



Case No.: S1 1K 006124 11 Kžk (Ref: X-KR-06/180-2)

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Before the Panel comprised of:

Judge Hilmo Vučinić, Presiding

Judge Dr. Miloš Babić, member

Judge Phillip Weiner, member

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

RADOMIR VUKOVIĆ AND ZORAN TOMIĆ

VERDICT

Counsel for the Prosecutor's Office of Bosnia and Herzegovina:

Mr. Ibro Bulić

Counsel for Radomir Vuković:

Mr. Radivoje Lazarević

Counsel for Zoran Tomić:

G. Petko Pavlović

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Reference to: X-KRŽ-06/180-2

Sarajevo, 25 January 2012

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina (BiH), the Panel of the Appellate Division of Section I for War Crimes, consisting of Judges Hilmo Vučinić, as the President of the Panel, and Dr. Miloš Babić and Phillip Weiner, as members of the Panel, and Dženana Deljković-Blagojević, Legal Advisor, as the record-taker, in the criminal case against the accused Radomir Vuković and Zoran Tomić, for the criminal offense of Genocide in violation of Article 171(a) of the Criminal Code of Bosnia and Herzegovina (CC of BiH), and Article 31 of the CC of BiH, deciding upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina No. KT-RZ-53/08 of 26 August 2008 and the Indictment No. KT-RZ-143/07 of 18 August 2008, upon the completion of the trial before the Appellate Panel at which the public was partially excluded, in the presence of the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Ibro Bulić and Attorneys Radivoje Lazarević and Petko Pavlović, the Defense Counsel for the Accused Radomir Vuković and Zoran Tomić respectively, after deliberation and voting, on 25 January 2012 rendered and published the following:

VERDICT

1. **The ACCUSED Radomir Vuković a.k.a. „Vojvoda“**, son of Vojin and Mira née Ivanišević, born on 16 February 1974 in Tuzla, PIN: ..., ... by ethnicity, citizen of ..., with the application for the citizenship of ... in process, with residence in ..., tile layer by occupation, literate, completed high school, married, father of a minor child, completed military service in 1992 in Han Pijesak, holds no rank of a reserve military officer, registered in the military records of the Šekovići Municipality, awarded a Gold Medal for Courage in 1993 by the VRS Main Staff and a Medal of Hero Milan Tepić, of average financial standing, no previous convictions, no other criminal proceedings pending against him,

IS GUILTY

Inasmuch as:

As a member of the special police force, together with other members of the 2nd Detachment of the Šekovići Special Police of the Republika Srpska MUP and together with other members of the VRS

and RS MUP, on 12 July 1995 in the afternoon hours, and on the following day of 13 July 1995, at the section of the Bratunac-Konjević Polje road in Sandići, Bratunac Municipality, he participated in keeping the road passable so that Bosniaks could be transported by buses and trucks without obstruction, in securing the road, closing and opening it for traffic in line with the plan to forcibly transfer Bosniak women, children and elderly, and after he participated on 13 July 1995 in the capturing of a large number of Bosniak males who, following the fall of the Srebrenica Safe Area and its total occupation by the VRS, attempted to escape from the Srebrenica Safe Area, in the afternoon of that same day, he took part in escorting the captured Bosniak men from the village of Sandići to the warehouse of the Kravica Farming Cooperative where they were imprisoned together with other Bosniak males who had been transported by bus to the warehouse, the total number of whom exceeded one thousand, so the accused, knowing that the population was forcibly removed and that the detained Bosniak men would be executed, together with other members of the 2nd Detachment of the Šekovići Special Police of the Republika Srpska MUP, killed the majority of the captives in such a manner that the accused Radomir Vuković participated in the execution of the prisoners by throwing hand grenades at them.

Therefore, by killing members of the group of Bosniaks, the accused Vuković assisted in exterminating in part this group as a national, ethnic and religious group,

whereby he committed the criminal offence of Genocide under Article 171, subparagraph (a) of the CC of BiH, as read with Article 31 of the same Code (Accessory),

Consequently, for this offence, pursuant to the same provision of the law, applying Articles 39, 42 and 48 and pursuant to Article 285 of the CPC of BiH, the Panel of the Court of BiH

SENTENCES

THE ACCUSED TO A LONG-TERM IMPRISONMENT OF 31 (THIRTY-ONE) YEARS

Pursuant to the provision under Article 56 of the CC of BiH, the time the Accused Radomir Vuković spent in custody starting from 8 August 2008 onwards shall be credited towards the imprisonment sentence.

Pursuant to Article 188, paragraph 4 of the CPC of BiH, the accused is hereby relieved of the payment of the costs of criminal proceedings, which shall be covered from within the Court's budgetary appropriations.

Pursuant to Article 198, paragraph 2 of the CPC of BiH, the injured parties are hereby instructed to address their potential property claims in a civil lawsuit.

2. Pursuant to Article 284, paragraph c) of the CPC of BiH,

The ACCUSED Zoran Tomić a.k.a. “Zgembo”, son of Ratko and Đurđijana née Vasilić, born on 3 August 1971 in Stupari, Kladanj Municipality, PIN: ..., living in ..., citizen of ..., literate, secondary school education, construction machines operator, employed in the Zvornik Police Station, MUP of Republika Srpska, single, served compulsory military service in 1990/1991 in Kuršumlija, no reserve officer rank, no decorations awarded, average financial standing, no previous convictions, no other criminal proceedings pending against him,

IS ACQUITTED OF THE CHARGES

that:

Intending to exterminate in part a group of Bosniaks causing their anguish by forcible transfer and separation of men from their families, capturing and executing them, as a member of the special police force, together with a number of other members of the 2nd Šekovići Detachment of the Special Police Force of the Republika Srpska MUP [Ministry of the Interior], as a knowing participant of the joint criminal enterprise in the period from 10 July to 19 July 1995, in which the Republika Srpska Army [VRS] and the Republika Srpska MUP carried out a widespread and systematic attack against members of the Bosniak people, knowing of such an attack, in co-perpetration with other members of the VRS and the RS MUP, with the common aim to forcibly permanently transfer from the UN safe area of Srebrenica around 40,000 civilians and summarily execute and bury more than 7,000 Bosniak men aged between 13 and 70:

1. On 12 July 1995, the Accused took part in the search of the Bosniak-populated villages in the UN safe area of Srebrenica, in the Potočari vicinity, in order to find Bosniaks, force them out of their homes and take them to the area of Potočari, where Bosniaks were being gathered, knowing that those people would be forcibly and permanently transferred from Potočari to the area under the control of the Army of the Republic of BiH. In the afternoon of the same day and on the following day, 13 July, at the section of the Bratunac-Konjević Polje road in the place called Sandići, Bratunac Municipality, he participated in keeping the road passable so that the Bosniaks could be transported by buses and trucks without obstruction, in providing security to the road, closing and opening it for traffic in line with the plan of forcible transfer of the Bosniak women, children and elderly, who, due to the fear caused by the separation of the men, terror, active threats and the inflicting of injuries by members of the VRS and RS MUP, were bundled onto the buses and trucks without resistance and they left the safe area;

2. On 13 July, the Accused participated in a reconnaissance operation and armed attacks from tanks, the *Praga* self-propelled anti-aircraft guns, anti-aircraft guns and other small arms against the column of Bosniaks in the area above Kamenica close to the said road, forcing the Bosniak men to surrender, encouraging and enticing them with false promises of prisoner exchange; the Accused participated in the capturing of several thousand Bosniaks who attempted to escape from the safe area through the forest, fearing that they would be captured and executed by the RS MUP and RS Army, whereupon he searched the captives and confiscated their money and valuables and ordered them to put aside the food, clothes and other things they had in their bags, whereupon in the afternoon of the same day he took part in the escorting of a column of around 1,000 captured Bosniaks from Sandići to the warehouse of the Kravica Farming Cooperative, knowing that they would be executed. After the captured Bosniaks were imprisoned in the Warehouse, the Accused and the other members of the 2nd Detachment killed the majority of the captives, the Accused having participated in the execution by firing from an automatic gun at the captives, while the other members of the 2nd Detachment were killing the captives using light machine guns, rifles and hand grenades,

Therefore,

with the intention to partially exterminate a group of Bosniaks as an ethnic and religious group, as a co-perpetrator, he would thus have committed the killing of members of a group of Bosniak population and the forcible transfer of the Bosniak civilian population to the territories outside of Republika Srpska,

whereby he would have committed the criminal offense of Genocide, in violation of Article 171 of the Criminal Code of BiH, as read with Article 29 and 180 (1) of the Code.

Pursuant to Article 189, paragraph 1 of the CPC of BiH, the accused Zoran Tomić is hereby relieved of the payment of the costs of criminal proceedings, which shall be covered from within the Court's budgetary appropriations.

Pursuant to Article 198, paragraph 2 of the CPC of BiH, the injured parties are hereby instructed to address their potential property claims in a civil lawsuit.

REASONING

II. HISTORY OF THE CASE

1. Under the Verdict of the Court of Bosnia and Herzegovina (X-KR-06/180-2) dated 22 April 2010, the accused Radomir Vuković and Zoran Tomić were found guilty as accessories in the criminal offense of Genocide under Article 171(a) and Article 31 of the CC of BiH. The accused were sentenced to 31 years imprisonment. Pursuant to Article 188(4) of the Criminal Procedure Code of Bosnia and Herzegovina (CPC of BiH), the accused were relieved of the payment of the costs of the criminal proceedings, which were to be covered from within the Court's budgetary appropriations, while the injured parties were instructed pursuant to Article 198(2) of the CPC to bring their potential property claims in a civil suit.
2. The Defense Counsel for the Accused Vuković and Tomić have appealed in a timely manner, alleging (1) essential violations of the criminal procedure provisions under Article 297 of the CPC of BiH, (2) incorrectly or incompletely established state of facts under Article 299 of the CPC of BiH, (3) a violation of the criminal code under Article 298 of the CPC of BiH and (4) the decision on sanction; and moved the Appellate Panel to grant the appeals, revoke the First Instance Verdict and order a retrial before the Panel of the Appellate Division, or grant the appeals and alter the Verdict by acquitting the accused of the charges.
3. The Prosecution has also appealed the referenced Verdict, contesting the decision on sanction and costs of the criminal proceedings pursuant to Article 296 of the CPC of BiH.
4. The Defense Counsel for each Accused respectively submitted responses to the Prosecution appeal, moving the Appellate Panel to refuse the appeal as ill-founded. The Prosecution likewise submitted a response to the Defense appeals, moving the Court to refuse them as ill-founded too.
5. At the session of the Appellate Panel held on 11 May 2011 pursuant to Article 304 of the CPC of BiH the Defense Counsel for each Accused and the Prosecution briefly presented their appellate arguments and the responses to the appeals of opposing counsel, and maintained their respective appellate arguments and the motions presented to the Court.
6. Having reviewed the contested Verdict within the grounds and arguments of the appeals, as stipulated under Article 306 of the CPC of BiH, on 11 May 2011, the Appellate Panel rendered the decision granting the appeals of both accused, revoking the Verdict of the Court of Bosnia and

Herzegovina (X-KR-06/180-2) dated 22 April 2010, and ordered a retrial before the Panel of the Appellate Division of Section I for War Crimes of the Court of Bosnia and Herzegovina.

7. The Appellate Panel rendered the decision revoking the First Instance Verdict pursuant to Article 297(1)(k) of the CPC of BiH. This Article stipulates that an essential violation of the criminal procedure provisions exists if the wording of the verdict was internally contradictory or contradicted the grounds of the verdict or if the verdict had no grounds at all, or if it did not cite reasons concerning the decisive facts.

III. PROCEDURAL DECISIONS

A. DISMISSAL OF ADDITIONAL COUNSEL

8. On 3 October 2011, the Appellate Panel dismissed additional *ex officio* counsel, namely Attorney Rade Golić from Vlasenica as an additional counsel for the accused Radomir Vuković, who had been appointed under the Decision of the Court of Bosnia and Herzegovina No. X-KR-06/180-2 dated 26 November 2008 and Attorney Miloš Perić from Zvornik as an *ex officio* additional counsel for the accused Zoran Tomić, who had been appointed under the Decision of the Court of Bosnia and Herzegovina No. X-KR-06/180-2 dated 26 November 2008.

9. The Appellate Panel rendered this decision pursuant to the Rules of Procedure on Amendments to the Rules of Procedure of the Court BiH (Official Gazette of BiH, No. 61/11), Article 41(i)(2). This Article stipulates that in rendering a decision to appoint additional counsel, the Court may consider the criteria such as *inter alia* the complexity of the case, the quantity of prosecution evidence and an estimated length of trial.

10. In rendering this decision, the Appellate Panel relied on the fact that the nature and intensity of the retrial before the Appellate Panel, the body of evidence to be presented, and the number of anticipated hearings do not justify the engagement of two *ex officio* Defense Counsel for each accused as was necessary in the first instance proceedings.

11. As compared with the first instance proceedings in the case at hand, the proceedings before the Appellate Panel were less complex in terms of its length and the body of evidence adduced wherefore the Appellate Panel concluded that no co-counsel would be required for the defense before the Appellate Panel and that only one *ex officio* Defense Counsel could satisfy the interests of the Defense teams.

B. EXCLUSION OF THE PUBLIC

12. The Appellate Panel excluded the public in part during the main trial, namely on 2 November 2011 and 9 November 2011 while reviewing the testimony of the protected witness D5 given

during the first instance proceedings, and on 16 November 2011 and 30 November 2011 during the testimony of new Defense witnesses Neđo Jovičić and Franc Kos.

13. During the referenced periods of time, the public was excluded pursuant to Article 235 of the CPC of BiH in order to protect the witnesses whose names came up or witnesses who have testified with regard to the referenced events.

14. The Appellate Panel decided to exclude the public during the hearing of witness D5 as it was reviewing the audio-recording of the testimony of witness D5 that he gave during the first instance proceedings from which the public was excluded, too. The Defense proposed the exclusion of the public during the hearing of witness Neđo Jovičić because this witness so requested in order to avoid the stigma for having testified as he mentioned certain persons in his testimony. The public was partially excluded from the testimony of Franc Kos who mentioned a person whose identity was protected in another case of the Court BiH.

C. ADDUCED EVIDENCE AND DECISION ON MOTIONS TO ACCEPT NEW EVIDENCE

15. The Appellate Panel decided during the retrial to accept all the evidence adduced in the first instance proceedings¹, including, in accordance with the Law on the Transfer of Cases², the facts established³ before the ICTY⁴ and accepted under the decision of the Trial Panel⁵.

16. Pursuant to Article 317(2) of the CPC of BiH, the testimony of witness D5 given in the first instance proceedings on 11 February 2009, 11 March, 13 March and 20 March 2009 was reviewed during the retrial. Upon the proposal of the Defense for the Accused, new evidence was adduced, witnesses Tomislav Dukić, Neđo Jovičić and Franc Kos were heard, and the following documentary evidence presented: a photo of the Farming Cooperative in Kravica identified by witness Neđo Jovičić during his evidence⁶, a photo of the Farming Cooperative in Kravica identified by witness Franc Kos during his evidence⁷ and transcripts of witness Mevludin Orić's evidence at the ICTY dated 28, 29 and 30 August 2006.⁸

17. Bearing in mind Article 317 of the CPC of BiH that regulates a retrial before the Appellate Division, the legal nature of this trial and the fact that it is not a *de novo* trial, the Appellate Panel dismissed the proposal of the Defense for the Accused to review before the Appellate Panel all the

¹ Annex 1 to the Verdict.

² Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Collected by the ICTY in Proceedings Before the Courts in BiH (Official Gazette 61/04).

³ Article 3 of the LoTC.

⁴ International Tribunal for the former Yugoslavia.

⁵ Decision of the Court of BiH, No.: X-KR-06/180-2 dated 27 February 2009; Annex 2.A to the Verdict.

⁶ A-DO I

⁷ A-DO II

evidence adduced during the first instance proceedings and decided to review only the evidence of witness D5. The Panel determined that only this witness directly incriminates the Accused since the first instance Verdict was for the most part based precisely on the evidence of this witness regarding the Accused's participation in the referenced event. In addition, this testimony was most contested by the Defense for the Accused wherefore the Panel concluded it was necessary to review the entire testimony also pursuant to the requirement to protect the fairness of the proceedings.

18. Even though only this evidence of the witness was reviewed, the Appellate Panel notes that the overall evidence adduced during the first instance proceedings, and the new evidence adduced before the Appellate Panel was evaluated with equal attention as a complete body of evidentiary materials. Other evidence was not reviewed for the purpose of judicial economy and efficiency given the large volume of evidence and the length of the evidence adduced, particularly the evidence of all the witnesses.

D. MOTION TO HEAR NEW WITNESSES

19. The Defense for the Accused Vuković proposed to hear witness Franc Kos as a new piece of evidence. The Defense stated that, in his evidence given at the ICTY on May 2010, this witness testified that in the evening of 13 July 1995, together with another two persons, he was in front of the warehouse in Kravica, and that his testimony would additionally explain the events. The Defense proposed his hearing at this stage since he was unavailable earlier and was arrested in the Republic Croatia only in 2010.

20. The Defense also proposed that witness Tomo Dukić testify in relation to the movement of the accused Vuković during the critical period. The Defense could not summon this witness earlier since he was under investigation, and as a suspect he could not testify in the capacity of a witness.

21. The Defense also proposed that witness Neđo Jovičić be examined, arguing that they had information that on the critical day (13 July 1995) this person was present in front of the warehouse in Kravica and witnessed the event. The Defense did not propose this witness earlier because details of information in his possession were disclosed only after his testimony in another case of the Court of BiH on 13 June 2011.

22. The Prosecution objected to the hearing of witness Franc Kos, arguing that the proposal was ungrounded and imprecise since it did not concretely indicate what this evidence could prove.

⁸ A-DO III

Also, this witness is one of the accused in another case pending before the Court of BiH, *Prosecutor's Office v. Franc Kos et al.*

23. The Prosecution also objected to the hearing of witness Tomo Dukić. This witness testifies that the accused Vuković was at the road communication in Sandići. The Defense did not contest this fact during the first instance proceedings. According to the Prosecution, this was an attempt to secure an alibi for the Accused, which they consider ungrounded.

24. The Prosecution submitted it is not clear what the testimony of witness Neđo Jovičić should prove, wherefore it proposed that this proposal be rejected.

25. The Appellate Panel, however, concludes that these three witnesses are relevant since they witnessed the events in front of the Kravica warehouse. The Appellate Panel finds that eye-witness accounts are valuable in the proceedings and that such witnesses may clarify the state of facts and contribute to the rendering of a proper verdict in the case. Furthermore, the Appellate Panel held the requirements set forth in Article 295(4) of the CPC of BiH were satisfied and that these three pieces of evidence had the character of new evidence since, despite due diligence and caution, the Defense for the Accused could not have adduced this evidence during the main trial before the Trial Panel. Therefore, the Appellate Panel concluded it was reasonable to hear these three witnesses and allowed the Defense teams to examine them.

E. MOTION TO ACCEPT PHOTO-DOCUMENTATION

26. On 26 September 2011, the Defense for the accused Vuković filed within their appeal a motion to present evidence that the Trial Panel did not accept in the first instance proceedings, or the new evidence that was not available at the time of the first instance proceedings. Vuković's Defense first proposed that the Prosecution disclose the identity of the persons whose photos were used for a photo-album that was presented to witness D5 when he was examined in the capacity of a suspect on 18 April 2008, and at the hearing on 18 August 2008, namely the persons whom the witness had recognized in those accounts. This evidence was proposed with the view to verifying the credibility of witness D5.

27. The Prosecution objected to this proposal arguing that such photos represented working material in the case rather than a part of the Prosecution case record. In addition, the statements referred to by Vuković's Defense (dated 18 April 2008 and 18 August 2008) were submitted to the Defense enclosed with the Indictment during the first instance proceedings, wherefore they had a sufficient period of time after the direct examination of the witness D5 to get prepared for cross-examination. Accordingly, the Prosecution's obligation to act upon the requests of the Defense has been complied with.

28. The Appellate Panel holds that by their proposal the Defense wishes to disclose the identity of the persons depicted on photos, including those whom the witness D5 did not recognize. Such proposal could not be accepted since the Prosecution is not under obligation to state and disclose the names of the persons presented to the witness D5 for identification. The Defense was in possession of this material during the first instance proceedings and could have itself verified the identity of the persons depicted on the photos and possibly call them as witnesses. The Appellate Panel is satisfied that the Prosecution met their obligation by providing the Defense with the referenced accounts of witness D5 enclosed with the Indictment, and that the Trial Panel also provided the Defense with an opportunity to obtain this relevant information during the cross-examination when they knew in advance what witness D5 had testified about.

F. MOTION TO ACCEPT THE TRANSCRIPTS OF EVIDENCE AT THE ICTY – MEVLUDIN ORIĆ

29. The Defense further proposed a review of the transcript of Mevludin Orić's testimony in the ICTY case *Prosecutor v. Vujadin Popović* (IT-05-88-T), namely the evidence from 28, 29 and 30 August 2006. The Defense argued that at on 13 July 1995 the witness was present in front of the warehouse in Kravica. The Prosecution objected to this evidence stating that this evidence had been proposed before in the first instance proceedings but was refused, that this witness only passed by the hangar in Kravica and recognized no one there, and that therefore it amounted to a cumulative piece of evidence.

30. The Appellate Panel, however, finds that this proposal of the Defense is well founded, that this evidence is not cumulative and that the acceptance of the testimony of a witness who was present on the critical place at the critical time is justified for the purpose of providing a more comprehensive review of the facts. This witness speaks about the referenced event from a different perspective and in a different capacity from all the other witnesses. He neither survived detention in the hangar nor was a member of the VRS military or police formations. Rather, he is a person who happened to be passing by the hangar heading toward another location. In view of the foregoing, this evidence is not merely cumulative. The acceptance of this evidence is also in compliance with Article 5 of the Law on Transfer of Cases by the ICTY to the BiH Prosecutor's Office and the Use of Evidence Collected by ICTY in the proceedings before the Courts in BiH, since this is the evidence that the witness gave at the ICTY.

G. DEFENSE MOTION TO REVIEW A FILM

31. The Defense also proposed the reviewing of the "Srebrenica – The Betrayed City" film during the proceedings. The Defense learned about this film only after completion of the first instance proceedings in this case. According to the Defense, this evidence is relevant as it points to the

facts relevant to Srebrenica. The Prosecution objected to this evidence presentation because the relevance of this evidence, or the evidence to be contested by this film, was not clear

32. The Appellate Panel has established that this proposal of the Defense is ill founded and refused the presentation. It does not transpire from the motion who is the author of the film, and which evidence the film contests. The film's authenticity and relevance is also unclear. The Appellate Panel emphasized that it did not *a priori* refuse the admission of this evidence, but noted that the Defense could adduce this evidence if it provided the testimony of the film's creator.

H. MOTION TO RE-EXAMINE THE WITNESSES HEARD IN THE FIRST INSTANCE PROCEEDINGS

33. Tomić's Defense proposes that witnesses D5 and Munira Subašić be re-examined and that the transcripts of their accounts from the first instance proceedings in court's case.....be admitted as evidence⁹

34. The Prosecution objected to the re-summoning of these two witnesses, particularly because they were already once heard in the first instance proceedings, and because the accused's Counsel examined them in detail. It is also improper to admit transcripts of their evidence given in another case

35. The Appellate Panel concludes that the Defense arguments pertaining to this motion are not well founded. By its nature, this motion does not satisfy the criteria set forth in Article 259(4) of the CPC of BiH and does not amount to a new piece of evidence. Both these witnesses were indeed examined during the direct examination and cross-examination before the Trial Panel, particularly witness D5. This witness was examined not only with regard to the time period when the referenced event took place. In order to verify this witness's credibility, the Defense examined him with regard to the facts that preceded the event and also the facts concerning the entire period after the event, including the time the witness spent in custody. Furthermore, the proposal to use as evidence the transcripts of these witnesses' testimony in other first instance proceedings before the Court of BiH cannot be accepted as the provisions of the CPC of BiH do not allow for such a possibility and this evidence does not fall under admissible exceptions from the direct presentation of evidence under Article 273 of the CPC of BiH.

⁹ Annex 1 to the appeal of Defense Counsel for Petko Pavlović, and the submission dated 22 September 2011.

**I. DEFENSE MOTION TO ACCEPT THE TRANSCRIPTS FROM THE CASE OF THE COURT OF BIH AGAINST
ŽELJKO IVANOVIĆ**

36. The Defense proposed as new evidence the transcripts of evidence of witnesses Milan Rankić, Mirko Ivanović, Petar Mitrović, Salih Alibašić and Slobodan Radonja. These witnesses testified in the Case No. X-KR-06/180-3 of the Court of BiH. In these transcripts the witnesses presented the facts which the Defense argues raise questions as to the credibility of witness D5.

37. The Prosecution argues that these witnesses exclusively presented insinuations that do not bring into question the credibility of witness D5. Therefore, the Prosecution objects to the acceptance of this evidence.

38. The Appellate Panel considers this proposal of the Defense to not be well-founded. An analysis of the Motion and the arguments pertaining to the facts about which these witnesses would speak reveals that they all address issues irrelevant to either the event which is the subject of the indictment, or to the testimony of witness D5 in relation to the critical period of 13 July 1995. The Appellate Panel has therefore decided to reject this evidence as irrelevant to the case. For the purpose of evaluation of the witness D5 credibility, the Appellate Panel will above all evaluate the testimony of the witness given in the case against the accused (including his direct and cross examination) and its relationship to other evidence adduced. .

J. MOTION TO HEAR WITNESS JEAN RENE RUEZ

39. The Defense for the accused Tomić proposed hearing witness Jean Rene Ruez, or the review of his testimony given in the case No. X-KR-06/180-3 (Željko Ivanović) regarding his knowledge about the events in Kravica that he has investigated. The Defense considers that certain information in his possession is important and contrary to the accounts of other witnesses. The Defense argues that this witness could not have been heard earlier because the foregoing information was learned of only after he testified in *Ivanović*.

40. The Appellate Panel notes that witness Jean Rene Ruez has earlier appeared in the proceedings before the ICTY. The Defense even refers to the transcript of this witness's evidence in *Blagojević* case from 2003, wherefore it is obvious that the testimony of this witness does not amount to a new piece of evidence in terms of Article 295(4) of the CPC of BiH. In addition, the Defense does not indicate which Prosecution facts would this evidence contest, particularly bearing in mind that this witness was not an eye-witness to the event, and would not be able to provide additional information about the participation of the Accused themselves, but rather he was a subsequent investigator of the crimes in Srebrenica. In paragraph 32 of the Verdict above, the Panel has already provided the arguments relative to the motion to accept the transcripts from

other first instance cases of the Court of BiH. For the foregoing reasons, the Panel refused the Defense proposal to summon this witness or accept the transcripts of his evidence.

K. DECISION TO ACCEPT ESTABLISHED FACTS

41. On 23 September 2011, the Defense Counsel for the accused Radomir Vuković filed with the Court of BiH a Motion to accept 56 facts established by the ICTY in *Prosecutor v. Vujadin Popović et al.* (hereinafter *Popović*).¹⁰

42. In the referenced Motion, the Defense Counsel referred to Article 4 of the Law on the Transfer of Cases and argued that the Judgment in the *Popović* case became final on 8 September 2010 in the part pertaining to the accused Ljubomir Borovčanin. The proposed facts pertain to this part of the Judgment.

43. On 16 November 2011, the Appellate Panel granted in part the motion of the Defense Counsel for the accused Vuković, and partially accepted the facts listed in Annex 2.B to the Verdict.

44. On 27 September 2011, the Prosecution submitted their response to the Motion. The Prosecution argued that it was necessary to establish the admissibility criteria for each proposed fact, as was established in the Court's previous decisions, and that pursuant to the referenced criteria only the facts under number 10, 11 and 16 satisfied the required characteristics and could be accepted. The Prosecution argues that the remaining part of the Motion should be refused.

45. Having addressed the arguments advanced by both parties, the Appellate Panel rendered this decision for the reasons to follow:

46. Article 4 of the Law on the Transfer of Cases provides that "At the request of a party or *proprio motu*, the courts, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY or to accept documentary evidence from proceedings of the ICTY relating to matters at issue in the current proceedings."

47. Analyzing the quoted Article of the Law on the Transfer of Cases, the Panel notes that the first formal requirement under the referenced provision, pertaining to the hearing of the parties and their defense counsels, has been satisfied. The Appellate Panel heard the parties and their Defense Counsels at the hearing held on 9 November 2011.

¹⁰ Number: IT-05-88-T.

48. It further transpires from the referenced provision that the acceptance of the facts listed in the Motion pursuant to Article 4 of the Law on the Transfer of Cases falls under the discretion of the Court. However, neither the Law on the Transfer of Cases nor the CPC of BiH stipulates any criteria based on which this issue could be addressed, or any legal requirements based on which it would be possible to accept these facts as proved. The aim of the legislator in providing the court with the discretion to accept the adjudicated facts 'as proved' includes judicial efficiency and advocating the accused's right to a trial within a reasonable period of time, but also a respect for the witnesses in order to decrease the number of courts before which they must repeat their testimony, which is frequently a traumatic experience for them.

49. The Court must be mindful of the fact that the rights of the accused in this case must be ensured pursuant to the BiH regulations and the European Convention. Accordingly, in using its discretionary power in this case, as embodied in Article 4 of the Law on the Transfer of cases, the Panel has taken into account Article 6 of the European Convention, as well as Articles 13 and 15 of the CPC of BiH. In establishing a balance among the goals of the Law on the Transfer of Cases, the Panel is cautious not to diminish the accused's right to a presumption of innocence and a fair trial. Otherwise, a situation in which the evidentiary proceedings would be *de facto* completed to the prejudice of the accused even before all the evidence in the case has been directly adduced could not be avoided.

50. The Panel has further emphasized that it is not bound by the ICTY case law and its views, but that in considering this problem it was mindful of the views of the ICTY and the Court of BiH in their prior jurisprudence. In interpreting the wording of Article 4 of the Law on Transfer and in deciding upon the Motion, the Court has taken into account the following criteria:

(a) The criteria for deciding on the facts proposed

a. A fact must be a "fact" which is:

- i. distinct, concrete and identifiable;
- ii. not a conclusion, opinion or oral testimony;
- iii. does not include legal characterisations.

(b) The fact must contain the ICTY essential findings and must not be significantly altered.

- a. The fact does not directly or indirectly attest to the criminal responsibility of the Accused.
- b. The fact accepted as truthful to the extent that it has become a common knowledge and is not subject to reasonable contest can be accepted as adjudicated even if it concerns the element of criminal liability.

- c. The fact must be 'established under a final decision' of the ICTY which means that it has either not been appealed or has been finally settled on appeal, and no appeal further lies from it.
- d. The fact must be established in the proceedings before the ICTY where the accused against whom the fact was established and the accused before the Court of BiH have the same interest to contest the concrete fact. Accordingly, the facts indicated in the documents that are subject of a plea agreement, or a voluntary admission in the proceedings before the ICTY, are inadmissible because the interests of the accused in such cases are different, and often contrary to the interests of the accused who have exercised their right to a trial.
- e. The fact must be established in the proceedings before the ICTY where the accused, against whom the fact was established, had a legal representative, the right and a possibility to a defense. It is, therefore, clear that the acceptance of a fact ensuing from the proceedings in which the accused did not test the fact with his evidentiary instruments, is inadmissible for this Panel. This is all the more so because the accuracy of such a fact is questionable since the accused did not have an opportunity (or it was insufficient) to comment on it and try to contest it.

51. Generally speaking, the Court must be satisfied that judicial economy will be achieved by accepting the facts, and that acceptance will not violate the accused's right to a fair, public and expeditious trial. The Court has the discretion to refuse to accept facts that will not provide for more expeditious proceedings and are not in the interest of justice. The Court may also refuse to accept facts that satisfy the criteria enumerated above, but which would, if accepted, violate the right to a fair trial. The Court has taken this into account in rendering this decision.

52. According to the Appellate Panel, the facts listed in the Annex to the Decision have satisfied the foregoing selection criteria. As to the facts in the remaining part of the Prosecution Motion, the Panel has not accepted them for the following reasons:

53. Fact No. 9, and facts 23 - 29, 32, 37, 39 - 42, 44 - 48, 49 - 56 amount to legal views and conclusions of the ICTY Chambers. Facts 20, 21 and 22 represent oral evidence and personal observations of the convicted Ljubomir Borovčanin. Fact No. 18 represents a personal view and opinion of the persons interviewed by Borovčanin. As such, these facts do not satisfy the first criteria that a fact not contain a conclusion of the ICTY Chamber, or a personal view or an opinion.

54. The unaccepted facts speak to issues that should be verified during the proceedings. This Panel may reach similar findings, but it will do so on the basis of evidence adduced during the trial. The Appellate Panel is of the view that these facts have not satisfied any of the foregoing criteria and, therefore, the Defense motion pertaining to this part is refused.

55. Finally, fact No. 38 is the repeated fact No. 19, and it has been already accepted as established in the part of the Decision marked as Annex 2.B.

L. MOTIONS THE DEFENSE HAS WITHDRAWN

56. Under the submission dated 22 September 2011, the Defense for the accused Tomić proposed that police forensic expert Branislav Ristivojević be summoned and directly examined, or that the report of this person, that he presented in the ICTY case against Ljubomir Borovčanin be admitted into evidence. A cross-examination was also proposed of the witnesses who gave their evidence before the ICTY, namely Dragan Obrenović, Momir Nikolić, Ljubiša Borovčanin, however, during the retrial before the Appellate Panel, the Defense for the Accused withdrew these proposals.

IV. THE ORDER OF EVENTS

A. STATUS OF SREBRENICA IN JULY 1995

57. The town of Srebrenica was declared a “safe area” pursuant to UN Security Council Resolution No. 819 (1993). It fell within the VRS’s Drina Corps zone of responsibility. This fact was presented by the ICTY military analyst, Richard Butler, in part 1.24 - 1.26 of Exhibit T-86, the “Srebrenica Military Narrative (revised) – Krivaja '95 Operation dated 1 November 2002” (“Butler Report”).

58. Declaring the region a “safe area” implied that all warring parties had to treat the town and its surroundings as a protected zone that must be exempted from all armed attacks or any hostilities.

59. During the first instance proceedings a transcript of the testimony of military observer Joseph¹¹ Kingori¹² from the ICTY case *Prosecutor v. Krstić* was admitted into evidence pursuant to Article 5 of the Law on the Transfer of Cases from the ICTY to the Court and Prosecutor’s Office of BiH and the Use of Evidence. Witness Kingori testified that UN forces (UNPROFOR Dutch Battalion) were present in the enclave with a peace-keeping mandate.

¹¹ T46.

¹² T46.

B. THE ARMED CONFLICT AND THE RS SUPREME COMMAND DIRECTIVE NO. 7 OF 8 MARCH 1995 AND NO. 7.1 OF 31 MARCH 1995 AND IMPLEMENTATION

60. The Appellate Panel concluded based on all the evidence adduced that the critical event (mass killing at the Kravice warehouse) took place in BiH during the armed conflict between the Army and the MUP of Republika Srpska and the Army of the R BiH. This fact was not disputed during the proceedings.

61. On 13 June 1992 Radovan Karadžić, the President of the Presidency of the Serb Republic of Bosnia and Herzegovina, issued an Order to apply the rules of international laws of war in the VRS, stating that the international agreements signed by the SFRJ, rules of international customs of war and generally accepted principles of international criminal law¹³ ought to be applied. This included the 1948 Genocide Convention. On 16 June 1992, he issued an order introducing the measures of highest combat readiness.¹⁴

62. The following facts accepted as established in the ICTY final judgments were also accepted as evidence:

*“There was an armed conflict in eastern Bosnia between 11 July and 1 November 1995.”¹⁵
The attack was widespread or systematic. The attack, carried out by the VRS and MUP was planned and defined in the “Krivaja 95” order.¹⁶ The attack was clearly directed against the Bosnian Muslim civilian population in the Srebrenica enclave.^{17”}*

63. The Butler Report¹⁸ and established fact No. 5 indicate that there existed a military plan of the VRS to isolate the Srebrenica enclave from Žepa. This was known as the “Krivaja 95” Operation. The Drina Corps was tasked with its execution.

64. The RS Supreme Command issued directives Nos. 7 and 8 on 8 March 1995¹⁹ which presented four main priorities of the VRS:

- (1) to enforce a military solution which the international community will have to accept;
- (2) to improve operative and strategic positions of the VRS;
- (3) to advance prospects for the revival of economy by sending conscripts back to their homes, and

¹³ Exhibit T.66.

¹⁴ Exhibit T.69.

¹⁵ Accepted fact number 1 (Annex 3).

¹⁶ Accepted fact number 2 (Annex 3).

¹⁷ Accepted fact No 4 (Annex 3).

¹⁸ T86.

¹⁹ Exhibit T.67. Additional instructions were published on 31 March 1995, Exhibit T.68.

(4) to create preconditions to negotiate a peace agreement.

65. More specifically, pursuant to Directive 7, the Drina Corps was tasked as follows:

[C]omplete the physical separation of Srebrenica from Žepa as soon as possible, preventing even communication between individuals in the two enclaves. By planned and well-thought out combat operations, create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa.²⁰

66. In one part the Directive reads as follows:

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

67. Pursuant to Article 5 of the Law on the Transfer of Cases (LOTIC), the Trial Panel in this case admitted into evidence the transcripts of evidence of several witnesses at the ICTY. The Appellate Panel has also accepted transcripts of the following witnesses: the Dutchbat Commander, Lieutenant Colonel Thomas Karremans, his Deputy Commander Robert Franken, and members of the Dutchbat, Lieutenant Lendert Cornelius van Duijn, Majors Pieter Boering, Robert Groenewegen, and UNMO member Joseph Kingori.

68. Among others, the Appellate Panel has considered the transcripts of evidence of Dragan Obrenović, Momir Nikolić and Miroslav Deronjić.²¹ The Appellate Panel has also considered the transcripts of evidence of witnesses Karremans, Franken and Groenewegen before the ICTY as corroborating evidence about the attack on Srebrenica and the events related to the criminal offenses committed in the Kravice warehouse. These transcripts of evidence before the ICTY admitted into evidence corroborate the testimony of Colonel Joseph Kingori who testified by video link during the first instance proceedings.

69. On 16 April 1993 the UN Security Council passed Resolution 819 (1993) creating the Srebrenica “safe area”, intended to protect the Muslims fleeing attacks by the VRS. In Resolution 824 (1993) of 6 May 1993 it also designated the areas surrounding Žepa and Goražde as “safe areas”. The safe areas were within the territory of the VRS’s Drina Corps.²²

70. It is clear from the Butler Report that by early January 1995 the RS Government had made a decision to pressure to the safe areas by restricting the movement of UN forces in eastern Bosnia,

²⁰ Established fact number 5.

²¹ Accepted under Procedural Decision of the Trial Panel dated 19 February 2009.

in particular of the supply convoys that supplied the three safe areas. Butler stated that limitations were placed on fuel, ammunition and provisions to the UN forces, and that these limits seriously undermined their ability to monitor the activities in the safe areas.²³

71. Witness Kingori testified before the ICTY that the United Nations had a permanent peace-keeping presence in the enclave (UNPROFOR) with a base at Potočari operated by Dutch soldiers (Dutchbat) and several observation posts at other points in the enclave. It also had military observers (UNMO) stationed within the enclave but reporting through a separate chain of command.²⁴ UNMO was working with UNPROFOR, but had a different mission.²⁵

72. The Srebrenica areawas within the geographical scope of authority of the VRS Drina Corps, commanded by General Milenko Živanović until 13 July 1995, and by General Radoslav Krstić after that date. The Zvornik Brigade and the Bratunac Brigade were units within the Drina Corps.

73. Colonel Joseph Kingori was based in the UNMO HQ Srebrenica from early April 1995 to 11 July 1995 as one of (only) three UNMO officers. His tasks included monitoring cease-fires and observing and assessing the capabilities of the warring parties.

74. What was disputable and what the Defense mostly emphasized during the second-instance proceedings was the scope of presence and the deployment of the ARBiH forces. It is indisputable that the ARBiH was present in the enclave to a certain extent.

75. According to Dutchbat Deputy Commander Robert Franken the enclave had not been successfully demilitarized, as a “mass of small weapons was still in the enclave”.²⁶ Dutchbat soldier Paul Groenewegen saw only small-caliber weapons. He had observed small units of ABiH soldiers in groups of five to ten men, but he did not consider them to be directly “organized in a military way”.²⁷

76. Colonel Kingori testified that the VRS had a proper structure and heavy weapons in the area, unlike the Bosnian Muslim side which did not have an organized army in Srebrenica. Colonel Kingori described the military situation within the enclave in that period as characterized by violations of the status of the safe area by the Serb side, “*basically, the BSA (VRS) are the ones*

²² Exhibit T.86, Butler report, 1.24-1.26.

²³ Exhibit T.86, Butler report, 1.34.

²⁴ Pursuant to Article 5 of the Law on Transfer of Cases, the Court admitted into evidence the transcript of evidence of the UN military observer, Colonel Joseph Kingori as Exhibit T.46, which was from the case *Prosecutor v. Krstić*, IT-98-33-T, 31 March 2000 and 3 April 2000.

²⁵ Joseph Kingori, 12 November 2009.

²⁶ Exhibit T.52, Robert Franken, transcript of evidence in the *Prosecutor v. Krstić* case, IT-98-33-T, 4 April 2000, T.2006.

²⁷ Exhibit T.48, Paul Groenewegen, transcript of evidence in the *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, 24 June 2004, T.11165 (admitted into transcripts of evidence of the witnesses in the *Prosecutor v. Popović et al.*, IT-05-88-T, 25 October 2005, admitted into evidence pursuant to Article 4 of the LOTC).

who were most of the time there actually the aggressors, as far as I know”.²⁸ “[F]rom the Muslim side, that is BiH, there was no organized military as such. For one, it is good to remember that they did not have heavy weapons... they had some small arms.... AK-47s and all that... they were not armed as such. [...] I don’t think they posed any threat at all... it was not an organized structure the way the military should be.... and were not match for the Serbs.”²⁹ On the other hand, the Serbs “had an organized structure and... were armed with heavy weapons. At least they had artillery because they used it. They had mortars. They had machine-guns. They had rockets... tanks and many other types of heavy weapons”.³⁰ “It was a real organized army”.³¹

77. The ICTY Judgments contain findings regarding the military situation. It had been established that “From the outset, both parties to the conflict violated the “safe area” agreement.”³² However, with regard to the VRS forces, the ICTY established that “Generally, the Bosnian Serb forces surrounding the enclave were considered well disciplined and armed. The VRS was organized on a geographic basis and Srebrenica fell within the domain of the Drina Corps.

78. According to established fact No. 50³³ between 1,000 and 2,000 soldiers from three Drina Corps Brigades were deployed around the enclave. These Bosnian Serb forces were equipped with tanks, armored vehicles, artillery and mortars. The unit of the AFBiH that remained in the enclave – the 28th Division – was not well organized and well equipped. A firm command structure and communications system was lacking, some ABiH soldiers carried old hunting rifles or no weapons at all and few had proper uniforms.

79. Pursuant to Article 5 of the LOTC the Panel also admitted into evidence the testimony of Momir Nikolić given before the ICTY. Pursuant to Articles 3 and 4 of the same Code the Panel admitted into evidence four statements given before the ICTY during the investigation. The Defense requested his presence in the first instance proceedings for cross-examination but he did not want to testify, and the Panel was unable to secure his presence for this purpose. Like the Trial Panel, the Appellate Panel used Nikolić’s testimony to corroborate the general facts and did not base the decision on the accused Vuković’s guilt exclusively or to a decisive extent on his evidence given before the ICTY.

80. Witness Nikolić testified before the ICTY about the activities his unit took to implement Directive 7. He testified that he was personally responsible for checks at the yellow bridge and for

²⁸ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1812.

²⁹ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1813-1815.

³⁰ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1815.

³¹ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1914.

³² Accepted fact number 51 (Aneks 3)

³³ Accepted fact number 50 (Annex 2A).

everything concerning the entry of convoys, catering to the needs of DutchBat and the Muslim population. He stated the following:

As concerns the convoys, mostly during that period of time, immediately before the attack on Srebrenica, convoys for the Dutch and for the Muslim civilians coming in were prevented from entering. The Bratunac Brigade had no authority to keep convoys out or let them in. All orders that were issued in this respect went from the main staff through the Drina Corps command, trickling down to us eventually. We were the last to receive these orders, and we had the task to stop certain convoys, to reduce the number of trucks in a convoy, or to make certain requests regarding the humanitarian aid being shipped into Srebrenica. As for the Dutch Battalion, the situation was perfectly clear. DutchBat was not allowed to have sufficient supplies of fuel, victuals, or other staples that were necessary for the proper and normal functioning of DutchBat. The final aim of these restrictions imposed against DutchBat was for DutchBat not to be ready for combat, not to be ready for carrying out their tasks within the enclave. This was the chief reason why no supplies of fuel, victuals, clothes and other staples, and other things were not allowed into the enclave. The rotation of certain units and companies was not allowed either. All these restrictive measures had the same aim as I just described.³⁴

81. Witness Miroslav Deronjić was an SDS Main Board member that Karadžić appointed as the Serb civilian commissioner for Srebrenica. He plead guilty at the ICTY to a single count of persecution as a crime against humanity in relation to the events in Glogova in 1992 and was sentenced to ten years of imprisonment.³⁵ He was not indicted for his role in the events in Srebrenica. He died on 17 May 2007 while serving his sentence in Sweden.

82. The Trial Panel and the Appellate Panel also accepted the transcripts of his testimony before the ICTY in the *Momir Nikolić* case. During those proceedings he was cross-examined. The statements of the witness given to the ICTY investigators in 1998, 1999 and 2003 were also accepted.³⁶ Deronjić testified that in the spring of 1995 (most likely in May) he met Karadžić in Zvornik. Karadžić told him:

'Miroslav, a military operation will soon take place in Srebrenica. I cannot give you any details and please, don't tell anyone about this, but take the necessary steps when you come back, or rather, the actions that you think are necessary in Bratunac.' He asked whether I understood, and I told him that I did.

83. Dragan Obrenović, then Zvornik Brigade's Chief of Staff, first learned of the intended attack on Srebrenica on 29 June 1995. Obrenović was the chief of staff of the Zvornik Brigade until 4 July

³⁴ Exhibit T.44, Momir Nikolić, transcript of evidence from *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, 22 September 2003, T.1634-1635.

³⁵ *Prosecutor v. Miroslav Deronjić*, IT-02-61-S, Decision on sanction, 30 March 2004 and *Prosecutor v. Miroslav Deronjić*, IT-02-61-S, Judgment on the appealed decision on sanction, 20 July 2005.

³⁶ Exhibits T.55a, T.55b, T.55c and T.55d.

1995 and was its deputy commander until 15 July when he resumed his duties as chief of staff.³⁷ The Court admitted into evidence transcripts of his evidence at the ICTY pursuant to Article 4 LOTC. In addition, Witness Momir Nikolić first became aware of the plan to attack Srebrenica in early July 1995 at the Bratunac Brigade headquarters when General Milenko Živanović told him Srebrenica should be separated from Žepa, “*that an attack on Srebrenica should be carried out, and that Srebrenica was to be defeated militarily and cleansed from its Muslims.*”³⁸

C. THE VRS TAKEOVER OF SREBRENICA AND ITS AFTERMATH IN JULY 1995

1. The VRS attack on Srebrenica was launched on 6 July 1995 and continued until 10 July 1995. The Butler report stated that the military attack started early in the morning by shelling the positions held by the 28th Division of the ARBiH. The VRS captured the Srebrenica safe area on 11 July 1995. A number of witnesses for the Defense and the Prosecution testified about this, and the facts are reflected in the Established Facts numbered 8, 9 and 10. According to witness Kingori, the capture of the city was preceded by a constant shelling of civilian parts of the enclave, of such an intensity and manner to harass these people and force them leave the enclave. The capture of Srebrenica on 11 July resulted in the flight of Bosniaks from the city and the surrounding villages, that is, in the gathering of approximately 25,000 women, children and the elderly in the UN base in Potočari.³⁹

2. At 4.30 on 6 July 1995 the VRS attacked positions of the ABiH's 28th Infantry Division and the UNPROFOR Observation Posts. In the face of VRS fire the Dutchbat soldiers retreated from their positions over three days.⁴⁰

3. The attack on the enclave began with shelling in the early morning of 6 July 1995 - “*there were no military targets in the area... they were hitting on the roads, next to the hospital, hitting houses*”.⁴¹ Witness Kingori stated that the attack was of high intensity considering the size of the villages “and at times we could count over a hundred shells landing in the same place”.⁴²

4. The VRS attack on Srebrenica continued through 7 and 8 July 1995. The Butler Report describes UNPROFOR positions on the south side of the enclave being occupied by Drina Corps

³⁷ Before the ICTY, Obrenović pled guilty to persecution as a Crime against Humanity and was convicted to 17 years imprisonment. He was indicted together with Vidoje Blagojević, Dragan Jokić and Momir Nikolić for the events in Srebrenica in July 1995.

³⁸ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1636.

³⁹ Established fact number 11.

⁴⁰ Exhibit T.86, Butler report, 3.10; Joseph Kingori, testimony of (insert date).

⁴¹ Exhibit T.46, Joseph Kingori, *Krstić*, 31 March 2000, T.1820-21.

⁴² Exhibit T.46, Joseph Kingori, *Krstić*, 31 March 2000, T.1827.

soldiers on 8 July. Specifically, it describes OP Foxtrot (operational post) being abandoned and Dutch soldiers of OP Uniform being taken into Serb custody.⁴³

5. Witness Miroslav Deronjić met President Karadžić in Pale on 8 or 9 July 1995. During that meeting Karadžić said of those in Srebrenica “*Miroslav, those people there must be killed... whatever you can, you have to kill... the Western Slavonia principle*” referring to an operation by the Croatian army in which the Serb population was expelled and numerous civilians killed.⁴⁴

6. The Butler Report describes the VRS operations against Srebrenica continuing through 9 July and tells how the VRS took over the UN check-points. Lieutenant Van Duijn described the shelling of Srebrenica by the VRS on 9 July 1995:⁴⁵

We could see the shelling coming down on the town of Srebrenica, and as I said, every 30, 45 minutes it would change. It would go quiet for five to ten minutes, and then the shelling would start at our -- our own location. And then we would have that again for the same period of time, and then it would change again to shell the town. And we could see it from...I could see it from my location, shelling, hitting houses, and houses exploding or...after that, the detonations and smoke coming from houses from that detonations and shellings.

7. Colonel Kingori testified that the Serbs also shelled the Potočari compound, concluding that they “*definitely they were targeting UNPROFOR and also civilians*”.⁴⁶ “*Muslims were not given the choice to leave or to continue staying in Srebrenica. After the enclave fell, they were just told “We’re providing transport to take you out” and that was it. They were not even asked where they wanted to be taken*”.⁴⁷

8. Witness Deronjić stated that he, Karadžić and others knew that there had been killings and liquidation and said, “*the unfavorable conditions under which the population was evacuated from Potočari, and the situation in Potočari and beyond were such that they did not allow for the possibility of Muslims remaining in the area. The civilians did not have a choice...the actual intent was to have them leave the area and cleanse the area of Muslims*”.⁴⁸

9. The UNMOs left Srebrenica on 9 July for Potočari because they felt they were directly threatened by possible tank fire. Colonel Kingori said that between 18.45 and 20.51 on 9 July shells flew over the UN Dutchbat compound “deliberately missing the buildings... causing a lot of panic among the refugees”. Between 12.50 and 13.50 forty-nine shells were recorded to have

⁴³ Exhibit T.86, Butler report, 3.10.

⁴⁴ Exhibit T.55d, *Prosecutor v. Momir Nikolić*, IT-02-60/1-S, 28 October 2003, T.1565, also Exhibit T.55d. Statement dated 25 November 2003, para. 180-181.

⁴⁵ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2226.

⁴⁶ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1882.

⁴⁷ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1884.

⁴⁸ Exhibit T.55d, Statement dated 25 November 2003, para. 226-227.

fallen on the town of Srebrenica.⁴⁹ Several hit the hospital and others fell near it, about which he testified "I inspected the hospital, there were no soldiers there and there was no military base or headquarters or an ammo depot...inside the hospital".⁵⁰ According to Colonel Kingori the refugees were "all channeled to one area"⁵¹ (Potočari) because of targeted bombardment from all sides.

1. 10 July 1995

10. By the morning of 10 July the VRS forces were advancing on the Dutch positions between Srebrenica and the VRS. The Dutch requested NATO air support and NATO aircraft circled overhead causing the Serbs to halt their fire. When the aircraft departed the VRS resumed its fire and maneuvers against the Dutch, until the VRS was in Srebrenica itself. Major Pieter Boering described that by 10 July "there was a general sentiment of panic" in the Srebrenica enclave.⁵²

11. The Prosecution documentary evidence clearly shows that Colonel Vidoje Blagojević, the then Chief of Staff of the Bratunac Brigade, conveyed an order for full mobilization by 18.00 hours on 10 July 1995. The order was applicable to all engaged in compulsory work and all men liable for military service.⁵³ The Acting Minister of the Interior, Tomislav Kovač, issued a dispatch note ordering all units operating in combat near Sarajevo, including the 2nd Šekovići Detachment, to the Srebrenica sector by 11 July.

12. Prosecution witness Dragomir Vasić testified before the Court on 1 April 2009 that Ljubomir Borovčanin was appointed to command the MUP units,⁵⁴ and the units were ordered to leave Trnovo during the night and to report to the police station in Bratunac by 12.00 on 11 July 1995. The unit commanders were to contact General Krstić upon arrival.⁵⁵ Dragomir Vasić testified that this meant that the units were to be subordinated to Borovčanin.⁵⁶

13. The Butler Report noted that from the night of 10 July ARBiH soldiers from the 28th Division and Muslim men began gathering in the area of the villages of Šušnjari and Jaglići in the north-west corner of the enclave. This area provided the best departure point from which to begin a journey through VRS minefields and into ARBiH-held territory near Tuzla. Butler noted the

⁴⁹ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T. T.1903.

⁵⁰ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T. T.1914.

⁵¹ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T. T.1915.

⁵² Exhibit T.47, Pieter Boering, *Popović*, 20 September 2006, T.1937.

⁵³ Exhibit T.71.

⁵⁴ Dragomir Vasić, 1 April 2009.

⁵⁵ Exhibit T.28.

⁵⁶ Dragomir Vasić, 1 April 2009.

estimates that “between 10,000 and 15,000 men would ultimately be part of a “mixed” (military and civilian) column that would attempt to escape along this route”.⁵⁷

2. 11 July 1995

14. The VRS attack on the town of Srebrenica and the enclave continued on 11 July 1995. Witness Kingori estimated that, by 11 July, up to 10,000 refugees were in the UN base in Potočari. About 80% were women, the rest were older men and boys. Shelling was ongoing and “Potočari and Srebrenica were still being targeted”.⁵⁸

15. Witness Jovan Nikolić, who testified in the First Instance proceedings on 15 December 2008, stated that he saw a great number of women and children attempting to seek refuge in the factory at Potočari having gone there in panic. He also saw a fairly large number of buses there.

16. Lieutenant Van Duijn said that by the morning of 11 July, Srebrenica was empty. The civilians and any ARBiH soldiers had fled. Many had gathered at the *Bravo Company* in Srebrenica, which he described as “one big chaos where people were scared and hysterical and running through each other and grabbing whatever they could take with them and running or walking to the north following the road”. He was ordered to deploy blocking positions to allow the Dutch to retreat and to give the refugees time to make it to Potočari.⁵⁹ UN Dutchbat Deputy Commander Robert Franken said that the Dutchbat “essentially withdrew on the tail of the refugees as they moved towards Potočari”.⁶⁰

17. It further transpires from the Butler Report that President Karadžić issued two instructions regarding Srebrenica. The first appointed Miroslav Deronjić “the new civilian commissioner in Srebrenica” and stated that “decision of the civilian commissioner was binding on all civilian authorities in the Srpska Srebrenica Municipality”. The second ordered that a public security station be established in Srpska Srebrenica.⁶¹

18. By 11.00 on 11 July 1995 Serb forces were advancing towards Srebrenica. According to Accepted Fact No. 10, “[I]ate in the afternoon of 11 July 1995, General Mladić, accompanied by General Živanović (then Commander of the Drina Corps), General Krstić (then Deputy

⁵⁷ Exhibit T.86, Butler report, 3.16, 3.21.

⁵⁸ Exhibit T. 46, Joseph Kingori, *Krstić*, 31 March 2000, T.1835.

⁵⁹ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2267-2268.

⁶⁰ Exhibit T.52, Robert Franken, *Krstić*, 4 April 2000, T.2021.

⁶¹ Exhibit T.86, Butler report, 4.1-4.2, and the RS Presidency Order O1-1341.

Commander and Chief of Staff of the Drina Corps) and other VRS officers, took a triumphant walk through the empty streets of Srebrenica town.”⁶²

19. Video footage shows General Mladić entering Srebrenica on 11 July 1995. Before departing he gave a television interview for the Serbian news in which he declared “*Here we are on 11 July in Serb Srebrenica. On the eve of yet another great Serb holiday, we give this town to the Serb people as a gift. Finally after the rebellion against the Dahis, the time has come to take revenge on the Turks in this region*”.⁶³ The video shows him directing and ordering his soldiers straight to Bratunac and Potočari.

20. Witness Miroslav Deronjić, who was in Bratunac at the time, testified that Karadžić phoned him on 11 July and told him that he had been appointed the new civilian commissioner in Srebrenica. Karadžić told him to contact Mladić and have him arrange a meeting with UNPROFOR and Muslim representatives at which they would be offered three options. The first was “*that they would remain in Srebrenica which was inconceivable. The second option was that they would go in the direction of Kladanj which was under the control of the Muslim army. Under the third variant they would go to third countries, which was also not a real option*”.⁶⁴

21. The ICTY has found that “[t]housands of Bosnian Muslim residents from Srebrenica fled to Potočari seeking protection within the UN compound.”⁶⁵ “By the evening of 11 July 1995, approximately 20,000 to 25,000 Bosnian Muslim refugees were gathered in Potočari.”⁶⁶ “The refugees in the (UN) compound (in Potočari) could see Serb soldiers setting houses and haystacks on fire”.⁶⁷

22. Witness Munira Subašić, who had moved to Srebrenica in 1993, testified during the First Instance proceedings that she left for Potočari on 11 July 1995 after the shells had hit the school and killed the people. The UN was attempting to transfer people to Potočari and she described travelling there in a convoy. Her husband and son left for Potočari on the morning of 11 July.⁶⁸

23. Dutchbat estimated that by the evening of 11/12 July some 17,500 refugees had gathered at the UN compound in Potočari. UNMOs put the number at between 30,000 and 35,000.⁶⁹ “Several thousand had pressed inside the UN compound itself, while the rest were spread throughout the

⁶² Accepted fact number 10 (Annex 3).

⁶³ Exhibit T.1 at 30.30.

⁶⁴ Exhibit T.55d, statement dated 25 November 2003, para. 187.

⁶⁵ Accepted fact number 12 (Annex 3).

⁶⁶ Accepted fact number 11 (Annex 3).

⁶⁷ Accepted fact number 32 (Annex 3).

⁶⁸ Munira Subašić, 24 April 2009.

⁶⁹ Exhibit T.86, Butler report, 3.22.

neighboring factories and fields.”⁷⁰ “Conditions in Potočari were deplorable. There was very little food or water available and the July heat was stifling.”⁷¹ Dutchbat soldier Paul Groenewegen testified that thousands of people were seeking refuge, “people tried to find shelter in the factories and the houses that were left empty”, but that most people stayed outside overnight.⁷²

24. Following the VRS takeover of Srebrenica three meetings were held between the VRS and UNPROFOR at the Fontana Hotel in Bratunac on 11 and 12 July. The first meeting was held at 20.30 hours on 11 July and was attended by General Mladić and other senior VRS officers and Dutchbat representatives, including Lieutenant Colonel Karremans. Karremans requested the withdrawal of the Dutchbat, the Muslim population and the staff of Médecines Sans Frontières. Mladić demanded that buses be provided.⁷³

25. Momir Nikolić was present at the first meeting, describing it:⁷⁴

My assessment is that this was no meeting at all. All those who were present were standing. General Mladić was the only speaker. He was trying to intimidate the DutchBat commander and his officers. He was threatening them. And he was acting violently. He dictated his terms, told them what he wanted to say. The tone was that of an order, and no one except Mladić said anything at that meeting. He asked the questions and provided the answers. This was all finished in no time at all. An ultimatum was given to the DutchBat commander as to what he should do before the next meeting.

26. After the first meeting the first buses and trucks appeared.⁷⁵ In Robert Franken’s view, he saw a “planned deportation” of the Muslim population from Srebrenica.⁷⁶ The ICTY found that “the Bosnian Muslim refugees were not consulted or given a choice about their final destination.”⁷⁷

27. Dutchbat soldier Paul Groenewegen described the VRS soldiers putting the civilians onto buses, saying that initially “*there was only shouting and people being called names. And if they still didn’t want to get in, then violence was used*”.⁷⁸ He also stated that “*the refugees did not come to Potočari of their own free will...I think they had no other option*”.⁷⁹

⁷⁰ Accepted fact number 13 (Annex 3).

⁷¹ Accepted fact number 14 (Annex 3).

⁷² Exhibit T.48, Paul Groenewegen, *Blagojević*, 19 July 2003, T.1020-1021.

⁷³ Exhibit T.86, Butler report, 4.4.-4.8.

⁷⁴ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1657-1658.

⁷⁵ Exhibit T.52, Robert Franken, *Krstić*, 4 April 2000, T.2028.

⁷⁶ Exhibit T.52, Robert Franken, *Krstić*, 4 April 2000, T.2087-2088.

⁷⁷ Accepted fact number 40 (Annex 2A).

⁷⁸ Exhibit T.48, Paul Groenewegen, *Blagojević*, 19 July 2003, T.1026.

⁷⁹ Exhibit T.48, Paul Groenewegen, *Blagojević*, 19 July 2003, T.1041-1042.

3. 12 July 1995

28. The ICTY found that “Immediately following the take-over of Srebrenica, the whereabouts of the 28th Division of the ABiH were unknown. This was of great concern to the VRS, as was the possibility that forces of the 2nd Corps of the ABiH attacking from the direction of Tuzla and Kladanj would link up with elements of the 28th Division. Radio intercepts indicate that the VRS first became aware of the formation of the column around 0300 hours on 12 July 1995.”⁸⁰ It also found that “the Drina Corps Command was well aware of the general VRS plan to capture the Bosnian Muslim men trying to breakthrough to Tuzla. Indeed, the Drina Corps Command received direct orders from the Main Staff to take prisoners from the Bosnian Muslim column.”⁸¹

29. Early in the day on 12 July the Drina Corps Command issued an order that all available buses and mini-buses be secured for use by the Drina Corps on 12 July 1995 and arrive at Bratunac stadium by 16.30 on the same day. The same order required that all private and state owned buses be mobilized and put under Drina Corps control.⁸² By 12.00 on 12 July the first bus convoys began leaving the UN Compound at Potočari under the direction of the Drina Corps Command. The Bratunac Brigade Command was logistically supporting the operation by disbursing and accounting for fuel. By early afternoon, a number of senior VRS officers, including Generals Mladić, Živanović and Krstić had arrived in Potočari to personally observe the situation. All the aforementioned was described in the Butler Report and General Milenko Živanović’s Order.⁸³

30. The Butler report concluded that the buses and trucks that began arriving on the morning of 12 July “became the vehicles which the VRS Drina Corps used to transport the civilian population out of Potočari on 12 and 13 July 1995. Many of these same vehicles were probably then used to move Muslim males from detention sites near Bratunac to detention and execution sites near Zvornik between 13 and 16 July 1995”.⁸⁴ Witness Dragomir Vasić testified that the prisoners were under army jurisdiction and that Deronjić had said (in code) that the “*goods should be in the warehouse*”, meaning prisoners should be taken to Bratunac prison.⁸⁵ According to Vasić the police were requested by order on 10 July to return. They did so on 12 July and were subsequently

⁸⁰ Accepted fact number 53 (Annex 3).

⁸¹ Accepted fact number 54 (Annex 3).

⁸² Exhibit T.73.

⁸³ Exhibit T.86, Butler report, 5.3-5.9, see Exhibit T.73 “Provision of buses for the evacuation from the Srebrenica enclave,” order issued by Major General Živanović, sent at 8:35 on 12 July 1995.

⁸⁴ Exhibit T.86, Butler report, 12.3.

⁸⁵ Dragomir Vasić, 1 April 2009.

taken out of his chain of command. Dragomir Vasić did not see Borovčanin on 12 July because Borovčanin was on the road and Vasić was in Bratunac.⁸⁶

31. According to Established Fact No. 21, “[f]rom the morning of 12 July, Bosnian Serb forces began separating men from the refugee population in Potočari and holding them in separate locations.”⁸⁷

32. Witness van Duijn testified that on 12 July General Mladić, in what he described as “a *sort of propaganda visit*”, came to the refugees outside the Potočari base, because Mladić handed out food and drinks to the refugees.⁸⁸ “Captain Mane”, who identified himself as the local Serb commander, informed van Duijn that 200 buses were coming to take the civilians from Srebrenica. “He mentioned that the refugees were going to leave and that he wanted to know if the UN would stay, or otherwise the Serbs would do it their own way”.⁸⁹ “Captain Mane” supervised the transportation of the civilians outside the Dutch compound on 12 July. According to this witness, “*the way it worked was that Mane told me how many trucks or buses were present, and how many refugees could be seated in those trucks. And I would give orders to the UN soldiers to let people through[...]*.”⁹⁰

33. General Mladić visited the vicinity of the Dutchbat compound in Potočari at least a few times on 12 July. Dutchbat soldier Paul Groenewegen saw Mladić outside the base (and again on 13 July) and concluded that he was “controlling the situation.”⁹¹ Lieutenant Van Duijn described how Serb soldiers put civilians on buses outside the Dutch base on 12 July, while singling out the Muslim men and taking them to a lawn in front of a house. When he asked why men were being singled out he was told that they had a list of war criminals and they needed to do a cross-check. At the time he found this to be a credible explanation.⁹² Another video still from the Petrović video shows van Duijn speaking to a company commander and another member of the special police from the Jahorina Training Centre near the bus depot in Potočari on 13 July 1995.⁹³

34. Describing the condition of the refugees, van Duijn testified that “[p]eople sat in their own faeces. They were injured, wounded; to stay was not an option for them, without food, without water, and it was clear that they had to leave and leave fast”.⁹⁴

⁸⁶ Dragomir Vasić, 1 April 2009.

⁸⁷ Accepted fact number 21 (Annex 2A _____-).

⁸⁸ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2277

⁸⁹ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2284-2285

⁹⁰ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2286

⁹¹ Exhibit T.48, Paul Groenewegen, *Blagojević*, 19 July 2003, T.1044

⁹² Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2286-2287

⁹³ Exhibit T.134

⁹⁴ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2300

35. Colonel Kingori described how in the morning of 12 July 1995 VRS soldiers came into the Dutchbat base to check for the presence of ARBiH soldiers. Major Nikolić, Colonel Vuković, General Krstić and other officers came into the base to speak to the UN. General Mladić came to the base on 12 July and with other senior officers “was distributing soft drinks and candies to the refugees who were outside the main base”.⁹⁵

36. On the morning of 12 July 1995 witness Momir Nikolić met Lt-Colonel Vujadin Popović, the Chief of Security of the Drina Corps in Bratunac. Popović told him “*that the thousands of Muslim women and children in Potočari would be transported out of Potočari towards Muslim-held territory near Kladanj and that the able-bodied Muslim men within the crowd of Muslim civilians would be separated from the crowd, temporarily detained in Bratunac, and killed shortly thereafter.*” The witness was told that it was his responsibility to help coordinate and organize this operation. They then discussed appropriate sites for detention and then execution. The witness stated this in his statement accepting the facts and guilt.⁹⁶ Witness Nikolić also testified that he met Lieutenant-Colonel Kosorić and Lieutenant-Colonel Popović in front of the Fontana Hotel on the morning of 12 July, and after upon questioning them as to what would happen to the able-bodied men, Popović told me that “all *balijas* need to be killed.”⁹⁷

37. According to witness Nikolić they then discussed the provisional places of detention for the separated men. He suggested to Popović and Kosorić that the buildings of the Vuk Karadžić elementary school, the *Đuro Pucar Stari* secondary school in Bratunac, the gym, and the hangar should be used as detention facilities for the men separated from the group at Potočari. There was further conversation related to his own role; he was told that his task would be to coordinate the forces that would be engaged in Potočari for this operation of separating, temporarily detaining, and eventually killing the detained men.

38. At the second meeting at the Fontana Hotel between Mladić and civilian representatives of Bosnian Muslims in Potočari (recorded by Zoran Petrović), Mladić insisted that the population should hand over its weapons and that “an evacuation” of the population from the enclave should be organized, and soldiers be treated “in compliance with international conventions”. He said he would start organizing transportation for the citizens from the safe area.⁹⁸

39. According to Richard Butler’s report, the third meeting occurred at 10.00 on 12 July and included the presence of three Muslim civilian representatives. During the meeting Mladić insisted that all Muslim men aged between 16 and 60 were to be screened for war crimes, and insisted that

⁹⁵ Exhibit T. 46, Joseph Kingori, *Krstić*, 3 April 2000, T.1841

⁹⁶ Exhibit T.56, 6 May 2003

⁹⁷ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 2003, T.1751

⁹⁸ Exhibit T.1

the Muslim military hand over its weapons and surrender.⁹⁹ Mladić told them that they had a choice; either “*survive or disappear*”.

40. Witness Dragomir Vasić also participated in the meeting at the Fontana Hotel at 12.00 on 12 July and recognized himself in the video. The meeting had been ordered by General Mladić, and, according to Vasić, its purpose was to resolve civilian issues.¹⁰⁰

41. Witness Miroslav Deronjić also attended the meeting and said that Radovan Karadžić had given him authority over civilians in Srebrenica.¹⁰¹ When Vasić arrived at the meeting he was informed that Borovčanin had been tasked by the military to secure the area near the Yellow bridge (*Žuti most*).¹⁰² Vasić also stated that he attended that meeting with Mladić.¹⁰³

42. Witness Momir Nikolić was also there, saying “*I knew before the third meeting from the conversation with Lieutenant-Colonel Kosorić and Lieutenant-Colonel Popović, namely, I knew what would be done in Srebrenica, who would be transported, and who would be separated from Potočari, temporarily detained, and ultimately executed. That is what I knew because I heard this piece of information from the two lieutenant-colonels in front of the Fontana Hotel[...]. ...At that time, I suggested a site for temporary detention... We then had a discussion in front of Fontana about execution sites in the territory of the Municipality of Bratunac... namely, the area of Ciglane, the socially owned company in Bratunac, and the area where the lead and zinc mine is, the lead and zinc mine of Sase in Sase.*”¹⁰⁴

43. On 12 July 1995 the separation of the Bosnian Muslim men from the women, children and the elderly continued at Potočari in the presence of senior VRS officers, including General Mladić. Witness Pieter Boering described seeing Mladić after the third meeting at the Fontana Hotel outside the UN base on 12 July with a Serb camera crew, speaking to the population as they appeared to be “planning to prepare transport and board the people”. According to witness Boering, at Colonel Karremans’ request Boering spoke to Mladić and asked him to ensure that the infirm, elderly and women should be transported first. Mladić listened but nothing changed in relation to the order of transportation.¹⁰⁵

44. Witness Munira Subašić testified that she saw General Mladić at the UN base at Potočari on 12 July around noon. Mladić said that the men had to be screened and the women and children could go home. Munira Subašić asked him to save her son, and he asked for his name, and sent

⁹⁹ Exhibit T.86, Butler report, 4.14.-4.15.

¹⁰⁰ Dragomir Vasić, 1 April 2009.

¹⁰¹ Dragomir Vasić, 1 April 2009.

¹⁰² Dragomir Vasić, 1 April 2009.

¹⁰³ Exhibit T.1.

¹⁰⁴ Exhibit T.44, Momir Nikolić, *Blagojević*, 1 October 2003, T.2377-2379.

¹⁰⁵ Exhibit T.47, Pieter Boering, *Popović*, 22 September 2006, T.2008-2010.

three people to find the son, who was brought to her and then taken away again. She did not see her husband or son again. Her husband's body was recovered in 2004 and she believes that her son was taken to Kravica. Before Mladić arrived, she saw VRS soldiers organizing the boarding of buses and separating the men from the women at the gate. Her personal belongings were taken from her at Potočari.¹⁰⁶

45. Witness Paul Groenewegen described the physical process of the VRS separating the men from the women and children at Potočari:

46. *"It was done in different ways. A single soldier removing a single man or a single soldier picking out groups, or groups of soldiers picking out groups of people. And, finally, they were all gathered in the house"*.¹⁰⁷ Groenewegen spent the entire day standing between the refugees and the VRS and assisting the refugees, providing them water, helping women with children and trying to prevent panic from breaking out. The Dutchbat soldiers and the VRS together formed a human barrier separating the refugees from the buses. The men being separated were being escorted past the human barrier to the house.¹⁰⁸

47. Witness Kingori testified that he saw Mladić a second time on 12 July at the UN base while the VRS was separating women and children from the men and the men were being held in a separate building (a white building). Kingori asked Mladić why they were imprisoned and Mladić took him into the house and told him that the prisoners were *"very comfortable in there"*.¹⁰⁹ Witness Kingori saw that the men were forced to leave all their belongings in a truck by the road, including their wallets and their identification documents. The Dutch told him that some men had been taken behind the building followed by the sound of shooting.

48. Witness Kingori further testified that the men and women were very afraid of what might happen to them. On 12 July *"they were separating some very young boys, some as young as 13, 14, and they were telling them to go and join the other men"*. Witness Kingori testified that the separation continued on 13 July with the VRS soldiers taking things from the DutchBat soldiers and the civilians.¹¹⁰

¹⁰⁶ Munira Subašić, 24 April 2009.

¹⁰⁷ Exhibit T.48, Paul Groenewegen, *Blagojević*, 19 July 2003, T.1027.

¹⁰⁸ Exhibit T.48, Paul Groenewegen, *Popović*, 25 October 2006, T.2980-2985.

¹⁰⁹ Exhibit T.46, Joseph Kingori, *Krstić*, 31 March 2000, T.1844., Exhibit T. 49, Leendert van Duijn, *Popović*, 27 September 2006, T.2293.

¹¹⁰ Exhibit T.46, Joseph Kingori, *Krstić*, 31 March 2000 T.1857-58.

49. Witness Milutin Kandić, a member of the 1st PJP Company, was also heard during the evidentiary proceedings before the Trial Panel. This witness testified that he saw UNPROFOR soldiers holding hands to prevent the Serb forces from entering.¹¹¹

50. Witness Kingori saw VRS soldiers separating the men from the women and putting the men into a white house. He complained directly to Mladić about this, saying that it was wrong and that they should not separate family members. He was very concerned about their fate because they were being required to remove their identification documents. The men were in fear.¹¹²

51. On 12 July 1995 Dragomir Vasić sent a dispatch note in which he stated that “*the military operation is continuing according to plan. The Turks are fleeing towards Sućeska, while the civilians have gathered in Potočari (about 15,000)*”. He also reported that a meeting was to occur with UNPROFOR and the ICRC and Muslim representatives from Srebrenica to reach an agreement about the evacuation of the civilian population from Potočari to Kladanj. “*Joint police forces are advancing on Potočari with the aim of taking UNPROFOR personnel prisoner, surrounding the entire civilian population and cleansing the area of enemy troops.*” It went on: “*The objective of today’s military operations is to ensure that all roads from Srebrenica to Skelani, Bratunac and Vlasenica are passable*”. All the foregoing transpires from the Prosecution documentary evidence.¹¹³

52. On 12 July witness Boering went briefly into the building before he was ordered to leave by VRS soldiers at gunpoint. Some Muslim prisoners were sitting on the floor, and some passports or identity documents were in a corner. One of Mladić’s bodyguards said to him in English “*Look, Major, what I’m going to do*”. VRS soldiers with dogs then prevented him from going there to see what had happened.¹¹⁴

53. Established Fact No. 34 states that “*[i]dentification papers and personal belongings were taken away from both Bosnian Muslim men at Potočari and from the men captured from the column; their papers and belongings were piled up and eventually burnt.*”¹¹⁵

54. Witness Momir Nikolić testified with regard to the situation in Potočari on 12 July as follows:¹¹⁶

At the very spot where the separation was taking place of the men from their families, I saw innumerable cases of abuse and mistreatment of the men being

¹¹¹ Milutin Kandić, 12 August 2009.

¹¹² Joseph Kingori, 12 November 2009.

¹¹³ Exhibit T.29.

¹¹⁴ Exhibit T.47, Pieter Boering, *Popović*, 22 September 2006, T.2013-2018.

¹¹⁵ Accepted fact number 34 (Annex 2A).

¹¹⁶ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1696-1697.

separated.....After the separation, which was done in a rough and inappropriate way, personal belongings were seized and thrown onto a pile which was formed on the way to the White House where they were taken. Then there was physical abuse and beating of those men with hands and feet. Then there was verbal abuse; that is, they were called balijas and Turks and Ustashas and the like. Then those who passed through this point were turned back from the buses they had reached and separated and told to go back to the place where the already separated men were temporarily detained.

55. Witness Dragomir Vasić testified that Mladić ordered the women and children separated from the men. He said that he and Deronjić did not agree with the order but that it was correct in military terms.¹¹⁷ An ICTY judgment found that “On 12 July 1995, as the bus convoys were being organized General Mladić was heard to say during an intercepted conversation ‘They’ve all capitulated and surrendered and we’ll evacuate them all – those who want to and those who don’t want to.’”¹¹⁸

56. The separation and transport continued until the evening hours. “Captain Mane” told Van Duijn that his forces were going back to Bratunac to the Fontana Hotel to celebrate that night, and that Van Duijn was to keep the road clear for transportation in the morning. According to the testimony of Dragan Obrenović, accepted as evidence in the case, “Mane” was Lieutenant Colonel Mane Đurić, the deputy chief of the security centre in Zvornik.¹¹⁹

57. Furthermore, dispatch note 281/95 dated 12 July 1995 bears Dragomir Vasić’s name. The Panel is not convinced by his denials that he was the author. The note said that “*the evacuation and transport of the civilian population from Srebrenica is underway...the majority men of military age, about 8,000 men (of whom 1,500 armed)...are in the Konjević Polje and Sandići sector. The Šekovići Detachment, the 1st Company of the PJP of the Zvornik CJB and the 5th Company of the Zvornik CJB are blocking this section with the goal of destroying these forces.*”¹²⁰

58. Witness Dragomir Vasić testified that the 5th Company was not there and the aim was to secure the road to chase the (Muslim) people from the woods. He explained that the words “destroying” or “liquidating” were used to denote destruction in a military sense (ie, the destruction of a capacity to fight). The Panel notes that Richard Butler reached a similar conclusion, and did not infer a sinister intent from this phrasing. Momir Nikolić also testified in relation to this document, saying that in the military context the phrase meant “*there was fighting going on and there was an attempt to destroy those Muslim soldiers*”.¹²¹

¹¹⁷ Dragomir Vasić, 1 April 2009.

¹¹⁸ Accepted fact number 39 (Annex 2A).

¹¹⁹ Exhibit T.50, Dragan Obrenović, *Blagojević*, 2 October 2003, T.2581.

¹²⁰ Exhibit T.30. The time on the note is 17:30.

¹²¹ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 2003, T.1818.

59. Witness Dragan Obrenović believed that the VRS had information that the column moving through the woods contained between 1,000 and 1,500 members of the ABiH's 28th Division,¹²² while witness Danilo Zoljić, who was examined during the first-instance proceedings before the Court of BiH, believed that the column was heading towards Tuzla and posed objective danger to the Serbs.¹²³

60. The following facts established by the ICTY are relevant to the conclusion about the further development of the events:

“By the afternoon of 12 July 1995, or the early evening hours at the latest, the Bosnian Serb forces were capturing large numbers of these men in the rear.¹²⁴ 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 1995.¹²⁵ On 12 and 13 July 1995, the women, children and elderly were bussed out of Potočari, under the control of VRS forces, to Bosnian Muslim held territory near Kladanj.”¹²⁶

61. On 12 July Dragan Obrenović was informed that the 28th Division was fleeing the Srebrenica area and moving in the direction of Tuzla, and that the Zvornik (Brigade) was in its path.¹²⁷

62. According to Established Facts No. 19, 20 and 23, “The VRS and MUP, walking among the Bosnian Muslim refugees, were separating all Bosnian Muslim men aged 16 to approximately 60 or 70 from their families.”¹²⁸ “The separations continued throughout 12 and 13 July.”¹²⁹ “The Bosnian Muslim men who had been separated from the women, children and elderly in Potočari (numbering approximately 1,000) were transported to Bratunac.”¹³⁰

63. Witness Momir Nikolić, the chief of intelligence and security of the Bratunac Brigade, testified that at around 20.00 on 12 July he told the commander of the Bratunac Brigade, Vidoje Blagojević what had happened in Potočari that day, and that the men who had been separated from the women and detained in the white house and the Vuk Karadžić school were to be killed.¹³¹ After this meeting, Nikolić, who was the brigade's duty officer that day, wrote an intelligence report for the corps command regarding the situation and the progress of the evacuation that day, but “in that report I didn't indicate the intention to kill”¹³²

¹²² Exhibit T.50, Dragan Obrenović, *Blagojević*, 2 October 2003, T.2467.

¹²³ Danilo Zoljić, 20 March 2009.

¹²⁴ Accepted fact number 33 (Annex 2A).

¹²⁵ Accepted fact number 15 (Annex 3).

¹²⁶ Accepted fact number 16 (Annex 3).

¹²⁷ Exhibit T.50, Dragan Obrenović, *Blagojević*, 8 October 2003, T.2799.

¹²⁸ Accepted fact number 19 (Annex 3).

¹²⁹ Accepted fact number 20 (Annex 3).

¹³⁰ Accepted fact number 23 (Annex 3).

¹³¹ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1700.

¹³² Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1702.

64. Thus, for example, witness Miroslav Deronjić describes meeting Dragomir Vasić at the SDS office in Bratunac on 12 July: “Vasić told me they were separating the men from the women outside UNPROFOR. I asked Vasić to tell Mladić that this was insane and that they shouldn’t be doing it right where UNPROFOR was, and that this simply was not the place for it”.¹³³

65. Witness Momir Nikolić described the meeting with Deronjić and Colonel Ljubiša Beara, the chief of the security administration of the VRS Main Staff on the night of 13 July at the SDS office. Deronjić firmly said that the prisoners in Bratunac should be transported out that night; “he opposed any idea of executions and killings taking place in and around Bratunac”.¹³⁴ Beara brought up the subject of killing the prisoners and “at that meeting there was an open discussion about those Muslims who had been captured and would later be killed...the problem discussed was whether this should be done in Bratunac, in Zvornik, or somewhere else. And there was a lot of debate and dispute and argument about this between Colonel Beara and Miroslav Deronjić”.¹³⁵

66. Witness Dragomir Vasić also participated in the midnight meeting in Miroslav Deronjić’s office on 13/14 July 1995 between Beara and Deronjić. Beara said that he came with an order from his boss (Mladić) to liquidate the prisoners (i.e. Muslims who had surrendered during the day and had been transported to Bratunac). Witness Vasić testified that Deronjić called Karadžić who said that the prisoners should be taken to prison. Witness Vasić did not know who Beara was before then, but saw that Beara had been drinking, and thus, Vasić testified, he did not believe him to be serious.¹³⁶

67. Witness Miroslav Deronjić also confirmed that Beara appeared “*inebriated*”. In his testimony from 2003, witness Deronjić stated:

I told Mr. Beara that I had received instructions and an order and that I had to inform him that the prisoners should be taken in the direction of Bijeljina and Zvornik and to Batkovići. He then said to me: "I have orders that these prisoners be killed in Bratunac. These prisoners were to be killed in Bratunac. And he said he had received those orders from the top."¹³⁷

68. Witness Deronjić thought this might mean either “*from the Main Staff or from Mr. Karadžić*”.¹³⁸ Deronjić was concerned that the killings would occur in Bratunac and told Beara that the prisoners were supposed to be taken towards Bijeljina and that he “would not allow any killings in Bratunac”.¹³⁹ Deronjić also recalled driving after Beara on the morning of 14 July after hearing

¹³³ Exhibit T.55d, statement dated 25 November 2003 para. 198.

¹³⁴ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1676-16377.

¹³⁵ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 2003, T.1752.

¹³⁶ Dragomir Vasić, 1 April 2009.

¹³⁷ Exhibit T.55d, *Prosecutor v. Momir Nikolić*, IT-02-60/1-S, 28 October 2003, T.1550.

¹³⁸ Exhibit T.55d, *Prosecutor v. Momir Nikolić*, IT-02-60/1-S, 28 October 2003, T.1563; also Exhibit T.55d, statement dated 25 November 2003, para. 208-210.

¹³⁹ Exhibit T.55d, statement dated 25 November 2003, para.209.

that Beara was going to the brickyards in Bratunac and assuming that executions were going to occur there. He found Beara in his jeep and “told him that there could be absolutely no liquidations in Bratunac brickyard or anywhere else”. Beara agreed and Deronjić understood that the prisoners were to be taken to Zvornik.¹⁴⁰

69. Richard Butler’s report provides a clear overview of the executions that occurred between 12 July and 18 July in the Srebrenica territory. It also provides evidence of the mass-burials necessary to dispose of the bodies.¹⁴¹ The report describes executions in Bratunac and how Muslim males separated from the women and children in Potočari on 12 July were bussed to Bratunac and put in a large building known as “the hangar”. Many of them were beaten and killed during the night of 12 July with the murders continuing throughout 13 July.¹⁴²

70. On 12 July 1995 Radovan Karadžić gave a television interview on SRT and spoke about the situation in Srebrenica. This was also video-recorded and the footage was admitted into evidence. The footage shows Karadžić said the following:

Our army is enabling the establishment of our civil authorities there because the Serbs were exiled from Srebrenica at the beginning of the war. These Serbs are coming back now, from the neighboring villages. There are already existing organs there, elected organs of the Municipal Assembly, the Serb organs. And there is now, as affairs settle down, an activity of the refugees who want to leave. In fact, the majority, the vast majority of these refugees declared they wished to go to Tuzla... If they want to accept the authorities of the Republika Srpska, and become its citizens, then they don't have to go” and “... And I am [...] that this war will only end with a complete Serb victory, although we wanted to separate from them, rather than defeat and incorporate them into our state. In the final analysis, Bosnia once belonged to the Serbs and it may happen that it will return, in its entirety, to Yugoslavia.”¹⁴³

71. Witness Karremans, the Dutchbat commander, expressed great surprise at the speed with which the buses and trucks arrived in Potočari after the morning meeting to collect the refugees. He questioned how it was possible that so many vehicles were gathered in such a short time, and concluded that it was a preplanned operation.¹⁴⁴

4. 13 July 1995

72. It transpires from the ICTY-established facts that the first mass executions of Bosnian Muslim prisoners began on 13 July 1995: “On 13 July 1995, the Dutchbat troops witnessed definite signs

¹⁴⁰ Exhibit T.55d, statement dated 25 November 2003, para.211.

¹⁴¹ Exhibit T.86, Butler report.

¹⁴² Exhibit T.86, Butler report, 6.2-6.3.

¹⁴³ Exhibit T.1, transcript. Video footage, Exhibit T.134.

¹⁴⁴ Exhibit T.52, Thomas Karremans, *Blagojević*, 25 June 2004, T.11314-11315.

that the Bosnian Serbs were executing some of the Bosnian Muslim men who had been separated.”¹⁴⁵ That day, Colonel Radislav Janković of the VRS told Major Franken that the men had been transferred to a POW camp. He said that the ICRC was monitoring the POWs and that the VRS already had 6,000 POWs.¹⁴⁶

73. Witness van Duijn testified that early in the morning of 13 July he watched a roll call of Serb soldiers near the Dutch base of between 50 and 70 soldiers,¹⁴⁷ and that the Serb soldiers began separating the men at about 8:30, supervised by “Captain Mane” .¹⁴⁸

74. Witness Kingori informed Leendert van Duijn of overcrowded conditions in the white house. Witness Van Duijn went into the house and found it packed with men, and the front lawn full of a “mixture of personal belongings, photographs...and passports from the men sitting inside the house”. He started assembling the passports and then asked “Captain Mane” why passports were being disposed of - if they were to check for war criminals, they needed the passports to ascertain identities. The witness went on to say that:

‘Mane’...grinned at me and he told me that the men didn’t need their passports anymore, which at that point made it clear to me that there was a very dark future ahead for the men in the house and in fact for the men that had been singled out the day before.

75. Witness Paul Groenewegen saw a few hundred men being separated from women and children at Potočari and being taken to a house. “As soon as the house was full, they were put on buses and driven off in the same direction as the buses containing the women and children. When the house was full again, this was repeated”. He also witnessed VRS soldiers placing a Muslim man wearing civilian clothes against a wall and shooting him through the head from a distance of about three meters. The man had been offering some “resistance” to the soldiers.¹⁴⁹

76. Richard Butler described in his report a further development of the events on 13 July. He stated that at 10.09 Colonel Beara of the VRS Main Staff made an intercepted telephone call saying 400 Muslims had come out at Konjević Polje and they needed to be taken to the football field at Nova Kasaba. Prisoners held there were transported to detention site near Bratunac and then to execution sites in the zone of the Zvornik Brigade.”¹⁵⁰

¹⁴⁵ Accepted fact number 22 (Annex 2A).

¹⁴⁶ Exhibit T.52, Robert Franken, *Krstić*, 4 April 2000, T.2049-2050. Janković was on the VRS Main Staff Intelligence Administration – see exhibit T.86, Butler report, 12.13.

¹⁴⁷ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2298.

¹⁴⁸ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2300-2301.

¹⁴⁹ Exhibit T.48, Paul Groenewegen, *Blagojević*, 19 July 2003, T.1031-1036.

¹⁵⁰ Exhibit T.86, Butler report, 12.8.

77. Established facts Nos. 17 and 18. corroborate in part the above statements of the referenced witnesses :

"The removal of the Bosnian Muslim civilian population from Potočari was completed on the evening of 13 July 1995 by 2000 hours.¹⁵¹ As the buses carrying the women, children and elderly headed north towards Bosnian Muslim-held territory, they were stopped along the way and again screened for men.¹⁵² Ljubiša Borovčanin reported to Pale on 13 July 1995 that "A part of the MUP forces was involved in the organization of the evacuation of civilians from Srebrenica to Kladanj".¹⁵³ A Reuters video provides additional corroboration, as it shows a member of the special police from the Jahorina Training Centre near Bosnian Muslim women refugees and piles of discarded possessions near the bus depot in Potočari on 13 July."¹⁵⁴

78. Mass deportation of the population was also demonstrated through General Krstić's regular combat report, in which he stated that "The Corps zone of responsibility is under full control. So far the transport of 15,000 Muslims from Potočari to Kladanj has been organized".¹⁵⁵

79. On 13 July 1995 Dragomir Vasić sent a dispatch note to the Office of the Minister of Interior referring to a battle between a PJP company in the Sandići and Konjević Polje area in which a police officer was killed and three others were wounded.¹⁵⁶ In a second note, Vasić referred to the evacuation of the "remaining civilian population from Srebrenica to Kladanj (about 15,000) by bus", noting the urgent need for "10 tonnes of petrol" and mentioning the "Killing of about 8,000 Muslim soldiers whom we blocked in the woods near Konjević Polje. Fighting is going on. This job is being done solely by MUP units".¹⁵⁷

80. In a regular combat report to the VRS Main Staff, General Krstić reported that "In Konjević Polje and also in Nova Kasaba the reception of Muslim civilians and soldiers who surrender is being carried out in an organized fashion".¹⁵⁸ The Drina Corps reported that the last civilians had been removed from Potočari by 20.00 on 13 July.

81. Witness Dragan Obrenović, at that time the chief of staff of the Zvornik Brigade, who testified before the ICTY, stated that he received a call from Lieutenant Dragan (Drago) Nikolić, the chief of security of the Zvornik Brigade, at around 20.00 on 13 July 1995. Obrenović testified that Nikolić told him that Lieutenant-Colonel Popović had ordered him to "*make preparations to take in a large number of prisoners from Srebrenica who were not going to be sent to Batković camp, which the ICRC and UNPROFOR knew about, but rather the order was to take them to Zvornik and to*

¹⁵¹ Accepted fact number 17 (Annex 2A).

¹⁵² Accepted fact number 18 (Annex 2A).

¹⁵³ Exhibit T.76.

¹⁵⁴ Exhibit T.134.

¹⁵⁵ Exhibit T. 75.

¹⁵⁶ Exhibit T.31.

¹⁵⁷ Exhibit T.32.

execute them. The order had come personally from Mladić and was to be personally implemented by Beara and Lieutenant-Colonel Popović. Nikolić asked Obrenović to place the military police at his disposal. As a result Obrenović ordered a military police platoon to return and he placed this unit at Nikolić's disposal."¹⁵⁹

82. The Butler Report, for example, stated that Colonel Janković reported to the Main Staff about the completion of the "evacuation of the entire Muslim population from the former enclave of Srebrenica".¹⁶⁰ That evening General Mladić issued an order to the Drina Corps command referring to the closure of the Konjević Polje-Kravica-Bratunac road and instructing the command to set up traffic regulation points and to restrict traffic to military vehicles and MUP vehicles engaged in combat operations. No information was to be provided to the "... media regarding the course, situation, and results of combat operations in the area and the overall activities in this area, particularly on prisoners of war, evacuated civilians, escapees and similar".¹⁶¹ In his report, Butler estimated that the column contained approximately 12,000 to 15,000, of which perhaps one-third were armed.

a. First Mass-Executions of Bosnian Muslim Prisoners

83. According to the Butler Report the first major execution occurred at the Kravica warehouse in the late afternoon on 13 July 1995. The Report explains how, in the afternoon of 13 July, a group of Muslim men were taken by truck and bus from the direction of Konjević Polje and executed in the Cerska Valley by VRS soldiers. At least one piece of earth-moving equipment was part of the convoy. Butler¹⁶² describes these executions as the "first known major organized killing of Muslim male prisoners captured from the column".¹⁶³ "A group of prisoners captured along the Konjević Polje-Bratunac Road on 13 July was held in Bratunac, spending the night on trucks. In the morning of 14 July a convoy of five or six buses and trucks took them to the school in Petkovci (associated with the Petkovci Dam execution site).¹⁶⁴ They were then executed.

84. The separated men were also taken to the "old school" behind the Vuk Karadžić school in Bratunac and were held there from the afternoon of 13 July until the afternoon of 15 July. During

¹⁵⁸ Exhibit T.75.

¹⁵⁹ Exhibit T.50, Dragan Obrenović, *Blagojević*, 2 October 2003, T.2468-2475.

¹⁶⁰ Exhibit T.86, Butler report, 12.11.

¹⁶¹ Exhibit T.86, Butler report, 10.13, refers to the order 3/4-1638.

¹⁶² Exhibit T.86, Butler report, 6.26-6.27.

¹⁶³ Exhibit T.86, Butler report, 6.26-6.27

¹⁶⁴ Exhibit z T.86, Butler report, 6.9-6.10

that time some were taken out and murdered. The remaining prisoners were then transported to the school in Pilica, and later to the Branjevo Military Farm, where a mass execution took place.¹⁶⁵

85. The organized nature of these executions was attested to by Momir Nikolić at the ICTY. He testified that he met Beara in the night of 13 July on the main street of Bratunac.¹⁶⁶ He said that:

“Colonel Beara ordered me to go to the command of the Zvornik Brigade and see Drago Nikolić personally that same evening. He also ordered me to convey his orders to Drago Nikolić that the Muslim prisoners in Bratunac would be transferred to Zvornik the same evening and that he should secure accommodation for those prisoners. Further, he told me to tell him to get his people ready because a lot of Muslim prisoners would be coming along. He also told me to convey these orders to Drago Nikolić; namely, that the people who were to be transferred would be temporarily detained in buildings assigned by Dragan and that those people would be killed in the territory of Zvornik Municipality. Nikolić then went to the Zvornik Brigade’s forward command post and conveyed Beara’s orders to Drago Nikolić.¹⁶⁷ He reported this to Beara later that night in Bratunac.”¹⁶⁸

86. Witness Nikolić also testified that on the night between 13 and 14 July Dragan Mirković, the unit commander for civilian affairs, told Momir Nikolić that there had been killings of Muslims, *“that some people had been taken off the buses and that Muslims who had been staying in the hangar had been killed. I received information that between 80 and a hundred Muslims had been killed that night.”*¹⁶⁹

87. The mass-executions of Bosnian Muslim prisoners continued through 14 July 1995. The Butler Report detailed mass-executions and burials in the zone of the 1st Zvornik Infantry Brigade between 13 and 15 July 1995. At Orahovac and Grbavci School, for example, captured Muslim males were taken to the school in Grbavci on the afternoon of 14 July. They were then taken from the school, blindfolded, put in a military truck and taken to a field where they were lined up and executed.¹⁷⁰ *“A large group of prisoners who had been held overnight in Bratunac were bussed in a convoy of 30 vehicles to the Grbavci School in Orahovac early in the morning of 14 July 1995.”*¹⁷¹ *“It is estimated that there were 2,000 to 2,500 Bosnian Muslim men detained in the school gym.”*¹⁷² *“Prisoners not killed on 13 July 1995 were subsequently bussed to execution sites further north of*

¹⁶⁵ Exhibit T.86, Butler report, 6.4-6.5

¹⁶⁶ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 1993, T.1744.

¹⁶⁷ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 1993, T.1745.

¹⁶⁸ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 1993, T.1750.

¹⁶⁹ Exhibit T. 44, Momir Nikolić, *Blagojević*, 23 September 2003, T.1762.

¹⁷⁰ Exhibit T. 86, Butler report, 7.6-7.27.

¹⁷¹ Accepted fact number 28 (Annex 2A)..

¹⁷² Accepted fact number 29 (Annex 2A).

Bratunac, within the zone of responsibility of the Zvornik Brigade.”¹⁷³ The ICTY found that “[t]he large-scale executions in the north took place between 14 and 17 July 1995.”¹⁷⁴

88. Witness Dragan Obrenović learned that a member of the 4th Battalion of the Zvornik Brigade had joined the first group of soldiers guarding the school and had later volunteered to participate in the killings.¹⁷⁵ The prisoners detained in schools in the Zvornik area were under his authority as the deputy commander of the Zvornik Brigade – for example, the prisoners at the Orahovac school were guarded by members of its military police.¹⁷⁶ Obrenović put several military police officers at Drago Nikolić’s disposal after Nikolić informed him that the prisoners were to be killed. He testified that he “*wasn’t sure whether they would just be guarding the position or whether they would actually be shooting. I gave them to him, and he could use them any way he wanted to use them*”.¹⁷⁷ In his plea agreement at the ICTY Obrenović acknowledged that “[o]n hearing of this plan to kill the prisoners I, as acting Commander, took responsibility for the plan and supported the implementation of the plan”.¹⁷⁸

89. A body removal and burial operation for the victims of the Kravica massacre commenced on the morning of Saturday 14 July in which municipal, police and military authorities cooperated and coordinated in removing the bodies from the Kravica warehouse and burying them in pre-dug graves in the Glogova area. This will be considered in detail in the part of the Verdict pertaining to the hangar in Kravica.

90. On 14 July Miroslav Deronjić drove past the warehouse. He stated the following:

*“I paid special attention to the agricultural cooperative because I knew that a massacre had taken place there: The building could be seen from the road. I could see that the whole building had been riddled with bullets and that its facade was damaged. Parts of the facade had fallen off and there were some big holes caused by some large-caliber ammunition”.*¹⁷⁹

91. Another group of prisoners captured at the same location was taken to the football field at Nova Kasaba and transported to Bratunac, where they spent the night. On 14 July they were taken to a sports hall in Pilica. The Butler Report described this as associated with the mass executions at Branjevo Farm.¹⁸⁰

¹⁷³ Accepted fact number 35(Annex 2A)..

¹⁷⁴ Accepted fact number 36 (Annex 2A).

¹⁷⁵ Exhibit T.50, Dragan Obrenović, *Blagojević*, 2 October 2003, T.2537-2538.

¹⁷⁶ Exhibit T.50, Dragan Obrenović, *Blagojević*, 10 October 2003, T.3023-3023.

¹⁷⁷ Exhibit T.50, Dragan Obrenović, *Blagojević*, 10 October 2003, T.3027-3028.

¹⁷⁸ Exhibit T.58, Statement on the facts given by Dragan Obrenović, p. 2.

¹⁷⁹ Exhibit T.55d, Statement dated 25 November 2003, para. 212.

¹⁸⁰ Exhibit T. 86, Butler report, 6.9-6.10.

92. According to the eye-witness testimony, the deportation of the women, children and elderly from Potočari finished on 14 July. Munira Subašić testified that she left Potočari on Saturday 14 July on the second last bus and was taken to Dubrava, near Tuzla.¹⁸¹ All buses were stopped by Serb soldiers who boarded each one. Armed men stopped her bus – they boarded it and said “Get up Balija women this is the last time you will see your sons and husbands”. They also asked for gold and money and tried to take attractive women off the bus.¹⁸²

93. Established fact No. 41 states that “[o]n 14 July 1995, the UN Security Council expressed concern about the forced relocation of civilians from the Srebrenica “safe area” by the Bosnian Serbs, asserting it was a clear violation of their human rights.”¹⁸³ Most of the Bosnian Muslim men separated at Potočari and captured from the woods were held in Bratunac for one to three days before being transferred to other detention and execution sites.¹⁸⁴

94. According to Momir Nikolić’s estimate, on the night of 14 July 1995 there were between four and four and a half thousand Muslim prisoners being held in Bratunac in facilities including the school, the hangar, the secondary school centre, the gym. That evening buses and trucks containing more Muslim prisoners arrived in Bratunac. There were not enough personnel to properly secure all the prisoners.¹⁸⁵ Witness Dragomir Vasić testified that he learned from Borovčanin on 14 July about an incident at Kravica involving prisoners grabbing a rifle and that some had been killed. On 14 July 1995 Tomislav Kovač came to the police station at Bratunac. Thereafter, he travelled with Vasić to the Srebrenica police station, where he ordered that civilian protection of civilian property not be plundered.¹⁸⁶

95. The Butler Report describes execution sites at Brana (the dam) and Petkovci School. On 13 and 14 July prisoners were taken by bus and truck to the Petkovci school where they were held until the early hours of the morning of 15 July. At that point, they were taken by truck to an execution site and shot in groups of five to ten.¹⁸⁷

96. Witness Momir Nikolić heard about the incident at the Kravica warehouse on 14 July while in Bratunac, saying that “*already on the 14th, this was common knowledge. That is, almost the entire town, all the soldiers, had heard about it. People I saw and came across that day had heard that this incident had occurred in town. One of the people I heard about it from was the chief of the public security station, Miodrag Josipović*”.¹⁸⁸ Nikolić learned on 14 July 1995¹⁸⁹ that on the

¹⁸¹ Munira Subašić, 24 April 2009.

¹⁸² Munira Subašić, 24 April 2009.

¹⁸³ Accepted fact number 41 (Annex 3).

¹⁸⁴ Accepted fact number 27 (Annex 3).

¹⁸⁵ Exhibit T.44, Momir Nikolić, *Blagojević*, 19 September 2003, T.1749-1750.

¹⁸⁶ Dragomir Vasić, 1 April 2009.

¹⁸⁷ Exhibit T.86, Butler report, 7.28-7.32.

¹⁸⁸ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 2003, T.1734.

previous day an incident had occurred in the building known as OK Kravica, whereby the Muslim prisoners “*had seized an automatic rifle from a member of the police who was guarding them and who had captured them and was holding them there. And then the person who had grabbed the rifle shot at the policeman, and the policeman was killed. One or two others were wounded. And then after that, a group of policemen who were there used automatic weapons and other weapons they had on them to execute the prisoners in that facility. I also learned that in addition to the sidearms used to shoot at the captured Muslims in that facility, they brought boxes of hand grenades. They shut the doors and then they killed the people inside using those grenades.*” He heard that “*most of those who had taken part*” were members of the 2nd Šekovići Detachment who had been at Sandići. The initial information was that hundreds of Muslims had been killed and that MUP members had taken away and buried their bodies in the Glogova village area.¹⁹⁰

97. The mass-executions continued on 15 July 1995. The Butler Report stated that “[s]ometime after midnight the Bosnian Muslim men held at the Petkovci ‘new’ school were placed on trucks, and moved to the dam, where they were subsequently executed”. Zvornik Brigade logs revealed ten trips between the school and the dam and, later in the morning, an ultra light truck and an excavator were working at the dam.¹⁹¹

98. Around 11:00 on 15 July Dragan Obrenović returned to the Zvornik Brigade headquarters. Major Dragan Jokić, the chief of the engineers, told him that “*he had a lot of problems with securing the prisoners of war and with burying them.*”¹⁹² In his plea agreement Obrenović stated that “*Beara, Popović and Drago Nikolić were taking people wherever they wanted to take them. He said Popović had instructed him not to make a record of the activities involving the killing operation or speak on the radio about it. I was aware that the killing operation was going on.*”¹⁹³

99. Witness Obrenović testified that on the morning of 15 July 1995 he had a meeting with Vasić, Borovčanin and Miloš Stupar at the brigade headquarters (during which he had telephoned General Krstić and Vasić had telephoned the MUP in Pale). At that meeting Stupar informed him of an incident at the Kravica warehouse in which a Muslim prisoner had killed a police officer, and that his men had opened fire on the remaining prisoners and killed them. Obrenović stated that “*[b]ased on our conversation I supposed that everyone present knew of the plan to kill the prisoners who had been brought to Zvornik. I also reasoned that, if I had known of the plan whilst*

¹⁸⁹ Exhibit T. 44, Momir Nikolić, *Blagojević*, 23 September 2003, T. 1736.

¹⁹⁰ Exhibit T. 44, Momir Nikolić, *Blagojević*, 23 September 2003, T. 1737.

¹⁹¹ Exhibit T.86, Butler report, 10.21.

¹⁹² Exhibit T.50, Dragan Obrenović, *Blagojević*, 2 October 2003, T.2519.2521.

¹⁹³ Exhibit T.58, Statement of facts as set out by Dragan Obrenović, page 3.

*in the hills, these officers who were dealing with the prisoners in Bratunac would have known about the plan too.*¹⁹⁴

100. At about 14.00 on 15 July witness Obrenović went to the forward command post of the 4th Battalion and spoke to its commander, who told him that he had found “*his men guarding prisoners in the gymnasium of the school at Orahovac and that the execution of prisoners had already commenced in a nearby location*”.¹⁹⁵

101. The Butler Report also referred to mass executions that occurred at the Branjevo Military Farm in the afternoon of 16 July 1995, when the captured Muslims were taken to the farm and 15 to 20 busloads of men were murdered.¹⁹⁶ Hundreds of prisoners were also assembled at the Pilica Cultural Centre and executed by soldiers from Bratunac.¹⁹⁷ “Buses loaded with Bosnian Muslim men started arriving from Pilica at approximately 10.00 hours. The men were subsequently executed during the course of the day, first by members of the 10th Sabotage Detachment, and later by ‘men in military uniforms from Bratunac’”.¹⁹⁸ By the evening of 16 July, “earthmoving equipment from the Zvornik Brigade was en route from Orahovac to the Branjevo Military Farm to bury the dead”.¹⁹⁹

102. A large-scale mass-execution and burial occurred at Kozluk between 15 and 17 July, of which there were no known survivors.²⁰⁰ A bulldozer operated for 1.5 hours at Kozluk on 18 July 1995.²⁰¹ The Butler Report concluded that these executions were the result of “*a coordinated effort involving elements and personnel of the VRS Main Staff, the Drina Corps, the Zvornik Brigade and the Bratunac Brigade all coordinated in various components of the mass executions at the Branjevo Military Farm and the Pilica Dom. The burial process continued on 17 and 18 July 1995*”.²⁰²

¹⁹⁴ Exhibit T.58, Statement of facts as set out by Dragan Obrenović, page 3-4.

¹⁹⁵ Exhibit T.58, Statement of facts as set out by Dragan Obrenović, page 5.

¹⁹⁶ Exhibit T.86, Butler report, 7.36-7.42.

¹⁹⁷ Exhibit T.86, Butler report, 7.47-7.48.

¹⁹⁸ Exhibit T.86, Butler report, 10.39.

¹⁹⁹ Exhibit T.86, Butler report, 10.47.

²⁰⁰ Exhibit T.86, Butler report, 7.53-7.54.

²⁰¹ Exhibit T.86, Butler report, 7.58.

²⁰² Exhibit T.86, Butler report, 10.70.

5. 17 to 28 July 1995

103. The search for remaining Bosnian Muslims continued on 17 July 1995. The Butler Report concluded that “[b]y the evening of 17 July 1995, all large-scale execution activity was completed. Most of the burial activity related to the execution was also completed”.²⁰³

104. Ljubiša Borovčanin reported on the role of the police in the Srebrenica 95 operation, stating that the Bratunac Brigade took the UN checkpoint on 12 July without incident. Between 25,000 and 28,000 civilians gathered in Potočari and after 14.00 hours “they began to be transported to Kladanj in an organized way” supervised by the VRS and with the MUP forces having a “supporting role, such as regulating traffic and maintaining public order”. Borovčanin reported that the 2nd Special Police Detachment was led by Miloš Stupar and Rado Čuturić, the Special Police Unit²⁰⁴ forces were commanded by Danilo Zoljić,²⁰⁵ and that the logistics officer of the 2nd Special Police Department²⁰⁶ was responsible for the logistics.²⁰⁷

105. Dispatch note no. 205 to the Minister of the Interior dated 15 July 1995, undersigned by Dragomir Vasić, reported on the activities of PJP units in the area around Kravica and Srebrenica.²⁰⁸ Dragomir Vasić denied writing this dispatch.²⁰⁹

D. SUBORDINATION OF THE MUP UNITS TO VRS IN THE OPERATIONS IN SREBRENICA

106. The Appellate Panel concludes that the police units that were linked and coordinated with the Drina Corps also participated in the operation of the capture of Srebrenica and the activities thereafter. The evidence adduced with regard to the foregoing undoubtedly confirmed that these units were established right before the Srebrenica capture and were under the military command. Richard Butler’s report described that the RS MUP was resubordinated to the Drina Corps in July 1995, that such joined police forces were organized as combat formations, and that their primary role was internal securing of the operations.

107. The ICTY Judgments established that:

²⁰³ Exhibit T.86, Butler report, 10.53.

²⁰⁴ Exhibit T.39.

²⁰⁵ Exhibit T.39.

²⁰⁶ Exhibit T.39.

²⁰⁷ Exhibit T.39.

²⁰⁸ Exhibit T.34.

²⁰⁹ Dragomir Vasić, 1 April 2009.

*“... there was close co-operation and co-ordination between the MUP and Drina Corps units. On 11 July 1995, before the VRS found out about the formation and movement of the Bosnian Muslim column, the Main Staff ordered the Drina Corps to take pre-emptive steps, “by arrangement and co-operation with the MUP” to block the passage of Bosnian Muslims to and from the enclave.”*²¹⁰

*“The civilian police of the Republika Srpska was organized under the Ministry of Interior (“MUP”). In July 1995, Tomislav Kovač was the acting Minister of Interior. The civilian police was organized in two sections: the regular police force and the special police brigade.”*²¹¹

*“In accordance with the law in effect in the RS, MUP units could be re-subordinated to the VRS for various purposes²¹², including to reinforce the VRS during combat activities.”*²¹³

108. The RS Law on the Implementation of the Law on Internal Affairs during the Imminent Threat of War provides that: *“Police forces tasked under an order of the Armed Forces Chief Commander with combat activities shall be subordinated to the commander of the unit in whose area of responsibility they are to carry out combat assignments.”*²¹⁴

109. Witness Danilo Zoljić stated with regard to this that the President of RS determines the organization of police forces and issues orders for their engagement during the war, while the police can be subordinated to the military command pursuant to the Minister’s orders.²¹⁵ Richard Butler also noted that in practice, units were re-subordinated when deployed to certain tasks.²¹⁶

110. The MUP Special Police units’ headquarters was in Bijeljina under the command of General Goran Sarić and his Deputy, Lieutenant Ljubiša Borovčanin.²¹⁷

111. Butler’s Report described six nominal police companies that were organized either to supplement the military forces, or to perform search activities for security reasons in the Drina Corps’s rear. Special Police Units (SPU) existed within the Regional Public Security Center Zvornik (CJB) under the command of Dragomir Vasić and his Deputy, Mane Đurić. Their organization was under the command of Danilo Zoljić.

²¹⁰ Accepted fact 44 (Annex 2A)

²¹¹ Accepted fact 45 (Annex 2A)

²¹² Accepted fact 56 (Annex 2A)

²¹³ Accepted fact 56 (Annex 2A)

²¹⁴ Dated 29 November 1994, Chapter IV, Article 14

²¹⁵ Danilo Zoljić, 20 March 2009

²¹⁶ Exhibit T.28 also mentioned in Exhibit T.86, Butler’s Report, 2.14-2.19

²¹⁷ Exhibit T.62 is a diagram showing the structure of the MUP Special Police brigades in July 1995.

112. Witness Danilo Zoljić²¹⁸ testified that the police was not involved in the Srebrenica takeover operation.²¹⁹ This witness stated that the special police units were engaged on 12 July.²²⁰ This is in compliance with the other evidence proving in particular the engagement of the 2nd Šekovići Detachment²²¹, which came to the area of Srebrenica on this date.²²²

113. On 10 July 1995, the then acting Minister of Interior of Republika Srpska, Tomislav Kovač, issued an order for the deployment of the 1st Company of the PJP, Public Security Center Zvornik, the Jahorina Training Center company, and the 2nd Šekovići Detachment to Bratunac.²²³ Under this order, the commander of the 2nd Šekovići Detachment, was to be subordinated to Ljubiša Borovčanin, Deputy Commander of the RS Special Police Brigade.²²⁴ The same order appointed Borovčanin as the commander of these joint units.²²⁵

114. Witness Dragomir Vasić, Chief of the Public Security Center of the MUP RS testified that in July 1995, four units of the PJP operated in his sector, one of which participated in the combat activities in Trnovo.²²⁶ In his dispatch notes sent on 12 July and 14 July, this witness mentioned the presence of the following MUP units that were “engaged to block and break through the enemy forces”: the 2nd Šekovići Detachment, the 1st Company of the PJP Zvornik, the 2nd Company of the PJP Zvornik, the 5th Company the CJB Zvornik, the 6th Company of the PJP CJB Zvornik, the PJP CJB Bijeljina company, the Jahorina Training Center company, the PJP CJB Doboje company,²²⁷ and in the dispatch note of 13 July, the PJP Srbinje company.²²⁸

E. ROLE OF THE SECOND ŠEKOVIĆI DETACHMENT AND ITS DEPLOYMENT TO SREBRENICA AREA ON 12 JULY 1995

115. On 10 July 1995 the Chief of Staff of the VRS Bratunac Brigade conveyed an order for the full mobilization of all able-bodied men. The Minister of the Interior issued an order to all units operating in combat near Sarajevo, including the 2nd Šekovići Detachment, which was deployed in Srednje near Sarajevo, to move to the Srebrenica sector by 11 July. That same day he appointed Ljubiša Borovčanin to command the joint MUP units, which included the 2nd Šekovići Detachment, the Zvornik Police company and the Jahorina Training Center company.

²¹⁸ Danilo Zoljić, 20 March 2009.

²¹⁹ Danilo Zoljić, 20 March 2009.

²²⁰ Danilo Zoljić, 20 March 2009.

²²¹ Danilo Zoljić, 20 March 2009.

²²² Danilo Zoljić, 20 March 2009.

²²³ Danilo Zoljić, 20 March 2009.

²²⁴ Danilo Zoljić, 20 March 2009.

²²⁵ T.28.

²²⁶ Dregomir Vasić, 1 April 2009.

²²⁷ Exhibit T.30 and Exhibit T.33.

²²⁸ Exhibit T.32.

116. Several members of the detachment testified about the status, assignments, structure, manpower and weapons of the 2nd Šekovići Detachment, including 1st platoon members Mirko Aščerić, Marko Aleksić; 2nd platoon members Milenko Pepić, Slobodan Stjepanović, Dražen Erzić and Nedeljko Sekula; and Skelani platoon members Petar Mitrović, witness D5, Aleksandar Radovanović, Duško Mekić, Miladin Stevanović, Predrag Čelić, Zoro Lukić and Slaviša Žugić.²²⁹

117. These witnesses provided a clear account of the creation and structure of this Police formation. The 2nd Detachment had five platoons – three infantry platoons, a support or armored platoon and a rear, or logistics, platoon. The Detachment strength was around 100 men, while the three infantry platoons had around thirty members each, the armored support platoon had around twenty members and the logistics platoon, about five or six.

118. The ICTY Judgments established the following:

“The Special Police Brigade was a combat unit of the MUP. Colonel Goran Sarić was the commander and Colonel Ljubiša Borovčanin was the deputy commander”²³⁰

The Special Police Brigade consisted of approximately eight detachments, including the 2nd Detachment from Šekovići commanded by Miloš Stupar, and a Training Centre at Jahorina, commanded by Duško Jević.²³¹

Members of the detachments were armed with automatic and semi-automatic weapons and were trained differently than the regular police force.²³²

The detachments also had heavy weapons and vehicles, such as tanks, armored personnel carriers (“APCs”) and Pragas.²³³

119. The 2nd Detachment Šekovići was established as a unit of the Republika Srpska MUP PJP in 1993. The special police units were formed in 1994, and were comprised of 30% to 40% men from active police units and the remainder from the reserves.

120. Witness Danilo Zoljić, who served as the Zvornik Special Police Commander at the relevant time, testified to the structure and establishment of the unit. Witness D5, a member of the 1st

²²⁹ Predrag Čelić, 5 February 2009, Milenko Pepić, 4 February 2009, Dražen Erzić, 12 June 2009, Duško Mekić, 18 June 2009, Slobodan Stjepanović, 5 February 2009.

²³⁰ Accepted fact no. 46 (Annex 2.A).

²³¹ Accepted fact no. 47 (Annex 2.A). Exhibit 63 is a chart showing the RS Police structure in the Drina Corps AoR on 12 July 1995.

²³² Accepted fact no. 48 (Annex 2.A)

²³³ Accepted fact no. 49 (Annex 2.A)

section of that Platoon, who joined in March/April 1993 and remained in it until late 1995, stated that it had between 30 and 50 members in July 1995.²³⁴

121. The Trial Panel heard abundant evidence as to who was the commander of the 2nd Šekovići Detachment in July 1995. However, both the Trial Panel and the Appellate Panel which re-examined the evidence had insufficient evidence to determine with precision the identity of the commander of the Detachment on 12 and 13 July 1995. Since this fact was not a subject of the Indictment, the Panel was not bound to establish it.

122. In July 1995 Marko Aleksić commanded (as acting commander) the 1st platoon, while Milenko Trifunović (Čop) commanded the 3rd platoon²³⁵. Marko Aleksić was the acting commander after the prior commander, Milenko Kovačević, was wounded on the field mission to Srednje.²³⁶ The 2nd platoon was commanded by Jelenko Lukić.²³⁷

123. According to witness D5, as a special police unit the 2nd Detachment had several *pragas*, howitzers and mortars, which also follows from the above mentioned facts established by the ICTY (p. 197). Witness D5 was issued with an automatic rifle (four magazines and 5 x 30 rounds) and had hand-held grenades and a pistol. Mirko Milanović was issued with a light machine-gun. In his statement given to SIPA, Duško Mekić testified that the Skelani platoon was mainly armed with automatic rifles and that the unit had one or two tanks, a Praga and some mortars (120mm and 82mm and an armored BOV).²³⁸ According to witness Nenad Andrić, some members of the 1st platoon had hand-held grenades and some had pistols.²³⁹ In his statement to the ICTY, witness Miloš Stupar said that the support platoon had a tank, a Praga and 68 and 82 mm mortars and a three-barreled BOV (self-propelled anti-aircraft gun).²⁴⁰

124. Witness Dražen Erkić saw the Accused Radomir Vuković on field missions armed with a light machine gun (caliber 7.62 mm). Dražen Erkić also testified that Vuković was armed with a light machine gun.²⁴¹ Witness D5 stated “as far as I recall, he occasionally was issued with an M-84, occasionally with an automatic rifle”.²⁴²

125. According to witnesses Danilo Zoljić, D5 and Nenad Andrić, in late June/early July 1995, the 2nd Detachment was deployed on a combat mission to Srednje near Sarajevo. Witness D5 stated

²³⁴ Witness D5, 11 February 2009, Exhibit T.12a, Statement of 18 April 2008.

²³⁵ Miladin Stevanović, 2 April 2009; Petar Mitrović, 8 April 2009.

²³⁶ Marko Aleksić, 4 February 2009. Other witnesses described him as “the commander”, e.g. Slaviša Žugić, 13 January 2009.

²³⁷ Milenko Pepić, 4 February 2009, Marko Aleksić, 4 February 2009.

²³⁸ Duško Mekić, 18 June 2009, Exhibit T.137, Witness statement given to SIPA, 20 October 2005.

²³⁹ Nenad Andrić, 13 August 2009.

²⁴⁰ Exhibit T.45, Miloš Stupar, *Blagojević*, 28 April 2004., T.8328, 29 April 2004, T.8458.

²⁴¹ Dražen Erkić, 12 June 2009.

²⁴² Witness D5, 11 March 2009.

that the unit spent some 10 days in Srednje with between 50 and 60 members of the detachment who were deployed there.²⁴³

126. Prosecution witnesses D5 and Duško Mekić stated that Rade Čuturić, normally the deputy commander, commanded the 2nd Šekovići Detachment on its field mission to Srednje before its deployment to Srebrenica.

127. The Appellate Panel examined whether the Accused were on the field mission in Srednje, given the Accused Vuković's Defense Counsel's argument that the Prosecution failed to prove beyond a reasonable doubt that Vuković had been on the field mission or prove his presence in front of the Kravica warehouse.

128. The Appellate Panel considers the testimony of two witnesses to be relevant, including one summoned by the Defense for Radomir Vuković, who confirmed his presence. Witness D5 initially testified that he could not recall whether Vuković was on that field mission in Srednje.²⁴⁴ However, in cross-examination he recalled Vuković being in one of the vehicles transporting the police to Srednje, but could not recall which, and recalled seeing him at Srednje but could not remember where.²⁴⁵

129. Faced with such conflicting evidence, the Court considered the corroborating evidence of Slaviša Žugić, who, while testifying for Radomir Vuković, stated that Vuković was on the Srednje field mission.²⁴⁶

130. The Appellate Panel could not find any credible evidence to prove the presence of the Accused Tomić in Srednje.

131. Witness Dragomir Stupar was the assistant commander for logistics in the 2nd Šekovići Detachment in July 1995. He said that after leaving Srednje on 11 July 1995, the 2nd Šekovići Detachment was deployed to assist the VRS in its engagement in the Srebrenica enclave, which is consistent with the earlier findings relating to the order to resubordinate the Detachment to the military forces engaged to capture Srebrenica those days. The commander of the MUP Special Police Units, Ljubomir Borovčanin, ordered Stupar to establish a logistics base for the detachment in Bratunac several days before leaving for the Srednje mission. It was set up in a makeshift warehouse which contained fuel, food and other provisions.²⁴⁷ Witnesses Slobodan Stjepanović,

²⁴³ Witness D5, Exhibit T.12b Statement of 22 May 2008.

²⁴⁴ Witness D5, 11 March 2009.

²⁴⁵ Witness D5, 11 March 2009.

²⁴⁶ Slaviša Žugić, 1 July 2009.

²⁴⁷ Dragomir Stupar, 27 February 2009.

Milenko Pepić, Miladin Stevanović, Zoro Lukić and witness D5 also stated that they spent a night in the school in Bratunac when they returned from the mission in Srednje.

132. According to witnesses Aleksandar Radovanović and D5, in the evening hours of 11 July 1995 Rade Čturić ordered the unit to return to Šekovići. Witness Aleksandar Radovanović said that it was on the bus back that Trifunović told them they were going to Srebrenica. Witness D5 said that the unit set off in busses and a truck a day or two before St Peter's Day (Petrovdan), which falls on 12 July 1995.²⁴⁸ Defense witness Aleksandar Radovanović stated that on the way back the unit stopped in Vlasenica and they were told they were going to Bratunac. The majority of the 2nd Šekovići Detachment members were on the bus.²⁴⁹ They reached Bratunac in the early morning hours and *Oficir* (Rade Čturić) told them they were going to Skelani. They stopped in Bjelovac and spent the night in a school there.

133. Defense witness Slaviša Žugić, a member of the 1st platoon of the 2nd Šekovići Detachment in July 1995, was also deployed to Srednje in June 1995. The unit completed its task in Srednje and Rade Čturić ordered them back to Bratunac. They arrived there at night and were told they were to secure the road to Konjević Polje for the passage of vehicles. They were told that a convoy of buses containing women and children from Srebrenica was to pass by. They spent the night at a school near Bratunac. The orders they received came by way of the platoon commander but were issued by the detachment commander. They were also told that a large armed column was coming from the enclave so they had to stay alert.²⁵⁰

134. Prosecution witness Predrag Čelić, who was also on the Srednje field mission, testified that the unit left for Bratunac on the night of 11 July, arrived in the early hours of 12 July and spent the night in a school near Bratunac.²⁵¹

135. Witness D5 testified that the members of the 2nd Šekovići Detachment left Srednje in three vehicles, two 110 trucks and a *Dubrava* bus.²⁵² Prosecution witness Zoro Lukić said that the next morning (12 July 1995) Rade Čturić lined them up and told them they were going to Potočari in relation to the Srebrenica military action.²⁵³ Mirko Aščerić confirmed this by stating that the following day they were deployed to the road at Sandići. Rade Čturić issued this order to the platoon commanders who conveyed the orders to the platoon members. They were told that their task was to secure the road as a column was on the move from Srebrenica and to prevent the column from crossing the road. They were also instructed to allow the passage of buses and trucks

²⁴⁸ Witness D5, 11 February 2009.

²⁴⁹ Aleksandar Radovanović, 18 November 2009.

²⁵⁰ Slaviša Žugić, 13 January 2009.

²⁵¹ Predrag Čelić, 5 February 2009.

²⁵² Witness D5, 11 March 2009.

²⁵³ Zoro Lukić, 13 March 2009.

containing Muslims coming from the Srebrenica enclave, and to prevent anyone from stopping these buses and trucks.²⁵⁴

136. Witness D5 stated that that night they asked Milenko Trifunović (Čop) about what they were to do the following day. According to witness D5, Trifunović said *“we would go through Potočari towards Budak, I think. To secure that area and escort anyone who came along... Bosniaks...able-bodied...to Bratunac,”* but did not say what would *“happen to them once they reach Bratunac.”*²⁵⁵

137. The 2nd Detachment was on a field mission in Srednje and from there redeployed to Bratunac in the night between 11 and 12 July 1995. The Defense did not dispute this. The witnesses and earlier findings relating to the general context of the events in Srebrenica clearly show that the 2nd Detachment was deployed to the area of Srebrenica after its fall, and it is clear that the unit was engaged in the coordinated operations of the RS Army and MUP. The 2nd Detachment was in the Army service and it was deployed to the area of Srebrenica to assist the operation of the VRS Main Staff in Srebrenica.

138. The evidence shows that on 12 July 1995 members of the 2nd Šekovići Detachment searched Muslim-populated villages in the area above the UN Dutchbat Base at Potočari. Other members of the 2nd Detachment testified about the “mopping-up operation” of 12 July 1995. The evidence shows beyond a reasonable doubt that one part of the 2nd Šekovići Detachment participated in the search operation of 12 July 1995.

139. Commanders of the police units met at the yellow bridge, near the UN Base in Potočari, to coordinate their activities. Zvornik Special Police Commander Danilo Zoljić went to the yellow bridge and met the commanders of the police units there, including Ljubomir Borovčanin, Rade Čuturić and his deputy commander. Zoljić spoke to each company to find out why they were there and what their assignments were. Zoljić heard Borovčanin directly ordering Rade Čuturić and the commander of the 1st PJP Company to cross the yellow bridge and search the villages along the road for armed men, since civilians were coming from Srebrenica. Borovčanin tasked the 1st company with searching the terrain.

140. The area to be searched was predominantly inhabited by the Bosniaks of Srebrenica. The purpose of the search was to see whether armed men were in the area and whether any civilians had been left behind.²⁵⁶

²⁵⁴ Mirko Aščerić, 13 January 2009.

²⁵⁵ Witness D5, Exhibit T.12b Statement dated 22 May 2008.

²⁵⁶ Danilo Zoljić, 20 March 2009.

141. According to witness D5 on 12 July 1995 they were ordered to search the houses in the village of Budak above Potočari, villages which were predominantly inhabited by Bosniaks. Whomever they were to find in the houses they were to escort to Bratunac and Potočari. From there, the people were to be taken to Kladanj and Tuzla. However, they did not find anyone in the houses at that time and, soon afterwards, they received an order from the commander to go to the area of Kravica and Konjević Polje to secure the road.

142. Other prosecution witnesses also offered testimony similar to that of witness D5 concerning their involvement in the deployment. Witness Marko Aleksić, a member of the 1st platoon of the 2nd Detachment, testified that his unit travelled to Bratunac and awaited instructions. Rade Čturić gave them a task there to head towards Srebrenica and form combat lines.²⁵⁷ They were in a combat formation and went into houses searching for people.²⁵⁸ Witness Miladin Stevanović, a member of the 3rd platoon, also said that their instructions were that if any armed groups were to surrender, they would have to hand them over to the army. They found no one in the houses, and returned to the yellow bridge.²⁵⁹

143. According to Slaviša Žugić, a member of the 1st platoon, the morning after their return from Srednje they stopped en route to search the terrain to see whether anyone was still alive there. They were ordered to find Muslims, to apprehend them and to take them to the UN base in Potočari. Witness Zoro Lukić, a member of the 2nd Detachment, stopped at the yellow bridge and Čturić told them to go uphill for a kilometer or so and search for any enemy soldiers heading towards Bratunac. They then searched the area and after that were ordered to deploy along the Konjević Polje road at Sandići.²⁶⁰

144. Witness Predrag Čelić testified that in the morning of 12 July 1995 his unit was sent to Potočari and was told to go and form a combat front-line. In his initial statement to the Prosecutor, however, he said that they went to search houses but found no-one in them.²⁶¹

145. Witness D5 provided detailed evidence about the search and its purpose. When they reached Budak they formed a skirmish line, moving side by side, about five to ten meters apart.²⁶² From Budak witness D5 could see Potočari, where women, children and elderly, but no young men, were gathered.²⁶³ The search was performed in “the usual” way and they found no persons or weapons. He described going into some houses “*in a slow-motion manner; as we would put it*

²⁵⁷ Marko Aleksić, 4 February 2009.

²⁵⁸ Marko Aleksić, 4 February 2009.

²⁵⁹ Miladin Stevanović, 2 April 2009.

²⁶⁰ Zoro Lukić, 3 March 2009.

²⁶¹ Predrag Čelić, 5 February 2009, Exhibit T.10, Statement dated 7 October 2005.

²⁶² Witness D5, 20 March 2009.

²⁶³ Witness D5, 20 March 2009.

by sneaking under the window in order to get to the door not knowing who may be waiting inside and the police going into the houses in pairs to cover each other."²⁶⁴

146. Witness Slaviša Žugić testified that approximately 15 members of his 1st platoon participated in the search, using a skirmish line of police working 5 to 7 meters apart.²⁶⁵ Witness Milenko Pepić, of the 2nd platoon of the 2nd Detachment found out that they were going to the Potočari area to search and inspect the terrain, on the grounds that armed Muslims might be there. They went into the houses in the villages above Potočari but no-one was in them. He testified that had they found civilians they would have taken them to Potočari.²⁶⁶

147. Witness Cvijan Ristić testified that the PJP 1st company from Zvornik – under the command of Radomir Pantić – also participated in the search. The company had three police platoons, one of which was from Zvornik.²⁶⁷ This witness was a member of the 1st PJP Company who had worked at the Zvornik Police Station in 1995. On the afternoon of 11 July 1995, he was substituting for his wounded commander and received a dispatch note deploying the 1st Company to Bratunac. He gathered about 20 members of his unit; some were deployed to Bratunac and some to Konjević Polje. They were wearing olive drab camouflage uniforms with police insignia. They received their tasks at approximately 5.00 or 6.00 on 12 July. Afterwards, about 50 to 60 members of his unit travelled by bus from Bratunac to Potočari to the yellow bridge. Many soldiers were there and he recognized members of the 2nd Šekovići Detachment. *Oficir*, Miloš Stupar and his commander Radomir Pantić were there.²⁶⁸ Ristić estimated that about 200 men were at the yellow bridge. His unit was then deployed on the hills above Potočari to protect against attacks by armed Muslim men, while he remained by the yellow bridge for two to three hours. They searched about 500 meters into the woods until they reached some houses but found no civilians. They passed by the houses. They were there for about half an hour. They were tasked only to engage armed groups, seize their weapons and send any prisoners to the commanders for further decisions as to their fate. They stayed there until 14.00 or 15.00 and then withdrew to Bratunac by bus on Pantić's orders.

148. Defense witness Radoslav Stuparović was called up on the afternoon of 11 July (the day before Petrovdan), and, along with about 20 other men, was sent by bus from Zvornik to the Bratunac police station. The next morning (12 July) Commander Pantić ordered them to go by bus to the yellow bridge near Potočari. When he arrived he saw members of the 2nd Šekovići Detachment. *Oficir* Čuturić was there and spoke to Pantić. Several hours later they were ordered

²⁶⁴ Witness D5, 13 March 2009.

²⁶⁵ Slaviša Žugić, 13 January 2009.

²⁶⁶ Milenko Pepić, 4 February 2009.

²⁶⁷ Radoslav Stuparović, 9 July 2009.

²⁶⁸ Cvijan Ristić, 2 July 2009.

to deploy to the right above a demarcation line to protect Bratunac from armed incursion. They deployed in groups and walked with the 2nd Šekovići Detachment flanking them. Stuparović signed an investigative statement saying he had seen a huge mass of people near the factory in Potočari and learned that the army was rounding up civilians and guarding them there.²⁶⁹

149. Under the Indictment, the two Accused were, *inter alia*, charged with the participation in the search of the terrain to find civilians, but this will be further elaborated on later in the Verdict.

150. Defense witness Slobodan Stjepanović, of the 2nd platoon of the 2nd Detachment, testified that he was deployed towards Potočari and the area nearby. He went to the last village, where unit members stood 10 meters apart. From his position he could see more than 50 civilians gathered in Potočari.²⁷⁰ The Panel notes that in his statement to State Investigation and Protection Agency (SIPA) investigators he described seeing “even 15,000 civilians” within the compound when he passed by several hours later.²⁷¹

151. Witness Slaviša Žugić was aware that women and children were coming on buses from Srebrenica and were supposed to be going to Kladanj.²⁷² From the hillside above Potočari they could see Muslims at the UN base. Predrag Čelić assumed that they were refugees.²⁷³ Cvijan Ristić also testified that he could see a huge mass of people whom he thought had “escaped” from Srebrenica in the UN base.²⁷⁴ Milenko Pepić said that the civilians had gone to the UN Base to be transferred to the “free territory”.²⁷⁵

152. The Dutchbat and UN witnesses described the situation in Potočari in the early morning hours of 12 July. Thousands of refugees congregated and sought assistance at the compound, while the VRS was separating men from women, children and elderly (See Chronology – 3. 12 July 1995).

153. Witness D5 stated that when his unit went down the hill after searching the villages above Potočari he saw many people gathered near the factory there. Most of these were women and children from Srebrenica.²⁷⁶

154. After examining the testimony of all witnesses who spoke of these events in the area of Srebrenica on 12 July 1995, the Appellate Panel concludes that the entire population of Srebrenica decided to leave the town as a result of the continuous attacks on Srebrenica and its surroundings.

²⁶⁹ Radoslav Stuparović, 9 July 2009, statement from 29 June 2006.

²⁷⁰ Slobodan Stjepanović, 5 February 2009.

²⁷¹ Exhibit T.11, signed Statement given by Slobodan Stjepanović to SIPA on 27 October 2005.

²⁷² Slaviša Žugić, 13 January 2009.

²⁷³ Predrag Čelić, 5 February 2009.

²⁷⁴ Cvijan Ristić, 2 July 2009.

²⁷⁵ Milenko Pepić, 4 February 2009.

The Court finds that it follows from the heard testimony and video record taken by reporter Petrović (DT-1) that it must have been obvious to anyone within sight of the Dutchbat compound that hundreds, if not thousands, of refugees from Srebrenica were gathering there for protection, and that the situation was chaotic.

F. DEPLOYMENT OF THE 2ND ŠEKOVIĆI DETACHMENT TO THE KONJEVIĆ POLJE – BRATUNAC ROAD ON 12 JULY 1995 AND ITS TASKS

155. According to the Prosecution witnesses examined in the First Instance proceedings, after they finished the search of the terrain above Potočari on the morning of 12 July 1995 they were deployed along the Konjević Polje – Bratunac road. The Appellate Panel finds their testimony consistent, as they provided similar accounts of this assignment.

156. Witness D5 testified that after completing the search at Budak the 3rd Skelani platoon commander Milenko Trifunović ordered those engaged in the search to deploy to Konjević Polje to secure it, as Muslims coming from Srebrenica out of the hilly forested area were believed to be on the road. Trifunović instructed them to relocate to Kravica to *“maintain the road from Kravica towards Konjević Polje as it was assumed that the surrender would take place there, meaning Muslims surrendering”*. They were to go to Sandići and Kravica and receive further instructions there.²⁷⁷ They were sent there in buses and trucks, and it took about 20 minutes to get there.²⁷⁸ Witness D5 got off at the Kravica farming co-operative and walked several hundred meters up the road to a destroyed house. There he was with Miladin Stevanović.²⁷⁹

157. Witness Miladin Stevanović testified that after they had searched the terrain they were sent to secure the Bratunac - Konjević Polje road.²⁸⁰

158. Witness Milenko Pepić testified that the 1st platoon was deployed in the direction of Kravica and the 3rd was deployed along the road. In describing how the 1st and 2nd platoons were deployed on the road that led to the Kravica warehouse hangar, Witness D5 stated that his unit deployed approximately in the middle. Either the 2nd or 3rd platoon was deployed near the destroyed house where the Muslims were surrendering.²⁸¹ The Zvornik Company (1st PJP Company), containing a mixture of police and military, and was to his right towards Konjević Polje.²⁸²

²⁷⁶ D5 – 11 February 2009.

²⁷⁷ Witness D5, 11 February 2009.

²⁷⁸ Witness D5, 13 March 2009.

²⁷⁹ Witness D5, 13 March 2009.

²⁸⁰ Miladin Stevanović, 2 April 2009.

²⁸¹ Evidence D5, 13 March 2009.

²⁸² Evidence D5, 20 March 2009.

159. Witness Marko Aleksić, the acting commander of the 1st platoon, testified to personally deploying his unit members Radomir Vuković, Duško Mekić, Mirko Aščerić on the road adjacent to members of the 2nd platoon, about 500 meters from the Kravica Farming Cooperative. His unit was deployed along the road from Kravica to Konjević Polje near Sandići and tasked with securing the road by establishing a combat line to prevent Muslims from passing through.²⁸³

160. Witness Dragomir Stupar confirmed that the 2nd Detachment was deployed along the road on 12 July 1995, since on that day (Thursday, 12 July 1995) he was ordered at the base in Bratunac to take food to the members of the 2nd Šekovići Detachment on the road to Konjević Polje.²⁸⁴

161. The 1st PJP Zvornik Company was also deployed along the road. Witness Radoslav Stuparević, a member of the 1st PJP Zvornik Company, testified that at around 18.00 to 19.00 hours on 12 July his unit was ordered onto buses to Konjević Polje. Upon arrival at Sandići, their commander Radomir Pantić ordered them to deploy along the road in groups to protect the road from armed attack. Pantić told him to connect with the 2nd Šekovići Detachment.²⁸⁵

162. Witness Nenad Andrić of the 1st PJP Company's 1st platoon confirmed this by stating they were ordered to take up positions on the road to secure it to allow the free passage of vehicles. He observed that soldiers were standing along the road every 300 meters or so²⁸⁶. Defense witness Cvijan Ristić gave the same statement.²⁸⁷

163. Witness Zoro Lukić said their task was to guard the road to allow the unhindered passage of vehicles and to defend Serb villages from attack.²⁸⁸

164. Danilo Zoljić testified that the 1st Company was on the road from Konjević Polje to Bratunac, on the hillside. Each police officer on the road could see the next one. Others from the 2nd Detachment were on the hillside towards Sandići.²⁸⁹

165. The Appellate Panel also examined Nenad Andrić's evidence concerning the passage of the convoy of buses and cargo trucks. Witness Andrić said that in the late afternoon he saw several buses of civilians from Srebrenica escorted by UNPROFOR vehicles - jeep and off-road vehicles. Between five and ten buses were escorted in several convoys, with each UN vehicle being followed by several buses. This continued until nightfall.²⁹⁰

²⁸³ Exhibit T.8, Marko Aleksić's signed statement given to SIPA on 12 October 2005.

²⁸⁴ Slobodan Stjepanović, 5 February 2009.

²⁸⁵ Radoslav Stuparović, 9 July 2009.

²⁸⁶ Nenad Andrić, 13 August 2009.

²⁸⁷ Cvijan Ristić, 2 July 2009.

²⁸⁸ Zoro Lukić, 13 March 2009.

²⁸⁹ Danilo Zoljić, 20 March 2009.

²⁹⁰ Nenad Andrić, 13 August 2009.

166. Witness Miladin Stevanović noticed there was a high frequency of bus traffic on the road: he saw buses passing through, carrying mainly women and children, but also some old men.

167. Witness Mirko Aščerić of the 1st platoon was stationed on the road so that Duško Mekić and Slaviša Žugić were to his left and right side.²⁹¹ They were told that a large column of Muslims was moving slowly through the woods and were deployed there because the column could cut off the Serb villages.²⁹²

168. The deployment of the 1st PJP Company and the 2nd Šekovići Detachment on the Konjević Polje – Bratunac road continued through 13 July 1995.

169. Witness Momir Nikolić, the chief of intelligence and security of the Bratunac Brigade stated that he met Duško Jević (the commander of the Jahorina Training Center, whose unit had also been ordered to Srebrenica on 11 July) on the morning of 13 July 1995, at which time he told Duško to order his units to assemble and secure the captured Muslims in one place, for future evacuation to Bratunac.²⁹³ This is consistent with the testimony of witness D5, who stated that their task was *“to capture and take to the meadow...on the right side...to encircle the captured individuals”*.²⁹⁴

170. Witness Stanislav Vukajlović, a member of the MUP Training Center at Jahorina, said that he was sent on a field mission to Bratunac, where he and about 30 others were taken by bus to the Konjević Polje road and ordered to secure the road. They were referred to as “deserters”. He was armed with an automatic rifle. He saw police in Sandići. He later learned these police were from the 2nd Šekovići Detachment.²⁹⁵

171. Witness Nedeljko Sekula testified that he saw a unit of “deserters” comprised of people who had fled to Serbia. He knew these individuals from field missions.²⁹⁶ The Petrović video also shows armed members of the Jahorina Training Center unit in camouflage uniforms standing on the road to the south and east of the Sandići meadow on 13 July.²⁹⁷

172. Witness Slaviša Žugić said that on 13 July they were deployed to secure the Konjević Polje to Bratunac road for the purpose of allowing a convoy of women and children coming from Srebrenica to pass without hindrance.²⁹⁸ Witness Duško Mekić, a member of the Skelani platoon deployed along the road, provided similar evidence. He was aware that their instructions were to

²⁹¹ Witness D5, 13 March 2009.

²⁹² Exhibit T.44.

²⁹³ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1713-1714.

²⁹⁴ Witness D5, exhibit T.12b statement of 22 May 2008.

²⁹⁵ Stanislav Vukajlović, 23 March 2009.

²⁹⁶ Nedeljko Sekula, 27 August 2009.

²⁹⁷ Exhibits T.1 and T.134.

guard the road in order to secure the deportation of women and children from Srebrenica.²⁹⁹ Stanislav Vukajlović, from the Jahorina Training Center unit, stated that on the 13 July “a lot of buses and trucks transporting civilians, women and children from Srebrenica, were passing down the road that day, they were coming from the direction of Bratunac and going towards Konjević Polje. We were not given any particular orders as to what to do, but I understood that we were supposed to secure the unhindered passing of civilians”.³⁰⁰ He testified before the Court that he saw many buses carrying women and children going in that direction.³⁰¹

173. Witness Marko Aleksić saw buses filled mostly with women, children and elderly men “heading to Kladanj and Tuzla.” He thought they were coming from Srebrenica. Vehicles moving in the opposite direction towards Bratunac were “mainly Serbs. Those were private and military vehicles.”³⁰² Witness Mirko Aščerić, while deployed on the road, saw buses and trucks and vans transporting people from Srebrenica to, as he thought, Kladanj.³⁰³

174. Witness D5 also saw buses and trucks carrying civilians who had been at the “collection Center” in Potočari pass by. They were travelling towards Konjević Polje in the direction of Tuzla.³⁰⁴ There was no traffic on the road during the time the column was being escorted to Kravica but traffic passed through during the day. He had seen buses and trucks of civilians from Potočari and Srebrenica passing by. He stated “I knew I was assisting the safe passage of those buses carrying people from Srebrenica in the direction of Kladanj and Tuzla.”³⁰⁵

175. While detained on the meadow Witness D1 saw buses containing women and children passing on the way to Potočari. He also saw a few vehicles worth of ‘regular traffic’.³⁰⁶ Witness Enver Husić, detained on the meadow, saw buses and trucks travelling along the road, and described them as packed full of women and children from Potočari.³⁰⁷

176. On the second day of their deployment (13 July), witness Slobodan Stjepanović saw civilians from Srebrenica passing by on buses. He said that the four members of his group (himself plus Đinić, Tomić, Predrag Čelić) stayed in the destroyed house. Then Đinić and Tomić left and did not come back.³⁰⁸

²⁹⁸ Slaviša Žugić, 13 January 2009.

²⁹⁹ Duško Mekić, 18 June 2009.

³⁰⁰ Exhibit T.19, statement given by Stanislav Vukajlović to SIPA investigators on 18 October 2005.

³⁰¹ Stanislav Vukajlović, 23 March 2009.

³⁰² Exhibit T.8, signed statement given by Marko Aleksić to SIPA, 27 June 2005.

³⁰³ Mirko Aščerić, 13 January 2009.

³⁰⁴ Witness D5, 11 February 2009.

³⁰⁵ Witness D5, 11 February 2009.

³⁰⁶ Witness D1, 18 December 2008.

³⁰⁷ Enver Husić, 6 March 2009.

³⁰⁸ Slobodan Stjepanović, 5 February 2009.

177. The photographic exhibits corroborate the eye-witness testimony. An aerial photograph taken at about 14.00 on 13 July 1995 shows buses on the road between Nova Kasaba and Konjević Polje passing by a group of prisoners next to a football field near Nova Kasaba.³⁰⁹ Another aerial photograph, taken at the same time, shows a group of prisoners on the meadow at Sandići and a number of buses and or trucks either parked or passing on the road.³¹⁰ The Petrović video also shows a group of prisoners on the meadow in the afternoon of 13 July.³¹¹

178. The Appellate Panel is satisfied that the 2nd Šekovići Detachment was deployed along the Konjević Polje road to keep the road passable, and established full control of the road for that purpose. The Panel concludes that this road was indisputably used to transport the Bosniak population from Potočari in convoys of buses and trucks, which are the facts that were not disputed by the Defense.

G. SURRENDER OF BOSNIAN MUSLIMS ALONG KONJEVIĆ POLJE-BRATUNAC ROAD

179. On 13 July 1995 many Bosnian Muslims in the column surrendered to the MUP and VRS members along the Konjević Polje - Bratunac road. The evidence shows that hundreds of prisoners were taken to a meadow in Sandići next to the road, after first being frisked for valuables and weapons. The 3rd Skelani platoon of the 2nd Šekovići Detachment was present in Sandići next to where these persons surrendered. Initially persons surrendered in small groups, but as time passed larger groups began surrendering. People came out of the woods to surrender and members of the 3rd platoon stopped them and took their belongings.

180. Both the Trial and Appellate panels accepted as evidence the following fact established by the ICTY:³¹²

“By the afternoon of 12 July 1995, or the early evening hours at the latest, the Bosnian Serb forces were capturing large numbers of these men in the rear,”

181. The evidence presented during the proceedings shows that the Muslims began surrendering to the 2nd Detachment near Sandići on 13 July 1995.

182. Witness Zoro Lukić said that Slaviša Žugić and Zoran Tomić were with him when Muslims began surrendering on the morning of 13 July. He saw that some Muslims were wounded; one was

³⁰⁹ Exhibit T.105.

³¹⁰ Exhibit T.107.

³¹¹ Exhibits T.1 and T.134.

³¹² Accepted fact No. 33 (Anex _2 A).

being carried on a blanket. Rade Čuturić was using a megaphone to call on the Muslims to surrender.³¹³

183. According to witness D5 loudspeakers were operated by persons at the destroyed house to persuade the Muslims to surrender.³¹⁴ Witness D5 stated that a person from Šekovići, whose name he thinks was Zoran, stood by the house with a megaphone and called on people to surrender, telling them that they would be safe and allowed to go to Tuzla.³¹⁵ He called out "Muslims, surrender yourselves."³¹⁶ This was corroborated by Nedeljko Sekula who testified that Zoro Lukić used a megaphone near the destroyed house.³¹⁷ Aleksandar Radovanović and Marko Aleksić also heard (from the hill pass in Sandići) Muslims being called upon to surrender by megaphone.³¹⁸ Cvijan Ristić did not see Zoran Tomić calling for Muslims to surrender but did see the Muslims who did surrender being guarded by members of the 2nd Šekovići Detachment.³¹⁹

184. Witness Danilo Zoljić described men coming from the woods in small groups of one or two and saying "we surrender", and then going to the meadow to join those already there. He saw about ten people coming out of the woods near a stream, saying they wanted to surrender.³²⁰

185. Witness Milutin Kandić of the 1st PJP Zvornik Company unit said that when they returned to Sandići on 13 July he saw small groups of men aged between 15 or 17 and 60 surrendering. Some wore civilian clothes. They came out of the woods and joined the other civilians on the meadow. Members of the 1st PJP company were near the destroyed house. From the balcony he could see civilians going to the Sandići meadow to surrender. Some wore backpacks which they tossed onto the road when the soldiers ordered them to discard them. One particular incident stuck in this witness's mind; he recalled seeing a little girl, aged about 10, coming out of the woods with her father. He was shocked and asked the father why the girl was there, but the father just shrugged and said she wanted to come. Buses were passing by and the father agreed to put the child on the bus. Milutin Kandić put the girl on the bus of his own initiative because he thought they were going to "a camp".³²¹

186. Witness Cvijan Ristić marked on a diagram the position of his unit and the 2nd Šekovići Detachment, including the house, and said that a tank or praga was positioned near the meadow. While he was in Sandići, he saw a large number of buses. He said the Muslims were surrendering

³¹³ Zoro Lukić, 3 March 2009.

³¹⁴ Witness D5, 13 March 2009.

³¹⁵ Witness D5, Exhibit T.12a statement of 18 April 2008.

³¹⁶ Witness D5, Exhibit T.12b statement of 22 May 2008.

³¹⁷ Nedeljko Sekula, 27 August 2009.

³¹⁸ Aleksandar Radovanović, 18 November 2009.

³¹⁹ Cvijan Ristić, 2 July 2009.

³²⁰ Danilo Zoljić, 20 March 2009.

³²¹ Milutin Kandić, 12 August 2009.

down the yellow line marked on the diagram. The megaphone was about 100 meters from him.³²² Zoro Lukić also testified that the unit's tank was stationed near the meadow.³²³

187. Witness D5 testified that when the Muslims came out of the woods "*frisking was carried out and belongings were seized*" mainly by "*guys from the Šekovići Detachment, meaning from Šekovići, but there were individuals from Skelani too*". He did not personally see people taking money from the prisoners but heard rumors later on that up to 15,000 to 20,000 DM was taken. The Muslims who surrendered were unarmed. Their identification was not checked. No lists of names were compiled. After apprehension they were taken to a large meadow in Sandići.³²⁴

188. The Petrović video corroborates the testimony that calls to surrender were made; the video clearly shows Serb soldiers calling out to the Muslims to surrender.³²⁵ The video shows a *praga* or tank on the meadow on 13 July.³²⁶

189. Witness D1, a prisoner on the meadow, saw an anti-aircraft gun and a tank which was firing shells into the woods. He also saw it fire at the wall of a building, blasting one person out of it.³²⁷

190. On the second day of his unit's deployment, witness Stanislav Vukajlović passed through Sandići and saw a tank turned towards a hill. According to this witness "*the Bosniaks who were surrendering were coming down that hill. Before that I heard a praga firing, but I don't remember the tank firing rounds.*"³²⁸ Witness Marko Aleksić testified that the 1st platoon of the 2nd Detachment was deployed in Sandići, while the 3rd platoon was deployed towards Kravica. He was aware that a convoy was taking the road. He heard the sound of a *praga* firing.³²⁹

191. The Court heard evidence from witness D1, witness D2 and Enver Husić, who were in the column of men escaping from Srebrenica through the woods.

192. Witness D1 is one of several known survivors of the massacre in the Kravica warehouse of 13 July 1995 and one of those in the column attempting to break out of Srebrenica. He described his flight from Srebrenica by stating that on 11 July 1995 he was in his house in Srebrenica when he set out trying to reach "free territory" in Tuzla after receiving a message from a courier to do so. The women and children tried to make it to Potočari, while the men set off through the woods, thinking it was safer that way. Seventeen men left from his village that day: all of them are still missing. Some of the younger men in the column carried weapons and were at the head of the

³²² Cvijan Ristić, 2 July 2009, marked on exhibit T.106.

³²³ Zoro Lukić, 3 March 2009.

³²⁴ Witness D5, 11 February 2009.

³²⁵ Exhibit T.1.

³²⁶ Exhibit T.1, see also witness D5, 11 March 2009.

³²⁷ Witness D1, 18 December 2008.

³²⁸ Exhibit T.19, statement given by Vukajlović to investigators, 18 October 2005.

column. Most of the men were elderly. The column was armed at the front and rear but not in the middle. The witness was near the rear of the column. The column was first ambushed near Baljkovica. The witness initially carried his hunting rifle, but gave it to his son-in-law (who has not been seen since). He carried a backpack containing bread and water. Shots were fired at the column while it travelled through the woods. The column travelled towards the area where the shots were coming from with the intent of surrendering, calling out not to shoot. Near Kamenica they encountered some acquaintances and could hear calls for them to surrender. Many people in the column were wounded. They crossed the river and put the wounded down. They surrendered to the Bosnian Serbs and two soldiers searched them for weapons and money. Witness D1 had 100 Deutsche Marks and he gave it to the soldiers. The Serb soldiers were armed with automatic weapons.³³⁰

193. Witness D2, the other survivor of the massacre, was a member of the ABiH who surrendered to the VRS in the Srebrenica enclave on 13 July 1995. He was in the column of Bosnian Muslims trekking through the woods trying to break through the VRS lines to get to Tuzla. He surrendered in the area near Sandići on 13 July. The VRS soldiers searched the prisoners and took everything of value. The prisoners were then taken to the Sandići meadow and guarded there during the day. They were intermittently sprayed with water so that they would not faint.

194. Enver Husić had only just turned 17 in July 1995. Prior to July 1995 he had been living with his family as a refugee in the Srebrenica enclave. He testified during the trial that the shelling of Srebrenica started on 10 July and stopped at around 10 am on 11 July. When the shelling resumed in the afternoon he and his family decided to leave. His mother and sister headed towards Potočari while his brother, his father and he joined the column heading towards Kazani. His mother and sister decided to go with the majority of civilians to the UNPROFOR base in Potočari believing that they could obtain protection there. The men were afraid that they would be slaughtered by the Serbs and decided instead to join the column passing through the woods. Witness Husić described the column as organized but not structured. Most of those in the column were civilians and he did not see them having weapons. He saw some armed men at the back of the column. As the column made its way through the woods on 12 July it came under fire from shells. The column was fired upon from all sides. Enver Husić fell asleep during the night and awoke on the morning of 13 July to see many bodies and blood on the hillside. He found his father wounded from the shelling. He estimated that the column may have stretched for some two to three kilometers ahead of him. They were walking two abreast in pairs when they set off from Jagličići. When he woke up on 13 July, he could hear the Serbs calling for them to surrender, telling them that they were surrounded and would not be hurt and that UNPROFOR would help them and

³²⁹ Marko Aleksić, 4 February 2009.

take them to Tuzla. On the road below they could see soldiers in UN APCs wearing UN blue helmets. Those in the column thought that it was UNPROFOR in the UN APCs and that they would be protected.³³¹ The Serbs said that they could surrender until 14.00, at which point the Serbs would “kill you all”. He knew that the column could not reach Tuzla as it would be shelled and was happy to see the UNPROFOR APCs and blue helmets. He walked with a group to the road, seeing armed soldiers on both sides of the path on the way down. He crossed a bridge across a stream and encountered Serb police who asked them to hand over any valuables and money that they had. They singled out his neighbor and told him to go inside the house, while they were taken to the meadow and ordered to sit down. A tank was parked about 10 meters away.³³²

195. The Zoran Petrović video supports the testimony of Enver Husić and clearly shows Serb soldiers and police using stolen UNPROFOR vehicles and wearing UN blue helmets in the presence of the surrendering prisoners.³³³

196. The evidence established that in the middle of the day on 13 July 1995, while the prisoners were being taken to the meadow in Sandići, General Ratko Mladić arrived there, accompanied by his escort, several senior officers and Borovčanin.

197. Momir Nikolić testified before the ICTY to have known that the MUP forces were under the direct command of Duško Jević and under the command of Ljubiša Borovčanin.³³⁴ On the morning of 13 July he became aware that Mladić was to visit the area. Before General Mladić arrived at Sandići, Momir Nikolić gave instructions to the MUP officers in Konjević Polje:

“I told members of the MUP that the prisoners in Konjevic Polje, those that surrender or those that are captured, should be detained on premises that can easily be secured, that during the day transportation would be organized, and that the imprisoned Muslims would be transported to Bratunac during the day.”

198. He thought that the same fate that had been planned and ordered with regard to individuals captured in Potočari would befall these prisoners too:

199. *“In my opinion, all those captured in that period enjoyed the same status, whether it was on the road or in Potočari itself... Those prisoners were to be transported to Bratunac, temporarily*

³³⁰ Witness D1, 18 December 2008.

³³¹ Thomas Karremans testified at the ICTY that, on the other hand, he was unaware of Muslims ever impersonating Dutchbat or UN soldiers with blue helmets, exhibit T.52, *Blagojević*, T.11165.

³³² Enver Husić, 6 March 2009.

³³³ Exhibits T.1 and T.134.

³³⁴ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, p. 1712. Dragan Jokić was the chief of engineering of the Zvornik Brigade in July 1995.

*detained in the premises and buildings designated for such temporary detention, and after that, killed like all the others that had been separated on the 12th and 13th in Potocari.*³³⁵

200. At around 12.30 Momir Nikolić arrived at Konjević Polje, where he saw about 80 to 100 prisoners on the Sandići meadow. He awaited Mladić's arrival. Nikolić drove back to Bratunac after Mladić left. Along the way he noticed about 500 men being marched along the road. He passed the Kravica warehouse and noticed a few soldiers there.³³⁶

201. Witness Momir Nikolić told the prisoners that they should not worry, and that transportation would be organized to transfer them to free territory.³³⁷ After this Momir Nikolić spoke to Mladić *"in the middle of the road where I reported to him and asked him: 'General, sir, what is going to happen to these men?' And he simply gestured. He didn't say anything. With his hand in answer to my question, he waved his hand and showed me what would happen. I understood that to mean that those men would be killed. Actually, I saw that to be a confirmation of what was already happening."*

202. Witness Milutin Kandić was at Sandići when he saw Mladić arrive and speak to the civilians from a distance of about 10 to 15 meters.³³⁸

203. Witness Dragomir Stupar said that Mladić was accompanied by his entourage and Borovčanin was there from the police.³³⁹ Dragomir Stupar, who was delivering food to members of the 2nd Šekovići Detachment, saw Mladić at the meadow addressing Bosniak women and children who came from Srebrenica on five or six buses. Mladić told them *"don't be afraid, nothing will happen to you and you will be transferred to a safe area."*³⁴⁰

204. Witness Radoslav Stuparović stated that General Mladić came by and addressed the soldiers and police. He heard Mladić say that *"whoever does not have blood on their hands won't be harmed"*.³⁴¹

Witness D1 described sitting on the meadow when Mladić showed up with his entourage who were all wearing uniforms. Mladić said *"do you know who I am? I am General Mladić. You were abandoned by Naser Orić who has fled to Tuzla. You will be exchanged and given food."*

³³⁵ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, p. 1716-1717.

³³⁶ Exhibit T.56 of 6 May 2003..

³³⁷ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, p 1718.

³³⁸ Milutin Kandić, 12 August 2009.

³³⁹ Dragomir Stupar, 27 February 2009.

³⁴⁰ Dragomir Stupar, 27 February 2009.

³⁴¹ Exhibit T.140, Radoslav Stuparović, 9 July 2009, statement 29 June 2006.

205. According to the witness, Mladić also said they would be accommodated somewhere. A round of applause followed. Witness D1 asked Mladić if he could get his shoes out of his backpack, to which Mladić responded “Yes”. Mladić was there for about 15 minutes.³⁴²

206. Witness D2 also described General Mladić address to the prisoners, in which he told them that they would all be exchanged for Serbs. After Mladić left, a VRS commander selected the most-able bodied prisoners, telling them that they would be exchanged. The selected men, including Witness D2, were put onto waiting buses and taken to Kravica where they were taken into the warehouse. He realized as soon as they were put onto crowded buses moving in the direction of Bratunac that they were not going to be exchanged. This became even more obvious when they reached the warehouse.³⁴³

H. TREATMENT OF PRISONERS ON SANDIĆI MEADOW

207. The evidence shows that the prisoners were treated poorly at the Sandići meadow, where several sporadic murders took place in advance of the mass execution at the warehouse. Witness D5 testified that many prisoners were wounded but received no medical treatment. Water, but not food, was provided for the prisoners.³⁴⁴ Witness D5 described the individuals who surrendered as “*exhausted, in rags... most of them were in civilian clothes*”. There were elderly men among them.³⁴⁵ He saw a water truck arrive and someone took water to the prisoners in a jerry can.³⁴⁶

208. The testimony of witness D5 was corroborated by witnesses Enver Husić and D1, who were prisoners on the Sandići meadow on 13 July 1995. They spent several hours on the meadow and described the conditions of detention.

209. Witness D1 said that it was very hot and the soldiers sprayed the prisoners with water from a water tank.³⁴⁷ He saw Serb police or soldiers murder some prisoners. He described how a young man asked for water and Serb soldiers then hit him on the head with a shoe and took him away and shot him in the head about 7 to 8 meters away. Another person asked for his wounds to be treated and was shot on the spot. Witness D1 realized that they were all going to be killed. Witness D1 also saw Serb soldiers taking away a Muslim police officer they knew from Vlasenica (Ahmed) and taking him into a house, where they remained for an hour before all of them came out. Ahmed

³⁴² Witness D1, 18 December 2008.

³⁴³ Exhibit T.143, witness D2 (witness K), *Krstić*, 10 April 2000, p. 2497-2575.

³⁴⁴ Witness D5, 11 February 2009.

³⁴⁵ Witness D5, Exhibit T.12b statement of 22 May 2008.

³⁴⁶ Witness D5, 13 March 2009.

³⁴⁷ Witness D1, 18 December 2008.

came back to the meadow with the soldiers to collect his three brothers and three soldiers took them all away. The body of one of these individuals has been recovered.³⁴⁸

210. Witness Enver Husić was ordered by a soldier on the tank to obtain some water for the prisoners. He took two jerry cans and went to the creek and filled them with water. He estimated that there were fewer than 1,000 men on the 100m-diameter meadow. The prisoners were sitting and crowded in together. Many were wounded. The temperature was around 30 degrees that day. Each prisoner was entitled to a capful of water. He was on the meadow for maybe two or three hours, estimating that he left around 14.00 or 15.00. Enver Husić identified himself in the Petrović video at the time when the words “surrender – where the fuck did you get that T-shirt” are spoken.³⁴⁹ He remembered seeing a civilian camera man, in the company of two or three soldiers, when he surrendered. This witness managed to escape when he was sent again to fetch water. The treatment the prisoners were receiving convinced him that he would die on the meadow or somewhere else. A bus stopped by the meadow and the driver asked Enver Husić to fill his water bottle. He put the water in a bottle and got on the bus while the driver was talking to a soldier. The women on the bus hid him by covering him with bags. The bus drove off without the driver noticing. He got off in Tišće and walked to Kladanj. His wounded father stayed on the meadow and was never seen again. He also left two friends, the “Tihčić brothers from Skelani”, on the meadow. He said that they remained unaccounted for. His brother survived because a man from Vlasenica saved him.³⁵⁰

I. NUMBER OF PRISONERS AND SOLDIERS/MUP OFFICERS ON SANDIĆI MEADOW

211. The evidence indicates that there was a huge number of captured Bosniak men on the Sandići meadow by the afternoon hours of 13 July, who surrendered that day. Notwithstanding the imprecise figures provided by the witnesses in their testimony, which could be expected under such circumstances, it can be estimated that there were more than 1000 people on the meadow. Out of this number, at least 400 to 500 prisoners were in the column to the warehouse.

212. According to witness Petar Mitrović, there were around 500 captured people at Sandići on 13 July. Witness Radoslav Stuparović stated that “*people were surrendering in large numbers*”. He estimated that he saw 400 to 500 prisoners from the meadow moving along the road.³⁵¹ This was

³⁴⁸ Witness D1, 18 December 2008.

³⁴⁹ Enver Husić, 6 March 2009, Exhibit T.1.

³⁵⁰ Enver Husić, 6 March 2009.

³⁵¹ Radoslav Stuparović, 9 July 2009.

corroborated by witness Slobodan Stjepanović, who told SIPA that he saw about 400 people in a column in rows of four persons heading in the direction of Bratunac.³⁵²

213. The Petrović video shows a soldier on the road saying there were 3.000 to 4.000 prisoners, which additionally supports the fact that there were more than 1.000 prisoners. In his report No. 284/95 of 13 July 1995,³⁵³ Ljubomir Borovčanin informed the Police HQ in Pale and the Special Police Brigade in Janja about a combat between the Muslims and the Police in the area of Konjević Polje on 12/13 July. He reported that 200 Muslims were killed, while some 1500 soldiers surrendered to the Police.

214. Witness Danilo Zoljić estimated there were several hundred of unarmed people on the meadow, while about 50 to 60 police were stretched out along the road, with only a small number guarding the prisoners on the meadow.³⁵⁴ Witness D5 spoke about a lot of prisoners, while witness D1, one of the survivors from the meadow, said he did not count, but the prisoners themselves estimated there were up to 2000 of them there.³⁵⁵

215. Various witnesses provided different estimates of the number of guards at Sandići on that day. Witness D1 testified that many soldiers were guarding the prisoners on the meadow.³⁵⁶ Witness D5 estimated that there were around 50 to 60 police in the vicinity of the meadow, of whom about 20 were from the 1st, 2nd and 3rd platoons. About 30 of these were actually on the meadow, standing maybe five to ten meters apart.³⁵⁷ He stated that while he was at Sandići he saw soldiers bringing the prisoners there and heard vehicles taking them away.

216. According to witness D5 members of the three platoons of the 2nd Šekovići Detachment were guarding the prisoners on the meadow.³⁵⁸ Witness Stanislav Vukajlović stated that about seven members of his unit from Jahorina were guarding the prisoners on the meadow in Sandići.³⁵⁹

217. Witness Zoljić radioed Dragomir Vasić for military assistance because only three or four police were securing the prisoners.³⁶⁰

218. Witness D5 also guarded the prisoners. A large number that had surrendered were gathered on the meadow.³⁶¹ Some of them were wounded, some asking for water.³⁶² His specific

³⁵² Exhibit T.11, signed statement of Slobodan Stjepanović to SIPA, 27 October 2005.

³⁵³ T 76

³⁵⁴ Danilo Zoljić, 20 March 2009.

³⁵⁵ Witness D1, 18 December 2008.

³⁵⁶ Witness D1, 18 December 2008.

³⁵⁷ Witness D5, 13 March 2009.

³⁵⁸ Witness D5, 11 February 2009.

³⁵⁹ Exhibit T.19, statement given by Stanislav Vukajlović to investigators, 18 October 2005.

³⁶⁰ Danilo Zoljić, 20 March 2009.

³⁶¹ Witness D5, 11 February 2009.

³⁶² Exhibit T.140, Radoslav Stuparović, 9 July 2009, Statement of 29 June 2006.

assignment was to stay by the water fountain near the destroyed house and send anyone who surrendered to the area behind the house to be searched.³⁶³ A large number of police were searching the prisoners on the meadow.³⁶⁴ Zoro Lukić also saw some soldiers frisking the prisoners on the meadow.³⁶⁵

219. These statements did not produce any clear conclusion about the total number of prisoners on the meadow and about the number of guards securing them. The witnesses gave different estimates due to the constant inflow of prisoners and different time the prisoners noticed how many policemen guarded them. Notwithstanding that the precise number could not be established, it is still clear that the number ranged between one and two thousand. Such a huge number of prisoners and only a few guards required an urgent relocation to a new site, whereupon 400 to 500 prisoners were taken to a nearby warehouse of the Kravica Farming Cooperative.

J. TAKING THE PRISONERS TO KRAVICA WAREHOUSE AND THE NUMBER OF PRISONERS THERE

220. The Panel is satisfied that the evidence proves that more than 1000 Bosniak men were divided in two halves approximately and imprisoned in two rooms of the Kravica warehouse during the afternoon. According to Luka Marković, half of the prisoners were bused to the warehouse. This witness counted more than 15 buses bringing prisoners.

221. The remaining prisoners were marched in a column from Sandići. The number of prisoners in the column corresponds to the number of captives at Sandići as estimated by witnesses. The prisoners were marched in the column to the warehouse in Kravica on the afternoon hours of 13 July.

222. The hangar in Kravica is 61.2 meters in length, 10.2 meters wide and 4.1 meters high. The side facing east is on the left when looked at from the road, and is 30.77 meters wide, while the west side is 24.26 meters in width. It is divided into two separate rooms with separate entrances on the side facing the road. The rear side of both rooms has windows.³⁶⁶ Witness Jovan Nikolić, who was then working as the director of the Kravica Farming Co-operative, described it as an independent farming co-operative with five or six workers, mainly concerned with fruit storage and transportation.³⁶⁷ An ICTY investigation report described it as *“a large warehouse of prefabricated construction utilized as an agricultural warehouse. The walls consist of concrete on the exterior*

³⁶³ Witness D5, 20 March 2009.

³⁶⁴ Witness D5, 13 March 2009.

³⁶⁵ Zoro Lukić, 3 March 2009.

³⁶⁶ Exhibit T.96 – sketch of the Kravica scene.

³⁶⁷ Jovan Nikolić, 15 December 2008.

*and interior walls sandwiching Styrofoam sheet insulation. There are several other buildings in the complex ...”*³⁶⁸

223. Witness Milenko Pepić testified that Rade Čuturić gave him a Motorola radio in the afternoon of 13 July. Čuturić told him that a group of Muslims were supposed to surrender and be transferred to the Farming Co-operative in Kravica. He said the road would need to be closed to allow unhindered passage of the column. Soon thereafter Čuturić ordered Milenko Pepić (over the radio) to close the road to allow the column of captured Muslims to pass. Witness Pepić stated that the traffic that was stopped mainly consisted of buses and trucks taking Muslim civilians from Srebrenica to Kladanj and other areas. Upon receiving the order from Čuturić, Pepić stopped the flow of buses for some time.³⁶⁹

224. Slobodan Stjepanović’s evidence was similar. He stated that he received information at about 18.00 to 19.00 hours that a *“large group of civilians was soon to pass from Konjević Polje to Bratunac and that it was necessary to secure their passing through the secured sections of the road”*.³⁷⁰ After that the column set off from the Sandići meadow.

225. Witness D1 was also in the column that was marched to the hangar. He estimated that the column was about 300 to 400 meters long and that a soldier with a rifle was placed every six or seven meters along the column. Some soldiers from the meadow escorted the column to the warehouse.³⁷¹ He testified that at approximately 16.00 a soldier with a German shepherd dog and a machine gun ordered the prisoners to form a column.³⁷²

226. Witness Milutin Kandić said that he saw soldiers escorting a group of prisoners in the direction of Konjević Polje. The soldiers escorted two groups of prisoners and took them in the direction of Bratunac. He thought that they were civilians because they were wearing civilian clothes and had no weapons.³⁷³

227. Witness Predrag Čelić stated that *“a fairly large column of about 1,000 Srebrenica civilians set off from Konjević Polje towards Kravica...The column was marched by members of the military and police”*.³⁷⁴

228. Witness Marko Aleksić testified that a column of Muslims that had surrendered somewhere near Sandići passed by them as they were securing the road. They were walking three or four

³⁶⁸ Exhibit T.40 - “Summary of Forensic Evidence – Execution Points and Mass Graves”, page 6.

³⁶⁹ Milenko Pepić, 4 February 2009.

³⁷⁰ Exhibit T.11, signed statement given by Slobodan Stjepanović to SIPA, 27 October 2005.

³⁷¹ Witness D1, 18 December 2008.

³⁷² Witness D1, 18 December 2008.

³⁷³ Milutin Kandić, 12 August 2009.

abreast along the road coming from Sandići. The witness thought that those accompanying them could have been police from his unit. He thought that there were about 500 in the column.³⁷⁵

229. In the statement to the Prosecution witness D5 said that the column left Sandići within an hour of Mladić's departure in the afternoon hours of 13 July. Milenko Trifunović issued an order that prisoners were to be taken to the hangar and detained there. The order was passed down to each member. Rade Čuturić ordered the prisoners to form a column.³⁷⁶ The Petrović video also shows Trifunović at the Sandići meadow on 13 July 1995 standing by some prisoners, with the destroyed house in the background.³⁷⁷ Witness D5 gave a detailed account of the departure of the column of Muslims from Sandići to the Kravica warehouse. He testified that the prisoners were taken in groups of four and lined up on the asphalt road. Witness D5's task was to secure the column by escorting it. Both accused and Brane Džinić travelled with the column.³⁷⁸ During cross-examination witness D5 stated that the column set off sometime between 17.00 and 18.30, or possibly a little earlier. Witness D5 was certain that no-one from the Skelani platoon stayed behind, excepting Miladin Stevanović and Nenad Vasić who left before the column left.³⁷⁹ The witness was on the left-hand side of the column, while Slobodan Jakovljević was behind him.³⁸⁰ The column was escorted by members of the 2nd Šekovići Detachment, and so far as Witness D5 could recall no-one outside of the 2nd Detachment marched with the column.³⁸¹ The column marched approximately a kilometer. There was no traffic on the road when the column set off.³⁸²

230. Witnesses D2, Luka Marković and Stanislav Vukajlović described buses taking prisoners to the warehouse.

231. Witness Luka Marković was at the Kravica agricultural when 15 or 16 buses carrying Muslim refugees came to the warehouse. The passengers got off the buses and went into the hangar with their hands behind their necks.³⁸³

232. Stanislav Vukajlović, whose Jahorina (Training Center) unit was also guarding the prisoners on the meadow, stated that "*some of the prisoners who were gathered there entered the buses in*

³⁷⁴ Exhibit T.10, signed statement of Predrag Čelić to SIPA, 27 October 2005. He was then a serving police officer and provided the statement under caution.

³⁷⁵ Marko Aleksić, 4 February 2009.

³⁷⁶ Witness D5, Exhibit T.12b, Statement of 22 May 2008.

³⁷⁷ Exhibit T.1.

³⁷⁸ Witness D5, 11 February 2009.

³⁷⁹ Witness D5, 13 March 2009.

³⁸⁰ Witness D5, 13 March 2009.

³⁸¹ Witness D5, 20 March 2009.

³⁸² Witness D5, 11 February 2009.

³⁸³ Witness Luka Marković, 3 March 2009.

*which there were already some prisoners, and they were transported in the direction of Konjević Polje”*³⁸⁴.

233. Defense witness Radoslav Stuparović estimated that 400 - 500 prisoners were moved in both directions.³⁸⁵ This was his “total estimate” of the number of prisoners on the Sandići meadow; he testified that he saw between 100 and 150 prisoners in the column.³⁸⁶ He stated: “*We asked Zoljić to find someone to take those men from there, because we could not leave them there in the field over night. There were around 50 of us and there were from 400 to 500 prisoners there. The vehicles eventually arrived and they picked up those people and took them to Bratunac. The vehicles included several military trucks and buses. The transportation was done quickly.*”³⁸⁷

234. The evidence shows that there were 400 to 500 people in the column of prisoners moving towards the Kravica warehouse. The other group of prisoners arrived in the warehouse on buses. According to witness Luka Marković, there were 15-16 buses. Both D1 and D2 stated that the hangar was so packed with prisoners there was no room between them. The Panel concludes that this fact and efforts to take as many prisoners as possible from the meadow in Sandići show that the buses were full of prisoners. On the average, one bus can take 40-50 passengers, therefore a simple calculation gives a total number of 600-800 transported prisoners which, together with those brought in the column, amounts to between 1,000 and 1,300 people imprisoned in the warehouse.

235. The warehouse measures 61x10, which is 610 m² in total. In light of the testimony of witnesses D-1 and D-2 and the fact that the warehouse was packed with prisoners, it can be concluded that at least two prisoners had to share 1 m², therefore, there could be around 1,200 prisoners in the warehouse. Both calculations corroborate witness D2, who stated that there were between 1,000 and 1,500 prisoners in the warehouse.³⁸⁸ All this supports the conclusion of the Panel that there were more than one thousand people imprisoned in the warehouse.

K. EXECUTION OF THE PRISONERS AT KRAVICA WAREHOUSE

236. The Court notes that three ICTY trial and two ICTY appeal Chambers, as well as one Trial Panel of this Court have found that members of the 2nd Šekovići Detachment were responsible for the mass murder of hundreds of prisoners on 13 July 1995 at the Kravica warehouse. The

³⁸⁴ Exhibit T19, signed statement of Stanislav Vukajlović to investigators, 18 October 2005.

³⁸⁵ Radoslav Stuparović, 9 July 2009.

³⁸⁶ Radoslav Stuparović, 10 August 2009.

³⁸⁷ Exhibit T.140, para.17.

³⁸⁸ Exhibit T.143, witness D2.

Appellate Panel in this case reached the same conclusion based on the evidence placed into the case record.

237. The Accused, together with other members of the 2nd Detachment, are charged with killing prisoners detained in the warehouse on 13 July. The evidence shows that most of the prisoners were killed that afternoon. Their deaths were caused by bullets expelled from automatic rifles and machine-guns, as well as blasts and fragments from hand-grenades thrown into the warehouse. Several witnesses testified about this incident.

238. Witness D1, one of the prisoners and survivors, entered through the second door as the first room had filled up by the time he had arrived. Men from the column were sitting on the floor and people packed in very tightly. He saw a bus parked in front of the warehouse, and an UNPROFOR APC on the road, but no other traffic. The use of hand-grenades and machine guns on the prisoners lasted until nightfall. There would be pauses in the violence and then it would start again. He heard laughing outside the hangar and the sounds of wounded people crying within. Witness D1 described holding his head down and sitting in a corner waiting for something to hit him. He survived the shooting and spent Friday night in the hangar. Two dead bodies were on top of him. People were crying out for help. The soldiers responded that whoever was healthy should come out. Some wounded people went out and were immediately shot. Witness D1 remembered one person jumping from the window; he survived and is still alive. Witness D1 said that after nightfall a loader was parked in front of the hangar with a water truck to wash away the blood. Around 2 a.m., when there had been no sound from outside for awhile, he sat up and heard two people discussing how to escape in whispers. Witness D1 went out the door and saw a loader there. Blood was on the road in front of the warehouse. A soldier saw him and instructed him to stop. Witness D1 lay down and the soldier told him to disappear. Witness D1 then left in the direction of the river and escaped through the woods.³⁸⁹

239. Witness D2 gave a similar account of the killings in the warehouse as witness D1. He estimated that between 1,000 and 1,500 prisoners were in the warehouse with him. This is how he described what happened:

"While I was inside the warehouse, they fired from all kinds of weapons. They first fired infantry weapons, automatic rifles. Then they would stop doing that. They would shoot for about half an hour, then take a little rest, and then there would be a new series of shooting. They would throw hand grenades through the windows, and grenades fell some two or three meters away from me. I could just feel the explosion, the detonation, and as a result of that I was injured by small shrapnel

*coming from those shells. So I got wounded, I was injured, but I felt well. I wasn't seriously injured. People started screaming, and it was terrible. It is hard for me to describe it. I haven't seen anything like it in any of the horror movies that I had seen. This was far worse than any film. And this lasted all night long, with short breaks. The Serbs would take some rest, make a short break, and then they would resume. They opened fire from anti-aircraft weapons that were positioned on the asphalt road, with Zoljas as well. All I saw was some kind of lightning coming from weapons. A bullet hit me which came from, I believe, an infantry weapon, but I'm not sure.*³⁹⁰

240. Witness D2 managed to escape through a window into a corn field but was noticed by soldiers, who shot him in the shoulder. He lay there pretending to be dead throughout the night and the next day. The next morning he heard soldiers going through the warehouse shooting anyone who was still alive. As he pretended to be dead in the corn field he saw the excavator collecting the bodies and heard the sound of bodies being loaded onto a truck. Later that day he managed to crawl away to safety.

241. Witness Luka Marković, another eye-witness to the massacre, worked at the Kravica Farming Co-operative in July 1995 as a procurement officer. He was working there on Thursday 13 July 1995. That day he saw seven men using automatic weapons, including a machine gun, to shoot into the hangar. Hand grenades were also used to kill the prisoners in the hangar. He estimated that the hangar contained 1,000 to 1,100 people. Luka Marković estimated that the shooting occurred between 20.00 and 21.30 hrs and that it was all finished by 22.00 hrs. He said that the shooting started at around 21.00 hrs when one man was killed. Luka Marković testified that the hand grenades brought tears to his eyes and he presumed that they had been thrown in through the windows. He testified that on Saturday 14 July a man came out of one part of the warehouse and tried to escape and ran off but was shot and killed.³⁹¹

242. Witness D5 gave a detailed account of the killings in the warehouse. He said that while they were standing in front of the warehouse a member of the 2nd Detachment "*Krsto Dragičević (Krlc)* came inside the warehouse and a man from the captured group snatched his rifle and fired one bullet at him. The bullet shot him through his neck. Rade Čuturić came running to take the rifle away. Asked to clarify this in cross-examination, he stated that "*Čuturić grabbed the barrel, pointed the barrel up in the air, and the prisoner fired an entire clip,*³⁹² *then the shooting started...It first started from Milanović's light machine-gun...then most of them from automatic rifles...shooting*

³⁸⁹ Witness D1, 18 December 2008.

³⁹⁰ Exhibit T.143, witness D2 (witness K), *Krstić*, 10 April 2000.

³⁹¹ Luka Marković, 3 March 2009.

directly at prisoners inside the warehouse...by rotating, as one magazine would be emptied and replaced by another."³⁹³

243. This was confirmed by Dragomir Stupar, who was driving his van back to Bratunac past Kravica when he was stopped at the entrance by Rade Čturić. Two VRS soldiers got in – one had a face covered in blood. Dragomir Stupar drove them and Čturić to the hospital in Bratunac. Čturić had injured hands and he told Dragomir Stupar that the detained Bosniaks had seized a rifle and killed Krle and that he had tried to stop the shooting.

244. Witness D5 testified that Milanović started shooting into the second part of the hangar without orders.³⁹⁴ Most of the other men then started shooting into the hangar, firing from their automatic rifles, shooting at the prisoners until their clips were emptied and they had to reload them.³⁹⁵ Witness D5 was a few meters from the entrance while the shooting took place.³⁹⁶ After Krsto was killed between 15 and 20 of the Muslim prisoners attempted to escape. They made it to the semi-circle but were made to retreat into the hangar.³⁹⁷ The men were discharging their weapons around two meters from the door and firing "*by rotating, as magazines were emptied.*" Witness D5 testified that he personally did not shoot at the prisoners and had his rifle hanging from a tree. He could hear voices inside cursing and calling names at the soldiers.³⁹⁸ One member of the detachment, Aleksandar Radovanović, told Witness D5 that he was a traitor and asked why he did not fire. Radovanović had said "*you, pussy, why aren't you shooting.*"³⁹⁹ The shooting lasted, in the words of Witness D5, "*for quite a long time*",⁴⁰⁰ or "*longer than half an hour*".⁴⁰¹ No soldier made any effort to stop the shooting.⁴⁰²

245. Witness Marko Aleksić stated that about half an hour after the column had passed he heard "*a rapid succession of fire coming from the direction of Kravica and one could hear our soldiers cursing and Muslims were heard shouting 'Allahu Akbar'. This was followed by intensive firing in rapid succession.*"⁴⁰³

246. Witness Nikola Ilić was a member of the intervention platoon of the 1st battalion of the VRS Bratunac Brigade. He said that he was on leave between 10 and 14 July 1995. While passing along the road to Sandići on 13 July he saw up to 200 captured Muslim men on a small hill being

³⁹² Witness D5, 11 March 2009.

³⁹³ Witness D5, 11 February 2009.

³⁹⁴ Witness D5, 11 March 2009, (p. 25), 13 March 2009.

³⁹⁵ Witness D5, 11 February 2009.

³⁹⁶ Witness D5, 11 March 2009.

³⁹⁷ Witness D5, Exhibit T.12a statement 18 April 2008.

³⁹⁸ Witness D5, 11 February 2009.

³⁹⁹ Witness D5, Exhibit T.12b statement 22 May 2008.

⁴⁰⁰ Witness D5, 11 February 2009.

⁴⁰¹ Witness D5, 11 March 2009.

⁴⁰² Witness D5, 11 February 2009.

guarded by 10 members of the police. He stopped at the Kravica warehouse to speak to the workers (five were there, including Luka Marković). Some soldiers were there, one of whom was slapping Milan Nikolić. While he was there he saw a column comprised of three to four rows of persons, consisting of a maximum of 100 people, being escorted by about 10 to 15 armed police in camouflage uniform. The column entered the hangar. That was when a Muslim grabbed a rifle and killed a police officer at the door while another grabbed a rifle and held it in the air. A police officer grabbed the rifle by the barrel while the police made a circle around the building to prevent Muslims from leaving. Then the police started shooting. This happened just before evening. The police were shooting from 7 to 8 meters away from the door directly into the warehouse (“*because Muslims started to leave the warehouse*”). One police officer was wounded. A bus arrived and was parked at the door to prevent the Muslims from leaving. The police used automatic weapons and sub-machine guns. Nikola Ilić stayed there for about 15 minutes and left. As he was moving away, he heard the blasts of hand grenades.

247. Witness Jovan Nikolić testified that he drove to the Kravica warehouse at approximately 22.00 on the evening of 13 July with Zoran Erić (one of the Kravica Cooperative employees). When he arrived a man came out of the cornfield and told him to turn off his headlights. He was told of an incident in which many prisoners had been killed. He heard sporadic shooting coming from an unidentified direction. He did not stay there and returned to Bratunac.⁴⁰⁴

248. Witness Milenko Pepić had earlier been ordered to close the road to traffic while the column was passing by. Rade Čturić subsequently called Milenko Pepić and told him to allow the traffic through. Pepić then got on a passing bus and went past Kravica. On the way back he saw hay outside the warehouse that had not been there before. He heard gunfire from the direction of Kravica and heard Čturić speaking by Motorola to Borovčanin, telling him that Krle had been killed. Čturić then told the witness that Krle had been killed and that he was going to Bratunac to receive medical treatment. He said that Krle had been shot, that Muslims started escaping and that the Serbs had shot in response.⁴⁰⁵ In the second part of his statement of 22 May 2008 witness D5 stated that he was unsure whether Miladin Stevanović participated in the shooting, but that he had been present at the warehouse.⁴⁰⁶

249. Zoran Petrović drove past the warehouse on the afternoon of 13 July. His video shows a 27 second clip of a bus and a pile of bodies outside the warehouse on the afternoon of 13 July.⁴⁰⁷

⁴⁰³ Exhibit T.8, signed statement of Marko Aleksić to SIPA, 12 October 2005.

⁴⁰⁴ Jovan Nikolić, 15 December 2008.

⁴⁰⁵ Milenko Pepić, 4 February 2009.

⁴⁰⁶ Witness D5, Exhibit T.12b, statement of 22 May 2008.

⁴⁰⁷ Exhibit T.1, and still exhibit T.111.

250. Finally, a new Defense witness Neđo Jovičić,⁴⁰⁸ who was Ljubomir Borovčanin's driver at the relevant period, testified before the court. On 13 July, this witness drove Borovčanin and a journalist from Serbia, Zoran Petrović Piroćanac, whose video record was admitted into evidence in this case. The witness stated that he saw a horrifying scene passing by Kravica, when Borovčanin said "My god, what is this." The witness turned around and saw a pile of dead bodies in front of the Farming Co-operative.

251. An obvious discrepancy exists in the evidence as to the time when the shooting started and finished. Witness Luka Marković stated that the shooting started around 21.00, but that was denied by witness D5, who testified that the shooting could not have begun at around 21.00 because by that time he was on the way to Skelani (he said that Luka Marković was incorrect in stating that the shooting commenced at around that time).⁴⁰⁹ This was corroborated by witness Marko Aleksić, who heard shooting from about 18.30 lasting for an hour to an hour and a half, and noted that "*in the end one could only hear single shots.*" According to witness Slobodan Stjepanović, after a large group consisting mostly of civilians from Srebrenica passed in the direction of Bratunac in the afternoon he heard shooting which lasted about 30 minutes.⁴¹⁰ Witness Miladin Stevanović confirmed that the shooting started in the afternoon. He sought and was given permission to go to Bratunac. On his way back (at around 17.00-17.30) he was stopped in Kravica by two soldiers. He saw Krle's body covered by a tarp outside the warehouse. He saw about 7-8 other bodies. Trifunović and other members of the detachment were there. Mirko Milanović had a light machine gun. They put Krle's body on the truck and took it to the health center in Bratunac at around 17.30.

252. The hospital records⁴¹¹ show that Rade Čuturić was admitted in the Health Center at 17:40 hours after getting wounded in Kravica, while the dead body of Krsto Dragičević was examined at 19.00 hours. Stevanović stated that they left Kravica with the body of Krsto Dragičević around 17.30, but they had to wait for the doctor in Bratunac, since the Health Center was crowded with wounded people. Later on, they also had to wait for someone to bring the keys to the chapel, which explains the lapse of time between 17.30 and 19.00.

253. The fact established by the ICTY (no. 6 in Annex 2.B) shows that the killings started in the afternoon:

"Meanwhile, Borovčanin arrived at the Kravica Warehouse some time between 5:15 p.m. and 5:30 p.m., after receiving a message from Stupar to go there urgently. Borovčanin saw a pile of bodies in front of the West and Centre Rooms

⁴⁰⁸ Neđo Jovičić, 16 November 2011.

⁴⁰⁹ Witness D5, 11 March 2009.

⁴¹⁰ Slobodan Stjepanović, 5 February 2009.

⁴¹¹ Exhibit T64.

of the Kravica Warehouse and a large number of bullet holes on the outside walls. (ICTY Judgment in the Popović et al. case dated 10 June 2010, para. 432)."

254. Witness D5 described how the shooting started. A member of the Skelani Platoon, Krsto Dragičević, came inside the warehouse to talk to a Bosniak he knew. Soon after that, a man from the captured group snatched his rifle and fired one bullet at him. Čuturić came running to take the rifle away, one burst was fired while he was holding the barrel and Čuturić burned his hands. Then Čop came running to them, grabbed the rifle and threw it behind his back. After that, one of them, Mirko Milovanović, started shooting in the direction of the warehouse from his light machine-gun. He saw bodies fall one over other. The witness stated that hand grenades were also used in the killing of prisoners, they took them from two boxes which were brought there. The shooting lasted rather long.

255. The 2nd Detachment left Kravica in the evening. Witness D5 stated that it was still daylight when they left and when the shooting stopped. He was unsure who ordered them to leave, but they left by bus and truck to Bratunac where they stayed for about half an hour.⁴¹² The entire 3rd Platoon, excepting Miladin Stevanović and the police officers who had left earlier with Krle's body, was on the bus. After the shooting, the Skelani Platoon left for Skelani and "some people (soldiers) with yellow belts arrived."⁴¹³

256. As noted earlier, there is no doubt that there were more than 1000 prisoners in Kravica on 13 July before the killings. It was impossible to determine the precise number of killed people, but the court can justifiably conclude based on the testimony of witnesses that the vast majority of prisoners were killed. This conclusion stems from the testimony of witnesses D5 and D1, who testified that the shooting lasted for some time (even until nightfall – D1) and that hand grenades from two boxes were thrown inside the warehouse.

257. The Defense disputed that the majority of 1000 people were killed as it is alleged in the Indictment, and argued that there still were survivors in the warehouse in the evening. A new witness, Franc Kos, was examined about these circumstances. He was a member of the VRS 10th Sabotage Detachment, who arrived in the area of Kravica on 13 July 1995 with his unit. The transcript of Mevludin Orić's testimony was also read out in the court.

258. According to witness Kos, at around 20.00 hrs he arrived in front of the Kravica Co-operative hangar that day and it was already getting dark. On his way there, he could hear sporadic fire.

⁴¹² Witness D5, Exhibit T.12b statement of 22 May 2008.

⁴¹³ Witness D5, 11 March 2009.

Upon arriving in front of the hangar, he saw a bus and several bodies outside. He also saw some men in uniforms and he assumed it was a unit composed of local people.

259. The witness looked inside and saw people in one room lying, he did not know if they were dead or alive, they looked like they were sleeping. He assumed there were people alive inside because he heard some voices coming from the other side of the hangar. At one moment, a man came out running towards the witness, he was all covered in blood, and someone fired at him. One of the soldiers told the witness to move away or he could get killed. When they were about to leave, a person who came with the witness went back and threw one hand grenade inside through the window.

260. However, the Appellate Panel is not satisfied that this testimony invalidates the Prosecution's averment that the majority of the prisoners in the warehouse were killed by the 2nd Detachment. It clearly follows from the testimony that the witness was in front of Kravica when it was already getting dark, but he saw people lying and they looked to him like they were sleeping. Witness Kos personally saw that the prisoners were being killed (one prisoner covered in blood came out of the hangar running and he was killed on the spot, while the person who was with the witness threw hand grenades in the warehouse), therefore the only conclusion he could reach in such a situation was that the people lying on the floor were not alive.

261. The Panel finds the testimony (transcript) of witness Orić unreliable. According to witness Orić, on 13 July between 21.00 and 22.00 hours, together with other prisoners, he passed in a bus by a large group of 400 to 500 prisoners sitting on a meadow between the road and the warehouse in Kravica. This is in contravention of the entire body of presented evidence, since there is no single piece of evidence presented either by the Prosecution or the Defense which corroborates that there was a large group of alive prisoners in front of the warehouse in the evening. Quite the opposite, the evidence shows that there was a number of dead bodies in front of the warehouse, whose number is not even close to that mentioned by witness Orić. Besides, both the photographs and the video record of the area in front of the Kravica warehouse clearly show that the meadow between the road and the warehouse is too small for such a huge number of prisoners mentioned by witness Orić. Therefore, the Panel cannot accept this evidence as a proof that the mentioned number of prisoners survived the killings in the Kravica warehouse.

262. A doubt as to whether there were survivors in the warehouse after the shooting that afternoon was resolved since the evidence showed that a small number of prisoners did indeed survive that wave of killings. According to witness D1 who survived the killings, not all prisoners were killed and there were new sporadic killings in the morning of 14 July, when all those who survived were called to get out, and those who responded were executed outside. Witness D1 survived and serves as a proof that there were survivors, however, all this does not deny the fact

that the majority of prisoners were killed as a consequence of a massive use of weapons and hand grenades.

L. STATUS OF THE KILLED PRISONERS

263. The Defense argued that the people who surrendered and who were on the meadow in Sandići and in the Kravica warehouse afterwards, were actually prisoners of war, members of the 28th Division of the Army of BiH from Srebrenica passing in a column through the woods.

There is no doubt that the prisoners were mainly men from Srebrenica, many of whom surrendered precisely from the column moving towards the area under the control of the Army of BiH. Nevertheless, there is also no doubt that those men were unarmed when they surrendered on the Sandići meadow and when imprisoned in the warehouse. Furthermore, Petrović's video clearly shows that they were not even in uniforms.

264. Furthermore, the Defense themselves note the obligation of a member of the armed forces to spare the life and treat humanely a member of the enemy forces who surrenders, lays down his weapons or has been overcome.

265. The Appellate Panel reaffirms Article 3 common to the Geneva Conventions which prohibits violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture of all persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, who shall in all circumstances be treated humanely, without any adverse distinction on the grounds of race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

266. Finally, the Accused are charged precisely with acts of violence to life and person. This offense does not require that the acts of killing aimed at extermination be targeted exclusively against civilians. Since the protected value in this case is a national, ethnic, religious or racial group of people, it is entirely irrelevant if the people on the Sandići meadow and in the Kravica warehouse were prisoners of war or civilians.

M. REMOVAL AND BURIAL OF BODIES FROM KRAVICA WAREHOUSE

267. A number of witnesses testified about the removal and burial operation coordinated by the VRS and civilian authorities. The removal of the bodies of the murdered prisoners from Kravica and their burial in previously prepared dug graves commenced on 14 July, the morning after the warehouse massacre.

268. On the morning of Saturday 14 July 1995 Jovan Nikolić telephoned Drago Nikolić about the killings at the warehouse. They arranged to meet. Jovan Nikolić travelled to Kravica at around 9.30 to 10 on the morning of 14 July. There were piles of dead bodies in front of the hangar covered in straw. Entering the hangar he saw more piles of the dead covered in straw. Some soldiers guarded the hangar.⁴¹⁴

269. Witness Ostoja Stanojević, a member of the Zvornik Brigade engineering company, was tasked with driving cargo trucks. On 13 July 1995 he reported for duty to Major Dragan Jokić, the commander of the engineering company of the Zvornik Brigade, at the civilian protection office in Zvornik. He was told he had to “clean the trash in Srebrenica”, that much trash had been left behind after the buses containing the civilians had left.⁴¹⁵ He stayed in a hotel in Bratunac, and the following afternoon (Saturday) a man came to Stanojević and told him to follow him to Kravica, where they were to “do a job together”. A truck at the entrance had broken down. The driver of that truck said that his truck was broken and bodies had to be loaded onto the truck. Four men with masks were taking bodies out of the warehouse. Two were putting them onto a loader from which they were loaded onto the truck. Each bucket held one cubic meter. Two were loaded onto the truck. When the truck was loaded he drove it to a pre-dug grave that was approximately two meters long. There were already bodies in the grave. Two men in masks were there with shovels. Stanojević returned to Kravica for a reloading of bodies and took them to the burial site. He then returned to the hotel in Bratunac.⁴¹⁶

270. Dragan Obrenović stated in his plea agreement to the ICTY that at about 14.00 on 14 July 1995 he received a message to release two machine operators. The release was “related to the work of Popović and Nikolić”, meaning that it was for the burial of the prisoners as part of the plan that Drago Nikolić had informed him of the night before.⁴¹⁷

271. Luka Marković testified that on Saturday 14 July they were manually loading the bodies onto loaders which transferred to the warehouse. Part of the warehouse wall was torn down by a loader to make an opening to get in to load bodies onto the trucks. The body loading operation took two days. Workers came with forks and put hay over the bodies in the trucks once they were loaded.⁴¹⁸

272. Witness Krstan Simić was a construction machine driver normally employed in a mine. In July 1995 he was a member of the VRS Bratunac Brigade performing his work obligation as a truck driver. Krstan Simić and two other truck drivers met Momir Nikolić in front of the Bratunac command. Nikolić ordered them to drive their dump trucks to the Kravica Farming Co-operative.

⁴¹⁴ Jovan Nikolić, 15 December 2008.

⁴¹⁵ Ostoja Stanojević, 15 December 2008.

⁴¹⁶ Ostoja Stanojević, 15 December 2008.

⁴¹⁷ Exhibit T.58, Statement of facts as set out by Dragan Obrenović.

They refueled and he and another driver, Miodrag Obrenović (now deceased), drove there in a convoy of five trucks. Some military police accompanied them to the warehouse. He was unaware of his task before he got there. An excavator and a loader were also there. Bodies were both inside and outside the warehouse hangar when he arrived. Military police from the Bratunac Brigade were at the scene but did not help in the body removal. The police assisted by putting bodies into the bucket of the loader. Around 20 buckets of bodies were loaded into his truck. Bodies were being taken from the hangar through a small opening, but the loader was unable to get in. They had to pull down part of the warehouse wall to allow the loader's bucket access to the warehouse – using a bucket and tools to create a hole to get in. Krstan Simić recognized the hole in photographs tendered into evidence. The civilian protection people were manually putting the bodies onto the bucket which was being loaded onto the trucks. The bodies were all male. When all five trucks were loaded with bodies, a military police officer told the truck drivers they were going in a convoy to Glogova. The convoy drove along an unpaved road near Glogova until they reached a mass grave which was about 50 to 60 meters in length and about 2 meter wide. Soldiers and military police were present. The bodies were unloaded by opening the back of the truck and pushing the bodies into the grave. Krstan Simić's truck was the fourth in line. After unloading the bodies the trucks travelled back to Bratunac to be washed.⁴¹⁹

273. Aerial photographs of Glogova, taken on 27 July 1995, show “two areas of disturbed soil on either side of the roadway” with a bulldozer parked nearby.⁴²⁰ An aerial photograph taken on 17 July 1995 at Glogova shows disturbed soil⁴²¹ at a location a few kilometers west of Bratunac.⁴²²

N. REBURIAL OF THE BODIES OF PRISONERS FROM SREBRENICA AND KRAVICA WAREHOUSE

274. Several months after the massacre at the Kravica warehouse which took place on 13 July, Republika Srpska's highest authorities decided that the bodies had to be dug up and reburied in different places. In September 1995, the chief of security of the Drina Corps, Lieutenant Colonel Popović, told Momir Nikolić that “*the Main Staff of the Army of Republika Srpska has ordered him to transfer the bodies of the Muslims who had been buried in the village of Glogova to a set of new locations in the Srebrenica Municipality*”.

⁴¹⁸ Luka Marković, 3 March 2009.

⁴¹⁹ Krstan Simić, 18 December 2008.

⁴²⁰ Exhibit T.40, page 11 (Manning Report February 2001), see photograph exhibit T.122.

⁴²¹ Exhibit T.120.

⁴²² Exhibit T.123.

275. Nikolić was placed in charge of co-coordinating this effort, which would involve the 5th Engineering Corps of the Drina Corps, Bratunac Brigade military police, the MUP and the civilian authorities, who would provide logistical assistance in the form of procurement of additional heavy equipment, trucks and fuel. Using heavy equipment from socially owned and state owned enterprises (e.g. Bratunac Brickworks, Radnik construction company) the graves in Glogova were dug and the bodies moved to new gravesites in the Srebrenica Municipality. Nikolić coordinated the entire operation. The assistant chief of intelligence of the Bratunac Brigade, Dragiša Jovanović, selected the reburial sites.⁴²³

276. Nikolić testified that it was supposed to be a secret or clandestine operation, but because of the large number of participants – including those who operated the vehicles provided logistic support or were involved in other ways – it could not have been kept secret. The reason for the secrecy was “because it was an illegal act to remove a large mass grave to another site.”⁴²⁴

277. Witness Dragan Obrenović, the chief of staff of the Zvornik Brigade, testified that the reburials occurred in September and October 1995 under the control of Beara and Popović, and they required the involvement of military police, engineers and civilian authorities. The civilian police supervised traffic clearance on the roads.⁴²⁵

278. Several months after participating in the burial operation on 14 July 1995, Krstan Simić received an order from Momir Nikolić at the Bratunac command. He was told he had to “clean Srebrenica of trash and debris”. With the same colleague he took his truck back to the mass grave near Glogova. They drove in the dark and when they arrived there some men were digging up the grave. Backhoes were used to load the trucks up with bodies. When full, the trucks were driven to a location near Jadar where the bodies were unloaded the bodies into new graves. Another loader was waiting for the bodies, and was used to put the bodies into the new grave. A man from civilian protection was providing light for the workers. All five trucks were involved in this reburial. Krstan Simić did one return trip during the night.⁴²⁶

279. Aerial photographs taken on 30 October and 9 November 1995 show disturbed earth at the sites of the Glogova 1 and 2 mass burial sites.⁴²⁷

280. In late September or October 1995 Momir Nikolić told Miroslav Deronjić that the grave in Glogova had been excavated and that the bodies had been moved elsewhere. Nikolić said that the army had ordered him to do it and that most bodies had been moved to the Zeleni Jadar and

⁴²³ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 2003, T.1767-1769.

⁴²⁴ Exhibit T.44, Momir Nikolić, *Blagojević*, 30 September 2003, T.2294-2296.

⁴²⁵ Dokaz T.50, Dragan Obrenović, *Blagojević*, 2. October 2003.

⁴²⁶ Krstan Simić, 18 December 2008.

⁴²⁷ Exhibit T.124, Exhibit T.125.

Čizmići area.⁴²⁸ Maps and photographic maps show that location to be in an isolated area several kilometers south of Srebrenica.⁴²⁹

281. Aerial photographs taken on 2 and 23 October 1995 show disturbed earth around the sites of the Zeleni Jadar secondary graves.⁴³⁰

282. When Momir Nikolić transferred responsibility to his successor he burned any documents that he thought could “compromise” him and the brigade before the three-person commission of senior officers who came to Bratunac, which included the chief of security of the Drina Corps, Majo Pajić.⁴³¹ He also destroyed a report he had compiled in relation to the reburial operation.⁴³²

283. The Butler Report noted that “in contrast to the pattern of normal military accountability procedures followed by the VRS Drina Corps and subordinate formations during the actual commission of the criminal acts, the concealment aspects of the crime took place under a much greater cloak of secrecy” that left few documentary records.⁴³³ Butler found some records of exhumations and reburials that took place between 7 September and 2 October at Lažeta 2, Petkovac and Kozluk, from where the bodies were moved to Hodžići, Liplje and Čančari.⁴³⁴

O. FORENSIC EVIDENCE AT THE WAREHOUSE

284. It is clear, based on the forensic evidence, that a massacre had occurred at the Kravica warehouse, and that automatic weapons and explosive devices were used inside the warehouse. In September 1996, a team from the US Naval Investigative Service assisted investigators from the ICTY in a forensic examination of part of the Kravica warehouse. The team collected biological evidence and took samples of human tissue, hair and blood and swabs of explosive residue from the walls and floor. It also collected projectiles and fragments from the walls and building.⁴³⁵

285. The team examined the left side of the western part of the room in the warehouse. The forensic report provided evidence consistent with that of the eye-witnesses and survivors of the use of explosives to kill the prisoners. The team found on the interior north wall “impact areas” next to blood and tissue splatter extending to the ceiling. The western interior wall had an explosive

⁴²⁸ Exhibit T.55d, Statement of 25 November 2003.

⁴²⁹ Exhibit T.126, Exhibit T.127.

⁴³⁰ Exhibits T.128, T.129, T.130.

⁴³¹ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 2003.

⁴³² Exhibit T.44, Momir Nikolić, *Blagojević*, 1 October 2003.

⁴³³ Exhibit T.86, Butler Report, 11.0.

⁴³⁴ Exhibit T.86, Butler Report, 11.1.

⁴³⁵ Exhibit T.87.

“impact site with significant blood and tissue splatter and dripping patterns” with “two suspected seats of explosive detonations along the wall”. One explosion originated near the floor. Tissue and blood splatter patterns were present near the explosion site and extended almost 4 meters off the floor.

286. The southern interior wall had six areas marked with explosive residue detonations and numerous impacts consistent with having been the seat of explosive detonations. Extensive suspected blood splatter patterns extending up the wall were dispersed around the residue. Steel reinforcing bars inside the concrete walls were broken, as if from an explosion. The east interior wall contained the possible seat of a blast as well as numerous impact defects with explosive residue and blood and tissue splatter.

287. The southern exterior (front) wall was heavily marked with hundreds of impact defects, most heavily concentrated around the doors. Three metal fragments consistent with the jacketed portion of a bullet were recovered. The northern exterior wall had a large hole. Underneath the hole was a shallow mound of earth with 30 suspected human bone fragments inside. Numerous impact marks were found around a smaller doorway and on the exterior wall. Significant damage had occurred to the top and west margins of the larger doorway (at the eastern end). This was indicative of an inward force being applied.⁴³⁶

288. Investigations and analyses of the mass grave sites provided additional evidence of the murders. According to the ICTY, “In April 1996 they commenced forensic examinations of suspected execution points and exhumation of mass graves.”⁴³⁷ “Forensic evidence showed that there were two types of mass graves, ‘primary graves’, in which individuals were placed soon after their deaths and ‘secondary graves’, into which the same individuals were later reburied.”⁴³⁸

289. This forensic evidence is consistent with that of the eye witnesses. An ICTY investigation report (“Graves Exhumed in 2000”) concluded that one mass grave site in particular, Glogova 1, was linked to the Kravica murders through artifacts and other evidence. The report stated that:

Glogova 1 is a primary, disturbed mass grave located on a dirt road off the Konjević Polje to Bratunac Road near the village of Glogova. ...

Ample evidence was located within the Glogova 1 grave linking it to the mass execution point of Kravica Warehouse. This evidence includes broken masonry and door frames indistinguishable from that located at the Kravica Warehouse, as well as artifacts such as car parts and straw described by a survivor of the massacre as being present in the warehouse.

⁴³⁶ See photographs exhibits T.112, T.113, T.114, T.115.

⁴³⁷ Accepted fact number 30 (Annex 3).

⁴³⁸ Accepted fact number 31 (Annex 3).

... The bodies of at least 191 individuals and 283 body parts were located within the graves. Due to time constraints, a limited number of autopsies have been conducted and the calculation of the MNI (Minimum Number of Individuals) has not yet been made. ...

The Glogova 1 gravesite is a primary grave made up of at least 6 sub-graves [C,E,F,H,K and L].[...] A particular feature of some of the graves...was the high incidents of apparent blast and shrapnel injury to the bodies. Located within some of the graves were grenade "fly off" levers, as well as apparent pieces of grenade and shrapnel. The items located within the graves and the injuries evident in the bodies fully supports witness testimony of the process of execution and body removal at the Kravica Warehouse.

A direct physical link to the Kravica Warehouse execution point was found in each of the Glogova 1 graves. ...

Although post-mortem examination has not been made of all the bodies from Glogova, it is clear that the victims within the grave suffered a violent death. Bodies were discovered with bullets and shrapnel embedded in bones and decomposed flesh. Many bodies showed signs of high impact fractures, many of which were consistent with the use of explosives and hand grenades. ...The remains varied in age, however, at least one individual was described by an anthropologist as being approximately 12 to 14 years of age.⁴³⁹

290. In 2000 ICTY investigators exhumed mass-graves in Glogova (Glogova 01 and 02). Emeritus Professor Richard Wright concluded in respect of Glogova 01 that bodies had been dug up and removed from that grave.⁴⁴⁰

291. ICTY investigator Dean Manning's report of February 2001 concluded that "*ample evidence was located within the Glogova 1 grave linking it to the mass execution point of Kravica warehouse. The evidence includes broken masonry and door frames indistinguishable from that located at the Kravica warehouse, as well as artefacts such as car parts and straw described by a survivor of the massacre as being present in the warehouse*".⁴⁴¹ An ICTY investigation diagram provides an overview of the execution sites, as well as primary and secondary graves.⁴⁴² A map shows their location.⁴⁴³

292. In 2000 ICTY investigators took masonry, tile, insulation and paint samples from the warehouse for comparison with similar materials present on the sites of mass-graves. The investigators reported that forensic samples taken from the mass-grave Glogova 01 matched those taken from the warehouse. The report concluded that "*the action of enlarging the doorway of Kravica warehouse...would have resulted in the component parts of that doorway and the surrounding masonry falling on and amongst the bodies of the victims that lay within. It would have*

⁴³⁹ Exhibit T.41, p. 11.

⁴⁴⁰ Exhibit T.85.

⁴⁴¹ Exhibits T.40, T.31, T.42 "4. Glogova 1 – primary grave".

⁴⁴² Exhibit T.116.

been inevitable that the use of a bucketed plant machine, scooping up and removing those bodies from the building would also have picked up anything lying with the bodies...that debris was conveyed with the bodies and deposited with them in their place of burial.”⁴⁴⁴

V. PARTICIPATION OF THE ACCUSED, AS ALLEGED IN THE INDICTMENT

293. The Indictment alleges that on 13 July 1995 the Accused participated in a reconnaissance operation and in armed attacks using tanks, Pragas, anti-aircraft guns and other infantry weapons against the column of Bosniaks in the area of Kamenica near the road.

294. The Accused are also charged with forcing Bosniak men to surrender (encouraging and luring them by making false promises that they would be exchanged). They participated in capturing several thousand Bosniaks who, fearing execution by the RS MUP and VRS, had attempted to escape from the safe area through the forest. The escapees were searched and their money and valuables confiscated. They were then ordered to lay down food, clothes and other things they had in their bags.

295. In the afternoon of the same day the Accused allegedly escorted a column of around 1,000 captured Bosniaks from Sandići to the warehouse of the Kravica Farming Cooperative, knowing that they were to be executed, and, after the captured Bosniaks were imprisoned in the Warehouse, killed the majority of the captives. It is alleged that the Accused Vuković participated in the execution by throwing hand grenades at prisoners, and the Accused Tomić by shooting from an automatic rifle, while other members of the 2nd Detachment used light machine guns, rifles and hand grenades to kill the prisoners.

296. The Appellate Panel is not satisfied that the presented evidence proved all the allegations of the Indictment.

297. The Appellate Panel concludes that both Accused were members of the 2nd Šekovići Special Police Detachment at the relevant time. Vuković was a member of the 1st platoon, whereas the Accused Tomić was a member of the 2nd platoon.

298. Prosecution witnesses Marko Aleksić, Mirko Aščerić and Slobodan Stjepanović, Slaviša Žugić and Predrag Čelić were all members of the same Detachment and testified about the status

⁴⁴³ Exhibit T.133.

⁴⁴⁴ Exhibit T.90.

of the Accused. The Defense did not dispute that they were members of the police force, and this fact is proven by Prosecution Exhibit T59 (List of members of the 2nd Šekovići Detachment).

299. Based on the presented evidence, the Court is satisfied beyond a reasonable doubt that both Accused were present during the search of the terrain above Potočari, and that both of them were later deployed along the Bratunac – Konjević Polje road and at Sandići on 13 July. The Appellate Panel is satisfied that the Accused Vuković was present while the column of prisoners marched from Sandići to the warehouse in Kravica, where he subsequently participated in the killings of Bosniak men imprisoned in the hangars as alleged in the Indictments. However, the Panel is not satisfied beyond a reasonable doubt that the Accused Tomić participated in this crime.

300. Other allegations of the Indictment were dismissed since they were not corroborated by evidence. There is no proof that the Accused participated in earlier reconnaissance operations or artillery attacks against the column of Bosniak men moving through the woods. The Panel is also not satisfied that these two Accused induced Bosniak men to surrender by extending false promises of exchange.

301. The Defense for Zoran Tomić did not dispute that he participated in the search of the terrain above Potočari with other members of his unit.

302. Defense witness Cvijan Ristić saw the Accused Tomić at the yellow bridge.⁴⁴⁵ Witness D5 saw the Accused Tomić on the morning of 12 July before leaving to search the terrain, in the line-up at Bjelovac. Then he saw him again when they reached the yellow bridge and when they got up the “Budak hill”, although he did not see him going into any houses.⁴⁴⁶ Prosecution witness Zoro Lukić testified that Zoran Tomić was with them during the search of Budak, and that he was with Brano Džinić.⁴⁴⁷

303. Witness D5 thought that the Accused Vuković had also participated in the search, and his assumption was based on the fact that Vuković was at Sandići the following day (13 July). Witness Danilo Zoljić was at the yellow bridge on 12 July and he heard Ljubiša Borovčanin verbally ordering 1st Company Commander Radomir Pantić and 2nd Detachment Commander Rade Čturić to search the area above Potočari, and he could see people entering some houses.⁴⁴⁸ Witness Marko Aleksić, the then Commander of the 1st Platoon, same as other infantry platoon commanders, received an order from Rade Čturić to take the right-hand side of Potočari. They marched to an elevation above Potočari. After that, they were sent to the Kravica –Konjević Polje

⁴⁴⁵ Defense witness Cvijan Ristić, 2 July 2009.

⁴⁴⁶ Witness D5, 13 March 2009.

⁴⁴⁷ Zoro Lukić, 3 March 2009.

⁴⁴⁸ Danilo Zoljić, 20 March 2009.

road and he personally deployed the Accused Vuković, Duško Mekić and Mirko Aščerić on the road.⁴⁴⁹

304. Based on this evidence, the Panel concludes that the Accused Vuković also participated in the search of the terrain above Potočari on 12 July.

A. PRESENCE OF RADOMIR VUKOVIĆ AND ZORAN TOMIĆ ON KONJEVIĆ POLJE – BRATUNAC ROAD ON 12 AND 13 JULY 1995

305. The evidence shows that members of the 2nd Šekovići Detachment, including the Accused Radomir Vuković and Zoran Tomić, were deployed along the road on 12 July 1995. Their task was to keep the road passable on 12 and 13 July so that Bosniak women, children and elderly from Srebrenica could be transported.

306. Witness Slobodan Stjepanović, a member of the 2nd platoon, was sent from Potočari to Bratunac and then deployed on the road between Kravica and Bratunac. He was with Predrag Čelić, Brano Džinić and Zoran Tomić and they were deployed on one section of the road with the task to secure the road in order to allow the unimpeded traffic.⁴⁵⁰ Witness Predrag Čelić confirmed that the 2nd platoon was deployed on the road between Sandići and Bratunac. Zoran Tomić was on the road for a while, together with Brano Džinić. The four of them - Čelić, Tomić, Džinić and Slobodan Stjepanović - were there together near a house. They spent the night of 12/13 July in the house. Predrag Čelić knows both Accused and identified them in the courtroom.⁴⁵¹

307. Witness Milenko Pepić testified that Zoran Tomić was stationed on the road along with other members of the 2nd platoon. He knew Zoran by the nickname of Zgembo and identified him in court.⁴⁵² Several other witnesses testified to the deployment of the two Accused along the road on 13 July 1995, including witness D5.⁴⁵³

308. Defense witness Cvijan Ristić testified that Zoran Tomić was securing the road near Predrag Čelić. He saw Tomić and Zoran Lukić near a house the 2nd Šekovići Detachment was using. His commander ordered them to form a horse-shoe formation to guard against attack. He saw Zoran Tomić on the night of 12 July with Čelić, guarding each other (one sleeping and one awake).⁴⁵⁴

⁴⁴⁹ Marko Aleksić, Exhibit T.8, Annex 2A.

⁴⁵⁰ Slobodan Stjepanović, 5 February 2009.

⁴⁵¹ Predrag Čelić, 5 February 2009.

⁴⁵² Milenko Pepić, 4 February 2009.

⁴⁵³ Witness D5, 11 February 2009.

⁴⁵⁴ Cvijan Ristić, 2 July 2009.

Witness Nedeljko Sekula first saw Tomić when he arrived near the destroyed house – Predrag Čelić was further away. Tomić came to smoke near the four men who were at the mortars (Sekula described him as a chain-smoker).⁴⁵⁵ Defense witness Radoslav Stuparović toured along the road and saw Zoran Tomić and Predrag Čelić.⁴⁵⁶

309. Neđo Jovičić, a new Defense witness, stated he saw the Accused and said hello to him at a pass on the road near Sandići. He was standing there at that time, while the prisoners were on the meadow.

310. Witness Marko Aleksić, the acting commander of the 1st platoon, testified to personally deploying his unit members Radomir Vuković, Duško Mekić, Mirko Aščerić on the road adjacent to members of the 2nd platoon, about 500 meters from the Kravica Farming Co-operative. His unit was deployed along the road from Kravica to Konjević Polje near Sandići and tasked with securing the road by establishing a combat line to prevent Muslims from passing through.

386. Witness Slaviša Žugić also testified that Radomir Vuković was deployed along the road. Žugić did not know him well, but knew his nick-name was *Vojvoda* and did not know any other *Vojvoda* in the 1st platoon. Žugić also identified Vuković in court as this *Vojvoda*.⁴⁵⁷

311. Witness D5 recalled that he saw Vuković along the road.

312. The two Accused and their defense counsel did not deny that they were deployed on the road on 12 and 13 July 1995. The Panel, having assessed the evidence and finding the witness testimonies to be consistent with one another, is accordingly satisfied that it has been established beyond a reasonable doubt that both Accused were deployed and present on the road on 12 and 13 July 1995.

B. PRESENCE OF RADOMIR VUKOVIĆ AND ZORAN TOMIĆ ON THE SANDIĆI MEADOW

313. Given the ample Defense evidence, in particular the testimony of Defense witnesses, the Appellate Panel has not explained every single piece of evidence relevant to the presence of the Accused in this area and their participation in the events which followed on 13 July 1995, but generally addressed the reliability of witness testimony, both individually and in correlation with other evidence.

⁴⁵⁵ Nedeljko Sekula, 27 August 2009.

⁴⁵⁶ Radoslav Stuparović, 9 July 2009.

⁴⁵⁷ Slaviša Žugić, 13 January 2009.

314. The Appellate Panel notes that all the witnesses who belonged to the 2nd Detachment or other police formations which coordinated their activities with the 2nd Detachment in the area of Srebrenica, gave incomplete accounts of the events in their testimony and resorted to stating they did not remember the crucial moments of the 13 July 1995. The witnesses were unable to provide precise information about the number of prisoners on the Sandići meadow or in the column, and/or to give a precise account of the killings in the warehouse.

315. Their testimony was incomplete and inconsistent partly because they feared they could incriminate themselves. The other reason was to avoid incriminating their former co-combatants and spare themselves from any inconveniences potentially resulting from their testimony to the detriment of the Accused. However, it cannot be ignored that both prosecution and defense witnesses knew the Accused and their families, since all of them lived in a fairly small area and/or worked with them after the war.

316. The Appellate Panel evaluated the testimony of every witness and compared the facts arising from their testimony to the facts established on the basis of other witness statements and documentary evidence to determine if they are consistent with or in contravention of other evidence of this case. The Panel finally concluded that the witnesses were mainly reliable when they spoke about not so relevant facts. On the other hand, they did not know or could not remember the specific assignments of the Accused. Consequently, the Panel was left with a very small number of witnesses who actually wanted to testify about the events in the warehouse and the participation of the Accused in them. Therefore, the Panel based its conclusion mainly on those portions of witness testimony which were consistent with the other presented evidence.

317. Mirko Aščerić saw Radomir Vuković at Sandići, wearing his bandana as always, and he also saw him in the bus when they set off from Srednje.⁴⁵⁸ Photographs tendered into evidence by Defense Counsel for Vuković also show him in 1995 wearing green camouflage, blue police uniform and a black bandana.⁴⁵⁹

318. Defense witness Radoslav Stuparević testified he saw the Accused Tomić on 13 July at Sandići. He described his appearance in 1995 as being “quite different” at that time; Tomić was thinner with dark complexion. He was known as a person who talked and joked a lot.

⁴⁵⁸ Mirko Aščerić, 13 January 2009.

⁴⁵⁹ Exhibits O.1.25, 27, 28, 29, 30 and 37.

C. PRESENCE OF THE ACCUSED IN THE COLUMN OF PRISONERS AND PARTICIPATION IN THE EXECUTIONS

319. With regard to the presence of the two Accused in the column that escorted the prisoners to the Kravica warehouse (where they were killed soon afterwards), the Appellate Panel is satisfied only that the Accused Vuković's presence and participation in the crime was proved beyond a reasonable doubt. The presence of the Accused Tomić, however, with the column and in front of the hangar in Kravica were not proved.

320. Testimony of witnesses D5 and Petar Mitrović's statement, clearly show that the majority of 2nd Šekovići Detachment members escorted one part of the prisoners to the Kravica warehouse. The Appellate Panel concludes that witness D5 provided the only direct evidence that these Accused escorted the column to the warehouse. Other testimony, in particular testimony provided by members of the 2nd Detachment and/or other formations which were in the field at the relevant time (PJP and Jahorina) could not be taken as a basis for a clear conclusion.

321. In his witness statement of 22 May 2008, Witness D5 named the members of the Skelani platoon who escorted the column towards Kravica. There were others were from the 1st and 2nd platoons, but the witness was back then unsure of their names. In the same statement witness D5 mentioned that "Zgembo" escorted the column. He did not mention Vuković.⁴⁶⁰ When witness D5 was cross-examined as to why he had not mentioned the presence of Vuković in his statement of 22 May 2008, he explained that he did not remember it immediately, but that he remembered it later on and stated: "*I am sure about Vojvoda ... based on the throwing of hand grenades, because as far as I recall nobody joined us later.*"⁴⁶¹

322. Witness D5 testified in the first instance proceedings that Zoran Tomić escorted the column. Witness D5 was on the left hand side facing towards Sandići, and thinks that Tomić must have been on the other side of the column because he could not see him on the same side.⁴⁶² Witness D5 knew one of the prisoners in the column and he wanted to help him to escape to the woods, but Tomić forced him back into the column, took his money away, as well as his official police ID, which Tomić threw away and trampled on.⁴⁶³

323. The Petrović video corroborated witness D5's testimony with respect to the presence of Mirko Milanović of the 2nd Šekovići Detachment. Mirko Milanović is shown sitting with Milojko Milanović of the 1st PJP Company Zvornik in the vegetation on the side of the road about 100

⁴⁶⁰ Witness D5, Exhibit T.12b Statement of 22 May 2008.

⁴⁶¹ Witness D5, 11 March 2009.

⁴⁶² Witness D5, 13 March 2009.

meters south of the Sandići meadow at 16.12 hrs on 13 July 1995. Witness D5 mentioned that Mirko Milanović was present both in front of the hangar and at Sandići.

324. Witness D5's evidence that Borovčanin was present when the column set off is consistent with the video evidence which shows Ljubiša Borovčanin in this same location 22 seconds later. Another video still shows him on the Sandići meadow with a member of the 1st Intervention Platoon of the Zvornik CSB. Still another shows him at the meadow standing next to a Serb soldier or MUP officer in camouflage uniform wearing a stolen UN blue helmet.⁴⁶⁴

325. Witness D1 was also in the column that was marched from Sandići to the warehouse. He estimated that the column was about 300 to 400 meters long, that soldiers were placed on both sides of the column and that a soldier with a dog also escorted the column.

326. This testimony is corroborated by the established fact no. 2 in Annex 2.B:

"PW-156 and many other Bosnian Muslim men were ordered to form a column and march from Sandići Meadow to Kravica, arriving in front of Kravica Warehouse between 3 and 5 p.m.. The Bosnian Serb Forces accompanying them were in military uniform, with automatic rifles and wearing ammunition belts. A Bosnian Serb man in civilian clothes, accompanied by a German shepherd dog, headed the column as it walked to Kravica Warehouse. (ICTY Judgment in the Popović et al. case dated 10 June 2010, para. 426)."

(a) VUKOVIĆ

327. The indictment alleges that Radomir Vuković participated in the execution of prisoners by throwing hand grenades at the prisoners in the warehouse.

328. The forensic evidence proves beyond a reasonable doubt that hand-grenades were thrown at the prisoners inside the warehouse, and that prisoners were shot with machine-guns and rifles.

329. Witness D1, who was inside the hangar, saw hand grenades being thrown in through the windows and heard and felt grenades exploding inside.⁴⁶⁵

⁴⁶³ Witness D5, 11 March 2009.

⁴⁶⁴ Exhibit T.1, Exhibit T.134.

⁴⁶⁵ Witness D1, 8 December 2008.

330. About 30 minutes after the column had passed, from about a kilometer away, Slobodan Stjepanović heard rifle shooting *“accompanied with sporadic light detonations resembling the detonations of hand grenades.”*⁴⁶⁶

331. During the re-enactment of events at the Kravica warehouse, witness Luka Marković said regarding the hand grenades, *“I only heard detonations and we felt pinching, you know, in our eyes. We assumed that was because of the hand grenades because they could not kill them inside as they were locked in”*. The witness then identified the window through which hand grenades could have been thrown in, and the information was recorded.⁴⁶⁷

332. Witness Marko Aleksić said that *“after some time, in addition to firing, one could hear the sound of detonating grenades...similar to the sound of hand grenades blasts”*.⁴⁶⁸

333. Witness D5 saw two boxes of hand grenades, but did not know whether they were full or empty. The hand grenades were brought to the warehouse on a truck.⁴⁶⁹ Witness D5 could see inside the hangar: *“Dead bodies one over the other, across one another and fell down”*, and after the shooting from rifles and light machine-guns members of the 2nd Detachment used hand-held grenades. Radomir Vuković and Brano Džinić threw hand grenades into the hangar at the prisoners. Witness D5 said this during his direct examination.⁴⁷⁰ When cross-examined, the witness said he was certain that hand grenades were thrown into the first part of the hangar. A total of two cases of hand grenades were thrown into the hangar.⁴⁷¹

334. Witness D5 is the eye-witness to Vuković’s participation in the killings as described in the Indictment. In addition to this witness, the participation of the accused Vuković was confirmed by other evidence which will be stated later in the Verdict.

335. Speaking about the hand grenades, witness D5 said that *“when the shooting stopped, grenades were thrown...only two men were throwing hand grenades...Vojvoda and Čupo”*.⁴⁷² Witness D5 testified that some prisoners were still alive after the shooting and hand grenade throwing was over as he *“could hear voices from inside the hangar, cursing and calling names.”*⁴⁷³

336. Witness D5’s identification or recognition of Radomir Vuković was, in the Court’s view, strong. Witness D5 first met Vuković in 1993 when he (witness D5) joined the Special Police

⁴⁶⁶ Exhibit T.11, signed statement of Slobodan Stjepanović to SIPA, 27 October 2005.

⁴⁶⁷ Exhibit T.15.

⁴⁶⁸ Exhibit T.8, signed statement of Marko Aleksić to SIPA, 12 October 2005.

⁴⁶⁹ Witness D5, 20 March 2009.

⁴⁷⁰ Witness D5, 11 February 2009.

⁴⁷¹ Witness D5, 11 March 2009.

⁴⁷² Witness D5, Exhibit T.12b Statement 22 May 2008, also Witness D5, Exhibit T.12b Statement 22 May 2008.

⁴⁷³ Witness D5, 11 February 2009.

Brigade.⁴⁷⁴ In 1995, witness D5 only knew Vuković as “Vojvoda” and as a member of the 1st Platoon of the 2nd Detachment. The unit had only one person nicknamed Vojvoda. He did not recall Vuković having long hair, but he recalled him wearing a black bandana over his forehead.⁴⁷⁵ Of Vuković’s appearance in 1995, the witness said: “*he wore a black bandana across his forehead, while we were all issued with black berets*”.⁴⁷⁶

337. Witness D5 correctly identified the Accused in the courtroom during his testimony on 11 February 2009. When cross-examined on 20 March 2009, witness D5 said that both of them were briefly incarcerated at the same time in the Belgrade prison while awaiting extradition to BiH prior to the proceedings before the Court of BiH. Witness D5 attempted to contact him and to talk to him through one imprisoned member of the Zemun Clan, who communicated with Vuković and through the guards. He wanted to contact him at that time to ask him if he had any information about the situation in BiH, if he heard any rumors and about the contents of his statement. It was then when he learned that Vuković was charged with the events in Kravica. However, Vuković did not want to talk to him.

338. Defense Counsel for Radomir Vuković requested that witness D5 identify his client from five photographs of Vuković in uniform during the war, some from 1995.⁴⁷⁷ Witness D5 correctly identified Radomir Vuković in the pictures, and he also correctly identified a contemporaneous photograph of Radomir Vuković.⁴⁷⁸ The photographs the Defense tendered into evidence show the Accused Vuković with a black bandana over his forehead. Witness Mirko Aščerić confirmed he saw Radomir Vuković in Sandići with a bandana he always wore.⁴⁷⁹ This evidence supports witness D5 in stating that the Accused Vuković wore a black bandana over his forehead in 1995. In 2008, Radomir Vuković and witness D5 were briefly incarcerated at the same time in the Belgrade prison while awaiting extradition to BiH in respect of charges related to Srebrenica. Witness D5 said he saw Vuković every day in the prison and recognized him immediately, but that Vuković did not want to talk to him.⁴⁸⁰

339. The Appellate Panel concludes that the person witness D5 refers to as Vojvoda in his testimony is the Accused Vuković.

340. In addition to witness D5, Petar Mitrović also gave a statement during the initial investigation in an earlier case of the Court (X.-KR-5/24) concerning the participation of a person nicknamed

⁴⁷⁴ Witness D5, 11 March 2009.

⁴⁷⁵ Witness D5, 20 March 2009 (page 9 English).

⁴⁷⁶ Witness D5, 20 March 2009.

⁴⁷⁷ Witness D5, 11 March 2009, Exhibits O-I-25, O-I-26, O-I-27, O-I-28, O-I-29, O-I-30.

⁴⁷⁸ Witness D5, 11 March 2009, Exhibit O-I-10.

⁴⁷⁹ Mirko Aščerić, 13 January 2009.

⁴⁸⁰ Witness D5, 20 March 2009.

Vojvoda “who was throwing hand grenades with Čupo.” This statement was admitted into evidence during the first instance proceedings.⁴⁸¹

341. In this statement Petar Mitrović said that in addition to the sound of machine guns and rifles, he also heard explosions of hand grenades in front of the warehouse in Kravica on 13 July. Two members of the police, nicknamed Vojvoda and Čupo, were the ones throwing hand grenades. He did not know their full names. He described Vojvoda as a short, chubby man, with brown hair. Petar Mitrović was summoned as a prosecution witness. He denied the major part of his earlier statement and alleged that pressure had been put on him when he had given the statement. The Appellate Panel evaluated this explanation and found it confusing and conflicting. Mostly he stated that he could not recall his statements, but he also denied having made certain statements regarding the participation of his co-combatants in the relevant incident. When questioned as to how such statements made it onto the record, he claimed that he did not hear the record being read back to him by the recorder “because he had a headache”. Despite these claims, the Panel concludes that Mitrović’s statement was correctly taken in accordance with the CPC of BiH; the suspect had an attorney during the examination, he was instructed of his rights and, being aware of them, he signed the Examination Record. No credible evidence was presented to the Appellate Panel to show that he was placed under any pressure during the examination. Therefore, the Record of Examination of Petar Mitrović is a credible, in particular because the extensive facts provided concerning the circumstances relating to the all the moreso in light of the fact that the information he provided concerning events in the warehouse was consistent with other evidence the Panel heard.

342. Witness Jovan Nikolić, who served as director of the Kravica Farming Co-operative, corroborated the testimony of witness D5 and Petar Mitrović’s statement by stating that he arrived at the Kravica Farming Cooperative at around 10 p.m. on 13 July. At that time Zoran Erić (one of the employees in the Cooperative), panick-stricken, told him that Bosniaks were imprisoned in the warehouse some time between 5 and 6 p.m. and that many of them had been killed inside. Erić also told him that a guard from Skelani was killed when a prisoner grabbed his rifle, then shooting started at the prisoners and there were a lot of dead people. While he was inside the Kravica compound, he heard automatic gunfire coming from the asphalt road direction.

343. In his statement given to the Prosecutor’s Office of BiH during the investigation in the Kravica case, the witness said that Zoran Erić told him that Special Police from Skelani was in front of the hangar, that witness Nikolić heard automatic gunfire towards the central part of the warehouse and

⁴⁸¹ Suspect examination record of Petar Mitrović, 21 June 2005.

detonations of hand grenades. When he testified, he confirmed this statement and averments therein as correct.

344. In the same statement, the witness said Erić told him that the killings were committed by members of the Special Police from Skelani. According to the witness, the very following day there were rumors in Bratunac that the Special Police from Skelani had done that and no one else was mentioned as responsible for the killings. In his testimony, the witness confirmed his earlier statement that people in Bratunac talked that “certain Čupo and Vojvoda” participated in the killings and threw hand grenades.

345. The Defense for the Accused Vuković denied that the Accused Vuković had a nickname Vojvoda and argued there were other individuals with this nickname.

346. In addition to witness D5, other witnesses also confirmed the fact that Vuković was nicknamed Vojvoda at the relevant time and that he was precisely the Vojvoda in question and that he was wide-known as Vojvoda. Milutin Kandić, Vuković’s witness, also a member of the 2nd Detachment, stated that he knew other individuals whose nickname was Vojvoda, but he also said that he knew the Accused precisely by the nickname of Vojvoda. This was also confirmed by witnesses Stanislav Vukajlović, Marko Aleksić and Slaviša Žugić. All of them called the Accused Vuković by the nickname Vojvoda and said that he was a member of the 1st Platoon of the 2nd Detachment. Moreover, witness Slaviša Žugić stated he did not know anyone else in the 1st Platoon under the nickname of Vojvoda and he identified in the courtroom the Accused Vuković as the Vojvoda.⁴⁸² Witness D5 also did not know anyone else in the 2nd Detachment whose nickname was Vojvoda.⁴⁸³

347. Finally, Brane Džinić (aka Čupo) was found guilty in a final Verdict of the Court of BiH (X-KR-05/24) of aiding in the commission of the criminal offence of Genocide and sentenced to a long-term prison sentence of 33 years. This shows that ‘Čupo’ participated in the execution of the prisoners in the same manner as the accused Vuković, as described by witnesses D5 and Petar Mitrović in his statement.

348. Having evaluated the evidence in its entirety, the Appellate Panel is satisfied that it has been proved beyond a reasonable doubt that the accused Vuković was a member of the 2nd Šekovići Detachment, that he was deployed with his unit on 12 and 13 July along the Bratunac – Konjević Polje road, and that his Detachment, together with other formations, secured the road during the transport of Bosniak women, children and elderly.

⁴⁸² Slaviša Žugić, 13 January 2009.

⁴⁸³ D5, Statement of 20 March 2009.

349. The testimony of witness D5 was supported in its critical parts by Petar Mitrović's statement and the testimony of Jovan Nikolić and Milutin Kandić. Therefore the Panel is satisfied that Vuković was seen along the road on 12 July, that he was in Sandići when Bosniak men surrendered and when they were captured on 13 July and that he escorted Bosniaks to the warehouse in Kravica.

350. The evidence established that the accused Vuković escorted the captured Bosniaks with other members of the 2nd Detachment from Sandići to the warehouse, and after the unit killed the captives in the warehouse by shooting at them with automatic rifles and machine guns, the Accused took hand grenades from the boxes in front of the warehouse and threw them inside.

351. This part of witness D5's testimony was supported by Petar Mitrović's statement given in 2005, and is therefore regarded as reliable. Mitrović said that the Bosniak men were killed by hand grenades and that the person whose nickname was Vojvoda participated in that. Witness Nikolić gave an identical account of the events. He came to the hangar in the evening, he was told that the men inside had been killed and that Vojvoda and Čupo had thrown hand grenades into the warehouse.

352. The fact that Vuković was nicknamed Vojvoda was also proven beyond a reasonable doubt. Witnesses D5 and Mitrović knew him by that nickname even before knowing his proper name. Witnesses Stanislav Vukajlović, Milutin Kandić, Slaviša Žugić and Marko Aleksić further clarified the issue of Vuković's nickname in their testimony. The Appellate Panel accordingly concludes that it was the Accused Vuković whom the witnesses knew under the nickname of Vojvoda.

353. The Defense for Radomir Vuković disputed the presence of the Accused in front of the hangar during the executions and his leading the column of prisoners from Sandići to the warehouse. In that regard, they disputed the credibility of witness D5, who did not mention Vuković as one of the perpetrators in his initial statements to the Prosecutor. The Panel will address the credibility of witness D5 further in the Verdict.

354. The Court heard a new defense witness, Franc Kos, whose testimony has been mentioned earlier. The witness stated he saw another person throwing hand grenades inside the hangar the relevant afternoon. However, the Appellate Panel finds the testimony of this witness to be irrelevant, since the complexity of the operation and the execution of Bosniak men in the warehouse in Kravica clearly required the involvement of a very large number of people. While it is likely that there were others besides the Accused Vuković and Brano Džinić aka Čupo who threw hand grenades into the hangar, it is ultimately irrelevant to these proceedings whether or not this is true. The participation of persons in addition to Vuković does not exclude or diminish his responsibility.

355. The entire body of presented evidence establishes beyond a reasonable doubt that Vuković participated in the commission of the criminal offense precisely in the manner and by the actions alleged in the Indictment.

(b) ZORAN TOMIĆ

356. The Prosecution Indictment charges the Accused Zoran Tomić with the same criminal offense as Vuković, but his act of perpetration is described as the participation in the killings by shooting an automatic rifle. The Accused denied it was proved that he had at all escorted the column, that he had been present in front of the warehouse and that he participated in the killings, as alleged in the Indictment.

357. The presented evidence shows that the accused Tomić was a member of the 2nd Šekovići Detachment 2nd platoon during the relevant period, as confirmed in the testimony of witness Mirko Aščerić (also a member of the 2nd Detachment, 1st platoon at the relevant time). He was deployed along the Bratunac-Konjević Polje road on 12 and 13 July 1995 and he was at the Sandići meadow on 13 July 1995 together with all members of the 2nd Detachment who were guarding the captured Bosniak men who had surrendered.

358. Witness D5 first identified the Accused Tomić (identified as “Zgembo”) as a participant in the events in Kravica. Witness D5 claimed that a certain Zgembo escorted the column of the captives from Sandići towards Kravica together with other members of the Detachment named by this witness.

359. It was proved during the trial that the Accused Tomić indeed had the nickname “Zgembo”, which the Defense did not dispute at all.

360. There was an abundance of evidence proving that the Accused was present on the road and at Sandići on 12 and 13 July 1995, and together with the 2nd Detachment he was deployed on the road on 12 and 13 July 1995.. Both Prosecution and Defense witnesses testified to have seen the Accused at the yellow bridge and on the Bratunac – Konjević Polje road, usually with Predrag Čelić and Brano Džinić. The Panel is therefore satisfied that the evidence proves beyond a reasonable doubt that the Accused Tomić was involved up to the moment the column of prisoners was formed to be taken to the warehouse and killed.

361. The testimony of witness D5 was the only evidence that spoke to Tomić’s alleged participation in escorting the column and its subsequent execution. The Appellate Panel carefully examined all the statements about the Accused Tomić given by this witness and admitted them

into evidence, as well as the manner in which this witness testified about Tomić's participation. However, the entire testimony of this witness does not satisfy the Appellate Panel that the evidence clearly and unambiguously establishes Tomić's guilt beyond a reasonable doubt. The Panel will specifically address the credibility of witness D5 and explain in more detail its decision not to accept his testimony as the evidence proving the guilt of the Accused.

D. CREDIBILITY OF WITNESS D5

362. The Defense for both Accused attempted to challenge the overall credibility of witness D5 by arguing that D5 concluded a plea agreement with the Prosecutor's Office of BiH, and accused the witness of incriminating others to secure a better position for himself. They argued that witness D5 was unreliable and that no conviction could be based on his testimony.

363. Witness D5 joined the Special Police Brigade in February 1993 and remained in it until late 1995, but without any distinction.⁴⁸⁴ Witness D5 also testified that he had been diagnosed with a personality disorder while detained in Belgrade Prison awaiting extradition.⁴⁸⁵ He was prescribed some medication (Bromezepam) for his condition.⁴⁸⁶ No evidence, however, was presented to demonstrate that any medical condition could have affected the accuracy of his recollection or his veracity.

364. The Prosecutor first examined witness D5 as a suspect on 8 April 2008, after his extradition from the Republic of Serbia to Bosnia and Herzegovina. He exercised his right to remain silent on that occasion. On 18 April 2008 the witness requested to provide a statement to the Prosecutor's Office as a suspect. His lawyer informed the Prosecution that his client wanted to conclude a plea agreement and was willing to cooperate. Then the witness gave a statement as a suspect. Contacts between the Prosecution and the witness and his attorney followed and the Prosecutor's Office granted him immunity from prosecution in respect of the contents of the statements. The parties agreed that it would be used solely to negotiate a plea bargain and that the statement would not be used in the criminal proceedings against the witness if the negotiations failed.

365. On 22 May 2008 the witness provided a statement to the Prosecutor's Office in the presence of his lawyer as a witness. The witness was subject to prosecution had he made a false

⁴⁸⁴ Witness D5, 11 March 2009.

⁴⁸⁵ Witness D5, 20 March 2009.

⁴⁸⁶ Witness D5, 11 March 2009.

statement.⁴⁸⁷ After that, the witness testified in the *Kravica* case (*Stupar*) and identified the persons who participated in the warehouse massacre.

366. Witness D5's second statement (of 22 May 2008) was far more detailed and incriminating for the Accused than the first one. The witness explained to the Court that he did not relate the full truth in his first statement.⁴⁸⁸ As a suspect he was under no obligation to tell the truth. As a witness he was under such an obligation. His testimony in Court was broadly consistent with his statement of 22 May 2008, and not his statement of 18 April 2008.

367. Article 281(2) of the CPC of BiH provides that "The Court is obligated to conscientiously evaluate *every item* of evidence and its correspondence with the rest of the evidence and, based on such evaluation, to conclude whether the fact(s) have been proved." As the Constitutional Court noted, this fundamental obligation arises from the right of the accused to a fair trial, which is guaranteed by Article II(3) of the Constitution of Bosnia and Herzegovina and Article 6 of the European Convention on Human Rights ("ECHR").⁴⁸⁹

368. Witness D5 concluded a plea agreement in relation to the events in Kravica and was convicted under the Verdict No. X-KRŽ-06/180-1 rendered by the Court of BiH on 22 October 2008. Having accepted the agreement on the admission of guilt, the Court found him guilty of aiding in the killings, deportation and forcible transfer as Crimes against Humanity committed in Srebrenica in July 1995, and sentenced him to a prison term of six years.

369. The Defense referred to numerous examples of national and international case law which in their estimation suggested that the testimony of a witness who, were it not for a plea agreement, would practically be a co-accused, had to be regarded with reservation. The Appellate Panel agrees that an analysis of witness D5's evidence must include an examination of his position in relation to the accused and his motives.

370. In several of its cases the Constitutional Court has examined the probative value of testimony given by witnesses who concluded plea agreements. In the M.Š.⁴⁹⁰ case _the Appellant filed an appeal on the grounds of violations of the right to a fair trial guaranteed under Article 6(1) of the ECHR, given that the decision on his guilt mostly relied on the testimony of a person who had been criminally prosecuted for the same offense as the Appellant but who concluded a plea agreement with the Prosecution. The Constitutional Court held in this case that the evidence of

⁴⁸⁷ Exhibit T.12(b), 22 May 2008.

⁴⁸⁸ Witness D5, 11 March 2009.

⁴⁸⁹ *Id.* para. 30. See *Branka Kolar-Mijatović*, AP-1262/06 (Constitutional Court of BiH), Decision on Admissibility and Merits, 23 December 2007, paras 36-37; *Hazim Vukalo*, AP-3189/06 (Constitutional Court of BiH), Decision on Admissibility and Merits, 23 May 2007, paras 35-36.

⁴⁹⁰ AP 661/04 of 22 April 2005.

witnesses immunized pursuant to a plea agreement should not be presumed to be unreliable, disregarded or subjected to a higher degree of scrutiny than other evidence.

“With regard to the testimony of this witness, the Court held that “even though such witnesses may often be unreliable, [the fact that the witness testified pursuant to a plea agreement] in itself is not a reason not to have faith in the statement of such a witness.”⁴⁹¹

371. The Constitutional Court considers that such reasons must satisfy the requirement of careful and conscientious evaluation of evidence, and that the truth of the court's conclusion has to be real, reasoned and based on objective facts.

372. This issue was also considered in the case of appellant Nihad Vlahovljak, who inter alia argued that the Judgment issued by the FBiH Supreme Court was chiefly based on the testimony of witness who concluded a plea agreement. The Decision states:⁴⁹²

“The Constitutional Court holds that a decision whether to take a testimony of a witness who concluded a plea agreement as the basis for a decision has to be made in every specific case and no general rule may be established, other than that the accused must be given the opportunity to dispute such a testimony, while the court must provide a convincing explanation thereof.”

373. Having taken into account the position of the Constitutional Court, the Appellate Panel is of the opinion that it is not inherently unfair to convict the Accused on the basis of the testimony of witness D5 who concluded a plea agreement, provided that the testimony is credible, logical and consistent with all other evidence, and that the guilty verdict is the only reasonable conclusion that could be reached in a case. Generally, such testimony must be so strong as to leave no room for any doubt.

374. In the opinion of the Appellate Panel, the fact that the witness concluded a plea agreement does not by itself pose an obstacle to base a conviction on such evidence.

375. The Defense objected that witness D5's testimony was untrue, arguing that the witness was unreliable. The Panel examined the quality of information provided by this witness, and if it was obtained from a reliable source, and concluded that witness D5 gave a detailed and comprehensive account of the events that was corroborated in many respects by other evidence.

⁴⁹¹ M.Š. AP-661/04, Constitutional Court of BiH, “Decision on the Admissibility and Merits” 22 April 2005, para. 37 (emphasis added).

⁴⁹² Nihad Vlahovljak, AP 3896/08, str. 17.

376. A number of witnesses testified in this case, many of them members of the 2nd Šekovići Detachment, PJP Zvornik and Jahorina Training Center. All of these witnesses participated in the incidents charged in the Indictment, including the events preceding those which occurred at the warehouse in Kravica. Their testimony corroborated the testimony of witness D5, but for his incrimination of the Accused. For instance, all members of this unit provided similar accounts of the combat movements of the Detachment from the end of June to mid-July 1995, the events in the field on 12/13 July, the events on the road, etc.

377. Witness D5 did not just arbitrarily name all the persons from the unit who were involved in the relevant events. Quite the opposite, witness D5 incriminated certain individuals only, while exonerating some other members of the Detachment by stating they had not been present during the massacre, so that they were acquitted of the charges (according to him, Miladin Stevanović was not at the relevant location, as was also established under the final Verdict rendered by the Court of BiH in the case No. X-KR-05/24-2 which acquitted Stevanović. With regard to Petar Mitrović, Slobodan Jakovljević and Branislav Medan, he stated they had gone behind the warehouse to guard the prisoners, as was also established under the final Verdict rendered by the Court of BiH in the cases No. X-KR-05/24 and X-KR-05/24-1 against those Accused).

378. In some portions of his testimony, witness D5 stated he had not seen the Accused Tomić (during the search of the houses in Budak village), and he did not involve the Accused Vuković in every single incident which had taken place in the filed (he never involved him in the search and seizure of personal belongings and documents from the captives who surrendered). Such testimony leads to a conclusion that the witness was honest.⁴⁹³

379. The Panel further examined if during his testimony this witness indicated or his behavior showed any motive to bring any of the Accused into an unfavorable position and concluded that there was no such motive, nor did the witness have any special motive to incriminate precisely these Accused persons. When witness D5 spoke about the Accused Vuković during his testimony, he seemed to be objective and he entirely corroborated other evidence which incriminated the Accused Vuković. Therefore, if viewed with the other indirect evidence, the testimony of witness D5 was truthful and led to the only possible conclusion – that it was correct.

380. The Defense had the opportunity to cross-examine the witness, they were given enough time to prepare the cross-examination, which lasted for full three trial days.

381. The Defense attempted to refute his credibility by stating that the witness did not remember all the details, for instance, he did not remember a bus in front of the hangar, although some

witnesses and documentary evidence showed that there indeed was a bus parked in front of the hangar during the massacre. However, several factors have to be taken into account: the time lapsed from 1995, the exhaustion and fatigue of the witness who, together with his entire unit, had spent the previous night on the road and that it can be reasonably expected that a certain circumstance or fact could be overlooked if the importance and intensity of the event which caused it leaves such a strong impression on the observer that it overpowers his ability to observe and recollect certain details (such as the massive massacre in Kravica). Therefore, it can be easily concluded that such an omission could occur, moreover, it most probably did occur as a result of everything that was going on. On the other hand, this detail is not vitally important for the credibility of this witness. This witness was examined in several cases before this Court and his credibility would be undermined if he were now to state that he had indeed seen the bus in front of the hangar. It is precisely his inability to remember this fact that showed the Panel that the witness was consistent and that he stated only the facts he could remember, even if they partially contravened other evidence.

382. In view of such a testimony, the Appellate Panel concludes that the witness is credible and reliable and corroborated by other presented evidence. Furthermore, the Defense evidence did not cast doubt on the validity of D5's testimony about the Accused Vuković.

383. The Panel does not accept the testimony of witness D5 with regard to the Accused Tomić, as sufficient for conviction, due to his imprecise recollection of the events. This does not necessarily imply that the witness gave incorrect information, but his testimony relevant to the involvement of the Accused Tomić was simply not sufficiently reliable and comprehensive.

384. The Appellate Panel notes that witness D5 misidentified Zoran Tomić while examining photograph 37 (Exhibit T.12c). Witness D5 made the same mis-identification during cross-examination at the first instance main trial hearing of 11 March 2009 when he identified a person on the photograph as Zoran Tomić.⁴⁹⁴ Witness Dražen Erkić said that no. 37 was actually Nikola Milaković.⁴⁹⁵ When Nikola Milaković, nicknamed "Tito", a member of the 2nd Šekovići Detachment in July 1995, was examined, he confirmed that the photograph was of him, taken from his identity card.⁴⁹⁶

385. In the statement of 18 April 2008 he gave as a suspect to the Prosecution in case No. KTRZ-10/05, witness D5 mentioned the Accused Tomić as a person who escorted the column of prisoners. He identified him in one of the photographs shown to him during the examination as a

⁴⁹³ See Krsto Savić case (X-KRŽ-07/400), Court of BiH, Appellate Verdict of 11 April 2011, para 248 (the witness was found credible because he gave information in favor of the Accused).

⁴⁹⁴ Exhibit O-I-12, Witness D5, 11 March 2009.

⁴⁹⁵ Dražen Erzić, 12 June 2009.

person named “Zgembo”. He did not know his full name at that time. When describing the massacre, he stated that all members of the 2nd Detachment who were in front of the hangar and secured the warehouse formed a semi-circle. Then approximately 5 to 7 men came out of the hangar and were killed. When asked if all others were shooting at the prisoners inside the hangar, D5 responded “well, yes.” Then the prosecutor asked if he was sure that everyone else, “*but the four of you*” fired (referring to witness D5 who did not shoot, as well as Jakovljević, Medan and Mitrović, who went behind the warehouse), the witness answered: “*There was shooting, I don’t know exactly who was shooting and how much, or if everybody was shooting.*”

386. In his witness statement of 22 May 2008 in Court of BiH case No. X-KR-05/24, witness D5 said that a person whose nickname was Zgembo escorted the column and all those in the semi-circle participated in the shooting at the warehouse. He initially thought that Zgembo also fired, and then became sure that he had, but he did not state to have actually seen him shooting from an automatic rifle.

387. When he was directly examined during the first instance proceedings witness D5 testified that all those who escorted the column formed a semi-circle, including the Accused Tomić, and that all of them fired. During his first cross-examination, witness D5 said that Zoran Tomić participated in escorting the column and he remembered him. He mentioned for the first time that he knew one of the prisoners in the column and wanted to help him, but Tomić personally frisked him, forced him back into the column, took his money away and his official ID.

388. When cross-examined for the second time by the Defense for Accused Tomić, witness D5 could not remember on which side Tomić was when he escorted the column, but he thought he was not at the same side as the witness. He could not remember where precisely Tomić stood, but he knows he was part of the semi-circle.

389. When attempting to recall Tomić’s participation the witness often “thought” that the Accused Tomić had fired in front of the warehouse, or stated that he knew the Accused was there, but acknowledged that “he did not see him”. Such imprecision in his own recollection was obvious in his direct and cross-examination and during his testimony. Such a testimony could result only in a clear and firm assumption, but not in an indisputable conclusion about the fact. Witness D5’s inability to reach a clear and positive conclusion about Tomić’s participation left the Panel with a dilemma, whereas guilt must be proved beyond any reasonable doubt.

390. His statement that everyone who stood there fired is not sufficient for the Panel to conclude that Accused Tomić was involved, since in the absence of a solid proof it can be reasonably

⁴⁹⁶ Nikola Milaković, 27 August 2009.

concluded that not everyone was shooting. In the absence of a positive and precise identification of the Accused Tomić by D5, such a general assertion which was not properly substantiated may not be accepted as credible and reliable and may not be taken as a basis for conviction.

391. In addition, when witness D5 mentioned the incident with a prisoner who attempted to escape, but the Accused Tomić sent him back to the column, he initially stated that it had not happened during the escort of the column, but when the column had initially set off. When asked by the Defense why he did not mention the incident in his earlier testimony, he explained that he had remembered it many times before, but "*he decided to say it at that particular moment*".

392. Witness D5 initially provided a detailed account of the incident with the prisoner, allegedly perpetrated by the Accused Tomić, he even remembered the name of the prisoner. Later on, he became confused, he could not remember if that happened when the column had set off or during the escort of the column. Nevertheless, the Panel did not enter into establishing whether the Accused Tomić had indeed done that, although the Panel noted that there was no other corroborating evidence. When examining the testimony of witness D5, the Panel noted that witness D5 had failed to mention this incident earlier. The Panel sees this as a manipulation with some facts he knew, which partially undermines the reliability of his recollection and testimony, at least when the Accused Tomić is concerned.

393. Having examined the statements given by witness D5 about the involvement of the accused Tomić in the context of his mis-identification on the photograph and manipulation with the facts he knew, the Appellate Panel does not find this testimony unreliable by itself. On the other hand, this testimony alone still cannot satisfy the requirement of "proof beyond a reasonable doubt", since it leaves doubt about the reliability of this witness' recollection.

394. Moreover, having examined all the facts this testimony produced, the Panel concluded that it still leaves dilemmas about the precision of this witness recollection, since he gave his direct observations as assumptions, most often relying on his recollection of the pattern of behavior of other people in his vicinity. The Appellate Panel cannot accept such testimony as clear and reliable, since it could be inferred that everyone else fired, therefore, the Accused must have fired too.

395. A testimony which could be taken as a basis for conviction does not necessarily require that the witness should remember where precisely the Accused Tomić stood, if he could remember that he was in the column and part of the semi-circle with others. However, the testimony would have to be flawless and entirely consistent to result in the conviction of the Accused Tomić. The entire testimony of witness D5 actually implies the possibility that the Accused Tomić escorted the column, stood in the semi-circle and fired at the prisoners in the Kravica warehouse, but in light of the earlier stated inconsistencies of his testimony, it is impossible to reach a clear conclusion,

since it seems that witness D5 recalled the pattern of behavior of others in his vicinity and instinctively imputes it to the Accused Tomić as his probable conduct, which eventually can, but does not necessarily have to be correct.

396. This stands in contrast to the case against Accused Vuković, whose involvement in the events charged was corroborated by other evidence, in particular Petar Mitrović's statement. The testimony of witness D5 was the only evidence against the Accused Tomić and it is insufficient for conviction. The testimony of witness D5 by itself is not problematic, its major part is generally consistent with other witnesses, physical evidence and video records. However, the probative value of the presented evidence in relation to the Accused Tomić is insufficient to infer that a conviction is the only reasonable conclusion.

397. Based on these reasons, the Panel concludes it was not proved that the Accused Tomić committed the criminal offense charged against him, so it acquits him of the charges pursuant to Article 284(c) of the CPC of BiH.

VI. LEGAL DEFINITION - GENOCIDE

398. Article 171 of the CC BiH defines the criminal offense of genocide as follows:

"Whoever, with an aim to destroy, in whole or in part, a national, ethnical, racial or religious group, orders perpetration or perpetrates any of the following acts

- a. Killing members of the group;*
- b. Causing serious bodily or mental harm to members of the group;*
- c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
- d. Imposing measures intended to prevent births within the group;*
- e. Forcibly transferring children of the group to another group ..."*

399. Article 171 of the CC of BiH is, in major part, identical to Article 141 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CC of SFRY) and Article 2 of the Convention on the

Prevention and Punishment of the Crime of Genocide (Genocide Convention) that came into effect on 12 January 1951.⁴⁹⁷

400. Article 141 of the CC of SFRY defines the criminal offense of Genocide as follows:

"Whoever, with the intention of destroying a national, ethnic, racial or religious group in whole or in part, orders the commission of killings or the inflicting of serious bodily injuries or serious disturbance of physical or mental health of the group members, or a forcible transfer of the population, or that the group be inflicted conditions of life calculated to bring about its physical destruction in whole or in part, or that measures be imposed intended to prevent births within the group, or that children of the group be forcibly transferred to another group, or whoever with the same intent commits one of the foregoing acts, shall be punished with a sentence of imprisonment for not less than five years or by the death penalty."

401. In addition to the other acts referred to in Article 2 of the Genocide Convention, Article 141 of the CC of SFRY specifically mentions "forcible transfer" as an act which, in conjunction with the appropriate *mens rea*, constitutes the criminal offense of Genocide.

402. Article 2 of the Genocide Convention defines the criminal offense of Genocide as follows:

"In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;*
- (b) Causing serious bodily or mental harm to members of the group;*
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
- (d) Imposing measures intended to prevent births within the group;*
- (e) Forcibly transferring children of the group to another group."*

403. Genocide is also a criminal offense under customary international law. As early as in 1951 the International Court of Justice (ICJ), stated that "the principles underlying the Convention are recognized by civilized nations as binding on States even without any conventional obligation."⁴⁹⁸

⁴⁹⁷ See also, the Statute of the International Criminal Court (the Rome Statute), Article 6, entered into force on 1 July 2002, U.N. Doc. A/CONF.183/9 (identical to Article 2 of the Genocide Convention).

⁴⁹⁸ *Reservations to the Convention on the Prevention and the Prevention of the Crime of Genocide*, Advisory Opinion, (1951) Report of the International Court of Justice 23.

404. Also, the Report of the Secretary General Pursuant to Paragraph 2 of the Security Council Resolution 808 (1993), unanimously approved by the Security Council Resolution 827, stated as follows:

"The part of conventional international humanitarian law which has beyond doubt become part of international customary law is the law applicable in armed conflict as embodied in: [...] the Convention of the Prevention and Punishment of the Crime of Genocide of 9 December 1948."⁴⁹⁹

405. Article 2 of the Genocide Convention is reproduced in Article 4 of the ICTY Statute and Article 2 of the ICTR Statute, which confirms that the definition of genocide accepted in customary international law is identical to the definition in the Genocide Convention. As the Trial Chamber in the *Jelisić* case noted:

"Article 4 of the Statute takes up word for word the provisions [of the Genocide Convention]. [...] The Convention has become one of the most widely accepted international instruments relating to human rights. There can be absolutely no doubt that its provisions fall under customary international law ..."⁵⁰⁰

406. Article 171 of the CC of BiH, as well as Article 141 of the CC of SFRY, were adopted as a national law to bring the State into compliance with its obligation under the Genocide Convention. Article V of the Convention states that: "The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide [...]". The SFRY actively participated in the drafting of the Genocide Convention and ratified it in 1950.⁵⁰¹ Article 171 of the CC of BiH, as a provision of national law derived from international law, imports the legal legacy of the international provision on which it was based, as well as the international jurisprudence through which it has been implemented and applied, into the domestic law of BiH.

407. The crime of genocide stipulated in Article 171 of the CC of BiH thus contains the *chapeau* elements (or general elements), including genocidal intent, as well as *actus reus* elements of underlying crimes.⁵⁰²

⁴⁹⁹ Report of the Secretary General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), (Report of Secretary General) UN Doc. S/25704, para. 35. See also, *Prosecutor v Akayesu*, ICTR-96-4-T, Judgement, 2 September 1998, para. 495 ("The Genocide Convention is undeniably considered part of customary international law."); *Prosecutor v Jelisić*, IT-95-10-T, Judgement, 14 December 1999, para. 60. ("Article 4 of the Statute takes up word for word the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide that is, beyond doubt, a part of customary international law.")

⁵⁰⁰ *Jelisić* Trial Judgement, para. 60.

⁵⁰¹ *Official Gazette of the Presidium of the National Assembly of the Federative People's Republic of Yugoslavia*, No. 2/50.

⁵⁰² Although the underlying crimes listed in Sub-Paragraphs (a)-(e) may be characterized as the *actus reus* of genocide, one must keep in mind that the underlying crimes also have the *actus reus* and the *mens rea* elements. It is, therefore, desirable that genocide is formulated in the manner similar to the crimes against humanity in the sense that it requires a

A. EARLIER FINDINGS ON THE GENOCIDE IN SREBRENICA

408. The issue of the existence of genocide in Srebrenica was considered by the ICTY in the cases against Krstić, as well as the case against Blagojević and Jokić. In these Judgments the ICTY established that genocide was committed in Srebrenica in July 1995.⁵⁰³

409. The International Court of Justice in *Bosnia and Herzegovina v. Serbia and Montenegro* also found that genocide was committed in Srebrenica in 1995.⁵⁰⁴

"The Court concludes that the acts committed at Srebrenica falling within Article II (a) and (b) of the Convention were committed with the specific intent to destroy in part the group of the Muslims of Bosnia and Herzegovina as such; and accordingly that these were acts of genocide, committed by members of the VRS in and around Srebrenica from about 13 July 1995."

410. In *Vujadin Popović et al.*, which, *inter alia*, contains the findings on the events in July 1995 that are in the focus of this Indictment, the ICTY Trial Chamber found that:

"the murder operation – from the separations to detention to execution and burial – was a carefully orchestrated strategy to destroy aimed at the Muslim population of Eastern Bosnia. As found earlier, through this murderous enterprise, the underlying acts of killing and the infliction of serious bodily and mental harm were committed. The Trial Chamber is satisfied beyond all reasonable doubt that these acts were perpetrated with genocidal intent. ... Thus the Trial Chamber is satisfied that genocide was committed by members of the Bosnian Serb Forces, including members of the VRS Main Staff and the VRS Security Branch, such as Popović and Beara, against the Muslims of Eastern Bosnia, as part of the Bosnian Muslims."

411. The Appellate Panel of the Court of BiH also concluded in *Stupar et al.* (which is relevant to the case of co-accused of Vuković and Tomić, as well):

"Specifically, this Panel finds that Genocide was committed in Srebrenica in July 1995. Due to its nature, that crime could not have been committed by a single person, but it had to include the active participation of a number of persons, each of whom had a role."⁵⁰⁵ The First Instance Panel – after hearing evidence near identical to that presented in the present case in relation to the circumstances

separate check of the *chapeau* elements and the underlying crimes. The purpose of it is to emphasize that the crime of genocide requires the proving of two special criminal intents, the intent of the underlying crime and the genocidal intent.

⁵⁰³ *Prosecutor v Radislav Krstić*, IT-98-33-T, Judgement, 2 August 2001, para. 598 (*Krstić* Trial Judgement); *Prosecutor v Radislav Krstić* IT-98-33-A, Judgement, 19 April 2004, para. 37 (*Krstić* Appeal Judgement); *Blagojević and Jokić* Trial Judgement, paras. 671-677; *Blagojević and Jokić* Appeal Judgement, paras. 122-123; *Popović* Trial Judgement, paras. 837-866.

⁵⁰⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, 26 February 2007, at paras. 296-297.

⁵⁰⁵ *Prosecutor's Office of Bosnia and Herzegovina v Miloš Stupar, Milenko Trifunović, Brano Džinić, Aleksandar Radovanović, Slobodan Jakovljević, Branislav Medan and Milovan Matić*, X-KRŽ-05/24, Appellate Verdict, 9 September 2009, para. 572 (*Stupar et al. Appellate Verdict*).

*surrounding the attack on Srebrenica and the ensuing mass-murders of Bosniaks – had determined that 'there was a plan to destroy a protected group in part, perpetrated against the Bosniaks in Srebrenica by the Bosnian Serb forces, and implemented by forcibly transferring the women, children and elderly and killing the males.'*⁵⁰⁶

412. A trial panel of the Court of B-H in *Prosecutor's Office v Milorad Trbić* reached the same conclusion.⁵⁰⁷

413. In each of the referenced Verdicts it has been concluded that the perpetrators of the mass murders and deportations that occurred in Srebrenica in July 1995 committed these acts with an intention to destroy in whole or in part a national, ethnic, racial, or religious group of Bosniaks-Muslims who lived in Srebrenica.

414. The ICTY Trial Chamber held in *Krstić*:

*"The Bosnian Serb forces knew, by the time they decided to kill all of the military aged men that the combination of those killings with the forcible transfer of the women, children and elderly would inevitably result in the physical disappearance of the Bosnian Muslim population at Srebrenica".*⁵⁰⁸

415. The Panel accordingly has no dilemma in asserting that genocide was committed in Srebrenica in July 1995, and that the mass killing at the Kravica warehouse was committed as part of the genocide. In addition to the prior cases discussed above, the exhibits submitted into the case record during this trial have proved it.

416. Once the Appellate Panel established beyond a reasonable doubt that the Accused Vuković participated in the acts of killing at the Kravica warehouse, it analyzed his acts through the statutory elements of the criminal offense he was charged with. The Panel found that the acts of the Accused satisfied the elements of the criminal offense of Genocide, as he participated in the offense after becoming aware that a forcible transfer of the population was being carried out and that the detained Bosniak men would be executed. Therefore, by participating in the killings he aided in the partial extermination of a group of Bosniaks, a national, ethnic, and religious group.

⁵⁰⁶ *Prosecutor's Office of Bosnia and Herzegovina v. Miloš Stupar, Milenko Trifunović, Brano Džinić, Aleksandar Radovanović, Slobodan Jakovljević, Branislav Medan and Milovan Matić*, X-KR-05/24, 29 July 2008, First Instance Verdict (written verdict issued on 13 January 2009), page 102 of the English language version).

⁵⁰⁷ *Prosecutor's Office of BiH v Milorad Trbić*, X-KR-07/386, 16 October 2009, First Instance Verdict, paras. 223-229 (written verdict issued on 29 April 2010).

⁵⁰⁸ *Krstić* Trial Judgement, para. 595.

B. ELEMENTS

417. The crime of genocide stipulated in Article 171 of the CC of B-H contains two different groups of elements, that is, the *chapeau* elements (or general elements), including genocidal *mens rea*, that is, genocidal intent, as well as *actus reus* elements of underlying crimes.⁵⁰⁹

418. The Indictment charged that the Accused Vuković participated in the *actus reus* as a knowing participant in the JCE and knowing that the captured Bosniak men would be executed in the warehouse, and that, with a view to partially exterminating a group of Bosniaks as a national, ethnic, and religious group, as a co-perpetrator he committed killings of members of the group of Bosniaks and forcible transfer of the Bosniak civilian population to the territories outside of Republika Srpska, whereby he committed the criminal offense of Genocide in violation of Article 171 of the Criminal Code of BiH, as read with its Articles 29 and 180(1).

(a) Acts of genocide – actus reus

419. According to Article 171(a) of the CC of B-H, the *actus reus* of genocide includes "killing members of the group". The Panel has concluded that "killing members of the group" includes, at a minimum, the act of murder that the national law criminalized as a distinct offense.⁵¹⁰

420. The elements of the criminal offense of murder are:

1. The deprivation of life; and
2. The direct intent to deprive of life, as the perpetrator was aware of his act and wanted the act to be perpetrated.⁵¹¹

⁵⁰⁹ Although the underlying crimes listed in Sub-Paragraphs (a)-(e) may be characterized as the *actus reus* of genocide, one must keep in mind that the underlying crimes also have the *actus reus* and the *mens rea* elements. It is, therefore, desirable that genocide is formulated in the manner similar to the crimes against humanity in the sense that it requires a separate check of the *chapeau* elements and the underlying crimes. The purpose of it is to emphasize that the crime of genocide requires the proving of two special criminal intents, the intent of the underlying crime and the genocidal intent.

⁵¹⁰ The Panel does not make any finding as to whether the concept of "killing members of the group" referred to in Article 171(a) is broader than the concept of murder.

⁵¹¹ See, *Mitar Rašević and Savo Todović*, X-KR/06/275 (Court of BiH), Trial Verdict, 28 February 2008, p. 61; *Dragan Damjanović*, X-KR-05/51 (Court of BiH), Trial Verdict, 15 December 2006, pp. 53,54. See also, *Prosecutor v Blagojević and Jokić*, IT-02-60-T, Judgement, 17 January 2005, para. 642; *Prosecutor v Krstić*, Judgement, 2 August 2001, para. 543.

421. The qualification "members of the group" does not automatically imply that the number of victims must be large. In theory, murdering just one victim may satisfy the *actus reus* of the crime of genocide.⁵¹² However, in order to satisfy this element the victims must be members of the national, ethnic, racial, or religious group that the perpetrator sought to exterminate in full or in part.⁵¹³

422. The Panel established that the Accused Vuković participated in the murder by throwing hand grenades at the detained men. The nature of the act itself implies a high degree of awareness and desire to cause the harm that actually resulted.

423. What qualifies this *actus reus*, which is essentially that of a murder, as genocide, is the intent with which it was committed. To qualify as genocide, the acts must have been intended to destroy the protected group.

(b) Genocidal intent -- Mens Rea

424. The Indictment averred that the Accused committed genocide *with the aim of partially exterminating members of the group of Bosniaks-Muslims from the Srebrenica enclave*. The Indictment averred that genocide was committed against *members of a group of Bosniaks from the Srebrenica enclave*.

425. Under the qualification "members of the group" the victims of the killings must be members of the national, ethnic, racial, or religious group that the perpetrator wanted to exterminate in full or in part.⁵¹⁴

(i) The protected group

426. There is ample evidence indicating that a part of the targeted group belonged to the group of Bosniaks, which the Defense did not contest. The testimonies of witnesses who were members of the 2nd Detachment, Marko Aleksić, Slaviša Žugić, Dragomir Stupar, D5 and others, confirm that they knew that the men who moved through the woods in a column and who later surrendered on the Bratunac-Konjević Polje road were Bosniaks-Muslims from Srebrenica. Witness Luka Marković also knew that the captives who surrendered and who were detained at the warehouse in Kravica

⁵¹² In the *Ndindabahizi* case, the ICTR Trial Chamber has found that the murder of one person satisfied the *actus reus* of genocide. *Prosecutor v Ndindabahizi*, ICTR-2001-71-I, Judgement, 15 July 2004, para. 471.

⁵¹³ *Prosecutor v Brđanin*, IT-99-36-T, Judgement, 1 September 2004, para. 688.

⁵¹⁴ *Prosecutor v Brđanin*, IT-99-36-T, Judgement, 1 September 2004, para. 688.

were men of Bosniak ethnicity from Srebrenica and that the women and children aboard the buses on the road were Bosniaks, inhabitants of the Srebrenica safe area. The soldiers who were on the road knew that the men, detainees who had surrendered, and the women and children who were taken away by buses, were Bosniaks from Srebrenica.⁵¹⁵ The Appellate Panel finds that the Accused Vuković, just like the other members of the Detachment, undoubtedly knew that the men detained in the warehouse belonged to the group of Bosniak people.

427. The Bosniaks were a protected group pursuant to Article 171 of the CC of BiH. The Panel notes that the Muslims were one of the constituent "peoples" of the Socialist Republic of BiH (1974 Constitution of the SR BiH). In the more recent history of BiH, the 18 March 1994 Constitution of the Federation of BiH also described Bosniaks (Muslims) as a constituent people in the Federation of BiH. Bosniaks lived in the territory of Srebrenica until July 1995. Also, the current BiH Constitution states in its preamble that Bosniaks are one of the constituent peoples of Bosnia and Herzegovina.

428. The Bosniak population of Srebrenica constituted a "part" of the protected group of the Bosniak people pursuant to Article 171 of the CC of BiH. As mentioned earlier, the intent to exterminate a group in part requires the subject of the extermination to target a "substantial" part of the protected group. Although the size of the Bosniak population in Srebrenica most likely did not exceed 40,000 persons, the evidence indicates that this population amounted to a significant part of the Bosniak population.

429. The *Krstić* Appellate Panel held that the Muslim population in Srebrenica

*"represented not only the Muslim inhabitants of the Srebrenica municipality but also many Muslim refugees from the surrounding region. [...] Because most of the Muslim inhabitants of the region had, by 1995, sought refuge within the Srebrenica enclave, the elimination of that enclave would have accomplished the goal of purifying the entire region of its Muslim population".*⁵¹⁶

⁵¹⁵ Exhibit T1.

⁵¹⁶ *Krstić* Appeal Judgement, para 15.

(ii) "Partial extermination"

430. With respect to the crimes committed in Srebrenica in July 1995, the ICTY Appellate Chamber established that a part which is the target must make "a substantial part"⁵¹⁷ of the protected group. This was indeed established on the basis of evidence.

431. First of all, with respect to the overall size of the population of the enclave, ICTY demographer Helge Brunborg wrote in his report of April 2003:

*"There is a great uncertainty and debate about the number of people who were in the enclave before it fell on 12 July 1995. Moreover, it is not known where the people in the enclave came from. Most of them probably came from the municipality of Srebrenica itself but there were many who came from the surrounding municipalities, as there were large flows of displaced people in and out of Srebrenica after April 1992 [...] It is assumed that about 40,000 people were in the town of Srebrenica before it fell, but the exact size of this population and its distribution is not known."*⁵¹⁸

432. The ICTY case also reads:

*"[T]he ambit of the genocidal enterprise in this case was limited to the area of Srebrenica. While the authority of the VRS Main Staff extended throughout Bosnia, the authority of the Bosnian Serb forces charged with the take-over of Srebrenica did not extend beyond the Central Podrinje region. From the perspective of the Bosnian Serb forces alleged to have had genocidal intent in this case, the Muslims of Srebrenica were the only part of the Bosnian Muslim group within their area of control."*⁵¹⁹

433. Miroslav Deronjić, the Serb civilian commissioner for Srebrenica, assessed the enclave to have held around 40,000 persons.⁵²⁰

434. With respect to the total number of the killed people in the Srebrenica region, Helge Brunborg assessed a total of 7,433 men missing from Srebrenica and surrounding municipalities in 1995. Comparing the list of missing persons of the International Committee of the Red Cross (ICRC) and PHR (Physicians for Human Rights) with those of the OSCE Voters' Registers for BiH in 1997 and 1998 elections and the 1991 census data, resulted in a conclusion that 7,475 people

⁵¹⁷ *Krstić* Appeal Judgement, paras 8-12.

⁵¹⁸ Exhibit T-88, 1. *Missing by Municipality of Residence*.

⁵¹⁹ *Krstić* Appeal Judgement, para 17.

⁵²⁰ Exhibit T-55d, statement of 25 November 2003, para. 179.

from the Srebrenica enclave were missing and presumed dead.⁵²¹ Matching the names of the missing with those recorded by the 1991 census as living in the Srebrenica area then gave an 87% match.⁵²²

435. Given the referenced statistical data, a conclusion can be made that the number of people killed [in the incident] makes a substantial part of the total number of the killed and missing Bosniaks-Muslims from Srebrenica, which in total also constitutes a substantial part of the overall number of the Bosniak population that lived in the Srebrenica region.

436. Also, as indicated in Chapter K), *Executions in Kravica*, more than 1,000 people were killed in the warehouse in Kravica, and the evidence indicates that the bodies from the warehouse were first buried in the Glogova primary grave, wherefrom they were subsequently relocated to the secondary graves of Zeleni Jadar and other (see paragraphs 361 and 362). The Prosecution examined expert witness Dr. Vedad Tuco, who stated that for the minimum of 856 persons there exists a confirmation that they had been killed in the Kravica warehouse.

437. The Defense for Zoran Tomić examined at the main trial Svetlana Radovanović, professor at the Department of Geography of the University of Belgrade.⁵²³ In her report *The Number of Persons Killed in Kravica on 13 July 1995*, she tried to challenge the conclusions of Dr. Vedad Tuco and his two findings.⁵²⁴ Professor Radovanović concluded that Dr. Vedo Tuco is wrong when stating that the number of victims is 856: “Of all these cases only 95 or 11.1 % of identified persons may be linked to Kravica, and for 27 of them 13 July was established as the date of death.”

438. However, the evidence of the removal and burial of the bodies from the Kravica warehouse tells of an operation conducted over a weekend in which loaders were used as well as trucks returning several times to pick up the bodies. Witness Krstan Simić described the movement to the warehouse in the early morning hours of 14 July as part of a five-truck convoy, each of the trucks carrying dead bodies. Many more dead bodies than what Prof. Radovanović claims were loaded on the trucks and afterward buried in graves prepared beforehand in Glogova. The Appellate Panel therefore does not find relevant the fact that only 27 death certificates read that the persons to which they relate were killed in the Kravica warehouse on 13 July 1995, as it was established that the number of the buried bodies from Kravica by far outreached the number of 27 killed.

⁵²¹ Exhibit T-89. The Court understands from the ICRC website that the Committee has compiled an updated and revised list of over 8,000 persons, however, no party to the proceedings tendered it into evidence; hence the Court does not rely upon it.

⁵²² Exhibit T-88.

⁵²³ Professor Svetlana Radovanović, 26 August 2009.

⁵²⁴ Exhibit O-II/13B, 1 August 2009.

439. The Defense insisted that the killings in the Kravica warehouse did not reach the threshold of partial extermination of the group of Bosniaks-Muslims from the Srebrenica enclave and that they did not affect the overall number and vitality of the group of Bosniaks, and corroborated that with the report of Prof. Radovanović, who stated in the conclusion that *"statistical indicators of the scope of mortality, for both the total number of persons killed and those killed in Kravica show that those are not values that vitally affect the possibility of reproduction and survival of the Muslims (Bosniaks) in the individually reviewed municipalities, and they in particular do not constitute an important factor of jeopardizing the survival and the possibility of reproduction of the overall Muslim community of Bosnia and Herzegovina."*⁵²⁵

440. The Appellate Panel took into consideration the reasoning of Prof. Radovanović in the context of the definition of the criminal offense of Genocide and noted that her conclusion is based on an incorrect interpretation of the legal definition, whereby the Defense's assertion that the killings in Kravica do not reach the threshold of partial extermination cannot be accepted.

441. For establishing the criminal offense of Genocide with respect to the elements "in full or in part", it suffices only that there exists an intent to destroy, in full or in part, a protected group. The International Criminal Tribunal for Rwanda reached a similar conclusion when it stated that the lowest number of killed persons required to establish the existence of genocidal intent has not been prescribed.⁵²⁶

442. The number, that is, the percentage of the killed persons and the manner in which that percentage affects the "vitality of an ethnic group" do not constitute an element of an offense. For the existence of genocide it is important to establish the intent to "destroy, in part or in full" a group and that "the victim is a member of a specific national, ethnic, racial or religious group".

443. The Appellate Panel stresses that the issue of whether it was a mass murder or individual instances of killing, whether or not in reality that killing affects the survival of the group, and whether these killings result in visibly severe consequences on the "capacity of biological reproduction" of the analyzed group is of no relevance for the factual and legal analyses of the elements of the crime, its commission and for the finding that the crime was committed with that special intent.

⁵²⁵ Exhibit O-II/13B, findings (a) and (c).

⁵²⁶ For example, in the *Prosecutor v Nindabahizi* case, ICTR-2001-71-I, Judgement and sentence, 15 July 2004, the ICTR found that murdering one person satisfied the *actus reus* of genocide.

(iii) The "Random Incident" objection

444. The Defense argued that the killings in the warehouse were a non-planned incident caused by a rebellion of one detainee, who snatched a rifle and shot at the police officer Dragičević. The Appellate Panel cannot accept this assertion. It follows from the evidence that there existed a twofold plan for the fate of the Srebrenica Muslims – to transfer the women and children to the territory under the control of the Army of BiH and execute all able-bodied men. This plan was obviously in part executed by the killing in Kravica.

445. Also, the killing in Kravica was not the only mass killing that happened in the second half of July 1995. After this mass execution, mass killings also happened in Cerska, Orahovac, Bratunac, the locality of Pilica, and Branjevo. Richard Butler elaborated on this in detail in his report, as mentioned earlier. The witnesses who had transported and buried the killed ones on the following day, Ostoja Stanojević and Krstan Simić, stated that they transported the bodies to the graves in Glogova, where they saw graves already prepared, approximately 50 m long and 2 m wide.

446. A reasonable and logical conclusion is that the graves of that size could not be prepared in a short period of time, but that they were prepared beforehand and in a planned manner, as it was known that the Srebrenica Muslims would be buried there and the operation of removing the bodies had been well-organized previously, as machinery was engaged on a short notice.

447. Therefore, it can also be concluded from the manner in which the mass killing of the detainees in the warehouse occurred that it was not committed in the heat of the moment as a revolt against the death of a fellow combatant. The detainees were killed from a semi-circle formed *before* the shooting started. Also, the rear windows of the warehouse were secured by guards who were behind the warehouse and the shooting from automatic guns and machine-guns was continuous and systematic until the majority of the detainees were killed. And finally, after the shooting stopped, hand grenades were thrown into the warehouse in order to make the killings massive and to finish off the detainees wounded in the shooting.

448. Therefore, the foregoing are objective indicators of an operation planned in advance, which renders illogical and unfounded the conclusion that the killing of one policeman sparked the mass execution.

(c) Mode of participation of the Accused

449. For the crime of complicity in genocide, as set forth in the Indictment, it was necessary to prove that the Accused Vuković shared the genocidal intent with principal perpetrators and that by committing the killings in the Kravica warehouse his goal was to exterminate, in whole or in part, the protected group of Bosniaks.

450. Given the fact that it was established that he committed the act of killing the detainees in the warehouse with a direct intent to kill them by throwing hand grenades, the Appellate Panel will only analyze whether it has been proven that he also possessed the necessary special genocidal intent that, as a co-perpetrator, he would have to share with the principal perpetrator, which is:

"with an aim to destroy, in whole or in part, a national, ethnical, racial or religious group".

451. The *mens rea*, as a subjective attitude toward the act that must exist to commit genocide requires a specific genocidal intent of the perpetrator. The destruction of a protected group, in whole or in part, must be the aim of the underlying crime(s).⁵²⁷ These acts must have been carried out against the victims because of their membership in a protected group, although they need not have been committed solely because of their membership.⁵²⁸ It is not, however, "sufficient that the perpetrator simply knew that the underlying crime would inevitably or likely result in the destruction of the group."⁵²⁹

452. The element of "destruction" requires that the perpetrator intended to bring about the physical or biological destruction of the group, or the destruction of its material existence.⁵³⁰ The ICTY has held that the term "destroy" in the definition of genocide "can encompass the forcible transfer of a population" and that "the physical or biological destruction of the group is the likely outcome of a forcible transfer of the population when this transfer is conducted in such a way that the group can no longer reconstitute itself – particularly when it involves the separation of its members".⁵³¹

453. However, although it was found that genocide was committed in Srebrenica in July 1995, that does not mean that the Accused had the requisite *mens rea* to commit genocide, as opposed to extermination or murder. To find him guilty of genocide the Court must establish beyond a reasonable doubt that the Accused had the necessary intent to destroy the Bosniak population of Srebrenica.

⁵²⁷ *Blagojević and Jokić* ICTY Trial Judgement, para. 656.

⁵²⁸ *Prosecutor v Eliezer Niyitegeka*, ICTR-96-14-A, Judgement, 9 July 2004, para. 53.

⁵²⁹ *Blagojević and Jokić* Trial Judgement, para. 656.

⁵³⁰ *Krstić* Appeal Judgement, para. 25.

⁵³¹ *Blagojević and Jokić* Trial Judgement, paras. 665-666; *Krstić* Appeal Judgement, para. 31.

454. According to the Indictment, the Accused (as a co-perpetrator) shared with the principal perpetrator an intent to destroy in part the national, ethnic, and religious group of Bosniaks. Therefore, to prove the crime of genocide, it was necessary to prove that the Accused had the intent to destroy the protected group, in whole or in part, by killing the detainees in the warehouse.

(i) Plan

455. Although the existence of a genocidal plan is not an element of the crime of genocide⁵³² and prior knowledge of the plan does not constitute an element of the crime and needs not be proven, in the case at hand it was necessary to analyze the acts of the Accused in the context of the overall operation to take Srebrenica and its outcome, given that in the specific case the acts of the Accused and the massacre in Kravica make an inseparable part of that project.

456. The operation of capturing Srebrenica and the documented project of *Directive 7*, discussed earlier, were implemented with the previously devised plan of Republika Srpska President Radovan Karadžić and the VRS General Staff. The operation included the attack on Srebrenica and an organized and planned population transfer, as well as mass killings of the able bodied men in the killing fields around Srebrenica, all of which was to result in the extermination of the group of Bosniaks from that territory.

457. The Appellate Panel has concluded that while there is insufficient evidence to determine when a plan for the execution of Bosniak men in Srebrenica was initially conceived, such a plan existed by the time the operation to take Srebrenica began and the events described in part IV of the Verdict (Chronology) took place. The organization of the attack clearly indicates that the goal of the population transfer and the mass killings of men in the fields around Srebrenica was the destruction of Bosniaks in that area.

458. The Appellate Panel reached this conclusion based on the facts contained in the reports by Richard Butler and Colonel Kingori, member of the UNMO, and the evidence given by the witnesses, including injured parties D1 and D2, as well as Munira Subašić, who described the terror the Serb army inflicted on the Srebrenica population in early July. It started with a fierce

⁵³² *Krstić* Trial Judgement, ICTY, para. 572:

"The Appeals Chamber, in a recent decision, indicated that the existence of a plan was not a legal ingredient of the crime of genocide but could be of evidential assistance to prove the intent of the authors of the criminal act(s). Evidence presented in this case has shown that the killings were planned: the number and nature of the forces involved, the standardised coded language used by the units in communicating information about the killings, the scale of the executions, the invariability of the killing methods applied, indicate that a decision was made to kill all the Bosnian Muslim military aged men."

shelling of the town, its surroundings, and the UN positions. The witnesses stated that the situation was unbearable, and that it was precisely this reality which prompted the population to flee the area in fear for their lives. The inhabitants left their homes and sought refuge in Potočari.

459. As indicated earlier (in paragraph 78) witness Deronjić testified that President Karadžić told him "*Miroslav, those people they must all be killed...whatever you can, you have to kill...The Western Slavonia principle*" (referring to the Srebrenica Muslims). Witness Momir Nikolić stated that on 12 July he met Vujadin Popović, who told him that the plan was to transport the civilians from Srebrenica toward Kladanj and that the able-bodied men would be separated from the civilians, temporarily detained and then killed. Popović instructed Nikolić to help organize and coordinate that operation.

460. It is clear that the plan proceeded according to these instructions. It was implemented in stages: take over the UN positions, separate the men from the women and children, organize buses for a forcible transfer of the women and children from the Srebrenica enclave, transfer the captured men to the detention sites, execute the men *en masse*, transfer the bodies to previously prepared mass graves. Several months later the bodies were dug up and transferred to secondary graves. The existence of a plan to carry out genocide in Srebrenica implied the involvement of a large number of military formations, soldiers, policemen and members of the civilian authorities.

461. The coordinated nature and scale of the attacks on Srebrenica, the preparations for dealing with a large number of bodies (e.g. trucks being requisitioned to dispose of corpses, graves being dug in advance of the murders, etc.), the repeated and systematic targeting of the protected group, and the testimony of witness D5 confirm that the VRS Main Staff planned to destroy a significant part of the Bosniak community.

(ii) Awareness of the principal perpetrator's intent to destroy

462. The Prosecution argued that witness D5 knew in advance that the unit would be dispatched to Srebrenica and that there was a plan to kill the men and deport the women and children. In his testimony before the Panel, witness D5 stated that Commander Trifunović told him when his unit was in Srednje that they would be ordered to go to the protected zone in the Srebrenica enclave, and kill and persecute the Muslims living there ("take the ground, persecute, kill ..."). They received this information from Rade Čuturić, who had in turn received it from his superior, Ljubiša Borovčanin. Čuturić conveyed this information to Trifunović, and he to witness D5.⁵³³

⁵³³ Witness D5, 11 February 2009.

463. Asked by the First Instance Panel when they were conveyed that information, Witness D5 stated: "That was mentioned while we were in the field mission in Srednje; that statement was mentioned, and the order was mentioned in the village of Sandići...I couldn't say where I was exactly, it was Sandići field mission and we were divided in groups of 5, 6 or 7 men, I do not know who was with me except Petar Mitrović, I remember him well, he was with me because we were together most of the time... Commander Trifunović conveyed it directly, he conveyed it directly to someone and then we would pass it on."⁵³⁴

464. In his statement to the Prosecutor's Office of 22 May 2008 witness D5 stated that the order in relation to the search of the terrain was "to kill the able-bodied and bring civilians to Bratunac or Potočari... because that was considered to be a collection center. [...] Only civilians, women, children were to be taken to Potočari or Bratunac".⁵³⁵

465. The Prosecution claims, at least implicitly, that the fact that witness D5, as a member of the 2nd Šekovići Detachment, said that he was informed of the plan to kill the men and deport women and children before his unit left Srednje on 11 July 1995, implies that the other unit members must have been informed of this plan. The Appellate Panel does not agree with this averment, at least when it concerns the Accused Vuković.

466. The Appellate Panel notes that no evidence was placed on the record to the effect that the Accused Vuković was present at the time the orders that witness D5 referred to were issued, although there was evidence that the Accused was in the field in Srednje with the Detachment. The Panel is therefore unable to conclude that it has been established beyond a reasonable doubt that the Accused was directly or specifically informed of the genocidal plan prior to the events of 12 and 13 July

467. However, the following circumstances and facts indicate the Accused's awareness of the VRS intent to destroy the Bosniak population of Srebrenica:

468. It is indisputable that it has been proven that the Accused was present in the unit on 12 July in the Bratunac region, together with the 2nd Detachment, and on 13 July 1995 in Sandići and in front of the Kravica warehouse, when he became aware that the Bosniak population of the Srebrenica enclave would be destroyed and that he played an active role in the actions that facilitated it.

469. It has been established that the Accused Vuković was in the Srebrenica area with the 2nd Detachment (CHAPTER V), and that he was also deployed on the road between Bratunac and

⁵³⁴ Witness D5, 20 March 2009.

⁵³⁵ Witness D5, Exhibit T.12b, Statement 22 May 2008.

Konjević Polje. It has been proven that the mass transportation of the Bosniak population from Srebrenica occurred along that road, and, as the Detachment was busy searching the terrain around Potočari, all its members were clear that the expulsion of the local inhabitants was being carried out. Another proof that it was not a sporadic and insignificant number is the fact that it has been proven that by 12 July there were dozens of thousands of women, children and elderly in Potočari who waited for transportation and that witnesses stated that convoys with these inhabitants were moving along the road.

470. Given the fact that the Accused was on the road and that the Detachment's task was to secure the road, as proven, at least on the basis of that massive scale and with the prior knowledge that Srebrenica was taken could the Accused conclude that a large scale operation was in progress and that it was not a spontaneous transport or normal traffic, but an extraordinary situation commanded by higher authorities.

471. Also, he could infer that it was an organized and planned operation from the fact that the Detachment was dispatched to that area precisely at the time of these events, so he could recognize the link between their presence and the ongoing events. He was also aware that the process was commanded by VRS General Staff, since General Mladić himself visited the meadow in Sandići, as has been established.

472. It was also proven that the Accused was present at the meadow in Sandići where, together with other Detachment members, he guarded the detained men who surrendered on 13 July. As witnesses – aggrieved parties and witness D5 consistently described, the surrender lasted throughout part of the day and was not a one-off event. The witnesses concur that the persons surrendering appeared tormented and exhausted while getting out of the forest, starved and dispirited, and many were wounded since there was a continuous artillery fire against the column in the forest from the meadow in Sandići.

473. The Accused could see for himself their poor mental and physical condition and that none of the witnesses received any medical treatment, but were rather left at the mercy of the policemen on the meadow who guarded them. Although starving, they were not offered any food or any assistance that would have improved their condition, the assistance they came for having been tricked into surrendering. Quite to the contrary, the Accused, and indeed everyone present, could see that the people in such condition were being searched and dispossessed of money, other valuables, and their personal documents, which were not being placed into custody but thrown to a pile on the floor, whereby they became just numbers, that is, victims of the ensuing massacre.

474. In this way the Accused could also inevitably understand that these people had no future and that their destiny lay in the hands of the armed policemen guarding them. Also, the Accused could see how little their lives were worth and witness the lack of discipline and responsibility when

several people were killed on the meadow. None of the witnesses to this event has said that any of the policemen at the scene was held accountable.

475. Prior to the events in Srebrenica, the Accused was an experienced policeman although he was young; he had enough field experience and, as every member of the official police force, he must have been informed of the obligation to comply with the rules of humanitarian law.

476. It has been proven that the Accused escorted the captives, who marched in a column toward the warehouse. It must have been clear to the Accused that they were not being taken to a location of rescue, which would have required transported in the direction in which the rest of the Srebrenica population was being transported. A reasonable individual would have wondered why those people were not joining other civilians who were leaving for the free territory, but rather were being taken in the opposite direction from where they would be handed over to ARBiH. It has been proven in the course of the proceedings that General Mladić visited Sandići, where he guaranteed the captives safety and promised they would be exchanged for Serb soldiers. Witness D5 stated that he did not trust Mladić when he made this promise. While this is witness D5's personal view, the Appellate Panel concludes that a reasonable person would have inferred from the ferocity of the artillery attacks against the Bosniaks in the forest who subsequently surrendered to the Serb troops, the arbitrary killings on the meadow, the deprivations of food and care to which the captives were subjected, and the provision of only small quantities of water, that the plan was not to care for or allow the surrendered persons to live. It must have been obvious that the Serb army intended to annihilate the population.

477. In addition to the foregoing, when the Accused arrived in Kravica, he could see the scale of the detention operation, since the hangar was already half-full when the column arrived and the column filled in the other part. It has been established that around 500 people were escorted in the column. An enormous number of people had to fit into a warehouse that was not designed to house a large number of people. Actually, judging by its appearance and position, the warehouse was not designed to house people at all. The windows were small and inadequate, and the entrances to sections of the warehouse were inadequate to allow the entry of hundreds of people who were forced to enter and settle inside. The witness – injured party D1 described that it was not possible to sit in the warehouse as a result of the overcrowding. It must have been obvious to the Accused that the detainees were being mistreated, that they would not be able to survive in these conditions, and that the purpose of detention was to deprive them of their lives. So, the Accused saw all that when he arrived in front of the warehouse. Also, as the witnesses described, it is indicative that soon afterward a light machine gun was mounted opposite the warehouse entrance. This could indicate only one thing: that it would be used and that the target would be the persons detained in the warehouse, which ultimately happened.

478. Finally, the beginning and the duration of the execution are also important to conclude that the mass killing of the captives was not an accidental and spontaneous event, although the Defense linked the killings to the incident in which one Detachment member was killed and Commander Čturić wounded in front of the warehouse. According to witness D1, the shooting lasted until the night, with sporadic pauses. This action was directed at destruction. There was a clear and demonstrated intention not to let anyone in the warehouse survive. The very manner in which the Accused participated in the execution – by throwing hand grenades into the hangar – indicates a consistent intention to have all the detainees in the warehouse killed, including the ones who might not have succumbed to the fired bullets or were only wounded.

479. Based on the foregoing, the Appellate Panel concludes that, although the Accused Vuković was aware of the ongoing genocide, there is no evidence to suggest that the Accused himself participated in the killings with the intent of destroying the Bosniak population of Srebrenica. Rather, the Panel concludes that the Accused participated in the perpetration as an accessory, aware of the principal perpetrators' genocidal intent and that the massacre in Kravica constituted a part of that genocide.

480. The acts of the Accused as an accessory are defined in Article 31 of the Criminal Code of BiH:

"Whoever intentionally helps another to perpetrate a criminal offense by giving advice or instructions as to how to perpetrate a criminal offense, supplying the perpetrator with tools for perpetrating the criminal offense, removing obstacles to the perpetration of a criminal offense shall be punished as if he himself perpetrated such offense, but the punishment may be reduced."

481. The massacre in the Kravica warehouse is an inseparable part of the overall project to exterminate the Srebrenica population which was going on simultaneously with the forcible transfer of women, children and the elderly in the relevant period. Given that the massacre in Kravica was one of the killings perpetrated in the area of Srebrenica and Bratunac in that period, while other killings ensued, it can clearly be concluded that the Accused's participation in the killings in the Kravica warehouse, with his prior knowledge of the circumstances that had preceded it, had the character of aiding and abetting in the overall operation of destruction of a protected group of people.

482. The Prosecution presented no evidence that suggests to the Panel that the Accused himself killed with the intent of destroying the Bosniak population of Srebrenica. Rather, the evidence shows that Accused allowed himself to be used as a weapon which, when deployed in conjunction with other weapons, was capable of destroying a protected group. Acting with intent when killing the detainees in the warehouse, having prior knowledge of the scope of the VRS actions in implementing the genocidal plan in the field, and with the knowledge that his unit, the 2nd Šekovići

Detachment, was also assisting in the implementation of that plan, the Accused aided and abetted the implementation of the VRS plan to destroy the group of Bosniak people from the Srebrenica enclave.

483. The Accused participated in the securing of the Konjević Polje-Bratunac road, assisted the capturing of Bosniak men, escorted the detainees who surrendered to the warehouse in Kravica, and participated in the execution of the detainees in the warehouse. All these actions have a character of facilitating and aiding the principal perpetrators in the perpetration of the criminal offense, and with the knowledge that the killing, abuse and transfer of the population was being conducted in Srebrenica and around and that it implied a massive engagement of the Serb military and police forces, he was aware that a criminal offense was being committed and that with his actions he aided the criminal offense by killing the detainees in the warehouse. The Accused thus aided and abetted the commission of genocide with intent.

484. The Court of BiH has already considered these issues and rendered similar conclusions in some of the cases. The *Kravica (Stupar et al.)* Appellate verdict held, in relation to seven co-accused of the identical criminal offense that the Accused Vuković is accused of, that *“all the foregoing facts and circumstances indicate that there actually existed a genocidal plan to destroy in part or in whole a group of the Bosniak people and that the Accused did possess knowledge of the existence of the referenced plan. However, based on the evidence presented with regard to their state of mind and mental attitude towards the action, the Appellate Panel finds that, based on the presented evidence, it is not possible to conclude beyond a reasonable doubt that the Accused shared the special intent to destroy, in part or in whole, the protected group of Bosniaks”*.⁵³⁶

485. The Panel also held that *“if the person whose actions contributed to the perpetration of genocide had the intent to bring about the destruction of a group in whole or in part, then that person is a perpetrator of genocide. If a person is only aware of the genocidal intent of the perpetrator, but the person did not share the intent, the person is an accessory to genocide”*. It also held that *“the Accused’s knowledge of the plan and their participation in its implementation does not establish that they also shared the genocidal intent”*⁵³⁷, which was exactly the case in the proceedings against this Accused, hence the Appellate Panel shares the same conclusion.

486. The requirement for accessory liability is that the accused carried out an act that “contributed to the commission of the criminal offense...but was not necessarily decisive in its perpetration.”⁵³⁸ Mere presence at the scene of the crime will not conclusively show that an individual was an

⁵³⁶ *Prosecutor’s Office of Bosnia and Herzegovina v Miloš Stupar, Milenko Trifunović, Brano Džinić, Aleksandar Radovanović, Slobodan Jakovljević, Branislav Medan and Milovan Matić*, X-KRŽ-05/24, Verdict of the Appellate Panel, 9 September 2009, para. 544.

⁵³⁷ *Kravica (Stupar et al.)*, para. 560, 569-570..

accessory, unless the presence itself had a significant encouraging effect on the principal perpetrator.⁵³⁹ The assistance may be provided by either an act or by an omission, and it may occur before, during or after the act of the principal perpetrator.⁵⁴⁰ The accessory need not share the *mens rea* required for the crime; it is enough that the accessory was aware of the *mens rea* of the principal perpetrator and knew that his or her acts would assist in the commission of the specific crime.⁵⁴¹

487. The Appellate Panel concludes that the Prosecution has not proven beyond a reasonable doubt that the Accused himself had a special genocidal intent to destroy, in whole or in part, the group of Bosniak people, but that with his participation he aided and abetted the execution of that objective. Based on the foregoing facts, the Panel concludes that the Accused participated in the commission as an accessory, rather than a co-perpetrator as charged in the Indictment.

488. Therefore, in the application of the *in dubio pro reo* principle, the Panel has rendered a decision more favorable for the Accused.

(d) The Borovčanin objection

489. The Appellate Panel will also comment on the position of the Defense for the Accused Vuković stressing that the ICTY Trial Chamber in the *Popović et al.* case (conducted against Ljubomir Borovčanin who was the superior officer of the 2nd Šekovići Detachment of the Special Police Brigade) did not find it proven in the proceedings that Borovčanin was aware of the genocidal plan or that he personally had an intent to commit genocide. The Defense therefore considers that the Accused Vuković, being an ordinary policeman, could not possess the same awareness, either.

490. The ICTY Trial Chamber found in the Borovčanin Judgement of 10 June 2010 that the evidence was insufficient to establish that Borovčanin had prior knowledge of the plan to murder the Muslims in Kravica, but that as the superior, especially after arriving in front of the warehouse on 13 July, he might have had the knowledge sufficient to put him on notice that his subordinates had committed the murder.

⁵³⁸ *Prosecutor v. Samardžija*, X-KRZ-05-07 (Court of BiH), Second Instance Verdict, 27 April 2007, p. 2.

⁵³⁹ *Prosecutor v. Šimšić*, X-KR-05/04 (Court of BiH), First Instance Verdict, 11 July 2006, para. 78.

⁵⁴⁰ *Prosecutor v. Pekez*, X-KRŽ-05/96-1 (Ct. of BiH), Second Instance Verdict, 5 May 2009 para. 108. Some Panels have transposed the ICTY's "substantial contribution" requirement of Aiding and Abetting to Article 31. See e.g., *Prosecutor v. Nikačević*, X-KR-08/500, Instance Verdict, 19 February 2009, page 49-50. The plain text of Article 31, however, clearly calls for the application of a lower *actus reus* standard than that which would be required in Article 29 CC of BiH or Article 7(1) of the ICTY Statute (transposed into Article 180 CC of BiH).

⁵⁴¹ *Prosecutor v. Samardžija*, X-KRZ-05-07 (Court of BiH), 27 April 2007, p. 2 – 3; *Prosecutor v. Mitrović*, X-KRŽ-05/24-1 (Court of BiH), Second Instance Verdict, 7 September 2009, para. 261; *Prosecutor v. Pekez*, X-KRŽ-05/96-1 (Court of BiH), Second Instance Verdict, 5 May 2009 para. 108.

491. The ICTY found Borovčanin guilty of failure to protect the detained Bosnian Muslims whereby he aided and abetted the murder. The ICTY also established his responsibility for the failure to report the murder to the competent authorities so that the matter could be investigated. He was therefore held criminally responsible, pursuant to Article 7(3), for murder as a crime against humanity, as well as for murder as a violation of the laws or customs of war. The Trial Chamber found that while Borovčanin was not a member of the JCE to murder, he aided and abetted murder at the Kravica warehouse by omission. Given that it was not committed with a genocidal intent, the ICTY did not find him guilty of genocide.⁵⁴²

492. Having analyzed the reasons that led the ICTY Trial Chamber to acquit the Accused Borovčanin of the charge of genocide because he did not possess genocidal intent, this Panel concluded that the Defense objections pointing at the relevance of that decision with respect to the Accused Vuković cannot be accepted as well-founded, and that the ICTY decision could not affect the facts that the Panel of the Court of B-H established in the proceedings against the Accused.

493. First of all, the respective Indictments by the Prosecutor's Office of B-H and the Office of the Prosecutor of the ICTY did not involve the same mode of responsibility and the same factual framework. The Accused Vuković has been found guilty of the specific acts of participation in the killings as a member of the 2nd Detachment, whereas Borovčanin was charged with a whole series of events during which he was a superior to all joint police forces, including the 2nd Detachment.

494. The respective decisions by the Court of BiH and the ICTY are a result of respective comprehensive evidentiary proceedings conducted before these instances and the ICTY judgment does not oblige the Court of BiH to render an identical decision, except in a case in which the Court of BiH, pursuant to the Law on the Transfer of Cases of the Prosecutor's Office of BiH to the Court of BiH and the use of Evidence, admits a fact as an established fact. However, the issue of Borovčanin's individual responsibility cannot constitute an established fact that will have an effect on the Accused Vuković, given that the Court must adduce evidence on the mode of participation of every individual Accused.

495. The ICTY decision on Borovčanin was rendered based on the evidence adduced before the ICTY and it does not oblige the Court of BiH to render an identical decision, given that the decision rendered by the Court of BiH is based on the evidence adduced before this Court.

496. In the case against the Accused Vuković and the Accused Tomić evidence was adduced concerning the two members of the 2nd Šekovići Detachment. With respect to the findings made in

⁵⁴² IT-05-88-T, 10 June 2010, paras. 1560,1563,1576, 1582, 1583.

the Borovčanin case, the Appellate Panel received information about the events at the Sandići/Kravica warehouse locations from the statements of witnesses who were police officers on the ground. All the adduced evidence that led the Panel to find the Accused Vuković guilty indeed indicated that, although there was no firm evidence that the Accused Vuković had prior knowledge of the killing plan, or that he possessed genocidal intent, or that he started committing the offense sharing such an intent with another, he inevitably became aware of the genocidal intent of others which, by all the circumstances that preceded the killings in the warehouse, indicated that the Bosniaks in Kravica would indeed be killed.

497. Also, in the proceedings conducted before the Court of BiH witnesses providing inculpatory evidence about Borovčanin were examined. They demonstrated that Borovčanin was personally in front of Kravica on 13 July 1995 (witness Neđo Jovičić, see above: "Executions in the Kravica Warehouse"). Witness D5 also testified that he personally was informed of the Kravica execution plan while they were still on the field mission in Srednje. These statements constitute the evidence the ICTY did not have at their disposal when adjudicating in the case against Borovčanin.

498. Another factor due to which the decision in the *Borovčanin* case differs from the decision in the *Vuković* case is the very act of perpetration of the offense that the Accused are charged with. Hierarchically, Borovčanin was superior to the Accused Vuković and he was charged as the superior to the units of the joint police forces and found guilty of his passive role. On the other hand, the Accused Vuković is accused as a member of the 2nd Detachment for his proactive role in the perpetration of the offense and he personally contributed to genocide, hence it can be concluded that the circumstances and findings that were being proved in the respective proceedings in these two cases are different, although they are based on one and the same event when it comes to the Kravica warehouse massacre.

499. Unlike the *Borovčanin* case where evidence was adduced on Borovčanin's acts as the superior and his presence in one segment of time in front of the Kravica warehouse, in the case against Vuković evidence was adduced that gave a clear picture and chronological sequence of events that is more comprehensive, thus facilitating the forming of a correct conclusion about this particular Accused. It has been proven that Vuković spent the whole days of 12 and 13 July at the Sandići-Kravica locality, and that he was one of the guards who guarded the detainees and who participated in escorting them to the warehouse. Except for few pieces of evidence that indicated Borovčanin's sporadic presence at the Sandići-Kravica locality, the Appellate Panel did not find it proven that Borovčanin was with the 2nd Detachment the whole time in order to be aware of the extent of the criminal activity that resulted in a mass execution in the warehouse.

500. Based on the foregoing, the verdict in the case against Vuković could not be rendered in accordance with the ICTY conclusions related to Borovčanin, either with respect to the facts or the adduced evidence, although the two cases are partially linked by the same event.

VII. THE PARTS OF THE INDICTMENT THAT WERE NOT ACCEPTED

501. Having reviewed the Indictment the Appellate Panel stated that the criminal acts that the Accused are charged with are referred to in two separate Counts of the Indictment. The acts described in the referenced Counts make one entity and comprise a number of activities that the Accused undertook on 12 and 13 July 1995, which the Prosecutor legally defined as the criminal offense of Genocide in violation of Article 171 of the CC of BiH.

502. By carrying out a simple analysis of the prescribed *actus reus* of the offense of Genocide it is easy to conclude that the referenced two Counts in the Indictment do not constitute separate criminal offenses, but should be regarded as a whole, with a view to describing the committed offense more precisely. That is why, having decided on the Indictment, the Appellate Panel listed the referenced acts under one Count of the Indictment, making reference to the acts describing the participation of the Accused Vuković in the criminal offense of Genocide.

503. Having done so, the Appellate Panel omitted from the factual part of the Indictment the elements that do not constitute the elements of the criminal offense of Genocide (widespread and systematic attack). Also omitted are the parts of the Indictment that have not been proved. Those are the parts of the Indictment related to: the inflicting of severe physical or mental harm, awareness of a Joint Criminal Enterprise, forcible transfer of the population, separation of the men from their families, capturing, conducting reconnaissance operation and armed attacks from tanks, the *Praga* self-propelled anti-aircraft guns, anti-aircraft guns and other infantry weapons against the column of Bosniaks in order for them to surrender, encouraging and enticing them with false promises of exchange, search and confiscation of money and valuables from the captives, and ordering them to lay down food, clothes and other things they carried in their bags. As for the act referred to in the Indictment concerning the participation in the search of the Bosniak-populated villages in the vicinity of Potočari on 12 July 1995, although it can be concluded from the adduced evidence that the Accused Vuković participated in it, the act itself does not constitute a criminal offense of Genocide, hence it is also omitted from the factual part of the Indictment.

504. Given that the parts of the Indictment that were omitted in the operative part of the Verdict do not constitute a separate criminal offense there was no need to render an acquittal for them. The Appellate Panel was guided by the opinion that court's interventions in the description of facts of the offense are permissible if their goal is a more precise definition of the offense. In doing so, it

was mindful not to exceed the charges, that is, not to bring the Accused in a more difficult procedural situation that implies a qualification graver for him. The description of the facts has been harmonized with the established state of the facts, the legal definition of the offense is not graver, and the omitted parts of the Indictment did not bring the Accused in a more difficult procedural position.

505. Given the foregoing, the Appellate Panel adjusted the operative part of the Verdict to the facts established in the proceedings conducted before it.

A. JOINT CRIMINAL ENTERPRISE

506. The indictment alleged that the Accused participated in the genocide as knowing participants in a joint criminal enterprise “from 10 July to 19 July 1995, in which the VRS and the RS MUP carried out a widespread and systematic attack against members of the Bosniak people, knowing of such an attack, in co-perpetration with other members of the VRS and the RS MUP, with the common aim to permanently transfer around 40,000 civilians from the UN safe area of Srebrenica and summarily execute and bury more than 7,000 Bosniak men aged between 13 and 70”.

507. The Appellate Panel notes that a systemic mode of responsibility in a Joint Criminal Enterprise is incorporated in Article 180(1) of the CC of BiH and that it constitutes a part of customary international law at the time when the criminal offenses from that case were committed, and the application of responsibility under a Joint Criminal Enterprise does not violate the principle of legality, for which the arguments were provided in the earlier decisions of this Court.⁵⁴³

508. The jurisprudence of international criminal tribunals (the ICTR, ICTY, Special Court for Sierra Leone, and the East Timor Special Panels) recognizes joint criminal enterprise as a mode of liability in the commission of crimes recognized under international criminal law.⁵⁴⁴

509. In the *Tadić* case, the ICTY Appeals Chamber defined the elements common to all categories of JCE as follows:

⁵⁴³ The case of *Mitar Rašević and Savo Todović*, X-KR/06/275 (Court of BiH), Trial Panel Verdict, 28 February 2008; the case of *Miloš Stupar et al.*, X-KR/05/24.

⁵⁴⁴ For example, the *Brđanin* Appeal Chamber held “The Appeals Chamber in *Tadić* held that JCE existed as a form of responsibility in customary international law at the time of the events in the former Yugoslavia”, para. 363 (*Tadić* Appeal Judgement, para. 226), and also referred to the *Vasiljević* Appeal Judgement, para. 95.

- i. A plurality of persons. They need not be organized in a military, political or administrative structure.
- ii. The existence of a common plan, design or purpose which amounts to or involves the commission of a crime provided for in the Statute.
- iii. Participation of the accused in the common design involving the perpetration of one of the crimes provided for in the Statute.

510. In the Indictment the Prosecutor included almost all members of the VRS and RS MUP who were deployed in the Srebrenica area in the period of 10-19 July, starting from the highest ranking officers to the soldiers lowest in the hierarchy, charging them of having participated together in a single Joint Criminal Enterprise. Moreover, the Prosecution argues that these persons are criminally liable for all crimes committed after the fall of Srebrenica, that is, the acts of forcible transfer, and certainly a great majority of all murders committed in that period.⁵⁴⁵

511. Neither the jurisprudence nor the professional literature supports the proposal that a basic form of JCE should expand from the highest echelon of military leadership to the lowest ranking infantry soldier, including persons having diverse roles, but charging all of them with *the identical degree of criminal liability*.⁵⁴⁶

512. For the purpose of this analysis, the Panel assumes *arguendo* that a Joint Criminal Enterprise did exist and that its common purpose was to capture, detain, kill in summary execution, bury and re-bury thousands of Bosniak men and boys, aged 16-60, from the Srebrenica enclave in the period of 10-19 July 1995 and “to forcibly transfer women and children from the Srebrenica enclave to Kladanj on 12 and 13 July 1995,” but also that some members of the military leadership were among the participants in this JCE.

513. However, even under such assumption, the Appellate Panel concludes that the Accused Vuković was not a participant in this JCE and that he cannot be held responsible for all criminal offenses committed within the framework of that JCE.

514. Such a considerable expanding of responsibility of the Accused on the basis of a JCE would mean a complete violation of the fundamental principles of criminal law. In accordance with the fundamental principle of individual responsibility, the Accused is criminally liable for the act he personally committed. However, he cannot be held criminally responsible for the criminal acts

⁵⁴⁵ See *Brđanin*, Appeals Chamber Judgement, para 445 (“A coherent application of such a notion could make each one of the RPPs [Relevant Physical Perpetrator], as members of the JCE, responsible for each one of the crimes that the Trial Chamber found were committed throughout the territory of the ARK during the Indictment period.”)

⁵⁴⁶ See e.g., Antonio Cassese, *International Criminal Law* (Oxford, Oxford University Press, 2nd edition), pp. 209,210.

committed following the idea of the highest ranking superiors where his contribution to the commission has not been proven. The intent to commit genocide and the other persons' acts cannot constitute the basis for the liability of the Accused, and the theory of a Joint Criminal Enterprise does not change this fundamental principle in any way.

515. The persons who devised and commanded the criminal plan implemented after the fall of Srebrenica are responsible for all ensuing criminal offenses. On the other hand, ordinary soldiers, members of the VRS and MUP, are responsible for the crimes in which they participated and nothing more than that. A different conclusion would have meant attributing collective responsibility to all soldiers for the crimes of their superiors, which is absolutely incompatible with the domestic laws, international criminal law and the laws of warfare.

516. The Appellate Panel also concludes that the Prosecutor did not establish the legal elements of the basic category of responsibility for a JCE. Although by the acts of the Accused the common goal or plan of the JCE was partially realized, it can be concluded that the Accused participated in that plan only as an instrument with whose help the act was committed, without becoming a member of the JCE.

517. When analyzing an alleged individual participation in a JCE a difference must be carefully drawn between the persons acting in accordance with the common objective and the persons acting independently but sharing the same criminal intent. The Trial Chamber in *Krajišnik* explained the difference between the persons acting together toward the same common objective and the persons acting individually with the same criminal intent. As the ICTY Trial Chamber stated: "*It is evident, however, that a common objective alone is not always sufficient to determine a group, as different and independent groups may happen to share identical objectives*".⁵⁴⁷

518. Therefore, it does not suffice for the Prosecution to show that a great number of persons had identical criminal objectives. The relevant investigation shall also focus on whether these persons shared a common objective and whether they actually associated in order to achieve that objective. There is no evidence of the Accused's explicit concert with other persons aimed at achieving that objective.

519. Also, from the legal point of view, a knowing participation in the implementation of a common purpose and plan in a JCE does not necessarily imply membership in the JCE. As the ICTY Appeals Chamber in the *Brđanin* case stated, the principal perpetrator of a criminal offense who furthers the common purpose of a JCE may know of the existence of the JCE and be aware of his role in the implementation of the common purpose without sharing the *mens rea* required to

⁵⁴⁷ *Krajišnik* Trial Chamber Judgement, para 884.

become a member of the JCE.⁵⁴⁸ Simply, knowledge of a common purpose does not inherently imply membership in a JCE, even when an individual executes a common purpose or plan.

520. The ICTY Trial Chamber in *Krajišnik* proposed to consider the question whether the persons suspected of having been members of a JCE *acted together*. Specifically,

"Rather, it is the interaction or cooperation among persons – their joint action – in addition to their common objective, that makes those persons a group. The persons in a criminal enterprise must be shown to act together, or in concert with each other, in the implementation of a common objective, if they are to share responsibility for the crimes committed through the JCE."⁵⁴⁹

521. The Trial Chamber then adds:

"On the other hand, links forged in pursuit of a common objective transform individuals into members of a criminal enterprise. These persons rely on each other's contributions, as well as on acts of persons who are not members of the JCE but who have been procured to commit crimes, to achieve criminal objectives on a scale which they could not have attained alone."⁵⁵⁰

522. The Panel notes that responsibility for a JCE is equally applied with respect to the criminal offense of Genocide, as well as all the other offenses stipulated in Articles 172-175 of the CC of BiH. The proof that an individual genocidal intent or knowledge of its existence with others does not *ipso facto* lead to the conclusion that such a person was a member in a JCE whose objective was genocide. Similarly, the proof of genocidal intent does not depend in any way on the proof of membership in a JCE whose objective is genocide. Responsibility for a JCE requires a proof of intent different from the one required for a special genocidal intent, that is, requires additional proof of membership in a JCE whose objective is the commission of genocide. The Prosecution did not prove, either with respect to the facts or the law, that the Accused acted *"together"* or *"in concert"* with members in any JCE.

523. Acting together requires a certain degree of reciprocity, which is obviously lacking in this case. The evidence indicates only that the Accused acted in accordance with the ideas of those who were responsible for devising and commanding the common political/military plan, but there does not exist the evidence that the Accused and the plan authors cooperated in any way or that

⁵⁴⁸ *Brđanin*, Appeals Chamber Judgement, para 410. See also Declaration of Judge Van Den Wyngaert in the *Brđanin* Appeals Chamber Judgement, para 5 ("[Acquiescence as a standard of liability], in my view, would be an overly broad interpretation of the word 'agreement'. It would have an overly broad 'downward' effect.")

⁵⁴⁹ *Krajišnik* Trial Chamber Judgement, para 884.

⁵⁵⁰ *Krajišnik* Trial Chamber Judgement, para 1082.

the plan authors knew the Accused personally, except as a member of a formation that was an instrument of perpetration.

524. It does not follow from the evidence that there were strong ties between the Accused, as a member of lower-ranking military structures, and members who supported the JCE, that is, higher-ranking commanders of the relevant VRS and MUP forces. The Accused was a member of only one police formation, without a rank or function, and there is a whole series of structures in the chain-of-command leading to the level of commander such as Gen. Mladić.

525. In addition to this, even if it is accepted that the participation of a person such as the Accused was required for the implementation of that common plan, such a relation does not challenge the interdependence characteristic of membership in a JCE. The Accused was simply an "instrument" used by the plan authors who, in light of the ICTY *Krajišnik* Judgment, "*were not a JCE members but were used to commit criminal offenses*".

526. The Appellate Panel therefore cannot conclude that the Accused Vuković is responsible as a co-perpetrator in the referenced JCE, as there do not exist the elements required to accept that the Accused Vuković committed the criminal offense as a member in the JCE. Rather, the Panel concluded that the Accused participated in the massacre in the warehouse in Kravica as an aider in genocide under Article 171(a) and Article 31 of the CC of BiH.

VIII. APPLICABLE LAW

527. When it comes to the applicable law, the Defense for the Accused Vuković stressed that the principle of lawfulness, that is, the principle of *nullum crimen sine lege nulla poena sine lege* constitutes an inviolable legal principle from the aspect of human rights protection. As such, it does not allow that a perpetrator is tried for a criminal offense that, at the time of the commission, was not codified in the laws that were in force, that is, that the law that was in effect at the time of the commission, that is, the Criminal Code of SFRY (CC of SFRY), must be applied in the case at hand.

528. The Defense for both Accused pointed that in this case there existed a criminal code, that is, the CC of SFRY, that prescribed the offense that the Indictment charges the Accused with. Under the CC of SFRY, the criminal offense of Genocide, in violation of Article 141, carried a sentence of imprisonment for a term of five years or the death penalty, while the CC of BiH sets forth the sentence of imprisonment of not less than 10 years or a long term imprisonment. When the Constitution of BiH came into effect, the death penalty laid down by the referenced law was

abolished, hence the maximum penalty that may be imposed for the referenced criminal offense would be the sentence of imprisonment for a term of 20 years, which is far more lenient than the long term imprisonment sentence.

529. The Defense for both Accused pointed that the Entities' courts and the Court of the Brčko District implement the law that was in effect at the time of the alleged commission, that is, the CC of SFRY, hence the different practice of the Court of BiH and other courts is contrary to the fundamental human right, that is, the right to equality of all citizens before the law.

530. The Defense Counsel also argue that Article 4(a) of the CC of BiH may be applied only in a situation where the national legislation failed to regulate certain acts or omissions as criminal offenses. Therefore, given that, in accordance with international law, genocide was prescribed as a criminal offense even before the referenced event, a retroactive application of the CC of BiH in the case at hand is not justified, as it cannot be subsumed under the exceptions envisaged in Article 15(1) of the International Covenant on Civil and Political Rights (ICCPR) or Article 7(2) of the European Convention on Human Rights (ECHR).

531. The Panel considers this argumentation to be unfounded and that Article 171 of the CC of BiH must be applied in the case at hand.

532. Article 3(2) of the CC of BiH, related to the principle of legality, reads: "No punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offense by law or international law, and for which a punishment has not been prescribed by law".

533. It is indisputable that the CC of SFRY set forth Genocide as a separate criminal offense in its Article 141. However, a question arises as to which law to apply when meting out the punishment, since the CC of SFRY prescribed the sentence of imprisonment not exceeding 20 years or the death penalty. The Defense claims that the application of the CC of B-H does not mean the application of a more lenient law, as with the abolition of the death penalty (which had initially been the most stringent punishment in the CC of SFRY prescribed for this offense) the sanction referred to in Article 141 of the CC of SFRY turns out to be more lenient for the Accused than the sanction set forth in Article 171(1) of the CC of BiH.

534. However, Article 4a) of the CC of BiH refers to "general principles of international law". Since neither international law nor the ECHR contains such an term, this term is, therefore, a combination of the "principles of international law" referred to by the UN General Assembly and the International Law Commission, on the one hand, and "the general principles of law recognized by the community of nations", as referred to in the Statute of the International Court of Justice and Article 7(2) of the ECHR, on the other. The principles of international law, as referred to in the

General Assembly Resolution 95 (1) (1946) and the International Law Commission (1950), relate to the *Charter of the Nuremberg Tribunal and the Judgment of the Nuremberg Tribunal*. In the *Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and the Judgment of the Nuremberg Tribunal*, adopted by the International Law Commission in 1950 and submitted to the General Assembly, Principle I sets forth: "Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment". Principle II states: "The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law." Therefore, irrespective of whether viewed from the standpoint of customary international law or of "principles of international law", it is beyond doubt that Genocide was a criminal offense in the period concerned, that is, that the principle of legality has been satisfied.

535. It is Article 4(a) of the Law on the Amendments to the Criminal Code of BiH (*Official Gazette of BiH* No. 61/04) that provides legal ground for trying or punishing criminal offenses under the general principles of international law. This Article sets forth that Articles 3 and 4 of the CC of BiH shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of international law. This Article fully incorporated Article 7(2) of the European Convention and it provides for a departure from the principle set forth in Article 4 of the CC of BiH, as well as for a departure from the mandatory application of a more lenient law in the proceedings for the offenses that are criminal according to international law, as are the proceedings against these Accused given that they concern incriminations that include a violation of rules and international law. Actually, Article 4a. of the Law on the Amendments to the Criminal Code of BiH is applied to all criminal offenses from the domain of crimes against humanity and values protected by international law, as these offenses, Genocide included, are dealt with in Chapter XVII of the Criminal Code of B-H entitled *Crimes against Humanity and Values Protected by International Law*, while the provisions on genocide are accepted as part of customary international law and constitute a non-derogatory provision of international law.

536. When these provisions are viewed together with Article 7 of the ECHR, which takes precedence over all other laws in BiH (Article 2.2 of the BiH Constitution), it can be concluded that the principle of legality under Article 3 of the CC of BiH is contained in the first sentence of Article 7(1) of the ECHR, while the second sentence of Article 7(1) of the ECHR prohibits imposing a heavier penalty than the one that was applicable at the time the criminal offense was committed.

537. However, Article 7(2) of the ECHR contains an exception to the view articulated in Paragraph (1) and allows for a trial and punishment of any person for any act or omission which, at the time

when it was committed, was criminal according to the general principles of law recognized by civilized nations. The same principle is set forth in Article 15 of the ICCPR.

538. This exception was incorporated with a specific goal to enable the application of national and international war crimes legislation that came into effect during and after World War II. Accordingly, the jurisprudence of the European Court of Human Rights (*Naletilić v Croatia* No. 51891/99; *Kolk and Kislyiy v Estonia*, No. 23052/04 and 4018/04) emphasizes the applicability of Paragraph (2) rather than Paragraph (1) of Article 7 of the ECHR when such acts are concerned, which also justifies the application of Article 4(a) of the Law on the Amendments to the Criminal Code of BiH in such cases.

539. Even when this issue is viewed from the aspect of application of a more lenient law, it follows that the CC of BiH is more lenient to the Accused in the case at hand, as it prescribes a prison sentence, which is in any case more lenient than the death penalty, which was the maximum penalty prescribed by the CC of SFRY for this criminal offense. Also, from the aspect of the description of the *actus reus* of the criminal offense of Genocide, it follows that Article 141 of the CC of SFRY sets forth "forcible transfer of population", as one of the relevant acts, which is not contained in Article 171 of the CC of BiH.

540. The position of the Defense, which neglects the fact that death penalty was prescribed for the referenced offense at the time of the commission, is therefore unacceptable, as it implies that the referenced sanction may simply be deleted from Article 141 of the CC of SFRY. That would have meant an application of a law that practically does not exist, that is, one sanction would have been removed and substituted with another without an explicit legal provision.

541. The Constitutional Court of BiH took an identical position about this issue while adjudicating on the appeal in the case of *A. Maktouf* (AP 1785/06). In its Decision of 30 March 2007 it stated: Paragraph 68. "In practice, legislation in all countries of former Yugoslavia did not provide a possibility of pronouncing either a sentence of life imprisonment or long-term imprisonment, as often done by the International Criminal Tribunal for the former Yugoslavia (the cases of *Krstić*, *Galić*, etc.). At the same time, the concept of the SFRY Criminal Code was such that it did not stipulate either long-term imprisonment or life sentence but death penalty in case of a serious crime or a 15 year maximum sentence in case of a less serious crime. Hence, it is clear that a sanction cannot be separated from the totality of goals sought to be achieved by the criminal policy at the time of application of the law." In Paragraph 69 the Court wrote; "In this context, the Constitutional Court holds that it is simply not possible to 'eliminate' the more severe sanction under both earlier and later laws, and apply only other, more lenient, sanctions, so that the most serious crimes would in practice be left inadequately sanctioned."

542. Based on the foregoing, the Appellate Panel concludes that Article 171 of the CC of BiH, rather than Article 141 of the CC of SFRY, shall apply in the case at hand.

IX. SENTENCE

543. The purposes of sentencing are set out in both the general and special sections of the CC of BiH. Article 2 of the CC of BiH establishes as a general principle that the type and range of the sentence must be “necessary” and “proportionate” to the “nature” and “degree” of danger to the protected objects: personal liberties, human rights, and other basic values. In the case of genocide, the nature and degree of the danger will always be severe. The type of sentence the Court can legally impose in the case of genocide is limited to jail, and the range has been established as 10 to 20 years, or long-term imprisonment of between 20 and 45 years. The distinction between a 10 to 20 year sentence and a long-term sentence has consequences for the convicted person, including not only a longer period of incarceration, but also: more severe restrictions on the personal liberties of the convicted person within the prison system (Art. 170 LoE)⁵⁵¹; less privacy as to correspondence and telephone calls (Art. 172 LoE); and a longer mandatory sentence before consideration for parole or community privileges (Art. 44(4) CC of BiH). On the other hand, long-term sentencing also provides for more intensive and individualized treatment for rehabilitation.

544. In addition to the general principle pronounced in Article 2, the CC of BiH prescribes further purposes and considerations the Court must address when determining and pronouncing a sentence. These are of two types: those that relate to the objective criminal act and its impact on the community, including the victims; and those that relate specifically to the convicted person.

Pursuant to Article 2 and Article 48 of the CC of BiH, the sanction must be necessary and proportionate to the danger and threat to protected objects and values.

545. *"Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit*

⁵⁵¹ Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and Other Measures, Official Gazette 12/10.

and aims of the United Nations."⁵⁵² Punishment of genocide is a principle "recognized by civilized nations as binding on the States, even without any conventional [treaty] obligation."⁵⁵³

546. The effectiveness of the sentence must take into account not only the fact that genocide was found to have been committed, but also the manner in which the specific act of genocide was committed in each particular case. "Genocide embodies a horrendous concept, indeed, but a close look at the myriad of situations that can come within its boundaries cautions against prescribing a monolithic punishment for one and all genocides or similarly for one and all crimes against humanity or war crimes."⁵⁵⁴ In addition to the threat that was posed to the protected values and persons by the commission of genocide against them generally, the Panel examined the actual damage done to the protected persons in this particular case.

Pursuant to Article 48 of the CC of BiH, the sanction must be necessary and proportionate to the suffering of direct and indirect victims of the crime

547. *The direct victims of the crime of genocide of which the Accused has been found guilty are hundreds of men who lost their lives in the massacre in the warehouse in Kravica that lasted for around an hour and a half on 13 July 1995, as well as the women and children related to these men and whose families and lives were destroyed by the loss of these men in this particular way. The indirect victim is the protected group of Bosniaks from Srebrenica whose existence was threatened by the genocidal act.*

548. *The physical and mental suffering that the direct victims were exposed to was extreme. The men of all ages who were killed in the Kravica warehouse were unarmed prisoners who had been captured by or surrendered to the Bosnian Serbs in exchange for promises of safety. Their mental and physical suffering during the one and one half hours of the massacre is indescribable.*

Pursuant to Articles 6 and 39 of the CC of BiH, the sentence must be sufficient to deter others from perpetrating similar crimes.

549. *Prevention of genocide has always been linked with punishment. The very title of the Genocide Convention makes that point clear. In order to prevent genocide, the crime must be named and the perpetrators of the crime must be held accountable and not be permitted to profit from their participation in genocide. Deterrence is of particular importance in the present case. The Accused was a direct perpetrator of the killings.*

⁵⁵² Opening paragraph of UN General Assembly Resolution 96(I), 11 December 1946.

⁵⁵³ Reservations to the Convention on Genocide (Advisory Opinion) 1951 ICJ Reports 16, p. 23.

⁵⁵⁴ *Krstić* Trial Chamber Judgement, para 700.

Pursuant to Article 39 of the CC of BiH, the sentence must express the community's condemnation of the offense committed by the Accused.

550. *The community in this case is the people of Bosnia and Herzegovina, and the entire world community, who have, by domestic and international law, mandated that genocide be unequivocally condemned, and that commission of genocide be subject to effective punishment. Condemnation of genocide has been given primacy within the international community by virtue of its recognition as jus cogens, that is, a norm from which no derogation is permitted⁵⁵⁵ as well as its recognition as a norm that is enforceable erga omnes, by which all States are recognized as having an obligation to enforce it.⁵⁵⁶ Genocide has been described as a crime "directed against the entire international Community rather than the individual".⁵⁵⁷ This community has made it clear that these crimes, regardless of the side which committed them or the place in which they were committed, are equally reprehensible and cannot be condoned with impunity. The legislation of Bosnia and Herzegovina reflects this same resolve. The particular crime of genocide committed in this case was carried out in a manner that is particularly reprehensible and the sentence must reflect the nation's and the world's condemnation of this activity.*

Pursuant to Article 39 of the CC of BiH, the sentence must be necessary and proportionate to the need to increase the consciousness of citizens as to the danger of crime.

551. *The danger of genocide lies not only in the physical destruction of the targeted group, but also in the soul-destroying nature of the intent with which it is carried out, and the risk of its contagion. The imposition of a penalty for this crime must demonstrate that genocide will not be tolerated, but it must also show that the legal solution is the appropriate way to recognize that crime and break the cycle of private retribution. Reconciliation cannot be ordered by a court, nor can a sentence mandate it. However, a sentence that fully reflects the seriousness of the act can contribute to reconciliation by providing a response consistent with the Rule of Law. It can also promote the goal of replacing the desire for private or communal vengeance with the recognition that justice is achieved.*

⁵⁵⁵ *Application of Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia), Decision on Further Requests for the Indication of Provisional Measures, 13 September 1993, p. 440.; Vienna Convention on the Law of Treaties, entry into force 27 January 1980, Art. 53.

⁵⁵⁶ *Barcelona Traction Light and Power Company* (Belgium v. Spain), Judgment of 5 February 1970, 1970 ICJ Reports 4, p. 32; *Application of Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia), Decision on Preliminary Objections, 11 July 1996, para. 31.

⁵⁵⁷ William Schabas, *Genocide in International Law* (Cambridge: Cambridge University Press 2000), p 6.

Pursuant to Article 39 of the CC of BiH, the sentence must be necessary and proportionate to the need to increase the consciousness of citizens as to the fairness of punishment.

552. *Penalties for genocide, which has been labeled the “crime of crimes”, have included the most serious punishment that can be imposed by national and international legal systems. National jurisdictions have imposed the death penalty for convictions of genocide, even in those states where the death penalty had been repealed or abandoned for all other crimes.*⁵⁵⁸

553. *Bosnia and Herzegovina has embraced the abolition of the death penalty for all crimes, a position that is entirely consistent with the respect for human life that makes the act of genocide so abhorrent. The murder of one person can fairly justify a sentence of long-term imprisonment. Participation in the murder of several hundred defenseless people in the manner evident in this case, even without genocidal intent, would fairly demand the severest of sentences available in domestic law. No penalty can adequately reflect the seriousness of depriving hundreds of persons of life, the psychological pain inflicted on their families, or the even graver crime that was committed when that deprivation of life was accompanied by the aim to deprive an entire group of human beings of their right to exist. The fairness of the sentence then depends not only on the correlation between the seriousness of the crime, the harm done by its commission, and the condemnation in which it is held, but also and more specifically, on the relationship of the available sentencing options to the sentence imposed for the particular crime.*

554. *The statutory requirement of fairness also requires consideration of the individual circumstances of the criminal actor in addition to the criminal act. There are two statutory purposes relevant to the individual convicted of crime: (1) specific deterrence to keep the convicted person from offending again (Arts. 6 and 39 of the CC of BiH); and (2) rehabilitation (Art. 6 of the CC of BiH). Rehabilitation is not only a purpose that the CC of BiH imposes on the Court; it is the only purpose related to sentencing recognized and expressly required under international human rights law, to which the Court is constitutionally bound. Article 10(3) of the ICCPR provides: “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”*

555. *There are a number of statutory considerations relevant to the sentencing purposes of rehabilitation and specific deterrence that affect the sentencing of the individual convicted person (Art. 48 of the CC of BiH). These include: degree of liability; the conduct of the perpetrator prior to*

⁵⁵⁸ Rwanda, considered a *de facto* abolitionist state, executed 22 offenders convicted of genocide by its domestic Court in 1997; Israel, which had abolished the death penalty for all other crimes, retained it for genocide and sentenced Adolph Eichmann to death. Schabas, *Genocide*, pp. 396-397. The death penalty has been justified as a “fair” sentence for the

the offense, at or around the time of the offense and since the offense; motive; and the personality of the perpetrator. These considerations can be used in aggravation or mitigation of the sentence, as the facts warrant. The point of these considerations is to assist the Panel in determining the sentence that is not only necessary and proportionate for the purposes and considerations already calculated in connection with the act itself and the effect on the community, but to tailor that sentence to the deterrent and rehabilitative requirements of the particular offender.

556. *Whereas the maximum sentence available under law might be fair in this case, the Panel is mindful that as horrendous as this act of genocide was, there are those who committed multiple acts of genocide, as well as those whose crime was the commission of the larger genocidal plan, of which the genocide at the Kravica warehouse was but a part. Therefore the maximum sentence must, in fairness, be reserved for those crimes that, though qualitatively no more heinous, may quantitatively exceed even this crime.*

557. Furthermore, the Accused has been found guilty as an aider in genocide. Therefore, in deciding on sentencing the Accused, the following provisions are also relevant:

Whoever intentionally helps another to perpetrate a criminal offense shall be punished as if he himself perpetrated such offense, but the punishment may be reduced (Article 31(1) of the CC of BiH).

The accomplice shall be considered criminally responsible within the limits set by his own intent or negligence, and the inciter and the accessory within the limits of their own intent (Article 32(1) of the CC of BiH).

558. It follows from the foregoing provisions that the law requires the Court to pay due attention to the limitations of the Accused's intent as an accessory in the actions taken. It is in the Court's discretion to decide on the manner of sentencing - "as if he had committed it himself" or "also a more lenient sentence may be imposed". This indicates that the law proceeds from a position that acting as an accessory is the mildest form of co-perpetration which reflects that accessories most often support the offense committed by the perpetrator.

559. However, in this particular case, the Accused was found to be an accessory only because, from the evidence, it could not be inferred beyond a reasonable doubt that the Accused acted with genocidal intent. However, the specific accessory actions of the Accused are at the same time the actions of co-perpetration in killings which far exceed the standard actions of an accessory in the

commission of genocide in recognition that those who commit a crime which has as its aim to deprive an entire group of people of their right to exist on earth have forfeited their own right to exist. *Id.*, p. 397.

commission of the criminal offenses in which “special intent” is not required, due to which the sentence could not be more lenient.

700. Based on the foregoing, while meting out the type and length of punishment, the Appellate Panel was mindful of all circumstances of importance in rendering a more stringent or lenient sentence, pursuant to Article 48 of the CC of BiH.

701. The Accused Vuković was a Special Police member, trained in both combat and police work, and he had already spent several years in the 2nd Detachment. The Panel could not disregard the fact that, as a Special Police member at the time of the offense, he knew that he had an obligation to obey the law and protect civilians in his custody.

702. What should be emphasized is the cruelty with which the offense was committed, which, if comparison is possible at all, makes his acts graver by their character and consequences and the suffering inflicted on the victims from the act of killing from an automatic gun, for example. This role of the Accused Vuković in the killing must be regarded as an aggravating circumstance. It has been established that the Accused Vuković, deliberately and systematically, threw a large number of hand grenades (from two trunks) into the warehouse. The use of that particular weapon at that time against the hundreds of wounded and dying people crammed in the warehouse without any hope of rescue demonstrates a degree of cruelty and persistence that must be taken into account when meting out the punishment, and such conduct must be sanctioned adequately.

703. The Appellate Panel also considers as aggravating the fact that after the perpetration, being aware of the criminal proceedings against him in BiH, the Accused hid in Serbia until 2008 in an attempt to evade criminal prosecution, and that he was arrested pursuant to the warrant in the Republic of Serbia and extradited to Bosnia and Herzegovina.

704. On the other hand, the Appellate Panel also considered the extenuating circumstances for the Accused as follows: his proper conduct in the courtroom, the fact that he personally did not do anything to aggravate the position of witnesses, and the fact that he did not show disrespect for any witness or the Panel, in both the first instance and the second instance proceedings. Also, the Accused is married, with one child, according to the data currently available to the Panel, with no prior conviction and no other criminal proceedings pending.

705. Finally, the Panel took into account the final sentences of imprisonment imposed in another case (the *Kravica* case), which is linked to the same event in terms of facts and in which the Accused were also members of the 2nd Detachment. The sentences imposed in the *Kravica* case ranged between 28 and 33 years of imprisonment. Therefore, in an attempt to be consistent with the prison sentences imposed for this and similar criminal offenses, the Appellate Panel has determined that the sentence for the Accused of 31 years of imprisonment, pronounced by the

Trial Panel, is appropriate, given the committed crime, and necessary and proportionate to the suffering of the direct and indirect victims and to the degree and danger to the “protected values”, as set out in Article 48 of the Criminal Code. The Appellate Panel holds that this sentence reflects the purpose of sentencing (personal and general deterrence) and that it will increase the consciousness of citizens as to the danger of crime and to the fairness of punishment.

706. Pursuant to Article 56 of the CC of BiH, the time the Accused Vuković spent in custody since 8 August 2008 shall be credited towards the pronounced sentence of imprisonment.

707. The Appellate Panel rendered a verdict acquitting the Accused Tomić of the charges and, pursuant to Article 138(2) of the CPC of BiH, rendered a decision to terminate the custody and release the Accused.

X. DECISION ON THE COSTS OF THE PROCEEDINGS AND CLAIMS UNDER PROPERTY

LAW

708. The Accused Tomić was acquitted of the charges, so, pursuant to Article 189(1) of the CPC of BiH, he is relieved of the duty to reimburse the costs of the criminal proceedings, which shall be paid from within the budget appropriations.

709. With respect to the Accused Vuković, when rendering the decision on the costs of the proceedings, the Appellate Panel has taken into account the fact that the Accused is of middle income, that he has a family, that he has been in custody for more than three years, and that he has been sentenced to a long-term imprisonment by the final verdict, due to which he has not been and will not be able to earn money and help his family. Due to the foregoing, the Panel considers that his covering of the proceedings costs would jeopardize the support of the persons he is obliged to support, hence it decided to fully relieve the Accused of the duty to reimburse the costs of the proceedings, pursuant to Article 188 of the CPC of BiH.

710. Pursuant to Article 198(3) of the CPC of BiH, and considering that no aggrieved parties pursuing a claim under the property law have been identified, aggrieved parties are instructed to pursue their potential claim under property law in a civil action.

RECORD-TAKER

Dženana Deljković Blagojević

PRESIDING JUDGE

Hilmo Vučinić

LEGAL REMEDY: No appeal lies from this Verdict.

ANNEX 1 - Evidence

a. PROSECUTION WITNESSES

1. The following Prosecution witnesses were heard at the main trial:

Protected witnesses D1, D4 and D5, Jovan Nikolić, Ostoja Stanojević, Krsto Simić, Slaviša Žugić, Mirko Aščerić, Milenko Pepić, Marko Aleksić, Predrag Čelić, Slobodan Stjepanović, Dragomir Stupar, Luka Marković, Zoro Lukić, Danilo Zoljić, Stanislav Vukajlović, Ilija Nikolić, Miladin Stevanović, Petar Mitrović, Vasić Dragomir, Munira Subašić, Dražen Erkić, Damir Brekalo, Duško Mekić, Stevo Ilić, Slaviša Vlačić, Marko Ostojić, Tahir Ibrišimović, Richard Butler, Josepha Kingori and Paul Gornvegen. Expert Vedo Tuco was examined at the proposal of the Prosecution.

a. PROSECUTION DOCUMENTARY EVIDENCE

The Court reviewed the following documentary evidence of the Prosecution:

T1 – cd (Zoran Petrović's film) and transcript

T2 – Record of Interview of Witness Jovan Nikolić, No. KT-10/05 dated 10 October 2005

T2a, T2b, T2c, T2d – photos of the Kravica Warehouse

T3a – photograph of a truck

T 3b – sketch for Witness Ostoja Stanojević

T4 – photo (tendered during the examination of Witness D1) of the Kravica Warehouse

T5 – photo (tendered during the examination of Witness Krsto Simić) of the Kravica Warehouse taken from P-10.1

T6 – aerial photo (tendered during the examination of Witness Krsto Simić) of Glogova dated 17 July 1995

T7- aerial photo (tendered during the examination of Witness Krsto Simić) of Glogova dated 17 July 1995

T8 –Record of Interview of Witness Marko Aleksić, composed by the SIPA War Crimes Investigation Center, No. 14-04/2-327/05 dated 12 October 2005

T9 – Record of Interview of Witness Milenko Pepić, composed by the SIPA War Crimes Investigation Center, No. 14-04/2-388/05 dated 26 October 2005

T10 – Record of Interview of Witness Predrag Čelić, composed by the SIPA War Crimes Investigation Center, No. 14-04/2-391/05 dated 27 October 2005

T11- Record of Interview of Witness Slobodan Stjepanović (Counsel Golić raised an objection under CPC Article 273), composed by the SIPA War Crimes Investigation Center, No. 14-04/2-393/05 dated 27 October 2005

T11a – photo shown to Witness Slobodan Stjepanović, who made certain notes and markings on it

T12 a- Prosecutor's Office of BiH Record of Interview of a Suspect No. KT-RZ-10/05 dated 18 April 2008, and a transcript dated 18 April 2008 (Witness D-5)

T12 b- Record of Interview of Witness D-5 dated 22 May 2008, and a transcript dated 22 May 2008 (Witness D-5)

T 12 c – Record of Interview of Witness D-5 dated 18 August 2008

T12d – photo with markings of Witness D-5 on it

T12e – photo taken from P-10.6

T13 – photo tendered during the examination of Witness Dragomir Stupar, taken from P-10.1

T14 – Record of Interview of Witness Luka Marković dated 20 September 2005

T15 – Minutes of on-site visit and reconstruction dated 29 September 2005, with a CD (titled: reconstruction Luka Marković)

T16- photo marked by Witness D-4

T17 – sketch pertaining to Witness D-4

T18 – Transcript of Interview of Witness Danilo Zoljić dated 15 September 2006

T19 – Record of Interview of Witness Stanislav Vukajlović

T20a – sketch

T20b – photo of the Kravica Warehouse

T21 – Record of Interview of Suspect Miladin Stevanović dated 1 July 2005

T22 – 22 photos of the Kravica Warehouse

T23 – Record of Interview of Suspect Miladin Stevanović dated 24 June 2005

T24 – Record of Interview of Suspect Petar Mitrović dated 21 June 2005

T25 – Decision of the Court of BiH No. X-KR-05/24 dated 18 April 2007

T26 – photo of the Kravica Warehouse

T27 – photo taken from P-10.6

T28 – Order no. 64/95 dated 10 July 1995 issued by Staff Commander Tomislav Kovač

T29 – Dragomir Vasić's Dispatch Note, Zvornik CJB /Public Security Center/, no. 277/95 dated 12 July 1995

T30 - Dragomir Vasić's Dispatch Note, Zvornik CJB, no. 281/95 dated 12 July 1995

T31 - Dragomir Vasić's Dispatch Note, Zvornik CJB, no. 282/95 dated 13 July 1995

T32 - Dragomir Vasić's Dispatch Note, Zvornik CJB, no. 283/95 dated 13 July 1995

T33 - Dragomir Vasić's Dispatch Note, Zvornik CJB, no. 12-6/08-508/95 dated 14 July 1995

T34 - Dragomir Vasić's Dispatch Note, Zvornik CJB, no. 01-16-02/1-205/95 dated 15 July 1995

T35 - Dragomir Vasić's Dispatch Note, Zvornik CJB, no. 01-01-0211-206/95 dated 17 July 1995

T36 - Dragomir Vasić's Dispatch Note, Zvornik CJB, no. 12-6/08-534/95 dated 19 July 1995

T37 - Dragomir Vasić's Dispatch Note, Zvornik CJB, no. 01-16-02/12231/95 dated 28 July 1995

T38 - Dragomir Vasić's Dispatch Note, Zvornik CJB, no. 01-16-02/1-221/95 dated 22 July 1995

T39 – Report by Ljubiša Borovčanin, Deputy Commander of the SBO

T40 – Dean Meaning's Report

T41 – Dean Meaning's Report

T42 – Dean Meaning's Report

T43 – Dean Meaning's 2003 Report in the Blagojević case

T44 – Transcript of Momir Nikolić's testimony

T45 – Transcript of Miloš Stupar's testimony

T46 – Transcript of Joseph Kingori's testimony

T47 - Transcript of testimony of Pietera

T48 - Transcript of Paul Groenwegen's testimony

T49 - Transcript of Leendert Van Duijn's testimony

T50 - Transcript of Dragan Obrenović's testimony

T51 - Transcript of Robert Franken's testimony

T52 - Transcript of Thomas Karremans' testimony

T53 - Transcript of Miroslav Deronjić's testimony

T54 – Ljubomir Borovčanin's statements to the OTP on 20 February 2002

T54b – 11 March 2002, 12 March 2002

T55a – Miroslav Deronjić's statement from 1997

T55b – Statement from 1998

T55c – Statement from 1999

T55d – Miroslav Deronjić's statement from 2003

T56 – Statement of Facts and Acceptance of Responsibility (Momir Nikolić)

T57 – Obrenović

T58 – Statement of Facts and Acceptance of Responsibility (Dragan Obrenović)
(listed on record for 29 April 2009, book 4)

T59 – List of members of the 2nd Šekovići Detachment who received their July 1995 salary - Special Brigade – 2nd Šekovići Special Police Detachment

T60 – RS MUP /Republika Srpska Ministry of the Interior/ letter no. 02/3-strictly confidential 1091/05 dated 22 November 2005

T61 - List of members of the Special Police Brigade, submitted by the Crime Police Administration of the Republika Srpska MUP, no. 02/3- strictly confidential 994/05 dated 26 October 2005

T62 – Structure of the Special Police Brigade of the RS MUP, Janja HQ (Bijeljina)

T63 – Structure of the RS police in the Drina Corps area, dated 12 July 1995 - P363

T64 – Hospital admissions register (entry for 13 July 1995)

T65 – 1992 guidelines for setting out criminal prosecution criteria; author: Military Prosecutor's Office attached to the RS Army Main Staff

T66 – Order to apply rules of international laws of war in the Army of the Serb Republic of Bosnia and Herzegovina, Official Gazette of the Serb People, dated 13 June 1992; author: Radovan Karadžić

T67 - Directive for Further Operations no. 7, ref. number Dt 2/2-11 dated 8 March 1995, Republika Srpska Armed Forces Supreme Command; author: Supreme Commander Radovan Karadžić

T68 - Directive for Further Operations op.7/1, ref. number Dt 2/2-15 dated 31 March 1995, Republika Srpska Army Main Staff, Commander Ratko Mladić

T69 - Radovan Karadžić's order to introduce the highest state of combat readiness, dated 16 June 1995

T70 – Semi-annual report, RS MUP, Special Police Brigade, 2nd Šekovići Special Police Detachment, no. 01/1-1-1/2-230/95 dated 5 July 1995

T71 - Order to mobilize all military conscripts, dated 10 July 1995; author: Vidoje Blagojević

T72 – Security-related events report, no. 200, dated 12 July 1995, Bijeljina MUP

T73 - Order to procure buses for evacuation, dated 12 July 1995; author Milenko Živanović

T74 - Order to prevent passing of Muslim groups towards Kladanj and Tuzla, dated 13 July 1995; author: Milenko Živanović

T75 – Regular Combat Report dated 13 July 1995; author: Radislav Krstić

T76 –MUP Special Police Brigade’s Report no. 284/95 dated 13 July 1995 (Ljubiša Borovčanin, Deputy Commander of the Special Police Brigade)

T77 - Regular Combat Report dated 14 July 1995, author: Mile Simanić

T78 – Delivery of information to deputy minister, dated 14 July 1995; author: Dragan Kijac

T79 - Regular Combat Report dated 17 July 1995; author: Mile Simanić

T80 – Report on the security situation in the 2nd Šekovići Police Detachment dated 3 August 1995; author: Nedeljko Sekula

T81 – Treatment of prisoners of war, Milomir Savčić

T82 – Laboratory report

T83 – Analysis of samples of explosives recovered from various sites in Srebrenica; author: Netherlands Forensic Institute

T84 – Estimation of the minimum number of individuals exhumed by the ICTY between 1996 and 2001, January 2004; author Jose Pablo Baraybar

T85 – Report on excavations and exhumations at the Glogova 1 mass grave in 2000, Richard Wright - missing

T86 – Srebrenica Military Narrative (revised) – operation “Krivaja 95” dated 1 November 2002, Richard Butler

T87 – United States Naval Criminal Investigative Service’s report on the review and finding of evidence from the Kravica Warehouse

T88 - Addendum on the Number of Missing and Dead from Srebrenica by H. Brunborg

T89 – Report on the Number of Missing and Dead from Srebrenica by H. Brunborg and H. Urdal

T90 - Michael Hedley’s report on the review and finding of evidence from the Kravica Warehouse, dated March 2001

T91 - Report on blood and tissue samples found in Grbavica School, Kravica Warehouse

T92 - OTP’s report titled “Missing from Srebrenica – persons who were registered missing after the fall of Srebrenica“

T93 - Report on Excavations and Exhumations at Glogova 2 mass grave, 1999-2001, forensic anthropologist Jose Pablo Baraybar

T94 - Report by the Chief Pathologist- mass burial sites of Srebrenica, ICTY, 1999, John Clark

T95 - ICRC publications, missing persons in the territory of BiH, dated 30 June 1998

3C-18 Dean Manning’s report (addendum), dated 8 June 2007 and 27 November 2007 (Srebrenica investigation).

T96 – Sketch of Kravica, no. 14-13/1-7-243/05 dated 4 October 2005

T97 – photo of Srebrenica and Žepa, July 95

T98 - photo - “White house”- ICTY

T99 – aerial photo - Potočari- ICTY, 13 July 2009 (with notes)

T100 – aerial photo -Potočari dated 13 July 1995 – ICTY

T101 - Map-movement of the column and the position of the Serb forces- ICTY

T102 - photo –depicting the hill and the woods where Muslim columns were moving- ICTY

T103 - Map depicting movement of the column -P138

T104 - Map depicting movement of columns, routed to north and south- P24

T105 - aerial photo - Nova kasaba, football pitch, dated 13 July 1995 – ICTY

T106 – aerial photo of the Sandići valley-P9.3

T107 - photo of the Sandići valley 13 July 1995-P9.1

T108 – blown-up photo of the Sandići valley-P9.2

T109 - photo taken from the direction of Bratunac, depicting an area between Kravica and Sandići; the warehouse marked -P9.5

T110 - photo of the Kravica Warehouse, 13 July 1995-P10.2

T111 – still images extracted from video footage of bodies in front of the Kravica Warehouse, 13 July 1995

T112 – photo of the ceiling in the western section, with blood traces-P10.5

T113 - photo of the interior of the warehouse (western section) with blood stains on the wall-P10.4

T114 - photo of a shoeprint under a window-P10.7

T115 – blown-up photo of the shoeprint under the window -P10.8

T116 – Map of primary and secondary graves, ICTY

T117 - photo of Konjević Polje dated 14 August 1995-P8.4

T118 – photo of Glogova dated 5 July 1995 (with a note)-P11.2

T119 – aerial photo of Glogova (with a note)-P11.1

T120 - aerial photo of Glogova dated 17 July 1995-P11.3

T121 – ID card photo (Dahmo Kadrić from Glogova)-P657

T122 - Mass graves in Tatar-Bratunac, 27 July 1995 and 20 October 1995, ICTY, Tatar Bratunac -P567

T123 - GL 1-photo

T124 - photo of disturbed soil, Glogova, 30 October 1995-P570

T125 - photo of disturbed soil, Glogova, 9 November 1995-P571

T126 - Zeleni Jadar- grave, ICTY

T127 - aerial photo - Zeleni Jadar, ICTY

T128 - Zeleni Jadar- grave, disturbed soil, 7 September 1995 and 2 October 1995, ICTY

T129 - Zeleni Jadar- grave, disturbed soil, 24 August 1995 and 2 October 1995, ICTY

T130 - Zeleni Jadar- grave, disturbed soil, 20 October 1995 and 23 October 1995, ICTY

T131 - Map showing the village of Kravica and the road in Kravica-P674

T132 – Map of Kravica -P4.3

T133 - Srebrenica graves, primary and secondary, chart

T134 - Brochure- still images extracted from video footage of the Srebrenica trial-P22

T135 - Brochure- Book for identification of Bosnian Muslims -P23

T137 – Record of Interview of Witness Duško Mekić, SIPA War Crimes Investigation Center, dated 20 October 2005

T138a – Judgment of the Municipal Court of Mostar Posl.br.K. 30/98 dated 26 November 2001

T138b – Judgment of the District Court of Mostar no. K 30/98 dated 26 November 2001

T138c – Judgment of the Higher Court of Mostar no. KŽ. 14/96 dated 22 April 1997

T139 – aerial photo of the Sandići valley-P9.3

T140 – Prosecutor's Office of BiH Record of Interview of Witness Radoslav Stuparević, no. KT-RZ-18/05 dated 29 June 2006

T141 - aerial photo of the Sandići valley -P9.3

T142 – Record of Interview of Witness Nedeljko Sekula, SIPA War Crimes Investigation Center, dated 12 October 2005

T143 – Transcript of Testimony of Witness „K“ in case no. IT-98-33-T on 10 April 2000

T144-1 – Interim Combat Report, strictly confidential, no. 03/253-54-1 dated 25 May 1995; commander: Colonel Vidoje Blagojević

T144-2 - Order to prevent passing of Muslim groups towards Kladanj and Tuzla, dated 13 July 1995; author: Milenko Živanović

T144-3 – Regular Combat Report dated 17 July 1995

T144-4 – Interim Combat Report about the situation in the area of responsibility of the 1st Zvornik Infantry Brigade, Drina Corps Command, strictly confidential, no. 03/2-221; author: Major-General Radislav Krstić

T144-5 - Regular Combat Report dated 18 July 1995, Drina Corps Command, strictly confidential, no. 03/2-222; author: Major-General Radislav Krstić

T144-6 - Regular Combat Report dated 19 July 1995, Drina Corps Command, strictly confidential, no. 03/2-223; author: Major-General Radislav Krstić

b. DEFENSE

C.1 WITNESSES

The following witnesses for the defense of Radomir Vuković and Zoran Tomić were examined in the course of the first instance main trial:

Slaviša Žugić, Savo Pavlović, Cvijan Ristić, Muhamed Buševac, Milica Bogičević, Dušan Spasojević, Radoslav Stuparević, Milutin Kandić, Nenad Andrić, Nedeljko Sekula, Nikola Milaković and Aleksandar Radovanović. Expert Svjetlana Radovanović was also examined.

C.2 DOCUMENTARY EVIDENCE

2. The Court reviewed the following defense documentary evidence for Radomir Vuković:

O - I – 1 – Photo of the Kravica warehouse – tendered on 18 December 2008 during the examination of Witness D1

O - I – 2 – Prosecutor's Office Record of Interview of Witness Marko Aleksić No. KT-RZ-10/05 dated 27 June 2006, in *Stupar and Others* – tendered on 4 February 2009

O - I – 3 a – Main trial immunity agreement entered into between the Prosecutor's Office of BiH and Marko Aleksić, No. KT-RZ-10/05 dated 27 June 2006, tendered on 4 February 2009

- O - I - 3 b – Decision on immunity granted by the Prosecutor’s Office of BiH to Witness Marko Aleksić at the main trial, no. KT-RZ-10/05 dated 6 July 2006, tendered on 4 February 2009
- O - I - 3 c – Information on immunity granted by the Prosecutor’s Office of BiH to Marko Aleksić during the investigation, dated 5 May 2006, tendered on 4 February 2009
- O - I - 4 – Set of photos marked with number 1 (Witness D5 wrote names on photos)
- O - I - 5 – Set of photos marked with number 2
- O - I - 6 – Set of photos marked with number 3
- O - I - 7 – Set of photos marked with number 4
- O - I - 8 – photo on which Witness D5 marked the location of the rifle and the body of Krsto Dragičević
- O - I - 9 – Report by a doctor of the Belgrade District Prison on the health condition of Witness D5, no. 713-1-1605/08-04 dated 30 May 2008
- O - I - 10 – Set of photos marked with number 5
- O - I - 11 – Set of photos marked with number 6
- O - I - 12 – Set of photos marked with number 7
- O - I - 13 – Set of photos marked with number 8
- O - I - 14 – Set of photos marked with number 9
- O - I - 15 – Set of photos marked with number 10
- O - I - 16 – Set of photos marked with number 11
- O - I - 17 – Set of photos marked with number 12
- O - I - 18 – Set of photos marked with number 13
- O - I - 19 – Set of photos marked with number 14
- O - I - 20 – Photo marked with number 15
- O - I - 21 – Set of photos marked with number 16
- O - I - 22 – Set of photos marked with number 17
- O - I - 23 – Set of photos marked with number 18
- O - I - 24 through O - I - 30 – photos marked with numbers 19, 20, 21, 22, 23, 24 and 25 respectively
- O - I - 31 – Trial transcript in Case No. X – KR-05/24 (*Stupar et al*), dated 11 June 2008
- O - I - 32 – Trial transcript in Case No. X-KR-05/24-II (*Miladin Stevanović et al*), dated 11 June 2008
- O - I - 33 – Verdict of the Court of BiH No. X-KR-06/236 dated 6 November 2008 in the *Mladen Blagojević* case
- O - I - 34 – Verdict of the Court of BiH No. X-KR-06/294 dated 11 April 2008 in the *Šefik Alić* case
- O - I - 35 – Expert witness’s report on the mental state and competence of Petar Mitrović
- O - I - 36 – Živinice Municipality Commission Record (State Commission for Collection of War Crimes Facts) – no. 01-0564/95 dated 8 August 1995
- O - I - 37 – photo
- O - I - 38 – Operational Report by the Command of the 28th Division of the Army of BiH, strictly confidential, no. 04-114/95, Srebrenica, 30 June 1995, operative time, 17:00 hours
- O - I - 39 – Notification from the session of the Presidency of the Srebrenica Municipality, no. 00342255 01- /95, held on 9 July 1995 at 19:00 hours
- O - I - 40 – List of war criminals (known to the Command of the 1st Light Infantry Brigade) who committed war crimes in the municipalities of Bratunac, Srebrenica, Milići, Vlasenica and Skelani

(with regard to whom there are indications suggesting that they are located in Srebrenica), no. 00678851 Bratunac, 12 July 1995

O - I - 41 – Report on supplies of UBS /ordnance/ and MTS /materiel/ to the Žepa and Srebrenica enclaves, R BiH, the Army of R BiH General Staff, Army Staff, no. 1-1/7-169 dated 28 May 1996, Kakanj

O - I - 42 – Presentation of the Army of BiH Commander General Rasim Delić, R BiH, the Army of BiH General Staff, Commander's Office, strictly confidential, no. 1/1-941, Sarajevo, 30 July 1996

O - I - 43 – Information related to the document by the GSS /translator's note: abbreviation unknown/ of the A R BiH, the Army of R BiH, the 28th Division Command, Intelligence Section, strictly confidential, no. 02-06/95, Srebrenica, 29 June 1995

O - I - 44 – Information on combat results of the units and commands of the 28th Division (ground forces) of the 2nd Corps of the Army of RBiH, Army of R BiH, the 2nd Corps Command, strictly confidential, no. 04/1-105-603, Tuzla, 8 July 1995

O - I - 45 – Statement of the representative(s) of the Srebrenica enclave civilian authorities regarding the implementation of the agreement on the evacuation of civilians from the enclave, the Commissioner for Civilian Affairs in Srebrenica, no. 07-27/95 dated 17 July 1995

O - I - 46 – Order to make preparations for launching of offensive combat operations; order, Army of BiH General Staff, R BiH, no. 1/825-84 dated 17 June 1995

O - I - 47 – Information about the results of the negotiations on demilitarization of Srebrenica, the R BiH Armed Forces Supreme Command Staff, Sarajevo, R BiH, strictly confidential, no. 02/520-2, Sarajevo, 20 April 1993

O - I - 48 – Intelligence information of the Military Security Service Section of the 2nd Corps Command, no. 06-101-197-7/95 dated 11 September 1995

O - I - 49 – Ramiz Bećirović's statement composed by the Military Security Service Section of the 2nd Corps Command of the Army of R BiH, Tuzla 11 August 1995

O - I - 50 – Information and Order related to the successes and tasks of ARBiH units, 2nd Corps Command of the Army of R BiH, strictly confidential, no. 02/1-604/123, Tuzla, 2 July 1995

O - I - 51 – Accommodation of R/Z /prisoners of war/, the 1st Light Infantry Brigade Command, strictly confidential, no. 04-520-51/95 dated 13 July 1995

O - I - 52 – Telegram no. E8EAS60G dated 28 June 1995 relating to a successfully accomplished sabotage b7d /translators note: abbreviation unknown/. Congratulatory message, Command of the 2nd Corps of the A R BiH, strictly confidential, no. 02/1-670/4, Tuzla 28 June 1995

O - I - 53 – Report on reinforcement of RJ /war units, reserve units/, the 28th Division, Personnel, the A R BiH, the 2nd Corps Command, strictly confidential, no. 03-183-231, Srebrenica: 1 July 1995

O - I - 54 – Interim Report by the 5th Engineers Battalion Command, strictly confidential, no. 107-1 dated 13 July 1995

O - I - 55 – Report on partly clearing up the Srebrenica terrain, Kravica sector, Republika Srpska, the Government, the State Commission for Exchange of Prisoners of War and Missing Persons, Banja Luka, no. 193/97 dated 29 May 1997

O - I - 56 – Translation of Richard Butler's VRS Brigade Command Responsibility Report

- O - I – 57 – Certificate in the name of Radomir Vuković, issued by the RS Ministry of Interior, the Police Brigade for ATD /antiterrorist operations/ Bijeljina, the 2nd Detachment for ATD, Šekovići, no. 01/1-1.4/2-851/96, dated 24 October 1996
- O - I – 58 – Certificate in the name of Radomir Vuković, issued by the Šekovići Section of the RS Ministry of Defense, no. 02-835-149/98 dated 18 March 1998
- O - I – 59 – Death certificate in the name of Milica Vuković, Serbia and Montenegro, the Republic of Serbia, the Belgrade registrar region, ref. number: 00444, dated 6 April 2005
- O - I – 60 – Request for registration – cancellation of registration of permanent – temporary place of residence and change of address – apartment, in the name of Radomir Vuković, the RS Ministry of Interior, Šekovići, dated 2 February 2006

C.3 ZORAN TOMIĆ

The Court reviewed the following defense documentary evidence for Zoran Tomić:

- O-II-1 – photo of a house
- O-II-2 – photo of the school
- O-II-3 – photo
- O-II-4 – photo of Krsto Dragičević's tombstone
- O-II-5 – photo depicting 6 individuals
- O-II-6 – photo depicting 20 individuals
- O-II-7 – photo depicting 22 individuals
- O-II-8 – photo depicting 14 individuals
- O-II-9 – Plea Agreement No. KT-RZ 43/08 dated 16 October 2008 – a photocopy
- O-II-10 – Statement of facts and admission of guilt No. KT-RZ 43/08 dated 16 October 2008 – a photocopy
- O-II-11 – Verdict of the Court of BiH No. X-KR-06/180-1 dated 22 October 2008 – a photocopy
- O-II-12 – Certificate on injuring of Nenad Andrić No. 13-09/1-29-341 dated 9 September 1995, RS MUP-Zvornik Public Security Centre; a photocopy
- O-II- 12a – Discharge sheet
- O-II- 12b – Delivery sheet
- O-II-13 a – Order dated 14 July 2009, issued to expert witness professor dr. Svetlana Radovanović by Defense Counsel Miloš Perić, Zvornik – a photocopy
- O-II-13 b – Expert witness Dr Svetlana Radovanović's report dated 1 August 2009, Belgrade – a photocopy
- O-II-13 c – Consolidated overview of medical certificates of cause of death from the list of the ICTY – a photocopy
- O-II-13 d – Dr Svetlana Radovanović's CV
- O-II-13 e – Summary of the Report on the number of the dead in the Kravica ZZ /Farming Cooperative/ on 13 July 1995 – a photocopy

O-II-13 f – OSCE’s Voter Registration Manual, the Federation of BiH Statistics Bureau, demographic statistics 2000, Sarajevo, June 2001 – a photocopy.

O-II-13 g – Summary of the Findings on the missing and dead from Srebrenica – the 2005 Report, Dr Svetlana Radovanović

O-II-13 h – CD, Dr Svetlana Radovanović

O-II-14 – Agreement for the Demilitarization of Srebrenica and Žepa entered into by Lieutenant General Ratko Mladić and General Sefer Halilović on 8 May 1993, in the presence of Lieutenant General Phillippe Morillon – a photocopy

O-II-15 – Photo of the Kravica - Warehouse

O-II-16 – Drina Corps Command Order, strictly confidential, no. 03/157-7, dated 15 July 1995

ANNEX 2. A – ACCEPTED FACTS ESTABLISHED BY FINAL ICTY JUDGMENTS⁵⁵⁹

UČV ⁵⁶⁰ no.	ACCEPTED FACTS ESTABLISHED BY A FINAL ICTY JUDGMENT ⁵⁶¹	Paragraph in ICTY judgment <i>Blagojević and Jokić, and Krstić</i>)
1.	There was an armed conflict in eastern Bosnia between 11 July and 1 November 1995.	<i>Blagojević</i> , para. 549
2.	The attack was widespread or systematic. The attack, carried out by the VRS and MUP was planned and defined in the “ <i>Krivaja 95</i> ” order”.	<i>Blagojević</i> , para. 551
3.	The attack continued after the fall of Srebrenica and affected the approximately 40,000 people who lived within the Srebrenica enclave at the time of the attack.	<i>Blagojević</i> , para.551
4.	The attack was clearly directed against the Bosnian Muslim civilian population in the Srebrenica enclave.	<i>Blagojević</i> , para.552
5.	In March 1995, Radovan Karadžić, President of Republika Srpska (“RS”), issued a directive to the VRS concerning the long-term strategy of the VRS forces in the enclave. The directive, known as “Directive 7”, specified that the VRS was to: [C]omplete the physical separation of Srebrenica from Žepa as soon as possible, preventing even communication between individuals in the two enclaves. By planned and well-thought out combat operations, create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica.	<i>Krstić</i> , para. 28
6.	Just as envisaged in this decree, by mid 1995, the humanitarian situation of the Bosnian Muslim civilians and military personnel in the enclave was catastrophic.	<i>Krstić</i> , para. 28
7.	On 31 March 1995, the VRS Main Staff issued Directive 7.1, signed by General Mladić. Directive 7.1 was issued “on the basis of Directive No. 7” and directed the Drina Corps to, <i>inter alia</i> , conduct “active combat operations...around the enclaves”.	<i>Krstić</i> , para.29
8.	The VRS offensive on Srebrenica began in earnest on 6 July 1995.	<i>Krstić</i> , para.31
9.	On 9 July 1995, President Karadžić issued a new order authorizing the VRS Drina Corps to capture the town of Srebrenica.	<i>Krstić</i> , para.33
10.	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.	<i>Krstić</i> , para. 36
11.	By the evening of 11 July 1995, approximately 20,000 to 25,000 Bosnian Muslim refugees were gathered in Potočari.	<i>Krstić</i> , para. 37
12.	Thousands of Bosnian Muslim residents from Srebrenica fled to Potočari seeking protection within the UN compound.	<i>Krstić</i> , para.37

⁵⁵⁹ Facts accepted under the Decision No. X-KR-06/180-2 rendered by the Court of BiH dated 27 February 2009;

⁵⁶⁰ Ordinal number of the fact established in this case (established fact in the *Vuković et al.* case).

⁵⁶¹ **Prosecutor v. Krstić**: Trial Chamber’s judgment (IT-98-33-T) dated 2 August 2001 affirmed by the Appeals Chamber’s judgment (IT-98-33-A) dated 19 April 2004, **Prosecutor v. Blagojević and Jokić**: Trial Chamber’s judgment (IT-02-60) dated 17 January 2005 affirmed by the Appeals Chamber’s judgment (IT-02-60-A) dated 9 May 2007.

13.	Several thousand had pressed inside the UN compound itself, while the rest were spread throughout the neighboring factories and fields.	<i>Krstić,</i> para. 37
14.	Conditions in Potočari were deplorable. There was very little food or water available and the July heat was stifling.	<i>Krstić,</i> para. 38
15.	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.	<i>Krstić,</i> para. 432
16.	On 12 and 13 July 1995, the women, children and elderly were bussed out of Potočari, under the control of VRS forces, to Bosnian Muslim held territory near Kladanj.	<i>Krstić,</i> para. 48
17.	The removal of the Bosnian Muslim civilian population from Potočari was completed on the evening of 13 July 1995 by 2000 hours.	<i>Krstić,</i> para. 51
18.	As the buses carrying the women, children and elderly headed north towards Bosnian Muslim-held territory, they were stopped along the way and again screened for men.	<i>Krstić,</i> para. 56
19.	The VRS and MUP, walking among the Bosnian Muslim refugees, were separating all Bosnian Muslim men aged 16 to approximately 60 or 70 from their families.	<i>Blagojević,</i> para.168
20.	The separations continued throughout 12 and 13 July.	<i>Blagojević,</i> para.168
21.	From the morning of 12 July, Bosnian Serb forces began gathering men from the refugee population in Potočari and holding them in separate locations.	<i>Krstić,</i> para. 53
22.	On 13 July 1995, the Dutch Bat troops witnessed definite signs that the Bosnian Serbs were executing some of the Bosnian Muslim men who had been separated.	<i>Krstić,</i> para. 58
23.	The Bosnian Muslim men who had been separated from the women, children and elderly in Potočari (numbering approximately 1,000) were transported to Bratunac.	<i>Krstić,</i> para. 66
24.	The men and boys in Potočari were separated from the women, children and elderly and taken to the White House for interrogation.	<i>Krstić,</i> para. 157
25.	Drina Corps officers were also seen in the vicinity of the White House during the time the separated men were detained there.	<i>Krstić,</i> para. 158
26.	Beginning on the afternoon of 12 July 1995 and continuing throughout 13 July 1995, men detained in the White House were bussed out of the Potočari compound to detention sites in Bratunac.	<i>Krstić,</i> para. 159
27.	Most of the Bosnian Muslim men separated at Potočari and captured from the woods were held in Bratunac for one to three days before being transferred to other detention and execution sites.	<i>Krstić,</i> para. 179
28.	A large group of the prisoners who had been held overnight in Bratunac were bussed in a convoy of 30 vehicles to the Grbavci school in Orahovac early in the morning of 14 July 1995.	<i>Krstić,</i> para. 220
29.	It is estimated that there were 2,000 to 2,500 Bosnian Muslim men were detained in the school gym.	<i>Krstić,</i> para. 320
30.	In April 1996 they commenced forensic examinations of suspected execution points and exhumation of mass graves.	<i>Blagojević,</i> para. 381
31.	Forensic evidence showed that there were two types of mass graves, "primary graves", in which individuals were placed soon after their deaths and "secondary graves", into which the same individuals were later reburied.	<i>Blagojević,</i> para. 381
32.	The refugees in the (UN) compound (<i>in Potočari</i>) could see Serb soldiers setting houses and haystacks on fire.	<i>Krstić,</i> para. 41

33.	By the afternoon of 12 July 1995, or the early evening hours at the latest, the Bosnian Serb forces were capturing large numbers of these men in the rear.	<i>Krstić,</i> para. 63
34.	Identification papers and personal belongings were taken away from both Bosnian Muslim men at Potočari and from men captured from the column; their papers and belongings were piled up and eventually burnt.	<i>Krstić,</i> para. 547
35.	Prisoners not killed on 13 July 1995 were subsequently bussed to execution sites further north of Bratunac, within the zone of responsibility of the Zvornik Brigade.	<i>Krstić,</i> para. 67
36.	The large-scale executions in the north took place between 14 and 17 July 1995.	<i>Krstić,</i> para. 67
37.	Plans to transport the Bosnian Muslim civilians out of the enclave crystallized at this second meeting (<i>between Generals Mladić, Krstić and the UN Dutch Bat and a Bosnian Muslim representative at the Hotel Fontana in Bratunac at 23.00 hours on 11 July 1995</i>).	<i>Krstić,</i> para. 129
38.	Further, it was General Mladić who initiated the meetings at the Hotel Fontana when he made it abundantly clear that he wanted the Bosnian Muslims out of the area.	<i>Krstić,</i> para.147
39.	On 12 July 1995, as the bus convoys were being organized, General Mladić was heard to say during an intercepted conversation: They've all capitulated and surrendered and we'll evacuate them all – those who want to and those who don't want to.	<i>Krstić,</i> para. 147
40.	Certainly, the Bosnian Muslim refugees were not consulted or given a choice about their final destination.	<i>Krstić,</i> para.147
41.	On 14 July 1995, the UN Security Council expressed concern about the forced relocation of civilians from the Srebrenica "safe area" by the Bosnian Serbs, asserting it was a clear violation of their human rig.	<i>Krstić,</i> para.148
42.	The Drina Corps Command was also in contact with the MUP unit along the Bratunac - Konjević Polje road, monitoring their progress.	<i>Krstić,</i> para.176
43.	A conversation, intercepted on 13 July 1995 at 2040 hours, reveals that General Krstić spoke to Colonel Borovčanin, the Deputy Commander of the MUP unit, asked how things were going and stated that he would be in touch.	<i>Krstić,</i> para. 176
44.	... there was close co-operation and co-ordination between the MUP and Drina Corps units. On 11 July 1995, before the VRS found out about the formation and movement of the Bosnian Muslim column, the Main Staff ordered the Drina Corps to take pre-emptive steps, "by arrangement and co-operation with the MUP" to block the passage of Bosnian Muslims to and from the enclave.	<i>Krstić,</i> para. 287
45.	The civilian police of the Republika Srpska was organized under the Ministry of Interior ("MUP"). In July 1995, Tomislav Kovač was the acting Minister of Interior. The civilian police was organized in two sections: the regular police force and the special police brigade.	<i>Blagojević,</i> para. 71
46.	The Special Police Brigade was a combat unit of the MUP. Colonel Goran Sarić was the commander and Colonel Ljubiša Borovčanin was the deputy commander.	<i>Blagojević,</i> para. 75
47.	The Special Police Brigade consisted of approximately eight detachments, including the 2nd Detachment from Šekovići commanded by Miloš Stupar, and a Training Centre at Jahorina, commanded by Duško Jević.	<i>Blagojević,</i> para. 75
48.	Members of the detachments were armed with automatic and semi-automatic weapons and were trained differently than the regular police force.	<i>Blagojević,</i> para. 75
49.	The detachments also had heavy weapons and vehicles, such as tanks, armored	<i>Blagojević,</i> para.

	personnel carriers (“APCs”) and Pragas.	75
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EFV ⁵⁶² No.	ACCEPTED FACT ESTABLISHED BY A FINAL ICTY JUDGMENT ⁵⁶³	Paragraph in ICTY judgment
50.	Generally, the Bosnian Serb forces surrounding the enclave were considered well disciplined and armed. THE VRS was organized on a geographic basis and Srebrenica fell within the domain of the Drina Corps. Between 1,000 and 2,000 soldiers from three Drina Corps Brigades were deployed around the enclave. These Bosnian Serb forces were equipped with tanks, armored vehicles, artillery and mortars. The unit of the ABiH that remained in the enclave – the 28th Division – was not well organized and well equipped. A firm command structure and communications system was lacking, some ABiH soldiers carried old hunting rifles or no weapons at all and few had proper uniforms. However, the Trial Chamber also heard evidence that the 28th Division was not as weak as they have been portrayed in some quarters. Certainly the number of men in the 28th Division outnumbered those in the Drina Corps and reconnaissance and sabotage activities were carried out on a regular basis against the VRS forces in the area.	<i>Krstić</i> , para. 21
51.	From the outset, both parties to the conflict violated the “safe area” agreement”.	<i>Krstić</i> , para. 22
52.	The Trial Chamber heard credible and largely uncontested evidence of a consistent refusal by the Bosnian Muslims to abide by the agreement to demilitarize the “safe area”. Bosnian Muslim helicopters flew in violation of the no-fly zone ; the ABiH opened fire toward Bosnian Serb lines and moved through the “safe area”; the 28th Division was continuously arming itself; and at least some humanitarian aid coming into the enclave was appropriated by the ABiH. To the Bosnian Serbs it appeared that Bosnian Muslim forces were using the “safe area” as a convenient base from which to launch offensives against the VRS and that UNPROFOR was failing to take any action to prevent it. General Halilović admitted that Bosnian Muslim helicopters had flown in violation of the no-fly zone and that he had personally dispatched eight helicopters with ammunition for the 28th Division. In moral terms, he did not see it as a violation of the “safe area” agreement given that the Bosnian Muslims were so poorly armed to begin with.	<i>Krstić</i> , para. 24
53.	Immediately following the take-over of Srebrenica, the whereabouts of the 28th Division of the ABiH were unknown. This was of great concern to the VRS, as was the possibility that forces of the 2nd Corps of the ABiH attacking from the direction of Tuzla and Kladanj would link up with elements of the 28th Division. Radio intercepts indicate that the VRS first became aware of the formation of the column around 0300 hours on 12 July 1995.	<i>Krstić</i> , para. 162

⁵⁶² Ordinal number of the fact established in this case (established fact in the Vuković et al. case).

⁵⁶³ **Prosecutor v. Krstić**: Trial Chamber’s judgment (IT-98-33-T) dated 2 August 2001 affirmed by the Appeals Chamber’s judgment (IT-98-33-A) dated 19 April 2004, **Prosecutor v. Blagojević and Jokić**: Trial Chamber’s judgment (IT-02-60) dated 17 January 2005 affirmed by the Appeals Chamber’s judgment (IT-02-60-A) dated 9 May 2007.

54.	Certainly the Drina Corps Command was well aware of the general VRS plan to capture the Bosnian Muslim men trying to breakthrough to Tuzla. Indeed, the Drina Corps Command received direct orders from the Main Staff to take prisoners from the Bosnian Muslim column.	<i>Krstić</i> , para. 169
55.	Defence witnesses accused the Bosnian Muslim forces of using the safe area as a fortified base from which to launch offensives against the Bosnian Serb forces. In particular, on 26 June 1995, several weeks prior to the offensive of the VRS on Srebrenica, the Bosnian Muslim forces launched an assault from the enclave on the Serbian village of Višnica 5km away.	<i>Krstić</i> , para.567
56.	In accordance with the law in effect in the RS, MUP units could be re-subordinated to the VRS for various purposes, including to reinforce the VRS during combat activities.	<i>Blagojević</i> , para. 76

ANNEX 2. B – FACTS ESTABLISHED UNDER FINAL ICTY JUDGMENTS⁵⁶⁴

1. 1. PW-111 and PW-156 were among other Bosnian Muslim men detained in Sandići Meadow who were taken by unidentified members of Bosnian Serb Forces to Kravica Warehouse on 13 July on foot or by bus. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 426)
2. PW-156 and many other Bosnian Muslim men were ordered to form a column and march from Sandići Meadow to Kravica, arriving in front of Kravica Warehouse between 3 and 5 p.m.. The Bosnian Serb Forces accompanying them were in military uniform, with automatic rifles and wearing ammunition belts. A Bosnian Serb man in civilian clothes and accompanied by a German shepherd dog headed the column as it walked to Kravica Warehouse. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 426)
3. PW-111 was one of the first Bosnian Muslim prisoners to arrive at Kravica Warehouse. He was taken to the East Room of Kravica Warehouse. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 427)
4. Meanwhile, PW-156 was detained in the West Room. Kravica Warehouse was packed with Bosnian Muslim men who were guarded by members of Bosnian Serb Forces, including members of the SBP 2nd Šekovići Detachment, and members of the Military Police, the 1st Infantry Battalion and the Red Berets of the Bratunac Brigade, wearing green camouflage, multi-coloured uniforms. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 427)
5. The members of the Bosnian Serb Forces guarding them also looked frightened. Two of them—the one in the blue UN helmet and another one with curly, shoulder-length hair and black glasses—

⁵⁶⁴ Facts accepted pursuant to the Appellate Panel Decision No. S1 1K 006124 11 Kžk of 16 November 2011.

wanted to shoot at the prisoners. They were stopped by a third who told them that these prisoners were not to blame for anything. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 429)

6. Meanwhile, **BOROVČANIN** arrived at Kravica Warehouse some time between 5:15 p.m. and 5:30 p.m., after receiving a message from Stupar to go there urgently. Borovčanin saw a pile of bodies in front of the West and Centre Rooms of the Kravica Warehouse and a large number of bullet holes on the outside walls. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 432)
7. Miroslav Stanojević, a member of the Red Berets of the Bratunac Brigade was also injured in this “burnt-hands” incident. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 433)
8. Throughout the night between 13 and 14 July, members of the Bosnian Serb Forces would periodically enter Kravica Warehouse, shoot, and throw hand grenades through the windows. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 435)
10. During the time relevant to the Indictment, **BOROVČANIN** was Deputy Commander of the SBP of the RS MUP. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 1434)
11. On 10 July 1995 **BOROVČANIN** was appointed Commander of a joint force of MUP units which was sent to Bratunac. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 1434)
12. **BOROVČANIN** received this order issued by Tomislav Kovač, Deputy Minister of the Interior, in the afternoon on 10 July, while he was in battle in Trnovo on the Sarajevo front. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 1434)
13. **BOROVČANIN** arrived at the Bratunac Police Station around noon on 11 July and headed to the Pribičevac IKM to speak to Krstić. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 1437)
14. At the time, in response to information received on the movement of the ABiH 28th Division, Bosnian Serb Forces were ordered to block the withdrawal of the ABiH from the Srebrenica enclave by ensuring control over the territory along the defence lines of the VRS in the Bratunac area. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 1442)
15. Following Mladić’s order on 12 July, **BOROVČANIN** left Potočari at around 1:30 p.m. and went to the Bratunac Police Station to organise the deployment of the 1st PJP Company from Zvornik and the SBP 2nd Šekovići Detachment. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 1449)

16. As described above, around dusk, the 1st PJP Company from Zvornik and the SBP 2nd Šekovići Detachment were deployed along the Bratunac-Konjević Polje Road from Kravica-Sandići-Pervani up to Hrnčići. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 1449)
17. Their task was to assist in securing the Bratunac-Konjević Polje Road against the column which was trying to break through the VRS defence lines. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 1449)
19. Some time around 4 p.m., Mladić arrived at Sandići Meadow with a number of officers and gave a speech to the Bosnian Muslims detained there, telling them that the transportation to ABiH-held territory was under way and that they would be exchanged as prisoners of war. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 1453).
30. In the early morning of 12 July, **BOROVČANIN** and his units arrived in Potočari after they took over OP Papa without any fighting. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 1486)
31. **BOROVČANIN** and the MUP units had been brought to the area to assist in the military operation which was ongoing at that time. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 1486)
43. The Bratunac-Konjević Polje Road was busy and it needed to be secured for the column of prisoners to pass. (ICTY Judgment in the *Popović et al.* case dated 10 June 2010, para. 1514)

B. ANNEX 3 – TABLE OF AUTHORITIES

a. ICTY

- *Prosecutor v Vidoje Blagojević and Dragan Jokić*, IT-02-60-T, Judgment, 17 January 2005 (*Blagojević and Jokić* Trial Judgment)
- *Prosecutor v Vidoje Blagojević and Dragan Jokić*, IT-02-60-A, Judgment, 9 May 2007 (*Blagojević and Jokić* Appeal Judgment)
- *Prosecutor v Miroslav Deronjić*, IT-02-61-S, Sentencing Judgment, 30 March 2004
- *Prosecutor v Miroslav Deronjić*, IT-02-61-S, Judgment on Sentencing Appeal, 20 July 2005
- *Prosecutor v Radislav Krstić*, IT-98-33-T, Judgment, 2 August 2001 (*Krstić* Trial Judgment)

- *Prosecutor v Radislav Krstić*, IT-98-33-A, Judgment, 19 April 2004 (*Krstić Appeal Judgment*)
- *Prosecutor v Momir Nikolić*, IT-02-60/1-S, Sentencing Judgment, 2 December 2003
- *Prosecutor v Momir Nikolić*, IT-02-60/1-A, Judgment on Sentencing Appeal, 8 March 2006
- *Prosecutor v Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero and Vinko Pandurević*, IT-05-88-T, Judgment, 10 June 2010
- *Prosecutor v Milorad Stakić*, IT-97-24-A, Judgment, 22 March 2006

b. ICTR

- *Prosecutor v Emmanuel Nindabahizi*, ICTR-01-7-I, Judgment and Sentence, 15 July 2004
- *Prosecutor v Eliezer Niyitegeka*, ICTR-96-14-A, Judgment, 9 July 2004

c. INTERNATIONAL COURT OF JUSTICE

- *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, 26 February 2007

d. COURT OF BOSNIA AND HERZEGOVINA

- *Prosecutor's Office of Bosnia and Herzegovina v. Miloš Stupar, Milenko Trifunović, Brano Džinić, Aleksandar Radovanović, Slobodan Jakovljević, Velibor Maksimović, Dragiša Živanović, Branislav Medan and Milovan Matić*, X-KR-05/24 , 29 July 2008, First Instance Verdict (written verdict 13 January 2009)
- *Prosecutor's Office of Bosnia and Herzegovina v Miloš Stupar*, X-KRŽ-05/24, Second Instance Verdict, 9 September 2009
- *Prosecutor's Office of Bosnia and Herzegovina v Miloš Stupar, Milenko Trifunović, Brano Džinić, Aleksandar Radovanović, Slobodan Jakovljević, Branislav Medan and Milovan Matić*, X-KRŽ-05/24, Second Instance Verdict, 9 September 2009
- *Prosecutor's Office of Bosnia and Herzegovina v Milorad Trbić*, X-KR-07/386, 16 October 2009, First Instance Verdict (written verdict 29 April 2010)