



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-04-81-PT
Date: 22 September 2008
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding Judge
Judge Christine Van Den Wyngaert
Judge Bakone Justice Moloto

Registrar: Mr. Hans Holthuis

Decision of: 22 September 2008

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC

**DECISION ON PROSECUTION'S MOTION FOR
JUDICIAL NOTICE OF FACTS RELEVANT TO THE
SREBRENICA CRIME BASE**

The Office of the Prosecutor

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Counsel for the Accused

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TRIAL CHAMBER I (“Trial Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seised of the “Motion for Judicial Notice of Facts Relevant to the Srebrenica Crime Base, with Annexes” (“Motion”), filed by the Prosecution on 10 July 2008, and hereby renders its Decision.

A. Submissions

1. Prosecution

1. In the Motion, the Prosecution requests the Trial Chamber to take judicial notice, pursuant to Rule 94(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), of 104 facts listed in Annex B to the Motion (“Proposed Facts”), which were adjudicated in the Trial and Appeal Judgements in *Prosecutor v. Krstić*¹, and the Trial and Appeal Judgements in *Prosecutor v. Blagojević and Jokić*.²

2. The Prosecution submits that the taking of judicial notice of the Proposed Facts would further the interests of judicial economy by focusing the Prosecution’s case on the issues genuinely in dispute. If the Motion were granted, the Prosecution would be in a position to further reduce the number of witnesses called and the length of time required to present its case.³

3. In the Motion, the Prosecution argues that the Proposed Facts meet the criteria for admissibility under Rule 94(B) as they are relevant, probative and reliable, and that judicial notice would be in the interests of judicial economy and would not infringe upon the rights of Momčilo Perišić (“Accused”).⁴

2. Defence

4. On 24 July 2008, the Defence filed the “Defence Position Regarding Judicial Notice of Adjudicated Facts Concerning Srebrenica Crime Base” (“Response”), whereby it objects to the admission of the Proposed Facts.

5. As a general point, the Defence submits that the “wholesale admission of facts taken from a judgement based on an assessment of evidence by another Trial Chamber is not an appropriate

¹ Case No. IT-98-33-T, Judgement, 2 August 2001 (“*Krstić* Trial Judgement”); Case No. IT-98-33-A, Judgement, 19 April 2004 (“*Krstić* Appeal Judgement”);

² Case No. IT-02-60-T, Judgement, 17 January 2005 (“*Blagojević and Jokić* Trial Judgement”); Case No. IT-02-60-A, Judgement, 9 May 2007 (“*Blagojević and Jokić* Appeal Judgement”).

³ Motion, para. 5.

⁴ Motion, para. 37.

exercise of the Trial Chamber's discretion under Rule 94(B)."⁵ The Defence submits that unlike previous motions for judicial notice of adjudicated facts, the current Proposed Facts link the crime base evidence to "named subordinates or principals who have neither been charged nor convicted".⁶ This would, in the Defence's submission, "improperly preclude a reasoned analysis of this Trial Chamber of the actual guilt of these individuals, a matter which has direct bearing on the Accused's exposure to criminal liability."⁷ The Defence therefore objects to the admission of facts concerning any such individual. The Defence also submits that the Proposed Facts include findings concerning accused currently at trial in the *Popović et al.* case, and it would be premature to admit such facts as no final judgement has been rendered in that case yet.⁸ Hence, the Trial Chamber should exercise its discretion and deny the admission of the Proposed Facts.⁹

6. The Defence further submits that the Prosecution failed to prove that the Proposed Facts concerning individuals who were not on trial in the "other proceedings" were contested during such proceedings and as such, the Prosecution Motion should be denied.¹⁰

7. Finally, the Defence specifically objects to the admission of:

- i. Portions of Proposed Facts relating to the conduct of individuals who were not represented during the *Krstić* and *Blagojević and Jokić* cases, and of those individuals who pleaded guilty in the *Erdemović, Nikolić* and *Obrenović* cases;¹¹ and
- ii. Some Proposed Facts which contain legal conclusions.¹²

3. Prosecution's Reply

8. On 1 August 2008, the Prosecution filed its "Reply to Defence Response Regarding Judicial Notice of Adjudicated Facts Concerning Srebrenica Crime Base" ("Reply"), whereby it seeks leave to reply and submits that the Defence arguments should be dismissed.

9. According to the Prosecution, there is no requirement that the Proposed Facts must relate only to individuals who were charged and convicted before the Tribunal. The Prosecution notes that the complete exclusion from judicial notice of facts relating to the acts, conduct and mental state of

⁵ Response, para. 8.

⁶ *Ibid.*

⁷ Response, para. 10.

⁸ Response, para. 9.

⁹ Response, para. 8.

¹⁰ Response, para. 9.

¹¹ *Ibid.*, referring to Proposed Facts 13-15, 17, 19, 21-25, 28-31, 41-58, 60, 61, 63-67, 69, 70-80, 82, 84, 86, 87.

¹² *Ibid.*, referring to Proposed Facts 1, 9, 11, 12, 20, 21, 38-40, 60, 63.

the accused, does not extend to other individuals whose criminal acts or omissions the accused is allegedly responsible for.¹³

10. The Prosecution further submits there is no requirement to show that the Proposed Facts were contested at trial. The Prosecution notes that instead the Proposed Fact must not be based on an agreement between the parties and it is evident, from the *Krstić* and *Blagojević and Jokić* judgements that none of the Proposed Facts were subject to any such agreement. Nevertheless, the Prosecution challenges the Defence assertion that the Proposed Facts were not contested by the defence teams of the *Krstić* and *Blagojević and Jokić* cases.¹⁴ Specifically, the Prosecution submits that a review of the *Krstić* pre-trial documents shows that all the relevant allegations were in dispute,¹⁵ whereas the Pre-Trial Brief of the *Blagojević* Defence challenged the allegations of the Bratunac Brigade's involvement in the events in Srebrenica, Potočari and Bratunac.¹⁶

11. Finally, the Prosecution takes issue with the Defence objection that some of the Proposed Facts contain legal conclusions. The Prosecution argues that the Defence has given an "overly broad" interpretation to the term "legal conclusion".¹⁷ The Prosecution argues that the use of legal language in describing a fact does not preclude taking judicial notice thereof.¹⁸ Rather, only when a fact contains a finding or characterisation of an *essentially* legal nature, which the Prosecution submits is not the case for any of the Proposed Facts, such a fact must be excluded.¹⁹

12. The Prosecution concedes that Annex B to the Motion contained minor inaccuracies and requests the Trial Chamber to adopt the Revised Annex B appended to the Reply instead.²⁰

B. Applicable Law

13. Rule 94(B) of the Rules provides that:

At the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings.

¹³ Reply, para. 6.

¹⁴ Reply, para. 8.

¹⁵ Reply, para. 10.

¹⁶ Reply, para. 11.

¹⁷ Reply, para. 12.

¹⁸ Reply, para. 13, citing *Prosecutor v. Dragomir Milošević*, IT-98-29/1-AR73.1, Decision on Interlocutory Appeals Against Trial Chamber's Decision on Prosecutions' Motion for Judicial Notice of Adjudicated Facts and Prosecution's Catalogue of Agreed Facts, ("*Dragomir Milošević* Appeal Decision") 26 June 2007, para. 22.

¹⁹ Reply, paras 13, 14, citing *Perišić* Decision on Sarajevo Facts, para. 25.

²⁰ Reply, para. 4.

14. The Trial Chamber has set out at length the settled jurisprudence of the Tribunal with regard to the judicial notice of adjudicated facts in its recent Decision on Adjudicated Facts Concerning Sarajevo.²¹

C. Incorporation by Reference

15. The Trial Chamber notes that the Defence seeks to incorporate by reference in its Response “all the objections set forth” in its Defence Memorandum Brief on the Application of the Rights contained in ICTY Statute and in ICCPR to the Presentation of Evidence with Appendix A, dated 16 May 2006 (“Defence Memorandum Brief”).²² The Prosecution objects to such incorporation as the Defence failed to provide an explanation as to the exceptional circumstances justifying such an oversized filing.²³

16. The “Practice Direction on the Length of Briefs and Motions” provides that motions, responses and replies shall not exceed 3,000 words and that a party seeking to exceed such limit, shall request authorisation in advance, providing an explanation on the exceptional circumstances justifying the request.²⁴ Excluded from the word count are appendices and books of authorities, which, by definition “will not contain legal or factual arguments, but rather references, source materials, items from the record, exhibits, and other relevant, *non-argumentative material*.”²⁵ The Trial Chamber notes that the Memorandum Brief, on the other hand, contains extensive legal arguments challenging the “constitutionality” of the Rules allowing the admission into evidence of written statements and transcripts, and the judicial notice of adjudicated facts. By incorporating its Memorandum Brief into the Response, the Defence would appear to circumvent the prescribed word limit, without having sought authorisation by the Trial Chamber and demonstrated good cause.

17. For the foregoing reason, the Trial Chamber finds that the Defence Memorandum Brief should be dismissed. The Trial Chamber enjoins the Parties, in this case the Defence, to respect the Practice Direction on the Length of Briefs and Motions and to avoid attempting incorporation by reference of lengthy documents containing legal and factual arguments. Such arguments should be developed within the context of the submission itself. Nevertheless, considering the nature of the

²¹ *Prosecutor v Momčilo Perišić*, IT-04-81-PT, Decision on Prosecution’s Motion for Judicial notice of Adjudicated Facts Concerning Sarajevo, (“*Perišić* Decision on Judicial Notice of Sarajevo Facts”)26 June 2008, paras 13-17.

²² Response, para 6. The Trial Chamber notes that on 31 May 2006, Trial Chamber III dismissed without prejudice the general objections set forth in the Defence Memorandum Brief. Order on Defence Memorandum Brief, 31 May 2006, paras 5-6.

²³ Reply, para. 5.

²⁴ Practice Direction on the Length of Briefs and Motions, 16 September 2005, Section (C), paras 5-7.

²⁵ Practice Direction on the Length of Briefs and Motions, 16 September 2005, Section (C), para. 6.

objections raised in the Defence Memorandum Brief, the Trial Chamber finds it necessary to address them.

18. The Defence raises fundamental objections against the Rules being in violation of the fundamental rights of the accused as enshrined in Article 21 of the Statute. The Defence argues that the admission of written statements and transcripts, and judicial notice of adjudicated facts would violate the Accused's "right to confront, right to be tried in his presence, right to the presumption of innocence, right to be treated equally before the tribunal [*sic*]and the right to equality of arms."²⁶

19. As regards the objections that such presentation of evidence would violate the principle of equality of arms, the Trial Chamber finds that the matter has been extensively discussed and is now settled in the jurisprudence of the Tribunal. The principle of "equality of arms" requires "a judicial body to ensure that neither party is put at a disadvantage when presenting its case, particularly in terms of procedural equity."²⁷ The purpose of the principle is to give equal access to the processes of the Tribunal, or an equal opportunity to seek procedural relief where relief is needed.²⁸ In the present instance, the Defence may, as the Prosecution, present evidence by means of written statements and transcripts or to propose facts to be judicially noticed.²⁹

20. With reference to the right to confront/cross examine witnesses, the Trial Chamber notes it is also well established in the jurisprudence of the Tribunal that the right to cross-examination is not absolute and it may be restricted without necessarily entailing a violation of Article 21 of the Statute or being inconsistent with a fair trial.³⁰

²⁶ Defence Memorandum Brief, p. 33-36.

²⁷ *Prosecutor v. Milomir Stakić*, IT-97-24-A, Appeal Judgement, 22 March 2006, para. 149. See also, *Ferdinand Nahimana et al v. Prosecutor*, ICTR-99-52-A, Judgement, 28 November 2007, para. 173; *Prosecutor v. Dario Kordić and Mario Čerkez*, IT- 95-14/2-A, Appeal Judgement, 17 December 2004, para. 175; *Prosecutor v. Duško Tadić*, IT-94-1-A, Judgement, 15 July 1999, para. 48.

²⁸ *Prosecutor v. Dario Kordić and Mario Čerkez*, IT- 95-14/2-A. Decision on Application by Mario Čerkez for Extension of Time to File his Respondent's Brief, 11 September 2001, paras 5-7. The Defence also argues that "unlike inquisitorial systems where a neutral magistrate undertakes the examination and has the opportunity and duty to investigate, the statements and prior testimony here are the product of a zealous and effective advocate presenting its case. In this instance the prosecutor had an opportunity to question and develop evidence but not the accused. In this regard, the Trial Chamber recalls that the principle of equality of arms must also be viewed with respect to the different functions of the parties have. The matter has been extensively dealt with in *Prosecutor v. Momčilo Perišić*, IT-04-81-PT, Decision on Motion to Appoint Amicus Curiae to Investigate Equality of Arms, 18 June 2007, paras 5-7. The Trial Chamber sees no reason to revisit this discussion here and refers the parties to the abovementioned decision.

²⁹ In this respect the Trial Chamber notes that in the present case, the Defence has made joint motions with the Prosecutor for judicial notice of adjudicated facts on two occasions: Parties Joint Submission in Respect of Facts Relevant to Zagreb Crime Base with Amended Confidential annex A on 22 July 2008, and Parties Joint Submission in Respect of Facts Relevant to the Sarajevo Crime Base with Amended Annex, on 11 August 2008.

³⁰ *Prosecutor v. Milan Martić*, IT-95-11-AR73.2, Decision on Appeal Against the Trial Chamber's Decision on the Evidence of Witness Milan Babić, 14 September 2006, paras 12-13. The Appeals Chamber in *Martić* further rejected the Appellant's claim that the fairness of a trial is uniquely predicated on the fairness accorded to the Accused. See also *Prosecutor v. Jadranko Prlić et al.*, IT-04-74-AR73.6, Decision on Appeals Against Admitting Transcript of Jadranko Prlić's Questioning into Evidence, 23 November 2007, para. 52; *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 25.

21. In relation to the right of presumption of innocence, the Defence argues that “these procedural rules shift the burden of proof to the accused.”³¹ As will be discussed in more detail below,³² the Appeals Chamber in *Karemera* stressed that facts judicially noticed under Rule 94 (B) are “merely presumptions” which can be rebutted by the defence during trial and that “judicial notice does not shift the ultimate burden of persuasion, which remains with the Prosecution.”³³

22. The Defence also argues that Rules 92 *bis* and *quater* and 94(B) would violate the right of the accused to be tried in his presence, as the evidence would have been gathered during proceedings where the accused was not present and/or outside proceedings.³⁴ Article 21(4)(d) states that “[i]n the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality: [...] to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; [...]” The Appeals Chambers of both this Tribunal and the International Criminal Tribunal for Rwanda (“ICTR”) have interpreted the right of the accused to be present at trial as the right to be “physically present at his trial.”³⁵ However, it is also undisputed that such right is not absolute.³⁶ The Trial Chamber considers that the right to be present at trial must be read in context with the objective and purpose of Article 21 as a whole.³⁷ Article 21 lists a series of rights of the accused, which include, but are not limited to, his right to “defend himself,” “to examine, or have examined witnesses against him”, and “to obtain the attendance and examination of witnesses on his behalf”.³⁸ These are specific aspects of the right to a fair trial to which the accused is entitled throughout the proceedings, from the moment an indictment against him is confirmed.³⁹ The Trial Chamber finds that these rights do not extend to trials in which the accused in the current case was not a party to, nor did he have the status of accused as defined in the Rules.

³¹ Defence Memorandum Brief, p. 36.

³² See paras 39-42 *infra*.

³³ *Karemera et al.* Appeal Decision, para. 42.

³⁴ Defence Memorandum Brief, p. 36. See also *Ibid*, pp 12-17.

³⁵ *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-2001-73-AR73, Decision on Interlocutory Appeal, (“*Zigiranyirazo* Decision”) 30 October 2006, paras 11-13; *The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-998-44-AR73.10, Decision on Nzirorera’s Interlocutory Appeal Concerning his Right to be Present at Trial, (“*Nzirorera* Decision”), para. 11; *Prosecutor v. Jovica Stanišić and Franko Simatović*, IT-03-69-AR73.2, Decision on Defence Appeal of the Decision on Future Course of Proceedings, para. 6. See also *Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze v. The Prosecutor*, Case No. ICTR99-52-A, Judgement, (“*Nahimana* Appeal Judgement”) 28 November 2007, para. 96.

³⁶ *Prosecutor v. Slobodan Milošević*, Decision on Interlocutory Appeal of the Trial Chamber’s Decision on the Assignment of Defence Counsel, (“*Milosević* Decision”) 1 November 2004, para. 13; *Zigiranyirazo* Decision, para. 14; *Nzirorera* Decision, para. 11; Rule 80(B).

³⁷ See, *i.e.*, *Colozza v. Italy*, European Court of Human Rights, No. 9024/80, ECHR, Judgement, 12 February 1985, para. 27.

³⁸ Article 21(4)(e) and (f).

³⁹ See Rules 2 and 47(H).

23. The Trial Chamber finds that the purpose of article 21(4)(d) is to ensure that the Accused be present during the presentation of the evidence against him, at his trial, in order to actively and effectively confront and challenge it, in other words to defend himself.⁴⁰ As noticed by the European Court of Human Rights (“ECtHR”) in two cases also cited by the Defence in its Memorandum Brief, as a general rule the presentation of evidence should be carried out “in the presence of the accused during a public hearing with the view to adversarial argument.”⁴¹ In this light, the Trial Chamber finds that although the evidence sought to be introduced pursuant to Rules 92 *bis* and *quater* and 94(B) has, by definition, its origin outside trial or in other proceedings where the current accused was not present, his right to challenge such evidence during *his* trial is in not violated.⁴² The Accused will have the possibility to actively challenge all the evidence brought against him by the Prosecution, either by producing evidence to the contrary, calling upon witnesses on his behalf, cross-examine Prosecution witnesses or any other means available to him pursuant to the Rules.⁴³ As a conclusion, the Trial Chamber finds that the Defence argument that the right of the accused to be present would be violated has no merit.

24. The Defence further contends that the Rules provide for “a shifting of the burden of proof and the partial elimination of the right of confrontation” which in turn constitute a violation of the principle of equality as set out in Article 21(1) of the Statute. Considering the above discussion on the right of confrontation and the burden of proof, the Trial Chamber finds this objection without merit.⁴⁴

⁴⁰ In this regard see *Zigiranyirazo* Decision, fn. 48, citing *Riggins v. Nevada*, 504 U.S. 127, 142 (1992) (Kennedy, J., concurring) where the Supreme Court stated “[i]t is a fundamental assumption of the adversary system that the trier of fact observes the accused throughout the trial, while the accused is either on the stand or sitting at the defence table. This assumption derives from *the right to be present at trial, which in turn derives from the right to testify and right under the Confrontation Clause.*” (emphasis added); and *R. v. Lee Kun* (1916) 1 Kings Bench Reports 337, at 341, where it is emphasised that “[t]he reason why the accused should be present at the trial is that he may hear the case made against him and have the opportunity [...] of answering it.”

⁴¹ *Kostovski v. Netherlands*, European Court of Human Rights, Application No. 11454/85, Judgement, 20 November 1989, para. 41; *Delta v. France*, European Court of Human Rights, Application No. 11444/85, Judgement, 19 December 1990, para. 36. Both cases dealt with the issue of statements taken in the absence of the accused or his defence counsel. In view of the Defence arguments in its Memorandum Brief that the evidence pursuant to Rules 92 *bis* and *ter* and 94 (B) would have been gathered in the absence of the Accused, the Trial Chamber finds these cases to be fitting to the particular argument. Furthermore, in both Cases the ECtHR addressed the presentation of the evidence in general in the view the right to a fair trial. As noted in *Colozza v. Italy*, “[a]lthough this is not expressly mentioned in paragraph 1 of Article 6, the object and the purpose of the Article taken as a whole shows that a person “charged with a criminal offence” is entitled to take part in the hearing. (para. 27). See also Stefan Trechsel, *Human Rights in Criminal Proceedings*, (2006) pp 252-253.

⁴² The Trial Chamber is mindful that the right to challenge evidence or facts admitted pursuant to Rules 92 *quater* and 94(B) may result to be limited in light of the fact that the Accused may not have access to the primary source of the evidence. However as discussed in paragraph 20 above, a restriction to such right does not necessarily entail a violation of the right to a fair trial.

⁴³ The Trial Chamber further notes pursuant to Rule 92 *bis*(C), after hearing the parties, the Trial Chamber shall decide whether to require the witness to appear for cross examination.

⁴⁴ See paras 19-20 *supra*.

25. Finally, the Trial Chamber recalls that a Trial Chamber shall ensure that the proceedings are conducted with full respect for the rights of an accused⁴⁵ and that it may exclude evidence when its probative value is substantially outweighed by the need to ensure a fair trial.⁴⁶ A finding of guilt, if any, shall not be substantially based on adjudicated facts. Such facts will be considered by the Trial Chamber together with other facts established in light of the evidence presented during the trial, to support its final determination.

D. Discussion

26. As a preliminary point, after a review of Annex B to the Prosecution Motion and Revised Annex B to the Prosecution Reply, the Trial Chamber notes that the corrections proposed by the Prosecution are minor, in that they entail the withdrawal of Proposed Fact 70—which is repetitive of Proposed Fact 69—and corrections to the paragraph references of Proposed Facts 45, 73 and 83.⁴⁷ As such, the changes have no impact on the substance of the Motion and the Trial Chamber therefore adopts Revised Annex B for the purpose of this Decision.

1. The Proposed Fact Must be Distinct, Concrete and Identifiable

27. A fact of which judicial notice is sought should be distinct, concrete and identifiable in the findings of the original judgement.⁴⁸ In particular, all purported adjudicated facts should be understood in the context of the judgement “with specific reference to the place referred to in the judgement and to the indictment period of that case”.⁴⁹ It follows that if adjudicated facts proposed for admission are insufficiently clear even in their original context, the Trial Chamber should not take judicial notice of them.⁵⁰

28. The Trial Chamber notes that the Defence has not challenged any of the Proposed Facts as falling short of this requirement. Nevertheless, after a careful review of the Proposed Facts, the Trial Chamber finds that the expression “full scope of the plan” in Proposed Fact 38 is unclear and therefore this Proposed Fact should not be admitted.⁵¹ Similarly, the word “resources” in Proposed Fact 42 is too vague. Furthermore as the same subject matter is covered by Proposed Fact 41,

⁴⁵ Article 20(1).

⁴⁶ Rule 89(D).

⁴⁷ Reply, para. 4.

⁴⁸ *Prosecutor v. Momčilo Krajišnik*, IT-00-39-T, Decision on Third and Fourth Motions for Judicial Notice of Adjudicated Facts, (“*Krajišnik Decision*”) 24 March 2005, para. 14. *See also Prosecutor v. Prlić et al.*, IT-04-74-PT, Decision on Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B), (“*Prlić et al. Pre-Trial Decision*”) 14 March 2006, para. 21.

⁴⁹ *Krajišnik Decision*, para. 14, fn. 44.

⁵⁰ *Ibid.*

⁵¹ Proposed Fact 38 reads “From the evening of 13 July 1995, General Krstić participated in the full scope of the plan to kill the Bosnian Muslim men originated earlier by General Mladić and other VRS officers.”

Proposed Fact 42 is not admitted.⁵² The Trial Chamber further finds that Proposed Fact 76 is already covered, in more detail, by Proposed Fact 75 and is therefore not admitted as it is repetitive.⁵³

29. The Trial Chamber recalls that when the formulation of a fact contains a minor inaccuracy or ambiguity due to its abstraction from the context of the original judgement, the Trial Chamber can, in its discretion, correct such an inaccuracy or ambiguity *proprio motu*.⁵⁴ The Trial Chamber has therefore made a few corrections to render some Proposed Facts consistent with the meaning intended in the previous proceedings: Proposed Fact 2 should be changed back to the original formulation of paragraph 100 of the *Krstić* Trial Judgement, with the omission of the seven additional Brigades mentioned therein;⁵⁵ in Proposed Facts 4 and 22, the words “In July 1995” should be included at the beginning of each Proposed Fact;⁵⁶ in Proposed Facts 45 and 46 the year “1995” should be introduced after the word “July”;⁵⁷ in Proposed Fact 50, the word “Brigade” should be introduced in the first sentence after the word “Zvornik”;⁵⁸ in Proposed Facts 77 and 78, the year “1995” should be included after the words “16 July”;⁵⁹ in Proposed Fact 71 the words “in Branjevo Farm on 16 July 1995” should be added at the end of the sentence in order to avoid any ambiguity with regard to the time-frame and location of the Proposed Fact;⁶⁰ in Proposed Fact 97 the words “in July 1995” should be added at the end of the sentence.⁶¹

2. The Proposed Facts Must be Pertinent and Relevant to the Case

30. The proposed facts must be relevant to a matter at issue in the current proceedings. As the Appeals Chamber has noted, “Rule 94 of the Rules is not a mechanism that may be employed to

⁵² Proposed Fact 42 reads “Drina Corps resources were utilised to assist with the execution from 14 July 1995 onwards”, whereas Proposed Fact 41 reads “Drina Corps troops took part in killing episodes from 14 July 1995 onwards at Orahovac, Petkovci Dam, Branjevo Military Farm, Pilica Cultural Centre and Kozluk.”

⁵³ Proposed Fact 75 reads “[t]he Zvornik Brigade excavators and bulldozers operating in the Kozluk area from 16 July 1995 were involved in work related to the burial of victims from the Kozluk execution site”, whereas Proposed Fact 76 reads “The extensive amount of Zvornik Brigade engineering work at Kozluk around this time was connected to the burial of bodies in the Kozluk grave.” Both Proposed Facts are contained in para. 253 of the *Krstić* Trial Judgement, and Proposed Fact 76 is a conclusion based on the finding presented in Proposed Fact 75 and the geographical location of Kozluk. The *Krstić* Trial Judgement makes no reference to engineering work of the Zvornik Brigade other than the use of excavators and bulldozers.

⁵⁴ *Prosecutor v. Popović et al.*, IT-05-88-T, Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts with Annex, 26 September 2006 (“*Popović et al.* Decision”), para. 7; *Perišić* Decision on Judicial Notice of Sarajevo Facts, para. 21.

⁵⁵ See Annex B.

⁵⁶ *Ibid.* The Trial Chamber notes that Proposed Facts 23 and 24 originate from the same paragraph in the *Blagojević* Trial Judgement as Proposed Fact 22, all relate to the incidents in Potočari and should be read in that context. The Trial Chamber therefore finds it is unnecessary to introduce a time reference also in Proposed Facts 23 and 24.

⁵⁷ *Ibid.*

⁵⁸ See Annex B.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

circumvent the ordinary requirement of relevance and thereby clutter the record with matters that would not otherwise be admitted.”⁶²

31. The Defence has not challenged any of the Proposed Facts as falling short of this requirement. The Trial Chamber finds that all the Proposed Facts are pertinent to Counts 9 through 13 of the Indictment,⁶³ scheduled incidents relating to Srebrenica as described in Annex A to the Indictment and are relevant to the case.

3. The Proposed Facts Must not Contain any Findings or Characterisations That are of an Essentially Legal Nature

32. The proposed facts must not contain any findings or characterisations that are of an essentially legal nature. In other words, they must represent *factual findings* of a Trial Chamber or Appeals Chamber.⁶⁴ In general, findings related to the *actus reus* or the *mens rea* of a crime are deemed to be factual findings.⁶⁵ In determining whether a proposed fact is truly a factual finding, it has been observed that “many findings have a legal aspect, if one is to construe this expression broadly. It is therefore necessary to determine on a case-by-case basis whether the proposed fact contains findings or characterisations that are of an essentially legal nature and which must, therefore, be excluded.”⁶⁶

33. In general the Defence argues that Proposed Facts 1, 9, 11, 12, 20, 21, 38-40, 60 and 63 contain legal conclusions, without any indication as to which portion(s) of the Proposed Facts it considers to have such legal connotation.⁶⁷ The Trial Chamber however does not find that any of those Proposed Facts identified by the Defence contain a legal characterisation but that they instead relate to factual findings of the Chamber in the cases that they were extracted from.

34. Proposed Fact 1 relates to the formation structure, objective of the Drina Corps, as well as to the location of its headquarters in November 1992; Proposed Fact 9 relates to the description of the plan for Krivaja-95 and the findings therein are factual; Proposed Facts 11 and 12 contain factual findings relating to the acts of the Bosnian Serb forces after the take-over of Srebrenica; Proposed Fact 63 contains an essentially factual description. Proposed Fact 20 states that “the Bosnian Muslim civilians who were bussed out of Potočari were not making a free choice”. The Trial Chamber finds this to be a factual description of the lack of free choice that existed at the time the

⁶² *Prosecutor v. Semanza*, ICTR-97-20-I, Decision on the Prosecutor’s Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54, 3 Nov 2000, para. 24; *Nikolić Appeal Decision*, para. 52.

⁶³ Prosecution Filing of Revised Second Amended Indictment with Annex A, 5 February 2008 (“Indictment”).

⁶⁴ *Dragomir Milošević Appeal Decision*, paras 19-22; *Krajišnik Decision*, para. 15.

⁶⁵ *Krajišnik Decision*, para. 5.

⁶⁶ *Krajišnik Decision*, para. 19. See also *Dragomir Milošević Appeal Decision*, paras 19-22.

⁶⁷ Proposed Fact 38 has already been discussed and found to be lacking clarity. See para. 28 *supra*.

Bosnian Muslims were being bussed out of Potočari. The Trial Chamber further finds that the use of the term “civilian” in this case is of a descriptive and factual character. Likewise, Proposed Fact 21 refers to the “atmosphere of fear and terror” which is a factual description of how the Bosnian Muslim refugees experienced the situation in Potočari at the time. Proposed Fact 39 contains a reference to “military-aged Bosnian Muslim men”, which the Trial Chamber finds to be a description of the age range of these men. Finally, Proposed Facts 40 and 60 relate to the *actus reus* and *mens rea* of General Krstić and Dragan Jokić.

4. The Proposed Fact Must not be Based on an Agreement Between the Parties to the Original Proceedings

35. The Defence submits that the Prosecution failed to prove that the Proposed Facts were contested during the previous proceedings.⁶⁸ However, the Trial Chamber notes that the requirement applicable to the Proposed Facts is whether these facts are “adjudicated” and not whether the facts were contested during the proceedings. In other words, a fact is “adjudicated” when a Trial Chamber has made a finding of fact based on the evidence presented during the proceedings, as opposed to a finding based on an agreement between the parties to the original proceedings, such as a plea agreement under Rules 62 *bis* and 62 *ter*, or an agreement between the parties on matters of fact in accordance with Rule 65 *ter* (H). Whether a fact is based on an agreement is clear where the structure of the relevant footnote in the original judgement cites the agreed facts between the parties as a primary source of authority.⁶⁹

36. In applying this requirement, the Trial Chamber does not find that any of the Proposed Facts are based on an agreement between the parties.⁷⁰

5. The Proposed Fact Must not be Subject to Pending Appeal or Review

37. The proposed facts must not be contested on appeal. Thus, “[o]nly facts in a judgement, from which there has been no appeal, or as to which any appellate proceedings have concluded, can truly be deemed “adjudicated facts” within the meaning of Rule 94(B)”.⁷¹

38. None of the Proposed Facts under examination are subject to pending appeal. The Trial Chamber finds therefore that all Proposed Facts satisfy this requirement.

⁶⁸ See para. 6 *supra*.

⁶⁹ *Popović et al.* Decision, para. 11.

⁷⁰ The Trial Chamber notes, nevertheless, that there is *prima facie* evidence that these facts were indeed contested by in the *Krstić and Blagojević and Jokić* proceedings. See Reply, paras. 10, 11.

⁷¹ *Kupreškić et al.* Decision, para. 6; *Krajišnik* Decision, para. 14; *Prlić et al.* Pre-Trial Decision, paras 12, 15.

6. The Proposed Fact Must not Relate to Acts, Conduct, or Mental State of the Accused

39. In general, the Defence objects to the Proposed Facts, as they include findings on the conduct of named and unnamed individuals, some of whom are currently on trial in the *Popović* case. It submits that any finding implying the guilt of these individuals could have a great bearing on the criminal responsibility of the Accused in the present case. The Defence further objects to portions of some Proposed Facts as they relate to the conduct of individuals not represented during the *Krstić* and *Blagojević and Jokić* cases or to the guilty pleas in the *Erdemović*, *Momir Nikolić* and *Obrenović* cases.⁷²

40. A Trial Chamber must withhold judicial notice of any alleged adjudicated fact relating to the acts, conduct and mental state of the *accused*. Two factors warrant this “complete exclusion”. First, it strikes a “balance between the procedural rights of the accused and the interest of expediency that is consistent with the one expressly struck in Rule 92 *bis*, which governs the proof of facts other than by oral evidence”.⁷³ Second, “there is reason to be particularly sceptical of facts adjudicated in other cases when they bear specifically on the actions, omissions, or mental state of an individual not on trial in those cases [as] the defendants in those other cases would have had significantly less incentive to contest those facts than they would facts related to their own actions; indeed, in some cases such defendants might affirmatively choose to allow blame to fall on another”.⁷⁴

41. This requirement does not, however, apply to the conduct of other persons for whose criminal acts and omissions the accused is alleged to be responsible through one or more of the forms of liability in Article 7(1) or (3) of the Statute.⁷⁵ All other requirements being met, there is no reason why judicial notice of facts concerning crimes committed by other individuals should not be taken, as long as the burden to establish the alleged criminal responsibility of the accused remains with the Prosecution.⁷⁶

42. The Trial Chamber notes that “when the accused is charged with crimes committed by others, while it is possible to take judicial notice of adjudicated facts regarding the existence of such crimes, the *actus reus* and the *mens rea* supporting the responsibility of the accused for the crimes in question must be proven by other means than judicial notice.”⁷⁷ The Appeal Chamber found that, in the careful exercise of its discretion, a Trial Chamber may take judicial notice of facts concerning

⁷² See paras 5, 7(i) *supra*.

⁷³ *Karemera et al.* Appeal Decision, para. 51.

⁷⁴ *Karemera et al.* Appeal Decision, para. 51.

⁷⁵ *Karemera et al.* Appeal Decision, para. 52.

⁷⁶ See *Dragomir Milošević* Appeal Decision, para. 16.

⁷⁷ *Dragomir Milošević* Appeal Decision, para. 16, citing *Karemera et al.* Appeal Decision, para. 52.

acts and conduct of individuals other than the accused, even as close to him as members of a joint criminal enterprise.⁷⁸

43. The Trial Chamber finds that the Proposed Facts go to the conduct of persons other than the Accused in this case and thus meet this requirement.

7. The Formulation of a Proposed Fact Must not Differ Substantially From the Formulation in the Original Judgement

44. The facts of which judicial notice is sought must be formulated by the moving party in the same way – or at least in a substantially similar way – as the formulation used in the original judgement.⁷⁹ Furthermore, a Trial Chamber can and indeed must decline to take judicial notice of facts which are “out of context” if it considers that the way they are formulated – abstracted from the context in the judgement from where they came – is misleading or inconsistent with the other facts adjudicated in the original case.⁸⁰ Finally, a proposed fact also has to be examined in the context of the other Proposed Facts in the motion. It follows that the Trial Chamber must deny judicial notice if the proposed fact is either unclear in that context or has become unclear because one or more of the surrounding purported facts will be denied judicial notice.⁸¹

45. The Trial Chamber notes that on a number of occasions, the Prosecution has combined into a Proposed Fact findings contained in more than one paragraph of the original judgement. This is the case for Proposed Facts 17, 92, 100 and 103 in relation to the *Krstić* Trial Judgement, and for Proposed Fact 40 in relation to the *Krstić* Appeal Judgement. The Trial Chamber finds that the substance of these Proposed Facts is consistent with that of the original judgements in *Krstić*.

46. Furthermore, Proposed Fact 52 is based on two paragraphs of the *Blagojević and Jokić* Trial Judgement, as well as two paragraphs of the *Krstić* Trial Judgement. The Proposed Fact accurately reflects the finding contained in the *Blagojević and Jokić* Trial Judgement and adds a time-frame contained elsewhere in that and the *Krstić* Trial Judgement. The Trial Chamber finds that Proposed Fact 52 is not inconsistent with the findings in the original judgements and should be admitted.

47. Finally, the Trial Chamber notes that some Proposed Facts contain minor changes and/or corrections. The Trial Chamber finds that this does not make these facts substantially different from the original formulation. There is therefore no reason to exclude the following Proposed Facts on this ground: 14, 19, 30, 34, 35, 36, 39, 41, 51, 54, 58, 59, 60, 61, 66, 68, 73, 74, 81, 85, 89, 90, 93,

⁷⁸ *Karemera et al.* Appeal Decision, paras 52-53.

⁷⁹ *Krajišnik* Decision, para. 14; *Prlić et al.* Pre-Trial Decision, para. 21.

⁸⁰ *Karemera et al.* Appeal Decision, para. 55; *Popović et al.* Decision, para. 8.

⁸¹ See *Popović et al.*, para. 8.

97, 98, 99, 101, 102 and 104. The Trial Chamber will attach the list indicating the changes and/or corrections proposed by the Prosecution in relation to these Proposed Facts in Annex A.

8. Trial Chamber's Residual Discretion

48. Besides the application of these requirements, in exercising its residual discretion, the Trial Chamber has carefully assessed whether the admission of the Proposed Facts would advance judicial economy while still safeguarding the rights of the accused.

49. The Trial Chamber has already found that Proposed Facts 38, 42 and 76 do not meet the requirements for judicial notice pursuant to Rule 94 (B). As regards the remaining Proposed Facts, the Trial Chamber notes that they relate to both Counts 9 through 13 of the Indictment and scheduled incidents relating to Srebrenica as described in Annex A to the Indictment. The Trial Chamber recalls that the taking of judicial notice of these Proposed Facts will only shift the initial production of evidence to the Defence, while the ultimate burden of persuasion remains with the Prosecution. Furthermore, these Proposed Facts concern exclusively the commission of crimes in Srebrenica. The Prosecution will ultimately have to prove, during the course of the trial, the existence of facts establishing the criminal responsibility of the Accused for these crimes as pleaded in the Indictment.

50. In exercising its residual discretion, the Trial Chamber finds that the taking of judicial notice of the remaining Proposed Facts will further the interest of justice and expedite the proceedings while guaranteeing the rights of the Accused to a fair trial.

E. DISPOSITION

51. For the foregoing reasons and pursuant to Rule 94(B) of the Rules, the Trial Chamber:

GRANTS leave to file the Prosecution Reply;

ACCEPTS the Revised Annex B to the Reply instead of Annex B to the Motion;

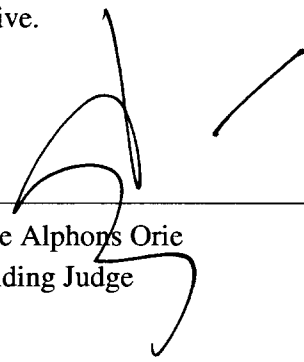
GRANTS the Motion **IN PART** and will take judicial notice of the following Proposed Facts:

- a) 1, 3, 5-21, 23-37, 39-41, 43-44, 47-49, 51-69, 72-75, 79-96, and 98-104; and
- b) 2, 4, 22, 45-46, 50, 71, 77-78 and 97 subject to the changes indicated in paragraph 29 above.

The Trial Chamber attaches Annex B to this Decision listing the Adjudicated Facts as admitted.

The Trial Chamber will not take judicial notice of the other Proposed Facts.

Done in English and French, the English version being authoritative.



Judge Alphons Orié
Presiding Judge

Dated this twenty-second day of September 2008

At The Hague

The Netherlands

[Seal of the Tribunal]

ANNEX A

List indicating the changes and/or corrections proposed by the Prosecution in relation to Proposed Facts discussed in paragraph 47 of this decision.

Proposed Fact 14 - the words “on July 12” have been inserted.

Proposed Fact 19 - the word “officers” has been inserted after the words “Drina Corps Command.”

Proposed Fact 30 - the words “these men” have been replaced with the words “Bosnian Muslim men.”

Proposed Fact 34 - “On 14 July 1995” was introduced at the beginning of the sentence.

Proposed Fact 35 - the word “him” was replaced with “Dragan Obrenović” and one sentence has been omitted between the first and second sentences.

Proposed Fact 36 - the phrase “to execute” was introduced after the word “order”.

Proposed Fact 39 - the words “Krstić” and “of military-aged Bosnian Muslim men of Srebrenica” have been inserted.

Proposed Fact 41 - indicates only the locations where the Drina Corps was found to have participated in killing episodes, without including the details of what occurred at each single location.

Proposed Fact 51 - the word “detention” has been removed and the word “detained” has been inserted instead after the word “men”.

Proposed Fact 54 - the words at the beginning of the sentence “[i]n relation to the participation of elements of the Zvornik Brigade in the executions in Orahovac, the Trial Chamber finds that there is sufficient evidence to establish beyond reasonable doubt” have been removed and “the involvement of” has been replaced with “were involved”.

Proposed Fact 58 - in the second sentence, the words “By telling Cvijetin Ristanović to take the excavator to Orahovac, Dragan Jokić provided practical assistance that had a substantial effect on the commission of the crime” were replaced by “Jokić provided assistance by telling Cvijetin Ristanović to take the excavator to Orahovac.”

Proposed Fact 59 - the words “[t]he Trial Chamber finds that Dragan Jokić rendered practical assistance which has a substantial effect on the commission of the mass executions in” have been

removed at the beginning of the sentence as have the words “[h]is acts of assistance included” from the beginning of the second sentence, so that a single sentence is formed.

Proposed Fact 60 - the words “[f]urther the fact that Dragan Jokić and” have been removed so that a single sentence is formed from two sentences.

Proposed Fact 61 joins two separate sentences from the original paragraph 775 of the *Blagojević and Jokić* Trial Judgement, and the words at the beginning of the second sentence, “[t]he evidence further establishes that Dragan Jokić knew that these men and boys were detained” have been removed so that the two sentences could be merged.

Proposed Fact 66 - the words “to the execution site at Branjevo Military Farm” have been introduced in keeping with paragraph 126 of the *Krstić* Appeal Judgement.

Proposed Fact 68 - the words “was” and “(a Main Staff subordinate unit) and” have been removed.

Proposed Fact 73 - the word “Zvornik” has been added to the first sentence of the paragraph.

Proposed Fact 74 - has been modified so that references to the “Trial Chamber” have been removed.

Proposed Fact 81 has been modified so that the words “Trial Chamber” and “evidence” have been removed.

Proposed Fact 85 - the word “reburial” has been inserted before the word “operation” in accordance with the context of the other Proposed Facts.

Proposed Fact 89 - the words “which took place some time in late September to late October 1995” have been added at the end of the sentence.

Proposed Fact 90 - the specification “which took place some time in late September to late October 1995” has been added at the end of the sentence.

Proposed Fact 93 - the third sentence of paragraph 298 of the *Krstić* Trial Judgement has been removed.

Proposed Fact 97 - the words “for the Drina Corps” have been added at the end of the sentence.

Proposed Fact 98 - the words “of the Zvornik Brigade” have been added at the end of the sentence.

Proposed Fact 99 - the word “was” has been inserted.

Proposed Fact 101 – paragraph 62 of the original judgement has been rearranged and merged to form one single sentence.

Proposed Fact 102 - the word “he” has been replaced with “Blagojević.”

Proposed Fact 104 - the word “was” has been inserted.

ANNEX B
List of Adjudicated Facts Admitted by the Trial Chamber

Number	Adjudicated Fact
1	The Drina Corps of the VRS was formed in November 1992, with the specific objective of “improving” the situation of Bosnian Serb people living in the Middle Podrinje region, of which Srebrenica was an important part. It was organised along the lines of the former JNA Corps and, as was the case with the VRS generally, JNA operating methodologies were almost completely adopted. The Drina Corps Headquarters was established first in Han Pijesak and later moved to Vlasenica.
2	In July 1995, the Drina Corps was composed of the following subordinate Brigades: Zvornik Brigade; 1 st Bratunac Light Infantry Brigade (“Bratunac Brigade”) [...].
3	These Brigades had combat capabilities and were supported by the 5 th Mixed Artillery Regiment, the 5 th Engineers Battalion, 5 th Communications Battalion and the 5 th Military Police battalion.
4	In July 1995 , the Drina Corps came under the Command of the Main Staff of the VRS, along with the 1 st and 2 nd Krajina Corps, the East Bosnia Corps, the Hercegovina Corps and the Sarajevo-Romanija Corps.
5	Two units were also directly subordinated to the Main Staff: the 10 th Sabotage Detachment (a unit primarily used for wartime sabotage activities) and the 65 th Protective Regiment (a unit created to provide protection and combat services for the Main Staff.)
6	On 8 March 1995, the Supreme Commander of the RS Armed Forces, President Karadžić, issued Directive for Further Operations 7: “Planned and well-thought-out combat operations” were to create “ <i>an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of both enclaves.</i> ”
7	The separation of the Srebrenica and Žepa enclaves became the task of the Drina Corps.
8	The Drina Corps was the VRS military formation tasked with planning and carrying out operation Krivaja 95, which culminated in the capture of Srebrenica town on 11 July 1995.
9	The plan for Krivaja 95 was aimed at reducing the “safe area” of Srebrenica to its urban core and was a step towards the larger VRS goal of plunging the Bosnian Muslim

	population into humanitarian crisis and, ultimately, eliminating the enclave.
10	The VRS offensive on Srebrenica began in earnest on 6 July 1995.
11	Following the take-over of Srebrenica, in July 1995, Bosnian Serb forces devised and implemented a plan to transport all of the Bosnian Muslim women, children and elderly out of the enclave.
12	Following the take over of Srebrenica in July 1995, the Bosnian Serbs devised and implemented a plan to execute as many as possible of the military aged Bosnian Muslim men present in the enclave.
13	Late in the afternoon of 11 July 1995, General Mladić, accompanied by General Živanović (then Commander of the Drina Corps), General Krstić (then Deputy Commander and Chief of Staff of the Drina Corps) and other VRS officers, took a triumphant walk through the empty streets of Srebrenica town.
14	The Bosnian Muslim women, children and elderly, as well as a small number of men, who boarded the buses on July 12 , bound for Bosnian Muslim held territory, were counted by members of the Bratunac Brigade Military Police, present in Potočari pursuant to an order by Captain Momir Nikolić of the Bratunac Brigade. Members of the MUP assisted in this task.
15	General Krstić was in Potočari for between an hour and two hours in the afternoon of 12 July 1995 and that he was present with other VRS officers, including General Mladić, overseeing the bussing of the Bosnian Muslim women, children and elderly.
16	General Krstić ordered the procurement of buses for the transportation of the Bosnian Muslim population from Potočari on 12 and 13 July 1995, he issued orders to his subordinates about securing the road along which the busses would travel to Kladanj and that he generally supervised the transportation operation.
17	General Krstić, working in close co-operation with other military officials of the VRS Main Staff and the Drina Corps, played a significant role in the organisation of the transportation of the civilians (women, children and elderly) out of Serb-held territory.
18	The Drina Corps was instrumental in procuring the buses and other vehicles that were used to transport the Bosnian Muslim women, children and elderly out of the Potočari

	compound on 12 and 13 July 1995, as well as the fuel needed to accomplish this task.
19	Drina Corps Command officers and units were present in Potočari monitoring the transportation of the Bosnian Muslim civilians out of the area on 12 and 13 July 1995.
20	On 12 and 13 July 1995, the Bosnian Muslim civilians of Srebrenica who were bussed out of Potočari were not making a free choice to leave the area of the former enclave. The Drina Corps personnel involved in the transportation operation knew that the Bosnian Muslim population was being forced out of the area by the VRS.
21	The presence of armed members of the Bratunac Brigade in Potočari contributed to the atmosphere of fear and terror in Potočari, as well as to the intimidation of the Bosnian Muslim refugees there.
22	In July 1995 , elements of the Bratunac Brigade participated in the transfer of women, children and elderly from Potočari.
23	The Bratunac Brigade contributed vehicles and fuel to the transfer operation.
24	Elements of the Bratunac Brigade regulated traffic as the buses passed through Bratunac on their way to Konjević Polje.
25	Elements of the Bratunac Brigade participated in the separations of Bosnian Muslim men from the Bosnian women, children and elderly in Potočari. Members of the Bratunac Brigade Military Police participated in the separations, by actively separating men from their families and by providing security for the other units engaged in the separations.
26	The assistant commander for security and intelligence, Captain Nikolić, participated in the separations of Bosnian Muslim men from the rest of the Bosnian Muslim population in Potočari on 12 and 13 July.
27	An officer from the Bratunac Brigade, Momir Nikolić, was present in Konjević Polje on 13 July and was involved in the detention of Bosnian Muslim men there.
28	The Vuk Karadžić School and the various buildings surrounding it were secured by several units of the Republika Srpska armed forces, including by members of the Bratunac Brigade Military Police Platoon, by the special police, by the civilian police of the MUP, as well as by members of the Drina Wolves and paramilitary formations.

29	Members of the Bratunac Brigade Military Police participated in guarding hundreds of Bosnian Muslim men detained in the Vuk Karadžić school complex and the buses parked around Bratunac town on the night of 12 and 13 July.
30	Members of the Bratunac Brigade Military Police were part of the VRS units that were escorting Bosnian Muslim men to the Zvornik municipality and guarding them at the detention facilities.
31	Members of the Bratunac Brigade Military Police participated in the transfer of Bosnian Muslim prisoners to Zvornik on the morning of 14 July. Momir Nikolić gave the instructions to the Military Police to escort the buses to Zvornik.
32	From 13 July 1995, the Zvornik Brigade became aware of plans to transport Bosnian Muslim prisoners to its zone of responsibility and began locating detention sites for them.
33	From 14 July 1995, the Zvornik Brigade was aware of the existence of the thousands of Bosnian Muslim prisoners distributed throughout Zvornik.
34	On 14 July 1995 , Drago Nikolić informed Dragan Obrenović that he had been called by Lieutenant Colonel Popović, chief of security of the Drina Corps, and told to prepare for the arrival of a large number of prisoners who were being brought from Bratunac to the Zvornik municipality.
35	Drago Nikolić further informed Dragan Obrenović that the men were not being sent to a camp in Batkovići because the Red Cross and UNPROFOR knew about that camp; instead, they were being brought to Zvornik to be executed. Drago Nikolić said that this order came personally from General Mladić and that “everybody knew about it, including [the] commander, Lieutenant Pandurević.”
36	The order to execute would be implemented by Colonel Beara and Lieutenant Colonel Popović, with Drago Nikolić being included.
37	Drago Nikolić then asked Dragan Obrenović to place the Zvornik Brigade Military Police company at his disposal. After informing him that the Military Police company was already deployed, Dragan Obrenović told him he would “see what [he] could do” about at least placing the Military Police commander and a platoon at Drago Nikolić’s disposal.

38	NOT ADMITTED
39	Krstić fulfilled a key co-ordinating role in the implementation of the killing campaign of military-aged Bosnian Muslim men of Srebrenica.
40	Krstić permitted the Main Staff to use personnel and resources under his command to facilitate the murders of the Bosnian Muslims of Srebrenica between 13 and 19 July 1995 and knew that by doing so he was making a substantial contribution to the execution of the Bosnian Muslim prisoners.
41	Drina Corps troops took part in killing episodes from 14 July 1995 onwards at Orahovac, Petkovci Dam, Branjevo Military Farm, Pilica Cultural Centre and Kozluk.
42	NOT ADMITTED
43	On the morning of 15 July 1995, Colonel Beara asked General Krstić for additional men to help with the execution of Bosnian Muslim prisoners.
44	General Krstić undertook to assist Colonel Beara with obtaining the men required to carry out the execution of these men.
45	Elements of the Bratunac Brigade participated in the burial of the victims of the Kravica Warehouse massacre on 14 July 1995 at Glogova.
46	Members of the Engineering Company of the Zvornik Brigade participated in the burial operation at Glogova following the mass executions at the Kravica Warehouse on 15 July 1995.
47	Members of the Bratunac Brigade Military Police participated in the transport of Bosnian Muslim men from Bratunac to the Grbavci school in Orahovac, in the Zvornik municipality, in the early afternoon of 14 July.
48	Soldiers from the Zvornik Brigade command and the 4 th Battalion of the Zvornik Brigade assisted in guarding the prisoners at the Grbavci School in Orahovac.
49	Members of the military police company of the Zvornik Brigade were present immediately prior to the executions, presumably for such purposes as guarding the prisoners and then facilitating their transportation to the execution fields.

50	Members of the Zvornik Brigade Military Police assisted in the detention of prisoners, with the approval of Dragan Obrenović, the deputy commander of the Zvornik Brigade, who knew of the murder operation at the time when he allowed the Military Police members to assist Drago Nikolić.
51	Drago Nikolić, the chief of security of the Zvornik Brigade, was in charge of the Bosnian Muslim men detained in Orahovac.
52	Members of the Zvornik Brigade participated in the detention, execution and burial of Bosnian Muslim men at the Grbavci School and nearby field in Orahovac on 14 July 1995.
53	Personnel from the 4 th Battalion of the Zvornik Brigade were present at Orahovac during the executions, assisting in their commission.
54	Members of the security organ of the Zvornik Brigade were involved in the execution operation in Orahovac.
55	Machinery and equipment belonging to the Engineers Company of the Zvornik Brigade was engaged in tasks relating to the burial of the victims from Orahovac between 14 and 16 July 1995.
56	Members of the Zvornik Brigade Engineering Company participated in the burials from the night of 14 July through the morning of 15 July, using the equipment belonging to the Zvornik Brigade Engineering Company.
57	Dragan Jokić, who at the time functioned as duty officer, told Cvijetin Ristanović to go to Orahovac while the killings were ongoing and that this was done in the presence of Slavko Bogičević, who subsequently at Orahovac instructed Ristanović as to the grave digging.
58	Dragan Jokić knew that Ristanović was sent to Orahovac specifically in order to dig mass graves for victims of the executions. Jokić provided assistance by telling Cvijetin Ristanović to take the excavator to Orahovac.
59	Jokić co-ordinated, sent and monitored the deployment of Zvornik Brigade Resources and equipment to the mass execution sites at Orahovac, Pilica/Branjevo Military Farm, and Kozluk between 14-17 July 1995.

60	Dragan Jokić knew about the detention of Bosnian Muslims at the Grbavci School at Orahovac, at the Petkovci School, at the Pilica School, and at Kozluk sent Zvornik Brigade heavy digging equipment and personnel to operate this equipment to dig mass graves where executions were either ongoing or had taken place.
61	From 14 July onwards Dragan Jokić knew that thousands of Bosnian Muslim men and boys were being detained in the Zvornik Brigade area on discriminatory grounds because they were Bosnian Muslim.
62	Dragan Jokić knew that the crimes committed at Orahovac, Pilica/Branjevo Military Farm, and Kozluk were committed by the principal perpetrators against the victims because they were Bosnian Muslims.
63	Drivers and trucks from the 6 th Infantry Battalion of the Zvornik Brigade were used to transport the prisoners from the detention site to the execution site at Petkovci Dam on 15 July 1995
64	The Zvornik Brigade Engineer Company was assigned to work with earthmoving equipment to assist with the burial of the victims from Petkovci Dam.
65	Colonel Popović was involved in organising fuel to transport the Bosnian Muslim prisoners to the execution site at Branjevo Farm and that the allocation of fuel was co-ordinated through the Drina Corps Command.
66	Drina Corps Military Police were engaged in guarding the Bosnian Muslim prisoners in the buses that took them to the execution site at the Branjevo Military Farm.
67	Members of the 10 th Sabotage Detachment of the Main Staff took part in the killings at Branjevo Military Farm.
68	Drazen Erdemović, a member of the VRS 10 th Sabotage Detachment, participated in the mass execution.
69	As of 16 July 1995, Colonel Popović was in contact with General Krstić to report on matters relating to the executions. General Krstić was being informed about what had happened as part of the chain of command for reporting purposes and was supervising and monitoring the activities of his subordinate officers who were participating in the executions.

70	WITHDRAWN
71	The Zvornik Brigade equipment was used for activities relating to the burial of the victims in Branjevo Farm on 16 July 1995.
72	On 17 July members of the Zvornik Brigade Engineering Company participated in digging the mass graves following the execution of approximately 1,000 Bosnian Muslim men at the Branjevo Military Farm.
73	At 22:10 on 16 July the Zvornik Brigade's 1 st Battalion, which was stationed at the farm, requested a loader, an excavator and a dump truck to be in Pilica at 08:00 on 17 July. Jokić was informed in his capacity as Chief of Engineering. An excavator and a loader were sent to the 1 st Battalion.
74	Dragan Jokić knew of the detention of Bosnian Muslim prisoners at the Pilica School as early as 14 July. Jokić, as Chief of Engineering, was informed of the 16 July request for heavy machinery and was in contact with Engineering Company members in order to effectuate the request. As a result of Dragan Jokić's actions Zvornik Brigade engineering resources and personnel were sent. Dragan Jokić knew that these resources were sent in order to dig mass graves.
75	The Zvornik Brigade excavators and bulldozers operating in the Kozluk area from 16 July 1995 were involved in work related to the burial of victims from the Kozluk execution site.
76	NOT ADMITTED
77	Members of the Zvornik Brigade Engineering Company participated in the burial of Bosnian Muslim men in mass graves at Kozluk on 16 July 1995.
78	On 16 July 1995 , Dragan Jokić sent Miloš Mitrović, a machine operator of the fortification platoon of the Zvornik Brigade Engineering Company, with an excavator and another member of the Engineering Company, Nikola Ricanović, to Kozluk, to report to Damjan Lazarević, commander of the fortification platoon of the Zvornik Brigade Engineering Company. Dragan Jokić did not tell them what their task was going to be, but told them that Damjan Lazarević would give them further instructions.
79	Upon arrival, Lazarević ordered Mitrović to put earth on bodies that had been put in already-dug graves. Mitrović worked in Kozluk until it was decided that his machine

	could not finish the task because it was only operating at 30% capacity and was in fact not designed for this kind of work.
80	Dragan Jokić, as Chief of Engineering, not only knew what the tasks were going to be but also that mass killings had been committed in Kozluk.
81	With particular regard to Kozluk, by 17 July, Dragan Jokić had knowledge that hundreds of Bosnian Muslims had been murdered. Dragan Jokić knew that the Zvornik Brigade's engineering resources were to be used to dig mass graves for the executed victims.
82	Units under the command of the Zvornik Brigade participated in the executions at Nezuk on 19 July 1995.
83	During a period of several weeks, in September and early October 1995, Bosnian Serb forces dug up a number of the primary mass graves containing the bodies of executed Bosnian Muslim men and reburied them in secondary graves in still more remote locations.
84	The reburial operation, which took place some time in September and October 1995, was ordered by the VRS Main Staff. Colonel Beara, Chief of Security of the Main Staff, and Lieutenant Colonel Popović, Assistant Commander for Security of the Drina Corps, directed this operation.
85	The reburial operation was carried out on the ground by the Bratunac and Zvornik Brigades.
86	Within the Bratunac Brigade, Captain Nikolić, the Chief of Security and Intelligence, was tasked with the organisation of the operation.
87	Within the Zvornik Brigade the Assistant Commander for Security, 2 nd Lieutenant Drago Nikolić, was responsible for the operation.
88	The VRS Main Staff provided fuel to the Zvornik Brigade for the reburial operation and allocated the task of maintaining the records of fuel distribution to Captain Milorad Trbić, security officer in the Zvornik Brigade.
89	Lieutenant Colonel Popović and Colonel Beara organised the operation which took place some time in late September to late October 1995.

90	2 nd Lieutenant Drago Nikolić and the Zvornik Brigade Military Police provided traffic security during the reburial operation which took place some time in late September to late October 1995.
91	In July 1995, the Commander of the Main Staff was General Mladić.
92	General Živanović assumed the role of Drina Corps Commander at the time of its formation in November 1992.
93	General Radislav Krstić was born in the village of Nedjeljište, in the municipality of Vlasenica, Bosnia on 15 February 1948. Prior to the war in Bosnia, General Krstić was a Lieutenant Colonel in the JNA and he joined the VRS in July 1992. On 8 August 1994, the RS Minister of Defence appointed him as Chief of Staff/Deputy Commander of the Drina Corps, effective 15 August 1994. General Krstić assumed his new duty from the outgoing officer on 29 September 1994.
94	Upon the commencement of Krivaja 95 on 6 July 1995, General Krstić was Chief of Staff of the Drina Corps.
95	In July 1995, General Krstić was the Chief of Staff of the Drina Corps until his appointment as Corps Commander
96	On the evening of 13 July 1995, General Mladić appointed General Krstić as Commander of the Drina Corps. From that point in time, General Krstić operated as the Drina Corps Commander and the entire Corps recognised him as such.
97	Lieutenant Colonel Vujadin Popović was Assistant Commander for Security for the Drina Corps.
98	In July 1995, Lieutenant Colonel Vinko Pandurević was the Commander of the Zvornik Brigade in July 1995.
99	Dragan Obrenović was the Chief of Staff of the Zvornik Brigade.
100	Dragan Jokić was the Chief of Engineering of the Zvornik Brigade and held the rank of Major between 11 July 1995 and 1 November 1995.
101	The security department, headed by Lieutenant Drago Nikolić was directly subordinate to the Commander of the Zvornik Brigade.

102	On 25 May 1995, Blagojević was appointed as the Commander of the Bratunac Brigade. In July 1995, Blagojević held the rank of Colonel. He remained in this position until mid-1996 when he was re-assigned to the VRS Main Staff, later named the VRS General Staff.
103	Colonel Blagojević remained in command and control of all units of the Bratunac Brigade, including those members of the security organ, as well as the Bratunac Brigade Military Police between 11 July 1995 and 1 November 1995.
104	Colonel Ljubiša Beara was the head of Security of the VRS Main Staff.