

ANNEX 2: PROCEDURAL HISTORY

1. This case involves seven Accused, 315 witnesses in total, 5,383 exhibits in total amounting to 87,392 page numbers, and 34,915 transcript page numbers.

A. Pre-Trial Proceedings

1. Indictment and Joinder or Severance of Cases

2. The Accused in *Popović et al.* were previously indicted in six separate cases, namely, *Prosecutor v. Vujadin Popović*,¹ *Prosecutor v. Ljubiša Beara*,² *Prosecutor v. Drago Nikolić*,³ *Prosecutor v. Ljubomir Borovčanin*,⁴ *Prosecutor v. Zdravko Tolimir, Radivoje Miletić and Milan Gvero*⁵ and *Prosecutor v. Vinko Pandurević and Milorad Trbić*.⁶ On 10 June 2005, the Prosecution filed a joinder motion, seeking to join these cases into a single consolidated indictment.⁷ On

¹ *Prosecutor v. Popović*, Case No. IT-02-57-I, Indictment, 26 Mar 2002. The Indictment was confirmed by Judge Schomburg and placed under seal. See *Prosecutor v. Popović*, Case No. IT-02-57-I, Order on Review of Indictment Pursuant to Article 19 of the Statute and Order for Non-Disclosure, 26 Mar 2002.

² *Prosecutor v. Beara*, Case No. IT-02-58-I, Indictment, 26 Mar 2002. The Indictment was confirmed by Judge Schomburg. See *Prosecutor v. Beara*, Case No. IT-02-58-I, Order on Review of Indictment Pursuant to Article 19 of the Statute, 26 Mar 2002.

³ *Prosecutor v. Nikolić*, Case No. IT-02-63-I, Indictment, 6 Sept 2002. The Indictment was confirmed by Judge Schomburg and placed under seal. See *Prosecutor v. Nikolić*, Case No. IT-02-63-I, Order Confirming Indictment Pursuant to Article 19, Order Concerning Non-disclosure, and Order Issuing Arrest Warrant, 6 Sept 2002.

⁴ *Prosecutor v. Borovčanin*, Case No. IT-02-64-I, Indictment, 6 Sept 2002. The Indictment was confirmed by Judge Schomburg. See *Prosecutor v. Borovčanin*, Case No. IT-02-64-I, Order Confirming Indictment Pursuant to Article 19, Order Concerning Non-disclosure, and Order Issuing Arrest Warrant, 6 Sept 2002; *Prosecutor v. Borovčanin*, Case No. IT-02-64-I, Order to Lift the Seal of Confidentiality of the Indictment, Arrest Warrant and Non-disclosure Warrant, 27 Sept 2002.

⁵ *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-I, Indictment, 8 Feb 2005. The Indictment was confirmed by Judge Liu and placed under seal. See Decision on Review of Indictment and Order for Non-Disclosure, 10 Feb 2005.

⁶ *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-I, Indictment, 10 Feb 2005. The Indictment was confirmed by Judge Liu. See Decision on Review of Indictment and Order for Non-Disclosure, 24 Mar 2005; *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-I, Indictment, 10 Feb 2005. The Indictment was confirmed by Judge Liu. See Decision on Review of Indictment and Order for Non-Disclosure, 30 Mar 2005. The Prosecution was also ordered to withdraw the initial indictment against Pandurević, confirmed on 2 Nov 1998 by Judge Mumba in the case *Prosecutor v. Krstić, Pandurević and Blagojević*, as amended on 27 Oct 1999.

⁷ *Prosecution v. Popović*, Case No. IT-02-57-PT, *Prosecution v. Beara*, Case No. IT-02-58-PT, *Prosecution v. Nikolić*, Case No. IT-02-63-PT, *Prosecution v. Borovčanin*, Case No. IT-02-64-PT, *Prosecution v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-PT, *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-PT, Prosecution's Motion for Joinder of Accused, 10 June 2005.

21 September 2005, the Trial Chamber granted the joinder motion.⁸ The Appeals Chamber dismissed **Pandurević** and **Miletić**'s appeals against the decision.⁹ The case was assigned to Trial Chamber II on 26 September 2005¹⁰ and Judge Agius was appointed Pre-Trial Judge on 5 October 2005.¹¹

3. On 28 June 2005, the Prosecution filed a motion to amend the indictments against the nine Accused, proposing one consolidated amended indictment.¹² Pursuant to a Trial Chamber order of 13 October 2005,¹³ the Prosecution filed the Consolidated Amended Indictment under a single case number on 11 November 2005. On 7 December 2005, the Trial Chamber ordered the Accused to file any preliminary motions against the form of the Consolidated Amended Indictment by no later

⁸ *Prosecutor v. Popović*, Case No. IT-02-57-PT, *Prosecutor v. Beara*, Case No. IT-02-58-PT, *Prosecutor v. Nikolić*, Case No. IT-02-63-PT, *Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-PT and *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-PT, Decision on Motion for Joinder, 21 Sept 2005. By order of the President, the Joinder Motion had been assigned to Trial Chamber III. See Order Referring the Joinder Motion, *Prosecutor v. Popović*, Case No. IT-02-57-PT, *Prosecutor v. Beara*, Case No. IT-02-58-PT, *Prosecutor v. Nikolić*, Case No. IT-02-63-PT, *Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-PT and *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-PT, 29 June 2005 and Corrigendum to Order Referring the Joinder Motion, 4 July 2005.

⁹ *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-AR73.1, Decision on Vinko Pandurević's Interlocutory Appeal Against the Trial Chamber's Decision on Joinder of Accused, 24 Jan 2006; *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-AR73.1, Decision on Radivoje Miletić's Interlocutory Appeal against the Trial Chamber's Decision on Joinder of Accused, 27 Jan 2006.

¹⁰ Order Assigning a Case to a Trial Chamber, 26 Sept 2005.

¹¹ Order Designating a Pre-Trial Judge, 5 Oct 2005.

¹² *Prosecutor v. Popović*, Case No. IT-02-57-PT, *Prosecutor v. Beara*, Case No. IT-02-58-PT, *Prosecutor v. Nikolić*, Case No. IT-02-63-PT, *Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-PT, and *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-PT, Prosecution's Motion for Amendments to the Indictments + Annex A, 28 June 2005. In the Motion the Prosecution requested, amongst others, that the charges of genocide, conspiracy to commit genocide and extermination be added in the case of Tolimir and Trbić; the charge of conspiracy to commit genocide be added against **Popović** and **Nikolić**; the charge of complicity to commit genocide be deleted with regard to **Popović**, **Nikolić** and **Borovčanin**; the charge of forcible transfer of the Bosnian Muslim population to include the forcible transfer of the Bosnian Muslim population from the Žepa enclave and the deportation of the Bosnian Muslim men from Žepa with regard to **Beara**, **Popović**, **Pandurević**, **Trbić**, **Borovčanin** and **Nikolić**; and to clarify that the charge of forcible transfer not only applies to the women and children, but also to the men who were forcibly bused out of Potočari and those who were captured or surrendered from the column of people fleeing the Srebrenica area. The Prosecution filed a corrigendum, See Corrigendum to Prosecution's Consolidated Amended Indictment, confidential, 15 July 2005.

¹³ Order on the Consolidated Amended Indictment, 31 Oct 2005.

than 9 January 2006.¹⁴ **Popović, Nikolić, Borovčanin, Miletić, Gvero, Pandurević** and Trbić filed motions challenging the form of the Consolidated Amended Indictment.¹⁵ In March 2006, the Prosecution filed two additional motions seeking to amend the Consolidated Amended Indictment.¹⁶ On 31 May 2006, the Trial Chamber granted the Accused's motions in part and the Prosecution motion to amend the Consolidated Amended Indictment in part, which became the Second Consolidated Amended Indictment.¹⁷

4. **Popović, Borovčanin** and **Pandurević** challenged the form of the Second Consolidated Amended Indictment.¹⁸ On 13 July 2006, the Trial Chamber granted the Accused's motions in part and ordered the Prosecution to make the proposed amendments in the Second Consolidated

¹⁴ Further Order on the Consolidated Amended Indictment, 7 Dec 2005, p. 3. *See* Order on the Consolidated Amended Indictment, 31 Oct 2005.

¹⁵ The Motion of Vujadin Popović Objecting the Form of Consolidated Indictment, 6 Jan 2006; Defence Motion on Behalf of Drago Nikolić Alleging Defects in the Form of the Consolidated Amended Indictment, 29 Dec 2005; Ljubomir Borovčanin's Defence Preliminary Motion on the Form of the Consolidated Amended Indictment, 9 Jan 2006; Preliminary Motion of General Miletić Regarding Defects in the Form of the Indictment, 9 Jan 2006 (French original), 24 Jan 2006 (English translation); General Gvero's Preliminary Motion Challenging Jurisdiction: Indirect Co-Perpetration, 30 Dec 2005; Vinko Pandurević's Preliminary Motion on the Form of the Consolidated Amended Indictment, 5 Jan 2006; Defendant Milorad Trbić's Challenge to the Indictment Pursuant to Rule 72, 8 Jan 2006. In response the Prosecution filed a motion under Rule 72 which included a proposed amended indictment. *See* Consolidated Response to Defence Motions under Rule 72, 23 Jan 2006.

¹⁶ Motion to Amend the Indictment Relating to Ljubomir Borovčanin, 22 Mar 2006; Motion to Amend the Indictment Relating to the 22 Mar 2006 Appeals Chamber Judgement in the Case of *Stakić*, 29 Mar 2006. Miletić, Nikolić, Gvero, Borovčanin and Trbić filed responses. *See* Response of General Miletić to the Prosecutor's Motion to Amend the Indictment, 11 Apr 2006; Defence Consolidated Response on behalf of Drago Nikolić to the Prosecution's Motions to Amend the Indictment dated 22 and 29 Mar 2006, 12 Apr 2006; General Gvero's Preliminary Motion Challenging Jurisdiction: Joint Criminal Enterprise with Common Purpose, 24 Apr 2006; Borovčanin Defence Notification on Joining General Gvero's Preliminary Motion Challenging Jurisdiction: Joint Criminal Enterprise with Common Purpose, 12 Apr 2006. Borovčanin further filed an additional response to Prosecution's Motion pertaining only to him. *See* Borovčanin Defence Submission Regarding Prosecution's Motions to Amend the Indictment, 7 Apr 2006; Defendant Milorad Trbić's Challenge, Pursuant to Rule 72, to the Proposed Indictment Dated 29 Mar 2006, 12 Apr 2006.

¹⁷ Decision on Motions Challenging the Indictment Pursuant to Rule 72 of the Rules, 31 May 2006. Additionally it granted one of the Prosecution's motions to clarify the form of liability alleged against **Borovčanin** and ordered the Prosecution to amend sections of the Consolidated Amended Indictment.

¹⁸ Response on Behalf of Vujadin Popović to Prosecution Submission pursuant to the Trial Chamber's Decision on the Motion Challenging Indictment pursuant to Rule 72 of the Rules, confidential, 23 June 2006; [Popović] Preliminary Motion Objecting the Form of the Second Consolidated Amended Indictment, 30 June 2006; Borovčanin Defence Preliminary Motion on the Form of the Second Consolidated Amended Indictment, 30 June 2006; Response on Behalf of the Defence of Vinko Pandurević Pursuant to Rule 72 to the Prosecution Submission of the Second Consolidated Amended Indictment, 30 June 2006.

Amended Indictment.¹⁹ On 4 August 2006, the Prosecution submitted a new version of the Second Consolidated Amended Indictment.²⁰

5. On 26 June 2006, Trbić's case was severed from the present case,²¹ and it was referred to the BiH State Court pursuant to Rule 11 *bis*.²² Tolimir's case was severed from the joint case as he remained at large when the Second Consolidated Amended Indictment became effective.²³ Tolimir was arrested on 31 May 2007 and transferred to the seat of the Tribunal on 1 June 2007.²⁴ The Prosecution attempted to join Tolimir's case with the present case,²⁵ but the Trial Chamber denied the motion.²⁶

2. Transfer, Initial Appearance and Pleas

6. **Popović** was transferred to the Tribunal on 14 April 2005.²⁷ He made his initial appearance on 18 April 2005²⁸ and pleaded not guilty to all charges.²⁹ **Beara** was transferred to the Tribunal on 10 October 2004.³⁰ At his initial appearance on 11 November 2004, he pleaded not guilty to all charges.³¹ After the Indictment was amended, **Beara** entered new pleas of not guilty to the additional charges at a further appearance on 13 April 2005.³² **Nikolić** surrendered on 15 March 2005 and was transferred to the Tribunal on 17 March 2005.³³ On 20 April 2005, he entered a plea

¹⁹ Decision on Further Amendments and Challenges to the Indictment, 13 July 2006.

²⁰ Submission pursuant to the Trial Chamber's Decision on Further Amendments and Challenges to the Indictment and Motion Seeking Leave to Make Additional Minor Corrections, partly confidential, 4 Aug 2006; Order on Operative Indictment and Severance of the Case against Zdravko Tolimir, 15 Aug 2006.

²¹ Decision on Severance of Case against Milorad Trbić with Confidential and *Ex Parte* Annex, 26 June 2006.

²² *Prosecutor v. Milorad Trbić*, Case No. IT-05-88/1-PT, Decision on Referral of Case under Rule 11 *bis* with Confidential Annex, 27 Apr 2007.

²³ Order on Operative Indictment and Severance of the Case Against Zdravko Tolimir, 15 Aug 2006.

²⁴ *See Prosecutor v. Tolimir*, Case No. IT-05-88/2-I, Order Assigning a Case to a Trial Chamber, 1 June 2007.

²⁵ Prosecution's Motion for Joinder of the Accused, 10 June 2007.

²⁶ Decision on Motion for Joinder, 20 July 2007.

²⁷ *See Prosecutor v. Popović*, Case No. IT-02-57-I, Scheduling Order for Initial Appearance, 15 Apr 2005. *See also, Prosecutor v. Popović*, Case No. IT-02-57-I, T. 2 (18 Apr 2005).

²⁸ *Prosecutor v. Popović*, Case No. IT-02-57-I, T. 1–2 (18 Apr 2005).

²⁹ *Prosecutor v. Popović*, Case No. IT-02-57-I, T. 3–6 (18 Apr 2005).

³⁰ *Prosecutor v. Beara*, Case No. IT-02-58-I, Scheduling Order for Initial Appearance, 11 Oct 2004. *See also, Prosecutor v. Beara*, Case No. IT-02-58-I, T. 1–4 (12 Oct 2004).

³¹ *Prosecutor v. Beara*, Case No. IT-02-58-I, T. 11–12 (11 Nov 2004).

³² *Prosecutor v. Beara*, Case No. IT-02-58-I, T. 19–20 (13 Apr 2005).

³³ *Prosecutor v. Nikolić*, Case No. IT-02-63-I, Scheduling Order for Initial Appearance, 21 Mar 2005.

of not guilty to all charges.³⁴ **Borovčanin** surrendered and was transferred to the Tribunal on 1 April 2005.³⁵ On 5 May 2005, **Borovčanin** entered a plea of not guilty to all charges.³⁶ **Miletić** surrendered on 24 February 2005 and was transferred to the Tribunal on 28 February 2005.³⁷ On 15 April 2005, he entered a plea of not guilty to all charges.³⁸ **Gvero** surrendered and was transferred to the Tribunal on 24 February 2005.³⁹ He pleaded not guilty to all charges.⁴⁰ **Pandurević** was transferred to the Tribunal on 23 March 2005.⁴¹ He entered a plea of not guilty to all charges on 3 May 2005.⁴²

7. Following joinder and consolidation of the Indictment,⁴³ **Popović, Beara, Nikolić** and **Pandurević** entered new pleas of not guilty to all charges on 4 April 2006.⁴⁴ **Borovčanin** entered new pleas of not guilty to all counts on 4 April 2006 and 13 July 2006, respectively.⁴⁵ On 6 July 2006, **Gvero** and **Miletić** entered new pleas of not guilty to all charges.⁴⁶

3. Assignment of Counsel

8. Mr. Zoran Živanović was assigned as counsel for **Popović** as of 18 April 2005⁴⁷ and Ms. Julie Condon as co-counsel as of 10 July 2006.⁴⁸ Mr. John Ostojić was assigned as counsel for **Beara** as of 11 November 2004⁴⁹ and Mr. Christopher Meek as co-counsel as of 3 April 2006.⁵⁰

³⁴ *Prosecutor v. Nikolić*, Case No. IT-02-63-I, T. 8 (20 Apr 2005).

³⁵ *Prosecutor v. Borovčanin*, Case No. IT-02-64-I, Scheduling Order for Initial Appearance, 1 Apr 2005.

³⁶ *Prosecutor v. Borovčanin*, Case No. IT-02-64-I, T. 30–32 (5 May 2005).

³⁷ *Prosecutor v. Tolimir et al.*, Case No. IT-04-80-I, Scheduling Order for Initial Appearance, 1 Mar 2005. The Scheduling Order indicated the date incorrectly.

³⁸ *Prosecutor v. Tolimir et al.*, Case No. IT-04-80-I, T. 63–64 (15 Apr 2005).

³⁹ *Prosecutor v. Tolimir et al.*, Case No. IT-04-80-I, Scheduling Order for Initial Appearance, 1 Mar 2005.

⁴⁰ *Prosecutor v. Tolimir et al.*, Case No. IT-04-80-I, T. 35–36 (2 Mar 2005).

⁴¹ *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-I, Scheduling Order for Further Initial Appearance, 20 Apr 2005.

⁴² *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-I, T. 26–27 (3 May 2005).

⁴³ Decision on Motion for Joinder, 21 Sept 2005; Order on the Consolidated Amended Indictment, 31 Oct 2005.

⁴⁴ T. 99–122 (4 Apr 2006).

⁴⁵ T. 112–119 (4 Apr 2006), T. 281 (13 July 2006). *See also* T. 245–248 (13 July 2006) (finding that, with the exception of **Borovčanin** with regard to Counts 1 and 2, the Accused were not required to enter new pleas to the Second Consolidated Amended Indictment.

⁴⁶ T. 224–228 (6 July 2006).

⁴⁷ *Prosecutor v. Popović*, Case No. IT-02-57-I, Decision of the Deputy Registrar, 18 Apr 2005.

⁴⁸ Decision of the Registrar, 10 July 2006.

⁴⁹ *Prosecutor v. Beara*, Case No. IT-05-88-PT, Decision of Deputy Registrar, 11 Nov 2004.

⁵⁰ *Prosecutor v. Beara*, Case No. IT-05-88-PT, Decision of Deputy Registrar, 3 Apr 2006.

Ms. Jelena Nikolić was assigned counsel for **Nikolić** as of 10 May 2005⁵¹ and Mr. Stephane Bourgon as co-counsel as of 24 August 2005.⁵² Mr. Aleksandar Lazarević was assigned as counsel for **Borovčanin** as of 4 January 2006⁵³ and Mr. Miodrag Stojanović as co-counsel as of 30 May 2005.⁵⁴ Ms. Natacha Fauveau-Ivanović was assigned as counsel for **Miletić** as of 14 April 2005.⁵⁵ Mr. Dragan Krgović was assigned as counsel for **Gvero** as of 16 March 2005.⁵⁶ Mr. Peter Haynes was assigned as counsel for **Pandurević** as of 7 March 2006⁵⁷ with Mr. Đorđe Sarapa as co-counsel.⁵⁸

4. Pre-Trial Briefs

9. The Prosecution filed its Pre-Trial Brief on 28 April 2006.⁵⁹ **Borovčanin** responded to the Prosecution Pre-Trial Brief on 11 July 2006, and the other six Accused filed their Pre-Trial Briefs on 12 July 2006.⁶⁰

5. Pre-Trial Case Management

10. Following the joinder of the trials, the pre-Trial proceedings lasted 11 months. Four status conferences were held between 10 November 2005 and 6 July 2006.⁶¹ Five Rule 65 *ter* conferences

⁵¹ *Prosecutor v. Nikolić*, Case No. IT-02-63-I, Decision of Deputy Registrar, 10 May 2005.

⁵² *Prosecutor v. Nikolić*, Case No. IT-02-63-PT, Decision of Deputy Registrar, 24 Aug 2005.

⁵³ Decision of Registrar, 4 Jan 2006. Mr. Lazarević replaced Mr Alan Newman as lead counsel (*Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, Decision of Deputy Registrar, 9 May 2005) who in turn had succeeded Ms. Colleen Rohan (*Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, Decision of Registrar, 6 Apr 2005).

⁵⁴ *Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, Decision of Registrar, 30 May 2005.

⁵⁵ *Prosecutor v. Tolimir et al.*, Case No. IT-04-80-I, Decision of Deputy Registrar, 14 Apr 2005.

⁵⁶ *Prosecutor v. Gvero* Case No. IT-04-80-PT, Decision of the Registrar, 16 Mar 2005.

⁵⁷ Decision of the Deputy Registrar, 7 Mar 2006.

⁵⁸ Decision of the Deputy Registrar, 7 Mar 2006.

⁵⁹ Prosecution's Filing of Pre-Trial Brief Pursuant to Rule 65 *ter* and List of Exhibits Pursuant to Rule 65 *ter* (E) (v) [sic] Under Seal, 28 Apr 2006. On 24 May 2006, the Trial Chamber denied **Miletić** motion seeking a BCS translation of the Prosecution Pre-Trial Brief. *See* Decision on Joint Defence Motions Requesting the Translation of the Pre-Trial Brief and Specific Motions, 24 May 2006.

⁶⁰ Pre-Trial Brief of the Defence of Vujadin Popović, 12 July 2006; Accused Ljubiša Beara's Rule 65 *ter* Pre-Trial Brief, confidential and under Seal, 12 July 2006; Pre-Trial Brief on Behalf of Drago Nikolić pursuant to Rule 65 *ter* (F), 12 July 2006; Borovčanin Defence Response to Prosecution's Pre-Trial Brief, 11 July 2006; General Miletić Defence Pre-Trial Brief, confidential, 12 July 2006 (French original), 21 July 2006 (English translation); General Gvero's Pre-Trial Brief, 12 July 2006; Defence Pre-Trial Brief on Behalf of the Accused Vinko Pandurević, 12 July 2006.

⁶¹ T. 1–46 (10 Nov 2005), T. 77–139 (4 Apr 2006), T. 140–174 (19 May 2006), T. 175–237 (6 July 2006).

were held between 9 November 2005 and 6 July 2006.⁶² The Pre-Trial Conference took place on 13 July 2006 and the trial commenced on 14 July 2006.⁶³

6. Provisional Release

11. On 22 June 2005, **Popović** filed a motion seeking provisional release prior to the joinder of the case.⁶⁴ The Trial Chamber denied the motion,⁶⁵ and this decision was upheld on appeal.⁶⁶ On 7 October 2005, **Nikolić** filed a motion for provisional release,⁶⁷ which was denied by the Trial Chamber.⁶⁸ That decision was upheld on appeal.⁶⁹ On 2 March 2006, **Borovčanin** filed a motion for provisional release.⁷⁰ On 10 May 2006, the Trial Chamber denied the motion for release.⁷¹ **Borovčanin**'s appeal against the decision was dismissed.⁷²

12. In April 2005, **Miletić** and **Gvero** both filed motions for provisional release for the period before trial.⁷³ The Trial Chamber granted both motions on 19 July 2005.⁷⁴ The Prosecution

⁶² 7 Feb 2005, 28 Oct 2005, 9 Mar 2006 and 28 Apr 2006.

⁶³ Scheduling Order for a Status Conference and for Start of Trial, 6 June 2006. However, the opening statements were not heard until 21 August 2006.

⁶⁴ *Prosecutor v. Popović*, Case No. IT-02-57-I, The Vujadin Popović's Motion for Provisional Release, 22 June 2005.

⁶⁵ *Prosecutor v. Popović*, Case No. IT-02-57-PT, Decision on Motion for Provisional Release, 22 July 2005.

⁶⁶ *Prosecutor v. Popović*, Case No. IT-02-57-AR65.1. The Vujadin Popović's Appeal against the Decision on Provisional Release, 22 Aug 2005.

⁶⁷ Motion Seeking the Provisional Release of Drago Nikolić until the beginning of the Trial Phase of the Proceedings, 7 Oct 2005.

⁶⁸ Decision on Drago Nikolić's Request for Provisional Release, 9 Nov 2005.

⁶⁹ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.1, Decision on Interlocutory Appeal of Trial Chamber Decision Denying Drago Nikolić's Motion for Provisional Release, 24 Jan 2006.

⁷⁰ Defence Application for Provisional Release of the Accused Ljubomir Borovčanin with Annexes I, II, III and V, and Confidential Annex IV, partly confidential, 2 Mar 2006.

⁷¹ Decision on Defence Application for Provisional Release of the Accused Ljubomir Borovčanin, 10 May 2006.

⁷² *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.2, Decision on Defence's Interlocutory Appeal of Trial Chamber's Decision Denying Ljubomir Borovčanin Provisional Release, 30 June 2006.

⁷³ *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-PT, General Gvero's Motion for Provisional Release, 5 Apr 2005; *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-PT, Request for Provisional Release by General Miletić, partially confidential, 25 Apr 2005 (French original), 4 May 2005 (English translation).

⁷⁴ *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-PT, Decision Concerning Motion for Provisional Release of Milan Gvero, 19 July 2005, para. 19; *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-PT, Decision Concerning Motion for Provisional Release of Radivoje Miletić, 19 July 2005, para. 19.

appealed both of the Trial Chamber's decisions,⁷⁵ which were upheld by the Appeals Chamber.⁷⁶ On 6 June 2006, due to the approaching start of the trial, the Trial Chamber suspended the provisional release of both **Gvero** and **Miletić** as of 29 June 2006.⁷⁷ On 20 June 2006, the Trial Chamber ordered **Gvero** and **Miletić** to return to the UNDU no later than 4 July 2006.⁷⁸ On a joint application,⁷⁹ both accused were provisionally released after the pre-trial conference during the summer recess between 14 July and 14 August 2006.⁸⁰

13. **Pandurević** applied for provisional release on 3 June 2005.⁸¹ The Trial Chamber denied the motion on 18 July 2005.⁸² **Pandurević** submitted another motion on 30 January 2006 for release until the beginning of the trial phase of proceedings,⁸³ which was also denied.⁸⁴

7. Assignment of a Bench

14. On 30 June 2006, by order of the President, Judge Agius (Malta, Presiding Judge), Judge Kwon (Republic of Korea), and Judge Prost (Canada) were appointed to the case.⁸⁵ Judge Støle (Norway) was assigned as a reserve judge.⁸⁶

⁷⁵ *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-AR65.1, Prosecution's Consolidated Appeal from the Trial Chamber's Decision Granting Provisional Release to Radivoje Miletić and Milan Gvero, 22 Aug 2005.

⁷⁶ *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-AR65.1, Decision on Interlocutory Appeal against Trial Chamber's Decisions granting Provisional Release, 19 Oct 2005.

⁷⁷ Order Suspending Provisional Release, 6 June 2006.

⁷⁸ Decision on Joint Defence Motion for Variation of the Order suspending Provisional Release issued on 6 June 2006, 20 June 2006.

⁷⁹ Joint Defence Urgent Submission by the Accused Radivoje Miletić and Milan Gvero, confidential, 11 July 2006.

⁸⁰ Decision on Joint Motion of the Accused Miletić and Gvero for Temporary Provisional Release from 15 July 2006 until the Continuation of Trial, 13 July 2006.

⁸¹ *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-PT, Application for Provisional Release, 3 June 2005.

⁸² *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-PT, Decision on Vinko Pandurević's Application for Provisional Release, 18 July 2005.

⁸³ Vinko Pandurević's Request for Provisional Release Until the Beginning of the Trial Phase of the Proceedings & Annex A, 30 Jan 2006.

⁸⁴ Decision on Pandurević's Renewed Motion for Provisional Release, 6 June 2006.

⁸⁵ Order assigning Judges to a case before a Trial Chamber, 30 June 2006.

⁸⁶ Order Assigning a Reserve Judge to a Case Before a Trial Chamber, 23 Aug 2006.

B. Trial Proceedings

1. The Prosecution Case

15. The case for the Prosecution commenced on 21 August 2006⁸⁷ and concluded on 7 February 2008.⁸⁸ The Prosecution adduced evidence from 182 witnesses in total.⁸⁹ Ninety-five witnesses testified *viva voce*. 52 witnesses gave evidence pursuant to Rule 92 *ter*. Twelve expert witnesses testified either *viva voce* or under Rule 92 *ter*.⁹⁰ Five witnesses were subpoenaed pursuant to Rule 54.⁹¹ Two witnesses testified by video-conference link.⁹² Sixty-four *viva voce* and 92 *ter* witnesses were granted protective measures. The Trial Chamber admitted the evidence of 31 witnesses pursuant to Rule 92 *bis*, of whom seven were granted protective measures, and four witnesses pursuant to Rule 92 *quater*. During the Prosecution case, the Trial Chamber granted leave to the Accused to call a joint Defence intercept expert witness.⁹³

16. A total of 2,906 Prosecution exhibits were admitted into evidence.

2. Judgement of Acquittal

17. After the closing of the Prosecution case, on 14 and 15 February 2008, six of the Accused made oral submissions for acquittal under Rule 98 *bis*. **Popović** did not make a submission under Rule 98 *bis*.⁹⁴ The Prosecution responded orally to the Accused's submissions on 15 and 18 February 2008.⁹⁵ On 3 March 2008, the Trial Chamber gave an oral decision dismissing the Accused's motions in all respects. In its decision, the Trial Chamber held that there was sufficient evidence on all counts in relation to each of the Accused to support a possible conviction.⁹⁶ Following the decision, the Trial Chamber noted the Prosecution submission made on 18 February

⁸⁷ Opening Statement, T. 382 (21 Aug 2006).

⁸⁸ T. 21222–21223 (7 Feb 2008).

⁸⁹ The number includes reopening and rebuttal witnesses called by the Prosecution.

⁹⁰ Among the expert witnesses, Smith and Bulter gave evidence as partially expert witnesses. *See also infra*, paras. 48–52.

⁹¹ Decision on Prosecution Motion for Subpoena, 18 Jan 2007; Decision on Prosecution Motion for Subpoena, 19 Jan 2007; Decision on Prosecution's Motion for Issuance of a Subpoena, 21 Aug 2007; Decision on Prosecution's Motion for Issuance of a Subpoena, 21 Aug 2007; Decision on Prosecution Motion for Subpoena of Dragan Jokić and Decision on Protective Measures, confidential, 29 Aug 2007.

⁹² Decision on Prosecution's confidential motion for testimony of witness 88 to be heard via video link, confidential, 26 June 2007; Decision on Prosecution motion requesting video-conference link testimony of witness 167 and Protective Measures, 23 Aug 2007.

⁹³ T. 9857–9858 (2 Apr 2007). Đuro Rodić, a joint Defence intercept expert, gave evidence on 24 May and 12 June 2007. T. 12059–12130 (24 May 2007), T. 12452–12525 (12 June 2007).

⁹⁴ T. 21302 (14 Feb 2008).

⁹⁵ T. 21383–21389 (15 Feb 2008), T. 21392–21457 (18 Feb 2008).

⁹⁶ T. 21461–21473 (3 Mar 2008).

2008, in which the Prosecution conceded that no evidence was adduced in support of the allegations contained in paragraph 31.1.b. and 31.1.c of the Indictment.⁹⁷ Therefore, the Trial Chamber noted that the Accused would not need to address these two allegations.⁹⁸

18. On 10 March 2008, **Nikolić** filed a motion for certification to appeal the Rule 98 *bis* Decision.⁹⁹ The Trial Chamber denied the motion.¹⁰⁰

3. The Defence Cases

19. The Defence cases started with the case for **Popović**, which commenced on 2 June 2008¹⁰¹ and concluded on 8 July 2008.¹⁰² **Popović** adduced evidence from 28 witnesses in total.¹⁰³ Twenty witnesses testified *viva voce*, of whom three were joint witnesses and three were expert witnesses. Two witnesses testified by video-conference link.¹⁰⁴ The Trial Chamber admitted the evidence of ten witnesses pursuant to 92 *bis*.¹⁰⁵

20. The case for **Beara** commenced on 10 July 2008¹⁰⁶ and concluded on 11 September 2008.¹⁰⁷ **Beara** adduced evidence from 45 witnesses in total. Twenty-five witnesses testified *viva voce*, of whom six were expert witnesses and two were joint witnesses, including one joint expert witness. Two witnesses gave evidence pursuant to Rule 92 *ter*. The Trial Chamber admitted the evidence of 18 witnesses pursuant to Rule 92 *bis*.

21. The case for **Nikolić** commenced on 15 September 2008¹⁰⁸ and concluded on 2 October 2008.¹⁰⁹ **Nikolić** adduced evidence from 27 witnesses in total.¹¹⁰ Fourteen witnesses testified *viva voce*, of whom four were expert witnesses, including three joint expert witnesses. One of the *viva*

⁹⁷ Prosecution Submission Concerning Paragraphs 31.1b and 31.1c of the Indictment, 15 Feb 2008.

⁹⁸ T. 21473 (3 Mar 2008).

⁹⁹ Defence Motion on Behalf of Drago Nikolić seeking Certification of the Trial Chamber Rule 98 *bis* Decision, 10 Mar 2008.

¹⁰⁰ Decision on Motion for Certification of 98 *bis* Decision, 15 Apr 2008.

¹⁰¹ T. 21555 (2 June 2008).

¹⁰² T. 23508 (8 July 2008). *See also* T. 23515 (10 July 2008).

¹⁰³ The number includes one witness called by **Popović** after the case was reopened.

¹⁰⁴ Decision on Popović's Motion Requesting Video-Conference Link Testimony of Two Witnesses, 29 May 2008.

¹⁰⁵ The witnesses include Oliver Stojković, Dušan Đunjić and Đuro Rodić.

¹⁰⁶ T. 23515 (10 July 2008).

¹⁰⁷ T. 25648 (11 Sept 2008).

¹⁰⁸ T. 25653 (15 Sept 2008).

¹⁰⁹ T. 26633 (2 Oct 2008).

¹¹⁰ The number includes one reopening witness and one witness who previously testified for the Prosecution.

voce witnesses was granted protective measures. Eight witnesses gave evidence pursuant to 92 *ter*, of whom two testified by video-conference link.¹¹¹ The Trial Chamber admitted the evidence of four witnesses pursuant to Rule 92 *bis* and one pursuant to Rule 92 *quater*.

22. The case for **Borovčanin** commenced on 6 October 2008¹¹² and concluded on 13 November 2008.¹¹³ **Borovčanin** adduced evidence from 15 witnesses in total. Eleven witnesses testified *viva voce*, of whom four were expert witnesses, including one joint expert witness. One witness gave evidence pursuant to Rule 92 *ter*. The Trial Chamber admitted the evidence of three witnesses pursuant to Rule 92 *bis*.

23. The case for **Miletić** commenced on 12 November 2008¹¹⁴ and concluded on 22 January 2009.¹¹⁵ **Miletić** adduced evidence from 17 witnesses in total. Fourteen witnesses testified *viva voce*, of whom three were joint witnesses and one was an expert witness. Two witnesses gave evidence pursuant to Rule 92 *ter*. The Trial Chamber admitted the evidence of one witness pursuant to Rule 92 *bis*.

24. **Gvero** made an opening statement prior to the start of the Prosecution case.¹¹⁶ **Gvero** initially did not call any evidence in his case-in-chief and he made an opening statement only.¹¹⁷ **Gvero** later filed a request to reopen his case, which was granted.¹¹⁸ Subsequently, four witnesses testified *viva voce*. The Trial Chamber admitted evidence of one witness pursuant to Rule 92 *quater*.¹¹⁹

25. The case for **Pandurević** commenced on 27 January 2009¹²⁰ and concluded on 12 March 2009.¹²¹ **Pandurević** adduced evidence from nine witnesses in total. Five witnesses, including **Pandurević**, testified *viva voce*, of whom three were joint witnesses and one was an expert witness. One witness gave evidence pursuant to Rule 92 *ter*. The Trial Chamber admitted the evidence of three witnesses pursuant to Rule 92 *bis*. The Trial Chamber granted **Pandurević**'s request for

¹¹¹ The Trial Chamber orally granted **Nikolić**'s motion for the testimony of the two witnesses by video-conference link. T. 25751–25752 (16 Sept 2008).

¹¹² T. 26636 (6 Oct 2008).

¹¹³ T. 28124 (13 Nov 2008).

¹¹⁴ T. 28173 (13 Nov 2008).

¹¹⁵ T. 30590 (22 Jan 2008).

¹¹⁶ T. 610–617 (23 Aug 2006).

¹¹⁷ T. 30600–30611 (26 Jan 2009).

¹¹⁸ *See infra*, para. 35.

¹¹⁹ Decision on Gvero's Motion for the Admission of Evidence Pursuant to Rule 92 *quater*, 3 Feb 2009.

¹²⁰ T. 30644 (27 Jan 2009).

¹²¹ T. 32690 (12 Mar 2009).

access to his counsel, subject to the limitation that any attorney-client communications during cross-examination or re-examination could not cover the substance of the testimony given in examination-in-chief.¹²²

26. A total of 2,474 Accused exhibits were admitted into evidence.

4. The Chamber Witness

27. On 10 March 2009, the Trial Chamber issued an order to summon Momir Nikolić¹²³ to testify as a Chamber witness pursuant to Rule 98, instructing that his testimony would proceed pursuant to Rule 92 *ter*.¹²⁴ Momir Nikolić gave evidence between 21 and 28 April 2009.¹²⁵ A total of three Chamber's exhibits were admitted with his own evidence.

5. Rebuttal and Reopening

28. On 7 April 2008, the Prosecution filed a motion seeking to reopen its case against **Popović** and to admit evidence from three witnesses along with 10 related documents.¹²⁶ On 9 May 2008, the Trial Chamber granted the motion.¹²⁷ On 27 May 2008, the Trial Chamber granted **Popović's** request for certification to appeal the decision.¹²⁸ On 24 September 2008, the Appeals Chamber dismissed **Popović's** appeal against the Trial Chamber decision on 9 May 2008.¹²⁹ Subsequently, these witnesses, one of whom was subpoenaed, testified on 10, 11 and 25 March 2009.¹³⁰ On 2

¹²² T. 30638 (26 Jan 2009).

¹²³ Momir Nikolić originally appeared on the Prosecution's Rule 65 *ter* Witness List in the present case, but was withdrawn by the Prosecution on 2 November 2007. T. 17398 (2 Nov 2007).

¹²⁴ Order to Summon Momir Nikolić, 10 Mar 2009. The Trial Chamber also ordered Momir Nikolić to review his Statement of Facts which was attached to his plea agreement with the Prosecution and provide the Trial Chamber with a written statement confirming his Statement of Facts or indicating, with an explanation, any specific parts of his Statement of Facts he no longer agrees to ("Further Statement"); and ordered him to attest that his Statement of Facts and Further Statement accurately reflect what he would say if examined. *Ibid.*, pp. 2–3.

¹²⁵ T. 32895–T. 33364 (21–28 Apr 2009).

¹²⁶ Motion to Reopen the Prosecution Case, With Two Appendices, confidential, 7 Apr 2008. The Prosecution further requested the Trial Chamber to issue an order forbidding the release of the substance of the interviews, or names of the witnesses in question without approval of the Trial Chamber. The Trial Chamber granted this request. Order on the Motion to Reopen the Prosecution Case, 8 Apr 2008.

¹²⁷ Decision on Motion to reopen the Prosecution Case, 9 May 2008.

¹²⁸ Decision on Popović's Motion for Certification of Decision on the Motion to Reopen the Prosecution Case, 27 May 2008.

¹²⁹ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.5, Decision on Vujadin Popović's Interlocutory Appeal against the Decision on the Prosecution's Motion to Reopen its Case-In-Chief, 24 Sept 2008.

¹³⁰ Two of these witnesses were granted protective measures. T. 32562 (10 Mar 2009), T. 32777 (25 Mar 2009).

March 2009, the Prosecution sought leave to introduce rebuttal evidence from six witnesses and requested once more to reopen its case to lead *viva voce* evidence from two witnesses.¹³¹ The Prosecution also sought to introduce supporting documentary evidence in both rebuttal and in reopening.¹³² The Trial Chamber rendered a decision on 18 March 2009 and a further decision on 27 March 2009,¹³³ granting the motion in part and permitting the Prosecution to call two rebuttal witnesses¹³⁴ and two witnesses for the purpose of reopening its case.¹³⁵ The Trial Chamber further permitted admission of some documents supporting the evidence of one witness. **Nikolić's** request for certification to appeal the decision on 18 March 2008 was denied.¹³⁶ The four Prosecution witnesses gave evidence on 23 March, 1, 4–5, 29 April 2009.

29. On 23 April 2009, the Prosecution filed another motion to reopen its case and/or admit evidence in rebuttal, seeking leave to tender three videos and Mladić's notebook which the Prosecution obtained after the close of its case.¹³⁷ In its decision issued on 8 May 2009, the Trial Chamber granted the Prosecution motion in part, allowing the admission into evidence of the three videos but denying the request for admission of the notebook.¹³⁸ The Trial Chamber denied requests for certification to appeal the decision filed by **Gvero** and **Popović**, respectively.¹³⁹

¹³¹ Prosecution's Motion to Admit Evidence in Rebuttal Under Rule 85(A) and to Reopen its Case with Appendices A-G, confidential, 2 Mar 2009.

¹³² Prosecution's Motion to Admit Evidence in Rebuttal Under Rule 85(A) and to Reopen its Case with Appendices A-G, confidential, 2 Mar 2009, paras. 9–11.

¹³³ Partial Decision on Prosecution's Motion to Admit Evidence in Rebuttal and to Reopen its Case, confidential, 18 Mar 2009; Further Decision on Prosecution's Motion to Admit Evidence in Rebuttal and to Reopen Its Case, confidential, 27 Mar 2009.

¹³⁴ Partial Decision on Prosecution's Motion to Admit Evidence in Rebuttal and to Reopen Its Case, confidential, 18 Mar 2009.

¹³⁵ Further Decision on Prosecution's Motion to Admit Evidence in Rebuttal and to Reopen Its Case, confidential, 27 Mar 2009.

¹³⁶ Decision on Nikolić Expedited Motion for Certification of the Partial Decision on Prosecution's Motion to Admit Evidence in Rebuttal and to Reopen Its Case, confidential, 20 Mar 2009.

¹³⁷ Prosecution's Second Motion to Reopen its Case and/or Admit Evidence in Rebuttal Under Rule 85(A), confidential, 27 Mar 2009.

¹³⁸ Decision on Prosecution Second Motion to Reopen its Case And/Or Admit Evidence in Rebuttal, confidential, 8 May 2009.

¹³⁹ Decision on Gvero Motion Seeking Certification to Appeal the Decision on the Prosecution's Second Motion to Reopen its case, 3 June 2009; Decision on Popović Request for Certification to Appeal the Decision on the Prosecution Second Motion to Reopen its Case, confidential, 3 June 2009.

30. On 16 December 2009, the Prosecution filed another motion seeking leave to reopen its case for the purpose of entering two documents into evidence in order to answer a query of the Trial Chamber.¹⁴⁰ On 26 January 2010, the Trial Chamber granted the motion in part.¹⁴¹

31. As a result of the Prosecution's first reopening, **Popović** sought leave to reopen his case in order to call four witnesses and to call two other witnesses to rebut evidence led by the Prosecution during its reopened case.¹⁴² On 14 May 2008, the Trial Chamber issued a decision permitting the *viva voce* testimony of one witness in order to rebut evidence given by Chamber's witness Momir Nikolić.¹⁴³ On 9 June 2008, the Trial Chamber issued a further decision, permitting four witnesses to be called pursuant to Rule 92 *ter* and admitting the evidence of one expert witness.¹⁴⁴ On 12 May 2009, a subpoena was issued for Svetozar Kosoric,¹⁴⁵ who testified on 30 June 2009. On 22 July 2009, the Trial Chamber denied a new **Popović** motion to reopen his case.¹⁴⁶

32. Following the Trial Chamber's decision which denied his motion requesting the Trial Chamber to exercise its discretionary powers to call a witness pursuant to Rule 98,¹⁴⁷ **Nikolić** filed a motion requesting the Trial Chamber to issue a subpoena for Sreten Milošević to give evidence before the Tribunal.¹⁴⁸ The Trial Chamber granted the motion.¹⁴⁹ As a reopening witness for **Nikolić**, Milošević gave *viva voce* evidence on 15 July 2009.¹⁵⁰

33. On 1 April 2009, **Miletić** sought leave to reopen his case to admit evidence he had obtained after the completion of his case.¹⁵¹ Additionally, **Miletić** sought another month to consider whether he wished to present further evidence following the Prosecution's introduction of new evidence

¹⁴⁰ Prosecution's Motion Seeking Leave to Reopen its Case, 16 Dec 2009.

¹⁴¹ Decision on Prosecution Motion to Reopen its Case, 26 Jan 2010.

¹⁴² Vujadin Popović's Motion to Call Witnesses, With Annexes, confidential, 27 Apr 2009; Vujadin Popović's Addendum to the Motion to Call Witnesses, confidential, 1 May 2009.

¹⁴³ Partial Decision on Popović's Motion to Call Witnesses, confidential, 14 May 2009.

¹⁴⁴ Further Decision on Popović Motion to Call Witnesses, confidential, 9 June 2009.

¹⁴⁵ Decision on Vujadin Popović's Request for a Subpoena *ad Testificandum*, 14 May 2009.

¹⁴⁶ Vujadin Popović's Motion to Reopen his Case, With Confidential Annexes, partly confidential, 10 July 2009.

¹⁴⁷ Decision on Nikolić Motion Requesting the Trial Chamber to Exercise its Discretion Pursuant to Rule 98, 15 June 2009.

¹⁴⁸ Expedited Motion on behalf of Drago Nikolić Requesting the Trial Chamber to Issue a *Subpoena Duces Tecum*", 18 June 2009.

¹⁴⁹ Decision on the Expedited Motion on Behalf of Drago Nikolić Requesting the Trial Chamber to Issue a *Subpoena Duces Tecum*, 24 June 2009.

¹⁵⁰ Sreten Milošević, T. 33953–34040 (15 July 2009).

¹⁵¹ General Miletić's Motion to Reopen the Defence Case, confidential, 1 Apr 2009 (French original), 7 Apr 2009 (English translation).

during its reopening.¹⁵² The Trial Chamber granted the motion in part.¹⁵³ The Trial Chamber also permitted **Miletić** one week from the date of its decision to determine whether he wished to present further evidence, if any, to rebut evidence led by the Prosecution during its reopening.¹⁵⁴

34. On 28 April 2009, **Miletić** again sought to reopen his case to introduce video evidence.¹⁵⁵ The Trial Chamber granted the motion.¹⁵⁶ On 18 May 2009, **Miletić** also requested, pursuant to Rule 92 *bis*, the admission into evidence of statement made by a protected witness.¹⁵⁷ The statement was admitted.¹⁵⁸ On 22 July 2009, the Trial Chamber denied **Miletić**'s third motion to reopen his case.¹⁵⁹

35. On 12 June 2009, **Gvero** filed a motion seeking four Prosecution witnesses to be re-called and the reopening of his case to present additional witnesses to rebut evidence presented during the Prosecution's second reopening.¹⁶⁰ In its decision on 15 June 2009, the Trial Chamber denied the request to recall the Prosecution witnesses.¹⁶¹ In its further decision on 24 June 2009, the Trial Chamber permitted **Gvero** to reopen his case and to call five of the six witnesses requested.¹⁶² On

¹⁵² General Miletić's Motion to Reopen the Defence Case, confidential, 1 Apr 2009 (French original), 7 Apr 2009 (English translation).

¹⁵³ Decision on General Miletić's Motion to Reopen the Defence Case, confidential, 23 Apr 2009.

¹⁵⁴ Decision on General Miletić's Motion to Reopen the Defence Case, confidential, 23 Apr 2009. On the same day the Trial Chamber also granted another motion sought by Miletić, seeking protection of the documentary evidence it had sought to tender pursuant to 92 *bis*. Decision on General Miletić's Motion for the Application of Rule 70 and for Protective Measures, confidential, 23 Apr 2009.

¹⁵⁵ General Miletić's Second Motion to Reopen the Defence Case, confidential, 28 Apr 2009 (French original), 7 May 2009 (English translation).

¹⁵⁶ Decision on General Miletić's Second Motion to Reopen the Defence Case, confidential, 15 May 2009.

¹⁵⁷ General Miletić's Motion to Admit a Written Statement Pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence, confidential, 18 May 2009 (French original), 28 May 2009 (English translation).

¹⁵⁸ Decision on General Miletić's Motion to Admit a Written Statement Pursuant to Rule 92 *bis*, confidential, 9 June 2009.

¹⁵⁹ Consolidated Decision on Motions for the Admission of Evidence and Other Related Motions, 22 July 2009.

¹⁶⁰ Motion on Behalf of Milan Gvero Seeking the Recall of Certain Prosecution Witnesses and the Re-Opening of Milan Gvero's Case, 12 June 2009.

¹⁶¹ Partial Decision on Gvero Motion Seeking the Recall of Certain Prosecution Witnesses and the Reopening of the Case, 15 June 2009.

¹⁶² Further Decision on Gvero Motion Seeking to Recall Prosecution Witnesses and to Reopen the Case, confidential, 24 June 2009, p. 2. The Trial Chamber denied **Gvero**'s request to call Zdravko Tolimir on the basis that this was opposed by the Prosecution because it would involve core factual issues that would bear directly on the criminal involvement of the Accused. *Ibid.*, pp. 2–3.

26 June 2009, the Trial Chamber denied a **Gvero** motion seeking reconsideration from the Trial Chamber of its decision on 15 June 2009.¹⁶³ **Gvero** called four of these witnesses on 2 and 3 July 2009.¹⁶⁴

6. Final Briefs and Closing Arguments

36. The Prosecution and all Accused filed their final briefs on 30 July 2009.¹⁶⁵ The Prosecution made its closing argument between 2 and 7 September 2009.¹⁶⁶ **Popović** made his closing argument on 7 September 2009,¹⁶⁷ followed by **Beara** on 8 September 2009,¹⁶⁸ **Nikolić** on 8 and 9 September 2009,¹⁶⁹ **Borovčanin** on 9 and 10 September 2009,¹⁷⁰ **Miletić** on 10 and 11 September 2009,¹⁷¹ **Gvero** on 11 September 2009¹⁷² and **Pandurević** on 14 September 2009.¹⁷³ **Nikolić** and **Gvero** made a respective statement at the closing arguments.¹⁷⁴

¹⁶³ Decision on Motion on behalf of Milan Gvero seeking Reconsideration and, in the Alternative, Certification, 26 June 2009.

¹⁶⁴ One witness was granted protective measures, T. 33831 (2 Jul 2009).

¹⁶⁵ Prosecution Filing of Final Trial Brief Pursuant to Rule 65ter (E), confidential, 30 July 2009; Vujadin Popović's Final Brief, confidential, 30 July 2009; Defendant, Ljubiša Beara's Final Trial Brief, confidential, 30 July 2009; Final Trial Brief On Behalf of Drago Nikolić, confidential, 30 July 2009; Ljubomir Borovčanin's Final Trial Brief, public with a confidential annex, 30 July 2009; Final Trial Brief of The Defence For General Miletić, confidential, 30 July 2009 (French original), 24 Aug 2009 (English translation); Final Brief on Behalf of Milan Gvero, confidential, 30 July 2009; Defence Final Trial Brief on Behalf of Vinko Pandurević, confidential, 30 July 2009; Filing of Pandurević Defence Final Trial Brief with Paragraph Numbers, confidential, 2 Sept 2009. The Prosecution filed a public redacted version of the sentencing section of its final brief. Prosecution's Motion to File a Public Redacted Version of Chapter XIV (Sentencing) of the Prosecution Final Trial Brief, public with confidential appendix, 4 Sept 2009. The Prosecution and a few Accused file corrigenda to their final briefs: Corrigendum to the Prosecution Final Brief, 2 Sept 2009; Second Corrigendum to the Prosecution Final Trial Brief, 1 Oct 2009; Vujadin Popović's Corrigendum to his Final Brief, confidential, 7 Sept 2009; Corrigendum to Final Trial Brief on behalf of Drago Nikolić, 15 Sept 2009; Borovčanin Defence Corrigendum to its Final Trial Brief, confidential, 4 Sept 2009. **Borovčanin** filed a response to the Prosecution's corrigendum. Borovčanin Response to 'Second Corrigendum to the Prosecution Final Trial Brief', 15 Oct 2009. On 23 April 2010, **Borovčanin** filed his public and corrected final brief. Ljubomir Borovčanin's Public and Corrected Final Trial Brief, 23 Apr 2010.

¹⁶⁶ T. 34043–34322 (2–7 Sept 2009).

¹⁶⁷ T. 34322–34400 (7 Sept 2009).

¹⁶⁸ T. 34409–34466 (8 Sept 2009).

¹⁶⁹ T. 34466–34551 (8–9 Sept 2009).

¹⁷⁰ T. 34551–34605 (9–10 Sept 2009).

¹⁷¹ T. 34606–34675 (10–11 Sept 2009).

¹⁷² T. 34676–34743 (11 Sept 2009).

¹⁷³ T. 34745–34835 (14 Sept 2009).

¹⁷⁴ T. 34896–34911 (15 Sept 2009).

7. Agreed Facts, Stipulations, and Adjudicated Facts

37. On 5 May 2006, the Prosecution filed a motion requesting the Trial Chamber to take judicial notice pursuant to Rule 94(B) of 534 facts adjudicated in the *Krstić* Trial Judgement of November 2001, the *Krstić* Appeal Judgement of April 2004, and the *Blagojević and Jokić* Trial Judgement of January 2005.¹⁷⁵ The Trial Chamber granted the motion in part, taking judicial notice of 288 adjudicated facts.¹⁷⁶ Subsequently, **Popović** and **Nikolić** filed motions seeking certification to appeal the decision pursuant to Rule 73 (B).¹⁷⁷ The Trial Chamber denied the request.¹⁷⁸

38. On 1 May 2008, **Popović** filed a motion requesting the Trial Chamber to take judicial notice pursuant to Rule 94 (B) of 66 facts adjudicated in the *Krajišnik* Trial Judgement and the *Orić* Trial.¹⁷⁹ The Trial Chamber granted the motion in part, taking judicial notice of 50 adjudicated facts.¹⁸⁰

39. A number of “Stipulations” between the Parties were admitted into the record during the course of trial.¹⁸¹

¹⁷⁵ Prosecution’s Motion for Judicial Notice of Adjudicated Facts, 5 May 2006.

¹⁷⁶ Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex, 26 Sept 2006.

¹⁷⁷ Defence Motion for Certification to Appeal Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 2 Oct 2006; Motion on behalf of Drago Nikolić Joining the Popović Motion for Certification to Appeal Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 3 Oct 2006.

¹⁷⁸ Decision on Defence Motion for Certification to Appeal Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 20 Oct 2006.

¹⁷⁹ Vujadin Popović’s Motion for Judicial Notice of Adjudicated Facts, 1 May 2008.

¹⁸⁰ Decision on Popović’s Motion for Judicial Notice of Adjudicated Facts with annex, 2 June 2008.

¹⁸¹ Stipulations Between the Office of the Prosecution and the Accused Ljubisa Beara Regarding the Testimony of Dražen Erdemović, 7 May 2007; Stipulations Between the Office of the Prosecutor and the Accused Vujadin Popović Regarding the Testimony of Dražen Erdemovic, 14 May 2007; Stipulation Between Representatives of the Office of the Prosecutor and the Accused Drago Nikolić Regarding the Testimony of Dražen Erdemović, 15 May 2007; Ex. 3D00585 (confidential); Stipulation between the Office of the Prosecutor and the Accused Radivoje Miletić Concerning Convoy-related Documents with Appendix, 2 June 2009. During the proceedings on 7 February 2008, three stipulations were admitted: a stipulation on the admission of the so-called “Scorpions video”; a stipulation on the admission of still images during the Borovčanin interview; and a stipulation with regard to Ahmo Hasić’s description of the school where he was held in Bratunac, T. 21188–21191 (7 Feb 2008); Ex. P03248, “Stipulation: Statement of Agreed Facts Concerning the Execution Video showing the Killing of Six Bosnian Muslim Men near Trnovo”; Ex. P03246, “Borovčanin Interview Book of Still Images with Stipulation”. During the proceedings on 26 January 2009, the Prosecution and **Gvero** notified their stipulation concerning Thomas Dibb, T. 30599–30600 (26 Jan 2009); Ex. 6D00337, “Stipulation made by Gvero and the Prosecution regarding Thomas Dibb”. Stipulations related to the Trivić diary were admitted on 26

40. On 21 July 2006, the Prosecution filed a motion for judicial notice of facts of common knowledge pursuant to Rule 94(A), requesting the Trial Chamber to take judicial notice of a proposed fact.¹⁸² On 26 September 2006, the Trial Chamber denied the motion.¹⁸³

8. Contempt Proceedings

41. Dragan Jokić, who at the time was serving a nine-year prison sentence for his conviction entered by this Tribunal on 17 January 2005 in the *Blagojević* and *Jokić* case, was subpoenaed on 29 August 2007 to give oral testimony in this case.¹⁸⁴ On 31 October 2007, upon being asked to take the solemn declaration, Jokić claimed he was unable to testify.¹⁸⁵ The Trial Chamber instructed Jokić to provide a confidential and *ex parte* filing justifying his alleged inability to testify,¹⁸⁶ which he filed later that same day.¹⁸⁷ On 1 November 2007, the Trial Chamber decided that nothing in the filing justified Jokić's refusal to testify.¹⁸⁸ As a result of Jokić's continuing refusal to testify,¹⁸⁹ the Trial Chamber found sufficient grounds to initiate proceedings against him for contempt of the Tribunal.¹⁹⁰ Pursuant to Rule 77(D)(ii) it decided to prosecute the matter itself.¹⁹¹

January 2010 in the "Decision on Prosecution Motion to reopen its case", Ex. 7D01240, "Stipulations between the Prosecution and the Defence concerning the Diary of Mirko Trivić".

¹⁸² Prosecution Motion for Judicial Notice of Facts of Common Knowledge Pursuant to Rule 94(A), 21 July 2006. The proposed fact reads: "Starting in April 1992 and until 16 April 1993, Bosnian Serb political and military leaders implemented a plan to link Serb-populated areas in Bosnia and Herzegovina together, to gain control over these areas and to create a separate Bosnian Serb state from which most non-Serbs would be permanently removed. This plan involved the forced movement of many Bosnian Muslims from their homes via a pattern of conduct commonly referred to as 'ethnic cleansing'". *Ibid.*, p.1.

¹⁸³ Decision on Prosecution Motion for Judicial Notice of Facts of Common Knowledge Pursuant to Rule 94(A), 26 Sept 2006 (noting that the judicial and documentary record provided by the Prosecution was not sufficient to establish that the proposed fact was notorious and commonly accepted).

¹⁸⁴ Decision on Prosecution Motion for Subpoena of Dragan Jokić and Decision on Protective Measures, confidential, 29 Aug 2007; Order, confidential and *ex parte*, 29 Aug 2007; Order, confidential and *ex parte*, 26 Oct 2007.

¹⁸⁵ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, T. 17245–17247, 17254, 17268 (closed session) (31 Oct 2007).

¹⁸⁶ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, T. 17263–17264 (closed session) (31 Oct 2007).

¹⁸⁷ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Submission by Dragan Jokić Presenting Grounds to Justify His Refusal to Respond to the Summons to Appear before the Court, confidential and *ex parte*, 31 Oct 2007 (French original), 2 Nov 2007 (English translation).

¹⁸⁸ T. 17274 (closed session) (1 Nov 2007).

¹⁸⁹ T. 17274–17275, 17279 (partly in closed session) (1 Nov 2007).

¹⁹⁰ Upon being called Jokić refused to give a solemn declaration to allow the Trial Chamber to assess his fitness, T. 17244–17247 (closed session) (31 Oct 2007). After session Jokić lodged a

42. The contempt case against Jokić was held on 19 November 2007, 10 December 2007 and 15 December 2008.¹⁹² Jokić pleaded not guilty.¹⁹³ On 27 March 2009, the Trial Chamber issued its Judgement, in which it found that Jokić, by persistently refusing to testify without a reasonable excuse in this case while being a witness before the court, knowingly and wilfully interfered with the Tribunal's administration of justice.¹⁹⁴ Jokić was sentenced to four months imprisonment, to be served consecutively with the sentence he was already serving.¹⁹⁵

43. On 14 April 2009, Jokić filed an appeal against the Trial Chamber Judgement.¹⁹⁶ On 25 June 2009, the Appeals Chamber upheld the Trial Chamber's Judgment.¹⁹⁷

9. Evidentiary Matters

(a) Borovčanin Statement

44. On 6 July 2007, the Prosecution filed a confidential motion seeking to amend its Rule 65 *ter* Exhibit List to add documents pertaining to the Borovčanin Statement and admit them into evidence.¹⁹⁸ On 25 October 2007, the Trial Chamber admitted Borovčanin Statement as evidence against him.¹⁹⁹ With regard to the use of Borovčanin Statement against the co-Accused, the Trial Chamber concluded, by majority with Judge Prost partially dissenting, that unless **Borovčanin** was

submission detailing why he was unable to give evidence. Submission by Dragan Jokić Presenting Grounds to Justify His Refusal to Respond to the Summons to Appear before The Court, confidential and *ex parte*, 31 Oct 2007 (French original), 2 Nov 2007 (English translation). On resumption of proceedings the following day the Trial Chamber rejected Jokić's submission as providing any basis for not giving evidence. T. 17275 (1 Nov 2007).

¹⁹¹ See also *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, T. 17279–17281 (1 Nov 2007).

¹⁹² Scheduling Order, 9 Nov 2007; *Contempt Proceedings against Dragan Jokić*, Case No. IT-05-88-R77.1, T. 1–7 (19 Nov 2007), T. 1–63 (partly in closed session) (10 Dec 2007), T. 1–70 (partially in closed session) (15 Dec 2008).

¹⁹³ *Contempt Proceedings against Dragan Jokić*, Case No. IT-05-88-R77.1, T. 2 (19 Nov 2007).

¹⁹⁴ *Contempt Proceedings against Dragan Jokić*, Case No. IT-05-88-R77.1, Judgement on Allegations of Contempt, 27 Mar 2009, para. 37.

¹⁹⁵ *Contempt Proceedings against Dragan Jokić*, Case No. IT-05-88-R77.1, Judgement on Allegations of Contempt, 27 Mar 2009, para. 42.

¹⁹⁶ Notice of Appeal Filed by Dragan Jokić Against the Trial Judgement, confidential, 14 Apr 2009 (French original), 21 Apr 2009 (English translation).

¹⁹⁷ *Contempt Proceedings against Dragan Jokić*, Case No. IT-05-88-R77.1-A, Judgement on Allegations of Contempt, 25 June 2009.

¹⁹⁸ Prosecution's Motion for Leave to Amend 65 *ter* Exhibit List with 18 Exhibits Pertaining to Alistar Graham, confidential, 6 July 2007; Motion for Leave to Supplement Prosecution's 6 July 2007 65 *ter* Motion, 12 July 2007; Corrigendum to Prosecution's 6 July 2007 and 12 July 2007 Motions seeking leave to Amend 65 *ter* Exhibit List, 13 July 2007.

¹⁹⁹ Decision on the Admissibility of the Borovčanin Interview and the Amendment of the Rule 65 *ter* Exhibit List, 25 Oct 2007.

able to be cross-examined the interview could not be used as evidence of the acts and conduct of his co-accused.²⁰⁰ The Trial Chamber granted the parties certification to appeal the decision.²⁰¹

45. The Appeals Chamber reversed the Trial Chamber's decision on the admissibility of the Borovčanin Statement against the co-Accused.²⁰² On 18 January 2008, the Trial Chamber admitted the Borovčanin Statement for all purposes.²⁰³

(b) Documentary Evidence Admitted from the Bar Table

46. On 14 March 2008, the Trial Chamber granted a motion by the Prosecution for admission of documents from the Bar Table.²⁰⁴ On 12 May 2009, the Trial Chamber granted in part a motion by **Nikolić** seeking to admit documents from the Bar Table.²⁰⁵

47. Between June and July 2009, **Popović**, **Gvero** and the Prosecution filed motions seeking to admit further documentary evidence from the Bar Table.²⁰⁶ The Trial Chamber denied these Motions.²⁰⁷ **Popović** sought certification to appeal this decision,²⁰⁸ and **Gvero** requested the Trial Chamber to either reconsider its decision, or to allow certification to appeal.²⁰⁹ On 30 July 2009,

²⁰⁰ Decision on the Admissibility of the Borovčanin Interview and the Amendment of the Rule 65 *ter* Exhibit List, 25 Oct 2007, Partial Dissenting Opinion of Judge Kimberly Prost.

²⁰¹ Decision on the Admissibility of the Borovčanin Interview and the Amendment of the Rule 65 *ter* Exhibit List, 25 Oct 2007.

²⁰² *Prosecutor v. Popović et al.*, Case No IT-05-88-AR73.1, Decision on Appeals against Decision admitting Material Related to Borovčanin's Questioning, 14 Dec 2007. The Appeals Chamber dismissed the motions by the Accused and allowed the Prosecution's motion in the part relating to the admissibility of the evidence.

²⁰³ T. 19993 (18 Jan 2008).

²⁰⁴ Decision on Prosecution's Motion for Admission of Exhibits from the Bar Table, Motion to Amend the Bar Table Motion, and Oral Motion for Admission of Additional Exhibit, 14 Mar 2008.

²⁰⁵ Decision on Nikolić Bar Table Motion, confidential, 12 May 2009.

²⁰⁶ Vujadin Popović's Motion to Amend his Rule 65 *ter* List and for the Admission of Documents from the Bar Table, with confidential annexes, partially confidential, 23 June 2009; Vujadin Popović's Addendum to the Motion to Amend his Rule 65 *ter* List and for the Admission of Documents from the Bar Table, partially confidential, 25 June 2009; Vujadin Popović's Further Addendum to the Motion to Amend his Rule 65 *ter* List and for the Admission of Documents from the Bar Table, confidential, 29 June 2009; Motion on Behalf of Milan Gvero Seeking the Admission of Five Documents from the Bar Table, 9 July 2009; Prosecution's Motion for Admission of Exhibits from the Bar Table with confidential appendix, confidential, 10 July 2009.

²⁰⁷ Consolidated Decision on the Motions for the Admission of Evidence and Other Related Motions, 22 July 2009.

²⁰⁸ Vujadin Popović's Request for Clarification of the 'Consolidated Decision on Motions for the Admission of Evidence and Other Related Motions' and for Certification to Appeal", 24 July 2009.

²⁰⁹ Motion on behalf of Milan Gvero seeking Reconsideration of the Trial Chamber's Refusal to Allow the Admission of Documents from the Bar Table and, in the Alternative, Certification of the Same, 24 July 2009.

the Trial Chamber reconsidered its decision, granted **Popović** and **Gvero**'s requests in part and admitted some of the proposed evidence.²¹⁰

(c) Expert Witnesses

48. In this case, the Trial Chamber received evidence of 12 expert witnesses called by the Prosecution and 17 expert witnesses called by the Accused. The Trial Chamber hereby notes a few specific issues that arose with regard to expert witnesses.

49. On 9 June 2006, the Prosecution filed a notice of Richard Butler's military reports.²¹¹ **Popović**, **Nikolić**, **Pandurević** and **Beara** filed motions opposing the admission of this report and objecting to Butler's status as an expert military analyst witness.²¹² On 31 October 2006, the Prosecution confidentially disclosed five additional reports by Butler which were included in the Prosecution's disclosure of expert witness statements.²¹³ On 19 September 2007, the Trial Chamber permitted the Prosecution to call Butler as an expert witness, adding that the admissibility of Butler's reports would only be decided after his examination and cross-examination had concluded.²¹⁴

50. On 26 September a Joint defence motion for certification was filed,²¹⁵ which the Trial Chamber granted on 30 October 2007.²¹⁶ Subsequently, a joint defence appeal was filed on 6 November 2007.²¹⁷ On 30 January 2008, the Appeals Chamber dismissed the appeal.²¹⁸

²¹⁰ Decision on Gvero's and Popović's Motions Regarding Consolidated Decision on Motions for the Admission of Evidence and Other Related Motions, confidential, 30 July 2009.

²¹¹ Prosecution's Notice of Filing Military Report of Richard Butler, 9 June 2006. This report contained the "VRS Main Staff Command Responsibility Report" as Annex A.

²¹² Defence Motion Pursuant to Rule 127(A) for Extension of Time to File the Rule 94 *bis* Notice Regarding Prosecution Expert Witness Richard Butler, 2 Oct 2006; Motion on Behalf of Drago Nikolić Joining "Defence Motion Pursuant to Rule 127(A) for Extension of Time to File the Rule 94 *bis* Notice Regarding Prosecution Expert Witness Richard Butler", 11 Oct 2006; Motion on Behalf of Vinko Pandurević and Ljubiša Beara Joining "Defence Motion Pursuant to Rule 127(A) for Extension of Time to File the Rule 94 *bis* Notice Regarding Prosecution Expert Witness Richard Butler", 17 Oct 2006.

²¹³ Prosecution's Notice of Disclosure of Expert Witness Statements Under Rule 94 *bis*, confidential, 31 Oct 2006.

²¹⁴ Decision on Defence Rule 94 *bis* Notice Regarding Prosecution Expert Witness Richard Butler, 19 Sept 2007.

²¹⁵ Joint Defence Motion for Certification of the Trial Chamber's Decision on Defence Rule 94 *bis* Notice Regarding Prosecution Expert Witness Richard Butler, 26 Sept 2007; Motion on Behalf of Drago Nikolić Joining the Joint Defence Motion for Certification of the Trial Chamber's Decision on Defence Rule 94 *bis* Notice Regarding Prosecution Expert Richard Butler, 27 Sept 2007.

²¹⁶ Decisions on Motion for Certification of Decision on Defence Rule 94 *bis* Notice Regarding Prosecution Expert Witness Richard Butler, 30 Oct 2007.

51. On 6 February 2008 the Accused filed a joint motion seeking the exclusion of two narratives,²¹⁹ prepared by Butler and tendered by the Prosecution, on the basis that they lacked relevance and probative value.²²⁰ On 27 March 2008, the Trial Chamber denied the motion, and admitted the narratives.²²¹

52. In December 2006, **Gvero** and **Miletić** filed motions requesting the Prosecution to specify Rupert Smith's qualifications, and comply with the requirements set out in Rule 94 *bis* for calling expert witnesses.²²² **Gvero** filed a further motion on 8 January 2007, arguing that the Prosecution's failure to comply with the requirement set out in Rule 94 *bis* should preclude it from eliciting evidence from Smith at trial.²²³ **Gvero** further argued that Smith should be precluded from testifying as a witness because he was also appearing as a factual witness.²²⁴ On 30 March 2007, the Trial Chamber rendered a decision, in which it ordered **Miletić** and **Gvero** to file submissions detailing all the objections to Smith testifying as an expert.²²⁵ The Accused filed separate submissions on 20 April 2007 challenging the Prosecution's request to call General Smith as an expert in relation to the history, function and importance of a Main Staff in general; the function and operation of the VRS Main Staff; and the command doctrine of the VRS.²²⁶ On 11 October 2007, the Trial Chamber permitted Smith to testify as an expert with regard to the history, function,

²¹⁷ Joint Defence interlocutory appeal concerning the status of Richard Butler as an Expert Witness, partially confidential, 6 Nov 2007 (filed by **Popović, Beara, Nikolić** and **Pandurević**).

²¹⁸ *Prosecutor v. Popović et al.*, Case No IT-05-88 AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 Jan 2008.

²¹⁹ Srebrenica Military Narrative of 15 May 2000 and the Revised Srebrenica Military Narrative of 1 November 2002.

²²⁰ Joint Defence Motion Challenging the Admissibility of the Narratives Prepared by Witness Richard Butler, 6 Feb 2008.

²²¹ Decision on the admissibility of the Narratives of Expert Witness Richard Butler, 27 Mar 2008; Comparison of Richard Butler's Srebrenica Military Narratives, 31 Mar 2008.

²²² Motion and Notice Pursuant to Rule 94 *bis* Relating to the Evidence of General Sir Rupert Smith, confidential, 15 Dec 2006; General Miletić's Motion Regarding the Testimony of General Sir Rupert Smith, confidential, 27 Dec 2006 (French Original), 10 Jan 2007 (English translation); Prosecution's Notice of Disclosure of Expert Witness Statements Under Rule 94 *bis*, confidential, 31 Oct 2006.

²²³ General Gvero's Motion to Strike Prosecution Response as Untimely or For Leave to Reply: Motion Relating to Evidence of General Sir Rupert Smith, 8 Jan 2007, para. 10.

²²⁴ General Gvero's Motion to Strike Prosecution Response as Untimely or For Leave to Reply: Motion Relating to Evidence of General Sir Rupert Smith, 8 Jan 2007, para. 11.

²²⁵ Decision Regarding Evidence of General Rupert Smith and the Calculation of Time Limits Under Rule 126 *bis*, 30 Mar 2007, p. 4.

²²⁶ Submission on Behalf of General Milan Gvero Pursuant to Rule 94 *bis* Relating to the Proposed Expert Evidence of General Sir Rupert Smith, 20 Apr 2007; Submissions of General Miletić in Respect of the Testimony of General Sir Rupert Smith, 20 Apr 2007 (French original), 1 May 2007 (English translation).

and importance of a Main Staff in general, but not with regard to the function and operation of the VRS Main Staff, or the command doctrine of the VRS.²²⁷

53. Following Smith's testimony, **Miletić** and **Gvero** filed motions seeking the exclusion of Smith's statement from the evidence or alternatively the redaction of some parts of the Statement.²²⁸ The Trial Chamber dismissed the motion on 11 March 2008, stating that it would not consider opinion evidence that went beyond Smith's previously established limits as an expert witness.²²⁹ **Miletić** subsequently requested certification to appeal the decision,²³⁰ which the Trial Chamber denied.²³¹

54. On 1 May 2008, **Popović**, **Beara**, **Nikolić**, **Borovčanin** and **Pandurević** filed a joint notice pursuant to Rule 94 *bis*, in which they disclosed Professor Schabas' expert report and requested the Trial Chamber to take notice of its disclosure to the Prosecution.²³² On 19 May 2008, the Prosecution filed a notice, in which it requested the Trial Chamber not to admit the report and proposed evidence of Professor Schabas, challenging the relevance of the contents of his report and his proposed testimony.²³³ On 1 July 2008, the Trial Chamber held that the five Accused would not be permitted to call Professor Schabas as an expert witness, nor tender the report as an expert report because the subject on which Professor Schabas' expertise was offered in this case was a matter which fell directly within the competence of the Trial Chamber.²³⁴ On 30 July 2008, the Trial Chamber dismissed a request by the five Accused for reconsideration of this decision.²³⁵

²²⁷ Second Decision regarding the evidence of General Rupert Smith, 11 Oct 2007, p. 5.

²²⁸ General Miletić's Objection to the Admission into Evidence of General Smith's Expert Statement, 21 Nov 2007 (French original), 28 Nov 2007 (English translation); Passages of the Expert Statement of General Smith to Which Objection is Taken by Milan Gvero, 21 Nov 2007.

²²⁹ Decision on Defence Objections to Admission of the Expert Statement of General Rupert Smith, 11 Mar 2008, p. 2.

²³⁰ General Miletić's Request for Certification to Appeal the Decision on Defence Objections to the Admission of Expert Statement of General Smith, 18 Mar 2008 (French original), 26 Mar 2008 (English translation).

²³¹ Decision on Miletić's Request for Certification of the Decision on Defence Objections to the Admission of the Expert Statement of General Rupert Smith, 15 Apr 2008.

²³² Joint Notice of Disclosure of an Expert Witness Report Pursuant to Rule 94 *bis*—Historical Legal Expert, 1 May 2008.

²³³ Notice Pursuant to Rule 94 *bis* Concerning Defence Non-Military Expert Reports and Two Military Expert Reports and Objection to the Schabas Report and Testimony, confidential, 19 May 2008.

²³⁴ Decision on the Admissibility of the Expert Report and Proposed Expert Testimony of Professor Schabas, 1 July 2008.

²³⁵ Decision on the Request for Reconsideration of the Decision on the Admissibility of the Expert Report and Proposed Expert Testimony of Professor Schabas, 30 July 2008.

(d) Impeaching one's own Witness

55. During the proceedings held on 17 September 2007, the Trial Chamber by majority, Judge Agius dissenting, ruled that any party may challenge the credibility of its own witness.²³⁶ It granted a request by all the Accused for certification to appeal the decision.²³⁷ The Appeals Chamber partly granted the joint appeal by the Accused, holding that the Trial Chamber had erred in putting the decision to impeach a witness in the hands of the party calling him.²³⁸

(e) Intercept Evidence

56. On 12 September 2006, the Trial Chamber decided to defer the ruling on the admission of intercepted communications until the issue could be addressed in a comprehensive manner.²³⁹ Following an order issued by the Trial Chamber on 17 January 2007,²⁴⁰ five Accused filed submissions substantially describing the nature of their objections to the intercept evidence.²⁴¹

57. On 1 May 2007, the Prosecution filed a submission seeking admissibility of intercepted evidence.²⁴² In its decision of 7 December 2007, the Trial Chamber found that all of the intercepts tendered by the Prosecution were *prima facie* credible and therefore sufficiently relevant and probative to be admitted.²⁴³ During the trial, the Prosecution tendered 213 individual intercepts of

²³⁶ T. 15457–15458 (17 Sept 2007).

²³⁷ Decision on Certification and Clarification of the Trial Chamber's Oral Decision on Impeachment of a Party's own Witness, 21 Nov 2007.

²³⁸ *Prosecutor v. Popović et al.* Case No. IT-05-88-AR73.3, Decision on Appeal against Decision on Impeachment of a Party's Own Witness, 1 Feb 2008. The Appeals Chamber further held that a party must seek permission of the Trial Chamber to impeach its own witness in relation to that witness's credibility or the substance of their testimony; and that the scope of that challenge must be subjected to the Trial Chamber's control. *Ibid.*, paras. 24–28.

²³⁹ Decision on Prosecution's *Confidential* Motion for Admission of Written Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis*, 12 Sept 2006, para. 103; Prosecution's Motion for Admission of Written Evidence in lieu of *Viva Voce* Testimony pursuant Rule 92 *bis* and attached annexes A-D, confidential, 12 May 2006.

²⁴⁰ Order regarding intercepted Communications, 17 Jan 2007.

²⁴¹ Defence Submission on Behalf of Drago Nikolić Regarding its Objection to the Admissibility of Intercepted Communications, 2 Feb 2007; [Popović] Defence Submissions on the Exclusion of Intercept Evidence Pursuant to Rule 95, 2 Feb 2007; Accused Beara's Submissions Regarding the Lack of Admissibility of Intercept Evidence, 2 Feb 2007; General Miletić's Submission Objecting to the Admissibility of Intercepted Communications, 2 Feb 2007 (French original), 9 Feb 2007 (English translation); Borovčanin Defence Notification on Joining Other Srebrenica Defence Preliminary Submissions Regarding Admissibility of Intercept Material and Evidence, 5 Feb 2007.

²⁴² Prosecution's Submission in Support of the Admissibility of Intercept Evidence, with Confidential Annexes, 1 May 2007.

²⁴³ Decision on Admissibility of Intercepted Communications, 7 Dec 2007.

VRS communications, several related documents and called 28 former intercept operators to testify in support of the admission of the intercepts.²⁴⁴

10. Provisional Release

58. On 25 April 2008, **Popović** filed a motion requesting provisional release “in the form of a custodial visit” on humanitarian grounds,²⁴⁵ which was denied due to flight risk.²⁴⁶ On a **Popović** appeal,²⁴⁷ this decision was upheld.²⁴⁸ On 9 July 2008, **Nikolić** filed a motion for provisional release under custodial conditions on compassionate grounds.²⁴⁹ The Trial Chamber granted **Nikolić** provisional release for a period of four days (including travel time).²⁵⁰

59. On 15 December 2006, the Trial Chamber denied a second motion for release by **Borovčanin**.²⁵¹ This decision was upheld on appeal.²⁵² On 24 July 2007, the Trial Chamber granted **Borovčanin** seven days of custodial release.²⁵³ On 9 April 2008, the Trial Chamber granted **Borovčanin** seven days of custodial release.²⁵⁴ The Prosecution filed an appeal against this decision.²⁵⁵ The Appeals Chamber remitted the decision to the Trial Chamber for *de novo*

²⁴⁴ Decision on Admissibility of Intercepted Communications, 7 Dec 2007.

²⁴⁵ The Accused Vujadin Popovic's Motion for Provisional Release, in the Form of a Custodial Visit, Based on Humanitarian Grounds, confidential, 25 Apr 2008.

²⁴⁶ Decision on Popović's Motion for Provisional Release, confidential, 28 May 2008, public redacted version, 28 May 2008.

²⁴⁷ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.7, Vujadin Popović's Interlocutory Appeal Against the “Decision on Popović's Motion for Provisional Release”, 4 June 2008.

²⁴⁸ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.7, Decision on Vujadin Popović's Interlocutory Appeal Against the Decision on Popović's Motion for Provisional Release, 1 July 2008.

²⁴⁹ Motion on behalf of Drago Nikolic Seeking Provisional Release under Custodial Conditions on Compassionate Grounds, confidential, 9 July 2008.

²⁵⁰ Decision on Nikolić's Motion for Provisional Release, 21 July 2008. On 30 July 2008, the Trial Chamber granted Nikolić's motion seeking variation of the terms of his release. Decision on Nikolić's Motion Seeking a Variation of the Conditions of his Provisional Release, 30 July 2008.

²⁵¹ Decision on Defence Motion for Provisional Release of Ljubomir Borovčanin, confidential and *ex parte*, 15 Dec 2006.

²⁵² *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.3, Decision on Interlocutory Appeal of Trial Chamber's Decision Denying Ljubomir Borovčanin Provisional Release, 1 Mar 2007; See also *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.3, Defence Interlocutory Appeal Against the Trial Chamber's 'Decision on Defence Motion for Provisional Release of Ljubomir Borovčanin' dated 15 Dec 2006, confidential and *ex parte*, 21 Dec 2006.

²⁵³ Decision on Borovčanin's Motion for Leave to Withdraw Application for Provisional Release and to File Application for “Custodial Visit to his Father for a Short Fixed Period Based on Humanitarian Grounds”, confidential, 24 July 2007.

²⁵⁴ Decision on Borovčanin's Motion for Custodial Visit, confidential, 9 Apr 2008, public redacted version, 9 Apr 2008.

²⁵⁵ *Prosecutor v. Popović et al.* Case No. IT-05-88-AR 65.6, Consolidated Appeal against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's

determination regarding the duration of release.²⁵⁶ The Trial Chamber subsequently granted **Borovčanin** four days of custodial release in May 2008.²⁵⁷ On 17 December 2008, the Trial Chamber denied **Borovčanin**'s request for provisional release under custodial conditions.²⁵⁸ On 3 June 2010, **Borovčanin** was granted permission to visit the Embassy of the Republic of Serbia in The Hague on strict custodial conditions.²⁵⁹

60. **Miletić** and **Gvero** were again provisionally released during the 2006 and 2007 winter recess²⁶⁰ and the 2007 summer recess.²⁶¹ Both Accused were also granted provisional release during the break before commencement of the Defence cases,²⁶² which the Prosecution appealed.²⁶³ On 15 May 2008, the Appeals Chamber remitted the decision concerning **Miletić** to the Trial Chamber for re-determination and reversed the decision concerning **Gvero**.²⁶⁴ On 22 May 2008, **Miletić** was granted provisional release for a period not exceeding four days (including travel time).²⁶⁵ On 21 July 2008, the Trial Chamber granted **Miletić**'s motion for provisional release for a period not exceeding seven days (excluding travel time).²⁶⁶ On 10 December 2008, the Trial Chamber again granted a **Miletić** motion for provisional release for a period not exceeding seven days (excluding travel time).²⁶⁷ On 15 October 2009, the Trial Chamber denied a **Miletić** motion

Motions for Provisional Release during the Break in the Proceedings, confidential, 10 Apr 2008, public redacted version, 15 Apr 2008.

²⁵⁶ *Prosecutor v. Popović et al.* Case No. IT-05-88-AR65.4, Decision on Consolidated Appeal against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional Release during the Break in the Proceedings, 15 May 2008.

²⁵⁷ Further Decision on Borovčanin's Motion for Custodial Visit, 22 May 2008.

²⁵⁸ Decision on Borovčanin's Motion for Custodial Visit, 17 Dec 2008.

²⁵⁹ Decision on Borovčanin's Motion for Custodial Visit, confidential, 3 June 2010.

²⁶⁰ Decision on Defence Motions for Provisional Release of Radivoje Miletić and Milan Gvero, 7 Dec 2006; Decision on Motions for Provisional Release during the Winter Judicial Recess, 7 Dec 2007.

²⁶¹ Decision on Motion for Provisional Release from 21 July 2007 until the Resumption of Trial, 13 July 2007.

²⁶² Decision on Miletić's Request for Provisional Release During the Break in the Proceedings, 9 Apr 2008; Decision on Gvero's Request for Provisional Release During the Break in the Proceedings, 9 Apr 2008.

²⁶³ *Prosecution v. Popović et al.* Case No. IT-05-88-AR 65.6, Consolidated Appeal against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional Release during the Break in the Proceedings, confidential, 10 Apr 2008, public redacted version, 15 Apr 2008.

²⁶⁴ *Prosecutor v. Popović et al.* Case No. IT-05-88-AR65.5 and Case No. IT-05-88-AR65.6, Decision on Consolidated Appeal against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional Release during the Break in the Proceedings, 15 May 2008.

²⁶⁵ Further Decision on Miletić's Motion for Provisional Release, 22 May 2008.

²⁶⁶ Decision on Miletić Motion for Provisional Release, 21 July 2008.

²⁶⁷ Decision on Miletić's Motion for Provisional Release, 10 Dec 2008.

for provisional release by majority, Judge Prost dissenting.²⁶⁸ On a **Miletić** appeal,²⁶⁹ this decision was overturned on 19 November 2009.²⁷⁰ On 11 February 2010, the Trial Chamber denied another **Miletić** motion for provisional release by majority, Judge Prost dissenting.²⁷¹

61. On 21 July 2008, the Trial Chamber partially granted a motion by **Gvero** seeking provisional release, permitting a period not exceeding 7 days (excluding travel time) during the summer recess.²⁷² On 25 November 2008, **Gvero** sought provisional release during the winter judicial recess,²⁷³ which was granted.²⁷⁴ On 1 May 2009, **Gvero** sought provisional release during the period for preparation of closing arguments,²⁷⁵ which was granted by the Trial Chamber.²⁷⁶ On a Prosecution appeal,²⁷⁷ this decision was overturned.²⁷⁸ On 28 July 2009, in response to a motion to reconsider the provisional release²⁷⁹ the Trial Chamber granted **Gvero** provisional release.²⁸⁰ This decision was, again, appealed by the Prosecution and overturned by a duty Judge.²⁸¹ On 17 December 2009, the Trial Chamber, by majority, with Judge Agius dissenting, granted a **Gvero**

²⁶⁸ Decision on Miletić's Motion for Provisional Release, confidential, with public dissenting opinion of Judge Prost, 15 Oct 2009.

²⁶⁹ *Prosecutor v. Popović et al.* Case No. IT-05-88-AR65.10, Appeal Against the Decision on General Miletić's Motion for Provisional Release, confidential, 19 Oct 2009 (French original), 27 Oct 2009 (English translation).

²⁷⁰ *Prosecutor v. Popović et al.* Case No. IT-05-88-AR65.10, Decision on Radivoje Miletić's Appeal Against Decision on Miletić's Motion for Provisional Release, confidential, 19 Nov 2009, public redacted version, 19 Nov 2009.

²⁷¹ Decision on Miletić's Motion for Provisional Release, confidential, 11 Feb 2010.

²⁷² Decision on Gvero's Motion for Provisional Release, 21 July 2008.

²⁷³ Motion Seeking the Provisional Release of Milan Gvero for Humanitarian Reasons during the December 2008 Recess, confidential, 25 Nov 2008.

²⁷⁴ Decision on Gvero's Motion for Provisional Release, 10 Dec 2008 (for a period not exceeding 7 days (excluding travel time)).

²⁷⁵ Motion Seeking the Provisional Release of Milan Gvero for Humanitarian Reasons during the Period Allowed for the Preparation of Final Briefs and Closing Arguments, confidential and partially *ex parte*, 1 May 2009.

²⁷⁶ Decision on Gvero's Motion for Provisional Release, confidential, 15 June 2009, public redacted version, 16 June 2009 (for a period not exceeding 21 days (excluding travel time)).

²⁷⁷ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.8, Prosecution's Appeal against Decision on Gvero's Motion For Provisional Release, confidential, 17 June 2009.

²⁷⁸ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.8, Decision on Prosecution's Appeal against Decision on Gvero's Motion for Provisional Release, confidential, 20 July 2009, public redacted version, 20 July 2009.

²⁷⁹ Request for Reconsideration of Milan Gvero's Motion for Provisional Release in light of the Appeals Chamber Decision of 20 July 2009, confidential & urgent, 22 July 2009.

²⁸⁰ Decision on Request for Urgent Reconsideration of Gvero's Motion for Provisional Release, confidential, 28 July 2009, public redacted version, 28 July 2009.

²⁸¹ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.9, Prosecution's Appeal against Decision on Gvero's Motion for Provisional Release, confidential, 29 July 2009; *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.9, Decision on Prosecution's Appeal against Decision on Gvero's Motion for Provisional Release, confidential, 6 Aug 2009.

motion for provisional release for a period not exceeding 25 days (excluding travel time).²⁸² Judge Prost appended a separate declaration.²⁸³ This decision was overturned by the Appeals Chamber on 25 January 2010.²⁸⁴

62. On 11 December 2007, **Pandurević** was granted custodial release for 10 days during the winter recess.²⁸⁵ On 21 July 2008, **Pandurević** was further granted custodial release for four days during the summer recess.²⁸⁶

11. Reconstitution of Defence Teams

63. As of 2 November 2007, co-counsel for **Popović** Ms. Condon was replaced by Ms. Mira Tapušковиć.²⁸⁷ As of 5 June 2008, co-counsel for **Beara** Mr Meek was replaced by Mr. Predrag Nikolić.²⁸⁸ As of 25 March 2008, co-counsel for **Borovčanin** Mr. Stojanović was replaced by Mr. Christopher Gosnell.²⁸⁹ As of 21 January 2010, lead counsel for **Borovčanin** Mr. Lazarević was replaced by Mr. Gosnell; in turn Mr Gosnell's role as co-counsel was filled by Ms. Tatjana Čmerić.²⁹⁰ Mr. Petrušić was appointed co-counsel for **Miletić** on 20 February 2007.²⁹¹ Mr. David Josse was appointed co-counsel for **Gvero** on 12 September 2006.²⁹² As of 12 June 2009, co-counsel for **Pandurević** Mr. Sarapa was replaced by Mr. Simon Davis.²⁹³

²⁸² Decision on Gvero's Motion for Provisional Release with Judge Agius' Dissenting Opinion and Judge Prost's Separate Declaration, 17 Dec 2009.

²⁸³ Decision on Gvero's Motion For Provisional Release with Judge Agius' Dissenting Opinion and Judge Prost's Separate Declaration, 17 Dec 2009.

²⁸⁴ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.11, Decision on Prosecution's Appeal against Decision on Gvero's Further Motion for Provisional Release, confidential, 25 Jan 2010.

²⁸⁵ Decision on Pandurević's Request for Provisional Release on Compassionate Grounds, 11 Dec 2007.

²⁸⁶ Decision on Pandurević's Motion for Provisional Release, confidential, 21 July 2008, public redacted version, 21 July 2008.

²⁸⁷ Decision of the Deputy Registrar, 2 Nov 2007.

²⁸⁸ Decision by the Registrar re. assignment of counsel, 5 June 2008.

²⁸⁹ Decision (by the Registrar regarding the withdrawal and assignment of co-counsel), 25 Mar 2008.

²⁹⁰ Decision of the Deputy Registrar, 22 Jan 2010, pp. 2–3.

²⁹¹ Decision of the Registrar, 23 Feb 2007 (assigning Mr. Petrušić pursuant to the "Decision on Third Request for Review of the Registry Decision on the Assignment of Co-Counsel for Radivoje Miletić", 20 Feb 2007).

²⁹² Decision of the Deputy Registrar, 12 Sept 2006.

²⁹³ Decision of the Registrar, 15 June 2009.

12. Site Visit

64. An on-site visit was conducted from 2 to 7 October 2006 to view the relevant sites for the case, including the municipalities of Srebrenica, Bratunac, Zvornik and Vlasenica.²⁹⁴ During this period the Judges only viewed the geographical locations without receiving evidence or comments regarding events alleged to have occurred there.²⁹⁵

²⁹⁴ T. 2426–2427 (16 Oct 2006).

²⁹⁵ T. 2426 (16 Oct 2006).