



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-98-33-T  
Date: 02 August 2001  
Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Almiro Rodrigues, Presiding  
Judge Fouad Riad  
Judge Patricia Wald

**Registrar:** Mr. Hans Holthuis

**PROSECUTOR**

v.

**RADISLAV KRSTIĆ**

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**JUDGEMENT**

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**The Office of the Prosecutor:**

Mr. Mark Harmon  
Mr. Peter McCloskey  
Mr. Andrew Cayley  
Ms. Magda Karagiannakis

**Counsel for the Accused:**

Mr. Nenad Petrušić  
Mr. Tomislav Višnjić

## CONTENTS

<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. FINDINGS OF FACT .....</b>	<b>3</b>
<b>A. THE TAKE-OVER OF SREBRENICA AND ITS AFTERMATH .....</b>	<b>3</b>
1. 1991-92: The Break-Up of the Former Yugoslavia.....	3
2. 1992-1993: Conflict in Srebrenica.....	4
3. April 1993: The Security Council Declares Srebrenica a “Safe Area” .....	6
4. Early 1995: The Situation in the Srebrenica “Safe Area” Deteriorates.....	9
5. Spring 1995: The Bosnian Serbs Plan To Attack the Srebrenica “Safe Area”.....	10
6. 6-11 July 1995: The Take-Over of Srebrenica .....	11
7. The Bosnian Muslim Civilians of Srebrenica.....	12
(a) The Crowd at Potočari.....	12
(i) The Humanitarian Crisis in Potočari: 11-13 July 1995 .....	13
(ii) 12-13 July: Crimes Committed in Potočari .....	13
(iii) 12-13 July 1995: The Transport of the Bosnian Muslim Women Children and Elderly from Potočari .....	15
(iv) The Separation of the Bosnian Muslim Men in Potočari.....	16
(b) The Column of Bosnian Muslim Men .....	18
8. The Execution of the Bosnian Muslim Men from Srebrenica.....	20
9. Forensic Evidence of the Executions.....	21
10. The Number of Men Executed by the Bosnian Serb Forces Following the Take-over of Srebrenica in July 1995 .....	25
11. A Plan to Execute the Bosnian Muslim Men of Srebrenica .....	27
12. Widespread Knowledge of the Crimes .....	28
13. The Impact of the Crimes on the Bosnian Muslim Community of Srebrenica .....	29
14. Conclusions.....	31
<b>B. THE ROLE OF THE DRINA CORPS IN THE SREBRENICA CRIMES .....</b>	<b>32</b>
1. Preliminary Matters .....	32
(a) Background to the Drina Corps.....	32
(b) Codes and Numbers Used by the Drina Corps in July 1995.....	33
(c) Reliability of Intercepted Communications .....	34
2. Krivaja 95 .....	39
(a) The Objective of Krivaja 95.....	39
(b) The Shelling of Srebrenica: Terrorisation of the Civilian Population .....	40
3. Involvement of Drina Corps Personnel in the Events at Potočari: 11-13 July 1995 .....	42
(a) Transport of the Bosnian Muslim Civilians out of Potočari .....	42
(i) Meeting at Hotel Fontana on 11 July 1995 at 2000 Hours .....	42
(ii) Meeting at the Hotel Fontana on 11 July 1995 at 2300 Hours .....	43
(iii) Meeting at the Hotel Fontana on 12 July 1995 at 1000 Hours.....	44
(iv) Organisation of the Buses .....	45
(v) The Presence of Drina Corps Officers in Potočari on 12 and 13 July 1995 .....	47
(vi) A Forced or Voluntary Movement?.....	48
(b) The Crimes Committed in Potočari on 12-13 July 1995 .....	50
(c) The Separation of the Men in Potočari.....	53
4. Involvement of the Drina Corps in Action against the Bosnian Muslim Column .....	56
(a) Combat against the Column .....	57
(b) Capture of Bosnian Muslim Men from the Column .....	59
(i) General Knowledge that Bosnian Muslim Men were Being Captured from the Column ..	59
(ii) 13 July 1995: Participation in the Capture of Prisoners along the Bratunac-Konjević Polje Road.....	60

(iii) 12-15 July 1995: Involvement with the Detention of Bosnian Muslim Prisoners in Bratunac.....	64
(iv) 13-16 July 1995: Zvornik Brigade Knowledge of Bosnian Muslim Prisoners detained in its Zone of Responsibility.....	67
(v) Capture of Prisoners during Drina Corps Sweep Operation in the Former Enclave .....	68
5. Involvement of the Drina Corps in the Mass Executions.....	69
(a) The Morning of 13 July 1995: Jadar River Executions.....	69
(b) The Afternoon of 13 July 1995: Čerska Valley Executions .....	71
(c) Late Afternoon of 13 July 1995: Kravica Warehouse.....	72
(d) 13-14 July 1995: Tišća.....	76
(e) 14 July 1995: Grbavci School Detention Site and Orahovac Execution site .....	77
(f) 14 - 15 July 1995: Petkovci School Detention Site and Petkovci Dam Execution Site .....	81
(g) 14 - 16 July 1995: Pilica School Detention Site and Branjevo Military Farm Execution Site .....	83
(h) 16 July 1995: Pilica Cultural Dom.....	87
(i) Kozluk.....	89
(j) Smaller Scale Executions following the Mass Executions .....	91
(k) The Reburials .....	92
6. The Chain of Command in Operation for the Drina Corps: July 1995 .....	93
(a) Parallel Chains of Command.....	93
(i) Did the VRS Main Staff exclude the Drina Corps Command from the Srebrenica Follow-up Operations? .....	94
(ii) Were the Security Organs Operating in Secret? .....	99
(iii) Conclusions .....	100
(b) Responsibility of the Drina Corps Command for the Actions of Non-Drina Corps Units Operating in the Drina Corps Area of Responsibility in July 1995.....	101
(i) The 10 <sup>th</sup> Sabotage Detachment .....	101
(ii) The 65 <sup>th</sup> Protection Regiment .....	103
(iii) The MUP .....	104
7. Conclusions about the Involvement of the Drina Corps in the Srebrenica Crimes .....	107
C. THE ROLE OF GENERAL KRSTIĆ IN THE SREBRENICA CRIMES.....	110
1. Background Information.....	110
2. Summary of the Defence Case .....	111
3. The Command Position Held by General Krstić Throughout the Relevant Period.....	115
(a) The Evidence.....	115
(b) Conclusions.....	122
4. The Role of General Krstić in Krivaja 95.....	123
5. 12-13 July 1995: The Role of General Krstić in the Removal of the Bosnian Muslim Women, Children and Elderly from Potočari .....	126
(a) Attendance at the Hotel Fontana Meetings .....	127
(b) Organisation of the buses .....	128
(c) Presence in Potočari .....	131
(i) 12 July 1995.....	131
(ii) 13 July 1995.....	134
(d) Efforts Made by General Krstić to Ensure the Safety of the Bosnian Muslim Civilians Transported out of Potočari .....	135
6. The Role of General Krstić in the Executions .....	136
(a) Evolution of the Plan to Execute the Military Aged Bosnian Muslim Men of Srebrenica..	136
(b) Separation and Mistreatment of the Bosnian Muslim Men in Potočari.....	137
(c) Separation of the Bosnian Muslim Men in Tišća .....	139
(d) The Bosnian Muslim Column and the Capture of Prisoners.....	140
(e) General Krstić's Involvement in the Executions.....	143
(i) General Krstić and Colonel Beara Discuss the Deployment of Troops to Assist in the Executions: 15 July 1995.....	144
(ii) The Recall of Colonel Pandurević and the Zvornik Brigade from Žepa: 15 July 1995 ..	148
(iii) Knowledge of Colonel Popović's Activities on 16 July 1995.....	153

(iv) Conversation Between General Krstić and “OA” about the Executions on 20 July 1995	156
(v) Contact Between General Krstić and Other Individuals Involved in the Executions	157
7. Other Evidence that General Krstić Remained Informed of Events Occurring in Srebrenica Before and After the VRS Military Take-Over on 11 July 1995	160
8. The Role of General Krstić in the Reburial and Cover-up Operations	161
9. The Response of General Krstić to the Executions	161
D. CONCLUSIONS	163
E. SUMMARY OF THE TRIAL CHAMBER’S KEY FACTUAL FINDINGS	164
(i) General Findings	164
(ii) Findings Relating to the Drina Corps	165
(iii) Findings Relating Specifically to General Krstić	169
<b>III. LEGAL FINDINGS</b>	<b>171</b>
A. INTRODUCTION	171
B. MURDERS	173
C. EXTERMINATION	174
1. Definition	174
2. Findings	179
D. MISTREATMENTS	179
1. Serious bodily or mental harm	179
2. Cruel and Inhumane Treatment	182
E. DEPORTATION OR FORCIBLE TRANSFER	183
1. General Considerations	183
2. Evaluation of the facts	184
(a) Lawfulness of the transfer	184
(b) The compulsory nature of the transfer	186
(c) The fact of the transfer within the borders of Bosnia-Herzegovina	186
F. PERSECUTIONS	187
G. GENOCIDE	188
1. Actus reus	190
2. Mens rea	190
(a) A group, as such	193
(b) Intent to destroy the group in whole or in part	199
(i) Intent to destroy	199
(ii) “In part”	204
H. CRIMINAL RESPONSIBILITY OF GENERAL KRSTIĆ	213
1. Introduction	213
2. The criminal responsibility of General Krstić for the crimes proved at trial	215
(a) General Krstić’s responsibility for the crimes committed at Potočari	215
(b) General Krstić’s criminal responsibility for the killing of the military-aged Muslim men from Srebrenica	219
(i) Participation in the genocidal joint criminal enterprise to kill the military-aged men	220
(ii) Participation in the other crimes constituted by the killings	229
(iii) Responsibility for the killings under Article 7(3)	229
(c) Conclusions on General Krstić’s criminal responsibility	231
I. CUMULATIVE CHARGING AND CONVICTIONS	232
1. Applicable Law	232
(a) Cumulative Charging	233
(b) Cumulative Convictions	233
(i) Submissions of the Parties	234
(ii) The Test Laid down by the Appeals Chamber in the Čelebići Case (« the Test »)	234
2. Application of the Test to the Concurrent Offences Specified in the Indictment	236
(a) The Concurrent Offences Characterising “the campaign of terror” in Potočari and the Subsequent Forcible Transfer of the Bosnian Muslim Civilians from 10 to 13 July 1995	236
(i) Relationship between Offences under Article 3 and Offences under Article 5	237

(ii) Relationship between Murder under Article 5 and Persecutions.....	238
(iii) Relationship between Persecutions (forcible transfer) and Other Inhumane Acts (forcible transfer).....	238
(iv) Conclusions.....	239
(b) The Concurrent Offences Characterising the Murders Committed Against the Bosnian Muslim Civilians from 13 to 19 July 1995 .....	239
(i) Relationship Between Offences under Article 3 (war crimes) and Article 4 (genocide) and between Article 3 (war crimes) and Article 5 (crimes against humanity) .....	239
(ii) Relationship Between Offences under Article 4 (genocide) and Article 5 (crimes against humanity) .....	240
3. Conclusions.....	242
<b>IV. SENTENCING .....</b>	<b>242</b>
A. THE APPLICABLE PROVISIONS.....	243
B. GENERAL SENTENCING PRINCIPLES .....	244
1. General Practice on Prison Sentences in the former Yugoslavia .....	244
2. Gravity of the Crime .....	245
3. Personal Situation of the Accused .....	247
(a) Aggravating Circumstances .....	247
(i) Criminal Participation.....	248
(ii) Premeditation and Motives of Crimes .....	249
(b) Mitigating Circumstances .....	249
(i) Mitigating Circumstances Concomitant with the Commission of the Crimes .....	250
(ii) Mitigating Circumstances Posterior to the Commission of the Crimes.....	250
C. DETERMINATION OF GENERAL KRSTIĆ'S SENTENCE .....	251
<b>V. DISPOSITION .....</b>	<b>255</b>

**ANNEXES LIST**

<b>ANNEX I</b>	<b>PROCEDURAL HISTORY</b>
<b>ANNEX II</b>	<b>SHORT CHRONOLOGY</b>
<b>ANNEX III</b>	<b>GLOSSARIES</b>
<b>ANNEX III-A</b>	<b>GLOSSARY- LEGAL CITATIONS</b>
<b>ANNEX III-B</b>	<b>GLOSSARY- MAIN ABBREVIATIONS</b>
<b>ANNEX IV</b>	<b>DOCUMENTS</b>
<b>ANNEX IV-A</b>	<b>MAP – EASTERN BOSNIA (TUZLA-SREBRENICA)</b>
<b>ANNEX IV-B</b>	<b>MAP – DRINA CORPS’ AREA OF RESPONSIBILITY</b>
<b>ANNEX IV-C</b>	<b>MAP – EXECUTION AND BURIAL SITES</b>
<b>ANNEX IV-D</b>	<b>CHART – VRS DRINA CORPS STRUCTURE</b>
<b>ANNEX IV-E</b>	<b>PHOTOGRAPH</b>

## ANNEX I – PROCEDURAL HISTORY

### A. The Tribunal

1. 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 (hereinafter “the Tribunal”) was established by the Security Council<sup>1</sup> pursuant to Chapter VII of the Charter of the United Nations, with jurisdiction over grave breaches of the 1949 Geneva Conventions, violations of the laws or customs of war, crimes against humanity and genocide.

### B. The Accused

2. General Krstić was indicted on 2 November 1998<sup>2</sup> for genocide, crimes against humanity and violations of the laws or customs of war, based on his alleged role in the events in and around the Bosnian Muslim enclave of Srebrenica between 11 July 1995 and 1 November 1995. A warrant of arrest,<sup>3</sup> ordering the transfer of the accused to the Tribunal, was sent to the Federation of Bosnia-Herzegovina. He was arrested on 2 December 1998 by members of the Stabilisation Force (“SFOR”) and transferred to the Detention Unit of the Tribunal on 3 December 1998. He has been detained there ever since.

3. General Krstić was a Lieutenant Colonel in the Yugoslav People’s Army (“JNA”) before the armed conflict erupted in Bosnia and Herzegovina in 1992. After that, General Krstić served as a commander of the 2<sup>nd</sup> Romanija Motorised Brigade, which was first a component of the Sarajevo-Romanija Corps, and became part of the Drina Corps in November 1992. He continued to serve as the Commander of the brigade until September 1994. From this date, until he became Commander of the Drina Corps, he served as Chief of Staff/Deputy Commander of the Bosnian Serb Army (“VRS”) Drina Corps. In June 1995, General Krstić was promoted to the rank of General-Major and, in January 1998, to the rank of Lieutenant Colonel-General.

### C. The Indictment

4. General Krstić is charged with committing genocide (count 1) and, alternatively, complicity to commit genocide (count 2). He is further charged with extermination (count 3), a crime against humanity; murder (counts 4-5), a crime against humanity and a violation of the laws or customs of

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<sup>1</sup> Resolution 827 (1993) adopted by the Security Council on 25 May 1993.

<sup>2</sup> The Indictment was confirmed by Judge Florence Mumba.

<sup>3</sup> 2 November 1998.

war; persecutions (count 6), a crime against humanity, for murders, cruel and inhuman treatment, the terrorising of Bosnian Muslim civilians, the destruction of personal property and the deportation or forcible transfer of Bosnian Muslims; deportation (count 7), a crime against humanity or, alternatively, inhumane acts/forcible transfer (count 8), a crime against humanity. General Krstić is charged with these crimes under Article 7(1) and Article 7(3). At his initial appearance, on 7 December 1998, he pleaded “not guilty” to each of the counts in the Indictment against him.

5. Subsequent to several motions filed by the parties,<sup>4</sup> the Trial Chamber, in view of the offences ascribed to the accused and the type of responsibility alleged by the Prosecution, ordered the latter to state more precisely the accused’s command functions at the time of the events covered in the Indictment, the manner in which he was able to carry them out and the chain of command in which he exercised his authority.<sup>5</sup>

6. A redacted version of the Indictment was filed on 9 June 1999. On 27 October 1999, the Prosecution filed the final amended Indictment, which contained the additional charges of deportation, a crime against humanity, or, in the alternative, inhumane acts (forcible transfer), a crime against humanity. On 25 November 1999, the accused entered a plea of “not guilty” to the new count.

7. On 28 January 2000, following further motions filed by the parties,<sup>6</sup> in which the accused continued to challenge the form of the Indictment, the Trial Chamber held that Rule 72(A)(ii) was not an appropriate way of challenging the evidence and that the proof of facts alleged was a matter for trial.<sup>7</sup> The accused also objected that the acts underlying counts 7-8 (deportation/forcible transfer) were identical with those underlying count 6 (persecution). The Trial Chamber held that the question of cumulative charges should be considered at the end of the trial, because it would be difficult to analyse any overlap in charges before all the evidence was heard. The parties were advised to address the issue of cumulative charging “on all relevant charges in their pre-trial briefs”.<sup>8</sup>

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<sup>4</sup> Motion for Leave to File Redacted Indictment and for Non-Disclosure of Part of Supporting Materials, 7 December 1998; Preliminary Motion on the Form of the Indictment, 1 March 1999; Response to Preliminary Motion on the Form of the Indictment, 31 March 1999; Memorandum filed Pursuant to the Trial Chamber’s 6 May Decision on the Defence Preliminary Motion on the Form of the Indictment, 7 June 1999; Preliminary Motion of the Defence on the Form of the Indictment, 6 July 1999; Response to the Second Preliminary Motion on the Form of the Indictment, 2 August 1999.

<sup>5</sup> Decision on the Defence Preliminary Motion on the Form of the Indictment, 6 May 1999.

<sup>6</sup> Preliminary Motion on the Form of the Amended Indictment, Counts 7-8, 28 December 1999; Prosecution’s Reply to Preliminary Motion on the Form of the Amended Indictment, Counts 7-8, 18 January 2000.

<sup>7</sup> Decision on Defence Preliminary Motion on the Form of the Amended Indictment, Count 7-8, 28 January 2000.

<sup>8</sup> This was reinforced by an oral order, on 10 February 2000.



#### **D. The main stages of the proceedings**

8. On 24 November 1999, pursuant to Article 14 of the Statute and Rule 27 of the Rules, the President of the Tribunal assigned Trial Chamber I, consisting of Judge Almiro Rodrigues, Presiding, Judge Fouad Riad and Judge Patricia Wald, to hear the case.<sup>9</sup>

9. The Registrar permanently assigned Mr. Petrušić<sup>10</sup> as Defence counsel on 13 April 1999 and Mr. Visnjić as co-counsel on 9 February 2000.<sup>11</sup>

10. At the pre-trial conference, on 7 March 2000, the Prosecution submitted a brief identifying areas of agreement and disagreement on matters of law and fact, in accordance with Rule 65 *ter*(E)(iii).<sup>12</sup> On 14 April 2000, the Defence was ordered by an oral decision of the Trial Chamber to identify matters of agreed facts and law, in accordance with Rule 65 *ter*(F)(ii). The Defence reasserted the submissions made in its Pre-Trial Brief, namely that General Krstić was neither involved in the evacuation of the civilian population nor had any knowledge of the alleged massacres which occurred in the period covered by the indictment.<sup>13</sup>

11. The Prosecution case commenced on 13 March 2000 and concluded on 28 July 2000. The Defence case commenced on 16 October 2000 and concluded on 13 December 2000. The Prosecution case in rebuttal commenced on 19 March 2001 and concluded on 23 March 2001. The Defence case in rejoinder commenced on 2 April 2001 and concluded on 4 April 2001. Subsequent to a Motion to re-open submitted by the Prosecution,<sup>14</sup> the case was re-opened and additional hearings were held on 5 June 2001.

#### **E. Orders for the production of documents**

12. On 24 February 1999, the Prosecution made a request to the Trial Chamber, pursuant to Article 29<sup>15</sup> of the Statute and Rules 39 and 54 of the Rules of Procedure and Evidence, for assistance in obtaining documents. The Prosecution claimed that the requested documents were instrumental in identifying who was the commander of the Drina Corps in the period covered by the Indictment and would thus help in the determination of the application of Article 7(1) or 7(3) to the

<sup>9</sup> Order of the President Assigning Judges to a Trial Chamber, 24 November 1999.

<sup>10</sup> Mr. Petrušić was provisionally assigned as Counsel on 8 December 1998, 7 January 1999 and 6 February 1999, pursuant to Article 11 (B) of the Directive on Assignment of Defence Counsel (hereinafter "the Directive").

<sup>11</sup> Pursuant to Rule 45 of the Rules of Procedure and Evidence (hereinafter "the Rules"), and the Directive.

<sup>12</sup> Prosecution's Submission of Agreed Matters of Law Presented During the Pre-Trial Conference of 7 March 2000, 8 March 2000. This Rule was subsequently amended on 12 April 2001, the same procedure now covered under Rule 65 *ter*(E)(i).

<sup>13</sup> Submission of the Defence in Accordance with the Oral Order of the Trial Chamber on 14 April 2000, 24 May 2000.

<sup>14</sup> Motion to Re-open the Prosecutor's Case for the Purpose of Introducing Fresh Evidence", 24 April 2001.

<sup>15</sup> Article 29 of the Statute entitled "Co-operation and judicial assistance" states *inter alia* that "States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including but not limited to [...] the production of evidence [and] the service of documents".

accused. On 12 March 1999, the Trial Chamber granted the Prosecution's request with respect to two of the requested documents but declined to issue a binding order for the other documents, on the ground that the Prosecution did not give the requested entity sufficient time for compliance and that a general indication of contents was lacking for three of them.<sup>16</sup> On 15 June 1999, the Prosecution submitted another request for issuance of a binding order with respect to the documents for which a binding order was previously denied. The Trial Chamber granted the Request on 13 August 1999.

13. On 29 September 2000, the Defence requested that the Trial Chamber issue a binding order for the production of documents. It submitted that the requested documents could help determine the activities of the BiH Army within and around the surrounding "safe areas" of Srebrenica, Žepa and Goražde. On 5 October 2000, the Trial Chamber, pursuant to Article 29 of the Statute and Rules 54 and 54 *bis* of the Rules, granted the order.

#### **F. Issues relating to the appearance and protection of victims and witnesses**

##### **1. Matters dealing with witnesses for the Prosecution and the Defence**

14. Several motions were filed by the Prosecution, pursuant to Articles 20 and 22 and Rules 54, 69, 73 and 75, for the protection of victims and witnesses and for the protection of other confidential material.<sup>17</sup> On 31 March 1999, pursuant to the order of the Trial Chamber, issued at the status conference on 10 February 1999, the Prosecution submitted a report of a special mission to Bosnia and Herzegovina which investigated the security needs of Bosnian witnesses.<sup>18</sup>

15. On 7 March 2000, pursuant to Rule 65 *ter* (E)(iv) and following an oral order of the Trial Chamber at the Pre-Trial Conference,<sup>19</sup> the Prosecution submitted an amended witness list. The Prosecution stated that, following agreement by the Defence to accept specific expert reports which had been filed pursuant to Rule 94 *bis* (A), some expert witnesses were no longer required to testify.

16. On 23 May 2000, the Prosecution filed a motion seeking leave to add a witness to its list of witnesses. It claimed that the witness testimony had only recently become known to the Prosecution. The witness could provide unique information about the VRS military units involved in the events alleged in the Indictment. The Trial Chamber ruled, pursuant to Rules 54, 65 *ter* and

<sup>16</sup> On 29 October 1997, the Appeals Chamber specified the four criteria with which any binding order for the production of documents must comply, namely: 1) identify specific documents and not broad categories; 2) set out the relevance of such documents to the trial; 3) not be unduly onerous; 4) give the State sufficient time for compliance; Judgement on the Request of the republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, IT-95-14-AR108 *bis*, 29 October 1997.

<sup>17</sup> Motion for Protective Measures, 18 December 1998; Prosecutor's Further Submission Concerning Motion for Protective Measures, 04 January 1999;

<sup>18</sup> Prosecution's Report on Mission to Bosnia and Herzegovina to Clarify Security Needs of Bosnian Witnesses.

73 bis, that it would be in the interest of justice to hear the witness and granted the Prosecution leave to modify its witness list.<sup>20</sup>

17. At the Status Conference of 14 April 2000, the Trial Chamber requested that the Prosecution review the proposed victim impact testimony as the Trial Chamber had already heard testimony on this subject from previous Prosecution witnesses. On 20 July 2000, the Prosecution filed a revised list<sup>21</sup> containing formal statements corroborating witness testimony of the impact that the crimes perpetrated by the VRS had on the lives of survivors from the Srebrenica community.

18. On 29 September 2000, *per* Rule 54 of the Rules, the Defence for General Krstić filed several Motions for the safe conduct of Defence witnesses, which were granted.<sup>22</sup>

19. On 9 March 2000, the Prosecution requested a witness summon, which was granted on 14 March 2000.<sup>23</sup> On 27 November 2000, the Prosecution filed another request<sup>24</sup> for the issuance of a *subpoena ad testificandum* and an order for safe conduct for a witness to appear as a rebuttal witness.<sup>25</sup> The subpoena and safe conduct were granted on 5 December 2000.<sup>26</sup> In view of the adjournment of the trial due to the medical condition of the accused, the Prosecution requested the re-issuance of a summons to appear and an order for safe conduct for the same witness on 13 February 2001. The request was granted on 21 February 2001.<sup>27</sup> On 20 March 2001, a military medical certificate was filed with the Trial Chamber, confirming that the summoned witness had been hospitalised and was therefore unable to appear as witness. On 22 March 2001, the Trial Chamber orally ruled that the Prosecution would be allowed to call the investigator who would testify as to the statements made by this witness in his presence.<sup>28</sup>

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<sup>19</sup> 6 March 2000.

<sup>20</sup> Decision on Prosecution Motion to Modify its Witness List, 14 June 2000.

<sup>21</sup> Prosecutor's Rule 94 *ter* Filing, 20 July 2000.

<sup>22</sup> Defence Motion for the Safe Conduct for Defence Witness, 29 September 2000, granted on 9 October 2000; Second Defence Motion for the Safe Conduct for Defence Witness, 6 October 2000, granted on 11 October 2000; Third Defence Motion for the Safe Conduct for Defence Witnesses, 6 October 2000, granted on 11 October; Fourth Defence Motion for the Safe Conduct for Defence Witness, 6 October 2000, granted on 11 October 2000; Fifth Defence Motion for the Safe Conduct for Defence Witness, 12 October 2000, granted on 25 October 2000; Sixth Defence Motion for the Safe Conduct for Defence Witness, 19 October 2000, granted on 25 October 2000; Seventh Defence Motion for the Safe Conduct for Defence Witness, 19 October 2000, granted on 25 October 2000; Defence Motion for the Safe Conduct for Defence Witness, 19 March 2001; Second Defence Motion for the Safe Conduct for Defence Witnesses, 19 March 2001.

<sup>23</sup> Witness Summons, 14 March 2000.

<sup>24</sup> Prosecutor's Request for the Issuance of a *Subpoena Ad Testificandum* and an order for Safe Conduct, 27 November 2000.

<sup>25</sup> Prosecution's rebuttal case commenced on 19 March 2001.

<sup>26</sup> Witness Summons, *ex parte*, 5 December 2000. See also the Order for the Safe Conduct for a Prosecution Witness, 5 December 2000.

<sup>27</sup> Order again Summoning a Witness to Appear, under seal, *ex parte*, 21 February 2001.

<sup>28</sup> T. 8913, 22 March 2001.

## 2. Interview and Testimony of the accused

20. On 28 July 2000, the Trial Chamber ordered that a visual recording of the interview granted by the accused to the Prosecution investigators on 18 and 19 February 2000 ("the Interview") be made public on 4 August 2000.

21. On 16 October 2000, General Krstić took the stand to testify on his own behalf. He testified from 16 to 25 October and was cross-examined from 25 October to 2 November 2000.

## 3. Special testimony via video-conference link

22. On 5 January 2001, the Prosecution requested that the testimony of a witness be received via video-conference link,<sup>29</sup> pursuant to Rule 71 *bis*. The video-link testimony was heard on 23 March 2001.<sup>30</sup>

## 4. The summoning of Trial Chamber witnesses pursuant to Rule 98 of the Rules

23. In order to facilitate its deliberations, the Trial Chamber decided to summon witnesses to provide the Trial Chamber with more specific information as to the presence and role of the 28<sup>th</sup> Division of the BiH Army before, during and after the attack upon Srebrenica by the Bosnian Serb forces in July 1995 and also with respect to the column of Bosnian Muslim men seeking to leave the Srebrenica enclave at the time of the attack. On 12 December 2000, the Trial Chamber ordered *proprio motu* the appearance, pursuant to Rule 98 of the Rules,<sup>31</sup> of General Sefer Halilović and General Enver Hadzihasanović, as Chamber witnesses.

24. On 20 March 2001, the Defence submitted a motion<sup>32</sup> requesting that the Trial Chamber consider calling three additional witnesses pursuant to Rule 98. The Trial Chamber dismissed the motion on the basis that it is up to the Trial Chamber to decide which witnesses to call in accordance with the provisions of this Rule and that the Trial Chamber was satisfied that the witnesses summoned by the Chamber could provide the information it needed.<sup>33</sup>

25. On 27 March, the Defence, on the basis of the principle of equality of arms, requested that all prior statements and documents produced or annotated by the witnesses to be called by the Trial Chamber and which were transmitted by the Prosecution to the Trial Chamber be disclosed to the

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<sup>29</sup> Motion of the Prosecutor to Receive Testimony Via Video-Conference Link Pursuant to Rule 71 *bis*, 05 January 2001.

<sup>30</sup> Addendum to Motion of the Prosecutor to Receive Testimony Via Video-Conference Pursuant to Rule 71 *bis*, 13 February 2001.

<sup>31</sup> Order for a Witness to Appear, 12 December 2000; Further Order for a Witness to Appear, 15 December 2000. Due to the adjournment of the trial, these witnesses were heard during the week of 2-6 April 2001.

<sup>32</sup> Motion for Calling of Additional Witnesses, confidential, 20 March 2001.

<sup>33</sup> T. 9102, 23 March 2001.

Defence as well.<sup>34</sup> The Prosecution objected to the motion, arguing that it was under no obligation, under the Rules, to disclose the requested documents to the Defence and that such disclosure could jeopardise ongoing investigations.<sup>35</sup> The parties eventually reached an agreement and allowed each other access to their documents.<sup>36</sup>

### **G. Issues related to the length of the proceedings**

26. In addition to the specific schedule adopted by the Trial Chamber, according to which two cases were heard simultaneously, the proceedings against General Krstić incurred delays due to the following two main factors.

#### **1. Medical condition of the accused**

27. On 14 December 1994, the accused suffered a landmine-blast injury on the right foot and lower leg and underwent amputation as a result. Throughout the course of this trial, General Krstić underwent various medical examinations relating to his condition, to ensure that he was fit to attend trial.

28. On 24 June 1999, after a recommendation by the United Nations Detention Unit (“UNUD”) Chief of the Medical Service, the Trial Chamber authorised the accused to be taken to Bronovo Hospital for a medical examination.<sup>37</sup>

29. On 9 January 2001, the Defence requested<sup>38</sup> an adjournment of the trial due to the deteriorating medical condition of the accused. On 15 January 2001, the Trial Chamber decided to adjourn the trial in order for the accused to undergo leg surgery.<sup>39</sup>

30. On 25 January 2001, the Defence for General Krstić filed a Request for Provisional Release, pursuant to Rule 65 of the Rules. It stated that General Krstić would have to undergo surgery on his leg and that such surgery would be better carried out either in the Republika Srpska or in the Federal Republic of Yugoslavia, where problems of communication between the accused and his doctors, due to language difficulties, would not arise. After having heard the parties, the Trial Chamber orally rejected the request, because neither the authorities of Republika Srpska nor the Federal Republic of Yugoslavia had provided any guarantees to the Trial Chamber that the accused would reappear in court, but indicated that Yugoslav doctors would be present at the operation in

<sup>34</sup> Motion for Disclosure of Witness Materials, 27 March 2001, para. 1.

<sup>35</sup> Prosecution Reply to Motion for Disclosure of Witness Materials, 30 March 2001.

<sup>36</sup> T. 9431.

<sup>37</sup> Order Requesting the Assistance of the Host Country in Respect of Provisional Custody of an Accused, confidential, *ex parte*, 24 June 1999.

<sup>38</sup> Defence Motion for the Adjournment of the Trial Session, 09 January 2001.

<sup>39</sup> Decision Adjourning the Trial, 15 January 2001.

The Hague and available for consultation by the accused after the operation.<sup>40</sup> The trial resumed on 19 March 2001.

2. Issues relating to Admission of Evidence in Rebuttal and Motions to Re-Open the Case

31. Throughout the proceedings, the parties submitted motions with respect to both the disclosure obligations of the parties and the admissibility of evidence. The most important issues of disclosure and admission arose during the rebuttal and rejoinder phases of the proceedings.

32. On 26 February 2001, the Defence submitted two motions<sup>41</sup> with respect to four radio intercepted conversations (“the intercepts”) attributed to the accused that were submitted by the Prosecution. In one of them, dated 2 August 1995, the accused, referring to Bosnian Muslim men, was alleged to utter “kill them all”.

33. The first motion sought the disclosure of all reports, tapes and other information in the possession of the Prosecution that were related to this 2 August 1995 conversation,<sup>42</sup> on the ground that they might contain exculpatory evidence. The Trial Chamber noted that the Prosecution had disclosed to the Defence a series of documents showing that no Muslims had been killed as a result of General Krstić’s alleged statements on 2 August 1995. Although the Defence initially persisted with regard to the statements of two witnesses, Witnesses DB and Obrenović, the Prosecution assured the Defence that these two witnesses were not questioned, during their interview with the Prosecution, in connection with the critical intercepts of 2 August 1995. Thereafter the Defence withdrew its motion.<sup>43</sup>

34. The second motion objected to the admission of the four intercepts on two grounds. First, it argued that the intercepts were “statements of the accused”, within the meaning of Rule 66(A)(i), and should have been disclosed to the Defence as required by that Rule. The Defence argued that the prejudice caused by failure to disclose could only be repaired by excluding the evidence. Second, the Defence contended that these intercepts should have been presented during the case-in-chief and were inadmissible in rebuttal.

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<sup>40</sup> T. 8612, 26 January 2001.

<sup>41</sup> Motion to Exclude Alleged Statements of the Accused, 26 February 2001; Motion for Disclosure of Exculpatory Information, 26 February 2001.

<sup>42</sup> Motion for Disclosure of Exculpatory Information, para. 16, 26 February 2001.

<sup>43</sup> T. 8618.

35. The Prosecution countered that the Defence had not invoked reciprocal discovery under Rule 66(B) at any stage of the proceedings and that, in addition, such materials were not exculpatory within the meaning of Rule 68.<sup>44</sup>

36. On 19 March 2001, the Trial Chamber, having considered the Prosecution's Response<sup>45</sup> and the Defence's Reply,<sup>46</sup> orally observed that the intercepts were not "statements of the accused" within the meaning of Rule 66(A)(i) but qualified as "documents" within the meaning of Rule 66(B). The Trial Chamber emphasised that, under Rule 66(B), the Prosecution is not bound to disclose all the material gathered as evidence, unless the Defence uses the procedure of "reciprocal disclosure" as provided by Rule 67.<sup>47</sup> The Trial Chamber rejected the first ground of objection based on the status of the intercepted statement as subject to disclosure under the Rules. As to the second ground, the Trial Chamber observed that the Defence had known of the Prosecution's intentions to introduce the documents in time to prepare its cross-examination on the rebuttal evidence. The Trial Chamber further observed that the documents at issue went to the merits of the case and to the credibility of the accused and, hence, were relevant to the case. The Trial Chamber rejected<sup>48</sup> the Defence motion objecting to their admissibility at that time, leaving the decision on admissibility to the close of rebuttal and rejoinder submissions, when the parties would have the opportunity to submit further arguments.

37. Several motions were submitted seeking the exclusion of evidence tendered during the rebuttal case of the Prosecution, in addition to the four intercepts previously mentioned.<sup>49</sup> According to the Defence, those additional exhibits should have been introduced either during the Prosecution's case-in-chief or, if constituting fresh evidence, submitted for admission through a motion to re-open the case.

38. On 25 April 2001, the Trial Chamber, after considering the extensive arguments submitted by both the Prosecution and the Defence, rendered a confidential decision with respect to the admissibility of this disputed evidence in rebuttal.<sup>50</sup> A redacted decision thereof was published on 4

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<sup>44</sup> See notably the Prosecution Reply to motion for Disclosure of Exculpatory Information Pursuant to Rule 68, 14 March 2001.

<sup>45</sup> The Prosecution Reply to Motion to Exclude Alleged Statements of the Accused Pursuant to Rule 66, 14 March 2001 (the "Prosecution Response").

<sup>46</sup> Defence's Reply Re: Motion to Exclude Alleged Statements of the Accused, 16 March 2001 (the "Defence's Reply").

<sup>47</sup> T. 8616, 19 March 2001.

<sup>48</sup> T. 8617.

<sup>49</sup> Motion to Exclude the Testimony of Rebuttal Witness Mr. Richard Butler, 28 March 2001; Prosecution Reply to Defence Motion to Exclude Testimony of Rebuttal Witness Mr. Richard Butler, 30 March 2001, confidential; Motion for Rescheduling Order, 28 March 2001; Prosecution Reply to Defence Motion for Rescheduling Order, 30 March 2001; Decision on the Testimony of Witness Richard Butler, 30 March 2001; Motion for Continuance, 5 April 2001; Defence Objections to Rebuttal/Rejoinder Exhibits, 11 April 2001.

<sup>50</sup> Decision on the Defence Motions to Exclude Exhibits in Rebuttal and Motion for Continuance, confidential, 25 April 2001; Decision on the Defence Motions to Exclude Exhibits in Rebuttal and Motion for Continuance, 4 May 2001 (the "Decision").

May 2001. The Trial Chamber assessed whether the evidence introduced met the two prong test set out by the Appeals Chamber in *Čelebići* for admission in rebuttal, namely, whether it was evidence relating to issues arising directly out of defence evidence and whether, if it was, the need for it could nevertheless reasonably have been anticipated in the case-in-chief.<sup>51</sup> As for fresh evidence introduced in rebuttal, the Trial Chamber found that certain pieces of evidence presented at this late stage of the proceedings were admissible in rebuttal on the ground that they were significant to the case, did rebut aspects of the Defence case and were not available during the examination-in-chief.

39. The first disputed exhibit was the intercept that allegedly took place between the accused and Major Obrenović on 2 August 1995, whereby the accused, referring to Bosnian Muslim men, is alleged to have said “Kill them all”. The Defence submitted that this intercept went to the core of the case as it could potentially be used as proof of the accused’s *mens rea* “which is a required element for the crimes of genocide, crimes against humanity, and violation of the laws and customs of war charged in the Amended Indictment”.<sup>52</sup> The Defence further argued that the issue with which this intercept was concerned was raised for the first time during the cross-examination of General Krstić by the Prosecution and could thus not be regarded as arising directly out of the Defence case.<sup>53</sup>

40. The Prosecution countered that the intercept was not a fundamental part of the case. It explained that the Amended Indictment differentiated between the widespread and systematic killings, which occurred between 11 and 18 July 1995, and the “opportunistic” killings, which took place thereafter until 1 November 1995. The mass executions were at the heart of the case and they took place prior to the occurrence of this intercepted conversation of 2 August 1995. According to the Prosecution, this particular intercept clearly showed “General Krstić’s continued personal involvement in the killings of Muslims” and, by using a pejorative term, “Turks”, the accused’s attitude towards the Muslims.<sup>54</sup> The Prosecution further claimed that the points raised by the intercept could not have been explored before the cross-examination of the accused, because the Prosecution could not have predicted what the accused’s response to the intercept would be. It further submitted that the test of “reasonable foreseeability” should not be interpreted to mean that the Prosecution is required to “anticipate [...] every possible answer that the Defendant might give to every question put to him in cross-examination”.<sup>55</sup> Consequently, the Prosecution argued it could not have reasonably foreseen that the accused would have denied that the conversation took place and thus questioned the authenticity of the intercept.

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<sup>51</sup> *Čelebići* Appeal, para. 273.

<sup>52</sup> Defence’s Reply Re: Motion to Exclude Alleged Statements of the Accused (“Defence Reply”), para. 10, 16 March 2001.

<sup>53</sup> Defence Reply, para. 14.

<sup>54</sup> The Prosecution Response, para. 21.

<sup>55</sup> The Prosecution Response, para. 41.



41. The Trial Chamber rejected the Prosecution's arguments and found that this intercept touched upon a fundamental part of the Prosecution's case in light of the fact that the accused was charged with special intent crimes, especially genocide and persecution.<sup>56</sup> The Trial Chamber also observed that the evidence, which the intercept intended to rebut arose out of a question asked during cross-examination by the Prosecution which was intentionally phrased so broadly as to encompass the entire case against the accused. Furthermore, the Prosecution appeared to have made a tactical decision to use it during cross-examination rather than in the case-in-chief. The Trial Chamber found that the admission of such an explosive intercept would inevitably be viewed as going to the heart of the case, the accused's *mens rea*, despite the fact that its probative value was openly doubted by several Prosecution witnesses.<sup>57</sup> The Trial Chamber hence ruled that the exhibits and the testimony related to this intercepted conversation were not admissible.

42. Two additional intercepts, dated 2 August 1995, were said to involve the accused and Lieutenant Colonel Popović. In one such intercept, the accused allegedly asked Lieutenant Colonel Popović to bring Bosnian Muslims who fled to Serbia back to Eastern Bosnia. On the other intercept, the term "parcels" was used, in reference to Bosnian Muslim prisoners. General Krstić denied having had any contact with Colonel Popović in August 1995 during his testimony.

43. Four additional intercepted conversations were submitted by the Prosecution to provide context and meaning to the intercepts of 2 August between the accused, Lieutenant Colonel Popović and Major Obrenović ("the Background intercepts"). One, allegedly involving the accused and someone with the name of Mandzuka, referred to the fact that about 2000 Bosnian Muslims escaped to Serbia. Three other conversations, allegedly involving Colonel Beara and someone named Jevdić or Stevo, also made reference to Bosnian Muslim men who fled to Serbia and to attempts by the VRS to bring them back to Bosnia.

44. At issue, were also a series of exhibits, particularly notebooks, and the evidence of several witnesses who testified in relation to the reliability of these intercepted conversations.

45. The Defence objected to the introduction of this evidence on the ground that it constituted fresh evidence, because the Prosecution did not acquire the documents concerned until October and November 2000, by which time it had completed its case-in-chief. The Defence thus argued that the admission of these intercepts should have been sought through a motion to re-open the case.

46. Regarding the two intercepts that were said to involve the accused and Lieutenant Colonel Popović, the Trial Chamber held that they constituted fresh evidence, as the Prosecution had no

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<sup>56</sup> Decision, para. 22.

<sup>57</sup> Decision, para. 26.

possession of such documents during its case-in-chief. The Trial Chamber, however, found that this evidence directly rebutted evidence introduced by the Defence and that the Prosecution could not have reasonably anticipated that General Krstić would deny having had any contact with Colonel Popović. The Trial Chamber thus found that the two intercepts constituted fresh evidence admissible in rebuttal.<sup>58</sup>

47. The Trial Chamber, however, excluded the Background Intercepts on the ground that no independent basis existed for their admission and that the intercepts with Colonel Popović were sufficiently clear without reference to any other evidence.<sup>59</sup>

48. Further exhibits and testimony were tendered into evidence to authenticate the intercepts. The Trial Chamber excluded the exhibits tendered to authenticate the intercepts that were not admitted. The Trial Chamber however acknowledged that the Defence challenged the reliability of the intercepts tendered by the Prosecution throughout the course of the trial. It thus found that the Prosecution was entitled to adduce additional evidence in rebuttal to prove that the intercepts were a reliable source of information, provided that the evidence so adduced related to the reliability of the intercepts generally. The testimony of Witness Frease was admitted on this basis.

49. The Defence also raised objections with regard to the admission during rebuttal of the testimony of Witness II. This witness testified as to the date when General Krstić was appointed commander of the Drina Corps, which is a critical aspect to the case. The Trial Chamber accepted that the Prosecution, despite the exercise of due diligence, was unable to obtain the witness' statement during its case-in-chief. The Trial Chamber further concluded that the Defence would not suffer any prejudice from the late admission of such evidence hence admitting the testimony of Witness II as fresh evidence in rebuttal. The Trial Chamber further admitted two exhibits, one video still and two video clips, tendered into evidence in the context of Witness II's testimony.

50. The Defence further objected to the testimony of the investigator who interviewed a protected individual ("Witness OA"), on the grounds of hearsay. The investigator was to testify as to the information which arose in the course of Witness A's interviews with the Prosecution,<sup>60</sup> namely, the fact that General Krstić was appointed commander on 13 July 1995. Witness A was supposed to testify in person but was unable to for medical reasons and the Prosecution called the investigator. In light of the fact that the investigator was not actually present during the first of the two interviews with Witness OA, the Trial Chamber found the first statement inadmissible hearsay

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<sup>58</sup> Decision, para. 39.

<sup>59</sup> Decision, para. 39.

<sup>60</sup> The Prosecution interviewed Witness A twice.

evidence as the Defence could not properly cross-examine the investigator on the issues raised.<sup>61</sup> As for the second statement, the Trial Chamber was satisfied that this statement was meant to be used in corroboration of Witness II's testimony on the issue of when General Krstić became Commander of the Drina Corps. It credited the Prosecution's claim that Witness OA's statement could not be adduced separately without being corroborated by another witness and recognised that Witness II's testimony constituted a new element which the Prosecution could not have anticipated and that justified admission of the statement at this stage of the trial.<sup>62</sup> Hence, the Trial Chamber held that the statement and testimony of the investigator, in relation to the second interview, were fresh evidence admissible in rebuttal.<sup>63</sup>

51. Objections were also raised by the Defence with regard to the admission of an "Operational Directive" signed by General Mladić in November 1992, which expressed an intent to expel the Muslim population from Žepa. The Prosecution submitted that it intended to use the directive to rebut the testimony of the defence military expert, General Radovan Radinović, who stated that the objectives of the VRS in 1992 and 1993 were purely defensive.<sup>64</sup> The Defence argued that a document dated 1992 could not be used to rebut a statement describing the situation in 1995 and that to include the events of 1992 would constitute an extension of the subject matter of the case which primarily dealt with events in 1995 and would in turn require an extension of time for them to prepare an adequate defence.<sup>65</sup>

52. The Trial Chamber held that such evidence, which indicates the Serb strategic objectives as of 1992, is an important part of a case that includes charges of genocide, persecution and deportation and should have been adduced during the case-in-chief. The Prosecution could not reasonably claim that the expert witness's statements with regard to the VRS defensive objectives constituted evidence that could not be reasonably anticipated. The Trial Chamber further found that to admit such evidence as rebuttal would deviate from the purpose underlying the rule on admission of evidence in rebuttal. In addition, the document at issue does not qualify as fresh evidence as the Prosecution had been in possession of the "Operational Directive" since 1998 and it should thus have prioritised its translation. That evidence was therefore not admitted.<sup>66</sup>

53. Objections were also raised with regard to a daily combat report and an intelligence report of 12 July 1995 as well as a map, which were introduced to rebut the accused's testimony that he

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<sup>61</sup> Decision para. 55.

<sup>62</sup> Decision, para. 58.

<sup>63</sup> *Id.*, para. 59.

<sup>64</sup> T. 9050, 23 March 2001.

<sup>65</sup> Motion for Continuance, 5 April 2001, para. 12.

<sup>66</sup> Decision, para. 66.

did not know Muslim prisoners were being captured by the VRS on 12 July.<sup>67</sup> The Trial Chamber found that the intelligence report specifically rebutted the accused's response to a question asked by a Judge during the Defence case. It therefore admitted the intelligence report, on the ground that the Prosecution could not be expected to anticipate the Judge's questions. The Trial Chamber excluded the daily combat report and the map on the ground that it was evidence that related to the responsibility of the accused for acts committed by his subordinates and should have been tendered into evidence during the case-in-chief.<sup>68</sup>

54. The Prosecution also tendered a copy of a notebook and excerpt thereof for the purpose of authenticating an intercepted conversation that had allegedly taken place on 13 July 1995 between General Krstić and Colonel Borovčanin. During his testimony, General Krstić denied this conversation took place. The Defence objected on the ground that it was improper rebuttal evidence. The Trial Chamber observed that this intercepted conversation had already been admitted into evidence as an exhibit during the case-in-chief, demonstrating that its authenticity was not in dispute. The Trial Chamber thus held that it was unnecessary to admit the notebook material relating to the intercept as fresh evidence.<sup>69</sup>

55. The Prosecution filed a motion to re-open the case on 15 March 2001 in order to admit four expert reports on exhumations that were completed in August 2000.<sup>70</sup> The Defence objected to their admission, arguing that the Prosecution had not met its burden of showing reasonable diligence in obtaining the evidence.<sup>71</sup> The Prosecution countered that its submissions met the two prong test set out by the Appeals Chamber. It stated that the Prosecution had been diligently conducting exhumations in Bosnia and Herzegovina in relation to the Srebrenica case since 1996. The four expert reports and the accompanied summary report were produced at the close of exhumations at the end of the year 2000, and the Prosecution contended that the delay resulted from the fact that the experts needed time to reach their findings. The Prosecution further submitted that the reports had significant probative value.<sup>72</sup>

56. The Trial Chamber admitted the four expert reports concerning exhumations submitted by the Prosecution and allowed the Defence to submit into evidence an expert report in response.<sup>73</sup>

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<sup>67</sup> See also Motion to Exclude the Testimony of Rebuttal Witness Mr. Richard Butler, 28 March 2001; Prosecution Reply to Defence Motion to Exclude Testimony of Rebuttal Witness Mr. Richard Butler, 30 March 2001, confidential; Motion for Rescheduling Order, 28 March 2001; Prosecution Reply to Defence Motion for Rescheduling Order, 30 March 2001; Decision on the Testimony of Witness Richard Butler, 30 March 2001.

<sup>68</sup> Decision, para. 72.

<sup>69</sup> Decision, paras. 84, 85.

<sup>70</sup> Motion to Re-open the Prosecutor's Case for the Limited Purpose of Introducing Four Expert Reports and a Summary Report of Fresh Exhumation Evidence, 15 March 2001.

<sup>71</sup> Response to Motion to Re-open Prosecution's Case, 20 March 2001, para. 3.

<sup>72</sup> T. 9093-4, 23 March 2001.

<sup>73</sup> T. 9423.

The Trial Chamber ruled that there was no need for the Prosecution to be granted leave to re-open its case.

57. On 24 April 2001, the Prosecution filed a "Motion to re-open the Prosecutor's Case for the Purpose of Introducing Fresh Evidence" in order to adduce a recently obtained "Information note", dated 13 July 1995 and signed by Lieutenant Colonel Radenko Jovičić,<sup>74</sup> which could assist the Trial Chamber in determining when General Krstić became Commander of the Drina Corps.<sup>75</sup> The Defence objected to its admission on two grounds. It first contended that the Prosecution did not exercise due diligence in obtaining the document.<sup>76</sup> On this basis, the Defence submitted, on 26 April 2001, an application to unseal all pleadings and orders filed by the Prosecution in connection with the efforts to locate and interview General Živanović.<sup>77</sup> On 1 May 2001, recognising that a Trial Chamber is entitled, in accordance with the provisions of Rule 70 of the Rules, to lift or otherwise amend the confidentiality measures ordered by other Judges, the Trial Chamber nevertheless denied the application to unseal the documents, but permitted the Defence to examine them. The Defence subsequently withdrew its contention based on failure to exercise due diligence.<sup>78</sup> It further argued that the Information note was not disclosed according to Rule 66(B). The Trial Chamber rejected the argument based on Rule 66(B) for the same reasons as those previously stated in the context of the "kill them all" intercept, and found that the Prosecution had not failed to exercise due diligence in obtaining possession of the Information note.<sup>79</sup> However, having due regard to the fact that the trial was coming to an end and in view of its duty to guarantee equality of arms between the parties and ensure particularly the right of the accused to a fair and expeditious trial, the Trial Chamber decided that it was in the interests of justice to grant additional time for the parties to finalise their views on the matter, thus deferring its decision.

58. On 5 June 2001, the Trial Chamber heard the testimony of Witness JJ for the Prosecution, who received the Information note from General Milenko Živanović on 23 April 2001. Subsequently, the Defence recalled its military expert, General Radovan Radinović, to testify as to the issuance of the Information note and the weight that the Trial Chamber should afford to it. The Trial Chamber, after considering the arguments presented by the parties, orally decided to admit the Information note into evidence.<sup>80</sup>

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<sup>74</sup> Chief of Personnel and Legal Affairs of the Drina Corps.

<sup>75</sup> Motion to re-Open the Prosecution's case for the Purpose of Introducing Fresh Evidence, 24 April 2001.

<sup>76</sup> Motion for Disclosure of Items relevant to motion to reopen, 1 May 2001.

<sup>77</sup> Motion for Disclosure of Sealed Pleadings and Orders, 26 April 2001.

<sup>78</sup> T. 9676, 05 June 2001.

<sup>79</sup> Decision on the Defence Motion for Disclosure of Items Relevant to Motion to Re-Open and Scheduling Order, 8 May 2001.

<sup>80</sup> T. 9828, 05 June 2001.

## **H. Duration and Figures of the Trial**

59. The Trial Chamber sat for a total of 98 days; 103 Prosecution witnesses, 13 Defence witnesses, including the accused who gave testimony in his own defence and 2 Trial Chamber witnesses were heard; 910 Prosecution exhibits, 183 Defence exhibits and 5 Trial Chamber exhibits were tendered. A total of 9 witnesses testified in closed session. Protective measures such as pseudonyms, face or voice distortion were offered to 58 witnesses who testified in open session.

60. Both the Prosecution and the Defence filed their closing briefs on 21 June 2001. Closing arguments for the Prosecution were heard on 26 and 27 June 2001. Closing arguments for the Defence were heard on the 28 and 29 June 2001.

## ANNEX II - SHORT CHRONOLOGY

- 6 and 7 April 1992 The European Community and the United States of America recognise the Republic of Bosnia and Herzegovina.
- 22 May 1992 The Republic of Bosnia and Herzegovina becomes a member of the United Nations.
- Early 1992 Serb paramilitaries gain control of the town of Srebrenica for several weeks.
- May to September 1992 A group of Muslim fighters, under the leadership of Naser Orić, recaptures Srebrenica. Over the following months, the Muslim forces organise a series of raids. By September, Muslim forces from Srebrenica link up with those in Žepa.
- January 1993 The Srebrenica enclave reaches the size of 900 square kilometres.
- Muslim forces attack the Serb village of Kravica. The Serbs respond with a counter-offensive, severing the link between Srebrenica and Žepa and reducing the size of the Srebrenica enclave. An atmosphere of terror between the Serb and the Muslim populations prevails.
- March and April 1993 The Commander of the UN Protection Force (UNPROFOR), General Philippe Morillon, visits Srebrenica and tells the residents of Srebrenica that the town is under the protection of the United Nations.
- 13 April 1993 Between March and April, the High Commissioner for Refugees (UNHCR) evacuates approximately 8 000 to 9 000 Muslims from Srebrenica. On the 13<sup>th</sup> of April 1993, the Serbs tell the UNHCR representatives that they will attack the town unless the Muslims surrender and agree to be evacuated from the enclave.
- 16 April 1993 The UN Security Council declares the town of Srebrenica and its surroundings to be a safe area (Resolution 819). The UNPROFOR commanders negotiate a cease-fire agreement signed by General Halilović, for the BiH Army, and General Mladić, for the VRS. This agreement calls for the enclave to be disarmed under the supervision of UNPROFOR troops.
- 18 April 1993 The first group of UNPROFOR troops arrives in Srebrenica.
- 8 August 1994 The RS Minister of Defence appoints General Krstić as Chief of Staff / Deputy Commander of the Drina Corps, with effect from the 15<sup>th</sup> of August 1994.
- January 1995 A new set of UNPROFOR troops, a battalion from the Netherlands (Dutch Bat), arrives in the Srebrenica enclave. The humanitarian situation in the Srebrenica enclave deteriorates.
- March 1995 The BiH Army conducts military offensives in and from the area of the enclave.
- Radovan Karadžić, President of RS, issues a directive ("Directive 7", 8 March 1995) regarding the long-term strategy of the VRS forces in the enclave. This strategy specifies that the VRS is to "[c]omplete the physical separation of Srebrenica from Žepa" and to block aid convoys directed towards Srebrenica.
- 31 March 1995 The VRS Main Staff issues Directive 7.1: an implementing order of Directive 7 is signed by General Mladić.

- 2 May 1995 The then-Colonel Krstić is promoted to the rank of General-Major on the recommendation of the Drina Corps Commander, General Živanović. This promotion is effective the 23<sup>rd</sup> of June.
- 31 May 1995 The Serbs capture the Observation Post “OP Echo”.
- 2 July 1995 General Milenko Živanović signs two orders laying out the plans for the military assault on the enclave and ordering various units of the Drina Corps to ready themselves for combat. The operation is code-named “Krivaja 95”.
- 6 July 1995 The operation «Krivaja 95» begins.
- 9 July 1995 The Serb forces surround the town of Srebrenica. President Karadžić issues a new order authorising the capture of the town of Srebrenica.
- 10 July 1995 Shelling of Srebrenica by the Serbs takes place. The residents of Srebrenica flee in the direction of Potočari where the UN compound is located. Colonel Karremans (Commander of the Dutch Bat) urgently requests air support.
- 11 July 1995 The Serbs are intensively shelling the urban area of Srebrenica.
- 1430 hours: NATO bombs VRS tanks. The VRS threaten to kill Dutch troops held in custody and to shell the UN Potočari compound. The air support is abandoned.
- General Mladić enters the town of Srebrenica with General Krstić and General Živanović, among others, at his side.
- 2000 hours: A meeting at the Hotel Fontana in Bratunac between the VRS officials (General Krstić is absent) and the UNPROFOR leaders is held. General Mladić leads the meeting. The meeting focuses on the issue of the refugees.
- General Mladić appoints General Krstić to be commander of the forces engaged in the operation “Stupčanica 95” on Žepa.
- Around 2200 hours: the 28<sup>th</sup> division command, with the municipal authorities of Srebrenica, decides to form a column constituted almost exclusively of men who will attempt to reach Tuzla through the woods. The column begins to trek north from the villages of Jaglici and Šušnjari at around midnight.
- 2300 hours: A second meeting is held at the Hotel Fontana, presided over by General Mladić. General Krstić is present. The Dutch Bat representatives (UNPROFOR leaders) arrive with an unofficial Muslim representative.
- 12 July 1995 General Živanović signs an order addressed to all the Drina Corps’ units requesting that “all buses ...belonging to the VRS be secured for use by the Drina Corps”. The RS Ministry of Defence sends three orders to its local secretariats directing them to procure buses and to send them to Bratunac.
- 1000 hours: A third meeting takes place at the Hotel Fontana, General Mladić is still presiding. General Krstić is at his side. Mladić orders the evacuation of the Muslim refugees. He also informs the group that all men between the age of 16 and 60 will have to be separated and screened for “war criminals”.



1230 hours: General Krstić gives a television interview at Potočari.

1300 hours: Dozens of buses are arriving in Potočari. The women, children, and elderly begin to be bussed out of Potočari to Muslim territory near Tuzla. The men between the age of 16 and 65 are systematically separated to be detained in Potočari and then transferred to Bratunac.

The Serb forces launch an artillery attack against the column as it crosses an asphalt road between the area of Konjevic Polje and Nova Kasaba. The first prisoners are captured from the column.

13 July 1995 The evacuation of the women, children and elderly continues. The separation of the men and their transfer to Bratunac progresses.

A large number of men from the column are captured. Several thousands are collected in the Sandici Meadow and on the Nova Kasaba football field.

The massive executions begin: Jadar River, Cerska Valley, and Kravica Warehouse.

2000 hours: The removal of the Muslim civilian population from Potočari is complete.

2030 hours: General Krstić signed his first order as Commandant of the Drina Corps.

13-14 July The executions continue: Tišća

14 July 1995 President Karadžić issues Decree 01-1369/95 naming General Krstić commander of the Drina Corps.

The operation «Stupcanica 95 » begins in Žepa.

Executions take place at Orahovac.

The UN Security Council expresses concern about the forced relocation of civilians from Srebrenica. The international community expresses anxiety about the missing Muslims.

14-15 July Executions occur at the Petkovci Dam.

15 July 1995 President Karadžić issues Decree 01-1419/5 relieving General-Major Živanović from command of the VRS Drina Corps.

16 July 1995 Executions take place at the Branjevo Military Farm and the Pilica Cultural Dom.

The head of the column manages to break through into Muslim-held territory.

17-18 July Small-scale executions occur: Kozluk.

20 July 1995 A public announcement from President Karadžić naming General Krstić commander of the VRS Drina Corps is aired on RS television

A ceremony is held in honour of General Živanović at the Han Kram restaurant.

September-1<sup>st</sup>  
November 1995 The primary mass graves are opened, the bodies are reburied in smaller secondary gravesites. The international community is given access to the area.

## ANNEX III A. GLOSSARY - LEGAL CITATIONS

<b>Additional Protocol I</b>	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977
<b>Additional Protocol II</b>	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977
<b><i>Akayesu</i> Judgement</b>	<i>Prosecutor v. Jean-Paul Akayesu</i> , Case No. ICTR-96-4-T, Judgement, 2 September 1998
<b><i>Akayesu</i> Sentence</b>	<i>Prosecutor v. Jean-Paul Akayesu</i> , Case No. ICTR-96-4-T, Decision on Sentence, 2 October 1998
<b><i>Aleksovski</i> Judgement</b>	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT 95-14/1-T, Judgement, 25 June 1999
<b><i>Aleksovski</i> Appeal Judgement</b>	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT 95-14/1-A, Judgement, 24 March 2000
<b><i>Bagilishema</i> Judgement</b>	<i>Prosecutor v. Ignace Bagilishema</i> , Case No. ICTR-95-1A-T, Judgement, 7 June 2001
<b><i>Blaškić</i> Judgement</b>	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, Judgement, 3 March 2000
<b><i>Čelebići</i> Judgement</b>	<i>Prosecutor v. Zejnil Delalić et al</i> , Case no. IT-96-21-T, Judgement, 16 November 1998
<b><i>Čelebići</i> Appeal Judgement</b>	<i>Prosecutor v. Zejnil Delalić et al</i> , Case No. IT-96-21-A, Judgement, 20 February 2001
<b>Commission of Experts Report</b>	Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992) (S/1994/674)
<b>Common Article 3</b>	Article 3 of Geneva Conventions I through IV
<b>Defence Final Trial Brief</b>	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T, Final Submissions of the Accused, 21 June 2001
<b>Defence Pre-trial Brief</b>	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-PT, Pre-trial Brief of the Defence Pursuant to Rule 65 ter (E) (i), 29 February

	2000
<b><i>Erdemović</i> Appeal Judgement</b>	<i>Prosecutor v. Dražen Erdemović</i> , Case No. IT-96-22-A, Judgement, 7 October 1997
<b><i>Erdemović</i> Sentencing Judgement</b>	<i>Prosecutor v. Dražen Erdemović</i> , Case No. IT-96-22-T, Sentencing Judgement, 29 November 1996
<b><i>Erdemović</i> Sentencing Judgement II</b>	<i>Prosecutor v. Dražen Erdemović</i> , Case No. IT-96-22-T <i>bis</i> , Sentencing Judgement, 5 March 1998
<b><i>et seq.</i></b>	Et sequitur (“and what follows”)
<b><i>Furundžija</i> Judgement</b>	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-T, Judgement, 10 December 1998
<b><i>Furundžija</i> Appeal Judgement</b>	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-A, Judgement, 21 July 2000
<b>Geneva Convention I</b>	Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949
<b>Geneva Convention II</b>	Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949
<b>Geneva Convention III</b>	Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949
<b>Geneva Convention IV</b>	Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949
<b>Geneva Conventions</b>	Geneva Conventions I through IV of August 12, 1949
<b>Hague Convention IV</b>	The 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land
<b>Hague Regulations</b>	Regulations Respecting the Laws and Customs of War on Land annexed to Hague Convention IV
<b>ICCPR</b>	International Covenant on Civil And Political Rights, adopted by the United Nations General Assembly on 16 December 1966
<b>ICRC Commentary (GC IV)</b>	Pictet (ed.)-Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1958)

<b>ICRC Commentary (Additional Protocol I)</b>	Sandoz <i>et al.</i> (eds.)-Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949
<b>ICC Statute</b>	Rome Statute of the International Criminal Court, Adopted at Rome on 17 July 1998 (PCNICC/1999/INF/3)
<b>1991 ILC Report</b>	Report of the International Law Commission on the work of its 43rd session, 29 April-19 July 1991, supplement no. 10 (A/46/10)
<b>1996 ILC Report</b>	Report of the International Law Commission on the work of its 48th session, 6 May-26 July 1996, supplement no. 10 (A/51/10)
<b>Indictment</b>	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-PT, Amended Indictment, 22 November 1999
<b><i>Jelisić</i> Judgement</b>	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-T, Judgement, 14 December 1999
<b><i>Jelisić</i> Appeal Judgement</b>	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-A, Appeals Judgement, 5 July 2001
<b><i>Kambanda</i> Judgement</b>	<i>Prosecutor v. Jean Kambanda</i> , Case No. ICTR 97-23-S, Sentencing Judgement, 4 September 1998
<b><i>Karadžić and Mladić</i> case</b>	<i>Prosecutor v. Radovan Karadžić and Ratko Mladić</i> , Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, case nos. IT-95-5-R61 and IT-95-18-R61, 11 July 1996
<b><i>Kayishema</i> Judgement</b>	<i>Prosecutor v. Clément Kayishema and Obed Ruzindana</i> , Judgement and Sentence, Case No. ICTR-95-1-T, 21 May 1999
<b><i>Kayishema</i> Sentence</b>	<i>Prosecutor v. Clément Kayishema and Obed Ruzindana</i> , Judgement and Sentence, Case No. ICTR-95-1-T, 21 May 1999 (Sentence appended to the Judgement)
<b><i>Kordić</i> Judgement</b>	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-T, Judgement, 26 February 2001
<b><i>Kunarac</i> Judgement</b>	<i>Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković</i> , Case No. IT-96-23-T, Judgement, 22 February 2001

<b><i>Kupreškić</i> Judgement</b>	<i>Prosecutor v. Zoran Kupreškić et al</i> , Case No. IT-95-16-T, Judgement, 14 January 2000
<b>Law Reports</b>	Law Reports of Trials of War Criminals (the United Nations War Crimes Commission)
<b><i>Musema</i> Judgement</b>	<i>Prosecutor v. Alfred Musema</i> , Case No. ICTR-96-13-T, Judgement and Sentence, 27 January 2000
<b><i>Nikolić</i> Decision</b>	<i>Prosecutor v. Dragan Nikolić</i> , Review of the indictment pursuant to Rule 61, Case No. IT-94-2-R61, Decision of Trial Chamber I, 20 October 1995
<b>Prosecution Final Trial Brief</b>	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T, Prosecutor's Final Trial Brief, 21 June 2001
<b>Prosecution Pre-trial Brief</b>	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-30-PT, Prosecutor's Filing Pursuant to Rule 65 ter (E) / Prosecutor's Pre-trial Brief Pursuant to Rule 65 ter (E) (i), 25 February 2000
<b>Report of the Secretary-General</b>	Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), (S/25704)
<b>Report of the Preparatory Commission for the ICC</b>	Report of the Preparatory Commission for the International Criminal Court, 6 July 2000, (PCNICC/2000/INF/3/Add.2)
<b>Rules</b>	Rules of Procedure and Evidence of the International Tribunal
<b><i>Serushago</i> Sentence</b>	<i>Prosecutor v. Serushago</i> , Case No. ICTR-98-39-S, Sentencing Judgement, 5 February 1999
<b>Statute</b>	Statute of the International Tribunal, annexed to the Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993), (S/25704)
<b><i>Tadić</i> Judgement</b>	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-T, Opinion and Judgement, 7 May 1997
<b><i>Tadić</i> Appeal Judgement</b>	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-A, Judgement, 15 July 1999
<b><i>Tadić</i> Jurisdiction Decision</b>	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1/AR72, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995

**Tadić Sentencing Judgement**

*Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Judgement in Sentencing, 14 July 1997

**Tadić Sentencing Judgement II**

*Prosecutor v. Duško Tadić*, Case No. IT-94-1-A and IT-94-1-Abis-R117, Sentencing Judgement, 11 November 1999

**Tadić Sentencing Judgement III**

*Prosecutor v. Duško Tadić*, Case No. IT-94-1-A and IT-94-1-Abis, Judgement in Sentencing Appeals, 26 January 2000

**Talić Decision**

*Prosecutor v. Momir Talić and Radoslav Brđanin*, Case No. IT-99-36-PT, Decision on the Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001

**TWC**

Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10

**Vance-Owen Peace Plan**

This plan is reproduced in pp. 13-44 of the Report of the Secretary-General on the Activities of the International Conference on the former Yugoslavia, 2 February 1993, (S/25221)

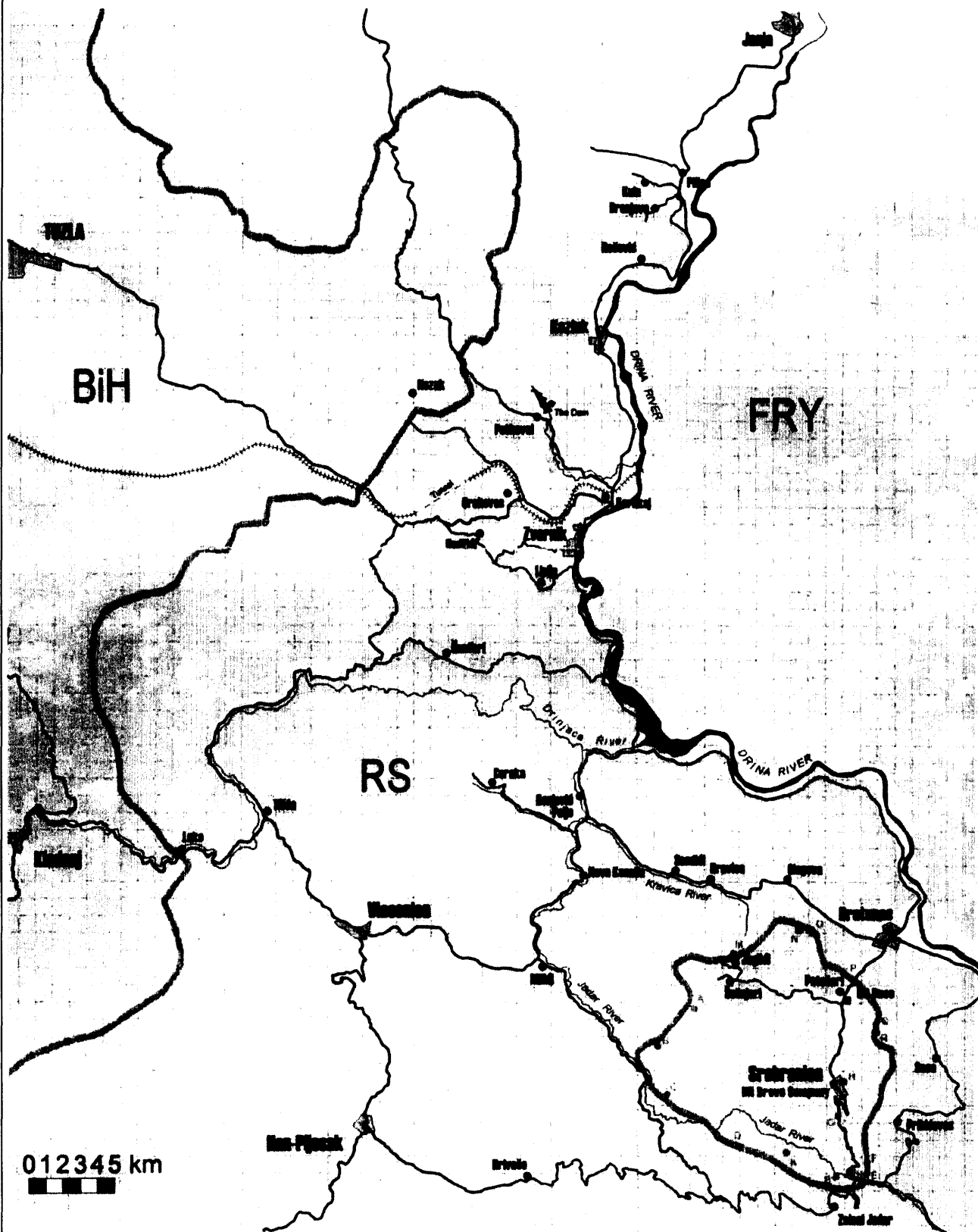
## ANNEX III-B. GLOSSARY – MAIN ABBREVIATIONS

<b>AbiH</b>	Armed Forces of the Republic of Bosnia and Herzegovina
<b>BiH</b>	Bosnia and Herzegovina
<b>C</b>	Trial Chamber's Exhibit admitted in the case <i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T
<b>D</b>	Defence Exhibit admitted by the Chamber in the case <i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T
<b>Dayton Agreements</b>	Agreements between RBiH, Croatia and the FRY, initialled in Dayton on 21 November 1995 and signed in Paris on 14 December 1995
<b>Dutchbat</b>	Dutch Battalion of UNPROFOR
<b>ECHR</b>	European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1959
<b>EC</b>	European Community
<b>ECMM</b>	European Community Monitoring Mission
<b>FRY</b>	Federal Republic of Yugoslavia (Serbia and Montenegro)
<b>ICC</b>	International Criminal Court
<b>ICRC</b>	International Committee of the Red Cross
<b>ICTR</b>	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
<b>ICTY</b>	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
<b>ILC</b>	International Law Committee

<b>IMT</b>	International Military Tribunal sitting at Nuremberg, Germany
<b>IMTFE</b>	International Military Tribunal for the Far-East sitting at Tokyo, Japan
<b>JNA</b>	Yugoslav Peoples' Army (Army of the Socialist Federal Republic of Yugoslavia)
<b>MUP</b>	Republika Srpska Ministry of the Interior Police
<b>P</b>	Prosecution Exhibit admitted by the Chamber In the case <i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T
<b>p.</b>	Page
<b>pp.</b>	Pages
<b>Para.</b>	Paragraph
<b>Paras</b>	Paragraphs
<b>Parties</b>	The Prosecutor and the Defence in <i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T
<b>RS</b>	Republika Srpska
<b>SFRY</b>	Socialist Federal Republic of Yugoslavia
<b>T.</b>	Transcript of hearing in <i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T
<b>UNPROFOR</b>	United Nations Protection Force
<b>VRS</b>	Republika Srpska Army



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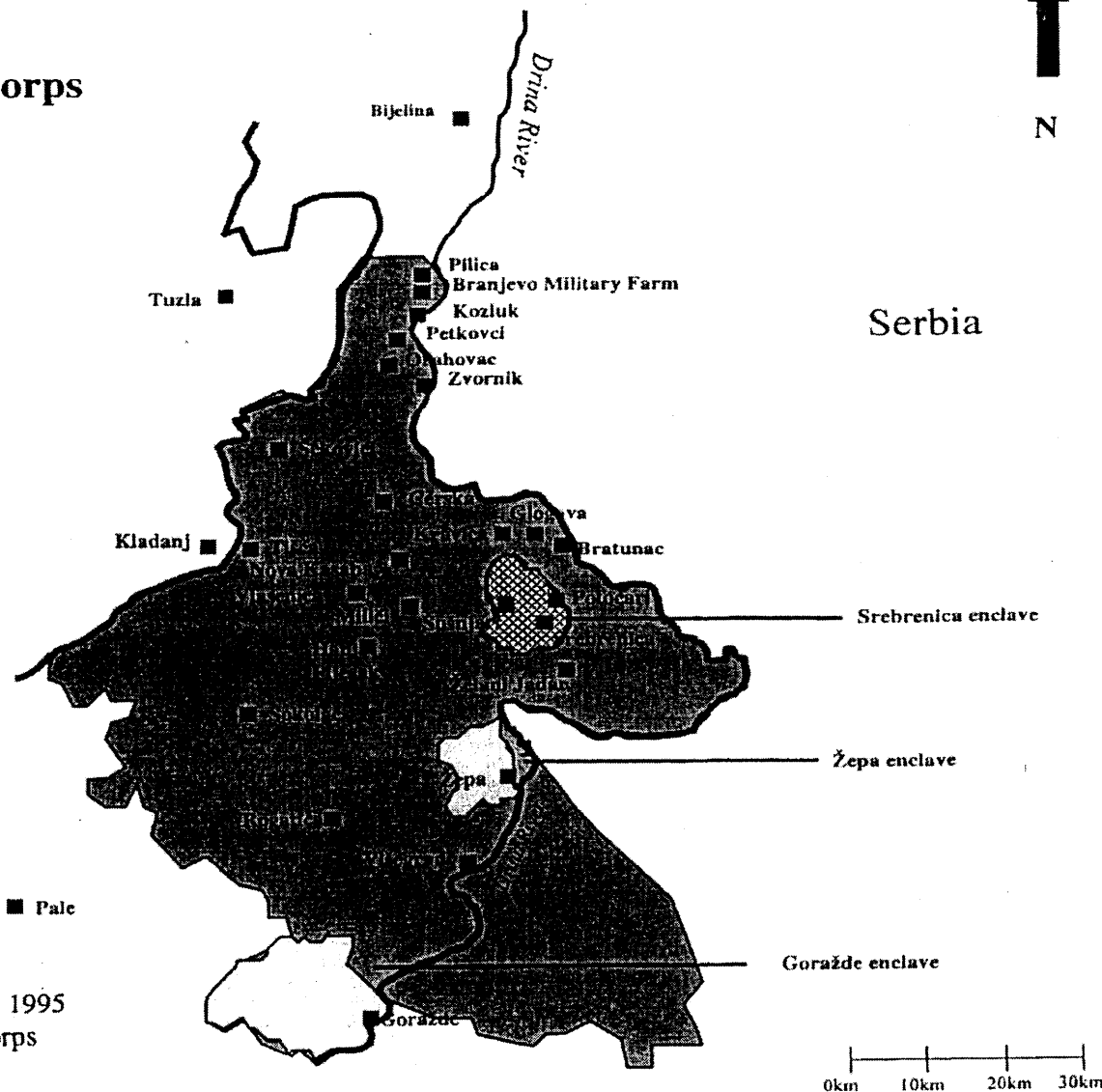





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**ATTACHMENT B**

**Close-up Map of the Drina Corps  
Area of Responsibility  
11 July 1995**



-  Approximate Confrontation Line - July 1995
-  Area of Responsibility - VRS Drina Corps
-  UN Enclaves

IT-98-33-T  
FC-98-93-A  
9189  
657

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**Key:**  
 Primary Mass Grave ●  
 Secondary Mass Grave ●  
 Transportation of Bodies .....→

# VRS DRINA CORPS

CORPS COMMANDER

Drina Corps Commander



Gen-Maj  
KRSTIC, Radislav

Drina Corps Commander before Gen-Maj KRSTIC, Radislav



Gen-Maj  
ZIVANOVIC, Milenko

NOTE: Co-ordinator functions of other Commands Staff personnel have not been indicated.

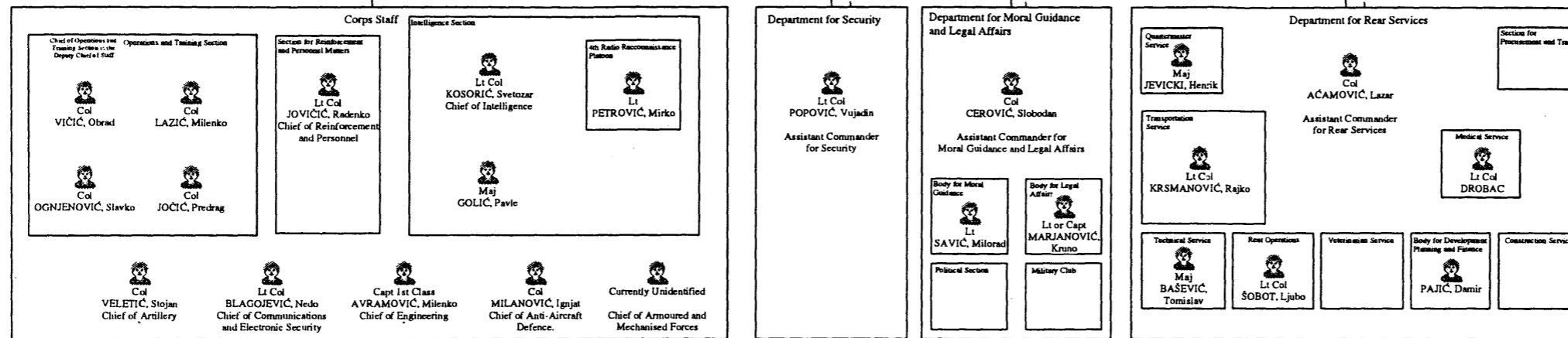
CHIEF OF STAFF  
DEPUTY COMMANDER

Chief of Staff/ Deputy Commander

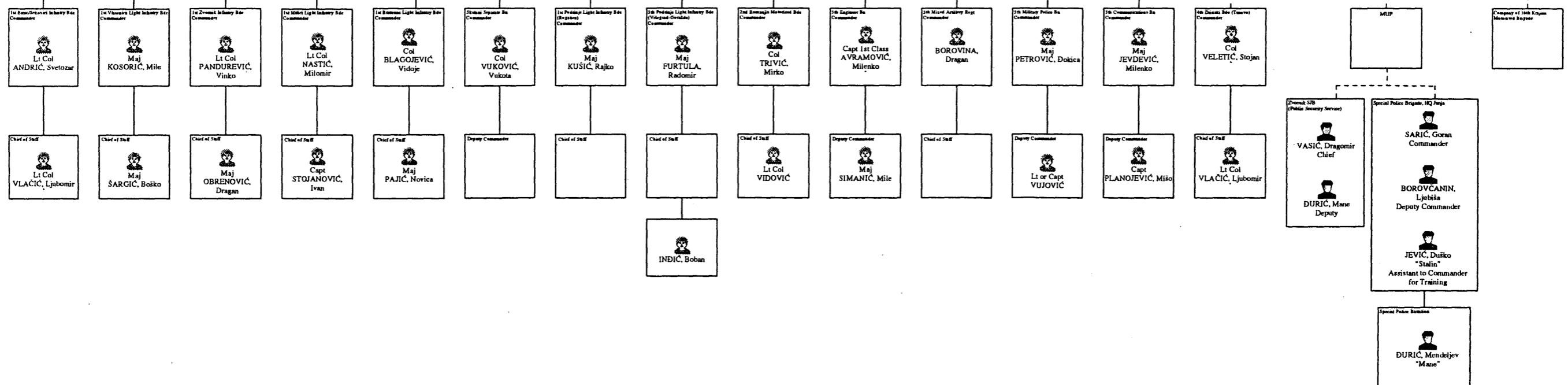
Deputy Chief of Staff in the Chief of Operations and Training Section

CORPS STAFF

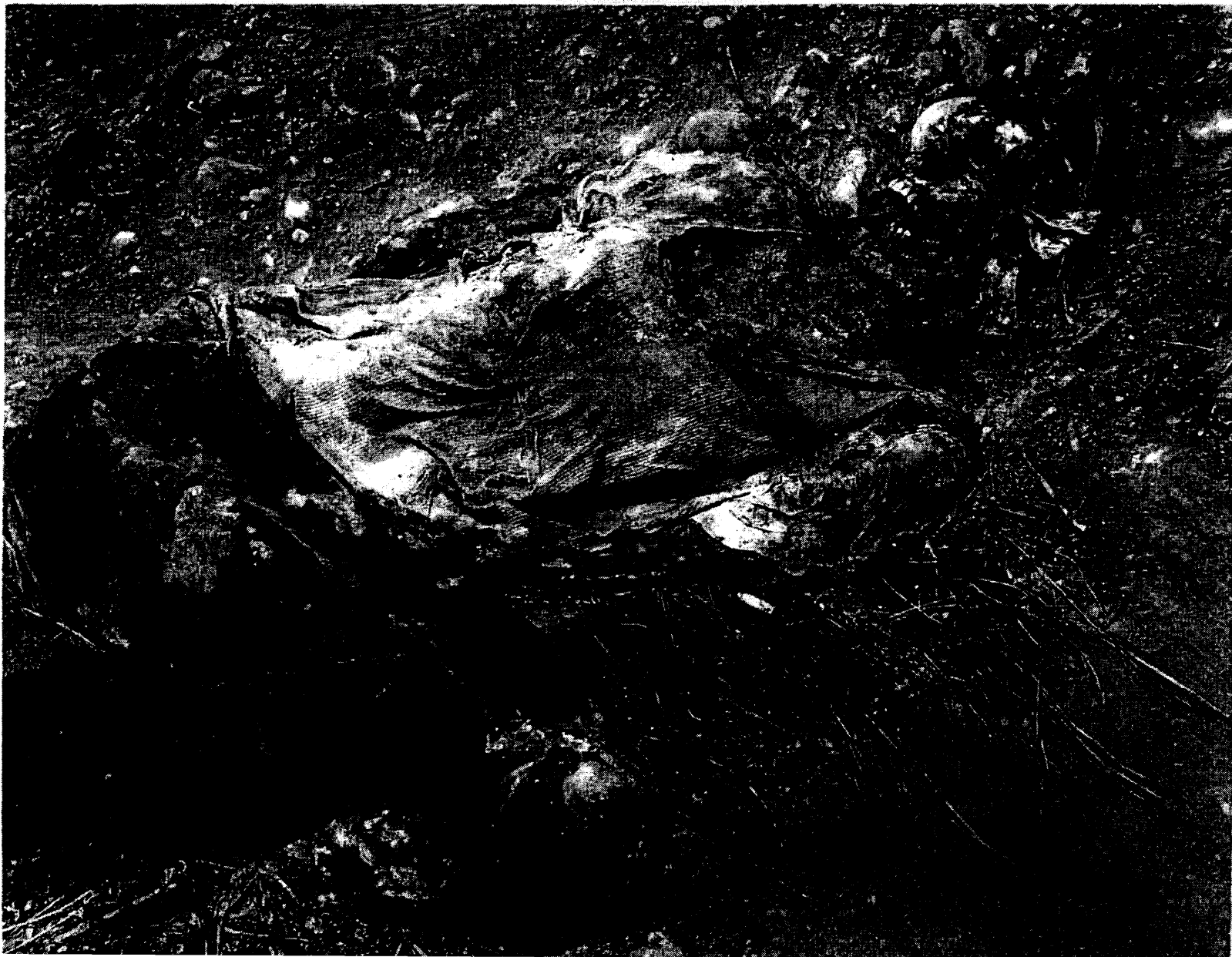
CORPS BRANCHES



SUBORDINATE UNITS



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17-98-33-T

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## I. INTRODUCTION

1. The events surrounding the Bosnian Serb take-over of the United Nations (“UN”) “safe area” of Srebrenica in Bosnia and Herzegovina, in July 1995, have become well known to the world.<sup>1</sup> Despite a UN Security Council resolution declaring that the enclave was to be “free from armed attack or any other hostile act”, units of the Bosnian Serb Army (“VRS”) launched an attack and captured the town. Within a few days, approximately 25,000 Bosnian Muslims,<sup>2</sup> most of them women, children and elderly people who were living in the area, were uprooted and, in an atmosphere of terror, loaded onto overcrowded buses by the Bosnian Serb forces and transported across the confrontation lines into Bosnian Muslim-held territory. The military-aged<sup>3</sup> Bosnian Muslim men of Srebrenica, however, were consigned to a separate fate. As thousands of them attempted to flee the area, they were taken prisoner, detained in brutal conditions and then executed. More than 7,000 people were never seen again.

2. The events of the nine days from July 10-19 1995 in Srebrenica defy description in their horror and their implications for humankind’s capacity to revert to acts of brutality under the stresses of conflict. In little over one week, thousands of lives were extinguished, irreparably rent or simply wiped from the pages of history. The Trial Chamber leaves it to historians and social psychologist to plumb the depths of this episode of the Balkan conflict and to probe for deep-seated causes. The task at hand is a more modest one: to find, from the evidence presented during the trial, what happened during that period of about nine days and, ultimately, whether the defendant in this case, General Krstić, was criminally responsible, under the tenets of international law, for his participation in them. The Trial Chamber cannot permit itself the indulgence of expressing how it feels about what happened in Srebrenica, or even how individuals as well as national and international groups not the subject of this case contributed to the tragedy. This defendant, like all others, deserves individualised consideration and can be convicted only if the evidence presented in court shows, beyond a reasonable doubt, that he is guilty of acts that constitute crimes covered by the Statute of the Tribunal (“Statute”). Thus, the Trial Chamber concentrates on setting forth, in detail, the facts surrounding this compacted nine days of hell and avoids expressing rhetorical

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<sup>1</sup> See e.g., Prosecution exhibit (hereafter “P”) 30, Report of the Secretary-General Pursuant to General Assembly Resolution 53/35: The fall of Srebrenica, UN Doc. A/54/549, 15 November 1999 (hereafter “Secretary-General’s Report”).

<sup>2</sup> See Mr. Nesib Mandžić, Transcript at page (hereafter “T.”) 963 (testifying that some 25,000 Bosnian Muslim refugees had gathered in Potočari); P 404/88 (Report of Karremans dated 12 July 1995 stating that, as of that date, 17,500 people had gathered in and around Potočari); P 77/26 (UNMO fax dated 13 July 1995 reporting that 10,000 refugees had been already transported with a further 20,000-25,000 to follow).

<sup>3</sup> Throughout this Judgement, the term “military aged” is used to describe the group of men who were captured and executed following the take-over of Srebrenica. It is a misnomer to the extent that some boys who were several years younger and some men who were several years older than would generally be considered “military aged” were included

indignation that these events should ever have occurred at all. In the end, no words of comment can lay bare the saga of Srebrenica more graphically than a plain narrative of the events themselves, or expose more poignantly the waste of war and ethnic hatreds and the long road that must still be travelled to ease their bitter legacy.

3. In July 1995, at the time the atrocities occurred, General Krstić was first the Chief of Staff and, subsequently, the Commander of the Drina Corps, a formation of the Bosnian Serb Army (hereafter "VRS"). All of the crimes committed following the take-over of Srebrenica were committed in the zone of responsibility of the Drina Corps. The Prosecution has charged General Krstić with genocide (or alternatively, complicity to commit genocide). General Krstić is further charged with crimes against humanity, including extermination, murder, persecution and deportation (or alternatively, inhumane acts (forcible transfer)) and murder, as a violation of the laws or customs of war. The Indictment charges General Krstić with responsibility for these acts, as a result of his individual participation (pursuant to Article 7 (1) of the Statute). The Prosecution also seeks to attribute criminal responsibility to General Krstić for these acts, pursuant to the doctrine of command responsibility (under Article 7(3) of the Statute) because, allegedly, troops under his command were involved in the commission of the crimes.

4. The Trial Chamber draws upon a mosaic of evidence that combines to paint a picture of what happened during those few days in July 1995. In all, the Trial Chamber heard more than 110 witnesses over 98 days of trial and viewed in the vicinity of 1,000 exhibits. A large number of former residents of Srebrenica who survived the events came to The Hague to testify. The Trial Chamber considers that the essence of their testimony was highly credible. The accounts given by the survivors of the execution sites are corroborated by forensic evidence (such as shell casings and explosive and tissue residues) at some of the execution sites, expert analysis of the contents of mass graves and aerial reconnaissance photographs taken in 1995. The Trial Chamber has also considered the testimony of UN military personnel who were in Srebrenica, records of VRS radio communications that were intercepted by the Army of Bosnia Herzegovina ("ABiH") in July and August 1995, records seized from the ABiH, records seized from the VRS, the analysis of military experts called by both the Prosecution and the Defence and the testimony of General Krstić himself, as well as other witnesses who testified for the Defence. In addition, the Trial Chamber called two witnesses of its own accord, both of whom formerly held senior positions in the ABiH and were closely monitoring the unfolding events in Srebrenica in July 1995.

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within this group. Consequently, the term should be understood in its broadest, non-technical sense as including the men and boys who were broadly defined by the Bosnian Serb authorities as being within the vicinity of military age.

5. The Judgement is divided into five Parts, Part I being the Introduction. The factual findings of the Trial Chamber begin in Part II with a narrative overview, the purpose of which is to briefly orient the reader with the events leading up to the take-over of Srebrenica and its aftermath. The Trial Chamber then moves on to consider the aftermath of the take-over of Srebrenica in much greater detail and, in particular, considers the role of the Drina Corps in the transportation of the Bosnian Muslim women, children and elderly out of the former enclave, as well as in the capture, detention and execution of the Bosnian Muslim men from Srebrenica. Finally, the Trial Chamber considers the role played by General Krstić in these events. Part III of the Judgement provides a legal framework for analysing the facts set out in Part II. The Chamber considers the requisite elements of genocide and the other crimes with which General Krstić has been charged, as well as the general principles regulating the attribution of criminal responsibility. Then, based on this legal framework and on the findings of fact in Part II of the Judgement, the Chamber presents its findings about the criminal responsibility of General Krstić. Part IV of the Judgement covers matters relating to sentencing and, finally, Part V sets forth the disposition.

## II. FINDINGS OF FACT

### A. The Take-Over of Srebrenica and its Aftermath

#### 1. 1991-92: The Break-Up of the Former Yugoslavia

6. The history of the break-up of the Socialist Federal Republic of Yugoslavia has been described in previous judgements of this Tribunal and will not be repeated in detail here.<sup>4</sup> However, some minimal background material is necessary to understand the specific case of Srebrenica.

7. From 1945 until 1990, Yugoslavia was composed of six Republics – Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia. Certain Republics were populated predominantly by one ethnic group: for example, Serbs in Serbia and Croats in Croatia. The region under consideration, in the present case, formed part of Bosnia and Herzegovina (“Bosnia”), which was the most multi-ethnic of all the Republics, with a pre-war population of 44 percent Muslim, 31 percent Serb, and 17 percent Croat.<sup>5</sup>

8. The territory of Yugoslavia has been shared for centuries by these and other ethnic groups, with periods of peaceful co-existence interspersed with conflict. The Second World War was a time of particularly bitter strife, with accusations of atrocities emanating from all quarters. Marshal

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<sup>4</sup> See e.g., *Prosecution v. Tadić*, Case No.: IT-94-1-T, (hereafter “The *Tadić* Judgement”) paras. 53-126.



Tito's post-war government discouraged ethnic division and nationalism with a focus on the unity of the communist state. Thus, relative calm and peaceful inter-ethnic relations marked the period from 1945 until 1990. Nevertheless, the various groups remained conscious of their separate identities.

9. In the late 1980s, economic woes and the end of communist rule set the stage for rising nationalism and ethnic friction. The Republics of Slovenia and Croatia both declared independence from the Federal Republic of Yugoslavia in June 1991. Slovenia's status was secured after a mere ten days of fighting with the predominantly Serb forces of the Yugoslav People's Army (JNA), but the armed conflict in Croatia stretched on for some months. Macedonia broke off successfully in September 1991.

10. Bosnia began its journey to independence with a parliamentary declaration of sovereignty on 15 October 1991. The Republic of Bosnia and Herzegovina was recognised by the European Community on 6 April 1992 and by the United States the following day. International recognition did not end the matter, however, and a fierce struggle for territorial control ensued among the three major groups in Bosnia: Muslim, Serb and Croat. The international community made various attempts to establish peace, but these attempts met with limited success. In the Eastern part of Bosnia, which is close to Serbia, the conflict was particularly fierce between the Bosnian Serbs and the Bosnian Muslims.

## 2. 1992-1993: Conflict in Srebrenica

11. The town of Srebrenica is nestled in a valley in eastern Bosnia, about fifteen kilometres from the Serbian border. Before the war, many of Srebrenica's residents worked in the factories at Potočari, a few kilometres north of Srebrenica, or in the zinc and bauxite mines to the south and northeast of the town. In 1991, the population of the municipality was 37,000, of which 73 percent were Muslim and 25 percent were Serb.<sup>6</sup> Prior to the war, the standard of living was high and members of the different ethnic groups, for the most part, lived comfortably together.<sup>7</sup>

12. During the conflict the Central Podrinje region, which included Srebrenica,<sup>8</sup> was an area of significant strategic importance. For the Bosnian Serbs, control of this region was necessary in

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<sup>5</sup> *Tadić*, paras. 56-57; Secretary-General's Report, paras. 17-18.

<sup>6</sup> Secretary-General's Report, para. 33. The term "municipality" is an expression used to describe the larger area around a town and is equivalent to a "county" or a "canton".

<sup>7</sup> See e.g., Witness S, Transcript, pages (hereafter "T.") 3282-3283.

<sup>8</sup> General Radovan Radinović (hereafter "Radinović"), T. 8108.

order to achieve their minimum goal of forming a political entity in Bosnia. As stated by General Radovan Radinović, the Defence military expert:

Serbs intended to preserve Bosnia and Herzegovina as a component part of the former state. That was indeed their fundamental, long-term, and political objective in Bosnia and Herzegovina. Why? I don't think it is very difficult to understand that. They wanted to live in the same state with other Serbs, and the only state that could guarantee that was the former Yugoslavia... the Serbs realised that the area of Central Podrinje had a huge strategic importance for them. Without the area of Central Podrinje, there would be no Republika Srpska, there would be no territorial integrity of Serb ethnic territories; instead the Serb population would be forced to accept the so-called enclave status in their ethnic territories. The territory would be split in two, the whole area would be disintegrated, and it would be separated from Serbia proper and from areas which are inhabited almost 100 per cent by Serb populations.<sup>9</sup>

General Sefer Halilović (the Commander of the Main Staff of the ABiH from June 1993 until November 1993 and, prior to that, Chief of Staff of the Main Staff of the ABiH) also emphasised the strategic importance of the Central Podrinje region for the Bosnian Serbs. In his view the political agenda of the Serbs was to eliminate the Drina River as a border between "Serb states".<sup>10</sup>

13. Despite Srebrenica's predominantly Muslim population, Serb paramilitaries from the area and neighbouring parts of eastern Bosnia gained control of the town for several weeks early in 1992. In May 1992, however, a group of Bosnian Muslim fighters under the leadership of Naser Orić managed to recapture Srebrenica. Over the next several months, Orić and his men pressed outward in a series of raids. By September 1992, Bosnian Muslim forces from Srebrenica had linked up with those in Žepa, a Muslim-held town to the south of Srebrenica. By January 1993, the enclave had been further expanded to include the Bosnian Muslim held enclave of Čerska located to the west of Srebrenica. At this time the Srebrenica enclave reached its peak size of 900 square kilometres, although it was never linked to the main area of Bosnian-held land in the west and remained a vulnerable island amid Serb-controlled territory.<sup>11</sup>

14. In January 1993, Bosnian Muslim forces attacked the Bosnian Serb village of Kravica. Over the next few months, the Bosnian Serbs responded with a counter-offensive, eventually capturing the villages of Konjevic Polje and Čerska, severing the link between Srebrenica and Žepa and reducing the size of the Srebrenica enclave to 150 square kilometres. Bosnian Muslim residents of the outlying areas converged on Srebrenica town and its population swelled to between 50,000 and 60,000 people.<sup>12</sup> During this military activity in the months following January 1993,

<sup>9</sup> Radinović, T.7812-7813.

<sup>10</sup> General Sefer Halilović (hereafter "Halilović"), T. 9459-9451.

<sup>11</sup> Secretary-General's Report, paras. 33-38. The Trial Chamber has relied upon the Secretary-General's Report as an accurate recounting of the events leading up to the take-over of Srebrenica, at least on matters where no contrary evidence has been presented at trial.

<sup>12</sup> *Ibid.*, para. 37.

there were reports of terror inflicted by Muslims on Serb civilians and by Serbs on Muslim civilians.<sup>13</sup>

15. The Commander of the UN Protection Force “UNPROFOR”, General Philippe Morillon of France, visited Srebrenica in March 1993. By then the town was overcrowded and siege conditions prevailed. The advancing Bosnian Serb forces had destroyed the town’s water supplies and there was almost no running water. People relied on makeshift generators for electricity. Food, medicine and other essentials were extremely scarce. Before leaving, General Morillon told the panicked residents of Srebrenica at a public gathering that the town was under the protection of the UN and that he would never abandon them.<sup>14</sup>

16. Between March and April 1993, approximately 8,000 to 9,000 Bosnian Muslims were evacuated from Srebrenica under the auspices of the UN High Commissioner for Refugees (“UNHCR”). The evacuations were, however, opposed by the Bosnian Muslim government in Sarajevo as contributing to the “ethnic cleansing” of the territory.<sup>15</sup>

17. The Bosnian Serb authorities remained intent on capturing the enclave, which, because of its proximity to the Serbian border and because it was entirely surrounded by Serb-held territory, was both strategically important and vulnerable to capture. On 13 April 1993, the Bosnian Serbs told the UNHCR representatives that they would attack the town within two days unless the Bosnian Muslims surrendered and agreed to be evacuated.<sup>16</sup>

### 3. April 1993: The Security Council Declares Srebrenica a “Safe Area”

18. On 16 April 1993, the UN Security Council responded by passing a resolution, declaring that “all parties and others treat Srebrenica and its surroundings as a “ safe area ” that should be free from armed attack or any other hostile act.”<sup>17</sup> At the same time, the Security Council created two other UN protected enclaves, Žepa and Goražde.<sup>18</sup>

19. The UNPROFOR command in the field was sceptical about the value of the Security Council resolution. UNPROFOR commanders therefore negotiated a cease-fire agreement signed by General Halilović and General Ratko Mladić (the Commander of the Main Staff of the VRS). This agreement called for the enclave to be disarmed under the supervision of UNPROFOR

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<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.* para. 38.

<sup>15</sup> *Ibid.* para. 39.

<sup>16</sup> *Ibid.* para. 54.

<sup>17</sup> UN Doc. S/RES/ 819 (1993).

<sup>18</sup> UN Doc. S/RES/ 824 (1993).

troops.<sup>19</sup> However, there was discord about the precise boundaries of the territory subject to the agreement. General Halilović testified before the Trial Chamber that the agreement covered only the urban area of Srebrenica.<sup>20</sup> This view appears to have been shared by UNPROFOR. The Bosnian Serb authorities, on the other hand, did not consider the agreement to be limited to the urban areas of Srebrenica.<sup>21</sup>

20. On 18 April 1993, the first group of UNPROFOR troops arrived in Srebrenica. Fresh troops were rotated approximately every six months after that. The peacekeepers were lightly armed and at any one time numbered no more than 600 men (a much smaller force than had been originally requested).<sup>22</sup> They established a small command centre (the "Bravo Company compound") in Srebrenica itself and a larger main compound about five kilometres north of the town in Potočari. In addition, the UNPROFOR peacekeepers manned thirteen observation posts ("Ops") marking the perimeter of the enclave. Most of the time, groups of Bosnian Serb and Bosnian Muslim soldiers also maintained shadow positions near these outposts. In January 1995, a new set of UNPROFOR troops (a battalion from the Netherlands, colloquially referred to as "Dutch Bat") rotated into the enclave.

21. Generally, the Bosnian Serb forces surrounding the enclave were considered well disciplined and well armed.<sup>23</sup> The VRS was organised on a geographic basis and Srebrenica fell within the domain of the Drina Corps. Between 1,000 and 2,000 soldiers from three Drina Corps Brigades were deployed around the enclave.<sup>24</sup> These Bosnian Serb forces were equipped with tanks, armoured vehicles, artillery and mortars. The unit of the ABiH that remained in the enclave – the 28<sup>th</sup> Division – was not well organised or well equipped. A firm command structure and communications system was lacking,<sup>25</sup> some ABiH soldiers carried old hunting rifles or no weapons at all and few had proper uniforms.<sup>26</sup> However, the Trial Chamber also heard evidence that the 28<sup>th</sup> Division was not as weak as they have been portrayed in some quarters.<sup>27</sup> Certainly the

<sup>19</sup> Secretary-General's Report, paras. 59-65. A preliminary agreement was signed on 18 April 1993, followed by a more comprehensive agreement on 8 May 1993. *See id.* See also Halilović, T. 9445, 9448.

<sup>20</sup> Halilović, T. 9465.

<sup>21</sup> Secretary-General's Report, para. 60.

<sup>22</sup> *See* Secretary-General's Report, para. 226.

<sup>23</sup> *See* Secretary-General's Report, para. 230.

<sup>24</sup> *See* Secretary-General's Report, para. 230.

<sup>25</sup> *See e.g.*, Secretary-General's Report, para. 230; Colonel Joseph Kingori (hereafter "Kingori"), T. 1813-1814; Major Robert Franken (hereafter "Franken"), T. 2008-2009; Captain Vincentius Egbers (hereafter "Egbers"), T. 2207; Witness C, T. 1150-1151; and General Enver Hadžihasanović (hereafter "Hadžihasanović"), T. 9509.

<sup>26</sup> *See, e.g.*, Kingori, T. 1813-1814; Franken, T. 2007; Egbers, T. 2206-22094; and Witness C, T. 1150-1151. *See also* Hadžihasanović, T. 9513-9516 and Court Witness Exhibit (hereafter "C") 2, and C 3.

<sup>27</sup> General Radislav Krstić (hereafter "Krstić") T. 6054.

number of men in the 28<sup>th</sup> Division outnumbered those in the Drina Corps<sup>28</sup> and reconnaissance and sabotage activities were carried out on a regular basis against the VRS forces in the area.<sup>29</sup>

22. From the outset, both parties to the conflict violated the "safe area" agreement. The Trial Chamber heard evidence of a deliberate Bosnian Serb strategy to limit access by international aid convoys into the enclave.<sup>30</sup> Colonel Thomas Karremans (the Dutch Bat Commander) testified that his personnel were prevented from returning to the enclave by Bosnian Serb forces and that equipment and ammunition were also prevented from getting in.<sup>31</sup> Essentials, like food, medicine and fuel, became increasingly scarce. Some Bosnian Muslims in Srebrenica complained of attacks by Bosnian Serb soldiers.<sup>32</sup>

23. Insofar as the ABiH is concerned, General Halilović testified that, immediately after signing the "safe area" agreement, he ordered members of the ABiH in Srebrenica to pull all armed personnel and military equipment out of the newly established demilitarised zone.<sup>33</sup> He also ordered that no serviceable weapons or ammunition be handed over to UNPROFOR. He said this was prompted by bad experiences with the international community in the past.<sup>34</sup> Accordingly, only old and dysfunctional weapons were handed over and anything that was still in working order was retained.<sup>35</sup> In General Halilović's view, the agreement on demilitarisation did not oblige the ABiH to surrender anything and the Bosnian Muslims wanted to preserve their weaponry.<sup>36</sup>

24. The Trial Chamber heard credible and largely uncontested evidence of a consistent refusal by the Bosnian Muslims to abide by the agreement to demilitarise the "safe area".<sup>37</sup> Bosnian

<sup>28</sup> The Trial Chamber heard varying estimates of the number of men in the 28<sup>th</sup> Division. The military expert called by the Defence, General Radinović, made several estimates: Radinović, T. 7913 (10,000 men (including about 8,000 armed men); Defence Exhibit (hereafter "D") 160, (hereafter "Radinović Report"), para. 2.9, (stating that the 28<sup>th</sup> Division consisted of between 10,000 and 12,000 men); and Radinović, T. 8188-8189 (referring to intelligence information from the Milići Brigade suggesting there were between 5,000 and 7,500 men in the 28<sup>th</sup> Division). General Enver Hadžihasanović, who in July 1995 was the Chief of Staff of the Main Staff of the ABiH, testified that the 28<sup>th</sup> Division in Srebrenica had 5,803 men, which was 102 % of the actual requirement according to military doctrine. See Hadžihasanović, T. 9513; and C 1.

<sup>29</sup> See e.g. Defence Witness DF, T. 8507, and T. 8507-8508; and D 30, D 33, D 34, D 35, D 37, D 51, D 54, D 60, D 59, D 62, D 93, and D 94. See also Krstić, T. 7557 (regarding the ABiH's Operation Skakavac ("grasshopper"), involving sabotage activities within a broader area of Bosnia under the control of the VRS, and including the Srebrenica and Žepa "safe areas").

<sup>30</sup> See eg. P 122, p. 63, (testimony of Colonel Thomas Karremans (hereafter "Karremans") at the Rule 61 Hearing, stating that after 26 April no convoy came at all); Karremans, T. 3299-3306, 3322-3325; and Captain Johannes Rutten (hereafter Rutten), T. 2104-2107.

<sup>31</sup> Karremans, T. 3301-3302.

<sup>32</sup> See, e.g., Kingori, T. 1811-1812.

<sup>33</sup> Halilović, T. 9467.

<sup>34</sup> Halilović, T. 9466. See also Secretary-General's Report, para. 61.

<sup>35</sup> Halilović, T. 9466 and Secretary-General's Report, para. 61.

<sup>36</sup> Halilović, T. 9466-9467.

<sup>37</sup> See generally, Krstić, T. 6033 and Radinović, T. 7836 ff.

Muslim helicopters flew in violation of the no-fly zone;<sup>38</sup> the ABiH opened fire toward Bosnian Serb lines and moved through the “safe area”;<sup>39</sup> the 28<sup>th</sup> Division was continuously arming itself<sup>40</sup>; and at least some humanitarian aid coming into the enclave was appropriated by the ABiH.<sup>41</sup> To the Bosnian Serbs it appeared that Bosnian Muslim forces in Srebrenica were using the “safe area” as a convenient base from which to launch offensives against the VRS and that UNPROFOR was failing to take any action to prevent it.<sup>42</sup> General Halilović admitted that Bosnian Muslim helicopters had flown in violation of the no-fly zone and that he had personally dispatched eight helicopters with ammunition for the 28<sup>th</sup> Division. In moral terms, he did not see it as a violation of the “safe area” agreement given that the Bosnian Muslims were so poorly armed to begin with.<sup>43</sup>

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

#### 4. Early 1995: The Situation in the Srebrenica “Safe Area” Deteriorates

26. By early 1995, fewer and fewer supply convoys were making it through to the enclave.<sup>44</sup> The Dutch Bat soldiers who had arrived in January 1995 watched the situation deteriorate rapidly in the months after their arrival. The already meagre resources of the civilian population dwindled further and even the UN forces started running dangerously low on food, medicine, fuel and ammunition. Eventually, the peacekeepers had so little fuel that they were forced to start patrolling the enclave on foot. Dutch Bat soldiers who went out of the area on leave were not allowed to return and their numbers dropped from 600 to 400 men.

27. There were other ominous signals from the VRS. In March and April, the Dutch soldiers noticed a build-up of Bosnian Serb forces near two of the observation posts, OP Romeo and OP Quebec. The new Bosnian Serb soldiers seemed better equipped and more disciplined.<sup>45</sup> One of

<sup>38</sup> Radinović, T. 7840-7842. See also D 123, D 124, D 125, and D 126 (regarding helicopter flights, and landings in the “safe areas” by the ABiH). Mr. Butler, accepted that Bosnian Muslim military units continued to operate out of the safe area after its establishment. Butler, T. 5374. See also Hadžihasanović, T. 9518.

<sup>39</sup> Defence Witness DA, T. 6874-6875, 6877; and Krstić, T. 6088-6089.

<sup>40</sup> Krstić, T. 5984. See also: D 27, D 47, D 49, D 48, D 74, and D 52 (regarding the procurement of weapons and materiel by the ABiH in the “safe areas”); D 70 (regarding the arrival of soldiers from the 28<sup>th</sup> Division in Žepa); D 44, and D 45 (regarding the use of helicopters to bring in arms to the “safe areas”); and Krstić, T.6008-6013 and D 39, (regarding the ABiH plan to disarm UNPROFOR and take their weapons).

<sup>41</sup> Krstić, T. 5993-5994. See also D 55, and D 33.

<sup>42</sup> Radinović, T. 7840-7842.

<sup>43</sup> Halilović, T. 9467-9468.

<sup>44</sup> P 122, pp. 62-66, 67 (testimony of Colonel Karremans).

<sup>45</sup> Captain Leendert van Duijn (hereafter “van Duijn”), T. 1772-1773.

the Bosnian Muslim commanders told a Dutch Bat soldier that the Bosnian Serbs had plans to take-over these two OPs.<sup>46</sup>

##### 5. Spring 1995: The Bosnian Serbs Plan To Attack the Srebrenica "Safe Area"

28. In March 1995, Radovan Karadžić, President of Republika Srpska ("RS"), reacting to pressure from the international community to end the war and ongoing efforts to negotiate a peace agreement,<sup>47</sup> issued a directive to the VRS concerning the long-term strategy of the VRS forces in the enclave. The directive, known as "Directive 7", specified that the VRS was to:

[C]omplete the physical separation of Srebrenica from Žepa as soon as possible, preventing even communication between individuals in the two enclaves. By planned and well-thought out combat operations, create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica.<sup>48</sup>

Blocking aid convoys was also a part of the plan:

The relevant State and military organs responsible for work with UNPROFOR and humanitarian organisations shall, through planned and unobtrusively restrictive issuing of permits, reduce and limit the logistics support of UNPROFOR to the enclaves and the supply of material resources to the Muslim population, making them dependent on our good will while at the same time avoiding condemnation by the international community and international public opinion.<sup>49</sup>

Just as envisaged in this decree, by mid 1995, the humanitarian situation of the Bosnian Muslim civilians and military personnel in the enclave was catastrophic. In early July 1995, a series of reports issued by the 28<sup>th</sup> Division reflected the urgent pleas of the ABiH forces in the enclave for the humanitarian corridor to be deblocked and, when this failed, the tragedy of civilians dying from starvation.<sup>50</sup>

29. On 31 March 1995, the VRS Main Staff issued Directive 7.1, signed by General Mladić. Directive 7.1 was issued "on the basis of Directive No. 7" and directed the Drina Corps to, *inter alia*, conduct "active combat operations...around the enclaves"<sup>51</sup>

<sup>46</sup> Van Duijn, T.1774.

<sup>47</sup> P 425.

<sup>48</sup> P 425, p. 10.

<sup>49</sup> *Ibid.*, p. 14.

<sup>50</sup> P 898 (Requesting that constant efforts be made to deblock the humanitarian corridor); P 899 (dated 6 July 1995, reporting that "The situation continues to be exceptionally difficult. The food convoy announced for today has not arrived. The first people to die of hunger in the area of Srebrenica after the demilitarisation were registered today."); P 900 (dated 7 July 1995, reporting that "The humanitarian situation is worrying. Today more civilians have been registered as having died from hunger..."); P 901 (dated 8 July 1995 reporting that "This situation is also dramatic and practically hopeless. The civilian population is dying of hunger...we will very soon be forced to abandon this area because of a lack of food."); P 902 (dated 9 July 1995, reporting that the "humanitarian situation is catastrophic...").

<sup>51</sup> P 426.

30. On 31 May 1995, Bosnian Serb forces captured OP Echo, which lay in the Southeast corner of the enclave. In response to this aggression, a raiding party of Bosniacs attacked the nearby Serb village of Višnjica, in the early morning of 26 June 1995. Although a relatively low intensity attack, some houses were burned and several people were killed.<sup>52</sup> Following this, the then-commander of the Drina Corps, General-Major Milenko Živanović, signed two orders, on 2 July 1995, laying out the plans for the attack on the enclave and ordering various units of the Drina Corps to ready themselves for combat. The operation was code-named “Krivaja 95”<sup>53</sup>

#### 6. 6-11 July 1995: The Take-Over of Srebrenica

31. The VRS offensive on Srebrenica began in earnest on 6 July 1995.<sup>54</sup> In the following days, the five UNPROFOR observation posts, in the southern part of the enclave, fell one by one in the face of the Bosnian Serb forces advance. Some of the Dutch soldiers retreated into the enclave after their posts were attacked, but the crews of the other observation posts surrendered into Bosnian Serb custody.<sup>55</sup> Simultaneously, the defending ABiH forces came under heavy fire and were pushed back towards the town.

32. Once the southern perimeter began to collapse, about 4,000 Bosnian Muslim residents, who had been living in a Swedish housing complex for refugees nearby, fled north into Srebrenica town. Dutch Bat soldiers reported that the advancing Bosnian Serbs were “cleansing” the houses in the southern part of the enclave.<sup>56</sup>

33. By the evening of 9 July 1995, the VRS Drina Corps had pressed four kilometres deep into the enclave, halting just one kilometre short of Srebrenica town. Late on 9 July 1995, emboldened by this military success and the surprising lack of resistance from the Bosnian Muslims as well as the absence of any significant reaction from the international community, President Karadžić issued a new order authorising the VRS Drina Corps to capture the town of Srebrenica.<sup>57</sup>

34. On the morning of 10 July 1995, the situation in Srebrenica town was tense. Residents, some armed, crowded the streets. Colonel Karremans sent urgent requests for NATO air support to defend the town, but no assistance was forthcoming until around 1430 hours on 11 July 1995, when NATO bombed VRS tanks advancing towards the town. NATO planes also attempted to bomb VRS artillery positions overlooking the town, but had to abort the operation due to poor visibility.

<sup>52</sup> Secretary-General’s Report, para. 225.

<sup>53</sup> P 428.

<sup>54</sup> P 428, and Radinović, T. 7916.

<sup>55</sup> Witness B, T. 844-847.

<sup>56</sup> Witness B, T. 854.

<sup>57</sup> P 432.



NATO plans to continue the air strikes were abandoned following VRS threats to kill Dutch troops being held in the custody of the VRS, as well as threats to shell the UN Potočari compound on the outside of the town, and surrounding areas, where 20,000 to 30,000 civilians had fled.<sup>58</sup>

35. The Trial Chamber heard that, although the Bosnian military and political authorities in Srebrenica requested help from the ABiH and the President of Bosnia, Alija Izetbegović, their pleas went unanswered. In the view of General Halilović, the ABiH as a whole was capable of preventing the take-over of Srebrenica, but ABiH forces in the area could not defend Srebrenica without outside assistance.<sup>59</sup> However, military operations in the Sarajevo area were given a higher priority at the critical time.<sup>60</sup> The Defence presented evidence of a “deal” allegedly made between the Bosnian Muslim and Bosnian Serb leaderships whereby Srebrenica was sacrificed by the former in exchange for territory in the Sarajevo area.<sup>61</sup> Undeniably, the enclave was not defended in the manner that would have been anticipated. However, the existence of such a “deal” is hotly contested and does not have a direct bearing on the present case. Any possible territorial exchange agreed upon by the opposing governments neither justifies the atrocities that occurred following the take-over of Srebrenica, nor impacts upon the responsibility of General Krstić for those acts.

36. Late in the afternoon of 11 July 1995, General Mladić, accompanied by General Živanović (then Commander of the Drina Corps), General Krstić (then Deputy Commander and Chief of Staff of the Drina Corps) and other VRS officers, took a triumphant walk through the empty streets of Srebrenica town. The moment was captured on film by Serbian journalist, Zoran Petrović.<sup>62</sup>

## 7. The Bosnian Muslim Civilians of Srebrenica

### (a) The Crowd at Potočari

37. Faced with the reality that Srebrenica had fallen under Bosnian Serb forces control, thousands of Bosnian Muslim residents from Srebrenica fled to Potočari seeking protection within the UN compound. By the evening of 11 July 1995, approximately 20,000 to 25,000 Bosnian Muslim refugees were gathered in Potočari. Several thousand had pressed inside the UN compound itself, while the rest were spread throughout the neighbouring factories and fields. Though the vast

<sup>58</sup> P 77/18 (UNMO report-containing the threat made by the Bosnian Serbs that, if NATO action continued, everything inside the enclave would be bombed); and P 403, Mr. R. Butler, *Srebrenica Military Narrative-Operation “Krivaja 95”*, 15 May 2000, (hereafter “Butler Report”), para. 3.17.

<sup>59</sup> Halilović, T. 9495.

<sup>60</sup> Halilović, T. 9453, 9492.

<sup>61</sup> The Trial Chamber viewed a film made by Dutch television about the circumstances surrounding the take-over of Srebrenica suggesting such an agreement. See T. 9479 ff.

<sup>62</sup> P 145.

majority were women, children, elderly or disabled,<sup>63</sup> witnesses estimated that there were at least 300 men inside the perimeter of the UN compound and between 600 and 900 men in the crowd outside.<sup>64</sup>

(i) The Humanitarian Crisis in Potočari: 11-13 July 1995

38. Conditions in Potočari were deplorable. There was very little food or water available and the July heat was stifling.<sup>65</sup> One of the Dutch Bat officers described the scene as follows:

They were panicked, they were scared, and they were pressing each other against the soldiers, my soldiers, the UN soldiers that tried to calm them. People that fell were trampled on. It was a chaotic situation.<sup>66</sup>

39. One of the fleeing Srebrenica residents settled for the night in the area near the Zinc Factory in Potočari:

I found a cover of a container that they used . . . in that factory, so we used that, covered it, and that was our bed. The baby had its pram, and we left our belongings in the pram or simply lied down on the ground . . . . As we sat there, snipers would fire every now and then, and all this throng would then move to one side or the other, screaming. Above us was the Pecista village where the Serb soldiers were firing at houses. The sound of that shell, again we would simply dodge to one side or the other with frightened cries, and that is how we spent the night. . . . People were all frightened, people were all hungry, people were scared out of their wits. They didn't know what would happen next, so that those were people who were terrified.<sup>67</sup>

40. On 12 July 1995, the situation in Potočari grew steadily worse. General Mladić appeared accompanied by television crews who filmed him handing out sweets to children. Other than this one televised gesture,<sup>68</sup> General Mladić and his men made no attempt to alleviate the suffering of the refugees who were desperate for food and water.

(ii) 12-13 July: Crimes Committed in Potočari

41. On 12 July 1995, as the day wore on, the already miserable physical conditions were compounded by an active campaign of terror, which increased the panic of the residents, making them frantic to leave. The refugees in the compound could see Serb soldiers setting houses and haystacks on fire:<sup>69</sup>

<sup>63</sup> Van Duijn, T. 1741; P 127, pp. 34-35; Witness G, T. 1643.

<sup>64</sup> Franken, T. 2048, 2085.

<sup>65</sup> See, e.g., Captain Eelco Koster (hereafter "Koster"), P 127/A, p. 35-36; Vaasen, T. 1397; Kingori, T. 1833; Karremans, T. 3330-3331.

<sup>66</sup> Van Duijn", T. 1748.

<sup>67</sup> Ms. Camila Omanović (hereafter "Omanović"), T. 1090-911093.

<sup>68</sup> Witnesses testified that once the television cameras were switched off, the sweets were taken away from the children. See Vaasen, T. 1414; Rutten, T. 2125; Witness F, T. 1521.

<sup>69</sup> Rutten, T. 2115; Mandzić, T.994; Omanović, T. 1091-93; van Duijn, T. 1779-1780; Witness G, T. 1638-1642; Ms. Hava Hajdarević (hereafter "Hajdarević"), T. 2581.

We could see nearby houses on fire. They also torched the houses in a selective manner, with the purpose of frightening the population and also so as to prevent them from coming back. It was a very clear message, very clear sign that Srebrenica – that is, that there would be no life for Bosniaks in Srebrenica anymore.<sup>70</sup>

42. Throughout the afternoon of 12 July 1995, Serb soldiers mingled in the crowd. One witness recalled hearing the soldiers cursing the Bosnian Muslims and telling them to leave; that they would be slaughtered; that this was a Serb country.<sup>71</sup> Another witness testified that a soldier cut him in the face.<sup>72</sup>

43. Killings occurred.<sup>73</sup> In the late morning of 12 July 1995, a witness saw a pile of 20 to 30 bodies heaped up behind the Transport Building in Potočari, alongside a tractor-like machine.<sup>74</sup> Another testified that, at around 1200 hours on 12 July, he saw a soldier slay a child with a knife in the middle of a crowd of expellees. He also said that he saw Serb soldiers execute more than a hundred Bosnian Muslim men in the area behind the Zinc Factory and then load their bodies onto a truck, although the number and methodical nature of the murders attested to by this witness stand in contrast to other evidence on the Trial Record that indicates that the killings in Potočari were sporadic in nature.<sup>75</sup>

44. As evening fell, the terror deepened. Screams, gunshots and other frightening noises were audible throughout the night and no one could sleep.<sup>76</sup> Soldiers were picking people out of the crowd and taking them away: some returned; others did not.<sup>77</sup> Witness T recounted how three brothers – one merely a child and the others in their teens – were taken out in the night. When the boys' mother went looking for them, she found them with their throats slit.<sup>78</sup>

45. That night, a Dutch Bat medical orderly came across two Serb soldiers raping a young woman:

[W]e saw two Serb soldiers, one of them was standing guard and the other one was lying on the girl, with his pants off. And we saw a girl lying on the ground, on some kind of mattress. There was blood on the mattress, even she was covered with blood. She had bruises on her legs. There was even blood coming down her legs. She was in total shock. She went totally crazy.<sup>79</sup>

<sup>70</sup> Mr. Nesib Mandžić (hereafter "Mandžić"), T. 994.

<sup>71</sup> Mr. Bego Ademović, (hereafter "Ademović") T. 1589.

<sup>72</sup> Witness H, T. 1683-87.

<sup>73</sup> Franken, T. 2052; Witness B, T. 908; Witness G, T. 1642-1648; Witness H, T. 1688-92; Ademović, T. 1590-97.

<sup>74</sup> Witness H, T. 1688-89.

<sup>75</sup> Ademović, T. 1590-1591, 1593-96.

<sup>76</sup> See, e.g. Mandžić, T. 995; Omanović, T. 1109-1110; Ms. Mirsada Malagić (hereafter "Malagić") T. 1957-1958; Witness H, T. 1692-95, Hajdarević, T. 2585-2586.

<sup>77</sup> Mandžić, T. 994; Ademović, T. 1598-99; Malagić T. 1954-1955; Witness H, T. 1692-1695.

<sup>78</sup> Witness T, T. 3432-3434.

<sup>79</sup> Lance Corporal David Vaasen (then-Private First Class) (hereafter "Vaasen"), T. 1429-30.

46. Bosnian Muslim refugees nearby could see the rape, but could do nothing about it because of Serb soldiers standing nearby.<sup>80</sup> Other people heard women screaming, or saw women being dragged away.<sup>81</sup> Several individuals were so terrified that they committed suicide by hanging themselves.<sup>82</sup> Throughout the night and early the next morning, stories about the rapes and killings spread through the crowd and the terror in the camp escalated.<sup>83</sup>

47. On the morning of 13 July 1995, refugees searching for water came upon clusters of corpses next to a nearby stream. Finding dead bodies in such a prominent place strengthened their resolve to flee as soon as possible.<sup>84</sup>

(iii) 12-13 July 1995: The Transport of the Bosnian Muslim Women Children and Elderly from Potočari

48. On 12 and 13 July 1995, the women, children and elderly were bussed out of Potočari, under the control of VRS forces, to Bosnian Muslim held territory near Kladanj. When the first group of buses pulled into Potočari in the early afternoon of 12 July 1995, the Srebrenica refugees rushed to board them.<sup>85</sup> Most of the residents did not even know where they were headed. One survivor recounted her experience before the Trial Chamber:

[N]obody asked us . . . . They simply brought the buses. And they knew, because such chaos reigned in Srebrenica, so they knew if they brought those five buses, or any number of vehicles, that people (would) simply set off. Because before that, they had passed such horrible nights . . . . We simply wanted to get away, to get away, only not to stay there. And we didn't even have any other possibility. . . . We had no say in the matter."<sup>86</sup>

Some soldiers were hitting and abusing the refugees as they boarded the buses.<sup>87</sup>

49. Witnesses said the buses were overcrowded and unbearably hot. Along the road, some village residents taunted the passengers with the three-fingered Serb salute. Others threw stones at the passing buses. Most of the women, children, and the elderly, however, arrived safely at Tišća.<sup>88</sup>

<sup>80</sup> Vaasen, T. 1431.

<sup>81</sup> Omanović, T. 1132; Ademović, T. 1588.

<sup>82</sup> Malagić T. 1959-1960; Omanović, T. 1113, 1117-1119; Witness B, T. 914-915.

<sup>83</sup> Omanović, T. 1113; Mandžić, T. 997.

<sup>84</sup> Omanović, T. 1114; Witness E, T. 1349; Rutten, T. 2139-2140; see also Franken, T. 2052; Koster, P 127, p.44.

<sup>85</sup> Witness B, T. 894-98.

<sup>86</sup> Omanović, T. 1129-30; see also, e.g., Ademović, T. 1603 (expellees were not given a choice about whether to stay or where to go).

<sup>87</sup> Witness G, T. 1643-1648; see also Kingori, T. 1881-85 (it was forced transport with the destination determined by the Bosnian Serbs).

<sup>88</sup> One witness testified about unconfirmed information that suggests approximately 1,000 women, most of them young, did not arrive in Kladanj from Potočari. See Malagić, T. 1991. Fragments of the Trial Record suggest that, at various points throughout the journey, women, particularly young attractive women, were pulled off the buses by Bosnian Serb forces, their ultimate fate unknown. e.g. Witness D, T. 1279-1280. However, the Prosecution did not pursue this matter and did not seek to include this in the criminal conduct for which the defendant was alleged to be responsible.

After disembarking, they were forced to continue on foot for several kilometres through the “no-man’s land” between the Bosnian Serb and Bosnian Muslim lines to Kladanj.<sup>89</sup>

50. Dutch Bat soldiers attempted to escort the buses carrying the Bosnian Muslim civilians out of Potočari. They succeeded in accompanying the first convoy of refugees on 12 July 1995,<sup>90</sup> but thereafter they were stopped along the way and their vehicles were stolen at gunpoint.<sup>91</sup> When Major Robert Franken, the Deputy Commander of Dutch Bat, was asked, during his testimony, why the Serbs were seizing the UNPROFOR vehicles, he answered:

Because they didn’t want anybody to be around; that’s obvious...they didn’t want us to witness whatever would happen.<sup>92</sup>

51. The removal of the Bosnian Muslim civilian population from Potočari was completed on the evening of 13 July 1995 by 2000 hours.<sup>93</sup> When UN soldiers visited the town of Srebrenica on 14 July 1995, they said they did not find a single Bosnian Muslim alive in the town.<sup>94</sup>

52. The Trial Chamber finds that, following the take-over of Srebrenica, in July 1995, Bosnian Serb forces devised and implemented a plan to transport all of the Bosnian Muslim women, children and elderly out of the enclave.

(iv) The Separation of the Bosnian Muslim Men in Potočari

53. From the morning of 12 July, Bosnian Serb forces began gathering men from the refugee population in Potočari and holding them in separate locations.<sup>95</sup> One Dutch Bat witness saw men being taken to a location in front of the Zinc Factory and, subsequently, that evening, driven away in a lorry.<sup>96</sup> Further, as the Bosnian Muslim refugees began boarding the buses, Bosnian Serb soldiers systematically separated out men of military age who were trying to clamour aboard.<sup>97</sup> Occasionally, younger and older men were stopped as well. These men were taken to a building in Potočari referred to as the “White House”.<sup>98</sup>

<sup>89</sup> Malagić, T. 1981-82.

<sup>90</sup> Witness C, T. 1187.

<sup>91</sup> Franken, T. 2031 (testifying that Dutch Bat lost about 15-16 jeeps); Rutten, T. 2130, 2131, 2154; Witness G, T. 1650-59.

<sup>92</sup> Franken, T. 2031.

<sup>93</sup> P 459 (Report prepared by Colonel Janković of the VRS Main Staff, dated 13 July 1995).

<sup>94</sup> Vaasen, T. 1478.

<sup>95</sup> Witness H, T. 1685, 1695, 1716-1717; Omanović, T. 1130-1131.

<sup>96</sup> Van Duijn, T. 1761-1762.

<sup>97</sup> Vaasen, T. 1418-1419; Franken, T. 2038-2039; Witness C, T. 1182; Witness F, T. 1511; Witness G, T. 1643-1644; Omanović, T. 1105-1106; Witness E, T. 1350; Malagić, T. 1966; and Mandžić, T. 992, 1005-1006. Witness B recalled that the separation process may not have begun until after the first few buses had already been filled up.

Witness B, T. 898.

<sup>98</sup> See, e.g., Witness B, T. 898; Kingori, T. 1844-1849, 1857.

54. The way in which the separations were conducted was traumatic for the Bosnian Muslim families involved. Witness I, for example, testified:

I was carrying water to have for my children so that on the road they could have some refreshment, because there were people who were passing out. A Serb soldier grabbed me by the shoulder and said, "Here." I said, "Let me see off my children, at least, to the trucks." He says "You can't." So I gave that canister to a grandchild. And the Serb soldier grabbed me by the shoulder, and I had to go into the house there.<sup>99</sup>

55. Witness DD recalled seeing her young son for the last time as her family tried to board the buses:

[F]rom the left column one of their soldiers jumped out, and he spoke to my child. He told us to move to the right side, and he told my son, "Young man, you should go to the left side." . . . I grabbed him by his hand . . . And then I begged them, I pleaded with them. Why are you taking him? He was born in 1981. But he repeated his order. And I held him so hard, but he grabbed him . . . [A]nd he took my son's hand, and he dragged him to the left side. And he turned around, and then he told me, "Mommy, please, can you get that bag for me? Could you please get it for me? . . . That was the last time I heard his voice."<sup>100</sup>

56. As the buses carrying the women, children and elderly headed north towards Bosnian Muslim-held territory, they were stopped along the way and again screened for men. Witness D, for example, managed to steal aboard a bus in Potočari, but was separated from his family once the bus stopped in Tišća:

I got off the bus too with my child in my arms. My wife had her backpack on her back, and she was supporting my mother because she was old and very frail. My child was five years old. After we had got off the bus and had made just a few steps, I noticed several Serb soldiers. One of those Serb soldiers pulled me by the shoulder and said, "Give the child to your wife and you come with us." I had to do that. So I gave the child to my wife. I tried to turn once again, because I knew that was the last time I would see my child. As a matter of fact, I was about to say something. I wanted to say anything, but then I couldn't. At that moment, the Serb soldier pushed me with his rifle and said, "Move on."<sup>101</sup>

57. As early as the evening of 12 July 1995, Major Franken heard that no men were arriving with the women and children at their destination in Kladanj.<sup>102</sup>

58. On 13 July 1995, the Dutch Bat troops witnessed definite signs that the Bosnian Serbs were executing some of the Bosnian Muslim men who had been separated. For example, Corporal Vaasen saw two soldiers take a man behind the White House. He then heard a shot and the two soldiers reappeared alone.<sup>103</sup> Another Dutch Bat officer, saw Serb soldiers execute an unarmed man with a single gunshot to the head. He also heard gunshots 20-40 times an hour throughout the

<sup>99</sup> Witness I, T. 2371.

<sup>100</sup> Witness DD, T. 5754-55.

<sup>101</sup> Witness D, T. 1261.

<sup>102</sup> Franken, T. 2046-2047.

<sup>103</sup> Vaasen, T. 1438.

afternoon.<sup>104</sup> When the Dutch Bat soldiers told Colonel Joseph Kingori, a United Nations Military Observer<sup>105</sup> (“UNMO”) in the Srebrenica area, that men were being taken behind the White House and not coming back, Colonel Kingori went to investigate. He heard gunshots as he approached, but was stopped by Bosnian Serb soldiers before he could find out what was going on.<sup>106</sup>

59. Beginning on the afternoon of 12 July 1995 and continuing throughout 13 July 1995, men detained in the White House were placed on separate buses to the women, children and elderly and were taken out of the Potočari compound to detention sites in Bratunac.<sup>107</sup>

(b) The Column of Bosnian Muslim Men

60. As the situation in Potočari escalated towards crisis on the evening of 11 July 1995, word spread through the Bosnian Muslim community that the able-bodied men should take to the woods, form a column together with members of the 28<sup>th</sup> Division of the ABiH and attempt a breakthrough towards Bosnian Muslim-held territory in the north. At around 2200 hours on the evening of 11 July 1995, the “division command”, together with the Bosnian Muslim municipal authorities of Srebrenica, made the decision to form the column.<sup>108</sup> The young men were afraid they would be killed if they fell into Bosnian Serb hands in Potočari and believed that they stood a better chance of surviving by trying to escape through the woods to Tuzla.<sup>109</sup>

61. The column gathered near the villages of Jaglici and Šušnjari and began to trek north. Witnesses estimated that there were between 10,000 and 15,000 men in the retreating column.<sup>110</sup> Around one third of the men in the column were Bosnian Muslim soldiers from the 28<sup>th</sup> Division, although not all of the soldiers were armed.<sup>111</sup> The head of the column was comprised of units of the 28<sup>th</sup> Division, then came civilians mixed with soldiers and the last section of the column was the Independent Battalion of the 28<sup>th</sup> Division.<sup>112</sup> A small number of women, children and elderly

<sup>104</sup> Corporal Groenewegen testimony, P 32, .62. See also Kingori, T. 1852; Franken, T. 2052; and Witness G, T. 1642-48.

<sup>105</sup> The role of UNMOs was to monitor violations of cease-fire agreements and also to provide humanitarian support. Unlike UNPROFOR, the UNMOs were unarmed. See Kingori, T. 1799-1800.

<sup>106</sup> Kingori, T. 1850-51; see also Franken, T. 2040 (UN soldiers not allowed to investigate sounds emanating from the White House).

<sup>107</sup> See the further discussion on the transportation of the Bosnian Muslim men from Potočari *Infra* paras. 156-161.

<sup>108</sup> Hadžihasanović, T. 9527-9528.

<sup>109</sup> Witness L, T. 2654; Mr. Enver Husić (hereafter “Husić”), T.2640. See also Hadžihasanović, T. 9594-9595.

<sup>110</sup> Hadžihasanović, T. 9528 (putting the number of men in the column at between 12,000 and 15,000 people and the length of the column at between 12 and 15 kilometres).

<sup>111</sup> See, e.g., Butler, T. 5318 (one-third were soldiers, but only 1,000 had weapons); Cf. Witness P, T. 2944 (one-third of the men were armed); Witness S, T. 3240 (about one third of the men were armed with hunting rifles and similar weapons).

<sup>112</sup> Hadžihasanović, T. 9528.

travelled with the column in the woods. When subsequently captured by Bosnian Serb forces, they were put on passing buses from Potočari heading towards Kladanj.<sup>113</sup>

62. At around midnight on 11 July 1995, the column started moving along the axis between Konjevic Polje and Bratunac. On 12 July 1995, Bosnian Serb forces launched an artillery attack against the column that was crossing an asphalt road between the area of Konjevic Polje and Nova Kasaba *en route* to Tuzla. Only about one third of the men successfully made it across the asphalt road and the column was split in two parts.<sup>114</sup> Heavy shooting and shelling continued against the remainder of the column throughout the day and during the night. Men from the rear of the column who survived this ordeal described it as a “man hunt”.<sup>115</sup>

63. By the afternoon of 12 July 1995, or the early evening hours at the latest, the Bosnian Serb forces were capturing large numbers of these men in the rear.<sup>116</sup> Witnesses reported a variety of techniques used to trap prisoners. In some places, ambushes were set up<sup>117</sup> and, in others, the Bosnian Serbs shouted into the forest, urging the men to surrender and promising that the Geneva Conventions would be complied with.<sup>118</sup> In some places, Bosnian Serb forces fired into the woods with anti-aircraft guns and other weapons<sup>119</sup> or used stolen UN equipment to deceive the Bosnian Muslim men into believing that the UN or the Red Cross were present to monitor the treatment accorded to them upon capture.<sup>120</sup> In fact, Bosnian Serb forces stripped the captured Muslim men of their personal belongings<sup>121</sup> and, in some cases, carried out random summary executions.<sup>122</sup>

64. The largest groups of Bosnian Muslim men from the column were captured on 13 July 1995; several thousand were collected in or near the Sandići Meadow and on the Nova Kasaba football field. The Trial Chamber heard from men held captive on these fields<sup>123</sup> and from witnesses who passed by them on the buses heading to Kladanj.<sup>124</sup> Aerial reconnaissance photos tendered into

<sup>113</sup> Witness K, T. 2503, 2509.

<sup>114</sup> Hadžihasanović, T. 9528-9529.

<sup>115</sup> Hadžihasanović, T. 9530.

<sup>116</sup> Butler, T. 5453-5454.

<sup>117</sup> See, e.g., Witness J, T. 2450.

<sup>118</sup> Witness P, T. 2946.

<sup>119</sup> Witness K, T. 2504; Egbers, T. 2224-2225.

<sup>120</sup> Witness M, T. 2766; Witness P, T. 2292-93.

<sup>121</sup> Witness Q, T. 3018; Witness R, T. 3198; Witness O, T. 2866; Witness S, T. 3246-3247.

<sup>122</sup> Witness R, T. 3192-3193, 3198-3202; Witness P, T. 2957; Husić, T. 2634-2635. See also Mr. Andere Stoelinga, T. 2299-2300.

<sup>123</sup> See, e.g., Witness J, T. 2439-2497; Witness K, T. 2497-2571; Witness L, T. 2647-2731; Witness O, T. 2860-2938; Husić, T. 2598-2646; Witness P, T. 2940-3014; Witness Q, T. 3015-3051.

<sup>124</sup> See, e.g., Ademović, T. 1607 (1,000 men at the Nova Kasaba football field); Malagić, T. 1974-75 (long column of prisoners between Sandići and Kravica, and a large group in a meadow, with their belongings heaped by the road); Hajdarević, T. 2587-2588 (many prisoners with their hands behind their heads near Kravica and Sandići); Egbers, T. 2226 (football field at Nova Kasaba was entirely filled with men, sitting on their knees with their hands behind their heads, surrounded by soldiers); Witness Q, T. 3025 (saw crowd of prisoners in Sandići from bus); Witness E, T. 1354,



evidence by the Prosecution confirm the presence of masses of people in these locations on 13 July 1995.<sup>125</sup>

65. The head of the column waited to see what would happen to the second part of the column. Heavy shooting and shelling continued throughout the day of 12 July 1995 and into the night, and ultimately the head of the column abandoned hope. On 13 July 1995, they continued their journey up along the Kalesija-Zvornik road, where they too were caught in ambushes and suffered further casualties.<sup>126</sup> After one unsuccessful attempt to move forward to the Bosnian Muslim front lines on 15 July 1995, the head of the column finally managed to break through to Bosnian Muslim-held territory on 16 July 1995. ABiH forces attacking from the direction of Tuzla assisted by piercing a line of about one-and-a-half kilometres for the emerging column.<sup>127</sup>

#### 8. The Execution of the Bosnian Muslim Men from Srebrenica

66. The Bosnian Muslim men who had been separated from the women, children and elderly in Potočari (numbering approximately 1,000) were transported to Bratunac and subsequently joined by Bosnian Muslim men captured from the column. No discernible effort was made to keep the prisoners from Potočari and the men captured from the column in woods separate. These men were held in various locations, such as an abandoned warehouse,<sup>128</sup> an old school<sup>129</sup> and even in the buses and trucks that had brought them there.<sup>130</sup> During the nights, individual prisoners in Bratunac were called out, and cries of pain and gunfire could be heard.<sup>131</sup> After being detained in Bratunac for between one and three days, the prisoners were transported elsewhere, as the buses used to evacuate the women, children and elderly from Potočari became available.

67. Almost to a man, the thousands of Bosnian Muslim prisoners captured, following the take-over of Srebrenica, were executed. Some were killed individually or in small groups by the soldiers who captured them and some were killed in the places where they were temporarily detained. Most, however, were slaughtered in carefully orchestrated mass executions, commencing on 13 July 1995, in the region just north of Srebrenica. Prisoners not killed on 13 July 1995 were subsequently bussed to execution sites further north of Bratunac, within the zone of responsibility of the Zvornik Brigade. The large-scale executions in the north took place between 14 and 17 July 1995.

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1356 (a total of approximately 300-400 prisoners at Kravica and in a meadow between Konjevic Polje and Nova Kasaba).

<sup>125</sup> P 12/2; P 12/4; Butler, T. 4925-4928; P 490; P 491; P 492; P 493; P 494; P 495; P 496; P 497; and P 498.

<sup>126</sup> Hadžihasanović, T. 9529.

<sup>127</sup> Hadžihasanović, T. 9529-9530.

<sup>128</sup> Witness N, T. 2801.

<sup>129</sup> Witness I, T. 2374.

68. Most of the mass executions followed a well-established pattern. The men were first taken to empty schools or warehouses. After being detained there for some hours, they were loaded onto buses or trucks and taken to another site for execution. Usually, the execution fields were in isolated locations. The prisoners were unarmed and, in many cases, steps had been taken to minimise resistance, such as blindfolding them, binding their wrists behind their backs with ligatures or removing their shoes. Once at the killing fields, the men were taken off the trucks in small groups, lined up and shot. Those who survived the initial round of gunfire were individually shot with an extra round, though sometimes only after they had been left to suffer for a time.<sup>132</sup> Immediately afterwards, and sometimes even during the executions, earth moving equipment arrived and the bodies were buried, either in the spot where they were killed or in another nearby location.

69. At several of the sites, a few wounded people survived by pretending to be dead and then crawled away. The Trial Chamber heard from some of these survivors about their ordeals. It also heard from a member of the VRS who participated in one of the largest executions, which took place on 16 July 1995.<sup>133</sup>

70. In addition to being an unspeakable human evil, the decision to execute these Bosnian Muslim men is unfathomable in military terms. As Mr. Richard Butler (Chief Warrant Officer Three All Source Intelligence Technician with the United States Army), the Prosecution's military expert, pointed out:

...it is hard to envision a better bargaining chip in dealing with the political authorities of certainly the BiH government and of the International Community than having 10,000 to 15000 Muslim men in the middle of Potočari in a legitimate prisoner of war facility under the control or under the supervision of certainly the UN troops that were there and the ICRC at a point in time. That is the ultimate bargaining chip, to be able to get significant political leverage from people, one would think, and this chip was thrown away for another reason.

## 9. Forensic Evidence of the Executions

71. The extensive forensic evidence presented by the Prosecution strongly corroborates important aspects of the testimony of survivors from the various execution sites. Commencing in 1996, the Office of the Prosecutor (hereafter "OTP") conducted exhumations of 21 gravesites associated with the take-over of Srebrenica: four in 1996 (at Čerska, Nova Kasaba, Orahovac (also known as Lazete 2) and Branjevo Military Farm (Pilica)); eight in 1998 (Petkovci Dam, Cančari

<sup>130</sup> Witness N, T. 2802; Witness I, T. 2374 (old school).

<sup>131</sup> Witness L, T. 2668; Witness N, T. 2804; Witness Q, T.2957; Witness I, T. 2377.

<sup>132</sup> See, e.g., Witness Q, T. 3033, 3035-3036 ; Witness L, T. 2690 (when a wounded man at the Orahovac site asked to be finished off, the Serb soldier replied "slowly, slowly").

Road 12, Čančari Road 3, Hodžići Road 3, Hodžići Road 4, Hodžići Road 5, Lipje 2, Zeleni Jadar 5); five in 1999 (Kozluk, Nova Kasaba, Konjević Polje 1, Konjevic Polje 2, and Glogova 2);<sup>134</sup> and four in 2000 (Lazete 1, Lazete 2C,<sup>135</sup> Ravnice and Glogova 1). Of the 21 gravesites exhumed, 14 were primary gravesites, where bodies had been put directly after the individuals were killed. Of these, eight were subsequently disturbed and bodies were removed and reburied elsewhere, often in secondary gravesites located in more remote regions.<sup>136</sup> Seven of the exhumed gravesites were secondary burial sites.<sup>137</sup> The OTP retained ballistics, soil analysis and materials analysis, experts to comparatively examine materials and residues found in the primary and secondary gravesites.<sup>138</sup> As a result of these analyses, links were discovered between certain primary gravesites and certain secondary gravesites and these are considered in further detail below.

72. The Prosecution called eight witnesses to give evidence before the Trial Chamber about the exhumations and the resulting forensic findings.<sup>139</sup> In addition, the Trial Chamber received volumes of written reports prepared by the experts who conducted the OTP investigations. In response, the Defence filed two reports by a forensic expert, Dr. Zoran Stanković.<sup>140</sup>

73. The forensic evidence supports the Prosecution's claim that, following the take-over of Srebrenica, thousands of Bosnian Muslim men were summarily executed and consigned to mass graves. Although forensic experts were not able to conclude with certainty how many bodies were in the mass-graves, due to the level of decomposition that had occurred and the fact that many

<sup>133</sup> See generally the discussion *Infra* paras. 195-253.

<sup>134</sup> See P 140 D. Manning, *Srebrenica Investigation: Summary of Forensic Evidence-Execution Points and Mass Graves*, 16 May 2000 (hereafter "Manning Report") p. 00950906

<sup>135</sup> This gravesite is part of the Lazete 2 site exhumed in 1996, but is treated as a separate site for present purposes.

<sup>136</sup> Manning Report, p. 00950925 and D. Manning, *Srebrenica Investigation: Summary of Forensic Evidence-Mass Graves Exhumed in 2000*, February 2001 (hereafter "Additional Manning Report") p 7601. The Additional Manning Report was filed as part of the "Motion to Reopen the Prosecutor's Case for the Limited Purpose of Introducing Four Expert Reports and a Summary Report of Fresh Exhumations Evidence" dated 15 March 2001. The Trial Chamber issued an oral order that these four expert's reports be admitted into evidence on 4 April 2001. See T. 9423. The Report was subsequently tendered as P 897.

<sup>137</sup> Additional Manning Report, p. 7601.

<sup>138</sup> See P 144 (Laboratory Report on Automated Ballistic Comparison, prepared by United States Bureau of Alcohol, Tobacco and Firearms, Forensic Science Laboratory, 24 February 2000); P 179 (Statement of Antony G. Brown, Palynologist 6 January 1998); P 180 (Statement of Antony G Brown, Palynologist 26 February 1999); P 143 (Report on Textile Investigation, prepared by Ing. S.E. Maljaars, Ministry of Justice, Netherlands Forensic Institute, 11 February 2000). See also Mr. Dean Manning (hereafter "Manning"), T. 3593.

<sup>139</sup> Professor Jose Baraybar (hereafter "Baraybar") T. 3781-3895; Professor Helge Brunborg, (hereafter "Brunborg") T. 4036-4100; Dr. John Clark, (hereafter "Clark") T. 3896-3972; Professor William Haglund, (hereafter "Haglund") T. 3723-3780; Dr. Christopher Lawrence, (hereafter "Lawrence") T. 3974-4034 ; Manning, T. 3542-3626, 4141-4150; Mr. Jean-Rene Ruez, (hereafter "Ruez") T. 3465-3541; and Professor Richard Wright, (hereafter "Wright"), T. 3632-3721.

<sup>140</sup> D 172 (*Forensic Opinion* dated 17 October 2000, by Doc. Dr. sc. Med. Zoran Stanković, Specialist in Forensic Medicine, permanent Expert for the area of Forensic Medicine pursuant to Ruling No. 740/0373/98 of the Ministry of Justice of Serbia, Institute of Forensic Medicine-VMA (hereafter "Stanković Report") and D 172 (*Forensic Opinion* dated 18 April 2001 by Doc. Dr. sc. Med. Zoran Stanković, Specialist in Forensic Medicine, permanent Expert for the area of Forensic Medicine pursuant to Ruling No. 740/0373/98 of the Ministry of Justice of Serbia, Institute of Forensic Medicine-VMA, (hereafter "Additional Stanković Report").

bodies were mutilated in the process of being moved from primary to secondary graves by mechanical equipment, the experts were able to conservatively estimate that a minimum of 2,028 separate bodies were exhumed from the mass-graves.<sup>141</sup>

74. Identity documents and belongings, found in most of the exhumed graves, suggest that the victims were linked with Srebrenica. Among the items found were license cards and other papers with references to Srebrenica.<sup>142</sup> In some cases, investigators were able to positively identify bodies in the graves as former Srebrenica residents on the basis of distinctive personal items found with the bodies such as jewellery,<sup>143</sup> artificial limbs<sup>144</sup> and photographs.<sup>145</sup> Other artefacts found at the majority of the gravesites, such as verses from the Koran, suggest the presence of victims with Muslim religious affiliation.<sup>146</sup> It is also of note that the sex distribution of the persons listed as missing from Srebrenica, on the International Committee of the Red Cross (ICRC) list (cross-referenced with other sources), correlates with the sex distribution of the bodies exhumed from the graves.<sup>147</sup> Professor Helge Brunborg, a Prosecution demographics expert, testified that the overwhelming majority of people registered as missing from Srebrenica are men.<sup>148</sup> The forensic examinations of the gravesites associated with Srebrenica reveal that only one of the 1,843 bodies for which sex could be determined was female.<sup>149</sup> Similarly, there is a correlation between the age distribution of persons listed as missing and the bodies exhumed from the Srebrenica graves: 26.4 percent of persons listed as missing were between 13-24 years and 17.5 percent of bodies exhumed fell within this age group; 73.6 percent of persons listed as missing were over 25 years of age and 82.8 percent of bodies exhumed fell within this age group.<sup>150</sup>

75. The results of the forensic investigations suggest that the majority of bodies exhumed were not killed in combat; they were killed in mass executions. Investigators discovered at least 448 blindfolds on or with the bodies uncovered during the exhumations at ten separate sites.<sup>151</sup> At least

<sup>141</sup> Additional Manning Report p. 7614.

<sup>142</sup> Manning, T. 3579-3580, 3588-3592. Identification items uncovered during the exhumations conducted in 2000 further revealed the presence of individuals listed as missing by the ICRC list cross-referenced with other sources. See Additional Manning Report, p. 7600-7597.

<sup>143</sup> P 132/95, and P 132/95A. See also Manning T. 3580-3582.

<sup>144</sup> P 132/93, and P 132/93A. See also Manning, T. 3583-3584.

<sup>145</sup> P 132/1, and P 132/18. See also Manning, T. 3589-3590, and 3592.

<sup>146</sup> P 132/110. See also Manning, T. 3588-3589. Artefacts demonstrating Muslim religious affiliation were also identified in three of the gravesites exhumed in 2000. Additional Manning Report pp. 7600-7597.

<sup>147</sup> Brunborg, T. 4071.

<sup>148</sup> Brunborg, T. 4070.

<sup>149</sup> Baraybar, T. 3811-3812. Additional Manning Report, p. 7613.

<sup>150</sup> P 276 (H. Brunborg and H. Urdal, The Report on the Number of Missing and Dead from Srebrenica), p. 00926384, Figure 3. This figure only includes exhumations conducted up to the year 2000.

<sup>151</sup> The sites were: the primary grave at Branjevo Military Farm and the related secondary grave of Cančari Road 12; the primary grave at Orahovac (known as Lazete 2), and the three connected secondary graves at Hodžići Road 3, Hodžići Road 4 and Hodžići Road 5; and the Kozluk grave and the associated secondary grave at Cančari Road 3. Manning T.3569-3570. In addition, during the exhumations conducted in 2000, blindfolds were found at Lazete 2C and Lazete 1. Additional Manning Report, p. 7601.

423 ligatures were located during exhumations at 13 separate sites.<sup>152</sup> Some of the ligatures were made of cloth and string, but predominately they were made of wire.<sup>153</sup> These ligatures and blindfolds are inconsistent with combat casualties. The Prosecution also relied on forensic evidence that the overwhelming majority of victims located in the graves, for who a cause of death could be determined, were killed by gunshot wounds.<sup>154</sup> The exhumations also revealed that some of the victims were severely handicapped and, for that reason, unlikely to have been combatants.<sup>155</sup>

76. Upon reviewing the Prosecution's forensic evidence, the Defence forensic expert, Dr. Zoran Stanković, argued that "some mass graves originated from the bodies of the persons who lost their lives in mutual armed conflicts of the warring sides, and that in some graves, where the cases of sure execution were registered, there were also...bodies killed in combat...".<sup>156</sup> He particularly criticised the methodology employed during some of the Prosecution's forensic investigations into cause of death.<sup>157</sup> Certainly, at those sites where no blindfolds or ligatures were found during exhumations, the evidence that the victims were not killed in combat was less compelling.<sup>158</sup> Significantly, some of the gravesites located in the Nova Kasaba and Konjevic Polje area, where intense fighting took place between the Bosnian Serb and Bosnian Muslim forces, on 12 and 13 July 1995, were amongst those where very few blindfolds and ligatures were uncovered.<sup>159</sup> The Defence expert, Dr. Stanković did not however, fundamentally challenge the substantive findings of the Prosecution experts and accepted that the exhumations were conducted by experts with "substantial professional experience and adequate technical, scientific and moral integrity."<sup>160</sup>

77. The Trial Chamber cannot rule out the possibility that a percentage of the bodies in the gravesites examined may have been of men killed in combat. Overall, however, the forensic evidence presented by the Prosecution is consistent with the testimony of witnesses who appeared

<sup>152</sup> The sites were: the primary grave at Čerska; the primary grave of Nova Kasaba exhumed in 1996; the primary grave of Orahovac (Lazete 2) and its related secondary site of Hodžići Road 5; the primary grave of Branjevo Military Farm, and the related secondary grave at Cančari Road 12; the primary site of Petkovci Dam and its related site of Liplje 2; the primary grave of Kozluk and its associated secondary grave of Cančari Road 3; and the secondary site of Zeleni Jadar 5. Manning, T. 3579-3576. In addition, during the exhumations conducted in 2000, ligatures were found at Lazete 2 C, and Glogova 1. Additional Manning Report, p 7601.

<sup>153</sup> Manning, T. 3576.

<sup>154</sup> Manning, T. 3565. The results of the additional exhumations conducted in 2000 continued to reflect this pattern. See Additional Manning Report.

<sup>155</sup> See e.g. P 219 (an individual with a prosthetic leg and his hands tied behind his back). See generally, Lawrence, T. 3987-3989; and Clark, T. 3912-3913, 3939-3940.

<sup>156</sup> Stanković Report, p 13. See also Additional Stanković Report, p 8174.

<sup>157</sup> Stanković Report, p 10-11.

<sup>158</sup> Clark, T. 3958.

<sup>159</sup> Manning Report, T. p. 00950924. See also the Additional Manning Report p. 7606 (regarding the Ravnice primary grave, which is also located close to the Konjevic Polje to Bratunac Road, and in which no ligatures or blindfolds were uncovered. In addition, this is an undisturbed primary gravesite, which further suggests that the victims may have been combat casualties. See the discussion *Infra* para. 78).

<sup>160</sup> Stanković Report, at p. 11.

before the Trial Chamber and recounted the mass execution of thousands of Bosnian Muslim men at Čerska Valley, Kravica Warehouse, Orahovac, Branjevo Farm, Petkovci Dam and Kozluk.<sup>161</sup>

78. Most significantly, the forensic evidence presented by the Prosecution also demonstrates that, during a period of several weeks in September and early October 1995, Bosnian Serb forces dug up many of the primary mass gravesites and reburied the bodies in still more remote locations.<sup>162</sup> Forensic tests have linked certain primary gravesites and certain secondary gravesites, namely: Branjevo Military Farm and Cančari Road 12; Petkovci Dam and Liplje 2; Orahovac (Lazete 2) and Hodžići Road 5; Orahovac (Lazete 1) and Hodžići Road 3 and 4; Glogova and Zeleni Jadar 5; and Kozluk and Cančari Road 3.<sup>163</sup> The reburial evidence demonstrates a concerted campaign to conceal the bodies of the men in these primary gravesites, which was undoubtedly prompted by increasing international scrutiny of the events following the take-over of Srebrenica. Such extreme measures would not have been necessary had the majority of the bodies in these primary graves been combat victims. The Trial Chamber also notes that General Krstić himself did not contest the exhumation evidence presented by the Prosecution about the existence of the mass graves containing the bodies of “victims of Srebrenica”.<sup>164</sup>

79. Overall the Trial Chamber finds that the forensic evidence presented by the Prosecution provides corroboration of survivor testimony that, following the take-over of Srebrenica in July 1995, thousands of Bosnian Muslim men from Srebrenica were killed in careful and methodical mass executions.

10. The Number of Men Executed by the Bosnian Serb Forces Following the Take-over of Srebrenica in July 1995

80. It is impossible to determine with precision the number of Bosnian Muslim men killed by Bosnian Serb forces following the take-over of Srebrenica in July 1995. During the course of the exhumations conducted by the OTP, the process of identifying the number of bodies was complicated by the fact that, in the course of being removed from primary gravesites to secondary gravesites, the corpses were broken up and body parts became intermingled. However, as already noted, experts were able to conservatively determine that the minimum number of bodies in the graves exhumed was 2028.<sup>165</sup> Although the Trial Chamber cannot dismiss the possibility that some

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<sup>161</sup> The statistics relating to the forensic examinations conducted at these individual gravesites will be considered more closely in the Part IIB.

<sup>162</sup> Ruez, T. 3534.

<sup>163</sup> Manning, T. 3614-3615 and see also Additional Manning Report p. 7601.

<sup>164</sup> Krstić, T. 6489.

<sup>165</sup> As Baraybar (a Prosecution forensic expert) pointed out, the minimum number of individuals within the grave is a very conservative estimate. Baraybar, T. 3811.

of the exhumed bodies were killed in combat, it accepts that the majority of the victims were executed. Eighteen additional graves linked with Srebrenica have been located but not yet exhumed. Based on preliminary examinations conducted by the OTP, all of these sites contain human remains and it is expected that the total number of bodies found and linked with Srebrenica will significantly increase as these sites are exhumed.<sup>166</sup>

81. The number of people still listed as missing from Srebrenica in July 1995 provides further guidance as to the likely number of men executed. Professor Brunborg testified that, conservatively estimated, a minimum of 7,475 persons from Srebrenica are still listed as missing, based on the cross-referencing of ICRC lists and other sources and that it is likely that the vast majority of these missing people are deceased.<sup>167</sup> In determining the number of people missing following the take-over of Srebrenica, checks were made to ensure that people who were listed as missing prior to July 1995 were excluded. In particular, steps were taken to exclude ABiH soldiers who were reported as killed, wounded, captured or missing in action prior to July 1995 to the extent that was possible. In over 180 cases, however, this could not be done with certainty due to a lack of adequate personal data about the missing persons.<sup>168</sup>

82. Nonetheless, the evidence given by witnesses, as corroborated by the forensic and demographics evidence presented by the OTP, strongly suggests that well in excess of 7,000 people went missing following the take-over of Srebrenica. The correlation between the age and sex of the bodies exhumed from the Srebrenica graves and that of the missing persons support the proposition that the majority of missing people were, in fact, executed and buried in the mass graves.

83. There are other indications on the Trial Record that Bosnian Serb forces executed thousands of Bosnian Muslim men following the take-over of Srebrenica. Estimates of the number of prisoners detained and killed at diverse locations throughout the Drina Corps zone of responsibility between 13 and 16 July 1995 will be considered in Part II B. There are also fragments of information from VRS communications about the possible magnitude of the executions. An intercepted conversation, at 1730 hours on 13 July 1995, indicates that about 6,000 men had been captured from the Bosnian Muslim column by that time.<sup>169</sup> Consistent with this, around 14 July,

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<sup>166</sup> Baraybar, T. 3844. Four additional gravesites were exhumed in 2,000, reducing the number of unexhumed sites from 22 to 18. Prosecution experts estimate that a minimum of 2,571 further bodies are located in probed, but as yet, unexhumed gravesites. On the basis of their investigations to date, the Prosecution estimates that the total number of bodies detected in the mass graves is 4,805. See Additional Manning Report, p. 7614. This estimate was, however, contested by the Defence. See Additional Stanković Report, p. 8179.

<sup>167</sup> Brunborg, T. 4067. The final list prepared by the OTP refers to 7,481. This discrepancy is explained by the fact that information from the International Committee of the Red Cross revealed that six people on the list have been found alive, but the ICRC was not at liberty to disclose the names.

<sup>168</sup> Brunborg, T. 4078-4079.

<sup>169</sup> P 523.

Colonel Radislav Janković (from the VRS Main Staff), during a conversation with a Dutch Bat officer about the attempted breakthrough by the 28<sup>th</sup> Division, stated that the VRS had already taken 6,000 prisoners of war.<sup>170</sup> Other intercepted VRS conversations reveal that, on 15 July 1995, midway through the executions, at least 3,000-4,000 Bosnian Muslim prisoners were being detained by the VRS.<sup>171</sup> Further, on 18 July 1995, two unidentified Bosnian Serbs were heard in an intercepted conversation reflecting on the recent events in Eastern Bosnia, including matters relating to the Bosnian Muslim column.<sup>172</sup> One participant said that of the 10,000 military aged men who were in Srebrenica, “4,000-5,000 have certainly kicked the bucket”. Mr. Butler pointed out that this number was too high to refer only to combat casualties and concluded that this figure must include the men who were executed in the zone of the Zvornik Brigade.<sup>173</sup>

84. The Trial Chamber is satisfied that, in July 1995, following the take-over of Srebrenica, Bosnian Serb forces executed several thousand Bosnian Muslim men. The total number is likely to be within the range of 7,000 -8,000 men.

#### 11. A Plan to Execute the Bosnian Muslim Men of Srebrenica

85. A concerted effort was made to capture all Muslim men of military age. In fact, those captured included many boys well below that age and elderly men several years above that age that remained in the enclave following the take-over of Srebrenica. These men and boys were targeted regardless of whether they chose to flee to Potočari or to join the Bosnian Muslim column. The operation to capture and detain the Bosnian Muslim men was well organised and comprehensive. The Trial Chamber did, however, hear evidence of some exceptions to this general plan. In particular, on 15 and 16 July 1995, during intensive combat between the Bosnian Muslim column and the Zvornik Brigade, the Commander of that Brigade, Colonel Pandurević, without consultation with his superiors, made a decision to let a portion of the men in the armed head of the Bosnian Muslim column through to Tuzla.<sup>174</sup> However, this decision was apparently made out of desperation and in light of the Zvornik Brigade’s inability to contain the column.

86. There is also evidence that some wounded Bosnian Muslim men were accorded proper treatment and evacuated under medical supervision.<sup>175</sup> This, argued the Defence, was evidence that the Bosnian Serb forces did not intend to kill all of the military aged Bosnian Muslims of

<sup>170</sup> Franken, T. 2050.

<sup>171</sup> P 478 (A conversation intercepted at 1000 hours in which Colonel Beara stated he still had 3,500 “parcels” to distribute.); P 675 (Interim Combat Report dated 18 July 1995, sent by the Commander of the Zvornik Brigade stating that “someone brought in 3,000 Turks of military age and placed them in schools in the municipality”).

<sup>172</sup> P 684.

<sup>173</sup> Butler, T. 5205.

<sup>174</sup> Butler, T. 5105, 5128-5120, 5520-5522.

<sup>175</sup> Butler, T. 5513.



Srebrenica, but rather only those who posed a potential military threat.<sup>176</sup> The treatment accorded to these men stands out as an anomaly in the treatment of the Bosnian Muslim men following the take-over of Srebrenica in July 1995. It may perhaps be explained, to some degree, as a strategy on the part of the Bosnian Serbs to avoid attracting international suspicion, especially given that UN personnel were present in the enclave watching the treatment accorded to some of these wounded men in the first few days after the take-over of Srebrenica. For example, on 13 July, a report prepared by Colonel Janković of the Main Staff noted that over 50 wounded Bosnian Muslims had been placed in the Bratunac hospital and that an UNPROFOR officer had stayed at the hospital to ensure the men were accorded proper treatment. Colonel Janković, however, was determined to “send him away tomorrow, under the pretext that his help is not necessary.”<sup>177</sup> The evidence that a small number of wounded Bosnian Muslims were accorded proper treatment does not diminish the overwhelming evidence showing that the Bosnian Serb forces went to great lengths to seize Bosnian Muslim men at virtually every opportunity, whether or not they posed a military threat,<sup>178</sup> collected them together in detention centres and subsequently executed them.

87. The Trial Chamber finds that, following the take over of Srebrenica in July 1995, the Bosnian Serbs devised and implemented a plan to execute as many as possible of the military aged Bosnian Muslim men present in the enclave.

## 12. Widespread Knowledge of the Crimes

88. As early as 14 July 1995, reports of missing Bosnian Muslim men from Srebrenica began to surface in the international media.<sup>179</sup> Around 15 July 1995, Witness DE, a Drina Corps officer, saw a television film clip showing captured men on a football pitch, presumably Nova Kasaba, while visiting Belgrade.<sup>180</sup> By 18 July 1995, news of the missing Bosnian Muslims from Srebrenica had

<sup>176</sup> Final Submissions of the Accused, 21 June 2001 (hereafter “Defence Final Brief”), para. 140.

<sup>177</sup> P 459. Colonel Janković further noted “I think if we want to take over the enclaves of Žepa and Goražde in the same way, it will be necessary to present the operation in Srebrenica in the media, so as to show that we had rendered adequate treatment to the civilians, and even to soldiers who surrendered their weapons.” There is evidence that, following the period of the mass-executions, wounded Bosnian Muslim men, who were in VRS custody, were properly treated. In a communication on 17 July 1995, the Commander of the Zvornik Brigade sought assistance from the Drina Corps Command to arrange for the removal of wounded Bosnian Muslim prisoners from the Bratunac health centre to Bijeljina. See P 370. Mr. Butler also testified that, by 22 July 1995, the policy of executing the Muslim prisoners had been abandoned. See Butler, T. 5233-5234, 5340, 5525-5526. Such a policy change is not surprising. By this time, word that the Bosnian Serbs had orchestrated mass executions of Bosnian Muslim men following the take-over of Srebrenica had been widely publicised.

<sup>178</sup> See for example, the discussion *Infra* para. 216 about the capture of Bosnian Muslim men from buses at Tišća.

<sup>179</sup> See e.g. P 113-3, dated 14 July 1995 (story from China); P 114/1, dated 17 July 1995 (story from Banja Luka entitled “Zametica Denies Maltreatment of Srebrenica Muslims”); P 113/5, dated 24 July 1995, (story entitled “Mazowiecki on Serb Human Rights Abuses re Srebrenica Missing”); P 113/6 dated 27 July 1995 (story regarding Mazowiecki’s resignation as UN envoy on the grounds that he could no longer take part in the “fictional” defence of human rights in the former Yugoslavia).

<sup>180</sup> Defence Witness DE, T. 7736.

become so widespread that the UN Secretariat wrote to the Special Representative of the Secretary General in Bosnia stating:

You will, no doubt, have read and heard the extensive reports of atrocities committed by the Bosnian Serbs during their recent take-over of Srebrenica. While many of these reports emerge from refugees, they are widespread and consistent, and have been given credence by a variety of international observers, including UNHCR.<sup>181</sup>

89. Shortly thereafter, the missing Bosnian Muslim men became a factor in the negotiations between the VRS and the ABiH at Žepa, the other UN “safe area” that had come under attack by the VRS on 14 July 1995, following the take-over of Srebrenica. During the course of negotiations between the opposing parties at Žepa, Bosnian Muslim representatives wanted guarantees that the men who were evacuated would be transported in safety and specifically cited the missing men of Srebrenica as an example of why the Bosnian Serb authorities could not be trusted.<sup>182</sup> The Bosnian Muslim representatives refused Bosnian Serb demands for an “all for all” prisoner-exchange until the Bosnian Serbs accounted for the 6,800 men they believed were missing from Srebrenica at that time.<sup>183</sup>

### 13. The Impact of the Crimes on the Bosnian Muslim Community of Srebrenica

90. The impact of these events on the Bosnian Muslim community of Srebrenica has been catastrophic. Most families were dismembered and irreparably rent. In the words of one former Srebrenica resident:

With the fall of Srebrenica . . . from the face of the earth were wiped off three generations of men in the cruellest way possible. I can corroborate it by a fresh example from my family. My father-in-law, Omer Malagić, born in 1926, his three sons, one of whom was my husband, Salko Malagić, born in 1948. His two brothers, Osman Malagić, born in 1953 ; Dzafer Malagić born in 1957. His three grandsons, that is my two sons Elvir Malagić born in 1973 ; Admir Malagić born in 1979; and my brother-in-law's son, Samir Malagić's son, born in 1975. There are hundreds of such families in Srebrenica...<sup>184</sup>

91. In a patriarchal society, such as the one in which the Bosnian Muslims of Srebrenica lived,<sup>185</sup> the elimination of virtually all the men has made it almost impossible for the Bosnian Muslim women who survived the take-over of Srebrenica to successfully re-establish their lives. Often, as in the case of Witness DD, the women have been forced to live in collective and

<sup>181</sup> Secretary-General's Report, para. 390.

<sup>182</sup> Secretary-General's Report, para. 416.

<sup>183</sup> Secretary-General's Report, para. 400.

<sup>184</sup> Malagić, T. 1983-84.

<sup>185</sup> Witness DD, T. 5778 (testifying that her husband was the head of the household and was responsible for decision making on most matters, including the financial affairs of the family. Witness DD also testified that this system was typical of all families living in her community); Ms. Jasna Zecević, (hereafter “Zecević”), T.5776, 5778-5779. (The witness, the director of Vive Zene (a non-governmental organisation that provides psychosocial support for many Bosnian Muslim women and children who survived the take-over of Srebrenica) described the pre-war Srebrenica community as having a traditional patriarchal structure.)

makeshift accommodations for many years, with a dramatically reduced standard of living.<sup>186</sup> The pain and fear associated with having so many loved ones torn away makes it very difficult for those who survived to think of returning home (even if that were possible in practical terms) or even to exist as a cohesive family unit. In Witness DD's words:

...sometimes I also think it would be better if none of us had survived. I would prefer it.<sup>187</sup>

The director of Vive Zene, a non-governmental organisation that provides psychosocial support for many women and children who survived the take-over of Srebrenica, testified that the vast majority of Bosnian Muslim women refugees have been unable to find employment.<sup>188</sup> Further, women forced to become the head of their households following the take-over of Srebrenica have great difficulties with the unfamiliar tasks of conducting official family business in the public sphere.<sup>189</sup>

92. Similarly, the adolescent survivors from Srebrenica face significant hurdles as they enter adult-hood. Few are employed<sup>190</sup> and returning to Srebrenica is not something these young people even talk about. As the Director of Vive Zene explained:

...their dream is just to go outside, far away from Bosnia. Just that.<sup>191</sup>

Younger children who survived the take-over of Srebrenica have also developed adjustment problems, such as low levels of concentration, nightmares and flashbacks.<sup>192</sup> The absence of male role models is another factor that will inevitably have significant implications for Bosnian Muslim children from Srebrenica in years to come.<sup>193</sup>

93. The Trial Chamber heard that the survivors of Srebrenica have unique impediments to their recovery and staff members at Vive Zene speak of the "Srebrenica Syndrome" as a new pathology category.<sup>194</sup> One of the primary factors giving rise to the syndrome is that, with few exceptions, the fate of the survivor's loved ones is not officially known: the majority of men of Srebrenica are still listed as missing. For Bosnian Muslim women it is essential to have a clear marital status, whether widowed, divorced or married: a woman whose husband is missing does not fit within any of these categories.<sup>195</sup> Moreover, on a psychological level, these women are unable to move forward with the process of recovery without the closure that comes from knowing with certainty what has

<sup>186</sup> Witness DD, T. 5759-5760; Zecević, T. 5779-5784.

<sup>187</sup> Witness DD, T. 5761. See also Zecević, T. 5791-5793.

<sup>188</sup> Zecević, T. 5783-5784

<sup>189</sup> Zecević, T. 5787.

<sup>190</sup> Zecević, T. 5791.

<sup>191</sup> Zecević, T. 5797.

<sup>192</sup> Ms. Teufika Ibrahimfendić (hereafter "Ibrahimfendić"), (co-ordinator of the Vive Zene multidisciplinary team), T. 5820-5826.

<sup>193</sup> Zecević, T. 5797.

<sup>194</sup> Ibrahimfendić, T. 5817-5818.

happened to their family members and properly grieving for them.<sup>196</sup> The Trial Chamber also heard of the collective guilt experienced by women because they survived the events in Potočari and their husbands, brothers and fathers did not.<sup>197</sup> The level of trauma experienced by the women and children who were transported out of Srebrenica was assessed by Vive Zene as being “exceptionally high” and this, in large part, was attributed to the fact that the women and men had been separated following the take-over of Srebrenica.<sup>198</sup> This heartbreak and anguish is no better reflected than in the words of Witness DD whose young son was torn away from her in Potočari:

...I keep dreaming about him. I dream of him bringing flowers and saying, “Mother, I’ve come” I hug him and say, “Where have you been, my son?” and he says, “I’ve been in Vlasenica all this time”.<sup>199</sup>

94. When asked why he thought the mass executions of Bosnian Muslim men took place following the take-over of Srebrenica, General Halilović suggested that:

Methodologically speaking, Srebrenica is no different from some other parts of Bosnia-Herzegovina. It is true that it is significantly different in terms of the numbers of people that were executed. As to why it took place in the Drina River valley, I think the reasons can be found in the decisions issued by the Serbian Assembly in Banja Luka...I think that today there are more than 60 settlements of Bosniak population mainly who wish to go back to their homes, but those who were executed no longer have any chance of going back home, and that area was removed from the face of the earth. It was cleansed... and [it was] an area which was between two Serb states.<sup>200</sup>

#### 14. Conclusions

95. Almost without exception, the witnesses who appeared before the Trial Chamber did not seriously contest that, following the take-over of Srebrenica, the mass killings described above actually occurred outside of combat activities and on the basis of orders given by high level Bosnian Serb officers or officials.<sup>201</sup> Nonetheless, in the words of Nuremberg Prosecutor Telford Taylor, it is “important that these incredible events be established by clear and public proof, so that no one can ever doubt that they were fact and not fable...”.<sup>202</sup> It is therefore imperative to document these “incredible events” in detail.

<sup>195</sup> Zecević, T. 5785-5786.

<sup>196</sup> Zecević, T. 5792.

<sup>197</sup> Zecević, T. 5793; Ibrahimefendić, T. 5841.

<sup>198</sup> Teufika Ibrahimefendić, T. 5814-5815.

<sup>199</sup> Witness DD, T. 5769.

<sup>200</sup> Halilović, T. 9500.

<sup>201</sup> Cf. however, the comments of the Defence military expert, General Radinović, “Mass casualties on the Muslim side are a result of actions which should be classified as combat activities, and not violence against civilians” D 160 (Prof. Dr. Radovan Radinović, *Military Expert Testimony of Srebrenica*, 17 October 2000. (hereafter “Radinović Report”), para. 5.9.

<sup>202</sup> Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10, Nuernberg, October 1946-April 1949, Volume I, p. 27.

96. However, the central issue in this case is the role that one man, General Krstić, played in the criminal acts and whether he is legally responsible for conduct that amounts to war crimes, crimes against humanity or genocide. The Trial Chamber now turns to the evidence linking, first, the Drina Corps as a whole to the criminal acts committed following the take-over of Srebrenica and, then, to the precise role that General Krstić played in these events.

## **B. The Role of the Drina Corps in the Srebrenica Crimes**

### **1. Preliminary Matters**

97. Prior to examining the role the Drina Corps played in the events following the take-over of Srebrenica, the Trial Chamber will first address preliminary matters relating to the formation and operation of the Drina Corps, as well as the nature of the evidence presented by the Prosecution linking the Drina Corps to the crimes in this case. This analysis will provide an important backdrop to the remainder of the Judgement, which addresses the central issue in this case: the criminal responsibility of General Krstić, both individually and as a senior officer of the Drina Corps, for the Srebrenica crimes.

#### **(a) Background to the Drina Corps**

98. The Drina Corps of the VRS was formed in November 1992, with the specific objective of "improving" the situation of Bosnian Serb people living in the Middle Podrinje region, of which Srebrenica was an important part.<sup>203</sup> It was organised along the lines of the former JNA Corps<sup>204</sup> and, as was the case with the VRS generally, JNA operating methodologies were almost completely adopted.<sup>205</sup> The Drina Corps Headquarters was established first in Han Pijesak and later moved to Vlasenica.<sup>206</sup> A map depicting the zone of responsibility of the Drina Corps is annexed to this Judgement.

99. General Živanović assumed the role of Drina Corps Commander at the time of its formation. In addition to the Commander, the Drina Corps also had a Chief of Staff and three Assistant Commanders. As will be discussed further below, in July 1995, General Krstić was the Chief of Staff of the Drina Corps until his appointment as Corps Commander. Lieutenant Colonel Vujadin Popović was Assistant Commander for Security; Colonel Slobodan Cerović was Assistant Commander for Moral, Legal and Religious Affairs; and Colonel Lazar Aćamović was Assistant

<sup>203</sup> Radinović Report, para. 2.3.

<sup>204</sup> Butler Report, para. 1.

<sup>205</sup> Butler T. 4746.

<sup>206</sup> Radinović, T. 7830, 7854.

Commander for Rear Services (or Logistics).<sup>207</sup> A chart showing relevant Drina Corps personnel as of July 1995 is annexed to this Judgement.

100. In July 1995, the Drina Corps was composed of the following subordinate Brigades: Zvornik Brigade; 1<sup>st</sup> Bratunac Light Infantry Brigade (“Bratunac Brigade”); 1<sup>st</sup> Vlasenica Light Infantry Brigade (“Vlasenica Brigade”); 2<sup>nd</sup> Romanija Motorized Brigade (“2<sup>nd</sup> Romanija Brigade”); 1<sup>st</sup> Birać Infantry Brigade (“Birać Brigade”); 1<sup>st</sup> Milići Light Infantry Brigade (“Milići Brigade”); 1<sup>st</sup> Podrinje Light Infantry Brigade (“1<sup>st</sup> Podrinje Brigade”); 5<sup>th</sup> Podrinje Light Infantry Brigade (“5<sup>th</sup> Podrinje Brigade”) and the 1<sup>st</sup> Skelani Separate Infantry Battalion (“Skelani Battalion”).<sup>208</sup> These Brigades had combat capabilities and were supported by the 5<sup>th</sup> Mixed Artillery Regiment, the 5<sup>th</sup> Engineers Battalion, 5<sup>th</sup> Communications Battalion and the 5<sup>th</sup> Military Police battalion.<sup>209</sup>

101. The Drina Corps came under the Command of the Main Staff of the VRS, along with the 1<sup>st</sup> and 2<sup>nd</sup> Krajina Corps, the East Bosnia Corps, the Hercegovina Corps and the Sarajevo-Romanija Corps. Two units were also directly subordinated to the Main Staff: the 10<sup>th</sup> Sabotage Detachment (a unit primarily used for wartime sabotage activities) and the 65<sup>th</sup> Protective Regiment (a unit created to provide protection and combat services for the Main Staff.)<sup>210</sup> In July 1995, the Commander of the Main Staff was General Mladić. In turn, the Main Staff was subordinate to President Karadžić, the Supreme Commander of the VRS.<sup>211</sup>

(b) Codes and Numbers Used by the Drina Corps in July 1995

102. Much of the evidence presented to the Trial Chamber took the form of military orders and reports issued by the VRS during July and August 1995, as well as conversations between Drina Corps and other VRS personnel that were intercepted by members of the ABiH during that period. Code-names and numbers were frequently employed throughout this documentary and intercept evidence. Some explanation of these codes is necessary before proceeding to analyse the evidence.

103. There was no dispute between the parties about the code names used to refer to relevant Drina Corps subordinate Brigades, as well as the Drina Corps Headquarters. Specifically: “Palma”

<sup>207</sup> Butler Report para. 2.3.

<sup>208</sup> D 149.

<sup>209</sup> Radinović, T. 7858-7859.

<sup>210</sup> Radinović, T. 7827.

<sup>211</sup> D 147.

was the Zvornik Brigade;<sup>212</sup> “Badem” was the Bratunac Brigade;<sup>213</sup> and “Zlatar” was the Command of the Drina Corps.<sup>214</sup>

104. Examination of the evidence as a whole reveals that “Zlatar 385” was a telephone number associated with General Krstić during July 1995. In an intercepted telephone conversation at 0954 hours on 14 July 1995, General Živanović advised Colonel Ljubisa Beara, the head of Security of the VRS Main Staff, to contact Zlatar 385 about some assistance that Colonel Beara was seeking.<sup>215</sup> A few minutes later, a conversation was intercepted between Colonel Beara and General Krstić in which Colonel Beara raised the same request with General Krstić.<sup>216</sup> In addition, on 18 July 1995 at 0716 hours, General Krstić called and asked for Colonel Cerović to be connected to extension 385. This was done and General Krstić and Colonel Cerović subsequently conversed,<sup>217</sup> further confirming that “385” was General Krstić’s telephone extension during July 1995.

(c) Reliability of Intercepted Communications

105. Prominently featured in the evidence presented by the Prosecution in this case, were transcriptions of conversations between VRS personnel in July and August 1995 that were intercepted by intelligence officers from the ABiH. These documents were handed over to the OTP by the Bosnian government. Monitoring enemy communications was a standard military practice, employed by both parties to the conflict, the objective being to discover the plans and movements of the opposing side in order to take pre-emptory action.<sup>218</sup> Although the VRS did have secure means of sending communications, the Trial Chamber heard evidence that these systems were not always functional and that often unsecured lines were used for expediency; secured communications took much longer to prepare and send.<sup>219</sup> The Prosecution relied upon intercept evidence as proof of key elements of its case. The reliability of these intercepted conversations, however, was the subject of strenuous debate between the parties.

106. A former employee from the OTP, who worked on compiling the intercept database, testified about the procedures established to test the accuracy of the intercept evidence received by

<sup>212</sup> Krstić, T. 6668.

<sup>213</sup> Krstić, T. 6841.

<sup>214</sup> Defence Witness DB, T. 7108.

<sup>215</sup> P 472.

<sup>216</sup> P 478.

<sup>217</sup> P 680.

<sup>218</sup> Witness U, T. 4159 and Defence Witness DC, T7518-7519.

<sup>219</sup> Butler, T. 5190-5192. Krstić, T. 6673, P 750 (VRS document from 1992 referring to security problems caused by frequent use of Motorolas); P 825 (also referring to problems caused by the use of Motorolas within the VRS); Defence Witness DB, T. 7202-7203 (agreeing that lack of attention to security concerns in communications was a problem within the VRS).

the OTP from the Bosnian Government.<sup>220</sup> The “intercept project”, as it became known, was handled by a team of analysts, investigators, translators and others with language skills, who collected, assembled, analysed and translated the material that had been provided to the OTP in its original Bosnian/Croatian/Serbian (hereafter “B/C/S”) form. Both the ABiH and the State Security Services of Bosnia provided intercept material to the OTP.<sup>221</sup>

107. Additionally, a number of Bosnian Muslim witnesses, who were involved in intercepting and transcribing the VRS conversations, testified before the Trial Chamber about the methods employed.<sup>222</sup> The contents of the conversations were first recorded on tape by Bosnian Muslim interceptors, then transcribed onto a piece of paper or into a notebook and finally typed out on a computer and sent to Headquarters.<sup>223</sup> Although the transcribers generally made a note of the time at which the conversation commenced, the date was not always recorded for each conversation. However, dates could usually be ascertained by looking back through the notebooks to find the last recorded date and then tracking the times at which the subsequent conversations occurred, to determine when a new day had begun.<sup>224</sup> The Trial Chamber viewed several of the original notebooks in which intercepted conversations were transcribed.

108. Very often the participants in the conversations identified themselves by name, or their identities could be ascertained from the context of the conversation. In addition, the Bosnian Muslim interceptors became familiar with the voices of the VRS participants in the conversations over the course of time. Witness U said that he had been monitoring conversations for almost two years prior to July 1995 and was very familiar with the voices of the participants in the conversations he was intercepting.<sup>225</sup> When participants could not be identified, they were referred to as “X” and “Y”.<sup>226</sup> On some occasions a single conversation was monitored by different intercept operators working in different locations which, in the Trial Chamber’s view, is a factor supporting the authenticity of these communications.<sup>227</sup>

109. The Trial Chamber was told that all possible measures were taken to ensure the accuracy of the transcribed conversations. According to Witness W:

<sup>220</sup> Ms. Stephanie Frease (hereafter “Frease”), T. 8925-8927.

<sup>221</sup> Frease, T. 8926.

<sup>222</sup> Witness U, T. 4154-4206; Witness V, T. 4206-4253; Witness W, T. 4254-4324; Witness X, T. 4325-4383; Witness Y, T. 4394-4447; Witness Z, T. 4447-4484, 8755-8774; Witness AA, T. 4487-4560; Witness BB, T. 4573-4670, 8710-8748; Witness CC, T. 4689-4713.

<sup>223</sup> Witness U, T. 4169; Witness V, T. 4210-4212; Witness W, T. 4261; Witness Y, T. 4398-4399; Witness Z, T. 4455; Witness AA, T. 4494-4495; Witness BB, T. 4576.

<sup>224</sup> Witness AA, T. 4499-4505.

<sup>225</sup> Witness U, T. 4169-4170. See also Witness X, T. 4333; Witness Y, T. 4400; Witness AA, T. 4496-4497.

<sup>226</sup> Witness W, T. 4270.

<sup>227</sup> Witness AA, T. 4550.



It was essential that every word, literally every word be recorded and that it should be audible, properly heard. You couldn't guess because these were serious matters, and anything that was not sufficiently clear ... any word not heard well enough was not recorded.<sup>228</sup>

Nonetheless, Witness Z conceded:

We did our best to be as precise as possible. However, there are many, many reasons why that was very difficult to achieve.<sup>229</sup>

110. In the event that a particular word could not be understood, the transcriber rewound the tape until it became clear and, if necessary, sought assistance from a colleague. If this was unsuccessful, the missing words were indicated with three dots or a question mark.<sup>230</sup> These gaps in conversation reflected the fact that, usually, one of the participants in the conversation could be heard more clearly than the other one.<sup>231</sup> On some occasions the version of a conversation recorded in the notebook differed from the typewritten text. Witness Z explained that the person doing the typing may have requested clarification of some portion of the conversation and, accordingly, the tape would be replayed.<sup>232</sup> The typist could only change the contents of a conversation with the approval of the original transcriber or after personally listening to the tape.<sup>233</sup>

111. The Defence objected that the Bosnian Muslim interceptors were not properly trained for the work that they were doing and had inadequate technology at their disposal. As a result, it was argued, the intercepts were filled with assumptions as to what had been said during the course of the conversation.<sup>234</sup> Prosecution Witness Y conceded that some of the soldiers intercepting conversations for the ABiH were better trained than others.<sup>235</sup>

112. General Radinović testified that, although the VRS used intercepted radio communications in their intelligence work, he did not consider them to have a high degree of reliability.<sup>236</sup> There was, however, evidence to the contrary. A VRS document dating back to 1993 indicates that radio reconnaissance platoons, or intercepting groups, had provided the VRS command structure with about 70 percent of all intelligence data gathered, which shows how heavily they relied upon the interception procedure.<sup>237</sup> Indeed the Trial Chamber heard evidence that the VRS was relying on information obtained from intercepted ABiH communications during the events in Srebrenica. For example, a Daily Combat Report of the Zvornik Brigade on 14 July 1995 refers to information

<sup>228</sup> Witness W, T. 4269.

<sup>229</sup> Witness Z, T. 4472.

<sup>230</sup> Witness Y, T. 4400; Witness Z, T. 4456; Witness AA, T. 4495.

<sup>231</sup> Witness Y, T. 4442.

<sup>232</sup> Witness Z, T. 4466. See also Witness BB, T. 4577-4578.

<sup>233</sup> Witness Z, T. 4470.

<sup>234</sup> Defence Witness DB, T. 7113-7114

<sup>235</sup> Witness Y, T. 4435

<sup>236</sup> Radinović, T. 8485, T. 9369.

about the Bosnian Muslim column (which at that time was fleeing the enclave towards Tuzla) obtained from intercepted conversations between the military leaders of the column and personnel from the 2<sup>nd</sup> Corps located in Tuzla.<sup>238</sup>

113. The Trial Chamber also heard evidence that the VRS was constantly concerned about the possibility of their communications being overheard. In 1992, the VRS noted:

So far we have registered nine enemy interception groups, exceptionally well manned and equipped.<sup>239</sup>

Defence Witness DB (who in July 1995 was a communications officer in the Drina Corps) agreed that the lack of attention paid to securing communications in the VRS was a problem and he did not dispute that the ABiH did intercept communications being made during the Srebrenica and Žepa operations.<sup>240</sup> Defence Witness DC, who was also an officer in the Drina Corps in July 1995, agreed that intercepted communications, although not always trustworthy and reliable, could be useful sources of information.<sup>241</sup>

114. General Radinović argued that, in order to be considered a reliable source of information, the intercepts would have to be collated, cross-checks made between the tapes and the notebooks, and military experts, linguists and so on called in to assess them.<sup>242</sup> The Trial Chamber accepts that the OTP did in fact diligently check and cross-reference the intercept material as part of the “intercept project”. In order to determine whether the material was reliable and genuine, the OTP looked at the internal consistency between the notebooks and the printouts of each conversation. Transcripts of a single conversation, which was recorded by two or more interceptors, were also compared. The OTP also embarked on a process of corroborating the intercepts with information obtained from other sources, such as documents acquired from the VRS, the RS Ministry of Defence and UNPROFOR, as well as aerial images.<sup>243</sup> A former OTP employee assigned to the “intercept project” testified that, as a result of this corroboration process, she became convinced that the intercepts were “absolutely reliable”.<sup>244</sup> Although, at times, the OTP was unable to determine the significance of some aspects of the conversations, there was no information in the intercepted

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<sup>237</sup> P 750 (Analysis of combat readiness of RS Army in 1992). See also P 827 (dated 23 July 1995, intelligence report on electronic surveillance.)

<sup>238</sup> P 548

<sup>239</sup> P 750, 1992. Also P 825.

<sup>240</sup> Defence Witness DB, T. 7201-7203.

<sup>241</sup> Defence Witness DC, T. 7519-7520.

<sup>242</sup> Radinović, T. 9339-9341.

<sup>243</sup> Frease, T. 8931-8932, T. 8938-8939.

<sup>244</sup> Frease, T. 8939.

conversations that was completely at odds with the other evidence uncovered by the OTP.<sup>245</sup> Meticulous procedures were used by the OTP for tracking the dates of the intercepted conversations and the former OTP employee who appeared before the Trial Chamber testified with “absolute certainty” that the dates ascribed to the individual conversations were accurate.<sup>246</sup>

115. The testimony of Mr. Butler provided corroboration of the careful consideration given to the intercept evidence during the course of the OTP’s investigation. Initially, in the course of preparing his expert military report, Mr. Butler viewed the intercepts with some scepticism.<sup>247</sup> However, after detailed examination of the complete body of intercept evidence, he was convinced that they were reliable and, to the extent that he was able to draw firm conclusions from the individual conversations, he incorporated them into his military analysis.

116. On the whole, the Trial Chamber considers the intercepted communications to be a reliable source of evidence. All possible measures were taken by the Bosnian Muslim interceptors to ensure the accuracy of the recorded conversations, as would be expected in any prudent army. This fact was reinforced by the measures taken by the OTP to verify the reliability of the intercepted evidence as part of the “intercept project”. The Trial Chamber accepts that, often, aspects of the intercepted conversations can be corroborated by other evidence of events occurring at the time and it is impossible for the Chamber to imagine that this level of documentable detail could have been completely manufactured by the Bosnian Muslim interceptors. For example, on 16 July 1995 a conversation was recorded regarding a request made by Colonel Popović for 500 litres of diesel fuel.<sup>248</sup> Written records obtained from the Zvornik Brigade confirm that 500 litres of diesel fuel were in fact released to Colonel Popović on 16 July 1995.<sup>249</sup> The Trial Chamber is satisfied that the intercept evidence is a reliable source of information. The weight and meaning attributable to each intercepted conversation will be considered on a case by case basis and in light of the wider context in which the conversation took place. Certainly, several of the intercepts tendered by the Prosecution were extremely fragmented, with numerous gaps where transcribers were unable to determine what was being said with precision. In those specific cases, the Trial Chamber has obviously not been able to draw any firm conclusions from the intercepts.

117. Having considered preliminary matters relating to the establishment and formation of the Drina Corps, as well as the nature of the evidence presented in this case, the Trial Chamber now

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<sup>245</sup> Frease, T. 8993.

<sup>246</sup> Frease, T. 8939-8944, T. 8947.

<sup>247</sup> Butler, T. 5207.

<sup>248</sup> P 620.

<sup>249</sup> P 619.

considers the Drina Corps' role in the commission of the crimes that occurred following the take-over of Srebrenica in July 1995.

2. Krivaja 95

118. The Drina Corps was the VRS military formation tasked with planning and carrying out operation Krivaja 95, which culminated in the capture of Srebrenica town on 11 July 1995. However, the Indictment against General Krstić does not allege that the military invasion of the Srebrenica "safe area" was itself a violation of international law. Rather, it is the events that followed the military assault, namely the bussing of the women, children and elderly out of the Srebrenica enclave and the wholesale slaughter of the military aged men from Srebrenica that are the focus of this case. Nonetheless, the role of the Drina Corps in Krivaja 95 provides an important backdrop to the Trial Chamber's consideration of the acts that followed.

(a) The Objective of Krivaja 95

119. The precise objective of Krivaja 95 was the subject of argument between the parties during the course of the trial. There was no dispute that the initial plan did not include taking the town of Srebrenica.<sup>250</sup> Despite the fact that Srebrenica was a "to be or not to be" issue for the VRS, an assessment had been made by the VRS command that conditions were not right at that moment for capturing Srebrenica town.<sup>251</sup> The Defence, however, argued that the plan for Krivaja 95 was limited to effectively separating the two enclaves of Srebrenica and Žepa (with no significant modification of the "safe area" boundaries) and represented a direct response to the military offensives being conducted by the ABiH in the area of the enclave.<sup>252</sup> The Prosecution disputed this, claiming that the objective of Krivaja 95 was not only to split Žepa and Srebrenica, but also to reduce each enclave to its urban core. Shrinking the enclaves, the Prosecution contended, would undoubtedly trigger a humanitarian crisis and force the UN to abandon the "safe area" concept, which had proved such a thorn in the side of the Bosnian Serbs.<sup>253</sup>

<sup>250</sup> Butler, T. 4811.

<sup>251</sup> Radinović, T. 8467-8468, Radinović Report, para. 2.7.

<sup>252</sup> Krstić, T. 6124-6125, and Defence Witness DC, T. 7436. A "Spring Offensive", the aim of which was to militarily defeat the VRS, was planned and implemented by the ABiH prior to the takeover of Srebrenica, See Krstić, T 6049, 6054, Radinović, T. 7844-7846, and D 66, D 67, D 88, D 89, D 90. Operation Skakavac ("grasshopper") was implemented by the ABiH in the lead up to the Spring Offensive, and involved planning and executing sabotage activities within the broader area of Bosnia under the control of the VRS, including eastern Bosnia. Krstić, T. 7557, and 6013.

<sup>253</sup> Butler, T. 4804-18; and Dannatt, T. 5576-5577, 5614. In its Final Brief, the Defence appears to have accepted that this was in fact the goal of Krivaja 95. See Defence Final Brief, para. 149.

120. The Prosecution's argument is supported by reference to the documentation prepared by the Drina Corps Command for Krivaja 95.<sup>254</sup> The plan specifically directed the Drina Corps to "split apart the enclaves of Žepa and Srebrenica and to reduce them to their urban areas". The plan also refers to "reducing the enclaves in size" and specified that the Drina Corps was to "improve the tactical positions of the forces in the depth of the area, and to create conditions for the elimination of the enclaves".<sup>255</sup> The Defence argued that the reference to eliminating the enclaves was directed to a separate and future operation and not to the immediate campaign.<sup>256</sup> Nonetheless, the Trial Chamber is persuaded that, although the initial aim of Krivaja 95 was limited, it was an important step towards ultimately establishing Bosnian Serb control over Srebrenica. The Trial Chamber has no doubt that, consistent with the March 1995 directive issued by President Karadžić mandating the blocking of aid convoys into the enclave,<sup>257</sup> plunging the Bosnian Muslim residents into a humanitarian crisis was an integral component of the long-term VRS strategy for Srebrenica. On its face, however, the plan for Krivaja 95 certainly did not include a VRS scheme to bus the Bosnian Muslim civilian population out of the enclave, nor to execute all the military aged Bosnian Muslim men, as ultimately happened following the take-over of Srebrenica.

121. The Trial Chamber finds that the plan for Krivaja 95 was aimed at reducing the "safe area" of Srebrenica to its urban core and was a step towards the larger VRS goal of plunging the Bosnian Muslim population into humanitarian crisis and, ultimately, eliminating the enclave.

(b) The Shelling of Srebrenica: Terrorisation of the Civilian Population

122. Numerous witnesses gave evidence that, during Operation Krivaja 95, the VRS shelled the Srebrenica enclave intensively with the apparent intent to terrify the populace.<sup>258</sup> Evidence suggests that shelling commenced on 6 July 1995, as Krivaja 95 got under way.<sup>259</sup> On 8 July 1995, an eyewitness saw columns of refugees coming under VRS (Drina Corps) artillery fire.<sup>260</sup> On 9 July 1995, a Dutch Bat platoon commander saw VRS tanks firing in the direction of Srebrenica town, even though there were only refugees and a UN base in the vicinity.<sup>261</sup> Again on 10 July 1995, despite the military success that had already been achieved by the VRS, shelling continued all that day and the next. Shells fired by the VRS hit a hospital where 2,000 civilians had gathered for

<sup>254</sup> P 428.

<sup>255</sup> P 428.

<sup>256</sup> Krstić, T. 6394 and Radinović, T. 7896-7897.

<sup>257</sup> P 425

<sup>258</sup> Kingori, T. 1914-1916; Egbers, T. 2214; Witness B, T. 852; Witness C, T. 1152-53. See also P 77/1, P 77/3, P 77/6, P 77/8, P 77/12, Secretary-General's Report, para. 283.

<sup>259</sup> Witness B, T. 841; Kingori, T. 1826-1829; Karremans, T. 3317, 3327-3328.

<sup>260</sup> Mandžić, T. 949-950.

<sup>261</sup> Egbers, T. 2215. See also van Duijn, T. 173101733.

refuge and six of them were killed.<sup>262</sup> An UNMO who witnessed the unfolding events that day remarked upon the intensity of the shelling:

[a]t times we could count over a hundred shells landing in the same place. You know, a continuous shelling of up to a hundred shells in the same area, and this is quite high intensity, considering the size of those villages.<sup>263</sup>

123. Thousands of residents, desperate for protection, crowded around the UNPROFOR Bravo Company compound in Srebrenica, eventually forcing their way inside. The chaotic scene was exacerbated when mortar shells landed inside the compound around noon, wounding several people.<sup>264</sup> Following the shelling of Bravo Company and with the encouragement of the Dutch Bat troops, Bosnian Muslim residents from Srebrenica began to move north towards Potočari. Shells fell alongside the road and VRS forces were seen bringing up the rear of the crowd. Many witnesses believed this was a deliberate attempt to “herd” the crowd out of Srebrenica.<sup>265</sup> The VRS also embarked upon a campaign of burning Bosnian Muslim houses to ensure there would be no possibility of their former occupants returning.<sup>266</sup> Further evidence that Srebrenica town was extensively shelled and that civilians came under fire was provided in combat reports filed by the 28<sup>th</sup> Division of the ABiH in the days immediately following the commencement of Krivaja 95.<sup>267</sup>

124. General Krstić<sup>268</sup> and several other Defence witnesses who took part in Krivaja 95,<sup>269</sup> denied that Srebrenica was shelled, or that civilians were deliberately targeted by the Drina Corps during Krivaja 95. One Defence witness stated that:

The town of Srebrenica was not shelled at all. Not a single shell fell on the urban part of town, not a single building was damaged when we entered the town on the 11<sup>th</sup> of July.<sup>270</sup>

Mr. Richard Butler, the Prosecution’s military expert, expressed the view that shells did not target the civilians of Srebrenica.<sup>271</sup> However, he subsequently clarified his position, stating there was no

<sup>262</sup> See P 77/12, (UNMO report from 10 July 1995) ; Secretary-General’s Report para. 283.

<sup>263</sup> Kingori, T.1827, P 77, 989-903.

<sup>264</sup> Witness B, T. 855-857 ; Mandzić, T. 958-960; Witness C, T. 1159-61.

<sup>265</sup> Witness B, T. 858; Mandzi, T. 980; Omanović, T. 1082; Vaasen, T. 1392; Egbers, T. 2220; Witness C, T. 1161.

<sup>266</sup> Witness B, T. 854-855; Mandzić, T. 949, 957.

<sup>267</sup> P 899 (report dated 6 July 1995 stating that “hundreds of shells have fallen on the lines of defence and civilian targets”); P 900 (report dated 7 July 1995, stating that “the aggressor has subjected the line of defence...to strong sniping and fire... and had frequently engaged in random tank artillery fire against both the line of defence and civilian targets...”); P 901 (report dated 8 July 1995 stating that “An enemy tank from the Kula is destroying the centre of Srebrenica on a daily basis and at 1300 hours the enemy fired three guided missiles from that position on the town centre, causing enormous material damage.”); P 902 (report dated 9 July 1995 stating that “the aggressor is conducting an infantry attack...and the whole “safe area” came under fierce fire from all calibre. The town centre itself is being constantly shelled.”); P 903 (report dated 10 July 1995, stating that civilian targets in the area were being attacked and that “the centre of town is being continually ravaged by artillery fire...”).

<sup>268</sup> Krstić, T. 6462-6464 (denying that Srebrenica was shelled on 11 July 1995).

<sup>269</sup> Radinović, T. 821, T. 8232-8234, 8237-8238; Defence Witness Mr. Zeljko Borovčanin, (hereafter “Borovčanin”) T. 7011-7022, T. 7028-7029; Defence Witness DB, T. 7080; Defence Witness DC, T. 7441- 7442.

<sup>270</sup> Defence Witness DC, T. 7441-744.

evidence that shells were fired directly at civilians by the VRS, and he did not dispute the testimony of the Dutch Bat soldiers and other witnesses about the impact of the shelling upon the civilians.<sup>272</sup> Mr. Butler did, however, say that there is little evidence of the calibre of shells fired or the extent of the damage caused.<sup>273</sup>

125. While the Prosecution may not have conclusively established the precise number of shells fired, or the type of artillery used, the Trial Chamber finds that the shelling of Srebrenica carried out by the Drina Corps, on 10 and 11 July 1995, by which time the original objectives of Krivaja 95 had already been achieved, was calculated to terrify the Bosnian Muslim population and to drive them out of Srebrenica town.

### 3. Involvement of Drina Corps Personnel in the Events at Potočari: 11-13 July 1995

#### (a) Transport of the Bosnian Muslim Civilians out of Potočari

##### (i) Meeting at Hotel Fontana on 11 July 1995 at 2000 Hours

126. As the humanitarian crisis in Potočari escalated, at around 2000 hours on 11 July 1995, General Mladić summoned UNPROFOR leaders for the first of three meetings with VRS officials at the Hotel Fontana in Bratunac.<sup>274</sup> General Mladić led the meeting, which lasted approximately one hour. General Živanović, then-Commander of the Drina Corps, was present along with other Drina Corps officers, including Lieutenant Colonel Svetozar Kosorić, the Drina Corps Chief of Intelligence, and Captain First Class Momir Nikolić, the Assistant Commander for Intelligence and Security of the Bratunac Brigade.<sup>275</sup> Colonel Karremans stated that there were about 10,000 women and children within the Potočari compound and sought assurances that Dutch Bat and the Bosnian Muslim population would be allowed to withdraw from the area. General Mladić stated that the Bosnian Muslim civilian population was not the target of his actions and, subsequently, asked whether UNPROFOR would be able to provide any buses for their transportation out. Colonel Karremans replied that he thought that could be arranged.<sup>276</sup>

127. During the meeting, General Mladić asked the UNPROFOR leaders to put him in contact with a representative of the ABiH, as well as Bosnian Muslim civilian representatives. At this point, the VRS appeared to have no idea where the ABiH was. The 28<sup>th</sup> Division had disengaged

<sup>271</sup> Butler, T. 5318.

<sup>272</sup> Butler, T. 5480-5481.

<sup>273</sup> Butler, T. 5317.

<sup>274</sup> Witness B, T. 860, 881.

<sup>275</sup> Butler Report, para. 4.3.

<sup>276</sup> P 39 (transcript of Hotel Fontana meeting on 11 July 1995 at 2030 hours).

from the VRS in the southern part of the enclave and the VRS had not yet realised that ABiH troops were rallying in the column to make a push towards Tuzla. Like General Mladić, however, Colonel Karremans had no idea how to get in contact with military or civilian leaders of Srebrenica. The meeting concluded with General Mladić telling Colonel Karremans to return later that same evening at 2300 hours for a second meeting.

(ii) Meeting at the Hotel Fontana on 11 July 1995 at 2300 Hours

128. As General Mladić had directed, the second meeting convened at the Hotel Fontana took place around 2300 hours that same evening. General Mladić again presided at the meeting. This time General Živanović was not present but General Krstić was.<sup>277</sup> Colonel Kosorić and Major Nikolić from the Drina Corps were also in attendance at this meeting. The Dutch Bat representatives arrived with a schoolteacher named Nesib Mandzić, an unofficial Bosnian Muslim representative who was plucked from the crowd in Potočari.<sup>278</sup> The consensus of the UN and Bosnian Muslim participants in the meeting was that General Mladić was putting on a show calculated to intimidate them. As the meeting began, the death cries of a pig being slaughtered just outside the window could be heard in the meeting room. The Prosecution witnesses all thought this grisly interruption was deliberately designed to frighten them.<sup>279</sup> General Mladić then placed the broken signboard from the Srebrenica Town Hall on the table. Mr. Mandzić thought this too was meant to symbolise the fact that the Bosnian Serbs had taken Srebrenica and the Bosnian Muslims could no longer stay there.<sup>280</sup>

129. Plans to transport the Bosnian Muslim civilians out of the enclave crystallised at this second meeting. The Dutch Bat officer present stated that between 15,000 and 20,000 refugees, mostly women, children and elderly, had gathered in and around Potočari by that time and recounted the developing humanitarian crisis.<sup>281</sup> General Mladić stated that he would provide the vehicles to transport the Srebrenica refugees out of Potočari.<sup>282</sup>

130. Although General Mladić said that the population had to choose whether to stay or, if they were not staying, where to go, he used threatening language. He demanded that all ABiH troops within the area of the former enclave lay down their arms and made it clear that, if this did not happen, the survival of the Bosnian Muslim population would be in danger. General Mladić said he

<sup>277</sup> Witness B, T. 884-885; Mandzić, T. 973-974.

<sup>278</sup> Mandzić, T. 964-966.

<sup>279</sup> Witness B, T. 885; Witness C, T. 1169; Mandzić, T. 976.

<sup>280</sup> Mandzić, T. 975-976. See also Witness C, T. 1169-1170.

<sup>281</sup> P 40 (transcript of the Hotel Fontana Meeting on 11 July 1995 at 2300 hours).

<sup>282</sup> Witness B, T. 887.



wanted a clear position on whether the Bosnian Muslims wanted to “survive, stay, or disappear”. Turning to Mr. Mandzić, General Mladić said:

Do you understand me Nesib...And the future of your people is in your hands...not only in this territory.<sup>283</sup>

Mr. Mandzić was in an untenable position. He pleaded with General Mladić that he did not know where the 28<sup>th</sup> Division was and, in any event, had no power to commit the ABiH to any course of action. Nor did he have the authority to negotiate on behalf of the civilian population. His explanations, however, fell on deaf ears. General Mladić concluded the meeting, saying:

That is your problem, bring people who can secure the surrender of weapons and save your people from destruction.<sup>284</sup>

To those present at the meeting that night it seemed clear that staying would not be an option for the Bosnian Muslim civilians of Srebrenica.<sup>285</sup> General Mladić scheduled a follow-up meeting for the next morning.

(iii) Meeting at the Hotel Fontana on 12 July 1995 at 1000 Hours

131. On 12 July 1995 at about 1000 hours, General Mladić convened the third and final meeting to discuss the fate of the Srebrenica Muslims. Once again, General Mladić dominated the meeting, with General Krstić sitting at his side.<sup>286</sup> In addition, Colonel Popović joined Colonel Kosorić as a representative of the Drina Corps at the meeting. By this time, the VRS had obtained information about the existence of the Bosnian Muslim column attempting to break out of the former enclave.<sup>287</sup> The Dutch Bat representatives, still unable to contact the official Bosnian Muslim military or civilian leaders of Srebrenica, had again brought Mr. Mandzić, along with two more unofficial representatives from the Potočari refugees: Ms. Camila Omanović, an economist; and Mr. Ibro Nuhanović, a businessman.

132. General Mladić again made it clear that survival of the Srebrenica Muslims was conditional upon a military surrender. He said:

...you can either survive or disappear...For your survival, I request: that all your armed men who attacked and committed crimes--and many did-- against our people, hand over their weapons to the Army of the Republika Srpska...on handing over weapons you may...choose to stay in the

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<sup>283</sup> P 40.

<sup>284</sup> P 40.

<sup>285</sup> Witness B, T. 887; Mandzić, T. 970, Krstić, T. 6295.

<sup>286</sup> Mandzić, T. 987-989.

<sup>287</sup> See the discussion *supra* para. 162.

territory....or, if it suits you, go where you want. The wish of every individual will be observed, no matter how many of you there are.<sup>288</sup>

General Mladić stated that he would provide the vehicles, but that the fuel would have to be provided by someone else and suggested that UNPROFOR assume responsibility for this.<sup>289</sup>

133. Mr. Mandžić and Ms. Omanović both testified before the Trial Chamber that the clear message conveyed by General Mladić in this meeting was that the Bosnian Muslim refugees could only survive by leaving Srebrenica.<sup>290</sup>

134. General Mladić also informed those present that all men between the ages of about 17 and 70 would have to be separated and screened to separate out possible “war criminals”.<sup>291</sup>

(iv) Organisation of the Buses

135. After the meeting at the Hotel Fontana on the morning of 12 July 1995, two of the Dutch Bat soldiers went back to Bratunac to meet with VRS officials to work out an evacuation plan. As it turned out there was no need for such a meeting. By around noon on 12 July 1995, dozens of buses and trucks were arriving in Potočari to collect the Bosnian Muslim women, children and elderly. The VRS had already made all the necessary arrangements.<sup>292</sup>

136. The Defence argued that Drina Corps personnel were not involved in the removal of the Bosnian Muslim civilians from Potočari following the take-over of Srebrenica. However, there is abundant evidence showing the participation of the Drina Corps in this operation.

137. Early in the morning of 12 July 1995, General Živanović signed an order addressed to all the subordinate units of the Drina Corps directing that “all buses and mini-buses belonging to the VRS be secured for use by the Drina Corps,” arrive at the Bratunac stadium by 16.30 hours and follow instructions about locations for fuel distribution.<sup>293</sup> The order further stated that the Drina Corps Command had sent a message to the RS Ministry of Defence asking for private buses to be mobilised. The same morning, the RS Ministry of Defence sent three orders to its local secretariats directing them to procure buses and send them to Bratunac.<sup>294</sup>

<sup>288</sup> P 49 (transcript of Hotel Fontana meeting on 12 July 1995 at 10.00 hours).

<sup>289</sup> *Ibid.*

<sup>290</sup> Mandžić, T.1043; Omanović, T. 1129-1130, 1135.

<sup>291</sup> Mandžić, T.899; Witness C, T. 1174-1175; Karremans, P 122, p. 13.

<sup>292</sup> Witness B, T. 894-895.

<sup>293</sup> P 436 (which is stamped as having been received by the command of the Zvornik Brigade at 0835 hours on the morning of 12 July 1995).

<sup>294</sup> P 404/126, P 404/127, P 404/128.

138. Intercepted conversations throughout 12 and 13 July 1995 reveal that other Drina Corps officers were also working on matters relating to the transportation. These include the Drina Corps Chief of Transportation, Lieutenant Colonel Rajko Krsmanović,<sup>295</sup> and Major Momir Nikolić, the Assistant Commander for Intelligence and Security Affairs of the Drina Corps Bratunac Brigade.<sup>296</sup> The specific involvement of General Krstić in the organisation of the buses is considered below in Part II C.

139. Logs seized from the Bratunac Brigade show that this Brigade was monitoring fuel disbursements to buses and trucks on 12 and 13 July 1995.<sup>297</sup> The Trial Chamber accepts that the Drina Corps command must have been informed about the enormous quantities of fuel being disbursed given the scarcity of this precious commodity in Eastern Bosnia at the time.

140. Although the Drina Corps ultimately managed to find enough buses it was a scramble. Up until the evening of 11 July 1995, General Mladić had appeared to be working on the assumption that the buses to move the civilians out of Potočari would be provided by the UN. This was logical given the limited resources of the VRS and particularly the scarcity of buses and fuel in Eastern Bosnia at the time. The Drina Corps, after requesting buses from the Ministry of Defence in the early morning hours of 12 July 1995, succeeded in gathering the number of vehicles required for the transport of the entire population of women, children and elderly within a 48 hour period. The Prosecution expert, Mr. Butler, testified that an operation of this size – moving in the vicinity of 25,000 people – would normally have to be planned days in advance.<sup>298</sup>

141. On the evening of 13 July 1995, Colonel Janković, a VRS Main Staff officer, prepared a “wrap-up” report about the transportation of the Bosnian Muslim civilians out of Potočari, which was sent to the Drina Corps Intelligence Department, further confirming that the Drina Corps was an interested party in the transportation operation.<sup>299</sup>

142. The Trial Chamber finds that the Drina Corps was instrumental in procuring the buses and other vehicles that were used to transport the Bosnian Muslim women, children and elderly out of the Potočari compound on 12 and 13 July 1995, as well as the fuel needed to accomplish this task.

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<sup>295</sup> P 435 (intercepted communication from 0735 hours on 12 July 1995 relating to the procurement of buses); P 440 (intercept at 12.10 hours on 12 July 1995 in which General Krstić ordered Colonel Krsmanović to start the buses moving.); P 441 (intercept dated 12 July 1995 at 12.12 hours in which Colonel Krsmanović is involved with trailer trucks); P 452 (intercepted conversation at 11.10 hours on 13 July 1995, showing Colonel Krsmanović monitoring the movement of the bus fleet out of Potočari).

<sup>296</sup> P 450, Butler, T. 4849-4851.

<sup>297</sup> P 404/159; P 404/160.

(v) The Presence of Drina Corps Officers in Potočari on 12 and 13 July 1995

143. On 12 and 13 July, as the evacuation of the Bosnian Muslim women, children and elderly proceeded, many witnesses saw General Mladić in and around the compound in Potočari, as well as other Main Staff officers.<sup>300</sup> Although it appeared that General Mladić was in charge of the transportation operation during the time he was there,<sup>301</sup> there is also compelling evidence that Drina Corps personnel were present in Potočari, on 12 and 13 July 1995, to assist with moving the Bosnian Muslim civilians out of the enclave. The presence of General Krstić in Potočari on 12 and 13 July 1995 is considered in Part II C below. However, among the other Drina Corps Command Staff identified by witnesses in Potočari, on 12 and 13 July 1995 were: the Corps Commander, General Živanović;<sup>302</sup> the Assistant Commander for Security, Colonel Popović;<sup>303</sup> the Assistant Commander for Rear Services, Colonel Lazar Aćamović;<sup>304</sup> and the Chief of Intelligence, Colonel Kosorić.<sup>305</sup> On 12 July 1995, a Dutch Bat soldier spoke to Colonel Kosorić about arranging for Dutch Bat troops to accompany a convoy of Bosnian Muslim refugees from Potočari.<sup>306</sup> Eyewitnesses also identified six persons, all of whom appear on the roster of the Drina Corps' Bratunac Brigade, as being present in Potočari at the time when the women, children and elderly were moved out.<sup>307</sup> One of these, Major Momir Nikolić (the Bratunac Brigade Assistant Commander for Intelligence and Security), was known to Dutch Bat/UNMOs in the area as a

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<sup>298</sup> Butler, T. 5396.

<sup>299</sup> P 459.

<sup>300</sup> Witness B, T. 901 (presence of General Mladić and Colonel Janković, an intelligence officer from the VRS Main Staff); Mandžić, T. 990 (presence of General Mladić on 12 July 1995); Omanović, T. 1104 (presence of General Mladić on 12 July 1995); Witness C (presence of General Mladić on 12 July 1995); Witness E (presence of General Mladić on 13 July 1995); Vaasen T. 1417, 1437, 1465 (presence of General Mladić on 12 July 1995 and presence of Colonel Janković on 12 and 13 July 1995); Witness F, T. 1520, 1540 (presence of General Mladić on "first" and "second" days); Witness H, T. 1708 (presence of General Mladić on 12 July 1995); van Duijn, T. 1749-1750 (presence of General Mladić and Colonel Janković on 12 July 1995); Kingori, T. 1841 (presence of General Mladić on 12 July 1995); Malagić, T. 1964, (presence of General Mladić on 12 July 1995); Franken, T. 2049 (presence of Colonel Janković on 13 July 1995); Karremans, T. 3355-3356 (presence of General Mladić in Potočari on 12 and 13 July 1995 along with Colonel Janković).

<sup>301</sup> Karremans, T. 3372-3373.

<sup>302</sup> Van Duijn, T. 1749-1750 (General Živanović was with General Mladić in Potočari on 12 July 1995); Kingori, T. 1846-1847 (presence of General Živanović in Potočari with a group of other officers); Rutten, T. 2128, 2161 (presence of General Živanović in one of the cars accompanying General Mladić near the compound and presence of General Živanović in front of the compound on 13 July 1995.)

<sup>303</sup> Kingori, T. 1880; Rutten, T. 2152. P 58 (a still photograph taken from the footage of an interview filmed by a television crew in Potočari on 12 July 1995) also confirms the presence of Colonel Popović.

<sup>304</sup> Franken, T. 2028, 2084 (presence of Colonel Aćamović outside the gate of the compound on 12 July 1995, his involved in the co-ordination and logistics of the transportation, and his presence in the company of General Krstić around 2-3pm on 12 July 1995); Witness B, T. 911-914 and Kingori, T. 1875-1876 (presence of Colonel Aćamović on 13 July 1995).

<sup>305</sup> Witness C, T. 1187. P 136 (video of an interview given by Zoran Kovačević, the Commander of one of the companies in the Bratunac Brigade, in Potočari on 12 July 1995), shows Colonel Kosorić in the background. See also Butler, T. 4845-4846.

<sup>306</sup> Witness C, T. 1187.

<sup>307</sup> The individuals are: Steten Petrović, Captain Nikolić, Sergeant Zoran Milosavljević, Slavoljub Grujčić, Goran Rakić, and Zoran Spajić. See P 454 and Butler, T. 4861-4865.

liaison officer prior to the take-over of Srebrenica.<sup>308</sup> Major Nikolić was seen in Potočari on both 12<sup>309</sup> and 13 July 1995.<sup>310</sup>

144. The Trial Chamber finds that Drina Corps Command officers and units were present in Potočari monitoring the transportation of the Bosnian Muslim civilians out of the area on 12 and 13 July 1995.<sup>311</sup>

(vi) A Forced or Voluntary Movement?

145. General Radinović testified for the Defence that the flight of the women, children and elderly from Potočari was voluntary and could in no way be viewed as a forced movement.<sup>312</sup> He acknowledged that fear was a factor in their decision to leave, but insisted this was the case in all wars. During the war in Bosnia, as elsewhere, the mass movement of civilian populations was a regular occurrence whenever enemy forces captured territory.<sup>313</sup> Mr. Butler, the Prosecution's expert, agreed that the flight of civilians from conflict zones is a recognised phenomenon of war and often represents a rational choice on the part of the civilians.<sup>314</sup> Indeed, as already noted, in 1993 the UNHCR had assisted the evacuation of many thousands of Bosnian Muslims from Srebrenica.

146. Certainly, faced with the reality of their disastrous situation by the evening of 11 July 1995, the Srebrenica refugees in Potočari were clamouring to get out of the enclave. As Colonel Karremans said at the first meeting held at the Fontana Hotel at 2030 hours on 11 July 1995, many of the Bosnian Muslim women in the compound had already told Dutch Bat that they were waiting for buses to arrive so they could escape.<sup>315</sup>

147. Overwhelming evidence presented during the course of the Trial, however, demonstrates that, in July 1995, the Bosnian Muslim population of Srebrenica was not faced with a genuine choice as to whether to leave or to remain in the area. The shelling of Srebrenica, particularly on 10 and 11 July 1995, and the burning of Bosnian Muslim homes was calculated to terrify the population and make them flee the area with no hope of return. Further, it was General Mladić who initiated the meetings at the Hotel Fontana when he made it abundantly clear that he wanted the

<sup>308</sup> Kingori, T. 1804; Franken, T. 2012.

<sup>309</sup> Witness F, T. 1525 (presence of Major Nikolić on "the day that Serb soldiers came in" to Potočari); Kingori, T.1836-1837, 1883; and Rutten, T. 2119-2121 (presence of Major Nikolić in Potočari on 12 July 1995, as the buses were coming in); Koster, T. 3403.

<sup>310</sup> Kingori, T. 1874; Karremans, T. 3356.

<sup>311</sup> See also the further discussion of the activities of these officers in Potočari, *Infra* paras. 352-353.

<sup>312</sup> Radinović, T. 7962-7963.

<sup>313</sup> Radinović, T. 7962-7963.

<sup>314</sup> Butler, T. 5507-5508.

<sup>315</sup> P 39, p. 11.

Bosnian Muslims out of the area. On 12 July 1995, as the bus convoys were being organised, General Mladić was heard to say during an intercepted conversation:

They've all capitulated and surrendered and we'll evacuate them all – those who want to and those who don't want to.<sup>316</sup>

Certainly, the Bosnian Muslim refugees were not consulted or given a choice about their final destination. An UNMO in the Srebrenica area testified to an incident he witnessed in which Serb soldiers threatened to shoot an elderly woman if she did not leave Srebrenica, despite her pleas to remain. As a result of this threat and to ensure her safety, the UNMO physically removed the woman from the Srebrenica hospital where she had been and took her to Potočari.<sup>317</sup> All of these factors, against the backdrop of the terror campaign waged by the VRS against the refugees in Potočari, make it clear that the Bosnian Serbs wanted the area cleansed of Bosnian Muslims.

148. Yet the VRS sought to make the flight of the Srebrenica residents look like a voluntary movement. On 14 July 1995, the UN Security Council expressed concern about the forced relocation of civilians from the Srebrenica "safe area" by the Bosnian Serbs, asserting it was a clear violation of their human rights.<sup>318</sup> On 17 July 1995, in the face of growing international condemnation, Major Franken, the Deputy Commander of Dutch Bat, met with a VRS delegation to discuss the situation of wounded Bosnian Muslims in the area of the former enclave. During the meeting, he and the unofficial Bosnian Muslim representative Mr. Mandžić, who was also present, were told to sign a declaration specifying that the transfer of the Bosnian Muslim civilians from Potočari was voluntary, supervised and escorted by UNPROFOR and carried out by the VRS without any irregularities.<sup>319</sup> VRS officers made it clear to Major Franken that he was required to sign the declaration in order to ensure that 59 wounded patients could be promptly evacuated by the International Committee of the Red Cross (ICRC).<sup>320</sup> When he testified before the Trial Chamber, Major Franken described his forced assent to the declaration as "worthless".<sup>321</sup> In reality, he said General Mladić "ordered the population to go to Kladanj, period".<sup>322</sup> General Krstić, during an

<sup>316</sup> P 445 (conversation intercepted by the ABiH between General Mladić and an unidentified person).

<sup>317</sup> Kingori, T. 1886-1887.

<sup>318</sup> P 113 (press release from Security Council). See also P 113/1 (statement by UNHCR referring to the wholesale removal of Srebrenica residents as "one of the most blatant examples of ethnically motivated forced displacement seen yet in the war.")

<sup>319</sup> P 47, Franken, T. 2054-2056, 2059-2062, Mandžić, T. 1007-1016.

<sup>320</sup> Franken, T. 2062.

<sup>321</sup> Franken, T. 2062.

<sup>322</sup> Franken, T. 2060.

interview with the OTP shortly after his arrest, acknowledged that it was a forced movement of the population, although he denied that he was involved.<sup>323</sup>

149. The Trial Chamber finds that, on 12 and 13 July 1995, the Bosnian Muslim civilians of Srebrenica who were bussed out of Potočari were not making a free choice to leave the area of the former enclave. The Drina Corps personnel involved in the transportation operation knew that the Bosnian Muslim population was being forced out of the area by the VRS.

(b) The Crimes Committed in Potočari on 12-13 July 1995

150. On 12 and 13 July 1995, upon the arrival of Serb forces in Potočari, the Bosnian Muslim refugees taking shelter in and around the compound were subjected to a terror campaign comprised of threats, insults, looting and burning of nearby houses, beatings, rapes, and murders.<sup>324</sup> Drina Corps officers were present in Potočari on 12 and 13 July 1995<sup>325</sup> and, in addition, Drina Corps units were seen in the vicinity of Potočari on 12 and 13 July 1995.<sup>326</sup> The Petrović video of the Potočari area, filmed on 13 July 1995, shows an armoured personnel carrier with a military registration number matching that of a vehicle assigned to the Command of the Bratunac Brigade.<sup>327</sup>

151. There was also an array of non-Drina Corps Serb forces present in Potočari on 12 and 13 July 1995. There were VRS Main Staff officers reporting directly to General Mladić.<sup>328</sup> Some eyewitnesses also reported seeing members of the paramilitary group Arkan's Tigers in Potočari.<sup>329</sup> Other witnesses said that some of the Bosnian Serb soldiers appeared to be "irregulars" or "Rambo types".<sup>330</sup> Serb military police wearing blue uniforms with black belts and driving police vehicles were identified,<sup>331</sup> as well as a person who identified himself as Captain Mane from the police and his commander who went by the code name of "Stalin".<sup>332</sup> Witnesses spoke of soldiers dressed in black who appeared to be operating under their own command structure,<sup>333</sup> a unit that had dogs with

<sup>323</sup> P 399, p. 32. During his testimony before the Trial Chamber, however, General Krstić maintained that the movement of the Bosnian Muslim women, children and elderly from Potočari was an "evacuation". Krstić, T. 6217 and 6295-6296.

<sup>324</sup> See *supra* paras. 41-47.

<sup>325</sup> See *supra* paras. 143-144.

<sup>326</sup> See generally Butler, T. 4855-4866.

<sup>327</sup> P 460 (still photo from the video) and Butler, T. 4856.

<sup>328</sup> See *supra* para. 143 (regarding the activities of Major Janković from the VRS Main Staff).

<sup>329</sup> Vaasen, T.140-5-06; Kingori, T.1918-19.

<sup>330</sup> Franken, T. 2030, 2034, 2064 (both regular and irregular troops); Witness F, T. 1562 (separate group of disorganised soldiers arrived later and were smoking, drinking, and looting); Rutten, T. 2116 (the first Serb soldiers who entered the compound were "Rambo types").

<sup>331</sup> Witness F, T. 1505; Kingori, T.1836,

<sup>332</sup> Van Duijn, T. 1742-1744. "Stalin" was identified as a person known as Jevic from the MUP Reserve Battalion. See P 73 and van Duijn T. 1764. See also Rutten, T. 2123.

<sup>333</sup> Witness F, T. 1544; Witness H, T. 1684, Kingori, T. 1836. Kingori speculated that the soldiers in black were from "Arkan's brigade". Kingori, T. 1919.

them<sup>334</sup> and soldiers dressed in a combination of camouflage and civilian clothing.<sup>335</sup> Numerous witnesses, who reported the presence of “VRS soldiers” in green camouflage uniforms in Potočari, were not able to identify them as belonging to any particular unit.<sup>336</sup> These disparate groups all appeared to have their own commanding officers.<sup>337</sup> While Bosnian Muslim witnesses were sometimes able to recognise individual Serb soldiers, suggesting that at least some units were from the local area,<sup>338</sup> there was evidence that Serb forces from outside the Srebrenica area had also been brought in.<sup>339</sup> Colonel Karremans, the Commander of Dutch Bat recalled hearing that General Mladić brought new troops into the enclave, including militia and Arkan’s Brigade, a few days prior to the commencement of Krivaja 95.<sup>340</sup>

152. Not surprisingly, given the chaos that enveloped the Potočari compound on 12 and 13 July 1995, most witnesses were unable to specify which units were responsible for the crimes committed during those days. Many witnesses heard screams, gunshots and stories of murder, without directly observing the crimes themselves.<sup>341</sup>

153. The Trial Record suggests that non-Drina Corps troops were highly visible perpetrators of the opportunistic crimes committed as part of the terror campaign in Potočari. One witness saw “Rambo types” burning houses and crops on the hillside around Potočari on 12 July and, later that night, threaten to slit the throat of a young wounded Bosnian Muslim man.<sup>342</sup> Only one witness directly implicated the Drina Corps in any of the mistreatment. A Dutch Bat soldier testified that members of the Drina Wolves, a sub-unit of the Zvornik Brigade, went inside houses in the vicinity of the compound and “started to plunder those houses”. He identified the men as belonging to the

<sup>334</sup> Witness H, T. 1689; Franken, T. 2036. See also Egbers, T. 2263 (testifying about the presence of a unit with German Shepherd dogs at a school where he was detained by Bosnian Serbs after being stopped at a road block south of Nova Kasaba on 13 July 1995; and Corporal Martin Van der Zwan (hereafter “Van der Zwan”), T. 2327, 2336-2338 (who was also detained by a special purpose unit with German Shepherd dogs following the capture of OP Uniform. One of the dog handlers came from Sarajevo.)

<sup>335</sup> Van Duijn, T. 1739.

<sup>336</sup> See, e.g., Mandžić, T.1006; Omanović, T.1103-05, 1127; Rutten, T.2149; Egbers, T.2150; Witness N, T.2787; Ademović, Malagić, T.1966-67, T.1957; Hajdarević, T.2575; Witness H, T.1683-87.

<sup>337</sup> Vaasen, T. 1407.

<sup>338</sup> Witness D, T. 1263 (soldiers spoke with the usual accent from the region); Witness E, T. 1346, 1372 (recognised a policeman he knew prior to the war); Ademović, T. 1586-7 (recognised a former colleague and an acquaintance); Witness H, T. 1684 (recognised an acquaintance); Malagić, T. 1953, 1963, 1969 (recognised several people she knew from the area, including a former policeman and soldiers dressed in camouflage.)

<sup>339</sup> Mandžić, T. 1013 (many young soldiers he had not seen in the area before); Witness D, T. 1250 (the soldiers dressed differently from soldiers around Srebrenica, and spoke with an accent similar to Montenegrins. See also Egbers, T. 2263 (who, while being detained by Bosnian Serbs near Nova Kasaba on 13 July 1995, spoke to a person named Milanic who said he had been deployed to Srebrenica from Sarajevo with his unit); and Van der Zwan, T. 2319-2320 (who, during the time the OP Uniform was taken over, identified four soldiers wearing the badge of the Krajina Serbs, one of whom said he was from Knin).

<sup>340</sup> Karremans, T. 3378-3379.

<sup>341</sup> Mandžić, T. 995; Omanović, T. 1104, 1117, 1125; Witness C, T. 1183; Vaasen, T. 1433.

<sup>342</sup> Rutten, T. 2116-2117. See also Witness F, T. 1499 (soldiers in black were “cleansing” all the houses very thoroughly.)



Drina Wolves because he saw them wearing the Drina Wolves insignia depicting a wolf's head.<sup>343</sup> The witness heard screams from inside one of the houses and a burst of fire from an AK-47. The witness concluded that the Bosnian Muslim refugees inside the house were being killed.<sup>344</sup> Although this witness was confident about his identification of the Drina Wolves in this criminal activity, the Trial Chamber heard no other evidence corroborating the participation of this unit in the crimes. Furthermore, the same witness testified that he saw soldiers wearing HVO (*i.e.* Bosnian Croat forces) insignia in Potočari and there is no other support for the notion that these forces played any part in the events in Srebrenica.<sup>345</sup> Accordingly, the Trial Chamber cannot discount the possibility that this witness, although on the whole credible, was mistaken in his identification of the unit involved in the crimes he described. Indeed, upon cross-examination, the witness accepted that he was not close enough to directly observe whether the unit plundering the houses was from the Drina Corps. He merely thought it was the unit of the Drina Wolves that he had seen earlier.<sup>346</sup>

154. In the absence of direct identification evidence, the Prosecution was left to rely on the fact that regular soldiers in green camouflage uniforms, of the type usually worn by the Drina Corps including General Krstić,<sup>347</sup> were involved in the commission of crimes in Potočari.<sup>348</sup> However, the Trial Chamber cannot discount the possibility that there were also non-Drina Corps troops in Potočari wearing this standard military uniform.<sup>349</sup>

155. The evidence suggests that the various Serb units who entered Potočari had each been assigned a designated role in the well co-ordinated Serb campaign waged there between 12 and 13 July 1995. A Dutch Bat soldier recounted before the Trial Chamber that Potočari:

... was a well-prepared stage. Everybody had been assigned a task, everybody knew his position. There were people who had to guard the compound, who had to guard the surroundings. There were units who had to clear out the houses, and there were other units who had to do the interrogations...It was indeed well organised...<sup>350</sup>

<sup>343</sup> Vaasen, T. 1407.

<sup>344</sup> Vaasen, T. 1408 *ff.*

<sup>345</sup> Vaasen, T. 1457.

<sup>346</sup> Vaasen, T. 1470.

<sup>347</sup> Kingori, T. 1839; Franken, T. 2064-2065.

<sup>348</sup> Witness F, T. 1503 (soldiers in camouflage uniforms were looting houses); Ademović, T. 1589 (soldiers wearing camouflage (but without insignia) threatening to slaughter the Bosnian Muslim refugees and a soldier wearing camouflage killed a baby with a knife); Witness G, T. 1647-1648 (soldiers in green camouflage kicking Bosnian Muslim men who were boarding buses); Rutten, T. 2137-2138, (as the witness, a Dutch Bat soldier, tried to enter a room where Bosnian Muslim men were being interrogated, he had a weapon put to his face by a Serb soldier wearing green camouflage), T. 2152 (saw soldiers in green camouflage taking Deutsche marks from Bosnian Muslims), T. 2196-2197 (saw a Serb soldier in camouflage uniform chasing a woman who had run out of a house).

<sup>349</sup> Indeed, one witness encountered Serb soldiers in green camouflage uniform near Nova Kasaba on 13 July 1995 and was told by their commander (Major Zoran Malinić) that he and his unit had been deployed from Sarajevo. Egbers, T. 2241.

<sup>350</sup> Witness F, T. 1513.

Although the Trial Chamber cannot conclude with certainty the extent of the assignment given to the Drina Corps within this well-planned operation, the record does establish that Drina Corps officers were heavily involved in organising and monitoring the transportation of the Bosnian Muslim women, children and elderly from Potočari. This appears to have been one of the more disciplined aspects of the Potočari operation. One witness recalled that:

...during the deportation of the Muslim refugees, there was some kind of discipline. But for the rest of it, there was no discipline.<sup>351</sup>

The absence of any substantial direct evidence showing the involvement of Drina Corps troops in the opportunistic crimes committed against Bosnian Muslim civilians in Potočari, tends to suggest that the majority of these crimes were committed by irregular Serb forces that had entered the area on 12 July 1995. Nonetheless, as Prosecution witnesses testified, Drina Corps officers present in and around the Potočari compound could not but have been aware of the deteriorating situation of Bosnian Muslims who had gathered there and the mistreatment occurring at the hands of other Serb forces who were present in the area.<sup>352</sup> By all accounts, the harassment of the Srebrenica refugees by the Serb forces was too widespread and pervasive to be overlooked. These Drina Corps officers did nothing to prevent the criminal conduct.<sup>353</sup> Accordingly, the Trial Chamber finds that Drina Corps officers and units present in Potočari on 12 and 13 July 1995 must have been aware of the catastrophic humanitarian situation confronting the Bosnian Muslim refugees, as well as the general mistreatment being inflicted by Serb forces, but took no action in response.

(c) The Separation of the Men in Potočari

156. At the Hotel Fontana meeting on 12 July 1995, General Mladić had said that military-aged men in the crowd at Potočari would be screened for war crimes.<sup>354</sup> The Prosecution's military experts accepted that it was not inherently unreasonable or criminal for the Bosnian Serbs to conduct such screening given widespread and plausible allegations that Bosnian Muslim raiders from Srebrenica had committed war crimes against Bosnian Serb villages.<sup>355</sup> Indeed, the Drina Corps Bratunac Brigade had prepared a list, dated 12 July 1995, of 387 suspected Bosnian Muslim war criminals in the Srebrenica enclave.<sup>356</sup> Throughout the war, large-scale prisoner exchanges were conducted between the Bosnian Serbs and Bosnian Muslims and a new infusion of Bosnian

<sup>351</sup> Vaasen, T. 148.

<sup>352</sup> Witness F, T. 1564.

<sup>353</sup> Witness F, T. 1912-1913.

<sup>354</sup> See the discussion *supra* para. 134.

<sup>355</sup> Butler, T. 5397-5398.

<sup>356</sup> Butler Report para. 5.19.

Muslim prisoners would have been a potentially useful bargaining tool for the Bosnian Serbs in future exchange negotiations.<sup>357</sup>

157. Consistent with this, the men and boys in Potočari were separated from the women, children and elderly and taken to the White House for interrogation. Contrary to the claims made by General Mladić and other Serb soldiers that these men would be screened and ultimately exchanged for Bosnian Serb prisoners of war,<sup>358</sup> when they were taken to the White House they were forced to leave their belongings, including their wallets and identification papers, in a large pile outside the building prior to entering.<sup>359</sup> The Trial Chamber also heard evidence that some of the men detained at the White House were killed and mistreated in sporadic attacks<sup>360</sup> and, more generally, that all of the Bosnian Muslim men who were separated were held in appalling conditions.<sup>361</sup>

158. Again, the Trial Record is not clear as to which Serb units were involved in the separation and detention of the Bosnian Muslim men in Potočari. One witness recalled that police with dogs were involved in the process of separating the men, which may suggest the involvement of the 65<sup>th</sup> Protection Regiment.<sup>362</sup> Another implicated the bodyguards of General Mladić in a shooting incident in the vicinity of the White House.<sup>363</sup> More generally, witnesses reported well-organised and well-dressed soldiers in and around the White House.<sup>364</sup> Some witnesses specifically recalled that all the soldiers around the White House wore green camouflage uniforms<sup>365</sup> although, again, the Trial Chamber is unable to thereby conclude that they were Drina Corps troops. Certainly though, Drina Corps Officers were involved in procuring the buses and overseeing their journey out of the enclave, giving rise to an inference that they also played a part in boarding the Bosnian Muslim refugees onto the buses. Drina Corps officers were also seen in the vicinity of the White House during the time the separated men were detained there.<sup>366</sup> They must have been aware that the Bosnian Muslim men's belongings had been taken from them and piled out in front of the White House, as well as the terrible conditions in which these men were kept. By the late afternoon of 12 July 1995, terror in the Potočari compound had developed to such intensity that Major Franken was prompted to draw up a list containing the names of the men in and around the compound. In his view, the conduct of the VRS signalled to all who were present that the survival of the men was at

<sup>357</sup> Dannatt, T. 5616-5617; Butler, T. 5389.

<sup>358</sup> Kingori, T. 1854; Rutten, T. 2195-2196; Franken, T. 2051; van Duijn, T. 1769-70, 1780, 1786.

<sup>359</sup> Kingori, T. 1850-53; Witness F, T. 1511-1512; Malagić, T. 1974; Franken, T. 2039.

<sup>360</sup> See the discussion *supra* para. 58.

<sup>361</sup> Kingori, T. 1844.

<sup>362</sup> Witness T. 3437, and Defence Final Brief, para. 292.

<sup>363</sup> Witness C, T. 1183.

<sup>364</sup> Witness C, T. 1183.

<sup>365</sup> Rutten, T. 2153; Witness N, T. 2797.

<sup>366</sup> Kingori, T. 1846-1849 (identifying Major Nikolić, Colonel Popović, and General Živanović as present at the White House) and Rutten, T. 2152 (identifying General Živanović as present at the White House). The presence of General Krstić at the White House is considered *Infra* paras. 365-367.

risk and Major Franken made his list in an effort to safeguard their lives by establishing a record of their presence in the compound.<sup>367</sup> The Drina Corps officers present must have also known that there was a terrible uncertainty about what was going to happen to the separated men. One Dutch Bat witnesses summed it up in this way:

[Y]ou could see the total fear, and I never thought that it really existed, but you could even smell death there because it was total fear, what you saw on the faces of the men and the young boys.<sup>368</sup>

159. Beginning on the afternoon of 12 July 1995 and continuing throughout 13 July 1995, men detained in the White House were bussed out of the Potočari compound to detention sites in Bratunac.<sup>369</sup> Colonel Kingori testified that:

...the men who were being taken from that white building, the ones who had been put together earlier. They were put on their own buses, different from the ones carrying the women and children and we did not know where their destination was...<sup>370</sup>

[the men who had been separated] could [sic] shout and say, 'You know these people are going to kill us, and then you are not doing anything about it.' ...Something bad was actually going to be done to them. You know we could see it...you could see there was a lot of fear. They were crying, You know, men -you can imagine men crying in front of you and seeking assistance from you, assistance which you cannot give--it had gone beyond my control.<sup>371</sup>

Drina Corps officers present in the compound, particularly those in the vicinity of the White House, must have known that the separated men from Potočari were bussed out to detention sites in Bratunac. Indeed, the fact that the buses transporting the Bosnian Muslim men from Potočari were diverted from the transportation of the women, children and elderly, which the Drina Corps was overseeing, to carry out this task made that knowledge on their part inevitable.<sup>372</sup>

160. Later, after all of the Bosnian Muslim civilians had gone from Potočari, the piles of personal effects, including identity cards, that had been taken from the Bosnian Muslim men and boys were set on fire.<sup>373</sup> At that point Dutch Bat soldiers were certain that the story about screening for war criminals could not be true: something more ominous was afoot.<sup>374</sup> The Chamber accepts that, at the stage when the Bosnian Muslim men were divested of their identification *en masse*, it must have been apparent to any observer that the men were not being screened for war crimes. In the absence of personal documentation, these men could no longer be accurately identified for any purpose. Rather, the removal of their identification could only be an ominous signal of atrocities to come. However, the evidence suggests that the destruction of the identity documents did not occur until

<sup>367</sup> Franken, T. 2096-2097

<sup>368</sup> Rutten, T. 2149-2150.

<sup>369</sup> Witness G, T. 1646; Kingori, T. 1855; Egbers, T. 2233.

<sup>370</sup> Kingori, T. 1855

<sup>371</sup> Kingori, T. 1856-1857.

<sup>372</sup> Vaasen, T. 1439-1440; Witness L, T. 2662; Witness P, T. 2956.

<sup>373</sup> Rutten, T. 2136; Witness F, T. 1541-1542; van Duijn, T. 1786.

the late afternoon or evening of 13 July 1995. On the basis of the evidence presented, the Trial Chamber is unable to positively conclude that any Drina Corps personnel were still in the compound at the time the personal belongings taken from the Bosnian Muslim men detained in the White House were burned.

161. The Trial Chamber finds that Drina Corps personnel present in the Potočari compound, on 12 and 13 July 1995, knew that the Bosnian Muslim men, who were separated from the women, children and elderly, were not treated in accordance with accepted practice for war crimes screening and that there was a terrible uncertainty about what the fate of these men would be. The Drina Corps Command also knew that the separated men from Potočari were bussed out to detention sites in Bratunac using busses that had been diverted from the transportation of the women, children and elderly, which the Drina Corps was overseeing.

#### 4. Involvement of the Drina Corps in Action against the Bosnian Muslim Column

162. Immediately following the take-over of Srebrenica, the whereabouts of the 28<sup>th</sup> Division of the ABiH were unknown.<sup>375</sup> This was of great concern to the VRS, as was the possibility that forces of the 2<sup>nd</sup> Corps of the ABiH attacking from the direction of Tuzla and Kladanj would link up with elements of the 28<sup>th</sup> Division.<sup>376</sup> Radio intercepts indicate that the VRS first became aware of the formation of the column around 0300 hours on 12 July 1995.<sup>377</sup> At the Hotel Fontana meetings on 11 and 12 July 1995, General Mladić had attempted to secure the surrender of the ABiH forces in the area of the former enclave. He was, however, unsuccessful and, in the ensuing days, VRS units, including units of the Drina Corps that were not engaged in the Žepa campaign, were assigned to block the column.<sup>378</sup> In addition to these Drina Corps units, non-Drina Corps units, including a Special Brigade of the police units of the RS Ministry of the Interior (*Ministarstvo Unutrašnjih Poslova*, or MUP), elements of the Military Police Battalion of the 65<sup>th</sup> Protection Regiment and subsequently elements of the municipal police, also took action to block the column.<sup>379</sup> Over the course of 12 and 13 July 1995, a series of intercepted conversations track the developing knowledge of the Drina Corps,<sup>380</sup> and the VRS generally,<sup>381</sup> about the column.

<sup>374</sup> Rutten, T. 2195; Franken, T.2051; van Duijn, T. 1769-70, 1780, 1786.

<sup>375</sup> Radinović, T. 7951-7952.

<sup>376</sup> Radinović Report, paras. 4.17-4.18.

<sup>377</sup> Butler, T. 4929-4930; P 500; P 501; P 502; and P 503.

<sup>378</sup> Radinović Report, para. 3.26.

<sup>379</sup> D 98, P 830, P 507, P 503, P 404/2/114, P 878, P 502, P 404/2/115, D 165, P 508, P 487, P 404/61, P 504, P 507; also P 511, and generally Butler, T. 4871-4872. See also Radinović Report, para. 3.26.

<sup>380</sup> P 507 (intercepted conversation on 12 July 1995 involving an officer at the Drina Corps Headquarters and discussing MUP involvement in the operations relating to the column). See also Butler T. 4944-4945; P 508 (intercept dated 12 July 1995 at 11.56 hours involving officers from the 1<sup>st</sup> Bratunac Light Infantry Brigade, and the Drina Corps

163. About one third of the Bosnian Muslim column was comprised of soldiers from the 28<sup>th</sup> Division, and about two-thirds were Bosnian Muslim civilian men from Srebrenica.<sup>382</sup> The military experts for both the Prosecution and the Defence agreed that, under VRS regulations, the column qualified as a legitimate military target.<sup>383</sup> Certainly the Indictment in this case does not allege that the combat activities against the column were deliberately or indiscriminately directed against civilians in the column. However, thousands of Bosnian Muslim men were also captured from the column, most of them civilians, transferred to detention sites, and subsequently executed. Consequently, the knowledge the Drina Corps had of the column, as well as Drina Corps involvement in action taken against it, particularly the capture of Bosnian Muslim prisoners, forms a critical backdrop to the Trial Chamber's findings on the criminal responsibility of General Krstić for the Srebrenica crimes.

(a) Combat against the Column

164. As the Bosnian Muslim column attempted to break out of the enclave, it first moved through the area of responsibility of the Bratunac Brigade. The 13 July 1995 Combat Report sent by the Bratunac Brigade to the Drina Corps Command discussed military activities related to encircling and crushing groups of Bosnian Muslims attempting to escape the area.<sup>384</sup> The combat against the column in the Bratunac zone of responsibility, however, appears to have been of low intensity.<sup>385</sup>

165. Leaving the area of the Bratunac Brigade, the column moved up towards the Zvornik Brigade's zone of responsibility. On 12 July 1995 at 16.40 hours, the Chief of Staff of the Zvornik Brigade, Major Dragan Obrenović, was heard in an intercepted conversation discussing matters relating to the column and the activities of the MUP who were deployed to ambush the column along the Konjević-Polje road.<sup>386</sup> In a conversation at 20.35 hours on 13 July 1995, Major Obrenović is again heard reporting on the movement of the column to an unidentified General.<sup>387</sup> The General ordered Major Obrenović to take urgent steps to ensure he did not "let anything

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Command and discussing the movement of the column); P 509 (intercept on 12 July 1995 at 13.45 hours involving an officer at the Drina Corps Command and discussing complications in the area where the 4<sup>th</sup> Battalion was deployed); and P 511 (intercepted conversation on 12 July 1995 at 16.40 hours involving Major Obrenović, the Chief of Staff of the Zvornik Brigade, discussing the movement of the column and the police ambushes that had been set along the Konjević Polje-Hrncici stretch.).

<sup>381</sup> P 500 (intercept between unidentified subscribers at 0603 hours on 12 July 1995); P 502 (intercept between unidentified subscribers at 06.56 hours on 12 July 1995); P 506 (intercept on 12 July 1995 discussing the location of the column); P 515 (intercepted conversation on 13 July 1995 at 09.10 hours involving Colonel Beara, Security Chief of the Main Staff, and discussing Bosnian Muslim prisoners in Konjević Polje)

<sup>382</sup> See *supra* para. 61.

<sup>383</sup> Radinović Report, para. 3.25; and Butler, T. 4921.

<sup>384</sup> P 488.

<sup>385</sup> Butler, T. 4993.

<sup>386</sup> P 511; Butler, T. 4949-4951.

through". On 13 July 1995, the Zvornik Brigade reported to the Command of the Drina Corps that troops not engaged for Žepa were being deployed to deal with the enemy forces known to be moving out of Srebrenica and towards Tuzla. Clashes between the Zvornik Brigade and the 2<sup>nd</sup> Corps of the ABiH from Tuzla were also noted.<sup>388</sup> The Daily Combat report sent to the Drina Corps Command by the Zvornik Brigade on 14 July 1995 reveals that clashes with the 2<sup>nd</sup> Corps continued and, in addition, the Zvornik Brigade encountered the Bosnian Muslim column at around 18.00 hours.<sup>389</sup> Later that same day, the Zvornik Brigade reported to the Drina Corps Command, in an Interim Combat Report, that the Bosnian Muslim column had broken through the defences of the Zvornik Brigade.<sup>390</sup> By 10.00 hours on 15 July 1995, the Zvornik Brigade was aware of the presence of a column "of between four and five thousand".<sup>391</sup> The Daily Combat Report sent to the Drina Corps Command by the Zvornik Brigade on 15 July 1995 reported heavy combat with the Bosnian Muslim column, as well as the actions of Bosnian Muslim forces who were attacking the front line in an effort to assist the column in breaking through.<sup>392</sup> An Interim Combat Report of the same date states that the Zvornik Brigade was completely engaged by enemy forces.<sup>393</sup> On 16 July 1995, Lieutenant Colonel Vinko Pandurević, the Commander of the Zvornik Brigade, reported that, in view of the enormous pressure on his Brigade, he had taken a unilateral decision to open up a corridor to allow about 5,000 unarmed members of the Bosnian Muslim column to pass through.<sup>394</sup> Following this, on 17 and 18 July 1995, Zvornik Brigade units engaged in pockets of combat with Bosnian Muslim stragglers who remained in the zone of responsibility.<sup>395</sup>

166. Undisputed evidence thus demonstrates that the Drina Corps subordinate Brigades, particularly the Bratunac and Zvornik Brigades, engaged in combat with the column as it attempted to break-through to Bosnian Muslim held territory. These Brigades were continuously reporting to the Drina Corps Command about matters relating to the column between 12 and 18 July 1995.

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<sup>387</sup> P 542.

<sup>388</sup> P 540, (Zvornik Brigade Daily Combat Report 13 July 1995).

<sup>389</sup> P 548 (Zvornik Brigade Daily Combat Report, 14 July 1995). See also P 555 (intercepted conversation at 09.10 hours on 14 July 1995 in which the duty officer of the Zvornik Brigade informs General Živanović about the size of the column and the threat posed by it.); P 556 (intercepted conversation at 20.38 hours on 14 July 1995 between the duty officer of the Zvornik Brigade and General Živanović about the column).

<sup>390</sup> P 550 (Zvornik Brigade Interim Combat Report, 14 July 1995).

<sup>391</sup> P 607 (Intercept between Colonel Pandurević and a person named "Mijatović", 15 July 1995)

<sup>392</sup> P 597.

<sup>393</sup> P 609; Butler, T. 5115.

<sup>394</sup> P 614 (Zvornik Brigade Interim Combat Report, 16 July 1995).

<sup>395</sup> P 641 (Zvornik Brigade Combat Report for 17 July 1995, sent to the Command of the Drina Corps); P 675 (Zvornik Brigade Interim Combat Report for 18 July 1995, sent to the Command of the Drina Corps); and P 676 (Zvornik Brigade Combat Report for 18 July 1995 sent to the Command of the Drina Corps); P 694 (intercepted conversation on 19 July 1995 at 08.12 hours in which Colonel Pandurević speaks of chasing 150 Muslims remaining within his zone of responsibility.) See also Butler Report, para. 7.74.

(b) Capture of Bosnian Muslim Men from the Column

167. Mr. Butler calculated that, from the afternoon of 12 July 1995, or the early evening at the latest, the Bosnian Serbs were capturing, within the zone of responsibility of the Drina Corps, large numbers of the men from the column.<sup>396</sup> How much the Drina Corps knew about the capture of the men and the involvement of Drina Corps units in these events, proved to be the subject of a critical debate between the parties in the case.

(i) General Knowledge that Bosnian Muslim Men were Being Captured from the Column

168. There is persuasive evidence that the Drina Corps Command knew that prisoners were being captured from the column from 12 July 1995 onwards. An intelligence report prepared by the Zvornik Brigade on 12 July 1995 and received by the Drina Corps Command in the early morning hours of 13 July 1995, expressly referred to the fact that Bosnian Muslims in the column were “fleeing in panic, without any control, in groups or individually and giving themselves up to the MUP/Ministry of the Interior/ or the VRS/Republika Srpska Army.”<sup>397</sup> On 13 July 1995, the contents of this report were subsequently conveyed by the Drina Corps Intelligence Department to, *inter alia*, the Main Staff and the MUP, in a document that stated “our soldiers were using megaphones asking them to surrender” (emphasis added).<sup>398</sup>

169. Certainly the Drina Corps Command was well aware of the general VRS plan to capture the Bosnian Muslim men trying to breakthrough to Tuzla. Indeed, the Drina Corps Command received direct orders from the Main Staff to take prisoners from the Bosnian Muslim column. On 13 July 1995,<sup>399</sup> in an attempt to forewarn Drina Corps Brigades who were in the approaching column’s line of attack, Lieutenant Colonel General Milan Gvero, the Main Staff Assistant Commander for Moral Legal and Religious Affairs, issued an order about the column to the Drina Corps Command.<sup>400</sup> The order was also sent to the Drina Corps Forward Command Post (hereafter “FCP”) and directly to the relevant subordinate Brigades, namely the Zvornik Brigade, the Birać Brigade and the Vlasenica Light Infantry Brigade. General Gvero described the column as comprised of “hardened criminals and cut-throats, who will stop at nothing in order to avoid capture and escape to Bosnian Muslim controlled territory.” The Corps and Brigade commands were ordered to use all available manpower in “discovering, blocking, disarming and capturing” men from the column. To this end, the Drina Corps was ordered to set ambushes along the Zvornik-Crni Vrh-Sekovici-Vlasenica road. General Gvero specified the procedure to be followed when Bosnian

<sup>396</sup> Butler T. 5453.

<sup>397</sup> P 878.

<sup>398</sup> P 739.

<sup>399</sup> This date was identified by Butler, T.4 968.



Muslims from the column were captured, one aspect of which was reporting immediately to the "Superior Command." Later that same day, General Živanović issued an order at 16.00 hours largely reproducing the order sent by General Gvero.<sup>401</sup>

170. The Trial Chamber finds that, from 12 July 1995, the Drina Corps Command knew Bosnian Muslim prisoners were being taken from the column by Bosnian Serb forces within its zone of responsibility. The Drina Corps Command was informed of the Main Staff policy of blocking and capturing the Bosnian Muslim men in the Column and the Main Staff had directed that Drina Corps units be deployed in setting ambushes for the column.

(ii) 13 July 1995: Participation in the Capture of Prisoners along the Bratunac-Konjević Polje Road

171. The vast majority of prisoners were seized along the road between Bratunac and Konjević Polje on 13 July 1995. An intercepted conversation on that day indicates that about 6,000 men had been captured by 1730 hours.<sup>402</sup> Witnesses estimated that between 1,000 and 4,000 Bosnian Muslim men captured from the column were detained in the Sandići Meadow on 13 July 1995.<sup>403</sup> The soldiers guarding the men forced them to drop their belongings into big piles and to hand over their valuables. Late in the afternoon of 13 July 1995, General Mladić visited the meadow and told the men that they would not be hurt but would be exchanged as prisoners of war and that their families had been transported safely to Tuzla.<sup>404</sup> The Bosnian Serb forces on the scene began shepherding the men out of the meadow. Some were put on buses or marched towards the nearby Kravica Warehouse.<sup>405</sup> Others were loaded on buses and trucks and taken to Bratunac and other nearby locations.<sup>406</sup> In addition, an estimated 1,500 and 3,000 men captured from the column were held prisoner on the Nova Kasaba football field on 13 July 1995.<sup>407</sup> As in the Sandići meadow, the men at Nova Kasaba were forced to turn over their valuables and abandon their belongings.<sup>408</sup> General Mladić visited that field in the afternoon of 13 July 1995 as well, but this time he told the prisoners that the Bosnian Muslim authorities in Tuzla did not want them and so they would be sent

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<sup>400</sup> P 532.

<sup>401</sup> P 462.

<sup>402</sup> P 523.

<sup>403</sup> Compare Witness K, T. 2503, 2508 (originally 1,000 people, increasing to 3,500 or 4,000 in a few hours); Witness L, T. 2659 (2,000 to 2,500 people); Husić, T. 2619 (1,000 people); Witness J, T. 2451 (2,000 people); Witness O, T. 2874 (1,000 to 2,000 people).

<sup>404</sup> Witness J, T. 2459; Witness K, T. 2509; Witness L, T. 2660-2661.

<sup>405</sup> Witness K, T. 2510; Witness J, T. 2461.

<sup>406</sup> Witness O, T. 2871.

<sup>407</sup> Witness P, T. 2950-2951; Witness Q, T. 3022.

<sup>408</sup> Witness P, T. 2950.

somewhere else.<sup>409</sup> Most of the men at Nova Kasaba were subsequently loaded into buses and trucks and taken to Bratunac and other holding sites.<sup>410</sup>

172. The evidence conclusively establishes that, on 13 July 1995, MUP forces were deployed along the stretch of road between Konjević Polje and Bratunac where the bulk of the Bosnian Muslim prisoners were captured from the column.<sup>411</sup> The Prosecution argued that Drina Corps units were also present there, but the Defence adamantly denied this.

173. A video taken by Serb journalist, Zoran Petrović, in the company of Lieutenant Colonel Ljubisa Borovčanin, the Deputy Commander of a Special MUP Brigade, recorded the activity along the Bratunac-Konjević Polje road on 13 July 1995.<sup>412</sup> Mr. Butler presented circumstantial evidence indicating that military equipment shown in the film belonged to units of the Drina Corps, specifically the 4<sup>th</sup> Battalion of the Bratunac Brigade (a Zvornik Brigade unit, that at the time was functioning as a Bratunac Brigade unit) and the 2<sup>nd</sup> Romanija Brigade.<sup>413</sup> However, this evidence is not sufficiently reliable to support a firm conclusion by the Trial Chamber that these Drina Corps units were engaged in the capture of Bosnian Muslim men along that stretch of road. For example, during his testimony, Mr. Butler suggested that a photograph of soldiers wearing flak jackets who were guarding a group of Bosnian Muslim prisoners in Sandići probably belonged to the 4<sup>th</sup> Battalion of the Bratunac Brigade. He drew this conclusion based upon information the OTP uncovered during the course of its investigations about the equipment inventories of the various units in the area.<sup>414</sup> However, when Mr. Butler was recalled during the Prosecution's rebuttal case, he informed the Chamber that ongoing investigations had revealed that the individuals in the photograph were members of a police unit and not in fact members of the army.<sup>415</sup> Similarly, during his initial testimony, Mr. Butler concluded that the army owned a tank shown in the Petrović video.<sup>416</sup> During rebuttal, the Prosecution filed a stipulation, with the agreement of the Defence, that a witness would testify that the tank in question belonged to a police unit.<sup>417</sup>

174. The Prosecution also relied upon general evidence that army units, in addition to the MUP, were present along the Bratunac-Konjevic Polje road on 13 July 1995. First, Mr. Butler doubted

<sup>409</sup> Witness P, T. 2953-2954. See also Witness Q, T. 3013-15.

<sup>410</sup> Witness P, T. 2955-2956

<sup>411</sup> In addition to the video showing the presence of the MUP along this stretch of road on 13 July and discussed *Infra* para. 173, an intercepted conversation on 12 July 1995 at 16.40 hours reveals that the civilian police were involved in setting up an ambush in Konjević Polje. See P 512. An order issued by the Main Staff in the late evening of 12 July 1995 also noted that organs of the MUP had been assigned to "secure the communication Bratunac-Konjević Polje." See D 165. General Krstić agreed that the MUP were present in this area. Krstić, T. 6416.

<sup>412</sup> P 3.

<sup>413</sup> Butler, T. 4925-4931.

<sup>414</sup> P 493, and Butler T. 4926-4927.

<sup>415</sup> Butler, T. 9181.

<sup>416</sup> P 3 video still number 491.

whether the entire stretch of road between Bratunac and Konjevic Polje could have been secured by the MUP, given the breadth of the area involved and the limited number of MUP formations known to be present.<sup>418</sup> Second, Mr. Butler testified that, when interviewed by the OTP, the police who were filmed by Petrović guarding the Bosnian Muslim prisoners in Sandići on 13 July 1995, confirmed that there were army members with them in the Sandići meadow area that day.<sup>419</sup> The Bosnian Muslim men who made it through to Tuzla after being caught up in the second part of the column, stated that both the MUP and the VRS were engaged in capturing Bosnian Muslim men.<sup>420</sup> The women, children and elderly who had been bussed from Potočari to Kladanj also told members of the ABiH, who met them upon their arrival, that they had seen dead men lying by the road and also claimed that the army had been involved.<sup>421</sup> Witnesses captured in several locations remembered only seeing "Bosnian Serb soldiers," in green camouflage uniforms, without knowing which unit they came from.<sup>422</sup> Some remembered blue camouflage uniforms<sup>423</sup> and police cars.<sup>424</sup> Other witnesses recounted rumours that members of the paramilitary group, called Arkan's Tigers, were in the area;<sup>425</sup> some reported seeing Bosnian Serb soldiers dressed in stolen UN uniforms.<sup>426</sup> There was, however, virtually no evidence demonstrating that units of the Drina Corps were amongst these army forces. The only exception is one eyewitness who recalled seeing a truck with a wolf's head on the door, the emblem of the Drina Corps, at the football field in Nova Kasaba, where captured men were collected.<sup>427</sup>

175. Although there is some persuasive force in the arguments and evidence presented by the Prosecution, the Trial Chamber is unable to conclude, beyond a reasonable doubt, that Drina Corps units participated in the capture of the thousands of Bosnian Muslim men from the column who were taken along the Bratunac-Konjević Polje Road on 13 July 1995.

176. Although the Prosecution was unable to identify specific Drina Corps units along the Bratunac-Konjević Polje road on 13 July 1995, there is strong evidence that the Corps Command knew that thousands of Bosnian Muslim prisoners had been captured along that stretch of road throughout the day. A series of intercepted conversations show close co-operation and co-

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<sup>417</sup> Stipulation 890, T. 9186.

<sup>418</sup> Butler, T. 9201.

<sup>419</sup> Butler, T. 9182.

<sup>420</sup> Hadžihasanović, T. 9604.

<sup>421</sup> Hadžihasanović, T. 9605.

<sup>422</sup> Witness K, T. 2506-2507; Witness L, T. 2657; Witness O, T. 2867.

<sup>423</sup> Witness P, T. 2948-2949; Witness S, T. 3247.

<sup>424</sup> Witness O, T. 2868.

<sup>425</sup> Witness L, T. 2658.

<sup>426</sup> Husić, T. 2609-2613; Witness K, T.2517.

<sup>427</sup> Egbers, T. 2237.

ordination between MUP units and Drina Corps units, particularly the Engineers Battalion,<sup>428</sup> who were jointly engaged in action to block the Bosnian Muslim column.<sup>429</sup> The Drina Corps Command was also in contact with the MUP unit along the Bratunac-Konjević Polje road, monitoring their progress. A conversation, intercepted on 13 July 1995 at 2040 hours, reveals that General Krstić spoke to Colonel Borovčanin, the Deputy Commander of the MUP unit, asked how things were going and stated that he would be in touch.<sup>430</sup>

177. Also on 13 July 1995 at 2100 hours, a conversation was recorded involving Colonel Krsmanović, the Drina Corps Chief of Transportation Services.<sup>431</sup> Colonel Krsmanović, who on 12 July 1995 had been involved in procuring the buses for the transportation of the Bosnian Muslim civilians out of Potočari, told the other participant in the conversation that there were “700 people in Sandići village” and that “(t)he buses need to stop there, load 10 pieces and bring them here to me.” Between 1,000 and 4,000 Bosnian Muslim prisoners taken along the Bratunac-Konjevic Polje road were detained in the Sandići Meadow throughout 13 July 1995. It is difficult to attribute any precise meaning to the statement Colonel Krsmanović made about loading “10 pieces”. At a minimum, however, the conversation shows that Colonel Krsmanović was still involved in directing the movement of buses in the area of the former enclave one hour after the transport of the Bosnian Muslim women, children, and elderly had been completed on the evening of 13 July 1995. More particularly, Colonel Krsmanović was directing the movement of buses in the very areas where thousands of Bosnian Muslim prisoners had been collected on 13 July 1995 and at the time when they were being transported to holding sites in Bratunac.

178. The Trial Chamber finds that the Drina Corps Command knew that thousands of Bosnian Muslim prisoners had been captured along the Bratunac-Konjevic Polje Road on 13 July 1995. The Trial Chamber further finds that an officer in the Drina Corps Command was still involved in directing the movement of buses in the area of the former enclave where the prisoners were being held, despite the fact that the transportation of the Bosnian Muslim women, children and elderly out of the enclave on the evening of 13 July 1995 had already been completed an hour earlier.

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<sup>428</sup> P 504 (intercepted conversation on 12 July 1995 at 0740 hours in which one participant stated “...the police in Konjevic Polje have been told to Šsicc the same as the Engineering Battalion are doing, and that he can give orders to them through the commander of the Engineering Battalion.”); P 505 (intercepted conversation on 12 July at 07.48 hours during which one participant refers to a person from the MUP and states “One of his companies is up there next to our man with the bulldozers, over there in/?Konjević Polje/ and has the task of doing whatever he does. So you can give orders what to do through the commander.”)

<sup>429</sup> See the further discussion *Infra* para. 287.

<sup>430</sup> P 529.

(iii) 12-15 July 1995: Involvement with the Detention of Bosnian Muslim Prisoners in Bratunac

179. Most of the Bosnian Muslim men separated at Potočari and captured from the woods were held in Bratunac for one to three days before being transferred to other detention and execution sites. Evidence that Drina Corps units knew about the detention of men in Bratunac, though circumstantial, is persuasive.

180. The town of Bratunac is in the zone of the Bratunac Brigade of the Drina Corps.<sup>432</sup> The arrival of many thousands of military aged Bosnian Muslim men could not have escaped the attention of the Brigade Command. In fact, a Bratunac Brigade military police log on 14 and 15 July 1995 reveals that military police from the Bratunac Brigade “were engaged in the escort of Bosnian Muslim refugees.”<sup>433</sup> Since the women, children and elderly had already been transported from Potočari by the night of 13 July 1995, it appears likely that this referred to an assignment to escort the busses of male prisoners as they commenced their journey up north towards the Zvornik Brigade.<sup>434</sup> The Prosecution also relied on the presence of soldiers in green camouflage at the detention sites in Bratunac as evidence that Drina Corps troops were present there.<sup>435</sup> However, as previously noted, this evidence, of itself, is insufficient to establish the involvement of the Drina Corps.

181. The Trial Chamber finds that the Drina Corps Bratunac Brigade could not but have known that thousands of Bosnian Muslim prisoners were being detained in Bratunac between 12-15 July 1995. The Trial Chamber also accepts the evidence adduced by the Prosecution showing that Bratunac Brigade military police were engaged in escorting these prisoners to northern detention sites on 14 and 15 July 1995.

182. Mr. Butler further concluded that the Drina Corps Command must have been involved in making the arrangements to detain the men at Bratunac. He based this conclusion on the fact that the resources involved were over and above those owned by the Bratunac Brigade and that an intensive level of co-ordination with the Command level of the Corps would have been required.<sup>436</sup> However, the Trial Chamber is unable to make any specific finding that the Drina Corps Command

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<sup>431</sup> P 530.

<sup>432</sup> Butler, para. 6.11.

<sup>433</sup> P 404 /2 (tab 61) (Military Police log for 14 and 15 July 1995).

<sup>434</sup> Butler, Report para. 6.33 & fn. 206.

<sup>435</sup> Witness G, T. 1653-1658.

<sup>436</sup> Butler, T. 5408.

was involved in making the arrangement to detain the men in Bratunac based only on theories as to how such a task would normally be carried out.

183. Nonetheless, the Prosecutor made a compelling argument that the Drina Corps Command must have known the Bosnian Muslim prisoners were being detained in Bratunac on the nights between 12 and 15 July 1995. Certainly, the Bratunac Brigade Command would be expected to have informed the Drina Corps Command about the arrival of thousands of military-aged Bosnian Muslim men within its zone of responsibility. This is especially so given that the whereabouts of the 28<sup>th</sup> Division was an issue of great concern to the Drina Corps units involved in preparing for the operation in Žepa.<sup>437</sup>

184. The Trial Chamber also notes that many men were transported to Bratunac from Potočari at the same time that Drina Corps troops were present and actively engaged in organising the buses for transporting the Bosnian Muslim civilians out of the compound. Throughout the trial, the Prosecution relied upon the fact that the Drina Corps Command had procured the buses for the transportation of the women, children and elderly out of Potočari, to support an inference that they must have also known about the transport of the Bosnian Muslim prisoners to detention and execution sites, including those in Bratunac, between 12 and 17 July 1995. The timing of the events suggests that the same buses used to transport the women, children and elderly were used to transport the Bosnian Muslim prisoners. Certainly, it is clear from eyewitness testimony that buses used to transport the men from Potočari to Bratunac on 12 and 13 July 1995 had to be diverted from the parallel task of transporting the women, children and elderly to Kladanj.<sup>438</sup> Further, it was not until the bussing of the women, children and elderly from Potočari was finished in the evening of 13 July 1995, thus making the entire convoy of buses and trucks available, that the transportation of the men from Bratunac to the detention and northern execution sites in zone of the Zvornik Brigade commenced. Officers in the Drina Corps Command had co-ordinated the procurement of the buses in the first place and were monitoring the transport of the women, children and the elderly out of the enclave. They must have known that, first, the buses were being diverted to the parallel task of transporting the Bosnian Muslim men from Potočari to Bratunac on 12 and 13 July 1995 and, second, that they were subsequently used to transport the men up north to the zone of responsibility of the Zvornik Brigade after the transport of the women, children and elderly was completed. Buses were scarce in Eastern Bosnia during July 1995. The Drina Corps had scrambled to obtain the requisite number of buses on 12 July 1995 casting its net far and wide, including calling upon

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<sup>437</sup> The Defence argued that, even if subordinate Brigades of the Drina Corps had knowledge, of, or were involved in the executions, this information was not transmitted to the Corps Command, because there was a parallel chain of command involving the VRS Main Staff in operation. The issue of how the Drina Corps chain of command was operating during July 1995 is considered *Infra* paras. 262-276.

the resources of private companies. One witness who saw the long line of buses transporting the Bosnian Muslims out of Potočari remarked how strange it was to see them given that, in the three years prior, there had barely been a single vehicle in the enclave.<sup>439</sup> It is difficult to imagine that different buses were then acquired to transport the thousands of Bosnian Muslim prisoners to detention and execution sites. An eyewitness testified that some of the buses that arrived to transport the Bosnian Muslim women, children and elderly from Potočari, bore the inscriptions of companies in the region such as “Sembrija Transport” from Bijeljina, and “Drina Trans” from Zvornik.<sup>440</sup> Mr. Erdemović then testified that one of the buses used to transport Bosnian Muslim men to an execution site on 16 July 1995 bore the inscription of a Zvornik transportation company.<sup>441</sup> This is consistent with the notion that the buses originally procured by the Drina Corps were still in use. As previously noted, intercept evidence also suggests that the Drina Corps Transportation Chief was involved in directing the movement of buses subsequent to the conclusion of the transportation of the Bosnian Muslim women, children and elderly from the enclave. Overall, the Trial Chamber is satisfied that the buses procured by the Drina Corps were used for the transportation of Bosnian Muslim prisoners to detention and execution sites. It follows from this that, on 12 and 13 July 1995, the Drina Corps Command must have been informed about the diversion of the buses from their original task of transporting the Bosnian Muslim women, children and elderly into transporting men from Potočari to Bratunac. The Trial Chamber also finds that, from the evening of 13 July 1995, the Drina Corps must have known that their buses had been put to further use in dealing with the Bosnian Muslim prisoner population remaining within its zone of responsibility.

185. Another factor supporting the proposition that the Drina Corps Command knew of the Bosnian Muslim prisoners detained at Bratunac is that, as Mr. Butler pointed out, it was very likely that the prisoner convoys leaving from Bratunac would have had to obtain route clearance from the Drina Corps for their journey up into the zone of the Zvornik Brigade since combat was ongoing in that area.<sup>442</sup>

186. The Trial Chamber finds that the Drina Corps Command had knowledge of both the fact that Bosnian Muslim men were being detained in Bratunac between 12 and 15 July 1995 and that, from the evening of 13 July 1995, they were transported to detention sites in the north, following completion of the removal of the Bosnian Muslim women, children and elderly.

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<sup>438</sup> See the discussion *supra* para. 159.

<sup>439</sup> Malagić, T. 1992.

<sup>440</sup> Mandžić, T. 1000. Other witnesses said some of the buses came from companies in Serbia. See Malagić, T. 1992.

<sup>441</sup> See *Infra* paras. 239.

<sup>442</sup> Butler Report, para. 6.34.

(iv) 13-16 July 1995: Zvornik Brigade Knowledge of Bosnian Muslim Prisoners detained in its Zone of Responsibility

187. There is evidence that, from 13 July 1995, the Zvornik Brigade was aware of the plans to distribute, throughout the Zvornik area, the thousands of Bosnian Muslim men being detained temporarily in Bratunac. Vehicle records<sup>443</sup> show that, on 13 July 1995, an Opel "Record", assigned to the Command of the Zvornik Brigade, travelled from the Zvornik Brigade headquarters to Orahovac (where a mass execution took place on 14 July 1995<sup>444</sup>) and Bratunac (where the Bosnian Muslim men were being detained at that time). On 14 July 1995, the vehicle visited Orahovac two more times and also went to Ročević (where Prosecution investigators believe Bosnian Muslim men were subsequently detained in a school<sup>445</sup>). On 15 July 1995, it went to Kozluk (a known crime scene between 15 and 17 July 1995), Kula (where men were detained in the Pilica school on 14 and 15 July 1995), Pilica (where a mass execution took place on 16 July 1995<sup>446</sup>) and Ročević. On 16 July 1995, it went to Kozluk, Pilica, Ročević and Kravica. As is readily apparent, the timing and location of these visits correlate strongly to the timing and location of the detentions and mass executions.

188. The Defence argued that the Opel "Record" is known to have been the personal vehicle of Colonel Beara of the Main Staff and that he was responsible for these scouting visits.<sup>447</sup> However, the documentation for the vehicle demonstrates that the vehicle was operated by three members of the Zvornik Brigade military police company.<sup>448</sup> Even if Colonel Beara was involved in directing the trips, the Zvornik Brigade must have known it was being utilised for this purpose.

189. In a conversation intercepted on 14 July 1995 at 21.02 hours, the Zvornik Brigade duty officer was heard speaking to Colonel Beara, the Security Chief of the Main Staff, about "big problems...with the people, I mean, with the parcel."<sup>449</sup> Mr. Butler confirmed that the word "parcel" was used throughout the intercepted conversations to describe the prisoners taken from the Bosnian Muslim column as opposed to the column itself.<sup>450</sup> This intercept is further evidence that the Zvornik Brigade was fully aware of the existence of the Bosnian Muslim prisoner population within its zone.

<sup>443</sup> P 543.

<sup>444</sup> See the discussion *Infra* paras. 220-225.

<sup>445</sup> Butler, T. 5029.

<sup>446</sup> See the discussion *Infra* paras. 233-248.

<sup>447</sup> Defence Final Brief, para. 312

<sup>448</sup> P 543, Butler Report para. 6.34, Butler, T. 5027.

<sup>449</sup> P 559. See also P 561 (intercepted conversation on 14 July 1995 at 2227 hours in which the Zvornik Brigade duty officer stated "This packet has done most to ruin us and since this morning we have been reporting on the numbers of people" at which point the other participant in the conversation cuts him off.)

<sup>450</sup> Butler, T. 5056.



190. By 15 July 1995, Colonel Pandurević, the Commander of the Zvornik Brigade, was complaining loudly to the Drina Corps command about the “additional burden” on his Brigade caused by the thousands of Bosnian Muslim prisoners distributed throughout Zvornik.<sup>451</sup>

191. The Trial Chamber finds that, from 13 July 1995, the Zvornik Brigade became aware of plans to transport Bosnian Muslim prisoners to its zone of responsibility and began locating detention sites for them. From 14 July 1995, the Zvornik Brigade knew that thousands of Bosnian Muslim prisoners were distributed throughout Zvornik.

(v) Capture of Prisoners during Drina Corps Sweep Operation in the Former Enclave

192. Pursuant to an order issued by General Krstić on 13 July 1995, Drina Corps units were also involved in conducting sweep operations in the area of the former enclave. Three subordinate units of the Drina Corps, namely Bratunac Brigade, the Skelani Separate Battalion and the Milići Brigade, were directed to conduct search operations in and around the former enclave of Srebrenica for Bosnian Muslim stragglers and to report back to General Krstić by 17 July 1995 on their efforts.<sup>452</sup> In response, Colonel Ignjat Milanović, the Drina Corps Chief of Anti-Aircraft Defence, reported back to General Krstić on the situation within the zones of the Bratunac Brigade, the Milići Brigade and the Skelani Separate Battalion on 15 July 1995.<sup>453</sup> Colonel Milanović wrote that he had acquainted himself with the situation to the east of the Milići-Konjević Polje-Bratunac road and that large groups of enemy soldiers were still present in this area. He indicated that the Bratunac Brigade was still searching this terrain. Colonel Milanović proposed, in the absence of available personnel from the Drina Corps Command, the appointment of the Commander of the Bratunac Brigade, Colonel Blagojević, as the commander of the forces engaged in sweeping the terrain. General Krstić subsequently accepted this proposal.<sup>454</sup> Accordingly, the Bratunac Brigade Daily Combat Report for 16 July 1995 stated that the Brigade Commander had visited all the units blocking the enemy retreat and listed them (the 1<sup>st</sup> Milići Light Infantry Brigade, units of the 65<sup>th</sup> Protection Regiment, parts of the MUP and the Drina Corps 5<sup>th</sup> Engineer Battalion), defined their tasks and organised their joint action and communication.<sup>455</sup>

193. Nonetheless, the Prosecution conceded it did not have any evidence about the numbers of prisoners taken as a result of the sweep operations ordered by General Krstić, although Mr. Butler maintained that there is evidence showing that prisoners were being taken in the area after 15 July

<sup>451</sup> P 609 (Interim Combat Report of the Zvornik Brigade, 15 July 1995).

<sup>452</sup> P 463.

<sup>453</sup> P 537.

<sup>454</sup> Krstić, T. 6700-6701.

<sup>455</sup> P 539.

1995.<sup>456</sup> Although General Krstić agreed that, pursuant to his 13 July 1995 order, the area being searched by Drina Corps troops coincided with the route traversed by the column, he pointed out that the search took place on 14 July 1995 after the column had already passed through.<sup>457</sup>

194. The Trial Chamber is unable to make any specific finding about the capture of Bosnian Muslim prisoners during the sweep operations conducted pursuant to the 13 July 1995 search order issued by General Krstić. The manner in which the order was implemented, however, demonstrates that Drina Corps forces were operating hand in hand with non-Drina Corps forces, whether military (the 65<sup>th</sup> Protection Regiment) or non-military (the MUP).

##### 5. Involvement of the Drina Corps in the Mass Executions

195. The vast amount of planning and high-level co-ordination that had to be invested in killing thousands of men in a few days is apparent from even the briefest description of the scale and the methodical nature in which the executions were carried out. The Trial Chamber now turns to the evidence presented by the Prosecution, including vehicle records, personnel records and radio intercepts, linking the Drina Corps with the various known execution sites for the Bosnian Muslim men from Srebrenica between 13 and 17 July 1995.

###### (a) The Morning of 13 July 1995: Jadar River Executions

196. A small-scale execution took place at Jadar River on 13 July 1995. Witness S, who survived this execution, testified before the Trial Chamber. Witness S recounted being captured near Konjevic Polje in the early morning hours of 13 July 1995 from where he was taken to a hut in front of a school building.<sup>458</sup> From there he was taken across a meadow to the front of a house where four uniformed men proceeded to interrogate him.<sup>459</sup> As this was happening, between about 7.00 and 9.00 hours in the morning of 13 July 1995,<sup>460</sup> Witness S observed buses loaded with women and children going past.<sup>461</sup> Witness S was moved on to yet another house<sup>462</sup> and, subsequently, to a warehouse on the banks of the Jadar River, where his Serb captors beat him.<sup>463</sup> Later, a bus arrived in front of the warehouse<sup>464</sup> and Witness S, along with 16 other men, was

<sup>456</sup> Butler, T. 5369.

<sup>457</sup> Krstić, T. 7360.

<sup>458</sup> Witness S, T. 3245-3250. P 177 ( a photograph of the hut).

<sup>459</sup> Witness S, T. 3255-3256.

<sup>460</sup> Witness S, T. 3261.

<sup>461</sup> Witness S, T. 3258.

<sup>462</sup> Witness S, T. 3262.

<sup>463</sup> Witness S, T. 3264, 3274.

<sup>464</sup> Witness S, T. 3271.

transported a short distance to a spot on the banks of the Jadar River.<sup>465</sup> The men were then lined up and shot.<sup>466</sup> Witness S, after being hit in the hip by a bullet, sprang in to the River and managed to escape.<sup>467</sup> The execution at Jadar River took place prior to midday, on 13 July 1995.<sup>468</sup>

197. Evidence directly implicating the Drina Corps in the Jadar River execution is slim. Witness S was unable to specifically identify any of the people involved in his detention or the executions as belonging to the Drina Corps. Certainly it appears that army personnel, in addition to police,<sup>469</sup> may have been involved. At the hut in front of the school building, and later in the warehouse, Witness S saw soldiers in camouflage uniforms.<sup>470</sup> He was also interrogated by a moustached man wearing a soldier's camouflage uniform.<sup>471</sup> This interrogator revealed that he had been in command of the Srebrenica operation in 1993.<sup>472</sup>

198. The Prosecution identified the area where Witness S had been interrogated as near the headquarters and COMS (communication) building of the Drina Corps 5<sup>th</sup> Engineering Battalion. Involvement of this Battalion in the Jadar River executions was, however, strongly contested by Defence Witness DE, an officer in the 5<sup>th</sup> Engineers Battalion in July 1995, who testified that the premises identified by Witness S were utilised by other units who had no command relationship with the Engineers Battalion.<sup>473</sup> Indeed a series of intercepted conversations from 12 July 1995 reveal that a MUP company was in the area of the Drina Corps 5<sup>th</sup> Engineers Battalion on that day. However, the intercepts also indicate that this MUP unit could receive orders through the Drina Corps Engineers that day, thereby refuting Witness DE's claim that the Engineers had no connection with this MUP unit.<sup>474</sup>

199. Mr. Butler further pointed out that Colonel Milanović, the Drina Corps Chief of Anti-Aircraft Defence in July 1995 and previously the Chief of Staff of the Bratunac Brigade in 1992-1993, was heard in several intercepted conversations on 13 July 1995 trying to acquire bulldozers or backhoes. The Prosecution argued this equipment was probably related to executions in either the Jadar River, or subsequently in Čerska valley, but could not specify which.<sup>475</sup>

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<sup>465</sup> Witness S, T. 3275.

<sup>466</sup> Witness S, T. 3276-3277.

<sup>467</sup> Witness S, T. 3277-3281.

<sup>468</sup> Witness S, T. 3286.

<sup>469</sup> Witness S testified that a man he knew previously was amongst the executioners at Jadar River. Witness S, T. 3267. The Prosecution has interviewed this person, who revealed that he was a part of the 2<sup>nd</sup> Police company, an intervention unit formed out of the Zvornik CSB (municipal police).

<sup>470</sup> Witness S, T. 3251, 3254, 3272-3273

<sup>471</sup> Witness S, T. 3259-3260.

<sup>472</sup> Witness S, T. 3260.

<sup>473</sup> Defence Witness DE, T. 7683-7684.

<sup>474</sup> P 502, P 503, P 504, P 505.

<sup>475</sup> P 517; P 521; Butler, T. 4775.

200. On balance, the Trial Chamber finds that the evidence presented is insufficient to support a finding that the Drina Corps was involved in the Jadar River execution on the morning of 13 July 1995. It is possible that the army personnel Witness S recalled were non-Drina Corps units in light of the fact that many non-local units were in the area following the take-over of Srebrenica.<sup>476</sup> Similarly, the Prosecution was unable to conclusively establish that the engineering equipment referred to by Colonel Milanović was used to bury the prisoners at this execution site. While the fact that prisoners were being interrogated near buildings utilised by the 5<sup>th</sup> Engineering Battalion may support an inference that this Drina Corps unit knew that several Bosnian Muslim prisoners had been taken by Bosnian Serb forces, it is insufficient to demonstrate that the Engineering Battalion thereby knew of, or was involved in, their subsequent execution.

(b) The Afternoon of 13 July 1995: Čerska Valley Executions

201. The first of the large-scale executions happened on the afternoon of 13 July 1995. Witness M, who was hiding in the woods, saw two or three buses followed by an armoured personnel carrier (hereafter “APC”) and a backhoe driving towards Čerska at around 1400 hours. Afterwards, he heard small arms fire for about half an hour. The buses and the APC then returned along the same road, but the excavator remained there longer.<sup>477</sup> Some of the men with whom Witness M hid in the woods later told him that they saw a pool of blood on the road to Čerska on 13 July 1995.<sup>478</sup> Some weeks after, Witness M and his companions came across a mass grave near Čerska, which they believed contained the bodies of victims from the 13 July 1995 executions.<sup>479</sup>

202. Witness M’s testimony as to the fact (if not the precise timing) of the execution at Čerska Valley is corroborated by physical evidence. Aerial photos show that the earth in this spot was disturbed between 5 July and 27 July 1995.<sup>480</sup> Between 7 and 18 July 1996, investigators from the OTP, in conjunction with a team from Physicians for Human Rights, exhumed a mass grave to the southwest of the road through the Čerska Valley from the main road from Konjević Polje to Nova Kasaba.<sup>481</sup> It appeared from the location of shell casings that the victims had been placed on the roadside while their executioners stood across the road. Soil from the northeast side of the road was used to cover the bodies where they fell. One hundred and fifty bodies were recovered from the mass grave and the cause of death for 149 was determined to be gunshot wounds. All were male, with a mean age from 14 to 50 and 147 were wearing civilian clothes. Forty-eight wire ligatures were recovered from the grave, about half of which were still in place binding the victims hands

<sup>476</sup> See the discussion regarding the presence of such units in Potočari, *supra* para. 151.

<sup>477</sup> Witness M, T. 2737-39.

<sup>478</sup> Witness M, T. 2746.

<sup>479</sup> Witness M, T. 2752.

<sup>480</sup> Ruez, T. 689, P 16/2.

behind their backs.<sup>482</sup> Experts were able to positively identify nine of the exhumed bodies as persons listed as missing following the take-over of Srebrenica. All were Bosnian Muslim men.<sup>483</sup>

203. The Prosecution sought to prove Drina Corps involvement in the Čerska Valley executions from circumstantial proof. First, the Čerska Valley road is in the zone of operations of the Drina Corps, specifically either the Milići Brigade or the Vlasenica Brigade.<sup>484</sup> Second, Witness M's eyewitness account of the buses followed by an earth loader driving up the Čerska Valley road into a wooded area, roughly corresponds in time to intercepted communications on 13 July 1995 in which Colonel Milanović, the Drina Corps Chief of Anit-Aircraft Defence, asked for engineering equipment to be sent to Konjević Polje.<sup>485</sup> The Prosecution also relied upon the fact that the executions at Čerska Valley appeared to be planned in advance and were well-organised, to suggest co-ordination at the level of the Corps Command. The convoy to the Čerska Valley execution site included digging equipment and the Čerska Valley detention site had an adequate number of guards.

204. The Trial Chamber does not consider the intercept evidence, which loosely corresponds with the events in the Čerska Valley, together with arguments based upon the scale and planning required for this crime, sufficient to implicate the Drina Corps in its commission and is unable to conclude that Drina Corps units were involved in the Čerska Valley executions on 13 July 1995.<sup>486</sup>

(c) Late Afternoon of 13 July 1995: Kravica Warehouse

205. Between 1,000 and 1,500 Bosnian Muslim men from the column fleeing through the woods, who had been captured and detained in Sandići Meadow, were bussed or marched to the Kravica Warehouse on the afternoon of 13 July 1995.<sup>487</sup> At around 18.00 hours, when the warehouse was full, the soldiers started throwing grenades and shooting directly into the midst of the men packed inside. Witness J, a survivor, recalled:

all of a sudden there was a lot of shooting in the warehouse, and we didn't know where it was coming from. There were rifles, grenades, bursts of gunfire and it was – it got so dark in the warehouse that we couldn't see anything. People started to scream, to shout, crying for help. And

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<sup>481</sup> Manning Report, p. 00950937.

<sup>482</sup> P 206/1 (W. Haglund, Forensic Investigation of the Čerska Grave Site), pp. vii-viii.

<sup>483</sup> Manning Report, p. 00950938.

<sup>484</sup> Butler, T. 5003; Butler Report para. 6.14.

<sup>485</sup> P 517; P 521; and Butler Report, para. 6.15 & fn. 186 & 187.

<sup>486</sup> The paucity of evidence implicating the Drina Corps in the commission of the mass executions on 13 July stands in contrast to the substantial evidence implicating the Drina Corps in the commission of the mass executions from 14 July onwards as discussed *infra*.

<sup>487</sup> Witness K, T. 2520.

then there would be a lull, and then all of a sudden it would start again. And they kept shooting like that until nightfall in the warehouse.<sup>488</sup>

Witness K, another survivor, could not find words to describe the massacre:

It is hard for me to describe it. I haven't seen anything like it in any of the horror movies that I saw. This was far worse than any film.<sup>489</sup>

206. Guards surrounding the building killed prisoners who tried to escape through the windows.<sup>490</sup> By the time the shooting stopped, the warehouse was filled with corpses. Witness J recalled that "(n)owhere could you stand on the concrete floor without stepping on a dead body. The dead bodies had covered the entire concrete."<sup>491</sup> Witness K, who was only slightly wounded, described crossing the warehouse to make his escape through a window after the shooting stopped:

I was not even able to touch the floor, the concrete floor of the warehouse... After the shooting, I felt a strange kind of heat, warmth, which was actually coming from the blood that covered the concrete floor, and I was stepping on the dead people who were lying around. But there were even people who were still alive, who were only wounded, and as soon as I would step on him, I would hear him cry, moan, because I was trying to move as fast as I could. I could tell that people had been completely disembodied, and I could feel bones of the people that had been hit by those bursts of gunfire or shells, I could feel their ribs crushing. And then I would get up again and continue . . . .<sup>492</sup>

207. Soon after Witness K crawled out the window, he was shot by a Serb soldier still standing guard. He fell to the ground and lay quietly, pretending to be dead, until the morning. He then escaped while the soldiers were otherwise occupied. Witness J somehow escaped injury and spent the night inside the warehouse hiding under a dead body. The next morning, the soldiers called out to see if any of the wounded men were still alive. Upon identifying some wounded prisoners, the guards made some of them sing Serb songs and then they killed them.<sup>493</sup> After the last one had been killed, an excavator began taking the bodies out of the warehouse. A water tank was used to wash the blood off the asphalt.<sup>494</sup>

208. Other evidence corroborates the survivors' testimony.<sup>495</sup> An aerial reconnaissance photo, taken on 13 July 1995 at 14.00 hours, shows two buses outside the Warehouse, just as Witness K remembered.<sup>496</sup> In addition, the OTP sent a team of experts to examine the warehouse on 30

<sup>488</sup> Witness J, T. 2464.

<sup>489</sup> Witness K, T. 2524.

<sup>490</sup> Witness K, T. 2530, 2532.

<sup>491</sup> Witness J, T. 2469.

<sup>492</sup> Witness K, T. 2526.

<sup>493</sup> Witness J, T. 2464-65; Witness K, T. 2535.

<sup>494</sup> Witness K, T. 2536.

<sup>495</sup> See also Witness Q, T. 3026 (testifying that he saw bodies outside the Kravica Warehouse as he was being transported by bus from Nova Kasaba to Bratunac).

<sup>496</sup> P 8/1; Witness K, T. 2514-2515.

September 1996.<sup>497</sup> Analyses of hair, blood and explosives residue, collected at the Kravica Warehouse, provide strong evidence of the killings. Experts determined the presence of bullet strikes, explosives residue, bullets and shell cases, as well as human blood, bones and tissue adhering to the walls and floors of the building.<sup>498</sup>

209. Forensic evidence presented by the Prosecutor suggests a link between the Krivaca Warehouse, the primary mass grave known as Glogova 2, and the secondary grave known as Zeleni Jadar 5. These links were made by matching two shell cases found at the warehouse with shell cases found at the Zeleni Jadar 5 gravesite, which demonstrates that either the shell cases were fired by the same weapon (which must have been present at each site), or that the shell cases were transported from one site to another.<sup>499</sup> In turn, forensic tests link Zeleni Jadar 5 with the primary grave of Glogova 2.<sup>500</sup> The Glogova 2 gravesite was exhumed by the OTP between 11 September and 22 October 1999. A minimum number of 139 individuals were found. The sex of the victims could be determined in 109 cases and all were male. Predominately the victims died of gunshot wounds and in 22 cases there was evidence of charring to the bodies. No ligatures or blindfolds were uncovered.<sup>501</sup> The OTP exhumed the Zelenia Jadar 5 site between 1 and 21 October 1998.<sup>502</sup> Of at least 145 individuals in the grave, 120 were determined to be male with the remainder undetermined, and the predominant cause of death was gunshot wounds. Two ligatures were recovered, but no blindfolds were found.<sup>503</sup>

210. Exhumations conducted between 7 August and 20 October 2000 at the primary gravesite of Glogova 1 also revealed matches between broken masonry and door frames, and other artefacts found at both the gravesite and at the Kravica Warehouse execution site, suggesting that some of the victims from the Kravica Warehouse were buried there.<sup>504</sup> The bodies of at least 191 individuals were located, but autopsies had not been finalised prior to the close of this trial.<sup>505</sup> In one of the subgraves at this site, 12 individuals bound with ligatures were found, along with evidence of blindfolds on three bodies.<sup>506</sup>

<sup>497</sup> Manning, T. 3616

<sup>498</sup> P 181/1; P 181/2; P 181/3; P 181/4; P 150; and P 97. See also Manning, T. 3616-3625.

<sup>499</sup> Manning, T. 3597; Manning Report, p. 00950916.

<sup>500</sup> Manning Report, p. 00950983.

<sup>501</sup> Manning Report, p. 00950980.

<sup>502</sup> Manning Report, p. 00950984.

<sup>503</sup> Manning Report, p. 00950984-5.

<sup>504</sup> Additional Manning Report, p 7604.

<sup>505</sup> Additional Manning Report, p 7604-7603.

<sup>506</sup> Additional Manning Report, p 7602.

211. One of the few survivors said the soldiers outside the Warehouse were Bosnian Serbs wearing camouflage uniforms, but could not identify the specific unit they came from.<sup>507</sup> The Trial Chamber also heard evidence that one individual, (hereafter "OA"), who was a member of the Drina Corps in July 1995, was informed sometime prior to 20 July 1995 that members of the army and the police had committed crimes in the Kravica Warehouse.<sup>508</sup> Primarily, however, the Prosecution was left to rely upon three categories of circumstantial evidence that Drina Corps troops were involved in the Kravica Warehouse executions.

212. First there is evidence that Drina Corps units were in the vicinity where the executions was carried out. In particular, the bodies were taken from the Kravica Warehouse to the gravesite in Glogova, which is less than 400 meters from the command post of the 1<sup>st</sup> Infantry Battalion of the Bratunac Brigade.<sup>509</sup> There is also an annotation in the Bratunac Military Police Platoon orders book discussing a military police detachment sent to provide security to public utility workers at Glogova on 19 July 1995.<sup>510</sup> The Prosecution argued that this may have been related to the burial of victims from the Kravica Warehouse. As already described, the bodies of victims from the Kravica Warehouse were subsequently buried in a gravesite at Glogova.

213. Second, the Prosecution argued that the Kravica Warehouse execution was well organised and involved a substantial amount of planning, requiring the participation of the Drina Corps Command. The Prosecution maintained that the Kravica Warehouse victims came from preliminary prisoner collection sites such as the Sandići meadow and Nova Kasaba football field which had to be set up well in advance as holding places for so many prisoners. Similarly, the Prosecution argued that the Kravica Warehouse must have been pre-designated as a holding site, since a concerted effort was made to bring prisoners there from several different intermediate sites on the afternoon of 13 July 1995. The Prosecution further suggested that the Drina Corps would have had to authorise the diversion of buses from the transportation of the Bosnian Muslim civilians out of Potočari for this purpose.

214. Third, Mr. Butler relied upon the arrival of a bucket-loader after the killings to collect the bodies as evidence of knowledge at either the Brigade or the Corps level, since those are the levels

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<sup>507</sup> Witness K, T. 2517.

<sup>508</sup> This individual was subpoenaed to appear as a witness for the Prosecution but was unable to appear for medical reasons. However, the Trial Chamber permitted the Prosecution to call one of its investigators, Mr. Jan Kruszewski (hereafter "Kruszewski"), who was present when "OA" was interviewed by the OTP. The Chamber also admitted into evidence the contemporaneous notes of Kruszewski (P 887), and the transcript of the interview given by "OA" (P 886).

<sup>509</sup> Butler, T. 5001-03.

<sup>510</sup> P 404/2 tab 61; and Butler, para. 6.27 & fn.204.



at which the allocation of heavy equipment must be made.<sup>511</sup> However, there was no direct evidence that the equipment belonged to, or had been procured by, a unit of the Drina Corps.

215. Overall, the evidence presented does not support a finding beyond a reasonable doubt that Drina Corps troops were involved in the executions at the Kravica Warehouse. The Trial Chamber does, however, find that the Drina Corps Command must have known that prisoners were transported to the Kravica Warehouse given that buses were diverted from the transportation of the Bosnian Muslim women, children and elderly from Potočari for this purpose. Furthermore, given the proximity of the Drina Corps Bratunac Brigade to the execution and burial sites and the massive scale of the executions, the Trial Chamber is satisfied that, by the evening of 13 July 1995, the Drina Corps must have been well aware of the fact that the executions had taken place at the Kravica Warehouse. The Warehouse was situated on the main road between Bratunac and Konjević-Polje, which was heavily utilised by military vehicles that day. Some of the Bosnian Muslim refugees reported that, on 13 July 1995, as the busses they were travelling on passed through Kravica, they saw the bodies of men lying down in the meadow and others lined up with their hands tied behind their necks.<sup>512</sup> The noise and high levels of activity associated with this massive scale crime could not have escaped the attention of the Drina Corps.

(d) 13-14 July 1995: Tišća

216. As the buses crowded with Bosnian Muslim women, children and elderly made their way from Potočari to Kladanj, they were stopped at Tišća, searched, and the Bosnian Muslim men found on board were removed from the bus. The evidence of Witness D, who was separated from his family at the Tišća checkpoint on 13 July 1995, reveals a well-organised operation in Tišća. From the checkpoint, Witness D was taken to a nearby school, where a number of other prisoners were being held. An officer directed the soldier escorting Witness D towards a nearby school where many other prisoners were being held. At the school, a soldier on a field telephone appeared to be transmitting and receiving orders. Sometime around midnight, Witness D was loaded onto a truck with 22 other men with their hands tied behind their backs.<sup>513</sup> At one point the truck carrying Witness D stopped and a soldier on the scene said: "Not here. Take them up there, where they took people before."<sup>514</sup> The truck reached another stopping point and the soldiers came around to the back of the truck and started shooting the prisoners.<sup>515</sup> Witness D, who had managed to untie his

<sup>511</sup> Butler, T. 5000-5001.

<sup>512</sup> Witness D, T. 1259; Witness E, T. 1354-1355. See also Malagić, T. 1976.

<sup>513</sup> Witness D, T. 1291.

<sup>514</sup> Witness D, T. 1293.

<sup>515</sup> Witness D, T. 1295.

hands, leaped from the truck and fled into the woods, narrowly escaping the gunfire. After an arduous journey through the woods, he eventually reached safety.<sup>516</sup>

217. There is evidence that Drina Corps personnel were present in Tišća on 12 July 1995. Witness C, a Dutch Bat officer escorting one of the first convoys of buses and trucks, came across Major Sarkić, the Chief of Staff of the Milići Brigade, at the Tišća checkpoint. Major Sarkić told Witness C that he had been ordered by the Drina Corps Command to send people from his unit to Tišća. Major Sarkić expressed discontent about this assignment, in light of the other work he had to do in order to secure the enclave. Witness C also said it was clear to him that Major Sarkić was trying to avoid discussing what was being done with the men taken off the buses. At that time, Witness C was already contemplating the terrible possibility that the men may have been taken somewhere for execution and later informed his battalion about what he had seen in Tišća.<sup>517</sup>

218. However, it is not clear from Witness C's testimony what Major Sarkić's troops had been tasked to do at Tišća. He simply said that his men had been ordered to Tišća "to escort this group of people".<sup>518</sup> Witness C said that he did not make any inquiries into exactly what Sarkić's men were doing with the Bosnian Muslim prisoners.<sup>519</sup> Whether troops from the Milići Brigade were actually involved in taking the men from Tišća to the execution sites remains unclear.

219. The Trial Chamber finds that the Prosecution has failed to prove that Drina Corps units either knew of, or were involved in, the subsequent executions of the Bosnian Muslim men screened at Tišća. Certainly though, the Milići Brigade knew that Bosnian Muslim men were being pulled off the buses at Tišća and taken to separate sites.

(e) 14 July 1995: Grbavci School Detention Site and Orahovac Execution site

220. A large group of the prisoners who had been held overnight in Bratunac were bussed in a convoy of 30 vehicles to the Grbavci school in Orahovac early in the morning of 14 July 1995.<sup>520</sup> When they got there, the school gym was already half-filled with prisoners who had been arriving since the early morning hours<sup>521</sup> and, within a few hours, the building was completely full. Survivors estimated that there were 2,000 to 2,500 men there, some of them very young and some quite elderly, although the Prosecution suggested this may have been an over-estimation and that

<sup>516</sup> Witness D, T. 1297-1299

<sup>517</sup> Witness C, T. 1190-1196.

<sup>518</sup> Witness C, T. 1193.

<sup>519</sup> Witness C, T. 1229.

<sup>520</sup> Witness L, T. 2665, T. 2674.

<sup>521</sup> Witness N, T. 2820 (arrived from Bratunac in the early morning of 14 July 1995).

the number of prisoners at this site was probably closer to 1,000.<sup>522</sup> The gym was packed and stifling; occasionally the guards would shoot at the ceiling to quiet the panicked prisoners.<sup>523</sup> Some prisoners were taken outside and killed. At some point, a witness recalled, General Mladić arrived and told the men: “Well, your government does not want you, and I have to take care of you”.<sup>524</sup>

221. After being held in the gym for several hours, the men were led out in small groups to the execution fields that afternoon. Each prisoner was blindfolded and given a drink of water as he left the gym.<sup>525</sup> The prisoners were then taken in trucks to the execution fields less than one kilometre away. The men were lined up and shot in the back; those who survived the initial gunfire were killed with an extra shot.<sup>526</sup> Two adjacent meadows were used; once one was full of bodies, the executioners moved to the other.<sup>527</sup> While the executions were in progress, the survivors said, earth-moving equipment was digging the graves.<sup>528</sup> Witness N, who survived the shootings by pretending to be dead, reported that General Mladić drove up in a red car and watched some of the executions.<sup>529</sup>

222. The forensic evidence supports crucial aspects of the survivors’ testimony. Aerial photos show that the ground in Orahovac was disturbed between 5 and 27 July 1995<sup>530</sup> and again between 7 and 27 September 1995.<sup>531</sup> Two primary mass graves were uncovered in the area, and were named “Lazete-1” and “Lazete-2” by investigators. The Lazete 1 gravesite was exhumed by the Prosecution between 13 July and 3 August 2000. All of the 130 individuals uncovered, for whom sex could be determined, were male. One hundred and thirty eight blindfolds were uncovered in the grave.<sup>532</sup> Identification material for twenty-three individuals, listed as missing following the fall of Srebrenica, was located during the exhumations at this site.<sup>533</sup> The gravesite Lazete 2 was partly exhumed by a joint team from the OTP and Physicians for Human Rights between 19 August and 9 September 1996 and completed in 2000. All of the 243 victims associated with Lazete 2 were male and the experts determined that the vast majority died of gunshot injuries.<sup>534</sup> In addition, 147 blindfolds were located. One victim also had his legs bound with a cloth sack.<sup>535</sup> Twenty-one

<sup>522</sup> Witness N, T. 2822 (estimating there were about 2,500 men in the gym). Cf. Witness L, T. 2676-2677 (estimating there were at least 700 or 800 men) and Prosecution Closing Arguments, T. 9851.

<sup>523</sup> Witness L, T. 2683; Witness N, T. 2823.

<sup>524</sup> Witness N, T. 2822.

<sup>525</sup> Witness L, T. 2685-86; Witness N, T. 2824.

<sup>526</sup> Witness N, T. 2824-25.

<sup>527</sup> Witness L, T. 2698, 2703-2705.

<sup>528</sup> Witness L, T. 2697-99; Witness N, T. 2825.

<sup>529</sup> Witness N, T. 2825.

<sup>530</sup> Ruez, T. 3476--50; P 162/2.

<sup>531</sup> Ruez, T. 3477; P 162/4 and 5.

<sup>532</sup> Additional Manning Report, p. 7601.

<sup>533</sup> Additional Manning Report, p. 7600.

<sup>534</sup> Additional Manning Report, p. 7608.

<sup>535</sup> Manning Report, p. 00950952 and Additional Manning Report p. 7607.

individuals, listed as missing following the take-over of Srebrenica, were positively identified during the first exhumation of the Lazete 2 gravesite; all of them were Bosnian Muslim men.<sup>536</sup> Identification documents for a further four men listed as missing following the fall of Srebrenica were uncovered during the exhumations at this site in 2000.<sup>537</sup> On 11 April 1996, investigators from the OTP uncovered numerous strips of cloth in a “rubbish” site in the grounds of the Grbavci School next to the gymnasium. These cloth strips were indistinguishable from the blindfolds uncovered during the exhumation of the Lazete 2 gravesite.<sup>538</sup>

223. Forensic analysis of soil/pollen samples, blindfolds, ligatures, shell cases and aerial images of creation/disturbance dates, further revealed that bodies from the Lazete 1 and Lazete 2 graves were removed and reburied at secondary graves named Hodžići Road 3, 4 and 5.<sup>539</sup> Aerial images show that these secondary gravesites were created between 7 September and 2 October 1995<sup>540</sup> and all of them were exhumed by the OTP in 1998.<sup>541</sup> Following a similar pattern to the other Srebrenica related gravesites, the overwhelming majority of bodies at Hodžići Road 3, 4 and 5 were determined to be male and to have died of gunshot wounds.<sup>542</sup> Although only one ligature was located during exhumations at these three sites,<sup>543</sup> a total of 90 blindfolds were found. The total minimum number of individuals exhumed at the three gravesites was 184.<sup>544</sup>

224. Substantial evidence links the executions at Orahovac to the Zvornik Brigade. First, Orahovac is located within the zone of responsibility of the 4<sup>th</sup> Battalion of the Zvornik Brigade. Second, as previously noted, an Opel “Record” belonging to the Zvornik Brigade visited this area on 13 and 14 July 1995. Third, at some point late in the evening of 13 July 1995, a detachment of military police from the Zvornik Brigade was dispatched to Orahovac.<sup>545</sup> It appears that the personnel roster was later altered to conceal this fact. The originally pencilled text was erased, but the words “O-Orahovac” are still visible. The letter “O” was written next to 10 names, then erased and replaced with other letters, in what must have been an attempt to conceal their involvement in the crimes.<sup>546</sup> Fourth, one of the Orahovac survivors recognised the voice of a former colleague, Gojko Simić, among the executioners.<sup>547</sup> Personnel records show that a Gojko Simić matching the

<sup>536</sup> Manning Report, p. 00950953.

<sup>537</sup> Additional Manning Report, p. 7598.

<sup>538</sup> Manning Report, p. 00950952.

<sup>539</sup> Manning Report, p. 00950951, and Additional Manning Report, p. 7611.

<sup>540</sup> P 167/1, P 167/4, P 167/5, P 167/6, and P167/7, Ruez, T. 3502-3503. Ruez also discussed the likely disturbance dates for additional, but as yet unexhumed, secondary burial sites along the Hodžići Road. See T. 3499-3506.

<sup>541</sup> Manning Report, p. 00950950.

<sup>542</sup> Manning Report, p. 00950955-6, 00950959, 00950962-3.

<sup>543</sup> Manning Report, p. 00950960. (This ligature was found at Hodžići Road 5)

<sup>544</sup> Manning Report, p. 00950956, 00950960, 00950963.

<sup>545</sup> P 567, Butler Report, para. 7.8; 7.16, Butler, T. 5067-5068.

<sup>546</sup> P 568, Butler, T. 5069-5073, P 569.

<sup>547</sup> Witness L, T.2694.

description given by the survivor was the Commander of the Heavy Weapons Platoon of the 4<sup>th</sup> Infantry Battalion of the 1<sup>st</sup> Zvornik Infantry Brigade.<sup>548</sup> The witness heard Simić tell the other executioners: "Collect your ammunition and let's go to the meadow to kill the men."<sup>549</sup> Fifth, records of the Zvornik Brigade's Engineer Company reflect the presence of a number of vehicles in Orahovac on 14 July 1995: a TAM 75 (small size transportation vehicle<sup>550</sup>), which made two round-trips between the base and Orahovac; a Mercedes 2626 which towed an excavator to the village of Križeviči (located one kilometre from Orahovac); one excavator, which went from the base to Orahovac, spent six hours digging and then returned to base; and an excavator-loader that went from the base to Orahovac and spent 5 hours working.<sup>551</sup> The Zvornik Brigade's fuel dispersal log shows that 200 litres of diesel fuel were distributed to the Engineer Company on 14 July 1995.<sup>552</sup> In addition, the Engineer Company Daily Orders Journal lists the following items on both 15 and 16 July 1995: work with BGH-700 (excavator) in Orahovac; work with ULT 220 (loader) in Orahovac.<sup>553</sup> Zvornik Brigade vehicle utilisation records also show that, on 15 and 16 July 1995, one ULT 220 (loader) was operating for five hours at Orahovac and a TAM 75 truck made three or four trips between the base and Orahovac.<sup>554</sup> Also on 15 July 1995, 40 litres of diesel fuel were disbursed to the Rear Services Battalion, operating out of Orahovac and, on 16 July 1995, a Mercedes truck towed an excavator with a trailer between the base and Orahovac, and a TAM 75 truck made two trips to Kozluk.<sup>555</sup> This evidence is consistent with accounts given by survivors who stated there were large vehicles shining lights on the execution site.<sup>556</sup>

225. The Trial Chamber finds that the Drina Corps Zvornik Brigade participated in the execution of Bosnian Muslim men at Orahovac on 14 July 1995. Members of the military police company of the Zvornik Brigade were present immediately prior to the executions, presumably for such purposes as guarding the prisoners and then facilitating their transportation to the execution fields. Personnel from the 4<sup>th</sup> Battalion of the Zvornik Brigade were present at Orahovac during the executions, assisting in their commission. Further, machinery and equipment belonging to the Engineers Company of the Zvornik Brigade was engaged in tasks relating to the burial of the victims from Orahovac between 14 and 16 July 1995.

<sup>548</sup> Butler, T. 5066, 5074-5081.

<sup>549</sup> Witness L, T. 2698.

<sup>550</sup> Butler, T. 5085.

<sup>551</sup> P 582, P 643, 580; Butler, T. 5082-5086; and Butler Report para. 7.20.

<sup>552</sup> P 645

<sup>553</sup> P 584; Butler, T. 5082-5083, 5087; and Butler Report, para. 7.22, 7.25, 7.27.

<sup>554</sup> P 589, P 582; Butler, T. 5085-5090; and Butler Report, para. 7.23.

<sup>555</sup> P 645; Butler Report, para. 7.27; P 643, P 582.

<sup>556</sup> Witness L, T. 2699-2700; Witness N, T. 2828.

(f) 14 - 15 July 1995: Petkovci School Detention Site and Petkovci Dam Execution Site

226. Another large group of about 1,500-2000 prisoners from Bratunac was driven north to the Petkovci School on the afternoon of 14 July 1995. As at the other detention sites, the conditions at Petkovci School were deplorable. It was extremely hot and crowded, the men had no food or water and some prisoners became so thirsty they resorted to drinking their own urine.<sup>557</sup> Periodically, soldiers came in and beat the prisoners or called them out to be killed. A few prisoners discussed trying to escape but the others said it was better to remain; that surely the Red Cross was monitoring the situation and they would not all be killed.<sup>558</sup> Eventually, however, the men were called out in small groups. They were told to strip to the waist, take off their shoes and their hands were tied behind their backs.<sup>559</sup> Sometime during the night of 14 July 1995, the men were taken in trucks to a stony area near the Petkovci Dam. As soon as they saw their destination the prisoners recognised their fate. Witness P recalls seeing a large "field" already filled with dead men lying face down with their hands tied behind them.

227. Groups of five or ten prisoners were taken off the trucks. They were then lined up and shot. Some begged for water before being killed, but none was provided. Witness O recalled what he expected to be his final moments:

I was really sorry that I would die thirsty, and I was trying to hide amongst the people as long as I could, like everybody else. I just wanted to live for another second or two. And when it was my turn, I jumped out with what I believe were four other people. I could feel the gravel beneath my feet. It hurt. . . . I was walking with my head bent down and I wasn't feeling anything. . . . And then I thought that I would die very fast, that I would not suffer. And I just thought that my mother would never know where I had ended up. This is what I was thinking as I was getting out of the truck.<sup>560</sup>

In fact Witness O was only wounded and lay still expecting another round of gunfire to end his life.<sup>561</sup> When the soldiers were finished with a round of killing, they laughed and made jokes:

"Look at this guy, he looks like a cabbage."<sup>562</sup> Then they walked around killing the wounded.<sup>563</sup>

Witness O almost called out for the soldiers to put him out of his misery:

I was still very thirsty. But I was sort of between life and death. I didn't know whether I wanted to live or to die anymore. I decided not to call out for them to shoot and kill me, but I was sort of praying to God that they'd come and kill me. But I decided not to call them and I was waiting to die.<sup>564</sup>

<sup>557</sup> Witness P, T.2960-2961; Witness O, T. 2902-2903

<sup>558</sup> Witness O, T. 2905.

<sup>559</sup> Witness O, T. 2904; Witness P, T. 2968-69.

<sup>560</sup> Witness O, T. 2911-12.

<sup>561</sup> Witness O, T. 2912-14.

<sup>562</sup> Witness O, T. 2914; see also Witness P, T. 2977

<sup>563</sup> Witness O, T. 2914-16; Witness P, T. 2976.

<sup>564</sup> Witness O, T. 2916.

228. After the soldiers had gone, however, Witness O was still alive. Another man, Witness P, was also alive a few rows ahead of him and they helped untie each other. Together they crawled across the field of bodies to hide in the woods nearby.<sup>565</sup> They spent the night on a hill overlooking the “field” and, in the morning, they looked down at between 1,500-2,000 bodies in the “field”.<sup>566</sup> By then mechanical loaders had arrived and were collecting the bodies.<sup>567</sup>

229. The accounts given by the survivors are supported by forensic and other evidence. Aerial images show that earth around the Petkovci Dam site was first disturbed between 5 and 27 July 1995, and then again between 7 and 27 September 1995.<sup>568</sup> A team of investigators from the OTP exhumed a gravesite at the Petkovci Dam between 15 and 25 April 1998.<sup>569</sup> Experts determined that this gravesite had been “robbed”, using a mechanical excavator that resulted in “grossly disarticulated body parts” throughout the grave.<sup>570</sup> The minimum number of individuals located within this grave was 43, but only 15 could be identified as male with the remainder undetermined. Six body parts showed definite gunshot wounds, with a further 17 showing probable or possible gunshot wounds.<sup>571</sup> One ligature was located on the surface of the grave and one “possible” blindfold was found loose in the grave.<sup>572</sup>

230. Forensic tests show that a mass grave site known as Liplje 2 is a secondary gravesite associated with the primary gravesite at Petkovci Dam and this gravesite was exhumed by the OTP between 7 and 25 August 1998.<sup>573</sup> Aerial images reveal that Liplje 2 was created between 7 September and 2 October 1995.<sup>574</sup> Traces of mechanical teeth marks and wheel tracks show the grave was dug by a wheeled front loader with a toothed bucket.<sup>575</sup> A minimum number of 191 individuals were located in this grave with 122 determined to be male, and the remainder undetermined. Where cause of death could be determined, gunshot wounds predominated.<sup>576</sup> While 23 ligatures were uncovered, no definite blindfolds were found.<sup>577</sup>

231. The Zvornik Brigade was also much in view in the area of Petkovci and the Dam on 15 July 1995. The execution site at the Petkovci Dam is located less than two kilometres from the

<sup>565</sup> Witness O, T. 2917-18.

<sup>566</sup> Witness P, T. 2983

<sup>567</sup> Witness O, T. 2925; Witness P, T. 2981.

<sup>568</sup> P 163/2, and P 163/3. Manning Report, p. 00950965. Ruez, T.3480-3482.

<sup>569</sup> Manning Report, p. 00950966.

<sup>570</sup> Wright, T. 3653-3659.

<sup>571</sup> Manning Report, p. 00950966.

<sup>572</sup> Manning Report, p. 00950967.

<sup>573</sup> Manning Report, p. 00950965.

<sup>574</sup> P 168/2 and P 168/3, Ruez, T. 3508-3509. Ruez also discussed possible disturbance dates for other, as yet unexhumed, gravesites in this location. See T. 3506-3511.

<sup>575</sup> Manning Report, p. 00950970.

<sup>576</sup> Manning Report, p. 00950970-0090971.

<sup>577</sup> Manning Report, p. 00950971.

command post of the Zvornik Brigade's 6<sup>th</sup> Infantry Battalion in Baljkovica.<sup>578</sup> Further, the Zvornik Brigade Daily Orders record shows that, on 15 July 1995, the Zvornik Brigade Engineer Company was assigned to work with an ULT and an excavator in Petkovci,<sup>579</sup> although vehicle records do not show that any of the Engineer Company's earthmoving equipment was at the Petkovci execution site. However, vehicle records for the 6<sup>th</sup> Infantry Battalion of the Zvornik Brigade show that two trucks made a total of 10 roundtrips between Petkovci and the Dam on 15 July 1995, with two members of the 6<sup>th</sup> Infantry Battalion assigned as drivers of the vehicles.<sup>580</sup>

232. The Trial Chamber finds that drivers and trucks from the 6<sup>th</sup> Infantry Battalion of the Zvornik Brigade were used to transport the prisoners from the detention site to the execution site at Petkovci Dam on 15 July 1995 and that the Zvornik Brigade Engineer Company was assigned to work with earthmoving equipment to assist with the burial of the victims from Petkovci Dam.

(g) 14 - 16 July 1995: Pilica School Detention Site and Branjevo Military Farm Execution Site

233. On 14 July 1995, more prisoners from Bratunac were bussed northward to a school in the village of Pilica, north of Zvornik. As at other detention facilities, there was no food or water and several men died in the school gym from heat and dehydration.<sup>581</sup> The men were held at the Pilica School for two nights.<sup>582</sup> On 16 July 1995, following a now familiar pattern, the men were called out of the school and loaded onto buses with their hands tied behind their backs.<sup>583</sup> They were then driven to the Branjevo Military Farm, where groups of 10 were lined up and shot.<sup>584</sup>

234. Mr. Drazen Erdemović was a member of the VRS 10<sup>th</sup> Sabotage Detachment (a Main Staff subordinate unit) and participated in the mass execution.<sup>585</sup> Mr. Erdemović appeared as a Prosecution witness and testified:

The men in front of us were ordered to turn their backs. When those men turned their backs to us, we shot at them. We were given orders to shoot.<sup>586</sup>

Mr. Erdemović said that all but one of the victims wore civilian clothes and that, except for one person who tried to escape, they offered no resistance before being shot.<sup>587</sup> Sometimes the

<sup>578</sup> P 2, P 590, Butler, T. 5101.

<sup>579</sup> P584, Butler T. 5086-5087, Butler Report, para. 7.33-7.34.

<sup>580</sup> P 591, P 594, P 592, P 593, Butler, T. 5093-5103, Butler Report, para. 7.35.

<sup>581</sup> Witness Q, T. 3036.

<sup>582</sup> Witness Q, T. 3039.

<sup>583</sup> Witness Q, T. 3040.

<sup>584</sup> Witness I, T. 2390-92.

<sup>585</sup> Mr. Erdemović was indicted for one count of crimes against humanity or alternatively a violation of the laws and customs of war. He entered a guilty plea to the count of crimes against humanity and was convicted for his role in the executions at Branjevo Military Farm. The Trial Chamber sentenced him to 10 years imprisonment. Following an appeal, this sentence was subsequently revised to five years for violations of the laws or customs of war. See *Prosecutor v Erdemović*, Case No.: IT-96-22-Tbis, *Sentencing Judgement*, 5 March 1998.



executioners were particularly cruel. When some of the soldiers recognised acquaintances from Srebrenica, they beat and humiliated them before killing them.<sup>588</sup> Mr. Erdemović had to persuade his fellow soldiers to stop using a machine gun for the killings; while it mortally wounded the prisoners it did not cause death immediately and prolonged their suffering.<sup>589</sup>

235. One of the survivors, Witness Q, recalled the moment when he was confronted by the firing squad:

When they opened fire, I threw myself on the ground. . . . And one man fell on my head. I think that he was killed on the spot. And I could feel the hot blood pouring over me. . . . I could hear one man crying for help. He was begging them to kill him. And they simply said "Let him suffer. We'll kill him later."<sup>590</sup>

236. Between 1,000 and 1,200 men were killed in the course of that day at this execution site.<sup>591</sup> The next day, Witness Q, who had crawled to safety and was hiding nearby, heard heavy machinery going back and forth from the killing field.<sup>592</sup>

237. The testimony of the survivors has other support in the Trial Record. Aerial photographs, taken on 17 July 1995, of an area around the Branjevo Military Farm, show a large number of bodies lying in the field near the farm, as well as traces of the excavator that collected the bodies from the field.<sup>593</sup> The Branjevo Military Farm gravesite (also known as the Pilica gravesite) was exhumed between 10 and 24 September 1996 by the OTP and a team from Physicians for Human Rights.<sup>594</sup> Where the sex of the bodies could be determined it was male and where cause of death could be determined it was gunshot wounds. Eighty-three ligatures and two cloth blindfolds were located<sup>595</sup> and, in this grave, positive identification was made for 13 individuals who were missing following the take-over of Srebrenica: all of them Bosnian Muslim men.<sup>596</sup>

238. On the basis of forensic examinations, a gravesite known as Čančari Road 12 was determined to be a secondary grave associated with the primary site at Branjevo Military Farm.<sup>597</sup> Aerial images show this secondary grave was created between 7 and 27 September 1995 and back

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<sup>586</sup> Erdemović, T. 3126.

<sup>587</sup> Erdemović, T. 3138.

<sup>588</sup> Erdemović, T. 3135.

<sup>589</sup> Erdemović, T. 3128.

<sup>590</sup> Witness Q, T. 3041-42.

<sup>591</sup> Erdemović, T. 3130, 3132; see also Witness I, T. 2392 (1,000 to 1,500 dead).

<sup>592</sup> Witness Q, T. 3045.

<sup>593</sup> P 24/2, P 24/4; Ruez, T. 3486.

<sup>594</sup> Manning Report, p. 00950943.

<sup>595</sup> Manning Report, p. 00950944.

<sup>596</sup> Manning Report, p. 00950944.

<sup>597</sup> Manning Report, p. 00950942, T. 3605 (ligatures and blindfolds from the Branjevo Military Farm were matched to items found in Čančari Road 3 and 12.).

filled prior to 2 October 1995.<sup>598</sup> The bodies of 174 individuals were uncovered and, again, where the sex and cause of death of the victims could be determined, it was male and gunshot wounds respectively.<sup>599</sup> Sixteen ligatures and eight blindfolds were also uncovered in this grave.<sup>600</sup> One individual was positively identified as a Bosnian Muslim man listed as missing following the take-over of Srebrenica.<sup>601</sup>

239. There is compelling evidence that Drina Corps units were connected with the atrocities at Branjevo Farm. Mr. Erdemović and the other members of his unit received orders relating to the executions on the morning of 16 July 1995. They first stopped at the Zvornik Brigade headquarters, where they met a Lieutenant Colonel who, although wearing a VRS uniform, did not have any insignia denoting the unit he belonged to.<sup>602</sup> Two military police officers wearing Drina Corps insignia accompanied the Lieutenant Colonel.<sup>603</sup> The Defence suggested that the description of this person given by Mr. Erdemović accords with the physical appearance of Colonel Beara, the Main Staff Chief of Security.<sup>604</sup> The Prosecution, on the other hand, pointed to the fact that he was accompanied by Drina Corps military police and was able to give orders to personnel at the Farm and so concluded that he must have been a Drina Corps officer.<sup>605</sup> The Lieutenant Colonel and the police officers went with Erdemović and his fellow-soldiers from the 10<sup>th</sup> Sabotage Detachment to the Branjevo Military Farm. The Lieutenant Colonel then left.<sup>606</sup> About half an hour after his departure, buses began to arrive carrying the Bosnian Muslim men, some of whom were blindfolded and had their hands tied. The buses that brought the prisoners to Branjevo Farm displayed the markings of "Centrotrans Sarajevo" and "Drinatrans Zvornik" transportation companies.<sup>607</sup> These buses must have been the ones originally procured by the Drina Corps for the transportation of the Bosnian Muslim women, children and elderly from Potočari. The fact that the Bosnian Muslim men were not transported to detention sites until after the transportation of the women, children and elderly was finished supports this conclusion, as does the fact that the Drina Corps are known to have procured buses from, *inter alia*, Zvornik.<sup>608</sup> Mr. Erdemović also testified that policemen wearing the insignia of the Drina Corps military police escorted the buses of

<sup>598</sup> P 169/25, P 169/26 and P169/27; Ruez, T. 3523-3524; Manning Report, p. 00950943. Ruez also discussed possible disturbance dates for other, as yet unexhumed gravesites along the Cančari road. See T. 3511-3525.

<sup>599</sup> Manning Report, p. 00950947-8.

<sup>600</sup> Manning Report, p. 00950948.

<sup>601</sup> Manning Report, p. 00950949.

<sup>602</sup> Erdemović, T. 3116-3123.

<sup>603</sup> Erdemović, T. 3121.

<sup>604</sup> Krstić, T. 6330, 6333.; Defence Final Brief, para. 312.

<sup>605</sup> Prosecutor's Final Trial Brief, 21 June 2001 (hereafter "Prosecution Final Brief"), para. 347.

<sup>606</sup> Erdemović, T. 3122-3124.

<sup>607</sup> Erdemović T. 3127.

<sup>608</sup> P 435 (radio intercept at 07.35 hours on 12 July 1995 in which General Krstić ordered Lieutenant Colonel Krsmanović, the Drina Corps Transport Officer, to procure 50 buses from Pale, Višegrad, Rogatica, Sokolac, Han Pijesak, Vlasenica, Milići, Bratunac and Zvornik.)

prisoners.<sup>609</sup> Upon reaching the Farm, these Drina Corps military police began unloading the Bosnian Muslim men ten at a time to be then taken away and executed.<sup>610</sup>

240. The shootings began at 10.00 hours and continued until 1500 hours.<sup>611</sup> Mr. Erdemović explained that around ten soldiers, whom he was told were from Bratunac, joined his unit between 13.00 and 14.00 hours to assist with the shootings.<sup>612</sup> These men were dressed in VRS uniforms and it was clear to Mr. Erdemović that they knew some of the Bosnian Muslim men from Srebrenica, suggesting that they were local people.<sup>613</sup> The Prosecution was, however, unable to identify any particular member of the Bratunac Brigade present at Branjevo Farm during the executions.<sup>614</sup> The Lieutenant Colonel, who had been there earlier, returned to the Branjevo Farm with the Drina Corps military police who accompanied the last bus of Bosnian Muslim prisoners.<sup>615</sup> The participation of personnel from the Bratunac Brigade in the executions in the Zvornik Brigade zone of responsibility on 16 July is further corroborated by a Zvornik Brigade Interim Combat Report dated 16 July 1995 stating that, in addition to the regular troops of the Zvornik Brigade, forces operating under the Brigade's command included two platoons from the Bratunac Infantry Brigade.<sup>616</sup>

241. It is important to note that the Branjevo Farm itself was under the direct authority and control of the 1<sup>st</sup> Infantry Battalion of the Zvornik Brigade.<sup>617</sup> Further, Zvornik Brigade vehicle records show an ULT 220 in operation at Branjevo for eight-and-a-half hours on 17 July 1995 and that a truck towed a "BG-700" that day.<sup>618</sup> Although there are no utilisation records for a BGH-700 excavator, the Fuel Dispersal Log reveals that 100 litres of diesel fuel were disbursed to a BGH-700 on 17 July 1995.<sup>619</sup> The Daily Orders Journal of the Zvornik Brigade Engineering Company records work assignments of an ULT 220 in Branjevo and transportation of a BGH-700 to Branjevo on 17 July 1995.<sup>620</sup> Aerial photographs show an excavator digging a hole at Branjevo on 17 July 1995.<sup>621</sup>

242. There is also evidence implicating the Drina Corps Command itself in the Branjevo Farm executions. At around 1400 hours on 16 July 1995, a series of interconnected conversations were

<sup>609</sup> Erdemović, T. 3129.

<sup>610</sup> Erdemović, T. 3129-3130.

<sup>611</sup> Erdemović, T. 3130.

<sup>612</sup> Erdemović, T. 3132, T. 3141.

<sup>613</sup> Erdemović, T. 31330-3134.

<sup>614</sup> Butler, T. 9194.

<sup>615</sup> Erdemović, T. 3138-3139.

<sup>616</sup> P 614; Butler, T. 5342-5345.

<sup>617</sup> P 616; Butler, T.5133 and Butler Report, para. 7.46.

<sup>618</sup> P 646.

<sup>619</sup> P645; Butler, T. 5169 and Butler Report, para. 7.43.

<sup>620</sup> P 642; Butler, T. 5168 and Butler Report, para. 7.44.

intercepted relating to the executions. To begin, the duty officer at “Palma” (the Zvornik Brigade) called “Zlatar” (Drina Corps Headquarters) urgently requesting “500 litres of D 2” (diesel fuel) to be released to Colonel Popović.<sup>622</sup> The Zvornik Brigade duty officer stressed that unless he received the fuel, Colonel Popović would stop the work he was doing. Later in the conversation “Palma” stipulated to “Zlatar” that “(t)he bus loaded with oil is to go to Pilica village” and that Colonel Krsmanović, the Drina Corps Chief of Transportation, was to arrange the transportation. This fuel, the Prosecution argued, was necessary for the transport of Bosnian Muslim prisoners from Pilica to the execution site at the Branjevo Military Farm.<sup>623</sup> Records for 16 July 1995 confirm that 500 litres of diesel fuel was dispatched for Colonel Popović and the Drina Corps Command<sup>624</sup> is listed as the “recipient’ on this document.<sup>625</sup> Mr. Butler concluded from the timing of the executions and burials and the fact that the fuel was to be sent to Pilica Village where the Pilica school is located, that the fuel was most likely used for transporting the prisoners to the execution site at Branjevo Farm.<sup>626</sup>

243. The Trial Chamber finds that members of the Bratunac Brigade arrived at Branjevo Farm during the course of the afternoon on 16 July 1995 and participated in the killings.<sup>627</sup> The Trial Chamber also finds that Drina Corps military police were engaged in guarding the Bosnian Muslim prisoners in the buses that took them to the Farm and that Zvornik Brigade equipment was used for activities relating to the burial of the victims. Finally, the Trial Chamber accepts the intercept evidence demonstrating that Colonel Popović was involved in organising fuel to transport the Bosnian Muslim prisoners to the execution site at Branjevo Farm and that the allocation of fuel was co-ordinated through the Drina Corps Command.

(h) 16 July 1995: Pilica Cultural Dom

244. Mr. Erdemović testified that, at around 1500 hours on 16 July 1995, after he and his fellow soldiers from the 10<sup>th</sup> Sabotage Detachment had finished executing the prisoners at the Branjevo Military Farm, they were told that there was a group of 500 Bosnian Muslim prisoners from

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<sup>621</sup> Butler, T. 5169; Butler Report, para. 7.45 & fn.268; P 24/2 and 24/3.

<sup>622</sup> P 620.

<sup>623</sup> Prosecution Final Brief para. 354; Butler, T. 5139 and Butler Report, para. 9.20.

<sup>624</sup> P 619. Although the English translation on this document actually refers to “Drina Corps Commander”, the B/C/S abbreviation “KDK” has consistently been translated as Drina Corps Command in other documents in the case, and so the Trial Chamber adopts that interpretation in relation to this document also. The Prosecution expressly accepted that the translation on the document was incorrect to this extent. See Prosecution Closing Statement, T. 9954.

<sup>625</sup> P 619.

<sup>626</sup> Butler, T. 5139.

<sup>627</sup> See also the discussion *Infra* paras 380-387 regarding the deployment of members from the Bratunac Brigade to assist in the executions on 16 July 1995.

Srebrenica trying to break out of a nearby club.<sup>628</sup> Mr. Erdemović and the other members of his unit refused to carry out any more killings. They were then told to attend a meeting with the Lieutenant Colonel at a café in Pilica. Mr. Erdemović and his fellow-soldiers travelled to the café as requested and, as they waited, they could hear shots and grenades being detonated.<sup>629</sup> The sounds lasted for approximately 15-20 minutes after which a soldier from Bratunac entered the café to inform those present that “everything was over”.<sup>630</sup> No survivors from the Pilica Cultural Dom execution site appeared before the Trial Chamber.

245. The OTP sent a team of experts to conduct a forensic examination of the Pilica Dom between 27 and 29 September 1996, and again on 2 October 1998.<sup>631</sup> As with the forensic tests conducted at the Krivaca warehouse, analyses of hair, blood and explosives residue, collected at the Pilica Dom, provide strong evidence that mass executions had occurred in this location. Experts determined the presence of bullet strikes, explosives residue, bullets and shell cases, as well as human blood, bones and tissue adhering to the walls, ceilings and floors.<sup>632</sup>

246. The Pilica Cultural Centre is in the Drina Corps zone of responsibility.<sup>633</sup> The Prosecution also relied upon the evidence of Mr. Erdemović to establish that the same soldiers from Bratunac, who had arrived to assist the 10<sup>th</sup> Sabotage Detachment with the Branjevo Farm killings, carried out killings at the Pilica Cultural Dom. According to Mr. Erdemović these soldiers from Bratunac left the Farm as soon as the executions there were finished and travelled to another location to continue with the killings.<sup>634</sup> As already noted, the presence of the Bratunac Brigade, in the Zvornik Brigade zone of responsibility finds support in a Zvornik Brigade Combat Report from 16 July 1995, which indicates that personnel from the Bratunac Brigade were operating under the command of the Zvornik Brigade that day.<sup>635</sup> In addition, the Bratunac Brigade Military Police Platoon log for 16 July 1995 indicates that “one police patrol remained in Pilica to secure and watch over the Bosnian Muslims.”<sup>636</sup> Mr. Butler argued that, since there was no combat in the Pilica area at that time, the Bratunac Brigade police must have been guarding the Bosnian Muslim men at Pilica who were subsequently executed in the late afternoon or early evening hours of 16 July 1995.<sup>637</sup>

<sup>628</sup> Erdemović, T. 3140.

<sup>629</sup> Erdemović, T. 3143-3144.

<sup>630</sup> Erdemović, T. 3148-3149.

<sup>631</sup> Manning, T. 3619.

<sup>632</sup> P 181/1; P 181/2; P 182/3; P 182/4; P 150; and P 97. See also Manning, T. 3616-25

<sup>633</sup> Butler, T. 5132-5136.

<sup>634</sup> Erdemović, T. 3140-3141.

<sup>635</sup> P 614; Butler, T. 5342-5345; Butler Report, para. 7.49 & fn. 272.

<sup>636</sup> P 618 (extract from the daily orders book of the military police platoon of the Bratunac Brigade for 17 July 1995, recording events that took place on 16 July 1995).

<sup>637</sup> Butler, T. 5136-5137.

247. The Prosecution also adduced some evidence that the Drina Corps Command knew about the prisoners in the Pilica Cultural Dom and was involved in co-ordinating action relating to them. A conversation was intercepted at 1111 hours on 16 July 1995 between Colonel Beara, the Security Chief of the VRS Main Staff and Colonel Cerović, the Drina Corps Assistant Commander for Moral, Legal and Religious Affairs. Colonel Beara stated that “triage” had to be done on the prisoners.<sup>638</sup> The Prosecution argued that Colonel Beara and Colonel Cerović must have been referring to the prisoners in the Pilica Cultural Dom: at around this time the executions at the Branjevo Military Farm were already underway, but the prisoners in the Pilica Cultural Dom were still alive. Both parties agreed that the military term “triage” is used to describe the separation and further treatment of the sick and wounded.<sup>639</sup> The reference to “triage” remains an unexplained aspect of the conversation and Mr. Butler conceded that attributing any particular meaning to it would be speculation.<sup>640</sup> The Defence, by contrast, argued this reference to “triage” demonstrates an intent to spare some of the prisoners from the fate of the others.<sup>641</sup>

248. The Trial Chamber accepts the forensic evidence showing that executions took place at the Pilica Cultural Dom, as well as the evidence linking the Bratunac Brigade to these crimes. The Trial Chamber cannot attribute any particular meaning to the conversation between Colonel Beara and Colonel Cerović. The most the Trial Chamber can conclude from this conversation is that, on 16 July 1995, a Drina Corps officer was discussing matters relating to Bosnian Muslim prisoners with Colonel Beara, who both parties identified as having been involved in the executions.

(i) Kozluk

249. In 1999, the OTP exhumed a grave near the town of Kozluk. Information obtained from a community of refugees in Germany about rumoured killings led to the identification of the Kozluk site and investigations carried out at the site confirm that mass executions had occurred there. According to the OTP investigator’s conversations with the refugees, about 500 prisoners were forced to sing Serb songs while being driven on army trucks to the Kozluk site, where they were killed by an execution squad.<sup>642</sup> However, the Trial Chamber heard no direct testimony about these events and the Prosecution was unable to specify the timing of crimes committed in this location.

250. The minimum number of bodies uncovered from the Kozluk grave was 340 and all the individuals for whom sex could be determined were male. Gunshot wounds were the overwhelming cause of death for those bodies in which a cause could be ascertained. A number of

<sup>638</sup> P 627.

<sup>639</sup> Krstić, T. 6754.

<sup>640</sup> Butler, T. 5357-5378.

<sup>641</sup> Defence Final Brief, para. 158.

bodies showed signs of pre-existing disability or chronic disease ranging from arthritis to amputations.<sup>643</sup> Fifty-five blindfolds and 168 ligatures were uncovered.<sup>644</sup> Aerial images show that the Kozluk mass gravesite was created between 5 and 17 July 1995<sup>645</sup> and that it was disturbed again between 7 and 27 September 1995.<sup>646</sup>

251. The Prosecution's forensic experts have linked the Kozluk primary grave with the secondary grave at Čančari Road 3, which was exhumed by the OTP between 27 May and 10 June 1998.<sup>647</sup> Aerial photographs show the Čančari Road 3 gravesite was first excavated after 27 September 1995, and back filled prior to 2 October 1995.<sup>648</sup> In addition to the usual analyses of soil, material and shell cases, the link between the two graves was established by the presence at both sites of fragments of green glass bottles and bottle labels known to have come from the Vetinka bottling factory near the Kozluk mass grave.<sup>649</sup> All of the bodies for which sex could be determined were male and gunshot wounds were the predominant cause of death for those individuals for which a cause could be ascertained.<sup>650</sup> Eight blindfolds and 37 ligatures were located during the exhumation.<sup>651</sup>

252. The Kozluk execution site is located within the zone of responsibility of the Zvornik Brigade<sup>652</sup> and there is evidence linking this Brigade with the Kozluk site on 16 July 1995 and in the days immediately following. On 16 July 1995, an excavator-loader belonging to the Zvornik Brigade operated for eight hours in Kozluk.<sup>653</sup> A truck belonging to the Zvornik Brigade made two trips between Orahovac and Kozluk on that same day.<sup>654</sup> A bulldozer operated in Kozluk for 1.5 hours on 18 July 1995 and another hour on 19 July 1995.<sup>655</sup> The Zvornik Brigade Engineer Company Orders Journal shows assignments on 18 July 1995 to improve the trench in Kozluk and the transport of a bulldozer to Kozluk.<sup>656</sup>

253. The Trial Chamber is persuaded that the Zvornik Brigade excavators and bulldozers operating in the Kozluk area from 16 July 1995 were involved in work related to the burial of

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<sup>642</sup> Ruez, T. 500, 783-788.

<sup>643</sup> Manning Report, p. 00950973.

<sup>644</sup> Manning Report, p. 00950974.

<sup>645</sup> P 164/1; Ruez, T. 3482; Manning Report, p. 00950975.

<sup>646</sup> P 164/3; Ruez, T. 3434-3484; and Manning, T. 3603-3608.

<sup>647</sup> Manning Report, p. 00950976.

<sup>648</sup> Manning Report, p. 00950975.

<sup>649</sup> Manning T. 3609-3614.

<sup>650</sup> Manning Report, p. 00950976-00950977

<sup>651</sup> Manning Report, p. 00950977.

<sup>652</sup> P 2; Butler Report, para. 7.53. Kozluk is the garrison area of the "Podrinje Detachment" (Drina Wolves).

<sup>653</sup> P 580; Butler, T. 5082-5083.

<sup>654</sup> P 582; Butler, T. 5085-5086.

<sup>655</sup> P 404/tab 281.

victims from the Kozluk execution site. The executions in Kozluk must have occurred between 14 July and 17 July 1995, given that aerial images show the mass grave in the Kozluk area was created prior to 17 July 1995 and the prisoners were not transported to the zone of responsibility of the Zvornik Brigade until 14 July 1995. The location of Kozluk, between the Petkovci Dam and the Branjevo Military Farm, also suggests that the executions were likely to have taken place around 15-16 July 1995. Such a finding fits with the overall sequence of the northern executions: the crimes at Orahovac occurred on 14 July 1995; the crimes at Petkovci Dam, located to the north of Orahovac occurred on 15 July 1995; and the crimes at Branjevo Military Farm and the Pilica Dom, both of which are located to the north of Kozluk, occurred on 16 July 1995. The Trial Chamber finds that this extensive amount of Zvornik Brigade engineering work at Kozluk around this time was connected to the burial of bodies in the Kozluk grave.

(j) Smaller Scale Executions following the Mass Executions

254. In addition to the planned mass executions described, the Trial Chamber heard evidence about smaller scale executions in which small groups of Bosnian Muslim stragglers trying to escape the enclave were killed on location after capture by the VRS.<sup>657</sup> Witness R was captured on 19 July 1995 with a group of about 11 stragglers and escaped being executed along with all the others at a location known as Nezuk within the zone of responsibility of the Zvornik Brigade.<sup>658</sup>

255. The Prosecution argued that these executions were carried out by the 16<sup>th</sup> Krajina Brigade which, at the time, was operating under the command of the Zvornik Brigade. An eyewitness identified Serb soldiers with yellow patches on the sleeve of their left arm reading "Krajisnik" or "Krajisnici".<sup>659</sup> The Zvornik Brigade Daily Combat Report to the Drina Corps Command on 19 July reveals the presence of the 16<sup>th</sup> Krajina Brigade amongst the Zvornik Brigade's available units. This Report also stated that 13 Muslim soldiers had been eliminated that day, which approximates the number killed at Nezuk.<sup>660</sup> Other records indicate that a unit from the 1<sup>st</sup> Krajina Corps had been deployed to the zone of the Zvornik Brigade to operate under the command of the Zvornik Brigade from about 16 July 1995 and that they remained there until about 22 July 1995.<sup>661</sup>

<sup>656</sup> P 404/4 (tab 214); Butler Report, para. 7.58 & fn.282.

<sup>657</sup> See generally Witness R, T 3196-3206. The Prosecution also relied upon documents seized from the Zvornik Brigade which indicated that Muslim men were in their custody who are now on the ICRC missing persons list to demonstrate that the Zvornik Brigade killed captured Bosnian Muslim prisoners fleeing from Srebrenica following the mass executions. See P 707, P 706, Butler, T. 5227-5233. However, the Trial Chamber is unable to make any specific finding on the basis of the evidence presented.

<sup>658</sup> Witness R, T. 3200-3202, Butler, T. 5227.

<sup>659</sup> Witness R, T. 3205-3206, 3229-3230.

<sup>660</sup> P 693.

<sup>661</sup> P 404 (tab 430 and tab 432); Butler Report para. 10.10.



256. In light of this evidence, the Trial Chamber accepts that units under the command of the Zvornik Brigade participated in the executions at Nezuk on 19 July 1995.

(k) The Reburials

257. The forensic evidence presented to the Trial Chamber suggests that, commencing in the early autumn of 1995, the Bosnian Serbs engaged in a concerted effort to conceal the mass killings by relocating the primary graves to remote secondary gravesites. All of the primary and secondary mass gravesites associated with the take-over of Srebrenica located by the OTP were within the Drina Corps area of responsibility.<sup>662</sup> However, the Prosecution presented very little evidence linking any Drina Corps Brigades to the reburials<sup>663</sup> and no eyewitnesses to any of this activity were brought before the Trial Chamber.

258. One exception to this general paucity of evidence was a document sent by the VRS Main Staff to the Drina Corps Command on 14 September 1995 and copied to the Zvornik Brigade for their information.<sup>664</sup> The document, which was signed by General Mladić, authorised the release of five tons of diesel fuel to carry out work in the Drina Corps zone of responsibility. The document specified that the fuel was to be delivered to Captain Milorad Trpić, which the Prosecution argued was probably a reference to a Zvornik Brigade security officer.<sup>665</sup> Another order that same day from the Main Staff Technical Service Division authorised the release of the fuel to the Drina Corps.<sup>666</sup> Mr. Butler pointed out that, normally, fuel for engineering works would be the responsibility of the Rear Services branch and the involvement of the security personnel on this occasion supported an inference that the fuel was linked with the criminal activity.<sup>667</sup> Given that aerial images confirm the reburial activity was ongoing at this time and the fact that there is no information establishing that any legitimate engineer work was being carried out by the Zvornik Brigade, Mr. Butler concluded that the fuel must have been used for the reburial activity.<sup>668</sup> More generally, the Prosecution argued it was logical that the Zvornik Brigade would be tasked with digging up the bodies, as they had been involved in the original burials and knew where the gravesites were.<sup>669</sup>

259. A journal, recording the issues raised during periodic meetings convened by the Commander of the Bratunac Brigade with his Corps Command Staff, indicates that, on 16 October 1995,

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<sup>662</sup> Ruez, T. 3470.

<sup>663</sup> Butler, T. 5235.

<sup>664</sup> P 709.

<sup>665</sup> Butler, T. 5236.

<sup>666</sup> P 710.

<sup>667</sup> Butler, T. 5236.

<sup>668</sup> Butler, T. 5237.

<sup>669</sup> Butler, T. 5242.

Captain Nikolić, the Assistant Commander for Intelligence and Security, stated that the Brigade was engaged in tasks issued by the VRS Main staff. Captain Nikolić used the word “asanacija” to describe this work.<sup>670</sup> “Asanacija” (which translates as “restoration of the terrain”) is used in military lexicon to refer to finding, identifying and burying the dead.<sup>671</sup>

260. Investigators from the OTP estimate it would have taken at least two full nights and several trucks to move the bodies to the secondary gravesites. The longest distance between primary and secondary gravesites (Branjevo Farm to Cančari Road) was 40 kilometres.<sup>672</sup>

261. Overall, however, the Trial Chamber finds that the evidence adduced by the Prosecution about the reburial activity is too scant to support a finding, beyond a reasonable doubt, that units of the Drina Corps were engaged in the reburial of bodies from primary to secondary gravesites during the early Autumn of 1995. However, the Chamber is satisfied that, given the scale of the operation and the fact that it was carried out entirely within their zone of responsibility, the Drina Corps must have at least known this activity was occurring.

#### 6. The Chain of Command in Operation for the Drina Corps: July 1995

262. Having concluded that Drina Corps units and equipment were involved in carrying out many of the acts charged in the Indictment against General Krstić, the Trial Chamber now considers the Drina Corps chain of command in operation during the relevant period. This discussion provides an important backdrop to Part II C, where the Trial Chamber considers the issue of what General Krstić knew, or should have known, about the activities of the Drina Corps as a result of his position in the Corps Command, first as Chief of Staff and then as Corps Commander.

##### (a) Parallel Chains of Command

263. The Defence argued that, even if Drina Corps personnel and resources were implicated at various crime sites, General Krstić had no knowledge of their involvement. One of the key arguments advanced in support of this position was that there was a parallel chain of command operating during the relevant time.<sup>673</sup> Specifically, the Drina Corps had no control over the Srebrenica follow up operation, primarily due to the intervention of the Main Staff under the command of General Mladić. The Defence also argued that the activities of the VRS security organs, including those of Colonel Popović, the Drina Corps Assistant for Security, were conducted

<sup>670</sup> P 374.

<sup>671</sup> Butler, T. 5121; P 611.

<sup>672</sup> Ruez, T. 3535-3536.

<sup>673</sup> Another key aspect of this argument was the General Krstić was engaged as the Commander of the Žepa operation and so knew nothing about events occurring back in Srebrenica.

independently of the Corps Command. As a result, argued the Defence, the Drina Corps Command was excluded from knowledge of the detention and execution of the Bosnian Muslim men, despite the fact that the illegal activities were carried out in its zone of responsibility. In addition, the Defence cited command competencies being exercised by the President of RS and the newly appointed civilian authority in Srebrenica, who reportedly also had certain duties and responsibilities regarding prisoners and refugees.<sup>674</sup> However, as to the latter, the Trial Chamber emphasises it heard no evidence that the civilian Commissioner in any way exercised such authority or otherwise affected the involvement of the Drina Corps Command in the Srebrenica crimes.

(i) Did the VRS Main Staff exclude the Drina Corps Command from the Srebrenica Follow-up Operations?

264. The Defence pointed to four significant junctures at which the Main Staff directly intervened in Srebrenica-related operations in July 1995, thereby effectively rendering the Drina Corps Command powerless. The first point was on 9 July 1995 when General Mladić arrived at Pribicevac, where the Drina Corps had established its FCP for Krivaja 95, and took over command of the continued attack on Srebrenica and, in the process, expanded the original goals of Krivaja 95 to include its capture. The second was General Mladić's assumption of control over the movement of the civilian population out of Potočari. Third, General Mladić, rather than the then Corps Commander, General Živanović, made the decision to appoint General Krstić commander of the VRS forces engaged in the Žepa operation. Fourth, on 17 July 1995, despite the fact that the Drina Corps Command had earlier made its own arrangements for sweep operations in the Srebrenica area, the Main Staff appointed a Main Staff officer, Lieutenant Colonel Keserović, to take over command of the search.<sup>675</sup> Moreover, the Defence argued, General Mladić had expressly stated that the whereabouts of the 28<sup>th</sup> Division following the take-over of Srebrenica was his concern<sup>676</sup> and, in the words of General Radinović, "the command of the Drina Corps was... completely excluded from any kind of command competence and, therefore, command responsibility."<sup>677</sup>

265. The Trial Record is indeed replete with evidence demonstrating that the Main Staff was heavily involved in the direction of events following the take-over of Srebrenica.<sup>678</sup> Further, there are indications that Drina Corps units were not always informed or consulted about what the Main

<sup>674</sup> On 11 July 1995 the President of Republika Srpska appointed a civilian commissioner for the Serbian municipality of Srebrenica. See P 404, fn 90. The President gave the civilian commissioner a very high level of responsibility, including responsibility for the treatment of prisoners of war, as well as ensuring that the civilian population chose freely whether to stay or to leave. See Radinović, T.8064.

<sup>675</sup> P 649; Radinović, T. 8461-8463. See also Krstić; T. 7365, 7381.

<sup>676</sup> Krstić, T. 6203.

<sup>677</sup> Radinović, T. 8057

Staff was doing in their area of concern during the week that followed 11 July 1995. For example, in an intercepted conversation, on 13 July 1995 at 1829 hours, "Zile" (a nickname frequently associated with General Živanović) discussed records on war criminals with an unknown participant, although only the words uttered by the latter were audible.<sup>679</sup> During the course of the conversation, the unknown participant asked whether it was "possible to make a list of those from Žepa, Srebrenica and Goražde urgently?" and expressed concern that "they'll get away scott-free." At this time, captured Bosnian Muslim men had already been executed at Jadar River and Čerska and the executions at Kravica Warehouse were imminent. The unknown participant in the conversation appeared to be unaware of this and was still working on the assumption that a formal vetting process had been implemented, as foreshadowed by General Mladić at the Hotel Fontana meeting on 12 July 1995. It is also apparent that the 13 July 1995 search order issued by General Krstić<sup>680</sup> was subsequently modified by some other authority.<sup>681</sup> Indeed the Trial Chamber heard evidence that one Brigade was searching land on the other side of the enclave altogether from that specified by General Krstić.<sup>682</sup> Further, in a report on 18 July 1995, Colonel Pandurević, the Commander of the Zvornik Brigade, complained of the fact that "someone" had brought thousands of Bosnian Muslim prisoners into his area of responsibility over the preceding ten days.<sup>683</sup> The reference to "someone" admits of possible intervention by an authority outside of the Drina Corps in matters within the Zvornik Brigade zone of responsibility. It is also true that Colonel Beara from the Main Staff was heard issuing orders directly to Drina Corps officers.<sup>684</sup> In addition, an intercept, dated 15 July at 0954 hours, between General Zivanović and Colonel Beara,<sup>685</sup> suggests that, on about 13 July 1995, General Mladić may have issued orders directly to members of the Drina Corps 5<sup>th</sup> Podrinje Brigade regarding the executions. It also suggests that General Zivanović was not fully apprised of the implementation of those orders prior to his conversation with Colonel Beara.<sup>686</sup> Finally, in a conversation intercepted on 17 July 1995 at 2030 hours between General Krstić and an unidentified person, General Krstić asked "(w)ith whose approval did you send

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<sup>678</sup> E.g. P 532 (Order from Main Staff to Drina Corps on 13 July 1995 directing that measures be taken to block and capture the men from the column); and Krstić, T. 6300.

<sup>679</sup> P 525.

<sup>680</sup> P 463.

<sup>681</sup> P 464 (order issued by the Commander of the Bratunac Brigade on 14 July 1995 which General Krstić testified demonstrated that areas being searched by that Brigade deviated from the order he issued). Krstić; T. 7351-735.

<sup>682</sup> P 536 and P 537, and Defence Witness DB, T. 7333-7335.

<sup>683</sup> P 675.

<sup>684</sup> P 627.

<sup>685</sup> P 470.

<sup>686</sup> The intercept refers to the failure of "Furtula" (who the Prosecution argued was Major Radomir Furtula, the Commander of the 5<sup>th</sup> Podrinje Brigade (also known as the Višegrad Brigade) to follow the "boss's" orders. The Prosecution argued that, in the context of this conversation, the "boss" must have been General Mladić. See Prosecution Final Brief, para. 366. See the further discussion of this conversation and a related conversation involving General Krstić, *Infra* paras. 380-387.

soldiers down there?” The other participant said “(o)n orders from the Main Staff,”<sup>687</sup> suggesting the Main Staff was directing events at that time without informing the Drina Corps of all the details.<sup>688</sup> The Trial Chamber has already noted the presence of non-Drina Corps units within the Drina Corps zone of responsibility from 11 July 1995 onwards. The evidence demonstrates that several of these non-Drina Corps units were heavily involved in the capture and execution of the Bosnian Muslim men, including the police battalion of the 65<sup>th</sup> Protection Regiment, the MUP, and the 10<sup>th</sup> Sabotage Detachment.<sup>689</sup>

266. Nonetheless, an evaluation of the complete Trial Record makes it abundantly clear that the Main Staff could not, and did not, handle the entire Srebrenica follow-up operation on its own and at almost every stage had to, and did, call upon Drina Corps resources for assistance. As acknowledged by the Defence’s own military expert, General Radinović, the Main Staff did not have any resources of its own and could not carry out any operation without relying on those of its constituent Corps.<sup>690</sup> It is clear from the details of the mass executions recounted previously that Drina Corps troops and resources were regularly called upon to assist with the executions.

267. General Radinović, however, argued that the senior command of the Main Staff had the power to requisition the resources of the subordinate brigades and to dispense with notification to the Corps in crisis situations.<sup>691</sup> This, said General Krstić, was exactly what happened following the take-over of Srebrenica: Colonel Beara, the Main Staff Security Chief, used the facilities of the Zvornik Brigade for the operation he had been tasked with by the Main Staff without notifying anyone at either the Brigade Command or Drina Corps Command level. General Krstić was adamant that Colonel Beara had not formally issued any assignment to the Zvornik Brigade involving the executions.<sup>692</sup> Further, General Krstić maintained, the Drina Corps Command did not receive any records about the utilisation of Drina Corps personnel or vehicles by Colonel Beara.<sup>693</sup>

268. The Trial Chamber accepts that, from 9 July 1995, when he arrived at the Pribicevac FCP in the midst of Krivaja 95, General Mladić, as Commander of the Main Staff of the VRS, entered the zone of operation of the Drina Corps and may have directed key aspects of VRS activities, including the continued attack on Srebrenica, the transportation of the Bosnian Muslim civilians out of Potočari and, ultimately, the executions. Certainly, the evidence portrays General Mladić as a

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<sup>687</sup> P 364/2, tab 14/2.

<sup>688</sup> Although it was not clear from the intercept that the unidentified participant was from the Drina Corps, the Defence argued this was implicit from the reference he made to the Potočari area, which is within the zone of the Drina Corps. T. 5445.

<sup>689</sup> See the discussion of the relationship between these units and the Drina Corps *Infra* paras. 277-289.

<sup>690</sup> Radinović, T. 8471-8472.

<sup>691</sup> Radinović, T. 8472.

<sup>692</sup> Krstić T. 6494-6495.

<sup>693</sup> Krstić, T. 7399-7400.

dominating personality, who was actively involved in both the public and behind-the-scenes aspects of the unfolding events.<sup>694</sup> Indisputably, General Mladić directed the meetings at the Hotel Fontana while the Drina Corps representatives sat in silence. He was also sighted in Potočari, and at several of the execution sites. However, the evidence does not support a finding that the Drina Corps Command was, thereby, completely excluded from all knowledge or authority as to the involvement of its troops or assets in the operation. Nor does the Trial Record support the Defence argument that orders to the subordinate Brigades of the Drina Corps thereafter came directly or exclusively from the Main Staff. As a military principle, it would be untenable if the Main Staff came into the Drina Corps zone of responsibility and took complete control of Drina Corps assets and personnel without the assent, or at least the knowledge, of the Drina Corps Command, especially in the midst of ongoing combat operations. No army could function under these circumstances and VRS principles did not admit of such a possibility. As reflected in the words of Defence Witness DE who was a Drina Corps officer in July 1995:

Our army functioned according to two basic principles: The principle of having one command and the principle of subordination. One command meant that every person in the chain of command above him has only one man who can issue orders to him, one superior; and the principle of subordination implied that the subordinated persons must act on the orders of their superior unless an order of that kind represented a criminal act, which was regulated in other rules and regulations positive.<sup>695</sup>

This accords with the testimony of Mr. Butler who stated that, in light of JNA regulations, it would be unheard of for a Commander of the Main Staff to interfere with the chain of command and assume direct command over subordinate units. Such a practice would be evidence of a poor and undisciplined army and, in Mr. Butler's view, the VRS was a very well organised army.<sup>696</sup>

269. The evidence does not, in any way, support a finding that the Drina Corps was completely excluded from matters relating to the transportation of the Bosnian Muslim civilians from Potočari or the Bosnian Muslim prisoners. As described above, officers of the Drina Corps Command were engaged in the procurement and organisation of the buses on which the Bosnian Muslim civilians were transported out of Potočari. This is clearly inconsistent with the notion that the Main Staff had taken over direct command of the subordinate Drina Corps Brigades.<sup>697</sup> The Drina Corps Intelligence Department also received a Main Staff document dated 13 July 1995 reporting on the completion of the transportation operation, showing that the Main Staff ensured the Corps Command remained informed about the activities being conducted within its zone.<sup>698</sup> Further, when the Main Staff issued orders to the Drina Corps about blocking and detaining the Bosnian

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<sup>694</sup> Butler, T. 5447.

<sup>695</sup> Defence Witness DE, T. 7620.

<sup>696</sup> Butler, T. 4837, 5254.

<sup>697</sup> See the discussion *supra* paras. 135-142.

<sup>698</sup> P 459; and Butler, T. 4868.

Muslim column, the orders were sent through the Corps Command.<sup>699</sup> It is true that these orders were also copied directly to the relevant Drina Corps subordinate Brigades, but the Trial Chamber accepts the explanation given by Mr. Butler that this was purely a time-saving device in an emergency situation.<sup>700</sup> The most important factor is that the Drina Corps Command itself was included in the chain of command by the Main Staff and remained informed about the tasks being issued to its subordinate brigades.

270. There are many other examples of the Drina Corps chain of command operating in a normal manner in the period following the take-over of Srebrenica. On 15 July 1995, a conversation was intercepted between Colonel Beara and General Krstić in which Colonel Beara made a direct and urgent request to General Krstić for assistance in finding men who could assist him in the work he was carrying out.<sup>701</sup> In response, General Krstić directed Colonel Beara to contact Colonel Blagojević, the Commander of the Bratunac Brigade and to utilise his Red Berets (a reconnaissance unit subordinate to the 3<sup>rd</sup> Battalion of the Bratunac Brigade<sup>702</sup>). This episode is totally inconsistent with the notion that the Main Staff was directing the activities of Drina Corps subordinate Brigades without reference to the Drina Corps Command. Further, there is documentation showing that the subordinate Drina Corps Brigades were constantly reporting to the Drina Corps Command on matters relating to the Bosnian Muslim column and the prisoners. In his 15 July 1995 Interim Combat Report, Colonel Pandurević, Commander of the beleaguered Zvornik Brigade, which was caught up in combat with the Bosnian Muslim column, pleaded with the Corps Command for help with dealing with the prisoners being detained in his zone of responsibility. Colonel Pandurević warned the Drina Corps Command that if the situation were not alleviated, he would be forced to let the prisoners go.<sup>703</sup> Similarly, on 16 July 1995, Colonel Pandurević made another urgent request to the Corps Command for assistance.<sup>704</sup> This demonstrates that the Zvornik Brigade was still utilising the regular chain of command and that it was not reporting directly to the Main Staff about Srebrenica related events. Overall, the Prosecution produced 54 documents showing the involvement of the Drina Corps Command in the VRS chain of command in the wake of the take-over of Srebrenica.<sup>705</sup>

271. Further, records were kept by the Drina Corps subordinate units about the use of resources for matters connected to the executions. One would naturally expect the Drina Corps Command to have been closely monitoring the use of all its resources given the high level of military activity

<sup>699</sup> P 532. See the discussion *supra* para. 169.

<sup>700</sup> Butler, T. 4970.

<sup>701</sup> P 478.

<sup>702</sup> Butler, T. 4913-4914.

<sup>703</sup> P 609.

<sup>704</sup> P 614.

occurring in the week of 13 July 1995, including the commencement of the Žepa Operation, the combat with the head of the Bosnian Muslim column composed of members of the 28<sup>th</sup> Division, the ABiH forces attacking from the direction of Tuzla, and the search operations around the Srebrenica area. It is inconceivable that Brigade commanders would fail to notice that the Main Staff had requisitioned Drina Corps personnel and resources for its own uses or fail to inform its own Command of such requisitions.

272. Aside from the documentary and intercept evidence adduced by the Prosecution, showing that the Drina Corps Command was not excluded from the Srebrenica follow-up activities, the proximity of Drina Corps Command to the crime sites strengthens the confidence of the Trial Chamber that the Corps Command could not be, and was not, oblivious to these events.

(ii) Were the Security Organs Operating in Secret?

273. The Defence also argued that prisoners of war were the exclusive responsibility of the security and intelligence organs, particularly the former.<sup>706</sup> Moreover, according to the Defence, the security organ of the Drina Corps, in conjunction with the Main Staff security organ, formed an independent command line whereby operations were conducted secretly from the Drina Corps Command.<sup>707</sup> In particular, General Radinović postulated that the VRS regulations governing the security organs permit security officers in the Corps Command to make their own assessment as to what is an official secret, which can only be divulged with the permission of the Assistant for Security of the Main Staff.<sup>708</sup> The Defence hypothesised that Colonel Popović, the Assistant Commander of Security for the Drina Corps, received his assignments as to the prisoners directly from Colonel Beara, but that pursuant to VRS regulations he was not allowed to report about them to anyone in the Corps Command.<sup>709</sup> Accordingly, the Drina Corps Command and the Commands of the subordinate Brigades were unaware of the crimes being committed by the security organs.<sup>710</sup> This, argued the Defence, is corroborated by the absence of documents from the security organs, during the relevant period, reporting to the Drina Corps Command about the fate of the prisoners.<sup>711</sup>

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<sup>705</sup> Butler, T. 5250-5251. These exhibits are listed in P 378.

<sup>706</sup> Radinović, T. 8071.

<sup>707</sup> Radinović, T. 8052, 8067, and 8068.

<sup>708</sup> Radinović, T. 8069-8070, D 158/P 402 fn 34, (Rules of Service of Security Organs in the Armed Forces of the Socialist Federative Republic of Yugoslavia, 1984. Para. 49 states that a security officer “may pass on information that constitutes an official secret to other authorised security organ officers or other persons only with the authorisation of his superior officer in the security organ.”)

<sup>709</sup> Krstić, T. 7367-7368.

<sup>710</sup> Krstić, T. 7366-7367.

<sup>711</sup> Radinović, T. 8079.



274. The Prosecution's view of the relationship between the security organs in the Main Staff and the Drina Corps during the critical period is entirely different. It maintained that, according to VRS regulations, the Assistant Commander for Security was directly subordinate to the commanding officer of the unit of the armed forces under whose command he is placed: in this case, Colonel Popović was subordinated to the Drina Corps Commander.<sup>712</sup> Mr. Butler argued that, while the Main Staff security organ provided "technical advice, technical assistance, in some cases, resources, guidance, and direction for the more technical aspects of security operations...", it did not form an alternative chain of command.<sup>713</sup>

275. Mr. Butler conceded that there could be some circumstances in which the Corps Commander would not be informed of the work of the security officer, for example, if the Commander himself was the subject of the investigation. However, he maintained that for "daily activities" of the security branch, one would expect the Corps Commander to be fully informed.<sup>714</sup> The criminal activity involved in the execution of thousands of Bosnian Muslim men is hardly a "daily activity" and it is to be expected that some attempt would be made to shroud the commission of such crimes in secrecy, although their massive scale necessarily made that difficult. Nonetheless, the evidence, viewed in its entirety, does not support the view that the Main Staff and Drina Corps Security organs were carrying out activities relating to the executions without the knowledge of the Drina Corps command. Even if Colonel Beara and Colonel Popović were primarily directing this criminal activity under orders from General Mladić, they were continually communicating and co-ordinating with personnel from the Drina Corps Command. On 16 July 1995, around the time of the Branjevo Military Farm executions, Colonel Beara had a conversation with Colonel Cerović from the Drina Corps Command, during which Colonel Beara informed Colonel Cerović that "triage" had to be done on the prisoners.<sup>715</sup> On that same day, Colonel Popović co-ordinated his requests for fuel to be used in conjunction with the executions through the Zvornik Brigade, which in turn passed this request on to the Drina Corps Command.<sup>716</sup> The Drina Corps Command is also mentioned in the paper work for this fuel allocation.<sup>717</sup> In total, the Prosecution pointed to 11 exhibits<sup>718</sup> refuting the contention that the VRS security organs were operating secretly.

(iii) Conclusions

276. Overall, the Prosecution has made a compelling argument that, due to their massive nature and the level of co-operation and co-ordination required, the executions could not have been

<sup>712</sup> P 402 fn 34, para. 16; Butler, T. 5351.

<sup>713</sup> Butler, T. 4767.

<sup>714</sup> Butler, T. 5301.

<sup>715</sup> P 627.

<sup>716</sup> P 620 (intercepted conversation at 1358 hours on 16 July 1995. See the discussion *supra* para. 242).

<sup>717</sup> P 619.

accomplished in isolation from the Drina Corps Command. The Trial Chamber is satisfied that, following the take-over of Srebrenica, the Drina Corps Command continued to exercise command competencies in relation to its subordinate Brigades and that this command role was not suspended as a result of the involvement of the VRS Main Staff, or the security organs, in the Srebrenica follow-up activity.

(b) Responsibility of the Drina Corps Command for the Actions of Non-Drina Corps Units Operating in the Drina Corps Area of Responsibility in July 1995

277. The evidence adduced indicates that two units of the VRS, that were normally subordinated to the Main Staff, were operating in the Drina Corps zone of responsibility during July 1995 and are implicated in the crimes committed: the 10<sup>th</sup> Sabotage Detachment was involved in the executions at Branjevo Military Farm<sup>719</sup> and the Trial Chamber heard evidence that the Military Police Battalion of the 65<sup>th</sup> Protection Regiment was involved in the assembly and detention of Bosnian Muslim prisoners near Nova Kasaba.<sup>720</sup> Further, MUP forces, including a special MUP unit as well as units of municipal police, were also operating in the Drina Corps zone of responsibility during July 1995. MUP units were present in Potočari, on 12 and 13 July 1995<sup>721</sup> and were involved in the capture of Bosnian Muslim prisoners in the Nova Kasaba region on 13 July 1995.<sup>722</sup> The Prosecution also maintained that MUP personnel are implicated in the executions that took place at Jadar River on the morning of 13 July 1995.<sup>723</sup> The Prosecution has argued that all of these units were resubordinated to the Drina Corps “during various times in July 1995”, so that the Drina Corps Command bears responsibility for their actions.<sup>724</sup>

(i) The 10<sup>th</sup> Sabotage Detachment

278. The video of the VRS victory walk through Srebrenica on 11 July 1995 shows the presence of soldiers of the 10<sup>th</sup> Sabotage Detachment at a checkpoint and, subsequently, the Commander of

<sup>718</sup> Butler, T. 5277; and P 378.

<sup>719</sup> See the discussion *supra* paras. 234, 239-240.

<sup>720</sup> Butler T. 4918; Butler Report, para. 2.12-2.13. The Defence agreed that this unit was involved in the capture of massive numbers of Bosnian Muslim prisoners. Defence Final Brief, para. 303.

<sup>721</sup> Butler, T. 4856-4859; Van Duijn, T. 1742-1744; 1747; 1760-1771; 1778; 1780-1783 (identifying Captain Mendeljev “Mane” Durić, MUP Battalion Commander; supervising the separation process and identifying Duško Jević a.k.a. “Stalin” from the MUP). See also P 459, (report dated 13 July 1995 from the Main Staff to the Drina Corps intelligence department stating that the MUP had been looting from UNPROFOR and that the MUP requested permission to participate in searching the UNPROFOR base in Potočari after the departure of the refugees); and Butler, T. 4869.

<sup>722</sup> Butler Report, para. 2.13.

<sup>723</sup> Prosecution Final Brief, para. 202. See also the discussion of police involvement in the Jadar River executions, *supra* para. 197.

<sup>724</sup> Butler Report, para. 2.12

that unit, Miso Pelemis, is shown in the centre of Srebrenica town.<sup>725</sup> Mr. Erdemović, who was a member of the 10<sup>th</sup> Sabotage Detachment at that time, confirmed that members of his unit were present in Srebrenica on 11 July 1995.<sup>726</sup> General Krstić, however, denied that the 10<sup>th</sup> Sabotage Detachment was engaged with the Drina Corps units for the purposes of Krivaja 95. He testified that he was unaware of the presence of the 10<sup>th</sup> Sabotage Detachment on 11 July 1995, despite the fact that the video shows General Krstić walking past soldiers wearing uniforms belonging to this unit.<sup>727</sup> Defence Witness DB, who was a Drina Corps officer present at the Pribicevac FCP during Krivaja 95, contradicted this. Witness DB confirmed that the 10<sup>th</sup> Sabotage Detachment had arrived around 9 or 10 July 1995.<sup>728</sup> Witness DB believed that General Krstić also knew the 10<sup>th</sup> Sabotage Detachment had arrived by this time.<sup>729</sup> Further evidence as to the knowledge General Krstić had about the involvement of the 10<sup>th</sup> Sabotage Detachment in Krivaja 95 came from Witness II, who was a member of the Drina Corps in July 1995 and was with General Krstić during the walk through Srebrenica on 11 July 1995. Witness II said that he saw Miso Pelemis at that time and that, quite possibly, General Krstić spoke to Pelemis in Srebrenica town.<sup>730</sup> However, as argued by the Defence, the 10<sup>th</sup> Sabotage Detachment comprised about 30 men and they arrived around 10 July 1995 by which time the VRS was already on the brink of capturing Srebrenica. It seems unlikely that the Command of the Drina Corps would have called upon this unit to assist in the military attack at this stage.<sup>731</sup>

279. It is known that, on 16 July 1995, members of the 10<sup>th</sup> Sabotage Detachment participated in the execution of the Bosnian Muslim men at Branjevo Farm and that troops from the Bratunac Brigade were also involved in the commission of these atrocities.<sup>732</sup> Prior to proceeding to the execution fields, the 10<sup>th</sup> Sabotage Detachment called in at the headquarters of the Zvornik Brigade where they met a Lieutenant Colonel accompanied by two members of the Drina Corps military police. This officer was clearly in charge of directing the subsequent executions, including the participation of the 10<sup>th</sup> Sabotage Detachment, at the Branjevo Farm.<sup>733</sup> This scenario, the Prosecution argued, demonstrated that the 10<sup>th</sup> Sabotage Detachment had come under the command of the Drina Corps at the time. However, the Defence argued that this Lieutenant Colonel was in

<sup>725</sup> P 145 ; and P 146.

<sup>726</sup> Erdemović, T. 3087-3091; Butler, T. 4825-4826.

<sup>727</sup> Krstić T. 6507-6508.

<sup>728</sup> Defence Witness DB, T. 7233.

<sup>729</sup> Defence Witness DB, T. 7233.

<sup>730</sup> Witness II, T. 9120.

<sup>731</sup> Defence closing argument, T. 10105.

<sup>732</sup> See the discussion *supra* para. 240.

<sup>733</sup> See the discussion *Infra* para. 239.

fact a member of the Main Staff and not the Drina Corps and the Trial Chamber is unable to rule out that possibility.<sup>734</sup>

280. General Radinović testified that not a single piece of evidence existed showing the Main Staff authorised the Command of the Drina Corps to act with the 10<sup>th</sup> Sabotage Detachment.<sup>735</sup> Mr. Butler conceded that there was no specific document indicating the 10<sup>th</sup> Sabotage Detachment was acting under the command of the Drina Corps<sup>736</sup> and accepted that he knew of no “technical evidence” to support the theory of resubordination.<sup>737</sup>

281. The Trial Chamber is unable to conclude that the 10<sup>th</sup> Sabotage Detachment was formally resubordinated to the Drina Corps Command on 16 July 1995 when members of this unit were involved in the executions at Branjevo Farm. Nonetheless, it is clear that there must have been close co-operation and co-ordination between the Drina Corps and this unit from the time they arrived in Srebrenica and continuing throughout the follow-up action thereto. The Drina Corps Command must have been fully aware of the presence of this unit within its zone of responsibility and, as has already been determined, units of the Drina Corps acted together with the 10<sup>th</sup> Sabotage Detachment in the commission of the executions at Branjevo Farm on 16 July 1995.

(ii) The 65<sup>th</sup> Protection Regiment

282. The Prosecution pointed to documents indicating that a Military Police Battalion of the 65<sup>th</sup> Protection Regiment, which was based in Nova Kasaba, fell under the control of the Commander of the Bratunac Brigade and, by extension the Drina Corps Command, on or about 15 July 1995.<sup>738</sup> However, the Trial Chamber heard no persuasive evidence that the 65<sup>th</sup> Protection Regiment was involved in any illegal activity after this time.<sup>739</sup> Certainly though, the Drina Corps Command was well aware of the presence of this unit within its zone of responsibility following the take-over of Srebrenica and was organising co-operative action with them to block the column.<sup>740</sup>

<sup>734</sup> See the discussion *Infra* paras. 239.

<sup>735</sup> Radinović, T. 8053, 8056.

<sup>736</sup> Butler, T. 5381.

<sup>737</sup> Butler, T. 5342.

<sup>738</sup> Butler T. 4996; and Butler Report, para. 2.12.

<sup>739</sup> Mr. Butler conceded the Prosecution could provide no details as to how many prisoners were taken as part of the sweep operations in which the 65<sup>th</sup> Protection Regiment were participating with the Drina Corps from 15 July 1995. Butler, T. 5369.

<sup>740</sup> See the discussion of documents referring to the joint operations of the 65<sup>th</sup> Protection Regiment and units of the Drina Corps *supra* para. 162.

(iii) The MUP

283. The Prosecution argued that MUP forces were subordinated to the Drina Corps for the purposes of Krivaja 95 based on the order for active combat, which designated “two or three companies of MUP” amongst the reserve forces for the operation.<sup>741</sup> Defence Witness DB agreed that, by virtue of the orders, MUP forces were to be involved in the attack on Srebrenica as reserve forces.<sup>742</sup> The Prosecution pointed to regulations specifying that, when conducting operations with the army, MUP units are subordinated to the army for the duration of those operations,<sup>743</sup> and argued that, therefore, the MUP had been resubordinated to the Drina Corps Command.

284. Although General Krstić agreed that a special detachment of the MUP, commanded by Colonel Borovčanin, had arrived in Bratunac by 11 July 1995,<sup>744</sup> he denied that any MUP forces acted as reserves for Krivaja 95.<sup>745</sup> Certainly, Mr. Butler could not refer to any documentation indicating that the reserve MUP forces referred to in the plan were actually deployed.<sup>746</sup> In order to engage the special MUP unit commanded by Colonel Borovčanin, permission had to be obtained from the RS Minister of the Interior and no document to that effect was ever produced during the course of the trial.<sup>747</sup>

285. Another Defence witness testified that the special MUP unit, commanded by Colonel Borovčanin, did arrive on or about 10 July 1995. However he too disputed that this unit was the same one mentioned in the plan for Krivaja 95. If it had been, he said, the Krivaja 95 plan would have referred to “the special MUP units”, whereas the MUP units referred to in the plan were the local public security stations in local communities.<sup>748</sup> On the other hand, Mr Butler believed the MUP forces specified as reserves in the Krivaja 95 plan would have been Special MUP forces rather than municipal police, given that they were included as a military infantry company in the plan.<sup>749</sup>

286. Regardless of whether the MUP forces that arrived in the Srebrenica on about 10 July 1995 were engaged by the Drina Corps for Krivaja 95 or not, it is clear that, upon the withdrawal of the 28<sup>th</sup> Division from the enclave following the take-over of Srebrenica, MUP forces were

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<sup>741</sup> P 428.

<sup>742</sup> Witness DB, T. 7134.

<sup>743</sup> P 420 (The Law on the Implementation of the Law of Internal Affairs During an Imminent Threat of War or a State of War), Butler, T. 4768.

<sup>744</sup> Krstić, T. 6140, 6416.

<sup>745</sup> Krstić, T. 6413, 6416, 6418.

<sup>746</sup> Butler, T. 5372-5373.

<sup>747</sup> Radinović, T. 8061-8062.

<sup>748</sup> Defence Witness DB, T. 7149.

<sup>749</sup> Butler, T. 4806-4807.

incorporated into the “follow-up” operation. MUP units were present in Potočari<sup>750</sup> and they were also placed along the Bratunac-Konjević Polje road, where they engaged in blocking and capturing large numbers of men from the Bosnian Muslim column on 13 July 1995.<sup>751</sup>

287. The Prosecution pointed to intercepted conversations that, in its view, demonstrate that these units were acting under the command of the Drina Corps.<sup>752</sup> Certainly the evidence reveals that there was close co-operation and co-ordination between the MUP and Drina Corps units. On 11 July 1995, before the VRS found out about the formation and movement of the Bosnian Muslim column, the Main Staff ordered the Drina Corps to take pre-emptive steps, “by arrangement and co-operation with the MUP” to block the passage of Bosnian Muslims to and from the enclave.<sup>753</sup> A Dutch Bat officer in Potočari spoke to a member of the police present there who said that his unit “had a sort of liaison with...the Drina Corps” and that, although his unit was not a part of the Drina Corps, they were “more or less working together.”<sup>754</sup> During a conversation between two unidentified participants at 0656 hours on 12 July regarding the Bosnian Muslim column, one participant suggested “Maybe we should see or you could see if the MUP...can set up some ambushes and so on.”<sup>755</sup> The language of this intercept suggests a co-operative relationship rather than one in which the MUP could be directly ordered to carry out tasks by the Drina Corps. Similarly, in a further intercepted conversation, on 12 July 1995 at 1305 hours, General Krstić is heard ordering the Vlasenica Brigade to “Get in touch with these guys from the MUP. That means you, your Brigade and them.”<sup>756</sup> Another intercepted conversation, on 13 July 1995 at 1945 hours, took place between a person, “X”, who was calling from “General Krstić’s” and looking for Ljubisa, which was probably a reference to Colonel Ljubisa Borovčanin the Deputy Commander of the special MUP Brigade.<sup>757</sup> Shortly thereafter at 2040 hours, General Krstić spoke to Colonel Borovčanin, asked how things were going and stated that “we’ll be in touch.”<sup>758</sup> Furthermore, as noted above, MUP forces were engaged with Brigades of the Drina Corps in blocking the retreating Bosnian Muslim column and in searching the former enclave.<sup>759</sup> On 15 July 1995, Colonel Ignjat

<sup>750</sup> See the discussion *supra* para. 151.

<sup>751</sup> See the discussion *supra* para. 162.

<sup>752</sup> For example: P 504; P 506; and Butler, T. 4938-4939 (regarding intercepted conversations dated 12 July 1995 at 0740 hours and 0748 hours respectively, suggesting that orders for MUP units were being passed on through the Commander of the Drina Corps 5<sup>th</sup> Engineers Battalion), P 507 (intercepted conversation at 0843 hours on 12 July). The Trial Chamber notes, however, that Butler’s response to this conversation was “You can’t read too much into this one. Clearly it is an awareness piece that the forces are operating together.” Butler, T. 4945). Commenting on the series of intercepts relied upon by the Prosecution to show MUP resubordination, Mr Butler stated that they demonstrate that Drina Corps and MUP units were “co-ordinating their activities”. Butler, T. 9206.

<sup>753</sup> P. 830.

<sup>754</sup> van Duijn, T. 1742-1743.

<sup>755</sup> P 502.

<sup>756</sup> P 446.

<sup>757</sup> P 527.

<sup>758</sup> P 529.

<sup>759</sup> See the discussion *supra* paras. 162 and 192.

Milanović the Drina Corps Chief of Anti-Aircraft Defence, recommended the appointment of Colonel Blagojević, the Commander of the Bratunac Brigade, as the Commander of all of the units who were sweeping the terrain of the former enclave in accordance with the order issued by General Krstić on 13 July 1995.<sup>760</sup> The following day, Colonel Blagojević reported that he had visited all units involved in blocking the enemy, including the MUP, and that he had “defined their tasks, and organised their joint actions and communications.”<sup>761</sup> The Defence maintained that this was evidence only that these units were working together and did not speak of a formal command relationship. This position is supported by the fact that, on 17 July 1995, the Main Staff issued an order appointing an officer of the Main Staff to take over the co-ordination of these forces, indicating that the Main Staff was directing the activities of all these units.<sup>762</sup> In an intercepted conversation on 15 July 1995, Colonel Beara spoke to General Krstić about acquiring some additional men for the work he was engaged in.<sup>763</sup> When General Krstić suggested to Colonel Beara “...then take those MUP guys from up there”, Colonel Beara replied “No, they won’t do anything, I talked to them”. Thus Colonel Beara had obviously already spoken to the MUP without going through the Drina Corps Command first, yet he clearly considered that he had to get permission from General Krstić to use Drina Corps personnel.

288. Mr. Butler conceded that, during the period between 11 and 13 July 1995, when all the activity was occurring along the Bratunac/Konjević Polje Road, there is no document demonstrating that the MUP was subordinated to the Drina Corps.<sup>764</sup> Moreover, he accepted that there was no evidence showing that MUP reported to the Drina Corps Command or subordinate Brigades about their activities along the Bratunac Konjević-Polje road.<sup>765</sup> The only information the Prosecution obtained from their investigations into this matter is that MUP personnel were reporting up through Colonel Borovčanin. Mr. Butler accepted that there is no evidence to link the MUP with any of the local army commands other than their physical presence.<sup>766</sup> Under cross-examination, Mr. Butler conceded that an order sent from the Main Staff on 12 July 1995 specified that the MUP was to act “in collaboration” with subordinate Brigades of the Drina Corps and that a command relationship was not specifically indicated.<sup>767</sup>

289. The Trial Chamber is unable to conclude that the MUP units present in the Drina Corps zone of responsibility were subordinate to the Drina Corps during July 1995. The evidence

<sup>760</sup> P 537.

<sup>761</sup> P 539 (Bratunac Brigade Daily Combat Report, 16 July 1995).

<sup>762</sup> P 649.

<sup>763</sup> P 478.

<sup>764</sup> Butler, T. 9204.

<sup>765</sup> Butler, T. 9204-9205.

<sup>766</sup> Butler, T. 9205.

<sup>767</sup> D 165, Butler, T. 9200-9203.

presented, although certainly demonstrating close co-ordination and co-operation, does not conclusively establish that the Drina Corps had assumed command of MUP units. There is no doubt, however, that the Drina Corps was well aware of the presence of MUP units within their zone of responsibility, as well as the action being taken by MUP units to block and capture Bosnian Muslim men in the column.

#### 7. Conclusions about the Involvement of the Drina Corps in the Srebrenica Crimes

290. There is no evidence that the Drina Corps devised or instigated any of the atrocities that followed the take-over of Srebrenica in July 1995. The evidence strongly suggests that the criminal activity was being directed by the VRS Main Staff under the direction of General Mladić. It was General Mladić who victoriously lead the VRS officers through the streets of Srebrenica on 11 July 1995 and it was he who threatened and intimidated the Bosnian Muslim and UNPROFOR representatives at Hotel Fontana meetings, on 11 and 12 July 1995, while demanding the surrender of the 28<sup>th</sup> Division. He was directing events in Potočari, both the transport of the women, children and elderly from Potočari<sup>768</sup> and the separation of the men and their detention in the White House.<sup>769</sup> Eyewitnesses reported the physical presence of General Mladić at the Sandići Meadow and Nova Kasaba football fields where thousands of Bosnian Muslim prisoners were detained on 13 July 1995.<sup>770</sup> He was also identified as being physically present at the Grbavci School Detention Site and at Orahovac, observing the executions on 14 July 1995.<sup>771</sup> Colonel Beara, the head of the Security Administration of the VRS Main Staff, was also much in view<sup>772</sup> and there is further evidence suggesting the involvement of other individuals from the Main Staff in the criminal activity.<sup>773</sup>

291. However, the Main Staff did not have the resources to carry out the activities that occurred in the area of the former enclave following the take-over of Srebrenica on its own. The Main Staff was an organisational shell and was largely dependent upon the personnel and equipment of its subordinate Brigades to implement its objectives. It stands to reason that the Drina Corps, the VRS

<sup>768</sup> See for example, P 445 (intercepted conversation at 1250 hours on 12 July 1995, in which General Mladić is heard speaking of buses and trucks, and stating "We'll evacuate them all, those who want to and those who don't want to.")

<sup>769</sup> See generally, Butler, T. 4853-4854.

<sup>770</sup> See also P 472 (an intercept on 15 July 1995, in which Colonel Beara refers to the "Commanders" orders, which appears to be a reference to General Mladić in the context of the executions); and Butler T. 5512 (discussing the presence of General Mladić on the Bratunac-Konjević Polje Road on 13 July 1995 while bodies lined the road, and his presence at Sandići where one individual was killed).

<sup>771</sup> See also the testimony of Witness S, T. 3261, regarding the possible involvement of General Mladić in the Jadar River executions on 13 July 1995.

<sup>772</sup> P 472; P 478; P 627.

<sup>773</sup> Butler, T. 4786-4789. See also P 627 (in which a Main Staff officer by the name of Trkulja is mentioned in the context of discussions relating to the prisoners).



subordinate Corps stationed in the area of Srebrenica would have been called upon and the evidence consistently bears this out.

292. The Drina Corps was not oblivious to the overall VRS strategy of eliminating the Srebrenica enclave. This had always been the long-term Drina Corps objective in the area. Although Krivaja 95 started out as a limited operation, it quickly accelerated to a plan for taking over Srebrenica town when the opportunity presented itself on the evening of 9 July 1995. From that point, the Drina Corps continued to shell the enclave intensively with the intent to cause the Bosnian Muslim civilians to flee the area. The Drina Corps was also fully cognisant of the catastrophic humanitarian situation of the Bosnian Muslim refugees in Potočari and the fact that Bosnian Serb forces were terrorising the population there.

293. When the plan to transport the Bosnian Muslim population out of Potočari was devised, the Drina Corps were called upon to procure the buses. Drina Corps personnel were also present in Potočari, overseeing the transportation operation, knowing full well that the Bosnian Muslims were not exercising a genuine choice to leave the area.

294. It has not been established that the Drina Corps was involved in devising the plan to execute the military aged Bosnian Muslim men of Srebrenica. However, although there may have been some initial desire on the part of the Main Staff to limit knowledge about the executions, this could not be sustained for three reasons. First, the executions formed an integral part of the VRS follow-up activities after the take-over of Srebrenica and could not be neatly or secretly compartmentalised. So, for example, the Bosnian Muslim men were being captured from the column at the same time and along the same road used for the transportation of the women, children and elderly out of the enclave. The Drina Corps was preoccupied with both the transportation operation and the passage of the Bosnian Muslim column at the time and thus inevitably had to know that the men were being taken prisoner. Second, the massive scale of the atrocities, all of which occurred within a section of the Drina Corps zone of responsibility (in an area that was no more than about 80 kilometres at its longest and widest points<sup>774</sup>) meant, inescapably, the Drina Corps must have known about their occurrence. Third, in the absence of sufficient personnel and equipment of its own, the Main Staff had to rely upon resources of the Drina Corps to assist with the executions.

295. Certainly the evidence does not conclusively demonstrate that the Drina Corps was informed of all aspects of the executions plan from the outset. Rather, it appears that the Corps'

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<sup>774</sup> These figures have been calculated on the basis of the map of the Drina Corps area of responsibility annexed to the Amended Indictment against General Krstić, dated 27 October 1999.

knowledge of, and involvement in, these atrocities gradually increased as the events unfolded. On 12 July and 13 July 1995, Drina Corps personnel knew that Bosnian Muslim men were being separated from the women, children and elderly in Potočari, taken from the buses passing through Tišća and detained, and that there was a real question as to what the fate of these men would be. From the evening of 12 July 1995, the Drina Corps knew that Bosnian Muslim men were being captured from the column attempting to break out of the enclave and that, on 13 July 1995, thousands of prisoners had been taken along the Bratunac-Konjević Polje road. The act of capturing the prisoners, of itself, was not unlawful. It could have been consistent with a plan to screen them for war crimes and/or ultimately exchange them for Bosnian Serb prisoners of war. However, it quickly became apparent that this was not the case. Bosnian Serb plans for the Bosnian Muslim men were radically revised in light of the knowledge that, on 12 and 13 July 1995, some 6,000 prisoners had been taken from the column fleeing through the woods. On 13 July 1995, the Drina Corps Command could not but have known that thousands of these captured Bosnian Muslim men had been taken to the Kravica Warehouse aboard busses originally procured by the Drina Corps for the transportation of the Bosnian Muslim refugees from Potočari and that these men were subsequently executed that same day. The Drina Corps Command must also have known that the remainder of the Bosnian Muslim men were not transferred to regular prisoner of war facilities but instead were detained in Bratunac without any provisions made for food, water or other necessities. For thousands of prisoners, arranging such provisions would have been no small task. Yet there was no evidence of any steps being taken in this regard, nor of inquiries made by the Drina Corps Command about what plans were being made for the Bosnian Muslim prisoners. It is also apparent that, by 13 July 1995 when a vehicle began scouting for detention sites, the Zvornik Brigade was aware of plans to transport the Bosnian Muslim prisoner's northward, to sites within its zone of responsibility. This decision to transport them to remote locations up north (again with no provision made for food or water), rather than to recognised prisoner of war facilities, amounted to an unequivocal signal that a mass executions plan was in operation. The Trial Chamber finds that, by the evening of 13 July 1995, the Drina Corps Command must have been aware of the VRS plan to execute all of the thousands of military aged Bosnian Muslim men who were captured in the area of the former enclave.

296. In contrast to the scant evidence implicating the Drina Corps in the commission of the mass executions that took place on 13 July 1995, there is substantial and compelling evidence showing that between 14 July and 17 July 1995, the resources of subordinate Drina Corps Brigades were utilised to assist with the mass executions. Given that these subordinate Brigades continued to operate under the Command of the Drina Corps, the Command itself must have known of the involvement of its subordinate units in the executions as of 14 July 1995. This is particularly so in

view of the pressing military situation facing these units which must have prompted especially careful monitoring of Corps resources.

### **C. The Role of General Krstić in the Srebrenica Crimes**

297. Having considered the role of the Drina Corps in the criminal activities that occurred following the take-over of Srebrenica in July 1995, the Trial Chamber now proceeds to consider the specific role that the accused, General Krstić, played in these events.

#### **1. Background Information**

298. General Radislav Krstić was born in the village of Nedjeljište, in the municipality of Vlasenica, Bosnia, on 15 February 1948. Prior to the war in Bosnia, General Krstić was a Lieutenant Colonel in the JNA and he joined the VRS in July 1992. His first appointment was as Commander of the 2<sup>nd</sup> Romanija Motorised Brigade, which initially fell under the organisational structure of the Sarajevo-Romanija Corps of the VRS, but was later resubordinated to the VRS Drina Corps. He was promoted to the rank of Colonel in October 1992.<sup>775</sup> On 8 August 1994, the RS Minister of Defence appointed him as Chief of Staff/Deputy Commander of the Drina Corps, effective 15 August 1994.<sup>776</sup> General Krstić assumed his new duty from the outgoing officer on 29 September 1994.<sup>777</sup>

299. In late December 1994, General Krstić was seriously injured when he stepped on a landmine. He was evacuated to a military hospital in Sokolac and subsequently transferred to the Military Medical Academy in Belgrade. As a result of the injuries he sustained from the landmine, part of his leg was amputated. He remained in rehabilitation and on leave until mid May 1995, when he resumed his work as the Drina Corps Chief of Staff/Deputy Commander.<sup>778</sup> On 2 May 1995, the Drina Corps Commander, General Živanović, recommended then-Colonel Krstić for early promotion to the rank of General-Major, which became effective on 28 June 1995.<sup>779</sup>

300. Throughout July 1995, General Krstić was frequently referred to by his shortened name of "Krlje". In the video of the VRS victory walk through Srebrenica on 11 July 1995, General Mladić is heard calling General Krstić by this name.<sup>780</sup> Witness Z, a Bosnian Muslim intercept operator,

<sup>775</sup> Krstić, T. 5972.

<sup>776</sup> Butler Report, para. 8.3 & fn. 313.

<sup>777</sup> Stipulations paras. 1-2; and Krstić, T. 5980.

<sup>778</sup> Krstić, T. 6026-6028.

<sup>779</sup> Agreed Facts, para. 12.

<sup>780</sup> P 3.

said that even he and his colleagues referred to General Krstić as “Krlle” amongst themselves, because General Krstić was so often called by that name in the intercepted conversations.<sup>781</sup>

## 2. Summary of the Defence Case

301. During his testimony before the Trial Chamber, General Krstić repeatedly stressed that, as a career military officer, he fully respected the laws of armed conflict. Several witnesses who testified on his behalf confirmed his strict approach to ensuring compliance with the Geneva Conventions among his troops and the humanitarian manner in which he treated members of the civilian population during the course of the war in Bosnia.<sup>782</sup> Defence Witness DC, who in July 1995 was a Drina Corps officer, expressed bewilderment as to why General Krstić should be the one on trial for the Srebrenica crimes:

All that we were able to see and hear about him [General Krstić] and our experience working with him has suddenly been totally undermined, and I simply cannot understand why he should have been accused. Because later when we learnt what had happened in the environs of Srebrenica, he could not have ordered that to happen, because throughout the war, everything he did and said was quite in the opposite sense.<sup>783</sup>

302. General Krstić accepted that the Drina Corps was responsible for planning and executing Krivaja 95, although he testified that he was not personally charged with drawing up the plans, nor did he provide any special advice in relation to the attack.<sup>784</sup> He emphasised that it was a very limited operation designed to separate the Srebrenica and Žepa enclaves and was a direct response to military activities being conducted by the ABiH in the area.<sup>785</sup> The civilian population was not targeted in any way<sup>786</sup> and General Krstić pointed out that the plan for Krivaja 95 specifically stated that, in dealing with prisoners of war and civilians, the Geneva Conventions were to be strictly complied with.<sup>787</sup>

303. From 5 July 1995, General Krstić was present at the FCP in Pribicevac in his capacity as Chief of Staff of the Drina Corps.<sup>788</sup> On 9 July 1995, however, he said that General Mladić arrived at the FCP and subsequently assumed command of the operation, thereby sidelining both himself

<sup>781</sup> Witness Z, T. 4478.

<sup>782</sup> See: Defence Opening Statement, T. 5954; Krstić, T. 5973-5974, 7407, 7412-7413; Defence Witness Mr. Milenko Radulović (hereafter “Radulović”) T. 7595; Defence Witness DA, T. 6890-6893, 6895-6896; Defence Witness Borovčanin, T. 6997; Defence Witness DC T. 7451-7452, 7508-7509, 7512; Defence Witness Mr. Vlado Rudović, T. 7535-7536, 7545; Defence Witness DE, T. 7696. Witness II also confirmed that General Krstić always behaved in a professional manner, both towards his own colleagues and Bosnian Muslim soldiers. T. 9156-9157.

<sup>783</sup> Defence Witness DC, T. 7451-7452.

<sup>784</sup> Krstić, T. 7571.

<sup>785</sup> Krstić, T. 6123-6125.

<sup>786</sup> Krstić, T. 6410, Radinović, T. 7953.

<sup>787</sup> P 428.

<sup>788</sup> Krstić, T. 6423.

and General Živanović (who was also at the FCP by that time).<sup>789</sup> It was General Mladić, acting pursuant to a decision issued by President Karadžić,<sup>790</sup> who ordered the continuation of the attack to capture Srebrenica.<sup>791</sup> Although he was present as General Mladić victoriously strode through the streets of Srebrenica, General Krstić testified that he was not happy about the unfolding events. When General Mladić impatiently ordered the further continuation of the attack towards Potočari and Bratunac, Drina Corps Brigade Commanders prevailed upon him to reconsider, pointing out the dire consequences for the civilian population and the international condemnation of the VRS that would surely follow.<sup>792</sup> Furthermore, they argued, the whereabouts of the 28<sup>th</sup> Division was unknown and, from a military point of view, it would be foolish to accelerate the attack in the absence of such information. On this occasion they were successful and General Mladić, although angry, retracted his orders.<sup>793</sup>

304. Following completion of Krivaja 95, General Krstić said that he attended a meeting called by General Mladić at the Bratunac Brigade Headquarters on the evening of 11 July 1995.<sup>794</sup> At this meeting, General Mladić informed the assembled Drina Corps troops of VRS plans to launch an attack against the “safe area” of Žepa.<sup>795</sup> General Mladić appointed General Krstić to be the commander of the forces engaged for Žepa.<sup>796</sup> Thereafter, General Krstić maintained, Žepa became his over-riding concern and he had no further knowledge of events occurring back in the Srebrenica area: General Mladić assumed complete control of all the Srebrenica follow-up activities. General Krstić testified that he met with General Mladić at the Drina Corps headquarters in Vlasenica on 13 July 1995, whereupon General Mladić reiterated: “Krstić, you are the Commander of the forces engaged towards Žepa. Until the completion of the Žepa operation, you should not be coming back to the Vlasenica Command Post.”<sup>797</sup>

305. Although General Krstić was present at two of the three Hotel Fontana meetings convened by General Mladić to discuss the fate of the Bosnian Muslim civilians from Srebrenica, he maintained that he did not speak or have any discussions with General Mladić about these Bosnian Muslim refugees.<sup>798</sup> He resolutely denied that he had any involvement in organising the transfer of

<sup>789</sup> Krstić, T. 6185 (stating that General Mladić arrived at the FCP on 9 July 1995); and Krstić, T. 6188, 6428-6429. (stating that after General Mladić assumed command, he and General Živanović were effectively sidelined).

<sup>790</sup> P 432.

<sup>791</sup> Krstić T.6427. This was confirmed by Defence Witness DB, T.7069-7070, T.7229.

<sup>792</sup> Krstić, T. 6195,

<sup>793</sup> Krstić, T.6196; and P 770 (Photo of General Mladić sitting down and General Krstić standing over him communicating, which General Krstić said was taken after General Mladić gave order to continue operation towards Potočari. Krstić T. 6509).

<sup>794</sup> Krstić, T. 6567. See also Defence Witness DB, T. 7092; and Defence Final Brief, para. 266.

<sup>795</sup> Krstić, T. 6575.

<sup>796</sup> Krstić, T. 6575-6576.

<sup>797</sup> Krstić, T. 6233

<sup>798</sup> Krstić, T. 6583.

the women, children, and the elderly from Potočari, or that he was even present in Potočari while that was happening. Upon the conclusion of the Hotel Fontana meeting, on 12 July 1995, he said he travelled back towards the Pribicevac FCP and, on the way, was stopped at a checkpoint in Potočari. He testified that soldiers acting upon orders from General Mladić refused to let him pass.<sup>799</sup> By coincidence, he happened upon a television crew at the checkpoint and agreed to give a brief interview, after which he turned around and went back in the direction of Bratunac in order to continue his journey to the Pribicevac FCP.<sup>800</sup> At the Potočari checkpoint he saw no signs of any refugees or the buses transporting them.

306. General Krstić testified that he first learned of the existence of the Bosnian Muslim column in the evening of 12 July 1995.<sup>801</sup> At this time he was informed that the column was comprised of members of the 28<sup>th</sup> Division and heard nothing about the presence of civilians in the column.<sup>802</sup> General Krstić also maintained that he heard nothing about the subsequent capture of men from the column during the week commencing 12 July 1995.<sup>803</sup>

307. General Krstić argued that, throughout the period during which the executions took place, he held the position of Chief of Staff of the Drina Corps. According to his version of events, he did not become Commander of the Drina Corps until 20 or 21 July 1995, when General Mladić appointed him to this position during a ceremony at a restaurant in the Han Kram hamlet.<sup>804</sup> General Živanović remained in his position as Commander of the Drina Corps until this time. Furthermore, as already noted, General Krstić said that, at a meeting at the Bratunac Brigade Headquarters on the evening of 11 July 1995, General Mladić appointed General Krstić commander of the VRS military operations in Žepa. From that point, until the conclusion of the Žepa operation on 2 August 1995, General Krstić was entirely focused upon Žepa and had no involvement in any other Drina Corps matters.<sup>805</sup> General Krstić testified that he had absolutely no knowledge of the executions until the end of August or beginning of September in 1995. Several other Defence witnesses confirmed that knowledge of the executions was not widespread within the VRS prior to August 1995. Witness DA, a Drina Corps officer during July 1995, said that he had no access to reliable information about the killings prior to the time that General Krstić was arrested.<sup>806</sup> Defence Witness DC, another Drina Corps officer, did not hear any reports about the executions until two or

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<sup>799</sup> Krstić, T. 6644.

<sup>800</sup> Krstić, T. 6642-6643.

<sup>801</sup> Krstić, T. 7390.

<sup>802</sup> Krstić, T. 7390.

<sup>803</sup> Krstić, T. 7392-7393.

<sup>804</sup> Krstić, T. 6263-6265.

<sup>805</sup> Krstić, T. 6585.

<sup>806</sup> Defence Witness DA, T. 6962.

three months after the take-over of Srebrenica.<sup>807</sup> In particular, from 12 July to 2 August 1995, Witness DC did not hear any rumours about disappearances.<sup>808</sup> A Drina Corps soldier engaged in the Žepa operation, testified that during the period he was in Žepa, he did not hear anything about the executions. He found out about the allegations for the first time at the beginning of October when he saw reports on television.<sup>809</sup> Similarly, Defence Witness DF, another Drina Corps officer, did not receive any information that VRS killed thousands of Bosnian Muslim prisoners from Srebrenica from any Serb sources: he only became aware of these allegations through the mass media.<sup>810</sup>

308. As already discussed, the existence of a parallel chain of command, whereby General Mladić and the Main Staff of the VRS assumed control of decision making relating to both the capture of Srebrenica, and the Srebrenica follow-up operations (including the bussing of the Bosnian Muslim population and the detention and execution of thousands of Bosnian Muslim men) was a central contention of the Defence case.

309. General Krstić did not contest the fact that the mass executions of Bosnian Muslim men in the Srebrenica enclave had taken place in July 1995,<sup>811</sup> but he maintained that he first found out about these crimes at the end of August, or the beginning of September 1995. At this time, another Drina Corps officer informed him of certain aspects of the Bosnian Muslim executions perpetrated by senior officers in the VRS Main Staff and of the fact that one senior officer of the Drina Corps was involved in these crimes.<sup>812</sup> Upon receipt of the information, he took steps to have this officer removed, but to no avail.<sup>813</sup> General Krstić felt there was nothing else he could do given that a superior officer from the Main Staff had instigated the crimes. He also held grave fears for the safety of his family and himself and saw no option but to remain silent.<sup>814</sup> Resignation was not something he considered appropriate as, in his view, the crimes were instigated by isolated individuals within the VRS and could not be attributed to the VRS as a whole.<sup>815</sup> Consequently, General Krstić stayed on in the VRS and contributed to the implementation of the Dayton Peace Accords.<sup>816</sup> At the time of his arrest, he was the Commander of the 5<sup>th</sup> Corps. General Krstić said

<sup>807</sup> Defence Witness DC, T. 7459.

<sup>808</sup> Defence Witness DC, T. 7514.

<sup>809</sup> Defence Witness Radulović, T.7 599.

<sup>810</sup> Defence Witness DF, T. 8542.

<sup>811</sup> See the discussion *supra* para. 78.

<sup>812</sup> Krstić, T. 6315, 6751-6753, 6851.

<sup>813</sup> Krstić, T. 6827

<sup>814</sup> Krstić, T. 6828, 7388.

<sup>815</sup> Krstić, T. 7389

<sup>816</sup> Krstić, T. 6309.

he made no effort to hide or to avoid contact with UN forces, as his conscience was clear about his conduct during the war.<sup>817</sup>

310. The Trial Chamber now considers the claims made by the Defence in light of the evidence presented by the Prosecution.

### 3. The Command Position Held by General Krstić Throughout the Relevant Period

311. There was no dispute between the parties that, upon the commencement of Krivaja 95 on 6 July 1995, General Krstić was Chief of Staff of the Drina Corps. There was, however, a fundamental disagreement as to the precise time at which General Krstić assumed the role of Commander of the Drina Corps. The Prosecution argued that General Krstić assumed the role of Commander of the Drina Corps at around 2000 hours on 13 July 1995, at which time the mass executions of Bosnian Muslim men had commenced. The Defence denied this, and stated that General Krstić did not take over as Commander of the Drina Corps from General Živanović until 20 or 21 July 1995, at a special hand-over ceremony at the Han Kram restaurant. General Mladić arrived in a helicopter with General Tolimir and read out a decree issued by President Karadžić, thereby placing General Živanović at the disposal of the Main Staff, appointing General Krstić as Commander of the Drina Corps and appointing Colonel Andrić as Chief of Staff of the Drina Corps.<sup>818</sup> By this time all of the executions had already occurred. However, even on the Defence version of events, General Krstić was Commander of the Drina Corps in September and early October 1995 when the bodies of executed Bosnian Muslim men were removed from primary graves to more remote secondary mass gravesites.<sup>819</sup>

#### (a) The Evidence

312. The Prosecution relied both on documentary evidence and eyewitness evidence from two individuals, who were members of the Drina Corps in July 1995, to support its claim that General Krstić took over command of the Drina Corps on 13 July 1995. One of these individuals, Witness II, testified that, on the day prior to the commencement of the Žepa operation<sup>820</sup> (which began on 14 July 1995) he and General Krstić travelled to Viogora where General Krstić addressed the troops assembling for Žepa.<sup>821</sup> Afterwards, they returned to the Drina Corps Command Post in Vlasenica where General Mladić had already begun assembling all the officers present. General Mladić then

<sup>817</sup> Krstić, T. 6309-6311.

<sup>818</sup> Krstić T. 6263-6266.

<sup>819</sup> See the discussion *supra* para. 78.

<sup>820</sup> Witness II, T. 9128, 9131.

<sup>821</sup> Witness II, T. 9128.



appointed General Krstić as Corps Commander.<sup>822</sup> The time of the ceremony was between four and six in the afternoon.<sup>823</sup> However, Witness II was unsure about exactly when the appointment of General Krstić as Corps Commander became effective.<sup>824</sup> Witness II was quite clear, however, that “at Žepa...everybody addressed General Krstić as Commander, meaning Corps Commander.”<sup>825</sup>

313. The account given by Witness II was largely corroborated by the statement “OA” made to the OTP on 29 March 2000. “OA” said that in the afternoon of 13 or 14 July 1995, General Mladić assembled all those present at the Drina Corps Headquarters in Vlasenica and announced that, from that very day, General Krstić had assumed the role of Corps Commander and that General Živanović was retiring. At the same time, General Mladić appointed Colonel Andrić as Corps Chief of Staff.<sup>826</sup> “OA” thought that the transport of the Bosnian Muslim population from Potočari was still going on at the time the ceremony took place,<sup>827</sup> which lends some support to the proposition that the ceremony must have taken place on 13 July 1995. The Trial Chamber notes, however, that “OA’s” statement was not tested under cross-examination and, therefore, the weight attributed to it must be reduced accordingly. However, an intercepted conversation at 1822 hours on 13 July further supports the presence of General Krstić at the Drina Corps Headquarters in the company of General Mladić<sup>828</sup> and is consistent with the evidence of both Witness II and “OA”.

314. Although the parties agreed that official documentation regarding the hand over process must have been completed, neither party was able to produce this vital piece of paper during the main trial. It was only after the Defence surrebuttal case had been completed in April 2001 that the Prosecution finally managed to secure, from General Živanović, documentation relating to the appointment of General Krstić as Commander of the Drina Corps. The document supported the Prosecution’s claim that General Mladić had indeed appointed General Krstić as Corps Commander during a ceremony at Drina Corps headquarters on the afternoon of 13 July 1995 and that General Krstić assumed his new role of Corps Commander at that time.<sup>829</sup>

315. The Defence, while not disputing the authenticity of the stamp or signature on the document,<sup>830</sup> argued that the document could not be viewed as evidence that General Krstić assumed the position of Corps Commander on 13 July 1995. General Radinović concluded it was

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<sup>822</sup> Witness II, T. 9129.

<sup>823</sup> Witness II, T. 9171.

<sup>824</sup> Witness II, T. 9167.

<sup>825</sup> Witness II, T. 9167.

<sup>826</sup> P 886.

<sup>827</sup> P 887; and P 886.

<sup>828</sup> P 458.

<sup>829</sup> P 905.

<sup>830</sup> T. 9676.

possible that the document “was created by General Živanović at the time for some unofficial purpose, or was created after the fact.”<sup>831</sup>

316. Certainly, there are some inconsistencies in the 13 July 1995 handover document. Foremost amongst these is the fact that the document states that the handover was carried out pursuant to “the Decree of the President of Republika Srpska”. However, the decree naming General Krstić as commander of the Drina Corps was not issued by President Karadžić until 14 July 1995 and stated it was to take effect as of 15 July 1995. According to Mr. Butler, the Prosecution’s own military expert, under the law in Republika Srpska, President Karadžić was the only person authorised to appoint someone as Commander of the Drina Corps.<sup>832</sup> Mr. Butler was unable to explain why President Karadžić would have signed an order to take effect on 15 July 1995 if he actually meant it to take effect on 13 July 1995. General Dannatt speculated that General Mladić had appointed General Krstić as Corps Commander on 13 July pursuant to oral permission from President Karadžić with written ratification following the next day.<sup>833</sup>

317. The Trial Chamber is also mindful of Defence evidence that, pursuant to VRS rules and practice, certain formal procedures must be completed before the command of the Corps can be transferred.<sup>834</sup> In particular, General Radinović argued that official minutes of handover (bearing the signatures of General Mladić, General Krstić, and General Živanović) would have to be prepared before General Krstić could acquire the rights and duties attached to the position of Corps Commander.<sup>835</sup> However, at least one Defence witness acknowledged that formal procedures for the hand over of duty could be, for good cause, dispensed with.<sup>836</sup>

318. Consistent with the notion that General Živanović ceased to be Corps Commander some time on the evening of 13 July 1995, the last known order signed by General Živanović in this capacity was sent out at 1730 hours on 13 July 1995.<sup>837</sup> The same evening, at 2030 hours, General Krstić issued his 13 July 1995 search order directing units of the Bratunac and Milići Brigades and the Skelani Separate Battalion to begin sweep operations in the area of the former Srebrenica enclave.<sup>838</sup> General Krstić signed this order with the word “Commander” under his signature. The

<sup>831</sup> D 181 (Statement of Prof. Gen. Radovan Radinović, dated 26 May 2001, submitted in response to the Prosecutor’s Motion to Reopen), p. 7; Radinović, T. 9733.

<sup>832</sup> P 406; and Butler, T. 4752.

<sup>833</sup> Dannatt, T. 5703-5705.

<sup>834</sup> Krstić, T. 7412; Defence Witness DE, T. 7612-7614; Defence Witness DB, T. 7337-7338.

<sup>835</sup> Radinović, T. 9736-9739.

<sup>836</sup> Defence Witness DB, T. 7297. This witness was an officer in the Drina Corps in July 1995 and accepted the possibility that someone may, *de facto*, assume command prior to the issuance of formal documentation signed by the President.

<sup>837</sup> P 462.

<sup>838</sup> P 463.

Prosecution argued that, by signing as “Commander”, General Krstić was making a clear statement that he had taken over as Commander of the Drina Corps.<sup>839</sup> The following day, the Bratunac Brigade issued an implementing order in response to the search order issued by General Krstić and raised no questions about his authority to direct their activities.<sup>840</sup>

319. The Defence did not dispute that the 13 July 1995 search order was signed by General Krstić as Commander, but maintained that it was done only in his role as Commander of the Žepa operation and not the entire Drina Corps.<sup>841</sup> The Prosecutor in turn argued that the normal practice for someone in such a position would be to identify himself as a commander of the particular operative group, not just as Commander.

320. The Prosecution also relied upon the substance of the 13 July 1995 search order to support the claim that General Krstić had assumed the role of Corps Commander by the time it was issued. In the opinion of Mr. Butler, this order dealing with search operations in the former Srebrenica enclave had absolutely nothing to do with the Žepa operation.<sup>842</sup> By contrast, General Krstić testified that the terrain of the former enclave had to be searched before starting towards Žepa and that the order therefore formed part of the preparations for the Žepa operation that was due to begin on 14 July 1995.<sup>843</sup> Certainly, the Trial Chamber heard evidence that the whereabouts of the 28<sup>th</sup> Division of the ABiH was a matter of great concern to the VRS units preparing for Žepa.<sup>844</sup>

321. The most puzzling aspect of the Prosecution case is that, although the last written order issued by General Živanović in his capacity as Drina Corps Commander was dated 13 July 1995, there is evidence that he continued to exercise some command authority up until 14 July 1995. General Živanović is heard in a number of radio intercepts on 14 July 1995. At 0910 hours on 14 July 1995 the duty officer of the Zvornik Brigade, Major Jokić, called and spoke to General Živanović.<sup>845</sup> Major Jokić told General Živanović that he had information about a “huge group” of “Turks” moving towards Velja Glava. General Živanović instructed Major Jokić to inform “Mane” who had “policemen in Konjević Polje and Zvornik.” General Živanović stated that the Zvornik Public Security Centre would have to handle it as “the Army is busy.” That evening, at 2038 hours, General Živanović told Major Jokić that reinforcements would be arriving in the morning and that Obrenović (the Zvornik Brigade Chief of Staff) should maintain pressure and reconnaissance activities against the column. During this conversation, General Živanović said “take this as an

<sup>839</sup> P 759 (showing both orders side by side for the purposes of comparison).

<sup>840</sup> P 464. See also Butler T.4890; and Dannatt T.5644, and Radinović, T. 8350-8351.

<sup>841</sup> Krstić, T. 6248-6249; Defence Witness DB T. 7335.

<sup>842</sup> Butler, T. 4888.

<sup>843</sup> Krstić, T. 6686.

<sup>844</sup> See the discussion *supra* para. 303.

<sup>845</sup> P 555.

order.”<sup>846</sup> The Prosecution hypothesised that, although General Živanović had been relieved of Command by this time, he was still a superior VRS officer. Given that General Krstić appears to have been out of contact on 14 July 1995, the Prosecution argued that General Živanović was stepping in on urgent matters relating to the column.<sup>847</sup> Another conversation, recorded at 2056 hours on 14 July 1995, took place between General Živanović and Colonel Vuković, the commander of the Skelani Separate Battalion. General Živanović stated he had received the paper that Blagojević (the Commander of the Bratunac Brigade) sent and that Colonel Vuković should read his conclusions.<sup>848</sup> In a further conversation, on 14 July 1995 at 2056 hours, an unidentified major was heard to ask “(h)ow can I find out where General Živanović is as I’ve been waiting here for him on his orders since 1700 hours.” The unidentified major was subsequently put through to speak to General Živanović later in the same conversation. He then proceeded to give General Živanović a briefing on certain events, to which General Živanović responded “excellent.”<sup>849</sup> Mr. Butler was not able to explain why General Živanović continued to play such a prominent role in co-ordinating the work of the Drina Corps if the command had truly passed to General Krstić, although Witness II testified that General Živanović had close ties with people in the area and had remained there for two months or more after he had ceased being Corps Commander.<sup>850</sup>

322. However, one intercepted conversation at 0935 hours on 14 July 1995 provides a clue that General Živanović was winding up his involvement with the Drina Corps. General Živanović said to the other participant in the conversation “I’m here at the command post but I’m slowly packing my backpack, they’ve [presumably the Main Staff or the Supreme Command] already asked me to go somewhere else...”<sup>851</sup> There is also one radio intercept at 2236 hours on this same date that suggests General Krstić may have been physically present in the area around Srebrenica and that he had been briefed on certain matters. The conversation is between “Malinić” (probably Major Zoran Malinić, the Commander of the Military Police Battalion of the 65<sup>th</sup> Protection Regiment) and an unidentified individual. The unidentified individual said “Krstić has just come up here. He went back there, he’ll call me later. He’ll look into it, and will assign someone to co-ordinate it...Yes, yes I know...Hey listen, I know. Just take it easy, this is an open line. I’m up to speed...Živanović told me. Well, in short, now I have told Krle [the shortened name for General Krstić] about that, about what should/be/done. I suggested what he should do, so he’ll do something...”<sup>852</sup>

<sup>846</sup> P 556.

<sup>847</sup> Butler, T. 5049-5051, and 5438.

<sup>848</sup> P 558; Butler, T. 5439-5442; and Butler Report, para. 8.25 & fns. 348-349; para. 8.27 & fn.351.

<sup>849</sup> P 558.

<sup>850</sup> Witness II, T. 9129.

<sup>851</sup> Butler Report, para. 8.21 & fn. 342, 343; P 466.

<sup>852</sup> P 364/1 (14 July 1995 tab 11).

323. At 0954 hours on 15 July 1995, Colonel Beara, the Security Chief of the Main Staff, was heard in an intercepted conversation asking General Živanović to arrange for some men to be sent to him.<sup>853</sup> General Živanović replied that he could not “arrange for that anymore” and told Colonel Beara to call the “Zlatař” (the Drina Corps Command) switchboard at extension 385. A few minutes later, a conversation was intercepted between General Krstić and Colonel Beara during which Colonel Beara repeated the request he had made to General Živanović and asked General Krstić to help him get the men he needed. General Krstić undertook to see what he could do to help Colonel Beara, clearly showing that he had taken over this authority from General Živanović.<sup>854</sup>

324. Also on 15 July 1995, Colonel Ignat Milanović, the Drina Corps Chief of Anti-Aircraft Defence, sent a report to General Krstić at the FCP, proposing the appointment of Colonel Blagojević, the Commander of the Bratunac Brigade, to co-ordinate forces operating in the vicinity of the Bratunac-Konjević Polje-Milići Road.<sup>855</sup> Under cross-examination, General Krstić agreed that he had accepted this proposal.<sup>856</sup> Subsequently, on 16 July 1995, Colonel Blagojević sent a report stating that he had visited the units involved and organised their joint action, again demonstrating that General Krstić was exercising command competencies in relation to Drina Corps units operating back in the Srebrenica area.<sup>857</sup>

325. In the days following 15 July 1995, General Krstić is noted issuing orders about matters clearly unrelated to the Žepa operation, further confirming his role as Corps Commander. On 17 July 1995 General Krstić signed an order relating to mobilisation issues as Commander.<sup>858</sup> At 0615 hours on that same day, General Krstić had a conversation with Captain Trbić, who was acting as duty officer for the Zvornik Brigade, and then Colonel Pandurević, the Commander of the Zvornik Brigade.<sup>859</sup> During the course of the conversation, General Krstić acknowledged he had received reports sent by the Zvornik Brigade about the situation back in its zone of responsibility and that he had personally received an update from the Brigade Commander. In a further intercepted conversation, on 17 July 1995 at 0910 hours, General Krstić urgently ordered Lieutenant Colonel Vlačić (who was temporarily acting as Chief of Staff of the newly formed 4<sup>th</sup> Drinski Light Infantry

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<sup>853</sup> P 472.

<sup>854</sup> P 478.

<sup>855</sup> P 537.

<sup>856</sup> Krstić, T. 6695-6696.

<sup>857</sup> P 539.

<sup>858</sup> P 481. The Trial Chamber does not accept the explanation put forward by General Krstić that, although dated 17 July 1995, this document was signed, on about 22 or 23 July, after his return from the Žepa operation. See Krstić, T. 6729-6730, 7361-7362.

<sup>859</sup> P 650

Brigade deployed in the area of the Sarajevo Romanija Corps<sup>860</sup>) to return to his unit (the Birać Brigade).<sup>861</sup> This demonstrates that General Krstić was taking responsibility for matters unconnected to the Žepa operation. Finally, on 19 July 1995 at 0812 hours, Colonel Pandurević, the Commander of the Zvornik Brigade, was heard in conversation with Colonel Cerović, the Drina Corps Assistant Commander for Moral, Legal and Religious Affairs. Colonel Cerović informed Colonel Pandurević that in accordance with an order issued by General Krstić there could be no shift rotations for the Sarajevo-Romanija Corps, again a matter that appears to be unconnected with the Žepa operation, and the Defence did not seek to provide an explanation to the contrary.<sup>862</sup>

326. On 17 July 1995, a typed document was sent by the Bratunac Brigade, discussing a date for a farewell ceremony for General Živanović on 23 June (probably meant to read 23 July). The document was originally written by hand and dispatched on 14 July 1995 to the communications centre to be typed and distributed.<sup>863</sup> The document reads:

(w)e wish to inform you that we shall be able to secure the presence of the Command and representatives of the municipal authorities for the official farewell for General Živanović, hitherto commander of the Drina Corps...

Also on 17 July 1995, General Živanović himself issued an announcement relating to the “send-off” lunch-time gathering planned for him at the Jela restaurant in Han Kram on 20 July 1995.<sup>864</sup> While the title of the document was “Send-off ceremony for the corps commander, announcement” the body of the document again referred to General Živanović as the “hitherto corps commander”. The parties strenuously debated whether the use of the word “hitherto” indicates that, at the time these documents were written (14 July and 17 July respectively), General Živanović was no longer the Commander of the Drina Corps; a dispute that was complicated by translation ambiguities.<sup>865</sup> Certainly though, General Živanović’s signature on the document he issued on 17 July 1995 did not include any reference to him being Corps Commander. By contrast, documents issued by General Živanović prior to 13 July show that his signature invariably included a reference to his position as Commander of the Drina Corps.

<sup>860</sup> P 652.

<sup>861</sup> P 652.

<sup>862</sup> P 694. See also P 677 (intercepted conversation at 0712 hours on 18 July 1995 between General Krstić and Colonel Veletić discussing matters outside the Corps zone); and P 680 (intercepted conversation on 18 July 1995 at 0716 hours between General Krstić and Colonel Cerović, in which General Krstić directs Colonel Cerović to go to a location that appears to be unconnected with Žepa and orders him to assume command when he gets there.)

<sup>863</sup> P 467; and Butler, T. 44896-4899.

<sup>864</sup> D 181/5.

<sup>865</sup> General Krstić (Krstić, T. 6720-6721) and General Radinović (Radinović, T. 8353, 8450-8451) both testified that the term used in the original Serbian version of the document does not mean that Živanović was no longer the commander of the Drina Corps. The Prosecution obtained an official statement from the Tribunal translation service confirming that the correct English translation for the word was “hitherto”. See T. 8356.

327. A number of Defence witnesses attested that General Krstić did not take over as Corps Commander until around 20 July 1995.<sup>866</sup> Witness II, while confirming that he and General Krstić did go to the Han Kram restaurant sometime during the course of the Žepa operation, was unsure as to the nature of the ceremony that General Krstić attended there.<sup>867</sup> The Prosecution suggested that this event at the Han Kram restaurant was simply a farewell lunch for General Živanović.<sup>868</sup>

(b) Conclusions

328. The conflicting evidence reveals that, from early July 1995, General Krstić began to assume more and more *de facto* responsibility within the Drina Corps. As discussed in further detail below, he was the person primarily directing Krivaja 95 from the Drina Corps Forward Command from 6 July 1995, at least until General Mladić arrived on 9 July 1995.<sup>869</sup> Further, while General Živanović attended the first meeting at the Fontana Hotel with General Mladić on 11 July 1995 at 2200 hours, it was General Krstić who attended the second meeting that same evening at 2300 hours and the third meeting the following morning: General Živanović was not present. Some witnesses at these meetings came away with the impression that General Krstić was the Drina Corps Commander.<sup>870</sup>

329. The documentation of the hand over ceremony on 13 July 1995, which is corroborated by two eye-witness accounts, is very strong evidence that, on that date, General Mladić appointed General Krstić as Commander of the Drina Corps during a ceremony at the Vlasenica Headquarters. The reasons why this ceremony took place prior to the date of the Decree issued by President Karadžić remain unknown. The Trial Chamber acknowledges that the handover may not have been carried out strictly in accordance with the procedures laid down in VRS regulations. However, the Trial Record is replete with examples of formal procedures being dispensed with due to the exigencies of war.<sup>871</sup>

330. The Prosecution accepted that General Živanović was, in accordance with the decree issued by President Karadžić, “officially on paper” Corps Commander until 15 July 1995.<sup>872</sup> Nonetheless, from the afternoon of 13 July 1995, General Krstić behaved as Commander of the Drina Corps,

<sup>866</sup> Radinović, T. 7993; Defence Witness DC, T. 7450; Defence Witness Borovčanin, T. 6998; Defence Witness Radulović, T. 7593-7594.

<sup>867</sup> Witness II, T. 9152-9153, T. 9168.

<sup>868</sup> Witness JJ, T. 9707.

<sup>869</sup> See the discussion *Infra* para. 334.

<sup>870</sup> Witness C, T. 1240; Mandžić T.1044.

<sup>871</sup> General Krstić himself acknowledged that, in some situations, formal procedures are not complied with and that oral orders may be sufficient. See Krstić, T. 7405, T. 7412. General Radinović similarly acknowledged that sometimes things have to be carried out in an ad hoc fashion in emergency situations. See Radinović, T. 8471-8472. The Trial Chamber also notes that General Mladić was accustomed to over-riding rules and procedures.

commencing with the 13 July search order, which he signed in his newly acquired capacity of Corps Commander. There was no confusion on the part of the Drina Corps: it was clearly understood that General Krstić was the Commander from 13 July 1995 and his orders were implemented accordingly.<sup>873</sup> The evidence accords with the opinion of the Prosecution's military expert, Major Dannatt, that the "logical time" to appoint a new Corps Commander would be between the conclusion of the attack on Srebrenica and prior to the attack on Žepa.<sup>874</sup>

331. The Trial Chamber finds that, on the evening of 13 July 1995, General Mladić appointed General Krstić as Commander of the Drina Corps and that, from that point in time, General Krstić operated as the Drina Corps Commander and the entire Corps recognised him as such.

#### 4. The Role of General Krstić in Krivaja 95

332. The role that General Krstić played in Krivaja 95, the VRS assault on the Srebrenica enclave, is not directly relevant to the crimes charged in the Indictment, in the sense that the attack on Srebrenica is not alleged to be a violation of international law. However, Krivaja 95 forms an important backdrop to the Trial Chamber's consideration of the criminal responsibility of General Krstić for the crimes that followed the take-over of Srebrenica.

333. There was agreement between the parties that, as Chief of Staff, General Krstić played a role in planning and executing Krivaja 95. General Krstić said that his participation was limited to evaluating the overall situation together with General Živanović.<sup>875</sup> Mr. Butler accepted the possibility that General Krstić may not have written the plan himself, but maintained that the plan was "a reflection of the work of the staff officers of the Drina Corps of which he [General Krstić] is the functional co-ordinator and controller...".<sup>876</sup>

334. While General Živanović appears to have been in formal control of the Krivaja 95 preparations, General Krstić assumed a pivotal role in the command of the attack itself,<sup>877</sup> at least until the appearance of General Mladić on the scene on 9 July 1995.<sup>878</sup> When President Karadžić

<sup>872</sup> Butler, T. 5361.

<sup>873</sup> Butler, T. 4901.

<sup>874</sup> Dannatt, T. 5656-5657.

<sup>875</sup> Krstić, T. 6374.

<sup>876</sup> Butler, T. 5432.

<sup>877</sup> Two Defence witnesses, who were both at the Pribicevac FCP, testified that General Krstić was in command of the operation. Defence Witness DB, T. 7226 (testifying that General Živanović didn't interfere significantly and that his impression was that, up until 9 July 1995 the operation was under the command of General Krstić); and Defence Witness DC, T. 7438, (testifying that "Krivaja 95 was under the command of General Radislav Krstić...").

<sup>878</sup> Defence Witness DC, an officer in a Drina Corps Brigade involved in Krivaja 95, testified that the Commander of the Brigade this witness belonged to in July 1995 received orders from General Krstić up until 10 July 1995 and thereafter from General Mladić directly. Defence Witness DC, T.7438-7440.



sent the order for the VRS to take the enclave on 9 July 1995, it came with instructions to deliver “personally” to General Krstić.<sup>879</sup> The Defence asserted that General Krstić and General Živanović were sidelined upon the arrival of General Mladić and therefore played no role in the continued attack on Srebrenica.<sup>880</sup> This was confirmed by Defence Witness DC, a Drina Corps officer who was present at the Pribicevac FCP. Witness DC did not recall General Krstić issuing any orders after the arrival of General Mladić.<sup>881</sup> However, when General Mladić victoriously entered Srebrenica town with a camera crew in tow on the afternoon of 11 July 1995, General Krstić and General Živanović were right beside him.<sup>882</sup> Later, both General Mladić and President Karadžić praised General Krstić for his leadership role in the conquest of the enclave. In December 1995, General Mladić gave a speech at a ceremony for the Drina Corps during which he told them:

You fought heroically under the leadership of your Chief of Staff or Corps Commander, who, although severely wounded, made a tremendous contribution to the victory of the Serbian arms and the Serbian army, not only against the Muslim gladiators in Srebrenica and Žepa, but also against those who helped them, now by land, now by air, now from behind the conference table or through the media...They could not be saved because they did not deserve to be saved. All of those who obeyed the agreement and came to the UNPROFOR base were saved and transported.<sup>883</sup>

Although General Krstić suggested that General Mladić may have been referring to General Živanović in this speech,<sup>884</sup> the reference to the “Chief of Staff or Corps Commander” who had been “severely wounded” leaves little room for doubt that General Krstić was the subject of these comments. General Krstić was both Chief of Staff and Corps Commander during the period of the Srebrenica and Žepa operations and the injuries he sustained as a result of his land mine accident are well known. General Krstić was present at the ceremony and indeed was sitting on the stage with General Mladić.<sup>885</sup> On several occasions President Karadžić gave General Krstić credit for the victory in Srebrenica,<sup>886</sup> although the Trial Chamber accepts that these statements may be explained, at least in part, as an attempt by President Karadžić to deflect attention from General Mladić as their relationship deteriorated.<sup>887</sup>

<sup>879</sup> P 432; and Butler Report, para. 8.10 & fn. 325.

<sup>880</sup> Krstić, T. 6427-6429, 6433, 6434, 6436-6437.

<sup>881</sup> Defence Witness DC, T. 7440.

<sup>882</sup> P 145 (showing General Krstić with General Mladić and others entering Srebrenica on 11 July 1995).

<sup>883</sup> P 367 (video of ceremony); P 482 (a magazine article in Srpska Vojska on 28 December 1995 reporting the speech given by General Mladić); and see also Butler T. 5243-5247.

<sup>884</sup> Krstić, T. 6446.

<sup>885</sup> P 756 (photo of ceremony).

<sup>886</sup> See P 112/1 (article dated July 20 1995 in the *Belgrade Crna* where President Karadžić refers to General Krstić and General Živanović as the “chief architects” of the Bosnian Serb victories in Srebrenica and Žepa); and P 430 and P 99, (a transcript and video respectively of a speech given by President Karadžić giving General Krstić credit for planning the attack on Srebrenica).

<sup>887</sup> General Krstić explained the comments as an attempt by President Karadžić to discredit General Mladić. See Krstić T. 6308, 7570-7572. Mr. Butler also acknowledged this possibility. See Butler, T. 5468.

335. Despite efforts to distance himself from Krivaja 95, particularly the second phase involving the capture of Srebrenica, the Trial Chamber is left without doubt that General Krstić was no ordinary participant in these events. Regardless of whether or not he was completely sidelined upon the arrival of General Mladić, it is clear that General Krstić was fully informed of the conduct of the operation. Given his position as Deputy Commander/Chief of Staff of the Drina Corps and his prominent role in the drafting and execution of Krivaja 95, the Trial Chamber finds that General Krstić must have known the VRS military activities against Srebrenica were calculated to trigger a humanitarian crisis, eventually leading to the elimination of the enclave. He thus played a leading role in the events that forced the terrorised civilian population of Srebrenica to flee the town in fear of their lives and move toward Potočari, setting the stage for the crimes that followed. From his vantage point at the FCP in the hills of Pribicevac, he had an unobstructed view of the impact of the shelling upon the terrorised Bosnian Muslim residents of Srebrenica town.<sup>888</sup> It is inconceivable that a commander so actively involved in the campaign would not have been aware of such an obvious cause and effect relationship between the shelling and the exodus of residents from Srebrenica that was apparent to virtually all UN military personnel in the area.<sup>889</sup>

336. General Krstić entered Srebrenica with General Mladić and was present when General Mladić announced that “the moment has finally come to take revenge on the Turks here”.<sup>890</sup> Shortly after the conclusion of the VRS operations in Srebrenica and Žepa, an article was published in Srpska Vojska, on 25 August 1995, reflecting an interview General Krstić had given to Borislav Djurjević.<sup>891</sup> General Krstić used ethnically inflammatory language, such as the term “Ustasha” and referred to the Muslims going back on their word about unconditionally laying down their arms following the take-over of Srebrenica. In a communication that General Krstić sent to the Zvornik Brigade on 30 October 1995, he congratulated them on their efforts to liberate centuries-old Serbian territories from the hated enemy and to prevent further genocide against the Serbian people.<sup>892</sup> In November 1995, an article about the Drina Corps in a magazine called Drinski called “The Youngest but an Elite Corps Already”, again quotes General Krstić as using derogatory terms such as “Balija” in reference to Muslims from the Second World War.<sup>893</sup> General Krstić spoke of the VRS struggles to remedy past injustices and, three times, he spoke of saving the Serbian people from the threat of “genocide” at the hands of the ABiH.<sup>894</sup> General Krstić is also heard using derogatory language to refer to Bosnian Muslims in conversations intercepted by the ABiH during

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<sup>888</sup> Butler, T. 4187.

<sup>889</sup> See the discussion *supra* paras. 122-125.

<sup>890</sup> P 145 (video of Srebrenica 11 July 1995).

<sup>891</sup> P 743.

<sup>892</sup> P 745.

<sup>893</sup> Krstić, T. 6540.-6541.

<sup>894</sup> P 744.

July 1995.<sup>895</sup> Although the Trial Chamber accepts that this type of charged language is commonplace amongst military personnel during war, it is of note that, during his testimony before the Trial Chamber, General Krstić denied that he ever used derogatory language such as “Turks” or “Balijas” to refer to the Bosnian Muslims.<sup>896</sup> The Trial Chamber cannot accept this in light of the evidence presented before it.

337. The Trial Chamber finds that General Krstić was well aware that the shelling of Srebrenica would drive tens of thousands of Bosnian Muslim civilians from the town into the small area of Potočari they thought “safe” because of the UN base there. He must have known that, inevitably, basic needs for shelter, food, water and medicine at that site would prove overwhelming. The Trial Chamber further finds that General Krstić was fully apprised of the VRS territorial goals in the Srebrenica enclave, which included cleansing the area of the Bosnian Muslim population.

5. 12-13 July 1995: The Role of General Krstić in the Removal of the Bosnian Muslim Women, Children and Elderly from Potočari

338. General Krstić claimed that, from the time he was appointed commander of the Žepa campaign, on the evening of 11 July 1995,<sup>897</sup> the preparations for that operation became his overriding concern. In particular, General Krstić testified that he was not present when the Bosnian Muslim women, children and elderly were removed from Potočari, on 12 and 13 July 1995, and that he played no role in making the arrangements for their transportation. At this time, the Defence argued, General Krstić was organising the deployment of his forces for Žepa in the direction of Viogora-Derventa-Milići-Vlasenica-Han Pijesak-Plane and, from 12 July 1995 onwards, General Krstić was establishing his new FCP for the Žepa operation in the village of Krivače.<sup>898</sup> However, these claims are contradicted by overwhelming evidence that, in the opinion of the Trial Chamber, demonstrates that General Krstić played a significant role in the removal of the Bosnian Muslim civilians from Potočari.

<sup>895</sup> P 650, (in which General Krstić asks Trbić “have you killed the Turks up there?”).

<sup>896</sup> Krstić, T. 6514-6515.

<sup>897</sup> The Prosecution argued that the meeting at the Bratunac Headquarters at which General Mladić first announced his plans for the attack on Žepa actually occurred in the evening of 12 July. This conclusion was based upon the testimony of Witness II, as well as evidence that the road General Krstić reportedly travelled along the night of 11 July was not open to VRS traffic until 12 July 1995. See Prosecution Final Brief para. 241 and fn 764. The Trial Chamber finds it unnecessary to make a specific finding on this point. Whether General Krstić received his assignment for Žepa on 11 or 12 July does not, in the view of the Trial Chamber, make a material difference to the outcome of the case.

<sup>898</sup> Radinović Report, para. 4.1.

(a) Attendance at the Hotel Fontana Meetings

339. General Krstić attended two of the three meetings convened by General Mladić at the Hotel Fontana dealing with issues relating to the fate of the civilian population from Srebrenica. The first meeting he attended was held on 11 July 1995 at 2300 hours and the second on 12 July 1995 at 1000 hours.<sup>899</sup> At these meetings General Krstić represented the Drina Corps and he sat next to General Mladić, although he did not speak.<sup>900</sup>

340. As a result of his attendance at these meetings, there can be no doubt that General Krstić knew about the refugees in Potočari and their desperate plight: that was a primary reason for convening the meeting and the subject of detailed discussion by the Dutch Bat Commander, Colonel Karremans. Mr. Mandzić, the unofficial Bosnian Muslim civilian representative, also spoke openly about the crisis conditions facing the refugees in Potočari, including the heat, overcrowding and lack of food and water.<sup>901</sup> General Krstić was present when the transportation of the Bosnian Muslim civilians out of Potočari was discussed and he heard the threatening language used by General Mladić. In particular, General Krstić was there when General Mladić bluntly stated to Mr. Mandzić "...bring people who can secure the surrender of weapons and save your people from destruction."<sup>902</sup> It was apparently clear to General Krstić, as it was to the others present at the meetings, that staying in Srebrenica or Potočari would not be an option for the Bosnian Muslim civilians.<sup>903</sup>

341. General Krstić testified that he did not hear the cries of a pig being slaughtered outside the Hotel Fontana on the evening of 11 July 1995. He further claimed that he was unaware that Bosnian Muslims would be particularly offended by such an act.<sup>904</sup> The Trial Chamber finds these claims untenable. The Chamber accepts that the death cries of the pig being slaughtered were clearly audible to all those present at the meeting and that this act was calculated to insult and threaten the Bosnian Muslim civilians. The import of this gesture, as well as other acts of intimidation, such as placing the broken signboard from the Srebrenica Town Hall in front of Mr. Mandzić, could hardly be ignored by anyone present at the meeting.<sup>905</sup> Most importantly, General Krstić was present when General Mladić announced that the survival of the Bosnian Muslim population was linked to the complete surrender of the ABiH.<sup>906</sup> Under cross-examination, General

<sup>899</sup> Krstić, T. 6208-6209, 6213-6214.

<sup>900</sup> Mandzić, T. 974, 987-989, 1042; Witness B, T. 886, 925-926; P 40.

<sup>901</sup> P 40 (transcript of meeting).

<sup>902</sup> P 40.

<sup>903</sup> See the discussion *supra* para. 130.

<sup>904</sup> Krstić, T. 6552-6554.

<sup>905</sup> See the discussion *supra* para. 128.

<sup>906</sup> See the discussion *supra* para. 130.

Krstić conceded that he was unaware of the ABiH ever agreeing to lay down their arms.<sup>907</sup> Significantly, he said that he wondered how the Bosnian Muslim civilians would ever be able to comply with the demands made by General Mladić, but that these thoughts “remained deep inside” him.<sup>908</sup> He did nothing to raise these concerns with General Mladić.

342. General Krstić was also present at the Hotel Fontana when General Mladić told members of UNPROFOR and representatives of the Bosnian Muslim civilian population, that men of military age in Potočari would be screened for war crimes.<sup>909</sup>

343. The Trial Chamber finds that, as a result of his attendance at the Hotel Fontana meetings on 11 and 12 July 1995, General Krstić was fully apprised of the catastrophic humanitarian situation confronting the Bosnian Muslim refugees in Potočari and that he was put on notice that the survival of the Bosnian Muslim population was in question following the take-over of Srebrenica.

(b) Organisation of the buses

344. The Trial Record also indicates that General Krstić played a principal role in organising the buses for the evacuation throughout the day of 12 July 1995. A radio intercept, at 0735 hours on 12 July 1995, shows General Krstić ordering Lieutenant Colonel Krsmanović, the Drina Corps Transport Officer, to procure 50 buses from Pale, Visegrad, Rogatica, Sokolac, Han Pijesak, Vlasenica, Milići, Bratunac and Zvornik.<sup>910</sup> Later intercepts show Colonel Krsmanović working throughout the day on the organisation of the buses.<sup>911</sup> At 12:10, a conversation was intercepted in which General Krstić ordered Colonel Krsmanović to start moving the buses.<sup>912</sup> Shortly thereafter, General Mladić was also recorded conversing with an unidentified person about the movement of the buses. That person told General Mladić that the buses had left ten minutes earlier.<sup>913</sup> At 1305 hours, General Krstić was heard talking to Lt. Colonel Šobot, the Personnel and Mobilisation Officer for the Drina Corps Rear Services. General Krstić asked how many buses were on the road, and Šobot answered, “Twenty.” General Krstić then asked to be connected to the Vlasenica Brigade and requested Colonel Kosorić, the Drina Corps Chief of Intelligence, who was not there. The evidence shows that Colonel Kosorić was also involved in organising buses for Potočari.<sup>914</sup> General Krstić then told “Savo” from the Vlasenica Brigade to secure the road “up to the

<sup>907</sup> Krstić T. 6579-6580.

<sup>908</sup> Krstić T. 6623.

<sup>909</sup> Krstić, T. 6621-6622. Although witnesses testified that General Mladić had made this statement at the meeting on the morning of 12 July 1995, General Krstić indicated this may have happened on the evening of 11 July 1995. In any event, General Krstić accepted that he knew General Mladić had made this statement.

<sup>910</sup> P 435, Butler, T. 4827-4828

<sup>911</sup> P 404 fn.130; and P 438.

<sup>912</sup> P 440.

<sup>913</sup> P 404 fn 132; and P 445.

tunnel...that's where they'll be disembarking."<sup>915</sup> In the context of the events happening contemporaneously with this conversation, the Trial Chamber accepts that General Krstić was speaking of the Bosnian Muslim women, children and elderly from Potočari. Survivors who were amongst those transported from Potočari speak of going through a tunnel along the road from Luke to Kladanj when they left the buses and continued their journey towards Bosnian Muslim held territory on foot.<sup>916</sup> Several other intercepts also appear to connect General Krstić with the organisation of transport for Potočari.<sup>917</sup> These intercepts, showing General Krstić's involvement in the organisation and planning of transferring the civilian population from Potočari, are consistent with the organisational role expected of the Chief of Staff of a Corps engaged in an operation such as the transport of tens of thousands of people out of Potočari.

345. The intercepts are further corroborated by the evidence of Witness II, who testified that, on 12 July 1995, General Krstić ordered the requisition of buses and trucks from local companies for use in transporting the Bosnian Muslim civilians out of Potočari.<sup>918</sup> Further, Witness II recalled that, on 12 July 1995, General Mladić asked General Krstić "a couple of times how far they had gone in preparations, whether everything was finished, whether the buses were ready and things like that."<sup>919</sup> General Krstić told General Mladić that all the necessary measures had been taken and that the buses would be arriving as soon as possible.<sup>920</sup> Although Witness II was not sure of exactly what orders were issued to whom, he was sure that General Krstić was involved in the organisation of the buses.<sup>921</sup>

346. General Krstić, however, adamantly denied that he was involved in any conversations about the transfer of the civilian population from Potočari and said that he was completely without communications from the afternoon of 12 July 1995 until the early evening hours of that day.<sup>922</sup> At 13.05 hours, when he was recorded in intercepted conversations talking to the Drina Corps senior officers about buses, General Krstić said he was on the road coming back from the checkpoint at Potočari and heading to the Pribicevac FCP; he had no phone in his car. Witness II confirmed that

<sup>914</sup> See the discussion *supra* paras. 143.

<sup>915</sup> P 446; Butler, T. 4839-4840.

<sup>916</sup> See generally, Butler, T. 4842.

<sup>917</sup> See for example, P 359, and Butler T. 4831-4832 (showing General Krstić involved with the issue of fuel); P 440, and P 443 (referring to fuel and stating that "Krstić" (a shortened name for General Krstić, (see Butler T. 4834) ordered it). P 448 (intercept at 1848 hours on 12 July 1995 between two Main Staff personnel and referring to "Krstić" who the Prosecution's military expert, Butler, believes to be a reference to General Krstić given the context of the conversation. Butler, T. 4848).

<sup>918</sup> Witness II, T. 9122-9123.

<sup>919</sup> Witness II, T. 9123. See also Witness II, T. 9157-9161.

<sup>920</sup> Witness II, T. 9123.

<sup>921</sup> Witness II, T. 9157-9161.

<sup>922</sup> Krstić, T. 6666.

the radio communications and built-in telephones fitted into the vehicles used by General Krstić did not work because relays were faulty.<sup>923</sup> General Krstić also denied having any communications once he reached Pribicevac, arguing that the communications centre there had already been dismantled.<sup>924</sup> There was a lengthy debate between the Prosecution and the Defence about whether the Pribicevac FCP had been dismantled at about 1900 hours on 11 July 1995 as claimed by the Defence.<sup>925</sup> Regardless of the precise time at which the Pribicevac FCP was dismantled, overwhelming evidence demonstrates that General Krstić had access to communications during the relevant period (whether at Pribicevac or elsewhere) and that he organised buses to transport the Bosnian Muslim population from Potočari. The intercepts and eyewitness testimony to this effect are supported by a contemporaneous public statement made by General Krstić demonstrating an awareness and acceptance of responsibility for the transportation operation. In a television interview, given on 12 July 1995 at Potočari, General Krstić said:

The Drina Corps has been conducting this operation successfully. We have not suspended this operation. We are going all the way to liberate the municipality of Srebrenica. We guarantee safety to civilians. They will be taken safely to a destination of their choice.<sup>926</sup>

He made no mention of the possibility that the Bosnian Muslim refugees could remain in Srebrenica.

347. The Trial Chamber finds that General Krstić ordered the procurement of buses for the transportation of the Bosnian Muslim population from Potočari on 12 and 13 July 1995, that he issued orders to his subordinates about securing the road along which the busses would travel to Kladanj and that he generally supervised the transportation operation.

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<sup>923</sup> Witness II, T. 9113.

<sup>924</sup> Krstić, T. 6611.

<sup>925</sup> Defence Witness DB, a Drina Corps communications officer, insisted that the communications facilities at the Pribicevac FCP had been dismantled at about 1900 hours on 11 July 1995. See Defence Witness DB, T. 7078-7079, 7244-7245. The testimony of Defence Witness DB was corroborated by Defence Witness DG who was a Drina Corps signalman at Pribicevac in July 1995. Defence Witness DG said that he left the Pribicevac FCP on the day that the army entered Srebrenica (namely 11 July 1995), at about 1830-1930 hours, and that by the afternoon of 12 July 1995, the communications devices had already been transferred to the new FCP at Krivače. See Defence Witness DG, T. 9231-9232, 9320. The Prosecution argued that these witnesses must have been mistaken about the time at which the communications facilities at Pribicevac were dismantled. In particular, Defence Witness DB testified that, on the same evening he dismantled the Pribicevac FCP, he passed through Potočari and saw VRS soldiers present in the area amongst the Bosnian Muslim civilians and UNPROFOR members. See Defence Witness DB, T. 7081-7082. The Prosecution adduced evidence showing that there were no VRS soldiers present at Potočari until 12 July 1995, and therefore that Defence Witness DB must be mistaken about the date upon which the FCP had been dismantled. See Koster, T. 9040-9041.

<sup>926</sup> P 66; and P 67.

(c) Presence in Potočari(i) 12 July 1995

348. General Krstić testified that, upon the conclusion of the Hotel Fontana meeting at about 1200 hours on 12 July 1995, he went in the direction of Potočari, but was stopped at a checkpoint manned by troops of the 65<sup>th</sup> Protection Regiment: General Mladić had ordered that no one was permitted to pass through.<sup>927</sup> General Krstić recalled seeing both Colonel Kosorić and Colonel Popović at the checkpoint. According to General Krstić, he ordered Colonel Kosorić to report at the Krivače FCP the next morning: they did not discuss any matters relating to the situation in Potočari.<sup>928</sup> General Krstić agreed that, at about 1230 hours, he gave a television interview at the Potočari checkpoint, but he said it took place at a location close to his car as his injured leg made it difficult for him to walk any distance.<sup>929</sup> The video of this interview shows buses moving past, although General Krstić said that, during the time he was stopped at the Potočari checkpoint, he did not see the refugee population or any signs of the buses transporting them.<sup>930</sup> The Prosecution presented evidence that General Krstić was only about four or five bus lengths away from the refugees in Potočari when he gave the interview.<sup>931</sup> General Krstić maintained that he was only in Potočari for a very brief period and neither saw nor heard anything alerting him to the ongoing removal of some 20,000 Bosnian Muslim refugees.<sup>932</sup>

349. General Krstić testified that, after he left the Potočari checkpoint, he went back to Bratunac, on his way to the Pribicevac FCP. According to his version of events, he arrived at the Pribicevac FCP around 1330 or 1400 hours and received a progress report from one of his subordinate officers about the preparations for the Žepa operation.<sup>933</sup> He subsequently went to Viogora where the units for Žepa had commenced assembling<sup>934</sup> and then travelled to the Drina Corps Headquarters in Vlasenica, arriving between 1700 and 1800 hours.<sup>935</sup> He stayed at Headquarters only a short time to carry out preparations for his departure to Žepa<sup>936</sup> and then visited relatives in Han Pijesak, prior

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<sup>927</sup> Krstić, T. 6218.

<sup>928</sup> Krstić, T. 6219, 7404.

<sup>929</sup> Krstić, T. 6634.

<sup>930</sup> Krstić, T. 6634, 6638.

<sup>931</sup> See P 769 (on which Ruez, an investigator from the OTP, marked with two red arrows the area that he believes General Krstić was standing at the time of the interview).

<sup>932</sup> Krstić, T. 6633-6634.

<sup>933</sup> Krstić, T. 6220-6221.

<sup>934</sup> Krstić, T. 6221-6227.

<sup>935</sup> Krstić T. 6227.

<sup>936</sup> Krstić T. 6229.



to arriving at the Krivače FCP between 2200 and 2300 hours.<sup>937</sup> General Krstić said he spent that night at his wife's parent's home in Kusace, near the FCP at Krivače.<sup>938</sup>

350. By contrast, the evidence adduced by the Prosecution demonstrates that, on 12 July 1995, General Krstić was present in Potočari for a more substantial period of time than he admitted. The evidence also reveals that General Krstić was fully aware of, and involved in, the events taking place in Potočari relating to the transport of the Bosnian Muslim civilians out of the compound. Witness F testified that he saw General Krstić in Potočari on two consecutive days following the take-over of Srebrenica.<sup>939</sup> Colonel Kingori saw General Krstić in Potočari on 12 July 1995 and said that he arrived "somewhere in the middle of the day...".<sup>940</sup> General Krstić was in the vicinity, said Colonel Kingori, "for quite some time. Let's say over an hour...",<sup>941</sup> although he recalled that General Krstić was inside the compound for only about 15 minutes.<sup>942</sup> Major Franken saw General Krstić in Potočari "(s)omewhere around the 12<sup>th</sup>, 13<sup>th</sup>, or 14<sup>th</sup> of July".<sup>943</sup> Later, however, he thought it would most likely have been on 12 July in the afternoon, around 2-3pm.<sup>944</sup> The most compelling evidence, however, comes from Witness II. This witness testified that, after the Hotel Fontana meeting on the morning of 12 July 1995, he accompanied General Krstić to Potočari. Witness II assumed the reason for this trip was to speak to UNPROFOR about the transport of the Bosnian Muslim civilians out of the compound.<sup>945</sup> While they were in fact stopped at a VRS military checkpoint as General Krstić maintained, they were subsequently permitted to proceed into Potočari.<sup>946</sup> Witness II's recollection was that he and General Krstić stayed in Potočari "(f)or an hour or maybe two hours".<sup>947</sup> During this time, Witness II recalled seeing the Bosnian Muslim refugees and the buses that had just arrived, although he was not sure whether the buses had already begun transporting people out at that stage.<sup>948</sup> The eyewitness testimony about the presence of General Krstić in Potočari on 12 July 1995 is consistent with the intercept evidence showing that General Krstić was fully involved in organising the removal of the Bosnian Muslim civilians from Potočari.

<sup>937</sup> Krstić, T. 6229-6231.

<sup>938</sup> Krstić, T. 6231.

<sup>939</sup> Witness F, T. 1516-1519.

<sup>940</sup> Kingori, T. 1837-8, 1846, T.1906.

<sup>941</sup> Kingori, T.1908.

<sup>942</sup> Kingori, T. 1839.

<sup>943</sup> Franken, T. 2065.

<sup>944</sup> Franken, T. 2084.

<sup>945</sup> Witness II, T. 9123.

<sup>946</sup> Witness II, T. 9124.

<sup>947</sup> Witness II, T. 9124.

<sup>948</sup> Witness II, T. 9165-9166.

351. The Defence pointed out that one of the Prosecution's witnesses, Colonel Kingori, did not report the presence of General Krstić in Potočari to his own command, whereas he did report the presence of General Mladić, as well as Vukovic (an officer from the Skelani Battalion and liaison with Dutch Bat), Colonel Lazar Aćamović (the Drina Corps Assistant Commander for Rear Services) and Major Nikolić (the Assistant Commander for Intelligence and Security Affairs of the Bratunac Brigade). Colonel Kingori explained that the list of officers in his report was not intended to be exhaustive and that VRS officers other than those mentioned were also present in Potočari.<sup>949</sup> However, his omission of General Krstić's name from the report does tend to suggest that the officers named played a more visible role in the events taking place in Potočari compound than General Krstić did. This is confirmed by the fact that Colonel Aćamović told Colonel Kingori that he was the special representative of General Mladić in the area.<sup>950</sup>

352. As to the conduct of General Krstić while he was in Potočari, several witnesses testified to seeing General Krstić in and around the Potočari compound conferring with other high-ranking military officers,<sup>951</sup> including General Mladić.<sup>952</sup> It appeared to several of these witnesses that General Krstić, as well as the other officers, were giving orders to the soldiers.<sup>953</sup> This conclusion was based on the witnesses' observations of the body language and the comings and goings of the officers.<sup>954</sup> Witness F said that the officers would speak to the soldiers and then the soldiers would go off and perform tasks.<sup>955</sup> Due to language barriers, however, none of the Dutch Bat personnel could confirm the content of the conversations between General Krstić and the soldiers.

353. Nonetheless, it was clear to the UN and Dutch Bat observers that General Krstić and the other high ranking officers present in Potočari were:

...all working together, for the same cause, just to ensure that all the Muslims leave that place, all of them board those buses and go outside the enclave.<sup>956</sup>

Witness F further said that the officers he saw, including General Krstić:

...were present in order to see that everything was going according to plan, and sometimes they gave their commands, they gave orders, or they told people what to do, or it was reported to them how the situation was progressing.<sup>957</sup>

<sup>949</sup> Kingori, T. 1909.

<sup>950</sup> Kingori, T. 1874-1876.

<sup>951</sup> Witness F, T. 1517-1518; Kingori, T. 1837-8, 1846; Franken, T. 2065.

<sup>952</sup> Witness F, T. 1525; Kingori, T. 1848.

<sup>953</sup> Kingori, T. 1848, Witness F, T. 1523-1524.

<sup>954</sup> Witness F, T. 1556.

<sup>955</sup> Witness F, T. 1906, 1910.

<sup>956</sup> Kingori, T. 1887.

<sup>957</sup> Witness F, T. 1523-1524. See also Witness F, T. 1517.

354. The Trial Chamber finds that General Krstić was in Potočari for between an hour and two hours in the afternoon of 12 July 1995 and that he was present with other VRS officers, including General Mladić, overseeing the bussing of the Bosnian Muslim women, children and elderly. The Trial Chamber rejects the evidence given by General Krstić that he was only present for a few minutes at the Potočari checkpoint and that he had no knowledge of anything that was occurring in Potočari involving the Srebrenica refugees. As a result of his presence in Potočari on the afternoon of 12 July 1995, General Krstić must have known of the appalling conditions facing the Bosnian Muslim refugees and the general mistreatment inflicted by VRS soldiers on that day.

(ii) 13 July 1995

355. General Krstić vigorously denied being anywhere near Potočari on 13 July 1995. In the morning of that day, he testified, he first went to the Krivače FCP and then to the Drina Corps Command Post in Vlasenica to check on the progress of the plans for Žepa.<sup>958</sup> While there, he had a brief conversation with General Mladić about the Žepa operation.<sup>959</sup> The presence of General Krstić at the Drina Corps Headquarters on 13 July 1995 was corroborated by Defence Witness DA who saw him there that morning.<sup>960</sup> Upon leaving Vlasenica, General Krstić said that he set off towards Han Pijesak with Witness DA.<sup>961</sup> He then spent the afternoon visiting hospitalised soldiers with Witness DA, as well as making social visits to his own relatives and relatives of Witness DA.<sup>962</sup> Defence Witness DA corroborated all of this.<sup>963</sup> General Krstić testified that he then travelled to the Krivače FCP and arrived there between 1700 and 1800 hours in the evening of 13 July 1995.<sup>964</sup> Witnesses DA<sup>965</sup> and DB<sup>966</sup> both provided corroboration of this sequence.

356. The Prosecution presented scant evidence in support of its claim that General Krstić was present in Potočari on 13 July 1995. Witness F, the Dutch Bat soldier who said that General Krstić was present on two consecutive days following the take-over of Srebrenica, was unable to identify precisely the dates and at one point in his evidence stated that the “second” day was actually 12 July 1995.<sup>967</sup> Colonel Kingori testified that General Krstić “was still around” in Potočari on 13 July

<sup>958</sup> Krstić, T. 6231.

<sup>959</sup> Krstić, T. 6233, 6669-6670.

<sup>960</sup> Defence Witness DA, T. 6918-6919.

<sup>961</sup> Krstić T. 6233.

<sup>962</sup> Krstić, T. 6234-6236.

<sup>963</sup> Defence Witness DA, T. 6886-6887, 6926-6927.

<sup>964</sup> Krstić, T. 6236, 6669.

<sup>965</sup> Defence Witness DA, T. 6927.

<sup>966</sup> Defence Witness DB, T. 7097.

<sup>967</sup> The witness initially referred to the “first” day as being the day on which soldiers first came into the enclave, (which the Prosecutor argues was 12 July 1995). However, Witness F subsequently testified that the 12<sup>th</sup> was the “second” day. See Witness F, T. 1533. On cross-examination the witness testified the “first” day was on the day the enclave fell, namely 11 July 1995. See Witness F, T. 1554. However, on redirect, the Witness said that the “first” day was the day

1995, but gave no further details about his observations on that day.<sup>968</sup> The Trial Chamber is unable to rely on this evidence to establish that General Krstić was present in Potočari on 13 July 1995. Further, it was clear from the testimony of Witness II, who was with General Krstić throughout the day of 13 July 1995, that General Krstić did not return to Potočari that day. Undoubtedly, on this day, General Krstić must have been primarily focusing on all the preparations necessary for the operation that he would lead in Žepa, which was due to commence the next day.

357. The Trial Chamber finds that the Prosecution has not proved that General Krstić was present in Potočari on 13 July 1995.

(d) Efforts Made by General Krstić to Ensure the Safety of the Bosnian Muslim Civilians Transported out of Potočari

358. On more than one occasion, General Krstić was heard to emphasise that no harm must befall the Bosnian Muslim civilians who were being transported out of Potočari. In an intercepted conversation, at 1305 hours on 12 July 1995, in which he was heard discussing the movement of the buses and the point at which the Bosnian Muslims on the buses would be disembarking, General Krstić said: "Take care, nothing must happen to any of them...is that clear".<sup>969</sup> The Defence argued that, in fact, the literal translation of this is that "not a hair must be touched on their heads" and conveyed that the greatest possible care should be taken in relation to the Bosnian Muslim civilians.<sup>970</sup> In the interview he gave in Potočari on 12 July 1995, General Krstić also emphasised that the civilians would be treated properly and transported wherever they wanted to go.<sup>971</sup>

359. General Krstić displayed a similar concern during the removal of the Bosnian Muslim civilian population from Žepa later that same month. In a conversation intercepted on 25 July 1995, the participants discussed an order, personally given by General Krstić, that the convoy bound for Kladanj was to be treated in a civilised fashion "so that nothing of the kind of problem we had before happens."<sup>972</sup> This indicates that General Krstić was anxious to ensure that the transport of the civilian population from Žepa was conducted properly, but it also suggests that he was fully aware that there had been problems with similar operations in the past.

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the VRS troops came into Potočari, which was the same day that the transportation of the refugees began (i.e. 12 July 1995). See T. 1559, and Witness F, T. 1516.

<sup>968</sup> Kingori, T. 1859, 1908.

<sup>969</sup> P 446.

<sup>970</sup> T. 9336.

<sup>971</sup> See generally, Butler, T. 5472-5473.

<sup>972</sup> D 167.

## 6. The Role of General Krstić in the Executions

### (a) Evolution of the Plan to Execute the Military Aged Bosnian Muslim Men of Srebrenica

360. The Trial Chamber heard no evidence that killing the Bosnian Muslim men of Srebrenica was part of the original plan for Krivaja 95. To the contrary, the Prosecution built its case on the theory that the plan to execute the Bosnian Muslim men of Srebrenica was devised in the evening hours of 11 July and the early morning hours of 12 July 1995, once the VRS became aware of the presence of men amongst the crowd at Potočari.<sup>973</sup> At the Hotel Fontana meetings on the evening of 11 July 1995, General Mladić had asked UNPROFOR to organise the buses for the transport of the Bosnian Muslim refugees out of the enclave. However, at the meeting on 12 July, General Mladić informed the UNPROFOR representatives that the Bosnian Serbs would provide the buses, despite the fact that such resources were incredibly difficult to come by within the enclave at that time. He also announced, for the first time, that the Bosnian Muslim men of military age would be separated and screened for war crimes. The experts all agreed that this would have been a legitimate undertaking and the Prosecution did not dispute the existence of a list of suspected Bosnian Muslim war criminals in the enclave drawn up by the Bratunac Brigade on 12 July 1995.<sup>974</sup> The Defence also pointed out that notes from interrogations of Bosnian Muslim men from Srebrenica were subsequently seized during a search of the Bratunac Brigade offices by the OTP.<sup>975</sup> However, it quickly became apparent that the Bosnian Serbs had no intention of screening the men in accordance with accepted military practice. Instead, the men, as well as some boys who were not of military age, were seized and divested of their personal belongings, including their identification papers, which were later destroyed to ensure no trace of their identity remained. Even Bosnian Muslim men, on the brink of reaching Bosnian Muslim-held territory and clearly posing no military threat, were pulled off the buses at Tišća on 12 and 13 July 1995 and dragged back into Bosnian Serb custody. The detention of the captured men, not in recognised prisoner of war facilities such as those at Bajkovići, but in brutal conditions and without adequate food or water all reflect the pre-conceived plan to execute them.<sup>976</sup>

361. The Prosecution also contended that the execution plan, given its scale and the level of detailed organisation involved, must have been conducted as a “military operation” in which the Drina Corps was fully involved. General Krstić, argued the Prosecution, was frequently in the presence of General Mladić between 9 and 13 July, including at the Hotel Fontana between 11 and 12 July 1995 and was involved in the development of the plan from the outset. The Trial Chamber

<sup>973</sup> Prosecution Final Brief, para. 233.

<sup>974</sup> See the discussion *supra* para. 156.

<sup>975</sup> Butler, T. 5224; and Defence Final Brief para. 32.

does not accept this argument. Whereas there is ample direct evidence showing that General Krstić was involved in organising matters relating to the transportation of the Bosnian Muslim women, children and elderly out of Potočari, there is no corresponding evidence showing him involved in making arrangements for the executions. He was not seen or heard giving any orders that could be construed as arranging the detention sites, guards, blindfolds, ligatures or other matters relating specifically to the executions. To the contrary, during this period, General Krstić was engaged as the Commander for the operation at Žepa, which was due to start on 14 July 1995. He had plans of attack to devise, troops to marshal and a new forward command post to establish. The fact that General Krstić, along with several units of the Drina Corps, was concentrating on Žepa just as the plan for the Srebrenica executions went into operation, suggests that the plan to kill the Bosnian Muslim men was not conceived as a military operation to be primarily implemented by the Drina Corps. Further, it is undisputed that non-Drina Corps units, such as the 10<sup>th</sup> Sabotage Detachment, were brought into the area to participate in the executions. Similarly, it appears that the security unit of the Main Staff was heavily involved in carrying out the crimes and there are indications on the Trial Record that the Drina Corps was not always consulted about what was going on within its zone of responsibility.<sup>977</sup>

362. The Trial Chamber cannot discount the possibility that the executions plan was initially devised by members of the VRS Main Staff without consultation with the Drina Corps Command generally and General Krstić in particular. Nonetheless, the fact remains that the executions were carried out on a massive scale, all within the Drina Corps zone of responsibility. General Krstić was present within the area of the former Srebrenica enclave at least up until the evening of 13 July by which time the first mass executions had already taken place. Between 14 and 19 July 1995 units of the Drina Corps became increasingly involved in the executions. The Trial Chamber has already found that the Drina Corps Command must have known about the plan to execute the Bosnian Muslim men as of the evening of 13 July 1995. The Trial Chamber will now consider the evidence directly relating to General Krstić's developing knowledge about the fate of the captured Bosnian Muslim men and their subsequent execution, and his participation therein.

(b) Separation and Mistreatment of the Bosnian Muslim Men in Potočari

363. The Trial Chamber has found that General Krstić was in Potočari during the afternoon of 12 July 1995. As a result of his presence there and his role in organising the buses, General Krstić

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<sup>976</sup> Prosecution Final Brief, para. 235-236.

<sup>977</sup> See the discussion *supra* paras. 265.

must have been aware that the men were not being bussed out along with the women, children and elderly, but instead were separated and detained or transported elsewhere.

364. By the afternoon of 12 July 1995, some of the men were already being bussed out to detention facilities in Bratunac. Buses were diverted from the transportation of the women, children and elderly for this purpose. As the buses left the compound, the men shouted out, begging the UN to do something; it was clear from the manner in which the VRS soldiers were terrorising the Bosnian Muslim men in Potočari that their lives were imperilled.<sup>978</sup> However, there is no clear evidence that General Krstić witnessed the men being bussed to Bratunac during the time he was in Potočari. Indeed the evidence reveals that General Krstić was present in Potočari in the early afternoon of 12 July 1995. Witness II said the buses had just arrived when he and General Krstić were there, giving rise to the possibility that Witness II and General Krstić had departed by the time the bussing of men to Bratunac commenced. However, given his principal role in organising the buses and overseeing the transportation of the women, children and elderly, he must at least have been informed that buses were being diverted for the purpose of transporting the men to Bratunac.

365. Eyewitnesses placed General Krstić in the vicinity of the White House where the Bosnian Muslim men were detained. In the afternoon of 12 July 1995, Colonel Kingori, alarmed at reports that Bosnian Muslim men were being taken behind the White House and shot, asked General Mladić to explain the situation. In an effort to allay his fears, General Mladić took Colonel Kingori to the White House. When they arrived, Colonel Kingori saw General Krstić and other VRS officers there.<sup>979</sup>

366. Given his physical presence close to the White House, on the afternoon of 12 July 1995, the Prosecution also asks the Chamber to infer that General Krstić must have been aware that Bosnian Muslim men were being taken out and shot in the vicinity. Colonel Kingori heard single shots not far from the White House on that day.<sup>980</sup> Indeed, Colonel Kingori said that, when he went to the White House with General Mladić to investigate allegations about the shootings, General Krstić was at the White House. This might suggest that General Krstić had also been at the White House earlier when the shootings that prompted Colonel Kingori's investigations had occurred. Once again, however, the evidence as to the timing of the shootings and the presence of General Krstić near the White House was far from precise. It is clear from the Trial Record that the situation at the White House and indeed the compound generally, deteriorated as the day wore on. It is also clear

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<sup>978</sup> See the discussion *supra* para. 159.

<sup>979</sup> Kingori, T. 1844-1846, 1848.

<sup>980</sup> Kingori, T. 1853

that General Krstić was in Potočari early in the afternoon of 12 July 1995. None of the witnesses directly testified that they saw General Krstić at the White House at the time these acts occurred. Consequently, the Trial Chamber is unable to conclude, beyond a reasonable doubt, that General Krstić necessarily knew about these shootings.

367. However, the Trial Chamber is satisfied that, from his presence at the White House, General Krstić must have known the segregated men were being detained in terrible conditions and were not being treated in accordance with accepted practice for war crimes screening. General Krstić must have realised, as did all the witnesses present in and around the compound that day, that there was a terrible uncertainty as to what was going to happen to the men who had been separated. Certainly, General Krstić took no steps to clarify with General Mladić or anyone else what the fate of the men would be.

(c) Separation of the Bosnian Muslim Men in Tišća

368. As the buses carrying the Bosnian Muslim women, children and elderly to Kladanj reached Tišća, they were stopped and further screening was carried out for men who had managed to escape the net in Potočari. A witness recounted how he was taken from the bus at Tišća on 13 July 1995 and spent the rest of the day detained in a school building. In the evening hours, he was taken out, with about 22 other men, for execution, but managed to survive.<sup>981</sup>

369. An intercepted conversation, at 1305 hours on 12 July 1995, reveals that General Krstić was giving orders to Drina Corps units to secure the road from Vlasenica up toward Tišća where the civilians were disembarking.<sup>982</sup> The fact that General Krstić had been involved in issuing orders to Drina Corps units about securing this stretch of the road gives rise to an inference that he must have known the men were being taken off the buses at Tišća. The Trial Chamber agrees with Mr. Butler that the likelihood of General Krstić being unaware that men were being separated at this point was "rather low". Further, the Chief of Staff of the Milići Brigade and troops from his unit were present at the Tišća screening site upon orders from the Drina Corps Command.<sup>983</sup> Mr. Butler went further and argued that, by implication, the Drina Corps Command, including General Krstić, must have known about the executions plan.<sup>984</sup> The Trial Chamber does not agree. Certainly, it is clear that General Krstić must have known the men were being separated at Tišća and taken to detention sites, but whether he also had direct knowledge, at that point, that their ultimate fate would be execution has not been established beyond a reasonable doubt.

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<sup>981</sup> Witness D T. 1260-1298

<sup>982</sup> P 446; and Butler T. 4838-4839.

<sup>983</sup> See the discussion *supra* paras. 217.



(d) The Bosnian Muslim Column and the Capture of Prisoners

370. General Krstić said that he learned of the breakthrough of the Bosnian Muslim column in the direction of Tuzla on the evening of 12 July 1995, when he arrived at the Drina Corps Command Post in Vlasenica.<sup>985</sup> However, according to General Krstić, he heard nothing of the capture of Bosnian Muslim civilians from the column during the entire week of 13-20 July 1995.<sup>986</sup> This claim is not plausible in light of the evidence presented to the Trial Chamber.

371. There is substantial evidence showing that General Krstić was kept fully informed of the developments relating to the movement of the Bosnian Muslim column. A conversation was intercepted on 12 July 1995 at 1156 hours in which the Drina Corps Command informed that Bratunac Brigade that "they are moving towards Konjević Polje."<sup>987</sup> During the course of the conversation, the officer from Bratunac indicated that General Krstić was there with him and then told the Command that he was putting General Krstić on the line to speak to them. The presence of General Krstić at the Bratunac Brigade Headquarters, during this conversation, is consistent with the fact that the meeting General Krstić attended at the Hotel Fontana in Bratunac had concluded around this time. Similarly, in a conversation intercepted at 1345 hours on 12 July 1995, involving the duty officer at the Drina Corps Command, the participants spoke of matters related to the Bosnian Muslim column and then General Krstić came on the line.<sup>988</sup> This is further evidence that General Krstić was at the scene when information regarding the column was coming in to the Drina Corps and that he must have been informed of all relevant developments thereto.

372. In the early morning hours of 13 July 1995, the Drina Corps Command received an intelligence report prepared by the Zvornik Brigade. The Zvornik Brigade expressly reported that Bosnian Muslims in the column were "fleeing in panic, without any control, in groups or individually and giving themselves up to the MUP/Ministry of the Interior/ or the VRS/Republika Srpska Army."<sup>989</sup> On 13 July 1995, the contents of this report were subsequently forwarded to, among others, General Krstić personally.<sup>990</sup>

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<sup>984</sup> Butler, T. 5011.

<sup>985</sup> Krstić, T. 7392.

<sup>986</sup> Krstić, T.7392.

<sup>987</sup> P 508.

<sup>988</sup> P 509. See also P 510 (intercepted conversation dated 12 July 1995 at 1440 hours in which two unidentified participants discuss the movement of the column and at the end of the conversation General Krstić came on the line looking for Krsmanović.).

<sup>989</sup> P 878.

<sup>990</sup> P 739.

373. General Krstić was included in the chain of command on a series of other communications about the column. First, on 13 July 1995, General Gvero from the Main Staff issued his order to the Drina Corps, regarding measures to block the column.<sup>991</sup> The order was sent to the Drina Corps Command, including the FCP. General Gvero directed the Drina Corps to use all available manpower in “discovering, blocking, disarming and capturing” Bosnian Muslims and to place them in “suitable premises”, where they could be guarded by small forces, and to report immediately to the Superior Command”. Although General Krstić testified that he did not receive this order signed by General Gvero,<sup>992</sup> he accepted that he did receive an order from General Živanović that, in large part, reproduced the order General Gvero sent on 13 July 1995.<sup>993</sup> General Krstić maintained that this was the first information he received that “people were being captured.”<sup>994</sup> Another document, dated 13 July 1995, reveals that the Drina Corps Command Intelligence and Security section sent a document to, *inter alia*, General Krstić personally at the Pribicevac FCP, analysing the movement of the column out of Srebrenica and towards Tuzla.<sup>995</sup> Again, General Krstić said this could not have reached the FCP at Pribicevac, as the communications facilities there were already disbanded by the time this document was sent.<sup>996</sup> Regardless of whether the Pribicevac FCP had already been disbanded by this time, these documents demonstrate that General Krstić was included in the chain of command for reporting matters relating to the Bosnian Muslim column. Furthermore, the Trial Chamber is satisfied that, even if the Pribicevac FCP had been disbanded by this time, General Krstić would have promptly received the communications addressed to him there. Defence Witness DB testified that, if a communication could not be delivered, steps would be taken, depending on the urgency of the communication, to deliver it to the recipient by other means, such as courier. In the case of urgent communications, the sender would be notified if the communication had not been delivered within two hours.<sup>997</sup> The whereabouts of the Bosnian Muslim column was one of the most pressing issues facing the Drina Corps Command on 13 July 1995. In fact, General Krstić testified that he considered the 28<sup>th</sup> Division, whose whereabouts were unknown following the take-over of Srebrenica, as a potential threat to the ongoing military operations of the Drina Corps in the region, particularly those being conducted at Žepa.<sup>998</sup> At the meeting at the Bratunac Brigade Headquarters on 11 or 12 July 1995, Colonel Pandurević, the Commander of the Zvornik Brigade,

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<sup>991</sup> P 532.

<sup>992</sup> Krstić, T. 6672.

<sup>993</sup> P 462. Krstić, T. 6672-6673.

<sup>994</sup> Krstić, T. 6300.

<sup>995</sup> P 739.

<sup>996</sup> Krstić, T. 6654.

<sup>997</sup> Defence Witness DB, T. 9293-9295.

<sup>998</sup> Krstić, T. 6229, stating “If I were in General Mladić’s shoes, I would not have issued such an order (for Žepa) because we did not know where the 28<sup>th</sup> Division was and what it could do. It would have been much more useful and efficient for the forces that had taken part in the operation in Srebrenica, after their entry into Srebrenica, to go looking for the 28<sup>th</sup> Division, to pursue those units, and to get into contact with them in order to avoid the problems that occurred later and which had serious consequences for the 1<sup>st</sup> Zvornik Brigade and partly for the 1<sup>st</sup> Birać Brigade.”

raised this issue with General Mladić as a potential problem for the Žepa operation and General Krstić agreed with him.<sup>999</sup> General Krstić therefore had a very compelling reason to remain informed about developments concerning the Bosnian Muslim column that was directly related to his campaign at Žepa.

374. One Defence witness testified that, on 13 July 1995, he had a conversation about the Bosnian Muslim column with General Krstić, who expressed the view that the VRS should let the column pass so that the matter could be “ended as it should”.<sup>1000</sup> From his reference to letting the column pass, it might be surmised that General Krstić knew that steps were being taken to capture the men from the column or, at the very least, knew this was probable.

375. Witness II testified that, on the day of the ceremony at which General Mladić announced that General Krstić was the new Commander of the Drina Corps (which the Trial Chamber accepts was 13 July 1995), he and General Krstić drove back to the Vlasenica headquarters from Bratunac at about 1500-1600 hours. Their journey took them along the Bratunac, Konjevic Polje, Milići, and Vlasenica road.<sup>1001</sup> This is the same road where thousands of Bosnian Muslim men from the column were taken prisoner on 13 July 1995. However, Witness II testified that, although there were some soldiers around, he did not observe anything unusual. Nor did he see any buses with refugees coming from Bratunac.<sup>1002</sup> Nonetheless, even if the evidence as to what General Krstić personally witnessed is unclear, there is compelling evidence that he would have received reports that Bosnian Muslim men from the column were captured along this road, given that units of the Drina Corps were working in close co-operation with other units involved in the capture, such as the MUP brigade commanded by Colonel Borovčanin.<sup>1003</sup> By the evening of 13 July 1995, General Krstić was the Commander of the Drina Corps and it is inconceivable to the Chamber that General Krstić would have been permitted to remain uninformed about the capture of thousands of Bosnian Muslim prisoners along the Bratunac-Konjevic Polje Road, during the course of that day.

376. On the evening of 13 July 1995, General Krstić issued his order directing units of the Drina Corps to conduct search the area of the former Srebrenica enclave for Bosnian Muslims. By this time, thousands of Bosnian Muslims had already been taken prisoner. The presence of the column in the area would certainly have had an effect on the scope and intensity of the sweep operations contemplated in General Krstić’s order. On the basis of his 13 July 1995 search order,<sup>1004</sup> General Krstić was in charge of forces searching the former enclave for Bosnian Muslims from 14 to 17 July

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<sup>999</sup> Krstić, T. 6203, 6229

<sup>1000</sup> Defence Witness DA, T. 6928- 6929.

<sup>1001</sup> Witness II, T. 9138.

<sup>1002</sup> Witness II, T. 9169.

<sup>1003</sup> See the discussion *supra* paras. 286-287.

1995. Also on the evening of 13 July, General Krstić was heard speaking with Colonel Borovčanin from the MUP who was present along the Bratunac-Konjevic Polje Road that day. In response to General Krstić's inquiry as to how things were going, Colonel Borovčanin informed him that things were "going well."<sup>1005</sup> In short, even if he was mainly focused on marshalling the resources for the attack on Žepa, he must have known, by the evening of 13 July 1995, that there were several thousand Bosnian Muslim men being held prisoner in the zone of responsibility of the Drina Corps.

377. In summary, the Trial Chamber finds that General Krstić was fully informed of developments relating to the movement of the Bosnian Muslim column and that he knew, by the evening of 13 July 1995, that thousands of Bosnian Muslim men from the column had been captured by Bosnian Serb forces within his zone of responsibility.

(e) General Krstić's Involvement in the Executions

378. There is no evidence that General Krstić was personally present at any of the execution sites. Indisputably, at the time the executions commenced, he was engaged in preparations for the combat activities for Žepa, and from 14 July 1995 onwards, in launching the attack itself.

379. Nonetheless, the Trial Chamber has already found that the executions began on 13 July 1995 and, as of that evening, the Drina Corps Command must have known about the plan to execute all of the military aged Bosnian Muslim men in Srebrenica. The Trial Chamber has further found that the Drina Corps Command must have known of the involvement of Drina Corps subordinate units in the mass executions as of 14 July 1995 and, by implication, that the fate of the thousands of Bosnian Muslim men being detained within its zone of responsibility was to be death by execution. Given his position in the Drina Corps Command, first as Chief of Staff and then as Commander from the evening of 13 July 1995, General Krstić must have also known about these matters. By 14 July 1995, General Krstić, in his role as Corps Commander, must have been informed about the participation of his subordinate units in the executions commencing on that date. Although General Krstić was also focusing on Žepa during this period, the Chamber does not accept the Defence argument that General Krstić was completely excluded from matters related to the executions. The Trial Chamber now turns to the direct evidence demonstrating that General Krstić had knowledge of, and participated in, the executions.

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<sup>1004</sup> P 463.

<sup>1005</sup> P 529 (intercepted conversation at 2040 hours on 13 July 1995).

(i) General Krstić and Colonel Beara Discuss the Deployment of Troops to Assist in the Executions: 15 July 1995

380. Just prior to 1000 hours on 15 July 1995, General Živanović was heard in an intercepted conversation with Colonel Beara. Colonel Beara told him that Furtula (believed to be Major Radomir Furtula, the Commander of the 5<sup>th</sup> Podrinje Brigade (also known as the Višegrad-Goražde Brigade), a unit of the Drina Corps,<sup>1006</sup> "...didn't give a damn about the commander's order" and had not sent Lukić's intervention platoon.<sup>1007</sup> Colonel Beara then asked General Živanović to assist with organising replacement personnel but General Živanović informed Colonel Beara that he could no longer arrange for that and advised him to call extension 385.<sup>1008</sup> A few minutes later at around 1000 hours, a conversation was intercepted, during which General Krstić was heard talking to Colonel Beara.<sup>1009</sup> A Bosnian Muslim interception officer of the ABiH recorded the following:

(Colonel Ljubo BEARA-General Krstić)

B: General, FURTULA didn't carry out the boss's order.

K: Listen, he ordered him to lead out a tank, not a train.

B: But I need 30 men just like it was ordered.

K: Take them from NASTIĆ OR BLAGOJEVIĆ, I can't pull anybody out of here for you.

B: But I don't have any here. I need them today and I'll give them back tonight. Krle, you have to understand. I can't explain it like this to you.

K: I'll disturb everything on this axis if I pull them out, and a lot depends on him.

B: I can't do anything without 15 to 30 men with Boban INDIĆ.

K: Ljubo, this/line/is not secure.

B: I know, I know.

K: I'll see what I can do, but I'll disturb a lot. Check down with NASTIĆ and BLAGOJEVIĆ.

B: But I don't have any. If I did, I wouldn't still be asking for the 3<sup>rd</sup> day.

K: Check with BLAGOJEVIĆ, take his Red Berets.

B: They're not there, only 4 of them are still there. They took off, fuck 'em, they're not there any more.

K: I'll see what I can do.

B: Check it out and have them go to Drago's.

K: I can't guarantee anything.

B: Krle, I don't know what to do any more.

<sup>1006</sup> Butler, T. 4903, Butler Report, para. 9.13.

<sup>1007</sup> P 472.

<sup>1008</sup> See the discussion *supra* para. 323.

<sup>1009</sup> P 478.

K: Ljubo, then take those MUP/Ministry of Interior/guys from up there.

B: No, they won't do anything, I talked to them. There's no other solution but for those 15 to 30 men with INDIĆ. That were supposed to arrive on the 13<sup>th</sup> but didn't.

K: Ljubo, you have to understand me, you guys fucked me up so much.

B: I understand, but you have to understand me too, had this been done then, we wouldn't be arguing over it now.

K: Fuck it, now I'll be the one to blame.

B: I don't know what to do. I mean it, Krle. There are still 3,500 parcels that I have to distribute and I have no solution.

K: Fuck it, I'll see what I can do.

Two other Bosnian Muslim interceptors recorded this same conversation. One of the records is a partial transcript reflecting the very beginning of the conversation, in which both General Krstić and Colonel Beara fully reveal their identities as they attempted to establish contact with each other.<sup>1010</sup> The other version is a complete transcript that does not differ materially from the one outlined above.<sup>1011</sup>

381. As can be seen from this transcript, Colonel Beara repeated the comment he had previously made to General Živanović that "Furtula didn't carry out the boss's order" and that he needed thirty men. Although the language used is somewhat cryptic, General Krstić knew what Colonel Beara was talking about, as had General Živanović in the conversation that took place just before. Thus both the new and the old Drina Corps Commanders knew about the prior "boss's order" to send thirty men with Boban Indić three days earlier on 13 July 1995.<sup>1012</sup> The executions commenced on 13 July 1995, which supports an inference that these thirty men, who did not arrive, were to have been utilised in connection with this criminal activity. In their absence, Colonel Beara was urgently seeking assistance from General Krstić to assemble the men he needed.

382. General Krstić's initial reluctance to provide any men for Colonel Beara is consistent with the fact that, by this time, units from the Zvornik Brigade had been withdrawn from Žepa and sent back to address the urgent situation in their zone of responsibility.<sup>1013</sup> General Krstić directed Colonel Beara to check with "Nastić" (probably Major Nastić, the commander of the Milići Brigade) and "Blagojević" (probably Colonel Blagojević, the Commander of the Bratunac Brigade). General Krstić advised Colonel Beara to take some of "Blagojević's Red Berets". The Bratunac

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<sup>1010</sup> P 474.

<sup>1011</sup> P 475.

<sup>1012</sup> Defence Witness DB testified that Boban Indić was a member of the Višegrad Brigade (a subordinate unit of the Drina Corps) and that Indić was present during the Žepa operation. Defence Witness DB, T. 7274.

Brigade did indeed have a reconnaissance platoon called the “Red Berets”.<sup>1014</sup> Most critically, Colonel Beara said that he still had “3500 parcels” to “distribute” and had “no solution”. He asserted that he would only need the additional troops for a few hours and could return them by the evening. General Krstić then made a commitment to help Colonel Beara, saying “I’ll see what I can do”.

383. The Prosecution has persuasively argued that “parcels” was a code name for Bosnian Muslims and that “distribute” was a code for killing them.<sup>1015</sup> Several intercepts, recorded throughout the period of July 1995, reveal that VRS officers expressed concern about discussing matters related to the Bosnian Muslim prisoners over the telephone, and so the use of code words on this occasion is not surprising.<sup>1016</sup> (In this very conversation, General Krstić warned Colonel Beara that the line was not secure.) During an intercepted conversation on 14 July 1995 at 2102 hours, Major Jokić, duty officer of the Zvornik Brigade, spoke to Colonel Beara and told him that the “Superior Command” urgently needed him. He then said there were “big problems with the people, I mean, with the parcel.”<sup>1017</sup> In another intercepted conversation, later that same evening at 2227 hours, Major Jokić said to a person who was identified as General Vilotić:

...Obrenović is really engaged to the maximum. We all are, believe me. This packet has done most to ruin us...and since this morning we have been reporting on the number of people, well...well, so..<sup>1018</sup>

General Vilotić cut Major Jokić off at that point, saying he did not want to discuss it. A conversation intercepted on 2 August 1995 at 1240 hours, between General Krstić and Colonel Popović, provides a further example of the use of the term “parcel”. Colonel Popović asked General Krstić whether a person called “Čiča” was on his way towards Colonel Popović, and General Krstić confirmed that he was. Colonel Popović then said “(h)e went up there because we had some parcels, to check what they know”.<sup>1019</sup> General Krstić replied “Good”. The Chamber heard evidence that Bosnian Muslim prisoners were still being taken within the Drina Corps zone of responsibility throughout this period.<sup>1020</sup> This supports an inference that by “parcels” the VRS were referring to people, specifically Bosnian Muslim prisoners from whom information could be

<sup>1013</sup> See the discussion *Infra* paras. 388-399.

<sup>1014</sup> Krstić, T. 6727.

<sup>1015</sup> Prosecutor’s opening statement T. 483.

<sup>1016</sup> P 364/1 (14 July 1995, tab 9) (conversation dated 14 July 1995 at 2102 hours); P 364/1 (14 July 1995 tab 10) (conversation dated 14 July 1995 at 2227 hours); P 364/1 (14 July 1995 tab 12) (conversation dated 14 July 1995 at 2241 hours); P 364/2 (15 July 1995 tab 1) (conversation dated 15 July 1995 at 0818 hours); and P 364/2 (17 July 1995 tab 14) (conversation dated 17 July 1995 at 2030 hours).

<sup>1017</sup> P 559.

<sup>1018</sup> P 561. The Prosecution was unable to explain who General Vilotić is or his role in the events. See Butler Report, para. 7.66.

<sup>1019</sup> P 851. See also P 850, being a copy of the original record of the conversation from the notebook of interceptions).

obtained and that General Krstić was well aware of this. These intercepted conversations strongly support an inference that VRS personnel were using the word “parcel” as a code name for the Bosnian Muslim prisoners.

384. The conversation between General Krstić and Colonel Beara on 15 July 1995 is critical. Although the language itself is indirect, viewed in the context of what was happening on all fronts in the Drina Corps area of responsibility, the Trial Chamber concludes that the subject matter of this conversation was the executions. Both the Prosecution and the Defence agreed that Colonel Beara was fully involved in the killings.<sup>1021</sup> Further, this conversation occurred in the middle of the period in which the executions were carried out. Mr. Butler pointed out that it took place after the mass executions at Orahovac and Petkovci Dam, but before the executions at the Branjevo Farm, Kozluk and the Pilica Dom.<sup>1022</sup> In addition, Colonel Beara mentioned that he would only need the men for a few hours and would return them at the end of the day. This indicates a short and discreet assignment rather than the deployment of men for combat.

385. Revealingly, General Krstić did not attempt to provide an alternative meaning for this conversation, but rather denied that it had ever taken place, or indeed that he ever had a conversation with Colonel Beara between 13 and 17 July 1995. The Bosnian Muslim interceptors recorded that, during the course of the conversation, General Krstić referred to Colonel Beara by his first name of “Ljubo”. General Krstić said that he never addressed officers from a superior command by just a name without mentioning the rank.<sup>1023</sup> The Trial Chamber rejects this explanation and finds that, at the time this conversation took place on 15 July 1995, General Krstić knew the executions were occurring and that he undertook to assist Colonel Beara in obtaining the necessary personnel to carry them out. This intercepted conversation does, however, support the notion that the Main Staff was primarily directing the executions, albeit calling upon the resources of the Drina Corps Command. This is apparent both from Colonel Beara’s involvement and also the reference General Krstić made to the fact that “you guys fucked me up so much”, which would appear to be a reference to the Main Staff, to which Colonel Beara belonged.

386. During the intercepted conversation, General Krstić had suggested that Colonel Beara approached the Commander of the Bratunac Brigade about getting the men needed for the

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<sup>1020</sup> In fact, the Trial Chamber heard that, as late as October 1995, the Bratunac Brigade was continuing to capture Muslim men who were trying to remain in the area near their houses. See P 712; and Butler, T. 5239, 5369.

<sup>1021</sup> Krstić, T. 6737

<sup>1022</sup> Butler T. 4910.

<sup>1023</sup> Krstić, T. 6726-6727.



executions and had personally undertaken to try to assist Colonel Beara in this regard.<sup>1024</sup> Subsequently, on 16 July 1995, men from the Bratunac Brigade arrived to assist members of the 10<sup>th</sup> Sabotage Detachment with the executions at Branjevo Farm.<sup>1025</sup> The Chamber has also found that these men from Bratunac left the Branjevo Farm execution site at the conclusion of the killings and proceeded immediately to the Pilica Dom execution site.<sup>1026</sup>

387. The Trial Chamber finds that, on the morning of 15 July 1995, Colonel Beara asked General Krstić for additional men to help with the execution of Bosnian Muslim prisoners being carried out in the Drina Corps zone of responsibility. General Krstić undertook to assist Colonel Beara with obtaining the men required to carry out the execution of Bosnian Muslim men. General Krstić raised the possibility that men from the Bratunac Brigade could be used, undertook to arrange that and then men from that Brigade subsequently arrived to assist with the Branjevo Farm executions on 16 July 1995.

(ii) The Recall of Colonel Pandurević and the Zvornik Brigade from Žepa: 15 July 1995

388. The Žepa operation commenced on the morning of 14 July 1995.<sup>1027</sup> General Krstić testified that, on that same day, he received a call from General Živanović who requested the urgent return of Colonel Pandurević, the Commander of the Zvornik Brigade, and parts of his unit. General Krstić testified that General Živanović simply said the situation in the area of the Zvornik Brigade was very complex and uncertain and that General Živanović gave no further details.<sup>1028</sup> General Krstić further testified that, in the afternoon hours of 14 July 1995, sometime around 1800 hours, he received a call from the Chief of Staff of the Zvornik Brigade, Major Obrenović, who submitted the same request.<sup>1029</sup> On the night between 14 and 15 July 1995, Colonel Pandurević pulled his units out of Žepa and organised a march towards Zvornik, his primary area of responsibility.<sup>1030</sup> According to his testimony, General Krstić learned nothing further about the events in Zvornik that had provoked this transfer of troops, namely the intensive battle being waged against the Bosnian Muslim column and the simultaneous arrival of thousands of Bosnian Muslim prisoners into the Zvornik Brigade zone of responsibility. When questioned about this, General Krstić said that the withdrawal of Colonel Pandurević and the Zvornik Brigade did not impact upon the operation at Žepa and he therefore had no reason to inquire into the matter further.<sup>1031</sup> This

<sup>1024</sup> Further confirmation that men from Bratunac were sent to assist in the executions is found in P 622, discussed *Infra* paras. 401-402.

<sup>1025</sup> See the discussion *supra* paras. 240.

<sup>1026</sup> See the discussion *supra* paras. 246-248.

<sup>1027</sup> See Defence Witness DC, T. 7449.

<sup>1028</sup> Krstić, T. 6253,-6254.

<sup>1029</sup> Krstić, T. 6745-6747.

<sup>1030</sup> Krstić, T. 6744.

<sup>1031</sup> Krstić, T. 6777-6778.

contrasts with the statement General Krstić made to the OTP in an interview on 18 February 2000, where he stated that, on the evening of 14 July 1995, the Zvornik Brigade Chief of Staff reported to him that the front lines of the Zvornik Brigade zone of responsibility had been broken through.<sup>1032</sup>

389. At 1925 hours on 15 July 1995, Colonel Pandurević, who had then been back in his zone of responsibility for about one day, sent an Interim Combat Report to the Command of the Drina Corps, discussing the threat posed to the Zvornik Brigade by the Bosnian Muslim column. Colonel Pandurević stated that:

An additional burden for us is the large numbers of prisoners distributed throughout schools in the brigade area, as well as obligations of security and restoration of the terrain... This command cannot take care of these problems any longer, as it has neither the material nor other resources. If no one takes on this responsibility, I will be forced to let them go.<sup>1033</sup>

At this time on 15 July 1995, the prisoners held at Orahovac and the Dam had already been executed and, for the most part, buried. The prisoners in Pilica and those who were later killed at Kozluk, were still alive.

390. It is clear from this Interim Combat Report that Colonel Pandurević knew about the prisoner situation in his area of responsibility by 15 July 1995. He was concerned about the diversion of Zvornik Brigade resources from combat with the 28<sup>th</sup> Division in order to meet the demands posed by the presence of the prisoners in his zone. Up until that point the Zvornik Brigade had been assigned tasks relating to the prisoners and Colonel Pandurević warned his Command that he would not tolerate the situation any longer.

391. Whether Colonel Pandurević also knew that prisoners were being liquidated in his zone at the time he sent his 15 July 1995 Interim Combat Report was the subject of dispute between the parties. General Radinović argued that if Colonel Pandurević had known about the executions he would not have referred to the prisoners at all in his report to ensure that he did not implicate himself in the crimes.<sup>1034</sup> General Krstić testified that when Colonel Pandurević referred to being unable to “take care of these problems any longer”, he was referring only to the problem of guarding them.<sup>1035</sup> The defence further maintained that the “burden” referred to by Colonel Pandurević was the care and feeding of the prisoners.<sup>1036</sup> However, as the Prosecution pointed out, there is no evidence of the Zvornik Brigade Rear Services Staff taking action to co-ordinate food and water or other essential supplies for a large group of prisoners at this time.<sup>1037</sup> According to the

<sup>1032</sup> P 228, p. 24.

<sup>1033</sup> P 609.

<sup>1034</sup> Radinović, T. 7988, 8390-8396.

<sup>1035</sup> Krstić, T. 6738-6739.

<sup>1036</sup> Krstić, T. 6740-6741. See also, Radinović, T. 8407-8408.

<sup>1037</sup> Butler Report, para. 7.77.

Prosecution, when Colonel Pandurević wrote of “restoration of the terrain” (or “asanacija terena” as it appears in the original B/C/S version of the document) in his 15 July Interim Combat Report he was referring to burying the bodies of executed Bosnian Muslim prisoners. The Defence disputed this, arguing that it referred only to cleaning up the battlefield when fighting was over.<sup>1038</sup> Mr. Butler accepted that clearing the battlefield to dispose of combat casualties was standard operating practice pursuant to JNA regulations.<sup>1039</sup> However, as Mr. Butler pointed out, it seems unlikely that Colonel Pandurević was referring to legitimate battle cleanup activities, as combat with the Bosnian Muslim column was ongoing at this time. It would be a surprising military practice for “asanacija terena” to be carried out in the middle of the hostilities.

392. The Trial Chamber is satisfied that, at the time he wrote his 15 July 1995 Interim Combat Report, Colonel Pandurević knew about the ongoing execution of Bosnian Muslim prisoners in his zone of responsibility. On 13 and 14 July 1995, Zvornik Brigade resources were engaged in scouting sites that were subsequently used to detain the prisoners throughout Zvornik. Further, the Chamber has already determined that, on 14 and 15 July 1995, Zvornik Brigade resources were being utilised to assist with the executions at Orahovac and Petkovci Dam.<sup>1040</sup>

393. That Colonel Pandurević knew of the executions is consistent with his complaint that vital Zvornik Brigade resources were being diverted into dealing with the prisoners. As Commander of the Zvornik Brigade, Colonel Pandurević must have been informed about the deployment of these individuals and resources, given the impact it was having on the ability of the Zvornik Brigade to respond to the threat posed by the Bosnian Muslim column. Moreover, Colonel Pandurević obviously considered that he had some control over what was being done with prisoners because he said that, unless he received some assistance, *he* would be forced to let them go. The Chamber also accepts that the Interim Combat Report was written on the assumption that the Drina Corps Command, including General Krstić as Commander, knew about both the prisoner situation and the executions being carried out in the Zvornik Brigade’s zone: otherwise such cryptic references would be unintelligible by the Command.

394. General Krstić denied that he ever received the 15 July 1995 Interim Combat Report sent by Pandurević at the Krivače FCP.<sup>1041</sup> However, as Commander of the Drina Corps, General Krstić would surely have demanded follow-up information, knowing the situation faced by the Zvornik Brigade was so critical. An intercepted conversation on 17 July 1995 at 0615 hours also suggests

<sup>1038</sup> Radinović, T. 8409-8410, 8410-8411.

<sup>1039</sup> Butler, T. 5339-5340.

<sup>1040</sup> See the discussion *supra* paras. 225 and 232.

<sup>1041</sup> Krstić, T. 6736, 6793.

that General Krstić received the Daily Combat Reports and Interim Combat Reports sent by Colonel Pandurević during this period.<sup>1042</sup>

395. The crisis facing the Zvornik Brigade was also referred to in a 15 July 1995 report from Colonel Milanović, the Drina Corps Chief of Anti-Aircraft Defence and previously Chief of Staff of the Bratunac Brigade,<sup>1043</sup> describing the situation in the zone of the Bratunac Brigade, the Milići Brigade and the Skelani Separate Battalion. General Krstić accepted he had received this report at the Krivače FCP.<sup>1044</sup> Colonel Milanović proposed taking “200 or more soldiers from the 1<sup>st</sup> Milići Brigade in the direction of Stublić, besides the SB Skelani, if Pandurević settles his situation.” Obviously, Colonel Milanović believed that General Krstić knew about Colonel Pandurević’s “situation”, and that General Krstić would understand the reference in his report without further explanation.

396. An intercepted conversation on 16 July 1995 provides a further glimpse that General Krstić was taking steps to remain fully informed of the developing situation of the Zvornik Brigade. At 1602 hours, “Zlatar 01” (a code associated with Drina Corps Commander who by that time was General Krstić) called to speak with “Palma 01” (a code associated with the Commander of the Zvornik Brigade) and, when the Commander of the Zvornik Brigade could not be located, Zlatar 01 left a message for him to call Zlatar 385, an extension associated with General Krstić.<sup>1045</sup>

397. On 18 July 1995, Colonel Pandurević sent a further Interim Combat Report about events in the Zvornik Brigade area of responsibility.<sup>1046</sup> This time, the Prosecution and the Defence were in agreement: in this Report Colonel Pandurević voiced strong discontent about the crimes that had occurred within his area of responsibility.<sup>1047</sup> Colonel Pandurević wrote:

It is inconceivable to me that someone brought in 3,000 Turks of military age and placed them in schools in the municipality, in addition to the 7,000 or so who have fled into the forests. This has created an extremely complex situation and the possibility of the total occupation of Zvornik in conjunction with the forces at the front. These actions have stirred up great discontent among the people and the general opinion is that Zvornik is to pay the price for the taking of Srebrenica.

The Prosecution argued that Colonel Pandurević was speaking of the discontent in Zvornik that had resulted from the killings of thousands of Bosnian Muslims in that area. Colonel Pandurević was

<sup>1042</sup> P 650 (intercepted conversation from 17 July 1995 at 0615 hours between General Krstić and Captain Trbić of the Zvornik Brigade during which General Krstić acknowledged having received a report (which must have been one of the combat reports sent on 16 July 1995) from the Zvornik Brigade. Later in the conversation, General Krstić spoke to Colonel Pandurević and discussed whether there were any changes to the report).

<sup>1043</sup> P 537, Butler, T. 4986-498.

<sup>1044</sup> P 537, and Krstić, T. 6771.

<sup>1045</sup> P 635. See also P 630 (intercepted conversation at 1355 hours on 16 July 1995 in which “Zlatar 1” (the Drina Corps Command) called “Palma 01” (the Zvornik Brigade Command) for a briefing on “what’s new for Zlatar 1”).

<sup>1046</sup> P 675.

<sup>1047</sup> Radinović, T. 7989.

angry because his whole area was, as the Prosecution argued, “soaked in Muslim blood”.<sup>1048</sup> General Radinović agreed with this interpretation.<sup>1049</sup>

398. General Krstić said that the 18 July 1995 Report did not reach him at the FCP.<sup>1050</sup> However, there is strong evidence to the contrary. In an intercepted conversation on 19 July 1995 at 0812 hours,<sup>1051</sup> Colonel Pandurević spoke to Colonel Cerović, the Drina Corps Assistant Commander for Legal Religious and Moral Affairs, about the losses sustained by the Zvornik Brigade in combat with the Bosnian Muslim column and referred to a report that Colonel Pandurević had sent the previous day. This must have been a reference to the Interim Combat Report sent by Colonel Pandurević on 18 July 1995, which included information about the casualties suffered by the Zvornik Brigade. Colonel Cerović acknowledged receipt of the report and said “(y)es and I presented that to Krstić and wrote him special/report/ based on your interim and daily reports.” While General Krstić denied that this intercepted conversation was a reliable piece of evidence, he was at a loss to explain how or why a Bosnian Muslim interceptor could or would have made up these words.<sup>1052</sup> The conversation not only demonstrates that General Krstić received the Interim Combat Report sent by Colonel Pandurević on 18 July 1995, but also supports an inference that Colonel Cerović was ensuring that all the “interim and daily reports” sent by Colonel Pandurević were being forwarded to General Krstić. This would be expected given the pressing situation of the Zvornik Brigade at that time.

399. The Trial Chamber finds that General Krstić knew that the Zvornik Brigade was recalled in order to deal with the dual problems of combat with the column and the presence of thousands of Bosnian Muslim prisoners within his zone of responsibility. In the days following 14 July 1995, General Krstić was kept fully informed about events taking place in the Zvornik Brigade’s zone of responsibility. It is beyond belief that, as Commander of the Žepa Operation and, more particularly, of the Drina Corps, he did not receive, or demand an explanation as to why troops assigned to the combat operation that he was leading were being withdrawn and deployed elsewhere. Nor does the evidence described above admit of such a remote possibility. The recall of Colonel Pandurević and the Combat and Interim Combat Reports Colonel Pandurević subsequently sent to the Drina Corps Command, confirm that, by 15 July 1995, General Krstić was well aware of the large number of prisoners distributed throughout the Zvornik Brigade zone of responsibility, as well as the use of Zvornik Brigade resources in connection with the executions.

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<sup>1048</sup> T.8417.

<sup>1049</sup> Radinović, T. 8417.

<sup>1050</sup> Krstić, T. 6792-6793.

<sup>1051</sup> P 695.

(iii) Knowledge of Colonel Popović's Activities on 16 July 1995

400. A series of intercepts and documents from 16 July 1995 reveal that Colonel Popović was up in the zone of the Zvornik Brigade and that he asked the Drina Corps Command to send diesel fuel to him in Pilica to enable him to continue his "work".<sup>1053</sup> These intercepts are corroborated by Drina Corps records showing the distribution of this fuel to Colonel Popović.<sup>1054</sup> This paperwork makes reference to the Drina Corps Command<sup>1055</sup> as the "recipient" of the fuel, which was addressed to Colonel Popović, confirming that the Corps Command was fully comprised of the work being carried out by Colonel Popović. Given that General Krstić was, by that time, the Corps Commander, he must have known that the fuel had been allocated to Colonel Popović to assist with the work he was doing in the Zvornik Brigade zone of responsibility. The involvement of the Corps Command on this issue is consistent with the fact that fuel was immensely scarce in Eastern Bosnia at this time. In the words of Mr. Butler, fuel was "liquid gold".<sup>1056</sup>

401. Also on 16 July 1995, the day after the Colonel Beara/General Krstić intercept, a conversation was intercepted between Colonel Popović and a person called Rasić (an officer within the operations centre of the Drina Corps<sup>1057</sup>) at 2116 hours.<sup>1058</sup> The Bosnian Muslim intercept operator recorded the following:

(*Palma*/code-name) Lt. Col. Vujadin Popović-Rasic (OC/Operations Centre/) Lt. Colonel Popović asked to be connected with General Krstić at *Zlatar*/code-name/ and he was not there, he asked to be connected with the OC

P: Hello, Lt. Col. Popović speaking.

R: Rasić here, can I help you?

P: Rale!

R: Yes?

P: I was just up there.

R: Yes.

<sup>1052</sup> Krstić, T. 6792-6793.

<sup>1053</sup> See the discussion *supra* para. 242.

<sup>1054</sup> P 619.

<sup>1055</sup> The English version of this document actually translates the BCS reference to "KDK" as "Drina Corps Commander". Elsewhere however, this acronym has been translated as "Drina Corps Command" and the Prosecution did not seek to argue the document referred to the Drina Corps Commander specifically. See *supra* para. 242 and accompanying footnote.

<sup>1056</sup> Butler T. 4832. See also P 638 (intercepted conversation from 16 July 1995 showing General Krstić was closely monitoring the Corps fuel resources.)

<sup>1057</sup> Butler, T. 5143.

<sup>1058</sup> P 622.

P: I was with the boss personally.

R: Yes.

P: Here where I am...you know where I am?

R: I know.

P: Well, you got his interim report.

R: All of it.

P: It's all just like he wrote it...I was there on the spot and was convinced he had received some numbers...well, that's not even important...I'll come there tomorrow so tell the General...I've finished the job.

R: You finished?

P: I finished everything.

R: Good.

P: I'll come there tomorrow when I'm sure that's all been taken care of, you know.

R: Good.

P: After I bring a transport from there.

R: Right.

P: Well, in general, there weren't any major problems. But up there, there were horrible problems and that thing the commander sent, it was just the right thing.

R: Good.

P: Just the thing...horrible...it was horrible.

R: Listen Vujadin.

P: What?

R: Tell me, did anything arrive there now from Vidoje Blagojević?

P: From Vidoje?

R: Today.

P: Yes...You mean manpower?

R: Yes, yes...did anything arrive? Something was supposed to arrive?

P: Yes, it arrived...it's up there...it's up there but it didn't arrive on time and it wasn't brought in on time. And the others who arrived, did arrive, but they were late and so they weren't brought in on time, and that's why the commander who was here had problems.

R: When exactly did Blagojević's men arrive?

P: Fuck it, I don't know exactly, now I can't...

R: I know... the duty officer/as printed/

P: Maybe the duty officer...here's the duty officer.

R: Let me talk to him.

P: OK.

D: Hello!

R: Hello!

D: Yes go ahead.

R: When did Blagojević's men arrive?

D: From *Badem*/code-name/?

R: Yes...when did they arrive and how many of them arrived?

D: I'll call you right back.

R: OK, find out exactly and call me back.

D: I will.

Thus Colonel Popović was calling from "Palma", the code name for the Zvornik Brigade. Mr. Butler surmised that the reference to Colonel Popović being "up there" meant that Colonel Popović had just returned from an area north of Zvornik, i.e. the Pilica area,<sup>1059</sup> and that Rasic (and therefore the Drina Corps Command where Rasic was the duty officer) knew this.<sup>1060</sup> In this context, when Colonel Popović referred to "the boss", he was likely referring to Colonel Pandurević the Commander of the Zvornik Brigade,<sup>1061</sup> and the Interim Combat Report mentioned by Colonel Popović was the one sent by Colonel Pandurević on 16 July 1995.<sup>1062</sup> Colonel Popović referred to the fact that the men from Colonel Blagojević (the Commander of the Bratunac Brigade) had arrived. The Trial Chamber has already found that members of the Bratunac Brigade arrived to assist in the Branjevo Farm executions and that they had subsequently participated in the executions at Pilica.<sup>1063</sup> The third participant in the conversation, "D", subsequently linked the men with *Badem* (the code name of the Bratunac Brigade) further supporting the position that the men being discussed were from the Bratunac Brigade. Consequently, this intercept is further evidence that men were sent from the Bratunac Brigade to assist in the executions on 16 July 1995 following Colonel Beara's request for additional men from General Krstić on the morning of 15 July 1995.

402. In light of the fact that Colonel Popović initially asked for General Krstić, the Trial Chamber finds the "General" subsequently referred to is also General Krstić. The Trial Chamber is also persuaded, having regard to the timing of the conversation that "the job" Colonel Popović referred to was the criminal activity in the Pilica area that had taken place on 16 July 1995.<sup>1064</sup> It is clear from the statements Colonel Popović made during the course of the conversation, that Colonel Blagojević's men had arrived late. This is consistent with the testimony of Mr. Erdemović that

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<sup>1059</sup> Butler, T. 5144.

<sup>1060</sup> Butler, T. 5144.

<sup>1061</sup> Butler, T. 5144.

<sup>1062</sup> Butler, T. 5145.

<sup>1063</sup> See the discussion *supra* para. 240, 243, 246 and 248.



soldiers from the Bratunac Brigade arrived mid-way through the executions at Branjevo Farm to assist the 10<sup>th</sup> Sabotage Detachment.

403. Further intercepts taken on 17 July 1995 support a finding that Colonel Popović was reporting to the Drina Corps Command and, specifically to General Krstić, about the executions. At 1242 hours on that day, "Zlatar 01" (the code associated with General Krstić as Drina Corps Commander) called Major Golić from the Drina Corps intelligence section looking for Colonel Popović.<sup>1065</sup> Major Golić, referring to "Zlatar 01" as "General", informed him that "Popović is still in Zvornik, but will be back in the afternoon." "Zlatar 01" then instructed Major Golić to "...find Popović, and have him call the Forward Command Post immediately."<sup>1066</sup> Several hours later Colonel Popović was overheard in a conversation during which he stated:

Hello, it's Popović...boss...everything's OK, that job is done...everything's OK...everything has been brought to an end, no problems...I'm here at the place...I'm here at the place where I was before, you know...I'm at the base...at the base, the base...Can I just take a little break, take a shower and then I'll think again later...basically, that all gets an "A"...an "A"...the grade is "A", everything's OK...that's it, bye, take care<sup>1067</sup>

Although General Krstić was not expressly identified in the conversation, given the executions that had been completed at this time, the preceding conversation in which General Krstić was seeking a report from Colonel Popović and Popović's reference to "boss", the inference is very strong that this conversation recorded Colonel Popović reporting to General Krstić about the completion of the executions.

404. The Trial Chamber finds that, as of 16 July 1995, Colonel Popović was in contact with General Krstić to report on matters relating to the executions. General Krstić was being informed about what had happened as part of the chain of command for reporting purposes and was supervising and monitoring the activities of his subordinate officers who were participating in the executions.

(iv) Conversation Between General Krstić and "OA" about the Executions on 20 July 1995

405. During his interview with the OTP, on 29 March 2000, "OA" stated that, some time between the point when the Bosnian Muslim population was transported from Potočari and 20 July 1995, he heard, informally, stories that killings had occurred following the take-over of Srebrenica.

<sup>1064</sup> Butler, T. 5148.

<sup>1065</sup> P 661.

<sup>1066</sup> See also P 662 (intercept on 17 July 1995 at 1244 hours in which an unidentified subscriber speaks to Captain Trbić at the Zvornik Brigade and asks that Colonel Popović be contacted and told to leave right away for "Zlatar 01", the code name associated with General Krstić in the intercepts);

Specifically, "OA" was told that liquidations had occurred in a co-operative hall in Kravica<sup>1068</sup> and were carried out by members of the army and the police.<sup>1069</sup> Sometime prior to 20 July 1995, "OA" repeated these stories separately to General Krstić and Colonel Kosorić and neither of them responded.<sup>1070</sup> "OA" emphasised, however, that at the time he spoke with General Krstić and Colonel Kosorić, he did not have any confirmed or official information.<sup>1071</sup> Although "OA" did not appear before the Chamber and could not be cross-examined, the statement he made is consistent with other evidence presented to the Trial Chamber that General Krstić had direct knowledge of the executions by the time their conversation took place some time prior to 20 July 1995.

(v) Contact Between General Krstić and Other Individuals Involved in the Executions

406. Throughout the critical period, General Krstić was regularly in contact with individuals who appear to have been involved in the Srebrenica crimes. This contact is relevant because it refutes the assertion made by General Krstić that he was completely isolated from events in Srebrenica due to his position as Commander of the Žepa operation and played no role in the crimes committed in the aftermath of the take-over of Srebrenica. Although the Trial Chamber could not, on the basis of these contacts alone, conclude that General Krstić was involved in the crimes, in combination, the frequency of these contacts during the critical days of July 1995 supports the other evidence adduced that General Krstić was also involved in these events.

407. First and foremost, is the interaction between General Krstić and General Mladić. The parties agreed that General Mladić was the primary figure behind the executions in Srebrenica.<sup>1072</sup> If General Mladić knew about the killings, it would be natural for General Krstić to know as well. They were in constant contact throughout the relevant period: at the Pribicevac FCP; during the victory march through Srebrenica; at the Bratunac Brigade Headquarters meeting on 11 or 12 July 1995; at the Hotel Fontana meetings on 11 and 12 July 1995; at Potočari on 12 July 1995; at Vlasenica on the morning of 13 July 1995; at Viogora on 13 July 1995 addressing the troops assembling for Žepa;<sup>1073</sup> at Vlasenica on the evening of 13 July 1995 when General Mladić

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<sup>1067</sup> P 666; P 667; Butler, T. 5186-5187.

<sup>1068</sup> P 886, P 01908768.

<sup>1069</sup> P 886, P 01908769.

<sup>1070</sup> P 886, P 01908764, 01908768, 01908770-1.

<sup>1071</sup> P 01908771.

<sup>1072</sup> See also the testimony of Witness J, T. 2459; Witness K, T. 2509; and Witness L, T. 2658-2661 (that, late in the afternoon of 13 July 1995, General Mladić visited the Sandići Meadow); and the testimony of Witness P, T. 2953-2954; and Witness Q, T. 3024, (that he also visited the Nova Kasaba football field in the afternoon of 13 July 1995).

<sup>1073</sup> Witness II, T. 9218; Krstić, T. 6669.

appointed General Krstić as Corps Commander,<sup>1074</sup> and subsequently at the FCP at Krivače, and later Godjenje, during the course of the Žepa negotiations between the Bosnian Serb side and the Bosnian Muslim side.<sup>1075</sup> The Defence, of course, argued that General Mladić concealed the executions from General Krstić, but a question eventually arises as to why General Krstić himself would not inquire about what was being done with the prisoners.

408. Second, as already noted, on 15 July 1995, General Krstić was heard speaking to Colonel Beara, the Chief of Security for the Security Administration of the Main Staff.<sup>1076</sup> There was also agreement between the parties that Colonel Beara was heavily involved in the killings. Further, Defence Witness DC testified that Colonel Beara was present amongst the command staff at Žepa, along with General Mladić and that he was engaged in negotiations at Žepa from mid July 1995 onwards.<sup>1077</sup> Witness II testified that Colonel Beara was at an UNPROFOR checkpoint in Žepa during the course of the Žepa operation and that General Krstić met with him.<sup>1078</sup>

409. Third, General Krstić had frequent contact with Colonel Popović during the relevant period. The evidence presented to the Trial Chamber suggests that Colonel Popović played a significant role in the crimes committed following the take-over of Srebrenica. He was with the VRS officers who walked through the streets of Srebrenica, on the afternoon of 11 July 1995<sup>1079</sup> and he was present at the Hotel Fontana meeting convened by General Mladić, on the morning of 12 July 1995.<sup>1080</sup> Eyewitnesses place him in Potočari on 12 July 1995<sup>1081</sup> and, in addition, he is known to have been in the Zvornik area around 16 July 1995 and to have organised fuel used in conjunction with the executions in the Pilica area.<sup>1082</sup> The Defence accepted that Colonel Popović was implicated in the Srebrenica crimes.

<sup>1074</sup> See also P 458 (conversation intercepted at 1822 hours on 13 July 1995 placing General Krstić and General Mladić together), and the explanation given by Butler, T. 4868.

<sup>1075</sup> Krstić T.6262. Defence Witness DB, T. 7101, (testifying that General Mladić occasionally came to the FCPs at Krivače and later in Godjenje, and came two or three times during the Žepa operation); and Krstić, T. 6255-6259, 6262 (testifying that he had contact with General Mladić during the Žepa operations when General Mladić came to the FCP or if a Brigade commander informed General Krstić he was in the region of deployment of that Brigade); and Defence Witness DB, T. 7290 (testifying that General Mladić was frequently at Žepa during the negotiations). See also P 671 (intercept dated 17 July 1995 of a conversation between General Mladić and General Krstić discussing matters pertaining to the negotiations at Žepa).

<sup>1076</sup> See the discussion *supra* paras. 380-387.

<sup>1077</sup> Defence Witness DC, T. 7503, 7513.

<sup>1078</sup> Witness II, T. 9134.

<sup>1079</sup> PP 145 A (video of the walk through Srebrenica).

<sup>1080</sup> See the discussion *supra* para. 131.

<sup>1081</sup> See the discussion *supra* para. 143.

<sup>1082</sup> P 620 (intercept in the afternoon of 16 July 1995 in which the duty officer at the Zvornik Brigade is passing on Colonel Popović's request for diesel fuel to the Drina Corps Command); and P 619 (confirming that 500 litres of diesel fuel was released to Colonel Popović). See also P 624 (intercept on 16 July 1995 at 2233 hours in which the Duty Officer of the Zvornik Brigade confirms that Colonel Popović had been at the Zvornik Brigade.); and P 661 (an intercepted conversation from 1242 hours on 17 July 1995 in which an officer at Drina Corps headquarters notes that Colonel Popović was still in Zvornik.) See generally Butler, T. 5345.

410. Colonel Popović is seen standing behind General Krstić, during the televised interview given in Potočari on 12 July 1995.<sup>1083</sup> On 16 July 1995, Colonel Popović left a message for General Krstić reporting on activities relating to the executions.<sup>1084</sup> Further conversations were intercepted, on 17 July 1995 at 1242 hours demonstrating contact between General Krstić and Colonel Popović.<sup>1085</sup> Witness II testified that Colonel Popović was present in Žepa “a few times” during the course of the Žepa operation.<sup>1086</sup>

411. Fourth, the intensive involvement of Colonel Pandurević, the Commander of the Zvornik Brigade, in events relating to the Bosnian Muslim column and prisoners has already been noted,<sup>1087</sup> along with the involvement of the Zvornik Brigade personnel and resources at the execution sites at Orahovac, Petkovci Dam, Branjevo Farm and Kozluk. On 16 July 1995 at 1602 hours, a conversation was intercepted in which Zlatar 01 (the code name for the Drina Corps Commander<sup>1088</sup> i.e. General Krstić) called to speak to Palma 01 (code name for the Zvornik Brigade Commander, i.e. Colonel Pandurević). Zlatar 01 said “Tell him it’s Zlatar 01 calling to ask what’s new... ‘and Palma asks’ ...who should he call when he gets a chance?” The answer came back: “Zlatar 385”, a number frequently associated with General Krstić throughout the intercepts.<sup>1089</sup> The Trial Chamber accepts this intercept as evidence that General Krstić was trying to reach Colonel Pandurević. Given that Colonel Pandurević had, the previous night, been urgently recalled from Žepa upon the orders of General Krstić, it would be expected that General Krstić would have checked in with Colonel Pandurević around this time.<sup>1090</sup> On 17 July 1995 at 0615 hours, a conversation was intercepted between General Krstić and Trbić (duty officer of the Zvornik Brigade). Trbić reported to General Krstić that “everything’s under control so far. There are no further problems to yesterday’s report” (which appears to be a reference to the Interim Combat Report sent by Colonel Pandurević on 16 July 1995 describing combat between the column and the 2<sup>nd</sup> Corps, which resulted in many Bosnian Serb casualties). General Krstić then said: “OK have you killed the Turks up there?”. Trbić replied: “Well I guess you got the report. What more can I tell you”. General Krstić said “I got it” and Trbić responded “Basically we did”. General Krstić asked to speak to Trbić’s Commander and Trbić told General Krstić he would have to go through

<sup>1083</sup> P 58.

<sup>1084</sup> See the discussion *supra* paras. 401-402.

<sup>1085</sup> P 661; P 666; P 667; and Butler T. 5180.

<sup>1086</sup> Witness II, T. 9134.

<sup>1087</sup> See the discussion *supra* paras 388-399.

<sup>1088</sup> The Trial Chamber heard evidence that the designation “01” was used to refer to indicated “commander”. (insert details) The Prosecution conceded that, insofar as written orders were concerned, the use of this code was not uniform, so that it could not necessarily be concluded that a document which included the reference “01” was issued by the Corps Commander. However, in the context of this spoken conversation, the Chamber is satisfied that “Zlatar 01” was a reference to General Krstić given the subsequent reference to extension 385, which the Trial Chamber has already found was associated with General Krstić during this period.

<sup>1089</sup> P 635.

switchboard. General Krstić then said "Hello Vinko, Vinko!" (Vinko is the first name of Colonel Pandurević). General Krstić asked Vinko "Are there any changes in reference to that report?" And Vinko said: "Nothing significant. Basically, we'll probably finish this today." General Krstić then said "I am going up there now, you know."<sup>1091</sup>

412. Fifth, on 18 July 1995 at 0716 hours, a conversation was intercepted between General Krstić and Colonel Cerović.<sup>1092</sup> In July 1995, Colonel Cerović was the Drina Corps Assistant Commander for Legal, Religious and Moral Affairs. He was heard in several intercepts conducting conversations from the Drina Corps Command Post relating to the handling of prisoners.<sup>1093</sup> In the intercepted conversation on 18 July 1995, General Krstić said to Colonel Cerović: "I hope that everything is OK down there with Vinko", and Colonel Cerović replied: "It is. I talked to Vinko last night. He'll send an additional report today. He stabilised everything he was supposed to do." The Trial Chamber accepts that the reference to Vinko was a reference to Colonel Vinko Pandurević, the Commander of the Bratunac Brigade, who on 18 July 1995 sent an Interim Combat Report to the Drina Corps Command.

7. Other Evidence that General Krstić Remained Informed of Events Occurring in Srebrenica Before and After the VRS Military Take-Over on 11 July 1995

413. There is other evidence that General Krstić was not as isolated from the events occurring around Srebrenica, during the critical period from 11 July 1995 onwards, as he maintained. In particular, General Krstić dropped in frequently to the Drina Corps Headquarters in Vlasenica, during the period between 11 July and 17 July 1995. He acknowledged being there on 12 July 1995 around 1700 and 1800 hours<sup>1094</sup> and again the next morning.<sup>1095</sup> An eye-witness also gave evidence that General Krstić returned to the Drina Corps headquarters in Vlasenica "a few times" during the course of the Žepa operation, further confirming that he was in a position to learn about events happening outside his immediate area of concern in Žepa.<sup>1096</sup> This was corroborated in the statement made to the OTP by the protected individual "OA" who said that General Krstić would

<sup>1090</sup> Butler, T. 5161.

<sup>1091</sup> P 650, see also Butler T. 5175 ff.

<sup>1092</sup> P 688.

<sup>1093</sup> P 627 (intercepted conversation on 16 July 1995 in which Colonel Cerović states that "Triage has to be done on the prisoners. Later in the same conversation, Colonel Cerović spoke to Colonel Beara and again mentioned triage and the prisoners, and Colonel Beara cut him off saying "I don't want to talk about it on the phone." At this time, the two groups of prisoners left alive were those coming from the Pilica School to the Branjevo Military Farm and those at the Pilica Dom. See Butler T. 5156.)

<sup>1094</sup> Krstić, T. 6667.

<sup>1095</sup> Krstić, T. 6669

<sup>1096</sup> Witness II, T. 9133.

occasionally travel to Vlasenica in the evenings during the course of the Žepa operation.<sup>1097</sup> The distance between Vlasenica and Krivače is minimal: about 34 kilometres.<sup>1098</sup>

#### 8. The Role of General Krstić in the Reburial and Cover-up Operations

414. Documentation linking the Drina Corps to the reburial activity is scant and the available evidence discloses no direct involvement by General Krstić in this aspect of the crimes. The Prosecution relied primarily on the fact that, even on the Defence version of events, General Krstić was the Corps Commander throughout this period. An operation of the scale required to dig up thousands of corpses and transfer them to remote locations, all within the zone of responsibility of the Drina Corps, could hardly have escaped his notice. As Mr. Butler testified, at that time a declared state of war was in existence in the zone:

...and the fact that most of the areas in question fall into the designated war zones where the military has exclusive primacy based on the scope of activity that had to have occurred and one would assume primarily at night for the burial operations and the movement of the remains, the different locations and all the assets that needed to happen with that, I would be very hard pressed to come up with any form of an explanation on how the Drina Corps staff, in general, and how the Drina Corps Commander, specifically, could not have been aware of what was going on over, essentially, a two-month period.<sup>1099</sup>

415. The Prosecution sought to rely on two documents from the Main Staff allegedly dealing with the allocation of fuel for the reburial works, which were addressed directly to the Drina Corps Command. On the basis of these documents, the Prosecution argued that General Krstić, as Commander, must have been informed of what was going on.<sup>1100</sup> As previously determined, the Trial Chamber is unable to conclude beyond a reasonable doubt that the fuel allocated was used for the reburial works, or that Drina Corps resources were implicated in this activity. However, the Trial Chamber does accept that, at a minimum, General Krstić, the Commander of the Drina Corps, must have known that the massive reburial operation was occurring within his zone of responsibility.

#### 9. The Response of General Krstić to the Executions

416. The Defence argued that, given the involvement of superior Main Staff officers in the executions, notably General Mladić, General Krstić was in no position to take any action to prevent the executions, or punish those who were involved. General Krstić specifically stated that “nobody could or dared comment on anything that General Mladić said.”<sup>1101</sup> However, there is evidence on

<sup>1097</sup> P 886, p. 01908770.

<sup>1098</sup> Prosecution stipulation number 892, T. 9187.

<sup>1099</sup> Butler, T. 5241.

<sup>1100</sup> P 709; and P 710.

<sup>1101</sup> Krstić, T. 6623.

the Trial Record to contradict this. Notably, on 11 July 1995, Drina Corps officers prevailed upon General Mladić to reconsider his ill-conceived plan to continue the VRS attack towards Potočari and Bratunac.<sup>1102</sup> General Mladić, although angry, retracted his orders,<sup>1103</sup> suggesting that it was neither out of the question to challenge General Mladić, nor impossible to change his mind. Further, on 17 July 1995 at 2030 hours, a conversation was intercepted between General Krstić and an unidentified participant, discussing the deployment of troops. General Krstić asked the other participant in the conversation: “With whose approval did you send soldiers down there?” The other conversant replied: “on orders from the Main Staff”. General Krstić responded: “God damn you, bring me back the soldiers as soon as possible.”<sup>1104</sup> This strong reaction on the part of General Krstić is another indication that he was not afraid to question, or indeed override, the authority of the Main Staff, and by implication, General Mladić.

417. As already noted, General Krstić testified that, when he first found out about the executions, at the end of August or the beginning of September 1995, he took steps to have a senior officer of the Drina Corps who was implicated in the executions, removed, but to no avail.<sup>1105</sup> However, no evidence, other than the testimony of General Krstić himself, was proffered in support of this claim. To the contrary, the totality of the evidence suggests that General Krstić continued to be a loyal supporter of General Mladić. An article dated 25 August 1995, reflecting an interview given by General Krstić to a journalist with the Srpska Vojska, General Krstić specifically praised General Mladić for the role he had played in the “liberation” of Srebrenica.<sup>1106</sup> In December 1995, General Krstić sat next to General Mladić on a podium at a ceremony for the Drina Corps.<sup>1107</sup> Further, as the relationship between President Karadžić and General Mladić deteriorated, General Krstić was amongst the VRS Generals who signed a document protesting attempts by President Karadžić to remove General Mladić.<sup>1108</sup> General Krstić accepted that he knew about the executions at the time he endorsed the document, but testified that he had to sign because he did not dare to defy General Mladić. As a career soldier who loved his profession, General Krstić felt unable to retire and move away from the area, despite everything that had happened. He thus exercised a choice to remain in his birth-place surrounded by his family.<sup>1109</sup>

<sup>1102</sup> See the discussion *supra* para. 303.

<sup>1103</sup> Krstić, T. 6196, 6510-6511; and P 770 (Photo of General Mladić sitting down and General Krstić standing over him communicating, which General Krstić said was taken after gave order to continue operation towards Potočari). Krstić T. 6509..

<sup>1104</sup> P 364/2 (17 July tab 14).

<sup>1105</sup> Krstić, T. 6335.

<sup>1106</sup> P 743.

<sup>1107</sup> P 367; Butler, T. 5243-5246.

<sup>1108</sup> P 91.

<sup>1109</sup> Krstić, T. 6831-6834.

418. The Trial Chamber finds that General Krstić was aware that men under his command had participated in the execution of Bosnian Muslim men between 14 and 19 July 1995 and failed to take steps to punish any of them.

#### **D. Conclusions**

419. Taking control of the Middle Podrinje area was a critical element of the Bosnian Serb strategy for military victory. At the time the removal of the Bosnian Muslim civilians from the enclave took place, General Krstić was Chief of Staff of the Drina Corps, which was formed specifically for the purpose of pursuing Bosnian Serb territorial goals in Middle Podrinje. Despite his efforts to present himself as a soldier with no interest in politics and no ethnic hatreds, the Trial Chamber does not accept that General Krstić was disinterested in measures being taken to cleanse the area of Bosnian Muslims. Certainly, General Krstić was not a reluctant participant in the transportation of the Bosnian Muslim population out of the enclave, on 12 and 13 July 1995, although he appeared concerned to ensure that the operation was conducted in an orderly fashion. He simply wanted the civilian population out of the area and he had no interest in mistreating them along the way.

420. Additionally, the evidence presented to the Trial Chamber does not support the notion that General Krstić himself ever envisaged that the chosen method of removing the Bosnian Muslims from the enclave would be to systematically execute part of the civilian population. Rather, General Krstić appears as a reserved and serious career officer who is unlikely to have ever instigated a plan such as the one devised for the mass execution of Bosnian Muslim men, following the take-over of Srebrenica in July 1995. Left to his own devices, it seems doubtful that General Krstić would have been associated with such a plan at all. One Defence witness testified that, as news of the breakthrough by the Bosnian Muslim column filtered in, General Krstić said to him "Let them pass, just so that this can be ended as it should."<sup>1110</sup>

421. Nonetheless, in July 1995, General Krstić found himself squarely in the middle of one of the most heinous wartime acts committed in Europe since the Second World War. The plan to execute the Bosnian Muslim men may not have been of his own making, but it was carried out within the zone of responsibility of the Drina Corps. Furthermore Drina Corps resources were utilised to assist with the executions from 14 July 1995 onwards. By virtue of his position as Drina Corps Commander, from 13 July 1995, General Krstić must have known about this.

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<sup>1110</sup> Defence Witness DA, T.6928- 6929.



422. The Prosecution's case against General Krstić was based on layer upon layer of circumstantial evidence as well as critical pieces of direct evidence, which reveals his developing knowledge of, and participation in, the executions. Although, on 11 or 12 July 1995, he had been appointed as Commander of the new VRS operation against Žepa, General Krstić remained informed of events occurring back in Srebrenica. General Krstić attended two meetings at the Hotel Fontana with General Mladić, relating to the fate of the Bosnian Muslim civilians from Srebrenica. Furthermore, he was involved in organising the transport of the Bosnian Muslim civilians from Potočari and, on 12 July 1995, was present in Potočari while the transportation operation was being carried out. General Krstić remained fully informed of matters relating to the Bosnian Muslim column, including the capture and detention of the prisoners.

423. Although there is little evidence linking General Krstić directly with the activity occurring in the Srebrenica area on 13 and 14 July 1995, the evidence shows that he was fully aware of these events. On 14 July 1995, General Krstić was contacted about the crisis facing the Zvornik Brigade, which was simultaneously engaged in heavy combat with the armed head of the Bosnian Muslim column and trying to cope with the thousands of prisoners detained in schools throughout Zvornik. He immediately sent Colonel Pandurević and his men back from Žepa to their zone of responsibility. General Krstić knew full well the reasons for this urgent recall. In the following days, Colonel Pandurević reported back to the Drina Corps Command about the situation facing his Brigade, including matters relating to the prisoners and the executions. Furthermore, on 15 July 1995, when Colonel Beara contacted him to inform him that the Main Staff was unable to secure enough troops to continue with the executions, General Krstić chose to further assist in the commission of the crimes. On 15 July 1995, thousands of prisoners were still alive; had General Krstić intervened at even that late date they might have been saved.

#### **E. Summary of the Trial Chamber's Key Factual Findings**

424. The Trial Chamber concludes that the following key facts have been established beyond a reasonable doubt.

##### **(i) General Findings**

425. In July 1995, following the take-over of Srebrenica, Bosnian Serb forces devised and implemented a plan to transport all of the Bosnian Muslim women, children and elderly from the area (para. 52).

426. In July 1995, following the take-over of Srebrenica, Bosnian Serb forces executed several thousand Bosnian Muslim men. The total number of victims is likely to be within the range of 7,000 -8,000 men (para. 84).

427. Following the take-over of Srebrenica, in July 1995, Bosnian Serb forces devised and implemented a plan to execute as many as possible of the military aged Bosnian Muslim men present in the enclave (para. 87).

428. During a period of several weeks, in September and early October 1995, Bosnian Serb forces dug up a number of the primary mass graves containing the bodies of executed Bosnian Muslim men and reburied them in secondary graves in still more remote locations (para. 78).

(ii) Findings Relating to the Drina Corps

429. The Drina Corps plan for Krivaja 95 was aimed at reducing the "safe area" of Srebrenica to its urban core and was a step towards the larger VRS goal of plunging the Bosnian Muslim population into humanitarian crisis and, ultimately, eliminating the enclave (para. 121).

430. On 10 and 11 July 1995, the shelling of Srebrenica, carried out by the Drina Corps, was calculated to terrify the Bosnian Muslim population and to drive them out of Srebrenica town and, thereby, the area (para. 125).

431. The Drina Corps was instrumental in procuring the buses and other vehicles that, on 12 and 13 July 1995, were used to transport the Bosnian Muslim women, children and elderly out of the Potočari compound, as well as the fuel needed to accomplish that task (para. 142).

432. Drina Corps Command officers and units were present in Potočari monitoring the transportation of the Bosnian Muslim civilians out of the area on 12 and 13 July 1995 (para. 144).

433. On 12 and 13 July 1995, the Bosnian Muslim civilians of Srebrenica who were bussed out of Potočari were not exercising a free choice to leave the area of the former enclave. The Drina Corps personnel involved in the transportation operation knew that the Bosnian Muslim population was being forced out of the area by the VRS (para. 149).

434. The Prosecution has failed to prove that Drina Corps units committed any of the opportunistic crimes that occurred in Potočari on 12 and 13 July 1995. However, Drina Corps personnel present in the Potočari compound, on 12 and 13 July 1995, must have been aware of the catastrophic humanitarian situation confronting the Bosnian Muslim refugees, as well as the mistreatment being inflicted by Bosnian Serb forces, but took no action in response (para. 155).

435. Drina Corps personnel present in the Potočari compound, on 12 and 13 July 1995, knew that the Bosnian Muslim men who were separated from the women, children and elderly, were not treated in accordance with accepted practice for war crimes screening and that there was a terrible uncertainty about the fate of these men. The Drina Corps Command also knew that the separated men from Potočari were bussed out to detention sites in Bratunac using busses that had been diverted from the transportation of the women, children and elderly, which the Drina Corps was overseeing (para. 161).

436. Between 12 and 18 July 1995, Drina Corps Brigades, particularly the Bratunac and Zvornik Brigades, were engaged in combat with the Bosnian Muslim column as it attempted to break-through to Bosnian Muslim held territory. These Brigades were continuously reporting to the Drina Corps Command about matters relating to the column (para. 166).

437. From 12 July 1995, the Drina Corps Command knew Bosnian Muslim prisoners were being taken from the column by Bosnian Serb forces within its zone of responsibility. The Drina Corps Command was further informed of the Main Staff policy of blocking and capturing the Bosnian Muslim men in the column, and the Main Staff directed the deployment of Drina Corps units in setting ambushes for the column (para. 170).

438. The Prosecution has failed to prove that, on 13 July 1995, Drina Corps units participated in the capture of the thousands of Bosnian Muslim men from the column who were taken along the Bratunac-Konjevic Polje Road (para. 175).

439. The Drina Corps Command knew that, on 13 July 1995, thousands of Bosnian Muslim prisoners had been captured along the Bratunac-Konjevic Polje Road (para. 178).

440. The Drina Corps Bratunac Brigade could not but have known that, between 12-15 July 1995, thousands of Bosnian Muslim prisoners were being detained in Bratunac. On 14 and 15 July 1995, the Bratunac Brigade military police were engaged in escorting these prisoners to northern detention sites (para. 181).

441. The Drina Corps Command could not but have known that, between 12 and 15 July 1995, thousands of Bosnian Muslim men were being detained in Bratunac and that they were transported to detention sites in the north following completion of the removal of the Bosnian Muslim women, children and elderly (para. 186).

442. Buses procured by the Drina Corps were used for the transportation of Bosnian Muslim prisoners to detention and execution sites. On 12 and 13 July 1995, the Drina Corps Command must have been informed about the diversion of the buses from their original task of transporting

the Bosnian Muslim women, children and elderly into transporting men from Potočari to Bratunac and, from the evening of 13 July 1995, the Drina Corps must have known that the buses had been put to further use in transporting Bosnian Muslim prisoners north to Zvornik (para. 184).

443. From 13 July 1995, the Zvornik Brigade became aware of plans to transport Bosnian Muslim prisoners to its zone of responsibility and began locating detention sites for them. From 14 July 1995, the Zvornik Brigade was aware of the existence of the thousands of Bosnian Muslim prisoners distributed throughout Zvornik (para. 191).

444. The Prosecution has not proved the involvement of the Drina Corps in the Jadar River execution on the morning of 13 July 1995 (para. 200).

445. The Prosecution has not proved that Drina Corps units were involved in the Čerska Valley executions on 13 July 1995 (para. 204).

446. The Prosecution has not proved that Drina Corps units were involved in the executions at the Kravica Warehouse on 13 July 1995. However, the Corps Command must have known that prisoners were transported to the Kravice Warehouse and, by the evening of 13 July 1995, the Drina Corps must have been well aware of the fact that the executions had taken place at the Kravica Warehouse (para. 215).

447. The Prosecution has not proved that Drina Corps units either knew of, or were involved in, the executions of the Bosnian Muslim men screened at Tišća. The Milići Brigade did, however, know that Bosnian Muslim men were being pulled off the buses at Tišća and taken to separate sites (para. 219).

448. By the evening of 13 July 1995, the Drina Corps must have been aware of the VRS plan to execute all of the thousands of Bosnian Muslim men and boys captured in the area of the former enclave following the take-over of Srebrenica (para. 295).

449. The Zvornik Brigade participated in the execution of Bosnian Muslim men at Orahovac on 14 July 1995. Members of the military police company of the Zvornik Brigade were present immediately prior to the executions, presumably for such purposes as guarding the prisoners and then facilitating their transportation to the execution fields. Personnel from the 4<sup>th</sup> Battalion of the Zvornik Brigade were present at Orahovac during the executions, assisting in their commission. Further, machinery and equipment belonging to the Engineers Company of the Zvornik Brigade was engaged in tasks relating to the burial of the victims from Orahovac between 14 and 16 July 1995 (para. 225).

450. On 15 July 1995, drivers and trucks from the 6<sup>th</sup> Infantry Battalion of the Zvornik Brigade were used to transport the prisoners from the detention site to the execution site at Petkovci Dam and the Zvornik Brigade Engineer Company was assigned to work with earthmoving equipment to assist with the burial of the victims from Petkovci Dam (para. 232).

451. On 16 July 1995, members of the Bratunac Brigade participated in the killings at Branjevo Farm. Drina Corps military police were also engaged in guarding the Bosnian Muslim prisoners in the buses that took them to the Farm and Zvornik Brigade equipment was engaged in activities relating to the burial of the victims. The Drina Corps Assistant Commander for Security, Colonel Popović, was involved in organising fuel to transport the Bosnian Muslim prisoners to the execution site at Branjevo Farm and the allocation of fuel for his work was co-ordinated through the Drina Corps Command (para. 243).

452. On 16 July 1995, the Bratunac Brigade assisted with the executions that took place at the Pilica Cultural Dom (para. 248).

453. Zvornik Brigade excavators and bulldozers operating in the Kozluk area, from 16 July 1995, were involved in work related to the burial of victims from the Kozluk executions, which occurred between 14 July and 17 July 1995 (para. 253).

454. On 19 July 1995, units under the command of the Zvornik Brigade participated in the executions at Nezuk (para. 256).

455. The Prosecution has not proved that units of the Drina Corps were engaged in the reburial of bodies from the primary gravesites to secondary gravesites in the early Autumn of 1995. However, given the scale of the operation, the Drina Corps Command must at least have known this activity was being carried out within its zone of responsibility. (para. 261)

456. Following the take-over of Srebrenica, the Drina Corps Command continued to exercise command competencies in relation to its subordinate Brigades and its command role was not suspended as a result of the involvement of the VRS Main Staff, or the security organs, in the Srebrenica follow-up activity. (para. 276)

457. The Prosecution has not proved that, on 16 July 1995, the 10<sup>th</sup> Sabotage Detachment was resubordinated to the Drina Corps Command, when members of this unit were involved in the executions at Branjevo Farm. However, there must have been close co-operation and co-ordination between the Drina Corps and this unit, from the time they arrived in Srebrenica and continuing throughout the follow-up action thereto (para. 281).

458. The Prosecution has not proved that MUP units were resubordinated to the Drina Corps following the take-over of Srebrenica in July 1995. The Drina Corps Command was, however, well aware of the presence of MUP units within their zone of responsibility, as well as the action being taken by MUP units to block and capture Bosnian Muslim men in the column (para. 289).

459. The Prosecution has not proved that the Drina Corps devised or instigated any of the atrocities that followed the take-over of Srebrenica in July 1995 (para. 290).

460. The Drina Corps Command knew of the involvement of its subordinate units in the executions of Bosnian Muslim men as of 14 July 1995 (para. 296).

(iii) Findings Relating Specifically to General Krstić

461. On the evening of 13 July 1995, General Mladić appointed General Krstić as Commander of the Drina Corps. From that point in time, General Krstić operated as the Drina Corps Commander and the entire Corps recognised him as such (para. 331).

462. General Krstić was well aware that the shelling of Srebrenica would drive thousands of civilians from Srebrenica town into the small area of Potočari they thought "safe" because of the UN base there. He must have known that, inevitably, basic needs for shelter, food, water and medicine at that site would prove overwhelming. General Krstić was fully apprised of the VRS territorial goals in the Srebrenica enclave (para. 337).

463. As a result of his attendance at the Hotel Fontana meetings on 11 and 12 July 1995, General Krstić was fully apprised of the catastrophic humanitarian situation confronting the Bosnian Muslim refugees in Potočari and he was put on notice that the survival of the Bosnian Muslim population was in question following the take-over of Srebrenica (para. 343).

464. General Krstić ordered the procurement of buses for the transportation of the Bosnian Muslim population out of Potočari on 12 and 13 July 1995, issued orders to his subordinates about securing the road along which the busses would travel to Kladanj and he generally supervised the transportation operation (para. 347).

465. General Krstić was in Potočari for between an hour and two hours in the early afternoon of 12 July 1995, and he was present with other VRS officers, including General Mladić, overseeing the bussing of the Bosnian Muslim women, children and elderly. As a result of his presence in Potočari, General Krstić must have known of the appalling conditions facing the Bosnian Muslim refugees and the general mistreatment inflicted by VRS soldiers on that day (para. 354).

466. The Prosecution has not proved that General Krstić was present in Potočari on 13 July 1995 (para. 357).

467. General Krstić was heard ordering his subordinates that no harm must befall the Bosnian Muslim civilians who were being transported out of Potočari (para. 358).

468. The Prosecution has not proved that General Krstić was involved in designing the execution plan (para. 362).

469. As a result of his presence at the White House during the afternoon of 12 July 1995, General Krstić must have known the segregated men were being detained in terrible conditions and not being treated in accordance with accepted practice for war crimes screening. General Krstić must have realised, as did all the witnesses present in and around the compound that day, that there was a terrible uncertainty as to what was going to happen to the men who had been separated. However, General Krstić took no steps to clarify with General Mladić, or anyone else, what the fate of the men would be (para. 367).

470. On 12 July 1995, General Krstić must have known the men were being pulled off the passing buses at Tišća and taken to detention sites, but the Prosecution has not proved that he also had known that their ultimate fate would be execution (para. 369).

471. General Krstić was fully informed of developments relating to the movement of the Bosnian Muslim column and he knew, by the evening of 13 July 1995, that thousands of Bosnian Muslim men from the column had been captured by Bosnian Serb forces within his zone of responsibility (para. 377).

472. As of 13 July 1995, the Drina Corps Command must have known about the plan to execute all of the military aged Bosnian Muslim men in Srebrenica and, as of 14 July 1995, the Corps Command must have known of the involvement of Drina Corps subordinate units in the mass executions. Given his position in the Drina Corps Command, first as Chief of Staff and then, from the evening of 13 July 1995, as Commander, General Krstić must also have known about these matters (para. 379).

473. On the morning of 15 July 1995, Colonel Beara asked General Krstić for additional men to help with the execution of Bosnian Muslim prisoners. General Krstić undertook to assist Colonel Beara with obtaining the men required to carry out the execution of these men. General Krstić raised the possibility that men from the Bratunac Brigade could be used, undertook to arrange that men from that Brigade subsequently arrived to assist with the Branjevo Farm executions on 16 July 1995 (para. 387).

474. General Krstić ordered the Zvornik Brigade to return to its zone of responsibility in order to deal with the dual problems of combat with the column and the presence of thousands of Bosnian Muslim prisoners within his zone of responsibility. In the days following 14 July 1995, General Krstić was kept fully informed about events taking place in the Zvornik Brigade's zone of responsibility. On 15 July 1995, General Krstić was well aware of the large number of prisoners distributed throughout the Zvornik Brigade zone of responsibility, as well as of the use of Zvornik Brigade resources in connection with the executions (para. 399).

475. As of 16 July 1995, Colonel Popović was in contact with General Krstić to report on matters relating to the executions. General Krstić was informed about what had happened as part of the chain of command for reporting purposes and was supervising and monitoring the activities of his subordinate officers who were participating in the executions (para. 404).

476. The Prosecution has failed to establish that General Krstić was directly involved in the reburial activity. However, General Krstić must have at least known that this massive operation was occurring within his zone of responsibility (para. 415).

477. General Krstić was aware that men under his command had participated in the execution of Bosnian Muslim men between 14 and 19 July 1995 and failed to punish any of them (para. 418).

### **III. LEGAL FINDINGS**

#### **A. Introduction**

478. In this third Part, the Trial Chamber will explore whether the particular facts, as found by the Trial Chamber, support beyond reasonable doubt findings that the crimes alleged in the indictment have been committed. Since, by their nature, these crimes tend to involve many people with differing degrees of participation and to include series of events over a period of time, it is reasonable to ascertain, first, whether a factual case has been made out that the legal pre-requisites for the commission of these crimes have been proved and, then, to determine the degree of culpability, if any, attributable to the defendant, General Krstić. The legal pre-requisites will be determined in light of the state of customary international law at the time of the events Srebrenica took place.

479. The Indictment charges the accused with murders, as independent crimes under both Article 3 and Article 5 of the Statute and as an element of the counts of persecutions and extermination under Article 5. The murders are further referred to in the alternative counts of genocide and



complicity of genocide, which counts also encompass causing serious bodily or mental harm. Finally, the indictment alleges that crimes against humanity, in the form of deportation or forcible transfer of women, children and elderly persons, were committed in violation of Article 5. Each of these crimes has its own specific elements which the Trial Chamber will now discuss.

480. The jurisprudence of the Tribunal establishes that, for a crime under Article 3, it must be determined that a state of armed conflict existed, at the time the criminal acts were committed, and that there is a close nexus between the armed conflict and those acts. By comparison, Article 5 of the Statute requires only that there be an armed conflict and that the acts have occurred within the frame of that armed conflict. The critical element of a crime under Article 5 is that the criminal acts form part of a widespread or systematic attack against a civilian population. Further, such acts may constitute persecution where it is demonstrated that they were perpetrated with a discriminatory intent on political, racial or religious grounds. By contrast, genocide, as envisaged in Article 4 of the Statute, does not require that there be an armed conflict, only that the prohibited acts be committed “with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such (...).”

481. According to the Appeals Chamber, “an armed conflict exists whenever there is a 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>1111</sup> In the present instance, it is not disputed that a state of armed conflict existed between BiH and its armed forces, on the one hand, and the Republika Srpska and its armed forces, on the other. There is no doubt that the criminal acts set out in the indictment occurred not only within the frame of, but in close relation to, that conflict.

482. According to the Judgement rendered by Trial Chamber II in the Kunarac case,<sup>1112</sup> five elements are required for “an attack directed against a civilian population” within the meaning of Article 5 of the Statute:

- (i) There must be an attack.<sup>1113</sup>
- (ii) The acts of the perpetrator must be part of the attack.<sup>1114</sup>
- (iii) The attack must be “directed against any civilian population”.<sup>1115</sup>

<sup>1111</sup> Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-AR72, 2 October 1995 (*Tadić* Appeal I).

<sup>1112</sup> Judgement, *The Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, IT-96-23T and IT-96-23/1-T, 22 February 2001, para. 410.

<sup>1113</sup> Appeals Judgement, *The Prosecutor v. Tadić*, IT-94-1-A, 15 July 1999, para. 251.

<sup>1114</sup> *Ibid.*, para. 248.

- (iv) The attack must be “widespread or systematic”.<sup>1116</sup>
- (v) The perpetrator must know of the wider context in which his acts occur and know his acts are part of the attack.<sup>1117</sup>

All of these elements are met in this case. Thus, there is no doubt, from a reading of the factual Part of this Judgement,<sup>1118</sup> that all the criminal acts described in the indictment form part of a widespread or systematic attack against a civilian population and were committed with discriminatory intent within the meaning of Article 5 (h) of the Statute.

In sum, all the statutory pre-requisites for crimes under Articles 3 and 5, including persecution, are met.

483. The next question is whether the factual elements of each of the specific crimes encompassed by Articles 3, 4 and 5 listed in the indictment have been met and especially whether the particularly strict requirements of Article 4 have been established. The Trial Chamber will discuss those factual elements for, in turn: murder, extermination, serious bodily or mental harm, deportation or forcible transfer, persecution and, finally, genocide and complicity of genocide.

### **B. Murders**<sup>1119</sup>

484. The Prosecution argues that the notion of murder encompasses “all forms of voluntary killings, whether premeditated or not”.<sup>1120</sup> The Defence made no specific submissions in this regard.

485. Murder has consistently been defined by the ICTY and the ICTR as the death of the victim resulting from an act or omission of the accused committed with the intention to kill or to cause serious bodily harm which he/she should reasonably have known might lead to death.<sup>1121</sup>

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<sup>1115</sup> Article 5 of the Statute.

<sup>1116</sup> See note 1114 above, para. 248.

<sup>1117</sup> *Ibid.*

<sup>1118</sup> Part II.

<sup>1119</sup> Different terminology is used in the English and French versions of the Statute. The French version specifies “meurtre” whereas the English version uses the term “killing”. The term “killing” refers to any act causing death without specifying the perpetrator’s degree of intention. The *Akayesu* Judgement observed that the notion of “meurtre” or “murder” should be preferred to that of “killings” in accordance with the general principles of criminal law which provide that where there are two possible interpretations the one which is more favourable to the accused must be used (*Akayesu* Judgement, par. 501). It also noted (at para. 588) that the term “murder” is translated in French into “assassinat” (which supposes premeditation and may involve, if proven, a higher sentence) and stated that the term “meurtre” in French should be preferred, in keeping with customary international law. The Chamber subscribes to the position previously adopted by the ICTR in the *Akayesu* Judgement.

<sup>1120</sup> Prosecutor’s pre-trial brief pursuant to Rule 65 *ter* (E) (i), 25 February 2000, para. 104, p. 38.

486. In this case, it is undisputed that thousands of Bosnian Muslims, residing or taking refuge in Srebrenica, were murdered during the period of 12-19 July and, in particular, that varying size groups of men were summarily executed on several sites within the jurisdiction of the Drina Corps.<sup>1122</sup> These mass executions were not challenged by the accused.<sup>1123</sup>

487. The Trial Chamber concluded that almost all of those murdered at the execution sites were adult Bosnian Muslim men and that up to 7000-8000 men were executed.<sup>1124</sup>

488. In addition, many murders were committed in Potočari on 12, 13 and 14 July.<sup>1125</sup> The people murdered there were Bosnian Muslim adults, although witnesses T and Ademović recounted the murder of a young boy<sup>1126</sup> and a baby.<sup>1127</sup> It is impossible to determine exactly how many murders were committed in Potočari, but it was a sizeable number. The Trial Chamber is also satisfied that men, detained in Bratunac between 12 and 14 July 1995, were executed at night opportunistically,<sup>1128</sup> although again, it is not possible to establish exactly how many victims there were.

489. Therefore, the Trial Chamber is satisfied that murders falling within the meaning of Article 3 and Article 5 (murder and persecution) of the Statute were committed.

### C. Extermination

490. The indictment also charges extermination under Article 5(b) based on these murders. The Trial Chamber will first set out a legal definition of extermination, before moving to consider whether the elements required to establish the crime of extermination are met in this case.

#### 1. Definition

491. Article 5 of the Statute which covers crimes against humanity states:

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<sup>1121</sup> See in particular the *Akayesu* Judgement, para. 589; the *Čelebići* Judgement, para. 439; the *Blaškić* Judgement, paras. 153, 181, and 217; and the *Jelišić* Judgement, paras. 35 and 63 (in the latter case, the Trial Chamber ruled that a perpetrator of murder must have had the intention to cause death; the foreseeable consequence theory was not upheld).

<sup>1122</sup> The indictment covers a period from 12 July to 1<sup>st</sup> November 1995. The Prosecution, however, offered no evidence of killings occurring after approximately 19 July 1995.

<sup>1123</sup> See in particular the cross-examination of the accused, T. 6489.

<sup>1124</sup> *Supra*, paras. 80-84.

<sup>1125</sup> *Supra*, para. 44-45.

<sup>1126</sup> *Supra*, para. 44.

<sup>1127</sup> *Supra*, para. 45.

<sup>1128</sup> *Supra*, para. 66.

[t]he International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in an armed conflict, whether international or national in character, and directed against any civilian population:

[...]

(b) extermination.

492. Extermination is also widely recognised as a crime against humanity in many international<sup>1129</sup> and national<sup>1130</sup> instruments. Nevertheless, it has rarely been invoked by national courts<sup>1131</sup> and it has not yet been defined by this Tribunal. The term “extermination” appeared in a number of post-war decisions by the Nuremberg Military Tribunal and the Supreme National Tribunal of Poland. However, although the crime of extermination was alleged, the judgements generally relied on the broader notion of crimes against humanity and did not provide any specific definition of the term “extermination”.<sup>1132</sup> Only the ICTR has defined, on several occasions, the requisite elements of the offence.<sup>1133</sup>

1. the accused or his subordinate participated in the killing of certain named or described persons;
2. the act or omission was unlawful and intentional.

<sup>1129</sup> Article 6(c) of the Statute of the Nuremberg Tribunal; Article II(c) of Control Council Law No. 10, Principle VI of the Nuremberg Principles; Article 5(b) of the Statute of the ICTY; Article 3(b) of the Statute of the ICTR; Article 18(b) of the Draft Code of Crimes against the Peace and Security of Mankind adopted by the ILC at its 48<sup>th</sup> session in 1996; and Articles 7(1)(b) and 7(2)(b) of the Statute of the International Criminal Court.

<sup>1130</sup> See especially section 7 (3.76) of the Canadian Criminal Code and Article 212-1, paragraph 1 of the French Penal Code (adopted by Act no. 92-1336 of 16 December 1992, amended by Act no. 93-913 of 19 July 1993, entered into force on 1 March 1994) which uses the term “widespread and systematic practice of summary executions”. Yet, the definition used in French law differs from that used in the international texts because a discriminatory element is required for all crimes against humanity.

<sup>1131</sup> See the District Court of Jerusalem which found Adolf Eichmann guilty of the crime against humanity of extermination although no definition was expressly provided. *Attorney-General of the Government of Israel v. Adolf Eichmann*, Israel, District Court of Jerusalem, 12 December 1961, 36 ILR, (1968), Part IV, p. 239, see *Barbie case*, Cour de Cassation, 3 June 1988, 78 ILR, pp. 332 and 336.

<sup>1132</sup> See the following judgements. *Josef Altstötter and others*, US Military Tribunal, Nuremberg (1947), Law Reports of Trials of War Criminals by the UN War Crimes Commission, Vol. VI. The accused were found guilty of crimes against humanity. The expression “racial extermination of the Poles” is used in the judgement to define the programme implemented nation-wide, p. 75; *Amon Leopold Goeth (Hauptsturmführer)*, Supreme National Tribunal of Poland (1946), Law Reports of Trials of War Criminals, Vol. VII. The judgement uses the term “extermination” broadly to justify genocide. The Tribunal notes that a policy of extermination was applied in order to destroy the Jewish and Polish nations (unofficial translation), p. 9. *I.G. Farben Trial: Carl Krauch and 22 others*, US Military Tribunal, Nuremberg (1947-1948), Law Reports of Trials of War Criminals, Vol. X. *The Krupp Case: Alfried Felix Alwyn Krupp Von Bohlen und Halbach & 11 others*, US Military Tribunal, Nuremberg, (1947-1948), Law Reports of Trials of War Criminals, Vol. X. *The High Command Case: Wilhelm Von Leeb and 13 others*, US Military Tribunal (1947-1948), Law Reports of Trials of War Criminals, Vol. XII. *The Rusha Case: Ulrich Greifelt & others*, US Military Tribunal, Nuremberg, (1947-1948), Law Reports of Trials of War Criminals, Vol. XIII. The Tribunal notes that the programme implemented by the Nazis corresponded to a systematic programme of genocide which involved *inter alia* the extermination of national and racial groups. *Gauleiter Artur Greiser*, Supreme National Tribunal of Poland (1946), Law Reports of Trials of War Criminals, Vol. XIII.

<sup>1133</sup> Judgement, *The Prosecutor v. Jean-Paul Akayesu*, case no. ICTR-96-4-T, 2 September 1998, paras. 591-592; Judgement, *The Prosecutor v. Kambanda*, case no. ICTR-97-23, 4 September 1998; Judgement, *The Prosecutor v. Kayishema/Ruzindana*, case no. ICTR-95-1-T, 21 May 1999, paras. 141-147; Judgement, *The Prosecutor v. Rutaganda*, case no. ICTR-96-3-T, 6 December 1999, paras. 82-84; Judgement, *The Prosecutor v. Musema*, case no. ICTR-96-13-T, 27 January 2000.

3. the unlawful act or omission must be part of a widespread or systematic attack;
4. the attack must be against the civilian population[.]<sup>1134</sup>

493. The Prosecutor submits<sup>1135</sup> that the crime of extermination must, by its very nature, be directed against a group of individuals, that it requires an element of mass destruction and that it embraces situations where a large number of people who do not share any common characteristic are killed.<sup>1136</sup> No discriminatory element is required.<sup>1137</sup>

494. The pre-trial Brief of the Defence<sup>1138</sup> argues that the act of extermination is distinguishable from genocide by the fact that it is not committed on account of a person's national, ethnical, racial or religious affiliation and that, moreover, the commission of the act does not require any special intention, that is, the intent to destroy the group in whole or in part.<sup>1139</sup>

495. 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>1140</sup> The Trial Chamber will now identify what extermination further involves and whether the requirements of that crime are met in this case.

496. To this end, the Trial Chamber notes the common definition of "extermination". According to the French Dictionary *Nouveau Petit Robert*, "*exterminer*" (to exterminate) derives from the Latin *exterminare*, meaning "to drive out", which comes from "*ex*" meaning "out" and "*terminus*" meaning "border". Likewise, the *Oxford English Dictionary* gives the primary meaning of the word "exterminate"<sup>1141</sup> as the act of driving out or banishing a person or group of persons beyond the boundaries of a state, territory or community. The ordinary use of the term "extermination",<sup>1142</sup>

<sup>1134</sup> *Akayesu* Judgement, para. 592. This Judgement further refers to the conditions required for a crime against humanity pursuant to the ICTR Statute, which also involve that the attack "be on discriminatory grounds, namely: national, political, ethnic, racial, or religious grounds." There is no such requirement in Article 5 of the ICTY Statute regarding crimes against humanity other than persecution.

<sup>1135</sup> Prosecutor's pre-trial Brief pursuant to Rule 65 *ter* (E)(i), 25 February 2001.

<sup>1136</sup> *Ibid.*, para. 129.

<sup>1137</sup> In accordance with the *Tadić I* Appeals Judgement, paras. 273-305. Conversely, see *Akayesu* Judgement, para. 592, *Kayishema/Ruzindana* Judgement, para. 144, *Rutaganda* Judgement, paras. 83-84, and *Musema* Judgement, paras. 218-219.

<sup>1138</sup> *The Prosecutor v. Radislav Krstić*, case no. IT-98-33-PT, Pre-trial Brief of the Defence pursuant to Rule 65 *ter* (E)(i), 29 February 2000.

<sup>1139</sup> *Ibid.*, paras. 35-36.

<sup>1140</sup> *Akayesu* Judgement, para. 589; *Blaškić* Judgement, para. 217; *Jelisić* Judgement, para. 35; *Kupreškić* Judgement, paras. 560-561.

<sup>1141</sup> The term appeared in the Christian Latin language in the twelfth century but was hardly used before the sixteenth. See *The Oxford English Dictionary* (2<sup>nd</sup> Edition) Vol. V, p. 601. *Le Nouveau Petit Robert*, French language dictionary (Dictionnaires Le Robert - Paris, 1994), p. 871.

<sup>1142</sup> *Ibid.* Meaning which appeared first in Vulgate and then in French.

however, has come to acquire a more destructive connotation meaning the annihilation of a mass of people.

497. Thus, the International Law Commission insists on the element of mass destruction in defining extermination:

[Extermination is a] crime which by its very nature is directed against a group of individuals. In addition, the act used to carry out the offence of extermination involves an element of mass destruction which is not required for murder. In this regard, extermination is closely related to the crime of genocide [...]<sup>1143</sup>

498. Given the limited precedents in the matter, it is useful to refer further to Article 7(2)(b) of the Statute of the International Criminal Court, which goes into more detail on the definition of the term “extermination” and specifies that:

Extermination includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of the population.

From the insertion of this provision, we surmise that the crime of extermination may be applied to acts committed with the intention of bringing about the death of a large number of victims either directly, such as by killing the victim with a firearm, or less directly, by creating conditions provoking the victim’s death.<sup>1144</sup> The Report of the ICC Preparatory Commission on the Elements of the crimes provides further guidance. It indicates that “the perpetrator [should have] killed one or more persons” and that the conduct should have taken place “as part of a mass killing of members of a civilian population.”<sup>1145</sup>

499. It is necessary, then, to identify the victims. Article 5 of the ICTY Statute covering crimes against humanity refers to acts “directed against any civilian population”. The victims need not share national, ethnical, racial or religious characteristics. In accordance with the Tadić Appeals Judgement,<sup>1146</sup> the Trial Chamber is of the view that it is unnecessary that the victims were discriminated against for political, social or religious grounds, to establish the crime of extermination.

500. According to the commentary on the ILC Draft Code, extermination distinguishes itself from the crime of genocide by the fact that the targeted population does not necessarily have any

<sup>1143</sup> See in particular the commentary on the ILC Draft Code of Crimes against the Peace and Security of Mankind (hereinafter, “ILC Draft Code”), *Report of the International Law Commission on the work of its 48<sup>th</sup> session, 6 May - 26 July 1996*, Official Documents of the United Nations General Assembly’s 51<sup>st</sup> session, Supplement no. 10 (A/51/10), Article 18, p. 118.

<sup>1144</sup> Cherif Bassiouni, *Crimes against Humanity in International Criminal Law* (2<sup>nd</sup> edition, 1999), p. 295.

<sup>1145</sup> Report of the Preparatory Commission for the International Criminal Court, Finalized draft text of the Elements of Crimes, PCNICC/2000/1/Add.2, 2 November 2000 (footnotes omitted).

<sup>1146</sup> *Tadić I Appeals Judgement*, paras. 281-305.

common national, ethnical, racial or religious characteristic, and that it also covers situations where “some members of a group are killed while others are spared”.<sup>1147</sup> For this reason, extermination may be retained when the crime is directed against an entire group of individuals even though no discriminatory intent nor intention to destroy the group as such on national, ethnical, racial or religious grounds has been demonstrated; or where the targeted population does not share any common national, ethnical, racial or religious characteristics.

501. The very term “extermination” strongly suggests the commission of a massive crime, which in turn assumes a substantial degree of preparation and organisation.<sup>1148</sup> It should be noted, though, that “extermination” could also, theoretically, be applied to the commission of a crime which is not “widespread” but nonetheless consists in eradicating an entire population, distinguishable by some characteristic(s) not covered by the Genocide Convention, but made up of only a relatively small number of people. In other words, while extermination generally involves a large number of victims, it may be constituted even where the number of victims is limited.

502. In this respect, the ICC definition of extermination indicates that it would be sufficient that the criminal acts be “calculated to bring about the destruction of *part* of the population.” The Trial Chamber notes that this definition was adopted after the time the offences in this case were committed. In accordance with the principle that where there is a plausible difference of interpretation or application, the position which most favours the accused should be adopted, the Chamber determines that, for the purpose of this case, the definition should be read as meaning the destruction of a numerically significant part of the population concerned.

503. In sum, the Trial Chamber finds that for the crime of extermination to be established, in addition to the general requirements for a crime against humanity, there must be evidence that a particular population was targeted and that its members were killed or otherwise subjected to conditions of life calculated to bring about the destruction of a numerically significant part of the population.

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<sup>1147</sup> See note 1143 above.

<sup>1148</sup> In para. 207, the Blaškić Judgement provides: “in practice, these two criteria [widespread and systematic attack] will often be difficult to separate since a widespread attack targeting a large number of victims generally relies on some form of planning or organisation. The quantitative criterion is not objectively definable as witnessed by the fact that neither international texts nor international and national case-law set any threshold starting with which a crime against humanity is constituted.”

## 2. Findings

504. Although there is evidence that a small number of killings in Potočari and afterwards involved women, children and elderly,<sup>1149</sup> virtually all of the persons killed in the aftermath of the fall of Srebrenica were Bosnian Muslim males of military age. The screening process at Potočari, the gathering of those men at detention sites, their transportation to execution sites, the opportunistic killings of members of the column along the Bratunac-Milići road as they were apprehended, demonstrate beyond any doubt that all of the military aged Bosnian Muslim males that were captured or fell otherwise in the hands of the Serb forces were systematically executed. The result was that the majority of the military aged Bosnian Muslim males who fled Srebrenica in July 1995 were killed.

505. A crime of extermination was committed at Srebrenica.

### D. Mistreatments

506. While the indictment cites mainly the killing of large numbers of Bosnian Muslim men, it also alleges two kinds of mistreatments: serious bodily or mental harm, as a genocidal crime;<sup>1150</sup> and cruel and inhumane treatment, including severe beatings, as an element of the persecutions inflicted on the Bosnian Muslims.<sup>1151</sup>

#### 1. Serious bodily or mental harm

507. The serious bodily or mental harm, cited by the Prosecution in support of the genocide charge, relates to the suffering endured by those who survived the executions.

508. The Prosecution relies upon the definition of serious bodily or mental harm found in the *Akayesu* Judgement, which includes “acts of torture, be they bodily or mental, inhumane or degrading treatment, persecution”.<sup>1152</sup> The Prosecution also quotes the *Eichmann* Judgement rendered by the Jerusalem District Court on 12 December 1961, according to which “the enslavement, starvation, deportation and persecution [and the] detention [of individuals] in ghettos, transit camps and concentration camps in conditions which were designed to cause their degradation, deprivation of their rights as human beings and to suppress them and cause them

<sup>1149</sup> One witness testified about the slaughtering of a baby. Expert reports on the exhumations show that a small number of the victims were under the age of fifteen or over sixty-five year old. Although those victims may not legally qualify as “military aged men”, there were obviously treated by the Bosnian Serb forces as if of military age.

<sup>1150</sup> Indictment, para. 21 (b).

<sup>1151</sup> Indictment, para. 31 (b).

<sup>1152</sup> *Akayesu* Judgement, para. 504, cited in Prosecutor’s pre-trial brief pursuant to Rule 65 *ter* (E) (i), 25 February 2000, para. 105, p. 39.



inhumane suffering and torture”<sup>1153</sup> may constitute serious bodily or mental harm. The Defence made no specific submissions on this issue.

509. The Chamber observes that, in the decision on the review of the indictment against *Karadžić and Mladić* pursuant to Rule 61, the ICTY stated that cruel treatment, torture, rape and deportation could constitute serious bodily or mental harm done to members of a group under a count of genocide.<sup>1154</sup> The Preparatory Commission for the International Criminal Court indicated that serious bodily and mental harm “may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment”.<sup>1155</sup>

510. The *Kayishema and Ruzindana* Judgement defined serious bodily harm as “harm that seriously injures the health, causes disfigurement or causes any serious injury to the external, internal organs or senses”.<sup>1156</sup> The same Judgement held that serious mental harm must “be interpreted on a case-by-case basis in light of the relevant jurisprudence”.<sup>1157</sup> Reference to serious mental harm, in the context of the Genocide Convention, appears to have been restricted originally to the injection of pharmacological substances occasioning the serious impairment of mental faculties.<sup>1158</sup> The United States supported this restrictive interpretation, indicating in a statement of interpretation annexed to their instrument of accession that, in their view, “mental harm” meant permanent impairment of the mental faculties brought on through drugs, torture or techniques similar thereto.<sup>1159</sup> In addition, the Preparatory Committee of the International Criminal Court points out that “‘mental harm’ is understood to mean more than the minor or temporary impairment of mental faculties”.<sup>1160</sup> A distinction must thus be drawn between serious mental harm and emotional or psychological damage or attacks on the dignity of the human person not causing

<sup>1153</sup> *The Israeli Government Prosecutor General v. Adolph Eichmann*, Jerusalem District Court, 12 December 1961 (hereinafter “the *Eichmann* District Court Judgement”), in *International Law Reports* (ILR), vol. 36, 1968, p. 340, cited in the Prosecutor’s pre-trial Brief pursuant to Rule 65 *ter* (E) (i), 25 February 2000, para. 105, p. 39.

<sup>1154</sup> *The Prosecutor v. Radovan Karadžić and Ratko Mladić*, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, IT-95-5-R61 and IT-95-18-R61, 11 July 1996 (hereinafter “the *Karadžić and Mladić* case”), para. 93.

<sup>1155</sup> Report of the Preparatory Commission for the International Criminal Court. Finalised draft text of the elements of crimes, UN Doc. PCNICC/2000/INF/3/Add.2, 6 July 2000, p. 6.

<sup>1156</sup> *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, ICTR-95-1-T, 21 May 1999, para. 109 (hereinafter “the *Kayishema and Ruzindana* Judgement”).

<sup>1157</sup> *Kayishema and Ruzindana* Judgement, para. 113.

<sup>1158</sup> Reference to serious mental harm for this purpose was first proposed by China (UN Doc. E/AC.25/SR.5, p. 9; UN Doc. A/C.6/211; UN Doc. A/C.6/232/Rev. 1; UN Doc. A/C.6/SR.81). Though at first rejected, the proposition was ultimately adopted at the initiative of India (UN Doc. A/C.6/SR.81). See also Nehemia Robinson’s *The Genocide Convention; A commentary*, New York, 1960, p. ix.

<sup>1159</sup> 132:15 CONG. REC. S1378. See also the Genocide Convention Implementing Act of 1987, s. 1091(a)(3).

<sup>1160</sup> Report of the Preparatory Committee on the Establishment of an International Criminal Court. Part 2. Jurisdiction, Admissibility and Applicable Law, UN Doc. A/CONF. 183/2/Add.1, 14 April 1998, p. 11.

lasting impairment. The *Akayesu* Judgement stressed, however, that “causing serious bodily or mental harm [...] does not necessarily mean that the harm is permanent and irremediable”.<sup>1161</sup>

511. The serious bodily or mental harm, included within Article 4 of the Statute, can be informed by the Tribunal’s interpretation of the offence of wilfully causing great suffering or serious injury to body or health under Article 2 of the Statute. The latter offence was defined in the *Čelebići* Judgement as “an act or omission that is intentional, being an act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical suffering or injury”.<sup>1162</sup>

512. The *Blaškić* Judgement defined the serious bodily or mental harm required to prove a charge of persecution under Article 5 as follows:

the victim must have suffered serious bodily or mental harm; the degree of severity must be assessed on a case by case basis with due regard for the individual circumstances;

the suffering must be the result of an act of the accused or his subordinate;

when the offence was committed, the accused or his subordinate must have been motivated by the intent to inflict serious bodily or mental harm upon the victim, through his own will or deliberate recklessness.<sup>1163</sup>

513. The Trial Chamber finds that serious bodily or mental harm for purposes of Article 4 *actus reus* is an intentional act or omission causing serious bodily or mental suffering. The gravity of the suffering must be assessed on a case by case basis and with due regard for the particular circumstances. In line with the *Akayesu* Judgement,<sup>1164</sup> the Trial Chamber states that serious harm need not cause permanent and irremediable harm, but it must involve harm that goes beyond temporary unhappiness, embarrassment or humiliation. It must be harm that results in a grave and long-term disadvantage to a person’s ability to lead a normal and constructive life. In subscribing to the above case-law, the Chamber holds that inhuman treatment, torture, rape, sexual abuse and deportation are among the acts which may cause serious bodily or mental injury.

514. The Chamber is fully satisfied that the wounds and trauma suffered by those few individuals who managed to survive the mass executions do constitute serious bodily and mental harm within the meaning of Article 4 of the Statute.<sup>1165</sup>

<sup>1161</sup> *Akayesu* Judgement, para. 502.

<sup>1162</sup> *The Prosecutor v. Zejnil Delalić, Zdravko Mucić a/k/a “Pavo”, Hazim Delić and Esad Landžo a/k/a “Zenga”, IT-96-21-T*, 16 November 1998 (hereinafter “the *Čelebići* Judgement”), para. 511.

<sup>1163</sup> *Blaškić* Judgement, para. 243.

<sup>1164</sup> *Akayesu* Judgement, para. 502.

<sup>1165</sup> *Eichmann* District Court Judgement, para. 199: “there is no doubt that causing serious bodily harm to Jews was a direct and unavoidable result of the activities which were carried out with the intention of exterminating those Jews who remained alive”.

## 2. Cruel and Inhumane Treatment

515. The Prosecution relies on paragraphs 4, 6, 7, 11 and 22 to 26 of the indictment to allege that persecutions were committed against the Bosnian Muslims by, among other crimes, “the cruel and inhumane treatment of Bosnian Muslim civilians, including severe beatings.”<sup>1166</sup> The paragraphs mentioned above, however, do not contain any specifics with respect to cruel and inhumane treatment.

516. Cruel and inhumane treatment has been defined in the jurisprudence of the Tribunal as “an intentional act or omission, that is an act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity” and includes such offences as torture.<sup>1167</sup> The Chamber has just explained how the term “serious” should be interpreted.

517. The Trial Chamber has described in detail the ordeal suffered both by the Bosnian Muslims who fled to Potočari and the Bosnian Muslims captured from the column. More specifically, the Trial Chamber heard reliable evidence concerning the severe beatings and other cruel treatments suffered by the Bosnian Muslim men after they had been separated from their relatives in Potočari. Numerous witnesses further testified about the terrible conditions prevailing both in and outside the UN Potočari compound: lack of food and water which the VRS provided in very limited quantity, thousands of people crammed into a small space. More significantly, rapes and killings were reported by credible witnesses and some committed suicide out of terror. The entire situation in Potočari has been depicted as a campaign of terror. As an ultimate suffering, some women about to board the buses had their young sons dragged away from them, never to be seen again.<sup>1168</sup>

518. The Trial Chamber thus concludes that the VRS and other Serb forces imposed cruel and inhumane treatment on a large number of Bosnian Muslims who were subjected to intolerable conditions in Potočari, cruelly separated from their family members, and, in the case of the men, subjected to the unspeakable horror of watching their fellow captives die on the execution fields, escaping that fate only by chance. The main fact for which the Prosecution alleges inhumane treatment, though, is the forcible transfer of the Bosnian Muslim women, children and elderly outside the enclave of Srebrenica.

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<sup>1166</sup> Indictment, para. 31 (b).

<sup>1167</sup> *Čelebići* Judgement, para. 552; *Blaškić* Judgement, para. 186.

<sup>1168</sup> Witness DD.

## **E. Deportation or Forcible Transfer**

519. The Chamber has found that, on 12 and 13 July 1995, about 25,000 Bosnian Muslim civilians were forcibly bussed outside the enclave of Srebrenica to the territory under BiH control. The transportation of these Bosnian Muslim women, children and elderly from Potočari to Kladanj forms the basis of three counts in the indictment. It is included under the count of crime against humanity for persecutions (count 6). In addition, the Prosecution characterises the act as a deportation constituting a crime against humanity (count 7) or, alternatively, as an inhumane act constituting a crime against humanity (forcible transfer) (count 8).

### **1. General Considerations**

520. The Prosecution defines deportation as the “forced displacement of civilians from the area in which they are lawfully present without grounds permitted by international law”. The Prosecution submits that it is “not necessary [...] for civilians to be forcibly removed across a national border in order for the offence to be established”.<sup>1169</sup> The Defence defines deportation as the forced removal of a person to another country,<sup>1170</sup> and emphasises that not all forcible transfers of civilians are criminal offences.<sup>1171</sup>

521. Both deportation and forcible transfer relate to the involuntary and unlawful evacuation of individuals from the territory in which they reside. Yet, the two are not synonymous in customary international law. Deportation presumes transfer beyond State borders, whereas forcible transfer relates to displacements within a State.<sup>1172</sup>

522. However, this distinction has no bearing on the condemnation of such practices in international humanitarian law. Article 2(g) of the Statute, Articles 49 and 147 of the Geneva Convention concerning the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Article 85(4)(a) of Additional Protocol I, Article 18 of the ILC Draft Code and Article 7(1)(d) of the Statute of the International Criminal Court all condemn deportation or forcible

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<sup>1169</sup> Prosecutor’s pre-trial Brief pursuant to Rule 65 *ter* (E) (i), para. 131.

<sup>1170</sup> Final Submissions of the Accused, para. 375-377.

<sup>1171</sup> Final Submissions of the Accused, para. 386.

<sup>1172</sup> See in particular the commentary on the ILC Draft Code, p. 122 “Whereas deportation implies expulsion from the national territory, the forcible transfer of population could occur wholly within the frontiers of one and the same State”.

transfer of protected persons.<sup>1173</sup> Article 17 of Protocol II likewise condemns the “displacement” of civilians.

523. In this regard, the Trial Chamber notes that any forced displacement is by definition a traumatic experience which involves abandoning one’s home, losing property and being displaced under duress to another location. As previously stated by the Trial Chamber in the *Kupreškić* case,<sup>1174</sup> forcible displacement within or between national borders is included as an inhumane act under Article 5(i) defining crimes against humanity. Whether, in this instance, the facts constitute forcible transfer or deportation is discussed below.

## 2. Evaluation of the facts

### (a) Lawfulness of the transfer

524. Article 49 of the Fourth Geneva Convention and Article 17 of Protocol II allow total or partial evacuation of the population “if the security of the population or imperative military reasons so demand”.<sup>1175</sup> Article 49 however specifies that “[p]ersons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased”.

525. As a preliminary matter, this condition is not satisfied in the present case. The Srebrenica citizens who had gathered in Potočari were not returned to their homes as soon as hostilities in the area in question had ceased. In fact, active hostilities in Srebrenica town itself and to the south of the enclave had already ceased by the time people were bussed out of Potočari. Security of the civilian population can thus not be presented as the reason justifying the transfer.

526. In addition to the security of the population, the Geneva Convention also allows for evacuations based on “imperative military reasons”. In terms of military necessity, two World War II cases are relevant. General Lothar Rendulic was accused of violating Article 23(g) of the 1907 Hague Regulations, which prohibits the destruction or seizure of the enemy’s property, “unless such

<sup>1173</sup> According to Article 49 of the Fourth Geneva Convention: “Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited [...]”. Article 85(4) of Protocol I characterises “[...] the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory [...]” as a grave breach of the Protocol. Article 18 of the ILC Draft Code and Article 7(1)(d) of the Statute of the International Criminal Court specify under the same heading “deportation or forcible transfer of population” as acts liable to constitute crimes against humanity.

<sup>1174</sup> *Kupreškić* Judgement, para. 566.

<sup>1175</sup> Article 49 of the Fourth Geneva Convention reads as follows: “the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. [...] Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased”. Security of the population and imperative military reasons are also listed in Article 17 of Protocol II as the only reasons that could justify the evacuation of the civilian population.

destruction or seizure [is] imperatively demanded by the necessities of war". Retreating forces under his command engaged in scorched earth tactics, destroying all facilities that they thought might aid the opposing army. In addition, Rendulic ordered the evacuation of civilians in the area. Rendulic raised the defence of "military necessity", since his troops were being pursued by what appeared to be overwhelming Soviet forces. The U.S. Military Tribunal at Nuremberg concluded that, even though Rendulic may have erred in his judgement as to the military necessity for evacuating the civilians, his decisions were still justified by "urgent military necessity" based on the information in his hands at the time.<sup>1176</sup> By contrast, Field Marshall Erich von Manstein was convicted by a British military tribunal of "the mass deportation and evacuation of civilian inhabitants" of the Ukraine. Von Manstein argued that the evacuation was warranted by the military necessity of preventing espionage and depriving the enemy of manpower.<sup>1177</sup> This was not found to be a legitimate reason for the evacuation of the population or the destruction of their property.<sup>1178</sup> In addition, the judge advocate<sup>1179</sup> noted that the Prosecution's evidence showed that "far from this destruction being the result of imperative necessities of the moment, it was really the carrying out of a policy planned a considerable time before, a policy which the accused had in fact been prepared to carry out on two previous occasions and now was carrying out in its entirety and carrying out irrespective of any question of military necessity".<sup>1180</sup>

527. In this case no military threat was present following the taking of Srebrenica. The atmosphere of terror in which the evacuation was conducted proves, conversely, that the transfer was carried out in furtherance of a well organised policy whose purpose was to expel the Bosnian Muslim population from the enclave. The evacuation was itself the goal and neither the protection of the civilians nor imperative military necessity justified the action.

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<sup>1176</sup> *Wilhelm List and others*, US military Tribunal, Nuremberg ("the Hostages Trial"), Law Reports of Trials of War Criminals, Vol. VIII, case No. 47, p. 69 (1948): "It is our considered opinion that the conditions as they appeared to the defendant at the time were sufficient, upon which he could honestly conclude that urgent military necessity warranted the decision made. This being true, the defendant may have erred in the exercise of his judgement but he was guilty of no criminal act".

<sup>1177</sup> *Von Lewinski (called von Manstein)*, British Military Court at Hamburg (Germany), Dec. 19, 1949, in 16 Annual Dig. and Reports of Public International Law Cases 509, 521 (1949): "In a country so thickly populated as the Ukraine it was necessary for the security of the troops to remove the population from the battle or the combat zone. To do otherwise would have been to invite espionage. The evacuation of this zone was therefore mere military security. Further, it was necessary to deprive the enemy of labour potential as the enemy put every able-bodied man into the army and utilised women and even small children. They could not allow them to fall into the hands of the enemy".

<sup>1178</sup> *Id.* at 522-23. Indeed, the judge advocate went so far as to suggest that deportation of civilians could never be justified by military necessity, but only by concern for the safety of the population. *Id.* at 523. This position, however, is contradicted by the text of the later Geneva Convention IV, which does include "imperative military reasons", and the Geneva Convention is more authoritative than the views of one judge advocate.

<sup>1179</sup> The British military tribunals did not issue reasoned opinions, so the law reports contain the submissions of the judge advocates, who advised the court on the law after the presentation of the prosecution and defence.

<sup>1180</sup> *Von Lewinski (von Manstein)*, *op. cit.* p. 522-23.

(b) The compulsory nature of the transfer

528. The Chamber next must determine whether the civilians were in fact forcefully transferred. The commentary to Article 49 of Geneva Convention IV suggests that departures motivated by the fear of discrimination are not necessarily in violation of the law:

[T]he Diplomatic Conference preferred not to place an absolute prohibition on transfers of all kinds, as some might up to a certain point have the consent of those being transferred. The Conference had particularly in mind the case of protected persons belonging to ethnic or political minorities who might have suffered discrimination or persecution on that account and might therefore wish to leave the country. In order to make due allowances for that legitimate desire the Conference decided to authorise voluntary transfers by implication, and only to prohibit 'forcible' transfers.<sup>1181</sup>

529. However, the finalised draft text of the elements of the crimes adopted by the Preparatory Commission for the International Criminal Court provides that:

[t]he term 'forcibly' is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.<sup>1182</sup>

530. The threats to Srebrenica residents far transcended mere fear of discrimination. The evacuation took place at the final stage of a campaign conducted to force the population to flee the enclave during a time when VRS troops were actively threatening and injuring the Bosnian Muslim civilians of Srebrenica. The negotiations between the Bosnian Muslim "representative", Nesib Mandžić, and General Mladić at the second meeting in the Hotel Fontana on 11 July attest to the intimidating conditions in which the Bosnian Muslim civilians were evacuated.<sup>1183</sup> The Trial Chamber has already found that, despite the attempts by the VRS to make it look like a voluntary movement, the Bosnian Muslims of Srebrenica were not exercising a genuine choice to go, but reacted reflexively to a certainty that their survival depended on their flight.<sup>1184</sup>

(c) The fact of the transfer within the borders of Bosnia-Herzegovina

531. The Bosnian Muslim women, children and elderly assembled at Potočari were forcibly transferred to Kladanj, an area in the territory of Bosnia-Herzegovina controlled by the ABiH, in order to eradicate all trace of Bosnian Muslims in the territory in which the Bosnian Serbs were looking to establish their own State. However, Bosnia-Herzegovina was the only State formally recognised by the international community at the time of the events. Since the Srebrenica civilians

<sup>1181</sup> Commentary to Geneva Convention IV, at 279.

<sup>1182</sup> Report of the Preparatory Commission for the International Criminal Court, Finalised Draft Text of the Elements of the Crimes, UN Doc. PCNICC/2000/INF/3/Add.2, 6 July 2000, p. 11.

<sup>1183</sup> *Supra*, paras. 128-130.

<sup>1184</sup> *Supra*, paras. 145 to 149.

were displaced within the borders of Bosnia-Herzegovina, the forcible displacement may not be characterised as deportation in customary international law.

532. The Chamber therefore concludes that the civilians assembled at Potočari and transported to Kladanj were not subjected to deportation but rather to forcible transfer. This forcible transfer, in the circumstances of this case, still constitutes a form of inhumane treatment covered under Article 5.

#### **F. Persecutions**

533. General Krstić is accused of persecutions, a crime against humanity, on the basis of his alleged participation in:

- a. the murder of thousands of Bosnian Muslim civilians, including men, women, children, and elderly persons;
- b. the cruel and inhumane treatment of Bosnian Muslim civilians, including severe beatings;
- c. the terrorising of Bosnian Muslim civilians;
- d. the destruction of personal property of Bosnian Muslims; and
- e. the deportation or forcible transfer of Bosnian Muslims from the Srebrenica enclave.<sup>1185</sup>

534. The Trial Chamber has already discussed generally some of these offences referred to by the Prosecutor. It will now turn more specifically to the offences not previously covered, bearing in mind that the crime of persecutions has been defined, in the *Kupreškić* Judgement, as “the gross or blatant denial, on discriminatory grounds, of a fundamental right, laid down in international customary or treaty law, reaching the same level of gravity as the other acts prohibited in Article 5”.<sup>1186</sup>

535. The Tribunal’s case-law has specified that persecutory acts are not limited to those acts enumerated in other sub-clauses of Article 5<sup>1187</sup> or elsewhere in the Statute,<sup>1188</sup> but also include the denial of other fundamental human rights, provided they are of equal gravity or severity.<sup>1189</sup> Furthermore, the Tribunal’s case-law emphasises that “discriminatory acts charged as persecution must not be considered in isolation, but in context, by looking at their cumulative effect. Although

<sup>1185</sup> Indictment, para. 31.

<sup>1186</sup> *Kupreškić* Judgement, para. 621.

<sup>1187</sup> *Kupreškić* Judgement, para. 605

<sup>1188</sup> *Kordić and Čerkez* Judgement, para. 193.

<sup>1189</sup> *Kupreškić* Judgement, para. 619; *Kordić and Čerkez* Judgement, para. 195.



individual acts may not be inhumane, their overall consequences must offend humanity in such a way that they may be termed 'inhumane'.<sup>1190</sup>

536. The Trial Chamber has previously determined that a widespread and systematic attack was launched against the Bosnian Muslim population of Srebrenica from 11 July onwards, by reason of their belonging to the Bosnian Muslim group.

537. The humanitarian crisis in Potočari, the burning of homes in Srebrenica and Potočari, the terrorisation of Bosnian Muslim civilians, the murder of thousands of Bosnian Muslim civilians, in Potočari or in carefully orchestrated mass scale executions, and the forcible transfer of the women, children and elderly out of the territory controlled by the Bosnian Serbs, constitute persecutory acts.

538. The Trial Chamber is thus satisfied that a crime of persecution, as defined in the indictment, was committed from 11 July 1995 onward in the enclave of Srebrenica.

### G. Genocide

539. General Krstić is principally charged with genocide and, in the alternative, with complicity in genocide<sup>1191</sup> in relation to the mass executions of the Bosnian Muslim men in Srebrenica between 11 July and 1 November 1995.<sup>1192</sup>

540. Article 4(2) of the Statute defines genocide as:

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

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

541. The Trial Chamber must interpret Article 4 of the Statute taking into account the state of customary international law at the time the events in Srebrenica took place. Several sources have been considered in this respect. The Trial Chamber first referred to the codification work

<sup>1190</sup> *Kupreškić* Judgement, para. 622.

<sup>1191</sup> Counts 1 and 2.

undertaken by international bodies. The Convention on the Prevention and Punishment of the Crime of Genocide<sup>1193</sup> (hereinafter "the Convention"), adopted on 9 December 1948,<sup>1194</sup> whose provisions Article 4 adopts *verbatim*, constitutes the main reference source in this respect. Although the Convention was adopted during the same period that the term "genocide" itself was coined, the Convention has been viewed as codifying a norm of international law long recognised and which case-law would soon elevate to the level of a peremptory norm of general international law (*jus cogens*).<sup>1195</sup> The Trial Chamber has interpreted the Convention pursuant to the general rules of interpretation of treaties laid down in Articles 31 and 32 of the Vienna Convention on the Law of Treaties. As a result, the Chamber took into account the object and purpose of the Convention in addition to the ordinary meaning of the terms in its provisions. As a supplementary means of interpretation, the Trial Chamber also consulted the preparatory work and the circumstances which gave rise to the Convention. Furthermore, the Trial Chamber considered the international case-law on the crime of genocide, in particular, that developed by the ICTR. The Report of the International Law Commission (ILC) on the Draft Code of Crimes against Peace and Security of Mankind<sup>1196</sup> received particular attention. Although the report was completed in 1996, it is the product of several years of reflection by the Commission whose purpose was to codify international law, notably on genocide : it therefore constitutes a particularly relevant source for interpretation of Article 4. The work of other international committees, especially the reports of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN Commission on Human Rights,<sup>1197</sup> was also reviewed. Furthermore, the Chamber gave consideration to the work done in producing the Rome Statute on the establishment of an international criminal court, specifically, the finalised draft text of the elements of crimes completed by the Preparatory Commission for the International Criminal Court in July 2000.<sup>1198</sup> Although that document post-dates the acts involved here, it has proved helpful in assessing the state of customary international law which the Chamber itself derived from other sources. In this regard, it should be noted that all the States attending the conference, whether signatories of the Rome Statute or not, were eligible to be represented on the Preparatory Commission. From this perspective, the

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<sup>1192</sup> Indictment, para. 21.

<sup>1193</sup> Articles II and III.

<sup>1194</sup> Entered into force on 12 January 1951.

<sup>1195</sup> *Reservations to the Convention on the Prevention and Punishment of Genocide*, Advisory Opinion, ICJ Reports (1951), p. 23.

<sup>1196</sup> ILC Draft Code, in particular, pp. 106-114.

<sup>1197</sup> Nicodème Ruhashyankiko, *Study on the Question of the Prevention and Punishment of the Crime of Genocide*, United Nations, Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/416, 4 July 1978; Benjamin Whitaker, *Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide*, United Nations, Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1985/6, 2 July 1985.

document is a useful key to the *opinio juris* of the States. Finally, the Trial Chamber also looked for guidance in the legislation and practice of States, especially their judicial interpretations and decisions.

542. Article 4 of the Statute characterises genocide by two constitutive elements:

- the *actus reus* of the offence, which consists of one or several of the acts enumerated under Article 4(2);
- the *mens rea* 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.

1. Actus reus

543. The Trial Chamber has discussed above the murders and serious bodily and mental harm alleged by the Prosecution and has concluded they have been proved. It has been established beyond all reasonable doubt that Bosnian Muslim men residing in the enclave were murdered, in mass executions or individually. It has also been established that serious bodily or mental harm was done to the few individuals who survived the mass executions.

2. Mens rea

544. The critical determination still to be made is whether the offences were committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

545. The Prosecution contends that the Bosnian Serb forces planned and intended to kill all the Bosnian Muslim men of military age at Srebrenica and that these large scale murders constitute genocide.<sup>1199</sup> The Defence does not challenge that the Bosnian Serb forces killed a significant number of Bosnian Muslim men of military age but disagrees a genocidal intent within the meaning of Article 4 has been proved.

546. The Trial Chamber is ultimately satisfied that murders and infliction of serious bodily or mental harm were committed with the intent to kill all the Bosnian Muslim men of military age at Srebrenica. The evidence shows that the mass executions mainly took place between 13 and 16 July, while executions of smaller scale continued until 19 July. All of the executions systematically targeted Bosnian Muslim men of military age, regardless of whether they were civilians or soldiers.

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<sup>1198</sup> PCNICC/2000/INF/3/Add. 2, 6 July 2000.

<sup>1199</sup> Prosecution Opening Statement, T. 461.

The military aged men who fled to Potočari were systematically separated from the other refugees. They were gathered in the "White House" and were forced to leave their identification papers and personal belongings outside the house. While opportunistic killings occurred in Potočari on 12 and 13 July,<sup>1200</sup> most of the men detained in the White house were bussed to Bratunac, from the afternoon of 12 July throughout 13 July,<sup>1201</sup> and were subsequently led to execution sites. Additionally, the VRS launched an artillery attack against the column of Bosnian Muslim men marching toward Tuzla soon after it became aware of its existence.<sup>1202</sup> A relentless search for the men forming the column started on 12 July and continued throughout 13 July. The few survivors qualified the search as a "man hunt" that left hardly any chance of escape.<sup>1203</sup> Attack resumed on 14 and 15 July against the third of the column that had managed to cross the asphalt road between Konjevic Polje and Nova Kasaba on 11-12 July.<sup>1204</sup> As the pressures on the VRS mounted during the fatal week of 11-16 July, negotiations were undertaken between the Bosnian Muslim and Bosnian Serb sides and a portion of the Bosnian Muslim column was eventually let through to government-held territory.<sup>1205</sup> The most logical reason for this was that most of the VRS troops had been relocated to Žepa by this time and, due to lack of manpower to stop the column, the Zvornik brigade was forced to let them go.<sup>1206</sup> Overall, however, as many as 8,000 to 10,000 men from the Muslim column of 10,000 to 15,000 men were eventually reported as missing.<sup>1207</sup>

547. The VRS may have initially considered only targeting the military men for execution.<sup>1208</sup> Some men from the column were in fact killed in combat and it is not certain that the VRS intended at first to kill all the captured Muslim men, including the civilians in the column.<sup>1209</sup> Evidence shows, however, that a decision was taken, at some point, to capture and kill all the Bosnian Muslim men indiscriminately. No effort thereafter was made to distinguish the soldiers from the civilians. Identification papers and personal belongings were taken away from both Bosnian Muslim men at Potočari and from men captured from the column; their papers and belongings were piled up and eventually burnt.<sup>1210</sup> The strength of the desire to capture all the Bosnian Muslim men was so great that Bosnian Serb forces systematically stopped the buses transporting the women,

<sup>1200</sup> *Supra*, paras. 43-47, 58.

<sup>1201</sup> *Supra*, para. 59, 66.

<sup>1202</sup> An intercept submitted into evidence indicates that the Bosnian Serbs were aware of the column as of 12 July at 0300 hours. *Supra*, para. 162.

<sup>1203</sup> *Supra*, para. 62.

<sup>1204</sup> *Supra*, para. 65.

<sup>1205</sup> *Supra*, para. 65.

<sup>1206</sup> *Supra*, para. 85.

<sup>1207</sup> *Supra*, para. 83.

<sup>1208</sup> A list of criminals of war was drawn upon Živanović's order dated 13 July; an intercepted conversation between Cerović and Beara on 16 July (P335) also indicates that the prisoners should be screened.

<sup>1209</sup> *Supra*, paras. 77, 80.

<sup>1210</sup> *Supra*, para. 171.

children and the elderly at Tišća and checked that no men were hiding on board.<sup>1211</sup> Those men found in the buses were removed and subsequently executed.<sup>1212</sup> Admittedly, as the Defence has argued, some wounded men were authorised to leave the Srebrenica enclave under the escort of UNPROFOR. A report of 13 July, however, indicates that the VRS agreed to their evacuation only because of the presence of UNPROFOR and in order to show to the media that non-combatants were properly treated.<sup>1213</sup> Except for the wounded, all the men, whether separated in Potočari or captured from the column, were executed, either in small groups or in carefully orchestrated mass executions. They were led to sites located in remote places for execution. The men, sometimes blindfolded, barefoot or with their wrists bound behind their backs, were lined up and shot in rounds. Others were jammed into buildings and killed by rounds of automatic rifles or machine gunfire, or with hand grenades hurled into the buildings.<sup>1214</sup> Bulldozers usually arrived immediately after the execution was completed, to bury the corpses.<sup>1215</sup> Soldiers would sometimes start digging the graves while the executions were still in progress.<sup>1216</sup> Bosnian Serb soldiers would come back to the execution sites a few hours later and check that no one had been left alive.<sup>1217</sup> The evidence shows that the VRS sought to kill all the Bosnian Muslim military aged men in Srebrenica, regardless of their civilian or military status.

548. The Prosecution contends that evidence demonstrates an intent to destroy part of a group as such,<sup>1218</sup> which is consonant with the definition of genocide. Conversely, the Defence maintains that the intent to kill all the Bosnian Muslim men of military age living in Srebrenica cannot be interpreted as an intent to destroy in whole or in part a group as such within the meaning of Article 4 of the Statute.

549. As a preliminary, the Chamber emphasises the need to distinguish between the individual intent of the accused and the intent involved in the conception and commission of the crime. The gravity and the scale of the crime of genocide ordinarily presume that several protagonists were involved in its perpetration. Although the motive of each participant may differ, the objective of the criminal enterprise remains the same. In such 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. It is then necessary to establish whether the accused being prosecuted for genocide shared the intention that a genocide be carried out.

<sup>1211</sup> *Supra*, para. 216. The screening of the men probably took place on 12 July and in the earlier hours of 13 July.

<sup>1212</sup> para. 106.

<sup>1213</sup> P459, *supra* para. 86.

<sup>1214</sup> Execution in Kravica on 13 July, Pilica cultural Dom on 16 July.

<sup>1215</sup> *Supra*, para. 68.

<sup>1216</sup> Orahovac, 14 July.

550. Genocide refers to any criminal enterprise seeking to destroy, in whole or in part, a particular kind of human group, as such, by certain means. Those are two elements of the special intent requirement of genocide:

- the act or acts must target a national, ethnical, racial or religious group;
- the act or acts must seek to destroy all or part of that group.<sup>1219</sup>

(a) A group, as such

551. The parties agreed that genocide must target not only one or several individuals but a group as such.<sup>1220</sup>

552. United Nations General Assembly resolution 96 (I) defined genocide as “a denial of the right of existence of entire human groups”.<sup>1221</sup> On the same issue, the Secretariat explained:

The victim of the crime of genocide is a human group. It is not a greater or smaller number of individuals who are affected for a particular reason but a group as such.<sup>1222</sup>

In 1951, following the adoption of the Genocide Convention, the International Court of Justice observed that the Convention looked “to safeguard the very existence of certain human groups and [...] to confirm and endorse the most elementary principles of morality”.<sup>1223</sup> The ILC also insisted on this point in 1996:

The group itself is the ultimate target or intended victim of this type of massive criminal conduct. [...] the intention must be to destroy the group ‘as such’, meaning as a separate and distinct entity.<sup>1224</sup>

The *Akayesu* Judgement<sup>1225</sup> and the *Kayishema and Ruzindana* Judgement<sup>1226</sup> upheld this interpretation.

<sup>1217</sup> See esp. Witnesses J and K’s testimony who are survivors of the execution carried out at the Kravica warehouse. *supra* para. 207.

<sup>1218</sup> Indictment, para. 21.

<sup>1219</sup> *Jelisić* Judgement, para. 66.

<sup>1220</sup> Prosecutor’s Submissions of agreed matters of law presented during the pre-trial conference of 7 March 2000, 8 March 2000, paras. 92 and 93.

<sup>1221</sup> UN Doc. A/ 96(I) (1946), 11 December 1946.

<sup>1222</sup> “Relations Between the Convention on Genocide on the One Hand and the Formulation of the Nurnberg Principles and the Preparation of a Draft Code of Offences Against Peace and Security on the Other”, U.N. Doc. E/AC.25/3/Rev.1, 12 April 1948, p. 6. Nehemia Robinson set forth this essential characteristic of genocide very explicitly in his commentary on the Convention: “The main characteristic of Genocide is its object: the act must be directed toward the destruction of a *group*. Groups consist of individuals, and therefore, destructive action must, in the last analysis, be taken against individuals. However, these individuals are important not *per se* but only as members of the group to which they belong” (*op.cit.* p. 63).

<sup>1223</sup> *Reservations to the Convention on the Prevention and Punishment of Genocide*, Advisory Opinion, ICJ Reports (1951), p. 23.

<sup>1224</sup> ILC Draft Code, p. 88.

553. The Convention thus seeks to protect the right to life of human groups, as such. This characteristic 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>1227</sup>

554. However, the Genocide Convention does not protect all types of human groups. Its application is confined to national, ethnical, racial or religious groups.

555. National, ethnical, racial or religious group are not clearly defined in the Convention or elsewhere. In contrast, the preparatory work on the Convention and the work conducted by international bodies in relation to the protection of minorities show that the concepts of protected groups and national minorities partially overlap and are on occasion synonymous. European instruments on human rights use the term “national minorities”,<sup>1228</sup> while universal instruments more commonly make reference to “ethnic, religious or linguistic minorities”;<sup>1229</sup> the two expressions appear to embrace the same goals.<sup>1230</sup> In a study conducted for the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1979, F. Capotorti commented that “the Sub-Commission [on Prevention of Discrimination and Protection of Minorities] decided, in 1950, to replace the word ‘racial’ by the word ‘ethnic’ in all references to minority groups described by their ethnic origin”.<sup>1231</sup> The International Convention on the Elimination of All Forms of Racial Discrimination<sup>1232</sup> defines racial discrimination as “any distinction, exclusion, restriction or

<sup>1225</sup> *Akayesu* Judgement, para. 522: “The perpetration of the act charged therefore extends beyond its actual commission, for example, the murder of a particular individual, for the realisation of an ulterior motive, which is to destroy, in whole or in part, the group of which the individual is just one element”.

<sup>1226</sup> *Kayishema, Ruzindana* Judgement, para. 99: “‘Destroying’ has to be directed at the group *as such*, that is, *qua* group”.

<sup>1227</sup> See in particular the *Kupreškić* Judgement, para. 636 and the *Jelisić* Judgement, para. 79.

<sup>1228</sup> See in particular Article 14 of the European Convention on Human Rights: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as [...] association with a national minority [...]”. See also the Framework Convention for the Protection of National Minorities, ETS 157, or principle VII of the Final Act of the Conference on Security and Co-operation in Europe (1975), point 105, para. 2.

<sup>1229</sup> See in particular Article 27 of the International Covenant on Civil and Political Rights: “In those States in which *ethnic, religious or linguistic minorities* exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”.

<sup>1230</sup> See in particular the definition suggested by the European Commission for Democracy through Law, *The Protection of Minorities*, Strasbourg: Council of Europe Press, 1994, p. 12: a national minority is “a group which is smaller in number than the rest of a population of a State, whose members, who are nationals of that State, have ethnical, religious or linguistic features different from those of the rest of the population, and are guided by the will to safeguard their culture, traditions, religion or language”.

<sup>1231</sup> F. Capotorti, *Study on the Rights of the Persons Belonging to Ethnic, Religious and Linguistic Minorities*, UN Doc. E/CN.4/Sub.2/384/Rev.1 (1979), paras. 197, referring to the debates held on a draft resolution on the definition of minorities (E/CN.4/Sub.2/103).

<sup>1232</sup> UNTS, vol. 660, no. 9646.

preference based on race, colour, descent, or national or ethnic origin".<sup>1233</sup> The preparatory work on the Genocide Convention also reflects that the term "ethnic" was added at a later stage in order to better define the type of groups protected by the Convention and ensure that the term "national" would not be understood as encompassing purely political groups.<sup>1234</sup>

556. The 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.

557. A group's cultural, religious, ethnic or national characteristics must be identified within the socio-historic context which it inhabits. As in the *Nikolić*<sup>1235</sup> and *Jelisić*<sup>1236</sup> cases, the Chamber identifies the relevant group by using as a criterion the stigmatisation of the group, notably by the perpetrators of the crime, on the basis of its perceived national, ethnic, racial or religious characteristics.

558. Whereas the indictment in this case defined the targeted group as the Bosnian Muslims, the Prosecution appeared to use an alternative definition in its pre-trial brief by pleading the intention to eliminate the "Bosnian Muslim population of Srebrenica" through mass killing and deportation.<sup>1237</sup> In its final trial brief, the Prosecution chose to define the group as the Bosnian Muslims of Srebrenica,<sup>1238</sup> while it referred to the Bosnian Muslims of Eastern Bosnia in its final arguments.<sup>1239</sup> The Defence argued in its final brief that the Bosnian Muslims of Srebrenica did not form a specific national, ethnic, racial or religious group. In particular, it contended that "one cannot create an artificial 'group' by limiting its scope to a geographical area".<sup>1240</sup> According to the Defence, the Bosnian Muslims constitute the only group that fits the definition of a group protected by the Convention.<sup>1241</sup>

559. Originally viewed as a religious group, the Bosnian Muslims were recognised as a "nation" by the Yugoslav Constitution of 1963. The evidence tendered at trial also shows very clearly that the highest Bosnian Serb political authorities and the Bosnian Serb forces operating in Srebrenica in

<sup>1233</sup> Article 1.

<sup>1234</sup> UN Doc. A/C.6/SR.73 (Petren, Sweden); UN Doc. A/C.6/SR.74 (Petren, Sweden).

<sup>1235</sup> *The Prosecutor v. Nikolić, Review of the indictment pursuant to Rule 61*, Decision of Trial Chamber I, 20 October 1995, case no. IT-94-2-R61 (hereinafter "the *Nikolić* Decision"), para. 27.

<sup>1236</sup> *Jelisić* Judgement, para. 70.

<sup>1237</sup> Prosecutor's pre-trial brief pursuant to Rule 65 *ter* (E) (i), 25 February 2000, para. 12.

<sup>1238</sup> Prosecution Final Trial Brief, para. 412.

<sup>1239</sup> Closing argument, T. 9983.

<sup>1240</sup> Final Submissions of the Accused, para. 104.



July 1995 viewed the Bosnian Muslims as a specific national group. Conversely, no national, ethnical, racial or religious characteristic makes it possible to differentiate the Bosnian Muslims residing in Srebrenica, at the time of the 1995 offensive, from the other Bosnian Muslims. The only distinctive criterion would be their geographical location, not a criterion contemplated by the Convention. In addition, it is doubtful that the Bosnian Muslims residing in the enclave at the time of the offensive considered themselves a distinct national, ethnical, racial or religious group among the Bosnian Muslims. Indeed, most of the Bosnian Muslims residing in Srebrenica at the time of the attack were not originally from Srebrenica but from all around the central Podrinje region. Evidence shows that they rather viewed themselves as members of the Bosnian Muslim group.

560. The Chamber concludes that the protected group, within the meaning of Article 4 of the Statute, must be defined, in the present case, as the Bosnian Muslims. The Bosnian Muslims of Srebrenica or the Bosnian Muslims of Eastern Bosnia constitute a part of the protected group under Article 4. The question of whether an intent to destroy a part of the protected group falls under the definition of genocide is a separate issue that will be discussed below.

561. The Prosecution and the Defence, in this case, concur in their belief that the victims of genocide must be targeted *by reason of* their membership in a group.<sup>1242</sup> This is the only interpretation coinciding with the intent which characterises the crime of genocide. The intent to destroy a group as such, in whole or in part, presupposes that the victims were chosen by reason of their membership in the group whose destruction was sought. Mere knowledge of the victims' membership in a distinct group on the part of the perpetrators is not sufficient to establish an intention to destroy the group as such. As the ILC noted:

[...] the intention must be to destroy a group and not merely one or more individuals who are coincidentally members of a particular group. The [...] act must be committed against an individual because of his membership in a particular group and as an incremental step in the overall objective of destroying the group.<sup>1243</sup>

562. As a result, there are obvious similarities between a genocidal policy and the policy commonly known as "ethnic cleansing". In this case, acts of discrimination are not confined to the events in Srebrenica alone, but characterise the whole of the 1992-95 conflict between the Bosnian Serbs, Muslims and Croats. The Report of the Secretary-General comments that "a central objective of the conflict was the use of military means to terrorise civilian populations, often with

<sup>1241</sup> Final Submissions of the Accused, paras. 102-107.

<sup>1242</sup> Prosecutor's pre-trial brief pursuant to Rule 65 *ter* (E) (i), 25 February 2000, para. 92, p. 33.

<sup>1243</sup> ILC Draft Code, p. 109. See also Pieter Drost, *The Crime of State, Genocide*, p. 124, for a commentary on the Convention: "It is an externally perceptible quality or characteristic which the victim has in common with the other members of the group, which makes him distinct from the rest of society in the criminal mind of his attacker and which for that very reason causes the attacker to commit the crime against such marked and indicated individual".

the goal of forcing their flight in a process that came to be known as 'ethnic cleansing'".<sup>1244</sup> The Bosnian Serbs' war objective was clearly spelt out, notably in a decision issued on 12 May 1992 by Momčilo Krajišnik, then President of the National Assembly of the Bosnian Serb People. The decision indicates that one of the strategic objectives of the Serbian people of Bosnia-Herzegovina was to reunite all Serbian people in a single State, in particular by erasing the border along the Drina which separated Serbia from Eastern Bosnia, whose population was mostly Serbian.<sup>1245</sup>

563. The accused himself defined the objective of the campaign in Bosnia during an interview in November 1995, when he explained that the Podrinje region should remain "Serbian for ever, while the Eastern part of Republika Srpska and the Drina river w[ould] be an important meeting point for the entire Serbian people from both sides of the Drina".<sup>1246</sup>

564. In this goal, the cleansing of Bosnian Muslims from Srebrenica had special advantages. Lying in the central Podrinje region, whose strategic importance for the creation of a Bosnian Serb Republic has frequently been cited in testimony,<sup>1247</sup> Srebrenica and the surrounding area was a predominantly Muslim pocket within a mainly Serbian region adjoining Serbia.<sup>1248</sup> Given the war objectives, it is hardly surprising that the Serbs and Bosnian Muslims fought each other bitterly in this region from the outbreak of the conflict.<sup>1249</sup>

565. Many attacks were launched by both parties against villages controlled by the other side in the region. The Bosnian Muslim forces committed apparent violations of humanitarian law directed against the Bosnian Serb inhabitants of the region, especially from May 1992 to January 1993.<sup>1250</sup> In response, operations were conducted by the Bosnian Serb forces, notably, a large-scale attack launched in January 1993. The attack forced the Bosnian Muslim population from the surrounding villages to flee to the areas of Srebrenica and Žepa. As a result, the population of Srebrenica climbed from 37,000 in 1991 to 50,000 or 60,000 in 1993 while, at the same time, the territory shrank from 900 to 150 square km.<sup>1251</sup> A significant majority of the Muslim population, residing in the territory of the Drina Corps' zone of responsibility, had already been displaced by April 1993. By that date, the Bosnian Serb forces had ethnically cleansed the towns and villages of Zvornik,

<sup>1244</sup> para. 19.

<sup>1245</sup> P746/a.

<sup>1246</sup> P743, p. 2.

<sup>1247</sup> Radinović, T. 7812. *supra*, para. 12.

<sup>1248</sup> See para. 11, referring to the Report of the Secretary-General, para. 33.

<sup>1249</sup> The Report of the Secretary-General, para. 33, lists the crimes committed by the Bosnian Serb forces against the Bosnian Muslim population from the very outset of the conflict.

<sup>1250</sup> Report of the Secretary-General, paras. 34 to 37.

<sup>1251</sup> *Supra*, para. 13-14.

Šekovići, Kalesija, Bratunac, Vlasenica, Kladanj, Olovo, Han Pijesak, Rogatica and Sokolac.<sup>1252</sup>

The over-populated municipality of Srebrenica was then subjected to constant shelling before the Security Council decided, on 16 April 1993, to declare the enclave a safe area.<sup>1253</sup> Despite a period of relative stability, the living conditions remained dreadful. The Security Council Mission, set up pursuant to resolution 819, described Srebrenica on 30 April 1993 as an “open jail”<sup>1254</sup> and stated that 50% of the dwellings had been demolished. The Mission further lamented the Bosnian Serb forces’ harassment of the humanitarian convoys heading for Srebrenica and the obstacles confronted in transporting the sick and wounded out of the enclave.<sup>1255</sup> Until 1995, the water and electricity networks were unusable, having been either destroyed or cut. There was an extreme shortage of food and medicines.<sup>1256</sup>

566. Even before the offensive of July 1995 and as early as January 1995, the Bosnian Serb forces tried to prevent the humanitarian convoys from getting through to the enclave.<sup>1257</sup> The Trial Chamber has previously described the catastrophic humanitarian situation which was born out of the policy of systematically hampering humanitarian convoys.<sup>1258</sup> In particular, several persons died from starvation on 7 and 8 July 1995 and a report from the command of the 28<sup>th</sup> Division, dated 8 July 1995, warned that the civilian population would very soon be forced to flee the enclave if it wished to survive.<sup>1259</sup>

567. However, the Trial Chamber has found that, on its face, the operation Krivaja 95 did not include a plan to overrun the enclave and expel the Bosnian Muslim population.<sup>1260</sup> The Trial Chamber heard credible testimony on the chronic refusal of Bosnian Muslim forces to respect the demilitarisation agreement of 1993.<sup>1261</sup> Defence witnesses accused the Bosnian Muslim forces of using the safe area as a fortified base from which to launch offensives against the Bosnian Serb forces. In particular, on 26 June 1995, several weeks prior to the offensive of the VRS on Srebrenica, the Bosnian Muslim forces launched an assault from the enclave on the Serbian village

<sup>1252</sup> Statement of General Hadžihasanović made on 24 January 2001, para. 4, corroborated by General Krstić’s statement in a press article published in November 1995 (P744/c, p. 1).

<sup>1253</sup> Resolution 819 (1993), 16 April 1993.

<sup>1254</sup> P 126: Report of the Security Council Mission set up pursuant to resolution 819 (1993), UN Doc. S/25700 (30 April 1993), para. 18.

<sup>1255</sup> *Ibid*, para. 10 and 11.

<sup>1256</sup> *Supra*, para. 15.

<sup>1257</sup> *Supra*, para. 26.

<sup>1258</sup> *Supra*, para. 28.

<sup>1259</sup> P 901, p. 2.

<sup>1260</sup> *Supra*, para. 120.

<sup>1261</sup> *Supra*, p ara. 24. First agreement signed on 18 April 1993, followed by the agreement of 8 May 1993.

of Višnica 5km away.<sup>1262</sup> Such acts could well have motivated an attack designed to cut communications between the enclaves of Žepa and Srebrenica.

568. The operation, however, was not confined to mere retaliation. Its objective, although perhaps restricted initially to blocking communications between the two enclaves and reducing the Srebrenica enclave to its urban core, was quickly extended. Realising that no resistance was being offered by the Bosnian Muslim forces or the international community, President Karadžić broadened the operation's objective by issuing, on 9 July, the order to seize the town.<sup>1263</sup> By 11 July, the town of Srebrenica was captured, driving 20,000 to 25,000 Muslim refugees to flee towards Potočari. Operation Krivaja 1995 then became an instrument of the policy designed to drive out the Bosnian Muslim population. The humanitarian crisis caused by the flow of refugees arriving at Potočari, the intensity and the scale of the violence, the illegal confinement of the men in one area, while the women and children were forcibly transferred out of the Bosnian Serb held territory, and the subsequent death of thousands of Bosnian Muslim civilian and military men, most of whom clearly did not die in combat, demonstrate that a purposeful decision was taken by the Bosnian Serb forces to target the Bosnian Muslim population in Srebrenica, by reason of their membership in the Bosnian Muslim group. It remains to determine whether this discriminatory attack sought to destroy the group, in whole or in part, within the meaning of Article 4 of the Statute.

(b) Intent to destroy the group in whole or in part

(i) Intent to destroy

569. The Prosecution urges a broad interpretation of Article 4's requirement of an intent to destroy all or part of the group. It contends that the acts have been committed with the requisite intent if "[the accused] consciously desired [his] acts to result in the destruction, in whole or in part, of the group, as such; or he knew his acts were destroying, in whole or in part, the group, as such; or he knew that the likely consequence of his acts would be to destroy, in whole or in part, the group, as such".<sup>1264</sup> The Prosecution is of the opinion that, in this case, General Krstić and others "consciously desired their acts to lead to the destruction of part of the Bosnian Muslim people as a [...] group".<sup>1265</sup>

<sup>1262</sup> Report of the Secretary-General, para. 225.

<sup>1263</sup> *Supra*, para. 33.

<sup>1264</sup> Prosecutor's pre-trial brief pursuant to Rule 65 *ter*(E)(i), 25 February 2000, para. 90.

<sup>1265</sup> *Ibid*, para. 91, p. 33.

570. Conversely, the Defence claims that the perpetrator of genocide must “have the specific intent to destroy the [...] group” and concludes that “the *dolus specialis* constitutes a higher form of premeditation”.<sup>1266</sup>

571. The preparatory work of the Genocide Convention clearly shows that the drafters envisaged genocide as an enterprise whose goal, or objective, was to destroy a human group, in whole or in part. United Nations General Assembly resolution 96 (I) defined genocide as “the *denial* of the right of existence of entire human groups”.<sup>1267</sup> The draft Convention prepared by the Secretary-General presented genocide as a criminal act which aims to destroy a group, in whole or in part,<sup>1268</sup> and specified that this definition excluded certain acts, which may result in the total or partial destruction of a group, but are committed in the absence of an intent to destroy the group.<sup>1269</sup> The International Law Commission upheld this interpretation and indicated that “a general intent to commit one of the enumerated acts combined with a general awareness of the probable consequences of such an act with respect to the immediate victim or victims is not sufficient for the crime of genocide. The definition of this crime requires a *particular state of mind* or a *specific intent* with respect to the overall consequence of the prohibited act”.<sup>1270</sup> The International Court of Justice insisted, in its Opinion on the *Legality of the Threat or Use of Nuclear Weapons*,<sup>1271</sup> that specific intent to destroy was required and indicated that “the prohibition of genocide would be pertinent in this case if the recourse to nuclear weapons did indeed entail the element of intent, towards a group as such, required by the provision quoted above”.<sup>1272</sup> The ICTR adopted the same interpretation. In *The Prosecutor v. Jean Kambanda*, the Trial Chamber stated: “the crime of genocide is unique because of its element of *dolus specialis* (special intent) which requires that the crime be committed with the intent ‘to destroy in whole or in part, a national, ethnic, racial or

<sup>1266</sup> Final Submissions of the Accused, 21 June 2001, para. 94.

<sup>1267</sup> UN Doc. A/96 (I), 11 December 1946 (Emphasis added).

<sup>1268</sup> UN Doc. E/447 (1947), p. 20 “the word genocide means a criminal act directed against any one of the aforesaid groups of human beings, with the purpose of destroying it in whole or in part, or of preventing its preservation or development”.

<sup>1269</sup> UN Doc. E/447 (1947), p. 23. See also “Relations Between the Convention on Genocide on the One Hand and the Formulation of the Nurnberg Principles and the Preparation of a Draft Code of Offences Against Peace and Security on the Other”, UN Doc. E/AC.25/3/Rev.1, 12 April 1948, p. 6: “The destruction of the human group is the actual aim in view. In the case of foreign or civil war, one side may inflict extremely heavy losses on the other but its purpose is to impose its will on the other side and not to destroy it.”

<sup>1270</sup> ILC Draft Code, p. 88 (emphasis added).

<sup>1271</sup> ICJ Repors (1996), p. 240.

<sup>1272</sup> Para. 26. The Chamber notes however that several dissenting opinions criticised the Opinion on the issue by holding that an act whose foreseeable result was the destruction of a group as such and which did indeed cause the destruction of the group did constitute genocide. In particular, Judge Weeramantry observes that the use of nuclear weapons inevitably brings about the destruction of entire populations and constitutes, as such, genocide. He thus challenges the interpretation that “there must be an intention to target a particular national, ethnical, racial or religious group qua such group, and not incidentally to some other act” (Reports p. 502). In the same vein, Judge Koroma comments on “the abhorrent shocking consequences that a whole population could be wiped out by the use of nuclear weapons during an armed conflict”. He claims that such a situation constitutes genocide “if the consequences of the act could have been foreseen” (Reports, p. 577).

religious group as such”<sup>1273</sup>. In *Kayishema, Ruzindana*, the Trial Chamber also emphasised that “genocide requires the aforementioned specific intent to exterminate a protected group (in whole or in part)”<sup>1274</sup>. Moreover, the Chamber notes that the domestic law of some States distinguishes genocide by the existence of a plan to destroy a group.<sup>1275</sup> Some legal commentators further contend that genocide embraces those acts whose foreseeable or probable consequence is the total or partial destruction of the group without any necessity of showing that destruction was the goal of the act.<sup>1276</sup> Whether this interpretation can be viewed as reflecting the status of customary international law at the time of the acts involved here is not clear. For the purpose of this case, the Chamber will therefore adhere to the characterisation of genocide which encompass only acts committed with the *goal* of destroying all or part of a group.

572. Article 4 of the Statute does not require that the genocidal acts be premeditated over a long period.<sup>1277</sup> 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. For instance, an armed force could decide to destroy a protected group during a military operation whose primary objective was totally unrelated to the fate of the group. The Appeals Chamber, in a recent decision, indicated that the existence of a plan was not a legal ingredient of the crime of genocide but could be of evidential assistance to prove the intent of the authors of the criminal act(s).<sup>1278</sup> Evidence presented in this case has shown that the killings were planned: the number and nature of the forces involved, the standardised coded language used by the units in communicating information about the killings, the scale of the executions, the invariability of the killing methods applied, indicate that a decision was made to kill all the Bosnian Muslim military aged men.<sup>1279</sup>

573. The Trial Chamber is unable to determine the precise date on which the decision to kill all the military aged men was taken. Hence, it cannot find that the killings committed in Potočari on 12 and 13 July 1995 formed part of the plan to kill all the military aged men. Nevertheless, the Trial Chamber is confident that the mass executions and other killings committed from 13 July onwards were part of this plan.

<sup>1273</sup> ICTR 97-23-S, 4 September 1998 (hereinafter The “*Kambanda Judgement*”), para. 16.

<sup>1274</sup> 21 May 1999, para. 89.

<sup>1275</sup> Article 211-1 of the French Criminal Code states that the crime must be committed “in the execution of a concerted plan to destroy wholly or partially a group”.

<sup>1276</sup> See in particular Eric David, *Droit des conflits armés*, p. 615; Alexander K.A. Greenawalt, “Rethinking genocidal intent: the case for a knowledge-based interpretation”, *Columbia Law Review*, December 1999, pp. 2259-2294; Gil Gil *Derecho penal internacional, especial consideracion del delito de genicidio*, 1999.

<sup>1277</sup> The element of premeditation was dismissed at the proposal of Belgium (UN Doc. A/C.6/217) on the ground that such a provision was superfluous in light of the special intent already incorporated into the definition of the crime (UN Doc. A/C.6/SR.72, p. 8).

<sup>1278</sup> *Jelisić Appeal Judgement*, para. 48.

<sup>1279</sup> *Supra*, para. 85-87.

574. The manner in which the destruction of a group may be implemented so as to qualify as a genocide under Article 4 must also be discussed. The physical destruction of a group is the most obvious method, but one may also conceive of destroying a group through purposeful eradication of its culture and identity resulting in the eventual extinction of the group as an entity distinct from the remainder of the community.

575. The notion of genocide, as fashioned by Raphael Lemkin in 1944, originally covered all forms of destruction of a group as a distinct social entity.<sup>1280</sup> As such, genocide closely resembled the crime of persecution. In this regard, the ILC stated, in its 1996 report, that genocide as currently defined corresponds to the second category of crime against humanity established under Article 6(c) of the Nuremberg Tribunal's Statute, namely the crime of persecution.<sup>1281</sup> There is consensus that the crime of persecution provided for by the Statute of the Nuremberg Tribunal was not limited to the physical destruction of the group but covered all acts designed to destroy the social and/or cultural bases of a group. Such a broad interpretation of persecution was upheld *inter alia* in the indictment against *Ulrich Greifelt et al.*, before the United States Military Tribunal in Nuremberg. The accused were charged with implementing a systematic programme of genocide which sought to destroy foreign nations and ethnic groups. The indictment interpreted destruction to mean not only the extermination of the members of those groups but also the eradication of their national characteristics.<sup>1282</sup> It should be noted that this interpretation was supported by the working group established to report on the human rights violations in South Africa in 1985. While recognising that the Convention literally covered only the physical or material destruction of the group, the report explained that it was adopting a broader interpretation that viewed as genocidal any act which prevented an individual "from participating fully in national life", the latter being understood "in its more general sense".<sup>1283</sup>

576. Although the Convention does not specifically speak to the point, the preparatory work points out that the "cultural" destruction of a group was expressly rejected after having been seriously contemplated.<sup>1284</sup> The notion of cultural genocide was considered too vague and too

<sup>1280</sup> *Axis Rule in Occupied Europe*, p. 79, pp. 87-89.

<sup>1281</sup> ILC Draft Code, *op. cit.*, commentary of article 17, p. 106.

<sup>1282</sup> *USA v. Ulrich Greifelt et al.*, Trials of War Criminals, vol. XIV (1948), p. 2: "The acts, conduct, plans and enterprises charged in Paragraph 1 of this Count were carried out as part of a systematic program of genocide, aimed at the destruction of foreign nations and ethnic groups, in part by murderous extermination, and in part by elimination and suppression of national characteristics". See also the judgements rendered by the Polish Supreme Court against Amon Leopold Goeth (Trials of War Criminals, vol. VII, no. 37, p. 8) and Rudolf Franz Ferdinand Hoess (Trials of War Criminals, vol. VII, no. 38, p. 24).

<sup>1283</sup> *Violations of Human Rights in Southern Africa: Report of the Ad Hoc Working Group of Experts*, UN Doc. E/CN.4/1985/14, 28 January 1985, paras. 56 and 57.

<sup>1284</sup> The notion of a cultural genocide was rejected by the General Assembly Sixth Committee by 25 votes to 6, with 4 abstentions and 13 delegations absent.

removed from the physical or biological destruction that motivated the Convention. The ILC noted in 1996:

As 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>1285</sup>

577. Several recent declarations and decisions, however, have interpreted the intent to destroy clause in Article 4 so as to encompass evidence relating to acts that involved cultural and other non physical forms of group destruction.

578. In 1992, the United Nations General Assembly labelled ethnic cleansing as a form of genocide.<sup>1286</sup>

579. The Federal Constitutional Court of Germany said in December 2000 that:

the statutory definition of genocide defends a supra-individual object of legal protection, i.e. the *social* existence of the group [...] the intent to destroy the group [...] extends beyond physical and biological extermination [...] The text of the law does not therefore compel the interpretation that the culprit's intent must be to exterminate physically at least a substantial number of the members of the group.<sup>1287</sup>

580. The Trial Chamber is aware that it must interpret the Convention with due regard for the principle of *nullum crimen sine lege*. It therefore recognises that, despite recent developments, customary international law limits the definition of genocide to those acts seeking the physical or biological destruction of all or part of the group. Hence, an enterprise attacking only the cultural or sociological characteristics of a human group in order to annihilate these elements which give to that group its own identity distinct from the rest of the community would not fall under the definition of genocide. The Trial Chamber however points out that where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of an intent to physically destroy the group. In this case, the Trial Chamber will thus take into account as evidence of intent to destroy the group the deliberate destruction of mosques and houses belonging to members of the group.

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<sup>1285</sup> ILC Draft Code, pp. 90-91.

<sup>1286</sup> UN Doc. AG/Res./47/121 of 18 December 1992.

<sup>1287</sup> Federal Constitutional Court, 2 BvR 1290/99, 12 December 2000, para. (III)(4)(a)(aa). Emphasis added.



(ii) "In part"

581. Since in this case primarily the Bosnian Muslim men of military age were killed, a second issue is whether this group of victims represented a sufficient part of the Bosnian Muslim group so that the intent to destroy them qualifies as an "intent to destroy the group in whole or in part" under Article 4 of the Statute.

582. Invoking the work of the ILC and the *Jelisić* Judgement, the Prosecution interprets the expression "in whole or in part" to mean a "substantial" part in quantitative or qualitative terms.<sup>1288</sup> However, the Prosecution states that "it is not necessary to consider the global population of the group. The intent to destroy a multitude of persons because of their membership in a particular group constitutes genocide even if these persons constitute only part of a group either within a country or within a region or within a single community".<sup>1289</sup> The Prosecution relies on, *inter alia*, the *Akayesu* Judgement which found the accused guilty of genocide for acts he committed within a single commune and the *Nikolić* Decision taken pursuant to Rule 61, which upheld the characterisation of genocide for acts committed within a single region of Bosnia-Herzegovina, in that case, the region of Vlasenica.<sup>1290</sup> The Prosecution further cites the *Jelisić* Judgement which declared that "international custom admit[ted] the characterisation of genocide even when the exterminatory intent only extend[ed] to a limited geographic zone".<sup>1291</sup>

583. The Defence contends that the term "in part" refers to the scale of the crimes actually committed, as opposed to the intent, which would have to extend to destroying the group as such, *i.e.* in its entirety.<sup>1292</sup> The Defence relies for this interpretation on the intention of the drafters of the Convention, which it contends was confirmed by the subsequent commentary of Raphael Lemkin in 1950 before the American Congress during the debates on the Convention's ratification<sup>1293</sup> and by the implementing legislation proposed by the United States during the Nixon and Carter administrations.<sup>1294</sup> That is, any destruction, even if only partial, must have been carried out with the intent to destroy the entire group, as such.

<sup>1288</sup> Prosecutor's pre-trial brief pursuant to Rule 65 *ter* (E)(i), 25 February 2000, para. 100.

<sup>1289</sup> Prosecutor's pre-trial brief pursuant to Rule 65 *ter* (E)(i), 25 February 2000, para. 101.

<sup>1290</sup> Review of the Indictment pursuant to Rule 61 of the Rules of Procedure and Evidence, Decision of Trial Chamber I, 20 October 1995, IT-94-2-R61, para. 34.

<sup>1291</sup> *Jelisić* Judgement, para. 83.

<sup>1292</sup> Final Submissions of the Accused, paras. 96-101.

<sup>1293</sup> Letter of Raphael Lemkin published in "Executive Sessions of the U.S. Senate Foreign Relations Committee", Historical Series 781-805 (1976), p. 370, quoted in the Defence Final Trial Brief, para. 97. Raphael Lemkin explained that partial destruction must target a substantial part in such a way that it affects the group as a whole.

<sup>1294</sup> Senate Executive Report No. 23, 94<sup>th</sup> Cong., 2<sup>nd</sup> Session (1976), pp. 34-35.

584. The Trial Chamber does not agree. Admittedly, by adding the term “in part”, some of the Convention’s drafters may have intended that actual destruction of a mere part of a human group could be characterised as genocide, only as long as it was carried out with the intent to destroy the group as such.<sup>1295</sup> The debates on this point during the preparatory work are unclear, however, and a plain reading of the Convention contradicts this interpretation. Under the Convention, the term “in whole or in part” refers to the intent, as opposed to the actual destruction, and it would run contrary to the rules of interpretation to alter the ordinary meaning of the terms used in the Convention by recourse to the preparatory work which lacks clarity on the issue. The Trial Chamber concludes that any act committed with the intent to destroy a part of a group, as such, constitutes an act of genocide within the meaning of the Convention.

585. The Genocide Convention itself provides no indication of what constitutes intent to destroy “in part”. The preparatory work offers few indications either. The draft Convention submitted by the Secretary-General observes that “the systematic destruction even of a fraction of a group of human beings constitutes an exceptionally heinous crime”.<sup>1296</sup> Early commentaries on the Genocide Convention opined that the matter of what was substantial fell within the ambit of the Judges’ discretionary evaluation. Nehemia Robinson was of the view that the intent to destroy could pertain to only a region or even a local community if the number of persons targeted was substantial.<sup>1297</sup> Pieter Drost remarked that any systematic destruction of a fraction of a protected group constituted genocide.<sup>1298</sup>

586. A somewhat stricter interpretation has prevailed in more recent times. According to the ILC, the perpetrators of the crime must seek to destroy a quantitatively substantial part of the protected group:

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<sup>1295</sup> In this regard, see especially the commentary of the representative of the United Kingdom, Fitzmaurice, UN Doc. A/C.6/SR. 73. The preparatory work is unclear on the issue. It does indeed seem that there was confusion between the *actus reus* and the *mens rea* in this respect.

<sup>1296</sup> Draft Convention for the Prevention and Punishment of Genocide presented by the Secretary-General, 26 June 1947, UN Doc. E/447, p. 24.

<sup>1297</sup> Nehemia Robinson, *The Genocide Convention*, p. 63: “the intent to destroy a multitude of persons of the same group must be classified as genocide even if these persons constitute only part of a group either within a country or within a region *or within a single community*, provided the number is substantial”. The writer also noted before the Foreign Relations Commission of the American Senate: “the intent to destroy a multitude of persons of the same group must be classified as genocide even if these persons constitute only part of a group either within a country or within a single community, provided the number is substantial because the aim of the convention is to deal with action against large numbers, not individual events if they happen to possess the same characteristics. It will be up to the court to decide in every case whether such intent existed” (*The Genocide Convention - Its Origins and Interpretation, reprinted in Hearings on the Genocide Convention Before a Subcomm. of the Senate Comm. on Foreign Relations, 81<sup>st</sup> Cong., 2<sup>nd</sup> Sess., 487, 498 (1950)*).

<sup>1298</sup> Pieter Drost, *The Crime of State, Book II, Genocide*, Sythoff, Leyden, p. 85: “Acts perpetrated with the intended purpose to destroy various people as members of the same group are to be classified as genocidal crimes although the victims amount to only a small part of the entire group present within the national, regional or local community”.

It is not necessary to intend to achieve the complete annihilation of a group from every corner of the globe. None the less the crime of genocide by its very nature requires the intention to destroy at least a substantial part of a particular group.<sup>1299</sup>

The *Kayishema and Ruzindana* Judgement stated that the intent to destroy a part of a group must affect a “considerable” number of individuals.<sup>1300</sup> The Judgement handed down on Ignace Bagilishema, on 7 June 2001, also recognised that the destruction sought must target at least a substantial part of the group.<sup>1301</sup>

587. Benjamin Whitaker's 1985 study on the prevention and punishment of the crime of genocide holds that the partial destruction of a group merits the characterisation of genocide when it concerns a large portion of the entire group or a significant section of that group.

'In part' would seem to imply a reasonably significant number, relative to the total of the group as a whole, or else a significant section of a group, such as its leadership.<sup>1302</sup>

The “Final Report of the Commission of Experts established pursuant to Security Council resolution 780 (1992)” (hereinafter “ Report of the Commission of Experts”) confirmed this interpretation, and considered that an intent to destroy a specific part of a group, such as its political, administrative, intellectual or business leaders, “may be a strong indication of genocide regardless of the actual numbers killed”. The report states that extermination specifically directed against law enforcement and military personnel may affect “a significant section of a group in that it renders the group at large defenceless against other abuses of a similar or other nature”. However, the Report goes on to say that “the attack on the leadership must be viewed *in the context of the fate of what happened to the rest of the group*. If a group suffers extermination of its leadership and in the wake of that loss, a large number of its members are killed or subjected to other heinous acts, for example deportation, the cluster of violations ought to be considered in its entirety in order to interpret the provisions of the Convention in a spirit consistent with its purpose”.<sup>1303</sup>

588. Judge Elihu Lauterpacht, the *ad hoc* Judge nominated by Bosnia-Herzegovina in the case before the International Court of Justice regarding the application of the Convention on the

<sup>1299</sup> *Ibid.*, p. 89.

<sup>1300</sup> *Kayishema and Ruzindana* case, para. 97: “‘in part’ requires the intention to destroy a considerable number of individuals who are part of the group”.

<sup>1301</sup> *The Prosecutor v. Ignace Bagilishema*, case no. ICTR-95-1A-T, 7 June 2001 (hereinafter “*Bagilishema* Judgement”) para. 64: “Although the destruction sought need not be directed at every member of the targeted group, the Chamber considers that the intention to destroy must target at least a substantial part of the group”.

<sup>1302</sup> Para. 29.

<sup>1303</sup> *Report of the Commission of Experts*, UN Doc. S/1994/674, para. 94 (emphasis added).

Prevention and Punishment of the Crime of Genocide, spoke similarly in his separate opinion.<sup>1304</sup> Judge Lauterpacht observed that the Bosnian Serb forces had murdered and caused serious mental and bodily injury to the Bosnian Muslims and had subjected the group to living conditions meant to bring about its total or partial physical destruction. He went on to take into account “the forced migration of civilians, more commonly known as ‘ethnic cleansing’” in order to establish the intent to destroy all or part of the group. In his view, this demonstrated the Serbs’ intent “to eliminate Muslim control of, and presence in, substantial parts of Bosnia-Herzegovina”. Judge Lauterpacht concluded that the acts which led to the group's physical destruction had to be characterised as “acts of genocide” since they were “directed against an ethnical or religious group as such, and they [were] intended to destroy that group, if not in whole certainly in part, to the extent necessary to ensure that that group [would] no longer occup[y] the parts of Bosnia-Herzegovina coveted by the Serbs”.<sup>1305</sup>

589. Several other sources confirm that the intent to eradicate a group within a limited geographical area such as the region of a country or even a municipality may be characterised as genocide. The United Nations General Assembly characterised as an act of genocide the murder of approximately 800 Palestinians<sup>1306</sup> detained at Sabra and Shatila, most of whom were women, children and elderly.<sup>1307</sup> The *Jelisić* Judgement held that genocide could target a limited geographic zone.<sup>1308</sup> Two Judgements recently rendered by German courts took the view that genocide could be perpetrated within a limited geographical area. The Federal Constitutional Court of Germany, in the *Nikola Jorgić* case, upheld the Judgement of the Düsseldorf Supreme Court,<sup>1309</sup> interpreting the intent to destroy the group “in part” as including the intention to destroy a group within a limited geographical area.<sup>1310</sup> In a Judgement against Novislav Djajić on 23 May 1997, the Bavarian

<sup>1304</sup> *Application of the Convention of the Prevention and Punishment of the Crime of Genocide*, Bosnia-Herzegovina v. Yugoslavia (Serbia and Montenegro), Order on further Requests for the Indication of Provisional Measures, ICJ Reports (1993), pp. 325- 795.

<sup>1305</sup> Separate Opinion of Judge Lauterpacht, ICJ Reports (1993), p. 431.

<sup>1306</sup> There are varying estimates as to the number of victims. The Israeli commission of inquiry put the number of victims at 800. However, according to the ICRC, no less than 2,400 people were massacred. The massacre was perpetrated over two days, on 16 and 17 September 1982.

<sup>1307</sup> UN Doc. AG/Res.37/123D (16 December 1982), para. 2. It should however be noted that the resolution was not adopted unanimously, notably, the paragraph characterising the massacre as an act of genocide was approved by 98 votes to 19, with 23 abstentions. See UN Doc. A/37/PV.108, para. 151.

<sup>1308</sup> *Jelisić* Judgement, para. 83.

<sup>1309</sup> Düsseldorf Supreme Court, *Nikola Jorgić* case, 30 April 1999, 3StR 215/98.

<sup>1310</sup> Federal Constitutional Court, 2BvR 1290/99, 12 December 2000, par. 23: “The courts also do not go beyond the possible meaning of the text by accepting that the intent to destroy may relate to a geographically limited part of the group. There is support for that interpretation in the fact that STGB para. 220a [ the national law integrating the Convention] penalises the intent to destroy partially as well as entirely”.

Appeals Chamber similarly found that acts of genocide were committed in June 1992 though confined within the administrative district of Foča.<sup>1311</sup>

590. The Trial Chamber is thus left with a margin of discretion in assessing what is destruction “in part” of the group. But it must exercise its discretionary power in a spirit consonant with the object and purpose of the Convention which is to criminalise specified conduct directed against the existence of protected *groups*, as such. The Trial Chamber is therefore of the opinion that the intent to destroy a group, even if only in part, means seeking to destroy a distinct part of the group as opposed to an accumulation of isolated individuals within it. Although the perpetrators of genocide need not seek to destroy the entire group protected by the Convention, they must view the part of the group they wish to destroy as a distinct entity which must be eliminated as such. A campaign resulting in the killings, in different places spread over a broad geographical area, of a finite number of members of a protected group might not thus qualify as genocide, despite the high total number of casualties, because it would not show an intent by the perpetrators to target the very existence of the group as such. Conversely, the killing of all members of the part of a group located within a small geographical area, although resulting in a lesser number of victims, would qualify as genocide if carried out with the intent to destroy the part of the group as such located in this small geographical area. Indeed, the physical destruction may target only a part of the geographically limited part of the larger group because the perpetrators of the genocide regard the intended destruction as sufficient to annihilate the group as a distinct entity in the geographic area at issue. In this regard, it is important to bear in mind the total context in which the physical destruction is carried out.

591. The parties have presented opposing views as to whether the killings of Bosnian Muslim men in Srebrenica were carried out with intent to destroy a substantial part of the Bosnian Muslim group. It should be recalled that the Prosecution at different times has proposed different definitions of the group in the context of the charge of genocide. In the Indictment, as in the submission of the Defence, the Prosecution referred to the group of the Bosnian Muslims, while in the final brief and arguments it defined the group as the Bosnian Muslims of Srebrenica or the Bosnian Muslims of Eastern Bosnia. The Trial Chamber has previously indicated that the protected group, under Article 4 of the Statute, should be defined as the Bosnian Muslims.

592. The Prosecution first argues that “causing at least 7,475 deaths of mainly Bosnian Muslim men in Srebrenica, the destruction of this part of the group, which numbered in total approximately

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<sup>1311</sup> Bavarian Appeals Court, *Novislav Djajić* case, 23 May 1997, 3 St 20/96, section VI, p. 24 of the English translation.

38,000 to 42,000 prior to the fall”,<sup>1312</sup> constitutes a substantial part of the group not only because it targeted a numerically high number of victims, but also because the victims represented a significant part of the group. It was common knowledge that the Bosnian Muslims of Eastern Bosnia constituted a patriarchal society in which men had more education, training and provided material support to their family. The Prosecution claims that the VRS troops were fully cognisant that by killing all the military aged men, they would profoundly disrupt the bedrock social and cultural foundations of the group. The Prosecution adds that the mass executions of the military aged men must be viewed in the context of what occurred to the remainder of the Srebrenica group. The offensive against the safe area aimed to ethnically cleanse the Bosnian Muslims<sup>1313</sup> and progressively culminated in the murder of the Bosnian Muslim men as well as the evacuation of the women, children and elderly.<sup>1314</sup> In the Prosecution’s view, the end result was purposeful, as shown by the longstanding plan of Republika Sprska to eliminate the Bosnian Muslims from the area. Specifically, Radovan Karadžić, in Directive 7 of 7 March 1995,<sup>1315</sup> ordered the Drina Corps to “[...] create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa”.<sup>1316</sup> General Krstić and his superiors also manifested genocidal intent by using inflammatory rhetoric and racist statements that presented the VRS as defending the Serbian people from a threat of genocide posed by “Ustasha-Muslim hords”.<sup>1317</sup> According to the Prosecution, “by killing the leaders and defenders of the group and deporting the remainder of it, the VRS and General Krstić had assured that the Bosnian Muslim community of Srebrenica and its surrounds would not return to Srebrenica nor would it reconstitute itself in that region or indeed, anywhere else”.<sup>1318</sup> The Prosecution points us to the terrible impact the events of 11-16 July had upon the Bosnian Muslim community of Srebrenica : “what remains of the Srebrenica community survives in many cases only in the biological sense, nothing more. It’s a community in despair; it’s a community clinging to memories; it’s a community that is lacking leadership; it’s a community that’s a shadow of what it once was”.<sup>1319</sup> The Prosecution concludes that “the defendant’s crimes have not only resulted in the death of thousands men and boys, but have destroyed the Srebrenica Muslim community”.<sup>1320</sup>

593. The Defence argues in rejoinder that, “although the desire to condemn the acts of the Bosnian Serb Army at Srebrenica in the most pejorative terms is understandably strong”, these acts

<sup>1312</sup> Prosecutor’s final Trial Brief, para. 412.

<sup>1313</sup> Prosecutor’s final Trial Brief, para. 420.

<sup>1314</sup> Prosecutor’s final Trial Brief, para. 423.

<sup>1315</sup> P425.

<sup>1316</sup> cited in the Prosecutor’s final Trial Brief, para. 425.

<sup>1317</sup> P750, cited in the Prosecutor’s final Trial Brief, para. 416.

<sup>1318</sup> Prosecutor’s final Trial Brief, para. 438.

<sup>1319</sup> T. 10004-10005.

<sup>1320</sup> Closing arguments, T. 10009.

do not fall under the legal definition of genocide because it was not proven that they were committed with the intent to destroy the group as an entity.<sup>1321</sup> First, the killing of up to 7,500 members of a group, the Bosnian Muslims, that numbers about 1,4 million people, does not evidence an intent to destroy a “substantial” part of the group. To the Defence, the 7,500 dead are not even substantial when compared to the 40,000 Bosnian Muslims of Srebrenica.<sup>1322</sup> The Defence also points to the fact that the VRS forces did not kill the women, children and elderly gathered at Potočari but transported them safely to Kladanj, as opposed to all other genocides in modern history, which have indiscriminately targeted men, women and children.<sup>1323</sup> The Defence counters the Prosecution’s submission that the murder of all the military aged men would constitute a selective genocide, as the VRS knew that their death would inevitably result in the destruction of the Muslim community of Srebrenica as such.<sup>1324</sup> According to the Defence, had the VRS actually intended to destroy the Bosnian Muslim community of Srebrenica, it would have killed all the women and children, who were powerless and already under its control, rather than undertaking the time and manpower consuming task of searching out and eliminating the men of the column.<sup>1325</sup> The Defence rejects the notion that the transfer of the women, children and elderly can be viewed cynically as a public relations cover-up for the planned execution of the men. First, it says the decision to transfer the women, children and elderly was taken on 11 July, *i.e.* before the VRS decided to kill all the military aged men. Further, the Defence points out, by the time the evacuation started, the world community was already aware of, and outraged by, the humanitarian crisis caused by the VRS in Srebrenica, and the VRS was not concerned with covering up its true intentions.<sup>1326</sup> The Defence also argues that the VRS would have killed the Bosnian Muslims in Žepa, a neighbouring enclave, as well, if its intent was to kill the Bosnian Muslims as a group.<sup>1327</sup> Furthermore, the Defence claims that none of the military expert witnesses “could attribute the killings to any overall plan to destroy the Bosnian Muslims as a group”.<sup>1328</sup> To the Defence, a true genocide is almost invariably preceded by propaganda that calls for killings of the targeted group and nothing similar occurred in the present case. Inflammatory public statements made by one group against another – short of calling for killings - are common practice in any war and cannot be taken as evidence of genocidal intent.<sup>1329</sup> The Defence argues that, despite the unprecedented access to confidential material obtained by the Prosecution, none of the documents submitted, not even the intercepted conversations of VRS Army officers involved in the Srebrenica campaign,

<sup>1321</sup> Final Submissions of the Accused, para. 131.

<sup>1322</sup> Closing arguments, T. 10113.

<sup>1323</sup> Final Submissions of the Accused, para. 133.

<sup>1324</sup> Closing arguments, T. 10118.

<sup>1325</sup> Closing arguments, T. 10118.

<sup>1326</sup> Closing arguments, T. 10118-10119.

<sup>1327</sup> Final Submissions of the Accused, paras. 141-145.

<sup>1328</sup> Final Submissions of the Accused, para. 156.

show an intent to destroy the Bosnian Muslims as a group.<sup>1330</sup> The Defence contends that the facts instead prove that the VRS forces intended to kill solely all potential fighters in order to eliminate any future military threat. The wounded men were spared.<sup>1331</sup> More significantly, 3,000 members of the column were let through after a general truce was concluded between the warring parties.<sup>1332</sup> The Defence concludes that the killings were committed by a small group of individuals within a short period of time as a retaliation for failure to meet General Mladić's demand of surrender to the VRS of the BiH Army units in the Srebrenica area. The Defence recognises that "the consequences of the killings of 7,500 people on those who survived are undoubtedly terrible". However, it argues that these consequences would remain the same, regardless of the intent underlying the killings and thus "do not contribute to deciding and determining what the true intent of the killing was".<sup>1333</sup> The Defence concludes that "there is no proof and evidence upon which this Trial Chamber could conclude beyond all reasonable doubt that the killings were carried out with the intent to destroy, in whole or in part, the Bosnian Muslims as an ethnic group".<sup>1334</sup>

594. The Trial Chamber concludes from the evidence that the VRS forces sought to eliminate all of the Bosnian Muslims in Srebrenica as a community. Within a period of no more than seven days, as many as 7,000- 8,000 men of military age were systematically massacred while the remainder of the Bosnian Muslim population present at Srebrenica, some 25,000 people, were forcibly transferred to Kladanj. The Trial Chamber previously described how the VRS attempted to kill all the Bosnian Muslim men of military age, regardless of their civilian or military status; wounded men were spared only because of the presence of UNPROFOR and the portion of the column that managed to get through to government-held territory owed its survival to the fact that the VRS lacked the military resources to capture them.

595. Granted, only the men of military age were systematically massacred, but it is significant that these massacres occurred at a time when the forcible transfer of the rest of the Bosnian Muslim population was well under way. The Bosnian Serb forces could not have failed to know, by the time they decided to kill all the men, that this selective destruction of the group would have a lasting impact upon the entire group. Their death precluded any effective attempt by the Bosnian Muslims to recapture the territory. Furthermore, the Bosnian Serb forces had to be aware of the catastrophic impact that the disappearance of two or three generations of men would have on the

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<sup>1329</sup> Final Submissions of the Accused, para. 161, Closing arguments, T. 10129.

<sup>1330</sup> Final Submissions of the Accused, para. 157, 166.

<sup>1331</sup> Closing arguments, T. 10120.

<sup>1332</sup> Final Submissions of the Accused, paras. 146-147.

<sup>1333</sup> Closing arguments, T. 10139.

<sup>1334</sup> Closing arguments, T. 10140.



survival of a traditionally patriarchal society, an impact the Chamber has previously described in detail.<sup>1335</sup> The Bosnian Serb forces knew, by the time they decided to kill all of the military aged men, that the combination of those killings with the forcible transfer of the women, children and elderly would inevitably result in the physical disappearance of the Bosnian Muslim population at Srebrenica. Intent by the Bosnian Serb forces to target the Bosnian Muslims of Srebrenica as a group is further evidenced by their destroying homes of Bosnian Muslims in Srebrenica and Potočari<sup>1336</sup> and the principal mosque in Srebrenica soon after the attack.<sup>1337</sup>

596. Finally, there is a strong indication of the intent to destroy the group as such in the concealment of the bodies in mass graves, which were later dug up, the bodies mutilated and reburied in other mass graves located in even more remote areas, thereby preventing any decent burial in accord with religious and ethnic customs and causing terrible distress to the mourning survivors, many of whom have been unable to come to a closure until the death of their men is finally verified.

597. The strategic location of the enclave, situated between two Serb territories, may explain why the Bosnian Serb forces did not limit themselves to expelling the Bosnian Muslim population. By killing all the military aged men, the Bosnian Serb forces effectively destroyed the community of the Bosnian Muslims in Srebrenica as such and eliminated all likelihood that it could ever re-establish itself on that territory.<sup>1338</sup>

598. The Chamber concludes that the intent to kill all the Bosnian Muslim men of military age in Srebrenica constitutes an intent to destroy in part the Bosnian Muslim group within the meaning of Article 4 and therefore must be qualified as a genocide.

599. The Trial Chamber has thus concluded that the Prosecution has proven beyond all reasonable doubt that genocide, crimes against humanity and violations of the laws or customs of war were perpetrated against the Bosnian Muslims, at Srebrenica, in July 1995. The Chamber now proceeds to consider the criminal responsibility of General Krstić for these crimes in accordance with the provisions of Article 7 of the Statute.

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<sup>1335</sup> *Supra*, paras. 90-94.

<sup>1336</sup> *Supra*, paras. 41, 123, 153.

<sup>1337</sup> It was eventually turned into a parking lot. P4/4 to P4/6; Ruez, T. 542-543.

<sup>1338</sup> See Witness Halilović, *Supra* para. 94.

## H. Criminal Responsibility of General Krstić

### 1. Introduction

600. The Prosecution alleges that General Krstić is criminally responsible for his participation in the crimes charged in the indictment, pursuant to Article 7(1) of the Statute,<sup>1339</sup> which states that:

A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

601. The Trial Chambers of the ICTY and the ICTR and the Appeals Chamber of the ICTY have identified the elements of the various heads of individual criminal responsibility in Article 7(1) of the Statute.<sup>1340</sup> The essential findings in the jurisprudence may be briefly summarised as follows:

- “Planning” means that one or more persons design the commission of a crime at both the preparatory and execution phases;<sup>1341</sup>
- “Instigating” means prompting another to commit an offence;<sup>1342</sup>
- “Ordering” entails a person in a position of authority using that position to convince another to commit an offence;<sup>1343</sup>
- “Committing” covers physically perpetrating a crime or engendering a culpable omission in violation of criminal law;<sup>1344</sup>
- “Aiding and abetting” means rendering a substantial contribution to the commission of a crime;<sup>1345</sup> and
- “Joint criminal enterprise” liability is a form of criminal responsibility which the Appeals Chamber found to be implicitly included in Article 7(1) of the Statute. It entails individual responsibility for participation in a joint criminal enterprise to commit a crime;<sup>1346</sup>

<sup>1339</sup> Para. 18 of the Indictment. In its Final Trial Brief (para. 27), the Prosecution makes reference to each head - except “committing” - mentioned in Article 7(1) as well as the “common purpose doctrine” (discussed below) as a basis for General Krstić’s guilt.

<sup>1340</sup> Cf. Article 6(1) of the Statute of the ICTR. In its Final Trial Brief (para. 3), the Prosecution incorporates by reference its submissions on Article 7 in its Pre-Trial Brief (paras 13-86). Likewise, the Defence’s submissions on Article 7 in its Pre-Trial Brief (paras 13-29) are incorporated in its Final Trial Brief (para. 2).

<sup>1341</sup> *Akayesu* Judgement, para. 480; *Blaškić* Judgement, para. 279; *Kordić and Čerkez* Judgement, para. 386.

<sup>1342</sup> *Akayesu* Judgement, para. 482; *Blaškić* Judgement, para. 280; *Kordić and Čerkez* Judgement, para. 387.

<sup>1343</sup> *Akayesu* Judgement, para. 483; *Blaškić* Judgement, para. 281; *Kordić and Čerkez* Judgement, para. 388.

<sup>1344</sup> *Tadić* Appeal Judgement, para. 188; *Kunarac et al.* Judgement, para. 390.

<sup>1345</sup> *Aleksovski* Appeal Judgement, paras. 162-164.

602. Since the Prosecution has not charged any specific head of criminal responsibility under Article 7(1) of the Statute,<sup>1347</sup> it is within the discretion of the Trial Chamber to convict the Accused under the appropriate head within the limits of the Indictment and fair notice of the charges and insofar as the evidence permits.<sup>1348</sup> As to joint criminal enterprise liability, in its Final Trial Brief the Defence contends that it is not open to the Trial Chamber to apply this doctrine because it has not been pleaded in the Indictment. The Trial Chamber rejects this submission. The Prosecutor's Pre-trial Brief discussed this form of liability, specifically in the context of ethnic cleansing;<sup>1349</sup> the Defence acknowledged this pleading in its Pre-trial Brief and did not object to the concept itself but only to some details of the legal submissions on the matter.<sup>1350</sup> Moreover, the Trial Chamber finds that the "nature and cause of the charge against the accused" pleaded in the indictment contains sufficient references to his responsibility for the alleged crimes committed in concert with others.<sup>1351</sup>

603. The Prosecution "also, or alternatively" alleges that General Krstić incurs "command responsibility" for the crimes charged in the Indictment pursuant to Article 7(3) of the Statute.<sup>1352</sup> Pursuant to this provision:

The 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 and reasonable measures to prevent such acts or to punish the perpetrators thereof.

604. According to the case law,<sup>1353</sup> the following three conditions must be met before a person can be held responsible for the acts of another person under Article 7(3) of the Statute:

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<sup>1346</sup> *Tadić* Appeal Judgement, paras. 185-229. The Appeals Chamber in the *Tadić* Appeal Judgement interchangeably used several other terms, such as "common purpose" liability (*Tadić* Appeal Judgement, para. 220), to denote the same form of participation. For reasons discussed below, the Trial Chamber proposes to apply the label "joint criminal enterprise" throughout this Judgement. Trial Chamber II recently discussed joint criminal enterprise liability in detail in *Prosecutor v. Radoslav Brdanin and Momir Talić*, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, Case No. IT-99-36-PT, 26 June 2001 (the "*Talić* Decision").

<sup>1347</sup> The Trial Chamber notes in this regard that the Appeals Chamber held that: "Although greater specificity in drafting indictments is desirable, failure to identify expressly the exact mode of participation is not necessarily fatal to an indictment if it nevertheless makes clear to the accused the nature and cause of the charge against him". *Čelebići* Appeal Judgement, para. 351.

<sup>1348</sup> *Furundžija* Judgement, para. 189; *Kupreškić* Judgement, para. 746; *Kunarac et al.* Judgement, para. 388.

<sup>1349</sup> Prosecutor's Pre-trial Brief, paras. 21-27. The Prosecution refers to joint criminal enterprise liability as "co-perpetration"; the Appeals Chamber has in fact employed this term in this sense (*Tadić* Appeal Judgement, paras. 196, 228; *Furundžija* Appeal Judgement, para. 118). The Prosecution further considers "co-perpetration" to be a form of "committing".

<sup>1350</sup> Defence's Pre-trial Brief, paras. 18-19. See also para. 21 of the Prosecutor's Pre-trial Brief annexed to the Prosecutor's Submission of Agreed Matters of Law Presented During the Pre-trial Conference of 7 March 2000, dated 8 March 2000. On the Defence's objection to the joint criminal enterprise doctrine, see para. ?? *supra*.

<sup>1351</sup> See Indictment, e.g., paras. 6-11.

<sup>1352</sup> Para. 19 of the Indictment.

<sup>1353</sup> See, e.g., *Blaškić* Judgement, para. 294; *Kunarac et al.* Judgement, para. 395.

- The existence of a superior-subordinate relationship;
- The superior knew or had reason to know that the criminal act was about to be or had been committed; and
- The superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator thereof.

605. The facts pertaining to the commission of a crime may establish that the requirements for criminal responsibility under both Article 7(1) and Article 7(3) are met. However, the Trial Chamber adheres to the belief that where a commander participates in the commission of a crime *through his subordinates*, by “planning”, “instigating” or “ordering” the commission of the crime, any responsibility under Article 7(3) is subsumed under Article 7(1).<sup>1354</sup> The same applies to the commander who incurs criminal responsibility under the joint criminal enterprise doctrine through the physical acts of his subordinates.

## 2. The criminal responsibility of General Krstić for the crimes proved at trial

606. The Trial Chamber will now turn to the criminal responsibility of General Krstić for the crimes proved at trial. The following discussion distinguishes between two sets of crimes:

- The humanitarian crisis and crimes of terror committed at Potočari and the subsequent forcible transfer of the women, children and elderly; and
- The mass executions of the military-aged Muslim men from Srebrenica.

### (a) General Krstić’s responsibility for the crimes committed at Potočari

607. The Trial Chamber characterises the humanitarian crisis, the crimes of terror and the forcible transfer of the women, children and elderly<sup>1355</sup> at Potočari as constituting crimes against humanity, that is, persecution<sup>1356</sup> and inhumane acts.<sup>1357</sup>

608. The evidence establishes that General Krstić, along with others, played a significant role in the organisation of the transportation of the civilians from Potočari. Specifically, the Trial Chamber has concluded that, on 12 July, General Krstić ordered the procurement of buses and their subsequent departure carrying the civilians from Potočari. At some later stage, he personally

<sup>1354</sup> Likewise, *Kayishema and Ruzindana* Judgement, para. 223; *Blaškić* Judgement, para. 337.

<sup>1355</sup> Paras. 38-51, 337.

<sup>1356</sup> Murder, cruel and inhumane treatment (including terrorisation, destruction of personal property and forcible transfer) - count 6.

<sup>1357</sup> Forcible transfer - count 8.

inquired about the number of buses already en route. The Trial Chamber has also found that General Krstić ordered the securing of the road from Luke to Kladanj up to the tunnel where the people on the buses were to disembark. It has further been established that General Krstić knew that this was a forcible, not a voluntary, transfer.<sup>1358</sup>

609. The Trial Chamber has similarly concluded that General Krstić was fully aware of the ongoing humanitarian crisis at Potočari as a result of his presence at the hotel Fontana meeting, on 11 July at 2300 hours, where General Mladić and Colonel Karremans of Dutchbat discussed the urgency of the situation, and, at the meeting on 12 July, when General Mladić decided that the VRS would organise the evacuation of the Bosnian Muslim women, children and elderly. Following this meeting, General Krstić was present himself at Potočari, for one to two hours, thus he could not help but be aware of the piteous conditions of the civilians and their mistreatment by VRS soldiers on that day.<sup>1359</sup>

610. In light of these facts, the Trial Chamber is of the view that the issue of General Krstić's criminal responsibility for the crimes against the civilian population of Srebrenica occurring at Potočari is most appropriately determined under Article 7(1) by considering whether he participated, along with General Mladić and key members of the VRS Main Staff and the Drina Corps, in a joint criminal enterprise to forcibly "cleanse" the Srebrenica enclave of its Muslim population and to ensure that they left the territory otherwise occupied by Serbian forces.

611. According to the Appeals Chamber in the *Tadić* Appeal Judgement, for joint criminal enterprise liability to arise, three *actus reus* elements require proof:<sup>1360</sup>

- (i) A plurality of persons;
- (ii) The existence of a common plan, which amounts to or involves the commission of a crime provided for in the Statute; the Appeals Chamber specified that<sup>1361</sup>

There is no necessity for this plan, design or purpose to have been previously arranged or formulated. The 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.

- (iii) Participation of the accused in the execution of the common plan,<sup>1362</sup> otherwise formulated as the accused's "membership" in a particular joint criminal enterprise.<sup>1363</sup>

<sup>1358</sup> *Supra* paras. 340, 344.

<sup>1359</sup> *Supra* paras. 340, 354.

<sup>1360</sup> *Tadić* Appeal Judgement, para. 227.

<sup>1361</sup> *Tadić* Appeal Judgement, para. 227(ii). The Appeals Chamber reaffirmed this statement in the *Furundžija* Appeal Judgement, para. 119.

612. The facts described in the preceding paragraphs compel the inference that the political and/or military leadership of the VRS formulated a plan to permanently remove the Bosnian Muslim population from Srebrenica, following the take-over of the enclave. From 11 through 13 July, this plan of what is colloquially referred to as “ethnic cleansing” was realised mainly through the forcible transfer of the bulk of the civilian population out of Potočari, once the military aged men had been separated from the rest of the population. General Krstić was a key participant in the forcible transfer, working in close co-operation with other military officials of the VRS Main Staff and the Drina Corps.<sup>1364</sup> The *actus reus* requirements for joint criminal enterprise liability therefore have been met.

613. In defining the intent requirement, or *mens rea*, of joint criminal enterprise liability, the Appeals Chamber has distinguished between crimes committed in the execution of the agreed upon objectives of the criminal enterprise and crimes upon which the participants had not agreed but which were a natural and foreseeable consequence of the plan.<sup>1365</sup> In this regard, the Trial Chamber notes that Trial Chamber II interpreted the relevant portion of the *Tadić* Appeal Judgement as follows:<sup>1366</sup>

The state of mind of the accused to be established by the prosecution accordingly differs according to whether the crime charged:

- (a) was within the object of the joint criminal enterprise, or
- (b) went beyond the object of that enterprise, 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 needs to establish only that the accused was aware that the further crime was a possible consequence in the execution of that enterprise and that, with that awareness, he participated in that enterprise.

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<sup>1362</sup> The Prosecution submits that it is not required that each participant fulfils different elements of the *actus reus* of the crime; it suffices that each participant makes an essential contribution to the execution of the crime (Prosecutor’s Pre-Trial Brief, para. 23). In this respect, the Defence formulates its reservation to the joint criminal enterprise doctrine as follows: “it is necessary [...] to specify among the *actus rei* each individual act committed by each perpetrator.” (Defence’s Pre-Trial Brief, para. 18).

<sup>1363</sup> *Tadić* Decision, para. 43.

<sup>1364</sup> *Supra* para. 344.

<sup>1365</sup> *Tadić* Appeal Judgement, para. 228.

<sup>1366</sup> *Tadić* Decision, para. 31 (emphasis in original). Since members of the joint criminal enterprise may incur liability for crimes committed by other members which fall *outside the object of the common plan*, the Trial Chamber agrees that the doctrine is best referred to as “joint criminal enterprise”, rather than “common purpose” liability (*Tadić* Decision, para. 37). Furthermore, it is noteworthy that in regard to responsibility for a crime falling outside the object of the joint enterprise, the *Tadić* Decision explains that the requirement that such a crime be a “natural and foreseeable” consequence of the execution of the enterprise, “is an *objective* element of the crime, and does not depend upon the state of mind on the part of the accused”. The requirement that the accused was aware that the commission of such a crime was a possible consequence of the execution of the enterprise, “is the *subjective* state of mind on the part of the accused which the prosecution must establish.” *Tadić* decision, para. 30 (emphasis in original).

614. In order to determine whether General Krstić had the requisite *mens rea* for responsibility to arise under the joint criminal enterprise doctrine, the Trial Chamber must determine which crimes fell within and which fell outside the agreed object of the joint criminal enterprise to ethnically cleanse the Srebrenica enclave.

615. The object of the joint criminal enterprise implemented at Potočari on 12 and 13 July was firstly the forcible transfer of the Muslim civilians out of Srebrenica. That General Krstić had the intent for this crime is indisputably evidenced by his extensive participation in it. Furthermore, the humanitarian crisis that prevailed at Potočari was so closely connected to, and so instrumental in, the forcible evacuation of the civilians that it cannot but also have fallen within the object of the criminal enterprise. When General Krstić marched triumphantly into Srebrenica alongside General Mladić on 11 July, he saw the town completely empty and soon found out, at least by the evening, that a huge number of the inhabitants had fled to Potočari and were crowded together in the UN compound and surrounding buildings. Although, by his own claim, he was the organiser of the military operation on Srebrenica, he had taken no action to provide food or water, nor to guarantee the security of the civilians inhabitants of the town. The Trial Chamber finds that General Krstić subscribed to the creation of a humanitarian crisis as a prelude to the forcible transfer of the Bosnian Muslim civilians. This is the only plausible inference that can be drawn from his active participation in the holding and transfer operation at Potočari and from his total declination to attempt any effort to alleviate that crisis despite his on the scene presence.

616. The Trial Chamber is not, however, convinced beyond reasonable doubt that the murders, rapes, beatings and abuses committed against the refugees at Potočari were also an agreed upon objective among the members of the joint criminal enterprise. However, there is no doubt that these crimes were natural and foreseeable consequences of the ethnic cleansing campaign. Furthermore, given the circumstances at the time the plan was formed, General Krstić must have been aware that an outbreak of these crimes would be inevitable given the lack of shelter, the density of the crowds, the vulnerable condition of the refugees, the presence of many regular and irregular military and paramilitary units in the area and the sheer lack of sufficient numbers of UN soldiers to provide protection. In fact, on 12 July, the VRS organised and implemented the transportation of the women, children and elderly outside the enclave; General Krstić was himself on the scene and exposed to firsthand knowledge that the refugees were being mistreated by VRS or other armed forces.

617. In sum, the Trial Chamber finds General Krstić guilty as a member of a joint criminal enterprise whose objective was to forcibly transfer the Bosnian Muslim women, children and elderly from Potočari on 12 and 13 July and to create a humanitarian crisis in support of this

endeavour by causing the Srebrenica residents to flee to Potočari where a total lack of food, shelter and necessary services would accelerate their fear and panic and ultimately their willingness to leave the territory. General Krstić thus incurs liability also for the incidental murders, rapes, beatings and abuses committed in the execution of this criminal enterprise at Potočari.

618. Finally, General Krstić knew that these crimes were related to a widespread or systematic attack directed against the Bosnian Muslim civilian population of Srebrenica; his participation in them is undeniable evidence of his intent to discriminate against the Bosnian Muslims. General Krstić is therefore liable of inhumane acts<sup>1367</sup> and persecution<sup>1368</sup> as crimes against humanity.

(b) General Krstić's criminal responsibility for the killing of the military-aged Muslim men from Srebrenica

619. The Trial Chamber has made findings that, as of 13 July, the plan to ethnically cleanse the area of Srebrenica escalated to a far more insidious level that included killing all of the military-aged Bosnian Muslim men of Srebrenica. A transfer of the men after screening for war criminals - the purported reason for their separation from the women, children and elderly at Potočari - to Bosnian Muslim held territory or to prisons to await a prisoner exchange was at some point considered an inadequate mode for assuring the ethnic cleansing of Srebrenica. Killing the men, in addition to forcibly transferring the women, children and elderly, became the object of the newly elevated joint criminal enterprise of General Mladić and VRS Main Staff personnel. The Trial Chamber concluded that this campaign to kill all the military aged men was conducted to guarantee that the Bosnian Muslim population would be permanently eradicated from Srebrenica and therefore constituted genocide.

620. The issue that remains to determine is whether General Krstić was a member of the escalated joint criminal enterprise to kill the military-aged men and whether he thus incurred responsibility for genocide, including the causing of serious bodily and mental harm to the few men surviving the massacres. In this respect, the Trial Chamber will discuss the relationship between Article 7(1) and Article 4(3), and between "genocide" in Article 4(3)(a)<sup>1369</sup> and the alternative allegation of "complicity in genocide" in Article 4(3)(e).<sup>1370</sup> The Trial Chamber further will determine whether General Krstić also incurs responsibility for the other crimes constituted by the killings, that is, persecutions,<sup>1371</sup> extermination<sup>1372</sup> and murder<sup>1373</sup> as crimes against humanity, and

<sup>1367</sup> Forcible transfer - count 8.

<sup>1368</sup> Murder, and cruel and inhumane treatment (including terrorisation, destruction of personal property and forcible transfer) - count 6.

<sup>1369</sup> Count 1 of the Indictment.

<sup>1370</sup> Count 2 of the Indictment.

<sup>1371</sup> Count 6 of the Indictment.



murder as a violation of the laws or customs of war.<sup>1374</sup> Lastly, the Trial Chamber will consider whether the evidence suggests that General Krstić incurs command responsibility for the crimes alleged under Article 7(3).

(i) Participation in the genocidal joint criminal enterprise to kill the military-aged men

621. The Trial Chamber has concluded that General Krstić was involved in organising the buses for the transportation of the women, children and elderly from Potočari throughout 12 July. He personally saw that the military-aged men were being segregated at Potočari and that they were being detained at the White House in sordid conditions. He must have observed, further, that contrary to General Mladić's statement at the Hotel Fontana meeting, no genuine efforts were taking place to screen the men for war criminals. General Krstić knew, also on 12 July, that the buses exiting from Potočari were being stopped at Tišća where any men who had managed to get aboard were pulled off and taken to detention sites.<sup>1375</sup> On 13 July, when he was preparing the military operation at Žepa which commenced the next day, General Krstić found out that thousands of Srebrenica men fleeing in the column through the woods toward Tuzla had been captured on the territory of the Drina Corps. As the then Corps' Chief of Staff, "the primary co-ordinator of the Corps' activities",<sup>1376</sup> General Krstić must have been aware that no adequate measures were being taken to provide for shelter, food, water and medical care for several thousand captured men and that no arrangements or negotiations were ongoing for their prisoner-of-war exchange.<sup>1377</sup>

622. On that basis alone, the Trial Chamber must conclude that, by the evening of 13 July at the latest, General Krstić knew that the Muslim men were being executed at a number of separate sites and that none had been allowed to enter government held territory along with the women, children and elderly. General Krstić could only surmise that the original objective of ethnic cleansing by forcible transfer had turned into a lethal plan to destroy the male population of Srebrenica once and for all.

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<sup>1372</sup> Count 3 of the Indictment.

<sup>1373</sup> Count 4 of the Indictment.

<sup>1374</sup> Count 5 of the Indictment.

<sup>1375</sup> *Supra*, para. 470.

<sup>1376</sup> Richard Butler, VRS Corps Command Responsibility Report, Section Two, para. 2.6 (P401). In his Report, Prosecution military expert Mr Butler refers to, amongst others, para. 66 of the JNA Rules for Land Forces Corps (Provisional) (P402/4) and Article 11 of the JNA Regulations on the Responsibilities of the Land Army Corps Command in Peacetime (P402/10). On the applicability of these instruments of the former Yugoslav National Army to the Army of Republika Srpska, see *Infra*. On the responsibilities of the VRS Corps Chief of Staff, see also the testimony of Prosecution military expert General Dannatt, T. 5578.

<sup>1377</sup> *Supra* paras. 363-379, 465-472.

623. In terms of General Krstić’s participation in the killing plan, the evidence has established that, from 14 July onwards, Drina Corps troops took part in killing episodes. The facts in relation to the Drina Corps’ participation at each site may be summarised as follows:

- Zvornik Brigade units scouted for sites at Orahovac presumably to be used for detention and execution on 13 and 14 July;<sup>1378</sup> furthermore, Zvornik Brigade personnel were present at Orahovac immediately prior to, and during the killings; Zvornik Brigade military equipment was engaged in tasks relating to the burial of the victims from Orahovac between 14 and 16 July;<sup>1379</sup>
- Drivers and trucks from the 6<sup>th</sup> Infantry Battalion of the Zvornik Brigade were used to transport the prisoners from the detention site at Petkovci Dam to the execution sites on 15 July; the Zvornik Brigade Engineer Company was assigned to work with earthmoving equipment to assist with the burial of the victims from Petkovci Dam;<sup>1380</sup>
- Members of the Bratunac Brigade assisted in the killings on the site of the Branjevo Farm on 16 July; Drina Corps military police were engaged in guarding the Muslim prisoners in the buses that took them from several detention places to the Farm and Zvornik Brigade equipment was engaged in activities relating to the burial of the victims; Colonel Popović, the Drina Corps’ Assistant Commander for Security, was involved in organising fuel to transport the Muslim prisoners to the execution sites at Branjevo Farm and the allocation of fuel was co-ordinated through the Drina Corps Command;<sup>1381</sup>
- The Bratunac Brigade assisted with the executions that took place at the Pilica Cultural Dom on 16 July;<sup>1382</sup> and
- Zvornik Brigade engineering work on 16 July was traced to the burial of bodies in the Kozluk grave.<sup>1383</sup>

624. Thus, the Drina Corps rendered tangible and substantial assistance and technical support to the detention, killing and burial at these several sites between 14 and 16 July. The need for their involvement was unavoidable because the Main Staff had limited assets and resources of its own and had to utilise the Drina Corps resources and expertise for complicated operations like these detentions, executions and burials on Drina Corps territory.<sup>1384</sup> It is inconceivable that the

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<sup>1378</sup> *Supra* paras. 220-225.  
<sup>1379</sup> *Supra* para. 449.  
<sup>1380</sup> *Supra* para. 450.  
<sup>1381</sup> *Supra* para. 451.  
<sup>1382</sup> *Supra* para. 452.  
<sup>1383</sup> *Supra* para. 453.  
<sup>1384</sup> *Supra* para. 266.

involvement of Drina Corps troops and equipment could take place without some - even if hasty - degree of planning which, moreover, required the involvement of the top levels of command.

625. The evidence shows that, following the capture of Srebrenica, the Drina Corps Command continued to exercise regular command competencies over its subordinate troops. The Corps' ordinary chain of command was not suspended as a result of the direct involvement of the Main Staff or the security organs in certain aspects of the Srebrenica follow up operation. The Trial Chamber has further held that General Krstić became the *de facto* Corps Commander from the evening of 13 July onwards and *de jure* Corps Commander from 15 July onwards.<sup>1385</sup>

626. Three military experts submitted reports and testified before the Trial Chamber on the responsibilities and authorities of the Commander of the Drina Corps in July 1995. The Prosecution called its in-house expert Richard Butler, as well as Major General F.R. Dannatt of the British Army.<sup>1386</sup> Professor Dr R. Radinović, a retired General in the JNA, provided expert evidence for the Defence.<sup>1387</sup>

627. The experts based their opinions on certain military regulations which the Army of Republika Srpska (VRS) adopted from the former Yugoslav National Army (JNA),<sup>1388</sup> as well as Republika Srpska legislation. These instruments define the responsibilities and corresponding authorities of VRS Corps Commanders.

628. According to Article 65 of the JNA Rules for Land Forces Corps (Provisional), the VRS Corps Commander:

bears the responsibility for the accomplishment of a mission. He takes decisions, gives assignments to his subordinates, organises co-ordination and co-operation, and controls the implementation of decisions.

The Commander accomplishes this through the exercise of "command and control", which Article 63 of the JNA Rules for Land Forces Corps (Provisional) defines as:

conscious and organised activities of the Commander of the Corps and the bodies of command, aimed at engaging and unifying the actions and activities of all units, commands, headquarters and other entities of All People's Defence and social self-protection in the zone of operation, as well as equipment used in combat, for the purpose of achieving the set goals in the optimal way.

Article 6 of the JNA Regulations on the Responsibilities of the Land Army Corps Command in Peacetime further provides that:

<sup>1385</sup> *Supra* para. 330.

<sup>1386</sup> Butler Report; Statement of Major General F.R. Dannatt, Military Expert (P385A).

<sup>1387</sup> Prof. Dr. Radovan Radinović, Retired General, Military Expert Testimony of Srebrenica (D160).

<sup>1388</sup> The Trial Chamber accepts that these JNA documents were the regulatory foundation of the VRS; it understands this to be the position of General Radinović. See Butler Report, para. 1.4; Radinović, T. 7997-7998.

The right to command units and institutions of [the Corps] is under the exclusive responsibility of the Commander. Units and institutions outside the Corps' organic compound, those temporarily subordinated, are commanded and controlled by the Commander only within the limits of stipulated authorities.

According to General Krstić himself, the principle of "command and control" is "fundamental not only to military operations but also to the work of the commands and staffs in control and command of units".<sup>1389</sup> General Krstić testified that he was well-versed in this principle and experienced in its execution.<sup>1390</sup> Furthermore, although General Radinović contested that the Instructions on How the 4<sup>th</sup> Corps Command is to Operate When Carrying out Priority Assignments in Peacetime and Wartime apply to the VRS Drina Corps,<sup>1391</sup> he agreed with the following portion of the Butler Report which quotes from these Instructions:<sup>1392</sup>

[The Corps Commander] is personally, directly and legally empowered to 'lead the operations of the Corps Command, assign tasks to his subordinate officers, ensure that they are carried out, and bear full responsibility for their completion.'

629. The military regulations confer the widest powers on the Corps Commander in order to enable him to carry out his command responsibilities. According to Article 173 of the RS Law on the Army,<sup>1393</sup> command in the army is based on:

the principles of a unified command regarding the use of forces and means, single authority, obligations to enforce decisions, command and orders issued by superior officers.

Article 4 of the RS Law on the Army defines a "Superior Officer" as:

a person in command of a military unit or a person managing a military institution [...], and in command of personnel serving in the military unit or institution, in compliance with the law and other regulations issued by the competent body.

The concept of "Superior Officer" is further defined in the Interim Provisions on the Service in the Army of the Serb Republic.<sup>1394</sup> Paragraph 17 of these Provisions provides that:

Members of the Army shall carry out the orders of their superiors without demur, in full, accurately and punctually.

630. These sources show indisputably that as Commander of the Drina Corps, General Krstić had extensive formal powers over the assets and troops of the Drina Corps.<sup>1395</sup> The trial record

<sup>1389</sup> Krstić, T. 6341.

<sup>1390</sup> Krstić, T. 6342.

<sup>1391</sup> Radinović, T. 7809, 7999. P402/7 contains The Instructions on How the 4<sup>th</sup> Corps Command is to Operate When Carrying out Priority Assignments in Peacetime and Wartime.

<sup>1392</sup> Butler Report, para. 2.0, referring to page 14 of the Instructions on How the 4<sup>th</sup> Corps Command is to Operate When Carrying out Priority Assignments in Peacetime and Wartime; Radinović, T. 8011.

<sup>1393</sup> P142/40.

<sup>1394</sup> Signed into effect by the President of Republika Srpska on 18 August 1992. P142/24.

<sup>1395</sup> See Radinović Report, Chapter III, para. 3.7. General Radinović testified that "the [...] Corps Commander [...] does not share his command responsibility with anybody at all." (T. 8019). Mr Butler testified that "[the Commander] is

confirms that General Krstić exercised many of these powers from the evening of 13 July on - in matters affecting the entire Drina Corps, not just the Žepa operation - once General Mladić had appointed him as Commander.<sup>1396</sup>

- On the evening of 13 July, General Krstić signed a search order as “Commander”, which the Trial Chamber accepts to mean “Commander of the Drina Corps”, as opposed to “Commander of the Žepa operation”,<sup>1397</sup>
- Witness II stated that “at Žepa [i.e. from 14 July]...everybody addressed General Krstić as Commander, meaning Corps Commander”;<sup>1398</sup>
- A Radio intercept, at 2236 hours on 14 July, between “Malinić” (the commander of the Military Police Battalion of the 65<sup>th</sup> Protection Regiment) and an unidentified individual contains a statement by the latter that:<sup>1399</sup>

he [Krstić] [will] look into it, and will assign someone to co-ordinate it [...] I'm up to speed...Živanović told me. Well, in short, now I have told Krle about that, about what should/be/done. I suggested what he should do, so he'll do something...

- The authority of General Živanović - the outgoing Corps Commander - is seen to be fast fading away. Although he exercised a few command functions on 14 July, in an intercept at 0935 hours on that day, General Živanović disclosed that he was slowly “packing his backpack” and that “they” (presumably the Main Staff) had already asked him to go somewhere else.<sup>1400</sup>

631. The Trial Chamber concludes that from the evening of 13 July, General Krstić exercised “effective control” over Drina Corps troops and assets throughout the territory on which the detentions, executions and burials were taking place. The Trial Chamber finds furthermore that from that time onwards, General Krstić participated in the full scope of the criminal plan to kill the Bosnian Muslim men originated earlier by General Mladić and other VRS officers. In fact, by 13 July - when the mass killings started - General Krstić had already organised the military attack on

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legally empowered with the authorities and the responsibilities to command and direct the activities of his, in this case, corps.” (T. 4754-4755). See also Dannatt Report, para. 26. The evidence does not establish that the 10<sup>th</sup> Sabotage Detachment and the MUP were re-subordinated to the Drina Corps, however, and General Krstić’s formal powers therefore did not extend to these troops (*supra* paras. 278-290).

<sup>1396</sup> *Supra*, para. 312.

<sup>1397</sup> *Supra*, para. 318.

<sup>1398</sup> *Supra*, para. 312.

<sup>1399</sup> *Supra*, para. 322.

<sup>1400</sup> *Supra*, para. 322.

Žepa and as Drina Corps Chief of Staff and Commander-to-be<sup>1401</sup> he had to make provision for Drina Corps resources to be applied in the clean-up activities following the fall of Srebrenica. On 14 July, while some of his Drina Corps troops were participating in the Žepa operation, other troops under his effective control were engaged in capturing and assisting in the execution of Muslim men from Srebrenica.

632. On 15 July, General Krstić's participation in the killing plan reached an aggressive apex. According to an interchange intercepted early that day, Colonel Beara - a Main Staff officer whom General Krstić himself identifies as personally engaged in supervising the killings - requests General Živanović to arrange for more men to be sent to him. General Živanović states he can not "arrange for that anymore" and refers Colonel Beara to General Krstić.<sup>1402</sup> Colonel Beara subsequently urgently requests General Krstić's assistance in the "distribution of 3,500 parcels", a code term repeatedly used in military communications to signify captured Bosnian Muslim men that are slated to be killed. General Krstić suggests that Colonel Beara solicit help from several units, including the Bratunac and Milići Brigades in the Drina Corps, and the MUP. Colonel Beara replies that these units were not available, saying: "I don't know what to do. I mean it, Krle". The intercept strongly implies that when the MUP troops declined to carry out the killings, General Krstić agreed to fill the breach, stating: "I'll see what I can do".<sup>1403</sup> General Krstić arranged for Bratunac Brigade members to assist in the killings at the Branjevo Farm and the Pilica Dom the next day.<sup>1404</sup>

633. The Trial Chamber concludes beyond reasonable doubt that General Krstić participated in a joint criminal enterprise to kill the Bosnian Muslim military-aged men from Srebrenica from the evening of 13 July onward. General Krstić may not have devised the killing plan, or participated in the initial decision to escalate the objective of the criminal enterprise from forcible transfer to destruction of Srebrenica's Bosnian Muslim military-aged male community, but there can be no doubt that, from the point he learned of the widespread and systematic killings and became clearly involved in their perpetration, he shared the genocidal intent to kill the men. This cannot be gainsaid given his informed participation in the executions through the use of Drina Corps assets.

634. Finally, the Trial Chamber has concluded that, in terms of the requirement of Article 4(2) of the Statute that an intent to destroy only part of the group must nevertheless concern a substantial part thereof, either numerically or qualitatively, the military aged Bosnian Muslim men of

<sup>1401</sup> Witness JJ was told by General Živanović that General Mladić had informed him between 15 and 20 June 1995 that General Krstić was going to replace him as Corps Commander. General Živanović also told the witness that General Krstić was anxious to be in command. T. 9683, 9708.

<sup>1402</sup> *Supra*, para. 323.

<sup>1403</sup> *Supra*, para. 380.

Srebrenica do in fact constitute a substantial part of the Bosnian Muslim group, because the killing of these men inevitably and fundamentally would result in the annihilation of the entire Bosnian Muslim community at Srebrenica. In this respect, the intent to kill the men amounted to an intent to destroy a substantial part of the Bosnian Muslim group. Having already played a key role in the forcible transfer of the Muslim women, children and elderly out of Serb-held territory, General Krstić undeniably was aware of the fatal impact that the killing of the men would have on the ability of the Bosnian Muslim community of Srebrenica to survive, as such. General Krstić thus participated in the genocidal acts of “killing members of the group” under Article 4(2)(a) with the intent to destroy a part of the group.

635. The Trial Chamber has further determined that the ordeal inflicted on the men who survived the massacres may appropriately be characterised as a genocidal act causing serious bodily and mental harm to members of the group pursuant to Article 4(2)(b). While the agreed objective of the joint criminal enterprise in which General Krstić participated was the actual killing of the military aged Bosnian Muslim men of Srebrenica, the terrible bodily and mental suffering of the few survivors clearly was a natural and foreseeable consequence of the enterprise. General Krstić must have been aware of this possibility and he therefore incurs responsibility for these crimes as well.

636. General Krstić thus incurs responsibility for the killings and causing of serious bodily and mental harm as a co-participant in a joint criminal enterprise to commit genocide. However, the Prosecution has alleged alternatively that General Krstić incurs responsibility for “genocide” under Article 4(2) and 4(3)(a), or for “complicity in genocide” under Article 4(3)(e). This requires a brief discussion as to the relationship between these provisions.

637. The Prosecution’s submissions on this matter are limited to the distinction between “genocide” and “complicity in genocide” under Article 4(3). The Prosecution submits that the *mens rea* requirement for both forms of participation entails genocidal intent. The Prosecution further contends that this is not incompatible with the *Akayesu* Judgement of ICTR Trial Chamber I, according to which complicity in genocide is defined to include aiding and abetting the commission of genocidal acts with the knowledge of the principal’s genocidal intent even if that intent is not shared. The Prosecution submits that “knowledge” of the genocidal intent accompanied by substantial contribution to the genocidal plan or enterprise amounts to a shared intent.<sup>1405</sup>

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<sup>1404</sup> *Supra*, paras. 386 and 401.

<sup>1405</sup> Prosecutor’s Pre-Trial Brief, .06-107. During closing argument, the Prosecution submitted that General Krstić “had the genocidal intent from the beginning, he maintained it throughout, and that complicity for genocide would require

638. The Defence, on the other hand, submits that “Complicity is a form of accomplice liability and exists upon proof that a person planned, instigated or ordered an act or otherwise aided and abetted its performance.”<sup>1406</sup> To be liable as an accomplice in genocide, it must be established that the accused rendered a substantial contribution to the commission of the act in the awareness of the principle’s genocidal intent. Thus, according to the Defence, to establish that General Krstić was an accomplice in genocide, the Prosecution need not prove that he had genocidal intent.<sup>1407</sup>

639. The Trial Chamber’s view on the relationship between the heads of criminal responsibility in Article 7(1) and Articles 4(3)(a) and (e) is as follows.

640. Article 7(1) entails a general provision on individual criminal responsibility applicable to all crimes in the Statute. Article 4(3) provides for heads of responsibility in relation to genocide only; it is taken *verbatim* from Article III of the Genocide Convention. Article 4(3) provides for a broad range of heads of criminal responsibility, including heads which are not included in Article 7(1), such as “conspiracy to commit genocide” and “attempt to commit genocide”.<sup>1408</sup> By 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.<sup>1409</sup> 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).

641. The question whether participation in a joint criminal enterprise under Article 7(1) corresponds to “genocide” or “complicity in genocide”, pursuant to Article 4(3), has not yet been answered in the case law.<sup>1410</sup>

642. In the *Tadić* Appeal Judgement, the Appeals Chamber referred to “the notion of common design as a form of accomplice liability”,<sup>1411</sup> a phrase upon which Trial Chamber II subsequently

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some leaps of faith based principally on General Krstić’s testimony. We don’t think that the interpretation should be given to the facts in this case that he is culpable of only complicity.” T 10020.

<sup>1406</sup> Defence’s Final Trial Brief, para. 123.

<sup>1407</sup> Defence’s Final Trial Brief, paras. 124-128.

<sup>1408</sup> In this respect, it is noteworthy that the ICC Statute includes a *single* provision on individual criminal responsibility - Article 25 - which is applicable to all crimes within the jurisdiction of the ICC, including genocide.

<sup>1409</sup> The Report of the Secretary-General states that “the [Genocide] Convention is today considered part of international customary law as evidenced by the International Court of Justice in its Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, 1951.” Report of the Secretary-General, para. 45 (footnote omitted).

<sup>1410</sup> The Trial Chamber notes that in *Akayesu* and *Musema* ICTR Trial Chamber I pronounced on the elements of “complicity in genocide”. However, the Trial Chamber interpreted “complicity” in accordance with the Rwandan Penal Code, which is why this jurisprudence is only of limited value to the present case. See *Akayesu* Judgement, paras. 537, 540; *Musema* Judgement, paras. 179, 183.

<sup>1411</sup> *Tadić* Appeal Judgement, paras. 220, 223 (emphasis provided).



relied to distinguish “committing” from “common purpose liability” under Article 7(1).<sup>1412</sup> However, this Trial Chamber views the comment in the *Tadić* Appeal Judgement as not part of the *ratio decidendi* of that Judgement and does not believe that *Tadić* characterisation means that any involvement in a joint criminal enterprise automatically relegates the liability of an accused to that of “complicity in genocide” in Article 4(3)(e).<sup>1413</sup> In the *Čelebići* Appeal Judgement, the Appeals Chamber reaffirmed the meaning of the plain language of Article 7 (1) that “liability under Article 7(1) applies to direct perpetrators of crimes and to accomplices”,<sup>1414</sup> and the *Kordić and Čerkez* Trial Chamber stated that “[t]he various forms of participation listed in Article 7(1) may be divided between principal perpetrators and accomplices.”<sup>1415</sup> In short, the Trial Chamber sees no basis for refusing to accord the status of a co-perpetrator to a member of a joint genocidal enterprise whose participation is of an extremely significant nature and at the leadership level.

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). The question comes down to whether, on the face of the case, a participant in the criminal enterprise may be most accurately characterised as a direct or principal perpetrator or as a secondary figure in the traditional role of an accomplice.

644. In the present case, General Krstić participated in a joint criminal enterprise to kill the military-aged Bosnian Muslim men of Srebrenica with the awareness that such killings would lead to the annihilation of the entire Bosnian Muslim community at Srebrenica. His intent to kill the men thus amounts to a genocidal intent to destroy the group in part. General Krstić did not conceive the plan to kill the men, nor did he kill them personally. However, he fulfilled a key co-ordinating role in the implementation of the killing campaign. In particular, at a stage when his participation was clearly indispensable, General Krstić exerted his authority as Drina Corps Commander and arranged for men under his command to commit killings. He thus was an essential participant in the genocidal killings in the aftermath of the fall of Srebrenica. In sum, in view of both his *mens rea* and *actus reus*, General Krstić must be considered a principal perpetrator of these crimes.<sup>1416</sup>

<sup>1412</sup> *Prosecutor v. Radoslav Brđanin and Momir Talić*, Decision on Motion by Momir Talić for Provisional Release, Case No. IT-99-36-PT, 28 March 2001, paras. 40-45.

<sup>1413</sup> According to the Appeals Chamber: “a proper construction of the Statute requires that the *ratio decidendi* of its decisions is binding on Trial Chambers”. *Aleksovski* Appeal Judgement, para. 113.

<sup>1414</sup> *Čelebići* Appeal Judgement, para. 338.

<sup>1415</sup> *Kordić and Čerkez* Judgement, para. 373.

<sup>1416</sup> The Trial Chamber notes in this respect that Article 141 of the Criminal Code of Republika Srpska (P402/98) provides with regard to genocide that he who *orders* the commission of genocidal acts or *commits* such acts shall be punished by imprisonment of at least five years or by the death penalty. This supports the finding that the category of

645. General Krstić is guilty of genocide pursuant to Article 4(2)(a).

(ii) Participation in the other crimes constituted by the killings

646. The Trial Chamber finds that, by his participation in the joint criminal enterprise to kill the military-aged Bosnian Muslim men from Srebrenica, General Krstić is also guilty of murders as violations of the laws or customs of war. Furthermore, as he cannot but have been aware that these murders were related to a widespread or systematic attack against the Bosnian Muslim civilian population of Srebrenica, General Krstić is also guilty of murders as crimes against humanity and - in view of the object of the joint criminal enterprise to kill all the military-aged Bosnian Muslim men of Srebrenica - extermination. Finally, General Krstić is guilty of murders as acts of persecution: his intent to discriminate against the Bosnian Muslim population of Srebrenica is his participation in the killings of all the Bosnian Muslim men and the transfer of all the women, children and elderly from the territory of the Drina Corps.

(iii) Responsibility for the killings under Article 7(3)

647. The evidence also satisfies the three-pronged test established by the jurisprudence for General Krstić to incur command responsibility under Article 7(3) for the participation of Drina Corps personnel in the killing campaign.<sup>1417</sup>

648. First, General Krstić exercised effective control over Drina Corps troops involved in the killings.<sup>1418</sup> Second, in terms of *mens rea*, 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. Third, General

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principle perpetrators of genocide is not limited to those *physically committing* acts of genocide. On 21 July 1993, the National Assembly of Republika Srpska adopted - with minor amendments unrelated to the above provision - the Criminal Code of the Socialist Federative Republic of Yugoslavia and renamed it the "Criminal Code of Republika Srpska". See Law on Amendments to the Criminal Code of the Socialist Federative Republic of Yugoslavia (P402/58).<sup>1417</sup> Since it can not be concluded beyond reasonable doubt that Drina Corps troops - or other troops under the effective control of General Krstić - were responsible for the terror crimes at Potočari (FM, para. 155), the Trial Chamber can not conclude that General Krstić incurs liability for these crimes under Article 7(3).

<sup>1418</sup> This is the first test under Article 7(3) (*Čelebići* Appeal Judgement, paras 186-198, 266). In the case in point, there is no evidence to rebut the presumption that as Commander of the Drina Corps, General Krstić's *de jure* powers amounted to his effective control over subordinate troops (*Čelebići* Appeal Judgement, para. 197). To the contrary, the evidence on the record confirms that as Corps Commander General Krstić was firmly in charge of his troops. Conversely, it has not been established that General Krstić exercised formal powers over the 10<sup>th</sup> Sabotage Detachment and the MUP. In the absence of other conclusive evidence that he in reality did exercise effective control over these troops, General Krstić can not be said to incur command responsibility for their participation in the crimes.

Krstić failed to prevent his Drina Corps subordinates from participating in the crimes or to punish them thereafter.

649. In respect to this last issue, the Trial Chamber finds that General Krstić's effective control enabled him to prevent Drina Corps officers and troops from participating in the commission of crimes. Further, as to General Krstić's ability to punish subordinates, the Trial Chamber considers that, on 13 May 1992, President Karadžić issued his Order on the Application of the Rules of the International Law of War in the Army of the Serbian Republic of Bosnia and Herzegovina.<sup>1419</sup> General Krstić testified that he was aware of the obligation enshrined in paragraph 2 of this Order,<sup>1420</sup> namely that:

It is the duty of the competent superior officer to initiate proceedings for legal sanctions against individuals who violate the rules of the international law of war.

The Guidelines for Determining Criteria for Criminal Prosecution, issued by the Military Prosecutor's Office of the Main Staff of the Armed Forces of Republika Srpska,<sup>1421</sup> state in relation to "criminal offences against humanity and international law" that:

officers in all units must accept the obligation to draft reports on all incidents which might be regarded as criminal offences [...] In these cases, the commands have a duty to inform, among others, the military prosecutor's office, which will, after making an assessment, take appropriate action in keeping with the law and prosecution policy.

In a similar fashion, General Radinović testified, with regard to units not subordinated to the Drina Corps, that:<sup>1422</sup>

[i]f, in the command system and the system of informing, the command of the Drina Corps found out that these units committed something that was proscribed under regulations, then they would be obliged, the Drina Corps, and the command system would be obliged to act in accordance or exactly the same way that any officer or any member of an army would behave when they found out that somebody was acting against rules and regulations, *meaning that procedures would have to be initiated and investigations* which would be required in such a particular case.

General Radinović also stated that, if an officer becomes aware that persons in the highest level in command are responsible for a violation of the law, this officer is duty bound to report the violation to the civil authorities above the army.<sup>1423</sup>

650. The Trial Chamber has found that General Krstić did not punish a single Drina Corps officer or soldier who participated in the killings in the aftermath of the fall of Srebrenica.<sup>1424</sup> General Krstić testified that, after the commission of these crimes, he only found out about the involvement

<sup>1419</sup> P402/76

<sup>1420</sup> Krstić, T. 6346-6347.

<sup>1421</sup> Exhibit 402/68; Guidelines, p. 8.

<sup>1422</sup> Radinović, T. 8057.

<sup>1423</sup> Radinović, T. 8466.

of one Drina Corps officer. He unsuccessfully tried to have this person replaced and, as a result, was himself subsequently targeted by the Security Services for special surveillance. General Krstić testified that, at the time, he feared for his safety and that of his family.<sup>1425</sup> He stated under cross-examination that:<sup>1426</sup>

I must acknowledge here before you and this Trial Chamber that not in my wildest dreams was I able to undertake any measures. We weren't allowed to talk about anything like that let alone take steps against a commanding officer, regardless of my knowledge that he or somebody else had perhaps committed a war crime. [...] It was my intention to report war crimes but that was not a possibility. I was not able to do so. [...] First of all, for security reasons, the security and safety of my family.

651. However, Mr. Butler, the Prosecutor's military expert, testified that VRS Corps Commanders did switch jobs throughout the war and that he had found no evidence that officers in general were operating in a climate of fear.<sup>1427</sup> Moreover, in the case of General Krstić, the fact is that he was publicly extolled by both General Mladić and President Karadžić for his leadership role in the conquest of the Srebrenica enclave, months after the massacres occurred. General Krstić also appeared on public platforms as an enthusiastic supporter of General Mladić in the following year and indeed signed a plea to President Karadžić to keep General Mladić on as Commander of the Main Staff of the VRS.<sup>1428</sup> These facts tend to demonstrate General Krstić's solidarity with, rather than his fear of, the highest military and civilian echelons of the Republika Srpska.

652. Although the elements of Article 7(3) have thus been fulfilled, the Trial Chamber will not enter a conviction to that effect because in its view General Krstić's responsibility for the participation of his troops in the killings is sufficiently expressed in a finding of guilt under Article 7(1).

(c) Conclusions on General Krstić's criminal responsibility

653. The Trial Chamber's findings on the issue of cumulative convictions are discussed below. At this point, the Trial Chamber concludes that General Krstić incurs criminal responsibility for his participation in two different sets of crimes that occurred following the attack of the VRS on Srebrenica in July 1995.

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<sup>1424</sup> *supra*, para. 477.

<sup>1425</sup> Krstić, T. 6350-6351, 6358, 7422.

<sup>1426</sup> Krstić, T. 6347.

<sup>1427</sup> Butler, T. 5474-5. General Dannatt testified likewise, stating that: "I don't believe I have come across an incident in the Balkans whereby a general who refused to follow orders has been shot. [...] I think there are cases of people being removed or dismissed from their position, which is quite common in military matters." Dannatt, T. 5685.

<sup>1428</sup> *Supra*, paras. 334, 417.

Firstly, on the basis of the humanitarian crisis and crimes of terror at Potočari and the forcible transfer of the women, children and elderly from Potočari to Bosnian Muslim held territory, from 11 to 13 July, General Krstić incurs responsibility under Article 7(1) for inhumane acts (forcible transfer, count 8 of the Indictment) and persecution (murder, cruel and inhumane treatment, terrorisation, destruction of personal property and forcible transfer, count 6 of the Indictment).

Secondly, on the basis of the killing of the military aged Muslim men from Srebrenica and the causing of serious bodily and mental harm to the men surviving the massacres: General Krstić incurs responsibility under Article 7(1) and Article 4(3)(a) for genocide (count 1), General Krstić also incurs responsibility under Article 7(1) for the killings as extermination (count 3), murder (count 4) and persecution (count 6) as crimes against humanity, and murder as a violation of the laws or customs of war (count 5).

654. Having pronounced on the crimes for which General Krstić may be held criminally responsible, the Trial Chamber now turns to address the issue of cumulative charging and convictions in order to decide upon which of these crimes, based on the same underlying conduct, it will enter convictions.

### I. Cumulative charging and convictions

655. The Prosecutor and the Defence made submissions on the issue. They disagree on the standards regarding when an accused can be convicted of more than one offence under a single or several Article(s) of the Statute for the same underlying conduct.

#### 1. Applicable Law

656. The Statute provides no guidance on cumulative convictions. The Rules indicate that the “Trial Chamber shall vote on each charge contained in the indictment.”<sup>1429</sup> As recently amended,<sup>1430</sup> they further state that the Trial Chamber “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”.<sup>1431</sup>

657. The jurisprudence of the Tribunal is however of assistance in the matter. In the *Čelebići* case, the Appeals Chamber pronounced on the issue of cumulative charging and convictions in

<sup>1429</sup> Rule 87 (B).

<sup>1430</sup> The Rule was last amended at the Twenty Third Plenary Session in December 2000 and, since it may be construed as more favourable to the accused than the previous one, is applicable in this case.

<sup>1431</sup> Rule 87 (D).

respect of Article 2 (Grave Breaches of the Geneva Conventions) and Article 3 (Violations of the Law and Customs of the War) violations.<sup>1432</sup> In the *Jelisić* case, the Appeals Chamber adopted the same approach as in the *Čelebići* Appeals Judgement, in relation to charges under Articles 3 and 5.<sup>1433</sup> Both the Prosecutor and the Defence made submissions in this case based on the rulings of the Appeals Chamber in the *Čelebići* case.<sup>1434</sup>

(a) Cumulative Charging

658. The Prosecution submits that “cumulative charging is allowed and customary under ICTY jurisprudence”.<sup>1435</sup> The present Trial Chamber has already decided that “cumulative charging under different sub-sections of Article 5 is permissible”.<sup>1436</sup>

659. With regard to other cumulative charging under Articles 3, 4 and 5, the Trial Chamber adopts the approach taken by the Appeals Chamber in the *Čelebići* case, which decided that:

Cumulative charging is to be allowed in light of the fact that, prior to the presentation of all of the evidence, it is not possible to determine to a certainty which of the charges brought against an accused will be proven. The Trial Chamber is better poised, after the parties’ presentation of the evidence, to evaluate which of the charges may be retained, based upon the sufficiency of the evidence. In addition, cumulative charging constitutes the usual practice of both this Tribunal and the ICTR.<sup>1437</sup>

660. As a result, it is possible for the accused to be found guilty of more than one crime on the basis of the same criminal conduct. It thus becomes important to determine when more than one conviction is punishable under the Tribunal’s jurisprudence and tenets of fundamental fairness.

(b) Cumulative Convictions

661. On the basis of the facts contained in paragraphs 21 to 26 of the Indictment, General Krstić has been charged by the Prosecution with genocide under Article 4,<sup>1438</sup> also with murder under Article 5 (a), extermination under Article 5 (b), murder under Article 3 and persecutions under Article 5 (h).<sup>1439</sup> The Indictment also alleges facts in paragraphs 4, 6, 7, 11, 24.1, 24.3-24.6, 24.8,

<sup>1432</sup> *Čelebići* Appeal Judgement, paras. 400 *et seq.*

<sup>1433</sup> *Jelisić* Appeal Judgement, para. 82.

<sup>1434</sup> The submissions were filed before the *Jelisić* Appeals Judgement was rendered.

<sup>1435</sup> Prosecution Final Trial Brief, para. 472.

<sup>1436</sup> *The Prosecutor v Krstić*, Decision on Defence Preliminary Motion on the form of the Amended Indictment, Case No IT-98-33-PT, 28 January 2000, pp. 4-7.

<sup>1437</sup> *Čelebići* Appeal Judgement, para. 400.

<sup>1438</sup> The genocide is perpetrated through the killings of the group and through serious bodily or mental harm caused to members of the group.

<sup>1439</sup> The offence of persecutions is perpetrated through the murder of thousands of Bosnian Muslim civilians, including men, women, children and elderly persons, the cruel and inhumane treatment (including severe beatings) of Bosnian Muslim civilians, the terrorising, the destruction of personal property of Bosnian Muslim civilians and the deportation or forcible transfer of Bosnian Muslims from Srebrenica.

24.9 and 24.11 on the basis of which it charges persecutions under Article 5 (h) and deportation under Article 5 (d) (or, in the alternative, other inhumane acts in the form of forcible transfer under Article 5 (i)). After stating the submissions made by the Prosecution and the Defence on this issue, the Trial Chamber will set out the test it will utilise.

(i) Submissions of the Parties

662. The Prosecutor argues that “[u]nder the *Čelebići* framework, the Trial Chamber may choose to focus its attention on a “Count 4, Murder as a Crime Against Humanity” (under Article 5 of the Statute) conviction over a “Count 5, Murder as a Violation of the Laws or Customs of War (under Article 3 of the Statute) conviction because murder under Article 5 requires a materially distinct element not contained in murder under Article 3”.<sup>1440</sup> The Prosecutor makes no other arguments as to the relation between other crimes cumulatively charged in the Indictment.

663. The Defence contends that under the *Čelebići* framework, Article 3 and Article 5 both have materially distinct elements, but in contrast, acknowledges that General Krstić can be convicted of both offences.<sup>1441</sup> However, the Defence is of the view that “the dissenting opinion of Judges Hunt and Bennouna more correctly define(s) the test for multiple convictions”, because “only elements relating to the conduct and mental state of the accused should be taken into account when applying the “different elements” test”.<sup>1442</sup> The Defence further states that “if the formulation of the dissent is applied to Counts 4 and 5 of the Amended Indictment, both charging murder, only one conviction could be imposed”.<sup>1443</sup> Finally, the Defence submits that charges specified to be in the alternative cannot be cumulative, such as charges contained in Counts 1 and 2, (genocide or complicity in genocide) and in Counts 7 and 8 (deportation or forcible transfer).<sup>1444</sup> The Defence does not make any submission as to the relation between other crimes cumulatively charged in the indictment (e.g. genocide, extermination and persecutions).

(ii) The Test Laid down by the Appeals Chamber in the *Čelebići* Case (« the Test »)

664. The Appeals Chamber in the *Čelebići* case held that cumulative convictions are permissible to punish the same criminal conduct if the following two prong test is met:

[... M]ultiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not

<sup>1440</sup> Prosecution Final Trial Brief, para. 473. It should be noted that the Prosecution seems to have misread the *Čelebići* Test, which is detailed *Infra* in (ii) “the Test laid down by the Appeals Chamber in the *Čelebići* case”.

<sup>1441</sup> Final Submission of the Accused, para. 399.

<sup>1442</sup> Final Submission of the Accused, para. 400, p. 124.

<sup>1443</sup> Final Submission of the Accused, para. 400, p. 124.

contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other.<sup>1445</sup>

The Appeals Chamber further stated that:

[...] the Chamber must decide in relation to which offence it will enter a conviction. This should be done on the basis of the principle that the conviction under the more specific provision should be upheld. Thus, if a set of facts is regulated by two provisions, one of which contains an additional materially distinct element, then a conviction should be entered only under that provision.<sup>1446</sup>

665. Thus, the first inquiry to be made is whether, under the definitions of the separate offences, the accused may be found liable for more than one offence based upon the same conduct. If this is so, the Trial Chamber will then determine whether the definition of each offence provision has a materially distinct element not contained in the other. For instance, the Appeals Chamber in the *Čelebići* case held that “the offence of wilfully causing great suffering under Article 2 contains an element not present in the offence of cruel treatment under Article 3 : the protected person status of the victim. Because protected persons necessarily constitute individuals who are not taking an active part in the hostilities, the definition of cruel treatment does not contain a materially distinct element [...]”.<sup>1447</sup> In so ruling, the Appeals Chamber in the *Čelebići* case reasoned that the requirement of Article 3 that victims not be taking an active part in the hostilities is not materially distinct from the requirement of Article 2 that victims are protected persons. Thus, cumulative convictions could not be entered under both Article 2 for wilfully causing great suffering and Article 3 for cruel treatment.

666. A subsidiary question is which requirements of the offences definitions must be compared. As mentioned above, the Statute requires that both war crimes and crimes against humanity be committed during an armed conflict but, according to the jurisprudence of the Tribunal, whereas Article 3 requires that the acts of the accused be committed in close connection with an armed conflict, this is not a substantive requirement for the applicability of Article 5.<sup>1448</sup> The Appeals Chamber, in the *Jelisić* case, did rule that Articles 3 and 5 of the Statute each contain a unique,

<sup>1444</sup> Final Submission of the Accused, paras. 397, 398.

<sup>1445</sup> *Čelebići* Appeal Judgement, para. 412.

<sup>1446</sup> *Čelebići* Appeal Judgement, para. 413.

<sup>1447</sup> *Čelebići* Appeal Judgement, para. 424. Also, on the question of whether entering cumulative convictions under Articles 2 and 3 is permissible, the Appeals Chamber in the *Čelebići* case stated that “It should also be borne in mind that Article 2 applies to international conflicts, while Article 3 applies to both internal and international conflicts. However, this potentially distinguishing element does not come into play here, because the conflict at issue has been characterised as international as well”. Footnote 652.

<sup>1448</sup> The armed conflict requirement in Article 5’s chapeau has been characterised by the jurisprudence of the Tribunal as not a substantive requirement for cumulative convictions purposes. It is however a jurisdictional requirement for the



materially distinct element not contained in the other, that is Article 3 requires a close nexus to an armed conflict and Article 5 requires that the act or omission be committed as part of a widespread or systematic campaign against a civilian population. In this sense, the Trial Chamber will consider only substantive requirements when comparing offences.

667. Finally, if the application of this first prong of the Test requires that the Trial Chamber render only one conviction, the Trial Chamber will, in accordance with the second prong of the Test, select the most specific applicable criminal provision. For instance, applying the second prong of the Test, the Appeals Chamber in the *Čelebići* case held that because the offence of wilfully causing great suffering sanctioned by Article 2 is more specific than the offence of cruel treatment sanctioned by Article 3, the Article 2 offence must be preferred, and the Article 3 offence must be dismissed.

## 2. Application of the Test to the Concurrent Offences Specified in the Indictment

668. The Trial Chamber has found that General Krstić participated, first, in the campaign of terror that followed the attack on Srebrenica from 10 to 13 July 1995 and which led to the forcible transfer of Bosnian Muslim civilians and, secondly, in the murders of Bosnian Muslim military aged men, which took place from 13 July to 19 July 1995.

669. The Test will be applied to the cumulatively charged offences characterising each criminal conduct proved, first to offences charged under different Articles of the Statute, and then to different offences charged under Article 5.

### (a) The Concurrent Offences Characterising “the campaign of terror” in Potočari and the Subsequent Forcible Transfer of the Bosnian Muslim Civilians from 10 to 13 July 1995

670. Paragraphs 4, 6, 7, 11 and 22 to 26 of the Indictment describe, *inter alia*, how thousands of Bosnian Muslim civilians, fled to Potočari, were terrorised and/or murdered there and were thereafter transported by buses and trucks, under the control of the VRS, to areas outside the enclave of Srebrenica. Counts 1, 3 to 6, and 8 characterise the acts described in these paragraphs as genocide, extermination, murder under Articles 3 and 5, persecutions and deportations (or, in the alternative, inhumane acts in the form of forcible transfer). With regard to the offence of persecutions, Count 6 of the Indictment states that persecutions were committed not only through murder but also through “the cruel and inhumane treatment of Bosnian Muslim civilians, including

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application of Article 3 of the Statute. *Jelisić* Appeal Judgement, para. 82. See also *Tadić* Jurisdiction Decision and *Tadić* Appeal Judgement, para. 249.

severe beatings”, “the terrorising of Bosnian Muslim civilians”, “the destruction of personal property of Bosnian Muslims” and “the deportation or forcible transfer of Bosnian Muslims”. Murder is thus but one of the sub-crimes of the offence of persecutions.

671. The Trial Chamber has found that the events between 10 to 13 July 1995 in Potočari are appropriately characterised as murders and as persecutions committed through murder, cruel and inhumane treatment (including severe beatings), terrorising, destruction of personal property of Bosnian Muslim civilians and forcible transfer. While the cruel and inhumane treatments (including severe beatings), terrorising and destruction of personal property of the Bosnian Muslim civilians are solely covered by the persecutions count (Count 6), the murders committed at this time can also be legally characterised as murders under Article 3 and 5 (Counts 4-5) and persecutions (Count 6). The forcible transfer at this time can be characterised as a persecution committed by means of inhumane acts (Count 6) and as a separate Article 5 offence of other inhumane acts (Count 8).<sup>1449</sup>

672. The Chamber has not found the accused guilty of genocide, complicity of genocide and extermination under Counts 1, 2 and 3 for the acts committed in Potočari from 10 to 13 July 1995 and has decided that the forcible transfers are most appropriately considered under other inhumane acts rather than deportation.

673. Thus, the Trial Chamber will apply the Test with a view to determining whether convictions for the offence of murder, under both Articles 3 and 5, and persecutions (Article 5 (h)), committed through murder, are permissible and whether convictions under both persecutions (Article 5 (h)), committed through other inhumane acts (forcible transfer), and other inhumane acts (Article 5 (i)), committed through forcible transfer, may be used to punish the same criminal conduct.

(i) Relationship between Offences under Article 3 and Offences under Article 5

674. The Test is first applied to determine whether murder sanctioned by Article 3 requires a materially distinct constituent element not required by murder sanctioned by Article 5 and *vice versa*, with a view to determining whether convictions under both the offence of murder under Article 3 and offences under Article 5, punishing the same conduct, is permissible. The application of the Test involves a comparison between the elements of the crimes as defined by the Trial Chamber. Murder as a war crime is any illegal and intentional act or omission, which caused the death of a non-combatant person, and was committed in close connection with an armed conflict. Article 5 punishes any prohibited intentional acts or omissions committed within an armed conflict

as part of a general and systematic attack upon a civilian population. Murder under Article 3 requires a unique and materially distinct element in the form of a close nexus between the acts of the accused and an armed conflict. Offences under Article 5 require a unique and materially distinct element in the form of a requirement that they be perpetrated as part of a widespread or systematic attack upon a civilian population. Because each category of offences contains an element not required by the other, the Test is satisfied and the Trial Chamber finds it permissible to enter a conviction under both Articles 3 and 5 to punish the same murders.

(ii) Relationship between Murder under Article 5 and Persecutions

675. The Test must also be applied to determine whether murder sanctioned by Article 5 (a) requires a materially distinct element not required by persecutions sanctioned by Article 5 (h) and *vice versa*. Thus, the Chamber has to determine whether entering both convictions under the offence of murder under Article 5 and persecutions perpetrated through murder under Article 5, to punish the same conduct, is permissible. Murder under Article 5 (a) punishes any illegal and intentional act or omission, which caused the death of one or more persons and was committed in an armed conflict, as part of a widespread or systematic attack upon a civilian population. Article 5(h) persecutions punishes any illegal and intentional act or omission, which has wronged one or more persons and was committed in an armed conflict, as part of a widespread or systematic attack upon a civilian population for political, racial or religious reasons. Persecutions require a discriminatory intent as an additional element not required by murder under Article 5. Because the offence of persecution requires a unique materially distinct element *vis-à-vis* murder under Article 5 (a), the Test is not met. The second prong of the Test must be applied. Since the offence of persecutions is more specific than the offence of murder, persecutions must be preferred. The Trial Chamber, accordingly, enters a conviction under the charge of persecutions and dismisses the charge of murder under Article 5 (a).

(iii) Relationship between Persecutions (forcible transfer) and Other Inhumane Acts (forcible transfer)

676. The offence of persecutions has been defined above. The offence of other inhumane acts is defined as any intentional act or omission, which caused injury to a human being in terms of physical or mental integrity, health or human dignity.<sup>1450</sup> The offence of persecutions requires a unique additional material element not required by the offence of other inhumane acts in the form

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<sup>1449</sup> The Trial Chamber has found that the transfer of the Bosnian Muslim civilians from Potočari to areas controlled by Muslim forces is to be characterised as forcible transfer and not as deportation. See *supra*, para. XX (genocide part).

<sup>1450</sup> *Tadić* Judgement, para. 729 (citing the ILC *Draft Code*, p. 103).

of a requirement that the offence of persecutions must have been perpetrated on the basis of a discriminatory intent, the offence of other inhumane acts has no counterpart of a distinct material element. The Test is not satisfied and the second prong of the Test must be applied. Because persecutions require a unique additional materially distinct element vis-à-vis other inhumane acts (forcible transfer), the offence of persecutions applies with more specificity to the situation at hand. The Trial Chamber finds that it is not permissible to enter convictions both under persecutions by way of forcible transfer and under other inhumane acts (forcible transfer) to punish the same conduct. The Trial Chamber therefore dismisses the separate charge of other inhumane acts (forcible transfer) under Article 5 (i). General Krstić can only be convicted for persecutions (count 6) for the acts of forcible transfer that took place on 10 and 13 July 1995.

(iv) Conclusions

677. In sum, the Trial Chamber enters convictions for charges of murder under Article 3 and for charges of persecution, murders, terrorising the civilian population, destruction of personal property, and cruel and inhumane treatment committed from 10 to 13 July 1995 in Potočari.

678. The Trial Chamber will now apply the Test on cumulative offences with regard to the second category of murders charged against General Krstić, namely the killings that occurred between 13 and 19 July 1995.

(b) The Concurrent Offences Characterising the Murders Committed Against the Bosnian Muslim Civilians from 13 to 19 July 1995

679. Paragraphs 21 to 25 of the indictment describe, *inter alia*, how thousands of Bosnian Muslim men were arrested by the Bosnian Serb forces, led to execution sites and executed. It has been decided that these acts fulfil the requirements of genocide sanctioned by Article 4, as well as murder under Article 3, murder under Article 5, extermination and persecutions under Article 5. For the reasons stated above,<sup>1451</sup> the Test is applicable only insofar as the offence of persecutions is perpetrated through murders.

(i) Relationship Between Offences under Article 3 (war crimes) and Article 4 (genocide) and between Article 3 (war crimes) and Article 5 (crimes against humanity)

680. The Trial Chamber has already found that it is permissible to enter convictions on charges of murder under both Article 3 and Article 5 to punish the same criminal conduct.<sup>1452</sup>

<sup>1451</sup> *Supra*, para. 670.

<sup>1452</sup> *Jelisić* Appeal Judgement, para. 82.

681. The same reasoning applies to the relationship between murder under Article 3 and genocide under Article 4. The relationship between genocide and murder as a war crime can be characterised as follows. The offence of genocide requires a special intent to destroy a national, ethnical, racial or religious group (or part thereof). Murder as a war crime requires a close nexus between the acts of the accused and an armed conflict, which is not required by genocide. The Test for separate convictions is satisfied. Accordingly, convictions must be entered on both charges in respect of the same criminal conduct because genocide and murder under Article 3 each contain an additional element not required by the other.

(ii) Relationship Between Offences under Article 4 (genocide) and Article 5 (crimes against humanity)

682. The Trial Chamber notes that Article 4 (genocide) demands proof of elements not required by Article 5 (crimes against humanity). Article 5 offences demand proof that they have been perpetrated in an armed conflict, as part of a widespread or systematic attack upon a civilian population. With regard to the first requirement that Article 5 offences be committed in an armed conflict, it has been held that the requirement of an armed conflict is not a substantive requirement for this purpose.<sup>1453</sup> The other Article 5 requirement that the acts be perpetrated against a civilian population prevents isolated or random acts being characterised as crimes against humanity.<sup>1454</sup> Similarly, the notion of an intent to destroy a “group” in genocide would rule out isolated or random acts being characterised as genocide. However, the limitation to certain types of “group” as defined in the crime of genocide is far more specific than the “civilian population” defined in the crimes against humanity. The requirement in Article 5 that the crimes be part of a widespread or systematic attack against a civilian population is comprised within the genocide requirement that there be an intent to destroy a specified type of group. As discussed above, acts of genocide must be committed in the context of a manifest pattern of similar conduct, or themselves constitute a conduct that could in itself effect the destruction of the group, in whole or part, as such. Thus, Article 5’s exclusion of random or isolated acts also characterises genocide.<sup>1455</sup>

<sup>1453</sup> *Tadić* Jurisdiction Decision, para. 141: “It is by now a settled rule of customary international law that crimes against humanity do not require a connection to international armed conflict. Indeed, as the Prosecutor points out, customary international law may not require a connection between crimes against humanity and armed conflict at all...”.

<sup>1454</sup> *Prosecutor v Tadić*, Decision on Defence Motion on the Form of the Indictment, Case No IT-94-1-PT, 14 November 1995, para. 11.

<sup>1455</sup> The question of whether genocide is an autonomous crime or an aspect of a crime against humanity was discussed during the drafting of the genocide Convention. Many delegates were firm in their views that the two concepts of genocide and crimes against humanity should be kept separate and the Ad Hoc Committee rejected the proposition to have the preamble describe genocide as “a crime against humanity”. The Polish delegate expressed the view held by representatives of the Ad Hoc Committee that while it is true that genocide is a crime against humanity, to state that in the Genocide Convention would overreach the provisions of General Assembly Resolution 180 (II). See, W. Schabas, *Genocide in International Law*, p 64. Similarly, the ICTY in the *Karadžić and Mladić* case held that the genocidal

683. While murder under Article 5 (a) does not require any additional materially distinct element than what is contained in the definition of extermination and persecutions, extermination under Article 5 (b) and persecutions under Article 5 (h) both contain an additional element, which must be considered with regard to Article 4 of the Statute. The Preparatory Commission for the ICC defined extermination as the killing of one or more persons as part of a mass killing of civilians.<sup>1456</sup> Persecutions is defined as any illegal and intentional act or omission which, as part of a massive or systematic attack on a civilian population, has wronged one or more individuals for political, racial or religious reasons.

684. The offences of genocide and persecutions both require proof of a special intent, respectively an intent to destroy a particular type of group (or part of that group) as such and an intent to discriminate against persons on political, racial or religious grounds. Clearly, genocide has a distinct, mutual element in the form of its requirement of an intent to destroy a group, altogether, in whole or in part, over and above any lesser persecutory objective. The offence of persecutions, on the other hand, contains no element of intent or implementation that would not be subsumed in the destruction requirement of genocide. The Test is not satisfied. Since the crimes of persecutions and genocide do not have a mutually distinct element, it is not possible to cumulate convictions for both. When the application of the first prong demonstrates that it is impermissible to convict an accused of two offences based on the same conduct, the second prong of the Test must be applied to determine for which offence the accused should be convicted. Genocide requires a highly specialised intent in the destruction of a characterised group or part of a group, the discriminatory intent in persecutions is less specific. Genocide, the most specifically defined crime, is to be retained.

685. Extermination requires an intentional killing of one or more persons as part of the mass killing of a civilian population. Genocide, though it might also be committed by a single or a few murders, needs proof that the perpetrator intended to destroy a national, ethnical, racial or religious group, or part of the group, as such.<sup>1457</sup> Thus, while neither crime has a substantiality threshold as such in term of the actual killings perpetrated, both require that the killings be part of an extensive

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“intent may also be inferred from the perpetration of acts which violate, or which the perpetrators themselves consider to violate the very foundation of the group- acts which are not in themselves covered by the list in Article 4 (2) but which are committed as part of the same pattern of conduct”. Consideration of the Indictment within the framework of Rule 61, para. 94. The ICC Statute indicates clearly that genocide requires that “the conduct took place in the context of a manifest pattern of similar conduct”, repeating the requirement that crimes against humanity are not perpetrated as isolated or random acts but are part of a pattern of similar acts. Report of the Preparatory Commission for the ICC.

<sup>1456</sup> *Supra*, para. 498.

<sup>1457</sup> In the *Karadžić and Mladić* case, the Trial Chamber considered that the definition of genocide requires “a reasonably significant number, relative to the total of the group as a whole, or else a significant section of a group such as its leadership.”, transcript on hearing on 27 June 1996, p. 15.

plan to kill a substantial part of a civilian population. But genocide has a distinct additional requirement, in terms of the nature of the group targeted. In extermination, the killings may be indiscriminate. Thus, in this case, at least, where genocide is committed by killings, it cannot be supplemented by extermination for the same underlying acts. Because the Test is not satisfied, it is impermissible to convict the accused of the two offences of extermination and genocide based on the same conduct and the second prong of the Test must be applied to determine for which offence the accused should be convicted. Genocide requires a highly specialised intent in the destruction of a characterised group or part of a group, extermination does not. Genocide, the most specific crime, is to be retained.

686. The Trial Chamber thus finds that, based on the same conduct, it is permissible to enter cumulative convictions under both Articles 3 and 4 and under both Articles 3 and 5. But it is not permissible to enter cumulative convictions based on the executions under both Articles 4 and 5. The Article 4 offence, as the most specific offence, is to be preferred.

3. Conclusions

687. In conclusion, the Trial Chamber finds that, in respect of the conduct attributed to General Krstić which took place from 10 to 13 July 1995, it is permissible to enter a conviction under persecutions (Article 5) and murder (Article 3), i.e., to retain Counts 5 and 6. In respect of the murder-type conduct, which took place from 13 to 19 July 1995, it is permissible to enter a conviction on both murder (Article 3) and genocide, i.e., Counts 5 and 1.

688. As a result of the foregoing discussions, General Krstić is to be found guilty of:  
- genocide;  
- persecutions; and  
- murder

689. Finally, the Trial Chamber turns to the question of the appropriate sentence to be imposed on General Krstić in respect of the convictions entered.

**IV. SENTENCING**

690. The Prosecutor submits that General Krstić should receive consecutive life sentences for each crime for which he is found guilty, pursuant to Article 24 of the Statute and Rule 101 of the

Rules.<sup>1458</sup> The Defence submits that General Krstić must be acquitted on all counts of the indictment and thus made no submission on sentencing.<sup>1459</sup>

691. The sentence is to be determined by reference to the relevant provisions of Articles 23 and 24 of the Statute and Rules 87 (C) and 101 of the Rules of Procedure and Evidence. The Trial Chamber should also consider the general sentencing principles and practices of the Tribunal, as well as those of the ICTR.<sup>1460</sup>

#### A. The Applicable Provisions

692. Articles 23 and 24 of the Statute and Rules 87(C) and 101 contain sentencing provisions. These provisions determine the objectives of sentencing, the factors to be taken into consideration for the determination of a sentence and the manner in which a sentence should be imposed.

693. Article 23 (1) of the Statute states that “the Trial Chamber shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law”. The practice of the Tribunal, based on these provisions, reflects two objectives of a sentence: the need to punish an individual for the crimes committed and the need to deter other individuals from committing similar crimes.<sup>1461</sup>

694. Article 24 (1) of the Statute provides that “the penalty imposed by the Trial Chamber shall be limited to imprisonment” and further states that the appropriate term of imprisonment is to be determined by “recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia”. Article 24 (2) provides for the Trial Chambers to “take into account such factors as the gravity of the offences and the individual circumstances of the convicted person”. These statutory provisions are to be read in conjunction with Rule 101, which provides that the Chamber *shall* take into account the factors mentioned in Article 24 (2) as well as *such* factors as any aggravating or mitigating circumstances and the general practice of the courts in the former Yugoslavia.<sup>1462</sup>

<sup>1458</sup> Prosecution Final Trial Brief, para. 467.

<sup>1459</sup> Defence Closing Argument, T. 10148.

<sup>1460</sup> *Aleksovski* Appeal Judgement, para. 107.

<sup>1461</sup> See in particular, *Kunarać* judgement, paras 836 *et seq.*; *Kordić* Judgement, para. 847.

<sup>1462</sup> Rule 101 defines the weight to be placed upon the provisions of Article 24 when determining the appropriate sentence. Rule 101 provides in full that:

- (A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.
- (B) 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;



695. Rule 101 states also that the Trial Chamber must take into consideration "any penalty imposed by a Court of any State on the convicted person for the same act" and which has already been served, as well as the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal. On the other side, Rule 87(C) grants the Trial Chamber discretion to either impose a penalty "in respect of each finding of guilt" or a single sentence reflecting the totality of the criminal conduct of the accused.<sup>1463</sup> In the case of multiple sentences, the Trial Chamber shall indicate whether they are to be served consecutively or concurrently (Rule 101 (c)).<sup>1464</sup>

696. In accordance with the relevant sentencing provisions, the ICTY and the ICTR have developed a number of factors that should be examined when determining a proper sentence: the general practice on prison sentences in the former Yugoslavia, the gravity of the crimes and the individual circumstances of the convicted person.

## **B. General Sentencing Principles**

### **1. General Practice on Prison Sentences in the former Yugoslavia**

697. It is well established that the general sentencing practice of the former Yugoslavia is not binding on the Tribunal, although the Tribunal should have regard to it.<sup>1465</sup> Sentencing by the courts of the former Yugoslavia was based on the provisions of Chapter XVI, "Criminal Acts Against Humanity and International Law"<sup>1466</sup> and Article 41(1)<sup>1467</sup> of the SFRY criminal code. The

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- (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;
  - (iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10, paragraph 3, of the Statute.
  - (C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.
  - (D) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.

<sup>1463</sup> In particular, as to the sentence to be imposed for cumulative convictions, the Appeals Chamber in the *Čelebići* case held that "...the overarching goal in sentencing must be to ensure that the final or aggregate sentence reflects the totality of the criminal conduct and overall culpability of the offender. Š...Ć. The decision as to how this should be achieved lies within the discretion of the Trial Chamber", *Čelebići* Appeal Judgement, para. 430.

<sup>1464</sup> Most of the Trial Chambers of the ICTY have rendered judgements imposing multiple sentences, but the *Jelisić*, *Blaškić*, *Kordić*, *Kunarać*, *Kambanda* and *Serushago* Judgements imposed single sentences as in the cases before the Nuremberg and Tokyo Military Tribunals.

<sup>1465</sup> *Tadić* Sentencing Judgement II, para. 12; *Furudžija* Judgement, para. 285; *Aleksovski* Judgement, para. 242; *Kordić* Judgement, para. 849; *Kunarać* Judgement, para. 859. The ICTR adopts, *mutatis mutandis*, a similar position: *Kambanda* Judgement, para. 23; *Akayesu* Sentence, para. 12-14; *Kayishema* Sentence, paras. 5-7.

<sup>1466</sup> See Chapter XVI of the criminal code of the former Yugoslavia "Crimes Against Humanity and International Law: Articles 141 and 142(1) dealt with the crimes of genocide and other war crimes committed against civilians. See also Articles 142-156 and Articles 38 "Imprisonment", 41 "Sentences", and 48 "Coincidence of several offences." Crimes against peace and international law, including the crime of genocide and war crimes against a civilian population, were punishable by a sentence of 5-15 years in prison, by the death penalty or by 20 years in prison if a prison sentence was substituted for the death penalty, or in cases of aggravated homicide.

<sup>1467</sup> Article 41(1) of the criminal code of the SFRY states: "The court shall determine the sentence for the perpetrator of a given crime within the limits prescribed by the law for this crime, bearing in mind the purpose of the punishment and

death penalty could be imposed for war crimes and genocide, while a minimum prison sentence of ten years and a maximum of fifteen years were stipulated as the penalty to be imposed for aggravated murders. Article 38(2) of the SFRY criminal code permitted courts to hand down a sentence of twenty years in prison in lieu of the death penalty.<sup>1468</sup> In 1998, Bosnia and Herzegovina abolished the death penalty and introduced in its place a long-term imprisonment of 20-40 years “for the gravest forms of criminal offences [...] committed with intention”.<sup>1469</sup> In accordance with the recommendation of the Secretary General’s Report, the Tribunal cannot impose the death penalty.<sup>1470</sup> “The penalty imposed by the Trial Chamber shall be limited to imprisonment” (Article 24-1 of the Statute). The sentence imposed by the Trial Chamber in this case thus falls near the range of sentence afforded by the FRY for the most severe war crimes.

## 2. Gravity of the Crime

698. The gravity of the offence is a primary factor to be taken into account in imposing a sentence. The Trial Chamber in the *Čelebići* case stated that it was “by far the most important consideration, which may be regarded as the litmus test for the appropriate sentence”.<sup>1471</sup> The seriousness of the crime must weigh heavily in the sentence imposed irrespective of the form of the criminal participation of the individual.<sup>1472</sup> Taking into consideration the seriousness of the crime avoids excessive disparities in sentences imposed for the same type of conduct.<sup>1473</sup>

699. The Prosecutor argues that the gravity of crimes with which General Krstić may be convicted is self-evident and that genocide “constitutes the crime of crimes, which must be taken into account when deciding the sentence”.<sup>1474</sup> The Prosecutor also argues that the number of victims and their suffering are factors to be taken into account in assessing the gravity of the crimes committed.

700. Assessing the seriousness of the crimes is not a mere matter of comparing and ranking the crimes in the abstract. It has been argued that crimes against humanity and war crimes are equally

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taking into account all the circumstances that could lead to this sentence being more or less severe, in particular: the degree of criminal responsibility, the motives of the crime, the degree of the threat or damage to protected property, the circumstances under which the crime was committed, the background of the perpetrator, his personal circumstances and behaviour after the commission of the crime as well as other circumstances which relate to the character of the perpetrator”.

<sup>1468</sup> *Kordić* Judgement, para. 849.

<sup>1469</sup> *Tadić* Sentencing Judgement II, para. 12.

<sup>1470</sup> Report of the Secretary General, paras 111-112.

<sup>1471</sup> *Čelebići* Judgement, para. 1225.

<sup>1472</sup> *Čelebići* Appeal Judgement, para. 741.

<sup>1473</sup> *Čelebići* Appeal Judgement, paras. 756-758.

<sup>1474</sup> Prosecution Final Trial Brief, para. 468 (citing *Blaskić* Judgement, para. 800, itself citing *Kambanda* judgement, para. 9, 16).

serious and that “there is in law no distinction between the seriousness of a crime against humanity and that of a war crime [...]”.<sup>1475</sup> No Chamber has yet ruled on the ranking of crimes in a case where an individual has been found guilty of genocide. It can also be argued, however, that genocide is the most serious crime because of its requirement of the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such. In this sense, even though the criminal acts themselves involved in a genocide may not vary from those in a crime against humanity or a crime against the laws and customs of war, the convicted person is, because of his specific intent, deemed to be more blameworthy. However, this does not rule out the Trial Chamber’s duty to decide on the appropriate punishment according to the facts of each case. Genocide embodies a horrendous concept, indeed, but a close look at the myriad of situations that can come within its boundaries cautions against prescribing a monolithic punishment for one and all genocides or similarly for one and all crimes against humanity or war crimes.<sup>1476</sup> A murder, whether qualified as a crime against humanity, a war crime or an act of genocide, may be a graver offence than imposing serious bodily or mental harm upon an individual. In this regard, the Trial Chamber ascribes to the approach taken by the Appeals Chamber that “[t]he level [of penalty] in any particular case [be] fixed by reference to the circumstances of the case.”<sup>1477</sup>

701. Thus, the Trial Chamber must assess the seriousness of the crimes in the light of their individual circumstances and consequences. This presupposes taking into account quantitatively the number of victims and qualitatively the suffering inflicted on the victims.<sup>1478</sup>

702. In this sense, the Trial Chamber agrees with the Prosecutor that the number of victims and their suffering are relevant factors in determining the sentence<sup>1479</sup> and that the mistreatment of women<sup>1480</sup> or children is especially significant in the present case. However, the Prosecutor also contends that the “overwhelming scope of the crimes”, the manner in which the crimes were committed, the fact that some of the victims were elderly men and young boys, the fact that many

<sup>1475</sup> *Tadić* Sentencing Judgement III, para. 69 and the Separate Opinion of Judge Shahabuddeen. The Appeals Chamber, and subsequently Trial Chambers confirmed this assertion. *Furundžija* Judgement, paras 240 to 243; *Kunarac* Judgement, para. 851. In the opposite sense, see Separate Opinion of Judge Cassese appended to the *Tadić* Sentencing Judgement III, para. 14, where it is stated that crimes against humanity are more serious than war crimes because of “a whole pattern of criminality” within which they are committed and the intent of the perpetrator of the crime who must be aware of the said pattern. Also see the Joint Separate Opinions of Judge McDonald and Judge Vohrah appended to *Erdemović* Appeal Judgement, paras 20 *et seq.* and Separate and Dissenting Opinion of Judge Li appended to the *Erdemović* Appeal Judgement, paras 19 *et seq.* See also the Declaration of Judge Vohrah appended to the *Furundžija* Appeal Judgement, in particular paras 5 *et seq.*

<sup>1476</sup> In this regard, the Trial Chamber in the *Tadić* case held that “... What is to be punished by penalty is the proven criminal conduct...”. *Prosecutor v. Tadić*, Decision on Defence Motion on the Form of the Indictment, IT-94-1-PT, 14 November 1995.

<sup>1477</sup> *Tadić* Sentencing Judgement III, para. 69.

<sup>1478</sup> *Čelebići* Judgement, para. 1226.

<sup>1479</sup> Prosecutor’s Final Brief, para. 469; See also *Erdemović* Appeal Judgement, para. 15, the *Kambanda* Judgement, para.42, *Kayishema* Sentence, para. 26; *Kordić* Judgement, para. 852.

<sup>1480</sup> *Furundžija* Judgement, para. 283.

of the executed were blindfolded and had their hands tied behind their back when they were murdered, and the “long-term damage to their surviving family members and the Bosnian Muslim community” are aggravating circumstances.<sup>1481</sup> As such, the Prosecutor does not draw any clear line between factors relevant to assess the gravity of the crimes committed and factors relevant as aggravating circumstances.

703. The Trial Chamber considers that the circumstance that the victim detainees were completely at the mercy of their captors,<sup>1482</sup> the physical and psychological suffering inflicted upon witnesses to the crime,<sup>1483</sup> the “indiscriminate, disproportionate, terrifying” or “heinous” means and methods used to commit the crimes<sup>1484</sup> are all relevant in assessing the gravity of the crimes in this case.<sup>1485</sup> Appropriate consideration of those circumstances gives “a voice” to the suffering of the victims.<sup>1486</sup>

### 3. Personal Situation of the Accused

704. The Trial Chamber must also take into account factors pertaining to the “individual circumstances of the convicted person” (Article 24-2 of the Statute), to “bring to light the reasons for the accused's criminal conduct” and to assess “the possibility of rehabilitating the accused.”<sup>1487</sup> The prospect of rehabilitating the accused and the extent to which the accused is a great danger to the community as a whole should be taken into account.<sup>1488</sup> Thus, in general, factors peculiar to the person who committed the crimes, and not those pertaining to the crimes committed, are considered as aggravating or mitigating circumstances.

#### (a) Aggravating Circumstances

705. The Statute and the Rules do not stipulate which factors are to be considered as aggravating circumstances. In finding whether there are any aggravating circumstances, the Trial Chamber proceeds with caution.<sup>1489</sup> Factors identified as potentially aggravating by the Trial Chamber are the level of criminal participation, the premeditation and the motive of the convicted person.

<sup>1481</sup> Prosecution Final Trial Brief, para. 471.

<sup>1482</sup> *Čelebići* Judgement, para. 1268.

<sup>1483</sup> *Jelisić* Judgement, para. 132.

<sup>1484</sup> *Kayishema* Sentence, para. 18; *Blaškić* Judgement, para. 787; *Kordić* Judgement, para. 852.

<sup>1485</sup> In the opposite sense, *Kunarać* judgement, which refers to the fact that some crimes stretch over a long period or are committed repeatedly as an aggravating circumstance, para. 865. This fact seems to enter in the quantitative assessment of the crimes.

<sup>1486</sup> *Tadić* Judgement; the *Čelebići* (paras.1226, 1260, 1273), *Furundžija* (paras 281 *et seq.*) and *Blaškić* (para. 787) Judgements.

<sup>1487</sup> *Blaškić* Judgement, paras. 779 and 780.

<sup>1488</sup> *Erdemović* Sentencing Judgement, para. 110, and *Erdemović* Sentencing Judgement II, para. 16(1).

<sup>1489</sup> In many national jurisdictions, the law specifically identifies those aggravating circumstances, e.g. Criminal Law (Sentencing) Act of South Australia, (1988), Section 10; United States of America Federal Sentencing Guidelines. In

(i) Criminal Participation

706. The Prosecutor argues that General Krstić's "direct, conscious and deliberate participation in creating and furthering the criminal plan as the Chief of Staff and Commander of the Troops which committed the offences, which evidences his intent and willingness to participate in the commission of the crimes, serves as an aggravating factor". The Prosecutor argues that General Krstić's "penultimate command after General Mladić, and/or the fact that he was in a position to order the prevention, cessation or punishment" of the crimes serve as aggravating factors.<sup>1490</sup>

707. The Trial Chamber has already examined the criminal responsibility of the accused in order to decide on his guilt. The same elements should not be reviewed a first time as a constitutive element of the crime and a second time as an aggravating circumstance.

708. Direct criminal participation under Article 7 (1), if linked to a high-rank position of command, may be invoked as an aggravating factor. In determining a sentence, both Tribunals have mentioned the three most direct forms of participation, "planning, ordering, instigating", as possible aggravating circumstances in the case of a highly placed accused.<sup>1491</sup> So it is in the case of genocide. Because an accused can commit genocide without the aid and co-operation of others, provided he has the requisite intent, a one-man genocidal agent could be viewed differently from the commander of an army or the president of a State, who has enlisted the resources of an army or a nation to carry out his genocidal effort. The Trial Chamber finds that the direct participation of a high level superior in a crime is an aggravating circumstance, although to what degree depends on the actual level of authority and the form of direct participation.

709. A high rank in the military or political field does not, in itself, lead to a harsher sentence. But 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>1492</sup> It must be noted though that current case law of the Tribunal does not evidence a discernible pattern of the

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some jurisdictions, the judge cannot consider any other aggravating circumstances than those provided by the law, e.g. French Criminal Code, articles 132.71 *et seq.* (in general) for instance; Dutch Criminal Code, Articles 10, 57, 421-423 for instance.

<sup>1490</sup> Prosecution Final Trial Brief, para. 471.

<sup>1491</sup> *Kambanda* Judgement, para. 44, *Kupreškić* Judgement, para. 862; *Rutaganda* Judgement, para. 470 and *Akayesu* Judgement, para. 36.

<sup>1492</sup> *Rutaganda* Judgement, para. 469: "the fact that a person in a high position abused his authority and committed crimes is to be viewed as an aggravating factor." *Kambanda* Judgement, para. 44. In this regard, the Appeals Chamber reduced the sentence imposed on Duško Tadić from 25 to 20 years stating that "there is a need for sentences to reflect the relative significance of the role of the accused and ...to take into account his level in the command structure, which was law.", *Tadić* Sentencing Judgement III, paras 55-57.

Tribunal imposing sentences on subordinates that differ greatly from those imposed on their superiors.<sup>1493</sup>

(ii) Premeditation and Motives of Crimes

710. The Prosecutor also argues that the “premeditation involved in the genocide and deportation is clearly an aggravating circumstance in the case, given General Krstić’s critical role in planning this massive crime”.<sup>1494</sup>

711. Premeditation<sup>1495</sup> may “constitute an aggravating circumstance when it is particularly flagrant” and motive “to some extent [is] a necessary factor in the determination of sentence after guilt has been established.”<sup>1496</sup> When a genocide or a war crime, neither of which requires the element of premeditation, are in fact planned in advance, premeditation may constitute an aggravating circumstance.<sup>1497</sup> Premeditated or enthusiastic participation in a criminal act necessarily reveals a higher level of criminality on the part of the participant.<sup>1498</sup> In determining the appropriate sentence, a distinction is to be made between the individuals who allowed themselves to be drawn into a maelstrom of violence, even reluctantly, and those who initiated or aggravated it and thereby more substantially contributed to the overall harm. Indeed, reluctant participation in the crimes may in some instances be considered as a mitigating circumstance.

712. The Trial Chamber agrees with the Prosecutor on the relevance of premeditation as an aggravating factor in the abstract but, based on the sequence of General Krstić’s delayed participation in the genocidal scheme initiated by General Mladić and others, finds it not applicable to the situation.

(b) Mitigating Circumstances

713. Neither the Statute, the Rules nor the jurisprudence of the Tribunals define “mitigating” circumstances.<sup>1499</sup> A definition of what is a mitigating circumstance is provided in fact by the SFRY Criminal Code. Article 42(2) of the SFRY Criminal Code stated that the judge may determine whether “there are mitigating circumstances *which are such that they indicate that the*

<sup>1493</sup> Sentences imposed by the ICTY on subordinates are of an average of 15 years imprisonment as opposed to sentences imposed on superiors, which are of an average of 17 years imprisonment.

<sup>1494</sup> Prosecution Final Trial Brief, para. 471.

<sup>1495</sup> The Defense submits that the true motive for the murders of the Bosnian Muslim men, were vengeance and punishment, for failing to surrender following General Mladić’s invitation to do so. Defence Closing Arguments, T. 10157.

<sup>1496</sup> *Blaškić* Judgement, para. 785.

<sup>1497</sup> *Serushago* Sentence, para. 30.

<sup>1498</sup> *Jelić* Judgement, paras 130-131; see also the *Tadić* Sentencing Judgement, para. 57 and the *Tadić* Sentencing Judgement II, para. 20: the enthusiastic support for the attack launched against the non-Serbian civilian population.

<sup>1499</sup> *Kordić* Judgement, para. 848.

*objective of the sentence may be achieved equally well by a reduced sentence.*" Mitigating circumstances, concomitant or posterior to the crimes, vary from case to case. The Prosecution submits that there are no mitigating circumstances in the present case.<sup>1500</sup> However, the Trial Chamber has the discretion to consider any factors it considers to be of a mitigating nature.

(i) Mitigating Circumstances Concomitant with the Commission of the Crimes

714. Indirect participation is one circumstance that may go to mitigating a sentence. An act of assistance to a crime is a form of participation in a crime often considered less serious than personal participation or commission as a principal and may, depending on the circumstances, warrant a lighter sentence than that imposed for direct commission.<sup>1501</sup> Similarly, in some cases, forced participation in a crime can be a mitigating circumstance. The jurisprudence of the Tribunal established that, while duress<sup>1502</sup> cannot afford a "complete defence to a soldier charged with crimes against humanity or war crimes in international law involving the taking of innocent lives",<sup>1503</sup> it may be taken into account as a mitigating circumstance. The Trial Chamber may also take into account the particular personal circumstances of the accused at the time the crimes are committed, if they illustrate the character and the capacity of the convicted person to be reintegrated in society. For instance, the fact that an accused has no prior convictions for violent crimes may be considered relevant.<sup>1504</sup> In contrast, personality disorders ("borderline, narcissistic and anti-social characteristics") are not relevant factors,<sup>1505</sup> although significant mental handicap<sup>1506</sup> can constitute a mitigating circumstance. Good character<sup>1507</sup>, "keen sense for the soldiering profession", or "poor family background" in combination with youth and an "immature and fragile" personality are also elements that may constitute mitigating circumstances.<sup>1508</sup>

(ii) Mitigating Circumstances Posterior to the Commission of the Crimes

715. The behaviour of the accused after commission of the criminal acts is also relevant to the Trial Chamber's assessment of the appropriate sentence. The behaviour of the accused in the proceedings instigated against him is of particular importance. The fact that an accused is co-operating with the court, or that he or she voluntarily surrendered, admits guilt and expresses

<sup>1500</sup> Prosecution Closing Arguments, T. 10011.

<sup>1501</sup> *Furundžija* Judgement, para. 282. For instance, participation as an aider or abettor, e.g. in the crime of genocide, may range from providing information, resources, or covering-up the crimes, to leading the execution squads.

<sup>1502</sup> Defined as: "imminent threats to the life of an accused if he refuses to commit a crime", Joint Separate Opinion of Judges McDonald and Vohrah appended to the *Erdemović* Appeal Judgement, para. 66.

<sup>1503</sup> Joint Separate Opinion of Judges McDonald and Vohrah appended to the *Erdemović* Appeal Judgement, para. 88.

<sup>1504</sup> *Jelišić* Judgement, para. 124, *Furundžija*, para. 284.

<sup>1505</sup> *Jelišić* Judgement, para. 125.

<sup>1506</sup> Rules of Procedure and Evidence, Rule 67 (A)(ii)(b): "diminished or lack of mental responsibility".

<sup>1507</sup> *Erdemović* Judgement, para. 16(i); *Akayesu* Sentencing Judgement, para. 35 (iii), but not in the *Čelebići* Judgement, para. 1256.

remorse before convictions are all relevant factors and can constitute mitigating circumstances provided the accused is acting knowingly and sincerely.<sup>1509</sup>

716. The only mitigating circumstance explicitly provided for in Rule 101(B)(ii) is co-operation with the Prosecutor. "The earnestness and degree of co-operation with the Prosecutor decides whether there is reason to reduce the sentence on these grounds".<sup>1510</sup> This co-operation often becomes a question of the quantity and quality of the information provided by the accused.<sup>1511</sup> The providing of statements by the accused, which elucidate the details of the crimes or implicate other persons, may be considered a mitigating circumstance.<sup>1512</sup> Such statements may increase the speed of a trial.<sup>1513</sup> Co-operation that continues during the hearings may also be relevant.<sup>1514</sup> In this regard, the Prosecution emphasises the fact that General Krstić gave a voluntary statement but that the information he provided was not wholly true.<sup>1515</sup> In contrast, the "health" of the convicted person may also be a mitigating circumstance and the Defence stressed the bad health of General Krstić throughout the trial.<sup>1516</sup>

717. The Trial Chamber turns now to determine the appropriate sentence to be imposed upon General Krstić in view of the factors examined above: the general sentencing practice of the former Yugoslavia for persons convicted of genocide, crimes against humanity and war crimes, the gravity of the crimes committed by General Krstić and the existence and the weight of any aggravating and/or mitigating circumstances. The Trial Chamber has already alluded to the fact that genocide, being the gravest offence under Yugoslav law, would have permitted its highest sentence, up to forty years, and that the sentence will fall near that range.

### C. Determination of General Krstić's Sentence

718. General Krstić was 47 years old at the time of Srebrenica. At the beginning of the ten fateful days, which are 10 to 19 July 1995, he held the position of Chief of the VRS Drina Corps Staff and, during the ten days, he was promoted to the rank of commander of the VRS Drina Corps. As a

<sup>1508</sup> *Čelebići* Judgement, para. 1283.

<sup>1509</sup> *Kupreškić* Judgement, para. 853; *Serushago* Sentence, para. 35; see also the *Musema* Judgement, para. 1007; see also on contrary *Kambanda* Judgement, para. 51; *Akayesu* Sentencing Judgement, para. 35(i), *Serushago* Sentence, paras 40 and 41, *Ruggiu* Judgement, paras 69-72, *Kunarać* Judgement, para. 869; *Blaškić* Judgement, para. 780.

<sup>1510</sup> *Blaškić* Judgement, para. 774.

<sup>1511</sup> *Blaškić* Judgement, para. 774, the *Erdemović* Sentencing Judgement, paras 99-101 and the *Erdemović* Sentencing Judgement II, para. 16 iv, and the *Kambanda* Judgement, para. 47.

<sup>1512</sup> *Kunarać* Judgement, para. 868.

<sup>1513</sup> *Musema* Judgement, para. 1007. *Idem* in the *Ruggiu* Judgement, para. 53: a guilty plea accelerates the proceedings and makes it possible to save resources.

<sup>1514</sup> *Idem* and in the contrary sense, *Čelebići* Judgement, para. 1244: Mucić's lack of respect for the judicial process, attempts to fabricate evidence and influence witnesses are taken to be aggravating circumstances.

<sup>1515</sup> Prosecution Closing Arguments, T. 10011.



military professional, General Krstić was well aware of the extent of his obligations laid out in the military codes of the former JNA and then of the VRS. He was congratulated for the manner in which he launched the military attack on Srebrenica. On 2 December 1998, when he was arrested by SFOR, he was in command of the VRS 5th Corps in Sokolac. Since that date, he has been detained in the UN Detention Unit in Scheveningen at The Hague in the Netherlands.

719. The Trial Chamber found that General Krstić participated in two criminal plans, initially to ethnically cleanse the Srebrenica enclave of all Muslim civilians and later to kill the military aged men of Srebrenica. For his participation in these crimes, General Krstić has been found guilty of murder (under Article 3), persecutions (under Article 5) and genocide (under Article 4). The commission of those crimes would have justified the harshest of sentences in the former Yugoslavia.

720. The extreme gravity of the crimes committed by General Krstić is established by their scale and organisation and the speed with which they were perpetrated in a ten day period. The Trial Chamber has already described in detail how all Bosnian Muslims in Srebrenica were uprooted, how up to 25,000 Bosnian Muslim women, children and elderly persons were expelled toward Bosnian Muslim controlled territory and how 7,000 to 8,000 Bosnian Muslim men and boys were executed in the most cruel manner. The Trial Chamber notes the physical and psychological suffering inflicted on the victims and the obvious psychological suffering of the survivors. The survivors lost their male family members; three generations of Muslim men from the Srebrenica area disappeared in a single week. To date, most of the women and children survivors have not been able to return to their homes and many suffer what is now known as the "Srebrenica Syndrome": an inability to get on with their lives because of the lack of definite news on the fate of their lost sons, husbands and fathers.<sup>1517</sup>

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<sup>1516</sup> *Čelebići* Judgement, para. 1270.

<sup>1517</sup> *Supra*, paras. 90-94. See also Witness I, T. 2420-22: "And 8.000 Srebrenica inhabitants are missing, and we must all know that. We must all know that there must have been children, poor people, between 16.000 and 20.000, and one needs to feed them all, to bring them up. There are so many fathers without sons and sons without fathers. I had two sons, and I don't have them any more. Why is that? And I lived and I worked in my own home, nobody else's, and that was -- that same held true for my father and my grandfather, but what they seized, what they took away, what they grabbed. I had two houses. One they burnt down. It could burn. They burnt it down, but the other one they couldn't burn, so they came and put a mine to it because the house was new and I hadn't finished it yet. The roof was still missing, but it was all made of concrete and bricks, so it wouldn't burn. And I thought. Well, it will survive at least. But no, they came and planted mines, and it just went down; nothing but bust. But, right. Never mind that. I had it, so it's gone. They took it. They seized it. But why did they have to kill my sons? "And I stand today as dried as that tree in the forest. I could have lived with my sons and with my own land, and now I don't have either. And how am I supposed to live today? I don't have a pension or anything. Before that, I relied on my sons. They wouldn't have left me. They wouldn't have let me go hungry. And today, without my sons, without land, I'm slowly starving."

721. As to the role of the accused, the Trial Chamber has affirmed General Krstić's conscious and voluntary participation in the crimes of which he has been found guilty. General Krstić held a high rank in the VRS military hierarchy and was even promoted after the perpetration of the aforementioned crimes. At the time of the crimes, he was third, then second in command after General Mladić. In this regard, the Trial Chamber finds that the fact that General Krstić occupied the highest level of VRS Corps commander is an aggravating factor because he utilised that position to participate directly in a genocide.

722. The Trial Chamber also notes that the conduct of General Krstić during the course of the trial has not been altogether forthcoming. General Krstić testified under oath before the Trial Chamber. While this could be viewed as a sign of co-operation with the Tribunal, the evidence clearly established that he put up a false defence on several critical issues, most notably, his denial that he or anyone from the Drina Corps was involved in the forcible transfer of Muslim women, children and elderly from Potočari; the date upon which he became commander of the Drina Corps, or became aware of the mass executions. General Krstić's manner was one of obstinacy under cross-examination. He continually refused to answer directly or forthrightly legitimate questions put to him by the Prosecution or even Judges. Overall, his conduct during the proceedings evidences a lack of remorse for the role he played in the Srebrenica area in July 1995.

723. The Trial Chamber finds no other relevant circumstances. Although sympathetic to General Krstić's discomfort throughout the trial because of medical complications he suffered,<sup>1518</sup> the Trial Chamber considers that this circumstance is not related to the objectives of sentence.

724. The Trial Chamber's overall assessment is that General Krstić is a professional soldier who willingly participated in the forcible transfer of all women, children and elderly from Srebrenica, but would not likely, on his own, have embarked on a genocidal venture; however, he allowed himself, as he assumed command responsibility for the Drina Corps, to be drawn into the heinous scheme and to sanction the use of Corps assets to assist with the genocide. After he had assumed command of the Drina Corps, on 13 July 1995, he could have tried to halt the use of Drina Corps resources in the implementation of the genocide. His own commander, General Mladić, was calling the shots and personally supervising the killings. General Krstić's participation in the genocide consisted primarily of allowing Drina Corps assets to be used in connection with the executions from 14 July onwards and assisting with the provision of men to be deployed to participate in executions that occurred on 16 July 1995. General Krstić remained largely passive in the face of

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<sup>1518</sup> In late December 1994, General Krstić was seriously injured when he stepped on a landmine. He was evacuated to a military hospital in Sokolac, and subsequently transferred to the Military Medical Academy in Belgrade. As a result of

his knowledge of what was going on; he is guilty, but his guilt is palpably less than others who devised and supervised the executions all through that week and who remain at large. When pressured, he assisted the effort in deploying some men for the task, but on his own he would not likely have initiated such a plan. Afterwards, as word of the executions filtered in, he kept silent and even expressed sentiments lionising the Bosnian Serb campaign in Srebrenica. After the signing of the Dayton Accords, he co-operated with the implementers of the accord and continued with his professional career although he insisted that his fruitless effort to unseat one of his officers, whom he believed to have directly participated in the killings, meant he would not be trusted or treated as a devoted loyalist by the Bosnian Serb authorities thereafter. His story is one of a respected professional soldier who could not balk his superiors' insane desire to forever rid the Srebrenica area of Muslim civilians, and who, finally, participated in the unlawful realisation of this hideous design.

725. The Prosecutor submits that General Krstić should be sentenced to consecutive life sentences for each count of the Indictment under which General Krstić is found guilty. However, in view of the fact that General Krstić is guilty of crimes characterised in several different ways but which form part of a single campaign or strategies of crimes committed in a geographically limited territory over a limited period of time, the Trial Chamber holds it preferable to impose a single sentence, bearing in mind that the nearly three years spent in the custody of the Tribunal is to be deducted from the time to be served.<sup>1519</sup>

726. In light of the above considerations, the Trial Chamber sentences General Krstić to Forty six years of imprisonment.

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the injuries he sustained from the landmine, part of his leg was amputated and he remained in rehabilitation and on leave until mid May 1995.

<sup>1519</sup> Rule 101 (D).

## V. DISPOSITION

727. Based upon the facts and the legal findings as determined by the Trial Chamber and for the foregoing reasons, the Trial Chamber:

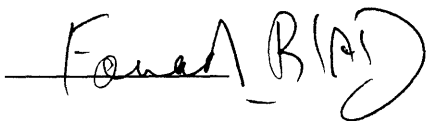
**FINDS** Radislav Krstić **GUILTY** of:

- Genocide;
- Persecution for murders, cruel and inhumane treatment, terrorising the civilian population, forcible transfer and destruction of personal property of Bosnian Muslim civilians;
- Murder as a violation of the Laws and Customs of War;

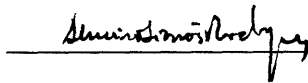
**SENTENCES** Radislav KRSTIĆ to Fourty six years of imprisonment and **STATES** that the full amount of time spent in the custody of the Tribunal will be deducted from the time to be served.

Done on second of August 2001 in English and French, the English text being authoritative.

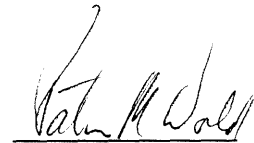
At The Hague, The Netherlands



**Judge Fouad Riad**



**Judge Almiro Rodrigues**



**Judge Patricia Wald**

**Presiding**