UNITED NATIONS

	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-97-24-T
		Date:	31 July 2003
		Original:	English

IN TRIAL CHAMBER II

Before: **Judge Wolfgang Schomburg, Presiding**
Judge Volodymyr Vassylenko
Judge Carmen Maria Argibay

Registrar: **Mr. Hans Holthuis**

Judgement of: **31 July 2003**

PROSECUTOR

v.

MILOMIR STAKIĆ

JUDGEMENT

The Office of the Prosecutor:

Ms. Joanna Korner
Mr. Nicholas Koumjian
Ms. Ann Sutherland

Counsel for the Accused:

Mr. Branko Lukić
Mr. John Ostojic

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The Judgement has been divided into three main sections. The first section deals with the factual findings; the second with the role of Dr. Stakić in the events described in the factual findings; and the third with the individual criminal responsibility of Dr. Stakić for the crimes alleged. A summary of this Judgement may be found at the end of this document, after the divider.

I. FACTUAL FINDINGS

A. **The Accused**

1. The Accused, Dr. Milomir Stakić, was born on 19 January 1962 in the village of Marička in the Municipality of Prijedor, today part of the entity "Republika Srpska" of Bosnia and Herzegovina. He is the son of Milan and Mira Stakić[1] and is of Serbian ethnicity.

2. The Accused has been married to Božana Cuk from the village of Busnovi since October 1987. They have two children together; a son born in 1989 and a daughter born in 1993.[2]

3. Dr. Stakić started his career as a physician. He received his medical training at the Faculty of Medicine of the University of Banja Luka[3] and after graduation commenced a medical traineeship in Banja Luka.[4] He continued his medical career in Teslić in 1989[5] and then took up a position at the health centre in Omarska, which entailed working at the emergency ambulance service and at village infirmaries in Lamovita and Kevljani.[6]

4. Prior to multi-party elections in Bosnia and Herzegovina in November 1990, the Accused was involved in setting up a local branch of the People's Radical Party "Nikola Pašić"[7] and became the President of that party for the Omarska area.[8] By the time of the elections, the Omarska branch of the party had entered into a coalition agreement with the Serbian Democratic Party (SDS). The Accused subsequently appeared as a candidate on the SDS electoral list[9] and became a member of the SDS.[10]

5. On 18 November 1990, the Accused was elected to the Prijedor Municipal Assembly as SDS deputy and subsequently nominated by the SDS for the position of vice-president of the Assembly, to which he was appointed on 4 January 1991.[11] On 11 September 1991, he was elected vice-president of the SDS Municipal Board in Prijedor.[12]

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[1] *Božana Stakić*, 92 *bis* statement of 6 March 2003, p. 1.
[2] *Božana Stakić*, 92 *bis* statement of 6 March 2003, p. 1 and 4.
[3] *Božana Stakić*, 92 *bis* statement of 6 March 2003, p. 1.
[4] *Witness Z*, T. 7618-19.
[5] *Slavica Popović*, T. 12759; *Ranka Stanar*, 92 *bis* statement of 28 February 2003, p. 1.
[6] *Borislavka Dakić*, T. 10332-33; *Slavica Popović*, T. 12754-55, 12759; *Ranka Stanar*, 92 *bis* statement of 28 February 2003, p. 2.
[7] Founded by the Belgrade lawyer *Veljko Guberina*.
[8] *Milan Rosić,* T. 11953, and T. 11989-90; *Slavica Popović*, T. 12756; *Božana Stakić,* 92 *bis* statement of 6 March 2003, p. 1.
[9] *Čedomir Vila*, T. 11420.
[10] *Mirsad Mujadžić*, T. 3635.
[11] Exh. SK2.
[12] Exh. SK12 and S94.

6. Apart from noting here that immediately after 30 April 1992 the Accused moved from Omarska into an apartment in the town of Prijedor,[13] the Trial Chamber will discuss the events of the period between 7 January 1992 and the end of September 1992 elsewhere in this Judgement as they form part of the Accused's alleged criminal conduct (including alleged preparatory acts).

7. The Accused remained in Prijedor municipal politics until 11 January 1993 when he was removed from his position as president of the Municipal Assembly.[14] He was subsequently sent to the front as a physician in the Army of the Republika Srpska.[15]

8. The Accused joined the Prijedor health centre on 19 May 1993 as deputy chief executive officer.[16] He still receives a salary from this centre.[17]

9. At some point between 1995 and 1996, the Accused re-entered Prijedor politics and was again appointed president of the Municipal Assembly.[18] In 1997, he and his family moved to Belgrade.[19]

10. On 23 March 2001, pursuant to a warrant of arrest of the International Tribunal dated 22 January 2001, the Accused was arrested in Belgrade. That same day he was transferred to the United Nations Detention Unit in The Hague where he is still detained.[20]

11. The trial of the Accused on the allegations set out in the Fourth Amended Indictment ("Indictment") began on 16 April 2002. Dr. Stakić faces charges of genocide (Count 1), or alternatively complicity in genocide (Count 2), murder as a crime against humanity (Count 3), extermination (Count 4), murder as a violation of the laws or customs of war (Count 5), persecutions (Count 6), deportation (Count 7) and inhumane acts (Count 8).

[13] *Ranka Travar*, 92 *bis* statement of 28 February 2003, T. 13460.
[14] Exh. S372.
[15] *Božana Stakić*, 92 *bis* statement of 6 March 2003, p. 4.
[16] *Borislavka Dakić*, T. 10332-33.
[17] *Borislavka Dakić*, T. 10365.
[18] Exh. S178 and S403.
[19] *Božana Stakić*, 92 *bis* statement of 6 March 2003, p. 5.
[20] Exh. D128.

B. General Preliminary Observations Related to all Factual Findings

12. The evidence in this case has been assessed by the Trial Chamber in accordance with the Tribunal's Statute and Rules of Procedure and Evidence and, where those sources provide no guidance, in a manner best favouring a fair determination of the case.

13. The Trial Chamber must base its factual findings primarily on the evidence tendered by the parties and subsequently admitted. In the light of the party driven procedure laid down in the Rules, the Trial Chamber expresses its serious concern about shortcomings of the Prosecution which failed to present certain available and crucial evidence in a timely manner. The Chamber found it necessary to use its powers under Rule 98 to summon a number of witnesses *proprio motu* and to order the Prosecution to produce additional evidence.

14. In its evaluation of the evidence, the Trial Chamber relied primarily on documentary evidence. It was especially cautious when dealing with documents attributed to Dr. Stakić and found corroborating evidence from an expert statement under Rule 98 and/or convincing witness testimony necessary. Except where addressed separately, there was no reasonable doubt as to the authenticity of other documents, including video and audio tapes.

15. If it is not corroborated by other evidence, the testimony of a single witness must be treated with great caution. Apart from the fact that much time has passed since 1992, the Trial Chamber is aware of the limited value of witness testimony in general. Special caution is warranted in cases like this one which have both a highly political, ethnic and religious element and a complex historical background. The Judges are convinced that for the most part, most witnesses sought to tell the Chamber what they believed to be the truth. However, the personal involvement in tragedies like the one in the former Yugoslavia often consciously or unconsciously shapes a testimony.

16. The Trial Chamber heard 37 live Prosecution witnesses and admitted 19 witness statements pursuant to Rule 92 *bis*. The Prosecution called three expert witnesses. Pursuant to Rule 98, the Chamber called six witnesses and ordered the Prosecution to appoint a forensic handwriting examiner and a forensic document expert. The Trial Chamber heard 38 live Defence witnesses and admitted seven Rule 92 *bis* statements. The Defence called two live expert witnesses and introduced the report of an expert on constitutional issues through Rule 94 *bis*. A total of 1448 exhibits were admitted into evidence, 796 for the Prosecution ("S"), 594 for the Defence ("D") and 58 Chamber exhibits ("J"). The trial is reflected in 15,337 pages of transcript ("T.").

17. The Accused made use of his right to remain silent.

18. The Trial Chamber does not wish to reduce the victims to mere numbers in statistics. The victims were people - men and women with different backgrounds, histories and personalities. As it is impossible to reconstruct the fate of each victim, the Chamber has selected three individuals to highlight their suffering and the core issues in this case: Professor Muhamed Čehajić,[21] Witness X and Nermin Karagić.[22]

19. In the section on factual findings, the Trial Chamber has limited itself to facts relevant to the legal analysis of the case. Another limitation of the case stems from the Indictment which covers the Municipality of Prijedor during a specific period (30 April 1992 to 30 September 1992).

20. The unfortunate but obvious fact that, for various reasons, this Tribunal has never had and never will have the opportunity to hear all the persons allegedly most responsible in one procedure creates additional problems. The Trial Chamber is aware that the possibility of divergences from, or even contradictions with, findings in other cases cannot be excluded because they are based on different evidence tendered and admitted.

21. The Trial Chamber has endeavoured to come as close as possible to the truth. However, the Chamber is aware that no absolute truth exists.

22. Before the Trial Chamber turns to its assessment of the applicable law (III), the relevant factual basis will now be presented in its proper context, followed by findings on the Accused's role in these events (II).

[21] See *infra* E. 2. (a) (ii).
[22] See *infra* III. G.

C. General Background of the Events in Prijedor in 1992

1. Political situation in Bosnia and Herzegovina

23. After the occupation of the Kingdom of Yugoslavia in 1941, the German Nazi regime created the "Independent State of Croatia", headed by an anti-Serb Ustaša regime. Allied with Germany and Italy, Croatian fascists (Ustašas) fought both Serb monarchists (Chetniks) and communists (Tito's partisans). Many Serbs, but also Jews and other targeted groups, were systematically killed in extermination camps because of their religion and ethnicity. One of the most infamous camps was located at Jasenovac in Western Slavonia, north of Prijedor municipality, near the border between Bosnia and Herzegovina and Croatia.

24. The "Socialist Republic of Bosnia and Herzegovina" became one of the six republics in the Socialist Federal Republic of Yugoslavia (SFRY) a successor state of the Kingdom of Yugoslavia. Due to the century-long dramatic and complicated history of the Balkans and political developments in the former Yugoslavia after the two World Wars, the Republic of Bosnia and Herzegovina was populated primarily by Serbs, Croats and members of the Muslim-Slavic community. Apart from the differences in their cultural heritage and religious tradition, the three groups had much in common and peacefully coexisted for most of the time.

25. Marshal Tito's death in 1980 and the rapid disintegration of the ruling League of Communists of Yugoslavia in the first months of 1990 resulted in a power vacuum and the emergence of national parties throughout the country.

26. Three new parties basing themselves on an ethnic-national identity became key players on the political scene of Bosnia and Herzegovina by the autumn of 1990: the Croat Democratic Union (HDZ), the Party for Democratic Action (SDA) and the Serbian Democratic Party (SDS).

27. During the campaign prior to the 18 November 1990 election, the HDZ, SDA and SDS reached an informal agreement not to confront one another, but rather to direct their campaign efforts against the League of Communists, the Social Democrats and other non-national parties.

28. When the votes had been counted, it was clear that the HDZ, SDA and SDS had won an overwhelming victory in most of the 109 municipalities in Bosnia and Herzegovina. The three victorious parties soon extended their pre-election inter-party agreement on the division of primary positions[23] on the national level to the regional and municipal levels.

[23] Exh. SK42, p. 2; Exh. D92, p. 11-12.

29. A census in April 1991 recorded that 43.7 percent of the residents of Bosnia and Herzegovina were ethnic Muslims, 32.4 percent were Serbs and 17.3 percent were Croats.[24]

30. The main political parties had their own separate national agenda with conflicting interests which surfaced after the declarations of independence by Slovenia and Croatia on 25 June 1991. The armed conflict in Slovenia and a sustained war in Croatia triggered old animosities between Serbs and Croats. The SDA leadership, siding with HDZ, made it clear that "Bosnia and Herzegovina" would not remain in a Serb-dominated Yugoslavia without Slovenia and Croatia. The SDS adamantly opposed the very idea of independence.

31. The SDS and the SDA failed to reconcile their differences and started moving in opposite directions. Hostile rhetoric used by the leaders of both parties, echoed in their party-controlled mass media, created mutual suspicions and contributed to the increase of inter-communal tension.

32. In anticipation of a secession of Bosnia and Herzegovina from Yugoslavia, the Bosnian Serb leadership as early as April 1991 created an Association of Bosanska Krajina Municipalities (ZOBK), which was made up of representatives of municipalities with a predominantly Serbian population.

33. In anticipation of Bosnian Serb resistance, the Bosnian Muslim leadership founded the paramilitary organisation, the Patriotic League. In June 1991 the SDA created the National Defence Council whose task was to guide the work of the Patriotic League.

34. On 16 September 1991 the SDS took further steps in consolidating the Serbian municipalities by transforming the Association of Bosnian Krajina into the Autonomous Region of Krajina (ARK).

35. On 14 October 1991, the Assembly of Bosnia and Herzegovina adopted a "Memorandum" on the sovereignty of Bosnia and Herzegovina paving the way for a referendum on the republic's independence.[25]

36. In response, on 24 October 1991, the Serb deputies of the Assembly proclaimed a separate "Assembly of the Serbian People" which called for a plebiscite of the Serbian people in Bosnia and Herzegovina on the question of whether or not they wanted to remain in the federal Yugoslav state.

37. On 19 December 1991, the Main Board of the SDS sent out "Instructions for the Organisation and Activity of Organs of the Serbian People in Bosnia and Herzegovina in

[24] See also: Exh. S227-1; Exh. D90, p. 14.
[25] Exh. S418; Exh. D92, p. 26.

Extraordinary Circumstances",[26] which divided the municipalities of Bosnia and Herzegovina into two categories, depending on whether the Serbs were in the majority ("Variant A" municipalities) or not ("Variant B" municipalities). The Instructions also included specific steps to be taken in two stages in order to gain power in the municipalities.

38. On 9 January 1992, a "Republic of the Serbian People of Bosnia and Herzegovina" was proclaimed. It was composed of the so-called Serbian autonomous regions and districts, including the Autonomous Region of Krajina (ARK).

39. On 29 February and 1 March 1992, the Referendum for the verification of the status of Bosnia and Herzegovina took place. According to the Republican Electoral Commission, "from a total number of 3,253,847 voters (…) 2,073,568 citizens eligible to vote went to the polls (64.31% of the electorate)". Of the total number of valid voting papers, there were 2,061,932 votes "in favour" (99.44% of the voters), while 6,037 voters (0.29%) voted against the sovereignty of Bosnia and Herzegovina.[27]

40. Immediately after this referendum, on 3 March 1992, Bosnia and Herzegovina proclaimed its independence. On 6 April 1992, Bosnia and Herzegovina was recognised by the European Community as a sovereign nation, and on 7 April 1992 the United States of America followed suit.

41. On 12 May 1992, the 16th session of the Assembly of the Serbian People in Bosnia and Herzegovina was held in Banja Luka. At the session Radovan Karadžić outlined the six strategic goals of the Bosnian Serb leadership in Bosnia and Herzegovina. Given the significance of these goals for illustrating the political context in which the crimes charged in this Indictment were committed, the Trial Chamber will recall them in some detail.

42. The presentation begins: "The Serbian side in Bosnia and Herzegovina, the President, the Government, the Council for National Security, which we have set up have formulated strategic priorities, that is to say, the strategic goals for the Serbian people." The first two strategic goals read as follows:

> 1. The first such goal is separation from the other two national communities – separation of states. Separation from those who are our enemies and who have used every opportunity, especially in this century, to attack us, and who would continue with such practices if we were to continue to stay together in the same state.
>
> 2. The second strategic goal, it seems to me, is a corridor between Semberija and Krajina. That is something for which we may be forced to sacrifice something here and there, but is of the utmost strategic importance for the Serbian people, because it integrates the Serbian lands, not only of Serbian Bosnia and Herzegovina, but it integrates Serbian Bosnia and Herzegovina

[26] Exh. S39.
[27] Exh. S421.

> with Serbian Krajina and Serbian Krajina with Serbian Bosnia and Herzegovina and Serbia. So, that is a strategic goal which has been placed high on the priority list, which we have to achieve because Krajina, Bosnian Krajina, Serbian Krajina, or the alliance of Serbian states is not feasible if we fail to secure that corridor, which will integrate us, which will provide us unimpeded flow from one part of our state to another.

The remaining four goals concerned a) the establishment of a corridor in the Drina Valley, b) the establishment of a border on the Una and Neretva rivers, c) the division of the city of Sarajevo into Serb and Muslim parts, and d) access for the Serbian Republic of Bosnia and Herzegovina to the sea.

43. Having outlined the foregoing strategic goals, Karadžić concluded by saying: "We believe, and we have faith in God, justice and our own strength, that we shall achieve what we have planned, all six strategic goals – of course, according to the hierarchy – and that we shall finally and definitely finish the job of the freedom struggle of the Serbian people."[28] The Trial Chamber agrees with the Prosecution's military expert, Ewan Brown, who came to the conclusion that the six strategic goals should be seen as the political direction given by the senior Bosnian Serb leadership regarding the creation of a Bosnian Serb State.[29]

2. Political developments in the Municipality of Prijedor before the 30 April 1992 takeover

44. The Municipality of Prijedor is located in the north-western region of Bosnia and Herzegovina known as the Bosnian Krajina. The municipality's main road and railroad connect the town of Prijedor with Banja Luka to the southeast and Bosanski Novi, which borders the Republic of Croatia, to the northwest. The municipality's second largest road connects Prijedor with the town of Sanski Most, which is located south of the municipality. The town of Prijedor is the largest settlement in the municipality.

45. For centuries, the Municipality of Prijedor was inhabited predominantly by Serbs, Muslims and Croats. Each group formed a majority of the population in some areas of the municipality, while in other parts the population was mixed.[30] Serbian, Muslim and Croatian communities in the Municipality of Prijedor usually co-existed in a rather peaceful manner, even during the radical geopolitical changes in the Balkans at the end of the nineteenth and beginning of the twentieth century.

46. During World War II, when Yugoslavia was occupied by Germany and Italy, the Municipality of Prijedor formally became part of the aforementioned "Independent State of

[28] See generally Exh. S141.
[29] *Ewan Brown*, T. 8566-67.
[30] *Robert J. Donia*, T.1719-20; *Muharem Mujadžić*, T.3581-85.

Croatia", led by an anti-Serb Ustaša government.[31] The municipality was the scene of many massacres of Serbs by the German Nazi regime and the Ustaša, aided by a segment of the Muslim population. Croats and Muslims who sided with the predominantly Serb partisan resistance, which was particularly strong in a mountainous and heavily wooded northeastern area around Mount Kozara, also became victims. Thousands of Bosnian Serbs, Jews and other targeted groups were sent to concentration camps run by the forces of the German Nazi regime and the Ustaša.[32]

47. After World War II, the Partisan resistance in Prijedor acquired almost mythical proportions. As a memorial to these events, the famous Kozara Monument was built in the early 1970s to honour the partisans and civilians who perished.[33]

48. The systematic efforts of Marshal (Josip Broz) Tito, the leader of Communist Yugoslavia founded by a declaration at Jajce on 29 November 1943, to boost friendship between the peoples of Yugoslavia influenced the public conscience, especially the conscience of the young generation. They promoted the re-establishment of ethnic tolerance and a feeling of mutual confidence between the communities in the Municipality of Prijedor. Marriages and personal friendships across ethnic lines were significant in number. Before, and immediately after the November 1990 multi-party election, the municipality remained an area of ethnic peace.

49. As a result of the 18 November 1990 elections, the 90 seats in the Municipal Assembly of Prijedor were distributed between the SDA with 30 seats, the SDS with 28 seats and the HDZ with 2 seats, the remaining 30 seats being split between the League of Communists – Social Democratic Party (later known only as the Social Democratic Party), the Alliance of Reformist Forces of Yugoslavia, the Democratic Socialist Alliance and the Democratic Alliance.[34] Acting in accordance with the pre-election inter-party agreement, the SDA and the SDS voted identically and supported each other's nominations for the six key positions in the Municipality of Prijedor. On 4 January 1991, Professor Muhamed Čehajić of the SDA was elected president of the Prijedor Municipal Assembly and Dr. Milomir Stakić of the SDS was elected vice-president of the Assembly. Milan Kovačević (SDS) became president of the Assembly's Executive Board. Dušan Baltić (SDS) was elected secretary of the Municipal Assembly.[35]

50. In February 1991, representatives of the SDA and SDS announced that they had reached an agreement on most of the remaining major positions in the municipality. However, during the summer of 1991, the SDS complained that the SDA had failed to honour the inter-party agreement

[31] See *supra* para. 23
[32] Exh. SK42, p.2-4; Exh. D92, p.7-8.
[33] *Robert J. Donia* T. 1703-04; Exh. SK 42, p.3.
[34] Exh. SK42, p.2; *Robert J. Donia*, T. 1692-93.

with regard to the police commanders. The agreement provided that the biggest party had the right to select the chief of police and the traffic police commander, who were the first- and third-ranking officers in the force respectively. The second biggest party would then select the police station commander, who was the second-ranking police officer. However, at the Republic level, the Ministry of Internal Affairs intervened regarding the SDS candidate for the police station commander because that position required a person with a university degree and the SDS candidate only had a secondary school education. As a result, the SDA opposed the candidate selected by the SDS, and the SDS accused the SDA of obstructing the implementation of the inter-party agreement.[36]

51. According to the official results of the census in Bosnia and Herzegovina (31 March – 1 April 1991), the Municipality of Prijedor had 112,543 residents.[37] 49,351 of the participants in this census (or 43.9%) regarded themselves as Muslims, 47,581 (42.3%) as Serbs, 6,459 (5.7%) as "Yugoslavs", 6,316 (5.6%) as Croats and 2,836 (2.5%) as "Others".[38] The census, for the first time, identified the Bosnian Muslims as the largest ethnic group in the Municipality of Prijedor. Once the results were known, the Prijedor SDS Board appealed to the Secretariat for Statistics at the Republic level asking that the census be repeated in the municipality. This request yielded no response. The shifting demographic balance in favour of the Muslim population was considered a challenge by the Serbs and became one of the central issues in the municipality's political life during 1991 and 1992.[39]

52. Following Slovenia's and Croatia's declarations of independence in June 1991, the situation in the Municipality of Prijedor rapidly deteriorated. While forced to withdraw from Slovenia, the JNA remained in Croatia to fight. During the war in Croatia, the tension increased between the Serbs and the communities of Muslims and Croats.[40] There was a huge influx of Serb refugees from Slovenia and Croatia into the municipality.[41] At the same time, Muslims and Croats began to leave the municipality because of a growing sense of insecurity and fear amongst the population.[42] Pro-Serb propaganda became increasingly visible. The municipal newspaper "Kozarski Vjesnik" started publishing allegations against the non-Serbs.[43] The Serb media propagandised the idea that

[35] Exh. SK42, p.4-5; Exh. S17; Exh. S172; Exh. S190.
[36] Exh. SK42, p.5-6.
[37] Exh. S227-1
[38] Exh. S227-1
[39] Exh. SK 42, p. 1-2.
[40] *Nerman Karagić* T. 5254.
[41] *Milovan Dragić*, T. 10421; *Milan Rosić*, T. 11928; *Witness DA*, T. 9156; *Momir Pusac*, T. 10896-97; *Mrs. Kovačević*, T. 10166; *Witness JA*, T. 10811; *Cedomir Vila,* T. 11269.
[42] *Milovan Dragić*, T. 10490-93; *Milan Rosić*, T. 11927; *Milenko Plemić*, T. 12011-12; *Witness JA*, T. 10766; *Ostoja Marjanović*, T. 11645-46; *Mico Kos*, T. 9803-04 and T. 9864; *Witness DF*, T. 10045; *Borislava Dakić*, T. 10318, T. 10341 and T. 10416; *Slobodan Kuruzović*, T. 14558; *Ljuban Janković*, T. 12535-36.
[43] *Witness A*, T. 1819-21.

the Serbs had to arm themselves in order to avoid a situation similar to that which happened during World War II when the Serbs were massacred.[44] Terms like "Ustaša", "Mujahideen" and "Green Berets" were used widely in the press as synonyms for the non-Serb population.[45] Radio Prijedor disseminated propaganda, referring to Croats and Muslims in a derogatory manner.[46] As one result of the takeover of the transmitter station on Mount Kozara in August 1991 by the Serbian paramilitary unit the "Wolves of Vučak",[47] TV Sarajevo was cut off. It was replaced by broadcasts from Belgrade and Banja Luka with interviews of SDS politicians and renditions of Serb nationalistic songs which would previously have been banned. SDS politicians argued that while Serbs sought to preserve Yugoslavia, the Muslims and Croats wanted to destroy the country.[48]

53. In addition to the growing political tension, the economic situation worsened in the Municipality of Prijedor. Many enterprises stopped working because of electrical power cuts, the disruption of traditional economic ties with Croatia and Slovenia and the lack of raw materials and spare-parts, all highly important for running the economy. There were also significant shortages of food, medicine and petrol.

54. In September 1991, the Prijedor Territorial Defence (TO) and the Fifth Kozara Brigade were mobilised and deployed to Western Slavonia as part of the JNA's war against Croatia. The call-up and deployment of the Brigade was carried out without the support of the SDA, but many Muslims nevertheless responded to the call-up.[49] At the same time, on 17 September 1991, predominantly Muslim reservists gathered in front of the municipal building to protest against the call-up to the Prijedor TO.[50]

55. By autumn of 1991, the rift between the SDS and the SDA over the implementation of the inter-party, pre-election agreement became wider. On 18 September 1991, the Municipality of Prijedor SDS Board made a public statement accusing the SDA of violating the agreement and claiming that the Ministry of Internal Affairs had smuggled weapons into the predominantly Muslim village of Kozarac. This was followed by a walkout of SDS deputies from the Prijedor Municipal Assembly.[51]

56. On 7 November 1991, the Municipal Assembly unanimously voted on the second mobilisation of the Fifth Kozara Brigade and its redeployment to Western Slavonia. According to

[44] *Muharem Murselović*, T. 2687.
[45] *Witness B*, T. 2211.
[46] *Ivo Atlija*, T. 5549-51.
[47] Exh. S151.
[48] *Jusuf Arifagić*, T. 7058.
[49] Exh. SK42, p.15
[50] Exh. SK42, p.13.
[51] *Robert J. Donia*, T. 1735; SK 42, p.6 and footnote 14.

the mobilisation order, those who wished to return to the front could agree to be mobilised; those who declined were free to return home after turning in their equipment and weapons. This solution facilitated the participation of many Serbs in the unit's redeployment to Croatia, but it also allowed many Croats and Muslims to decline and, thus, contributed to further estrangement between the Serbs, Croats and Muslims.[52]

57. Preoccupied with the shift in the demographic balance in the municipality in favour of the Muslims, the Prijedor SDS Board paid great attention to the organisation of a plebiscite of the Serbian people in the municipality, as requested by the Assembly of the Serbian People in Bosnia and Herzegovina. The participants in the plebiscite, which took place on 9/10 November 1991, were given different ballot papers depending on whether they were Serbs or Non-Serbs. As it was reported in the weekly "Kozarski Vjesnik", 45,003 registered Serbs in the Municipality of Prijedor participated in the plebiscite, as did 2,035 people categorized as non-Serbs. 99.9% of the Serbs and 98.8% of the non-Serbs voted in favour of Bosnia and Herzegovina remaining in a joint state of Yugoslavia.[53] In this context, it has to be recalled that according to the census of spring 1991, the Municipality of Prijedor had 112,543 residents.[54]

58. On 2 December 1991, the President of the Prijedor Municipal Board of the SDS, Simo Mišković, at the meeting of the Board, summing up the results of the plebiscite, posed two choices for the future: "The plebiscite vote has shown that 60% of the electorate are Serbs. This indicates two options:

1) repeat the municipal elections" or

2) "take over and establish independent organs. It will be decided later which of the two options will be chosen."[55]

59. The second option was adopted at the meeting of the Prijedor Municipal Board of the SDS on 27 December 1991. At the meeting Simo Mišković read out "Instructions for the Organisation and Activity of Organs of the Serbian People in Bosnia and Herzegovina in Extraordinary Circumstances" adopted earlier on 19 December 1991 by the Main Board of the SDS in Bosnia and Herzegovina.[56]

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[52] Exh. SK42, p.16-17.
[53] Exh. SK42, p.17; D92-41.
[54] See *supra* para. 51.
[55] Exh. SK42, p.18.
[56] See *supra* para. 37.

60. The instructions provided for two stages in the formation of the Serbian government bodies, assemblies, executive boards, administrative organs, courts, public security stations etc., as well as the Serbian crisis staffs in BiH municipalities in the framework of each variant.[57] After the instructions were read out, the Prijedor Municipal Board of the SDS discussed the framework for the organisation of the municipal Crisis Staff in the future and adopted a decision on the establishment of the Assembly of the Serbian People of the Municipality of Prijedor on 7 January 1992.[58]

61. At the session on 7 January 1992, two days prior to the proclamation of the Republic of Serbian People of Bosnia and Herzegovina,[59] the Serbian members of the Prijedor Municipal Assembly and the presidents of the local Municipal Boards of the SDS implemented the aforementioned decision and proclaimed the Assembly of the Serbian People of the Municipality of Prijedor. It was decided that the Assembly would have 69 members, including 28 Serbs from the Municipal Assembly of Prijedor and 41 presidents of the local boards of the SDS. Milomir Stakić was elected President of this Assembly.[60]

62. Ten days later, on 17 January 1992, the Assembly of the Serbian People of the Municipality of Prijedor unanimously voted to join the ARK. In a decision signed by its President, Dr. Milomir Stakić, the Assembly endorsed "joining the Serbian territories of the Municipality of Prijedor to the Autonomous Region of Bosnian Krajina".[61]

63. In the meeting of the Prijedor Municipal Board of the SDS on 17 February 1992, in anticipation of the secession of Bosnia and Herzegovina from Yugoslavia and the creation of a separate Serbian state on ethnic Serbian territories, Simo Mišković reported that it was time for the SDS to activate "the second stage" of the Variant B of the "Variants A and B Instructions".[62]

64. At its fifth session on 16 April 1992, the Assembly of the Serbian People of the Municipality of Prijedor elected the government of this municipality and adopted the decision to merge the Public Auditing Service (SDK) of the Municipality of Prijedor with the SDK of the Bosnian Krajina Autonomous Region of Banja Luka. In addition to the previously elected President of the Assembly of the Serbian People of the Municipality of Prijedor and chairman of the Executive Committee of the Prijedor Serbian Municipality, Dr. Milomir Stakić and Dr. Milan

[57] Exh. SK39.
[58] Exh. SK12 and S95.
[59] See *supra* para. 38.
[60] Exh. SK45; Exh. SK40; Exh. SK40.
[61] Exh. S96.
[62] Exh. SK42, p.20-21.

Kovačević, *inter alia,* the following persons were elected to the first government of this municipality:

Boško Mandić: Deputy Chairman of the Executive Committee

Ranko Travar: Secretary for Economic Affairs

Slavko Budimir: Secretary for National Defence

Milovan Dragić: Director of the Public Utilities Company

Simo Drljača : Commander of the Public Security Station (SJB)

Slobodan Kuruzović: Commander of the TO Municipal Staff[63]

65. One week later, on 23 April 1992, the Prijedor Municipal Board of the SDS decided *inter alia* to reinforce the Crisis Staff and to subordinate to the Crisis Staff "all units and staff in management posts" and "to immediately start working on the takeover, the co-ordination with JNA notwithstanding".[64]

66. By the end of April 1992, a number of clandestine Serb police stations were created in the municipality and more than 1,500 armed men were ready to take part in the takeover.[65]

D. **The Takeover of Power in Prijedor**

1. The takeover of power by Serbs in the Municipality of Prijedor on 29/30 April 1992

67. The Trial Chamber is convinced that the forcible takeover of the municipal authorities in Prijedor was prepared well in advance of 1 May 1992. In an article from 28 April 1995, which discusses the takeover, "Kozarski Vjesnik" notes that 1 May 1992 was the date set initially by the SDS. However, the arrival of a dispatch ordering the blockade of the JNA army (barracks, convoys and transport) on the afternoon of 29 April 1992 was reason enough for the SDS authorities to move the action one day forward.[66]

68. A declaration on the takeover prepared by the SDS[67] was read out on Radio Prijedor the day after the takeover and was repeated throughout the day. The document[68] refers to the

[63] Exh. S4.
[64] Exh. SK47.
[65] Exh. D99. According to "Kozarski Vjesnik" of 9 April 1993, in which *Simo Drljača* was portrayed as Deputy Minister of Interior of the Serb Republic, it is reported that: "He executed his task so well that after six months [on the night of 29th to 30th May 1992] of illegal work, a force of 1775 well armed men in thirteen police stations was ready to carry out the difficult tasks in the time ahead." Another source spoke about 1587 policemen, Exh. S137.
[66] Exh. S430.
[67] Exh. D56(b). On the underlying document, the date 1/5/1992 has been crossed out, which is consistent with the evidence suggesting that the takeover had been planned for 1 May 1992.
[68] Exh. D56(b).

aforementioned dispatch dated 29 April 1992 sent by the Minister of the Interior, Alija Delimustafić and received in the Prijedor offices of the Ministry of the Interior in BiH (MUP). [69]

69. On 29 April 1992, a meeting was organized on the proposed separation of the Prijedor Public Security Station (SJB) from Banja Luka in favor of its direct subordination to Sarajevo.[70] Among the some 500 participants,[71] were Professor Muhamed Čehajić, President of the Municipal Assembly of Prijedor, Mirza Mujadžić, President of the SDA, Hasan Talundžić, Chief of the SJB in Prijedor, Fikret Kadirić, Commander of the traffic police department and Simo Mišković, President of the SDS.[72] Mr. Janković was called out of the meeting to deal with the aforementioned dispatch that had been received from Sarajevo, which referred to the need to begin combat activities.[73] Several witnesses mentioned the dispatch from the Ministry of the Interior in Sarajevo as being the catalyst for the takeover of Prijedor municipality since it gave the order to "attack the military facilities and barracks in Prijedor, to confiscate the military equipment, and to block the roads around Prijedor", which was seen as "an attack against Serbs". [74] Without delay, several actions were taken and meetings convened.

70. Immediately afterwards, a meeting was held at the police station. Simo Drljača and others compiled a list of people who would be prohibited from entering the building of the Municipal Assembly, the Secretariat of the Interior (SUP), the court and the auditing office. This list contained about a dozen names, including Professor Čehajić,[75] the freely elected President of the Municipal Assembly of Prijedor.

71. Another meeting was held at Prijedor barracks on the same day between 17:00 and 19:00.[76] This meeting was convened by Dr. Stakić who invited the elected members of the Serbian Municipal Assembly, including Simo Drljača, Dr. Kovačević and Simo Mišković, to meet at Colonel Arsić's office in the JNA barracks.[77]

72. When planning the anticipated takeover, the possibility of using armed Serbs from the TO was discussed. However, it was decided that there was not "a great risk" and that the 400

[69] *Ostoja Marjanović*, T. 11656.
[70] *Milos Janković*, T. 10669.
[71] *Milos Janković*, T. 10755.
[72] *Milos Janković*, T. 10668.
[73] *Milos Janković*, T. 10672.
[74] *Milovan Dragić*, T. 10430; On the other hand, *Mirsad Mujadžić* testified that the authenticity of this dispatch was denied by the central government in Sarajevo, meaning that it was a forgery. *Mirsad Mujadžić*, T.3834-3838
[75] *Slobodan Kuruzović*, T. 14499-14500.
[76] *Slobodan Kuruzović*, T. 14493-14494.
[77] *Slobodan Kuruzović*, T. 14435.

policemen who would be involved in the takeover would be sufficient for the task.[78] The objective of the takeover was, according to Slobodan Kuruzović,

> [T]o take over the functions of the president of the municipality, the vice-president of the municipality, the director of the post office, the chief of the SUP, etc..[79]

73. It was Dr. Stakić who made the announcement that, "in the course of the night, power would be taken over".[80]

74. In the night of the 29/30 April 1992, the takeover of power took place "without a single bullet fired".[81] Employees of the public security station and reserve police gathered in Čirkin Polje, part of the town of Prijedor. Only Serbs were present and some of them were wearing military uniforms.[82] Those who refused to participate had to hand in their ID and weapon and leave.[83] The people there were given the task of taking over power in the municipality and were broadly divided into five groups. Each group of about twenty had a leader and each was ordered to gain control of certain buildings. One group was responsible for the Municipal Assembly building, one for the SUP building, one for the courts, one for the bank and the last for the post-office.[84]

75. Some main actors had to arrive in Čirkin Polje at about 04:30 on 30 April 1992, amongst them were, without reasonable doubt, Srdo Srdic, Simo Miškovic, Slobodan Kuruzović, Slavko Budimir[85] and Dr. Stakić himself.[86] This Trial Chamber has no clear evidence why these persons were called first to Čirkin Polje and not directly to their new offices. Persons who were elected in previous sessions by the Serbian Assembly were escorted to their places of work to assume their posts at around 06:00.[87]

76. Finally, in the early morning of 30 April 1992, the SDS definitively took over power in Prijedor. The Central Authorities were replaced by SDS or SDS-loyal personnel. First and foremost, Dr. Stakić, the elected Vice-President, replaced the freely elected President of the Municipal Assembly, Professor Čehajić. The residents of Prijedor noticed a strong military presence in the town and observed that checkpoints had been established throughout the town overnight.[88] Witness A, on his way to work, observed that a machine-gun emplacement had been

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[78] *Slobodan Kuruzović*, T. 14493-94.
[79] *Slobodan Kuruzović*, T. 14495.
[80] *Slobodan Kuruzović*, T. 14440.
[81] *Milos Janković*, T. 10676.
[82] *Milos Janković*, T. 10716-18.
[83] *Milos Janković*, T. 10758-59.
[84] *Milos Janković*, T. 10758-59.
[85] *Slavko Budimir*, T. 12836-38.
[86] See *Ranko Travar*, T. 13242-46; *Slobodan Kuruzović*, T. 14439, doubtful however: *Slavko Budimir*, T. 12836-12838
[87] *Slobodan Kuruzović*, T. 14437.
[88] *Muharem Murselović*, T. 2688-2689; *Witness F*, 92 *bis* transcript in *Tadić*, T. 1597-1598; *Mirsad Mujadžić*, T. 3669.

set up outside the Municipal Assembly building.[89] Serbian flags had been hoisted around the town,[90] *inter alia* in front of the Municipal Assembly.[91] Many of the soldiers from either Colonel Colic's or Colonel Arsić's units controlled the town. There were also many soldiers from outside Prijedor, who were later identified as being from a special police force in Banja Luka.[92] Although Colonel Arsić officially distanced himself from this operation saying that it had been carried out by paramilitary units of the SDS, the Trial Chamber is convinced that soldiers from his unit co-operated in the takeover as planned.[93]

77. As stated before, the declaration of the takeover was broadcast by Radio Prijedor throughout the day. The document was read out by a woman. The citizens were urged to remain calm.[94] Dr. Stakić was present in the radio station and was interviewed.[95] He himself took the text of the declaration to the radio station.[96]

78. This Trial Chamber has no doubt related to the truthfulness of Cedomir Vila testifying that Professor Muhamed Čehajić issued a statement that he would mount a "Gandhi-like" resistance to the takeover.[97] It reflects in a few words the characterization of this person the Judges have obtained from the evidence in its entirety.

79. Stoja Radakovic, who worked as the technical secretary for the Presidency of the Municipal Assembly in Prijedor throughout 1992, testified convincingly, that on the morning of 30 April 1992 when she arrived at the office there were two men in uniform at the entrance of the Municipal Assembly who asked to see her ID.[98] She testified that Dr. Stakić had already arrived for work at around 07:00. When she arrived, Dr. Stakić was sitting in his office, but later that day he moved into Mr. Cehajic's office. Professor Čehajić did not appear at work that day.[99] Thereafter, Dragan Savanovic moved into Dr. Stakić's old office, as he now occupied the position of vice-president of the Municipal Assembly.[100]

80. This testimony is corroborated by Slobodan Kuruzović's testimony: "When power was taken over, there were the controls of the police forces in front of the municipality and the court and the SUP and the post office as well […] The police was [*sic*] at the entrance and quite simply

[89] *Witness A*, T. 1823.
[90] *Witness B*, T. 2207-08; *Witness A*, T. 1823.
[91] *Cedomir Vila*, T. 11334.
[92] *Mirsad Mujadžić*, T. 3669.
[93] See *inter alia*: *Mirsad Mujadžić*, T. 3610.
[94] *Mrs. Kovačević*, T. 10213; *Zoran Becner*, T. 12503-04.
[95] See *infra* paras 102-103.
[96] *Witness A*, T. 1995-97.
[97] *Cedomir Vila*, T. 11334.
[98] *Stoja Radakovic*, T. 11041.
[99] *Stoja Radakovic*, T. 11114-17.

Professor Cehajic and other officials weren't allowed to enter the building and they returned home".[101] In his opinion, the takeover was the result of a decision taken on the level of Prijedor, rather than one taken in Banja Luka on the level of the ARK.[102] The Trial Chamber shares his view based on the aforementioned compelling evidence on the developments that occurred after 7 January 1992.

81. According to General Wilmot, who testified as the military expert in the Defense case, the takeover in Prijedor was peaceful because there was no resistance.[103]

82. The fact that the Serbs forcibly took power in Prijedor on 29-30 April 1992 has been proved beyond reasonable doubt and is amply supported by documentary evidence. For instance, a daily combat report sent from the JNA 5th Corps Command to the 2nd Military District Command on 1 May 1992, and signed on behalf of Major General Momir Talić contains the following reference: "After the SDS take-over in Prijedor the situation in general is calm. During the night a killing occurred at a checkpoint in Prijedor, and a Muslim organization sealed off the village of Kozarac, preventing access to it". A dispatch sent by Simo Drljača at the Prijedor SJB to the Banja Luka Security Services Centre on 30 April 1992 contains a full account of the takeover and observes that: "at 0400 hours in the municipality control was seized over SJBs and all other major facilities".

83. The Prosecution tendered an audio tape of a program aired by Radio Prijedor on the third anniversary of the takeover in Prijedor (1995) under the title "Remembering the Serbian takeover of 29 April 1992" in which Simo Mišković, Slobodan Kuruzović and Milan Kovačević speak about the events of the night of 29 April. (The Defence contested the authenticity of this tape. However, the Trial Chamber has no doubts at all as to its authenticity as the identity of those speaking on it has been confirmed in Court.[104]) All three speakers mentioned that the meeting at the barracks on 29 April 1992 was attended by the members of the SDS Crisis Staff, including Dr. Stakić, Mr. Kuruzović, Mr. Drljača, Dr. Kovačević, Mr. Mišković, and Colonel Arsić. They agreed that the police and armed Serbs should be the ones to carry out the takeover in the town and secure certain vital buildings and functions within the municipality. The police force, which gathered at the Dom in Cirkin Polje, was dispatched at 04:00 to implement the takeover. In this review, it was confirmed that the representatives of the Serbian authorities went to the headquarters where they were provided with lists of people who were not allowed to enter various buildings. People mentioned in these lists included, *inter alia*, the elected President of the Municipality, Professor Muhamed

[100] *Stoja Radakovic*, T. 11117.
[101] *Slobodan Kuruzović*, T. 14440-41.
[102] *Slobodan Kuruzović*, T. 14502.
[103] *Richard Wilmot*, T. 14082
[104] *Mrs.Kovačević*, T. 10193; *Slavko Budimir*, T. 12981; *Ranko Travar*, T. 13258.

Cehajic, the Chairman of the SDA, Dr. Mirsad Mujadžić and other top officials and supporters of the SDA.

84. In conclusion, this Trial Chamber regards the takeover by the SDS as an illegal *coup d'état*, which was planned and coordinated a long time in advance with the ultimate aim of creating a pure Serbian Municipality. These plans were never hidden and they were implemented in a coordinated action by the police, the army and politicians. One of the leading figures was Dr. Stakić, who came to play the dominant role in the political life of the Municipality. In fact, it was Dr. Stakić himself who finally triggered this *coup d'état* by convening the meeting in the afternoon of 29 April.

2. After the takeover

(a) The general atmosphere in Prijedor municipality

85. As will be seen below, civilian life was transformed in a myriad ways after the takeover. The evidence shows that as a result of the changes, tension[105] and fear increased significantly among the non-Serb population in Prijedor municipality.[106] There was a marked increase in the military presence in the town of Prijedor.[107] Armed soldiers were placed on top of all the high rise buildings in Prijedor town[108] and the Serb police established checkpoints throughout the town of Prijedor[109]. The Muslim population responded by establishing checkpoints in, amongst others, the Kozarac, Hambarine and the Brdo areas.[110] Few of the residents in Prijedor town dared to move around outside.[111]

(b) Prijedor municipality People's Defence Council (National Defence Council) in the Municipality of Prijedor

86. Very soon after the takeover, the municipal People's Defence Council[112] started meeting in a new composition, presided over by the Accused in his capacity as President of the post-takeover Municipal Assembly. The People's Defence Council was, according to a law of the Republic of Bosnia and Herzegovina, to function in the immediate threat of war.[113] The Council operated under this law until 1 June 1992 when the Government of the Serbian Republic adopted a new law

[105] *Goran Dragojević*, T. 11209; *Richard Wilmot*, T. 14009.
[106] *Mico Kos*, T. 9806-07.
[107] *Muharem Murselović*, T. 2688-89; *Witness F*, 92 *bis* transcript in *Tadić,* T. 1597-1598; *Mirsad Mujadžić*, T. 3669.
[108] *Muharem Murselović*, T. 2697.
[109] *Witness A*, T. 1833; *Witness F*, T. 1600.
[110] *Slobodan Kuruzović*, T. 14745-46.
[111] *Witness A*, T. 1832-33
[112] Due to different translation, the terms "People's Defence Council" and "National Defence Council" are used interchangeably.
[113] *Mirsad Mujadžić*, T. 3607-08 and T. 3687.

relating to the Serbian army.[114] While these laws did not confer direct authority upon the People's Defence Council over the military – in particular it could not take executive decisions[115] – the laws granted the Council a role of coordinator between the civilian and military authorities.[116] Moreover, Slavko Budimir, who headed the municipal Secretariat for People's Defence, testified that the Municipal Assembly would adopt decisions on issues submitted for consideration by the People's Defence Council. These two bodies were therefore thoroughly intertwined. What is more, as will be seen below, during the period relevant to the present case the Municipal Assembly would be replaced by the Crisis Staff of Prijedor municipality, with a membership almost identical to that of the People's Defence Council. This functional distinction therefore served as nothing more than a formality.

87. As a consequence of its coordinating role, the People's Defence Council's membership consisted of civilian, military and police leaders. The evidence shows that the Council's meetings were regularly attended by the following members, apart from the Accused who appears to have been present at every meeting as President:

- Dragan Savanović, Vice-President of the Municipal Assembly,
- Dr. Milan Kovačević, President of the Executive Committee of the Municipal Assembly,
- Colonel Vladimir Arsić, Commander of the 343rd Motorised Brigade,
- Major Radmilo Željaja, Chief of Staff of the 343rd Motorised Brigade[117],
- Major Slobodan Kuruzović, Commander of the Territorial Defence Staff,
- Boško Mandić, Commander of Prijedor Municipal Civil Defence Staff,
- Slavko Budimir, Secretary of Prijedor Municipal Secretariat for People's Defence,
- Simo Drljača, Chief of the Prijedor Public Security Station,
- Rade Javorić, Commander of the Territorial Defence at the Prijedor Garrison[118].

In addition to these members of the Council, the sessions were often also attended by, among others, Simo Mišković, President of the SDS Board in Prijedor, Ranko Travar, Secretary of the Prijedor Municipal Secretariat for the Economy and Social Affairs and Mile Mutić, Director of "Kozarski Vjesnik".[119]

[114] *Slavko Budimir*, T. 13009.
[115] *Slavko Budimir*, T. 13020-21.
[116] *Mirsad Mujadžić*, T. 3608 and T. 3814.
[117] Exh. S274.
[118] *Slavko Budimir*, T. 12859; *Slobodan Kuruzović*, T. 14449, and T. 14496-97.
[119] Exh. S28; Exh. S60 and Exh.S90.

(c) Prijedor Crisis Staff

(i) Establishment and membership

88. The Crisis Staff of Prijedor municipality, based on the available evidence, was first mentioned in the minutes of the People's Defence Council meeting of 15 May 1992. The Council considered and approved the draft Decision on the Organisation and Work of the Crisis Staff "under the proviso that a representative of the Garrison in Prijedor" be added to the proposed list of members.[120]

89. The Crisis Staff was formally established on 20 May 1992 when the Municipal Assembly adopted the "Decision on the Organisation and Work of the Prijedor Municipal Crisis Staff".[121] This decision provides in Article 3 that:

> Should the Municipal Assembly be unable to sit in session, Prijedor Municipal Crisis Staff shall decide on matters falling within the province of the Assembly jurisdiction.
>
> As soon as it is possible to convene a session of the Assembly, it shall be the duty of the Crisis Staff to submit for endorsement all decisions which it has adopted and which would normally fall within the province of the Assembly.

From this, it is clear that the Prijedor Municipal Crisis Staff assumed the duties of the Municipal Assembly. It should be noted in this connection that the Municipal Assembly referred to in this decision, although bearing the name of the multi-party Municipal Assembly elected on 18 November 1990, to all intents and purposes corresponded to the Assembly of the Serbian People of Prijedor Municipality established on 7 January 1992. It will however subsequently be referred to as the 'Municipal Assembly' since the termination on 30 April 1992 of the lawfully elected multi-party Assembly effectively resulted in a takeover of also this body and its competencies.

90. According to the "Decision on Appointments to the Prijedor Municipal Crisis Staff" also adopted on 20 May 1992[122], the Prijedor Crisis Staff was composed *inter alia* as follows:[123]

- President, Dr. Milomir Stakić,
- Vice-President, Dragan Savanović,
- Dr. Milan Kovačević,
- Slobodan Kuruzović,
- Boško Mandić,

[120] Exh. S60.
[121] Exh. S110, published as item 18 in Official Gazette no. 2/92, dated 25 June 1992 (admitted as exhibit S180) (hereafter "the Decision on the Organisation and Work of the Crisis Staff ").
[122] Exh. S112 also published as item 19 in Official Gazette 2/92 (Exhibit S180).
[123] *Slobodan Kuruzović* confirmed that this reflects the situation as it stood directly after the takeover, T. 14472.

- Simo Drljača,
- Slavko Budimir,
- Ranko Travar.

Thus, the above-mentioned proposal of the People's Defence Council of 15 May 1992 to include a representative of the Prijedor garrison was ultimately not accepted by the Municipal Assembly. However, the Trial Chamber has been furnished with evidence that both Colonel Arsić and Major Željaja were regularly present at Crisis Staff meetings.[124] In addition to this, it is also noteworthy that the membership of the Crisis Staff was almost identical to that of the People's Defence Council.

(ii) Competencies of the Crisis Staff

91. The competencies of the Crisis Staff are set out in the Decision on the Organisation and Work of the Crisis Staff. The Decision provides in the relevant parts:

> Article 2
>
> Prijedor Municipal Crisis Staff has been established to coordinate the functions of the authorities, the defence of the municipal territory, the protection of safety of people and property, the establishment of government and the organisation of all other fields of life and work. As coordinator, the Crisis Staff shall create conditions enabling the Municipal Executive Committee to discharge its legal executive functions, manage the economy and other areas of life.
>
> Article 3
>
> Should the Municipal Assembly be unable to sit in session, the Prijedor Municipal Crisis Staff shall decide on matters falling within the province of the Assembly jurisdiction.
>
> As soon as it is possible to convene a session of the Assembly, it shall be the duty of the Crisis Staff to submit for endorsement all decisions which it has adopted and which formally fall within the province of the Assembly.
>
> Article 4
>
> Prijedor Municipal Crisis Staff shall have a President, Vice-President, and nine members.
>
> The President of the Municipal Assembly shall serve *ex officio* as the President of the Crisis Staff and the Vice-President of the Municipal Assembly as Vice-President of the Crisis Staff.
>
> The following shall serve as members of the Crisis Staff: the President of the Municipality Executive Committee, Commander of the Municipal Territorial Defence Staff, Commander of the Municipal People's Defence Staff, Chief of the Public Security Station, Secretary of Municipal Secretariat for Trade, Industry and Public Services, Secretary of the Municipal Secretariat for Town Planning, Housing, Utilities, and Legal Property Affairs, the Health and Security Officer at Municipal Secretariat for the Economy and Social Affairs, and Information Officer at Municipal Secretariat for the Economy and Social Affairs.
>
> Article 5

[124] *Slobodan Kuruzović,* T. 14560.

In accordance with the assessment of the political and security situation and realistic requirements, the Crisis Staff shall adopt relevant decisions on the organisation and work of the Municipal Assembly, its organs, and other municipal organs and local communes.

Article 6

In discharging its functions in the area of defence, the Crisis Staff shall in particular:

- coordinate the work and activities of all components of All People's Defence;
- consider issues of mobilisation, development and reinforcement of the armed forces and other organisations and foster their cooperation with other responsible municipal organs;
- on special request of the Commander of the Municipal TO / Territorial Defence / Staff, deal with issues of supply requirements and funding sources for the TO;
- keep abreast of all aspects of the situation in the Municipality essential for the waging of armed combat and take appropriate measures;
- monitor the implementation of the recruitment plan and, where necessary, take measures for successful implementation thereof.

Article 11

The provisions of the Constitution, the law and decisions adopted by the Assembly, the Presidency and the Government of the Serbian Republic of BH / Bosnia and Herzegovina/ and the responsible organs of the Autonomous Region of the Banja Luka Krajina have been and shall remain the foundation for the work of Prijedor Municipal Crisis Staff.

92. The evidence shows that the Crisis Staff met very frequently in the period immediately after the takeover and that it adopted numerous decisions, orders, and other enactments.[125] According to Ranko Travar, there were a number of decisions taken by the Crisis Staff which did not fall within the areas of responsibility of either the Municipal Assembly or the Crisis Staff.[126] It was Dušan Baltić, as the Secretary of the Municipal Assembly, who was responsible for ensuring that any decisions passed in that body were consistent with the laws in force at the time. However, Slavko Budimir testified that he could not recall any occasion on which Mr. Baltić raised such matters with the President of the Municipal Assembly.[127]

(iii) The "reporting centre"

93. A so-called "reporting centre" was established in the basement of the Municipal Assembly building in Prijedor town. The centre itself predated the establishment of the Crisis Staff. However, when the Crisis Staff was established the centre started to function as a central point for receiving and processing information from the civilian sector.[128] The reporting centre was equipped with a phone, a radio, a teleprinter, a switchboard and a unit which was capable of encoding and

[125] *Slobodan Kuruzović*, T. 14462.
[126] *Ranko Travar*, T. 13469-71.
[127] *Slavko Budimir*, T. 13139-40.

deciphering coded messages. The latter was connected to "their organisational unit in Banja Luka". The encryption unit was used when instructions from the ministry at the higher level were received about, for example, the reinforcement of units or the strength of troops. Among the information received at this centre were instructions from the Republic level political leadership to municipal bodies such as the Crisis Staff and the President of the Municipal Assembly.[129]

94. The reporting centre was staffed by employees from the Secretariat for National Defence.[130] On 22 May 1992, Dr. Stakić sent a letter "to all commercial and social enterprises" informing them that:

> In accordance with the Decision of the Crisis Staff of the [ARK], permanent operational duty shall be introduced in all municipalities of the [ARK]. The purpose of introducing permanent operational duty by the Crisis Staff is to provide continuous monitoring of the situation in the civilian sector of the territory of the municipality, giving additional instructions for the implementation of conclusions, decisions and orders of the Crisis Staff […].[131]

To comply with the decision of the ARK, a duty roster system was established in which all Crisis Staff members took part.[132] Although Ranko Travar and Slavko Budimir were most often in the reporting centre,[133] Dr. Stakić was also on duty sometimes.[134] The evidence shows that towards the end of May 1992, Dr. Stakić started night duty at the Crisis Staff.[135] He would leave home at 21:00 and would not return until 07:00 the following morning.[136]

(iv) Establishment of local crisis staffs

95. The evidence shows that the municipal Crisis Staff established several 'local crisis staffs' throughout the municipality.[137]

96. The Trial Chamber has been provided with a document entitled "Instructions on the Establishment, Composition, and Tasks of the Local Crisis Staffs in the Prijedor municipality"

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[128] *Slavko Budimir*, T. 12911-12 and T. 12971; *Ranko Travar*, T. 13374-77 and Exh. S106.
[129] *Slavko Budimir*, T. 13055-57.
[130] *Slavko Budimir*, T. 12879.
[131] Exh. S106.
[132] *Ranko Travar*, T. 13374-77.
[133] *Ranko Travar*, T. 13374-77 and Slavko Budimir, T. 12879.
[134] *Ranko Travar*, T. 13374-77. See also *Slavko Budimir*, T. 12913-14, who testified that Simo Drljača and Dr. Stakić would occasionally drop by the centre.
[135] *Milan Rosić*, T. 11994; *Ostoja Marjanović*, T. 11696 and T. 11899-11900.
[136] *Božana Stakić,* 92 *bis* statement, p.3.
[137] Exh. S73, Crisis Staff order dated 6 June 1992 regarding the compilation of lists and collection of money for the purchase of flour requesting "local staff commanders to establish the needs for other basic food items (oil, sugar, salt, fat, pasta) as well as [the needs] for items for personal hygiene (detergent, soap, toothpaste etc) and submit it to the Secretariat for Economic Affairs […]"(also published as item 25, Official Gazette 2/92 (Exh. S180)); Exh. S250 Memorandum from the War Presidency of Prijedor municipality to the Prijedor Municipal Assembly on 24 July 1992 for the confirmation of the enactments of the Crisis Staff and War Presidency in the period between 29 May and 24 July 1992, refers to numerous decisions regarding local crisis staffs, including appointing presidents, vice-presidents, and

dated June 1992.[138] While this document is unsigned, its veracity is supported by the document entitled "Supplement to Instructions on the Establishment, Composition, and Tasks of Local Crisis Staffs in Prijedor Municipality".[139] This latter document contains the text "President of the Crisis Staff of Prijedor Municipality, Milomir Stakić, s.r.[140]" and the official stamp of the Municipal Assembly of Prijedor Municipality.

97. With regard to the membership of the local crisis staffs, the Instructions provide in item 3 that:

> In addition to ex officio members, primarily persons who are completely loyal and committed to the policy and direction taken by the Serbian Republic of BH and the Autonomous Region of Krajina and enjoy great respect and trust in their own communities while possessing the creative abilities and determination necessary for such complex and responsible tasks, shall be considered for appointments to the local crisis staff.

The basic tasks of the local crisis staffs were among others to:

- exercise and coordinate authority in the local territory,
- maintain effective protection and defence of the local territory and secure all prerequisites essential for successful combat,
- control the security of the territory, protect the safety of citizens and their property as well as the safety of socially-owned property,
- maintain constant synchronisation and coordination of the measures and actions of the military and police in the local area,
- develop the most varied forms and methods of information and political propaganda activities.

(v) Transformation of the Crisis Staff into a War Presidency

98. On 31 May 1992, the Serbian Assembly of Bosnia and Herzegovina issued a "Decision on the Formation of War Presidencies in Municipalities in Times of War or the Immediate Threat of War".[141] This Decision provides in Article 3 that a War Presidency shall:

> organise, co-ordinate and adjust activities for the defence of the Serbian people and for the establishment of lawful municipal authorities
>
> perform all the duties of the Assembly and the executive body until the said authorities are able to convene and work

members of the local crisis staffs in Ljubija, Prijedor Centre, Lamovita, Omarska, Tukovi, Orlovača, Brezičani, Rakelići, Božići, and Palančište, listing decisions adopted on 6 June, 9 June, 17 June, 22 June, 14 July, 24 July.

[138] Exh. S62 (hereafter: Instructions).

[139] Exh. S92.

[140] The acronym "s.r.", "svoje ručno", meaning "by his own hand", was used in the former Yugoslavia to indicate that an official document had been signed by the relevant competent official, *Dušan Baltić*, T. 8214.

[141] Exh. S206, published as item 168, Official Gazette of the Serbian People in BiH, No. 8/92 of 8 June 1992 (hereafter: Decision on War Presidencies).

> create and ensure conditions for the work of military bodies and units in defending the Serbian nation
>
> carry out other tasks of state bodies if they are unable to convene.

99. In an interview with TV Banja Luka on 30 June 1992, Dr. Stakić stated that the Crisis Staff in Prijedor that was active during war operations had been renamed the War Presidency "by a decision from the government and the presidency of the Serbian Republic of Bosnia and Herzegovina".[142] This is furthermore corroborated by a "Kozarski Vjesnik" article, which provides that the decision was implemented by the Prijedor Crisis Staff on 15 July 1992.[143]

100. The change of name from Crisis Staff to War Presidency was purely cosmetic. There was no change in the duties and functions of the Crisis Staff and no change in the membership of that body as a result of the change in name. In other words, *de facto* it remained the same body.[144] Dr. Stakić himself stated:

> [a]s soon as the initial combat activities subsided, we activated the Executive Committee, and it now operates normally, meaning in a fully peaceful environment, and the War Presidency meets regularly once a week and if necessary, more than once.[145]

Pavle Nikolić, a Defence constitutional expert, described the War Presidency as a body "competent to organise, coordinate and harmonise defence activities".[146]

101. A subsequent "Decision on the Formation of War Commissions in Municipalities in Times of War or the Immediate Threat of War" adopted by the Serbian Assembly of Bosnia and Herzegovina on 10 June 1992[147] annulled the Decision on War Presidencies. However, this Decision on War Commissions was never implemented in Prijedor Municipality by the War Presidency.[148] In an article in "Kozarski Vjesnik" dated 4 September 1992, the underlying reasons were said to have been that the War Presidency was considered an executive, rather than a consultative body and that the Decision on War Commissions had not yet arrived in Prijedor when the Crisis Staff was renamed War Presidency.[149]

(d) Developments leading up to an armed conflict in Prijedor municipality

(i) The media

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[142] Exh. S11, p. 14.
[143] Exh. S249. See also *Ranko Travar*, T. 13272-75.
[144] *Slavko Budimir*, T. 12928.
[145] Exh. S11, p. 14.
[146] Report of *Pavle Nikolić* (Exh. D90), p. 49.
[147] Exh. S207, published as item 217, Official Gazette of the Serbian People in BiH, No. 10/92 of 30 June 1992 (hereafter: Decision on War Commissions).
[148] Exh. S261.
[149] Exh. S261.

102. Witnesses have testified that, after the takeover, several announcements were broadcast on radio and television informing the citizens of the takeover and urging the population to stay calm.[150] In particular, an announcement from the "new leadership and government" of the municipality, brought by Dr. Stakić himself to Radio Prijedor, was repeatedly read out. It provides in its entirety:

> To the citizens of the municipality of Prijedor: A year and a half has already elapsed since the first multiparty elections, and the constitution of a multiparty Municipal Parliament or Assembly and other municipal organs and we still have a single part and single ethnic government in the municipality. Due to the fact that the party of Democratic Action all this time did not wish to share power, either with the winning parties or with the opposition parties, the work of the Municipal Assembly has been blocked, and the work of all other organs of government has been blocked. Because of this, the citizens and peoples of the municipality of Prijedor are living in a state of anarchy, insecurity, poverty and great fear, and this is not all. The large companies in Prijedor are being intentionally destroyed. The work of all social institutions is being obstructed, as is the work of all public services. The sowing and reaping of crops is being hindered, as are supplies of staple foods for the citizens, while at the same time the public is being misinformed and told that negotiations are underway on sharing power.
>
> The dozens of solutions achieved during negotiations among the three ruling parties have been obstructed by the leadership of the Party of Democratic Action whose leaders, acting through their people in the government organs and financial institutions, are looting the municipality of Prijedor on a large scale. There have even been attempts to disassemble and take away whole factories from Prijedor and taking them to other areas. There has been a great deal of blackmail. There have been demands for foreign currency for the Party of Democratic Action and its leaders to be paid so that they would leave individual socially-owned and privately-owned companies alone, because not even the minimum conditions for work have been provided for the companies. The citizens have been left without any means of earning their living. Workers are jobless and are not receiving their wages while old-age pensioners have lost their pensions. And the citizens have lost their savings, their health insurance, as well as legal and physical security, which has all lead to the breakdown of life in general of the people in our municipality.
>
> A great deal of tension has been caused in the past 30 days intentionally and for certain purposes, purposes pertaining to a special psychological war and this has been cause by the organised departure of the Muslim population from Prijedor, especially women and children who have left for Croatia, Slovenia, Austria, and Germany where they spread lies saying that they were fleeing from massacres being prepared for them by the Serbian people. Dozens of buses full of young Muslim men have gone to Austrian centres for military training under the pretext of going to work abroad. This has intensified fear of the imminent war in our municipality.
>
> The last straw was on 29 April 1992 when the so-called Ministry of Defence of the Ministry of the Interior of the so-called sovereign Bosnia and Herzegovina, when a dispatch arrived with an order to the municipal Secretariat for the Interior and the secretariat for People's Defence as well as the Territorial Defence staff to the effect that in Prijedor municipality they should immediately block communications, military barracks, and military facilities to mount attacks on the JNA, to take away from them weapons and technology, all of which would mean war, death, destruction, and arson in our municipality. On several occasions, Nijaz Duraković, the president of the Socialist Democratic Party, has called on its members, the members of his party, to wage a war against Yugoslavia, the regular JNA, and thus, the Serbian people, which is unacceptable for all citizens of goodwill.
>
> For all these reasons, we have decided to take over power in the municipality of Prijedor and, therefore, to take full responsibility for the peaceful and secure life of all citizens and peoples in our municipality, the protection of their property, the establishment of the rule of law, the organising of the economy, and normal life in the town and in the villages in the area of the municipality. We wish to tell all the citizens of the municipality of Prijedor that in our peaceful Kozara area, we must never again experience war and slaughter, burning and destruction, charred

[150] *Nusret Sivać*, T. 6568; *Witness F,* 92 *bis* transcript in *Tadić* T. 1597; *Witness W*, T. 6806-07; *Ljubica Kovačević*, T. 10213; *Kasim Jaskić*, 92 *bis* statement (Exh. S41/1), p. 3.

> homes, screams of terror, which is the aim of the fanatical and slavish rump leadership of Bosnia and Herzegovina. For this reason, we must remain calm, reasonable, continue living and working, and establishing normal life and work, all of which has been disrupted by the single party and single nationality authorities of the Party of Democratic Action. Companies must continue to operate, communications must be passable and safe, supplies must be normal because poverty, misery, fear, the brandishing of arms and psychological exhaustion must end. With this end in view, this government is taking over all functions and responsibility for normalising the situation and life in general in the area of our municipality. In this way, we shall make a big contribution to the solution of the crisis in Bosnia and Herzegovina and the negotiations which are underway.
>
> Dear citizens, peaceful, safe, and protected life and property for each individual are the highest values we have been building up during 50 years in freedom. Therefore, join us and help us to defend all this and preserve it from those who wish to push us into war, death, and desolation. For this reason, let us continue working normally in all companies, institutions, organs, public services, and all the other areas where we work and live. We must finally begin to live and work in the freedom and democracy that we have opted for in the multiparty elections.
>
> In Prijedor, on 30 April 1992,
>
> The new leadership and government of the Municipality of Prijedor[151]

103. Directly after the takeover, the Accused, introduced as the President of the Serbian municipality of Prijedor, gave an interview on Radio Prijedor. He explained that the Serbs had taken control in Prijedor and that the SDS could wait no longer for an agreement with the SDA.[152]

104. Beside the statements given by the Accused, those of Milan Kovačević and Simo Drljača were also broadcast on Radio Prijedor throughout the day They urged the population to hand over weapons and speaking of the conditions under which they would guarantee security in the municipality.[153] There were also radio announcements by leaders of the SDA, including Dedo Crnalić, Dr. Sadiković and Professor Muhamed Čehajić, who called for restraint and promised that a solution at a higher level would be forthcoming.[154]

105. Evidence has been led that, after the takeover, Radio Prijedor played mainly Serbian songs and that propaganda featured frequently, characterising the leaders of the SDA and prominent non-Serbs as criminals and extremists who should be punished for their behaviour.[155] One example of such propaganda was the derogatory language used for referring to non-Serbs[156] such as mujahedin, Ustaša, or Green Berets[157]. Both the printed and broadcast media also spread what can be only considered as blatant lies about non-Serb doctors: Dr. Mirsad Mujadžić of the SDA was accused of injecting drugs into Serb women making them incapable of giving birth to male children[158] and Dr. Željko Sikora, referred to as the "Monster Doctor", was accused of making Serb women abort if

[151] Exh. D56b, as translated by *Ostoja Marjanović*, T. 11652.
[152] *Witness A*, T. 1825 and T. 2050.
[153] *Witness R*, T. 4267.
[154] *Witness R*, T. 4265-67.
[155] *Mirsad Mujadžić*, T. 3703-04.
[156] *Witness B*, T. 2211.
[157] *Witness B*, T. 2284.
[158] *Ivo Atlija*, T. 5551.

they were pregnant with male children and of castrating the male babies of Serbian parents[159]. Moreover, in a "Kozarski Vjesnik" article dated 10 June 1992, Dr. Osman Mahmuljin was accused of deliberately having provided incorrect medical care to his Serb colleague Dr. Živko Dukić, who had a heart attack. Dr. Dukić's life was saved only because Dr. Radojka Elenkov discontinued the therapy allegedly initiated by Dr. Mahmuljin.[160] Nusret Sivać testified that appeals were broadcast aimed at the Serbs to lynch the non-Serbs.[161] Moreover, forged "biographies of prominent non-Serbs", including Prof. Muhamed Cehajić, Mr. Crnalić, Dr. Eso Sadiković and Dr. Osman Mahmuljin, were broadcast.[162]

106. The content of these programmes was thus predominantly of a Serb nationalist nature, which would only a few years earlier have been prohibited.[163] Mirsad Mujadžić testified that the aim of this propaganda campaign was to stifle non-Serb resistance by undermining the credibility of prominent and respected non-Serb citizens of Prijedor.[164]

107. Regarded until March 1992 as a more or less reliable source of information, after the takeover, the "Kozarski Vjesnik" weekly became the voice of the Serb authorities only.[165] The Trial Chamber has been furnished with evidence that either the Director of "Kozarski Vjesnik" and Radio Prijedor[166], the officer[167] Mile Mutić, or the journalist Rade Mutić, or another journalist would regularly attend meetings of the Crisis Staff, the National Defence Council, or the Executive Committee.[168] The Serb influence over this weekly is furthermore demonstrated by the discussions of the Municipal Board of the SDS in Prijedor on 30 April 1991. The minutes of this session record that the Secretary of the Serbian Municipal Assembly, Dušan Baltić, put forward the opinion that "Kozarski Vjesnik" should be brought under the control of the SDS.[169] Articles were aimed at discrediting and undermining the credibility of prominent non-Serbs in Prijedor.[170] More importantly, first hand articles and interviews, *inter alia* with Dr. Stakić, in favor of the SDS and its participation in the takeover were published in it. The Trial Chamber is therefore of the opinion that the views expressed in "Kozarski Vjesnik's" articles, and especially those attribueted to the

[159] *Witness A*, T. 1819-20.
[160] Exh. S402.
[161] *Nusret Sivać,* T. 6618.
[162] *Nusret Sivać*, T. 6619.
[163] *Jusuf Arifagić*, T. 7058.
[164] *Mirsad Mujadžić*, T.3706-08.
[165] Defence historian, *Srdja Trifković*, T. 13946-47.
[166] *Nusret Sivać*, T. 6788-89
[167] *Nusret Sivać*, T. 6618.
[168] *Slobodan Kuruzović*, T. 14458-59; *Slavko Budimir*, T. 13077-78. This is also corroborated by video footage, Exh. S7.
[169] Exh. SK12.
[170] *Nusret Sivać*, T. 10252-53.

Crisis Staff, can be considered known to the members of the Crisis Staff in general and the Accused in his various political positions in particular.

108. In this connection, the Trial Chamber noted that the first issue of the "Official Gazette of Prijedor Municipality" published after the takeover on 20 May 1992 was renumbered as "Year I" and issue 1/92[171], instead of continuing in the previous order.

(ii) Mobilisation in Prijedor municipality

109. The Ministry of People's Defence of the Serbian Republic of Bosnia and Herzegovina declared an imminent threat of war and ordered the general public mobilisation of the TO in the entire territory of the Republic on 16 April 1992.[172] However, it was only on 4 May 1992 that the ARK Secretariat for People's Defence carried out this command and ordered "general, public mobilisation on the entire territory of the [ARK]."[173]

110. On 5 May 1992, the People's Defence Council of Prijedor municipality held its second session and discussed several issues concerning mobilisation in the municipality. The Council concluded that the TO and the 343rd Motorised Brigade should be reinforced in accordance with requests from the commanders of these units processed through Slavko Budimir's municipal Secretariat for People's Defence. It was concluded that the mobilisation order from the ARK was to be carried out using a special plan and call-up papers issued by the Secretariat for People's Defence.[174]

111. During its fourth session on 15 May 1992, the People's Defence Council concluded that all those who failed to respond to the mobilisation call-ups would be prevented from participating in decision-making processes regarding "work and security matters in companies and other legal entities."

112. On 22 May 1992, the Crisis Staff "considering the current situation and conditions" adopted a "Decision on Mobilisation on the Territory of Prijedor Municipality".[175] The decision obligated, subject to "legal action", all conscripts assigned to nine war units, including the 343rd Motorised Brigade, to report for duty with immediate effect.

(iii) Strengthening of Serb armed forces in Prijedor municipality

[171] Exh. S276
[172] Exh. S21.
[173] Exh. S343.
[174] Exh. S28.
[175] Exh. S61, this document is typesigned "Stakić Dr. Milomir".

113. In the weeks following the takeover, the Serb authorities in Prijedor worked to strengthen their position militarily in accordance with decisions adopted on the Republic and ARK levels. On 12 May 1992, the Assembly of the Serbian People of Bosnia and Herzegovina established the Serbian Army under Lt. Gen. Ratko Mladić's command by bringing together former JNA units.[176] On the same day, this Assembly adopted a decision to subordinate the TO to the Serbian army.[177] As a result of these decisions, at its fourth session on 15 May 1992 the People's Defence Council adopted conclusions with regard to commencing the transformation of "both TO staffs and form[ing] a unified command for control and command of all the units formed in the territory of the municipality."[178]

114. In accordance with the People's Defence Council's conclusions regarding the establishment of a unified military command, the Commander of the 343rd Motorised Brigade, Colonel Arsić, on 17 May 1992 ordered that the Commander of the TO staff and all other TO, volunteer and other units, including "the armed Serb people", be placed under the Command of the Region.[179] In the order, reference is specifically made to the People's Defence Council's conclusions of 15 May 1992. Colonel Arsić's order ends by stating that any unit or individual who fails to comply with the order will be considered paramilitary and that measures will be taken against them.

115. In furtherance of the decisions of the Assembly of the Serbian People of Bosnia and Herzegovina and conclusions of the People's Defence Council, rather belatedly, the Crisis Staff on 29 May 1992 adopted the conclusion that:

> Because of the formation of the Army of the Serbian Republic of Bosnia and Herzegovina, the need for the Serbian TO has ceased. The Serbian TO shall be incorporated into the structure of the Region and placed under its command.[180]

The Crisis Staff also adopted a decision that the commander of the Prijedor Serbian TO, Major Kuruzović, would henceforth be under the command of the Command of the Region.[181] In his testimony before the Trial Chamber, Major Kuruzović confirmed that this restructuring meant that all 1,000-2,000 men in the TO came under the command of the commander of the 343rd Motorised Brigade, Colonel Arsić.[182]

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[176] Exh. S141, and *Ewan Brown*, T. 8537-41.
[177] Exh. S141 and *Slobodan Kuruzović*, T. 14638-39,
[178] Exh. S60.
[179] Exh. D125.
[180] Exh. S113, this is a copy of the relevant page of issue 2/92 of the Official Gazette of Prijedor Municipality, in which the Crisis Staff's conclusion is published as item 97.
[181] Exh. S203, also this exhibit is a copy of the relevant page of issue 2/92 of the Official Gazette of Prijedor Municipality, item 55.
[182] *Slobodan Kuruzović*, T. 14563.

116. After the takeover, Major Kuruzović and the TO staff which he commanded distributed petrol vouchers to the army, the police, and the vehicles of the medical centre from the community cultural centre[183] building in Čirkin Polje until the TO staff's subordination to the Regional Command.[184] After the subordination of the TO staff, this building was turned into a "Logistics Base" by the decision of the municipal Secretariat for Economy.[185] This Logistics Base was formally subordinated to the Crisis Staff and the Secretariat for Economy and had reporting duties to both the Crisis Staff and the Garrison command.[186] The Crisis Staff directed the logistics support of the Logistics Base[187], which continued the issuing of fuel vouchers and also distributed food to all Serb checkpoints in the municipal territory.[188] A report from 17 June 1992 makes reference to the Logistics Base and states that it also had a duty to distribute weapons and ammunition to the local crisis staffs in the municipality.[189] Moreover, Major Kuruzović testified that the Logistics Base also provided food to the Omarska and Keraterm camps.[190]

117. There is also testimony that in the spring and summer of 1992 the Secretariat for People's Defence started to develop reserve police units.[191] A report by the Chief of the SJB Simo Drljača from January 1993 confirms this and shows the developments of these units over the period April-December 1992. With regard to the period relevant to the Indictment, the report[192] provides the following:

Month	Active policemen	Reserve policemen	Total
April	145	308	453
May	145	1447	1663
June	148	1607	1755
July	153	1459	1612
August	171	1383	1554
September	177	1396	1573
October	180	995	1175

[183] *Slobodan Kuruzović*, T. 14470-71.
[184] *Slobodan Kuruzović*, T. 14468, T. 14802, and T. 14615.
[185] *Slobodan Kuruzović*, T. 14571, T. 14617, T. 14637-38.
[186] *Slobodan Kuruzović*, T. 14805-14806. See also Exh. S433 "Supplies have been delivered in accordance with the decision of the Crisis Staff of the Serbian Municipality of Prijedor on the basis of which a report has been compiled and sent to the Crisis Staff and Garrison command."
[187] *Slobodan Kuruzović*, T. 14805-06.
[188] *Goran Dragojević*, T. 11210-11; *Zoran Prastalo*, T. 12123
[189] Exh. S433.
[190] *Slobodan Kuruzović*, T. 14807.
[191] *Slavko Budimir*, T. 13017.
[192] Exh. S268.

The increase in reserve policemen from the month of April to the month of May is particularly striking. A report signed by Simo Drljača of 30 April 1992 even states that on this very day: "Ten police stations and 1,587 policemen were mobilized".[193]

(iv) Disarming of paramilitary units and calls to surrender weapons

118. At its second session on 5 May 1992, the People's Defence Council called upon "all paramilitary units and individuals who possess weapons and ammunition illegally" to surrender them immediately and at the latest by 11 May 1992 at 15:00 to the Prijedor SJB. According to the Council, failure to comply with this order would result in "the most rigorous sanctions."[194]

119. On 8 May 1992, the ARK War Staff adopted the conclusion that Banja Luka Radio would "broadcast bulletins calling citizens to surrender weapons in order to maintain peace in the area." Connected with this duty was the People's Defence Council Presidents' obligation to report to the War Staff on any actions taken "to disarm paramilitary units and individuals possessing illegal weapons and ammunition."[195]

120. On 11 May 1992, the ARK Crisis Staff extended the "deadline for the surrender of illegally acquired weapons" to "2400 hours on 14 May 1992."[196] The document reports that the deadline was extended "at the request of the citizens of all nationalities because of the wish to return the weapons in a peaceful way and without the intervention of the police" and also provides that: "After expiry of the deadline, the weapons will be seized by employees of the [CSB] of the [ARK], and the most severe sanctions shall be taken against those that disobey the proclamation of the Crisis Staff."

121. The matter of disarming paramilitary formations was further discussed at the 15 May 1992 meeting of the People's Defence Council, at which it was concluded that the Prijedor SJB "in concert with the army command" should draft "a plan of disarmament after which the actual process should be set in motion (without predetermined deadlines) and with the assistance of the media."

122. In line with the ARK conclusion and the "plan of disarmament", announcements were subsequently broadcast regularly on the radio requesting the non-Serb population to surrender their weapons.[197] For the most part, the civilian population complied with these requests turning in their

[193] Exh. S137.
[194] Exh. S28.
[195] Exh. S104.
[196] Exh. S140.
[197] *Witness A*, T. 1833; *Witness B*, T. 2280; *Kasim Jaskić*, 92 *bis* statement of 30 August 1994 and 26 March 2002, p.2.

hunting rifles and pistols as well as their permits[198] and in the belief that if they handed in their weapons they would be safe.[199] Threats were also issued against those who refused to comply and it was announced that the orders to surrender weapons had been issued by the Crisis Staff and the military department of the barracks in Prijedor. Moreover, those who lived in the villages surrounding Prijedor were told to deliver their weapons to the local commune.[200] House searches performed by soldiers of the homes of the non-Serb population were common[201] and any weapons found were confiscated.[202]

123. Mirsad Mujadžić testified that, during a meeting between representatives of the SDS and the SDA held on 16 May 1992, Major Radmilo Željaja issued an ultimatum calling for members of the TO to hand over their weapons to the Serbian Army. That this was done is corroborated by witness testimony.[203] Major Željaja also called for all Bosniak citizens to declare their loyalty to the Serbian Republic and to respond to the mobilisation call-ups. The ultimatum issued also contained a threat that any resistance would be punished.[204]

(v) Implementation of work obligation

124. The above-mentioned decision of 4 May 1992 by the ARK Secretariat for People's Defence ordered all "public organisations, businesses and other entities" to immediately transfer to a work schedule applicable in time of war.[205] This work obligation was discussed by the Prijedor People's Defence Council on 5 May 1992 during a meeting at which it was decided that the Executive Committee should be suggested to consider moving to "wartime organisation and operation for some enterprises and to adopt appropriate decisions".

125. In its decision on mobilisation in the territory of Prijedor municipality adopted on 22 May 1992, the Crisis Staff ordered that those conscripts and people with a work obligation would carry out their wartime assignments in accordance with the needs and plans in the enterprises where they were working.[206] Moreover, in a Conclusion adopted on 5 June 1992, the Crisis Staff decided that:

> The managers of enterprises, organisations, and socio-political communities are bound by this Conclusion to penalise any failure to respond to the work obligation by dismissing such employees from work.

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[198] *Witness V*, T. 5723-24.
[199] *Witness X*, T. 6858.
[200] *Witness H,* 92 *bis*, transcript of testimony in *Sikirica,* IT-95-8-PT, T. 2257 (Exh. S33/1a); *Witness Z*, T. 7546.
[201] *Witness A*, T. 1834-35.
[202] *Dr. Ibrahim Beglerbegović*, T. 4101-02.
[203] *Witness B*, T. 2209, *Witness U*, T. 6212.
[204] *Mirsad Mujadžić*, T. 3840-42.
[205] Exh. S343.
[206] Exh. S61, this document is typesigned "Stakić Dr. Milomir"; *Witness JA*, T. 10805.

Thus, this Conclusion appears to have been adopted to follow up previous enactments regarding the work obligation.

(vi) Dismissals of non-Serbs

The Trial Chamber has been furnished with evidence that many non-Serbs were dismissed from their jobs in the period after the takeover.[207] In early June 1992, Dr. Ibrahim Beglerbegović was handed a decision stating that he was no longer head of his department.[208] Moreover, the director of the medical centre, Risto Banović, was replaced by Ranko Šikman, who was far less educated, but who, unlike Mr. Banović, was a member of the SDS.[209] Dr. Beglerbegović testified that decisions dismissing various individuals from their positions usually cited failure to report to work as the basis for the dismissal.[210] This is corroborated *inter alia* by copies of two decisions terminating the employment of Dr. Majda Sadiković and Mirsad Osmanović for failing to report for work for five days.[211] Both these documents are based on the Crisis Staff's conclusions of 5 June 1992.[212]

126. Dr. Beglerbegović also testified that his wife, who was the director of a pharmacy organisation in Prijedor, was dismissed although there was no written decision in that case.[213] Nusret Sivać testified that his sister, who had worked as a judge at the municipal court in Prijedor for many years, was dismissed soon after the takeover.[214] Furthermore, Witness X testified that his father, a construction worker of Muslim ethnicity, and all the other Muslim employees were dismissed from their jobs after the takeover.[215]

127. The general tendency is reflected in a decision of the Crisis Staff of the ARK dated 22 June 1992, which provides that:

> All executive posts, posts involving a likely flow of information, posts involving the protection of public property, that is all posts important for the functioning of the economy, may only be held by personnel of Serbian nationality. This refers to all socially-owned enterprises, joint-stock companies, state institutions, public utilities, Ministries of the Interior, and the Army of the Serbian Republic of Bosnia and Herzegovina. These posts may not be held by employees of Serbian nationality who have not confirmed by Plebiscite or who in their minds have not made it

[207] See *e.g. Witness C*, T. 2376; *Witness H,* 92 *bis* transcript in *Sikirica*, T. 2251; *Witness I*, 92 *bis* statement, p.1.
[208] *Dr. Ibrahim Beglerbegović*, T. 4088. There does however appear to have been a decision in this case as exhibit S386 contains a decision of the Dr. Mladen Stojanović Medical Centre dismissing Dr. Sadeta Beglerbegović, dated 30 June 1992 on the basis of a decision adopted by the Crisis Staff on 29 June 1992.
[209] Exh. S86 is a decision appointing Ranko Šikman as acting director of the medical centre, replacing Risto Banović. *Dr. Ibrahim Beglerbegović*, T. 4089
[210] *Dr. Ibrahim Beglerbegović*, T. 4092.
[211] Exh. S124b and 125b (Transcript for the English version)
[212] Both decisions contain the following preamble: "Pursuant to Article 75, paragraph 2, item 3 of the Law on Basic Rights Stemming from Employment, and in connection with the conclusions of the Crisis Staff of the Prijedor Municipality number 02111-132/92 of the 5th of June, 1992, I hereby issue a decision on the termination of employment."
[213] *Dr. Ibrahim Beglerbegović,* T. 4093-94.
[214] *Nusret Sivać*, T. 6615.
[215] *Witness X*, T. 6853.

> ideologically clear that the Serbian Democratic Party is the sole representative of the Serbian people. The deadline for the implementation of the tasks [following from this Decision] is 1500 hrs Friday, 26 June 1992, on which the presidents of the municipal crisis staffs shall report to this Crisis Staff. Failure to implement this decision shall result in the immediate dismissal of those responsible. [216]

The Trial Chamber is convinced that the content of this decision was implemented in the Municipality of Prijedor. There is no need to rely upon a contested document, allegedly signed by Dr. Stakić himself.[217]

(vii) Marking of non-Serb houses

128. The announcements broadcast on the radio also obliged non-Serbs to hang a white cloth outside their homes as a demonstration of their loyalty to the Serbian authorities.[218] Dr. Ibrahim Beglerbegović testified that he was afraid as they had said that whoever failed to do it would be shelled and so he put up a big white towel.[219] According to Witness I, almost everyone complied with the order.[220] Charles McLeod, who was with the ECMM and visited Prijedor municipality in the last days of August 1992, testified that while visiting a mixed Serb/Muslim village he saw that the Muslim houses were identified by a white flag on the roof.[221] This is corroborated by the testimony of Barnabas Mayhew (ECMM), who testified that the Muslim houses were marked with white flags in order to distinguish them from the Serb houses.[222]

E. **Acts Committed Against Non-Serbs in the Municipality of Prijedor**

1. Armed attacks against the non-Serb civilian population

(a) Attack on Hambarine

129. After the takeover of Prijedor on 30 April 1992, nearly all the villages in the municipality began to establish security checkpoints.[223] Two such checkpoints were established outside the village of Hambarine,[224] a predominantly Muslim area. Security patrols were also set up in the village to warn the residents of any potential attack and give them time to flee to a nearby forest.[225]

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[216] Exh. S45. This Decision is signed by Radoslav Brđanin and stamped, and contains the hand-written text "For immediate delivery to the president of the municipal Crisis Staff".
[217] Exh. S46; the handwriting expert *Cornelis Ten Kamp* was unable to conclude whether this signature is Dr. Stakić's due to the poor reproduction quality of the exhibit.
[218] *Witness A*, T. 1833; *Witness B*, T. 2213; *Witness H,* 92 *bis* transcript in *Sikirica*, T. 2254
[219] *Dr. Ibrahim Beglerbegović*, T.4105.
[220] *Witness I*, 92 *bis* statement of 12 and 17 July 2001 (Exh. S34/1a), p.1.
[221] *Charles McLeod*, T. 5123-24 and Exh. S167.
[222] *Barnabas Mayhew*, T. 6063-64.
[223] *Witness C*, T. 2297.
[224] *Witness C*, T. 2297.
[225] *Elvedin Nasić*, statement 15 March 2000, p.2.

130. Around 19:00 on 22 May 1992, there was a shooting incident at one of the Muslim checkpoints at the Polje bus-stop near Hambarine when a car with six, in all likelihood, JNA soldiers, four Serbs and two Croats, was stopped.[226] The fact that this incident happened is supported by several witnesses' testimony and documentary evidence.[227] The evidence is however contradictory as to what exactly happened at the checkpoint, in particular concerning which side opened fire first. One exhibit[228] contains an interview recounting the experience of one of the JNA soldiers in the car, Siniša Mijatović. He stated that he:

> was sitting with [his] comrades at the back seat of the vehicle. Then […] they cocked the rifle which he took from them […] and it fired. Then they opened fire at us from all sides. The slaughter started. Ratko and I somehow managed to get out of the vehicle. I sustained a number of injuries in the arms, legs and stomach area.[229]

Other evidence indicates that it was the JNA soldiers in the car who started shooting. In particular, Mirsad Mujadžić, who visited the site immediately after the shooting and arranged for an ambulance to come and who also questioned several of the participants on both sides and eyewitnesses, testified that it was the JNA soldiers who left the vehicle and started shooting. The reason, as far as Mujadžić could ascertain from his inquiries, was that the checkpoint commander Aziz Alisković had requested the JNA soldiers to leave their weapons at the checkpoint and return to the barracks.[230] However, Witness DH testified that the Muslim checkpoint personnel opened fire first. He had passed through the checkpoint earlier that day. He testified that the Muslim men at the checkpoint were well-armed. Witness DH confirmed Alisković's request that the JNA soldiers surrender their weapons and testified that fire was subsequently opened from the nearby "bunker" with a heavy M54 machine-gun when the request was rejected.[231] Based on this evidence, the Trial Chamber concludes in favour of the Accused and finds that the Muslim personnel at the checkpoint was the first to open fire on this manifestation of the conflict.

131. Later that same evening, there was an ultimatum issued to the residents of Hambarine. The residents were to surrender several individuals alleged to have been involved in the incident, especially the policeman Aziz Alisković, and all weapons or face attack.[232] However the

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[226] *Mirsad Mujadžić* T. 3626 and T. 3697-99; *Muharem Murselović*, T. 2699-2700; *Witness O*, T.3195-96.
[227] *Nermin Karagić* T. 5204-05; *Witness Y*, 92 *bis* transcript from *Sikirica*, T. 1380-81; *Witness X*, T.6855-56; *Zoran Prastalo*, T.12111; *Witness DH*, T. 13506-07; *Borislava Dakić*, T. 10322-24; and *e.g.* Exh. S268, S273, S349.
[228] Exh. S240-1.
[229] Exh. S240-1.
[230] *Mirsad Mujadžić*, T. 3699-3700.
[231] *Witness DH*, T. 13504-07.
[232] *Witness C*, T. 2298-99; *Witness O*, T. 3195 and T. 3279; *Witness B*, T. 2215-2216; *Muharem Murselović*, T. 2700-01; *Nermin Karagić*, T. 5290; *Witness X*, T. 6856-57; *Witness DD*, T. 9557; *Nada Markovska*, T. 9959; *Cedomir Vila*, T. 11286.

testimonies differ on the authorship of the ultimatum, varying from the Crisis Staff and its president, Dr. Stakić,[233] to the military authorities[234] and ever Radmilo Željaja.[235]

132. The ultimatum was not complied with.[236] Consequently, around noon the next day the shelling of Hambarine began. The shelling came from three directions from the north-west in the Karane area, from the area of Urije and from the area of Topic Hill.[237] Nermin Karagić, who was less than 4 kilometres away from Hambarine, saw an APC and then a tank open fire.[238] Ivo Atlija testified that he saw two or three tanks and approximately a thousand soldiers during the attack.[239] The bombardment of Hambarine continued until about 15:00. Many who were not eyewitness to the attack heard the detonations in the village of Hambarine.[240]

133. Afterwards, two or three tanks set out from the direction of Prijedor, followed by infantry.[241] The TO tried to defend the village, but the residents were forced to flee to other villages or to the Kurevo woods to escape the shelling.[242] There were approximately 400 refugees, mostly women, children and elderly people, who fled Hambarine as a result of the attack that saw the Serb soldiers kill, rape and torche houses.[243] A military operation was consequently concentrated on the Kurevo forest.[244]

134. The Chamber observes that there is also documentary evidence to confirm the attack on Hambarine. In the report on reception centers in the Municipality of Prijedor from the head of the Prijedor SJB, Simo Drljača, it is reported as follows:

> Since the residents of the village of Hambarine did not abide by the Decision of the Ministry of People's Defence of the Serbian Republic and did not surrender their weapons, refused to cooperate with the legal authorities regarding the attack against soldiers, and rejected the demands set by the army, *the Crisis Staff of Prijedor Municipality decided to intervene militarily in the village,* in order to disarm and apprehend those known to have perpetrated the crime against the soldiers.[245]

Witness Nada Markovska spontaneously identified Simo Drljača's signature on the aforementioned document. She later retracted this position stating that she could not attest to the authenticity of the

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[233] *Mirsad Mujadžić*, T. 3717. See also Exh. S240-1, where the reporter states that the Crisis Staff issued the ultimatum.
[234] *Witness DD*, T. 9557; *Cedomir Vila*, T. 11286.
[235] *Witness O*, T. 3279.
[236] *Witness C*, T. 2299; *Witness E*, 92 *bis* transcript in *Sikirica*, T. 2497.
[237] *Witness C*, T. 2299; *Nermin Karagić*, T. 5290.
[238] *Nermin Karagić*, T. 5206-07.
[239] *Ivo Atlija*, T. 5556-57.
[240] *Witness AA*, statement of 9 October 2000, p. 3.
[241] *Mirsad Mujadžić*, T. 3718.
[242] *Elvedin Nasić*, statement 15 March 2000, p.2; *Ivo Atlija*, T. 5661; *Mirsad Mujadžić*, T. 3719-20 and 3723; *Witness Q*, T. 3918-21, T.4053-55.
[243] *Ivo Atlija*, T. 5558.
[244] *Witness DH*, T. 13569.
[245] Exh. S353 (emphasis added).

signature.[246] However, this Trial Chamber is convinced that the first spontaneous reaction reflects the truth.

135. A 1st Krajina Corps Command regular combat report dated 24 May 1992 and signed by Maj. Gen. Momir Talić, was sent to the Serbian Republic/BH Army Main Staff, stating from its perspective:

> In the area of Prijedor, and particularly, in the area of Hambarine, there was an armed attack by Muslim units, which our forces cleared from the area. Further conflicts can be expected in that area and in the area of Kozarac village.
>
> […]
>
> The mopping up of the extremist Muslim units in the area of Hambarine village near Prijedor has been completed and Kozarac village is sealed off. A group of 35 experienced soldiers from the 5th Infantry Brigade was sent to Prijedor.[247]

136. In "Kozarski Vjesnik" of 29 May 1992[248] a press release from the Prijedor Crisis Staff is reflected. It describes that on 22 May 1992 paramilitary formations from Hambarine carried out an armed attack on members of the army of the Serbian Republic of Bosnia and Herzegovina, killing two and wounding four others. It said that, because the Muslim paramilitaries did not allow the wounded and killed to be evacuated, the military command had issued an order to use force to effect this removal. The article further states that:

> This military activity was intended to issue a warning. Its purpose was not to provoke violence which shielded the perpetrators of this crime. The Crisis Staff wishes to warn that from now on, they will no longer be warning actions, but that it would directly attack the areas where perpetrators of such acts and members of the paramilitary formations are hiding. The Crisis Staff is hereby ordering the population of Hambarine and other local communes in this area, that is, all residents of Muslim and other nationalities, that today, Saturday 23 May, until 12.00, they must surrender the perpetrators of this crime to the public security station in Prijedor. ..With this crime, all deadlines and promises have been exhausted and the Crisis Staff can no longer guarantee the security of the above-mentioned areas.

137. The Crisis Staff of Prijedor met before 15:00. As they had heard nothing from the people of Hambarine and those responsible for the crime had not been surrendered, the army of the Serbian Republic of Bosnia and Herzegovina felt forced to retaliate.[249] The Crisis Staff stated[250] that the situation in Hambarine calmed down during the evening after the action taken. The article further states that the Crisis Staff will continue disarming the paramilitaries until the process is completed and that the order for the removal of roadblocks on all the roads on the territory of Prijedor Municipality must be complied with. It reports that several individuals involved in the organization

[246] *Nada Markovska*, T. 9959 and T. 10024-25.
[247] Exh. S349.
[248] Exh. S389-1.
[249] Exh.S389-1.
[250] Exh. S389-4

and distribution of weapons, including Professor Muhamed Čehajić, were taken to the Public Security Station in Prijedor. It urges residents of the local communes to take all measures to disarm paramilitaries and states that the non-negotiable order of disarming must be complied with until its completion.

138. General Wilmot, the military expert witness for the Defense, testified that if the situation was that a group of Serbian soldiers was attacked by Muslims at a checkpoint, killing two people, a reasonable and prudent response would be to ask the persons responsible for the killings to turn themselves in and to order the surrender of any weapons. He further testified that if there was no compliance with this order, the military would be justified in going to seek out the perpetrators and that a combat situation could arise. However, General Wilmot made it clear that attacking the civilian population and destroying 30-50 houses as a response to this incident was unwarranted.[251]

(b) Attack on Kozarac

139. The area of Kozarac, surrounding Kozarac town, comprises several villages, including Kamičani, Kozaruša, Sušići, Brđjani, Babići. Before the war, the population of Kozarac was predominantly Muslim.[252] Indeed, approximately 98 to 99% of the inhabitants of Kozarac were Muslims.[253]

140. After the Serb takeover of Prijedor, the population of Kozarac tried to control the perimeter of their town and, with the aid of Sead Čirkin, a former JNA officer, organized patrols.[254] These patrols were usually comprised of around 10 residents armed with hunting rifles.[255].

141. After the attack on Hambarine, another ultimatum was issued for the town of Kozarac.[256] It demanded that the weapons of the TO and the police be surrendered.[257] Radmilo Željaja delivered the ultimatum on Radio Prijedor, threatening to raze Kozarac to the ground if residents failed to comply.[258] Following the ultimatum, negotiations took place between the Muslim and the Serb sides which were unsuccessful. Stojan Župljanin, who led the Serb delegation, said that, unless his conditions were met, the army would take Kozarac by force.[259] As of 21 May 1992, the Serb inhabitants of Kozarac started to leave the town. Kozarac was subsequently surrounded and the

[251] *Richard Wilmot*, T. 14026; T. 14067 and T. 14069.
[252] *Muharem Murselović*, T. 2702; *Witness P,* T. 3313-15.
[253] *Idriz Merdžanić*, T. 7722; *Witness DD*, T. 9487.
[254] *Jusuf Arifagić*, T. 7118-19.
[255] *Jusuf Arifagić*, T. 7071, T. 7119; *Idriz Merdžanić*, T. 7823.
[256] *Witness O*, T. 3196.
[257] *Witness F*, 92 *bis* transcript in *Sikirica,* T. 1605; *Witness T*, T. 2620.
[258] *Nusret Sivać*, T. 6765; *Witness T*, T. 2620.
[259] *Idriz Merdžanić*, T. 7722.

phone lines were disconnected.[260] On the night of 22 and 23 May 1992, detonations could be heard in the direction of Prijedor and fires could be seen in the area of Hambarine.[261]

142. It was then announced that a military convoy comprising two columns would pass through Kozarac. An order was given to remove the checkpoints on the road to permit the passage of the convoy. However, when the columns approached Kozarac, they opened fire on the houses and checkpoints and, at the same time, shells were fired from the hills. The shooting was aimed at people fleeing from the area.[262] The shelling was intense and unrelenting; indeed, according to one eyewitness, a shell landed every second.[263] Over 5,000 soldiers and combatants participated in the attack, including units allegedly led by Šešelj, Arkan and Jović.[264] While it was acknowledged that some of the guards at Javori had opened fired on the advancing Serb soldiers, it was merely a tactic to give people more time to flee from the attack. Sead Čirkin was heard saying to a guard at the checkpoint that they should allow the tanks through in order to have them fall within range of a hand-held rocket launcher called a Zolja. At least one of the tanks was at least damaged in this way.[265] One or two of the soldiers in the convoy was allegedly shot by a sniper. It is believed that the members of the paramilitary resistance were Muslim on the basis that the population of the surrounding villages was mainly Muslim.

143. Once the people had fled their homes, the soldiers set fire to the houses.[266] The attack continued until 26 May 1992 when it was agreed that the people should leave the territory of Kozarac.[267] A large number of people in Kozarac surrendered that day. The Serb authorities explained that all those who wished to surrender should form a convoy and that a ceasefire would be in effect during this period. It was later learned that when the convoy, which left that day, reached the Banja Luka-Prijedor road the women and men were separated. The women were taken to Trnopolje and the men to Omarska and Keraterm camps.[268] According to Nusret Sivać, a large numbers of women and children arrived in Prijedor on the day of the attack. The Prijedor intervention platoon, led by Dado Mrđja, Zoran Babić and others intervened and began to mistreat the women and children. “Some time later in that day, buses arrived, and they ordered these women and children to board these buses. And it was then that they said that they should be taken to Trnopolje” [269]. Dr. Popovic, who worked at the health centre in Omarska, testified that after the

[260] *Witness F*, 92 *bis* transcript in *Sikirica,* T. 1604.
[261] *Witness F*, 92 *bis* transcript in *Sikirica,* T. 1606-07.
[262] *Witness P*, T. 3328-31.
[263] *Witness R*, T. 4273. See also *Witness U*, T. 6215-16 and *Samir Poljak*, T. 6333-34.
[264] *Nusret Sivać*, T.6764-65.
[265] *Jusuf Arifagić*, T. 7123-24; *Witness DH*, T. 13518.
[266] *Witness P*, T. 3331.
[267] *Witness P*, T. 3329-30, T. 3335 and 3330.
[268] *Jusuf Arifagić*, T.7075.
[269] *Nusret Sivać*, T. 6767-68.

attack on Kozarac, buses brought elderly men, women and children to the Dom in Omarska. They did not stay there though.[270]

144. Jusuf Arifagić testified that he chose not to surrender that day, but instead retreated to Mount Kozara, where he and others made contact with Becir Medunjanin and Sead Cirkin who were with a group of around 750 people. Some of the people from this group, including Jusuf Arifagić, attacked Kozarac, but were soon repulsed by tanks and artillery.[271]

145. There was extensive destruction of property in Kozarac as a result of the attack. After the attack, the houses had been not only destroyed, but leveled to the ground using heavy machinery.[272] The medical centre in Kozarac was damaged during the attack[273] and the medical facilities were transferred to the basement.[274] According to Idriz Merdžanić, who worked in the clinic over this period, several individuals arrived with gun-shot or shrapnel wounds. Injured women and children were also taken in when the clinic had relocated.[275]

146. On 26 May 1992, pursuant to an agreement between the Kozarac police department and the Serbs, the wounded were evacuated from the town in an ambulance.[276] However, before this agreement, no wounded had been allowed out of Kozarac. Dr. Merdžanić testified that when he tried to arrange the evacuation of two injured children, one of whom had her legs completely shattered, he had not been given permission and had instead been told that all the "balija" should die there, as they would be killed in any event.[277] Osman Didović negotiated with Željaja, who had dictated the terms under which he wanted Kozarac to surrender.[278]

147. As with the attack on Hambarine, there is ample corroborating documentary evidence. A report sent by the 1st Krajina Corps Command to the Srpska Republika BH Army Main Staff dated 27 May 1992 and signed by Colonel Dragan Marcetic of the 1st Krajina Corps Command, "[c]oncerning the destruction of the Green Berets in the wider area of Kozarac village" states as follows:

> 1. The armed conflict started in 25 May 1992 and ended on 27 May at 1300 hrs.

[270] *Slavica Popovic*, T. 12745.
[271] *Jusuf Arifagić*, T. 7137-38.
[272] *Witness O*, T. 3196.
[273] *Witness F*, 92 *bis* transcript in *Sikirica,* T. 1609.
[274] *Witness U*, T. 6215-16 and *Idriz Merdžanić*, T. 7732.
[275] *Idriz Merdžanić*, T. 7733-34 and *Witness F*, 92 *bis* transcript in *Sikirica,* T. 1609-10.
[276] *Witness F*, 92 *bis* transcript in *Sikirica,* T.1612-15; *Witness R*, T. 4275.
[277] *Idriz Merdžanić*, T. 7737-38.
[278] *Witness R.*, T. 4274-75.

2. Participating in the armed conflict on our side were components of the 343rd Motorised Brigade (an enlarged motorized battalion) supported by two 105 mm howitzer batteries and one M-84 tank squadron.

3. The total strength of the "Green Berets" was 1,500 – 2,000 men without heavy weapons.

4. Overall results:

- The wider area of Kozarac village, i.e. the area of the village of Kozarusa, Trnopolje, Donji Jakupovici, Gornji Jakupovici, Benkovac, Rakovic has been entirely freed of "Green Berets";

- 80 – 100 "Green Berets" were killed and about 1,500 captured;

- part of the Green Berets (100 – 200 persons) at large on Mt. Kozara;

- our own casualties are five killed and 20 wounded, and

- minor damage (already repaired) on the track assembly of two M-84s.

- The B.Luka –Ivanjska –Kozarac –Prijedor –Bosanski Novi road and the wider area of Kozarac completely under the control of the 1st KK.

This report also records the strength of the 343rd Motorized Brigade as being at 121% with a total of 6,124 officers and soldiers.[279]

148. A regular combat report dated 25 May 1992 from the 1st Krajina Corps to the Serbian Republic of BH Army Main Staff states that, on the day before, there was an attack by Muslim extremists on a military column, thereby setting off armed conflicts that were ongoing. The report estimates that there were 1,200–1,500 armed members of the Green Berets in the village of Kozarac and states "our forces have sealed off the entire area". It was further noted that, during the afternoon of 25 May, there was fighting in the villages of Kozarac, Kozarusa and Kevljani. It was reported that: "two of our soldiers were killed and another two wounded. One hundred Green Berets were captured. Our forces have sealed off the village of Kozarac and fighting is still going on". Regarding the Green Berets, the report states as follows: "The extremism of the Muslim forces – Green Berets, probably assisted by HOS members – is particularly strong in Kozarac village and its neighborhood where fighting against these groups is in progress".[280]

149. A report on "Reception Centres in Prijedor Municipality" by Simo Drljača, dated 16 August 1992, refers to the incidents in Kozarac:

> However, on 24 May 1992, Muslim extremists in the village of Jakupovici used their weapons to attack a military patrol, wounding a soldier. Troops from Prijedor set out to assist the patrol, but the armed Muslim extremists attempted to stop them at the first Muslim houses at the edge of Prijedor. On that occasion, a fierce armed clash broke out between the army and the Muslim extremists in the broader Kozarac area. The Muslims refused to surrender their weapons, and

[279] Exh. S350 and D178.
[280] Exh. D175.

> subsequently it was established that they had extensively prepared for the armed conflict over a long period of time.[281]

150. An article in "Kozarski Vjesnik" signed by the "Crisis Staff" in Prijedor on 26 May 1992 reports that Muslim paramilitaries set fire to the column of Muslim people from Kozarac and that the military of the Serbian Republic of Bosnia and Herzegovina were doing their best to save these people.[282]

151. In a video, the reporter talks about severe fighting in Kozarac, which took place on 25 and 26 May. He states that the Green Berets and local extremists in Kozarac have obstructed the hand-over of weapons and that the Serbian army has forced them to withdraw. The reporter interviews Dr. Stakić, President of the Prijedor Municipal Crisis Staff, who explains that the whole territory of Prijedor Municipality is under their control following the liberation of Kozarac. He further states that there is still "cleaning" going on in Kozarac because those individuals who are left in Kozarac are the most extreme and professionals.[283]

152. The assessments of these incidents by military experts are nearly identical. The OTP expert testified that a semi-urban environment is often not the preferred terrain for staging a military attack as the attacker is likely to incur significant casualties.[284] He further testified that if a military convoy was attacked they would have been justified in returning fire and that it is probably true that they would be permitted to secure the area.[285] According to the Defense expert, an appropriate response to an attack on a military convoy could be to pursue the alleged perpetrators, thereby opening up the possibility of combat operations spreading to a wider area. There is a right to take prisoners during such an operation. The prisoners may be held in temporary detention facilities until they can be transferred to a more permanent facility.[286]

(c) Analysis of these two events

153. The Trial Chamber recognises that, as a matter of principle, the soldiers in the car at the checkpoint in Hambarine and the Serb columns in Kozarac, when attacked at Jakupovići, had a right to self-defence. However, the Trial Chamber stresses that any armed response must be proportionate to the initial attack. As the Defence military expert General Wilmot testified, other courses of action were at the Serb force's disposal in both situations to achieve the goal of finding the alleged perpetrators of the killings of Serb soldiers if that, in truth, was the reason for the Serb

[281] Exh. S353, p.2.
[282] Exh. S389-3.
[283] Exh. S240
[284] *Ewan Brown*, T. 8798-8800.
[285] *Ewan Brown*, T. 8764-65.
[286] *Richard Wilmot*, T. 14027-31.

forces' actions. In particular, it would have been possible to dispatch units to search for the alleged perpetrators. The OTP's military expert Ewan Brown opined that, in the case of Kozarac, the Serb force would most likely also have had the right to secure the area before performing such a search. However, to launch what can only be described as planned, co-ordinated, and sustained armed attacks on civilian settlements does not meet the requirements imposed by the fundamental principle of proportionality, particularly when considering the eyewitness testimony that fire was also opened with heavy weapons on the fleeing civilian population. The disproportionality and the use of armed force against civilian population rendered both attacks illegal.

154. Furthermore, any act of self-defence must be temporally connected with the initial attack. Thus, the launching of full-fledged military manoeuvres one day after the initial attacks does not fulfil this prerequisite for legal military acts of "self-defence". The delay in attacking the settlements taken together with the planned and co-ordinated character of the disproportionate attacks launched by the Serb authorities on these predominantly Muslim areas indicate that the initial incidents, because that is all that they were, only served as the long expected pretext for the Serb authorities to finally cleanse the Hambarine and Kozarac areas of their non-Serb population.

155. The incidents taken as the basis for a "reaction" from the Serbian political and military authorities were only a pretext to start the ethnic cleansing of the areas mostly comprising Bosniak towns, villages and hamlets, where checkpoints had been established out of fear of such an attack taking place due to the escalating propaganda against non-Serbs.

156. In the case of Hambarine, for the people guarding the checkpoint to stop a car with several members of the Serb armed forces in was clearly a defensive act to counter the threat they might pose to the inhabitants. At the end of the day, it is even immaterial who started the shooting: the supposed "reaction" was already prepared as may be inferred from the position of the forces that shelled the village and the number of soldiers sent in.

157. As for Kozarac, given that "Kozarac village was sealed off"[287] and that experienced reinforcements were sent to Prijedor, the announcement of the military convoy was a provocation to justify the "reaction" of the military. The witnesses' accounts allow this Trial Chamber to infer that the Serb army was already positioned around the Kozarac area beforehand, and that an

[287] Exh. S349.

overwhelming force of around 6,700 Serb soldiers was already prepared to encounter only 1,500-2,000 Muslims without heavy weapons.[288]

158. The Serb authorities used the incidents in Hambarine and Kozarac as a pretext for initiating full-scale armed conflict in the municipality against the civilian population and non-Serb paramilitary forces. It was the trigger that allowed the Serbs to use the overwhelming military power at their disposal to achieve the first and second strategic goals of the Serbian people.[289]

2. Detention facilities in the Prijedor municipality (based on allegations in paragraph 46 of the Indictment)

(a) The camps: Keraterm, Omarska and Trnopolje

159. There is ample documentary evidence to prove that the Crisis Staff set up detention camps and determined who should be responsible for the running of those camps. In relation to the Omarska camp, an order of 31 May 1992 from the Chief of the Prijedor SJB, Simo Drljača,[290] states the following:

> With a view to the speedy and effective establishment of peace on the territory of Prijedor municipality and *in accordance with the Decision of the Crisis Staff,* I hereby order the following:
>
> 1. The industrial compound of the "Omarska" Mines strip mine shall serve as a provisional collection centre for persons captured in combat or detained on the grounds of the Security Service's operational information […].

The Chamber notes that the list of recipients on the last page of the order has the Prijedor Crisis Staff in first position.

160. A report of 16 August 1992 by Simo Drljača, states *inter alia* regarding the camps:[291]

> In such a situation, the Crisis Staff of Prijedor Municipality decided to utilize the facilities of the Keraterm work organization in Prijedor to accommodate those captured, under the supervision of employees of the Prijedor Public Security Station and the Prijedor Military Police
>
> […]
>
> The Crisis Staff of Prijedor Municipality decided that all detainees from Keraterm in Prijedor be transferred to the premises of the administration building and workshop of the iron ore mine in Omarska, where mixed teams of operative personnel would continue the initiated processing, which is the reason why this facility was given the working title Omarska Investigative Centre for Prisoners of War. On the basis of the same decision, the facility was placed under the supervision of the police and the army. The police were thus entrusted with the task of providing direct physical security, while the army provided in-depth security in the form of two circles and by laying mines along the potential routes of escape by prisoners.

[288] Exh. S350 and D178.
[289] See *supra* para.41-43.
[290] Exh. S107, p. 1 (emphasis added).
[291] Exh. S353.

161. Moreover, a document compiled by the Security Services in Banja Luka entitled "Report concerning the situation as found and questions relating to prisoners, collection centers, resettlement and the role of the SJB in connection with these activities",[292] dated 18 August 1992, reports the following (p. 1):

> In order to solve the problem that had arisen [the capturing of many "members of hostile formations, other persons who had been in the zones of armed conflict, and persons who sought help and protection], *the Crisis Staff of the municipality of Prijedor* decided to organize reception and accommodation in the settlement of Trnopolje for persons who sought protection, and that prisoners of war should be held for processing in the building of the Keraterm RO [work organization] in Prijedor, or in the administrative building and workshop of the RZR [iron ore mine] in Omarska.

The Report goes on to state (p. 23):

> However, the armed conflicts in the municipality quickly spread to most of the settlement, and the number of persons captured rapidly increased, so that the capacity of this facility the Keraterm camp could neither meet the growing needs nor provide conditions for work with the prisoners. At the same time the Crisis Staff of the municipality of Prijedor assessed that it would be advisable for security reasons as well to transfer the prisoners to another place, and decided on the facilities of the administrative building and workshops of the Omarska RZR. The same decision determined that the Keraterm facilities in Prijedor should be used exclusively for transit, that people who had been brought in should be received there solely for transportation to the facilities in Omarska and Trnopolje. This could not be done in Prijedor SJB because of the lack of space. On 27 May 1992, *pursuant to the decision of the Crisis Staff* of the municipality of Prijedor, *all the prisoners from the Keraterm facility in Prijedor were transferred to the facility in Omarska*. Under the same decision, the Omarska facility was placed under the direct supervision of the police and the army. The police, i.e. Omarska Police Station, was charged with the immediate security of the administration building itself, the workshops and the garages for the work machinery, while the army took over in-depth security in the form of sentry posts and the mining of certain areas as they saw fit.[293]

(i) Keraterm

162. The Trial Chamber is satisfied that the Keraterm factory was set up as a camp on or around 23/24 May 1992.[294] There were four rooms in the camp, Room 2 being the largest and Room 3 the smallest. By late June 1992, there were about 1,200 people in the camp. Every day people were brought in or taken away from the camp. The numbers increased considerably by late July. The detainees were mostly Muslims and Croats.[295]

163. The detainees slept on wooden pallets used for the transport of goods or on bare concrete in a big storage room. The conditions were cramped and people often had to sleep on top of each other. In June 1992, Room 1, which according to witness statements was slightly larger than Courtroom 2 of this Tribunal (98.6 m2), held 320 people and the number continued to grow. The

[292] Exh. S407 (emphasis added).
[293] Exh. S407 (emphasis added).
[294] Exh. S152.
[295] *Witness B*, T. 2224-25 and T. 2248; *Witness Y*, 92 *bis* transcript from *Sikirica*, T. 1402 and T. 1462; *Witness C*, T. 2312; *Witness K*, 92 *bis* transcript in *Sikirica*, T. 4079-80.

detainees were given one meal a day, made up of two small slices of bread and some sort of stew. The rations were insufficient for the detainees. Although families tried to deliver food and clothing every day they rarely succeeded. The detainees could see their families walking to the camp and leaving empty-handed, so in all likelihood someone at the gates of the camp took the food and prevented it from being distributed to the detainees.[296]

(ii) Omarska (including the fate of Professor Muhamed Čehajić)

164. The Omarska mines complex was located about 20km from the town of Prijedor.[297] The mine was operational until late March 1992[298] and then, a few days after the incident at Kozarac, the army and police forcibly entered the Omarska mines complex.[299] The first detainees were taken to the camp sometime in late May 1992 (between 26 and 30 May).[300] Branko Rosić recalled that the detainees were brought to the camp in AutoTransport buses escorted by the army.[301] The camp buildings were almost completely full and some of the detainees had to be held on the pista, [302] the area between the two main buildings. The pista was lit up by specially installed spot-lights after the detainees arrived.[303] Female detainees were held separately in the administrative building.[304] Estimates of the total number of inmates vary from 1,000 to more than 3,000, which in the view of this Trial Chamber is the more reliable figure.[305] Simo Drljača's report[306] states that:

> According to available documents and files kept in Omarska from 27 May to 16 August 1992, a total of 3,334 persons were brought to the Investigative Centre, of which:
>
> - 3,197 Muslims
> - 125 Croats
> - 11 Serbs
> - 1 (other)
>
> - 28 persons under 18 years of age
> - 68 persons over 60,
> - 2,920 persons between the ages of 18 and 60,
>
> - 3,297 men, and 37 women.

[296] See generally *Witness B*, T. 2228-30; *Witness K*, 92 *bis* statement, paras 42-47; *Witness Y*, 92 *bis* transcript from *Sikirica*, T. 1399-1401; *Witness H*, 92 *bis* transcript in *Sikirica,* T. 2258-60.
[297] *Ostoja Marjanović*, T. 11784.
[298] *Ostoja Marjanović*, T. 11868-69.
[299] Ostoja *Marjanović*, T. 11701.
[300] *Cedo Vuleta*, T. 11510-13 and T. 11543-44 and Exh. S353 indicating that the detainees were transferred to the camp on 27 May 1992 (see testimony of *Cedo Vuleta*, T. 11553-55), *Muharem Murselović*, T. 2904.
[301] *Branko Rosić*, T. 12657-58 and T. 12699.
[302] *Branko Rosić*, T. 12715.
[303] *Cedo Vuleta*, T. 11608-09.
[304] *Branko Rosić*, T. 12711.
[305] See *e.g. Nada Markovska*, T. 10018; *Cedo Vuleta*, T. 11584.
[306] Exh. S353.

165. The employees were asked to wear white armbands to distinguish them from the detainees.[307] In addition, their access to certain areas within the site was restricted.[308] The regular workers at the mine were separate from the police and military.

166. The police and the military controlled the detainees.[309] With the arrival of the first detainees, permanent guard posts were established around the camp,[310] and anti-personnel landmines were set up around the camp.[311] The military were around the camp compound, whereas the police were located "inside, where the detainees were".[312] An Order from the Prijedor SJB confirms that the Omarska camp compound was enclosed and that a mine field lay around the perimeter of the camp:

> 8. The Management shall without delay **fence off the compound around the Management building with barbed wire**, placing a barrier on the road to Omarska, and shall also provide drinking water. The guards shall prevent any unauthorised persons from approaching or entering the collection centre in accordance with the official guard duty rules.
>
> 9. Authorised representatives of the Army of the Serbian Republic of Bosnia and Herzegovina shall without delay **lay a mine field** in accordance with the mining regulations, which includes making a mine field layout, correct marking, etc.[313]

167. The conditions in the camp were appalling. In the building known as the "White House", the rooms were crowded with 45 people in a room no larger than 20 square meters.[314] The faces of the detainees were distorted and bloodstained and the walls were covered with blood.[315] As early on as the first evening, the detainees were beaten, with fists, rifle butts and wooden and metal sticks.[316] The guards mostly hit the heart and kidneys, when they had decided to beat someone to death.[317] In the "garage", between 150-160 people were "packed like sardines" and the heat was unbearable.[318] For the first few days, the detainees were not allowed out and were given only a jerry can of water and some bread. Men would suffocate during the night and their bodies would be taken out the following morning.[319] The room behind the restaurant was known as "Mujo's Room". The dimensions of this room were about 12 by 15 metres and the average number of people

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[307] *Branko Rosić*, T. 12658; *Cedo Vuleta*, T. 11541 and T. 11606; *Witness P*, T. 3360
[308] *Branko Rosić*, T. 12669 and T. 12662-63; *Cedo Vuleta*, T. 11610-11.
[309] *Witness R*, T. 4410; *Miloš Janković,* T. 10697; *Cedo Vuleta*, T. 11516; *Nada Markovska*, T. 9923. This is also corroborated by Exh. S379, a list dated 21 June 1992, compiled by the War-time Police Station in Omarska, signed by *Željko Mejakić*, of the workers that will be providing security for the Omarska Collection Centre who need to be issued with special passes. The document indicates that apart from those on the list, the only people entering the collection compound will be police employees organised into shift with regular records kept.
[310] *Branko Rosić,* T. 12705.
[311] *Branko Rosić*, T. 12678-79. See also *Cedo Vuleta*, T. 11607 and Exh. S15-16-1.
[312] *Branko Rosić*, T. 12708-07, T. 12722 and Exh. S15-16-2.
[313] Exh. S107.
[314] *Kerim Mesanović*, 92 *bis* transcript in *Kvočka,* T. 5162.
[315] *Kerim Mesanović*, 92 *bis* transcript in *Kvočka,* T. 5162.
[316] *Kerim Mesanović*, 92 *bis* transcript in *Kvočka,* T. 5163.
[317] *Kerim Mesanović*, 92 *bis* transcript in *Kvočka,* T. 5163.
[318] *Samir Poljak*, T. 6356-57; *Dzemel Deomić*, 92 *bis* transcript from *Tadić*,T. 3270-71.

detained there was 500, most of whom were Bosniaks.[320] The women in the camp slept in the interrogations rooms, which they would have to clean each day as the rooms were covered in blood and pieces of skin and hair.[321] There were no beds in the mine and the sleeping quarters were very crowded.[322] In the camp one could hear the moaning and wailing of people who were being beaten up.

168. The detainees at Omarska had one meal a day.[323] The food was usually spoiled and the process of getting the food, eating and returning the plate usually lasted around three minutes.[324] Meals were often accompanied by beatings.[325] The toilets were blocked and there was human waste everywhere.[326] Edward Vulliamy, a British journalist, testified that when he visited the camp, the detainees were in a very poor physical condition. He witnessed them eating a bowl of soup and some bread and said that he had the impression they had not eaten in a long time. They appeared to be terrified.[327]

169. The Chamber heard conflicting evidence about the quality of the water in the Omarska camp.[328] The detainees drank water from a river that was polluted with industrial waste and many suffered from constipation or dysentery.[329] Those who worked in the mine testified that the water quality was adequate, whereas the detainees stated that it was polluted and not potable. On the basis of the evidence presented, the Chamber is not satisfied beyond a reasonable doubt about the poor quality of the water available to the detainees in the Omarska camp.

170. There were three categories of prisoners in the camp. The first category comprised those who had allegedly participated in the attack on Prijedor town and other attacks against Serbian armed forces. In the second category were those who were "suspected of organising, abetting, financing and illegally suppying arms." Finally, the third catergory was made up of people who were "captured in and brought in from areas where there had been fighting, but had happened to be [in that area] because […] extremists had prevented them from withdrawing to a secure place." [330]

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[319] *Samir Poljak*, T. 6357-58.
[320] *Muharem Murselović*, T. 2719-20.
[321] *Witness H*, 92 *bis* transcript *Sikirica,* T. 2273.
[322] *Cedo Vuleta*, T. 11603-05.
[323] *Pero Rendić*,92 *bis* transcript from *Kvočka*, T. 7367.
[324] *Muharem Murselović*, T. 2721; Kerim Mesanović, 92 *bis* transcript from *Kvočka*, T. 5164.
[325] *Witness C*, T. 2339; *Witness R*, T. 4306.
[326] *Muharem Murselović*, T. 2721 and T. 2736.
[327] *Edward Vulliamy*, T. 7940-41.
[328] *Branko Rosić*, T. 12660-61; *Cedo Vuleta*, T. 11508; *Ostoja Marjanović*, T. 11733-34 and Exh. D69b (a document certifying the quality of the water in the Omarska mines).
[329] *Muharem Murselović*, T. 2721-22. One of the other detainees testified that the prisoners were given water that was used to clean the construction machines in the iron ore mine in Omarska and that, as a result, many of the detainees suffered from intestinal diseases. See *Nusret Sivać*, T. 6638, T. 6642.
[330] *Nada Markovska*, T. 10005; similarly, *Cedo Vuleta*, T. 11619-20; Exh. S407, p.3; Exh. S353, p. 4.

This category of people would later be released.[331] No criminal report was ever filed against persons detained in the Omarska camp, nor were the detainees apprised of any concrete charges against them.[332] Apparently, there was no objective reason justifying these people's detention.[333]

171. The Omarska camp was closed immediately after a visit by foreign journalists in early August.[334] On 6 or 7 August 1992, the detainees at Omarska were divided into groups and transported in buses to different destinations.[335] One witness estimated that, in total, 1,500 people were transported on 20 buses.[336]

The Fate of Professor Muhamed Čehajić[337]

172. Professor Muhamed Čehajić was a very well-liked high school teacher in Prijedor. He was married to Dr. Minka Čehajić with two children. By 1990, being over 50 years old, he had entered the political arena as a member of the SDA and was elected to the Municipal Assembly of Prijedor at the multiparty election that year.[338] He was voted President of the Municipal Assembly by his colleagues, and Dr. Stakić was his deputy from the beginning of their mandate.[339]

173. Professor Čehajić was against the war and opposed the mobilization of Prijedor citizens to fight in Slovenia and Croatia. He tried, in his official capacity, to reach agreements with other political parties to ensure real multiparty representation.

174. After the Serbian takeover of the municipality on 30 April 1992, he was the first person to be denied access to his office at the municipal building.[340] Although characterized as a "dove" (as opposed to the "hawks") by the Serbian dominated media,[341] and preaching peace and a "Ghandi-like resistance" together with Dr. Esad Sadiković, he was arrested on the afternoon of 23 May 1992.[342] He was taken first to the MUP building and Keraterm,[343] and then transferred to Banja

[331] *Nada Markovska*, T. 10005; similarly, *Cedo Vuleta*, T. 11619-20; Exh. S407, p.3; Exh. S353, p. 4.
[332] *Nada Markovska*, T. 10006-08.
[333] *Dr. Popovic*, T. 12791.
[334] *Samir Poljak*, T. 6375-76.
[335] *Witness P*, T. 3370-71 and *Samir Poljak*, T. 6376.
[336] *Witness P*, T. 3371.
[337] See *supra* para. 18.
[338] The elections were held on November 18, 1990. *Robert J. Donia*, T. 1692.
[339] See Exh. SK2, SK11, S19 and D19.
[340] *Slobodan Kuruzović*, T. 14499-14500.
[341] "Kozarski Vjesnik", 28 May 1993; see also *Nusret Sivać*, T. 10252-53.
[342] *Dr. Minka Čehajic*, T. 3051 and the letter she read in Court, T. 3113-14. See also S389-4, an article of "Kozarski Vjesnik" dated 24 May 1992.
[343] *Dr. Minka Čehajic*, T.3052-54; *Muharem Murselović*, T. 2707.

Luka and finally to Omarska camp.[344] Witnesses told the Trial Chamber that he was called out one night, around the 27 or 28 July, and nothing more has been heard about him to this day.[345]

175. Professor Čehajić was not in good health when he was arrested. He suffered from a heart problem and his wife noticed a physical deterioration when she was allowed to visit him the two days following his detention.[346] A doctor from the village of Omarska told the Chamber that she used to send him the necessary medicines, but she could not say why or when she stopped this delivery.[347]

176. Prijedor is a small place where everyone knew one another.[348] Not one witness could point to a crime committed by Professor Čehajić and everyone knew that he was an inmate at Omarska camp. His widow read out in Court his last letter, delivered to her after a long delay, which clearly stated that he was not aware of any accusations against him, or being culpable of any crime.[349]

177. After a chance meeting in the street with Dr. Kovačević, Dr. Minka Čehajić gained access to the MUP building and was able to visit her husband on 24 and 25 May. She was on duty at the hospital on 26 May[350] and was therefore not able to visit that day. When she came again on 27 May, she was told that Professor Čehajić had been transferred to Keraterm, where she could not visit him. She then tried to contact Dr. Stakić, her colleague and the very man who had worked side by side with her husband for more than a year; the person who was responsible for all the citizens in Prijedor. She was never given the opportunity to speak to him.[351]

178. Stoja Radaković, the technical secretary for the President and Vice-President of the Municipal Assembly,[352] testified that both Dr. Stakić and Professor Čehajić were good persons and that they had a co-operative working relationship. However, two years later Dr. Stakić referred to Professor Čehajić as being a hypocrite when, in January 1992, he congratulated him on becoming the president of the Serbian Municipal Assembly:

> "On the direction of the central office of the SDS, we formed the Serbian Assembly of Prijedor and I became Chairman. When I arrived to work the next day, the then chairman of the joint Assembly, Muhammed Čehajić, greeted me with the following words: "Hello colleague, now we

[344] *Dr. Minka Čehajic*, T. 3090-3109; *Witness A*, T. 1909; *Nusret Sivać*, T. 6629-30; and *Witness DD*, T. 9555.
[345] *Dr. Minka Čehajic*, T. 3094; *Witness A*, T. 1909; *Nusret Sivać*, T. 6629-30.
[346] *Dr. Minka Čehajic*, T. 3052-54.
[347] *Slavica Popović*, T.12783, T. 12796-97. For the alleged fact that *Dr. Popović* signed a death certificate for *Professor Čehajić,* See *also Dr. Andzić*, *Kvočka* transcript, T.7583. *Slavica Popović* also told the Chamber that she had informed *Dr. Čehajić* of her husband being at Omarska. See T. 12783 and T. 12797.
[348] *Zoran Prastalo,* T. 12200
[349] See letter, T. 3113-14; also *Dr. Minka Čehajić*, T. 3159-60.
[350] *Dr.Minka Čehajić,* T. 3052-54.
[351] *Dr. Minka Čehajić*, T. 3075-77.
[352] *Stoja Radaković*, T. 11031-32.

> are both chairmen and I congratulate you from all my heart and wish you success." But in spite of his smile I knew what was behind these words and what they are planning to do to us."[353]

179. Professor Čehajić's name appears on a list[354] of people suspected of encouraging the armed rebellion and attack on Prijedor by Muslim forces, although he was arrested seven days before that attack took place.[355] He was investigated by a military unit in Banja Luka but then sent back to Prijedor and the Omarska camp as a civilian, because no grounds were found to treat him as a war criminal.[356] Nevertheless, in August, Dr. Minka Čehajić received a decision by a local court judge in Prijedor stating that Professor Čehajić was to be tried by a military court.[357] This decision appeared as a result of a series of inquires she made in Banja Luka and in Prijedor, that even included the incredible story that he had managed to escape the camp.[358]

180. The authorities in Prijedor had classified the Omarska camp inmates according to three categories.[359] The first category included "persons suspected of the gravest crimes, people who had directly organized and taken part in the armed rebellion", and the second comprised "persons suspected of organising, abetting, financing and illegally supplying arms".[360] Even if Professor Čehajić was placed under this category, there was no evidence at all that he was indicted or tried for this alleged conduct. This Trial Chamber has not even the slightest indicia that could have served as a justification for investigations.

181. Dr. Stakić convened and was present at the meeting held on the evening of 29 April 1992 when the takeover was decided, and the list of persons that would not be allowed access to the important offices was written. The very first name on that list was that of Professor Čehajić. His arrest took place in the afternoon of 23 May 1992 while the attack on Hambarine was happening. The next morning Dr. Kovačević already knew about this detention and it defies logic to suppose that he had not at least told Dr. Stakić about it.

182. Dr. Minka Čehajić was denied the payment due to her husband being detained at a camp.[361] The detention of the former President of the Municipal Assembly was common knowledge in Prijedor. The repeated denial of an appointment to Dr. Čehajić with Dr. Stakić and Dr. Kovačević demonstrates blatantly that the purpose was to prevent her from pleading for her husband.[362]

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[353] Exh. S47, "Kozarski Vjesnik" from 28 May 1994.
[354] Exh. D246.
[355] *Dr. Minka Čehajić*, T. 3051.
[356] *Dr.Minka Čehajić*, T. 3090-3109.
[357] Exh. J18.
[358] *Dr. Minka Čehajić*, T. 3095
[359] See *supra* para. 170.
[360] Exh. S407.
[361] *Dr. Minka Čehajić*, T. 3077.
[362] *Dr. Minka Čehajić*, T. 3077.

183. This Trial Chamber has no evidence at hand to establish beyond reasonable doubt, the reason for his death.[363] Even if Professor Čehajić was not directly killed, the conditions imposed on a person whose health was fragile, alone would inevitably cause his death. His ultimate fate was clearly foreseeable.

184. In conclusion, this Chamber is convinced that also Dr. Stakić knew all these facts, also he was President of the Crisis Staff, the National Defence Council, the War Presidency and the Municipal Assembly in Prijedor and, since he was permanently together with representatives of both police and the military, he cannot have been unaware of what was common knowledge around the town, the Municipality and even further afield.[364] It was Dr. Stakić himself that triggered the deplorable fate of this honorable man.

(iii) Trnopolje

185. As to the setting up of the Trnopolje camp, the Trial Chamber notes the report by the Chief of the SJB Simo Drljača that

> [d]uring the fighting [in Kozarac on 24 May 1992], the army left a free corridor for all citizens who wanted to take shelter and flee from the zone of armed conflict, that is to say, for all those who did not want to take part in an armed struggle against the Army of the Serbian Republic. The army organised shelter for such citizens in the village of Trnopolje, in the elementary school, the social centre, warehouse and neighbouring houses, to ensure their safety.[365]

This report provided the basis for a subsequent report by a Commission for the Inspection of the Municipalities on the level of the ARK. This report states that:

> During these armed conflicts, the Army of the Serbian Republic captured many members of hostile formations and other persons who had been in the zones of armed conflict, and a number of citizens leaving their homes and flats sought help and protection. In order to solve the problem that had arisen, the Crisis Staff of the municipality of Prijedor decided to organise reception and accommodation in the settlement of Trnopolje for persons who sought protection […][366]

The commander of the TO Staff and subsequently commander of the Trnopolje camp, Major Slobodan Kuruzović, testified about his recollection of how the Trnopolje camp was established. He stated that he received a telephone call from someone in the Prijedor Municipal Assembly asking him to "accommodate the people who fled as a result of the attack on Hambarine". He declined this request but was called again sometime between 22 and 26 or 27 May 1992 by Simo Drljača and Dr. Milan Kovačević, who repeated the request.[367] Kuruzović claimed that he only went to the

[363] *Witness DD*, T. 9555; *Nada Markovska*, T. 9948.
[364] See *e.g*. Dr. *Momir Pusać*, T. 10961.
[365] Exh. S353, dated 16 August 1992.
[366] Exh. S407, dated 18 August 1992.
[367] *Slobodan Kuruzović*, T. 14618 and T. 14451.

school, and took up his duties as camp commander, when he heard that a large number of people were leaving Kozarac in this direction.[368]

186. The Trial Chamber, however, has reasonable doubts as to whether Slobodan Kuruzović's testimony accurately reflects the setting up of the Trnopolje camp.

187. As to the characteristics of Trnopolje camp, the Trial Chamber obtained no evidence that could lead to the conclusion beyond reasonable doubt that the entire camp was fenced off deliberately as such, although parts of it were enclosed by a pre-existing wall.[369] However, "even if there had been just a line on the ground, nobody would have dared to cross it",[370] on account of the fact that the camp was guarded on all sides by the army.[371] There were machine-gun nests and well-armed posts pointing their guns towards the camp.[372] Mr. Merdžanić indicated on Exhibit S321-2 the precise location of the checkpoints, snipers and machine-gun nests around the Trnopolje camp.[373] When Charles McLeod visited the camp towards the end of August 1992, he observed cartridge cases which indicated to him that there had been shooting in the area.[374] Changes affecting the appearance of the facilities were made whenever a foreign delegation was expected.[375]

188. There were several thousand people detained in the camp, the vast majority of whom were Muslim and Croat,[376] though there were some Serbs.[377] Nusret Sivać estimated that when he arrived in Trnopolje on 7 August 1992, there were around 5,000 people detained there.[378] Women and children were detained at the camp as well as men of military age, although the latter were not detained in large numbers.[379] The camp population had a high turnover with many people staying for less than a week in the camp before joining one of the many convoys to another destination.[380]

189. The commander of the Trnopolje camp was Slobodan Kuruzović.[381] He was referred to in the camp as "Major" and wore a military uniform.[382] The camp guards were all dressed in military,

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[368] *Slobodan Kuruzović* T. 14451-52.
[369] *Idriz Merdžanić*, T. 7748-51.
[370] *Idriz Merdžanić*, T. 7751.
[371] *Idriz Merdžanić*, T. 7839-45; *Nusret Sivać*, T. 6687-88.
[372] *Witness P*, T. 3352; *Charles McLeod*, T. 5121; *Idriz Merdžanić*, T. 7755.
[373] *Idriz Merdžanić,* T. 7752
[374] *Charles McLeod*, T. 5121.
[375] *Nusret Sivać*, T. 6691; *Witness X*, T. 6879 and *Idriz Merdžanić*, T. 7829-30.
[376] *Witness F*, 92 *bis* statement in *Tadić,* T. 1645; *Witness DD*, T. 9646; *Witness DI*, T. 13702.
[377] *Witness JA*, T. 10789.
[378] *Nusret Sivać*, T. 6783.
[379] *Idriz Merdžanić*, T. 7756-57.
[380] *Witness F*, 92 *bis* statement in *Tadić* T. 1645; *Witness U*, T. 6255.
[381] *Witness P*, T. 3352; *Witness E*, 92 *bis* transcript in *Sikirica,* T. 2525*; Witness I*, statement 12 and 17 July 2001, p.4; *Emsud Garibović*, 92 *bis* transcript in *Kvočha*, T. 5823; *Witness U*, T. 6224; *Witness Y*, 92 *bis* transcript in *Sikirica,* T. 1434-35; *Witness DI*, T. 13701; *Muharem Murselović*, T. 9736.
[382] *Idriz Merdžanić*, T. 7861-62.

rather than police uniform[383] and were from Prijedor.[384] Mr. Kuruzović stayed in a house very close to the Trnopolje compound. He was often seen by the detainees accompanied by the Balaban brothers, [385] well known for their brutality.

190. The detainees were provided with food at least once a day and, for some time, the families of detainees were allowed to bring food.[386] However the quantity of food available was insufficient and people often went hungry.[387] Moreover, the water supply was insufficient and the toilet facilities inadequate.[388] The majority of the detainees slept in the open air. Some devised makeshift were shelters of blankets and plastic bags.[389] While clearly inadequate, the conditions in the Trnopolje camp were not as appalling as those that prevailed in Omarska and Keraterm. Indeed, Mr. Vulliamy testified that when he interviewed several detainees who had just arrived from the Omarska and Keraterm camps, they appeared to be rather relieved to be in Trnopolje, where the conditions were apparently less dire than the conditions in the camps from which they had come.[390]

191. There were some Muslim doctors in the Trnopolje camp and detainees were permitted to seek medical attention from the makeshift clinic, although the medical supplies were clearly inadequate to meet the needs of the detainees.[391]

192. There is evidence to suggest that detainees who, in exceptional cases, could persuade a Serb to vouch for them were released from the camp.[392] In one case, a Croat family was even released from the camp, at the request of a relative.[393]

193. Slobodan Kuruzović objected to the characterisation of the Trnopolje camp in several documents as a "prisoner of war camp".[394] He said that nobody in Trnopolje was interrogated[395] and that the detainees had complete freedom of movement.[396] In the light of overwhelming evidence to the contrary, the Trial Chamber is not convinced by this testimony.[397]

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[383] *Witness U*, T. 6224; *Idriz Merdžanić*, T. 7861-62.
[384] *Nusret Sivać*, T. 6688.
[385] *Idriz Merdžanić*, T. 7830-32.
[386] *Witness B*, 2248.
[387] *Idriz Merdžanić*, T. 7758, *Witness F*, T. 1654
[388] *Idriz Merdžanić*, T. 7759.
[389] *Nusret Sivać*, T. 6783-84.
[390] *Edward Vulliamy*, T. 7961-62.
[391] *Witness U*, T. 6250.
[392] *Witness DD*, T. 9600-01.
[393] *Witness DI*, T. 13693-94.
[394] *Slobodan Kuruzović*, T. 14781.
[395] *Slobodan Kuruzović*, T. 14782.
[396] *Slobodan Kuruzović*, T. 14721-23 and T. 14860-61.
[397] See e.g.: *Slobodan Kuruzović*, T. 14867. ; Exh. D126 and D127.

194. Slobodan Kuruzović estimated that between 6,000 and 7,000 people passed through the Trnopolje camp in 1992. Those who passed through the camp were there for humanitarian reasons and were not guilty of any crime. They were fleeing war operations in Hambarine and Kozarac to protect themselves and their families.[398] He sees no basis for Dr. Stakić's characterisation, in an interview, of the people in the Trnopolje camp as "extremists".[399] Slobodan Kuruzović testified that the detainees that arrived in Trnopolje from the Omarska camp were classified as class "C", that is to say, they had not participated in the armed conflict.[400]

195. The International Red Cross arrived in the camp in mid-August 1992. A few days later the detainees were registered and received a registration booklet. The delivery of adequate food and medical supplies was arranged and the camp was officially closed down on 30 September,[401] although there is evidence to suggest that some 3,500 remained for a longer period, until they were transferred to Travnik in Central Bosnia.[402]

(b) Other detention facilities

(i) Prijedor JNA barracks

196. The JNA barracks in Prijedor were known as the Žarko Zgonjanin barracks. The Trial Chamber, in the absence of sufficient evidence, concludes that this facility was not set up as a camp but rather as a transition detention center. [403]

(ii) Miska Glava Community Centre

197. Some people who were fleeing the cleansing of Bišćani were trapped by Serb soldiers and taken to a command post at Miska Glava. Their names were recorded by an officer called Zoran Popović. The next morning they were called out, interrogated and beaten. This pattern continued for four or five days. Several men from the village of Rizvanovići were taken out by soldiers and have not been seen since.[404]

198. Around 100 men were arrested in the woods near Kalajevo by men in JNA and reserve police uniform and taken to the Miska Glava dom (cultural club). They were detained together in cramped conditions. They spent three days and two nights there and during that time were given a

[398] *Slobodan Kuruzović*, T. 14758-59.
[399] *Slobodan Kuruzović*, T. 14776; Exh. S187.
[400] *Slobodan Kuruzović*, T. 14859; see *supra* paras 170 and 180.
[401] *Idriz Merdžanić*, T. 7799-7800.
[402] Exh. D92-90.
[403] *Witness Y*, 92 *bis* transcript in *Sikirica,* T. 1386-87.
[404] *Elvedin Nasić*, statement 1995 p.3.

single loaf of bread to share and very little water to drink.[405] There is no reasonable doubt that this centre qualifies as a detention facility.

(iii) SUP building in Prijedor

199. The detention cells were located behind the main SUP building. There was also a courtyard[406] where people were called out at night and beaten up.[407] Prisoners detained in this building were also regularly threatened and insulted. Guards would curse them by calling them "balija", a derogative term for Muslim peasants of low origin.[408]

200. Although the SUP building appears to have functioned mainly as a transit centre for people to be sent to Omarska, the Trial Chamber is convinced that the terrain of the SUP was used as a detention facility.

3. Killings in the camps and detention facilities (based on allegations in paragraph 47 of the Indictment)

201. The Trial Chamber notes that there occurred without reasonable doubt numerous killings, both inside and outside the camp. However, it was not and will never be possible to identify case by case the direct perpetrator and his victim(s). This however is no impediment precluding the Trial Chamber from coming to the conclusion that killings were committed at a concrete place and at a concrete point in time despite not knowing the exact numbers of victims.

(a) Benkovać barracks – 25 July 1992

202. Based on the evidence of Samir Poljak, who testified about his detention in the Benkovac barracks, the Trial Chamber finds that at least one killing occurred at the Benkovac barracks. He recalls that a detainee by the name of Mr. Alić was beaten so badly that he could no longer stand the pain and begged to be killed. He heard a shot and then silence.[409]

(b) Room 3 massacre at Keraterm camp – 24 July 1992

203. On the basis of the evidence presented at trial, there can be no reasonable doubt that a massacre was committed in the Keraterm camp on or about 24 July 1992. The details of this event were recounted to the Chamber by several witnesses, one of whom survived the massacre.

[405] *Nermin Karagić*, T. 5213-20.
[406] *Kerim Mesanović,* 92 *bis* transcript in *Kvočka*, T. 5157.
[407] *Kerim Mesanović,* 92 *bis* transcript in *Kvočka*, T. 5158-60.

204. Around 20–21 July 1992, Room 3 at the Keraterm camp, which had previously held residents from Kozarac, was emptied. New detainees from the recently cleansed Brdo area were incarcerated.[410] Brdo comprises the villages of Bišcani, Rizvanovići, Rakovcani, Hambarine, Čarakovo and Zecovi.[411] For the first few days, the detainees were denied food as well as being subjected to beatings and abuse.[412]

205. On the day of the massacre, witnesses observed the arrival of a large number of armed persons in the camp, wearing military uniforms and red berets.[413] A machine-gun was placed in front of Room 3.[414]

206. That night, bursts of shooting and moans could be heard coming from Room 3.[415] A man in Room 1 was wounded by a stray bullet.[416] A machine gun started firing. The next morning there was blood on the walls in Room 3. There were piles of bodies and wounded people.[417] The guards opened the door and said: "Look at these foolish 'balijas' – they have killed each other".[418] Some of the detainees saw bodies laid out on the grass outside Room 3,[419] and the area outside Room 3 was covered with blood.[420] A truck arrived and one man from Room 1 volunteered to assist with loading the bodies onto the truck.[421] Soon after, the truck with all the bodies left the compound. The volunteer from Room 1 reported that there were 128 dead bodies on the truck.[422] As the truck left, blood could be seen dripping from it.[423] Later that day, a fire engine arrived to clean Room 3 and the surrounding area.[424]

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[408] *Witness R*, T. 4283.
[409] *Samir Poljak*, T. 6347-49.
[410] *Witness B*, T. 2236; *Jusuf Arifagić*, T. 7095-96.
[411] *Witness A*, T. 1795.
[412] *Witness C*, T. 2314-15; *Witness Y*, 92 *bis* testimony in *Sikirica,* T. 1434.
[413] *Jusuf Arifagić*, T. 7097; *Witness Y*, 92 *bis* testimony in *Sikirica,* T. 1458. See also *Witness K*, Statement, 18 August 2000, paras 33-35
[414] *Witness B*, T. 2237. See also *Jusuf Arifagić*, T. 7101; *Witness Y*, 92 *bis* testimony in *Sikirica,* T. 1458.
[415] *Witness B*, T. 2238-39; *Jusuf Arifagić*, T. 7098; *Witness Y*, 92 *bis* transcript in *Sikirica,*KT. 1431 and *Witness K*, Statement, 18 August 2000, paras 36-37.
[416] *Witness B*, T. 2239.
[417] *Witness E*, 92 *bis* testimony in *Sikirica,* T. 2502 and T. 2510-17.
[418] *Witness Q*, T. 3973.
[419] *Witness B*, T. 2239-40, *Jusuf Arifagić*, T. 7098-99; *Witness Y*, 92 *bis* testimony in *Sikirica,* T. 1431 and *Witness K*, Statement, 18 August 2000,paras 36-37.
[420] *Jusuf Arifagić*, T. 7098.
[421] *Witness B*, T. 2239-40.
[422] *Witness B*, T. 2240. *Witness Y* estimated that there were between 200 and 300 bodies on the truck. *Witness Y*, 92 *bis* testimony in *Sikirica,* T. 1432.
[423] *Jusuf Arifagić*, T. 7099.
[424] *Jusuf Arifagić,* T. 7099; *Witness Y*, 92 *bis* testimony in *Sikirica*, T. 1431.

(c) Prisoners killed in Keraterm camp – 24 July 1992

207. One witness reported about 42 or 43 shots, cries, shootings, and bodies found the next morning in front of Room 3 and loaded later on a Zastava 640.[425] Based on this evidence, the Trial Chamber is satisfied beyond all reasonable doubt that there was a second massacre in Room 3 the following day, though is not able to assess the exact number of victims.

(d) More than 100 prisoners killed in Omarska camp – July 1992

208. On the basis of the evidence presented at trial, the Trial Chamber finds that over a hundred people were killed in late July 1992 in the Omarska camp.

209. Around 200 people from Hambarine arrived in the Omarska camp sometime in July 1992. They were initially accommodated in the structure known as the "White House". Early in the morning, around 01:00 or 02:00 on 17 July 1992, gunshots were heard that continued until dawn. Dead bodies were seen in front of the White House. The camp guards, one of whom was recognised as Zivko Marmat, were shooting rounds into the bodies. "Everyone was given an extra bullet that was shot in their heads". The bodies were then loaded onto a truck and taken away.[426] There were about 180 bodies in total.[427]

(e) 44 men and women killed on a bus from the Omarska camp – July 1992

210. Around late July 1992, 44 people were taken out of Omarska and put in a bus. They were told that they would be exchanged in the direction of Bosanska Krupa.[428] They were never seen again. During the exhumation in Jama Lisac, 56 bodies were found. Most of them died from gunshot injuries. DNA analysis allowed the investigators to identify the bodies of Sureta Medunjanin, the wife of Bećir Medunjanin, and Ekrem Alić and Smail Alić, who were both last seen in Omarska.[429]

(f) 120 persons killed (Omarska camp)– 5 August 1992

211. In the early morning of 5 August 1992, Radovan Vokić, Simo Drljaća's driver, asked guards around to bring to the buses detainees from Keraterm who had been brought there the previous day from Prijedor to the Omarska camp. He was in possession of a list of detainees, which had been

[425] *Jusuf Arifagić*, T. 7100; *Witness Y*, 92 *bis* testimony in *Sikirica*, T. 1434.
[426] *Witness P*, T. 3359-61.
[427] *Witness P*, T. 3362; *Witness H*, 92 *bis* testimony in *Sikirica,* T. 2279.
[428] *Witness T*, 92 *bis* transcript in *Kvočha,* T. 2743.
[429] *Nicolas Sebire*, T. 7370-71.

carefully compiled, written out and signed by Simo Drljača.[430] At least 120 people,[431] amongst whom were Anto Gavranović, Juro Matanović, Refik Pelak, Ismet Avdić, Alija Alibegović, Esad Islamović and Raim Musić, were called out. They were lined up and put on to two buses which drove away towards Kozarac under escort.[432] The buses used were the usual public transportation buses in Prijedor.[433] Witness E compiled a list of about 60 people he knew personally who were taken away on these buses and killed.[434]

212. The corpses of some of those taken away on the buses were later found in Hrastova Glavica and identified.[435] A large number of bodies, 126,[436] were found in this area, which is about 30 kilometres away from Prijedor. In 121 of the cases, the forensic experts determined that the cause of death was gunshot wounds.[437]

(g) A number of persons outside Manjača camp – 6 August 1992

213. Between six and eight men who were taken in a bus from the Omarska camp to Manjača camp were killed outside the Manjača camp.[438] Several witnesses testified that when they disembarked from the bus, two men were escorted away and their throats were slit.[439]

(h) Approximately 200 persons killed on the Vlašić mountain convoy – 21 August 1992

214. The Chamber heard evidence about this massacre from individuals who had travelled in the convoy over Mount Vlašić on 21 August and, in some cases, first-hand accounts from survivors of the massacre. The Chamber has primarily relied on eyewitness accounts of the massacre and is satisfied as to the reliability of this evidence.

215. On 21 August 1992, buses started to arrive in the Trnopolje camp and the detainees were told to board them. At this stage, there were very few women and children left in the camp, so it was mostly men who boarded the four buses.[440] The camp commander, Slobodan Kuruzović was present for most of this time.[441] The buses proceeded towards Kozarac, where they were joined by

[430] Exh. S427, video of *Mr. Prcać* interview, ERN 0105-7521-0105-7522.
[431] According to *Mr. Prcać*, the number was 125, S427, video of *Mr. Prcac* interview, ERN 0105-7521-0105-7522.
[432] *Witness B*, T. 2243 and T. 2265.
[433] *Witness B*, T. 2243-44.
[434] *Witness E,* 92 *bis* transcript in *Sikirica,* T. 2522–33.
[435] *Witness E,* 92 *bis* transcript in *Sikirica,* T. 2527.
[436] *Nicolas Sebire,* T. 7361; see also *Witness B*, T. 2246.
[437] *Nicolas Sebire*, T. 7361-62.
[438] See *e.g. Witness A*, T. 1839 and *Witness M*, 92 *bis* statement, 6 August 2000, p. 8.
[439] *Witness C*, T. 2385. *Muharem Murselović*, T. 2771-72.
[440] *Witness X*, T. 6886-87.
[441] *Witness X*, T. 6887.

four other buses which had been loaded in Tukovi and eight lorries.[442] The buses had been organised by the Serb authorities to transport people out of Prijedor into Muslim-held territory.[443]

216. The convoy was accompanied by a number of police vehicles.[444] Mount Vlasić was a landmark on the way to the final destination which was the line of separation between Serb and Muslim controlled territory in the direction of Travnik.[445] The convoy progressed slowly over the dirt track and bumpy terrain. The buses and lorries came to a halt near a creek.[446] The passengers were ordered to leave the buses and line up outside.[447] Witness X and his father were told to exit the bus. At this point the policemen who were accompanying the convoy huddled together and appeared to be discussing something.[448] At that moment a truck appeared and the women and children were told to board it. Another truck arrived and departed with more detainees but left behind a number of people who had been at the Trnopolje camp and some residents of Kozarac.[449]

217. The prisoners were then ordered to line up and board two of the buses. There were approximately 100 people packed onto each bus.[450] One individual in police uniform appeared to be in charge during this transfer procedure. He was carrying a pistol and had thick black hair.[451] The bus travelled for about another 10-15 minutes and then drew up on a road flanked on one side by a steep cliff and on the other by a deep gorge. The men were ordered to get out and walk towards the edge of the gorge where they were told to kneel down. The individual who appeared to be in charge said: "Here we exchange the dead for the dead and the living for the living."[452] Then the shooting began. Two soldiers went to the bottom of the gorge and shot people in the head.[453]

218. The Chamber was provided with some additional information about the precise location where the massacre occurred and on those who took part in it. The area is known as Koricanske Stijene.[454] Among the guards and soldiers who were present at the site of the execution, Dragan Knezević, Sasa Zecević, Zoran Babić, Zeljko Predojević, Branko Topala and a man nicknamed "Dado" were identified.[455]

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[442] *Witness X*, T. 6896.
[443] *Witness B*, T. 2257.
[444] *Witness X*, T. 6896.
[445] *Witness X*, T. 6897.
[446] *Witness X*, T. 6899-6900; *Witness B*, T. 2261-62.
[447] *Witness B*, T. 2261-62.
[448] *Witness X*, T. 6900.
[449] *Witness B*, T. 2261-62.
[450] *Witness X*, T. 6900-02.
[451] *Witness X*, T. 6902-03.
[452] *Witness X*, T. 6904-06.
[453] *Witness X*, T. 6906-07.
[454] *Witness X*, T. 6914.
[455] *Witness X*, T. 6915-16.

219. Slobodan Kuruzović testified that he was present when the buses were loaded for the convoy across Mount Vlasić. He said that he had heard it was a group of the police transporting people across Mount Vlasić and that the guards had singled men out from the group, robbed them and then killed them. He did not know whether Darko Mrda, an ex-pupil of his, accompanied the transport. He testified that the Vlasić mountain convoy was organised by the Executive Committee and that the security was organised by the SUP. Mr. Kuruzović testified that he did not recognise any of the guards on the buses that day. He said that the buses came from AutoTransport.[456] Mr. Kuruzović testified that he wrote a report in the brigade command on the Vlašić massacre and stated that the civilian police had served as escorts. Mr. Kuruzović recalled having stated in that report when the crimes were committed, when the group had left with the buses and also how the transportation had been organised and that the Executive Board supplied the fuel, that the public security station provided escort for this convoy and that these escorts were tasked with providing for the security of these people until their arrival in the territory of Travnik and further on in either Bosnia and Herzegovina or abroad.[457] Mr. Kuruzović stated that he may have discussed this with Dr. Stakić but that it did not happen in any formal way.[458]

(i) Conclusions on killings in the Omarska camp

220. On the basis of the evidence presented at trial, the Chamber is convinced that hundreds of detainees were killed or disappeared in the Omarska camp between the end of May and the end of August when the camp was finally closed. Among them were:

- Esad and Mirsad Alić.[459]
- Ismet Aras.[460]
- Ahmet Atarović.[461]
- Hamdija Avdagić.[462]
- Islam Bahonjić [463]
- Hamdija Balić.[464]
- Enes Begić.[465]
- Dzevad, Edin and Ekrim Besić.[466]
- Zlatan Besirević.[467]
- Ahmed Blazević.[468]

[456] *Slobodan Kuruzović*, T. 14531-32, T. 14872-74.
[457] *Slobodan Kuruzović*, T. 14576.
[458] *Slobodan Kuruzović*, T. 14577.
[459] *Witness R*, T. 4314.
[460] *Nusret Sivać*, T. 6634.
[461] *Nusret Sivać*, T. 6680.
[462] *Witness R*, T. 4318-20.
[463] *Witness A*, T.1920, *Witness R*, T. 4302, *Nusret Sivać*, T. 6686.
[464] *Witness A*, T.1920-21.
[465] *Nusret Sivać*, T. 6684-86, *Dr. Beglerbegović*, T. 4148-49.
[466] *Witness R*, T. 4315 and T. 4318.
[467] *Witness A*, T.1909.

- Ismail Burazović.[469]
- Muhamed Čehajić.[470]
- Fadil Colić.[471]
- Mustafa Crnalić.[472]
- Ziko Crnalić.[473]
- Sead Crnić.[474]
- Esref Crnkić.[475]
- Husein Crnkić.[476]
- Sead Curak.[477]
- Dr. Curak.[478]
- Sakib Delmić.[479]
- Ibrahim Denić.[480]
- Akib Deumić.[481]
- Osman Didović.[482]
- Muhamed Fazlić.[483]
- Ferid Garibović, Senad Garibović, Enes Garibović, Hasib Garinović, Dervis Garibović, Irfan Garibović, Dzevad Garibović, Suvad Garibović, Hamdo Garibović, and Mirsad Jakupović.[484]
- Habiba Harambasić.[485]
- Zijljad Hodžić.[486]
- Jasko Hrnić[487]
- Hajrudin Jakupović.[488]
- Idriz Jakupović.[489]
- Nihad Jakupović.[490]
- Suad Jakupović.[491]
- Asaf Kapetanović.[492]

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[468] *Witness R*, T. 4319.
[469] *Nusret Sivać*, T. 6680.
[470] *Witness A*, T. 1909, *Nusret Sivać*, T. 6629-30.
[471] *Witness R*, T. 4318-19.
[472] *Witness A*, T.1910-11. *Kerim Mesanović*, who was detained in Omarska, saw *Crnalić* being killed. *Krle*, who was the shift commander was present and *Zeljko*, the camp commander was also there. Kerim Mesanović, 92 *bis* transcript in *Kvočka,* T. 5191.
[473] *Witness A*, T.1911.
[474] *Witness R*, T. 4319.
[475] *Witness A*, T. 1912. *Mirsad Mujadžić* testified that this individual was killed in Omarska because it was believed that he was politically involved. *Mirsad Mujadžić*, T. 3737.
[476] *Witness A*, T.1921. *Mirsad Mujadžić*, T. 3737.
[477] *Dr. Beglerbegović*, T. 4148-49.
[478] *Witness Z*, T. 7560.
[479] *Witness R*, T. 4315.
[480] *Witness R*, T. 4314-15.
[481] *Witness R*, T. 4315.
[482] *Witness R*, T. 4315.
[483] *Witness R*, T. 4315.
[484] *Emsud Garibović*, 92 *bis* transcript in *Kvočka,* T. 5819-22, T. 5837 and T. 5839.
[485] *Dr. Beglerbegović*, T. 4148.
[486] *Witness R*, T. 4304-14.
[487] *Samir Poljak*, T. 6374; *Witness W*, T. 6831.
[488] *Witness R*, T. 4304 and T. 4314.
[489] *Witness A*, T.1915-17.
[490] *Samir Poljak*, T. 6374.
[491] *Witness R*, T. 4320.
[492] *Witness A*, T.1914.

- Burhurudin Kapetanović,.[493]
- Mehmedalija Kapetanovic.[494]
- Emir Kerabasic.[495]
- Omer Kerenović.[496]
- Edim Kodžić.[497]
- Aleksandar Komsić.[498]
- Mirzet Lisić.[499]
- Ziko Mahmuljin.[500]
- Osman Mahmuljin.[501]
- Meho Mahmutović.[502]
- Mr. Becir Medunjanin.[503]
- Sadeta Medunjanin.[504]
- Esad Mehmedagić.[505]
- Nijaz Memić.[506]
- Edin Mujagić.[507]
- Fikret Mujakić.[508]
- Fikret Mujidzić.[509]
- Kadir Mujkanović.[510]
- Senad Mujkanović.[511]
- Vasif Mujkanović.[512]
- Dr. Musić.[513]
- Ibrahim Okanović.[514]
- Jusuf Pasić.[515]
- Camil Pezo.[516]
- Fnu Poljak (father of Samir).[517]
- Abdulah Puskar.[518]
- Dr. Eso Sadikovic,.[519]

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[493] *Witness A*, T.1911.
[494] *Witness A*, T.1913-14.
[495] *Witness R*, T. 4314; *Samir Poljak*, T. 6374.
[496] *Witness A*, T. 1913 and *Nusret Sivać*, T. 6680.
[497] *Nusret Sivać*, T. 6634.
[498] *Witness A*, T.1912.
[499] *Nusret Sivać*, T. 6634.
[500] *Witness A*, T.1911-12.
[501] *Witness A*, T. 1912; *Dr. Beglerbegović*, T. 4148; *Nusret Sivać*, T. 6684-86; *Witness Z*, T. 7560.
[502] *Nusret Sivać*, T. 6680.
[503] *Witness A*, T. 1909
[504] *Witness A*, T. 1910.
[505] *Witness A*, T. 1913; *Nusret Sivać*, T. 6680.
[506] *Witness R*, T. 4318.
[507] *Witness R*, T. 4315.
[508] *Witness A*, T. 1920
[509] *Witness A*, T. 1915.
[510] *Witness A*, T. 1920.
[511] *Witness A*, T. 1919
[512] *Witness R*, T. 4318.
[513] *Witness Z*, T. 7560.
[514] *Witness A*, T. 1914.
[515] *Nusret Sivać*, T. 6686; *Dr. Beglerbegović*, T. 4148-49; *Witness Z*, T. 7560.
[516] *Witness A*, T. 1917.
[517] *Samir Poljak*, T. 6373-74.
[518] *Witness A*, T.1911.
[519] *Witness A*, T. 1910; *Dr. Beglerbegović* T. 4148-49; *Nusret Sivać*, T. 6686-87; *Witness Z*, T. 7560.

- Silvije Sarić.[520]
- Nedzad Serić.[521]
- Zeljko Sikora.[522]
- Rufat Suljanović.[523]
- Mustafa Tadžić.[524]
- Meho Tursić,.[525]
- Bajram Zgog.[526]

221. In the afternoons a yellow truck stopped by the White House to pick up, on average, between 6 and 13 bodies. The truck would return empty within five minutes.[527] Both Cedo Vuleta and Branko Rosic, who worked at the Omarska mines complex during the time it was being used as a camp, testified they saw dead bodies at the camp.[528]

222. A dispatch from the Command of the 1st Krajina Corps dated 22 August 1992[529] refers to the mass execution of civilians in the camps and centres. It states that everyone was trying to pass responsibility for issuing orders for these executions on to someone else.

(j) Keraterm camp – between 24 May and 5 August 1992

223. The Trial Chamber finds that killings were committed in the Keraterm camp between 24 May and 5 August 1992, when the camp finally closed. A brief review of the relevant evidence follows.

224. Among others, the following persons, known by their names, were killed in the Keraterm camp:

- Dzemal Mesić,[530]
- Sabid Sijecic,[531]
- Samir Musić,[532]
- Fatusk Musić,[533]
- Muharem Sivać,[534]
- Drago Tokmadžić,[535]

[520] *Nusret Sivać*, T. 6680.
[521] *Witness A*, T. 1913; *Nusret Sivać*, T. 6680.
[522] *Nusret Sivać*, T. 6686; *Dr. Beglerbegović*, T. 4148-49; *Witness Z*, T. 7560.
[523] *Nusret Sivać*, T. 6686; *Dr. Beglerbegović*, T. 4148-49; *Witness A*, T. 1914.
[524] *Witness A*, T. 1913.
[525] *Witness A*, T. 1920.
[526] *Witness A*, T. 1918.
[527] *Muharem Murselović*, T. 2766- 67; *Dr. Beglerbegović*, T. 4120.
[528] *Branko Rosić*, T. 12662; *Cedo Vuleta*, T. 11579-81.
[529] Exh. S358.
[530] *Witness O*, T. 2233.
[531] *Witness E*, 92 *bis* testimony in *Sikirica,* T. 2508.
[532] *Witness E*, 92 *bis* testimony in *Sikirica,* T 2506-07.
[533] *Witness E*, 92 *bis* testimony in *Sikirica,* T. 2506-07.
[534] *Witness E*, 92 *bis* testimony in *Sikirica,* T. 2518.

- Fikret Avdić,[536]
- Besim Hergić,[537]
- Zehro Causević,[538]
- Dzemal Mesić,[539]
- Safet Mesić,[540]
- Emsud Bahonjić.[541]

Witness E compiled a list of about 60 people who were killed in Keraterm and later identified some of the victims at an exhumation site in Hrastova Glavica.[542]

(k) Trnopolje camp – between 25 May and 30 September 1992

225. Although the killings in the Trnopolje camp were committed on a much smaller scale than those in the Keraterm and Omarska camps, nonetheless, the Chamber finds, on the basis of the following evidence, that killings did occur.

226. A detainee of the Trnopolje camp[543] was on several occasions ordered to bury bodies from the camp. He recognised the bodies of Meula Idrizvic, Sadik Idrizvic, Munib Hodzic, Samir Elezovic, Ante Mrgolja and his son Goran or Zoran and the Foric brothers.[544] Witness W testified that her father and brother, along with seven members of the Forić family were killed in the Trnopolje camp.[545] An elderly man called Sulejman Kekić was killed in the Trnopolje camp by a guard known as "Zolka".[546] Teofik Talić and a father and son with the last name "Murgić" were also killed in the camp.[547]

227. On one occasion, several soldiers arrived from the direction of Kozarac. A man called Tupe Topala was among them and he was carrying a knife and shouting: "Where are you balijas? I want to cut your throats". The soldiers were yelling and cursing. Afterwards they lead 11 men out of the camp – they had their heads down and their hands over their head. The soldiers took the men into a

[535] *Witness Y*, 92 *bis* testimony in *Sikirica,* T. 1421-25.
[536] *Witness Y*, 92 *bis* testimony in *Sikirica,* T. 1421-25.
[537] *Witness Y*, 92 *bis* testimony in *Sikirica,* T. 1421-25.
[538] *Witness Y*, 92 *bis* testimony in *Sikirica,* T. 1421-25.
[539] *Witness O*, T. 3216-17.
[540] *Witness O*, T. 3213.
[541] *Witness K*, statement 18 August 200, para. 24. *Jusuf Arifagić* also testified that he saw the dead body of *Emsud Bahonjić* on the garbage dump in Keraterm. *Jusuf Arifagić,* T. 7089-90.
[542] *Witness E*, 92 *bis* testimony in *Sikirica,* T. 2522-23 and T. 2527.
[543] *Mustafa Mujkanović*, 92 *bis* transcript in *Tadić,*T. 3172.
[544] *Mustafa Mujkanović*,92 *bis* transcript in *Tadić,* T. 3184-87. In relation to the *Forić* brothers, *Witness U*, T. 6253-54.
[545] *Witness W*, T. 6835-37; *Idriz Merdžanić*, T. 7786 who confirmed that five or six people with the name of *Forić* were taken from the camp and never seen again, Exh. S324.
[546] *Witness X*, T. 6882-83.
[547] *Idriz Merdžanić*, T. 7785-86.

maize field behind the house where Witness Q was staying. She later heard gunshots and screams.[548]

4. Interrogations, beatings and sexual assaults in the camps and detention facilities (based on allegations in paragraph 49 of the Indictment)

228. The Indictment alleges that in the detention facilities discussed above the non-Serb detainees were subjected to physical and mental abuse, including torture, beatings with weapons, sexual assaults and the witnessing of inhumane acts, including murder and the infliction of serious bodily or mental harm.

(a) Omarska camp

229. The Trial Chamber finds that many of the detainees at the Omarska camp were subjected to serious mistreatment and abuse.

230. Numerous witnesses were beaten while undergoing interrogation. *Inter alia,* Witness P was beaten with a rubber baton.[549] Dzemel Deomić was interrogated on two separate occasions and suffered serious injuries from the accompanying mistreatment. During the first interrogation, one of the guards placed a gun in his mouth and pulled the trigger. During the second he was beaten with a metal rod and a wire and kicked severely.[550] Witness T was seriously beaten during an interrogation.[551]

231. Aside from the use of physical force to elicit information, the guards meted out harsh beatings to the non-Serb detainees on a routine basis. On account of the gross mistreatment, people were in a constant state of fear. Every night between 3 and 10 people were called out, some of whom were never seen again.[552] Nedzad Serić, the president of the court, was beaten and did not survive the camp. Witness A testified that it was normal for the detainees to be beaten.[553] The detainees were beaten with baseball bats, and pieces of metal chains with balls attached to them.[554]

232. The two buildings in the compound of the Omarska camp known as the "White House" and the "Red House" appear to have been the most notorious locations for beatings.[555] Numerous

[548] *Witness Q*, T. 3998 – 99.
[549] *Witness P*, T. 3357.
[550] *Dzemel Deomić*, T. 3272
[551] *Witness T*, 92 *bis* transcript in *Kvočka*, T. 2660-63.
[552] *Witness A*, T. 1887-88.
[553] *Witness A*, T. 1882-83.
[554] *Nusret Sivać*, T. 6681
[555] *Witness C*, T. 2331-37.

detainees were brought to the "White House" every day to be beaten.[556] They were beaten by one or more guards with, among other things, batons[557] (sometimes with a metal ball attached[558]), wood objects and copper cables[559]. Sometimes the detainees lost consciousness as a result of the beating[560].

233. The Trial Chamber concludes from this evidence that the detainees at the camp were constantly and systematically mistreated while undergoing interrogations or because of their ethnicity. In this context, the Trial Chamber recalls that the vast majority of inmates were Muslims and Croats.

234. The Trial Chamber also heard evidence of sexual abuse taking place in the Omarska camp.

235. Witness H was raped at Omarska every night usually by three or four men.[561] Witness H later learned that one of the men who raped her was called Pavlić or Pavić.[562] Due to the frequent rapes, Witness H experienced severe blood loss and fell into a coma. Dr. Kosuran was summoned and he told the guard that she was weak and in danger as a result of low blood pressure. Witness H had constant painful bleeding from the rapes.[563]

236. One incident of sexual abuse occurred in the "White House" on 26 June 1992. The guards tried to force Mehmedalija Sarajlic to rape a girl.[564] He begged: "Don't make me do it. She could be my daughter. I am a man in advanced age." The soldiers replied: "Well, try to use the finger." There was a scream and beatings, and then everything was silent. A minute or two later, a guard came into the room and asked for two strong men who went to fetch the body of Mehmedalija Sarajlic. His dead body was later seen near the "White House".[565]

(b) Keraterm camp

237. The Trial Chamber finds that the detainees at the Keraterm camp were subjected to terrible abuse. The evidence demonstrates that many of the detainees at the Keraterm camp were beaten on a daily basis. Up until the middle of July, most of the beatings happened at night. After the detainees from Brđo arrived, around 20 July 1992, there were "no rules", with beatings committed both day and night. Guards and others who entered the camp, including some in military uniforms

[556] *Witness R*, T. 4304, *Witness T*, 92 *bis* transcript in *Kvočka*, T. 2744-48.
[557] *Muharem Murselović*, T. 2732-36.
[558] *Witness T*, 92 *bis* transcript in *Kvočka*, T. 2732.
[559] *Witness A*, T. 1896.
[560] *Witness C*, T. 2331-32
[561] *Witness H*, 92 *bis* transcript in *Sikirica,* T. 2275-76.
[562] *Witness H*, 92 *bis* transcript in *Sikirica,* T. 2276.
[563] *Witness H*, 92 *bis* transcript in *Sikirica,* T. 2276.
[564] *Witness A*, T. 1901.

carried out the beatings. There were no beatings in the rooms since the guards did not enter the rooms – people were generally called out day and night for beatings.[566] Some of the people who were called out did not return[567] and those that did return were all bruised. Jusuf Arifagić and others were called out one night and ordered to lie down on the asphalt while the soldiers beat them and asked questions. He was asked to confess that he was a Green Beret and, as a result of the beatings, he sustained serious injuries to his head, arms and knees.[568]

238. The Trial Chamber heard personal accounts from non-Serb witnesses of having been subjected to gross mistreatment in the camp.[569] On one occasion, when Witness K was returning from the toilet, he was ordered by a guard to bang his head against a thin metal wall. Two guards then grabbed him and banged his head into the wall. Witness K fainted but managed to get back to his room.[570] One night, on Čupo Banović's shift, some 50 men, including some very old men, arrived in the camp from Elezi and Witness K saw and heard them being beaten all night. On one occasion, guard Čupo called Witness K over and put the barrel of his pistol into his mouth.[571] Witness C testified that the condition of the people detained in one of the rooms to which he was taken after a beating was terrible: they were badly beaten and many of them were moaning and crying. In some cases it was difficult to recognise people.[572] Witness Y, a Croat, testified that immediately upon arrival at the Keraterm camp he saw guards beating the detainees. When he reported this conduct to some of the other guards, he was himself beaten.[573] On a sketch diagram of the Keraterm camp[574], Witness Y indicated the location of a room where the beatings were generally conducted. He himself was taken there and badly beaten on one occasion. He sustained serious injuries from the mistreatment, including a broken arm and nose. Several other detainees were beaten that same evening.

239. A camp guard nicknamed "Duća" was responsible for many beatings. Duća often came to the camp in a Mercedes, however he was not a regular guard. On one occasion, he ordered all prisoners from Kamičani in Room 3 to come out and he and others beat them with a metal baton that had a metal ball on one end. Amongst those beaten were Senad Kešić and Enes Alić. Mr.

[565] *Witness A*, T. 1901-02.
[566] *Witness B*, T. 2231-32, *Witness K*, 92 *bis* transcript in *Sikirica,* T. 4108.
[567] *Witness B*, T. 2232.
[568] *Jusuf Arifagić*, T. 7087.
[569] *Witness C*, T. 2314-15; *Witness K*, 92 *bis* transcript in *Sikirica,* T. 4036.
[570] *Witness K*, 92 *bis* statement, para. 15.
[571] *Witness K*, 92 *bis* statement, para. 23.
[572] *Witness C*, T. 2315.
[573] *Witness Y*, 92 *bis* transcript in *Sikirica,* T. 1394.
[574] Exh. S237-2

Krivdić was stabbed in the calf with a bayonet.[575] On another occasion, Duća's Mercedes drove into Room 2 and the Mercedes occupants started beating the prisoners.[576]

240. Rape was also committed in the Keraterm camp. A woman, Witness H, was taken to a first floor room by a guard whose name she mentioned. Then this guard raped her in a "sort of ceremony".[577] He left her lying on a desk and other men came into the room. The victim could not tell the number or the names of the rapists, and she lost consciousness several times. When she awoke the next morning, she was covered in blood and thought she was dying. Later on, she was brought to the Omarska camp. Her fate there was discussed in that context.[578]

241. The Chamber heard convincing evidence of one incident in late July, when Witness B saw the men from Brđo, who were being kept in Room 3, outside. Half the group was naked from the waist-down and standing, and half the group was kneeling. According to Witness B: "They were positioned in such a way as if engaged in intercourse."[579]

(c) Trnopolje camp

242. The Trial Chamber finds that, although the scale of the abuse at the Trnopolje camp was less than that in the Omarska camp, mistreatment was commonplace. The Serb soldiers used baseball bats, iron bars, rifle butts and their hands and feet or whatever they had at their disposal to beat the detainees. Individuals were who taken out for questioning would often return bruised or injured.[580] According to Dr. Merdžanić, who worked in the makeshift medical clinic in Trnopolje during his detention, detainees would often be taken to a room that had served as a laboratory for interrogation.[581] Dr. Merdžanić could hear the sounds of beating and verbal abuse. Some of the victims were brought to the clinic to have their wounds dressed.[582] Pictures were secretly taken of seriously injured detainees.[583]

243. Around 26 July 1992, Witness Q was arrested and taken to Trnopolje, where she stayed until 4 September 1992. She was told by the soldiers, who harassed her and mistreated her, that she was

[575] *Witness K*, 92 *bis* statement, paras 28-29.
[576] *Witness K*, 92 *bis* statement, para. 31.
[577] *Witness H*, 92 *bis* transcript in *Sikirica*, T. 2268.
[578] See*, supra,* para. 235.
[579] *Witness B*, T. 2243.
[580] *Witness U*, T. 6250.
[581] Exh. S321-16 and S321-17. See *Idriz Merdžanić*, T. 7784-85.
[582] *Witness F*, 92 *bis* transcript in *Tadić*, T. 1655 and T. 1660.
[583] Pictures of the injuries sustained by two of the detainees were entered into evidence as Exh. S321-7 and S321-14; *Idriz Merdžanić*, T. 7773 and T. 7778.

an extremist from Hambarine. They cursed her "balija mother"[584]. Witness Q saw her younger brother there – he was black and blue from beating and his trousers were covered in blood[585].

244. Both Witness F and Witness I heard that women were raped in the Trnopolje camp.[586] Several other witnesses testified that women who were detained at the Trnopolje camp were taken out of the camp at night by Serb soldiers and raped or sexually assaulted.[587] Dr. Idriz Merdžanić testified that there were several women who sought help at the clinic. Dr. Merdžanić was able to arrange for several of them to visit the gynaecological ward in Prijedor in order to enable them to establish that the rapes had occurred. Dr. Duško Ivić, a Serb physician, reported that all the women who went had been raped, although Dr. Merdžanić himself never saw the results of the medical examinations.[588] If this hearsay evidence were the only evidence available, this Trial Chamber may have had reasonable doubts that rapes did occur. However the Trial Chamber did hear evidence from an individual who was herself[589] a victim of rape in the camp and confirmed that several women and young girls, including a 13 year old one, were raped in the camp or taken out at night for this purpose. Thus, the Trial Chamber is satisfied that rapes did occur in the Trnopolje camp.

(d) Miska Glava community centre

245. The Trial Chamber is convinced that interrogations and beatings occurred at the Miska Glava Community Centre. It was a cultural club which had been transformed into a command post.[590] People were detained there in very cramped conditions.[591] Around 21 July 1992, a group of 114 people were moved in buses to Miska Glava where their names were recorded by an officer. People were regularly called out at the detention unit to be beaten.[592]

(e) Ljubija football stadium

246. The Trial Chamber is satisfied beyond reasonable doubt that serious beatings occurred at the Ljubija football stadium.[593]

247. Around 25 July 1992, civilians were taken on buses to the stadium in Ljubija.[594] Detainees were ordered off the buses and some were made to run. As they ran past the bus driver they each

[584] *Witness Q*, T. 3958 and T. 3997
[585] *Witness Q*, T. 3958-59
[586] *Witness F*, 92 *bis* transcript in *Tadić*, T. 1665-67 and *Witness I,* 92 *bis* statement 12 and 17 July 2001, p.4.
[587] *Witness U*, T. 6255-56; *Idriz Merdžanić,* T. 7761; *Nusret Sivać*, T. 6690.
[588] *Idriz Merdžanić*, T. 7761-62.
[589] See *infra* Section III. F. 5. (c) d.
[590] *Elvedin Nasić*, 92 *bis* statement 1995, p. 3; and *Nermin Karagić*, T. 5217.
[591] *Nermin Karagić*, T. 5213.
[592] *Nermin Karagić*, T. 5220-23.

received a blow[595]. Most new arrivals were beaten and forced to look down. They were then lined against the wall in the stadium and ordered to bend down (forward at the waist). As the detainees were beaten "there was a stream of blood running along the wall."[596]

(f) Prijedor SUP

248. The Trial Chamber heard convincing testimony from many people who were taken to the SUP building in Prijedor and subjected to beatings. People of various ethnicities were imprisoned; they had in common that all of them were non-Serbs.[597] Names were called out in the evening and people were taken to the courtyard, where they had to stand in front of the wall and stretch out their feet which would be hit.[598] Some detainees were forced to run towards the police van, along two rows of police officers[599], while others were taken two by two out of the group into the van to be beaten.[600] Prisoners were also brought to the courtyard where the atmosphere was brutal.[601] They were lined up against the wall and savagely beaten with metal objects by members of the intervention platoon.[602]

249. Nihad Basić was taken to the courtyard by this squad. He was told: "Come here, you Turk" and, after being beaten, he was thrown back into his cell covered with his own blood.[603] Another detainee, Dr. Mahmuljin, fell down as a result of these beatings. He was falsely accused by two guards of having killed Serb children and was threatened with death[604]. Radio Prijedor made a public announcement falsely accusing Dr. Mahmuljin of having intentionally killed one of his Serb patients. Dr. Mahmuljin's arm had been fractured in several places. He was totally motionless and he had to be dragged to the police van when they transferred him to Omarska[605].

(g) Prijedor JNA barracks

250. The Trial Chamber has already concluded that the JNA barracks in Prijedor were not used as a camp but rather as a transit detention center.[606]

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[593] See *infra* Section I. E. 5. (h).
[594] *Elvedin Nasić*, statement 15 January 1995, p.3.
[595] *Nermin Karagić*, T. 5228.
[596] *Nermin Karagić*, T. 5233.
[597] *Witness A*, T. 1849.
[598] *Witness A*, T. 1851.
[599] *Witness A*, T. 1851.
[600] *Witness R*, T. 4285; *Witness A*, T. 1851; *Kerim Mesanović,* 92 *bis* transcript in *Kvočka*, T. 5153
[601] *Nusret Sivać*, T. 6620-21.
[602] *Nusret Sivać*, T. 6620-21.
[603] *Witness A*, T. 1851.
[604] *Nusret Sivać*, T. 6620-21.
[605] *Nusret Sivać*, T. 6621
[606] See para. 196.

5. Killings in Prijedor Municipality (based on allegations in paragraph 46 of the Indictment)

251. The Trial Chamber is satisfied beyond reasonable doubt that the following killings occurred.

(a) Kozarac – May and June 1992

252. The Trial Chamber has previously found that numerous killings were committed during the attack on Kozarac.[607]

(b) Mehmed Sahorić's house, Kamicani – 26 May 1992

253. The only survivor, Fatima Sahorić, was detained in Trnopolje. She and her family along with a number of neighbours had been sheltering in the basement of their house on 26 May 1992 when a group of soldiers arrived and asked them to surrender their weapons. Then a soldier fired a rifle-launched grenade into the basement and everyone, except Fatima, was killed.[608]

254. Dr. Idriz Merdžanić spoke with the commander of the camp, Slobodan Kuruzović, about collecting and burying the bodies. When granted permission, Fatima Sahorić and six others drove to Kamičani, where the house was located. They were accompanied by soldiers. All of the dead were Muslims and Fatima Sahorić was able to identify the following individuals from among them: Dzamila Mujkanovic and her brother, Mehmed Sahoric, Lutvija Foric and her son, Tofik, Serifa Sahoric and Jusuf.[609]

(c) Hambarine – July 1992

255. A second attack on Hambarine occurred on or around 1 July 1992. Witness Q testified that she and her family were living in Gomjenica and one afternoon she heard a noise and saw a group of soldiers rounding up people from the surrounding houses. She asked her husband to leave, but the soldiers came with weapons and with masks over their faces and began to beat her husband in front of her and the children.[610] The soldiers told Witness Q to go back to the house and they took her husband away. That was the last time she saw him.[611] Witness Q testified that she continued to watch as the soldiers rounded up more people and took them to the Zeger bridge. The soldiers started to kill people and threw their bodies into the Sana river, which was red with blood.[612] Not all the men were killed; some were loaded onto buses and taken to the camps – Omarska and Keraterm. She identified some of the people taken to the buses, but she could not recognise the men

[607] See *supra* Section I. E. 1. (b-c)
[608] *Witness U*, T. 6246; *Idriz Merdžanić*, T. 7739.
[609] *Witness U*, T. 6239-44; *Idriz Merdžanić*, T. 7739.
[610] *Witness Q*, T. 3937.
[611] *Witness Q*, T. 3947

in the river.[613] Witness Q described the soldiers' uniforms, identified some of them, and marked some photographs.[614]

(d) Jaškići – 14 June 1992 (withdrawn) [615]

(e) Bišćani – July 1992

256. Bišćani was a village and a local commune comprising the following hamlets: Mrkalji, Hegici, Ravine, Duratovici, Kadici, Alagici and Cemernica. On 20 July 1992, Serb forces attacked this village. There were forces massing in Mrkalji and screams could be heard from that area. Approximately 30 to 40 people were killed by Serb forces with rifles and heavy weapons on an APC near a clay pit in the hamlet of Mrkalji.[616] The soldiers were wearing camouflage uniforms and the victims were wearing civilian clothes. The civilian men had not provoked the soldiers and there were people running from the guns before the soldiers opened fire.[617]

257. On arriving in Cemernica, Witness S met a man called Muhamed Hazdic who had witnessed killings by soldiers in the hamlet of Alagici. Screams and shots could still be heard from the direction of Alagici.[618] Shortly thereafter, the military arrived in the village of Cemernica, first the soldiers wearing blue uniforms, then the military vehicles and APCs. Witness S, along with a group of about 35 to 40 people all dressed in civilian clothes and unarmed, had sought shelter in the cemetery near Smail Hadzic's house where the soldiers soon caught up with them[619] He observed one of the soldiers questioning Muhamed Hadzic on his ethnicity and then the soldier shot him at point-blank range. Witness S was able to recognize at least four soldiers.[620]

258. The following morning the soldiers returned in small groups and began to loot the houses. They took the television sets, gold and other valuables, including from Witness S's father in law's house. Two men, Husnija Hadzic and Hare Pelak, were taken by the soldiers that day to assist with the collection of the bodies. They have not been seen since that time.[621] Witness S learned that that day his father was killed in his home village of Hegici by Serb soldiers.[622]

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[612] *Witness Q,* T. 3948; Exh. S15-25.
[613] *Witness Q*, T. 3950-54.
[614] Exh. S15-24; *Witness Q*, T. 3950-56.
[615] Prosecution Notice of Specific Allegations from the Fourth Amended Indictment which are conceded as not proven, 30 September 2002.
[616] *Witness S*, T. 5879-94.
[617] *Witness S*, T. 5894-96.
[618] *Witness S*, T. 5901-02.
[619] *Witness S*, T. 5902-03.
[620] *Witness S*, T. 5903-06.
[621] *Witness S*, T. 5906-07
[622] *Witness S*, T. 5908-10.

259. On 23 July 1992, Witness S and about ten other Muslims were ordered to assist in the collection of the dead bodies in the area of the Bišćani local commune. This was organized by two Serb soldiers, Ranko Dosen and Slavko Petrovic, who arrived in Cemernica in the morning with two trucks for the task.[623] These two soldiers and the others who accompanied them were armed and dressed in camouflage uniforms.[624] Witness S described the route they took in the truck and where they picked up the dead bodies.[625] They were given no equipment (such as gloves or masks) to deal with the bodies and the stench of the decomposing bodies was unbearable. Instead they wrapped the bodies in blankets, some of which bore the brand name "Ambassador".[626] Witness S told the Trial Chamber about the numbers of bodies and the places where they retrieved the bodies, and was able to identify a number of individuals among the dead.[627] The trucks were loaded with bodies and would take turns to be unloaded. Neither Witness S nor any of the other Muslims accompanied the trucks to their final destination.[628]

260. At one stage, Witness S looked into the driver's cabin and saw what he described as a "trip order" setting out the route the truck should take, the amount of fuel to be used and the final destination, which was listed as Tomasica.[629] At the base of the trip order was written "Zarko Zgonjanin barracks".[630]

261. The following day, Witness S was again called upon to assist in the collection of bodies. He worked this time with a different group of people, new trucks and new drivers.[631] He estimated that, in total, over the two-day period, he and others collected between 300 and 350 bodies.[632] All of the victims were Muslims living in the territory of the Bišćani local commune. None of them were wearing uniform, nor did they appear to have been armed at the time of death.[633] Witness S submitted a final list of 37 individuals from Bišćani whom he identified and who were killed around 20 July 1992.[634]

262. Witness C testified that his two brothers were killed in Bišćani (Mrkalji) during an attack on that village by the Serb forces on 20 July 1992.[635] The two brothers, together with their families,

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[623] *Witness S*, T. 5910-5912.
[624] *Witness S*, T. 5913-5914
[625] See Exh. S211/S.
[626] *Witness S*, T. 5917-5919.
[627] *Witness S*, T. 5922-5952. See also List of Victims known by name.
[628] *Witness S*, T. 5934
[629] *Witness S*, T. 5934.
[630] *Witness S*, T. 5933
[631] *Witness S*, T. 5959-60.
[632] *Witness S*, T. 5966.
[633] *Witness S*, T. 5966-68.
[634] *Witness S*, T. 5969-70 and Exh. S212.
[635] *Witness C*, T. 2344.

were sheltering in a basement when soldiers broke in and escorted the two brothers out.[636] They were taken next door and killed with automatic rifles.[637] The wife of one of the brothers related this story to Witness C when they met in Karlovac.[638] At the time of their death, the two brothers were dressed in civilian clothes and were unarmed.[639] Their corpses were collected some days later and driven to an unknown destination.[640]

263. Witness I testified that she was involved in a volunteer organisation and assisted in exhumations. She identified 22 people who were killed in Bišćani on 20 July 1992.[641]

264. Ivo Atlija also testified about the bodies of victims of the attacks in the commune of Bišćani that he was able to identify. In Dimaci he found the burnt bodies of three persons he knew. In Mlinari, many of the victims had been killed with spades and picks; he recognized eight persons. In Buzici, among the bodies found, Ivo. Atlija recognised two. In Jezerce, he identified the bodies of three persons. In Cengije he found four bodies he could identify. He was told by eyewitnesses that a woman had been raped and two of the others had been tortured before they were killed. In Mustanica, Ivo Atlija buried his father who had three gunshot wounds in his back, and saw two more identifiable bodies. Near the Catholic church, he found another neighbour's body, whose throat had been slit. In Ivandici, one entire family had been killed by gunshot wounds. On the Raljas hill, the bodies of two teenagers had been buried.[642] In an area known as "Redak", Ivo Atlija found up to 200 bodies partly buried in a ditch by the side of the road.[643]

265. Witness X was in Bišćani on 20 July 1992 when the Serb army attacked the village. He and his father were told to wait at a collection point in the village and from there were taken to the Trnopolje camp. He witnessed the killing of several men by Serb soldiers, including four whose names he mentioned.[644] That night in Trnopolje he learned that several people had been taken off in a second bus that traveled from Bišćani to Trnopolje that day and had been executed in the sand pits next to "Granata's house".[645] He named eight individuals in that bus. In addition, Witness X testified that upon arrival at Trnopolje, about 12 people were ordered back on the bus on which he

[636] *Witness C*, T. 2344.
[637] *Witness C*, T. 2344-45.
[638] *Witness C*, T. 2343-44.
[639] *Witness C*, T. 2345.
[640] *Witness C*, T. 2345.
[641] Witness I, 92 *bis* statement, 12 and 14 July 2001, p. 5.
[642] *Ivo Atlija*, T. 5603-11.
[643] *Ivo Atlija*, T. 5611 and T. 5614.
[644] *Witness X*, T. 6862-65.
[645] *Witness X*, T. 6870.

had been traveling and that he later learned that they had been killed in a mass execution near Kratalj.[646]

(f) Čarakovo – July 1992

266. On 1 July 1992, in Čarakovo, several men wearing police uniforms killed three men at the Behlici settlement with automatic rifles. Two of the perpetrators and two of the dead persons have been identified.[647]

267. On 23 July 1992 the village of Čarakovo was attacked. From a neighbouring field, a witness stated: "I did hear the shooting, and I heard the tanks, and I heard the screams of the women and children. I heard them crying. And then I saw the houses that were burning straight away".[648] Several people were killed.[649] She later helped the relatives bury the bodies.

268. In late July, Witness V took Besim Music to the hospital – she had been beaten by Serb soldiers and shot in the head. Besim Music's husband, Badema, was also killed along with Ramiz Rekic. Witness V saw Nasif Dizdarevic being buried by his own son.[650]

(g) Briševo – 24 July 1992

269. The village of Briševo was shelled on 23 July 1992. 77 Croats were killed in the village between 24 and 26 July 1992, including three Croats in a maize field and four others at the edge of the woods near Briševo.[651]

(h) Ljubija football stadium – 25 July 1992

270. Around 25 July 1992 there was shooting and shelling around Ljubija lasting until around 16:00 when the shelling subsided slightly. Subsequently men where taken on buses to the football stadium in Ljubija.[652] The commander of the Special Forces was present and some of the soldiers were members of the Special Forces from the Republika Srpska. They wore dark blue/black

[646] *Witness X*, T. 6871-73.
[647] *Witness C*, T. 2310-11.
[648] *Witness V*, T. 5727-29.
[649] *Witness V*, T. 5730-38.
[650] *Witness V*, T. 5741-42.
[651] *Witness M*, 92 *bis* statement, paras 4-6.
[652] *Witness Q*, T.3928-31; *Elvedin Nasić*, 92 *bis* statement 1995, p.3. See also, *Nermin Karagić*, T. 5227-5528 and Exh. S169, photograph 2.

camouflage uniforms.[653] Many soldiers, members of the 6th Krajina Brigade in camouflage uniform, were present.[654]

271. On arriving at the stadium, people were seriously beaten. [655] Later on, a non-Serb was brought in and was asked to identify the men who had been with him in the woods. He pointed to two men. These men were singled out and taken across to the fence on the other side of the stadium. They were killed along with others who had been identified.[656] Also, some of those who had been made to line up against a wall and withstand mistreatment at the hands of the soldiers were killed. Later, detainees were forced to assist in removing the bodies of the dead. There were between 10 and 15 bodies on the bus.[657] Nermin Karagić testified that he was ordered to embark on an Autotransport Prijedor bus and they left the stadium. He recalled that, although he could not be sure, at the time he thought that one of the bodies he loaded into the bus (one that had been decapitated) was the body of his father, as he was of the same build and was wearing a similar pullover.[658]

272. The Trial Chamber is convinced that at the beginning of the war, the stadium served as a base for the military police.[659] The grounds of the stadium are enclosed on one side by a forest with a non-continuous fence, on a second side by a fence with a 10 meter gap, on the third side by a wall and on the fourth by a building. Civilians were brought to the stadium to be interviewed. Shooting could be heard from the area both day and night.[660]

(i) Ljubija iron ore mine – 25 July 1992

273. The mine pit in Ljubija was known as Jakarina Kosa. It was cordoned off by the Serbs and trucks could be heard during the night from the direction of the mine. There was also earth-moving equipment and a drill machine that was used to bore holes. One day there was a large explosion and the Serbs left. The locals were told to stay away from the area as it was mined.[661]

274. Both Nermin Karagić and Elvedin Nasić testified about the killing and burial of bodies in a place know locally as "Kipe".[662] Both also managed to escape alive during the executions that took

[653] *Elvedin Nasić*, 92 *bis* statement 1995, p.4.
[654] *Nermin Karagić*, T. 5226.
[655] See *supra* para. 246.
[656] *Nermin Karagić*, T. 5233-34.
[657] *Nermin Karagić*, T. 5235-37
[658] *Nermin Karagić*, T. 5238-41.
[659] *Witness DD*, T. 9637-38.
[660] *Witness DD*, T. 9638-40.
[661] *Witness N*, 92 *bis* statement, paras 2-3.
[662] *Nermin Karagić,* T. 5242 and Exh. S169, photograph 4; *Elvedin Nasić*, 92 *bis* statement, p. 4

place at the site. According to Nermin Karagić approximately 50 people were killed.[663] Karagić informed the Trial Chamber that a year and a half later he returned to the site in order to identify some of the bodies that had been exhumed. He was able to identify his father's body and a DNA test later confirmed that identification.[664]

6. Destruction and looting of commercial and residential properties

275. The Indictment alleges that the Accused, Dr. Stakić, participated in a campaign of persecution against the non-Serb population in the Municipality of Prijedor, which included the destruction, wilful damage and looting of residential and commercial properties in the parts of towns, villages and other areas in Prijedor Municipality inhabited predominantly by non-Serbs.

(a) Town of Prijedor

276. The Trial Chamber finds that the Stari Grad section of the town of Prijedor, and in particular those houses and businesses belonging to Muslim residents, suffered extensive damage, looting and destruction. A brief discussion of the relevant evidence follows.

277. Stari Grad was the oldest part of the town of Prijedor and, before the conflict, its residents were predominantly Muslim.[665] Part of the destruction that occurred on 30 May 1992 was committed shortly after an attack on the town of Prijedor by a group of Muslims led by Slavko Ecimović and the counter-attack by the Serbs. Once the attack had been successfully repelled by the Serbs, whose weaponry was superior to that of the Muslim attackers, "in the early hours of the morning, the ethnic cleansing […] of the town of Prijedor began."[666] Serb soldiers and artillery encircled the old town ("Stari Grad") and inhabitants were forcibly removed from their homes and taken to the camps.[667] Nusret Sivać testified to the destruction of the "old town" by the Serbs:

> [A]lmost for the whole day until late afternoon, from those positions outside my house, the bank of the Bereg, for a long time a tank and several grenade launchers were firing upon the old town. The old town was ablaze since the early morning hours.[668]

278. Moreover, after this initial destruction, there was a more targeted effort to destroy homes that had formerly belonged to Croats and Muslims.[669] A team led by Dule Miljus and Veljko Hrgar marked off Croat and Muslim houses for destruction, even when those houses "were still in good

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[663] *Nermin Karagić,* T. 5244-47; *Elvedin Nasić*, 92 *bis* statement, p. 5.
[664] *Nermin Karagić,* T. 5247-50.
[665] *Witness A,* T. 1800-01
[666] *Nusret Sivać*, T. 6572-74.
[667] *Nusret Sivać*, T. 6574-75.
[668] *Nusret Sivać*, T. 6575.
[669] See *e.g. Witness Z*, T. 7565; *Ibrahim Beglerbegović*, T. 4141; *Witness H*, 92 *bis* transcript in *Sikirica*, T. 2256-57.

shape".[670] At night, explosives were used to destroy the houses and in the morning, a truck would arrive in order to remove the rubble.[671] It was later heard from one of the members of that team that they had acted on the orders of the Crisis Staff.[672]

279. There is also evidence that homes and businesses in Prijedor were heavily looted after the initial attack.[673] Nijaz Kapetanović's apartment was searched 16 times and goods belonging to Merhamet, a humanitarian organisation, and personally to the witness were taken.[674]

280. Documentary evidence also proves the extent of the destruction of Stari Grad.[675] The Chamber saw a video showing aerial footage of destruction in Prijedor.[676] A review on the security situation written by Simo Drljača's successor Bogdan Delić in September 1993, indicates that over 80% of the property belonging to Muslims in Prijedor was destroyed and looted:

> In the course of combat operations and later on, many things went on that were not in keeping with official stands and views. There was uncontrolled [exploitation] and destruction of property, looting, abuse, arson, blowing up of privately-owned buildings and places of worship of other faiths. On the basis of this, it may be concluded that *currently not a single Muslim place of worship remains in the municipality of Prijedor and that over 80% of the housing that belonged to this part of the population has been demolished, destroyed, and looted*.[677]

281. According to General Wilmot, the attack on Stari Grad and in particular the nature and extent of the destruction was completely unjustified. Military forces went into a civilian area and destroyed homes and businesses. He described it as contrary to the rules of land warfare and a criminal act and argued that it should have been reported and investigated.[678]

282. The Trial Chamber agrees with this assessment but does not share the view of Bogdan Delić that these events were of an "uncontrolled" character. The Trial Chamber is convinced that this systematic destruction formed part of the general attack against the non-Serb population.

(b) Briševo

283. The Trial Chamber is satisfied, on the basis of the convincing evidence of Ivo Atlija, that the town of Briševo was attacked and that over a hundred houses were destroyed during the attack. The Trial Chamber also finds that houses in Briševo were looted.

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[670] *Nusret Sivać*, T. 6693.
[671] *Nusret Sivać*, T. 6693.
[672] *Nusret Sivać*, T. 6694.
[673] *Minka Čehajić,* T. 3073-5.
[674] *Nijaz Kapetanović,* T. 2950-1.
[675] *Witness B*, T. 2214; *Zoran Prastalo*, T. 12259-12260.
[676] Exh. S58.
[677] Exh. S273, p. 2-3 (emphasis added).
[678] *Richard Wilmot*, T. 14034-37.

284. The village of Briševo comprised approximately 120 houses and was inhabited almost exclusively by Croats. On 27 May in the morning hours, Briševo was shelled and as the day progressed the shells were complemented by artillery and infantry fire.[679] The soldiers who participated in the attack wore JNA uniforms with red ribbons tied around their arms or attached to their helmets.[680] 68 houses were partially or completely destroyed by fire during the attack.[681] In addition, the soldiers looted various items from the houses, such as television sets, video recorders, radios and certain items of furniture.

(c) Kamičani

285. Witness F and Witness Q testified that they saw the village of Kamičani burning and Witness Q further testified that houses had been destroyed.[682] Muslim and Croat houses were targeted.[683]

(d) Čarakovo

286. The Trial Chamber is satisfied that the Muslim village of Čarakovo suffered extensive damage and destruction and that houses were looted. [684] The village of Čarakovo was attacked by Serb soldiers on 23 July 1992. The soldiers fired mortars and artillery at the fleeing population.[685]

(e) Kozarac

287. The Trial Chamber recalls its findings on the attack on Kozarac.[686] Houses were looted and destroyed on both sides of the road leading to the centre of town[687]. Several witnesses testified that the destruction was not the result of war operations, rather, houses were deliberately destroyed after the attack, mostly through arson.[688]

288. Muslim and Croat houses in Kozarac were targeted for destruction, while Serb houses were spared.[689] This is consistent with video footage that shows houses in Kozarac after the destruction bearing different markings – those marked with a cross were destroyed, while those marked with a Serbian flag remained intact, either because they belonged to a Serb family or because they were

[679] *Ivo Atlija*, T. 5546-47 and T. 5571-73.
[680] *Ivo Atlija*, T. 5575.
[681] *Ivo Atlija*, T. 5589.
[682] *Witness F*, 92 *bis* transcript in *Tadić*, T. 1649-50; *Witness Q*, T. 3920.
[683] *Witness U*, T. 6209; *Kasim Jaskić*, 92 *bis* statement, p. 3; *Nusret Sivać*, T. 6611; *Minka Čehajić*, T. 3098; *Witness T*, T. 2643.
[684] *Witness V*, T. 5739-40.
[685] *Witness V*, T. 5727-29.
[686] See *supra* Section I. E. 1. (b).
[687] *Idriz Merdžanić*, T. 7741; *Nusret Sivać*, T. 6611.
[688] See *e.g. Idriz Merdžanić*, T. 7836; *Witness P*, T. 3347 and 3349; *Witness DI*, T. 13704; *Zoran Prastalo*, T. 12259-60.
[689] *Witness F*, 92 *bis* transcript in *Tadić*, T. 1646-49.

earmarked for a Serb family.[690] Moreover, Edward Vulliamy, who passed through the town of Kozarac on 5 August 1992 testified that he was told by Major Milutinović that the houses that remained standing in Kozarac belonged to Serbs and that 40,000 Muslims had left the area.[691]

(f) Kozaruša

289. The Chamber is satisfied that the village of Kozaruša, which had a majority Muslim population, was destroyed[692] and that only Serb houses remained, for the most part, untouched.[693]

(g) Bišćani

290. The Trial Chamber is satisfied that after the shelling of the village of Bišćani, Serb soldiers looted the Muslim houses while the owners were still inside.[694] The soldiers took away valuables, television sets, gold and jewellery. Muslim houses were found destroyed with traces of fire.[695]

(h) Hambarine

291. The Trial Chamber recalls its findings on the situation in Hambarine in general[696]. At least 50 houses along the Hambarine-Prijedor road were damaged or destroyed by the Serb armed forces.[697]

(i) Rakovčani (withdrawn)[698]

(j) Rizvanovići

292. The Trial Chamber is satisfied that homes were destroyed and personal belongings looted in the attack on Rizvanovići, a predominantly Muslim village[699]. Nermin Karagić testified that, after the cleansing of Rizvanovići, he saw that all the houses were ablaze. He also testified that valuables were looted in the days following the cleansing.[700]

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[690] *Idriz Merdžanić,* T. 7868 – 74 and Exh. S325 and 326.
[691] *Edward Vulliamy*, T. 7910-12.
[692] *Minka Čehajić,* T. 3098.
[693] *Witness T*, 92 *bis* transcript in *Kvočka*, T. 2647.
[694] *Witness S*, T. 5906, T. 5910-11.
[695] *Witness B*, T. 2216-2217; *Witness X*, T. 6859.
[696] See *supra* Section I. E. 1. (a)
[697] *Witness DD*, T. 9483; *Witness DE*, T. 9695.
[698] Prosecution Notice of Specific Allegations from the Fourth Amended Indictment which are Conceded as Not Proven, 30 September 2002.
[699] *Witness V*, T. 5720; *Witness B*, T. 2219
[700] *Nermin Karagić,* T. 5270.

(k) Donja and Gornja Ravska (already dismissed under Rule 98 *bis*)

(l) Kevljani

293. The Trial Chamber finds that there is not sufficient corroborating evidence to the one witness testimony[701] to support the alleged shelling of Kevljani. The Chamber did not receive any photographic or video evidence to confirm the Prosecution's assertion.

(m) Evidence about the situation in general

294. A letter from the head of the Prijedor SJB, Simo Drljača, to the Banja Luka CSB, dated 4 August 1992, refers to the widespread looting of Muslim homes in the municipality:

> Since many Serbs are participating in combat activities in the municipality and in other combat areas […], there have been no Serb paramilitary formations that would damage the struggle and its goals. However, the mass-plundering of abandoned Muslim houses should be stressed, where everything is being taken and the houses are often burned down. This occurrence has got so out of hand that even the *synchronised actions of the military police* and the police find it very difficult to prevent.[702]

295. The extent of the looting in Prijedor is also discussed in a document from the Command of the 1st Krajina Corps to the Prijedor Operative Group Command dated 22 August 1992, which describes the situation in Prijedor as "*[o]n the verge of anarchy*".[703]

7. Destruction of or wilful damage to religious and cultural buildings

296. The Indictment alleges that Dr. Stakić participated in persecutorial destructions of Bosnian Muslim and Bosnian Croat religious and cultural buildings. The Trial Chamber however was not able, based on the evidence before it, to identify specific cultural buildings as being destroyed or damaged.

(a) Donja Ljubija mosque (withdrawn)[704]

(b) Hambarine mosque – 24 May 1992

297. The Trial Chamber is satisfied that the mosque in Hambarine was shelled during the attack on Hambarine.[705]

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[701] *Samir Poljak*, T. 6332-34. See Section I. B.
[702] Exh. S251 (emphasis added).
[703] Exh. S358 (emphasis added).
[704] Prosecution Notice of Specific Allegations from the Fourth Amended Indictment which are conceded as not proven, 30 September 2002.
[705] *Witness C*, T. 2303 and *Nermin Karagić,* T. 5207.

(c) Kozaruša mosque (withdrawn)[706]

(d) Mosques in Prijedor - May 1992

298. Based on the evidence of several witnesses, the Trial Chamber finds that two mosques[707] were already[708] destroyed in May 1992, amongst them, the Čaršijka mosque. "The first to be struck in the old town and in Zagrad, the Bereg part of the town, were the mosques. Both mosques had been hit and destroyed and burned during the first – the initial onslaught."[709] A group of men identified as Milenko Milić, Momčilo Radanović, Cigo and Milorad Vokić (personal bodyguard to Simo Drljača) entered the yard outside the main mosque in Prijedor and set it alight.[710]

(e) Mutnik mosque in Kozarac – May/June 1992

299. The Trial Chamber finds, based on the convincing testimony of Witness P, that the Mutnik mosque was destroyed by Serbs. [711]

(f) Stari Grad mosque in Prijedor – May/June 1992

300. See *supra* (d).

(g) Kamičani mosque - June 1992

301. The mosque in Kamičani was destroyed by Serbs. Both witnesses T and U testified that they saw the mosque being set alight.[712]

(h) Bišćani mosque - 20 July 1992

302. The Trial Chamber is convinced that, on 20 July 1992, the mosque in Bišćani was destroyed.[713] Around 23 July 1992, Witness S reviewed the damage to the mosque in Bišćani. He testified that it had been left without a roof and that there was no minaret. The mosque also showed signs of having suffered burn damage. Photographs show the damage to the interior and exterior of the mosque.[714]

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[706] Prosecution Notice of Specific Allegations from the Fourth Amended Indictment which are conceded as not proven, 30 September 2002.
[707] See also *infra* (k).
[708] See *infra* para. 305
[709] *Nusret Sivać*, T. 6575.
[710] *Nusret Sivać*, T. 6575-76 and T. 6603-06; Exh. S213, photograph 4; *Minka Čehajić*, T. 3102; *Witness B*, T. 2214.
[711] *Witness P*, T. 3382.
[712] *Witness U*, T. 5882, *Witness T*, 92 *bis* transcript in *Kvočka*, T. 2624.
[713] *Witness S*, T. 5882 and T. 5928.
[714] See *Witness S*, T. 5926-27 and Exh. S210-10, 210-11, 210-12.

(i) Briševo Catholic church - 29 July 1992

303. On the basis of the video footage and testimony of Witness M, the Trial Chamber finds that on 29 July 1992 the Catholic church in Briševo was destroyed. It showed signs of having been burned, the roof was missing and there were holes in the tower.[715] The Chamber reviewed video footage of the church remains.[716]

(j) Prijedor Catholic church - 28 August 1992

304. The Trial Chamber finds that the Catholic church in Prijedor was blown up in the early hours of 28 August 1992. Prior to its destruction, the Catholic church in Prijedor was subjected to several searches by the police and army. The soldiers insisted that there was a sharp-shooter in the steeple. On 28 August 1992 at around 01:00 the church was blown up by a group of soldiers and police.[717] A very loud explosion could be heard and pieces of the debris flew through the air.[718] Nusret Sivać, who had also heard the explosion and seen the destruction of the church, further testified that he later saw a group of men, including Dušan Miljus and Vljiko Hrgar, trying to destroy the church completely. They claimed that it was on account of the threat posed to pedestrians by the leaning bell tower.[719] Several other witnesses confirmed that the Catholic church in Priejdor had been destroyed by Serbs.[720]

(k) Prijedor mosque (Puharska section) - 28 August 1992

305. The Trial Chamber finds that the Prijedor mosque was destroyed on 28 August 1992 by Serbs.[721] This incident is also referred to in a regular combat report from the 1st Krajina Corps dated 29 August 1992.[722]

8. Denial of fundamental human rights to Bosnian Muslims and Bosnian Croats (based on allegations in paragraph 54(5) of the Indictment)

306. The Indictment alleges that the Accused, Dr. Stakić, participated in a persecutorial campaign which included the denial of fundamental rights to Bosnian Muslims and Bosnian Croats, including [*sic*] the right to employment, freedom of movement, right to proper judicial process or right to

[715] *Witness M,* 92 *bis* statement 6 August 2000, p. 6.
[716] Exh. S186.
[717] *Witness AA*, 92 *bis* statement, 9 October 2000, p. 4.
[718] *Nijaz Kapetanović*, T. 2952-54.
[719] *Nusret Sivać*, T. 6606 – 08.
[720] *Minka Čehajić*, T. 3102, *Witness H*, 92 *bis* transcript in *Sikirica,*T. 2257, *Ibrahim Beglerbegović*, T. 4142, and *Witness DF*, T. 10099.
[721] *Nijaz Kapetanović,* T. 2953; *Witness H*, 92 *bis* transcript in *Sikirica,* T. 2257; *Ibrahim Beglerbegović*, T. 4142.
[722] Exh. D29-1139.

proper medical care. For reasons set out in the section on persecution,[723] the Trial Chamber will address the issue only briefly.

(a) Employment

307. The Trial Chamber is satisfied that in the days and months after the takeover in Prijedor, many non-Serbs were dismissed from their jobs.[724] Indeed, only an extremely small percentage of Muslims and Croats were able to continue working.[725]

308. The Trial Chamber is not persuaded on the basis of the evidence submitted by the Defence that the dismissal of non-Serbs only occurred on a sporadic basis, nor that non-Serbs voluntarily gave up their positions.[726]

309. A number of documents implicate the Prijedor Crisis Staff or the Municipal Assembly as the decision-making authority responsible for implementing this policy of dismissing non-Serbs from their jobs[727]. There are several decisions by the Municipal Assembly Executive Committee dismissing employees at the Prijedor Municipal Conference of the Red Cross, the Deputy Public Attorney, and some military organisations, and appointing replacements.[728] In addition, there are numerous references to Crisis Staff and War Presidency Decisions dismissing and appointing individuals to various organisations, [729] as discussed before.[730]

(b) Freedom of movement

310. The Trial Chamber notes that imprisonment is not charged in the Indictment. A curfew was imposed for all citizens; checkpoints were established. However, the Trial Chamber regards this as normal and justified actions during times of armed conflict.

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[723] See *infra*, Section III. F. 5. (b) (i) (i)
[724] See *e.g. Witness C*, T. 2376; *Witness H*, 92 *bis* transcript in *Sikirica*. 2255; *Witness I*, statement of 12 and 17 July 2001, p.1; *Witness M*, 92 *bis* statement, 6 August 2000, p. 2.
[725] *Nijaz Kapetanović*, T. 2949.
[726] See e.g. *Nada Markovska*, T. 9930 – 9931.
[727] Exh. S45, decision by the Crisis Staff of the ARK, dated 22 June 1992, provides that "All executive posts, posts involving a likely flow of information, posts involving the protection of public property, that is, all posts important for the functioning of the economy, may only be held by the personnel of Serbian nationality" and that these posts may not be held by persons of Serbian nationality who have not confirmed by Plebiscite or who in their minds have not made it ideologically clear that the Serbian Democratic Party is the sole representative of the Serbian people." This decision contains the hand-written text "For immediate delivery to the president of the municipal Crisis Staff." Exhibit S46, dated 23 June 1992, is a cover letter signed in Latin script "SMilomir". The handwriting expert found the exhibit unsuitable for comparison, Exh. S114, Exh. S84. The Trial Chamber is cautioned by this, relies however on the sum of the corroborating evidence.
[728] Exh. S22, dated 4 May 1992; Exh. S27, dated 4 May 1992; Exh. S103, dated 7 May 1992.
[729] Exh. S250.
[730] See *supra* Section I. D. (d) (vi)

(c) Right to proper judicial process

311. The Trial Chamber is aware that the judicial system did not function properly as a consequence of the takeover.

(d) Access to medical treatment

312. The Trial Chamber is satisfied that there was a shortage of medical supplies as early as September 1991 due to the war in Croatia.[731] The evidence shows that this shortage became more acute through 1992.[732]

313. However, the Chamber is not satisfied that, bearing in mind the prevailing shortages in the municipality, non-Serbs were denied proper medical treatment in a way that would be substantially different to the medical care *vis-à-vis* the entire population.

9. Deportation and forcible transfer of the non-Serb population (based on allegations in paragraph 54(4) of the Indictment)

314. Many citizens fled the territory of the Municipality of Prijedor in 1992 in order to escape from the hostile atmosphere created at least since the beginning of that war. The exodus of the mainly non-Serb population from Prijedor accelerated in the run-up to the takeover and reached a peak in the following months. Daily convoys and trucks left the Municipality heading to non-Serb controlled areas.

315. Many of the witnesses reported that the buses they took belonged to the Prijedor Autotransport company.[733] The points of embarkation for the larger transports were overseen by members of the police and/or army. [734] The police and army were trying to impose some order on the more than a thousand people seeking to board the buses and trucks.

316. The routes taken by the convoys out of the municipality varied, depending on the final destination. Some would customarily pass through Skendur Vakuf and proceed over Mount Vlašić in the direction of Travnik.[735] Others, bound for Croatia, passed through either Bosanski Novi on the way to Karlovac in Croatia, or via Banja Luka to cross the border into Croatia in Bosanski Gradiska, and then onto Karlovac.[736] The conditions on the journey were often perilous. Looting

[731] Exh. D92-28; Exh. D92-43; Exh. D92-57; Exh. 92-77.
[732] Exh. 92-80.
[733] *Witness B*, T. 2244*, Witness S*, T. 5972.
[734] *Witness B*, T. 2257.
[735] See *e.g. Witness B*, T. 2257-59.
[736] See *e.g. Witness C*, T. 2343.

was commonplace and not infrequently soldiers would threaten those travelling in the convoy with weapons or mistreat them in other ways, [737] if not even kill them.[738]

317. Edward Vulliamy, a British journalist who joined one of the convoys leaving from Prijedor, testified that as he entered the mountain passes, shots were being fired over the top of the convoy and the situation became more threatening. He also said that soldiers appeared to be taking peoples' property. Mr. Vulliamy's assessment of the severity of the situation led him to reveal his identity as a member of the press for his own protection.[739]

318. There is ample additional evidence to suggest that the Serb authorities organised and were responsible for escorting convoys out of Serb-controlled territory.

319. After the takeover, it was impossible for anyone to leave Prijedor on his own. "The only way were those convoys organised by the Serb authorities".[740] The civilian authorities in Prijedor were responsible for coordinating the transports out of the camp towards Travnik.[741]

320. The report of the work of the Prijedor Red Cross between 5 May and 30 September 1992, notes that: "There is great pressure for citizens of Muslim or Croatian nationality to leave the AR Krajina".[742]

321. An article from "The Times" by Jim Judah dated 15 August 1992[743] quotes Slavko Budimir as saying that up to 3,000 Muslims have applied to quit Prijedor in the last 15 days and that this has nothing to do with "ethnic cleansing". The article describes a queue of 100 Muslim women waiting outside Mr. Budimir's office who say that they have permission to leave but they are trying to add their husbands and sons, who are in detention camps, to the lists. A Reuters article dated 13 August 1992 by Andrej Gustincić[744] states that on closer inspection of the application forms of those wishing to leave, only about 400 out of 3,000 are Serbs and most of them are from mixed families. According to the article, Mr. Budimir insisted that the Muslims were leaving only because they wanted to find better jobs elsewhere, were looking for medical treatment, or were suffering from war psychosis. He is quoted as saying: "All this has to do with forces over my head [….] There is no reason for anyone to leave, nor do I support this". However, when Slavko Budimir was presented with these statements during this testimony, he immediately clarified that the most

[737] *Witness Z*, T. 7580-81.
[738] See *supra* Section I. E. 3.(e-h)
[739] *Edward Vulliamy*, T. 7982-7985.
[740] *Witness B*, T. 2281.
[741] *Slobodan Kuruzović*, T. 14456 (emphasis added).
[742] Exh. S434, p. 9.
[743] Exh. S404.
[744] Exh. S405.

important reasons were the situation in town, disrespect for law and order, plunder, killings, murders, and that this had an effect on everybody making it the primary reason for departure of everybody.[745]

322. The evidence demonstrates that a large number of Muslims and Croats fled the territory of the Municipality of Prijedor over the Indictment period. An attempt to estimate the total number of people who fled is no easy task. However, the evidence does provide some clues.

323. A "Kozarski Vjesnik" article of 24 April 1992 entitled "Neighbours put to the test" reports on the ethnic tensions in Prijedor and comments that more than 3,000 people of mainly Muslim origin had left Prijedor town in the previous fortnight for reasons of fear.[746]

324. A Report by the Commission for the Inspection of the municipalities in Banja Luka, provides that:

> From the beginning of the armed conflict in the municipality of Prijedor until 16 August 1992, according to data that have been insufficiently checked out, about *20,000 citizens left the municipality, mainly of Muslim and Croatian*, but also of Serbian, ethnicity, of all age groups and both sexes. Prijedor SJB has no records about this group of citizens […] because they […] did not follow the legally prescribed procedure for deregistering citizens' legal place of residence. On 16 August 1992 [as printed], Prijedor SJB received and made positive rulings on 13,180 applications to deregister the legal places of residence, mainly from citizens of Muslim nationality who expressed the desire to depart for the Republic of Slovenia or other countries of Western Europe. This group has still not left the municipality, but has just completed the unregistering of residences, and is now, with the help of religious and humanitarian organisations, looking for a way of resettling in the desired direction. Prijedor SJB has no data about what these people have done with their immovable assets or what they have done or will do with their movable assets.[747]

325. A document dated 18 July 1992 from the Prijedor SJB to the Banja Luka SJB[748] requests a police patrol from Banja Luka Public Security Station to meet a convoy of five buses of women and children leaving from Trnopolje reception centre on 18 July 1992 and escort the convoy by a safe road to Skender Vakuf. The convoy was arranged with Colonel Arsić and Lieutenant-Colonel Boško Paulić (commander of the 122nd Brigade). A patrol car from the Prijedor SJB and policemen serving as escorts will be leading the way for the convoy.

326. A report on the work of the Prijedor Red Cross dated 30 September 1992 states that:

> 23,000 people have been housed though the reception centre at Trnopolje, of whom we and the International Red Cross have dispatched 1,561 to the Karlovac reception centre. On 29 September 1992 a convoy was escorted to Karlovac in the presence of European observers.
>
> […]

[745] *Slavko Budimir*, T. 13159.
[746] Exh. S5.
[747] Exh. S152, p. 4 (emphasis added).
[748] Exh. S354.

> The problem of Trnopolje is becoming more complicated with the onset of autumn, so that all those who have been left without homes are arriving in great numbers seeking accommodation. There are now more than 3,000 thousand [number as printed] citizens there.[749]

327. According to the 1991 census on 1 April 1991 Prijedor municipality had 112,543 inhabitants of whom 49,351 (43.9%) were Muslim, 47,581 (42.3%) were Serb, and 6,316 (5.6%) were Croat.[750]

328. Ljubica Kovačević, widow of Dr. Milan Kovačević, presented to the Trial Chamber a CD-ROM containing information that, during the period of the Indictment, the total number of refugees arriving in Prijedor municipality was 1,414.[751] This evidence shows that 1,389 persons or 98.2% of these persons arriving in the Prijedor municipality were of Serb ethnicity.[752]

329. In the time immediately following the Indictment period, *i.e.* from 1 October until 31 December 1992, this trend continued and the evidence shows that of the 1,589 refugees that settled in Prijedor municipality 1,564 (or 98.4%) were of Serb ethnicity.[753]

330. This trend continued also after this period. According to the evidence provided by Ljubica Kovačević, from 1 January 1993 until the end of 1999,[754] of the 27,009 refugees settling in Prijedor municipality, 26,856 or 99.4% were of Serb ethnicity.[755] During the same time, 47 Muslims and 97 Croats returned.[756]

331. Non-Serbs were not only replaced by Serbs as described before. The evidence also proves that before citizens were able to leave the territory of Prijedor, they had to obtain the requisite certificate or permit. For example, the Official Gazette of Prijedor Municipality number 4/92, dated 4 November 1992, includes "Instructions on the Types of Certificates for Travel and Departure from the Territory of Prijedor Municipality and the Manner of their Issuing to Citizens".[757] The instructions establish the types of certificates issued to citizens for the purpose of leaving Prijedor (Republika Srpska), the manner of their issuance and the necessary documents. In a radio interview dated 30 June 1992,[758] Marko Đenadija of the Prijedor SJB, who was directly in charge of issuing travel permits for leaving Prijedor, elaborates on the procedure that must be followed by those who wish to leave Prijedor:

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[749] Exh. S434, p. 9.
[750] Exh. S227-1
[751] Exh. D43-1.
[752] Exh. D43-1.
[753] Exh. D43-1.
[754] Exh. D43.
[755] Exh. D43.
[756] Exh. D43-1.
[757] Exh. S376, p. 31. The Instructions are signed by *Milan Kovačević.*
[758] Exh. S11-2.

> a citizen must obtain an appropriate certificate from the Secretariat of National Defence allowing him to leave the area. This is the only document required, in addition of course to an already issued passport, because we are not issuing passports at present. Persons travelling by their own vehicles are obliged to report the details pertaining to the vehicle, the driver and the passengers.

He further explains that not all citizens were entitled to receive travel documents, it was mainly military conscripts and those who were of security interest or those who were wanted for specific enquiries. According to this, there were about 3,000 requests for "voluntary" moving out of the area.[759] Many people left by their own personal vehicles even without any approval, especially those who were on their own, who were fleeing.[760]

332. There were long lines of people, waiting for permission, gathered outside the SUP in Prijedor. Slavko Budimir said that they tried their best to issue those people with documents in accordance with the regulations, to enable citizens, regardless of their ethnicity to exercise their rights.[761] Mr. Budimir stated that there were more women leaving than men. Citizens who were leaving the municipality and who lived in socially-owned apartments[762] had to produce proof that they were returning their apartment to its rightful owner, for example, when the apartment belonged to a company.

333. According to Slavko Budimir's testimony, the RS government issued a decree on the movement of people and goods in the RS territory. After 30 April 1992, a Serb had to follow a procedure before leaving the territory. The decree did not make any distinctions; it was applied to all citizens regardless of their ethnic background. Those who left were not required to turn their property over to the RS.[763] This conflicts with the convincing testimony of Minka Čehajić who said that when she sought official permission to leave Prijedor, it was only granted on the condition that she give up her property.[764]

334. There is ample evidence that those who left the municipality left under considerable pressure. Witness B explained it in the following way:

> [W]e no longer had any rights there. We no longer had the right to live, let alone own anything. Any day, somebody could come, confiscate your car, take away your house, shoot you, without ever being held responsible for it. So it was the only solution, the only way out, to go as far as away from there as possible, at any cost.[765]

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[759] Exh. S11-2, pp. 22-23.
[760] *Slavko Budimir*, T. 13141-13144.
[761] *Slavko Budimir*, T. 13144.
[762] *Slavko Budimir*, T. 13150.
[763] *Slavko Budimir*, T. 13036-13037.
[764] *Minka Čehajić*, T. 3104.
[765] *Witness B*, T. 2263.

II. THE ROLE OF DR. MILOMIR STAKIĆ IN THESE EVENTS

335. Dr. Stakić's career prior to his alleged criminal conduct has already been discussed in paragraphs 1 through 5 of this Judgement.

1. Positions held by Dr. Stakić from January 1991 – September 1992

336. The Trial Chamber is satisfied that between January 1991 and September 1992 Dr. Stakić held the following positions in the Municipality of Prijedor:

- From 4 January 1991, he served as the elected Vice-President of the Municipal Assembly in Prijedor under Muhamed Čehajić, the legally elected President of the Municipal Assembly at that time.[766]

- On 11 September 1991, the SDS in Prijedor established a Municipal Board and Dr. Milomir Stakić served as Vice-President of the Board.[767]

- As of 7 January 1992, he was elected President of the self-proclaimed Assembly of the Serbian people of the Municipality of Prijedor.[768]

- After the takeover on 30 April 1992, Dr. Stakić rose to prominence within the municipality, acting as President of the Municipal Assembly after the forced removal of Muhamed Čehajić from that post.[769] He simultaneously assumed the position of President of the Prijedor Municipal People's Defence Council.[770]

[766] Exh. SK2 ("Kozarski Vjesnik" article "Déjà-vu?" dated 11 January 1991) p. 1; Exh. D19 (Minutes of extraordinary session of Prijedor Municipal Assembly, dated 17 February 1992); Exh. S19 (Extract from the Minutes of the meeting of businessmen and representatives of the Prijedor municipality, dated 21 April 1992) and Exh. SK11 ("Kozarski Vjesnik" article dated 20 September 1991); see also *supra* paras. 49, 76, 78.
[767] Exh. S94, minutes of the 11 September 1991 meeting of the SDS Municipal Board.
[768] Exh. S4, "Kozarski Vjesnik" article "Government of the Serbian Municipality elected", dated 24 April 1992; Exh. S6, "Kozarski Vjesnik" article "Serbs live in this municipality as well", dated 31 January 1992; Exh. S47, "Kozarski Vjesnik" article, dated 28 April 1994, "SDA had a detailed plan for the liquidation of Serbs"; Exh. S91, pp. 653-654.
[769] Exh. S112 and item 19 in Official Gazette 2/92 (Exh. S180); Exh. S187, p.1; Exh. S91 p. 653.
[770] Exh. S28, minutes of the 5 May 1992 meeting of the Prijedor People's Defence Council, typesigned "President of the People's Defence Council, Stakić Dr. Milomir, s.r."; Exh. S60, minutes of the People's Defence Council session on 15 May 1992, typesigned "President of the People's Defence Council, Stakić Dr. Milomir"; Exh. S90, dated 29 Sept. 1992, typesigned President National Defence Council Stakić Dr. Milomir, "s.r."; Exh. S318, Conclusions of the 18 May 1992 meeting of the Prijedor People's Defence Council meeting, signed "SMilomir" and stamped with the official stamp of the People's Defence Council.

- As of May 1992, he served as President of the Prijedor Municipal Crisis Staff, later renamed "War Presidency".[771]

- As of 24 July 1992 until the end of the period of time covered by the Indictment (30 September 1992), he exercised the functions of President of the Municipal Assembly of Prijedor.

2. The role of Dr. Stakić in the SDS and the Serbian Municipal Assembly

337. The Trial Chamber is satisfied that Dr. Stakić was actively involved in the Serbian Democratic Party ("SDS") Municipal Board in Prijedor as of September 1991.

338. Dr. Stakić was elected Vice President of the SDS Prijedor Municipal Board on 11 September 1991.[772] At a meeting of the SDS Municipal Board on 28 October 1991 attended by Dr. Stakić, the question of establishing Serbian assemblies in all municipalities was discussed.[773] On 2 December 1991, the results of a plebiscite, organised by the SDS Board as a response to the official census, were announced, claiming that 60% of the electorate was of Serbian ethnicity. Two options were proposed on the basis of this result: the first "to repeat the municipal elections" and the second "to take over and establish independent organs". The minutes of the meeting read "it will be decided later which of the two options will be chosen."[774]

339. At a meeting, held on 27 December 1991 and attended by the full board of the SDS Prijedor Municipal Board, Simo Mišković presented a report on the implementation of the instructions that had been received.[775] The minutes of this meeting state as follows: "Since there were two versions, only version II which is relevant for Prijedor was read out. Having read out all the items in sections A and B of version II, Mišković explained what had been done so far with respect to the instructions."[776] At that meeting, the role of the local crisis staffs was discussed and a decision was taken about the establishment of an Assembly of the "Serbian People of the Municipality of Prijedor", to be proclaimed on 7 January 1992.[777] Dr. Stakić, among others, was assigned to set up the committee on inter-party cooperation and the committee for social affairs.[778]

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771 The Decision on appointments to the Prijedor Municipal Crisis Staff is found in item 19 of the Official Gazette of Prijedor Municipality, Exh. S180.
772 Exh. SK12, minutes of 11 September 1991.
773 Exh. SK12, minutes of 28 October 1991.
774 Exh. SK12, minutes of 2 December 1991. See also *supra* paras 57-58.
775 Exh. SK12; Exh. S95. The minutes are unsigned but contain references at the end to the President of the Municipal Board, Simo Mišković and the recording clerk Vinko Kos.
776 Note the confusion here caused by the fact that the minutes incorrectly describe the two Variants A and B as versions I and II, and refers to the two stages of each Variant as sections A and B.
777 Exh. SK12.
778 Exh. SK12.

340. On 7 January 1992, the "Serbian Assembly of the Municipality of Prijedor" convened and elected Dr. Stakić as its first president.[779] A proclamation of this Assembly was issued on 8 January 1992.[780] Milan Kovačević, in a radio address, referred to the Serbian Assembly as a "shadow government".[781]

341. Dr. Stakić is reported to have said that the formation of this assembly "is not targeted against the Muslim population, but the target is the irresponsible behaviour of the leadership of the Party of Democratic Action in Prijedor". Dr. Stakić claimed that the SDA has "persistently been avoiding decisions regarding the division of government and has taken all of the significant and important functions in the institutions of the municipality such as the people's Defence Council, the Municipal Court, the SUP, the Public Prosecutor's office and even the SDK".[782] The decision to establish a separate Assembly was denounced by other political leaders as contributing to inter-party and inter-ethnic tensions.[783]

342. On 17 January 1992, the Assembly of the Serbian People of the Municipality of Prijedor voted unanimously to join the Autonomous Region of Bosanska Krajina ("ARK").[784] A copy of the Decision by the Assembly of the Serbian People of Prijedor Municipality to join the Serbian Municipality of Prijedor with the ARK was admitted at trial.[785] Notably, the document bears the signature of Dr. Stakić as well as the official stamp of the Serbian Assembly of Prijedor municipality.[786]

343. The minutes of the SDS Municipal Board dated 9 May 1992[787] show Mr. Kuruzović making reference to "a final goal". He states that the idea is to achieve everything peacefully and without destruction.[788] It is at this meeting that Dr. Stakić states that "peace must be maintained at all costs, and the economy must be revived."[789] The Defence argues that this contemporaneous quotation is evidence that Dr. Stakić had no intention other than to promote peace in the municipality.

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[779] *Robert Donia*, T. 1760, *Muharem Murselović*, T. 2868; *Mirsad Mujadžić*, T. 3634, *Slobodan Kuruzović*, T. 14434. Two "Kozarski Vjesnik" articles reporting on interviews with Dr. Stakić establish that the parallel Assembly was established on 7 January 1992 and that Dr. Stakić was appointed its first president. See Exh. S6, "Kozarski Vjesnik" article "Serbs live in this municipality as well", dated 31 January 1992; Exh. S47, "Kozarski Vjesnik" article, dated 28 April 1994, "SDA had a detailed plan for the liquidation of Serbs".
[780] Exh. SK45.
[781] Exh. S91.
[782] Exh. SK40, a "Kozarski Vjesnik" article dated 10 February 1992. See also *Robert Donia*, T. 1761 – 62.
[783] Report of *Robert Donia*, p. 20.
[784] *Robert Donia*, T. 1767;
[785] Exh. S96.
[786] According to the handwriting expert this signature was written fluently, judging by its line quality, and was used as a reference signature. Exh. S288, p. 6.
[787] Exh. SK46.
[788] Exh. SK46.
[789] Exh. SK46, p. 2.

However, this Trial Chamber disagrees: the acts discussed below are compelling evidence that this formula was merely the typical language of a politician hiding his real political intentions.

3. The role of Dr. Stakić before and during the takeover: 16–30 April 1992

344. The Trial Chamber is convinced that Dr. Milomir Stakić played a significant role in planning and coordinating the April 1992 takeover of power in Prijedor.

345. On 29 April, the day before the takeover, Dr. Stakić convened a meeting at the JNA barracks.[790] The meeting covered the modalities of the takeover, including the number of policemen required to execute it successfully, and the issue of whether members of the TO should be called upon to assist. Early the next morning the self-proclaimed Serbian authority, including Dr. Stakić, met in Čirkin Polje where they waited for news that the takeover had been successful. Once the police had secured control, Dr. Stakić was escorted to the Municipal Assembly building. On this very first day of the takeover, he occupied Professor Muhamed Čehajić's office.[791]

346. The Trial Chamber finds that in his capacity as President of the Assembly of the Serbian People in Prijedor, Dr. Stakić orchestrated the takeover of power together with, among others, Simo Drljača, Dr. Kovačević and Colonel Arsić. The Trial Chamber is satisfied that this event activated the SDS-initiated plan to enable the Serbs to secure and maintain control in Prijedor municipality. Thereafter, the members of the Assembly of the Serbian People were installed in the strategic positions within the municipality: Dr. Stakić as the President of the Municipal Assembly, Dr. Kovačević as President of the Executive Board and Simo Drljača as Chief of Police.[792]

4. The role of Dr. Stakić in the Prijedor Crisis Staff

347. The Trial Chamber is satisfied that a Crisis Staff was established directly after the takeover and met on a nearly daily basis.[793]

348. The appointees to the Crisis Staff were drawn from different departments within the governing structure. For example, Slavko Budimir represented the Municipal Secretariat for Peoples' Defence, while Ranko Travar was the Secretary for the Economy and Social Affairs. Simo Drljača, the Chief of the Prijedor Public Security Station in Prijedor, represented the police forces on the Crisis Staff.[794] The Chamber is satisfied that at a meeting of the All People's Defence

[790] See *supra* para 71.
[791] *Muharem Murselović*, T. 2696.
[792] E.g. *Witness Z*, T. 7535.
[793] *Slobodan Kuruzović*, T. 14462.
[794] See Exh. S60; Exh. S180, item 19.

Council on 15 May 1992, Dr. Stakić, among others, proposed having a military representative on the Crisis Staff.[795] However, this proposal was ultimately rejected by the Crisis Staff members.[796]

349. The Trial Chamber is convinced that shortly after the takeover on 30 April 1992, the Crisis Staff, presided over by Dr. Stakić, took over the role of the Municipal Assembly.[797]

350. Pavle Nikolić, a constitutional expert, confirmed that during the period of imminent war danger and in the state of war itself, the municipal assemblies that functioned in peacetime were replaced, initially by the crisis staffs. He described in some detail the role of the Crisis Staff, and the Chamber finds particularly relevant his assessment that "the Crisis Staff coordinated authority functions in order to defend the territory […]".[798]

351. Throughout the period for which the work of the Municipal Assembly was suspended, the Crisis Staff, and later the War Presidency, was the highest municipal authority, a repository of not only legislative, but also executive authority. As Slobodan Kuruzović testified: "From the 29th of April onwards […] the supreme body in the municipality was the assembly, and later the Crisis Staff, and later the War Presidency".[799] Based on conclusions adopted by the Crisis Staff of the ARK, as of 18 May 1992, the Crisis Staffs were designated "the highest organs of authority in the municipalities."[800]

352. By virtue of his position as President, Dr. Stakić played a leading role in the Crisis Staff. He presided over the meetings, not only in theory, but also in practice.[801]

353. Some of the Crisis Staff meetings were held in the basement of the Municipal Assembly building. Later, the meetings were held in a room next to Dr. Stakić's office.[802] As President, Dr. Stakić convened the Crisis Staff meetings and determined the agenda.[803] Decisions of the Crisis Staff were not adopted by vote or majority.[804] Dr. Stakić and the other prominent members of the

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[795] Exh. S60. See also *Slavko Budimir*, T. 12865-66. *Slobodan Kuruzović* testified that the most likely reason for Dr. Stakić to have proposed a military representative for the Crisis Staff was "because of the cooperation between the police, the army and the security organs." *Slobodan Kuruzović*, T. 14683.
[796] *Slobodan Kuruzović*, T. 14683.
[797] See Exh. S106 - a letter from the Serbian Republic of Bosnia and Herzegovina, Autonomous Region of Krajina, Prijedor Municipality, Crisis Staff, dated 22 May 1992 and signed by Dr. Milomir Stakić, alerting all commercial and social enterprises that the Crisis Staff will henceforth assume permanent operational duty in the civilian sector on the territory of the municipality.
[798] Report of *Pavle Nikolić*, p. 48 in *Simić*, admitted under Rule 92 *bis* in the *Stakić* case.
[799] *Slobodan Kuruzović*, T. 14591.
[800] Exh. S319, dated 18 May 1992. The conclusions are typesigned "President of the Crisis Staff, Radoslav Brdanin, s.r.". The conclusions were also found in item 17 of Exh. S109, the Official Gazette of the Autonomous Region of Krajina, no. 2/92.
[801] *Slavko Budimir*, T. 12887-88, 12919; *Ranko Travar*, T. 13273.
[802] *Slobodan Kuruzović*, T. 14463-64; *Dušan Baltić*, T. 8316.
[803] *Slavko Budimir*, T. 12878.
[804] *Slavko Budimir,* T. 12922.

Crisis Staff agreed upon various matters in principle before the meetings. As Mr. Kuruzović testified:

> As far as I know, everyone was equal when discussions were held. But I assume that there were certain – there was advice or agreements which were reached between the president of the municipality, the vice-president of the municipality, the president of the executive committee, the vice-president of the executive committee, so between the main people and perhaps those who were involved in the security for the town. That would be natural as a sort of preparation.[805]

354. The Trial Chamber finds that towards the end of May, pursuant to an order from the regional authorities, municipal crisis staffs were redesignated as "War Presidencies". On 31 May 1992, the Serbian Assembly of BiH issued a "Decision on the Formation of War Presidencies in Municipalities in Times of War or the Immediate Threat of War".[806] This Decision provides (Article 3) that a War Presidency shall:

> organise, co-ordinate and adjust activities for the defence of the Serbian people and for the establishment of lawful municipal authorities
>
> perform all the duties of the Assembly and the executive body until the said authorities are able to convene and work
>
> create and ensure conditions for the work of military bodies and units in defending the Serbian nation
>
> carry out other tasks of state bodies if they are unable to convene.

355. According to a "Kozarski Vjesnik" article, this Decision was later implemented by the Prijedor Crisis Staff on 15 July 1992.[807]

356. The change of name from Crisis Staff to War Presidency was purely cosmetic. There was no change in the duties and functions of the Crisis Staff and no change in the membership of that body as a result of the change in name – that is to say, *de facto*, it remained the same.[808] Pavle Nikolić described the War Presidency as a body "competent to organize, coordinate and harmonize defence activities".[809]

357. In an interview with TV Banja Luka on 30 June 1992, Dr. Stakić in his capacity as President of the War Presidency, stated: "We are planning to convene the Assembly very shortly, so that it

[805] *Slobodan Kuruzović*, T. 14464.
[806] Exh. S206, "Decision on the Formation of War Presidencies in Municipalities in Times of War or the Immediate Threat of War" (hereafter "the Decision on War Presidencies"), published in item 168 of the Official Gazette of the Serbian People in BiH, No. 8/92 of 8 June 1992.
[807] Exh. S249.
[808] *Slavko Budimir*, T. 12928.
[809] Report of *Pavle Nikolić*, p. 49 in *Simić*.

can approve or disprove some of the decisions taken by the War Presidency, and thus assert its full legitimacy."[810]

358. The "Decision on the Formation of War Commissions in Municipalities in Times of War or the Immediate Threat of War" dated 10 June 1992[811] annulled the Decision on War Presidencies. However, the Decision on War Commissions was never implemented in the Prijedor Municipality by the War Presidency.[812] An article in "Kozarski Vjesnik" dated 4 September 1992 described the War Presidency as an executive rather than a consultative body.[813]

359. At a session of the Municipal Assembly held on 24 July 1992, decisions of the Crisis Staff and the War Presidency were confirmed by the Assembly.[814] Once the decisions of the Crisis Staff had been ratified, meetings of the Crisis Staff or War Presidency were no longer held.[815] The Trial Chamber notes that when the Crisis Staff decisions where confirmed by the Municipal Assembly, Dr. Stakić, as President of both bodies, presided.

5. The role of Dr. Stakić in the Council for National Defence (People's Defence Council)

360. In addition to his role as President of the Crisis Staff, Dr. Stakić acted as President of the Council for National Defence. The work of this body further supports the conclusion that representatives of the civilian authorities, including Dr. Stakić, co-operated with representatives from the police and the military on military matters and issues relating to the camps.

361. The minutes of the 2nd session of the National Defence Council held on 5 May 1992, only a few days after the takeover, list the following, *inter alia,* as members of the Council: Dr. Milomir Stakić (presiding), Slavko Budimir, Slobodan Kuruzović, Dr. Milan Kovačević, all members of the Crisis Staff, Simo Drljaća (Chief of Police), and Vladimir Arsić and Radmilo Željaja (army representatives). The minutes indicate that the following conclusions relating to military matters were adopted:

> 1) The Municipal Secretariat for National Defence is to reinforce the TO/Territorial Defence/ Detachment and the War Unit 4777, in conjunction with the Military Department and in accordance with the requests made by the commanders of those units.
>
> […]

[810] Exh. S11.
[811] Exh. S207, item 217, Official Gazette of the Serbian People in BiH, No. 10/92 of 30 June 199 (hereinafter "the Decision on War Commissions"), published in item 217 of the Official Gazette of the Serbian People in BiH, No. 10/92 of 30 June 1992.
[812] Exh. S261.
[813] Exh. S261.
[814] Exh. S255, S260 and S261; *Slavko Budimir*, T. 13138.
[815] *Slavko Budimir*, T. 13136.

> 7) All paramilitary units and individuals who possess weapons and ammunition illegally are called upon to surrender them immediately and not later than 11 May 1992 at 1500 hours, to the Public Security Station in Prijedor or its nearest office.[816]

362. The Council for National Defence met again on 15 May 1992 with Dr. Milomir Stakić presiding.[817] Among the issues on the agenda were the "mobilisation in the municipality and the issue of the status of deployed forces." The minutes indicate that Dr. Stakić, together with, *inter alia*, Vladimir Arsić and Radmilo Željaja, participated in the discussion about this issue.[818] The conclusions adopted included a decision to "start the transformation of both TO staffs and form a unified command for control and command of all the units formed in the territory of the municipality."[819]

363. Dr. Stakić, Dr. Kovačević, Radmilo Željaja and Simo Drlaća, *inter alia,* attended a meeting of the Council for National Defence on 29 September 1992.[820] The minutes include reference to a report on forthcoming activities regarding "the open Trnopolje reception centre" and note, in this context, that the Public Security Station in Prijedor will provide an escort for a convoy.[821]

6. <u>The role of Dr. Stakić in coordinating the co-operation between police, military and politicians</u>

364. Evidence supports the finding that the civilian authorities, the police and the military co-operated on the same level within the municipality of Prijedor in order to achieve their aforementioned common goals at any cost.

365. The Chamber first recalls that Article 9 of the Decision on the Organisation and Work of Prijedor Municipal Crisis Staff, reads in its relevant part:

> The Crisis Staff shall at all times cooperate with the army of the Serbian Republic of Bosnia and Herzegovina, Civil Defence and Public Security, through the senior officers or organs of those institutions.

366. Dr. Stakić himself spoke about the co-operation between the civilian and the military authorities in Prijedor. In an interview with "Kozarski Vjesnik" dated 13 January 1993, he was quoted as saying: "Cooperation has been very good with the command of our Prijedor units itself."[822] In a separate interview, Dr. Stakić said that the Crisis Staff took the decision that the army and police should lift the blockade on the Prijedor/Banja Luka road in Kozarac.[823] A report on the "Reception Centres in Prijedor Municipality" compiled by Simo Drlaća "at the request of the

[816] Exh. S28.
[817] Exh. S60.
[818] Exh. S60.
[819] Exh. S60.
[820] Exh. S90.
[821] Exh. S90.
[822] Exh. D92-99.

Commission of the Banja Luka Security Services Centre" states that it was at the request of the Crisis Staff that the army intervened militarily in Hambarine.[824]

367. Dr. Stakić, interviewed as President of the Prijedor Municipal Crisis Staff, stated on 24 May 1992, that the whole territory of Prijedor Municipality had been under control since the liberation of Kozarac and that in Kozarac there was still "čišćenje" going on because those remaining were the most extreme and professional.[825] The Trial Chamber found that the word 'čišćenje' was frequently used for operations carried out by Serb armed forces after attacks on targeted areas in Prijedor municipality.[826] Nusret Sivać was asked about the meaning of this term and stated:

> The first time I encountered this expression was when I was covering the war in Croatia. I believed that it would be a fair war, hand-to-hand, but when they started talking about "cleansing" and "mopping up" that was the first time I really saw it for what it was. It was a scorched-earth policy, loot first, then burn, and then demolish. And never again would there be any traces of other civilisations in those areas but the Serb civilisation.[827]

In light of the foregoing, the Trial Chamber considers the term 'čišćenje' to refer to the Serb forces' conduct to round up survivors of the attacks for the detention camps and frequently arbitrarily killing them in a brutal manner under the pretext that they formed part of paramilitary groups, such as the Muslim 'Green Berets'. These acts were followed by acts, such as looting and torching of the survivors' houses, which resulted in the razing of complete non-Serb villages and settlements to the ground. The Trial Chamber will use the terms cleansing and mopping up interchangeably in the following when referring to "čišćenje".

368. Almost two years after the events, one of the key military figures in Prijedor, Colonel Radmilo Željaja, gave an interview to "Kozarski Vjesnik", in which he acknowledged the level of co-operation between the military, the police and the civilian authorities in the spring and summer of 1992.[828] In speaking about the events after the attack on Hambarine he illustrated the extent of the co-operation during this period:

> Of course, we then offered maximal help and support to the SDS both in organizing preparations and advising them in order to overcome certain problems and to take power […] I must emphasise here in this region, and more or less everyone knows that, the very close cooperation between the Army and the Police. Such cooperation also existed with the leaders of the Party, the people in power, the Crisis Staff, and all decent Serbs who were and still are of importance for this town.[829]

[823] Exh. S187, p. 7.
[824] Exh. S353.
[825] Exh. S240-1, pp.7-8.
[826] See *e.g.* Exh. S240, S349, S351, and S359.
[827] *Nusret Sivać*, T. 6662.
[828] Exh. S274.
[829] Exh. S274.

369. The Prijedor SJB implemented decisions, conclusions and orders of the Crisis Staff. This finding is based on a series of documents which demonstrate convincingly that these two bodies worked together in a form of coordinated co-operation. The first is a document dated 1 July 1992 from the Prijedor SJB and addressed to the Crisis Staff. It bears a signature under which appears the name Simo Drlaća, Chief of the Public Security Station. It reports on the extent to which the SJB has succeeded in implementing various decisions of the Crisis Staff.[830] In addition, there are two documents from the Secretary of the Municipal Assembly, Dušan Baltić, which are relevant in this regard. The first, dated 23 June 1992, states that the Administrative Services Section of the Municipal Assembly has been instructed by the Crisis Staff to draft a report on the implementation of the conclusions (orders, decisions, rulings, conclusions) adopted at its meetings.[831] The second, dated 13 July 1992, is entitled "Report on Implementation of the Conclusions of the Prijedor Municipal Crisis Staff". It states that "in order to compile this report the Service asked that the relevant organs and individuals submit written information on the implementation of the above-mentioned conclusions of the Crisis Staff for which they are responsible and which were forwarded to them on time." Information on the stage of implementation of the various orders is provided.[832]

370. Charles McLeod, a representative of the European Community Monitoring Mission ("ECMM"), who visited Prijedor in 1992 and met with, *inter alia*, Dr. Stakić, remembers him as the person in Prijedor who, along with the military and police, was controlling matters there.[833] Muharem Murselović testified that the soldiers and police personnel of Prijedor were coordinated by the Crisis Staff, who was informed about everything "as a Supreme Commander would be. The Crisis Staff coordinated the work of the police, and in some ways the army was also involved".[834] According to Witness DD, Dr. Stakić did not act alone and was not the only person with influence. He did not act independently at that time.[835] In conclusion, the Trial Chamber is satisfied that the relationship between the police and the Municipal Assembly was one of co-operation, not subordination.[836]

371. The Trial Chamber is satisfied that Dr. Stakić and other members of the Crisis Staff wore camouflage uniforms for a period of time in 1992. This is, *inter alia,* supported by the testimony of Slavko Budimir, a former member of the Crisis Staff in Prijedor, who testified that for a short period of time in 1992, most of the Crisis Staff members, including Dr. Stakić, wore uniforms and carried pistols, although there was no obligation to do so – it was a matter for each individual to

[830] Exh. S114.
[831] Exh. J13.
[832] Exh. S115.
[833] *Charles McLeod*, T. 5181.
[834] *Muharem Murselović*, T. 2699.
[835] *Witness DD*, T. 9568-70.

decide.[837] The Chamber also relies upon a letter dated 17 August 1992 from Simo Drljača to the Prijedor Municipality Crisis Staff referring to checks issued in response to a request by the Crisis Staff for material for flags and camouflage uniforms.[838] The records show that Dr. Stakić was among those who were measured for a camouflage uniform. Slobodan Kuruzović, who was shown this document in court, confirmed that the camouflage material had already been ordered on 3 May 1992, shortly after the takeover of power in Prijedor.[839] There are also several videos[840] in which Dr. Stakić can be seen acting in official capacities wearing a camouflage uniform. At a meeting between members of the Crisis Staff and foreign journalists in August 1992, Dr. Stakić can be seen wearing a camouflage uniform and even carrying a weapon.[841]

372. The Chamber therefore finds that civilian members of the Crisis Staff wore uniforms, which provides evidence that the civilian authorities considered themselves to be on the same level as the army and the police.

373. The Chamber is aware that General Wilmot, the military expert for the Defence, suggested a stovepipe as an analogy for how the various organs within a given system operated. He proposed that each organ (i.e. the civilian authorities, the police and the military) operated largely independently of the others (i.e. the information and command flows are vertical, within a particular stovepipe, rather than horizontal, between the various stovepipes). Within the military "stovepipe", he opined that the only civilians to figure in the military stovepipe are those at the top of the chain of command, namely the President and the Minister of Defence.[842] When confronted with the transcript of the interview[843] in which Dr. Stakić states that the Crisis Staff "made a decision that the army and police" attack Kozarac, General Wilmot said it was unlikely that Dr. Stakić had issued a direct order to the military, although he acknowledged that "he might have influenced the decision".[844] The Trial Chamber finds that this analysis is not inconsistent with its findings, basing itself, in contrast to General Wilmot, on all the available evidence: the Crisis Staff, the military and the police co-operated with one another on the same level in order to achieve their common goals.

374. The Trial Chamber also notes in this regard the comments of Simo Drljača on the cooperation between the civilian authorities and the police. He said that it was "satisfactory" during the period of seizure of power. However, after the takeover "the new people did not understand the

[836] *Zoran Prastalo*, T. 12257-58.
[837] *Slavko Budimir*, T. 12927.
[838] Exh. S432, signed by *Simo Drljača* and stamped SJB Prijedor.
[839] *Slobodan Kuruzović*, T. 14790-91.
[840] Exh. S10; Exh. S11; Exh. S157.
[841] Exh. S157.
[842] *Richard Wilmot*, T. 14002-05.
[843] Exh. S187.
[844] *Richard Wilmot*, T. 14117-18.

role of the police" and "the attempt to transform the police into a Council body which would execute orders given by the Council civil authorities was unacceptable and misunderstandings arose." He also mentions that there was a request from the politicians that the staff be completely replaced by "SDS members, irrespective of education and expertise." He continues that "[If] something was not done correctly, then I should be replaced and not they [the staff] because they executed my orders and those from the Chief of the Central Police Headquarters in Banja Luka and the Ministry of Interior." Lastly, Simo Drljača comments on the police co-operation with the VRS that "[u]nlike the present civil authorities (*i.e.* some individuals from the authorities) the cooperation with the [VRS] as well as the officers was exceptional. The co-operation occurred in the joint cleansing of renegades on the terrain, joint work at the checkpoints, joint intervention groups for maintaining the public peace and order, as well as in the combat against terrorist groups."[845]

375. However, despite what appear to have been professional disagreements and normal attempts to defend one's own jurisdiction, there is ample evidence that Dr. Stakić, besides the professional contacts discussed above and below, maintained close personal ties with Simo Drlaća and Colonel Arsić. Dr. Stakić socialised frequently with Colonel Arsić, Simo Drljaća and Dr. Kovačević.[846] Indeed, Dr. Stakić was close friends with Dr. Kovačević, and even shot pool with Simo Drlaća.[847] There is no doubt that, on these occasions, there was also an informal mutual exchange of information on developments following from the takeover.

376. The Chamber is aware that, in addition to the aforementioned coordination and co-operation at the level of Prijedor municipality, the Indictment alleges vertical coordination and co-operation among the organs of the Serbian Republic of Bosnia and Herzegovina. In this context, the Chamber notes that there is extremely limited, if any, evidence of contacts between the politicians on the municipal level and those on the regional and republican level.[848] The evidence made available was not sufficient to permit the Trial Chamber to make a finding as to the precise nature or degree of this alleged co-operation.[849]

7. The role of Dr. Stakić related to the detention facilities

377. The Trial Chamber finds that the Crisis Staff, presided over by Dr. Stakić, was responsible for establishing the Omarska, Keraterm and Trnopolje camps, and, as discussed before, that there

[845] Exh. D99.
[846] *Slavko Budimir*, T. 12888, 12908, T. 13003; *Ljubica Kovačević*, T. 10217 and *Slobodan Kuruzović*, T. 14510.
[847] *Ranko Travar*, T. 13389.
[848] *Mico Kos*, T. 9844-49; *Slobodan Kuruzović*, T. 14609.
[849] See *supra* para. 19 and *infra* para. 552 on the limitation of the case.

was a coordinated co-operation between the Crisis Staff, later the War Presidency, and members of the police and the army in operating these camps. The Crisis Staff participated by overseeing security there, taking decisions on the continuing detention of Prijedor citizens, providing transport and the necessary fuel for the transfer of prisoners between the various camps and from the camps to non-Serb controlled territory, as well as coordinating the provision of food for the detainees.

378. In an interview with a British television crew in late 1992 or early 1993, Dr. Stakić himself states that the "reception centres" were established by the civilian authorities in Prijedor: "These places such as Omarska, Keraterm and Trnopolje, *were a necessity in a given moment and were formed according to a decision of the civilian authorities in Prijedor*".[850]

379. On 31 May 1992, Simo Drljača, Chief of the Prijedor SJB, ordered that the detention facility in Omarska be established and indicated that order was issued "in accordance with the Decision of the Crisis Staff".[851]

380. Two reports by the Serbian police about the situation in the municipality of Prijedor during the period covered by the Indictment should be mentioned in this context. One report refers to the involvement of the Crisis Staff in the establishment of all three camps:

> In order to solve the problem that had arisen [the capturing of many members of hostile formations, other persons who had been in the zones of armed conflict, and persons who sought help and protection], *the Crisis Staff of the municipality of Prijedor decided* to organise reception and accommodation in the settlement of Trnopolje for persons who sought protection, and that prisoners of war should be held for processing in the building of the Keraterm RO [work organisation] in Prijedor, or in the administrative building and workshop of the RŽR [iron ore mine] in Omarska.[852]

381. Another document[853] refers to a conclusion of the Crisis Staff "assigning the duty of providing security for the Trnopolje camp to the Regional Command". Mr. Kuruzović, the former commander of Trnopolje camp, confirmed that it was pursuant to a decision of the Crisis Staff dated 10 June 1992 that the TO, initially responsibile for providing security, was replaced by soldiers from the local 43rd Brigade.[854]

382. A letter dated 4 August 1992 from Simo Drljača to the Banja Luka CSB, refers to a decision of the War Presidency to substitute the police for the army in order to secure the Omarska and Keraterm camps. It reads in relevant part:

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[850] Exh. S187 (emphasis added).
[851] Exh. S107. As regards reliability, this Order is signed by Simo Drljača and also contains the official stamp of the Prijedor SJB. In addition, the list of receptions on the last page of the Order lists the Prijedor Crisis Staff first.
[852] Exh. S407, p. 1 (emphasis added). Very similar information is found in Exh. S353, p. 4.
[853] Exh. S250, p. 5.
[854] *Slobodan Kuruzović*, T. 14716 and T. 14813.

> There are two collection centres for prisoners, and one for civilian refugees, in the municipality. *Contrary to regular procedure, the police took over the complete security of these centres*. Approximately 300 policemen are involved in this work on a daily basis. A decision was made at a meeting of the War Presidency that the army should take over this work by 31 July 1992 and that the number of police should decrease significantly**.** Since the army has still not, and will not, take over these obligations, it was requested of the Ministry of the Interior and the [Banja Luka CSB] not to reduce the number of police until further notice.[855]

383. This decision of the War Presidency is also referenced in an earlier dispatch dated 1 August 1992 from Simo Drljača to the MUP of the Serbian Republic of BiH and the Banja Luka CSB. The dispatch states that on 24 July 1992, "the War Presidency of the Prijedor Municipal Assembly adopted a decision, no. 01-023-59/92, pursuant to which the reserve police force presently employed should be greatly reduced and the security for the Keraterm, Trnopolje and Omarska reception centres provided by the army. The deadline for the implementation of this decision was fixed for 31 July 1992." [856] The dispatch goes on to state that the army has refused to assume its responsibilities at the centres, which are staffed with 300 police officers every day, and that the SJB cannot implement the decision on the reduction of the reserve police force as long as the army does not assume its duties "in accordance with the arrangements and decisions previously made."

384. The role of the Crisis Staff in coordinating the security for the camps is further referenced in the aforementioned documents compiled by the Serbian police authorities. The role of the Crisis Staff in relation to the Keraterm and Omarska camps is highlighted in the following passages of the report compiled by Simo Drljača. Given the weight accorded to this information, the passages are cited in full:

> Although the Muslim extremists put up a fierce resistance, ruthlessly settling scores with members of their own people who refused to fight against the Serbian forces, the local government, the army and the police were not ready for this development of events, believing to the end in a peaceful and civilised agreement between the peoples. This created a problem of the quartering, guarding and treatment of captured people. It was in this kind of situation that the Crisis Staff of the municipality of Prijedor decided to use the premises of the Keraterm RO/work organisation/ in Prijedor to accommodate captured persons under the supervision of the employees of the SJB and the Military Police of Prijedor.
>
> […]
>
> Operational processing started in the *Keraterm* facility in Prijedor, to which the army brought about 600 persons at the beginning of the conflict.
>
> However, the armed conflict spread to other municipalities as well. The number of persons captured suddenly increased, and it was clear that, in consequence of the small capacity of this facility, and for security reasons, it was not suitable to hold the captured in this facility any longer. For this reason, the Crisis Staff of Prijedor decided that all the captives should be transferred from the *Keraterm* facility in Prijedor to the premises of the administration building and the workshop of the RŽR/iron ore mine/in Omarska, where mixed teams of operatives continued the processing they had started […] By the same decision, the facility was placed under the control of the police and the army. The police were given the task providing immediate physical security, and the army

[855] Exh. S251, p. 2 (emphasis added).
[856] Exh. D137.

took over in-depth security in the form of two rings and the mining of the prisoner's possible escape routes.

[…]

In the same Crisis Staff Decision, it was ordered that the *Keraterm* facility in Prijedor should be used only for transit purposes and that only the first selection of persons brought in should be made there, since, for reasons of lack of space, this was not feasible in Prijedor SJB.

[…]

Direct security for the Investigations Centre of prisoners of war in Omarska, as well as the temporary Keraterm facility, is being provided by the police pursuant to the Decision of the Crisis Staff, since it was assessed that given the numerous sites and areas in which armed conflict is taking place, the army lacks resources to take charge of these facilities.[857]

385. In addition to the Crisis Staff's coordinating function in relation to security at the camps, documentary evidence shows that the Crisis Staff prohibited the release of detainees from the camps and prevented them from returning to Prijedor.

386. A letter dated 23 June 1992 from the Prijedor Municipal Assembly Technical Services to Simo Drljača[858] refers to Conclusion no. 02-111-108/92 adopted by the Crisis Staff "forbidding the release of prisoners".[859] Other "conclusions" about the prisoners in the camps are included in the so-called "Confirmation document" which must be attributed to Dr. Stakić as the President of the Municipal Assembly confirming decisions of the Crisis Staff he presided over himself.[860] On 31 May 1992, the Municipal Assembly prohibited "the return of POW's to Trnopolje and Prijedor." On 23 June 1992, it rejected "the request submitted by Muharem Dauti to return to Stari Grad."[861] On 2 July 1992, the Crisis Staff prohibited "the individual release of persons from Trnopolje, Omarska, and Keraterm."[862]

387. A Crisis Staff Decision dated 2 June 1992 "on the release of imprisoned persons" shows that the Crisis Staff participated in establishing guidelines for the continuing imprisonment or release of the detainees. It states that prisoners may be released either on the basis of the camp commander's signature or with the signature of the Chief of the Public Security Station.[863] This decision contains an original ink deposit "SMilomir" signature. The handwriting expert concluded that there are no

[857] Exh. S353.
[858] Exh. J13.
[859] The two Conclusions are dated 31 May 1992. See also Exh. S115; Exh. S114.
[860] Exh. S250.
[861] Exh. S250.
[862] Exh. S250. This conclusion is also referred to in Exh. S116.
[863] Exh. S64.

signs of simulation or disguise and that the writer of the reference signature *possibly* signed this decision.[864]

388. The Crisis Staff presided over by Dr. Stakić also contributed to ensuring food supplies for police and prisoners at the camp. On 12 June 1992, the Crisis Staff adopted a conclusion "concerning continued operation of the Čirkin Polje Logistics Base and the provision of food for refugees and prisoners"[865] The Chamber also relies upon a document mentioned above which refers to a meeting between members of the Crisis Staff and the army attended by representatives from the Čirkin Polje Logistics Base after which the latter takes steps to provide "full material support to members of the Serbian army units and police officers in the municipality area" and to provide "food supplies to the prisons in Keraterm and Omarska."[866]

389. In concluding that the Crisis Staff had a management and oversight function in relation to the camps, the Chamber also places reliance upon the testimony of Edward Vulliamy, a British journalist, who, along with his television crew, sought to gain access to the Omarska camp in August 1992. Upon arrival in Prijedor on 5 August, they went straight to the "civic centre" where they were greeted by the Chief of Police, Simo Drljača. In a conference room upstairs they were introduced to members of the "Crisis Staff" or "Crisis Committee",[867] namely, Dr. Milomir Stakić, his deputy, Dr. Kovačević, Colonel Vladimir Arsić and Simo Drljača.[868] After brief introductory remarks from both Dr. Kovačević and Dr. Stakić, Colonel Arsić addressed the journalists and encouraged them to visit the Manjaca camp rather than Omarska. He said that Manjaca fell under his authority and that they could proceed directly to the camp. When they insisted on going to Omarska, Colonel Arsić indicated that they would have to seek permission from the civilian authorities, and gestured towards Dr. Kovačević and Dr. Stakić.[869]

390. In a video report, Colonel Vladimir Arsić is reported to have said that the army had nothing to do with the collection centre in Trnopolje and the investigation centre in Omarska, and that these were under the sole jurisdiction of the municipal civilian authorities.[870]

391. While the Chamber does not attribute significant weight to articles and news reports, it observes that there are numerous references in the media to the fact that the civilian authorities played some role in the operation and day to day running of the camps. In a video entitled "Crimes

[864] Exh. S288, p. 5.
[865] Exh. S250, p.6.
[866] Exh. S433.
[867] *Edward Vulliamy*, T. 7912-13.
[868] *Edward Vulliamy*, T. 7913 and T. 8080.
[869] *Edward Vulliamy*, T. 7923.
[870] Exh. S151, p.1.

Committed in Omarska" Penny Marshall says "we were told that the army does not control Omarska, that there prisoners are under the responsibility of the civil authorities and local militia".[871]

392. Dr. Stakić acknowledges in an interview that the people detained in the Trnopolje camp were mainly Muslims.[872] When asked about reports in the Western press that people were killed in Omarska, Dr. Stakić says that there were some cases where inmates died but that there were no reports of murders in the camp:

> There were cases – because I was informed … informed by the chief of the service which …. under whose supervision everything proceeded – cases of death which are … have medical documentation about death, and not about murder.[873]

Dr. Stakić says that those in the Omarska camp who appeared to be injured or wounded had incurred such injuries before entering the camp in the course of combat operations. He maintains that he has no information about maltreatment and physical violence in the centres themselves. Dr. Stakić says: "Our stand, the official stand of the authorities was that there must not be any maltreatment".[874]

393. In an interview from January 1993, Dr. Stakić states that the camps were lightly guarded with no fences or minefields. He stated that he had no accurate information on the number of killed and missing:

> During the war, many have fled over Kozara, running away from these collection centres. These were not concentration camps, they had no fortifications, and no barbed wire, no electricity nor minefields, and they were guarded by twenty (ish) guards. And, in the true sense of the word, we do not have information on the number of killed and missing**,** however the number of five thousand, that, when one hears it one should get hold of one's chair. That number is not even one tenth of what you've presented.[875]

394. According to Slobodan Kuruzović all of the Crisis Staff members were aware of the existence and operation of the Trnopolje camp.[876] He testified that the Room 3 massacre in the Keraterm camp was common knowledge.[877] As for events in the Omarska camp, he said that the details did not emerge during the summer of 1992, but only afterwards.[878] In terms of the knowledge of Crisis Staff members about crimes such as the Room 3 massacre in Keraterm,

[871] Exh. J22.
[872] Exh. S187-1, p.7.
[873] Exh. S187-1, p.5.
[874] Exh. S187-1, pp. 4-5
[875] Exh. S365-1, p. 2
[876] *Slobodan Kuruzović*, T. 14547.
[877] *Slobodan Kuruzović*, T. 14588-89.
[878] *Slobodan Kuruzović*, T. 14589.

Mr. Kuruzović said that it could not have gone unnoticed by the civilian authorities. When asked during his testimony:

> Did anybody in the Crisis Staff try to take action to prevent that something like this would happen again in the future? Were there any investigations? Were there any reports to the responsible authorities, be it in the military area or be it in the police or public prosecutor or area of the investigating judge?

Slobodan Kuruzović responded:

> I don't know whether this was discussed by the Crisis Staff. I didn't hear or witness any such discussion. But I suppose it couldn't have gone unnoticed. If the Crisis Staff made decisions regarding water, food, mobilisation, traffic control, requisition of vehicles et cetera, I don't think they would have omitted to require reports about all these events, and they probably required an investigation by the courts, because from what I know, the incident in Keraterm involved civilians. And civilians are in charge of - - civilians are the responsibility of civilian authorities**,** and I suppose something of that kind must have been requested or even demanded.[879]

395. The Trial Chamber finds that Simo Drljača visited both the Omarska and Manjača camps in 1992.[880] However, on the basis of the evidence presented by the parties, the Chamber cannot conclude beyond a reasonable doubt that Dr. Milomir Stakić ever visited the camps. The Chamber can only be satisfied that a delegation from Banja Luka, accompanied by relevant authorities of the Prijedor Municipality, visited the Omarska camp in mid or late July 1992.

396. According to the Prosecution witness, Mr. Sivać, the delegation arrived around noon with a convoy of vehicles. The delegation comprised of Drljaća, Vokić, Brđanin and his collaborators, a group of journalists, and among the politicians from Prijedor, Kovačević, Dr. Stakić, Srdić, Misković, Andzić, and a military representative, Željaja. Sivać repeatedly testified to having seen Dr. Stakić in the delegation. [881] According to him, Dr. Stakić was in a group that entered the administrative building a little later than the main part of the delegation and headed for the garage.[882] The prisoners were lined up in front of the buildings and were forced to sing Chetnik songs.[883] Some details of Sivać's testimony were confirmed by two Defence witnesses, Nada Markovska and Cedo Vuleta, such as the approximate period and time of the visit, the arrival of cars, the delegation entering the administrative building, and the fact that inmates were lined up and were forced to sing Chetnik songs.[884]

397. However, the three testimonies are inconsistent as to the number and identity of the members of the delegation, the number of cars, and the route the delegation used when entering the

[879] *Slobodan Kuruzović*, T. 14590.
[880] *Witness A*, T. 2047, *Slobodan Kuruzović*, T. 14590.
[881] *Nusret Sivać*, T. 6640, 6648, 6697, 10276-77, 10289.
[882] *Nusret Sivać*, T. 6646-47.
[883] *Nusret Sivać*, T. 6640-41.
[884] *Nada Markovska*, T. 9930, 9970, 10004; *Cedo Vuleta* T. 11559, 11617-19.

building. According to Nada Markovska the delegation was composed of Mr. Župljanin, Mr. Simo Drljaća, Mr. Brđanin and Mr. Mrkić.[885] It arrived in several cars and entered the administrative building the same way, that is through the main entrance. Cedo Vuleta, who, according to his testimony, was working at that time exactly where the delegation arrived and had an overview of all the cars that had arrived, stated that the delegation came in two cars and that there were seven or eight people, among whom he recognised Mr. Radić and Mr. Drljača, and the delegation was accompanied by two or three armed escorts.[886]

398. However, the most relevant discrepancy between the Prosecution and the two Defence witnesses' testimonies is the alleged presence of Dr. Stakić in the delegation. Both Mrs. Markovska and Mr. Vuleta stated that they did not see him there on that day, even though they had a clear view, as they believe they recall, of all members of the delegation. [887] In this respect, the Trial Chamber recognises the possibility that the Accused was not part of the main group of the delegation but arrived later in another car and reached the meeting room without being noticed by the two Defence witnesses.

399. The Trial Chamber does not have any doubt about the credibility of Mr. Sivać. Based on a line-up in the courtroom,[888] the Trial Chamber found that he had no difficulty identifying Dr. Stakić. However, the evidence presented by the Defence does not allow the Trial Chamber to come to the conclusion beyond reasonable doubt that Dr. Stakić was actually among the members of the delegation visiting the Omarska camp on that day. It cannot be excluded that Mr. Sivać, a bit further away from the members of the delegation, was only under the impression of having seen Dr. Stakić yet is still convinced that he saw this well known man. The remaining doubts must be assessed in favor of the Accused.

400. However, this single and not finally clarified event, has no impact at all on the Trial Chamber's assessment that Dr. Stakić not only had knowledge about the existence of the camps but also actively participated in setting up and running them.

401. For the foregoing reasons, the Trial Chamber is satisfied that, Dr. Stakić was aware that non-Serbs were detained in the camps on a discriminatory basis and that foreseeable crimes were being committed against them in the camps.

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[885] *Nada Markovska*, T. 9927, 9973.
[886] *Cedo Vuleta* T. 11612-14.
[887] *Nada Markovska* claimed neither to have seen Dr. Stakić that day, nor ever in Omarska; T. 9929-30, 9971-73; *Cedo Vuleta* did not see Dr. Stakić on that day in Omarska. T. 11550.
[888] *Nusret Sivać*, T. 6552-6554; T. 2264 and *Prosecutor v. Milomir Stakić,* Case No. IT-97-24-AR73.4, Decision on the Prosecution motion seeking leave to appeal the decision of Trial Chamber II ordering an identification parade, 28 June 2002.

8. The role of Dr. Stakić related to deportation

402. The Chamber turns first to Dr. Stakić's own words from interviews mostly with foreign journalists, about the "mass exodus" of the non-Serb population from the municipality of Prijedor.

403. In an interview with a British television crew Dr. Stakić elaborates on the methods used to assist those "wishing to leave" the area and where they might go. When talking about Trnopolje, Dr. Stakić states that they organised free buses and a train for those who wanted to go to central Bosnia so that "the genocide that we have already been blamed for in Europe should not occur". He continues: "It is better that they leave and tomorrow, when the war ends … those among them who want to return here will be able to do so".[889] When questioned about allegations of ethnic cleansing, Dr. Stakić replied that they were trying to secure papers for people and a decent departure at their personal wish and request. He spoke of a certain number of Muslims still in Prijedor working in the public services sector and the economy. He stated that most of those leaving were doing so partly for political or economic[890] reasons. He states that Trnopolje was officially closed around mid-September 1992 and that the people from Trnopolje were transferred under the organisation of the International Red Cross to Karlovac. [891]

404. The Trial Chamber is convinced that Dr. Stakić himself saw the long lines of Muslim and Croat men and women standing outside the SUP building waiting for permission to leave the municipality.[892]

405. In addition, several Crisis Staff documents make specific reference to the non-Serbs fleeing the municipality. For example, there are two Crisis Staff decisions which provide for the redistribution of property formerly belonging to Muslims and Croats to Serbs. The first document states that all movable and immovable property "that belonged to Muslims, Croats and others, as well as to Serbs who have left the territory of Prijedor Municipality or have not responded to the general mobilisation call-up on the territory of Prijedor Municipality" shall be declared state property and shall be at the disposal of Prijedor Municipality.[893] The second document drafted in the form of decision with a signature line for Dr. Milomir Stakić sets out guidelines for the division of real estate declared to be "state property" "among the Serbian population of Prijedor

[889] Exh. S187-1, p. 7
[890] Exh. S187-1, p. 8
[891] Exh. S187-1, p. 3
[892] *Miloš Janković*, T. 10739-40, *Slavko Budimir*, T. 13144, *Ostoja Marjanović*, T. 11707-08; *Stoja Radaković*, T. 11079; *Witness Z*, T. 7559.
[893] Exh. S158.

Municipality, families of fallen combatants and the Serbian population moving in from areas affected by the war".[894]

406. The Trial Chamber also relies on the evidence of Charles McLeod, a representative of the European Community Monitoring Mission ("ECMM") who visited Prijedor in late August 1992. He met with Dr. Stakić, among other representatives of the civilian authorities and formed the impression that the "official story" did not match the facts on the ground. A month earlier he witnessed 9,000 people crossing over to Croatia at Karlovac.[895] One of the politicians with whom he met was Dr. Stakić. Mr. McLeod is still in possession of detailed notes from that meeting.[896] Following the interview with, *inter alia*, Dr. Stakić, Mr. McLeod concluded that despite the protestations of the representatives, the authorities were systematically expelling the Muslim population by whatever means possible. Mr. McLeod's contemporaneous notes read in relevant part:

> 42. Conclusion. The authorities insist that they are acting in the best interests of all the people in the area and that they have no desire to get rid of the Muslim population. However this just does not match what they are actually doing. Against this background, it is very hard to draw conclusions based on what is said.
>
> 43. The conclusion to be drawn from what we have seen is that the Muslim population is not wanted and is being systematically kicked out by whatever method is available.[897]

407. Moreover, the Trial Chamber is satisfied that on several occasions Dr. Stakić was given specific information about the crimes being perpetrated against non-Serbs in the municipality and the fact that many were fleeing. When Witness Z decided to leave the Municipality of Prijedor in the summer of 1992, she turned to Dr. Stakić for assistance, believing that his authority could assist in obtaining the requisite permit. When Dr. Stakić told her to go to the SUP building like everyone else she protested that there were long lines for such a permit. She took him to the window to see the queues outside the SUP building.[898]

408. Finally, the Trial Chamber relies upon the chilling words contained in a dispatch dated 22 August 1992, sent from the Command of the 1st Krajina Corps to the Prijedor Operative Group Command, which attributes responsibility for "the needless spilling of Muslim blood" to the civilian and military authorities in Prijedor:

> One thing is certain: we are already starting to feel the cost of the needless spilling of Muslim blood. There is information that *Muslims driven out of the municipality of Prijedor*, and those who fled to the other side, but who had done nothing against the Serbian Republic before, are now

[894] Exh. S196.
[895] *Charles McLeod*, T. 5131.
[896] Exh. S166.
[897] Exh. S166.
[898] Witness Z, T. 7558-7560.

taking up arms in Croatia and joining the war against us. Several such persons were captured in Gradačac. In addition to this, *Muslims who were either driven out of or fled from Prijedor* to Croatia now attack everything that is Serbian, and the Serbs in Croatia have thus gained fanatical enemies, bequeathed to them by the civilian and military authorities of Prijedor.[899]

[899] Exh. S358 (emphasis added).

III. THE INDIVIDUAL CRIMINAL RESPONSIBILITY OF DR. MILOMIR STAKIĆ FOR THE CRIMES ALLEGED – APPLICABLE LAW AND FINDINGS

A. General Principles of Interpretation of the Applicable Law

409. In this section of the Judgement, the Trial Chamber will provide its interpretation of the relevant law. It will restrict itself to an interpretation of the law to the extent necessary to provide a basis for determining the factual questions presented to this Chamber. In interpreting and applying the relevant law, the Trial Chamber has taken the following principles, *inter alia*, as its basis:

410. First, the Trial Chamber has interpreted the law in accordance with the Tribunal's Statute and Rules of Procedure and Evidence. It has also borne in mind the context in which the Statute was adopted, in particular resolution 827 (1993) establishing the International Tribunal under Chapter VII of the Charter of the United Nations.

411. Second, the Trial Chamber has considered carefully the Report of the Secretary-General Pursuant to Paragraph 2 of Security Council resolution 808 (1993)[900] according to which "the application of the principle *nullum crimen sine lege* requires that the international tribunal should apply rules of international humanitarian law which are beyond any doubt part of customary law".[901] Against this background the Trial Chamber observes that whereas the norms laid down in Articles 2 to 5 of the Statute reflect customary international law, some of them also find their primary basis in various conventions. The Chamber has consequently deemed it appropriate to interpret any relevant convention in conformity with the general rules of interpretation of treaties set out in Articles 31 and 32 of the Vienna Convention on the Law of Treaties of 23 May 1969.[902]

412. Third, the Trial Chamber is aware that both substantive international criminal law and humanitarian law have developed since 1992. It has therefore been very cautious in interpreting the relevant rules and has assessed carefully whether the law constituted applicable law at the time the alleged crimes were committed. To do otherwise might lead to a violation of the fundamental principle of non-retroactive application of substantive criminal law.

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[900] S/25704, 3 May 1993.
[901] *Ibid*, para. 34.
[902] UNTS vol. 1155, p. 339, in force for Yugoslavia from 27 January 1980, succeeded to by Bosnia and Herzegovina on 1 September 1993 and by Serbia and Montenegro on 12 March 2001. See also *Tadić Decision on Defence Motion for Interlocutory Appeal on Jurisdiction*, 2 October 1995, paras 79-93, describing the interpretation of Articles 2 and 3 of the Statute in accordance with the relevant conventions.

413. Fourth, as already stated, the Trial Chamber is aware that some of the norms laid down in Articles 2 to 5 of the Statute find their source in conventions drafted at various times and in different contexts. The Trial Chamber stresses that the provisions of the Statute do not form a coherent closed system of norms and that, in contrast to what may normally be assumed in the context of national codification of substantive criminal law norms, the norms laid down in Articles 2 to 5 must be interpreted against their own specific historical and contextual background. It follows that the Trial Chamber needs to exercise great caution in applying any systematic interpretation or *a contrario* reasoning that might normally follow from the interpretation of national codification of law. Ordinarily, the same interpretation should be given to the same phrase in a national code of substantive criminal norms even if the context differs. However, such a systematic interpretation cannot be assumed, and indeed is not always called for, when interpreting phrases in the relevant provisions of the Statute.

414. Fifth, when interpreting the relevant substantive criminal norms of the Statute, the Trial Chamber has used previous decisions of international tribunals, the primary source being judgements and decisions of this Tribunal and the Rwanda Tribunal, and in particular those of the Appeals Chamber. As a secondary source, the Trial Chamber has been guided by the case-law of the Nuremberg[903] and Tokyo[904] Tribunals, the tribunals established under Allied Control Council Law No. 10,[905] and the Tribunal for East Timor.[906]

415. Sixth, the Trial Chamber is restricted by the Indictment and cannot make a legal assessment of the facts that do not conform to the Indictment as would be possible in other legal systems. In addition, the Trial Chamber notes that some of the crimes listed as constituting acts of persecution (Count 6) are also charged separately, namely murder (Count 3), deportation (Count 7) and other inhumane acts (Count 8). Torture and rape, however, are charged only under the chapeau of persecution and not as separate counts. Imprisonment is not charged at all and extermination is charged separately and not as an act constituting persecution. The Trial Chamber is bound by these charges and will attempt to find a more systematic approach when answering the question whether to convict cumulatively.

416. The Trial Chamber explicitly distances itself from the Defence submission that the principle *in dubio pro reo* should apply as a principle for the interpretation of the substantive criminal law of

[903] Trial of Major War Criminals Before the International Military Tribunal, Nuremberg, 14 Nov 1945 – 1 Oct 1946.
[904] The International Military Tribunal for the Far East, Tokyo, 29 April 1946 – 12 November 1948.
[905] Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10 (Department of State Bulletin, 15 (384), 10 November 1946, 862).
[906] East Timorese Transitional Administration, Dili District Court, Special Panel for Serious Crimes.

the Statute.[907] As this principle is applicable to findings of fact and not of law, the Trial Chamber has not taken it into account in its interpretation of the law.

B. Modes of Participation: Articles 7(1) and 7(3) of the Statute

417. The Accused, Dr. Milomir Stakić, is charged under Article 7(1) of the Statute in its entirety with all the Counts in the Indictment. Article 7(1) of the Statute states:

> 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.

418. The Trial Chamber recalls its Decision on Rule 98 *bis* Motion for Judgement of Acquittal insofar as the Accused was acquitted of the charge of instigation as set out in Counts 3 to 8.[908]

419. In addition to criminal responsibility pursuant to Article 7(1) of the Statute, the Prosecution alleges that Dr. Milomir Stakić incurred criminal responsibility as a superior[909] pursuant to Article 7(3) of the Statute in respect of all Counts in the Indictment.

420. Article 7(3) of the Statute of the Tribunal states:

> 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.

1. The Applicable Law

(a) Committing

421. In view of the fact that the Prosecution bases its charges primarily on the concept of joint criminal enterprise as one definition of "committing", the Trial Chamber will first consider joint criminal enterprise.

(i) Arguments of the Parties

a. Prosecution

[907] See Defence Final Brief, paras 33-42.
[908] Rule 98 *bis* Motion for Judgement of Acquittal, 31 October 2002, para. 108.
[909] While the Trial Chamber views the terms "superior responsibility" and "command responsibility" as synonymous, in this Judgement it will use the term "superior" rather than "commander" with regard to Dr. Stakić, as he was not a member of the military and the term "commander" is more commonly used when describing persons in a military or para-military structure vested with some form of authority.

422. In the Indictment, the Prosecution qualifies the word 'committed', stating: "[b]y using the word "committed" in this indictment, the Prosecution does not intend to suggest that the Accused physically perpetrated any of the crimes charged personally".[910] The Prosecution submits that the term "committed" in Article 7(1) refers to the Accused's alleged participation in a joint criminal enterprise as a co-perpetrator.[911] It alleges that Dr. Stakić is individually criminally responsible for all Counts in the Indictment because he participated in a joint criminal enterprise to commit these crimes, or because "these crimes were natural and foreseeable consequences of the execution of the common purpose of the joint criminal enterprise and Milomir Stakić was aware that these crimes were the possible consequence of the execution of the joint criminal enterprise."[912]

423. The Prosecution submits that the Tribunal's jurisprudence to date recognises three specific categories of joint criminal enterprise and argues that, although the *mens rea* varies, the objective requirements are the same for all three categories. For the Prosecution, these requirements are that:

> (1) two or more individuals are one way or another involved together in the commission of a crime,
>
> (2) there existed a common plan, design or purpose amounting to or including the commission of one or more crimes within the Statute, and
>
> (3) the accused participated in the execution of the common plan, design or purpose and was thereby related and linked to the commission of one of the crimes provided for in the Statute.[913]

424. The Prosecution further submits that the first category of joint criminal enterprise requires that the Accused intended to commit a certain crime and that this intent was shared by all the individuals involved in its commission.[914]

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[910] Indictment, para. 37.
[911] Prosecution Final Trial Brief, para. 156.
[912] Indictment, paras 26 and 28.
[913] Prosecution Final Trial Brief, para. 107, citing the *Tadić* Appeal Judgement, para. 227.
[914] *Ibid*, para. 108.
[915] *Ibid*, para 108.
[916] *Ibid*.
[917] *Ibid*.
[918] Prosecution's Response to "Defence Final Trial Brief", pp .3-4.

425. In the view of the Prosecution, the second category of joint criminal enterprise requires that "the accused had knowledge of a system to ill-treat prisoners and had intent to further this common concerted system of ill-treatment".[915]

426. For the third category of joint criminal enterprise the Prosecution submits that the Accused must have "intended to participate in and further the common criminal activity or plan, design or purpose of the individuals concerned, and to contribute to the joint criminal enterprise, or in any event to the commission of a crime by the group."[916] Additionally it alleges that "responsibility for a crime other than that agreed upon in the common plan, design or purpose may arise if, under the circumstances of the case, it was foreseeable that such crime might be perpetrated by one or more participants in the joint criminal enterprise, and the accused willingly took that risk."[917] In its Response to the Defence Final Brief, the Prosecution claims that the *Krnojelac* Trial Chamber's discussion of the *mens rea* requirement under the "basic form" (first and second variants) of joint criminal enterprise is not applicable to the "extended form" (third variant)[918] and that, according to the settled jurisprudence,[919] an accused need not share the *mens rea* of the perpetrator under the "extended" form of joint criminal enterprise.

427. The Prosecution has thus pleaded all three categories of joint criminal enterprise in relation to all the Counts charged in the Indictment.

b. Defence

428. The Defence submits that the theory of joint criminal enterprise is a judicially created construct used to broaden the meaning of the term "committed" in Article 7(1) of the Statute and should therefore be used cautiously and restrictively.[920] It holds that any theory and resulting culpability on the premise of joint criminal enterprise would be a violation of the principle of legality, *nullum crimen sine lege,* since this theory was never contemplated in the Statute of the Tribunal or the Geneva Conventions of 1949.[921]

429. The Defence argues that the Prosecution must prove both the existence of a joint criminal enterprise and the participation in that joint criminal enterprise by the Accused.[922] For the Defence, a joint criminal enterprise exists when there is an understanding or arrangement tantamount to an

[919] *Tadić* Appeal Judgement, para. 228; *Čelebići* Appeal Judgement, para. 366; Prosecution's Response to "Defence Final Trial Brief", pp.2-3.
[920] Defence Final Trial Brief, paras 168 and 170.
[921] *Ibid*, para. 178.
[922] *Ibid*, para. 171.

agreement between two or more persons that they will commit a crime.[923] A person may participate in a joint criminal enterprise by:

> (1) participating directly in the commission of the agreed crime itself (as a principal offender);
>
> (2) being present at the time of commission of the agreed crime, knowing that the crime is being committed, by intentionally assisting or encouraging another participant in the joint criminal enterprise to commit that crime; or
>
> (3) acting in furtherance of a particular system in which the crime is committed by reason of position of authority or function with knowledge of the nature of the system and with intent to further that system.[924]

430. The Defence argues that the Prosecution must establish that each participant in the joint criminal enterprise had a common state of mind required for the crime in question and that the accused, as a participant in the joint criminal enterprise shared the *mens rea* of the principal offender. The Defence submits that this also applies to the "extended" form of joint criminal enterprise.[925] According to the Defence, "[t]he decisional authority of the ICTY requires proof that the accused shared the intent of the crime committed by the extended joint criminal enterprise".[926] The Defence submits that where the Prosecution relies on inference to prove the *mens rea*, such inference must be the only reasonable one available on the basis of the evidence.[927]

(ii) Discussion

431. The Trial Chamber acknowledges the recent Appeals Chamber Decision in the *Ojdanić* case on the question of joint criminal enterprise. In this Decision the Appeals Chamber found that the Tribunal has jurisdiction *ratione personae* when the form of liability satisfies four conditions: (i) the liability must be provided for, explicitly or implicitly, in the Statute; (ii) it must have existed under customary international law at the relevant time; (iii) the law providing for that form of liability must have been sufficiently accessible at the relevant time to anyone who acted in such a way; and (iv) such person must have been able to foresee that he could be held criminally liable for his actions if apprehended.[928]

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[923] *Ibid*, para. 172, citing the *Krnojelac* Trial Judgement, para. 80
[924] *Ibid*, para. 187, citing the *Krnojelac* Trial Judgement, para. 81.
[925] *Ibid*, para. 190.
[926] *Ibid*, para. 190.
[927] *Ibid*, paras 188, 191.
[928] *Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – Joint Criminal Enterprise*, 21 May 2003, para. 21.

432. The Appeals Chamber in *Tadić* observed that Article 7(1) "covers first and foremost the physical perpetration of a crime by the offender himself, or the culpable omission of an act that was mandated by a rule of criminal law. However, the commission of one of the crimes envisaged in Articles 2, 3, 4 or 5 of the Statute might also occur through participation in the realisation of a common design or purpose."[929] In the *Ojdanić* Decision, the Appeals Chamber held unequivocally that joint criminal enterprise is to be regarded as a form of "commission" pursuant to Article 7(1) of the Statute and not as a form of accomplice liability.[930] Since it constitutes a form of "commission" in the sense that, insofar as a participant shares the purpose of the joint criminal enterprise as opposed to merely knowing about it, he cannot be regarded as a mere aider and abettor to the crime contemplated.[931]

433. The Trial Chamber emphasises that joint criminal enterprise can not be viewed as membership in an organisation because this would constitute a new crime not foreseen under the Statute and therefore amount to a flagrant infringement of the principle *nullum crimen sine lege*.[932] This must always be borne in mind when working with this definition of the term "commission".

434. There are three categories of joint criminal enterprise as described by the Prosecution in its arguments.

435. In order to establish individual criminal responsibility pursuant to a joint criminal enterprise, the Prosecution must prove, for all three categories the existence of a common criminal plan between two or more persons in which the accused was a participant.[933] The existence of the agreement or understanding need not be express, but may be inferred from all the circumstances.[934] The participation of two or more persons in the commission of a particular crime may itself establish an unspoken understanding or arrangement amounting to an agreement formed between them then and there to commit that particular criminal act.[935] A person may participate in a joint criminal enterprise in various ways: (i) by personally committing the agreed crime as a principal offender; (ii) by assisting or encouraging the principal offender in committing the agreed crime as a co-perpetrator who shares the intent of the joint criminal enterprise; (iii) by acting in furtherance of a particular system in which the crime is committed by reason of the accused's position of authority or function and with knowledge of the nature of that system and intent to further it.[936] Provided the

[929] *Tadić* Appeal Judgement, para. 188.
[930] *Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – Joint Criminal Enterprise*, para. 20.
[931] *Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – Joint Criminal Enterprise*, para. 20.
[932] *Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – Joint Criminal Enterprise*, paras 20 and 31.
[933] *Tadić* Appeal Judgement, para. 227.
[934] *Tadić* Appeal Judgement, para. 227; *Krnojelac* Trial Judgement, para. 80.
[935] *Vasiljević* Trial Judgement, para. 66; *Krnojelac* Trial Judgement, para. 80.
[936] *Vasiljević* Trial Judgement, para. 67; *Krnojelac* Trial Judgement, para. 81.

agreed crime is committed by one of the participants in the joint criminal enterprise, all the participants are equally guilty of the crime regardless of the role each played in its commission.[937]

436. The basic category of joint criminal enterprise requires proof that the accused shared the intent specifically necessary for the concrete offence, and voluntarily participated in that enterprise.[938] The "extended" joint criminal enterprise is one by which a member of the enterprise who did not physically perpetrate the crimes charged is still responsible for a crime which exceeded the agreed object of that enterprise if (i) the crime was a natural and foreseeable consequence of the execution of that enterprise, and (ii) the accused was aware that such a crime was a possible consequence of the execution of the enterprise, and, with that awareness, participated in it.[939] As stated by the Appeals Chamber in *Tadić*:

> In order for responsibility [*e.g*][940] for deaths [which went beyond the original enterprise] to be imputed to others, however, everyone in the group must have been able to *predict* this result. It should be noted that more than negligence is required. What is required is a state of mind which a person, although he did not intend to bring about a certain result, was aware that the actions of the group were most likely to lead to that result but nevertheless willingly took that risk.[941]

437. The Trial Chamber notes with special reference to the *mens rea* of joint criminal enterprise that Article 7(1) lists modes of liability only. These can not change or replace elements of crimes defined in the Statute. In particular, the *mens rea* elements required for an offence listed in the Statute cannot be altered.

438. The Trial Chamber emphasises that joint criminal enterprise is only one of several possible interpretations of the term "commission" under Article 7(1) of the Statute and that other definitions of co-perpetration must equally be taken into account. Furthermore, a more direct reference to "commission" in its traditional sense should be given priority before considering responsibility under the judicial term "joint criminal enterprise".

439. The Trial Chamber prefers to define 'committing' as meaning that the accused participated, physically or otherwise directly or indirectly,[942] in the material elements of the crime charged through positive acts or, based on a duty to act, omissions, whether individually or jointly with

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[937] *Vasiljević* Trial Judgement, para. 67; *Krnojelac* Trial Judgement, para. 82.
[938] *Tadić* Appeal Judgement, paras 190-206.
[939] *Tadić* Appeal Judgement, paras 204-220, and particularly para. 206.
[940] Insertion added.
[941] *Tadić* Appeal Judgement, para. 220.
[942] Indirect participation in German Law (*mittelbare Täterschaft*) or "the perpetrator behind the perpetrator"; terms normally used in the context of white collar crime or other forms of organised crime

others. [943] The accused himself need not have participated in all aspects of the alleged criminal conduct.

440. In respect of the above definition of 'committing', the Trial Chamber considers that a more detailed analysis of co-perpetration is necessary. For co-perpetration it suffices that there was an explicit agreement or silent consent to reach a common goal by coordinated co-operation and joint control over the criminal conduct. For this kind of co-perpetration it is typical, but not mandatory, that one perpetrator possesses skills or authority which the other perpetrator does not. These can be described as shared acts which when brought together achieve the shared goal based on the same degree of control over the execution of the common acts. In the words of *Roxin*: "The co-perpetrator can achieve nothing on his own…The plan only 'works' if the accomplice[944] works with the other person."[945] Both perpetrators are thus in the same position. As *Roxin* explains, "they can only realise their plan insofar as they act together, but each individually can ruin the whole plan if he does not carry out his part. To this extent he is in control of the act."[946] *Roxin* goes on to say, "[t]his type of 'key position' of each co-perpetrator describes precisely the structure of joint control over the act."[947] Finally, he provides the following very typical example:

> If two people govern a country together - are joint rulers in the literal sense of the word - the usual consequence is that the acts of each depend on the co-perpetration of the other. The reverse side of this is, inevitably, the fact that by refusing to participate, each person individually can frustrate the action.[948]

441. The Trial Chamber is aware that the end result of its definition of co-perpetration approaches that of the aforementioned joint criminal enterprise and even overlaps in part. However, the Trial Chamber opines that this definition is closer to what most legal systems understand as "committing"[949] and avoids the misleading impression that a new crime[950] not foreseen in the Statute of this Tribunal has been introduced through the backdoor.[951]

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[943] *Kvočka* Trial Judgement, para. 251.
[944] In this context the term 'accomplice' is used interchangeably with 'co-perpetrator' (footnote added). See also *Krnojelac* Trial Judgement, para. 77.
[945] *Roxin, Claus,* Täterschaft und Tatherrschaft (Perpetration and control over the act), 6th Edition, Berlin, New York, 1994, p. 278.
[946] *Roxin, Claus,* Täterschaft und Tatherrschaft (Perpetration and control over the act), 6th Edition, Berlin, New York, 1994, p. 278.
[947] *Roxin, Claus,* Täterschaft und Tatherrschaft (Perpetration and control over the act), 6th Edition, Berlin, New York, 1994, p. 278.
[948] *Ibid*. p. 279
[949] See *supra Roxin* as one example for the Civil Law approach. For the Common Law approach see: *Sworth, Andrew*, Principals of Criminal Law, 2nd Edition, Oxford 1995, p. 409 ff and *Fletcher, George P.*, Rethinking Criminal Law, Oxford, 2000, p. 637ff.
[950] *E.g*. "membership in a criminal organization".
[951] Defence Final Brief, paras 168, 170, and 178.

442. In respect of the *mens rea*, the Trial Chamber re-emphasises that modes of liability can not change or replace elements of crimes defined in the Statute and that the accused must also have acted in the awareness of the substantial likelihood that punishable conduct would occur as a consequence of coordinated co-operation based on the same degree of control over the execution of common acts. Furthermore, the accused must be aware that his own role is essential for the achievement of the common goal.

(b) Planning

443. The Trial Chamber follows the established jurisprudence and considers that planning implies that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases.[952] The Trial Chamber agrees that where an accused is found guilty of having committed a crime, he can not be convicted of having planned the same crime,[953] even though his involvement in the planning may be considered an aggravating factor.

(c) Ordering

444. The Prosecution submits in respect of 'ordering' that proof is required that one or more persons performed the *actus reus* of the crime in question as a perpetrator, with or without the participation of the accused. Such proof, in the Prosecution's opinion, includes the perpetrator's having acted "in execution of or otherwise in furtherance of an express or implied order by the accused to the perpetrator as a subordinate or other person over whom the accused possessed *de jure* or *de facto* authority to order."[954] A formal superior-subordinate relationship between the accused and the perpetrator need not have existed; it is sufficient that the accused possessed the authority to order and that that authority can be reasonably implied.[955] Finally, the Prosecutor contends with regard to 'ordering' that the accused must fulfil the relevant *mens rea* requirement of the crime in question and have been aware of the substantial likelihood that the crime committed would be a consequence of the implementation of the order given.[956]

445. The Trial Chamber considers 'ordering' to refer to "a person in a position of authority using that position to convince another to commit an offence."[957] The person 'ordering' must have the

[952] *Krstić* Trial Judgement, para. 601.
[953] *Kordić* Trial Judgement para. 386.
[954] Prosecution Final Trial Brief, para. 161, citing the *Blaškić* Trial Judgement, paras 281-282 and *Kordić* Trial Judgement, para. 388.
[955] *Ibid*.
[956] *Ibid*.
[957] *Krstić* Trial Judgement, para. 601.

required *mens rea* for the crime with which he is charged[958] and must have been aware of the substantial likelihood that the crime committed would be the consequence when executing or otherwise furthering the implementation of the order. The Trial Chamber considers, however, that an additional conviction for ordering a particular crime is not appropriate where the accused is found to have committed the same crime.

(d) Aiding and Abetting

446. The Trial Chamber notes the submissions of the parties relating to aiding and abetting but holds that a discussion of this mode of liability is not relevant to its findings in this case.

(e) Article 7(3)

(i) Arguments of the parties

a. Prosecution

447. The Prosecution submits that Article 7(3) of the Statute applies where a superior failed to exercise his or her power to prevent subordinates from committing offences or failed to punish them afterwards.[959] According to the Prosecution, the pre-requisites for individual criminal responsibility under Article 7(3) of the Statute are that:

> (1) the accused exercised superior authority over the perpetrator(s) of the offence;
>
> (2) the accused knew or had reason to know that the perpetrator was about to commit the offence or had done so, and
>
> (3) the accused failed to take the necessary and reasonable measures to prevent the offence or to punish the perpetrator.[960]

448. The Prosecution argues that Article 7(3) covers not only military leaders or international conflicts but also civilian leaders in internal or unclassified armed conflicts.[961]

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[958] *Blaškić* Trial Judgement, paras 278 and282.
[959] Prosecution's Final Brief, para. 91, citing *Aleksovski* Appeal Judgement, para. 76.
[960] Prosecution's Final Pre-trial Brief (Revised April 2002) of 5 April 2002, para. 145, and Prosecution Final Trial Brief of 5 May 2003, para. 92.
[961] See Prosecution Final Trial Brief, para. 91, citing *Hadžihasanović* Jurisdiction Decision, para. 179. The Prosecution also referred to para. 174 "…the purpose of command responsibility is to ensure that persons vested with *responsibility over others* fulfil their *duty* to ensure that their subordinates do not commit criminal acts. The absence of an express limitation—or an additional element or jurisdictional requirement—in the language of Article 7(3) was deemed as evidence that under customary law the doctrine of command responsibility could be applied to non-military superiors. Likewise, this Trial Chamber observes [that] the absence of any express limitation, or conversely, any requirement of an international armed conflict—or even armed conflict—on the applicability of the doctrine of command responsibility would indicate that the doctrine applies regardless of the nature of the conflict."

449. With regard to the first pre-requisite, the Prosecution submits that a superior-subordinate relationship exists when the superior is in a position either to prevent the crime or to punish the perpetrator once the crime has been committed. The Prosecution holds that the test for determining a superior-subordinate relationship is whether the superior had "effective control" of the perpetrators[962] and that the same is valid in the civilian context. It adds, however, that while the control must be of the same degree in the military and civilian settings, it may be exercised in different ways.[963]

450. In respect of the second pre-requisite, the Prosecution argues that a superior may be held criminally responsible only if specific information was in fact available or provided to him which would have put him on notice of possible unlawful acts by his subordinates.[964] According to the Prosecution, the "had reason to know" standard applies to all superiors, whether military or civilian.[965]

451. In respect of the third pre-requisite, the Prosecution submits that neither this Tribunal nor the Rwanda Tribunal has established a general standard for interpretating the expression "necessary and reasonable measures". The Prosecution cites the Appeals Chamber in *Delalić*, which stated that it is "inextricably linked to the facts of each particular situation" and to the "type and nature of the effective control exercised by the accused over his subordinates."[966] The Prosecution maintains however that international law "holds a superior criminally liable for failing to take measures to prevent or punish that are 'within his material possibility'".[967] Even if the Accused did not have the legal responsibility to take preventive or punitive action, he still incurs criminal liability if he had *de facto* powers that "amounted to effective control."[968] The Prosecution also holds that the duty to prevent crimes of subordinates rests on a superior at any stage before the commission of the crime "if he acquires knowledge that such a crime is being prepared or planned, or when he has reasonable grounds to suspect subordinate crimes."[969] The Prosecution argues that the duty to punish subordinate perpetrators "includes at least an obligation to investigate the crimes to establish the facts and to report them to the competent authorities, if the superior does not have the power to sanction himself."[970] With regard to civilian authorities, the Prosecution reiterates in this context

[962] Prosecution Final Trial Brief, para. 93, citing *Čelebići* Trial Judgement, para. 378; see also *Čelebići* Appeal Judgement, paras 192 and 256.
[963] *Ibid*, citing the *Bagilishema* Appeal Judgement, paras 50, 52, and 55.
[964] Prosecution Final Trial Brief, para. 96, citing *Čelebići* Appeal Judgement, para. 238.
[965] Prosecution Final Trial Brief, para. 96, citing *Bagilishema* Appeal Judgement, paras. 27-30.
[966] Prosecution Final Pre-trial Brief, para. 97, footnote 285, citing the *Delalić* Appeal Judgement, para. 394.
[967] Prosecution Final Trial Brief, para. 101, citing the *Delalić* Trial Judgement, para. 395.
[968] *Ibid*.
[969] Prosecution Final Trial Brief, para. 102, citing the *Kordić*, Trial Judgement, para. 445.
[970] *Ibid*, citing *Kordić* Trial Judgement, para. 446.

that civilian superiors "would be under similar obligations, depending upon the effective power exercised and whether they include an ability to require the competent authorities to take action."[971]

b. Defence

452. The Defence formulates the three elements of command responsibility as follows:

> (1) the existence of a superior-subordinate relationship within the same hierarchy between the accused and the perpetrator of the offence,
>
> (2) the accused knew or had reason to know that the perpetrator was about to commit the offence or had done so, and
>
> (3) the accused failed to take the necessary and reasonable measures to prevent the offence or to punish the perpetrator.[972]

453. Like the Prosecution, the Defence submits that the applicable test is "effective control" required in cases involving both *de jure* and *de facto* superiors.[973] With regard to civilian superiors, the Defence argues that "the doctrine of command responsibility 'extends to civilian superiors only to the extent that they exercise a degree of control over their subordinates which is similar to that of military commanders'".[974] Similarly, the Defence holds that a civilian superior's control is "similar to" a military commander's where the control is "effective" and where the superior has the "material ability" to prevent and punish subordinates' crimes.[975] The Defence argues that "substantial influence alone is not sufficient for a finding of *de facto* authority or effective control."[976]

454. The Defence cites the *Kordić* Trial Judgement according to which "in order to make a proper determination of the status and actual powers of control of a superior, it [is] necessary to look to the substance of the documents signed by the superior and whether there is evidence of them being acted upon."[977] The Defence argues that the starting point for determining the formal authority of political and military superiors is an analysis of the formal procedures for appointment.[978] The Defence claims that if the superior's status is not clearly stated in an appointment order, his status may be discerned from the actual tasks carried out, if the superior is perceived as having a high public profile which may be manifested through public appearances and

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[971] *Ibid*.
[972] Defence Final Brief, para. 212.
[973] *Ibid*, para. 213.
[974] *Ibid*, para. 216, citing the *Delalić* Trial Judgement, para. 378.
[975] *Ibid*, para. 216. citing the *Delalić* Trial Judgement, para. 378
[976] *Ibid*, citing the Delalić Appeal Judgement, para. 266.
[977] *Ibid*, para. 217.
[978] *Ibid*, para. 218.

statements.[979] However, while relevant to the overall assessment of the accused's authority, it is insufficient to establish that authority. With regard to civilian leaders, "evidence of perceived authority may not be sufficient, as it may be indicative of mere powers of influence in the absence of a subordinate structure."[980] The Defence submits that "great care must be taken lest an injustice be committed in holding individuals responsible for the acts of others in situations where the link of control is absent or too remote."[981]

455. The Defence submits that as concerns the requirement that the Accused must have known or had reason to know, such knowledge may not be presumed solely on the basis of a superior position.[982]

456. In respect of the element of necessary and reasonable measures, the Defence submits that a superior may only be held criminally liable for failure to take measures that were within his powers.[983] The Defence argues that it is the commander's degree of effective control over subordinates that determines whether he took reasonable measures to prevent or punish the subordinates' crimes. The Defence also contends that such material ability must not be considered in the abstract, but evaluated on a case by case basis, having regard to all circumstances.[984]

(ii) Discussion

457. To hold a superior responsible for the acts of his subordinates, the jurisprudence of the Tribunal has established that three elements must be satisfied. The Trial Chamber must establish beyond reasonable doubt:

> i. the existence of a superior-subordinate relationship between the superior and the perpetrator of the crime;
>
> ii. that the superior knew or had reason to know that the criminal act was about to be or had been committed; and
>
> iii. the superior's obligation to take the necessary and reasonable measures to prevent the criminal act or to punish the perpetrator thereof.[985]

458. As the Appeals Chamber has held, "[t]he principle that military and other superiors may be held criminally responsible for the acts of their subordinates is well-established in conventional and customary law."[986]

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[979] *Ibid*, citing *Kordić* Trial Judgement, paras 421-424.
[980] *Ibid*, again citing *Kordić* Trial Judgement, paras 421-424.
[981] *Ibid*, para. 219, citing *Delalić* Trial Judgement, para. 377.
[982] *Ibid*, para. 236, citing *Kunrac* Trial Judgement, para.
[983] *Ibid,* para. 245, citing *Delalić* Trial Judgement, para. 395.
[984] *Ibid,* para. 245.
[985] *Aleksovski* Appeal Judgement, para. 72.

459. The existence of a superior-subordinate relationship is characterised by a formal or informal hierarchical relationship between the superior and subordinate.[987] The hierarchical relationship may exist by virtue of a person's *de jure* or *de facto* position of authority.[988] The superior may be a member of the military or a civilian.[989] The superior-subordinate relationship need not have been formalised or necessarily determined by "formal status alone".[990] Both direct and indirect relationships of subordination within the hierarchy are possible[991] and the superior's "effective control" over the persons committing the offences must be established.[992] Effective control means the "material ability to prevent or punish the commission of the offences".[993] "Substantial influence" over subordinates that does not meet the threshold of "effective control" is not sufficient under customary law to serve as a means of exercising command responsibility.[994] Where a superior has effective control and fails to exercise that power, he can be held responsible for the crimes committed by his subordinates.[995] A superior vested with *de jure* authority who does not actually have effective control over his or her subordinates would not incur criminal responsibility pursuant to the doctrine of superior responsibility, whereas a *de facto* superior who lacks formal letters of appointment or commission but does, in reality, have effective control over the perpetrators of offences might incur criminal responsibility.[996]

460. As regards the mental element of superior responsibility, it must be established that the superior knew or had reason to know that his subordinate was about to commit or had committed a crime. Superior responsibility is not a form of strict liability.[997] It must be proved that: (i) the superior had actual knowledge, established through either direct or circumstantial evidence, that his subordinates were committing or about to commit crimes within the jurisdiction of the Tribunal, or that (ii) he had in his possession information which would at least put him on notice of the risk of such offences, such information alerting him to the need for additional investigation to determine whether such crimes had been or were about to be committed by his subordinates.[998] Under the jurisprudence of the Tribunal, circumstantial evidence of "actual knowledge" has been found to include the number, type and scope of the illegal acts; the period over which the illegal acts

[986] *Čelebići* Appeal Judgement, para. 195.
[987] *Čelebići* Appeal Judgement, para. 303. See also ICRC Commentary on Additional Protocol I, para. 3544.
[988] *Čelebići* Appeal Judgement, paras 193, 197, (formal letter of commission or appointment is not necessary). A *de facto* superior must "wield substantially similar powers of control over subordinates" as a *de jure* superior.
[989] *Čelebići* Appeal Judgement, paras 195-96 and 240; *Aleksovski* Appeal Judgement, para. 76.
[990] *Čelebići* Trial Judgement, para. 370.
[991] *Čelebići* Appeal Judgement, para. 252.
[992] *Čelebići* Appeal Judgement, para. 197.
[993] *Čelebići* Trial Judgement, para. 378, affirmed in *Čelebići* Appeal Judgement, para. 256.
[994] *Čelebići* Appeal Judgement, para. 266.
[995] *Čelebići* Appeal Judgement, para. 196-98. See also, *Aleksovski* Appeal Judgement, para. 76.
[996] *Čelebići* Appeal Judgement, para. 197.
[997] *Čelebići* Appeal Judgement, para. 239.
[998] *Čelebići* Appeal Judgement, para. 223 and 241.

occurred; the number and type of troops involved; the logistics involved, if any; the geographical location of the acts; the widespread occurrence of the acts; the speed of the operations; the *modus operandi* of similar illegal acts; the officers and staff involved; and the location of the commander at the time.[999] Considering geographical and temporal circumstances, this means that the more physically distant the superior was from the commission of the crimes, the more additional *indicia* are necessary to prove that he knew of them. On the other hand, if the crimes were committed next to the superior's duty-station this suffices as an important *indicium* that the superior had knowledge of the crimes, and even more so if the crimes were repeatedly committed.[1000] Knowledge may be presumed if a superior had the means to obtain the relevant information of a crime and deliberately refrained from doing so.[1001]

461. Finally, it must be established that the superior failed to take the necessary and reasonable measures to prevent or punish the crimes of his or her subordinates. The measures required of the superior are limited to those "within his power", meaning those measures which are "within his material possibility".[1002] A superior is not obliged to perform the impossible. However, he has a duty to exercise the measures possible within the circumstances,[1003] including those which may be beyond his legal competence.[1004] The obligation to prevent or punish may, under some circumstances, be satisfied by reporting the matter to the competent authorities.[1005] A failure to take the necessary and reasonable measures to prevent an offence of which a superior knew or had reason to know cannot be cured simply by subsequently punishing the subordinate for the commission of the offence.[1006]

(iii) General Issues Regarding Article 7(3) in this Case

a. Civilian Superior: Public Officials as Superiors

462. Pursuant to Article 7(3) of the Statute and following jurisprudence of this Tribunal, a civilian superior may be held criminally responsible for the crimes of his subordinates.

b. Convictions under both Article 7(1) and Article 7(3)?

[999] *Čelebići* Trial Judgement, para. 386, citing Final Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992), (UN Document S/1994/674), para. 58.
[1000] *Aleksovski* Trial Judgement, para. 80.
[1001] *Čelebići* Appeal Judgement, para. 226.
[1002] *Čelebići* Trial Judgement, para. 395.
[1003] *Krnojelac* Trial Judgement, para. 95.
[1004] *Čelebići* Trial Judgement, para. 395.
[1005] *Blaskić* Trial Judgement, para. 335.
[1006] *Blaškić* Trial Judgement, para. 336.

463. It is legally permissible under the jurisprudence of this Tribunal to find a person criminally responsible for one crime under both Article 7(1) and Article 7(3).[1007] While there have been cases where a conviction has been entered for one Count pursuant to both Article 7(1) and Article 7(3),[1008] there have been others where a Trial Chamber exercised its discretion to enter a conviction under only one head of individual criminal responsibility even when it has been satisfied that the legal requirements for entering a conviction pursuant to the second head of responsibility have been fulfilled.[1009] In such cases, the Trial Chamber has entered a conviction under the head of responsibility which better characterises the criminal conduct of the accused.[1010]

464. The Trial Chamber endorses the view of the *Blaškić* Trial Chamber that "[i]t would be illogical to hold a commander criminally responsible for planning, instigating or ordering the commission of crimes and, at the same time, reproach him for not preventing or punishing them."[1011] The Trial Chamber also endorses the *Krnojelac* Trial Judgement which stated that:

> it is inappropriate to convict under both heads of responsibility for the same count based on the same acts. Where the Prosecutor alleges both heads of responsibility within the one count, and the facts support a finding of responsibility under both heads of responsibility, the Trial Chamber has a discretion to chose which is the most appropriate head of responsibility under which to attach criminal responsibility to the Accused.[1012]

In conclusion, this Trial Chamber shares the view that conviction under both Article 7(1) and Article 7(3) for the same criminal conduct is generally not possible.[1013]

465. Article 7(3) serves primarily as an omnibus clause in cases where the primary basis of responsibility can not be applied. In cases where the evidence leads a Trial Chamber to the conclusion that specific acts satisfy the requirements of Article 7(1) and that the accused acted as a superior, this Trial Chamber shares the view of the *Krnojelac* Trial Chamber that a conviction should be entered under Article 7(1) only and the accused's position as a superior taken into account as an aggravating factor.[1014]

466. For these reasons, it is in general not necessary in the interests of justice and of providing an exhaustive description of individual responsibility to make findings under Article 7(3) if the

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[1007] See, *e.g*., *Blaskić* Trial Judgement and *Kordić* Trial Judgement.
[1008] *Kordić* Trial Judgement, paras 830-831, 836-837 and 842-843; *Blaškić* Trial Judgement, paras. 744-754.
[1009] *Krstić* Trial Judgement; *Krnojelac* Trial Judgement.
[1010] *Krnojelac* Trial Judgement, paras 173, 316, and 496.
[1011] *Blaškić* Trial Judgement, para. 337.
[1012] *Krnojelac* Trial Judgement, para. 173.
[1013] The Trial Chamber declines to follow the practice at the Rwanda Tribunal of finding that acts such as "ordering" or "committing" which clearly fall under Article 7(1) can be used to satisfy the mental element of "knew or had reason to know", thereby merging the responsibility as a superior for direct acts with the theory of superior responsibility or imputed responsibility for acts of subordinates. See, *e.g*., *Prosecutor v. Clément Kayishema and Obed Ruzindana*, Judgement, 21 May 1999, Article 7(3) convictions upheld on appeal, *Prosecutor v. Clément Kayishema and Obed Ruzindana*, Judgement (Reasons), 1 June 2001.

Chamber is already satisfied beyond reasonable doubt of both responsibility under 7(1) and the superior positions held by the accused. The superior positions of the accused, without diminishing their importance, would then only constitute an aggravating factor, the seriousness of which would depend on the concrete superior status of the accused over his subordinates. The superior positions of the accused must be established in detail and related to the concrete conduct established under Article 7(1). This approach in relation to Article 7(3) responsibility does not diverge from that taken in relation to *e.g.* ordering or planning when "committing" has already been established. *Obiter*: it would be a waste of judicial resources to enter into a debate on Article 7(3) knowing that Article 7(1) responsibility subsumes Article 7(3) responsibility.

467. This discussion makes clear however that when an accused is found not guilty under Article 7(1) in relation to a particular charge, the mode of individual responsibility under Article 7(3) must be considered.

2. Trial Chamber's findings

468. The Trial Chamber finds that the mode of liability described as "co-perpetratorship" best characterises Dr. Stakić's participation in offences committed in Prijedor Municipality in 1992. It will therefore outline the essential elements of this participation applicable to all offences in respect of which Dr. Stakić incurs criminal liability, which will serve as a basis for its findings in relation to each count in the Indictment. However, this is in no way restrictive and additional modes of liability will be considered in respect of specific counts.

(a) Actus reus

(i) Co-perpetrators

469. The associates of the Accused included the authorities of the self-proclaimed Assembly of the Serbian People in Prijedor Municipality, the SDS, the Prijedor Crisis Staff, the Territorial Defence and the police and military. In particular, Dr. Stakić acted together with the Chief of Police, Simo Drljača, prominent members of the military such as Colonel Vladimir Arsić and Major Radmilo Željaja, the president of the Executive Committee of Prijedor Municipality, Dr. Milan Kovačević, and the Commander both of the Municipal Territorial Defence Staff and the Trnopolje camp, Slobodan Kuruzović.

(ii) Common goal

[1014] *Krnojelac* Trial Judgement, paras 173 and 496; see also *Naletilić and Martinović* Trial Judgement, para. 81.

470. The objective of consolidating Serbian control in Prijedor Municipality which had a majority Muslim population (variant B municipality) was first articulated in the Instructions issued by the Main Board of the Serbian Democratic Party of Bosnia and Herzegovina on 19 December 1991.[1015] The Instructions provided a blueprint for the Serbian people in Bosnia and Herzegovina to "live in a single state".[1016] This objective was embraced by the SDS Prijedor Municipal Board which started to implement the first stage preparations in respect of variant B municipalities.[1017] With the establishment of the self-proclaimed Assembly of the Serbian People in Prijedor Municipality on 7 January 1992, the plan on the municipal level took tangible form.[1018] The Serbian Assembly's decision of 17 January 1992 to join the Autonomous Region of Krajina ("ARK") reinforces the idea that it was sought to establish a Serb-dominated and Serb controlled territory on a municipal level.[1019]

471. The common goal on the Prijedor level found its vibrant expression in Radovan Karadžić's six strategic goals of the Bosnian Serb leadership in Bosnia and Herzegovina which included as the first goal the separation of Serbs from "the other two national communities".[1020] Karadžić remarked that the accomplishment of his goals "shall finally and definitely finish the job of the freedom struggle of the Serbian people".[1021] By the time Karadžić set out these goals, preparations were already underway for the fulfillment of the first goal in Prijedor Municipality.

(iii) Agreement or silent consent

472. On 29 April 1992, both at the meeting convened by Dr. Stakić at Prijedor JNA barracks and at the gathering in Cirkin Polje, the final agreement was made amongst those willing to participate, in particular the police and armed Serbs, that power would be taken over in Prijedor municipality during the night. This was the trigger and the first in a series of agreements necessary to achieve the common goal. No formal agreement was necessary and all participants were aware of where the decision to take over power would lead.

473. The takeover by the Serbian authorities on 30 April 1992 was the culmination of months of planning by the SDS which, at that time, was already cooperating with the police to boost security forces in the municipality in anticipation of the *coup d'état*.[1022] After the takeover, Dr. Stakić and other SDS leaders assumed positions in the municipal government, and legally elected Muslim and

[1015] Exh. SK39.
[1016] Exh. SK39, p.2.
[1017] Minutes of the SDS Prijedor Municipal Board (1991), Exh. SK12.
[1018] Exh. SK45.
[1019] Exh. S96.
[1020] Exh. S141, p. 13-15.
[1021] Exh. S141.
[1022] Exh. S268.

Croat politicians were forcibly removed. Other leading SDS members were installed in strategic positions throughout the municipality. Simo Drljača became Chief of Police.

474. After the takeover, the Serb leadership sought to achieve a state of readiness for war in the Municipality of Prijedor, a view supported by the Prosecution's military expert Ewan Brown.[1023] A regular combat report from the 5th Corps Command to the 2nd Military District Command dated 3 May 1992 demonstrates that "one 105mm Howitzer Battery and one Anti-Armour Artillery Battery of the 343rd Motorised Brigade were relocated to the Prijedor area in order to strengthen units in the wider Prijedor – Ljubija – Kozarac area. The units have taken upon their positions."[1024]

475. The Prijedor Crisis Staff began to impose restrictions on the non-Serb residents of Prijedor. In particular, announcements were made that all weapons should be surrendered. The creation of a coercive environment for the non-Serb residents of Prijedor municipality is consistent with the co-perpetrators' objective of consolidating Serb power in the municipality by forcing non-Serbs to flee or be deported, thereby changing fundamentally the ethnic balance in the municipality.

476. A propaganda campaign helped to polarise the Prijedor population along ethnic lines and created an atmosphere of fear. Dr. Stakić made a number of media appearances during the summer of 1992[1025] instilling inter-ethnic suspicion. The newspaper "Kozarski Vjesnik" became a propaganda tool of the Serb authorities. Residents were prevented from receiving the Sarajevo TV station[1026] and could only watch TV programs from Belgrade or Banja Luka.[1027] In a speech reported in "Kozarski Vjesnik", Dr. Stakić proclaimed: "Now we have reached a state in which the Serbs alone are drawing the borders of their new state."[1028] This is also demonstrated by the fact that the Official Gazette of Prijedor Municipality of 20 May 1992 started explicitly with a "Year 1" edition.

477. The creation of an atmosphere of fear in Prijedor Municipality culminated in the agreement amongst members of the Crisis Staff to use armed force against civilians and to establish the Omarska, Keraterm and Trnopolje camps. The order to set up the Omarska camp on 31 May 1992, signed by Simo Drljača, was issued "in accordance with the Decision of the Crisis Staff"[1029] presided over by Dr. Stakić. The Trial Chamber finds no reason to doubt Dr. Stakić's own statement in a television interview that "[Omarska, Keraterm, and Trnopolje were] a necessity in

[1023] *Ewan Brown*, T. 8600-01
[1024] Exh. S345, para. 2.
[1025] *Muharem Murselović*, T. 2844, T. 2864; *Dr. Ibrahim Beglerbegović*, T. 4084.
[1026] *Kasim Jasić*, 92 *bis* statement, 30 August 1994, p. 2.
[1027] *Mevludin Sejmenović*: T. 4481-82, T. 5441-42.
[1028] Exh. S252, Kozarski Vjesnik article 7 August 1992.
[1029] Exh. S107.

the given moment" and his confirmation that these camps "were formed according to a decision of [his] civilian authorities in Prijedor".[1030]

(iv) Coordinated co-operation

478. Slobodan Kuruzović, who was deeply involved in the immediate preparations for the takeover on 30 April 1992, confirmed that it was carried out with very closely coordinated co-operation between the Serb civilian authorities, the military, the TO and the police.[1031]

479. Throughout the period immediately after the takeover, Dr. Stakić, in co-operation with the Chief of Police, Simo Drljača, and the most senior military figure in Prijedor, Colonel Vladimir Arsić, worked to strengthen and unify the military forces under Serb control.[1032] The response to the incidents at Hambarine and Kozarac in late May 1992 heralded the first in a series of measures taken by the Crisis Staff, in cooperation with the military and the police, to rid the municipality of non-Serbs.

480. Simo Drljača represented the police forces in the Crisis Staff. Dr. Stakić suggested that the Crisis Staff should also have a military representative,[1033] but this proposal was rejected.[1034] Nevertheless, either Arsić or Željaja occasionally attended meetings of the Prijedor Crisis Staff on behalf of the military.[1035] Just after the takeover, military uniforms were ordered by the civilian authorities for the use of civilian leaders, including Dr. Stakić, who wore a military uniform and carried a weapon in June and August 1992.[1036]

481. Although the influence of Dr. Stakić over the military was strongly contested by the Defence, the Trial Chamber sees close co-operation between Dr. Stakić and the military. For example, on 5 May 1992 the National Defence Council of the Municipal Assembly of Prijedor presided over by Dr. Stakić, adopted conclusions in relation to a general mobilisation and the surrender of illegal weapons.[1037]

482. Through his positions as President of both the Crisis Staff and the National Defence Council, Dr. Stakić facilitated coordination by the police and military with each other and with the civilian authorities. The reporting centre was located below Dr. Stakić's office in the Municipal Assembly basement and Dr. Stakić was frequently on duty. Željaja and Drljača often passed by to

[1030] Exh. S187-1.
[1031] See *supra* Section I. D. 1.
[1032] Exh. S28 and Exh. S60.
[1033] *Slobodan Kuruzović*, T. 14559-60; *Slavko Budimir*, T. 12865-66, for the agenda see Exh. S60.
[1034] *Slavko Budimir*, T. 12865-66.
[1035] *Witness O*, T. 3232-33; *Slavko Budimir*, T. 12910.
[1036] *Witness Z*, T. 7563; *Milovan Dragić*, T. 10526; Exh. S7; Exh. S157.

obtain information regarding events in Prijedor.[1038] The different entities headed by Dr. Stakić also provided logistical and financial assistance to the military. The National Defence Council required competent municipal organs to secure priority communications and essential supplies such as food and oil and to report to the Prijedor Executive Committee about these matters.[1039] Documentary evidence demonstrates that the Crisis Staff set up the Logistics Base at Čirkin Polje which provided meals for police at checkpoints and guards at the camps, fuel for transporting detainees to and between camps, and ammunition for the police and army.[1040] In addition, the Chamber relies on two documents, one which obliges the Prijedor Garrison Command and the Public Security Station to "identify their requirements for material and technical equipment ("MTS") and supplies",[1041] and one which assigns to Simo Drljača, Ranko Travar and Radovan Rajlić the task of making a comprehensive review of the possibilities and setting criteria recommending to the Crisis Staff "the manner of payment to and catering for the army and the police in the Prijedor municipality area."[1042]

483. A document from the Čirkin Polje Logistics Base dated 17 June 1992 and entitled "Report on Mobilised Motor Vehicles in Čirkin Polje Logistics Base" is instructive. The report lists vehicles mobilised in the Logistical Support Staff pursuant, *inter alia*, to "the decision of the Crisis Staff of the Serbian Municipality of Prijedor."[1043] The report further states that certain of the vehicles listed are being used by the Čirkin Polje Logistics Base for the following tasks: "the distribution of food for the police in the centre and in Prijedor II, army units in Prijedor II, […], Trnopolje, *Keraterm*". The report indicates additional involvement of the Crisis Staff:

> Since 1 May 1992, Čirkin Polje Logistics Base, has been providing complete logistics support to all police officers in Centar, Prijedor II and all members of: Palančiste, Omarska, RakelićI, Prijedor II, Ljeskari, Brezičani, Gornja Ljubija and Tukovi Sector staffs. Supplies have been delivered *in accordance with the decision of the Crisis Staff* of the Serbian Municipality of Prijedor, on the basis of which a report has been compiled and sent to the Crisis Staff and the Garrison Command.[1044]

484. There is one additional passage in the document which amply illustrates the extent of the co-operation and interdependency between the Crisis Staff presided over by Dr. Stakić and the army and police in relation to the ongoing police and army operations in the municipality and the camps. It refers to a meeting between members of the Crisis Staff and the army attended by representatives from the Čirkin Polje Logistics Base after which the latter takes steps to provide "full material

[1037] Exh. S28.
[1038] *Slavko Budimir*, T. 13058-59.
[1039] Exh. S28.
[1040] Exh. S433.
[1041] Exh. S78.
[1042] Exh. S77.
[1043] Exh. S433.
[1044] Exh. S433 (emphasis added).

support to members of the Serbian army units and police officers in the municipality area" and to provide "food supplies to the prisons in Keraterm and Omarska." It reads in relevant part:

> At the meeting of the Crisis Staff of the Serbian municipality of Prijedor and the Garrison Command held on 10 June 1992 and attended by Major Slobodan Kuruzović, commander of the Serbian army staff, as well as, deputy commander for logistics Mirko Mudrinić, Quartermaster Stevan Nikolić and all commanders of sector staffs, all instructions given by the Garrison Command and the Crisis Staff relating to the transformation of the territorial defence into the army of the Serbian Republic of BH were accepted. With this in mind, we have taken a series of measures and steps in cooperation with the Garrison Command Logistics with the goal of providing full material support to members of the Serbian army units and police officers in the municipality area, and providing food supplies *to the prisons in Keraterm and Omarska*.[1045]

485. In another document dated 17 June 1992, the Crisis Staff "orders" the Prijedor Public Security Station and the Prijedor Regional Command (*i.e.* the police and the army) "to form a joint intervention platoon". The document states that the Crisis Staff must "give its consent to the members proposed for the platoon" and, additionally, that the Regional Command and the Public Security Station must submit a written report on "the activities and the work results of the intervention platoon to the Municipal Crisis Staff within seven days."[1046] Reference to this joint intervention platoon is also found in SJB documents reporting on the implementation of Crisis Staff enactments.[1047]

486. Other Crisis Staff enactments demonstrate that the Crisis Staff, headed by Dr. Stakić, cooperated in providing logistical support (*e.g.* fuel and technical equipment) to the army and police. For example, an order of the Crisis Staff dated 6 June 1992 states that the army is to be supplied with oil at the *Žarko Zgonjanin* barracks.[1048] A conclusion by the Crisis Staff dated 9 June 1992 tasks "the commander of the Regional Command with collecting and transferring all MTS [materiel and technical equipment] from the grounds of the *Kozaraputevi*".[1049]

487. A document dated 4 August 1992 from Simo Drljača, Chief of the Prijedor SJB, discusses *inter alia* paramilitary activity in Prijedor municipality. It credits the "synchronised activities of the Serbian army and police" with having, in large part, destroyed any paramilitary formations.[1050] Similarly, a "Kozarski Vjesnik" article dated 13 November 1992 reports on the details of a closed session of the Municipal Assembly. Simo Drljača, as Chief of the Public Security Station, is

[1045] Exh. S433 (emphasis added).
[1046] Exh. S79.
[1047] Exh. S114; Exh. S115
[1048] Exh. S69.
[1049] Exh. S250.
[1050] Exh. S251 (emphasis added).

reported to have said that thanks to efficient army and police action, Muslim paramilitary formations were smashed and that the situation was stable in this respect.[1051]

488. There was coordinated co-operation between the Crisis Staff, later the War Presidency, and members of the police and army in operating the camps. The Crisis Staff participated through its oversight of security in the camps, took decisions on the continuing detention of Prijedor citizens, provided transport (and the necessary fuel) for the transfer of prisoners between the various camps and from the camps to territory not controlled by Serbs, and coordinated the provision of food for detainees.

489. Dr. Stakić spent considerable time with Drljača and Arsić socially. As Slavko Budimir testified: "I did say in my previous testimony that Mr. Drljača and Mr. Stakić and Mr. Arsić often spent time together. I didn't socialise with them, but I knew that the three of them did see each other socially."[1052] The Trial Chamber is convinced that they would have discussed the development of their common goals on such occasions. Thus, based on this mutual exchange of information one can infer that there was an informal means of co-operation.

(v) Joint control over criminal conduct

490. The common goal could not be achieved without joint control over the final outcome and it is this element of interdependency that characterises the criminal conduct. No participant could achieve the common goal on his own, although each could individually have frustrated the plan by refusing to play his part or by reporting crimes. If, for example, the political authorities led by Dr. Stakić had not participated, the common plan would have been frustrated. Dr. Stakić was aware of this. Had he not been, it would not have been necessary to oust Professor Čehajić.

491. The atmosphere of impunity for all those involved in the *coup d'état* led by Dr. Stakić and the general lawlessness which prevailed in Prijedor ensured that the common goal could be pursued.

(vi) Dr. Stakić's authority

492. As indicated, in January 1992, Dr. Stakić was elected President of the Assembly of the Serbian People in Prijedor. After the takeover, he became President of the Municipal Assembly and President of the Prijedor Municipal People's (National) Defence Council. From May 1992 he served as President of the Prijedor Municipal Crisis Staff. The Trial Chamber is satisfied that Dr. Stakić was the leading political figure in Prijedor in 1992.

[1051] Exh. D92-96.
[1052] *Slavko Budimir*, T. 13005.

493. After the takeover in Prijedor and during the month of May, Dr. Stakić was "the most responsible individual" in Prijedor "because he made a lot of public appearances over the radio and in the media, and also because he was the President of the Prijedor Crisis Staff".[1053] In Prijedor "there was neither *de facto* nor *de jure* authority or individual who would be above Dr. Stakić [*sic*]".[1054] Dr. Stakić was always present when anything was happening because he was the "first man in Prijedor" so he appeared in the newspapers, on television or on the radio.[1055] In an interview in "Kozarski Vjesnik" on 13 January 1993, in his capacity as President of the Municipal Assembly in Prijedor, Dr. Stakić was described by the reporter as "the top official in the municipality".[1056]

494. Dr. Stakić was identified as the "mayor" of Prijedor, a title usually denoting a position of high political authority, in contemporaneous articles and reports.[1057] He even introduced himself to the ECMM monitor in this way in June 1992.[1058] Moreover, Edward Vulliamy, who met Dr. Stakić on 5 August 1992 when he and his television crew were seeking access to the Omarska camp, testified that Milomir Stakić was introduced as the "mayor of Prijedor".[1059] The titles themselves are immaterial as it is clear that Dr. Stakić had special responsibility for events in Prijedor and also the power to change their course. Moreover, the Trial Chamber notes the cumulative effect of Dr. Stakić's various functions as a superior in the central bodies of the Municipality in the sense of Article 7(3) of the Statute.

(b) *Mens rea*

(i) *Mens rea* for the specific crime charged

495. The specific *mens rea* requirement for each offence charged will be considered separately in the section dealing with that offence.

(ii) Mutual awareness of substantial likelihood that crimes would occur

496. The Trial Chamber is convinced that Dr. Stakić and his co-perpetrators acted in the awareness that crimes would occur as a direct consequence of their pursuit of the common goal. The co-perpetrators consented to the removal of Muslims from Prijedor by whatever means

[1053] *Muharem Murselović*, T. 2864.
[1054] *Muharem Murselović*, T. 2868.
[1055] *Dr. Beglerbegović*, T. 4084-88.
[1056] Exh. D92-99.
[1057] Exh. S151. The Trial Chamber is aware that Dr. Stakić was also described as the Prijedor mayor in a "Kozarski Vjesnik" article dated 23 October 1993, but as it falls outside the period of Indictment, the Chamber has not relied upon Exh. D92-92.
[1058] Exh. S166.
[1059] *Edward Vulliamy*, T. 7913-14 and T. 8080.

necessary and either accepted the consequence that crimes would occur or actively participated in their commission. The fact that Dr. Stakić felt it necessary to replace Professor Čehajić and others who clearly would not have participated in the implementation of the common goal demonstrates Dr. Stakić's awareness that without his acts and the acts of the other co-perpetrators, the ultimate goal of the creation of a Serbian state could not be realised.

(iii) Dr. Stakić's awareness of the importance of his own role

497. Interviewed as President of the Crisis Staff on 24 May 1992, Dr. Stakić states that the whole territory of Prijedor Municipality has been under Serb control since the "liberation of Kozarac" and that "cleansing" or "mopping up"[1060] is still ongoing in Kozarac "because those remaining are the most extreme and the professionals".[1061] It is the Trial Chamber's firm opinion that Dr. Stakić was fully aware that these extreme citizens were none other than innocent Muslim and Croat civilians, some of whom were armed but who certainly could not be considered by a reasonable observer to be an extreme or a professional armed force. In fact the evidence shows that even though Dr. Stakić spoke of fighting only the Muslim extremists who were carrying out armed operations against the Serb forces, he believed that the Muslim population was composed entirely of extremists. In a television interview with British Channel 4 towards the end of 1992, Dr. Stakić stated:

> Because we have never at any point, not even to this very day, declared war on the entire Muslim people or a struggle for the extermination of that people, but *only a struggle against the extremists among that people, those who did not want co-existence here, who wanted a unitary state with absolute rights for the Muslim people* and with prepared programmes for the extermination of the Serb people from these areas.[1062]

The Trial Chamber is therefore satisfied that Dr. Stakić did not differentiate between the civilian Muslim and Croat population, which he claimed to want to protect against evil and harm, and the extremists whom more than anything else he wanted to defeat. In his mind, the desire for an independent Bosnia and Herzegovina would qualify for being an extremist.

498. The Trial Chamber is convinced that Dr. Stakić knew that his role and authority as the leading politician in Prijedor was essential for the accomplishment of the common goal. He was aware that he could frustrate the objective of achieving a Serbian municipality by using his powers to hold to account those responsible for crimes, by protecting or assisting non-Serbs or by stepping down from his superior positions.

[1060] Exh. S240, The Accused used the word 'čišćenje'.
[1061] Exh. S240-1a.
[1062] Exh. S187, p.4 (emphasis added)

C. Genocide and Complicity in Genocide (Counts 1 and 2)

1. The Applicable Law

499. The Accused, Dr. Milomir Stakić, is charged in Count 1 of the Fourth Amended Indictment ("Indictment") with genocide, or, alternatively, in Count 2 with complicity in genocide, punishable under Articles 4(3)(a) or (e), 7(1) and 7(3) of the Statute. Article 4 of the Statute provides in the parts relevant to this case:

> 1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.
>
> 2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) killing members of the group;
>
> (b) causing serious bodily or mental harm to members to the group;
>
> (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part…
>
> 3. The following acts shall be punishable:
>
> (a) genocide…
>
> (c) direct and public incitement to commit genocide…
>
> (e) complicity in genocide.

500. Articles 4(2) and 4(3) of the Statute repeat *verbatim* Articles II and III of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, (Convention against Genocide).[1063] It is widely accepted that the law set out in the Convention forms part of customary international law and constitutes *jus cogens*.[1064]

501. The Trial Chamber, noting the principle of non-retroactivity of substantive criminal law,[1065] relies primarily on the following sources when interpreting the crime of genocide:

[1063] 78 UNTS 277, in force as of 12 January 1951. The Convention was ratified by the Socialist Federal Republic of Yugoslavia on 29 August 1950. The Convention was implemented in the SFRY in the Criminal Code of 1977 (Articles 141 and 145). See the Criminal Code of the Socialist Federal Republic of Yugoslavia adopted by the SFRY Assembly at the Session of the Federal Council held on 28 September 1976; declared by a decree of the President of the Republic on 28 September 1976; published in the Official Gazette SFRY No. 44 of 8 October 1976; a correction was made in the Official Gazette SFRJ No. 36 of 15 July 1977; took effect on 1 July 1977 ("SFRY Criminal Code").

[1064] See *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, (1951) ICJ Reports 23; and *Prosecutor v. Goran Jelisić*, Case No. IT-95-10, Judgement, 14 December 1999 ("*Jelisić* Trial Judgement") para. 60, with further references.

[1065] In this respect the 1998 Rome Statute of the International Criminal Court is of limited assistance as an aid to the interpretation of the provisions on genocide under the ICTY Statute.

- the Convention against Genocide interpreted in accordance with the general rules of interpretation of treaties set out in Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties;[1066]

- the object and purpose of the Convention as reflected in the *travaux préparatoires*;

- subsequent practice including the jurisprudence of the ICTY, ICTR and national courts;

- the publications of international authorities.

502. The Trial Chamber recalls and adopts the description of genocide as "the crime of crimes", set down by the Rwanda Tribunal in the *Kambanda* case[1067] and more recently by Judge Wald in her Partial Dissenting Opinion in the *Jelisić* Appeal Judgement[1068] where she stated:

> Some learned commentators on genocide stress that the currency of this 'crime of all crimes' should not be diminished by use in other than large scale state-sponsored campaigns to destroy…groups, even if the detailed definition of genocide in our Statute would allow broader coverage.[1069]

Like in its Decision on Rule 98 *bis* Motion for Judgement of Acquittal,[1070] the Trial Chamber will, whilst interpreting Article 4 restrictively and with caution, always be guided by the unique nature of the crime of genocide.

503. The Trial Chamber notes that in relation to Counts 3 to 8, "instigating" as a mode of liability was dismissed in the Decision on Rule 98 *bis* Motion for Judgement of Acquittal. In respect of genocide, the Trial Chamber regards instigating as the derogated mode of criminal liability insofar as the direct and public incitement to commit genocide punishable under Article 4(3)(c) would take priority (*lex specialis derogat legi generali*). However, incitement is not charged in the Fourth Amended Indictment, and the Trial Chamber will consequently limit its discussion to genocide and complicity in genocide. Other modes of individual responsibility will be discussed separately.[1071]

(a) Genocide

(i) Arguments of the Parties

a. Prosecution

[1066] Signed 23 May 1969, 1155 UNTS 339, in force for Yugoslavia from 27 January 1980, succeeded to by BiH on 1 September 1993 and by Serbia and Montenegro on 12 March 2001.
[1067] *Prosecutor v. Kambanda,* Case No. ICTR-97-23-S, Judgement and Sentence, 4 September 1998 ("*Kambanda* Sentencing Judgement") para. 16. See also *Prosecutor v. Omar Serushago*, Case No. ICTR-98-39-S, Judgement, 5 February 1999 ("*Serushago Sentence*"), para. 15.
[1068] *Jelisić* Appeal Judgement, p. 64, para.2.
[1069] This Trial Chamber does not agree that the word "minority" should appear before the word "groups" as in Judge Wald's original description and the word "minority" has therefore been omitted from the quotation.
[1070] Decision on Rule 98 *bis* Motion for Judgement of Acquittal, 31 October 2002.
[1071] See sections (ii)(f) and (b) below.

504. Responsibility for genocide under Article 4(3)(a) forms the *core* of the Prosecution's case on the basis of the following modes of liability listed in order of priority:[1072]

- co-perpetration in a joint criminal enterprise where the common purpose included or escalated to genocide;

- co-perpetration in a joint criminal enterprise where genocide was the natural and foreseeable consequence of the execution of the common purpose;

- superior responsibility;

- alternatively, complicity in genocide under Article 4(3)(e).

505. The Prosecution submits that the legal ingredients of genocide include: (1) the material element of the offence, constituted by one or several acts enumerated in Article 4(2); and (2) the *mens rea* of the offence, consisting of the special intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.[1073]

506. Dealing first with the *actus reus*, the Prosecution submits that the elements of "killing" under Article 4(2)(a) are that (1) the accused killed one or more persons; (2) such person or persons belonged to a particular national, ethnical, racial or religious group; and (3) the accused intended to kill the person or persons.[1074]

507. The Prosecution submits that the elements of causing serious bodily and mental harm are: (1) the accused caused serious bodily or mental harm to one or more persons; (2) such person or persons belonged to a particular national, ethnical, racial or religious group; and (3) the accused intended to cause harm to the person or persons.[1075]

508. According to the Prosecution, the elements of deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part are: (1) the accused inflicted conditions of life on one or more persons; (2) such person or persons belonged to a particular national, ethnical, racial or religious group; (3) the conditions of life were inflicted deliberately; and (4) the conditions of life were calculated to bring about the physical destruction of the group, in whole or in part.[1076] The Prosecution submits that a group is physically destroyed in

[1072] Prosecution Final Trial Brief, para. 174 (emphasis in the original).
[1073] Prosecution Final Trial Brief, para. 194.
[1074] Prosecution Final Trial Brief, para. 196.
[1075] Prosecution Final Trial Brief, para. 214.
[1076] Prosecution Final Trial Brief, para. 232.

whole or in part through (1) the death of its members and/or (2) other biological destruction that over time physically annihilates the group, at least in part, in the geographic area in question.[1077]

509. The Prosecution divides the *mens rea* of genocide into three parts: (1) the degree of requisite intent; (2) the scope of requisite intent; and (3) the term "in part". It maintains that individual perpetrators and those who order, plan or instigate genocide must be shown to have the specific intent articulated in Article 4(2). The Prosecution argues, however, that this intent is not required for all liability under Article 7(1), in particular under the third variant of joint criminal enterprise which is nevertheless a form of co-perpetration falling under Article 4(3)(a).[1078] According to the Prosecution, the scope of the intent must extend to destruction or partial destruction of the group itself.[1079] The Prosecution adopts two approaches to assessing what is destruction "in part" of a group. First, the intent requirement may be satisfied by proof of an intent to destroy the targeted groups within a limited geographical area.[1080] Second, the intent may be to destroy a substantial portion or section of the group, where the word "substantial" refers to the large number harmed or the representative quality of the targeted members of the group.[1081]

b. Defence

510. The Defence elaborates on the reasons for defining the elements of the crime of genocide narrowly and refers to various authorities that support a narrow interpretation. In its opinion, Article 2(4) should be interpreted in a way consistent with the principle of *in dubio pro reo*.[1082] The Defence rejects theories which hold that "genocide is a natural and foreseeable outgrowth of persecution; and that genocidal intent can be proven without evidence of an intent to kill a substantial number of the targeted population".[1083] As stated, it favours instead a narrow interpretation of the phrase "in whole or in part" consonant with the *Jelisić* Trial Judgement and *Sikirica* Judgement on Defence Motions to Acquit.[1084] With reference to the phrase "as such", the Defence argues that genocide requires an intent to destroy a group physically or biologically, and quotes the Trial Chamber in *Sikirica* which stated that this phrase "establishes a demarcation between genocide and most cases of ethnic cleansing".[1085] The Defence develops an argument that

[1077] Prosecution Final Trial Brief, para. 234.
[1078] Prosecution Final Trial Brief, para. 248.
[1079] Prosecution Final Trial Brief, para. 249.
[1080] Prosecution Final Trial Brief, para 252-262.
[1081] Prosecution Final Trial Brief, paras 263-265.
[1082] This principle relates to the facts rather than the law.
[1083] Defence Final Brief, para. 299.
[1084] Defence Final Brief, paras 303-305.
[1085] Defence Final Brief, paras 313- 314, quoting *Sikirica et al.* Judgement on Defence Motions to Acquit, para. 89.

acts having as their purpose forceful departure or dispossession rather than physical destruction cannot be qualified as acts of genocide.[1086]

511. The Defence submits that:

> where the Prosecution admits that their principal theory of the case is one of joint criminal enterprise, and where the accused takes no part in the physical commission of genocide and was not present at the place where the genocide was being carried out, then proof beyond a reasonable doubt of a genocidal plan should be necessary in order to extend criminal liability to the absent accused.[1087]

The Defence cites Tribunal jurisprudence in support of its submission that although the existence of a plan is not a legal ingredient of the crime, it will be an important factor in proving specific intent in most cases.

(ii) Discussion

a. The protected groups

512. Article 4 of the Statute protects national, ethnical, racial or religious groups. In cases where more than one group is targeted, it is not appropriate to define the group in general terms, as, for example, "non-Serbs". In this respect, the Trial Chamber does not agree with the "negative approach" taken by the Trial Chamber in *Jelisić*:

> A "negative approach" would consist of identifying individuals as not being part of the group to which the perpetrators of the crime consider that they themselves belong and which to them displays specific national, ethnical, racial or religious characteristics. Thereby, all individuals thus rejected would, by exclusion, make up a distinct group.[1088]

Conversely, a targeted group may be distinguishable on more than one basis and the elements of genocide must be considered in relation to each group separately, e.g. Bosnian Muslims and Bosnian Croats.[1089]

b. The objective element: *actus reus*

513. The Indictment limits the charges of genocide to the basic, underlying criminal acts listed in paragraphs (a) to (c) of Article 4(2) of the Statute and the Trial Chamber to a great extent concurs with the legal elements of the Article as put forward by the Prosecution.

514. The acts in paragraphs (a) and (b) require proof of a result.

[1086] Defence Final Brief, paras 315-316.
[1087] Defence Final Brief, para. 321.

515. "Killing" in sub-paragraph (a) needs no further explanation. As regards the underlying acts, the word "killing" is understood to refer to intentional but not necessarily premeditated acts.[1090]

516. "Causing serious bodily or mental harm" in sub-paragraph (b) is understood to mean, *inter alia*, acts of torture, inhumane or degrading treatment, sexual violence including rape, interrogations combined with beatings, threats of death, and harm that damages health or causes disfigurement or injury. The harm inflicted need not be permanent and irremediable.[1091]

517. "Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part" under sub-paragraph (c) does not require proof of a result. The acts envisaged by this sub-paragraph include, but are not limited to, methods of destruction apart from direct killings such as subjecting the group to a subsistence diet, systematic expulsion from homes and denial of the right to medical services.[1092] Also included is the creation of circumstances that would lead to a slow death, such as lack of proper housing, clothing and hygiene or excessive work or physical exertion.[1093]

518. The words "calculated to bring about its physical destruction" replaced the phrase "aimed at causing death" proposed by Belgium in the UN General Assembly's Sixth (Legal) Committee.[1094] The Trial Chamber in *Akayesu* held that the expression "should be construed as the methods of destruction by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seek their physical destruction".[1095] The element of physical destruction is inherent in the word genocide itself, which is derived from the Greek "genos" meaning race or tribe and the Latin "caedere" meaning to kill. It must also be remembered that cultural genocide, as distinct from physical and biological genocide, was specifically excluded from the Convention against Genocide. The International Law Commission has commented:

> 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.[1096]

[1088] *Jelisić* Trial Judgement, para. 71.
[1089] As charged in the Fourth Amended Indictment, para. 40.
[1090] See *Clément Kayishema and Obed Ruzindana*, Case ICTR-95-1-A, Judgement, 1 June 2001 ("*Kayishema and Ruzindana* Appeal Judgement*")* para. 151; *Akayesu* Trial Judgement, paras 500-01.
[1091] *Akayesu* Trial Judgement, paras 502-4; *Kayishema and Ruzindana* Trial Judgement, paras 108-110.
[1092] *Akayesu* Trial Judgement, paras 505-6.
[1093] *Kayishema and Ruzindana* Trial Judgement, paras 115-116.
[1094] UN Doc. A/C.6/217 (Belgian proposal); UN Doc. A/C.6/SR.82 (Soviet amendment).
[1095] *Akayesu* Trial Judgement, para. 505.
[1096] Report of the International Law Commission on the Work of its Forty-eighth Session, 6 May- 26 July 1996, UN Doc. A/51/10, pp. 90-91.

519. It does not suffice to deport a group or a part of a group. A clear distinction must be drawn between physical destruction and mere dissolution of a group. The expulsion of a group or part of a group does not in itself suffice for genocide.[1097] As Kreß has stated, "[t]his is true even if the expulsion can be characterised as a tendency to the dissolution of the group, taking the form of its fragmentation or assimilation. This is because the dissolution of the group is not to be equated with physical destruction".[1098] In this context the Chamber recalls that a proposal by Syria in the Sixth Committee to include "[i]mposing measures intended to oblige members of a group to abandon their homes in order to escape the threat of subsequent ill-treatment" as a separate sub-paragraph of Article II of the Convention against Genocide was rejected by twenty-nine votes to five, with eight abstentions.[1099]

c. The subjective element: *mens rea*

520. Genocide is a unique crime where special emphasis is placed on the specific intent. The crime is, in fact, characterised and distinguished by a "surplus" of intent. The acts proscribed in Article 4(2) of the Statute, sub-paragraphs (a) to (c), are elevated to genocide when it is proved that the perpetrator not only wanted to commit those acts but also intended to destroy the targeted group in whole or in part as a separate and distinct entity. The level of this intent is the *dolus specialis* or "specific intent", terms that can be used interchangeably.[1100]

d. The specific intent to destroy the group "as such"

[1097] K. Kreß, *Münchner Kommentar zum StGB*, Rn 57, §6 VStGB, (Munich 2003), W. A. Schabas, *Genocide in International Law* (Cambridge University Press, 2000), p. 200. The German courts have found that the expulsion of Bosnian Muslims from the areas in which they lived did not constitute genocide. See BGH v. 21.2.2001 – 3 StR 244/00, NJW 2001, 2732 (2733).

[1098] K. Kreß, *Münchner Kommentar zum StGB*, Rn 57, §6 VStGB, (Munich 2003).

[1099] A/C.6/234, see UN GAOR, 3rd Session, Sixth Committee, Summary Records of Meetings, 21 September to 10 December 1948, p. 176 and 186. For further details see K. Kreß, *Münchner Kommentar zum StGB*, Rn 53-57, 57, §6 VStGB, (Munich 2003).

[1100] *Jelisić* Appeal Judgement, paras 45-46: "This intent has been referred to as, for example, special intent, specific intent, *dolus specialis*, particular intent and genocidal intent. The Appeals Chamber will use the term 'specific intent' to describe the intent to destroy in whole or in part, a national, ethnical, racial or religious group, as such. The specific intent requires that the perpetrator, by one of the prohibited acts enumerated in Article 4 of the Statute, seeks to achieve the destruction, in whole or in part, of a national, ethnical, racial or religious group, as such." *Akayesu* Trial Judgement, para. 498: "Genocide is distinct from other crimes inasmuch as it embodies a special intent or *dolus specialis*. Special intent of a crime is the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged. Thus, the special intent in the crime of genocide lies in "the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." The issue was not discussed on appeal in the *Akayesu* or *Ruzindana* cases. *Prosecutor v Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-A, Judgement, 26 May 2003, (*Rutaganda* Appeal Judgement), para. 524: "Conformément au Statut, l'intention spécifique implique donc que l'auteur cherche à détruire, en tout ou en partie, un groupe national, ethnique, racial ou religieux, comme tel et ce, au moyen de l'un des actes énumérés à l'article 2 dudit Statut. La preuve de l'intention spécifique requiert qu'il soit établie que les actes énumérés ont été, d'une part, dirigés contre un groupe visé à l'article 2 du Statut et, d'autre part, commis avec le dessein de détruire en tout ou en partie ledit groupe, en tant que tel."

521. The group must be targeted because of characteristics peculiar to it,[1101] and the specific intent must be to destroy the group as a separate and distinct entity.[1102] As the Trial Chamber in *Sikirica* pointed out:

> Whereas it is the individuals that constitute the victims of most crimes, the ultimate victim of genocide is the group, although its destruction necessarily requires the commission of crimes against its members, that is, against individuals belonging to that group.[1103]

e. The specific intent to destroy a group "in part"

522. The key factor is the specific intent to destroy the group rather than its actual physical destruction.[1104] As pointed out by the Trial Chamber in *Semanza*, "there is no numeric threshold of victims necessary to establish genocide".[1105] This Trial Chamber emphasises that in view of the requirement of a surplus of intent, it is not necessary to prove a *de facto* destruction of the group in part[1106] and therefore concludes that it is not necessary to establish, with the assistance of a demographer, the size of the victimised population in numerical terms. It is the genocidal *dolus specialis* that predominantly constitutes the crime.

523. In construing the phrase "destruction of a group in part", the Trial Chamber with some hesitancy follows the jurisprudence of the Yugoslavia and Rwanda Tribunals which permits a characterisation of genocide even when the specific intent extends only to a limited geographical area, such as a municipality.[1107] The Trial Chamber is aware that this approach might distort the definition of genocide if it is not applied with caution.[1108]

[1101] See N. Robinson, *The Genocide Convention: A Commentary*, (New York, 1960), p. 60.
[1102] *Jelisić* Trial Judgement, para. 79.
[1103] *Sikirica et al.* Judgement on Defence Motions to Acquit, para. 89.
[1104] See *e.g.* N. Jørgensen, "The Genocide Acquittal in the Sikirica Case Before the International Criminal Tribunal for the Former Yugoslavia and the Coming of Age of the Guilty Plea", (2002) 15 *Leiden Journal of International Law*, p. 389, at p. 394.
[1105] *Prosecutor v Laurent Semanza*, Case No. ICTR-97-20-T, Judgement and Sentence, 15 May 2003, ("*Semanza* Trial Judgement and Sentence"), para. 316.
[1106] The Trial Chamber concludes from this that it is not necessary to establish, with the assistance of a demographer, the size of the victimised population in numerical terms.
[1107] See *Akayesu* Trial Judgement, paras. 704, 733; *Jelisić* Trial Judgement, para. 83; *Sikirica et al.* Judgement on Defence Motions to Acquit, para. 68.
[1108] See *e.g.* W. Schabas, "Was genocide committed in Bosnia and Herzegovina? First Judgements of the International Criminal Tribunal for the Former Yugoslavia", (November 2001) *Fordham International Law Journal*, p. 23, at pp. 42-43: "Although the concept of genocide on a limited geographic scale seems perfectly compatible with the object and purpose of the Convention, it does raise questions relating to the plan or policy issue. Localized genocide may tend to suggest the absence of a plan or policy on a national level, and while it may result in convictions of low-level officials within the municipality or region, it may also create a presumption that the crime was not in fact organized on a larger scale."

524. This Trial Chamber concurs with the Trial Chamber in *Krstić* which held 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".[1109] Furthermore,

> 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.[1110]

525. The Trial Chamber notes that according to the jurisprudence of this Tribunal, the intent to destroy a group may, in principle, be established if the destruction is related to a significant section of the group, such as its leadership.[1111]

526. It is generally accepted, particularly in the jurisprudence of both this Tribunal and the Rwanda Tribunal, that genocidal *dolus specialis* can be inferred either from the facts,[1112] the concrete circumstances, or "a pattern of purposeful action."[1113]

f. Modes of Liability

527. In the Appeals Chamber Decision in *Ojdanić*, it was held that joint criminal enterprise was "a form of 'commission' pursuant to Article 7(1) of the Statute".[1114] The Appeals Chamber found that "insofar as a participant shares the purpose of the joint criminal enterprise (as he or she must do) as opposed to merely knowing about it, he or she cannot be regarded as a mere aider and abettor to the crime which is contemplated".[1115]

528. "Commission", as a mode of liability, is broadly accepted, and joint criminal enterprise provides one definition of "commission". The Appeals Chamber in *Čelebići* characterised

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[1109] *Krstić* Trial Judgement, para. 590.
[1110] *Ibid*.
[1111] *Sikirica et al.* Judgement on Defence Motions to Acquit, paras 65, 76-85.
[1112] *Akayesu* Trial Judgement, paras. 523-4; *Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Judgement, 27 January 2000 ("*Musema* Trial Judgement"), paras. 166-7; *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Case Nos IT-95-5-R61 and IT-95-18-R61, Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, 11 July 1996 ("*Karadžić and Mladić* Review"), paras. 94-95; *Jelisić* Appeal Judgement, paras. 47-49; *Sikirica et al.* Judgement on Defence Motions to Acquit, para. 61: "the requisite intent for the crime of genocide will have to be inferred from the evidence". *Rutaganda* Appeal Judgement, para. 525: "En l'absence de preuves explicites directes, le *dolus specialis* peut donc se déduire d'un ensemble de faits et de circonstances pertinentes".
[1113] *Kayishema* and *Ruzindana* Trial Judgement, para. 93.
[1114] *Prosecutor v Milan Milutinović, Nikola Šainović & Dragoljub Ojdanić*, Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – Joint Criminal Enterprise, (*Ojdanić* Decision) 21 May 2003, para. 20.
[1115] *Ibid*.

"commission" as "primary liability". Furthermore, as stated in the *Kunerac* Trial Judgement, a crime can be committed individually or jointly with others, that is, "[t]here can be several perpetrators in relation to the same crime where the conduct of each one of them fulfils the requisite elements of the definition of the substantive offence."[1116]

529. The Prosecution bases responsibility for genocide as such under Article 4(3)(a) on co-perpetration in a joint criminal enterprise where the common purpose included or escalated to genocide, or co-perpetration in a joint criminal enterprise where genocide was the natural and foreseeable consequence of the execution of the common purpose. It argues that the *dolus specialis* is required with respect to individual perpetrators, and those who order, plan or instigate genocide.[1117] However, according to the Prosecution, in the "narrow case of joint criminal enterprise liability under the third variant", proof of the *dolus specialis* is not required.[1118]

530. According to this Trial Chamber, the application of a mode of liability can not replace a core element of a crime. The Prosecution confuses modes of liability and the crimes themselves. Conflating the third variant of joint criminal enterprise and the crime of genocide would result in the *dolus specialis* being so watered down that it is extinguished. Thus, the Trial Chamber finds that in order to "commit" genocide, the elements of that crime, including the *dolus specialis* must be met. The notions of "escalation" to genocide, or genocide as a "natural and foreseeable consequence" of an enterprise not aimed specifically at genocide are not compatible with the definition of genocide under Article 4(3)(a).

(b) Complicity in genocide

531. The Trial Chamber considered the relationship between Article 7(1) and complicity in genocide under Article 4(3) in its Decision on 98 *bis* Motion for Judgement of Acquittal. Noting the overlap between Articles 7(1) and 4(3), the Trial Chamber concluded that two approaches are possible. Article 4(3) can either be regarded as *lex specialis* in relation to Article 7(1) (*lex generalis*), or the modes of participation under Article 7(1) can be read into Article 4(3). As pointed out by the Trial Chamber in *Semanza*, there is no material distinction between complicity in genocide and "the broad definition accorded to aiding and abetting".[1119]

532. The Trial Chamber has previously identified the perpetrators or co-perpetrators of genocide as those who devise the genocidal plan at the highest level and take the major steps to put it into

[1116] *Kunerac* Trial Judgement, para. 390; see also *Kvočka* Trial Judgement, para. 251.
[1117] Prosecution Final Trial Brief, para. 248.
[1118] *Ibid*.
[1119] *Semanza* Trial Judgement and Sentence, para. 394.

effect.[1120] The perpetrator or co-perpetrator is the one who fulfils "a key co-ordinating role"[1121] and whose "participation is of an extremely significant nature and at the leadership level".[1122] This Trial Chamber regards genocide under Article 4(3)(a) as usually limited to "perpetrators" or "co-perpetrators".

533. An accomplice to an offence may be described as someone who, *inter alia*, associates himself in an offence committed by another. Aiding and abetting genocide refers to "all acts of assistance or encouragement that have substantially contributed to, or have had a substantial effect on, the completion of the crime of genocide".[1123] Complicity therefore necessarily implies the existence of a principal offence.[1124] Stated otherwise, complicity in genocide is possible only where genocide actually has been or is being committed.[1125] However, the Trial Chamber is aware that an individual can be prosecuted for complicity even where the perpetrator has not been tried or even identified[1126] and that the perpetrator and accomplice need not know each other.

534. An accused can thus be held liable only in respect of the alternative charge of complicity in genocide if the Trial Chamber is satisfied beyond reasonable doubt that genocide as such took place. For the purposes of this case, the Trial Chamber deems it unnecessary to expand on the *actus reus* and *mens rea* for complicity in genocide.

2. The Trial Chamber's Findings

(a) Arguments of the Parties Related to the Facts

(i) The Prosecution

535. The Prosecution asserts in relation to Article 4(3)(a) of the Statute that Dr. Stakić is responsible for the deaths of approximately 3,000 people in the Municipality of Prijedor,[1127] primarily in the Omarska, Keraterm and Trnopolje camps, but also in Kozarac, Kamičani, Hambarine, Bišćani, Čarakovo, Briševo, Ljubija football stadium, Ljubija iron ore mine area, Benkovac military barracks, outside Manjača camp, and *Koričanske stijene* in the Vlasić Mountain area.[1128] The Prosecution argues that the victims were Muslims and Croats from the Municipality of Prijedor and were deliberately chosen on the basis of their identification with these two

[1120] Decision on Rule 98 *bis* Motion for Judgement of Acquittal, 31 October 2002, para. 50.
[1121] *Krstić* Trial Judgement, para. 644.
[1122] *Krstić* Trial Judgement, para. 642.
[1123] *Semanza* Trial Judgement and Sentence, para. 395.
[1124] *Akayesu* Trial Judgement, para. 527.
[1125] *Musema* Trial Judgement, para. 171-173.
[1126] *Musema* Trial Judgement, para. 174.
[1127] Prosecution Final Trial Brief, paras 197 and 199.
[1128] Prosecution Final Trial Brief, para. 197.

groups.[1129] Moreover, the Prosecution argues that it was the prominent persons belonging to the Muslim and Croat leaderships who were targeted, including political leaders, civil servants, professors/teachers, lawyers, business leaders, medical doctors and personnel and policemen.[1130] According to the Prosecution, Dr. Stakić's intent to kill these people can be inferred from his positions of authority, his actions in exercise of that authority, his close cooperation with the police and the military, and his failure to prevent or punish the killings after they became known.[1131]

536. As it concerns Article 4(3)(b) of the Statute, the Prosecution refers to beatings, torture, rape psychological mistreatment, interrogations and humiliating games at the Omarska, Keraterm and Trnopolje camps and other detention centres.[1132] The Prosecution asserts that the people targeted for serious bodily and mental harm at the camps were Muslims and Croats from the Municipality of Prijedor, including men, women, children and the elderly, but especially the leadership.[1133] According to the Prosecution, Dr. Stakić's intent to cause serious bodily and mental harm to Muslim and Croat detainees in Prijedor's camps and detention centres can be inferred from evidence that the camps were created and controlled by Dr. Stakić and the Crisis Staff, and evidence that Dr. Stakić had *de facto* control over the police and military forces who made up the guard and security forces at the camps.[1134]

537. In relation to Article 4(3)(c), the Prosecution submits that all the beatings, rapes, sexual assaults, humiliation and psychological abuse inflicted upon the detainees at the camps, together with the general conditions in the camps and systematic expulsions, constitute conditions of life calculated to destroy the Muslim and Croat groups within the Municipality of Prijedor.[1135] The Prosecution argues that these acts were intentionally orchestrated to contribute to the groups' annihilation.

538. The Prosecution submits that the evidence at trial proved beyond a reasonable doubt that Dr. Stakić acted with the specific intent to destroy the Muslims and Croats, in the Municipality of Prijedor, as such.[1136] The Prosecution argues that his intent may be inferred from the following:[1137]

- the general political doctrine which gave rise to the 'prohibited' acts;

- the general nature of atrocities in a region or a country;

[1129] Prosecution Final Trial Brief, para. 200.
[1130] Prosecution Final Trial Brief, paras 204-210.
[1131] Prosecution Final Trial Brief, para. 211.
[1132] Prosecution Final Trial Brief, paras 216-229.
[1133] Prosecution Final Trial Brief, para. 230.
[1134] Prosecution Final Trial Brief, para. 231.
[1135] Prosecution Final Trial Brief, paras 235-242.
[1136] Prosecution Final Trial Brief, para. 267.
[1137] Prosecution Final Trial Brief, para. 268, citing judgements of the Tribunal.

- existence of a genocidal plan and the accused's participation in its creation and/or execution;

- the scale of atrocities committed;

- the general context of the perpetration and/or repetition of other destructive or discriminatory acts committed as part of the same pattern of conduct, systematically directed against the same group, whether committed by the same offender or by others;

- the perpetration of acts which violate, or which the perpetrators themselves consider to violate, the very foundation of the group;

- the hatred for the group of the accused and/or his or her associates participating in the commission of the offence including superiors and subordinates;

- the degree to which the group was in fact destroyed in whole or in part;

- utterances of the accused; and

- the concealment of bodies in mass graves causing terrible distress to survivors unable to verify or mourn the deaths.

The Prosecution submits that these factors support a finding of genocide. Specific reference is made to the envisaged forced creation of an ethnically pure Serbian state in Bosnia and Herzegovina. According to the Prosecution, "the predominant aim was to drive out or destroy at least enough of the Muslim population to be certain that the number remaining could be of no threat at all and would be fully subdued".[1138] The Prosecution relies on evidence relating to conditions in the camps, the destruction of towns, villages, churches and mosques, Dr. Stakić's role in the propaganda machinery, the number of people detained in camps and ultimately killed, the concealment of bodies in mass graves, the denial of rights to Muslims and Croats, transfers out of Prijedor, and statements made by Dr. Stakić.[1139]

(ii) The Defence

539. The Defence argues that the evidence "does not compel the inference that Dr. Stakić was party to a plan to create a unified Serbian state by destroying other ethnic groups".[1140] The Defence refers to Radovan Karadžić's speech at the founding session of the Assembly of the Serbian People of Bosnia and Herzegovina on 12 May 1992 and argues that although the speeches show that the Bosnian Serbs were seeking to secede from Bosnia and Herzegovina, they do not prove an intention to commit genocide in order to create a mono-ethnic state.[1141]

[1138] Prosecution Final Trial Brief, para. 272.
[1139] Prosecution Final Trial Brief, paras 270-312.
[1140] Defence Final Brief, para. 306.
[1141] Defence Final Brief, paras 307-308.

540. According to the Defence, the camps were established for legitimate reasons, as provided in the Geneva Conventions, and were not part of a genocidal plan.[1142] The Defence refers to the Order dated 31 May 1992 signed by Simo Drljača, chief of the Prijedor Public Security Station, directing that the Omarska collection centre be established in accordance with the Decision of the Crisis Staff[1143] which, according to the Defence, contemplates a secure facility with provision made for food, cleaning, maintenance and direct supervision by the Chief of Police.[1144] The Defence also refers to a report from the Security Services Centre in Banja Luka dated 18 August 1992[1145] which, the Defence argues, describes a willingness on the part of municipal officials to grant national and religious rights and freedoms to all those loyal to the Bosnian Serb Republic, and provides evidence that Dr. Stakić did not possess genocidal intent.[1146] The Defence submits that there has been no credible evidence of Dr. Stakić's presence at any of the camps.[1147]

541. The Defence submits that Dr. Stakić was in no way associated with arrangements for bus convoys out of the Municipality of Prijedor, and that even if he had been involved directly in arranging transport for people wishing to leave the Municipality of Prijedor, this is not proof of genocidal intent.[1148]

542. As it concerns conclusions and orders of the Crisis Staff, the Defence argues that these are consistent with attempts to establish law and order and do not compel an inference of genocide.[1149]

543. Finally, the Defence points to evidence that Dr. Stakić was a mild-mannered person who exhibited no characteristics of hatred or discrimination towards other citizens of the Municipality of Prijedor, and argues that Dr. Stakić was either not informed or misled as to the criminal conduct that took place in the camps.[1150]

(b) Discussion and findings related to Counts 1 and 2

544. Crimes were committed on a massive scale throughout the municipality of Prijedor during the time period covered by the Fourth Amended Indictment, i.e. from 30 April 1992 to 30 September 1992. As set out in the Trial Chamber's factual findings, killings occurred frequently in the Omarska, Keraterm and Trnopolje camps and other detention centres. Similarly, many people were killed during the attacks by the Bosnian Serb army on predominantly Bosnian Muslim villages

[1142] Defence Final Brief, paras 328-329, referring to the testimony of General Wilmot.
[1143] Exh. S107.
[1144] Defence Final Brief, para. 325.
[1145] Exh. S152.
[1146] Defence Final Brief, paras 326-327.
[1147] Defence Final Brief, paras 331-361.
[1148] Defence Final Brief, paras 362-367.
[1149] Defence Final Brief, para. 370.

and towns throughout the Prijedor municipality and several massacres of Muslims took place. The thousands of persons who were detained in the camps were subjected to inhuman and degrading treatment, including routine beatings. Moreover, rapes and sexual assaults were committed at some of these facilities. Detainees were given little more than a subsistence diet. In addition, Bosnian Muslims who had lived their whole lives in the municipality of Prijedor were expelled from their homes. Bosnian Muslims were discriminated against in employment, e.g. by arbitrary dismissals, their houses were marked for destruction, and in many cases were destroyed along with mosques and Catholic churches. The Prosecution relies upon these events in Prijedor municipality in 1992 in their totality as being the *actus reus* for genocide under Article 4(2) (a) to (c) of the Statute.

545. The Trial Chamber will first identify the relevant targeted group or groups for the purposes of the definition of genocide. The Trial Chamber finds that the majority of victims of acts potentially falling under Article 4(2) (a) to (c) of the Statute belong to the Bosnian Muslim group. Some evidence has also been presented of similar crimes committed against Bosnian Croats. However, the number of Croats in the Municipality of Prijedor was limited[1151] and the Trial Chamber finds that the evidence of crimes committed against Croats has been insufficient to allow it to conclude that the Bosnian Croat group was separately targeted.

546. The Trial Chamber has reviewed its factual findings in Part II of this Judgement and a comprehensive pattern of atrocities against Muslims in Prijedor municipality in 1992 emerges that has been proved beyond reasonable doubt. However, in order to prove Dr. Stakić's involvement in the commission of these acts as a co-perpetrator of genocide, the Trial Chamber must be satisfied that he had the requisite intent. Thus, the key and primary question that falls to be considered by the Trial Chamber is whether or not Dr. Stakić possessed the *dolus specialis* for genocide, this *dolus specialis* being the core element of the crime.

547. Dr. Stakić is charged with participating in a genocidal campaign in the Municipality of Prijedor, allegedly organised at the highest level of the Serbian Republic, the seeds of which were sown around the time of the constitutive Session of the Assembly of the Serbian People of Bosnia and Herzegovina on 24 October 1991. He is charged with acting in concert with Milan Kovačević and Simo Drljača of the Prijedor Crisis Staff; Radoslav Brđanin, General Momir Talić and Stojan Župljanin of the ARK Crisis Staff; and Radovan Karadžić, Momčilo Krajišnik and Biljana Plavšić, members of the leadership of the Serbian Republic and the SDS.[1152] In its Decision on 98 *bis*

[1150] Defence Final Brief, paras 390-394.
[1151] The highest estimate of the population of Croats in Prijedor Municipality in 1991 is 7% (*Witness A*, T. 1794), while the more common estimate according to the 1991 census is 5.6% (*Muharem Murselović*, T. 2682) or 5.5% (*Mirsad Mujadžić*, T. 3580).
[1152] Fourth Amended Indictment, para. 27.

Motion to Acquit, the Trial Chamber concluded that on the basis of the evidence presented by the Prosecution, a reasonable Trial Chamber "*could* conclude that Dr. Stakić shared the plans to create a unified Serbian state by destroying other ethnic groups".[1153] Having heard all the evidence, the Trial Chamber finds that it has not been provided with the necessary insight into the state of mind of alleged perpetrators acting on a higher level in the political structure than Dr. Stakić to enable it to draw the inference that those perpetrators had the specific genocidal intent. As a consequence, the Trial Chamber is unable to draw any inference from the vertical structure that Dr. Stakić shared the intent.

548. During the period covered by the Indictment, Dr. Stakić operated within the broader framework of the activities of the SDS at a national level and the ARK, a Serb-led union of municipalities in Bosnia and Herzegovina which the Assembly of the Serbian people of the Municipality of Prijedor voted to join on 17 January 1992.[1154] The evidence indicates that SDS leaders at the local or municipal level were in contact with and indeed took directions from their counterparts, on a regional or even a national level.[1155] Dr. Radovan Karadžić presented the six strategic goals of the Serbian people to the session of the Assembly of the Serbian People in Bosnia and Herzegovina in Banja Luka on 12 May 1992.[1156] Significantly, the first strategic goal was the separation from the other two national communities, the Bosnian Muslims and the Bosnian Croats, "a separation of states", a "[s]eparation from those who are our enemies".

549. Dr. Stakić prepared a session of the Assembly of the Serbian Republic of BiH at the Prijedor Hotel on 22 or 23 October 1992 in which Dr. Karadžić participated[1157] and the Trial Chamber is satisfied that Dr. Stakić met Dr. Karadžić on at least this one occasion. However, the Trial Chamber has no knowledge of what was discussed during any such meetings. The Trial Chamber is similarly unable to draw any inference from Ranko Travar's testimony that Dr. Stakić stayed in the SDS and remained loyal to Dr. Karadžić when a rift developed between Dr. Karadžić and Dr. Plavsić in 1997,[1158] an event which in any case falls outside the time period of the Indictment. Thus, there is insufficient evidence in this case to prove that a genocidal campaign was being planned at a higher level.

550. The persons belonging to the vertical hierarchical structure are all either deceased, or unavailable because criminal proceedings are pending against them, with the exception of Biljana Plavšić who was compellable as a witness following the final determination of her case. On 2

[1153] Para. 89.
[1154] Exh. S96.
[1155] Exh. SK39.
[1156] Exh. S141.
[1157] *Mico Kos*, T. 9844-48; *Petar Stanar*, T. 14264.

October 2002, on the basis of a confidential plea agreement between the parties, Plavsić entered a plea of guilty to persecutions. On 8 January 2003, this Trial Chamber raised the question of hearing Plavsić as a witness in the Stakić case.[1159] On this occasion the Defence expressed its interest in hearing Plavsić as a witness.[1160] The Trial Chamber ordered the hearing of Plavsić as soon as possible and practicable after her sentencing, and ordered the Prosecution to disclose to the Defence and the Trial Chamber the statements of Plavsić and the plea agreement,[1161] which it did on 14 January 2003. On 27 February 2003, Plavsić was sentenced to eleven years imprisonment.[1162] On 19 March 2003, the Prosecution tendered Plavsić's "Factual Basis for Plea of Guilty" as part of the cross-examination of Srdja Trifković.[1163] On 25 March 2003 the Defence stated that it no longer insisted on hearing Plavsić[1164] and the Prosecution waived the right to base any appeal on the fact that Plavsić was not heard.[1165] On the basis of confidential 65*ter*(I) conferences with the parties in both the Plavsić and Stakić cases,[1166] on 1 April 2003 the Prosecution agreed to withdraw the factual basis of Plavsić's guilty plea[1167] and the Defence stated that it would not base an appeal on the fact that it did not have the opportunity to cross-examine Plavsić.[1168] Ultimately, the Trial Chamber decided that there was no point in postponing the end of the hearings in the case in order to hear Plavsić because, without anticipating her testimony, it could not reasonably be expected that having pleaded guilty to persecution and not genocide, she could or would make any statement that would lead the Trial Chamber to the conclusion that any person mentioned in paragraph 27 of the Indictment had the specific intent.[1169]

551. The Trial Chamber stresses that it is only on the basis of the evidence in this concrete case that it reaches the conclusion that a genocidal intent on a higher level has not been proved beyond reasonable doubt. This is despite the fact that there are a number of indicia that could point in the direction of such an intent which the Trial Chamber attempted to explore further by calling additional witnesses *proprio motu* under Rule 98.[1170]

[1158] *Ranko Travar*, T. 13467-68.
[1159] T. 9894.
[1160] T. 9898-99
[1161] T. 9915.
[1162] *Prosecutor v Biljana Plavšić*, Case No. IT-00-39&40/1, Sentencing Judgement, 27 February 2003.
[1163] T. 13877; T. 13904.
[1164] T. 14340.
[1165] T. 14342.
[1166] *Ex parte* Hearing - Prosecution (Stakić Defence not present), 25 March 2003, mentioned at T. 14340; Rule 65 *ter* (I) conference (Closed Session), 31 March 2003.
[1167] T. 14895.
[1168] T. 14895.
[1169] See Order to Vacate Order Summoning Biljana Plavšić, 2 April 2003, vacating the Order of 9 January 2003 summoning Biljana Plavšić *proprio motu*.
[1170] In particular, the Trial Chamber called *Slavko Budimir*, *Ranko Travar* and *Slobodan Kuruzović*, all members of the Prijedor Crisis Staff in 1992.

552. The Trial Chamber notes that the Prosecution has explicitly stated that it has not charged Dr. Stakić with crimes where it would be necessary to *prove* a vertical joint criminal enterprise extending beyond Prijedor.[1171] Dr. Stakić is charged "with those crimes directly linked through the horizontal joint criminal enterprise in Prijedor down to the actual perpetrators in Prijedor."[1172]

553. In relation to "killing members of the group" the Trial Chamber is not satisfied that Dr. Stakić possessed the requisite *dolus specialis* for genocide, but leaves open the question whether he possessed the *dolus eventualis* for killings which may be sufficient to satisfy the subjective elements of other crimes charged in the Indictment. While the Trial Chamber is satisfied that the common goal of the members of the SDS in the Municipality of Prijedor, including Dr. Stakić as President of the Municipal Assembly, was to establish a Serbian municipality, there is insufficient evidence of an intention to do so by destroying in part the Muslim group. The Trial Chamber believes that the goal was rather to eliminate any perceived threat, especially by Muslims, to the overall plan and to force non-Serbs to leave the Municipality of Prijedor. Security for the Serbs and protection of their rights seems to have been the paramount interest. As one member of the ECMM delegation which visited Prijedor Municipality in late August 1992 pointed out, "the conclusion to be drawn from what we have seen is that the Muslim population is not wanted and is being systematically kicked out by whatever method is available".[1173] Had the aim been to kill all Muslims, the structures were in place for this to be accomplished. The Trial Chamber notes that while approximately 23,000 people were registered as having passed through the Trnopolje camp at various times when it was operational and through other suburban settlements,[1174] the total number of killings in Prijedor municipality probably did not exceed 3,000.[1175]

554. Even though Dr. Stakić helped to wage an intense propaganda campaign against Muslims, there is no evidence of the use of hateful terminology by Dr. Stakić himself from which the *dolus specialis* could be inferred. Statements made by Dr. Stakić do not publicly advocate killings and while they reveal an intention to adjust the ethnic composition of Prijedor, the Trial Chamber is unable to infer an intention to destroy the Muslim group. This inference cannot be drawn from Dr. Stakić's remark that Muslims in Bosnia "were created artificially"[1176] and his interview in January 1993 with German television, while demonstrating intolerance of Muslims, advocated the removal of "enemy" Muslims from Prijedor rather than the physical elimination of all Muslims. The interview concludes with the statement: "those who stained their hands with blood will not be able

[1171] Prosecution Final Brief, Appendix A, p. 34.
[1172] T. 15297.
[1173] Exh. S166; *Charles McLeod*, T. 5130, T. 5161-62.
[1174] Exh. S434.
[1175] *Ewa Tabeau*, T. 8414-17.
[1176] Exh. S187, p. 5; T. 5692.

to return. Those others, if they want…when the war ends, will be able to return".[1177] The intention to displace a population is not equivalent to the intention to destroy it.

555. The Trial Chamber has considered whether anyone else on a horizontal level in the Municipality of Prijedor had the *dolus specialis* for genocide by killing members of the Muslim group but concludes that there is no compelling evidence to this effect. Simo Drljača, head of the Prijedor SJB, clearly played an important role in establishing and running the camps,[1178] and was portrayed by the evidence as being a difficult or even brutal person,[1179] but the Trial Chamber is not satisfied that Drljača pulled the Crisis Staff into a genocidal campaign.[1180]

556. In relation to "causing serious bodily or mental harm to members of the group", the Trial Chamber is unable to conclude, for the reasons given in the previous paragraph, that Dr. Stakić committed acts causing serious bodily or mental harm to Muslims with the intention to destroy the Muslim group.

557. For the same reasons, the Trial Chamber finds that the *dolus specialis* has not been proved in relation to "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part." The Trial Chamber recalls in this context that deporting a group or part of a group is insufficient if it is not accompanied by methods seeking the physical destruction of the group.

558. Regarding the third category of joint criminal enterprise, the Trial Chamber repeats its finding that according to the applicable law for genocide, the concept of genocide as a natural and foreseeable consequence of an enterprise not aiming specifically at genocide does not suffice.

559. The Trial Chamber recalls its finding that whenever Dr. Stakić is found not guilty under Article 7(1) in relation to an offence, responsibility under Article 7(3) must be considered. Since the Trial Chamber is not satisfied beyond a reasonable doubt that anyone, including any subordinates of Dr. Stakić in the Municipality of Prijedor, had the *dolus specialis*, there is no room for the application of Article 7(3) in relation to Count 1.

560. For the foregoing reasons, Dr. Stakić is acquitted of genocide under Count 1.

[1177] Exh. S365-1, p. 4.
[1178] See *e.g.* Exh. S107; Exh. S353; *Muharem Murselović*, T. 2905.
[1179] *Ljubica Kovačević*, for example, testified that her husband *Milan Kovačević* did not seem to like *Drljača* because *Drljača* once pulled a gun at him, T. 10180. *Ranko Travar* testified that *Drljača* was very short tempered and not easy to work with, T. 13463. *Slavko Budimir* testified that like other members during discussions at meetings of the Crisis Staff, Dr. Stakić also expressed some different opinions and would get into some sort of conflict when discussing things with *Drljača*, T. 12922.
[1180] See Exh. D99, article from "Kozarski Vjesnik" dated 9 April 1993 interviewing *Simo Drljača* who comments on the co-operation between the civilian authorities and the police.

561. In order for Dr. Stakić to be held responsible for complicity in genocide, it must be proved that genocide in fact occurred. On the basis of the evidence presented in this case, the Trial Chamber has not found beyond a reasonable doubt that genocide was committed in Prijedor in 1992. For this reason Dr. Stakić is acquitted of complicity in genocide under Count 2.

D. **Requirements Common to Articles 3 and 5 of the Statute**

562. In Counts 3 – 8 of the Indictment, Dr. Stakić is charged with crimes under Articles 3 (Violations of the laws or customs of war) and 5 (Crimes against humanity) of the Statute. This section addresses the common preconditions required for the application of these Articles.

1. The Applicable Law

(a) Arguments of the parties

563. The Parties submit that the existence of an armed conflict, whether internal or international, is a pre-requisite to the applicability of Articles 3 and 5 of the Statute.

564. The Prosecution argues that while Article 3 requires a relationship between the crimes committed and the armed conflict, Article 5 does not require a "substantive" connection between the crime and the armed conflict.[1181]

565. The Defence submits that, in relation to Article 3, the Prosecution must prove a nexus between the armed conflict and the alleged offence.[1182]

(b) Discussion

(i) Requirement of an armed conflict

566. Pursuant to Article 3 of the Statute, the Tribunal has jurisdiction over violations of the laws or customs of war, a pre-condition of which is the existence of an armed conflict in the territory where the crimes are alleged to have occurred. It is immaterial for the purposes of Article 3 of the Statute whether the armed conflict is international or internal.[1183]

567. Article 5 of the Statute confers jurisdiction on the Tribunal to prosecute persons for crimes against humanity. While the Appeals Chamber has held that "customary international law may not require a connection between crimes against humanity and any conflict at all",[1184] Article 5 imposes a jurisdictional requirement limiting the Tribunal's jurisdiction to crimes against humanity "when committed in armed conflict, whether international or internal in character".

[1181] Prosecution Final Brief, paras 302 and 395-96.
[1182] Defence Final Brief, para. 609.
[1183] *Prosecutor v. Duško Tadić,* Case No. IT-94-I-AR72, Decision on the Defence Motion for an Interlocutory Appeal on Jurisdiction, 2 Oct. 1995 ("*Tadić* Jurisdiction Decision"), para. 137.
[1184] *Tadić* Jurisdiction Decision, para. 141.

568. An armed conflict exists "whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State."[1185]

(ii) Establishing a nexus between the armed conflict and the alleged acts of the Accused

569. As regards Article 3, the Prosecution must also establish a link between the acts of the accused alleged to constitute a violation of the laws or customs of war and the armed conflict in question. As to the precise nature of this nexus, the Appeals Chamber has held that "it would be sufficient […]that the alleged crimes were closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict."[1186] In other words, it is sufficient to establish that the perpetrator acted in furtherance of or under the guise of the armed conflict.[1187] The Appeals Chamber has put forward the following factors, *inter alia*, to be taken into account when determining whether the act in question is sufficiently related to the armed conflict:[1188]

> the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator's official duties.

570. By contrast the Appeals Chamber has held that "the requirement contained in Article 5 of the Statute is a purely jurisdictional prerequisite which is satisfied by proof that there was an armed conflict and that objectively the acts of the accused are linked geographically as well as temporally with the armed conflict".[1189]

2. Trial Chamber's findings

(a) Armed conflict

571. The Trial Chamber is satisfied that an armed conflict existed in the territory of the Municipality of Prijedor between 30 April and 30 September 1992.

572. Firstly, the military expert for the Defence stated that, in his expert opinion, there was a state of armed conflict in the Prijedor municipality between April and September 1992.[1190] Ewan Brown, the military expert for the Prosecution, indicated that, after the attacks on Hambarine and

[1185] *Tadić* Jurisdiction Decision, para. 70.
[1186] *Kunarac* Appeal Judgement, para. 57.
[1187] *Kunarac* Appeal Judgement, para. 58.
[1188] *Kunarac* Appeal Judgement, para. 59.
[1189] *Kunarac* Appeal Judgement, para. 83.
[1190] *Richard Wilmot*, T. 14160.

Kozarac, combat operations were ongoing in the Municipality of Prijedor throughout the summer of 1992.[1191]

573. In addition, the regular combat reports from the 1st Krajina Corps Command to the 5th Corps Command provide ample evidence that combat operations were ongoing in the Prijedor municipality during the Indictment period.[1192]

574. Finally, the fact that "Kozarski Vjesnik" referred to its publications over this period as the "War Edition" supports the fact that combat operations were ongoing.[1193]

(b) Nexus

575. The Trial Chamber is further satisfied that there was a nexus between this armed conflict and the acts of the Accused. This can be established through both objective and subjective elements.

576. There is evidence that the Crisis Staff, of which Dr. Milomir Stakić was President, issued the ultimatum to the residents of Hambarine that they should surrender their weapons or suffer the consequences.[1194] An SJB report states that it was the Crisis Staff which decided to intervene militarily in the village of Hambarine.[1195] Moreover, in an interview, Dr. Milomir Stakić, speaking in his capacity as President of the Crisis Staff, stated in relation to the attack on the town of Kozarac: "[A]ctually *we* made a decision that the army and the police go up there […]".[1196] Throughout the armed conflict, there is evidence that Dr. Milomir Stakić maintained close contacts with the military.[1197]

[1191] Exh. S340, Report of *Ewan Brown*, pp. 28-30.
[1192] Exh. S363; Exh. S358; Exh. D168, Exh. D173; Exh. D174; Exh. D177; Exh. D180; Exh. D182; Exh. D184.
[1193] See e.g. Exh. S242-1, "Kozarski Vjesnik" of 17 July 1992.
[1194] Exh. S389-1.
[1195] Exh. S152.
[1196] Exh. S187.
[1197] See *supra,* Section II. 6.

E. **Murder as a Violation of the Laws or Customs of War – Article 3 of the Statute (Count 5)**

1. The Applicable Law

577. Dr. Stakić is charged with murder as recognised by Article 3(1)(a) of the Geneva Conventions of 1949 and punishable under Article 3 of the Statute. It is settled in the jurisprudence of this Tribunal that violations of Article 3 common to the Geneva Conventions of 1949 ("common Article 3") fall within the ambit of Article 3 of the Statute[1198]

578. Common Article 3 states in relevant part:

> In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:
>
> 1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely […].
>
> To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
>
> (a) Violence to life and person, *in particular murder of all kinds*,[1199] mutilation, cruel treatment and torture;
>
> […]

579. The Trial Chamber recalls that it has already found two requirements for the applicability of Article 3: the existence of an armed conflict and a nexus between the acts of the accused and that conflict.

580. As argued by the parties,[1200] in addition to the requirements common to Articles 3 and 5 of the Statute, four additional requirements specific to Article 3 must be satisfied in respect of the crime of murder as a violation of the laws or customs of war:

> 1. The violation must constitute an infringement of a rule of international humanitarian law;
> 2. The rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met […];
> 3. The violation must be "serious", that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim […];
> 4. The violation of the rule must entail, under customary or conventional law, the individual responsibility of the person breaching the rule.[1201]

[1198] See *Kunarac* Appeal Judgement, para. 68.
[1199] Emphasis added.
[1200] Prosecution Final Brief, para. 367, Defence Final Brief paras 610-11.
[1201] *Tadić* Jurisdiction Decision, para. 94.

581. The last element under Article 3 is that the victim must have been taking no active part in the hostilities at the time the crime was committed. The Trial Chamber will now turn to the specific elements of the crime of murder.

(a) Arguments of the parties

582. The Prosecution submits that the crime of murder as a violation of the laws or customs of war has the following *actus reus*: the accused, either by act or omission, causes the death of one or more persons. In the Prosecution's submission, the accused's contribution must be "substantial" and the required *mens rea* for murder is the intent "to kill, or inflict serious injury in reckless disregard of human life."[1202]

583. The Defence submits that the elements of murder under Article 3 are (i) the death of the victim as a result of an act or omission of the accused, and (ii) that the accused committed the act or omission with the intent to kill.[1203]

(b) Discussion

584. The definition of murder as a violation of the laws or customs of war is now settled in the jurisprudence of the ICTR and the ICTY which holds that the death of the victim must result from an act or omission of the accused committed with the intent either to kill or to cause serious bodily harm in the reasonable knowledge that it would likely result in death.[1204]

585. However, this definition may create a certain confusion because both Articles 3 and 5 use the term murder interchangeably with killings. The Trial Chamber notes that prior case-law on this issue held that the intent to kill is a pre-requisite, but did not provide any further description of what is meant by "intent to kill". "Intent to kill" is defined in Blacks' Law Dictionary (7th Edition) as:

> An intent to cause the death of another; esp., a state of mind that, if found to exist during an assault, can serve as the basis for an aggravated-assault charge.

Moreover, the Trial Chamber notes that where the English text reads "murder" in Article 5 of the Statute, in the French, the term "assassinat" is used.

586. The Trial Chamber finds that in the context of Article 3 of the Statute "murder" means taking another person's life. If murder is conceived in the narrow sense only, ordinary killings, namely the taking of another person's life without any additional subjective or objective

[1202] Prosecution Final Brief, paras 399-401.
[1203] Defence Final Brief, para. 614.
[1204] See *e.g. Prosecutor v. Radislav Krstić*, para. 485; *Prosecutor v. Tihomir Blaškić,* para. 217; *Prosecutor v. Miroslav Kvočka et al,* para. 132.

aggravating elements, do not fall under the Article. This Trial Chamber believes, however, that murder should be equated to killings, that is *meurtre* in French law and *Mord* in German law.

587. Turning to the *mens rea* element of the crime, the Trial Chamber finds that both a *dolus directus* and a *dolus eventualis* are sufficient to establish the crime of murder under Article 3.[1205] In French and German law, the standard form of criminal homicide (*meurtre, Totschlag*) is defined simply as intentionally killing another human being. German law takes *dolus eventualis* as sufficient to constitute intentional killing. The technical definition of *dolus eventualis* is the following: if the actor engages in life-endangering behaviour, his killing becomes intentional if he "reconciles himself" or "makes peace" with the likelihood of death. Thus, if the killing is committed with "manifest indifference to the value of human life", even conduct of minimal risk can qualify as intentional homicide. Large scale killings that would be classified as reckless murder in the United States would meet the continental criteria of *dolus eventualis*.[1206] The Trial Chamber emphasises that the concept of *dolus eventualis* does not include a standard of negligence or gross negligence.[1207]

2. Trial Chamber's findings

(a) Objective element: *actus reus*

588. The Trial Chamber is satisfied that all killings alleged in paragraphs 44 and 47 of the Indictment, except the alleged incident in the village of Jaškići[1208], have been proven beyond reasonable doubt to have been committed by armed Serb forces.

(b) Subjective element: *mens rea*

(i) Requirement that the victims were taking no active part in the hostilities

589. The Trial Chamber is convinced that the vast majority of the victims of these crimes were taking no active part in the hostilities at the time the crimes were committed. In particular, the Trial Chamber finds that those held in the Omarska, Keraterm and Trnopolje camps are automatically to be considered *hors de combat* by virtue of their being held in detention. The same applies to those victims who were displaced in the many convoys that were organised and those innocent civilians who were killed during indiscriminate armed attacks on civilian settlements, throughout the Municipality of Prijedor during the Indictment period. In relation to the women and children who

[1205] See *e.g.* Schönke/Schröder Strafgesetzbuch, Kommentar, 26. Auflage, *Cramer/Sternberg-Lieben*. Section 15, para. 84.
[1206] See generally Fletcher, GP, *Rethinking Criminal Law*, (Oxford University Press, 2000), p.325-326.
[1207] In German law: *Fahrlässigkeit.*

were the victims of these crimes, there is no evidence at all to suggest that they participated in combat activities.

(ii) *Mens rea* of the Accused with regard to killings in Prijedor municipality

590. The Trial Chamber recalls its finding that there was a plan among the leading members of the SDS within the Municipality of Prijedor, including Milomir Stakić, to establish a Serbian municipality in Prijedor, that is, a municipality in which the Serbs would be in control and be assured of retaining it. One of the means by which it was envisioned that Serb dominance would be achieved was the initiation of a campaign of ethnic cleansing of the non-Serb population within the municipality, thereby redressing the perceived ethnic imbalance where the Muslims represented a relative majority of the population. The plan first materialised on the level of Prijedor municipality with the establishment of the Assembly of the Serbian People on 7 January 1992, at which session Milomir Stakić was elected to the position of President.[1209]

591. The Trial Chamber finds that the co-perpetrators in the plan to consolidate Serbian power in the municipality at any cost, including Milomir Stakić as the highest-ranking civilian leader in the municipality, ensured that members of the police, army and irregular forces were allowed to operate in a climate of total impunity. This was amply illustrated by Witness B who, when asked why he had decided to flee Prijedor in 1992, stated the following:

> [W]e no longer had any rights there. We no longer had the right to live, let alone own anything. *Any day, somebody could come, confiscate your car, take away your house, shoot you, without ever being held responsible for it*. So it was the only solution, the only way out, to go as far as away from there as possible, at any cost.[1210]

592. The plan to create a Serb-controlled municipality was subsequently activated through the SDS-led takeover in the municipality on 30 April 1992.[1211] Milomir Stakić immediately assumed the role of President of the Municipal Assembly, and it was arranged that the duly-elected President, Professor Muhamed Čehajić, be denied access to the building of the Municipal Assembly. As has been shown above, Professor Čehajić was subsequently arrested, detained, and killed.[1212]

593. The evidence shows that Dr. Stakić as the leading figure in the municipal government[1213], worked together with the Chief of the SJB, Simo Drljača, the highest ranking man in the military,

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[1208] Para. 44(4) of the Indictment, which was withdrawn by the Prosecution, see *supra* Section I. E. 5. (d).
[1209] Exh. SK45 and Exh. S262.
[1210] *Witness B*, T. 2263 (emphasis added).
[1211] See *e.g.* Exh. S91 and *Slobodan Kuruzović*, T. 14437.
[1212] See *supra* Section I. E. 2 (a) (ii)
[1213] See *supra* Section III. B. 2 (a) (vi)

Colonel Vladimir Arsić, and the President of the Executive Board, Dr. Milan Kovačević to implement the SDS-initiated plan to consolidate Serb authority and power within the municipality. As stated earlier, the Trial Chamber is satisfied that the coordinated co-operation between the foregoing representatives of the civilian authorities, the police and the army in furtherance of the plan constituted a form of co-perpetratorship.[1214]

594. The Prosecution has produced an abundance of evidence which has not been contested by the Defence that large-scale and widespread killings directed against the civilian non-Serb population and those who did not want to pledge allegiance to the Serb authorities were committed by Serb forces in towns, other settlements and areas, and in detention facilities throughout the municipality.[1215] The Trial Chamber finds that these killings were of three kinds: 1) killings committed in detention facilities by guards or outsiders permitted to enter these facilities, 2) killings committed during organised convoys by police and/or military units assigned for the "protection" of those travelling in the convoy, and 3) killings committed as a result of armed military and/or police action in non-Serb or predominantly non-Serb areas of the municipality.[1216]

595. Turning to the first category of killings, those committed in the camps, the Trial Chamber is satisfied beyond reasonable doubt that Dr. Stakić, as President of the Crisis Staff in Prijedor, actively participated in and threw the full support of the civilian authorities behind the decision to establish the infamous Keraterm, Omarska, and Trnopolje camps.[1217]

596. The Trial Chamber finds that the creation and running of these camps, which required the co-operation of the civilian police and military authorities, were acts endangering the lives of thousands of persons, almost exclusively of non-Serb ethnicity, who were detained there. The Trial Chamber has taken note of the evidence that the Accused clearly was aware of the conditions in similar detention camps in Croatia and in Bosnia and Herzegovina where Serbs were detained. At a meeting held in Prijedor on 15 October 1992 between members of the Government of Republika Srpska and the municipal Government under the Accused on the one hand and the head of the ICRC in Banja Luka, on the other, the Accused is reported to have asked "why [the ICRC] was not striving for the release of Serbs being held in camps in Croatia and Bosnia and Herzegovina".[1218] Moreover, in an interview in the "Kozarski Vjesnik" on 26 June 1992, the Accused is quoted as saying that "We do not wish to treat the Muslims the way the Muslim extremists have been treating the Serbs in Zenica, Konjić, Travnik, Jajce…and everywhere in Alija's Bosnia where they are the

[1214] See *supra* Section III. B. 2.
[1215] See *supra* Section I. E. 3; Section I. E. 5.
[1216] See *supra* Section I. E. 3; Section I. E. 5 (a-c) and (e-i)
[1217] Exh. S407; See *supra* Section II. 7.
[1218] Exh. D92-92.

majority population." The Trial Chamber finds that these statements show that the Accused was aware of the conditions of life to which Serbs were subjected by other ethnic groups in other parts of the former Yugoslavia. He knew the conditions in the camps set up in the Municipality of Prijedor would not be different from those established in other parts of Yugoslavia.

597. The Trial Chamber has also noted the Accused's statement in the interview with British Channel 4 when questioned about reports of deaths in the Omarska camp that:

> There were cases, because I was informed…informed by the chief of the service which…under whose supervision everything proceeded – cases of death which are…have medical documentation about death, and not about murder.[1219]

598. Indeed, it is impossible to imagine that, as the highest-ranking civilian leader of a relatively small municipality, Milomir Stakić did not at some point become aware that killings and mistreatment were commonplace within the camps, especially in Omarska and Keraterm. In this regard, the Trial Chamber also recalls that several of the witnesses testified that they spoke directly with Milomir Stakić about relatives detained within the camps, and almost all of them stated that knowledge of the killings and mistreatment in the camps was widespread.[1220] Yet, Dr. Stakić chose not to intervene. He was one of the co-perpetrators in the plan to consolidate Serb power in the municipality at *any* cost, including the cost of the lives of innocent non-Serb civilians in the camps. He simply accepted that non-Serbs would and did die in those camps.

599. The Trial Chamber cannot therefore come to any other conclusion than that the Accused was fully aware that large numbers of killings were being committed in the camps he participated in setting up. The conditions in these camps, which were characterised by a pervasive atmosphere of impunity for wrongdoing of which he was also aware, were likely to result in the death of the detainees, whether through killings committed (i) by the camp guards, (ii) by outsiders (army personnel or irregular forces) intervening, or (iii) by virtue of the appalling and inhumane living conditions within the camps.

600. With regard to the second category of killings, the Trial Chamber is convinced that many occurred during transports to camps and expulsions of the civilian non-Serb population from the municipality. In particular, as only one example, the Trial Chamber has found that on 21 August 1992 approximately 200 men travelling on a convoy over Mount Vlašić were massacred by armed Serb men.[1221] The primary perpetrators of this crime were members of the Prijedor "Intervention

[1219] Exh. S187-1.
[1220] See *supra* para. 407.
[1221] Section I. E. 3. (h)

Platoon", established by order of the Crisis Staff.[1222] This platoon comprised individuals with criminal records and people recently released from jail. The "Intervention Platoon" was established with the objective of terrorising the non-Serb population in Prijedor, presumably to hasten the departure of non-Serbs in large numbers from the territory. To entrust the escort of a convoy of unprotected civilians to such groups of men, as Dr. Stakić along with his co-perpetrators on several occasions did in order to complete the plan for a purely Serb municipality, is to reconcile oneself to the reasonable likelihood that those traveling on the convoy will come to grave harm and even death. The same applies to the killings referred to in paragraphs 47(5)-(7) of the Indictment perpetrated by the armed escorts accompanying the unarmed non-Serb civilians destined for the camps.[1223]

601. The Accused's knowledge of such criminal acts is also proven by the evidence that he took an active role in the organisation of the massive displacement of the non-Serb population out of Prijedor municipality. For instance, the Commander of the TO staff and subsequent commander of the Trnopolje camp, Major Slobodan Kuruzović, who was present when the convoy over Mount Vlašić was formed on 21 August 1992, testified that he may have discussed this particular convoy with the Accused although it "did not happen in any formal manner".[1224] The Trial Chamber is convinced that the commission of a crime of such enormity as the massacre at Korićanske Stijene on Mount Vlašić could not have passed unnoticed by the Accused who clearly kept himself informed about the progress of the displacement of the non-Serb citizens of Prijedor.[1225]

602. For these reasons the Trial Chamber finds that Milomir Stakić, as the highest-ranking civilian leader, incurs criminal responsibility for deliberately placing the Prijedor citizens travelling in that and other convoys in harm's way with the knowledge that, in all likelihood, the victims would come to grave harm and even death.

603. The Trial Chamber now turns to the many killings committed by the Serb armed military and police forces in the Municipality of Prijedor during the period of the Indictment.

604. The Trial Chamber has been provided with evidence that the military units in Prijedor area were heavily reinforced in the beginning of May 1992. In particular, a regular combat report from the 5th Corps Command to the 2nd Military District Command dated 3 May 1992 states:

> In the course of 2 and 3 May, one 105 mm Howitzer Battery and one Anti-Armour Artillery Battery of the 343rd Motorised Brigade were relocated to the Prijedor area in order to strengthen

[1222] Exh. S79.
[1223] Section I. E. 3. (e-g)
[1224] *Slobodan Kuruzović*, T. 14576-77.
[1225] Section II. 8.

> the units in the wider Prijedor – Ljubija – Kozarac area. The units have taken up their positions.[1226]

The Trial Chamber notes the location of these units and is convinced that such an important development must have been discussed at the early sessions of the People's Defence Council presided over by the Accused. In particular, the Trial Chamber is convinced that this was on the agenda at the fourth session of the People's Defence Council on 15 May 1992, the minutes of which reflect that "the status of the deployed forces" was discussed.[1227] Moreover, the evidence also shows that on 15 May 1992 the People's Defence Council discussed the mobilisation in the municipality. As a result of the discussions under this point on the agenda, the Council concluded that the remaining conscripts in the municipality should be assigned to war units 4777 [the 43rd Motorised Brigade[1228]] and 8316 [the Prijedor TO[1229]], thereby strengthening these units substantially.

605. Thus, the Trial Chamber is satisfied beyond reasonable doubt that the Accused was aware of the vastly superior strength of the Serb armed units.

606. In a "Kozarski Vjesnik" interview dated 28 April 1994, the Accused stated that:

> An interesting thing happened on the 20th of May […] when travelling to work from Omarska I saw in Prijedor, at Kozarac, armed Muslims with lilies on their sleeves. I noticed the same in Kozaruša and *I knew the time for action had come*. Two days later our people were attacked in Hambarine and the same happened in Kozarac on 24th May. We reacted by mounting guards in certain spots in the town and prepared for defence. *We knew they were armed mainly with light infantry weapons and wasps*, but we were better armed and our lads were brave and bold."[1230]

607. Following the shooting incident at the checkpoint in Hambarine on 22 May 1992, the Crisis Staff issued an ultimatum for the surrender of weapons by Muslim paramilitary forces in Hambarine by 12.00 on 23 May 1992. The ultimatum, which was published in the "Kozarski Vjesnik" as a press release of the Crisis Staff, reads in its entirety:

> This military activity was intended to issue a warning. Its purpose was not to provoke violence which shielded the perpetrators of this crime. *The Crisis Staff* wishes to warn that from now on, they will no longer be warning actions, but that *it would directly attack* the areas where perpetrators of such acts and members of the paramilitary formations are hiding. The Crisis Staff is hereby ordering the population of Hambarine and other local communes in this area, that is, all residents of Muslim and other nationalities, that today, Saturday 23 May, until 12.00, they must surrender the perpetrators of this crime to the public security station in Prijedor…With this crime, all deadlines and promises have been exhausted and *the Crisis Staff can no longer guarantee the security of the above-mentioned areas*[1231]

[1226] Exh. S345.
[1227] Exh. S60.
[1228] *Ewan Brown*, T. 8588-90.
[1229] *Ewan Brown*, T. 8588-90.
[1230] Exh. S47 (emphasis added).
[1231] Exh. S389-1 (emphasis added).

608. Further written evidence of the Crisis Staff's involvement in these crimes exists in the form of a report authored by the Chief of the SJB, Simo Drljača, on "reception centres" in Prijedor municipality. This report states with regard to the attack on Hambarine that:

> Since the residents of the village of Hambarine did not abide by the Decision of the Ministry of People's Defence of the Serbian Republic and did not surrender their weapons, refused to co-operate with the legal authorities regarding the attack against the soldiers, and rejected the demands set by the army, *the Crisis Staff of Prijedor Municipality decided to intervene militarily in the village*, in order to disarm and apprehend those known to have perpetrated the crime against the soldiers.[1232]

609. In the Trial Chamber's opinion, the ultimatum issued on 23 May 1992, the above-mentioned SJB report, and the Accused's proven awareness of the strength and deployment of the military units in Prijedor establish the knowledge of the Accused that the subsequent attack on Hambarine would result in civilian casualties. The attacks were ordered by the Crisis Staff and carried out even with this knowledge in mind, in complete disregard of the innocent and unprotected civilians living in the area.

610. As stated earlier, the Trial Chamber has found that a second ultimatum was issued according to which weapons of the TO and the police in the Kozarac area had to be surrendered.[1233] The ultimatum was read out on Radio Prijedor by Major Radmilo Željaja, at that time Chief of Staff of the 343rd Motorised Brigade, and witnesses have testified that he threatened to raze the predominantly Muslim town of Kozarac to the ground if the residents failed to comply.[1234] During the unsuccessful negotiations that followed this ultimatum, Stojan Župljanin, Chief of the Banja Luka CSB, who led the Serb delegation stated that unless the Serb conditions were met, the army would take Kozarac by force.[1235]

611. The Trial Chamber is not convinced that the Accused as the highest SDS politician in Prijedor municipality, could have remained unaware of the hostile statements by the SDS and army representatives and of the consequences non-compliance with the ultimatum would entail for the civilian non-Serb population, particularly in light of the recent armed attack on Hambarine.

612. The Trial Chamber has taken note of the evidence by Defence Witness DH that when the Serb military convoy on its way to Kozarac entered the village of Jakupovići, one Serb soldier was shot dead by a sniper and two tanks on the Serb side were destroyed by handheld rockets.[1236] The Trial Chamber recognises that this may be seen as a provocation against which the Serb military force had a right to defend itself. However, such a justification for the ensuing attack is absurd in

[1232] Exh. S353, (emphasis added). See *supra* para. 366.
[1233] *Witness F*, 92 *bis* transcript in *Tadić,* T. 1605-06; Witness T, 92 *bis* transcript in *Kvočka,* T. 2620.
[1234] *Nusret Sivać*, T. 6765 and *Witness T*, T. 2620.
[1235] *Idriz Merdzanić*, T. 7722-23, *Witness DD*, T. 9486-89.

light of the eyewitness testimony that the attack was a planned and coordinated military operation of extreme intensity with infantry and armoured vehicles supported by artillery grouped on surrounding hills[1237] opening fire not only on the houses in the villages but also on the unarmed civilians fleeing into the nearby forests.[1238] In this context, Witness R testified that at one point a shell fell every second.[1239] The Serb forces subsequently set fire to houses and continued the attack until 26 May 1992 when a huge number of inhabitants surrendered and were brought to the Trnopolje, Omarska, and Keraterm camps.[1240] In the Trial Chamber's opinion, this is a clear example of what the term "čišćenje"[1241] in reality meant.

613. The report from the 1st Krajina Corps Command to the Republika Srpska BH Army Main Staff dated 27 May 1992 "Concerning the destruction of the 'Green Berets' in the wider area of Kozarac village" confirms the fire power of the Serb units and how the targets were defined by the attackers. The report provides that "Participating in the armed conflict on our side were components of the 343rd Motorised Brigade (an enlarged motorised battalion) supported by two 105 mm howitzer batteries and one M-84 tank squadron"[1242]. It is noteworthy that the very units redeployed to the municipality on 3 May 1992 by the 5th Corps Command were used in this military operation, which indicates that preparations had been made in advance for such attacks. The report also provides that the Serb casualties were five killed and 20 wounded and that the so-called "Green Berets", in the Trial Chamber's opinion, clearly referring to the civilian population which in actual fact appears to have been the main target of this military operation, had a "total strength of […] 1,500-2,000 men *without* heavy weapons" and that their casualties were 80-100 killed and about 1,500 captured.[1243]

614. In a television bulletin on 24 May 1992, i.e. in the midst of the military attack on Kozarac and surrounding areas, reporter Rade Mutić states that information regarding the fighting in Hambarine, Kozarac, Kozaruša, and Kamičani is accessible only through the announcements of the Crisis Staff and its Secretariat for Information, broadcast hourly on Radio Prijedor[1244], a fact which shows that the Crisis Staff was in complete control of the situation and, like any authoritarian regime, chose what information to make public. The Trial Chamber notes in this context that the Accused as President of the Crisis Staff stated in the same bulletin that "čišćenje" is still ongoing in

[1236] *Witness DH*, T. 13518, see *supra* para. 142
[1237] *Witness P*, T. 3329-31.
[1238] *Witness P*, T. 3329-31.
[1239] *Witness R*, T.4273; *Witness U*, T. 6214-16 and *Samir Poljak*, T. 6333-34.
[1240] *Jusuf Arifagić*, T. 7074-75.
[1241] The Trial Chamber has previously stated that the word "čišćenje" refers to "mopping up" or "cleansing" of an area of the terrain, see *supra* para. 367.
[1242] Exh. S350; Exh. D178.
[1243] Exh. S350; Exh. D178, (emphasis added).

Kozarac "because those remaining are the most extreme and the professionals".[1245] The Trial Chamber has previously stated that even though the evidence shows that some of the individuals in the mentioned areas were armed, they could not be considered "extreme or professional".[1246] Moreover, the Trial Chamber has found that the Accused did not differentiate between the civilian Muslim and Croat population, which he claimed he wanted to protect, and the so-called extremists he strived to defeat.[1247]

615. The Trial Chamber is satisfied that the creation and maintenance of the above-mentioned environment of impunity, in which the rule of law was neither respected nor enforced and which depended on the co-operation of all the pillars of the civil and military authorities, were acts that endangered the lives of all non-Serb citizens of Prijedor municipality.

616. The Trial Chamber does not believe that the conscious object of Dr. Stakić's participation in the creation and maintenance of this environment of impunity was to kill the non-Serb citizens of Prijedor municipality. However, it is satisfied that Dr. Stakić, in his various positions, acted in the knowledge that the existence of such an environment would in all likelihood result in killings, and that he reconciled himself to and made peace with this probable outcome. He consequently participated with the requisite *dolus eventualis* and therefore incurs criminal responsibility for all the killings in paragraphs 44 and 47 of the Indictment which this Trial Chamber has found to be proven. The Accused is found guilty of murder, a Violation of the Laws or Customs of War under Article 3 of the Statute in combination with common Article 3 (1) (a) of the Geneva Conventions.

F. **Crimes Against Humanity – Article 5 of the Statute**

617. Dr. Stakić is charged with the following crimes under Article 5 of the Statute: murder, extermination, deportation, and other inhumane acts (forcible transfer) persecutions on political, racial and religious grounds (including murder, torture, physical violence, rapes and sexual assaults, constant humiliation and degradation, destruction and looting of residential and commercial properties, destruction of, or wilful damage to religious and cultural buildings, deportation and forcible transfer and denial of fundamental human rights). Article 5 provides in its relevant parts:

> The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:
>
> (a) murder;
>
> (b) extermination;

[1244] Exh. S240-1.
[1245] Exh. S240-1.
[1246] See *supra* para. 497.
[1247] Exh. S187, see *supra* para. 497.

[…]

(d) deportation;

[…]

(f) torture;

(g) rape;

(h) persecutions on political, racial and religious grounds;

(i) other inhumane acts.

1. *Chapeau* Elements of Crimes Against Humanity

(a) The Applicable Law

(i) Additional pre-requisites for the application of Article 5 of the Statute

618. The Trial Chamber recalls its finding that a jurisdictional requirement for the applicability of Article 5 is the existence of an armed conflict.

a. Arguments of the parties

619. The Prosecution submits that all crimes against humanity share the following four elements: (i) the existence of an armed conflict, (ii) the existence of a widespread or systematic attack directed against a civilian population, (iii) that the accused's conduct was related to the widespread or systematic attack, and (iv) that the accused had knowledge of the wider context in which his conduct occurred.[1248]

620. The Defence submits that five elements must be proved before an act can be found to constitute a crime against humanity: (i) there must be an "attack", (ii) the acts of the accused must be part of the attack, (iii) the attack must be directed against any civilian population, (iv) the attack must be widespread or systematic, and (v) the principal offender must know of the wider context in which his acts occur and know that his acts are part of the attack.[1249]

b. Discussion

621. The jurisprudence of this Tribunal has established that for the acts of an accused to amount to a crime against humanity the following five elements must be present:

1. There must be an attack;

[1248] Prosecution Final Brief, para. 302.
[1249] Defence Final Brief, para. 397.

2. The acts of the perpetrator must be part of that attack;

3. The attack must be directed against any civilian population;

4. The attack must be widespread or systematic;

5. The perpetrator must know that his acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population and know that his acts fit into such a pattern.[1250]

622. The Trial Chamber will merely recall and reconfirm points of clarification in relation to these requirements as set out in the jurisprudence which are relevant to this case.

623. The concept of "an attack" must be distinguished from that of "an armed conflict". An attack can "precede, outlast, or continue during the armed conflict, but it need not be part of it",[1251] and "is not limited to the use of armed force; it encompasses any mistreatment of the civilian population."[1252]

624. The entire population of the geographical entity in which the attack takes place need not be the object of that attack, "[i]t is sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way as to satisfy the Chamber that the attack was directed against a civilian 'population', rather than against a limited and randomly selected number of individuals."[1253] In addition, the phrase "directed against" should be interpreted as meaning that the civilian population is the primary object of the attack.[1254]

625. "Widespread" refers to the large-scale nature of the attack and the number of victims, whereas "systematic" refers to "the organised nature of the acts of violence and the improbability of their random occurrence."[1255] Factors to consider in determining whether an attack satisfies either or both requirements of a widespread or systematic attack are enumerated in the jurisprudence, and include (i) the consequences of the attack upon the targeted population, (ii) the number of victims, (iii) the nature of the acts, (iv) the possible participation of officials or authorities or any identifiable patterns of crimes.[1256] Moreover, the acts of the accused "need only be a part of this attack."[1257]

[1250] These elements are set out in the *Kunarac* Appeal Judgement, para. 85.
[1251] *Kunarac* Appeal Judgement, para. 86.
[1252] *Kunarac* Appeal Judgement, para. 86.
[1253] *Kunarac* Appeal Judgement, para. 90.
[1254] *Kunarac* Appeal Judgement, para. 91.
[1255] *Kunarac* Appeal Judgement, para. 94.
[1256] *Kunarac* Appeal Judgement, para. 95.
[1257] *Kunarac* Appeal Judgement, para. 96.

626. It must be proven that the accused knew that there was an attack on the civilian population and that his acts formed part of that attack "or at least [that he took] the risk that his acts were part of the attack."[1258]

(b) Trial Chamber's findings

(i) Requirement that there be an attack directed against a civilian population

627. The Trial Chamber is satisfied that the events which took place in Prijedor municipality between 30 April and 30 September 1992 constitute an attack directed against a civilian population. The scale of the attack was such that it cannot be characterised as having been directed against only a limited and randomly selected group of individuals. Rather, most of the non-Serb population in the Municipality of Prijedor was directly affected. Moreover, it is clear from the combat reports that the Serb military forces had the overwhelming power as compared to the modest resistance forces of the non-Serbs.[1259] General Wilmot, who testified as the military expert in the Defence case, acknowledged that the scale of the attack on Hambarine was disproportionate to the threat posed by the resistance forces active in those areas.[1260] Those attacks, and the ones that followed in the broader Brđo region, coupled with the arrests, detention and deportation of citizens that came next, were primarily directed against the non-Serb civilian population in the Municipality of Prijedor.

(ii) Requirement that the attack be widespread or systematic

628. Recalling that the requirement that an attack be widespread or systematic is disjunctive, the Trial Chamber is nonetheless satisfied beyond reasonable doubt that the attack has to be characterised as both widespread and systematic.

629. The Chamber is satisfied that the attack directed against the civilian population was prepared as of 7 January 1992 when the Assembly of the Serbian People in Prijedor was first established. The plan to rid the Prijedor municipality of non-Serbs and others not loyal to the Serb authorities was activated through the takeover of power by Serbs on 30 April 1992. Thereafter the attack directed against the civilian population intensified, according to the plan, culminating with the attacks on Hambarine and Kozarac in late May 1992. Attacks on predominantly non-Serb areas including the Brđo region ensued, with hundreds of non-Serbs killed and many more arrested and detained by the Serb authorities, *inter alia* in detention facilities.

[1258] *Kunarac* Appeal Judgement, para. 102.
[1259] See *supra,* para. 474.
[1260] *General Wilmot*, T. 14071.

630. Having established that the attack was systematic, it is not strictly necessary to consider the requirement that the attack be widespread. Nonetheless, the Chamber finds that the attack on the non-Serb population of Prijedor was also widespread. The attacks, as such, occurred throughout the municipality of Prijedor, initially in Hambarine and Kozarac, and then spreading to the whole of the Brđo region. Moreover, thousands of citizens of Prijedor municipality passed through one or more of the three main detention camps, Omarska, Keraterm and Trnopolje, established in the towns of Omarska, Prijedor and Trnopolje respectively.

2. Murder (Count 3)

(a) The Applicable Law

631. The Trial Chamber agrees with the Prosecution's submission that the constituent elements of murder as a crime against humanity under Article 5 of the Statute are the same as those of murder as a violation of the laws or customs of war under Article 3 of the Statute.

(b) Trial Chamber's findings

632. The Trial Chamber is satisfied that, in relation to those killings for which the Trial Chamber has held Dr. Stakić criminally responsible under Article 3, he is also criminally responsible under Article 5, since it finds that those killings were committed in the context of a widespread and systematic attack directed against the civilian population of the Municipality of Prijedor and that Dr. Stakić was aware that his acts formed part of that attack.

3. Extermination (Count 4)

(a) Applicable law

633. The Indictment charges the Accused with extermination as a crime against humanity under Article 5(b) of the Statute.[1261]

(i) Arguments of the Parties

a. Prosecution

634. The Prosecution submits that the *actus reus* for extermination under Article 5(b) is that "the Accused or his subordinate participated in the killing of certain named or described persons".[1262]

[1261] Indictment, para. 41.
[1262] Prosecution Final Brief, paras. 315.

The Prosecution argues that extermination can be considered murder on a massive scale and that the crime includes not only the implementation of mass killings or the infliction of conditions that lead to mass killing but also the planning thereof. It claims that the *actus reus* can consist of both acts or omissions and encompasses a variety of methods of killing or causing death both directly and indirectly, including the deprivation of food, inadequate protection from extreme weather, and denial of medical care. As for the *mens rea* for extermination, the Prosecution argues that the act or omission occurred with intent, recklessness, and/or gross negligence.[1263]

b. Defence

635. The Defence puts forward the following elements of the crime of extermination:

> (a) "… any one act or combination of acts which contributes to the killing of a large number of individuals";
>
> (b) "the offender must intend to kill, to inflict grievous bodily harm, or to inflict serious injury, in the reasonable knowledge that such act or omission is likely to cause death or otherwise intends to participate in the elimination of a number of individuals, in the knowledge that his action is part of a vast murderous enterprise in which a large number of individuals are systematically marked for killing or killed"[1264]

636. The Defence submits that the Prosecution must first prove that killings occurred on "a large or vast scale".[1265] In this regard, the Defence acknowledges that the *Vasiljević* Trial Chamber stated that although most Second World War cases concerned thousands of individuals, "it does not suggest, however, that a lower number of victims would disqualify that act as 'extermination'".[1266] The Defence disagrees however and holds that such an approach leads to the conclusion "that extermination would and could become the same crime as murder […] which certainly was not the intention of the drafters of the Statute." The Defence contends that "the minimum size of the victimized population should be defined as a hybrid between that required for genocide and that required for mass murder or killings" and "should be in any event in the thousands".[1267] The Defence also submits that the Prosecution must prove that the extermination was "collective in nature rather than directed towards singled out individuals." The Defence asserts that this implies that killings must "occur on a vast scale in a concentrated place and time" and that this was the approach the Trial Chamber took in *Prosecutor v. Krstić*.[1268] In relation to the objective element, the Defence argues that the crime of extermination requires the existence of a "vast scheme of

[1263] Prosecution Final Brief, paras 316 and 318. The Prosecution largely relies on the judgements of the ICTR Trial Chambers in *Prosecutor v. Kayishema and Ruzindana*, para. 146 and *Prosecutor v. Rutaganda*, para. 81.
[1264] Defence Final Brief, para. 414, citing *Prosecutor v. Mitar Vasiljević*.
[1265] Defence Final Brief, para. 416.
[1266] Defence Final Brief, para. 419.
[1267] Defence Final Brief, paras 421-22.
[1268] Defence Final Brief, paras 421-22.

collective murder", i.e. a "criminal plan" to commit extermination, which requirement follows from the *Krstić* case.[1269]

637. The Defence argues in relation to the *mens rea* that the crime of extermination requires that the Prosecution prove three mental elements (i) the accused must have the general "intent to kill a large number of individuals,"[1270] (ii) the accused must have knowledge of the existence of the "vast scheme of collective murder" or the "criminal plan" and in this context, further argues that "the 'negligence' standard of 'should have known' does not apply and cannot be substituted to expand and broaden the crime of extermination as a crime against humanity"[1271] and (iii) the perpetrator must have "willingly participated" in the vast scheme of collective murder and that this participation must be "significant and substantial".[1272]

(ii) Discussion

a. Objective element: *actus reus*

638. This Trial Chamber agrees with the parties that the core element of extermination is the killing of persons on a massive scale. The Trial Chamber in *Krstić* examined the common definition of the French "exterminer" and the English "exterminate" and the ordinary use of this term and concluded that, as compared to the killing of persons on a massive scale, it has "a more destructive connotation meaning the annihilation of a mass of people". The same Trial Chamber quotes the commentary on the ILC Draft Code of Crimes against the Peace and Security of Mankind, according to which

> [e]xtermination 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.[1273]

The *Krstić* Trial Chamber also held that

> [t]he very term "extermination" strongly suggests the commission of a massive crime, which in turn assumes a substantial degree of preparation and organisation. 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

[1269] Defence Final Brief, paras 429-31.
[1270] Defence Final Brief, para. 428.
[1271] Defence Final Brief, paras 432- 433.
[1272] Defence Final Brief, paras 434-435.
[1273] *Prosecutor v. Radislav Krstić*, Trail Judgement, paras 496-497 and ILC Draft Code of Crimes against the Peace and Security of Mankind, *Report of the International Law Commission on the work of its 48th session*, 6 May-26 July 1996, Official Documents of the United Nations General Assembly's 51st session, Supplement no. 10 (A/51/10), Article 18, p. 118.

> 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.[1274]

639. Extermination must form part of a widespread or systematic attack against a civilian population. An act amounting to extermination, as explained by the Trial Chamber in *Prosecutor v. Vasiljević,* "must be collective in nature rather than directed towards singled out individuals. However, in contrast to genocide, the offender need not have intended to destroy the *group* or part of the group to which the victims belong,"[1275] and it is not required that the victims share national, ethnical, racial or religious characteristics.[1276] In this context it should be emphasised that the crime of extermination may apply to situations where some members of a group are killed but others spared.[1277] It suffices that the victims be defined by political affiliation, physical attributes or simply the fact that they happened to be in a certain geographical area. Moreover, the victims may be defined in the negative, *i.e*. as not belonging to, not being affiliated with or not loyal to the perpetrator or the group to which the perpetrator belongs.

640. This Trial Chamber does not find that the case-law provides support for the Defence submission that the killings must occur on a vast scale in a concentrated place over a short period. Such a claim does not follow from the requirement that the killings must be massive. Nor does the Trial Chamber believe that a specific minimum number of victims is required. As the Trial Chamber in *Prosecutor v. Vasiljević* held, the lowest figure from the Second World War cases to which the crime of extermination was applied was a total of 733 killings. The Chamber added in a footnote however that it does not suggest "that a lower number of victims would disqualify that act as 'extermination' as a crime against humanity, nor does it suggest that such a threshold must necessarily be met."[1278] In the opinion of this Trial Chamber, an assessment of whether the element of massiveness has been reached depends on a case-by-case analysis of all relevant factors. As the Trial Chamber in *Krstić* held, the massiveness of the crime automatically assumes a substantial degree of preparation and organisation which may serve as indicia for the existence of a murderous "scheme" or "plan", but not, as proposed by the Defence, of a "vast scheme of collective murder" as a separate element of crime.

b. Subjective element: *mens rea*

[1274] *Krstić* Trail Judgement, para. 501.
[1275] *Vasiljević* Trail Judgement, para. 227.
[1276] *Krstić* Trail Judgement, paras 499-500.
[1277] *Krstić* Trail Judgement, para. 500 and ILC Draft Code of Crimes against the Peace and Security of Mankind, *Report of the International Law Commission on the work of its 48th session*, 6 May-26 July 1996, Official Documents of the United Nations General Assembly's 51st session, Supplement no. 10 (A/51/10), Article 18, p. 118.
[1278] *Vasiljević* Trail Judgement, para. 227 and footnote 587.

641. Turning now to the mental element, this Trial Chamber finds that the *mens rea* required for extermination is that the perpetrator intends to kill persons on a massive scale or to create conditions of life that lead to the death of large numbers of individuals. This includes the requirement that the perpetrator's mental state encompasses all objective elements of the crime: the annihilation of a mass of people.

642. Relying on the Judgement of the Trial Chamber in *Prosecutor v. Kayishema,* the Prosecution argues that an accused can be held liable for his acts or omissions if they have been committed "with intention, recklessness, or gross negligence".[1279] This Trial Chamber does not agree and finds that it would be incompatible with the character of the crime of extermination and with the system and construction of Article 5 if recklessness or gross negligence sufficed to hold an accused criminally responsible for such a crime. It therefore considers that the threshold for the *mens rea* cannot be lower than the intent required for murder as a crime against humanity (i.e. *dolus directus* or *dolus eventualis*).

(b) Trial Chamber's findings

(i) Arguments of the Parties related to the facts

a. Prosecution

643. According to the Prosecution, the evidence shows beyond reasonable doubt that it was the armed military and police forces under the effective control of Stakić and the Crisis Staff that caused the deaths throughout the municipality and, in particular, in the camps[1280] and that the Accused, through his positions of authority and his actions in exercise of that authority, is therefore responsible for the deaths of approximately 3,000 individuals in Prijedor in 1992.[1281]

644. The Prosecution argues that the victims of the killings were almost exclusively Muslims and Croats from Prijedor municipality and that the evidence therefore shows that the victims were chosen because of their identification with these groups.[1282] In addition, the Prosecution, listing several individuals of various backgrounds and professions, claims the perpetrators targeted

[1279] Prosecution Final Brief, para. 318, citing the *Kayishema* Trial Judgement, para. 146.
[1280] Prosecution Final Brief, para. 197.
[1281] Prosecution Final Brief, para. 197.
[1282] Prosecution Final Brief, para. 200.

"political, religious, and community leaders for extermination in an effort to facilitate the elimination of Prijedor's Muslim and Croat populations."[1283]

645. With regard to the *mens rea* and in addition to the arguments on the general *mens rea* of murder[1284], the Prosecution argues that the Accused's intent to kill at least 3,000 people can be inferred "from his positions of authority, his actions in exercise of that authority, and his failure to prevent or punish these killings after they became known."[1285] In particular, the Prosecution argues that the close co-operation between the Accused and, on the one hand, the head of the police, Simo Drljača, and, on the other hand, the military commander, Colonel Vladimir Arsić, "strongly supports the inference that he intended the actions taken by those forces, including the charged killings between 30 April and 30 September 1992."[1286] Moreover, the Prosecution contends that the Accused's alleged *mens rea* to kill a large amount of people can be inferred from his never taking any action to punish any of the perpetrators of the crimes, the scale and severity of which were well known in the municipality.[1287] In this connection, the Prosecution states that "the crimes and the resulting damage to Bosniak and Croat communities in Prijedor in the spring and summer of 1992 were so brazen, appalling, and of such dramatic magnitude that they were obvious to all who lived in the municipality" and that even those who just passed through Prijedor "were shocked by the destruction of homes and places of worship, the conditions of persons in places such as Trnopolje, and the desperation of Muslims and Croats to escape Prijedor."[1288]

646. The Prosecution concludes that the Accused knew that crimes were being committed in the municipality. The Prosecution furthermore supports this by referencing the statistics which show that of the 3,010 identified persons listed in the Prosecution expert Ewa Tabeau's report as dead or missing in the 19 municipalities that formed the ARK, 1,747 were from Prijedor, an area which only had one-ninth of the ARK's total population. Accordingly and because the crimes in the Prosecution's opinion "occurred with frequency and intensity over a limited period of time; were well prepared and materially supported", this can only be explained as a "deliberate policy".[1289] In this connection, the Prosecution, referring to the Room 3 massacre at the Keraterm camp and the massacre of 125 men removed from the Keraterm camp on 5 August 1992 and taken to the Omarska camp, submits that the evidence is particularly telling as regards the fact that mass killings were committed in the full knowledge of the authorities.[1290] This is further supported by the

[1283] Prosecution Final Brief, para. 201, and paras 204-10.
[1284] See *supra* Section III. E. 1. (a).
[1285] Prosecution Final Brief, para. 211.
[1286] Prosecution Final Brief, para. 211.
[1287] Prosecution Final Brief, paras 73-7, and 212.
[1288] Prosecution Final Brief, para. 72.
[1289] Prosecution Final Brief, paras 79 and 80.
[1290] Prosecution Final Brief, para. 82.

widespread disappearance of prominent individuals, which the Prosecution contends the Accused must have been aware of.[1291]

647. The Prosecution argues that the Accused had the means at his disposal to identify the perpetrators and the influence to bring them to justice but instead chose to "publicly […] justify criminal activity by police and military forces and shift blame to innocent civilians, deliberately creating a climate of impunity for crimes against non-Serbs."[1292] Thus, the Prosecution asserts that the Accused's intent to kill these people is established by his "absolute refusal to prevent these crimes, to investigate them, or to punish the perpetrators."[1293]

b. Defence

648. The Defence submits that the murders committed in Prijedor in 1992 were "sporadic, random and uncontrollable, committed by drunken soldiers, criminals who executed foolish personal vendettas".[1294] The Defence stresses that the Accused did not physically commit any of the crimes committed in the municipality.[1295] With regard to the individual crimes listed in paragraphs 44 and 47 of the Indictment, the Defence states that the Prosecution has failed to prove beyond reasonable doubt the killings listed in paragraphs 44(7), 47(5), 47(6), 47(7), 47(8), and 47(10) but does not provide a specific evaluation of the evidence to support this conclusion.[1296]

649. Concerning the alleged criminal *mens rea* of the Accused as a direct perpetrator, the Defence only states that none of the evidence supports a conclusion that the Accused had the requisite *mens rea* for the crime of extermination.[1297] In addition, the Defence argues that none of the killings committed was a natural and foreseeable consequence of the acts or conduct of the Accused.[1298]

(ii) Discussion and findings related to Count 4

650. With regard to the findings concerning the general legal requirements for crimes against humanity under Article 5 of the Statute, the Trial Chamber refers to its discussion above.[1299]

[1291] Prosecution Final Brief, para. 84.
[1292] Prosecution Final Brief, para. 212.
[1293] Prosecution Final Brief, para. 212.
[1294] Defence Final Brief, para. 411.
[1295] Defence Final Brief, para. 205.
[1296] Defence Final Brief, para. 404.
[1297] Defence Final Brief, para. 438.
[1298] Defence Final Brief, para. 405.
[1299] See *supra* Section III. F. 1. (b)

a. Objective element: *actus reus*

651. The Indictment in paragraphs 44 and 47 charges the Accused with a number of killings committed in Prijedor municipality between 30 April and 30 September 1992.

652. As was noted above with regard to Counts 3 and 5[1300], the proven large-scale killings were of three kinds: 1) killings committed in camps and other detention facilities, 2) killings committed during organised convoys by police and/or military units, and 3) killings committed as a result of armed military and/or police action in non-Serb or predominantly non-Serb areas of the municipality.[1301]

653. The evidence shows that the proven killings, many of which independently would reach the requisite level of massiveness for the purposes of an evaluation under Article 5(b) of the Statute, were aimed at the collective group of targeted individuals and not at the victims in their individual capacity. This holds true *inter alia* for:

- the massacre in Room 3 of the Keraterm camp;[1302]
- the killings of around 120 men who were called out in an organised fashion on 5 August in the Keraterm camp;
- the closely controlled and cold-blooded executions at Korićanske Stijene on Mount Vlašić on 21 August 1992;[1303]
- the Serb armed attack on the mainly Croat village of Briševo, which started on 27 May 1992.

654. Although the total number of victims of the killings set out in paragraphs 44 and 47 of the Indictment, for which Dr. Stakić incurs criminal liability, can never be accurately calculated, the Trial Chamber finds that based on a conservative estimate, more than 1,500 persons were killed. Considering the scale of the killings and in an effort not to lose sight of the fact that these crimes were committed against individual victims, the Trial Chamber has included a List of Victims known by name, in which are enumerated the names of those persons identified as killed in Prijedor municipality in 1992, in total 486 human beings.

[1300] See *supra* Section III. E. 2. and Section III. F. 2. (b)
[1301] See *supra* Section I. E. 3. and Section I. E. 5. (a-c) and (e-i)
[1302] See *supra* Section I. E. 3. (b)
[1303] See *supra* Section I. E. 3. (h)

655. The Trial Chamber therefore considers that the killings committed in the Municipality of Prijedor during the relevant period of 1992 were part of a campaign of annihilation of non-Serbs carried out by Serb police and military forces, and that the killings thus perpetrated fulfil the requisite element of massiveness for the purposes of Article 5(b) of the Statute. It is proven that acts of extermination were committed by the Accused.

b. Subjective element: *mens rea*

656. The Trial Chamber is satisfied that the Accused possessed the requisite intent to kill, including the intent to cause serious bodily harm in the reasonable knowledge that it was likely to result in death.[1304] However, this intent must also cover the killings of a large number of targeted individuals. The Trial Chamber will now evaluate the evidence presented in these respects.

657. As a preliminary point, the Trial Chamber reiterates its opinion that the "Kozarski Vjesnik" weekly was the voice of the Serb authorities and that the opinions expressed therein, particularly if published by the Crisis Staff or other Serb municipal authorities, can be considered to have been known by the Accused and the other participants in the bodies over which he presided.[1305] The Trial Chamber also stresses its earlier finding that the Serb authorities under the leadership of the Accused created an atmosphere of terror and impunity in the Municipality of Prijedor, where widespread criminal behaviour not only went unpunished but was also tacitly condoned by the authorities provided the perpetrator was loyal to the Serb cause.[1306]

658. The preparations for the takeover of power show how tightly intertwined the Serb civilian, police, and military authorities were.[1307] The evidence also shows that the Accused, as President of the People's Defence Council, was the key co-ordinator between these authorities and that this body under his direction repeatedly acted upon issues fundamental to the defence of the Serb municipality, such as reinforcements of and mobilisation into the TO and the 343rd Motorised Brigade. As has been found earlier, the Accused was keenly aware of his own role in the events and had a very clear opinion[1308] about whom he and his fellow Serbs were fighting against.[1309] It is appropriate here to once again cite the Accused's own words, which clearly show his conviction that all non-Serbs who did not want to pledge allegiance to the Serb authorities were considered "extremists":

[1304] See *supra* Section III. E. 2. (b) (ii)
[1305] See *supra* Section I. D. 2. (d) (i)
[1306] See *supra* Section III. E. 2. (b) (ii)
[1307] See *supra* Section I. D. 1.
[1308] Exh. S187, p.4.
[1309] See *supra* Section III. B. 2. (b) (iii)

> Because we have never at any point, not even to this very day, declared war on the entire Muslim people or a struggle for the extermination of that people, but *only a struggle against the extremists among that people, those who did not want co-existence here, who wanted a unitary state with absolute rights for the Muslim people* and with prepared programmes for the extermination of the Serb people from these areas.[1310]

The Trial Chamber recalls in this connection the Accused's statement to the British Channel 4. Well aware that he was being interviewed on international television, the Accused stated that he was informed by the Chief of the SJB, Simo Drljača, about deaths in the Omarska camp.[1311]

659. The closely coordinated co-operation between the various Serb authorities is furthermore shown by a "Kozarski Vjesnik" interview from May 1994 with Radmilo Željaja, then Colonel and commander of the 43rd Motorised Brigade in Prijedor.[1312] Colonel Željaja stressed in particular the following:

> I must emphasise here in this region, *and more or less everyone knows that*, the very close co-operation between the Army and Police. Such co-operation was also established with the leaders of the Party, the people in power, the Crisis Staff and all decent Serbs who were and still are of importance of this town.

660. The Trial Chamber has already discussed the coordinated co-operation between politicians, the police and the military, who are therefore mutually responsible for all foreseeable crimes committed under their jurisdiction.

661. Killings were perpetrated on a massive scale against the non-Serb population of Prijedor municipality. The lives of the non-Serb population were of very little, if any, value to the Serb perpetrators. The Trial Chamber has found that the Accused, because of his political position and role in the implementation of the plan to create a purely Serb municipality, was familiar with the details and the progress of the campaign of annihilation directed against the non-Serb population. Dr. Stakić was aware of the killings of non-Serbs and of their occurrence on a massive scale. The Trial Chamber is therefore convinced that the Accused acted with the requisite intent, at least *dolus eventualis*, to exterminate the non-Serb population of Prijedor municipality in 1992 and finds the Accused guilty of this crime, punishable under Article 5(b) of the Statute.

[1310] Exh. S187, p.4, see *supra* para. 497.
[1311] See *supra* para. 597.
[1312] Exh. S274, emphasis added.

4. Deportation and other inhumane acts (Counts 7 and 8)

(a) Applicable law on deportation (Count 7)

662. The Indictment charges the Accused with deportation and forcible transfer, the latter as an inhumane act under Article 5(i) of the Statute.[1313]

(i) Arguments of the Parties

a. Prosecution

663. The Prosecution submits that the elements for the crime of deportation are that:

1. the Accused forcibly removed one or more persons by expulsion or other coercive acts from the area in which they were lawfully present, without grounds permitted under international law, and

2. the Accused wilfully committed the expulsion or other coercive acts.[1314]

664. The Prosecution claims that the Tribunal's Statute was formulated to address specifically "ethnic cleansing", the essence of which is "the displacement of thousands upon thousands of people within Bosnia."[1315] The Prosecution further argues that "it seems inconceivable that the Statute was intended to expressly sanction 'deportation' in the limited sense of cross-border transfers only." To this the Prosecution adds that "it may be difficult to exactly determine the location of the borders of a country […] particularly in situations of armed conflict" and that "internal displacement is frequently a prelude to the further transfer of individuals outside of the country."[1316]

665. The Prosecution concludes that the duration of the dislocation from the area in which the victims were lawfully present is immaterial to the guilt of the perpetrator because "to hold otherwise would lead to an injustice, particularly if the reasons for their successful return (*e.g.* the recapture of the area by friendly forces) were independent of the original will of the Accused."[1317]

[1313] Fourth Amended Indictment, paras 56-59.
[1314] Prosecution Final Brief, para. 364.
[1315] Prosecution Final Brief, para. 360.
[1316] Prosecution Final Brief of 5 May 2003, para. 362.
[1317] Prosecution Final Brief, para. 366.

The Prosecution holds that subsequent repatriation of the victims by the perpetrator does not affect the criminal liability.[1318]

b. Defence

666. The Defence submits that the crime of deportation was not committed by the Accused because the population displacement 1) "was not involuntary", 2) "was permitted under international law", 3) "did not last beyond the period that hostilities were ongoing", and 4) because "the 'victims' were ultimately returned to their original place of residence".[1319]

667. The Defence contends that, in each of the areas in Prijedor where deportation is alleged to have occurred, the "military responded to acts of provocation by armed combatants and carried out the lawful movement of a population for purposes of both security and imperative military necessity."[1320] In this context, the Defence refers to Article 49(2) of the Fourth Geneva Convention and argues that "[a]n occupying power may carry out the lawful movement of a population 'if the security of the population or imperative military reasons so demand.'"[1321] The Defence further argues that a population may be evacuated from an area in danger as a result of military operations or where intense bombing may occur and the presence of protected persons would hamper military operations.[1322]

668. The Defence also asserts that not every population dislocation is necessarily in violation of international law, particularly when persons protected under the Fourth Geneva Convention, who might have suffered discrimination or persecution on account of being members of an ethnic or political minority, wish to leave a country.[1323] In this context, the Defence holds that an element of the crime of deportation is that the victims be transferred across an international border.[1324]

669. The Defence suggests that the law on deportation should also include a requirement that "a significant and substantial number of the population" be transferred before criminal liability may arise[1325] and that the alleged deportations in Prijedor municipality were "authorized by the International Community".[1326]

[1318] Prosecution Final Brief, para. 366.
[1319] Defence Final Brief, para. 482.
[1320] Defence Final Brief, para. 485.
[1321] Defence Final Brief, para. 486.
[1322] Defence Final Brief, para. 487.
[1323] Defence Final Brief, para. 491.
[1324] Defence Final Brief, para. 483.
[1325] Defence Final Brief, para. 497.
[1326] Defence Final Brief, para. 498.

670. The Defence's final argument is that repatriation of the victims at a future point in time "should be recognized under the law given the circumstances of such crimes, despite their gravity."[1327]

(ii) Discussion

a. Objective element: *actus reus*

671. The jurisprudence of this Tribunal has drawn a distinction between deportation under Article 5(d) of the Statute and other inhumane acts (forcible transfer) under Article 5(i) of the Statute. This distinction was set out in *Krstić*, where the Trial Chamber ruled that "[b]oth 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."[1328]

672. The Trial Chamber in the *Krnojelac* case noted that deportation is clearly and specifically prohibited under the law as a crime against humanity and has long been so[1329] and that deportation was defined as "the forced displacement of persons by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law." It added the requirement that the persons deported be displaced across a national border in order "to be distinguished from forcible transfer which may take place within national boundaries." In this respect, the *Krnojelac* Trial Chamber made reference to World War II cases.[1330]

673. The Trial Chamber is aware of the jurisprudence developed by other Trial Chambers but must also review the merits of the Prosecution's submission which it addressed during the Rule 98 *bis* stage of the current proceedings when it determined that deportation should not be interpreted as

[1327] Defence Final Brief, para. 601.
[1328] *Krstić* Trial Judgement, para. 521.
[1329] The *Krnojelac* Trial Chamber referred to Article 6(c) of the Nuremberg Charter, to Article II (1)(b) of Control Council Law No. 10, to Article 5(c) of the Tokyo Charter, to the Nuremberg Judgement in which Baldur Von Schirach was convicted of deportation as a crime against humanity (Nuremberg Judgement, pp 317-319), to Article 11 of the International Law Commissions Draft Code of Crimes against the Peace and Security of Mankind (1954), to Article 18 of the ILC Draft Code of 1996, and to Article 7(1)(d) of the Statute of the International Criminal Court, *Krnojelac* Trial Judgement, para. 473. The *Krnojelac* Trial Chamber (para. 473) also referred to the *Krstić* Trial Chamber, which held that deportation is also prohibited in international humanitarian law as Article 2(g) of the Statute, Articles 49 and 147 of the Geneva Convention relative to 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 transfer of protected persons, *Krstić* Trial Judgement, para. 522.
[1330] *Krnojelac* Trial Judgement, para. 474, footnote 1429.

being applicable to transfers across internationally recognized borders only.[1331] In so doing, it takes into account the pre-requisite that forced population displacements were already punishable at the time of the alleged crimes.

674. The English version of the Statute uses the term 'deportation'. "Deportation" according to Black's Law Dictionary is "the act or an instance of removing a person to another country; esp., the expulsion or transfer of an alien from a country."[1332] Moreover, the Trial Chamber notes that Black's Law Dictionary also refers to the Roman law term '*deportatio'* as the act "of carrying away" a person from the area where he had lived under safe conditions in the past. '*Deportatio'* is further described as "[p]erpetual banishment of a person condemned for a crime. It was the severest form of banishment since it included additional penalties, such as seizure of the whole property, loss of Roman citizenship, confinement to a definite place […]. Places of *deportatio* were islands (*in insulam*) near the Italian shore […]."[1333] Thus, under Roman law, the term *deportatio* referred to instances where persons were dislocated from one area to another area also under the control of the Roman Empire. A cross-border requirement was consequently not envisaged. Expressed in these terms, the concept of deportation seems to mean the removal of someone from the territory over which the person removing exercises (sovereign) authority, or to remove someone from the territory where the person could receive the "protection" of that authority. The core aspect of deportation is twofold: (1) to take someone out of the place where he or she was lawfully staying, *and* (2) to remove that person from the protection of the authority concerned.

675. The French version of the Statute uses the term "expulsion", *i.e.* ejectment by forcibly evicting a person.[1334]

676. In his report pursuant to Security Council resolution 808, the Secretary-General noted that

> Crimes against humanity were first recognized in the Charter and Judgement of the Nürnberg Tribunal, as well as in Law No. 10 of the Control Council for Germany. Crimes against humanity are aimed at any civilian population and are prohibited regardless of whether they are committed in an armed conflict, international or internal in character.

The report continues:

> Crimes against humanity refer to inhumane acts of a very serious nature, such as wilful killing, torture or rape, committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. In the conflict in the territory of the former Yugoslavia, such inhumane acts have taken the form of so-called "ethnic cleansing"

[1331] *Stakić* Decision on Rule 98 *bis* Motion for Judgement of Acquittal, paras 131-132.
[1332] Black's Law Dictionary, 7th ed., p. 450.
[1333] Black's Law Dictionary, 7th ed., p. 450, citing Adolf Berger, "Encyclopaedic Dictionary of Roman Law", 1953, p. 432.
[1334] Black's Law Dictionary, 7th ed., p. 603 and Doucet/Fleck, français-allemand, 1, 4th ed., p. 450.

> and widespread and systematic rape and other forms of sexual assault, including enforced prostitution.[1335]

The Statute, and thereby the Tribunal itself, was established to attach criminal responsibility to those in the former Yugoslavia responsible for this practice. As many, if not most, conflicts are in some way connected with claims to territory it is often difficult, particularly several years after the conflict ends, to establish the exact or even an approximate location of a particular border at the relevant time. In this context, the Trial Chamber notes that the Security Council in the third paragraph of the preamble of the resolution 827 (1993) already expressed "its grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including […] the continuance of the practice of 'ethnic cleansing', *including for the acquisition and the holding of territory*."[1336]

677. The protected interests behind the prohibition of deportation are the right and expectation of individuals to be able to remain in their homes and communities without interference by an aggressor, whether from the same or another State. The Trial Chamber is therefore of the view that it is the *actus reus* of forcibly removing, essentially uprooting, individuals from the territory and the environment in which they have been lawfully present, in many cases for decades and generations, which is the rationale for imposing criminal responsibility and not the destination resulting from such a removal. The Trial Chamber believes that, should a definite destination requirement be specified, it would often be difficult to determine whether and when the crime occurred because the victims may have been transferred in several stages and therefore through several territories and across borders that may have changed every day. A fixed destination requirement might consequently strip the prohibition against deportation of its force.

678. The Trial Chamber emphasises that a judicial term must be understood and defined in the context it is used. Bearing in mind both the protected interests underlying the prohibition against deportation and the mandate of this Tribunal, it would make little or no sense to prohibit acts of deportation, in the words of the Security Council, "regardless of whether they are committed in an armed conflict, international or internal in character" and at the same time to limit the possibility of punishment to cases involving transfers across internationally recognised borders only.

679. For the purposes of the present case, the Trial Chamber finds that Article 5(d) of the Statute must be read to encompass forced population displacements both across internationally recognised

[1335] Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), UNSC, UN Doc. S/25704 (1993), paras 47 and 48; reprinted in 32 ILM (1993) 1163.
[1336] United Nations Security Council, resolution 827 (1993), S/RES/827 (1993), 25 May 1993 (emphasis added). See also UN Security Resolution 808, dated 22 February 1993, para. 6 of the preamble.

borders and *de facto* boundaries, such as constantly changing frontlines, which are not internationally recognised. The crime of deportation in this context is therefore to be defined as the forced displacement of persons by expulsion or other coercive acts for reasons not permitted under international law from an area in which they are lawfully present to an area under the control of another party.

680. It is enlightening in this context to consider how the crime of deportation has been regulated in the Statute of the International Criminal Court. That Statute utilises a single category of "deportation or forcible transfer of population" and defines this crime as the "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law".[1337] According to the Elements of Crimes for the International Criminal Court, the first element of this crime against humanity is that "[t]he perpetrator deported or forcibly transferred, without grounds under international law, one or more persons *to another State or location*, by expulsion or other coercive acts."[1338] While such simultaneous use of both terms (deportation and forcible transfer) might create terminological confusion in the law, it is clear that the Statute of the International Criminal Court does not require proof of crossing an international border but only that the civilian population was displaced. This Trial Chamber is aware of the limited value of such a comparison when applied to acts that occurred prior to the establishment of the International Criminal Court. However, customary international law has long penalised forced population displacements and the fact that the Statute of the International Criminal Court has accepted the two terms 'deportation' and 'forcible transfer' in one and the same category only strengthens the view that what has in the jurisprudence been considered two separate crimes is in reality one and the same crime.

681. Any forced displacement of population involves "abandoning one's home, losing property and being displaced under duress to another location."[1339] In essence, the prohibition against deportation serves to provide civilians with a legal safeguard against forcible removals in time of armed conflict and the uprooting and destruction of communities by an aggressor or occupant of the territory in which they reside.

682. The definition of deportation requires 'forced' or 'forcible' displacement.[1340] Thus, transfers based on an individual's free will to leave are lawful. In the jurisprudence, the requirement of 'forced displacement' has been interpreted to refer not only to acts of physical violence but also to

[1337] Statute of the International Criminal Court, Article 7(1)(d) as defined in 7(2)(d).
[1338] Assembly of State Parties to the Rome Statute of the International Criminal Court, 1st session, 3-10 Sept. 2002, Part II.B. Elements of Crimes, ICC-ASP/1/3 (Emphasis added).
[1339] *Krstić* Trial Judgement, para. 523.
[1340] The Trial Chamber will in the future use 'forced' displacement to describe this element.

other forms of coercion.[1341] The Trial Chamber in *Krstić* made reference to the Elements of Crimes for the International Criminal Court which provides that the 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.[1342]

683. The Trial Chamber emphasises that, with regard to a subsequent legal evaluation of the behaviour of a warring party, assistance by humanitarian agencies is not a factor rendering a displacement lawful.

684. In conclusion, the Trial Chamber adopts a definition of deportation that includes the aforementioned elements. It points out, however, that in the context of the Statute the question of whether a border was internationally recognised or merely *de facto* is immaterial. To hold otherwise would not sufficiently take into account the broader meaning of the word, the initial concept, the legislator's purpose and the sense and spirit of the norm. The Trial Chamber emphasizes that the underlying act – i.e. irrespective of whether the displacement occurred across an internationally recognized border or not - was already punishable under public international law by the time relevant to the present case. The Trial Chamber points to the fact that the International Military Tribunal at Nuremberg, on the basis of Article 6(c)[1343] of the Nuremberg Charter referring to "deportations" as a crime against humanity, applied this provision *de facto* in cases where victims were displaced within internationally recognised borders.[1344] In addition, the Trial Chamber notes that in *Attorney General v. Adolf Eichmann* the District Court of Jerusalem found Adolf Eichmann guilty of deportation for acts of internal displacement.[1345]

[1341] *Krnojelac* Trial Judgement, para. 475; *Krstić* Trial Judgement, para. 529; *Kunarac et al* Trial Judgement, para. 542.
[1342] Assembly of State Parties to the Rome Statute of the International Criminal Court, 1st session, 3-10 Sept. 2002, Part II.B. Elements of Crimes, ICC-ASP/1/3 (Emphasis added).
[1343] Article 6c reads "The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility […] CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated", Charter of the International Military Tribunal, annexed to the Agreement for the Prosecution and Punishment of the Major War Criminals of 8 August 1945, 5 U.N.T.S. 251; U.K.T.S. 4 (1945), Cmd. 6671; (1945) 39 AJIL, Supp. 259.
[1344] Count Four (A) of the Nuremberg Indictment dealt with crimes against humanity "Murder, Extermination, Enslavement, Deportation, and other inhumane acts committed against civilian populations before and during the war" "*in Germany and in all those countries and territories occupied by the German forces since 1 September 1939* and in Austria and Czechoslovakia and in Italy and on the High Seas" (emphasis added). The Nuremberg Indictment contained the allegation that civilians who were, who were believed to be, or who were believed likely to become hostile to the Nazi Government were held in "protective custody and concentration camps", including the Buchenwald and Dachau concentration camps within the borders of Germany proper. The International Military Tribunal stated that "With regard to crimes against humanity there is no doubt whatever that political opponents were murdered in Germany before the war, and that many of them were kept in concentration camps in circumstances of great horror and cruelty", International Military Tribunal, The Trial Of German Major War Criminals, Judgement: 30th September, 1946-1st October, 1946, p. 65.
[1345] *Attorney General v. Adolf Eichmann*, District Court of Jerusalem, Case No. 40/61, paras 200-206.

685. Finally, the Trial Chamber does not agree with the Defence submission that a minimum number of individuals must have been forcibly transferred for the perpetrator to incur criminal responsibility. This submission finds no support in the case-law of this Tribunal and is tantamount to negating the protective effect of the prohibition against deportation.

b. Subjective element: *mens rea*

686. The Trial Chamber observes in respect of the *mens* rea that the intent requirements for deportation have not been discussed exhaustively in the jurisprudence of the Tribunal. Intent, regardless of whether in the special form required for the crime of genocide or the more common forms required for the other crimes under the jurisdiction of the Tribunal, is generally difficult to establish and recourse to the sum of all established facts and circumstances is necessary. For this Trial Chamber, all the objective elements identified above must be covered by the intent of the perpetrator. This approach is fully consonant with the aim of prohibiting the practice of ethnic cleansing.

687. The Trial Chamber agrees with the Trial Chamber in the *Prosecutor v. Mladen Naletilić and Vinko Martinović* that the intent of the perpetrator must be that the victim is "removed, which implies the aim that the person is not returning." [1346] If a victim were to return, this would consequently not have an impact on the criminal responsibility of the perpetrator who removed the victim.

(b) The Trial Chamber's findings with regard to deportation (Count 7)

688. An atmosphere of mistrust, fear, and hatred was fuelled by the political tensions in the municipality from the second half of 1991 until the takeover of power on 30 April 1992. As a result of SDS-generated propaganda, the non-Serb population of the municipality of Prijedor was living in constant fear and uncertainty. [1347]

689. "Kozarski Vjesnik" regularly reported on the rising tensions in the municipality in the period 1991 to 1992.[1348] In an article dated 24 April 1992, i.e. less than a week before the scheduled Serb takeover of power, it is reported that: "Clearly, there is growing fear and distrust even in this town with relations between Muslims and Serbs hitting rock bottom because, without even wanting to admit it themselves, they apparently think the worst of each other." The newspaper

[1346] *Naletilić and Martinović* Trial Judgement, para. 520 and footnote 1362.
[1347] *Ivo Atlija*, T. 5549.
[1348] Exh. SK1; Exh. SK40; Exh. SK13.

speaks of "temporary departures" from the municipality and notes that "More than 3,000 people, mainly women and children, left town in the last 15 days. They are mainly Muslims."[1349]

690. In this connection, the Trial Chamber recalls its observation that, following the takeover of power on 30 April 1992, the municipality's Official Gazette was renumbered beginning with "Year I". The Trial Chamber regards this as evidence that, from the point of view of the Serb authorities, a new Serbian age had dawned in Prijedor municipality.

691. There is ample evidence that those who left the municipality did so under considerable pressure. Witness B explained it in the following way:

> we no longer had any rights there. We no longer had the right to live, let alone own anything. Any day, somebody could come, confiscate your car, take away your house, shoot you, without ever being held responsible for it.[1350]

This is corroborated by a report on the work of the Prijedor Red Cross between 5 May and 30 September 1992 which notes: "There is great pressure for citizens of Muslim or Croatian nationality to leave the AR Krajina".[1351]

692. The Trial Chamber heard evidence from many witnesses who fled the territory of the municipality of Prijedor in 1992. Most travelled either to Travnik or Croatia to escape Serb-controlled territory. The exodus of the mainly non-Serb population from Prijedor started as early as 1991 but accelerated considerably in the run-up to the takeover. The mass departure reached a peak in the months after the takeover. Most people travelled on one of the daily convoys of buses and trucks leaving the territory. These convoys would depart from specified areas within the municipality of Prijedor and were also organised on a regular basis from the Trnopolje camp.

693. Witness A left the Omarska camp on 6 August 1992 in a convoy that contained 1,360 persons.[1352] Witness B testified that he and his family decided to join a convoy organised by the Serb authorities in order to leave the municipality for Travnik because there was no other way that the non-Serb population would be permitted to leave.[1353] Witness B testified that "[leaving] was the only solution, the only way out, to go as far as away from there as possible, at any cost."[1354] According to Witness B, "thousands" of people were present when the convoy was being formed under the supervision of the reserve police in Prijedor.[1355] Witness Z left Prijedor for Travnik on 21

[1349] Exh. S5.
[1350] *Witness B*, T. 2263.
[1351] Exh. S434.
[1352] *Witness A*, T. 1928.
[1353] *Witness B*, T. 2257.
[1354] *Witness B*, T. 2263.
[1355] *Witness B*, T. 2259.

August 1992 with one of the daily convoys leaving from Tukovi stadium. More than 100 persons had been squeezed onto her lorry and she estimated that all in all 1,000 to 1,500 persons were present in the convoy.[1356] Moreover, several witnesses testified to being transported in convoys bound for Karlovac in Croatia.[1357]

694. According to the testimony of the commander of the Trnopolje camp Slobodan Kuruzović, the civilian authorities in Prijedor were responsible for coordinating the transports leaving the camp in the direction of Travnik:

> Later on one could hear in the town that the Red Cross and the UNHCR were organising [transports] without any problems and it would be easy for people to go either to neighbouring countries and further on abroad and then huge pressure ensued there in Trnopolje of people who wanted to leave, who wanted to leave Prijedor, until they understood that it would all come to nothing, and several other convoys went via Travnik. *I asked the president of the executive community [sic] to provide transport, and the chief of the SUP to provide security for that transport*. Some people took buses, some large lorries, they were escorted by the police.[1358]

695. Mr. Kuruzović recalled that on one occasion the Accused had assisted with "transportation" from the Trnopolje camp when the President of the Executive Committee, Dr. Milan Kovačević, was not available.[1359] Moreover, on two or three occasions, transports by train were organised from the Trnopolje camp which was located 200 metres from a railway station. Mr. Kuruzović testified that these transports were organised by the Executive Committee of the Municipal Assembly. [1360]

696. On 29 September 1992, the Prijedor People's Defence Council, presided over by the Accused, met and discussed forthcoming activities regarding the "Open Trnopolje Reception Centre". The Council reached conclusions on the departure of persons from this camp and that members of the Prijedor SJB were to provide escort for the convoy. In addition, it was concluded that "the Municipal Red Cross will be advised to close down the open Trnopolje Reception Centre as the departure of all registered persons from this reception centre effectively makes it unnecessary".[1361] As a result of these conclusions, on the same day the ICRC escorted 1,561 persons from the Trnopolje camp to Karlovac in Croatia.[1362]

697. The Trial Chamber has been provided with a wealth of evidence proving that many, if not most, road convoys were organised using buses belonging to local transportation companies, such

[1356] *Witness Z*, T. 7576-79.
[1357] *Witness C*, T. 2343; *Muharem Murselović*, T. 2772; *Minka Čehajić*, T. 3099.
[1358] *Slobodan Kuruzović*, T. 14456, emphasis added.
[1359] *Slobodan Kuruzović*, T. 14547.
[1360] *Slobodan Kuruzović*, T. 14819.
[1361] Exh. S90.
[1362] Exh. S424; Exh. S43; and Exh. S435.

as Autotransport Prijedor and Rudnik Ljubija.[1363] In particular, written evidence has shown that Autotransport Prijedor carried out transports for the needs of the Crisis Staff, the army and the police throughout July 1992 to places like Trnopolje, Omarska, Keraterm, and Banja Luka.[1364] There is evidence that Autotransport Prijedor requested reimbursement to be granted by the Executive Committee for transports on behalf of the Crisis Staff during the month of July 1992 and that 31 buses ran a total of 1,300 kilometres to transport refugees.[1365]

698. In a television interview with British Channel 4 by the end of 1992, the Accused explained that a "good number of [the detainees in the Trnopolje camp] wish to leave this area."[1366] The Accused elaborated:

> the rest [of the Muslims from Kozarac who found themselves in Trnopolje], because their family homes had been destroyed, were accommodated either in the territory of Prijedor municipality or went, *were transferred to*…some did go to central Bosnia...those who expressed this wish. *We organised buses and a train for them, and this was for free, just that they go, so that there should be no casualties*, that that genocide that we have already been blamed for in Europe should not occur.[1367]

699. Convoys were organised by the police and military. One such convoy is referred to in an SJB report to the Banja Luka CSB which states that a convoy of 5 buses departing on 18 July 1992 from the Trnopolje camp with women and children on board had been co-arranged by Colonel Arsić of the Prijedor Garrison and the 122nd Brigade. The report states that security for the convoy was provided by a patrol car and policemen from the Prijedor SJB.[1368]

700. As further regards the convoys, the Trial Chamber recalls its previous findings.[1369] According to Witness Z, who travelled in a convoy from Tukovi stadium to Mount Vlašić on 21 August, during the journey the travellers were mistreated and their money and valuables looted. She testified:

> [W]e stopped many times. Suddenly, the lorry would stop, and the first time we pulled over, a soldier came and dragged a man out and ordered him to follow him. So he left, and when the man came back, his head was bleeding, and he said he had been beaten. He said they had ordered him to collect all the Serbian money we had on us into this nylon bag. He was supposed to fill it with money. And he said: "Unless all the money we had was collected, they would kill us". That's what they told him. So we continued down the road. We drove for about another hour. And then we stopped again, and the same routine followed. So a man was taken out, and then returned back into the lorry. And now it was time to collect all the gold and jewellery we had into the same nylon

[1363] *Witness B*, T. 2244; *Nermin Karagić*, T. 5241; *Witness S*, T. 5972; *Witness DD*, T. 9588; *Mico Kos*, T. 9862; *Branko Rosić*, T. 12699; *Slobodan Kuruzović*, T. 14530, T. 14878-79.
[1364] Exh. S87.
[1365] Exh. S63.
[1366] Exh. S187-1.
[1367] Exh. S187-1, emphasis added.
[1368] Exh. S354.
[1369] See *supra* paras 314-319.

> bag. And again the same routine. If gold was found on anyone after the collection, that person would be killed.[1370]

701. As to the evidence that citizens of Prijedor had to obtain certain certificates or permits, the Trial Chamber recalls its findings above.[1371]

702. It was the duty of Slavko Budimir and the Secretariat for People's Defence to assist in issuing certificates for the movement of the population outside of the municipality of Prijedor. Mr. Budimir testified that many people came to the Secretariat to apply for permission to leave the municipality[1372] and that all those who submitted applications received approvals. In his opinion, Muslims and Croats were worse off than Serbs during this time.

703. The Trial Chamber has previously found that according to the 1991 census on 1 April 1991 Prijedor municipality had 112,543 inhabitants of whom 49,351 (43,9%) Muslim, 47,581 (42,3%) Serb, and 6,316 (5,6%) Croat.[1373]

704. As noted in the factual findings, the Trial Chamber was presented with evidence by Dr. Milan Kovačević's widow Ljubica Kovačević that during the period relevant for the Indictment, of the 1,414 refugees arriving in Prijedor municipality, 1,389 or 98.2% were of Serb ethnicity.[1374] The evidence also shows that this influx of Serb refugees increased to 1,564 or 98.4% during the last months of 1992 and that in the period 1993 to 1999 of the 27,009 refugees settling in the municipality 26,856 or 99.4% were of Serb ethnicity.[1375] During the same time period, 47 Muslims and 97 Croats returned.[1376]

705. There is evidence from the SJB's official reports that between 4,000 to 5,000 persons, primarily Muslims, left the municipality of Prijedor prior to the outbreak of armed conflict there.[1377] These reports state that, by 16 August 1992, the SJB had issued notices of termination of residence for 13,180 inhabitants[1378] and that, by 29 September 1992, this number had increased to 15,280 inhabitants.[1379] The SJB reports furthermore provide that:

[1370] *Witness Z*, T. 7580-81.
[1371] See *supra* paras 331-333.
[1372] *Slavko Budimir*, T. 13141.
[1373] Exh. S227-1.
[1374] Exh. D43-1, see *supra* para. 327.
[1375] Exh. D43.
[1376] Exh. D43-1, see *supra* paras 328-330.
[1377] Exh. S353.
[1378] Exh. S353 and Exh. S407.
[1379] Exh. S266.

> From the beginning of the armed conflict in the municipality to this day, according to insufficiently verified data, around *20,000 citizens* of all ages, both male and female, *primarily Muslim and Croats* but also Serbs, have moved away from the municipality.[1380]

This is corroborated by a statement in "Kozarski Vjesnik" on 9 April 1993 given by the then former Chief of the SJB, Simo Drljača:

> As to the extensive work performed by the administrative-legislative bodies, it is enough to say that more than 20,000 cases of emigration by Muslim and Croat citizens were registered. When the German TV came to prove that we were forcefully expelling Muslims and Croats, we showed them more than 20,000 visas, guarantees and requests for voluntary emigration for economic reasons.[1381]

706. On 2 July 1993, "Kozarski Vjesnik" ran an article called "Who are we and how many" which reported the unofficial census results for Prijedor municipality from a recent census in the municipalities of the Republika Srpska. The article states that of the 65,551 inhabitants in the municipality 53,637 were Orthodox, 6,124 Muslim and 3,169 Catholic.[1382] The Trial Chamber is of the opinion that the above figures, undisputed by the Defence, show how horrifically effective the SDS-induced deportation campaign of the non-Serb population was. Not only was the total population in the municipality reduced by almost 60% but the Muslim and Croat ethnical groups were also decimated by 87.6% and 49.8%, respectively. The new census showed that Prijedor municipality had been transformed into a virtually purely Serb municipality with 96.3% Serbs. The common goal to create a Serb municipality had finally been achieved.

707. The Trial Chamber finds that the atmosphere in the municipality of Prijedor during the time relevant to the Indictment was of such a coercive nature that the persons leaving the municipality cannot be considered as having voluntarily decided to give up their homes. The Trial Chamber disagrees with the Defence that the fact that the firm "Santours" in Prijedor advertised in "Kozarski Vjesnik", *inter alia* in March 1992, organised bus trips to foreign countries serves as an *indicia* for a voluntary departure.[1383] Even though this time period does not form part of the Indictment, the Trial Chamber regards these trips as forming part of the beginning of the process of deportation.

708. The Accused addressed the matter of population displacements in his capacity as President of the Crisis Staff on 26 June 1992. In responding to the question of which measures the Crisis Staff was taking to ensure the safety of refugees and citizens, the Accused stated:

> The fact that there are members of the Muslim community who were let down by the SDA and its leaders and who have now lost their homes and wish to leave the Prijedor municipality. *The Crisis Staff, notwithstanding the fuel crisis and, consequently, the transport crisis in general, is*

[1380] Exh. S353.
[1381] Exh. D99.
[1382] Exh. S229.
[1383] Exh. D74.

doing its best to issue valid passes to those who wish to leave and secure the transport for them. Simply put, we, the Serbs, are not a people with genocidal intentions.[1384]

709. Other evidence corroborates the fact that the Crisis Staff took measures to facilitate the expelling of non-Serb citizens of the Prijedor municipality. In particular, a "Kozarski Vjesnik" article dated 10 July 1992 reports that, after considering the issue of people "voluntarily applying for moving out of the municipality" the Crisis Staff "agreed on accelerating all activities which make it possible to carry out this process in an organised fashion."[1385]

710. The evidence has established the close and coordinated co-operation between the civilian authorities led by the Accused, the SJB and the military authorities. This proves that the Accused's conduct, occupying the political field of this co-operation, was a *conditio sine qua non* for the achievement of the deportation. The Trial Chamber is convinced that the deportation of the non-Serb population from the territory of the municipality, in accordance with the first two of the six strategic goals of the Serbian people expounded by Radovan Karadžić on 12 May 1992[1386], was the central tool to establish a pure Serbian State.

711. After having visited Prijedor municipality, including the Trnopolje camps, an ECMM representative accompanying the CSCE Rapporteur's mission wrote in his personal notes that "the Muslim population is not wanted, and is being systematically kicked out by whatever method [that] is available." The massive scale on which these deportations were carried out, also from the very centre of Prijedor town close to the Accused's office in the Municipal Assembly building, clearly supports the finding that the Accused himself was instrumental in the plan to expel the non-Serb population.

712. In conclusion the Trial Chamber is convinced that the Accused intended to deport the non-Serb population from Prijedor municipality and that, based on this intent, he not only committed the crime of deportation as a co-perpetrator, but also planned and ordered this crime. The Trial Chamber consequently finds the Accused guilty of the crime of deportation, a crime against humanity under Article 5(d) of the Statute.

(c) Applicable law with regard to other inhumane acts (Count 8)

(i) Arguments of the Parties

a. Prosecution

[1384] Exh. S83, emphasis added.
[1385] Exh. S248.
[1386] Exh. S141, see *supra* paras 41-43.

713. As regards the elements of the crime of forcible transfer as an inhumane act under Article 5(i), the Prosecution submits that the victims must be transferred "from the area in which they reside 'to another location.'" The Prosecution argues that it is not required to determine whether the destination is an area held by the deporting party or an opposing party, or whether it lies within or outside of one State.[1387] Accordingly "[a]ll that is required for the offence is transfer of persons 'from where they reside to *a place that is not of their choosing*.'"[1388] The Prosecution submits as regards the *mens rea* that the expulsion or other coercive acts must have been committed wilfully regardless of whether the final destination was within Bosnia and Herzegovina or not.[1389]

714. Because of the uncertainty surrounding the "precise scope" of the crime of deportation under Article 5(d) of the Statute, the Prosecution argues in the alternative that forcible transfer occurred in Prijedor during the time relevant to the Indictment.[1390] The Prosecution submits that the elements of this crime are that:

1. one or more persons were involuntarily and unlawfully evacuated by the accused from the territory in which they reside to another location, whether within the same State or beyond the State borders, by expulsion or other coercive acts, and

2. the expulsion or other coercive acts were committed wilfully.[1391]

715. The Prosecution construes "unlawfully" as meaning "without grounds permitted under international law."[1392]

716. In this connection, the Prosecution makes three preliminary observations and submits that:

1. Article 5(i) satisfies the principles of certainty and legality (*nullum crime sine lege*),

2. the Tribunal's jurisprudence indicates that forcible transfer constitutes an inhumane act within the meaning of Article 5(i), and

3. forcible transfer is not a lesser offence included in the crime of deportation.[1393]

b. Defence

[1387] Prosecution Final Brief, para. 391.
[1388] Prosecution Final Brief, para. 391.
[1389] Prosecution Final Brief, para. 393.
[1390] Prosecution Final Brief, para. 369.
[1391] Prosecution Final Brief, para. 390.
[1392] Prosecution Final Brief, para. 390, footnote 1007.
[1393] Prosecution Final Brief, para. 370.

717. With regard to other inhumane acts (forcible transfer) under Article 5(i) of the Statute, the Defence argues that the Prosecution is attempting to charge the Accused with the same crime in more than one count.[1394] In its view, the crime of forcible transfer does not require that the victims be transferred across a national border.[1395] The Defence argues that the two elements of the crime are that:

1. the accused forcibly transferred one or more persons from an area in which they were lawfully present without grounds permitted under international law, and

2. this was done by force or other coercive acts.[1396]

718. However, the Defence argues that "[i]nasmuch as the two elements of the crime of forcible transfer are incorporated within the crime of deportation" the Defence arguments under the crime of deportation are incorporated as well.[1397]

(ii) Discussion

719. The Trial Chamber recalls that "[t]he use of 'other inhumane acts' as a crime against humanity under Article 5(i) of the Statute to attach criminal liability to forcible transfers, which are not otherwise punishable as deportations, raises serious concerns."[1398] While noting that "[n]ot every law can be defined with ultimate precision and that it is for the jurisprudence to interpret and apply legal provisions which need, in part, to be formulated in the abstract", the Trial Chamber declared that the description of a criminal offence extends beyond the permissible when the specific form of conduct prohibited can not be identified."[1399] The Trial Chamber therefore held that as "[t]he crime of 'other inhumane acts' subsumes a potentially broad range of criminal behaviour and may well be considered to lack sufficient clarity, precision and definiteness" it might violate the fundamental criminal law principle *nullum crimen sine lege certa*.[1400]

720. This legal issue was addressed in *Kupreškić*, where the Trial Chamber held that the category "other inhumane acts" was:

[1394] Defence Final Brief, para. 504.
[1395] Defence Final Brief, para. 508.
[1396] Defence Final Brief, para. 507.
[1397] Defence Final Brief, para. 509.
[1398] *Stakić* Decision on Rule 98 *bis* Motion for Judgement of Acquittal, para. 131.
[1399] *Stakić* Decision on Rule 98 *bis* Motion for Judgement of Acquittal, para. 131.
[1400] *Stakić* Decision on Rule 98 *bis* Motion for Judgement of Acquittal, para. 131

> deliberately designed as a residual category, as it was felt undesirable for this category to be exhaustively enumerated. An exhaustive categorization would merely create opportunities for evasion of the letter of the prohibition.[1401]

After referring to several international human rights instruments such as the Universal Declaration of Human Rights of 1948 and the two United Nations Covenants of 1966, the *Kupreškić* Trial Chamber concluded that by referring to such instruments one would be able to identify "less broad parameters for the interpretation of 'other inhumane acts'" and "identify a set of basic rights appertaining to human beings, the infringement of which may amount, depending on the accompanying circumstances, to a crime against humanity."[1402]

721. This Trial Chamber disagrees with that approach and notes that the international human rights instruments referred to by the *Kupreškić* Trial Chamber provide somewhat different formulations and definitions of human rights. However, regardless of the status of the enumerated instruments under customary international law, the rights contained therein do not necessarily amount to norms recognised by international criminal law. The Trial Chamber recalls the report of the Secretary-General according to which "the application of the principle *nullum crime sine lege* requires that the international tribunal should apply rules of international humanitarian law which are beyond doubt part of customary law."[1403] Accordingly, this Trial Chamber hesitates to use such *human rights* instruments automatically as a basis for a norm of *criminal law*, such as the one set out in Article 5(i) of the Statute. Its hesitation is even more pronounced when, as in the present case, there is no need to undertake such an exercise. A norm of criminal law must always provide a Trial Chamber with an appropriate yardstick to gauge alleged criminal conduct for the purposes of Article 5(i) so that individuals will know what is permissible behaviour and what is not.

722. This Trial Chamber is not persuaded by the Prosecution's argument that there are certain limited circumstances when the principle of certainty does not require specification of a prohibited conduct. For the present case, the Statute already provides a means to address illegal population transfers as the crime against humanity of deportation. Thus, from the point of view of consistent interpretation of the law, it is preferable to adopt the contextually correct definition of deportation.

(d) The Trial Chamber's findings

723. This Trial Chamber has used a definition of deportation that covers different forms of forcible transfers. The Prosecution has proposed that various forms of forcible transfer should be covered by Article 5(i) of the Statute. The Trial Chamber has concluded that the vast majority of

[1401] *Kupreškić et al.* Trial Judgement, para. 563.
[1402] *Ibid*, para. 566.

these forms fall under the definition of deportation as laid down in Article 5(d). In relation to other examples provided by the Prosecution (such as removal of individuals to detention facilities), the Trial Chamber is not convinced that they a) reached the same level as other listed crimes under Article 5 of the Statute, b) suffice to base a conviction cumulatively on Article 5(i), and c) in this case might amount to an infringement of the principle *nullum crime sine lege certa*.

724. Count 8 other inhumane act (forcible transfer) is consequently dismissed.

[1403] Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), UNSC, UN Doc. S/25704 (1993), para. 34; reprinted in 32 ILM (1993) 1163

5. Persecutions on political, racial and religious grounds (Count 6)

725. The Accused, Dr. Milomir Stakić, is charged with persecutions as crimes against humanity pursuant to Article 5(h) of the Statute based on a number of different acts.[1404] Some of these acts have also been charged cumulatively under Counts 3 and 5 ("Murder") and Counts 7 and 8 ("Deportation" and "Forcible Transfer"). The Trial Chamber's findings in relation to these counts can be found *supra* under Section III. E. and Sections III. F. 2 and 4.

(a) The Applicable Law

(i) Arguments of the Parties

726. The Trial Chamber observes that the approach of the parties to the constitutive elements of the crime of persecutions appears to be similar and, therefore, the Trial Chamber need only briefly summarise their arguments.

a. Prosecution

727. According to the Prosecution, the elements of persecutions under Article 5(h) of the Statute are "(1) the Accused committed acts or omissions against a victim or victim population violating a basic or fundamental human right; (2) the Accused intended to commit the violation; (3) the Accused's conduct was committed on political, racial or religious grounds; and, (4) the Accused's conduct was committed with requisite discriminatory mental state."[1405]

728. The Prosecution recalls that "the jurisprudence of the International Tribunal has adopted a broad interpretation of the term persecutions" and that even "acts that are not inherently criminal may nonetheless become criminal and persecutorial if committed with discriminatory intent."[1406] The Prosecution stresses that acts need to be examined not in isolation but together for their cumulative effect and that the test for a finding of persecutions can be met only if the cumulative effect of the acts amounts to a gross violation of fundamental rights.[1407] In short, "[c]umulatively, the acts must reach a similar level of gravity as the other crimes against humanity listed in Article 5 of the Statute."[1408]

[1404] Indictment Count 6 (Persecutions), paras 52 - 55.
[1405] Prosecution Final Brief, para. 319.
[1406] Prosecution Final Brief, para. 322, citing *Kvočka* Trial Judgement, para. 186.
[1407] Prosecution Final Brief, para. 322, citing *Krnojelac* Trial Judgement, para. 434, and *Kupreškić* Trial Judgement, para. 550.
[1408] Prosecution Final Brief, para. 322, citing *Kordić* Trial Judgement, paras 194-196.

729. When defining the *mens rea*, the Prosecution recalls that "[i]t is the specific intent to cause injury to a human being because he belongs to a particular community or group, rather than the means employed to achieve it, that bestows on it its individual nature and gravity […] "[1409]

b. Defence

730. The Defence submits that to establish persecution the Prosecution must prove beyond a reasonable doubt that "(a) the accused committed acts or omissions against a victim or victim population violating a basic or fundamental human right; (b) the accused's conduct was committed on political, racial or religious grounds; and (c) the accused's conduct was committed with requisite discriminatory mental state."[1410]

731. The Defence also submits that the persecutory acts must rise to the same level of gravity as other acts under crimes against humanity[1411] and that the act must "be discriminatory in fact."[1412] The persecutory conduct must be based on race, religion or politics.[1413]

(ii) Discussion

732. The Trial Chamber adopts the settled definition in the jurisprudence of this Tribunal and recognises that the elements of the crime of persecution are the following. An act or omission that:

1. discriminates in fact and which denies or infringes upon a fundamental right laid down in customary international or treaty law (the *actus reus*); and

2. was carried out deliberately with the intent to discriminate on political, racial and religious grounds (*mens rea*). [1414]

Each of the three grounds listed in Article 5(h) of the Statute is in itself sufficient to qualify conduct as persecutions, notwithstanding the conjunctive "and" in the text of Article 5(h).[1415]

a. Actus Reus

[1409] Prosecution Final Brief, para. 356, quoting *Kordić* Trial Judgement, para. 212.
[1410] Defence Final Brief, para. 439, citing *Tadić* Trial Judgement, para. 697, and *Kupreškić* Trial Judgement, para. 621.
[1411] Defence Final Brief, para. 440, citing *Kupreškić* Trial Judgement, para. 621; *Kordić* Trial Judgement, paras 195-196 and *Krnojelac* Trial Judgement, para. 434; see also footnote 413, citing *Tadić* Trial Judgement, paras 704-710, *Kupreškić* Trial Judgement, paras 610-613; *Blaškić* Trial Judgement, paras 220, 227, 234; *Kordić* Trial Judgement, paras 205-207.
[1412] Defence Final Brief, para. 440, citing *Krnojelac* Trial Judgement, para. 432.
[1413] Defence Final Brief, para. 440, citing *Tadić* Trial Judgement, para. 195 (mistake as to the victim's ethnicity would still meet the required persecution elements); *Krnojelac* Trial Judgment, para. 431.
[1414] *Vasiljević* Trial Judgement, para. 244.
[1415] See already *Tadić* Trial Judgement, para. 713; and *Naletilić and Martinović* Trial Judgement, para. 638.

733. The Trial Chamber recognises that "the persecutory act must be *intended* to cause, *and result in*, an infringement on an individual's enjoyment of a basic or fundamental right". [1416] Although the Statute does not explicitly require that the discrimination take place against a member of a targeted group, the act or omission must in fact have discriminatory consequences rather than have been committed only with discriminatory intent.[1417]

734. The targeted individuals may include persons "who are *defined by the perpetrator as belonging to the victim group due to their close affiliations or sympathies for the victim group*", "as it is the perpetrator who defines the victim group while the targeted victims have no influence on the definition of their status".[1418]

735. The act or omission constituting the crime of persecutions may assume various forms. There is no comprehensive list of the acts that may amount to persecution.[1419] Persecution may encompass acts that are or are not enumerated in the Statute.[1420] In charging persecutions, the Prosecutor must plead with precision the particular acts amounting to persecutions.[1421]

736. In order to comply with the principle of *nullum crimen sine lege certa*, there must be "clearly defined limits on the types of acts which qualify as persecution".[1422] The acts of persecution not enumerated in Article 5 or elsewhere in the Statute must be of an equal gravity or severity as the other acts enumerated under Article 5.[1423] When considering whether acts or omissions satisfy this threshold, they should not be considered in isolation but in their context and with consideration of their cumulative effect.[1424] An act which may not appear comparable to the other acts enumerated in Article 5 might reach the required level of gravity if it had, or was likely to have, an effect similar to that of the other acts because of the context in which it was undertaken.[1425] The Trial Chamber will not repeat these additional elements of crime in relation to each of the acts described below.

b. Mens Rea

737. The Trial Chamber opines that the terms "discriminatory intent" amounts to the requirement of a "*dolus specialis*".

[1416] *Tadić* Trial Judgement, para. 715 (emphasis added).
[1417] *Vasiljević* Trial Judgement, para. 245.
[1418] *Naletilić and Martinović* Trial Judgement, para. 636 (emphasis in the original).
[1419] *Vasiljević* Trial Judgement, para. 246.
[1420] *Vasiljević* Trial Judgement, para. 246.
[1421] *Vasiljević* Trial Judgement, para. 246.
[1422] See already *Kupreškić et al.* Trial Judgement, para. 618 (emphasis in the original).
[1423] *Vasiljević* Trial Judgement, para. 247.

738. The Trial Chamber recalls that the *mens rea* of the crime of persecutions, apart from the knowledge required for all crimes against humanity listed in Article 5 of the Statute, consists of:

1. the intent to commit the underlying act, and
2. the intent to discriminate on political, racial or religious grounds.

739. The requirement that an accused intend to discriminate does not require the existence of a discriminatory policy.[1426]

740. In the *Vasiljević* case, the Trial Chamber held that

> […] the discriminatory intent must relate to the specific act charged as persecution. It is not sufficient that the act merely occurs within an attack which has a discriminatory aspect.[1427]

In this context, the Trial Chamber in that case criticised the fact that, in other cases before the Tribunal, it was held that "a discriminatory attack is a sufficient basis from which to infer the discriminatory intent of acts carried out within that attack."[1428] It continued by stating that

> [t]his approach may lead to the correct conclusion with respect to most of the acts carried out within the context of a discriminatory attack, but there may be acts committed within the context that were committed either on discriminatory grounds not listed in the Statute, or for purely personal reasons. Accordingly, this approach does not necessarily allow for an accurate inference regarding intent to be drawn with respect to all acts that occur within that context. [1429]

741. This Trial Chamber however is of the view that the role of the particular accused has a significant impact on the question whether proof is required of a discriminatory intent in relation to each specific act charged, or whether it would suffice that proof of a discriminatory attack is a sufficient basis from which to infer the discriminatory intent in relation to acts forming part of that attack. In both the *Vasiljević* and *Krnojelac* cases, the accused were closely related to the actual commission of crimes. In such cases, this Trial Chamber might agree that proof is required of the fact that the direct perpetrator acted with discriminatory intent in relation to the specific act. In the present case, however, the Accused is not alleged to be the direct perpetrator of the crimes. Rather, as the leading political figure in Prijedor municipality, he is charged as the perpetrator behind the direct perpetrator/actor and is considered the co-perpetrator of those crimes together with other persons with whom he co-operated in many leading bodies of the Municipality. The Trial Chamber deliberately uses both terms "perpetrator" and "actor" because it is immaterial for the assessment of

[1424] *Vasiljević* Trial Judgement, para. 247.
[1425] *Krnojelac* Trial Judgement, para. 446.
[1426] *Vasiljević* Trial Judgement, para. 248.
[1427] *Vasiljević* Trial Judgement, para. 249.
[1428] *Vasiljević* Trial Judgement, para. 249.
[1429] *Vasiljević* Trial Judgement, para. 249.

the intent of the indirect perpretator whether or not the actor had such a discriminatory intent; the actor may be used as an innocent instrument or tool only.[1430]

742. In such a context, to require proof of the discriminatory intent of both the Accused and the acting individuals in relation to all the single acts committed would lead to an unjustifiable protection of superiors and would run counter to the meaning, spirit and purpose of the Statute of this International Tribunal. This Trial Chamber, therefore, holds that proof of a discriminatory attack against a civilian population is a sufficient basis to infer the discriminatory intent of an accused for the acts carried out as part of the attack in which he participated as a (co-)perpetrator.

743. In cases of indirect perpetratorship, proof is required only of the general discriminatory intent of the indirect perpetrator in relation to the attack committed by the direct perpetrators/actors. Even if the direct perpetrator/actor did not act with a discriminatory intent, this, as such, does not exclude the fact that the same act may be considered part of a discriminatory attack if only the indirect perpetrator had the discriminatory intent.

744. In conclusion, what is required in the context of the present case is proof of a discriminatory attack against the non-Serb population. The Trial Chamber will now turn to Dr. Stakić's criminal responsibility for the different acts with which he has been charged under the *chapeau* of persecutions.

(b) Specific acts alleged under persecutions

745. The Trial Chamber will consider the different acts alleged by the Prosecution in the order they appear in the Indictment.[1431] The Trial Chamber will first set out the legal requirements related to each of the specific acts charged under persecutions and then focus on the established facts in relation to the different charges.

746. In the presentation of these acts already established in this Judgement the Trial Chamber will focus on examples of concrete persecutorial acts, where a discriminatory intent of the direct perpetrator can also be discerned. Such examples serve only as a tool to present *pars pro toto* the picture of the alleged campaign of persecution. To sum up, in this context, it is immaterial whether or not the direct perpetrator had, or even shared, the intent of the indirect perpetrator who acts on a higher level. What counts is the discriminatory intent of the indirect perpetrator.

(i) The Applicable Law

[1430] See Münchener Kommentar, Strafgesetzbuch, Vol. 1, C.H. Beck, München, 2003, Section 25, Rn 88-94, (*Joecks*); and see *e.g.* Bundesgerichtshof, BGHSt. 35, 347-356.
[1431] Indictment, para. 54 (1) -(5).

a. Murder

747. The elements of the crime of "Murder" under Article 5 (a) have already been discussed above. [1432]

b. Torture

748. Torture is a crime against humanity under Article 5(f) of the Statute.

749. The "Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment" of 10 December 1984 ("Convention Against Torture"), defines torture as follows:

> 1. For the purpose of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
>
> 2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application. [1433]

750. The Trial Chamber concurs with the definition of the crime of torture adopted by the *Kunarac et al.* Appeals Chamber:

> (i) the infliction, by an act or omission, of severe pain or suffering, whether physical or mental.
>
> (ii) the act or omission must be intentional.
>
> (iii) the act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person. [1434]

c. Physical violence

751. "Physical violence" is not included in Article 5 nor does it appear as a specific offence under other articles of the Statute.

752. In the Trial Chamber's view, 'physical violence' is a broad term which focuses *inter alia* on the conditions in which detainees were forced to live, such as overcrowded conditions, deprivation

[1432] See Section III. F. 2. (a).
[1433] Article 1,"Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment", of 10 December 1984, UNTS vol. 1465, p. 85. The Convention entered into force 26 June 1987; G.A. Res. 39/46, Doc. A/39/51. This Convention is binding on BiH since 6 March 1992 as one of the successor States to SFRY.

of food, water and sufficient air, exposure to extreme heat or cold, random beating of detainees as a general measure to instil terror amongst them and similar forms of physical assaults not amounting to torture as defined above.

753. The Trial Chamber therefore holds that even if physical violence is not listed under Article 5 of the Statute and the alleged acts do not qualify as torture, they may nonetheless fall under the crime of persecution.[1435]

d. Rapes and sexual assaults

754. Rape is a crime against humanity under Article 5(g) of the Statute.

755. The Trial Chamber concurs with the definition of the crime of rape adopted by the *Kunarac et al.* Appeals Chamber.[1436]

756. In this context, "[f]orce or threat of force provide clear evidence of non-consent, but force is not an element *per se* of rape. […] A narrow focus on force or threat of force could permit perpetrators to evade liability for sexual activity to which the other party had not consented by taking advantage of coercive circumstances without relying on physical force." [1437]

757. This Trial Chamber holds that, under international criminal law, not only rape but also any other sexual assault falling short of actual penetration is punishable. This offence embraces all serious abuses of a sexual nature inflicted upon the integrity of a person by means of coercion, threat of force or intimidation in a way that is humiliating and degrading to the victim's dignity. [1438]

e. Constant humiliation and degradation

758. Acts of "constant humiliation and degradation" are not explicitly listed under Article 5 nor do they appear as specific offences under other articles of the Statute.

759. When examining the allegations of "harassment, humiliation and psychological abuse" and describing the conditions of detention prevailing in a camp, the Trial Chamber in the *Kvočka et. al.* case found that "humiliating treatment that forms part of a discriminatory attack against a civilian

[1434] *Kunarac et al.* Appeal Judgement, para. 142.
[1435] See *supra* para. 736.
[1436] *Kunarac et al.* Appeal Judgement, paras 127-128.
[1437] *Kunarac et al.* Appeal Judgement, para. 129.
[1438] *Furundžija* Trial Judgement, para. 186.

population may, in combination with other crimes or, in extreme cases alone, similarly constitute persecution."[1439]

760. This Trial Chamber holds that the alleged acts of constant humiliation and/or degradation may amount to persecutions.[1440]

f. Destruction, wilful damage and looting of residential and commercial properties

761. Article 3(b) of the Statute penalises "wanton destruction of cities, towns or villages, or devastation not justified by military necessity". Following the definition of this crime settled in the Tribunal's jurisprudence, this Chamber concurs that the elements of the crime are satisfied where:

> (i) the destruction occurs on a large scale;
>
> (ii) the destruction is not justified by military necessity; and
>
> (iii) the perpetrator acted with the intent to destroy the property in question or in reckless disregard of the likelihood of its destruction. [1441]

762. Article 3(e) of the Statute penalises "plunder of public and private property". Plunder encompasses "all forms of unlawful appropriation of property in armed conflict for which individual responsibility attaches under international law, including those acts traditionally described as 'pillage'".[1442] Such acts of appropriation include "both widespread and systematised acts of dispossession and acquisition of property in violation of the rights of the owners and isolated acts of theft or plunder by individuals for their private gain."[1443]

763. The Trial Chamber notes that prior jurisprudence has held that "[i]n the context of an overall campaign of persecution, rendering a people homeless and with no means of economic support may be the method used to 'coerce, intimidate, terrorise […] civilians […]'." [1444] When the cumulative effect of such property destruction is the removal of civilians from their homes on discriminatory grounds, the "wanton and extensive destruction and/or plundering of Bosnian Muslim civilian dwellings, buildings, business, and civilian personal property and livestock" may constitute the crime of persecution.[1445]

[1439] *Kvočka et al.* Trial Judgement, para. 190.
[1440] See *supra* para.736.
[1441] *Kordić* Trial Judgement, para. 346.
[1442] *Čelebići* Trial Judgement, para. 591.
[1443] *Kordić* Trial Judgement, para. 352.
[1444] *Kordić* Trial Judgement, para. 205.
[1445] *Ibid.*

764. This Trial Chamber therefore concludes that acts of "destruction, wilful damage and looting of residential and commercial properties", even if not listed in Article 5 of the Statute, may amount to persecution.[1446]

g. Destruction of or wilful damage to religious and cultural buildings

765. Article 3(d) of the Statute penalises "the seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science" as violations of the laws or customs of war.

766. The International Military Tribunal[1447], and the 1991 ILC Report, [1448] *inter alia*, have singled out the destruction of religious buildings as a clear case of persecution as a crime against humanity.[1449]

767. This Trial Chamber shares the view that "[t]his act, when perpetrated with the requisite discriminatory intent, amounts to an attack on the very religious identity of a people".[1450]

768. The Trial Chamber therefore concludes that acts of "destruction of, or wilful damage to, religious and cultural buildings", even if not listed in Article 5 of the Statute, may amount to persecutions.[1451]

h. Deportation and forcible transfer

769. "Deportation" and "Forcible Transfer" have already been discussed. [1452]

i. Denial of fundamental rights, including the right to employment, freedom of movement, right to proper judicial process, or right to proper medical care

770. In the present case, the Accused is charged with persecutions of the non-Serb population of the Municipality of Prijedor for several acts, *including* the denial of fundamental rights such as (i) employment, (ii) freedom of movement, (iii) proper judicial process, and (iv) medical care. The

[1446] See *supra* para. 736.
[1447] *Kordić* Trial Judgement, para. 206, referring to the Nuremberg Judgement, pp. 248, 302.
[1448] *Id.*, referring to the 1991 ILC Report, p. 268.
[1449] *Kordić* Trial Judgement, para. 206.
[1450] *Kordić* Trial Judgement, para. 207.
[1451] See *supra* para. 736.
[1452] See Section III. F. 4. (a) and (c).

Prosecution submits that these rights are fundamental rights and violations thereof amount to persecutions.[1453]

771. In relation to the specificity of the charges, the Trial Chamber recalls the *Kupreškić et al.* Appeals Judgement which states that the Prosecution must charge particular acts as persecutions – as already discussed above. The Appeals Chamber reasoned that "the fact that the offence of persecutions is a so-called 'umbrella' crime does not mean that an indictment need not specifically plead the material aspects of the Prosecution case with the same detail as other crimes. The crime of persecutions cannot, because of its nebulous character, be used as a catch-all charge"[1454] and the Trial Chamber rejects any attempt by the Prosecution to do so by using the open-ended term "including".

772. For this reason, the Trial Chamber will not consider any other denial of fundamental rights not expressly mentioned by the Prosecution in the Indictment. The Accused is not sufficiently informed of, and therefore unable to defend himself against, any charges other than those explicitly stated in the Indictment.

773. This Trial Chamber opines that it is immaterial to identify which rights may amount to fundamental rights for the purpose of persecution. Persecution can consist of the deprivation of a wide variety of rights, whether fundamental or not, derogable or not.[1455]

(c) Trial Chamber's findings in relation to the *actus reus* of the different persecutorial acts

774. As discussed above, the Trial Chamber has determined that for a persecutorial act, a different discriminatory intent must be proved depending on the position of the perpetrator. In case of a persecutorial attack, it must be proved on the level of the indirect (co-)perpretator behind the perpetrator/actor. However, proof of individual crimes committed by the direct perpetrators with discriminatory intent may be of assistance. In this context, the Trial Chamber, will present some of these examples in order to provide, *pars pro toto,* as complete a picture as possible of the persecutorial campaign in the Municipality of Prijedor.

a. Murder

[1453] Prosecution Final Brief, Appendix A, p. 9.
[1454] See *Kupreškić et al*. Appeal Judgement, para. 98.
[1455] The U.S. Military Tribunal in the *Justice* case included among the lesser forms of persecution the passing of "decrees expelling Jews from public services, educational institutions, and from many business enterprises." See *Josef Altstötter et al.* (the *Justice* Trial), Trials of war criminals before the Nuremburg Military Tribunals, Vol. III, pp. 1063-1064; see also *IMT Judgement*, pp. 248-249.

775. The Trial Chamber has already found Dr. Milomir Stakić responsible for the killings alleged in paragraph 44 of the Indictment as murder under Articles 3 and 5 of the Statute.[1456]

776. The Trial Chamber must now establish whether these killings amount to murder under the charge of persecution, *i.e*. that these killings were committed with a discriminatory intent against the non-Serb population in the Municipality of Prijedor.

777. In the hamlet of Cemernica, Witness S saw a soldier questioning Muhamed Hadzić about his ethnicity and then shooting at him at point-blank range. [1457] On 23 July 1992, Witness S and about ten other Muslims were ordered to assist in the collection of dead bodies in the area of the Bišćani local commune. He estimates that, in total, over the two-day period they collected between 300 and 350 bodies. All of the victims were Muslims living in the territory of the Bišćani local commune. Witness S submitted a final list of 37 individuals from Bišćani he personally identified who were killed around 20 July 1992.[1458]

778. Furthermore, detainees from the Trnopolje camp were loaded onto a convoy of non-Serb civilians and killed on Mount Vlašić on 21 August 1992. As the Chamber has already found, approximately 200 persons were killed on that occasion.[1459]

779. In the Trnopolje camp, a man called Tupe Topala was carrying a knife and shouting "Where are you balijas? I want to cut your throats". The soldiers were yelling and cursing. Afterwards they led 11 men out of the camp –their heads were down and their hands were over their heads. The soldiers took the men into a maize field. Gunshots and screams were heard.[1460] The Trial Chamber is convinced that they were killed with discriminatory intent.

b. Torture

780. The Trial Chamber has already found that many of the detainees at the Omarska, Keraterm and Trnopolje camps were subjected to serious mistreatment and abuse amounting to torture. [1461] Detainees were severely beaten, often with weapons such as cables, batons and chains. In Omarska and Keraterm, this occurred on a daily basis. As a result of these brutal beatings detainees were seriously injured.[1462] The Trial Chamber is convinced that severe beatings were also committed in

[1456] See Section III. E. and F.
[1457] *Witness S*, T. 5906-07.
[1458] Exh. S212.
[1459] See Section I. E. 4. (a)-(c); *Witness X*, T. 6886-6914.
[1460] *Witness Q*, T. 3998-99.
[1461] See Section I. E. 4. (a), (b) and (c).
[1462] See Section I. E. 3.

the Miska Glava community centre,[1463] the Ljubija football stadium,[1464] the SUP building[1465], and outside the camps.[1466]

781. In Omarska, several detainees were beaten while undergoing interrogation.[1467] The screaming, wailing and moaning of the detainees who had been beaten could be heard even outside the interrogation room. [1468] Dzemel Deomić, for example, was interrogated on two separate occasions and suffered serious injuries from the accompanying mistreatment. The first time, he was asked whether he knew where one of his fellow detainees had hidden a weapon. When he responded that he did not, he was struck on his legs, back and head. One of the guards placed a gun in his mouth and pulled the trigger. During the second interrogation he was beaten with a metal rod, and a wire and was kicked with boots.[1469]

782. In the Keraterm camp, for example, Mr. Arifagić, along with others, was called out one night and ordered to lie down on the asphalt while the soldiers beat them and asked questions. He was asked to confess to being a "Green Beret" and, as a result of the beatings, sustained serious injuries to his head, arms and knees.[1470]

783. In relation to the Ljubija football stadium, Nermin Karagić testified that prisoners were lined up, ordered to bend down and kicked between the eyes. They had to put their hands on the top of the wall where there was a man who walked on their fingers while they sang songs about Greater Serbia. They were hit at the same time. One prisoner said his mother was a Serb and was separated from the others.[1471]

784. In the SUP Building in Prijedor a man called Nihad Basić was taken to the courtyard by the intervention platoon, told "Come here, you Turk" and, after being beaten, was thrown back into his cell covered with blood.[1472]

785. These examples of serious mistreatment lead the Trial Chamber to the following conclusions. First, all the mistreatment was of such a serious nature that it amounted to the

[1463] See Section I. E. 4. (d).
[1464] See Section I. E. 4. (e).
[1465] See Section I. E. 4. (f). See also Exh. S15/32.
[1466] See *e.g., Witness B*, T. 2220-21 (in Tukovi); *Nijaz Kapetanovic*, T. 2950-52 (Prijedor); *Witness Q*, T. 3937-46 (Gomjenica); *Nermin Karagić*, T. 5260 (in Rizvanovici); *Ivo Atlija*, T. 5565, 5569-70 (Gornja Ravska); *Witness V*, T. 5740 (Carakovo).
[1467] See Section I. E. 4. (a).
[1468] *Nada Markovska*, T. 9932 and T. 9970; *Kerim Mesanović*, 92 *bis* transcript in *Kvočka,* T. 5178-79.
[1469] *Dzemel Deomić*, 92 *bis* transcript in *Tadić,* T. 3272.
[1470] *Jusuf Arifagić*, T. 7087.
[1471] *Nermin Karagić*, T. 5235-36.
[1472] *Witness A*, T. 1850-51.

infliction of severe pain or suffering. Second, the examples provided show that the direct perpetrators had the intent to inflict such pain or suffering for one of the purposes set out in the definition of torture. Some examples demonstrate that the direct perpetrator intended to obtain information from the victim. Other examples indicate that the direct perpetrator inflicted the pain or suffering with a discriminatory intent towards the victim.

c. Physical violence

786. The Trial Chamber finds that the conditions in which the detainees were forced to live in the camps form part of acts of "physical violence".

787. The Trial Chamber has already established that the detainees in the Omarska, Keraterm, and Trnopolje camps were kept in inhumane conditions[1473] and subjected to physical and verbal assaults.[1474] Apart from the terrible conditions in which the detainees were forced to live, several witnesses testified that, during their detention, on different occasions but especially during the beatings, they were cursed, insulted and called "ustaša", "balija" or "Green Berets". [1475] Many detainees were physically assaulted and beaten in the camps.[1476]

788. In the Omarska camp, for example, Muharem Murselović testified that on one occasion he was beaten in the toilet in the hangar. Some guards broke the door and said: "Oh, you're a balija, a Turk." They started beating him and broke his ribs.[1477]

789. Another significant example of physical violence against non-Serbs was given by Dr. Merdzanic, who, following the attack on Kozarac, had attempted to arrange the evacuation of two injured children, one of whose legs were completely shattered. He was not given permission to do so and was told instead that all the "balija" should die there as they would be killed in any event.[1478]

790. The Trial Chamber concludes that the perpetuation of the inhumane conditions constituting cruel and inhuman treatment of the non-Serb detainees was carried out by the direct perpetrators with the intent to cause serious physical suffering to the victims and to attack their human dignity. The direct perpetrators caused such physical suffering because the victims were non-Serbs. The

[1473] See Section I. E. 2. (a).
[1474] See *Witness R*, T. 4283.
[1475] *Muharem Murselovic*, T. 2737.
[1476] *Nusret Sivać*, T. 6681-82; *Witness K*, 92 *bis* statement, para. 15.
[1477] *Muharem Murselović*, T. 2736-37.
[1478] *Idriz Merdzanic*, T.7737-38.

Trial Chamber is satisfied that these acts of physical violence amount to crimes against humanity.[1479]

d. Rapes and sexual assaults

791. The Trial Chamber finds that acts of rape were committed in the Trnopolje camp. [1480] It now wishes to discuss in detail one concrete case of rape, allegedly committed on Witness Q where the discriminatory intent of the direct perpetrator played an important role. The Trial Chamber is confronted with two opposing versions of the rape: one is Witness Q's own account of the event, the other is the denial by her alleged rapist who was also heard as a witness.

792. Witness Q was arrested around 26 July 1992 and taken to Trnopolje where she stayed until 4 September 1992. After nine days in the camp, she was told that the commander wanted to see her. They took her to Slobodan Kuruzović whom she knew because he had been her brother's teacher. He started interrogating her and then said that she should move to the house where the command was located. She returned to get her children and then moved to the command house where Kurozovic was living.[1481]

793. Witness Q testified that that first night in the house Kuruzović came in wearing sun glasses. He removed his shirt and took out his pistol. He sat down and, wearing only his undershirt, said to her: "Come on, get up and give me a kiss". Witness Q looked down and did not want to comply. He grabbed her face and ordered her to take her clothes off. He said: "I want to see how Muslim women fuck". He stripped naked and told her to do the same. He started ripping her shirt and Witness Q said: "You'd better kill me". He answered: "I'm not going to kill a fine woman like you". She asked him not to do this to her. He kissed her and started biting and hitting her. She screamed and he said: "You are screaming in vain. There is nobody here who can help you". He took out his penis and put it in her mouth and then raped her. She screamed but he said: "It is better that you stay quiet or all the soldiers outside will take their turn". She had no chance to resist him. He raped her and ejaculated into her. Then he left saying: "See you tomorrow". She found some clothes in the house to replace the ones which had been ruined.[1482]

794. He returned the second night and asked: "Who has done this to you". She said "some fool" and he laughed. The second night he cursed her and said: "You know what Muslims are doing to

[1479] See *supra* para. 736.
[1480] See Section I. E. 4. (c).
[1481] *Witness Q*, T. 3959-60.

our women". Showing his knife, he started raping her again. She screamed and grabbed him by the neck so that she almost strangled him. He stabbed her in the left shoulder with the knife and then raped her. He left and said: "See you tomorrow, baby".[1483] Witness Q testified that she is still suffering from the stab wound to her left shoulder and that she cannot hold her hand up for long above her shoulder. [1484]

795. When Kuruzović returned the third day, she begged him to release her brother, who was also in the camp. She wanted to kill herself and have her brother look after the children. The next day, Witness Q's brother was brought in and, when he saw her, he started to cry and said that he knew what had happened to her. [1485] Kuruzović came back the next night. He took off her clothes and pushed her down to the floor. She did not resist. When he raped her that night, she was wracked with pain. Kuruzović came to her on all but two of the nights they were in that house. [1486]

796. This Trial Chamber had some reservations as to the accuracy of Witness Q's testimony because of one detail she mentioned that did not appear very credible: she told the Chamber that, on the first night, Kuruzović ripped her clothes off with a knife and that she had found other clothes in the house to replace the ruined ones. However, she stated that this also happened the following nights. The Chamber finds it difficult to believe that she had so many clothes with her while in detention.

797. When questioned by the Prosecution about the people who were put in the house he used, Slobodan Kuruzović first stated that he did not use it at all except for a few days to watch television when no one was there. He then gave a list of different people who stayed at that house and remembered that there was once a group from Brdo, from Hambarine among whom was a student of his, a girl, accompanied by her mother and some other children.[1487]

798. Asked why out of the thousands of people in the camp he put this girl in the house, he rectified his previous answer and said that she was not a girl but a woman around 30-35 years old, who was staying there with her mother and sisters. He was unable to give any particular reason why he had put her there. He wanted the Trial Chamber to believe that she had asked him for permission to stay there because he had been her teacher. [1488]

[1482] *Witness Q*, T.3965-68.
[1483] *Witness Q*, T. 3968-69.
[1484] *Witness Q*, T. 4067-69.
[1485] *Witness Q*, T.3969-70.
[1486] *Witness Q*, T. 3970-71.
[1487] *Slobodan Kuruzović*, T. 14838.
[1488] *Slobodan Kuruzović*, T. 14839.

799. When shown a photograph of Witness Q, Kuruzović said that he did not remember: "I don't think…this is somebody who is a bit older", was his answer. Asked if she looked like the student he was talking about, but perhaps ten years older, he stated: "She looks a bit heavier. Maybe she has gained some weight". [1489]

800. Slobodan Kuruzović was shown the video-tape of the testimony of Witness Q. After the video was stopped, though cautioned not to do so, he made a long statement without being prompted by any questions. [1490] He protested his innocence and expressed surprise and indignation at being accused of this act. He tried to put the blame on others ("maybe one of the Muslims had done this") or on Witness Q herself ("is she trying to denigrate the Serbian people as such?"…; "she simply seized the opportunity or perhaps in collusion with her brother".) He told the Trial Chamber that he had no need to do something like that because he is a "relatively good-looking man". He went on to say that Witness Q's story was impossible, that everybody around would have known, that she stayed there for a few days, that it would have been impossible for her to leave the camp wounded and injured ("You can't make it disappear in just several days. These are serious injuries"). He insisted that the injuries would have been impossible to hide.

801. After listening to Kuruzović's denial and contradictions, the Trial Chamber did not believe his protestations of innocence. His alleged surprise and indignation were feigned, because he already knew of the accusation as he had been questioned on the subject when interviewed by the Office of the Prosecutor in Banja Luka.

802. Furthermore, his insistence that it would have been impossible to hide the consequences of the rape (Witness Q's injuries) was not consistent with the fact that she was detained in Trnopolje for more than a month (26 July to 4 September 1992) and that no people were allowed access to the house he used as his headquarters. Other allegations he made were simply unconvincing, such as that he was a "relatively good-looking man" and had no need to rape.

803. For a woman, rape is by far the ultimate offense, sometimes even worse than death because it brings shame on her.

[1489] *Slobodan Kuruzović*, T. 14842-43.
[1490] *Slobodan Kuruzović*, T. 14855-57.

804. To tell previously unknown people, such as the Judges, the Counsel of both parties and all others present in the courtroom, is undoubtedly a difficult and stressful effort. No one could have expected Witness Q to be a calm and detached witness.

805. The Trial Chamber has come to the conclusion that her repeated account of the way she was undressed was her way of conveying her resistance to the fact that she was forcibly undressed. As the attack on her dignity was the same nightmare for her every night, Witness Q also attached the details of the first rape to the successive ones. Her testimony is credible and the Trial Chamber considers it proved beyond reasonable doubt that she was repeatedly raped in the Trnopolje camp.

806. The Trial Chamber is therefore convinced that rape based on discriminatory intent was committed also in the Trnopolje camp. The Trial Chamber has already established the commission of other cases of rape and sexual assaults in the Keraterm and Omarska camps.[1491] As discussed above, these crimes were committed with a discriminatory intent.

e. Constant humiliation and degradation

807. The Trial Chamber is satisfied beyond reasonable doubt that thousands of non-Serbs detained in the Omarska, Keraterm and Trnopolje camps were constantly subjected to acts of humiliation and degradation. Apart from the already established terrible conditions in which the detainees were forced to live in the camps, which were themselves humiliating and degrading, several Muslim and Croat witnesses testified that, during their detention, on different occasions, they were forced to show Serbian signs (three fingers) and sing "Chetnik" songs.[1492] These songs were abusing and humiliating to all non-Serb people. [1493] In addition, they were cursed, insulted and called "ustaša", "balija" or "Green Berets". A witness testified that in the Prijedor SUP Building prisoners were regularly threatened and insulted.[1494]

808. The Trial Chamber is satisfied that these acts were committed by the direct perpetrators with the intent to inflict humiliating and degrading treatment upon the victims. The Trial Chamber is also convinced that these acts amount to crimes against humanity.[1495]

f. Destruction and looting of residential and commercial properties

[1491] Section I. E. 4. (a) and (b).
[1492] See Section I. E. 2.
[1493] *Nusret Sivać*, T. 6627-28.
[1494] *Witness R*, T. 4283.
[1495] See *supra* para. 736.

809. The Trial Chamber has already found that many residential and commercial properties were looted and destroyed in the parts of towns, villages and other areas in Prijedor municipality inhabited predominantly by Bosnian Muslims and Bosnian Croats.[1496]

810. The Trial Chamber is convinced that these acts amount to crimes against humanity.[1497]

g. Destruction of or wilful damage to religious and cultural buildings

811. The Trial Chamber has already found that Bosnian Muslim and Bosnian Croat religious buildings were destroyed or wilfully damaged in a number of villages whereas Serb Orthodox churches remained intact.[1498]

812. The Catholic Church in Prijedor, for example, was blown up on 28 August 1992 by a group of soldiers and police.[1499]

813. The Trial Chamber is satisfied that these acts amount to crimes against humanity,[1500] committed by the direct perpetrators with the discriminatory purpose to destroy such non-Serb religious buildings.

h. Deportation and forcible transfer

814. "Deportation" under Article 5(d) of the Statute has already been established beyond reasonable doubt.[1501] The Trial Chamber is convinced that the deportations of non-Serb population from Prijedor municipality took place throughout the period relevant to the Indictment.

815. One example tells of how such deportations took place. The Trial Chamber heard the testimony of Edward Vulliamy, a British journalist, who on 17 August 1992 joined a large convoy of cars, buses and trucks loaded with non-Serbs heading through Banja Luka and Skender Vakuf towards Travnik. The convoy was escorted by armed police and the atmosphere became increasingly violent as they progressed through the hills. He testified: "Everywhere there were trucks and people giving the Serbian salute at our convoy and spitting and shouting. And then we got to a place called Vitovlje, and I can remember the people running across the fields and gardens of the village, shouting a term which [I was told] meant: "Slaughter them, slaughter them." Using a

[1496] Section I. E. 6.
[1497] See *supra* para. 736.
[1498] See Section I. E. 7.
[1499] *Witness AA*, 92 *bis* statement, pp. 3-4. See also *Minka Čehajić*, T. 3102, *Witness H*, 92 *bis* transcript in *Sikirica,* T. 2257, *Beglerbegović*, T. 4142, and *Witness DF*, T. 10099.
[1500] See *supra* para 736.

word – and I don't know, because I don't know the language […] which was supposed to apply to animals not people."[1502]

816. All these deportations were committed by the direct perpetrators with the intent to discriminate against the non-Serbs.

i. Denial of fundamental rights

817. The Trial Chamber observes that the Prosecution alleged an extensive number of persecutory acts which were proved, and which paint a comprehensive picture of persecutions. The Trial Chamber is of the view that the violations of other rights form an integral part of this picture but do not require separate analysis.

(d) Dr. Stakić's *mens rea* for persecution

818. The aforementioned findings lead the Trial Chamber to the conclusion that various crimes such as murder, torture, physical violence, rapes and sexual assaults were committed by the direct perpetrators with a discriminatory intent. What is crucial is that these crimes formed part of a persecutorial campaign headed *inter alia* by Dr. Stakić as (co-)perpetrator behind the direct perpetrators. He is criminally responsible for all the crimes and had a discriminatory intent in relation to all of them, whether committed by the direct perpetrator/actor with a discriminatory intent or not.

819. The Trial Chamber is convinced that there was a persecutorial campaign based on the intent to discriminate against all those who were non-Serb or who did not share the above-mentioned plan to consolidate Serbian control and dominance in the Municipality of Prijedor. The evidence before this Trial Chamber compellingly shows that the victims of these crimes discussed above were non-Serbs, or those affiliated to or sympathising with them. The Trial Chamber holds that this campaign started as of 7 January 1992 with the establishment of the self-proclaimed Assembly of the Serbian People in the Municipality of Prijedor.[1503] The Serbian Assembly's decision of 17 January 1992 to join the Autonomous Region of Krajina ("ARK") reinforced the plan to establish a Serb-dominated and Serb-controlled territory on a municipal level.[1504] The Chamber has already recalled the first of Radovan Karadžić's six strategic goals of the Bosnian Serb leadership in Bosnia and Herzegovina which included separation from "the other two national communities", *i.e.* the

[1501] See Section III. F. 4. (b) and (d).
[1502] *Edward Vulliamy*, T. 7984.
[1503] Exh. SK45.
[1504] Exh. S96; Section III. B. 2. (a) (ii).

Bosnian Muslims and the Bosnian Croats, "a separation of states", a "separation from those who are our enemies", and the preparations and acts to achieve these goals in Prijedor municipality. [1505]

820. The Trial Chamber has previously found that more than 1,500 non-Serbs were killed and many more were arrested and detained by the Serb authorities.

821. In detention facilities, Muslims and Croats almost exclusively were deprived of their liberty.[1506] Detainees were killed, tortured, raped, sexually assaulted, subjected to other forms of physical violence and constant humiliation and degradation. Dr. Stakić himself confirmed that the camps were set up in conformity with a decision of the Prijedor civilian authorities and stated that they "were a necessity in the given moment".[1507]

822. The Trial Chamber has also already established that as the highest representative of the civilian authorities, Dr. Stakić played a crucial role in the coordinated co-operation with the police and army in furtherance of the plan to establish a Serbian municipality in Prijedor.

823. Dr. Stakić was thus one of the main actors in the persecutorial campaign. In an interview in the "Kozarski Vjesnik" on 26 June 1992, for example, the Accused is quoted as saying that "We do not wish to treat the Muslims the way the Muslim extremists have been treating the Serbs in Zenica, Konjic, Travnik, Jajce…and everywhere in Alija's Bosnia where they are the majority population."[1508] The Trial Chamber finds that the statement shows that the Accused was aware of the conditions of life Serbs were subjected to by other ethnical groups in other parts of the former Yugoslavia, whether in detention camps or not. The Trial Chamber has also noted the Accused's statement in the British Channel 4 interview that he was informed about deaths by the "chief of the service […] under whose supervision everything proceeded"[1509], meaning the Chief of the SJB Simo Drljača with whom the Accused met daily. The Trial Chamber can only conclude, therefore, that the Accused was fully aware that mass killings were being committed in the detention camps he himself assisted in setting up, and that the conditions in these camps, of which he was also aware, were likely to result in death, torture and other forms of physical and mental violence of and against the detainees. In this respect, the Trial Chamber emphasises that the established fact that Serbs were detained and mistreated in other parts of the former Yugoslavia is not a defence or justification for Dr. Milomir Stakić's criminal conduct.

[1505] See Section I. C. 1. and Section III. B. 2. (a), (ii).
[1506] See Section I. E. 2. (a).
[1507] See Section III. B. 2. (a) (iii).
[1508] Exh. S83.
[1509] Exh. S187-1.

824. The Trial Chamber further finds beyond reasonable doubt that this also holds true for the mass killings and other persecutorial acts committed by members of the Serb police and military forces during the convoys of detainees organised by the civilian authorities in Prijedor.

825. On 7 August 1992, Dr. Stakić stated: "[…] now we reached a state in which the Serbs alone are drawing the borders of their new State. These borders are once again being drawn with the blood of the best Serbian sons. We have been cheated on several times in history… because our *former friends*, the Croats and Muslims, were our friends only when they needed that friendship in order to justify their historical mistakes. Therefore, *we will not create a common State again*." [1510] At another occasion, Dr. Stakić made the abusive and discriminatory remark that Muslims "[…] were created artificially". [1511]

826. The Trial Chamber is satisfied beyond reasonable doubt that the Accused had the intent to discriminate against non-Serbs or those affiliated or sympathising with them because of their political or religious affiliations in the Prijedor municipality during the relevant time in 1992. The Trial Chamber therefore finds the Accused guilty as a co-perpetrator of the proven acts alleged under persecution, a crime against humanity under Article 5(h) of the Statute. The Trial Chamber reiterates that this criminal responsibility not only encompasses the various acts described above, where the Trial Chamber found also proof of the discriminatory intent of the direct perpetrator, but also the massive scale of all the other acts described above which are covered by the discriminatory intent of the Accused himself.

[1510] Exh. S252 (emphasis added).
[1511] Exh. S187, p. 5.

G. **In Conclusion of Part III: Two Fates**

827. Due to the fact that persecution is the core crime in this case and in conclusion of its findings, the Trial Chamber will now turn to the single fate[1512] of two human beings victims of nearly all the crimes established in this Judgement.

1. The fate of Nermin Karagić

828. Nermin Karagić is a Bosniak. He was not yet 18 years old in the spring and summer of 1992. He was living in Rizvanovici, in the Brđo area, less than 4 km from Hambarine. He did not have much education. He worked with his father in the fields and sold his products at Prijedor market.[1513]

829. His first experience of the war was the incident at Hambarine when he heard shooting at the checkpoint and at night when he heard the ultimatum to hand over Aziz Aliskovic and Sikiric, purported to be the persons responsible for the shooting. The next day at 12.00 when the ultimatum expired, the shelling started from all sides, from the Urije neighbourhood in Prijedor, from the Topic hill and from Karana. Nermin Karagić saw everything.[1514] Shortly after the checkpoint in Hambarine came under attack, an APC opened fire and he took shelter. Then a tank arrived and he saw it open fire and fire 20 shells.[1515]

830. There was a Muslim checkpoint between Rizvanovici and Tukovi. Nermin Karagić was a guard at the checkpoint. He said that there would be about 10 men and only one rifle, an M48, at the checkpoint.[1516] After the attack on Hambarine, Nermin Karagić spent most of the time outside with the patrol in the village. A few times he slept out in the open.[1517]

831. At a date he could not state precisely, in June-July 1992, shelling started at night on Rizvanovici village.[1518] The next day when forces entered Rizvanovici, he was at the quarry in Sljunkura. The soldiers were wearing olive-grey military uniforms. They were shooting and throwing hand grenades. Nermin Karagić ran away and then joined others at a vantage point where

[1512] See *supra* para. 18.
[1513] *Nermin Karagić*, T. 5203.
[1514] *Nermin Karagić*, T. 5290.
[1515] *Nermin Karagić*, T. 5206-07.
[1516] *Nermin Karagić*, T. 5205.
[1517] *Nermin Karagić*, T. 5206.
[1518] *Nermin Karagić*, T. 5291 and T. 5206 .

they were able to see the whole area of Prijedor.[1519] Later, everybody referred to the event as "the cleansing".[1520]

832. After the "cleansing", Nermin Karagić was working and hiding in the basement at his home.[1521] He testified that everyone in the village was Muslim apart from one Croat. There were also refugees from Bosanska Dubica as a result of the war in Croatia. That town had also been shelled and the refugees were all Muslims.[1522]

833. A man he could not identify arrived one day and told those who were hiding that a group had decided to head in the direction of Bihac in an attempt to reach the free territory. 300 or more people left on foot. *Karagić* did not see any women in this group but there were some children. He mentioned that there were 4-5 or 9 rifles in the group.[1523]

834. They went through the woods and over the open hills. They rested in a village called Kalajevo in Prijedor municipality. Then there was shooting and they started to flee. The group broke apart. Nermin Karagić joined a group with his father. They ran into a wood and heard people shouting that they were surrounded. People put their hands up and went out.[1524]

835. They were lined up in a column and Karagić counted 117 of them. Their captors were in JNA and reserve police uniforms. The prisoners were told to empty their pockets. Then the captors fired shots in the air. One prisoner was discovered with a pistol and the captors threatened to cut his throat. The prisoners were lined up in one column and led to the road so that a vehicle could pick them up. One van arrived and made several trips[1525].

836. The prisoners were taken to Miska Glava Dom (cultural club). The secretary of the local commune used to have his office there and the building was used for events and meetings.[1526]

837. The prisoners were locked up in the café. 114 people were put in the room which was about half the size of Courtroom II (*i.e.* 50m^2). They spent two nights and three days in the dom. All their names and dates of birth were listed. In these three days their captors threw in a single loaf of bread and a packet of sweets for everyone to share. The Miska Glava territorial defense was there, in olive-grey JNA uniforms.

[1519] *Nermin Karagić*, T. 5291-92.
[1520] *Nermin Karagić*, T. 5291.
[1521] *Nermin Karagić*, T. 5209.
[1522] *Nermin Karagić*, T. 5209-10.
[1523] *Nermin Karagić*, T. 5211-12.
[1524] *Nermin Karagić*, T. 5213.
[1525] *Nermin Karagić*, T. 5214-15.
[1526] *Nermin Karagić*, T. 5215

838. It was summer and the heat was indescribable. They were thirsty. They were given water but had to "earn" it by singing songs about greater Serbia.[1527] They crouched on a tile floor with their knees cramped against them, chest and arms around their legs.

839. People were taken out all the time and beaten. They would hear banging upstairs. Nermin Karagić's father was beaten outside the building and was black and blue. Nermin Karagić asked his father what he should say if he was taken out and his father answered: "tell them everything you know". For a while, they called people out by name and then just asked for "a volunteer". These people never came back.[1528] Nermin Karagić watched Islam Hopovac, the brother of his sister-in-law, being beaten, being turned round like a "bicycle wheel".[1529]

840. A man came whose son had allegedly been killed in Rizvanovici. He asked for ten volunteers. Another man in an olive-grey uniform and black gloves took out three men. He had a knife and when he came back his knife and gloves were bloodstained. Nermin Karagić got up when the man came to ask for ten volunteers thinking it was better to get it over with. He was ordered to sit down. When the ten men went out they could hear one man being killed right outside the door –it sounded as if his head was being squashed. Twelve men actually left the room, one from Cazin and one from Visegrad. They were refugees. None of these people returned.[1530]

841. After the days in the Dom, there was shelling and the captors panicked. The prisoners were put on buses. Two prisoners went to bury a dead body before joining the bus. The buses went to Ljubija. They passed through the centre of the town but had to keep their heads down. Nevertheless, he said that the streets were teaming with soldiers from the 6th Krajina brigade in camouflage uniforms.[1531]

842. The Ljubija stadium had a wall on one side.[1532] The prisoners were ordered off the buses and received a blow as they ran into the stadium.[1533] They were lined up in two rows.[1534] He remembered that there was a major there, a soldier in an olive-grey uniform and a police officer (member of military police) in a camouflage uniform with a white belt. There was only one person in civilian clothes, a "vojvoda", meaning some kind of leader.[1535]

[1527] *Nermin Karagić*, T. 5220.
[1528] *Nermin Karagić*, T. 5220-21.
[1529] *Nermin Karagić*, T. 5223.
[1530] *Nermin Karagić*, T. 5225.
[1531] *Nermin Karagić*, T. 5226.
[1532] *Nermin Karagić*, T. 5228.
[1533] *Nermin Karagić*, T. 5228.
[1534] *Nermin Karagić*, T. 5230.
[1535] *Nermin Karagić*, T. 5231.

843. The prisoners were ordered to bend forward. They were kicked on the nose between the eyes; there was a stream of blood running across the ground. They stood up and a man, a Croat or Muslim, was brought in and the men in uniform asked him to point out who had been with him in the woods. He pointed to Ismet Avdic and Ferid Kadiric or Kadic, whose son was also killed.[1536] People were singled out and taken to the other side of the fence. The other prisoners were ordered to look away but Nermin Karagić saw the man with the white belt shoot one man in that group three times. The "vojvoda" told him not to shoot anymore as it would attract attention from persons in the town.

844. The children were separated and taken to the dressing room.[1537] The major asked for Mirza Mujadžić – he was looking for wealthy or eminent people. Nermin Karagić heard his father being beaten. They had to put their hands on top of the wall. A man walked over their fingers while forcing them to sing songs about greater Serbia. They were being hit at the same time.[1538]

845. Nermin Karagić felt something hit him on his back and he fell. All the prisoners were being beaten. Nermin Karagić saw the man next to him being killed. He carried the man's headless body later. He thought it was his father because he was wearing a pale blue pullover that he recognised but he is not certain to this day since his father might have lent it to someone.[1539]

846. One prisoner said that his mother was a Serb and he was separated from the others. He is still alive. The prisoners were beaten for several hours. Many people died from the beatings.[1540] The prisoners were ordered to collect the bodies of fellow prisoners and they took them to the back of the bus. Then they were made to board the bus, where he kept his head bowed; another man who raised his head was shot. The soldiers called them "Ustaša".[1541]

847. No military bus was used. Nermin Karagić heard the driver was from Volar.[1542] The prisoners were taken to a place referred to as "Kipe".[1543] Three men were asked to volunteer to get off. They probably unloaded the dead. Then there were bursts of gunfire and they were told to get off the bus 3 by 3.[1544] The bus was full, including the aisle. There were 50 seats. In the end there were only 5-6 prisoners left. A window was smashed. One man jumped out and was killed. Nermin Karagić jumped out while the guard was changing his clip. He ran and fell into a hole about 50-100

[1536] *Nermin Karagić*, T. 5233.
[1537] *Nermin Karagić*, T. 5234.
[1538] *Nermin Karagić*, T. 5235.
[1539] *Nermin Karagić*, T. 5236-38.
[1540] *Nermin Karagić*, T. 5236.
[1541] *Nermin Karagić*, T. 5239.
[1542] *Nermin Karagić*, T. 5241.
[1543] *Nermin Karagić*, T. 5244.
[1544] *Nermin Karagić*, T. 5245.

meters away. Two others ran past. They were part of the last group of 5-6 people. He got out of the hole and ran.[1545]

848. Nermin Karagić kept running and falling. Then he slept or passed out. He was woken by the cold and was very confused. He called out: "Shoot at me. I can't stand it any more".[1546] He ran into the woods and heard someone shout "freeze". He found two Croats in civilian clothes from Briševo who showed him the way to Čarakovo. He ended up in Raljas Suljevica, a big area with many hamlets.[1547] His face was disfigured. One person, a Croat, gave him some food. He wanted to get to Čarakovo and then to Hambarine.[1548]

849. The witness arrived in Rakovicani where there were some survivors and he was given some food, but a soldier in an olive-grey uniform discovered him and pointed a rifle at his head. The soldier killed a dog that was barking.[1549] He asked Nermin Karagić about his injuries and then, with the help of another soldier, took him to the community centre in Rakovicani.[1550] As his two captors were talking about fuel, he told them he had some concealed at his house, hoping he would be able to escape somehow. He was put on a tractor and they went to his house about 1 km away. He was held at gunpoint at all times.[1551]

850. When they were back at the Dom, his belt was taken off, he was beaten and the soldiers held the belt to his throat and tried to strangle him while the commander sat there reading a novel. This man told him that he should call him the commander.[1552] After the beating, they took him to the café Bosna for questioning. A soldier kept pricking him around the kidneys with his knife and telling him: "see how the JNA has food yet you refuse to serve with the JNA". The commander asked him to be a grave-digger. He was taken behind Smail Karagić's house where there were two bodies and six others nearby, including females. He dug the grave.[1553] He had to beg for water. One soldier shot around his feet making him dance. Karagić told him to aim at the spade, which he did and fired a whole burst of gunfire. Nermin Karagić untied the corpses and pulled them into the grave.[1554] Someone had been cutting wood for a stake and threatened and hit him. The commander tripped Karagić who used the opportunity to run away. They threw a grenade after him which exploded, injuring his arm and ear. He ran to the edge of the wood and threw himself into a ditch.

[1545] *Nermin Karagić*, T. 5246-47.
[1546] *Nermin Karagić*, T. 5250.
[1547] *Nermin Karagić*, T. 5251.
[1548] *Nermin Karagić*, T. 5252-53.
[1549] *Nermin Karagić*, T. 5254
[1550] *Nermin Karagić*, T. 5254.
[1551] *Nermin Karagić*, T. 5258-59.
[1552] *Nermin Karagić*, T. 5261.
[1553] *Nermin Karagić*, T. 5263.
[1554] *Nermin Karagić*, T. 5265.

The men ran past. He escaped in the opposite direction and found an isolated house but did not dare to stay there. He was spotted again once and they opened fire –this time tracer bullets- but he escaped again.[1555]

851. He was on the run for several days. He felt the soldiers were looking for him in forest and hid up a tree.[1556] After crawling across a cemetery, Nermin Karagić found a hole that he and his brother had dug before the cleansing and cried for the first time when he saw nobody was left. He set off in the direction the group had taken initially after the cleansing and found his brother with a group of people. They stayed together until 21 August.[1557]

852. Nermin Karagić was told that a convoy had gone through Travnik and that all had gone well. He joined a convoy on 21 August 1992 in Tukovi. There were many people in all kinds of uniforms on the way to Tukovi, but he was not stopped.[1558] In Tukovi they got a trailer truck. He was hit with a rifle but then was hidden by some of the women. They made many stops to pick people up. The driver ordered his brother to ask everyone to hand over their money. Later, they asked for all valuables. They arrived in a village and some people were taken off. They then arrived in Smetovi. Nermin Karagić and his brother were asked to carry someone on a stretcher. This person had been at Keraterm and his body was emaciated.[1559]

853. Nermin Karagić also testified about the destruction of the mosque in Hambarine and the Rajkovac mosque when the cleansing started. He mentioned killings that he heard about in other villages: some people had been taken off a bus to Dubica; one of his uncles was killed in Duratovici and a man told him there were not many survivors in that village. Another uncle was killed behind Munib Karagić's house.[1560] There were 20-30 bodies outside Ferid's shop.[1561] When he was on the run, Nermin Karagić saw bodies in Vodicno. They were all civilians.[1562]

854. After his arrival in Smetovi, Nermin Karagić served in the army of BiH for two months, then left for Croatia.[1563] One and a half year later, exhumed bodies were taken to Sanski Most where Nermin Karagić identified his father, Islam Hopovac and the body with one eye hanging out.

[1555] *Nermin Karagić*, T. 5267.
[1556] *Nermin Karagić*, T. 5268.
[1557] *Nermin Karagić*, T. 5268.
[1558] *Nermin Karagić*, T. 5271.
[1559] *Nermin Karagić*, T. 5274-75.
[1560] *Nermin Karagić*, T. 5294.
[1561] *Nermin Karagić*, T. 5294.
[1562] *Nermin Karagić*, T. 5253-54.
[1563] *Nermin Karagić*, T. 5275.

His father's identification was confirmed by DNA analysis.[1564] Besides his father, Nermin Karagić lost 2 uncles, 3 cousins on his father's side and 2 of his mother's brother's cousins.[1565]

855. Nermin Karagić is clearly still suffering from the trauma of his experiences. He may confuse some incidents but the core of his story is clear. He was subjected to torture, serious physical violence, mistreatment, imprisonment, beatings and was hunted like a wild animal when he managed to escape. He witnessed the destruction of his village and other hamlets and villages in the area. He could see the destruction of the religious buildings related to his faith. He was told that all previous Muslim villages were now Serbian. He was subjected to degrading and humiliating acts and saw several people being killed.

856. Although he knew that one of the bodies he carried was his father's, he did not want to realize this ("he might have lent [his pullover] to someone").

857. Nermin Karagić was merely a teen-ager in 1992. He was a simple peasant boy working and living with his family who never imagined that he was to go through such an ordeal. His suffering marked him badly.

858. He never met Dr. Stakić and Dr. Stakić probably never heard about him until his appearance at trial. But it is clear for this Trial Chamber that Karagić, and others like him, were the victims of the rampant persecutions in the Prijedor municipality since the Serb takeover on 30 April 1992 and the crimes that followed thereof. As one of the co-perpetrators of that policy aiming at achieving a "pure Serb" municipality, Dr. Stakić must be held accountable for Nermin Karagić's tragic fate.

2. The fate of Witness X

859. In 1992, Witness X was a 22-year old young man from Bišcani, a predominantly Muslim village in the Brdo area, a little north of Hambarine and the Kurevo Woods, where Witness X lived together with his parents and a sister.

860. Though he had been a member of the communist Party, to which he was admitted while doing his mandatory military service, he was never active in politics and did not become a member of one of the nationalist parties created in the 1990s because he was brought up believing there were no differences between all the ethnicities in his country.[1566]

[1564] *Nermin Karagić*, T. 5249.
[1565] *Nermin Karagić*, T. 5277.
[1566] *Witness X,* T. 6996.

861. On 20 July 1992, the ethnic cleansing of the Brdo area began.[1567] Soldiers came into the village and ordered all the men in Bišcani to gather at a coffee bar on the road to Prijedor. Witness X and his father complied with this order. While at the coffee bar, he saw the soldiers cleansing and looting the village, torturing and beating the detainees, killing some of them. Witness X mentioned the names of five men killed.[1568]

862. At one point in time, an Autotransport bus from Prijedor stopped in front of the coffee bar and all the detainees were ordered to board it. They were driven to the town of Prijedor where they changed to another bus and were transported first to Omarska and then on to Trnopolje.[1569] On the way, Witness X could see dead people along the road and houses burning in the villages and hamlets.[1570] He testified that nobody went [to Trnopolje] of his own free will. The soldiers carrying out the cleansing were the ones who decided their destination.

863. Witness X described the conditions of the camp, which were awful. The detainees could not wash and the toilets were dreadful. It was hot, there were swarms of flies, and garbage was spilled all over the camp. There was a great deal of illness because of the unhealthy conditions.[1571] When Omarska camp was closed, all the people were transferred to Trnopolje.[1572]

864. On 21 August 1992, four buses were loaded with detainees in Trnopolje scheduled purportedly for exchange in Travnik. The buses were joined later by another four coming from Tukovi. They were escorted by eight lorries, one repair vehicle and police vehicles from Prijedor.[1573] The road into and up the mountains was very difficult and the convoy made slow progress until it arrived at a place where there was a huge gorge or ditch between a road and a hill.[1574] On the order of the policeman commanding the escort, the buses stopped and the men in two of these vehicles were ordered to get out and walk to the edge of the gorge. They were made to kneel there facing the abyss, and the commander, allegedly Dragan Mrđa, said: "Here we exchange the dead for the dead".[1575]

865. Witness X's father, kneeling beside him, pushed him into the gorge when the shooting started. He lost consciousness and, when he recovered, could see many corpses scattered down the gorge and a few uniformed men firing at pointblank range at some of the people who were still

[1567] *Witness X*, T. 6859.
[1568] *Witness X*, T. 6860-63.
[1569] *Witness X*, T. 6865-66.
[1570] *Witness X*, T. 6865.
[1571] *Witness X*, T. 6876.
[1572] *Witness X*, T. 6883.
[1573] *Witness X*, T. 6896.
[1574] *Witness X*, T. 6905.
[1575] *Witness X*, T. 6902-05.

alive. He cannot explain why he was not killed. In any case his situation was very bad because he had a broken ankle[1576] and could not walk. Another survivor he encountered some time later tried to help him to move by hopping on one leg, but he was very weak and could not manage to do so.

866. When alone again, he tried to cross the river by crawling since the water was so low he could not float downstream. He tried to get as far as he could from the execution site in this awful condition. This lasted all Saturday and Sunday. He slept at an old mill where he was found by some soldiers in olive drab uniforms who helped him and took him to Skender Vakuf where he was given first aid for his wounds.[1577] He was then transferred to a hospital in Banja Luka where his leg was amputated 15 centimeters below the knee.[1578] As a prisoner, he suffered beatings and torture.[1579]

867. This young man whose ordeal has been briefly described came back to his home town some years after the war. He found his old house destroyed: no doors, no windows, no ceiling, with marks of having been set on fire.[1580] He could not finish his studies. The worst part of his loss relate to his father. He said: "I never saw my father again either dead or alive…I loved him and respected him. And he disappeared…I would feel better if I could find out one day where his remains are so that I could erect a monument for gratitude simply".[1581]

868. Witness X is now married with two children. He lost part of a leg, his youth and his career. He had to live as an exiled person, trying to fit into a different environment; but the above quoted sentence summaries the hardest task for all the survivors: they cannot forget the missing and the dead.

H. **Cumulative Convictions**

869. The question whether and in which circumstances multiple convictions against an accused may be entered under separate heads of liability based on the same underlying conduct ("cumulative convictions") has been addressed in several decisions of the Tribunal, including in particular the *Čelebići* Appeal Judgement and the *Kunerac* Appeal Judgement. Cumulative convictions are permissible only if each relevant statutory provision has a materially distinct

[1576] *Witness X*, T. 6907.
[1577] *Witness X*, T. 6911-17.
[1578] *Witness X*, T. 6918.
[1579] *Witness X*, T. 6918-19.
[1580] *Witness X*, T. 6888.
[1581] *Witness X*, T. 6928.

element not contained in the other.[1582] An element is materially distinct from another if it requires proof of a fact not required by the other.[1583] Where this test of material distinctness is not met, a conviction under the more specific provision should be upheld.[1584] The legal prerequisites describing the circumstances of the relevant offences as stated in the *chapeau* of the relevant Articles of the Statute constitute elements for the purpose of applying this test.[1585]

870. While this Chamber feels bound by the decisions of the Appeals Chamber, it favours the further limitation of cumulative convictions. The guiding principle in these circumstances would be for the Chamber, in the exercise of its discretion, to convict only in relation to the crime that most closely and most comprehensively reflects the totality of the accused's criminal conduct.

871. The legal analysis that follows is separate from the question of sentencing. When finally determining the sentence, the Chamber will, wherever appropriate, take into account the fact that Dr. Milomir Stakić's individual criminal liability on different charges is based on the same underlying conduct.

872. As stated above, the individual criminal responsibility of Dr. Milomir Stakić has been established in relation to the following charges:

- Murder as a violation of the laws or customs of war under Article 3 (Count 5)
- Murder as a crime against humanity (Count 3)
- Extermination (Count 4)
- Persecution as a crime against humanity committed by acts of (i) murder, (ii) torture, (iii) physical violence, (iv) rapes and sexual assaults, (v) constant humiliation and degradation, (vi) destruction, wilful damage and looting of residential and commercial properties, (vii) destruction of, or wilful damage to, religious and cultural buildings, and (viii) deportation (Count 6)
- Deportation (Count 7)

873. Considering that the Chamber's findings of individual criminal responsibility in relation to certain of these charges are based on the same underlying facts, namely killings and forcible displacement of the population, it is now for the Trial Chamber to evaluate whether cumulative charges are permissible under the test set out in paragraph 869 above.

[1582] The Appeals Chamber first articulated the applicable test in the *Čelebići* case and this approach was subsequently accepted by the Appeals Chamber in the *Kunarac* case. See *Čelebići* Appeal Judgement, para. 412 and *Kunarac* Appeal Judgement, para. 168.
[1583] *Čelebići* Appeal Judgement, para. 412 and *Kunarac* Appeal Judgement, para. 168.
[1584] *Čelebići* Appeal Judgement, para. 413 and *Kunarac* Appeal Judgement, para. 168.
[1585] *Kunarac* Appeal Judgement, para. 177.

(a) Crimes under Articles 3 and 5 of the Statute

874. In relation to crimes under Article 3 and crimes under Article 5 of the Statute, the Chamber observes that Article 3 requires a close link between the acts of the accused and the armed conflict, while Article 5 requires that the acts occurred as part of widespread or systematic attack directed against a civilian population. Therefore the test of material distinctness is met and cumulative convictions may be entered on counts under Articles 3 and 5 of the Statute. Indeed, the Appeals Chamber in the *Kunarac* case recently affirmed that convictions for the same conduct under Article 3 of the Statute and Article 5 of the Statute are permissible,[1586] believing that the Security Council intended that convictions for the same conduct constituting distinct offences under several of the Articles of the Statute be entered.[1587]

(b) Murder under Article 3 and murder under Article 5 of the Statute

875. On the basis of the foregoing discussion, the Trial Chamber finds that convictions both for murder under Article 3 of the Statute (Count 5) and murder under Article 5 (Count 3) are in principle permissible.

(c) Extermination and murder under Article 5 of the Statute

876. The primary distinction between the crime of extermination and the crime of murder under Article 5 of the Statute is the scale on which the killings were committed. While even a single killing, committed as part of a widespread or systematic attack directed against a civilian population may be characterised as the crime against humanity of murder, the crime of extermination requires proof that a large number of individuals were killed (although there is no absolute minimum requirement). Moreover, extermination requires the intent to annihilate a mass of people. As the Trial Chamber in *Rutaganda* observed, while murder is the killing of one or more individuals, extermination is a crime which is directed against a group of individuals.[1588] The distinction is therefore between killings directed against an aggregation of individuals and killings directed against singled out and separately identifiable individuals. In the *Akayesu* Trial Judgement a series of murder charges in relation to named persons were held collectively to constitute extermination and Akayesu was convicted of both murder and extermination.[1589] These convictions were upheld on appeal.[1590] In *Rutaganda*, on the other hand, the Trial Chamber found that the allegation forming the basis of the murder charge was itself an allegation of extermination as it related to

[1586] *Kunarac* Appeal Judgement, para. 176. See also *Krstic* Trial Judgement, para. 674.
[1587] *Kunarac* Appeal Judgement, para. 178.
[1588] *Rutaganda* Trial Judgement, para. 422.
[1589] *Akayesu* Trial Judgement, para. 744. See also paras 469-470.
[1590] *Akayesu* Appeal Judgement, Disposition.

killings directed at a group of individuals, hence cumulative convictions were not permitted.[1591] This issue was not raised on appeal.

877. The Indictment against Dr. Stakić sets forth a series of allegations of killings that also form the basis for the charge of extermination. A large number of persons alleged by the Prosecution to be victims of killings are identified in an Annex to the Indictment, while a final list of individual victims of killings identified in the evidence is attached to this Judgement.[1592] Consequently, this Trial Chamber takes the view that in order to reflect the totality of the accused's culpable conduct directed both at individual victims and at groups of victims on a large scale, it is in principle permissible to enter convictions both for extermination and murder under Article 5.

(d) Extermination under Article 5 and murder under Article 3 of the Statute

878. For the reasons given in the preceding paragraphs, the Trial Chamber finds that it is appropriate to enter convictions for both extermination under Article 5 and murder under Article 3 of the Statute.

(e) Persecution and other crimes under Article 5 of the Statute

879. Where the same facts underlie charges of persecution under Article 5 of the Statute, and a crime against humanity, other than persecution, listed in Article 5 of the Statute, persecution will always be the more specific of these crimes as it requires proof of an additional element not required by the other crimes listed in Article 5, namely proof of discriminatory intent.[1593] Thus, in relation to cumulative charges of persecution and crimes other than persecution listed under Article 5, the test for permissible cumulative convictions is not met. Where the elements of persecution have been proven, a conviction should be entered for persecution only.

880. This Chamber considers that the core crime committed in this case was persecution. Indeed, the Chamber considers that the criminal conduct is most appropriately characterised by persecutory acts (Count 6), *inter alia,* the listed crimes of:

- Murder (Count 3)
- Deportation (Count 7)
- Rape, and
- Torture

[1591] *Rutaganda* Trial Judgement, para. 424.
[1592] See section VII below.
[1593] See Section III. F. 5. (a) (ii) (b.).

881. Based on the foregoing considerations, the Chamber will not enter separate convictions for the crimes of murder and deportation under Article 5, charged separately in Counts 3 and 7, respectively. Rather it will convict only on the charge of persecution, committed by acts of: (i) murder,[1594] (ii) torture, (iii) physical violence, (iv) rape and sexual assault (v) constant humiliation and degradation, (vi) destruction, wilful damage and looting of residential and commercial properties, (vii) destruction of, or wilful damage to, religious and cultural buildings and (viii) deportation.

(f) Conclusions

882. The Trial Chamber therefore enters convictions for the crimes of murder under Article 3 of the Statute (Count 5), extermination under Article 5 of the Statute (Count 4), and persecution under Article 5 of the Statute (Count 6), committed by the acts of[1595] (1) murder (Count 3), (2) torture, physical violence, rape, sexual assault, constant humiliation and degradation, destruction, wilful damage and looting of residential and commercial properties and destruction of, or wilful damage to, religious and cultural buildings and (3) deportation (Count 7).

883. In view of the fact that Counts 3 and 7 form part of the conviction under Count 6, the Trial Chamber does not deem it possible to enter an acquittal on those included counts.

[1594] *A fortiori*, where it is permissible to enter convictions under Articles 3 and 5 of the Statute for murder, it is appropriate to convict for murder as an act under the *chapeau* of persecution.
[1595] Following the order of paragraph 54 of the Indictment.

IV. SENTENCING

A. Applicable Law

1. ICTY Statute and Rules of Procedure and Evidence

884. Neither the Statute nor the Rules of Procedure and Evidence of the Tribunal specify the penalties for offences under the Tribunal's jurisdiction. Determination of the appropriate sentence is left to the discretion of the Trial Chamber although guidance as to which factors should be taken into account is provided by both the Statute and the Rules.

885. Article 24 of the Statute provides:

> 1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia
>
> 2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

886. Rule 101 of the Rules of Procedure and Evidence further states:

> (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;
>
> (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;

2. General Sentencing Practice in the Former Yugoslavia

887. It is settled jurisprudence of this Tribunal that the Trial Chamber, in accordance with Article 24(1) and Rule 101(B)(iii), is obliged to take into account the sentencing practice of the former SFRY as guidance in sentencing. This practice will accordingly be considered, although in itself it is not binding.[1596]

[1596] *Čelebići* Appeal Judgement, para. 818*; Kunarac* Appeal Judgement, paras 347-349.

888. The relevant provisions of national law in force at the time of the commission of the offences are to be found in the Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY Criminal Code).[1597]

889. Chapter sixteen of the SFRY Criminal Code penalised criminal acts against humanity and international law, with Article 142(1) giving effect to Geneva Convention IV[1598] and the two Additional Protocols.[1599] There was no provision specifically penalising crimes against humanity although genocide as a specific crime against humanity was dealt with under Article 141. Each of these offences was to be punished by not less than five years' imprisonment or the death penalty. Alternatively, the Court had the discretion to impose a term of 20 years imprisonment instead of the death penalty.[1600]

890. The maximum sentence that may be imposed by the Tribunal is life imprisonment.[1601] Both the United Nations and the Council of Europe, as well as other international bodies, have been working towards total abolition of the death penalty. In 1989, the second optional Protocol to the CCPR aiming at the abolition of the death penalty was adopted by the UN General Assembly.[1602] The Council of Europe requires all countries seeking membership to place a moratorium on the death penalty, effectively meaning that in Europe it has almost been completely abolished.[1603] For this reason the death penalty can no longer be imposed in states of the former Yugoslavia[1604] and has been replaced by the maximum penalty of life imprisonment except where a lower maximum is specified. Where a penalty becomes more lenient, the more lenient version must be applied. This means that if the SFRY Criminal Code were applied today, the maximum penalty would be life imprisonment. The Trial Chamber notes that in many countries the possibility of a review of a life sentence exists under certain conditions.[1605]

[1597] The Criminal Code of the Socialist Federal Republic of Yugoslavia, adopted by the SFRY Assembly at the session of the Federal Council held on 28 September 1976, published in the Official Gazette SFRY no. 44 of 8 October 1976, took effect on 1 July 1977 ("SFRY Criminal Code").
[1598] Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949.
[1599] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), 8 June 1997 and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II), 8 June 1997.
[1600] Article 34 and Article 38 SFRY Criminal Code.
[1601] Rule 101(A)
[1602] Adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989.
[1603] See Protocol No. 6 to the European Convention on Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, of 28 April 1983, ETS No. 144. Council of Europe resolution 1044 (1994) obliges all new member States to sign and ratify Protocol 6 and introduce a moratorium on executions.
[1604] *E.g.* Bosnia and Herzegovina and Serbia and Montenegro became members of the Council of Europe on 24 April 2002 and 3 April 2003 respectively. Protocol No. 6 entered into force for Bosnia and Herzegovina on 1 August 2002.
[1605] See *e.g.* Article 13 of the "Codigo Penal de la Republica Argentina", Libro Primero ,"Disposiciones Generales", Titulo II "De las penas" which reads in its relevant parts (unofficial translation): " A person sentenced to life imprisonment who has served 20 years of the sentencing... having complied regularly with the rules of the prison, can

B. **Arguments of the Parties**

(a) The Prosecution

891. The Prosecution submits that while the Trial Chamber is not obliged to consider national laws relating to sentencing, there are some underlying sentencing principles shared among several common and civil law countries thereby constituting "general principles of law recognised by civilised nations" set out in Article 38 of the Statute of the International Court of Justice.[1606] In particular, the principles enumerated by the Prosecution are retribution and deterrence, the gravity of the crime, and aggravating and mitigating circumstances.[1607] The Prosecution argues further that a third objective in sentencing at the Tribunal is the restoration of peace and security in Bosnia and Herzegovina in that:

> this Tribunal can make a significant contribution to the process of reconciliation by imposing just punishment on those officials most responsible for the atrocities. In providing true justice to the victims on all sides, the work of this institution can help break the cycle of revenge and retribution and contribute to the restoration of peace.[1608]

892. Following the Appeals Chamber Judgements in *Čelebići* and *Aleksovski*, the Prosecution submits that the gravity of the crime is the "primary consideration" in determining a sentence.[1609] It opines that the particular gravity of the crimes warrants a particularly severe penalty.[1610]

893. The Prosecution asserts that the gravity of the crimes charged is reflected in the harm and suffering caused to the victims including their number, "status", the social and economic consequences for the targeted group, and the duration and recurrence of the crimes. In addition, the "unique and pivotal role [of Dr. Stakić] in co-ordinating the campaign of ethnic cleansing carried out by the military, police and civilian government in Prijedor"[1611] is stressed.

894. The Prosecution argues that the only mitigating factor which the Trial Chamber is *obliged* to take into account is "substantial co-operation with the Prosecutor" as stated in Rule 101(B)(ii) and that, in this case, there has been no such co-operation. It contends that there are no other mitigating

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obtain his/her freedom by means of a judicial decision, after a report from the prison authorities and under the following conditions"... Section 57a of the German Strafgesetzbuch (StGB) reads in its relevant parts (unofficial translation): "Suspension of the Remainder of a Punishment of Imprisonment for Life: (1) The court shall suspend execution of the remainder of a punishment of imprisonment for life and grant probation, if:1. fifteen years of the punishment have been served; 2. the particular gravity of the convicted person's guilt does not require its continued execution."

[1606] Prosecution Final Brief, para 412.
[1607] Prosecution Final Brief, paras 413-419.
[1608] Prosecution Final Brief, para 429.
[1609] Prosecution Final Brief, para 430.
[1610] Prosecution Final Brief, paras 431-432.
[1611] Prosecution Final Brief, para 434.

factors in this case.[1612] As regards aggravating factors, the Prosecution proposes several factors which will be evaluated below.[1613]

895. The Prosecution recommends a sentence of life imprisonment "in order to give due consideration to the victims of these crimes and to make clear the determination of the international community to deter ethnic cleansing".[1614]

(b) The Defence

896. The Defence unequivocally submits that the Trial Chamber should enter an acquittal for Dr. Milomir Stakić because this will serve the goal of deterrence both generally and specifically and because when Dr. Stakić returns to Bosnia and Herzegovina, he will be a productive law-abiding citizen and loving and responsible parent like before the war.[1615] Nevertheless, the Defence does put forward arguments in relation to sentencing in the event that the Trial Chamber should convict.[1616]

897. Following Tribunal jurisprudence, the Defence deems deterrence and retribution to be the primary principles underlying sentencing. The relevant provisions in the Statute, Rules and SFRY Criminal Code are further highlighted and it points out that in order to determine the gravity of the offence it is necessary to consider "the particular circumstances of the case, as well as the form and degree of the participation of the accused".[1617]

898. The Defence proposes several factors in mitigation of sentence which the Trial Chamber will evaluate and consider below.

C. **Discussion**

1. General Considerations

899. The individual guilt of an accused limits the range of the sentence. Other goals and functions of a sentence can only influence the range within the limits defined by the individual guilt.

900. Within this framework it is universally accepted and reflected in judgements of this Tribunal and the Rwanda Tribunal that deterrence and retribution are general factors to be taken into account

[1612] Prosecution Final Brief, paras 438-439 (emphasis in the original).
[1613] Prosecution Final Brief, paras 440-452.
[1614] Prosecution Final Brief, para. 457.
[1615] Defence Final Brief, para. 669.
[1616] Defence Final Brief, para. 629.
[1617] Defence Final Brief, paras 630-632.

when imposing sentence.[1618] Individual and general deterrence has a paramount function and serves as an important goal of sentencing. An equally important goal is retribution, not to fulfil a desire for revenge but to express the outrage of the international community at heinous crimes like those before this Tribunal.[1619]

901. The Trial Chamber recalls that the International Tribunal was set up to counteract impunity and to ensure a fair trial for the alleged perpetrators of crimes falling within its jurisdiction. The Tribunal was established under Chapter VII of the United Nations Charter on the basis of the understanding that the search for the truth is an inalienable pre-requisite for peace. The Tribunal is mandated to determine the appropriate penalty, often in respect of persons who would never have expected to stand trial. While one goal of sentencing is the implementation of the principle of equality before the law, another is to prevent persons who find themselves in similar situations in the future from committing crimes. Therefore, general deterrence is substantially relevant to the case before this Chamber.

902. In the context of combating international crimes, deterrence refers to the attempt to integrate or to reintegrate those persons who believe themselves to be beyond the reach of international criminal law. Such persons must be warned that they have to respect the fundamental global norms of substantive criminal law or face not only prosecution but also sanctions imposed by international tribunals. In modern criminal law this approach to general deterrence is more accurately described as deterrence aiming at reintegrating potential perpetrators into the global society.[1620]

903. The sentence must reflect the gravity of the criminal conduct of the accused. This requires consideration of the underlying crimes as well as the form and degree of the participation of the individual accused.[1621]

904. The Trial Chamber recalls that if a particular circumstance is included as an element of the offence under consideration, it cannot be regarded also as an aggravating factor since each circumstance may only justly be considered once. For example, a discriminatory state of mind cannot be an aggravating factor for persecutions because it is an element of the crime itself. The Trial Chamber notes in this context that acts of torture are charged as acts of persecutions. In such cases the fact that the direct perpetrator inflicted the pain or suffering with a discriminatory intent

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[1618] *Aleksovski* Appeal Judgement, para. 185; *Čelebići* Appeal Judgement, para. 806
[1619] *Aleksovski* Appeal Judgement, para. 185.
[1620] *Integrationsprävention*, see German Constitutional Court, BVerfGE 90, 145 (173); BVerfGE 45, 187 (255f). *See also Radke* in Münchner Kommentar, Strafgesetzbuch, Vol. 1, §§1-51 (München, 2003).
[1621] *Kupreškić* Trial Judgement, para. 852, endorsed by the Appeals Chamber in *Aleksovski,* para. 182. See also *Furundzija* Appeal Judgement, para. 249 and *Čelebići* Trial Judgement, para. 1225, the gravity of the offence is "by far the most important consideration, which may be regarded as the litmus test for the appropriate sentence."

towards the victim can not serve as an additional factor in sentencing as it is an element of the crimes of both torture if based on discrimination, and persecutions.

2. Individual Circumstances of the Case

(a) The role of the Accused

905. Dr. Stakić was initially indicted with Milan Kovačević and Simo Drljaća, both of whom have since died. It must be stressed that the Trial Chamber will sentence only according to the specific and individual role of the Accused in the commission of the offences and the possible responsibility of deceased co-indictees will not influence the sentence to be pronounced against Dr. Stakić.

906. Dr. Stakić played a unique pivotal role in co-ordinating the persecutory campaign carried out by the military, police and civilian government in Prijedor. Without repeating all that has already been set out in this Judgement, the Trial Chamber recalls in this context that Dr. Stakić had a significant role in planning and co-ordinating the forcible takeover of power on 30 April 1992, set the agenda for and presided over meetings of the Crisis Staff, and took part in ordering attacks against non-Serbs. Together with his co-perpetrators, Dr. Stakić established the Omarska, Keraterm and Trnopolje camps and arranged for the removal from Prijedor municipality of those non-Serbs whose lives were to be spared. Such a wide-scale, complex and brutal persecutory campaign could never have been achieved without the essential contribution of leading politicians such as Dr. Stakić. It is vital that those responsible be held accountable for the consequences of their actions and the Trial Chamber takes notice of this factor when determining the appropriate sentence.

907. The Trial Chamber regards the acts of persecutions and extermination as the heart of the criminal conduct of Dr. Stakić. Persecutions constitutes inherently a very grave crime because of its distinctive feature of discriminatory intent. All the constitutive acts of the persecutorial campaign are serious in themselves and the Trial Chamber has taken into account their scale and cumulative effect within the Municipality of Prijedor where, more than 1,500 people were killed[1622] and tens of thousands deported.[1623]

908. The large number of killings has in part been covered by the convictions for extermination and persecutions and the Trial Chamber takes into account the fact that Dr. Stakić's individual criminal responsibility for murder under Article 3 and Article 5 (as an act of persecution) and extermination is based on the same underlying conduct.

[1622] See *supra* Section I. 5.
[1623] See *supra* Section I. 9.

909. When Dr. Stakić acted, he almost certainly never believed he would one day stand trial, be convicted and sentenced. In cases such as this one, dealing with the head of a municipality, general deterrence becomes substantially relevant.

(b) The Victims

910. The gravity of the crimes committed by Dr. Stakić is reflected in the tragic extent of the harm and suffering caused to the victims of the criminal campaign. The factors to be considered are the number of victims, the physical and mental trauma suffered by the survivors, and the social and economic consequences of the campaign for the targeted non-Serb group that comprised citizens of the Municipality of Prijedor for whom Dr. Stakić had a special responsibility.

3. Aggravating Circumstances

911. It has been established that only those circumstances directly related to the commission of the offence charged may be seen as aggravating.[1624]

912. The Trial Chamber considers that the primary aggravating factor in this case is the superior positions held by Dr. Milomir Stakić. While the sentencing provisions of Article 24 and Rule 101 do not make a distinction between responsibility under Articles 7(1) and 7(3) of the Statute, the Trial Chamber reiterates that in cases where the factual circumstances are such that a Trial Chamber could reasonably find that specific acts *could* satisfy the requirements of both Articles, if a conviction is entered under Article 7(1) only, the accused's position as a superior, when proved beyond reasonable doubt, must be taken into account as an aggravating factor.[1625] However, the aggravating effect is identical whether the accused is found to have fulfilled the requirements for responsibility under Article 7(3) or is simply proved to have held superior positions.

913. It is indisputable that as President of the Prijedor Municipal Assembly, the Prijedor Municipal People's Defence Council, the SDS Crisis Staff of Prijedor Municipality, and the Prijedor Municipal Crisis Staff, Dr. Stakić held a high position within the Municipality and was a figure of the greatest authority. The commission of offences by a person in such a prominent position aggravates the sentence substantially.

914. The Trial Chamber regards the fact that Dr. Stakić has been found responsible for planning and ordering, in addition to committing, the crime of deportation as a second aggravating factor in accordance with its legal analysis of modes of liability under Article 7(1) in paragraph 712 above.

[1624] *Kunarac* Trial Judgement, para. 850
[1625] See also *Čelebići* Appeal Judgement, para. 745. See *supra* para. 465.

915. The Trial Chamber in *Ntakirutimana* held in respect of Gérard Ntakirutimana, that "[i]t is particularly egregious that, as a medical doctor, he took lives instead of saving them. He is accordingly found to have abused the trust placed in him in committing the crimes of which he was found guilty.[1626]" Similarly in *Kayishema and Ruzindana*, it was found to be an aggravating circumstance that Kayishema was an educated medical doctor who betrayed the ethical duty that he owed to his community.[1627] The Trial Chamber follows the approach taken by the Rwanda Tribunal in considering the professional background of Dr. Milomir Stakić as a physician to be an aggravating factor, albeit not a significant one.

916. The Trial Chamber considers Dr. Stakić's unwillingness to assist certain individuals who approached him in times of need or indeed desperation to be an aggravating factor. For example, Dr. Minka Čehajić tried to contact Dr. Stakić twice in an effort to discover the whereabouts of her husband, Professor Muhamed Čehajić. She spoke to a secretary the first time in June 1992 and was told that Dr. Stakić was in the Crisis Staff and could not be reached. On the second occasion she was again told that Dr. Stakić was not there.[1628] Minka Čehaijić attempted to contact Dr. Stakić and Milan Kovačević rather than the police or military as she thought the mayor was in charge of the citizens and that Dr. Stakić would know what had happened to his predecessor.[1629] The Trial Chamber is convinced that Dr. Stakić knew about these attempts by Dr. Čehajić. Witness Z also turned to her colleague Dr. Stakić, knowing that he was an influential man, for assistance in obtaining a certificate stating that she was leaving Prijedor only temporarily. She met Dr. Stakić somewhere between late June and 15 July 1992 in his office at the municipality building.[1630] Dr. Stakić told her to go to the SUP to get the certificate like everybody else despite observing the queues outside the SUP building from his window.[1631] She was astonished that he appeared not to understand what was happening and realised that her meeting with him was to no avail.[1632] As a result of his conversations with Vojo Kupresanin and Bishop Komarica, Ivo Atlija went to the Prijedor Municipality building together with two other persons and asked to see Dr. Stakić with whom they had an appointment.[1633] Dr. Stakić told Atlija and the others that he could only help by arranging for them not to sleep in forests and destroyed houses but that as far as leaving Prijedor was concerned, he could do nothing because of accusations he faced of "ethnic cleansing".[1634]

[1626] *Prosecutor v Elizaphan and Gérard Ntakirutimana*, Case No. ICTR-96-10-T & ICTR-96-17-T, Judgement and Sentence, 21 February 2003, para. 910.
[1627] *Kayishema and Ruzindana* Sentencing Judgement, para 26.
[1628] *Minka Čehajić*, T. 3076-7.
[1629] *Minka Čehajić,* T. 3161.
[1630] *Witness Z*, T. 7556-8.
[1631] *Witness Z*, T. 7559.
[1632] *Witness Z*, T. 7560.
[1633] *Ivo Atlija*, T. 5649-50.
[1634] *Ivo Atlija*, T. 5651.

Atlija thought Dr. Stakić mentioned the village of Bisćani but did not say why it would be a good idea to go there.[1635] These examples demonstrate the mercilessness of Dr. Stakić, even when approached by a colleague or the wife of his predecessor.

917. The Trial Chamber notes that Dr. Stakić has been convicted of crimes committed during a relatively short time period (April to September 1992). This is not to be regarded as a mitigating factor in view of the large scale of the crimes committed and the long phase of preparation and planning that constitutes an aggravating factor.

918. The Trial Chamber notes that, as with white collar crimes, the perpetrator behind the direct perpetrator - the perpetrator in white gloves – might deserve a higher penalty than the one who physically participated depending on the particular circumstances of the case.

919. Contrary to the contention of the Prosecution, the Trial Chamber does not accept that the absence of a potential mitigating factor such as remorse can ever serve as an aggravating factor.[1636]

4. Mitigating Circumstances

920. The standard to be met for mitigating factors is the balance of probabilities.[1637] Mitigating circumstances may also include those not directly related to the offence such as co-operation with the Prosecutor or true expressions of remorse.

921. The Trial Chamber considers as a mitigating factor Dr. Stakić's consent on 1 October 2002 that a new Judge be appointed.[1638] Such consent was required at the time under all circumstances by Rule 15 *bis*. This allowed the proceedings to continue and averted the need to restart the Trial, which was both in the interests of justice and in the interests of the Accused.

922. The Trial Chamber considers as a mitigating factor Dr. Stakić's behaviour towards certain witnesses. For example, on 27 June 2002, he directed his counsel not to cross-examine Nermin Karagić "because of the suffering of this witness and his pretty bad mental state".[1639] Additionally, Dr. Stakić was present in court on 1 August 2002 despite illness in order to allow the cross-examination of Nusret Sivać and the testimony of Witness W to be conducted via video link.[1640] He subsequently directed his defence not to cross-examine Witness W.[1641] The Trial Chamber further

[1635] *Ivo Atlija*, T. 5651.
[1636] Prosecution Final Brief, paras 451-452.
[1637] *Kunarac* Trial Judgement, para. 847; *Sikirica et al.* Sentencing Judgement, para 110.
[1638] T. 8929.
[1639] T. 5287-5288
[1640] T. 6800, T. 6844-45
[1641] T. 6839

takes note of Dr. Stakić's correct behaviour during trial and in the United Nations Detention Unit.[1642]

923. The "personal situation" of the convicted person should be considered a mitigating factor and family concerns should in principle be a mitigating factor.[1643] This Trial Chamber takes into account the young age of Dr. Stakić at the time he committed the offences and the fact that he is married and has two young children.

924. The Trial Chamber finds that the mitigating factors do not carry enough weight to alter substantially the deserved sentence.

5. Personality of the Accused

925. Article 24(2) of the Statute and Article 41(1) SFRY Criminal Code require the Court to take into account the personal and individual situation of the accused, including his personality.

926. The Trial Chamber considers that the substantial volume of evidence given in favour of Dr. Stakić's personality and family situation merits consideration when arriving at an appropriate sentence. However, this factor will not be given undue weight given the severity of the crimes.[1644]

927. Certain witnesses, including many Prosecution witnesses, who had direct contact with or knowledge of Dr. Stakić, testified as to his moderate stance[1645] and stable, quiet and self-confident nature.[1646] Other witnesses described Dr. Stakić as "polite",[1647] "tolerant",[1648] "hard-working",[1649] "intelligent",[1650] and "modest"[1651]. His public speeches were not seen as nationalistic or prejudiced.[1652] However, there is vibrant evidence of his real intentions and feelings when he spoke, for example, about "the Muslims who were created artificially".[1653] While some witnesses

[1642] Exh. D128
[1643] *Kunarac* Appeal Judgement, para. 362
[1644] *Kunarac* Appeal Judgement, para. 33.
[1645] See also analysis of *Srdja Trifković*, T. 13737-38, T. 13825-28.
[1646] *Mirsad Mujadzić*, T.3901.
[1647] *Dr. Ibrahim Beglerbegović*, T. 4208-09.
[1648] *Mico Kos*, T. 9850.
[1649] *Stoja Radaković*, T. 11054.
[1650] *Vladimir Makovski*, T. 9704.
[1651] *Vladimir Makovski*, T. 9708.
[1652] *Witness W*, T. 6839-42, see also *Momir Pusac*, T.10906-07.
[1653] Exh. S187.

stated that Dr. Stakić was easy to manipulate,[1654] the Trial Chamber is convinced that he was determined and resolute.

6. Patterns in Sentencing

928. As stated, the Statute, Rules and jurisprudence of this Tribunal do not expressly lay down a range or scale of sentences applicable to the crimes falling under its jurisdiction. The decision has been left to the discretion of the Trial Chamber in each case and the guidance that may be found in the final sentence imposed in previously decided cases is extremely limited.[1655]

929. The argument that, all else being equal, crimes against humanity should attract a greater penalty than war crimes has been rejected by the Chambers of the Tribunal which have reaffirmed that the most important factor is the gravity of the crime rather than its objective classification.[1656]

930. In the *Tadić* Sentencing Appeal it was held that there was a need for sentences to reflect the relative significance of the role of the accused in the broader context in the former Yugoslavia.[1657] However, this has been interpreted as:

> not purport[ing] to require that, in every case before it, an accused's level in the overall hierarchy in the conflict in the former Yugoslavia should be compared with those at the highest level, such as that if the accused's place was by comparison low, a low sentence should automatically be imposed.[1658]

931. The Prosecution, in contrast to the Defence, does not compare the case of Dr. Stakić to any others decided by the Tribunal. The Trial Chamber finds that the case against Dr. Stakić is a unique one. It is not possible to compare it with any cases decided by this Tribunal, or indeed national or international courts on the territory of the former Yugoslavia.

932. The Prosecution considers that the most appropriate sentence is life imprisonment.[1659] The Trial Chamber notes that in a number of countries the killing of only one person results in a

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[1654] For example, *Vladimir Makovski*, who taught Dr. Stakić as a boy, testified that Dr. Stakić had an uneasy time in politics and may have been manipulated, as he may have believed lies told by others. He testified that others "may have used this, his human kindness, to simply manipulate him as a human being, as a young human being." T. 9760 and T. 9788. *Markovski* added, however, that he "had no idea really about political life or what was going on, or about Dr. Stakić's work in that period". T. 9776.

[1655] *Čelebići* Appeal Judgement, para. 821; *Kupreškic* Appeal Judgement, para. 443

[1656] See *Krnojelac* Trial Judgement, para. 511, following the *Furundžija* Appeal Judgement para. 247 and *Tadić* Sentencing Appeal Judgement para. 69 which states: "there is in law, no distinction between the seriousness of a crime against humanity and a war crime" reaffirming that penalties should be fixed in reference to the circumstances of the case. These cases departed from the earlier decisions in the *Erdemović* Appeal Judgement, paras 20-27 and *Tadić* Sentencing Judgement, paras 27-29, which held that a crime against humanity was inherently more serious that a war crime and should entail a heavier sentence all else being equal. The later cases here, followed the dissenting opinions of Judge Li in the *Erdemović* Appeal and Judge Robinson in *Tadić* Sentencing Judgement.

[1657] *Tadić* Judgement in Sentencing Appeals, para 55.

[1658] *Čelebići* Appeal Judgement, para. 847.

[1659] Prosecution Final Brief, para. 457.

mandatory life sentence, whereas in others life imprisonment is forbidden by constitution.[1660] The Statute, however, reflects the global policy of the United Nations aiming at the abolition of the death penalty and favours life imprisonment as the maximum sanction to be imposed. The Trial Chamber wishes to stress in this context that on both the international and national levels the imposition of the maximum sanction is not restricted to the most serious imaginable criminal conduct.

933. The Defence asserts that a sentence in line with those entered for Prcać, Kvočka, Krnojelac and Mucić, who received terms of imprisonment of between five and nine years, will meet the goals of retribution and deterrence because, as prison commanders, they were more culpable than a local politician. The Trial Chamber rejects this view as the superior position of Dr. Stakić and the scale of the crimes for which he has been found criminally responsible place his criminal responsibility on a different level from that of a prison commander. The Defence further argues that Biljana Plavšić and Steven Todorović, sentenced to eleven and ten years respectively, are more guilty than Dr. Stakić due to the high-ranking position of Plavšić in the Bosnian-Serb leadership and the active participation of Todorović in the crimes committed and that accordingly Dr. Stakić should receive a lighter sentence. However, the latter two cases are distinguishable due to the admissions of guilt and plea agreements constituting significant mitigating factors, among others factors unknown to this Trial Chamber. Still, this should not be misunderstood as implying that the fact that Dr. Stakić did not enter into a plea agreement can be regarded as an aggravating factor.

D. **Form of the Sentence**

934. Rule 87(C) of the Rules of Procedure and Evidence Provides:

> If the Trial Chamber finds the accused guilty on one or more of the charges contained in the indictment, it shall impose a sentence in respect of each finding of guilt and indicate whether such sentence 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.

935. The Trial Chamber considers that the appropriate punishment is best reflected in a single sentence encompassing all the criminal conduct of the accused.

[1660] See for example the Constitution of the Portuguese Republic, Fourth Revision, 1997, Article 30: "No one shall be subjected to a sentence or security measure that involves deprivation or restriction of liberty for life or for an unlimited or indefinite term."

E. **The Sentence**

936. In determining the appropriate sentence, the Trial Chamber takes into account the gravity of the offence, the role of the Accused, the aggravating and mitigating factors, the personality of the Accused, and especially his relatively young age at the date of this Judgement.

937. The Trial Chamber wishes to emphasize that Rules 123-125 of the Rules, and the Practice Direction on Pardon, Commutation of Sentence and Early Release,[1661] remain unaffected by the Disposition that follows.

[1661] Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the International Tribunal, IT/146, 7 April 1999.

V. DISPOSITION

We, Judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by United Nations Security Council Resolution 827 of 25 May 1993, elected by the General Assembly and mandated to hear this case against Dr. Milomir Stakić and find the appropriate sentence,

HEREBY DECIDE:

The Accused, Dr. Milomir Stakić, is **NOT GUILTY** of:

Count 1: Genocide

Count 2: Complicity in Genocide

Count 8: Other Inhumane Acts (forcible transfer), a Crime against Humanity

The Accused, Dr. Milomir Stakić, is **GUILTY** of:

Count 4: **Extermination**, a Crime against Humanity

Count 5: **Murder**, a Violation of the Laws and Customs of War

Count 6: **Persecutions**, Crimes against Humanity, incorporating **Count 3**: Murder, a Crime against Humanity, and **Count 7**: Deportation, a Crime against Humanity

Dr. Milomir Stakić is hereby sentenced to life imprisonment.

The then competent court (Rule 104 of the Rules) shall review this sentence and if appropriate suspend the execution of the remainder of the punishment of imprisonment for life and grant early release, if necessary on probation, if:

(1) **20 years** have been served calculated in accordance with Rule 101(C) from the date of Dr. Stakić's deprivation of liberty for the purposes of these proceedings, this being the "date of review".

(2) In reaching a decision to suspend the sentence, the following considerations, *inter alia*, shall be taken into account:

- the importance of the legal interest threatened in case of recidivism;
- the conduct of the convicted person while serving his sentence;
- the personality of the convicted person, his previous history and the circumstances of his acts;
- the living conditions of the convicted person and the effects which can be expected as a result of the suspension;

(3) Dr. Stakić's consent to the suspension of his sentence is required.

(4) The competent court may determine the term of probation, if any.

In case of early release, pursuant to Rule 101(C) of the Rules, Dr. Milomir Stakić is entitled to credit for 2 years, 4 months and 8 days, as of the date of this Judgement, calculated from the date of his deprivation of liberty for the purposes of these proceedings.

Pursuant to Rule 103(C) of the Rules, Dr. Milomir Stakić shall remain in the custody of the International Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.

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

_____
Judge Wolfgang Schomburg
Presiding

_____
Judge Volodymyr Vassylenko

_____
Judge Carmen Maria Argibay

Dated this thirty-first day of July 2003
At The Hague
The Netherlands

[Seal of the Tribunal]

VI. LIST OF VICTIMS KNOWN BY NAME

A. **Explanation**

938. The Annex to the Fourth Amended Indictment ("Annex") was entitled "Known Victims of Killings Listed in Paragraphs 44 and 47". The Trial Chamber has itself listed the names of those individuals identified by the evidence admitted during the Prosecution's case as victims of any of the crimes alleged in the Indictment.

939. The Trial Chamber finds that, for the purposes of a judgement in criminal matters, where an individual has been either (i) exhumed and identified, (ii) identified by an eye-witness as being killed or by a witness as still missing or dead, or (iii) named in a death certificate issued by a local court, sufficient evidence exists to conclude beyond reasonable doubt the individual concerned is deceased. It follows however that in relation to those individuals mentioned in the Annex but not identified by one of these means, this Trial Chamber can not be satisfied that they are deceased.[1662] Accordingly, these names have been struck from the list of deceased victims.

940. On 16 October 2002, the Prosecution moved to substitute the Annex by the revised list prepared by the Chamber. The Trial Chamber opines that its broader mandate of promoting peace and reconciliation in the former Yugoslavia is best served by providing a full and accurate record, on the basis of the evidence, of the individuals who became victims of the crimes committed in Prijedor in 1992. With this in mind, the Trial Chamber granted the Prosecution's motion and includes below a "List of victims known by name". The Trial Chamber excluded the names of those persons whose deaths are not supported by evidence.[1663] This should not be misunderstood as any statement of doubt as to the fate of those persons listed in the "Book of Missing Persons in Prijedor".[1664] It is only to say that it is not established beyond reasonable doubt that Dr. Stakić can be held criminally responsible for the deaths or disappearances of those persons not listed below.

[1662] The Trial Chamber finds the Prijedor Book of Missing Persons to be an unreliable source for the purpose of criminal proceedings, since the provenance of this document was never established in court. There may be reasons for the disappearance of a person that are not related to the crimes brought before this Trial Chamber. Therefore, the names of victims listed exclusively in this Book will be struck for lack of evidence.
[1663] See *e.g. Sikirica* Judgement, para. 115.
[1664] Exhibit S282.

B. **List of victims known by name**

Abdić, Fikret
Alagić, Fikret (son of Jusuf)
Alibegović, Alija
Alić, Ekro
Alić, Esad
Alić, Mirsad
Alić, fnu (son of Meho)
Alić, Mustafa
Alić, Smail
Alić, Zijad
Ališić, Edin
Ališković, Aziz
Ališković, Halid
Ališković, Jusuf
Ališković, Vahid
Ališković, Velid
Aras, Ismet
Arifagić, Hamdija
Atarović, Ahmet
Atlija, Joso
Avdagić, Hamdija
Avdić, "Eka" fnu
Avdić, Damir
Avdić, Fahrudin
Avdić, Fikret
Avdić, Ismet
Avdić, Mehmed
Avdić, Muhamed
Avdić, Nihad
Avdić, Rizad
Avdić, Sejfo
Avdić, Senad
Avdić, Zinad
Babic, Sead
Bahonić, Islam
Bahonjić, Emsud
Bahonjić, Nihad
Balić, Hamdija
Barišić, Jozo
Barišić, Vladimir
Basić, Nihad
Begić, Enez
Begović, Ibrahim
Begović, Muharem
Behlić, Adem
Behlic, Aziz
Behlic, Hasan
Besić, Edin
Besić, Ekrem
Bešić, Mustafa
Beširević, Zlatan
Bilalović, Šaban
Biletić, Ilija
Blažević, Ahmed
Brdar, Adem
Brdar, Smail
Burazerović, Muhamed
Burazović, Ismail
Buzuk, Ivica
Buzuk, Marija
Buzuk, Marko
Buzuk, Mato
Buzuk, Milan
Buzuk, Sreco
Buzuk, Vlatko
Čaušević, Enver
Čaušević, Mirhad
Ćehajić, Muhamed Prof.
Cerić, Amer
Cerić, Kemal
Colic, Fadil
Crljenković, Dervis
Crljenković, Emir
Crljenković, Hasan
Crljenković, Mirsad
Crljenković, Nurija
Crljenković, Ramo
Crljenković, Safet
Crnalić, Asmir aka "Vica"
Crnalić, Dedo
Crnalić, Mustafa aka Mujo
Crnalić, Ziko
Crnić (Jasko), Jasmin
Crnić, Sead
Crnkić, Esef
Crnkić, Husein
Dautović, Edna
Dautović, Edvin
Dedić, Mevludin
Dedić, Nermin
Dedić, Rifet
Delmić, Sakib
Denanović, Asema
Denanović, Vejsil
Denić, Ibrahim
Desić, Dzevad
Deumić, Akib
Didović, Osman
Dimač, Pero
Dimač, Radislav
Dimač, Stipe
Dizdarević, Ibrahim
Dizdarević, Mustafa
Dizdarević, Nazif
Došen, Luka
Drobić, Ilijaz
Duratović, Asmir
Duratović, Deno
Duratović, Ekrem
Duratović, Esef
Duratović, Fikret
Duratović, Hazim
Duratović, Husnija
Duratović, Ismet
Duratović, Kasim
Duratović, Mehmed
Duratović, Mirsad
Duratović, Mithet
Duratović, Said
Duratović, Smail
Duratović, Zemira
Duratović, Zlatan
Džamastagić, Said
Džolić, Besim
Džolić, Husein
Džolić, Sead
Ejupović, Fadil
Ejupović, Ismet
Ekinović, Adnan
Ekinović, Fuad
Elezović, Edhem
Elezović, Samir
Elezović, Halil
Elkasević, Osme
Elkasević, Sakib
Ermin, Kadić
Fazlić, Besim
Fazlić, Džafer
Fazlić, Emsud
Fazlić, Fadil
Fazlić, Kasim
Fazlić, Muhamed
Fazlić, Mustafa
Fazlić, Nihad

Fikić, Hamdija
Fikić, Husein
Fikić, Refik
Fikić, Reuf
Fikić, Saif (Cicko)
Forić, Adem
Forić, Emir
Forić, Hajro
Forić, Hanifa
Forić, Softic
Forić, Amir
Forić, Jusuf
Forić, Lutvija
Forić, Mehmed
Forić, Munib
Forić, Said
Forić, Semir
Forić, Tofik
Ganić, Sulejman
Garibović, Dervis
Garibović, Dzemal
Garibović, Dzevad
Garibović, Enes
Garibović, Ferid
Garibović, Hamdo
Garibović, Hasib
Garibović, Hilmija
Garibović, Irfan
Garibović, Senad
Garibović, Suad
Garibović, Suvad
Garibović, Sulejman
Garibović, Tahir
Gavaranović, Anto
Grozdanić, Muharem
Habibović, Almir
Habibović, Meho
Habibović, Senad
Hadžalić, Rizah
Hadžić, Muhamed
Hamulić, Fadil
Hamulić, Hasim
Hamulić, Razim
Harambasić, Fikret
Harambasiš, Habiba
Hasanogić, Osman
Hegić, Besim
Hegić, Hadzalija
Hegić, Hasan
Hegić, Husein
Hegić, Ismet
Hegić, Salih
Hergić, Besim
Hodza, Hamid
Hodžić, Fikret
Hodžić, Ismet
Hodžić, Munib
Hodžić, Serif
Hodžić, Zihljad
Hopovac, Adem
Hopovac, Azir
Hopovac, Fiket
Hopovac, Hamdija
Hopovac, Huse
Hopovać, Islam
Hopovac, Mesud
Hopovac, Miralem
Hopovac, Mirhad
Hopovac, Nijaz
Hopovac, Rejhan
Hopovac, Suad
Hrnić, Daljia
Hrnić, Jasko
Hrustić, Salid
Hujić, Huskan
Huskić, Edhem
Huskić, Enver
Huskić, Šuhra
Husnija, Hadzic
Idrizvic, Meula
Idrizvik, Sadik
Islamović, Esad
Ivandić, Jerko
Ivandić, Pejo
Jakara, Jozo
Jakupović, Azur
Jakupović, Atif
Jakupović, Hajrudin
Jakupović, Hilmija
Jakupović, Idriz
Jakupović, Iljaz
Jakupović, Kemal
Jakupović, Mirsad
Jakupović, Nail
Jakupović, Nihad
Jakupović, Suad
Japuković, Muhamed
Japuković, Sead
Jaskić, Abas
Jaskić, Nijas
Javor, Alija
Javor, Bahrija
Jusufović, "Car" Sead
Kadić, "Abdulah"
Kadić, Amir
Kadić, Bego
Kadić, Enes
Kadić, Ermin
Kadić, Faruk
Kadić, Ferid
Kadić, Hadjar
Kadić, Hajder
Kadić, Hamzalija
Kadić, Huse
Kadić, Kemal
Kadić, Meho
Kadić, Mirzet
Kadić, Mujago
Kadić, Mujo
Kadić, Sead
Kadić, Sulejman
Kadirić, "Zuti"
Kadirić, Agan
Kadirić, Avdo
Kadirić, Caban
Kadirić, Emdžad
Kadirić, Emsud
Kadirić, Enes
Kadirić, Ermin
Kadirić, Sejad
Kadirić, Hase
Kadirić, Husein
Kadiric, Mirhet
Kadirić, Mirsad
Kadirić, Nihad
Kadirić, Omer
Kadirić, Rašid
Kadirić, Rasim
Kadirić, Safet
Kadirić, Salih
Kadirić, Samir
Kadirić, Šerif
Kahrimanović, Hamdija
Kahrimanović, Muharem
Kahrimanović, Vadif
Kapetanović, Asaf
Kapetanović, Buhro
Kapetanović, Mehmedalija
Karabašić, Besim
Karabašić, Emir
Karagić, Emir
Karagić, Ferid
Karagić, Hamzo
Karagić, Ifet
Karagić, Munib
Karagić, Mustafa
Karagić, Salko
Karagić, Samir
Karagić, Sasa
Karagić, Saud
Karagić, Sulejman
Kardum, Gordan

Kardumović, Sakib
Karupović, Adem
Karupović, Fehim
Karupović, Osman
Karupović, Redžep
Karupović, Samet
Kekić, Asmir
Kekić, Emsud
Kekić, Halid
Kekić, Nurija
Kekić, Sabahudin
Kekić, Sulejman
Kenjar, Munib
Kerenović, Omer
Kljajić, Tofik
Kodzić, Edim
Komljen, Iva
Komljen, Kaja
Komljen, Luka
Komšić, Alexander Aco
Krak, Nezir
Lisić, Mirzet
Lovrić, Ante
Lovrić, Ivo
Lovrić, Jozo
Mahmuljin, Osman
Mahmuljin, Velida
Mahmuljin, Zijad
Mahmutović, Meho
Malovcić, Fadil
Marijan, Franjo
Marijan, Mara
Matanović, Ante
Matanović, Fabo
Matanović, Juro
Matanović, Predrag
Medić, Fikret
Medić, Hasan
Medić, Mirsad
Medić, Rasid
Medunjanin, Aris
Medunjanin, Becir
Medunjanin, Sadeta
Mehmedagić, Esad
Melkić, Ekrem
Memić, Nijaz
Mešić, Dzemal
Mešić, Safet
Mlinar, Ivica
Mlinar, Luka
Mlinar, Svraka
Mrgolja, Ante
Mrkalj, Elvedin
Mrkalj, Emsud
Mrkalj, Himzo
Mrkalj, Ifet
Mrkalj, Isak
Mrkalj, Kasim
Mrkalj, Latif
Mrkalj, Mirhad
Mrkalj, Smajil
Muhić, Camil
Muhić, Meho
Mujadžić, Dzemo
Mujadžić, Fikret
Mujadžić, Meho
Mujadžić, Mujo
Mujadžić, Ramiz
Mujagić, Edin
Mujagić, Esad
Mujakić, Fikret
Mujidzić, Fikret
Mujkanović, Abdulah
Mujkanović, Dervis
Mujkanović, Džamila
Mujkanović, Husein
Mujkanović, Ismet
Mujkanovic, Ibrahim
Mujkanović, Kadir
Mujkanović, Mirsad
Mujkanović, Rifet
Mujkanović, Senad
Mujkanović, Vasif
Mulalić, Suad
Murega, Anto
Murega, Laus
Murega, Remet
Murega, Zoran
Muračehajić, Fuad
Muretčehajić, Edin
Murgić, Ante
Murgić, Zoran
Murjakanović, Dzamila
Mušić, Badema
Mušić, Faruk
Mušić, Fatusk
Mušić, Ibrahim
Mušić, Ilijaz
Mušić, Mujo
Mušić, Rasim
Mušić, Samir
Mušić, Senad
Nasić, Emsud
Novkinić, Rahim
Nukić, Hilmil
Okanović, Ibrahim
Pašić, Jusuf
Pašić, Mujo
Paunović, Ibrahim "Becir"
Paunović, Zivko
Pelak, Hare
Pelak, Muharem
Pelak, Refik
Petrovac, Muharem
Pezo, Camil
Pidić, Ibrahim
Poljak, Ibro
Poljak, Zihad
Puškar, Abdulah
Radočaj, Jovo
Rakanović, Emsud
Ramadanović, Safet
Redžić, Asim
Redžić, Esef
Redžić, Naila
Redžić, Namir
Redžić, Nijaz
Redžić, Rubija
Redžić, Vahid
Rekić, Ramiz
Risvanović, Ferid
Rizvanović, Hasan
Rizvancević, Hasnija
Sabanavić, Ferid
Sabanavić, Fikret
Sadiković, Ago
Sadiković, Esad
Šahorić, Mehmed
Šahorić, Serifa
Salić, Dragica
Salić, Marija
Salihović, Huse
Sarajlić, Fikret
Sarić, Silvijo
Sehić, Mirhad
Selimović, Bajazid
Serić, Edzad
Šerić, Nedžad
Siječić, Enve
Sijacić, Ermin
Siječić, Jasmin
Siječić, Sabid
Sikirić, Mehmedalija
Sikora, Željko, Dr.
Simbegović, Hasib
Sivać, Muharem
Sivać, Sefik
Šolaja, Miroslav
Suljanović, Rufad
Suljanović, Rufat
Švraka, Mustafa
Tadžić, Huse

Tadžić, Mustafa
Talić, Teofik
Tedić, Muhamed
Tokmadžić, Drago
Topalović, Mile
Topalović, Pero
Trepić, Husein
Turkanović, Fikret
Tursić, Mehmed
Tursić, Meho
Velić, Meho
Vojniković, Elvir
Vukić, Dragan
Vukić, Meho
Zekanović, Rade
Zerić, Sead
Zgog, Bajram
Zukanović, Sabid

VII. ANNEXES

A. **Procedural Background**

1. Indictment and Arrest of Dr. Milomir Stakić

941. On 13 March 1997 Judge Elizabeth Odio Benito confirmed the initial indictment against Simo Drljača, Dr. Milan Kovačević and Dr. Milomir Stakić[1665].

942. On 10 July 1997, Dr. Milan Kovačević was arrested in Prijedor and transferred to The Hague. That same day, Simo Drljača was killed while resisting arrest. The indictment was consequently amended with the deletion of the name of the deceased co-accused, Simo Drljača[1666].

943. Trial proceedings against Dr. Kovačević as a single accused began on 6 July 1998. On 4 August 1998, the Chamber received the attending physician's report on the death of Dr. Kovačević by natural causes[1667]. On 24 August 1998, the Trial Chamber issued an order terminating the proceedings against Dr. Kovačević[1668].

944. Dr. Milomir Stakić was arrested in Belgrade on 23 March 2001 and transferred to the United Nations Detention Unit the same day.

2. Pre-trial Phase

945. At his initial appearance on 28 March 2001, Dr. Milomir Stakić, represented by Mr. Branko Lukić, pleaded not guilty to the charge of genocide. Since then Dr. Stakić pleaded not guilty to all additional counts contained in the fourth amended indictment.

946. The case of *The Prosecutor v Milomir Stakić*[1669] was initially assigned to Trial Chamber I on 27 March 2001. Following the March 2001 election of new Judges who would assume their mandate as of 17 November 2001 by the United Nations General Assembly on 23 November 2001, the case was transferred by the President of the International Tribunal for the former Yugoslavia to Trial Chamber II, consisting of Judges Wolfgang Schomburg (Presiding), Florence Mumba and Carmel Agius. On 28 November 2001 Judge Wolfgang Schomburg was appointed Pre-trial Judge.

[1665] The *Prosecutor v Simo Drljača and Milan Kovačević*, case no. IT-97-24, Review of the Indictment, 13 March 1997.
[1666] *The Prosecutor v Milan Kovačević* IT-97-24-PT, Indictment deleting co-accused, 12 May 1998.
[1667] *The Prosecutor v Milan Kovačević* IT-97-24-PT, statement concerning the death of *Dr. Kovačević*, 4 August 1998.
[1668] *The Prosecutor v Milan Kovačević*, Order Terminating the Proceedings Against *Milan Kovačević*, 24 August 1998.
[1669] *Prosecutor v. Milomir Stakić,* Case No. IT-97-24.

947. On 10 August 2001, the Registrar assigned Mr. Branko Lukić as defence counsel for Dr. Stakić as of 22 August 2001. On 18 December 2001, Mr. John Ostojić was assigned co-counsel retroactively as of 6 December 2001.

948. Immediately before and during the Trial, the Office of the Prosecutor was represented primarily by Ms. Joanna Korner (Senior Trial Attorney), Mr. Nicholas Koumjian, Ms. Ann Sutherland, Mr. Michael McVicker, Mr. Kapila Waidyaratne and Mr. Andrew Cayley.

(a) History of indictments until Fourth Amended Indictment

949. The initial indictment of 13 March 1997 charged Simo Drljača, Milan Kovačević and Milomir Stakić with individual and superior responsibility for one count of complicity in genocide under Article 4 of the Statute in respect of the alleged establishment of the Omarska, Keraterm and Trnopolje camps in the Municipality of Prijedor in the Republic of Bosnia and Herzegovina, and treatment of those detained therein between April 1992 and January 1993.

950. At a Motion Hearing on 2 August 2001 the Prosecution applied for leave to amend the indictment pursuant to Rule 50. The Amended Indictment filed on 6 August 2001 charged Dr. Milomir Stakić with individual and superior responsibility for a total of 12 counts including one count of complicity in genocide. The Prosecution believed that the changes did not amount to a new indictment but constituted an amendment as contemplated by the Rules. The Defence opined that adding 11 Counts created a new indictment and not simply a broadened version of the initial one. It argued that the Amended Indictment was based on a different factual ground. The Trial Chamber ruled that the changes did amount to an amendment rather than a new indictment and granted the requested amendment.

951. On 5 October 2001, the Prosecution filed the Second Amended Indictment which included two additional counts of inhumane acts. The Defence responded with a preliminary motion on 19 October pursuant to Rule 72(A). It objected to the form of the Second Amended Indictment as being too vague, making it impossible for them to prepare an adequate defence and therefore infringing the right of the accused to a fair trial under Article 21 of the Statute[1670]. In its Decision, Trial Chamber I (Judge Almiro Rodrigues (Presiding), Judge Fouad Riad and Judge Patricia Wald) ordered the Prosecutor to reorganise the indictment[1671] which resulted in the filing of the Second Amended Indictment (reorganised) on 27 November 2001.

[1670] *Prosecutor v. Milomir Stakić,* Case No. IT-97-24-PT, Motion objecting to the form of the Second Amended Indictment, 19 October 2001.
[1671] *Prosecutor v. Milomir Stakić,* Case No. IT-97-24-PT, Decision on the Defence motion objecting to the form of the Indictment, 13 November 2001.

952. On 20 October 2001, the Defence filed a motion challenging the jurisdiction of the ICTY and calling for the Second Amended Indictment to be dismissed on the grounds that the Tribunal was neither a valid exercise of United Nations authority nor duly established by law[1672]. The Trial Chamber I Decision of 30 October 2001[1673] rejected the motion because it did not raise any issues not already ruled on in the Appeals Chamber Decision on Dusko Tadić's Defence Motion for Interlocutory Appeal on Jurisdiction[1674].

953. On 13 November 2001, the Defence filed an interlocutory appeal on the grounds of abuse of the Trial Chamber's discretion regarding both its general challenge to the jurisdiction of the Tribunal and the specific challenge to the jurisdiction of the Tribunal in relation to Article 7(3)[1675]. A bench of the Appeals Chamber consisting of Judges Güney (Presiding), Shahabuddeen and Gunawardana denied the application for leave to appeal the decision on the ground that it did not satisfy the requirements of Rule 72(D)[1676].

954. On 16 January 2002, the Prosecution filed its final pre-trial brief pursuant to Rule 65 *ter* E (i), slightly revised later on 5 April 2002. This was followed by the Defence Response on 6 February 2003 pursuant to Rule 65 *ter* (F).

955. On 28 February 2002, the Prosecution again filed a request for leave to amend the indictment, this time in order to streamline the case somewhat. In the Third Amended Indictment, the number of counts was reduced to eight. The relevant time period was reduced to 30 April 1992 - 30 September 1992.

956. On 11 April 2002, the Prosecution filed a Fourth Amended Indictment containing the same charges as the third amended indictment with only a few minor changes.

957. The case was heard on the basis of this Fourth Amended Indictment.

(b) Commencement of Trial

958. The pre-trial Judge of Trial Chamber I informed the parties that the trial would open on 25 February 2002.

[1672] *Prosecutor v. Milomir Stakić,* Case No. IT-97-24, Motion objecting to the jurisdiction of the ICTY, 20 October 2001.
[1673] *Prosecutor v. Milomir Stakić,* Case No. IT-97-24, Decision on the Defence motion objecting to the jurisdiction of the Tribunal, 30 October 2001.
[1674] *Prosecutor v Duško Tadić*, Case No. IT-94-1, Appeal on Jurisdiction, 2 October 1995.
[1675] *Prosecutor v. Milomir Stakić,* Case No. IT-97-24-AR-72, Defence interlocutory appeal to the Trial Chamber's decision on motion challenging jurisdiction, 13 November 2001. The Prosecution filed a response on 23 November 2001.
[1676] *Prosecutor v. Milomir Stakić,* Case No. IT-97-24-AR-72, Decision on application for leave to appeal, 19 February 2002.

959. At the Status Conference on 18 January 2002, the now pre-trial Judge of Trial Chamber II, informed the parties that "*due to budgetary problems, the International Tribunal has no means to start a sixth case"* and set the provisional trial date at 16 April 2002 if there was a positive decision on the budget no later than March 15.

960. At the Rule 65 *ter* (I) meeting of 14 February 2002, the pre-trial judge informed the parties that the trial would provisionally commence on 16 April 2002 and the parties affirmed that they were prepared to start on this date. Accordingly, a provisional scheduling order was issued on 19 February 2002 which set the date for the start of the trial on 16 April 2002.

961. On 18 March 2002, the budget of the International Tribunal was approved. This allowed the trial to commence on 16 April 2002 and the necessary steps were taken immediately. The President of the Tribunal submitted a request to the Secretary-General of the United Nations to appoint two *ad litem* Judges to the case pursuant to Rule 13 *ter* (2).

962. On 20 March 2002, the Prosecution filed a motion pursuant to Rule 73 for reconsideration of the trial date. On 22 March 2002, the Trial Chamber denied the Prosecution motion, stating that '*the Prosecution has had sufficient time to prepare its case, since it had been announced on 14 November 2001 that the trial would commence on 23 February 2002 and the parties were duly informed to be prepared to start trial on that date.'* It confirmed that the trial would commence on 16 April 2002.

963. The pre-trial conference for *Prosecutor v Milomir Stakić,* Case No. IT-97-24-T was held on 10 April 2002 in accordance with Rule 73 *bis* and the trial opened on 16 April 2002.

964. On 10 April 2002 the President of the International Tribunal assigned two *ad litem* Judges to the case, Judge Mohamed Fassi Fihri and Judge Volodymyr Vassylenko.

(c) Adjudicated/agreed facts

965. During the entire case, the parties failed to reach any agreement on matters of law and fact as provided for *inter alia* in Rule 65 *ter* (H). Nor were several attempts by the bench to reach a plea agreement under Rule 62 *te*r or any other consensual solution successful.

966. All attempts to take judicial notice of adjudicated facts or to reach an agreement failed throughout the trial.

(d) Relationship to the case of *Prosecutor v Brđanin and Talić*[1677]

967. On 8 January 2002, the Prosecution filed a motion pursuant to Article 20(1) of the Statute and Rules 54 and 73 for a joint hearing [*sic*] of evidence common to the cases of *Prosecutor v Brđanin and Talić* and *Prosecutor v Milomir Stakić*[1678]. *Brđanin and Talić* was scheduled to commence on 21 January 2001 and *Stakić*, at that time, on 25 February 2002. The Municipality of Prijedor is one of the (at that time) sixteen municipalities about which evidence was to be led in the *Brđanin and Talić* case. Approximately twenty-five witnesses were scheduled to give evidence *viva voce* common to both cases and approximately twelve witnesses scheduled to give evidence under Rule 92 *bis*. The Prosecution contended that hearing the witnesses together would be a more efficient use of resources and avoid witnesses having to travel to The Hague twice.

968. The Defence of Momir Talić filed a response objecting to a joint hearing of these witnesses since it would delay the commencement of the *Brđanin and Talić* trial[1679].

969. For these reasons the Trial Chamber dismissed the motion for a joint hearing on 23 January 2002.[1680] The suggestion of a joint hearing of witnesses with six Judges was immediately excluded[1681].

3. The Trial Phrase

970. The trial of *Prosecutor v Milomir Stakić* commenced on 16 April 2002. The Prosecution case continued until 27 September 2002.

971. On 30 September 2002, in response to a request from the Trial Chamber, the Prosecution conceded that four specific allegations in the Fourth Amended Indictment were unproven and that there was insufficient evidence to sustain a conviction[1682]. After the close of the Prosecution case on 1 October 2002, the Trial Chamber held a discussion with the parties in open court on legal and factual issues. While this is not provided for by the Rules, the Trial Chamber considered that such a procedure is recommendable because the Trial Chamber has the duty to hear the parties and the

[1677] *The Prosecutor v Radoslav Brđanin and Momir Talić,* Case No. IT-99-36-T – It has to be noted that *Mr. Talić* died in the meantime in his home country after having been provisionally released beforehand due to his state of health.
[1678] *The Prosecutor v Radoslav Brđanin, Momir Talić and Milomir Stakić*, Case No. IT-99-36-PT & Case No. IT-97-24-PT, Prosecution's motion for a joint hearing of evidence common to the cases of *Prosecutor v Brđanin and Talić* and *Prosecutor v Milomir Stakić*, 8 January 2002.
[1679] *The Prosecutor v Momir Talić* Case No IT-99-36-PT, Response to the Prosecutor's motion for a joint hearing of evidence common to the cases *The Prosecutor v Brđanin and Talić* and *The Prosecutor v Stakić*, 9 January 2002
[1680] *The Prosecutor v Brđanin and Talić* and *The Prosecutor v Stakić,* Case No. IT-99-36-PT & Case No. IT-97-24-PT Decision on Prosecution's motion for a Joint Hearing, 11 January 2002.
[1681] *Prosecutor v. Milomir Stakić,* Case No. IT-97-24, Status Conference, 18 January 2002, T. 1458.
[1682] *Prosecutor v Milomir Stakić*, Case No. IT-97-24-T, Prosecution notice of specific allegations from the Fourth Amended Indictment which are conceded as not proven, 30 September 2002.

Prosecution has the right to be heard in relation to those parts of the indictment which the Trial Chamber *proprio motu* may be inclined to dismiss pursuant to Rule 98 *bis*. The ultimate aim of these deliberations was to facilitate and speed up the entire procedure under Rule 98 *bis* and to streamline the case so as to concentrate on the core issues.

972. After the close of the Prosecution case, on 9 October 2002, the Accused filed a motion for acquittal pursuant to Rule 98 *bis*, arguing primarily that he should be acquitted of Counts I and II of the Fourth Amended Indictment[1683].

973. As there was no available translation into B/C/S during the hearing on 16 October, the Prosecution response to the motion to acquit was read into the record to ensure that the accused had access to the content of the document in a language he understood by interpretation.[1684]

974. The Decision on the Defence Rule 98 *bis* Motion for Judgement of Acquittal was handed down on 31 October 2002. The Trial Chamber granted the motion insofar as the charges of instigation in charges 3 to 8 were not proven and acquitted Dr. Milomir Stakić *proprio motu* in relation to them. The remainder of the motion was dismissed. The list of victims attached to the indictment was updated by the Chamber with the consent apart from one incident (Donja and Gornja Ravska) of the parties and based on the Chamber's evaluation of facts at that time**.**

975. At the end of the Prosecution case, Judge Fassi Fihri had health problems. At that time Rule 15(C) *bis* provided that if a Judge is unable to continue sitting, another Judge may be assigned to the case and that a rehearing or continuation of proceedings from that point may be ordered. However, after the beginning of presentation of evidence, the continuation of proceedings can be ordered only with the consent of the accused. At the deliberations on 1 October 2001, Dr. Milomir Stakić gave his consent for a Judge to be assigned to replace Judge Fassi Fihri.

976. On 31 October 2002**,** Judge Carmen Maria Argibay was assigned to replace Judge Mohamed Fassi Fihri as of 1 November 2002**.**

977. On 16 October 2002, the Prosecution filed a motion pursuant to Rule 73 (A) for reconsideration of the commencement date of the Accused's case scheduled to begin on 18 November 2002[1685]. Pursuant to the Scheduling Order of 23 October 2002 dismissing this motion, the Defence case opened on 18 November 2002 and closed on 1 April 2003.

[1683] Defendant *Milomir Stakić's* motion for acquittal pursuant to Rule 98 *bis*, 9 October 2002.
[1684] T. 8986-9042.
[1685] *Prosecutor v Milomir Stakić,* Case No. IT-97-24-T, Prosecution's motion for reconsideration of commencement date of the Accused's case, 16 October 2002.

978. The parties agreed to deviate from the sequence of closing arguments envisaged in Rule 86 by presenting their oral arguments prior to the filing of the final trial briefs on 11 and 14 April 2003, respectively. The Response and Reply of both parties were filed on 15 April 2003. The Chamber used a questionnaire to invite the parties to add to their submissions some, of what the Chamber considered to be central legal and factual issues. The final briefs arrived on 5 May 2003

979. Following the close of the arguments, the Accused had the last word on 15 April 2003.

980. The Chamber sat for 150 days: 80 days hearing the Prosecution case, 67 hearing the Defence case and three days hearing closing arguments. During the case, eleven Rule 65 *ter* (I) meetings (applied by analogy) and two Rule 66 (C) in camera hearings were held.

B. List of Court Decisions

1. ICTY

ALEKSOVSKI
Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-T, Judgement, 25 June 1999 ("*Aleksovski* Trial Judgement").

Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-A, Judgement, 24 March 2000 ("*Aleksovski* Appeal Judgement").

BLAŠKIĆ
Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-AR108*bis*, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, 29 October 1997 ("*Blaškić* Judgement on the Request of the Republic of Croatia").

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-T, Judgement, 3 March 2000 ("*Blaškić* Trial Judgement").

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

ČELEBIĆI (A)
Prosecutor v. Zejnil Delalić, Zdravko Mucić also known as "Pavo", Hazim Delić and Esad Landžo also known as "Zenga", Case No. IT-96-21-T, Judgement, 16 November 1998 ("*Čelebići* Trial Judgement").

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

Prosecutor v. Zdravko Mucic, Hazim Delic and Esad Landzo, Case No. IT-96-21-A *bis,* Judgement on Sentence Appeal, 8 April 2003 ("*Mucic et al.* Judgement on Sentence Appeals").

ČELEBIĆI (B) ONLY THREE DEFENDANTS
Prosecutor v. Zdravko Mucić a/k/a "Pavo", Hazim Delić and Esad Landžo a/k/a "Zenga", Case No. IT-96-21-T*bis*-R117, Sentencing Judgement, 9 October 2001 ("*Mucić et al.* Sentencing Judgement").

ERDEMOVIĆ
Prosecutor v. Dražen Erdemovic, Case No. IT-96-22-T, Sentencing Judgement, 29 November 1996 ("*Erdemovic* 1996 Sentencing Judgement").

Prosecutor v. Dražen Erdemovic, Case No. IT-96-22-A, Judgement, 7 October 1997 ("*Erdemovic* Appeal Judgement").

Prosecutor v. Dražen Erdemovic, Case No. IT-96-22-T*bis*, Sentencing Judgement, 5 March 1998 ("*Erdemovic* 1998 Sentencing Judgement").

FURUNDŽIJA

Prosecutor v. Anto Furundžija, Case No. IT-95-17/1-T, Judgement, 10 December 1998 ("*Furundžija* Trial Judgement").

Prosecutor v. Anto Furundžija, Case No. IT-95-17/1-A, Judgement, 21 July 2000 ("*Furundžija* Appeal Judgement").

GALIĆ

Prosecutor v. Stanislav Galić, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 *bis*(c), 7 June 2002 ("*Galić* Decision on Interlocutory Appeal Concerning Rule 92 *bis*(c)").

Prosecutor v. Stanislav Galić, Case No. IT-98-29-T, Decision on the Motion for the Entry of Acquittal of the Accused Stanislav Galić, 3 October 2002 ("*Galić* Decision on the Motion for the Entry of Acquittal").

HADŽIHASANOVIĆ ET AL.

Prosecutor v. Enver Hadžihasanović, Mehmed Alagić and Amir Kubura, Case No. IT-01-47-PT, Decision on Joint Challenge to Jurisdiction, 12 November 2002 ("*Hadžihasanović et al.* Decision on Joint Challenge to Jurisdiction").

Prosecutor v. Enver Hadžihasanović, Mehmed Alagić and Amir Kubura, Case No. IT-01-47-PT, Interlocutory Appeal on Decision on Joint Challenge to Jurisdiction, 27 November 2002 ("*Hadžihasanović et al.* Interlocutory Appeal on Joint Challenge to Jurisdiction").

Prosecutor v. Enver Hadžihasanović, Mehmed Alagić and Amir Kubura, Case No. IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003 ("*Hadžihasanović et al.* Decision on Interlocutory Appeal Challenging Jurisdiction").

JELISIĆ

Prosecutor v. Goran Jelisić, Case No. IT-95-10-T, Judgement, 14 December 1999 ("*Jelisić* Trial Judgement").

Prosecutor v. Goran Jelisić, Case No. IT-95-10-A, Judgement, 5 July 2001 ("*Jelisić* Appeal Judgement").

KORDIĆ AND ČERKEZ

Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-T, Judgement, 26 February 2001 ("*Kordić and Čerkez* Trial Judgement").

Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-T, Decision on Defence Motions for Judgement of Acquittal, 6 April 2000 ("*Kordić and Čerkez* Decision on Defence Motions for Judgement of Acquittal").

KRNOJELAC

Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-PT, Decision on Form of Second Amended Indictment, 11 May 2000 ("*Krnojelac* Decision on Form of Second Amended Indictment").

Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, Judgement, 15 March 2002 ("*Krnojelac* Trial Judgement").

KRSTIĆ

Prosecutor v. Radislav Krstić, Case No. IT-98-33-T, Judgement, 2 August 2001 ("*Krstić* Trial Judgement").

KUNARAC, KOVAČ AND VUKOVIĆ
Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković, Case No. IT-96-23 & IT-96-23/1-T, Decision on Motion for Acquittal, 3 July 2000 ("*Kunarac et al.* Decision on Motion for Acquittal").

Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković, Case No. IT-96-23 & IT-96-23/1-T, Judgement, 22 February 2001 ("*Kunarac et al.* Trial Judgement").

Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković, Case No. IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002 ("*Kunarac et al.* Appeal Judgement").

Z. KUPREŠKIĆ, M. KUPREŠKIĆ, V. KUPREŠKIĆ, JOSIPOVIĆ, (PAPIC) AND SANTIĆ
Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipovic, Dragan Papic and Vladimir antic, also known as "Vlado", Case No. IT-95-16-T, Judgement, 14 January 2000 ("*Kupreškić et al.* Trial Judgement").

Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović and Vladimir Šantic, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001 ("*Kupreškić et al.* Appeal Judgement").

KVOČKA, KOS, RADIĆ, ŽIGIĆ AND PRCAĆ
Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać, Case No. IT-98-30/1-T, Judgement, 2 November 2001 ("*Kvočka et al.* Trial Judgement").

MILUTINOVIĆ, ŠAINOVIĆ AND OJDANIĆ
Prosecutor v Milan Milutinović, Nikola Šainović & Dragoljub Ojdanić, Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – *Joint Criminal Enterprise*, 21 May 2003 ("*Ojdanić* Decision").

MRKŠIĆ, ŠLIJVANČANIN AND RADIĆ
Prosecutor v. Mile Mrkšić, Veselin Šlijvančanin and Miroslav Radić, Case No. IT-95-13-R61, Decision on the Proposal of the Prosecutor for a Request to the Federal Republic of Yugoslavia (Serbia and Montenegro) to Defer the Pending Investigations and Criminal Proceedings to the Tribunal, 10 December 1998 ("*Mrkšić et al.* Decision on the Proposal of the Prosecutor").

NALETILIĆ AND MARTINOVIĆ
Prosecutor v. Mladen Naletilic and Vinko Martinovic, Case No. IT-98-34-T, Judgement, 31 March 2003 ("*Naletilic and Martinovic* Trial Judgement")

NIKOLIĆ
Prosecutor v. Dragan Nikolić, Case No. IT-94-2-PT, Decision on Defense Motion Challenging the Exercise of Jurisdiction by the Tribunal, 9 October 2002 ("*Nikolić* Decision on Defense Motion Challenging the Exercise of Jurisdiction").

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D. **List of Abbreviations**

According to Rule 2 (B), of the Rules of Procedure and Evidence, the masculine shall include the feminine and the singular the plural, and vice-versa.

ABiH (Muslim) Army of Bosnia and Herzegovina

Accused	Dr. Milomir Stakić
Additional Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 12 December 1977
Additional Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Geneva, 12 December 1977
AJIL	American Journal of International Law
All E.R.	All England Reports
ALR	Australian Law Reports
APC	Armoured Personnel Carrier
ARK	Autonomous Region of Bosanska Krajina
BiH	Bosnia and Herzegovina
BGH	Bundesgerichtshof (Federal Supreme Court of Germany)
CCL No. 10	Allied Control Council Law No. 10, December 20, 1945, *reprinted in* 1 CCL No. 10 Trials at xvi
CCPR	International Covenant on Civil and Political Rights, of 16 December 1966, 999 UNTS 171
CLR	Commonwealth Law Reports (Australia)
CSB	Security Services Center (Banja Luka)
CSCE	Conference for Security and Cooperation in Europe
Common Article 3	Article 3 common to the four Geneva Conventions of 1949
Convention Torture	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984
D	Defence Exhibit
Defence	Counsel for the Accused
DEMOS	Democratic Opposition Coalition of Slovenia
EC	European Community
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1959 (European Convention on Human Rights)

ECmHR	Former: European Commission of Human Rights
ECMM	European Community Monitoring Mission
ECOSOC	United Nations Economic and Social Council
ECtHR	European Court of Human Rights, Strasbourg
EJIL	European Journal of International Law
ESCOR	Economic and Social Council Official Records
EU	European Union
Exh.	Exhibit
F.2d	Federal Reporter Second Series (United States)
F.3d	Federal Reporter Third Series (United States)
F. Supp.	Federal Supplement (United States)
F. Supp. 2d	Federal Supplement Second Series (United States)
Federation	The Federation of Bosnia and Herzegovina, being one of the entities of BiH
Fnu	First name unknown
FRY	Federal Republic of Yugoslavia (*now*: Serbia and Montenegro)
GAOR	General Assembly Official Records
Geneva Convention I	Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces in the Field, August 12, 1949, 75 UNTS 31
Geneva Convention II	Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, August 12, 1949, 75 UNTS 85
Geneva Convention III	Geneva Convention Relative to the Treatment of Prisoners of War, August 12, 1949, 75 UNTS 135
Geneva Convention IV	Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 75 UNTS 2
Genocide Convention	Convention on the Prevention and Punishment of the Crime of Genocide, of 9 December 1948, 78 UNTS 277
HDZ	Croatian Democratic Union
HVO	Croatian Defence Council
ICC	International Criminal Court
ICC Statute	(Rome) Statute of the International Criminal Court, of 17 July 1998,

	UN Doc. A/CONF.183/9
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994
ICTR Rules	Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda, in force
ICTR Statute	Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955
ICTY	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
IFOR	Implementation Force
ILC	International Law Commission
ILC Y.B.	Yearbook of International Law Commission
ILM	International Legal Materials
ILR	International Law Reports
IMT	International Military Tribunal, Nürnberg, Germany
IMTFE	International Military Tribunal for the Far-East, Tokyo, Japan
JNA	Yugoslav Peoples' Army (Army of the Socialist Federal Republic of Yugoslavia)
KOS	JNA Counterintelligence
MASPOK	Mass movement in Croatia 1971
MUP	Ministry of the Interior in BiH
NDC	National Defence Council
NDH	Independent State of Croatia (1941)
NGO	Non-governmental organisation
Nuremberg Charter	Charter of the International Military Tribunal for the Prosecution and Punishment of the German Major War Criminals, Berlin, 6 October 1945

Nuremberg Judgement	Trial of Major War Criminals Before the International Military Tribunal, Nuremberg, 14 Nov 1945 – 1 Oct 1946
OTP/Prosecution	Office of the Prosecutor
p. pp.	Page Pages
para. paras	Paragraph Paragraphs
Peoples' Defence Council	Peoples' Defence Council of Prijedor Municipality
PRC	Prijedor Regional Command
Prijedor SJB	Prijedor Municipality Public Security Station
RS	Republika Srpska, being one of the entities of BiH
Rules	Rules of Procedure and Evidence of the ICTY in force
Rules of Detention	Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal (ICTY)
S	Prosecution Exhibit
SAO	Serbian Autonomous Region
SDA	Party of Democratic Action
SDB	State Security Department (Part of Banja Luka CSB; Also "Secret Police")
SDK	Public Accounting Service
SDS	Serbian Democratic Party
SFOR	Multinational Stabilisation Force
SFRY	*Former*: Socialist Federal Republic of Yugoslavia
SJB	Public Security Station
SKJ	League of Communists of Yugoslavia
SPS	Socialist Party of Serbia
SRBiH	Republic of Serbian People of Bosnia and Herzegovina
Statute	The Statute of the International Tribunal for the Former Yugoslavia established by Security Council Resolution 827
SUP	Secretariat of the Interior

T.	Transcript page from hearing. All transcript page numbers referred to are from the unofficial, uncorrected version of the transcript, unless not specified otherwise. Minor differences may therefore exist between the pagination therein and that of the final transcript released to the public.
TO	Territorial Defence forces
Tokyo Charter	Charter of the International Military Tribunal for the Far East, Tokyo, 19 January 1946
Tribunal	See: ICTY
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNPROFOR	United Nations Protection Force
Victim	A person against whom a crime of which the Tribunal has jurisdiction has allegedly been committed
VRS	Army of the Serbian Republic
ZOBK	Community of Municipalities of Bosnian Krajina
92 *bis* statement	*Name*, 92 *bis* statement, in the current case (e.g. *xyx*, 92 *bis* statement, p. 1234)
92 *bis* testimony	*Name*, 92 *bis* testimony in a previous case, followed by the case name and page No. of that transcript (e.g. *xyz,,* 92 *bis* testimony in Kunarac, T. 1234)