T. 15860-15862; Dobrivoje Vidić, T. 23011; BT-51, ex. P1784, 92*bis* statement, 00635474. With regards to the driving out of at the Bosnian Muslim and Bosnian Croat residents of the **Teslić** region, *see* BT-95, T. 19598-19599 (closed session); ex. P1937, “BBC World Broadcast Summary of a Radio BiH report that at least 10000 Teslić region residents had been driven out”. Regarding the expulsion of Bosnian Muslims and Bosnian Croats from **Bosanski Petrovac**, *see* Ahmet Hidić, T. 16272; ex. P1878, “Report on the events in Bosanski Petrovac from June 1992 by Bosanski Petrovac Country Club”. Regarding the expulsion of people from the Muslim villages of Bašiči and Mehovci in **Čelinac**, *see* BT-90, T. 17095, T. 17097 (closed session).

<sup>1406</sup> *See* IX.A., “Extermination and Wilful Killing” *supra*; D., “Destructions”, *infra*.

<sup>1407</sup> For **Prijedor**, *see* BT-1, T. 13682-13684; for **Bosanski Novi**, *see* Charles Kirudja, T. 14496; BT-84, T. 14163-14164; for **Šipovo**, *see* BT-105, T. 19111-19112 (private session); for **Bosanski Petrovac**, *see* Jovo Radojko, T. 20361; for **Čelinac**, *see* BT-90, T. 17083-17084, 17090-17092 (closed session).

<sup>1408</sup> Those who remained in **Sanski Most** had to sign a loyalty oath to Serbian authorities: Besim Islamčević, T. 7431; BT-104, T. 18531 (private session). Conversely, the police recommended to those who did not accept this loyalty, that it would be best if they moved out: Jakov Marić, T. 10840. *See also* BT-21, T. 8511-8513 (closed session) and ex. P218, “Decision of the Serb Municipality of Sanski Most Crisis Staff, 30 May 1992”. For evidence regarding the organisation and moving out of refugees in **Prnjavor** disloyal to the authorities of the SerBiH, *see* ex. P 2608, “Official Gazette of the Prnjavor Municipality”, 18 August 1992.

<sup>1409</sup> Following a decision of the Municipal Crisis Staff in Prijedor, which was broadcasted via the media, BT-1, T. 13682-13684 (private session). *See also* Nusret Sivac, ex. P1547, T. 6719.

<sup>1410</sup> *See* IX.F., “Persecutions”, *infra*.

<sup>1411</sup> In **Banja Luka** in 1992, a number of identifiable vehicles regularly circulated with armed, uniformed occupants, who conducted house searches, picked people off the streets, and searched for people in restaurants and coffee bars: BT-22, T. 4413-4419, 4490; BT-9, T. 3499 (closed session); Zijahudin Smailagić, T. 1964; Amir Džonlić, T. 2391-2392; BT-97, T. 18006-18007 (closed session). Victims were beaten and tortured; some were arrested and never returned: BT-22, T. 4416; BT-7, T. 2953; Zijahudin Smailagić, T. 1964. All citizens of Banja Luka were very familiar



552. This process of ‘ethnic cleansing’ was sometimes camouflaged as a process of resettlement of populations. In Banja Luka, the Agency for Population Movement and the Exchange of Material Wealth for the ARK (“Agency”), which was established on 12 June 1992 pursuant to a decision of the ARK Crisis Staff, aided in the implementation of both the exchange of flats<sup>1412</sup> and the resettlement of populations.<sup>1413</sup> The Agency was popularly known variously as ‘Perka’s Agency’ or as ‘Brdanin’s Agency’.<sup>1414</sup> The Trial Chamber is of the view that although this Agency was set up for the exchange of flats and the resettlement of populations, this was nothing else but an integral part of the ethnic cleansing plan.

553. Even when Bosnian Muslims and Bosnian Croats attempted to leave the area, they had to contend with departure procedures established by Bosnian Serb authorities that restricted one’s right to leave.<sup>1415</sup> Procedures for leaving included signing statements that the individual left voluntarily and relinquishing their property to Bosnian Serb authorities.<sup>1416</sup> The Trial Chamber is

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with a red Combi, and one witness refers to it as a “mobile torture chamber”: BT-7, T. 3122 (closed session); Muharem Krzić, T. 1488. Regarding the fact that the police and Crisis Staff should similarly have been aware of the vehicles’ notoriety, *see* BT-7, T. 3077, (closed session). Regarding the pressure exerted on Bosnian Muslims and Bosnian Croats in villages around Banja Luka, *see* BT-7, T. 3045 (closed session); ex. P422, “1<sup>st</sup> KK Command transcription of a Decision of SerBiH Presidency on granting amnesty from criminal prosecution”, 6 September 1992. A general atmosphere of fear also resulted in the involuntary departures of Bosnian Muslims and Bosnian Croats from a number of areas. Regarding **Ključ**, *see* ex. P1100, “Video-tape from Banja Luka TV”; ex. P1045, “Crime report no.12/92 informing on crimes committed in the municipality since 27 May 1992, 28 September 1992”; ex. P1010, “Report on the work of the Ključ Crisis Committee from 15 May onwards, 1 June 1992”; Ajiz Bečić, ex. P549, 92*bis* statement, 02109336; BT-79, T. 11591 (closed session). In **Prnjavor**, Bosnian Muslims and Bosnian Croats feared eviction from their homes and were subject to pressure exerted on them daily: Jasmin Odošević, T. 15126-15127. Bosnian Muslims in **Bosanski Novi** suffered persecution and intimidation from Bosnian Serb armed group: Charles Kirudja, T. 14495. *See* also ex. P1672, “Memorandum regarding arriving refugees from Bosanski Novi”, 8 July 1992.

<sup>1412</sup> BT-9, T. 3736, (closed session); BT-19, T. 20733 (closed session).

<sup>1413</sup> BT-94, T. 18004-18005, 18131 (closed session); ex. P2326 (under seal); BT-9, T. 3736 (closed session). Regarding the number of convoys organised by the Agency, *see* BT-88, T. 14714; Amir Džonlić, T. 2397.

<sup>1414</sup> Amir Džonlić, T. 2398.

<sup>1415</sup> Generally, permission to leave was granted by Bosnian Serb authorities once departure procedures were met. In **Banja Luka**, such procedures were established in the latter half of 1992: Amir Džonlić, T. 2398-2401, 2487, 2600, 2602-2606. In **Bosanska Krupa**, Bosnian Muslims were permitted to move away voluntarily, provided that certain conditions were met: ex. P1843, “Announcement by the Bosanski Petrovac Municipal Commission for Emigration regarding the emigration of Muslims from Petrovac Municipality”, 1 August 1992; ex. P1844, “Minutes of the 45<sup>th</sup> meeting of the Commission of Petrovac Municipal Assembly”, held on 31 July 1992, 3 August 1992; ex. P1869, “Crisis Staff Minutes”, 3 June 1992. Regarding **Ključ**, *see* Nisvet Tičević, T. 10784. *See* also ex. P1007, “Decision of the War Presidency regarding the criteria for leaving Ključ”, 30 July 1992. Regarding **Kotor Varoš**, *see* BT-71, T. 17643 (closed session). *See* also ex. P2116 (under seal). Regarding **Čelinac**, *see* BT-90, T. 17111 (closed session). *See* also ex. P1999, “Čelinac Municipal Assembly minutes from various sessions between May and August 1992”; ex. P1998, “Čelinac War Presidency decision regarding special status of the non-Serbian population”, 23 July 1992.

<sup>1416</sup> In **Banja Luka**, it was also stipulated that Bosnian Muslims and Bosnian Croats left for economic reasons: Zijahudin Smilagić, T. 1964. Regarding **Prijedor**, *see* Ivo Atljija, ex. P1527, T. 5655; Mevludin Sejmenović, ex. P1533, T. 4595. Regarding **Sanski Most**, *see* Besim Islamčević, T. 7472. *See* also ex. P694, “Decision of Sanski Most Crisis Staff on confiscation of property”, 29 June 1992; ex. P695, “Order issued by the Sanski Most Crisis Staff to the Municipal headquarters of civil protection”, 30 June 1992; ex. P703, “Minutes of the 7<sup>th</sup> session of the Sanski Most Executive Committee”, 15 July 1992. For evidence regarding **Ključ**, *see* Hasan Salihović, ex. P550, 92*bis* statement, 02109330; Nisvet Tičević, T. 10784; ex. P 1007 “Ključ War Presidency decisions regarding criteria for leaving”, 31 July 1992; Asim Egrlić, T. 10619. Regarding **Kotor Varoš**, *see* BT-71, T. 17643-17651 (under seal); ex. P2182, “Excerpt from minutes of the 47<sup>th</sup> session of Kotor Varoš Crisis Staff”, 29 June 1992; ex. P2243, “Declaration of an individual to the RS authorities of Kotor Varoš that he is voluntarily leaving the municipality”, 21 August 1992; BT-97, T. 17939-17940 (closed session); Muhamed Sadiković, T. 18273-18277; ex. P2243, “Declaration of an individual to the

satisfied beyond reasonable doubt that people did not in fact sign such documents voluntarily,<sup>1417</sup> but did so in order to escape the intolerable living conditions which were forced upon them. The Trial Chamber notes that permission to leave was not always granted, however, and that in some cases, military-aged Bosnian Muslims and Bosnian Croats were, at least initially, prevented by the authorities from leaving.<sup>1418</sup>

554. On the basis of the evidence before it, the Trial Chamber is thus satisfied beyond reasonable doubt that both the displacements of Bosnian Muslims and Bosnian Croats (*i.e.*, deportation and forcible transfers) and the alleged voluntary departure of some of them within and from the ARK were indeed forcible in nature.

(b) Permanent nature of transfers

555. The Trial Chamber is satisfied beyond reasonable doubt that in forcibly displacing the Bosnian Muslims and Bosnian Croats within and from the ARK, the Bosnian Serb authorities had no other intention but to ensure that the departure of these populations would be on a permanent basis.<sup>1419</sup> The fact that their homes, their business premises and their religious buildings were destroyed is indicative of this, as is the confiscation of their property or the relinquishment of it to

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RS authorities of Kotor Varoš that he is voluntarily leaving the municipality”, 21 August 1992. In **Bosanski Novi**, those released from the Mlakve Football Stadium on 23 July 1992 and who left on a convoy the same day had to sign over their property: Midho Alić, T. 13907-13910; BT-82, T. 14014-14016; BT-83, T. 14087; BT-81, T. 130807-13809. *See* also Charles Kirudja, T. 14495; ex. P1672, “Memorandum regarding arriving refugees from Bosanski Novi”, 8 July 1992; ex. P2542, “Report of Bosanski Novi Municipal Secretariat for social matters and general administration”, 28 July 1992, 0104755. Regarding **Prnjavor**, *see* ex. P2608, “Official Gazette of the Prnjavor municipality”, 18 August 1992; ex. P258, “ARK Official Gazette”, 23 June 1992, p.13; Jasmin Odobašić, T. 151222; ex. P1766, “Authorisation letter”, 13 June 1994. Regarding **Čelinac**, *see* BT-90, T. 17092 (closed session).

<sup>1417</sup> *See* BT-84, T. 14166-14167 (regarding Bosanski Novi).

<sup>1418</sup> In **Banja Luka**, the majority of men of military age were prevented from leaving for Travnik: Amir Džonlić, T. 2487. In **Ključ**, only children, women and the elderly were allowed to leave voluntarily: Nisvet Tičević, T. 10781-10782. *See* also ex. P240, “Banja Luka Security Services Centre decision regarding emigration from the ARK”, 12 June 1992.

<sup>1419</sup> Departure procedures in some municipalities required of those leaving that they did so permanently. For **Sanski Most**, *see* BT-21, T. 8588-8589, 8847-8848 (closed session); ex. P. 696, “Decision of Sanski Most Crisis Staff deciding on criteria for departure and fate of property”, 2 July 1992; ex. P694, “Decision of the Sanski Most Crisis Staff on confiscation of property”, 29 June 1992; ex. P 695, “Order issued by Sanski Most Crisis Staff to the Municipal headquarters of civil protection”, 30 June 1992; ex. P696, “Decision of Sanski Most Crisis Staff deciding on criteria for departure and fate of property”, 2 July 1992; ex. P703, “Minutes of the 7<sup>th</sup> session of the Sanski Most Executive Committee”, 15 July 1992; ex. P717, “Reports from Prijedor, Bosanski Novi and Sanski Most SJBs regarding the current situation of detainees, detention centres and refugees and the role of SJBs in relation to these”, 18 August 1992. For **Ključ**, *see* Nisvet Tičević, T. 10784. *See* also ex. P957, “Statement of Ključ Crisis Staff on assistance to citizens who wish to leave”, 4 June 1992; ex. P958, “Decision passed by Ključ War Presidency regarding criteria for departure”, 2 August 1992. For **Bosanski Novi**, *see* Charles Kirudja, T. 14495. *See* also ex. P1672, “Memorandum mentioning that reportedly all Muslims are forced to sign papers asking them to voluntarily leave”, 8 July 1992. For **Bosanski Petrovac**, *see* Jovo Radojko, T. 20361; ex. P1846, “Deregistration, transfer of property documents from Bosanski Petrovac”, 10 August 1992. *See* also ex. P1845, “Request from Bosanski Petrovac SJB regarding settlement of housing problems”, 5 August 1992; Ahmet Hidić, T. 16272-16274; ex. P1843, “Announcement by the Commission for Emigration regarding emigration of Muslims from Petrovac”, 1 August 1992.

the SerBiH without compensation.<sup>1420</sup> There is no doubt that in the mind of the Bosnian Serb authorities, the ethnic cleansing campaign could only be successful if the Bosnian Muslims and Bosnian Croats were to be *permanently* removed.<sup>1421</sup>

(c) Unlawfulness of transfers

556. With the exception of one incident in Čelinac,<sup>1422</sup> the Trial Chamber is not satisfied that Bosnian Serb authorities carried out the total or partial evacuation of the Bosnian Muslims and Bosnian Croats either for the security of these populations<sup>1423</sup> or for imperative military reasons. All the evidence points to this conclusion without the shadow of a doubt. In addition, the Trial Chamber notes that decisions to either of the said effects would have required that “persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased”<sup>1424</sup>, which did not happen in the present case. The Trial Chamber further notes that Bosnian Muslims and Bosnian Croats had a right to continue residing in their respective towns and villages. The Trial Chamber is thus satisfied beyond reasonable doubt of the unlawful nature of transfers carried out to this end.

(d) Deportations and Forcible Transfers

557. The Trial Chamber is satisfied beyond reasonable doubt that a number of deportations to Karlovac and forcible transfers to Travnik originating in the ARK took place during the period

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<sup>1420</sup> The expulsion of Bosnian Muslims and Bosnian Croats was often accompanied by a widespread destruction of their homes so as to ensure that they would not return. When leaving their homes in **Bosanski Novi**, Bosnian Muslims and Bosnian Croats were not allowed to take anything with them and had to hand over all valuables: BT-82, T. 13978; Midho Alić, T. 13892. Regarding **Prijedor**, see Charles McLeod, T. 7325-7326, 7388; ex. P841.7, “Report on meeting with the Prijedor Mayor”; Idriz Merdžanić, ex. P1148, T. 7801. See also IX.D., “Destructions”, *infra*.

<sup>1421</sup> For the Bosnian Serb authorities’ pursuit of an ethnically pure ARK, see ex. P2326 (under seal); ex. P229, “Conclusions reached at the session of Sanski Most sub-region”, 7 June 1992, ex. P1873, “Crisis Staff minutes”, 4 June 1992; Ewan Brown, T. 21564-21657.

<sup>1422</sup> See Vahid Mujkanović, ex. P1980, 92*bis* statement, 01106086-01106094. People from the villages of Mehovci and Bašići were expelled following attacks in mid-August 1992 targeting villages mostly inhabited by Bosnian Muslims and Bosnian Croats, after which they organised themselves and asked to leave Čelinac: BT-90, T. 17094-17097 (closed session). See also ex. P2000, “1<sup>st</sup> KK daily combat report to SerBiH Army Main Staff, 16 August 1992”. They were told to form a column in the direction of Banja Luka. However, for security reasons, the Bosnian Serb military police told them not to proceed, and to remain in Čelinac until further notice: BT-90, T. 17097-17100 (closed session). The Accused ordered that they be taken by bus to the Čelinac elementary school where, under the protection of special police, approximately 500 Bosnian Muslims and Bosnian Croats were protected against danger, including retaliations, and were kept until their release between seven and fifteen days later: BT-90, T. 17100, 17176-17182 (closed session); Mehmed Talić, T. 24149-24150. He also gave evidence that they stayed at the elementary school for approximately fifteen days, after which they returned to their homes and lived a normal life, T. 24151-24153.

<sup>1423</sup> For evidence of purported evacuations in **Bosanski Petrovac**, see Jovo Radojko, T. 20363. For evidence of purported evacuations in **Bosanska Krupa**, see Jadranko Šaran, T. 17235-17236; ex. P2098, “Bosanska Krupa War Presidency decision regarding the evacuation of the remaining Muslim population”, 22 May 1992; see para. 551 *supra*.

<sup>1424</sup> Article 49 of Geneva Convention IV. The Commentary of Geneva Convention IV (p. 280) also notes that “Evacuation must not involve the movement of protected persons to places outside the occupied territory, unless it is physically impossible to do otherwise. Thus, as a rule, evacuation must be to reception centres inside the territory.” Article 17 of Additional Protocol II also lists the security of the population and imperative military reasons as the only reasons that could justify the evacuation of the civilian population.

relevant to the Indictment. Convoys passed through Banja Luka<sup>1425</sup> in the direction of Travnik;<sup>1426</sup> at least one such convoy contained women, children and elderly Bosnian Muslims and Bosnian Croats.<sup>1427</sup> At least 5,000 people a year were transported by the Agency in the direction of Travnik alone.<sup>1428</sup>

558. In October 1992, roughly 158 Bosnian Muslim and Bosnian Croat detainees from Manjača camp were exchanged at Turbe, near Travnik.<sup>1429</sup> Detainees were also transported to Karlovac both prior to<sup>1430</sup> and following the closure of the camp in December 1992.<sup>1431</sup>

559. In the Municipality of Prijedor, Bosnian Muslims and Bosnian Croats were gathered in Trnopolje camp for their further forcible transfer to other locations.<sup>1432</sup> Security was provided by the Commander of the SJB, the Bosnian Serb police and military for a number of convoys that transported people from Trnopolje camp to Travnik<sup>1433</sup> prior to 21 August 1992.<sup>1434</sup> Following the attack on Čarakovo, people from the village were taken to Trnopolje, and then to Travnik by Bosnian Serb forces.<sup>1435</sup>

560. In the Municipality of Sanski Most, Bosnian Muslim representatives met with Bosnian Serb municipal authorities and representatives of the SDS on several occasions between June and August 1992, during which they requested that the Bosnian Serb municipal authorities organise convoys so that Bosnian Muslims could safely leave the area.<sup>1436</sup> They organised a convoy of approximately 2,000 Muslim men, women, children and elderly that left for Travnik at the beginning of August 1992.<sup>1437</sup> Bosnian Serb civilian and military police also escorted a Travnik-bound convoy of approximately 2,500 Bosnian Muslim men, women, children and elderly on 2 and 3 September 1992.<sup>1438</sup>

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<sup>1425</sup> Muharem Krzić, T. 1488-1494; Amir Džonlić, T. 2420. *See* also ex. P449 “Report from Banja Luka Party of Democratic Action to the UN, 30 September 1992”.

<sup>1426</sup> Amir Džonlić, T. 2404, gave evidence that he “heard that a few convoys from Prijedor and Bosanski Novi had passed through Banja Luka in the direction of Travnik and remember[s] that one of these convoys fared very badly at the Korićanske Stijene near Travnik. They came from the direction of Prijedor and went through Banja Luka and they were killed over there.”

<sup>1427</sup> BT-13, T. 4726 (closed session).

<sup>1428</sup> Amir Džonlić, T. 2401.

<sup>1429</sup> Adil Medić, T. 2269. *See* para. 749 *infra*.

<sup>1430</sup> Charles McLeod, T. 7334, 7383.

<sup>1431</sup> Amir Džonlić, T. 2747-2748. ICRC organised the closure and transfer of people to Karlovac: Adil Medić, T. 2269. *See* also ex. P1094 (under seal).

<sup>1432</sup> Idriz Merdžanić, T. 11787; BT-30, ex. P1541, T. 5749-50 (under seal).

<sup>1433</sup> BT-106, T. 21129-21130 (closed session). *See* also Elvedin Našić, T. 12711-12715; BT-78, ex. P562, T. 6887-6899 (under seal).

<sup>1434</sup> Emsud Garibović, T. 12460.

<sup>1435</sup> BT-30, ex. P1541, T. 5749-5750 (under seal). *See* also Nermin Karagić, ex. P559, T. 5270-5271.

<sup>1436</sup> Besim Islamčević, T. 7432, 7456, 7460-7468, 7491-7492, 7511-7512, 7543, 7549-7555.

<sup>1437</sup> Besim Islamčević, T. 7470-7472.

<sup>1438</sup> Besim Islamčević, T. 7474-7475, 7479.

561. In the Municipality of Ključ, a number of convoys were organised prior to a convoy of approximately 1,000 people, the majority of whom included Bosnian Muslim women and children, that left Ključ for Travnik in late July 1992.<sup>1439</sup> The Trial Chamber notes that people had to obtain the necessary documentation, and that very few able-bodied men left in this convoy.<sup>1440</sup>

562. Convoys for Bosnian Muslims and Bosnian Croats leaving Ključ for Travnik were organised by the police, who issued the relevant documents.<sup>1441</sup> On 11 September 1992, approximately 500 Bosnian Muslims were transported to Travnik.<sup>1442</sup> At least two other Travnik-bound convoys left in September,<sup>1443</sup> including one in which an over-crowded convoy transported 1,000 Bosnian Muslims and Bosnian Croats, whose names were called prior to their boarding from a list of people who had paid a fare.<sup>1444</sup>

563. Approximately 2,500 Bosnian Muslims and Bosnian Croats, the majority of whom were women, children and elderly, were also transported from Ključ towards Travnik on 1 October 1992.<sup>1445</sup> Bosnian Serb local police and the Bosnian Serb army were at the departure point with a list of those who had paid what was asked of them and signed over their property.<sup>1446</sup> Bosnian Serbs escorted the convoy to a location 25 kilometers away from Travnik, whereupon they demanded money and valuables from the passengers, who then walked to Travnik.<sup>1447</sup>

564. In Kotor Varoš in June or July 1992, Bosnian Serb soldiers expelled Bosnian Muslim men, women, and children from Lihovići to Čejavani, after which soldiers separated the women and children from the men.<sup>1448</sup> Bosnian Muslim women and children from the villages of Šipure and Medare were brought by Bosnian Serb soldiers to join the group of women and children already gathered in Čejavani.<sup>1449</sup> A truck then took the two groups to a sawmill in Kotor Varoš, where they were joined by a third group of Bosnian Muslim women and children from the villages of Hanifići and Čirkino Brdo.<sup>1450</sup> There were approximately 150-200 children gathered in the sawmill,<sup>1451</sup> and

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<sup>1439</sup> BT-25, T. 9083, (closed session); ex. P1010, "Report on the work of the Ključ Crisis Committee from 15 May 1992 – 1 July 1992".

<sup>1440</sup> BT-25, T. 9082-9083 (closed session).

<sup>1441</sup> Hasan Salihović, ex. P 550, 92*bis* statement, 02109330.

<sup>1442</sup> *Ibid.* See also Samir Dedić, T. 10444-10446.

<sup>1443</sup> Dževad Džaferagić, ex. P553, 92*bis* statement, 02061867; Husein Čajić, T. 9027. See also Samir Dedić, T. 10444, 10448.

<sup>1444</sup> Nisvet Tičević, T. 10787, 10803.

<sup>1445</sup> Ajiz Bečić, ex. P549, 92*bis* statement, 2109338.

<sup>1446</sup> *Ibid.*

<sup>1447</sup> *Ibid.* at 2109339.

<sup>1448</sup> BT-74, ex. P2046, 92*bis* statement, 01076160 (under seal).

<sup>1449</sup> *Ibid.* at 01076161 (under seal).

<sup>1450</sup> *Ibid.* at 01076161-01076162 (under seal).

<sup>1451</sup> *Ibid.* at 01076162 (under seal).

soldiers ordered those whose names had been called out from the whole group to board one of three buses that left towards Travnik.<sup>1452</sup>

565. A number of other convoys left for Travnik, including one that left Kotor Varoš Municipality on 25 August 1992<sup>1453</sup> and another that left the town of Kotor Varoš at the end of October 1992.<sup>1454</sup> A convoy of civilians, mostly Bosnian Muslim women and children, left the village of Grabovica in approximately mid to late October 1992.<sup>1455</sup> The convoy first traveled to Vrbanjci, and with thirteen other buses transporting mostly Bosnian Muslim women and children from Večići and surrounding villages, then left for Travnik.<sup>1456</sup>

566. In the Municipality of Bosanski Novi, the Bosnian Serb military told people that the village of Suhača was about to be attacked, that they could not protect them, and that they had to leave.<sup>1457</sup> People were also told by the army to retreat towards Bosanski Novi, where it would be decided where they would then go.<sup>1458</sup> On 24 May 1992, there were between approximately 8,000 and 10,000 Muslim men, women and children from Gornji Agići, Donji Agići and Crna Rijeka that left on a convoy of cars, tractors and horse-drawn carts.<sup>1459</sup>

567. SDA President and representative of Suhača, Sifet Barjaktarević, negotiated with Bosanski Novi municipal authorities the safe passage of this convoy to Croatia.<sup>1460</sup> A military police patrol instead sent the convoy towards Bosanski Novi, accompanied by two military trucks with Bosnian Serb soldiers.<sup>1461</sup> Upon their arrival at Blagaj Japra, however, the convoy was met by soldiers wearing JNA uniforms, who asked them to leave their property and board the rail carriages stationed there.<sup>1462</sup> The people refused, and were all forced by the soldiers to return to the village of Blagaj.<sup>1463</sup>

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<sup>1452</sup> *Ibid.* at 01076164 (under seal). Witness gave evidence that “a large group of women stayed behind because there was no room on the buses. The driver told the group that they would be heading towards Travnik. The two other buses stopped at Mt. Vlašić and soldiers threatened that they would be killed. Once they came to Smetovi, they stopped at the front lines. Occupants of the buses were ordered out at Smetovi (Zenica area). They walked 2-3 hours to Travnik.”

<sup>1453</sup> BT-97, ex. P2322, 92*bis* statement, 01028858 (under seal).

<sup>1454</sup> Muhamed Sadiković, T. 18260-18263, 18273-18277.

<sup>1455</sup> Elvedin Pašić, T. 19434-19435.

<sup>1456</sup> Elvedin Pašić, T. 19436-19437.

<sup>1457</sup> BT-82, T. 13970-13972; Charles Kirudja, T. 14451-14452. *See also* ex. P1666, “UNPROFOR Memorandum regarding 5000 Muslims from Bosanski Novi”, 9 June 1992.

<sup>1458</sup> BT-82, T. 13970.

<sup>1459</sup> BT-82, T. 13972. *See also* ex. P1684, “UNPROFOR Report”, 8 October 1992; Charles Kirudja, T. 14452, 14454; ex. P1666, “UNPROFOR Memorandum regarding 5000 Muslims from Bosanski Novi”, 9 June 1992; BT-84, T. 14129.

<sup>1460</sup> BT-82, T. 13972; BT-50, T. 14339 (private session).

<sup>1461</sup> BT-82, T. 13976; BT-50, T. 14339 (private session).

<sup>1462</sup> BT-82, T. 13973; Charles Kirudja, T. 14452, 14454. *See also* ex. P1666, “UNPROFOR Memorandum regarding 5000 Muslims from Bosanski Novi”, 9 June 1992; BT-50, T. 14343 (private session).

<sup>1463</sup> BT-82, T. 13973-13975; BT-50, T. 14 343 (private session).

568. Bosnian Serb municipal authorities also organised a convoy of 5,000 Bosnian Muslim men, women and children from Bosanski Novi, who had gathered in Blagaj, and who left in the direction of Croatia at the end of May 1992.<sup>1464</sup> A convoy of no less than 11,000 people, including between 600 and 700 detainees from the Mlakve Stadium in Bosanski Novi, and a large number from Prijedor, Bosanska Kostajnica, and Bosanska Dubica, were transported to Karlovac on approximately 23 July 1992.<sup>1465</sup> From the approximately 14,000 Muslims in Bosanski Novi prior to the conflict, roughly 1,000 Muslims remained behind following the departure of this convoy.<sup>1466</sup>

569. Bosnian Muslim representatives met with Bosnian Serb municipal authorities on several different occasions to discuss the movement of Bosnian Muslim populations from Bosanski Novi for security reasons, including to Karlovac.<sup>1467</sup> The Trial Chamber is satisfied beyond reasonable doubt, however, that Bosnian Muslim and Bosnian Croat departures were carried out under duress<sup>1468</sup> and were thus involuntary in nature,<sup>1469</sup> despite having been carried out with the collaboration or at the insistence of Bosnian Muslim representatives.

570. In the Municipality of Bosanski Petrovac, a mass departure of Bosnian Muslims from the area occurred on 13 September 1992, including a column of seven buses with a special police patrol escorting them that departed from the village of Bišanći, in the direction of Travnik.<sup>1470</sup> A smaller convoy of two buses had also left and gone via Mt. Vlašić to Travnik prior to this particular convoy.<sup>1471</sup> Over a three-day period, more than 900 Bosnian Muslim men, women and children moved from the Petrovac area in the direction of Bihać and Travnik.<sup>1472</sup> Approximately 2,500 Bosnian Muslim men, women and children were also transported to Travnik on 24 September 1992, following a public announcement made by the military police that all Bosnian Muslims would be transferred there.<sup>1473</sup>

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<sup>1464</sup> Charles Kirudja, T. 14420.

<sup>1465</sup> BT-81, T. 13810-13816 (private session); BT-87, ex. P1643, 92*bis* statement, 00942603.

<sup>1466</sup> BT-81, T. 13810-13814 (private session).

<sup>1467</sup> BT-81, T. 13846-13848 (private session); BT-87, ex. P1643, 92*bis* statement, 00942599; Charles Kirudja, T. 14519-14521.

<sup>1468</sup> BT-84, T. 14167.

<sup>1469</sup> Charles Kirudja, T. 144432, 14435-14436, 14440.

<sup>1470</sup> Ahmet Hidić, T. 16276-16278. *See also* ex. P1848, “Radio Bosanski Petrovac broadcast regarding moving out of Muslims from Bosanski Petrovac”, 13 September 1992. The convoy was in fact turned back, as passage was not allowed through Karinovac. The people then returned to Bosanski Petrovac: ex. P1849, “Report on escort and security provided for the convoy of Bosnian Muslims on 13 September 1992”; Jovo Radojko, T. 20200-20202.

<sup>1471</sup> Ahmet Hidić, T. 16277-16278.

<sup>1472</sup> *Ibid.*

<sup>1473</sup> Jovo Radojko, T. 20203-20209. Ahmet Hidić, T. 16271-16283 gave evidence that they had to walk the last 20 km to Travnik.

### 3. Responsibility of the Accused

571. The Trial Chamber has already dismissed JCE, planning and superior criminal responsibility under Article 7(3) of the Statute as possible modes of liability to describe the individual criminal responsibility of the Accused.<sup>1474</sup>

572. The Trial Chamber recalls its previous findings that the decisions of the ARK Crisis Staff can be attributed to the Accused,<sup>1475</sup> and that the ARK Crisis Staff's decisions of 28 and 29 May 1992, advocating the resettlement of the non-Serb population, were implemented by the municipal authorities and the police.<sup>1476</sup>

573. The Trial Chamber is not satisfied that the Accused ordered the crimes of deportation and forcible transfer. The wording of the ARK Crisis Staff's decisions of 28 and 29 May incites to action, but on its face does not order.<sup>1477</sup> The public utterances of the Accused are not specific enough to constitute orders to commit deportation and forcible transfer.

574. The Trial Chamber is however satisfied that the ARK Crisis Staff's decisions of 28 and 29 May 1992 prompted the municipal authorities and the police, who implemented them, to commit the crimes of deportation and forcible transfer after those dates. Although the two decisions are, not disingenuously, framed in terms of voluntary compliance, to the municipal authorities and the police they could have only meant a direct incitement to deport and forcibly transfer non-Serbs from the territory of the ARK. This is the only reasonable conclusion that may be drawn when the terms of the decisions are considered in the light of the Accused's unambiguous public statements, made repeatedly from early April 1992 onwards, calling upon the non-Serb population to leave the Bosnian Krajina and stating that only a small percentage of non-Serbs would be allowed to stay.<sup>1478</sup>

575. Furthermore, the Accused's espousal of the Strategic Plan, of which the crimes of deportation and forcible transfer formed an integral part, and the implementation of which he coordinated in his position as President of the ARK Crisis Staff, and his awareness that it could only be implemented through force and fear, demonstrate that he intended to induce the commission of the crimes of deportation and forcible transfer.<sup>1479</sup>

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<sup>1474</sup> See VIII., "The Accused's Role and his Responsibility in General", *supra*.

<sup>1475</sup> *Ibid.*

<sup>1476</sup> Ex. P211, "ARK Crisis Staff Conclusions", 28 May 1992, signed by the President, Radoslav Brdanin; Ex. P227, "Official Gazette of the ARK, ARK Crisis Staff Conclusions", 29 May 1992, with a signature block of the President of the Crisis Staff Radoslav Brdanin. See VI.D. *supra*.

<sup>1477</sup> *Ibid.* Ex. P277, "ARK Crisis Staff Conclusions", 20 May 1992: "There are no reasons whatsoever for people of any nationality to move out of the ARK".

<sup>1478</sup> See VIII.C.5., "The Accused's propaganda campaign", *supra*.

<sup>1479</sup> See VIII.C.1., "The Accused's espousal of the Strategic Plan", *supra*.



576. The Trial Chamber is satisfied that, with the exception of the failed attempt at displacing the Bosnian Muslim population of Gornji Agići, Donji Agići and Crna Rijeka in Bosanski Novi on 24 May 1992, the deportations to Karlovac and forcible transfers to Travnik originating in the ARK and described earlier all took place after the dates of the ARK Crisis Staff's decisions.<sup>1480</sup>

577. The Trial Chamber finds that the Accused instigated these forcible transfers and deportations.

578. In addition, the Trial Chamber is satisfied that the Accused also aided and abetted the execution of these crimes. In the first place, the Trial Chamber is satisfied that the Accused's inflammatory and discriminatory public statements, issued repeatedly from his several positions of authority, could only be and were understood by non-Serbs as direct threats to leave the areas under Bosnian Serb occupation.<sup>1481</sup> By making non-Serbs want to leave, these statements had a substantial effect in facilitating their subsequent deportation and forcible transfer by the municipal authorities, the police and the army.

579. In the second place, the Trial Chamber is satisfied that the Accused aided and abetted the crimes which rendered the displacement of non-Serbs forcible and permanent. The Trial Chamber has already found that, through the ARK Crisis Staff's decisions on disarmament mentioned earlier, the Accused aided and abetted the commission of wilful killing, torture, and the destruction of homes and of religious buildings.<sup>1482</sup>

580. Finally, the Trial Chamber is satisfied that the Accused aided and abetted the crime of forcible transfer of non-Serbs, by setting up through the ARK Crisis Staff's decision of 12 June 1992,<sup>1483</sup> the Agency for the Movement of People and Exchange in Banja Luka, which, *inter alia*, arranged bus travel to Travnik, and about which it has already found that it constituted an integral part of the plan to ethnically cleanse the region.<sup>1484</sup>

581. Having said this, the Trial Chamber is not satisfied that any other decisions of the ARK Crisis Staff instigated or aided and abetted in the commission of any of the crimes charged under Counts 8 and 9 of the Indictment.

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<sup>1480</sup> See paras 557-570 *supra*.

<sup>1481</sup> See VIII.C.5., "The Accused's propaganda campaign", *supra*.

<sup>1482</sup> See IX.A., "Extermination and Wilful Killing" and B., "Torture", *supra*.

<sup>1483</sup> Ex. P241, "Decision of the ARK Crisis Staff", 12 June 1992. See also Ex. P227, "Conclusions of the ARK Crisis Staff", 26 May 1992. See also VI.D. *supra*.

<sup>1484</sup> See para. 552 *supra*. See also VI.D., "The Role of the ARK Crisis Staff in the Implementation of the Strategic Plan", *supra*.

582. The Trial Chamber is satisfied that the Accused was aware that his public statements and the decisions of the ARK Crisis Staff on disarmament and on setting up the Agency substantially assisted in the commission of deportation and forcible transfer of non-Serbs. The crimes of deportation and forcible transfer were an integral part of the Strategic Plan, which the Accused espoused throughout in the awareness that it could only be implemented through force and fear, and the implementation of which he coordinated in his position as President of the ARK Crisis Staff.<sup>1485</sup> He was also aware of the intent of the municipal authorities, the police and the army to deport and forcibly transfer the non-Serb population.

583. The Trial Chamber therefore finds that the Accused also aided and abetted the crimes of forcible transfer and deportation.

## **D. Destructions**

### **1. The Law**

#### **(a) Unlawful and wanton extensive destruction and appropriation of property not justified by military necessity**

584. The Prosecution has charged the Accused with the offence of unlawful and wanton extensive destruction and appropriation of property not justified by military necessity under Count 10.<sup>1486</sup> The extensive destruction and appropriation of property not justified by military necessity carried out unlawfully and wantonly constitutes a grave breach under Article 2 (d) of the Statute. This single article combines two separate acts: the (i) destruction of property and (ii) appropriation of property.<sup>1487</sup>

585. Article 2 (d) is based on Article 147 of Geneva Convention IV, which sanctions as a grave breach the extensive destruction and appropriation of property protected by the Convention, not justified by military necessity and carried out unlawfully and wantonly.<sup>1488</sup>

586. Two types of property are protected under Article 2 (d):

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<sup>1485</sup> See VI.D., “The Role of the ARK Crisis Staff in the Implementation of the Strategic Plan”, *supra*.

<sup>1486</sup> Indictment, paras 61-64.

<sup>1487</sup> Although appropriation of property under Article 2 (d) has never been dealt with by this Tribunal, “unlawful appropriation of property in armed conflicts” has been referred to and proscribed as in the *Naletilić* Trial Judgements as (i) plunder (ii) pillage and (iii) spoliation. See *Naletilić* Trial Judgement, para. 612, fn. 1499. The Commentary to the Geneva Conventions does not define the concept of appropriation, See p. 601.

<sup>1488</sup> See, e.g., Article 50 of Geneva Convention I; Article 51 of Geneva Convention II and Article 130 of Geneva Convention III.

1. real or personal property in occupied territory, belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organisations (except where such destruction is rendered absolutely necessary by military operations);<sup>1489</sup>
2. property that carries general protection under the Geneva Conventions of 1949 regardless of its location.<sup>1490</sup>

587. The destruction and appropriation must be extensive.<sup>1491</sup> However, a single incident, such as the destruction of a civilian hospital, may exceptionally suffice to constitute the crime.<sup>1492</sup>

588. The prohibition of destruction of property situated in occupied territory is subject to an important reservation. It does not apply in cases “where such destruction is rendered absolutely necessary by military operations”.<sup>1493</sup>

589. With regards to the *mens rea* requirement for destruction of property the perpetrator must have acted with the intent to destroy the protected property or in reckless disregard of the likelihood of its destruction.<sup>1494</sup>

590. With respect to the *mens rea* requisite of appropriation of property, the perpetrator must have acted intentionally, with knowledge and will of the proscribed result.<sup>1495</sup>

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<sup>1489</sup> Article 53 of Geneva Convention IV sets forth a protection to property situated in occupied territory: “Any destruction by the Occupying power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited except where such destruction is rendered absolutely necessary by military operations.” See Commentary to Geneva Conventions IV, p. 601.

<sup>1490</sup> *Naletilić* Trial Judgement, para. 575. Several provisions of the Geneva Conventions identify particular types of property accorded general protection. For example, Article 18 (protection of civilian hospitals), Articles 21 and 22 (protection of land, sea and air medical transports), of Geneva Convention IV; Articles 38-39 (protecting ships and aircraft employed for medical transport) of Geneva Convention II, A; Articles 19-23 (protection of medical units and establishments), Articles 33-34 (protection of buildings and materials of medical units or of aid societies), Articles 35-37 (protection of medical transports), of Geneva Convention I.

<sup>1491</sup> *Naletilić* Trial Judgement, para. 576. In *Kordić* the Trial Judgement limited this requirement to property in occupied territory, whereas in the *Naletilić* Trial Judgement extends it to all property regardless of its location (*Kordić* Trial Judgement, para 341 (ii)). According to the Commentary to Geneva Convention IV, to constitute a grave breach the destruction and appropriation must be extensive: “an isolated incident would not be enough”. When making this statement, the Commentary adds in a footnote: “It might be concluded from a strict interpretation of this provision that the bombing of a single civilian hospital would not constitute a grave breach, but this would be an inadmissible inference to draw if the act were intentional”. See Commentary to Geneva Convention IV, p. 601.

<sup>1492</sup> *Naletilić* Trial Judgement, para. 576. See also *Blaškić* Trial Judgement, para. 157.

<sup>1493</sup> *Blaškić* Trial Judgement, para. 157; *Naletilić* Trial Judgement, paras 575, 577 (iii). See Article 53 of Geneva Convention IV.

<sup>1494</sup> *Naletilić* Trial Judgement, para. 577 (iv); *Kordić* Trial Judgement, para. 341 (iii).

<sup>1495</sup> *Naletilić* Trial Judgement, para. 612, footnote 1498.

(b) Wanton destruction of cities, towns and villages, or devastation not justified by military necessity<sup>ŠLPFI3Ć</sup>

591. The Prosecution has charged the accused with the offence of wanton destruction of cities, towns or villages, or devastation not justified by military necessity under Count 11.<sup>1496</sup> Wanton destruction of cities, towns or villages, or devastation not justified by military necessity constitutes a violation of the laws or customs of war under Article 3 (b) of the Statute.<sup>1497</sup> Article 3 (b) of the Statute is based on Article 23 (g) of the Hague Regulations which forbids the unnecessary destruction or seizure of enemy property, unless it is “imperatively demanded by the necessities of war”.<sup>1498</sup>

592. Article 3 (b) of the Statute is wide in scope, protecting all property in the territory involved in a war, including that located in enemy territory.<sup>1499</sup> The protection afforded under Article 3 (b) of the Statute is however, limited by the military necessity exception. The destruction or devastation of property in the territory involved in a war is prohibited except where it is justified by military necessity.<sup>1500</sup>

593. With respect to the *mens rea* requisite of destruction or devastation of property under Article 3 (b), the jurisprudence of this Tribunal is consistent. The destruction or devastation must have been either perpetrated intentionally, with the knowledge and will of the proscribed result, or in reckless disregard of the likelihood of the destruction or devastation.<sup>1501</sup>

(c) Destruction or wilful damage done to institutions dedicated to religion

594. The seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science constitute a violation of the law or customs of war under Article 3 (d) of the Statute.<sup>1502</sup> The Prosecution has charged the accused with the offence of destruction or wilful damage done to

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<sup>1496</sup> Indictment, paras 61-64.

<sup>1497</sup> Article 6 (b) of the London Charter enumerates the war crimes falling under the IMT’s jurisdiction and includes the “wanton destruction of cities, towns, or villages, or devastation not justified by military necessity”.

<sup>1498</sup> Article 23(g) of the Hague Regulations is placed in Section II entitled “Hostilities”.

<sup>1499</sup> *Kordić* Trial Judgement, para. 347; *Naletilić* Trial Judgement, para. 580. The wider scope is also given by the fact that Article 3, unlike Article 2 of the Statute, applies to international and non-international armed conflicts. See also, Commentary to Article 53 in Geneva Convention IV.

<sup>1500</sup> *Blaškić* Trial Judgement, para. 183; *Kordić* Trial Judgement, para. 346; *Naletilić* Trial Judgement, para. 579.

<sup>1501</sup> *Naletilić* Trial Judgement, footnote 1440; *Kordić* Trial Judgement, para. 346; *Blaškić* Trial Judgement, para. 183.

<sup>1502</sup> Article 3 (d) introduces in the Statute the same prohibition set out in Article 56 of the Hague Regulations, providing: “The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, are forbidden, and should be made the subject of legal proceedings”. Article 56 of the Hague Regulations applies only in cases of occupation.

institutions dedicated to religion under Count 12.<sup>1503</sup> The Trial Chamber will, therefore, only deal with this part of the offence.

595. Institutions dedicated to religion are protected under the Statute and under customary international law. Articles 27 and 56 of the Hague Regulations provide for the protection in armed conflict of, among others, buildings or institutions dedicated to religion.<sup>1504</sup> The protection is reiterated in both Additional Protocol I and II to the Geneva Conventions, in Articles 53 and 16 respectively.<sup>1505</sup>

596. The offence of destruction or wilful damage to institutions dedicated to religion overlaps to a certain extent with the offence of unlawful attacks on civilian objects except that the object of the offence of destruction or wilful damage to institutions dedicated to religion is more specific.<sup>1506</sup> Institutions dedicated to religion must be presumed to have a civilian character and to enjoy the general protection to which these objects are entitled to under Article 52 of Additional Protocol I.<sup>1507</sup> Pursuant to Article 52 of Additional Protocol I, institutions dedicated to religion as general civilian objects should not be attacked.<sup>1508</sup> They may be attacked only when they become a military objective. Military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage.<sup>1509</sup>

597. Further, the exception to the protection of institutions dedicated to religion is set out in Article 27 of the Hague Regulations:

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<sup>1503</sup> Indictment, paras 61-64.

<sup>1504</sup> Many other international instruments provide for protection of cultural property, including institutions dedicated to religion, including: Article 1 of the Roerich Pact of 15 April 1935; Articles 8 (2)(b)(ix) and 8 (2)(e)(iv) of the ICC Statute; the Convention for the Protection of Cultural Property; Article 16 of Additional Protocol II; Article 5 of the Hague Convention IX.

<sup>1505</sup> Places of worship protected under Additional Protocol I are only those considered to be the “heritage of all peoples”. Places of worship not protected under Article 53 are given general protection under Article 52 (3) of Additional Protocol I.

<sup>1506</sup> *Kordić* Trial Judgement, para. 361.

<sup>1507</sup> The *Jokić* Sentencing Judgement stated that the prohibition to direct attacks against this kind of property is additional to the prohibition to attack civilian objects, para. 50. The *Blaškić* Trial Judgement held that specific provisions of Article 3 of the Statute cover the provision of Additional Protocol I relating to unlawful attack upon civilian targets, See *Blaškić* Trial Judgement, para. 170. Article 52 of Additional Protocol I is therefore imported in the Statute under Article 3.

<sup>1508</sup> Additional Protocol I prohibits attacks on civilian objects in Article 52 (1) and describes civilian objects as “all objects which are not military objectives as defined in paragraph 2”. Paragraph 3 states: “ In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed no to be so used.”

<sup>1509</sup> Article 52 (2) Additional Protocol I. The definition of military objective in Article 52 (2) is today considered to be customary law (States not party to Additional Protocol I, such as the United States, Turkey and India confirmed the customary law nature of this provision during the 1999 Diplomatic Conference that adopted the Second Protocol to the 1954 Convention on Protection of Cultural Property).

[a]ll necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, *provided that they are not being used at the time for military purposes.*<sup>1510</sup>

598. The “military purpose” exception to the protection of institutions dedicated to religion has been confirmed consistently by this Tribunal.<sup>1511</sup> The Trial Chamber agrees that the protection afforded under Article 3 (d) is lost if the property is used for military purposes.

599. With respect to the *mens rea* requisite of destruction or devastation of property under Article 3 (d), the jurisprudence of this Tribunal is consistent by stating that the *mens rea* requirement is intent (*dolus directus*).<sup>1512</sup> The Trial Chamber holds that as religious institutions enjoy the minimum protection afforded to civilian objects the *mens rea* requisite for this offence should be equivalent to that required for the destruction or devastation of property under Article 3 (b).<sup>1513</sup> The Trial Chamber, therefore, is of the opinion that the destruction or wilful damage done to institutions dedicated to religion must have been either perpetrated intentionally, with the knowledge and will of the proscribed result or in reckless disregard of the substantial likelihood of the destruction or damage.

## 2. The Facts and Findings

### (a) Unlawful and Wanton Extensive Destruction and Appropriation of Property & Wanton Destruction of Cities, Towns and Villages or Devastation not justified by Military Necessity

600. The Trial Chamber is satisfied that in the period relevant to the Indictment, Bosnian Serb forces shelled towns and villages predominantly inhabited by Bosnian Muslims and Bosnian Croats, causing extensive damage to houses and business premises. After the shelling, the Bosnian Serb forces entered the towns and villages, looting and setting on fire apartments, houses and business premises belonging to Bosnian Muslims and Bosnian Croats. The Trial Chamber finds that the purpose of such attacks was to create terror, destroy these properties, cities, towns and villages and prompt non-Serbs to abandon their houses, villages or towns and leave permanently.

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<sup>1510</sup> Other Conventions provide for an exception to the protection: Article 5 of the Hague Convention IX which applies to bombardments by naval forces, provides: “[a]ll the necessary measures must be taken by the commander to spare as far as possible sacred edifices, buildings used for artistic, scientific, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, *on the understanding that they are not used at same time for military purposes.*” Article 4 of the Convention for the Protection of Cultural Property also provides that cultural property, including institutions dedicated to religion, shall not be subject to any act of hostility nor used for purposes which are likely to expose it to destruction or damage in the event of armed conflict, with the exception of “imperative military necessity”. *See, e.g.*, Article 5 of the Roerich Pact.

<sup>1511</sup> *Blaškić* Trial Judgement, para. 185; *Kordić* Trial Judgement, para. 362; *Naletilić* Trial Judgement, para. 605.

<sup>1512</sup> *Kordić* Trial Judgement, para. 361; *Blaškić* Trial Judgement, para. 185; *Naletilić* Trial Judgement, para. 605. International instruments on the protection of religious institutions (cultural property) are silent on the matter. The only provision which requires “wilful commission” is Article 85 (4)(d) of Additional Protocol I which elevates the

601. As a preliminary matter, the Trial Chamber is not satisfied that the destruction and appropriation of property which is alleged in the Indictment in the following towns and villages were proved beyond reasonable doubt as there is insufficient evidence: Ramići; Humići; Vrhpolje; Trnova; Sasina; Komušina; Rajševa; Kamenica and the town of Šipovo.<sup>1514</sup>

602. The Trial Chamber is satisfied beyond reasonable doubt that in the following municipalities, Bosnian Serb forces extensively destroyed and appropriated non-Serb property located in villages and towns predominately inhabited by Bosnian Muslims and Bosnian Croats.

(i) Banja Luka

603. The Trial Chamber is satisfied that attacks on private houses and business premises belonging to Bosnian Muslims and Bosnian Croats in the city of Banja Luka took place in mid 1992.<sup>1515</sup> Explosions were frequent and occurred mostly at night.<sup>1516</sup> Houses were attacked with hand grenades, rocket launchers and rifle launched grenades.<sup>1517</sup> The Trial Chamber is further satisfied that although the houses and business premises targeted were primarily owned by non-Serbs,<sup>1518</sup> Bosnian Serb-owned shops were also subject to attack on occasion.<sup>1519</sup> Such attacks appear to have been the result of a factional conflict between the Bosnian Serbs or criminal groups.<sup>1520</sup>

604. On the basis of the evidence before it, the Trial Chamber is satisfied that the police failed to investigate the bombing of private houses and business premises.<sup>1521</sup> Adequate attention was not given to these cases.<sup>1522</sup> There is some evidence that the destruction was carried out by criminals at the service of the SDS.<sup>1523</sup>

605. The Trial Chamber is further satisfied that, during the period relevant to the Indictment, there were many incidents in Banja Luka of non-Serbs being forced to either sign over their

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destruction of “recognised historic monuments, works of art or places of worship” to a grave breach and thus to a war crime (Article 85, paragraph 5), upon the presence of specific requirements.

<sup>1513</sup> See IX.D.1.(b), “Wanton destruction of cities, towns and villages, or devastation not justified by military necessity”.

<sup>1514</sup> The Prosecution in its Final Trial Brief withdrew the charges of destruction and appropriation of property in relation to the villages of Kotorište, Čepak, Šipure, Donja and Gornja Ravska, and Barići.

<sup>1515</sup> BT-104, T. 18492; BT-11, T. 3865 (closed session); Muharem Krzić, T. 1482; BT-13, T. 4706 (closed session).

<sup>1516</sup> BT-104, T. 18492; Muharem Krzić, T. 1481, 1757; BT-13, T. 4676, 4706 (closed session); Ibrahim Fazlagić, T. 4319.

<sup>1517</sup> Muharem Krzić, T. 1483.

<sup>1518</sup> Ibrahim Fazlagić, T. 4318-4319; BT-13, T. 4676 (closed session); BT-22, T. 4484; Muharem Krzić, T. 1482; BT-12, T. 4224; BT-11, T. 3865 (closed session).

<sup>1519</sup> Muharem Krzić, T. 1482; BT-107, T. 25044-25045 (closed session).

<sup>1520</sup> Muharem Krzić, T. 1482.

<sup>1521</sup> BT-11, T. 3866-3867 (closed session); BT-7, T. 3077 (closed session); BT-107, T. 25074-25075 (closed session).

<sup>1522</sup> BT-104, T. 18493.

<sup>1523</sup> BT-11, T. 3867-3868 (closed session).

property<sup>1524</sup> or exchange their property for property in Croatia.<sup>1525</sup> An agency was set up by the authorities of Banja Luka specifically to facilitate these exchanges.<sup>1526</sup> The SDS publicly announced that non-Serb owned shops and businesses would be transferred to returning Bosnian Serb soldiers as a reward.<sup>1527</sup> Bosnian Serb families moved into apartments belonging to non-Serbs who had left Banja Luka.<sup>1528</sup> Some people applied to exchange their apartments for apartments in Zagreb or Rijeka.<sup>1529</sup> In one example, a non-Serb was forced to exchange his house for just 100 German marks.<sup>1530</sup>

606. The exchange of property for a simple certificate was also common. In one instance, a man handed over his Mercedes to the police in exchange for a certificate. Among the men that came to seize his car was a member of the 4<sup>th</sup> Light Infantry Brigade.<sup>1531</sup> The man was told that they needed a vehicle for the new director of Blik, a retail company that produced the uniforms for the VRS army.<sup>1532</sup> The confiscation of cars could be avoided by paying a “Bosnian Serb protector”.<sup>1533</sup> Another non-Serb received a certificate saying that all his property had been expropriated by the National Red Cross on behalf of Republika Srpska. The certificate was signed by the policeman who took the goods.<sup>1534</sup>

607. People were not permitted to leave Banja Luka with more than three hundred German Marks.<sup>1535</sup> They were also warned not to take their belongings with them.<sup>1536</sup> However, when leaving Banja Luka, non-Serbs tried to hide valuables, for example, in coats and in pots of

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<sup>1524</sup> BT-20, T. 5255 (closed session).

<sup>1525</sup> Muharem Krzić, T. 1484-1485.

<sup>1526</sup> Muharem Krzić, T. 1484-1485.

<sup>1527</sup> Muharem Krzić, T. 1483; BT-22, T. 4436.

<sup>1528</sup> BT-20, T. 5241 (closed session); ex. P763 (under seal).

<sup>1529</sup> BT-9, T. 3445 (closed session).

<sup>1530</sup> BT-13, T. 4707-08 (closed session).

<sup>1531</sup> BT-22, T. 4428-32.

<sup>1532</sup> BT-22, T. 4420-4426.

<sup>1533</sup> Muharem Krzić, T. 1484.

<sup>1534</sup> BT-11, T. 3984-3985, 4047-4050, 4151 (closed session).

<sup>1535</sup> Amir Džonlić, T. 2402; BT-9, T. 3435-3436 (closed session); *see, e.g.*, ex. P226, “Information from the Banja Luka Public Security Service Centre” regarding the Decision of the ARK War Presidency of 3 June 1992 provides that physical persons leaving the ARK War Presidency can take with them a maximum of DM 300 or other currency equivalent to this amount.

<sup>1536</sup> BT-7, T. 2989 (closed session).



cosmetics.<sup>1537</sup> Restrictions were enforced at checkpoints where people were stripped and searched.<sup>1538</sup>

(ii) Bosanska Krupa

608. The Trial Chamber finds that the town of Bosanska Krupa was shelled by Bosnian Serb forces on 22 April 1992. Houses predominantly inhabited by Bosnian Muslims were set on fire and destroyed.<sup>1539</sup> At the end of May 1992, men wearing army uniforms with an insignia of a white eagle looted a couple of houses in the village of Arapuša.<sup>1540</sup>

(iii) Bosanski Novi

609. The Trial Chamber is satisfied that in June 1992, areas of Bosanski Novi town predominantly inhabited by Bosnian Muslims were set on fire by armed men.<sup>1541</sup> Units of the regular army were not involved.<sup>1542</sup>

610. The villages of Blagaj Japra and Blagaj Japra were shelled in May 1992. After the shelling, military tanks carrying flags with the symbol of the SerBiH entered the villages.<sup>1543</sup> Bosnian Serb soldiers took valuables and money from the villagers of Blagaj Rijeka and Blagaj Japra.<sup>1544</sup> Houses in the village of Blagaj Rijeka were set on fire.<sup>1545</sup>

611. The village of Suhača was also shelled by the Bosnian Serb army. After the shelling, Bosnian Serb soldiers entered the village and looted the houses.<sup>1546</sup> On 11 May 1992, Bosnian Serb forces shelled the Bosnian Muslim village of Gornji Agići, targeting civilian houses.<sup>1547</sup> In the village of Donji Agići, Bosnian Muslim property was looted and set on fire by Bosnian Serb forces.<sup>1548</sup>

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<sup>1537</sup> Amir Džonlić, T. 2402; BT-9, T. 3435-3436 (closed session).

<sup>1538</sup> BT-7, T. 2989 (closed session).

<sup>1539</sup> BT-56, T. 17496 (private session); Jadranko Šaran, T. 17289.

<sup>1540</sup> BT-55, T. 17548.

<sup>1541</sup> BT-81, T. 13784-13785, 13788 (private session).

<sup>1542</sup> BT-81, T. 13803.

<sup>1543</sup> BT-49, T. 14223 (closed session); BT-86, ex. P1639, 92bis statement, 00943011 (under seal).

<sup>1544</sup> BT-82, T. 13978; BT-49, T. 14229, 14237 (closed session); BT-50, ex. P1641, 92bis statement, 00672858 (under seal); BT-87, ex. P1643, 92bis statement, 00942600 (under seal).

<sup>1545</sup> BT-86, ex. P1639, 92bis statement, 00943012 (under seal).

<sup>1546</sup> BT-50, ex. P1641, 92bis statement, 00672858 (under seal).

<sup>1547</sup> BT-83, T. 14042-14043, 14055.

<sup>1548</sup> BT-87, ex. P1643, 92bis statement, 00942599 (under seal).

(iv) Bosanski Petrovac

612. In June 1992, Bosnian Muslim shops and business premises in the town of Bosanski Petrovac and the surrounding area were destroyed by Bosnian Serb forces.<sup>1549</sup> Organised groups looted Bosnian Muslim property, including cars, money and other valuables.<sup>1550</sup> On occasion, when Bosnian Muslims refused to hand over their money, a family member would be killed or a child abducted. The municipal Crisis Staff ordered the arrest of the men perpetrating these acts on 26 May 1992.<sup>1551</sup>

613. Non-Serbs were forced to hand over their property, either by exchanging it with Bosnian Serbs who were coming to Bosanski Petrovac or by leaving it to the SerBiH.<sup>1552</sup> In fact, actual exchanges seldom took place: non-Serbs transferred their property in exchange for nothing.<sup>1553</sup> However, some families that left for Bihać acquired Bosnian Serb property in exchange.<sup>1554</sup> The Trial Chamber is not satisfied that documents showing the sale of property belonging to non-Serbs are reliable, as the evidence shows that such transfers were always occasioned by force.<sup>1555</sup>

(v) Čelinac

614. The Trial Chamber is satisfied that houses and shops belonging to Bosnian Muslims in the town of Čelinac were shelled and set on fire by Bosnian Serb forces.<sup>1556</sup> Bosnian Muslim homes were also broken into and appliances and other valuables were taken away.<sup>1557</sup> The minutes of the 17<sup>th</sup> session of the Municipal Assembly held 5 August 1992 summarise what occurred in Čelinac:

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<sup>1549</sup> Ahmet Hidić, T. 16251-16254. *See, e.g.*, ex. P186, “Report prepared the Service for General Administration, Social Services, Information and Professional Services in 1997”, recording the total amount of destruction in Bosanski Petrovac during the war.

<sup>1550</sup> Ahmet Hidić, T. 16251-16254.

<sup>1551</sup> Jovo Radojko, T. 20111-20112.

<sup>1552</sup> Ahmet Hidić, T. 16277-16283; Midho Druzić, T. 16805-16812.; ex. P1844, “Decision of the Petrovac Municipal Assembly”, dated 3 August 1992, providing that for citizens of Muslim nationality “the commission will establish who can leave the Petrovac Municipality and the condition will be for them to exchange property or give it to the state, that is, to the Serbian Municipality of Petrovac.”

<sup>1553</sup> Ahmet Hidić, T. 16277-16283.

<sup>1554</sup> Ahmet Hidić, T. 16347. *See, e.g.*, ex. P1869, “Crisis Staff minutes of 2 June 1992”, which provide: “It has been decided that all Muslims and Croats, who so wish, be enabled to evacuated from the territory of Autonomous Region Krajina, but only under the condition that the Serbs outside the Serbian autonomous regions also be allowed to evacuate to the territory of the Serbian Republic of Bosnia and Herzegovina that is the Autonomous Region Krajina. In this way, the organised exchange of population would be carried out, that is its evacuation from one part of the former Socialist Republic of Bosnia to the other [...]”.

<sup>1555</sup> Ex. P1846, “Document containing a number of contracts concerning the transfer of movable and immovable property belonging to Muslim citizens of Petrovac to the Petrovac Municipal Assembly”; Ahmet Hidić, T. 16277-16283.

<sup>1556</sup> Mehmet Talić, T. 24164; BT-90, T. 17072 (closed session); Radosava Džombić, T. 23446, 23449; *See, e.g.* ex. P1991, “Morning news from Radio Banja Luča on 11 June 1992”, concerning four bomb attacks being carried out against private shops in Čelinac. The town of Čelinac was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1557</sup> BT-90, T. 17101-17102 (closed session).

[...] shops owned by non-Serbs are being destroyed, crime is on the rise, almost all weekend homes have been looted or destroyed. Sadly, these things are usually done by people wearing police or LPBČ uniforms [...]<sup>1558</sup>

615. Some inhabitants reported the events to the police and asked for protection. The police replied they could not do anything as they were not responsible and suggested instead that the people reporting the crimes leave the city.<sup>1559</sup>

616. As soon as the Bosnian Muslim inhabitants of Bašići left in August 1992, Bosnian Serbs looted their property and set their houses on fire. The only houses that weren't burned down were those inhabited by Bosnian Serbs.<sup>1560</sup>

(vi) Donji Vakuf

617. The Trial Chamber is satisfied that villages in the municipality of Donji Vakuf were regularly shelled by the Bosnian Serb military.<sup>1561</sup> Bosnian Serb military shelled the village of Prusac in August 1992.<sup>1562</sup>

618. In mid 1992, Bosnian Serb soldiers broke into houses inhabited by Bosnian Muslims in the town of Donji Vakuf and in the surrounding villages, looting their belongings and valuables.<sup>1563</sup> Bosnian Serb soldiers used garbage trucks and cars to carry away the booty.<sup>1564</sup> The Trial Chamber is further satisfied that Bosnian Serb civilians also participated in the looting<sup>1565</sup> and that the civilian police did nothing to prevent the looting.<sup>1566</sup>

(vii) Ključ

619. The Trial Chamber is satisfied that houses belonging to Bosnian Muslims in the town of Ključ were destroyed by Bosnian Serb soldiers.<sup>1567</sup> The houses were first looted and then set on

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<sup>1558</sup> Ex. P1999, "Minutes of the 17<sup>th</sup> Session of the Čelinac Municipal Assembly held on 5 August 1992", p. 36; *See, e.g.*, BT-90, T. 17090 (closed session).

<sup>1559</sup> Mehmet Talić, T. 24148.

<sup>1560</sup> Vahid Mujkanović, ex. P1980, 92*bis* statement, 02299907.

<sup>1561</sup> BT-103, T. 19961 (closed session); Senad Alkić, T. 15066-15067.

<sup>1562</sup> Senad Alkić, T. 14997.

<sup>1563</sup> Dževad Doslić, T. 14838; Safet Bibić, ex. P1694, 92*bis* statement, 02062050-02062051.

<sup>1564</sup> Safet Bibić, ex. P1694, 92*bis* statement, 02062051.

<sup>1565</sup> Alija Verem, ex. P1695, 92*bis* statement, 02061788; Safet Bibić, ex. P1694, 92*bis* statement, 02062050; Dževad Doslić, T. 14838, 14855.

<sup>1566</sup> Safet Bibić, ex. P1694, 92*bis* statement, 02062051.

<sup>1567</sup> Asim Egrić, T. 10702. For an accurate description of what occurred in Ključ, in May 1992, *See, e.g.*, ex. P1059, "Report to the Command of the 1<sup>st</sup> KK dated 16 Feb 1993" signed by Slobodan Dakić, Assistant Commander for Civilian Affairs. It provides: "Individuals and small and large groups of people began illegally appropriating Muslim property in Muslim villages and hamlets during combat operations in the local communes of Velagići, Sanica, Humići, and Peć, and continued to do so when the operations ended. This was done by military personnel, members of the police, and local Serbs. Later, acts of unlawful appropriation spread like an epidemic. This certainly happened although such acts have not been typical of the Serbian people throughout its history. There were cases of appropriation of cattle or buying them for next to nothing and taking away all other movable property."

fire.<sup>1568</sup> The Trial Chamber also finds that with respect to non-Serbs who were forced out of their houses and resettled elsewhere, their houses were allotted to Bosnian Serbs if they did not return after a certain amount of time.<sup>1569</sup>

620. The Trial Chamber is satisfied that in mid 1992, many villages in the municipality of Ključ predominantly inhabited by Bosnian Muslims and by Bosnian Croats were shelled, and houses and cars were set on fire and destroyed by Bosnian Serb forces. The nature of the attacks is reflected by the statement of Bosnian Serb soldiers wearing camouflage uniforms to some of the villagers of Prhovo: "it takes years to build a house and it takes very little time to burn it".<sup>1570</sup> In the same period, villages attacked by Bosnian Serb forces included Krasulje, Gornja and Donja Sanica, Crljeni<sup>1571</sup> the hamlet of Dragonvići,<sup>1572</sup> Pudin Han,<sup>1573</sup> Velagići,<sup>1574</sup> Biljani and its surrounding Bosnian Muslim hamlets,<sup>1575</sup> and Prhovo.<sup>1576</sup>

621. The Trial Chamber is satisfied that Bosnian Serb attacks upon Pudin Han, Prhovo, and Crljeni were also accompanied with the looting of valuables, including electronic devices, vehicles, furniture, money and jewelry.<sup>1577</sup> During the looting, the perpetrators would intentionally damage the houses by tearing drapes and breaking the windows.<sup>1578</sup> Bosnian Serb soldiers, Bosnian Serb civilians and the Bosnian Serb police participated in the looting.<sup>1579</sup> The looting of houses in the municipality of Ključ "were not isolated acts. These were acts by obedient who plundered, and making a certain gain they distributed the booty to the leaders [...] There [wasn't ] a house from

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<sup>1568</sup> Asim Egrić, T. 10702.

<sup>1569</sup> Asim Egrić, T. 10702; *See, e.g.*, ex. P938, "Decision on the conditions and procedure for allocating furniture and other vital household items from the contingent of goods confiscated on the territory of Ključ Municipality", signed by the President of the War Presidency, Jovo Banjac.

<sup>1570</sup> The soldiers then set the house on fire. BT-77, T.10337-10339.

<sup>1571</sup> Vinko Kondić, T. 9546-9547; Samir Dedić, T. 10440-10442.

<sup>1572</sup> Hasan Salihović, ex. P550, 92*bis* statement, 02109328.

<sup>1573</sup> Pudin Han was attacked at the end of May 1992: Ajiz Bečić, ex. P549, 92*bis* statement, 02109336; Hasan Salihović, ex. P550, 92*bis* statement, 02109325; BT-26, T. 9117-1918 (closed session); Nisvet Tičević, T. 10740. Pudin Han was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1574</sup> The Velagići school was mined and destroyed on 2 June 1992: Hasan Salihović, ex. P550, 92*bis* statement, 2109329; *See, e.g.*, BT-26, T. 9121 (closed session).

<sup>1575</sup> Biljani was attacked in July 1992: Dževad Džaferagić, ex. P553, 92*bis* statement, 02061865; Husein Čajić, T. 9022, 9029, 8976-8977; BT-25, T. 9080 (closed session).

<sup>1576</sup> Bajro Hadžić, ex. P552, 92*bis* statement, 00521139-00521142.

<sup>1577</sup> Ajiz Bečić, ex. P549, 92*bis* statement, 02109337-02109338; Bajro Hadžić, ex. P552, 92*bis* statement, 00521142; Samir Dedić, T. 10440-10442; BT-26, T. 9186 (closed session).

<sup>1578</sup> Ajiz Bečić, ex. P549, 92*bis* statement, 02109338.

<sup>1579</sup> Nisvet Tičević, T. 10752-10754; *See, e.g.*, ex. P1046, "Report of Public Security Station of Ključ on the crimes committed in the municipality from the outbreak of the armed uprising on 27 May 1992." It provides: "There has lately been widespread looting of Muslim houses" and "Information collected through intelligence work reveals that the perpetrators were in uniform, that is, they were military persons outside the authority of the SJB. However, because of wartime conditions, military security organs seldom disclose the identity of perpetrators, and punish such acts by sending them to the first front line. Such crimes are reported to the station, which simply does not know how to deal with them."

which they didn't steal something ranging from furniture [to] cars.”<sup>1580</sup> No measures were taken to prevent the looting.<sup>1581</sup>

(viii) Kotor Varoš

622. The Trial Chamber is satisfied that towns and villages in the municipality of Kotor Varoš were shelled by Bosnian Serb forces. When entering the villages, the Bosnian Serb forces looted and set the houses on fire. The town of Kotor Varoš and the village of Vrbanci was attacked by the Bosnian Serb army in June 1992.<sup>1582</sup> During the attack on Hrvačani, houses were either shelled or burned down.<sup>1583</sup> Furniture and other valuables inside the houses were looted by the Bosnian Serb forces. They also took the cattle from the surrounding villages.<sup>1584</sup> In the village of Dabovci, Bosnian Serb forces frequently looted Bosnian Muslim homes.<sup>1585</sup>

623. Bosnian Serb forces destroyed the village of Večići by heavy artillery shelling and an air raid.<sup>1586</sup> In mid 1992, the villages of Hanifići, Plitska and Kotor were attacked and set on fire by Bosnian Serb forces.<sup>1587</sup>

(ix) Prijedor

624. The Trial Chamber is satisfied that in the town of Prijedor, only non-Serb houses were targeted by Bosnian Serbs forces.<sup>1588</sup> Stari Grad, the old town of Prijedor, predominantly inhabited by Bosnian Muslims, was damaged in May 1992 by Bosnian Serb forces.<sup>1589</sup> Many houses were destroyed during the night with explosives. The day following such destruction the rubble would be collected.<sup>1590</sup> A group of men marked the non-Serb houses that had to be destroyed. One of the members of the group claimed to act pursuant to orders of the Crisis Staff.<sup>1591</sup>

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<sup>1580</sup> Muhamed Filipović, T. 9537.

<sup>1581</sup> Nisvet Tičević, T. 10756; ex. P660, “Report from the 1<sup>st</sup> KK Command to the Serbian Republic of BiH Army Main Staff dated 4 June 1992”, signed for General Momir Talić, which provides: “The Corps Command is taking all available measures to prevent various forms of crime, especially the looting of material goods.”

<sup>1582</sup> BT-75, ex. P2045, 92bis statement, 00371786 (under seal); Fikret Đikić, ex. P2042, 92bis statement, 00338683. The town of Kotor Varoš was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1583</sup> Elvedin Pašić, T. 19406-19407; *See, e.g.*, Fikret Đikić, ex. P2042, 92bis statement, 00338684.

<sup>1584</sup> Elvedin Pašić, T. 19406-19407.

<sup>1585</sup> BT-75, ex. P2045, 92bis statement, 00371787 (under seal); *See, e.g.*, ex. P2320.11-12 “Photographs of houses in the village of Dabovci”.

<sup>1586</sup> Elvedin Pašić, T. 19411-19414, 19420; Fikret Đikić, ex. P2042, 92bis statement, 00338685; *See, e.g.*, ex. P2431, “Video-tape showing the destruction of the village of Večići”.

<sup>1587</sup> Idriz Alekić, ex. P1895, 92bis statement, 02119431; BT-69, T. 17700 (closed session); *See, e.g.* Fikret Đikić, ex. P2042, 92bis statement, 00338685.

<sup>1588</sup> BT-1, T. 13699.

<sup>1589</sup> Nusret Sivac, T. 6720, 6692; Idriz Merdžanić, T. 7800-7801. Prijedor Stari Grad was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1590</sup> Nusret Sivac, T. 6624.

<sup>1591</sup> Nusret Sivac, T. 6693-6694, 6755.

625. The Trial Chamber is also satisfied that, in mid 1992, the Bosnian Muslim villages in Prijedor municipality of Bišćani, Kozaruša, Kamičani, Kevljani, Rakovčani, Čarakovo, and Rizvanovići were also destroyed by Bosnian Serb forces.<sup>1592</sup> The houses were set on fire and looted. The VRS loaded their trucks with goods belonging to non-Serbs.<sup>1593</sup>

626. In some villages, attacks were preceded by an ultimatum: for example in the Hambarine area in late May 1992, an ultimatum was given for the surrender of a particular individual.<sup>1594</sup> Following the expiration of the ultimatum, the Bosnian Muslim village of Hambarine was shelled by Bosnian Serb forces for the entire day.<sup>1595</sup> Houses were targeted indiscriminately. Tanks passed through the village and shelled the houses causing civilian casualties. Houses were looted and set on fire.<sup>1596</sup>

627. The Trial Chamber finds that after Hambarine, the Bosnian Muslim village of Kozarac was attacked by Bosnian Serb forces.<sup>1597</sup> The attack occurred at the end of May 1992, after an ultimatum was given to the Bosnian Muslim villagers to surrender their weapons. The Bosnian Muslim villagers decided not to surrender their weapons but to defend their village and families.<sup>1598</sup> No mortars or artillery were fired from Kozarac to Bosnian Serb positions.<sup>1599</sup> The Trial Chamber is satisfied that the houses of Kozarac were shelled by Bosnian Serb forces.<sup>1600</sup> The shelling lasted for about two days.<sup>1601</sup> The hospital was also shelled. Windows of the hospital were shattered and the building was damaged.<sup>1602</sup> One of the Bosnian Serb villagers attached a sign on his house stating: "This is Serbian house, do not touch".<sup>1603</sup> When the tanks entered into the town, Bosnian Serb soldiers broke into non-Serb houses to loot and then set them on fire.<sup>1604</sup>

628. The Trial Chamber is satisfied that Briševo, a town predominantly inhabited by Bosnian Croats,<sup>1605</sup> was attacked in May 1992.<sup>1606</sup> The shelling came from nearby Bosnian Serb villages.

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<sup>1592</sup> BT-32, P1515, 92bis statement, 02116403 (under seal); BT-1, T. 13699; BT-38, ex. P556, T. 1631(under seal); Nusret Sivac, T. 6611; Elvedin Našić, T. 12689. The villages of Kozaruša, Čarakovo and Kamičani were visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1593</sup> BT-1, T. 4737-4738; Nusret Sivac, T. 6610; Jusuf Arifagić, T. 7078; BT-36, T. 11054-11055 (closed session); BT-106, T. 21090 (closed session); BT-30, T. 5729.

<sup>1594</sup> The individual at issue was checkpoint commander Aziz Ališković: BT-78, ex. P562, T. 6856-6858 (under seal).

<sup>1595</sup> Hambarine was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1596</sup> Muharem Murselović, T. 12589-12590, 2700-2701; Ivo Atlija, T. 5556; BT-33, T. 12667 (closed session); Elvedin Našić, T. 12720; BT-35, ex. P563, T. 6808-6810 (under seal); BT-33, T. 4032-4033 (closed session).

<sup>1597</sup> Mevludin Sejmenović, T. 4673; Muharem Murselović, T. 2701; Idriz Merdžanić, T. 11795-11799. Kozarac was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1598</sup> Sead Ćirkin, an active "military", organised the defence. The group of men led by Sead Ćirkin was positioned in the outskirts of the town: Idriz Merdžanić, T. 11795-11799; BT-38, ex. P556, T. 1610-1613 (under seal).

<sup>1599</sup> BT-38, ex. P556, T. 1610 (under seal); BT-2, ex. P561, T. 2621(under seal).

<sup>1600</sup> Muharem Murselović, T. 2701.

<sup>1601</sup> Idriz Merdžanić, T. 7732; BT-38, ex. P556, T. 1610-1613 (under seal).

<sup>1602</sup> BT-36, T. 10999; Samir Poljak, T. 6332-6334; BT-38, ex. P556, T.1610-1611(under seal); BT-29, ex. P560, T. 6214-6216 (under seal).

<sup>1603</sup> BT-38, ex. P556, T. 1648-1649 (under seal).

<sup>1604</sup> Idriz Merdžanić, T. 7741; Jusuf Arifagić, T. 7078.

<sup>1605</sup> Ivo Atlija, T. 11931.

Briševo did not respond to the attack.<sup>1607</sup> Numerous houses were burnt down, the rest were damaged by the attack.<sup>1608</sup> Both the 6<sup>th</sup> Krajina Brigade and the 5<sup>th</sup> Kozara Brigade were involved in the attack.<sup>1609</sup> The Trial Chamber also finds that houses in Briševo were looted by soldiers.<sup>1610</sup>

629. The Trial Chamber is satisfied that the looting of Bosnian Muslim and Bosnian Croat villages in the area of Prijedor was organised.<sup>1611</sup> In fact, villagers forced to leave the area had to sign over their property to either to the ARK or to the SerBiH.<sup>1612</sup> The unlawful appropriation of real property began after the attack on Prijedor, Kozarac and Hambarine. At first, real property certificates were issued in order to justify the confiscation. Later on certificates were no longer issued. In contrast, Bosnian Serb residents did not have their property confiscated.<sup>1613</sup>

630. The Trial Chamber is also satisfied that in the municipality of Prijedor Bosnian Serb soldiers conducted searches in the houses inhabited by Bosnian Muslims on the pretext of looking for weapons. They would then loot the valuables and food from the houses. Bosnian Serb homes were not searched.<sup>1614</sup> Bosnian Serb soldiers in uniform and armed with automatic rifles came to the village of Čarkovo and forcefully appropriated fuel, vehicles, animals, money and other valuables.<sup>1615</sup> Houses in Ljubija and Rakovčani were also looted.<sup>1616</sup>

(x) Prnjavor

631. The Trial Chamber is satisfied that at the beginning of 1992 many privately owned businesses of Bosnian Muslims and Bosnian Croats in the town of Prnjavor were damaged by Bosnian Serb forces.<sup>1617</sup> Houses in the village of Lišnja were looted and set on fire by Bosnian Serb forces, while others were shelled. Around 100 houses were destroyed in Lišnja.<sup>1618</sup>

(xi) Sanski Most

632. The Trial Chamber is satisfied that in May 1992, the 6<sup>th</sup> Sana Brigade attacked Mahala, the Bosnian Muslim neighbourhood of Sanski Most town.<sup>1619</sup> After shelling the town of Sanski Most,

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<sup>1606</sup> Ivo Atlija, T. 11932-11933.

<sup>1607</sup> Ivo Atlija, T. 11932-11933.

<sup>1608</sup> Ivo Atlija, T. 11937.

<sup>1609</sup> Ivo Atlija, T. 11932-11933.

<sup>1610</sup> Ivo Atlija, T. 11949; BT-32, T. 5965 (closed session).

<sup>1611</sup> Mevludin, Sejmenović, T. 4862.

<sup>1612</sup> Emsud Garibović, T. 12510; Ivo Atlija, T. 5655-5656.

<sup>1613</sup> Mevludin Sejmenović, T. 4619.

<sup>1614</sup> Nusret Sivac, T. 6603, 6576.

<sup>1615</sup> BT-30, T. 5725-5727, 5739.

<sup>1616</sup> BT-33, T. 3932 (closed session); Nerim Karagić, T. 5277.

<sup>1617</sup> Jasmin Odošić, T. 15118-19; BT-51, ex. P 1784, 92*bis* statement, 00635471 (under seal).

<sup>1618</sup> BT-91, T. 15895-15896; Rusmir Mujanić, T. 16118; Jasmin Odošić, T. 15132.

<sup>1619</sup> BT-105, T. 18505; Adil Draganović, T. 4897, 4902. This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

Bosnian Serb military and police began looting the houses and business premises of Bosnian Muslims and in some cases of Bosnian Croats.<sup>1620</sup> Houses and business premises were also damaged with rockets launched from hand-held launchers called “zoljas”.<sup>1621</sup> The 6<sup>th</sup> Sana Brigade was responsible for blowing up Bosnian Muslim business premises in Sanski Most.<sup>1622</sup> No efforts were made to prevent or stop the violence.<sup>1623</sup>

633. The surrounding villages of Sanski Most municipality, including Hrustovo, Begići and Lukavice were also shelled by Bosnian Serb forces.<sup>1624</sup> On 31 May 1992, soldiers arrived in the village of Begići, looting homes and setting houses and barns on fire.<sup>1625</sup>

(xii) Šipovo

634. The Trial Chamber is satisfied that in the municipality of Šipovo, houses in villages predominantly inhabited by Bosnian Muslims, such as Bešnjjevo, were set on fire by Bosnian Serb forces.<sup>1626</sup>

(xiii) Teslić

635. In May 1992, Bosnian Muslim business premises were damaged in the town of Teslić.<sup>1627</sup> After the attack on Stenjak in June 1992, houses were set on fire by Bosnian Serb forces.<sup>1628</sup> The crime situation in Teslić from June to September 1992 is summarised in a report from the public prosecutor in Teslić which states:

[...] Most criminal acts remain undiscovered, and many crimes are tolerated by the authorities for various reasons. The Prosecutor's Office has knowledge of the day-to-day looting of property, houses and business premises being set on fire and destroyed, armed robbery and murder being committed for base motives, socially owned flats and private houses being occupied unlawfully, the stealing of forest timbers, and other forms of willful acts. There is no criminal prosecution for most of these cases.<sup>1629</sup>

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<sup>1620</sup> BT-104, T. 18513 (private session); Enis Šabanović, T. 6580; BT-104, T. 18508; Faik Biščević, T. 7094-7095; Ahmet Zulić, T. 6866; Besim Islamčević, T. 7425-7426.

<sup>1621</sup> Besim Islamčević, T. 7425-7426; Enis Šabanović, T. 6580.

<sup>1622</sup> Besim Islamčević, T. 7425-7426.

<sup>1623</sup> Besim Islamčević, T. 7510.

<sup>1624</sup> BT-15, T. 7248 (closed session); Rajif Begić, T. 6371; BT-23, T. 6413-6414, 6432. Hrustovo was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1625</sup> Rajif Begić, T. 6371.

<sup>1626</sup> BT-105, T. 19112-19114 (private session); Ex. P2403, “Official notes of Šipovo Wartime Department”, dated 16 September 1992, regarding murders, arsons and explosions in August and September 1992 in Šipovo Municipality; BT-105, T. 19113 (private session).

<sup>1627</sup> BT-65, ex. P1963, 92*bis* statement, 01012118 (under seal).

<sup>1628</sup> BT-63, ex. P1968, 92*bis* statement, 00963792 (under seal); BT-68, ex. P1967, 92*bis* statement, 00943115 (under seal).

<sup>1629</sup> Ex. P1947, “Report on the crime situation in the area of Teslić Municipality from June to September 1992”.



(xiv) Conclusions

636. The Trial Chamber finds that in the period relevant to the Indictment, Bosnian Serb forces extensively destroyed and appropriated property belonging to Bosnian Muslims and Bosnian Croats in the municipalities mentioned above.

637. In relation to the offence of destruction and appropriation of property under Article 2 (d) of the Statute, one of two alternative legal requirements needs to be fulfilled. The property destroyed or appropriated must either have been accorded general protection under the Geneva Conventions or the property must have been situated in occupied territory. The evidence shows that the property destroyed or appropriated consisted mostly of houses, business premises, vehicles, money and other valuables. Such property is not generally protected by the Geneva Conventions. Therefore, the Trial Chamber must establish whether the property destroyed or appropriated was situated in occupied territory.

638. Pursuant to the definition provided by Article 42 of the Hague Regulations, reflecting customary law, “[t]erritory is considered occupied when it is actually placed under the authority of a hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”<sup>1630</sup> Occupation is defined as a transitional period following invasion and preceding the agreement on the cessation of the hostilities.<sup>1631</sup> The question is therefore whether the relevant municipalities in the ARK were occupied by the FRY when the destruction and appropriation of property took place. In order to determine whether the FRY had established authority over the territory in question, the Trial Chamber has considered the guidelines set out in the Tribunal’s jurisprudence.<sup>1632</sup> Using these guidelines, the Trial Chamber finds that the

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<sup>1630</sup> Article 42 of the Hague Regulations. *See, e.g., Naletilić Trial Judgement*, paras 215-216; *Kordić Trial Judgement*, paras 338-339.

<sup>1631</sup> *Naletilić Trial Judgement*, para. 214.

<sup>1632</sup> Within the framework of Article 42 of the Hague Regulations, the Trial Chamber in *Naletilić* found that what must be determined on a case by case basis is whether the occupying power exercises an actual authority over the occupied area. Following the commentary to Geneva Convention IV, that Trial Chamber however drew a distinction between the regime of Article 42 of the Hague Regulations which requires an actual state of authority (actual control) and the applicability of the law of occupation to civilians protected by Geneva Convention IV which requires only that the civilians be in the hands of the occupying power. As a consequence it applied a different legal test to determine whether the law of occupation applies, depending on whether it is dealing with individuals or with property and other matters. That Trial Chamber held that forcible transfer and unlawful labour are prohibited from the moment civilians fall into the hands of the opposing power, regardless of the stage of the hostilities, and that there is no need to establish an actual state of occupation as defined in Article 42 of the Hague Regulations. However, with regard to destruction of property, that Trial Chamber held that actual authority is required and that the “actual authority test” as defined in the same judgement (*Naletilić Trial Judgement*, para. 222) must be fulfilled. To determine whether the authority of the occupying power has been actually established, the jurisprudence of the Tribunal has set out the following guidelines: the occupying power must be in a position to substitute its own authority for that of the occupied authorities, which must have been rendered incapable of functioning publicly; the enemy’s forces have surrendered, been defeated or withdrawn (in this respect, battle areas may not be considered as occupied territory and sporadic local resistance, even successful, does not affect the reality of occupation); the occupying power has a sufficient force present, or the capacity to send troops within a reasonable time to make the authority of the occupying power felt; a temporary administration has been

evidence brought forward by the Prosecution is not enough to satisfy the actual authority test required to establish the existence of a state of occupation. The Trial Chamber is not satisfied that the evidence adduced is enough to prove that at the time of the destruction and appropriation of the relevant property the stage arrived at was already a transitional period following invasion and preceding the agreement on the cessation of the hostilities. The evidence on the degree of authority exercised by the Bosnian armed forces over the Bosnian Krajina is, in the view of the Trial Chamber insufficient to lead it to the conclusion that a state of occupation had already been reached at the time the destruction and appropriation mentioned came to being. The Trial Chamber, therefore, cannot come to the conclusion that the property destroyed and appropriated was located in occupied territory. Consequently, there cannot be a violation of Article 2 (d) of the Statute.

639. Unlike Article 2 (d) of the Statute, Article 3(b) of the Statute is not restricted by either the requirement of the existence of a state of occupation or of the accordance of general protection under the Geneva Conventions. The protection to civilian property in Article 3(b) of the Statute is only limited by the military necessity exception. In most instances there is abundant evidence that there was no resistance at all and in the few cases where there is evidence of some resistance, the Trial Chamber comes to the conclusion that the evidence shows beyond reasonable doubt that it was minimal and certainly not such as to justify the destruction that occurred. The evidence therefore shows that the destruction of civilian property in villages, towns and cities predominantly inhabited by Bosnian Muslims and Bosnian Croats was not justified by military necessity and that the Bosnian Serb forces deliberately destroyed property belonging to Bosnian Muslims and Bosnian Croats. The Trial Chamber is also satisfied beyond reasonable doubt that this destruction and devastation was perpetrated intentionally, that is within the knowledge of and wanting the promised result or in reckless disregard of the substantial likelihood of the destruction or devastation. The Trial Chamber therefore finds that the destruction of property in the relevant municipalities were in violation of Article 3(b) of the Statute.

(b) Destruction or willful damage done to institutions dedicated to religion

640. The Trial Chamber is satisfied beyond reasonable doubt that there was willful damage done to both Muslim and Roman Catholic religious buildings and institutions in the relevant municipalities by Bosnian Serb forces.<sup>1633</sup>

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established over the territory; the occupying power has issued and enforced directions to the civilian population. *See, Naletilić* Trial Judgement, para. 217.

<sup>1633</sup> The Trial Chamber has to the extent possible adopted the terminology used by the expert witness Colin Kaiser in the “Report on the Damaging and Destruction of Muslim and Roman Catholic Sacral Buildings in the Municipalities of Bosanski Novi, Donji Vakuf, Ključ, Kotor Varoš, Prijedor and Sanski Most in the 1992-1995 War, with specific reference to 1992”, ex. P1183.1. The expert has categorised the conditions of the buildings in: “(a) destroyed (a building

641. As a preliminary matter, the Trial Chamber is not satisfied that the destruction or willful damage to the following institutions dedicated to religion alleged in the Indictment, has been proved beyond reasonable doubt, as there is insufficient evidence: Donji Budelj Mosque; Humići Mosque; Krasulje Mosque; Sanica Mosque;<sup>1634</sup> Džamija Mosque; Alić Mosque; and the Roman Catholic Churches in the towns of Bosanski Novi and Sanski Most.

642. Although the campaign of devastation of institutions dedicated to religion took place throughout the conflict, the Trial Chamber is satisfied that it intensified in the summer of 1992. The Trial Chamber finds that this concentrated period of significant damage to Muslim and Roman Catholic institutions dedicated to religion within the summer months of 1992, across the municipalities concerned, is indicative that the devastation was targeted, controlled and deliberate. These findings are based on the following incidents.

(i) Banja Luka

643. On 9 April 1992, the Franciscan Monastery in Petričevac was damaged. The investigations carried out established that the Monastery was hit by a missile from a hand held rocket launcher.<sup>1635</sup>

(ii) Bosanska Krupa

644. The Bosanska Krupa town mosque was mined by Bosnian Serb forces in April 1992. As a result of ensuing explosion, the minaret fell.<sup>1636</sup> The Roman Catholic Church in town was also destroyed.<sup>1637</sup> The mosque in the village of Arapuša was also destroyed by explosives.<sup>1638</sup>

(iii) Bosanski Novi

645. In early May or June 1992, the town mosque in Bosanski Novi was shelled and set on fire by Bosnian Serb soldiers.<sup>1639</sup> The walls were badly damaged but the minaret remained standing. Heavy machinery was brought from Prijedor in order to knock down the minaret. When the mosque

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is destroyed only if it literally razed to the ground or if the building structure has been so damaged that it must be pulled down); (b) Repairable ([...] the building was so badly damaged that it could not be used by the community but that it could have been repaired had such an opportunity existed). Burned stone, brick or cement block buildings fall into this category, as well as mosques that may have had their minarets mined while the walls remain standing, even if burned [...]); and (c) Minor or no apparent damage (minor damage refers mainly to pillaging and lesser damage from shelling and small arms [...]).

<sup>1634</sup> The Destruction or damage to the Donji Budelj Mosque, the Humići Mosque, the Krašulje Mosque and the Sanica Mosque is mentioned only in ex. P1066, "Information about the Culturecide of the Religious buildings of the Cultural and Historical Inheritance of the Bosniaks of the Ključ Municipality", dated March 1998 and prepared by the Committee of the Islamic Community of the Municipality of Ključ. The Trial Chamber, in the absence of corroborative evidence, is reluctant to rely on this exhibit.

<sup>1635</sup> Ex. P144, "Report from the Banja Luka SJB", dated 9 April 1992.

<sup>1636</sup> Muho Čehić, ex. P1913, 92*bis* statement, 02907042; BT-56, T. 17498.

<sup>1637</sup> BT-56, T. 17498.

<sup>1638</sup> Muho Čehić, ex. P1913, 92*bis* statement, 02907043.

was destroyed, trucks arrived to remove the rubble from the mosque. The site was then flattened and used as a parking lot. The tombs of the cemetery were also removed.<sup>1640</sup>

646. Other Muslim institutions dedicated to religion in the municipality of Bosanski Novi were targeted by Bosnian Serb forces. The Vidorijska mosque was burned down in May 1992.<sup>1641</sup> The mosques in Prekosanje, Urije and Gornji Agići were also destroyed.<sup>1642</sup> During an attack by Bosnian Serb forces on Suhača, the two mosques in the village were badly damaged by the shelling.<sup>1643</sup> The old wooden mosque in Blagaj Rijeka and its minaret was set on fire.<sup>1644</sup> The mosque in Blagaj Japra was also damaged.<sup>1645</sup> The minaret on the roof of the mosque in Donji Agići was blown off by an explosion and the roof structure collapsed.<sup>1646</sup>

(iv) Bosanski Petrovac

647. The mosques in the centre of Bosanski Petrovac town, named Donji Bišćani and Srednji Bišćani were damaged by Bosnian Serb forces in July 1992.<sup>1647</sup> Following explosions, the minarets of the Donji Bišćani and Srednji Bišćani mosques fell to the ground. The following days the rubble was cleared away by trucks.<sup>1648</sup> The minaret of the Rašinovac mosque was also blown up by Bosnian Serb forces.<sup>1649</sup>

(v) Čelinac

648. The old wooden mosque in the town of Čelinac was mined.<sup>1650</sup> After the explosion, trucks cleared away what was left.<sup>1651</sup> The smaller mosque in town and the little Catholic Chapel at the

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<sup>1639</sup> BT-81, T. 13787-13788; Colin Kaiser, T. 16470-16471.

<sup>1640</sup> Malik Kapetanović, ex. P1912, 92bis statement, 02907027; Colin Kaiser, T. 16470-16471. *See, e.g.*, ex. P1183.2., “Supplement to the Report on the Damaging and Destruction of Muslim and Roman Catholic Sacral Buildings in the Municipalities of Bosanski Novi, Donji Vakuf, Ključ, Kotor Varoš, Prijedor and Sanski Most in the 1992-95 War, with specific reference to 1992”.

<sup>1641</sup> Malik Kapetanović, ex. P1912, 92bis statement, 02907027.

<sup>1642</sup> Malik Kapetanović, ex. P1912, 92bis statement, 02907027; Colin Kaiser, T. 16470-16471; BT-83, T. 14087.

<sup>1643</sup> BT-50, ex. P1641, 92bis statement, 00672857 (under seal); BT-82, T.13969, 14012.

<sup>1644</sup> Midho Alić, T. 13881; BT-49, T.14223 (closed session).

<sup>1645</sup> Midho Alić, T. 13881.

<sup>1646</sup> Colin Kaiser, T. 16408; BT-83, T. 14087

<sup>1647</sup> Ahmed Hidić, T. 16254; Jovo Radojko, T. 20194; *See, e.g.*, ex. P1863 which is a report prepared by a Muslim organisation in 1997 recording the total amount of destruction in Bosanski Petrovac during the war. The three mosques listed in the report were destroyed in July 1992: Ahmed Hidić, T. 16254; Džemal Fazlić, ex. P1978, 92bis statement, 00942944; Alem Jaganjac, ex. P1910, Rule 92bis Statement, 02907001.

<sup>1648</sup> Alem Jaganjac, ex. P1910, 92bis statement, 02907001.

<sup>1649</sup> Alem Jaganjac, ex. P1910, 92bis statement, 02907001; ex. P1863, “Report, Information on dead, wounded, displaced and missing persons”, dated 25 March 1997, p. 6.

<sup>1650</sup> Mehmet Talić, T. 24164; BT-90, T. 17073 (closed session); Boro Mandić, T. 21374. *See, e.g.*, ex. P1992, “News item”, dated 12 June 1992, which provides: “[I]n Čelinac, at one o’clock in the morning, one or more unknown perpetrators attacked the building of the Mosque Board with hand grenades.” *See, e.g.*, ex. P1788 which states “[...] a Muslim place of worship in Prnjavor has been demolished. Some time before that, the one in Čelinac was also demolished[...].”

<sup>1651</sup> BT-90, T. 17089 (closed session).

exit from town were also destroyed by Bosnian Serb forces. The latter was destroyed in mid 1992.<sup>1652</sup>

(vi) Donji Vakuf

649. The three mosques in the town of Donji Vakuf were targeted by Bosnian Serb forces.<sup>1653</sup> The main mosque called Bašdžamija was mined and as a result was completely destroyed.<sup>1654</sup> The rubble of this mosque was loaded on trucks and thrown in the river Vrbas and on its banks. The location of the mosque was subsequently turned into a parking lot.<sup>1655</sup> The other two mosques in town were set on fire.<sup>1656</sup> A number of mosques were also destroyed by Bosnian Serb forces in the municipality. Three of the four mosques in the village of Prusac were damaged in August or September 1992. The mosques were riddled with bullets and some of the minarets were destroyed.<sup>1657</sup> The mosque in the hamlet of Šherdžik was destroyed by men wearing JNA uniforms on 9 August 1992. Due to the explosion, the walls of the mosque collapsed but part of the minaret was left standing.<sup>1658</sup> The mosque in the village of Sokolina was set on fire by men wearing olive grey uniforms in June 1992.<sup>1659</sup>

(vii) Ključ

650. Mosques and other institutions dedicated to religion were destroyed in Ključ by Bosnian Serb forces. The Ključ town mosque and its minaret was destroyed in August 1992, during the night.<sup>1660</sup> The Biljani Mosque was set on fire in the morning of 10 July 1992 when the village was attacked by Bosnian Serb forces.<sup>1661</sup>

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<sup>1652</sup> BT-90, T. 17074 (closed session); Mehmet Talić, T. 24164.

<sup>1653</sup> BT-103, T. 19954 (closed session); *See, e.g.*, ex. P1750 “Document”, reporting that “the mosques in Donji Vakuf,, where Moslems had lived in harmony with their Serbian neighbours for generations, are now empty and destroyed [...]”; Dževad Došlić, T. 14859-60.

<sup>1654</sup> BT-103, T. 19954 (closed session); BT-89, T. 14810-11 (closed session); Colin Kaiser, T. 16469.

<sup>1655</sup> Dževad Došlić, T. 14859-14860.

<sup>1656</sup> Dževad Došlić, T. 14857-14862; Colin Kaiser, T. 16469.

<sup>1657</sup> Senad Alkić, T. 14996.

<sup>1658</sup> Hamdija Begović, ex. P1908, 92*bis* statement, 02907117.

<sup>1659</sup> Avdo Habib, ex. P1909, 92*bis* statement, 02907140.

<sup>1660</sup> Samir Dedić, T. 10443-10444.

<sup>1661</sup> Dževad Džaferagić, 92*bis* statement, 02061866. The mosque was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

(viii) Kotor Varoš

651. During attacks on villages in Kotor Varoš by Bosnian Serb forces in June and July 1992, the mosques in the villages of Vrbanjci and Hanifići were set on fire and mined.<sup>1662</sup> The Roman Catholic Church in the town of Kotor Varoš was also set on fire.<sup>1663</sup>

(ix) Prijedor

652. The most systematic and brutal infliction of damage to both Muslim and Catholic institutions dedicated to religion occurred in Prijedor. In late August 1992 Bosnian Serb soldiers broke into the Roman Catholic Church in Prijedor to plant explosives in it. At 0100 hours the explosives detonated and destroyed the church.<sup>1664</sup> The police appeared indifferent to the reports on the events.<sup>1665</sup>

653. In areas surrounding Prijedor town, institutions dedicated to religion were targeted by Bosnian Serb forces. In Briševo, the Bosnian Serb military burned down the Roman Catholic church.<sup>1666</sup> In Kamičani, the mosque was set on fire.<sup>1667</sup> The Mutnik mosque in Kozarac was destroyed in mid 1992.<sup>1668</sup> The minaret of the mosque in Kozaruša was badly damaged.<sup>1669</sup> The mosque in Gornji Puharska was razed to the ground.<sup>1670</sup> The new mosque in Kevljani was completely destroyed by mines. The minaret and the mosque were blown up with explosives.<sup>1671</sup> The Gornji Jakupovići mosque's minaret was badly damaged by mines.<sup>1672</sup>

(x) Prnjavor

654. The town mosque in Prnjavor was targeted twice. On the first occasion it was damaged, and on the second it was razed to the ground.<sup>1673</sup> Attacks by Bosnian Serb forces also took place in

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<sup>1662</sup> BT-74, ex. P2046, 92bis statement, 01076158 (under seal); Redjo Alagić, ex. P1915, 92bis statement, 02119435; Idriz Alekić, ex. P1895, 92bis statement, 02119431. Hanifići mosque was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1663</sup> BT-71, T. 17651. See, e.g., ex. P2185, "Extract from the Minutes of the 53<sup>rd</sup> session of Crisis Staff" held on 2 July 1992. This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1664</sup> Nusret Sivac, T. 6607-07; BT-28, ex. P557, 92bis statement, 01799804 (under seal); Kerim Mešanović, T. 11247, 11255-11256.

<sup>1665</sup> BT-28, ex. P557, 92bis statement, 01799805 (under seal).

<sup>1666</sup> Ivo Atlija, T. 5589; see, e.g., ex. 1525/S186 "Videotape showing the remains of the Roman Catholic church".

<sup>1667</sup> Nerim Karagić, T. 6249.

<sup>1668</sup> Ivo Atlija, T. 12035; BT-38, ex. P556, T. 1650 (under seal); see, e.g., ex. P1128.35 "Photograph of the Mutnik mosque."

<sup>1669</sup> BT-63, ex. P1968 T.11054-55 (under seal).

<sup>1670</sup> Nusret Sivac, T. 6608.

<sup>1671</sup> Colin Kaiser, T. 16404-05. This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1672</sup> Colin Kaiser, T. 16408.

<sup>1673</sup> Jasmin Odošić, T. 15128; BT-51, ex. P1784, 92bis statement, 00635471 (under seal); see, e.g., ex. P1788, "Report", dated 22 June 1992, which states: "an Muslim place of worship in Prnjavor has been demolished." See, e.g.,

Prnjavor municipality. The mosque in Lišnja was damaged by shelling and set on fire in 1992, by Bosnian Serb forces.<sup>1674</sup> The mosque in Purači was blown up.<sup>1675</sup>

(xi) Sanski Most

655. Mosques in Sanski Most were also subject to major damage by Bosnian Serb forces. The mosques in the villages of Čapalj, Hrustovo, Lukavice, Kamengrad and Tomina were destroyed in 1992 by the Bosnian Serb forces.<sup>1676</sup>

(xii) Šipovo

656. In Šipovo, the Staro Šipovo, Bešnjevo and Pljeva mosques were bombed during the night on 7 August 1992 by Bosnian Serb forces. The mosques and their minarets were completely destroyed and the tombstones in the vicinity were also damaged.<sup>1677</sup>

(xiii) Teslić

657. In the town of Teslić, the Roman Catholic Church was demolished during an attack by the Serb forces in mid 1992.<sup>1678</sup> The mosques in the surrounding villages of Barići and Ruževići were also destroyed by Bosnian Serb forces.<sup>1679</sup>

(xiv) Conclusions

658. The Trial Chamber is satisfied beyond reasonable doubt that during the period covered in the Indictment, Bosnian Serb forces deliberately targeted the Muslim and Roman Catholic religious institutions mentioned above. The evidence has shown that such religious institutions were not used for military purposes. The Trial Chamber therefore finds that the damage to Muslim and Roman Catholic religious institutions in the above municipalities were in violation of Article 3(d) of the Statute.

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ex. P1789, "Document dated 6 August 1992", which states in para. 2: "All places of worship not belonging to the Serbian Orthodox Church are being demolished in the Teslić and Prnjavor areas."

<sup>1674</sup> BT-91, T. 15898; Rusmir Mujanić, T. 16017.

<sup>1675</sup> Jasmin Odobašić, T. 15130; Rusmir Mujanić, T. 16015-16018.

<sup>1676</sup> BT-21, T. 8621-8623 (closed session); Rajif Begić, T. 6373-6375, 6394-6395; BT-93, T. 20428 (closed session); BT-23, T. 6422, 6444.

<sup>1677</sup> BT-105, T. 19103. *See, e.g.*, ex. P2404, "Document mentioning the destruction of the Staro Šipovo, Bešnjevo and Pljeva mosques". BT-92 heard only about the destruction of the mosque in Bešnjevo, T. 19856.

<sup>1678</sup> Mehmed Tenić, T. 16902.

<sup>1679</sup> Mehmed Tenić, T. 16902-16903.

### 3. The Responsibility of the Accused

659. The Trial Chamber has already dismissed JCE, planning and superior criminal responsibility under Article 7(3) of the Statute as possible modes of liability to describe the individual criminal responsibility of the Accused.<sup>1680</sup>

(a) Unlawful and wanton extensive destruction and appropriation of property not justified by military necessity (Count 10)

660. The Trial Chamber has previously found that the requirements for the crime of unlawful and wanton extensive destruction and appropriation of property not justified by military necessity, punishable under Articles 2(d) of the Statute, have not been met and therefore the Accused is acquitted of the charges in Count 10 of the Indictment.

(b) Wanton destruction of cities, towns and villages, or devastation not justified by military necessity (Count 11)

661. There is no evidence to establish that the Accused ordered or instigated the wanton destruction of cities, towns and villages, or devastation not justified by military necessity, charged under Count 11 of the Indictment.

662. The Trial Chamber is not satisfied that the public utterances of the Accused prompted the physical perpetrators to commit any of the underlying acts charged under Count 11 of the Indictment, because the *nexus* between the public utterances of the Accused and the commission of the wanton destruction of cities, towns and villages, or devastation not justified by military necessity by the physical perpetrators has not been established. Moreover, neither the public utterances of the Accused nor the decisions of the ARK Crisis Staff are specific enough to constitute instructions by the Accused to the physical perpetrators to commit any of the underlying acts in question.

663. The Trial Chamber recalls its previous finding that the decisions of the ARK Crisis Staff can be attributed to the Accused.<sup>1681</sup> It also found that between 9 May 1992 and 18 May 1992, the ARK Crisis Staff issued a number of decisions demanding the disarmament of “paramilitary formations” and of “individuals who illegally possess weapons”, specifying that “[a]ll formations that are not in the Army of the Serbian Republic of Bosnia and Herzegovina or the Banja Luka Security Services Centre and are in the Autonomous Region of Krajina, are considered paramilitary formations and

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<sup>1680</sup> See VIII. D. *supra*, “The Accused’s Criminal Responsibility in General”.

<sup>1681</sup> See VIII. C. *supra*, “The Accused’s Participation in the Implementation of the Strategic Plan”.



must be disarmed.” Moreover, the Trial Chamber has found that, although these decisions on disarmament were not expressly restricted to non-Serbs, the disarmament operations were selectively enforced against them by the municipal civilian authorities, the CSB and the SJBs, and by the army.<sup>1682</sup>

664. The disarmament of Bosnian Muslims and Bosnian Croats throughout the ARK created an imbalance of arms and weapons favouring the Bosnian Serbs in the Bosnian Krajina, a situation amplified by the fact that the evidence establishes beyond reasonable doubt that the Bosnian Serb population was arming itself at the same time on a massive scale.<sup>1683</sup> The ARK Crisis Staff’s decisions on disarmament and their implementation further rendered the Bosnian Muslim and Bosnian Croat civilians more vulnerable, preventing or limiting their ability to defend themselves and giving practical assistance to the Bosnian Serb forces attacking non-Serb towns, villages and neighbourhoods. Moreover, at the municipal level, where ARK Crisis Staff’s decisions with respect to disarmament were implemented, the disarmament deadlines were on occasion used as a pretext to attack non-Serb villages.<sup>1684</sup>

665. For the foregoing reasons, the Trial Chamber is satisfied that the ARK Crisis Staff decisions on disarmament constituted practical assistance to the attacks of the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods. During and immediately after these attacks members of the Bosnian Serb forces committed a number of underlying acts of wanton destruction of cities, towns and villages, or devastation not justified by military necessity. Through the ARK Crisis Staff decisions on disarmament, the Accused had a substantial effect on the commission of these acts. However, the Trial Chamber is not satisfied that the ARK Crisis Staff decisions on disarmament had a substantial effect on those underlying acts of wanton destruction of cities, towns and villages, or devastation not justified by military necessity charged under Count 11 of the Indictment that were not committed in context of the armed attacks by the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods.

666. The Trial Chamber is also not satisfied that any other decisions of the ARK Crisis Staff or the public utterances of the Accused had a substantial effect on the commission of any of the underlying acts of wanton destruction of cities, towns and villages, or devastation not justified by military necessity charged under Count 11 of the Indictment.

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<sup>1682</sup> See VI.D. *supra*, “The role of the ARK Crisis Staff in the Implementation of the Strategic Plan”.

<sup>1683</sup> See IV. *supra*, “General Overview”.

<sup>1684</sup> See IV. *supra*, “General Overview”; IX.D., “Destructions”.

667. The Trial Chamber has previously found that the Accused espoused the Strategic Plan and that he was aware that it could only be implemented by the use of force and fear.<sup>1685</sup> Bearing in mind that the attacks by the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods constituted an essential part of the implementation of the Strategic Plan in the ARK; that the Accused held the position of President of the ARK Crisis Staff, the highest political authority in the ARK; his direct link with Radovan Karadžić and his close contact with the General Major Momir Talić, the commander of the 1<sup>st</sup> KK of the VRS and with Stojan Župljanin, the head of the CSB, and with other military and political leaders at the level of the ARK and the municipalities of the ARK; the Trial Chamber is satisfied beyond reasonable doubt that the only reasonable inference that may be drawn is that, when the ARK Crisis Staff decisions on disarmament were issued, the Accused was aware that the Bosnian Serb forces were to attack non Serb towns, villages and neighbourhoods and that through the ARK Crisis Staff decisions on disarmament he rendered practical assistance and a substantial contribution to the Bosnian Serb forces carrying out these attacks.

668. Moreover, the Trial Chamber is satisfied that the Accused was aware that during these armed attacks the Bosnian Serb forces would commit a number of crimes including the crime of wanton destruction of cities, towns and villages, or devastation not justified by military necessity and that the members of the Bosnian Serb forces carrying out the crimes in question had the required *mens rea*.

669. For the above reason, the Trial Chamber is satisfied that the Accused aided and abetted in the wanton destruction of cities, towns and villages, or devastation not justified by military necessity committed by the Bosnian Serb forces in context of the armed attacks of the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods after 9 May 1992, the date when the ARK Crisis Staff issued its first decision on disarmament.

670. The Accused aided and abetted members of the Bosnian Serb forces in the wanton destruction of cities, towns and villages, or devastation not justified by military necessity in the municipalities of Banja Luka, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Čelinac, Donji Vakuf, Ključ, Kotor Varoš, Prijedor, Sanski Most and Teslić.<sup>1686</sup>

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<sup>1685</sup> See VIII.C.1. *supra*, “The Accused’s espousal of the Strategic Plan”.

<sup>1686</sup> See IX.D.2.(a) *supra*, “Unlawful and Wanton Extensive Destruction and Appropriation of Property & Wanton Destruction of Cities, Towns and Villages or Devastation not justified by Military Necessity”. The Accused’s responsibility under Count 11 of the Indictment does not extend to destructions in the municipality of Prnjavor, since they occurred before 9 May 1992, the date when the ARK Crisis Staff issued the first decision on disarmament. Moreover, it does not extend to destructions in the municipality of Šipovo, as the evidence is unclear as to the date of these destructions.

(c) Destruction or wilful damage done to institutions dedicated to religion (Count 12)

671. There is no evidence to establish that the Accused ordered or instigated the destruction or wilful damage done to institutions dedicated to religion, charged under Count 12 of the Indictment.

672. The Trial Chamber is not satisfied that the public utterances of the Accused prompted the physical perpetrators to commit any of the underlying acts charged under Count 12 of the Indictment, because the *nexus* between the public utterances of the Accused and the commission of the wanton destruction of cities, towns and villages, or devastation not justified by military necessity by the physical perpetrators has not been established. Moreover, neither the public utterances of the Accused nor the decisions of the ARK Crisis Staff are specific enough to constitute instructions by the Accused to the physical perpetrators to commit any of the underlying acts in question.

673. The Trial Chamber reiterates its finding made in the previous section that the ARK Crisis Staff decisions on disarmament, which can be attributed to the Accused, constituted practical assistance to the attacks of the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods. During and immediately after these attacks members of the Bosnian Serb forces committed a number of underlying acts of destruction or wilful damage done to institutions dedicated to religion. Through the ARK Crisis Staff decisions on disarmament, the Accused had a substantial effect on the commission of these acts. However, the Trial Chamber is not satisfied that the ARK Crisis Staff decisions on disarmament had a substantial effect on those underlying acts of destruction or wilful damage done to institutions dedicated to religion charged under Count 12 of the Indictment that were not committed in context of the armed attacks by the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods.

674. The Trial Chamber is also not satisfied that any other decisions of the ARK Crisis Staff or the public utterances of the Accused had a substantial effect on the commission of any of the underlying acts of destruction or wilful damage done to institutions dedicated to religion charged under Count 11 of the Indictment.

675. The Trial Chamber further reiterates its finding made in the previous section that the Accused was aware that the Bosnian Serb forces were to attack non Serb towns, villages and neighbourhoods and that through the ARK Crisis Staff decisions on disarmament he rendered practical assistance and a substantial contribution to the Bosnian Serb forces carrying out these attacks.

676. Moreover, the Trial Chamber is satisfied that the Accused was aware that during these armed attacks the Bosnian Serb forces would commit a number of crimes including the crime of destruction or wilful damage done to institutions dedicated to religion and that the members of the Bosnian Serb forces carrying out the crimes in question had the required *mens rea*.

677. For the above reason, the Trial Chamber is satisfied that the Accused aided and abetted in the destruction or wilful damage done to institutions dedicated to religion committed by the Bosnian Serb forces in context of the armed attacks of the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods after 9 May 1992, the date when the ARK Crisis Staff issued its first decision on disarmament.

678. The Accused aided and abetted members of the Bosnian Serb forces in the destruction or wilful damage done to institutions dedicated to religion in the municipalities of Bosanski Novi, Bosanski Petrovac, Čelinac, Donji Vakuf, Ključ, Kotor Varoš, Prijedor, Prnjavor, Sanski Most, Šipovo and Teslić.<sup>1687</sup>

## **E. Genocide**

### **1. The Applicable Law**

679. The Accused is charged in count 1 of the Indictment with genocide and in count 2 with complicity in genocide, punishable under Article 4(3)(a) and (c) respectively, and under Article 7(1) and 7(3) of the Statute.<sup>1688</sup>

#### **(a) Sources of Law**

680. The Trial Chamber must apply Article 4 of the Statute in accordance with the state of customary international law at the time relevant to the Indictment. To this end, the main source is the Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948 and in force as of 12 January 1951 (“Genocide Convention”).<sup>1689</sup> Its Articles II

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<sup>1687</sup> See IX.D.2.(b) *supra*, “Destruction or willful damage done to institutions dedicated to religion”. The Accused’s responsibility under Count 12 does not extend to destructions in the municipalities of Banja Luka and Bosanska Krupa as they were committed before 9 May 1992, the date when the ARK Crisis Staff issued its first decision on disarmament.

<sup>1688</sup> Article 4 of the Statute provides in its relevant part: “1. 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. 2. 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; [...] 3. The following acts shall be punishable: (a) genocide [...] (e) complicity in genocide.”

<sup>1689</sup> The Genocide Convention was ratified by the SFRY on 29 August 1950. It was implemented in Articles 141 and 145 of the SFRY Criminal Code. See SFRY Criminal Code, adopted by the SFRY Assembly at the Session of the

and III are reproduced in Article 4(2) and (3) of the Statute. It is widely recognised that these provisions of the Genocide Convention reflect customary international law and that the norm prohibiting genocide constitutes *jus cogens*.<sup>1690</sup>

(b) Genocide

681. Article 4 of the Statute characterises genocide by the following constitutive elements:

1. the underlying act of the offence, which consists of one or several of the actus reus enumerated in subparagraphs (a) to (e) of Article 4(2) carried out with the mens rea required for the commission of each;
2. the specific intent of the offence, which is described as the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.<sup>1691</sup>

(i) The protected groups

682. The Genocide Convention and, correspondingly, Article 4 of the Statute, protects national, ethnical, racial or religious groups. These groups are not clearly defined in the Genocide Convention or elsewhere.<sup>1692</sup> The Trial Chamber agrees with the *Krstić* Trial Chamber that:

[t]he preparatory work of the Convention shows that setting out such a list was designed more to describe a single phenomenon, roughly corresponding to what was recognised, before the second world war, as “national minorities”, rather than to refer to several distinct prototypes of human groups. To attempt to differentiate each of the named groups on the basis of scientifically objective criteria would thus be inconsistent with the object and purpose of the Convention.<sup>1693</sup>

683. In accordance with the jurisprudence of the Tribunal, the relevant protected group may be identified by means of the subjective criterion of the stigmatisation of the group, notably by the perpetrators of the crime, on the basis of its perceived national, ethnical, racial or religious characteristics.<sup>1694</sup> In some instances, the victim may perceive himself or herself to belong to the aforesaid group.<sup>1695</sup>

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Federal Council held on 28 September 1976 and declared by decree of the President of the Republic on 28 September 1976; published in the SFRY Official Gazette No.44 of 8 October 1976 (correction in the Official Gazette SFRY No.36 of 15 July 1977) and which came into effect on 1 July 1977.

<sup>1690</sup> See *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, (1951) ICJ Reports 23. See also *Secretary-General's Report*, para. 45; *Stakić* Trial Judgement, para. 500; *Krstić* Trial Judgement, para. 541; *Jelisić* Trial Judgement, para. 60; *Akayesu* Trial Judgement, para. 495; *Kayishema* Trial Judgement, para. 88; *Rutaganda* Trial Judgement, para. 46; *Bagilishema* Trial Judgement, para. 54.

<sup>1691</sup> See *Krstić* Trial Judgement, para. 542; *Jelisić* Trial Judgement, para. 62; *Kayishema* Trial Judgement, para. 90.

<sup>1692</sup> *Krstić* Trial Judgement, para. 555; *Rutaganda* Trial Judgement, para. 56; *Bagilishema* Trial Judgement, para. 65; *Kajelijeli* Trial Judgement, para. 811.

<sup>1693</sup> *Krstić* Trial Judgement, para. 556.

<sup>1694</sup> *Nikolić* Rule 61 Decision, para. 27; *Krstić* Trial Judgement, para. 557; *Jelisić* Trial Judgement, para. 70.

<sup>1695</sup> See *Rutaganda* Trial Judgement, para. 56; See also *Krstić* Trial Judgement, para. 559.

684. The correct determination of the relevant protected group has to be made on a case-by-case basis, consulting both objective and subjective criteria.<sup>1696</sup> This is so because subjective criteria alone may not be sufficient to determine the group targeted for destruction and protected by the Genocide Convention, for the reason that the acts identified in subparagraphs (a) to (e) of Article 4(2) must be in fact directed against “members of the group”.<sup>1697</sup>

685. In addition, the Trial Chamber agrees with the *Stakić* Trial Chamber that, “[i]n cases where more than one group is targeted, it is not appropriate to define the group in general terms, as for example, ‘non-Serbs’”.<sup>1698</sup> It follows that the Trial Chamber disagrees with the possibility of identifying the relevant group by exclusion, *i.e.*: on the basis of “negative criteria”.<sup>1699</sup>

686. Moreover, where more than one group is targeted, the elements of the crime of genocide must be considered in relation to each group separately.<sup>1700</sup>

(ii) The underlying acts: their objective and subjective elements

687. The Indictment limits the charges of genocide and of complicity in genocide to the underlying criminal acts listed in subparagraphs (a) to (c) of Article 4(2) of the Statute.

688. The acts in subparagraphs (a) and (b) of Article 4(2) require proof of a result.<sup>1701</sup>

a. Killing members of the group

689. The *actus reus* and *mens rea* required for “killing” in subparagraph (a) have been set out earlier in this judgement.<sup>1702</sup> The killing must be of members of the targeted national, ethnical, racial or religious group.

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<sup>1696</sup> *Semanza* Trial Judgement, para. 317; *Kajelijeli* Trial Judgement, para. 811.

<sup>1697</sup> See Schabas, *Genocide in International Law*, p. 110; See also *Rutaganda* Trial Judgement, para. 57, which reached the same conclusion on a different reasoning: “it appears from a reading of the *travaux préparatoires* of the Genocide Convention, that certain groups, such as political and economic groups, have been excluded from the protected groups”.

<sup>1698</sup> *Stakić* Trial Judgement, para. 512.

<sup>1699</sup> “A ‘negative approach’ would consist of identifying individuals as not being part of the group to which the perpetrators of the crime consider that they themselves belong and which to them displays specific national, ethnical, racial or religious characteristics. Thereby, all individuals thus rejected would, by exclusion, make up a distinct group”: *Jelisić* Trial Judgement, para. 71.

<sup>1700</sup> *Stakić* Trial Judgement, para. 512.

<sup>1701</sup> *Stakić* Trial Judgement, para. 514.

<sup>1702</sup> See A.1. *supra*, “Wilful killing”. The word “killing” is understood to refer to intentional, but not necessarily to premeditated, acts. See also *Stakić* Trial Judgement, para. 515; *Kayishema* Appeal Judgement, para. 151.

b. Causing serious bodily or mental harm to members of the group

690. “Causing serious bodily or mental harm” in sub-paragraph (b) is understood to mean, *inter alia*, acts of torture, inhumane or degrading treatment, sexual violence including rape, interrogations combined with beatings, threats of death, and harm that damages health or causes disfigurement or serious injury to members of the targeted national, ethnical, racial or religious group. The harm inflicted need not be permanent and irremediable, but needs to be serious.<sup>1703</sup> The harm must be inflicted intentionally.<sup>1704</sup>

c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part

691. “Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” under sub-paragraph (c) does not require proof of the physical destruction in whole or in part of the targeted group.<sup>1705</sup> The acts envisaged by this sub-paragraph include, but are not limited to, methods of destruction apart from direct killings such as subjecting the group to a subsistence diet, systematic expulsion from homes and denial of the right to medical services.<sup>1706</sup> Also included is the creation of circumstances that would lead to a slow death, such as lack of proper housing, clothing and hygiene or excessive work or physical exertion.<sup>1707</sup>

692. The group upon which these conditions are inflicted must be a protected group under the terms of the Genocide Convention. Such conditions must be calculated to bring about the physical destruction of the targeted group in whole or in part and must be inflicted on it deliberately.

693. In its Rule 98*bis* Decision, the Trial Chamber decided that it would not entertain the Prosecution’s submission that “the mass deportation of the Bosnian Muslim and Bosnian Croat groups” constituted conditions of life calculated to bring about their physical destruction within the meaning of Article 4(2)(c) of the Statute, because it was not pleaded in the Indictment.<sup>1708</sup> Nevertheless, this does not preclude the Trial Chamber from relying on it as evidence of specific

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<sup>1703</sup> *Stakić* Trial Judgement, para. 516; *Akayesu* Trial Judgement, paras 502-504; *Kayishema* Trial Judgement, paras 108-110; *Kajelijeli* Trial Judgement, paras 814-816.

<sup>1704</sup> See *Krstić* Trial Judgement, para. 513.

<sup>1705</sup> *Stakić* Trial Judgement, para. 517.

<sup>1706</sup> *Stakić* Trial Judgement, para. 517; *Akayesu* Trial Judgement, paras 505-506; *Rutaganda* Trial Judgement, para. 50.

<sup>1707</sup> *Kayishema* Trial Judgement, paras 115-116; *Stakić* Trial Judgement, para. 517; See also Article 1 of the Draft Convention Prepared by the Secretariat in N. Robinson, *The Genocide Convention: a Commentary* (Institute of Jewish Affairs), New York, 1960, p. 123.

<sup>1708</sup> Rule 98*bis* Decision, para. 51. See also Prosecution Final Brief, fn. 995; “Confidential Prosecution’s Response to Trial Chamber Questions Regarding Genocide and the *Krstić* Appeal Judgement”, 29 April 2004, fn. 14.

intent. “The genocidal intent may be inferred, amongst other facts, from evidence of 'other culpable acts systematically directed against the same group’”.<sup>1709</sup>

694. Having said this, the Trial Chamber notes that “[t]he [Genocide Convention], and customary international law in general, prohibit only the physical or biological destruction of a human group”.<sup>1710</sup> In this context, the ILC has stated as follows:

[a]s clearly shown by the preparatory work for the Convention, the destruction in question is the material destruction of a group either by physical or by biological means, not the destruction of the national, linguistic, religious, cultural or other identity of a particular group. The national or religious element and the racial or ethnic element are not taken into consideration in the definition of the word “destruction”, which must be taken only in its material sense, its physical or biological sense.<sup>1711</sup>

(iii) The specific intent

695. The acts prohibited in sub-paragraphs (a) to (c) of Article 4(2) of the Statute are elevated to genocide when it is proved that the perpetrator not only wanted to commit those acts but also intended to destroy the targeted national, ethnical, racial or religious group in whole or in part, as such.<sup>1712</sup> This intent has been referred to, *inter alia*, as special intent, specific intent and *dolus specialis*.<sup>1713</sup> The Trial Chamber will use the term 'specific intent' to describe the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such. It is this specific intent that characterises the crime of genocide.

696. In the *Jelisić* case, the Appeals Chamber recalled:

the necessity to distinguish specific intent from motive (...) The existence of a personal motive does not preclude the perpetrator from also having the specific intent to commit genocide. In the *Tadić* appeal judgement the Appeals Chamber stressed the irrelevance and “inscrutability of motives in criminal law”.<sup>1714</sup>

697. In view of the specific intent required for genocide, it is not necessary to prove the *de facto* destruction of the group in whole or in part.<sup>1715</sup> Nevertheless, the *de facto* destruction of the group may constitute evidence of the specific intent and may also serve to distinguish the crime of

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<sup>1709</sup> *Krstić* Appeal Judgement, para. 33, citing *Jelisić* Appeal Judgement, para. 47.

<sup>1710</sup> *Krstić* Appeal Judgement, para. 25; *See Krstić* Trial Judgement, para. 576, and accompanying fn. 1284; *Semanza* Trial Judgement, para. 315; *Kajelijeli* Trial Judgement, para. 808.

<sup>1711</sup> 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. *See also Krstić* Appeal Judgement, fn. 39; *Krstić* Trial Judgement, para. 580.

<sup>1712</sup> *See Stakić* Trial Judgement, para. 520; *Jelisić* Appeal Judgement, para. 46; *Rutaganda* Trial Judgement, para. 59.

<sup>1713</sup> *Jelisić* Appeal Judgement, para. 45 and accompanying references in fn. 80.

<sup>1714</sup> *Jelisić* Appeal Judgement, para. 49, citing the *Tadić* Appeal Judgement, para. 269. *See also Kayishema* Appeal Judgement, para. 161; *Niyitegeka* Appeal Judgement, paras 49, 52.

<sup>1715</sup> *See Stakić* Trial Judgement, para. 522.



genocide from the inchoate offences in Article 4(3) of the Statute, such as the attempt to commit genocide.<sup>1716</sup>

a. The specific intent to destroy the group “as such”

698. The specific intent must be to destroy the group as a separate and distinct entity.<sup>1717</sup> The Trial Chamber concurs with the observation made by the *Sikirica* Trial Chamber that:

[t]he ultimate victim of genocide is the group, although its destruction necessarily requires the commission of crimes against its members, that is, against individuals belonging to that group.<sup>1718</sup>

699. This is consonant with the United Nations General Assembly Resolution 96(I), which defined genocide as “a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings”.<sup>1719</sup> The intent to destroy makes genocide an exceptionally grave crime and distinguishes it from other serious crimes, in particular 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 such.<sup>1720</sup>

b. The specific intent to destroy a group “in part”

700. As stated earlier, under the Genocide Convention, the terms “in whole or in part” speak to the intended scope of destruction, as opposed to the actual destruction of the group. It is clear from the terms of the Genocide Convention that “any act committed with intent to destroy a part of a group, as such, constitutes an act of genocide within the meaning of the Convention”.<sup>1721</sup> The Trial Chamber agrees with the *Krstić* and *Stakić* Trial Chambers that “the intent to destroy a group, even

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<sup>1716</sup> See further para. 725 *supra*.

<sup>1717</sup> *Stakić* Trial Judgement, para. 521; *Krstić* Trial Judgement, para. 552; *Jelisić* Trial Judgement, para. 79. Further, the ILC has stated that: “[t]he 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”, ILC Draft Code, p. 88.

<sup>1718</sup> *Prosecutor v. Duško Sikirića, Damir Došen, Dragan Kolundžija*, Case No. IT-95-8-T, Judgement on Defence Motion to Acquit, 3 September 2001 (“*Sikirica* Rule 98bis Decision”), para. 89.

<sup>1719</sup> UN Doc. A/ 96(I) (1946), 11 December 1946. This view was confirmed by the ICJ when it observed that the Genocide Convention looked “to safeguard the very existence of certain human groups and (...) to confirm and endorse the most elementary principles of morality”: *Reservations to the Convention on the Prevention and Punishment of Genocide*, Advisory Opinion, ICJ Reports (1951), p. 23. See *Krstić* Appeal Judgement, para. 8; *Krstić* Trial Judgement, para. 552.

<sup>1720</sup> See *Krstić* Trial Judgement, para. 553; *Jelisić* Trial Judgement, para. 79. See also *Niyitegeka* Appeal Judgement, para. 53: “The term ‘as such’ has the *effet utile* of drawing a clear distinction between mass murder crimes in which the perpetrator targets a specific group because of its nationality, race, ethnicity or religion. In other words, the term ‘as such’ clarifies the specific intent requirement” (footnotes omitted).

<sup>1721</sup> *Krstić* Trial Judgement, para. 584.

if only in part, means seeking to destroy a distinct part of the group as opposed to an accumulation of isolated individuals within it”.<sup>1722</sup>

701. In the *Krstić* case, the Appeals Chamber held that “[t]he intent requirement of genocide under Article 4 of the Statute is therefore satisfied where evidence shows that the alleged perpetrator intended to destroy at least a substantial part of the protected group”.<sup>1723</sup> It further stated that “the substantiality requirement both captures genocide’s defining character as a crime of massive proportions and reflects the Convention’s concern with the impact the destruction of the targeted part will have on the overall survival of the group”.<sup>1724</sup>

702. According to the Appeals Chamber, the determination of when the targeted group is substantial enough to meet this requirement may involve a number of considerations, including but not limited to: the numeric size of the targeted part of the group - measured not only in absolute terms but also in relation to the overall size of the entire group - , the prominence within the group of the targeted part of the group, and the area of the perpetrators’ activity and control as well as the possible extent of their reach.<sup>1725</sup> The Appeals Chamber has held that “[t]he applicability of these factors, as well as their relative weight, will vary depending on the circumstances of a particular case”.<sup>1726</sup>

703. Thus, the jurisprudence of the Tribunal supports the approach that permits a characterisation of genocide even when the specific intent to destroy a group, in part, extends only to a limited geographical area.<sup>1727</sup> The Trial Chamber further notes that according to the jurisprudence of the Tribunal, the intent to destroy a group may, in principle, be established if the destruction is related to a significant section of the group, such as its leadership.<sup>1728</sup> The Appeals Chamber has stated that “[p]roperly understood, this factor is only one of several which may indicate whether the substantiality requirement is satisfied”.<sup>1729</sup>

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<sup>1722</sup> *Krstić* Trial Judgement, para. 590; *Stakić* Trial Judgement, para. 524.

<sup>1723</sup> *Krstić* Appeal Judgement, para. 12; See also *Jelisić* Trial Judgement, para. 10; *Sikirica* Rule 98bis Decision, para. 65.

<sup>1724</sup> *Krstić* Appeal Judgement, para. 8; See also *Krstić* Trial Judgement, para. 590; *Jelisić* Trial Judgement, para. 82; *Sikirica* Rule 98bis Decision, para. 77.

<sup>1725</sup> *Krstić* Appeal Judgement, paras 12-14.

<sup>1726</sup> *Krstić* Appeal Judgement, para. 14.

<sup>1727</sup> Rule 98bis Decision, para. 53; *Jelisić* Trial Judgement, para. 83; *Sikirica* Rule 98bis Decision, para. 68; *Krstić* Trial Judgement, paras 589-590; *Stakić* Trial Judgement, para. 523.

<sup>1728</sup> *Stakić* Trial Judgement, para. 525; *Krstić* Trial Judgement, para. 587; *Sikirica* Rule 98bis Decision, paras 76-85; *Jelisić* Trial Judgement, para. 82.

<sup>1729</sup> *Krstić* Appeal Judgement, fn. 22.

(iv) Inferring the specific intent

704. The Trial Chamber notes that it is generally accepted in the jurisprudence of the Tribunal and of the ICTR that, in the absence of direct evidence,<sup>1730</sup> the specific intent for genocide can be inferred from “the facts, the concrete circumstances, or a ‘pattern of purposeful action’”.<sup>1731</sup>

705. In particular, the Appeals Chamber has established that:

[t]he existence of a plan or policy is not a legal ingredient of the crime. However, in the context of proving specific intent, the existence of a plan or policy may become an important factor in most cases. The evidence may be consistent with the existence of a plan or policy, or may even show such existence, and the existence of a plan or policy may facilitate proof of the crime.<sup>1732</sup>

706. In addition, the Appeals Chamber has held that “[t]he proof of the mental state with respect to the commission of the underlying act can serve as evidence from which the fact-finder may draw the further inference that the accused possessed the specific intent to destroy”.<sup>1733</sup>

707. Finally, the Appeals Chamber has established that

[t]he inference that a particular atrocity was motivated by genocidal intent may be drawn, moreover, even where the individuals to whom the intent is attributable are not precisely identified. If the crime committed satisfies the other requirements of genocide, and if the evidence supports the inference that the crime was motivated by the intent to destroy, in whole or in part, a protected group, a finding that genocide has occurred may be entered.<sup>1734</sup>

(c) Joint Criminal Enterprise

708. As stated earlier, the participant in a JCE of the first category must share with the person who physically carried out the crime the state of mind required for that crime. In the case of the crime of genocide, the two must share the specific intent.<sup>1735</sup>

709. With respect to the third category of JCE, the Appeals Chamber has held that

[a]n accused convicted of a crime under the third category of joint criminal enterprise need not be shown to have intended to commit the crime or even to have known with certainty that the crime was to be committed. Rather, it is sufficient that the accused entered into a joint criminal enterprise to commit a different crime with the awareness that the commission of that agreed upon crime made it reasonably foreseeable to him that the crime charged would be committed by other members of the joint criminal enterprise, and it was committed.<sup>1736</sup>

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<sup>1730</sup> *Krstić* Appeal Judgement, para. 34; *Jelisić* Appeal Judgement, para. 47.

<sup>1731</sup> *Stakić* Trial Judgement, para. 526; *Kayishema* Appeal Judgement, para. 159; See also *Krstić* Appeal Judgement, paras 33-34.

<sup>1732</sup> *Jelisić* Appeal Judgement, para. 48.

<sup>1733</sup> *Krstić* Appeal Judgement, para. 20.

<sup>1734</sup> *Krstić* Appeal Judgement, para. 34.

<sup>1735</sup> See VII.A.1. *supra*, “Joint Criminal Enterprise”.

<sup>1736</sup> Rule 98bis Appeal Decision, para. 5. In its Rule 98bis Decision, the Trial Chamber reasoned that the specific intent required for genocide could not be reconciled with the *mens rea* required for a conviction pursuant to the third category of joint criminal enterprise. “The latter consists of the Accused’s awareness of the risk that genocide would be

Where the crime charged is the crime of genocide, the Appeals Chamber has held that “the Prosecution will be required to establish that it was reasonably foreseeable to the accused that an act specified in Article 4(2) would be committed and that it would be committed with genocidal intent”.<sup>1737</sup>

710. In this connection, the Trial Chamber finds it necessary to distinguish the notion of “escalation” to genocide from the notion of genocide as a “natural and foreseeable consequence” of a JCE not aimed specifically at genocide.<sup>1738</sup> “Escalation” to genocide merely designates a factual allegation that the specific intent for genocide was formed at a stage later than the onslaught of an initial operation not amounting to genocide. According to the *Krstić* Trial Chamber, “Article 4 of the Statute does not require that the genocidal acts be premeditated over a long period. It is conceivable that, although the intention at the outset of an operation was not the destruction of a group, it may become the goal at some later point during the implementation of the operation”.<sup>1739</sup> The factual scenario described does not rule out that genocide may have been within the common purpose of the JCE.

(d) Superior Criminal Responsibility

711. Pursuant to Article 7(3) of the Statute, an accused in a hierarchically responsible position may be held liable for genocide as a result of his failure to carry out his duty as a superior to exercise control over his or her subordinates.<sup>1740</sup>

712. Superior criminal responsibility as a form of liability for genocide is not contemplated in Article III of the Genocide Convention, which Article 4(3) of the Statute reproduces *verbatim*. Contrary to the submissions of the Defence,<sup>1741</sup> the absence in the Genocide Convention of explicit reference to superior criminal responsibility is not fatal to the determination that, under customary

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committed by other members of the [joint criminal enterprise]. This is a different *mens rea* and falls short of the threshold needed to satisfy the specific intent required for a conviction for genocide under Article 4(3)(a)”: *ibid.*, para. 57 (footnotes omitted). The Trial Chamber found that there was no case to answer with respect to Count 1 (genocide) in the context of the third category of joint criminal enterprise, and thereby acquitted the Accused of Count 1 (genocide) in the context of the third category of joint criminal enterprise. The Appeals Chamber reversed the decision and reinstated the count.

<sup>1737</sup> Rule 98bis Appeal Decision, para. 6 (footnotes omitted).

<sup>1738</sup> Rule 98bis Decision, fn. 70. This Trial Chamber does not agree with the *Stakić* Trial Chamber when it equates the two, stating that: “[t]he notions of ‘escalation’ to genocide, or genocide as a ‘natural and foreseeable consequence’ of an enterprise not aimed specifically at genocide are not compatible with the definition of genocide under Article 4(3)(a)”: *Stakić* Trial Judgement, para. 530.

<sup>1739</sup> *Krstić* Trial Judgement, para. 572 (footnotes omitted).

<sup>1740</sup> See *Krnjelac* Appeal Judgement, para. 171; *Aleksovski* Trial Judgement, para. 72; *Čelebići* Trial Judgement, paras 333-334. Article 7(3) of the Statute provides that: “[t]he fact that any of the acts referred to in *articles 2 to 5* of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary measures to prevent such acts or to punish the perpetrators thereof” (emphasis added). See also Prosecution Final Brief, Appendix A, fn. 94.

international law, superior criminal responsibility extended to the crime of genocide at the time the acts charged in the Indictment are alleged to have been committed. Amongst other reasons, this is so because there may have been “a play of factors responsible for the silence which, for any of a number of reasons, sometimes occurs over the codification of an accepted point in the drafting of an international instrument”.<sup>1742</sup>

713. The Trial Chamber has previously noted that genocide is a crime recognised in customary international law, which by virtue of Article 4 of the Statute comes within the jurisdiction of the Tribunal.<sup>1743</sup> The Trial Chamber is also satisfied that superior criminal responsibility is recognised in customary international law, and that the Trial Chamber has jurisdiction over this form of criminal liability.<sup>1744</sup>

714. The Appeals Chamber has held that:

it appreciates that to hold that a principle was part of customary international law, it has to be satisfied that State practice recognised the principle on the basis of supporting *opinio juris*. However, it also considers that, where a principle can be shown to have been so established, it is not an objection to the application of the principle to a particular situation to say that the situation is new if it reasonably falls within the application of the principle.<sup>1745</sup>

715. The Trial Chamber is satisfied that it reasonably falls within the application of the doctrine of superior criminal responsibility for superiors to be held liable if they knew or had reason to know

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<sup>1741</sup> Defence Final Brief (confidential), pp. 52-54.

<sup>1742</sup> *Hadžihasanović* Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, para. 29 (referring to the non-reference in Additional Protocol II to command responsibility in relation to internal armed conflicts).

<sup>1743</sup> See E.1. *supra*, “Sources of law”.

<sup>1744</sup> The Appeals Chamber has held that: “[i]n order to come within the Tribunal’s jurisdiction *rationae personae*, any form of liability must satisfy three (*sic*) pre-conditions: (i) it must be provided for in the Statute, explicitly or implicitly; (ii) it must have existed under customary international law at the relevant time; (iii) the law providing for that form of liability must have been sufficiently accessible at the relevant time to anyone who acted in such a way; and (iv) such person must have been able to foresee that he could be held criminally liable for his actions if apprehended”: *Ojdanić* Appeal Decision on Motion Challenging Jurisdiction, para. 21. The Trial Chamber is satisfied that superior criminal responsibility satisfies all these pre-conditions. Superior criminal responsibility is explicitly provided for in Article 7(3) of the Statute. It was recognised in customary international law at the time of the acts charged: “[t]he principle that military and other superiors may be held criminally responsible for the acts of their subordinates is well-established in conventional and customary law”: *Čelebići* Appeal Judgement, para. 195. The *Hadžihasanović* Trial Chamber stated that “Article 7(3) constitutes a declaration of existing law under customary international law and does not constitute new law”: *Hadžihasanović* Decision on Joint Challenge to Jurisdiction, para. 179, which was reaffirmed on appeal: *Hadžihasanović* Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, paras 29-31. The third and fourth pre-conditions are also satisfied insofar: “[a]s to foreseeability, the conduct in question is the concrete conduct of the accused; he must be able to appreciate that the conduct is criminal in the sense generally understood, without reference to any specific provision. As to accessibility, in the case of an international tribunal such as this, accessibility does not exclude reliance being placed on a law which is based on custom”: *Hadžihasanović* Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, para. 34 (footnotes omitted). See also Articles 141 and 145 of the SFRY Criminal Code and Regulations Concerning the Application of the International Law of War to the Armed Forces of SFRY (“SFRY Regulations”), p. 25.

<sup>1745</sup> *Hadžihasanović* Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, para. 12 (referring to command responsibility in relation to internal armed conflicts).

that their subordinates were about to commit genocide or had done so and failed to take the necessary and reasonable measures to prevent the crimes or punish the perpetrators thereof.

716. This understanding is confirmed by the Statute, which in Article 7(3) explicitly refers to all the crimes within the jurisdiction of the Tribunal, including genocide, and which, according to the Appeals Chamber, “must be interpreted with the utmost respect to the language used by the legislator”.<sup>1746</sup> In addition, with one exception which is shown below,<sup>1747</sup> the application of superior criminal responsibility to the crime of genocide has not been contested in the jurisprudence of the Tribunal. Furthermore, it has been upheld in cases before the ICTR.<sup>1748</sup>

717. An additional question is whether a superior is required to possess the specific intent for genocide in order to be held liable for genocide pursuant to Article 7(3). The question of the *mens rea* requirement for genocide pursuant to Article 7(3) has not been decided in the jurisprudence of the Tribunal.<sup>1749</sup> In the *Stakić* Rule 98bis Decision, the Trial Chamber seized of that case stated the following:

It follows from Article 4 and the unique nature of genocide that the *dolus specialis* is required for responsibility under Article 7(3) as well. The Trial Chamber notes the legal problems and the difficulty in proving genocide by way of an omission on the part of civilian leaders.<sup>1750</sup>

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<sup>1746</sup> *Krstić* Appeal Judgement, para. 139.

<sup>1747</sup> See *infra* at para. 717 and *Stakić* Rule 98bis Decision, para. 92.

<sup>1748</sup> See para. 718 *infra*.

<sup>1749</sup> No accused has ever been convicted before the ICTY for genocide pursuant to Article 7(3). The *Stakić* Trial Judgement did not deal with this issue. The *Krstić* Trial Chamber found that the elements of Article 7(3) had been fulfilled, including the *mens rea* requirement: “not only was General Krstić fully aware of the ongoing killing campaign and of its impact on the survival of the Bosnian Muslim group at Srebrenica, as well as the fact that it was related to a widespread or systematic attack against Srebrenica’s Bosnian Muslim civilian population, but the Drina Corps (and Main Staff) officers and troops involved in conducting the executions had to have been aware of the genocidal objectives”: *Krstić* Trial Judgement, para. 648. It did not enter a conviction to this effect because it instead found that the criminal responsibility of the accused was sufficiently expressed in a finding of guilt under Article 7(1): *ibid.*, para. 652. The Appeals Chamber did not disturb or challenge this finding: *Krstić* Appeal Judgement, para. 250. The Trial Chamber that reviewed, pursuant to Rule 61, the indictments against Radovan Karadžić and Ratko Mladić did not address this issue. Although the Trial Chamber acknowledged that the conditions for these accused to be held responsible pursuant to Article 7(3) had been met, it concluded that the evidence it had reviewed revealed that the responsibility incurred for the crimes charged in the indictments, including genocide, was best characterised by Article 7(1) of the Statute. See *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Case No. IT-95-15-8-R61 and Case No. IT-95-18-R61, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, 11 July 1996, (“*Karadžić and Mladić* Rule 61 Decision”), paras 83, 84, 94-95; “Moreover, very careful consideration should be given to the individual criminal responsibility for the crime of genocide as described in count 1 of the [Bosnia and Herzegovina Indictment] (...) [There are] strong indications tending to show that Radovan Karadžić and Ratko Mladić planned, ordered or otherwise aided and abetted in the planning, preparation or execution of the genocide perpetrated in the detention facilities”: *ibid.*, para. 84; See also Schabas, *Genocide in International Law*, p. 311. In addition, the *Sikirica* Trial Chamber did not address this issue in its *Sikirica* Rule 98bis Decision because the Prosecution had stated that it had failed to present sufficient evidence of this element and therefore no longer relied on Article 7(3) with respect to the charges of genocide: *Sikirica* Rule 98bis Decision, para. 24. The Trial Chamber notes that, in light of the factual findings that follow, its discussion on this issue is *obiter dicta*.

<sup>1750</sup> “However, the evidence allows for the conclusion of a reasonable trier of fact that Dr. Stakić in principle had the power to punish or prevent as foreseen in Article 7(3)”: *Stakić* Rule 98bis Decision, para. 92 (emphasis added).

718. Individuals have been tried and convicted before the ICTR for genocide pursuant to Article 6(3) of the ICTR Statute, which is the provision analogous to Article 7(3) of the Statute.<sup>1751</sup> The *Cyangugu* case strongly supports the conclusion that a superior need not possess the specific intent in order to be held liable for genocide pursuant to the doctrine of superior criminal responsibility.<sup>1752</sup>

719. The Trial Chamber is unable to agree with the *Stakić* Trial Chamber that a superior need possess the specific intent in order to be held liable for genocide pursuant to Article 7(3) of the Statute. Aside from the indications in the jurisprudence noted previously, the following reason militates against this conclusion.

720. As a matter of statutory interpretation, there is in the Trial Chamber's view no inherent reason why, having verified that it applies to genocide, Article 7(3) should apply differently to the crime of genocide than to any other crime in the Statute.<sup>1753</sup> The Appeals Chamber has observed that superior criminal responsibility requires the Prosecution to establish that a superior knew or had reason to know of the criminality of subordinates.<sup>1754</sup> In the case of genocide, this implies that the superior must have known or had reason to know of his or her subordinate's specific intent, with all the evidentiary difficulties that follow. The Appeals Chamber has held that superior criminal responsibility is a form of criminal liability that does not require proof of intent to commit a crime

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<sup>1751</sup> Convictions were entered for genocide pursuant to Article 6(3) for the following Accused before the ICTR: Kambanda, Serushago, Kayishema, Musema, Kajelijeli, Barayagwiza and Imanishimwe.

<sup>1752</sup> In the *Cyangugu* case, the majority of the ICTR Trial Chamber found that for one factual incident Samuel Imanishimwe was criminally responsible for genocide solely on the basis of Article 6(3) of the ICTR Statute because he failed to prevent the killing of members of the Tutsi ethnic group by soldiers under his authority and effective control: "[t]he Chamber has found that, on 12 April 1994, soldiers participated in the attack on the refugees at the Gashirabwoba football field. The Chamber lacks sufficient reliable evidence to find that Imanishimwe ordered his soldiers to participate in the attack within the meaning of Article 6(1). The Chamber however finds that Imanishimwe knew or should have known about the participation of his soldiers in the attack at the Gashirabwoba football field [...] The Chamber notes that there is no evidence that Imanishimwe took any steps to prevent the attack or to punish any soldier at Karambo camp for participating in the massacre. Thus, the Chamber finds that Imanishimwe can be held criminally responsible under Article 6(3) for the actions of his subordinates at the Gashirabwoba football field": *Prosecutor v. Andre Ntagerwa, Emmanuel Bagambiki, Samuel Imanishimwe*, Case No. ICTR-99-46-T, Judgement and Sentence, 25 February 2004 ("*Cyangugu* Trial Judgement"), paras 653-654. "The Chamber also finds that the soldiers at the Gashirabwoba football field possessed the requisite genocidal intent during the killings on 12 April 1994, that is, to destroy, in whole or in part, members of the Tutsi ethnic group": *ibid.*, para. 690. *See also ibid.*, paras 694-695, 821. In contrast, it is difficult to draw any conclusions from the remaining ICTR verdicts since no other accused before it has been convicted for genocide pursuant to Article 6(3) of the ICTR Statute in the absence of a finding that he was also responsible *for the same acts* under Article 6(1) and thus that he had the specific intent for genocide. Thus, Kambanda, Serushago, Kayishema, Musema, Kajelijeli and Barayagwiza were all convicted also for genocide pursuant to Article 6(1). Article 6(1) of the ICTR Statute is the provision analogous to Article 7(1).

<sup>1753</sup> All that the *Secretary-General's Report* states to this effect is that: "A person in a position of superior authority should, therefore, be held individually responsible for giving the unlawful order to commit a crime under the present statute. But he should also be held responsible for failure to prevent a crime or to deter the unlawful behaviour of his subordinates. This imputed responsibility or criminal negligence is engaged if the person in superior authority knew or had reason to know that his subordinates were about to commit or had committed crimes and yet failed to take the necessary and reasonable steps to prevent or repress the commission of such crimes or to punish those who had committed them": *Secretary-General's Report*, para. 56.

<sup>1754</sup> *See Rule 98bis* Appeal Decision, para. 7.

on the part of a superior before criminal liability can attach.<sup>1755</sup> It is therefore necessary to distinguish between the *mens rea* required for the crimes perpetrated by the subordinates and that required for the superior. The Appeals Chamber has warned against the danger of “conflating the *mens rea* requirement of the crime of genocide with the mental requirement of the mode of liability by which criminal responsibility is alleged to attach to the accused”.<sup>1756</sup> If the elements dictated by Article 7(3) are fulfilled, there is no reason why superiors should not be convicted pursuant to Article 7(3) for genocide; genocide is, after all, the crime with which the superiors associated themselves with, through the deliberate failure to carry out their duty to exercise control.<sup>1757</sup>

721. Thus, the Trial Chamber is satisfied that the *mens rea* required for superiors to be held responsible for genocide pursuant to Article 7(3) is that the superiors knew or had reason to know that their subordinates (1) were about to commit or had committed genocide and (2) that the subordinates possessed the requisite specific intent.

(e) Complicity in Genocide

722. The Accused is charged with complicity in genocide pursuant to Article 4(3)(e) and Article 7(1) and 7(3) of the Statute.

723. “Complicity” and “accomplice liability” have the same meaning and are used interchangeably.<sup>1758</sup>

724. The Trial Chamber is satisfied that complicity as a form of participation comes within the Tribunal’s jurisdiction *rationae personae*.<sup>1759</sup> Complicity is one of the forms of criminal responsibility recognised by the general principles of criminal law,<sup>1760</sup> and in respect of genocide, it is also recognised in customary international law.<sup>1761</sup> The Genocide Convention, provisions of

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<sup>1755</sup> See Rule 98*bis* Appeal Decision, para. 7.

<sup>1756</sup> Rule 98*bis* Appeal Decision, para. 10.

<sup>1757</sup> “The doctrine of command responsibility is clearly articulated and anchored on the relationship between superior and subordinate, and the responsibility of the commander for actions of members of his troops. It is a species of vicarious responsibility through which military discipline is regulated and ensured”: *Čelebići* Trial Judgement, para. 647. The Appeals Chamber disagreed with the description of superior criminal responsibility as vicarious liability “insofar as vicarious liability may suggest a form of *strict* imputed liability”: *Čelebići* Appeal Judgement, para. 239.

<sup>1758</sup> Complicity is defined as “[a]ssociation or participation in a criminal act; the act or state of being an accomplice”: Black’s Law Dictionary, 7<sup>th</sup> ed., p. 279.

<sup>1759</sup> It complies with the preconditions set out earlier. See *supra* para. 713 and accompanying footnote.

<sup>1760</sup> “This recognition that individuals may be held criminally responsible for their participation in the commission of offences in any of several capacities is in clear conformity with general principles of criminal law”: *Čelebići* Trial Judgement, para. 321; see also *Tadić* Appeal Judgement, para. 338; *Akayesu* Trial Judgement, para. 527.

<sup>1761</sup> “The concept of direct individual criminal responsibility and personal culpability for assisting, aiding and abetting, or participating in, in contrast to the direct commission of, a criminal endeavour or act also has a basis in customary international law”: *Tadić* Trial Judgement, para. 666. “The foregoing establishes the basis in customary international law for both individual responsibility and of participation in the various ways provided by Article 7 of the Statute. The International Tribunal accordingly has the competence to exercise the authority granted to it by the Security Council to make findings in this case regarding the guilt of the accused, whether as a principal or an accessory or otherwise as a



which reflect customary international law, explicitly envisages complicity in genocide as a punishable act in its Article III, which is in turn reproduced in Article 4(3) of the Statute. The law providing for complicity in genocide was sufficiently accessible and foreseeable at the time the acts charged in the Indictment are alleged to have been committed.<sup>1762</sup>

725. At the same time, the Trial Chamber notes that the term “accomplice” is “a term of uncertain reference”.<sup>1763</sup> In particular as concerns complicity in genocide, the distinction between several meanings is complicated by the coexistence in the Statute of Article 4(3) with Article 7(1).<sup>1764</sup> The *verbatim* incorporation of Article III of the Genocide Convention results in that the inchoate offences relating to genocide (conspiracy, direct and public incitement and attempt), as well as complicity in genocide, are included in the Statute for the purposes of genocide along with Article 7(1), the general provision dealing with individual criminal responsibility for all crimes within the jurisdiction of the Tribunal. In addition, whilst Article 4(3) follows the approach of distinguishing between principals and accomplices or accessories, Article 7(1) simply specifies the various modes of involvement in crimes without drawing a formal distinction between principals and accessories.<sup>1765</sup>

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participant”: *ibid.*, para. 669. See also Article 6 of the Charter of the International Military Tribunal at Nürnberg; Article II(2) of Control Council Law No. 10; Principle VII of the “Principles of International Law Recognised in the Charter of the Nuremberg Tribunal and in the Judgement of the Tribunal”, adopted by the International Law Commission of the United Nations, 1950, UNGA, Official record, 5<sup>th</sup> Session, Supp. No. 12, UN Doc. A/1316 (1950).

<sup>1762</sup> See Articles 22, 24, 141, 145 of the SFRY Criminal Code. See also *Ojdanić* Appeal Decision on Motion Challenging Jurisdiction, para. 21.

<sup>1763</sup> “It means one who is associated with another in the commission of a crime, but his association may be either as a principal or as one who aids and abets the principal”: Separate Opinion of Judge David Hunt on *Ojdanić* Appeal Decision on Motion Challenging Jurisdiction, para. 29. See, e.g.: *A-G Israel v. Eichmann* (1968) 36 ILR 18 (District Court, Jerusalem), paras 193-194. The term’s ambivalence was noted by the Appeals Chamber in the *Krnjelac* Appeal Judgement, where it found that “this term has different meanings depending on the context and may refer to a *co-perpetrator* or an *aider and abettor*”: *Krnjelac* Appeal Judgement, para. 70 (emphasis in the original). Errors in the translation of the French and English terms added further to the confusion of the two meanings; the term “accomplice” may be translated into “*complice*” or into “*co-auteur*” depending on the context. See *Krnjelac* Appeal Judgement, para. 71 and fns 98, 101, 104. See also *Krstić* Appeal Judgement, para. 139 and fn. 233. The distinction between the two meanings is of some significance because it relates to the *mens rea* which must be established: Separate Opinion of Judge David Hunt on *Ojdanić* Appeal Decision on Motion Challenging Jurisdiction, para. 29. See further section on individual criminal responsibility, VII. *supra*.

<sup>1764</sup> “The Prosecution notes that it has charged Complicity in Genocide as a separate count in this case because of the uncertainty of the existing jurisprudence on these issues”: Prosecution Final Brief, fn. 856.

<sup>1765</sup> See Simester, A.P. and Sullivan, G.R., *Criminal Law: Theory and Doctrine* (Hart Publishing), Oxford, 2003, p. 237. See also Cassese, A., *International Criminal Law* (Oxford University Press), Oxford, 2003, p. 179. The coexistence of Article 7(1) and 4(3) is responsible for the exception identified in fn. 856 of the Prosecution Final Brief: whereas for crimes in Articles 2, 3 and 5 of the Statute, convictions for aiding and abetting are uniformly entered as convictions for the crime itself, convictions for accomplice liability for the crime of genocide may be entered as convictions for complicity in genocide. The Trial Chamber is aware that this is an anomaly, and therefore is not necessarily endorsing the view that complicity in genocide is a distinct crime separate from genocide (*see, a sensu contrario*, Prosecution Final Brief, para. 435). Rather, it agrees with the following view: “genocide and complicity in genocide are two different forms of participation in the same offence”: *Bagilishema* Trial Judgement, para. 67. The Trial Chamber also notes that no evidence was brought forth in the Prosecution Final Brief in support of the charge that the Accused was responsible pursuant to Article 7(3) for complicity in genocide under Article 4(3)(e). For this reason, the Trial Chamber finds it is unnecessary to address this issue altogether.

726. The Trial Chamber agrees that the most accurate description of the relationship between Article 4(3) and 7(1) of the Statute is the following:

[b]y incorporating Article 4(3) in the Statute, the drafters of the Statute ensured that the Tribunal has jurisdiction over all forms of participation in genocide prohibited under customary international law. The consequence of this approach, however, is that *certain* heads of individual criminal responsibility in Article 4(3) overlap with those in Article 7(1).<sup>1766</sup>

727. The Trial Chamber regards genocide under Article 4(3)(a) as encompassing principal offenders, including but not limited to the physical perpetrators and to those liable pursuant to the theory of JCE.<sup>1767</sup> By contrast, an accomplice to genocide under Article 4(3)(e) is someone who associates him or herself in the crime of genocide committed by another.<sup>1768</sup>

728. Complicity in genocide under Article 4(3)(e) necessarily implies that genocide has been or is being committed.<sup>1769</sup> However, an individual can be prosecuted for complicity in genocide even when the perpetrator of genocide has not been tried or even identified.<sup>1770</sup> An accused may not be convicted of genocide and complicity in genocide for the same acts.<sup>1771</sup>

(i) The objective element: *actus reus*

729. As a form of criminal participation, the meaning of complicity in genocide is governed by the general principles of criminal law.<sup>1772</sup> According to the jurisprudence of the Tribunal and of the

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<sup>1766</sup> *Krstić* Trial Judgement, para. 640 (emphasis added). See also *Krstić* Appeal Judgement, para. 138. The Trial Chamber disagrees with the Prosecution's submission that "this apparent 'overlap' in language between Article 7(1) and Article 4(3) of the Statute is an incidental result of the *verbatim* incorporation of Articles 4(2) and 4(3) from the Genocide Convention, and thus does not reflect a deliberate construction of particular language by the drafters of the Statute": Prosecution Final Brief, para. 435. The Appeals Chamber has held that: "[b]ecause the Statute must be interpreted with the utmost respect to the language used by the legislator, the Appeals Chamber may not conclude that the consequent overlap between Article 7(1) and Article 4(3)(e) is a result of an inadvertence on the part of the legislator where another explanation, consonant with the language used by the Statute, is possible": *Krstić* Appeal Judgement, para. 139.

<sup>1767</sup> *E.g.*: the Appeals Chamber in the *Krstić* case found that Krstić was "not guilty of genocide as a principal perpetrator" and that his criminal liability was "more properly expressed as that of an aider and abettor to genocide, and not as that of a perpetrator": *Krstić* Appeal Judgement, paras 134, 138 (emphasis added). It characterised his responsibility as aiding and abetting genocide under Article 7(1) of the Statute, but not pursuant to the provision of complicity in genocide under Article 4(3)(e), even though the latter was also alleged in the Indictment. See also *Krstić* Trial Judgement, para. 643: "It seems clear that 'accomplice liability' denotes a secondary form of participation which stands in contrast to the responsibility of the direct or principal perpetrators. The Trial Chamber is of the view that this distinction coincides with that between 'genocide' and 'complicity in genocide' in Article 4(3)". See also *Stakić* Trial Judgement, para. 532: "This Trial Chamber regards genocide as under Article 4(3)(a) as usually limited to 'perpetrators' or 'co-perpetrators' and *Stakić* Rule 98bis Decision, para. 51. A participant in a joint criminal enterprise has been understood to be liable as a co-perpetrator to the crime or crimes: *Vasiljević* Appeal Judgement, paras 95, 102.

<sup>1768</sup> See *Stakić* Trial Judgement, para. 533; *Akayesu* Trial Judgement, para. 527.

<sup>1769</sup> *Stakić* Trial Judgement, para. 533; *Stakić* Rule 98bis Decision, para. 52; *Akayesu* Trial Judgement, para. 530.

<sup>1770</sup> *Stakić* Trial Judgement, para. 533; *Stakić* Rule 98bis Decision, para. 52; *Akayesu* Trial Judgement, para. 531. See also *Krstić* Appeal Judgement, para. 143.

<sup>1771</sup> *Akayesu* Trial Judgement, para. 532. *Bagilishema* Trial Judgement, para. 67; *Nahimana et al* Trial Judgement, para. 1056.

<sup>1772</sup> See Partial Dissenting Opinion of Judge Shahabuddeen to the *Krstić* Appeal Judgement, Partial Dissenting Opinion of Judge Shahabuddeen, para. 65. Judge Shahabuddeen did not dissent from the Majority on this point.

ICTR, complicity in genocide under Article 4(3)(e) can consist of aiding and abetting genocide,<sup>1773</sup> although it is not to be excluded that there may be other acts which are not strictly aiding and abetting but which could amount to complicity.<sup>1774</sup> The Appeals Chamber has held that “the terms ‘complicity’ and ‘accomplice’ may encompass conduct broader than aiding and abetting”.<sup>1775</sup> Aiding and abetting genocide refers to all acts of assistance or encouragement that have substantially contributed to, or have had a substantial effect on, the completion of the crime of genocide by the principal offender.<sup>1776</sup>

(ii) The subjective element: *mens rea*

730. As stated, the meaning of complicity in genocide is governed by the general principles of criminal law. Complicity in genocide, where it consists of aiding and abetting genocide, does not require proof that the accomplice had the specific intent to destroy, in whole or in part, a protected group.<sup>1777</sup> In that case the Prosecution must prove beyond reasonable doubt “that an accused knew that his own acts assisted in the commission of genocide by the principal offender and was aware of the principal offender’s state of mind; it need not show that an accused shared the specific intent of the principal offender”.<sup>1778</sup>

2. The facts and findings

(a) The Protected Groups ‘In Whole’

731. The Trial Chamber will first identify the relevant protected groups for the purposes of the definition of genocide.

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<sup>1773</sup> The *Stakić* Trial Chamber observed that “there is no material distinction between complicity in genocide and “the broad definition accorded to aiding and abetting”: *Stakić* Trial Judgement, para. 531 (emphasis added); see also *Semanza* Trial Judgement, para. 394.

<sup>1774</sup> Prosecution Final Brief, fn. 856 and Appendix A to Prosecution Final Brief, fn. 84; *Bagilishema* Trial Judgement, para. 69 (“With regard to the *actus reus* of complicity in genocide, the Chamber notes that, under Common Law, the forms of accomplice participation are usually defined as ‘aiding and abetting, counselling and procuring’. On the other hand, in most Civil Law systems, three forms of accomplice participation are recognised: complicity by instigation, by aiding and abetting, and by procuring means”). See also Partial Dissenting Opinion of Judge Shahabuddeen, paras 64, 68. Judge Shahabuddeen did not dissent from the Majority on this point.

<sup>1775</sup> *Krstić* Appeal Judgement, para. 139. *Krnjelac* Appeal Judgement, para.70; *Tadić* Appeal Judgement, paras 220, 229.

<sup>1776</sup> See *Semanza* Trial Judgement, para. 395. See also *Stakić* Trial Judgement, para. 533; *Akayesu* Trial Judgement, paras 529-530.

<sup>1777</sup> *Krstić* Appeal Judgement, para. 142 *a sensu contrario*. See also *ibid.*, para. 140. The Appeals Chamber took “no position on the *mens rea* requirement for the conviction for the offence of complicity in genocide under Article 4(3) of the Statute where this offence strikes broader than the prohibition of aiding and abetting”: *ibid.*, fn. 247. The Trial Chamber does not find it necessary to take a position on this issue either.

<sup>1778</sup> Rule 98bis Decision, para. 66. See also Rule 98bis Appeals Decision, para. 7; *Akayesu* Trial Judgement, paras 540-541, 544; *Musema* Trial Judgement, para. 182; *Bagilishema* Trial Judgement, para. 71; *Semanza* Trial Judgement, paras 394-395: an “accused must have acted intentionally and with the awareness that he was contributing to the crime of genocide, including all its material elements”. See also Partial Dissenting Opinion of Judge Shahabuddeen, para. 65. Judge Shahabuddeen did not dissent from the Majority on this point.

732. The Indictment alleges that the Accused participated in a campaign “designed to destroy Bosnian Muslim and Bosnian Croat groups, in whole or in part, as national, ethnical, racial, or religious groups, as such, in the municipalities listed in paragraph 4 [of the Indictment], which formed part of the ARK”.<sup>1779</sup> In its Rule 98*bis* Decision, the Trial Chamber, based on the Prosecution’s submission at that stage, understood this to mean that the Bosnian Muslims and Bosnian Croats were the protected groups “in whole” in this case.<sup>1780</sup>

733. During closing arguments, after the Appeal Judgement had been rendered in the *Krstić* case, the Presiding Judge asked the parties to “assist the Trial Chamber in identifying what [they] consider[ed] to be the evidence relevant to the requirement of substantiality of the part of each of the protected groups allegedly intended for destruction”.<sup>1781</sup> The parties did so in writing.<sup>1782</sup> In this filing as well as in its Final Brief, the Prosecution maintained that its “*primary position* on the question of defining the group ‘in whole’ is that the protected groups ‘in whole’ in this case are the Bosnian Muslims and Bosnian Croats of the ARK”.<sup>1783</sup> It submitted, nevertheless, that the ultimate conclusion it seeks – namely that the Accused and other participants acted with genocidal intent – should be the same regardless of whether the Bosnian Muslims and Bosnian Croats of the ARK are identified as part of the protected groups or as the protected groups “in whole”.

734. The Prosecution’s submission that the protected groups “in whole” in this case are the Bosnian Muslims and Bosnian Croats of the ARK is not borne out by the evidence tendered at trial, particularly in light of the Trial Chamber’s prior determination of the definition of “protected groups” under the Genocide Convention.<sup>1784</sup> Contrary to the Prosecution submission,<sup>1785</sup> the

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<sup>1779</sup> Indictment, para. 36. As noted below, three municipalities were withdrawn in the Rule 98*bis* Decision.

<sup>1780</sup> Rule 98*bis* Decision, para. 49. See Public Version of “Prosecutor’s Response to the ‘Motion for Judgement of Acquittal –Rule 98*bis*’ filed on 5 September and Addendum filed on 16-17 September 2003”, 2 October 2003, para. 290 (footnotes omitted): “Although the Bosnian Muslims and Bosnian Croats are the protected groups in this case, the Prosecution submits that the intent requirement of Article 4(2) is satisfied by an intent to destroy the Bosnian Muslim and Bosnian Croat groups within a limited geographic area, namely the ARK.” See also *ibid.*, para. 298: “In light of the jurisprudence and the facts established by the evidence, the Prosecution submits that the Accused and other participants in the joint criminal enterprise intended to destroy the Bosnian Muslim and Bosnian Croat groups in the ARK, *i.e.*, a geographically limited part of the Bosnian Muslim and Bosnian Croat groups”. This view is reinforced by paragraph 28 of the Indictment: “All acts or omissions charged as Genocide or Complicity in Genocide, were committed with intent to destroy, in whole or in part, Bosnian Muslims and Bosnian Croats, a national, ethnical, racial or religious group, as such”.

<sup>1781</sup> T. 25194.

<sup>1782</sup> Confidential Prosecution’s Response to Trial Chamber’s Questions Regarding Genocide and the *Krstić* Appeal Judgement, 29 April 2004; Defendant’s Submission on the Chamber’s Questions Regarding the *Krstić* Opinion, 4 May 2004.

<sup>1783</sup> Confidential Prosecution’s Response to Trial Chamber’s Questions Regarding Genocide and the *Krstić* Appeal Judgement, 29 April 2004, para. 8; see also Prosecution Final Brief, para. 527.

<sup>1784</sup> See E. 1. *supra*, “The protected groups” and *Krstić* Trial Judgement, para. 556. See Robert Donia, T. 831-832 ; see also ex. P53, “Expert Report of Robert Donia”, pp. 3-4: “The term ‘Bosnian’ refers to an inhabitant of BiH. Within that broad designation, most Bosnians also identify themselves as belonging to one of three nationalities: Serb, Croat, or Bosnian Muslim [...] Inhabitants of BiH who are Serb or Croat by nationality are frequently called Bosnian Serbs and Bosnian Croats. One often finds them described simply as ‘Serb’ or ‘Croat’, without the adjectival ‘Bosnian’, when it is obvious that the referent is an inhabitant of BiH”. The Trial Chamber is satisfied in light of this definition that Bosnian

evidence clearly shows that the Bosnian Serb political leadership, including the ARK leadership, viewed the totality of the Bosnian Muslims and Bosnian Croats as specific national, ethnical, racial or religious groups.<sup>1786</sup> Conversely, no national, ethnical, racial or religious characteristic makes it possible to differentiate the Bosnian Muslims and Bosnian Croats residing in the ARK, at the time relevant to the Indictment, from the other Bosnian Muslims and Bosnian Croats. The only distinctive criterion would be their geographical location, not a criterion contemplated by the Genocide Convention.<sup>1787</sup> In addition, the Prosecution has not submitted any evidence that the Bosnian Muslims and Bosnian Croats residing in the ARK at the time relevant to the Indictment considered themselves a distinct national, ethnical, racial or religious group among the Bosnian Muslims and Bosnian Croats.

735. As stated earlier, where more than one group is targeted, the elements of the crime of genocide must be considered in relation to each group separately. The Trial Chamber has found that the majority of victims of acts potentially falling under Article 4(2) (a) to (c) of the Statute belong to the Bosnian Muslim group.<sup>1788</sup> Still, although the number of Bosnian Croats inhabiting the territory covered by the Indictment was much inferior to the number of Bosnian Muslims,<sup>1789</sup> the Trial Chamber finds that the evidence of crimes committed against Bosnian Croats is sufficient to allow it to conclude that the Bosnian Croat group was separately targeted, as such.<sup>1790</sup>

736. The Trial Chamber concludes that the protected groups, within the meaning of Article 4 of the Statute, must be defined, in the present case, as the Bosnian Muslims and Bosnian Croats, as

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Croats qualify as a protected group even if there was “a clear difference between the Bosnian Croats or the Bosnian Serbs compared with the Bosnian Muslims or the Bosniaks, as they call themselves. They didn’t have a motherland. They didn’t have any prospect to be supported by other communities outside Bosnia-Herzegovina and its own nationality as Bosnian Muslims”: see T. 10604-20605 (closed session).

<sup>1785</sup> “It is submitted that this definition [that the protected groups “in whole” in this case are the Bosnian Muslims and Bosnian Croats of the ARK] best comports with the subjective perceptions of the Accused and others who implemented the genocidal plan in the ARK”: Confidential Prosecution’s Response to Trial Chamber’s Questions Regarding Genocide and the *Krstić* Appeal Judgement, 29 April 2004, para. 8.

<sup>1786</sup> Ex. P50, “Minutes of the 16<sup>th</sup> session of the SerBiH Assembly held on 12 May 1992”, p.33: comment by Dušan Kozčić that “the enemy – Ustašas and Mujahedin – must be defeated by whatever means are necessary”; pp 41, 47: Ratko Mladić stated: “...the head of the dragon of fundamentalism lies beneath our hammer. The enemy has attacked with all its might from all directions. And it is a common enemy, regardless whether it is the Muslim hordes or Croatian hordes...”; ex. P1532, videotape, during the celebration of the third anniversary of the take-over of Mount Kozara, Vojo Kuprešanić stated: “We, in the assembly of the former Bosnia and Herzegovina, knew that nothing could be achieved with the Muslims and Croats, the anti-Serbian coalition, and we were happy to part ways with them”. The Accused used the term “Balija” to refer to Muslims and “Ustaša” to refer to Croats: Amir Džonlić, T. 2303-2305.

<sup>1787</sup> See *Krstić* Trial Judgement, para. 559.

<sup>1788</sup> See E.2. *infra*, “The underlying acts”.

<sup>1789</sup> Ex. P60, “Croatia National Statistics Depot, Population of Bosnia and Herzegovina, Permanent Population by Ethnicities in Municipalities; Censuses of 1971, 1981 and 1991” dated April 1995, which contains the 1991 census for BiH. According to the 1991 census, the total population of the 13 municipalities addressed in the Indictment was 724,137 inhabitants. Approximately 8.74% were Croats, whilst 32.19% were Muslims.

<sup>1790</sup> This can be seen particularly in those municipalities where they were more numerous, such as Kotor Varoš and Teslić: ex. P60, “Croatia National Statistics Depot, Population of Bosnia and Herzegovina, Permanent Population by Ethnicities in Municipalities; Censuses of 1971, 1981 and 1991” dated April 1995, which contains the 1991 census for BiH. See E.2. *infra*, “The underlying acts”. See also T. 20624-20625 (closed session).

such. The Bosnian Muslims and Bosnian Croats of the ARK would therefore constitute parts of the protected groups. The question of whether the intent to destroy these parts of the protected groups falls under the definition of genocide is discussed below.

(b) The Underlying Acts

737. The Indictment alleges that genocide was committed through the commission of the following underlying offences:

- (1) the killing of Bosnian Muslim and Bosnian Croat non-combatants by Bosnian Serb forces (including units of the 5<sup>th</sup> Corps/ 1<sup>st</sup> Krajina Corps) in villages and non-Serb areas; in camps and other detention facilities; and during the deportation or forcible transfer of the Bosnian Muslims and Bosnian Croats.
- (2) causing serious bodily or mental harm to Bosnian Muslim and Bosnian Croat non-combatants during their confinement in camps, other detention facilities, and during their interrogations at police stations and military barracks when detainees were continuously subjected to or forced to witness inhumane acts including murder, rape, sexual assault, torture and beatings.
- (3) detaining Bosnian Muslim and Bosnian Croat non-combatants under conditions calculated to bring about the physical destruction of a part of those groups; namely through beatings or other physical maltreatment as described above, starvation rations, contaminated water, insufficient or non-existent medical care, unhygienic conditions and lack of space.<sup>1791</sup>

(i) Killing Members of the Groups

738. The killing of Bosnian Muslims and Bosnian Croats is charged as genocide, and separately also as persecutions (a crime against humanity under Article 5(h) of the Statute), extermination (a crime against humanity under Article 5(b) of the Statute) and wilful killing (a grave breach under Article 2(a) of the Statute).<sup>1792</sup> Killings have already been dealt with in an earlier section of this judgement, where the Trial Chamber has found that at least 1,669 Bosnian Muslim and Bosnian Croat non-combatants were killed by Bosnian Serb forces.<sup>1793</sup>

739. In relation to those acts that have already been established, the Trial Chamber must also consider the additional criteria necessary for such acts to amount to “killing members of the group” under Article 4(2)(a). The elements of Article 4(2)(a) are identical to those required for wilful killing under Article 5(b) of the Statute, except that the former requires that they be committed against members of the protected groups. In relation to the finding that at least 1,669 Bosnian Muslims and Bosnian Croats were killed, the underlying act of killing members of the groups has been established.

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<sup>1791</sup> Indictment, para. 37.

<sup>1792</sup> Counts 3, 4 and 5.

<sup>1793</sup> See A.2. *supra*, “Conclusion on killings”.

740. The Prosecution has specifically charged a number of deaths caused by beatings at camps and other detention facilities both under “killings” and under “causing serious bodily or mental harm”. Where these have already been found by the Trial Chamber to amount to “killings”, the Trial Chamber has not entered a separate, additional finding under the heading of “causing serious bodily or mental harm”.

(ii) Causing Serious Bodily or Mental Harm to Members of the Group

741. The Indictment alleges that serious bodily or mental harm was inflicted on Bosnian Muslims and Bosnian Croats “during their confinement in camps, other detention facilities, and during their interrogations at police stations and military barracks”. The Trial Chamber has understood these allegations to correspond to every facility detailed in paragraph 42 of the Indictment.

742. A large number of Prosecution witnesses gave evidence about the serious bodily and mental harm inflicted on the detainees in camps and detention facilities established in the municipalities of the ARK and, as noted in a separate section below, about the conditions therein. As a preliminary matter, the Trial Chamber finds that evidence was adduced with respect to a number of detention facilities which were not charged in the Indictment.<sup>1794</sup> While such evidence may support the existence of an armed conflict or a widespread or systematic attack on a civilian population, no finding of guilt for the crimes of genocide and complicity in genocide may be made in respect of such uncharged incidents. With respect to the infliction of serious bodily or mental harm charged in the Indictment, the Trial Chamber finds that no evidence was adduced with respect to the following alleged incidents:

- Bosanska Kostajnica police station<sup>1795</sup> (Bosanski Novi municipality)
- Kotor Varoš Elementary School<sup>1796</sup> (Kotor Varoš municipality)
- Ribnjak camp<sup>1797</sup> (Prnjavor municipality)

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<sup>1794</sup> *E.g.*: evidence of the mistreatment of detainees at the Sanica police station in Ključ municipality: Ramiz Subašić, T. 10487-10488. Such evidence has been included in the General Overview section where appropriate.

<sup>1795</sup> Paragraph 42 of the Indictment alleges that: “At the Bosanska Koštajnica Police Station prominent and educated Bosnian Muslims were taken and beaten with metal and wooden sticks. A screwdriver was plunged into the flesh of detainees. A prisoner was beaten until unconscious”. The Prosecution conceded that its review of the evidence discovered no evidence for this allegation presented at trial, and thus withdrew this incident: Prosecution Final Brief, fn. 945.

<sup>1796</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004. Paragraph 42 of the Indictment alleges that: “At the Kotor Varoš Elementary School detainees were beaten and forced to perform sexual acts with each other. Some detainees died as a result of the beatings”. The evidence on this incident depends solely on the testimony of Prosecution witness Rašim Čirkić, who, after testifying in chief, never returned to the Tribunal for cross-examination by the Defence because of ill-health. Because the Defence has not had an opportunity to cross-examine the witness on these events, and there being absolutely no other evidence on them, the Trial Chamber has not considered it safe to rely only on his evidence.

- SUP building in Šipovo<sup>1798</sup> (Šipovo municipality)

743. In addition, the Trial Chamber finds that for the following incidents insufficient evidence was presented to allow it to conclude that the harm was serious enough to meet the threshold of causing serious bodily or mental harm:

- Bosanski Petrovac police station<sup>1799</sup> (Bosanski Petrovac municipality)
- Vijaka mill;<sup>1800</sup> Prnjavor police station<sup>1801</sup> (Prnjavor municipality)
- Krings factory;<sup>1802</sup> Sports hall;<sup>1803</sup> Lušci Palanka police station;<sup>1804</sup> a cellar of the house belonging to Simo Miljuš in Lušci Palanka<sup>1805</sup> (Sanski Most municipality)

<sup>1797</sup> Paragraph 42 of the Indictment alleges that: “At the Ribnjak camp detainees were made to carry out forced labour and beaten whilst carrying out such labour”. The Prosecution Final Brief contains no reference to the evidence. The Trial Chamber has been unable to find any evidence with respect to this camp.

<sup>1798</sup> Paragraph 42 of the Indictment alleges that: “In November 1992, a number of Bosnian Muslim non-combatants were detained by police officers. Those detained were taken to the SUP building in Šipovo. They were beaten with fists, feet and sticks and while handcuffed witnessed the beatings of other detainees”. This allegation has been withdrawn in the Prosecution Final Brief, para. 503.

<sup>1799</sup> Paragraph 42 of the Indictment alleges that: “At the police station in Bosanski Petrovac detainees were placed in overcrowded conditions, threatened with execution and were beaten”. The Trial Chamber is satisfied that at the police station in Bosanski Petrovac Bosnian Muslim detainees were interrogated. Detainees were kept there for about a fortnight in overcrowded conditions: Midho Družić, T. 16759-16761; Zijad Ramić, ex. P1979, 92bis statement, 1029881.

<sup>1800</sup> Paragraph 42 of the Indictment alleges that: “At the Vijaka mill detainees were interrogated about their ownership of weapons and beaten”. The Trial Chamber is satisfied that in mid-1992 the predominantly Muslim village of Lišnja was surrounded by Veljko Milanković’s men aka “Wolves of Vujčak”, the police and the VRS, and its citizens told, by Milanković and by Radivojević, the president of the Prnjavor executive board, to go to the sawmill, where they were kept by Milanković’s men and the police for about a day. All the detainees were Muslim with the exception of one Serb. One detainee was threatened by one of Milanković’s men who was drunk. The sawmill was under the charge of Milanković and Radisić: Rusmir Mujanić, T. 15998-16001, 16010-16012, 16015-16016, 16074, 16080-16081; Jasmin Odošić, T. 15083, 15132; BT-51, ex. P1784, 92bis statement, 635473 (under seal).

<sup>1801</sup> Paragraph 42 of the Indictment alleges that: “At the police station in Prnjavor detainees were beaten with fists, boots and truncheons and interrogated about their ownership of weapons”. The Trial Chamber is satisfied that interrogations were carried out in the Prnjavor police station. Whilst at the police station, detainees, including a boy as young as fourteen, were verbally abused by two soldiers with SAO Krajina (Croatia) insignia on their shoulders. Those conducting the interrogations were local reserve police officers, but also on some occasions, members of the Banja Luka CSB. Detainees suffered heavy bruising in the police station: BT-91, T. 15881; Rusmir Mujanić, T. 16030-16031, 16041-16043, 16099; BT-51, ex. P1784, 92bis statement, 635473 (under seal). The Prosecution Final Brief cites the evidence of witness Jasmin Odošić, T. 15134, 15171-15173, which however corresponds to events that took place in 1994.

<sup>1802</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004. Paragraph 42 of the Indictment alleges that: “At all seven facilities [including Krings factory] numerous detainees were subjected to regular beatings involving the use of fists, feet, batons, rifle butts, chair legs, bats, gun barrels, and other blunt objects. In some cases the beatings were so severe as to result in serious injury, permanent disfigurement and death”. The Trial Chamber is satisfied that around 3,000 Muslim men and women were held in the warehouse of the Krings Factory outside Sanski Most. The Krings factory was guarded by Serb soldiers, two of whom began to taunt detainees one night, although they gave up after a third intervened. At the beginning, guards were Serb soldiers, but these were replaced by police after 15 days: BT-108, ex. P839, 92bis statement, 2028505-2028506 (under seal); BT-16, T. 8089.

<sup>1803</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004. See preceding footnote for allegations in paragraph 42 of the Indictment referring, *inter alia*, to the Sanski Most sports hall. The Trial Chamber is satisfied that at the Sanski Most sports hall, men were separated from women and children. A large concentration of men remained, some of whom were later transferred to Manjača or released. They were all



744. The Trial Chamber will now proceed to detail its findings with respect to those camps and detention facilities in relation to which it is satisfied beyond reasonable doubt that serious bodily and/or mental harm was inflicted upon the Bosnian Muslim and Bosnian Croat detainees, and, further, that it was inflicted intentionally.

a. Banja Luka municipality

i. CSB building

745. The Trial Chamber is satisfied that, throughout summer 1992, upon being arrested, Bosnian Muslims and Bosnian Croats from various municipalities of the ARK were taken to the Banja Luka CSB, which was housed in the SUP building,<sup>1806</sup> and interrogated, before being transferred to other detention facilities.

746. Bosnian Muslims and Bosnian Croats arrested in the municipality of Kotor Varoš were transferred to the Banja Luka CSB for interrogation,<sup>1807</sup> prior to their transfer to Viz Tunjice Penitentiary<sup>1808</sup> and Mali Logor.<sup>1809</sup> A Bosnian Muslim arrested in Banja Luka was also taken to the CSB for interrogation.<sup>1810</sup> At the CSB building, Bosnian Muslims and Bosnian Croats were hit and kicked by policemen and by members of the Banja Luka Special Unit (aka “Specialists”), as they awaited their turn to be interrogated,<sup>1811</sup> as well as during interrogation.<sup>1812</sup> A Bosnian Muslim man suffered broken ribs and cuts to his face, whilst another broke a few teeth and still bears the marks

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Muslims, predominantly from the Mahala district of Sanski Most, of military age. Some remained there seven days. The Sanski Most sport hall was staffed by the regular and reserve police: Bekir Delić, T. 7947-7948, T. 8009; Sakib Muhić, T. 8113-8114, 8119; ex. P683, “Order of the Sanski Most Crisis Staff to Colonel Anicic regarding detainees in the Sports hall, to let some of them go after screening” dated 18 June 1992; ex. P685, “Order of the Sanski Most Crisis Staff” dated 18 June 1992 to Vlado Rašula, Ančić, Vinko, Došen: “In the matter of people imprisoned in the Sports hall, make a selection and release some”; BT-21, T8550-8551 (closed session).

<sup>1804</sup> See preceding footnote for allegations in paragraph 42 of the Indictment referring, *inter alia*, to the Lušći Palanka police station and to the cellar of the house belonging to Simo Miljuš in Lušći Palanka. The Trial Chamber is satisfied that a Muslim man was brought by soldiers in camouflage uniforms together with two others to the basement of a house owned by Simo Miljuš in Lušći Palanka. They were taken to the Lušći Palanka police station where he was interrogated by policemen, and hit by a soldier. Despite the indication that the other two were beaten more severely, there is no indication of the severity of the beatings: T. 6415-6417 (partly in private session).

<sup>1805</sup> See preceding footnote.

<sup>1806</sup> Muharem Krzić, T. 1625.

<sup>1807</sup> BT-72, T. 18405 (closed session); BT-69, T. 17703-17705 (closed session); see also ex. P2042.

<sup>1808</sup> BT-72, T. 18406 (closed session); ex. P2332 (under seal); ex. P2333 (under seal); see also ex. P2042.

<sup>1809</sup> BT-72, T. 18418 (closed session); see also ex. P2042.

<sup>1810</sup> BT-22, T. 4427.

<sup>1811</sup> BT-72, T. 18407 (closed session); see also ex. P2042.

<sup>1812</sup> BT-69, T. 17703-17705 (closed session); BT-22, T. 4427.

of strangulation.<sup>1813</sup> Samardžija, a commander of the Banja Luka CSB who was interrogating the latter, was present during the beatings.<sup>1814</sup>

ii. Manjača

747. Manjača was one of the major places of detention in the ARK, receiving detainees from various ARK municipalities and from other camps and detention facilities located therein.<sup>1815</sup>

748. The Trial Chamber is satisfied that Manjača was staffed by Bosnian Serb military police and was under the command of the 1<sup>st</sup> KK.<sup>1816</sup> The camp commander at Manjača was Lieutenant Colonel Božidar Popović.<sup>1817</sup>

749. Manjača began operating as a detention camp on 15 May 1992.<sup>1818</sup> At one given point there were approximately 3640 men detained in Manjača.<sup>1819</sup> Detainees at Manjača were predominantly Bosnian Muslims; there were also some Bosnian Croats and very few Bosnian Serbs.<sup>1820</sup>

750. The overwhelming majority of detainees were civilians that had never taken part in any fighting.<sup>1821</sup> There were a number of underage and elderly detainees in Manjača, as well as a mentally impaired man.<sup>1822</sup>

751. Detainees were subjected to regular beatings.<sup>1823</sup> Sometimes these beatings were selective.<sup>1824</sup> However detainees were systematically beaten upon arrival.<sup>1825</sup> On these occasions,

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<sup>1813</sup> BT-22, T. 4427; BT-69, T. 17705 (closed session).

<sup>1814</sup> BT-22, T. 4427; BT-72, T. 18415 (closed session); BT-76, ex. P2044, 92bis statement, 1028818 (under seal).

<sup>1815</sup> Ključ: BT-79, T. 11593 (closed session); Atif Džafić, ex. P1123, 92bis statement, 2004686; Sanski Most: Mirzet Karabeg, T. 6164; Prijedor – Omarska camp: BT-36, T. 11062 (closed session) – Kozarac: BT-104, T. 18533 (closed session); Bosanska Dubica, Bosanska Gradiška, Banja Luka and Croatia: Enis Šabanović, T. 6550; Kotor Varoš prison: BT-76, ex. P2044, 92bis statement, 1028823 (under seal).

<sup>1816</sup> BT-104, T. 18531 (closed session); Adil Medić, T. 2216.

<sup>1817</sup> Atif Džafić, ex. P1123, 92bis statement, 2004688; Adil Medić, T. 2216, 2226-2228; Amir Džonlić, T. 2362, 2386; ex. P841.5, “CSCE Rapporteur Mission to Banja Luka”, Meeting with Commandant of PW Camp Manjača, dated 3 September 1992.

<sup>1818</sup> Ex. P841.5, “CSCE Rapporteur Mission to Banja Luka”, Meeting with Commandant of PW Camp Manjača, dated 3 September 1992. It had been in operation earlier between 15 September 1991 to 1 November 1991 in the context of the war in Croatia.

<sup>1819</sup> Ex. P841.6, “McLeod Report on Manjača camp”, dated 3 September 1992; ex. P1617/ S 217 A, “Mayhew Report on Manjača and Trnopolje”, dated 4 September 1992; ex. P841.5, “CSCE Rapporteur Mission to Banja Luka”, Meeting with Commandant of PW Camp Manjača, dated 3 September 1992; Charles McLeod, T. 7318.

<sup>1820</sup> Ex. P1617/ S 217 A, “Mayhew Report on Manjača and Trnopolje”, dated 4 September 1992; ex. P841.6, “McLeod Report on Manjača camp”, dated 3 September 1992: “125 Croats, making 3.4% of the PW population, 96.5% Muslims, and 0.04% Serbs”.

<sup>1821</sup> Barney Mayhew, T. 13571; Adil Medić, T. 2220; Amir Džonlić, T. 2369; BT-104, T. 18533 (closed session); ex. P1617/ S 217 A, “Mayhew Report on Manjača and Trnopolje”, dated 4 September 1992: “The Bosnian Serb authorities claim these are prisoners of war. When pressed, they define prisoners of war as those who were arrested in combat zones. Combat zones appear in practice to have been local municipalities with a high proportion of Muslims. As far as we know there has been little fighting in these areas”; ex. P841.6, “McLeod Report on Manjača camp”, dated 3 September 1992.

<sup>1822</sup> Samir Dedić, T. 10424 ; Amir Džonlić, T. 2370; Faik Bišćević, T. 7168.

detainees were beaten by the military police that were manning the camp,<sup>1826</sup> and by those who had accompanied them in their transfer from their municipalities of origin.<sup>1827</sup> Beatings also took place during interrogations.<sup>1828</sup> Beatings were inflicted with the use of, amongst others, fists, feet, batons, wooden poles, rifle butts and electric cables.<sup>1829</sup>

752. In some cases, these beatings were so severe as to result in serious injury.<sup>1830</sup> After the beatings some detainees had to be taken to the infirmary, and even physically carried.<sup>1831</sup> At times the camp guards would forbid visits to the infirmary, regardless of the detainee's state of health.<sup>1832</sup> Detainees witnessed beatings being inflicted on other detainees.<sup>1833</sup>

753. Detainees were cowed in attitude, and forced to look to the ground until spoken to directly.<sup>1834</sup>

754. At Manjača, beatings were administered for the most part by the military police in charge of guarding the camp.<sup>1835</sup> The most brutal camp guards included Željko Bulatović (aka "Fadil Bula"), Zoran LNU (aka "Zoka"), "Pop" and "Špaga".<sup>1836</sup>

755. No evidence has been presented before the Trial Chamber that, as alleged in the Indictment, in Manjača, detainees were subjected to acts of sexual degradation.<sup>1837</sup>

756. The situation improved with the visits of the ICRC, and beatings became less frequent.<sup>1838</sup>

757. The Trial Chamber is satisfied that its commander, Božidar Popović, was aware of the beatings being inflicted upon the detainees. The Trial Chamber has already found that detainees

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<sup>1823</sup> Atif Džafić, ex. P1123, 92bis statement, 2004687; Samir Dedić, T. 10427; Jakov Marić, T. 10833.

<sup>1824</sup> Atif Džafić, P1123, 92bis statement, 2004685; BT-26, T. 9165 (closed session). The bases for selection are not clear from the evidence: *see* Atif Džafić, ex. P1123, 92bis statement, 2004687; Adil Draganović, T. 5088.

<sup>1825</sup> Muhamed Filipović, T. 9613.

<sup>1826</sup> BT-26, T. 9163-9164 (closed session); Enis Šabanović, T. 6490.

<sup>1827</sup> Thus, for example, from Prijedor, the intervention squad: BT-42, ex. P564, T. 1940-1941 (under seal). From Sanski Most, Daniluško Kajtez and Milan Camber, amongst others: Sakib Muhić, T. 8127-8128.

<sup>1828</sup> Atif Džafić, ex. P1123, 92bis statement, 2004687; Asim Egrlić, T. 10568; Ahmed Zulić, T. 6931; Bekir Delić, T. 8017-8018.

<sup>1829</sup> Ahmed Zulić, T. 6933; BT-26, T. 9219 (closed session); Asim Egrlić, T. 10606; Adil Draganović, T. 5008.

<sup>1830</sup> Sakib Muhić, T. 8134-8136; Atif Džafić, ex. P1123, 92bis statement, 2004685. The Trial Chamber has already found that some beatings also resulted in death. *See* A.2. *supra*, "The killing of a number of men in Manjača between 1 June and 18 December 1992 –Banja Luka municipality".

<sup>1831</sup> Atif Džafić, ex. P1123, 92bis statement, 2004685.

<sup>1832</sup> Atif Džafić, ex. P1123, 92bis statement, 2004685.

<sup>1833</sup> BT-36, T. 11063-11064 (closed session).

<sup>1834</sup> Barney Mayhew, T. 13570, 13577; ex. P1617/ S 217 A, "Mayhew Report on Manjača and Trnopolje", dated 4 September 1992; Charles McLeod, T. 7317-7318; Enis Šabanović, T. 6611; Ahmed Zulić, T. 6937.

<sup>1835</sup> Ahmed Zulić, T. 6933-6934; BT-26, T. 9219 (closed session).

<sup>1836</sup> Asim Egrlić, T. 10606-10607; Sakib Muhić, T. 8144-8145; Atif Džafić, ex. P1123, 92bis statement, 2004688; BT-26, T. 9220 (closed session); Muhamed Filipović, T. 10106; Jakov Marić, T. 10833.

<sup>1837</sup> The references in the Prosecution Final Brief contain no information on these events. The Trial Chamber has been unable to find any indication of these events in the evidence.

died inside Manjača camp as a result of beatings.<sup>1839</sup> Popović ordered that death certificates giving a false account of the cause of death be issued.<sup>1840</sup> Moreover, the detainees' cowed attitude could only be the result of a very strict discipline regime.<sup>1841</sup> In addition, the Trial Chamber is satisfied that General Talić was aware of the mistreatment being visited upon detainees and of the conditions in Manjača camp. At a meeting in the army club in Banja Luka on 22 June 1992, Adil Medić described the conditions he had witnessed in Manjača camp to General Talić, and told him that detainees said they were being mistreated.<sup>1842</sup> On one occasion, Vojo Kuprešanić visited Manjača camp.<sup>1843</sup>

iii. Mali Logor<sup>1844</sup>

758. Bosnian Muslim and Bosnian Croat detainees were held at Mali Logor military prison<sup>1845</sup> together with regular inmates, including Bosnian Serbs, some of whom had been sentenced before the war.<sup>1846</sup> Some Bosnian Muslim and Bosnian Croat detainees who were charged with armed rebellion were held there prior to being brought before the military judge.<sup>1847</sup>

759. The Trial Chamber is satisfied that beatings also took place regularly in Mali Logor, involving amongst others the use of fists, feet and batons,<sup>1848</sup> and resulting in serious injury or death.<sup>1849</sup> These beatings focused on Bosnian Muslims and Bosnian Croats.<sup>1850</sup> A Bosnian Croat detainee was forced by a Bosnian Serb military policeman to slap other detainees.<sup>1851</sup> He suffered psychological damage as a result of his detention and these problems continue to this day.<sup>1852</sup> Detainees witnessed these beatings being inflicted on others.<sup>1853</sup>

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<sup>1838</sup> BT-26, T. 9222 (closed session).

<sup>1839</sup> See A.2. *supra*, "The killing of a number of men in Manjača between 1 June and 18 December 1992 –Banja Luka municipality".

<sup>1840</sup> Enis Šabanović, T. 6517.

<sup>1841</sup> Barney Mayhew, T. 13570, 13577; ex. P1617/ S 217 A, "Mayhew Report on Manjača and Trnopolje", dated 4 September 1992.

<sup>1842</sup> Adil Medić, T. 2231-2232, 2276.

<sup>1843</sup> Enis Šabanović, T. 6577; Adil Draganović, T. 5114; Jakov Marić, T. 10833-10834.

<sup>1844</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1845</sup> BT-104, T. 18532 (closed session).

<sup>1846</sup> BT-72, T. 18419-18420 (closed session).

<sup>1847</sup> BT-72, T. 18434-18435 (closed session); Fikret Đikić, ex. P2042, 92*bis* statement, 338687.

<sup>1848</sup> Asim Egrić, T. 10565; BT-72, T. 18434 (closed session); Fikret Đikić, ex. P2042, 92*bis* statement, 338687.

<sup>1849</sup> BT-72, T. 18432-18433 (closed session).

<sup>1850</sup> BT-104, T. 18537 (closed session); Muhamed Filipović, T. 9595.

<sup>1851</sup> BT-72, T. 18434 (closed session).

<sup>1852</sup> BT-72, T. 18434 (closed session).

<sup>1853</sup> Muhamed Filipović, T. 9595; Asim Egrić, T. 10566.

760. It was evident to the judiciary of Banja Luka military court that these beatings were taking place, but their occurrence was not stopped nor were the perpetrators punished.<sup>1854</sup>

761. No evidence has been presented before the Trial Chamber that, as alleged in the Indictment, in Mali Logor, detainees were forced to perform sexual acts upon each other.<sup>1855</sup>

#### iv. Viz Tunjice Penitentiary

762. The camp at Viz Tunjice held both Bosnian Muslim and Bosnian Croat detainees, some of whom were detained under the authority of the Banja Luka CSB until criminal proceedings against them could be initiated.<sup>1856</sup> This prison also contained regular inmates who had been sentenced before the war, including Bosnian Serbs.<sup>1857</sup>

763. Bosnian Muslim and Bosnian Croat detainees were beaten immediately upon arrival with fists, feet and truncheons.<sup>1858</sup> They were subjected to ethnic slurs.<sup>1859</sup> A detainee's tooth was broken as a result of a Bosnian Serb prison guard introducing the barrel of his pistol into his mouth; he was also threatened with a knife.<sup>1860</sup> Another detainee suffered a broken cheekbone.<sup>1861</sup> On one occasion, the beatings resulted in the death of one detainee.<sup>1862</sup> Detainees did not receive any medical attention for the injuries they suffered.<sup>1863</sup>

764. The perpetrators of these beatings were the guards.<sup>1864</sup> Bosnian Muslim and Bosnian Croat detainees were also beaten by Bosnian Serb detainees.<sup>1865</sup>

765. Some detainees were transferred to Mali Logor. Prior to being transferred, they were beaten by the Viz Tunjice prison guards and by the Bosnian Serb military police that came to transfer them.<sup>1866</sup>

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<sup>1854</sup> BT-72, T. 18435 (closed session); BT-104, T. 18537-18539 (closed session).

<sup>1855</sup> The references in the Prosecution Final Brief contain no information on these events. The Trial Chamber has been unable to find any indication of this incident in the evidence.

<sup>1856</sup> Fikret Đikić, ex. P2042, 92bis statement, 2032813; BT-72, T. 18382, 18408, 18417 (closed session); Vahid Mujkanović, ex. P1980.1, 92bis statement, 2299904-2299905.

<sup>1857</sup> BT-72, T. 18411, 18463 (closed session).

<sup>1858</sup> BT-72, T. 18408 (closed session); Fikret Đikić, ex. P2042, 92bis statement, 338686.

<sup>1859</sup> BT-72, T. 18408 (closed session).

<sup>1860</sup> BT-72, T. 18410-18411 (closed session).

<sup>1861</sup> Fikret Đikić, ex. P2042, 92bis statement, 338687.

<sup>1862</sup> Vahid Mujkanović, ex. P1980, 92bis statement, 2299904; BT-72, T. 18415, 18462 (closed session).

<sup>1863</sup> BT-72, T. 18412 (closed session).

<sup>1864</sup> BT-72, T. 18408 (closed session).

<sup>1865</sup> Fikret Đikić, ex. P2042, 92bis statement, 338687; BT-36, T. 11061-11062 (closed session).

<sup>1866</sup> BT-72, T. 18418 (closed session); Fikret Đikić, ex. P2042, 92bis statement, 338687.

b. Bosanska Krupa municipality

766. Beginning 21 April 1992, Bosnian Muslim and Bosnian Croat civilians were confined in the Jasenica Elementary School at the orders of the Bosanska Krupa War Presidency, and were later transferred to the Petar Kočić School until 21 August 1992.<sup>1867</sup>

i. Jasenica Elementary School

767. On 21 and 22 April 1992, at Jasenica, a village at a distance of 18 kilometres from Bosanska Krupa town, Bosnian Serb policemen confined approximately 60 Bosnian Muslims and a few Bosnian Croats in the local elementary school building.<sup>1868</sup> Upon arrival, detainees were subjected to ethnic slurs.<sup>1869</sup> They were held there until 1 or 2 May 1992.<sup>1870</sup>

768. Policemen and local Bosnian Serbs guarded the Jasenica Elementary School.<sup>1871</sup> A panel of three local Bosnian Serbs tried the detainees held at the Jasenica School. The president of the panel was Mladen Drljača, who was the secretary of the municipality and judge in the misdemeanours court.<sup>1872</sup> In addition, detainees were also interrogated at the police headquarters.<sup>1873</sup>

769. Detainees were beaten at least twice in Jasenica, by members of two paramilitary units, the 'Suha Rebra' and Šešelj's Men.<sup>1874</sup> Detainees lost consciousness and sustained injuries such as a cut to the leg, broken ribs and a fractured skull.<sup>1875</sup> One detainee was provided with medical treatment for his injuries.<sup>1876</sup> In addition to these two instances, detainees were also beaten by Bosnian Serb soldiers and civilians.<sup>1877</sup>

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<sup>1867</sup> BT-56, T. 17449, 17465. *See also* ex. P2029 (under seal); ex. P2030 (under seal).

<sup>1868</sup> BT-56, T. 17449, 17451, 17455; ex. P2081, "List of persons detained on 21 and 22 April in armed conflict in Bosanska Krupa" which bears the stamp of the Assembly of the Serbian Municipality of Bosanska Krupa, and states that it was delivered by the Jasenica police department on 22 April 1992.

<sup>1869</sup> BT-55, T. 17544.

<sup>1870</sup> BT-56, T. 17455.

<sup>1871</sup> BT-56, T. 17459.

<sup>1872</sup> BT-56, T. 17453; BT-55, T. 17544; Mirsad Palić, ex. P2040, 92*bis* statement, 844635.

<sup>1873</sup> BT-56, T. 17475.

<sup>1874</sup> *See* B.2. *supra*, "Jasenica school". *See also* BT-56, T. 17461-17464; Mirsad Palić, ex. P2040, 92*bis* statement, 844635.

<sup>1875</sup> BT-56, T. 17462.

<sup>1876</sup> BT-56, T. 17463.

<sup>1877</sup> Mirsad Palić, ex. P2040, 92*bis* statement, 844634.

ii. Petar Kočić Elementary School

770. At the beginning of May 1992, detainees from Jasenica School were transferred to the Petar Kočić School on the outskirts of Bosanska Krupa, where they remained until 21 August 1992.<sup>1878</sup> Approximately 50 to 60 Bosnian Muslims were detained at the Petar Kočić School.<sup>1879</sup>

771. Petar Senić, the commander of the police, was in charge of this detention facility which was staffed by local Serbs.<sup>1880</sup>

772. The Trial Chamber found that Bosnian Serb policemen administered electroshocks to a number of Bosnian Muslim detainees during interrogation, and that at least one of the detainees still suffers from the physical consequences of this treatment today.<sup>1881</sup> In addition, detainees, including two women, were regularly beaten by policemen and by passers-by, and made to sing Četnik songs.<sup>1882</sup>

c. Bosanski Petrovac municipality

i. Kozila logging camp

773. A detention facility was set up by the Bosanski Petrovac Crisis Staff at the beginning of July in the working site of the timber company 'Kozila', in the village of Drinici,<sup>1883</sup> about 20 kilometres from the town of Bosanski Petrovac.<sup>1884</sup> Prior to that, and since around early to mid-June 1992,<sup>1885</sup> some Bosnian Muslim civilians had been detained at the Bosanski Petrovac police station.<sup>1886</sup>

774. The detainees of the Kozila logging camp were Bosnian Muslim men of between 25 and 65 years of age, although there were also between two to six underage detainees from Sanica, in the

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<sup>1878</sup> BT-56, T. 17465, 17470.

<sup>1879</sup> BT-56, T. 17465-17466.

<sup>1880</sup> BT-56, T. 17474, 17475.

<sup>1881</sup> See B.2. *supra*, "Kozila camp". See also BT-56, T. 17476-17480 (partly in private session).

<sup>1882</sup> Mirsad Palić, ex. P2040, 92*bis* statement, 844637. The Trial Chamber has already found that at least one detainee, Mirsad Budimlić, died from his wounds as a result of the beatings he received from policemen. See A.2. *supra*, "The killing of a number of men in the Petar Kočić elementary school –Bosanska Krupa municipality".

<sup>1883</sup> Ahmet Hidić, T. 16262-16263.

<sup>1884</sup> Midho Družić, T. 16761-16764; Džemil Fazlić, ex. P1978, 92*bis* statement, 942941; Jovica Radojko, T. 20347-20349; ex. P1840, "List of 29 people for whom Bosanski Petrovac SJB has ordered isolation", who were taken to do labour at the Kozila camp on 1 July 1992.

<sup>1885</sup> Zijad Ramić, ex. P1979, 92*bis* statement, 1029880; Midho Družić, T. 16758; Džemil Fazlić, ex. P1978, 92*bis* statement, 942941-942942.

<sup>1886</sup> Midho Družić, T. 16759, 16761; Zijad Ramić, ex. P1979, 92*bis* statement, 1029881; ex. P1838, "Minutes of the Bosanski Petrovac Crisis Staff", 29 June 1992: "Conclusions: until the prison in Kozila is made operational, a plan should be made to arrest and bring in under custody all Muslims fit for military service who are thought to be capable of causing any harm to the Serbs". See also Jovica Radojko, T. 20347-20349; Ahmet Hidić, T. 16265.

municipality of Ključ.<sup>1887</sup> There were at least 80 detainees,<sup>1888</sup> all of whom were civilians.<sup>1889</sup> They remained there until about mid-August 1992.

775. Either “Cigo” Zorić or Milan Kresoje was in charge of the camp.<sup>1890</sup> They both belonged to the police administration in Bihać.<sup>1891</sup> In addition, detainees were guarded by between 20 to 40 Bosnian Serb guards, some of whom were locals from Bosanski Petrovac.<sup>1892</sup> About eight were Bosnian Serb guards from Bihać prison, where “Cigo” Zorić worked previously.<sup>1893</sup>

776. Beatings were administered regularly in the Kozila logging camp by “Cigo” Zorić and by the guards of the camp,<sup>1894</sup> including Željko Branković and Milan Knežević.<sup>1895</sup> Beatings took place during interrogations and involved the use of fists, feet, rifles, pistols and truncheons.<sup>1896</sup> A pistol was put to a Bosnian Muslim detainee’s head during one interrogation.<sup>1897</sup> A number of detainees were beaten together at the same time, and also forced to beat each other.<sup>1898</sup> During these beatings, detainees were called ‘Balija’, subjected to other ethnic slurs and humiliated.<sup>1899</sup>

777. Some detainees lost consciousness during these beatings.<sup>1900</sup> One could not walk the next day as a result of the beatings, the physical consequences of which he still suffers.<sup>1901</sup> Another was placed in solitary confinement for eleven days after being beaten.<sup>1902</sup>

## ii. Kamenica

778. On 6 August 1992 some sixteen detainees from the Kozila logging camp were transferred to a camp located in Kamenica, in the municipality of Titov Drvar.<sup>1903</sup> On 21 August 1992, about 20

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<sup>1887</sup> Džemil Fazlić, ex. P1978, 92bis statement, 942941-942942; Midho Družić, T. 16789. Witnesses described that there were detainees also from Prekaja and Drvar, from Orašac and Gornji Vakuf: Midho Družić, T. 16774; and from Kulen Vakuf: Džemil Fazlić, ex. P1978, 92bis statement, 942941.

<sup>1888</sup> Midho Družić, T. 16774; Džemil Fazlić, ex. P1978, 92bis statement, 942941; ex. P1840: “List of 29 people for whom Bosanski Petrovac SJB has ordered isolation”, who were taken to do labour at the Kozila camp on 1 July 1992.

<sup>1889</sup> Jovica Radojko, T. 20157-20159; Midho Družić, T. 16789.

<sup>1890</sup> Midho Družić, T. 16773, 16782-16783; Džemil Fazlić, ex. P1978, 92bis statement, 942942; Zijad Ramić, ex. P1979, 92bis statement, 1029882.

<sup>1891</sup> Midho Družić, T. 16782-16783; Zijad Ramić, ex. P1979, 92bis statement, 1029882.

<sup>1892</sup> Džemil Fazlić, ex. P1978, 92bis statement, 942942; Midho Družić, T. 16782-16783.

<sup>1893</sup> Zijad Ramić, ex. P1979, 92bis statement, 1029882.

<sup>1894</sup> Džemil Fazlić, ex. P1978, 92bis statement, 942942-942943; Midho Družić, T. 16778; Zijad Ramić, ex. P1979, 92bis statement, 1029883-1029886.

<sup>1895</sup> Midho Družić, T. 16781; Zijad Ramić, ex. P1979, 92bis statement, 1029882-1029884.

<sup>1896</sup> Midho Družić, T. 16781-16782; Zijad Ramić, ex. P1979, 92bis statement, 1029883-1029886.

<sup>1897</sup> Zijad Ramić, ex. P1979, 92bis statement, 1029884-1029885.

<sup>1898</sup> Midho Družić, T. 16800; Zijad Ramić, ex. P1979, 92bis statement, 1029884. See B.2. *supra*, “Kozila camp”.

<sup>1899</sup> Midho Družić, T. 16782, 16784-16787; Zijad Ramić, ex. P1979, 92bis statement, 1029884. See B.2. *supra*, “Kozila camp”.

<sup>1900</sup> Midho Družić, T. 16781; Zijad Ramić, ex. P1979, 92bis statement, 1029885.

<sup>1901</sup> Midho Družić, T. 16783-16784, 16813.

<sup>1902</sup> Zijad Ramić, ex. P1979, 92bis statement, 1029884.

<sup>1903</sup> Zijad Ramić, ex. P1979, 92bis statement, 1029885.



Bosnian Muslim detainees were transferred from the Petar Kočić School in the municipality of Bosanska Krupa.<sup>1904</sup> Altogether, one Bosnian Croat and about 70 Bosnian Muslim detainees from Ključ, Bosanski Petrovac, Kulen Vakuf and Bosanska Krupa, were held there.<sup>1905</sup> There were also 40 Bosnian Serbs who had refused to be mobilised or had deserted held there.<sup>1906</sup> The Bosnian Muslims and Bosnian Croats remained until 3 November 1992, when the ICRC arranged for most of them to be exchanged.<sup>1907</sup>

779. Initially the guards in Kamenica were the same as those in the Kozila logging camp, including “Cigo”, who was in charge. Later, as a result of the beatings meted out to detainees, he was replaced by a member of the 2<sup>nd</sup> Krajina Corps of the VRS.<sup>1908</sup>

780. In the evenings, detainees were forced to sing Serbian songs. They were also beaten with batons and fists.<sup>1909</sup> In Kamenica, detainees had to prepare firewood, dig trenches and make a fence around the camp.<sup>1910</sup>

#### d. Donji Vakuf municipality

781. Between mid-June and mid-September 1992,<sup>1911</sup> Bosnian Muslim and Bosnian Croat male civilians<sup>1912</sup> were detained by Bosnian Serb soldiers, military police and police officers<sup>1913</sup> in the SUP building in Donji Vakuf, and later variously confined in a detention camp at Vrbas Promet, a detention facility known as "The House" and the Territorial Defence warehouse.

##### i. SUP building

782. Non-Serbs were held at the police station by regular police for a short while, and were subsequently transferred to other detention facilities in the municipality of Donji Vakuf.<sup>1914</sup>

783. At the SUP building detainees were beaten with police batons, electric cables, steel rods, feet, clubs and chains. They also witnessed beatings being inflicted on others.<sup>1915</sup> The perpetrators

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<sup>1904</sup> BT-56, T. 17492.

<sup>1905</sup> BT-56, T. 17492-17493.

<sup>1906</sup> Zijad Ramić, ex. P1979, 92bis statement, 1029886.

<sup>1907</sup> BT-56, T. 17492, 17495; Zijad Ramić, ex. P1979, 92bis statement, 1029887.

<sup>1908</sup> Zijad Ramić, ex. P1979, 92bis statement, 1029886.

<sup>1909</sup> BT-56, T. 17493-17494.

<sup>1910</sup> BT-56, T. 17494; Zijad Ramić, ex. P1979, 92bis statement, 1029887.

<sup>1911</sup> Dževad Došlić, T. 14836; Alija Verem, ex. P1695, 92bis statement, 02061788.

<sup>1912</sup> Dževad Došlić, T. 14886; Safet Bibić, ex. P1694, 92bis statement, 2062053.

<sup>1913</sup> Alija Verem, ex. P1695, 92bis statement, 2061788; Safet Bibić, ex. P1694, 92bis statement, 2062051.

<sup>1914</sup> Safet Bibić, ex. P1694, 92bis statement, 2062053; BT-103, T. 19959 (closed session); ex. P1735, “List of arrested persons held in Donji Vakuf SJB from 27 May to 12 July 1992”, compiled on 12 July 1992 by the Donji Vakuf SJB and

of the beatings were, amongst others, Saša “Karatista” and Boško Bilić,<sup>1916</sup> and some Bosnian Serb soldiers.<sup>1917</sup>

ii. “The House”

784. At least between four and 12 Bosnian Muslim men were kept in a private house owned by a Bosnian Serb woman that was across the street from the MUP, some for about five days.<sup>1918</sup>

785. At this detention facility, detainees were beaten with fists, chopped wood, rifle butts, police batons and feet.<sup>1919</sup> As a result of those beatings one detainee sustained fractured ribs and a fractured index finger.<sup>1920</sup> Detainees witnessed the beating and resulting death of Mulo Robović as he was being taken to the TO warehouse.<sup>1921</sup>

786. The perpetrators of the beatings were Bosnian Serb soldiers, police officers and military police.<sup>1922</sup>

iii. Territorial Defence warehouse

787. The TO warehouse held around 80 Bosnian Muslim men, some for about 20 days.<sup>1923</sup> One of the detainees at the TO warehouse was underage.<sup>1924</sup>

788. The commander of the TO warehouse was Miodrag Đurkić.<sup>1925</sup> The warehouse was staffed by the Bosnian Serb military.<sup>1926</sup>

789. At the TO warehouse in Donji Vakuf, beatings occurred very often, also in front of other detainees.<sup>1927</sup> Detainees were beaten with electric cables, bats, rifle butts, and feet.<sup>1928</sup> Detainees who were relatives were forced to beat each other by running at full speed and butting their heads

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signed by prison warden Miodrag Đurkić; ex. P1759, “Register of persons brought in/ detained”, containing entries from 1 June 1992 to 27 February 1995.

<sup>1915</sup> Safet Bibić, ex. P1694, 92bis statement, 2062052; Alija Verem, ex. P1695, 92bis statement, 2061788.

<sup>1916</sup> Safet Bibić, ex. P1694, 92bis statement, 2062052.

<sup>1917</sup> Alija Verem, ex. P1695, 92bis statement, 2061788.

<sup>1918</sup> Safet Bibić, ex. P1694, 92bis statement, 2062052-2062054; Alija Verem, ex. P1695, 92bis statement, 2061788-2061789; BT-89, T. 14808, 19959 (closed session).

<sup>1919</sup> Safet Bibić, ex. P1694, 92bis statement, 2062052.

<sup>1920</sup> Safet Bibić, ex. P1694, 92bis statement, 2062053.

<sup>1921</sup> Safet Bibić, ex. P1694, 92bis statement, 2062053; Alija Verem, ex. P1695, 92bis statement, 2061789.

<sup>1922</sup> Safet Bibić, ex. P1694, 92bis statement, 2062052; Alija Verem, ex. P1695, 92bis statement, 02061789.

<sup>1923</sup> BT-103, T. 19957, (closed session); Alija Verem, ex. P1695, 92bis statement, 2061789-2061790; Dževad Došlić, T. 14839, 14846.

<sup>1924</sup> Alija Verem, ex. P1695, 92bis statement, 2061789.

<sup>1925</sup> Dževad Došlić, T. 14845.

<sup>1926</sup> Alija Verem, ex. P1695, 92bis statement, 2061789.

<sup>1927</sup> Dževad Došlić, T. 14842-14843.

against each other.<sup>1929</sup> Naim Sutković, an elderly detainee, died of his injuries as a result of a severe beating.<sup>1930</sup> Detainees witnessed the deaths of others.<sup>1931</sup> One of the detainees, a teacher, was beaten by his former student.<sup>1932</sup> No medical attention was provided to those injured as a result of the beatings.<sup>1933</sup>

790. The perpetrators of the beatings were Bosnian Serb local reserve policemen and two military policemen who were not from Donji Vakuf.<sup>1934</sup> Some of the perpetrators of the beatings at the TO warehouse also perpetrated the beatings at the SUP building.<sup>1935</sup>

#### iv. Vrbas Promet

791. Bosnian Muslim and Bosnian Croat civilians were confined in an empty warehouse at the Vrbas Promet trade factory.<sup>1936</sup> There were about 90 to 95 male detainees there.<sup>1937</sup> Two of them were underage.<sup>1938</sup> The length of detention varied between one and three months.<sup>1939</sup>

792. Miodrag Đurkić, who was also the commander of the TO warehouse, was the commander of the detention facility at Vrbas Promet.<sup>1940</sup> It was guarded by Bosnian Serb police.<sup>1941</sup>

793. Upon arrival, detainees had to run the gauntlet where they were beaten with fists, rifles and batons by Bosnian Serb policemen and soldiers. Amongst the latter was Stojan Subašić,<sup>1942</sup> who beat Dževad Hadžić, the former director of the company he used to work for, accusing him of driving it to bankruptcy.<sup>1943</sup> Other detainees witnessed these beatings.

794. Two detainees from Donji Vakuf were seen upon arrival to have been seriously beaten up. One had crosses carved out in his face, chest and back. However it has not been established beyond

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<sup>1928</sup> Alija Verem, ex. P1695, 92bis statement, 2061790.

<sup>1929</sup> Alija Verem, ex. P1695, 92bis statement, 2061790.

<sup>1930</sup> Alija Verem, ex. P1695, 92bis statement, 2061790.

<sup>1931</sup> Dževad Došlić, T. 14845.

<sup>1932</sup> Dževad Došlić, T. 14843.

<sup>1933</sup> Dževad Došlić, T. 14843.

<sup>1934</sup> Dževad Došlić, T. 14843-14844, 14903-14904, 14914.

<sup>1935</sup> Alija Verem, ex. P1695, 92bis statement, 2061789-2061790.

<sup>1936</sup> BT-103, T. 19958 (closed session); Safet Bibić, ex. P1694, 92bis statement, 2062053.

<sup>1937</sup> Dževad Došlić, T. 14848-14849; Safet Bibić, P1694, 92bis statement, 2062049, 2062053.

<sup>1938</sup> Dževad Došlić, T. 14851.

<sup>1939</sup> Dževad Došlić, T. 14852; Alija Verem, ex. P1695, 92bis statement, 02061792. Safet Bibić, ex. P1694, 92bis statement, 2062055.

<sup>1940</sup> Dževad Došlić, T. 14850; Safet Bibić, ex. P1694, 92bis statement, 2062054.

<sup>1941</sup> Dževad Došlić, T. 14849; Safet Bibić, ex. P1694, 92bis statement, 2062054.

<sup>1942</sup> Safet Bibić, ex. P1694, 92bis statement, 2062053.

<sup>1943</sup> Safet Bibić, ex. P1694, 92bis statement, 2062054; Alija Verem, ex. P1695, 92bis statement, 2061792.

reasonable doubt that these beatings and injuries were inflicted in this or any other Donji Vakuf detention facility.<sup>1944</sup> The Trial Chamber therefore makes no finding in regard to this incident.

795. Beatings continued during the course of detention at Vrbas Promet. Amongst the perpetrators of the beatings were those who were also responsible for beatings at the TO warehouse.<sup>1945</sup> On one occasion, Bosnian Serb soldiers came into the Vrbas Promet detention facility, and beat up the detainees.<sup>1946</sup>

796. Two detainees died whilst at the Vrbas Promet.<sup>1947</sup> They were not given any medical assistance.<sup>1948</sup> Other detainees witnessed their death.

797. The Trial Chamber is satisfied that detainees saw Nikola Kisin just as they were released from Vrbas Promet to be exchanged.<sup>1949</sup> Nikola Kisin, a former teacher, was the president of the SDS in Donji Vakuf, and had earlier been made responsible for setting up the Serbian Municipality of Donji Vakuf.<sup>1950</sup>

e. Bosanski Novi municipality

798. From early June 1992, Bosnian Muslim civilians in Bosanski Novi municipality were confined at the Mlavke football stadium,<sup>1951</sup> and later in the Bosanski Novi Fire Station,<sup>1952</sup> until the end of August 1992.

i. Mlavke football stadium

799. At the Mlavke Football Stadium, at least 700 Bosnian Muslim civilian men were held,<sup>1953</sup> some of whom had been transferred from the Omarska, Trnopolje and Keraterm camps.<sup>1954</sup> Some were elderly men.<sup>1955</sup>

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<sup>1944</sup> Safet Bibić, ex. P1694, 92bis statement, 2062054; Alija Verem, ex. P1695, 92bis statement, 2061792.

<sup>1945</sup> Dževad Došlić, T. 14852.

<sup>1946</sup> Safet Bibić, ex. P1694, 92bis statement, 2062054.

<sup>1947</sup> (1) Ljuban Mršić: Dževad Došlić, T. 14850-14851; Alija Verem, ex. P1695, 92bis statement, 02061792; (2) *fnu* Mehdić, whose ulcer ruptured as a result of the beatings: Safet Bibić, ex. P1694, 92bis statement, 2062055; Alija Verem, ex. P1695, 92bis statement, 2061792.

<sup>1948</sup> Dževad Došlić, T. 14850; Safet Bibić, ex. P1694, 92bis statement, 2062055; Alija Verem, ex. P1695, 92bis statement, 2061792.

<sup>1949</sup> Dževad Došlić, T. 14863, 14882, 14929; Safet Bibić, ex. P1694, 92bis statement, 2062055; Alija Verem, ex. P1695, 92bis statement, 2061792.

<sup>1950</sup> He was appointed “commissioner responsible for forming civilian organs of government in the Serbian Municipality of Donji Vakuf” by virtue of an order of the ARK Crisis Staff, dated 17 June 1992 and signed on behalf of Radoslav Brđanin: ex. P1725, “Conclusions of the ARK Crisis Staff”.

<sup>1951</sup> Midho Alić, T. 13907.

<sup>1952</sup> BT-83, T. 14067.

800. The Mlavke football stadium was staffed by Bosnian Serb army reservists,<sup>1956</sup> one of whom was Radenko Balaban.<sup>1957</sup>

801. Beatings took place at the Mlavke football stadium.<sup>1958</sup> As a result of the beating inflicted by a Bosnian Serb soldier, a detainee was blinded in one eye.<sup>1959</sup> Beatings also took place when drunk Bosnian Serb soldiers returned from the front.<sup>1960</sup>

802. The guards cursed, taunted and threatened the detainees with death, and subjected them to ethnic slurs.<sup>1961</sup> An armed Bosnian Serb soldier with a gun forced detainees to graze grass like animals, for the purposes of humiliating them.<sup>1962</sup>

ii. Bosanski Novi fire station

803. The Bosanski Novi fire station was staffed by Bosnian Serb military police and commanded by Bogdan Grab from Josava.<sup>1963</sup> Around 19 Bosnian Muslim men, amongst them prominent citizens, were confined there.<sup>1964</sup>

804. Beatings took place at the Bosanski Novi Fire Station with “baseball bats”, truncheons and wooden sticks, hands and feet, and a man was beaten to death.<sup>1965</sup> The beatings were carried out by the military police, including the commander Bogdan Grab, and occasionally by drunken Bosnian Serb soldiers returning from the front who were brought in to beat the detainees.<sup>1966</sup>

f. Ključ municipality

805. Following the Serb takeover of the municipality on 27 May, and during June 1992, Bosnian Muslim civilians from the town of Ključ and other villages in the municipality of Ključ were

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<sup>1953</sup> BT-81, T. 13797; Midho Alić, T. 13902; BT-87, ex. P1643, 92bis statement, 942597 (under seal); BT-50, ex. P1641, 92bis statement, 672861 (under seal); BT-82, T. 14003.

<sup>1954</sup> BT-50, ex. P1641, 92bis statement, 672861 (under seal); BT-83, T. 14111.

<sup>1955</sup> Midho Alić, T. 13944-13945.

<sup>1956</sup> Midho Alić, T. 13902; BT-81, T. 13798; BT-82, T. 14013; BT-87, ex. P1643, 92bis statement, 942603 (under seal).

<sup>1957</sup> It is not clear from the evidence whether he was the SDS President of Jošava, or his relative: BT-87, ex. P1643, 92bis statement, 942603 (under seal); BT-82, T. 14013.

<sup>1958</sup> BT-81, T. 13800 (private session); BT-82, T. 14017; Midho Alić, T. 13906-13907; BT-50, ex. P1641, 92bis statement, 672861 (under seal).

<sup>1959</sup> Midho Alić, T. 13907.

<sup>1960</sup> BT-50, ex. P1641, 92bis statement, 672861 (under seal).

<sup>1961</sup> Midho Alić, T. 13903; BT-82, T. 14002, 14017; BT-50, ex. P1641, 92bis statement, 672861 (under seal); BT-81, T. 13797.

<sup>1962</sup> BT-87, T. 14365; BT-87, ex. P1643, 92bis statement, 942603 (under seal).

<sup>1963</sup> BT-83, T. 14071-14073.

<sup>1964</sup> BT-83, T. 14073, 14111; BT-82, T. 13988.

<sup>1965</sup> BT-83, T. 14079, 14083, 14110.

<sup>1966</sup> BT-83, T. 14078.

arrested, by the police and the Bosnian Serb military and taken to the SUP building and to the Nikola Mačkić School.<sup>1967</sup>

i. SUP building<sup>1968</sup>

806. The SUP building, situated in the town of Ključ, was staffed and operated by the Bosnian Serb police. Vinko Kondić was the commander of the SJB and a member of the Ključ Crisis Staff.<sup>1969</sup> He participated, together with 'Todo' Gajić, a police investigator, in the interrogations.<sup>1970</sup>

807. Those arrested were beaten in a gauntlet at the steps of the entrance to the SUP building with feet, fists, batons, rifle-butts and chair legs, and were subjected to ethnic slurs.<sup>1971</sup> A prominent Bosnian Muslim was thrown down the stairs, and as a result carried into the SUP building unconscious, whilst another suffered a cut lip and broken ribs.<sup>1972</sup> As a result of the severity of the beatings, the former suffered a serious, lasting injury with continuing effects today.<sup>1973</sup>

808. In addition, those arrested were beaten inside the SUP building, during and outside interrogations.<sup>1974</sup> The perpetrators of these beatings were Bosnian Serb police officers and local civilians.<sup>1975</sup>

809. The deputy commander, Dragan Stojčić, observed the state of the detainees after the beatings and, in the case of one witness, verbally rebuked the perpetrators of the beatings for the state in which he found the witness.<sup>1976</sup>

ii. Nikola Mačkić School

810. The Nikola Mačkić School was staffed by regular and reserve policemen.<sup>1977</sup>

811. Civilians taken to the Nikola Mačkić School were beaten when forced to run a gauntlet outside the school, when they were hit and struck with various objects such as sticks, bats and rifles,

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<sup>1967</sup> BT-77, T. 10340; Nisvet Tičević, T. 10746, 10748; Muhamed Filipović, T. 9582, 9584; BT-26, T. 9157-9158 (closed session); Atif Džafić, ex. P1123, 92*bis* statement, 2004684; BT-77, T. 10353; Samir Dedić, T. 10402.

<sup>1968</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>1969</sup> Atif Džafić, ex. P1123, 92*bis* statement, 2004673, 2004678.

<sup>1970</sup> Muhamed Filipović, T. 9585, 9589-9590; Ramiz Subašić, T. 10489.

<sup>1971</sup> Muhamed Filipović, T. 9584, 9586, 9594; Asim Egrlić, T. 10562-10563; Ramiz Subašić, T. 10488; BT-26, T. 9158 (closed session).

<sup>1972</sup> Muhamed Filipović, T. 9586, 9589; Asim Egrlić, T. 10563.

<sup>1973</sup> Muhamed Filipović, T. 9592, 9632.

<sup>1974</sup> Muhamed Filipović, T. 9590; BT-26, T. 9160 (closed session).

<sup>1975</sup> BT-26, T. 9159-9160 (closed session); Muhamed Filipović, T. 9590.

<sup>1976</sup> Atif Džafić, ex. P1123, 92*bis* statement, 2004681; BT-26, T. 9103, 9161 (closed session); Muhamed Filipović, T. 9591-9592.

<sup>1977</sup> Nisvet Tičević, T. 10750.

and were verbally abused.<sup>1978</sup> Those gauntlets were variously composed of Bosnian Serb civilians or of regular and reserve Bosnian Serb soldiers and policemen.<sup>1979</sup>

812. Beatings took place both during and outside interrogations,<sup>1980</sup> including the beating of a boy who was 16 and a half and still attending high school, despite the fact that his age was known to the interrogators.<sup>1981</sup> Bosnian Serb regular and reserve police officers were the perpetrators of these beatings.<sup>1982</sup>

813. Bosnian Muslim former police officers were the object of particularly severe physical abuse and humiliation.<sup>1983</sup> Witness Atif Džafić, the former chief of the Ključ SJB, was taken before Captain 'Dusko' Milicević, an inspector of the Banja Luka CSB.<sup>1984</sup> Miličević beat another Bosnian Muslim police officer in the witness' presence whilst another captain beat the witness.<sup>1985</sup>

814. There was blood on the walls of the school and on the detainees.<sup>1986</sup> One detainee who was bleeding as a result of the beatings was forced to lick his own blood off the floor, which others witnessed.<sup>1987</sup> Detainees were forced to extend the three fingers in the Serbian salute.<sup>1988</sup>

815. On one occasion Dragan Stojčić chased out those who were forcing the detainees to extend the Serbian salute and sing Četnik songs.<sup>1989</sup> In addition, the municipal authorities were aware that Bosnian Muslims were beaten by Bosnian Serbs in the Nikola Mačkić School.<sup>1990</sup>

g. Kotor Varoš municipality

816. Beginning 11 June 1992, the first day of Bajram and the date when the Bosnian Serbs took over the municipality,<sup>1991</sup> Bosnian Muslim and Bosnian Croat civilians,<sup>1992</sup> were detained by

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<sup>1978</sup> Nisvet Tičević, T. 10748; Samir Dedić, T. 10402-10403; Atif Džafić, P1123, 92bis statement, 2004684;

<sup>1979</sup> Atif Džafić, ex. P1123, 92bis statement, 2004684; Nisvet Tičević, T. 10748.

<sup>1980</sup> Atif Džafić, ex. P1123, 92bis statement, 2004685-2004686; Samir Dedić, T. 10420.

<sup>1981</sup> Samir Dedić, T. 10388; BT-77, T. 10404.

<sup>1982</sup> Atif Džafić, ex. P1123, 92bis statement, 2004684-2004685; Samir Dedić, T. 10456-10457.

<sup>1983</sup> Atif Džafić, ex. P1123, 92bis statement, 2004684-2004685; Nisvet Tičević, T. 10749.

<sup>1984</sup> Atif Džafić, ex. P1123, 92bis statement, 2004685.

<sup>1985</sup> Atif Džafić, ex. P1123, 92bis statement, 2004685.

<sup>1986</sup> BT-77, T. 10354; Nisvet Tičević, T. 10749.

<sup>1987</sup> Atif Džafić, ex. P1123, 92bis statement, 2004686.

<sup>1988</sup> Atif Džafić, ex. P1123, 92bis statement, 2004685; Nisvet Tičević, T. 10749.

<sup>1989</sup> Nisvet Tičević, T. 10749.

<sup>1990</sup> T. 11608-11611 (closed session).

<sup>1991</sup> BT-71, T. 17617 (private session); BT-69, T. 17694, 17701 (closed session); BT-97, T.17898; BT-76, ex. P2044, 92bis statement, 1028817 (under seal).

<sup>1992</sup> BT-97, T. 17898; BT-71, T. 17617 (private session).

Bosnian Serb soldiers and by policemen,<sup>1993</sup> and variously confined at the Grabovica School, the police station, the prison or the sawmill in Kotor Varoš until November 1992.<sup>1994</sup>

i. Grabovica School

817. In November 1992, a group of 200 Bosnian Muslim men, women and children were detained at the Grabovica School.<sup>1995</sup> Women and children stayed there for one night. The Trial Chamber has already found that the men that remained behind were eventually killed.<sup>1996</sup>

818. The person in charge of the Grabovica School wore a camouflage uniform.<sup>1997</sup> Detainees were guarded by Bosnian Serb soldiers.<sup>1998</sup>

819. At the Grabovica School, women and children were verbally abused on departure by the local population.<sup>1999</sup> They were made to walk slowly through a gauntlet composed of civilians, mostly women and children, and were beaten.<sup>2000</sup> A Bosnian Serb woman attempted to stab an underage Bosnian Muslim, but was prevented by a soldier from doing so.<sup>2001</sup>

ii. Kotor Varoš police station<sup>2002</sup>

820. At least 10 Bosnian Croat and Bosnian Muslim men and one woman were detained at the police station.<sup>2003</sup>

821. The chief of the SUP at the time was a Bosnian Serb, Savo Tepić.<sup>2004</sup> Slobodan Dubocanin was a member of the Banja Luka Special Unit present at the Kotor Varoš police station.<sup>2005</sup>

822. Beatings occurred upon entering the police station, when detainees were forced to run through gauntlets composed of, on occasion, members of the 'Specialists',<sup>2006</sup> in the course of which they were beaten with baseball bats, batons, rifle butts, fists, and were kicked.<sup>2007</sup>

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<sup>1993</sup> BT-97, T. 17897-17898; BT-72, T. 18403 (closed session); BT-71, T. 17618 (private session); BT-71, ex. P2115, 01045840 (under seal); BT-69, T. 17701 (closed session). Slobodan Župljanin was at the command post of the Serbian army near Vrbanjci. He was the commander of the 22 Light Mountain Brigade, and the brother of Stojan Župljanin: BT-69, T. 17701 (closed session), BT-72, T. 18394 (closed session).

<sup>1994</sup> BT-76, ex. P2044, 92*bis* statement, 1028821 (under seal).

<sup>1995</sup> Elvedin Pašić, T. 19428, 19451.

<sup>1996</sup> Elvedin Pašić, T. 19432-19433. See A.2. *supra*, “The killing of a number of men in the school in Grabovica”.

<sup>1997</sup> Elvedin Pašić, T. 19431.

<sup>1998</sup> Elvedin Pašić, T. 19432.

<sup>1999</sup> Elvedin Pašić, T. 19431, 19434-19435.

<sup>2000</sup> Elvedin Pašić, T. 19431, 19434.

<sup>2001</sup> Elvedin Pašić, T. 19448-19449.

<sup>2002</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>2003</sup> BT-71, T. 17619 (private session); BT-76, ex. P2044, 92*bis* statement, 1028818 (under seal).

<sup>2004</sup> BT-69, T. 17765 (closed session); BT-72, T. 18392 (closed session).

<sup>2005</sup> BT-71, T. 17633-17634 (private session).



823. Detainees were also beaten and abused during interrogation. Detainees were beaten with batons, rifle butts and chair legs and feet.<sup>2008</sup> Beatings in some cases were extremely severe and lengthy.<sup>2009</sup> During interrogation, one detainee witnessed the beating of his brother by a 'Specialist'.<sup>2010</sup> Another detainee was forced to eat his statement, which he had written in the Latin script, and forced to rewrite it in Cyrillic.<sup>2011</sup>

824. Outside interrogation, Bosnian Muslim and Bosnian Croat male and female detainees were forced by a Bosnian Serb policeman to perform sexual acts with each other, in front of a crowd of cheering men in police and Bosnian Serb military uniforms, some of whom were wearing red berets.<sup>2012</sup> Two other male detainees, at least one of whom was a Bosnian Muslim, were forced to perform *fellatio* on each other by the 'Specialists' whilst being subjected to ethnic slurs.<sup>2013</sup>

825. Detainees were forced to extend the Serbian three-fingered salute and were beaten.<sup>2014</sup>

### iii. Kotor Varoš prison

826. Bosnian Muslim and Bosnian Croat detainees were held in this prison.<sup>2015</sup> These included women, who were kept separate.<sup>2016</sup> There were about 145 male detainees in three different rooms.<sup>2017</sup>

827. Goran Zarić, aka "Điba", a policeman from Kotor Varoš, was the commander of the prison.<sup>2018</sup> He was replaced with Zdravko Žutic after some detainees escaped at the end of August 1992.<sup>2019</sup> Guards wore blue camouflage uniforms.<sup>2020</sup> The guards were also replaced.<sup>2021</sup>

828. Detainees were beaten upon arrival, with feet and fists, by policemen, one of whom was from the neighbouring municipality of Skender Vakuf.<sup>2022</sup>

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<sup>2006</sup> BT-76, ex. P2044 92bis statement, 1028817-1028818 (under seal).

<sup>2007</sup> BT-76, ex. P2044, 92bis statement, 1028818 (under seal).

<sup>2008</sup> BT-71, T. 17635 (private session).

<sup>2009</sup> BT-71, T. 17635 (private session).

<sup>2010</sup> BT-76, ex. P2044, 92bis statement, 1028820 (under seal).

<sup>2011</sup> BT-71, T. 17635 (private session); BT-69, T. 17702 (closed session).

<sup>2012</sup> BT-71, ex. P2115, 92bis statement, 1045841-1045842 (under seal); BT-76, ex. P2044, 92bis statement, 1028820 (under seal).

<sup>2013</sup> BT-76, ex. P2044, 92bis statement, 1028819 (under seal).

<sup>2014</sup> BT-76, ex. P2044, 92bis statement, 1028819 (under seal).

<sup>2015</sup> BT-69, T. 1663, 17715 (closed session).

<sup>2016</sup> BT-69, T. 17738 (closed session); BT-76, ex. P2044, 92bis statement, 1028821 (under seal).

<sup>2017</sup> BT-76, ex. P2044, 92bis statement, 1028821 (under seal).

<sup>2018</sup> BT-97, T. 17960; BT-76, ex. P2044, 92bis statement, 1028821 (under seal).

<sup>2019</sup> BT-76, ex. P2044, 92bis statement, 1028822 (under seal).

<sup>2020</sup> BT-76, ex. P2044, 92bis statement, 1028821 (under seal).

<sup>2021</sup> BT-76, ex. P2044, 92bis statement, 1028822 (under seal).

<sup>2022</sup> BT-97, T. 17935.

829. Detainees in Room Three were physically mistreated by outsiders in olive-drab camouflage uniforms, particularly at night.<sup>2023</sup> As a result of these beatings one detainee suffered several bone fractures to nose, teeth and ribs.<sup>2024</sup>

830. Detainees were expected to clean the weapons of VRS soldiers. On one occasion Bosnian Croat detainees, having committed a mistake while cleaning, were punished by having to swallow the chemical solution used to clean the weapons' barrels.<sup>2025</sup>

831. Some detainees were beaten to death,<sup>2026</sup> or were executed after their beatings.<sup>2027</sup> Detainees in Room Three witnessed the deaths of other detainees as a result of the beatings.<sup>2028</sup> Dubočanin had called some of these detainees out.<sup>2029</sup>

iv. Kotor Varoš sawmill<sup>2030</sup>

832. There were over three hundred Bosnian Muslim and Bosnian Croat women and children and elderly men held at the sawmill.<sup>2031</sup>

833. They were guarded by Bosnian Serb soldiers from Kotor Varoš and by the 'Specialists' from Banja Luka.<sup>2032</sup>

834. The older men were mistreated by being forced to eat paper and drink petrol.<sup>2033</sup> A mentally impaired man was beaten by a Bosnian Serb soldier.<sup>2034</sup> Detainees were humiliated when they were forced to sing Serbian songs and to assume a praying position.<sup>2035</sup>

835. Female detainees were taken out during the night by Bosnian Serb soldiers who wore camouflage uniforms, and who were from Banja Luka, and by policemen from Kotor Varoš.<sup>2036</sup> At least two female detainees were raped.<sup>2037</sup>

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<sup>2023</sup> BT-69, T. 17713-17714, 17900 (closed session).

<sup>2024</sup> BT-69, T. 17740 (closed session).

<sup>2025</sup> BT-69, T. 17715 (closed session).

<sup>2026</sup> BT-69, T. 17735 (closed session); BT-69, T. 17736-17737 (closed session); BT-76, ex. P2044, 92bis statement, 1028821-1028822 (under seal).

<sup>2027</sup> BT-69, T. 17715-17716 (closed session).

<sup>2028</sup> BT-69, T. 17735-17736 (closed session); BT-76, ex. P2044, 92bis statement, 1028821-1028823, (under seal).

<sup>2029</sup> BT-69, T. 17778 (closed session); BT-76, 92bis statement, ex. P2044, 1028821 (under seal).

<sup>2030</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>2031</sup> BT-75, ex. P2045, 92bis statement, 371788 (under seal); BT-74, ex. P2046, 92bis statement, 1076161 (under seal).

<sup>2032</sup> BT-75, ex. P2045, 92bis statement, 371788 (under seal); BT-74, ex. P2046, 92bis statement, 1076162 (under seal).

<sup>2033</sup> BT-75, ex. P2045, 92bis statement, 371788 (under seal).

<sup>2034</sup> BT-74, ex. P2046, 92bis statement, 1076162 (under seal).

<sup>2035</sup> BT-75, ex. P2045, 92bis statement, 371788 (under seal).

<sup>2036</sup> BT-75, ex. P2045, 92bis statement, 371788-371789 (under seal).

<sup>2037</sup> BT-75, ex. P2045, 92bis statement, 371789 (under seal); T. 19437-19438 (private session).

#### h. Prijedor municipality

836. The Trial Chamber is satisfied that, beginning 25 May 1992, Bosnian Muslim and Bosnian Croat civilians were variously detained by the police and the Bosnian Serb military at Omarska camp, Keraterm camp, Trnopolje camp, the Miška Glava Community Centre, the Ljubija football stadium or the Prijedor SUP and barracks, until sometime during September 1992.<sup>2038</sup>

#### i. Omarska camp

837. Omarska camp was established by the civilian authorities of Prijedor municipality.<sup>2039</sup> It was staffed mainly by the police, although there may have been some Bosnian Serb soldiers amongst the guards.<sup>2040</sup> Željko Mejakić, the commander of the Omarska police station during the conflict, was the commander of Omarska camp.<sup>2041</sup> Miroslav Kvočka was deputy commander of the camp, and was replaced by Drago Prać, whilst Mlade Radić aka “Krkan” was a guard there.<sup>2042</sup>

838. Interrogators in Omarska were for the most part members of the Prijedor SUP.<sup>2043</sup> Some were from the Banja Luka CSB<sup>2044</sup> and from the army.<sup>2045</sup> The bad conditions in Omarska, Keraterm and Trnopolje were known to the police.<sup>2046</sup>

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<sup>2038</sup> BT-36, T. 10961-10962, 11004 (closed session); Muharem Murselović, ex. P1542, T. 2904; BT-33, ex. P1544, T. 3954-3959 (under seal); BT-2, ex. P561, T. 2657 (under seal); BT-42, ex. P564, T. 1849 (under seal); BT-34, ex. P558, T. 1063-1064 (under seal); Elvedin Našić, T. 12691.

<sup>2039</sup> Nusret Sivac, ex. P1547, T. 6753; Nusret Sivac, T. 12797-12798. *See* ex. P1237, “Order, SJB Prijedor”, dated 31 May 1992 and signed by Chief of Public Security Service Drljača: “With a view to the speedy and effective establishment of peace on the territory of Prijedor municipality and in accordance with the Decision of the Crisis Staff, I hereby order the following: 1. The industrial compound of the “Omarska” Mines strip mine shall serve as a provisional collection centre for persons captured in combat or detained on the grounds of the Security Services’ operational information”.

<sup>2040</sup> BT-27, ex. P1529, T. 4410 (under seal); ex. P1260, “War time police station, Omarska, List of workers providing security for the Omarska Collection Centre who need to be issued special passes”, dated 21 June 1992 and signed by Station Commander Željko Mejakić. It contains a list of, *inter alia*, members of the army unit helping out, and states: “The only other people entering the Collection Centre compound will be police employees, organised into three shifts and for whom regular records are kept”; ex. P1237, “Order, SJB Prijedor”, dated 31 May 1992 and signed by Chief of Public Security Service Drljača: “Security services at the collection centre shall be provided by the Omarska Police Station, with an adequate number of policemen who shall be present at the collection centre at all times and shall organise guard duty according to the on duty-on call-off duty principle”; ex. P1254, “Prijedor SJB to Chief of Banja Luka CSB, Report on the conduct of Banja Luka CSB special unit members”, dated 13 June 1992 and signed by SJB Chief Simo Drljača.

<sup>2041</sup> BT-1, ex. P1619, T. 4841 (under seal); ex. P1260, “War-time police station Omarska, List of workers providing security for the Omarska Collection Centre who need to be issued special passes”, dated 21 June 1992 and signed by station commander Željko Mejakić; Muharem Murselović, ex. P1542, T. 2737.

<sup>2042</sup> BT-1, ex. P1619, T. 4742, 4744-4745 (under seal); Nusret Sivac, ex. P1547, T. 12763, 12777; BT-27, ex. P1529, T. 4291 (under seal).

<sup>2043</sup> BT-27, ex. P1529, T. 4294 (under seal); Nusret Sivac, T. 12742.

<sup>2044</sup> Nusret Sivac, T. 12742; ex. P1237, “Order, SJB Prijedor”, dated 31 May 1992 and signed by Chief of Public Security Service Drljača: “A mixed group consisting of national, public and military security investigators shall be responsible for the work and categorisation of detainees. They shall organise themselves respecting the parity principle. Mirko Jesić, Ranko Mijić and Lieutenant Colonel Majstorović shall be responsible for their work”.

<sup>2045</sup> Ex. P1237, “Order, SJB Prijedor”, dated 31 May 1992; ex. DB113a, “Report of the Prijedor SJB on Reception Centres in Prijedor Municipality”, undated, signed by Station Chief Simo Drljača: “The Banja Luka CSB and the

839. In July 1992, the Accused together with others, including Radoslav Vukić, Stojan Župljanin and Predrag Radić visited Omarska camp.<sup>2047</sup> Male detainees were lined up and made to sing Serbian songs and to extend the Serbian three-fingered salute.<sup>2048</sup>

840. At a given point in summer 1992, Omarska contained about 3,000 detainees,<sup>2049</sup> predominantly Bosnian Muslim men.<sup>2050</sup> There were also Bosnian Croat men, and some Albanians, Ukrainians, Roma, a Serb and a Turk.<sup>2051</sup>

841. Between 30 and 35 women were also detained in Omarska.<sup>2052</sup> They were for the most part kept in the administration building,<sup>2053</sup> except for one of them, Hajra Hadžić, who was kept with the men.<sup>2054</sup> The women were made to serve meals to male detainees and to perform other chores.<sup>2055</sup> These women were later transferred to Trnopolje camp.<sup>2056</sup>

842. Minors<sup>2057</sup> and mentally impaired individuals<sup>2058</sup> were also detained at the camp.

843. As stated earlier, detainees were unofficially grouped into three categories by the investigators who drew up the lists, although in practice detainees from all three categories were

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Command of the Banja Luka Corps became actively involved in resolving the situation. They sent a large number of experienced professionals to Prijedor whereupon mixed teams consisting of members of national, public and military security were established, with the task of carrying out the operative processing of captured persons and determining for each individual the degree of personal responsibility in the armed rebellion”.

<sup>2046</sup> Ex. P1237, “Order, SJB Prijedor”, dated 31 May 1992 and signed by Chief of Public Security Service Drljača: “The security services co-ordinators shall submit a report on the preceding 24 hours to the Chief of the Prijedor Public Security Station daily at 1200 hrs, or immediately when the circumstances allow no delay. The chief of security shall do the same with regard to the operation of the security services and possible security problems (...) The implementation of this Order shall be supervised by Police Chief Dušan Janković in collaboration with the Banja Luka Security Services Centre and with the support of authorised executive personnel”. See also T. 21097-21106 (closed session).

<sup>2047</sup> Ex. P284, “Kozarski Vjesnik newspaper article”, Representatives of the Krajina in Prijedor, dated 17 July 1992; Predrag Radić, T. 21996-22000; Nurset Sivac, T. 12749-12751, 12754-12756.

<sup>2048</sup> Nurset Sivac, T. 12754-12756; BT-1, T. 13634-13639, 13644-13656.

<sup>2049</sup> BT-42, ex. P564, T. 1897 (under seal).

<sup>2050</sup> BT-42, ex. P564, T. 1902 (under seal).

<sup>2051</sup> BT-42, ex. P564, T. 1902-1903 (under seal).

<sup>2052</sup> Muharem Murselović, ex. P1542, T. 2730.

<sup>2053</sup> BT-2, ex. P561, T. 2657-2658 (under seal).

<sup>2054</sup> Muharem Murselović, ex. P1542, T. 2729-2730; BT-1, ex. P1619, T. 4771 (under seal).

<sup>2055</sup> BT-1, ex. P1619, T. 4826 (under seal).

<sup>2056</sup> Muharem Murselović, ex. P1542, T. 2730-2731.

<sup>2057</sup> BT-42, ex. P564, T. 1904-1905 (under seal); BT-1, ex. P1619, T. 4933 (under seal).

<sup>2058</sup> Nusret Sivac, ex. P1547, T. 6630; BT-42, ex. P564, T. 1908 (under seal).

held in the camp.<sup>2059</sup> Prominent members of the Bosnian Muslim and Bosnian Croat local communities were particularly targeted in Omarska.<sup>2060</sup>

844. At the Omarska camp detainees were systematically beaten upon arrival to the camp.<sup>2061</sup> They were thereafter beaten both routinely<sup>2062</sup> and during interrogation,<sup>2063</sup> with all sorts of implements, including electric cables, rifle butts, police batons, wooden clubs, baseball bats, chains, fists and boots.<sup>2064</sup> Female detainees were also beaten.<sup>2065</sup> Beatings occurred during the day, on the way to meals<sup>2066</sup> and at night.<sup>2067</sup>

845. Detainees were humiliated: one detainee was forced to hit his head against a wall.<sup>2068</sup> Another was forced to lick his own blood.<sup>2069</sup> Yet another was forced to cross the *pista* naked whilst pursued by a guard with a whip.<sup>2070</sup> Physically and mentally impaired detainees were humiliated and some eventually killed.<sup>2071</sup> Detainees were regularly threatened with death, including the female detainees.<sup>2072</sup> Detainees were subjected to ethnic slurs.<sup>2073</sup>

846. In some cases the beatings were so severe as to result in serious injury, permanent disfigurement, or death.<sup>2074</sup> Detainees were beaten to death while other detainees were watching.<sup>2075</sup>

847. At Omarska, there were frequent incidents of female detainees being called out by the camp guards and the camp commander to be raped and sexually assaulted.<sup>2076</sup>

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<sup>2059</sup> Kerim Mešanović, T. 11183-11195, 11203-11204; ex. P1237, “Order, SJB Prijedor”, dated 31 May 1992 and signed by Chief of Public Security Service Drljača: “A mixed group consisting of national, public and military security investigators shall be responsible for the work and categorisation of detainees. They shall organise themselves respecting the parity principle. Mirko Ješić, Ranko Mijić and Lieutenant Colonel Majstorović shall be responsible for their work”; ex. P1305, “Omarska Collection Centre, List of first category persons”, dated 28 July 1992. *See also* T. 21107-21109 (closed session).

<sup>2060</sup> Mevludin Sejmenović, T. 12309-12311; Nusret Sivac, ex. P1547, T. 6628, 6630; BT-42, ex. P564, T. 1838-1839, 1910-1921 (under seal).

<sup>2061</sup> BT-1, ex. P1619, T. 4763 (under seal); Kerim Mešanović, ex. P1131, T. 5189; Muharem Murselović, ex. P1542, T. 2739; Nusret Sivac, ex. P1547, T. 6612.

<sup>2062</sup> BT-27, ex. P1529, T. 4304 (under seal).

<sup>2063</sup> Nusret Sivac, ex. P1547, T. 6637; Kerim Mešanović, ex. P1131, T. 5174-5175; BT-1, ex. P1619, T. 1098 (under seal); BT-2, ex. P561, T. 2662 (under seal).

<sup>2064</sup> Muharem Murselović, ex. P1542, T. 2732-2735; Kerim Mešanović, ex. P1131, T. 5162-5166; BT-27, ex. P1529, T. 4301 (under seal); Nusret Sivac, ex. P1547, T. 6681-6682.

<sup>2065</sup> BT-1, ex. P1619, T. 4767-4768 (under seal).

<sup>2066</sup> Nusret Sivac, ex. P1547, T. 6681; Kerim Mešanović, ex. P1131, T. 5178; BT-1, ex. P1619, T. 4750 (under seal).

<sup>2067</sup> BT-42, ex. P564, T. 1888 (under seal).

<sup>2068</sup> BT-34, ex. P558, T. 1097, 1100, 1102 (under seal).

<sup>2069</sup> BT-2, ex. P561, T. 2737 (under seal).

<sup>2070</sup> BT-1, ex. P1619, T. 4751 (under seal).

<sup>2071</sup> Nusret Sivac, ex. P1547, T. 6631-6633; BT-42, ex. P564, T. 1908 (under seal).

<sup>2072</sup> BT-1, ex. P1619, T. 4751-4752 (under seal).

<sup>2073</sup> Muharem Murselović, ex. P1542, T. 2735-2736.

<sup>2074</sup> Muharem Murselović, ex. P1542, T. 2772; BT-27, ex. P1529, T. 4301 (under seal); BT-1, ex. P1619, T. 4767-4768 (under seal); BT-2, ex. P561, T. 2738-2744 (under seal). *See A.2. supra*, “The killing of a number of people at Omarska camp between 28 May and 6 August 1992 –Prijedor municipality”.

<sup>2075</sup> *See B.2. supra*, “Prijedor”.

848. At Omarska camp, beatings were administered by camp guards, such as Milutin Popović aka “Pop” and Žarko Marmat.<sup>2077</sup> On religious holidays or if the relative of a guard was killed in the battlefield, beatings intensified.<sup>2078</sup> Shift commander Mlado Radić aka “Krkan” was present during the beatings but did nothing to prevent the beatings,<sup>2079</sup> and in fact organised the gauntlet of guards that on one occasion beat the detainees.<sup>2080</sup> Moreover, the following were present when the name of those who would be beaten was called out: Žigić and Kvočka.<sup>2081</sup> Detainees were also beaten by outsiders, including Bosnian Serb soldiers from the front, whilst camp guards stood aside.<sup>2082</sup>

ii. Keraterm camp

849. Keraterm was established by the civilian authorities of Prijedor municipality.<sup>2083</sup> It was staffed by employees of the Prijedor SJB and the Prijedor Military Police.<sup>2084</sup> As in Omarska, interrogators also consisted of members of the Banja Luka CSB and of the Banja Luka Corps.<sup>2085</sup> Sikirica was the camp commander.<sup>2086</sup> Nenad Banović, aka “Čupo”, and Zoran Žigić, were amongst the guards.<sup>2087</sup> Damir Došen aka “Kajin” was amongst the shift commanders.<sup>2088</sup> Simo Drljača, head of the Prijedor SUP, visited the camp a few days after the “Room 3” massacre.<sup>2089</sup>

850. Around 4,000 detainees were held in Keraterm camp,<sup>2090</sup> mostly Bosnian Muslim and Bosnian Croat men.<sup>2091</sup> There were also a couple of Albanians, and a Bosnian Serb accused of not being a loyal Serb.<sup>2092</sup> Detainees were eventually transferred to Omarska or Trnopolje.<sup>2093</sup>

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<sup>2076</sup> BT-1, ex. P1619, T. 4769-4770, 4775-4779, 4781-4783 (under seal); BT-42, ex. P564, T. 1901 (under seal). *See* B. 2. *supra*, “Prijedor”.

<sup>2077</sup> BT-1, ex. P1619, T. 4750 (under seal); Kerim Mešanović, ex .P1131, T. 5185.

<sup>2078</sup> Kerim Mešanović, ex .P1131, T. 5185-5186.

<sup>2079</sup> BT-1, ex .P1619, T. 4927 (under seal); Kerim Mešanović, ex .P1131, T. 5189.

<sup>2080</sup> Nusret Sivac, ex. P1547, T. 6681.

<sup>2081</sup> BT-1, ex. P1619, T. 4753 (under seal).

<sup>2082</sup> Muharem Murselović, ex. P1542, T. 2737, 2890; BT-2, ex .P561, T. 2729 (under seal).

<sup>2083</sup> Nusret Sivac, ex .P1547, T. 6753; Nusret Sivac, T. 12797-12798.

<sup>2084</sup> Ex. DB113a, “Report of the Prijedor SJB on Reception Centres in Prijedor Municipality”, undated, signed by Station Chief Simo Drljača. *See* also BT-34, ex .P558, T. 1073-1074 (under seal).

<sup>2085</sup> Ex. DB113a, “Report of the Prijedor SJB on Reception Centres in Prijedor Municipality”, undated, signed by Station Chief Simo Drljača.

<sup>2086</sup> BT-3, ex. P1135, T. 6196-6197 (under seal).

<sup>2087</sup> BT-37, ex. P555, T. 2521 (under seal)

<sup>2088</sup> BT-34, ex. P558, T. 1073-1074 (under seal).

<sup>2089</sup> Jusuf Arifagić, ex. P554, T. 7104; *see* A.2. *supra*, “The killing of a number of people at Omarska camp between 28 May and 6 August 1992 –Prijedor municipality”.

<sup>2090</sup> Ex. P1134, “Serbian Republic of Bosnia and Herzegovina Government, Commission for Inspecting Collection Centres and Other Facilities for Captives in the Serbian Republic of Bosnia and Herzegovina, Report of the Commission on the Inspection of Collection Centres and Other Facilities for Captives in the ARK, Strictly confidential, Pale”, dated 17 August 1992, p. 4; BT-34, ex. P558, T. 1126 (under seal).

<sup>2091</sup> BT-34, ex. P558, T. 1078 (under seal).

<sup>2092</sup> BT-34, ex. P558, T. 1078-1079 (under seal).

<sup>2093</sup> Jusuf Arifagić, ex. P554, T. 7105; BT-34, ex. P558, T. 1135 (under seal).

851. At Keraterm camp, detainees were beaten on arrival.<sup>2094</sup> An elderly man was beaten by Bosnian Serb soldiers at the entrance to the camp and accused of killing Serbs in 1942: his nose was broken as a result of this beating.<sup>2095</sup> Beatings occurred both day and night.<sup>2096</sup> Beatings were carried out with wooden clubs, baseball bats, electric cables and police batons.<sup>2097</sup> Nenad Banović, aka “Čupo”, shot at the legs of resting detainees, injuring them.<sup>2098</sup> Detainees were humiliated and tortured. Certain detainees were singled out for particularly harsh treatment, although it is not clear on what basis they were singled out. Two Bosnian Muslim former policemen were beaten with chains and metal rods.<sup>2099</sup> One Albanian man died after a few days as a consequence of a beating,<sup>2100</sup> just like a Bosnian Serb detainee and a half Bosnian Croat-half Bosnian Serb detainee.<sup>2101</sup>

852. In some cases the beatings were so severe as to result in serious injury<sup>2102</sup> and death.<sup>2103</sup> Beatings and humiliation were often administered in front of other detainees. Female detainees were raped in Keraterm camp.<sup>2104</sup>

853. The beatings were administered by the camp guards,<sup>2105</sup> in particular Nenad Banović “Čupo”.<sup>2106</sup> In addition, beatings were administered by people from outside.<sup>2107</sup>

### iii. Trnopolje camp

854. Trnopolje camp was established by the civilian authorities of Prijedor municipality<sup>2108</sup> and staffed by Bosnian Serb soldiers from Prijedor.<sup>2109</sup> Slobodan Kuruzović, the TO commander, was in charge of the camp.<sup>2110</sup>

855. Trnopolje was essentially a transit camp,<sup>2111</sup> the main purpose of which was the forcible transfer of the Bosnian Muslim population, particularly women, children and the elderly.<sup>2112</sup> As a

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<sup>2094</sup> Jusuf Arifagić, ex. P554, T. 7087; BT-34, ex. P558, T. 1063-1064 (under seal).

<sup>2095</sup> Jusuf Arifagić, ex. P554, T. 1094.

<sup>2096</sup> Jusuf Arifagić, ex. P554, T. 7090.

<sup>2097</sup> BT-34, ex. P558, T. 1186 (under seal).

<sup>2098</sup> BT-37, ex. P555, T. 1520-2521 (under seal).

<sup>2099</sup> Jusuf Arifagić, ex. P554, T. 7093-7094.

<sup>2100</sup> BT-34, ex. P558, T. 1078-1079 (under seal).

<sup>2101</sup> BT-34, ex. P558, T. 1080-1087 (under seal).

<sup>2102</sup> BT-34, ex. P558, T. 1082-1087 (under seal); BT-37, ex. P555, T. 2506-2507 (under seal).

<sup>2103</sup> BT-34, ex. P558, T. 1078-1079 (under seal).

<sup>2104</sup> BT-3, ex. P1135, T. 6197-6200 (under seal); *see* B.2. *supra*, “Prijedor”.

<sup>2105</sup> BT-34, ex. P558, T. 1063-1064 (under seal).

<sup>2106</sup> BT-37, ex. P555, T. 2499-2502, 2520-2521 (under seal).

<sup>2107</sup> BT-34, ex. P558, T. 1130 (under seal).

<sup>2108</sup> Nusret Sivac, ex. P1547, T. 6753; Nusret Sivac, T. 12797-12798; BT-38, ex. P556, T. 1639 (under seal).

<sup>2109</sup> Emsud Garibović, ex. P1538, T. 5823; Nusret Sivac, ex. P1547, T. 6688; Idriz Merdžanić, ex. P1148, T. 7749-7750, 7861-7862.

result of its transitory character, the number of detainees, who were predominantly women, children and elderly persons, fluctuated. In a second part of the camp, there were around 1600 predominantly Bosnian Muslim men permanently held, some of whom had been brought in from Omarska camp.<sup>2113</sup>

856. Male detainees were interrogated and beaten, with wooden poles and knives,<sup>2114</sup> some until they were unconscious.<sup>2115</sup> There was blood on the floor and on the wall of the interrogation room. Detainees were beaten in front of other detainees.<sup>2116</sup> Women were raped in Trnopolje camp, including by Kuruzović, the commander of the camp.<sup>2117</sup>

857. At the Trnopolje camp, beatings were administered by the guards.<sup>2118</sup> Detainees in Trnopolje were also beaten by people from outside, and the guards did nothing to stop them.<sup>2119</sup>

#### iv. Miška Glava

858. The secretary of the local commune had his office at the Miška Glava dom,<sup>2120</sup> which was staffed by the Territorial Defence.<sup>2121</sup> About 114 Bosnian Muslim detainees were locked up in the café therein.<sup>2122</sup>

859. At Miška Glava, detainees were beaten during interrogations by Bosnian Serb soldiers with fists and rifle butts.<sup>2123</sup> They suffered concussions, bleeding and heavy bruising.<sup>2124</sup> They were beaten in the presence of other detainees.<sup>2125</sup>

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<sup>2110</sup> BT-42, ex. P564, T. 1855-1858 (under seal); Idriz Merdžanić, ex. P1148, T. 7761; Jusuf Arifagić, ex. P554, T. 7105.

<sup>2111</sup> Paddy Ashdown, T. 12368-12370.

<sup>2112</sup> Emsud Garibović, T. 12469-12470; Idriz Merdžanić, T. 11815: "Trnopolje is undoubtedly for a major part, perhaps even the chief purpose of Trnopolje, was in point of fact the deportation of the Muslim population from the area, whereas the men's part was something else but it was like two camps in one, one where people were brought, transport, gathered, transported and then banished from the Serb area. Those were the women, children, and the elderly and possibly some men too who managed to join them and those others who were of military age, they were not allowed to leave, presumably because they were able-bodied men or -- and for some reasons, in Trnopolje were mostly people in whom Serbs were not interested. All those in whom they were interested, they took to Omarska or Keraterm".

<sup>2113</sup> BT-38, ex. P556, T. 1646-1647 (under seal); Barney Mayhew, ex. P1617, T. 6049, 6090; ex. P1617/S217 A, "Mayhew Report on Manjača and Trnopolje", dated 4 September 1992; Charles McLeod, T. 7326-7327; Idriz Merdžanić, ex. P1148, T. 7793.

<sup>2114</sup> Idriz Merdžanić, ex. P1148, T. 7766.

<sup>2115</sup> BT-38, ex. P556, T. 1657-1660 (under seal).

<sup>2116</sup> BT-38, ex. P556, T. 1661-1664 (under seal).

<sup>2117</sup> BT-33, T. 12663-12664 (closed session); BT-33, ex. P1544, T. 3965-3968 (under seal). See B.2. *supra*, "Prijedor".

<sup>2118</sup> Idriz Merdžanić, ex. P1148, T. 7785.

<sup>2119</sup> Idriz Merdžanić, ex. P1148, T. 7768.

<sup>2120</sup> Nermin Karagić, ex. P559, T. 5215.

<sup>2121</sup> Nermin Karagić, ex. P559, T. 5219.

<sup>2122</sup> Nermin Karagić, ex. P559, T. 5215, 5218.

<sup>2123</sup> Elvedin Našić, T. 12693-12694.

<sup>2124</sup> Nermin Karagić, ex. P559, T. 5220, 5223.



v. Ljubija football stadium

860. In July 1992, Bosnian Muslims detained in Miška Glava were transferred to the Ljubija football stadium, located in Gornja Ljubija.<sup>2126</sup> They were beaten when forced to run a gauntlet.<sup>2127</sup> Many civilians were already confined inside the stadium, guarded by Bosnian Serb policemen and members of an intervention platoon.<sup>2128</sup>

861. A detainee witnessed his relative's death and how his head was subsequently severed from his body.<sup>2129</sup> The remaining detainees were ordered to remove the bodies, which were mutilated.<sup>2130</sup>

vi. SUP building

862. Bosnian Muslims and Bosnian Croats were detained at the Prijedor SUP, including a woman and an underage boy.<sup>2131</sup>

863. Detainees were beaten with metal objects by members of the intervention squad,<sup>2132</sup> composed of men from Prijedor.<sup>2133</sup> One detainee had his temple bone fractured as a result of these beatings.<sup>2134</sup> Dr. Mahmuljin was beaten with special virulence: 'Dado' Mrdja and Zoran Babić accused him of killing Serb children as a consequence of the allegations aired by Radio Prijedor as part of the propaganda campaign.<sup>2135</sup> His arm was fractured in several places as a result and he was left unconscious.<sup>2136</sup> Detainees were also beaten during interrogation and humiliated.<sup>2137</sup> Detainees were subjected to ethnic slurs.<sup>2138</sup> From the Prijedor SUP, detainees were transferred to Omarska camp by policemen.<sup>2139</sup> Prior to their transfer, they were forced to run a gauntlet of policemen.<sup>2140</sup>

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<sup>2125</sup> Nermin Karagić, ex. P559, T. 5223.

<sup>2126</sup> Nermin Karagić, ex. P559, T. 5225-5226; Elvedin Našić, T. 12696.

<sup>2127</sup> Elvedin Našić, T. 12699.

<sup>2128</sup> Elvedin Našić, T. 12696-12698.

<sup>2129</sup> Elvedin Našić, T. 12699-12700. The Trial Chamber has already found that at a minimum 15 detainees were killed in the stadium. See A.2. *supra*, "The killing of a number of men at the Ljubija football stadium".

<sup>2130</sup> Nermin Karagić, ex. P559, T. 5237-5238. See B. 2. *supra*, "Prijedor".

<sup>2131</sup> Nusret Sivac, ex. P1547, T. 6619-6620; BT-42, P564, T. 1849 (under seal).

<sup>2132</sup> Nusret Sivac, ex. P1547, T. 6620-6621; BT-42, P564, T. 1851 (under seal).

<sup>2133</sup> BT-42, ex. P564, T. 1851 (under seal).

<sup>2134</sup> Nusret Sivac, ex. P1547, T. 6620-6621.

<sup>2135</sup> Nusret Sivac, ex. P1547, T. 6620-6621, 6626.

<sup>2136</sup> Nusret Sivac, ex. P1547, T. 6621.

<sup>2137</sup> Mevludin Sejmenović, ex. P1533, T. 4743.

<sup>2138</sup> BT-42, ex. P564, T. 1851 (under seal).

<sup>2139</sup> Nusret Sivac, ex. P1547, T. 6621.

<sup>2140</sup> Nusret Sivac, ex. P1547, T. 6621.

vii. Prijedor barracks

864. The JNA barracks in Prijedor, where at least 30 Bosnian Muslim men were detained, were staffed by the Bosnian Serb military. A detainee was questioned by Kovačević, the security officer. He was then interrogated and beaten with a stick by a police officer and slapped by Jović, a Lieutenant in a JNA outfit, which caused him to bleed, and forced to write and sign statements. Detainees were also beaten outside interrogation, including a Muslim religious official, and received injuries. As a result, a detainee suffered difficulty eating.<sup>2141</sup>

i. Prnjavor municipality

i. Sloga shoe factory

865. In mid-1992<sup>2142</sup> the predominantly Bosnian Muslim village of Lišnja was surrounded by Milanković's men aka "Wolves of Vučjak", the police and the VRS,<sup>2143</sup> and its citizens told, by Milanković and by Radivojević, the president of the Prnjavor executive board,<sup>2144</sup> to go to the sawmill, where they were kept by Milanković's men and the police for about a day.<sup>2145</sup>

866. About 250 to 300 Bosnian Muslim men were taken from the sawmill in Prnjavor to the Dom Kulture and afterwards to the Sloga shoe factory.<sup>2146</sup> There were about 370 detainees in the Sloga shoe factory, all Bosnian Muslim civilian men ranging from 14 to 60 years of age.<sup>2147</sup>

867. The Trial Chamber is satisfied that from mid-1992, about 370 Bosnian Muslim civilian men from 14 to 60 years of age were detained in the Sloga shoe factory. The Sloga shoe factory was staffed by the police. A detainee was told by the chief of police that they were being guarded for their own protection. Interrogations were carried out in the Sloga shoe factory. A detainee was struck with a rifle in the Sloga shoe factory by a policeman. Another was wounded in the head. Another detainee was hit in the face with a pistol by a drunk policeman who eventually apologised. On weekends, Bosnian Serb soldiers would come from the front and threaten the detainees.<sup>2148</sup>

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<sup>2141</sup> BT-36, T. 11049-11053 (closed session).

<sup>2142</sup> Jasmin Odobašić, T. 15132.

<sup>2143</sup> Rusmir Mujanić, T. 16014, Jasmin Odobašić, T. 15132.

<sup>2144</sup> Rusmir Mujanić, T. 16016; Jasmin Odobašić, T. 15083; BT-51, ex. P1784, 92bis statement, 635470 (under seal).

<sup>2145</sup> Rusmir Mujanić, T. 15998-15999, 16001, 16074.

<sup>2146</sup> Rusmir Mujanić, T. 15980, 16002, 16028; BT-91, T. 15874-15877.

<sup>2147</sup> BT-91, T. 15880; Rusmir Mujanić, T. 16036; Jasmin Odobašić, T. 15075, 15132 ; Rusmir Mujanić, T. 16034, 16036, 16038.

<sup>2148</sup> Rusmir Mujanić, T. 16033-16038, 16040-16043; BT-91, T. 15884-15886, 15965.

j. Sanski Most

868. Beginning 27 May 1992,<sup>2149</sup> Bosnian Muslim and Bosnian Croat civilians<sup>2150</sup> were detained both by regular and Bosnian Serb military police<sup>2151</sup> and confined in detention facilities in Sanski Most until about the end of August 1992.

869. The Trial Chamber is satisfied that these individuals were detained in accordance with the categorisation drawn up by the Sanski Most Crisis Staff.<sup>2152</sup>

i. SUP building<sup>2153</sup>

870. Some of those detained were initially taken to the SUP building in Sanski Most and interrogated.<sup>2154</sup> There were about 16-17 predominantly Bosnian Muslim male civilians, between 17 to 65 years of age.<sup>2155</sup> Those detained at the SUP were all prominent civilians who held important positions in the community life of Sanski Most, with the exception of one underage detainee.<sup>2156</sup> Some remained confined at the SUP building for as long as three months.<sup>2157</sup>

871. The SUP building was guarded by policemen.<sup>2158</sup> A detainee recognised Colonel Basara, the commander of the 6<sup>th</sup> Light Brigade, in camouflage uniform, at the SUP building.<sup>2159</sup> Another heard him give speeches to the Bosnian Serb soldiers in front of it.<sup>2160</sup>

872. Detainees from other detention facilities in Sanski Most were also brought into the SUP for interrogation.<sup>2161</sup> They were interrogated by criminal police investigators from the Sanski Most police, amongst them Zorić.<sup>2162</sup>

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<sup>2149</sup> Ex. P697, "Report from the Sanski Most SJB to the (BL) CSB," dated 2 July 1992 and signed by Mirko Vručinić, the Chief of the SJB.

<sup>2150</sup> Adil Draganović, T. 4984-4985; BT-17, T. 7768 (closed session); ex. P683, "Order of the Sanski Most Crisis Staff to Colonel Aničić regarding detainees in the Sports hall", dated 18 June 1992, to let some of them go after screening.

<sup>2151</sup> Jakov Marić, 10823-10824; Bekir Delić, T. 8010; ex. P697, "Report from the Sanski Most SJB to the (BL) CSB," dated 2 July 1992 and signed by Mirko Vručinić, the Chief of the SJB. It states "After combat operations by units of the Serbian Army on the territory of Sanski Most with the aim of disarming paramilitary formations, the bringing into custody of extremists of Muslim and Croat nationality began on 27 May 1992 and has continued until the present..."

<sup>2152</sup> Ex. P661, "Conclusions of the Sanski Most Crisis Staff", dated 4 June 1992, and categorising prisoners as follows for their deportation to Manjača: 1<sup>st</sup> category: politicians; 2<sup>nd</sup> category: nationalist extremists; 3<sup>rd</sup> category: people unwelcome in Sanski Most municipality.

<sup>2153</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>2154</sup> Bekir Delić, T. 7950-7951.

<sup>2155</sup> Adil Draganović, T. 5681; *see also* ex. P682, "Dispatch from the Sanski Most SJB to the Banja Luka CSB", dated 17 June 1992 for assistance in dealing with the large number of prisoners, mostly of Muslim nationality, at the SJB; BT-17, T. 7761, 7768 (closed session); Faik Bišćević, T. 7072-7073.

<sup>2156</sup> Adil Draganović, T. 4986; Faik Bišćević, T. 7062, 7072-7073.

<sup>2157</sup> BT-17, T. 7747, 7763 (closed session); Faik Bišćević, T. 7063.

<sup>2158</sup> Faik Bišćević, T. 7180.

<sup>2159</sup> Sakib Muhić, T. 8166-8167.

<sup>2160</sup> Faik Bišćević, T. 7076, 7163.

873. Beatings took place during interrogation, with the use of rifle butts, electric cables, poles, feet and fists,<sup>2163</sup> and threats were made.<sup>2164</sup> During interrogations, the perpetrators of the beatings were regular police officers and soldiers wearing camouflage uniforms of the VRS.<sup>2165</sup>

874. Beatings also took place in the SUP outside interrogation. Beatings were mostly conducted by the guards.<sup>2166</sup> Daniluško Kajtez, an SOS member, beat several detainees at the SUP.<sup>2167</sup> Whilst detained at the cells in the SUP, Bosnian Serb soldiers, inebriated at times, were given access to detainees and would beat them, as would civilians.<sup>2168</sup> A detainee was beaten and kicked whilst forced to assume a praying position.<sup>2169</sup> Detainees were subjected to ethnic slurs.<sup>2170</sup>

875. One detainee suffered fractured ribs as a result of being beaten.<sup>2171</sup> Another detainee lost all his teeth.<sup>2172</sup> Another detainee's hand was burnt with hot water.<sup>2173</sup> Detainees did not receive any medical treatment.<sup>2174</sup> 'Hodža' Emir Seferović and SDA secretary Hasim Kamber were beaten daily, and were eventually killed.<sup>2175</sup>

876. From the SUP, some detainees were transferred to other Sanski Most detention facilities such as the Betonirka factory garages, the Hasan Kikić School, a military facility at Magarice and also to Manjača in Banja Luka municipality.<sup>2176</sup>

877. At the SUP, after the arrival of ICRC representatives, beatings became less frequent and were limited to once a week.<sup>2177</sup> Visits by family members were also allowed after that.<sup>2178</sup>

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<sup>2161</sup> Jakov Marić, T. 10826.

<sup>2162</sup> Faik Bišćević, T. 7070; Jakov Marić, T. 10823-10826.

<sup>2163</sup> Jakov Marić, T. 10823-10826; Mirzet Karabeg, T. 6166-6167; Faik Bišćević, T. 7071; BT-17, T. 7756-7757 (closed session).

<sup>2164</sup> Ahmed Zulić, T. 6884-6885.

<sup>2165</sup> Faik Bišćević, T. 7071, 7165; Adil Draganović, T. 4978.

<sup>2166</sup> Ahmed Zulić, T. 6886.

<sup>2167</sup> BT-17, T. 7758 (closed session).

<sup>2168</sup> Faik Bišćević, T. 7073, 7076; BT-17, T. 7755-7758 (closed session); Mirzet Karabeg, T. 6166-6168.

<sup>2169</sup> Mirzet Karabeg, T. 6181.

<sup>2170</sup> Sakib Muhić, T. 8121.

<sup>2171</sup> BT-17, T. 7754 (closed session).

<sup>2172</sup> Mirzet Karabeg, T. 6182.

<sup>2173</sup> Mirzet Karabeg, T. 6180.

<sup>2174</sup> Faik Bišćević, T. 7064.

<sup>2175</sup> Faik Bišćević, T. 7075; BT-17, T. 7756-7758 (closed session).

<sup>2176</sup> Mirzet Karabeg, T. 6168; Sakib Muhić, T. 8120-8121; BT-17, T. 7760 (closed session); Ahmed Zulić, T. 7083-7084.

<sup>2177</sup> Mirzet Karabeg, T. 6176-6177.

<sup>2178</sup> Mirzet Karabeg, T. 6176.

ii. Betonirka<sup>2179</sup>

878. Bosnian Croat and Bosnian Muslim men from Sanski Most were detained at Betonirka.<sup>2180</sup> There were around 120 detainees.<sup>2181</sup> There were also some Roma.<sup>2182</sup> They were all civilians.<sup>2183</sup> A boy of 15 was kept for about two days,<sup>2184</sup> after which the detainees' age ranged from 20 to 65.<sup>2185</sup>

879. Drago Vujanić was the warden of the SUP building and of the Betonirka factory garages.<sup>2186</sup> He and his deputy, Mićo Krunić, were members of the police.<sup>2187</sup> The guards at Betonirka were Bosnian Serb regular and reserve policemen, and soldiers.<sup>2188</sup>

880. Beatings took place with horrifying regularity at the Betonirka factory garages.<sup>2189</sup> Beatings were carried out with the use of cables, feet of tables, spades and feet.<sup>2190</sup> The beatings were at times selective.<sup>2191</sup> One detainee testified that he was beaten as a result of the propaganda that had been spread regarding his practice as a doctor.<sup>2192</sup> For the most part, however, the detainees at Betonirka were randomly beaten.<sup>2193</sup>

881. These beatings caused serious injuries to the detainees.<sup>2194</sup> Enver Burnić, a Bosnian Muslim former policeman, was taken outside on St Vitus' day (28 June) by shift commander Martić, a Bosnian Serb policeman, who was drunk, and by two policemen, and beaten – he was told at the time that a bullet was too costly a way for him to die.<sup>2195</sup>

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<sup>2179</sup> This location was visited by the Trial Chamber and the Parties during the site visit which took place in March 2004.

<sup>2180</sup> Adil Draganović, T. 5000; Ahmed Zulić, T. 6883; Bekir Delić, T. 7961-7962; Jakov Marić, T. 10828.

<sup>2181</sup> Jakov Marić, T. 10827; Ahmed Zulić, T. 6883-6884; Bekir Delić, T. 7957.

<sup>2182</sup> Jakov Marić, T. 10828.

<sup>2183</sup> Bekir Delić, T. 7961-7962.

<sup>2184</sup> BT-23, T. 6420.

<sup>2185</sup> Bekir Delić, T. 7964.

<sup>2186</sup> Jakov Marić, T. 10829; Mirzet Karabeg, T. 6171; ex. P661, "Sanski Most Crisis Staff Conclusions", dated 4 June 1992: "The Crisis Staff hereby decides to appoint Drago Vujanić prison warden. Dismiss Paprić"; BT-21, T. 8543 (closed session); Bekir Delić, T. 7961; Enis Šabanović, T. 6619; BT-17, T. 7756 (closed session).

<sup>2187</sup> Bekir Delić, T. 7961; Faik Bišćević, T. 7077; Mirzet Karabeg, T. 6171. BT-17, T. 7756 (closed session).

<sup>2188</sup> Ahmed Zulić, T. 6881, 6954; Bekir Delić, T. 8013.

<sup>2189</sup> BT-23, T. 6418; Enis Šabanović, T. 6477; Ahmed Zulić, T. 6886; Bekir Delić, T. 7960; Jakov Marić, T. 10828. Ahmed Zulić, T. 6886.

<sup>2190</sup> Ahmed Zulić, T. 6887.

<sup>2191</sup> Jakov Marić, T. 10829; *see also* beating of Enver Burnić, below.

<sup>2192</sup> Mirzet Karabeg, T. 6174.

<sup>2193</sup> Bekir Delić, T. 7961.

<sup>2194</sup> Jakov Marić, T. 10829; BT-23, T. 6422.

<sup>2195</sup> Ahmed Zulić, T. 6883; Bekir Delić, T. 7961-7962.

882. The perpetrators of the beatings were the facility's guards, particularly the shift commander Martić.<sup>2196</sup> Bosnian Serb outsiders also beat the detainees, with the guards' knowledge and acquiescence.<sup>2197</sup>

883. On one occasion, at the time when reserve policeman Mladen Paprić was the camp commander, he stopped individuals from beating a detainee.<sup>2198</sup> He was eventually replaced as warden of the camp by Drago Vujanić.<sup>2199</sup>

### iii. Hasan Kikić gymnasium

884. About 500-600 individuals were taken to the gymnasium of the Hasan Kikić Elementary School, including 200 men that were brought in from Ključ.<sup>2200</sup> Their length of stay was about three or four days.<sup>2201</sup>

885. The gymnasium was staffed by guards in police and camouflage uniforms,<sup>2202</sup> under the command of Martić.<sup>2203</sup>

886. There were beatings at the Hasan Kikić gymnasium,<sup>2204</sup> as a result of which one detainee was suicidal.<sup>2205</sup> These were particularly severe when detainees were led to board the truck that took around 150 of them to Manjača on 6 June 1992.<sup>2206</sup> They were transported in very hot temperatures in trucks covered by tarpaulin, and were not given any water during the whole journey that lasted from morning until evening.<sup>2207</sup>

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<sup>2196</sup> Bekir Delić, T. 7960, 7963; BT-21, T. 8538-8539 (closed session); Ahmed Zulić, T. 6888; Mirzet Karabeg, T. 6172-6173, T. 6256; Jakov Marić, T. 10827, 10844-10845.

<sup>2197</sup> BT-21, T. 8538 (closed session); Mirzet Karabeg, T. 6172-6173, 6256.

<sup>2198</sup> Enis Šabanović, T. 6477-6478; BT-21, T. 8538 (closed session).

<sup>2199</sup> Ex. P661, "Sanski Most Crisis Staff Conclusions", dated 4 June 1992: "The Crisis Staff hereby decides to appoint Drago Vujanić prison warden. Dismiss Paprić"; BT-21, T. 8538, 8543 (closed session).

<sup>2200</sup> Enis Šabanović, T. 6480.

<sup>2201</sup> Sakib Muhić, T. 8121-8122.

<sup>2202</sup> Enis Šabanović, T. 6481.

<sup>2203</sup> Enis Šabanović, T. 6484.

<sup>2204</sup> Enis Šabanović, T. 6481; Sakib Muhić, T. 8121-8122.

<sup>2205</sup> Enis Šabanović, T. 6485.

<sup>2206</sup> Enis Šabanović, T. 6489. Under the heading of "causing serious bodily or mental harm" the Indictment charges the transport of detainees from the municipality of Sanski Most to Manjača camp between 6 June and 16 June. The transport of 7 July 1992 has been analysed earlier: *see* A.2. *supra*, "The killing of a number of men after their transportation from the Hasan Kikić elementary school and from Betonirka detention facility in Sanski Most to the Manjača camp –Sanski Most/ Banja Luka municipality".

<sup>2207</sup> Ex. P666, "Order", dated 6 June 1992, to evacuate 150 detainees from the Hasan Kikić elementary school in Sanski Most to Manjača; Sakib Muhić, T. 8105, 8123-8124. *See* A.2. *supra*, "The killing of a number of men after their transportation from the Hasan Kikić elementary school and from Betonirka detention facility in Sanski Most to the Manjača camp –Sanski Most/ Banja Luka municipality".

iv. Magarice military facility

887. A Bosnian Muslim detainee was beaten with truncheons by two soldiers outside a Bosnian Serb army position in Magarice,<sup>2208</sup> after he was taken before Colonel Basara.<sup>2209</sup> When he was transferred to the SUP, he was unable to lie down as a result of his injuries, because he was severely beaten.<sup>2210</sup>

k. Teslić municipality

888. Beginning 3 June 1992, Bosnian Muslim and Bosnian Croat civilians were detained by Bosnian Serb military police, regular police, reserve police or paramilitary forces.<sup>2211</sup> Those detained were taken to the SUP building in Teslić, from where they were eventually transferred to the Territorial Defence warehouse in Teslić and a detention camp at Pribinić, until about the beginning of October 1992.<sup>2212</sup>

889. The Trial Chamber is satisfied that the authorities of Teslić elaborated a list of Bosnian Muslim and Bosnian Croat individuals that were to be targeted.<sup>2213</sup>

i. SUP building

890. The SUP building in Teslić was at the time taken over by both the police and a group of paramilitaries, the 'Miće'.<sup>2214</sup>

891. Dusan Kuzmanović and Predrag Markočević were respectively the Chief and the commander of the Teslić SJB at the relevant time.<sup>2215</sup> The two were dismissed by Stojan Župljanin the day the 'Miće' were arrested.<sup>2216</sup>

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<sup>2208</sup> Faik Bišćević, T. 7033-7034.

<sup>2209</sup> Faik Bišćević, T. 7031-7033.

<sup>2210</sup> BT-17, T. 7747-7750 (closed session); Faik Bišćević, T. 7062.

<sup>2211</sup> Mehmed Kopic, ex. P1964, 92bis statement, 1034036; BT-61, ex. P1976, 92bis statement, 2978914-02978915 (under seal); Ferid Mahalbašić, ex. P1962, 92bis statement, 1034059; BT-61, ex. P1976, 92bis statement, 2978914 (under seal); Mehmed Tenić, T. 16850, 16857, 16860, 16874; BT-64, T. 16951, 16963 (partly in private session).

<sup>2212</sup> BT-61, ex. P1976, 92bis statement, 2978915 (under seal); Mehmed Tenić, T. 16860; BT-64, T. 16972.

<sup>2213</sup> Adil Osmanović, T. 16617-16618; ex. P1960, list, handwritten and typed, of about 64 Bosnian Muslim and Croats with accompanying descriptions of which at least 12 ended up being detained in camps or detention facilities during the Summer of 1992: Adil Osmanović, T. 16573-16574, 16620, 16637-16646, 16654-16657. See also ex. P1959, "Article from *Nezavisne Novine*", dated 29 September 1999: "Nezavisne brings you an exclusive report about the materials compiled by the Teslić local power-wielders –primarily the influential people from the Municipal Board of the Serbian Democratic Party and the Public Security Station –which, as it turns out, the 'Miće' paramilitary formation used as a kind of reference point in June 1992".

<sup>2214</sup> Mehmed Kopic, ex. P1964, 92bis statement, 34038.

<sup>2215</sup> Mehmed Kopic, ex. P1964, 92bis statement, 1034032. See also T. 19567 (closed session).

892. Detainees at the SUP were Bosnian Muslim and Bosnian Croat men.<sup>2217</sup> Almost all were prominent citizens.<sup>2218</sup> Detainees were beaten with police batons, rifle butts, fists and feet.<sup>2219</sup> Detainees witnessed the beatings of other detainees.<sup>2220</sup> They were forced to display the three-fingered Serbian salute, and to sing Serbian songs.<sup>2221</sup>

893. Detainees, including a Bosnian Muslim who was the former commander of the police, were beaten by policemen and also by the 'Miće' paramilitary group.<sup>2222</sup>

ii. Territorial Defence building

894. The TO building was located on the road leading to Rudnik Gomjenica and Vlajići.<sup>2223</sup> There were between 100 and 130 Bosnian Muslim and Bosnian Croat civilian men detained at the TO warehouse.<sup>2224</sup>

895. The TO building was staffed by the Bosnian Serb reserve police under the authority of the commanders of the Bosnian Serb police force, Predrag Markočević and Marinko Đukić.<sup>2225</sup>

896. Detainees were beaten with fists, feet, batons, chains, baseball bats and cables.<sup>2226</sup> Detainees were beaten daily.<sup>2227</sup> Detainees witnessed the beatings and deaths of other inmates as a result of the beatings.<sup>2228</sup> They were forced to extend the three-fingered Serbian salute and sing Serbian songs.<sup>2229</sup> Detainees were subjected to ethnic slurs.<sup>2230</sup>

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<sup>2216</sup> See T. 19567, 19684, 19751 (closed session).

<sup>2217</sup> BT-61, ex. P1976, 92bis statement, 2978915 (under seal); Mehmed Tenić, T. 16861; Ferid Mahalbašić, ex. P1962, 92bis statement, 1034060; BT-95, T. 19551 (closed session).

<sup>2218</sup> Mehmed Kopic, ex. P1964, 92bis statement, 1034036.

<sup>2219</sup> BT-61, ex. P1976, 2978915 (under seal); Ferid Mahalbašić, ex. P1962, 92bis statement, 1034060.

<sup>2220</sup> Mehmed Tenić, T. 16861.

<sup>2221</sup> BT-61, P1976, 92bis statement, 2978915 (under seal); Ferid Mahalbašić, ex. P1962, 92bis statement, 1034060.

<sup>2222</sup> Mehmed Kopic, ex. P1964, 92bis statement, 1034037; BT-95, T. 19551 (closed session); Mehmed Tenić, T. 16861, T. 16925, T. 16935.

<sup>2223</sup> BT-61, ex. P1976, 92bis statement, 2978916 (under seal).

<sup>2224</sup> Mehmed Tenić, T. 16867; Ferid Mahalbašić, ex. P1962, 92bis statement, 1034061.

<sup>2225</sup> BT-61, ex. P1976, 92bis statement, 2978916 (under seal); Mehmed Kopic, ex. P1964, 92bis statement, 1034038; BT-95, T. 19567 (closed session); Ferid Mahalbašić, ex. P1962, 92bis statement, 1034056; Mehmed Kopic, ex. P1964, 92bis statement, 1034032.

<sup>2226</sup> BT-61, ex. P1976, 92bis statement, 2978916-2978917 (under seal); Mehmed Tenić, T. 16871.

<sup>2227</sup> BT-61, ex. P1976, 92bis statement, 2978916 (under seal); Ferid Mahalbašić, ex. P1962, 92bis statement, 1034061.

<sup>2228</sup> BT-61, ex. P1976, 92bis statement, 2978916-2978917 (under seal); Mehmed Tenić, T. 16872, T. 16937-16938; Ferid Mahalbašić, ex. P1962, 92bis statement, 1034061. See A. 2. *supra*, "The killing of a number of men on the premises of the Public Security Service and the Territorial Defence building in Teslić, and in the Pribinić prison – Teslić municipality".

<sup>2229</sup> BT-61, ex. P1976, 92bis statement, 2978916 (under seal); Ferid Mahalbašić, ex. P1962, 92bis statement, 1034061.

<sup>2230</sup> BT-61, ex. P1976, 92bis statement, 2978917 (under seal).



897. Beatings were administered by the Bosnian Serb reserve police, and by the 'Miće' paramilitary group, and the worst shift was headed by the Bosnian Serb reserve police officer "Tomo" Mihajlović.<sup>2231</sup>

898. After the killings of 40 detainees by members of the 'Miće' paramilitary group,<sup>2232</sup> Predrag Radulović, an officer from the Banja Luka CSB, visited the facility and informed the detainees that "it would not happen again".<sup>2233</sup> They were released sometime after his visit.<sup>2234</sup>

### iii. Pribinić

899. Between the end of June and October 1992, around 200 Bosnian Muslim and Bosnian Croat men passed through Pribinić camp, including a mentally impaired man.<sup>2235</sup>

900. Pribinić camp was staffed by the Bosnian Serb military police.<sup>2236</sup> The camp commander was Dragan Babić, a local Bosnian Serb and a military police officer.<sup>2237</sup> One detainee saw Predrag Radulović, an officer from the Banja Luka CSB, at the end of July in the camp, informing them that he had established civilian authority in Teslić and therefore that the camp would be disbanded.<sup>2238</sup> However, it continued to function until October.

901. At Pribinić, detainees were beaten with police batons, rifle butts and chains, clubs, feet, rubber sticks, chains and wooden objects.<sup>2239</sup> Detainees were beaten daily.<sup>2240</sup> Some still suffer the serious physical effects of those beatings.<sup>2241</sup> The Trial Chamber has already found that several men

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<sup>2231</sup> Ferid Mahalbašić, ex. P1962, 92bis statement, 1034061; BT-61, ex. P1976, 92bis statement, 2978916-2978917 (under seal).

<sup>2232</sup> See A. 2. *supra*, "The killing of a number of men on the premises of the Public Security Service and the Territorial Defence building in Teslić, and in the Pribinić prison –Teslić municipality".

<sup>2233</sup> Mehmed Tenić, T. 16903.

<sup>2234</sup> Mehmed Tenić, T. 16904.

<sup>2235</sup> BT-64, T. 16972, 16976; BT-95, T. 19556-19558 (closed session).

<sup>2236</sup> BT-64, T. 16967, 16974; BT-61, ex. P1976, 92bis statement, 2978919 (under seal); ex. P1941: Official note, signed by authorised official person and dated 22 Sept 1992, "After the well-known scandal with 'Miće' group in Teslić, it became known that the then deputy commander of the company, Sargeant Marjanović, military policemen Sladan Čović, Zoran Jorgić, Tihomir Jovičić and Goran Dolić had been accomplices of the 'Miće' in many criminal activities. They had aided the 'Miće' group in perpetrating crimes, and after the 'Miće' were arrested, the said group of military policemen under command of the company commander Sargeant Marjanović, without leaving any written traces, continued to arrest large numbers of Muslims and Croats, detained them in the military prison in Pribinić and then disappeared without trace".

<sup>2237</sup> BT-64, T. 16968-16969; BT-61, ex. P1976, 92bis statement, 2978919 (under seal).

<sup>2238</sup> BT-64, T. 16981-16982; BT-95, T. 19559 (closed session).

<sup>2239</sup> BT-61, ex. P1976, 92bis statement, 2978919 (under seal); BT-64, T. 16968-16969.

<sup>2240</sup> BT-64, T. 16975.

<sup>2241</sup> BT-64, T. 16982, 17010.

died as a result of the beatings.<sup>2242</sup> Detainees witnessed the beatings<sup>2243</sup> and deaths of other detainees, including that of a mentally impaired man.<sup>2244</sup>

902. The beatings were administered by the Bosnian Serb military police<sup>2245</sup> and, on one occasion, by three Bosnian Serb soldiers who came into the camp.<sup>2246</sup> Dragan Babić, the camp commander, was particularly brutal, and personally administered beatings.<sup>2247</sup>

903. During their stay in Pribinić, detainees were interrogated by Aleksa Jović, deputy commander of the military police.<sup>2248</sup> At some point, Aleksa Jović ordered that Dragan Babić and some other guards be replaced in view of their brutality. A new commander was appointed by the name of Radić. Despite this, the beatings continued.<sup>2249</sup> Detainees complained again to Aleksa Jović, but to no avail.<sup>2250</sup>

(iii) Deliberately Inflicting upon the Group Conditions Calculated to Bring about Physical Destruction

904. In the Indictment, under the heading “conditions calculated to bring about physical destruction”, it is alleged that “[t]he brutal and inhumane conditions in the camps and detention facilities included inadequate food (often amounting to starvation rations), contaminated water, insufficient or non-existent medical care, inadequate hygiene and lack of space”.<sup>2251</sup> The Trial Chamber has understood these “camps and detention facilities” to consist exclusively of those specifically enumerated under the heading “camps” in paragraph 40 of the Indictment.<sup>2252</sup> As noted above, evidence was adduced with respect to a number of detention facilities which were not charged in the Indictment. This has not been considered for the purposes of the findings that follow.<sup>2253</sup>

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<sup>2242</sup> BT-64, T. 16975-16976. *See* A. 2. *supra*, “The killing of a number of men on the premises of the Public Security Service and the Territorial Defence building in Teslić, and in the Pribinić prison –Teslić municipality”.

<sup>2243</sup> BT-61, P1976, 92*bis* statement, 2978919 (under seal).

<sup>2244</sup> BT-64, T. 16977-16979.

<sup>2245</sup> BT-61, P1976, 92*bis* statement, 2978919 (under seal).

<sup>2246</sup> BT-64, T. 16978.

<sup>2247</sup> BT-61, P1976, 92*bis* statement, 2978919 (under seal); BT-64, T. 16968.

<sup>2248</sup> BT-64, T. 16974.

<sup>2249</sup> BT-64, T. 16980-16981, 16997.

<sup>2250</sup> BT-64, T. 17003.

<sup>2251</sup> Indictment, para. 43.

<sup>2252</sup> *See* Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para. 63: “Accordingly, at this stage and until given sufficient notice that evidence will be led of additional incidents or facilities in relation to a particular offence charged, [the Accused is] entitled to proceed upon the basis that the lists of killings and facilities *are* exhaustive in nature”.

<sup>2253</sup> The Prosecution Final Brief contains reference to the conditions of life inflicted on detention facilities not charged in the Indictment. These are: the Maslovare school in Kotor Varoš, the Gornja Sanica school in Ključ, the Sitnica school in Ključ and the cellar of the Una Hotel in Bosanski Novi: Prosecution Final Brief, para. 515. Such evidence has been included in the General Overview section where appropriate.

905. The Indictment and the Prosecution Final Brief allege that some acts that amount to the infliction of serious bodily or mental harm can also be characterised as the deliberate infliction of conditions of life calculated to bring about physical destruction.<sup>2254</sup> The Trial Chamber has only considered whether these amounted to conditions calculated to bring about physical destruction when it has not already found them to amount to “causing serious bodily or mental harm”.<sup>2255</sup>

906. In the absence of direct evidence, in inferring whether the “conditions of life” imposed on Bosnian Muslim and Bosnian Croat detainees amounted to conditions calculated to bring about their physical destruction in part,<sup>2256</sup> the Trial Chamber has focused on the objective probability of these conditions leading to the physical destruction of the group in part.<sup>2257</sup> In evaluating this objective probability, the Trial Chamber has focused on the actual nature of the “conditions of life” and on the length of time that members of the group were subjected to them. It has also been guided, when available, by factors such as the characteristics of the members of the group upon which they were inflicted.

907. With respect to deliberately inflicting upon the group conditions calculated to bring about its physical destruction in whole or in part, the Trial Chamber finds that no evidence was adduced with respect to the following camps or detention facilities alleged in the Indictment:

- Ribnjak camp<sup>2258</sup> (Prnjavor municipality)
- Bosanska Kostajnica police station<sup>2259</sup> (Bosanski Novi)
- CSB building<sup>2260</sup> (Banja Luka municipality)
- Kotor Varoš Elementary School<sup>2261</sup> (Kotor Varoš municipality)

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<sup>2254</sup> Indictment, para. 37(3); Prosecution Final Brief, fn. 991: “rape and some of the other crimes described above in relation to serious bodily and mental harm can also be characterised as ‘conditions of life’”.

<sup>2255</sup> See Schabas, *Genocide in International Law*, p. 167 (footnotes omitted): “[u]nlike the charges defined in paragraphs (a) and (b), the offence of deliberately imposing conditions of life calculated to bring about the group’s destruction does not require proof of a result. The conditions of life must be calculated to bring about the destruction, but whether or not they succeed, even in part, is immaterial. If a result is achieved, then the proper charge will be paragraphs (a) or (b)”.

<sup>2256</sup> The Indictment alleges that Bosnian Muslim and Bosnian Croat non-combatants were detained under conditions calculated to bring about the physical destruction of a part of those groups: Indictment, para. 37(3).

<sup>2257</sup> See N. Robinson, *The Genocide Convention: a Commentary* (Institute of Jewish Affairs, New York, 1960), p. 64: “[i]t is impossible to enumerate in advance the ‘conditions of life’ that would come within the prohibition of Article II; the intent and probability of the final aim alone can determine in each separate case whether an act of Genocide has been committed (or attempted) or not”.

<sup>2258</sup> The Prosecution Final Brief contains no reference to the evidence. The Trial Chamber has been unable to find any evidence with respect to this camp.

<sup>2259</sup> The Prosecution conceded that its review of the evidence discovered no evidence for this allegation presented at trial, and thus withdrew it: Prosecution Final Brief, fn. 945.

<sup>2260</sup> No evidence was presented to the Trial Chamber in this regard. The Trial Chamber has already made a finding under the heading of causing serious bodily or mental harm.

908. In addition, the Trial Chamber finds that insufficient evidence was presented before the Trial Chamber to allow it to conclude that the conditions of life inflicted upon detainees in the following camps and detention facilities amounted to conditions calculated to bring about the physical destruction of the group in part:

- Mali Logor;<sup>2262</sup> Viz Tunjice Penitentiary<sup>2263</sup> (Banja Luka municipality)
- Kozila logging camp<sup>2264</sup> (Bosanski Petrovac municipality)
- Jasenica Elementary School;<sup>2265</sup> Petar Kočić Elementary School<sup>2266</sup> (Bosanska Krupa municipality)
- SUP building; Nikola Mačkić School<sup>2267</sup> (Ključ municipality)

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<sup>2261</sup> The evidence on this detention facility depends solely on the testimony of Prosecution witness Rasim Čirkić, who, after testifying in chief, never returned to the Tribunal for cross-examination by the Defence because of ill-health. Because the Defence has not had an opportunity to cross-examine the witness on these events, and there being absolutely no other evidence on them, the Trial Chamber has not considered it safe to rely only on his evidence.

<sup>2262</sup> About 10 detainees were kept in a cell in Mali Logor of seven by eight meters. Some detainees remained there between 20 days and a month: BT-72, T. 18420, 18436 (closed session); Fikret Đikić, 92*bis* statement, ex. P2042, 338687. No further evidence was presented to the Trial Chamber in this regard.

<sup>2263</sup> The length of detention at Viz Tunjice varied between four days to about four and a half months. They were given food twice daily: BT-72, T. 18408, 18417 (closed session); BT-36, T. 11059, 11061-11062 (closed session); Fikret Đikić, 92*bis* statement, ex. P2042, 338687. No further evidence was presented to the Trial Chamber in this regard.

<sup>2264</sup> Most detainees were held at the Kozila logging camp for about a month, in the wooden shacks of the working site. Around 18 were kept in a room of about 14 square metres. They were provided with foam mattresses and blankets. They received three meals a day although the quality of the food was poor, and the quantity insufficient. They received sufficient water. Toilet facilities and showers were available. Some medical care appears to have been available. Around 6 August 1992, a number of detainees from Kulen Vakuf and from Bosanski Petrovac were transported from the Kozila logging camp to the detention facilities in the aforementioned camp in Kamenica, in the municipality of Titov Drvar. The rest were released on 21 August 1992: Zijad Ramić, ex. P1979, 92*bis* statement, 1029882-1029883, 1029885; Midho Družić, T. 16763-16778; Džemil Fazlić, ex. P1978, 92*bis* statement, 942942-942943. The character of the conditions does not permit the inference from the evidence presented that the conditions at Kozila logging camp were calculated to bring about physical destruction. In addition, a finding has been entered under the heading of causing serious bodily or mental harm.

<sup>2265</sup> Detainees were kept between 10 and 12 days at the Jasenica Elementary School. At the beginning, detainees were held in the gym of the school; later they were held in classrooms. Detainees slept on the floor and were not able to wash daily. They were given tinned food twice daily: BT-56, T. 17455, 17460; BT-55, T. 17544. The length of detention when considered together with the character of the other conditions does not permit the inference from the evidence presented that the conditions at the Jasenica Elementary School amounted to conditions calculated to bring about physical destruction. In addition, a finding has been entered under the heading of causing serious bodily or mental harm.

<sup>2266</sup> Detainees were forced by soldiers in former JNA uniforms to perform labour. On one occasion they were made to dig trenches for mortars to be transported to the frontline. The Trial Chamber has already found that a Serb military squad under the command of Milorad Kotur was responsible for the death of three detainees during trench-digging on a hill above the Petar Kočić School, despite assertions that they were accidentally killed by shots fired from nearby ABiH positions: BT-56, T. 17482-17484; Mirsad Palić, ex. P2040, 92*bis* statement, 844636-844637. *See A. 2. supra*, “The killing of a number of men in the Petar Kočić elementary school –Bosanska Krupa municipality”. One detainee was kept together with others for one month in a bathroom: BT-56, T. 17470-17471; ex. P2113.3, “Photograph of shower room in the school”. No further evidence was presented to the Trial Chamber on the conditions of life imposed upon detainees at the Petar Kočić Elementary School.

<sup>2267</sup> Those detained in the SUP building and the Nikola Mačkić School were crowded into cells and kept in cramped conditions and not provided with any food during their stay there. Their stay in these temporary detention facilities (which varied from a few hours to a maximum of two days) was a short-lived precursor to their transfer elsewhere: BT-

- Grabovica School;<sup>2268</sup> Kotor Varoš police station;<sup>2269</sup> Kotor Varoš sawmill<sup>2270</sup> (Kotor Varoš municipality)
- Prijedor barracks;<sup>2271</sup> Miška Glava;<sup>2272</sup> SUP building<sup>2273</sup> (Prijedor municipality)
- Vijaka mill<sup>2274</sup> (Prnjavor municipality)
- Krings factory;<sup>2275</sup> Hasan Kikić gymnasium<sup>2276</sup> (Sanski Most municipality)

26, T. 9161-9162 (closed session); BT-77, T. 10353-10355; Samir Dedić, T. 10404; Atif Džafić, ex. P1123, *92bis* statement, 2004684-2004685; ex. P1033, “Letter from the Ključ SJB to the Banja Luka CSB”, dated 29 August 2002 and signed by Chief Vinko Kondić: “There are no camps, prisons, or collection centres in our municipality. We send all prisoners to the Manjača prisoner of war camp at Dobrnja”. It contains a list of 1163 prisoners from Ključ municipality in the Manjača camp. The length of detention when considered together with the character of the other conditions does not permit the inference from the evidence presented that the conditions at the SUP building and the Nikola Mačkić School amounted to conditions calculated to bring about physical destruction. In addition, a finding has been entered under the heading of causing serious bodily or mental harm.

<sup>2268</sup> Women and children stayed there for one night: *see* E.2. *supra*, “Causing serious bodily or mental harm to members of the group”. No further evidence was presented to the Trial Chamber in this regard. The Trial Chamber has already made a finding under the heading of causing serious bodily or mental harm.

<sup>2269</sup> Detainees at the police station were kept in an extremely overcrowded room with a boarded up window, so that it was always dark, for some days, after which they were moved to another room. Length of detention varied between a few hours and eight days. One detainee spent the first night handcuffed to another. Food was very insufficient and detainees were beaten whilst eating it: BT-76, ex. P2044, *92bis* statement, 1028818, 1028820 (under seal); BT-71, T. 17635; BT-69, T. 17703-17704 (closed session). Despite the gravity of these conditions, the length of detention when considered together with the character of the other conditions does not permit the inference from the evidence presented that the conditions at the Kotor Varoš police station amounted to conditions calculated to bring about physical destruction. In addition, a finding has been entered under the heading of causing serious bodily or mental harm.

<sup>2270</sup> Some detainees were kept at the Kotor Varoš sawmill for three days. Detainees were kept in the warehouse. There was not enough food for all: BT-75, ex. P2045, *92bis* statement, 371788 (under seal). The length of detention when considered together with the character of the other conditions does not permit the inference from the evidence presented that the conditions at the Kotor Varoš sawmill amounted to conditions calculated to bring about physical destruction. In addition, a finding has been entered under the heading of causing serious bodily or mental harm.

<sup>2271</sup> At the JNA barracks, at least 30 detainees were kept in cramped conditions for one night: BT-36, T. 11049-11051 (closed session). No further evidence was presented to the Trial Chamber on this regard.

<sup>2272</sup> At Miška Glava dom, about 114 Bosnian Muslim detainees were locked up in the café, and the space was insufficient: they had to crouch with knees to chest and arms around the legs. Since it was summer it was extremely hot, and in order to get water they had to sing Serbian songs. The length of stay of detainees at Miška Glava varied from two to four days. During that time they received no food; they just had a loaf of bread and a packet of sweets to share: Nermin Karagić, ex. P559, T. 5218-5220; Elvedin Našić, T. 12694, 12709-12710. The length of detention when considered together with the character of the other conditions does not permit the inference from the evidence presented that the conditions at Miška Glava amounted to conditions calculated to bring about physical destruction. In addition, a finding has been entered under the heading of causing serious bodily or mental harm.

<sup>2273</sup> Detainees spent one night in a cell in the SUP: Mevludin Sejmenović, ex. P1533, T.4753; BT-42, ex. P564, T. 1851 (under seal). No further evidence was presented to the Trial Chamber in this regard.

<sup>2274</sup> The citizens of the predominantly Muslim village of Lišnja were kept by Milanković’s men and the police in the sawmill for about a day: *see* E. 2. *supra*, “Causing serious bodily or mental harm to members of the group”. No further evidence was presented to the Trial Chamber in this regard.

<sup>2275</sup> Around 3,000 Bosnian Muslim men and women, were held in the warehouse of the Krings factory outside Sanski Most. At one point women and the elderly were released to be transferred to Gracanica. There was at least one underage detainee amongst those who remained. At Krings, there were no toilets and no food was provided to the detainees. At least for one day, no water was provided. They remained there between one and three days: BT-108, ex. P839, *92bis* statement, 2028505-2028506 (under seal); Rajif Begić, T. 6375-6376. The length of detention when considered together with the character of the other conditions does not permit the inference from the evidence presented that the conditions at the Krings factory amounted to conditions calculated to bring about physical destruction.

<sup>2276</sup> At the Hasan Kikić Elementary School in Sanski Most, detainees received very little food. They had no toilets or beds. There was some medical care available for first aid. Their length of stay was about three or four days: Enis Šabanović, T. 6479-6486; Sakib Muhić, T. 8121-8122. The length of detention when considered together with the

- SUP building<sup>2277</sup> (Teslić municipality)

909. The Trial Chamber will now proceed to detail its findings with respect to those camps and detention facilities in relation to which it is satisfied beyond reasonable doubt that conditions calculated to bring about physical destruction were inflicted upon the Bosnian Muslim and Bosnian Croat detainees and, further, that they were inflicted deliberately.

a. Banja Luka municipality

i. Manjača camp

910. The camp was situated within a military training ground in what used to be its farm.<sup>2278</sup> The detainees were kept in large, crowded stables for livestock,<sup>2279</sup> where they sat or lay down for most of the day. There were some straw and blankets, but at times some detainees were lying directly on the concrete floor.<sup>2280</sup>

911. It was hard to breathe inside the stables because of the stench.<sup>2281</sup> The camp had no shower or bath facilities, and there was no running water.<sup>2282</sup> The camp was infested with lice.<sup>2283</sup> The detainees had to use buckets as toilets, although later there were field toilets of wooden boards.<sup>2284</sup>

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character of the other conditions does not permit the inference from the evidence presented that the conditions at the Hasan Kikić gymnasium amounted to conditions calculated to bring about physical destruction. In addition, a finding has been entered under the heading of causing serious bodily or mental harm.

<sup>2277</sup> The detainees' length of stay varied between one day and 12 days. From the SUP, detainees were transferred to other detention facilities. There were about 40 detainees in a basement cell of around six square meters, but there is evidence that not all were kept in the room all 12 days. Another room housed about seven or eight detainees, who slept on the concrete floor. There was one toilet which was broken. Detainees were not allowed to bathe. Detainees were not provided with any food for the first three days. Thereafter detainees were provided with sandwiches once a day. They were also occasionally provided with water. They received no medical attention following the beatings: BT-61, ex. P1976, *92bis* statement, 2978915 (under seal); Mehmed Tenić, T. 16865-16866; Ferid Mahalbašić, ex. P1962, *92bis* statement, 1034060-1034061; Mehmed Kopic, ex. P1964, *92bis* statement, 1034036, 1034038. Despite the gravity of these conditions, the length of detention when considered together with the character of the other conditions does not permit the inference from the evidence presented that the conditions at the Teslić SUP building amounted to conditions calculated to bring about physical destruction. In addition, a finding has been entered under the heading of causing serious bodily or mental harm.

<sup>2278</sup> Adil Medić, T. 2217.

<sup>2279</sup> Adil Medić, T. 2226; Amir Džonlić, T. 2367, 2371-2372, 2385; Paddy Ashdown, T. 12364; Samir Dedić, T. 10426; Charles McLeod, T. 7314-7315.

<sup>2280</sup> Amir Džonlić, T. 2370; Adil Medić, T. 2225; Atif Džafić, ex. P1123, *92bis* statement, 2004687; Asim Egrlić, T. 10607; Adil Draganović, T. 5106.

<sup>2281</sup> Amir Džonlić, T. 2371-2372.

<sup>2282</sup> Amir Džonlić, T. 2372; Adil Medić, T. 2226; Atif Džafić, ex. P1123, *92bis* statement, 2004687; Adil Draganović, T. 5101.

<sup>2283</sup> Atif Džafić, ex. P1123, *92bis* statement, p. 2004687.

<sup>2284</sup> Atif Džafić, ex. P1123, *92bis* statement, p. 2004687; Samir Dedić, T. 10431; Asim Egrlić, T. 10608.

912. The food in the camp was extremely insufficient,<sup>2285</sup> consisting of a thin broth and a slice of bread twice a day.<sup>2286</sup> As a result, many detainees lost weight and became very thin.<sup>2287</sup> Some detainees were so hungry they resorted to eating grass.<sup>2288</sup>

913. Water was severely insufficient, in terms of quantity<sup>2289</sup> as well as quality, since it originated from a lake.<sup>2290</sup> The poor water led to prevalent intestinal and stomach problems amongst the detainees.<sup>2291</sup> There were also quite a number of people with diabetes, high blood pressure and injuries. However, the 'medical clinic' in the camp, staffed by detainees, suffered a severe shortage of medicines and supplies.<sup>2292</sup>

914. Detainees at Manjača were made by the guards to perform heavy physical work.<sup>2293</sup> On one occasion, when an insufficient number of people volunteered, the detainee in charge of the stable received a blow with a wooden plank which broke his collarbone.<sup>2294</sup>

915. Manjača camp was visited several times by the ICRC and a local Bosnian Muslim humanitarian organisation, Merhamet.<sup>2295</sup> These organisations wrote reports and supplied humanitarian aid such as food, blankets, clothing, footwear and medicine. As a result of these visits, sometime towards the end of August 1992 conditions in the camp improved, particularly in terms of the food supplied to the detainees.<sup>2296</sup>

916. In response to a written request by Merhamet to the command of the 1<sup>st</sup> KK, between 110-120 detainees, amongst them underage, elderly and sick detainees, were released around 10 July

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<sup>2285</sup> Paddy Ashdown, T. 12375; Atif Džafić, ex. P1123, 92bis statement, 2004687; Muhamed Filipović, T. 9617-9618; Samir Dedić, T. 10428; Asim Egrlić, T. 10607; Ahmed Zulić, T. 6928; Faik Bišćević, T. 7085; Adil Draganović, T. 5098.

<sup>2286</sup> Atif Džafić, ex. P1123, 92bis statement, 2004685; Ahmed Zulić, T. 6928; Faik Bišćević, T. 7085.

<sup>2287</sup> BT-26, T. 9166 (closed session); Samir Dedić, T. 10428; Asim Egrlić, T. 10607; Adil Draganović, T. 5098; Ahmed Zulić, T. 6930-6931; Sakib Muhić, T. 8141-8144.

<sup>2288</sup> Ahmed Zulić, T. 6931; Muhamed Filipović, T. 9620; Adil Draganović, T. 5101, 6974.

<sup>2289</sup> Atif Džafić, ex. P1123, 92bis statement, 2004687; BT-26, T. 9166 (closed session); Asim Egrlić, T. 10609; Ahmed Zulić, T. 6928; Faik Bišćević, T. 7086-7087.

<sup>2290</sup> Barney Mayhew, ex. P1617, T. 6085; BT-27, T. 12083; Asim Egrlić, T. 10607; Jakov Marić, T. 10835; Enis Šabanović, T. 6530; Ahmed Zulić, T. 6929.

<sup>2291</sup> Ex. P1617/ S 217 A, "Mayhew Report on Manjača and Trnopolje" dated 4 September 1992.

<sup>2292</sup> Amir Džonlić, T. 2364-2366; ex. P841.6, "McLeod Report on Manjača camp", dated 3 September 1992.

<sup>2293</sup> Ex. P841.5, "CSCE Rapporteur Mission to Banja Luka", Meeting with Commandant of PW Camp Manjača, dated 3 September 1992; ex. P417, "Order" dated 22 August 1992, with a signature block of Momir Talić, on reconstruction works on the church in the village of Šljivno: "The collection centre at Manjača shall provide the workforce to carry out all the work on the site, and the head of the Centre shall personally answer to me for this"; Atif Džafić, ex. P1123, 92bis statement, 2004688; BT-26, T. 9167, 9228 (closed session); Ahmed Zulić, T. 6934; Bekir Delić, T. 7980; Enis Šabanović, T. 6532, T. 6612-6613; BT-36, T. 11101 (closed session); Adil Draganović, T. 5099.

<sup>2294</sup> Asim Egrlić, T. 10609.

<sup>2295</sup> Amir Džonlić, T. 2355-2356, 2360, 2380-2381; Adil Medić, T. 2215-2216, 2260.

<sup>2296</sup> Atif Džafić, ex. P1123, 92bis statement, 2004688-2004689; BT-26, T. 9222 (closed session); Muhamed Filipović, T. 9617-9618, 9624-9625; Asim Egrlić, T. 10609; Bekir Delić, T. 7980-7981; ex. P1617/ S 217 A, "Mayhew Report on Manjača and Trnopolje", dated 4 September 1992; Ahmed Zulić, T. 6929; ex. P2326, entry of 25 May 1992 (under seal); ex. P841.6, "McLeod Report on Manjača camp", dated 3 September 1992.

1992.<sup>2297</sup> In August and September 1992, more detainees were released.<sup>2298</sup> In December 1992, Manjača camp was closed and the ICRC and took care of the detainees that were released.<sup>2299</sup>

b. Bosanski Novi municipality

i. Mlavke football stadium

917. Detainees were kept at the Mlavke Football Stadium for about 45 days.<sup>2300</sup> Because they were confined to one part of the stadium, there was a shortage of space for approximately 700 men.<sup>2301</sup> They slept on the floor with no blankets.<sup>2302</sup>

918. The quantity of food was very insufficient, limited to thin soup and some bread,<sup>2303</sup> and detainees lost considerable weight.<sup>2304</sup> Women from outside the camp were occasionally allowed to take food to the detainees.<sup>2305</sup> Access to water for drinking was limited to twice a day.<sup>2306</sup>

919. Although they could wash, the water that was brought for that purpose was ice cold.<sup>2307</sup> In addition, they had no facilities to wash clothes.<sup>2308</sup> Relatives' visits were allowed on occasion and detainees could then receive clothes from their relatives.<sup>2309</sup> Toilet facilities were also inadequate.<sup>2310</sup>

920. Some people were ill and received no medical treatment.<sup>2311</sup> One man died of asthma.<sup>2312</sup>

921. Detainees had to perform labour to smoothen the path along the stadium.<sup>2313</sup>

922. On 24 July 1992, the ICRC registered the detainees and they were released.<sup>2314</sup>

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<sup>2297</sup> Amir Džonlić, T. 2388-2390; Adil Medić, T. 2237-2238; Samir Dedić, T. 10427.

<sup>2298</sup> Adil Medić, T. 2268-2269.

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<sup>2299</sup> Adil Medić, T. 2269; BT-27, ex. P1529, T. 4311 (under seal).

<sup>2300</sup> BT-82, T. 14000; BT-87, ex. P1643, 92bis statement, 942602 (under seal); Midho Alić, T. 13907.

<sup>2301</sup> Midho Alić, T. 13905; BT-83, T. 14063; BT-87, ex. P1643, 92bis statement, 942602 (under seal).

<sup>2302</sup> BT-82, T. 13999; Midho Alić, T. 13905.

<sup>2303</sup> Midho Alić, T. 13905-13906.

<sup>2304</sup> BT-82, T. 14000; BT-87, ex. P1643, 92bis statement, 942603 (under seal).

<sup>2305</sup> BT-81, T. 13799.

<sup>2306</sup> BT-82, T. 14000; BT-50, ex. P1641, 92bis statement, 672861 (under seal); BT-87, T. 14365.

<sup>2307</sup> Midho Alić, T. 13905; BT-87, T. 14365.

<sup>2308</sup> BT-82, T. 14002.

<sup>2309</sup> BT-83, T. 14076-14077.

<sup>2310</sup> BT-87, ex. P1643, 92bis statement, 942603 (under seal); BT-87, T. 14364.

<sup>2311</sup> Midho Alić, T. 13907; BT-82, T. 14017.

<sup>2312</sup> BT-82, T. 14000.

<sup>2313</sup> BT-82, T. 14000-14002.

<sup>2314</sup> BT-87, ex. P1643, 92bis statement, 942603 (under seal).



ii. Bosanski Novi fire station

923. At the fire station, around 19 detainees were kept in the cellar the whole time, where they slept on wooden palettes without covers.<sup>2315</sup> The length of detention stretched in some cases to one month.<sup>2316</sup> The detainees did not get sufficient water.<sup>2317</sup> Food consisted of leftovers from the military police; sometimes the food had already gone bad, which caused the detainees stomach aches.<sup>2318</sup> The room where the detainees were held had no toilet, and not even a bucket: for these purposes detainees were at the mercy of the Bosnian Serb military policeman guarding them, who would escort them to the toilet facilities at the fire department house, failing which detainees had to relieve themselves in a corner.<sup>2319</sup> Detainees had no opportunity of washing except sometimes when they were taken to the Una River.<sup>2320</sup>

c. Kotor Varoš municipality

i. Kotor Varoš prison

924. The length of detention at the Kotor Varoš prison varied from around seven days to 12 months,<sup>2321</sup> following which some were transferred to Manjača.<sup>2322</sup>

925. The 20 to 36 detainees of Room Three were kept in a cell of about 12 square meters with covered windows and a closed door.<sup>2323</sup> They slept on the floor with no cover.<sup>2324</sup> For about a month, the windows in Room Three were boarded up.<sup>2325</sup> Detainees of Room Three had to relieve themselves inside the cell in army flasks.<sup>2326</sup> They could not go out to the hallway.<sup>2327</sup> This situation went on for about a month until Dubočanin, which was identified as a member of the Banja Luka Special Unit, put an end to this state of affairs: thereafter the detainees of this room were allowed to the toilet where they could also wash and also out to the hallway once a day for a walk.<sup>2328</sup>

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<sup>2315</sup> BT-83, T. 14073.

<sup>2316</sup> BT-83, T. 14075-14076.

<sup>2317</sup> BT-83, T. 14076.

<sup>2318</sup> BT-83, T. 14074.

<sup>2319</sup> BT-83, T. 14074-14076.

<sup>2320</sup> BT-83, T. 14076-14077.

<sup>2321</sup> BT-69, T. 17710 (closed session); BT-97, T. 17933; BT-76, ex. P2044, 92bis statement, 1028821 (under seal).

<sup>2322</sup> BT-76, ex. P2044, 92bis statement, 1028823 (under seal).

<sup>2323</sup> BT-69, T. 17711, T. 17777 (closed session).

<sup>2324</sup> BT-69, T. 17714 (closed session).

<sup>2325</sup> BT-69, T. 17711 (closed session).

<sup>2326</sup> BT-69, T. 17711-17712 (closed session).

<sup>2327</sup> BT-69, T. 17711 (closed session).

<sup>2328</sup> BT-69, T. 17712 (closed session).

926. After about three months some of the detainees were allowed to receive visitors, although not those in Room Three.<sup>2329</sup>

927. They only received sufficient water to drink and could not wash themselves.<sup>2330</sup>

928. Food was severely insufficient – they received a meal consisting of the soldiers’ leftovers once every two or three days.<sup>2331</sup> Sometimes it was bad and caused the detainees dysentery and stomach problems.<sup>2332</sup> Detainees were not given medical treatment for the injuries caused by the beatings.<sup>2333</sup>

929. In August 1992, the ICRC visited the detainees and did so again once a month after that.<sup>2334</sup> “Nedo” Đekanović (president of the Kotor Varoš SDS), Zdravko Pejić (coordinator between Serbs in Banja Luka and Kotor Varoš) and Slobodan Župljanin (commander of the 22<sup>nd</sup> Light Mountain Brigade, and Stojan Župljanin’s brother) met the ICRC delegation on 3 October 1992 in the prison.<sup>2335</sup> The evening prior to the visit, detainees had to remove traces of maltreatment.<sup>2336</sup> Conditions improved thereafter and, just before the New Year, detainees were given blankets.<sup>2337</sup> Visits were allowed and detainees could receive food, and also bathe and shave.<sup>2338</sup>

#### d. Prijedor municipality

##### i. Omarska camp

930. The length of detainees’ stay in Omarska averaged approximately two months.<sup>2339</sup> At Omarska, detainees slept on the floor. They were kept in large numbers in garages and suffered from lack of space and air.<sup>2340</sup>

931. As stated earlier, around 29 May 1992, detainees from the Benkovac military barracks were transferred to the camp.<sup>2341</sup> Upon arrival, around 120 individuals were crammed into a garage for several days. It was very hot, and they had to beg for water and sing Serbian songs to obtain it.

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<sup>2329</sup> BT-69, T. 17713 (closed session).

<sup>2330</sup> BT-69, T. 17712 (closed session).

<sup>2331</sup> BT-69, T. 17712 (closed session); BT-76, ex. P2044, 92bis statement, 1028822 (under seal).

<sup>2332</sup> BT-97, T. 17933; BT-76, ex. P2044, 92bis statement, 1028822 (under seal).

<sup>2333</sup> BT-69, T. 17734 (closed session).

<sup>2334</sup> BT-69, T. 17738-17739 (closed session).

<sup>2335</sup> BT-76, ex. P2044, 92bis statement, 10288223 (under seal); BT-72, T. 18393 (closed session).

<sup>2336</sup> BT-69, T. 17739 (closed session).

<sup>2337</sup> BT-69, T. 17740 (closed session).

<sup>2338</sup> BT-69, T. 17740 (closed session).

<sup>2339</sup> Muharem Murselović, T. 12611; Samir Poljak, ex. P1521, T. 6360.

<sup>2340</sup> Muharem Murselović, T. 12600.

<sup>2341</sup> Samir Poljak, ex. P1521, T. 6353.

Even then it was not enough and they had to fight between themselves for a drink.<sup>2342</sup> The Trial Chamber has already found that two young men suffocated to death as a result of the conditions inside the garage.<sup>2343</sup>

932. As a rule, food at Omarska amounted to starvation rations. Detainees were fed once a day: a small piece of bread, stew and some cabbage.<sup>2344</sup> The food was usually spoiled.<sup>2345</sup> By contrast, the camp personnel enjoyed proper food.<sup>2346</sup> Detainees were forced to eat their food very quickly, in the space of minutes, or else they would be beaten.<sup>2347</sup> As a result of these conditions, detainees lost considerable weight.<sup>2348</sup>

933. The water given to the detainees was not fit for human consumption: it was in fact destined for industrial use.<sup>2349</sup> This caused the detainees intestinal problems.<sup>2350</sup>

934. Hygienic conditions were very deficient. Toilets were blocked and filthy.<sup>2351</sup> Instead of being allowed to bathe, detainees were on one occasion hosed down.<sup>2352</sup> No medicine was provided.<sup>2353</sup>

935. On 6 and 7 August, following the visit of foreign journalists,<sup>2354</sup> a large number of detainees (about 1360) were transferred to camps at Manjača and Trnopolje.<sup>2355</sup> International journalists met the following officials at Omarska: Simo Drljača, Milomir Stakić, Kovačević and Nada Balaban. Detainees had to remove traces of beatings and killings.<sup>2356</sup> Conditions in Omarska camp improved for the 150 detainees that remained: they were provided with mattresses and bedding and the food improved.<sup>2357</sup> Omarska was closed on 16 August 1992.<sup>2358</sup>

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<sup>2342</sup> Samir Poljak, ex. P1521, T. 6357; Samir Poljak, T. 11891.

<sup>2343</sup> Samir Poljak, ex. P1521, T. 6357; Samir Poljak, T. 11891. *See A.2. supra*, “The killing of a number of people in Omarska camp between 28 May and 6 August 1992 –Prijedor municipality”.

<sup>2344</sup> Muharem Murselović, ex. P1542, T. 2721; BT-1, ex. P1619, T. 4937 (under seal).

<sup>2345</sup> Muharem Murselović, ex. P1542, T. 2721; BT-1, ex. P1619, T. 4937 (under seal).

<sup>2346</sup> BT-1, ex. P1619, T. 4937 (under seal).

<sup>2347</sup> Muharem Murselović, ex. P1542, T. 2721; BT-1, ex. P1619, T. 4827 (under seal).

<sup>2348</sup> BT-2, ex. P561, T. 2755 (under seal).

<sup>2349</sup> Nusret Sivac, ex. P1547, T. 6642, 6748; Muharem Murselović, ex. P1542, T. 2721-2722; BT-1, ex. P1619, T. 4856 (under seal).

<sup>2350</sup> Nusret Sivac, ex. P1547, T. 6642.

<sup>2351</sup> Muharem Murselović, ex. P1542, T. 2736.

<sup>2352</sup> BT-1, ex. P1619, T. 4773 (under seal).

<sup>2353</sup> Muharem Murselović, ex. P1542, T. 2722.

<sup>2354</sup> Penny Marshall visited Omarska on 5 August: Nusret Sivac, T. 12759.

<sup>2355</sup> BT-42, ex. P564, T. 1928, (under seal); Samir Poljak, ex. P1521, T. 6376.

<sup>2356</sup> Samir Poljak, T. 11894-11897.

<sup>2357</sup> Samir Poljak, T. 11894-11897; ex. P1134, “Government of Serbian Republic of Bosnia and Herzegovina, Report of the Commission on the Inspection of Collection Centres and Other Facilities for Captives in the Autonomous Region of Krajina”, Pale dated 17 August 1992, states that “there are 174 male prisoners aged between 18 and 60 (...) The prisoners are kept in a hall containing military camp-beds and orderly toilet facilities”; Idriz Merdžanić, T. 11822-11823, referring to ex. P1134.

ii. Keraterm camp

936. Rooms Three and Four in Keraterm camp held each a few hundred detainees, making it unbearably crowded and hot inside.<sup>2359</sup> Some detainees remained there for approximately 16 days.<sup>2360</sup>

937. Detainees in Room Three were for three days not allowed to go outside the room and were forced to relieve themselves in a plastic beaker.<sup>2361</sup> In Room Four there was one toilet in the room, but it was blocked and filthy.<sup>2362</sup> In addition, detainees had no facilities to wash their clothes.<sup>2363</sup>

938. Food was extremely insufficient and was limited to a meal a day, which detainees only had a few minutes to eat.<sup>2364</sup>

939. A doctor visited once; nurses visited a few times for the purposes of administering lice powder.<sup>2365</sup>

iii. Trnopolje camp

940. Trnopolje camp was officially closed on 30 September 1992,<sup>2366</sup> although some detainees stayed behind longer.<sup>2367</sup> The 1,600 male detainees were held for approximately two to three months.<sup>2368</sup>

941. The conditions inside the camp were “unacceptable”.<sup>2369</sup> There were no beds or blankets at Trnopolje camp and detainees had to sleep on the floor.<sup>2370</sup> Some of them had to sleep outside.<sup>2371</sup>

942. Food was not organised at the camp and there was not enough of it.<sup>2372</sup> Initially it would be brought by relatives into the camp or bought from the local population,<sup>2373</sup> although subsequently

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<sup>2358</sup> Ex. DB113, “Report of the Prijedor SJB on Reception Centres in Prijedor Municipality”, undated, signed by Station Chief Simo Drljača.

<sup>2359</sup> BT-37, ex. P555, T. 2507 (under seal); BT-34, ex. P558, T. 1072-1073 (under seal).

<sup>2360</sup> BT-34, ex. P558, T. 1064, 1088 (under seal); BT-37, ex. P555, T. 2501, 2522 (under seal).

<sup>2361</sup> BT-37, ex. P555, T. 2507 (under seal).

<sup>2362</sup> BT-34, ex. P558, T. 1072-1073 (under seal).

<sup>2363</sup> BT-34, ex. P558, T. 1072-1073 (under seal).

<sup>2364</sup> BT-34, ex. P558, T. 1072-1073, 1087-1088 (under seal).

<sup>2365</sup> BT-34, ex. P558, T. 1134 (under seal).

<sup>2366</sup> Idriz Merdžanić, ex. P1148, T. 7799-7800; ex. P1617/ S 217 A, “Mayhew Report on Manjača and Trnopolje”, dated 4 September 1992.

<sup>2367</sup> Jusuf Arifagić, ex. P554, T. 7106.

<sup>2368</sup> Barney Mayhew, ex. P1617, T. 6090.

<sup>2369</sup> Paddy Ashdown, T. 12426-12430.

<sup>2370</sup> Idriz Merdžanić, T. 11812-11813.

<sup>2371</sup> BT-38, ex. P556, T. 1654-1655 (under seal).

<sup>2372</sup> Idriz Merdžanić, ex. P1148, T. 7758; BT-38, ex. P556, T. 1654-1655 (under seal).

<sup>2373</sup> Emsud Garibović, T. 12462; BT-38, ex. P556, T. 1654-1655 (under seal).

the Bosnian Serb Red Cross procured milk and bread which it bought locally.<sup>2374</sup> When the ICRC arrived in the camp around mid-August 1992, it arranged for the delivery of food.<sup>2375</sup> This was providential since by that time most of the local population had been “cleansed” and could not assist with the provision of food.<sup>2376</sup>

943. The quality of the water supplied was inadequate, as shown by the numerous cases of diarrhoea.<sup>2377</sup> At least one man who had also been beaten died of dysentery.<sup>2378</sup>

944. Basic hygiene was lacking: toilets quickly became unusable and septic pits were dug instead, but were not maintained.<sup>2379</sup> Lice and scabies were rife.<sup>2380</sup>

945. Some medical treatment was provided, but the camp was not sufficiently equipped beyond basic health care.<sup>2381</sup> There were no medical supplies available until the arrival of the ICRC.<sup>2382</sup>

e. Prnjavor municipality

i. Sloga shoe factory

946. Detainees were held at the Sloga shoe factory ranging from 36 days to about three months.<sup>2383</sup> With the exception of some eight to 10 men that were taken to a prison in Banja Luka, the others remained in Sloga.<sup>2384</sup> The Sloga shoe factory was closed on 14 September 1992, when around 70 to 100 of them were left – the rest had been released gradually, prior to this.<sup>2385</sup>

947. At the Sloga, detainees were initially put in one room for two or three days where they would take turns to lie down and sleep because there was not enough room.<sup>2386</sup> One detainee

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<sup>2374</sup> Idriz Merdžanić, ex. P1148, T. 7758.

<sup>2375</sup> Idriz Merdžanić, ex. P1148, T. 7799.

<sup>2376</sup> BT-29, ex. P560, T. 6312 (under seal).

<sup>2377</sup> BT-38, ex. P556, T. 1654-1655 (under seal); Barney Mayhew, ex. P1617, T. 6083; ex. P1617/S217A, “Mayhew Report on Manjača and Trnopolje” dated 4 September 1992.

<sup>2378</sup> Idriz Merdžanić, T. 11782.

<sup>2379</sup> Idriz Merdžanić, ex. P1148, T. 7759; BT-38, ex. P556, T. 1654-1655 (under seal); ex. P1617/S217A, “Mayhew Report on Manjača and Trnopolje”, dated 4 September 1992.

<sup>2380</sup> BT-38, ex. P556, T. 1654-1655 (under seal).

<sup>2381</sup> BT-38, ex. P556, T. 1657-1660 (under seal); Mevludin Sejmenović, T. 12203-12205.

<sup>2382</sup> Idriz Merdžanić, ex. P1148, T. 7765.

<sup>2383</sup> Rusmir Mujanić, T. 16034; BT-91, T. 15888.

<sup>2384</sup> BT-91, T. 15888.

<sup>2385</sup> BT-91, T. 15894.

<sup>2386</sup> BT-91, T. 15878-15879; Rusmir Mujanić, T. 16038-16039.

estimated that he was initially placed in a room with around 130 others.<sup>2387</sup> With the arrival of more detainees they were allowed into a second room.<sup>2388</sup>

948. Detainees could sleep on cardboard over the concrete floor.<sup>2389</sup> They were not provided with food during their stay at Sloga, but their families were allowed to bring them food almost every day. Those without relatives in the area lost weight despite the generosity of other detainees. They were also unable to wash their clothes.<sup>2390</sup> Some medical assistance appears to have been available.<sup>2391</sup>

949. Whilst in Sloga detainees worked, *inter alia*, on Milanković's estate.<sup>2392</sup> On these occasions they were guarded by the police.<sup>2393</sup>

f. Sanski Most municipality

i. Betonirka

950. The detainees' length of stay at the Betonirka factory garages varied between three days to over a month.<sup>2394</sup> On average there were around 30 individuals per garage, and there were three garages<sup>2395</sup> which were small.<sup>2396</sup> At some point, the garage was so crowded that the detainees had to sleep sitting up.<sup>2397</sup> They slept on the concrete,<sup>2398</sup> although at one point they were given Styrofoam mattresses. One night when Martić was shift commander they were forced to stand all 12 hours and were not allowed to sleep.<sup>2399</sup>

951. There was no ventilation in the garages, since the windows were covered.<sup>2400</sup> When the door was closed, breathing was difficult.<sup>2401</sup> Only very occasionally were they allowed outside for 30 minutes a day.<sup>2402</sup>

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<sup>2387</sup> Rusmir Mujanić, T. 16033.

<sup>2388</sup> BT-91, T. 15880.

<sup>2389</sup> Rusmir Mujanić, T. 16034, 16039.

<sup>2390</sup> Rusmir Mujanić, T. 16037.

<sup>2391</sup> Rusmir Mujanić, T. 16040.

<sup>2392</sup> BT-91, T. 15895; Rusmir Mujanić, T. 16043, 16048, 16061.

<sup>2393</sup> Rusmir Mujanić, T. 16044.

<sup>2394</sup> Ahmed Zulić, T. 6886; Jakov Marić, T. 10824; BT-23, T. 6418; Mirzet Karabeg, T. 4171, 4174.

<sup>2395</sup> Ahmed Zulić, T. 6883-6884; Mirzet Karabeg, T. 6169.

<sup>2396</sup> BT-23, T. 6418-6419; Ahmed Zulić, T. 6884.

<sup>2397</sup> BT-23, T. 6420.

<sup>2398</sup> Mirzet Karabeg, T. 6170.

<sup>2399</sup> Mirzet Karabeg, T. 6171.

<sup>2400</sup> Ahmed Zulić, T. 6884; Bekir Delić, T. 7956; BT-23, T. 6418-6419.

<sup>2401</sup> BT-23, T. 6418-6419.

<sup>2402</sup> Bekir Delić, T. 7959.

952. At Betonirka, the amount of food given to detainees was insufficient and its quality deficient: it sometimes consisted of leftovers from the MUP kitchen, which caused the detainees stomach problems.<sup>2403</sup> Detainees were given a very short time to eat it.<sup>2404</sup> Water came in dirty glass bottles.<sup>2405</sup>

953. At Betonirka, sanitary conditions were totally inadequate: they could only use the field toilet when the garage was open, which depended on the whims of the guard.<sup>2406</sup> If not, they had to relieve themselves in a bucket inside the garage, or in nylon bags.<sup>2407</sup> There was no water for bathing or for washing clothes.<sup>2408</sup>

954. There were no medical facilities available for the treatment of injuries at Betonirka.<sup>2409</sup>

g. Teslić municipality

i. Pribinić

955. Some detainees remained in Pribinić camp for 105 days.<sup>2410</sup> Between five and seven detainees were kept in rooms of about three by four meters.<sup>2411</sup> In some of the rooms the windows were covered and there was no light.<sup>2412</sup> Detainees slept on wooden pallets.<sup>2413</sup> They stayed inside except when they went to the toilet.<sup>2414</sup>

956. Detainees received a meal a day.<sup>2415</sup> They received sufficient water.<sup>2416</sup>

957. Hygiene was meagre: there was an outside toilet.<sup>2417</sup> Detainees could not wash or change clothes.<sup>2418</sup>

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<sup>2403</sup> BT-23, T. 6419-6420; Mirzet Karabeg, T. 6169, 6171; Jakov Marić, T. 10827; Bekir Delić, T. 7597-7598, 7962.

<sup>2404</sup> Ahmed Zulić, T. 6994-6995.

<sup>2405</sup> BT-23, T. 6420.

<sup>2406</sup> Bekir Delić, T. 7957-7958.

<sup>2407</sup> BT-23, T. 6419; Bekir Delić, T. 7957-7958.

<sup>2408</sup> Bekir Delić, T. 7957-7958, 7963.

<sup>2409</sup> Mirzet Karabeg, T. 6170-6171.

<sup>2410</sup> BT-64, T. 16969, 16971.

<sup>2411</sup> BT-61, ex. P1976, 92bis statement, 02978919 (under seal).

<sup>2412</sup> BT-61, ex., P1976, 92bis statement, 02978919 (under seal).

<sup>2413</sup> BT-64, T. 16972.

<sup>2414</sup> BT-64, T. 16972, 17004.

<sup>2415</sup> BT-64, T. 16971.

<sup>2416</sup> BT-64, T. 16971.

<sup>2417</sup> BT-64, T. 16971.

<sup>2418</sup> BT-64, T. 16971.

958. One detainee developed pneumonia and was taken to hospital together with another man who had been shot in the leg, but some other less fortunate ones were provided no medical treatment and died from their injuries.<sup>2419</sup>

ii. Territorial Defence building

959. Some detainees remained at the TO building between 30 and 40 days.<sup>2420</sup> Detainees were kept in a warehouse and stayed inside at all times.<sup>2421</sup> It was hot and stuffy.<sup>2422</sup> They had to sleep on the concrete floor.<sup>2423</sup>

960. Detainees had to urinate in a canister, or else they would risk being beaten on the way to the toilet.<sup>2424</sup> They were not able to wash or change clothes.<sup>2425</sup>

961. Detainees were fed a sandwich once a day.<sup>2426</sup> They had a 10 litre canister of water to share between everybody at the warehouse.<sup>2427</sup>

962. A detainee was taken to Teslić medical centre for medical attention, whilst other detainees were so severely beaten they had to be taken to Banja Luka hospital; detainees suffered from diabetes and dysentery but did not receive medical attention.<sup>2428</sup>

(c) The Specific Intent

963. The critical determination still to be made is whether the underlying offences were committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

(i) “In part”

964. The Prosecution submits that the Bosnian Muslims and Bosnian Croats of the ARK were the parts of these groups targeted for destruction, that they are “substantial” parts, and therefore that the

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<sup>2419</sup> BT-64, T. 16975, 17004-17005.

<sup>2420</sup> Mehmed Tenić, T. 16869; Ferid Mahalbašić, ex. P1962, 92*bis* statement, 1034062.

<sup>2421</sup> BT-61, ex. P1976, 92*bis* statement, 2978916 (under seal); Ferid Mahalbašić, ex. P1962, 92*bis* statement, 1034061; Mehmed Tenić, T. 16883.

<sup>2422</sup> Mehmed Kopic, ex. P1964, 92*bis* statement, 1034038.

<sup>2423</sup> BT-61, ex. P1976, 92*bis* statement, 2978916 (under seal); Mehmed Tenić, T. 16869; Ferid Mahalbašić, ex. P1962, 92*bis* statement, 1034061.

<sup>2424</sup> Ferid Mahalbašić, ex. P1962, 92*bis* statement, 1034061; Mehmed Tenić, T. 16868.

<sup>2425</sup> Mehmed Tenić, T. 16869; Ferid Mahalbašić, ex. P1962, 92*bis* statement, 1034062.

<sup>2426</sup> BT-61, ex. P1976, 92*bis* statement, 2978916 (under seal); Mehmed Tenić, T. 16867; Ferid Mahalbašić, ex. P1962, 92*bis* statement, 1034061.

<sup>2427</sup> Mehmed Tenić, T. 16868.

<sup>2428</sup> BT-61, ex. P1976, 92*bis* statement, 2978918 (under seal); Ferid Mahalbašić, ex. P1962, 92*bis* statement, 1034061; Mehmed Tenić, T. 16869.



intent to destroy these parts falls under the definition of genocide.<sup>2429</sup> In considering this submission, the Trial Chamber must answer the question “how much of a group a perpetrator must intend to destroy in order to meet the legal requirements of genocide”.<sup>2430</sup>

965. It is necessary at this stage to determine the geographical area to which the charges of genocide and complicity in genocide relate.<sup>2431</sup> The Indictment alleges that the Accused participated in a campaign designed to destroy Bosnian Muslims and Bosnian Croats “in the municipalities listed in paragraph 4 [of the Indictment], which formed part of the ARK”.<sup>2432</sup> Of these, three were withdrawn at the stage of the Trial Chamber’s Rule 98*bis* Decision, leaving Banja Luka, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Čelinac, Donji Vakuf, Ključ, Kotor Varoš, Prijedor, Prnjavor, Sanski Most, Teslić and Šipovo (“relevant ARK municipalities”). Moreover, the Prosecution did not lead evidence of underlying acts for genocide with respect to the municipalities of Čelinac and Šipovo.<sup>2433</sup>

966. The Trial Chamber is aware that narrowing down the scope of the “targeted part” to the relevant ARK municipalities could have a distorting effect, in more ways than one. In the first place, this is because the intent to destroy a group in part means seeking to destroy a “distinct part” of the group,<sup>2434</sup> and it is difficult to justify how the Bosnian Muslims and the Bosnian Croats of the relevant ARK municipalities constitute distinct parts as opposed to those of the ARK as a whole. In the second place, this is because, in the Prosecution’s submission, any alleged genocidal intent was not limited to the Bosnian Muslims and the Bosnian Croats of the relevant ARK municipalities, but

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<sup>2429</sup> In addition, the Prosecution submits, in the alternative, that “the evidence at trial has established beyond a reasonable doubt that the Accused and other participants in the joint criminal enterprise intended to destroy the Bosnian Muslim and Bosnian Croat leadership and military-aged men in the ARK. Thus, they intended to destroy the groups ‘in part’ within the meaning of Article 2”: Prosecution Final Brief, para. 537. For the reasons that follow, namely that the evidence supports the conclusion that the targeted parts were the Bosnian Muslims and Bosnian Croats of the ARK, the Trial Chamber has not felt it necessary to address these submissions. It is satisfied, however, that it is not possible to draw the conclusion from the evidence that the leadership was targeted, for the reason that the acts enumerated in Article 4(2)(a) to (c) were inflicted on Bosnian Muslims and Bosnian Croats the overwhelming majority of whom did not belong to the leadership. While leaders of the SDA and HDZ were among the first to be arrested, the overwhelming majority of those detained were not prominent. See IV.C. *supra*, “The implementation of the Strategic Plan in the Bosnian Krajina”. The question of men of military age is addressed in more detail below.

<sup>2430</sup> *Prosecutor v. Slobodan Milošević*, Case IT-02-54-T, Decision on Motion for Judgement of Acquittal, 16 June 2004, para. 127 (“*Milošević* Rule 98*bis* Decision”).

<sup>2431</sup> Despite the reference to the “ARK” and to “relevant ARK municipalities”, for the purposes of determining the specific intent for genocide, these should be understood as the area comprised by the Indictment throughout the whole period relevant to the Indictment, regardless of the fact that the ARK strictly speaking ceased to exist at some point before the end of it.

<sup>2432</sup> Indictment, para. 36. Paragraph 4 of the Indictment enumerates the following municipalities: Banja Luka, Bihać-Ripač, Bosanska Dubica, Bosanska Gradiška, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Čelinac, Donji Vakuf, Ključ, Kotor Varoš, Prijedor, Prnjavor, Sanski Most, Šipovo and Teslić. Of these, Bihać-Ripač, Bosanska Dubica and Bosanska Gradiška were dropped by the Rule 98*bis* Decision.

<sup>2433</sup> The Indictment does not charge the commission of any of the acts envisaged in Article 4(2)(a), (b) and (c) in the municipality of Čelinac. The Indictment charges the infliction of serious bodily or mental harm in the municipality of Šipovo, but the Prosecution withdrew this allegation in the Prosecution Final Brief. See E. 2. *supra*, “Causing serious bodily or mental harm to members of the group”.

<sup>2434</sup> See *Krstić* Trial Judgement, para. 590.

extended to those of the ARK.<sup>2435</sup> Finally, the discussion on the scope of the “targeted part” becomes of some importance when it is necessary to address whether the “targeted part” satisfies the requirement of substantiality.

967. The Trial Chamber finds that there is sufficient evidence that the targeted parts of the groups were the Bosnian Muslims and Bosnian Croats of the ARK.<sup>2436</sup> For the purposes of analysing whether the requirement of substantiality is satisfied, since it is difficult to precisely determine which municipalities belonged to the ARK at any given time, it suffices that the Trial Chamber is satisfied that all thirteen municipalities addressed in the Indictment and referred to as the relevant ARK municipalities belonged to the ARK at any given time.<sup>2437</sup> According to the 1991 census, there were 2,162,426 Bosnian Muslims and 795,745 Bosnian Croats in BiH.<sup>2438</sup> Of these, 233,128 Bosnian Muslims and 63,314 Bosnian Croats lived in the relevant ARK municipalities.<sup>2439</sup> Numerically speaking, the Bosnian Muslims and Bosnian Croats of the relevant ARK municipalities, on their own, constituted a substantial part, both intrinsically and in relation to the overall Bosnian Muslim and Bosnian Croat groups in BiH.<sup>2440</sup> The requirement of substantiality is satisfied, at a minimum, by the relevant ARK municipalities, and it is therefore unnecessary to inquire further into other relevant factors such as the prominence of the targeted parts within the groups.<sup>2441</sup> The Trial Chamber is satisfied that, in targeting the Bosnian Muslims and Bosnian

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<sup>2435</sup> The Indictment also alleges that the most extreme manifestation of this genocidal campaign took place in the municipalities of Bosanski Novi, Ključ, Kotor Varoš, Prijedor and Sanski Most: Indictment, para. 36. The Prosecution subsequently maintained that “it would submit in the alternative (...) that the Muslim and Croat communities in Prijedor, Sanski Most, Ključ and Kotor Varoš could also be seen to have been specially targeted and to constitute “substantial parts” of the overall groups under *Krstić* [Appeal Judgement]”: Confidential Prosecution’s Response to Trial Chamber’s Questions Regarding Genocide and the *Krstić* Appeal Judgement”, 29 April 2004, para. 8. It is not clear why the Prosecution does not or no longer make this argument with respect to Bosanski Novi. Regardless, the Trial Chamber does not consider it necessary to address this submission because it was not pleaded in the Indictment and because the evidence does not support it. It may however become relevant when evaluating whether the extent of the actual destruction supports a finding of genocidal intent. *See* para. 974 *infra* and accompanying footnote.

<sup>2436</sup> *See* IV.C. *supra*, “The implementation of the Strategic Plan in the Bosnian Krajina”. *See* also ex. P229, “Conclusions adopted by the municipalities of Bihać, Bosanski Petrovac, Bosanska Krupa –referred to as Srpska Krupa-, Sanski Most, Prijedor, Bosanski Novi and Ključ”, dated 7 June 1992: “All seven municipalities in our sub-region agree that Muslims and Croats should move out of our municipalities until a level is reached where Serbian authority can be maintained and implemented on its own territory in each of these municipalities. In this respect, we request that the Crisis Staff of the Autonomous Region of Krajina provide a corridor for the resettlement of Muslims and Croats to Central Bosnia and Alija’s independent state of BiH because they voted for it. If the leadership of the Autonomous Region of Krajina is Banja Luka fails to solve this issue, our seven municipalities will take all Muslims and Croats under military escort from our municipalities to the centre of Banja Luka (...)”.

<sup>2437</sup> *See* VI.A. *supra*, “The Autonomous Region of Krajina”.

<sup>2438</sup> Ex. P60: “Croatia National Statistics Depot, Population of Bosnia and Herzegovina, Permanent Population by Ethnicities in Municipalities; Censuses of 1971, 1981 and 1991” dated April 1995, which contains the 1991 census for BiH.

<sup>2439</sup> Ex. P60: “Croatia National Statistics Depot, Population of Bosnia and Herzegovina, Permanent Population by Ethnicities in Municipalities; Censuses of 1971, 1981 and 1991” dated April 1995, which contains the 1991 census for BiH.

<sup>2440</sup> They would amount to about 10.78% and 7.96% respectively of the total population of Bosnian Muslims and Bosnian Croats in BiH.

<sup>2441</sup> Nevertheless, other factors that would point towards the satisfaction of the substantiality requirement are satisfied too. *E.g.*: with respect to prominence within the group, Banja Luka was the biggest town on the Serbian side: *see* T. 20623 (closed session). *See* also VI, A. 3. *supra*, “The dispute between the ARK and the authorities of the SerBiH on

Croats of the ARK, the perpetrators intended to target at least substantial parts of the protected groups.

968. Furthermore, as noted below, evidence of genocidal intent may have to be inferred from the facts and circumstances. Because evidence of the underlying acts has only been lead with respect to certain municipalities, this could have an effect on the determination of the existence of genocidal intent. For this reason, when it comes to determining whether the actual extent of the destruction supports the inference that the underlying acts were committed with the specific intent, the Trial Chamber will only consider for the sake of comparison the populations of the relevant ARK municipalities, excluding Čelinac and Šipovo.

(ii) Inferring the specific intent

969. It remains to be determined whether the evidence shows that the killings and the infliction of serious bodily or mental harm and of conditions of life were carried out with the intent to destroy the Bosnian Muslim and Bosnian Croat groups of the ARK. The jurisprudence supports the position that, other things being equal, in cases of joint participation, “the intent to destroy, in whole or in part, a group as such must be discernible in the criminal act itself, apart from the intent of particular perpetrators”.<sup>2442</sup>

970. “Where direct evidence of genocidal intent is absent, the intent may still be inferred from the factual circumstances of the crime”.<sup>2443</sup> Where an inference needs to be drawn, it has to be *the only reasonable inference available on the evidence*.

971. The Prosecution enumerates a series of factors from which, in its submission, the specific intent may be inferred.<sup>2444</sup> These are not however the only factors relevant to prove the specific

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the status of the ARK”. With respect to the area of the Accused’s activity and power as well as the possible extent of their reach, the Trial Chamber is satisfied that this would correspond to the territory of the ARK: *see* VIII.B. *supra*, “*De jure and de facto* power of the Accused” and C. *supra*, “The Accused’s participation in the implementation of the Strategic Plan”.

<sup>2442</sup> “It is then necessary to establish whether the accused being prosecuted for genocide shared the intention that a genocide be carried out”: *Krstić* Trial Judgement, para. 549. A different formulation of the same principle is as follows: if the evidence supports the inference that the underlying acts were motivated by the specific intent required for genocide, a finding that genocide has occurred may be entered: *see* E.1. *supra*, “Inferring the specific intent” and *Krstić* Appeal Judgement, para. 34.

<sup>2443</sup> *Krstić* Appeal Judgement, para. 34.

<sup>2444</sup> Prosecution Final Brief, paras 540-541: “(i) the general political doctrine which gave rise to the ‘prohibited’ acts; (ii) the existence of a genocidal plan or policy, and the Accused’s participation in its creation and/or execution; (iii) the general nature of atrocities in a region or a country; (iv) the scale of actual or attempted destruction, *i.e.*, “the scale of the atrocities committed”; (v) the perpetration and/or repetition of other destructive or discriminatory acts committed as part of the same pattern of conduct, whether committed by the same offender or by others; (vi) the systematic targeting of members of the group, especially at the exclusion of members of other groups; (vii) the systematic disposal of bodies, including the concealment of bodies in mass graves, causing terrible distress to survivors unable to verify or mourn the deaths; (viii) the destruction of religious and cultural property and symbols, as well as the destruction of homes belonging to members of the group; (ix) the perpetration of acts which violate, or which the perpetrators

intent required for the crime of genocide. For ease of reference, the Trial Chamber has grouped the evidence into four sub-headings under which it will examine *all* the evidence.

a. The extent of the actual destruction

972. The Prosecution argues that the crimes committed in the ARK during 1992 were vast in their geographical scope across the region and substantial in the number of victims.<sup>2445</sup>

973. As the *Milošević* Trial Chamber has stated, “the extent of the actual destruction, if it does take place, will more often than not be a factor from which the inference may be drawn that the underlying acts were committed with the specific intent”.<sup>2446</sup> In determining whether the requisite specific intent can be inferred from the evidence, the Trial Chamber will examine the evidence as to the actual destruction of the groups within the terms of Article 4(2)(a), (b) and (c).<sup>2447</sup>

974. The proper basis for comparison would be between those Bosnian Muslims or Bosnian Croats who were victims within the terms of Article 4(2)(a), (b) or (c), and the populations of those groups in the whole ARK. However, since the Prosecution has lead evidence of underlying acts only for some municipalities, the Trial Chamber has looked at the number of Bosnian Muslims and Bosnian Croats in the relevant ARK municipalities, excluding Čelinac and Šipovo. The number of Bosnian Muslims and Bosnian Croats who were victims within the terms of Article 4(2)(a), (b) or (c) as such and of itself does not allow the Trial Chamber to legitimately draw the inference that the underlying acts were motivated by genocidal intent.<sup>2448</sup> Still, this does not necessarily negate the

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themselves consider to violate, the very foundation of the group; (x) the discriminatory intent of the Accused, and particularly the hatred expressed by the Accused and/or his associates (including superiors and subordinates) for the victim group; and (xi) the utterances of the Accused, including derogatory language targeting members of the group”.

<sup>2445</sup> See Prosecution Final Brief, paras 554-555.

<sup>2446</sup> *Milošević* Rule 98bis Decision, para. 125.

<sup>2447</sup> Ultimately, for the purposes of any eventual conviction, it would still have to be shown that the Accused is responsible for these acts under one of the bases of responsibility plead in the Indictment. But for the moment the analysis will take place without taking those requirements into account.

<sup>2448</sup> The Trial Chamber has already found that at least 1,669 Bosnian Muslim and Bosnian Croat non-combatants were killed by armed Serb forces. It has also found that conditions calculated to bring about physical destruction were deliberately inflicted on approximately 13,924 Bosnian Muslims and Bosnian Croats. The regular transfer of detainees between different camps and detention facilities may cause some distortion in these numbers. On the other hand, the populations of Bosnian Muslims and Bosnian Croats in the relevant ARK municipalities, excluding Šipovo and Čelinac, were, according to the 1991 census, 228,717 and 63,207 respectively. The victims would amount to about 5,34% of the population of those groups in the ARK. It is more difficult to give an estimate of those who were subjected to serious bodily and/or mental harm. In the first place, this is because there is no evidence of the number detained for the following detention facilities: Banja Luka CSB, Mali Logor, Viz Tunjice Penitentiary, Donji Vakuf SUP building, Ključ SUP building, Nikola Mačkić School, Ljubija football stadium, Prijedor SUP building, Teslić SUP building, the reason being that the majority of these were places of interrogation rather than of confinement. Mali Logor and Viz Tunjice Penitentiary, on the other hand, were penitentiary centres in existence before the war. In the second place, this is because although the evidence demonstrates that the beatings were widespread, they were not administered on all detainees, particularly when these were women and children. Nevertheless, of those detention facilities for which there is an estimated number of detainees, around 15,623 Bosnian Muslims and Bosnian Croats were detained in those camps and detention facilities where serious bodily and/or mental harm was inflicted on some of them.

inference that there was an intent to destroy in part the Bosnian Muslim and Bosnian Croat groups. However, in the Trial Chamber's view, when considering that fact along with other aspects of the evidence, the intent to destroy parts of the Bosnian Muslims and Bosnian Croats is not the only reasonable inference that may be drawn from the evidence.

975. Although the Prosecution repeatedly acknowledged that the "mass deportation is not relied upon in this case as a genocidal act, but only as evidence that the Accused intended to destroy the Bosnian Muslim and [Bosnian] Croat groups in the ARK",<sup>2449</sup> when assessing the size of the victimised parts of the Bosnian Muslim and Bosnian Croat groups, it repeatedly took into consideration and referred to the "sheer" numbers of Bosnian Muslims and Bosnian Croats who were "forcibly transferred".<sup>2450</sup> The Trial Chamber acknowledges that, whilst forcible displacement does not constitute in and of itself a genocidal act, it does not preclude a Trial Chamber from relying on it as evidence of intent.<sup>2451</sup> But in the Trial Chamber's view it is not appropriate to rely on it as evidence of the actual destruction of the targeted parts of the protected groups, since that would in effect mean the consideration, as it were through the back door, of forcible displacement as an underlying act.

976. On the subject of forcible displacement, the Trial Chamber finds, in accordance with the stated views of the Appeals Chamber, that forcible displacement could be an additional means to ensure the physical destruction, in this case of the Bosnian Muslim and Bosnian Croat groups of the ARK.<sup>2452</sup> The Appeals Chamber has also stated, however, that the existence of the specific intent required for the crime of genocide must be supported by the factual matrix.<sup>2453</sup> The extremely high number of Bosnian Muslim and Bosnian Croat men, women and children forcibly displaced from the ARK in this case, particularly when compared to the number of Bosnian Muslims and Bosnian Croats subjected to the acts enumerated in Article 4(2)(a), (b) and (c), does not support the conclusion that the intent to destroy the groups in part, as opposed to the intent to forcibly displace them, is the only reasonable inference that may be drawn from the evidence.<sup>2454</sup>

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<sup>2449</sup> Confidential Prosecution's Response to Trial Chamber's Questions Regarding Genocide and the *Krstić* Appeal Judgement, 29 April 2004, fn.14; Prosecution Final Brief, fn.995 and 1027. See also para. 693 *supra*, and accompanying footnote.

<sup>2450</sup> Confidential Prosecution's Response to Trial Chamber's Questions Regarding Genocide and the *Krstić* Appeal Judgement, 29 April 2004, para. 13; Prosecution Final Brief, paras 531, 556.

<sup>2451</sup> See also para. 693 *supra*, and accompanying footnote.

<sup>2452</sup> See *Krstić* Appeal Judgement, para. 31.

<sup>2453</sup> *Krstić* Appeal Judgement, para. 32.

<sup>2454</sup> In addition, the Prosecution argues that "the most serious crimes occurred disproportionately in Prijedor and the other "Variant B" municipalities where Serbs were a minority before 1992": Prosecution Final Brief, para. 554: see IV. C. *supra*, "The implementation of the Strategic Plan in the Bosnian Krajina". Again in these cases, the number of Bosnian Muslims and Bosnian Croats deported or forcibly transferred far surpasses those who were victims of the acts under Article 4(2)(a) to (c): see C.2. *supra*, "The facts and findings".

977. Still, the Prosecution submits that “[w]hile the underlying motive or objective of the joint criminal enterprise was the permanent removal of the Bosnian Muslim and Bosnian Croat groups from the ARK, it is submitted that several types of crimes, including genocide, were used and intended to further that objective” and that “the intent to expel the Bosnian Muslim and Bosnian Croat groups from the ARK and the specific intent to destroy them in whole or in part through genocide existed simultaneously, and were in fact complementary”.<sup>2455</sup> This hypothesis is simply not borne out by the evidence. The Bosnian Serb authorities in the ARK implemented a policy to create an ethnically homogeneous ARK, which entailed the forcible, unlawful and permanent removal of the Bosnian Muslims and Bosnian Croats from the ARK. Leaving aside the question whether the intent to expel can exist alongside the intent to destroy,<sup>2456</sup> the Trial Chamber finds that, *inter alia*, given the significant difference in numbers between those forcibly displaced from the ARK and those subjected to acts envisaged in Article 4(2)(a) to (c), the existence of an intent to destroy alongside the intent to forcibly displace is not the only reasonable inference that may be drawn from the evidence.

978. Moreover, the Prosecution submits that “had the Accused and other participants in the joint criminal enterprise intended solely to displace the Muslim and Croat population from the ARK, they clearly could have done so without overseeing the killing, imprisonment, torture and rape of Muslims and Croats on such a vast scale and in such systematic ways”.<sup>2457</sup> On the contrary, as stated, the scale of the acts enumerated in Article 4(2)(a) to (c) does not allow the Trial Chamber to legitimately come to the conclusion in favour of the existence of genocidal intent, particularly when viewed in light of the number of Bosnian Muslims and Bosnian Croats forcibly displaced from the ARK. The difference between the two is too pronounced, particularly in light of the fact that during much of the period relevant to the Indictment, and certainly as from summer 1992, the Bosnian Serb forces controlled the territory of the ARK, as shown by the fact that they were capable of mustering the logistical resources to forcibly displace tens of thousands of Bosnian Muslims and

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<sup>2455</sup> Prosecution Final Brief, fn. 1027 (confidential). In support of this contention the Prosecution cites a single witness, who stated that “there were two ways to cleanse or to clean (...) any particular area from Croats or Muslims, were to kill them or to expel them. So it was a two-fold strategy. And it depended on each case the relative importance of killings or expulsions in terms of the strategy, but there were a lot of killings, of course”: *see* T. 20637 (closed session). It is necessary to note, however, that this statement was not limited to the ARK but in fact referred to the whole of BiH: *see* T. 20635-20637 (closed session). The Trial Chamber notes that this is not a case where the “relative importance of killings” may lead to the only reasonable inference that these were committed with genocidal intent. As noted below, the Trial Chamber does not negate that ethnic cleansing may under certain circumstances ultimately reach the level of genocide, but in this particular case, it is not the only reasonable inference that may be drawn from the evidence.

<sup>2456</sup> The Appeal Chamber appears to regard the two as compatible (*see Krstić Appeal Judgement*, para. 31). *Cf* Schabas, *Genocide in International Law*, p. 200: “[Ethnic cleansing] is intended to displace a population, [genocide] to destroy it. The issue is one of intent and it is logically inconceivable that the two agendas coexist”.

<sup>2457</sup> Prosecution Final Brief, para. 559.

Bosnian Croats,<sup>2458</sup> resources which, had such been the intent, could have been employed in the destruction of all Bosnian Muslims and Bosnian Croats of the ARK.<sup>2459</sup>

979. Finally, the victims of the underlying acts in Article 4(2)(a) to (c), particularly in camps and detention facilities, were predominantly, although not only, military-aged men. This additional factor could militate further against the conclusion that the existence of genocidal intent is the only reasonable inference that may be drawn from the evidence.<sup>2460</sup> There is an alternative explanation for the infliction of these acts on military-aged men, and that is that the goal was rather to eliminate any perceived threat to the implementation of the Strategic Plan in the ARK and beyond. Security for the Bosnian Serbs seems to have been the paramount interest. In the words of one witness: “the aim was to reduce the threat to the detainer, the detainer’s community, and anyone [...] who looked as if they would fight, once sent to the other side, would be eligible for detention”.<sup>2461</sup>

b. The existence of a genocidal plan or policy<sup>2462</sup>

980. As stated, in the context of proving the specific intent, the existence of a plan or policy may become an important factor.

981. The Trial Chamber has already addressed the political agenda of the Bosnian Serb leadership, in the context of which it has identified the Strategic Plan.<sup>2463</sup> The Strategic Plan

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<sup>2458</sup> For comparative purposes, in a single instance, between 9000 and 10000 Bosnian Muslims from Bosanski Novi were deported into Croatian territory in July 1992: *see* T. 20628-20630 (closed session). *See* C.2. *supra*, “The facts and findings”.

<sup>2459</sup> *See* Barney Mayhew, T. 13597, cross-examined by Mr Ackerman: “Would you agree with me, I think that if it had been a unified aim of the Serb authorities to massacre the people who were confined in Manjača and Omarska and Keraterm and Trnopolje in May, June, July of 1992, that there was absolutely nothing to keep them from doing so? They had the guns and the bullets and could have done it. Correct?” “Yes”.

<sup>2460</sup> The Trial Chamber is aware that the Appeals Chamber has stated that: “The killing of military aged men was, assuredly, a physical destruction, and *given the scope of the killings* the Trial Chamber could legitimately draw the inference that their extermination was motivated by a genocidal intent”: *Krstić* Appeals Chamber, para. 27 (emphasis added). This is not an inference that may be drawn in this case.

<sup>2461</sup> “In looking at Trnopolje and Manjača, the majority were of fighting age”: Barney Mayhew, *ex. P1617*, T. 6071. *See ex. P1617/S166A*, “CSCE Rapporteur Mission to Banja Luka, 30-31/08/92, Meeting with the Mayor of Prijedor”, dated 3 September 1992 and authored by Charles McLeod, where an unidentified individual from the Bosnian Serb authorities stated that “We have released a certain number of prisoners from the camp who were from here and who are still around but in proposing an exchange we take a risk because we know as soon as they go back they will be mobilised and fight against us. We have already had experience of this”. *See* Charles McLeod, T. 7318, describing Manjača camp: “[t]hree and a half thousand male members of the predominantly [Bosnian] Muslim population had been brought together to hold them until a solution was found for what to do next with them”. In addition, no provision seems to have been made to keep them over the winter. *See ex. P1617/ S 217 A*, “Mayhew Report on Manjača and Trnopolje”, dated 4 September 1992, on Majača: “The camp commandant said that no provision of any kind had been made for winter, as he hoped the prisoners would all have gone before then”... on Trnopolje: “Again, no provision has been made for winter”. Furthermore, the Trial Chamber has also found that some military-aged non-Serbs were initially prevented by authorities from leaving. In Banja Luka, very few men of military age were permitted to leave in the direction of Travnik, for authorities feared that they would be mobilised into the ABiH: Amir Džonlić, T. 2397, 2487.

<sup>2462</sup> The Trial Chamber is of the view that this encompasses the factor cited in the Prosecution Final Brief of “the general political doctrine which gave rise to the ‘prohibited’ acts”.

<sup>2463</sup> *See* IV.B. *supra*, “The political agenda of the Bosnian Serb leadership”.

contained elements that denote its genocidal potential. “The project of an ethnically homogenous state formulated against the backdrop of mixed populations necessarily envisages the exclusion of any group not identified with the Serbian one”.<sup>2464</sup> The exclusion was to be achieved by the use of force and fear against any such group. In addition, there are obvious similarities between a genocidal policy and the policy commonly known as ethnic cleansing.<sup>2465</sup> The underlying criminal acts for each may often be the same.<sup>2466</sup> For the reasons stated above, however, it is not possible to conclude from the evidence that this potential materialised in the territory of the ARK in the period relevant to the Indictment. While the Trial Chamber is satisfied that the Strategic Plan was to link Serb-populated areas in BiH together, to gain control over these areas and to create a separate Bosnian Serb state, from which most non-Serbs would be permanently removed, and that force and fear were used to implement it, it is not possible to conclude from the evidence actually brought forth in the instant case that there was an intention to do so by destroying the Bosnian Muslim and Bosnian Croat groups of the ARK.<sup>2467</sup> The Trial Chamber stresses that it is only on the basis of the evidence in this concrete case, temporally and geographically limited, that it reaches the conclusion that genocidal intent is not the only reasonable inference that may be drawn from the Strategic Plan.

982. In addition, the Prosecution submits that, no later than the 12 May 1992 SerBiH Assembly Meeting, a decision was made to escalate the Strategic Plan to genocide, and that this decision can be inferred from the statements of the Bosnian Serb leadership and from the increase in the intensity of the violence against Bosnian Muslims and Bosnian Croats.<sup>2468</sup> The Trial Chamber has not found evidence of this alleged escalation into genocide in the territory of the ARK.<sup>2469</sup> Instead, the Trial Chamber has already found that, after the breakout of conflict in BiH in early April 1992, crimes committed against the non-Serb civilian population in the ARK increased in scale and gravity and

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<sup>2464</sup> *Karadžić and Mladić* Rule 61 Decision, para. 94.

<sup>2465</sup> See *Krstić* Trial Judgement, para. 562; see T. 20617 (closed session): “[Ethnic cleansing] was a strategy to force people to move through different steps, starting by threats, by selective killings, selective destruction of building, and then once the separation of the communities took place, *i.e.*, when the Serbian people left the places, then the second phase started with the use of paramilitary to take control of the towns and then organise the return of Serbs from the village and Serbs coming from other areas of Yugoslavia. I’m talking about displaced Serbs coming from Croatia, for instance”.

<sup>2466</sup> See Schabas, *Genocide in International Law*, p. 200.

<sup>2467</sup> The argument that the statements by the Bosnian Serb leadership, some of which have already been discussed in the section on the general overview, constitute evidence of genocidal intent can be dealt with in much the same fashion.

<sup>2468</sup> Prosecution Final Brief, paras 543, 552.

<sup>2469</sup> In actual fact, the process of ethnic cleansing accelerated in October 1992: see C.2. *supra*, “Forcible nature of the transfers”. The Prosecution also argues that the Trial Chamber should also take into account in determining the existence of an intent to destroy “the fact that all of the evidence indicates a continuing plan of destruction that would not have subsided in the fall of 1992 without the intervention of factors beyond the control of the Accused and other participants in the joint criminal enterprise”, such as the humanitarian aid provided by relief agencies, and the attention of the international community as a result of the existence of the Prijedor camps being reported in the media: Prosecution Final Brief, para. 557. For the reasons stated above, the Trial Chamber is not satisfied beyond reasonable doubt that the implementation of the Strategic Plan in the ARK resulted in genocide being committed in the relevant ARK municipalities in the time relevant to the Indictment.



that these crimes were committed with the aim of implementing the Strategic Plan.<sup>2470</sup> The ethnic cleansing was not a by-product of the criminal activity; it was its very aim and an integral part of the Strategic Plan.<sup>2471</sup> As shown, the increase in these crimes did not necessarily denote the onslaught of a genocidal campaign, but the continued implementation of the discriminatory campaign for the achievement of the Strategic Plan. Further, the similarities between the policy of ethnic cleansing and genocide have already been remarked upon. Genocide has at times been referred to as the last resort of the frustrated 'ethnic cleanser'.<sup>2472</sup> In the ARK, however, the Bosnian Serb leadership was able to assert control over the territory with relative ease, after which it embarked on a campaign of massive displacement.

c. The perpetration and/or repetition of other destructive or discriminatory acts committed as part of the same pattern of conduct<sup>2473</sup>

983. The Trial Chamber has already provided an overview of the crimes that were committed in execution of the Strategic Plan in the ARK during the period relevant to the Indictment, and found a pattern of conduct of the Bosnian Serb forces throughout the ARK municipalities, the final objective of which was the permanent removal of most of the non-Serb population. The evidence shows a consistent, coherent and criminal strategy of cleansing the ARK of Bosnian Muslims and Bosnian Croats implemented by the Bosnian Serb forces.<sup>2474</sup>

984. While the general and widespread nature of the atrocities committed is evidence of a campaign of persecutions, the Trial Chamber holds that, in the circumstances of this case, it is not possible to conclude from it that the specific intent required for the crime of genocide is satisfied.

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<sup>2470</sup> See IV. A, *supra*, “Background to the armed conflict in Bosnia and Herzegovina” and C. “The implementation of the Strategic Plan in the Bosnian Krajina”.

<sup>2471</sup> BT-19, T. 20635-20658, 20708 (closed session); BT-21, T. 8226 (closed session).

<sup>2472</sup> See Schabas, *Genocide in International Law*, p. 201.

<sup>2473</sup> The Trial Chamber is of the view that this section encompasses the factors cited in the Prosecution Final Brief of “the general nature of atrocities in a region or a country”, of “the systematic targeting of members of the group, especially at the exclusion of members of other groups”, of “the destruction of religious and cultural property and symbols, as well as the destruction of homes belonging to members of the groups” and of “the perpetration of acts which violate, or which the perpetrators themselves consider to violate, the very foundation of the group”. The Trial Chamber has not considered the factor of “the systematic disposal of bodies, including the concealment of bodies in mass graves, causing terrible distress to survivors unable to verify or mourn the deaths” because it does not consider that, in the circumstances of this case, it is a factor from which the specific intent required for the crime of genocide could be inferred.

<sup>2474</sup> See IV.C. *supra*, “The implementation of the Strategic Plan in the Bosnian Krajina”.

d. The utterances of the Accused<sup>2475</sup>

985. Turning to the *mens rea* of the Accused, the utterances of the Accused are addressed in more detail elsewhere in this judgement.<sup>2476</sup> The Prosecution submits that the only reasonable inference to be drawn from these utterances is that he intended to destroy the Bosnian Muslims and Bosnian Croats of the ARK.<sup>2477</sup>

986. In his utterances, the Accused openly derided and denigrated Bosnian Muslims and Bosnian Croats. He also stated publicly that only a small percentage of them could remain in the territory of the ARK. Some of the Accused's utterances are openly nasty, hateful, intolerable, repulsive and disgraceful. On one occasion, speaking in public of mixed marriages, he remarked that children of such marriages could be thrown in the Vrbas River, and those who would swim out would be Serbian children. On another occasion, he publicly suggested a campaign of retaliatory ethnicity-based murder, declaring that two Muslims would be killed in Banja Luka for every Serbian killed in Sarajevo.<sup>2478</sup>

987. Whilst these utterances strongly suggest the Accused's discriminatory intent, however, they do not allow for the conclusion that the Accused harboured the intent to destroy the Bosnian Muslims and Bosnian Croats of the ARK.<sup>2479</sup>

988. Finally, the Prosecution makes much of the speech made by the Accused following Dragan Kalinić's speech during the 16<sup>th</sup> session of the SerBiH Assembly, held on 12 May 1992.<sup>2480</sup> Dragan Kalinić, a delegate from Sarajevo and later SerBiH Health Minister, is recorded as stating: "Have we chosen the option of war or the option of negotiation? I say this with a reason and I must instantly add that knowing who our enemies are, how perfidious they are, how they cannot be trusted until they are physically, militarily destroyed and crushed, which of course implies eliminating and liquidating their key people. I do not hesitate in selecting the first option, the option of war." The Accused began his own speech by applauding the speech made by Dragan Kalinić: "I

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<sup>2475</sup> The Trial Chamber is of the view that this section encompasses the factor cited in the Prosecution Final Brief of "the hatred expressed by the Accused and/or his or her associates (including superiors and subordinates) for the victim group". The discriminatory intent of the Accused is dealt with elsewhere in this judgement. See F.3. *infra*, "The responsibility of the Accused".

<sup>2476</sup> See VIII.C. *supra*, "The Accused's propaganda campaign".

<sup>2477</sup> Prosecution Final Brief, para. 575.

<sup>2478</sup> See VIII.C. *supra*, "The Accused's propaganda campaign".

<sup>2479</sup> There is evidence that his intent may have instead been limited to forcibly displacing them from the ARK. Describing another of the Accused's speech, one witness noted that: "He said that Muslims could not stay in Banja Luka, that their safety and security should be dealt with in other ways, primarily by moving them out": BT-55, T. 17553. See also, referring to Prijedor, Barney Mayhew, ex. P1617, T. 6047: "[T]here was a predominant aim, it seemed, to drive out at least enough of the Muslim population to be certain that the number remaining could be of no threat at all and would be fully subdued". See X. C. *infra*, "Mitigating circumstances".

<sup>2480</sup> Prosecution Final Brief, para. 588.

would like to say a heart-felt bravo to Mr. Kalinić. In all my appearances in this joint Assembly, it has never crossed my mind that though he seems to be quiet, while I seem hawkish, his opinions are the closest to mine. I believe that this is a formula and we should adhere to this formula.”<sup>2481</sup> This speech is not unequivocal. The most that can safely be gleaned from it is that the Accused ultimately endorsed the war option, as suggested by Dragan Kalinić, and not the negotiation option. His response to Kalinić does not allow the finding that he had genocidal intent.

(d) Conclusion

989. Although the factors raised by the Prosecution have been examined on an individual basis, the Trial Chamber finds that, even if they were taken together, they do not allow the Trial Chamber to legitimately draw the inference that the underlying offences were committed with the specific intent required for the crime of genocide. On the basis of the evidence presented in this case, the Trial Chamber has not found beyond reasonable doubt that genocide was committed in the relevant ARK municipalities, in April to December 1992.

990. The Appeals Chamber has stated that:

The gravity of genocide is reflected in the stringent requirements which must be satisfied before this conviction is imposed. These requirements –the demanding proof of specific intent and the showing that the group was targeted for destruction in its entirety or in substantial part – guard against a danger that convictions for this crime will be imposed lightly. Where these requirements are satisfied, however, the law must not shy away from referring to the crime committed by its proper name.<sup>2482</sup>

991. When these requirements are not satisfied beyond reasonable doubt, as in this case, an accused must be acquitted of the charge. The Accused is therefore acquitted of the charges of genocide and complicity in genocide in counts 1 and 2 of the Indictment.

**F. Persecutions (count 3)**

1. The law

(a) Chapeau elements

992. Persecution is charged pursuant to Article 5(h) of the Statute.<sup>2483</sup> The crime of persecution consists of an act or omission which:

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<sup>2481</sup> Ex. P50, “Minutes of the 16<sup>th</sup> session of the SerBiH Assembly held on 12 May 1992”, pp. 22, 29-30.

<sup>2482</sup> *Krstić* Appeal Judgement, para. 37.

<sup>2483</sup> Indictment, paras 45-48. The Trial Chamber is satisfied that the general requirements for crimes against humanity have been met. *See V.*, “General Requirements for the Crimes Alleged in the Indictment”.

1. discriminates in fact and denies or infringes upon a fundamental right laid down in international customary or treaty law (the *actus reus*); and
2. was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race,<sup>2484</sup> religion or politics (the *mens rea*).<sup>2485</sup>

993. With respect to the discriminatory element of the *actus reus*, although Tribunal jurisprudence is clear that the act must have discriminatory consequences,<sup>2486</sup> the Appeals Chamber has stated that it is not necessary that the victim of the crime of persecution be a member of the group against whom the perpetrator of the crime intended to discriminate. In the event that the victim does not belong to the targeted ethnic group, “the act committed against him institutes discrimination in fact, *vis-à-vis* other [members of that different group] who were not subject to such acts, effected with the will to discriminate against a group on grounds of ethnicity”.<sup>2487</sup>

994. The act or omission constituting the crime of persecution may assume different forms.<sup>2488</sup> However, the principle of legality requires that the Prosecution must charge particular acts amounting to persecution rather than persecution in general.<sup>2489</sup> While a comprehensive list of such acts has never been established,<sup>2490</sup> it is clear that persecution may encompass acts which are listed in the Statute,<sup>2491</sup> as well as acts which are not listed in the Statute.<sup>2492</sup> The persecutory act or

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<sup>2484</sup> The Trial Chamber finds that the concept of ‘race’ includes ‘ethnicity’, which it finds more appropriate to refer to in the context of the present case.

<sup>2485</sup> *Krnjelac* Appeal Judgement, para. 185; *Krnjelac* Trial Judgement, para. 431; *Vasiljević* Trial Judgement, para. 244; *Stakić* Trial Judgement, para. 732; *Simić* Trial Judgement, para. 47. See also *Tadić* Trial Judgement, para. 715; *Kupreškić* Trial Judgement, para. 621; *Kordić* Trial Judgement, paras 189, 195. Although the Statute refers to the listed grounds in the conjunctive, it is settled in the jurisprudence of the Tribunal that the presence of discriminatory intent on any one of these grounds is sufficient to fulfil the *mens rea* requirement for persecution: see *Tadić* Trial Judgement, para. 713.

<sup>2486</sup> The *Tadić* Trial Judgement requires “the occurrence of a *persecutory act or omission* and a discriminatory basis for that act or omission on one of the listed grounds” (emphasis added), para. 715; the *Kupreškić* Trial Judgement requires that the *act* of persecution be done “on discriminatory grounds”, para. 621, as distinct from the requirement of discriminatory intent detailed later in that judgement, para. 633; the *Kordić* Trial Judgement requires the occurrence of a “*discriminatory act or omission*” (emphasis added), para. 189, and expressly incorporates the requirement “on discriminatory grounds” into the *actus reus* of the offence, para. 203; *Krnjelac* Trial Judgement, para. 431; *Vasiljević* Trial Judgement, para. 244; *Stakić* Trial Judgement, para. 732; *Krnjelac* Appeal Judgement, para. 185; *Simić* Trial Judgement, para. 47.

<sup>2487</sup> *Krnjelac* Appeal Judgement, para. 185.

<sup>2488</sup> *Kupreškić* Trial Judgement, para. 568; *Blaškić* Trial Judgement, para. 218; *Krnjelac* Trial Judgement, para. 433; *Vasiljević* Trial Judgement, para. 246; *Stakić* Trial Judgement, para. 735; *Simić* Trial Judgement, para. 50.

<sup>2489</sup> *Kupreškić* Trial Judgement, para. 626; *Krnjelac* Trial Judgement, para. 433; *Vasiljević* Trial Judgement, para. 246; *Stakić* Trial Judgement, para. 735; *Simić* Trial Judgement, para. 50.

<sup>2490</sup> *Tadić* Trial Judgement, para. 694; *Kupreškić* Trial Judgement, para. 567; *Blaškić* Trial Judgement, para. 219; *Kordić* Trial Judgement, para. 192; *Vasiljević* Trial Judgement, para. 246; *Stakić* Trial Judgement, para. 735.

<sup>2491</sup> *Kupreškić* Trial Judgement, para. 605; *Kvočka* Trial Judgement, para. 185; *Krnjelac* Trial Judgement, para. 433; *Vasiljević* Trial Judgement, para. 246; *Naletilić* Trial Judgement, para. 635; *Stakić* Trial Judgement, para. 735; *Simić* Trial Judgement, para. 48.

<sup>2492</sup> *Tadić* Trial Judgement, para. 703; *Kupreškić* Trial Judgement, paras 581, 614; *Blaškić* Trial Judgement, para. 233; *Kordić* Trial Judgement, paras 193-194; *Kvočka* Trial Judgement, para. 185; *Krnjelac* Trial Judgement, para. 433; *Vasiljević* Trial Judgement, para. 246; *Naletilić* Trial Judgement, para. 635; *Stakić* Trial Judgement, para. 735; *Simić* Trial Judgement, para. 48.

omission may encompass physical and mental harm, as well as infringements upon fundamental rights and freedoms of individuals.<sup>2493</sup> Although persecution usually refers to a series of acts, a single act may be sufficient.<sup>2494</sup>

995. Not every act or omission denying a fundamental right is serious enough to constitute a crime against humanity.<sup>2495</sup> While acts or omissions listed under other sub-paragraphs of Article 5 of the Statute are by definition serious enough, others (either listed under other Articles of the Statute or not listed in the Statute at all) must meet an additional test. Such acts or omissions must reach the same level of gravity as the other crimes against humanity enumerated in Article 5 of the Statute. This test will only be met by gross or blatant denials of fundamental rights.<sup>2496</sup> When invoking this test, acts should not be considered in isolation but rather should be examined in their context and with consideration of their cumulative effect.<sup>2497</sup> Separately or combined, the acts must amount to persecution, though it is not required that each alleged underlying act be regarded as a violation of international law.<sup>2498</sup>

996. The crime of persecution also derives its unique character from the requirement of a specific discriminatory intent.<sup>2499</sup> It is not sufficient for the accused to be aware that he is in fact acting in a way that is discriminatory; he must consciously intend to discriminate.<sup>2500</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 need to have taken part in the formulation of such discriminatory policy or practice by a governmental authority.<sup>2501</sup>

997. Discriminatory intent may not be inferred directly from the general discriminatory nature of an attack against a civilian population. However, it may be inferred from the context of the acts “as

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<sup>2493</sup> *Blaškić* Trial Judgement, para. 233; *Krnjelac* Trial Judgement, para. 433; *Vasiljević* Trial Judgement, para. 246.

<sup>2494</sup> *Kupreškić* Trial Judgement, para. 624; *Krnjelac* Trial Judgement, para. 433; *Simić* Trial Judgement, para. 50.

<sup>2495</sup> *Kupreškić* Trial Judgement, para. 618; *Kordić* Trial Judgement, para. 196; *Kvočka* Trial Judgement, para. 185; *Krnjelac* Trial Judgement, para. 434; *Stakić* Trial Judgement, para. 735; *Simić* Trial Judgement, para. 48.

<sup>2496</sup> *Kupreškić* Trial Judgement, para. 621; *Krnjelac* Trial Judgement, para. 434; *Naletilić* Trial Judgement, para. 635; *Stakić* Trial Judgement, para. 736; *Simić* Trial Judgement, para. 48.

<sup>2497</sup> *Kupreškić* Trial Judgement, paras 615(e), 622; *Krnjelac* Trial Judgement, para. 434; *Vasiljević* Trial Judgement, para. 247; *Naletilić* Trial Judgement, para. 637; *Stakić* Trial Judgement, para. 736; *Simić* Trial Judgement, para. 48.

<sup>2498</sup> *Kvočka* Trial Judgement, para. 186; *Krnjelac* Trial Judgement, para. 434; *Vasiljević* Trial Judgement, para. 247; *Simić* Trial Judgement, para. 48.

<sup>2499</sup> *Kordić* Trial Judgement, para. 217; *Blaškić* Trial Judgement, para. 235; *Tadić* Appeal Judgement, para. 305; *Vasiljević* Trial Judgement, para. 248; *Naletilić* Trial Judgement, para. 638; *Krnjelac* Appeal Judgement, para. 184; *Simić* Trial Judgement, para. 51.

<sup>2500</sup> *Kordić* Trial Judgement, para. 217; *Krnjelac* Trial Judgement, para. 435; *Vasiljević* Trial Judgement, para. 248; *Simić* Trial Judgement, para. 51.

<sup>2501</sup> *Kupreškić* Trial Judgement, para. 625; *Krnjelac* Trial Judgement, para. 435; *Vasiljević* Trial Judgement, para. 248; *Stakić* Trial Judgement, para. 739; *Simić* Trial Judgement, para. 51.

long as, in view of the facts of the case, circumstances surrounding the commission of the alleged acts substantiate the existence of such intent”.<sup>2502</sup>

## 2. The facts and findings

998. In the Indictment, the Prosecution has charged five different broad categories of acts as persecution.<sup>2503</sup> Several of these acts have also been charged as separate offences, and have been dealt with above. In relation to those underlying acts that have already been established, the Trial Chamber must also consider the additional criteria necessary to render such acts persecutory. Those underlying acts not already examined as separate charges (physical violence, rape, sexual assault, constant humiliation and degradation; denial of fundamental rights) will necessarily be addressed in greater detail before the Trial Chamber turns to consider whether the requisite criteria for the crime of persecution have been met.

### (a) Killings (para. 47(1) of the Indictment)

999. The Prosecution charges “the killing of Bosnian Muslims and Bosnian Croats by Bosnian Serb forces (including units of the 5<sup>th</sup> Corps/1<sup>st</sup> KK) in villages and non-Serb areas, in detention camps and other detention facilities” as persecutions.<sup>2504</sup> These acts are charged separately as genocide/complicity in genocide,<sup>2505</sup> extermination (a crime against humanity under Article 5(b) of the Statute) and wilful killing (a grave breach under Article 2(a) of the Statute).<sup>2506</sup> Because the elements of acts of wilful killings are identical to those required for murder under Article 5 of the Statute,<sup>2507</sup> they are as such of sufficient gravity to constitute persecution.

1000. Earlier in this Judgement, the Trial Chamber defined the legal requirements for the crime of killings<sup>2508</sup> and established that at least 1669 Bosnian Muslims and Bosnian Croats were killed in the ARK at the time relevant to the Indictment.<sup>2509</sup> The Trial Chamber finds that these killings were discriminatory in fact.

1001. With respect to the requisite *mens rea*, the Trial Chamber observes that the use of pejorative names such as ‘Baliyas’ for Muslims, ‘Ustašas’ for Croats and other verbal abuse often

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<sup>2502</sup> *Krnjelac* Appeal Judgement, para.184.

<sup>2503</sup> Para. 47 of the Indictment.

<sup>2504</sup> Para. 47(1) of the Indictment.

<sup>2505</sup> Counts 1 and 2 respectively.

<sup>2506</sup> Counts 4 and 5 respectively.

<sup>2507</sup> See IX.A., “Extermination and wilful killing”.

<sup>2508</sup> See IX.A., “Extermination and wilful killing”.

<sup>2509</sup> See para. 465 *supra*.

accompanied the killings.<sup>2510</sup> The Bosnian Serb direct perpetrators frequently celebrated their deeds by singing ‘Četnik’ songs.<sup>2511</sup> On occasion, Bosnian Muslims were deprived of their lives because they were believed to be members or supporters of the SDA.<sup>2512</sup> Before they were killed, Bosnian Muslims and Bosnian Croats were hit with or forced to kiss Serbian religious and national symbols,<sup>2513</sup> and made to sing Serbian songs.<sup>2514</sup> In contrast, a detainee who claimed to have a Serbian mother was spared execution.<sup>2515</sup> The Trial Chamber concludes that the circumstances surrounding the killings of Bosnian Muslims and Bosnian Croats substantiate the finding of discriminatory intent on racial, religious or political grounds on the part of the direct perpetrators.

(b) Torture and other forms of ill-treatment (para. 47(2) of the Indictment)

1002. The Prosecution charges “torture, physical violence, rapes and sexual assaults, constant humiliation and degradation of Bosnian Muslims and Bosnian Croats” as persecutions.<sup>2516</sup> Torture is separately charged as both a crime against humanity under Article 5(f) of the Statute and as a grave breach under Article 2(b) of the Statute,<sup>2517</sup> and as such is of sufficient gravity to constitute persecution. The other acts of ill treatment alleged by the Prosecution to amount to persecution arise for the first time at this stage. The Trial Chamber will therefore first address the constituent elements of these alleged offences before applying them to the facts of this case. Torture

1003. The Trial Chamber has set out the definition of the crime of torture above and found that in many instances, Bosnian Muslims and Bosnian Croats were subjected to severe ill-treatment and abuse amounting to torture.<sup>2518</sup> The Trial Chamber finds that these acts of torture were discriminatory in fact.

1004. With regard to the requisite *mens rea*, the Trial Chamber recalls that in camps and detention facilities, Bosnian Muslims and Bosnian Croats were commonly beaten up severely by their Bosnian Serb guards, as well as by Bosnian Serbs admitted from outside into the places of detention.<sup>2519</sup> Before and during these acts, detainees were frequently cursed, insulted, and called by

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<sup>2510</sup> Idriz Merdžanić, T. 11755; BT-33, ex. P1544, T. 3998 (closed session); Nermin Karagić, ex. P559, T. 5239; Ahmet Zulić, T. 6910; Husein Čajić, T. 9021; BT-33, ex. P1544, T. 4066 (closed session).

<sup>2511</sup> BT-26, T. 9130 (closed session); BT-84, T. 14142-14143 (private session); Elvedin Našić, T. 12706.

<sup>2512</sup> BT-97, T. 17910-17912; BT-81, T. 13801.

<sup>2513</sup> BT-35, ex. P563, T. 6224 (closed session); Ivo Atlija, ex. P1527, T. 5579-5580.

<sup>2514</sup> Elvedin Našić, T. 12702.

<sup>2515</sup> Nermin Karagić, ex. P559, T. 5236.

<sup>2516</sup> Para. 47(2) of the Indictment.

<sup>2517</sup> Counts 6 and 7 respectively.

<sup>2518</sup> See, section VI.B.2. *supra*.

<sup>2519</sup> See, *inter alia*, the events at Jasenica school in Bosanska Krupa, para. 491 *supra*.

derogatory names referring to their ethnicity.<sup>2520</sup> When Bosnian Muslims refused to kiss the Serbian flag or the four Serbian S's, they were stabbed or beaten until they fell unconscious.<sup>2521</sup> In many instances, severe pain or suffering was inflicted on Bosnian Muslims because they were allegedly supporting an independent Bosnian state<sup>2522</sup> or the SDA<sup>2523</sup>. Serbian songs were chanted very frequently during this ill-treatment and at times the victims themselves were forced to sing them.<sup>2524</sup> The Trial Chamber concludes that the circumstances surrounding the commission of acts of torture leave no doubt that they were carried out with the intention to discriminate against the victims on racial, religious or political grounds.

(i) Physical violence

1005. The term 'physical violence' does not appear anywhere in the Statute. The Trial Chamber finds that 'physical violence' may comprise treatment that does not amount to torture as defined above, such as "conditions in which detainees [are] forced to live, such as overcrowded conditions, deprivation of food, water and sufficient air, exposure to extreme heat or cold, random beatings of detainees as a general measure to instill terror amongst them and similar forms of physical assaults not amounting to torture ...".<sup>2525</sup> Such treatment may fall under the crime of persecution if it reaches the same level of gravity as the other crimes against humanity enumerated in Article 5 of the Statute.<sup>2526</sup>

1006. The Trial Chamber recalls that conditions in the majority of camps and facilities in which Bosnian Muslims and Bosnian Croats were detained can only be characterised as absolutely appalling.<sup>2527</sup> Constant and random beatings were the order of the day.<sup>2528</sup> Detainees were beaten on the way to and during their daily meal,<sup>2529</sup> as well as when they asked to use toilet facilities<sup>2530</sup>.

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<sup>2520</sup> From the evidence of these persons, the Trial Chamber understands 'ethnicity' also to include religion. *See*, Muharem Murselović, ex. P1542, T. 2737 ('Turk', 'Baliija'); Midho Družić, T. 16781-16782 ('Baliija', 'Mujahedin'); BT-97,

T. 17919 ('Baliija mothers') (private session); BT-42, ex. P564, T. 1850 ('Turk') and 1851 ('Ustaša') (under seal); BT-72, T. 18408 (closed session) ('Ustaša mothers'); Jusuf Arifagić, ex. P554, T. 7087 ('Green Beret') (under seal).

<sup>2521</sup> Muhamed Filipović, T. 9584; Midho Družić, T. 16784.

<sup>2522</sup> BT-56, T. 17462.

<sup>2523</sup> Enis Šabanović, T. 6525; Adil Draganović, T. 4975; Faik Bišćević, T. 7164-7165; BT-91, T. 15884-15885.

<sup>2524</sup> Nusret Sivac, ex. P1547, T. 6620 and 6627; Nerim Karagić, ex. P559, T. 5220; Samir Poljak, T. 11891; Adil Draganović, T. 5071; BT-72, T. 18414. (closed session).

<sup>2525</sup> *Stakić* Trial Judgement, para. 752.

<sup>2526</sup> *Krnojelac* Trial Judgement, para. 434; *Naletilić* Trial Judgement, para. 635; *Stakić* Trial Judgement, paras 751-753.

<sup>2527</sup> *See* IX.E.2.b.(iii), "Deliberately Inflicting upon the Group Conditions Calculated to Bring about Physical Destruction".

<sup>2528</sup> Kerim Mešanović, ex. P1131, T. 5168-5169; Mirket Karabeg, T. 6187.

<sup>2529</sup> Kerim Mešanović, ex. P1131, T. 5178; BT-1, ex. P1619, T. 4827; BT-34, ex. P558, T. 1087-1088 (under seal); BT-76, ex. P2044, 92*bis* statement, 1028820 (under seal).

<sup>2530</sup> Elvedin Našić, T. 12693-12694.



Sanitation and hygienic conditions were hideous.<sup>2531</sup> Detention facilities were intensely crowded.<sup>2532</sup> The Trial Chamber is thus satisfied that these incidents of physical violence were discriminatory in fact, and, placed in context, occupy the same level of gravity as the other crimes against humanity enumerated in Article 5 of the Statute.

1007. With respect to the requisite *mens rea*, the Trial Chamber observes that the circumstances surrounding the commission of acts of physical violence were the same as those in which torture was inflicted on detainees as described above.<sup>2533</sup> Consequently, the Trial Chamber concludes that the circumstances clearly show that they were carried out with the intention to discriminate against the Bosnian Muslims and Bosnian Croats concerned on racial, religious or political grounds.

(ii) Rapes

1008. Rape is set out as a crime against humanity under Article 5(g) of the Statute and as such is of sufficient gravity to constitute persecution. Under the jurisprudence of the Tribunal, it is defined as follows:

the *actus reus* of the crime of rape in international law is constituted by: the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances. The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.<sup>2534</sup>

1009. It should be noted that the Appeals Chamber has held that force or threat of force provides clear evidence of non-consent, but is not an element *per se* of rape, since “a narrow focus on force or threat of force could permit perpetrators to evade liability for sexual activity to which the other party had not consented by taking advantage of coercive circumstances without relying on physical force.”<sup>2535</sup> The Trial Chamber agrees that “for a woman, rape is by far the ultimate offence.”<sup>2536</sup>

1010. Earlier in this judgement, the Trial Chamber established that a number of Bosnian Muslim women were raped in Prijedor and in Teslić municipalities.<sup>2537</sup> The Trial Chamber finds that, apart from these municipalities, rapes of Bosnian Muslim and Bosnian Croat women occurred in the

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<sup>2531</sup> James Mayhew, ex. P1617, T. 6083; BT-33, ex. P1544, T. 3959 (under seal); BT-82, T. 14002; Adil Draganović, T. 5101; BT-17, T. 7752-7753 (closed session); Enis Šabanović, T. 6483.

<sup>2532</sup> Amir Džonlić, T. 2371-2372; Enis Šabanović, T. 6508-6509; BT-37, ex. P555, T. 2503 (under seal); Charles McLeod, T. 7315.

<sup>2533</sup> See IX.B., “Torture”.

<sup>2534</sup> *Kunarac* Trial Judgement, para. 460; *Kunarac* Appeal Judgement, paras 127-128.

<sup>2535</sup> *Kunarac* Appeal Judgement, para. 129.

<sup>2536</sup> *Stakić* Trial Judgement, para. 803.

<sup>2537</sup> See, section VI.B.2 *supra*.

municipalities of Banja Luka,<sup>2538</sup> Bosanska Krupa<sup>2539</sup>, Donji Vakuf,<sup>2540</sup> and in Kotor Varoš<sup>2541</sup>. In each incident, armed Bosnian Serb soldiers or policemen were the perpetrators. There can be no doubt that these rapes were discriminatory in fact.

1011. With regard to the requisite *mens rea*, the Trial Chamber notes that the direct perpetrators made abundant use of pejorative language.<sup>2542</sup> One of them made no secret that he wanted a Bosnian Muslim woman to “give birth to a little Serb”.<sup>2543</sup> The Trial Chamber is satisfied beyond reasonable doubt that, in the circumstances surrounding the commission of these rapes, these acts were carried out with the intent to discriminate against the Bosnian Muslim and Bosnian Croat women on racial, religious or political grounds.

(iii) Sexual assaults

1012. Any sexual assault falling short of rape may be punishable as persecution under international criminal law, provided that it reaches the same level of gravity as the other crimes against humanity enumerated in Article 5 of the Statute.<sup>2544</sup> This offence embraces all serious abuses of a sexual nature inflicted upon the integrity of a person by means of coercion, threat of force or intimidation in a way that is humiliating and degrading to the victim’s dignity.<sup>2545</sup>

1013. The Trial Chamber finds that many incidents of sexual assault occurred, including the case of a Bosnian Croat woman who was forced to undress herself in front of cheering Bosnian Serb policemen and soldiers.<sup>2546</sup> In another incident, a knife was run along the breast of a Bosnian Muslim woman.<sup>2547</sup> Frequently, it was demanded that detainees perform sex with each other.<sup>2548</sup> In each incident, armed Bosnian Serb soldiers or policemen were the perpetrators. The Trial Chamber is satisfied that, evaluated in their context, these acts are serious enough to rise to the level of crimes against humanity. Moreover, the Trial Chamber is satisfied that the circumstances surrounding the commission of sexual assaults leave no doubt at all that there was discrimination in

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<sup>2538</sup> BT-94, T. 18103.

<sup>2539</sup> BT-56, T. 17485-17488 (private session).

<sup>2540</sup> BT-89, ex. P1691, 92bis statement, 02062071-02062075 (under seal).

<sup>2541</sup> Elvedin Pašić, T. 19437-19438 (private session); BT-75, ex. P2045, 92bis statement, 00371789 (under seal); BT-76, ex. P2044, 92bis statement, 001028819-20 (under seal).

<sup>2542</sup> Slobodan Kuruzović, the camp commander of Trnopolje, told a woman he was about to rape that he wanted to see “how Muslim women fuck”, BT-33, T. 12663-12664 (closed session); BT-33, ex. P1544, T. 3965-3968 (closed session).

<sup>2543</sup> BT-89, ex. P1691, 92bis statement, 02062071 (under seal).

<sup>2544</sup> *Furundžija* Trial Judgement, para. 186.

<sup>2545</sup> *Stakić* Trial Judgement, para. 757.

<sup>2546</sup> BT-71, ex. P2115, 92bis statement, 01045841 (under seal); BT-76, ex. P2044, 92bis statement, 01028819 (under seal).

<sup>2547</sup> BT-1, ex. P1619, T. 4769, 4777-4779, 4781-4783 (under seal).

<sup>2548</sup> BT-42, ex. P564, T. 1901 (under seal); BT-76, ex. P2044, 92bis statement, 01028819-01028820 (under seal); BT-71, ex. P2115, 01045842 (under seal).

fact and discriminatory intent on the part of the direct perpetrators, based on racial, religious or political grounds.

(iv) Constant humiliation and degradation

1014. Humiliating and degrading treatment is prohibited under common Article 3 of the Geneva Conventions, although such acts are not explicitly listed under Article 5 or elsewhere in the Statute. In order to rise to the level of crimes against humanity, they must meet the test of gravity which satisfies the criteria for persecution.<sup>2549</sup>

1015. There are no specific incidents expressly charged as constant humiliation and degradation of Bosnian Muslims and Bosnian Croats in the Indictment. The Trial Chamber has already established the horrific conditions in which Bosnian Muslims and Bosnian Croats were forced to live in camps and other detention facilities, which were themselves humiliating and degrading.<sup>2550</sup> As part of the attack on human dignity, Bosnian Muslims and Bosnian Croats were constantly called by pejorative names while being forced to sing 'Četnik' songs, show the three-fingered Serbian greeting and show devotion for Serbian national symbols. Such treatment was humiliating and degrading to all non-Serbs.<sup>2551</sup> Beatings inside and outside camps were ubiquitous and merciless.<sup>2552</sup>

1016. There are many more examples of incidents in which the human dignity of Bosnian Muslims and Bosnian Croats was treated with outright contempt. The conditions in which people were transported to and from camps bear a resemblance to the transportation of livestock.<sup>2553</sup> In the camps and other places of detention, it was commonplace that detainees had no choice but to relieve themselves in the room in which they were detained.<sup>2554</sup>

1017. During interrogations, detainees were made to adopt uncomfortable postures<sup>2555</sup> while being held at gunpoint.<sup>2556</sup> Once, a Bosnian Muslim was forced to drink whisky.<sup>2557</sup> A Bosnian Croat was

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<sup>2549</sup> See *Kvočka* Trial Judgement, para. 190, in which this test was applied to harassment, humiliation, and psychological abuse.

<sup>2550</sup> See IX.E.2.b.(iii), "Deliberately Inflicting upon the Group Conditions Calculated to Bring about Physical Destruction"; see also paras 100-1007 *supra*.

<sup>2551</sup> See paras 999-1014 *supra*; see also Adil Draganović, T. 5070 (having to kiss Serb soil); Nermin Karagić, ex. P559, T. 5220 (water only given after the singing of Serb songs); BT-69, T. 17738 (Muslims called 'Četniks' after their beards had grown long) (closed session).

<sup>2552</sup> See paras 1002-1007 *supra*.

<sup>2553</sup> See paras 451-453, 493-494 *supra*.

<sup>2554</sup> BT-37, ex. P555, T. 2505-2506 (under seal); Muharem Murselović, ex. P1542, T. 2770; BT-69, T. 17711-17712 (closed session); BT-83, T. 14074-14075.

<sup>2555</sup> Elvedin Našić, T. 12694 (hands behind neck and head bent down); BT-34, ex. P558, T. 1098 (kneel down) (under seal).

<sup>2556</sup> BT-1, ex. P1619, T. 4745 (under seal).

<sup>2557</sup> Enis Šabanović, T. 6527.

made to eat the piece of paper on which he had written a statement because he had used Latin, not Cyrillic script.<sup>2558</sup>

1018. As part of the ill-treatment by camp guards, Bosnian Muslims and Bosnian Croats were also forced to beat and perform sexual acts on each other.<sup>2559</sup> It was announced that their mothers and sisters would be raped in front of them.<sup>2560</sup> Bosnian Muslims and Bosnian Croats were forced to watch other members of their group being killed, raped, and beaten.<sup>2561</sup> Detainees were provided with totally inadequate food over long periods.<sup>2562</sup> On one occasion, when some bread was thrown into their room, they started to fight over it like animals.<sup>2563</sup> People licked walls in order to get water from condensation.<sup>2564</sup> Some detainees started to hallucinate or became mentally disturbed as a result of the conditions.<sup>2565</sup>

1019. As a final humiliating gesture, the bodies of killed Bosnian Muslims and Bosnian Croats were often treated with disrespect<sup>2566</sup> or even mutilated,<sup>2567</sup> buried in mass graves<sup>2568</sup> and sometimes re-buried<sup>2569</sup> in order to cover up the crimes committed. Some of these gravesites have not been discovered to date. There can be no doubt that these acts were discriminatory in fact. The Trial Chamber also finds that in the given situation, these acts amount to the level of gravity of crimes against humanity.

1020. With regard to the requisite *mens rea*, taking into account the circumstances surrounding the commission of these acts of humiliation and degradation, the Trial Chamber has no doubt at all that the direct perpetrators possessed the requisite discriminatory intent based on racial, religious and political grounds.

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<sup>2558</sup> BT-71, ex. P2115, 92bis statement, 01045841 (under seal).

<sup>2559</sup> Zijad Ramić, ex. P1979, 92bis statement, 01029884-01029885; BT-42, ex. P564, T. 1901; (under seal) BT-71, ex. P2115, 01045841 (under seal).

<sup>2560</sup> Samir Poljak, T. 11891.

<sup>2561</sup> See paras 503-506 *supra*; Midho Alić, T. 13896-13897; BT-76, ex. P2044, 92bis statement, 01028819-01028820 (under seal); BT-2, ex. P561, T. 2650 (under seal).

<sup>2562</sup> BT-27, ex. P1529, T. 4306; (under seal); Muharem Murselović, ex. P1542, T. 2721; BT-1, ex. P1619, T. 4937 (under seal).

<sup>2563</sup> Samir Poljak, T. 11893.

<sup>2564</sup> BT-37, ex. P555, T. 2503 (under seal).

<sup>2565</sup> Samir Poljak, T. 11891.

<sup>2566</sup> BT-94, T. 18007.

<sup>2567</sup> Elvedin Našić, T. 12699-12700; Nermin Karagić, ex. P559, T. 5237-5238.

<sup>2568</sup> Ex. P2008, "Exhumations and Proof of Death Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003", 02927899.

<sup>2569</sup> Nicolas Sébire, T. 16704.

(c) Destruction and appropriation of property, including religious buildings in areas inhabited predominantly by a Bosnian Muslim and Bosnian Croat population (para. 47(3) of the Indictment)

1021. The Prosecution charges the “[d]estruction, wilful damage and looting of residential and commercial properties in the parts of towns, villages and other areas inhabited predominantly by a Bosnian Muslim and Bosnian Croat population”<sup>2570</sup> and “the destruction of, or wilful damage to, Bosnian Muslim and Bosnian Croat religious and cultural buildings”<sup>2571</sup> as persecutions. These acts are charged separately as unlawful and wanton extensive destruction and appropriation of property not justified by military necessity (a grave breach under Article 2(d) of the Statute); wanton destruction of cities, towns or villages, or devastation not justified by military necessity (a violation of the laws or customs of war under Article 3(b) of the Statute); and destruction or wilful damage done to institutions dedicated to religion (a violation of the laws or customs of war under Article 3(d) of the Statute).<sup>2572</sup>

1022. Earlier in this judgement, the Trial Chamber established the extensive destruction and appropriation of non-Serb property located in areas predominantly inhabited by Bosnian Muslims and Bosnian Croats during the period relevant to the Indictment.<sup>2573</sup> The Trial Chamber also found that Muslim and Roman Catholic institutions dedicated to religion were targeted and suffered severe damage during the summer months of 1992.<sup>2574</sup> Unlike non-Serb property, Bosnian Serb property was systematically left intact and only sporadically damaged. The Trial Chamber, therefore, finds that the destruction and appropriation of non-Serb property and religious buildings was discriminatory in fact.

1023. The Trial Chamber is satisfied that the destruction, wilful damage and looting of residential and commercial properties in the parts of towns, villages and other areas inhabited predominantly by a Bosnian Muslim and Bosnian Croat population and destruction of, or wilful damage to, Bosnian Muslim and Bosnian Croat religious and cultural buildings in the instant case occupy the same level of gravity as the other crimes enumerated in Article 5 of the Statute.

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<sup>2570</sup> Para. 47(3)(a) of the Indictment.

<sup>2571</sup> Para. 47(3)(b) of the Indictment.

<sup>2572</sup> Counts 10, 11, 12 respectively.

<sup>2573</sup> See IX.D, “Destructions” and para. 555 *supra*. Although the Trial Chamber found earlier that the Prosecution has not established a violation of Article 2(d) of the Statute, this does not affect the fact that extensive destruction and appropriation of non-Serb property has been established. Such acts, even if not amounting to a separate crime, may amount to persecutions provided that the requisite discriminatory elements are present. It is in this context that the Trial Chamber is considering in particular whether acts of looting amount to persecution (the extensive destruction of property having independently been found to amount to a violation of Article 3(b)).

<sup>2574</sup> See IX.D, “Destructions”.

1024. With regard to the requisite *mens rea*, the Trial Chamber finds that the circumstances surrounding the commission of the acts of destruction and appropriation of property and the destruction or damage to religious buildings, such as the marking of Bosnian Muslim and Bosnian Croat houses to be destroyed and the destruction and subsequent flattening of non-Serb religious sites and their subsequent use as parking lots,<sup>2575</sup> are indicative that the acts were carried out with the intent to discriminate on racial, religious or political grounds.

(d) Deportation or forcible transfer (para. 47(4) of the Indictment)

1025. The Prosecution charges “the deportation or transfer of Bosnian Muslims and Bosnian Croats [...] from areas within the ARK municipalities [...] to areas under the control of the legitimate government of Bosnia and Herzegovina (Travnik) and Croatia (Karlovac)” as persecutions.<sup>2576</sup> These acts are separately charged as deportation (a crime against humanity under Article 5(d) of the Statute) and as inhumane acts (forcible transfer) (a crime against humanity under Article 5(i) of the Statute)<sup>2577</sup> and as such are by definition of sufficient gravity to constitute persecution.

1026. Earlier in this judgement, the Trial Chamber defined the legal requirements for the crimes of deportation and forcible transfer.<sup>2578</sup>

1027. On the basis of the evidence adduced by the parties, the Trial Chamber earlier established that numerous acts of deportation and forcible transfer did take place in the period relevant to the Indictment, notably in the municipalities of Banja Luka, Prijedor, Sanski Most and Bosanski Novi.<sup>2579</sup> The individuals displaced as a result of these acts were almost exclusively Bosnian Muslims and Bosnian Croats. This policy was implemented through armed force, expulsion, intimidation, the imposition of intolerable living conditions, and the establishment of punitive departure conditions, all of which were targeted specifically at the Bosnian Muslim and Bosnian Croat communities.<sup>2580</sup> The Trial Chamber therefore finds that these acts of deportation and forcible transfer were discriminatory in fact.

1028. With respect to the requisite *mens rea*, the Trial Chamber finds that the circumstances surrounding the commission of the acts of deportation and forcible transfer are indicative that the

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<sup>2575</sup> See IX.D, “Destructions”, in particular, para. 649.

<sup>2576</sup> Para. 47(4) of the Indictment.

<sup>2577</sup> Counts 6 and 7 respectively.

<sup>2578</sup> See paras 540-545 *supra*.

<sup>2579</sup> See IX.C.2., “Deportation and Inhumane Acts – the facts and findings”. In view of the specificity with which the charges are pleaded, the Trial Chamber is precluded from making any finding of guilt under count 3 with respect to incidents where the transfer destination was to locations other than to Travnik or Karlovac.

<sup>2580</sup> See IX.C.2., “Deportation and Inhumane Acts – the facts and findings”.

acts were carried out by the direct perpetrators with the intent to discriminate. The displacements which occurred were the result of a systematic policy on the part of the Bosnian Serb authorities to cleanse the ARK municipalities of non-Serbs.<sup>2581</sup>

(e) Denial of fundamental rights (para. 47(5) of the Indictment)

1029. The Prosecution charges the Accused with “the denial of fundamental rights to Bosnian Muslims and Bosnian Croats, including the right to employment, freedom of movement, right to proper judicial process, or right to proper medical care” as persecutions.<sup>2582</sup> These acts are alleged for the first time under this count, and the Trial Chamber will thus first address the constitutive elements before applying them to the facts of this case. The Trial Chamber first recalls its decision at the Rule 98bis stage to confine its examination to the four rights specified in the Indictment (employment, freedom of movement, proper judicial process and proper medical care), despite the Prosecution’s open-ended pleading style.<sup>2583</sup>

1030. As a preliminary matter, the Trial Chamber notes the argument raised by the Accused that “no conviction may be based on the denial of any of these [four] rights since they are not specifically set out in the Statute. Any conviction for a violation of these rights violates the principle of legality.”<sup>2584</sup> The Trial Chamber finds that this argument is misconceived as the Accused is obviously confusing the underlying acts or violations with the actual crime charged, namely that of persecution. The underlying acts (and corresponding violations) alleged are encompassed by the crime of persecution, set out in the Statute and charged under Count 3 of the Indictment. Any possible conviction would be for this crime and not for the underlying acts or violations. It is well established in the jurisprudence of this Tribunal that a conviction for the crime of persecution does not violate the principle of legality. This argument is therefore rejected.

1031. The jurisprudence of this Tribunal has specified that acts which deny fundamental rights may amount to persecution provided they are of sufficient gravity or severity.<sup>2585</sup> The Trial

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<sup>2581</sup> See IX.C.2., “Deportation and Inhumane Acts – the facts and findings”.

<sup>2582</sup> Para. 47(5) of the Indictment.

<sup>2583</sup> 98bis Decision, paras 88, 89.

<sup>2584</sup> Defence Final Brief (confidential), p. 85.

<sup>2585</sup> *Kupreškić* Trial Judgement, paras 605, 619; *Kordić* Trial Judgement, paras 193, 195; *Krstić* Trial Judgement, para. 535. Because the definition of persecutions requires the denial of a 'fundamental' right, the Trial Chamber is not able to concur with the *Stakić* Trial Judgement that “[p]ersecution can consist of the deprivation of a wide variety of rights, whether fundamental or not, derogable or not.” para. 773 (emphasis added). However, this difference of opinion would appear to be limited to the way in which the *Stakić* Trial Judgement expressed itself with respect to the ‘fundamental’ nature of the rights, rather than expressing a more fundamental difference regarding the crime of persecution itself. The Trial Chamber is in accordance with the idea that “acts that are not inherently criminal may nonetheless become criminal and persecutorial if committed with discriminatory intent” (*Kvočka* Trial Judgement, para. 186), and thus accepts that individual acts might not violate fundamental rights. However, the Trial Chamber finds that it is the context of the individual acts and the necessity that the acts as well as the violations occasioned by them be examined

Chamber reiterates its view that there is no list of established fundamental rights and that such decisions are best taken on a case by case basis.<sup>2586</sup> In order to establish the crime of persecution, underlying acts should not be considered in isolation, but in context, looking at their cumulative effect.<sup>2587</sup> The Trial Chamber considers that it is not necessary to examine the fundamental nature of each right individually, but rather to examine them as a whole.<sup>2588</sup> It is appropriate, therefore, to look at the cumulative denial of the rights to employment, freedom of movement, proper judicial process and proper medical care in order to determine whether these are fundamental rights for the purposes of establishing persecutions.<sup>2589</sup>

(i) Right to employment

1032. The Trial Chamber is satisfied that employment of Bosnian Muslims and Bosnian Croats was terminated *en masse* in the municipalities of the ARK.<sup>2590</sup> The Trial Chamber will only consider violations of the right to employment alleged to have taken place between 1 April 1992 and 31 December 1992.<sup>2591</sup>

1033. After Bosnian Serb authorities had assumed power, Bosnian Muslim and Bosnian Croat employees in the municipalities of the ARK were gradually removed from key positions<sup>2592</sup> in sectors such as the judiciary,<sup>2593</sup> the army,<sup>2594</sup> the police,<sup>2595</sup> healthcare and other public services,<sup>2596</sup> the media,<sup>2597</sup> publicly or socially owned enterprises as well as in private concerns.<sup>2598</sup> Eventually,

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collectively that determines the gravity of the acts as a whole, and that it is this gravity which determines whether or not the rights violated are therefore 'fundamental' for the purposes of the crime of persecution.

<sup>2586</sup> Rule 98bis Decision, para. 86, referring to the *Kupreškić* Trial Judgement, para. 623.

<sup>2587</sup> *Kupreškić* Trial Judgement, para. 622.

<sup>2588</sup> This approach would appear to be favoured by both the Prosecution ("the previous practice of both Tribunals indicates that it is not necessary to determine each right individually": para. 621, Prosecution Final Brief) and the Defence ("If conviction may be had for denial of these rights it must be only in the context of considering them as a whole": p. 85, Defence Final Brief (confidential)) in this case.

<sup>2589</sup> A similar approach was also adopted in the *Stakić* Trial Judgement, para. 817. Contrary to Defence submissions (Defence Final Brief, p. 86), it is not necessary to establish that these rights were violated on a "widespread and systematic scale". The Trial Chamber finds that this Defence submission conflates the chapeau requirements for crimes against humanity with the requirements for the crime of persecution. There is no such requirement for the crime of persecution or the acts which underline it.

<sup>2590</sup> Zijahudin Smailagić, T. 1954; BT-13, T. 4586 (closed session); Adil Draganović, T. 4914; Mehmed Tenić, T. 16850-16851; BT-81, T. 13777; Muhamed Filipović, T. 9494; Jovica Radojko, T. 20133.

<sup>2591</sup> Indictment, para. 46.

<sup>2592</sup> Amir Džonlić, T. 2581.

<sup>2593</sup> Amir Džonlić, T. 2334; Adil Draganović, T. 4946-4948.

<sup>2594</sup> Ex. P233 (Press release of the ARK Crisis Staff about the need to differentiate along ethnic lines within the officer corps of the Bosnian Serb Army, 9 June 1992); BT-11, T. 3966-3967 (closed session).

<sup>2595</sup> BT-17, T. 7651-7652 (closed session); Jasmin Odobašić, T. 15116; BT-26, T. 9102-9103, 9105 (closed session).

<sup>2596</sup> BT-13, T. 4702 (closed session); BT-81, T. 13790-13791 (private session); Muharem Krzić, T. 1460-1461; Amir Džonlić, T. 2332.

<sup>2597</sup> Muharem Krzić, T. 1463-1464; Asim Egrić, T. 10553.

<sup>2598</sup> Midho Družić, T. 16756-16757; Ibrahim Fazlagić, T. 4305-4307; Muharem Krzić, T. 1752-1753.



Bosnian Muslims and Bosnian Croats in less senior positions also lost their jobs.<sup>2599</sup> Dismissals were carried out in various ways. Contracts of employment were terminated orally<sup>2600</sup> or in writing.<sup>2601</sup> Workers were prevented from physically accessing their place of work,<sup>2602</sup> insulted and threatened when they turned up,<sup>2603</sup> or told they were redundant and put on a ‘waiting list’.<sup>2604</sup> Frequently, Bosnian Serbs took over the vacant positions.<sup>2605</sup>

1034. Specific events would often be used as a pretext to lay off Bosnian Muslims and Bosnian Croats. Examples include the failure to respond to the call-up to the armed forces,<sup>2606</sup> non-participation in the Bosnian Serb referendum,<sup>2607</sup> and the refusal to sign a statement of loyalty to the SerBiH.<sup>2608</sup>

1035. On 22 June 1992, the ARK Crisis Staff issued a decision according to which the employment of a wide category of non-Serbs was to be terminated.<sup>2609</sup>

1036. The Prosecution concedes that the removal of Bosnian Muslims and Bosnian Croats from positions of employment does not *per se* amount to a denial of a fundamental right, but submits that it does if the person concerned was dismissed on the basis of religious or national grounds, which it

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<sup>2599</sup> Midho Družić, T. 16756-16757 (driver at timber company); BT-13, T. 4826 (accountant in a factory) (closed session).

<sup>2600</sup> Amir Džonlić, T. 2331; Midho Družić, T. 16756-16757.

<sup>2601</sup> Ibrahim Fazlagić, T. 4308-4310; Amir Džonlić, T. 2331.

<sup>2602</sup> BT-81, T. 13790-13791 (private session); Ibrahim Fazlagić, T. 4308.

<sup>2603</sup> Muhamed Filipović, T. 9518; BT-30, T. 12538; BT-26, T. 9203 (closed session).

<sup>2604</sup> BT-81, T. 13790-13791 (private session); Kerim Mešanović, ex. P1131, T. 5150. None of those that were put on a waiting list are known to have regained employment: BT-7, T. 2875-2876 (closed session).

<sup>2605</sup> Adil Draganović, T. 4946-4948; Muharem Krzić, T. 1461; BT-13, T. 4826 (closed session).

<sup>2606</sup> BT-22, T. 4436; BT-12, T. 4225; Jasmin Odobašić, T. 15114-15115.

<sup>2607</sup> Predrag Radić, T. 22254-22255.

<sup>2608</sup> Zoran Jokić, T. 24084-24085; BT-17, T. 7651-7652 (closed session); Jasmin Odobašić, T. 15116; BT-95, T. 19687. (closed session); BT-26, T. 9102-9103 (closed session).

<sup>2609</sup> The decision, ex. P254/P255, reads as follows: “I. All leading positions, positions involving access to information, protection of public property and other positions of importance for the functioning of the economy can be occupied exclusively by personnel of Serbian nationality. This applies to all socially-owned enterprises, joint stock companies, state institutions, public enterprises, the Ministry of the Interior and the Army of the Serbian Republic of Bosnia and Herzegovina. In addition, such positions cannot be occupied by workers who have not confirmed their Serbian nationality in the plebiscite, or to whom it is not yet clear that the only representative of the Serbian people is the Serbian Democratic Party. II. The deadline to carry out the task stated in Article 1 of this decision is 1500 hours on Friday 26 June 1992, and the presidents of the municipal Crisis Staffs will submit their reports to this Crisis Staff. III. Failure to carry out this decision shall result in automatic suspension of the responsible persons. IV. This decision takes effect on the day it is passed, and it will be published in the Official Gazette of the Autonomous Region of Krajina. Signed: President, Radoslav Brđanin”. See also Zijahudin Smailagić, T. 1960. The evidence shows that in Bosanski Petrovac and Prijedor, the ARK Crisis Staff decision of 22 June was subsequently implemented: see, ex. P1282, a note by the Prijedor SJB to the Prijedor Crisis Staff dated 1 July 1992, stating that “Decision of the Banja Luka ARK Crisis Staff no. 03-531, dated 22 June 1992, on staffing executive posts and other posts important to the functioning of business establishments has been implemented in this Public Security Station”; ex. P1879, a note by the Petrovac Crisis Staff to the ARK Crisis Staff dated 25 June 1992, stating that “Pursuant to ... ARK Crisis Staff decision on. 03-531/92, dated 22 June 1992, we hereby inform you that ... the steps envisaged in item 1, para. 1 of the Decision have been implemented...”; ex. P1837, “Decision” of the Petrovac Executive Committee dated 29 June 1992 pursuant to the ARK Crisis Staff decision of 22 June 1992 dismissing a Bosnian Muslim worker.

asserts is the case here.<sup>2610</sup> The Defence, in contrast, claims that loyalty, not ethnicity, was the decisive factor for the dismissal of Bosnian Muslims and Bosnian Croats,<sup>2611</sup> and that such “measures of control and security” could be justified under Article 27 of Geneva Convention IV.<sup>2612</sup>

1037. The Trial Chamber finds that most employments were in fact terminated on discriminatory grounds, for the prevailing reason that the employee in question was a Bosnian Muslim or a Bosnian Croat. This is so notwithstanding other reasons that were given, such as the failure to pledge allegiance to the SerBiH, because such grounds were manifestly designed to exclude persons from a state defined by the Serb ethnicity. Moreover, the Trial Chamber observes that the decision of the ARK Crisis Staff of 22 June 1992 unambiguously singles out “personnel of Serb nationality”, with loyalty mentioned only as a secondary consideration.<sup>2613</sup>

1038. The Defence also submits that employment of not only Bosnian Muslims and Bosnian Croats, but also of Bosnian Serbs was terminated as a result of the economic crisis that emerged in the wake of the armed conflict in Croatia starting in 1992.<sup>2614</sup> The Trial Chamber agrees that the armed conflict in Croatia in 1991 had a disastrous impact on the economy of Bosnia and Herzegovina, and particularly that of the Bosnian Krajina.<sup>2615</sup> There is evidence that several business concerns and enterprises, including public and socially owned ones, were not working at levels that would be sustained during normal times and that this resulted in unemployment.<sup>2616</sup> However, the Trial Chamber is not persuaded that dismissals on a scale such as in the instant case can be explained by the slowdown in the economy. The Trial Chamber concedes that this factor explains a significant number of dismissals, but it is satisfied that in many instances, Bosnian Serbs took over the positions of removed Bosnian Muslims or Bosnian Croats, clearly showing that the dismissals were not always motivated by economic reasons.<sup>2617</sup>

1039. The termination of employment of Bosnian Muslims and Bosnian Croats during the relevant period took place within the context of a plan to ethnically cleanse the territory claimed by the Bosnian Serb authorities. It is this plan which governs the considerations of this Trial Chamber. The concerns of control and security that the Defence suggests, cannot be considered outside this context of illegality. Consequently, Article 27 of Geneva Convention IV has no place in the

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<sup>2610</sup> Prosecution Final Brief, para. 638.

<sup>2611</sup> Defence Closing Statement, T. 25408.

<sup>2612</sup> Defence Final Brief (confidential), p. 38-40. Paragraph 4 of Article 27 of Geneva Convention IV reads: “[T]he Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.”

<sup>2613</sup> Ex. P254/P255, *see supra*.

<sup>2614</sup> Defence Final Brief (confidential), p. 87.

<sup>2615</sup> *See* paras 60, 84 *supra*.

<sup>2616</sup> BT-88, T. 14733; BT-95, T. 19687-19688 (closed session); BT-104, T. 18496-18497.

<sup>2617</sup> *See* also BT-7, T. 2985 (closed session).

consideration of this Trial Chamber. Similarly, the submission of the Defence that it was loyalty and not ethnicity that was at the basis of the termination of the employment cannot be entertained outside the ambit of illegality upon which the Bosnian Serb authorities had embarked, namely of ethnically cleansing the territory they were seeking for an ethnically pure Serbian state. This could not be achieved without the direct intervention of the army and the police and an effective public sector, which also, therefore, needed to be ethnically pure.

1040. The same reasoning applies to the submission of the Defence that the dismissal of Bosnian Muslims and Bosnian Croats who had failed to respond to the call-up was justified and legal. The Trial Chamber is convinced that the call-up was a further excuse that the Bosnian Serb authorities used as a pretext for dismissing the non-responding Bosnian Muslims and Bosnian Croats who would have no option but to leave the area. The Bosnian Serb authorities knew fully well that there could not possibly be a positive response by these ethnic groups to the call-up.<sup>2618</sup>

1041. In sum, the Trial Chamber is satisfied that there was a denial of the right to employment *vis-à-vis* Bosnian Muslims and Bosnian Croats in the municipalities of the ARK at the time relevant to the Indictment, thus depriving them of their livelihood.

(ii) Right to freedom of movement

1042. The Trial Chamber finds that a great number of Bosnian Muslims and Bosnian Croats in the municipalities of the ARK were unjustifiably deprived of their right to freedom of movement as a consequence of being detained and imprisoned,<sup>2619</sup> or by being forcibly displaced from the area where they resided.<sup>2620</sup> In addition, Bosnian Muslims or Bosnian Croats wishing to leave the area were forced to abide by strict departure procedures.<sup>2621</sup>

1043. There is also evidence to show that after 1 April 1992, in the territory of the ARK, Bosnian Muslims and Bosnian Croats were discriminated against at checkpoints<sup>2622</sup> and that, in one instance, curfew was imposed but applied only against non-Serbs.<sup>2623</sup> The Trial Chamber concludes that

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<sup>2618</sup> Bosnian Croats and Bosnian Muslims would have been used to fight against their kin in Croatia and in the Bosnian Krajina.

<sup>2619</sup> See IX.E.2., “Genocide – The facts and the findings”.

<sup>2620</sup> See IX.C., “Deportation and Inhumane Acts”.

<sup>2621</sup> See IX.D., “Deportation and Inhumane Acts”. See also ex. P173, “*Glas* newspaper article”, dated 6 May 1992, stating: “All male persons between 28 and 60 years of age are forbidden to leave the territory of the ARK without a special permit ...”. See also ex. P179, “Conclusion” by the War Staff of the ARK: “In the future, tickets for flights to Belgrade may not be sold to persons without the approval of the National Defence Councils...”.

<sup>2622</sup> Jusuf Arifagić, ex. P554, T. 7080-7081.

<sup>2623</sup> BT-1, T. 13699 (private session). Decisions of the ARK Crisis Staff also deal with the curfew: see ex. P227, “Official Gazette of the ARK” (“Hotel and catering establishments found open after 2200 hours, that is, during the curfew, will be closed down ... The strictest measures will also be taken against persons found to be moving about without proper permits during curfew and the vehicles they use will be taken away ... The Government of the Serbian Republic of BiH is to immediately prescribe punishment for violations of the curfew.”)

Bosnian Muslims and Bosnian Croats in the municipalities of the ARK were denied the right to freedom of movement on discriminatory grounds.

(iii) Right to proper judicial process

1044. The Trial Chamber is satisfied that Bosnian Muslims and Bosnian Croats in the municipalities of the ARK were arbitrarily arrested and detained in camps and other detention facilities for a considerable length of time. Most of them were never informed of the charges against them, and, in addition, were never charged before a court.<sup>2624</sup> In fact, there was a near-total absence of judicial process, including the right of access to a court.<sup>2625</sup>

1045. In the many cases in which Bosnian Muslims and Bosnian Croats were made to relinquish their property to the Bosnian Serb authorities before being taken away from their homes, the Trial Chamber finds that such appropriations were not only devoid of any legal process, but devised in a way as to simulate a renunciation of property rights without any compensation.<sup>2626</sup> The great majority of lawsuits initiated by Bosnian Muslims and Bosnian Croats following their dismissals aiming at reinstatement into employment were never dealt with by the courts.<sup>2627</sup> The Trial Chamber concludes that Bosnian Muslims and Bosnian Croats in the municipalities of the ARK were denied the right to proper judicial process on discriminatory grounds.

(iv) Right to proper medical care

1046. With regard to camps and other detention facilities in the ARK, the Trial Chamber finds that Bosnian Muslim and Bosnian Croat detainees did not enjoy proper medical care.<sup>2628</sup> Injuries such as major flesh wounds and serious inflammations were in many cases left untreated.<sup>2629</sup> Detainees suffering from asthma, diabetes or dysentery in most cases did not receive any medical care at all, even though they asked for it.<sup>2630</sup>

1047. Outside detention facilities, Bosnian Muslim and Bosnian Croat citizens in the municipalities of the ARK were often not admitted into hospital<sup>2631</sup> or were denied the medicine

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<sup>2624</sup> James Mayhew, T. 13569; Enis Šabanović, T. 6479; Ramiz Subašić, T. 10490-10491; Samir Dedić, T. 10404. In rare cases, there were charges of “armed rebellion against the SerBiH”, “fundamentalism” or “nationalism”, *see*, Samir Poljak, ex. P1521, T. 6379; Mevludin Sejmenović, ex. P1533, T. 4744; Enis Šabanović, T. 6527.

<sup>2625</sup> Even where ‘charges’ were brought, no regular court proceedings followed, *see*, Samir Poljak, ex. P1521, T. 6381. At Jasenica in the municipality of Bosanska Krupa, where Muslims were detained, a ‘court’ was set up consisting of an administrative clerk, a soldier and an accountant, BT-56, T. 17452-17453.

<sup>2626</sup> *See* IX.C., “Deportation and Inhumane Acts”.

<sup>2627</sup> Jasmin Odobašić, T. 15115; Amir Džonlić, T. 2335-2336.

<sup>2628</sup> *See* IX.E.2., “Genocide – The facts and the findings”.

<sup>2629</sup> Dževad Došlić, T. 14850; Mirzet Karabeg, T. 6170.

<sup>2630</sup> BT-82, T. 14000; Mehmed Tenić, T. 16869.

<sup>2631</sup> Muhamed Krzić, T. 1466; BT-69, T. 17704 (closed session).

they needed at pharmacies at the time relevant to the Indictment.<sup>2632</sup> In those cases in which they were in fact treated in hospitals, Bosnian Muslims and Bosnian Croats were treated callously at best – neglected, often beaten and subject to all kinds of abuse.<sup>2633</sup>

1048. The Trial Chamber is satisfied that the absence of required medical care was not caused by a general shortage of supplies at the time,<sup>2634</sup> but rather that proper medical care was deliberately withheld from Bosnian Muslims and Bosnian Croats by the Bosnian Serb authorities for the very reason of their ethnicity. The Trial Chamber concludes that the right to proper medical care was denied to Bosnian Muslims and Bosnian Croats.

(v) Conclusion regarding the denial of fundamental rights

1049. The Trial Chamber has established that Bosnian Muslims and Bosnian Croats in the ARK were denied the rights to employment, freedom of movement, proper judicial process, and proper medical care. In the context of the conflict taking place in the ARK, the Trial Chamber finds that, taking into account the cumulative effect of their denial, these rights cannot but be considered as fundamental rights for the purposes of establishing persecution. The Trial Chamber is also satisfied that the denial of these rights to Bosnian Muslims and Bosnian Croats was of equal gravity to other crimes listed in Article 5 of the Statute as well as discriminatory in fact and was carried out with the requisite discriminatory intent by the direct perpetrators on racial, religious and political grounds.

(f) Conclusion

1050. To sum up, the Trial Chamber is satisfied that the persecutorial campaign against Bosnian Muslims and Bosnian Croats included killings, torture, physical violence, rapes and sexual assaults, constant humiliation and degradation, destruction of properties, religious and cultural buildings, deportation and forcible transfer, and the denial of fundamental rights. These acts were discriminatory in fact and were committed by the perpetrators with the requisite discriminatory intent on racial, religious and political grounds.

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<sup>2632</sup> Midho Alić, T. 13932.

<sup>2633</sup> BT-78, ex. P562, T. 6916-6922 (under seal); Grgo Stojić, T. 6788-6789; Emsud Garibović, T. 12504.

<sup>2634</sup> Charles Kirudija, T. 14562.

### 3. The Responsibility of the Accused

1051. The Trial Chamber has already dismissed JCE, ‘planning’ and superior criminal responsibility under Article 7(3) of the Statute as possible modes of liability to describe the individual criminal responsibility of the Accused.<sup>2635</sup>

#### (a) Wilful killing, torture, destruction of property, religious buildings, deportation and forcible transfer as persecution

1052. The Trial Chamber has previously established the responsibility of the Accused for aiding and abetting certain crimes of wilful killing,<sup>2636</sup> torture,<sup>2637</sup> destruction of property and religious buildings<sup>2638</sup> as well as deportation and forcible transfer.<sup>2639</sup> The Accused has also been found responsible for instigating certain incidents of deportation and forcible transfer.<sup>2640</sup> For the purposes of persecution, the Trial Chamber has also found that these acts were committed with the requisite intent by the physical perpetrators.<sup>2641</sup> To hold the Accused responsible for these crimes under persecution, it needs to be demonstrated that the Accused also acted with discriminatory intent.

1053. The essence of the utterances made by the Accused are, in the Trial Chamber’s view, instructive of his attitude towards Bosnian Muslims and Bosnian Croats. The Trial Chamber recalls that the Accused repeatedly used derogatory and abusive language when referring to Bosnian Muslims and Bosnian Croats in public.<sup>2642</sup> Moreover, he openly labelled these people ‘second rate’<sup>2643</sup> or ‘vermin’<sup>2644</sup> and stated that in a new Serbian state, the few Bosnian Muslims and Bosnian Croats allowed to stay would be used to perform menial work.<sup>2645</sup> The Trial Chamber is thus satisfied that not only the physical perpetrators, but also the Accused possessed the intent to discriminate against the Bosnian Muslim and Bosnian Croat victims.

1054. The Trial Chamber finds that the Accused aided and abetted persecution with respect to wilful killing, torture, destruction of properties, religious and cultural buildings as well as deportation and forcible transfer. The Accused also instigated persecution with respect to deportation and forcible transfer.

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<sup>2635</sup> See VIII.D., “The Accused’s criminal responsibility in general”.

<sup>2636</sup> Count 5, *see* para. 476 *supra*.

<sup>2637</sup> Counts 6 and 7, *see* paras 535-538 *supra*.

<sup>2638</sup> Counts 11-12, *see* paras 669, 677-678 *supra*.

<sup>2639</sup> Counts 8 and 9, *see* paras 576-583 *supra*.

<sup>2640</sup> *Ibid*.

<sup>2641</sup> See “The facts and findings” earlier in this chapter.

<sup>2642</sup> See VIII.C.5., “The Accused’s Propaganda Campaign”.

<sup>2643</sup> BT-9, T. 3204 (closed session).

<sup>2644</sup> BT-7, T. 2834 (closed session).

<sup>2645</sup> BT-11, T. 3990 (closed session).

(b) Appropriations, physical violence, rapes, sexual assaults, constant humiliation and degradation as persecution

1055. Earlier in this chapter, the Trial Chamber has found that Bosnian Muslims and Bosnian Croats were exposed to physical violence, rapes, sexual assaults, as well as to constant humiliation and degradation by Bosnian Serb soldiers and policemen.<sup>2646</sup> In addition, the Trial Chamber has found that there was extensive appropriation of non-Serb property by Bosnian Serb forces.<sup>2647</sup> The Trial Chamber is satisfied that the Accused aided and abetted the commission of these crimes by the physical perpetrators.

1056. The Trial Chamber is satisfied that the ARK Crisis Staff decisions on disarmament issued between 9 May 1992 and 18 May 1992,<sup>2648</sup> which can be personally attributed to Accused,<sup>2649</sup> had the effect of creating an imbalance of arms and weapons favouring the Bosnian Serbs in the Bosnian Krajina. The Trial Chamber finds that the decisions on disarmament were selectively enforced on non-Serbs,<sup>2650</sup> while at the same time, the Bosnian Serb population was arming itself on a massive scale.<sup>2651</sup> Furthermore, at the municipal level, where the ARK Crisis Staff decisions with respect to disarmament were implemented, deadlines to hand over weapons were on occasion used as a pretext to attack non-Serb villages.<sup>2652</sup>

1057. The Trial Chamber is thus satisfied that the ARK Crisis Staff decisions on disarmament had a substantial effect on the commission of said crimes by Bosnian Serb soldiers and policemen during and immediately after the armed attacks on non-Serb towns, villages and neighbourhoods. The Trial Chamber is also satisfied that the Accused was aware that the Bosnian Serb forces were to attack non-Serb towns, villages and neighbourhoods and that through the ARK Crisis Staff decisions on disarmament, he rendered practical assistance and a substantial contribution to the Bosnian Serb forces carrying out these attacks, during which some of the crimes in question were committed.

1058. In addition, the Trial Chamber is satisfied that the Accused aided and abetted the crimes of physical violence, rapes, sexual assaults, and constant humiliation and degradation in camps and detention facilities throughout the ARK by Bosnian Serb soldiers and policemen. It has been established beyond reasonable doubt that the Accused had knowledge of the existence of these

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<sup>2646</sup> See paras 999-1020 *supra*.

<sup>2647</sup> See, XI.D.2, "Destructions. Facts and Findings".

<sup>2648</sup> See paras 242-247 *supra*.

<sup>2649</sup> See para. 319 *supra*.

<sup>2650</sup> See VI.D., "The role of the ARK Crisis Staff in the implementation of the Strategic Plan".

<sup>2651</sup> See IV., "General Overview".

<sup>2652</sup> See IV., "General Overview" and IX.D., "Destructions".

camps.<sup>2653</sup> The situation in the camps and detention facilities was discussed during ARK Crisis Staff meetings<sup>2654</sup> and the Accused made public statements about these camps and detention facilities.<sup>2655</sup> Therefore, the Trial Chamber is satisfied that the only reasonable conclusion that may be drawn is that the Accused was aware of the nature of these camps and other detention facilities and that inmates were subjected to physical violence, rape, sexual assaults, and constant humiliation and degradation therein.<sup>2656</sup> Although the Accused did not actively assist in the commission of any of the crimes committed in these camps and detention facilities, in light of his position as the President of the ARK Crisis Staff, the Trial Chamber is satisfied that his inactivity with respect to the camps and detention facilities, together with his public attitude to them, constituted encouragement and moral support to the running of these camps and detention facilities by the army and the police in the way described to the Trial Chamber throughout the trial. This complete inactivity combined with his public attitude to these camps and detention facilities necessarily left no doubt in the mind of those running the camps and detention facilities that they enjoyed the full support of the ARK Crisis Staff and its President. The Trial Chamber is satisfied that this fact had substantial effect on the commission of torture in the camps and detention facilities throughout the ARK.

1059. The Trial Chamber is satisfied that the ARK Crisis Staff decision dated 3 June 1992 providing that people were not permitted to leave the ARK with more than 300 German marks,<sup>2657</sup> which can be personally attributed to Accused,<sup>2658</sup> made a substantial contribution to the appropriation of property in the municipalities of the ARK.

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<sup>2653</sup> See VIII.C.6., “The Accused’s knowledge that crimes were being committed”. The Trial Chamber is satisfied that the Accused had this knowledge from the moment he became the President of the ARK Crisis.

<sup>2654</sup> Milorad Sajić, T. 23684-23685.

<sup>2655</sup> During July 1992, the Accused, together with others, including Predrag Radić, visited the Prijedor area making “a tour of the combat area and collection centres”. In this context, on 17 July 1992, the Accused visited Omarska camp. While Predrag Radić was very upset seeing how people were treated in the camp, the Accused publicly stated that “what we have seen in Prijedor is an example of a job well done”, adding that “it is a pity that many in Banja Luka, are not aware of it yet, just as they are not aware of what might happen in Banja Luka in the very near future.”: Ex. P284, “Kozarski Vjesnik newspaper article”, entitled “Representatives of the Krajina in Prijedor: It is not easy for anyone”, dated 17 July 1992; Predrag Radić, T. 21996-22008. See also, ex. P291, “Glas newspaper article”, dated 26 July 1992. At the end of August 1992, the Accused appeared on television to state: “Those who are not loyal are free to go and the few loyal Croats and Muslims can stay. As Šešelj said about the 7000 Albanians in Kosovo, they will be treated like gold and this is exactly how we are going to treat our 1.200 to 1.500 Muslims and Croats (...) If Hitler, Stalin and Churchill could have working camps so can we. Oh come on, we are in a war after all”: ex. P2326 (under seal).

<sup>2656</sup> The Trial Chamber is not satisfied that the evidence establishes beyond reasonable doubt that the Accused knew that people were killed inside these camps and detention facilities.

<sup>2657</sup> See VI.D.1.(c), “Resettlement of the non-Serb population”.

<sup>2658</sup> See para. 319 *supra*.



1060. The Trial Chamber is satisfied that not only the physical perpetrators of the crimes, but also the Accused possessed the intent to discriminate against the Bosnian Muslim and Bosnian Croat victims.<sup>2659</sup>

1061. The Trial Chamber finds that the Accused aided and abetted persecution with respect to physical violence, rapes, sexual assaults as well as constant humiliation and degradation.

(c) Denial of fundamental rights as persecution

1062. With regard to the denial of fundamental rights, the Trial Chamber recalls its previous finding that Bosnian Muslims and Bosnian Croats were denied the right to employment, the right to freedom of movement, the right to proper judicial process and the right to proper medical care.<sup>2660</sup>

(i) Right to employment

1063. The Trial Chamber is satisfied that the Accused, who can be held personally responsible for the decisions issued by the ARK Crisis Staff,<sup>2661</sup> ordered the municipal Crisis Staffs of the ARK to lay off non-Serbs *en masse*.

1064. The Trial Chamber recalls that the Accused had been publicly calling for the dismissal of non-Serbs from key positions as early as April 1992.<sup>2662</sup> On 8 May 1992, the ARK Crisis Staff issued a decision to the effect that “only personnel absolutely loyal to the Serbian Republic of Bosnia and Herzegovina may hold managerial posts.”<sup>2663</sup> The ARK Crisis Staff decision of 22 June 1992 went one step further in providing that “[a]ll leading positions, positions involving the access to information, protection of public property and other positions of importance for the functioning of the economy can be occupied exclusively by personnel of Serbian nationality”.<sup>2664</sup> The 22 June 1992 decision was subsequently implemented by the municipalities<sup>2665</sup> and resulted in the dismissal of almost all Bosnian Muslims and Bosnian Croats in the ARK.<sup>2666</sup>

1065. The Trial Chamber finds that the ARK Crisis Staff decision dated 22 June 1992, especially when considered in light of the earlier action taken by the Accused, provided concrete instructions

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<sup>2659</sup> See VIII.C.5., “The Accused’s propaganda campaign”.

<sup>2660</sup> See *supra*, para. 1049 *supra*.

<sup>2661</sup> See para. 319 *supra*.

<sup>2662</sup> See para. 326 *supra*.

<sup>2663</sup> Ex. P227, “ARK Official Gazette, Conclusions of 8 May 1992”.

<sup>2664</sup> Ex. P254/P255, “Decision of the ARK Crisis Staff of 22 June 1992”.

<sup>2665</sup> Ex. P1282, a note by the Prijedor SJB on implementation; ex. P1837, a decision by the Petrovac Executive Committee on dismissal; ex. P1879, a note by the Petrovac Crisis Staff on implementation.

<sup>2666</sup> See *supra*, paras 1032-1041. The Trial Chamber finds it immaterial whether or not a municipal Crisis Staff was legally entitled to terminate employment, as long as the employer of the concerned Bosnian Muslim or Bosnian Croat obeyed the decision of a municipal Crisis Staff.

to the municipal Crisis Staffs throughout the ARK to proceed with the dismissal of Bosnian Muslims and Bosnian Croats from basically all areas of employment. The evidence shows that the ARK municipalities accepted the authority of the ARK Crisis Staff.<sup>2667</sup> The Trial Chamber is also satisfied that the Accused intended the dismissal of Bosnian Muslims and Bosnian Croats to the largest possible extent, and that he was well aware that this would be the consequence of the implementation of the 22 June 1992 decision.

1066. The Trial Chamber is further satisfied that not only the physical perpetrators, but also the Accused possessed the intent to discriminate against the Bosnian Muslim and Bosnian Croat victims.<sup>2668</sup>

1067. The Trial Chamber finds that the Accused ordered persecution with respect to denying the fundamental right to employment.

(ii) Right to freedom of movement

1068. The Trial Chamber is satisfied that the Accused, who can be held personally responsible for the decisions issued by the ARK Crisis Staff,<sup>2669</sup> aided and abetted the restriction of freedom of movement to Bosnian Muslims and Bosnian Croats.

1069. The Trial Chamber finds that the Accused actively aided and abetted the setting up of impediments for Bosnian Muslims and Bosnian Croats to move around freely. This includes decisions of the ARK Crisis Staff dealing with curfew and with special permits to leave the territory of the ARK.<sup>2670</sup> The Trial Chamber has already found that these restrictions were applied against non-Serbs only.<sup>2671</sup>

1070. The Trial Chamber is satisfied that the Accused was aware that his conduct would substantially contribute to restrict the freedom of movement of Bosnian Muslims and Bosnian Croats. The Trial Chamber is satisfied that not only the physical perpetrators, but also the Accused possessed the intent to discriminate against the Bosnian Muslim and Bosnian Croat victims.<sup>2672</sup>

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<sup>2667</sup> Ex. P1282; ex. P1837; ex. P1879.

<sup>2668</sup> See VIII.C.5., “The Accused’s propaganda campaign”.

<sup>2669</sup> See para. 319 *supra*.

<sup>2670</sup> See ex. P173, “*Glas* newspaper article”, dated 6 May 1992, “No abandonment of Krajina”: “All male persons between 28 and 60 years of age are forbidden to leave the territory of the ARK without a special permit ...”. See also ex. P179, “Conclusion” by the War Staff of the ARK: “In the future, tickets for flights to Belgrade may not be sold to persons without the approval of the National Defence Councils...”. Regarding curfews, see ex. P227, “Official Gazette of the ARK” (“Hotel and catering establishments found open after 2200 hours, that is, during the curfew, will be closed down ... The strictest measures will also be taken against persons found to be moving about without proper permits during curfew and the vehicles they use will be taken away. ...”)

<sup>2671</sup> See para. 1043 *supra*.

<sup>2672</sup> See VIII.C.5., “The Accused’s propaganda campaign”.

1071. The Trial Chamber finds that the Accused aided and abetted persecution with respect to denying the right to freedom of movement.

(iii) Right to proper judicial process

1072. The Trial Chamber is satisfied that the Accused aided and abetted the denial of the right to proper judicial process to Bosnian Muslims and Bosnian Croats.

1073. The Trial Chamber finds that the Accused aided and abetted the maintenance of a system in which Bosnian Muslims and Bosnian Croats were unable to seek legal redress for their illegal detention. It has been established beyond reasonable doubt that the Accused had knowledge of the existence of camps and detention facilities and that inmates were detained there without legally prescribed grounds.<sup>2673</sup> The situation in the camps and detention facilities was discussed during ARK Crisis Staff meetings<sup>2674</sup> and the Accused made public statements about these camps and detention facilities.<sup>2675</sup> The Trial Chamber is satisfied that his inactivity with respect to the camps and detention facilities constituted encouragement and moral support to continuation of the running by the army and the police of these camps and detention facilities. This complete inactivity necessarily left no doubt in the mind of those running the camps and detention facilities that they enjoyed the full support of the ARK Crisis Staff and its President. The Trial Chamber is satisfied that this fact had substantial effect on the maintenance of a system in which Bosnian Muslims and Bosnian Croats were unable to seek legal redress for their illegal detention.

1074. In addition, the Trial Chamber is also satisfied that the Accused aided and abetted the maintenance of a system in which Bosnian Muslims and Bosnian Croats were unable to seek legal redress for the appropriation of their property.

1075. The Trial Chamber finds that the Accused aided and abetted persecution with respect to denying the right to proper judicial process.

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<sup>2673</sup> See VIII.C.6, “The knowledge of the Accused that crimes were being committed”.

<sup>2674</sup> Milorad Sajić, T. 23684-23685.

<sup>2675</sup> During July 1992, the Accused, together with others, including Predrag Radić, visited the Prijedor area making “a tour of the combat area and collection centres”. In this context, on 17 July 1992, the Accused visited Omarska camp. While Predrag Radić was very upset seeing how people were treated in the camp, the Accused publicly stated that “what we have seen in Prijedor is an example of a job well done”, adding that “it is a pity that many in Banja Luka, are not aware of it yet, just as they are not aware of what might happen in Banja Luka in the very near future.”: Ex. P284, “Kozarski Vjesnik newspaper article”, entitled “Representatives of the Krajina in Prijedor: It is not easy for anyone”, dated 17 July 1992; Predrag Radić, T. 21996-22008. See also, ex. P291, “Glas newspaper article”, dated 26 July 1992. At the end of August 1992, the Accused appeared on television to state: “Those who are not loyal are free to go and the few loyal Croats and Muslims can stay. As Šešelj said about the 7000 Albanians in Kosovo, they will be treated like gold and this is exactly how we are going to treat our 1.200 to 1.500 Muslims and Croats (...) If Hitler, Stalin and Churchill could have working camps so can we. Oh come on, we are in a war after all”: ex. P2326 (under seal).

(iv) Right to proper medical care

1076. The Trial Chamber finds that the evidence before it is insufficient to establish the responsibility of the Accused for the denial of the right to proper medical care.

## X. SENTENCING CONSIDERATIONS

### A. Defence Objection to the Absence of Individualised Sentencing Proceedings Following a Finding of Guilt

1077. The Defence objects to the application of Rule 86(C) which requires parties to address sentencing matters in closing arguments. According to the Defence, this Rule is manifestly unfair to the Accused and therefore requests, in the event of a finding of guilt, a separate sentencing hearing so that it can present evidence of remorse as a mitigating factor.<sup>2676</sup>

1078. The Prosecution responds that Rule 86 (closing arguments) and Rule 100 (which is captioned “pre-sentencing procedure”) were amended in 1998 to merge the bifurcated (trial and sentencing) proceedings. The Prosecution further submits that this is a matter which the Defence should have raised before the final trial brief stage and that, in addition, the Trial Chamber is bound by the Rules of this Tribunal.<sup>2677</sup>

1079. The Trial Chamber notes that paragraph C of Rule 86 was added to that Rule by a decision of the Eighteenth Plenary on 9 July 1998. On that occasion, the Plenary opted to adopt the current unitary system in preference to the bifurcated (trial and sentencing) system prevalent in many common law jurisdictions in trial by jury.

1080. As pointed out by the Prosecution, the Trial Chamber is bound by the Rules. In addition, departing from the Rule 86(C) in the present case would not only have the effect of giving the Accused a concession denied to other accused, but also of adopting a system which has been expressly abandoned by this Tribunal.

1081. The Trial Chamber does not agree with the Defence submission that as a result of the application of Rule 86(C) the Accused is forced to give up his right against self-incrimination in order to present evidence relevant to his sentencing.<sup>2678</sup> The Appeals Chamber has categorically

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<sup>2676</sup> In its Final Brief, the Defence also argues that “if an accused holds the Prosecution to its burden of proof and exercises the right to remain silent, an accused is precluded from effectively mitigating his or her sentence. An accused is forced to exercise one right – the right to force the Prosecution to prove its case – at the expense of another – the right to present evidence remorse.” Under the current Rules, “an accused is forced to give up his right against self-incrimination in order to present evidence relevant to his sentencing”, Defence Final Brief (confidential), paras 215-217.

<sup>2677</sup> Prosecution Response to the Defence Final Brief (confidential), para. 22.

<sup>2678</sup> Furthermore, the Defence submission that once an accused opts to proceed to trial and to exercise the right to remain silent then he or she is precluded from mitigating the sentence which an accused could ultimately receive if found guilty overlooks the fact that even in common law jurisdictions, including in the United States, the bifurcated system is not applied to all criminal cases, and where it is not applicable, the conflict which the Defence draws from the *Simmons* case is simply not invoked. For example, in the State of Vermont, while the Legislature incorporated the Model Penal Code’s provision for a bifurcated trial by separating the penalty phase from the merits phase of a first or second degree murder proceeding, it did not bifurcate the merits and penalty phase in the case of aggravated murder

stated that an accused can express sincere regret without admitting his participation in a crime.<sup>2679</sup> The Trial Chamber fully agrees and notes that Rule 84bis(A) even provides for an accused to make a statement without a solemn declaration and without having to face cross-examination. The Trial Chamber is satisfied that the Statute and the Rules of this Tribunal guarantee due process rights to all accused. The Trial Chamber, therefore, dismisses the Defence objection and proceeds with its sentencing considerations.

## **B. Cumulative Convictions**

1082. The Accused has been found individually criminally responsible pursuant to Article 7(1) of the Statute for the offences charged in:

- (a) Count 3: Persecutions as a crime against humanity (Article 5(h) of the Statute)
- (b) Count 5: Wilful Killing as a grave breach of the 1949 Geneva Conventions (Article 2(a) of the Statute)
- (c) Count 6: Torture as a crime against humanity (Article 5(f) of the Statute)
- (d) Count 7: Torture as a grave breach of the 1949 Geneva Conventions (Article 2(b) of the Statute)
- (e) Count 8: Deportation as a crime against humanity (Article 5(d) of the Statute)
- (f) Count 9: Inhumane Acts (forcible transfer) as a crime against humanity (Article 5(i) of the Statute)
- (g) Count 11: Wanton destruction of cities, towns or villages or devastation not justified by military necessity (Article 3(b) of the Statute)

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proceedings. For a confirmation of this, *see* State v. Grega (96-106); 168 Vt. 363; 721 A. 2d 445. The Court of Criminal Appeals in Tennessee at Knoxville in State of Tennessee v. Charles Johnston involving contempt proceedings decided that the defendant was not entitled to a separate sentencing hearing because the bifurcated system is also applicable in misdemeanours - Appeal no. E2002-02028-CCA-R3-CD – December 30, 2003. For example, in *People v. Hansen*, where the question arose whether New York Criminal Procedural Law § 400.27 violated non-capital defendants' due process rights by not affording them a separate sentencing hearing to present mitigating evidence, such as capital defendants were afforded, the New York Court of Appeals held that non-capital defendants were not deprived of their due process rights if they were not afforded the same sentencing procedures as capital defendants: *People v. Hansen*, 2003 N.Y. Int. 0008 (Feb. 13, 2003) – Defendant was convicted of non-capital first-degree murder and sentenced by the trial judge to life without parole. In reaching its conclusion the Court pointed to the U. S. Supreme Court's decision in *Harmelin v. Michigan* in which the Supreme Court held that "because of the qualitative difference between death and other penalties," capital sentencing receives a heightened level of due process. The Court also held that non-capital defendants did not have a right to a separate sentencing hearing under New York and federal constitutional guarantees of due process. New York laws have procedural safeguards that protect due process rights by ensuring that the court relies on accurate information and that all parties involved have a chance to respond to the factors the court considers in its sentencing determination: N.Y. Crim. Proc. Law §§ 390.20 to –40, 380.50.

<sup>2679</sup> *Vasiljević* Appeal Judgement, para. 177.

(h) Count 12: Destruction or wilful damage done to institutions dedicated to religion (Article 3(d) of the Statute)

1083. The Accused has been acquitted for the offences charged in:

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

(b) Count 2: Complicity in genocide (Article 4(3)(e) of the Statute)

(c) Count 4: Extermination as a crime against humanity (Article 5(b) of the Statute)

(d) Count 10: Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly (Article 2(d) of the Statute)

1084. Cumulative 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. When this test is not met, the Trial Chamber must enter a conviction based upon the principle that the more specific provision should be upheld.<sup>2680</sup>

1085. Convictions for charges of torture, deportation and inhumane acts (forcible transfer) brought under Article 5 of the Statute are impermissibly cumulative with convictions for charges of persecution.<sup>2681</sup> While, the underlying acts of torture, deportation and inhumane acts (forcible transfer) all overlap with the corresponding underlying acts of persecution, persecution contains additional discriminatory elements both in the *mens rea* and in the *actus reus* that are not required for torture<sup>2682</sup>, deportation<sup>2683</sup> and inhumane acts (forcible transfer)<sup>2684</sup>. These three charges are subsumed by the repository charge of persecution.<sup>2685</sup> A conviction may therefore be entered for persecution (Count 3) but not for torture (Count 6), deportation (Count 8) or inhumane acts (forcible transfer) (Count 9).

1086. Convictions based upon the same conduct for charges brought under Articles 3 and 5 of the Statute are permissibly cumulative as each Article contains materially distinct elements in the *chapeau* requirements.<sup>2686</sup> The materially distinct element in Article 3 is the close nexus requirement between the acts of the accused and the armed conflict whereas Article 5 requires that

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<sup>2680</sup> *Čelebići* Appeal Judgement, paras 412-413.

<sup>2681</sup> *Krnjelac* Trial Judgement, para. 503; *Vasiljević* Trial Judgement, paras 266-267; *Vasiljević* Appeal Judgement, paras 144-146.

<sup>2682</sup> *Kvočka* Trial Judgement, paras 227-228.

<sup>2683</sup> *Simić* Trial Judgement, paras 1056-1058.

<sup>2684</sup> *Krstić* Trial Judgement, para. 676, affirmed by *Krstić* Appeal Judgement, paras 230-233.

<sup>2685</sup> *Krstić* Appeal Judgement, para. 233; *Krnjelac* Appeal Judgement, para. 188.

the attack be widespread or systematic and directed against a civilian population. Convictions for destruction or wilful damage done to institutions dedicated to religion (Count 12) and for persecution (Count 3) based on the same conduct may therefore both be entered. Similarly, convictions for wanton destruction of cities, towns or villages, or devastation not justified by military necessity (Count 11) and for persecution (Count 3) based on the same conduct may also both be entered.

1087. Convictions based upon the same conduct for charges brought under Articles 2 and 5 of the Statute are permissibly cumulative as each Article contains materially distinct elements in the *chapeau* requirements.<sup>2687</sup> While Article 2 requires the existence of an international armed conflict and that the victims of the alleged offences be protected persons under the 1949 Geneva Conventions, Article 5 requires that there be a widespread or systematic attack directed against a civilian population. Therefore, convictions for wilful killing (Count 5), torture (Count 7), and persecution (Count 3) may all be entered.

1088. Thus, the Trial Chamber enters convictions for charges brought under:

- Count 3: Persecutions (incorporating Count 6: Torture, a Crime against Humanity; Count 8: Deportation, a Crime against Humanity; and Count 9: Inhumane acts (forcible transfer), a Crime against Humanity), in breach of Article 5(h) of the Statute
- Count 5: Wilful killing, in breach of Article 2 (a) of the Statute
- Count 7: Torture, in breach of Article 2 (b) of the Statute
- Count 11: Wanton destruction of cities, towns and villages or devastation not justified by military necessity, in breach of Article 3(b) of the Statute
- Count 12: Destruction or wilful damage done to institutions dedicated to religion, in breach of Article 3(d) of the Statute

### **C. Applicable Law: Sentencing factors and Sentencing purposes**

1089. Article 24 (2) of the Statute and Rule 101(B) of the Rules set out the factors to be taken into account in determining the sentence for an accused. A Trial Chamber is obliged to take into account such factors as the gravity of the offence and the individual circumstances of the convicted

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<sup>2686</sup> *Jelisić* Appeal Judgement, para. 82.

<sup>2687</sup> *Kordić* Trial Judgement, paras 820-824; *Naletilić* Trial Judgement, paras 720-738.



person.<sup>2688</sup> Aggravating and mitigating circumstances and the general practice regarding prison sentences in the courts of the former Yugoslavia must also be taken into account.<sup>2689</sup>

1090. When determining the sentence of an accused a Trial Chamber must also consider the main aims of punishment (*i.e.*, sentencing purposes). The jurisprudence of the Tribunal has indicated that retribution and deterrence are the main sentencing purposes.<sup>2690</sup> Retribution is not to be understood as fulfilling a desire for revenge but as duly expressing the outrage of the international community at these crimes.<sup>2691</sup> The Trial Chamber in the *Dragan Nikolić* case<sup>2692</sup> stated that retribution should solely be seen as:

an objective, reasoned and measured determination of an appropriate punishment which properly reflects the [...] culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offenders conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more.<sup>2693</sup>

Retribution must be understood as reflecting a fair and balanced approach to the exaction of punishment for wrongdoing. This means that the penalty must be proportionate to the wrongdoing; in other words, the punishment must fit the crime. This principle is reflected in the requirement in the Statute that the Trial Chambers, in imposing sentences, must take into account the gravity of the offence.<sup>2694</sup>

1091. As to deterrence, the penalties imposed by the Tribunal must, in general, have sufficient deterrent value to ensure that those who would consider committing similar crimes will be dissuaded from doing so.<sup>2695</sup> One of the main purposes of a sentence imposed by an international criminal tribunal is to “influence the legal awareness of the accused, the surviving victims, their relatives, the witnesses and the general public in order to reassure them that the legal system is implemented and enforced. Additionally, the process of sentencing is intended to convey the message that globally accepted laws and rules have to be obeyed by everybody.”<sup>2696</sup>

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<sup>2688</sup> Article 24(2) of the Statute provides: “In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.”

<sup>2689</sup> Rule 101 (B) of the Rules provides: “In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as: (i) any aggravating circumstances; (ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction; (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia[...].”

<sup>2690</sup> *Aleksovski* Appeal Judgement, para. 185; *Čelebići* Appeal Judgement, para. 806; *See also Todorović* Sentencing Judgement, paras 28-29.

<sup>2691</sup> *Aleksovski* Appeal Judgement, para. 185.

<sup>2692</sup> *Dragan Nikolić* Sentencing Judgement, para. 140.

<sup>2693</sup> *R. v. M. (C.A.)* (1996) 1 S.C.R. 500, para. 80 (emphasis in original).

<sup>2694</sup> *Todorović* Sentencing Judgement, para. 29.

<sup>2695</sup> *Todorović* Sentencing Judgement, para. 30. *See Tadić* Appeal Sentencing Judgement, para. 48; *Aleksovski* Appeal Judgement, para. 185; *Celebići* Appeal Judgement, para. 803.

<sup>2696</sup> *Dragan Nikolić* Sentencing Judgement, para. 139.

1092. The other three aims that sentencing usually promotes, namely, rehabilitation, social defence and restoration have not yet achieved the same dominance as retribution and deterrence in the sentencing history of this Tribunal, even though, in the opinion of the Trial Chamber, they are important for achieving the goals of this Tribunal. Such factors have tended to be dealt with as mitigating or aggravating factors, with social defence intermingling with the understanding that this Tribunal has of the aim of deterrence.<sup>2697</sup>

### 1. Gravity of the offence

1093. Both parties agree that the gravity of the offence should be the principal guideline for sentencing, irrespective of the form of an individual's criminal participation.<sup>2698</sup> Basing itself on the gravity of the offences charged and the submitted aggravating factors, the Prosecution requested a sentence of life imprisonment.<sup>2699</sup>

1094. Trial Chambers have consistently viewed the gravity of the offence as “the primary consideration in imposing sentence.”<sup>2700</sup> The Appeals Chamber endorsed the following statement by the Trial Chamber in the *Kupreškić* case:

The sentences to be imposed must reflect the inherent gravity of the criminal conduct of the accused. The determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime.<sup>2701</sup>

1095. The Trial Chamber is satisfied of the seriousness of the crimes that the Accused has been found guilty of. The crime of persecution as a crime against humanity is “inherently a very serious crime. This crime, like other crimes against humanity, requires that the acts of the accused be related to a widespread and systematic attack on a civilian population of which the accused has knowledge”.<sup>2702</sup> Its unique character is derived from a requirement of discriminatory aspects of the act and intent<sup>2703</sup> of which the Trial Chamber has found ample evidence.<sup>2704</sup> The Trial Chamber is also satisfied of the seriousness of the crimes of wilful killing and torture, wanton destruction of cities, towns and villages or devastation not justified by military necessity and destruction or wilful

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<sup>2697</sup> In addition, with regard to rehabilitation in the context of serious violations of international criminal law, the Appeals Chamber has stated the following: “Although rehabilitation (in accordance with international human rights) should be considered as a relevant factor, it is not one which should be given undue weight”, *Čelebići* Appeal Judgement, para. 806.

<sup>2698</sup> In this context, the Defence reiterates that it is precluded from making any effective arguments at sentencing because it does not even know which crime, if any, the Accused has been found guilty: Defence Final Brief (confidential), p. 218.

<sup>2699</sup> Prosecution Final Brief, para. 824.

<sup>2700</sup> *Čelebići* Appeal Judgement, para. 731.

<sup>2701</sup> *Ibid*, citing *Kupreškić* Trial Judgement, para. 852.

<sup>2702</sup> *Todorović* Sentencing Judgement, para. 32.

<sup>2703</sup> *Krnjelac* Appeal Judgement, paras 184-185.

<sup>2704</sup> See IX.F., “Persecutions”, *supra*.

damage done to institutions dedicated to religion. In assessing the gravity of the crimes, the Trial Chamber also takes into account the fact that it is an established principle in the jurisprudence of the Tribunal that war crimes are not inherently less serious than crimes against humanity.<sup>2705</sup>

## 2. Aggravating circumstances

1096. The weight to be given to the aggravating circumstances lies within the discretion of the Trial Chamber.<sup>2706</sup> The Appeals Chamber has held that “only those matters which are proved beyond reasonable doubt against an accused may be the subject of an accused’s sentence or taken into account in aggravation of that sentence.”<sup>2707</sup> Only the circumstances directly related to the commission of the offence charged may be seen as aggravating.<sup>2708</sup> The Trial Chamber further notes that if a particular circumstance is included as an element of the offence under consideration, it will not also be regarded as an aggravating factor.

1097. The Prosecution and the Defence make submissions on the aggravating circumstances which the Trial Chamber should take into account in determining the appropriate sentence for the Accused. In so doing, the Defence reiterates its complaint that the Accused finds himself in the untenable position of having to present sentencing arguments at the pre-conviction stage. It nevertheless puts forwards a limited presentation of anticipated aggravated factors.<sup>2709</sup> Since the list of aggravating circumstances submitted by the Prosecution encompasses all the factors submitted by the Defence, and goes beyond them, the Trial Chamber will for ease of reference follow the Prosecution’s list.

### (a) Senior position of the Accused and abuse of authority

1098. The Prosecution submits, *inter alia*, that the Trial Chamber should consider that the Accused’s responsibility under Article 7(1) of the Statute is aggravated by his position of authority.<sup>2710</sup> In addition, it submits that as President of the ARK Crisis Staff and as Vice-President of the ARK Assembly, the Accused had a duty to protect all citizens within the ARK, regardless of their ethnicity, and the obligation to prevent and punish the offences committed by the army and the police in the area of the ARK.<sup>2711</sup> The Defence disagrees that the Accused’s position as president of

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<sup>2705</sup> *Furundžija* Appeal Judgement, para. 247; *Tadić* Sentencing Appeal Judgement, para. 69.

<sup>2706</sup> *Čelebići* Appeal Judgement, para.777.

<sup>2707</sup> *Ibid.*, para. 763.

<sup>2708</sup> *Stakić* Trial Judgement, para. 911.

<sup>2709</sup> Defence Final Brief (confidential), p. 221. These are: 1) Gravity of the Offence and the manner in which it was committed; 2) Position of the Accused; 3) Status of the Victims and effect of the offences on the victims; 4) Accused’s education. The Defence did not add any arguments or submissions in its Response to the Prosecution’s Final Brief (confidential) filed on 16 April 2004.

<sup>2710</sup> Prosecution Final Brief, para. 771.

<sup>2711</sup> Prosecution Final Brief, para. 773.

the ARK Crisis Staff constitutes a substantial aggravating factor as the nature and extent of the power and authority of the ARK Crisis Staff is subject to differing interpretations.<sup>2712</sup>

1099. The Trial Chamber accepts that a high-ranking position of leadership held by a person criminally responsible under Article 7(1) of the Statute may be taken into account as an aggravating factor.<sup>2713</sup> In the *Krstić* case, the Trial Chamber justified this proposition by stating that “a person who abuses or wrongly exercises power deserves a harsher sentence than an individual acting on his or her own. The consequences of a person’s acts are necessarily more serious if he is at the apex of a military or political hierarchy and uses his position to commit crimes.”<sup>2714</sup> In the instant case, the Trial Chamber is satisfied that the Accused held positions of political authority at the highest level in the ARK and that he abused this authority in a way which discriminated against Bosnian Muslims and Bosnian Croats and brought them great harm and misery. The Trial Chamber therefore agrees with the Prosecution that it is appropriate to consider the Accused's senior position and his abuse of authority as an aggravating factor of considerable weight.

(b) Scale and scope of crimes

1100. The Prosecution submits that the crimes committed in the ARK during 1992 were of the gravest nature both in terms of their numbers and in the extent of harm and suffering of the victims.<sup>2715</sup>

1101. The Trial Chamber finds that given the nature of the crimes of which the Accused has been found guilty, the scale and scope of these crimes are essentially subsumed in the overall gravity of those crimes and have already been taken into consideration in making that assessment. Accordingly, the Trial Chamber will not treat them as aggravating factors separately.

(c) Victimisation and victim impact

1102. The Prosecution submits that the large number of victims, their status, vulnerability and the impact of those crimes on those victims should be considered as factors substantially aggravating the sentence in this case.<sup>2716</sup> The Defence acknowledges that a wide segment of the non-Serb

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<sup>2712</sup> Defence Final Brief (confidential), p. 222.

<sup>2713</sup> *Krstić* Trial Judgement, para. 708; *Kupreškić* Appeal Judgement, para 451; *Galić* Trial Judgement, para 765; *Momir Nikolić* Sentencing Judgement, para. 135; *Jokić* Sentencing Judgement, p.61.

<sup>2714</sup> *Krstić* Trial Judgement, para. 709. The Trial Chamber fully agrees with this and adds that: “A sentence must reflect the predominant standard of proportionality between the gravity of the offence and the degree of responsibility of the offender: *Akayesu* Appeal Judgement, para. 414.

<sup>2715</sup> Prosecution Final Brief, para. 779.

<sup>2716</sup> Prosecution Final Brief, para. 783.

population in the Bosnian Krajina were subjected to criminal acts but points out that these crimes are attributable to others and that the Accused did not participate in these criminal acts.<sup>2717</sup>

(i) Number of victims

1103. The Trial Chamber agrees that the number of victims reflects the scale of the crimes committed and amounts to an aggravating circumstance, but as scale has already been considered in assessing the gravity of the crimes, it will not be considered here.

(ii) Status and vulnerability of victims, impact of crimes on victims

1104. The Trial Chamber accepts that the status and vulnerability of the victims can be considered as aggravating circumstances.<sup>2718</sup> However, the civilian character of the victims cannot be considered an aggravating circumstance if it has been taken into account as part of the definition of the crimes, as is the case with persecutions as a crime against humanity.<sup>2719</sup>

1105. The extent of the long-term physical, psychological, and emotional suffering of the survivors can be an aggravating factor.<sup>2720</sup> The Appeals Chamber has held that even if the mental suffering of the survivors constitutes an element of, for example, the crime of inhumane acts, a Trial Chamber is entitled to take the long term effect of the trauma into account as an aggravating factor.<sup>2721</sup>

1106. The Trial Chamber is satisfied of the plight of the victims in the present case, their position of inferiority and their vulnerability. As established earlier, the victims were systematically disarmed only to be attacked, killed, beaten, tortured, raped, mistreated and forcibly displaced. In most instances, the victims were unarmed civilians, completely unprepared for what was to occur in the Bosnian Krajina; the victims included elderly people, women and children and disabled persons.<sup>2722</sup>

1107. The Trial Chamber is also taking into account that the Prosecution has proved beyond reasonable doubt the suffering of the victims who died during the persecutory campaign.<sup>2723</sup> Moreover, the Trial Chamber is also satisfied that the impact of the crimes of which the Accused

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<sup>2717</sup> Defence Final Brief (confidential), p. 223.

<sup>2718</sup> The Trial Chamber is considering these factors under this section only and has not taken them separately in consideration under the heading "Gravity of the Offence".

<sup>2719</sup> *Simić* Trial Judgement, para.70; *Todorović* Trial Judgement, para. 57; *Jokić* Sentencing Judgement, para. 64.

<sup>2720</sup> *Krnojelac* Trial Judgement, para. 512.

<sup>2721</sup> *Krnojelac* Appeal Judgement, para.167.

<sup>2722</sup> See IX., "Charges and Findings".

<sup>2723</sup> *Ibid.*

has been found guilty affected not only specific individuals but almost the entire Bosnian Muslim and Bosnian Croat communities in the ARK that ended up forcibly displaced.<sup>2724</sup>

(d) Willingness of the Accused's participation

1108. The Prosecution submits that the willing and enthusiastic participation of the Accused in the persecutory campaign against the Bosnian Muslims and Bosnian Croats in the ARK should be considered as an aggravating factor.<sup>2725</sup> The Defence denies the Accused's involvement in any of the crimes.<sup>2726</sup>

1109. The Trial Chamber agrees with the jurisprudence of this Tribunal that a crime is aggravated if it was committed with premeditation or zeal.<sup>2727</sup>

1110. The Trial Chamber is satisfied that the Accused held political functions at the highest level in the ARK. The Accused has been described as an ambitious man, driven by the lust for power and successful in accumulating power.<sup>2728</sup> In this context, the Trial Chamber is satisfied beyond reasonable doubt that the Accused allowed the persecutorial campaign to start and grow to tragic proportions and in so doing, he voluntarily contributed to the augmenting of its consequences. Moreover, the Trial Chamber has previously referred to the inflammatory and discriminatory statements the Accused made in public. The Trial Chamber further notes that had the Accused disagreed with these developments, he could have stepped down from his functions, but he chose not to do so.

(e) Duration of the criminal conduct

1111. The Prosecution submits that the evidence establishes that the planning and preparation of the crimes committed started as early as mid 1991.<sup>2729</sup> The Prosecution submits that the long phase of and duration of the criminal conduct should be considered by the Trial Chamber as an aggravating factor.<sup>2730</sup>

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<sup>2724</sup> *Ibid.*

<sup>2725</sup> Prosecution Final Brief, para. 799. The Prosecution submits that the active enthusiastic involvement and incitement by the Accused opened the way for the commission of grave crimes and removal of non-Serbs from the ARK and should be therefore considered as an aggravating factor: Prosecution Final Brief, para. 800.

<sup>2726</sup> Defence Final Brief (confidential), pp. 222.

<sup>2727</sup> *Krstić* Trial Judgement, paras 711-712; *Blaškić* Trial Judgement, para. 784; *Tadić* Sentencing Judgement, para. 20.

<sup>2728</sup> BT-103 T. 19945 (closed session). *See* VIII., "The Accused's Role and Responsibility in General".

<sup>2729</sup> Prosecution Final Brief, para. 804.

<sup>2730</sup> Prosecution Final Brief, para. 801.

1112. These underlying facts have been proved beyond reasonable doubt and the Trial Chamber agrees that they amount to aggravating circumstances.<sup>2731</sup> This being the case, the Trial Chambers will consider them as aggravating circumstances.

(f) Educational background

1113. According to the Prosecution, the Trial Chamber must take into account the background, education and intelligence of an accused in assessing as an aggravating factor. It submits that in the present case, the Accused is an intelligent, well-educated person with a long career in politics, who knew exactly what he was doing and knew the consequences of his actions.<sup>2732</sup> The Defence acknowledges that the Accused is a university-educated civil engineer but that his professional status is not a significant aggravating factor.<sup>2733</sup>

1114. The Trial Chamber finds that the Accused was an intelligent, university-educated person, who knew exactly the import and consequences of his actions. The Trial Chamber finds that these facts constitute an aggravating factor. However, given the circumstances of the present case, where the Accused's position of power and authority and his abuse thereof is certainly much more important, this aggravating factor will not be given undue weight.

(g) Conclusions

1115. The Trial Chamber has not found other aggravating factors *proprio motu*. In light of the above, the Trial Chamber finds that the following are relevant aggravating circumstances to which appropriate weight as stated above has been attached when determining the sentence:

- Position of leadership of the Accused
- Status and vulnerability of the victims and impact of the crimes on the victims
- Willingness of the Accused's participation
- Duration of the criminal conduct
- Educational Background of the Accused

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<sup>2731</sup> *Kunarac* Appeal Judgement, para. 356; *Todorović* Sentencing Judgement, paras 63-65; *Simić* Trial Judgement, para. 74.

<sup>2732</sup> Prosecution Final Brief, para. 806.

<sup>2733</sup> Defence Final Brief (confidential), p. 223.

### 3. Mitigating circumstances

1116. The Defence submits a number of mitigating factors which are analysed in detail below. The Prosecution submits that no mitigating factors exist in this case that could substantially reduce the sentence that should be imposed on the Accused.<sup>2734</sup> In particular, it submits that the Accused has not co-operated with the Prosecution.

1117. A number of mitigating factors have been considered and acknowledged by the Tribunal.<sup>2735</sup> As correctly pointed out by the Defence, mitigating circumstances need only be proved on a balance of probabilities.<sup>2736</sup> Mitigating circumstances may also include those not directly related to the offence.<sup>2737</sup> The Trial Chamber emphasises that a finding of mitigating circumstances relates to assessment of sentence and in no way derogates from the gravity of the crime. It mitigates punishment, not the crime.<sup>2738</sup>

#### (a) Benevolent treatment of Bosnian Muslim population in Čelinac<sup>2739</sup>

1118. The Defence submits that the Accused was responsible for saving the lives of the 1,860 Bosnian Muslims of Čelinac municipality in August 1992<sup>2740</sup> and that that the Accused took steps to protect their property.<sup>2741</sup> The Prosecution submits that such evidence is contradictory and unreliable.<sup>2742</sup>

1119. The Trial Chamber finds that the evidence regarding the instance where the Accused allegedly took action to ensure the safety of the Bosnian Muslim population in Čelinac is not clear. However, on a balance of probabilities, the Trial Chamber is satisfied that there is enough to prove that the Accused indeed contributed to the decision to provide shelter to the Bosnian Muslims from

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<sup>2734</sup> Prosecution Final Brief, para. 807.

<sup>2735</sup> In previous cases, Trial Chambers have found the following factors to be mitigating: voluntary surrender, guilty plea, co-operation with the Prosecution, youth, expression of remorse, good character with no prior criminal conviction, family circumstances, acts of assistance to victims, diminished mental capacity, and duress.

<sup>2736</sup> Defence Final Brief (confidential), p. 219. See also *Sikirica* Sentencing Judgement, para. 110; *Kunarac* Trial Judgement, para. 847; *Simić* Trial Judgement, para. 1065.

<sup>2737</sup> *Stakić* Trial Judgement, para. 920.

<sup>2738</sup> In this respect the Trial Chamber endorses the reasoning of the *Erdemović* Sentencing Judgement and the Hostage case cited therein: "It must be observed however that mitigation of punishment does not in any sense of the word reduce the degree of the crime. It is more a matter of grace than of defence", *ibid.*, para. 46.

<sup>2739</sup> In previous cases, Trial Chambers have found the acts of assistance to victims to be mitigating: *Krnjelac* Trial Judgement, para. 518; *Sikirica* Sentencing Judgement, paras 195, 229; *Kupreškić* Trial Judgement, para. 860.

<sup>2740</sup> Defence Final Brief (confidential), p. 224. The Defence relies on the account of Mehmet Talić who also testified that the Accused gave him assistance by providing him with a vehicle and a driver to pick up his daughter who was in the midst of an armed assault in Kotor Varoš.

<sup>2741</sup> The Defence submits that to ensure that the harvest was secured, the Accused directed combines to harvest the Bosnian Muslims crops first and then ensured that the Bosnian Muslims retained their harvest. Moreover, the Accused rendered assistance to the daughter of a Muslim inhabitant of Kotor Varoš: Defence Final Brief (confidential), p. 225.

<sup>2742</sup> The Prosecution accepts that it has been held by Trial Chambers of this Tribunal and in the ICTR that an accused's assistance to certain potential victims constitutes a mitigating factor in sentencing: Prosecution Final Brief, paras 809-810.



Čelinac municipality until the situation calmed down. The submission that by this the Accused saved the life of 1860 persons is however an overstatement. The Trial Chamber will take this instance in mitigation.

1120. As regards the Accused's assistance in removing Mehmet Talić's daughter from the midst of the armed assault on Kotor Varoš municipality by putting at his disposal a municipality vehicle and driver,<sup>2743</sup> the Trial Chamber does not doubt that this event indeed took place but attaches to it no importance for the purposes of mitigation due to its isolation.

1121. Regarding action taken by the Accused to protect the property and the harvest of the Bosnian Muslim population in Čelinac<sup>2744</sup>, the Trial Chamber finds that this may well have been the case in the view of the Accused and of witness Radosava Džombić. However, the Trial Chamber considers this to be in sharp contrast with the role played by the Accused in persecuting and permanently removing the Bosnian Muslims and Bosnian Croats without the least consideration for their well-being or for their property which they had to sign over to the SerBiH.<sup>2745</sup> Therefore, the Trial Chamber does not take this incident in mitigation.

(b) Equal treatment

1122. The Defence submits that in the course of the trial it presented evidence concerning the Accused's fair and equal treatment to all citizens within BiH.<sup>2746</sup>

1123. The Trial Chamber is not convinced that these facts can serve as significant mitigating factors. The Defence submission fails to explain on a balance of probabilities how, if the Accused had the interest of equal treatment and efficiency so much at heart, he nonetheless spearheaded the ARK Crisis Staff campaign for dismissal of Bosnian Muslims and Bosnian Croats from key

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<sup>2743</sup> Mehmet Talić, T. 24145-24146.

<sup>2744</sup> Radoslava Džombić, T. 23446-23448.

<sup>2745</sup> See IX.D., "Destructions".

<sup>2746</sup> Defence Final Brief (confidential), pp. 226-228. The Defence submits that during his tenure as President of the Čelinac Executive Board, as Secretary to the Secretariat for Traffic and Communications and as Minister of Construction, he championed three principles, namely: i) the professionalism of his subordinates and that SDS membership was not a prerequisite for employment in Čelinac or at the Ministry; ii) he adopted an open door policy where he attempted to deal with his constituents' problems irrespective of their ethnicity; and iii) while at the Ministry, he insisted that the rule of law be applied equally and fairly irrespective of nationality or position. The Accused also kept a number of non-Serbs in the employ of the municipality and approved the hiring of a Muslim on 11 May 1992 at a time when the Prosecution claims that he was spearheading moves to eliminate all non-Serbs from government work. The Defence also submits that during his tenure at the Ministry, the Accused was involved in the programme dealing with the rationalisation of apartments. The Prosecution does not specifically address this topic holding generally that no mitigating factors exist in this case that could substantially reduce the sentence that should be imposed on the Accused: Prosecution Final Brief, para. 807.

positions and why he went made speeches intimidating some of them.<sup>2747</sup> The Trial Chamber therefore attaches little importance to this factor.

(c) Public pronouncements calling for law and order

1124. The Defence agrees that the Prosecution has presented evidence of the harsh speeches of the Accused and submits that if his public statements are to be used in determining his guilt, it would be only fair to look at the totality of his statements in determining the appropriate punishment.<sup>2748</sup> The Defence states that there are a number of examples where the Accused spoke in favour of preserving peace.<sup>2749</sup> The Defence also submits that the Prosecution has erroneously claimed that he never spoke against paramilitaries.<sup>2750</sup> The Defence further states that the Accused played a role in the arrest of the Miće, a paramilitary group, and that his role should be acknowledged in bringing an end to the Miće's reign of terror and the release of over 1,000 non-Serbs in Teslić municipality.<sup>2751</sup> The Defence also points out that the municipalities to which the Accused had personal ties – Banja Luka and Čelinac – were the municipalities that were the safest in the Krajina.<sup>2752</sup>

1125. The Trial Chamber notes that it may be true that the municipalities of Banja Luka and Čelinac were the safest in the ARK, at least for some time, but is not satisfied that this was due the Accused's conduct. The Trial Chamber finds that the Defence claim regarding the Accused's role in bringing an end to the Miće's reign of terror and the release of over 1,000 non-Serbs in Teslić municipality because of this, grossly overstates the facts. The Trial Chamber finds that the role played by the Accused in participating in the talks which led to the arrest of the Miće group was motivated by the fact that the Miće group were out of control, targeting Serbs too. If the Bosnian Muslim and Bosnian Croat population of Teslić was spared from the Miće group as a result of their arrest, this was an incidental effect. Although the Trial Chamber accepts this event in mitigation, it will not give it significant importance.

1126. The Trial Chamber is satisfied that on certain occasions the Accused did voice his concern about paramilitaries, in particular about Veljko Milanković. While this constitutes a mitigating

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<sup>2747</sup> Ex. P138, "Newspaper article", dated 5 April 1992; ex. P154, "Glas newspaper article", dated 21 April 1992; ex. P2598, "Glas newspaper article", dated 28 April 1992; ex. P163, "Glas newspaper article", dated 29 April 1992. See also ex. P169, "Glas newspaper article", dated 5 May 1992 and VIII.C. 5, "The Accused's Propaganda Campaign".

<sup>2748</sup> Defence Final Brief (confidential), p. 228-229.

<sup>2749</sup> The Accused "urged others not to let anything happen to the Bosnian Muslims and the Romany and urged that they be protected", proposed that soldiers on leave be required to leave their long-barrelled firearms with their units in order to prevent their discharge in civilian areas; was critical of criminal activities in the Starcevice neighbourhood of Banja Luka: Defence Final Brief (confidential), p. 229.

<sup>2750</sup> Defence Final Brief (confidential), p. 229.

<sup>2751</sup> Defence Final Brief (confidential), p. 229.

<sup>2752</sup> Defence Final Brief (confidential), p. 229. The Prosecution does not specifically address these topics, holding generally that no mitigating factors exist in this case that could substantially reduce the sentence that should be imposed on the Accused: Prosecution Final Brief, para. 807.

factor, the Trial Chamber finds that his actions were restricted to words and when it suited him he himself threatened the use of force by the SOS, and so this mitigating factor will only be given little importance.<sup>2753</sup> Regarding the other instances of alleged positive speeches proposed in mitigation, the Trial Chamber has very scanty evidence about them and in the circumstances does not believe they carry any weight in mitigation.

(d) Lack of prior violent criminal acts and criminal history

1127. The Defence submits that the Accused has never been arrested or charged with any violation of the law, constituting a mitigating factor recognised by the Tribunal.<sup>2754</sup> The Prosecution declares that it has no information to suggest that the Accused was not a person of good character prior to the time of his offence. However, it submits, that given the gravity of the offences with which he is charged, the Trial Chamber should not attach undue weight to the Accused's good character prior to the commission of his offences.<sup>2755</sup>

1128. This Tribunal has, on several occasions, acknowledged that the previous good character of the convicted person can at times serve in mitigation.<sup>2756</sup> It must not be ignored, however, that considering the gravity of crimes that this Tribunal deals with, the instances when this possible mitigating factor can carry significant weight are and ought to be extremely exceptional.<sup>2757</sup> The Trial Chamber is of the view that no weight should be given to this factor in the present case.

(e) Personal circumstances

1129. The Defence submits that the relevant personal circumstances of the Accused are that: (1) he is a married father of two daughters, has a grandson, and is a civil engineer by trade;<sup>2758</sup> (2) prior to the multi-party elections, he was a well-respected director of Banja Luka area companies;<sup>2759</sup> (3) he was known for his fair and equal treatment of his employees irrespective of their nationality;<sup>2760</sup> and (4) one of his former employees, a Muslim, described him as "a good man, an educated man, a very

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<sup>2753</sup> Ex. P154, "Glas newspaper article", dated 21 April 1992. In an interview, being asked about the implementation of the demands of the SOS, the Accused stated: "We primarily want to carry out our task in a peaceful and civilised manner. We are trying to get people in certain responsible functions in individual firms to understand that they have to pull out. If they really intend to be stubborn and persistent in keeping their cushy positions, the implementation of this demand will be taken over by the Serbian Defence Forces. I repeat that we do not want this to be settled in this way, but if individual people in the Banja Luka companies who have been asked to withdraw do not do so in a period of three days, then members of the SOS will come on to the scene".

<sup>2754</sup> Defence Final Brief (confidential), pp. 229-230.

<sup>2755</sup> Prosecution Final Brief, para. 816.

<sup>2756</sup> See *Krnojelac* Trial Judgement, para. 519; *Kupreskić* Trial Judgement, para. 478; *Kupreskić* Appeal Judgement, para. 459; *Aleksovski* Trial Judgement, para. 236; *Erdemović* Sentencing Judgement, para. 16(i).

<sup>2757</sup> *Česić* Sentencing Judgement, paras 77-85; *Jokić* Sentencing Judgement, paras 101-102.

<sup>2758</sup> Defence Final Brief (confidential), p. 230.

<sup>2759</sup> Defence Final Brief (confidential), p. 230.

<sup>2760</sup> Defence Final Brief (confidential), p. 230.

sensible man”.<sup>2761</sup> In addition, the Defence disputes the Prosecution’s allegation that the Accused spoke out against mixed marriages, submitting that it would be “highly unlikely” for someone who had two siblings involved in mixed marriages and nieces and nephews born out of those marriages to speak in such a way.<sup>2762</sup>

1130. Out of all these proposed mitigating factors, the Trial Chamber will take into consideration his family status<sup>2763</sup> and his age<sup>2764</sup>, but notes that the Tribunal has generally attached only limited importance to these factors.<sup>2765</sup> The other factors are not been given any weight. Particularly, the Trial Chamber does not accept the Defence submission that the Accused never spoke out against mixed marriages.<sup>2766</sup>

(f) Lack of personal gain or profit

1131. The Defence submits that while others were able to profit materially from the war, the Accused was one of the few politicians who did not benefit financially from the war and was an outspoken critic of war profiteers.<sup>2767</sup>

1132. The Trial Chamber accepts that on occasions the Accused spoke openly against war profiteering but attaches little importance to it as it bears little relationship to the plight of the Bosnian Muslims and Bosnian Croats who were not only forcibly displaced but in their great majority, had to hand over their property without compensation to the SerBiH. Regarding his submission that he was also one of the few politicians who did not benefit financially from the war, the Trial Chamber has insufficient evidence in this respect and consequently cannot take it into consideration.

(g) Detention matters

1133. The Defence submits that the Accused (1) was denied the opportunity to voluntarily surrender to the Tribunal as he was arrested pursuant to a sealed indictment; (2) at the time of his

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<sup>2761</sup> Defence Final Brief (confidential), p. 230.

<sup>2762</sup> Defence Final Brief (confidential), p. 230. The Prosecution does not specifically address these topics, holding generally that no mitigating factors exist in this case that could substantially reduce the sentence that should be imposed on the Accused: Prosecution Final Brief, para. 807.

<sup>2763</sup> In previous cases, Trial Chambers have found the family status to be mitigating: *Kunarac* Appeal Judgement, paras 362, 408; *Tadić* Sentencing Judgement, para. 26; *Erdemović* Sentencing Judgement, para. 16(i).

<sup>2764</sup> In previous cases, Trial Chambers have found the age to be mitigating: *Jelisić* Appeal Judgement, paras 129-130; *Blaškić* Trial Judgement, para. 778; *Erdemović* Sentencing Judgement, para. 16(i).

<sup>2765</sup> *Furundžija* Trial Judgement, para. 284; *Jelisić* Trial Judgement, para. 124; *Banović* Sentencing Judgement, paras 75-76.

<sup>2766</sup> See, e.g., ex. P2323, “*Glas* newspaper article”, dated 11 August 1992; Pedrag Radić, T. 22314.

<sup>2767</sup> Defence Final Brief (confidential), pp. 230-231. The Prosecution does not specifically address this topic, holding generally that no mitigating factors exist in this case that could substantially reduce the sentence that should be imposed on the Accused: Prosecution Final Brief, para. 807.

sentencing, he will have been in custody for over fifty-seven months; and (3) has conducted himself in exemplary fashion, while in custody.<sup>2768</sup>

1134. The fact that the Accused did not surrender to the Tribunal has not been given any weight either as a mitigating or an aggravating factor, since the Indictment relating to the Accused remained confidential until the day of his arrest, and consequently, he did not have any opportunity to surrender, even if he had wanted to do so.<sup>2769</sup> The length of the Accused's detention at the time of his sentencing will be taken into account as credit towards service of the sentence that will be imposed on him, but not as a mitigating factor.

1135. As regards the submission that the Accused's conduct while in detention, the Trial Chamber is of the view that all accused are expected to behave appropriately while at the UNDU."<sup>2770</sup>

(h) General attitude towards the proceedings

1136. The Defence submits that the Accused (1) has been consistently respectful and attentive during these proceedings, recognising the gravity of the charges against him and the importance of the proceedings;<sup>2771</sup> (2) has consented to counsel's advice to forego cross-examination and challenges to the veracity of the victims of sexual assault;<sup>2772</sup> (3) the Accused has conducted himself in a manner beyond reproach regarding a particular Prosecution witness;<sup>2773</sup> and (4) has continuously showed respectful deportment despite upheavals over which he had no control.<sup>2774</sup>

1137. The Trial Chamber acknowledges that the Accused has generally been respectful during the course of the proceedings and that on some occasions consented to counsel's advice to forego cross-examination of the victims of sexual assault. It is also acknowledged that he readily agreed to Ms. Maglov's temporary excusal from the courtroom.<sup>2775</sup> His submission in mitigation relating to his

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<sup>2768</sup> Defence Final Brief (confidential), p. 231. The Prosecution does not specifically address these topics, holding generally that no mitigating factors exist in this case that could substantially reduce the sentence that should be imposed on the Accused: Prosecution Final Brief, para. 807.

<sup>2769</sup> *Vasiljević* Trial Judgement, para. 298. For the significance of voluntary surrender as a mitigating factor, see *Obrenović* Sentencing Judgement: "[...] since the Trial Chamber would have to speculate in order to determine whether Dragan Obrenović would in fact have voluntarily surrendered if given the opportunity, the Trial Chamber attached little weight to this factor" (*ibid.*, para. 136, emphasis in the original).

<sup>2770</sup> *Momir Nikolić* Sentencing Judgement, para. 168. See also *Česić* Sentencing Judgement, para. 86.

<sup>2771</sup> Defence Final Brief (confidential), p. 231.

<sup>2772</sup> Defence Final Brief (confidential), p. 231.

<sup>2773</sup> Defence Final Brief (confidential), p. 231.

<sup>2774</sup> E.g., co-counsel Milka Maglov's temporary excusal from the courtroom under allegations of a breach of the code of conduct; the uncertainty caused by lead-counsel's health problems; the continued uncertainty caused by problems with securing a replacement case manager; and the removal of two co-counsel: Defence Final Brief (confidential), p. 232. The Prosecution does not specifically address this topic, holding generally that no mitigating factors exist in this case that could substantially reduce the sentence that should be imposed on the Accused: Prosecution Final Brief, para. 807.

<sup>2775</sup> See, Annex B.B., "Trial Proceedings".

conduct regarding a particular Prosecution witness is also accepted. Only these arguments will be taken into consideration as mitigating factors.

(i) Remorse

1138. As noted earlier, the Defence submits that a well recognised mitigating factor before the Tribunals is the showing of remorse but that under the current Rules, only those defendants who enter guilty pleas are effectively allowed to present evidence of remorse at their individualised sentencing hearing, whilst a defendant who proceeds to trial is not given the right to a later sentencing hearing following a finding of guilt.<sup>2776</sup> For these reasons, the Defence requested, in the event of a finding of guilt, a separate hearing on the issue of punishment so that the Trial Chamber can consider it as a potential mitigating factor.<sup>2777</sup> The Prosecution submits that the Accused has shown no remorse for his involvement in these crimes.<sup>2778</sup>

1139. The Trial Chamber recalls that the Appeals Chamber has held that an accused can express sincere regrets without admitting his participation in a crime, and that this is a factor which may be taken into account.<sup>2779</sup> As noted earlier this could have been done without the Accused having to give evidence or being cross-examined by the Prosecution.<sup>2780</sup> In this case, the Accused has made no such statement, but throughout the trial there were a few instances when, through Defence counsel, he told witnesses that he felt sorry for what they had suffered. The Trial Chamber has no reason to doubt the sincerity of the Accused in offering his regret, and will take these instances into consideration as a mitigating factor for the purpose of sentencing the Accused.

(j) Conclusions

1140. The Trial Chamber has not found other mitigating factors *proprio motu*. In light of the above, the Trial Chamber finds that the following are relevant mitigating circumstances to which appropriate weight as stated above has been attached when determining the sentence:

- contributing to the decision to provide shelter to Bosnian Muslims from Čelinac
- equal treatment
- participating in the decision to arrest members of the Miće group

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<sup>2776</sup> Defence Final Brief (confidential), p. 215.

<sup>2777</sup> Defence Final Brief (confidential), p. 217.

<sup>2778</sup> Prosecution Final Brief, para. 815.

<sup>2779</sup> *Vasiljević* Appeal Judgement, para.177; *Sikirica* Sentencing Judgement, paras 152, 194, 230; *Todorović* Sentencing Judgement, paras 89-92; *Erdemović* Sentencing Judgement, para. 16(iii).

<sup>2780</sup> Rule 84*bis*(A).

- voicing concern about paramilitaries, in particular about Veljko Milanković
- the family status and age of the Accused
- speeches against profiteering
- respectful conduct during the course of the proceedings and with respect to a particular Prosecution witness
- remorse in individualised instances

4. The general practice regarding prison sentences in the courts of the former Yugoslavia and the Tribunal law

1141. With regard to the determination of sentence, both the Prosecution and Defence refer to Article 41(1) of the SFRY Criminal Code,<sup>2781</sup> which requires that consideration be given to:

[...] all the circumstances bearing on the gravity of the punishment (extenuating and aggravating circumstances), and in particular, the degree of criminal responsibility, the motives from which the act was committed, the past conduct of the offender, his personal situation and his conduct after the commission of the criminal act, as well as other circumstances relating to the personality of the offender.<sup>2782</sup>

1142. With regard to the punishment which could have been imposed by the courts of the former Yugoslavia on the accused, both Parties refer to Article 142 of the SFRY Criminal Code, which is entitled "Criminal Offences Against Humanity and International Law". Article 142(1) reads:

Whoever, in violation of the international law in time of war, armed conflict or occupation, orders an attack against the civilian population [...] or [...] tortures, or inhumane treatment of the civilian population [...] compulsion to prostitution or rape [...] shall be punished by no less than five years in prison or by the death penalty.<sup>2783</sup>

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<sup>2781</sup> Adopted by the SFRY Assembly at the Session of the Federal Council held on 28 September 1976; declared by decree of the President of the Republic on 28 September 1976; published in the Official Gazette SFRY No. 44 of 8 October 1976; took effect on 1 July 1977.

<sup>2782</sup> Article 41(1) SFRY Criminal Code: "The Court shall weigh the punishment [...] Keeping in mind the purpose of punishment and taking into consideration all the circumstances which influence the severity of punishment, and particularly the degree of criminal responsibility; motives for the commission of the offence; the intensity of threat or injury to the protected object, the circumstances under which the crime was committed, the previous character of the perpetrator, his personal circumstances and conduct after the commission of the crime, and other circumstances relating to the personality of the perpetrator." This Article is generally similar to the Trial Chamber's assessment of any relevant aggravating or mitigating circumstances required to be taken into account under Article 24 (2) of the Statute and Rule 101 (B).

<sup>2783</sup> Prosecution Final Brief, para. 751; Defence Final Brief (confidential), p. 220.

1143. Both the Prosecution and Defence agree that the Trial Chamber may use the sentencing practice of the courts of the former Yugoslavia as a guide to determining the appropriate penalty for an accused, although the Trial Chamber is not bound to follow such practice.<sup>2784</sup>

1144. Whether or not a Trial Chamber has the discretion to impose a sentence of imprisonment greater than that of twenty years has been resolved by the Appeals Chamber, which has interpreted the relevant provisions of the Statute and Rules to mean that, while a Trial Chamber must consider the practice of courts in the former Yugoslavia, its discretion is not curtailed by such practice.<sup>2785</sup> However, recourse must be made to it as an aid in determining the sentence to be imposed: an exercise which must go beyond merely reciting the relevant code provisions.<sup>2786</sup> The Tribunal can impose a sentence in excess of that which would be applicable under the relevant law of the former Yugoslavia. This does not violate the principle of *nulla poena sine lege* because an accused must have been aware that the crimes for which he is indicted are the most serious violations of international humanitarian law, punishable by the most severe of penalties.<sup>2787</sup>

1145. The Trial Chamber notes that in 1992, the sentencing law in BiH was regulated in 1992 by the SFRY Criminal Code, adopted by the Federal Assembly on 28 of September 1976, and in force since 1 July 1977, and by the Criminal Code of the Socialist Republic of Bosnia and Herzegovina of 10 June 1977 (“SRBH Criminal Code”). The SFRY Criminal Code regulated the general aspects of criminal law and a few specific offences, such as crimes against the security of the SFRY, genocide, and war crimes, while the SRBH Criminal Code regulated primarily the specific offences, and some general matters not addressed by SFRY Criminal Code. Both criminal codes initially remained in force after SRBH declared independence in 1992.<sup>2788</sup>

1146. Under the SFRY Criminal Code, the range of penalties existing in 1992 was a fine, confiscation of property, imprisonment, and capital punishment. The maximum term of imprisonment was 15 years, except for offences punishable with the death penalty, committed under

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<sup>2784</sup> Prosecution Final Brief, para. 750; Defence Final Brief (confidential), p. 220. The Prosecution further submits that sentencing practice of the SFRY have been understood as two-fold. First, a Trial Chamber can refer to factors found in Article 41(1) of the SFRY Criminal Code, such as a perpetrator’s personal circumstances or behaviour after the commission of the offence, when determining appropriate penalties. Second, a Trial Chamber can avail itself of actual sentencing decisions or ranges of penalties that courts of the FRY would produce for crimes comparable to those alleged in a given indictment. The Prosecution submits that the Trial Chamber’s evaluation of aggravating and mitigating factors is similar to the first tenet and that review of the practice applicable to Articles 141 and 142 of the SFRY Criminal Code is relevant to the second tenet: Prosecution Final Brief, para. 751. In addition, the Prosecution points out that the Trial Chamber in the *Dragan Nikolić* case concluded that the penalties set out in the laws of the former Yugoslavia shall be taken into consideration, but the Tribunal, having primacy over national jurisdictions in the former Yugoslavia, has no legal obligation to apply the more lenient penalty applied within these jurisdictions.

<sup>2785</sup> *Tadić* Appeal Judgement, para. 20.

<sup>2786</sup> *Vasiljević* Trial Judgement, para. 270.

<sup>2787</sup> *Čelebići* Appeal Judgement, paras 816-817; *Blaškić* Appeal Judgement, para. 681.

<sup>2788</sup> See Presidential Decree on the state of war of 8 April 1992, Presidential Decree on the application of traditional laws of 11 August 1992, and Law on the Retroactive Confirmation of the later Presidential Decree, 1 June 1994.



“particularly aggravating circumstances,” or causing “especially grave consequences,” in which cases the maximum term of imprisonment was 20 years.<sup>2789</sup>

## 5. Determination of Sentence

1147. The Appeals Chamber has emphasised in previous judgements that sentencing is a discretionary decision and that it is inappropriate to set down a definitive list of sentencing guidelines.<sup>2790</sup> The sentence must always be decided according to the facts of each particular case and the individual guilt of the perpetrator.”<sup>2791</sup>

1148. Rule 87(C) provides that:

If the Chamber finds the accused guilty on one or more of the charges contained in the indictment, it shall impose a sentence in respect of each finding of guilt and indicate whether such sentences shall be served consecutively or concurrently, unless it decides to exercise its power to impose a single sentence reflecting the totality of the criminal conduct of the accused.

1149. The Appeals Chamber in the *Blaškić* case has recently established that this competence of the Trial Chamber to impose a single sentence does not entitle it to impose a single sentence arbitrarily. Due consideration must be given to each particular offence in order for the gravity to be determined and for a reasoned decision on sentence to be provided and in particular it should be ensured that if imposed, a single sentence must reflect the totality of the criminal conduct in question.<sup>2792</sup>

1150. The Trial Chamber pursuant to Rule 87(C) decides to impose a single sentence in this case, as it reflects better the criminal conduct of the Accused which shows a constant pattern of criminal behaviour occurring within a closed temporal context. The single sentence that will be applied has been arrived at considering the gravity of the crimes that he is being found guilty of and taking into

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<sup>2789</sup> See Article 38 of the Federal Criminal Code of 1976/77. In 1992, the punishments for the specific offences were regulated by the SRBH Criminal Code. Murder was punishable with imprisonment of not less than five years, and in aggravated cases, which included murder in a cruel way, carried out violently, by endangering the life of others, or by motive of greed, with imprisonment of not less than 10 years or the death penalty (Article 36 of the Criminal Code of BiH of 1977). Rape was punishable with one to 10 years of imprisonment, in aggravated cases the lower limit being set to three years of imprisonment (Article 88 of the Criminal Code of BiH of 1977). Grievous bodily injury was punishable with six months to five years of imprisonment, which in aggravated cases could go above the set limit (Article 42 of the Criminal Code of BiH of 1977). If the above crimes were committed in “time of war, armed conflict or occupation”, under the SFRY Criminal Code, these offences were qualified as war crimes and were punishable with imprisonment of a minimum of five years or the death penalty: Article 142 (war crimes against the civilian population), Article 143 (war crimes against the wounded and sick) and Article 144 (war crimes against prisoners of war) of the SFRY Criminal Code of 1976/77. However, following the 1977 abolition of capital punishment in some of the republics of the SFRY, other than SRBH, the new maximum sentence for the most serious offences was 20 years imprisonment. The Trial Chamber considers that although there is no provision in the SFRY Criminal Code relating to persecution, a crime against humanity, as such, Article 142 prohibits criminal conduct which corresponds to the offence of persecution as brought to charge against the Accused and the Article therefore offers useful guidance in determining sentence.

<sup>2790</sup> *Krstić* Appeal Judgement, para. 242.

<sup>2791</sup> *Krstić* Appeal Judgement, para. 241, *Jelesić* Appeal Judgement, para. 101; *Blaškić* Appeal Judgement, para. 680.

<sup>2792</sup> *Blaškić* Appeal Judgement, para. 680.

consideration the accepted aggravating and mitigating circumstances and other factors required by the Statute and Rules of this Tribunal.

1151. For the purposes of determining the appropriate sentence, the Trial Chamber has considered sentences given to other accused before this Tribunal.<sup>2793</sup> However, because of the particular specificity of this case, characterised in particular by the pivotal role played by the Accused, it has found little assistance in those sentences. The sentence that is being imposed is based upon the circumstances of this case, and the Trial Chamber has endeavoured to individualise it to the Accused.

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<sup>2793</sup> *Kupreškić* Appeal Judgement, para. 443.

## XI. DISPOSITION

1152. Having considered all of the evidence and the arguments of the Parties, and based upon the facts and legal findings as determined by the Trial Chamber in this judgement; We, Judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, decide as follows:

The Accused **RADOSLAV BRĐANIN** is found **NOT GUILTY** and therefore acquitted of the following counts:

- **Count 1:** Genocide
- **Count 2:** Complicity in Genocide
- **Count 4:** Extermination
- **Count 10:** Unlawful and wanton extensive destruction and appropriation of property not justified by military necessity

The Accused **RADOSLAV BRĐANIN** is found not guilty under Article 7(3) of the Statute but **GUILTY** pursuant to Article 7(1) of the Statute of the following counts:

- **Count 3:** Persecutions (incorporating **Count 6:** Torture, a Crime against Humanity; **Count 8:** Deportation, a Crime against Humanity, and **Count 9:** Inhumane acts (forcible transfer), a Crime against Humanity)
- **Count 5:** Wilful Killing
- **Count 7:** Torture, a Grave Breach of the Geneva Conventions of 1949
- **Count 11:** Wanton destruction of cities, town or villages, or devastation not justified by military necessity
- **Count 12:** Destruction or wilful damage done to institutions dedicated to religion.

1153. The Trial Chamber sentences Radoslav Brđanin to a single sentence of imprisonment for **thirty-two years**.

1154. Radoslav Brđanin was arrested on 6 July 1999. Accordingly, he has been in custody now for five years, one month, and 26 days. He is entitled to credit for that period towards service of the sentence imposed, together with the period he will serve in custody pending a determination by the President pursuant to Rule 103(A) as to the State where the sentence is to be served. He is to remain in custody until such determination is made.

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

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Judge Carmel Agius  
Presiding

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Judge Ivana Janu

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Judge Chikako Taya

Dated this 1<sup>st</sup> day of September 2004  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

## ANNEX A - GLOSSARY

### A. List of Abbreviations, Acronyms and Short references

1 <sup>st</sup> KK	1 <sup>st</sup> Krajina Corps (formerly JNA 5 <sup>th</sup> Corps)
ABiH	Army of the Republic of Bosnia and Herzegovina
Accused	Radoslav Brdanin
Additional Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 12 December 1977
Additional Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Geneva, 12 December 1977
AID	Agency for Investigation and Documentation
aka	Also known as
ARK	Autonomous Region of Krajina
BiH	Republic of Bosnia and Herzegovina
Bosnian Serb Forces	Bosnian Serb Army, paramilitary, territorial defence, police units and civilians armed by these forces (as defined in <i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-T, Sixth Amended Indictment, 9 December 2003)
Bosnian Serb police	Bosnian Serb reserve and special police units
Bosnian Serb soldier or Bosnian Serb military	Generic term encompassing all armed and uniformed Bosnian Serbs but excluding police units and civilians armed by Bosnian Serb forces
CaT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1948, U.N.T.S Vol. 1465, p.85
Common Article 3	Article 3 common to the four Geneva Conventions of 1949
Control Council Law No. 10	Allied Control Council Law No. 10, December 20, 1945, reprinted in 1 CCL No. 10 Trials at

Convention for the Protection of Cultural Property	Convention for the Protection of Cultural Property in the Event of an Armed Conflict, The Hague, 14 May, 1954.
CSB	Security Services Centre of the ARK
CSCE	Conference for Security and Cooperation in Europe
Dayton Accords	General Framework Agreement for Peace in Bosnia-Herzegovina, between BiH, Croatia and the FRY, initiated in Dayton on 21 November 1995 and signed in Paris on 14 December 1995
Defence	Counsel for the Accused
Defence Final Brief (confidential)	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-T, Defence Final Brief filed on 5 April 2004 (confidential)
Eichmann Case	<i>Attorney General v. Adolf Eichmann</i> (1968) 36 ILR 18 (District Court, Jerusalem, Case No. 40/61)
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (European Convention on Human Rights)
ECmHR	European Commission on Human Rights
ECMM	European Community Monitoring Mission
ECOSOC	United Nations Economic and Social Council
ECtHR	European Court of Human Rights
EU	European Union
Ex.	Exhibit
Ex. DB	Defence Exhibit
Ex. P	Prosecution Exhibit
Federation	The Federation of Bosnia and Herzegovina
Fn	Footnote
fnu	First name unknown
FRY	Federal Republic of Yugoslavia

Geneva Convention I	Geneva Convention for the Amelioration of the Condition of Wounded, sick, and Shipwrecked Members of Armed Forces in the Field, 12 August 1949, 75 UNTS 31
Geneva Convention II	Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 UNTS 85.
Geneva Convention III	Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135
Geneva Convention IV	Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 2
Genocide Convention	Convention on the Prevention and Punishment of the Crime of Genocide, adopted on 9 December 1948, in force as of 12 January 1951, 78 UNTS 277
Hague Convention IX	Convention Concerning Bombardment by Naval Forces in Time of War, The Hague, 18 October 1907
Hague Regulations	Hague Convention (IV), Respecting the Laws and Customs of War on Land, and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907
HDZ	Croatian Democratic Union
HVO	Croatian Defence Council
ICC	International Criminal Court
ICC Statute	Statute of the International Criminal Court, Rome, 17 July 1998
ICCPR	International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such

	Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994
ICTR Rules	Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda
ICTR Statute	Statute of the International Criminal Tribunal for Rwanda
ICTY	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
IFOR	NATO-led Implementation Force in BiH, 20 December 1995 – 20 December 1996
ILC	International Law Commission
ILC Draft Code	Draft Code of Crimes Against the Peace and Security of Mankind, International Law Commission, 48th Session, 1996. A/48/10. Also published in ILC Y.B., 1996, vol. II(2)
ILC Y.B.	Yearbook of the International Law Commission
ILM	International Legal Materials
ILR	International Law Reports
IMT	International Military Tribunal for the Prosecution and Punishment of the Major German War Criminals, Nuremberg, Germany
IMTFE	International Military Tribunal for the Far-East, Tokyo, Japan
Indictment	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36, Sixth Amended Indictment, 9 December 2003
International Tribunal	See: ICTY
JCE	Joint Criminal Enterprise
JNA	Yugoslav Peoples' Army (Army of the Socialist Federal Republic of Yugoslavia)
KOS	JNA counter-intelligence
MBO	Muslim Bosniak Organisation



MUP	Ministry of Internal Affairs in BiH
Nuremberg Charter	London Agreement and Annexed Charter of the International Military Tribunal for the Prosecution and Punishment of the German Major War Criminals, London, 8 August 1945
Nuremberg Judgement	Trials of the Major War Criminals Before the International Military Tribunal, Nuremberg, 14 November 1945 – 1 October 1946
OTP	Office of the Prosecutor
p.	Page
pp.	Pages
para.	Paragraph
paras	Paragraphs
Parties	The Prosecution and the Defence in <i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-T
People's Defence Council	Permanent working body of the ARK Assembly dealing with people's defence issues that are relevant to the ARK
Principles of International Law	<i>Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgement of the Tribunal</i> , adopted by the International Law Commission of the United Nations, 1950, UNGA, Official record, 5th Session, Supp. No. 12, UN Doc. A/1316 (1950)
Prosecution	Office of the Prosecutor
Prosecution Final Brief (confidential)	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-T, Prosecution Final Brief filed on 5 April, 2004 (confidential)
Prosecution Final Brief	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-T, Prosecution's Submission of Public Redacted Version of the "Prosecution's Final Trial Brief", filed on 17 August 2004
Reservations to the Genocide Convention	<i>Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide</i> , Advisory Opinion, (1951) ICJ Reports 23
Roerich Pact	Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments, 15 April 1935

RS	Republika Srpska
Rules	Rules of Procedure and Evidence of the ICTY
Rules of Detention	Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the ICTY
SAO	Serbian Autonomous District
SDA	Party for Democratic Action
SDB	Public Security Service in BiH
SDS	Serbian Democratic Party
Secretary General's Report	Report of the Secretary General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), presented 3 May 1993 (S/25704)
SFOR	NATO-led Multinational Stabilisation Force in BiH, subsequent to December 1996
SFRY	Socialist Federal Republic of Yugoslavia
SFRY Criminal Code	Criminal Code of the Socialist Federal Republic of Yugoslavia; published in the Official Gazette SFRY No. 44 of 8 October 1976 (corrections in the Official Gazette SFRY No. 36 of 15 July 1977), in effect on 1 July 1977
SFRY Regulations	Regulations concerning the application of International Law to the armed forces of SFRY, SFRY Federal Secretariat for National Defence, 1988
SJB	Public Security Station
SKJ	League of Communists of Yugoslavia
SNB	Serbian National Security Services
SNSC	Serbian National Security Council
SOS	Serbian Defence Forces
SPO	Serbian Movement of Renewal
SPS	Socialist Party of Serbia
SRBH	Socialist Republic of Bosnia and Herzegovina (after 1945)

SRBH Criminal Code	Criminal Code of the Socialist Republic of Bosnia and Herzegovina; published in the Official SRBH Gazette No. 16/77 of 16 June 1977.
SerBiH	Serbian Republic of Bosnia and Herzegovina, later renamed Republika Srpska, composed of “Serbian autonomous regions” and “districts” including the ARK
SerBiH Assembly	Assembly of the Serbian People in Bosnia and Herzegovina, established on 24 October 1991 by SDS Deputies Club
Statute	Statute of the International Tribunal for the Former Yugoslavia established by Security Council Resolution 827
SUP	Secretariat for Internal Affairs
T.	Transcript page from hearing. All transcript page numbers referred to are from the unofficial uncorrected version of the transcript, unless specified otherwise. Minor differences may therefore exist between the pagination therein and that of the final transcript released to the public.
TO	Territorial Defence
Tokyo Charter	Charter of the International Military Tribunal for the Far-East, Tokyo, 19 January 1946
Tribunal	See: ICTY
UN	United Nations
UN General Assembly Resolution 96 (I)	UN General Assembly Resolution 96(I), UN Doc. A/96(I) (1946), 11 December 1946
UN General Assembly Resolution 242	UN General Assembly Resolution A/RES/46/242 (25 August 1992)
UN Security Council Resolution 752	UN Security Council Resolution S/RES/752 (15 May 1992)
UN Security Council Resolution 757	UN Security Council Resolution S/RES/757 (30 May 1992)
UNHCR	United Nations High Commissioner for Refugees
UNPROFOR	United Nations Protection Force

Victim	A person against whom a crime over which the Tribunal has jurisdiction has allegedly been committed
1969 Vienna Convention	Vienna Convention on the Law of Treaties, 22 May 1969, <i>in</i> UN Treaty Series, vol.1155, p.331
VJ	Army of the FRY
VRS	Army of the Serbian Republic of Bosnia and Herzegovina, then Republika Srpska, since 19 May 1992
ZOBK	Association of Municipalities of the Bosnian Krajina
ZOBK Assembly	Association of the Bosnian Krajina Municipalities Assembly
ZOBL	Banja Luka Community of Municipalities
92bis statement	First and last name of the witness (if applicable), exhibit number, “92bis statement”, ERN number

## B. List of cases

### 1. ICTY

#### **ALEKSOVSKI**

*Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-T, Judgement, 25 June 1999 (“*Aleksovski* Trial Judgement”).

*Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 March 2000 (“*Aleksovski* Appeal Judgement”).

#### **BLAŠKIĆ**

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*Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Judgement, 3 March 2000 (“*Blaškić* Trial Judgement”).

*Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004 (“*Blaškić* Appeal Judgement”).

#### **BRĐANIN AND TALJIĆ**

*Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-PT, Decision on Objections by Momir Talić to the Form of the Amended Indictment, 20 February 2001.

*Prosecutor v. Radoslav Brdanin and Momir Talić*, Case No. IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001.

*Prosecutor v. Radoslav Brdanin and Momir Talić*, Case No. IT-99-36-T, Order on the Standards Governing the Admission of Evidence, 15 February 2002.

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*Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-A, Decision on Interlocutory Appeal on Defence Motion for Acquittal, 19 March 2004 (“Rule 98*bis* Appeal Decision”).

*Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-T, Confidential Prosecutor’s Response to Trial Chamber Questions Regarding Genocide and *Krstić* Appeal Judgement, 29 April 2004.

## **ČELEBIĆI**

*Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka “Pavo”), Hazim Delić and Esad Landžo (aka “Zenga”)*, Case No. IT-96-21-T, Judgement, 16 November 1998 (“Čelebići Trial Judgement”).

*Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka “Pavo”), Hazim Delić and Esad Landžo (aka “Zenga”)*, Case No. IT-96-21-A, Judgement, 20 February 2001 (“Čelebići Appeal Judgement”).

## **FURUNDŽIJA**

*Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998 (“Furundžija Trial Judgement”).

*Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-A, Judgement, 21 July 2000 (“Furundžija Appeal Judgement”).

## **GALIĆ**

*Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Judgement, 5 December 2003 (“Galić Trial Judgement”).

## **HADŽIHASANOVIĆ ET AL.**

*Prosecutor v. Enver Hadžihasanović, Mehmed Alagić and Amir Kubura*, Case No. IT-01-47-PT, Decision on Joint Challenge to Jurisdiction, 12 November 2002 (“Hadžihasanović et al. Decision on Joint Challenge to Jurisdiction”).

*Prosecutor v. Enver Hadžihasanović, Mehmed Alagić and Amir Kubura*, Case No. IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003 (“Hadžihasanović et al. Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility”).

## **JELISIĆ**

*Prosecutor v. Goran Jelisić*, Case No. IT-95-10-T, Judgement, 14 December 1999 (“Jelisić Trial Judgement”).

*Prosecutor v. Goran Jelisić*, Case No. IT-95-10-A, Judgement, 5 July 2001 (“Jelisić Appeal Judgement”).

## **JOKIĆ**

*Prosecutor v. Miodrag Jokić*, Case No. IT-01-42/1-S, Sentencing Judgement, 18 March 2004 (“Jokić Sentencing Judgement”).

## **KARADŽIĆ AND MLADIĆ**

*Prosecutor v. Radovan Karadžić and Ratko Mladić*, Case No. IT-95-5/18-R61, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, 11 July 1996 (“Karadžić and Mladić Rule 61 Decision”).

## **KORDIĆ AND ČERKEZ**

*Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-T, Judgement, 26 February 2001 (“*Kordić Trial Judgement*”).

## **KRNOJELAC**

*Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T, Judgement, 15 March 2002 (“*Krnojelac Trial Judgement*”).

*Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Judgement, 17 September 2003 (“*Krnojelac Appeal Judgement*”).

## **KRSTIĆ**

*Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Judgement, 2 August 2001 (“*Krstić Trial Judgement*”).

*Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Judgement, 19 April 2004 (“*Krstić Appeal Judgement*”).

## **KUNARAC, KOVAČ AND VUKOVIĆ**

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*Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. IT-96-23-T & IT-96-23/1-T, Judgement, 22 February 2001. (“*Kunarac Trial Judgement*”).

*Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. IT-96-23-A & IT-96-23/1-A, Judgement, 12 June 2002 (“*Kunarac Appeal Judgement*”).

## **Z. KUPREŠKIĆ, M. KUPREŠKIĆ, V. KUPREŠKIĆ, JOSIPOVIĆ, (PAPIĆ) AND ŠANTIĆ**

*Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić ( aka “Vlado”)*, Case No. IT-95-16-T, Judgement, 14 January 2000 (“*Kupreškić Trial Judgement*”).

*Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović and Vladimir Šantić ( aka “Vlado”)*, Case No. IT-95-16-A, Judgement, 23 October 2001 (“*Kupreškić Appeal Judgement*”).

## **KVOČKA, KOS, RADIĆ, ŽIGIĆ AND PRCAĆ**

*Prosecutor v. Miroslav Kvočka, Milošica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać*, Case No. IT-98-30/1-T, Judgement, 2 November 2001 (“*Kvočka Trial Judgement*”).

## **MILUTINOVIĆ, ŠAINOVIĆ AND OJDANIĆ**

*Prosecutor v Milan Milutinović, Nikola Šainović & Dragoljub Ojdanić*, Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction – Joint Criminal Enterprise, 21 May 2003 (“*Ojdanić Appeal Decision on Motion Challenging Jurisdiction*”).

## **MILOŠEVIĆ**

*Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Motion for Judgement of Acquittal, 16 June 2004 (“*Milošević Rule 98bis Decision*”).

## **NALETILIĆ AND MARTINOVIĆ**

*Prosecutor v. Mladen Naletilić ( aka “Tuta” ) and Vinko Martinović ( aka “Štela” )*, Case No. IT-98-34-T, Judgement, 31 March 2003 (“*Naletilić Trial Judgement*”).

## **NIKOLIĆ**

*Prosecutor v. Dragan Nikolić (aka "Jenki")*, Case No. IT-94-2-R61, Review of the Indictment pursuant to Rule 61 of the Rules, 25 October 1995 ("Nikolić Rule 61 Decision").

*Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-S, Sentencing Judgement, 18 December 2003 ("Nikolić Sentencing Judgement").

## **NIKOLIĆ (MOMIR)**

*Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-S, Sentencing Judgement, 2 December 2003 ("Momir Nikolić Sentencing Judgement").

## **ŠEŠELJ**

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*Prosecutor v. Duško Sikirica, Damir Došen, Dragan Kolundžija*, Case No. IT -95-8-T, Judgement on Defence Motions to Acquit, 3 September 2001 ("Sikirica Rule 98bis Decision").

## **SIMIĆ**

*Prosecutor v. Blagoje Simić, Miroslav Tadić, Simo Zarić*, Case No. IT-95-9-T, Judgement, 17 October 2003 ("Simić Trial Judgement").

## **STAKIĆ**

*Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Decision on Rule 98bis Motion for Judgement of Acquittal, 31 October 2002 ("Stakić Rule 98bis Decision").

*Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Judgement, 29 October 2003 ("Stakić Trial Judgement").

## **TADIĆ**

*Prosecutor v. Duško Tadić (aka "Dule")*, Case No. IT-94-1, Separate Opinion of Judge Stephen on the Prosecutor's Motion requesting protective measures for victims and witnesses, 10 August 1995 ("Separate Opinion of Judge Stephen on Tadić Protective Measures Motion").

*Prosecutor v. Duško Tadić (aka "Dule")*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995.

*Prosecutor v. Duško Tadić (aka "Dule")*, Case No. IT-94-1-T, Decision on Defence Motion on Hearsay, 5 August 1996 ("Tadić Decision on Defence Motion on Hearsay")

*Prosecutor v. Duško Tadić (aka "Dule")*, Case No. IT-94-1-A Decision on Appellant's Motion for the Extension of Time-Limit and Admission of Additional Evidence, 15 October 1998.

*Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999 ("Tadić Appeal Judgement").

*Prosecutor v. Duško Tadić*, Case No. IT-94-1-A and IT-94-1-Abis, Judgement in Sentencing Appeals, 26 January 2000.

## **TODOROVIĆ**

*Prosecutor v. Stevan Todorović*, Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001 ("Todorović Sentencing Judgement").

## **VASILJEVIĆ**

*Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-T, Judgement, 29 November 2002 ("Vasiljević Trial Judgement").

*Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-A, Judgement, 25 February 2004 (“*Vasiljević* Appeal Judgement”).

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*Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgement, 1 June 2001 (“*Akayesu* Appeal Judgement”).

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### **NIYITEGEKA**

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## ANNEX B - PROCEDURAL BACKGROUND

### A. Pre-Trial Proceedings<sup>2794</sup>

#### 1. Indictment, Arrest, Transfer and Initial Appearance

1155. The Accused was initially indicted together with Momir Talić. Both the accused were charged with a single count of persecutions on political, racial or religious grounds, as a crime against humanity.<sup>2795</sup> Arrest warrants for both the Accused and Momir Talić were issued on 14 March 1999.<sup>2796</sup>

1156. The Accused was arrested by SFOR in Banja Luka on 6 July 1999 and transferred to the United Nations Detention Unit in The Hague on the same day. At his initial appearance before Judge Antonio Cassese, on 12 July 1999, the Accused pleaded “not guilty” with respect to the charge against him. In subsequent appearances, he pleaded not guilty to all additional counts contained in subsequent amended indictments.

1157. Momir Talić was arrested in Vienna, Austria on 25 August 1999 pursuant to an arrest warrant specifically addressed to the Austrian authorities, issued on 23 August 1999.<sup>2797</sup> He was transferred to the United Nations Detention Unit in The Hague the same day. At his initial appearance before Judge David Hunt, on 31 August 1999, Momir Talić pleaded “not guilty” with respect to the charge against him. In subsequent appearances, he pleaded not guilty to all additional counts contained in subsequent amended indictments, up to and including the corrected version of the Fourth Amended Indictment.

#### 2. Trial Chamber Composition

1158. The case was initially assigned to Trial Chamber II composed of Judges Antonio Cassese (Presiding), Florence Mumba and David Hunt.<sup>2798</sup> Judge David Hunt was designated Pre-trial Judge.<sup>2799</sup>

1159. On 1 February 2000, Judge Fausto Pocar was assigned to Trial Chamber II replacing Judge Antonio Cassese.<sup>2800</sup> As a result, on 3 February 2000, Judge David Hunt became Presiding Judge of

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<sup>2794</sup> Certain procedural events that occurred during the trial phase are listed in this section because they complete the subtopic to which they relate.

<sup>2795</sup> Indictment, 14 March 1999. The Indictment was confirmed by Judge Almiro Rodrigues and placed under seal: Order on Review of Indictment Pursuant to Article 19 of the Statute, 14 March 1999 (confidential).

<sup>2796</sup> Warrant of Arrest Order for Surrender, 14 March 1999.

<sup>2797</sup> Warrant of Arrest Order for Surrender for Momir Talić addressed to the Republic of Austria, 23 August 1999.

<sup>2798</sup> Order of the Vice-President Assigning a Case to a Trial Chamber, 8 July 1999; Order of the President Assigning a Case to Trial Chamber, 27 August 1999.

the case.<sup>2801</sup> On 3 April 2000, Judge Liu Daqun was assigned to the bench, replacing Judge Fausto Pocar.<sup>2802</sup>

1160. The composition of the Chamber again changed pursuant to an order dated 23 November 2001, designating a bench composed of Judges Wolfgang Schomburg (Presiding), Florence Mumba and Carmel Agius.<sup>2803</sup> Judge Carmel Agius was subsequently designated as the new Pre-Trial Judge.<sup>2804</sup>

1161. Shortly prior to the commencement of trial proceedings, on 18 January 2002, the President of the Tribunal assigned two *ad litem* Judges to the case, Judges Ivana Janu and Chikako Taya, replacing Judges Florence Mumba and Wolfgang Schomburg. Judge Carmel Agius became the Presiding Judge of the case.<sup>2805</sup>

### 3. History of indictments

1162. The initial indictment charged both accused with individual and superior responsibility for one count of crimes against humanity under Article 5 of the Statute in respect of the alleged persecution of Bosnian Muslims and Bosnian Croats in the Autonomous Region of Krajina between April and December 1992.<sup>2806</sup> The initial indictment was thereafter amended several times both at the request of the Prosecution and pursuant to objections by the Defence regarding specificity and the pleading style of the indictment.

1163. An Amended Indictment was issued on 16 December 1999, charging both accused and Stojan Župljanin with individual and superior responsibility for a total of 12 counts, including genocide.<sup>2807</sup>

1164. Following a decision by the Trial Chamber,<sup>2808</sup> which upheld certain objections to the form of the indictment by the Accused and Momir Talić,<sup>2809</sup> the Prosecution issued a Further Amended Indictment on 9 March 2001.<sup>2810</sup>

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<sup>2799</sup> Order Designating a Pre-Trial Judge, 13 July 1999; Order Designating a Pre-Trial Judge, 31 August 1999.

<sup>2800</sup> Order of the President Assigning a Judge to a Trial Chamber, 4 February 2000.

<sup>2801</sup> Designation of Presiding Judge, 3 February 2000.

<sup>2802</sup> Order of the President Assigning a Judge to a Trial Chamber, 7 April 2000.

<sup>2803</sup> Order of the President on the Composition of a Trial Chamber for a case, 7 December 2001.

<sup>2804</sup> Order Appointing a Pre-Trial Judge, 28 November 2001.

<sup>2805</sup> Order of the President Assigning Two *Ad Litem* Judges to a Trial, 18 January 2002.

<sup>2806</sup> Indictment, 14 March 1999.

<sup>2807</sup> Amended Indictment, 20 December 1999. Stojan Župljanin remains at large.

<sup>2808</sup> Decision on Objections by Radoslav Brđanin to the Form of the Amended Indictment, 23 February 2001.

<sup>2809</sup> Motion Objecting to the Form of the Amended Indictment, 5 February 2001; Motion for Dismissal of the Indictment, 8 February 2000.

<sup>2810</sup> Further Amended Indictment, 12 March 2001.

1165. On 5 April 2001, Momir Talić submitted a motion challenging the form of the Further Amended Indictment.<sup>2811</sup> The Trial Chamber on 26 June 2001 ordered the Prosecution to amend the indictment,<sup>2812</sup> which resulted in the Third Amended Indictment of 16 July 2001.<sup>2813</sup>

1166. A motion submitted by Momir Talić alleging defects in the form of the Third Amended Indictment was introduced on 30 July 2001.<sup>2814</sup> The Trial Chamber on 21 September 2001 ordered the Prosecution to amend the previous indictment,<sup>2815</sup> and a Fourth Amended Indictment was issued on 5 October 2001.<sup>2816</sup>

1167. A further challenge to the indictment was made by Momir Talić on 22 October 2001.<sup>2817</sup> Pursuant to an order by the Trial Chamber,<sup>2818</sup> a corrected version of the Fourth Amended Indictment was issued on 10 December 2001.<sup>2819</sup>

1168. After the commencement of the trial and subsequent to the severance of the proceedings against Momir Talić, on 7 October 2002, the Trial Chamber made an oral order to amend and streamline the indictment,<sup>2820</sup> which resulted in the Fifth Amended Indictment issued on the same day.<sup>2821</sup>

1169. Following the close of the Prosecution case, a Sixth Amended Indictment was issued on 9 December 2003,<sup>2822</sup> in order to comply with the Trial Chamber's ruling in its Rule 98*bis* Decision.<sup>2823</sup>

#### 4. Assignment of Counsel

1170. On 12 July 1999, the Registrar assigned Michael Greaves as counsel for the Accused.<sup>2824</sup> At the request of the Accused, John Ackerman was assigned lead counsel, replacing Michael Greaves.<sup>2825</sup> Milka Maglov was appointed co-counsel for the Accused as of 16 November 2001.<sup>2826</sup>

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<sup>2811</sup> Preliminary Motion Based on the Defects in the Form of the Indictment Dated 12 March 2001, 19 April 2001.

<sup>2812</sup> Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001.

<sup>2813</sup> Third Amended Indictment, 16 July 2001.

<sup>2814</sup> Preliminary Motion Based on the Defects in the Form of the Indictment of 16 July 2001, 16 August 2001.

<sup>2815</sup> Decision on Form of Third Amended Indictment, 21 September 2001.

<sup>2816</sup> Prosecutor's Fourth Amended Indictment and Request to Leave to Amend, 5 October 2001.

<sup>2817</sup> Preliminary Motion Based on the Defects in the Form of the Indictment of 5 October 2001, 22 October 2001.

<sup>2818</sup> Decision on Form of Fourth Amended Indictment, 23 November 2001.

<sup>2819</sup> Corrected Version of Fourth Amended Indictment, 10 December 2001.

<sup>2820</sup> Status Conference of 7 October 2002, T. 10311-10312.

<sup>2821</sup> Fifth Amended Indictment, 7 October 2002.

<sup>2822</sup> Sixth Amended Indictment, 9 December 2003.

<sup>2823</sup> Decision on Motion for Acquittal Pursuant to Rule 98*bis*, 28 November 2003. *See* paras 1193-1995 *infra*.

<sup>2824</sup> Decision, 13 July 1999.

<sup>2825</sup> Decision, 3 August 1999; Decision, 14 October 1999.

<sup>2826</sup> Decision, 30 November 2001.

1171. Milka Maglov's assignment as co-counsel was suspended by a decision of the Registrar dated 15 April 2002, pending the results of an investigation into alleged breaches of the Code of Professional Conduct for Defence Counsel Appearing before the International Tribunal, unrelated to charges of contempt that arose subsequently.<sup>2827</sup> On the following day, Tanja Radosavljević was appointed co-counsel as an interim measure. She was in turn replaced by Milan Trbojević pursuant to a request by the Accused on 9 May 2002.<sup>2828</sup>

1172. On 7 March 2003, the Registrar withdrew the assignment of Milan Trbojević pursuant to Article 19(C)(ii) of the Directive on the Assignment of Counsel.<sup>2829</sup> On 25 April 2003, David Cunningham was assigned co-counsel for the Accused.<sup>2830</sup>

## 5. Provisional Release

1173. Numerous applications for provisional release were filed.<sup>2831</sup> Most motions were dismissed by the Trial Chamber on the grounds that the conditions to grant provisional release were not met and that both the Accused and Momir Talić were lawfully detained<sup>2832</sup>

1174. One motion for provisional release was eventually granted. On 9 September 2002, the Medical Officer of the UN Detention Unit communicated a confidential medical report to the Registrar stating that Momir Talić was suffering from an incurable disease, putting into question his fitness to stand trial.<sup>2833</sup> On 10 September 2002, Momir Talić filed a motion to be provisionally released on humanitarian grounds.<sup>2834</sup> After having heard the Parties<sup>2835</sup> and two medical experts,<sup>2836</sup> on 20 September 2002 the Trial Chamber decided to provisionally release Momir Talić subject to certain conditions.<sup>2837</sup>

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<sup>2827</sup> Decision, 17 April 2002; Corrigendum, 17 July 2002.

<sup>2828</sup> Decision, 21 May 2002.

<sup>2829</sup> Decision, 7 March 2003.

<sup>2830</sup> Decision, 25 April 2003.

<sup>2831</sup> Petition for a Writ of *Habeas Corpus* on behalf of Radoslav Brdanin, 30 November 1999; Motion for Release, 3 December 1999; Motion for Release, 21 January 2000; Motion for the Provisional Release of Radoslav Brdanin, 28 April 2000; Request for Release, 8 December 2000.

<sup>2832</sup> Decision on Petition for a Writ of *Habeas Corpus* on behalf of Radoslav Brdanin, 8 December 1999; Decision on Motion for Release, 10 December 1999; Decision on Motions by Momir Talić (1) to Dismiss the Indictment, (2) for Release, and (3) for Leave to Reply to Response of Prosecution To Motion for Release, 1 February 2000; Decision on Motion by Radoslav Brdanin for Provisional Release, 25 July 2000; Decision on Motion by Momir Talić for Provisional Release, 28 March 2001.

<sup>2833</sup> Internal Memorandum, 9 September 2002.

<sup>2834</sup> Confidential Motion for Provisional Release, 10 September 2002; Request to lift the Confidentiality on the Motion for Provisional Release, 20 September 2002.

<sup>2835</sup> Motion Hearing, 19-20 September 2002, T. 9915-9961.

<sup>2836</sup> Paul Baas, T. 9784-9803 (closed session); Jaan van Merbeek, T. 9804-9823. (closed session)

<sup>2837</sup> Decision on the Motion for Provisional Release of the Accused Momir Talić, 20 September 2002.

## 6. Disclosure Matters

1175. Disclosure by the Prosecution of supporting material accompanying the Indictment pursuant to Rule 66(A)(i) was deferred until the Trial Chamber, on 3 July 2000, ordered the disclosure of the supporting material in an un-redacted form with the exception of documents for which an application under Rule 69 had been filed.<sup>2838</sup> During the Status Conference held on 20 July 2000, the Trial Chamber ordered the Prosecution to disclose all statements pursuant to Rule 66(A)(ii) by 31 August 2000. On 3 October 2001, the Trial Chamber also ordered the disclosure of documents pursuant to Rule 66(C).

1176. Concerning the disclosure of exculpatory material pursuant to Rule 68, the Trial Chamber rejected the application of Momir Talić to set the Prosecution a deadline, holding that this obligation existed continuously and was not dependent on the imposition of any time limit.<sup>2839</sup>

## 7. Status Conferences, Pre-Trial case management and admitted facts

1177. The Pre-Trial proceedings in this case lasted for more than two and a half years. Status Conferences were held on 11 November 1999, 11 January 2000, 24 March 2000, 20 July 2000, 17 November 2000, 2 February 2001, 18 May 2001, 6 September 2001, 7 October 2002, 23 January 2004, 28 January 2004 and 24 March 2004. Pre-Trial Conferences were held on 10 December 2001, 16 January 2002, and 21 January 2002. Concerning the admission of facts pursuant to Rule 65*ter* (H) the Parties did not reach any point of agreement or disagreement on matters of law and fact.

## 8. Pre-Trial Briefs

1178. The final version of the Prosecution's Pre-Trial Brief was filed on 29 October 2001. The Accused filed his Pre-Trial Brief on 16 November 2001 and Momir Talić filed his Pre-Trial Brief on 3 December 2001.

1179. On 21 November 2001, the Prosecution submitted that the Accused had failed to address legal issues and to set out the nature of his defence in his Pre-Trial Brief, as required under Rule 65*ter* (F). The Prosecution therefore requested to be provided with a new Pre-Trial Brief.<sup>2840</sup> On 14 January 2002, the Trial Chamber ruled that the Pre-Trial Brief of the Accused in fact did not

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<sup>2838</sup> Decision on Motion by Prosecution for Protective Measures, 3 July 2000.

<sup>2839</sup> Decision on Motion by Momir Talić for Disclosure of Evidence, 27 June 2000.

<sup>2840</sup> Prosecution's Response to "Defendant Brđanin's Pre-Trial Brief", 21 November 2001.

comply with Rule 65*ter* (F), and ordered him to make up for the shortcomings.<sup>2841</sup> A supplement to the Accused's Pre-Trial Brief was subsequently submitted on 8 April 2002.<sup>2842</sup>

## **B. Trial Proceedings**

### **1. Overview**

1180. The Prosecution case commenced on 23 January 2002 and ended on 20 October 2003. The Defence case started on 21 October 2003 and lasted until 9 February 2004.<sup>2843</sup> The Trial Chamber sat 284 trial days. The Prosecution called 202 witnesses, amongst them 120 *viva voce* witnesses<sup>2844</sup> and the rest was tendered into evidence pursuant to Rule 92*bis*. In total, 2736 Prosecution exhibits were admitted. The Defence brought forward 19 *viva voce* witnesses, among them one expert witness. In total, 350 Defence exhibits were admitted. The Trial Chamber called one witness *proprio motu* pursuant to Rule 98. Final Trial Briefs were filed on 5 April 2004 and corresponding Responses to the Final Trial Briefs were filed on 16 April 2004. Closing arguments were heard from 19 to 22 April 2004.

1181. Between 14 March and 19 May 2003, proceedings were suspended because of the serious health condition of the lead Defence Counsel.<sup>2845</sup>

### **2. Separation of Trials**

1182. On 14 October 1999 and again on 9 February 2000, Momir Talić filed motions seeking to have his trial severed from the trial of the Accused.<sup>2846</sup> The Trial Chamber dismissed both motions on 9 March 2000.<sup>2847</sup>

1183. In view of Momir Talić's state of health and of his provisional release, the Trial Chamber decided on 20 September 2002 to sever the proceedings against him.<sup>2848</sup> The Trial Chamber found that the interests of justice did not require a joint trial to proceed against both accused, one of whom

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<sup>2841</sup> Decision on Prosecution Response to "Defendant Brđanin's Pre-Trial Brief", 14 January 2002.

<sup>2842</sup> Supplemental Pre-Trial Brief of Defendant Radoslav Brđanin, 8 April 2002.

<sup>2843</sup> Prior to the commencement of the Defence case a pre-Defence Conference was held on 9 October 2003.

<sup>2844</sup> Amongst the *viva voce* witnesses, four were expert witness and one was a rebuttal witness.

<sup>2845</sup> Decision on Defence Motion for Adjournment, 10 March 2003; Decision on Defence Motion for Additional Adjournment, 15 April 2003.

<sup>2846</sup> Motion to Separate Trials, 19 October 1999; Motion for Separation of Trials, 11 February 2000.

<sup>2847</sup> Decision on Motions by Momir Talić for a Separate Trial and for Leave to File a Reply, 9 March 2000.

<sup>2848</sup> Decision on Prosecution's Oral Request for the Separation of Trials, 20 September 2002.

had been certified by a panel of medical experts as being unfit to stand trial. The case against Momir Talić was then given a new case number and re-assigned to a different bench.<sup>2849</sup>

1184. Momir Talić died on 28 May 2003 in Belgrade. Proceedings against him were terminated on 12 June 2003.<sup>2850</sup>

### 3. Evidentiary issues

1185. On 28 January 2002, after hearing the parties, the Trial Chamber gave an oral ruling setting out ten guidelines governing the admission of evidence in the case. A written decision followed.<sup>2851</sup>

1186. In its decision of 23 May 2002, the Trial Chamber established a standard procedure for the use of Rule 92*bis* statements during trial, namely that a motion seeking admission of those statements should be made at least 21 days before start of that part of the trial that dealt with the relevant municipality in relation to which the statements were being tendered.<sup>2852</sup>

1187. Several other cases before the Tribunal have dealt with evidence concerning the camps and detention facilities in the area of Prijedor, which also formed part of the present case.<sup>2853</sup> A number of transcript pages from these proceedings were admitted into evidence pursuant to Rule 92*bis* (D), as well as exhibits produced in these trials.<sup>2854</sup>

1188. Both accused filed motions seeking access to confidential material from other cases.<sup>2855</sup> Access was granted with respect to confidential transcripts and exhibits from the *Tadić* and *Kovačević* cases,<sup>2856</sup> as well as with respect to the *Kvočka* case.<sup>2857</sup> Release of confidential material from the *Sikirica* case was denied.<sup>2858</sup>

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<sup>2849</sup> *Prosecutor v. Momir Talić*, Case No. IT-99-36/1-T, Order of the President Assigning a Case to a Trial Chamber, 13 November 2002.

<sup>2850</sup> *Prosecutor v. Momir Talić*, Case No. IT-99-36/1-T, Order Terminating Proceedings Against Momir Talić, 12 June 2003.

<sup>2851</sup> Order on the Standards Governing the Admission of Evidence, 15 February 2002.

<sup>2852</sup> Public version of the Confidential Decision of the Admission of Rule 92*bis* statements dated 1 May 2002, 23 May 2002.

<sup>2853</sup> *Prosecutor v. Duško Tadić*, Case No. IT-94-1; *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-T; *Prosecutor v. Duško Sikirica and Others*, Case No. IT-95-8; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24.

<sup>2854</sup> See, e.g., ex. P554-567; ex. P1147-P1148; ex. P1516; ex. P1521; ex. P1527; ex. P1529; ex. P1533; ex. P1541-1544; ex. P1547; ex. P160; ex. P 1617; ex. P2415.

<sup>2855</sup> Motion for Access to Confidential Information, 18 July 2000; Request for Access to Confidential Information, 19 June 2001, paras 3-4; Motion to Join the Motion of Momir Talić for Access to Confidential Documents, 1 August 2000; Motion for Access to Confidential Information, 13 June 2001.

<sup>2856</sup> Order on the Motions of Momir Talić and Radoslav Brdanin for Access to Confidential Information in the Cases the *Prosecutor v. Tadić* and the *Prosecutor v. Kovačević*, 18 September 2000.

<sup>2857</sup> *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-T, Decision on Defence Request for Release of Confidential material, 4 October 2000.

<sup>2858</sup> *Prosecutor v. Sikirica*, Case No. IT-95-8, Order on Request for Release of Confidential Materials, 31 August 2000.



1189. The Prosecution filed 29 written motions for protective measures pursuant to Rule 75. The Defence also filed a number of motions for protective measures.<sup>2859</sup> Protective measures have been granted only when the Trial Chamber was satisfied that the measures sought were consistent with the rights of the accused.<sup>2860</sup> In the end, 76 witnesses testified under a pseudonym, of which 25 witnesses gave evidence in closed session.

1190. Radoslav Brdanin lodged a standing objection to evidence being given in closed session.<sup>2861</sup>

1191. On 3 July 2003 and 18 July 2003 respectively, the Defence filed two motions objecting to the admission of evidence obtained through the interception of telephone conversations.<sup>2862</sup> In a written decision, the Trial Chamber rejected the objections and admitted the telephone intercepts.<sup>2863</sup>

1192. The Defence also filed a number of written objections to Prosecution Exhibits contesting the authenticity of documentary evidence.<sup>2864</sup> These objections have been dealt with elsewhere in this Judgement.<sup>2865</sup>

#### 4. Motion for Disqualification of Judges

1193. On 25 April 2002, both accused filed a motion seeking to exclude the three judges of the Trial Chamber from further participating in the proceedings (“Motion to Disqualify”).<sup>2866</sup>

1194. Subsequently, the Defence withdrew the Motion to Disqualify with respect to Judges Ivana Janu and Chikako Taya. In a decision of 3 May 2002, the Presiding Judge of the Trial Chamber II (Judge Wolfgang Schomburg) dismissed the joint motion and found that there was no reasonable doubt as to the impartiality of Judge Carmel Agius.<sup>2867</sup> On 10 May 2004, Momir Talić requested

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<sup>2859</sup> The Defence filed two motions for protective measures requesting that some witnesses testify with pseudonyms and in closed session. The Trial Chamber granted the motions.

<sup>2860</sup> See, e.g., Decision on Motion by Prosecution for Protective Measures, 3 July 2000.

<sup>2861</sup> Procedural Matters, 1 July 2002, T. 7692; Procedural Matters, 22 November 2002, T. 12003.

<sup>2862</sup> Objection to intercept evidence, 3 July 2003; Supplemented objection to intercept evidence, 18 July 2003.

<sup>2863</sup> Decision on the Defence “Objection to Intercept Evidence”, 3 October 2003.

<sup>2864</sup> Objection to OTP Exhibits, Bosanski Petrovac Municipality, 19 May 2003; Objection to OTP Exhibits, Čelinac Municipality, 6 June 2003; Objection to OTP Exhibits, Teslić Municipality, 26 May 2003; Objection to OTP Exhibits, Bosanska Krupa Municipality, 30 June 2003.

<sup>2865</sup> See II, “General Considerations Regarding the Evaluation of Evidence”, *supra*.

<sup>2866</sup> Joint Motion to Disqualify the Trial Chamber Hearing the Brdanin-Talić Trial, 25 April 2002.

<sup>2867</sup> Decision on Joint Motion to Disqualify the Trial Chamber Hearing the Brdanin-Talić Trial, 3 May 2002. The Appeals Chamber subsequently refused to grant leave to appeal this decision: Appeals Chamber’s Decision on Application for Leave to Appeal against Judge Schomburg’s Decision on the Disqualification of a Judge Dated 3 May 2002, 20 June 2002.

leave to appeal such decision.<sup>2868</sup> On 20 June 2002, a three-judge bench of the Appeals Chamber rejected the appeal.<sup>2869</sup>

##### 5. Subpoena for War Correspondent Jonathan Randal

1195. A number of witness *subpoenas ad testificandum* were issued during the course of trial. Of particular note, on 29 January 2002, the Trial Chamber at the request of the Prosecution issued a *subpoena* to Jonathan Randal, a journalist who in 1993 had published an article in the Washington Post containing quotes attributed to the Accused.<sup>2870</sup> Randal, who had given a statement to the Prosecution, refused to give evidence.

1196. On 8 May 2002, Jonathan Randal filed a motion to set aside the *subpoena*, claiming that as a journalist, he enjoyed a qualified privilege and could not be compelled to give evidence in the concrete case.<sup>2871</sup> The Trial Chamber dismissed his motion on 7 June 2002.<sup>2872</sup> On 19 June 2002, Randal was granted leave to appeal the decision.<sup>2873</sup> On 26 June 2002, Jonathan Randal appealed against the Trial Chamber's ruling of 7 June 2002.<sup>2874</sup>

1197. The Appeals Chamber on 11 December 2002 reversed the Trial Chamber's decision.<sup>2875</sup> The Appeals Chamber set aside the *subpoena* and set out two criteria that must be met to compel war correspondents may be compelled to give evidence before the Tribunal: the testimony must be (1) of direct and important value to determining a core issue in the case, and (2) unobtainable otherwise.<sup>2876</sup> The Appeals Chamber allowed for a new request that Randal be subpoenaed to testify, to be decided in accordance with its decision.<sup>2877</sup>

1198. On 29 January 2003, the Prosecution made a second request to *subpoena* Jonathan Randal to give evidence.<sup>2878</sup> On 30 June 2003, the Trial Chamber dismissed the Prosecution's second

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<sup>2868</sup> Application for Leave to Appeal against Judge Schomburg's Decision on the Disqualification of a Judge dated 3 May 2002, 10 May 2002.

<sup>2869</sup> Appeals Chamber Decision on Application for Leave to Appeal against Judge Schomburg's Decision on the Disqualification of a Judge dated 3 May 2002, 20 June 2002.

<sup>2870</sup> Confidential Subpoena to Give Evidence, 29 January 2002.

<sup>2871</sup> Written Submissions on Behalf of Jonathan Randal to Set Aside Confidential Subpoena to Give Evidence Dated 29 January 2002, 8 May 2002.

<sup>2872</sup> Decision on Motion to Set Aside Confidential Subpoena to Give Evidence, 7 June 2002.

<sup>2873</sup> Trial Chamber's Decision to Grant Certification to Appeal the Trial Chamber's "Decision on Motion to Set Aside Confidential Subpoena to Give Evidence", 19 June 2002.

<sup>2874</sup> Motion to Appeal the Trial Chamber's "Decision on Motion on Behalf of Jonathan Randal to Set Aside Confidential Subpoena to Give Evidence", 26 June 2002.

<sup>2875</sup> Decision on Interlocutory Appeal, 11 December 2002.

<sup>2876</sup> *Ibid.*, paras 48-49.

<sup>2877</sup> *Ibid.*, para. 55.

<sup>2878</sup> Prosecution's Second Request for a Subpoena of Jonathan Randal, 29 January 2003 (confidential).

request.<sup>2879</sup> However, the article was admitted into evidence, without prejudice to the weight to be ascribed to it by the Trial Chamber in reaching its judgement.<sup>2880</sup>

## 6. Contempt proceedings against Milka Maglov

1199. On 8 April 2002, the Prosecution provided the Trial Chamber with a statement alleging that at the end of December 2001, Milka Maglov, co-counsel for the Accused had intimidated a Prosecution witness who enjoyed protective measures and who was about to give evidence in the case, and that in addition Milka Maglov had disclosed the identity of the witness to the public.<sup>2881</sup>

1200. On 15 April 2002, the Trial Chamber directed the Registrar to appoint an *amicus curiae* to investigate the conduct of Milka Maglov.<sup>2882</sup> Her assignment as co-counsel of the Accused was suspended on the same day for unrelated reasons.<sup>2883</sup> On 26 April 2002, Dejan Ukropina was appointed *amicus curiae*.<sup>2884</sup>

1201. On 15 April 2003, the Trial Chamber issued an order finding that there were sufficient grounds to believe that the conduct of Milka Maglov amounted to contempt of the Tribunal pursuant to Rule 77.<sup>2885</sup> On 8 May 2003, the Trial Chamber directed the Registrar to appoint an *amicus curiae* to prosecute Milka Maglov for the alleged intimidation of the witness, as well as for the alleged disclosure of the identity of the witness to a member of the public in violation of an order of the Trial Chamber.<sup>2886</sup> Brenda Hollis was appointed *amicus curiae* on 29 October 2003.<sup>2887</sup>

1202. At her initial appearance on 4 December 2003, Milka Maglov pleaded not guilty to the two charges. On 6 February 2004, the Chamber upheld a motion by the *amicus curiae* Prosecutor to amend the indictment, expanding the two charges and adding a third (attempted interference or intimidation). The case against Milka Maglov was heard from 16-19 February 2004. A motion for acquittal brought by Milka Maglov was dismissed by the Chamber on 19 March 2004. Milka Maglov's request for certification to appeal the decision was denied by the Chamber because it would not materially advance the proceedings.

1203. The start of the Defence case was delayed when, on 4 May 2004, counsel for Milka Maglov made a confidential application under Rule 15 for the disqualification and withdrawal of Judges

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<sup>2879</sup> Decision on Prosecution's Second Request for a *Subpoena* of Jonathan Randal, 30 June 2003, para. 38. Judge Taya appended a Separate Opinion to this Decision.

<sup>2880</sup> *Ibid.*

<sup>2881</sup> See Evidentiary matters, 8 April 2002, T. 3827-3842.

<sup>2882</sup> Order Requesting Investigation of Conduct of Co-Counsel for Defendant Brđanin, 15 April 2002.

<sup>2883</sup> Decision, 17 April 2002; Corrigendum, 17 July 2002. See paras 1159-1161 *supra*.

<sup>2884</sup> Decision, 26 April 2002.

<sup>2885</sup> Order Concerning Allegations against Milka Maglov, 15 April 2003.

<sup>2886</sup> Order Instigating Proceedings against Milka Maglov, 8 May 2003.

Agius (Presiding), Janu and Taya on the basis of a number of factors which might affect their impartiality or give the perception that they were not impartial. The application was dismissed by a decision of the Bureau dated 11 June 2004 and the Defence case was re-scheduled for 20 to 22 July 2004. The Defence case was further delayed when, on 15 July 2004, the Respondent filed an unopposed motion for continuance on the basis that she was unfit to stand trial. The same day, the Chamber issued a decision which, *inter alia*, adjourned the case until further notice and directed the Registry to identify a psychiatrist who the Chamber could appoint with a view to establishing the Respondent's fitness to stand trial. This process is still pending and the continuation of the case will depend on the outcome of the findings of the expert psychiatrist and the Trial Chamber.

#### 7. Rule 98bis Decision

1204. On 22 August 2003, the Defence filed a "Motion for Judgement of Acquittal – Rule 98bis".<sup>2888</sup> The written decision of the Trial Chamber on that motion was handed down on 28 November 2003 ("Rule 98bis decision").<sup>2889</sup> The decision acquitted the Accused of count 1 (genocide) of the Indictment in the context of the third category of joint criminal enterprise.<sup>2890</sup> The Trial Chamber also struck out factual allegations set out in the Indictment with regard to the municipalities of Bihać-Ripač, Bosanska Dubica and Bosanska Gradiška.

1205. Leave to appeal the Rule 98bis decision was granted on 3 December 2003.<sup>2891</sup> The Prosecution on 10 December 2003 appealed on the ground that the Trial Chamber had erred in law by dismissing a mode of liability at the Rule 98bis stage, and by finding that the third category of joint criminal enterprise was incompatible with genocide.<sup>2892</sup>

1206. On 19 March 2004, the Appeals Chamber upheld the Prosecution's appeal and reinstated count 1 (genocide) of the Indictment with respect to the third category of joint criminal enterprise.<sup>2893</sup>

#### 8. Site visit

1207. Between 14 to 18 March 2004, the Trial Chamber undertook a site visit to BiH to view some of the locations relevant to the case. It was the first time that a Trial Chamber undertook such a

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<sup>2887</sup> Decision, 31 October 2003.

<sup>2888</sup> Motion for Judgement of Acquittal, Rule 98bis, 22 August 2003 ("Defence Motion").

<sup>2889</sup> Decision on Motion for Acquittal pursuant to Rule 98bis, 28 November 2003.

<sup>2890</sup> Judge Ivana Janu went beyond this reasoning in her partly dissenting opinion, favouring the acquittal of the Accused of count 1 (genocide) and count 2 (complicity in genocide) altogether.

<sup>2891</sup> Procedural Matters, 3 December 2003, T. 23122.

<sup>2892</sup> Prosecution's Appeal from Trial Chamber's Decision on Motion for Acquittal pursuant to Rule 98bis, 10 December 2003.

<sup>2893</sup> Decision on Interlocutory Appeal, 19 March 2004.

visit. The Trial Chamber was accompanied by a guide chosen by the Parties, two members of its legal staff, as well as lead counsel for the Prosecution and Radoslav Brđanin respectively. The site visit was conducted according to a protocol agreed to between the parties and accepted by the Trial Chamber.

1208. The Trial Chamber visited the municipalities of Prijedor, Sanski Most, Banja Luka, Ključ, Čelinac and Kotor Varoš. In Prijedor, the Trial Chamber visited the Kevljani mosque, the football stadium in Ljubija, the Redak mine area, the Žeger Bridge in Čarakovo and the villages of Kevljani, Kamičani, Kozarac, Kozaruša, Hambarine and Brdo. In the city of Prijedor, the Trial Chamber visited specific locations, including the police station, the municipal assembly building and the Stari Grad mosque. In the city of Sanski Most, the Trial Chamber visited the Mahala area, the Krings factory, the Sports hall, the Hasan Kikić School, the municipal building, the police station, the Betonirka factory, the Partisan cemetery and the Vrhopolje bridge. In the surrounding areas, the Trial Chamber visited Hrustovo and the old mosque in Kerani. In the town of Ključ, the Trial Chamber visited the police station and the Nikola Mačkić School, the Ključ army headquarters and, in the surrounding areas, the village of Pudín Han, the Velagići school area, Lanište and the Biljani mosque. In Čelinac, the Trial Chamber visited the municipal building. In Kotor Varoš, the Trial Chamber visited the sawmill, the elementary school, the police station, and the medical centre. In the surrounding areas, the Trial Chamber visited the Grabovice school, the Stari Zatvor Jail and the villages of Večići, Hanifići and Kukavice. In Banja Luka, the Trial Chamber visited the CSB building, the municipal building, the 1<sup>st</sup> Krajina Corps headquarters, and the Mali Logor prison. Among the locations visited were the detention camps in Prijedor and Banja Luka, namely Omarska, Trnopolje, Keraterm and Manjača.<sup>2894</sup> A helicopter flight over the area known as Vlašić mountain also took place. Throughout the site visit the Trial Chamber was assisted by SFOR as well as the local police.

## 9. Sentencing Procedure

1209. Sentencing was dealt with by the Parties in their Final Trial Briefs. There were no further additions during the Closing Arguments except that the Prosecution reiterated its submission that the Accused should be sentenced to life imprisonment. The Accused maintained his position pursuant to his Final Trial Brief.

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<sup>2894</sup> For a more detailed account of the locations visited: Status Conference, 24 March 2004.

## ANNEX C – PERSONS KILLED

The Trial Chamber has established that the following persons were killed.

- **Banja Luka, Ćulum-Kostić – 5 individuals:**

Armin Ćulum, Čama Ćulum, Nijaz Ćulum, Refik Ćulum, Šefik Ćulum.<sup>2895</sup>

- **Prijedor, Hambarine – 3 individuals:**

Mevla *Inu*, Hasnija Rizvančević, one unknown individual.<sup>2896</sup>

- **Prijedor, Kozarac and surrounding area – 146 individuals:**

80 unknown individuals;<sup>2897</sup> one unknown Bosnian Croat;<sup>2898</sup> Ekro Alić;<sup>2899</sup> three individuals;<sup>2900</sup> the ‘Hodža’;<sup>2901</sup> 60 unknown individuals.<sup>2902</sup>

- **Prijedor, Kamičani, Mehmed Šahurić’s house – 8 individuals:**

Jusuf Forić, Lutvija Forić, Teufik Forić, Atif Jakupović, Đemila Mujanović, Ibrahim Mujkanović, Mehmed Šahurić, Šefira Šahurić.<sup>2903</sup>

- **Prijedor, Jaskići – 8 individuals:**

Osma Elkašović, Sakib Elkašović, Alija Forić, Smail Forić, Samed Jakupović, Zilhad Jakupović, Abaz Jaskić, Nijaz Jaskić<sup>2904</sup>

- **Prijedor, Biščani – 300 individuals:**

300 individuals,<sup>2905</sup> including: Hamdija Fikić, Saša Karagić, Mirsad Medić, Mirhad Mrkalj, Ferid Šabanović.<sup>2906</sup>

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<sup>2895</sup> BT-12, T. 4186-4187 (closed session); ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927928.

<sup>2896</sup> BT-33, T. 12649 (closed session)

<sup>2897</sup> Ex. P1416, “Report on Elimination of Green Berets in the Wider Area of Kozarac Village”, 27 May 1992.

<sup>2898</sup> Samir Poljak, ex. P1521, T. 6345-6346.

<sup>2899</sup> Samir Poljak, ex. P1521, T. 6347-6349.

<sup>2900</sup> BT-35, ex. P563, T. 6821-6823 (closed session).

<sup>2901</sup> BT-35, ex. P563, T. 6826-6827 (closed session).

<sup>2902</sup> BT-35, ex. P563, T. 6823, 6827 (closed session).

<sup>2903</sup> Ex. P2006.2, “Exhumations and Proof of Death, Municipality of Prijedor, Nicolas Sébire, 28 August 2002”, 01843975-01843976; BT-29, ex. P560, T. 6244-6245 (private session).

<sup>2904</sup> Senila Elkašović, ex. P566, T. 4612-4614; ex. P2006.2, “Exhumations and Proof of Death, Municipality of Prijedor, Nicolas Sébire, 28 August 2002”, 01843977-01843978.

- **Prijedor, Čarakovo – 16 individuals:**

Nasif Dizdarević;<sup>2907</sup> Hasim Simbegović;<sup>2908</sup> Adem Hopovac, Fehim Karupović, Rubija Redžić;<sup>2909</sup> Husein Sijačić, Jasmin Sijačić;<sup>2910</sup> Huse Salihović, Ermin Sijerčić;<sup>2911</sup> Huse Hopovac, Suad Hopovac, Fadil Malovčić, Asim Redžić;<sup>2912</sup> Badema Musić, Edina Musić, Ramiz Rekić.<sup>2913</sup>

- **Prijedor, Briševo – 68 individuals:**

Ilija Atlija;<sup>2914</sup> Marko Buzuk;<sup>2915</sup> Milan Buzuk;<sup>2916</sup> Pero Dimać<sup>2917</sup>; Stipo Dimać;<sup>2918</sup> Stipo Ivandić;<sup>2919</sup> Jozo Jakara;<sup>2920</sup> Jozo Lovrić;<sup>2921</sup> Ante Matanović;<sup>2922</sup> Ivica Mlinar;<sup>2923</sup> Luka Mlinar;<sup>2924</sup> Mara Mlinar;<sup>2925</sup> Mirsad Švraka;<sup>2926</sup> Srećo Buzuk, Vlatko Buzuk Ivo Lovrić;<sup>2927</sup> Ivica Buzuk, Jerko Ivandić, Milan Ivandić, Pejo Ivandić;<sup>2928</sup> Franjo Marijan, Mara Marijan;<sup>2929</sup> Ivo Komljen, Kaja Komljen, Luka Komljen;<sup>2930</sup> 43 unknown individuals.<sup>2931</sup>

- **Prijedor, Ljubija football stadium – 15 individuals:**

Irfan Nasić;<sup>2932</sup> Muharem Petrovac;<sup>2933</sup> Ismet Avdić, Ferid Kadirić or Kadić;<sup>2934</sup> 11 unknown individuals.<sup>2935</sup>

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<sup>2905</sup> BT-32, ex. P1515, T. 5884, 5893-5894, 5919, 5966-5968 (under seal); BT-32, T. 11851, 11864, 11867-11869 (closed session).

<sup>2906</sup> BT-78, ex. P562, T. 6862-6864 (under seal).

<sup>2907</sup> BT-30, T. 12549 (private session).

<sup>2908</sup> BT-30, T. 12555 (private session); BT-30, ex. P1541, T. 5748 (under seal).

<sup>2909</sup> BT-30, ex. P1541, T. 5732-5734 (under seal).

<sup>2910</sup> BT-30, T. 12544.

<sup>2911</sup> BT-30, T. 12549 (private session).

<sup>2912</sup> BT-30, T. 12546.

<sup>2913</sup> BT-30, T. 12549 (private session).

<sup>2914</sup> Ivo Atlija, T. 11953.

<sup>2915</sup> Ivo Atlija, ex. P1527, T. 5607.

<sup>2916</sup> Ivo Atlija, T. 11933.

<sup>2917</sup> Ivo Atlija, ex. P1527, T. 5579-5580.

<sup>2918</sup> Ivo Atlija, T. 11942.

<sup>2919</sup> Ivo Atlija, ex. P1527, T. 5609.

<sup>2920</sup> Ivo Atlija, T. 11947.

<sup>2921</sup> Ivo Atlija, ex. P1527, T. 5604.

<sup>2922</sup> Ivo Atlija, T. 11943.

<sup>2923</sup> Ivo Atlija, T. 11968.

<sup>2924</sup> Ivo Atlija, T. 11944.

<sup>2925</sup> Ivo Atlija, ex. P1527, T. 5611.

<sup>2926</sup> Ivo Atlija, T. 11944.

<sup>2927</sup> Ivo Atlija, ex. P1527, T. 5606.

<sup>2928</sup> Ivo Atlija, ex. P1527, T. 5605.

<sup>2929</sup> Ivo Atlija, ex. P1527, T. 5602.

<sup>2930</sup> Ivo Atlija, ex. P1527, T. 5610.

<sup>2931</sup> Ivo Atlija, ex. P1527, T. 5597-5599; Ivo Atlija, T. 11967.

<sup>2932</sup> Elvedin Našić, T. 12699.

<sup>2933</sup> Elvedin Našić, T. 12700.

- **Prijedor, Ljubija iron ore mine – 48 individuals:**

Suvad Čančar, Amir Crljenković, Emsud Dedić, Samir Dedić, Ekrem Duratović, Edin Fatimić, Reuf Fikić, *fnu* Hamulić, Bešim Hegić, Islam Hopovac, *fnu* Jamastagić, Hasan Jujić, Armin Kadić, Edin Kadić, Elvis Kadić, Vahidin Kadić, Zenil Kadić, Hilmija Kadirić, Šabahudin Kadirić, Ferid Karagić, Asmir Kekić, Esad Kekić, Jasmir Kekić, Nurudin Kekić, Ramo Kekić, Senad Kekić, Suvad Kekić, Rasid Medić, *fnu* Muhić, Suad Mulalić, Muho Musić, Edin Siječić;<sup>2936</sup> 16 unknown individuals.<sup>2937</sup>

- **Prijedor, Tomašica – 7 individuals:**

Dragica Salić, Mara Salić, Mile Topalović, Pero Topalović, three unknown individuals.<sup>2938</sup>

- **Sanski Most, Vrhpolje bridge – 28 individuals:**

Irfan Begić, Enes Cerić, Miralem Cerić, Ismet Kurbegović;<sup>2939</sup> Daut Begić, Elmedin Begić, Fuad Begić, Hakiya Begić, Muhamed Begić, Muharem Begić, Munib Begić, Nail Begić, Nedžad Begić, Enver Cerić, Midhat Cerić, Enes Dizdarević, Ismet Dizdarević, Mirsad Dizdarević, Muhamed Dizdarević, Esad Handanović, Ibrahim Handanović, Hasib Kadirić, Hasib Kljajić, Mumin Kljajić, Safet Kljajić, Rešid Šljivar, two unknown individuals.<sup>2940</sup>

- **Sanski Most, Kukavice – 15 individuals:**

Muharema Keranović;<sup>2941</sup> Husein Merdanović;<sup>2942</sup> Aldina Keranović, Almina Keranović, Fatima Keranović, Nira Keranović;<sup>2943</sup> Idriz Kadirić, Asim Keranović, Džehva Keranović,

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<sup>2934</sup> Nermin Karagić, ex. P559, T. 5233.

<sup>2935</sup> Nermin Karagić, ex. P559, T. 5233-5237; BT-33, ex. P1544, T. 3930-3931 (under seal).

<sup>2936</sup> Elvedin Našić, T. 12706-12707; ex. 2006.2, “Exhumations and Proof of Death, Municipality of Prijedor, Nicolas Sébire, 28 August 2002”, 01843986-01843987.

<sup>2937</sup> Elvedin Našić, T. 12706-12707.

<sup>2938</sup> BT-31, T. 13713-13715, 13717; ex. P739, “Combat Report”.

<sup>2939</sup> Rajif Begić, T. 6340-6343.

<sup>2940</sup> Ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927939-40; Rajif Begić, T. 6338.

<sup>2941</sup> Exhibit P 2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927941-02927945; ex. P797, “Exhumation Report”, 01900417; BT-14, T. 7220 (closed session).

<sup>2942</sup> Exhibit P 2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927941-45; ex. P797, “Exhumation Report”, 01900417; BT-15, T. 7262-7264 (closed session).

<sup>2943</sup> Exhibit P 2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927941-02927945; ex. P797, “Exhumation Report”, 01900417; BT-14, T. 7213-14 (closed session); BT-15, T. 7264 (closed session).



Edin Keranović, Jasima Keranović, Sabina Keranović, Arifa Zukić, Fatima Zukić, Smaila Zukić.<sup>2944</sup>

- **Sanski Most, Partisan cemetery – 17 individuals:**

Ibro Eminić, Smail Pašić or Bašić, 15 unknown individuals.<sup>2945</sup>

- **Sanski Most, Budim – 14 individuals:**

Hasan Alibegović, Hilmo Alibegović, Husein Alibegović, Ibrahim Alibegović, Ismet Alibegović, Jasmin Alibegović, Muhamed Alibegović, Mujaga Alibegović, Nazif Alibegović, Nijaz Alibegović, Sakib Alibegović, Sejad Alibegović, Sevdaga Alibegović, Zijad Alibegović.<sup>2946</sup>

- **Sanski Most, Škrlevita – 7 individuals:**

Josip Banović, Petar/Pero Nikić, Žarko Nikić, Drago Tadić, Karlo Tadić, Ante Tutić, Bono Tutić.<sup>2947</sup>

- **Ključ, Pudín Han – 3 individuals:**

Esma Bečić, Hamdo Bečić, Refik Draganović.<sup>2948</sup>

- **Ključ, Prhovo – 33 individuals:**

Hašim Hadžić, Hamdija Islamagić, Hilmo Jusić, Nedžad Jusić, Osman Jusić, Čamil Medanović, Isak Mešić, Reuf Osmanović;<sup>2949</sup> Nisveta Brković, Amela Hadžić, Hajro Hadžić, Izet Hadžić, Azemina Jusić, Emira Jusić, Enisa Jusić, Nermin Jusić, Samira Jusić, Arif Medanović, Fatima Medanović, Ferida Medanović, Hadžira Medanović, Halil Medanović, Hasan Medanović, Midheta Medanović, Mujo Medanović, Safet Medanović,

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<sup>2944</sup> Exhibit P 2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927941-02927945; ex. P797, “Exhumation Report”, 01900417; BT-14, T. 7264-7267 (closed session).

<sup>2945</sup> Ahmet Sulić, T. 6907; ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927955-02927956.

<sup>2946</sup> Ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927948-02927949; BT-23, T. 6430 (closed session).

<sup>2947</sup> Ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927952-02927953; Grgo Stojić, T. 6778, 6792; ex. P813, “Indictment”.

<sup>2948</sup> Nisvet Tičević, T. 10739-10740.

<sup>2949</sup> BT-77, T. 10341-10343; Bajro Hadžić, ex. P552, 92*bis* statement, 0521139; ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927964-02927965.

Šefik Medanović, Teufik Medanović, Gane Mešić, Isma Mešić, Nasiha Okić, Karanfil Osmanović, Rufad Osmanović.<sup>2950</sup>

- **Ključ, Velagići – 77 individuals:**

Ramiz Aličić, Eldin Bajrić, Fehim Bajrić, Husein Bajrić, Ibro Bajrić, Kasim Bajrić, Memo Bajrić, Mesud Bajrić, Muharem Bajrić, Mustafa Bajrić, Rifet Bajrić, Šefik Bajrić, Zikret Bajrić, Emsur Bečić, Refik Bečić, Šaban Bilajac, Tifo Bukvić, Đulaga Burzić, Elvedin Čarkić, Asim Čehić, Husein Čehić, Ilijas Čehić, Mirsad Čehić, Šabahudin Čemal, Saif Čemal, Almir Delić, Emir Delić, Fadil Delić, Karanfil Dervišević, Rešid Dervišević, Safet Dervišević, Adem Draganović, Džemal Draganović, Emsud Draganović, Esmin Draganović, Fadil Draganović, Fehret Draganović, *fnu* Draganović, Hamdija Draganović, Hilmo Draganović, Hilmo Draganović, Safet Draganović, Mesud Draganović, Nijaz Draganović, Ramiz Draganović, Rufat Draganović, Rufat Draganović, Husein Fazlić, Emir Gromilić, Sajim Halilović, Dževad Hotić, Ismet Jukić, Asim Keranović, Emir Keranović, Jasmin Keranović, Derviš Kujundžić, Adem Muheljić, Dedo Muheljić, Ibrahim Muratović, Nijaz Nedić, Atif Nezić, Husein Nezić, Islam Nezić, Rezah Nezić, Safet Nezić, Esad Zečević, Omer Zečević, Denis Zukić, Faik Zukić, Hamid Zukić, Hasan Zukić, six unknown individuals.<sup>2951</sup>

- **Kotor Varoš, Medical centre – 2 individuals:**

Miralem Avić, Muharem Skopljak.<sup>2952</sup>

- **Kotor Varoš, Dabovci – 3 individuals:**

Three unknown individuals.<sup>2953</sup>

- **Kotor Varoš, Hanifići mosque – 8 individuals:**

Murat/Mujo Alekić, Nijaz Alekić, Redžo Alekić, Rifat Alekić, Behar Botić, Mujo Planinkić, Rasim/Kasim Smajić, Suljo Smajić.<sup>2954</sup>

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<sup>2950</sup> Ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927964-02927965.

<sup>2951</sup> Ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927969-02927971.

<sup>2952</sup> Ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927984-02927985; BT-97, T. 17910-17913 (partly private session).

<sup>2953</sup> Elvedin Pašić, T. 19413; Fikret Đikić, ex. P2042, 92*bis* statement, 0338686.

<sup>2954</sup> Idriz Alekić, ex. P1895, 92*bis* statement, 02119431; ex. P2018; ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927987.

- **Kotor Varoš, Čirkino Brdo – 7 individuals:**

Hatidža Čirkić, Mina Čirkić, Hajrija Menzil, Ziza Mujanović, Aziz Vatrač, Fata Vilić, one unknown individual.<sup>2955</sup>

- **Kotor Varoš, Grabovica school – 40 individuals:**

40 unknown individuals.<sup>2956</sup>

- **Bosanski Novi, Blagaj Japra – 12 individuals:**

Ćamil Alić, Kemal Alić, Sulejman Burzić, Samed Imširović, Fehim Mehmedagić, Hasan Merzihić, Ismet Selimagić, Derviš Selmić,<sup>2957</sup> Hasan Ekić, Karanfil Isaković, Nijaz Isaković;<sup>2958</sup> Šaban Arapović.<sup>2959</sup>

- **Bosanski Novi, Alići – 27 individuals:**

Midho Ekić, Samid Ekić, Asim Klehić, Emir Ramadan and 23 unknown individuals.<sup>2960</sup>

- **Banja Luka, Manjača camp – 10 individuals:**

Esad Bender, *fnu* Čerić, Omer Filipović and 7 unknown individuals.<sup>2961</sup>

- **Prijedor, Omarska camp – 94 individuals:**

Zlatan Beširević;<sup>2962</sup> Muhamed Čehajić.<sup>2963</sup> Asmir Crnalić;<sup>2964</sup> Mustafa Crnjalić;<sup>2965</sup> Esref Crnkić;<sup>2966</sup> Husein Crnkić;<sup>2967</sup> Ibrahim Denić;<sup>2968</sup> Ilijaz Dobrić;<sup>2969</sup> Sulejman Ganić;<sup>2970</sup>

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<sup>2955</sup> Ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927989-02927990.

<sup>2956</sup> Ex. P2301, “Combat Report” by the 1<sup>st</sup> KK Comand, dated 4 November 1992.

<sup>2957</sup> Midho Alić, T. 13888-13889, 13894, 13896-13897; BT-49, T. 14229-14229 (closed session); ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927931-02927933.

<sup>2958</sup> BT-82, T. 13979, 13985; ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927931-02927933.

<sup>2959</sup> Ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927931-02927933.

<sup>2960</sup> BT-84, T. 14155-14158 (private session); ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927934; ex. P1681.

<sup>2961</sup> Enis Šabanović, T. 6518-6520, 6657; Muhamed Filipović, T. 9621; BT-36, T. 11064, 11066 (closed session); ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927929-02927930.

<sup>2962</sup> BT-42, ex. P564, T. 1909 (under seal).

<sup>2963</sup> Nusret Sivac, ex. P1547, T. 6629-6630; BT-42, ex. P564, T. 1909 (under seal).

<sup>2964</sup> Nusret Sivac, ex. P1547, T. 6630-6632.

<sup>2965</sup> BT-42, ex. P564, T. 1910-1911 (under seal).

<sup>2966</sup> Muharem Murselović, ex. P1542, T. 2745; BT-42, ex. P564, T. 1912 (under seal).

<sup>2967</sup> BT-42, ex. P564, T. 1921 (under seal).

Meho Habibović;<sup>2971</sup> Rizah Hadžalić;<sup>2972</sup> Hajrudin Jakupović;<sup>2973</sup> Idriz Jakupović;<sup>2974</sup> Mehmedalija Kapetanović;<sup>2975</sup> Anes Medunjanin;<sup>2976</sup> Bećir Medunjanin;<sup>2977</sup> Sadeta Medunjanin;<sup>2978</sup> Fikret Mujadžić;<sup>2979</sup> Senad Mujkanović;<sup>2980</sup> Edin Muretčehajić;<sup>2981</sup> Ibrahim Paunović;<sup>2982</sup> Čamil Pezo;<sup>2983</sup> Zijo Poljak;<sup>2984</sup> Safet Ramadanović;<sup>2985</sup> Eso Sadiković;<sup>2986</sup> Mehmedalija Sarajlić;<sup>2987</sup> Bajram Zgog;<sup>2988</sup> Esad Alić, Mirsad Alić, Emir Karabašić;<sup>2989</sup> Ismet Araš, Mirzet Lisić, Meho Mahmutović, Emir Kodžić, Živko Paunović, Ago Sadiković, Fikret Sarajlić;<sup>2990</sup> Ahmet Atarović, Ismail Burazović, Omer Keranović, Silvije Šarić;<sup>2991</sup> Muhamed Burazerović, Halim Mešić;<sup>2992</sup> Enes Begić, Jusuf Pašić, Željko Sikora;<sup>2993</sup> Muhamed Ergelić, Zilhad Hodžić;<sup>2994</sup> Emsud Bahonjić, Edin Bešić, Ekrem Bešić, Akib Deumić, Muhamed Fazlić, Muhamed Jakupović, Emir Karabašić, Edin Mujagić;<sup>2995</sup> Omer Mahmuljin, Jusuf Muretčehajić;<sup>2996</sup> Hamdija Avdagić, Dževad Bešić, Suad Bešić, Fadil Čolić, Nijaz Memić;<sup>2997</sup> Islam Bahonjić, Hamdija Balić, Fikret Mujakić, Kadir Mujkanović, Meho Tursić;<sup>2998</sup> Ziko Crnalić, Burhurudin Kapetanović, Zijad Mahmuljin, Abdulah Puškar;<sup>2999</sup> Aleksandar Komšić, Osman Mahmuljin;<sup>3000</sup> Esad Mehmedagić, Nedžad Serić, Mustafa Tadžić;<sup>3001</sup> Asaf Kapetanović, Ibrahim Okanović,

<sup>2968</sup> BT-27, ex. P565, T. 4314 (under seal).

<sup>2969</sup> BT-42, ex. P564, T. 1902 (under seal).

<sup>2970</sup> BT-44, ex. P565, T. 3218-3219 (under seal).

<sup>2971</sup> Nusret Sivac, ex. P1547, T. 6639.

<sup>2972</sup> BT-42, ex. P564, T. 1883-1884 (under seal); BT-1, ex. P1619, T. 4766-4767 (under seal).

<sup>2973</sup> BT-27, ex. P1529, T. 4314 (under seal).

<sup>2974</sup> BT-42, ex. P564, T. 1915-1917 (under seal).

<sup>2975</sup> BT-42, ex. P564, T. 1913-1914 (under seal).

<sup>2976</sup> Kerim Mešanović, T. 11195; Mevludin Sejmenović, T. 12310.

<sup>2977</sup> BT-2, ex. P561, T. 2734-2739 (under seal); BT-42, ex. P564, T. 1909 (under seal).

<sup>2978</sup> BT-42, ex. P564, T. 1910 (under seal).

<sup>2979</sup> BT-42, ex. P564, T. 1902, 1915 (under seal).

<sup>2980</sup> BT-42, ex. P564, T. 1919 (under seal).

<sup>2981</sup> BT-27, ex. P565, T. 4320 (under seal).

<sup>2982</sup> Nusret Sivac, ex. P1547, T. 6636.

<sup>2983</sup> BT-42, ex. P564, T. 1902, 1917-1918 (under seal); Muharem Murselović, ex. P1542, T. 2743.

<sup>2984</sup> Samir Poljak, ex. P1521, T. 6373-6374.

<sup>2985</sup> BT-42, ex. P564, T. 1902 (under seal); BT-44, ex. P565, T. 3219 (under seal); Nusret Sivac, ex. P1547, T. 6639; Muharem Murselović, ex. P1542, T. 2743-2745.

<sup>2986</sup> Nusret Sivac, ex. P1547, T. 6686; BT-42, ex. P564, T. 1910 (under seal).

<sup>2987</sup> BT-42, ex. P564, T. 1901 (under seal); BT-1, ex. P1619, T. 4770 (under seal).

<sup>2988</sup> BT-42, ex. P564, T. 1918-1919 (under seal).

<sup>2989</sup> BT-27, ex. P1529, T. 4314 (under seal).

<sup>2990</sup> Nusret Sivac, ex. P1547, T. 6634.

<sup>2991</sup> Nusret Sivac, ex. P1547, T. 6680.

<sup>2992</sup> Kerim Mešanović, T. 11188-11189.

<sup>2993</sup> Nusret Sivac, ex. P1547, T. 6686.

<sup>2994</sup> BT-27, ex. P1529, T. 4304 (under seal).

<sup>2995</sup> BT-27, ex. P565, T. 4315 (under seal).

<sup>2996</sup> BT-27, ex. P565, T. 4316 (under seal).

<sup>2997</sup> BT-27, ex. P565, T. 4318 (under seal).

<sup>2998</sup> BT-42, ex. P564, T. 1920 (under seal).

<sup>2999</sup> BT-42, ex. P564, T. 1911 (under seal).

<sup>3000</sup> BT-42, ex. P564, T. 1912 (under seal).

<sup>3001</sup> BT-42, ex. P564, T. 1913 (under seal).

Rufat Suljanović;<sup>3002</sup> Jaško Hrnić, Nihad Jakupović;<sup>3003</sup> Derviš Garibović, Dževad Garibović, Enes Garibović, Ferid Garibović, Hamdo Garibović, Hasib Garibović, Irfan Garibović, Senad Garibović, Suvad Garibović, Mirsad Jakupović;<sup>3004</sup> Adnan Ekinović, Omer Ekinović.<sup>3005</sup>

- **Prijedor, Trnopolje camp – 20 individuals:**

20 unknown individuals,<sup>3006</sup> including: *fnu* Forić, *fnu* Murgić, Teufik Talić;<sup>3007</sup> Sulejman Kekić.<sup>3008</sup>

- **Banja Luka, Sanski Most – Manjača convoy – 20 individuals:**

Haris Biščević;<sup>3009</sup> Hivzo Hodžić;<sup>3010</sup> Sevdaga Hukanović;<sup>3011</sup> Darko Matanović;<sup>3012</sup> Neron Mehadžić;<sup>3013</sup> Nedžad Muhić, Rane Muhić, an unknown boy;<sup>3014</sup> *fnu* Bahtić, Elvedin Hadžiahmetović, Jasmin Jelečević, Faik Pašić;<sup>3015</sup> Jasmin Barjaktarević, Ismed Hodžić, Adem Jakupović, Ramo Jusić, Vinko Matanović, Josip Mlinar;<sup>3016</sup> two unknown individuals.<sup>3017</sup>

- **Banja Luka, Omarska – Manjača convoy – 4 individuals:**

Sead Babić, Dedo Crnalić, Nezir Krak;<sup>3018</sup> *fnu* Cerić.<sup>3019</sup>

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<sup>3002</sup> BT-42, ex. P564, T. 1914 (under seal).

<sup>3003</sup> Samir Poljak, ex. P1521, T. 6374.

<sup>3004</sup> Emsud Garibović, ex. P1538, T. 5819-5822.

<sup>3005</sup> BT-42, ex. P564, T. 1905 (under seal).

<sup>3006</sup> Idriz Merdžanić, ex. P1148, T. 7786-7787; BT-33, ex. P1544, T. 3998-3999 (closed session); BT-37, ex. P555, T. 2524-2525 (under seal).

<sup>3007</sup> Idriz Merdžanić, ex. P1148, T. 7785-7786.

<sup>3008</sup> BT-78, ex. P562, T. 6882-6883 (under seal).

<sup>3009</sup> Enis Šabanović, T. 6501; Sakib Muhić, T. 8125-8126.

<sup>3010</sup> Adil Draganović, T. 4868

<sup>3011</sup> Bekir Delić, T. 7972.

<sup>3012</sup> Jakov Marić, T. 10814.

<sup>3013</sup> Enis Šabanović, T. 6501; Sakib Muhić, T. 8126.

<sup>3014</sup> Ahmet Zulić, T. 6918-6920.

<sup>3015</sup> Sakib Muhić, T. 8125-8126.

<sup>3016</sup> Ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927959-02927961.

<sup>3017</sup> Bekir Delić, T. 7972-7974; Jakov Marić, T. 10814-10815; Sakib Muhić, T. 8124-8128.

<sup>3018</sup> Muharem Murselović, T. 12606-12607; BT-42, ex. P564, T. 1839 (under seal).

<sup>3019</sup> BT-36, T. 11064 (closed session).

- **Sanski Most, Hrastova Glavica – 14 individuals:**

Hasan Bašić, Adem Behlić, Adem Brdar, Ferid Brkić, Nurija Crljenković, Refik Demirović, Memo Hujić, Adem Karupović, Osman Karupović, Samed Karupović, Šaban Kljajić, Taib Mujdžić, Ćamil Musić, Mirsad Šehić.<sup>3020</sup>

- **Prijedor, Keraterm room 3 – 190 individuals:**

190 unknown individuals.<sup>3021</sup>

- **Skender Vakuf, Korićanske stijene – 200 individuals:**

200 unknown individuals,<sup>3022</sup> including: Vasif Mujkanović.<sup>3023</sup>

- **Bosanska Krupa, Petar Kočić school – 11 individuals:**

Mirsad Budimlić;<sup>3024</sup> *fnu* Alijagić, *fnu* Alijagić, *fnu* Nasić, three unknown individuals, Teufik Sedić;<sup>3025</sup> Muratif Alić, Albin Bajrambašić, Zijad Selimović.<sup>3026</sup>

- **Ključ, Biljani – 144 individuals:**<sup>3027</sup>

Fikret Balagić;<sup>3028</sup> Ale Čajić;<sup>3029</sup> Adnan Ćehić, Ahmo Ćehić, Asim Ćehić, Elvir Ćehić, Efrajim Ćehić, Latif Ćehić, Miralem Ćehić, Nail Ćehić, Nedžad Ćehić, Rasim Ćehić, Suad Ćehić, Sulejman Ćehić, Teufik Ćehić, Almedin Šušnjar, Meho Šušnjar;<sup>3030</sup> Asim Alagić, Abid Avdić, Abid Avdić, Asim Avdić, Emsud Avdić, Fuad Avdić, Feriz Avdić, Habir Avdić, Hajrudin Avdić, Hakija Avdić, Muharem Avdić, Nail Avdić, Nijaz Avdić, Šefko Avdić, Smail Avdić;<sup>3031</sup> Besim Avdić, Smail Avdić;<sup>3032</sup> Enes Avdić, Ermin Avdić, Sead Avdić, Refik Avdić, Ibrahim Bajrić, Abid Balagić, Avdo Balagić, Vehbija Balagić, Aziz Botonjić, Ćamil Botonjić, Džafer Botonjić, Ejub Botonjić, Fadil Botonjić, Feris Botonjić, Hamed Botonjić, Hamid Botonjić, Hikmet Botonjić, Hilmo Botonjić, Husein Botonjić,

<sup>3020</sup> Ex. P2006.2; “Exhumations and Proof of Death, Municipality of Prijedor, Nicolas Sébire, 28 August 2002”, 01843986-01843987.

<sup>3021</sup> BT-37, ex. P555, T. 2516 (under seal).

<sup>3022</sup> Ex. P2326, entry of 4 September 1992 (under seal).

<sup>3023</sup> BT-27, ex. P1529, T. 4318 (under seal).

<sup>3024</sup> BT-56, T. 17481-17482.

<sup>3025</sup> BT-56, T. 17488-17489.

<sup>3026</sup> BT-56, T. 17482.

<sup>3027</sup> Ex. P2008, “Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003”, 02927979-02927981.

<sup>3028</sup> Husein Čajić, T. 9024; Asim Egrlić, T. 10615.

<sup>3029</sup> Husein Čajić, T. 9006-9007.

<sup>3030</sup> BT-25, T. 9085-86 (closed session).

<sup>3031</sup> BT-25, T. 9074, 9085 (closed session).

Muharem Botonjić, Mujo Botonjić, Najil Botonjić, Nijaz Botonjić, Omer Botonjić, Ramiz Botonjić, Rifet Botonjić, Šabahudin Botonjić Sabrija Botonjić, Sadik Botonjić, Saim Botonjić, Suad Botonjić, Sulejman Botonjić, Vehbija Botonjić Zijad Botonjić, Zuhdija Botonjić, Mesud Crnalić, Ahmet Džaferagić, Almir Džaferagić, Hamdija Džaferagić, Mehmed Džaferagić, Safet Džaferagić, Vehbija Džaferagić;<sup>3033</sup> Aiz Dervišević, Husein Dervišević, Omer Dervišević;<sup>3034</sup> Asmir Domazet, Derviš Domazet, Fadil Domazet, Hamdija Domazet, Hamid Domazet, Mehmed Domazet, Rifet Domazet, Safet Domazet, Zijad Domazet;<sup>3035</sup> Fahrudin Domazet, Fuad Domazet, Hajrudin Domazet, Hamed Domazet, Islam Domazet, Meho Domazet, Nail Domazet, Abid Hodžić, Adil Hodžić, Derviš Hodžić, Osman Hodžić, Rufad Hodžić;<sup>3036</sup> Almir Jašarević, Bego Jašarević, Besim Jašarević, Enes Jašarević, Kemal Jašarević, Raif Jašarević, Sabit Jašarević, Bećir Kapidžić, Jasmin Kapidžić, Muharem Kuburaš, Nihad Kuburaš, Asim Mešanović, Asmir Mešanović, Muhamed Mešanović, Suad Mešanović, Zifad Mešanović, Asim Mujezinović, Emir Mujezinović, Hamdija Mujezinović, Ismet Mujezinović, Muharem Mujezinović, Nail Mujezinović, Osman Mujezinović, Samir Mulahmetović, Smajil Mulahmetović, Abid Omanović, Adil Omanović, Elkaz Omanović, Emid Omanović, Hilmo Omanović, Mustafa Omanović, Omer Omanović, Omer Omanović, Saudin Omanović;<sup>3037</sup> Džemal Omeragić, Salko Omeragić, Samir Pežadžić, Šerif Pežadžić, Fadil Subašić, Izedin Subašić, Hazim Zukanović, Husein Zukanović, Salim Zukanović, Smail Zukanović.<sup>3038</sup>

- **Teslić, SUP building, TO building, Pribinić detention facility – 45 individuals:**

Zlatan Đanić, Rašim Galijašević, Himzo Jašarević, Mesud Kopic, Nihad Medić, Victor Tibetanac, Ramo Lugonjić, Midhad Midjić, Enes Begović;<sup>3039</sup> Fahrudin Begović, Senad Begović, Suljo Begović, Fehim Botić, Ibrahim Botić, Salkan Botić, Đulaga Garić, Fadil Gibić, Ramiz Gibić, Viktor Glancer, Besim Kopic, Isić Numan, Dževad Memić, Munir Memić, Sedad Pašić, Borislav Pastuhović, Alija Rašić, Fikret Šaćirović, Nihad Salkičević, Safet Tatarević;<sup>3040</sup> Mustafa Džafić, Juro Erejz, Pero *Inu*, Petar *Inu*, Remzija Jašarević;<sup>3041</sup> eleven unknown individuals.<sup>3042</sup>

<sup>3032</sup> Husein Čajić, T. 9006, 9020.

<sup>3033</sup> BT-25, T. 9074, 9086-9087 (closed session).

<sup>3034</sup> Husein Čajić, T. 9006.

<sup>3035</sup> Husein Čajić, T. 9015.

<sup>3036</sup> Husein Čajić, T. 9020.

<sup>3037</sup> BT-25, T. 9085 (closed session).

<sup>3038</sup> BT-25, T. 9074 (closed session).

<sup>3039</sup> Mehmed Tenić, T. 16872, 16875-16876, 16935-16937; Ferid Mahalbašić, ex. P1962, 92*bis* statement, 01034061.

<sup>3040</sup> Exhibit P 2008, "Exhumations and Proof of Death, Autonomous Region of Krajina, Nicolas Sébire, 16 May 2003", 02927982-02927983.

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<sup>3041</sup> BT-64, T. 16976-16979.

<sup>3042</sup> Ex. P1931, “Note”.





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

Case No. IT-99-36-T  
Date: 12 October 2004  
Original: English

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**IN TRIAL CHAMBER II**

**Before: Judge Carmel Agius**

**Registrar: Mr. Hans Holthuis**

**Date: 12 October 2004**

**PROSECUTOR**

**v.**

**RADOSLAV BRĐANIN**

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***PARTLY CONFIDENTIAL***

**ORDER**

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**The Office of the Prosecutor:**

Ms. Ann Sutherland

**Counsel for the Accused:**

Mr. John Ackerman  
Mr. David Cunningham

**I, Carmel Agius**, Judge of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Tribunal”):

**NOTING** that on 1 September 2004, Trial Chamber II issued its judgement in the case *Prosecutor v. Radoslav Brđanin* (“Judgement”);

**CONSIDERING** that due to mere technical reasons, the footnote numbering in the original hard copy of the Judgement does not correspond to the footnote numbering in the electronic version of the Judgement on the ICTY website, the mistake being that in the original hard copy of the Judgement footnote numbers 1396 to 1400, as well as number 1417 are not used;

**CONSIDERING** also that the Judgement contains a clerical error concerning reference to protected evidence which is specified in the confidential Annex to the present order;

**CONSIDERING** that the above mentioned issues require correction and that these corrections do not affect in any way the content of the Judgement;

**PURSUANT TO** Rule 54 of the Rules of Procedure and Evidence of the Tribunal;

**HEREBY**

**RECALL** the Judgement

**ORDER** to apply the correct footnote numbering and to effect the corrections specified in the confidential Annex to the present order, and

**ISSUE** the corrected Judgement that accompanies the present order.

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

Dated this 12<sup>th</sup> day of October 2004,

At The Hague

The Netherlands

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**Carmel Agius**

**[Seal of the Tribunal]**