

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

CASE NO IT-05-88-T

IN THE TRIAL CHAMBER

Before: Judge Carmel Agius, Presiding
Judge O Gon-Kwon
Judge Kimberley Prost
Judge Ole Bjorn Støle, Reserve Judge

Registrar: Mr John Hocking

Date Filed: 26th of July 2010

THE PROSECUTOR
-V-
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LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVČANIN
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ

PUBLIC

**PANDUREVIC NOTICE OF FILING A PUBLIC REDACTED VERSION OF THE
PANDUREVIC FINAL TRIAL BRIEF**

The Office of the Prosecutor

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Pursuant to the Trial Chamber's *Order on Outstanding Documents Marked for Identification and on Public Redacted Versions of the Final Briefs* (3 June 2010), the Defence for Vinko Pandurevic hereby files a public redacted version of its *Final Trial Brief* as Annex A to the present notice.

The Pandurevic Final Trial Brief was originally filed confidentially on 30 July 2009.

Respectfully submitted on this 26th of July 2010


Peter Haynes

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Word Count: 218

ANNEX A

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Annex A

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PART 1 – INTRODUCTION

1. Structure of the final brief

1. The Final Brief for Vinko Pandurevic will be presented in six parts.
2. Part 1 will seek to make certain observations about the various sources of evidence that have featured in the case before introducing the accused himself. The central theme to this part will be to highlight the stark contrast between the credible direct evidence of the accused and the other evidence relied upon in the case, not just by the Prosecution but by all parties.
3. Part 2 will introduce the defence case in summary.
4. Part 3 will address a number of important issues relating to the command of a brigade. The rules and regulations of the JNA and the VRS will be discussed as well as evidence of the practical reality of commanding the Zvornik Brigade.
5. Part 4 will focus on the facts. The narrative is intended to describe the relevant history of events as they affected Vinko Pandurevic. The narrative begins very much from his perspective with events leading up to July 1995, his departure from Zvornik for the Krivaja '95 Operation, his return on 15th July and his actions relating to the column over 15th and 16th July at Baljkovica. The narrative continues through the relevant events of August and September. The narrative will also deal with concurrent and parallel events that impacted upon Pandurevic's position as well as the evidence as to his developing state of knowledge.
6. Part 5 addresses the legal issues relating to the various forms of criminal liability upon which the Prosecution rely, including individual criminal responsibility, joint criminal enterprise (JCE I and JCE III), command and superior responsibility .
7. Part 6 of this brief addresses the legal issues as they affect Vinko Pandurevic count by count. It will draw upon the evidence in an endeavour to put the defence case both factually and legally.

2. Issues of Proof

8. The Prosecution bears the burden of proof in relation to all forms of JCE and the conspiracy to commit genocide as alleged in the indictment, as well as the guilt of the accused on each of the individual counts. The Prosecution needs to prove its allegations beyond reasonable doubt.

9. During the course of this trial, the Chamber has received almost 8,000 documents into evidence and heard from over 200 witnesses. Necessarily, due to the nature of the case, much of the evidence heard in the case is circumstantial, from which the Prosecution (or indeed other accused) invite the Chamber to draw inferences.
10. Nonetheless, in order for the Prosecution to discharge the burden of proving the case based on circumstantial evidence, it must (a) prove the primary facts on which it relies beyond reasonable doubt and, (b) prove, to the same standard, that all reasonable inferences consistent with innocence have been excluded.¹

2.1. Preliminary matters on evidence

11. The circumstantial evidence produced in the case falls under a number of categories which merit, in advance of a more detailed examination of the evidence, some preliminary comments.

2.1.1. Contemporaneous Documents

12. Documents have been liberally used by all parties in the case as proof of the facts they contain. They fall under a number of generic headings. Some can be described as contemporaneous records, for example the entries in the Zvornik Brigade Duty Operations officers log book; others as records made after the fact, such as the various reports made by army or police units; some as composite reports on events, such as the various UN reports or reports resulting from other inquiries. Others are statements of opinion by persons not called as witnesses, and others mere accounts of events given by people who have not been brought to court to be tested by cross-examination. There are business records (for example, the vehicle work logs), and public records.
13. The list is not exhaustive but attempts to identify the main sources of documentary evidence in the case. Documentary evidence is indirect evidence. It does not speak for itself. Where, in particular, the Prosecution invites an inference to be drawn from a document, it bears the burden set out above. Even in relation to contemporaneous documents, the contents of the document has not the force of direct evidence, and in the absence of corroboration, the Chamber should always be open to other reasonable inferences. It is a feature of the case that, despite their ready availability, the Prosecution has chosen not to call the authors of many of the documents from which it seeks to draw inferences.²
14. During the course of the trial, the Prosecution has unwaveringly interpreted documents adversely to the accused, blind to any other reasonable inference until it is pointed out. Plainly, not every reference to Orahovac in the documents from July 1995 is a reference

¹ The Prosecutor v. Delalic et al., Case No. IT-96-21-A, Appeal Judgement, 20 February 2001, para 458; The Prosecutor v. Stakic, Case No. IT-97-24-A, Appeal Judgement, 22 March 2006, para. 219; The Prosecutor v. Hadzihasanovic and Kubura, Case No. IT-01-47-T, Trial Chamber Judgement, 15 March 2006, para. 311.

² For instance, no single Duty Officer of the Zvornik Brigade has been called to give evidence to explain entries between 12th and 25th July 1995

to the detention or execution sites,³ neither is every mention of the words packages or parcels a reference to prisoners of war.⁴

15. In relation to the contemporaneous records, the Prosecution has during the trial made a number of unfounded insinuations about otherwise unexplained entries in the Zvornik Brigade Duty Officer's Logbook and other documents. To give two such examples:

- In P00377 at 5750 it is recorded "TG from Pelemis – has problems with personnel". The entry was made on 14th July and the inference apparently sought is that the "personnel" were required to carry out executions.⁵ There may even have been a suggestion that the Pelemis concerned was the commander of the 10th Sabotage detachment, which unit the Trial Chamber will be aware, conducted executions at Branjevo.⁶ Unfortunately, the theory falls down because the Pelemis concerned is the deputy commander of the Zvornik Brigade 1st battalion, and the personnel he is having problems with, are those requested earlier by the brigade to take part in ambushes in the Snagovo area.⁷
- Similarly, in P00377, the reference at 0293-5761 has been relied upon as an indication that ammunition was being requested by the 1st battalion for executions at Branjevo.⁸ This ignores the further entry at 0293-5767, indicating that the ammunition was not in fact delivered, and the evidence of Drazen Erdemovic as to the amount of ammunition which the unit from the 10th Sabotage detachment had available to it at Branjevo.⁹ In fact the entry discloses nothing more than a routine request for ammunition and fuel by the battalion, but in the atmosphere of suspicion that covers this period of July 1995, it is interpreted as having only one potential meaning, until the contrary is shown.

16. The above are only examples, but serve as an illustration of the dangers of drawing inferences from documents where the author or another relevant witness is not called to explain them. Further relevant examples will be dealt with at the appropriate place of the brief.

³ For instance, entry in the P00377, Zvornik Brigade Duty Operation Officer Notebook, 16 July 1995: "Men from Bratunac are in Orahovac. Obrenovic asked the commander what to do with them at 1920 hours." (BCS ERN 0293-5769 and ENG ERN 0308-9364); See explanation given T.31864-T.31865, 19 February 2009, Vinko PANDUREVIC.

⁴ T.31528-T.31529, 16 February 2009, Witness Vinko Pandurevic (concerning entry in P00377, Zvornik Brigade Duty Operation Officer Notebook, BCS ERN 0293-5769 and ENG ERN 0308-9364; [REDACTED], (PW-157)).

⁵ T.11453-T.11454, T.11460-T.11462, 14 May 2007, Slavko PERIC; [REDACTED]; T.31300-T.31301, 11 February 2009, Vinko PANDUREVIC.

⁶ T.32975, 22 April 2009, Momir NIKOLIC.

⁷ T.11453-T.11454, 14 May 2007, Slavko PERIC; [REDACTED]; T.31300-T.31301, 11 February 2009, Vinko PANDUREVIC.

⁸ T.521, 22 August 2006, Opening Statement of Chief Prosecutor Peter McCloskey referring to P377, 15 July 1995 entry (BCS ERN 0293-5761, ENG ERN 0308-9356).

⁹ P00377, Zvornik Brigade Duty Operation Officer Notebook, 16 July 1995 entry (BCS ERN 0293-5767, ENG ERN 0308-9362); T.10972-10973, 4 May 2007, Drazen ERDEMOVIC.

2.1.2. Business Records

17. A number of documents falling under the category of business records have been relied upon to indicate the acts and conduct of the accused and their subordinates. Perhaps principal among these have been vehicle work logs. Evidence has been heard as to how, when and by whom these documents should have been completed.¹⁰ It has been several times acknowledged that the regular procedure was not always followed.¹¹ The purpose of the records was self-evidently to account for the use of fuel, which as the Prosecution have regularly asserted, was a relatively scarce commodity.¹² Further, such records were prone to theft and misuse.¹³ Generically, as a body of documents, on their own, they are unreliable as evidence of the movement of men or machinery. The Trial Chamber has heard evidence from those driving or being carried in such vehicles that the logs are inaccurate as to a vehicle's movement on a particular day or days.¹⁴ In such circumstances the direct evidence of witnesses as to their movements ought to be preferred and the uncorroborated assertions on the face of such documents should be treated with caution.
18. Similar comments apply to other records and will be amplified in the appropriate parts of the brief.

2.1.3. Intercepted Radio-communications

19. The Trial Chamber will of course be aware that it was no part of the Pandurevic defence to challenge the authenticity of the intercept evidence in the case. It is accepted that the forces of the ABiH had the capability to intercept and record certain radio conversations, as did their counterparts in the VRS and Croatian Army.
20. However, the position adopted by the Pandurevic defence should not be taken as endorsing the intercepts as an unimpeachable evidential source. The computer printouts and notebooks have many obvious weaknesses, and the Defence of Vinko Pandurevic reserves the right to adopt the submissions of other accused in this regard. The records of these conversations do not have the evidential force, for example, of video tape.¹⁵ In many cases, absent corroboration from a party to the alleged conversation, the Trial Chamber will wish to exercise great caution before accepting as accurate, the alleged time and date of any particular conversation, the identity of the so-called collocutors, the attribution of dialogue to each of potentially several speakers, and the content of the alleged conversation.
21. The Chamber will moreover wish to be especially circumspect before drawing inferences from snippets of conversation recorded in this manner. Where relevant this matter will be

¹⁰ See, for instance, T.22355-22357, 18 June 2008, Branco BOGICEVIC; T.24104-T.24105, 25 July 2008, Zeljko KERKEZ.

¹¹ [REDACTED]; T.25769, 16 September 2008, Mirko SAKOTIC; T.30912-30913, 30 January 2009, Vinko PANDUREVIC; But also see T.22369, 18 June 2008, Branco BOGICEVIC.

¹² T.522, 22 August 2006, Opening Statement of Chief Prosecutor Peter McCloskey.

¹³ T.31715, 18 February 2009, Vinko PANDUREVIC.

¹⁴ [REDACTED]; T.25769, 16 September 2008, Mirko SAKOTIC; T.30912-30913, 30 January 2009 and T.31112, 9 February 2009, Vinko PANDUREVIC

¹⁵ Which "speaks for itself" according to the *Trial Chamber Decision on Prosecution's Second Motion to Reopen Its Case and/or Admit Evidence in Rebuttal*, 8 May 2009, para. 90.

expanded in relation to particular intercepts later on in this brief. For present purposes however, the Defence of Vinko Pandurevic would simply highlight the misconstruction of events which flowed from the simple misinterpretation of P01102, the intercept of a conversation at 07.40 on the morning of July 12th. This matter is dealt with more fully below.

2.1.4. The Evidence of Eileen Gilleece

22. As is now infamous, on 2nd October 2001 Vinko Pandurevic met OTP investigator Eileen Gilleece in the Peti Puk restaurant in Valjevo, Serbia. The product of that meeting is P2408, her 6-page, undated investigative note to file. The procedure adopted for the interview and for the preparation of the investigative notes does not even closely approximate to that prescribed by the Rules.¹⁶ The procedure was not recorded on audio or video tape, Pandurevic was not told that what he said was going to be recorded (though he obviously knew and talked freely anyway).¹⁷ He was never offered the opportunity to read, comment on, correct, or sign Miss Gilleece's note, either at the time or at the time of its conversion into the investigative note to file.¹⁸ Accordingly, the first time that the accused had the right to comment on its accuracy was during his own testimony.
23. These submissions are not intended to constitute a belated attempt to exclude P2408, merely to highlight what the document is, and more particularly, is not. It is a note of a meeting which lasted, according to the evidence, some ten and a half hours, even on Miss Gilleece's account.¹⁹ The meeting was attended by 7 people.²⁰ Lunch was eaten and alcohol was consumed throughout the day.²¹ The conversation was occasionally between Pandurevic and Miss Gilleece alone, but often involved other parties, and round table discussions.²² Everything had to be translated.²³ There was only one translator for 7 people, 5 of whom were native BCS speakers. According to the accused, the translator was struggling and could not translate the more technical aspects of the discussion.²⁴ No record now exists of what in fact Pandurevic said, as would of course be the case with an interview recorded on audio or video tape. P2408 amounts to little more than an aide memoire for Miss Gilleece as to what the translator said to her.
24. Even according to Miss Gilleece, the note is unreliable as to dates,²⁵ which is a significant failing, in the submission of the Defence. The Chamber has now heard evidence that it

¹⁶ Rules of Procedure and Evidence, Rules 43 and 63

¹⁷ T.31269-T.31270, 11 February 2009, Vinko PANDUREVIC

¹⁸ T.31270-31271, 11 February 2009, Vinko PANDUREVIC

¹⁹ P02408, Investigative notes of an interview with Milenko ZIVANOVIC and Vinko PANDUREVIC, dated 2 October 2001, page 1 "Time 11.30"; T.6752, 1 February 2007, Eileen GILLEECE; T.31270, 11 February 2009, Vinko PANDUREVIC

²⁰ P02408, Investigative notes of an interview with Milenko ZIVANOVIC and Vinko PANDUREVIC, dated 2 October 2001; Also, see evidence of Vinko Pandurevic about the presence of his brother, Petar: T.31269, 11 February 2009, Vinko PANDUREVIC

²¹ T.6752, 1 February 2007 Eileen GILLEECE; T.31269, 11 February 2009, Vinko PANDUREVIC

²² T.31270-31271, 11 February 2009, Vinko PANDUREVIC

²³ T.6752-T.6753, 1 February 2007, Eileen GILLEECE; T.31270, T.31282-31283, 11 February 2009, Vinko PANDUREVIC

²⁴ T.31282-T.31283, 11 February 2009, Vinko PANDUREVIC.

²⁵ T.6755-T.6756, 1 February 2007, OTP Prosecution Eileen GILLEECE

significantly misstates what Pandurevic had to say in many other respects.²⁶ The matters will be addressed specifically where appropriate in this brief, but to give three illustrations:

- (i) It is inconceivable that Pandurevic would have described Colonel Beara as “Head of Security for the Supreme Headquarters for the Corps”²⁷. It is surprising, to say the least, that an experienced OTP investigator can have even written it down, but that is perhaps another matter, it illustrates the difficulty that was being experienced in understanding terms of office;
- (ii) Similarly, the phrase attributed to Pandurevic that “the zone of intelligence has no other zone of attack”²⁸ is nonsensical and cannot reflect what he said. Again it indicates that for whatever reason, the accused’s words were not being properly or accurately recorded.
- (iii) Lastly, the note that Pandurevic was anxious to point out that “none of his reports referred to prisoners”²⁹ is not only necessarily inaccurate but also utterly incomprehensible, given especially that he had been discussing with Miss Gilleece the reports of Richard Butler and the Irregular Combat Reports of the 15th and 18th of July in which there were explicit references to prisoners.

25. In the submission of the Defence, the note of Miss Gilleece of her meeting with Pandurevic of 2nd October 2001 is simply incapable of being used to impeach or contradict his evidence at all.

2.1.5. Experts and Analysts

26. The case for Vinko Pandurevic is the only case for consideration by the Trial Chamber which does not depend wholly or substantially upon the evidence of one or more experts or analysts. Whilst the practice of calling witnesses with what might be loosely termed “a military background” to describe how certain aspects of life in the army or police forces ought to have functioned, and then thereafter to analyse events and interpret them, has been increasingly accepted as standard, it was not always the case. Prior to the Trial Chamber’s decision concerning the evidence of Richard Butler,³⁰ it was the unanimous position of the accused that such evidence was inexpert and inadmissible.³¹ Perhaps understandably, following that decision, a number of parties changed their tunes.³²

²⁶ T.31276-T.31291, 11 February 2009, Vinko PANDUREVIC.

²⁷ P02408, Investigative notes of an interview with Milenko ZIVANOVIC and Vinko PANDUREVIC, dated 2 October 2001, ENG ERN 0184-8868; T.31282, 11 February 2009, Vinko PANDUREVIC.

²⁸ P02408, Investigative notes of an interview with Milenko ZIVANOVIC and Vinko PANDUREVIC, dated 2 October 2001, ENG ERN 0184-8869; T.31285, 11 February 2009, Vinko PANDUREVIC.

²⁹ P02408, Investigative notes of an interview with Milenko ZIVANOVIC and Vinko PANDUREVIC, dated 2 October 2001, ENG ERN 0184-8869; T.31285-31286, 11 February 2009, Vinko PANDUREVIC.

³⁰ Prosecutor vs Popovic et al., Case IT-05-88, “*Decision on the Defence Rule 94bis Notice concerning Prosecution Expert Witness Richard Butler*”, 19 September 2007

³¹ See e.g. Prosecutor vs Popovic et al., Case IT-05-88, “*Popovic Response to the Notice of disclosure of Expert Witness Statements under Rule 94bis, 9 November 2006*”; “*Notice on Behalf of Vinko Pandurevic and Drago Nikolic pursuant to Rule 94bis(B)*”, 16 November 2006; “*Motion on behalf of Ljubisa Beara joining the Popovic*

27. In the submission of the Defence for Vinko Pandurevic, much if not all of this evidence is beset by a number of difficulties which detract substantially from the weight which can be attached to it. These difficulties can be broadly categorised as follows:

➤ Experts called to give evidence by a party are self-evidently not impartial;

28. Experts and analysts are in essence part of the legal team,³³ having unique access to materials, client and counsel. They are privy to case theory. Their reports and evidence are works in progress made in consultation with the calling party. They are moreover, financially dependant upon the calling party by one mechanism or another. It almost goes without saying that no expert would be called who did not provide the evidence which the calling party required. Lack of partiality was the cornerstone of most of the objection to the evidence of Richard Butler by the various accused.³⁴ It was also the basis for the rejection of such evidence in the Milutinovic case.³⁵ Moreover, it has been the main weapon of attack used by the Prosecution against defence experts and analysts.³⁶

➤ The expertise they possess is seldom sufficient

29. The qualifications of those admitted under Rule 94bis in this trial has, at least since the challenge to Mr Butler, been completely without question. It has covered a wide variety. A warrant officer³⁷ in the American Army has opined as to the socio-political causes of the Bosnian War,³⁸ the structure of the VRS at all levels³⁹ as well as the meaning to be attributed to documents written by others,⁴⁰ and the personal motivation involved in the taking of certain military action.⁴¹ A Canadian colonel with little or no combat experience and no command experience has expressed his views as to how a chief of staff acting as commander would have behaved in a highly pressurized combat situation.⁴² Additionally,

Reply to the Prosecution's Response to the Defence Motion regarding Expert witness Richard Butler", 11 April 2007

³² See for example the Rule 94bis applications made by various accused relating to *inter alia* Bozidar FORCA, Petar VUGA, Slobodan KOSOVAC

³³ T.20264-T.202271, 22 January 2008, Richard BUTLER

³⁴ Prosecutor vs Popovic et al., Case IT-05-88, "*Joint defence interlocutory appeal concerning the status of Richard Butler as an expert witness*", 06 November 2007; "*Joint defence reply to Prosecution's response to joint defence interlocutory appeal concerning the status of Richard Butler as an expert witness*", 27 November 2007

³⁵ Prosecutor v. Milutinovic et. al. Case No. IT- 05-87-T, 13 July 2006, T. 840-844. See Prosecutor v. Milutinovic et. al. Case No. IT- 05-87-T, "*Decision on Prosecution Request for Certification of Interlocutory Appeal of Decision on Admission of Witness Phillip Co's Expert Report*". 30 August 2006

³⁶ See for example T.23382-T.23383, 7 July 2008, Petar VUGA; T.30334-T.30335, 19 January 2009, Slobodan KOSOVAC

³⁷ P00681, CV of Richard Butler, dated 1 October 2007

³⁸ P00686, Butler Revised Narrative Report, Chap. 1

³⁹ P02764, Report titled, VRS Main Staff Command Responsibility, by Richard Butler, dated 9 June 2006; P00684, Revised "VRS Brigade Command Responsibility" report, by Richard Butler, dated 31 October 2002

⁴⁰ T.19996-T.19999, 18 January 2008, Richard BUTLER

⁴¹ T.19621-T.19622, 14 January 2008, Richard BUTLER

⁴² 3D00409, Military Expert Report by Remi Landry, [REDACTED]

assorted retired JNA officers have purported to recreate events on the ground in Bosnia by reference to their peacetime experience in that institution.⁴³

- The evidence given by these witnesses goes beyond the parameters of their expertise;

30. It has been the practice in this case for parties effectively to seek to advance their cases through expert witnesses. The totemic example of this is the eponymous Srebrenica Narrative Report of Richard Butler.⁴⁴ Many defence analysts have followed similar paths. Whilst the consideration of the admissibility of such tranches of evidence may have been determined,⁴⁵ its weight needs careful assessment. In the submission of the Defence there is a grave danger of according the narratives of analysts or experts a status which they do not deserve. Often, passages of narrative are inserted into the reports or evidence of such witnesses without any attempt at referencing the sources. Accordingly, it amounts to little more than evidence of a belief that certain things happened.

- Their consideration of the documents and other evidence is tailored to fit the case theory of the party calling them;

31. Perhaps understandably, because narrative experts and analysts are used to advance a party's case, there is a regular tendency for them to use only such material as fits with their case theory. This shortcoming has been frequently exposed during cross-examination. It has served to act as an indicator to the partiality of such witnesses. There have been, moreover, stark examples of the misuse of evidence by experts to fit a theory. When Richard Butler wrote his original Srebrenica Narrative Report, it was in anticipation of his giving evidence to the Trial Chamber in the Krstic case,⁴⁶ accordingly, it is unlikely he anticipated that he would be challenged as to his interpretation of the Zvornik Brigade Irregular Combat Report of 15th July (since Krstic agreed with it). Notwithstanding that, 2 months into the trial he signed off a report for admission under Rule 94bis in which he simply resolved the issue as to any ambiguity in that document by rewriting it to remove any.⁴⁷ His explanation that misquoting the document in not one but 3 crucial respects⁴⁸ amounts to a "technical error"⁴⁹ does not adequately describe what was serious misrepresentation of the evidence to the Trial Chamber in that case. In other aspects, his reports claim to offer support for propositions in footnotes where the source material was irrelevant to the proposition. His partiality, objectivity and analytical techniques require careful assessment. Sadly, his is not the only example. Defence expert Petar Vuga displayed a flexible approach to the question of who commanded the Military

⁴³ 3D00396, Expert Report by Petar Vuga, 31 March 2008; 5D00759, Expert report, Functioning of the VRS, By Military expert Slobodan KOSOVAC, 30 March 2008

⁴⁴ P00686, Butler Revised Narrative Report and also T.19597, 14 January 2008, Richard BUTLER

⁴⁵ Prosecutor vs Popovic et al., Case IT-05-88, "*Decision on the Defence Rule 94bis Notice concerning Prosecution Expert Witness Richard Butler*", 19 September 2007

⁴⁶ T.20698, 30 January 2008, Richard BUTLER

⁴⁷ P00685, Butler Narrative Report, p101

⁴⁸ *Asanacija* = "burying the bodies", *obezbedjenje terena* = "security operations, let them go" = "let the prisoners go"

⁴⁹ T.20756-T.20759, 30 January 2008, Richard BUTLER

Police within a brigade, dependant upon the office held by the accused on whose behalf he was being called.⁵⁰

- Their opinions and analyses are necessarily inferior to direct evidence on the issues

32. Certain trial chambers have concluded as a matter of principle that direct evidence on an issue is of greater weight than indirect evidence.⁵¹ Expert or analyst evidence is by definition indirect, accordingly, whether on a point of historical narrative or on a matter of practice and procedure, it can seldom have the weight of direct testimony. The evidence of the relevant witnesses will be dealt with at appropriate parts of the brief, but the Defence reiterates the generic point that in the accused himself, it has put forward a witness whose knowledge of both the system and the events is unrivalled by any analyst called by any party to the case.

2.2. [REDACTED]

33. [REDACTED]⁵² [REDACTED]⁵³[REDACTED].⁵⁴ [REDACTED]⁵⁵ [REDACTED]⁵⁶
[REDACTED]⁵⁷ [REDACTED]⁵⁸ [REDACTED]⁵⁹ [REDACTED]⁶⁰ [REDACTED]⁶¹
[REDACTED]⁶² [REDACTED]⁶³ [REDACTED]⁶⁴ [REDACTED]⁶⁵

34. [REDACTED].

35. [REDACTED].

36. [REDACTED].

37. [REDACTED]⁶⁶

38. [REDACTED]⁶⁷

⁵⁰ T.23361-T.23363, 7 July 2008, Petar VUGA

⁵¹ Prosecutor v Krnojelac, Case No IT-97-25 Trial Chamber Judgment paragraph 70

⁵² [REDACTED]⁵³ [REDACTED]⁵⁴ [REDACTED]

⁵³ [REDACTED]⁵⁴ [REDACTED]

⁵⁴ [REDACTED]

⁵⁵ [REDACTED]

⁵⁶ [REDACTED]

⁵⁷ [REDACTED]

⁵⁸ [REDACTED]

⁵⁹ [REDACTED]

⁶⁰ [REDACTED]

⁶¹ [REDACTED]

⁶² [REDACTED]

⁶³ [REDACTED]

⁶⁴ [REDACTED]

⁶⁵ [REDACTED]

⁶⁶ [REDACTED]⁶⁷ [REDACTED]

39. Of course, Pandurevic vehemently denies that any such event took place⁶⁸. No other witness ever saw him in the Command of the Zvornik brigade during his involvement in the Srebrenica and Zepa operations⁶⁹. There is no record of his being there on that date in any of the brigade's contemporaneous documents⁷⁰. The trial Chamber has heard from witnesses (e.g. Dragutinovic and Trivic), and seen exhibits⁷¹ showing he was elsewhere on that morning⁷².
40. [REDACTED]⁷³, [REDACTED].⁷⁴
41. [REDACTED].
42. [REDACTED].
43. [REDACTED].
44. [REDACTED],^{75 76 77}
45. [REDACTED]⁷⁸.
46. Pandurevic of course denies any such incident⁷⁹. He was not challenged on this point.
47. [REDACTED]
48. It is the Defence position, at least insofar as it relates to Vinko Pandurevic that, where disputed, unsupported and first recalled in or after June 2003, his evidence should not be relied upon.

2.2.1. [REDACTED]

49. [REDACTED].
50. [REDACTED].⁸⁰
51. [REDACTED].

⁶⁷ [REDACTED]

⁶⁸ T. 30896-T.30897, 30 January 2009, Vinko PANDUREVIC

⁶⁹ 7D00655 Interview Dragan STEVIC, 18 July 2006 ; T.10580, 26 April 2007, Mihajlo GALIC ; T.11832-T.11835, 21 May 2007, Mirko TRIVIC

⁷⁰ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, page 113-119

⁷¹ See 7D00495, the Vehicle Work Log for Dragan Stevic, Pandurevic's driver

⁷² T.12689 -12690 15 June 2007. Miodrag DRAGUTINOVIC. T11832-11835, 21 May 2007, Mirko TRIVIC

⁷³ See P01102D (This is the right number but there's no translation of the 07.24 part but only of the 7.40 part), Intercept from 07.24 on 12 July, and P01103, Intercept from 07.48, 12 July.

⁷⁴ See P00377, Zvornik Brigade Duty Operation Officer Notebook, ERN page 114

⁷⁵ [REDACTED]

⁷⁶ [REDACTED]

⁷⁷ [REDACTED]

⁷⁸ [REDACTED]

⁷⁹ [REDACTED]

⁸⁰ [REDACTED]

2.2.2. [REDACTED]

[REDACTED]

52. [REDACTED]

- [REDACTED].⁸¹
- [REDACTED].⁸²
- [REDACTED].⁸³
- [REDACTED].⁸⁴
- [REDACTED].⁸⁵
- [REDACTED].⁸⁶

53. [REDACTED]:

- [REDACTED]...⁸⁷
- [REDACTED].⁸⁸
- [REDACTED]^{89 90}
- [REDACTED]⁹¹

[REDACTED]

54. [REDACTED]^{92 93}.

55. [REDACTED].

⁸¹ [REDACTED]

⁸² [REDACTED]

⁸³ [REDACTED]

⁸⁴ [REDACTED]

⁸⁵ [REDACTED]

⁸⁶ [REDACTED]

⁸⁷ [REDACTED]

⁸⁸ [REDACTED]

⁸⁹ [REDACTED]

⁹⁰ [REDACTED]

⁹¹ [REDACTED]

⁹² [REDACTED]

⁹³ [REDACTED]

[REDACTED]

56. [REDACTED]⁹⁴

- [REDACTED].⁹⁵
- [REDACTED].⁹⁶
- [REDACTED]
- [REDACTED]⁹⁷
- [REDACTED]⁹⁸

[REDACTED]

57. [REDACTED].⁹⁹

2.2.3. [REDACTED]

58. [REDACTED]:

59. [REDACTED].

60. [REDACTED].

61. [REDACTED].^{100 101}

62. [REDACTED].

63. [REDACTED].

64. [REDACTED].

⁹⁴ [REDACTED].

⁹⁵ [REDACTED]

⁹⁶ [REDACTED]

⁹⁷ [REDACTED]

⁹⁸ [REDACTED]

⁹⁹ [REDACTED]

¹⁰⁰ [REDACTED]

¹⁰¹ [REDACTED]

2.3. Pandurevic's Testimony in his own Defence

65. Much of the instant case amounts to what has been referred to during the course of the trial as "construct"¹⁰², namely assessment and interpretation of various sources of evidence either by an expert witness, an analyst of some description, an investigator, or even in some instances, counsel. There has in truth been a dearth of direct oral evidence as to many of the crucial averments in the indictment.
66. The Defence does not deny that there is scope for inference, however, inference is a necessary consequence or inevitable conclusion of direct evidence.¹⁰³ It is neither theory nor speculation, and it cannot run counter to the effect of the direct evidence itself from which it derives.¹⁰⁴
67. Pandurevic, uniquely, has given evidence in his own defence. His evidence is direct evidence of events on the ground at the critical times. There is thus, direct evidence in his case on most if not all issues for determination. However, in giving that evidence, he brought upon himself no burden of proving anything. He merely put before the Chamber evidence to cast doubt upon the Prosecution case.¹⁰⁵ Where that evidence went unchallenged, the issue, it is submitted, must be resolved in his favour¹⁰⁶.

¹⁰² T. 31773, 19 February 2009, Vinko PANDUREVIC.

¹⁰³ 1) Direct evidence is defined as clear evidence of a fact or event that requires no additional thought to prove its existence, as opposed to circumstantial evidence. Direct evidence is not introduced for the purpose of having inferences drawn from it, but rather is to be considered on its face. Although all types of evidence are dependent on circumstances when it comes to their probative value and credibility, direct evidence is usually acknowledged as evidence which is more forceful than indirect evidence because it requires no inferences or leaps of logic to reach a conclusion.

Common law legal authorities: Bentham, Jeremy: *Rationale of Judicial Evidence Part 2 in: The Works of Jeremy Bentham, vol. 7, Book V, Chapter I*, Edinburgh: William Tait, 1843, p. 2; Walton, Douglas N., *Legal Argumentation and Evidence*, pp.81-83; Cochran, D., Kelly, M. A., Gulycz, M. and Gulycz, M., *Rules of Evidence: A Practical Approach*, Emond Montgomery Publication, 2007, p. 51.

2) The case-law of the ICTY has established that direct factual evidence is ought to be given more probative value than circumstantial or hearsay evidence:

Prosecutor v. Krnojelac, Case No. IT-97-25, Trial Chamber Judgment, 15 March 2002, par. 70: "In such cases [indirect evidence], the evidence of the witness was not the same as evidence given from a witness's own recollections, and the Trial Chamber has not given the evidence of such witnesses the same weight as evidence given from a witness's own recollection."

¹⁰⁴ 1) Celebici case, Case No. IT-96-21-A, Appeals Chamber Judgment, 20 February 2001, par. 458.

2) *Prosecutor v. Brdjanin*, Case No. IT-99-36-T, Trial Chamber Judgment, 1 September 2004, par. 23.

¹⁰⁵ 1) *Prosecutor v. Limaj, Bala and Musliu*, Case No. IT-03-66-T, Trial Chamber Judgment (30 November 2005): "Fatmir Limaj, however, testified in his own defence before the Chamber. He did so before any other Defence witnesses were called which counts in his favour in the assessment of credibility. This decision to testify has not created any burden on the Accused to prove his innocence. Rather, the Chamber had to determine whether, notwithstanding the evidence of the Accused, the Prosecution's evidence is sufficiently strong to meet the required standard for a conviction."

2) *Prosecutor v. Krnojelac*, Case No. IT-97-25, Trial Chamber Judgment, 15 March 2002, par. 68: "The Trial Chamber has taken the evidence given by the Accused into account in determining whether or not the Prosecution case should be accepted. His election to give evidence does not mean that the Accused accepted any onus to prove his innocence. Nor does it mean that a choice must be made between his evidence and that of the witnesses called by the Prosecution. The approach taken by the Trial Chamber has been to determine whether the evidence of the witnesses upon which the Prosecution relied should be accepted as establishing beyond reasonable doubt the facts alleged, notwithstanding the evidence given by the Accused and the witnesses upon which the Defence relied."

¹⁰⁶ 1) *Prosecutor v. Tadic*, Case No. 94-1-A, Appeals Chamber Judgment, 15 July 1999, par 65: "it has been the practice of this Tribunal and of the International Criminal Tribunal for Rwanda ("ICTR") to accept as evidence the testimony of a single witness on a material fact without need for corroboration."

68. More to the point, direct evidence as to events is preferable and of greater weight than construct or opinion, from whatever source. Pandurevic's evidence, for example, as to his reasons and motives for allowing the column of the 28th division to pass (supported as it is by the testimony of PW-168, and other contemporary accounts on the ground) must at least create a doubt as to the validity of Richard Butler's opinion on that topic.
69. Furthermore, in comparing the evidence of Pandurevic with expert witnesses called for any party in the case, favourable regard should be had to his own curriculum vitae. Leaving aside his unrivalled practical experience, his education, qualifications, military record and published bibliography would make him one of the most sought after military experts in this case, were he not accused.¹⁰⁷
70. The Defence commend the evidence of the accused Pandurevic to the Trial Chamber as credible, reliable and of great weight. He gave evidence for 22 days of the trial, and was subject at times to extremely testing cross-examination. His evidence was calm, composed, thoughtful, realistic and often self-effacing.¹⁰⁸ It was consistent with the vast majority of other direct contemporaneous testimony ([REDACTED]) and almost all of the contemporaneous documents.
71. As an indication of his straightforwardness and honesty, alone amongst the accused, he took no objection to the admissibility of the Muslim intercepts. Given the large number which have been added to the 65ter lists of the parties since the trial began, it is impossible to conclude that his decision to do that was borne of his knowledge of what they contained by way of evidence against him for he cannot have known or recalled every radio conversation he had throughout the war.
72. Similar comments apply to the stance he took in relation to the documents retained by Obrenovic from amongst the brigade's contemporaneous records. He has faced them and to the best of his ability, explained them.
73. His case was conducted in a wholly transparent and straightforward way. His decision to give evidence on his own behalf was telegraphed in a manner which afforded all parties the fullest opportunity to understand it and prepare to cross examine him. He was named as a witness on his own 65ter list 10 months before he took the stand.
74. Whilst criticism has been made of the content of his pre-trial brief and 65ter witness summary, experienced professional judges will doubtless understand the process involved in the creation of such documents, the stage at which they were created, and the value in using such documents as the basis of testing the consistency of the account of any witness called in a case before this Tribunal.

2) *Prosecutor v. Akayeshu*, Case No. ICTR-96-4-T, Trial Chamber Judgment, 2 September 1998, par. 135: "the Chamber can rule on the basis of a single testimony provided such testimony is, in its opinion, relevant and credible."

3) *Prosecutor v. Musema*, Case No. ICTR-96-13, Trial Chamber Judgment, 27 January 2000, par. 43: "Rule 89 sets out the general principle of the admissibility of any relevant evidence which has probative value, provided that such evidence meets the requirements for the conduct of a fair trial. The Chamber may rule on the basis of a single testimony if, in its opinion, that testimony is relevant and credible."

¹⁰⁷ T.30663-T.30671, 27 January 2009, Vinko PANDUREVIC; 3D00549, The sociology of the army- excerpt

¹⁰⁸ See for example his concession that P02920, Zvornik Brigade Document No. 15-12/95 report on success of combat operations, signed Vinko PANDUREVIC, dated 25 April 1995, ought not to have been written or signed by him; T.30833, 29 January 2009, Vinko PANDUREVIC

75. The Defence moreover, commends the character of the man as a further foundation of his credibility. The matter will be more fully developed in the following section.
76. Two matters merit special consideration, however, mainly due to the fact that they arose in a manner which was procedurally unusual in an adversarial system.

2.4. The Boksanica and Zivanovic Video Tapes

2.4.1. The Boksanica Footage

77. During the course of his evidence, Pandurevic told the Trial Chamber that he discussed the murders of prisoners in the Zvornik area with his Corps Commander, General Krstic when he went to see him in the Zepa area on or about 27th July 1995.¹⁰⁹ He said that that was the first opportunity he had to discuss matters with him face-to-face after he learnt of these events.¹¹⁰ After the conclusion of his evidence, the Prosecution sought and was granted leave to adduce the so-called Boksanica video in a second reopening of its case.¹¹¹
78. The Boksanica video apparently shows Pandurevic at the UN checkpoint at Boksanica outside Zepa, in the company of Krstic, Mladic, Gvero and others. The Prosecution argue that the date of the video is 26th July and that may be correct, although as will be discussed later in this section, it doesn't seem to square easily with all the evidence in the case.
79. The impact of Pandurevic's presence in or around Zepa during the evacuation process upon his culpability for the crimes charged in the indictment will be dealt with in the appropriate sections of this brief. For present purposes, however, it is the Defence submission that the video is largely corroborative of his account of events and has little or no effect upon the credibility of the wider account of events given by him during his testimony.
80. As a starting point in considering Pandurevic's evidence as to the date of his meeting with Krstic it is worth considering that in answer to the very first question he was asked about going to Zepa, he responded that he believed he went there around 27th July.¹¹² He was then shown 7D00091, the vehicle work log for the Nissan Patrol car in which he travelled. That document suggests that the car travelled to Rogatica and back on 26th July with 3 passengers, covering 193km, whilst on 27th July it travelled 27km making the much shorter journey to Vlasenica from Zvornik.

¹⁰⁹ T.31172, 10 February 2009, Vinko PANDUREVIC

¹¹⁰ T.31178-T.31179, 10 February 2009, Vinko PANDUREVIC

¹¹¹ Prosecutor vs Popovic et al., Case IT-05-88, "*Decision of the Trial Chamber on the Prosecution's Second Motion to Reopen its Case and/or admit evidence in rebuttal*", 8 May 2009

¹¹² T.31172, 10 February 2009, Vinko PANDUREVIC

81. Explaining why he had not travelled to see Krstic before that date, he went on to state that he was being kept on standby to go to Zepa every day from 23rd July.¹¹³ That account is corroborated by a number of intercepted communications from the period.¹¹⁴ Thereafter, the date of 27th appears in his evidence only as a result of the form of the questions put to him. It is quite understandable that he should do so, given the inferences naturally drawn from the available contemporaneous records. 7D00604 is an intercepted radio communication apparently from 25th July at about 8 o'clock in the evening. It records General Krstic telling Cerovic that "they" should continue to be on standby. Accordingly, the natural inference from this conversation is that, even by the evening of 25th July, there was no plan for Pandurevic to travel to Zepa, with or without units. Logic would dictate that, given that there was at least the possibility that he may have to go there with units, he would need to remain in Zvornik at this critical time in order to await instructions and be in a position to act upon them.
82. The following morning, apparently, Pandurevic was recorded speaking to Major Jevdjevic, the Drina Corps Signalsman at the IKM at Krivace above Zepa.¹¹⁵ In the course of their conversation, Jevdjevic is reported to have stated that "the guns have been silent for the second day". Pandurevic apparently said that he thought he might send "Jovovic" alone to talk to Krle about something. Plainly, by the morning of 26th July, Pandurevic neither intended to travel to see Krstic in Zepa, nor was he expected to do so. 7D00609 an intercept, allegedly at 23.20 on 26th records a conversation in which "Vinko" was required to report to Krstic the following morning at 8.00. He was told to come to the former IKM which he left.
83. At some time after 12.00 midday, on 26th July, Dragan Stevic, Pandurevic's driver, was at home in Zvornik and not apparently about to leave any time soon. He was waiting to hear whether Pandurevic wanted him that day, according to the entry made in the Zvornik Brigade Duty Officer's notebook.¹¹⁶ At 17.25 in the afternoon of the 26th July, Krstic is recorded talking again to Cerovic, asking him whether he has called Vinko, to which Cerovic replies that Milenko (Jevdjevic) has told him (Pandurevic) to be "up there at 08.00 in the morning". A number of reasonable inferences arise. Firstly, that by the time of the making of the entry in the Logbook about Stevic, i.e. the early afternoon of the 26th, Pandurevic had not left Zvornik. Secondly, by 17.25 that afternoon, i.e a few hours later, Krstic believed him to be in Zvornik (because he needed to be called), and that at some time prior to that Jevdjevic had indeed called him. One further inference is that by that time in the afternoon of 26th July, Krstic had not seen Pandurevic. If he had, there would have been little need for him to return "up there" the following morning.
84. It is worth pausing to consider the relevant geography. To drive from Zvornik to Zepa, one must pass through Vlasenica and Han Pijesak. Boksanica is on the far side of Zepa from Han Pijesak. The Prosecution allege (in a filing, rather than through any evidence called or cross-examination of the accused himself) that Pandurevic on the 26th July called at Boksanica either en route from or to Rogatica, where Stevic's vehicle work log suggests he went that day. In the time available between the record of Stevic's position in the Duty officer's logbook and the intercept, it would have been scarcely possible for

¹¹³ T.31175, 10 February 2009, Vinko PANDUREVIC

¹¹⁴ 7D00595, intercept 20.03 on 25th July, 7D00604, intercept 20.06, 25th July

¹¹⁵ See P01353, intercept 08.20, 26th July 1995

¹¹⁶ See P00377, Zvornik Brigade Duty Operation Officer Notebook, ERN 5803

Pandurevic to make the return journey to Zepa, let alone take in a stop at Rogatica and make a further call to chat with Mladic, Krstic et al.,

85. There is an ambiguous entry in the Duty officer's logbook at 9.45 on 26th July.¹¹⁷ It records an order from Krstic to Pandurevic that he is to wait at the barracks for Cerovic to arrive. It is not at all clear whether this entry was made at 09.45 on the morning of 27th or at 21.45 on the evening of 26th. Generally entries are made using a 24 hour clock, which would suggest the former, but the 27th July does not apparently begin until the following page and this entry is written in Cyrillic script and the same hand as everything that precedes it whereas the entries for 27th are written in latin script in different handwriting, suggesting the latter.
86. 7D609 is an intercept allegedly of a conversation between Pandurevic and the Drina Corps duty officer at 23.20 on 26th July. Pandurevic is instructed to attend at what must be Podzjeple the following day at 08.00. There are a number of curiosities about this conversation. Firstly, it makes no sense for the Duty officer to tell Pandurevic something that the Corps commander knew him to have been told 6 hours before. Secondly, assuming that the entry in the Duty officer's logbook for 9.45 related to that evening, there would be little purpose in a message being given to Pandurevic which Cerovic could have fully clarified with him just prior to this.
87. When he gave evidence about this intercept, Pandurevic said that he remembered the conversation and the fact that it required him to report to Krstic the following day. Accordingly, and not unreasonably, his entire recollection of the date of his visit to Zepa is based upon the accuracy of the date of this intercept.¹¹⁸
88. Be that as it may, any review of the available contemporaneous documents, taking them to be reliable and accurate would lead one to the inevitable conclusion that Pandurevic, not only went to see Krstic on the 27th of July, but also that he could not have gone there on 26th. Moreover, even though the dialogue of the video would suggest that the footage was taken on 26th July¹¹⁹, there are certain incongruities about the film itself. Mladic arrived for that meeting by helicopter, whereas Smith had to travel by car. Of course the Boksanica video records his arrival by helicopter unaccompanied by an interpreter. She is there waiting for him, presumably having received orders to be there for a purpose. The footage of buses containing evacuees from Zepa does not necessarily indicate one date or another, as movement continued from 24th through 27th July.¹²⁰
89. The Defence for Vinko Pandurevic does not seek to prove the date or dates of the film footage in the Boksanica video, merely to illustrate that even armed with it, Pandurevic could well have concluded that his visit to Krstic was on the 27th and not 26th. Accordingly, if indeed it can be found to be proved that the Boksanica footage shows Pandurevic with Krstic on 26th, then it cannot safely be concluded that this amounts to more than a mistake on the part of the accused in reconstructing events from the material available to him 14 years after the event.

¹¹⁷ See P00377, Zvornik Brigade Duty Operation Officer Notebook, ERN 5804

¹¹⁸ T.31177, 10 February 2009, Vinko PANDUREVIC

¹¹⁹ Mladic asks what the date is and is told it is 26th

¹²⁰ T.6963-6964, 6 February 2007, Esma PALIC; T.9738-T.9750, 30 March 2007, [REDACTED]

90. The Prosecution theory that Pandurevic paid 2 visits to the Zepa area on 26th and 27th July (again advanced in an interlocutory filing¹²¹ but not in evidence or cross-examination) is simply without merit or sensible evidential support.¹²² The vehicle work log for the Nissan Patrol which forms such a central part of the evidential picture upon which the Prosecution relies, records a journey of a mere 27 kilometers for 27th July. Moreover, the entry in the Duty Operations officer's logbook for 09.45 on 27th July¹²³ would seem to suggest that Pandurevic did not leave as ordered the previous evening to be at Krivace for 08.00 but was still waiting for Cerovic in Zvornik by almost 10 a.m. It would, moreover, make no sense for him to return to see Krstic a day after having seen him.
91. As to the contents of the video, Pandurevic testified that on the day he was with Krstic, the evacuation of the civilian population was underway but that he didn't have any specific information as to the manner in which this was being done.¹²⁴ Plainly, Pandurevic knew that an evacuation was taking place in Zepa from his conversation with Jevdjovic on the morning of 26th¹²⁵ (if indeed the intercept is correctly timed and dated), and the practicalities of that required little or no imagination – it must necessarily have involved the use of vehicular transport, almost inevitably buses.
92. It is inconceivable that having just referred in his testimony to 7D00609, and acknowledged the detail of the conversation with Jevdjovic in which he discusses the progress of the evacuation, that he would seek effectively to disown the conversation in his evidence, and purport to know nothing about it. So it is safe to conclude that when he said he didn't know the manner in which this was being done, he meant a little more than what mode of transport was being used.
93. Boksanica of course is not Zepa, or rather Podzeplje or Godjenje. It is a checkpoint some way outside the town. His knowledge of what was going on at Boksanica is apparent from the video. Plainly an ungainly visitor, he is heard to have the following conversation with Krstic at one point

“So, he's a commander then without an army....but where is his army?”

To which Krstic replies:

“In Zepa”¹²⁶

At the time he was discussing the UkBat commander, Dudnjik

94. His presence by the roadside as the convoy passes the checkpoint was brief.¹²⁷ His trademark maroon Nissan Patrol can be seen in the video to the left of the white UNAPC

¹²¹ Prosecution's Motion for Leave to Reply and Consolidated Reply to Defence Response to the Prosecution's Second Motion to Reopen its Case, paragraphs 13-15

¹²² T.1917, 3 July 2009, Sasa JOVANOVIĆ

¹²³ See P00377, Zvornik Brigade Duty Operation Officer Notebook, ERN 5804

¹²⁴ T.31180, 10 February 2009, Vinko PANDUREVIC

¹²⁵ 7D0604, Kanjuh -20.06-Cerovic-Gen. Krstic, 25-jul-1995

¹²⁶ T.1750-T.1751, 29 May 2009

¹²⁷ On P04537, Boksanica footage, he appears from about 25.00. He has gone by 38.32, so assuming the video to have run largely continuously, he was present for 15 minutes or so

as the camera looks from the bus as Mladic boards the first bus.¹²⁸ The car can be seen passing by the front of the 8th bus which Mladic boards,¹²⁹ and is gone by the time the camera pans outside during his boarding of the 9th.¹³⁰ Mladic goes on to board 23 or 24 buses.

95. It would be naïve not to acknowledge that his brief presence at Boksanica is not an omission from his evidence, and given the way in which matters have developed, one which will be for the Chamber to wrestle with in unsatisfactory circumstances, but it would simply be wrong to assume any deceit on his part. These events took place 14 years ago, and it is not as if a brief meeting with his Corps commander and General Mladic would have been a unique event during the war. Like many other factual witnesses in this case, his memory has necessarily been helped by the contemporaneous records of events. Had the video belatedly produced been available at the start of the trial, Pandurevic would undoubtedly have been able to be more accurate about the date of his visit to see Krstic, and the details of the day.
96. In truth the Boksanica video is an exhibit which stands equally to the credit of the accused. The visit to Krstic to talk about the combat reports of 15th – 18th July is a crucial part of his case, and one which was not discussed with Eileen Gilleece. It was not challenged by anybody, neither as to fact nor content. It will be an important consideration for the Chamber in determining many issues and is plainly accepted by the Prosecution and all parties as being a truthful part of Pandurevic's account.
97. To that end the Boksanica footage amounts to corroboration of his account, were any needed. It would of course be a more difficult piece of evidence to deal with had he averred in evidence that he had never been back to the Zepa area after 15th July, but he did not. He told the court about the visit to Krstic, and the Boksanica footage supports him in that. The fact that it is or might be one day out from when he believed it to have been can only be seen as a mistake borne of his using the available material to aid his memory.

2.4.2. The Zivanovic Footage

98. In his testimony on 30 January 2009, Pandurevic recalled that there was a meal following the meeting at the Bratunac Brigade headquarters on 11th July. It took place in an adjacent room to the meeting. He recalled that Zvonko Bajagic had brought fish for the meal, it was carp. Pandurevic stated that fish was a traditional meal for a fasting day, and that 11th July, the day before St. Peter's day was a fasting day, accordingly, fish had to be eaten.
99. When he gave evidence on 9th March, Zvonko Bajagic, described his relationship with both the accused Pandurevic and Milenko Jevdjovic. It is plain that he had no special relationship with either man during or after the war. It had been some considerable time since he had seen either of them.¹³¹ He had never spoken to either about the meal on 11th

¹²⁸ P04537, Boksanica footage, 34.36

¹²⁹ P04537, Boksanica footage, 38.32

¹³⁰ P04537, Boksanica footage, 39.12

¹³¹ T.32485-T.32486, 9 March 2009, Zvonko BAJAGIC

July 1995.¹³² He didn't know what Krstic had said about the date of the meeting and had never met with his lawyers.¹³³

100. He described that he had been to buy fish in Serbia on 10th July¹³⁴, that he had been cooking both the fish for the fast meal and meat for St. Peter's day during the 11th when Acamovic had come to ask him to prepare some food for the Bratunac brigade headquarters that evening, where Generals Mladic, Krstic and about 10 others were expected. That was at about 17.00. It was then that he first heard of the fall of Srebrenica.¹³⁵ He said he took the fish to Bratunac in his car, and laid it out for dinner in a room other than that in which the meeting was being held. He saw and greeted Mladic. He also saw Krstic, Jevdjovic and Pandurevic.
101. He said that he was to host a luncheon the following day for 200 people at the hotel in Vlasenica. This was the principle event of St Peter's day rather than any function at his home.¹³⁶ He mentioned that General Zivanovic was a guest at the hotel luncheon.¹³⁷ The guests at the lunch remained at the hotel until midnight. Perhaps more importantly, he said that he was present there too.¹³⁸
102. When it was suggested to him in cross-examination that it was the 12th July when he had taken the fish to Bratunac he responded : "How could it have been on 12th? On 12th was the day that you were supposed to eat meat."
103. Milenko Jevdjovic gave evidence about the meeting and the meal. He said that the meeting was on 11th July which was the last day of the fast according to Orthodox Christian beliefs. At the end of the meeting he saw Bajagic enter a larger office with a huge fish on an oval platter.¹³⁹
104. The Zivanovic footage lasts a little over 30 minutes. According to the evidence of Bajagic, therefore, it highlights events covering several hours in Vlasenica. Its apparent discovery in Belgrade at the home of Darko Mladic in December 2008 is profoundly curious. No connection between Bajagic and Mladic (senior or junior) has been established during the course of the trial, and the contents of the video have little or no interest for Mladic. Whilst the Trial chamber found that the video "speaks for itself", that is, with respect, only partially true. It cannot be determined from the tape how many cameramen contributed to the final edited version. The video comprises scenes from at least 3 locations; the church, Bajagic's home and a third location between (at least on the tape) the other two. The third location cannot be determined from the tape itself – it may be the hotel, or somewhere else. It is plain from the dialogue that it is somewhere where food was available.
105. The impact of the Zivanovic footage even upon the evidence of Bajagic himself, has been massively overstated. The video does not depict the hotel luncheon the preparation of which he was describing in cross-examination, but rather a smaller private affair at

¹³² T.32514, 9 March 2009, Zvonko BAJAGIC

¹³³ T.32514, 9 March 2009, Zvonko BAJAGIC

¹³⁴ T.32515, 9 March 2009, Zvonko BAJAGIC

¹³⁵ T.32513-T32517, 9 March 2009, Zvonko BAJAGIC

¹³⁶ T.32517, 9 March 2009, Zvonko BAJAGIC

¹³⁷ T.32522, 9 March 2009, Zvonko BAJAGIC

¹³⁸ T.32522, 9 March 2009, Zvonko BAJAGIC

¹³⁹ T.29609. 12 December 2008. Milenko JEVDJEVIC

Bajagic's home. The point is underlined by the case which was put to him by the Prosecution. Suggesting, effectively, that the hotel meal was a day later on 13th (curious in itself, given that counsel had already established by then that Bajagic was not in Vlasenica on 13th!)¹⁴⁰, an invoice was put to the witness detailing certain items apparently delivered for its preparation.¹⁴¹ Without over elaboration, it is obvious at a glance that the invoice cannot possibly relate to the meal shown in the video tape.

106. There is a grave risk that Bajagic's evidence is mischaracterised. He did not say that fish cannot be eaten on a feast day, rather that he took fish to Bratunac because it was a fast day.¹⁴² Like others, his recollection is not merely of an isolated event but of a whole sequence from the 10th through to the 14th July.¹⁴³ His recollection of events on the 12th is substantially corroborated by the video tape as to the service at church, the breaking of the bread, and the reception. It is unfortunate that there is no footage of the hotel meal he described organizing. Within the parameters of his account of events of 12th July, there is no room for the preparation of a meal for 10-12 officers and its delivery to Bratunac, and, given the context of his concurrently hosting a private lunch and a civic reception throughout the afternoon and evening, the occurrence of such events seems unlikely.
107. Be that as it may, only he could explain the events depicted on the video tape and his religious and dietary beliefs. Pandurevic may have called him as a witness but Bajagic's credibility as a witness stands alone on the question of what he would or would not eat on St Peter's day and, in the submission of the Defence, generally. Pandurevic's recollection that the meeting took place on 11th depends upon so many more things than the service of fish for dinner. He recounted the fact to Eileen Gilleece in October 2001. The suggestion that he aligned his account with that of Bajagic¹⁴⁴ is fanciful and without merit, especially when he first gave that account 7 years before it was known what Bajagic might say about the date of the meeting.¹⁴⁵

PART 2 - THE DEFENCE CASE

108. Expressed in a sentence, the case for Vinko Pandurevic is that it has not been proved to the requisite standard that he was a party to any of the offences charged in the indictment, substantially or inchoately, whether as an individual or a superior.
109. Such a glib challenge to his accusers, however, would not do justice to the positive defence he has presented throughout this trial. Whilst not inviting upon himself any burden of proving his innocence, it is his case that he did not participate in the crimes alleged.

¹⁴⁰ T.32524, 9 March 2009, Zvonko BAJAGIC

¹⁴¹ See P04434, Materiel list for VP 7111 Han Pijesak (Vlasenica), dated 13 July 1995

¹⁴² T.32535, 9 March 2009, Zvonko BAJAGIC

¹⁴³ T.32515-32537, 9 March 2009, Zvonko BAJAGIC

¹⁴⁴ Prosecutor vs Popovic et al., Case IT-05-88, "*Prosecution's Motion for Leave to Reply and Consolidated Reply to the Defence Responses to the Prosecution's Second Motion to Reopen its Case*", 21 April 2009, paragraph 30

¹⁴⁵ T.32514, 9 March 2009, Zvonko BAJAGIC

110. His denial has been there for all to see and test and he can rely upon the force, the plausibility, the credibility and the sheer persuasion of his testimony when addressing his submissions to the Trial Chamber.

111. His case has highlighted, without exclusively relying upon, a series of focal points which will be set out herein to assist the Trial Chamber in its passage through the body of this brief.

➤ Absence of Knowledge and Lack of Intent

112. Vinko Pandurevic did not possess the requisite knowledge and, accordingly, could not and did not form the necessary intent for the alleged offences.

113. His knowledge and his state of mind has been probed at length and in minute detail – unlike all other accused, his knowledge and state of mind has been susceptible to direct proof. In particular:

- (i) he knew nothing of any plan to kill prisoners nor did he have any knowledge of nor perceive a risk of opportunistic killings
- (ii) he became aware of prisoners in schools on 15th July
- (iii) he knew nothing of executions until 16th July by which stage events had passed and accordingly, he could not have the necessary intention (whether for genocide or other homicide offences)
- (iv) he knew nothing of a plan to rebury those who had been killed in executions

114. Various pieces of circumstantial evidence indicate not only a lack of knowledge of crucial events but also that those who were in the know avoided contact with him. His reports of 15th, 16th and 18th July are not truly inferential of guilty knowledge. Instead they amount to the only contemporaneous written record of the existence of prisoners in Zvornik created 2 years after this Tribunal was established.

➤ Absence from crucial locations and decision making processes in relation to the killing operation

115. Pandurevic was absent from Zvornik between the 4th and 15th July 1995, and again between the 4th August and 26th September (apart from a few hours on 16th September).

116. The consequences of those periods of absence had important implications - his personal presence and input were lacking. He was for the most part incommunicado. Someone else was in command of the Zvornik Brigade and, accordingly, responsible for the actions of subordinates. He could take no part in the crucial decisions to move prisoners to and from Bratunac: to take the prisoners to Zvornik; to hold those prisoners in schools; to execute the prisoners and to identify locations where the prisoners would be

buried. Subsequently, his later absence came at a time when a decision must have been made to exhume and rebury the bodies of the prisoners.

117. There is no direct evidence of his involvement in any such decision making nor, on the available evidence, would it be possible to draw any reasonable inference that that was the case.
118. Of significant importance is the fact that those who were orchestrating activities must have known that Vinko Pandurevic was absent from his command. The clear inference to be drawn from this fact and from all that there is to know of Vinko Pandurevic, is that had he been present, no such activity would have occurred nor would he have allowed it to occur "on his watch".

➤ A Commander is Responsible for Men not Territory

119. The Defence will dismantle and disprove the false prosecution theory that is the "Brigade Zone of Responsibility". Responsibility for the prisoners in the schools rested with those who brought and placed them there. The mere fact that those schools happened to be in the municipality of Zvornik did not create any responsibility for the commander of the Zvornik brigade. The theory was completely discredited in the course of the evidence, and was even abandoned ultimately by the prosecution's own military analyst.

➤ Not in Command and Control of those who committed offences

120. Pandurevic was not the de jure commander of the Zvornik brigade between 4th and 15th July, and again between 4th August and 26th September.
121. Neither was he in de facto command of any units or individuals involved in criminal acts. There did not exist between him and those involved in criminal acts any superior subordinate relationship at the time. He did not know that any subordinate of his was about to commit crime or had done so. Once he was appraised of sufficient facts, he reported matters to the competent authority.

➤ The Combat Reports of 15th, 16th and 18th July are inconsistent with membership of a JCE or Conspiracy

122. These documents read together (and in particular when considered alongside the later oral report to Krstic) are of great evidential significance. They amount to reports to a competent authority. They create a permanent audit trail in relation to the events in Zvornik ready for any investigator to discover. They are a written record of matters which the authors of the JCE/conspiracy decreed should never be written down. A further inference to draw from these three documents is that, taken together, they display genuine expressions of dismay and surprise from a man who was no party to the plan to bring prisoners to the Zvornik area for execution. Pandurevic has spoken to each of the documents. He is certainly best placed to explain what they mean.

- Letting the column pass at Baljkovica is inconsistent with an intention to commit mass murder or membership of the JCE or Conspiracy

123. Pandurevic was under orders to destroy the column of the 28th division. Whilst of course he would have suffered loss in combat, the evidence is clear that he could have easily achieved this objective. Now that the evidence has been heard, there is no longer any basis for concluding that the situation was so desperate for him that he had no choice. It is likely that his actions saved as many if not more lives than were lost to the killing operation. It was a unique and startling moment in this awful story. It is impossible to conclude that the man who chose this course of action had the intent required for genocide or the other forms of mass murder alleged in the indictment, or would join a plan to do any such thing. The Defence will of course pray in aid the fact that this was not the only time in war that Pandurevic acted in such a way.

PART 3 - BRIGADE COMMAND ISSUES

1. Zone of responsibility

*'The main task of the Zvornik Brigade was to defend the territory and the population from attacks by enemy forces. In that sense, we provided protection and defence for the population in the entire zone including the facilities situated there. If it had happened that an enemy or a column of the 28th Division was to head towards Zvornik, our duty was to fight them in the town and try to push them outside of the town. That does not mean that automatically, we become responsible and we take ownership of the facilities where combat operations were conducted.'*¹⁴⁶

1.1. False Prosecution theory

124. The Prosecution's case that the mere fact that offences were committed in Zvornik means that the Zvornik brigade and its commander must be responsible is convenient, but false. Beneath paragraph 30.5. of the indictment appears the legend "the sites described below in paragraphs 30.6. through 30.15. were located within the Zvornik brigade zone of responsibility". The latent assertion in the use of this phrase is amplified in paragraphs 39.c.vii and 77.b.ii where it is stated "[Pandurevic] had responsibility for all the Bosnian Muslim prisoners detained in the Zvornik Brigade zone of responsibility".

¹⁴⁶ T.31324-T.31325, 12 February 2009, Vinko PANDUREVIC

125. The misapprehension lay at the heart of Richard Butler's initial hypotheses also. The arrival of the prisoners of war at schools in Zvornik, he opined, meant for Pandurevic that "he's got to feed 3.000 more people."¹⁴⁷
126. Whilst it is correct that the phrase "zone of responsibility" has been well-aided during the case, and even appears in some of the documents admitted into evidence, it is submitted that it is a phrase that has few if any legal consequences. The assertions cited above betray a flawed approach to the question of a brigade or a brigade commander's responsibility arising from a confusion of the law on command responsibility and a highly questionable military theory. The confusion has been compounded and promulgated by the regular mistranslation in myriad documents, including the most important ones, of phrases such as "zona brigade", "zona odbrane" and "Z/O", routinely as zone of responsibility.¹⁴⁸ It is the defence position that the assertions in the indictment now have no legal or evidential basis.

1.2. Occupation commanders – the basis of a flawed theory of liability?

127. International Law provides for one narrow exception to the requirement that the relationship of subordination between the accused and the perpetrators should be inscribed in a vertical chain of command: occupation commanders or military governors.
128. Where an occupation commander or military governor has been endowed with executive powers over a territory occupied by his forces, he has a general duty to ensure the well-being of the civilian population within that territory. In such a situation the commander is charged with the responsibility to see that individuals present within his zone of responsibility do not commit criminal offences against members of the civilian population (or prisoners of war) and, if they have, that they are punished.¹⁴⁹ The Occupation commander – unlike other forms of commanders - cannot validly claim that his obligation to prevent and punish crimes was limited to those who were in his line of command.¹⁵⁰
129. However, the doctrine, is of very limited application and extends only to occupation commanders having full executive authority as well as military command over a defined territory. Even in the cases of such officials, the responsibility "is not unlimited" and is subject to such factors as the customs of war : international agreements ; fundamental principles of humanity and the authority delegated to the commander by his own government.¹⁵¹ Moreover, insofar as individual criminal responsibility is concerned, the superior responsibility of an occupation commander could only be engaged, as with any other category of commanders, where the three general conditions of superior

¹⁴⁷ See also T.20821-T.20822, 31 January 2008, Richard BUTLER

¹⁴⁸ See for example a crucial document **P00329**, ZB VBI, 15 July 1995: The expression "Z/O" in the first paragraph is translated into English as "area of responsibility", notwithstanding the fact the author in the second paragraph uses the phrase "brigade defence area". See also **P00330**, ZB VBI, 16 July 1995, paragraph 3, where a term "zona brigade" is simply ignored and translated as "zone of responsibility". See also **6D00097**, 8th GO Srebrenica ABiH, 13-05-12, 30 Jan 95: The expression in the BCS version "z/o brigada" is translated as "area of responsibility of the 285th Brigade".

¹⁴⁹ "The Hostage Case", *United States v. Wilhelm List et al*, Law Reports of Trials of War Criminals [hereafter: LRTWC], UN War Crimes Commission, Vol. VIII, pp. 69-70.

¹⁵⁰ "The Hostage Case", LRTWC, Ibid, p.70.

¹⁵¹ "The High Command Case", *United States v. Wilhelm von Leeb et al.*, LRTWC, Vol XII, pp. 75, 107.

responsibility have been met.¹⁵² In particular, the criminal responsibility of an occupation commander is, and remains personal and his act or neglect to act must be both voluntary and criminal.¹⁵³

130. The doctrine has no application in the present case. The Zvornik Brigade was not an occupying force, neither was Pandurevic invested with executive powers over the municipality of Zvornik, nor any other area and no suggestion has been made in the indictment, the Pre-Trial brief, or the evidence, to that effect. As is detailed elsewhere in this brief, the municipal authorities were fully functional during the relevant period of the indictment.

1.3. Name of the Brigade

131. It is a mere accident that the Zvornik Brigade is called the Zvornik Brigade. The Zvornik Brigade, like most brigades of the VRS between 1992 and 1996, bore the name of the town where its command post was based. However, the municipality of Zvornik, the town of Zvornik and the Zvornik Brigade are not interchangeable concepts.¹⁵⁴ The Zvornik Brigade was so called because it drew most of its men from the municipality of Zvornik and it was only called that between about June 1992 and early 1996.¹⁵⁵ The Zvornik Brigade was also made up of many Serb refugees who came from central Bosnia.¹⁵⁶ Its name did not involve a responsibility to look after everybody and everything in Zvornik, let alone a responsibility for everything that occurred in the municipality.¹⁵⁷ Indeed, the town of Zvornik was not the responsibility of the Zvornik Brigade, because it was not within its zone of defence.¹⁵⁸ Geographically, the Zvornik Brigade defence zone covered the territory of two municipalities - parts of the Osmaci municipality (once called Kalesija), and parts of the Ugljevik municipality to the north.¹⁵⁹

1.4. “Zone of defence” and “zone of responsibility for combat operations”

132. The concept of a brigade zone of responsibility does not exist in military law nor in theory. In relation to a brigade, the phrase is not to be found in any military rules, textbook, encyclopedia, or dictionaries of the JNA nor the VRS.¹⁶⁰
133. In military texts, the appropriate term of art to describe the area of a brigade’s combat activities is zone of defence.¹⁶¹ The delineation of that area depends upon the situation

¹⁵² See “Command Responsibility for War Crimes”, *Yale Law Journal*, Vol. 82, No. 6 (May 1973), p. 1276.

¹⁵³ “The High Command Case”, LRTWC, Vol. XII, p.75.

¹⁵⁴ [REDACTED]

¹⁵⁵ [REDACTED]; T.2659-T.12660, 14 June 2007, Miodrag DRAGUTINOVIC

¹⁵⁶ T.12659, 14 June 2007, Miodrag DRAGUTINOVIC

¹⁵⁷ [REDACTED]

¹⁵⁸ T.31798, 19 February 2009, Vinko PANDUREVIC. Cf the position of the Romanija brigade in relation to municipalities of Han Pijesak and Sokolac. T.11967-T.11968, 23 May 2007, Mirko TRIVIC.

¹⁵⁹ T.11954, 22 May 2007, Mirko TRIVIC; T.31297, 11 February 2009, Vinko PANDUREVIC.

¹⁶⁰ [REDACTED]

¹⁶¹ [REDACTED]; T.20799, 31 January 2008, Richard Butler; **P00694**, Brigade Rules, Articles 483-500 and schematic 25.

and disposition of army units.¹⁶² The territorial responsibility of army units builds from the smallest unit upwards and is measured by the area of "boots on the ground".¹⁶³ The clear evidence in the case is that each battalion of the Zvornik Brigade defended an area defined by its front lines and rear positions.¹⁶⁴

134. Admittedly, the phrase zone of responsibility did creep into military language during the war in Bosnia, but in truth it was a fiction¹⁶⁵ or an abbreviation; the various plans and maps¹⁶⁶ drawn in this case to illustrate the alleged zone of responsibility of the Zvornik Brigade describe its zone of responsibility for combat operations.¹⁶⁷
135. The full extent of a brigade's territorial responsibility is to defend, attack or otherwise carry out combat operations within a defined area. Therein lies the fallacy of the Prosecution position. A brigade was only obliged to carry out combat activities within the area it was designated to defend. It did not create a responsibility for any or all activities, criminal or otherwise, which took place within its boundaries. If anything, a brigade's responsibility within its defence zone or defence area was a responsibility to the population it defended and not for activities therein.¹⁶⁸

1.5. Detention and execution sites outside the zone

136. None of the relevant facilities are within the defence areas of any of the battalions of the Zvornik Brigade, nor of the Brigade itself.¹⁶⁹ Kula, Branjevo, Pilica, Rocevic, Petkovci, Orahovac, including the school, are all places outside the battalions' areas of defence and they are all a considerable distance from the majority of active personnel on the Brigade's front lines.¹⁷⁰
137. None of the schools had been legally requisitioned by the Zvornik Brigade.¹⁷¹ Accordingly, responsibility for the buildings was that of the occupier or municipality and any crime within it of the civilian police.¹⁷² The commanders of the battalions asserted positively that they had no responsibility for schools in which prisoners were held.¹⁷³ The facilities and each of them fell within the jurisdiction of the functioning civilian authorities.¹⁷⁴

¹⁶² P00694, Brigade Rules, Articles 483-500 and schematics 25 and 26;

¹⁶³ T.20793-T.20794, 31 January 2008, Richard Butler.

¹⁶⁴ [REDACTED]

¹⁶⁵ T.10906-T.10907, 03 May 2007, Mendeljev DJURIC

¹⁶⁶ [REDACTED]; P02109, Map 4 from Map Book: Drina Corps Area of Responsibility

¹⁶⁷ P02509, DC Order, 30 Nov 1992, Order designating brigade areas of responsibility for combat operations ; T.31797-T.31798:4, 19 February 2009, Vinko Pandurevic.

¹⁶⁸ T.20802-T.20803, 31 January 2008, Richard Butler ; T.31325, 12 February 2009, Vinko PANDUREVIC, [REDACTED].

¹⁶⁹ [REDACTED]

¹⁷⁰ [REDACTED]; T.20802, 31 January 2008, Richard Butler.

¹⁷¹ T.10578, 26 April 2007, Mihajlo GALIC;

¹⁷² T.12813, 18 June 2007, Miodrag DRAGUTINOVIC.

¹⁷³ T.11468, 14 May 2007, Milanko JOVICIC; T.11941, 22 May 2007, Mirko TRIVIC; T.10906-T.10907, 03 May 2007, Mendeljev DJURIC; T.11623, 16 May 2007, Ostojica STANISIC; T.11701, 17 May 2007, Ostojica STANISIC; T.13307, 26 June 2007, Marko MILOSEVIC; T.12931, 20 June 2007, Sreten ACIMOVIC

¹⁷⁴ T.20803-T.20804, 31 January 2008, Richard BUTLER; T.12658, 14 June 2007, Miodrag DRAGUTINOVIC

138. Even within its defence area, a battalion had neither responsibility for, nor authority over, non-service personnel. People had houses and property within defence zones of battalions and they had always lived there.¹⁷⁵ Within the areas of defence of e.g. the 3rd, 4th, 5th, 6th and 7th battalions, there were villages and settlements where people lived. The frontline of the 1st Battalion traversed mountains and was partly inhabited.¹⁷⁶
139. A brigade has jurisdiction and authority only in the zone of defence, within the combat disposition of its own units, and in buildings that were requisitioned for its purposes. All other public and private facilities were under the authority of local civilian authority. Life went on : schools and businesses were open ; parliament sat ; the police operated and local communities existed. It was not the case that two concurrent authorities functioned in one and the same place.¹⁷⁷ Units from the Main Staff and Drina Corps, over which the Zvornik Brigade had no authority or jurisdiction were frequently garrisoned within the Zvornik area.¹⁷⁸

1.6. Brigade commander cannot be responsible for the territory

140. The Prosecution confuses the territorial responsibility of a brigade with the responsibility of a commander for the actions of his men. A commander's responsibility is for men under his command and not for territory.¹⁷⁹ The commander of the Zvornik Brigade is responsible for units of the Zvornik Brigade and possibly for reinforcements that are provided under his command.¹⁸⁰ Moreover, the theory completely ignores the jurisdiction of the civilian police and the War Presidency.¹⁸¹
141. In truth, the theory that a commander bears responsibility for the criminal acts of anybody within the area his unit is designated to defend is without any evidential support in the case. The Zvornik Brigade was responsible for criminal conduct that involved its troops and if those actions took place within the units of the Zvornik Brigade.¹⁸² The evidence will not support the suggestion that a brigade nor its commander bears responsibility for everything that occurs within the municipality after which the brigade is named. Even Mr Butler by the end of his cross-examination did not begin to suggest a brigade commander had the sort of responsibility alleged in the indictment.¹⁸³ The unworkability of the suggestion is best illustrated by the apparent boundaries of the Zvornik Brigade and Romanija Brigade defence zones extending well into territory held by the Muslim forces throughout the war,¹⁸⁴ over which the brigades had no control.¹⁸⁵

¹⁷⁵ [REDACTED]

¹⁷⁶ [REDACTED]

¹⁷⁷ T.12658-T.12659, 14 June 2007, Miodrag DRAGUTINOVIC , T.11623, 16 May 2007, Ostoja STANISIC

¹⁷⁸ For instance, although the 10th Sabotage Detachment was often stationed within the Zvornik area, it was under the jurisdiction of the VRS Main Staff. T.10931-T.10932, 4 May 2007, Drazen ERDEMOVIC, T.13992, 21 August 2007, Dragan TODOROVIC; [REDACTED]. Concerning the 16th Krajisniki Motorized Brigade, see T.28456, 19 November 2008, Ljubomir OBRADOVIC. [REDACTED]

¹⁷⁹ T.20792 – T.20793, 31 January 2008, Richard BUTLER

¹⁸⁰ [REDACTED]

¹⁸¹ **P00422**, Guidelines on the duties of the Wartime Presidencies of Municipalities in a State of War, pp. 39-43, ENG ERN 0086-0473-0086-0478 (see especially point 1.2, p. 40)

¹⁸² [REDACTED]

¹⁸³ T.20803, 31 January 2008, Richard BUTLER

¹⁸⁴ T.11943-T.11944, 22 May 2007, Mirko TRIVIC; T.12658, 14 June 2007, Miodrag DRAGUTINOVIC;

142. Similarly, the assertion in the indictment that prisoners become the responsibility of the commander of the Zvornik Brigade by the mere fact of their arrival within the municipality of Zvornik, is equally misguided. To quote the accused Pandurevic:

“If anyone captured prisoners of war, they knew exactly where they were taking them, and they knew whether they were exposed to any risk. Since the Zvornik Brigade wasn't ordered to receive POWs, and they were accommodated in the area of Zvornik does not necessarily impose any obligation on the Zvornik Brigade. It is the duty and the obligation of those who brought them into the area and not the Zvornik brigade.”¹⁸⁶

1.7. Zone of responsibility as a basis for criminal liability

143. The effects of the Prosecution's flawed reliance upon a theory of zonal responsibility are truly far-reaching. At least at the tactical level of military activity, it has been used as the sole guide to criminal responsibility for all crimes connected with the Srebrenica and Zepa enclaves.

144. Krivaja '95 and Stupcanica '95 were Drina Corps operations, supported by all of its brigades. Both operations involved the personal direction of command staff from the Bratunac, Zvornik, Romanija, Birac, Skelani, Vlasenica, Podrinje and Milici Brigades.¹⁸⁷ It is of particular note that the involvement of the Zvornik Brigade and its commander in the action towards Zepa was, in comparison with these other units, at best, peripheral.¹⁸⁸

145. Notwithstanding that, Pandurevic and Blagojevic stand alone amongst the commanders of those units, not only as indictees but as members of the JCEs to forcibly transfer and murder the able bodied Muslim men.¹⁸⁹ Even more curious is the incomplete list of participating brigades under paragraph 98 of the indictment.

146. It is surely not overstating the position to suggest that had, for example the prisoners in Bratunac been moved on 13th July 1995 to Sokolac, then, not only would Mirko Trivic have found himself indicted for all 8 counts on this indictment and listed as a member of the JCEs at paragraph 97, but that Vinko Pandurevic would not have been indicted or so listed at all.

T.31798, 19 February 2009, Vinko PANDUREVIC.

¹⁸⁵ T.11944, 22 May 2007, Mirko TRIVIC; T.12658, 14 June 2007, Miodrag DRAGUTINOVIC

¹⁸⁶ T.31801, 19 February 2009, Vinko PANDUREVIC

¹⁸⁷ See **P00107**, Drina Corps Command Order 04/156-2, Operation Order No.1 Krivaja-95, dated 02 July 1995, paragraph 5; **P00114**, Drina Corps Command Orders No. 02/04-158-1, Zepa Op Order 1, signed by Radislav KRSTIC, dated 13 July 1995, paragraph 5(1)–(7)

¹⁸⁸ T.31170, 10 February 2009, Vinko PANDUREVIC; T.12705, 15 June 2007, Miodrag DRAGUTINOVIC; T.11863, 21 May 2007, Mirko TRIVIC.

¹⁸⁹ Prosecutor v. Popovic et al., Indictment, 4 August 2006, para 97

2. Commander and chief of staff as deputy commander

*'In the absence of the commander, the Chief of Staff or deputy commander stand in for him with all the commander's rights and duties.'*¹⁹⁰

*'He [Pandurevic] did not have responsibility for the units that I was in command of.'*¹⁹¹

2.1. Introduction

147. The following section is intended to address the question of de iure command of the Zvornik brigade during the periods of 4th to 15th July 1995 and 3rd August to 26th September (though in relation to the latter period the Defence does not anticipate any principle disagreement with the Prosecution).
148. The Army of Republika Srpska was created to answer a very specific threat. Its Main Staff was comprised of former officers of the JNA. At brigade level its units were mostly comprised of local inhabitants and refugees together with a handful of professional officers.
149. By 1995 both the army and the state were young. Neither was founded upon the same political system as Yugoslavia nor the same demography. In this section of the brief, a series of laws, regulations and rules will be analysed. However, it is the defence case that no coherent body of legislation or regulation applied to the VRS, but rather a 'mish-mash' of assorted provisions from the former Yugoslavia and Republika Srpska, many of which were unknown to the soldiers of the VRS and unavailable to them.
150. It is not intended to suggest that the VRS was completely unregulated. However, in seeking to prescribe a system of command, especially within the brigade, the Prosecution has confused law with regulation and regulation with practice and has been highly selective in the material it will rely upon.

2.2. The Rules of the Brigade of the JNA¹⁹²

151. The Prosecution and, in particular, its military analyst Richard Butler frequently invest the Brigade Rules with the force of law.¹⁹³ This is to completely misunderstand them, for they are merely instructions¹⁹⁴, guidance¹⁹⁵, a set of aspirations¹⁹⁶, a wish-list¹⁹⁷.

¹⁹⁰ **7D00717**, Rules regarding the brigade commanders authority of the regiment, Article 17; T.30728, 28 January 2009, Vinko PANDUREVIC

¹⁹¹ [REDACTED]

¹⁹² **P00408**, Brigade rules, Federal Secretariat for National Defence, Infantry Administration, 1-jan-1984

¹⁹³ T.19619, 14 January 2008, Richard BUTLER

¹⁹⁴ T.30719, 27 January 2009, Vinko PANDUREVIC

¹⁹⁵ T.30318, 19 January 2009, Slobodan KOSOVAC; T.30724, 28 January 2009, Vinko PANDUREVIC

152. The Brigade Rules were created by the Infantry Administration, a body responsible for matters relating to infantry brigades.¹⁹⁸ The rules were issued pursuant to the ‘Instructions on the preparation and use of professional military literature’¹⁹⁹, which stipulate how and who should issue professional military textbooks to be used in military academies. The word ‘instruction’ speaks for itself.²⁰⁰
153. The Brigade rules were not issued on the basis of the law. An instruction does not have the force of law. The Brigade Rules are accordingly not legally binding in nature.²⁰¹

2.2.1. Purpose of the Rules

154. The aim of the Brigade rules was to ensure that each separate brigade, according to its purpose and capabilities, adopted and applied unified views, attitudes and tactical moves in the preparation, organisation and execution of combat operations in an all-people’s defence war.²⁰²
155. Effectively, the Brigade Rules were a training manual. The introduction is very clear as to their purpose: they are ‘intended for the training of commands, staffs, units’ in the JNA army. Therefore, it was a duty of all senior staff and commands ‘to study the provisions’ of the rules in detail and ‘to test and evaluate them’.²⁰³ This clearly indicates that the rules were for ‘guidance’ only and had no legal value and there were no legal sanctions or penalties for non-compliance.²⁰⁴ Their parallel in the legal literature would be textbooks on criminal law, which are clearly not a basis for punishment since they are not the law.²⁰⁵
156. Further, the Brigade Rules were based on the concept of the “All People’s Defence and Social Self-Defence” and experiences drawn from exercises of units, commands and staffs, organisational and formational structure of brigades etc. When applying these rules, it was essential to have a creative approach – application was intended to be done ‘creatively and according to the concrete conditions for the preparation, organisation and the actual combat capability of each individual brigade.’²⁰⁶

¹⁹⁶ [REDACTED]

¹⁹⁷ T.28060, 12 November 2008, Branislav RISTIVOJEVIC;

¹⁹⁸ **P00408**, Brigade rules, Federal Secretariat for National Defence, Infantry Administration, 1-jan-1984

¹⁹⁹ **P00408**, Brigade rules, Federal Secretariat for National Defence, Infantry Administration, 1-jan-1984; T.30718, 27 January 2009, Vinko PANDUREVIC

²⁰⁰ T.30718, 27 January 2009, Vinko PANDUREVIC

²⁰¹ T.30318, 19 January 2009, Slobodan KOSOVAC; T.30724, 28 January 2009, Vinko PANDUREVIC

²⁰² **P00694**, JNA Brigade rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades), 1984, Introduction

²⁰³ **P00694**, JNA Brigade rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades), 1984, Introduction

²⁰⁴ T.30724, 28 January 2009, Vinko PANDUREVIC; T.30318, 19 January 2009, Slobodan KOSOVAC

²⁰⁵ T.30719, 27 January 2009, Vinko PANDUREVIC

²⁰⁶ **P00694**, JNA Brigade rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades), 1984, Introduction

2.2.2. Difficulties in applying the rules of the JNA to the VRS

157. A JNA brigade was a professional army unit. It was both tactical and mobile and had defined numerical parameters²⁰⁷ as well as zones of operation. A brigade in the VRS was a completely different institution. In terms of numbers, combat formation and organisation of the defence, the Zvornik Brigade failed to conform in any particular way with a military unit envisaged by the JNA.²⁰⁸ During the war, the Zvornik Brigade had only 12 professional officers (as opposed to 350 officers in the JNA²⁰⁹), to manage 5500 to 6000 soldiers.²¹⁰ Furthermore, the rules of the JNA envisaged a brigade should structure its zone of defence over a width of 10-15 km.²¹¹ By contrast, the Zvornik Brigade manned a 45-50 km long static front for 3 years.²¹²
158. The function of the army envisaged by the Brigade Rules was the defence of the territory of six former federal republics in a socialist country against an external enemy. They did not envisage a civil war between the republics or the break-up of the army into a series of nationalist armies.²¹³ Once this army ceased to exist²¹⁴, the rules were of limited applicability.²¹⁵ For example, under the Rules, the brigade commander had to be a member of the League of Communists in the JNA. Plainly, this was wholly inapplicable to the VRS.²¹⁶
159. The Rules were deeply unpopular among the soldiers in the VRS.²¹⁷ The symbol of the socialist star on the cover of the rules of the brigade was one which was despised or at least disliked by most of the soldiers of the Zvornik brigade. The same applied to the principles of brotherhood and unity on which they were based.²¹⁸

²⁰⁷ The size of a brigade in the JNA was between 1000 and 5000 men. Only motorized brigades would have around 5000 members.

²⁰⁸ [REDACTED]

²⁰⁹ [REDACTED]

²¹⁰ **3D00529**, 27 January 1995, Report on the combat readiness of the Zvornik Brigade for 1994, pages 6-7; See also: **7D00465**, Report on manning level and actual strength, 20 August 1993; **P00381**, Report on elements of combat deployment, 12 August 1995; **P00382**, Overview of available troops, 20 July 1995; **7D00464**, Numerical strength of DC units per month, 1995; **P00381**, ZB Elements of Combat deployment, 12 August 1995

²¹¹ **P00694**, JNA Brigade rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades), 1984, Schematics on page 205

²¹² [REDACTED]

²¹³ [REDACTED]

²¹⁴ See for example **P00026**, The organisational and establishment structure of the army Corps, 1992: The Army of Republika Srpska was officially established pursuant to a decision of the Assembly of Republika Srpska on the 12th of May, 1992. This order was drafted on the 26th of May, 1992. It was created as a result of negotiations and counselling between the highest political and military leaderships in the Republika Srpska. At no point does it indicate that one should start from the *existing doctrine* which had been in use by the Yugoslav People's Army or that the establishment books should be used that had already existed. Instead, the order indicated that each case had *specific circumstances* and that brigades should be established in keeping with the abilities and conditions under which parts of the Territorial Defence existed. This was a creative approach to the organisation of the military which was applied by the Main Staff and the Supreme Commander. This was about a new state being created with a new military regime. For details see T.30734, 28 January 2009, Vinko PANDUREVIC and T.30323-T.30324, 19 January 2009, Slobodan KOSOVAC

²¹⁵ T.30724, 28 January 2009, Vinko PANDUREVIC

²¹⁶ T.30726, 28 January 2009, Vinko PANDUREVIC

²¹⁷ [REDACTED]

²¹⁸ [REDACTED]

160. Nonetheless, the former officers of the JNA had been trained according to these rules and knew no others. Accordingly, when the VRS was created they sought to manage that institution by reference to their old training. From time to time, new orders and rules were written by the VRS as an acknowledgement of the reality that the rules of the JNA did not work.²¹⁹ If there were two sets of rules, one from the JNA and the other from the VRS, then the VRS set of rules prevailed.²²⁰
161. Copies of the JNA rules were not widely available in the VRS. This is particularly pertinent to the brigade where so few of its officers were trained. It is likely that only Pandurevic and Obrenovic in the whole of the Zvornik Brigade had actually seen the Brigade Rules. Certainly, none of the assistant commanders would have been familiar with them, nor the battalion commanders.²²¹

2.2.3. Commander under the Brigade Rules

i. Article 115

162. The Prosecution uses Article 115 of the Brigade Rules as its 'basis for the roles and responsibilities of the Brigade Commander'.²²² It is submitted that Article 115 expresses an admirable ideal : the brigade commander has the 'exclusive right to command all brigade units and attached units' and 'bears full responsibility for the work of the brigade command and subordinate commands, for the state of morale, for security and combat readiness, for training, and for proper performance of tasks'.²²³
163. Further reading of Article 115 illustrates that this is an expression of ideology rather than law : the commander takes decisions and assigns tasks to units and demands their strict execution 'regardless of difficulties that arise', whereas the commander influences the entire condition of the brigade with his 'personal conduct, work, involvement in the implementation of the SKJ policies, ethical standing, courage, ability, fairness, cool-headedness, consistency, and respect for the personality and opinion of subordinates'.²²⁴

ii. The principle of unity of command and subordination

²¹⁹ [REDACTED]

²²⁰ [REDACTED]

²²¹ [REDACTED]; T.30723-T.30724, 28 January 2009, Vinko PANDUREVIC

²²² P00684, Revised "VRS Brigade Command Responsibility" report, by Richard BUTLER, 31-oct-2002, Para. 1.7.

²²³ P00694, JNA Brigade rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades), 1984, Article 115; T.30726, 28 January 2009, Vinko PANDUREVIC

²²⁴ P00694, JNA Brigade rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades), 1984, Article 115

164. The Defence accepts and asserts that Article 115 and the philosophy of command in general, need to be understood in the light of the ‘principle of the unity of command and subordination’.²²⁵

165. The RS Law of the Army provides that command in the VRS shall rest on the principles of a unified command.²²⁶ The principle was further incorporated into the JNA Manual for the Work of Command and Staffs:²²⁷

‘The command relationship is based on the principle of unity, unity of command and subordination; it is defined in the relationship between the superior and his subordinate.

The command relationship pervades the entire system of the armed forces, from the SFRY Presidency to the soldiers. It is an obligation to execute the tasks set by one's superior or competent officers and organs in an accurate and proper manner, and to act in accordance with the military regulations in their execution. Any disruption in the command relationship, such as circumvention of or wrongful interference with the chain of command is a sign of military disorganisation. Only commanding officers authorised to do so by appropriate regulations may in exceptional circumstances set tasks instead of their immediate superiors.’

166. It is submitted that it is wrong to treat Article 115 as law.²²⁸ To overlay the Article with the principle of unity of command and then conclude that only the brigade commander can be in command of the brigade²²⁹ is to misunderstand both the Article and the principle. The principle is not without temporal considerations ; in other words, there can only be one man, one commander of a brigade at a certain time, whoever that might be : the commander, the deputy commander, somebody standing in for the commander, or somebody else temporarily designated to command the brigade.²³⁰ A commanding officer is not necessarily a commander.²³¹ Article 115 thus applies to each and every officer who, at any given time, has command over a brigade (i.e. the commanding officer). If the deputy commander is in command, then, pursuant to this principle, the deputy commander has the exclusive right to command at that time and the deputy commander bears the full responsibility for the brigade.

167. Further, according to this principle, a commander can only be in command of one unit at a time. If the commander of the brigade is, for example, sent to command another unit outside the brigade defence zone, he cannot be held responsible for the brigade.²³²

168. According to prosecution military analyst, Richard Butler :

²²⁵ **P00684**, Revised “VRS Brigade Command Responsibility” report, by Richard BUTLER, 31-oct-2002, Para. 2.0.

²²⁶ **P00415**, RS Law on the Army, 1-jun-1992, Article 173; **P00684**, Revised “VRS Brigade Command Responsibility” report, by Richard BUTLER, 31-oct-2002, Para. 2.10

²²⁷ **P00699**, Manual for the Work of the Command and Staffs, 1983, Chapter 1, Section 1, Point 5

²²⁸ See above

²²⁹ T.19619, 14 January 2008, Richard BUTLER

²³⁰ T.30726, 28 January 2009, Vinko PANDUREVIC

²³¹ T.30326, 19 January 2009, Slobodan KOSOVAC; T.30736, 28 January 2009, Vinko PANDUREVIC; See also P04574 and P04586

²³² T.30757-T.30758, 28 January 2009, Vinko PANDUREVIC; T.31191-T.31192, 10 February 2009, Vinko PANDUREVIC

"In essence, unity of command is the general military philosophy that only one individual can be in command of one unit or of one series of units. You cannot have a function where you have multiple commanders in one unit. I think historically that approach has been found not to work effectively on the battlefield."²³³

iii. Inadequacy of Article 115 – the absence of the commander

169. Article 115 does not allow for a situation where the brigade commander is absent or otherwise prevented from performing his duties. The principle in the rules removes the function of the deputy commander. If applied literally, the terms of this Article would prevent anyone commanding the brigade when the commander was absent. Obviously that situation cannot exist. It is necessary for the situation to be regulated. Therefore, Article 115 cannot be regarded as a complete statement of issues of command within the brigade of either the JNA or the VRS.

2.3. Commander's responsibility in law

170. The authority and responsibility of commanders was regulated by law for every command level in the JNA. At Brigade level the appropriate provisions were 'the Rules Regarding the Brigade Commanders Authority of the Regiment'.²³⁴
171. By contrast to the Brigade rules, these provisions have the force of law. They are based on the 'Law of the Yugoslav's People's Army' and authorised by the Supreme Commander of the Armed Forces of the SFRY.²³⁵
172. Article 10 of the Rules Regarding the Brigade Commanders Authority of the Regiment sets out the brigade commander's legal responsibilities as follows :
- "The commander is responsible for the overall situation in the brigade or regiment, for the correct and lawful work of the command organs, and for the successful and timely completion of all tasks within the remit of the command organs. The commander has direct control over the brigade and regiment units through the Chief of Staff, his assistants, and the organs for combat arms."
173. In law, as opposed to ideology, there is no basis for the assertion that the commander's right to command is exclusive. This accords with Pandurevic's understanding of his responsibilities.²³⁶

3. Chief of staff and deputy commander under the Brigade Rules

²³³ T.20773, 31 January 2008, Richard BUTLER

²³⁴ 7D00717, Regulations regarding the brigade commanders authority of the regiment; T.30729-T.30731, 28 January 2009, Vinko PANDUREVIC

²³⁵ 7D00717, Regulations regarding the brigade commanders authority of the regiment

²³⁶ T.30730, 28 January 2009, Vinko PANDUREVIC

3.1.Powers of the chief of staff to issue orders only in accordance with the commander's decision

174. Under Article 116 of the Brigade Rules and under Article 17 of the 'Rules Regarding the Brigade Commanders Authority of the Regiment', the chief of staff is also the deputy commander of the brigade.²³⁷ This means that 'his role is a twofold one'.²³⁸
175. Moreover, it is provided that the chief of staff has the right to assign tasks to subordinates 'in accordance with the commander's decisions' or 'in the spirit of the commander's orders',²³⁹ and, although he does not have the original right to command the brigade, he does have the authority to exercise command over the subordinates in the brigade when the situation demands. However, the 'command' function possessed by the chief of staff, must be understood within the greater context of the position and role of the chief of staff, i.e. as a 'principal advisor' to the commander and thus his power to issue orders if necessary, does not limit the commander's authority and responsibility.²⁴⁰
176. Two conditions must be met for this to take place: (1) the brigade commander must be on site and in command of the brigade and (2) the brigade commander previously took a decision that is the basis for any assignments that the chief of staff might give. In this case the chief of staff is acting in his role as the chief of staff.²⁴¹

3.2.Powers of the deputy commander are unlimited

177. It is submitted that Mr Butler has failed adequately to grasp the duality of the role of chief of staff/deputy commander.²⁴² Article 116 does not say that the 'deputy commander' can assign tasks to subordinates in accordance with the commander's decisions.²⁴³ The distinction is clear and reflects the different authority and responsibility which the chief of staff has qua chief of staff and when he is acting as deputy commander.
178. In a unit where the chief of staff is not also deputy commander, he would stand in for the commander in the commander's absence in any event, but would merely then be the chief of staff standing in for the commander.²⁴⁴ The establishment by law of the chief of staff's dual role means that when the commander is absent, he ceases to be chief of staff and becomes deputy commander. It makes no sense for him to be called deputy commander if upon acquiring that status, he had no additional rights and duties.

²³⁷ **P00694**, JNA Brigade rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades), 1984, Article 116; 7D00717, Regulations regarding the brigade commanders authority of the regiment, Article 17

²³⁸ T.30728, 28 January 2009, Vinko PANDUREVIC; T.12613, 14 June 2007, Miodrag DRAGUTINOVIC; T.30223, 16 January 2009, Slobodan KOSOVAC

²³⁹ **P00684**, Revised "VRS Brigade Command Responsibility" report, by Richard BUTLER, 31-oct-2002, Para. 2.15.; T.12612, 14 June 2007, Miodrag DRAGUTINOVIC; [REDACTED]; T.11953. 22 May 2007, Mirko TRIVIC

²⁴⁰ **P00684**, Revised "VRS Brigade Command Responsibility" report, by Richard BUTLER, 31-oct-2002, Para. 2.16.

²⁴¹ **P00694**, JNA Brigade rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades), 1984, Article 116; T.30727-T.30728, 28 January 2009, Vinko PANDUREVIC

²⁴² **P00684**, Revised "VRS Brigade Command Responsibility" report, by Richard BUTLER, 31-oct-2002, Para. 2.16.

²⁴³ **P00694**, JNA Brigade rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades), 1984, Article 116; T.30728, 28 January 2009, Vinko PANDUREVIC

²⁴⁴ T.30019, 13 January 2009, Slobodan KOSOVAC

179. More particularly, the deputy commander is needed because the commander is absent and the deputy cannot command 'in accordance with the commander's decisions', since there is no commander's decision to follow and the deputy does not know what the decision of the commander would be. This is why the deputy must have a different position to the chief of staff. While the commander is absent, the deputy commander is the commander of the brigade for all intents and purposes and the spirit, the light in which he commands is his own.²⁴⁵

3.3.Chief of staff is deputy commander in law with all rights and responsibilities

3.3.1. 'All rights and duties' necessarily include taking over command

180. The situation where the commander was absent from the brigade was not provided for by the Brigade Rules. However, the matter was regulated by Article 17 of the Rules Regarding the Brigade Commanders Authority of the Regiment :

'In the absence of the commander, the Chief of Staff or deputy commander stand in for him with all the commander's rights and duties.'²⁴⁶

181. According to this provision, the deputy commander²⁴⁷ had all the commander's rights and responsibilities.²⁴⁸ That necessarily included the power to issue orders of his own volition. The brigade deputy commander must try to act pursuant to Article 115 of the Brigade Rules : the deputy commander has the exclusive right to command and the deputy commander bears the full responsibility for the brigade.
182. In practice this is precisely how the system was perceived to operate by those who worked within it.²⁴⁹
183. The situation was mirrored at corps level. Article 10 of the 'Regulations on the Responsibilities of the Land Army Corps Command in Peacetime', states: 'The Chief of Staff shall replace the commander when the latter is absent and shall have all rights and duties.'²⁵⁰ According to Mr Butler, these peacetime provisions were the 'framework for

²⁴⁵ [REDACTED]; T.30758, 28 January 2009, Vinko PANDUREVIC; T.10040, 16 April 2007, Lazar RISTIC

²⁴⁶ **7D0717**, Regulations regarding the brigade commanders authority of the regiment, Article 17; T.30728, 28 January 2009, Vinko PANDUREVIC; T.10038, 16 April 2007, Lazar RISTIC; T.20782, 31 January 2008, Richard BUTLER

²⁴⁷ Or the chief of staff in the unit that had no deputy commander. See T.30726-T.30729, 28 January 2009, Vinko PANDUREVIC

²⁴⁸ The translation of the BCS text of 'pravima i duznostima' varies. In the 7D00717 the section was translated as with all 'rights and duties', whereas in the trial transcript on page T.30731 on 28 January 2009 and on page T.31438 on 13 February 2009, it was translated as with all 'rights and responsibilities'. Accordingly, we can assume that these two terms are interchangeable in this aspect.

²⁴⁹ The deputy commander does *not* act according to the command of the commander and has '*full authority*' and '*he takes over the command*' (T.12613, 14 June 2007, Miodrag DRAGUTINOVIC). '*When the commander is not present, the Chief of Staff is the person in command of the brigade*' (T.11953, 22 May 2007, Mirko TRIVIC). See also T.22449, 19 June 2008, Zoran JOVANOVIĆ; T.28208, 14 November 2008, Ljubomir OBRADOVIĆ; T.10666, 27 April 2007, Mihajlo GALIC

²⁵⁰ **P00410**, Federal Secretariat for National Defence, General Staff of the SFRY, Regulations regarding the responsibility of Corps Command of the ground forces during peacetime, 1-Jan-1990, Article 10

the roles and responsibilities of the corps commander' and are as such a 'foundation' for understanding the relationship between the operational (corps) and the tactical (brigade) levels.²⁵¹

184. The purpose of the provision, according to Butler, is to allow for "facilitating a rapid and efficient continuation of command" in the event that the brigade commander is "rendered unable to effectively exercise command during the course of combat operations".²⁵²
185. This is also codified in Article 16 of the 'Interim Provisions on the Service in the Army of the Serb Republic' : "If a unit or an institution is suddenly left without a commanding officer, command shall be assumed by his deputy or the highest-ranking officer in that unit until a new commanding officer is appointed."²⁵³ This provision clearly shows that 'command' is assumed by the deputy commander and the situation described here is quite different from one where the chief of staff delegates tasks to the units.

3.3.2. Compelling circumstances

186. The assertion made by Richard Butler in the conclusions to his VRS Brigade Command Responsibility report that 'only in compelling circumstances would the chief of staff/deputy commander assume direct and full command of the brigade'²⁵⁴ is completely without regulatory support. It may be that the phrase 'compelling circumstances' has been borrowed and amended slightly from the 'JNA Manual for the Work of Command and Staffs'²⁵⁵, which mentions 'exceptional circumstances' . However, those provisions are dealing with a wholly different situation.
187. Be that as it may, brigade deputy commanders occasionally assumed full command of brigades. Indeed, it is beyond dispute that Dragan Obrenovic did so in August and September 1995. Accordingly, one must assume that Mr Butler would concede that compelling circumstances occasionally did arise and included the absence of the commander on combat duty in another brigade defence zone.
188. Butler concedes that in such circumstances, the chief of staff's 'authority to issue independent orders is recognized under the relevant military regulations'. Subordinates would be obligated to carry out these instructions as they were issued, until such time as the Brigade Commander could effectively resume control.'²⁵⁶ This seems to suggest that

²⁵¹ P00684, Revised "VRS Brigade Command Responsibility" report, by Richard BUTLER, 31-oct-2002, Para. 1.5.

²⁵² P00684, Revised "VRS Brigade Command Responsibility" report, by Richard BUTLER, 31-oct-2002, Para. 2.17.

²⁵³ P00417, Interim Provisions Service Regulations of the Army of the Serb Republic, 18-aug-1992, Article 16; P00684, Revised "VRS Brigade Command Responsibility" report, by Richard BUTLER, 31-oct-2002, Para. 2.17.

²⁵⁴ P00684, Revised "VRS Brigade Command Responsibility" report, by Richard BUTLER, 31-oct-2002, Para. 7.7.

²⁵⁵ P00699, Manual for the Work of the Command and Staffs, 1983, Chapter 1, Section 1, Point 5

²⁵⁶ P00684, Revised "VRS Brigade Command Responsibility" report, by Richard BUTLER, 31-oct-2002, Para. 7.7

the compelling circumstances arise once the commander can no longer effectively command the brigade.

3.3.3. Absence of the commander as the only condition

189. Under Article 10, the only condition required for the deputy commander to stand in for the commander, was the absence of the commander. No further order, written or otherwise, was required at law.

190. Absence can cover a multitude of situations. It covers situations over and above that where the commander is absent from the command post or that no appropriate communication can be established with him or that he is unfit to command.²⁵⁷ It is often understood as absence from the defence zone.²⁵⁸ The commander may be absent for various reasons – he might be carrying out a task at the orders of superior command; recuperating on sick-leave; on leave ; he may have deserted or been taken prisoner, etc., As an illustration, Pandurevic was not absent when he was fighting in Baljkovica but he was absent when he was in Srebrenica with TG1.

191. According to the testimony of Trivic, the absence of the commander seemed to be the only condition for the chief of staff to take over command: ‘‘When the commander is not present, the Chief of Staff is the person in command of the brigade.’’²⁵⁹ The same situation occurred at battalion level : ‘‘When the battalion commander is absent, the deputy commander (of the battalion) takes over his responsibilities, is responsible and receives orders from the brigade command.’’²⁶⁰

3.3.4. Absence of the commander and the chief of staff

192. The brigade rules also fail to address the situation where both the commander and the chief of staff are absent. In contrast, Article 17 of the ‘Rules Regarding the Brigade Commanders Authority of the Regiment’ clearly states:

“If the commander and the Chief of Staff are absent, one of the assistant commanders shall be ordered to stand in.”²⁶¹

193. If both a commander and a Chief of Staff are absent, it will be the corps commander who will regulate the situation and put in place an officer who will perform the duties of the commander.²⁶² If there is no time or no possibility for the corps commander to order

²⁵⁷ T.30013, 12 January 2009, Slobodan KOSOVAC; T.12765, 18 June 2007, Miodrag DRAGUTINOVIC

²⁵⁸ T.407, 21 August 2006, Prosecution’s Opening Statement: ‘But in other situations such as when we see Vinko Pandurevic go down to take part in the attack on Srebrenica or the attack on Zepa, we see Dragan Obrenovic designated as the deputy commander. This is what he takes on *in the absence* or the unavailability of the commander.

²⁵⁹ T.11953, 22 May 2007, Mirko TRIVIC; [REDACTED]; T.12994, 21 June 2007, Steren ACIMOVIC

²⁶⁰ T.10038, 16 April 2007, Lazar RISTIC

²⁶¹ 7D00717, Regulations regarding the brigade commanders authority of the regiment, Article 17

²⁶² T.30733, 28 January 2009, Vinko PANDUREVIC

one of the assistants to stand in, then the command should be taken over by the most senior officer who is in the command. Thus, there is always somebody in command.²⁶³

3.4.Obrenovic as a deputy commander by appointment

3.4.1. Permanent order of appointment and automatic assumption of command

194. While Pandurevic was commander of the Zvornik Brigade, he was frequently required to carry out activities and personally lead temporary combat formations in areas outside the brigade's area of defence.²⁶⁴

195. Obrenovic also performed these tasks²⁶⁵ The practice of depriving a brigade either of its commander or its deputy on a regular basis was not usual in the JNA, nor envisaged by its rules. The constant absence of either commander or the chief of staff from the brigade command created problems and Pandurevic did not hesitate to complain to the corps command about it.²⁶⁶

196. When Pandurevic was absent from brigade command, Dragan Obrenovic, who was deputy commander by appointment or by establishment, took over.²⁶⁷ His formal appointment as chief of staff and deputy commander by the Drina Corps took place on 11 April 1993.²⁶⁸ This meant that Obrenovic was 'always' and 'automatically' deputy commander and thus took over the command of the Zvornik brigade whenever Pandurevic was absent; his position as deputy commander was 'permanent'.²⁶⁹

197. Irrespective of the opinion of others, this is how everyone perceived the position.:

"Mr. Haynes: When the commander leaves the command, you automatically become commander?

Witness: Yes. Unless it's regulated differently."²⁷⁰

3.4.2. No need for subsequent order of appointment

²⁶³ See section entitled "Part 3 Section 6 Senior officer present" ; T.30733, 28 January 2009, Vinko PANDUREVIC

²⁶⁴ T.30741, 28 January 2009, Vinko PANDUREVIC; P00684, Revised "VRS Brigade Command Responsibility" report, by Richard BUTLER, 31-oct-2002, Para. 2.18

²⁶⁵ T.30741, 28 January 2009, Vinko PANDUREVIC

²⁶⁶ P03379, ZB order, 27 December 1994. This is further proof that Pandurevic was not afraid to put things in writing. Nor would he shy away from addressing the corps commander in a strident way if need be. See T.30741-T.30743, 28 January 2009, Vinko PANDUREVIC

²⁶⁷ [REDACTED]; [REDACTED]; T.30743, 28 January 2009, Vinko PANDUREVIC; P684, Richard Butler's VRS Brigade Command Responsibility Report, point 2.18.

²⁶⁸ 7D00462, DC order, 11 April 1993.

²⁶⁹ T.30742-T.30744, 28 January 2009, Vinko PANDUREVIC; T.12613, 14 June 2007, Miodrag DRAGUTINOVIC

²⁷⁰ [REDACTED]

198. Therefore, it was not necessary to write a separate order for the chief of staff each time he became the deputy commander. This was already regulated in the DC order for his assignment. If not, then the position of 'zamenik' or 'deputy' would have no real meaning.²⁷¹
199. However, when the replacement lasted more than a month, an order recognizing the fact that a deputy was acting commander would generally be written. The principal reason for this was to regulate the status of the deputy commander (e.g. that he received financial benefits).²⁷² The subsequent order had no legal effect and more importantly was not a *conditio sine qua non* for a deputy commander to take over a command of the brigade. The deputy commander took over all the rights and responsibilities of the command, whether an order was written or not.²⁷³
200. Slobodan Kosovac underlined the fact that a subsequent written order in the case of a deputy appointed by permanent order was unnecessary. He opined that if there was no appointment by the establishment, the chief of staff would still stand in for the commander as the most senior officer of that particular command.²⁷⁴

3.5.Length of time of commander's absence is irrelevant

201. Between December 1992 and the end of the war, Pandurevic was absent from the Zvornik Brigade command approximately 10 times.²⁷⁵ There were occasions when he was absent for less than one month and others when he was absent for more than a month. There was no consistent practice whether or not the corps would write a replacement order.²⁷⁶

3.5.1. No additional replacement order if absence less than a month

202. In practice, when Pandurevic was absent for less than a month,²⁷⁷ no order of replacement was written. In that event, Obrenovic automatically assumed the command of the Zvornik brigade pursuant to the order of 11 April 1993. However, in most cases the

²⁷¹ T.30744, 28 January 2009, Vinko PANDUREVIC

²⁷² Another example when the order was written was where a brigade had no deputy commander per establishment. The corps command could also choose to appoint somebody other than chief of staff as a commander during Pandurevic's absence. See T.30745, 28 January 2009, Vinko PANDUREVIC; 7D01011, ZB Command, No. 01-22, Request, 14-feb-1994

²⁷³ T.30745, 28 January 2009, Vinko PANDUREVIC

²⁷⁴ T.30223, 16 January 2009, Slobodan KOSOVAC

²⁷⁵ T.30745, 28 January 2009, Vinko PANDUREVIC

²⁷⁶ T.12613, 14 June 2007, Miodrag DRAGUTINOVIC

²⁷⁷ For example (1) during his days off in February 1993, (2) during the Operation MAC 1 and MAC 2 in June 1993, (3) during February 1994 for seeing his daughter, (4) during his rehabilitation in Meljine in August 1994 etc. 7D01011, , ZB Command, No. 01-22, Request, 14-feb-1994; 7D00961, Rehabilitation from 21 July; T.30750-T.30752, 28 January 2009, Vinko PANDUREVIC

estimated length of Pandurevic's absence was unknown. Accordingly, it was entirely arbitrary whether an order was written or not.²⁷⁸ To use the two most relevant examples - if Krstic had refused to send Pandurevic back to Zvornik on 15th July, in all probability he would have been away from the brigade for a month or more. On the other hand, had Pandurevic not successfully arrested the progress of Croatian forces in the Krajina in early August, he would probably have been back in Zvornik within a few days.²⁷⁹

203. Three points about Pandurevic's absence in July are worthy of note: firstly, he was in command of another unit, namely Tactical Group 1; secondly, he had no communication with, nor effective control of the Zvornik Brigade;²⁸⁰ and, thirdly, according to some evidence, a public announcement was made to all the troops to the effect that Obrenovic would take over the command from Pandurevic and remain in command until his return.²⁸¹

3.5.2. Additional replacement order only if absence for more than a month

204. There were at least two occasions when Pandurevic was absent from the brigade for more than a month. The first occasion was between 9th January and 19th March 1995 for spinal surgery and rehabilitation.²⁸² During that period, Pandurevic was out of contact with the Zvornik Brigade²⁸³ and Obrenovic was its actual commander or its acting commander.²⁸⁴ The fact that the Drina corps did not issue a subsequent order appointing Obrenovic as deputy commander, (even though Pandurevic was absent for more than a month) did not alter his command position during this time but merely affected his remuneration.²⁸⁵
205. The second occasion was his absence between 3rd August and 26th September 1995. Of that period, he spent about six weeks in Krajina, thereafter, ten days in Montenegro. During this time Obrenovic stood in for the commander.²⁸⁶ A document acknowledging that fact was of course issued.²⁸⁷ However, its terms need careful analysis. In the defence submission, the ancillary, if not the principal purpose of this order, is the appointment of

²⁷⁸ At the end of May and beginning of June 1993, Vinko Pandurevic was the commander of the temporary structure of a battalion equivalent, which carried out combat activities in the territory of Rogatica, Ustipraga and Cajnice. In the middle of September 1994, Vinko Pandurevic was the commander of a detachment from the Drina Corps in the 1st KK in the region of Novi Grad and he was replaced by Dragan Obrenovic during that time without any order because this absence was less than a month.

²⁷⁹ T.24133, 1 December 2008, Dragisa MASAL; T.31198-31199, 10 February 2009, Vinko PANDUREVIC.

²⁸⁰ [REDACTED]; T.12614, 14 June 2007, Miodrag DRAGUTINOVIC; See below, section on communications during Krivaja '95

²⁸¹ [REDACTED]; 7D00725, OTP interview with Milan Maric, 30 June 2002.

²⁸² See for example 7D961, hospitalized in Meljine from 13th to 16th March; 7D962, Belgrade, Institute for Physical Medicine Rehabilitation and Rheumatology, 11 January to 6 February 1995 and Institute for Physiotherapy, 7 February to 1 March; T.30746-T.30749, 28 January 2009, Vinko PANDUREVIC

²⁸³ P00378, Duty operations officer diary contains no contact with the Zvornik brigade by Pandurevic.

²⁸⁴ T.26479, 1 October 2008, Mico GAVRIC; T.30749, 28 January 2009, Vinko PANDUREVIC; 5D00309, ZB regular combat report, 15 March 1995, point 2: '*The Chief of Staff, who also stands in for the commander of the brigade..*' or in original '*zastupa*'; 7D00944, all ZB reports from 9 January to 18 March 1995 (block) signed by Obrenovic and not Pandurevic

²⁸⁵ T.30749, 28 January 2009, Vinko PANDUREVIC and See above for section on why subsequent order not required

²⁸⁶ [REDACTED]

²⁸⁷ See 5D00452, 8 August 1995; T.31191-T.31192, 10 February 2009, Vinko PANDUREVIC

Milos Maksimovic as Chief of Staff, an event which is not automatic, nor regulated by law or standing order. The recital of Obrenovic's position is merely a condition precedent to the appointment of Maksimovic.

3.5.3. Additional order does not affect deputy commander's legal position

206. These two examples demonstrate that, order or no order from the corps, the powers and responsibilities of the deputy commander or the chief of staff when the commander was absent and when either were standing in for the commander, were identical: he assumed complete command of the brigade and had full authority when his commander was absent from his defence zone and there was no need to write a separate order.²⁸⁸ In the words of Dragisa Masal: "In principle, command and control principles, if the brigade commander had a chief of staff who was at the same time the deputy commander, then there was no need to write out a separate order".²⁸⁹

3.6. In practical terms there is no difference between the titles deputy commander, standing in for the commander, and acting commander.

207. The evidence discloses three different terms of art commonly in use when Obrenovic found himself in the position of commander. Various, he was described as deputy commander, acting commander, or standing in for the commander.²⁹⁰

208. [REDACTED]²⁹¹

209. [REDACTED]²⁹²

210. [REDACTED]²⁹³

211. Further, it is debatable whether the concept of an acting commander ("vrsilac duznosti") is a properly defined legal term at all. In law, military personnel can be active, on sick leave, in training, or they can be removed from duty. If they are prevented from carrying out their duty, an acting officer is assigned. A deputy commander holds an office by establishment, whereby the deputy stands in for the commander when the commander is not present. The concept of an acting commander does not exist either in legal terms or in the regulations.²⁹⁴

212. That, of course, is not to say that from time to time acting officers did not assume positions out of temporary expediency. However, that situation does not apply to the chief of staff of a brigade who, as a matter of establishment, is deputy commander and stands in for the commander with all rights and duties, as a matter of law, in the absence of the commander. 'Standing' in is a status in the service when all the jurisdiction areas are

²⁸⁸ T.12614, 14 June 2007, Miodrag DRAGUTINOVIC; T.24135-T.24136, 1 December 2008, Dragisa MASAL

²⁸⁹ T.24136, 1 December 2008, Dragisa MASAL

²⁹⁰ [REDACTED]

²⁹¹ [REDACTED]

²⁹² [REDACTED]; [REDACTED]

²⁹³ [REDACTED]

²⁹⁴ See P00703, Law on the Army, 1992; T.31217, 10 February 2009, Vinko PANDUREVIC

transferred to another person, similarly to the situation when one actually discharges duties, just that it is limited in time.²⁹⁵

3.7. The signing of combat reports is no indication of command responsibility

213. According to the Drina Corps order of 11 April 1993, whenever Dragan Obrenovic assumed his position as the deputy commander, he was duty bound to sign the combat and other reports as the 'deputy commander'.²⁹⁶ However, Obrenovic did not always (block) sign the reports in the required manner, but more usually signed as 'chief of staff'.²⁹⁷ For example during Pandurevic's absence from 9th of January to 19th of March 1994 all Zvornik Brigade reports were (block) signed by Obrenovic as 'chief of staff'.²⁹⁸
214. During one of Pandurevic's absences, General Zivanovic appointed Major Dragan Petkovic (who was the brigade commander before Pandurevic) to stand in for Pandurevic.²⁹⁹ The reports during Dragan Petkovic's replacement were (block) signed by him as a 'commander', not as somebody who was standing in for the commander,³⁰⁰ despite the fact that Pandurevic was not formally relieved from the command.³⁰¹
215. More bizarrely, in April 1993 Dragan Petkovic signed a Zvornik Brigade document as the 'commander'.³⁰² At that time, he had no authority whatsoever to issue orders as brigade commander. He was no longer a member of the Zvornik Brigade and could only have signed for the commander if somebody had appointed him to stand in for the commander temporarily (which had not occurred), if the commander was absent for any reason. The appropriate signatory at that time was Obrenovic, the Chief of Staff as deputy commander.³⁰³
216. In practice, the title accorded to the signatory of a combat report depended upon the Duty Operations Officer, who, on a day-to-day basis drafted the reports and appended the signature.³⁰⁴ In the main, those who fulfilled that role were non-professional officers with a limited understanding of military rules and the potential significance of the offices assumed by the block-signatures they used. Petkovic was presumably accorded the status of commander out of ancient habit and the lack of any other readily available title. The

²⁹⁵ T.30019, 13 January 2009, Slobodan KOSOVAC

²⁹⁶ 7D00462, DC order, 11 April 1993; T.30750, 28 January 2009, Vinko PANDUREVIC

²⁹⁷ For example from 5D00309, ZB regular combat report, 15 March 1995, we can see under point 2 that '*The Chief of Staff, who also stands in for the commander of the brigade.*', but the report is still type-signed by Obrenovic as 'chief of staff' instead of 'deputy commander' or 'standing in'.

²⁹⁸ 7D00944, ZB reports from 9 January to 18 March 1995; See also 7D943, ZB RBIs 1994 signed as 'chief of staff' instead of 'deputy commander'

²⁹⁹ 7D01011, Pandurevic's request for leave, 14 February 1994; T.30752-T.30753, 28 January 2009, Vinko PANDUREVIC

³⁰⁰ 7D01012, ZB reports on 17-18, 19, 20, 21 February 1994, all block-signed by Petkovic as the 'commander';

³⁰¹ This is an example of how the commander can be replaced by *somebody else* other than the deputy commander to stand in for him. However, if nothing is done, then the chief of staff as deputy commander automatically assumes command.

³⁰² 7D00452, 19 April 1993 Petkovic signed as the 'commander'

³⁰³ T.12647-T.12648, 14 June 2007, Miodrag DRAGUTINOVIC

³⁰⁴ [REDACTED]; T.30754, 28 January 2009, Vinko PANDUREVIC

concept of 'standing in' was not generally understood by those who were duty officers in the Zvornik Brigade³⁰⁵

217. According to the evidence which the Chamber has heard it is submitted that the block signatures at the foot of combat reports indicate very little. It may be an indicator of presence or absence of the commander (though as will be developed elsewhere in this brief, it is not conclusive even as to that). It certainly is not proof of the command responsibility of the commander or deputy on any given date.³⁰⁶

3.8. Formality is irrelevant

218. Another assertion made by Butler was that a brigade commander continued to command the brigade unless he was formally relieved or relinquish[ed] command to the superior who was next in line. It is submitted that this approach is not only flawed, but is inconsistent with the prosecution's case in other regards.
219. The Trial Chamber's attention is specifically drawn to the history of Pandurevic as outlined by him and others during his career in the VRS. On 18th December 1992, Pandurevic left Visegrad (where he was a commander) and travelled to Zvornik. He left Visegrad without any formal relinquishment of his command. According to his testimony he 'quite simply bade farewell to those people from the brigade and left, on the basis of the oral order from the Drina Corps command. I didn't transfer my duties to anyone.'³⁰⁷
220. He was neither formally relieved of his command in Visegrad, nor formally appointed as commander of the Zvornik Brigade on that date. To this day he has never been relieved of the command of the Visegrad Brigade. He was formally appointed as Commander of the Zvornik Brigade in October 1993.³⁰⁸ Notwithstanding that, it is the view of Mr Butler that Pandurevic was in command of the Zvornik Brigade from 18 December 1992.³⁰⁹
221. Despite the appointment of Obrenovic as chief of staff on 11 April 1993,³¹⁰ Butler still maintained that he had held the office from October 1992.³¹¹ Again, applying Butler's "formality" theory would lead to the conclusion that Obrenovic was appointed deputy commander not to Pandurevic but to Petkovic, Pandurevic's predecessor.³¹²
222. Furthermore, the assertion that Pandurevic 'did not formally relinquish command of the brigade when he assumed command of the tactical group deployed in Srebrenica'³¹³ is equally flawed. The concession that Pandurevic was in command of Tactical Group 1 is

³⁰⁵ T.30755, 28 January 2009, Vinko PANDUREVIC; T.30927, 30 January 2009, Vinko PANDUREVIC; T.31862, 20 February 2009, Vinko PANDUREVIC

³⁰⁶ Same thing happened at Main Staff level. See T.30510-T.30511, 22 January 2009, Slobodan KOSOVAC T.31196, 10 February 2009, Vinko PANDUREVIC

³⁰⁷ T.30683, 27 January 2009, Vinko PANDUREVIC

³⁰⁸ **P00372**, Order on 8 October 1993 appointing Pandurevic as Zvornik Brigade commander and Order on 26 October 1993 on the official assumption of the duty as the Zvornik Brigade commander; T.30694, 27 January 2009, Vinko PANDUREVIC.

³⁰⁹ **P00686** Richard Butler, Revised Narrative Report, 2.8

³¹⁰ **7D00462**, Order, 11 April 1993

³¹¹ **P00686**, Richard Butler, Revised Narrative Report, 7.8

³¹² T.30744, 28 January 2009, Vinko PANDUREVIC

³¹³ **P00686**, Richard Butler, Revised Narrative Report, 7.60

significant, since it would mean he held concurrent command of two separate units. This state of affairs offends the basic principles of unity of command upon which the prosecution relies so heavily. In addition, the evidence proves that Pandurevic was not only absent from the brigade zone but also was out of communication with Zvornik brigade command.

223. It is conceded that the Rules of the JNA envisage formality in the appointment and removal of officers in many circumstances. However, in practice, these procedures were simply ignored in the VRS during the war in Bosnia. Taken to its logical extreme, Butler's position would dictate that Pandurevic remained in command of the Visegrad Brigade to this day. However, the truth is, that all formalities aside, Pandurevic left the Visegrad Brigade and went to command the Zvornik Brigade in December 1992. In the same way, he left the Zvornik Brigade in July 1995 and went to command TG1 in Srebrenica and in August 1995 he left for Krajina to command the Drinski Brigade.
224. In other areas, the Prosecution positively aver that formality is no condition precedent to the assumption of office, even command. In relation to General Krstic, for example, the Prosecution assert that his command of the Drina Corps commenced on 13th July with an announcement by Mladic at a meeting.³¹⁴ In point of fact, Mladic had no power to appoint a Corps Commander. That was only in the gift of the President of the Republic. In that regard, there are obvious parallels with the formal announcement of Obrenovic assuming command at a public announcement prior to Pandurevic's departure to Srebrenica. Furthermore, there is a logical inconsistency between the position advanced by the prosecution in relation to the accused Miletic, and that of Pandurevic.
225. The central shortcoming to Butler's theory about the need for formality is his failure to identify the legal provisions which define the relationship between the commander and deputy commander of a brigade. Because Article 10 of the Rules Regarding the Brigade Commanders Authority of the Regiment has the force of law, the delegation of power to the deputy commander is legal. Butler's failure to consider these legal provisions and their effect upon the legal rights and duties of the deputy commander render his conclusion that an order was required to effect the delegation³¹⁵ completely false.

3.9. Deputy commander exclusively receives orders from and reports to superior command

226. When the brigade deputy commander is commanding officer due to the absence of the commander, it is the Corps commander who is his direct superior. The brigade deputy commander commands subject to orders from superior Corps command and he reports exclusively to the superior command.³¹⁶ In other words, when there is a "newly arisen situation, he (chief of staff) has to inform a superior command (corps command) of that and then goes on to act in accordance with the feedback he received from the superior commander".³¹⁷

³¹⁴ T.1803-1804, 30 June 2009, Svetozar KOSORIC.

³¹⁵ T.20008-T.20009, 18 January 2008, Richard BUTLER

³¹⁶ T.12613 and T.12701, 14 June 2007, Miodrag DRAGUTINOVIC; T.22449, 19 June 2008, Zoran JOVANOVIC; See also [REDACTED]

³¹⁷ T.11945-T.11955, 22 May 2007, Mirko TRIVIC

227. In the words of the Prosecution witness, Manojlo MILOVANOVIC, Chief of Staff of the VRS Main Staff:

“Actually, he (referring to the chief of staff when he stands in for the commander) is functioning as the brigade commander and his first immediate superior in that case is the Corps commander and there is absolutely no dilemma here.”³¹⁸

228. That situation is poignantly illustrated by the behaviour of Obrenovic throughout the period of Pandurevic’s absence. He accepted orders from Corps command and he gave orders accordingly. During his crisis of the 14th July, he required orders, advice and assistance not from Pandurevic but from Krstic (through the ministry of his friend, Jevdjovic). Pandurevic’s return on 15th July, was entirely dependant upon Krstic’s order.³¹⁹

229. Furthermore, a brigade commander has no command responsibility for the acts of his deputy commander when he is prevented from carrying out his duties and/or is absent. The Corps command is responsible for the actions of the brigade deputy commander in that situation. The absent brigade commander cannot influence the decisions and orders of the Corps commander directed to the deputy.³²⁰ This illustrates the principle of unity of command. [REDACTED]³²¹

4. Structure of the Zvornik Brigade

*“We were unable to organise the Zvornik Brigade and structure it so that it corresponded to what it was supposed to be according to the establishment structure. This was literally impossible.”*³²²

230. The origins and composition of the Zvornik Brigade will be dealt with elsewhere in this brief. In this section, how the Brigade attempted to organise itself after the arrival of Pandurevic, the practical effect of that organization and subsequent reorganizations will be analysed.

231. The subject has been thoroughly litigated during the course of the trial, and has been described by fact witnesses, and purportedly-expert witnesses, as well as being laid out and depicted in a variety of diagrams and schematic presentations. However, all parties agree that the ‘starting point for brigade structure’ is the model set out in the Rules of the JNA. Under this model, the commander commanded the units through the organs of the

³¹⁸ T.12356, 31 May 2007, Manojlo MILOVANOVIC; See also [REDACTED]

³¹⁹ This argument is developed in the section “Part 4 Section 6 Return to Zvornik on the 15th of July”.

³²⁰ T.30758-T.30760, 28 January 2009, Vinko PANDUREVIC; T.31435-T.31436, 13 February 2009, Vinko PANDUREVIC

³²¹ [REDACTED]

³²² T.30761, 28 January 2009, Vinko PANDUREVIC

brigade namely the Staff : the Organ for Morale ; the Logistics Organ and the Security Organ.³²³ The function and authority of those organs will be briefly described below.

4.1.The Staff

232. ‘The Staff’ was the executive organ of command, bearing the most important tasks and being responsible for all information gathering³²⁴. Certain units were directly subordinated to it. The Chief of Staff had the right to and regularly did issue orders to the various units contained within the Staff.³²⁵ In addition, the Staff was the most populous organ of the brigade.

4.2.Organ for Logistics

233. In addition to the various elements of this Organ, the rear battalion was also subordinated to the Organ for Logistics.³²⁶
234. This organ had strong functional links to its professional superior (see below). A logistics organ at a lower rank was duty-bound to follow the orders of a higher rank logistics organ, without going through the commander, who almost never involved himself in logistical issues.³²⁷

4.3.Organ for Morale

235. The Assistant Commander for morale, religious and legal affairs was Nenad Simic. His deputy was Ljubo Bojanovic. At the tactical level, his function was, inter alia, to organize funerals for fallen fighters, provide for their families and supply humanitarian aid. It could be difficult and distressing work. Simic himself suffered the loss of his son in combat. From time to time he also produced so-called morale boosting reports, an example of which is P2920.³²⁸
236. Whilst of course unattractive and unfortunate, as its signatory, Pandurevic accepts³²⁹ that the document “characterizes the command climate”, or is “reflective of the type of behaviours and attitudes that the brigade commander wanted to encourage through his command”³³⁰ is hyperbolic, especially given the circumstances in which it was authored

³²³ [REDACTED]; T.30719, 27 January 2009, Vinko PANDUREVIC.

³²⁴ T.12611, 14 June 2007, Miodrag DRAGUTINOVIC.

³²⁵ T.12612-12613, 14 June 2007, Miodrag DRAGUTINOVIC

³²⁶ T.12617-12620, 14 June 2007, Miodrag DRAGUTINOVIC; **7D00622**, Structure of the Zvornik Brigade; P694, JNA Brigade Rules, 1984, Schematics 1.

³²⁷ T.30768, 28 January 2009, Vinko PANDUREVIC.

³²⁸ T.30832-30833, 29 January 2009, Vinko PANDUREVIC; **P02920**, Zvornik Brigade Document No. 15-12/95 report on success of combat operations, signed by Vinko PANDUREVIC, 25 April 1995; P699, JNA Manual for the Work of Command and Staffs, 28 January 1983, point 20.

³²⁹ T.30833, 29 January 2009, Vinko PANDUREVIC.

³³⁰ T.19741-19742, 15 January 2008, Richard BUTLER.

and signed, and the rather more telling evidence of Pandurevic's actual commands, reports and behaviour toward his enemy.

4.4.Functional relationships

237. The functional relationship between the staff organs and brigade units provided for efficiency of command and a more effective use of those units. This functional relationship was, in fact, a veritable command relationship in the Zvornik Brigade, where the chief of the signals organ was authorized to command the signals company and the chief of the engineering organ was authorized to command the engineering company. This was "the customary way" in which the brigade functioned. In this way the Chief of Staff was directly responsible for the signals and engineering units.³³¹
238. The logic for this was that since the Zvornik Brigade did not have combat arms at battalion level, (nor an engineering battalion or a mechanised battalion etc.) the units that were equivalent to companies were linked to the Staff, to the Chief of Staff, or to some of the assistant commanders.³³²
239. [REDACTED].³³³ However, it runs contrary to other evidence on the same topic. Pandurevic explained that the duties of the Chief of Engineering included monitoring the Engineering company: training its members; he was authorised by the commander to issue direct tasks to those units and to assign direct tasks to those units. Pandurevic "almost never directly assigned a task to the commander of the Engineering Unit."³³⁴
240. Similarly, the Signals Unit was also attached to the Staff. The Signals Unit was directly linked to the Signals Organ. He was in charge of the unit, and the Chief of Staff was in command of it through him as well. Pandurevic received information about that unit through the Chief of Staff.³³⁵
241. Consequently, the chief of engineering had a general authorization from the commander to issue direct tasks to the Engineering Company. Similarly, the signals organ had a direct link with the Signals Company.³³⁶ The Operations Officer concurred on this issue.³³⁷

4.5. Subordination of units

242. Whilst the JNA model was used to organize the Brigade, the Zvornik Brigade did not conform in terms of size, as it had twice the number of men it ought under JNA rules.³³⁸

³³¹ T.12616-12617, 14 June 2007, Miodrag DRAGUTINOVIC.

³³² T.30763, 28 January 2009, Vinko PANDUREVIC.

³³³ [REDACTED]

³³⁴ T.30763, 28 January 2009, Vinko PANDUREVIC; **7D00806**, Reforming of the Zvornik Brigade, 21 March 1994.

³³⁵ T.30763-30764, 28 January 2009, Vinko PANDUREVIC.

³³⁶ T.30763-30764, 28 January 2009, Vinko PANDUREVIC.

³³⁷ T.12616-12617, 14 June 2007, Miodrag DRAGUTINOVIC.

³³⁸ T.12636-12638, 14 June 2007, Miodrag DRAGUTINOVIC; See also [REDACTED]; T.30762, 28 January 2009, Vinko PANDUREVIC.

The reason it was named the First Zvornik Light Infantry Brigade was because it was always intended that there should be a Second. That never happened. Even as late as September 1995, attempts were being made to make the Brigade conform to establishment structure, but it was not possible.³³⁹

243. The scheme for brigade structure proposed by the JNA Brigade Rules presupposes that it conforms to the unit in terms of size and number of units.³⁴⁰ The Zvornik Brigade never did.

4.6. Battalions

244. Rather than the four battalions envisaged by the rules, the Brigade was organised in such a way that it had seven infantry battalions, one manoeuvre battalion, one artillery battalion, one support battalion for anti-air defence, one logistics battalion and some companies.³⁴¹
245. The confrontation line between the battalions of the Zvornik Brigade and the 2nd Corps varied little during the war and was roughly 50 km long.³⁴² Under the rules, the Brigades zone of defence should have had a maximum width of 15-20 km.³⁴³
246. In addition there was a lack of adequate communication lines and trained senior officers.³⁴⁴

4.7. Podrinje detachment or Drina Wolves

247. The Podrinje Detachment, also known as the Manoeuvres Battalion or “Drina Wolves” was a Drina Corps unit which was not under the command of the Zvornik Brigade commander. It was billeted in Kozluk, near Zvornik, and was available for use by the Brigade if free of other commitments and with the permission of the Drina Corps commander.³⁴⁵

4.8. Reorganization of the Zvornik Brigade by Pandurevic

248. In March 1994, Pandurevic tried to reduce the number of battalions and the number of direct links to the commander. He did that to avoid the obstruction of the communication

³³⁹ **7D00324**, Drina Corps Order of 20 September 1995; **7D01001**, VRS Main Staff, combat readiness of DK units, 5 March 1993; T.30761-30762, 28 January 2009, Vinko PANDUREVIC.

³⁴⁰ **7D00539**, Organisation of Infantry brigade-scheme.

³⁴¹ **P00689**, Richard J. Butler, Srebrenica Narrative (Revised), Appendix B.

³⁴² **P01463**, Krivaja 95, Military map; [REDACTED]

³⁴³ **P00694**, JNA Brigade Rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades) 1984 (para 120), paragraph 484.

³⁴⁴ [REDACTED].

³⁴⁵ **7D01089**, Order of the Drina Corps, 20 September 1993; **7D705**, Drina Corps Order, 29 May 1995; **7D00766**, Telegram 13 June 1995; T.29886, 17 December 2008, Milenko JEVDJEVIC; T.30716-7, 27 January 2009, Vinko PANDUREVIC.

channels and command channels. Accordingly, a number of units ceased to be under his direct command. These were the Reconnaissance Platoon, the Signals Company, the Military Police Company and the Engineering Company which were under the command of the Chief of Staff and assistant commanders.³⁴⁶

249. Further, since all of these 'headquarters support units' or units attached to the Staff had clearly-defined tasks and duties, and these tasks usually were of a repetitive kind, it was not necessary to consult the commander on a regular basis.³⁴⁷

4.9.Role of the duty operations officer

4.9.1. General role

250. Every unit from Brigade level upwards had a duty operations officer and an assistant duty operations officer who were in charge of all documents coming in and going out of the Brigade. They were obliged to process all information in the 'staff office' at all times of the day and night.³⁴⁸
251. The operations department was obliged³⁴⁹ to publish a roster seven days in advance for the duties of the duty operations officer and his assistant. It was well known in advance who would be on duty on any given day. The Chief of Staff (not the Commander) was responsible for the roster and the list of persons who might appear on it.³⁵⁰
252. The Zvornik Brigade had its own internal rules regarding the responsibilities of the duty officer, which included the obligation to submit twice daily reports to the superior command.³⁵¹ In practice, the Brigade submitted reports once a day.³⁵²

³⁴⁶ **7D00806**, Reforming of the Zvornik Light Infantry Brigade, 21 March 1994; [REDACTED]; T.30764-30765, 28 January 2009, Vinko PANDUREVIC.

³⁴⁷ T.12616-12617, 14 June 2007, Miodrag DRAGUTINOVIC; T.30765, 28 January 2009, Vinko PANDUREVIC.

³⁴⁸ T.11484-11485, 14 May 2007, Milenko JOVICIC; T.12621, 14 June 2007, Miodrag DRAGUTINOVIC.

³⁴⁹ The responsibility for the creation of a roster of duty officers and the command of the duty officers was provided for by the rules of the JNA, the work of the command and staff - **P699** JNA Manual for the Work of Command and Staffs, 28 January 1983, page 34, point 65; T.12621, 14 June 2007, Miodrag DRAGUTINOVIC.

³⁵⁰ T.12623, 14 June 2007, Miodrag DRAGUTINOVIC.

³⁵¹ **7D00442**, Instructions regarding the Duty Operations Officer in the Zvornik Brigade, 1 January 1993, ENG p. 5.

³⁵² T.12622-12623, 14 June 2007, Miodrag DRAGUTINOVIC.

253. On a daily basis, the duty operations officer was obliged to act as a conduit between the Command and subordinated units, passing on information and conveying orders as necessary. When it was not possible to convey orders, he assumed the responsibility for the performance of such tasks upon himself.³⁵³

4.9.2. Documents kept by the duty operations officer

254. The duty operations officer kept a number of logs which were used to gather information relating to the Brigade.
255. Duty Operations Officer Notebook: P00377, P379 - the duty operations officer recorded all information received from the superior command, parts of the brigades, the subordinate units, the Chief of Staff and the commanders in this notebook. He recorded everything, official or personal, that came to him. Nothing could be omitted or deleted.³⁵⁴ The notebook is the most contemporaneous document in a brigade.³⁵⁵
256. Duty Operations Officer Diary: P378 - this summarised all official information including daily reports, orders from superior command, orders from the Brigade commander and the content of the duty operations officer notebook. It was completed on a daily basis and used during morning briefings.³⁵⁶
257. War Diary P384 - this was supposed to contain the most important information relative to combat operations. It was not kept contemporaneously due to manpower or time constraints. The Duty Operations Officer Notebook was often consulted in order to compile this diary ex post facto.³⁵⁷
258. Barracks Duty Officer Notebook (P383) - The keeping of the barracks' duty officer notebook was introduced in 1995 in order that the duty operations officer would have some insight into the functioning of the Brigade. For that reason, an additional notebook was kept by the duty officer at the barracks, who was subordinated to the barracks commander.³⁵⁸
259. Regular/Daily Combat Reports and Irregular/Interim Combat Reports - Interim reports were only submitted when it was necessary.³⁵⁹ Regular or interim combat reports were usually drafted in longhand by the duty operations officer who handed it to the Staff office where it was typed up. The report would then be signed by the authorised person at that time and then despatched to the Communications Centre where it would be encrypted and sent by teleprinter to the designated addressee ; hence, on the report you could see the

³⁵³ T.11486, 14 May 2007, Milenko JOVICIC; T.12622-12623, 14 June 2007, Miodrag DRAGUTINOVIC.

³⁵⁴ T.12623-12624, 14 June 2007, Miodrag DRAGUTINOVIC.

³⁵⁵ T.12627, 14 June 2007, Miodrag DRAGUTINOVIC.

³⁵⁶ T.12624, 14 June 2007, Miodrag DRAGUTINOVIC.

³⁵⁷ T.12624-12625, 14 June 2007, Miodrag DRAGUTINOVIC.

³⁵⁸ T.12625, 14 June 2007, Miodrag DRAGUTINOVIC.

³⁵⁹ T.12629, 14 June 2007, Miodrag DRAGUTINOVIC.

name of the signatory and a block signature but not the actual signature in that person's own handwriting.³⁶⁰

260. The information to be included in a regular combat report was prescribed by the Zvornik Brigade instructions for the duty operations officer.³⁶¹

5. Security organ

“According to Predrag Drinic, it was “highly unlikely” that a complaint would be filed against the security organ and particularly against the higher levels. Investigation of such persons would be even more unlikely.

When asked whether it would be possible to investigate a high-ranking officer in the security organ, Bogoljub Gajic, a former investigator with the VRS Military Police, testified: “No, no. It would have been suicide.” When asked to give a reason for that answer, Gajic stated: “Well, it’s a difficult question to answer. Why? Because of fear, fear of the person, fear of one’s own life and the life of one’s family.” When asked if it would be possible to investigate an officer of a lower rank in the security organ, Gajic said : “The answer is the same, but the fear would be a little less because he was a lower-ranking officer.” He also said that any complaints which were in fact filed against security officers had been directed against security officers subordinated to Colonel Beara of the Main Staff.

According to Drinic, security officers were members of an elite unit that could control any other unit. Actions against high ranking security officers “would mean risking your life.”³⁶²

5.1 Introduction

261. Much has been said during the course of this trial about the position which the security services held within the VRS structure. In the submission of the Pandurevic defence, the debate has ignored certain central realities.
262. The Security Services are of course a necessary part of any military organization. Their functions have been adequately aired during the course of this trial. In order to perform part of their function, it is necessary for them to be given certain powers and authority which to an extent set them apart and above other personnel in the army.
263. Only the security services, and their conjoined forces, the Military Police, had the power to arrest its own soldiers, including senior officers, even commanders. Only they could detain men, search their property, interrogate them, charge them with offences, and support prosecutions before military courts.

³⁶⁰ T.30754, 28 January 2009, Vinko PANDUREVIC.

³⁶¹ **7D00442**, Instructions regarding the Duty Operations Officer in the Zvornik Brigade, 1 January 1993.

³⁶² See BLAGOJEVIC, Trial Judgment, Para 427

264. The nature of the larger part of their work entitled them to gather and retain information about their own forces. Information which they kept and shared with each other professionally, was quite literally “for their eyes only”.
265. It would only be natural, given the above, that regular soldiers had a real trepidation for people with such powers, rights and authorities, even at the level of their own unit. Security officers and military policemen from superior command must necessarily have held for ordinary reserve soldiers a very particular aura.

5.2 The Security and Intelligence Services within the VRS

266. In the JNA the security and intelligence services were separately commanded. The Intelligence service was under the direct command of the Army Main Staff, whilst the security service was under the command of the Ministry of Defence. The two organisations were separately regulated: the regulations for the security service were drafted by the Presidency, whilst the regulations for the intelligence service were drafted by the Federal Secretariat for National Defence.³⁶³
267. The situation in the VRS was different. There was a sector for security and intelligence which fell under the direct command of the army Main Staff. The Main Staff of the VRS itself fell outside the framework of the Ministry of Defence and answered directly to the President himself.³⁶⁴
268. Whilst at Main Staff level there was one body under the leadership of a Commander for Security and Intelligence, at Corps and Brigade levels there was a division of the functions. There was a Chief of Security, who was also a deputy commander of the unit, and an assistant chief of staff for Intelligence who was part of the Staff.³⁶⁵ Accordingly, there was no unification of the services at operational or tactical levels. The exception to this was in a light infantry brigade where there was a deputy commander for security and intelligence.³⁶⁶
269. The Security Service was numerically and politically much the more powerful service.³⁶⁷ The function of the intelligence service was essentially “outward looking”. It was concerned with gathering information about the enemy and its intentions. The Security Service was also concerned with threats posed to the army from within. It was, despite its description, to this service that the task of counter-intelligence fell.³⁶⁸
270. Indeed it formed the vast majority of its work, both within the JNA rules³⁶⁹ and the subsequent Instruction³⁷⁰ of the Main Staff of the VRS. The Rules of the Intelligence Service give no instruction as to how it was to divide its work in percentage terms,

³⁶³ T.23342, 4 July 2008, Petar VUGA.

³⁶⁴ T.23343, 4 July 2008, Petar VUGA

³⁶⁵ These arguments are detailed in the “Part 3 Section 4 Structure of the Zvornik Brigade” section.

³⁶⁶ T.32933, 21 April 2009, Momir Nikolic.

³⁶⁷ P00692, Main Staff VRS Structure - July 1995, 1 November 2002.

³⁶⁸ P00706, Rules of Service of Security Organs in the Armed Forces of the Socialist Federative Republic of Yugoslavia, 1984.

³⁶⁹ P00706, Articles 6-15 and 39 described the division of work as 1/3 to 2/3, so the VRS Instruction marked an increase in the amount of counter-intelligence work being carried out.

³⁷⁰ P02741, Main Staff of the Republika Srpska Army /VRS/ order 18/20-414/94, 24 October 1994.

whereas the Rules of the Security Organ did. The Instruction, in spite of its title, can therefore only relate (outside the context of a light infantry brigade) to the security service or organ.

5.3. Command and Control

271. It is beyond dispute that the Brigade Chief of Security was subordinate to the commander, and nothing in this brief is designed to contest the position *de jure*. However, as a matter of practical reality, the brigade commander's ability effectively to control his security organ was limited by the task which he was engaged in.

5.4. The Instruction of October 1994

272. Leaving aside the contents of the Instruction, the preamble makes it plain that it is intended to address issues of "command and control...over security and intelligence organs" and has the stated aim of "preventing similar problems in control".
273. Whether it is a reaffirmation of existing principles of operation under the JNA, or intended to represent a fresh instruction within the VRS, the practical effects of the Instruction are hard to ignore. A Security Organ should ordinarily spend 80% of its time engaged in counter-intelligence work.³⁷¹ When engaged in such work, the organ was under the control of the security organ of its superior command and was fully independent.³⁷² The contents of its mail and telegrams were inviolable. The superior security organ would determine what the commander should know.³⁷³ Transfers, appointments and assignment of members of the service was the exclusive province of the VRS Commander and Chief of Security and Intelligence.³⁷⁴ Monitoring the legality, professionalism and correctness of the work of the security organ would be the responsibility of its superior security organ.³⁷⁵

5.5. Practical Reality

274. Pandurevic has given a clear account of the effects of this instruction upon his ability effectively to monitor or control his security organ, which would seem to accord with the probable results of the application of the Instruction, and is, in any event the only reliable direct evidence on the topic.
275. Pandurevic's account is of a Chief of Security whose time was effectively his own. He also dealt with the question of how and more importantly, who determined whether any given task was to be classified as counter-intelligence or command-staff work. It was apparently a system of self-certification by the security organ itself.

³⁷¹ P02741, The Instruction, paragraph 1

³⁷² Ibid, paragraph 2

³⁷³ Ibid, paragraph 4

³⁷⁴ Ibid, paragraph 5

³⁷⁵ Ibid, paragraph 7

5.6. Reporting

276. Reports to the Commander of activities of the Security organ were given when deemed appropriate by the Security Officer. Most significantly, Pandurevic received no reports from Drago Nikolic about events at Orahovac, Rocevic or Petkovci. Indeed, [REDACTED], no further or other attempt was made to report matters either to Obrenovic or Pandurevic.
277. A further issue that had arisen about the autonomy of the security organ concerned its claim to have the exclusive use of a car within the brigade's pool of motor vehicles. Despite Pandurevic's objection, the security organ got its wish, and in July 1995 had the exclusive use of a motor vehicle. It is the prosecution's case that this car was used to scout for detention sites on 13th and 14th July 1995, and the vehicle work log³⁷⁶ would tend to confirm that. Leaving aside overriding the Commander's wishes again, the use of the car at all times was none of the commander's business, and in particular, its use on 13th July was not reported to either Obrenovic or Pandurevic.

5.7. Authority over the Commander

278. In certain circumstances a Brigade Commander might even be obliged to face "discipline" from his own Assistant Commander for Security, if he was deemed to have breached security rules.³⁷⁷

5.8. Military Police

279. It almost goes without saying that the military police are the workforce of the security services in any military organization. The service could not function without some manpower over which it had some autonomy and professional control.
280. In an Infantry Brigade, the commander commanded the Military Police through the Chief of Security.³⁷⁸ In the Zvornik Brigade the Military Police company was subordinated to the Staff.³⁷⁹ In any event, the Chief of Security was able to give orders directly to the military police without reference to the commander or the chief of staff.³⁸⁰
281. The functional command relationship between the security organ and the military police was underlined by orders from the corps making the appointment of military

³⁷⁶ P00904, Vehicle Log for Opel Rekord P-4528, July 1995.

³⁷⁷ P00176, Order from the Security Department of the VRS 5th Corps, 3 June 1999.

³⁷⁸ See 7D00539, Organisation of Infantry brigade-scheme; T.12596, 12616-12617, 14 June 2007, Miodrag DRAGUTINOVIC.

³⁷⁹ T.12596, 12616-12617, 14 June 2007, Miodrag DRAGUTINOVIC; T.30781-2, 28 January 2009, Vinko Pandurevic

³⁸⁰ [REDACTED], T.30781-2, 28 January 2009, Vinko Pandurevic

policemen the preserve of security organs, and within the brigade itself by orders relating to the work of military policemen.³⁸¹

282. Perhaps the most obvious example of their working relationship is the task given to them under the combat order for Krivaja '95 : "security organs and military police will indicate the sectors for gathering of prisoners of war and war booty"³⁸²

5.9. Powers of Criminal Investigation

283. Points 51 – 56 of the Rules of the Security Organ³⁸³ give the security organ powers to find perpetrators of crimes : to prevent them from going into hiding ; to secure evidence ; to gather information and to submit reports to the Military Prosecutor's office. In relation to offences within the jurisdiction of the Military Courts, these matters fall within the sole jurisdiction of the security organ.³⁸⁴ They have the power of arrest,³⁸⁵ and of detention.³⁸⁶
284. In addition, the Military Police uncover, find and take into custody perpetrators of crimes : secure the evidence of crime ; collect information and act in accordance with the instructions of those in charge of criminal proceedings.³⁸⁷ In relation to the investigation of criminal matters falling within the jurisdiction of military courts, their jurisdiction is virtually concurrent with that of the security organ.³⁸⁸

6. Most senior officer present or 'the concept of superior-officer command'³⁸⁹

'As an assistant commander he is not empowered to make orders, but as a top Main Staff general, Mladic may authorise him to make such orders and he obviously felt comfortable, either with Mladic's direct authority or authority on his own, to send out this order regarding the capture of the people in the column'.³⁹⁰

"A. As a battalion commander, I was responsible for my unit. If any higher officers from a higher command arrived, they could command me, they could take over the battalion, they could issue orders and I can only be their subordinate.

³⁸¹ 7D00485, KDK - Organ bezbednosti, 11 May 1994, paragraph 4.

³⁸² 1D00382, Krivaja '95 order, 2 July 1995.

³⁸³ P00706, Rules of Service of Security Organs in the Armed Forces of the Socialist Federative Republic of Yugoslavia, 1984.

³⁸⁴ 4D00503, Report of Ristivojevic, para 3.10

³⁸⁵ Point 43 of the Rules of the Security Organ of the JNA (P00706), 1984

³⁸⁶ Point 45 (P00706), ibid

³⁸⁷ P00707, Service Regulations of the SFRY Military Police 1985, Chapter III point 2

³⁸⁸ Law on the Implementation of the Law on Military Courts and the Law on the Military Prosecutor's Office during a State of War, Article 4

³⁸⁹ P00696, Richard Butler's VRS Brigade Command Responsibility report, 2.11

³⁹⁰ T.470, 22 August 2006, Prosecution Opening Statement

Q. Did you think what was going on at the Petkovci school was under the control of somebody from higher command?

A. As soon as the officers from the higher command came and we hadn't been informed about that, we had not received any orders from my command, I suppose that they had the supreme authority and that they held all the responsibility."³⁹¹

6.1.Introduction

285. In this section it is intended to analyse the reality of dynamic command systems in the VRS, and to identify who was able to give orders in any given situation, and perhaps, more importantly, whose orders a soldier was obliged to follow. As will be seen, the simple identification of those with the title of commander will not always establish the active command chain at any given moment. Perhaps due to the nature of the conflict or the composition of the army itself, the VRS was regularly in the habit of collating operational or tactical forces for the carrying out of specific tasks. These so-called "joint-tasks" created individual command chains particular to the operation. They could be established formally, or by automatic operation of the dynamic principle that soldiers had the obligation to follow the orders of the senior officer present at certain points. That was the way in which the VRS created a dynamic command structure capable of effecting rapid changes in the command situation. It is not believed that the analysis in this section is controversial, as it has been part of most parties' cases at some time or another. It has certainly formed a central theme to the prosecution's theory of command responsibility for some time now, as will be seen in due course.

6.2.Article 17 of the Provisional Service Regulations of the Army of Republika Srpska: Orders given by the 'most senior officer present'

286. In classical terms, only the brigade commander has the right to command the units within the brigade. However, in the RS (as well as in the JNA)³⁹² the military rules describing relations in the army and legislating 'giving orders' in the army as one of the functions of the command and control,³⁹³ provided for an important exception to this rule. It was the Provisional Service Regulations of the Army of Republika Srpska that precisely defined the competencies and the relationships between the unit commands and the senior officers, the commanding officers.³⁹⁴ This exception to the commander's right to command was incorporated in the third paragraph of the Article 17 of the Provisional Service Regulations of the Army of RS.³⁹⁵

³⁹¹ T.11705, 17 May 2007, OTP witness Ostoja STANISIC

³⁹² Similar provisions applied in the JNA, See **5D00751**, Service Regulations for the Armed Forces, Item 37; T.29981-T.29982, 12 January 2009, Slobodan KOSOVAC

³⁹³ T.30736, 28 January 2009, Vinko PANDUREVIC

³⁹⁴ T.30325, 19 January 2008, Richard BUTLER; T.30325, 19 January 2009, Slobodan KOSOVAC

³⁹⁵ **P00417**, Provisional Service Regulations of the Army of RS, August 1992, Article 17

“Members of the Army shall carry out the orders of the most senior officer present when the superior officer is absent.”

287. Accordingly, when the superior officer is not present, the most senior officer present will take over the command and members of the army are obliged to carry out his orders.

³⁹⁶ In the situation envisaged by Article 17, the person in command (i.e. the commanding officer) is not necessarily a ‘commander’ by function.³⁹⁷ This situation may arise in a number of ways - for example, an officer who is not a commander by function can be assigned temporarily to a task by order, and perform the duties of a commander,³⁹⁸ and a deputy commander who stands in for the commander can become commanding officer.³⁹⁹ Poignantly, in this case an officer who is tasked to lead a column of buses, find individuals from various units to guard prisoners, both on the buses and at their destination, will assume command of those to whom he gives orders. In addition, they will be obliged to follow his orders pursuant to Article 17.

288. Such was the flexibility of the system prescribed by Article 17 that officers from ‘superior command’ could ‘directly’ command brigade personnel or units.⁴⁰⁰ It was not necessarily done by reference to the brigade commander or his deputy.⁴⁰¹ Considering only the Zvornik Brigade for now: an officer from superior command could come and command individuals or even units if he had ‘a broad military authority (deriving from rank and position) and whom everybody knew as having such authority’ without reference to deputy Obrenovic or commander Pandurevic.⁴⁰² If a colonel from the superior command came to give orders to Zvornik Brigade members, they would be obliged to carry the orders out, provided they were legal.⁴⁰³ Of course, in all probability, battalion soldiers were not familiar with the regulations. Nonetheless, they would recognise a colonel when they saw one and acknowledge his superiority and authority.

289. According to Article 17 of the Provisional Service Regulations of the Army of RS, the “execution of each order shall first be reported to the superior officer or to the officer who has given the order”.⁴⁰⁴ The practical impact of this upon the reporting chains can be seen graphically in two examples. Firstly, after being ordered to visit Drago Nikolic in Zvornik and inform him about the arrival of prisoners, Momir Nikolic initially reported to Colonel Beara, and not his commander, who was unaware until the following day that he had been given that task.⁴⁰⁵ Secondly, Drago Nikolic never reported to his brigade command that he had been investigating the availability of certain school premises as detention facilities.⁴⁰⁶

6.3. Security officers as part of the superior command

³⁹⁶ T.30225, 16 January 2009, Slobodan KOSOVAC; T.30736, 28 January 2009, Vinko PANDUREVIC

³⁹⁷ T.30326, 19 January 2009, Slobodan KOSOVAC

³⁹⁸ See e.g. **P04574**, an Order creating a specific unit, commanded by Kosoric, with Popovic as Chief of Staff etc.,

³⁹⁹ T.30737, 28 January 2009, Vinko PANDUREVIC

⁴⁰⁰ [REDACTED]

⁴⁰¹ [REDACTED]

⁴⁰² [REDACTED]; T.30737, 28 January 2009, Vinko PANDUREVIC

⁴⁰³ T.30737, 28 January 2009, Vinko PANDUREVIC

⁴⁰⁴ **P00417**, Provisional Service Regulations of the Army of RS, August 1992, Article 17

⁴⁰⁵ T.33331, 28 April 2009, Momir Nikolic

⁴⁰⁶ **P00904**, T.32395-T.32397, 3 March 2009, Vinko Pandurevic

290. Article 17 makes no distinction between the various organs of the army in terms of who can be the senior officer present. To do so would be illogical. It included officers from the security and intelligence organ of Main Staff : 'Since they were from the Main Staff and since they were then members of security, they could go directly to anybody, not asking the commanding officers for anything.'⁴⁰⁷ The theory was reflected by the reality on the ground. If high-ranking officers from superior command arrived in one of the villages in the municipality of Zvornik and gave orders to soldiers from the battalions, they would have acted upon those orders.⁴⁰⁸ In relation to the events reflected by this indictment, the person(s) who organised the reburial operation was/were in command of the people that were involved in the operation.⁴⁰⁹
291. Moreover, whilst the brigade commander bore responsibility for the tasks that were given to the brigade as such, individuals from brigade units who were given orders by some other commanding officers answered to those commanding officers, who were responsible in turn for the acts of those individuals as their subordinates.

6.4.Article 16: Joint Tasks

292. Article 16 of the Provisional Service Regulations of the Army of RS, provided the following:⁴¹⁰
- "When several units are given a joint task, a commanding officer shall be appointed in good time to direct the execution of the task. If this is not regulated beforehand, the role of superior officer shall be assumed by the most senior officer, who shall direct the execution of the task.
293. If a unit or an institution is suddenly left without a commanding officer, command shall be assumed by his deputy or the highest-ranking officer in that unit until a new officer is appointed."
294. Obviously, where several units are involved in the same task, normal principles of unity of command cannot apply, and the matter has to be separately regulated. In a perfect world, of course, the matter would be regulated in writing and in advance of the task. In reality, however, either there is not time to write orders for such tasks, or writing orders is unnecessary or undesirable. An example of each situation is available within the facts of this case; Krivaja '95 is a joint task in which Krstic was appointed commander by prior order (though interestingly not a written one).⁴¹¹ The operation to transfer the prisoners from Bratunac to Zvornik is either an example of an operation where command was regulated by prior oral order, or an example of a joint task where the role of superior

⁴⁰⁷ [REDACTED]

⁴⁰⁸ [REDACTED]

⁴⁰⁹ [REDACTED]

⁴¹⁰ P00417, Provisional Service Regulations of the Army of RS, August 1992, Article 16

⁴¹¹ See P106,P107

officer was assumed by the most senior officer present. That the operation was a joint task was beyond dispute.⁴¹²

295. Commanders whose units provide men for a joint task cease to command them so long as the task is live. Namely, the officer who would be in command of the task would be also in command of that whole temporary military structure consisting of three or four units, and every commander or senior officer leading their respective units would be carrying out orders. A system of hierarchy would soon be established in such a situation.⁴¹³

6.5.Command means giving orders

296. According to paragraph 13 of the Manual for the Work of Commands and Staff: 'Command is a process function of control.'⁴¹⁴ The content of command is demonstrated by giving 'commands, orders, directives, instructions'.⁴¹⁵
297. Butler explains it similarly, though in different terms. According to him, the action of command is how the individual 'exercises control' over the functions of the unit.⁴¹⁶ It can be effected variously, by direct orders, broader guidance or directives, and instructions. The giving of an order is the action of command.⁴¹⁷
298. In simple terms therefore, a person giving orders to certain individuals commands them, and a superior-subordinate relationship is thereby created. Accordingly, that person will bear command responsibility for the acts that subordinate carries out.

6.6.Command responsibility of superior officers

299. The RS Law of the Army provides that command in the VRS shall rest on the principles of a unified command regarding the use of force and means, and single-man seniority with obligations to enforce decisions, commands, and orders issued by superior officers.⁴¹⁸ Equally, the JNA Manual for the Work of the Command and Staffs defines the 'command relationship' as the 'relationship between the superior and his subordinate'.⁴¹⁹

⁴¹² T.20830, 31 January 2008, Richard BUTLER

⁴¹³ T.30327, 19 January 2009, Slobodan KOSOVAC; T.12349-T.12350, 31 May 2007, Manojlo MILOVANOVIC:

⁴¹⁴ P00699, Manual for the Work of Commands and Staffs, 1983, point 13

⁴¹⁵ P00699, Manual for the Work of Commands and Staffs, 1983, point 13

⁴¹⁶ T.19631, 14 January 2008, Richard BUTLER

⁴¹⁷ T.19631, 14 January 2008, Richard BUTLER; See also [REDACTED]

⁴¹⁸ P00684, Richard Butler VRS Brigade Command Responsibility Report, 2.10

⁴¹⁹ P00699, Manual for the Work of Commands and Staffs, 1983, Point 5

It further adds, that the command relationship is an 'obligation to execute the tasks set by one's superior'.⁴²⁰

300. Article 4 of the RS Law of the Army defines a superior officer as "a person in command of a military unit or a person managing a military institution, and in command of personnel serving in the military unit or institution, in compliance with the law and other regulations issued by the competent body."⁴²¹
301. It is clear from the RS Law of the Army and the JNA Manual for Work of the Command and Staffs, that the person in command is not only the commander, but any superior officer, who thereby bears command responsibility. It could be corps commander to the whole of the corps; corps assistant commander for security for the men under his command; brigade commander for the brigade; battalion commander for his battalion and a brigade assistant commander for logistics for the men under his command.
302. A senior officer is defined either by his rank or his position relative to others around him. A senior officer is: "a 'holder' of higher rank, or in the case when officers hold the same rank or have no rank, a senior officer is the holder of the higher position."⁴²²

6.7. Prosecution's standpoint since 2002

303. The Prosecution's standpoint as to who can command has been versatile, to put it mildly. Richard Butler cited Article 17 in his 2002 report on VRS Brigade Command Responsibility, under the heading 'the concept of superior-officer command'.⁴²³ His view as then expressed was that these provisions are 'clearly intended to alleviate potential command difficulties in small formations, particularly in giving orders to the unit in the absence of the specific unit commander'.⁴²⁴
304. He pointed out that according to these rules, 'soldiers were obligated to follow those orders legally given to them by senior or superior commanders, and that they are obligated to report the execution of each order back up the chain of command to the officer who issued the order'.⁴²⁵ In his opinion, furthermore, such an 'institutionalized chain of reporting exists at all levels of command'.⁴²⁶
305. During its opening statement in this case, the Prosecution expressed matters rather differently, claiming that 'commanders are the only ones that actually issue or originate orders, in this case, General Vinko Pandurevic, Deputy Commander Ljubomir

⁴²⁰ P00699, Manual for the Work of Commands and Staffs, 1983, Point 5

⁴²¹ P00415, RS Law on the Army, 1992, Article 4

⁴²² P00415, RS Law on the Army, 1992, Article 4

⁴²³ P00684, Richard Butler VRS Brigade Command Responsibility Report, 2.11

⁴²⁴ P00684, Richard Butler VRS Brigade Command Responsibility Report, 2.11

⁴²⁵ P00684, Richard Butler VRS Brigade Command Responsibility Report, 2.11

⁴²⁶ P00684, Richard Butler VRS Brigade Command Responsibility Report, 2.11

Borovcanin.’⁴²⁷ A day later, things were expressed differently again, when, in relation to General Gvero, it was said : ‘As an assistant commander he is not empowered to make orders, but as a top Main Staff general, Mladic may authorise him to make such orders and he obviously felt comfortable, either with Mladic’s direct authority or authority on his own, to send out this order regarding the capture of the people in the column’.⁴²⁸

306. Where the concept of “top Main Staff General authority”, or “command authority derived from comfort” are set out, counsel for the prosecution did not enlighten us. However, in the submission of the defence, if the Chamber is to accept that one superior officer from the Main Staff is able to issue orders of this sort to subordinate units, it inevitably follows that a Main Staff Chief of Security is able and entitled to give orders on the ground to an assortment of military policemen and tactical level security organs from assorted units relating to the movement and detention of prisoners of war.

307. The defence entirely accepts Butler’s limitation that an outside officer cannot come in and take over a brigade commander’s responsibility for the work of the brigade, command and subordinate commands, since the commander has the exclusive right of command, and he also is the one who ultimately bears responsibility for the actions of his subordinates.⁴²⁹ Nonetheless, as we have seen, an officer from superior command, can issue orders to individuals or units from subordinate units, without consulting the brigade commander, individually or as part of a joint unit, pursuant to an order appointing him, or merely because he is the senior officer present on the ground.

6.8. Practical reality

308. During the war in Bosnia and in the Army of Republika Srpska, there were very frequent situations when so-called ‘temporary compositions’ were formed of various units from various areas.⁴³⁰

309. In the period between 10th - 20th July, the VRS was engaged in carrying out a variety of tasks, sometimes carried out by units as a whole and sometimes by elements from different units combined as temporary formations and under separate command. Within the Drina Corps, the Zvornik Brigade was tasked with defending its defence zone and engaging in combat with the 28th Division. The Sekovici Brigade was tasked with defending its own defence zone. Parts of these brigades were in the Krajina as part of a temporary formation and were engaged in carrying out tasks under separate command for that specific task or operation. In addition to this, there were other tasks being conducted which relate to the events that are the subject of this trial. The commander of the Main Staff issued tasks to a specific individual, gave him a number of men and assets, and told him to carry out the task of dealing with the prisoners of war, and, based on all the documents that we’ve seen in this trial, whether through General Krstic or directly through Mr. Furtula, he was also given a unit, buses, and other assets required for the execution of this task. Beara (for it was he) acted as a commanding officer and carried out

⁴²⁷ T.400, 21 August 2006, Prosecution’s Opening Statement

⁴²⁸ T.470, 22 August 2006, Prosecution Opening Statement

⁴²⁹ T.19619, 14 January 2008, Richard BUTLER

⁴³⁰ T.30739, 28 January 2009, Vinko PANDUREVIC, see for example **P04574** and **P00107** Krivaja ‘95

a specific task. He had received his orders from his superior. He was given powers and authority to put it into practice. And all the men that were involved in the execution of this task were under the direct command of the most senior individual directing the mission. This was no parallel chain of command or any chain of command within the security organ. This was (as for Krivaja 95 operation) the command structure established for the execution of a specific task or operation. Beara was able to command all the men engaged in this task for three reasons: (1) he was appointed to do that by the commander of the Main Staff, (2) as a member and Chief of the Security Service, he could engage any VRS security officer and (3) he was the most senior officer on the ground at the time.⁴³¹

310. To cite some further examples, the Zvornik Brigade assistant for morale Ljubo Bojanovic, was a temporary battalion commander. The chief of the anti-aircraft unit, Milenko Kajtaz, was temporarily commanding a battalion in Krajina. Operations officer, Petrovic, was also temporarily commanding a battalion. Therefore, 'each and every officer, regardless of his position per establishment, can be appointed as a temporary commander over a certain unit or to conduct the execution of a certain task, and that includes a security organ'. Accordingly, this person is not responsible because he is a commander per establishment, but because he commanded those men on those days.⁴³²
311. Generally, however, when an officer from superior command visited the Brigade, he would first approach the brigade commander, if he was there. Occasionally, assistant commanders from the corps or the Main Staff would come to see their corresponding officers within the brigade but as a rule, the brigade commander would still be informed of this officer coming to the command.⁴³³ It is of note that neither the brigade commander of the Zvornik Brigade nor his deputy, were present at command on 14th July. When officers from superior command came to the Brigade on that day, the Brigade commanders didn't have the right or power to stop them doing their job at the Brigade.⁴³⁴ In practice, officers from the main staff came to the brigades and gave commands without seeking permission from anybody.⁴³⁵
312. In reality, orders were given and acted upon, notwithstanding the fact that the standard model of chain of command was ignored, including situations where (1) the giver of orders no longer had command authority,⁴³⁶ (2) the functional chain of command of the security organ demanded it,⁴³⁷ or (3) because the presence of officers from superior command dictated that it was logical for them to give specific orders.⁴³⁸

⁴³¹ T.32414-T.32415, 3 March 2009, Vinko PANDUREVIC

⁴³² T.32464, 3 March 2009, Vinko PANDUREVIC

⁴³³ T.11956-T.11957, 22 May 2007, Mirko TRIVIC

⁴³⁴ T.11956-T.11957, 22 May 2007, Mirko TRIVIC; T.11957, 22 May 2007, Mirko TRIVIC

⁴³⁵ T.20825, 31 January 2008, Richard BUTLER

⁴³⁶ T.20828, 31 January 2008, Richard BUTLER

⁴³⁷ T.33271, 27 April 2009, Momir NIKOLIC

⁴³⁸ T.33320-T.33321, 28 April 2009, Momir NIKOLIC; [REDACTED]; See also **P00699**, JNA Manual for the Work of Command and Staff, point 7, second paragraph, BCS page 15 and ENG page 14: "Staff relationships between command organs and staffs at a higher and lower organisational level are in fact functional relationships governed by the principle of obligatory action in accordance with the requests of the staff organ of the superior command for the purpose of implementing the decision made by the superior commander."

313. Obedience to these officers was inevitable and logical. As Momir Nikolic put it: "Irrespective of the lines of command and control, never in an armed force do you question an order or a request from an officer of your Superior Command."⁴³⁹
314. The events of July 1995 were a very specific situation in which people came from the corps and the Main Staff with an order, probably issued by the commander of the Main Staff, and they got in touch by the functional line of work with the people from the Zvornik Brigade. And that functional relationship became the relationship binding on both parties upon the request of the people from the corps and the Main Staff. Drago Nikolic was duty-bound to act upon the orders of Popovic and Beara when they sought assistance to carry out the job that had been given to them.⁴⁴⁰ The evidence indicates that Beara presented himself as a person "in command of the barracks" in the Zvornik Brigade.⁴⁴¹ "There was nothing resembling military command or order." Popovic simply said to the young soldiers to do it if they were willing, without insisting and the lads accepted the task and did it.⁴⁴² Moreover, Drago Nikolic never reported to Pandurevic what he was doing with Colonel Beara in Orahovac or Rocevici.⁴⁴³

⁴³⁹ T.33037, 22 April 2009, Momir NIKOLIC; See also T.10237, 18 April 2007, Lazar RISTIC

⁴⁴⁰ T.31962, 23 February 2009, Vinko PANDUREVIC

⁴⁴¹ [REDACTED] (PW-104).

⁴⁴² [REDACTED] (PW-172)

⁴⁴³ T.32426, 3 March 2009, Vinko PANDUREVIC

PART 4 – NARRATIVE OF EVENTS

The following paragraphs will focus on the events relevant to the case of Vinko Pandurevic.

1. RELEVANT HISTORICAL BACKGROUND

1.1. The Islamic declaration and its effect on the Serbian community

315. The Islamic Declaration written by Izetbegovic was the earliest indicator of ethnic conflict in pre-war Bosnia. It was both a statement of intention to secede from Yugoslavia, and a statement of intent to force upon the Serbs who remained part of an Islamic state.

316. The political and military development of the ideals expressed in the Islamic declaration preceded any recourse to nationalism by the Bosnian Serbs.⁴⁴⁴ Subsequent Bosnian Serb moves were, accordingly, responsive.⁴⁴⁵ There was an understandable historically based fear on the part of the Serb population in Bosnia of the rise of a Muslim army under Muslim control which drove their need for their own army.

1.2. Emergence of the VRS

317. The Assembly of the Serbian Republic of Bosnia and Herzegovina held a session in Banja Luka on 12 May 1992 at which it was decided to establish the Army of the Serbian Republic of Bosnia and Herzegovina.⁴⁴⁶ That decision was taken when the order for the Yugoslav People's Army to leave the territory of Bosnia and Herzegovina was announced. The order for organisational and establishment structure of the army corps was issued on the 26th of May, 1992,⁴⁴⁷ and was created as a result of the process of negotiations and counselling between the highest political and military leaderships in the Republika Srpska, regarding the organisation the Army of Republika Srpska.⁴⁴⁸ This document requires commanders to submit their proposals for creation of the structure of the Army of Republika Srpska. Some guidelines were given in this document concerning the characteristics the new army should have, for instance, "the army should be enabled for offensives and to protect Serbian territories in Bosnia and Herzegovina rather than to

⁴⁴⁴ SDA military branch formed 31 March 1991, Declaration on Sovereignty of BiH 15 October 1991,

⁴⁴⁵ Assembly of the Serbian People of Bosnia and Herzegovina was constituted on 25 October 1991 Declaration Proclaiming the Republic of the Serbian People of Bosnia and Herzegovina, *Official Gazette of the Serbian People in Bosnia and Herzegovina*, no. 2 of 27 January 1992, p. 14

⁴⁴⁶ Decision to Establish the Army of the Serbian Republic of Bosnia and Herzegovina, *Official Gazette of the Serbian People in Bosnia and Herzegovina*, number 6 of 17 May 1992, p. 219.

⁴⁴⁷ P00026, VRS Main Staff Directive 02/5-10 requesting proposals for the organisational and establishment structure of the army corps, 26-May-1992

⁴⁴⁸ T.30733-T.30734, 28 January 2009, Vinko PANDUREVIC

be able and capable of taking territories that belong to others”⁴⁴⁹. According to these guidelines, proponents were required to explain their suggestions concerning the structure of the Army of Republika Srpska.⁴⁵⁰ This is a creative approach to the organisation of the military which was applied by the Main Staff and the Supreme Commander.⁴⁵¹ This process definitely shows the originality of this new army, with new rules adapted to it, to its new organs, available personnel, means of combat and particular objectives.⁴⁵²

318. By early June 1992, the Main Staff of the Army published what would be the seminal order in establishing itself as the primary body behind the conduct of military operations. GS SRBH order 02/5-31, dated 04 June 1992, specifically designates the areas of responsibility, as well as the forthcoming tasks of the five Corps which would comprise the Army initially. It also directs each Corps Command to form at least one brigade-sized unit which was to be trained and equipped to fight anywhere inside, or if necessary, outside the Corps area of responsibility.⁴⁵³

319. Following this order, on 15 June 1992, the Presidency of the Serbian Republic of Bosnia and Herzegovina formally established the organization, formation and command of the Army. The next day, the commander of the Main Staff directed the Army to pursue operations formally in the basic strategic interests of the Serbian people.⁴⁵⁴

1.3. Pre-directive 4

320. In the second half of 1992, the situation was critical for Serbian forces. The Serbian population from Gorazde had been expelled (population movement was a near inevitable consequence of the war) but managed to keep the settlement on the right bank of the Drina. Visegrad was completely cut off and encircled without any means of communication. In central Podrinje, the Serbian settlements were destroyed and reduced to the territory of the town of Bratunac and part of Skelani. Zvornik was threatened by Muslim forces as well with approximately 80 to 90,000 inhabitants endangered by this situation.⁴⁵⁵

321. In this area, the combat achievements of the VRS were almost non-existent.⁴⁵⁶ To the contrary, the ABiH were successful and were inflicting material losses on the VRS.⁴⁵⁷

322. During this period, a considerable amount of Serbian villages (in total 146) were burnt because of the Muslim offensives in the area covered by municipalities of Srebrenica and Bratunac.⁴⁵⁸

⁴⁴⁹ P00026, VRS Main Staff Directive 02/5-10 requesting proposals for the organisational and establishment structure of the army corps, 26-May-1992

⁴⁵⁰ T.30323, 19 January 2009, Slobodan KOSOVAC

⁴⁵¹ T.30733-T.30734, 28 January 2009, Vinko PANDUREVIC

⁴⁵² T.30323, 19 January 2009, Slobodan KOSOVAC; [REDACTED]

⁴⁵³ P00684, Richard BUTLER, VRS Main Staff Command Responsibility Report, 31-Oct-2002, Para 1.17

⁴⁵⁴ P00684, Richard BUTLER, VRS Main Staff Command Responsibility Report, 31-Oct-2002, Para 1.19

⁴⁵⁵ 7D00968, 1.Zvpbr Intelligence Organ Report 17/104; T.30787, 28 January 2009, Vinko PANDUREVIC;

⁴⁵⁶ T.30789, 28 January 2009, Vinko PANDUREVIC

⁴⁵⁷ 7D00985, Article – “Bastinici Hajrinog Djela”

⁴⁵⁸ 7D00940, Surrogate sheet photo material – Map showing the destruction of Serbian villages in the municipalities of Srebrenica and Bratunac – May 1992-January 1993

1.4. Directive 4 and Spring Offensive of 1993

323. The objectives of Directive 4 are well known.⁴⁵⁹ In November 1992, Pandurevic was still a unit commander in Visegrad, and accordingly, did not see the directive⁴⁶⁰ as it was a strategic document.⁴⁶¹ The Drina Corps order of 24th November arrived at the Zvornik Brigade almost a month before he took the command.⁴⁶² Pandurevic was not aware of the order, even after he took the command. The Zvornik Brigade was in a poor state in November 1992 (5 commanders in as many months – none at all when Pandurevic arrived),⁴⁶³ and failure to address the order indicates the level of disorganization at the time.⁴⁶⁴
324. After his arrival his priorities were to organise the Brigade and launch some combat activities to prove its combat capacities.⁴⁶⁵
325. In January 1993, he participated in Operation Proboj. The objective of the operation was to repel Muslim forces from the town of Kamenica, and prevent communication between the 2nd Corps and the 28th Division and eventually, if possible, to push all those forces further away.⁴⁶⁶
326. On the 1st February 1993, he decided to cease fire and open a corridor, so that the civilian population could leave the town without the threat of the combat operation.⁴⁶⁷ The aim of opening the corridor was to avoid civilian casualties.⁴⁶⁸ A message was conveyed to the opposing commander.⁴⁶⁹ Some civilians, indeed, left the town.⁴⁷⁰ The procedure was not only logical and justifiable,⁴⁷¹ but correct and lawful.⁴⁷² His concern for the protection of the civilian population could be reflected by his organisation of a secure corridor by his own forces, as they could be subject to bombardment while securing the corridor.⁴⁷³ This was not action taken pursuant to Directive 4, about which, in any event he was ignorant.
327. Operation Udar in April 1993 was a continuation of Proboj. Pandurevic took no part in it.⁴⁷⁴
328. Following these operations, Muslim began to leave their villages and moved towards Srebrenica⁴⁷⁵ or Tuzla.⁴⁷⁶

⁴⁵⁹ P00029, VRS Main Staff Order 02/5-210, Operational Directive 4, 19-Nov-1992

⁴⁶⁰ T.30785, 28 January 2009, Vinko PANDUREVIC

⁴⁶¹ T.29887, 17 December 2008, Milenko JEVDJEVIC

⁴⁶² P03029, Drina Corps Command Order No. 2-126, for further activities, signed by Zivanovic, 24-Nov-1992

⁴⁶³ T.29888, 17 december 2008, Milenko JEVDJEVIC

⁴⁶⁴ T.29889, 17 december 2008, Milenko JEVDJEVIC

⁴⁶⁵ T.30971-T.30972, 28 January 2009, Vinko PANDUREVIC

⁴⁶⁶ T.30792-T.30793, 28 January 2009, Vinko PANDUREVIC; 7D1006

⁴⁶⁷ 7D1006, ZB Command, 82-4, RBI, 1-Feb-1993

⁴⁶⁸ 7D1006, ZB Command, 82-4, RBI, 1-Feb-1993 ; T.29892, 17 December 2008, Milenko JEVDJEVIC

⁴⁶⁹ 7D1006, ZB Command, 82-4, RBI, 1-Feb-1993

⁴⁷⁰ T.30795-T.30796, 28 January 2009, T.30799, 29 January 2009

⁴⁷¹ T.30793-T.30794, 28 January 2009, Vinko PANDUREVIC

⁴⁷² P00409, Regulation on the Application of the Rules of International Law of War in the Armed Forces of SFRY, 13-Apr-1988, Art. 80, T.29893, 17 December 2008, Milenko JEVDJEVIC

⁴⁷³ T.29893, 17 December 2008, Milenko JEVDJEVIC

⁴⁷⁴ T.30800, 29 January 2009, Vinko PANDUREVIC

1.5. Peace negotiations

329. Following the agreements on the demilitarization of the safe areas on 8th May 1993,⁴⁷⁷ commissions were set up to achieve the terms of the agreement. In Zepa, the commission gave up its work after 15 days. In Gorazde the commission was never invited to attend. Despite the preparedness of the VRS to participate fully in an agreement intended to achieve a peaceful existence for the enclaves, it was Muslim reluctance to engage in the process which caused it to break down.⁴⁷⁸
330. Other Drina Corps orders were intended to ensure that the ceasefire would hold, even in the event of provocative fire from the enemy,⁴⁷⁹ and to ensure the access of humanitarian convoys to the enclaves.⁴⁸⁰
331. Control of the demilitarized zones was the responsibility of UNPROFOR.⁴⁸¹ However, the failure of the commissions⁴⁸² and the commencement of diversionary activities from the enclaves⁴⁸³ led the VRS to conclude that neither the ABiH nor UNPROFOR would ever apply the 8th May agreement.⁴⁸⁴ Rather, the ABiH would use the cover of UNPROFOR to regroup their forces and dispatch them to other combat zones.⁴⁸⁵

1.6. Situation after the creation of the safe areas until 1995

332. In the territory of Zvornik, there were no significant combat activities. Towards the end of 1994, in the area of Zvornik on the north western part of the front line, in the direction of Teocak, there were some combat actions with a view to repairing the tactical position. However, due to bad weather conditions, almost no significant results were achieved as a result of that. Units and elements of the Zvornik Brigade were involved in combat activities in other areas; partly in the zone of the Drina Corps and partly in the zone of the Sarajevo and Romanija Corps.⁴⁸⁶
333. In June 1993, a combat group from the Zvornik Brigade was involved in operation MAC 1.⁴⁸⁷ The task of Pandurevic's group was to reach Ustipraca and cut off the retreat route for the forces that were deployed north of Ustipraca towards Visegrad.⁴⁸⁸ This

⁴⁷⁵ T.27127,21 October 2008, Dragoslav TRISIC; T.21843, 5 June 2008, Milenko LAZIC

⁴⁷⁶ [REDACTED] (PW-110)

⁴⁷⁷ P00003, Agreement on a ceasefire in the Territory of Bosnia and Hercegovina, 8-May-1993

⁴⁷⁸ T.29014-T.29017, 28 November 2008, Dragisa MASAL

⁴⁷⁹ 5D01027, GS VRS document no. 02/2-413, order to cease fire, signed by Manojlo Milovanovic, 9-May-1993

⁴⁸⁰ 5D01026, GS VRS order, No.02/2-420, signed by Gen. Ratko Mladic, 14-May-1993 : "Enable unhindered passage of and protection of consignments, equipment and personnel providing aid intended for the civilian population of the opposing side."

⁴⁸¹ 5D1025, GS VRS document, No.02/2-417, signed by Gen. Ratko Mladic

⁴⁸² T.29021, 28 November 2008, Dragisa MASAL

⁴⁸³ T.29022, 28 November 2008, Dragisa MASAL; 5D1264

⁴⁸⁴ T.29018-T.29019, 28 November 2008, Dragisa MASAL

⁴⁸⁵ T.29021, 28 November 2008, Dragisa MASAL

⁴⁸⁶ T.30820, 29 January 2009, Vinko PANDUREVIC

⁴⁸⁷ T.30812, 29 January 2009, Vinko PANDUREVIC

⁴⁸⁸ 5D01169, GS VRS Document no.02/2-436, combat order signed by Ratko Mladic, 22-May-1993

objective was successfully achieved.⁴⁸⁹ Other units had mixed success.⁴⁹⁰ This operation was led by Zivanovic, commander of the Drina Corps.⁴⁹¹ Having achieved a position of complete dominance over his opponent, Pandurevic established contact with Sejdic, the commander of ABiH forces.⁴⁹² In an echo of what he would do on 16th July 1995, Pandurevic unconditionally allowed 3000-4000 people to pass “under the barrels of his guns” towards Gorazde, including armed men, and vehicles.⁴⁹³

334. After this, Pandurevic took part in operation MAC 2, the aim of which was to repel the Muslim forces further away from Cajnice and to reclaim the Serbian villages on the right bank of the Drina. The success of the operation was limited as the operation was halted there.⁴⁹⁴ In July 1993, elements of the Zvornik Brigade were involved in Operation Lukavac⁴⁹⁵. In April-July 1994 a unit from the Brigade took part in Operation Zvijezda between Rogatica and Gorazde.⁴⁹⁶

2. THE ZVORNIK BRIGADE

“They were citizens, performing their duties, a teacher would be teaching at school, a worker would be working at the factory, whatever they were doing; they were involved with their families, their jobs. They were just regular people, and what they did as ordinary citizens, I don't know.”⁴⁹⁷

2.1. The origins of the Zvornik Brigade

335. The Zvornik Brigade was established in June 1992 and it became part of the Drina Corps after the Corps' formation on 1 November 1992. Before that, it was part of the Eastern Bosnia Corps.⁴⁹⁸
336. The Zvornik Brigade was established to defend the Serbian villages in the municipality of Zvornik and neighbouring municipalities. The battalions of the Brigade

⁴⁸⁹ T.30812, 29 January 2009, Vinko PANDUREVIC, T.29571, 11 December 2008, Milenko JEVDJEVIC

⁴⁹⁰ T.30814, 29 January 2009, Vinko PANDUREVIC, T.29569-T.29570, 11 December 2008, Milenko JEVDJEVIC

⁴⁹¹ T.30814, 29 January 2009, Vinko PANDUREVIC

⁴⁹² T.29573-T.29574, 11 December 2008, Milenko JEVDJEVIC

⁴⁹³ T.30816-7, 29 January 2009, Vinko PANDUREVIC; T.29574-T.29575, 11 December 2008, Milenko JEVDJEVIC

⁴⁹⁴ T.30818-T.30818, 29 January 2009, Vinko PANDUREVIC, T.29137, 2 December 2008, Dragisa MASAL

⁴⁹⁵ T.12167, 29 May 2007, Manojlo MILANOVIC

⁴⁹⁶ T.30819, 29 January 2009, Vinko PANDUREVIC

⁴⁹⁷ [REDACTED]

⁴⁹⁸ 7D00621, VRS Formation No. 111/978 - Light Infantry Brigade, 6 June 1992.

were, accordingly, manned only by men from the territory of the specific local communities.⁴⁹⁹

2.2. Organisation

337. The Zvornik Brigade was formed from parts of the Zvornik Municipal Territorial Defence Staff by engaging men fit for military service. The men were armed with weapons from the Territorial Defence depots and from the Yugoslav People's Army units, which had mobilised Serbian conscripts from the territory of Zvornik municipality in their ranks. The consolidation of TO (Territorial Defence) units and the Zvornik Infantry Brigade proceeded slowly, partly because of the decentralised nature of the TO structure.⁵⁰⁰ This situation triggered the appearance of paramilitaries in the area.⁵⁰¹ It was chaotic and dangerous. There was a disorganised but armed population. There was little or no control.⁵⁰²

338. Between May and December of 1992, the Zvornik Brigade had no fewer than five commanders, the last before Pandurevic being Major Dragan Petkovic.⁵⁰³ In an attempt to regulate things, the newly appointed professional JNA officers attempted to invoke the former rules of that institution.⁵⁰⁴ In practical reality, this proved difficult due to the difference in nature of the VRS. Therefore, the VRS began to create its own rules. In the event of conflict, the latter always prevailed.⁵⁰⁵ An additional difficulty was that very few of the soldiers ever *saw* the rules (either JNA or VRS) and thus, very few of them had any idea of their content. One of the consequences of this lack of knowledge of the rules was that most of the men would not question the authority of any superior officer to give them orders.⁵⁰⁶

2.3. Composition and personnel

339. According to the report regarding mobilisation readiness of the Zvornik Brigade for 1994 dated 27 January 1995, the Brigade had 5,248 men, which amounted to 137% establishment strength. Of the male conscripts, only 23 were professional military men : eighteen officers, four non-commissioned officers and one soldier. The officers were distributed as follows : nine in the Brigade Command (including the Commander and the Chief of Staff), two in the Manoeuvres Battalion, one in the Military Police Company, one in the 3rd Infantry Battalion, one in the 5th Infantry Battalion, one in the Isard PVO

⁴⁹⁹ **P00381**, Report on elements of combat deployment, 12 August 1995; **P00382**, Overview of available troops, 20 July 1995; T.12631, 14 June 2007, Miodrag DRAGUTINOVIC.

⁵⁰⁰ **P00686**, Richard Butler, Srebrenica Narrative, paragraphs 1.4-1.8.

⁵⁰¹ **P00753**, SRBH Main Staff Report on paramilitary formations, 28 July 1992; **P00742**, Zvornik Provisional Government Decision 01-22/92, 27 April 1992. In this Decision permission is granted to purchase material for manufacturing uniforms for the Igor Markovic Special Unit of the Territorial Defence of the Serbian Autonomous District of Semberija and Majejica, municipality of Zvornik. **P00686**, Butler, Srebrenica Narrative, paragraphs 1.2-1.3.

⁵⁰² T.12634, 14 June 2007, Miodrag DRAGUTINOVIC; [REDACTED].

⁵⁰³ T.12633, 14 June 2007, Miodrag DRAGUTINOVIC.

⁵⁰⁴ [REDACTED].

⁵⁰⁵ [REDACTED].

⁵⁰⁶ [REDACTED]; T.33037, 22 April 2009, Momir NIKOLIC.

and three in the MAD. Two non-commissioned officers were distributed to the Communications Company, another to the Logistics Battalion and a fourth one to the MAD.⁵⁰⁷

340. Originally composed as a Light Infantry Brigade, it was more than double the optimum size for such a unit. The ability of the command effectively to control the resources of the Brigade was accordingly compromised.⁵⁰⁸
341. Of the 5000 men, very few had seen active service. Most were reservists. A very small number were conscripts, but there were no contract soldiers. The substantial majority of the personnel of the Zvornik Brigade were made up of men who had been mobilised into TO units. A few had been mobilised before that into wartime units of the former JNA.⁵⁰⁹
342. The battalion soldiers, who comprised the vast majority of the manpower, were local men whose principal aim was to defend their homes and villages.⁵¹⁰ They were ill-equipped with weapons and had a very bad disposition towards carrying out combat tasks.⁵¹¹ Shortly after he first arrived, Pandurevic asked to be taken to a unit to get a picture of the situation. The battalion he visited was waiting for them while standing in a group and not lined up. When the company commander ordered them to line up, they started laughing incredulously.⁵¹²
343. Many times it was necessary for the commander to appear in person at battalion commands to ensure that his orders were being carried out.⁵¹³
344. The OTP interview of Slobodan Djokic serves as illustration of the disenfranchisement of some of the units, even in 1995. Djokic, a member of the 1st battalion, still believed that he was a member of the “village territorial defence”, and that he had no affiliation to the Zvornik Brigade.⁵¹⁴

a) Weekend warriors

345. The reservists were rotated in shifts. They would spend some time in the Brigade and after that they would stay at home to provide for their families. While at home, the soldiers were beyond the control of the Brigade command and their units.⁵¹⁵ This represented a huge problem of military management⁵¹⁶ and it was necessary for

⁵⁰⁷ **3D00529**, 27 January 1995, Report on the combat readiness of the Zvornik Brigade for 1994, pages 6-7; See also: **7D00465**, Report on manning level and actual strength, 20 August 1993; **P381**, Report on elements of combat deployment, 12 August 1995; **P00382**, Overview of available troops, 20 July 1995.

⁵⁰⁸ T.12636-12638, 14 June 2007, Miodrag DRAGUTINOVIC; See also [REDACTED]

⁵⁰⁹ T.12631-12632, 14 June 2007, Miodrag DRAGUTINOVIC.

⁵¹⁰ T.11387, 11 May 2007, Slavko PERIC; [REDACTED].

⁵¹¹ T.30706, 27 January 2009, Vinko PANDUREVIC.

⁵¹² [REDACTED]

⁵¹³ T.30708, 27 January 2009, Vinko PANDUREVIC.

⁵¹⁴ **7D00376**, OTP interview with Slobodan Djokic, 15 January 2006, ENG pp. 12-14.

⁵¹⁵ T.12638, 14 June 2007, Miodrag DRAGUTINOVIC.

⁵¹⁶ [REDACTED]

Pandurevic often to be on the spot.⁵¹⁷ With two exceptions, these large units of men were not commanded at battalion level by professional soldiers.⁵¹⁸

346. Hypothetically, whilst off-duty, soldiers fell under the jurisdiction of the civilian police for their criminal acts. However, the military unit retained the right to ask for the transfer of a person to be investigated by the military authority if it considered that the crime affected the military interests of the army.⁵¹⁹
347. The above statement at least appears to be a correct interpretation of the position under military law.⁵²⁰ One obvious example of such a person within the context of this case is the 4th battalion soldier, Gojko Simic.

b) Communication Difficulties

348. The Chamber has heard a plethora of evidence about the communication capabilities of certain of the battalions. It is not intended herein to rehearse that at length. However, it has to be observed that the brigade's forces were deployed over hundreds, if not thousands, of square kilometres of difficult terrain. Its front was 40-50 km long and the battalion command posts were at some distance from the brigade command. Furthermore, whilst the command enjoyed wire communications with the commands of the battalions, obtaining information about events away from the command post and frontal areas was far from easy or instantaneous.⁵²¹

2.4. Tactical situation at Pandurevic's arrival

349. Pandurevic became commander of the Zvornik Brigade on 18 December 1992.⁵²²
350. At the time of his arrival, the tactical situation in the brigade was very difficult. First of all, many civilians and soldiers had been killed in the territory of Glodjansko Brdo and one battalion of the Zvornik Brigade had been completely dissolved. The second battalion was in the area of Drinjaca, south of Zvornik, some 12 kilometres further away, and it was completely encircled. The territory between Crni Vrh and Nemici, which is north-west of the city of Zvornik, was not covered by the Serb forces, which meant that that territory was completely empty. The 6th Battalion had basically fallen apart and the Lokanj Battalion had virtually no contacts with the command. The other battalions were in dire straits. It was very difficult to control and command such units.⁵²³

⁵¹⁷ T.30708, 27 January 2009, Vinko PANDUREVIC

⁵¹⁸ [REDACTED].

⁵¹⁹ T.12640-126442, 14 June 2007, Miodrag DRAGUTINOVIC.

⁵²⁰ **P703**, RS Law on the Army, 1 June 1992, Article 3; **4D209**, Law on Military Prosecutor's Office, 31 December 1993, Articles 7 and 8; T.28072-28074, 12 November 2008, Branislav RISTIVOJEVIC.

⁵²¹ T.13071-13074, 22 June 2007, Sreten ACIMOVIC; [REDACTED]; T.31026, 3 February 2009, Vinko PANDUREVIC.

⁵²² **7D00731**, Information on the Zvornik Brigade, 18 December 1992; [REDACTED].

⁵²³ T.30694-30695, 27 January 2009, Vinko PANDUREVIC. T.12635-12636, 14 June 2007, Miodrag DRAGUTINOVIC. See also **7D01183**, Two regular combat reports Dec-1992 and Jan-1993 and **P00280**, Order 1st Zvornik Infantry Brigade, 22 January 1993.

351. Upon his arrival, no one could brief Pandurevic about the exact number of men in the brigade. The estimates were between 5600 and 6000.⁵²⁴

2.5. Relationship with local community

352. Both Pandurevic and Obrenovic experienced difficulties in trying to organize the Zvornik Brigade along military lines. [REDACTED] Apart from that, both received numerous threats from locals and soldiers they were trying to control.⁵²⁵

353. Pandurevic and Obrenovic were unpopular among the local population, mainly because locals did not want to be sent to fight outside their territorial defence area. Of course, it should be remembered that within the Zvornik area itself, the period from the summer of 1993 onwards was quiet in military terms relative to the rest of Bosnia. Given this backdrop, it is not surprising that attempts were made to secure a replacement for Pandurevic.⁵²⁶

3. EVENTS PRE-KRIVAJA 95

3.1. Creation of enclaves and treaty for demilitarization

354. The history of the creation of the enclaves is well documented.⁵²⁷ So too is the complete failure of the agreement on demilitarization, UNPROFOR's ability to police it, and the various breaches of it by the ABiH.⁵²⁸

3.2. Muslim arming in the enclaves

355. The arming of the 28th Division continued apace under the protection of the UN. Dutch Bat intelligence suggested that Muslim Forces in the enclave were still in possession of about 4000 to 4500 small arms and mortar.⁵²⁹ Muslim Forces had other weapons like RPG-7, machine-guns and AK-47s with which they attacked Dutchbat Forces.⁵³⁰ An M-48 (a tank) was positioned next to OP Bravo.⁵³¹

356. Dutchbat could never enter the "Bandera Triangle" where weapons could be kept.⁵³² When they made an attempt to get into this part of the territory they were stopped by 45

⁵²⁴ T.30695, 27 January 2009, Vinko PANDUREVIC.

⁵²⁵ [REDACTED].

⁵²⁶ [REDACTED]; T.12643-12645, 14 June 2007, Miodrag DRAGUTINOVIC. T.30709-30710, 27 January 2009, Vinko PANDUREVIC.

⁵²⁷ See Adjudicated Facts 9-32 inclusive.

⁵²⁸ P0003, Agreement on a ceasefire in the territory of the Bosnia and Hercegovina, 8 May 1993, Adjudicated Facts 32-50 inclusive.

⁵²⁹ T. 2438, 16 October 2006, Robert FRANKEN

⁵³⁰ EGBERS, Vincent 18 October 2006 page 2791 Line 24 to page 2792

⁵³¹ EGBERS, Vincent 18 October 2006 page 2792 line 20 to page 2793

⁵³² T.2441, 16 October 2006, Robert FRANKEN; T.2603, 17 October 2006, Robert FRANKEN

armed men,⁵³³ and Dutchbat personnel were held there for four days on the orders of Zulfo, the brigade commander of BiH, before being able to return.⁵³⁴

357. Muslims forces appeared to be more and more organized in the enclave. Before May 1995, they wore part uniforms but after May they were kitted out completely with new combat suits worn by the BiH.⁵³⁵ They also received new weapons.⁵³⁶ Zulfo's forces which controlled the area between OPA and OPC, were very clearly an organized military unit.⁵³⁷ The 28th Division had an HQ at the post building in Srebrenica⁵³⁸ which was used for communications with the 2nd Corps in Tuzla.⁵³⁹

Attacks from within the enclaves

358. Before the VRS operation in Srebrenica, attacks from the Srebrenica enclave into VRS controlled territory involving arson and the murder of soldiers and civilians were reported.⁵⁴⁰
359. The Command of the 8th Operations Group Srebrenica listed in detail all military activities carried out by the Muslim army from January 1992 to March 1994 in a document sent to the Sector for Morale of the 2nd Corps of the Army of Bosnia and Herzegovina.⁵⁴¹ This was at the time of the most severe ethnic cleansing and expulsion of Serbs from central Podrinje.
360. Momir Nikolic and Beara complained several times to Boering about the ABiH continually leaving the enclave on raids at night, burning Serbian villages, killing Serb civilians and raping the women.⁵⁴²
361. Since this did not have any effect, a decision was made to carry out an operation to narrow the "safe area" and to demilitarise it in earnest. This was planned and carried out by the Army of Republika Srpska. VRS Drina Corps forces launched operation "Jadar-95". This operation forced Dutchbat troops to abandon Observation Post (hereinafter "OP") Echo south of Srebrenica. The UN abandonment of this checkpoint ultimately led to the fall of the village of Zeleni Jadar, a key junction that the VRS needed as a stepping stone for future operations. By 5th June 1995, the initial military goals of "Jadar-95" were realised, and the VRS ceased offensive operations along the Zeleni Jadar road. Dutch UN forces hastily erected two new OPs, Sierra and Tango, to monitor the southern approach into the "safe area".⁵⁴³

⁵³³ T.2601, 17 October 2006, Robert FRANKEN

⁵³⁴ T.2602, 17 October 2006, Robert FRANKEN; T.2906, 20 October 2006, Vincent EGBERS

⁵³⁵ T.2438, 16 October 2006, Robert FRANKEN

⁵³⁶ T.2862, 20 October 2006, Vincent EGBERS

⁵³⁷ T.2604, 17 October 2006, Robert FRANKEN; T.2907, 20 October 2006, Vincent EGBERS

⁵³⁸ T.2646, 18 October 2006, Robert FRANKEN; T.2178, 25 September 2006, Peter BOERING

⁵³⁹ T.2179, 25 September 2006, Peter BOERING

⁵⁴⁰ T.2579, 17 October 2006, Robert FRANKEN

⁵⁴¹ 7D000625, Strictly confidential no. 69/94 of 7 March 1994.

⁵⁴² T.2111, 25 September 2006, Peter BOERING

⁵⁴³ P00686, Butler narrative Revised Narrative Report, Para 1.38

3.3. Directive 7⁵⁴⁴

362. Reference will be made in various parts of this brief to Directive 7. For present purposes, its impact on lower level commanders will be examined. Pandurevic's evidence is that he didn't see Directive 7 before arriving in the Hague.⁵⁴⁵
363. The directive only served as guidance for a period of one year and the commanders took out parts of it that they, according to their assessment, could carry through. There were situations when none of the guidelines given in a directive were, in fact, carried out. It wasn't a binding document.⁵⁴⁶ The criteria of Directive 7 obliged the Corps Commander to repeat it verbatim in any operational order. However, Zivanovic re-wrote the tasks as he saw fit to exclude those objectives (they were not limited in time and were very complex).⁵⁴⁷
364. The directive refers to different operations, such as Zvijezda, Spreca, Jadar and Prozor, but it does not mention Krivaja or Stupcanica at all.⁵⁴⁸

3.4. The Order of the Drina Corps⁵⁴⁹

365. According to Pandurevic, this order represented the brigade's ongoing tasks.⁵⁵⁰
366. He did not understand it to be his task to involve the removal of the populations from from Srebrenica or Zepa.⁵⁵¹ He only perceived legitimate military objectives in the order. Item 4 reflected the plan to separate the enclaves.⁵⁵²
367. Pursuant to the Order of 20th March 1995, the Zvornik Brigade carried out the operation Spreca 95.⁵⁵³ It was during this operation that Obrenovic was injured.⁵⁵⁴

3.5. Convoys

368. Convoys will doubtless be addressed in detail by other accused in their briefs. Convoys were abused on all sides. Their progress was interrupted by the Serbs.⁵⁵⁵ They were abused at the point of dispatch by those who used them to smuggle arms and

⁵⁴⁴ P00005, RS Supreme Command Directive 7, 8-Mar-1995

⁵⁴⁵ T.30821, 29 January 2009, Vinko PANDUREVIC

⁵⁴⁶ T.11920, 22 May 2007, Mirko TRIVIC

⁵⁴⁷ P203, T.15319, 13 September 2007, Milomir SAVCIC ; T.30826-T.30827, Vinko PANDUREVIC

⁵⁴⁸ T.15216, 11 September 2007, Nedeljko TRKULJA

⁵⁴⁹ P203

⁵⁵⁰ T.30823-T.30824, Vinko PANDUREVIC

⁵⁵¹ T.30827, Vinko PANDUREVIC

⁵⁵² T.30838-T.30829, Vinko PANDUREVIC

⁵⁵³ T.30824, Vinko PANDUREVIC

⁵⁵⁴ T.31103, 9 February 2009, Vinko PANDUREVIC

⁵⁵⁵ Adjudicated Facts 48 and 52

military equipment into the enclaves⁵⁵⁶ and they were abused at the point of arrival where the army in both Srebrenica and Zepa ring-fenced supplies for itself, thus depriving the civilian population of aid.⁵⁵⁷

369. In the circumstances, the Serb offer to trade directly with the civilian leadership within the enclave was a practical solution to the problem which ought not simply to be dismissed as cynical or self-serving. It alleviated problems of cost, administration, policing, supply, providing aid to the right people, as well as stopping at least one route of illegal re-armament. Its rejection by the muslim military authorities must have been a source of tension between the civil and military leadership.⁵⁵⁸
370. As far as humanitarian convoys were concerned, the role of the Zvornik Brigade was part of the general role of the VRS in terms of the convoys passing through the area. Zvornik is situated adjacent to the main border crossing from Serbia to Republika Srpska, and convoys often came from Belgrade. Pursuant to the orders received from superior command and in accordance with usual procedure, the contents of these convoys were examined.
371. Pandurevic was not directly involved in these procedures. This duty was entrusted to a reserve captain, a former bank manager who was skilled at this task.⁵⁵⁹
372. The Brigade was powerless in either allowing or rejecting the passage of convoys. The people who manned check-points were only to act in compliance with the usual procedure upon receiving a notice that a convoy was coming and to check the contents of what they are carrying.⁵⁶⁰ Pandurevic received no orders to obstruct the passage of any convoys nor issued any such instruction on his own initiative. Many convoys passed through Zvornik en route not only to the enclaves but to Tuzla and Sarajevo as well. Almost all passed smoothly.⁵⁶¹ There were two instances when convoys were found to be carrying items that were not intended for humanitarian purposes and could have been used for military purposes. The convoys were allowed to continue, minus the items.⁵⁶²

4. KRIVAJA 95 OPERATION

⁵⁵⁶ 5D00518, Surrogate Sheet – Humanitarian convoy Ilidza ; 5D00519, Surrogate Sheet – Humanitarian convoy Rogatica-Zepa; [REDACTED]

⁵⁵⁷ T.2642, 18 October 2006, Robert FRANKEN, T.2537-T.2538, 17 October 2006, Robert FRANKEN

⁵⁵⁸ T.2641, 18 October 2006, Robert FRANKEN

⁵⁵⁹ T.30809, 29 January 2009, Vinko PANDUREVIC

⁵⁶⁰ T.30809, 29 January 2009, Vinko PANDUREVIC

⁵⁶¹ T.30810, 29 January 2009, Vinko PANDUREVIC

⁵⁶² T.30809-T.30810, 29 January 2009, Vinko PANDUREVIC

*“The civilian population needed to be removed from the zone of combat operations. An agreement between warring sides could have created special safe areas where the population could have been removed for the duration of combat activities. However, this did not happen in this war. The sides could not agree about that. And my attempts were geared at temporarily removing the population from the area for the duration of combat activities. They pulled out together with their troops.”*⁵⁶³

4.1. Ad hoc operation and surprise to Pandurevic

373. Pandurevic had no knowledge of a plan to take action against the enclaves before Krstic called him to the Corps command and they had been to Pribicevac to carry out reconnaissance.⁵⁶⁴ This was probably 1st July.

374. Obrenovic had recently convalesced in Meljine, following injury,⁵⁶⁵ and the units of the Drina Wolves were engaged in an operation in the zone of responsibility of the Sarajevo-Romanija Corps.⁵⁶⁶ Approximately 955 soldiers were engaged outside the Brigade’s zone.⁵⁶⁷ Given that sort of commitment to other theatres of war, Pandurevic did not anticipate that the Brigade would be asked to form another battalion to go outside the area of defence. The absence of reference in the combat reports of 1st and 2nd July to Krivaja 95 is marked.⁵⁶⁸ [REDACTED].⁵⁶⁹

375. A number of objective factors point to the haste with which the operation was planned : commander’s reconnaissance was carried out a day before the use of the Corps was ordered;⁵⁷⁰ the preparatory orders of the Corps and the Brigade were unusually issued on the same day;⁵⁷¹ the deadline for preparation of the units was 48 hours after the issue of

⁵⁶³ T.32147, 26 February 2009, Vinko PANDUREVIC

⁵⁶⁴ 7D00091, VWL Dragan Stevic, Pandurevic’s driver, entry for 1st July 1995:” Zvornik-Bratunac-Milici-Pribicevac”, showing the journey that Pandurevic made during the reconnaissance led by Krstic; T.30839-T.30840, 29 January 2009, Vinko PANDUREVIC; T.30849, 28 January 2009, Vinko PANDUREVIC

⁵⁶⁵ T.30839, 29 January 2009, Vinko PANDUREVIC; P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, BCS ERN 0293-5643 for telephone number 082- 54 080, room 116 OBRENOVIC), BCS page 25, and ENG page 24; See also [REDACTED]

⁵⁶⁶ T.30839, 29 January 2009, Vinko PANDUREVIC; [REDACTED]; See P382, ZB Report, Overview of available troops, 20 July 1995: the manoeuvre battalion 367, page 2 ENG, page 2 BCS; P378, ZB duty operations officer diary, BCS page 70, (ERN 6672), entry at 14:00: shows POSS, which is the manoeuvres battalion with the strength of 85 soldiers leaving to Pale ; 7D436 , Engagement of manoeuvres battalion (POSS) into defence zone of SRK, 16 June 1995, under point 1: Captain Jolovic Milan with the units marches from region of Pale; P381, Elements of combat deployment, 12 August 1995, on reserve roughly 4000 soldiers and automatic weapons, artillery, mortars etc.

⁵⁶⁷ [REDACTED]; 5D00351, ZB regular combat report, 20th June 1995, Paragraph 2: “as of today 955 soldiers are engaged outside the brigade’s zone of responsibility”. This was the situation only ten days before the ‘Krivaja-95’ operation. This means that it was not known about the ‘Krivaja-95’ operation and that the Zvornik Brigade was not prepared for it.

⁵⁶⁸ T.30840-T.30843, 29 January 2009, Vinko PANDUREVIC; See 7D1022, ZB regular combat report, 1 July 1995; 7D1023, ZB regular combat report, 2 July 1995 – both deal with ZB activities and responsibilities, but there’s no mention of Krivaja 95. It was a real surprise for the brigade.

⁵⁶⁹ [REDACTED]

⁵⁷⁰ T.30841, 29 January 2009, Vinko PANDUREVIC; T.11961, 22 May 2007, Mirko TRIVIC

⁵⁷¹ See P106, DC Preparatory Order, 2 July 1995, the earliest possible hour of dispatch is 19:05; See also P699, Manual for the work of command and staff, Point 100 (Page BCS 54, ENG page 51) and Point 119 (Page 69 BCS, ENG page 64), explanations what preparatory order is.

the preparatory order.⁵⁷² Only on 2 July did Obrenovic report back to the brigade after convalescing at home.⁵⁷³

376. On the 3rd July Pandurevic organised the appointment of the commanders of combat groups and carried out his own commander's reconnaissance in Pribicevac and Zeleni Jadar.⁵⁷⁴

377. The operation was an *ad hoc* response to the current military situation around the enclaves. It was an operation that was seen as a '*response to a provocation*'. The activities of the 28th Division were in breach of all cease fire agreements and were placing a stress on resources. Something had to be done to separate the enclaves and disarm them.⁵⁷⁵

4.2. Units involved and command of the operation

4.2.1. Pandurevic in command of TG1

378. According to the Drina Corps order, the Zvornik Brigade provided a force equivalent to the *light infantry battalion* with hardware and strong support for the conduct of activities along an independent axis.⁵⁷⁶ The strength of the unit called *Tactical Group 1 (TG1)* was approximately 400 men. The unit was divided into two Battle Groups: BG 1: Podrinje Detachments Drina Wolves and BG-2: two companies from ZB infantry battalion.⁵⁷⁷ The commander of TG 1 was Pandurevic.⁵⁷⁸

⁵⁷² T.11962, 22 May 2007, Mirko TRIVIC; T.30845-T.30847, 28 January 2009, Vinko PANDUREVIC; [REDACTED]

⁵⁷³ T.30850, 29 January 2009, Vinko PANDUREVIC; [REDACTED]

⁵⁷⁴ 7D00091, VWL Dragan Stevic, Pandurevic's driver, entry for 3rd July 1995: '' Zvornik-Bratunac-Zeleni Jadar'', showing the journey that Pandurevic made during the reconnaissance led by him; T.30850, 29 January 2009, Vinko PANDUREVIC

⁵⁷⁵ T.11954-T.11955, 22 May 2007, Mirko TRIVIC

⁵⁷⁶ P00106, DC Preparatory Order, 2 July 1995, Para 2(a)

⁵⁷⁷ T.30844, 29 January 2009, Vinko PANDUREVIC; [REDACTED]; See also P00318, ZB Preparatory Order, 2 July 1995, Item 1: The tactical group had its command, one combat group made up of elements of the Podrinje detachment; combat group two, made up of two infantry companies from all battalions numbering about 60 men; an armoured and mechanized company ; a battalion fire group ; Howitzer regiment 122 ; and a logistics element. All these elements made up a tactical group. Item 2.4.: there was an armoured mechanized company which comprised a tank platoon, an armoured mechanized platoon, an anti-aircraft gun squad, and a handheld anti-rocket gun squad, and then a Howitzer platoon. See also P00384, ZB War diary 04.07.1995 – 0293-6053, BCS page 48, 407 soldiers, 2 pragas, 4 tanks and 4x APCs were sent to Srebrenica. This means that the total numerical strength of TG-1 was less than the numerical strength of a light infantry battalion. See also 7D00465, 20 August 1993, total manpower available to Zvornik was 5,970. See section Part 3 Section 4 Structure of Zvornik brigade

⁵⁷⁸ P00318, ZB Preparatory Order, 2 July 1995, Item 2.1. (a): Commander of TG1.... Lieutenant-Colonel Vinko PANDUREVIC; [REDACTED]

4.2.2. Pandurevic had command of a unit; Trivic and Andric did not

379. Contrary to the view of Richard Butler,⁵⁷⁹ Pandurevic held a different position to that of his colleagues, Trivic and Andric, who also took part in Krivaja '95. Trivic took a combat group from the Romanija Brigade but put Ljubo Eric in command of it. Therefore, up until the 11th of July until the moment he met up with Mladic and until the moment Mladic issued Colonel Andric, the commander of the Birac Brigade, Trivic, and other brigade commanders to be personally engaged in combat, Trivic didn't really do anything. So, from that moment on, he had somewhat broader autonomy. He could stay in the territory, but he could also leave it which meant that his position was entirely the opposite to that of Pandurevic. It would have been too much for a brigade commander to be put in command of a company.⁵⁸⁰ Trivic confirmed the position.⁵⁸¹

380. As for Colonel Andric, Pandurevic neither heard or saw anything of him. The combat group from Andric's brigade was commanded by Major Nemanja Pavlovic.⁵⁸²

4.3. Command of the Operation

381. Although the combat orders are silent on the topic,⁵⁸³ command of Krivaja '95 was entrusted to General Radislav Krstic, the then Chief of Staff of the Drina Corps. The combat orders were in fact written by General Zivanovic. Krstic did not become Corps commander until 13th July. Krivaja '95 involved units from several brigades of the Drina Corps.⁵⁸⁴ As such it is a classic joint task or operation as envisaged by Article 16 of the Provisional Service Regulations of the VRS.⁵⁸⁵ It is of note that Krstic, whom everybody accepts commanded the operation was not formally appointed in writing.

4.4. Aim of the operation as understood by Pandurevic

382. The order did not give any indications of the task involved.⁵⁸⁶ During reconnaissance, Krstic told Pandurevic that the enclaves had to be separated to prevent the 28th Division moving towards Srebrenica and launching strategic offensives towards the Drina.⁵⁸⁷

383. Pandurevic understood his involvement to concentrate on a point immediately below Pribicevac, which commanded the best view of the planned direction of the use of the Brigade forces.⁵⁸⁸ He believed the objectives of active combat were limited and believed

⁵⁷⁹ T.20957, 1 February 2008, Richard BUTLER

⁵⁸⁰ T.30880-T.30881, 30 January 2009, Vinko PANDUREVIC; see also T.29657, 12 December 2008, Milenko JEVDJEVIC: confirms that the commander of the battalion who took part in the attack, in Krivaja 95, was Captain First Class Ljubo Eric, not Trivic.

⁵⁸¹ T.11800-1, 18 May 2007, Mirko TRIVIC T.29773, 16 December 2008, Milenko JEVDJEVIC,

⁵⁸² T.30881, 30 January 2009, Vinko PANDUREVIC

⁵⁸³ See P106, P107

⁵⁸⁴ See P106, paragraph 2

⁵⁸⁵ P417

⁵⁸⁶ P106, DC Preparatory Order, 2 July 1995

⁵⁸⁷ T.30841, 29 January 2009, Vinko PANDUREVIC

⁵⁸⁸ T.30841, 29 January 2009, Vinko PANDUREVIC

they were achievable and would not pose a major problem.⁵⁸⁹ The task given to TG1 can clearly be seen from Point 5 of the order :⁵⁹⁰

“Tasks of the units for separating and reducing the enclaves in size: the 1st battalion /of the 1St Zpbr/ with line of departure Bukova Glava village – Javor /trig point 886/ - Zeleni Jadar village, will attack along the axis: three wooded hills /500 metres north of Zeleni Jadar - Pusulici village - Bojna - Srebrenica!

Task: to smash the enemy along the axis of advance and more immediately to *capture trig point 644 - Zivkovo Brdo /trig point 780/, and then to secure the flank and rear of the Bojna feature*, and to be ready to continue the attack.”

384. The separation of the enclaves would necessarily mean defining the boundaries of the two areas.⁵⁹¹ Being militarised areas which existed in contravention of the tri-partite agreement of May 1993, the enclaves had to be eliminated.⁵⁹² Trivic had a similar understanding of the aim of the operation.⁵⁹³
385. Trivic also confirms that the objective was to separate the enclaves and also to reduce them in size (geographically).⁵⁹⁴

4.5. Legitimate operation

4.5.1. Enclaves never demilitarised

386. It is beyond peradventure that the enclaves continued to exist illegally as militarised zones in breach of the ceasefire agreements.⁵⁹⁵ The activities carried out from them required constant military attention by the VRS.⁵⁹⁶ The area was however, constantly monitored and accordingly, the positions of the 28th Division were well known.⁵⁹⁷ In addition, there was intelligence to the effect that the civilian population was being held in the enclave by the 28th Division against its will.⁵⁹⁸

4.5.2. Strength of 28th Division

387. The force that was sent to conduct operation Krivaja 95, was outnumbered five or six to one by the forces of the 28th Division.⁵⁹⁹ The axis of the Zvornik Brigade was rather

⁵⁸⁹ T.30841, 29 January 2009, Vinko PANDUREVIC

⁵⁹⁰ P00838, Krivaja order, 2 July 1995, point 5

⁵⁹¹ T.32146, 26 February 2009, Vinko PANDUREVIC

⁵⁹² T.32149, 26 February 2009, Vinko PANDUREVIC

⁵⁹³ T.11810-2, 18 May 2007, Mirko TRIVIC

⁵⁹⁴ T.11811-T.11812, 18 May 2007, Mirko TRIVIC

⁵⁹⁵ T.32143, 26 February 2009, Vinko PANDUREVIC

⁵⁹⁶ P00686, Richard Butler's Revised Narrative Report, para 1.27

⁵⁹⁷ T.30854, 29 January 2009, Vinko PANDUREVIC

⁵⁹⁸ [REDACTED]

⁵⁹⁹ T.11969-T.11970, 23 May 2007, Mirko TRIVIC

easier to defend than it was to attack, given the lie of the land and the time that the 28th Division had spent in that area organising its defences.⁶⁰⁰ The forces which had been assembled for Operation Krivaja '95 were neither designed to take the town, nor capable of it in the face of serious or any resistance.⁶⁰¹ Moreover, the withdrawal of Naser Oric and his command staff some weeks earlier tends to support the common sense conclusion that the 28th Division knew of the attack in advance.⁶⁰²

388. Initially, progress in separating the enclaves was slow and difficult.⁶⁰³ The forces of the 28th Division were particularly strong and determined at the axis of the Zvornik Brigade unit. On 10th July the 28th Division drove the forces of the Zvornik Brigade back to their starting place, TG1 suffering many losses in the process.⁶⁰⁴

4.6. Pandurevic's movements from 4th to 11th July

389. Pandurevic, in the second echelon of the group,⁶⁰⁵ arrived at Jezero on the night of the 4th.⁶⁰⁶ On 5th July he determined the firing points for his artillery, spending the night at Zeleni Jadar.⁶⁰⁷ In the early morning hours of 6th July the attack started. The points of attack were features Biljeg (for BG1) and Tri Sise (for BG2). However, the 28th Division put up strong resistance and no progress was made. They spent the night in a tent near Bukova Glava.⁶⁰⁸

390. There were no combat activities on 7th of July due to bad weather conditions.⁶⁰⁹ However, on 8th July Pandurevic's unit managed to take Biljeg and Tri Sise. The Muslim forces withdrew to Zivkovo Brdo and Rajne. Pandurevic was present at the Biljeg UNPROFOR observation post. The 28th Division positions were in line with the UN observation post. He saw there some Dutchbat soldiers, who were inside the observation post. Pursuant to Krstic's order, TG1 instructed them to go in the direction of Bratunac, and they said that TG1 could take everything save for their combat vests. Pandurevic's order was that nothing should be taken from them and that the soldiers could be escorted via Pribicevac and sent away in the direction of Bratunac. The Podrinje detachment forces were there, together with Legenda, at the other point at which UNPROFOR forces were encountered. They reported back that there were soldiers at that point, and the order was conveyed for them to go first to Pribicevac and from there to proceed towards Bratunac.⁶¹⁰

391. On 9th July TG1 managed to take Zivkovo Brdo as well as Rajne, achieving their objective according to the plan. They established a line, blocking passage of the 28th Division from Srebrenica to Zepa. In Pandurevic's view that was *a completion of their*

⁶⁰⁰ T.11970, 23 May 2007, Mirko TRIVIC

⁶⁰¹ T.29526, 11 December 2008, Milenko JEVDJEVIC

⁶⁰² T.30866, 29 January 2009, T.30875, 30 January 2009, Vinko PANDUREVIC

⁶⁰³ T.11970, 23 May 2007, Mirko TRIVIC

⁶⁰⁴ T.11970-T.11971, 23 May 2007, Mirko TRIVIC

⁶⁰⁵ 7D242, ZB Marching order, 4th July 1995; T.30851, 29 January 2009, Vinko PANDUREVIC

⁶⁰⁶ T.30851-T.30852, T.30857, 29 January 2009, Vinko PANDUREVIC

⁶⁰⁷ T.30852-T.30854, T.30857, 29 January 2009, Vinko PANDUREVIC

⁶⁰⁸ T.30855-T.30857, 29 January 2009, Vinko PANDUREVIC; 7D761, DC interim combat report, 6 July 1995, shows heavy fighting on Pandurevic's axis on 6th July

⁶⁰⁹ T.30856-T.30857, 29 January 2009, Vinko PANDUREVIC

⁶¹⁰ T.30856-T.30858, 29 January 2009, Vinko PANDUREVIC

*original task.*⁶¹¹ Accordingly, at that point he withdrew the Podrinje Detachment from Zivkovo Brdo. He moved his tent to be closer to Rajne and there spent the night of 9th and 10th July.⁶¹²

392. On 10th of July, there was a counter-attack by the 28th Division. They pushed Pandurevic's unit back virtually to where it stated. Pandurevic spoke to Mladic mid-morning and promised to retake the positions. He did so in the afternoon. Pandurevic spent the night under the balcony of a demolished house by the road between the features Rajne and Bojna.⁶¹³
393. On the evening of 10th of July they received an order from Krstic to proceed with the attack and enter the town of Srebrenica in the morning.⁶¹⁴
394. On the morning of 11th July, Krstic ordered Pandurevic to advance further towards the town of Srebrenica. For the first time, he noticed soldiers of the 10th Sabotage Detachment in the area. His task was to continue operations along the road, to reach the town and to capture the surrounding hills around the town itself. They could observe a part of the town from their positions and it was completely empty. He was surprised that the 28th Division did not put up a fight and make it difficult for VRS forces to enter the town. They managed to take the features after 15:00 hours or possibly 17:00 hours. Pandurevic was moving along the main road leading directly to the town of Srebrenica. He was together with his driver, his signalman, Dragutinovic, the operations officer, and his escort. They entered the town after 15:00 hours.⁶¹⁵
395. Pandurevic understood that the part of the town he was able to see was empty ; he could hear 28th Division radio communications and the impression he got was that they were retreating in panic towards northern parts of the town⁶¹⁶ with a view to putting as much distance between them and the VRS units due to an imminent NATO bombing campaign.⁶¹⁷
396. Pandurevic remembers that an aerial bomb was dropped on the southern edge of Srebrenica, landing next to Legenda's jeep. An ambulance was also hit. Pandurevic and a group of officers were on the right-hand side of the road, some 60 metres from the vehicle which had been hit.⁶¹⁸

⁶¹¹ P00107, Krivaja order, 2 July 1995. Task can also be seen from Point 5: "Tasks of the units for separating and reducing the enclaves in size: the 1st battalion /of the 1st Zpbr/ with line of departure Bukova Glava village – Javor /trig point 886/ - Zeleni Jadar village, will attack along the axis: three wooded hills /500 meters north of Zeleni Jadar - Pusulici village - Bojna - Srebrenica! Task: to smash the enemy along the axis of advance and more immediately to capture trig point 644 - Zivkovo Brdo /trig point 780/, and then to secure the flank and rear of the Bojna feature, and to be ready to continue the attack."

⁶¹² See 7D00762 , 9 July 1995, DC Interim Combat report, describes the combat situation on the Zeleni Jadar-Srebrenica axis; 7DIC 00242 marked by Vinko PANDUREVIC ; T.30858-T.30561, 29 January 2009, Vinko PANDUREVIC

⁶¹³ 7D00474, 10 July 1995, DC Interim Combat report: describes the 28th Division's counter attack T.30861-T.30567, 29 January 2009, Vinko PANDUREVIC

⁶¹⁴ T.30566, 29 January 2009, Vinko PANDUREVIC

⁶¹⁵ T.30867-T.30868, 29 January 2009, Vinko PANDUREVIC;

⁶¹⁶ T.30868, 29 January 2009, Vinko PANDUREVIC

⁶¹⁷ T.30868, 29 January 2009, Vinko PANDUREVIC

⁶¹⁸ T.30868-T.30869, 29 January 2009, Vinko PANDUREVIC

397. The entry to Srebrenica and the meeting at the Bratunac brigade are dealt with in detail elsewhere in this brief. That night, Pandurevic took a different route back to Srebrenica from Bratunac. He spent the night in a police station in Srebrenica. His units remained in the positions, on the northern edge of the town.⁶¹⁹ All of Pandurevic's movements can be seen from the short video⁶²⁰ and map⁶²¹ and a map drawn by his operations officer Dragutinovic.⁶²²

4.7. Shelling of Srebrenica town

398. Although this has been a well-trodden area in all the trials which have dealt with these events, there still remain live issues as to (a) whether the town was in fact shelled; (b) if it was, when it was shelled; (c) to what extent it was shelled; (d) whether such shelling was justified; and who, if anybody, was responsible for the shelling.

399. According to the indictment, Srebrenica was shelled from 6th of July 1995 until 11th July.⁶²³ This would seem to accord with the evidence of Kingori.⁶²⁴ However, it would not be representative of the evidence of some of those who lived in the town, who claim that the town had been shelled for a much more prolonged period.⁶²⁵

400. It is accepted that there is some support for the evidence of Kingori from other sources⁶²⁶. Nonetheless, photographic evidence of the after-effects of heavy shelling on the urban area is conspicuous by its absence from the case (unlike for example photographs of dismantled mosques), and the contemporary video evidence indicates that on or about 10th July, the only mortar fire in Srebrenica was outgoing rather than incoming.⁶²⁷ In addition, the Trial Chamber will have the evidence of its own eyes from a site visit to a place, barely altered between July 1995 and October 2006.⁶²⁸

401. Srebrenica was substantially a garrison for the 28th Division, and a number of the downtown buildings were military facilities.⁶²⁹ The location of those facilities was, by the time of July 1995 well known to the VRS,⁶³⁰ and a detailed target map had been created from available information.⁶³¹ Even at the height of the battle, Kingori's evidence only suggests light casualties in the town.⁶³² His evidence as to the origin of the fire (at least on

⁶¹⁹ T.308674-T.30889, 30 January 2009, Vinko PANDUREVIC

⁶²⁰ 7D1058 (movements TG-1) and 7D1059 (movements commander)

⁶²¹ 7D1066, Map of Pandurevic 's movements during Krivaja 95

⁶²² 7DIC00126 map drawn by Dragutinovic

⁶²³ Prosecutor v Popovic, Indictment, 14 august 2006, Para 54

⁶²⁴ T.19173, 13 december 2007, Joseph KINGORI ; P00490 : around 250 artillery and mortar rounds

⁶²⁵ [REDACTED] (PW-126)

⁶²⁶ T.1896, 19 September 2006, BOERING, T. 2457, 16 October 2006, Robert FRANKEN T.1274-T.1275, 7 September 2006, Ahmo HASIC,

⁶²⁷ P02048, Srebrenica Trial Video

⁶²⁸ [REDACTED]

⁶²⁹ T.31993-T.31998, 23 February 2009, Vinko PANDUREVIC

⁶³⁰ T.31993-T.31998, 23 February 2009, Vinko PANDUREVIC

⁶³¹ T.30854, 29 January 2009, Vinko PANDUREVIC

⁶³² T.19191, 13 december 2007, Joseph KINGORI

11th July) is beyond Yellow Bridge in the direction of Bratunac.⁶³³ Boering's evidence suggests the shelling was targeted.⁶³⁴

402. Pandurevic did not direct his unit to shell the town,⁶³⁵ and it did not do so. His axis of attack was the defence lines of the 28th division and not the town. When he and his units entered the town, there was no obvious damage from shellfire.⁶³⁶ His neighbouring unit did not do so either.⁶³⁷ He didn't notice any shell damage on the hospital.⁶³⁸
403. Pusmulici village is situated directly beneath the Zivko Brdo feature, and that was one of the attack axes of the 28th Division during the breakout of 10th July. They took advantage of the poor visibility of the terrain, and attacked Zivko Brdo from there. Therefore, later fighting broke out in Pusmulici, village and, as a result, one could see smoke coming from the houses in the village.⁶³⁹ This is in all probability what Boering and Egbers saw on 10th July.⁶⁴⁰
404. The Swedish shelter was in the village of Slapovici. It was not in the line of Pandurevic's attack. From Zivko Brdo he was able to see this settlement.⁶⁴¹

4.8. Attacks on UN observation posts

405. The Muslim Forces regularly positioned their defences as close to UN facilities as possible.⁶⁴² The only casualty suffered by DutchBat was at the hands of an ABiH soldier, when they tried to withdraw.⁶⁴³ Without prejudice to the central submission that neither he nor his subordinates did anything to harm UN troops, it is probable that by no later than 9th July 1995, the DutchBat forces had themselves become combatants. The defence for Pandurevic reserves the right to adopt any or all of the submissions made by others in this regard. However, the only UN soldiers encountered by Pandurevic's forces were those on 8th July at (it is believed) OP Echo and Foxtrot. There is no direct evidence from any soldier from either of those OPs. Franken's account is hearsay and has to be tempered by reference to his other statements on the matter.⁶⁴⁴ Pandurevic's evidence on the point is clear, that he instructed his unit not to fire on the OP and to treat the Dutch soldiers properly and not to take their property.⁶⁴⁵ A senior Drina corps officer went to Zeleni Jadar to make sure that the DutchBat soldiers got back to Bratunac safely.⁶⁴⁶

⁶³³ T.19243, 13 december 2007, Joseph KINGORI; P511

⁶³⁴ T.2266, 27 September 2006, Pieter BOERING

⁶³⁵ T.12690, 15 June 2007, Miodrag DRAGUTINOVIC

⁶³⁶ T.12690, 15 June 2007, Miodrag DRAGUTINOVIC

⁶³⁷ T.11816-T.11817, 18 May 2007, Mirko TRIVIC

⁶³⁸ T.11899, 21 May 2007, Mirko TRIVIC

⁶³⁹ T.30864, 29 January 2009, Vinko PANDUREVIC

⁶⁴⁰ T.1932, 19 Sept 2006, Pieter BOERING, T.2868, 20 October 2006, Vincent EGBERS

⁶⁴¹ T.30864, 29 January 2009, Vinko PANDUREVIC

⁶⁴² T.2868, 20 October 2006, Vincent EGBERS T.12687-T.12688, 15 June 2007, Miodrag DRAGUTINOVIC

⁶⁴³ T. 2517, 17 October 2006, Robert FRANKEN

⁶⁴⁴ T. 2469, 16 October 2006, Robert FRANKEN

⁶⁴⁵ T.12687-T.12688, 15 June 2007, Miodrag DRAGUTINOVIC T. 2479, 16 October 2006, Robert FRANKEN

⁶⁴⁶ T29533, 11 December 2008, Milenko JEVDJEVIC

4.9. Entering the Srebrenica town

406. The VRS units and Pandurevic entered the town of Srebrenica around 15.00 – 17.00 hours on the afternoon of 11th July 1995.⁶⁴⁷
407. Pandurevic was not in the mood for celebration. He had been involved in heavy fighting and had suffered casualties. He was exhausted. More importantly, he was concerned that contact had been lost with the 28th Division.⁶⁴⁸
408. The trial video speaks for itself. After entering the town, Pandurevic deployed his troops in keeping with the tactical situation and took smaller forces to continue moving through the town towards the centre; he went all the way to the football pitch in Gostilj village.⁶⁴⁹ No TG1 personnel went towards Potocari. Pandurevic based himself at the police station in Srebrenica.⁶⁵⁰
409. He did not see any civilians in Srebrenica, except some elderly people at the UNPROFOR base.⁶⁵¹

4.10. The Meeting at the Bratunac Brigade Command

“In my view, it is of lesser importance whether it was on the 11th or the 12th. The important thing is what was discussed at the meeting and the fact that it actually happened.”⁶⁵²

4.10.1. The Subject of Discussion

410. There is no evidence that Pandurevic attended a meeting at the Command of the Bratunac Brigade where the operation forcibly to transfer the civilian population or kill the able bodied men was discussed. Pandurevic and Trivic have given evidence about this topic and both have denied that any such discussion took place.⁶⁵³ There was no challenge to this account. If it is the prosecution case that any such meeting must have involved such a discussion, then such a proposition should have been put. Whilst, of course, Trivic was a prosecution witness, he gave evidence at a time when the prosecution, pursuant to the current practice of the Chamber, was entitled to,⁶⁵⁴ and frequently did,⁶⁵⁵ cross-examine its own witnesses (the decision of the Appeals Chamber, disapproving such practice not being announced until November 2007)⁶⁵⁶

⁶⁴⁷ T.30876, 30 January 2009, Vinko PANDUREVIC

⁶⁴⁸ T.30879, 30 January 2009, Vinko PANDUREVIC.

⁶⁴⁹ T.30882, 30 January 2009, Vinko PANDUREVIC.

⁶⁵⁰ T12688, 15 June 2007, Miodrag DRAGUTINOVIC

⁶⁵¹ T.30882, 30 January 2009, Vinko PANDUREVIC.

⁶⁵² T33342, 28 April 2009, Momir NIKOLIC

⁶⁵³ T.11848, 21 May 2007, Mirko TRIVIC, T.30888, 30 January 2009, Vinko PANDUREVIC.

⁶⁵⁴ Prosecutor v. Popovic et al., Case No. IT-05-88-T, “Decision on certification and clarification of the Trial Chamber’s oral decision on impeachment of a party’s own witness”, 21 November 2007

⁶⁵⁵ See for example the cross-examination of Trivic on the question of *asanacija* during his re-examination. T.12045-T.12047, 23 May 2007, Mirko TRIVIC

⁶⁵⁶ Prosecutor v. Popovic et al., Case No. IT-05-88-T, “Decision on certification and clarification of the Trial Chamber’s oral decision on impeachment of a party’s own witness”, 21 November 2007

411. The unanimous evidence, heard *viva voce* by the Trial Chamber, suggests moreover, that the meeting had no credible information about the whereabouts of the column,⁶⁵⁷ and heard objection from Pandurevic about the continued action towards Zepa.⁶⁵⁸ Such evidence may indicate strongly the date on which the meeting in fact took place. More to the point, it may render the date of the meeting an irrelevant consideration.

4.10.2 The Date of the Meeting.

412. It is difficult to imagine any date more resonant to anyone who was involved in it, than 11th July 1995. That those who were in Srebrenica that afternoon with Mladic should go to Bratunac the same evening is consistent with his exhortations on the trial video for them to do so.⁶⁵⁹ That he should take stock with his subordinate officers and inform them of his future plans was only logical, especially given that he had issued the order for the attack on Zepa the previous day.⁶⁶⁰

413. Virtually all of those who took part in the meeting recall that it was on 11th July. Pandurevic recalls getting to Bratunac at about 22.00.⁶⁶¹ He passed through Potocari and recalls the crowds of people. He told Eileen Gilleece the same thing in October 2001, at a time when he didn't know he had been indicted.⁶⁶²

414. Milenko Jevdjovic recalls a meeting on 11th July at which he was dispatched to set up a Communications centre at Zepa.⁶⁶³ He said this to the OTP in April 2000.⁶⁶⁴

415. Svetozar Andric recalls a meeting on 11th July.⁶⁶⁵ So too, did General Krstic.⁶⁶⁶ In the submission of the defence, it is nonsensical to suggest that each of these people have conspired at various times to alter the date of this meeting. None of them can have appreciated the significance of the date when they first recounted events.

416. For wholly different reasons Zvonko Bajagic recalls delivering a meal to those at the meeting on 11th July.⁶⁶⁷ The Operations officer of TG1 recalls Krstic telling him on 12th July that Mladic would address the troops the following day,⁶⁶⁸ suggesting the matter had been discussed the night before.

⁶⁵⁷ See P1100, 1105 and 1106

⁶⁵⁸ T.30885, 30 January 2009, Vinko PANDUREVIC, T.11842, 21 May 2007, Mirko TRIVIC; Prosecutor v. Krstic, IT-98-33, T6561, 27 October 2000, Radislav KRSTIC

⁶⁵⁹ T.29913, 17 December 2008, Milenko JJEVDJEVIC; P02047 Srebrenica trial video, CD6 between 28.00 and 31.00

⁶⁶⁰ P00181, Main Staff Order No. 03/4-1807 to take defence lines and improve tactical position in the area of Srebrenica and Zepa, dated 10 July 1995

⁶⁶¹ T.30883, 30 January 2009, Vinko PANDUREVIC.

⁶⁶² P02408, Investigative notes of an interview with Milenko ZIVANOVIC and Vinko PANDUREVIC, dated 2 October 2001

⁶⁶³ T.29609-T.29610, 12 December 2008, Milenko JEVDJEVIC

⁶⁶⁴ 7D00551, JEVDJEVIC – OTP Interview, 4-apr-2000

⁶⁶⁵ T.29923-T.29924, 17 December 2008 – 7D01090, Andric Svetozar, interview, 19-feb-2002 (tendered on 17.12.08, but still no EXH status)

⁶⁶⁶ Prosecutor v. Krstic, IT-98-33, T.6442-T.6443:11, 26 October 2000, Radislav KRSTIC

⁶⁶⁷ 7D01092, BAJAGIC Zvonko, Defence witness statement, 27-dec-2007

⁶⁶⁸ T.12697, 15 June 2007, Miodrag DRAGUTINOVIC

417. Perhaps though, the most compelling evidence of the fact that the meeting was held on 11th July came in denial. Momir Nikolic, the Chief of Security of the Bratunac Brigade, originally recalled the meeting as being that night.⁶⁶⁹ However, following his plea agreement, he developed a “dilemma” about the date of the meeting, but not about the fact that it took place.⁶⁷⁰ Nor it seems about the events of the evening upon which the meeting took place. He remains clear that it occurred on the same night he attended the two Hotel Fontana meetings, the night he drafted a report about the presence of war criminals in Potocari, and the night he drove Nesub Mandzic to and from Potocari, without encountering any road blocks. The last piece of evidence would appear to put paid to the argument that no VRS officer could have passed through Potocari that night, because that must have been the 11th.
418. The sandwiching of the meeting between the two Hotel Fontana meetings, at which both Mladic and Momir Nikolic were present, and which the latter so clearly remembers as a part of the sequence of events, further points to the date.

4.10.3. Trivic's Diary

419. There is in fact no live witness who recalls that the meeting was on 11th July. Trivic has no independent recollection of the date, drawing it solely from his diary. He does not dismiss the possibility that the meeting might have been on 11th, but simply asserts that if that is so, then his diary must be wrong also.
420. As a record, Trivic's diary is a questionable document. It has an unfortunate history, in that it was dismantled and put back together in 2004. The exhibit we have in this case is a photocopy of the diary as re-assembled by Trivic. The numbers placed at the top of the page were placed there after it was put back together. It is apparent that the events of 4th to 14th July run roughly chronologically through pages 1-15, as numbered by Trivic (pages 1 to 36 of the English translation), whereas the events of 15th to 29th July (pages 37-76 in the English translation) run in reverse chronological order. The explanation for this is that Trivic recorded events relating to the Srebrenica operation conventionally, but then turned the book around and recorded the Zepa operation from the back of the book, coming forwards.⁶⁷¹
421. This is where the problems begin: looking at the Zepa entries, a significant number of pages are out of order. Without going into too much detail, it is plain from the date references that the sequence of pages from ERN 0648-6824 to 0648-6838 have been put back together incorrectly. The numerous errors serve to illustrate the difficulties in reassembling such brief and prosaic notes, which is even more difficult in relation to the Srebrenica operation where the date is only mentioned six times in twenty six pages.
422. However, the problems do not end there: the errors in the sequence of the pages from the back of the book must necessarily impact on the correctness of the sequence of pages at the front, as the pages, as part of a notebook, would have been linked prior to

⁶⁶⁹ T. 33341, 28 April 2009, Momir NIKOLIC

⁶⁷⁰ T.33342, 28 April 2009, Momir NIKOLIC

⁶⁷¹ These matters were all disclosed to the OTP during a visit by him to the Hague with his notebook/diary in March 2009. The facts set out in this brief will be the subject of agreement between the prosecution and the defence.

separation. The date 12th July does not appear on the same leaf as the reference to the meeting.

423. Further, the matter is complicated by the fact that Trivic was not asked to give evidence by reference to his diary, in the sense of using it as an *aide memoire*. Accordingly, there is no evidence as to how often he completed the diary. It is worthy of note that there are no entries for 6th, 7th and, 8th, and that the crucial date 12th July appears to have been inserted ex post facto.
424. Moreover, Trivic's account of the meeting is inconsistent with its having taken place on 12th. There were no buses full of prisoners on the streets of Bratunac,⁶⁷² there were no buses in Potocari.⁶⁷³ There was no information about the whereabouts of the column such as there would have been on 12th.⁶⁷⁴ There were congratulations for Mladic and a meal.⁶⁷⁵
425. PW-109 of course recalls a meeting of the commanders on 12th July at the Bratunac Brigade command. Significantly, he does not describe either Pandurevic or Trivic as being present.⁶⁷⁶ Moreover, his recollection as to times, dates and events has to be regarded as suspect given that he recalls the walk-through of Srebrenica as taking place on the morning of 11th July:⁶⁷⁷ The arrival of Krstic and Mladic at Hotel Fontana as being 1500hrs on 11th; there being only one meeting at the Hotel on the evening of 11th⁶⁷⁸ and the morning meeting at Bojna⁶⁷⁹ on 12th July taking place at about 1700hrs.⁶⁸⁰

4.11. Pandurevic's movements from 11th to 15th July

426. Pandurevic spent the night of 11th/12th July at the police station in Srebrenica. The following morning there was a briefing at Bojna⁶⁸¹ at which he was ordered to move as a reserve along the road towards Zepa. The meeting was brief, because they had already received their general tasks the day before. At this meeting, they were provided with the details in terms of the control of the ground en route of their march. That afternoon, Pandurevic also visited some wounded soldiers and also Major Dragutinovic, whom he conveyed to the unit en route towards Viogor. On 12th July, the unit reached the area of Viogor and Mount Jahorina. They stopped marching somewhere after 17:00 hours. Krstic arrived at Viogor at about 18:00 and Pandurevic spoke to him about the location of the 28th Division. Having driven through Potocari on the 11th, Pandurevic also asked him what was going to happen to people from Potocari. Krstic told him that they had wanted to be evacuated in the direction of Tuzla and Kladanj and that the process was under way. Krstic then ordered Pandurevic to start marching to Rijeka village the following morning

⁶⁷² T.11851-T.11853, 21 May 2007, Mirko TRIVIC

⁶⁷³ T.11980, 23 May 2007, Mirko TRIVIC

⁶⁷⁴ E.g. P01100, Intercept dated 12 July 1995 at 06:56; P01105, Intercept dated 12 July 1995 at 09:15, P01106, Intercept dated 12 July 1995, 11:56, T.33341, 28 April 2009, Momir NIKOLIC

⁶⁷⁵ Personal Diary of Mirko TRIVIC, ERN 6799-6800

⁶⁷⁶ [REDACTED] (PW-109)

⁶⁷⁷ [REDACTED] (PW-109)

⁶⁷⁸ [REDACTED] (PW-109)

⁶⁷⁹ T.30867, 29 January 2009, Vinko PANDUREVIC, T.12687, 15 June 2007, Miodrag DRAGUTINOVIC, Personal Diary of Mirko TRIVIC, ERN 6796

⁶⁸⁰ [REDACTED] (PW-109)

⁶⁸¹ Personal Diary of Mirko TRIVIC, page 12, T.12687, 15 June 2007, Miodrag DRAGUTINOVIC

via Viogor, Sucasca, Derventa, Vlasenica and Han Pijesak. In an orchard immediately by the road, Pandurevic spent the night in a tent.⁶⁸²

427. On the morning of 13th July, Krstic and General Mladic arrived. Mladic addressed the soldiers and announced that Krstic would take over the command of the Corps forthwith. As soon as the marching column was formed,⁶⁸³ Pandurevic set off. They encountered problems due to the condition of the road and at one point they encountered anti-tank mines. An APC got stuck, and the whole column had to wait for that part of the road to be cleared. They also stopped in Vlasenica around midnight to refuel⁶⁸⁴ and then continued moving towards the village of Rijeka.⁶⁸⁵
428. On the night of 13th and 14th of July, Pandurevic was travelling with his driver, Dragan Stevic, two escorts, soldiers and a signalman. He does not remember whether Dragutinovic was with him in the car. After all the vehicles were refuelled, he formed a marching column, checked the situation and headed towards Han Pijesak and then the village of Rijeka. Around 2000 hours, they arrived in the village of Rijeka, they set up a make shift camp, put up a tent and rested for a few hours. He arrived in Krivace DC IKM around 1000hrs and reported to Krstic. Other brigade commanders were present. There he received his orders in relation to Zepa⁶⁸⁶ and soon thereafter, he led his unit from the Rijeka village sector deploying his men into a combat line around 10 kilometers from Zepa. Pandurevic spent the night in a school.⁶⁸⁷
429. The events of the morning of 15th July are dealt with in detail elsewhere in this brief.⁶⁸⁸

4.12. Alleged presence of Pandurevic in Zvornik on 12th July

430. It is not clear whether the Prosecution still rely upon this allegation. [REDACTED]

⁶⁸² T.30889-T.30904, 30 January 2009, Vinko PANDUREVIC

⁶⁸³ See 7D00941, Order for march, 13th July 1995, signed by Pandurevic as commander of TG1. The order was not issued on the 12th since TG1 had another task which was to scour the terrain as a reserve force. Subsequently, they were supposed to proceed marching from the Viogor location towards Zepa T.30906, 30 January 2009, Vinko PANDUREVIC

⁶⁸⁴ 7D00091, VWL for Nissan, Dragan Stevic, Pandurevic's driver, BCS and ENG page 137-140 : The entries in the VWL during 11th to 14th July are inaccurate. There is no mention of Bratunac on the 11th, nor mentions of Viogor, Vlasenica, Milici, Rijeke or any of the places where TG1 and Pandurevic had been. Nor there is any mention of Zepa on 14th July. But Bratunac is mentioned on 13th July and Pandurevic went there on that day. This is probably because during combat the routes are unpredictable and Dragan Stevic did not know the area at all. Accordingly what he put down on the VWL during that period is merely intended to account for the fuel he used, rather than leave a record of the precise journeys he took. See T.30912-T.30913, 30 January 2009, Vinko PANDUREVIC

⁶⁸⁵ T.30904-T.30910, 30 January 2009, Vinko PANDUREVIC

⁶⁸⁶ P00114, Zepa Order, BCS page 1 and 3, ENG page 1 and 4: Under 4: "The Zvornik Infantry Brigade from the Podojlje-Bratunak area shall attack the enemy along the village of Purtdi - village of Cavid - Zepa axis in order to crush the enemy along the line of attack, reach the Pale - Borak line and continue the advance. The next task is to reach Zepa." Under 9c: "The civilian Muslim population and UNPROFOR are not targets of our operations. Collect them together and keep them under guard, but crush and destroy armed Muslim groups."; T.12592, 13 June 2007, Miodrag DRAGUTINOVIC

⁶⁸⁷ T. 30911-T.30923, 30 January 2009, Vinko PANDUREVIC; See also 7D01058 map marked about movements of TG-1 and 7D01059 map marked about movements commander; T.12592-T.12593, 13 June 2007, Miodrag DRAGUTINOVIC

⁶⁸⁸ See Part 4 Section 6: Return to Zvornik 15th July

4.12.1. [REDACTED]

431. [REDACTED]⁶⁸⁹, [REDACTED]⁶⁹⁰, [REDACTED].⁶⁹¹
432. [REDACTED].⁶⁹² [REDACTED].⁶⁹³ [REDACTED].
433. At 0724hrs, approximately half an hour earlier, somebody was looking for Mane on the same channel and the same frequency with the same operator.⁶⁹⁴ That was somebody who had already spoken to Radika, was looking for Mane (presumably because he was previously unable to find him), had information about the movement of the column since 0300hrs, was discussing ambushes and was taking measures with his military police. [REDACTED]
434. REDACTED⁶⁹⁵
- REDACTED⁶⁹⁶
 - REDACTED.
 - REDACTED.⁶⁹⁷
435. The explanation that this was a call intercepted by the duty officer on the “red light system” makes perfect sense.⁶⁹⁸

4.12.2. Regular combat report

436. Whilst of course it is correct that the Regular combat report of 12th July bears Pandurevic’s block signature,⁶⁹⁹ that was applied at 1710hrs, which was nine and a half hours later. Nobody suggests he was or could have been in Zvornik at that time.⁷⁰⁰ The block-signature of a combat report is no indication that a person is actually in command⁷⁰¹, let alone the presence of that person in the area.

⁶⁸⁹ [REDACTED]

⁶⁹⁰ [REDACTED]; [REDACTED]

⁶⁹¹ [REDACTED]; P00377, ZB duty operations officer notebook, ERN 5732: “Radika requested assistance in manpower to stop the Turks. We are sending Praga. Bring it in from Brezanci.”

⁶⁹² P01103d translation for ENG, P01103d original for BCS, INTERCEPT, 12th July, 7:55

⁶⁹³ [REDACTED]

⁶⁹⁴ P01102d BCS, 7D00694 for ENG, INTERCEPT, 12th July at 7:24

⁶⁹⁵ P01102b BCS (handwritten), P01102a translation for ENG, INTERCEPT 12th JULY 7:40

⁶⁹⁶ [REDACTED]

⁶⁹⁷ [REDACTED]

⁶⁹⁸ [REDACTED]

⁶⁹⁹ P00322, Zvornik Brigade RBI, 12th July 1995

⁷⁰⁰ T.30925-T.30926, 30 January 2009, Vinko PANDUREVIC

⁷⁰¹ See section Part 3 Section 3 Chief of Staff and Deputy Commander under the Brigade Rules.

4.12.3. Other evidence that Pandurevic was not present on 12th July

437. [REDACTED].⁷⁰² [REDACTED].⁷⁰³

(2) To have been in Zvornik on 12th July, Pandurevic would have to have left TG-1 without a commander, at a time when he was about to receive fresh orders – this would have been out of character.

(3) [REDACTED].⁷⁰⁴

(4) Miodrag Dragutinovic stated that he spent every night with Pandurevic from the time they left Zvornik brigade on 4th up to and including 14th July.⁷⁰⁵

(5) In interview, Pandurevic's driver confirms that throughout that period he was with Pandurevic every night.⁷⁰⁶

(6) VWL for Stevic and Pandurevic show that the first time Zvornik is mentioned is 15th July (Han Pijesak-Local-Zvornik). On 12th July the entry reads "Zeleni Jadar – Srebrenica", and the car was used from 0700 – 2300hrs.⁷⁰⁷

(7) Mihajlo Galic said he did not see Pandurevic in the Zvornik area during that period, nor had he heard of his presence at that time.⁷⁰⁸ Mihajlo Galic was the Assistant Chief of Staff for Personnel Affairs who testified that his office was at the Standard barracks on the first floor and that he was in his office the whole time when Pandurevic was away.⁷⁰⁹

(8) [REDACTED].⁷¹⁰

(9) [REDACTED].⁷¹¹

(10) Pandurevic was present at a briefing at Bojna at 0900hrs on 12th July.⁷¹²

(11) There is no entry in the duty operations officer notebook, duty operations officer diary, barracks duty operations officer diary or the war diary suggesting that Pandurevic was at the Zvornik Brigade command on 12th July.⁷¹³ In fact, not one Zvornik Brigade document records Pandurevic being back at command during the period between the fall of Srebrenica and midday on 15th July.

⁷⁰² [REDACTED]

⁷⁰³ [REDACTED]

⁷⁰⁴ [REDACTED]

⁷⁰⁵ T.12689, 13 June 2007, Miodrag DRAGUTINOVIC: "To the best of my knowledge the commander spent the night in the police station in Srebrenica."

⁷⁰⁶ 7D00655 OTP Interview Dragan Stevic, 18 July 2006, (T000-5466-T000-5466); [REDACTED]

⁷⁰⁷ 7D00495, Vehicle work log of VP for Nissan in July 95 – for - first time: re Han Pijesak – Local-Zvornik on 15th

⁷⁰⁸ T.10580, 26 April 2007, Mihajlo GALIC

⁷⁰⁹ T.10520, 25 April 2007, Mihajlo GALIC; [REDACTED]

⁷¹⁰ [REDACTED]

⁷¹¹ [REDACTED]

⁷¹² T.11832-T.11835, 21 May 2007, Mirko TRIVIC

⁷¹³ See P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, P00378, Zvornik Brigade duty operations officer diary, for period 12 February 1995 through 3 January 1996, P00379, Zvornik Brigade Duty Operations Officer Notebook, P00384, Zvornik Brigade – War Diary Book No. 5, 12 May 1995 through 15 October 1995, P00383 barracks duty officer notebook

(12) Vinko Pandurevic stated that he did not attend the Zvornik Brigade command on the morning of 12th July nor did he speak with Obrenovic on that day.⁷¹⁴

4.13. Communications during Krivaja 95

4.13.1. With battle groups

438. Contacts with battle groups during the Krivaja '95 operation were via RUP-2/2K equipment which provided encrypted communications for anyone privy to a particular frequency being used.⁷¹⁵ Twenty two frequencies were available. However, only one was used during Krivaja '95.⁷¹⁶

439. The 10th Sabotage Detachment was not linked to this system. It was equipped with Motorola radio equipment. According to its signalman, the unit '*had some special assignment*'.⁷¹⁷

4.13.2. With the Corps Command

440. Communications with Corps Command was through a radio relay device (RRU1). Using encrypted teleprinters, one could receive and transmit encrypted documents.⁷¹⁸

441. Voice communication with Corps Command was possible at the IKM at Vlasenica.⁷¹⁹ This was an *open line* for voice communications and a *protected* one for encrypted devices.⁷²⁰

4.13.3. With Zvornik Brigade Command

442. In order to contact Brigade Command, Pandurevic was obliged to go to the IKM at Pribicevac *personally* where he could use a phone.⁷²¹ This may sound strange but the two systems described above could not be interfaced⁷²² which was the reason why TG1 were not in contact with the Zvornik Brigade at this time.⁷²³

⁷¹⁴ T.30896, 30 January 2009, Vinko PANDUREVIC

⁷¹⁵ T.29589-T.29591, 11 December 2008, Milenko JEVDJEVIC

⁷¹⁶ T.29583-T.29584, 11 December 2008, Milenko JEVDJEVIC

⁷¹⁷ T.29587, 11 December 2008, Milenko JEVDJEVIC

⁷¹⁸ T.29589-T.29591, 11 December 2008, Milenko JEVDJEVIC

⁷¹⁹ T.29589-T.29591, 11 December 2008, Milenko JEVDJEVIC

⁷²⁰ T.29589-T.29591, 11 December 2008, Milenko JEVDJEVIC

⁷²¹ T.29594, 12 December 2008, Milenko JEVDJEVIC; T.12576, 13 June 2007, Miodrag DRAGUTINOVIC; T.12590, 13 June 2007, Miodrag DRAGUTINOVIC: '*We were together (with Pandurevic) and we did not have an occasion to establish any contact with the brigade.*'

⁷²² T.29594, 12 December 2008, Milenko JEVDJEVIC

⁷²³ T.12576, 13 June 2007, Miodrag DRAGUTINOVIC

443. According to the Zvornik Brigade Duty Officer's Notebook, Pandurevic only contacted the Brigade on two occasions⁷²⁴, namely 5th⁷²⁵ and 7th July.⁷²⁶ It was his practice always to speak to the duty officer,⁷²⁷ which is corroborated by his subsequent calls from the IKM at Krivace.⁷²⁸ Apart from those two calls, he made no contact with the Zvornik Brigade between 4th and 15th July.
444. When Pandurevic was at the command of the Bratunac Brigade on 11th July, he made no contact with the Zvornik brigade as he was still commanding TG1 under the command of Krstic.⁷²⁹ Likewise, Equally, nobody from the Zvornik Brigade tried to contact him during the 4th to 15th July.⁷³⁰
445. From the 4th of July, Pandurevic was away from command headquarters.⁷³¹ A number of witnesses confirm this. [REDACTED].⁷³²

4.14. Command of the Zvornik brigade during Pandurevic's absence

446. It is the defence case that, whatever the position at law,⁷³³ Pandurevic did not in any event have any effective control of the Zvornik Brigade between the 4th and 15th July.

4.14.1. Automatic assumption of command

447. Obrenovic automatically became deputy commander when Pandurevic left the brigade on 4th July.⁷³⁴

⁷²⁴ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95— bears no entry as to that effect; T.30921, 30 January 2009, Vinko PANDUREVIC

⁷²⁵ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, BCS and ENG page 96, ERN 0293-5714, entry on 5th July: VP 'tank grenades 50- pieces, 100 millimeters'. Read together with P378, ZB duty operations officer diary, ERN 6685, BCS page 83, ENG translation in 7D1075, entry at 17:00: commander Pandurevic called, asked for 50x100mm grenades for the tank.

⁷²⁶ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, BCS and ENG page 101, ERN 0293-5719, entry on 7th July 11:10: 'Colonel Pandurevic called, they are well, they work, materials to be taken and handed to the faculty'. Read together with P00378, ZB duty operations officer diary, ERN 0293-6686, BCS page 84, ENG translation also in P378, but in the translation for 7 July 1995 on 7.7.: "11:10: Brigade commander reported from the Zeleni Jadar region. Situation among the units is good." See also T.29597, 12 December 2008, Milenko JEVDJEVIC

⁷²⁷ T.31457, 13 February 2009, Vinko PANDUREVIC

⁷²⁸ P01173, intercept 15 July 1995

⁷²⁹ T.30922, 30 January 2009, Vinko PANDUREVIC

⁷³⁰ T.30922, 30 January 2009, Vinko PANDUREVIC

⁷³¹ [REDACTED] (PW-101)

⁷³² T.10579, 26 April 2007, Mihajlo GALIC; T.10144, 17 April 2007, Lazar RISTIC; See section Part 4 Section 4 Krivaja Operation

⁷³³ See Part 3 Section 3 Chief of Staff and Deputy Commander under Brigade Rules

⁷³⁴ [REDACTED]

4.14.2. Drina Corps Orders executed by Obrenovic

448. The interval between the 4th and the 15th of July was an active period for the Corps and the Zvornik Brigade. Corps command issued a number of orders during the period to the Zvornik Brigade. Unfailingly, these orders were executed by Obrenovic, who issued effective orders of his own without consultation with or deference to Pandurevic. The following is a non-exhaustive list of examples:

(1) On 12th July the Drina Corps issued an order to provide buses for the evacuation from the Srebrenica enclave.⁷³⁵ Obrenovic complied with it without consulting Pandurevic, who was ignorant of the order.⁷³⁶

(2) On 12th July the Drina Corps issued an order to regulate traffic on the Konjevic Polje Bratunac road.⁷³⁷ Pandurevic did not know of the order. Obrenovic made decisions in compliance with this order as a deputy commander.⁷³⁸

(3) The execution of these orders is recorded in the contemporaneous records of the Brigade, specifically the duty officer's logbook.⁷³⁹ The eight buses refer to Obrenovic by title.⁷⁴⁰ Pandurevic was not consulted about the execution of this order.⁷⁴¹ The orders were signed by Obrenovic⁷⁴² Pandurevic had no hand in their execution.⁷⁴³

(4) Through the medium of the regular combat report on the 12th of July, Obrenovic reported the execution of these orders to his superior command.⁷⁴⁴ The appearance of Pandurevic's block signature on the report merely indicates the practice of the incumbent duty officer.⁷⁴⁵ Pandurevic could not have been reporting these matters as he didn't know anything about them.⁷⁴⁶

⁷³⁵ P00110, Drina Corps order No. 22/226 re the provision of buses for evacuation from Srebrenica, 12th July 1995

⁷³⁶ T.30923, 30 January 2009, Vinko PANDUREVIC

⁷³⁷ P157, Drina Corps order No. 22/226 re the provision of buses for evacuation from Srebrenica, 12th July 1995

⁷³⁸ T.30924, 30 January 2009, Vinko PANDUREVIC; [REDACTED]

⁷³⁹ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, 12th July, ERN 5734, BCS and ENG page 116: *'the 4th and 7th battalions, everything all right; measures taken pursuant to order; the 2nd battalion, the 7th and 4th battalions - conscripts are to something lines to the maximum - at least three of them should stand guard'*

⁷⁴⁰ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, ERN 0293 5732, 12th July, BCS and ENG page 114: *'the 1st platoon of the Military Police - ambush at Dzafin Kamen, the 1st platoon of the 4th infantry battalion - tisova Kosa - ambush; chief of staff at the 7th pb; 8 buses from the Drina Trans and two buses from Military police and four trucks are going to Bratunac today'*

⁷⁴¹ T.30926-T.30927, 30 January 2009, Vinko PANDUREVIC

⁷⁴² P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, ERN 0293 5733, 12th July, BCS and ENG page 115

⁷⁴³ T.30928, 30 January 2009, Vinko PANDUREVIC

⁷⁴⁴ P00322, ZB regular combat report, 12 July 1995, para 2

⁷⁴⁵ T.30926, 30 January 2009, Vinko PANDUREVIC; Part 3 Section 3 Chief of Staff and Deputy Commander under Brigade Rules.

⁷⁴⁶ T.30924-T.30925, 30 January 2009, Vinko PANDUREVIC

(5) On 13th July the Drina Corps issued an order for the prevention of passage of Muslim groups to Tuzla and Kladanj.⁷⁴⁷ Again, the order was not delivered to Pandurevic, nor was he informed about it.⁷⁴⁸

(6) The Zvornik Brigade regular combat report on 13 July records and reports that Obrenovic complied with the order: it records that the primary task for the units is “to cut off groups of Turks retreating from Srebrenica towards Tuzla”.⁷⁴⁹

4.14.3. Obrenovic directly subordinated to the Drina Corps Command and not to Pandurevic

449. The above processes demonstrate the operation of the principle of unity of command ; Obrenovic made decisions based on the orders of his superior command and based upon on his own assessment.⁷⁵⁰

450. The most poignant illustration of the true command position during this period occurred on the evening of 14th July, when Obrenovic faced a moment of crisis. Despite the fact that he could easily have asked Jevdjevic to get Pandurevic to call him from the IKM at Krivace, he didn’t even think of contacting or consulting the Brigade commander. Instead he sought his intercession with the Corps commander, and issued his request in an interim combat report to the Corps.⁷⁵¹

4.14.4. Pandurevic issued no orders to the Brigade in this period

451. During the period 4th to 15th July Pandurevic was duty-bound to command only TG1 to the exclusion of any other unit.⁷⁵² He did not resume command of the Zvornik Brigade until it was handed over to him at the briefing of 15th July at Brigade Command.⁷⁵³

452. From 4th to 15th of July, Zvornik Brigade personnel received no orders from Pandurevic on any issue,⁷⁵⁴ nor did any Zvornik Brigade personnel seek his advice or views on any matter.⁷⁵⁵

453. Pandurevic was unaware of any orders issued to the Zvornik Brigade by higher command while he was in Srebrenica and Zepa (from 4th to 15th July). He and his unit had special tasks and there was no need for them to be informed about the situation in the Zvornik Brigade.⁷⁵⁶

⁷⁴⁷ P01032, Drina Corps Command order 03/156-12, 13 July 1995

⁷⁴⁸ T.30929, 30 January 2009, Vinko PANDUREVIC

⁷⁴⁹ P325, ZB regular combat report, 13 July 1995; T.30930, 30 January 2009, Vinko PANDUREVIC

⁷⁵⁰ T.30930, 30 January 2009, Vinko PANDUREVIC

⁷⁵¹ T.31461, 17 February 2009, Vinko PANDUREVIC; P00327, Zvornik Brigade Interim Report No.06-216/2, dated 14 July 1995

⁷⁵² T.12702, 15 June 2007, Miodrag DRAGUTINOVIC;

⁷⁵³ T.31436, 13 February 2009, Vinko PANDUREVIC

⁷⁵⁴ T.10579, 26 April 2007, Mihajlo GALIC

⁷⁵⁵ T.30922, 30 January 2009, Vinko PANDUREVIC

⁷⁵⁶ T.12702, 15 June 2007, Miodrag DRAGUTINOVIC

4.14.5. The command of Zvornik Brigade from 4th to 15th July

454. The position of the chief of staff when the commander is absent is discussed in detail elsewhere in this brief. It has been submitted at length that Obrenovic automatically assumed the command of the Zvornik Brigade when Pandurevic was absent, by reason of the order of appointment issued on 11 April 1993.⁷⁵⁷ Moreover, Pandurevic, as Commander of TG1, was not the Commander of the Zvornik Brigade and had no control over and no communications with the Zvornik Brigade.⁷⁵⁸

455. In addition, a *public announcement* was made to all the troops to the effect that Obrenovic would take over the command from Pandurevic and remain in command until his return.⁷⁵⁹ During that time the Zvornik brigade was under the command and responsibility of Dragan Obrenovic.⁷⁶⁰

5. POTOARI AND THE COLUMN

‘‘There’s no evidence that the Command in Zvornik was involved in that, and at present I have no way of knowing whether the brigade commander -- whether he was or was not involved in that [in the decision-making, the planning, and the actual transport of the group of women, children and elder men from Potocari to free territory under the control of the 2nd Corps of the ABiH]... I have no information on whether or not Colonel Pandurevic, as the commander of the brigade, had any input or opinion, from where his vantage point was down in Srebrenica.’’⁷⁶¹

5.1. Units involved in separation of men and women

5.1.1. Background

456. With the exception of a period of time at the start of 13th July, the separation of men at Potocari occurred throughout the evacuation.⁷⁶² It was justified as a search for war

⁷⁵⁷ Part 3 Section 3 Chief of Staff and Deputy Commander under Brigade Rules

⁷⁵⁸ [REDACTED]; T.12614, 14 June 2007, Miodrag DRAGUTINOVIC,

⁷⁵⁹ [REDACTED]; **7D00725**, OTP interview with Milan Maric, 30 June 2002.

⁷⁶⁰ 7D86, Dragan OBRENOVIC, Statement of facts, 20 May 2003; [REDACTED] (PW-101)); T.11703, 17 May 2007, Ostoja STANISIC; T.20788, 31 January 2008, Richard BUTLER; See Part 3 Section 3 Chief of Staff and Deputy Commander under Brigade Rules

⁷⁶¹ T.20388-T.20389, 24 January 2008, Richard BUTLER

⁷⁶² T.2496-T.2497, 16 October 2006, Robert FRANKEN, T.2752; T.2836; T.2899. 19 October 2006, Vincent EGBERS T. 2300, 28 September 2006, Leendert VAN DUIJN,

criminals on a list held by the VRS.⁷⁶³ Further separations took place at checkpoints on the route to Kladanj.⁷⁶⁴

5.1.2. Units involved

457. A number of units at Potocari took part in the separations ; these included members of the Bratunac Brigade,⁷⁶⁵ Bratunac Brigade Military Police,⁷⁶⁶ (though their precise role is unclear),⁷⁶⁷ MUP,⁷⁶⁸ Special Police Units,⁷⁶⁹ and elements of the Drina Corps Military Police, 10th Sabotage Detachment and 65th Protection Regiment.⁷⁷⁰

5.2. Units involved in busing of population

5.2.1. Involvement of the Dutchbat

458. Karremans suggested an evacuation.⁷⁷¹ Mladic gave instructions to Karremans as to how the evacuation should be carried out.⁷⁷² Franken received orders to cooperate and support the departure and to facilitate it.⁷⁷³ The Dutch helped the civilians board the buses and escorted the convoys.⁷⁷⁴

5.2.2. The Provision of Fuel

459. Fuel for the transport of the people at Potocari came from three sources: the Bratunac Brigade, who from 12 July began disbursing and accounting for fuel ;⁷⁷⁵ DutchBat ;⁷⁷⁶ and the Main Staff and Drina Corps of the VRS.⁷⁷⁷

⁷⁶³ P00686, Butler Revised Narrative Report, Para 5.20

⁷⁶⁴ P00686, Butler Revised Narrative Report, Para 5.24

⁷⁶⁵ P00686, Butler Revised Narrative Report, Para. 5.21

⁷⁶⁶ [REDACTED] (PW-126); T.18018, 21 November 2007, Mile JANJIC

⁷⁶⁷ T.18015-16, 21 November 2007 Mile JANJIC, T.17942-T.17947 , 20 November 2007, Mile JANJIC T.3807-T.3808, 8 November 2006, Mirko JANKOVIC

⁷⁶⁸ T.32986-32987, 22 April 2009, Momir NIKOLIC

⁷⁶⁹ T.17938, 20 November 2007, Mile JANJIC; P2963 Transcript of testimony in Case No. IT-02-60-T, *Prosecutor v. Blagojevic, et al.*, dated 24 and 25 May 2004

⁷⁷⁰ T.32986-32987, 22 april 2009, Momir NIKOLIC

⁷⁷¹ T.19807, 16 January 2009, Richard BUTLER

⁷⁷² T. 2564-T.2565, 17 October 2006, Robert FRANKEN, and P02265

⁷⁷³ T. 2682 ; T.2554; T.2649; T.2679,18 October 2006, Robert FRANKEN, and P453

⁷⁷⁴ T.10811-T.10812 , 2 may 2007, Mendeljev DJURIC

⁷⁷⁵ P00686, Butler Revised Narrative Report para 5.8

⁷⁷⁶ 4D00613, Command of 1st Bratunac Ipbr, Confidential No. 10-723/95, Overview of the amount of fuel, T.27076, 20 October 2008, Dragoslav TRISIC

⁷⁷⁷ T.27153, 21 October 2008, Dragoslav TRISIC

5.2.3. Units involved in Busing

460. Bratunac MPs drove the buses⁷⁷⁸ while the Special Police and Bratunac MPs were escorting the buses.⁷⁷⁹ On 13th July MUP were more involved in the transportation.⁷⁸⁰ Special Police Units were present in Potocari, apparently with a protective role,⁷⁸¹ and to expedite the evacuations.⁷⁸²

5.3. Command of units in Potocari

461. A number of senior VRS and MUP officers were present in Potocari, including Mladic,⁷⁸³ Zivanovic, Krstic,⁷⁸⁴ Popovic, Acimovic,⁷⁸⁵ Kosoric, Borovcanin,⁷⁸⁶ Djuric,⁷⁸⁷ and Vasic⁷⁸⁸ to name but a few. Boering thought an officer called Kosavic or Kozoric was responsible for the evacuations⁷⁸⁹, although he was not invited to identify this person.

462. There is a substantial body of evidence, not least his own plea agreement, which suggests that the central coordinator and supervisor of the operation to separate the men from the women and to bus the population from Potocari was Momir Nikolic.⁷⁹⁰

463. There is some evidence of individuals who claimed to be Drina Wolves,⁷⁹¹ a unit garrisoned in Kozluk, near Zvornik. Even if deemed to be credible that members of a special forces unit should be in Potocari with no obvious role, such men at that time would have been under the command of either General Zivanovic or Krstic.⁷⁹²

5.4. No involvement of Zvornik Brigade in Potocari

464. There is no evidence of the presence or involvement of Pandurevic at Potocari and he specifically denies the same.⁷⁹³ The Zvornik Brigade was not involved in the transfer of

⁷⁷⁸ P02963 Transcript of testimony in Case No. IT-02-60-T, *Prosecutor v. Blagojevic, et al.*, dated 24 and 25 May 2004

⁷⁷⁹ T.17934-T.17935, 20 November 2007, Mile JANJIC; T.27069-T.27070, 20 October 2008, Dragoslav TRISIC,

⁷⁸⁰ [REDACTED] (PW-100); P00686 Butler Revised Narrative Report, para 5.15, 5.23

⁷⁸¹ T.10809, 2 May 2007, Mendeljev DJURIC

⁷⁸² [REDACTED]

⁷⁸³ T.19253, 13 December 2007, Joseph KINGORI

⁷⁸⁴ T.32927-T.32928, 21 April 2009, Momir NIKOLIC

⁷⁸⁵ T. 2492-T.2493, 16 October 2006, Robert FRANKEN T.19276-T.19277, 14 December 2007, Joseph KINGORI,

⁷⁸⁶ P00686 Butler Revised Narrative Report, para 5.16

⁷⁸⁷ T. 2310, 27 September 2006, Peter BOERING T.2277-T.2278, 27 September 2006, Leendert VAN DUIJN

⁷⁸⁸ T.32927-T.32928, 21 April 2009, Momir NIKOLIC

⁷⁸⁹ T.2020, 22 September 2006, Peter BOERING

⁷⁹⁰ **4D00016**, Momir Nikolic – Statement of Facts and Acceptance of responsibility, 6 May 2003, paragraph 6; T.17968, 20 November 2007, T.18016, 21 November 2007, Mile JANJIC; T.3890, 9 November 2006, Mirko JANKOVIC

⁷⁹¹ T.32927-T.32928, 21 april 2009, Momir NIKOLIC; P02048, Srebrenica Trial Video : Drina Wolves members are not present; P01145, Intercept dated 13 July 1995, 18:42

⁷⁹² See Structure of Zvornik Brigade

⁷⁹³ [REDACTED]

the civilian population from Potocari to Klandanj,⁷⁹⁴ although it sent four buses to Potocari and a squad (four to five men) to Konjevic Polje to regulate the traffic.⁷⁹⁵

465. According to Butler, no evidence to suggest that either the Command in Zvornik or the Brigade was involved in the decision-making, the planning or the transport of civilians from Potocari.⁷⁹⁶ The buses were requested through the Secretariat of Defence of the Ministry in Zvornik which is an independent entity from the Zvornik Brigade.⁷⁹⁷
466. -Other than the alleged presence of members of the Drina Wolves, there is no evidence of any elements of the Zvornik Brigade being present at Potocari.⁷⁹⁸

5.5. Involvement of Zvornik Brigade units in ambushes

467. From 12th to 15th July, the Zvornik Infantry Brigade was deployed in their own zone of defence and actively engaged in ambushes and other combat activities against columns of the 28th BH Army Division, which attempted to break through towards the 2nd Corps of the BH Army.
468. The Brigade merely complied with orders from superior command to block the column.⁷⁹⁹
469. [REDACTED].⁸⁰⁰ [REDACTED].⁸⁰¹
470. [REDACTED].⁸⁰² [REDACTED].⁸⁰³
471. On the evening of 13th, the Zvornik Brigade had its first sighting of the 28th Division. [REDACTED].⁸⁰⁴
472. The same evening, Obrenovic took the rest of his military police company and some other forces that he had gathered and went to Snagovo. This inexperienced group arrived at about 2100-2130 hours. They organised an ambush assisted by another company sent by Mane Djuric which arrived sometime after midnight.
473. On 14th July, they were linking up the forces all night, attempting to set up some sort of defence but there was no combat that night.⁸⁰⁵
474. [REDACTED].⁸⁰⁶ [REDACTED] They were attacked precisely at the link-up of military units and a company of civilian police. His forces offered little resistance and

⁷⁹⁴ T3435, 13 February 2009, Vinko PANDUREVIC

⁷⁹⁵ [REDACTED]

⁷⁹⁶ T.20388, 24 January 2008, Richard BUTLER

⁷⁹⁷ T.20391, 24 January 2008, Richard BUTLER

⁷⁹⁸ T. 2892. 20 October 2006, Vincent EGBERS

⁷⁹⁹ P01032, Drina Corps Command Order 03/156-12, 13-Jul-1995; P00325, Zvornik Brigade Daily Combat Report, 13-Jul-1995

⁸⁰⁰ [REDACTED]

⁸⁰¹ [REDACTED]

⁸⁰² [REDACTED]

⁸⁰³ [REDACTED]

⁸⁰⁴ [REDACTED]

⁸⁰⁵ [REDACTED]

were dispersed. The police were pushed back towards Zvornik, and some of the troops were pushed towards the villages in Gornji Snagovo.⁸⁰⁷

475. The order of the Drina Corps Command received by the Command of the Zvornik Infantry Brigade at 1015 hours on 15th July records that the Zvornik Infantry Brigade was fully engaged in “blocking and, if possible, breaking up and capturing Muslim forces.”⁸⁰⁸ According to this order, while waiting for the arrival of TG-1 from Zepa, the Brigade had the task of conducting persistent and decisive defence in order to prevent the linking of Muslim formations by “taking all measures of combat security in order to protect the population and material goods.”⁸⁰⁹

476. Butler noted the coincidence of events: “while the prisoners were being accommodated in the territory of Zvornik municipality, the Zvornik Infantry Brigade participated in fierce clashes with a column of Muslims from the former enclave of Srebrenica. The column, which took the most direct way towards Tuzla, came across ambushes of the Zvornik Brigade in the late afternoon of 14th July 1995 and, by 1st July 1995, the column and the Zvornik Brigade clashed in a relatively fierce battle.”⁸¹⁰

477. On 15th July, fighting broke out again; Obrenovic’s units were blocked but they finally managed to link up with one of their units after pushing back Muslim forces.⁸¹¹

478. At a time when momentous events were afoot in Zvornik, the brigade commander, the operations officer and the commander of the special forces were in Krivace : the deputy commander and the commander of the engineering company were in peril at Snagovo and the Assistant Chief of Staff for Personnel was at the IKM.

6. RETURN TO ZVORNIK ON 15TH JULY

“Q. And just so that we are clear, could Lieutenant-Colonel Pandurevic have returned to Zvornik without an order from General Krstic?”

No.”

(T.29630, 12 December 2008, Milenko JEVDJEVIC)

⁸⁰⁶ [REDACTED]

⁸⁰⁷ P00327, Zvornik Brigade Interim Report No. 06-216/2, 14-Jul-1995; [REDACTED]

⁸⁰⁸ 7D00686 Drina Corps Command, strictly confidential no. 03/157-7 of 15 July 1995;

⁸⁰⁹ 7D00686 Drina Corps Command, strictly confidential no. 03/157-7 of 15 July 1995

⁸¹⁰ P00686 Butler Revised Narrative Report, para 7.66

⁸¹¹ [REDACTED]

6.1. Situation in Zvornik

479. There is no evidence to indicate that, prior to the morning of 15th July, Pandurevic had any idea of the military situation in Zvornik. All the evidence suggests that he had little contact with the Brigade command from 4th July to that morning.⁸¹² [REDACTED].⁸¹³

480. [REDACTED].

6.2. The afternoon of the 14th July

481. Milenko Jevdjovic, the IKM communications officer, testified that Obrenovic called him on the evening of 14th of July and pleaded with him, as a friend, to intercede with Krstic in order to secure the return of Pandurevic and his units to Zvornik.⁸¹⁴ Jevdjovic relayed Obrenovic's concerns to Krstic. Jevdjovic believed that Krstic knew the problems that the Zvornik Brigade was facing, but was reluctant to permit Pandurevic to return, thus jeopardizing the success of Stupcanica 95. Indeed, Krstic did not even inform Pandurevic of the situation in Zvornik.⁸¹⁵

482. The situation neatly illustrates how Krstic, as Corps commander, was concurrently in command of Pandurevic in Zepa and Obrenovic in Zvornik. More to the point, it illustrates poignantly how Pandurevic's fate was wholly dependent, during these critical hours, upon Krstic's orders. In this instance, Krstic's orders dictated that Pandurevic remained in Zepa and remained ignorant of developing events in Zvornik, both in military and criminal terms.

483. As afternoon became evening, Krstic returned to the home of his wife's parents, prior to the receipt at the IKM of reports confirming Obrenovic's assessment of the situation.⁸¹⁶ The timing of the receipt of this information again critically prevented Krstic from reconsidering the situation that night. Moreover, no information was given to Pandurevic that night.

6.3. The Morning of 15th July

484. No further information was received after 0700hrs.⁸¹⁷ As soon as Krstic saw the cables, he summoned Pandurevic. Even so, it was not certain that Krstic would make the order necessary for Pandurevic to return. It was completely within his gift to keep

⁸¹² See section on lack of communications between 4th and 15th July 1995; T.10579-10580, 26 April 2007, Mihajlo GALIC; T.12702-12704, 15 June 2007, Miodrag DRAGUTINOVIC.

⁸¹³ [REDACTED]

⁸¹⁴ T.29614-T.29615, 12 December 2008, Milenko JEVDJEVIC.

⁸¹⁵ T.29616, 12 December 2008, Milenko JEVDJEVIC.

⁸¹⁶ See **P169**, Drina Corps Command Report 03/157-12, 14 July 1995; **P327**, Zvornik Brigade Interim Combat Report 06-216/2, 14 July 1995; **P163**, Drina Corps Command Radio Intercept Detachment Report 13-37/2, 15 July 1995; T.29617-T.29618, 12 December 2008, Milenko JEVDJEVIC.

⁸¹⁷ **P163**, Drina Corps Command Radio Intercept Detachment Report 13-37/2, 15 July 1995.

Pandurevic at Zepa.⁸¹⁸ In the light of Pandurevic's radio communications with the Brigade, that was not impossible. The information which Pandurevic received from Miladin Mijatovic (former commander of the 4th battalion) was to the effect that the situation was not as bad as the earlier reports had suggested. In particular, the Western part of the defence zone (the areas of the 4th, 6th and 7th battalions) was apparently stable.⁸¹⁹ On the same morning, Pandurevic found out that Semso Muminovic was trying to contact him.⁸²⁰

6.4. Krstic's order

485. At 1000hrs, Krstic issued Drina Corps Order 03/157-7. In the introduction it read: *"The Drina Corps Commander has decided to return part of the forces of the 1st Zvornik Infantry Brigade and the Podrinje Special Forces Detachment to their zones of responsibility where they are to take measures to remove and prevent the consequences of a possible attack on Zvornik and the link-up of Muslim units from Srebrenica and Tuzla."* The body of the order read: *"The 1st Zvornik Infantry Brigade, the Ministry of the Interior forces, and the attached units shall take all measures to block and, if possible, break up and capture Muslim forces until the arrival of parts of the Zvornik Infantry Brigade and the POSS."*⁸²¹
486. Twenty minutes earlier, Dragan Jokic, the Zvornik Brigade duty officer on 15th of July, was informed that Pandurevic was returning.⁸²²

6.5. Arrival in Zvornik

487. Pandurevic arrived at the Zvornik Brigade command around noon on 15th of July and went directly to the office of the Chief of Staff, Obrenovic.⁸²³ This account is supported by the accounts in interview of everybody else who was present at the meeting.⁸²⁴ Even Dragan Obrenovic initially corroborated this account.⁸²⁵ [REDACTED].⁸²⁶

⁸¹⁸ T.30947-T.30948, T.30947-T.30948, T.30954, T.30954, 2 February 2009, Vinko PANDUREVIC. T.29630, 12 December 2008, Milenko JEVDJEVIC

⁸¹⁹ **P01173**, Intercept dated 15 July 1995, 08:55 hrs ; **P01174**, Intercept dated 15 July 1995, 09:10 hours; T.30949-T.30952, 2 February 2009, Vinko PANDUREVIC.

⁸²⁰ **P01171**, Intercept dated 15 July 1995, 08:34 hours.

⁸²¹ **7D00686**, Drina Corps Order 03/157-7, 15 July 1995.

⁸²² **P01176**, Intercept dated 09:39 hours, 15 July 1995.

⁸²³ T.30955, 2 February 2009, Vinko PANDUREVIC.

⁸²⁴ **7D00697**, OTP interview with Milos Stupar, 26 June 2002, BCS and ENG page 2 (the document does not have an exhibit status, but the relevant excerpts have been read into the transcript on 18 October 2007 (closed session), at T.16531:17-25 and T.16532:3-6); **7D00699**, OTP interview with Dragomir Vasic, 10 June 2003, pp. 3-4 ENG, p. 1 BCS; **7D693**, Surrogate sheet of the video of an OTP interview with Danilo Zoljic, 9 October 2007 (closed session) (document has MFI status pending the BCS transcript of the interview, but was played in the transcript at 16537:21 on 18 October 2007 (closed session)); **P2893**, OTP interview with Ljubomir Borovcanin, 11-12 March 2002, p. 104 ENG, pp. 95-96 BCS.

⁸²⁵ **7D00079**, OTP interview with Dragan Obrenovic, 2 April 2000, page 0110-3659 (ENG).

⁸²⁶ See section on Balkovica

6.6. The content of the meeting

488. The evidence about the discussion at the meeting is almost entirely harmonious.⁸²⁷

There was no discussion about prisoners of war and Pandurevic explained, in spite of objections from most of those present, that his orders were to stop and destroy the column. In his evidence, he gave as his reasons for doing so the following explanation :
*"I had quite a lot of wartime experience as regards the information on the enemy coming in, and the information I trusted most was the information I obtained personally and convinced myself on the ground that it was true. It would have been irresponsible if the task I had been issued by General Krstic was changed by me in the office without my having gone out on the ground and seen for myself what the situation was. At that point in time I didn't want to accept any other suggestions."*⁸²⁸

489. From the moment Pandurevic stepped into the office of the Chief of Staff, the meeting only lasted 20 minutes.⁸²⁹ There is no evidence of Pandurevic meeting Dragan Jokic at any time on the 15th July.

490. After the meeting, Pandurevic sent Obrenovic to the command of the 4th Battalion in Baljkovica, while Borovcanin went to take his units to the Parlog and Baljkovica area and Pandurevic went to the forward command post at Delici.⁸³⁰

6.7. The route to Delici

491. The Trial Chamber will be aware from its site visit that the route to Delici is ordinarily via Orahovac. However, on the afternoon of 15th July, that route was not available to Pandurevic because of the situation in respect of the column.⁸³¹ Instead, he took the route Jordan – Cer - Kitovnice.⁸³²

7. BALJKOVICA - THE PASSING OF THE COLUMN

⁸²⁷ T.30959-T.30960, 2 February 2009, Vinko PANDUREVIC; [REDACTED]; **P02893**, OTP interview with Ljubomir Borovcanin, 11-12 March 2002, p. 104 ENG, pp. 95-96 BCS; **7D00699**, OTP interview with Dragomir Vasic, 10 June 2003, pp. 3-4 ENG, p. 1 BCS

⁸²⁸ T.30963, 2 February 2009, Vinko PANDUREVIC

⁸²⁹ T.30964, 2 February 2009, Vinko PANDUREVIC

⁸³⁰ T.30964, 2 February 2009, Vinko PANDUREVIC

⁸³¹ **P00377**, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, BCS ERN 0293-5757, p. 139: "The Turks have cut off the road to Crni Vrh, the Chief of Staff reported, 6th Infantry Battalion. IKM reports a column moving from Krizevici towards Motovska Kosa."; **P02231** (page 16) and **P02232** (page 12): intercepted call L-1 is reporting to Igman-1 about the 40 men who should not be sent via Krizevici (next to Orahovac), but rather to send them across Jordan, Kitovnice, and Delici.

⁸³² T.30965, 2 February 2009, Vinko PANDUREVIC. T.30968, 2 February 2009, Vinko PANDUREVIC.

*"It was the first time in the course of the war that I heard two commanders of opposing sides negotiating on very important issues, because at that time everyone was very exclusive, and I was surprised that Major Pandurevic, without consulting his superior command, made the decision to allow the column through, and he allowed them to pass before the barrels of his guns."*⁸³³

*"Saving lives and one's soldiers and that of the enemy's as well are humanitarian reasons... I could have massacred the 28th Division. However, that's not what I did."*⁸³⁴

7.1. Introduction

492. The action of Pandurevic in allowing the column of the 28th Division to pass through Baljkovica en route to safety in Nezuk has, in the submission of the defence, very profound evidential consequences for the Prosecution case. It rebuts the requisite mens rea to commit genocide. It also rebuts any suggestion that he was an active participant in a joint criminal enterprise. We may never know exactly how many lives his action saved, but it seems safe to suggest it was many thousands. The decision was his and his alone.

493. At the commencement of the case, no doubt enforced by the opinions of Mr. Richard Butler, the Prosecution suggested *"By the early morning hours of the 16th, the Zvornik Brigade has lost some 50 people. And that's the moment when Pandurevic re-thinks his decision, and eventually the decision is made to open up an area to allow the rest of the people to go through. That stays open for a couple of days. But it's not done out of humanitarian reasons, but because 50 Serb boys were killed because of Mladic's wonderful scheme to take the Srebrenica enclave"*.⁸³⁵

494. During his evidence, Mr. Butler gave a similar explanation for events, opining that there hasn't been a single incident probably where the VRS and in particular one unit of brigade size suffered 40 losses in less than 24 hours.⁸³⁶

495. Nobody has previously contested Mr. Butler and the Prosecution's theory as to the motivation for Pandurevic's actions. In this case however, those conclusions have been challenged by the man who took the decision. In the submission of the defence, Mr. Butler and the Prosecution have presented an inaccurate and incomplete picture of the factors which bore upon Vinko Pandurevic on 15th and 16th July. The Chamber, now seized of all the evidence cannot, consistent with its duty to apply the appropriate standard of proof, conclude that it was not for good and humanitarian reasons that Pandurevic let the column go.

7.2. Military situation

⁸³³ T.29579, 11 December 2008, Milenko JEVDJEVIC

⁸³⁴ T.31041, 3 February 2009, Vinko PANDUREVIC

⁸³⁵ T.438-T.439, 22 August 2006, Prosecution's opening statement.

⁸³⁶ T.20023-T.20024, 18 January 2008, Richard BUTLER

496. There is no doubt that when Pandurevic returned to Zvornik on 15th July, he was greeted with a situation which was causing those then in command of affairs in and around Zvornik a significant degree of panic. The panic may have had a number of causes. Firstly, the prospect of combat action within the municipality of Zvornik for the first time perhaps in over two years.⁸³⁷ Secondly, the presence of thousands of enemy soldiers in and around the surrounding villages. Thirdly, the rumour inspired by propaganda that Naser Oric was leading the column.⁸³⁸ And last but not least, the response of the VRS and MUP forces who had been tasked to carry out ambushes in the path of the column.⁸³⁹
497. In fact, on the 15th of July, the combat situation was calm. There was little or no combat taking place.⁸⁴⁰ The column was already effectively blocked. It was utterly impotent to break out by itself and the Zvornik Brigade had good and detailed intelligence as to its intentions. The intelligence was being distributed to the appropriate units so that preparations for any possible combat engagement could be made.⁸⁴¹
498. Although the Brigade did lose a few soldiers that day, losses on the Muslim side were far heavier.⁸⁴² The precise whereabouts of the majority of the column had been established - it had crossed the Crni-Vrh - Zvornik road. This enabled Pandurevic to know where to establish blocking units and to secure routes to and from combat positions for which purpose the R battalion was mobilized.⁸⁴³
499. On the early morning of 16th July, the Zvornik Brigade anticipated an attack at about 0400hrs. Its intelligence proved correct. It comprised heavy artillery fire from Nezuk, focused on the defence positions of the Zvornik Brigade. The initial wave lasted 15-20 minutes and thereafter fire was opened at different times. Some of the firing overshot the Serb defence lines and caused losses to the column. The defence lines of the 4th, 6th and 7th battalions were not broken by the attack.⁸⁴⁴

7.3. State of the column

500. Self-evidently, by 16th July, the column of the 28th Division had been walking through the woods for four or five days. There had been many losses en route in fire fights, in mine fields and even to suicides.⁸⁴⁵ The morale of the column was very low and its leadership was divided and fighting within itself.⁸⁴⁶

⁸³⁷ T.30789-T.30793, 28 January 2009, Vinko PANDUREVIC

⁸³⁸ T.30942-T.30943, 30 January 2009, Vinko PANDUREVIC

⁸³⁹ [REDACTED]

⁸⁴⁰ T.30968-T.30969, 2 February 2009, Vinko PANDUREVIC

⁸⁴¹ P00377: Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, T.30969-T.30970, 2 February 2009, Vinko PANDUREVIC

⁸⁴² P00329: Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurevic, dated 15 July 1995

⁸⁴³ 1D00698; Document entitled Mobilisation of non-assigned conscripts, request from the Drina Corps Command signed by Commander Radislav Krstic dated 15 July 1995, T.31004-T.31009, 2 February 2009, Vinko PANDUREVIC

⁸⁴⁴ T.31027-T.31030, 3 February 2009, Vinko PANDUREVIC

⁸⁴⁵ T.26491-T.26492, 1 October 2008, Mico GAVRIC, T.27393, 27 October 2008, Zoran JANKOVIC

⁸⁴⁶ T.27392, 27 October 2008, Zoran JANKOVIC

501. By the time the column found itself blocked behind the Zvornik Brigade lines. There was chaos and mass panic. Attempts to establish radio contact with their own units were being blocked by the Serbs.⁸⁴⁷ Muminovic himself recalls having no contact with the column.⁸⁴⁸
502. The precise numbers within the column are difficult to establish. Even more so, the numbers who were carrying arms. Salihovic, the communications officer interrogated by Dragan Obrenovic said there were 3000 men. [REDACTED]. Zoran Jankovic thought 80% of the men he saw were carrying weapons. Pandurevic observed the column pass through the trenches and placed their number at 5,000 to 6,000.⁸⁴⁹

7.4. Negotiations with Semso Muminovic

7.4.1. 15th July 1995

503. The evidence suggests that Muminovic first tried to establish contact with Pandurevic during the early morning of the 15th July.⁸⁵⁰ The historical context of the radio communications was doubtless relevant, but the more pressing reason for making contact was the capture of Jankovic and his Motorola radio.⁸⁵¹
504. Prior to the return of Pandurevic, there is evidence that Muminovic was in contact with both Obrenovic and Vukotic during 15th July.⁸⁵² There is evidence of a cease fire agreement as early as 13:45 hours on 15th July.⁸⁵³
505. Pandurevic's own evidence is that he spoke to Muminovic five or six times on 15th July. Initially, he was prepared to let the civilians go, but upon learning that Muminovic was only interested in the armed men and did not care for the civilians, Pandurevic responded that he would allow everybody to pass provided they lay down their arms. He invited Muminovic to indicate the point at which they would pass and where the arms would be surrendered.⁸⁵⁴ This conversation (which Pandurevic believed was the 3rd of the day) was tape recorded.⁸⁵⁵ It is highly significant because firstly, it shows that there was no change in Pandurevic's position regarding the passage of people

⁸⁴⁷ T.20848-T.20849, 31 January 2008, Richard BUTLER, [REDACTED]

⁸⁴⁸ **2D00635**, Semso Muminovic, Information Report, 8 June 2001.

⁸⁴⁹ [REDACTED], T.27371, 27 October 2008, Zoran JANKOVIC, T.31075-T.31076, 3 February 2009, Vinko PANDUREVIC, T.10197-T.10198, 18 April 2007. See also T.11705-T.11713, 17 May 2007, Ostojica STANISIC

⁸⁵⁰ P01171; Intercept dated 15 Jul/95, at 08:34 hrs, T.30976-T.30979, 2 February 2009, Vinko PANDUREVIC

⁸⁵¹ T.27369, 27 October 2008, Zoran JANKOVIC

⁸⁵² P02231, Exhibit P-121 in Case No. IT-02-60-T- Tactical intercepts notebook, dates covered are 1 Jul to 24 Nov 95, page 17 BCS P02232, Exhibit P-121 in Case No. IT-02-60-T- Draft English translation covering 11 to 20 July 1995- Tactical intercepts notebook, dates covered are 1 Jul to 24 Nov 95, page 13 ENG, **2D00635**, Semso Muminovic, Information Report, 08 June 2001.

⁸⁵³ P02231, Exhibit P-121 in Case No. IT-02-60-T- Tactical intercepts notebook, dates covered are 1 Jul to 24 Nov 95, page 17 BCS P02232, Exhibit P-121 in Case No. IT-02-60-T- Draft English translation covering 11 to 20 July 1995- Tactical intercepts notebook, dates covered are 1 Jul to 24 Nov 95, page 13 ENG

⁸⁵⁴ T.30976-T.30979, 2 February 2009, Vinko PANDUREVIC

⁸⁵⁵ 7D00656; Video material recorded conversation between Semso Muminovic and Vinko Pandurevic on 15.07.1995

from the 15th to 16th July and, secondly that he was disingenuous in the irregular combat report of 15th July.⁸⁵⁶

506. According to Jankovic, who was close to the command of the 28th Division on the evening of 15th July, an agreement for the passage of the whole column had been concluded by that time, but that it was not carried into effect because of distrust on the part of the command of the ABiH.⁸⁵⁷

7.4.2. 16th July

507. The catalyst for Pandurevic's continued dialogue with Muminovic according to him was his own conscience.⁸⁵⁸ Nonetheless, he continued to strengthen the blockade of the column and the Brigade's defence lines. This matter will be amplified below.

508. [REDACTED]⁸⁵⁹⁸⁶⁰ ⁸⁶¹

509. Once agreement had been reached, Muminovic and Pandurevic were in constant communication throughout the period of the passage of the column. They were monitoring the development of the situation, and they reacted whenever necessary.⁸⁶² This is in marked contrast to Pandurevic's lack of communications with his own superior chain of command.

7.5. The forces at Pandurevic's disposal

510. The Zvornik Brigade was an extraordinarily large unit, numbering 5,500 to 6,000 men.⁸⁶³ It was well equipped⁸⁶⁴ and its front line had not been breached in four years. It could be commanded from both its command and forward command posts. On 16th July, the whole Brigade was at Pandurevic's disposal.⁸⁶⁵

511. It is of course correct that a tactical force had taken part in Krivaja-95, but by mid day on the 15th of July, all those units had returned to the Brigade and were fully deployed during the course of the afternoon.⁸⁶⁶

512. In addition to the brigade units Pandurevic had the following forces available:

- The Podrinje detachment of the special forces was in the area west of the command post of the 4th Battalion.

⁸⁵⁶ P00329: Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurevic, dated 15 July 1995

⁸⁵⁷ T.27391, 27 October 2008, Zoran JANKOVIC

⁸⁵⁸ P02231, Exhibit P-121 in Case No. IT-02-60-T- Tactical intercepts notebook, dates covered are 1 Jul to 24 Nov 95, page 18, T.30980-T.30981, 2 February 2009, Vinko PANDUREVIC

⁸⁵⁹ [REDACTED]⁸⁶⁰ [REDACTED]

⁸⁶⁰ [REDACTED]

⁸⁶¹ T.31031-T.31032, 3 February 2009, Vinko PANDUREVIC

⁸⁶² T.31042, 3 February 2009, Vinko PANDUREVIC

⁸⁶³ P00382: Zvornik Brigade Report 05/283-03, 20 July 1995

⁸⁶⁴ T.31026-T.31027, 3 February 2009, Vinko PANDUREVIC

⁸⁶⁵ T.31025, 3 February 2009, Vinko PANDUREVIC

⁸⁶⁶ T.30971-T.30972, 2 February 2009, Vinko PANDUREVIC

- A company of the military police which was deployed at the command post of the 4th Battalion on the east side.
- Two military police regiments of the East Bosnian Corps where the 4th and the 6th Battalions linked up.
- A Bratunac Brigade company on the south-west position vis-a-vis the battalion command post.
- An intervention platoon from the 2nd Infantry Battalion was also close nearby.
- On the 13th and the 14th July, two companies were established by Dragan Obrenovic in the area of Crni Vrh : One company was commanded by Major Jovanovic and the other one was commanded by Milan Maric.
- A MUP detachment from Doboj.
- On the Parlog-Baljkovica road were joint forces of the MUP commanded by Ljubisa Borovcanin including a detachment of the special police from Sekovici and PJP Company from Zvornik.
- A tank company of the Zvornik Brigade which, for the most part, was deployed along the road Crni Vrh-Memici and also on the Orahovac-Parlog-Baljkovica axis.⁸⁶⁷

513. In total, Pandurevic had 2,000 troops under his direct command.⁸⁶⁸ He could command from the IKM and he had effective communication systems with all units. He had a clear strategy to block the column, await further reinforcements and then to destroy it. Concurrently, he would resist any attack from the front. His forces were deployed accordingly.⁸⁶⁹ It is plain that, had he wanted to, he could have cleared a safe area from the encirclement of the 28th Division and massacred the column with his available artillery.⁸⁷⁰ To his credit that is not an option he took.⁸⁷¹ The Muslim forces were at all time concerned that the Serbs held the uphill positions.⁸⁷²

7.6. Prosecution case theory

7.6.1. Serb losses

514. The number of Serb dead mentioned both by the Prosecution Counsel in his opening statement and by Richard Butler in his evidence, has never been justified in evidence. Indeed, the Prosecution made no attempt to establish the number of dead on either side

⁸⁶⁷ T.31022-T.31024, 3 February 2009, Vinko PANDUREVIC

⁸⁶⁸ T.31024-T.31025, 3 February 2009, Vinko PANDUREVIC

⁸⁶⁹ T.31026, 3 February 2009, Vinko PANDUREVIC, 7D01116; surrogate sheet; Map, Baljkovica -95

⁸⁷⁰ [REDACTED], T.10160-T.10161, 17 April 2007, Lazar RISTIC, T.31026-T.31027, 3 February 2009, Vinko PANDUREVIC

⁸⁷¹ T.31041, 3 February 2009, Vinko PANDUREVIC, T.15115, 10 September 2007, Nedeljko TRKULJA, T.27392, 27 October 2008, Zoran JANKOVIC

⁸⁷² 2D00635, : Semso Muminovic, Information Report, 08 June 2001.

during the combat at Baljkovica. The correct and accurate figures always have been readily ascertainable. They are apparent from various documents retained in the records of the Zvornik Brigade.

515. The irregular combat report for 16th July⁸⁷³ mentions only about ten dead. Admittedly, the position so soon after combat has ended is not entirely clear. However, all subsequent records appear to agree that the number of dead is twenty two or twenty three. The irregular combat report of 18th July lists twenty seven dead.⁸⁷⁴ However, five of these had already been listed as dead on the 11th July.⁸⁷⁵ 7D421⁸⁷⁶, a list of dead members of the Zvornik Brigade, suggests that twenty three men died in Baljkovica on 16th July.
516. No evidence has been adduced to suggest that any MUP soldier died on 16th July. The evidence moreover suggests that only one soldier remained missing from that day.⁸⁷⁷ Mr. Butler's suggestion that this was the worst day in VRS history is palpably incorrect. Even within the history of the Zvornik Brigade, the massacre at Glodjansko brdo represented a graver episode in its history.⁸⁷⁸
517. Records suggest that the number of seriously injured was no more than twenty four.⁸⁷⁹ The defence does not deny that there was serious combat action on the morning of 16th July, but the consequences of it have been exaggerated by the Prosecution.

7.6.2. Self propelled guns

518. During the combat, a number of self propelled guns (probably two) were seized by members of the column. It was suggested that these weapons were used against the Zvornik Brigade and that the capture of them was a motivation for Pandurevic to let the column go. However, a closer examination of the evidence suggests that this was not an episode of real significance.
519. Firstly, the guns were only in the possession of the Muslim forces for a very short period of time.⁸⁸⁰ Secondly, the guns could not be moved and were trained on ABiH positions in Nezuk.⁸⁸¹ Thirdly, the guns were promptly destroyed.⁸⁸²

7.6.3. The 4th battalion command post

⁸⁷³ P00330; Zvornik Brigade Interim Combat report 06-218, 16 July 1995

⁸⁷⁴ P00334; Zvornik Brigade Interim Combat Report, 18.07.1995

⁸⁷⁵ P00321; Zvornik Brigade Daily Combat Report, 11.07.1995

⁸⁷⁶ 7D00421; Marked document titled – List of dead members of Zvornik Brigade

⁸⁷⁷ P02089; Document entitled Information on Missing soldiers, 15 Maart 2000

⁸⁷⁸ 7D00443, ZB Command, Reports of Boskovici combats, 4-aug-1993; 7D00421, List of dead soldiers in the Zvornik Brigade.

⁸⁷⁹ P00334, Zvornik Brigade Daily Combat Report 06/232, dated 25 July 1995

⁸⁸⁰ 7D00726: OTP witness statement of witness Vejiz Sabic, dated 8, 9 April and 16 May 2002, T.16568-[REDACTED]

⁸⁸¹ 7D00726, OTP witness statement of witness Vejiz Sabic, dated 8, 9 April and 16 May 2002; T.31030, 3 February 2009, Vinko PANDUREVIC

⁸⁸² 7D00726, OTP witness statement of witness Vejiz Sabic, dated 8, 9 April and 16 May 2002; T.16568-[REDACTED], T.31030, 3 February 2009, Vinko PANDUREVIC

520. The Prosecution suggest that destruction of the command post of the 4th battalion was another episode which compelled Pandurevic to reconsider his position. However, the suggestion misunderstands the evidence as to how that came about.
521. Following the interrogation of Salihovic by Obrenovic, Pandurevic had decided to let the column go⁸⁸³ but to safeguard his position he ordered Obrenovic to withdraw from the immediate vicinity of the 4th battalion command post.⁸⁸⁴ The effect of that was to remove Obrenovic's unit from the anticipated path of the column towards Baljkovica, but also to create a safe area upon which Pandurevic could fire artillery if the ABiH seriously breached the agreement.⁸⁸⁵ Accordingly, the 4th battalion command post was not overrun in the true sense of the word, rather it was abandoned to allow the column to pass through that area. Additionally, doubtless owing to the communication difficulties between Muminovic and the column, the cease fire was not immediately respected.⁸⁸⁶

7.7. Pandurevic's decision

522. Pandurevic has explained in evidence that his decision to let all members of the column pass to Nezuk had been made in principle on 15th July. That would seem to accord both with the text of his conversation with Semso Muminovic⁸⁸⁷ and the only evidence we have heard from a witness close to the command of the column.⁸⁸⁸ It would also explain why he was less than straightforward with his Corps command in describing his negotiation with the other side on 15th July⁸⁸⁹, and also why he was completely disingenuous in his description of events in his irregular combat report on 16th July.⁸⁹⁰
523. There can be no doubt that amongst his other emotions, by 15th July Pandurevic was both tired from extensive combat and disillusioned with the decisions of his superior command which he discerned as erroneous and dangerous. Nonetheless, the suggestion that he entered the agreement to let the column go through cowardice or compulsion is simply not made out.
524. Inevitably, as he told the Trial Chamber, further combat at Baljkovica would have led to massive loss of life on both sides. To elect not to take that course, was necessarily humanitarian in nature. It is illogical to say that Serbs would have died too. The fact of the matter is that his action saved the lives of hundreds, even thousands of Muslims in the column.
525. He took that decision on his own. It was contrary to his orders. He set up the decision in writing on 15th July. He justified that decision in writing on 16th July and again, on 18th July. In between times, he did his best to avoid or at least delay discovery of what he had done by his superior command.

⁸⁸³ T.31031, 3 February 2009, Vinko PANDUREVIC

⁸⁸⁴ T31032, 3 February 2009, Vinko PANDUREVIC, [REDACTED]

⁸⁸⁵ T.31033, 3 February 2009, Vinko PANDUREVIC

⁸⁸⁶ [REDACTED]

⁸⁸⁷ 7D00656, Surrogate sheet – recorded conversation between Semso Muminovic and Vinko Pandurevic, 15-Jul-1995

⁸⁸⁸ T.27391, 27 October 2008, Zoran JANKOVIC

⁸⁸⁹ P00329, Zvornik Brigade Daily Interim Combat Report No. 06-217-1, dated 15 July 1995

⁸⁹⁰ P00330, Zvornik Brigade Interim Combat report 06-218, 16-jul-1995

526. Paragraph 3 of the report of the 16th of July reads as follow:

"I have decided in view of the situation to open a corridor along the line of the three lost trenches for the civilian population, about 5,000 of them.

"I have agreed on a method of evacuation with the enemy side and this is now going forward. I have requested the release of a captured policeman and my own missing soldiers. This procedure is in progress and I think I will succeed. It is likely that a certain number of soldiers got out among the civilians, but all who passed passed through unarmed".

527. Self-evidently this does not reflect accurately or at all the agreement or the process being undertaken.⁸⁹¹ [REDACTED].⁸⁹² Given his reputation within the Corps command, and the army generally, his lack of frankness on these matters can only be an indication that his justification in this document for letting the column go itself has no basis.

528. Pandurevic was able to talk to Krstic directly on 16th July⁸⁹³ and yet he sought no approval nor advice before reaching the agreement to let the column go. After he had made the decision and the corridor was open, he did his best to avoid any contact with the Corps and Main Staff.⁸⁹⁴

529. Pandurevic's actions throughout the period of 15th to 25th July are equally consistent with his behaving in a humanitarian fashion. He did not use artillery on the column although he could have done that.⁸⁹⁵

530. He issued instructions that trapped Muslim forces were to be permitted to leave on 18th July notwithstanding the closure of the corridor.⁸⁹⁶

531. He personally ensured that a group of Muslim boys were escorted to safety on 18th July and that Semso Muminovic confirmed their safe arrival.⁸⁹⁷

532. He employed men with megaphones to call out to members of the column directing them through the corridor.⁸⁹⁸

533. The defence also submits that it is highly relevant in any debate about Pandurevic's motives in respect of the column to consider his behaviour previously in accommodations with Semso Muminovic and other commanders at Ustiprca and Kamenica. Against all that background and the surrounding facts, it is the defence submission that the Trial Chamber should find that the following statement from his evidence is nothing other than genuine:

⁸⁹¹ T.31050-T.31062, 3 February 2009, Vinko PANDUREVIC

⁸⁹² [REDACTED]

⁸⁹³ See for example P01183; Intercept dated 16 Jul/95, 07:06 hrs, from notebook 232

⁸⁹⁴ P01192; Intercept dated 16 July 1995, 15:29 hours, T.31045-T.31046, 3 February 2009, Vinko PANDUREVIC, P01194; Intercept dated 16 July 1995, 16:02 hours, T.31047-T.31048, 3 February 2009, Vinko PANDUREVIC, P01195; Intercept dated 16 July 1995, 16:15 hours, T.31048-T.31049, 3 February 2009, Vinko PANDUREVIC

⁸⁹⁵ T.31033-T.31034, 3 February 2009, Vinko PANDUREVIC

⁸⁹⁶ T.31097-T.31098, 9 February 2009, Vinko PANDUREVIC, T.10162, 17 April 2007, Lazar RISTIC

⁸⁹⁷ T.31097-T.31098, 9 February 2009, Vinko PANDUREVIC

T.10162, 17 April 2007, Lazar RISTIC

⁸⁹⁸ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, BCS and ENG page 151, T.31089, 2 February 2009, Vinko PANDUREVIC

*"Saving lives and one's soldiers and that of the enemy's as well are humanitarian reasons. My task was to repel the breakthrough by the 28th Division. I wasn't able to do that, but I could have massacred the 28th Division. I could have pulled out my men from Baljkovica, let the 28th Division concentrate in the area, allow elements of the 2nd Corps to link up with them, and in the area of one square kilometre, cover 5,000 men with artillery fire and each shell would hit the target; and, therefore, I would have fulfilled my task completely. However, that's not what I did"*⁸⁹⁹

8. THE KILLING OPERATION – PARALLEL EVENTS IN BRATUNAC AND ZVORNIK

*"I went into a room where I was met by Colonel Beara, and he delivered a brief speech, a monologue which went like this: "We have a lot of prisoners and it is very hard for us to control them. They are at various locations in the Zvornik municipality. We have to get rid of them. I expect assistance from the municipality." He then said that he was in command of the barracks and that I should obey his orders."*⁹⁰⁰

8.1. Decision to Kill POWs

534. The prosecution has advanced a case in which the decision to commit mass murder of the able bodied men of Srebrenica was taken on 12th July when information was first received that the forces of the 28th Division had broken out en masse towards Tuzla.⁹⁰¹ There is of course no direct evidence of the taking of any such decision, nor even its announcement to those who were to carry it out. This is in contrast with the more explicit evidence relating to the events leading to the movement of the prisoners from Bratunac to Zvornik on 13th and 14th.

535. When, where and in whose presence such a decision was taken is virtually a matter of surmise, and is critical to imputing knowledge of the plan to individual accused, Pandurevic in particular. Pandurevic's movements throughout the relevant period have been carefully detailed elsewhere.⁹⁰² In the defence submission, there is no direct evidence of his participation in the taking of any such decision, nor knowing prior to the 15th July of any such decision. To the contrary, the evidence shows that the crucial decisions to transport and murder the prisoners were taken in the absence of Pandurevic and without consulting him. The bland assertion made in opening that he was on 13th July *contactable*⁹⁰³ was not advanced at all during the trial, and no inference could properly be drawn to the effect that he was informed of the decision to take the prisoners to Zvornik for execution.

⁸⁹⁹ T.31041, 3 February 2009, Vinko PANDUREVIC

⁹⁰⁰ [REDACTED] (PW-104)

⁹⁰¹ T.33763, 30 June 2009, Svetozar KOSORIC, T.427, 21 August 2006, Prosecution Opening Statement

⁹⁰² See sections 'Pandurevic's movements 4th – 11th July' and 'Pandurevic's movements 11th – 15th July'

⁹⁰³ T.434-T.435, 21 August 2006, Prosecution Opening Statement

536. The absence of direct evidence of a decision being taken or announced on 12th is stark, and the theory does not sit well with much of the direct evidence. Abuses of muslim prisoners was already taking place on the night of 11th. The following morning Momir Nikolic claims to have discussed with Blagojevic the operation to transport the women and children to Kladanj and separate, detain and kill the able bodied Muslim men in Potocari. It was apparent that Blagojevic was fully informed of the transportation and killing operation and expected that Nikolic would continue to carry out the duties related to those operations that he had begun that morning.⁹⁰⁴
537. Momir Nikolic had a conversation outside the Hotel Fontana on the morning of 12th July with Lieutenant-Colonel Popovic and Lieutenant Colonel Kosoric, during which conversation he was told about the intention to separate the able-bodied Muslim men and to execute them. He didn't talk to any other participant in the operation of the transportation of people from Potocari.⁹⁰⁵ He was told that it was his responsibility to help coordinate and organize the operation. Kosoric reiterated this information and they discussed the appropriate locations to detain the Muslim men prior to their execution. Nikolic identified several specific areas : the Old Elementary School "Duro Pucar Sari, and the Hangar. Popovic and Kosoric talked with Nikolic about sites of executions of temporally detained Muslim men in Bratunac and they discussed two locations which were outside Bratunac town. These were : State company 'Ciglane' and a mine called 'Sase in Sase'.⁹⁰⁶
538. If Momir Nikolic's account is to be believed, it must be highly doubtful that any decision to kill the able-bodied muslim men was predicated by the breakout of the column. During the 12th July Hotel Fontana meeting, Mladic did not refer to it. Nikolic's alleged conversations with Popovic, Kosoric and Blagojevic took place immediately after that meeting at a time when Nikolic himself was not aware of the intelligence reports which did not start coming through until later that day and on 13th July.⁹⁰⁷
539. The only direct evidence of the existence of a plan to kill the able-bodied muslim men on 12th July comes from Momir Nikolic. He is a witness with serious credibility problems. So much so, that the prosecution abandoned him as being incapable of belief.⁹⁰⁸ Had the chamber not elected to call him, there would not be any direct evidence of the existence of a plan on 12th. Whether there was a plan to murder as early as the morning of the 12th must be seriously open to doubt, and certainly, in the defence submission, it cannot have extended to the members of the column. At that time, the VRS command did not even know of the existence of the column. They had no idea whether there was one or more than one column, where it or they were headed and how big it or they were. They had no reasonable expectation that they would capture anybody.
540. Whilst the provision of buses for transport of the evacuees from Potocari had been well-organised,⁹⁰⁹ no real thought had apparently been given to detention or execution

⁹⁰⁴ 4D00016, Statement of Facts and Acceptance of Responsibility, by Momir Nikolic, 6 May 2003, page 3

⁹⁰⁵ T.32904-T.32906, 21 April 2009, Momir NIKOLIC

4D00016: Statement of Facts and Acceptance of Responsibility, by Momir Nikolic, 6 May 2003, page 2

⁹⁰⁶ 4D00016, Statement of Facts and Acceptance of Responsibility, by Momir Nikolic, 6 May 2003, page 2

T.32917-T.32922, Momir NIKOLIC, 21 April 2009

⁹⁰⁷ 4D00016, Statement of Facts and Acceptance of Responsibility, by Momir Nikolic, 6 May 2003, page 3

⁹⁰⁸ T.17398, 2 November 2007, Prosecution Counsel

⁹⁰⁹ P00156; Document of Drina Corps No. 21/6-686 to the VRS Main Staff, Command Post and Rear Command Post (for information), signed by Maj. Gen Milenko ZIVANOVIC, Commander, dated 12 July 1995

sites. Certainly nothing was done to requisition or mobilize property and equipment suitable for such purposes. Moreover, Trivic whose account of a 12th July meeting is so heavily relied upon by the prosecution, is clear that nothing of the sort was discussed by the commanders that night.⁹¹⁰ Even by 1110hrs on 13th July, senior VRS officers were still communicating about the prisoners being taken to Batkovici, suggesting that they believed the plan was to exchange rather than murder the men.⁹¹¹

541. Self-evidently the separated men were not executed on 12th which does indicate that the plan had not crystallized on that day. Had there been any such plan, the action of taking them to the town of Bratunac to be detained on the buses and/or in temporary detention sites is inexplicable. They could simply have been taken away and killed that day. In fact the executions did not start until 13th, and then scarcely in a manner that indicated an organized plan.
542. About 10-15 minutes after the meeting in the BB HQ, Momir Nikolic spoke to Blagojevic in his office, he was tasked to continue to Potocari operation to transport the Muslim women and children to Kladanj and separate and detain the able bodied Muslim men.
543. On the evening of the 13th of July, Momir Nikolic was having dinner at the BB headquarters, when he received a call from a communications room to report directly to Colonel Beara in the centre of Bratunac. He travelled to the centre and met with Colonel Beara around 20:30 hours.⁹¹²

8.2. Events in Bratunac

8.2.1. Prisoners in the town

544. Thousands of Bosnian Muslim men arrived in Bratunac town during 12th and 13th July and were detained there for between one and three days. They were put in temporary detention in facilities, such as in and around the Vuk Karadžić School, in the Bratunac town football stadium, as well as in buses parked along the streets in Bratunac town. The security situation in the town was tense and chaotic.⁹¹³ For the inhabitants of the town, as well as those in positions of civil authority, it was bad news, a time bomb.⁹¹⁴

P00014; RS MOD document, Request 02-21-3638/95 for mobilization of buses, signed by Momcilo KOVACEVIC, dated 12 July 1995.

P02900; Order from RS MOD No. 02-78/95 to the MOD department in Zvornik, Milici, Vlasenica, Sekovici and Bratunac, dated 12 July 1995

P00110; Drina Corps Order re. the provision of buses for evacuation from the Srebrenica enclave, signed by ZIVANOVIC, dated 12 July 1995

⁹¹⁰ T.11981, 23 May 2007, Mirko TRIVIC

⁹¹¹ See P1134, intercepted telecommunication involving Colonel Rajko Krsmanovic at 11.10 on 13 July 1995

⁹¹² T.32903, 21 April 2009, Momir NIKOLIC

⁹¹³ [REDACTED] (PW-162), T.433, 21 August 2006, Prosecution Opening Statement, Decision on Prosecution motion for judicial notice of adjudicated facts, 21 September 2006, page 28, Adjudicated Fact No 204

⁹¹⁴ T.27220-T.27221, 22 October 2008, Ljubisav SIMIC

545. The buses began to arrive in town in the evening of the 12th of July, buses full of men were parked in the street including in front of the municipal building. The policemen guarding the buses on the 12th of July said the men were going to be taken to Batkovic for exchange.⁹¹⁵
546. On the morning of the 13th, colonel Beara spoke to Zlatan Celanovic, Bratunac Brigade Lawyer/Clerkin the street in Bratunac town about the numbers of prisoners detained in Bratunac. He indicated that the prisoners would be going to Kladanj the following day.⁹¹⁶

8.2.2. The massacre in Kravica

547. The Kravica warehouse lies a short distance outside the town of Bratunac on the road to Konjevic Polje. Any inspection of the building reveals a great deal about the manner in which the prisoners met their deaths. The defence for Pandurevic reserves the right to adopt the submissions of others in relation to any alleged catalyst of events at Kravica.
548. All the available evidence points to the fact that the killings took place in the afternoon to the evening) on 13th July⁹¹⁷. Obviously by reason of its location, close to the road, between Bratunac and Konjevic Polje, it was observed by a number of people and within a short period of time the event was known to a number of people.⁹¹⁸

8.3. Decision to move the prisoners

549. On 11 July 1995, Deronjic was appointed commissioner for Srebrenica.⁹¹⁹ On 13th July Deronjic asked President Karadzic to ask through the media to send any free trucks or buses to Bratunac.⁹²⁰ Later that evening he met Ljubisa Beara.⁹²¹ Beara had indicated that he was there to kill all of the Muslims that were being warehoused in schools and in buses. Significantly, other than the evidence of Momir Nikolic, this is chronologically the earliest mention of the plan to kill prisoners.

⁹¹⁵ [REDACTED] (PW-162)

⁹¹⁶ T.6638-T.6640, 31 January 2007, Zlatan CELANOVIC

⁹¹⁷ [REDACTED] (PW-161), T.13477-T.13479, 28 June 2007, Predrag CELIC, T.19898, 17 January 2008, Richard BUTLER, P0686, Srebrenica Narrative report, page 55; T.433, 21 August 2006, Prosecution Opening Statement; T.13562-T.13568, 09 July 2007, Milenko PEPIC, T.24214, 28 July 2008, Miladin JOVANOVIĆ; [REDACTED] (PW-162)

⁹¹⁸ [REDACTED] (PW-161), T.13562-T.13568, 09 July 2007, Milenko PEPIC; [REDACTED] (PW-170); 4D00016, Statement of Facts and Acceptance of Responsibility, by Momir Nikolic, 6 May 2003, page 6; T.13481-T.13482, 28 June 2007, Predrag CELIC; T.27198, 22 October 2008, Ljubisav SIMIC; T.27206-T.27207, 22 October 2008, Ljubisav SIMIC; T.27440, 28 October 2008, Dragan NESKOVIC; [REDACTED] (PW-162)

⁹¹⁹ ID00690; Decision on the appointment of the Civilian Commissioner for the Serbian Municipality of Srebrenica signed by President of Republic Radovan Karadzic dated 11 July 1995

⁹²⁰ [REDACTED]

⁹²¹ [REDACTED]

550. Deronjic was adamant that the executions should not take place in Bratunac. He used his influence and friendship with Karadzic to obtain an order from him countermanning Beara's orders to kill the prisoners in situ.⁹²²
551. Karadzic told Deronjic that all prisoners of war should be transported out of Bratunac. He said that a man would come, giving him full instructions, 'the goods should be in the warehouse'.⁹²³ Deronjic understood this to mean a military prison. Karadzic had told Deronjic that he was going to inform General Mladic to do it that way. That evening, Beara arrived at Deronjic's office.⁹²⁴
552. Beara, Dragomir Vasic, Momir Nikolic and Deronjic met in the SDS office in Bratunac. Momir Nikolic sat in another room where the secretary was, because the man superior to him was Beara. Deronjic was concerned that the prisoners in the town created a security risk and did not want the killing of these prisoners to be carried out in and around Bratunac. The killing operation was openly discussed. Deronjic and Beara were involved in a discussion. He said that he wanted the prisoners out of Bratunac and he invoked the decision issued by President Karadzic, saying that he had received instruction from the President how to deal with the prisoners who were present in Bratunac. Colonel Beara invoked the instructions he received from his boss, and he claimed he had totally different instructions.⁹²⁵
553. Momir Nikolic received a call from the communication room to report directly to Colonel Beara in the centre of Bratunac. He met Beara there at about 2030hrs. Beara ordered Nikolic to travel to the Zvornik Brigade and inform Drago Nikolic that thousands of Muslim prisoners were being held in Bratunac and would be sent to Zvornik that evening. Beara also told Nikolic that the Muslim prisoners should be detained in the Zvornik area and executed.
554. Where the truth lies between Momir Nikolic and Dragan Obrenovic we may never know. They both struck highly questionable plea agreements at about the same time. Nikolic's account that he travelled to Zvornik after the meeting with Beara and Deronjic, personally to inform Drago Nikolic about the prisoners, seems unlikely for a number of reasons. Firstly, time was of the essence. By the time he got to the IKM to speak to Drago Nikolic, the first prisoners would have been on their way,⁹²⁶ and Drago would simply not have had the opportunity to carry out the many journeys recorded in his driver's vehicle work log for the day.⁹²⁷ The following morning Momir Nikolic was responsible for organizing the military police escort for the prisoners.⁹²⁸ It seems likely that he would have had the same responsibility in relation to convoys which left on the evening of the 13th. The prisoners in Bratunac town, moreover were a serious security worry for him. It wouldn't make a lot of sense for him to leave town without informing his commander.
555. [REDACTED]. This is not corroborated by any contemporaneous document or intercept (as we have seen in this case communications through the Zvornik Brigade

⁹²² [REDACTED]

⁹²³ [REDACTED]

⁹²⁴ [REDACTED] (PW-142)

⁹²⁵ 4D00016 Statement of Facts and Acceptance of Responsibility, by Momir Nikolic, 6 May 2003., page 7; T.32937-T.32945, 21 April 2009, Momir NIKOLIC

⁹²⁶ P00686; Srebrenica Military Narrative – Operation 'Krivaja=95', 15 May 2000, page 2

⁹²⁷ P00904; Vehicle logbook for Opel Rekord P-4528

⁹²⁸ T.17931-T.17932, 20 November 2007, Mile JANJIC

switchboard to the IKM were especially porous) but is not incredible. There is one further possibility, and that is that there was no middle man at all. The Zvornik Brigade Duty Officer's Notebook for the evening of 13th July records the passing on of a message by Colonel Beara.⁹²⁹ It is not possible to say whether he appeared in person or was leaving a message by phone or radio. Either way, it would have been straightforward to speak to Drago Nikolic.

556. It seems impossible to avoid the conclusion that Drago Nikolic received the message. His vehicle work log and subsequent events would seem to bear that out. However it reached him, the timeline of events suggest that a decision taken by the President of the Republic was conveyed through the President of the Municipality in Srebrenica to the Main Staff Chief of Security. He then gave orders to Drago Nikolic, the Zvornik Brigade Chief of Security either directly or through one of his professional subordinates. There is no evidence that the regular command of the VRS at Corps or brigade level was informed of this at the time. Momir Nikolic only deigned to mention it to his commander the following day, when the whole plan was *fait accompli*. There must be a serious doubt that Drago Nikolic would have told Obrenovic at all had he not needed to be relieved as Duty Officer at the IKM.

557. The instructions to Drago Nikolic are highly significant. For a start they were given to Drago Nikolic and not to Obrenovic himself. Given the imminent arrival of thousands of prisoners, it is a stark fact that only one man within the Zvornik Brigade was to be informed. The fact that Obrenovic was contacted by Drago Nikolic was little more than an accident. Beara can have had no idea that he was acting as duty officer at the IKM. There is no evidence that Drago Nikolic was instructed to inform his commander, or to arrange the engagement of the brigade's logistics or engineering units. All that he asked for in fact was a handful of military policemen. Whilst they might have been useful in investigating sites around Zvornik for the detention of prisoners, their ability significantly to effect their actual detention, execution and burial was negligible. The plain inference is that Bear believed he could execute the whole plan without engaging the Zvornik brigade command at all. Whether he is in truth "an empty vessel", he was plainly comfortable making direct requests to the brigade for logistical assistance, as well as giving instructions to municipal leaders, even if he had to invoke the authority of his political masters.⁹³⁰

558. [REDACTED]. There is no evidence that Pandurevic acquiesced in the plan to transport the prisoners to Zvornik for execution. Indeed to the contrary, he denies any such allegation. More to the point, the available evidence suggests that no such information was, or could have been, in fact conveyed to Drago Nikolic. Indeed, if the Chamber accepts the evidence of Momir Nikolic to the effect that he was the messenger, palpably he did not tell him any such thing. There are a range of possibilities : either somebody gave false information to Drago Nikolic, or he lied to Obrenovic, or Obrenovic, for his own reasons, embellished the message. In any event, it is far too remote and tenuous a piece of evidence to conclude that Pandurevic knew on 13th July of the killing operation.

559. On 14th July Momir Nikolic returned to the Bratunac Brigade headquarters where he informed Blagojevic of his trip to Zvornik and the instructions he received from Beara

⁹²⁹ P00377, Zvornik Brigade Duty Operations Officer Notebook, ERN 0293-5742

⁹³⁰ P0377, Zvornik Brigade Duty Operations Officer Notebook, ERN 0293-5742, [REDACTED] (PW-104)

that all the prisoners would be moved to Zvornik where they would be detained and killed. Interestingly, the Trial Chamber in *Blagojevic* could not conclude that the commander of the Bratunac Brigade knew of the mass murders in Zvornik.

560. Notwithstanding the meeting and discussion on the 13th July, Deronjic learned the following morning that Colonel Beara was persisting in his search for the brick factory in Bratunac, in order to put some prisoners over there. Deronjic had a further confrontation with Beara over this and ordered him out of Bratunac and told him that there should be no killings in Bratunac.⁹³¹
561. It is plain that whenever the decision was taken to murder the prisoners, Mladic and Beara intended that the prisoners should be killed in Bratunac. From the above, it can be seen, that Beara was so determined to execute the plan in Bratunac that notwithstanding the orders of *two Presidents* he was still pursuing the original plan on the morning of the 14th of July. A short while after this, he was to lament to Krstic over the radio that his problems with killing prisoners in the Zvornik area would not have arisen had he been permitted to kill them all in Bratunac as he had wanted to do.⁹³²
562. The intervention of Karadzic and Deronjic is critical to the development of events. Had they not interceded, it is almost certain that no prisoners would have been taken to Zvornik at all and accordingly to an area for which Pandurevic is said to have responsibility. The decision was swiftly taken. There is no evidence that Pandurevic was informed of it. And nothing from which that could be inferred. Equally significantly, Momir Nikolic did not inform his own commander that he had been to Zvornik until the following day when events had significantly moved on.⁹³³
563. In Zvornik, the commander of the brigade was absent. There is no dispute that he was at or near Zepa, preparing his units for combat operations. There is no evidence that there were any communications that would have even alerted him to events in Zvornik. According to the evidence of PW-168, he was throughout the period of the arrival of prisoners in Zvornik, engaged in combat with the 28th division in and around Snagovo. He had told nobody about the arrival of the prisoners. Accordingly, their arrival on 13th and 14th of July was completely unexpected. Given the absence of not only the commander, but also the effective absence of his deputy, as well as the operations officer, the Zvornik Brigade was on 14th July a “rudderless ship.” At the risk of mixing shipping metaphors, fatefully, an “empty vessel” was about to sail into its waters.

8.4. Command of the operation

564. The movement of the prisoners commenced according to the evidence that same evening.⁹³⁴ But the substantial convoy left on the morning of the 14th. Momir Nikolic told Janjic and other Bratunac MP's to report to the front of the military police building. Mr Janjic and the others did so, where they again met with Momir Nikolic. He told them to go into town and help secure the Muslims detained in the schools and on the vehicles near the school. On the morning of the 14th, soldiers arrived at this location. They were

⁹³¹ [REDACTED]

⁹³² [REDACTED]

⁹³³ T.33331, 28 April 2009, Momir NIKOLIC

⁹³⁴ P00686; Srebrenica Military Narrative – Operation ‘Krivaja=95’, 15 May 2000, page 2

wearing black overalls and black bandanas and some of them had dogs. Some of these men got on to the buses and the buses began leaving.⁹³⁵

565. One survivor recalls being taken to Bratunac on a bus boarded by Military policemen whose insignia he recognized.⁹³⁶ The following day they set off for Kladanj to be exchanged there. They stopped at a parking lot of the Viogor Company. Three military policemen travelled with them to Viogor. They were replaced by armed soldiers, an APC arrived at the scene but they were not UNPROFOR, but Serbian soldiers.⁹³⁷ They continued the journey following this APC. They stopped at a school and they were told that they should raise their hands and run to the school. There were soldiers on both sides of the pitch.⁹³⁸
566. According to one source, Beara accompanied the prisoners on the buses personally.⁹³⁹
567. At a meeting at the Zvornik Brigade on the 14th of July, Beara enlisted the help of the Zvornik civil authorities to bury the bodies of the murdered Muslim prisoners. Beara delivered a brief speech. The meeting was held in Pandurevic's office. The plain impression was that Beara and not Pandurevic was in charge of this operation. Beara said as much. He said that there were a lot of prisoners who were hard to control and that they had to be got rid of. He said he expected assistance from the municipal authorities with the burying of the bodies. Beara had said that there was an order from two presidents to get rid of the prisoners in such a way that all of their bodies would need to be buried.⁹⁴⁰
568. The assertion of Beara is noteworthy. In Bratunac on the evening of the 13th of July, he told Deronjic the civil authority in Srebrenica that he had orders from Mladic to kill the prisoners in Bratunac. The following day in Zvornik, he told civilian leaders that he had the authority of the President himself. In the interim there can be little doubt that the soldiers or policemen or military policemen who drove or guarded buses en route from Bratunac to Zvornik, did so on his (Beara's) orders.
569. [REDACTED].⁹⁴¹
570. The reporting chains are of particular interest during the critical days. It was the view of Mile Janjic that the security line to Mladic had distanced itself and was functioning separately.⁹⁴² Moreover, whilst it is correct that Drago Nikolic informed Obrenovic of his task to receive prisoners that has to be viewed in the context of his particular difficulty, namely that he needed to be relieved as duty officer of the forward command post. Thereafter, Nikolic reported neither to Obrenovic, nor Pandurevic about his trips on the 13th July which the Prosecution suggests show him investigating the detention sites⁹⁴³, nor his use of military police units, nor his personal whereabouts and activities. Critically, and fatefully Obrenovic chose not to tell Pandurevic about his knowledge of the killing

⁹³⁵ T.17931-T.17932, 20 November 2007, Mile JANJIC

⁹³⁶ [REDACTED]

⁹³⁷ [REDACTED]

⁹³⁸ [REDACTED]

⁹³⁹ [REDACTED], 7D00086; page 1, 7D000685; [REDACTED]1

⁹⁴⁰ [REDACTED] (PW-104)

⁹⁴¹ [REDACTED]

⁹⁴² T.17958-T.17959, 20 November 2007, Mile JANJIC

⁹⁴³ P00904; Vehicle logbook for Opel Rekord P-4528

operation on 13th July, a fact he now acknowledges was a mistake.⁹⁴⁴ Notably, the reporting lines were determined by the Main Staff.⁹⁴⁵

571. There is an account, whether credible or not, that Mladic himself was present at the school in Grbavci on the 14th of July.⁹⁴⁶

8.5. Units Involved

572. The details of those who were present at the detention and execution sites will be dealt with in chronological narrative later in the brief.⁹⁴⁷ The following is a brief list of the identifiable units from outside the Zvornik brigade who escorted the prisoners to Zvornik and/or were present at various of the detention sites.

8.5.1. Elements of the Bratunac Brigade

573. The Bratunac Brigade provided a significant proportion of the manpower necessary to transport the prisoners to Zvornik, guard them in transit and guard them upon arrival. There is clear evidence that certain units of the Bratunac Brigade remained in the Zvornik area for several days.

574. On the morning of the 14th, a military police unit took part in the transfer of prisoners in the convoy to Zvornik.⁹⁴⁸ The same was recorded in the daily log book.⁹⁴⁹ The unit remained in Pilica till the 17th of July.⁹⁵⁰

575. The white APC at the head of the column was driven by the commander of the Bratunac Brigade Military Police, Mirko Jankovic, accompanied by Zoran Zivanovic. The Zenica company passed with him on the way to Zvornik to guard prisoners.⁹⁵¹

8.5.2. 10th Sabotage Detachment

576. The 10th Sabotage Detachment arrived on the battlefield outside Srebrenica on the 10th of July when the fall of Srebrenica was imminent. Their arrival coincided with the appearance of Mladic. It had no sensible military purpose and was regarded by those who had taken part in operation Krivaja-95 with surprise, suspicion and resentment.⁹⁵²

⁹⁴⁴ [REDACTED], 7D00086, Obrenovic –Statement of facts -20 May 2003, page 1, 7D000685; [REDACTED], T.32361-T.32362, 02 March 2009, Vinko PANDUREVIC

⁹⁴⁵ P00377, Zvornik Brigade Duty Operations Officer Notebook, ERN 0293-5744 (colonel Salapura called)

⁹⁴⁶ T.949-T.951, 29 August 2006, Mevludin ORIC

⁹⁴⁷ See section “Detention and Execution Sites”

⁹⁴⁸ T.32907-T.32909, Momir NIKOLIC, 21 April 2009

⁹⁴⁹ P00220: Bratunac Brigade Military Police Daily Log Book, 30 June 95 – 29 April 96

⁹⁵⁰ T.32907-T.32909, Momir NIKOLIC, 21 April 2009

⁹⁵¹ T.17948-T.17954, 20 November 2007, Mile JANJIC

⁹⁵² T.29586-T.29587, 11 December 2008, Milenko JEVDJEVIC, T.11973, 23 May 2007, Mirko TRIVIC, T.30867, 29 January 2009, Vinko PANDUREVIC

577. Their uniform was distinctive and set them apart. They can be seen on the trial video in black with black bandanas.⁹⁵³ The unit also had its own insignia.⁹⁵⁴
578. It is of course a Main Staff unit. Its commander was Pelemis who answered, in turn, to Salapura, Milovanovic and Mladic.⁹⁵⁵
579. The unit was involved in the executions at Branjevo farm. There is some dispute as to whether the unit received orders from its commander. The inference from the evidence was that they were there under the command of Beara.⁹⁵⁶

8.5.3: Drina Corps Military Police

580. There is evidence that units of the military police of the Drina Corps took part in the escort and the guarding of prisoners.⁹⁵⁷

8.5.4: Civilian Policemen

581. There is evidence of the presence of civilian policemen at the Pilica Cultural Dom.⁹⁵⁸ Drazen Erdemovic, in his testimony of 4 May 2007, said that they went there with an unknown Lieutenant-Colonel after the executions at Branjevo.⁹⁵⁹

8.5.5: Paramilitary Units

582. Lastly, at Rocevic there is evidence of the involvement of paramilitary units not obviously attached to any VRS unit. Damjan Lazarevic saw them there. He did not recognize the men. They had painted faces and masks..⁹⁶⁰

8.6. Events in Zvornik

583. Throughout the critical period (from about 20:00 hours on the 13th July to the morning of the 15th) it is important to remember that the Zvornik Brigade's commander was absent in another combat zone and effectively out of contact. To make matters worse, his deputy was preoccupied with fighting an enemy on two fronts and was himself away from the command of the brigade according to his evidence throughout the whole of 14th July.

584. [REDACTED].⁹⁶¹

⁹⁵³ P02047; Srebrenica Trial video

⁹⁵⁴ T.10939, 04 May 2007, Drazen ERDEMOVIC

⁹⁵⁵ T.13994-T.13995, 21 August 2007, Dragan TODOROVIC

⁹⁵⁶ T.14015, T.14027-T.14029, 21 August 2007, Dragan TODOROVIC

⁹⁵⁷ [REDACTED], 7D00086;., page 2

⁹⁵⁸ T.8543-T.8545, 09 March 2007, Pero PETROVIC, T.11404, 11 May 2007, Slavko PERIC

⁹⁵⁹ T.10982, 04 May 2007, Drazen ERDEMOVIC

⁹⁶⁰ T.14456, 29 August 2007, Damjan LAZAREVIC

585. Between 5:00 and 6:00 pm, Obrenovic tasked Maric to go to Snagovo. Jevtic's unit was lost and was unable to carry out its function. So, at around 0600hrs, Maric drove with his unit to Snagovo.⁹⁶² Plainly, the units at Obrenovic's disposal were not coping well with the tasks. [REDACTED].⁹⁶³
586. Between the 13th and the 14th of July, Ljubo Bojanovic joined up with Maric's unit. He had a force of 200 plus police men. Obrenovic dispatched several other units to the Snagovo area during the course of the 14th of July. His focus was the command of these units.
587. On the evening of the 14th he ordered a search of the terrain ahead in order to go towards the column that was coming in.⁹⁶⁴
588. The evidence suggests that those committed to ambushing the column were oblivious throughout this period to the problem developing with prisoners.⁹⁶⁵
589. [REDACTED]⁹⁶⁶
590. They had their first fight on the 14th, early in the morning, and then in the afternoon, fierce fighting began. [REDACTED].⁹⁶⁷
591. In the town of Zvornik itself, therefore, and at the command of the Brigade, the only persons who knew that the prisoners were arriving were Drago Nikolic, Jasikovac and the five military policemen. They also happened to be the only people who knew where they were going to be detained. Obrenovic did of course hear some information by chance that caused him to conclude that one of the sites was Orahovac.⁹⁶⁸ That may in due course explain the evidence of Sreten Milosevic as to why he and others went to that particular site rather than any other.

9. MOBILISATION AND ZVORNIK BRIGADE MACHINERY

⁹⁶¹ [REDACTED]

⁹⁶² P03138, Transcript of testimony of Milan MARIC from case No. IT-02-60-T, Prosecutor v. Blagojevic and Jokic, dated 6 and 7 July 2004, page 51-52

⁹⁶³ [REDACTED]

⁹⁶⁴ P03138, Transcript of testimony of Milan MARIC from case No. IT-02-60-T, Prosecutor v. Blagojevic and Jokic, dated 6 and 7 July 2004 page 57-62; T.22434, 19 June 2008, Zoran JANKOVIC; T.22463, 19 June 2008, Zoran JANKOVIC; [REDACTED] (PW-107)

⁹⁶⁵ P03138, Transcript of testimony of Milan MARIC from Case No. IT-02-60-T, Prosecutor v. Blagojevic and Jokic, dated 6 and 7 July 2004, page 68-69

⁹⁶⁶ [REDACTED]

⁹⁶⁷ [REDACTED]

⁹⁶⁸ [REDACTED]. P2232 page 7

‘Everything the army needs to use and does not own has to be requisitioned and handed over to the army with appropriate records made so that later on, that asset can be returned to the owner, and the legally prescribed procedure had to be followed.’⁹⁶⁹

9.1. Mobilisation process

592. In order to requisition and to use the property of others (facilities or equipment), a formal mobilisation procedure had to be used. That meant a brigade command, via Corps command, filing a *request* for specific machines or buildings to be used by the army. A copy of the request went to the military department in Zvornik.⁹⁷⁰ The Ministry of Defence would then issue an *order* to the commercial company which owned the requested resources to make them available to the Ministry of Defence, and they were then taken over by the brigade.⁹⁷¹

593. Brigade commands therefore had no power or authority themselves to mobilize men or to engage material, equipment or property. They were duty bound to contact organs for organisation, mobilisation. This entailed a *request* to Corps command which, in turn, would contact the Ministry of Defence, who in turn would ask them to mobilise men, requisition material or technical equipment. It was then a matter for the Ministry whether the mobilization would take place.⁹⁷²

594. It was in mid-1993 when the Corps command centralised these jobs. This resulted in the Corps Command making a request to and ordering the section of the Defence Ministry to carry out the mobilisation. That was the procedure which was in force from mid-1993 until the end of the war.⁹⁷³

595. Regardless of the time period over which property was mobilised or requisitioned by the Zvornik Brigade, the process remained the same. After an item was no longer needed, the file was closed, the asset was handed back to the owner, and the whole file was closed within the Ministry of Defence.⁹⁷⁴

596. The Main Staff, the Drina Corps, MUP and civil protection could also mobilize property for their own uses.⁹⁷⁵

597. However, in ‘*extraordinary circumstances*’, the commands of the brigades could submit requests *directly* to the departments of the Ministry of Defence, without going through the Corps command. In those circumstances, notification of the requests only to

⁹⁶⁹ T.10570, 26 April 2007, Mihajlo GALIC

⁹⁷⁰ Which was a civilian institution. It was part of the Ministry of Defence of the government of Republika Srpska. Being on that territory, by law, it had the ability to execute mobilisations.

⁹⁷¹ 7D01046, RS Ministry of Defence, Instructions by the Ministry of Defence regarding mobilisation, 5 June 1995; T.10569-T.10570, 26 April 2007, Mihajlo GALIC; [REDACTED] T.30710, 27 January 2009, Vinko PANDUREVIC; T.31325, 12 February 2009, Vinko PANDUREVIC; T.19811, 16 January 2008, Richard BUTLER; T.22452, 19 June 2008, Zoran JOVANOVIĆ

⁹⁷² T.30710, 27 January 2009, Vinko PANDUREVIC; T.31325, 12 February 2009, Vinko PANDUREVIC

⁹⁷³ [REDACTED]

⁹⁷⁴ T.10572, 26 April 2007, Mihajlo GALIC; [REDACTED]: For example, in February 1995 they would make an official request to remove the roof of an old school that had been abandoned and destroyed, 7D00458, Military post 7469, 6 February 1995

⁹⁷⁵ [REDACTED]

the Corps command was required.⁹⁷⁶ An example of this type of situation was the mobilization of the R-battalion on 15th July.⁹⁷⁷ Two points can be illustrated by this particular procedure ; firstly, that the procedure could be very quick; but secondly, that the mobilization process was followed and the rules were respected by the Zvornik Brigade even on 15th July.

9.2. Mobilisation by the Zvornik Brigade in June and July

598. The evidence reveals that there were a number of requests for the mobilization of men and materials in June and July 1995 by the Zvornik Brigade. These included but were not limited to:

(1) The request for the mobilization of buses pursuant to the Drina Corps order to transport persons from Potocari⁹⁷⁸

(2) The request for the mobilization of the R battalion for “*obezbedjenje terena*” on 15th July ;

(3) The Request for the mobilisation of motor vehicles on 15th July for the transport of conscripts⁹⁷⁹. The conscripts concerned are those of the R battalion.

(4) The Request for the mobilisation of seven conscripts on 14th July in order to secure the Zvornik medical centre.⁹⁸⁰ This request was sent since there was a shortage of personnel.⁹⁸¹

(5) A Request for an extension to the deadline for the use of a crane on 20th July.⁹⁸² The Zvornik Brigade command could not keep the mobilised piece of equipment after the deadline for mobilisation had expired and therefore had to request an extension of the deadline from the Ministry.⁹⁸³

599. Subject to certain comments below, these examples shows that where the Brigade wished to make use of machinery which it did not own, it was legally obliged to and in fact did make proper requests for the mobilization of those men and/or materials. More to the point, unlike organs of higher command, it could not do so unilaterally, only through the proper offices of the Ministry of Defence. The Zvornik Brigade was, for example, unable to mobilise the ULT-220 (owned by *Birač-Holding*), or the machines from the Jošanica quarry and the workers operating them of its own accord. How and by what procedure these men and machines came to be used is a matter of conjecture, but it was not through any request at Brigade level.

⁹⁷⁶ 7D01046, RS Ministry of Defence, Instructions by the Ministry of Defence regarding mobilisation, 5 June 1995, point 5

⁹⁷⁷ 3D00119, RS Ministry of Defence, Order for mobilisation, 15 July 1995.

⁹⁷⁸ Though see below 9.4

⁹⁷⁹ 7D00098, ZB Command, Request for mobilisation of motor vehicles, 15 July 1995

⁹⁸⁰ 7D00099, ZB, Request for mobilisation, 14 July 1995.

⁹⁸¹ T.10573, 26 April 2007, Mihajlo GALIC

⁹⁸² 7D00100, ZB Request regarding a crane, 20 July 1995

⁹⁸³ T.10574, 26 April 2007, Mihajlo GALIC

9.3. There was no mobilisation of schools or heavy digging equipment by the Zvornik Brigade

600. The schools in Zvornik belonged to local authorities.⁹⁸⁴
601. In the month of July, no attempt was made nor in fact was there any mobilisation of any schools at Orahovac, Rocevic, Grbavci, Pilica, Petkovci or other public buildings by either Pandurevic or anyone under his command.⁹⁸⁵ Had the mobilization of the schools been done on behalf of the Brigade, it would have to have come through Pandurevic or Obrenovic and then approved by the Corps commander and the appropriate procedure would have been followed.⁹⁸⁶
602. The same can be said in relation to the farm at Agroprom, Branjevo or indeed in respect of engineering equipment or trucks for the purposes of transporting prisoners or burying bodies.⁹⁸⁷

9.4. Mobilisation of buses on 12th July

603. The Zvornik Brigade was one of the recipients of the Drina Corps order on 12th July stating that 'all the buses and mini-buses belonging to the VRS be secured for the use by the Drina Corps'.⁹⁸⁸
604. In the Zvornik Brigade, it was Obrenovic who received this order in the afternoon when he came back to the brigade command from Memici. He had already been informed that the buses had been sent.⁹⁸⁹ He personally acted upon this order.⁹⁹⁰
605. The daily combat report for 12th July mentions the *eight buses* from 'Drina Trans' pursuant to the Drina Corps order.⁹⁹¹ These buses were requisitioned by the Ministry of Defence and they were sent directly to the logistics service of the Drina Corps in Bratunac. They were not handed over to the Zvornik Brigade.⁹⁹²
606. The Ministry of Defence sent other orders for the mobilisation of the buses. However, these were not addressed to the Zvornik brigade and had nothing to do with the brigade.⁹⁹³ It was necessary for the majority of the buses to be requisitioned from the

⁹⁸⁴ T.10578, 26 April 2007, Mihajlo GALIC

⁹⁸⁵ T.10578, 26 April 2007, Mihajlo GALIC; T.16052, [REDACTED] [REDACTED]; T.13327, 12 February 2009, Vinko PANDUREVIC;

⁹⁸⁶ [REDACTED]

⁹⁸⁷ T.10578, 26 April 2007, Mihajlo GALIC; [REDACTED]

⁹⁸⁸ P00110, Drina Corps, Provision of buses for evacuation from Srebrenica enclave, 12 July 1995

⁹⁸⁹ [REDACTED]

⁹⁹⁰ P00322, ZB regular combat report, 12 July 1992; See Part 4 Section 4 Krivaja 95

⁹⁹¹ P00322, ZB regular combat report, 12 July 1992

⁹⁹² [REDACTED]

⁹⁹³ See for example P2900, RS Ministry of Defence, Order for the mobilisation of buses, 12 July 1995; T.31326, 12 February 2009, Vinko PANDUREVIC

civilian economy, and that fell more in the purview of the RS Ministry of Defence than it did strictly of the army.⁹⁹⁴

607. It is important to note, that according to the testimony of Butler, it cannot be concluded in any way that the sending of buses was understood to be for any illegal act.⁹⁹⁵

9.5. Use of machinery (in burials)

9.5.1. Inventory stock and war booty of the Zvornik brigade

608. *A Review of the Engineer Units for 1995* shows the material supplies that the Zvornik Brigade used in 1995.⁹⁹⁶

609. The ‘*army stock*’ under (a) is what the engineers’ unit had as its own material and technical equipment. The so-called ‘*inventory stock*’ listed under point (b) was *owned by the public companies*. It is manifestly evident that the Zvornik Brigade simply did not own any machinery. The machinery listed under point (b) (i.e. ‘listed machinery’) was put at the temporary disposal of the Zvornik Brigade and for the purposes of the army by public companies, such as Birac Holding, Quarry, Zvornik Putevi. The ‘*war booty*’ under point (c) includes some motorised vehicles which the Zvornik Brigade did in fact own after seizing it from the enemy as war booty. However, no machinery is listed there.⁹⁹⁷

610. Frequently, items on the inventory stock (b) at the disposal of the engineer's unit were subsequently given back to companies to use when they needed to carry out their own assignments and tasks. This obviously depended on urgency and on a need-to-use basis.⁹⁹⁸

611. The Zvornik Brigade engineering company possessed the following construction machines in 1995, namely a BGH-700 excavator, Torpedo excavator, a trailer and four bulldozers (one not in working order).

⁹⁹⁴ T.19808, 16 January 2008, Richard BUTLER

⁹⁹⁵ T.20389, 24 January 2008, Richard BUTLER

⁹⁹⁶ 7D00260, A review of the engineer units for 1995, 20 December 1995, Para 8

⁹⁹⁷ T.31315, 12 February 2009, Vinko PANDUREVIC

⁹⁹⁸ T.13315, 12 February 2009, Vinko PANDUREVIC

9.5.2. The ULT-220 owned by Birac Holding

612. From the same review document, it is clear that the Zvornik Brigade did not own nor use any ULT-220 loaders in 1995.⁹⁹⁹ In fact, the ULT-220 was owned by the Birac Holding company and was operated by Veljko Kovacevic.¹⁰⁰⁰, who was not a member of the Zvornik Brigade¹⁰⁰¹
613. Given that this machine was not owned by the Zvornik Brigade and was not part of its inventory stock, and was not mobilized by order, the process by which it came to be used as it did is not clear from any documents. However, its use cannot be unconnected to the request for machinery made by Beara to an assembly of municipal and business figures in Zvornik on 14th.¹⁰⁰² There is no evidence, significantly, of the presence at that meeting of anybody from the Staff of the Zvornik Brigade, nor the engineering company, nor the logistics organ. Mihajlo Galic, whose duty it was to monitor the Brigade's material resources and process any requisitioning requests,¹⁰⁰³ knew nothing of any such request. The only proper inference to draw is that the acquisition of this machine was done without the involvement of the Brigade. The opening of a vehicle work log in relation to it is unexplained and a matter of conjecture, but demonstrates, in fact, no more than that it was provided with fuel.
614. There is no evidence that this was ever ordered by Pandurevic nor was it ever brought to his attention, since (a) he was at the IKM on 15th and 17th July when this vehicle was apparently provided with some fuel and (b) he would generally not be consulted about the provision of relatively small amounts of fuel to none-Zvornik Brigade vehicles.

9.5.3. BGH-700 owned by Zvornik Putevi

615. Similarly, according to the same Review, the BGH-700 was not owned by the Zvornik Brigade in 1995.¹⁰⁰⁴ It was owned by the public company called Zvornik Putevi.¹⁰⁰⁵ However, the machine was at the disposal of the Zvornik Brigade (under (b)) and was operated by Cvijetin Ristanovic, a member of the Brigade.¹⁰⁰⁶

9.5.4. Rovokopac/Trench digger¹⁰⁰⁷

⁹⁹⁹ 7D260, A review of the engineer units for 1995, 20 December 1995, Para 8, (Therefore, use of such a machine would have required a requisition order)

¹⁰⁰⁰ P302= P295, BCS page 565, ENG page 567, VWL for ULT 220, driver Kovacevic Veljko; T.13631, 10 July 2007, Cvijetin RISTANOVIC; T.14479, 29 August 2007, Damjan LAZAREVIC; T.31316, 12 February 2009, Vinko PANDUREVIC

¹⁰⁰¹ T.14514, 30 August 2007, Damjan LAZAREVIC, Lazarevic in cross-examination changes his mind and says Veljko was a member of the ZB when he came to help with his machine. There is obviously inconsistent evidence as to the status of this particular individual

¹⁰⁰² T.31317-T.31318, 12 February 2009, Vinko PANDUREVIC. T.7941, 28 February 2007, Zoran Zekic

¹⁰⁰³ T10494, 25 April 2007, Mihajlo Galic

¹⁰⁰⁴ 7D00260, A review of the engineer units for 1995, 20 December 1995, Para 8

¹⁰⁰⁵ T.13625, 10 July 2007, Cvijetin RISTANOVIC; T.13315, 12 February 2009, Vinko PANDUREVIC

¹⁰⁰⁶ T.13625, 10 July 2007, Cvijetin RISTANOVIC

¹⁰⁰⁷ No details specified other than to remark that it was a backhoe excavator

616. The Rovokopac/Trench digger was not on the inventory list of the Zvornik Brigade¹⁰⁰⁸ and its ownership is unclear. The mere opening of a vehicle work log doesn't render it brigade property, and indicates only the provision of fuel.¹⁰⁰⁹
617. The vehicle work log relating to this machine is improperly completed. The same signature appears in three places where there should have been different signatures. None of the signatures appear to be that of Cvijetin Ristanovic, the driver of the machine on the relevant days.¹⁰¹⁰

9.5.5. Rovokopac Torpedo (Torpedo Excavator) owned by Birac Holding

618. The Rovokopac Torpedo was on the inventory list of the machinery used by the Zvornik Brigade in 1995, but was owned by Birac Holding.¹⁰¹¹ It was operated by Cvijetin Ristanovic and Milos Mitrovic according to the VWL¹⁰¹². The VWL says it was in Orahovac, but there is no evidence it was there. The operator Ristanovic says he didn't use it and didn't sign the VWL.¹⁰¹³ The signatures are the same as on the VWL for the Torpedo.¹⁰¹⁴ Plainly the only realistic inference to draw is that the records were completed by the same person at the same time.

9.5.6. Four bulldozers

619. The Brigade did own four bulldozers (only three were in working order¹⁰¹⁵), which could be of use at least in pushing earth into mass graves, yet, according to the work logs, none of the three bulldozers were operating in July.¹⁰¹⁶

¹⁰⁰⁸ 7D00260, A review of the engineer units for 1995, 20 December 1995, Para 8

¹⁰⁰⁹ P00300, VWL, rovokopac – unspecified, July 1995

¹⁰¹⁰ T.13627-T.13628, 10 July 2007, Cvijetin RISTANOVIC

¹⁰¹¹ 7D00260, A review of the engineer units for 1995, 20 December 1995, Para 8; P00301, Zvornik Brigade Vehicle Log for Rovakopac Torpedo from Birac Holding

¹⁰¹² P301, Zvornik Brigade Vehicle Log for Rovakopac Torpedo from Birac Holding; P00295, Zvornik Brigade July 1995 Transportation Records, 1-jul-1995, BCS ERN 0069-5032, ENG ERN 0307-5485; T.14475, 29 August 2007, Damjan LAZAREVIC (Zvornik Brigade engineering company members.)

¹⁰¹³ T.13632, 10 July 2007, Cvijetin RISTANOVIC

¹⁰¹⁴ Ie unidentifiable but the same person

¹⁰¹⁵ 7D00260, A review of the engineer units for 1995, 20 December 1995, Para 8

¹⁰¹⁶ P00295, , Zvornik Brigade July 1995 Transportation Records, 1-jul-1995, VWLs of the TG140, TG220, TG110 - TG110 = BCS/ERN 00695035-00695036 and ENG/ ERN 00875995-00875996; BCS PAGE 491-492 and ENG PAGE 493-494; TG220 = BCS/ERN 00695039-00695040; ENG/ ERN 00875999-00876000; BCS PAGE 495-496 and ENG PAGE 497-498; TG80 = BCS/ERN 00695041-00695042; ENG/ ERN 00876001-00876002; BCS PAGE 497-498 and ENG PAGE 499-500 – the VWLs are silent.

10. SITUATION AT THE DETENTION SITES AND EXECUTIONS

620. Between 13th July and 16th July, prisoners were detained at 5 sites in the Zvornik area. The following is a broadly chronological review of their detention, execution and burial at each of those sites. An attempt will be made to identify where possible who was conducting executions, and who was giving orders at the sites.
621. The defence for Pandurevic reiterates its case that until the afternoon of the 15th July, Dragan Obrenovic was in command of the Zvornik Brigade. He has pleaded guilty to the same. Accordingly, the execution of prisoners at Orahovac, and Petkovci were completed during his period of command, and the execution of prisoners from Rocevic was under way. Only the events at Branjevo and Pilica certainly took place on Pandurevic's watch.
622. [REDACTED].^{1017 1018 1019 1020 1021}
623. It must follow that whatever individuals or assets, apparently belonging to the Zvornik Brigade, played any part of the events of 13th to 17th July, they did not do so pursuant to any orders of the brigade command. In fact, the sequence of facts set out in the paragraphs below demonstrates that these events were driven by officers of superior command, and carried out in the main by units of soldiers, policemen and paramilitaries brought in from outside for the purpose of conducting executions.
624. Those in command of the killing operation had not intended to inform the command of the Zvornik brigade of their plans, only its Chief of Security,¹⁰²² and even when they hit manpower problems, they refused to seek help from the brigade despite its manifest resources (5,900 men) being literally under their noses.¹⁰²³
625. The prosecution has identified (and doubtless will continue to do so) those individuals who stood guard, or drove a digging machine, or buried some bodies. These are not acts of the same character, however, as murder, and those who do these things in their own villages do not do these things to encourage, support or enable the commission of murder. They do so because of concern for the security of their own families, they do so because the alternative to burying bodies is to leave them to decompose in the July heat. The defence rejects the suggestion that all these activities are intrinsically linked to the killing operation. It is not a crime to hold prisoners of war in a school, perhaps until they can be taken somewhere more appropriate. It is not a crime to guard them. The crime is killing them. That they would be killed had been pre-determined by the authors of the killing operation in Bratunac. They didn't want to bring the prisoners to Zvornik. That they did was virtually accidental.
626. The general tenor of the evidence at any of these sites is that members of the Zvornik Brigade were drafted in to secure the sites and to ensure the safety of the local population.

¹⁰¹⁷ [REDACTED]

¹⁰¹⁸ [REDACTED]

¹⁰¹⁹ [REDACTED]

¹⁰²⁰ [REDACTED]

¹⁰²¹ [REDACTED]

¹⁰²² See above Part 4 Section 8 on "The Killing Operation"

¹⁰²³ P01179, intercepted telecommunication of 15 July between Beara and Krstic

Each site was typically close to a local civilian population which had had 'foisted upon it' comparatively large numbers of adult males who were hostile to them.

627. In the main, the evidence points to the fact that the members of the Zvornik Brigade acted in a humane rather than an aggressive way and, when considering the proximity of any actors to the execution sites, members of the Zvornik Brigade appear to have been involved in the aftermath (ie digging and burying) rather than in the actual executions.
628. As has been discussed earlier in this brief,¹⁰²⁴ the senior officer present assumes command of an operation or joint task. In the case of each of the detention and execution sites, it will be seen that a superior officer from outside the brigade (usually Beara or Popovic, though in one instance, possibly Mladic himself) filled that role. All of those connected with the operation were obliged to follow their orders. Conversely, no officer of the Zvornik Brigade would have had authority to give orders to members of the 10th Sabotage Detachment, Bratunac Brigade Military Police or other outside unit.

10.1 Grbavci School in Orahovac¹⁰²⁵

629. Pandurevic issued no orders to anybody to detain or execute prisoners at Orahovac.¹⁰²⁶ He had no knowledge of the Zvornik Brigade in the events there.¹⁰²⁷

Sequence of Events

630. Chronologically, the first detention site to receive prisoners was Orahovac. It is also, of course geographically the closest to Zvornik town centre. There is some evidence that this site was known to Obrenovic,¹⁰²⁸ and that he ordered soldiers at the command to go there to protect the villagers.¹⁰²⁹ This would explain why there were a number of soldiers from the command at Orahovac on 14th July with no obvious purpose.¹⁰³⁰
631. The sequence of events began on the evening of 13th July 1995 when a number of Military Policemen¹⁰³¹ ('MPs') from the barracks at Karakaj received an order for them to go to the school at Grbavci¹⁰³². There, they were to secure the area, particularly the gym area, before the arrival of a number of prisoners. In addition, they were obliged to carry out 'crowd control' duties due to the feelings of the local people. At no stage at this time

¹⁰²⁴ See Part 3 Section 5 : "Most Senior Officer Present"

¹⁰²⁵ Paragraph 30.6 of the Indictment

¹⁰²⁶ T.30935, 30th January 2009, Vinko PANDUREVIC, T.10088, 16th April 2007, Lazar RISTIC, T.10089, 16th April 2007, Lazar RISTIC (It appears that the events at Orahovac were dictated 'along some security chain of command, not through the Main Staff'). T.10164, 17th April 2007, Lazar RISTIC (RISTIC questioned how it was that things had happened in Zvornik as they had : that had the command not been absent, what occurred at Orahovac would not have happened)

¹⁰²⁷ T.30936, 30th January 2009, Vinko PANDUREVIC

¹⁰²⁸ See section 8 : "The Killing Operation"

¹⁰²⁹ [REDACTED]

¹⁰³⁰ T.10337-8, 23rd April 2007, Tanacko TANIC, [REDACTED], [REDACTED], [REDACTED] and 3D327 [extract of Sreten Milosevic OTP interview dated 16/1/06], T.10354, 23rd April 2007, T.10339, 23rd April 2007, Tanacko TANIC, T.10353, 23rd April 2007, Tanacko TANIC, [REDACTED], [REDACTED].

¹⁰³¹ T.26066, 23rd September 2008, Stevo KOSTIC

¹⁰³² [REDACTED], [REDACTED]

does there appear to have been any feeling or knowledge among the personnel present that the prisoners would in any way be harmed. Talks of exchange were overheard and the MPs' main concern was the welfare of the prisoners when they arrived.¹⁰³³

632. Some time elapsed before a number of civilian buses arrived containing the prisoners, who, at that time, were supervised¹⁰³⁴ and there appears to have been an escort with the buses.¹⁰³⁵ The prisoners were taken from the buses and put into the gym where a small number of personnel were tasked to look after them. Water was delivered to the prisoners.¹⁰³⁶
633. While the prisoners were at the school, a number of senior officers from the Main Staff were also there. The presence of Main Staff Officers at the school highlights the level at which this operation was to be executed. Accordingly, there can be no doubt who was in charge of events here and over the next few days at other sites. Ratko MLADIC¹⁰³⁷ was seen at the school and at the execution site¹⁰³⁸ while an older officer who was tall and wore glasses was also present¹⁰³⁹. This was almost certainly Beara, say the defence. He had been riding with the convoy, this was the first port of call, and his boss was there. In addition, Vujadin POPOVIC made an appearance.¹⁰⁴⁰
634. A number of other sightings were made of individuals to whom command was ascribed but no-one could identify.¹⁰⁴¹ Plainly they were not brigade officers.
635. The prisoners were held in the school overnight before executions began the following day. The delay may have been because the logistics and engineering necessary had not been organised. The following afternoon, of course, Beara addressed the assembled municipal leaders at Standard. Within a few hours he had his machinery. It is worthy of note that he chose to approach these people directly, rather than act through the Logistics or Engineering Units of the Zvornik Brigade, both of whom were readily available for him to speak to should he have wished.
636. Drago Nikolic¹⁰⁴² was at the school. He was in conversation more senior officers who must have been BEARA and/or POPOVIC. Plainly he was taking orders from his

¹⁰³³ [REDACTED], T.14541, 30th August 2007, Dragoje Ivanovic, [REDACTED], T.26033, 22nd September 2008, Stevo KOSTIC, T.[REDACTED], [REDACTED], T.10062, 16th April 2007, Lazar RISTIC

¹⁰³⁴ [REDACTED], but see T.14541, 30th August 2007, Dragoje Ivanovic

¹⁰³⁵ T.14541, 30th August 2007, Dragoje Ivanovic

¹⁰³⁶ T.10747, 1st May 2007, Stanoje BIRCAKOVIC

¹⁰³⁷ Commander of the Main Staff of the Bosnian Serb Army (VRS)

¹⁰³⁸ T.947, 29th August 2006, Mevludin ORIC but see [REDACTED], [REDACTED]

¹⁰³⁹ [REDACTED]

¹⁰⁴⁰ T.10337, 23rd April 2007, Tanacko TANIC

¹⁰⁴¹ T.10081-10082, 16th April 2007, Lazar RISTIC (A second lieutenant or a lieutenant arrived with two soldiers. They opened a trunk which contained a .84 mm machine gun. These men were not from the Zvornik Brigade), [REDACTED], T.6603, 30th January 2007, Milomir SIMIC, T.14542, T.14546, 30th August 2007, Dragoje Ivanovic, [REDACTED], T.943, T.950, 29th August 2006, Mevludin ORIC, [REDACTED], [REDACTED] (The person who escorted people to be executed wore a red beret – he was young), [REDACTED] (The same man issued the command for them to put on blindfolds and to leave), [REDACTED] (The same man was running things although it was not entirely clear if he was 100% the boss), [REDACTED], [REDACTED] (There were probably officers there. Their rank was not obvious but someone regulated the whole matter)

¹⁰⁴² Chief of Security (Assistant commander for security and intelligence) for the Zvornik Brigade of the VRS

professional superiors. Trbic, his deputy, Jasikovac and the requested military police personnel were there too.¹⁰⁴³

637. Lazar RISTIC¹⁰⁴⁴ had been ordered to send a dozen soldiers from the 4th Battalion to assist with security of the prisoners at the school. Upon their arrival, the MPs were told that they were relieved of their duties.¹⁰⁴⁵ Subsequently, as the events at the school unravelled, RISTIC received a telephone call from one of his troops.¹⁰⁴⁶ He was told that his men had been ordered to conduct executions. His men had told him that they wanted nothing to do with these events. RISTIC ordered that they should do nothing and, armed with that information, RISTIC attended at the school. Upon his arrival, he informed TRBIC of what was happening¹⁰⁴⁷ and extracted those soldiers whom he had supplied for “security purposes” and sent them back to their lines.¹⁰⁴⁸

Zvornik Brigade Personnel

638. A number of Zvornik Brigade personnel (predominantly from the Military Police Unit) attended at the school. They were Slajan JOKIC¹⁰⁴⁹, Dragoje IVANOVIC¹⁰⁵⁰, Milomir SIMIC¹⁰⁵¹, Stevo KOSTIC, Nada STOJANOVIC¹⁰⁵², Cedo JOVIC¹⁰⁵³, Goran BOGDANOVIC¹⁰⁵⁴, Stanoje BIRCAKOVIC¹⁰⁵⁵ and Milorad BIRCAKOVIC¹⁰⁵⁶. They were involved at the school guarding the prisoners. [REDACTED]¹⁰⁵⁷. It was there that some of them learned that prisoners had been exchanged and some had been liquidated.¹⁰⁵⁸
639. The executions were almost certainly carried out at Orahovac by members of the Bratunac Brigade Military Police unit which had brought the prisoners to Zvornik. A 4th battalion soldier did take part on the evidence. His name was Gojko SIMIC. The evidence

¹⁰⁴³ T.10075, 16th April 2007, Lazar RISTIC, [REDACTED], T.26003, 22nd September 2008, Stevo KOSTIC, but see [REDACTED] (who says it was either Jaskovac or Nikolic who gave the order), T.14540, T.14552 30th August 2007, Dragoje Ivanovic, T.14542, 30th August 2007, Dragoje Ivanovic, T.14544, 30th August 2007, Dragoje Ivanovic, T.14545, 30th August 2007, Dragoje Ivanovic

¹⁰⁴⁴ Deputy Commander of the 4th Battalion of the Zvornik Brigade

¹⁰⁴⁵ T.14544, 30th August 2007, Dragoje Ivanovic, T.14545, 30th August 2007, Dragoje Ivanovic,

¹⁰⁴⁶ T.10069, 16th April 2007, Lazar RISTIC

¹⁰⁴⁷ T.10077, 16th April 2007, Lazar RISTIC but see T.10086 where the same witness says that TRBIC was not there at the time

¹⁰⁴⁸ T.10062, 16th April 2007, Lazar RISTIC (Captain TRBIC ordered him to send a dozen soldiers to assist with security at the school), T.10181, 17th April 2007, Lazar RISTIC (At no stage did TRBIC say that this order had come from command or that it involved executions), T.10072, 16th April 2007, Lazar RISTIC, T.10074, 16th April 2007, Lazar RISTIC,,T.10133, 17th April 2007, Lazar RISTIC (Orahovac was out of his zone of defence)

¹⁰⁴⁹ [REDACTED]

¹⁰⁵⁰ T.14539, 30th August 2007, Dragoje IVANOVIC

¹⁰⁵¹ T.6527, 30th January 2007, Milomir SIMIC

¹⁰⁵² [REDACTED], T.950, 29th August 2006 Mevludin ORIC, T. 10081, 16th April 2007, Lazar RISTIC but see also statement of Stojanovic at 1D431

¹⁰⁵³ T.10337, 23rd April 2007, Tanacko TANIC, P.3750 OTP interview 13th March 2002 pages 39 to 48

¹⁰⁵⁴ T.10337, 23rd April 2007, Tanacko TANIC, See P.3750 OTP interview 13th March 2002 pages 39 to 48 of JOVIC

¹⁰⁵⁵ T.10743-T.10765, 1st May 2007, Stanoje BIRCAKOVIC,

¹⁰⁵⁶ T.11018, 7th May 2007, Milorad BIRCAKOVIC, [REDACTED]. P.296 Vehicle Log for Opel Rekord – 14th July = Orahovac

¹⁰⁵⁷ [REDACTED]

¹⁰⁵⁸ T.14550, 30th August 2007, Dragoje Ivanovic, T.6585, 30th January 2007, Milomir SIMIC

however shows that (a) he was not in service with the 4th Battalion of the Zvornik Brigade at the time of the events at Orahovac – he had been granted a period of absence.¹⁰⁵⁹ (b) he lived near to the school, (c) he had not received any order to attend the school and (d) he volunteered to be involved in executions.¹⁰⁶⁰

Use of Zvornik Brigade Machinery

640. Three excavators were deployed at the execution site¹⁰⁶¹. Almost certainly, they had been acquired from local companies by Beara that afternoon.¹⁰⁶² Two of the excavators were operated by Damjan LAZAREVIC and Cvijetin RISTANOVIC who are engineers from the Zvornik Brigade. The third excavator was operated by a civilian called Veljko KOVACEVIC¹⁰⁶³.

641. Other vehicles, including lorries and trucks were seen and used at the site for various purposes.¹⁰⁶⁴ No link can be established to the Zvornik Brigade.

10.2. Petkovci School

642. This location was outside the area of defence of the 6th Battalion of the Zvornik Brigade¹⁰⁶⁵

Sequence of Events

643. The prosecution allege that POPOVIC and BEARA were instrumental in the activities at Petkovci school and Petkovci Dam¹⁰⁶⁶. Indeed, BEARA was present at the school at which prisoners were being detained. He was, say the defence in command of the operation at the school, and subsequently the dam.

¹⁰⁵⁹ T.10098, 16th April 2007, Lazar RISTIC

¹⁰⁶⁰ T.10140, 17th April 2007, Lazar RISTIC

¹⁰⁶¹ T.14445, 29th August 2007, Damjan LAZAREVIC, T.13626, 10th July 2007, Cvijetin RISTANOVIC, T.957, 29th August 2006, Mevludin ORIC, [REDACTED], T.967, 29th August 2006, Mevludin ORIC

¹⁰⁶² P686 EXH, Srebrenica Military Narrative, « Operation Krivaja 95 » - Chapter 7, §B p64-68

¹⁰⁶³ T.13631, 10th July 2007, Cvijetin RISTANOVIC. See also P.302 and P.297

¹⁰⁶⁴ T.14565, 30th August 2007, Dragoje Ivanovic : [REDACTED]; [REDACTED], [REDACTED] (PW-169), T.10083, 16th April 2007, Lazar RISTIC

¹⁰⁶⁵ 7DIC180; [REDACTED]

¹⁰⁶⁶ See paragraph 30.7 of the indictment in which it is alleged that BEARA was assisted in the activities by POPOVIC, TRBIC and Drago NIKOLIC. It should be remembered that this location, together with Petkovci Dam is outside the area of defence of the 6th Battalion of the Zvornik Brigade

644. On 14th July, Marko MILOSEVIC¹⁰⁶⁷, deputy commander of the 6th Battalion of the Zvornik Brigade, received a call from the duty operations officer at Brigade command to notify him of the impending arrival of prisoners at the school¹⁰⁶⁸. The call was plainly for no more than information, as he was given no orders in relation to the prisoners. Nonetheless, his commander STANISIC, travelled to Zvornik to see what it was about. By the time he had got there, he learned that the prisoners were already at the school. He was told to find Colonel BEARA to give him a message. MILOSEVIC was despatched to the school at the instance of STANISIC in order to convey the message to Colonel BEARA¹⁰⁶⁹.
645. Upon the arrival of MILOSEVIC at the school, he spoke to Drago NIKOLIC¹⁰⁷⁰ who pointed him in the direction of Ljubisa BEARA in order to relay the message.¹⁰⁷¹ STANISIC indicates that the message which had been communicated to him was intended for a Colonel – that could only have been Colonel BEARA.¹⁰⁷² Milosevic recalls the Colonel being near a blue Golf motor car.¹⁰⁷³
646. Subsequently, STANISIC heard shots, bursts of shots from the vicinity of the school.¹⁰⁷⁴ As far as he was concerned, other officers of superior command were at the school and there was no need for him to check to see what was happening there.¹⁰⁷⁵ Despite being close to the school, no-one reported to him that prisoners had been transported away from the school over the night of the 14th – 15th July¹⁰⁷⁶.
647. On the morning of the 15th July, STANISIC received information from Battalion Communications that the villagers of Petkovci had made a request for a truck in order to clean up the school and to transport away from the school a number of dead bodies. Subsequently, he arranged for that to happen¹⁰⁷⁷. On the same day, STANISIC was notified by a security officer that there were to be prisoners at the school. STANISIC informed the security officer that that was not appropriate.¹⁰⁷⁸
648. So far as STANISIC was concerned, the Brigade had not requisitioned the school and the events at the school were not of the Brigade's making¹⁰⁷⁹.
649. It was clear to him that the command at the school was superior to his. He had no control over events there. He had received no orders from his own command about activities at the school and, on the available evidence his position/rank appears to have

¹⁰⁶⁷ T.13299, 26th June 2007, Marko MILOSEVIC, Deputy Commander of the 6th Battalion of the Zvornik Brigade. Evidence from T.13296, 26th June 2007

¹⁰⁶⁸ T.13343, 26th June 2007, Marko MILOSEVIC

¹⁰⁶⁹ T.13301-2, 26th June 2007, Marko MILOSEVIC

¹⁰⁷⁰ T.13303, 26th June 2007, Marko MILOSEVIC, T.11604, 16th May 2007 Ostoja STANISIC (Milosevic saw Beara, together with Drago Nikolic [the security organ of the Brigade] at the school)

¹⁰⁷¹ T.13303, 26th June 2007, Marko MILOSEVIC, T.13319, T.13332, 26th June 2007, Marko MILOSEVIC (despite detailed and prolonged cross examination on this topic, he is adamant that he met with and spoke to BEARA).

¹⁰⁷² T.11704, 16th May 2007, Ostoja STANISIC.

¹⁰⁷³ T.13305, 26 June 2007, Marko Milosevic

¹⁰⁷⁴ T.11607, 16th May 2007 Ostoja STANISIC

¹⁰⁷⁵ T.11608, 16th May 2007 Ostoja STANISIC

¹⁰⁷⁶ T.11609, 16th May 2007 Ostoja STANISIC

¹⁰⁷⁷ T.11610, 16th May 2007 Ostoja STANISIC

¹⁰⁷⁸ P.303, T.11621, 16th May 2007, Ostoja STANISIC

¹⁰⁷⁹ T.11701, 17th May 2007, Ostoja STANISIC

been seriously undermined by those of more senior command who attended at the school¹⁰⁸⁰.

650. Despite its proximity to the school BEARA did not go to the battalion command post in Petkovci.¹⁰⁸¹

651. During the presence of Beara in Petkovci, the battalion continued to function as normal. STANISIC was still receiving orders from senior command to supply troop numbers to various locations. The reasonable inference to be drawn from the evidence of STANISIC and MILOSEVIC is that they were more concerned with the defence of their lines than events at the school due to the presence of higher ranking officers at that location.¹⁰⁸²

Use of Zvornik Brigade men

652. The only realistic conclusion to draw from the available evidence is that no Zvornik Brigade soldiers or MPs were involved in activities at the school.¹⁰⁸³

653. There were some troops, some unknown troops at the school as well as military policemen who were unrecognisable.¹⁰⁸⁴

Use of Zvornik Brigade Machinery

654. There is no evidence of any Zvornik Brigade machinery at the school.¹⁰⁸⁵ The only evidence of machinery and/or transportation at this location relates to the lorries in which the prisoners were transported to the school.¹⁰⁸⁶

10.3. Petkovci Dam

655. This location was outside the area of defence of the 6th Battalion of the Zvornik Brigade¹⁰⁸⁷

Presence of Senior Officers

¹⁰⁸⁰ T.11705, 16th May 2007 Ostoja STANISIC

¹⁰⁸¹ T.13306, 26th June 2007, Marko MILOSEVIC

¹⁰⁸² T11596, 16 May 2007, OTP witness Ostoja Stanisic

¹⁰⁸³ T.11704, 17th May 2007, Ostoja STANISIC, T.13343, 26th June 2007, Marko MILOSEVIC and also T.13304 -T.13305, 26 June 2007, OTP witness Marko Milosevic

¹⁰⁸⁴ T.11605, 16th May 2007 Ostoja STANISIC, T.13304-5, 26th June 2007, Marko MILOSEVIC

¹⁰⁸⁵ See P686 EXH (Butler, Srebrenica Narrative) on Petkovci at paragraph 7.34 of his report in which he accepts that there is no record of any machinery used for the burial of bodies. T.13305, 26 June 2007, Marko MILOSEVIC; Also, [REDACTED] (PW-113).

¹⁰⁸⁶ [REDACTED] (PW-113).

¹⁰⁸⁷ 7DIC180; T.16101, [REDACTED]

656. It is clear that prisoners who were detained at Petkovci school were transported to the Dam and executed. The only reasonable inference to draw is that BEARA was controlling the events at the Dam and/or at the very least, BEARA must have known about them.

Use of Zvornik Brigade men

657. There is no evidence of involvement of Zvornik Brigade personnel being involved in executions at this site.¹⁰⁸⁸

Use of Zvornik Brigade Machinery

658. Two vehicle logs have been identified by Butler as indicating that the 6th battalion may have assisted in transporting prisoners to the dam,¹⁰⁸⁹ however, neither of the alleged drivers have been called to give evidence, and Stanisic says that at least one of the logs is in error.¹⁰⁹⁰

659. The Daily Log of the Engineering company has two entries involving the BGH-700 and the ULT-220 at Petkovci. However, there is no conclusive evidence as to who was operating these machines at the Dam.¹⁰⁹¹ Moreover, the Zvornik Brigade did not possess that particular type of machinery. Accordingly, any such machinery would have had to have been requisitioned.¹⁰⁹²

10.4. Rocevic School and the Kozluk site¹⁰⁹³

660. Again, these sites did not fall within the defence sector of any of the Infantry Battalions¹⁰⁹⁴

Sequence of Events

¹⁰⁸⁸ See again P686 EXH (Butler, Srebrenica Narrative) for Butler's interpretation of the internal Brigade documentation at Para. 7.33 which are Records from the Commander's Daily Orders for the Engineer Company of the Zvornik Brigade. These indicate that on 15 July, the Engineering Company had the following assignments: Assignment # 6 work with DLT in Petkovci, and Assignment # 7 work with excavator in Petkovci.412. [REDACTED]

¹⁰⁸⁹ P686 EXH (Butler, Srebrenica Narrative), Para. 7.35 vehicle records for 15 July 1995 indicate that two vehicles were active in going back and forth between Petkovci and the Dam (Branja).

¹⁰⁹⁰ See, on the one hand, P295 EXH, pp. 299-300 and 303-304, entry for 15 July and, on the other hand, T.11614-T.11616, 16 May 2007, OTP witness Ostoja Stanisic - Regarding these two trucks and trips, Ostoja Stanisic said that on the 15th, Vlado Josic went with the TAM80 to Srebrenica and that it was impossible to make a return journey to/from Srebrenica as well as to complete six other trips. He emphasises that Vlado Josic told him that personally that he went to Srebrenica

¹⁰⁹¹ P297, ENG ERN 0084-6762, entries 6 and 7.

¹⁰⁹² T.31315-31316, 12 February 2009, Vinko PANDUREVIC.

¹⁰⁹³ Events on 14th July 1995, at Rocevic where the Prosecution allege that POPOVIC AND NIKOLIC were active in efforts to assemble an execution squad.

¹⁰⁹⁴ T.12931, 20th June 2007, Srecko ACIMOVIC

661. On 14 July, JASIKOVAC¹⁰⁹⁵ ordered a number of military policemen to attend the school at Rocevic.¹⁰⁹⁶ Significantly, they did not ultimately carry out the task.
662. By the time the MPs arrived at the school¹⁰⁹⁷, the prisoners were already there¹⁰⁹⁸. This tends to suggest that the role of the MPs was auxiliary to that of the guards who were already in place. The available evidence supports the fact that the number and role of the MPs was limited.¹⁰⁹⁹ The evidence suggests that they were not really wanted at the school.¹¹⁰⁰ The scene at the school was chaotic with drunken people walking around with weapons.¹¹⁰¹
663. Upon arriving at the school with the MPs, JASIKOVAC went into the school alone, he spent about twenty minutes there, came out and then announced that they were going back to barracks.¹¹⁰²
664. There was concern locally about the presence of the prisoners at the school.¹¹⁰³ The local battalion commander was concerned about those who were guarding the prisoners. They appeared to be drunk or under the influence of drugs. They refused to answer his questions, refused to tell them who their commanding officer was and subsequently threatened him with a rifle.¹¹⁰⁴ This view was shared by Dragan JOVIC who did not recognise anyone from the Zvornik Brigade. In his view, they were most probably from the Bratunac Brigade.¹¹⁰⁵
665. ACIMOVIC went to barracks in Kozluk and there attempted to make contact with the Duty Operations Officer. The only person whom he could get any answer from was Vujadin POPOVIC¹¹⁰⁶
666. Others will certainly make detailed submissions about the alleged communications between Acimovic and others. Suffice it to say that the following day, 15th July, according to Acimovic he met with Popovic outside the school at 09.00.¹¹⁰⁷
667. It is plain that Popovic was purporting to give orders to Acimovic, and was threatening him that the prisoners would be executed in Rocevic unless he provided adequate transport to take them elsewhere.¹¹⁰⁸ The guards were still there from the previous day.

¹⁰⁹⁵ T.14555, 30th August 2007, Dragoje IVANOVIC, confirmed at [REDACTED], [REDACTED], [REDACTED], T.14553, 30th August 2007, Dragoje IVANOVIC, T.14554, 30th August 2007, Dragoje IVANOVIC

¹⁰⁹⁶ [REDACTED], [REDACTED] but see T.26044, 22nd September 2008, Stevo KOSTIC, T.18053, 21st November 2007, Dragan JOVIC, , [REDACTED]

¹⁰⁹⁷ T11047, 7th May 2007, Milorad BIRCAKOVIC (Milorad BIRCAKOVIC who drove JASIKOVAC to Rocevic), [REDACTED], [REDACTED], [REDACTED], T.10760, 1ST May 2007, Stanoje BIRCAKOVIC

¹⁰⁹⁸ [REDACTED]

¹⁰⁹⁹ [REDACTED]

¹¹⁰⁰ T.6543, 30th January 2007, Milomir SIMIC)

¹¹⁰¹ [REDACTED]

¹¹⁰² T.14554, 30th August 2007, Dragoje IVANOVIC

¹¹⁰³ T12934-935, 20th June 2007, Srecko ACIMOVIC

¹¹⁰⁴ T.12936, 20th June 2007, Srecko ACIMOVIC

¹¹⁰⁵ T.18053, 21st November 2007, Dragan JOVIC

¹¹⁰⁶ T12937-940, 20th June 2007, Srecko ACIMOVIC

¹¹⁰⁷ T.9923-9925, 3rd April 2007, Dragan ASCERIC, T.12933, 20th June 2007, Srecko ACIMOVIC

¹¹⁰⁸ T.12969, 20th June 2007, Srecko ACIMOVIC

668. A young man appeared, volunteering to execute the prisoners¹¹⁰⁹. He was young, too young to be a member of the Zvornik Brigade.¹¹¹⁰
669. MPs escorted the prisoners away from the school on the way to the execution site and, it would also appear that they unloaded them at the other end. No names or identities of those MPs is known other than the view taken that they were not Zvornik Brigade personnel. They must have been from the Bratunac Brigade.¹¹¹¹
670. It is accepted that under effective duress the battalion provided transport for the prisoners to Kozluk.
671. The preponderance of the evidence suggests that those who carried out the execution were unrecognisable by reason of their painted faces and balaclava masks.¹¹¹² [REDACTED]¹¹¹³ [REDACTED].¹¹¹⁴
672. The most reasonable inference to draw from the evidence as to identification is that the soldiers who had gathered at the execution site were not from the Zvornik Brigade¹¹¹⁵ but rather from the Bratunac Brigade.¹¹¹⁶ Failing that, the Trial Chamber may decide that the safest conclusion to draw is that the evidence is inconclusive as to the identification of the executioners.
673. In the aftermath, Damjan LAZAREVIC was ordered to go to the site in order to assist with burial of the bodies.¹¹¹⁷

Use of Zvornik Brigade machinery

674. It was assumed that the trucks being used to transport the prisoners away from the school belonged to the Zvornik Brigade. However, this could not be confirmed 100%.¹¹¹⁸
675. The machinery which was used to bury the prisoners was not the property of the Zvornik Brigade.¹¹¹⁹

¹¹⁰⁹ T.12971, 20th June 2007, Srečko ACIMOVIC, T.18056-T.18058 21st November 2007, Dragan JOVIC

¹¹¹⁰ [REDACTED]

¹¹¹¹ T.18059-18060, 21st November 2007, Dragan JOVIC, T.18053

¹¹¹² [REDACTED], T.14457, 29th August 2007, Damjan LAZAREVIC

¹¹¹³ [REDACTED]

¹¹¹⁴ [REDACTED], T.18063, 21st November 2007, Dragan JOVIC, see also T.13119, [REDACTED]

¹¹¹⁵ T.18065, T.18067, T.18085, 21st November 2007, Dragan JOVIC,

¹¹¹⁶ T.17951, 20th November 2007, Mile JANJIC.

¹¹¹⁷ T.14455, T.14457, 29th August 2007, Damjan LAZAREVIC

¹¹¹⁸ [REDACTED]

¹¹¹⁹ T.14458, 29th August 2007, Damjan LAZAREVIC (A ULT 220 came later to replace a smaller machine. The ULT 220 was owned by the stone quarry company based at Josanica. It was driven by Rade Boskovic)

10.5. Kula School near Pilica¹¹²⁰

676. This location is outside the defence area of the 1st Battalion of the Zvornik Brigade.¹¹²¹ These events took place while the Zvornik Brigade (and in particular at this location, the 1st Battalion) was stretched severely across four or five front lines. Spare men were few in number and there very few soldiers available from the 1st Battalion to assist at the school.¹¹²²

Sequence of Events

677. On 14th July 1995, Momir PELEMIS, the deputy commander of the 1st Battalion of the Zvornik Brigade was notified that about 200 prisoners were to be brought to Kula school, that they would stay there one night and then would be exchanged.¹¹²³

678. Slavko PERIC¹¹²⁴ spoke with Drago NIKOLIC on the phone and received orders that he should go to the school and that he should provide ten to fifteen men for guard duty. This was to ensure that there was no disruption to civilian lives around the school.¹¹²⁵

679. During the conversation with NIKOLIC, PERIC made it plain that he could not receive orders from him but rather any orders given to him had to come from the commander or deputy commander of the battalion.¹¹²⁶

680. A number of personnel from Battalion Command went to the school after 'agreeing' with Drago NIKOLIC that they would do so and there they prepared the school before the prisoners arrived.¹¹²⁷ They were unarmed.¹¹²⁸ Their role was to provide guard duty at the school in ensuring the security of the prisoners and of the villagers.¹¹²⁹

681. The prisoners arrived with an armed guard.¹¹³⁰ The Zvornik Brigade personnel did not recognise anyone.¹¹³¹ This tends to support the proposition that at this site, Zvornik Brigade personnel were, effectively, "playing second fiddle" to others at the school.

¹¹²⁰ Paragraph 30.9 of the Indictment - In which the prosecution allege that BEARA assisted by POPOVIC, NIKOLIC and TRBIC were instrumental in activities at the school. In addition, the prosecution allege that VRS personnel (Zvornik Brigade soldiers) were involved in the execution of prisoners at the school and the subsequent burial of the prisoners at Branjevo Military Farm under the control and/or command of Vinko PANDUREVIC.

¹¹²¹ See 7D1C180, [REDACTED].

¹¹²² T.11377, T.11387-T.11388, 11th May 2007, Slavko PERIC.

¹¹²³ T.11375-T.11376, 11th May 2007, OTP witness Slavko PERIC, T.10215-10216, 18 April 2007, OTP witness Rajko Babic

¹¹²⁴ Assistant Commander for Security and Intelligence of the 1st Battalion of the Zvornik Brigade. T.11375-11376, 11th May 2007, Slavko PERIC

¹¹²⁵ T.10215-T.10216, T.10219, 18 April 2007, OTP witness Rajko Babic

¹¹²⁶ T.11377-11378, 11th May 2007, Slavko PERIC

¹¹²⁷ T.11379, 11th May 2007, Slavko PERIC, T.11380, T.10220, 18 April 2007, OTP witness Rajko Babic, T.10221 T.11319, T.11323-11324, 10th May 2007, Jevto BOGDANOVIC,; Jovan ILIC (T.11327, 10th May 2007, Jevto BOGDANOVIC) ; Rajo JUROSEVIC (T.11327, 10th May 2007, Jevto BOGDANOVIC) ; Stevo OSTOJIC (T.11327, 10th May 2007, Jevto BOGDANOVIC) and Vojo LAKIC (T.11327, 10th May 2007, Jevto BOGDANOVIC).

¹¹²⁸ T.11325 10th May 2007, Jevto BOGDANOVIC and also T.11396, 11 May 2007, OTP witness Slavko Peric

¹¹²⁹ T.10251-T.10252, 18 April 2007, OTP witness Rajko Babic

¹¹³⁰ T.11396, 11 May 2007, OTP witness Slavko Peric

682. The Zvornik Brigade personnel were unable to exert any influence over the unknown soldiers and the unknown soldiers were the ones “who had the role to issue orders”¹¹³².
683. By the following day, 15th July, it became obvious to Slavko PERIC that the prisoners were ‘there to stay’. He went to Brigade Command to seek removal of the prisoners but his request was refused.¹¹³³ Instead, he employed ‘self help’ and went to the school personally.¹¹³⁴
684. Despite his personal attendance at the school in order to get the prisoners moved, he achieved nothing. PERIC said in evidence “I came away from all that with a conclusion that it was possible that even this operation, I mean the school, was controlled from a level much higher than that of the brigade even, and I came away with that impression because my arrival and what I said to them barely registered with them”.¹¹³⁵
685. However, his overtures appear to have had some effect because on the morning of 16th July, he received information that the prisoners would be moved that day.¹¹³⁶
686. At about midday on 16th July¹¹³⁷, two officers and about 10 soldiers in a vehicle arrived at the school. The soldiers were openly hostile towards the men from the Zvornik Brigade.¹¹³⁸
687. The irresistible inference to draw is that the two officers were Ljubisa BEARA and Vujadin POPOVIC who attended at the school together.¹¹³⁹ They were not identified at the scene by name, although descriptions were given. The mere fact that they were not identified by members of the Zvornik Brigade is highly significant given that members of the Zvornik Brigade would know their own commanders. Again, this evidence tends to support the argument that matters had been taken out of the hands of members of the Zvornik Brigade who were at the school.
688. Rajko BABIC spoke to one of the officers whom he described as a colonel or lieutenant colonel. He asked the officer what should be done with the prisoners and whether one or two could stay (he was referring to two people he recognized from the prisoners’ group). The officer said ‘no, they all have to leave’ ; at that moment, BABIC realised that “nothing good would happen to the prisoners” and decided not to set foot in the school again until it was empty.¹¹⁴⁰

¹¹³¹ T.11320, 10th May 2007, Jevto BOGDANOVIC, see also T.11381-T.11383, 11th May 2007, Slavko PERIC, T.10221, 18 April 2007, OTP witness Rajko Babic, T.11135-T.11136, 8 May 2007, OTP witness Milorad Bircakovic

¹¹³² T.11383, 11 May 2007, OTP witness Slavko Peric, T.10224-T.10226, 18 April 2007, OTP witness Rajko Babic T.10226-T.10228, (he refers to the unknown soldiers as the ones “who had the role to issue orders”)

¹¹³³ T.11395, T.11397 and T.11399, 11 May 2007, OTP witness Slavko Peric

¹¹³⁴ T.11392, 11 May 2007, OTP witness Slavko Peric

¹¹³⁵ T.11397, 11 May 2007, OTP witness Slavko Peric

¹¹³⁶ T.11408, 11 May 2007, OTP witness Slavko Peric

¹¹³⁷ One of the witnesses suggests that this attendance was on 15th July

¹¹³⁸ T.11409-T.11410, 11 May 2007, OTP witness Slavko Peric

¹¹³⁹ T.11414, 11 May 2007, OTP witness Slavko Peric, T.10237-T.10240, 18 April 2007, OTP witness Rajko Babic (On the 15th July, T.10247, T.10966, 4th May 2007, Drazen ERDEMOVIC (he saw an unidentified senior officer (lieutenant colonel) who was corpulent with grey hair who went with the soldiers to Branjevo Military Farm), T.10971 (that lieutenant colonel left the scene before the buses arrived)

¹¹⁴⁰ T.10237-T.10240, 18 April 2007, OTP witness Rajko Babic

689. Prior to buses arriving to take the prisoners away, one of the senior officers went with the unknown soldiers to Branjevo Military Farm, the scene of the next executions¹¹⁴¹.

690. Subsequently, additional 'non-Zvornik Brigade' soldiers arrived, they loaded the prisoners onto a bus and took them piecemeal away from the school. They were hostile to the 1st Battalion soldiers.¹¹⁴²

Use of Zvornik Brigade machinery

691. Some of the witnesses mention the presence of buses at the Kula school. The Zvornik Brigade did not possess any buses which meant that these vehicles must have been commissioned from a civilian company. All in all, there is no evidence of the Zvornik Brigade being involved in procuring these buses.¹¹⁴³

10.6. Branjevo Farm

692. The Zvornik Brigade ran two small farms or "ekonomija", one in Karakaj and one in Branjevo. The farm in Branjevo was part of a much larger agricultural holding belonging to Agroprom. The murders and burials were committed on the larger portion of land, belonging to Agroprom. The epithet "military farm" is entirely an invention of the prosecution and is inappropriate.¹¹⁴⁴

693. There has been a further flawed theory floated in the case concerning the provision of ammunition to the 1st battalion. Firstly, the executions at Branjevo were entirely conducted by the 10th Sabotage detachment. Secondly, the evidence reveals that that unit had more than an adequate supply of ammunition for the purpose, and lastly, the entries in the duty officer's notebook of the brigade reveal that no delivery of ammunition was in fact made.¹¹⁴⁵

Presence of Senior Officers

694. Drazen Erdemovic asserts the presence of an unidentified lieutenant colonel at the Branjevo Military Farm. According to Erdemovic's description, this officer was a corpulent man with grey hair. The lieutenant colonel left before the execution started and came back after they finished. He was urging the soldiers of the 10th Sabotage Detachment to follow him to the Pilica Cultural Centre.¹¹⁴⁶

¹¹⁴¹ T.10966, 4th May 2007, Drazen ERDEMOVIC (he saw an unidentified senior officer (lieutenant colonel) who was corpulent with grey hair who went with the soldiers to Branjevo Military Farm), T.10971 (that lieutenant colonel left the scene before the buses arrived)

¹¹⁴² T.11415 and T.11417, 11 May 2007, OTP witness Slavko Peric, T.11416

¹¹⁴³ T.10236, 18 April 2007, Rajko BABIC; T.11409-T.11410, 11 May 2007, Slavko PERIC.

¹¹⁴⁴ 7DIC364, and T.10286, 19 April 2007, Radivoje LAKIC

¹¹⁴⁵ See section Issues of proof

¹¹⁴⁶ T.10966, T.10971, T.10975, 4th May 2007, Drazen ERDEMOVIC

695. There seems little doubt that the evidence conclusively proves that Popovic was in the Pilica area at the time of the executions at Branjevo and Pilica. The 10th Sabotage detachment is of course a main staff unit, and would therefore, naturally be commanded by a Main Staff officer.

Use of Zvornik Brigade men

696. Damjan LAZAREVIC¹¹⁴⁷ assisted in the burial of the bodies at this site¹¹⁴⁸ together with Cvijetin Ristanovic who was operating the BGH-700 excavator.¹¹⁴⁹

697. LAZAREVIC noted that a number of elderly people from the public utilities company were loading bodies into the bucket of the excavator. When asked whether any members of the rear battalion ("R" Battalion) were there, he stated that there may have been two or three with the public utilities men, but he didn't know any of them and did not recall any names.

698. This evidence tends to question the suggestion in the indictment that 'R' Battalion personnel were present. Accordingly, the safest conclusion to reach is that this assertion can no longer be sustained.¹¹⁵⁰ More to the point, the mobilization of the R battalion and its deployment have been carefully analysed elsewhere and preclude its use in the Branjevo or Pilica area.¹¹⁵¹

Use of Zvornik Brigade machinery

699. No vehicles belonging to the Zvornik Brigade were used in the transportation or burial process.¹¹⁵² Nonetheless, the BGH-700 (belonging to the Zvornik road company) was operated by Cvijetin Ristanovic, member of the Zvornik Brigade Engineering Company.¹¹⁵³

¹¹⁴⁷ T.14459, 29 August 2007, OTP witness Damjan Lazarevic

¹¹⁴⁸ T.14460, 29 August 2007, OTP witness Damjan Lazarevic

¹¹⁴⁹ T.5392-T.5393, 1 December 2003, Prosecutor v. Blagojevic and Jokic, OTP witness Cvijetin Ristanovic

¹¹⁵⁰ T.14461-T.14462, 29 August 2007, OTP witness Damjan Lazarevic; T.25949, 18 September 2008, Dragan MILOSEVIC.

¹¹⁵¹ See Part 4 Section 11 about the VBI 15 July

¹¹⁵² T.14450, T.14481, 29th August 2007, Damjan LAZAREVIC, (Veljko KOVACEVIC) – T.14514, 30th August 2007, Damjan LAZAREVIC and see also T.5389-5390, 1st December 2003, Prosecutor v Blagojevic and Jokic, Cvijetin RISTANOVIC. T.5390, 1st December 2003, Prosecutor v Blagojevic and Jokic, Cvijetin RISTANOVIC (The BGH-700 was driven by RISTANOVIC).

¹¹⁵³ T.5392-T.5393, 1 December 2003, Prosecutor v. Blagojevic and Jokic, OTP witness Cvijetin Ristanovic

10.7. Pilica Cultural Centre

Presence of Senior Officers

700. According to the testimony of OTP witness Drazen Erdemovic, the same lieutenant-colonel who was present at the Branjevo Military Farm before and after the executions, had also urged the members of the 10th Sabotage Detachment to follow him to the Pilica Dom (Cultural Centre).
701. According to Erdemovic, the lieutenant-colonel claimed that “there were 500 people there from Srebrenica who were trying to break down the door and who were trying to escape from there, and he said that they needed to go there and execute those people”. Although Erdemovic and some other members of his unit refused to go to the Dom, it is understood from this witness’ testimony that the lieutenant-colonel with some “Bratunac-people” did go and were present at this detention/execution site.¹¹⁵⁴
702. This officer cannot have been a Zvornik Brigade Commander because LAZAREVIC would have known him. The officer had been at Kula, Branjevo and subsequently at Pilica. The reasonable inference to draw from this sequence of evidence is that BEARA was dictating events at all three sites.

Presence of Zvornik Brigade Officers

703. Slavko PERIC attended at this site for two or three minutes.¹¹⁵⁵

Use of Zvornik Brigade men

704. A number of soldiers were ordered to attend this site. These included those who had been at the school at Kula¹¹⁵⁶ and others from the 1st Battalion of the Zvornik Brigade.¹¹⁵⁷
705. The purpose of their attendance was to clear up the bodies left from the executions.¹¹⁵⁸
706. There were a number of soldiers at the scene whom no-one recognised as being from the Zvornik Brigade and it was unclear who was in overall charge of events at that location¹¹⁵⁹

¹¹⁵⁴ T.10982, 4 May 2007, Drazen ERDEMOVIC.

¹¹⁵⁵ T.11404, 11 May 2007, OTP witness Slavko Peric

¹¹⁵⁶ T.11326-11327, 10th May 2007, Jevto BOGDANOVIC

¹¹⁵⁷ T.11329, 10th May 2007, Jevto BOGDANOVIC

¹¹⁵⁸ T.10272-10274, 19th April 2007, Radivoje LAKIC (he was the manager of the Branjevo Military Farm – he sent to Pilica Dom a few elderly members of the workers platoon – this was a none combat platoon – they were Dusan Trivkovic, Jevto Lazarevic and Stevo Ostojic)

¹¹⁵⁹ T.11328, 10th May 2007, Jevto BOGDANOVIC, T.11404, 11 May 2007, OTP witness Slavko Peric

Use of Zvornik Brigade machinery

707. There is no conclusive evidence regarding the vehicles that transported the bodies of prisoners from the Pilica Cultural Centre to the Branjevo Military Farm. Regarding the burying of these bodies, see the relevant paragraph of the preceding section.

11. PANDUREVIC'S KNOWLEDGE AND REPORTING OF EVENTS

11.1. Introduction

708. This section will deal with the proper inferences which can be drawn from the extraneous sources of evidence as to Pandurevic's knowledge of the commission of crimes, especially murders.

709. The case against Pandurevic is unique in a number of ways, but stands apart peculiarly from the cases of others for a number of reasons which relate directly to the question of what knowledge could be imputed to him.

710. As will be detailed below, Pandurevic provided the only examples of report writing which explicitly referred to the existence of prisoners in the Zvornik area.¹¹⁶⁰ These references were conscious and deliberate, and, it must be assumed, were intended by Pandurevic to create a permanent record, which in fact they did.

711. By marked contrast, there is no record of any intercepted radio communication from which it could be inferred that Pandurevic had a contemporaneous knowledge of the prisoners or what was to happen to them. It would not be unreasonable to infer that those who were captured in such conversations did not allow themselves to be consciously or deliberately overheard. The absence of any such evidence in the case of Pandurevic is very significant. It is not just that he, himself did not talk of such matters, but also that nobody apparently engaged him in such a topic of conversation, notwithstanding his position and his written reports.

712. Throughout the period of 4th to 15th July, his ability to communicate with the command at Zvornik at all material times was severely limited, and is dealt with elsewhere in this brief.¹¹⁶¹ Nonetheless, there is no evidence that any attempt was made to alert him of the situation with the prisoners or indeed the column during the critical period 13th and 14th July.

¹¹⁶⁰ P00329, ZVORNIK BRIGADE DAILY INTERIM COMBAT REPORT NO. 06-217-1, DATED 15 JULY 1995 and P334

¹¹⁶¹ See Part 4 Section 4 on Communications during Krivaja 95

713. Indeed there is compelling evidence which suggests that he was being actively kept out of the communications loop when it came to the business of the prisoners.¹¹⁶² There is moreover, no evidence from which it could be properly inferred that any of his subordinates in the brigade reported to him about events in a timely or effective manner ([REDACTED]).

11.2. Irregular combat report of 15th July

“If there are potentially two reasonable interpretations, we will give them the benefit of the doubt” – T.480, 22 August 2006, Peter McCloskey (talking about P329)

11.2.1. The Prosecution Opening

714. The Irregular Combat Report of 15th July was dictated to the late Ljubo Bojanovic sometime before 1925hrs on that same evening. It has been termed the ‘*most important document in the case against Pandurevic*’,¹¹⁶³ ‘*the key document*’.¹¹⁶⁴ Prosecution counsel conceded in opening the case that the document is difficult to interpret,¹¹⁶⁵ and that the Trial Chamber would need to study and consider it throughout the evidence.¹¹⁶⁶ In cross-examination of the accused he described it as ‘*cryptic*’.¹¹⁶⁷ This view was not shared by his colleague, Mr Butler, who thought it was a quite straightforward document,¹¹⁶⁸ although that may have had something to do with the fact that he seemed to be working from a different translation to the rest of us.¹¹⁶⁹

715. On certain things there will be substantial and significant agreement. The use of the word “liquidated” in the first paragraph can only be interpreted to mean killed in combat,¹¹⁷⁰ and by the early evening of 15th July there had not been a major military engagement between the Zvornik Brigade and the ABiH.¹¹⁷¹

¹¹⁶² P01178, Intercept dated 15 July 1995, 09:54 hours.

¹¹⁶³ T.477, 22nd August 2006, Prosecution Opening Statement

¹¹⁶⁴ T.479, 22nd August 2006, Prosecution Opening Statement

¹¹⁶⁵ T.477, 22nd August 2006, Prosecution Opening Statement

¹¹⁶⁶ 22nd August 2006, Prosecution Opening Statement

¹¹⁶⁷ T.32211, 27 February 2009, Vinko Pandurevic

¹¹⁶⁸ T.20820, 31 January 2008, Richard Butler

¹¹⁶⁹ P00686, Butler, R., Narrative (Revised), para. 7.72

¹¹⁷⁰ T.480, 22nd August 2006, Prosecution Opening Statement

¹¹⁷¹ T.481, 22nd August 2006, Prosecution Opening Statement

11.2.2. Butler's Evidence on the Topic

716. Richard Butler's first report contained an assessment of this document based on a translation which was both incorrect and home-made. It is interesting to note that in evidence he averred that his initial reading of this document led him to believe it was exculpatory,¹¹⁷² but that many months of further analysis of the document and the surrounding evidence had forged the prosecution position as to its interpretation.
717. However, his reasoning in that regard betrays a fatal flaw which lies at the heart of the prosecution case and the indictment itself. It is based on the premise that merely because the prisoners were in the Zvornik area, the accused Pandurevic had a responsibility for their welfare.¹¹⁷³ In the defence submission, this notion of a Zone of Responsibility is demonstrably false.¹¹⁷⁴ In his evidence in this case, even Butler himself did not advance the theory.¹¹⁷⁵ His interpretation of P329 in that light is therefore no longer justifiable.
718. His view as to the intended meaning of P329 was, of course, not challenged in either of the previous cases in which he has given evidence. Indeed the prosecution position as to the interpretation of the relevant passages received some support from the defence.¹¹⁷⁶ Butler's comments were not made on the basis of the evidence, especially from the defence, in the present case. In particular, he did not have the benefit of hearing the evidence of the accused, Pandurevic about the report, nor the evidence of him [REDACTED] about Pandurevic's military options on 15th and 16th July.¹¹⁷⁷ Likewise, he did not hear Pandurevic's accepted explanation of his visit to Krstic some days after the report was written.
719. A sensible explanation for Butler's re-translation of the document in his initial report is difficult to find. In the submission of the defence, he certainly did not provide one. At best it displays a careless adherence to case theory in spite of, rather than because of the evidence.
720. The perversion of the sense of the document in the May 2000 report has another effect upon the evidence, for it was necessarily that document with its misrepresentation of the contents of the Irregular Combat Report of 15th July which Pandurevic took to Valjevo to discuss with Eileen Gilleece in October 2001. Little wonder therefore, that Pandurevic was at pains to point out that by way of example that '*asanacija*' did not mean *burying the bodies* as Butler had stated in his report. The prosecution's submission that Miss Gilleece's note is evidence of a shift in Pandurevic's case is both unfair and ignorant of historical context.

11.2.3. The Evidence of Pandurevic

721. In the defence submission, absent proof beyond a reasonable doubt to the contrary, Pandurevic's explanation as to the sense of the report must be accepted. He needs only to

¹¹⁷² T.20820-822, 31st January 2008, Richard Butler

¹¹⁷³ T.20822, 31 January 2008, Richard Butler

¹¹⁷⁴ See Part 3 Section 1 "Zone of Responsibility"

¹¹⁷⁵ T.20793, 31 January 2008, Richard Butler

¹¹⁷⁶ T.32216, 27th February, Vinko Pandurevic

¹¹⁷⁷ See Part 4 Section 7 "Baljkovica"

satisfy the Trial Chamber that the document *might* mean what he says it means. His explanation for his motives and meaning in writing the report have a credible historical perspective, both viewed from the basis of events at the time, and with the benefit of subsequent events.

722. To draw together a few features of the history, some of which have not been highlighted before - the intended recipient of the report, Krstic, had been in office less than 48 hours by the time it was sent ; he was engaged in combat operations towards Zepa, based at Krivace, and spending his nights at the home of his wife's family nearby.¹¹⁷⁸ At the time of Pandurevic's departure from Krivace, there was no intelligence as to the numerical strength of the column, but some information that Naser Oric was leading it.¹¹⁷⁹ Those assembled at the Standard Barracks in Zvornik on the morning of 15th July represented the Zvornik Brigade and the MUP. There were no representatives of the Drina Corps. Some of those present were strangers to Pandurevic and the area.¹¹⁸⁰ The evidence suggests that there was not a voice in the room in favour of fighting, other than Pandurevic's upon his return.¹¹⁸¹ Of those present, only Obrenovic could possibly have any direct knowledge of the whereabouts and size of the column. His perspective was from the conduct of small ambushes between Snagovo and Crni Vrh.

11.2.4. The Sources of the Information

723. There seems little basis for doubting that Pandurevic has done anything other than faithfully and accurately recount the sources of information available to him in preparing his report. The information had to be garnered over about seven hours, either at the Standard barracks or the IKM of the Brigade. Additionally to the personnel he encountered there, he would of course have had radio contact with brigade command and the commands of the battalions.

a) [REDACTED]

724. [REDACTED].¹¹⁸² If accepted, his account of his whereabouts on the 14th and early morning on 15th would represent a serious limitation on the information at his disposal by 12 noon on the 15th. If not accepted, then there is yet further serious damage to his credibility on any issue. Plainly by about 0930hrs on 15th July, the Zvornik brigade duty officer had been informed that Pandurevic was returning.¹¹⁸³ [REDACTED]¹¹⁸⁴ [REDACTED].¹¹⁸⁵

¹¹⁷⁸ T.29617, 12 December 2008, Milenko Jevdjjevic

¹¹⁷⁹ T.29801, 16 December 2008, Milenko Jevdjjevic; See also Part 4 section 6 "Return to Zvornik"

¹¹⁸⁰ T.32017, 23 February 2009, Vinko Pandurevic

¹¹⁸¹ See Part 4 section 6v "Return to Zvornik"

¹¹⁸² [REDACTED]

¹¹⁸³ P01176, Intercept dated 15 July 1995, 09:39 hours; [REDACTED]

¹¹⁸⁴ [REDACTED].

¹¹⁸⁵ [REDACTED]. See Part 4 Section 6 Return to Zvornik

725. [REDACTED] The prosecution case theory as to the interpretation of the report had been set in stone since at least the signing of Mr Butler's report in May 2000. [REDACTED].¹¹⁸⁶ [REDACTED].¹¹⁸⁷

726. [REDACTED].¹¹⁸⁸ [REDACTED].¹¹⁸⁹ None of those present has any reason to misremember or dissemble on that issue. The most graphic of the accounts describes Pandurevic as "bursting into the room"¹¹⁹⁰ which rings of the truth, given the urgency of his return. The alleged corridor conversation conveniently transfers the information to Pandurevic recently acquired from Jokic¹¹⁹¹ sufficient to support the prosecution case theory about the sense of the interim combat report. There is little if anything else to it beyond "I told him what Jokic had just told me." Stark in its absence from the prosecution's cross-examination of Pandurevic [REDACTED] was the explicit suggestion that the corridor conversation had in fact taken place. [REDACTED].

b) Brano Grujic

727. Given that Obrenovic did not know about the holding of prisoners in schools,¹¹⁹² Pandurevic must necessarily have had other information at his disposal before writing that section of the report. His account of a meeting at the IKM with Brano Grujic,¹¹⁹³ the former President of the Municipality of Zvornik, was not challenged, and found support in the evidence of PW-168,¹¹⁹⁴ as well as Dragutinovic.¹¹⁹⁵

728. According to Pandurevic, Grujic arrived at the IKM in the early afternoon of 15th July and enquired about the presence of prisoners in schools in the area. He had received the information from his Party activists. Pandurevic believes he mentioned two schools which were Petkovci and Pilica.¹¹⁹⁶ The latter assertion is particularly credible, given the fact that it is hardly in Pandurevic's interests to mention that he had acquired knowledge of the prisoners in Pilica on 15th, rather than some other location where the prisoners had already been killed.

729. Grujic mentioned that there was concern in the local communities.

c) Ljubo Bojanovic

730. Nobody present at the IKM was able to give Pandurevic further information about Grujic's query until the arrival of Bojanovic at about 1800hrs. He was unaware of the use of schools as detention facilities but knew that buses were passing towards Bijeljina. He

¹¹⁸⁶ [REDACTED]

¹¹⁸⁷ [REDACTED].

¹¹⁸⁸ [REDACTED]

¹¹⁸⁹ See Part 4 Section 6 Return to Zvornik

¹¹⁹⁰ Idem

¹¹⁹¹ [REDACTED]

¹¹⁹² [REDACTED].

¹¹⁹³ T30983, 2 February 2009, Vinko Pandurevic

¹¹⁹⁴ [REDACTED].

¹¹⁹⁵ T.12805, 18 June 2007, Miodrag Dragutinovic

¹¹⁹⁶ T.30983, 2 February 2009, Vinko Pandurevic

did not think the Brigade was involved in this process.¹¹⁹⁷ It is worth pausing to note that, of course, the route to Bijeljina and the Batkovci camp passed through Zvornik and, secondly, that the villages of Petkovci and Pilica lie on or just off the Zvornik-Bijeljina Road. Accordingly, there is a synergy between the two pieces of information received by Pandurevic at the IKM on the afternoon of 15th. Nonetheless, bus loads of prisoners must have suggested *a large number*, and Grujic had plainly come to voice the concern of the community

d) Brigade Command

731. Pandurevic had been in contact with the brigade command since he first arrived at the IKM in Krivace early on the morning of 15th July. The texts of those communications were substantially captured by Muslim intercept operators, and were entirely concerned with the combat situation.¹¹⁹⁸ Pandurevic preferred not to use Jokic, the standing duty officer, as a source of information.¹¹⁹⁹ Other than the telegrams available,¹²⁰⁰ and the conversations dealt with above, no other information was available to Pandurevic at the IKM at Krivace. Pointedly, Krstic did not discuss with him the detention of prisoners in the Zvornik area.¹²⁰¹ An hour later Krstic chose not to mention to Beara, during the infamous “3,500 parcels” conversation that Pandurevic was returning to Zvornik with over 400 men. Neither did Beara ask for resources from the Zvornik Brigade,¹²⁰² in spite of the fact that there is scant evidence that he had any knowledge of the Military situation the Brigade faced at that time.

732. From the Zvornik Brigade IKM, Pandurevic had access to all the information in the possession of the duty officer during the afternoon of 15th. By then the duty had passed to Nenad Simic.¹²⁰³ Nothing could be gleaned by him from the available logbooks or diaries which would have clarified the information from Grujic.

11.2.5. The Accuracy of the Combat Information

733. The daily combat report was sent about 15 minutes earlier than the Interim report at 1911hrs. It records the fact that ; “...at around 04.40 the enemy launched a heavy artillery attack on the defence lines of the 4th, 6th and 7th battalions. The attack ended at 05.30 but the enemy continued firing artillery and infantry weapons at short intervals. Three fighters from the 7th battalion were injured...”

734. Entries in the Duty Officers logbook for 15th July reveal the military situation in the battalions to be normal¹²⁰⁴. Two tank shells appear to have been recorded as being fired at

¹¹⁹⁷ T.30984 2 February 2009, Vinko Pandurevic

¹¹⁹⁸ **P01173**, Intercept dated 15 Jul/95, 08:55 hrs; **P01174**, Intercept dated 15 July 1995, 09:10 hours.

¹¹⁹⁹ T.30950-T.30952, 2 February 2009, Vinko PANDUREVIC

¹²⁰⁰ **P00327**, Zvornik Brigade Interim Report No. 06-216/2, 14 July 1995; **P00169**, Drina Corps Command Report 03/157-12, 14 July 1995; - **P00163**, Drina Corps Command Radio Intercept Detachment Report 13-37/2., 15 July 1995.

¹²⁰¹ T.31468-T.31469, 13 February 2009, Vinko Pandurevic

¹²⁰² **P01179**, Intercept dated 15 July 1995, 10:00 hours.

¹²⁰³ [REDACTED].

¹²⁰⁴ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, p141

the town and another target,¹²⁰⁵ while enemy forces were closing.¹²⁰⁶ The Brigade plainly anticipated that the 28th Division would attempt to make a break for the free territories at or about 0400hrs on 16th, and were making ready for it. Brigade intelligence revealed the column to be powerless without help from the 2nd Corps.¹²⁰⁷

735. Whilst of course Pandurevic was in possession of better information than the author of the Daily Report about the combat situation at the front, in terms of the military situation, the Interim Report represents a significant escalation in respect of current activity and future risk. However, one aspect is significantly downplayed, namely the numbers of the column. Obrenovic had estimated their number at almost double what Pandurevic wrote in the report.¹²⁰⁸ Accurate information as to the numerical size of the column was one of the principle pieces of information required by Corps command.¹²⁰⁹ Pandurevic explained the inaccuracies as being part of a certain “logic” to the report.¹²¹⁰ It is difficult to arrive at any other conclusion. Overstating the intensity of the enemy activity, whilst simultaneously placing conservative estimates as to the numbers within the column, must have some logic.

11.2.6. The State of the Negotiations with the ABiH

736. The fact and the details of the negotiations between Pandurevic and Semso Muminovic throughout the 15th July represent a five-fold obstacle to prosecution case theory:

- the impetus for a ceasefire and a peaceful passage of the column came from the Muslim side;
- the negotiations pre-dated the combat on the morning of 16th July ;
- on 15th July, Pandurevic was not indisposed to the passage of all the members of the column, merely to their passage with arms ;
- his assertion in the interim report that he had made an offer to the enemy commander to separate the civilians from the fighters was disingenuous ; and
- the “them” which had been the focus of his attention, and accordingly, the report itself, were the trapped fighters and civilians in the wider area of Pandurice, Planinci etc., rather than prisoners in schools.

737. The impact of these matters upon the Trial Chamber’s finding as to Pandurevic’s *mens rea* will be considered elsewhere in this brief. However, it is the defence submission that the prosecution have sought throughout to avoid the fact and details of the negotiations of 15th July, and the paragraph in P329 where Pandurevic refers to them.

¹²⁰⁵ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, p141

¹²⁰⁶ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, p141

¹²⁰⁷ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, p142

¹²⁰⁸ T.30959, 2 February 2009, Vinko Pandurevic

¹²⁰⁹ T.30985, 2 February 2009, Vinko Pandurevic

¹²¹⁰ T.30987, 2 February 2009, Vinko Pandurevic

738. The impression left by Richard Butler's report of May 2000 is that the negotiations only commenced after the fighting on 16th. During his evidence before this Chamber he conceded that he had not troubled to consider the tape-recorded conversations between Pandurevic and Muminovic, and knew nothing of their contents.¹²¹¹
739. The negotiations have a relevant historical context. Previous arrangements between Pandurevic and Muminovic had involved prisoner exchange, ceasefires and wider arrangements concerning the preservation of normal life and humanitarian conditions, irrespective of advantage for one side or the other.¹²¹² Whilst it is correct that in the absence of Pandurevic, there was contact between Muminovic and Obrenovic and Vukotic, it is plain that the personal connection was of great importance and that in the early morning of 15th July, Muminovic was seeking contact with Pandurevic, and leaving his radio frequency.¹²¹³

11.2.7. The knowledge of Higher Command

740. Corps command knew of Pandurevic's previous accommodations with Muminovic through combat reports and other enquiries.¹²¹⁴ What was known of Pandurevic's negotiations with him on 15th July prior to his sending the report is less clear. Plainly, it was known that Muminovic had made an attempt to contact him that morning, as the message was given to him by Mica Petkovic, an intelligence officer of the Drina Corps, at the IKM at Krivace.¹²¹⁵

11.2.8. The Prosecution's Misunderstanding of the State of Play at the Start of the Case

741. According to Pandurevic, he spoke five or six times with Muminovic on the afternoon of 15th July. All of the conversations were during the hours of daylight.¹²¹⁶ He only negotiated once he had stabilised the lines.
742. The prosecution's position at the start of the trial as espoused in the opening of prosecution counsel,¹²¹⁷ and further advanced through the evidence of its military analyst, Butler,¹²¹⁸ is that Pandurevic was not prepared to let the members of the column go on 15th July, and was only prepared to do so after suffering heavy losses on the morning of

¹²¹¹ T.20733, 30 January 2008, Richard Butler

¹²¹² **7D01191**, 92bis statement of Semsudin Muminovic.

¹²¹³ **P01171**, Intercept dated 15 July 1995, 08:34 hours.

¹²¹⁴ See **7D00454**, Zvornik Brigade, Information No. 57, 11 November 1993; **7D00945**, Zvornik Brigade, regular combat report, doc no. 435-04, 8 November 1993; T30975, 2 February 2009, Vinko Pandurevic

¹²¹⁵ T.30977, 2 February 2009, Vinko Pandurevic

¹²¹⁶ T.30980-981, 2 February, Vinko Pandurevic

¹²¹⁷ T.481-T.482, 22 August 2006, Peter McCloskey

¹²¹⁸ T.20844-T.20845, 31 January 2008, Richard Butler

16th July. This position is now demonstrably false, as we know from the actual text of those discussions that, by as early as the third conversation in the sequence, Pandurevic had already agreed that all the members of the column were free to leave, and was merely demanding that they abandon their arms.¹²¹⁹

743. The evidence of Jankovic, the captured policeman, is also instructive on this point. On 15th July, he was close to the command of the 28th Division. According to him, on the evening of 15th July, there was a concluded agreement for the safe passage of the column, which was not effective for the simple reason that the ABiH did not trust the Serbs. Had they done so, then, in all probability, there would have been no battle on the morning of 16th July. In any event, there is in these pieces of information, not considered by the Prosecution before the start of the case, significant support for the position of Pandurevic that by the time he wrote the Irregular Combat Report of the 15th, the passage of the column was effectively a “done deal”.¹²²⁰

11.2.9. “An Additional Burden”

a) Burden not Obligation

744. The use of the word burden in the critical fourth paragraph of the report is not accidental. Syntactically, it conveys a different concept to the obligations which faced the Brigade and which were dealt with elsewhere in the report. It does so because its author intended it to.¹²²¹

745. This is significant because it reveals that the Brigade had neither orders in relation to nor obligations for the prisoners.

b) Judge Prost’s Question

746. Discerning the meaning of P329 from the face of the document in its English form is made the more difficult by several debatable translations of critical phrases. Richard Butler himself referred to the difficulties of getting an accurate sense of the document in translation.¹²²² The Chamber has before it two translations – both were made by the Tribunal’s own service and yet are different in material ways. In the translation of the document prepared of P329, the prisoners are said to have been “*distributed throughout schools*”, a phrase which Judge Prost rightly picked up as conveying a rather wider idea than the information Pandurevic said he had received from Brano Grujic.¹²²³

¹²¹⁹ See 7D00656, Surrogate sheet - recorded conversation between Semso Muminovic and Vinko Pandurevic, 28 May 1995; T.30980, 2 February 2009, Vinko Pandurevic

¹²²⁰ [REDACTED].

¹²²¹ T.30992, 2 February 2009, Vinko Pandurevic

¹²²² T.20760, 30 January 2008, Richard BUTLER

¹²²³ T.32468, 3 March 2009, Vinko Pandurevic

747. However, when Pandurevic considered the original document and read back his words, the interpreters in court translated the phrase as merely “*placed in schools*”.¹²²⁴ That same phrase had been applied to the words of the document by CLSS when they had been asked to translate it as an appendix to the report of Dr Marojevic.¹²²⁵

748. Accordingly, in the submission of the defence that is the safer translation of the phrase, or at least, it cannot be said that there is anything in that phrase, as written which is inconsistent with the source of information Pandurevic says accounts for it.

c) “Asanacija I Obezbedjenje Terena”

749. The defence case as to this now infamous phrase is that, far from allowing for the possibility of a second reasonable interpretation as to what the author was intending to convey, the prosecution has not only closed its mind to any interpretation other than that erroneously placed upon it by Richard Butler, but that it has gone further and shaped the evidence to fit its interpretation. In that exercise it has found a willing accomplice in Dragan Obrenovic.

11.2.10. Asanacija

a) The evidence in the case as to its meaning

750. *Asanacija* probably comes second only to *zastupa* as the most discussed BCS word in the whole case. The process of sanitization is described in a variety of manuals and documents. It is an obligation which falls upon different public bodies in different situations. On the battlefield, however, it is the responsibility of the army.¹²²⁶ It is a combat activity.

751. It embraces a wide spectrum of practices, which can occur both during and after combat. Those practices or obligations include the rescue and removal of wounded during combat, the removal of dead bodies during combat, as well as the removal of dead and wounded once the battle is over, and the clearing up of harmful and hazardous waste. Harmful or hazardous waste in a battle would necessarily include not just human remains but animal remains and dangerous chemicals, such as might result from the firing of shells or rockets.

b) The need to remove the dead and wounded on 15th (and 16th July)

752. There is a central inconsistency at the heart of the Prosecution’s case about the events on the battlefield of 14th-16th July in Zvornik. On the one hand, it seeks to establish that

¹²²⁴ T.31566, 16 February 2009, Vinko Pandurevic

¹²²⁵ 7D00917, Linguistic report of Radmilo Marojevic.

¹²²⁶ T.30992, 2 February 2009, Vinko Pandurevic

the mounting casualties bore heavily upon Pandurevic's decision to let the column go;¹²²⁷ that the relevant casualties were not just from his own units¹²²⁸ but also from the immediate vicinity of Baljkovica as well as those on 16th July¹²²⁹ and that the chamber should consider not just the dead but also the wounded and those missing at that time.¹²³⁰

753. On the other hand, it seeks to persuade the Chamber that Pandurevic had no reason to be concerned about the recovery of dead, missing or wounded men on 15th July.¹²³¹ It simply cannot be both. As a matter of fact, at the time of writing the report, there were already many dead and wounded on both sides, some of whom were trapped.¹²³²

754. The prosecution's position also fails to take account of the fact that hazards to health do not only emanate from your own fallen and wounded. Large numbers in the column were dying in combat,¹²³³ or as a result of suicides, land mines and sickness.¹²³⁴ Their remains presented an equal hazard. They were not, as is often suggested, all carried away by their colleagues in the column.¹²³⁵ Many were buried by Serb forces.¹²³⁶ Some even remained to be discovered as surface remains months or years later.¹²³⁷

755. At the time of writing the report, Pandurevic anticipated a substantial offensive would occur during the very early hours of the next morning.¹²³⁸ Undoubtedly, his report is intended not only to be a record of past events, but a prediction of possible future developments. ("I *will* be forced to let them go") Indeed, the second illogicality about the prosecution's position in relation to the use of this phrase is that whilst it is suggested that Pandurevic cannot possibly, in using the phrase '*asanacija*', be talking about a future obligation to protect and sanitize the combat area, he can be talking about problems at Kula, Pilica and Branjevo, all of which are equally future events, and more to the point, completely outside his knowledge or contemplation on any version of events.¹²³⁹

c) The evidence of Momir Nikolic about when he was first told to use the term

756. The evidential impact of the testimony of Momir Nikolic upon the interpretation of this word is minimal. According to him he was instructed by Popovic some time in September or October 1995 to refer to the reburial of bodies by use of this epithet. According to him therefore, his use of the term in a Bratunac Brigade meeting was pursuant to that instruction, and at least by implication, he wouldn't ordinarily have used it to describe the task.

¹²²⁷ T.481-T.482, 22 August 2006, Peter McCloskey, T.20844-T.20845, 31 January 2008, Richard Butler

¹²²⁸ T.10656, 27 April 2007, Mihajlo Galic

¹²²⁹ T.10656, 27 April 2007, Mihajlo Galic

¹²³⁰ T.10657, 27 April 2007, Mihajlo Galic

¹²³¹ T.19997, 18 January 2008, Richard BUTLER.

¹²³² [REDACTED]

¹²³³ See e.g paragraph 1 of **P00329**, ZVORNIK BRIGADE DAILY INTERIM COMBAT REPORT NO. 06-217-1, DATED 15 JULY 1995

¹²³⁴ T.20848-T.20849, 31 January 2008, Richard Butler

¹²³⁵ T.27393, 27 October 2008, Zoran JANKOVIC.

¹²³⁶ [REDACTED].

¹²³⁷ T.33514, 1 May 2009, Dusan Janc

¹²³⁸ See **P00377**, ERN 0293-5760.

¹²³⁹ T.483, 22nd August 2006, Prosecution Opening Statement

757. [REDACTED], the instructions given to Jokic were that he shouldn't write anything down about the detention, murder or burial of prisoners. Plainly therefore, Pandurevic's report would have been a substantial breach of that instruction, which, going on to describe the burials as '*asanacija*', would have done little to remedy or disguise. There is no evidence of anyone, let alone Pandurevic, being instructed to refer to the burials in this way in July.

11.2.11. Obezbedjenje

a) Obezbedjenje cf Bezbednosti

758. The prosecution was plainly alive to the difficulties in the translation of this word as "security" from the very outset of the trial.¹²⁴⁰ Butler, in his inimitable way, ignored any such difficulties, stating in his narrative report that the phrase *obezbedjenje* meant "the security operation", thereby inserting into the phrase the concept of security in addition to removing the grammatical link between the words *obezbedjenje* and *terena*. (See below)

759. The trial chamber will be well familiar with the word which expresses the concept of security in BCS, namely *Bezbednost*. It appears in quite literally hundreds of documents admitted into evidence to express not just the organ or the service, but the concept of security itself.¹²⁴¹

760. The defence do not submit that the word *Obezbedjenje* is incapable of translation into English as the word security, but it does say that it is a concept that defies such a simple translation. It can plainly mean a number of things. It can be juxtaposed with the word *Bezbednosti*, when it apparently approximates to the English word "support",¹²⁴² as it does when juxtaposed to concepts such as "combat", "air defence" etc.,

761. It is possible to make sense of this sentence with a wholly alternative translation of this word, which is equally consistent with its sense in BCS.

b) Obezbedjenje Terena

762. It seems beyond argument that there is a grammatical link between the word *obezbedjenje* and the word *terena*.¹²⁴³ In other words, whatever operation the word *obezbedjenje* describes, it is an operation relating to the field.

763. The suggestion, therefore that word means "guarding",¹²⁴⁴ whilst not impossible in itself, ignores two facts, firstly, that that word cannot stand alone, and secondly, that

¹²⁴⁰ T.481-T.482, 22 August 2006, Prosecution Opening Statement

¹²⁴¹ See P00407, SFRY Rules of Service of Security Organs in the Armed Forces, 1984, page 1; P00694, JNA Brigade Rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades) 1984 (para 120), pages 56, 65, 116; P00699, JNA Manual for the Work of Command and Staffs, 1983, page 93.

¹²⁴² P00694, JNA Brigade Rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades) 1984 (para 120), page 65.

¹²⁴³ T.32641, 12 March 2009, Radmilo MAROJEVIC, T.30996ff, 2 February 2009, Vinko PANDUREVIC

within the clause in which it stands, it has a genitive object, *terena*, and thus cannot refer to the word prisoners.

764. The more logical sense, as circumstances will demonstrate, is that Pandurevic, as he stated, was referring to the extra personnel required for the operations of clearing up the battle field and the support and protection of his units in the field.¹²⁴⁵ To that end, the phrase in the report probably defies word-for-word translation.

11.2.12. The Mobilization of the R Battalion

765. What was intended by the use of the phrase *obezbedjenje terena* can be gleaned from the events in the Brigade on which Pandurevic was reporting. The occurrence of the identical or near identical phrase in a series of other contemporaneous documents is not coincidental. On 15th July, the brigade had been compelled to mobilise its Reserve or 'R' battalion.

766. The process can be followed through from a note in the Duty Operations officers notebook for 15th July,¹²⁴⁶ to a request of the Drina Corps,¹²⁴⁷ through the process of the Ministry of Defence,¹²⁴⁸ resulting in the calling for mobilization of 254 men, 195 of whom answered the call.¹²⁴⁹

767. As an aside at this juncture, three points need to be made. These events show that even in these very difficult circumstances, the brigade was still going through the proper procedures on 15th July for the mobilization of men and materials. Secondly, it illustrates that the process could be effected very quickly. In this case, within the same day. And thirdly, the mobilization of a whole battalion of men (roughly 5% of the brigade's total manpower) was not a decision to be taken lightly. In this instance they were being sent into a dangerous combat situation. This was a politically sensitive step for the Brigade to undertake. It was a matter about which he was bound to report both from that perspective, and to underline the point that "*all Brigade forces are engaged and we have no reserves.*"¹²⁵⁰

768. Throughout the whole sequence of the documents listed above and leading to the mobilization of the R battalion, the reason advanced for their call-up is that they are needed for the purposes of *obezbedjenje teritorije*.¹²⁵¹ There is no shade of meaning between terrain and territory. The words are synonymous.¹²⁵²

¹²⁴⁴ T.483, 22 August 2006, Prosecution Opening Statement

¹²⁴⁵ T.31000 –T.31006, 2nd February 2009, Vinko PANDUREVIC

¹²⁴⁶ See **P00377**, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, page 138 and T.31000, 2nd February 2009, Vinko PANDUREVIC

¹²⁴⁷ See **1D00698**, Drina Corp. Command, mobilization request. Str. Conf. No. 05/1-241, 15 July 1995; T31002, 2nd February 2009, Vinko Pandurevic

¹²⁴⁸ See **3D00119**, RS Ministry of Defence, Order for mobilisation, 15th July 1995; 7D709, and 3D125

¹²⁴⁹ See **P00377**, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, page 150 and T.310003, 2nd February 2009, Vinko Pandurevic

¹²⁵⁰ **P00329**, ZVORNIK BRIGADE DAILY INTERIM COMBAT REPORT NO. 06-217-1, DATED 15 JULY 1995, paragraph 3

¹²⁵¹ See **1D00698**, Drina Corp. Command, mobilization request. Str. Conf. No. 05/1-241, 15 July 1995; T31002, 2nd February 2009, Vinko Pandurevic

769. Once mobilised, the members of the R Battalion were deployed to make roads safe to pass, conduct blockades, carry out patrols and set up observation posts.¹²⁵³ They were sent to Crni Vrh and Planinci to support the unit from Bratunac.¹²⁵⁴
770. It is further submitted that the use of the phrase *obezbedjenje terena* in this report would have resonated with the Corps command, given the requests it had received to mobilize men earlier in the day for that purpose.

11.2.13. Guarding Prisoners is not labour intensive

771. Whilst the mobilization of the R battalion would undoubtedly have merited mentioning, given the above, it is submitted that the guarding of prisoners scarcely would. It certainly would not have required 250 plus men to be mobilised. It may depend to a degree upon the number of prisoners that there were, but held in six enclosed spaces, the requirement for guards would, even assuming the Zvornik brigade had been required to provide manpower, have been relatively little.
772. Moreover, given the fact that the evidence discloses that each of the transports which brought prisoners to the area brought its own guards with it,¹²⁵⁵ there would have been little or no additional requirement for men to fulfil that function. There is, furthermore, no evidence that the Brigade was being asked for men to guard the prisoners, or that it was struggling to respond to such requests ([REDACTED]). [REDACTED]. Interestingly, notwithstanding his presence in Zvornik on that day, Beara did not address his personnel concerns to the Brigade at all.¹²⁵⁶

11.2.14. “As well as” - Conjunctive or Disjunctive?

773. Before embarking upon a semantic or syntactic examination of this document, it is as well to remember the manner and the circumstances of its creation; dictated to Ljubo Bojanovic in a few short minutes whilst in the midst of combat preparations and negotiations. The manuscript document is noteworthy for the absence of any alterations. According to all the evidence, it appears to have been delivered in one take.
774. Nonetheless, the Trial Chamber will probably conclude that Pandurevic is an articulate and intelligent man. According to his own evidence and on the face of the document, it is clear that he was trying to express the idea in paragraph four that the prisoners presented a different problem to his other immediate responsibilities. To that end he expressed the sentiment that they were a burden, thereby distinguishing them from his obligations.

3D00119, RS Ministry of Defence, Order for mobilisation, 15 July 1995; 7D709, and 3D125

¹²⁵² T.31001, 2nd February 2009, Vinko Pandurevic

¹²⁵³ T.31006, 2nd February 2009, Vinko Pandurevic

¹²⁵⁴ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, page 154 and 157, T.31007, 2nd February 2009, Vinko Pandurevic

¹²⁵⁵ [REDACTED], (PW-162), Blagojevic and Jokic Trial Judgment, 17 January 2005, p.113

¹²⁵⁶ P01173, Intercept dated 15 Jul/95, 08:55 hrs.

775. If the prisoners had been his responsibility, then that would have entailed *inter alia* the obligation to guard them. However, he is at pains to distinguish them by his use of language from his responsibilities. They are a burden, a nuisance, a distraction to his men, but they are not his responsibility. To conjoin that sentiment with obligations towards the prisoners makes no sense and is not in keeping with his careful expression.

776. His evidence and sensible syntactic analysis suggests that the use of the phrase “as well as” disjoins the ideas in the two clauses from each other. The joinder of the two ideas would have been achieved by a relative clause, i.e., “prisoners which we are obliged to guard”

11.2.15. “Let Them Go”

a) Syntax of the whole report. Forces of 28th Division referred to in the plural throughout

777. It has become common practice for everyone involved in this case to distinguish between the two bodies of people referred to in Pandurevic’s report in terms of the pronouns applied to each. Those in the schools are “the prisoners” or “them”, whereas those in the woods are “the column”, “the 28th Division”, and accordingly “it”.

778. For the rest of us, that practice has removed ambiguity from our discussions. It is a good practice. Pandurevic, however, makes no such distinction, perhaps because one of his principal objectives was to enumerate the soldiers in the column for Corps command.¹²⁵⁷ Accordingly, there being no generic singular for the prisoners, he pluralises both groups.

779. In terms of the relative references in the report, the prisoners receive only one mention, whereas the men in the column are mentioned four times (twice in paragraph one, and once in each of paragraphs two and six). The soldiers in the column are the plain and main focus of the report taken as a whole.

b) Sense of the whole report minus the paragraph concerning the additional burden

780. If the fourth paragraph of the report is simply excised, the logic of the report is impeccable and unambiguous, as it is, in fact, if the fourth paragraph is placed after the sixth. One must also observe that this was not a document drafted and redrafted with the care of a legal pleading.

c) Reading the paragraph by reference to the following paragraph

¹²⁵⁷ T.30991-30992, 2 February 2009, Vinko PANDUREVIC

781. The central ambiguity of the document is crystallised in paragraphs four, five and six. In isolation, paragraphs four and five leave the reader with the only possible conclusion that the author is talking about the prisoners in schools, whereas, in isolation paragraphs five and six could only lead to the conclusion he was talking about the soldiers in the column. In the defence submission, however, the contextual link between “them” in the last sentence of paragraph four and the “civilians” and “others” in the very next sentence, is stronger. Moreover, as stated above, the soldiers in the woods are the principal focus of the report, forming the subject of its introductory sentence ; *“Since the fall of Srebrenica in the territory of the first Zvornik infantry brigade....there are about 3,000 armed and unarmed enemy soldiers”*.
782. This is no surprise. The whole purpose of the report was to tell the Corps command about the soldiers in the column;¹²⁵⁸ how many there were; what danger they posed and how they could be dealt with. They were the reason that Pandurevic had been sent back to Zvornik, and why Krstic had made the order he did at 1000hrs that day.¹²⁵⁹ It was entirely appropriate and predictable that Pandurevic would both deal with these questions and inform Corps command what he intended to do about them.

11.2.16. Paragraph 8

783. Such is the level of focus on the central paragraphs of this document, it is often forgotten that there is further information of substance and relevance elsewhere. Paragraph eight reads: *“I request reinforcements to be sent in keeping with previous requests for reinforcements.”*
784. The reference to previous requests must relate to the requests of Obrenovic on 14th July.¹²⁶⁰ Read in context, paragraph five of the report of 15th July encapsulates not only Pandurevic’s anger at the prior decisions of his superior command but a reminder to the Corps of its responsibilities towards the column relative to that of the Brigade: *“This command cannot take care of these problems any longer, as it has neither the material nor other resources. If no one takes on this responsibility , I will be forced to let them go”* (emphasis added).

11.2.17. Reading the report in conjunction with the following report of 16th July

785. Pandurevic’s evidence of the logic of the report of 15th July becomes clearer when the report of 16th July is considered. It has to be placed into context. Pandurevic had taken the decision ‘off his own bat’ to let the soldiers in the column go, had not consulted any of his superiors, and had spent the afternoon avoiding attempts to contact him by the Corps and Main Staff command. Eventually, at about 1800hrs, he composed the Irregular report of 16th July, in which he reported his decision to allow 5,000 “civilians” to pass, all “unarmed”.

¹²⁵⁸ T.30991-30992, 2 February 2009, Vinko PANDUREVIC

¹²⁵⁹ 7D00686, Drina Corps Command Order, 15 July 1995

¹²⁶⁰ P00327, Zvornik Brigade Interim Report No. 06-216/2, dated 14 July 1995

786. Inter-textually, the two documents make a perfect fit as part of a sequence. In both documents, Pandurevic reports on the difficulty of the military situation and the pressure it has placed on the Brigade. In the former he reports on negotiations for the passage of the civilians in the column and in the latter he reports on the concluded agreement for their evacuation. In both he overstates the ferocity, duration and impact of enemy action, whilst understating the numbers in the column. In the latter his corruption of the facts goes rather further.¹²⁶¹
787. In short, the report of the 16th of July is the report in which Vinko Pandurevic informs Corps command that he has done what he was threatening to do. To interpret paragraph five of 15th July report otherwise makes a contextual nonsense of the series of reports as a body.

“Pustiti”

788. Whilst the principal purpose of adducing the evidence of Marojevic was to tender into evidence his report and, in particular the annexes, including the translation of the combat report,¹²⁶² the fact of the matter is that he gave unchallenged evidence that the verb used in the phrase “let them go” is incapable of being used to mean *to free a prisoner*.¹²⁶³
789. The same verb is used in both paragraphs five and six of the combat report, and although the English translation of the word in paragraph six is “release(d)”, the sense is clear in that it relates unambiguously to the request of Muminovic that the whole column be allowed to leave Serb controlled territory.
790. Moreover, when a little less than 24 hours later, Pandurevic reported that he had asked for the “release” of Jankovic, the captured policeman, he used a quite different word, whose root is in the verb *osloboditi*, meaning release from prison.¹²⁶⁴
791. Irrespective of opinion, the juxtaposition of the same verb in paragraphs five and six, by contrast with the use of a wholly different (and appropriate) word in a similar document hours later and written by the same author, indicate clearly what sense was intended in the phrase translated as “let them go”.

11.2.18. Pandurevic did not have the knowledge, authority or ability to let the prisoners go as at 1800 hrs on 15th July

792. At the time of writing the report on 15th July, Pandurevic only had the sketchiest of knowledge even of the existence of prisoners. Although it is safe to conclude he knew there were a lot of them, he didn’t know precisely how many. He had little information as

¹²⁶¹ See **P00330**, ZVORNIK BRIGADE INTERIM COMBAT REPORT 06-218, 16-JUL-1995, Paragraphs 1, and 3

¹²⁶² T.32686, 12th March 2009, Radmilo Marojevic

¹²⁶³ **7D00917**, the Report of Radmilo Marojevic, page 10

¹²⁶⁴ See **P00330**, ZVORNIK BRIGADE INTERIM COMBAT REPORT 06-218, 16-JUL-1995, paragraph 3, **7D00917**, page 10 and T.32639, 12th March 2009, Radmilo Marojevic

to where they were, and (REDACTED) no information as to who had brought the prisoners to Zvornik, and who was in charge of the operation.

793. He plainly did not know there had been executions by then, or he would not have mentioned them at all. If he had known, as the prosecution suggest, he could not seriously have threatened to release men who had already been executed and buried. Either way, it makes no sense for him to have been referring to the prisoners in this paragraph of the report.
794. More pressing was the military situation which was then engulfing him and proving to be a substantial obstacle to his even trying to discover what was going on and where. Events were far advanced when he got to the IKM, where he first received information about prisoners. They were continuous whilst he was there and he was to be there until the late evening of 17th July.¹²⁶⁵
795. As has been discussed elsewhere, the buildings which housed the prisoners were not under the control of the Zvornik Brigade.¹²⁶⁶ The senior officers present at those locations were from the Main Staff and the Drina Corps.¹²⁶⁷ There is even evidence of Mladic himself visiting one location.¹²⁶⁸ Pandurevic could not give orders to those men, nor to units of the 10th Sabotage detachment, 65th Protection regiment, or Military police units of the Bratunac Brigade.
796. In short, even if he did know where the ‘still living’ prisoners were being held, and could get away from Baljkovica before they were all killed, he was in no position to threaten to let the prisoners go, unlike the soldiers in the column.

11.2.19. Reading the report in the context of subsequent events – the soldiers of 28th Division were let go, the prisoners in the schools were not

797. It is the defence case that the report was a form of advanced justification for the action Pandurevic was about to and knew he was about to take in allowing the column to pass on 16th July. That explains the disingenuous passages and exaggerations. With the benefit of hindsight, it is plain what Pandurevic’s logic was. In this report he was laying the ground for his action, while in the report of 16th,¹²⁶⁹ he was justifying what he was in the process of doing, while further, in the 18th July report,¹²⁷⁰ he was defending his actions by reference to evidence. The documents are a series and have a historical context.
798. If, in threatening to “let them go”, Pandurevic was referring to the prisoners, he simply made an empty threat which he could not, did not, and had no intention of executing. As a reference to the soldiers in the column, the report reflects actual events, and his mood and intentions at the time.

¹²⁶⁵ T.31096, 9 February 2009, Vinko PANDUREVIC.

¹²⁶⁶ Refer to section on Part 3 Section 1 Zone of Responsibility

¹²⁶⁷ T.13332, 26 June 2007, Marko Milosevic, T.10337, 23 April 2007 Tanacko Tanic

¹²⁶⁸ T.947, 29 August 2006, Mevludin Oric

¹²⁶⁹ P00330, ZVORNIK BRIGADE INTERIM COMBAT REPORT 06-218, 16-JUL-1995

¹²⁷⁰ P00334, Zvornik Brigade Interim Combat Report 06-222, dated 18 July 1995

11.2.20. Reading the report in the context of prior events – Pandurevic was angry about the Main Staff/DC attitude to the dangers of the 28th Division

799. Pandurevic had been dismayed by the Main Staff attitude to the missing 28th Division from the moment that Srebrenica was taken.¹²⁷¹ He had further voiced his concern during the meeting at the Bratunac Brigade that night.¹²⁷² He had feared that the 28th Division would make for Nezuk and endanger the rear of the Zvornik Brigade positions.¹²⁷³ When he learnt from Krstic the position of the Brigade on the morning of 15th July, he told his operations officer that events had turned out exactly as he had warned.¹²⁷⁴
800. His anger was still apparent on 18th July when he wrote that “Zvornik was [paying] the price for the taking of Srebrenica”¹²⁷⁵
801. It is clear that Pandurevic for one did not expect that operation Krivaja '95 would lead to the evacuation of Srebrenica. It was his evidence that he believed that after he had taken the features at Zivkovo Brdo on 9th July, and withdrawn to reserve positions, that he would thereafter be returned to Zvornik.¹²⁷⁶
802. Stability of the area was his concern,¹²⁷⁷ an idea he expanded upon in his irregular combat report of 16th July.¹²⁷⁸ Whilst this might seem strongly worded, the reality of the situation has to be borne in mind; a large group of people were trapped in an area where it was in nobody's interests for them to remain. To bring stability to the region, they had to be allowed to go where they wanted to. That was Pandurevic's conviction. It just so happened that he was able to thumb his nose at the main staff as he did it, and justify it to boot.

11.2.21. The VBI of 15th July is an exculpatory document

a) It is a record of the existence of prisoners in Zvornik

803. There is no other contemporaneous VRS document which refers to the existence of prisoners being held in schools in Zvornik.¹²⁷⁹ However angry Pandurevic might have been about the situation the Brigade had been placed in, he could have expressed his dismay, stressed the limits of the brigade's resources and warned that the column of the 28th Division may be allowed to pass to Nezuk without referring to the existence of the prisoners at all.
804. If he had known at the time that a large number had already been executed and more were to face the same fate, and he was supposedly an architect or supporter of that plan,

¹²⁷¹ P02048, Srebrenica trial video.

¹²⁷² T.30874-T.30889, 30 January 2009, Vinko PANDUREVIC.

¹²⁷³ T.30942-T.30943, 30 January 2009, Vinko PANDUREVIC.

¹²⁷⁴ T.12596-T.12598, 14 June 2007, Miodrag DRAGUTINOVIC

¹²⁷⁵ See P00334, Zvornik Brigade Interim Combat Report 06-222, dated 18 July 1995.

¹²⁷⁶ T.31331-31332, 12 February 2009, Vinko PANDUREVIC.

¹²⁷⁷ T.30885, 30 January 2009, Vinko PANDUREVIC.

¹²⁷⁸ **P00330**, ZVORNIK BRIGADE INTERIM COMBAT REPORT 06-218, 16-JUL-1995, paragraph 6

¹²⁷⁹ T.20819, 31st January 2008, Richard BUTLER

surely he would not have written about them. Those who came to know about the plan wrote nothing down and were extra-cautious about what they wrote down or said over the radio.¹²⁸⁰

805. Once Pandurevic had written the VBI of 15th July, there would be no mystery about where the prisoners were taken from Bratunac. There could be no suggestion they went to other parts of Republika Srpska. Aerial imagery and survivor testimony merely adjoined it. Pandurevic created a record of the truth, contemporaneous with events. There could never thereafter be any suggestion that he didn't know of the prisoners from a very early point after his return to Zvornik. He could neither deny nor even defer his knowledge from that moment forward.

b) It is a record which created other records in other places

806. As we have seen throughout the trial, the sending of a report creates an audit trail which is the more difficult to expunge. The handwritten report is retained as is the telegraphed document at the site of despatch. It creates a further record wherever it is received. Further copies of the document are generated whenever it is further disseminated. As a written document, it is virtually impossible to deny, unlike, for example, a radio communication, which may or may not have been intercepted. Pandurevic plainly had the facility to talk to Krstic by radio.¹²⁸¹ These facts were all well known to Pandurevic at the time he sent the report. It is naive and contrary to the evidence in the case to imagine he did not chose this form of communication with purpose.

c) The record and all relevant records at the Zvornik Brigade were preserved by Pandurevic

807. The copy of this document and many others, including other reports, the Duty Officers notebook, diary, war diary, vehicle work logs, and daily orders were retained within the Brigade throughout Pandurevic's command period. Pandurevic played an active role in the implementation of the Dayton peace accords.¹²⁸² The ICTY had by then been created for over 2 years. Madeleine Albright had revealed to the world US aerial imagery of the evidence of murders and burial sites in the Zvornik area.¹²⁸³ The destruction of the documents listed above would have been the work of a moment. Pandurevic's evidence is that his protection of the records was intended to serve history and justice well.
808. [REDACTED]¹²⁸⁴ [REDACTED],¹²⁸⁵ one has to view the retention and concealment of many of the records of the Brigade by Obrenovic as particularly sinister, and the behaviour of Pandurevic, more to the point, as the more admirable.

¹²⁸⁰ [REDACTED].

¹²⁸¹ **P01183**, Intercept dated 16 Jul/95, 07:06 hrs (conversation between Pandurevic and Krstic).

¹²⁸² T31246, 11 February 2009, Vinko Pandurevic

¹²⁸³ **P00466**, AFP Headlines, p.7

¹²⁸⁴ [REDACTED]

809. Obrenovic was not the only accused to misappropriate documents. As we know from the evidence of Momir Nikolic, virtually all the records of the Bratunac Brigade were destroyed by him.¹²⁸⁶

810. By contrast, Pandurevic created records of events, notwithstanding how they might affect him, and preserved many others

d) The fact that by the time of the writing of this report, the prisoners at Orahovac, Petkovci and Rocevic were already murdered, shows that Pandurevic cannot have known of the murder operation

811. Far from “darn well knowing”¹²⁸⁷ that the prisoners were being murdered, the sending of a report with an explicit mention of the prisoners in it shows quite the opposite. It is a fact that the prisoners at Orahovac and Petkovci were already dead and buried, and, at Rocevic/Kozluk, they were too, probably. It is inconceivable that if Pandurevic knew that murders had already been committed he would have sent a written report acknowledging the responsibility of his men for guarding and burying the victims.

812. In relation to the remainder, it is the defence case that events were too far beyond the tipping point for any intervention to have been of any effect.

e) A Participant in a JCE secretly to murder prisoners would scarcely create a record of their existence

813. There was in fact little or no difficulty in executing and burying the prisoners. There were no mass escapes. There were no mutinies or mass refusals to cooperate on the part of the executioners, guards, drivers or gravediggers. Indeed, for the main part, the operation was conducted efficiently and expeditiously within a relatively short period of time. Indeed, the only evidence of any difficulty in manpower comes from [REDACTED] the infamous intercept, allegedly involving Beara and Krstic. Plainly, if there were any such difficulties, they were being kept from Pandurevic.

814. The need for secrecy and discretion was paramount amongst participants in the JCE. Nothing was to be written down and care was to be taken over the airwaves. It defies credibility that, as an architect, conspirator or major player in the criminal enterprise, Pandurevic would create an indelible record of these events at such an early stage, unless he genuinely was in the dark as to what was going on and wanted to find out.

815. To that end this report has to be read alongside his evidence that later that month he visited Krstic at Zepa to discuss with him events within the Zvornik area such as were referred to in the three combat reports. This visit is expressly accepted by the

¹²⁸⁵ [REDACTED]

¹²⁸⁶ T.33140-33141, 24 April 2009, Momir NIKOLIC.

¹²⁸⁷ T.485, 22nd August 2006, Prosecution Opening Statement

Prosecution,¹²⁸⁸ and no challenge was put to Pandurevic about the purpose of his visit and the content of their discussion.

816. If Pandurevic's knowledge and involvement has been properly rather than fancifully characterised, the presence of prisoners in Zvornik could not have surprised him. He would have been at the alleged meeting at Bratunac on 12th July where the killing operation *must have been discussed*.¹²⁸⁹ He was *contactable* on 13th July and knew that the prisoners were to be sent to Zvornik.¹²⁹⁰ [REDACTED].¹²⁹¹ It is wholly unclear how the prosecution puts its case in this regard. How could all the above be right, and yet, Pandurevic should write a report containing the sentence "*It is inconceivable to me that someone brought in 3,000 Turks of military age and placed them in schools in the municipality*"¹²⁹² and thereafter to seek Krstic's explanation for events at Zepa ?
817. The Irregular Combat Report of 15th July, written *in extremis*, is the clearest and earliest indication that the prosecution's case as to Pandurevic's knowledge of the plan is nowhere near close to the truth. His own evidence on the topic confirms that.

f) The threat to "let them go", whether it relates to prisoners or soldiers is inconsistent with an intention to commit genocide or mass murder.

818. The Response of the Corps command shows that Pandurevic is out of step with superior command. The Drina Corps combat reports copy-paste the majority of his reports of 15th, 16th and 18th July, but excise all reference to prisoners.¹²⁹³
819. The action of allowing the column to pass represents the saving of a massive number of lives. Even if in part justified by the saving of life on his own side, the action is humanitarian. The soldiers in the column and the prisoners in the schools are similarly members of the alleged target group, being able bodied Muslim men from Srebrenica.
820. Pandurevic's intention to allow many of them to go free was expressed in writing to his command within a few hours of his having any control of events. His discussions with the Muslim side began almost immediately and were crystallised in principle with agreement on thousands being allowed to go a short while later. Those discussions predated any significant military action and therefore, the agreement can be regarded as entirely unfettered by any question of self-preservation.
821. Such an expression of intent, corroborated by concrete action, does not speak of an intention to destroy the group in whole or in part, rather than to take pragmatic military

¹²⁸⁸ See Prosecution's Motion for Leave to Reply and Consolidated Reply to the Defence Responses to The Prosecution's Second Motion to Reopen its Case, 23 April 2009

¹²⁸⁹ See Prosecution Motion for Leave to Reply and Consolidated Reply to the Defence Responses to The Prosecution's Second Motion to Reopen its Case, 23 April 2009.

¹²⁹⁰ See T.435, 21 August 2006, Prosecution Opening

¹²⁹¹ [REDACTED].

¹²⁹² P00334, Zvornik Brigade Interim Combat Report 06-222, dated 18 July 1995, paragraph 4

¹²⁹³ T.29626, 12 December 2008, Milenko Jevdjovic

and humanitarian steps. His further actions (for example in relation to the prisoners taken by the Zvornik Brigade between 18th and 25th July) will be dealt with in other parts of this brief. His report of the 15th July cannot be said, however, to support the requisite intention for Count 1 of the indictment, nor participation in a JCE, nor a conspiracy such as is alleged in Count 2.

11.3. The RBIs and VBIs 16th – 18th

11.3.1. The Irregular Combat Report of 16th July

822. On any version of events, the morning of 16th July was a hectic time for Pandurevic. According to all available sources, however, a ceasefire had been agreed by the late morning, and the passage of the 28th Division through the corridor began between 1300hrs and 1400hrs.¹²⁹⁴ Once the corridor had been opened, Pandurevic remained at the IKM and in constant contact with Semso Muminovic.¹²⁹⁵ Word about the opening of the corridor plainly reached his superior command quickly.¹²⁹⁶ Pandurevic was aware from an early stage that he was being required to report,¹²⁹⁷ and from an early stage he was avoiding contact with his command.¹²⁹⁸ After about an hour of silence, the Corps command was requesting someone to make personal contact with Pandurevic.¹²⁹⁹ By 1700hrs, Pandurevic could avoid the issue no longer, and so he dictated an interim report to Petrovic.¹³⁰⁰

823. Obrenovic had been despatched to the area of the 4th battalion the previous day. The only evidence of contact between them after that is some radio communication about (i) the interview of the Muslim officer,¹³⁰¹ and (ii) the point at which the column would pass through Zvornik Brigade lines.¹³⁰² Obrenovic's withdrawal on the 16th was not straightforward. He had pulled out at the point of intersection of the 4th and 6th battalions and then monitored the activities of the 2nd Corps.¹³⁰³ According to Pandurevic, he didn't arrive at the IKM until 1800hrs¹³⁰⁴ by which time, as far as Pandurevic was aware, the report had been sent. In point of fact, it hadn't been sent because of transmission

¹²⁹⁴ T.13034, 3 February 2009, Vinko PANDUREVIC

¹²⁹⁵ T.13042, 3 February 2009, Vinko PANDUREVIC

¹²⁹⁶ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, p148

¹²⁹⁷ T.31044, 3 February 2009, Vinko PANDUREVIC

¹²⁹⁸ T.31048, 3 February 2009, Vinko PANDUREVIC

¹²⁹⁹ P01195, Intercept dated 16 July 1995, 16:15 hours ; P01225, Intercept dated 16th July 1995, 16:43 ; T.31050, 3 February 2009, Vinko PANDUREVIC

¹³⁰⁰ T.31050, 3 February 2009, Vinko PANDUREVIC

¹³⁰¹ T.31031, 3 February 2009, Vinko PANDUREVIC, [REDACTED]

¹³⁰² See P02231, Exhibit P-121 in Case No. IT-02-60-T- Tactical intercepts notebook, dates covered are 1 Jul to 24 Nov 95, page 22 ; P02232, Exhibit P-121 in Case No. IT-02-60-T- Draft English translation covering 11 to 20 July 1995- Tactical intercepts notebook, dates covered are 1 July to 24 Nov 95, page 20

¹³⁰³ T.31064, 3 February 2009, Vinko PANDUREVIC, [REDACTED]

¹³⁰⁴ T.31064, 3 February 2009, Vinko PANDUREVIC

difficulties.¹³⁰⁵ Corps command had by then received a daily report from the brigade duty officer which made no reference to the passage of the column through brigade lines.¹³⁰⁶

824. It is common ground that the report is an inaccurate and disingenuous account of events on the ground, designed to justify Pandurevic's action, without actually revealing the full implications of the agreement which he had reached with the enemy.
825. More than that, the document shares a number of themes with its predecessor, the irregular combat report of 15th July. Like P329, it is obsessed with the issue of the column (which, by the time of writing, had been let go), and what the pressure of the situation in the Zvornik area might compel Pandurevic to do.
826. On the topic of common themes, the second paragraph of the report contains the complaint "*we had difficulties bringing in the supplies and evacuating the wounded because of the roads being cut off*" which seems to refer to the predicted problems of "*obezbedjenje i asanacija terena*", especially given Pandurevic's own explanation as to the meaning of this phrase and the use to which the R battalion was in fact put.¹³⁰⁷ Pandurevic in this report is at pains to point out to his superior command that he had foreseen these events.¹³⁰⁸
827. One theme uncommon to both reports is the issue of prisoners in the schools. There can be no sensible suggestion that Pandurevic was afraid to mention the prisoners. Indeed, given that he was looking for any additional reason he could find to justify his cooperation with the enemy, it is a surprise that he didn't throw them in for good measure. That he did not may infer any number of things, but two reasonable inferences which cannot be dismissed are, firstly, that he had received no further information about them since his earlier report, and secondly, that they were not presenting him with any problem of which he was aware.
828. As to the final paragraph of the report, this reflects Pandurevic's view that the Krivaja operation had changed. It had become, in effect, an operation to search the terrain.¹³⁰⁹

a) Alleged Encounter with Popovic on 16th July

829. Pandurevic did not see Popovic on 16th July.¹³¹⁰ There is no credible evidence to counter his assertion that he did not. It is of course accepted that Popovic was tasked to go to him at about 1640hrs that day.¹³¹¹ At that time, the evidence suggests he was in Pilica and/or Branjevo, and busy with other matters. Shortly after that, the irregular combat report of 16th July was sent by Pandurevic to the duty officer at Standard. It would have been available for Popovic to read at the command that evening. The intercepted radio

¹³⁰⁵ P00330, ZVORNIK BRIGADE INTERIM COMBAT REPORT 06-218, 16-JUL-1995, made at 18.10, sent at 20.05

¹³⁰⁶ 7D00532, RBI command Zvpbr, sent at 18.30

¹³⁰⁷ See Part 4 section 11 on VBI 15 July 1995

¹³⁰⁸ P00330, ZVORNIK BRIGADE INTERIM COMBAT REPORT 06-218, 16-JUL-1995, paragraph 3

¹³⁰⁹ T.31061, 3 February 2009, Vinko PANDUREVIC

¹³¹⁰ T.31050, 3 February 2009, Vinko PANDUREVIC

¹³¹¹ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, page 149 and P01225, Intercept dated 16 July 1995, 16:43

call at 2116hrs¹³¹² must have been made from or to Standard. It is vague in its detail, and fails to deal with one main current concern, namely the seizure of the two self-propelled guns, which were addressed in a further call 10 minutes later.¹³¹³ Had Popovic spoken to Pandurevic, he would surely have had that information, obviating the later inquiry. The obvious inference is that Popovic was not aware of the order to go to Pandurevic until he returned to the command of the Zvornik Brigade around 2100hrs that night. [REDACTED].¹³¹⁴ This is doubly relevant, since it confirms not only that Popovic was not there, but also that Obrenovic was, which will be dealt with in the next section.

b) The Conversation with Obrenovic on 16th July

830. By the evening of 16th, Obrenovic had received information from members of the 4th battalion and the 6th battalion relating to the execution of prisoners at both Petkovci and Orahovac.¹³¹⁵ [REDACTED].

831. In spite of the challenges from other accused, there can be little doubt that the conversation between Pandurevic and Obrenovic on the evening of 16th July took place. Both men were present there, and Obrenovic had received news of the fact and whereabouts of executions. It was inevitable that he would report that to Pandurevic, whether asked about it or not, and whatever the true state of his knowledge had been beforehand.

832. It is inconceivable that Pandurevic would leave the IKM that night [REDACTED].¹³¹⁶ He was the only person with whom the ABiH would negotiate,¹³¹⁷ and arrangements had to be made for the passage of the column during the night.¹³¹⁸ [REDACTED].¹³¹⁹ [REDACTED]. However, the evidence demonstrates that Pandurevic did stay at the IKM that night.¹³²⁰

833. [REDACTED]

c) Driving past Orahovac on the morning of 17th July

834. [REDACTED]. Furthermore, it cannot be reconciled with other documented events that morning. Pandurevic spoke to Krstic from the IKM after Obrenovic had arrived that morning.¹³²¹ At 0845hrs three colonels arrived at Standard from the Main Staff. They

¹³¹² P01201, Intercept dated 16 July 1995, 21:16 hours

¹³¹³ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, p152

¹³¹⁴ [REDACTED], [REDACTED]

¹³¹⁵ [REDACTED]

¹³¹⁶ [REDACTED]

¹³¹⁷ T.29625, 12 December 2008, Milenko JEVDJEVIC

¹³¹⁸ T31075, 3 February 2009, Vinko PANDUREVIC

¹³¹⁹ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, p 151

¹³²⁰ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, p 154, T.31077, 3 February 2009, Vinko PANDUREVIC

¹³²¹ P01206, Intercept dated 17 July 1995, 17 July 1995, 06:15

were at the IKM until 1500hrs.¹³²² They spent their time there in conversation with Obrenovic and Pandurevic.¹³²³ Pandurevic spent the morning otherwise engaged in the supervision of the passage of the column.¹³²⁴ [REDACTED]

835. Nonetheless, Pandurevic did acquire certain information from Obrenovic that morning. He had tasked him the previous evening to make enquiries into the business of the prisoners.¹³²⁵ On the morning of 17th, Obrenovic told him that he had discovered that prisoners had been held at Orahovac, Petkovci, Pilica and Rocevic, and that they had been executed. He mentioned execution sites on the banks of the Drina and at Branjevo.¹³²⁶ [REDACTED]
836. The information received by Pandurevic and the timing of it is of critical relevance to any consideration of his ability effectively to prevent further murders, irrespective of his authority to do so. By the morning of 17th July, when he first had details of most, if not all of the detention and execution sites, events had gone beyond prevention everywhere.
837. A second relevant aspect of the conversation with Obrenovic on the morning of the 17th is the discussion concerning the opening of the corridor and the interest of superior command in that during the previous day.¹³²⁷ At the time of this discussion, neither had any idea that they would receive a visit from the Main Staff later that morning. Events at Baljkovica required still a great deal of attention.¹³²⁸ The decision taken by Pandurevic and Obrenovic to adjourn further discussion of what to do viz-a-viz both issues was, in the circumstances, entirely logical.¹³²⁹ Likewise the delay until 18th July before Pandurevic sent a report detailing the losses suffered by the Brigade. Once the seriousness of the position was known to Pandurevic from the visit of the Main Staff officers, he would naturally want to “beef up” the losses to justify his actions and, despite the request originally being made during the morning of 17th,¹³³⁰ no report was sent that day.¹³³¹ The further discussion with Obrenovic that evening about the form of the report would have been an inevitable consequence of the visit from Main Staff, which neither could have foreseen at their early morning meeting.¹³³²
838. The presence of the Main Staff colonels reveals the involvement of High Command in affairs within the Drina Corps area of responsibility. Pandurevic’s guarded behaviour toward them was understandable in the circumstances. The evidence does not reveal that

¹³²² P00378, Zvornik Brigade duty operation officer diary, for the period 12 February 1995 through 3 January 1996, page 89

¹³²³ T.31091, 9 February 2009, Vinko PANDUREVIC, [REDACTED], T.15112-T.15113, 10 September 2007, Nedeljko TRKULA, T.14374-T.14375, 27 August 2007, Bogdan SLDOJEVIC

¹³²⁴ P1221c, Intercept dated 17 July 1995, 13:46 ; T.31093, 9 February 2009, Vinko PANDUREVIC

¹³²⁵ T.31071, 3 February 2009, Vinko PANDUREVIC

¹³²⁶ T.31084, 9 February 2009, Vinko PANDUREVIC

¹³²⁷ T.31085, 9 February 2009, Vinko PANDUREVIC

¹³²⁸ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, p156, and T.31089, 9 February 2009, Vinko PANDUREVIC

¹³²⁹ T.31086, 9 February 2009, Vinko PANDUREVIC

¹³³⁰ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, page 156, .31089, 9 February 2009, Vinko PANDUREVIC

¹³³¹ T.31095, 9 February 2009, Vinko PANDUREVIC

¹³³² T.31095, 9 February 2009, Vinko PANDUREVIC

he received any further information from them concerning the prisoners.¹³³³ In any event, further information by this stage would have been of limited practical use to him.

11.3.2. The Irregular Combat Report of 18th July

839. The principle purpose of the irregular combat report is to set out the losses suffered by the Zvornik Brigade which justified the opening of the corridor. Plainly, Pandurevic was nervous that the actual losses were insufficiently serious, and accordingly, listed the brigade's losses over a much broader period of time.¹³³⁴ Nonetheless, as detailed elsewhere, the actual losses give the lie to the prosecution's case theory about the gravity of the combat situation.¹³³⁵

840. The secondary purpose was Pandurevic's protest at the killing operation taking place in Zvornik. It is worth recalling the actual words of the report:

841. *"It is inconceivable to me that someone brought in 3,000 Turks of military age and placed them in schools in the municipality"*

842. No sensible suggestion has been made throughout the case that this expression was anything other than genuine.¹³³⁶ If genuinely Pandurevic could not conceive of the idea that anybody had done this, then it is impossible to conclude that he was an active or willing participant in the plan to move and/or murder the prisoners. Even more so than the Irregular Combat Report of 15th July, this document exculpates Pandurevic in that it shows his lack of knowledge of the plan to bring the prisoners to Zvornik, his lack of involvement in the execution of that plan, and his lack of any understanding that this operation was not to be reported about openly.

843. To an extent, of course, the two documents have to be considered together. On his own admission, by the time of writing the 18th July report, Pandurevic knew of the murder of prisoners. The explicit reference to their existence is therefore, all the more striking. It might be suggested that, having considered matters, this reference in this document is self-serving and an attempt to make it look as though he had nothing to do with the operation, but that could scarcely be said about the report of 15th, written at a time when he had little time for consideration, and when, on his account, he had no knowledge of any murders.

844. There may be many inferences to be drawn from these documents, but one wholly plausible inference is that they demonstrate, taken together, genuine expressions of dismay and surprise from a man who was no party to the plan to bring prisoners to the Zvornik area for execution.

¹³³³ T.31092, 9 February 2009, Vinko PANDUREVIC

¹³³⁴ P00334, Zvornik Brigade Interim Combat Report 06-222, dated 18 July 1995, paragraph 3

¹³³⁵ See Part 4 Section 7 : "Baljkovica"

¹³³⁶ T.20817-T.20818, 31 January 2008, Richard BUTLER

11.4. Reports of the Drina Corps to the Main Staff

845. If further indication was needed of the extent to which Pandurevic was ‘out of synch’ with his superior command in relation to the killing operation in particular, it is to be gleaned from the manner in which the Drina Corps relayed his reports to the Main Staff.
846. Routinely throughout the Combat reports of the Drina Corps, all references to the existence of prisoners is excised.¹³³⁷ The failure to relay the information can only give rise to one inference, which is the same conclusion Pandurevic came to when he heard nothing back from Krstic,¹³³⁸ namely, that unlike Pandurevic, the Corps commander was familiar with the details of the operation and was under orders not to refer to it explicitly in any correspondence.

11.5. The Meeting of 23rd July

847. Between 18th and 23rd July, both Pandurevic and Obrenovic were preoccupied with the search of the terrain in the Zvornik area. By 23rd the issue of the exchange of prisoners was resolved,¹³³⁹ and the sweeping was effectively over. Moreover, following their discussions on 16th, 17th and 18th July, it was logical to await a response from Corps command. It is common ground that a routine monthly meeting was held on 23rd July.¹³⁴⁰ No further information was forthcoming from the meeting, a fact which Pandurevic found strange.¹³⁴¹ In the conversation between Pandurevic and Obrenovic which followed, both were equally dismayed that the matter had been “put in their laps”, and were curious about the battalion commanders’ silence on the topic. Pandurevic made reference to leaving a record of events by his reports (which of course, Obrenovic had not seen). They agreed that was all they could do and that an investigation at brigade level was likely to do more harm than good.¹³⁴²

11.6. The Meeting with Krstic

848. A meeting with Krstic some time after 18th July was inevitable. No sensible challenge has been made to the fact or the content of the meeting. The Boksanica video suggests that the meeting took place on 26th July. Given what was known of the killing operation,

¹³³⁷ P138, Drina Corps Command Regular Combat Report No.3/2-216, signed by Radislav KRSTIC, dated 15 July 1995; P00139, Drina Corps Command Regular Combat Report No. 3/2-218, signed by Radislav KRSTIC, dated 16 July 1995 ; P00140, Drina Crps Command Daily Combat Report 3/2-219, 17-jul-1995; P00141, Drina Corps Command Daily Combat Report 3/2-222, 18-jul-1995; P00150, Drina Corps Command Interim Combat Report 3/2-217

¹³³⁸ T.311111, 9 February 2009, Vinko PANDUREVIC

¹³³⁹ See Part 4 section 12 Small scale executions

¹³⁴⁰ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95 , page 177, T.31149-50, 9 February 2009, Vinko PANDUREVIC. See also [REDACTED] (PW-108); T.12740, 15 June 2007, Miodrag DRAGUTINOVIC

¹³⁴¹ T.311154, 9 February 2009, Vinko PANDUREVIC

¹³⁴² T.311154, 9 February 2009, Vinko PANDUREVIC; T[REDACTED]

Krstic's response is both logical and plausible.¹³⁴³ It is moreover, consistent with his own apparent fatalism about events, as well as his own knowledge of them.¹³⁴⁴

12. SMALL-SCALE EXECUTIONS

849. Leaving aside the major detention and execution sites in the Zvornik municipality, the prosecution relies upon a series of murders as supporting the existence of a plan for large scale systematic murder. The relevant events concern the fate of 27 men in 5 separate locations over a period of about 20 days.¹³⁴⁵

850. The dates on which these events occurred are approximate. However, it seems inevitably to be the case that the alleged murders must have post-dated 16th July, when Pandurevic came to know of the large scale murders of prisoners in some schools in the area. In that context the events of the post-Baljkovica period will be analysed in this section, together with the actions of the Zvornik Brigade and orders of Pandurevic containing the capture, detention and treatment of prisoners.

12.1. Scouring the terrain after the corridor was closed

851. Following the closure of the corridor in the late afternoon of 17th July, a number of Muslim soldiers remained behind Zvornik Brigade lines. They fell broadly into three categories:

- Unarmed members of the column who wished to pass through to Nezuk;
- Armed combatants; and
- Units of the 2nd Corps inserted behind Zvornik Brigade lines for sabotage and/or diversionary operations.¹³⁴⁶

852. For those who wished to pass through to Nezuk, the evidence reveals that the corridor remained open, pursuant to an order from Pandurevic for some period after its notional closure on 17th.¹³⁴⁷ There is also evidence that Pandurevic took a personal interest in ensuring that a group of young men reached their destination safely.¹³⁴⁸

¹³⁴³ T.31179, 10 February 2009, Vinko PANDUREVIC

¹³⁴⁴ P01179, intercept Krstic-Beara, 15 July 1995, "Now, I'll be the one to blame"

¹³⁴⁵ Prosecutor vs Popovic, Indictment, 4 August 2006, Para 30.13-30.16

¹³⁴⁶ P00334, Zvornik Brigade Interim Combat Report 06-222, dated 18 July 1995, P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, BCS page 780 and 782, ENG page 162 and 164; P01261a and b, Intercept dated 19 July 1995, 08:12 hours; T.31128-T.31131, 9 February 2009, Vinko PANDUREVIC

¹³⁴⁷ P00377, Duty Officers log book, BCS and ENG page 156; T.31093-T.31094, 9 February 2009, Vinko PANDUREVIC

¹³⁴⁸ T.10162, 17 April 2007, Lazar RISTIC; T.31097-T.31098, 9 February 2009, Vinko PANDUREVIC

853. Pandurevic's orders were that combatants who laid down their arms and surrendered should be taken prisoner and brought to Standard barracks for further exchange. Moreover, his orders were explicit to the effect that all those who surrendered should be treated fairly in compliance with international conventions.¹³⁴⁹
854. Not all were prepared to lay down their arms and surrender and caution had always to be exercised in ascertaining whether the apparent intention to surrender was genuine or not.¹³⁵⁰ Nonetheless, the evidence demonstrates that during this period, prisoners were still being taken.¹³⁵¹
855. The combat report of 18th July referred to the behaviour of some enemy soldiers' determination to evade capture.¹³⁵² One incident in particular had been drawn to Pandurevic's attention by Dragutinovic. It concerned a soldier who exploded a hand-grenade upon being arrested, killing one Serb soldier and blinding another.¹³⁵³
856. In response to these incidents Pandurevic issued instructions that soldiers were to take the utmost care in the taking of prisoners.¹³⁵⁴ The instruction was consistent with his responsibility to his own men and accorded with the Rules of International Law of War in force at that time providing that in any case the commander should "take all precautionary measures for the security of the unit"¹³⁵⁵ [REDACTED]. Further, the evidence of the continued taking of prisoners would tend to contradict the assertion. In any event it was not Pandurevic's intention that it should be understood in that way.¹³⁵⁶ To further ensure that things were clear, Pandurevic issued another order reminding soldiers to respect the rules of procedure concerning the capture of prisoners while taking all the measures to be safe during this operation.¹³⁵⁷
857. There was heavy fighting during this period in which both sides suffered losses.¹³⁵⁸

12.2. Sending POWs to Batkovici

858. Pandurevic was seeking instructions from the Corps relating to prisoner exchange as early as 20th July. A brigade commander did not have the authority on his own to deal with such matters.¹³⁵⁹

¹³⁴⁹ T.31127, 9 February 2009, Vinko PANDUREVIC

¹³⁵⁰ T.31128-T.31129, 9 February 2009, Vinko PANDUREVIC

¹³⁵¹ 7D00773, ZB Command, 06-224/2, VBI, 19-Jul-1995

¹³⁵² P00334, Zvornik Brigade Interim Combat Report 06-222, dated 18 July 1995 ; P00333, Zvornik Brigade Interim Combat Report 06-222, dated 18 July 1995

¹³⁵³ [REDACTED]; T.31126, 9 February 2009, Vinko PANDUREVIC

¹³⁵⁴ [REDACTED]

¹³⁵⁵ P00409, Rules of International Laws of War, art 213 : "*Capture. It is prohibited to wound or kill a member of the enemy armed forces from the moment he stops offering resistance and visibly shows that he is willing to surrender, or when, due to wounding or sickness, he is not capable of fighting. He becomes a prisoner of war when he falls into the hands of the enemy.*

When capturing a member of the enemy armed forces, the commanding officer of a unit of the armed forces of the SFRY shall take all precautionary measures for the security of the unit."

¹³⁵⁶ [REDACTED]

¹³⁵⁷ [REDACTED]

¹³⁵⁸ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, page 162 to 164, T.31130, 9 February 2009, Vinko PANDUREVIC

859. His initial request received no response. Throughout the following days he discussed the matter on several occasions with officers from the Corps command. On 22nd July his combat report highlighted the fact that the detention facility at Zvornik was full.¹³⁶⁰ On 23rd July he discussed with Cerovic the sending of prisoners to Batkovic. Significantly, this conversation made explicit mention of the wounded prisoners being held in the brigade infirmary, thus indicating that Pandurevic made no distinction between the able bodied and wounded POW's in his detention facility.¹³⁶¹ Later that day, Pandurevic heard that the first group of prisoners had been transferred to Batkovic.¹³⁶²
860. From 20th until the 23rd July, prisoners were taken and brought to Standard. On 23rd, prisoners were sent to Batkovic. From capture until their transfer to Batkovic, the prisoners appeared in the Brigade records. The number of prisoners was indicated in regular combat reports on a daily basis.¹³⁶³ The number of prisoners arriving at the Brigade was recorded by the barracks duty operation officers in his notebook.¹³⁶⁴ They were then duly transferred to Batkovic.¹³⁶⁵ Their reception in the collection centre at Batkovic was also recorded.¹³⁶⁶ Approximately 140 to 150 prisoners of war were transferred to Batkovic after being captured between 23rd and 26th of July.¹³⁶⁷ Vinko Pandurevic gave orders that the prisoners should be treated fairly from the moment of their capture until their exchange.¹³⁶⁸

12.3. The Branjevo Survivors

861. Four Muslims who had apparently escaped from Branjevo were captured by soldiers from the 1st battalion. They were handed over to the military police of the Zvornik Brigade. Following interview by Drago Nikolic, they revealed that they had received help from two soldiers, [REDACTED].¹³⁶⁹ Their statements are in near identical terms¹³⁷⁰.
862. [REDACTED], were arrested. They too were interrogated by Drago Nikolic. At first, they denied that they helped the four men, but later, when they found out that they had

¹³⁵⁹ P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, page 165-167

¹³⁶⁰ P01307B, Intercept dated 23 July 1995, 06:40 hours : On 23th, Ljubo Bojanovic confirms Krstic the facility is full. P00340, Zvornik Brigade Interim Combat Report No. 06-229, dated 22 July 1995; T.31141, 9 February 2009, Vinko PANDUREVIC

¹³⁶¹ P01309, Intercept dated 23 July 1995, 08:00 hours

¹³⁶² T.31160, 10 February 2009, Vinko PANDUREVIC

¹³⁶³ Example : P00432, 28th Infantry Division Combat Report No. 01-163/95 dated 6 Jul. 1995

¹³⁶⁴ P00383, Zvornik Brigade reports of the duty operations officer, for the period 5 July 1995 through 21 January 1996

¹³⁶⁵ P00344, Zvornik Brigade Daily Combat Report 06/232, dated 25 July 1995 ; P00346, Zvornik Brigade Daily Combat Report 06/233

¹³⁶⁶ 7D00712, List of prisoners in Batkovica prison camp, exchanged in 1995, 13-May-2004

¹³⁶⁷ P00342, Zvornik Brigade Daily Combat Report 06/231, 24-Jul-1995, 26-Jul-1995; P00344, Zvornik Brigade Daily Combat Report 06/232, dated 25 July 1995; P00346, Zvornik Brigade Daily Combat Report 06/233; T.31167-T.31168, 10 February 2009, Vinko PANDUREVIC

¹³⁶⁸ T.31168-T.31169, 10 February 2009, Vinko PANDUREVIC, 7D00257, BiH regional office 02.12.1998, Statement of Salihovic Hasan, 2-Dec-1998

¹³⁶⁹ [REDACTED]

¹³⁷⁰ P00389, KIVIRIC, Sakib – statement provided to the Zvornik Military Police; P00390, MUSTAFIC, Emin – statement provided to the Zvornik Military Police; P00391, DOZIC, Fuad – statement provided to the Zvornik Military Police; P00392, HALILOVIC, Almir – statement provided to the Zvornik Military Police, T.32334, 2 March 2009, Vinko PANDUREVIC;

been captured, they admitted that they had helped them. They had told them which direction to go and gave them some clothes and food.¹³⁷¹ [REDACTED].¹³⁷² This was not reported to Brigade command.¹³⁷³

863. [REDACTED].¹³⁷⁴ However, Nebosja Jeremic, a lawyer tasked with combating crime within the brigade, wrote up no charges and could not recall any order for imprisonment being written up by the commander.¹³⁷⁵ The Chief of Security would have been obliged to sign off any charges laid against them.¹³⁷⁶ Neither the charges nor the order for imprisonment have been produced. Pandurevic never had to confirm the punishment of his soldiers when the security organ, acting *ex officio* and according to the rules, determined that a soldier had cooperated with the enemy, detained him, and then submitted a criminal charge to the prosecutors. He never punished a soldier for cooperating with the enemy.¹³⁷⁷ The Chief of Security was empowered by law to punish soldiers for cooperating with the enemy and did not need the commander's consent. Pandurevic never issued any such ruling.¹³⁷⁸
864. [REDACTED], Drago Nikolic informed Pandurevic that these prisoners had escaped from Pilica or Branjevo. This occurred after the briefing on 23rd July. A day or two later they disappeared.¹³⁷⁹ [REDACTED], they were shot by the Military on the orders of Pandurevic.¹³⁸⁰ Jeremic last saw them when they were making their statements, and did not know what happened to them.¹³⁸¹
865. Pandurevic did not know of the existence of these four Muslim prisoners [REDACTED].¹³⁸² He points out that their statements give no hint that they were survivors from an execution site¹³⁸³, and that it hardly makes sense for him to be ordering the execution of four men, whilst concurrently arranging for 140-150 to be taken for exchange at Batkovic. Other survivors from Branjevo were arrested and taken to Standard, and then transferred to Batkovic. For example, Ahmo Hasic survived the executions at Branjevo and met up with another man, Becir Salikovic. Later, they were captured by men in military uniforms and taken on a bus to Zvornik, where they were immediately placed on a truck which went to Batkovici with a group of twenty nine Muslim prisoners.¹³⁸⁴ Ahmo HASIC and Becir SALIKOVIC were registered in Batkovic camp on the 26th July.¹³⁸⁵ Hasic was exchanged on the 24th December.¹³⁸⁶

¹³⁷¹ T.32330-T.32331, 2 March 2009, Vinko PANDUREVIC

¹³⁷² [REDACTED]

¹³⁷³ T.32334, 2 March 2009, Vinko PANDUREVIC.

¹³⁷⁴ [REDACTED]

¹³⁷⁵ T.10438, 24 April 2007, Nebosja JEREMIC

¹³⁷⁶ T.10421, 24 April 2007, Nebosja JEREMIC

¹³⁷⁷ T.32333, 2 March 2009, Vinko PANDUREVIC

¹³⁷⁸ **P00385**, Judgement against Nesko DOKIC and Slobodan DOKIC (for aiding four Bosnian Muslim males), dated 25-07-1995.

¹³⁷⁹ [REDACTED]

¹³⁸⁰ **P03054**, OTP interview with Dragan Obrenovic, 4-6 June 2003.

¹³⁸¹ T.10438 – T.10439, 24th April 2007, Nebojsa JEREMIC

¹³⁸² [REDACTED]

¹³⁸³ P00389, KIVIRIC, Sakib – statement provided to the Zvornik Military Police; P00390, MUSTAFIC, Emin – statement provided to the Zvornik Military Police; P00391, DOZIC, Fuad – statement provided to the Zvornik Military Police; P00392, HALILOVIC, Almir – statement provided to the Zvornik Military Police

¹³⁸⁴ [REDACTED]

¹³⁸⁵ 7D00712, List of prisoners in Batkovica prison camp, exchanged in 1995, Hasic : page 5 BCS, ENG page 4, Salikovic : Page 7 BCS

12.4. The Prisoners from the Milici hospital

866. Prisoners stayed in Milici on the 13th and 14th July.¹³⁸⁷ They were then transferred to the Zvornik hospital. The prisoners came with their medical records, and were handed into the care of Dr. Lazarevic.¹³⁸⁸ When on the following day he inquired about the health of the prisoners, he was told that they had been evacuated to Tuzla in order to be exchanged.¹³⁸⁹

867. When they had arrived from Milici, the prisoners were placed in the hospital gynecology ward. There were eleven patients. One of them, Aziz Becirovic, died at the hospital as a consequence of his severe injuries.¹³⁹⁰ A treatment history file was opened for each of them. They were provided with adequate treatment. The prisoners were guarded by policemen. They were taken to Standard military barracks. Doctors from the Zvornik hospital continued to treat their patients daily after their transfer. They were accommodated in one big separate room from wounded Serb soldiers. When Lazarevic came a second time, the patients were no longer there and he was told that they were to be exchanged near Bijeljina.¹³⁹¹ The eleven patients were supposed to be treated at the Zvornik Hospital until their exchange.¹³⁹² One of the patients was sent to Karakaj barracks to continue his treatment.¹³⁹³ Two were sent to Batkovci for exchange.¹³⁹⁴ All the prisoners, brought to the hospital by any soldier from the Zvornik Brigade, and Serb soldiers were treated identically.¹³⁹⁵

868. Another doctor, namely Dr Begovic confirmed that Pandurevic was not in the Brigade when the prisoners arrived at the hospital.¹³⁹⁶ Dr Begovic only saw Pandurevic after the prisoners had gone.¹³⁹⁷ Dr Begovic was also able to say that he had been told by Obrenovic that the prisoners would be exchanged after a few days and that they should not be harmed.¹³⁹⁸ This was confirmed in writing a day after their arrival.¹³⁹⁹ Again, the prisoners were cared for and records were kept of their treatment.¹⁴⁰⁰ And although the prisoners were registered in a logbook, medical charts were opened in readiness for their transfer to Bijeljina.¹⁴⁰¹ Five days after their arrival, prisoners were removed from Standard and an MP later confirmed they had been taken away by bus without a medical

¹³⁸⁶ T. 1215, 6 September 2006, Ahmo HASIC.

¹³⁸⁷ [REDACTED]; **P1884**

¹³⁸⁸ T.9113-T.9115, 21 March 2007, Jugoslav GAVRIC

¹³⁸⁹ T.9116, 21 March 2007, Jugoslav GAVRIC

¹³⁹⁰ 7D00169, T.9082, 20 March 2007, Radivoje NOVAKOVIC;

¹³⁹¹ T.9027, 20 March 2007, Radivoje NOVAKOVIC

¹³⁹² T.9036, 20 March 2007, Radivoje NOVAKOVIC

¹³⁹³ [REDACTED]; T.9053, 20 March 2007, Radivoje NOVAKOVIC

¹³⁹⁴ T.9073-T.9074, 20 March 2007, Radivoje NOVAKOVIC

¹³⁹⁵ T.9074, 20 March 2007, Radivoje NOVAKOVIC

¹³⁹⁶ T.9135-T.9136; T.9153-T.9154, 21 March 2007, Zoran BEGOVIC

¹³⁹⁷ T.9154, 21 March 2007, Zoran BEGOVIC

¹³⁹⁸ T.9234; T.9144, T.9165, 21 March 2007, Zoran BEGOVIC

¹³⁹⁹ T.9143, 21 March 2007, Zoran BEGOVIC

¹⁴⁰⁰ T.9160, T.9162, T.9137, 21 March 2007, Zoran BEGOVIC

¹⁴⁰¹ T.9144, 21 March 2007, Zoran BEGOVIC

escort.¹⁴⁰² Following the departure of the prisoners, their files (lists, charts and discharge papers) stayed at the medical centre.

869. Another group of four or five wounded Muslim prisoners arrived. They too were treated and then sent for exchange to Bijeljina soon thereafter.¹⁴⁰³

870. Pandurevic learned about the existence of these wounded prisoners only once he returned from the IKM on the 18th or 19th July. He didn't understand why they had to be accommodated at Standard.¹⁴⁰⁴ He was repeatedly asking the Corps command to deal with the exchange of prisoners. Significantly, on 23rd July, Pandurevic was talking to Cerovic about the transfer of the prisoners to Batkovic.¹⁴⁰⁵ Obrenovic told him that they had been transferred to Batkovic following the meeting of 24th July. He never ordered the execution of these prisoners,¹⁴⁰⁶ nor ordered them not be registered; that was Obrenovic's initiative.¹⁴⁰⁷

12.5. Execution near Snagovo

871. On or about 22nd July, approximately six Bosnian Muslim¹⁴⁰⁸ men had become separated from the column of men retreating from the Srebrenica enclave.¹⁴⁰⁹ The group was partially armed.¹⁴¹⁰ They reached Snagovo on or about 20th July.¹⁴¹¹ The day after, one of them (Husein Hrnjic) went on reconnaissance but didn't come back.¹⁴¹² They were captured by MUP officers from Ugljevik police station in the woods near the town of Snagovo.¹⁴¹³ One of them managed to escape.¹⁴¹⁴ Another was taken to Batkovic after interrogation at Ugljevik.¹⁴¹⁵ The others were executed there, where they were captured.¹⁴¹⁶

872. The unit involved was comprised of MUP and PJP¹⁴¹⁷, mainly reserve policemen.¹⁴¹⁸ They were sealing off an area near Snagovo.¹⁴¹⁹ They were commanded through police chains of command. The witness thought that relations between the police and the army

¹⁴⁰² T.9137, T.9147-T.9148, 21 March 2007, Zoran BEGOVIC – a medical escort should have accompanied the patients but this could not be organised

¹⁴⁰³ T.9136, T.9148-T.9149, 21 March 2007, Zoran BEGOVIC

¹⁴⁰⁴ T.31169-T.31170, 10 February 2009 ; T.31709, 18 February 2009, Vinko PANDUREVIC

¹⁴⁰⁵ P01309, Intercept dated 23 July 1995, 08:00 hours, 23 July 1995

¹⁴⁰⁶ T.31169-T.31170, 10 February 2009, Vinko PANDUREVIC

¹⁴⁰⁷ T.31713, 10 February 2009, Vinko PANDUREVIC

¹⁴⁰⁸ PW-106, Ramiz Hrnjic, Salko Hrnjic, Muhamed Begic, Husein Hrnjic, Muhamed Mehmedovic and another person., [REDACTED] (PW-106)

¹⁴⁰⁹ [REDACTED] (PW-106)

¹⁴¹⁰ [REDACTED] (PW-106)

¹⁴¹¹ [REDACTED] (PW-106)

¹⁴¹² [REDACTED] (PW-106)

¹⁴¹³ [REDACTED] (PW-106)

¹⁴¹⁴ [REDACTED] (PW-106)

¹⁴¹⁵ [REDACTED] (PW-106)

¹⁴¹⁶ [REDACTED] (PW-106)

¹⁴¹⁷ [REDACTED] (PW-107)

¹⁴¹⁸ P02295, Bijeljina Public Security Centre document No 12-4/01-116/04 - List of police officers who were on assignment on the Zvornik Public Security Centre on 13 and 14 July 1995, dated 28 April 2004 ; [REDACTED] (PW-107)

¹⁴¹⁹ [REDACTED] (PW-107)

units were poor.¹⁴²⁰ However he understood his commander to be saying no prisoners were to be taken.¹⁴²¹ The policeman who shot the prisoners came from another unit. He was one of a number of similarly dressed men wearing bandanas.¹⁴²² It was not the intention of PW-107 that the prisoners should be executed, despite his orders, but he and his colleagues were unable to prevent the shootings.¹⁴²³ The unit from whom these soldiers came was unknown.¹⁴²⁴

873. There is no obvious link between these men and the VRS, let alone the Zvornik Brigade. The shootings have the hallmarks of acts of wanton violence committed by a man or men on a frolic of their own. Moreover, it is an isolated episode, in which a few were killed but one left alive. It does not support the prosecution case of a JCE to commit genocide.

12.6. Execution near Nezuk

874. The credibility of the accounts supporting these alleged executions is highly suspect. Both were armed combatants from the 28th Division.¹⁴²⁵ Despite being at Baljkovica on or around 16th July, neither passed through the corridor, despite that self-evident opportunity, with or without arms. Indeed neither concedes knowledge of the existence of the corridor, which the defence submit is implausible, given that they were amongst thousands of Muslims who at that time must have been passing through it and/or were being called through it by Serb soldiers.

875. The defence submits that the obvious inference is that they were part of a combat unit which had chosen not to pass through the corridor in order to carry out diversionary operations behind enemy lines.

876. It goes without saying that their surrender did not lead to their deaths, but rather to their brief detention at Standard and their subsequent transfer to Batkovic.¹⁴²⁶

877. There is no logic to this, if in truth they had witnessed the commission of War Crimes. Moreover, it does not support the prosecution's case that this episode, if true, is inferential of a JCE to commit genocide. The defence further contends that it probably indicates that the deaths of men in their unit occurred in combat rather than by execution, which event neither of them chose to record until 5 years later.¹⁴²⁷

¹⁴²⁰ [REDACTED] (PW-107); **P00064**, CJB Zvornik report 01-16-02/1-206/95, signed by Dragomir Vasic, dated 17 July 1995; P00091, RS Special Police Brigade Order No. 61/95 re creation of combat group, typed-sygned Goran SARIC, dated 17 July 1995; P00974, CJB Zvornik report 01-16-02/1-206/95, signed by Dragomir VASIC, dated 19 July 1995; 7D00717, Drina Corps order 01/159-2 (forwarding the RS Presidential Order declaring a State of War in RS), 29-Jul-1995.

¹⁴²¹ [REDACTED] (PW-107)

¹⁴²² [REDACTED] (PW-107)

¹⁴²³ [REDACTED] (PW-107)

¹⁴²⁴ [REDACTED] (PW-107)

¹⁴²⁵ P02288, OTP Witness Statement dated 28 May 2000;

¹⁴²⁶ [REDACTED] (PW-139)

¹⁴²⁷ P02288, OTP Witness Statement dated 28 May 2000; [REDACTED], (PW-139)

878. The soldiers allegedly involved in the executions were part of the unit from Krajina.¹⁴²⁸ They had been given orders by Obrenovic.¹⁴²⁹ Save for his evidence about the alleged misunderstanding over the Commander's instruction to take care over the taking of prisoners, he was clear that orders relating to the treatment of prisoners were lawful.¹⁴³⁰
879. Moreover, Pandurevic received no report of any such incident. The killing of enemy soldiers and the taking of prisoners by the Zvornik Brigade was at that time being fully recorded in a number of ways.¹⁴³¹ Indeed the report of the 19th July appears to refer explicitly to this episode.¹⁴³²

13. STUPCANICA 95 OPERATION

13.1. Command and purpose of the operation

880. The initial order to carry out operations towards Zepa was issued by General Ratko Mladic at about 1 o'clock in the afternoon on 10th July 1995.¹⁴³³ At about this time, Pandurevic had been compelled to bring his unit back from their reserve position to retake the features at Rajna and Zivkovo Brdo, following the Muslim counterattack earlier that morning.¹⁴³⁴ Although Pandurevic spoke to Mladic at about the time of the issue of the order, the conversation was limited exclusively to the present combat operation.
881. The order is addressed to the Drina Corps and the 65th Protection Regiment. There is no evidence that Pandurevic knew of the order at the time of its issue. The order itself calls for the units involved to take the defence line and improve the tactical position around the Zepa enclave. The offensive combat operation was scheduled to start on the 12th July.¹⁴³⁵
882. The first Pandurevic knew of a planned assault on Zepa was at the meeting of the commanders at the Bratunac Brigade on 11th July. This is dealt with in greater detail elsewhere, but the Defence observe that the issue of this order (on 10th July) for combat operations to commence on 12th July is yet another compelling reason to conclude that

¹⁴²⁸ P00336, Zvornik Brigade Daily Combat Report No. 06-224, type-signed Vinko PANDUREVIC, dated 19 July 1995 ; [REDACTED] (PW-126)

¹⁴²⁹ [REDACTED]; T.31130-T.31131, 9 February 2009, Vinko PANDUREVIC

¹⁴³⁰ T10162-T10163, T10164, 17 April 2007, Lazar RISTIC ; [REDACTED]

¹⁴³¹ P00383, Zvornik Brigade reports of the duty operations officer, for the period 5 July 1995 through 21 January 1996; [REDACTED]

¹⁴³² P00336, Zvornik Brigade Daily Combat Report No. 06-224, type-signed Vinko PANDUREVIC, dated 19 July 1995

¹⁴³³ **P00181** - VRS Main Staff Order No.03/4-1807, Krivaja 95 Order No.04/156-32, 10 Jul.1995 (ERN: 0425-7963-0425-7965).

¹⁴³⁴ T.30861-T.30863, 29 January 2009, Vinko Pandurevic; T.29538-T.29539, 11 December 2008 and T.29602-T.29604, 12 December 2008, Milenko JEVDJEVIC

¹⁴³⁵ **P00181** - VRS Main Staff Order No.03/4-1807, Krivaja 95 Order No.04/156-32, 10 Jul.1995 (ERN: 0425-7963-0425-7965), main operative part and point 4.

Mladic must have addressed his commanders about the action towards Zepa on the evening of the 11th.¹⁴³⁶ Pandurevic was, of course, opposed to the suggestion.¹⁴³⁷

883. The order of Mladic was followed by a Drina Corps order on 13th July.¹⁴³⁸ Unlike Krivaja 95, this order made no reference to Operational Directive 7. In terms, Stupcanica '95 was a lawful combat order, respecting the situation of civilians. As the Prosecution asserted in its Opening Statement, the combat action towards Zepa was legal and militarily justifiable.¹⁴³⁹ Pandurevic's understanding of the purpose of the military operation was to neutralise the Zepa Brigade by disarming it.¹⁴⁴⁰ Disarming the enclave and reducing its size was a military action that attempted to overturn a situation inconsistent with the creation of the safe areas and the terms agreed.¹⁴⁴¹

13.2. Involvement of the Zvornik Brigade units on 14 July 1995

884. Pandurevic first saw the order for combat on the morning of 14th July at the forward command post at Krivace when Krstic gave him his task.¹⁴⁴² No mention was made during the handing out of the task of any ultimatum given to the population of Zepa.¹⁴⁴³

885. After receiving his orders, Pandurevic led his unit from Rijeka village to Podzeplje. His units were deployed in a combat line and, from Podzeplje, they launched an attack along the Podzeplje-Brloznik village and Brloska mountain axis. In the main, his positions were one to two kilometres from the positions of the Zepa Brigade. They were ten kilometers from the village of Zepa itself.¹⁴⁴⁴

886. There was sporadic fighting on 14th July, mainly due to machine-gun fire from the Zepa Brigade (which was returned) as the units under Pandurevic closed their positions with the enemy.¹⁴⁴⁵ The positions taken up by Pandurevic's units were the same as those which had been held by the 65th Motorised Regiment of the VRS. It is worthy of note that

¹⁴³⁶ **P00181** - VRS Main Staff Order No.03/4-1807, Krivaja 95 Order No.04/156-32, 10 Jul.1995 (ERN: 0425-7963-0425-7965), point 4.

¹⁴³⁷ T.11842, 21 May 2007, Mirko TRIVIC; T.29608-T.29609, 12 December 2008, Defence witness Milenko Jevdjevic; T.30885, 30 January 2009, Vinko PANDUREVIC.

¹⁴³⁸ **P00114**, 13 July 1995, Drina Corps Command Order No. 02/04-158-1, Zepa Op Order 1, signed by Radislav KRSTIC, BCS ERN 0091-7870-0091-7873, ENG ERN 0092-0249-0092-0253.

¹⁴³⁹ T.398, 21 August 2006, Opening Statement of Chief Prosecutor Peter McCloskey

¹⁴⁴⁰ T.30916, 30 January 2009, Vinko Pandurevic.

¹⁴⁴¹ **P0003**, 8 May 1993, Agreement on a Ceasefire in the Territory of the Bosnia and Hercegovina, BCS ERN 0026-3474-0026-3477-BCST, ENG ERN 0026-3474-0026-3477, Article 3 prescribes demilitarization of both enclaves.

In its Opening Statement, the Prosecution asserted: "*Zepa and the Srebrenica enclaves were militarily supporting each other. Items were being flown in in secret helicopter missions from the BiH army and creating havoc within the ranks of the villages outside the enclaves and causing the VRS to tie down hundreds of troops around those enclaves away from the Sarajevo front, which was a crucial front. So this part of it is military and is legitimate.*" (T.398, 21 August 2006, Opening Statement of Chief Prosecutor Peter McCloskey).

¹⁴⁴² T.30914, 30 January 2009, Vinko Pandurevic.

¹⁴⁴³ T.30915, 30 January 2009, Vinko Pandurevic; Paragraph 9c) of **P00114** makes it clear that the combat operation was not directed against UNPROFOR and the civilian population.

¹⁴⁴⁴ T.30917, 30 January 2009, Vinko Pandurevic

¹⁴⁴⁵ T.29613-T.29614, 12 December 2008, Defence witness Milenko Jevdjevic; T.30918, 30 January 2009, Vinko Pandurevic.

the Prosecution allege that attacks towards Zepa predated any combat order or the arrival of Pandurevic's units.¹⁴⁴⁶ In that context, the contribution of Pandurevic's troops to any sense of insecurity on the part of the inhabitants of Zepa must be regarded as insubstantial. The allegations made in the Prosecution's Pre-Trial Brief are unsubstantiated and lack evidential support.¹⁴⁴⁷

13.3. Involvement of the Zvornik Brigade units from 15 to 31 July 1995

887. Pandurevic was summoned to see Krstic at the forward command post at about 8.00 hours on the 15th of July. After a short discussion, it was agreed that Pandurevic should withdraw his units from the line and return to Zvornik. He left the Zepa theatre at around 10 o'clock that morning. His units followed shortly.¹⁴⁴⁸ Thereafter, no unit of the Zvornik brigade (which would, in any event, have been under the command of the operational commander, Krstic) was present in the area until 31st July.¹⁴⁴⁹

888. On any version of events, the evacuation of Zepa occurred between the 24th and the 27th of July. Although there is evidence that Pandurevic was in contact with the Drina Corps IKM during that period and knew of the evacuation, that must be true of many people.

13.4. Presence of Pandurevic at Boksanica on or about 26 July 1995

889. The presence of Pandurevic at Boksanica on or about 26th July 1995 is no evidence of his participation in the evacuation. He is, in the context of those present, a very junior officer. He plays no active role. His presence cannot amount to encouragement, and in fact a detailed examination of the footage reveals that his Nissan vehicle disappears sometime between General Mladic's salutations to the 8th and 9th of the 23 coaches. He is not present as the commander of any unit, nor capable of giving any order. He is not able to effect any function beyond standing at a roadside or sitting at a table. His presence is both ephemeral and ineffective. As stated elsewhere, a detailed study of the dialogue reveals the poor state of Pandurevic's knowledge as to the personnel and function of those present.

13.5. Prosecution allegations regarding Operation Stupcanica 95

890. This section of the brief is primarily intended to deal with submissions about facts and events. Submissions as to the law, elements of offences and the indictment will be made elsewhere. However, before passing on, certain observations need to be made. This is the

¹⁴⁴⁶ Prosecutor v. Popovic et al., Indictment, 4 August 2006, para. 65.

¹⁴⁴⁷ Prosecution Pre-Trial Brief, 28 April 2006, para. 175. The Prosecution allege that Vinko Pandurevic and his units "entered the pocket from the north-west, captured land and burned villages."

¹⁴⁴⁸ T.30942-T.30943, T.30947-T.30948, T.30954, 2 February 2009, Vinko PANDUREVIC; T.12596-T.12598, 14 June 2007, Miodrag DRAGUTINOVIC; T.29620-T.29621, 12 December 2008, Defence witness Milenko Jevdjovic

¹⁴⁴⁹ See **7D00686** and **P00150**; Also, see T.31170, 10 February 2009, Vinko PANDUREVIC; T.12705, 15 June 2007, Miodrag DRAGUTINOVIC; T.11863, 21 May 2007, Mirko TRIVIC.

first trial before this Tribunal in which any allegation as to the forcible movement of peoples from Zepa in July of 1995 has been made. The events at Zepa were not considered by Richard Butler to be any part of his brief prior to June 2006.¹⁴⁵⁰ Nor was he invited to consider events in his evidence before this Trial Chamber. Whilst the form of any charge is entirely the Prosecution's business (subject to judicial review), one is entitled to ask what supervening events in 2005 made it appropriate to aver that a crime had been committed in Zepa, when it was not deemed appropriate to make such an averment in the Krstic or the Blagojevic trial. The evidence of all the principal witnesses was available then, as now and the documentary evidence has been in the possession of the Prosecution for many years.

891. In the submission of the Defence, the Tribunal would be left with an anomalous historical record, were the operational commander under Stupcanica 95 to escape conviction, whilst his subordinates (or at least some of them) were to be punished on the same evidence. Others may develop these submissions further. Pandurevic reserves the right to adopt them.

14. OPERATION STORM IN KRAJINA

14.1. Pandurevic's departure to Krajina

892. Before the end of July 1995 the offensive actions by Croatian forces in Krajina had become critical for Republika Srpska.¹⁴⁵¹ The evidence discloses that Pandurevic knew he would be going to Krajina as early as 26th July. His marching order of 28th July¹⁴⁵² was written 'pursuant to the order of the Drina Corps of 26 July 1995'.¹⁴⁵³ It would inevitably have been part of his discussion with Krstic in Zepa.¹⁴⁵⁴ According to 6DW-02, such was the level of urgency during Pandurevic's brief visit to Boksanica that Mladic was anxious that he and Jolovic should hasten their preparations for the Krajina (as opposed to 'hanging around with' him in Zepa).¹⁴⁵⁵

893. Already on 28 July, 220 soldiers from Zvornik brigade were dispatched.¹⁴⁵⁶ This was ten days before Pandurevic departed.

894. The 2nd Drinski Brigade left for Krajina at 1345hrs on 7th August¹⁴⁵⁷. The unit needed two days to get to the command post of the Main Staff and the 2nd Krajina Corps close to Petrovac.¹⁴⁵⁸

¹⁴⁵⁰ Section Four of the "VRS Main Staff Command Responsibility Report" deals with the Operation Stupcanica 95. The date of the report is 9 June 2006.

¹⁴⁵¹ T.31185, 10 February 2009, Vinko PANDUREVIC; P124, DC order, 29 July 1995

¹⁴⁵² 7D00729, ZB order for march to go to the z/o of the 2nd Krajina Corps, 28 July 1995; T.31179, 10 February 2009, Vinko PANDUREVIC; T.12722, 15 June 2007, Miodrag DRAGUTINOVIC

¹⁴⁵³ 7D00729, ZB order for march to go to the z/o of the 2nd Krajina Corps, 28 July 1995; T.31179, 10 February 2009, Vinko PANDUREVIC

¹⁴⁵⁴ T.31179, 10 February 2009, Vinko PANDUREVIC

¹⁴⁵⁵ T.33855, 2 July 2009, 6DW-02

¹⁴⁵⁶ P00351, ZB Irregular combat report, 28 July 1995: 'We have dispatched 220 soldiers... the convoy left the barracks at 18:45.' See also P00124, DC order on 29 July 1995, showing that part of Zvornik brigade already left.

895. The fighting in Krajina was extremely intense with the VRS being outgunned and suffering many losses.¹⁴⁵⁹ The loss of the Krajina was, moreover, a bitter blow for Serb morale. Pandurevic first saw the movement on his way to the front. These were for him, 'perhaps the most difficult days of the war'.¹⁴⁶⁰
896. His subsequent report of 23rd October sets out the difficulties of the campaign and amounts effectively to a daily record of his and his unit's movements throughout the period 7th August to 16th September.¹⁴⁶¹ His return was entirely dictated by the unfolding of events in Krajina. He might have been away for two weeks or two months. It was beyond his control.

14.2. Communications during stay in Krajina

897. While in Krajina, Pandurevic's superior was Colonel Kukobat Dusan, Chief of Staff and commander of 1st operation group of 2 KK, from the composition of the 2 Krajina Corps.¹⁴⁶²
898. While fighting in Krajina, Pandurevic contacted Zvornik Brigade command only in order to inform them of the well being of the men and to report on losses.¹⁴⁶³ Pandurevic did not speak to Krstic during that time. Although he acknowledged some encrypted communications concerning deserters.¹⁴⁶⁴
899. Pandurevic never received any information concerning a plan to exhume and rebury dead bodies in Zvornik.¹⁴⁶⁵ He did not have any knowledge of the whereabouts of the mass graves.¹⁴⁶⁶ Moreover, Pandurevic had shown in his reports of 15th- 18th July 1995 that he would not respect instructions about secrecy in communications in such matters.¹⁴⁶⁷ Logic dictated he would not be informed of the plan.

14.3. Command of Zvornik Brigade from 3 August to 16 September

900. According to the principle of unity of command, at the moment when Pandurevic was appointed a commander of the 2nd Drina Brigade of the Drina Corps, somebody automatically had to take over the command of the Zvornik Brigade. By establishment

¹⁴⁵⁷ P00379, ZB duty operations officer notebook, ERN 0293-6702, 7 August 1995; T.12723-T.12724, 15 June 2007, Miodrag DRAGUTINOVIC; P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, ERN 0293-6702, 7 August 1995; T.31196, 10 February 2009, Vinko PANDUREVIC

¹⁴⁵⁸ T.31197, 10 February 2009, Vinko PANDUREVIC

¹⁴⁵⁹ T.31198-T.31200, 10 February 2009, Vinko PANDUREVIC; 7D00439, Report written by Pandurevic regarding Drinski brigade, 23 October 1995

¹⁴⁶⁰ T.31204, 10 February 2009, Vinko PANDUREVIC

¹⁴⁶¹ 7D439, Report written by Pandurevic regarding Drinski brigade, 23 October 1995; T.31202, 10 February 2009, Vinko PANDUREVIC

¹⁴⁶² T.31202, 10 February 2009, Vinko PANDUREVIC

¹⁴⁶³ T.31202, 10 February 2009, Vinko PANDUREVIC; P00379, ZB duty operations officer notebook, ERN 439, BCS and ENG page 31: '*commander Pandurevic got in touch, they are all fine*;

¹⁴⁶⁴ T.31204, 10 February 2009, Vinko PANDUREVIC

¹⁴⁶⁵ See Part 4 section 17. Pandurevic's knowledge of the reburial operation

¹⁴⁶⁶ See Part 4 section 17. Pandurevic's knowledge of the reburial operation

¹⁴⁶⁷ See Part 4 Section 11 on VBI of 15, 16 and 18 July

that was the Chief of Staff as the deputy commander, Obrenovic.¹⁴⁶⁸ The Drina Corps order of 3rd August 1995 appointing Pandurevic as commander of the Drinski Brigade determined his and Obrenovic's respective roles and responsibilities.¹⁴⁶⁹

901. From 3rd August, Pandurevic was in command of the Drinski Brigade as the order was *effective immediately*.¹⁴⁷⁰ During that time, the evidence shows him gathering his troops, preparing logistics and issuing *orders* to that effect.¹⁴⁷¹
902. The reports of the Zvornik Brigade at that time display their usual inconsistencies. On 3rd August the report was not signed by anybody, but bears the block signature of Pandurevic.¹⁴⁷² The report on 4th August still bears the block signature of Pandurevic but is signed by Obrenovic as 'for the commander Pandurevic', presumably standing in for the commander Pandurevic.¹⁴⁷³ Pandurevic made no contribution to this report.¹⁴⁷⁴ On 5th August the report bears Pandurevic's block signature,¹⁴⁷⁵ whereas on 6th August the report is signed by Obrenovic as "standing in for the Commander".¹⁴⁷⁶
903. A few days later on 8th August, Krstic issued an order appointing Obrenovic as Pandurevic's 'stand in' and appointing Milos Maksimovic as chief of staff.¹⁴⁷⁷ The precise effect of this was more fiscal than legal.¹⁴⁷⁸ It is beyond dispute that during this time Obrenovic was standing in for the commander.¹⁴⁷⁹

¹⁴⁶⁸ 7D00462, Order appointing Obrenovic as chief of staff and deputy commander of ZB, 11 April 1993; T.31191, 10 February 2009, Vinko PANDUREVIC

¹⁴⁶⁹ T.31190, 10 February 2009, Vinko PANDUREVIC; 7D00615, DC Order to go to Krajina, 3 August 1995; T.31187, 10 February 2009, Vinko PANDUREVIC

¹⁴⁷⁰ T.32302, 2 March 2009, Vinko PANDUREVIC; T.31190, 10 February 2009, Vinko PANDUREVIC; T.31187-T.31188, 10 February 2009, Vinko PANDUREVIC: "Immediately after having received this order, I was duty-bound to proceed accordingly. I was in constant communication with all the other brigade commanders from the Drina Corps with a view to efficiently gather all the men, material, technical equipment, and to establish first the command and finally the entire brigade. In that sense, I started issuing my first orders to that brigade."

¹⁴⁷¹ 7D00611, ZB order, Preparation of units to form 2nd Drinski brigade, 3 August 1995: "...At 1400 hours on 6 August for a meeting with the Commander of the Drina lpbr, Lieutenant Colonel Vinko PANDUREVIC. Inform the aforementioned officers that, in keeping with certain duties, they should by that time carry out the necessary preparations at their services and posts." See T.31189, 10 February 2009, Vinko PANDUREVIC; T.12722, 15 June 2007, Miodrag DRAGUTINOVIC

¹⁴⁷² P00359, ZB regular combat report, 3 August 1995

¹⁴⁷³ P00360, ZB regular combat report, 4 August 1995, signed by Obrenovic as standing in.

¹⁴⁷⁴ T.31194-T.31195, 10 February 2009, Vinko PANDUREVIC

¹⁴⁷⁵ P00361, ZB regular combat report, 5 August 1995

¹⁴⁷⁶ P02839, ZB regular combat report, 6 August 1995

¹⁴⁷⁷ 5D00452, DC Command order no 05/2-384, 8 August 1995, Order appointing Obrenovic as stand in and Maksimovic as chief of staff

¹⁴⁷⁸ T.31191, 10 February 2009, Vinko PANDUREVIC

¹⁴⁷⁹ [REDACTED]

14.4. Return to Zvornik from Krajina

14.4.1. On 15th September

904. According to all the available records, Pandurevic returned with the Drinski Brigade to Zvornik on 16th September.¹⁴⁸⁰ On 15th September, he was still returning from the Krajina. That day, Obrenovic went to Vlasenica in the morning¹⁴⁸¹ and chaired a meeting of all battalion and division commanders at 1100hrs, most likely informing them about the situation in the corps after coming from Vlasenica that day.¹⁴⁸²

905. On an earlier occasion Obrenovic (doubtless ignorant of Pandurevic's report, and forgetting about the entry in the duty officer's notebook) had claimed that Pandurevic had returned a day or two earlier.¹⁴⁸³ This can now be seen for what it is, namely an ill-thought out attempt to tarnish Pandurevic with knowledge of the telegram relating to fuel on 14th September.¹⁴⁸⁴ As is plain from the evidence, Pandurevic and Obrenovic cannot have met in Zvornik on either 14th or 15th September [REDACTED].¹⁴⁸⁵

14.4.2. On 16th September

906. When Pandurevic returned to Zvornik brigade HQ on 16th September, in accordance with his continuing duties as commander of the Drinski Brigade, he needed first to dismantle his unit. This meant checking that everybody had returned safely, thanking them for their participation, talking to the brigade commanders and ensuring that all soldiers had returned. The process took until late afternoon, after which he held a meeting with the Drinski Brigade command where they analysed events which had passed. After that, he went to Celopek to see his girlfriend.¹⁴⁸⁶

907. Dragutinovic does not remember seeing Obrenovic when they got back on 16 September.¹⁴⁸⁷ Pandurevic says that he saw Obrenovic briefly on 16th in the evening before he left the barracks. Pandurevic told him that all the units had returned and asked

¹⁴⁸⁰ P00379, ZB duty operations officer notebook, ERN 0293-6724, 16 September 1995; 7D00439, Komanda 2. Dlpbr, 23.10.1995- Angazovanje2. Dlpbr u zoni 2. KK, Report written by Pandurevic regarding Drinski brigade, 23 October 1995; T.12723-T.12724, 15 June 2007, Miodrag DRAGUTINOVIC; T.31202, 10 February 2009, Vinko PANDUREVIC

¹⁴⁸¹ 7D00261. PRL, September, Mercedes, VWL Ljubisa Danojlovic, Obrenovic's driver, entry for 15 September: 7:00 – 24: Vlasenica IKM-Zvornik.

¹⁴⁸² P00379, ZB duty operations officer notebook, September, ERN 525. BCS and ENG page 117; P00378, ZVORNIKBRIGADE DUTY OPERATIONS OFFICER DIARY, FOR PERIOD 12 FEBRUARY 1995 THROUGH 3 JANUARY 1996, ZB duty operations officer diary, ERN 723, BCS and ENG page 121: 'informing of commanders of battalions and divisions about the military political situation in VRS in the corps and brigade responsibility'

¹⁴⁸³ 7D00086, Dragan Obrenovic, Statement of facts, Appendix to Plea agreement, ENG page 9, BCS page 8

¹⁴⁸⁴ See Part 4 section 15 Reburial operation

¹⁴⁸⁵ [REDACTED]

¹⁴⁸⁶ T.31208-T.31209, 10 February 2009, Vinko PANDUREVIC

¹⁴⁸⁷ T.12724, 15 June 2007, Miodrag DRAGUTINOVIC

him to continue looking after them, just like he said to all the other brigade commanders.¹⁴⁸⁸

908. Pandurevic specifically denies that there was any conversation with Obrenovic about the delivery of fuel.¹⁴⁸⁹

14.5. Command of the Zvornik Brigade on 16th September

909. On 16th September Pandurevic was not in command of the Zvornik brigade as he was still commander of the Drinski Brigade.¹⁴⁹⁰ Obrenovic, who was commanding the Zvornik Brigade at that time was, in line with his duties as brigade commander, visiting the 7th battalion in Memici from 0540 – 2400hrs on 16th September.¹⁴⁹¹ Moreover, he signed the regular combat report on 16th and he is referred to as the ‘brigade commander’ in the same report.¹⁴⁹²

910. The reference to ‘the commander’ in the duty operations officer notebook for 16th September is a reference to Obrenovic, since he was the commander at that time.¹⁴⁹³ The evidence shows that references to Obrenovic would be as Chief of Staff or sometimes ‘commander’.¹⁴⁹⁴

14.6. Pandurevic’s departure to Montenegro

14.6.1. On 17th September

911. On 16th September, Pandurevic finished his tasks with the Drinski Brigade and after informing Krstic over the phone that all units had returned to their garrisons he requested a 10-day-leave of absence. Having reported to Krstic by radio, he asked whether there

¹⁴⁸⁸ T.31210, 10 February 2009, Vinko PANDUREVIC

¹⁴⁸⁹ T.31209, 10 February 2009, Vinko PANDUREVIC; See Part 4 section 17. Pandurevic’s knowledge of the reburial operation

¹⁴⁹⁰ T.32302, 2 March 2009, Vinko PANDUREVIC

¹⁴⁹¹ 7D00772, VWL Ljubisa Danojlovic, Obrenovic’s driver, 16 September: 5:40 – 24:00 – Zvornik-Memici; See also P00378, ZB duty operation’s officer diary, ERN 6723, BCS pages 121-122: ‘*Brigade commander (referring to Obrenovic) inspected the positions of the 7.pb in the village of Memici*’; P00379, ZB duty operations officer notebook, September, ERN 528, BCS and ENG page 120: Obrenovic at 7th infantry battalion, group of officers in the 2nd infantry battalion; See also 7D670, ZB regular combat report 16 September 1995, Para 2. See also T.12724, 15 June 2007, Miodrag DRAGUTINOVIC; [REDACTED]

¹⁴⁹² 7D00670, ZB regular combat report, 16 September 1995, para 2 (*The brigade commander inspected the positions of the 7th pb defence area in Staro Selo*) and signature; See also P00377, ZB duty operations officer notebook, ERN 6541, 6542, 6543; P00378, ZVORNIKBRIGADE DUTY OPERATIONS OFFICER DIARY, FOR PERIOD 12 FEBRUARY 1995 THROUGH 3 JANUARY 1996, ERN 6727; 7D00675, Zvornik Brigade Regular Combat Report, 21 September 1995; 7D00676, Zvornik Brigade Regular Combat Report, 22 September 1995; [REDACTED]

¹⁴⁹³ T.12723-T.12724, 15 June 2007, Miodrag DRAGUTINOVIC

¹⁴⁹⁴ T.22449, 19 June 2008, Zoran JOVANOVIĆ

was a need for him to attend at Vlasenica. Krstic told him he did not need to come, and granted him 10 day leave.¹⁴⁹⁵

912. After that time, Pandurevic was in Celopek, getting ready for his leave in Montenegro.¹⁴⁹⁶ Officially he was already on leave.¹⁴⁹⁷ Whilst on leave he was not legally in active service and, accordingly, Obrenovic's tenure as commander continued.

14.6.2. Command of Zvornik Brigade on 17th September

913. On 17th September Obrenovic was clearly at the 2nd battalion IKM, holding a debriefing of the commanders of the divisions and battalions at Pecina, close to Malecisi.¹⁴⁹⁸ That day he signed the regular combat report for 17th September as a person standing in for the commander.¹⁴⁹⁹

14.7. Command during Pandurevic's absence

914. On 18th September Obrenovic was in Vlasenica with Krstic in his continued capacity as the commander of the brigade.¹⁵⁰⁰ He signed the regular combat reports as standing in for the commander.¹⁵⁰¹ The references in the reports on 21st, 22nd and 23rd September are

¹⁴⁹⁵ P00379, ZB duty operations officer notebook, ERN 530, BCS and ENG page 122: '*Lieut. Pandurevic to get in touch with Krstic before going to Vlasenica, and that he does not need to go to Vlasenica in the afternoon*'; T.31210, 10 February 2009, Vinko PANDUREVIC; P00379, ZB duty operations officer notebook, ERN 536 and telephone number in Budva; See also 7D00770, prl September, Nisan, D. Stevic and B.Pandurevic, 7D00771, PRL September, Reno Fofran, Stupar, Pandurevic, Milovnovic, Danojlovic, Obrenovic

¹⁴⁹⁶ P00379, ZB duty operations officer notebook, 17 September, ERN 530, page 122 BCS and ENG: '*Lieu. Colonel in Celopek, mayor in Malesici.*' This clearly shows Obrenovic was at Malesici with the 2nd battalion, and Pandurevic had informed command that he was in Celopek; T.31210, 10 February 2009, Vinko PANDUREVIC

¹⁴⁹⁷ P02925, Record of people present in the ZB in September 1995 : According to the record of people present in the Zvornik brigade command in September, Pandurevic was absent from 17th to 25th September (9 days altogether), so he is *already absent* from the Brigade on 17 September.

¹⁴⁹⁸ P00378, ZB duty operations officer diary, September, ERN 724, BCS page 122; 7D00261, VWL Ljubisa Danojlovic from 20.09 TO 30-09-95, 20-sep-1995, driver of Dragan Obrenovic, entry for 17th September 1995, page 4 ENG; 7D00671, ZB regular combat report 17 September 1995, Para 2: '*A team of brigade command officers is spending its second day in the defence area of the 2nd battalion, inspecting the overall situation in the unit. A briefing with battalion commanders was held at the IKM of the 2nd battalion.*'; [REDACTED]

¹⁴⁹⁹ 7D00671, ZB regular combat report, 17 September 1995, signed by Obrenovic 'for the commander', block signature by Pandurevic. The report for 17th September was composed by Nedeljkovic Milutin (initials MN), an old reserve captain, who was the duty officer very rarely and was very rarely mobilised. Thus, by mistake he put Pandurevic's block signature at the bottom of the report. However, it is signed by Obrenovic; T.31235, 11 February 2009, Vinko PANDUREVIC

¹⁵⁰⁰ P00379, ZB duty operations officer notebook, 18 September, ERN 632, BCS and ENG page 124; 7D00261, VWL, Ljubisa Danojlovic from 20.09 TO 30-09-95, 20-sep-1995, driver of Dragan Obrenovic, entry for 18 September: Zvornik – Vlasenica; [REDACTED], [REDACTED]

¹⁵⁰¹ 7D00672, ZB regular combat report, 18 September

therefore references to Obrenovic.¹⁵⁰² The same applies for the entries in the duty operations officer notebook ('commander left ekonomija' etc.)¹⁵⁰³

14.8. Return to Zvornik from Montenegro

14.8.1. On 25th September

915. According to the Zvornik Brigade personnel roster for September, Pandurevic was absent from 17th to 25th September (9 days altogether), so he was *still absent* from the Brigade on 25 September.¹⁵⁰⁴
916. On 25th September 1995 the Drina Corps by order formed a second brigade to go to the Krajina. Furtula was appointed commander.¹⁵⁰⁵ By a further order on 26th September, Furtula's appointment was revoked and Obrenovic was appointed commander of the unit.¹⁵⁰⁶
917. This was plainly an unexpected event, and led to the premature curtailment of Pandurevic's holiday.¹⁵⁰⁷ After receiving a call in Budva¹⁵⁰⁸, Pandurevic went back to Zvornik later that day and after arriving in the Zvornik area, he called Krstic from a friend's house.¹⁵⁰⁹ The call was relayed through Central to give the impression that Pandurevic was at Brigade command. Pandurevic relayed some concerns of Jolovic to Krstic, but the vagueness of the requests belie the fact that Pandurevic was not able to consult Jolovic because he was not there.¹⁵¹⁰ Pandurevic did not go to the command of the Zvornik Brigade on 25th September¹⁵¹¹ and did not take over the command.¹⁵¹²
918. On 25th September, Obrenovic was at Corps Command in Vlasenica at 0725hrs.¹⁵¹³ The meeting of the battalion commanders that day was necessarily conducted by him,

¹⁵⁰² See 7D00675, ZB regular combat report, 21 September 1995; 7D00676, ZB regular combat report, 22 September 1995; 7D00677, ZB regular combat report, 23 September 1995

¹⁵⁰³ P00379, ZB duty operations officer notebook, 23 September 1995, ERN 542, BCS and ENG page 134: '*commander left to ekonomija (farm) and then on Vjenacac... on Monday at 7:00 commander at the corps commander*'. This is relating to ekonomija in Karakaj, not Branjevo. This also shows that on Monday 25th Obrenovic was supposed to be in Vlasenica.

¹⁵⁰⁴ P02925, Zvornik Brigade Command Roster for September 1995 ; T.31233, 10 February 2009, Vinko PANDUREVIC

¹⁵⁰⁵ 7D00701, Drina Corps Command order : Forming and sending brigade to the zone of 1st Krajina Corps, 25 September 1995

¹⁵⁰⁶ P00158, Drina Corps Command Order 638/94-193-1, 26-sep-1995, DC order appointing Obrenovic instead of Furtula; T.12733, 15 June 2007, Miodrag DRAGUTINOVIC

¹⁵⁰⁷ T.31222, 10 February 2009, Vinko PANDUREVIC

¹⁵⁰⁸ P00379, ZB duty operations officer notebook, September, ERN 536: 086-51-486, BCS and ENG page 128: "room 100, 51998 – commander lieut. Pandurevic". That is the number in Budva, i.e. Becici, where Pandurevic was staying for 9 days; T.31222, 10 February 2009, Vinko PANDUREVIC

¹⁵⁰⁹ P00379, ZB duty operations officer notebook, September, ERN 545, BCS and ENG page 137: tel number "584726 – commander"

¹⁵¹⁰ P02929, Intercept dated 25 September 1995, 15:40 hours, between Central – Vinko - Krstic

¹⁵¹¹ T.32351, 2 March 2009, Vinko PANDUREVIC

¹⁵¹² T.31229, 10 February 2009, Vinko PANDUREVIC

¹⁵¹³ 7D00261, VWL Ljubisa Danojlovic from 20.09 TO 30-09-95, 20-sep-1995, driver of Dragan Obrenovic, entry for 25 September: Zvornik – Vlasenica – Zvornik; [REDACTED]

since he had returned from the Corps.¹⁵¹⁴ Moreover, Pandurevic held similar meetings on 26th September¹⁵¹⁵ and on 27th.¹⁵¹⁶ He would scarcely have done that if he had chaired an informed discussion on 25th.¹⁵¹⁷ Also, on 25th September, Obrenovic had not yet been appointed commander of the unit to go to Krajina.¹⁵¹⁸

919. The daily combat report for 25th September was drafted by Milutin Nedeljkovic (it bears the initials 'MN'). He was a reservist with little understanding of the relative roles of the Commander and Chief of Staff.¹⁵¹⁹ He habitually block-signed reports with Pandurevic's name and had made the same mistake earlier that month.¹⁵²⁰
920. A further document bearing the date 25th September 1995 bears Pandurevic's manuscript signature. It is the Order for the formation of an Infantry Company.¹⁵²¹ This is not a contemporaneous document such as a report but a creation of the operations department.¹⁵²² There are of course now two different copies of the document in evidence. The first, shown to [REDACTED] Pandurevic in chief, which appears to show Pandurevic's signature on top of the stamp (that at least was his view;¹⁵²³ one with which counsel for the prosecution concurred¹⁵²⁴), and a second photocopy appearing to show the opposite.¹⁵²⁵ Nevertheless, the order in which the signature and stamp were applied to the document is not determinative of its date, as it is perfectly possible both actions could have occurred on the 26th. Pandurevic's evidence is that that was the first date he returned to work at the Zvornik Brigade.¹⁵²⁶

¹⁵¹⁴ 7D00679, ZB regular combat report, 25 September 1995; P00379, ZB duty operations officer notebook, 25 or 26 September, ERN 547, BCS and ENG page 139: "meeting of the commanders of the battalions at 12:00" and few lines below "meeting at 10:00 as planned Obren"; T.31234, 10 February 2009, Vinko PANDUREVIC; T.31235, 11 February 2009, Vinko PANDUREVIC

¹⁵¹⁵ 7D00680, ZB regular combat report, 26 September 1995

¹⁵¹⁶ P00379, ZB duty operations officer notebook, 27 September, ERN 548, BCS and ENG page 140: "10:00 debriefing of the battalion and division commanders"; 7D00681, ZB regular combat report, 27 September 1995; P00378, ZB duty operations officer diary, September, ERN 729, BCS page 127: debriefing held.

¹⁵¹⁷ T.31238, 11 February 2009, Vinko PANDUREVIC

¹⁵¹⁸ [REDACTED]

¹⁵¹⁹ T.31235, 11 February 2009, Vinko PANDUREVIC

¹⁵²⁰ 7D00671, Zvornik Brigade Regular Combat Report, 17 September 1995

¹⁵²¹ P02927, Zvornik Brigade Document No. 01-440, signed by Vinko Pandurevic dated 25 September 1995 : Order on formation of infantry company in the composition n of the Drinski Brigade

¹⁵²² Document was prepared my MM, Milan Maric, who was a clerk in the operative organ. See T.31237, 11 February 2009, Vinko PANDUREVIC

¹⁵²³ T 31237:13 to T31238, 11th Feb 2009, Vinko PANDUREVIC

¹⁵²⁴ T 31237:13 to T31238, 11th Feb 2009, Vinko PANDUREVIC : " MR. McCLOSKEY: It's okay, I've seen it. JUDGE KWON: And do you agree with it? MR. McCLOSKEY: I agree with the part about the stamp. When it was signed, I might have a disagreement with"

¹⁵²⁵ P02927A, Zvornik Brigade Document No.01-440, signed by Vinko PANDUREVIC, dated 25 September 1995

¹⁵²⁶ P02925, Zvornik Brigade Roster for September 1995

14.8.2. On 26 September

921. At about 1230hrs on 26th September, Obrenovic departed for the Krajina.¹⁵²⁷ Pandurevic had arrived at Brigade Command two or three hours earlier and had resumed command of the brigade.¹⁵²⁸ Prior to that, Obrenovic had been in command of the Brigade for a continuous period of 54 days.¹⁵²⁹
922. On 27th September, Pandurevic left the command post. According to his driver's work log, he did not go very far, and remained local to Zvornik.¹⁵³⁰

15. REBURIAL OPERATION

"Were you aware of the acquiring of large numbers -- it's hard to say, 15, 20 very large trucks, big dump trucks, the kind that they haul bauxite around in from mid-September to roughly mid-October for a large transportation of materiel, men and materiel in the area of the Zvornik and Bratunac Brigades? Huge operation, took several days, drove through the night doing it, lots and lots of fuel had to be used. You must have know what I'm talking about. It was a Main Staff operation" ¹⁵³¹

923. From September through October 1995 the Bratunac Brigade, working with the civilian authorities, exhumed the mass graves at Glogova and other mass graves of Muslim victims of the murder operation, and reburied them in individual mass graves throughout the greater Srebrenica area. A similar process was undertaken in Zvornik, but over a much shorter period. There is evidence that it was concluded in five to six days.¹⁵³² Almost certainly, the process began no later than 22nd September in Zvornik.¹⁵³³ Wherever it was carried out, operations were conducted at night.¹⁵³⁴

¹⁵²⁷ P00378, ZB duty operations officer notebook, 26 September, ERN 729 BCS page 127: 'at 12:30, 430 soldiers left, composition of Drinski Brigade, left to the Zone of 1st Krajina Corps'. See also 7D00261, VWL Ljubisa Danojlovic from 20.09 TO 30-09-95, 20-sep-1995,0, entry for 26th September: Zvornik-Mrkonjic Grad – Radici. That clearly shows that DO left to Krajina on 26th September. See also T.31238, 11 February 2009, Vinko PANDUREVIC

¹⁵²⁸ T.31222, 10 February 2009, Vinko PANDUREVIC; T.31238, 11 February 2009, Vinko PANDUREVIC

¹⁵²⁹ T.12733, 15 June 2007, Miodrag DRAGUTINOVIC

¹⁵³⁰ 7D00770, VWL for Nissan; 7D771, VWL for Renault Safran

¹⁵³¹ T.24117, 28 July 2008, Zeljko KERKEZ, Peter McCloskey

¹⁵³² T.31244, 11 February 2009, Vinko PANDUREVIC (referring to information received from Miodrag Dragutinovic).

¹⁵³³ **P02391**, Intercept dated 22 September 1995, 18:44 hrs.

¹⁵³⁴ T.14485, 29 August 2007, Damjan Lazarevic

15.1. Decision to rebury

924. Undoubtedly, the catalyst for the operation was the revelation on 10th August 1995 of the aerial images of alleged atrocities in the wider Srebrenica area¹⁵³⁵. The evidence suggests, however, that the plan was conceived a few weeks later. Momir Nikolic was contacted by Colonel Popovic, the Drina Corps Chief of Security, and told to conduct a reburial of the Muslim bodies at Glogova. He assisted in the effort to exhume and re-bury Muslim bodies from mid-September to October 1995.

925. Fuel was dispatched to Zvornik on 14th September for “engineering works”.¹⁵³⁶ It had apparently been expended whilst “work” was ongoing by 22nd September.¹⁵³⁷

15.2. Command of the operation

926. Without doubt the operation to rebury the victims was conceived as a plan in the Main Staff. Indeed, that is the Prosecution’s case.¹⁵³⁸ Momir Nikolic said that the initiative came from the civilian authorities,¹⁵³⁹ but that the order was from the Main Staff.¹⁵⁴⁰

927. It is significant to note that he received his instructions from the Drina Corps Chief of Security, rather than from his brigade commander, indicating that the chain of command was the professional security line, notwithstanding the fact that it is difficult to conceive how reburying bodies could be classified as counter-intelligence work.¹⁵⁴¹

928. In Bratunac, men reported to Momir Nikolic to carry out the work,¹⁵⁴² and it was his specific duty to monitor and account for the usage of fuel.¹⁵⁴³ Significantly, the same role was given to Milorad Trbic, the acting Chief of Security in the Zvornik Brigade.¹⁵⁴⁴

15.3. Units involved

929. In Bratunac, the operation was conducted in coordination with the Bratunac Brigade Military Police, civilian police, and elements of the 5th Engineering Battalion of the Drina Corp.¹⁵⁴⁵

930. The political structure of Bratunac was also involved, namely Miroslav Deronjic, president of the SDS, Srbislav Davidovic, chairman of the executive council, Ljubisa Simic, the president of the municipality assembly of Bratunac and also Miodrag

¹⁵³⁵ See Part 4 Section 17 Pandurevic’s knowledge of the reburial operation

¹⁵³⁶ P00042; VRS Main Staff Order Signed by Ljubijevic dated 14 September 1995

¹⁵³⁷ P02391 Intercept dated 22 September 1995, 18:44 hrs

¹⁵³⁸ T.24117, 28 July 2008, Zeljko KERKEZ

¹⁵³⁹ T.33350, 28 April 2009, Momir NIKOLIC

¹⁵⁴⁰ 4D00016 : Statement of Facts and Acceptance of Responsibility, by Momir Nikolic, 6 May 2003, page 7-8.

¹⁵⁴¹ T.32962, 21 April 2009, Momir NIKOLIC.

¹⁵⁴² [REDACTED] (PW-170)

¹⁵⁴³ T.32962, 21 April 2009, Momir NIKOLIC.

¹⁵⁴⁴ P00042, VRS Main Staff Order Signed by Ljubijevic dated 14 September 1995 Richard Butler, Srebrenica Military Narrative(Revised), 1 November 2002, page 117

¹⁵⁴⁵ 4D00016: Statement of Facts and Acceptance of Responsibility, by Momir Nikolic, 6 May 2003, page 7

Josipovic, chief of the public security station in Bratunac. In addition, companies with construction machines were utilised.¹⁵⁴⁶

931. There is evidence, albeit hearsay, of the involvement of the 5th Engineering Battalion in the reburials in Zvornik as well.¹⁵⁴⁷ The “bauxite” dumper trucks bore the name ‘Štajer’, owned by ‘Autotransport’, indicating coordination at the highest level.¹⁵⁴⁸ The involvement in some capacity of two or three members of the Zvornik Brigade engineering company has to be conceded,¹⁵⁴⁹ nonetheless, the men who operated the machines during the re-excavation of graves were not members of the Zvornik Infantry Brigade. They were employees of commercial enterprises.¹⁵⁵⁰

15.4. Role of the security organs in the operation

15.4.1. Vujadin Popovic

932. Momir Nikolic had contact with Vujadin Popovic in September. Popovic said then that there was an order from the Main Staff for the relocation of the graves in Glogova. He also said that pursuant to this order, the command of the Drina Corps had received an order to initiate the whole action and that the task of the Drina Corps Command or the security organ of the Drina Corps was to ensure, for that operation, the necessary quantities of fuel. Momir Nikolic had the task of monitoring fuel consumption.¹⁵⁵¹
933. On 22nd of September, Popovic made inquiries of Trbic to ascertain how his work was going, and how the supplies of fuel were holding up.¹⁵⁵²
934. [REDACTED].¹⁵⁵³

15.4.2. Momir Nikolic

935. Momir Nikolic’s role in the reburial operation in Bratunac has been adequately set out already. After receiving the task, he did everything he had been asked. The operation involved a lot of people and assets.¹⁵⁵⁴

¹⁵⁴⁶ T.33059-T.33060, 23 April 2009, Momir NIKOLIC

¹⁵⁴⁷ T.32305, 2 March 2009, Vinko PANDUREVIC

¹⁵⁴⁸ T.14527, 30 August 2007, Damjan LAZAREVIC; T.32278, 27 February 2009, Vinko PANDUREVIC.

¹⁵⁴⁹ Damjan Lazarevic admits that he took part in the operation. Additionally, he asserts that Milorad Trbic and Slavko Bogicevic were also present. T14450-14451, T.14469, T.14479-T.14480, T.14488-T.14490, 29 August 2007 and T.14507-T.14508, 14514, 30 August 2007, Damjan LAZAREVIC

¹⁵⁵⁰ T.14508, T.14513-14514, 30 August 2007, Damjan LAZAREVIC.

¹⁵⁵¹ T.32961-T.32962, 21 April 2009, Momir NIKOLIC

¹⁵⁵² P2391, Intercept dated 22 September 1995, 18:44 hrs.

¹⁵⁵³ [REDACTED]

¹⁵⁵⁴ T.32962, 21 April 2009, Momir NIKOLIC

15.4.3. Milorad Trbic

936. Trbic took control of the fuel in Zvornik¹⁵⁵⁵ and coordinated the operation. One of the excavator drivers never spoke to anybody else but him.¹⁵⁵⁶

16. USE OF MEN AND MACHINERY FOR THE REBURIAL OPERATION

Q : “ The Zvornik Brigade was, in fact, involved in that process, wasn't it?

A : “Not the Zvornik Brigade, Mr. McCloskey. You cannot say that two men equal the Zvornik Brigade. The Zvornik Brigade was not involved at the time.”¹⁵⁵⁷

16.1. No mobilization by the Zvornik Brigade

937. Although there appears to have been involvement on the part of a very limited number of personnel affiliated to the Zvornik Brigade, there was no official mobilisation by the Zvornik Brigade for the reburial of bodies.

938. It is evident that whatever did happen, occurred and was sanctioned at a much higher level than that of the Brigade.

939. Damjan Lazarevic¹⁵⁵⁸ was an individual who knew something of the operation. He knew that those whose names had been put forward for the task were from the engineering unit or from other ZB units.¹⁵⁵⁹

940. However, the best evidence of knowledge (or lack of it) comes from Vinko Pandurevic who stated that persons other than Brigade personnel were directing and coordinating this task. Dragan Jokic told him that no one from the engineering company of the ZB was involved in the task. It was impossible for these three men to coordinate this with private companies. This must have been done by someone at a much higher level.¹⁵⁶⁰

¹⁵⁵⁵ [REDACTED]

¹⁵⁵⁶ T.14488-T.14490, 29 August 2007, Damjan LAZAREVIC

¹⁵⁵⁷ T.32304, 2 March 2009, Vinko PANDUREVIC

¹⁵⁵⁸ Part of the Zvornik Brigade engineering company

¹⁵⁵⁹ T.14484, 29 August 2007, Damjan Lazarevic

¹⁵⁶⁰ T.32313, T.32315, 2 March 2009, Vinko PANDUREVIC, T.14489-14490, 29th August 2007, Damjan LAZAREVIC (he suggests that the security branch of the command was responsible for the reburial, naming Major Trbic whose superior officer was Drago NIKOLIC. It was Major Trbic who told them what to do)

16.2. Use of members of the Zvornik Brigade

941. The evidence suggests that 2 members of the Zvornik Brigade were involved in digging out the graves. However, no Zvornik Brigade personnel were involved in the subsequent transportation and reburial of the corpses.¹⁵⁶¹

942. There was no involvement of members of the Zvornik Brigade over and above those persons mentioned above.¹⁵⁶²

16.3. Use of machinery

943. Trucks from various companies were used to transport the bodies. The Brigade vehicles were too old, and could not be used to complete the work.¹⁵⁶³

16.4. Fuel

944. The fuel for the exhumation operation was authorized by and requested at Main Staff level.¹⁵⁶⁴ Delivery of fuel of this type could have been made to the Brigade command, otherwise it would be delivered to a local gas station¹⁵⁶⁵ Notably, Obrenovic, who was in command did not know about the delivery of fuel at the time, nor how it was being disbursed.¹⁵⁶⁶

17. PANDUREVIC'S KNOWLEDGE OF THE REBURIAL OPERATION

“somebody was doing a job that had nothing to do with me, and in view of what had happened in July, I assumed that this operation had to be much more secretive and that it was better for me not to get mixed up in it in any way.”

(T.31243-31244, 11 February 2009, Vinko PANDUREVIC)

¹⁵⁶¹ T.14485-T.14486, 29 August 2007, Damjan Lazarevic (he did not know who was involved in the reburial operation – he was not able to know nor was he told of the identity of those persons. In addition, he had no idea of the location to which the corpses were taken)

¹⁵⁶² T.32305, 2nd March 2009, Vinko PANDUREVIC (and this was the use of two men who were involved without the knowledge and order of Brigade Command)

¹⁵⁶³ T.14485, 29 August 2007, Damjan LAZAREVIC

¹⁵⁶⁴ T.14487, 29 August 2007, Damjan LAZAREVIC, T.24101, 25 July 2008, Zeljko KERKEZ (The responsibility for fuel supplies, was under the technical service, generally at a unit level, the Main Staff, the Corps, brigades, etc)

¹⁵⁶⁵ T.32109, 10 February 2009, Vinko PANDUREVIC (the gas station which was regularly used by the Brigade, in Karakaj, 500 metres from the Brigade command)

¹⁵⁶⁶ [REDACTED]

17.1. Introduction

945. The exhumation and reburial of bodies was intended to be a secretive operation on any version of events. The prosecution avers, and the defence for Pandurevic certainly agree, that the operation was a response to the fact that the international community knew of the murder operation and the existence of certain mass graves. That had been graphically revealed to the Security Council and to the world by Madeleine Albright on 10th August 1995,¹⁵⁶⁷ when she dramatically displayed a selection of aerial images. It is reasonable to suppose that there would have been no reburial operation but for that event, and that for sure, no such scheme was in anybody's contemplation before that date.
946. Certainly, during the early part of August, the Bosnian Serbs had other concerns, as their forces and the Serbian population was being driven out of the Krajina. That had been Pandurevic's main concern too from July 26th when he first learnt that he would have to take a tactical unit to join the fight there. His movements during that period are well documented by his report on the Drinski Brigade's activities of 23rd October.¹⁵⁶⁸
947. The length of time that Pandurevic spent fighting in the Krajina was dependent upon a number of factors which were entirely beyond his control, in particular, how the combat action developed. In fact he returned to Zvornik on 16th September, after 39 days, but that was a mere coincidence.
948. During his absence, Obrenovic had full control of and responsibility for the Brigade which appears to be a non contentious fact. More to the point, according to the prosecution, Krstic had underscored that fact by writing a special order on 8th August. It is a significant feature of the secrecy of the reburial operation that those carrying out the plan also kept Obrenovic 'out of the loop'. He was unaware of any plan being executed in Zvornik while he was undoubtedly in command. Obrenovic admitted by his plea of guilty that he had no involvement in the reburial operation.¹⁵⁶⁹ [REDACTED].¹⁵⁷⁰ The defence for Pandurevic accepts that to be true.
949. It is plain that the plan to rebury the dead bodies had crystallised by 14th September, the day on which the fuel from Main Staff was sent for the operation. There would have been little point in telling Pandurevic of such a plan between 10th August and 14th September as he would have neither had the ability nor the authority to assist in its implementation. Not to tell Obrenovic, however, has the clearest inference; the plan was to be implemented without the knowledge of the command of the Zvornik Brigade.
950. For argument sake, the defence concedes and avers that involvement in a cover-up can be powerful evidence of participation in the substantive crime. Firstly, and obviously, covering up a crime is a crime in itself, and infers a guilty conscience. However, in the current case especially, covering up the crime required a great deal of detailed knowledge of the original crime, in particular, where the bodies were buried in the first place, and fairly precisely how many bodies there were in each place (so that you knew what you would need to dig them up and move them). Of necessity, those who orchestrated the

¹⁵⁶⁷ **P00466**, AFP Headlines..page 7

¹⁵⁶⁸ **7D00439**, Report signed by Vinko Pandurevic, 23 October 1995.

¹⁵⁶⁹ **P02911**, Plea agreement of Dragan Obrenovic, 20 May 2003 (Count 5 of the indictment); **P02912**, Prosecutor v. Dragan Obrenovic, Indictment, par. 17 (Count 1) refers to reburials.

¹⁵⁷⁰ [REDACTED]

reburial must have had a central role in the original killings and a particular interest in covering them up.

951. “Looking back up the telescope”, from the perspective of the reburial operation, gives a useful perspective on who was commanding and organizing the killing operation, and more importantly, who was not.
952. In the following section, Pandurevic’s knowledge of the reburial operation will be analysed. Beyond a general assertion of widespread knowledge,¹⁵⁷¹ no specific allegation has ever been made about Pandurevic’s involvement in the process of covering up the crimes. In his evidence he denied knowledge of the plan or its implementation until late September, by which time the operation was completed.

17.2. Planning and Execution of the Operation

953. As has been mentioned above, the earliest date at which the operation could have been planned was 10th August, the date on which the aerial images were published. In the Zvornik area, at least, the plan must have been complete by 14th September and was entering its implementation phase, as the Main Staff had sent fuel with a note for reference to the Zvornik Brigade.¹⁵⁷²
954. Popovic and “Mihailic” were eavesdropped over the radio on 22nd September about the issue of fuel and, by necessary, inference the reburials. It is plain from their conversation that the fuel had by then been obtained and that work was underway.¹⁵⁷³
955. The aerial images of the grave sites in the Zvornik area confirm that the reburial operations were conducted between the 7th and 27th September.¹⁵⁷⁴

17.3. Pandurevic’s whereabouts between 10th August and 27th September

17.3.1. Krajina

956. Pandurevic’s presence in the Krajina between 7th August and 16th September are fully dealt with elsewhere in this brief.¹⁵⁷⁵

¹⁵⁷¹ See Indictment paragraph 32, and T.484, 22nd August 2006, Prosecution Opening Statement

¹⁵⁷² **P00379**, Zvornik Brigade duty operations officer notebook, page 115 in both BCS and ENG; **P00041**, Main Staff Order No. 03/4-2341 regarding assignment of fuel, 14 September 1995; **P00042**, VRS Main Staff Order No. 10/34/2-3-701, issuing 5,000 litres of D-2 diesel fuel, 14 September 1995.

¹⁵⁷³ **P02391**, Intercept dated 22 September 1995, 18:44 hrs.

¹⁵⁷⁴ T.1831, 18 September 2006, Jean Rene RUEZ

¹⁵⁷⁵ See Part 4 section 14 “Operation Storm”

17.3.2. Return to Zvornik on 16 September and the issue of fuel

957. On 14th September, a telegram arrived at the Zvornik Brigade command notifying them of the arrival of 5 tonnes of fuel. The fuel was not for the use of the Brigade.¹⁵⁷⁶ That the telegram about the fuel was for Trbic's attention was unusual, because he was a security desk officer and information about fuel would usually be addressed to the rear services.¹⁵⁷⁷ [REDACTED], after the duty operations officer brought the contents of this anodyne telegram to his commander's attention (at that time, Obrenovic), the commander made an inquiry at the Corps duty operations officer, who knew nothing of it. Ten minutes later, however, Obrenovic received a call from Popovic, telling him, in effect, to mind his own business ("the Duty Officers were incompetent and had made a mistake").¹⁵⁷⁸ This is indeed a curious tale, especially given that the telegram was from the Main Staff (thus, calling the corps would make no sense), the Corps duty operations officer had no reason to notify Popovic, and Popovic's intervention was quite simply, pointless.
958. All the same, [REDACTED], then it was not intended that the Brigade Commander, Obrenovic, would know about the fuel. If it is not accepted, then it will be difficult to agree that his evidence is credible on this issue.
959. Two days later, [REDACTED] he asked Pandurevic about the fuel upon his return from Krajina. He said that Pandurevic told him that he knew nothing about it and said he would ask at Corps command when he visited later that day. Later, he returned and said that the fuel was for Popovic and his people to carry out reburials.
960. This account has a number of problems. Firstly, [REDACTED].¹⁵⁷⁹ Secondly, Obrenovic was not at the barracks when Pandurevic returned with his unit from the Krajina.¹⁵⁸⁰ Instead he was visiting the battalions all day.¹⁵⁸¹ Thirdly, Pandurevic did not go to Vlasenica on 16th September.¹⁵⁸² Lastly, given that Pandurevic was still commander of the Drinski Brigade on 16th September, and on leave from the morning of 17th, command of the Zvornik Brigade was Obrenovic's responsibility. If he had wanted to clear up the issue of the fuel, he was entitled to do so at any time after the arrival of the telegram, before or after Pandurevic's return with the Corps commander (He was, for example, in Vlasenica on 15th September).¹⁵⁸³
961. Obrenovic knew nothing about the arrival of the fuel, nor its disbursement.¹⁵⁸⁴ More significantly, given the fact that the operation in Zvornik took place between the 7th and 27th of September, whilst he was in command of the brigade, he knew nothing of it until his return from the Krajina at the end of October.¹⁵⁸⁵ This evidence is consistent with the

¹⁵⁷⁶ T.12726, 15 June 2007, Miodrag DRAGUTINOVIC.

¹⁵⁷⁷ [REDACTED]

¹⁵⁷⁸ 7D86, Statement of Facts Dragan Obrenovic, 20 May 2003, p. 9; [REDACTED].

¹⁵⁷⁹ [REDACTED].

¹⁵⁸⁰ T.12724, 15 June 2007, Miodrag DRAGUTINOVIC. T.31211 and 31223, 10 February 2009, Vinko PANDUREVIC

¹⁵⁸¹ **P00378**, Zvornik Brigade duty operations officer diary, page 121-122, P379, page 120, **7D261**, VWL-PRL Danojlovic Ljubisa, 20-30 September 1995.

¹⁵⁸² **P00379**, Zvornik Brigade duty operations officer notebook, page 122, T.31211-31213, 10 February 2009, Vinko PANDUREVIC.

¹⁵⁸³ **7D00261**, VWL-PRL Danojlovic Ljubisa, 20-30 September 1995.

¹⁵⁸⁴ [REDACTED].

¹⁵⁸⁵ [REDACTED]

testimony of several other (senior) officers of the brigade who were apparently unaware of the reburial operation at the time of its execution.¹⁵⁸⁶ The evidence in the case does not support the suggestion that the Brigade, as a whole, was either informed of the plan or involved in its execution. The theory of widespread knowledge is not supported by evidence.

17.3.3. Budva

962. Following the disbandment of the Drinski Brigade, Pandurevic went to Montenegro (Budva) and was there until the 25th of September. On 25th September, he received a message from the Brigade command that Krstic wanted him to cut short his holiday and to return to Zvornik.¹⁵⁸⁷
963. On the afternoon of the 25th, he was with friends in Zvornik and called the Brigade command to tell them where he could be reached.¹⁵⁸⁸ Later, he spoke to Krstic through the Brigade switchboard. Whatever else can be inferred from that conversation, knowledge of the reburial operation certainly cannot.¹⁵⁸⁹ Pandurevic first attended for duty at Standard on the morning of 26th September. Obrenovic was still there. Obrenovic left with his troops around noon the same day.¹⁵⁹⁰ Whatever they may have discussed, reburials cannot have been a topic, since, on his own account, Obrenovic at that time had no knowledge of them.

17.4. Knowledge after the event

964. A few days after his arrival from Budva, Pandurevic found out that some trucks from a transport company had passed through Zvornik for five or six days carrying some sort of material which had left behind an unbearable stench. The operation had taken place at night and local citizens had become upset because of the smell.¹⁵⁹¹
965. Pandurevic asked Dragutinovic whether the Brigade had been assigned any sort of task or issued any sort of order in connection with this and his answer was no. He said he had no knowledge and he knew nothing about the operation.¹⁵⁹²
966. Pandurevic did not discuss these events in detail with anyone at that time, nor did he make any sort of investigation. When Dragan Obrenovic returned from the Krajina, Pandurevic asked him what he knew. Obrenovic told him that just before Pandurevic's return from the Krajina, he became aware that Mladic personally had approved fuel for the relocation of corpses and that the engineers battalion of the Drina Corps had participated in that operation. Obrenovic also told him that this was being conducted "by

¹⁵⁸⁶ T.12735-12736, 15 June 2007, Miodrag DRAGUTINOVIC; T.10582, 26 April 2007, Mihajlo GALIC. T.25801, 16 September 2008, Mirko SAKOTIC.

¹⁵⁸⁷ T.31223, 10 February 2009, Vinko PANDUREVIC.

¹⁵⁸⁸ T.31225, 10 February 2009, Vinko PANDUREVIC

¹⁵⁸⁹ T.31227, 10 February 2009, Vinko PANDUREVIC

¹⁵⁹⁰ T.31230, 10 February 2009, Vinko PANDUREVIC.

¹⁵⁹¹ T.31242, T.31244, 11 February 2009, Vinko PANDUREVIC.

¹⁵⁹² T.31243, 11 February 2009, Vinko PANDUREVIC.

the very top, the highest authorities in the army” and that no task had been issued to the Brigade in that respect.¹⁵⁹³

967. Pandurevic saw that it was very difficult for him to take any action in view of the information he had. As he put it, “somebody was doing a job that had nothing to do with me, and in view of what had happened in July, I assumed that this operation had to be much more secretive and that it was better for me not to get mixed up in it in any way.”¹⁵⁹⁴
968. Pandurevic assumed that the operation was organized within the scope of the security organ. He did not have any direct information about who was engaged in this, who was in charge of it, but, as he said, “I was able to conclude that it was being done by the security organs because no tasks had been issued to any of the commands for them to pass the orders down the chain of command and deal with this matter.”¹⁵⁹⁵

18. BRIEF REVIEW OF SCIENTIFIC AND OTHER EVIDENCE RELATING TO GRAVE SITES

969. The defence for Pandurevic acknowledge that this topic is likely to be the subject of a substantial amount of discussion in the briefs of other accused, but, nonetheless present this brief review.
970. At the outset of this case, the Prosecution alleged that “By 1 November 1995, the entire Muslim population had been either removed or fled from Srebrenica and Zepa and over 7000 Muslim men and boys from Srebrenica had been murdered by VRS and MUP forces.”¹⁵⁹⁶ In this short section of the brief, the defence intend to raise a number of points to question the numbers involved in that assertion.
971. The Prosecution called forensic anthropologists¹⁵⁹⁷, pathologists¹⁵⁹⁸, demographers and statisticians¹⁵⁹⁹, and investigators¹⁶⁰⁰ in order to achieve a Minimum Number of Individuals (“MNI”) who had been murdered allegedly in the conflict.
972. There has to be serious doubt (a) whether the numbers which are alleged to have been involved can safely be interpreted in their thousands, (b) whether this can amount to genocide¹⁶⁰¹ and (c) fundamentally, whether the most significant proportion of those listed as missing, actually died in legitimate combat rather than in executions. It is submitted that a number of propositions can be made with a significant degree of

¹⁵⁹³ T.31243, 11 February 2009, Vinko PANDUREVIC.

¹⁵⁹⁴ T.31243-31244, 11 February 2009, Vinko PANDUREVIC.

¹⁵⁹⁵ T.31244, 11 February 2009, Vinko PANDUREVIC.

¹⁵⁹⁶ *Prosecution vs Popovic et al.*, Indictment, 04 August 2006, Paragraph 25.

¹⁵⁹⁷ Richard WRIGHT, Freddy PECERELLI, Jose Pablo BARAYBAR

¹⁵⁹⁸ John CLARK, Christopher LAWRENCE, William HAGLUND, Dusan DUNJIC

¹⁵⁹⁹ Helge BRUNBORG, Miladin KOVACEVIC, Oliver STOJKOVIC

¹⁶⁰⁰ Dean MANNING, Dusan JANC

¹⁶⁰¹ On a purely numerical basis the 7000 number relied upon by the Prosecution can only amount to a small fraction of the overall relevant population (ie 0.5%).

evidential force in respect of determination of a MNI such that there has to be serious doubt whether the 7000 number can be sustained.

18.1. First proposition – a significant number of adult males died in legitimate combat

973. Where it is suggested that persons died other than in legitimate combat, there are real doubts as to the causes of death which can be attributed to those who died¹⁶⁰². For instance, it is unsafe to accept the bald assertion that due to the numbers who allegedly died from gunshot wounds, that they were executed.¹⁶⁰³ In addition, the remains of many bodies were skeletonised. This caused real difficulties for the pathologists in determining cause and time of death.¹⁶⁰⁴ Moreover, a number of different causes were determined which are plainly consistent with legitimate combat including gunshots¹⁶⁰⁵, blast injuries¹⁶⁰⁶, ambush situations involving, inter alia, gunshots¹⁶⁰⁷, blunt force trauma¹⁶⁰⁸, suicides¹⁶⁰⁹ and land mines.¹⁶¹⁰ In addition, there is ample evidence of deaths occurring, for instance, during the gathering of the column in the Jaglici and Susnjara.

974. Further, the pathology was hampered by an inability to determine whether injury to the bodies had occurred ante or post mortem.¹⁶¹¹ The evidence also demonstrated that the methodology adopted by the Prosecution experts in determining cause of death is in question, in that record keeping both at the grave sites and at the morgues was inconsistent nor of a standard to be expected.¹⁶¹²

975. Finally on this aspect, the Prosecution rely upon findings of ligatures and/or blindfolds to support the proposition of executions at various grave sites rather than legitimate combat deaths. A number of points should be considered : (a) the small number of ligatures and/or blindfolds compared with the overall numbers of bodies found¹⁶¹³.

¹⁶⁰² See T.7368-T.7372, 20th February 2007, John CLARK; T.24353, 30th July 2008 Svetlana RADOVANOVIC

¹⁶⁰³ T.7530, 21st February 2007, Christopher LAWRENCE ; T.7458, 21st February 2007, Richard WRIGHT; T.8763-8764, 13th March 2007, Freddy PECERELLI; T.27809, T.27811, T.27812, 4th November 2008, T.27864, 5th November 2008, Dusan DUNJIC; T.33542, T.33564, 4th May 2009, Dusan JANC

¹⁶⁰⁴ See T.7358, T.7359, T.7364, 20th February 2007, John CLARK; T.7345, T.7345, T.7388, T.7389, T.7390, Clark, 20th February 2007, T.7533:11, T.7544, 21st February 2007, Christopher LAWRENCE; T.7520, T.7520, T.7521, 21st February 2007, Christopher LAWRENCE ; T.7449, 20th February 2007, Richard WRIGHT; T.8765, 13th March 2007, Freddy PECERELLI; T.18955, 10th December 2007, Dean MANNING ; T.27813, 4th November 2008, Dusan DUNJIC

¹⁶⁰⁵ See T.7342, T.7377, 20th February 2007, John CLARK; T.18954, 10th December 2007, Dean MANNING

¹⁶⁰⁶ See T.7342, 20th February 2007, John CLARK; T.18954, 10th December 2007, Dean MANNING, Adjudicated facts 121, 260, T.876, 28th August 2006, Mevludin ORIC

¹⁶⁰⁷ T.7394, T.7395, 20th February 2007, John CLARK ; T.33545, T.33550, T.33560, 4th May 2009, Dusan JANC, Adjudicated Facts 279

¹⁶⁰⁸ T.18954, 10th December 2007, Dean MANNING

¹⁶⁰⁹ T.19071, 11th December 2007, Dean MANNING, T.33541, 4th May 2009, Dusan JANC

¹⁶¹⁰ T.33538, 4th May 2009, Dusan JANC

¹⁶¹¹ See T.7345, T.7346, T.7389, 20th February 2007, John CLARK; T.7526, 21st February 2007 Christopher LAWRENCE.

¹⁶¹² T.27821, T.27825-27829, T.27831, 4th November 2008, Dusan DUNJIC

¹⁶¹³ “Decision on Prosecution Motion for Judicial Notice of Adjudicated facts with annex”, 26 September 2006, Adjudicated Facts 483 and 484 suggest 448 blindfolds were found and 423 ligatures. T.33546, 4th May 2009, Dusan JANC, see also P00649, Summary of Forensic Evidence – Execution Points and Mass Graves, report by MANNING Dean, 16 May 2000 page ; 1D00360, MANNING, D. – Report titled “Summary of forensic evidence – Execution Points and Mass Graves” dated 24 aug 03, page 3. See also, for instance, the large

This tends to support more legitimate combat deaths than executions, (b) bandages, field dressings¹⁶¹⁴ and armbands can account for some alleged bindings/blindfolds¹⁶¹⁵, (c) some gravesites produced no findings of ligatures and/or blindfolds.¹⁶¹⁶ This must raise an obvious doubt as to whether execution occurred at those sites¹⁶¹⁷

18.2. Second Proposition - There is no consistent evidence to be gleaned from the anthropological, pathological, archaeological, demographic and DNA analysis

976. The Prosecution has put forward a number of experts to provide evidence of MNI. There is no consistent method adopted by the Prosecution team. If the court adopts one method (ie DNA matching) before others¹⁶¹⁸, it will achieve a conclusion which is at odds with other more traditional methods. Accordingly, the court can only be left with confusion and serious doubt as to determination of MNI.¹⁶¹⁹

977. The safest and fairest way to deal with this aspect is to indicate that a number of persons were executed but that no specific number can be quantified with a sufficient degree of certainty. To say otherwise would be a 'fudge' of the evidence.

18.2.1. Anthropology and Pathology

978. A number of different aspects were considered by the anthropologists and pathologists. The main areas were skeletal examination, and age estimation. By consideration of these aspects, they suggested that they were able to provide:

- a MNI and,
- possible ages¹⁶²⁰ of those whose bodies had been found in the various graves.

979. In respect of MNI and the expert evidence on this aspect,

- A body count on pathological grounds is a difficult area¹⁶²¹. The same can be said of a body count on anthropological grounds.¹⁶²²

discrepancy between the numbers of people allegedly executed at Orahovac and the number of blindfolds found – Adjudicated Facts 367 and 371

¹⁶¹⁴ T.7343 and T.7367-8, 20th February 2007, John CLARK ; T.7531-2, 21st February 2007, Christopher LAWRENCE (see also P00641

¹⁶¹⁵ T.7532 and T.7541, 21st February 2007, Christopher LAWRENCE

¹⁶¹⁶ See reports of Dean Manning of 2000 and 2003 pp.950917ff and X0167710

¹⁶¹⁷ T.8764, 13th March 2007, Freddy PECCERELLI

¹⁶¹⁸ It was Dean Manning, Investigator, who first reported on DNA match findings. This was at a time when all others giving evidence about the issue of MNI propounded the view that DNA was just one aspect which could be used to assist in the identification of missing persons

¹⁶¹⁹ T.23999, 24th July 2008, Debra KOMAR

¹⁶²⁰ The age range was plus/minus one at each stage, T.9008, 15th March 2007, William HAGLUND

- In addition, assumptions had to be made to determine a MNI where grave sites had not been excavated¹⁶²³.

980. In respect of age estimation, the ages which have been achieved from the anthropology support the Prosecution assertion that bodies of men and boys were found in the graves. The ages range from 8-13 years, 11-15 years, 13-17 years, 8-85 years and 12-71 years. A considerable number of those who have been the subject of age estimation have fallen into the 'under 18' category. However, no consistent approach has been applied to this aspect.¹⁶²⁴

981. Some expert evidence suggests that the best way to age a body would be by comparison between a DNA match and the missing person list.¹⁶²⁵

982. However, no-one appears to have compared the "age evidence" obtained from the bodies and body parts against the DNA evidence. Therefore, it is likely that a body attributed to an eighteen year old could have been matched by DNA with someone in his 40s or a man measured as 1.8m tall has been linked to the remains of a man only 1.5m tall. This must create substantial doubt with the entire identification process¹⁶²⁶

983. Accordingly, on anthropological and pathological grounds alone, there have to be serious doubts over calculation of a MNI together with age estimation evidence.

18.2.2. Demographic Evidence

984. The Prosecution has also used demographic experts to attempt to determine a MNI for those whom they say were executed at the various sites. Their experts have used a number of techniques in their attempt to put forward a MNI. A number of "official" documents¹⁶²⁷ have been compared with missing person lists produced by the International Commission on Missing Persons ("ICMP") and the International Committee of the Red Cross ("ICRC").

985. A closer review of those official documents suggests that :

- They are often lacking in detail for those persons allegedly missing from events in and around Srebrenica¹⁶²⁸ :

¹⁶²¹ See T.7351:16, T.7378:20, T.7381:2, T.7382:11, T.7385:18, T.8797-T.8802, 14th March 2007, Jose Pablo BARAYBAR T.18952, 10th December 2007, Dean MANNING

¹⁶²² T.8812, T.8873, 14th March 2007, Jose Pablo BARAYBAR

¹⁶²³ T.7461:1, T.7468:22, T.7492:10, 21st February 2007, Richard WRIGHT, T.8768:11, 13th March 2007, Freddy PECERELLI

¹⁶²⁴ T.8848, T.8853-8854, 14th March 2007, Jose Pablo BARAYBAR, T.9005-T.9008, 15th March 2007, William HAGLUND, T.18954, 10th December 2007, Dean MANNING

¹⁶²⁵ T.8838, 14th March 2007, Jose Pablo BARAYBAR

¹⁶²⁶ T.8858, 14th March 2007, Jose Pablo BARAYBAR; [REDACTED]

¹⁶²⁷ Census of 1991, electoral lists for 1997, 1998 and 2000, list of displaced persons collected by UNHCR and the Bosnian Government, ICRC list, PHR list and ICMP lists

¹⁶²⁸ T.11182, T.11199, T.11200, T.11220-11221, T.11233, T.11269, T.11279, T.11284, T.11292, 9th May 2007, Helge BRUNBORG ; T.22681, T.22708, T.22726, 23rd June 2008, Miladin KOVACEVIC ; T.24327, 29th July 2008, T.24426, 30th July 2008, Svetlana RADOVANOVIC

- Often the details on the lists are confusing and/or are mistaken¹⁶²⁹ ;
- The lists contained only that information which their donors were able/willing to supply¹⁶³⁰;
- A number of lists which were available were never considered¹⁶³¹ ;
- There were difficulties encountered in conducting the comparisons¹⁶³² ;
- Some persons allegedly missing are still alive¹⁶³³ ;
- A significant number of persons on the lists produced by the OTP are none existent¹⁶³⁴ ;
- assumptions had to be made where details were lacking¹⁶³⁵ ;
- There is no clear picture of the number of civilians and military personnel who went missing¹⁶³⁶ ;
- The quality of the sources would obviously affect the credibility and reliability of any findings¹⁶³⁷ .
- The criteria adopted by the experts to compare the lists were too wide¹⁶³⁸ ;
- No confidence can be attached to the findings¹⁶³⁹ and
- The methodology adopted by the various experts is inconsistent¹⁶⁴⁰ .

¹⁶²⁹ T.11200, 9th May 2007, Helge BRUNBORG; T.22703, 23rd June 2008, Miladin KOVACEVIC ; T.21051-T.21053, 5th February 2008, Ewa TABEAU

¹⁶³⁰ T.11185, T.11283, T.11287, 9th May 2007, Helge BRUNBORG ; T.22737, 23rd June 2008, Miladin KOVACEVIC ; T.24332, T.24333, T.24334, 29th July 2008, T.24492, 31st July 2008, Svetlana RADOVANOVIC;

¹⁶³¹ T.11195, T.11241, T.11242, T.11298, T.11302, 9th May 2007, Helge BRUNBORG and see T.22670, T.22721, 23rd June 2008, Miladin KOVACEVIC ; T.24346, 30th July 2008, Svetlana RADOVANOVIC; T.21058, 5th February 2008, Ewa TABEAU

¹⁶³² T.11203, 9th May 2007, Helge BRUNBORG

¹⁶³³ T.22685, 23rd June 2008, Miladin KOVACEVIC

¹⁶³⁴ T.24365, 30th July 2008, Svetlana RADOVANOVIC;

¹⁶³⁵ T.11207, 9th May 2007, Helge BRUNBORG

¹⁶³⁶ T.11210, T.11248, 9th May 2007, Helge BRUNBORG, T.22699, T.22700, 23rd June 2008, Miladin KOVACEVIC

¹⁶³⁷ T.11223, 9th May 2007, Helge BRUNBORG , T.24363, T.24406, T.24421, 30th July 2008, Svetlana RADOVANOVIC;

¹⁶³⁸ T.11204, 9th May 2007, Helge BRUNBORG ; T.22664, T.22676, T.22710, 23rd June 2008, Miladin KOVACEVIC ; T.24336, 29th July 2008, T.24350, T.24385, T.24398, T.24412, T.24438, 30th July 2008, Svetlana RADOVANOVIC;

¹⁶³⁹ T.11219, T.11228, 9th May 2007, Helge BRUNBORG ; T.22675, 23rd June 2008, Miladin KOVACEVIC ; T.24325, T.24329, T.24331, Radovanovic, 29th July 2008, T.24359, T.24370-24376, T.24382, T.24389, T.24401, 30th July 2008, T.24481, T.24484, 31st July 2008, Svetlana RADOVANOVIC;

¹⁶⁴⁰ T.21048, 5th February 2008, Ewa TABEAU

986. From all that can be gleaned from this aspect of the evidence, application of simpler criteria would have produced a lower figure to that which the Prosecution experts achieved – i.e. the difference between 7661 and 2943 or even as low as 2000.¹⁶⁴¹
987. The approximate figure of 3000 as a MNI, on the demographic evidence, is the most realistic figure to be achieved from the available documents¹⁶⁴² which were used by all those instructed to provide conclusions.
988. In addition, it appears that the Prosecution itself takes the view that any results obtained from analysing these lists can only provide an assessment rather than any firm result¹⁶⁴³.
989. Accordingly, upon the demographic evidence, there has to be real doubt over the ability on the part of the Prosecution to put forward a cogent and clear MNI.

18.2.3. DNA analysis

990. During the course of the trial, the Prosecution changed the way in which they would address the MNI¹⁶⁴⁴ and indicated that they would rely upon DNA analysis to the exclusion of other more traditional means¹⁶⁴⁵. This was a huge sea change and could only be achieved by the very fact that this trial has taken so long to conclude.
991. The Prosecution heavily relies upon the DNA evidence as a means to determine a MNI. They have done this to the exclusion of other tried and tested methods. It is submitted that the DNA results which are relied upon by the Prosecution (in part or in full in determining MNI) are not reliable and should be treated with caution. This submission is made on the following basis:
- The collection of DNA was ongoing from 1996¹⁶⁴⁶ although there does not appear to have been any clear standard operating procedure for such collection. In some situations, the systems for collection were substandard¹⁶⁴⁷.
 - The laboratory facilities which were used to analyse materials and to produce results were not accredited to do so for a considerable period of time¹⁶⁴⁸: even if the DNA analysis was conducted properly, there was no ‘control’ in place to confirm that state of affairs¹⁶⁴⁹

¹⁶⁴¹ T.22683, 23rd June 2008, Miladin KOVACEVIC ; T.24348, T.24378 (3225 persons matched), 30th July 2008, Svetlana RADOVANOVIC;

¹⁶⁴² T.22686 and T.22696, 23rd June 2008, Miladin KOVACEVIC ; T.24378, 30th July 2008, T.24513, 31st July 2008, Svetlana RADOVANOVIC; T.33527, T.33539, Janc, 4th May 2009; 1D00374 - United Nations Protection Force, Letter Cover page to Mr. Mousalli regarding Srebrenica and Tuzla, 17 July 1995

¹⁶⁴³ T.19108, 12th December 2007, Dean MANNING

¹⁶⁴⁴ T.1551-T.1552, 12 September 2006, Jean-René RUEZ

¹⁶⁴⁵ T.18999, 11th December 2007, Peter Mc CLOSKEY ; T.19029, 11th December 2007, Dean MANNING

¹⁶⁴⁶ T.8829, 14th March 2007, Jose Pablo BARAYBAR

¹⁶⁴⁷ T.22980, 27th June 2008, Oliver STOJKOVIC ; [REDACTED]

¹⁶⁴⁸ T.23004, 27th June 2008, Oliver STOJKOVIC; T.20870, T.20872, T20914, 1st February 2008, Thomas PARSONS

¹⁶⁴⁹ T.23012, 27th June 2008, Oliver STOJKOVIC

- Standards of expertise to be expected for DNA analysis and production of results were considered lacking¹⁶⁵⁰
 - It has been indicated that 15,000 to 20,000 blood samples have been obtained from donor family members who had reported persons missing.¹⁶⁵¹ The personal details of those donors and of those they have reported missing are lacking for confidentiality reasons. Accordingly, there is a lack of transparency and an inability on the part of the defence to test the findings. In particular, the electropherograms which should accompany any particular results have been withheld and, for transparency, should all be checked.¹⁶⁵²
 - Only those persons who went missing as a result of events in and around Srebrenica after July 1995 should appear on the ICMP list. This list has been compared with the number of DNA matches obtained between (a) the body sample and (b) the donor samples. The ICMP list contains persons who went missing before that date and also some who were not involved in the Srebrenica events.¹⁶⁵³
992. The numbers who have, apparently, been matched by DNA evidence change on a regular basis. 6006 people have been identified or matched to individuals who went missing from Srebrenica¹⁶⁵⁴. In addition, a number of individuals have been identified by their unique DNA but have not been matched to the list of missing persons¹⁶⁵⁵.
993. The Defence set out to meet a case in August 2006 which has been changed and updated. It is submitted that there should be finality on this issue.
994. However, due to the way in which the evidence has been obtained and the piecemeal approach to the way in which the Prosecution has addressed this aspect of the evidence, there is only confusion in respect of the number of possible identifications¹⁶⁵⁶.
995. The most consistent message coming out of the articles written concerning ICMP or even ICMP employees¹⁶⁵⁷ is that DNA alone should not be used as the sole basis for identification¹⁶⁵⁸. Accordingly, it is submitted that the other more traditional, tried and

¹⁶⁵⁰ T.23022, 27th June 2008, Oliver STOJKOVIC ; T.23969, T.23971, 24th July 2008, Debra KOMAR T.20882, 1st February 2008, Thomas PARSONS

¹⁶⁵¹ T.11258, 9th May 2007, Helge BRUNBORG

¹⁶⁵² T.22986, T.22992, T.22998, T.23013, T.23018, 27th June 2008, Oliver STOJKOVIC ; T.23973, T.23978, 24th July 2008, Debra KOMAR, [REDACTED], T.20911, 1st February 2008, Thomas PARSONS.

¹⁶⁵³ T.33559-T.33564, T.33510-T.33512, 4 May 2009, T.33669, 5th May 2009, Dusan JANC ; T.20875, T.20879, 1st February 2008, Thomas PARSONS

¹⁶⁵⁴ T.19001, 11th December 2007, Dean MANNING; T.21035, 5th February 2008, Ewa TABEAU; T.33507, T.33520, 1st May 2009, Dusan JANC

¹⁶⁵⁵ T.19032, 11th December 2007, Dean MANNING; T.33507, 1st May 2009, Dusan JANC

¹⁶⁵⁶ T.19031, 11th December 2007, Dean MANNING ; T.23953, T.23958, T.23960, 23rd July 2008 , Debra KOMAR T.33452, T.33477, 29th April 2009, Thomas PARSONS; 1D1347-RFA related to data ident Muslim victims, 18-Aug-2008;

¹⁶⁵⁷ 2D00540-Yazedjian LN, Kesetovic R, Arlotti A, Karan Z, 'The Importance of Using Traditional Anthropological Methods in a DNA-led Identification system, Proceedings of the Annual Meeting of the Americal Academy.

¹⁶⁵⁸ T.23943, T.23945, 23rd July 2008, Debra KOMAR T.27847, 5th November 2008, Dusan DUNJIC, T.20905, T.20907, 1st February 2008, Thomas PARSONS. A solid analogy of this is the criteria adopted by the Crown Prosecution Service in the UK when seeking to use DNA evidence to support a criminal charge against a potential defendant - see CPS 'Guidance on DNA Charging at paragraph 3.3, confirmed by ACPO (Assistant Chief Police Officers Association) Guidance on Charging and evidential standards for DNA matches at paragraph 16 (both documents at www.cps.gov.uk/legal/assets/uploads/files/pdf)

tested methods should also be used alongside DNA evidence¹⁶⁵⁹ in order that the court has a clearer and fairer picture of what the Prosecution assert.

18.3. Third Proposition - The Expert evidence on the issue of MNI is flawed and tainted

996. It is submitted that the expert evidence on the issue of MNI is flawed and tainted for the following reasons:

- There was no consistent approach 'in the field' and at the morgues as evidence was produced.¹⁶⁶⁰
- Legitimate criticisms have been made of the methodology adopted by those tasked with exhuming bodies and calculating MNI.¹⁶⁶¹ In fact, in some instances, records were altered without consensus among those tasked to reach findings.¹⁶⁶²

997. Debra KOMAR¹⁶⁶³ succinctly summarized the evidence of all prosecution witnesses relevant to methodology and the issue of MNI. It is submitted that her evidence was the most independent and the most compelling on all relevant areas. In particular, she found the following:

998. In respect of the evidence of:

- Wright – his methodology and mathematical estimation in respect of MNI was deficient¹⁶⁶⁴
- Baraybar – it is difficult to see what standard he uses to determine MNI by bone count¹⁶⁶⁵. His introduction of sex and age variables in this particular case is questionable¹⁶⁶⁶. His methodology in respect of age assessment is far from transparent¹⁶⁶⁷ and will introduce bias and a skewing of the results¹⁶⁶⁸.
- Parsons – his analysis of DNA collection rates is unclear¹⁶⁶⁹: his use of assumptions to assist with conclusions is questionable¹⁶⁷⁰.

¹⁶⁵⁹ T.23944, T.23958, 23rd July 2008, Debra KOMAR; [REDACTED]; [REDACTED]

¹⁶⁶⁰ T.18909-18911, 10th December 2007, Dean MANNING; T.23876, 23rd July 2008, Debra KOMAR; [REDACTED]

¹⁶⁶¹ T.8971, T.8929, T.8930, T.8939, T.8941, T.8947, T.8954, T.8956, T.8959, T.8960, T.8970, T.8993-5, 15th March 2007, William HAGLUND; see also T.8775-8776, 13th March 2007, Freddy PECERELLI; see also T.8816, T.8878 and T.8884, 14th March 2007, Jose Pablo BARAYBAR but see T.19067 and T.19080, T.19143, 11th and 12th December 2007, Dean MANNING; T.23890, 23rd July 2008, Debra KOMAR

¹⁶⁶² T.8914, T.8916, 15th March 2007, William Haglund

¹⁶⁶³ T.23873, 23rd July 2008, Debra KOMAR

¹⁶⁶⁴ T.23893-T.23901, 23rd July 2008, Debra KOMAR

¹⁶⁶⁵ T.23903, 23rd July 2008, Debra KOMAR

¹⁶⁶⁶ T.23905, 23rd July 2008, Debra KOMAR

¹⁶⁶⁷ T.23911, 23rd July 2008, Debra KOMAR

¹⁶⁶⁸ T.23915, 23rd July 2008, Debra KOMAR

¹⁶⁶⁹ T.23932, 23rd July 2008, Debra KOMAR

¹⁶⁷⁰ T.23935, 23rd July 2008, Debra KOMAR

999. It is respectfully suggested that the Trial Chamber should consider the evidence of Debra Komar and the content of her report in full on these issues.

1000. Further, it is submitted that because the Prosecution experts had been informed what perceived circumstances had prevailed to cause death, their conclusions could be skewed and biased towards what they had been told rather than remaining objective.¹⁶⁷¹ For instance, where there were difficulties in ascertaining cause of death, gunshot wounds were favoured on the principle that they had been informed that there had been mass executions – i.e. ‘they jumped the gun’¹⁶⁷².

1001. In this area of the case, the prosecution expert evidence appears to be far from independent and consistent.¹⁶⁷³ Accordingly, the court should be cautious before accepting the conclusions of the Prosecution experts at face value.

18.4. Fourth Proposition - There are very practical issues arising which pertain to the actual number of bodies alleged by the Prosecution

1002. It is submitted that there are very practical issues arising which pertain to the actual number of bodies alleged by the Prosecution. Many of those practical issues have been addressed on this topic already.

1003. However, there are other obvious issues for the court to consider when/if determining a MNI.

1004. They are the following :

- Transportation of persons in detention – there can only be a finite number of vehicles which could have been used for the purposes of transporting those in detention. That number is limited by the evidence, which, in turn, must limit the numbers of those who were detained.¹⁶⁷⁴
- Available space to detain prisoners – again, the same argument applies. There is no clear and unambiguous evidence of numbers held within detention centres. In addition, the estimates provided by the various witnesses of numbers of prisoners in the detention sites

¹⁶⁷¹ See T.7349, T.7387, T.7393, T7397, 20th February 2007, John CLARK

¹⁶⁷² See T.7361, 20th February 2007, John CLARK

¹⁶⁷³ See T.7386, T.7387, T.8998 - T.9001, 15th March 2007, William HAGLUND T.11214-11215, 9th May 2007, Helge BRUNBORG ; T.18914, 10th December 2007, Dean MANNING, T.19062 and T.19068, 11th December 2007, Dean MANNING, T.19083, 12th December 2007, Dean MANNING ; T.24000-T.24001, 23rd July 2008, Debra KOMAR

¹⁶⁷⁴ T.33688, T.33693, 5th May 2009, Dusan JANC. – see also [REDACTED], (PW-110); T.1179, 6th September 2006, Ahmo HASIC, T.14541, 30th August 2007, Drago IVANOVIC, [REDACTED] (PW-169), T.6469, 29th January 2007, T.11381-11383, 11th May 2007, Slavko PERIC

is often entirely unrealistic compared with the size of the site¹⁶⁷⁵ and the numbers of bodies found.¹⁶⁷⁶

- The geographical extent of the area over which persons are alleged to have been involved in the “fall of Srebrenica” is ill defined¹⁶⁷⁷

1005. Finally, it is submitted that it cannot be said with any degree of certainty that the numbers which are asserted by the Prosecution involved entirely Muslim males. This submission is based upon the following evidence :

- The Prosecution experts have not turned their minds to evidence of connections between the bodies in the graves and the artefacts found with them and, when they did, their approach was inconsistent.¹⁶⁷⁸
- Insufficient work has been conducted upon this aspect of the case to make any kind of definitive conclusion¹⁶⁷⁹
- There is no compelling evidence that the question of genocide has been addressed from a scientific perspective when it could readily have been considered¹⁶⁸⁰
- The Prosecution experts have ‘cherry picked’ that evidence from graves which appears to have some sort of affiliation with the Muslim race rather than evaluate all of the evidence taken from the graves¹⁶⁸¹

¹⁶⁷⁵ T.33686-33700, 5th May 2009, Dusan JANC

¹⁶⁷⁶ [REDACTED] (PW-110), T.943, 29th August 2006, Mevludin ORIC, [REDACTED], (PW-169), T.10223-4, 18th April 2007, Rajko, BABIC, [REDACTED], T.18055, 21st November 2007, Dragan JOVIC, T.18077, [REDACTED], [REDACTED], T.14572, 30th August 2007, Dragoje IVANOVIC, [REDACTED] see also 1st Zvornik Brigade Commander’s Interim Combat Report 06/217-1 (OTP English translation), 15 Jul.1995 (ERN: 0081-5835-0081-5836). PANDUREVIĆ reported later that 3,000 Muslim prisoners were in Zvornik schools. P334 1st Zvornik Brigade Commander’s Interim Combat Report 06-223 (OTP English translation), 18 Jul.1995; T.31103-T.31104, 9 February 2009, Vinko PANDUREVIC

¹⁶⁷⁷ T.11177-T.11178, 9th May 2007, Helge BRUNBORG; T.24334, 29th July 2008, Svetlana RADOVANOVIC; T.24366, T.24367, 30th July 2008, Svetlana RADOVANOVIC; T.24507, 31st July 2008, Svetlana RADOVANOVIC; T.33527, 1st May 2009, Dusan DUNJIC

¹⁶⁷⁸ T.23883, T.23983, 24th July 2008, Debra KOMAR

¹⁶⁷⁹ T.23984-23985, 24th July 2008, Debra Komar

¹⁶⁸⁰ T.23988, T.23989, T.23991, T.24041, 24th July 2008, Debra KOMAR

¹⁶⁸¹ T.24040, 24th July 2008, Debra KOMAR, T.8919, 15th March 2007, William HAGLUND

PART 5 - MODES OF RESPONSIBILITY

1006. Vinko Pandurevic is indicted under both paragraph 1 and paragraph 3 of Article 7 of the ICTY Statute. Accordingly, he is alleged to be responsible both as an individual and as a superior for the crimes in the indictment. In the following paragraphs both modes of liability will be discussed.

1. Individual criminal responsibility

1007. Article 7(1) enumerates the following forms of responsibility: planning, instigating, ordering, and committing as well as aiding and abetting. The Prosecution charges each of the accused with all forms of participation in relation to the counts under which they are charged. Additionally, all accused are charged with committing these crimes by participating, with known or unknown co-perpetrators, in a joint criminal enterprise.¹⁶⁸²

1008. Notwithstanding this, during the Prosecution case, the allegations relating to the individual responsibility of Vinko Pandurevic can be summarized as follows:

- (i) *participation in* developing or *endorsement* of the plans “to murder able-bodied Muslim men” and “to forcibly remove the Muslim population from Srebrenica and Zepa.”¹⁶⁸³
- (ii) *committing* the crimes that formed the object of the plans as part of a joint criminal enterprise,¹⁶⁸⁴ or, otherwise,
- (iii) *aiding and abetting* the commission of such crimes.¹⁶⁸⁵

In the absence of any positive assertion that Pandurevic “ordered” or “instigated” crimes, these modes of liability will be ignored.¹⁶⁸⁶

¹⁶⁸² Prosecution Pre-Trial Brief, 28 April 2006, paragraph 430.

¹⁶⁸³ Indictment paragraphs: 27, 36, 39, 77. Although the Prosecution identifies two such plans, it also admits that they are completely intertwined and overlapping. T. 21431-21432, 18 February 2008, 98bis Submission Nelson Thayer.

¹⁶⁸⁴ The observation made regarding the two plans is also applied to the joint criminal enterprise. Although the Prosecution identifies two such enterprises, it also admits that they are completely intertwined and overlapping. T. 21431-21432, 18 February 2008, 98bis Submission Nelson Thayer.

¹⁶⁸⁵ For Prosecution assertions regarding Pandurevic’s individual responsibility, see: T.477-485, 22 August 2006, Opening Statement Peter McCloskey; See also, in general, T.21404-21442, 18 February 2008, 98bis Submission Nelson Thayer.

¹⁶⁸⁶ Indictment paragraphs: 30.14, 30.15, 39 a) and 39 b); Prosecution Pre-Trial Brief, 28 April 2006, paragraphs 435-436. The indictment does refer to Pandurevic “(personally) authorizing” certain acts, but these contentions pertain more to the general *commission* of specific crimes, as opposed to *ordering* them.

1.1. Participation in developing or endorsement of the common plan

1009. The defence makes no submissions as to the existence of plans to kill and/or transfer for present purpose. Plainly it is open to the Chamber to infer that some plans did exist.¹⁶⁸⁷ The Appeal Chamber in *Prosecutor v. Krstic* also suggested that the mere existence of such a plan could be inferred from the facts.¹⁶⁸⁸

1010. Nonetheless, in order to prove that Vinko Pandurevic did participate in developing or, at least, endorsed the plan “to murder the able-bodied Muslim men” and “forcibly transfer the Muslim population from Srebrenica and Zepa”, the Prosecution has to demonstrate, beyond reasonable doubt, the following:

- (i) that the *circumstances* in which this plan was forged are known and that on that basis
- (ii) the *participation* of Pandurevic in the planning or his *endorsement* of the plan can be established, showing that
- (iii) he *shared the specific intent* to commit the crimes that formed the object of the plans(s).¹⁶⁸⁹

1011. The Defence challenges all three points. It maintains that the circumstances in which the plan was forged have not been clarified and, for that reason, the participation of Pandurevic has not been proved. Moreover, the Defence asserts that Pandurevic did not participate in any such planning and did not share the specific intent required. All three points will be addressed in the section analyzing the first category of the joint criminal enterprise.

1.2. Commission of the crimes that formed the object of the common plan

1012. The Prosecution alleges that the common plan was executed through two joint criminal enterprises (JCE): first, “to murder the able-bodied Muslim men” and second, “to forcibly remove the Muslim population from Srebrenica and Zepa.”¹⁶⁹⁰ The underlying facts and agreements of the joint criminal enterprise are identical to the facts and agreements identified by the Prosecution for the overall planning of these crimes.¹⁶⁹¹

¹⁶⁸⁷ *Prosecutor v. Blagojevic and Jokic*, Trial Chamber Judgment, 27 January 2005, paragraph 721. *Prosecutor v. Krstic*, Appeal Chamber Judgment, 19 April 2004, paragraph 93.

¹⁶⁸⁸ *Prosecutor v. Krstic*, Appeal Chamber Judgment, 19 April 2004, paragraph 93.

¹⁶⁸⁹ These conditions have been drawn up on the basis of the indictment counts that allege participation in the common plan, that is, Counts 1, 2 and 7. They accumulate requirements *common* for demonstrating participation in planning, be that part of conspiracy, joint criminal enterprise or any other planning of a crime. *Prosecutor v. Haradinaj et al.*, Trial Chamber Judgment, 3 April 2008, paragraphs 138; 142. *Prosecutor v. Popovic et al.*, Decision on Motions Challenging the Indictment pursuant to Rule 72, 31 May 2006, paragraph 20; *Prosecutor v. Limaj et al.*, Trial Chamber Judgment, 30 November 2005, paragraph 513; *Prosecutor v. Kvocka et al.*, Appeal Chamber Judgment, 28 February 2005, paragraph 81; *Prosecutor v. Brdanin*, Trial Chamber Judgment, 1 September 2004, paragraphs 262, 268; *Prosecutor v. Kordic and Cerkez*, Trial Chamber Judgment, 26 February 2001, paragraph 386; *Prosecutor v. Naletilic and Martinovic*, Trial Chamber Judgment, paragraph 529-531; *Prosecutor v. Nahimana, Barayagwiza and Ngeze*, Caso No. ICTR-99-52-T, Trial Chamber Judgment, 3 December 2003, paragraph 954.

¹⁶⁹⁰ See indictment paragraphs: 27, 58.

¹⁶⁹¹ See indictment paragraph: 34.

Nonetheless, the liability of a participant to a joint criminal enterprise depends on the *commission* of the criminal acts in furtherance of that enterprise.¹⁶⁹²

1013. For that reason, in order to demonstrate the participation of Vinko Pandurevic in either JCE (both in the 1st category), the Prosecution has to prove, apart from the conditions identified above, that

- (i) Vinko Pandurevic *acted in concert* with the other JCE participants and
- (ii) *committed, assisted in or contributed to* the commission of the specific crimes.¹⁶⁹³

1014. The Defence challenges both points and avers that Pandurevic did not commit, assist in or contribute to any such crimes. These points will be addressed in relation to each count and as regards JCE I.

1015. To the extent that some of the crimes (coined as opportunistic killings) did not fall within the JCE, the Prosecution allows for the possibility that they were a natural and foreseeable consequence of the JCE I, and each accused was aware that those crimes were a natural and foreseeable consequence of the execution of the JCE. In the Defence submission this doctrine has no application to this case.

1.3. Aiding and abetting the commission of such crimes

1016. The Prosecution characterizes aiding and abetting as applicable to all contributions to the criminal event that are not captured by “planning, instigating, ordering or committing.”¹⁶⁹⁴ Accordingly, if the Prosecution case fails to demonstrate Pandurevic’s participation in developing the plan for the crimes or in the joint criminal enterprise, it can still prove that he aided and abetted the commission of those crimes.

1017. In order to make such claims, the Prosecution will have to demonstrate, beyond reasonable doubt, that:

- (i) while not sharing the specific intent, Pandurevic had *knowledge* of the plans to kill and forcibly transfer or, at least, of the specific intent of minimum one perpetrator, and
- (ii) he *intended to* assist, encourage or morally support the commission of such crimes, consequently,
- (iii) his acts did amount to *practical assistance, encouragement or moral support*, and

¹⁶⁹² Prosecutor v. Haradinaj et al., Trial Chamber Judgment, 3 April 2008, paragraphs 139; Prosecutor v. Milutinovic et al., Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanic’s Motion Challenging Jurisdiction – Joint Criminal Enterprise, 21 May 2003, para. 23.

¹⁶⁹³ Prosecutor v. Haradinaj et al., Trial Chamber Judgment, 3 April 2008, paragraphs 138; Prosecutor v. Krajisnik, Trial Chamber Judgment, 27 September 2006, paragraph 883; Prosecutor v. Blagojevic and Jokic, Trial Chamber Judgment, 17 January 2005, paragraph 702; Prosecutor v. Brdanin, Trial Chamber Judgment, 1 September 2004, paragraph 263; Prosecutor v. Krajisnik, Trial Chamber Judgment, paragraph 883.

¹⁶⁹⁴ Prosecution Pre-Trial Brief, para. 445.

(iv) his contribution had a *substantial effect* to the commission of such crimes.¹⁶⁹⁵

1018. The Defence avers that the evidence has not established any of these matters. First of all, Pandurevic had no contemporary knowledge of the overall plans. Secondly, the Prosecution has failed to show that Pandurevic was aware of one or more perpetrators criminal intent before any of the crimes occurred. Moreover, even though he did find out about some of the executions in the Zvornik area, he never intended to assist, encourage or morally support those involved in the commission of these crimes and, indeed, he never did so. Finally, the Defence will show that his acts never contributed in any significant way to the commission of those crimes.

1019. The Defence also submits that, as a matter of legal interpretation, it chose to discuss omissions as part of superior responsibility (failure to prevent and punish). Although the Defence agrees that mere presence at a crime scene can, in certain circumstances, amount to aiding and abetting, it also asserts that mere presence or tacit approval is a form of positive action and not omission.¹⁶⁹⁶ Mere presence and/ or tacit approval will be discussed as part of the counts of forcible transfer and deportation.

1020. These points will be addressed in relation to JCE I and as regards each count of the indictment.

2. Pandurevic's Alleged Participation in Joint Criminal Enterprise I

1021. The indictment alleges two separate yet intertwined JCEs: (1) "to murder the able-bodied Muslim men" and (2) to "forcibly transfer the Muslim population from Srebrenica and Zepa."

1022. The first category JCE has three basic conditions: plurality of persons, the existence of a common plan or purpose and the participation of the accused in the common plan.¹⁶⁹⁷

2.1. Plurality of persons

1023. There is no submission made on behalf of Pandurevic that the Prosecution have failed to prove that the two alleged JCE's involved a number of participants¹⁶⁹⁸ The

¹⁶⁹⁵ Prosecutor v. Haradinaj et al., Trial Chamber Judgment, 3 April 2008, paragraph 145; Prosecutor v. Limaj et al, Trial Chamber Judgment, 30 November 2005, paragraph 517; Prosecutor v. Brdanin, Trial Chamber Judgment, 1 September 2004, paragraph 271; Prosecutor v. Vasiljevic, Appeal Chamber Judgment, 25 February 2004, paragraph 102; Prosecutor v. Tadic, Appeal Chamber Judgment, 15 July 1999, paragraphs 229.

¹⁶⁹⁶ Prosecutor v. Brdanin, Appeals Chamber Judgment, 9 April 2007, para 273: "An accused can be convicted for aiding and abetting a crime when it is established that his conduct amounted to tacit approval and encouragement of the crime and that such conduct substantially contributed to the crime.⁵⁵¹ This form of aiding and abetting is not, strictly speaking, criminal responsibility for omission. In the cases where this category was applied, the accused held a position of authority, he was physically present on the scene of the crime, and his non-intervention was seen as tacit approval and encouragement."

¹⁶⁹⁷ Prosecutor v. Haradinaj, Trial Chamber Judgment, 3 April 2008, paragraph 135; Prosecutor v. Tadic, Appeals Chamber Judgment, 15 July 1999, paragraphs 190-196.

identification of those said to be participants will be the subject of some comment. To mention but a few examples at this stage, the Romanija Brigade and its commander Mirko Trivic are specifically excluded from paragraphs 97 and 98 of the indictment, notwithstanding the clear involvement of both man and unit in the taking of Srebrenica and the evacuation of Zepa.¹⁶⁹⁹ The Prosecution continue to aver that Colonel Vidoje Blagojevic was a participant in the Joint Criminal Enterprises, notwithstanding his acquittal by the Tribunal. No attempt has ever been made to indict the man listed 3rd as a participant, General Zivanovic, despite his regular contact with the office of the Prosecutor. Whilst therefore, a number of people may have been involved together in events, their identification in paragraph 97, is not only, in most cases unproven, it is haphazard and unreliable.

2.2. The existence of a common plan, design or purpose

1024. According to the Prosecution's narrative, the two common plans that formed the objectives for the two JCEs were forged as follows:

- during the evening of the 11th of July and the morning of the 12th of July, the initial plan to murder the hundreds of able-bodied men identified in the crowd of Potocari was developed (paragraph 27 of the indictment);
- at the same time, the plan forcibly to remove the inhabitants of Srebrenica was developed (paragraphs 27 and 58 of the indictment)
- the initial plan to execute "more than 1000 Bosnian Muslim men and boys" was expanded on 12 or 13 July to encompass the summary execution of more than 6000 men and boys (paragraph 36 of the indictment)
- no specific date is provided for when the alleged plan forcibly to transfer the inhabitants of Zepa was developed. It is implied that the planning happened somewhere between the 11th and the 13th of July 1995 (paragraphs 65-66 of the indictment).
- as an all-encompassing corollary of the plan forcibly to remove the inhabitants of Srebrenica and Zepa, the Prosecution invokes Directive 7 to show that an incipient form of the plan existed as early as March 1995 (paragraph 50 of the indictment).

1025. In order to prove, beyond reasonable doubt, that such a common plan existed, the Prosecution has to show that there was indeed an agreement, an arrangement or some sort of understanding between two or more persons, that need not be express, but it must stay at the basis of the criminal enterprise.¹⁷⁰⁰ By proving the existence of such an agreement, the Prosecution is also shedding light on the participation of the individual accused in the enterprise. Accordingly, in order to maintain that Pandurevic was a participant in both

¹⁶⁹⁸ Prosecutor v. Haradinaj, Trial Chamber Judgment, 3 April 2008, paragraph 138; Prosecutor v. Kvocka et al., Trial Chamber Judgment, 2 November 2001, paragraph 307; Prosecutor v. Tadic, Appeals Chamber Judgment, 15 July 1999, paragraph 227.

¹⁶⁹⁹ See section Krivaja 95.

¹⁷⁰⁰ Prosecutor v. Haradinaj, Trial Chamber Judgment, 3 April 2008, paragraph 138; Prosecutor v. Tadic, Appeals Chamber Judgment, 15 July 1999, paragraph 227-228.

JCEs, the existence of such an agreement as well as Pandurevic's knowledge of it has to be proved as an initial step. The Prosecution relies on three assertions regarding the existence of the arrangement and Pandurevic's knowledge of it: the issuing and distribution of Directive 7, the meeting of the 12th of July in Bratunac and alleged communications between Pandurevic and others.

2.2.1. The relevance of Directive 7

1026. Directive 7 is a strategic document.¹⁷⁰¹ In commercial terms it is a mission statement. It was created in the Main Staff and distributed only on a limited basis. The Prosecution's approach to the document is that it should effectively be treated as viral, infecting the whole VRS with criminal intent from the moment of its creation. That approach is naïve and ignorant of two important factors: firstly, very few people actually knew about it, and secondly, soldiers and commanders at tactical level merely followed combat orders which they were bound to do.

1027. Directive 7 was not distributed amongst combat units in its original form, but was re-written and amended by operational commanders on the basis of their specific military assessments. It made no mention of the operational objective which was to be Krivaja 95. In the Drina Corps, Zivanovic rewrote the directive and repeated only the combat objectives relevant to its enemy forces.¹⁷⁰² The tasks of the Zvornik Brigade are quite specific.¹⁷⁰³ Pandurevic's own evidence on the topic is compelling: he had no knowledge that the brigade's tasks would include the removal of the inhabitants from Srebrenica or Zepa.¹⁷⁰⁴

1028. It is important to note that the combat tasks Pandurevic understood he had on the basis of the Drina Corps order derived from Directive 7, were characterized as legitimate by the Prosecution in this case.¹⁷⁰⁵ Furthermore, the Appeals Chamber in Krstic found that, upon reading Directive 7 and other directives, General Radislav Krstic could have only known about the military plans to take over the enclaves and that the available evidence did not establish that he could have known of the existence of a criminal enterprise in particular, to kill the able-bodied men.¹⁷⁰⁶

2.2.2. The alleged meeting on the 12th of July

1029. The Prosecution also places great store on the occurrence of a meeting on 12th of July at the Bratunac Brigade headquarters.¹⁷⁰⁷ At this meeting, it is surmised, the plan to kill the able-bodied men *must have been* discussed. Whether such a meeting did in fact occur,

¹⁷⁰¹ P00686, Butler, R., Srebrenica Narrative, para. 1.37.

¹⁷⁰² T.11920, 22 May 2007, Mirko TRIVIC; T.15216, 11 September 2007, Nedeljko TRKULJA; T.15319, 13 September 2007, Milomir SAVCIC; T.30826-T.30827, Vinko PANDUREVIC; See Part 4 Section 3 Events pre-Krivaja

¹⁷⁰³ T.30823-T.30824, 29 January 2009, Vinko PANDUREVIC

¹⁷⁰⁴ T.30827, 29 January 2009, Vinko PANDUREVIC

¹⁷⁰⁵ T.398, 21 August 2006, Opening Statement Peter McCloskey; See Part 4 Section 13 Operation Stupcanica 95

¹⁷⁰⁶ Prosecutor v. Krstic, Appeals Chamber Judgment, 19 April 2004, paragraphs 90, 100.

¹⁷⁰⁷ See Part 3 Section 8 Decision to Kill POWs

must be subject to serious doubt. The preponderance of evidence suggests that it occurred on 11th and not 12th, and there is quite simply no evidence at all that the discussion included the commission of any sort of crimes. In the submission of the Defence it is not open to the Chamber to infer *contrary to all the direct evidence* that such a discussion in fact took place.¹⁷⁰⁸ It is worth pausing again to note that Trivic, who was present at the meeting, is not said to be party to any JCE. In the case of Pandurevic, the meeting is critical to establishing that he was a party, and when he joined. Such evidence is necessary.¹⁷⁰⁹

1030. In the submission of the Defence, the Prosecution has failed to discharge the burden of proving that Pandurevic became aware of any plan and/or joined it at a meeting in Bratunac, whenever it might have taken place.

2.2.3. Pandurevic's communications

1031. The expansion of the plan is said to have occurred thereafter on the 12th or 13th of July. There must be cogent evidence to demonstrate when the expansion happened, when alleged members of the JCE (including Pandurevic) were informed of the expansion of objectives and whether they actually began sharing those objectives and whether they persisted with their implementation.¹⁷¹⁰ In this respect, it is not necessary to show that the JCE members *explicitly* agreed to the expansion of criminal means; this agreement may materialise extemporaneously and be inferred from circumstantial evidence.¹⁷¹¹
1032. The Prosecution's case in this regard is vague. No evidence has been led to show what was discussed at the alleged 12th of July meeting or whether the expansion had already been conceived by that evening.
1033. There is clear evidence that Pandurevic was marching to Zepa throughout 13th July, and accordingly, he was nowhere near Bratunac when the first murders were taking place and the plans of Beara, Deronjic and Momir Nikolic were being hatched. The Prosecution must establish beyond reasonable doubt that Pandurevic was informed of and joined the expanded plan to kill all the able bodied men of Srebrenica. The height of the Prosecution's case in this regard seems to be the assertion in the opening statement that he was "contactable". Pandurevic's movements, communication capabilities and actual communications on 13th July have been dealt with in minute detail in this brief and in the evidence. There is not a shred of evidence to suggest that Pandurevic was informed of the expanded plan on 13th July, and nothing from which any proper inference to that effect could be drawn.¹⁷¹² It should not be forgotten that Pandurevic gave evidence himself on this topic. The Prosecution have not done nearly enough to prove beyond doubt that his

¹⁷⁰⁸ Prosecutor v. Haradinaj, Trial Chamber Judgment, 3 April 2008, paragraph 475.

¹⁷⁰⁹ Prosecutor v. Krajisnik, Appeals Chamber Judgment, 17 March 2009, paragraphs 154, 156-157.

¹⁷¹⁰ Prosecutor v. Krajisnik, Appeals Chamber Judgment, 17 March 2009, paragraphs 171-173.

¹⁷¹¹ Prosecutor v. Krajisnik, Appeals Chamber Judgment, 17 March 2009, paragraph 163; Prosecutor v. Brđanin, Appeals Chamber Judgment, 4 April 2007, paragraph 418; Prosecutor v. Kvočka *et al.*, Appeals Chamber Judgment, 28 February 2005, paragraphs 96 and 117; Prosecutor v. Vasiljević, Appeals Chamber Judgment, 25 February 2006, paragraphs 100, 108-109; Prosecutor v. Krnojelac, Appeals Chamber Judgment, 17 September 2003, paragraph 31; Prosecutor v. Tadić, Appeals Chamber Judgment, 15 July 1999, paragraph 227..

¹⁷¹² See Part 4, Sections 4, 13 and 14.

assertion not to have known about the killing operation before it began was untrue. Mere contact with Krstic and Mladic on that day does not give rise to any such inference.¹⁷¹³

1034. As acknowledged by him, Pandurevic came to know of some of the detention sites and executions.¹⁷¹⁴ Knowledge of a JCE to kill all the able bodied men of Srebrenica cannot be inferred, however, from knowledge that there are some prisoners in schools, or even that prisoners have been executed.¹⁷¹⁵
1035. In Blagojevic and Jokic it was held that even though there was circumstantial evidence to show that the killings at Kravica Warehouse were common knowledge, it did not lead to the *only possible conclusion* that Blagojevic knew about the mass execution “during the days following the massacre.”¹⁷¹⁶ The Trial Chamber thus concluded that there was insufficient evidence to show that Blagojevic knew about the overall plan to kill able-bodied men. The Appeals Chamber upheld that finding.¹⁷¹⁷
1036. The only evidence suggesting that Pandurevic had any knowledge even of the existence of prisoners of war prior to 15th July comes from PW-168. The credibility of certain aspects his evidence is highly questionable and has been dealt with in detail elsewhere.¹⁷¹⁸ Whatever else may be said about the Irregular Combat Report of 15th July, it plainly reflects matters which came to Pandurevic’s attention that day, and not before.
1037. There is no other evidence from which an inference could be drawn that Pandurevic had joined the expanded plan to murder.

2.3. Voluntary participation of Pandurevic in one or more aspects of the common design

1038. In order to demonstrate Pandurevic’s participation in the two JCEs, it is not enough to show that he knew about the common plan, but also that (1) he shared the specific intent for the crimes that formed the objectives of the JCE, and (2) that he either committed these crimes or he assisted in or contributed to their commission.¹⁷¹⁹

2.3.1. Shared intent

1039. The specific intent required for each charge on the indictment will be dealt with elsewhere. The Prosecution must prove, beyond reasonable doubt, that Pandurevic agreed and shared the common objectives of the two JCEs. In addition, when it comes to the common plan to execute prisoners of war, the Prosecution must prove that Pandurevic

¹⁷¹³ Prosecutor v. Krstic, Appeals Chamber Judgment, 19 April 2004, paragraph 98.

¹⁷¹⁴ T.31084-31085, 9 February 2009, Vinko PANDUREVIC

¹⁷¹⁵ Prosecutor v. Krstic, Appeals Chamber Judgment, 19 April 2004, paragraphs 99-100.

¹⁷¹⁶ Prosecutor v. Blagojevic and Jokic, Trial Chamber Judgment, 17 January 2005, paragraph 742.

¹⁷¹⁷ Prosecutor v. Blagojevic and Jokic, Appeals Chamber Judgment, 9 May 2007, paragraph 129.

¹⁷¹⁸ See Part 4 Sections 8 and 11.

¹⁷¹⁹ Prosecutor v. Haradinaj, Trial Chamber Judgment, 3 April 2008, paragraph 135; Prosecutor v. Tadic, Appeals Chamber Judgment, 15 July 1999, paragraph 196.

agreed not only to the initial plan, but also with the alleged expanded purpose. It must further prove the point in time Pandurevic became aware of the new objective.¹⁷²⁰

2.3.2. Commit, assist or contribute

1040. A joint criminal enterprise, as a mode of liability, requires that an individual actually *participates* in the commission of the crimes, or, at least, assists in their commission or contributes to them; only in such a case can participation be proven.¹⁷²¹ Consequently, the Prosecution has to show that Pandurevic acted together, or in concert with the other participants, in the implementation of a common objective, if he is to share responsibility for crimes committed through the JCE.¹⁷²² His contribution need not be substantial,¹⁷²³ but it must be significant.¹⁷²⁴ A contribution must involve voluntary and positive action.¹⁷²⁵
1041. The Prosecution claims that Pandurevic participated in the JCE to kill the prisoners of war by “authorizing” the transportation, detention, summary execution and burial of these prisoners in the Zvornik area with “full knowledge of the plan”.¹⁷²⁶
1042. Pandurevic’s lack of role in the detention and execution of the prisoners of war has been addressed in several sections of this brief.¹⁷²⁷ The legal implications of his role are discussed in detail in the section on superior responsibility. Similarly, in relation to the JCE forcibly to remove the inhabitants of Srebrenica and Zepa, the Prosecution claim that Pandurevic participated by defeating the enemy forces at both Srebrenica and Zepa, as well as by assisting in the forcible removal of prisoners of war from Srebrenica.¹⁷²⁸ These matters will be dealt with under that specific count.¹⁷²⁹
1043. Nonetheless, the Defence does briefly observe that in defeating the Muslim forces at Srebrenica, Pandurevic was merely following lawful orders pursuant to a legitimate combat operation.¹⁷³⁰ Significantly, perhaps, no averment is made that Pandurevic

¹⁷²⁰ Prosecutor v. Krajisnik, Appeals Chamber Judgment, 17 March 2009, paragraphs 202-203.

¹⁷²¹ Prosecutor v. Haradinaj, Trial Chamber Judgment, 3 April 2008, paragraph 138; *Prosecutor v. Milorad Krnojelac*, Decision on Form of Second Amended Indictment, 11 May 2000, para. 15; Prosecutor v. Tadic, Appeals Chamber Judgment, 15 July 1999, paragraph 227.

¹⁷²² Prosecutor v. Haradinaj, Trial Chamber Judgment, 3 April 2008, paragraph 139; Prosecutor v. Brdanin, Appeals Chamber Judgment, 4 April 2007, paragraphs 410, 430; Prosecutor v. Krajisnik, Trial Chamber Judgment, 27 September 2006, paragraph 884.

¹⁷²³ Prosecutor v. Haradinaj, Trial Chamber Judgment, 3 April 2008, paragraph 138; Prosecutor v. Kvočka et al, Appeals Chamber Judgment, 28 February 2005, paragraphs 97-98.

¹⁷²⁴ Prosecutor v. Krajisnik, Appeals Chamber Judgment, 17 March 2009, paragraph 215; Prosecutor v. Haradinaj, Trial Chamber Judgment, 3 April 2008, paragraph 138; Prosecutor v. Brdanin, Appeals Chamber Judgment, 4 April 2007, paragraph 430.

¹⁷²⁵ Prosecutor v. Blagojevic and Jokic, Appeals Chamber Judgment, 9 May 2007, paragraphs 147-176.

¹⁷²⁶ Indictment, paragraph 39.

¹⁷²⁷ See Part 4, Sections 8 and 10.

¹⁷²⁸ Indictment, paragraph 77.

¹⁷²⁹ See Counts 7 and 8, “Forcible Transfer and Deportation”

¹⁷³⁰ See Part 4 Section 4 Krivaja 95; T.398, 21 August 2006, Opening Statement Peter McCloskey; [REDACTED].

contributed to the JCE forcibly to transfer the population by shelling the town. The topic is nonetheless dealt with in more detail elsewhere.¹⁷³¹

3. Extended category of the joint criminal enterprise (JCE III)

1044. The Prosecution allege that in addition to his liability for the mass murder as a member of the JCE, Pandurevic is also liable for assorted sporadic murders by reason of their being a “natural and foreseeable consequence” of the plan to commit genocide. For the reasons hereinafter set out, the Defence submit that the application of the principles of JCE 3 to this case is inappropriate and unnecessary. Under the doctrine of JCE 3, participants in a criminal enterprise, who agreed to the common criminal design (of the first category JCE), but did not share the intent of any additional, incidental crimes, can be, nevertheless, held responsible for them, if these crimes were the natural and foreseeable consequence of the common design.¹⁷³²

1045. The conditions for a third category JCE to exist are as follows:

- 1) shared intent for the first category of joint criminal enterprise
- 2) the foreseeability of the possible commission by other members of the group of offences that *do not constitute the object* of the common criminal purpose,
- 3) willingness for taking the risk of such offences to take place.¹⁷³³

“Opportunistic killings”

1046. The Prosecution claims that “opportunistic killings” took place as “a natural and foreseeable consequence” of the JCE “to murder all able-bodied Muslim men from Srebrenica”.¹⁷³⁴ Further, the Prosecution alleges that such opportunistic killings also took place as a consequence of the JCE to “forcibly transfer and deport the population from Srebrenica and Zepa.”¹⁷³⁵

¹⁷³¹ See Part 4 Section 4 Krivaja 95.

¹⁷³² Prosecutor v. Haradinaj et al., Trial Chamber Judgment, 3 April 2008, paragraphs 137-138; Prosecutor v. Kvočka et al., Appeal Chamber Judgment, 28 February 2005, paragraph 83; Prosecutor v. Blaškić, Appeal Chamber Judgment, 29 July 2004, paragraph 33; Prosecutor v. Krstić, Trial Chamber Judgment, 2 August 2001, paragraph 613; Prosecutor v. Radoslav Brđanin and Momir Talić, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para. 31; Prosecutor v. Tadić, Appeal Chamber Judgment, 15 July 1999, paragraphs 220, 227-228, 231-232.

¹⁷³³ Prosecutor v. Haradinaj et al., Trial Chamber Judgment, 3 April 2008, paragraphs 137; Prosecutor v. Krstić, Trial Chamber Judgment, 2 August 2001, paragraph 613; Prosecutor v. Tadić, Appeal Chamber Judgment, 15 July 1999, paragraphs 220.

¹⁷³⁴ Indictment, paragraph 31.

¹⁷³⁵ Indictment, paragraph 83.

As a consequence of the killing operation

1047. In the Defence submission, it is nonsense to suggest that assorted odd killings *went beyond the scope* of the plan to commit mass murder. There is a temporal, geographical and personnel link between the incidents said to constitute evidence of the plan to commit genocide, and those said to be opportunistic killings. There is moreover, no obvious logic as to why certain events are said to form part of one and certain others are differently categorized. Why, for example, the murder of certain prisoners at the Petkovci school are said to be opportunistic,¹⁷³⁶ whilst the remainder are part of the JCE to kill the able bodied men,¹⁷³⁷ is a matter of profound curiosity. JCE 3 is intended, in the Defence submission, for situations where the incidental offences are more serious than those agreed upon by the common design.¹⁷³⁸

1048. A further problem arises from the fact that liability under JCE 3 depends upon the prior existence of a JCE. In other words you cannot foresee that something is a necessary consequence of a plan, until there is a plan. In the indictment as originally pleaded, that is precisely what is alleged.¹⁷³⁹ Whilst the evidence may not have supported some of these allegations in any event, the muddled thinking that went into the drafting of the indictment in the first place is plain.

1049. This averment is particularly relevant to the case of Pandurevic. As has been set out above, when, let alone if, he joined the JCE to murder the able bodied men, is far from clear on the evidence. Any liability for necessarily foreseeable events could only run from the time he is proven to have joined.

As a consequence of the forcible transfer operation

1050. Much of that submitted above is pertinent to the allegation that certain crimes were a necessary and foreseeable consequence of the plan forcibly to transfer the population of Srebrenica, not least the comments about the timing of the incidents in paragraph 31. In the Defence submission the killings in paragraph 31 are moreover, too remote from the plan to remove the civilian population to attract liability under JCE 3. However, the indictment alleges also that the crime of persecution was a necessary and foreseeable consequence of the plan to transfer the population.¹⁷⁴⁰

1051. The Defence frankly wonder whether this was a mistake in the indictment's drafting. The particulars of paragraph 48 of the indictment cannot properly be characterized as "individual criminal acts" when it actually describes the whole alleged murder and forcible transfer operations. Points b, c and d are presented as elements of the crime of persecution, which, as a crime against humanity, requires widespread and systematic

¹⁷³⁶ Indictment paragraph 31.4

¹⁷³⁷ Indictment paragraph 30.7

¹⁷³⁸ Prosecutor v. Haradinaj et al., Trial Chamber Judgment, 3 April 2008, paragraphs 137; Prosecutor v. Krstić, Trial Chamber Judgment, 2 August 2001, paragraph 613; Prosecutor v. Tadić, Appeal Chamber Judgment, 15 July 1999, paragraphs 220. See also, Cassese, A., International Criminal Law, 2008, Oxford University Press, pp. 206-207.

¹⁷³⁹ Indictment paragraphs 31.1 and 31.2

¹⁷⁴⁰ Indictment paragraphs 83 and 48

behaviour. Consequently, the same acts cannot be both widespread and systematic and at the same time individual and opportunistic.

1052. The Defence submits that category three of the joint criminal enterprise does not arise in the present case. In any event, since the Prosecution has failed to prove, beyond reasonable doubt, that Pandurevic had knowledge of, let alone shared the intent necessary for JCE I, it is otiose to discuss his responsibility for any additional, allegedly foreseeable offences.

4. Elements of command responsibility not fulfilled

1053. Three matters must be proved before Pandurevic can be convicted on the basis of command or superior responsibility: (1) the superior-subordinate relationship between Pandurevic and the perpetrator of the underlying offence, (2) Pandurevic knew or had reason to know that his subordinate was about to commit such act or had done so and (3) Pandurevic failed to take necessary and reasonable measures to prevent such act or punish the perpetrator thereof.¹⁷⁴¹

1054. The three elements necessarily have to be considered in *the order in which they are enumerated above*. To do otherwise is illogical, as it matters not that an individual failed to take necessary and reasonable measures to prevent such act or punish the perpetrator thereof, where there was no command relationship between the individual and the perpetrator. Only once the command relationship has been established, would Pandurevic's knowledge of the crimes become relevant. And the knowledge element is a *conditio sine qua non* in order to trigger Pandurevic's duty to act. Without his knowledge, no duty to punish the perpetrators can arise.

1055. The Prosecution has to prove each of the 3 elements beyond reasonable doubt.¹⁷⁴²

Underlying offences

1056. The Prosecution must prove that Pandurevic's subordinate has committed a *criminal offence*. That involves proof of not only the *actus reus* of the subordinate's crime, but also "the requisite *mens rea* [of the subordinates] at the time".¹⁷⁴³ In other words, it is not sufficient to show that, for example, a member of the Zvornik Brigade guarded the prisoners in schools without knowing that the prisoners of war were about to be executed or a member of the brigade was merely present at the crime scene.¹⁷⁴⁴ To establish that

¹⁷⁴¹ See inter alia BLAGOJEVIC, Trial Judgment, Para 686, 790; CELEBICI Appeal Judgment, Para 189-198, 225, 226, 238, 239, 256, 263, 346; ALEKSOVSKI Appeal Judgment, Para 72, 76; KUNARAC Trial Judgment, Para 394-399

¹⁷⁴² See BLASKIC, Appeal Judgment, Para 451; STAKIC, Appeal Judgment, Para 9, 157, 337; CELEBICI, Trial Judgment, Para 601; KRNOJALAC, Trial Judgment, Para 94; NTAGERURA, Appeal Judgment, Para 166-175

¹⁷⁴³ See BLAGOJEVIC, Appeal Judgment, Para 284; KAYISHEMA and RUZINDANA, Appeal Judgment, Para 186

¹⁷⁴⁴ See Part 4 Section 10.

Pandurevic had command responsibility for genocide for example, it must first be proven beyond reasonable doubt, that *his subordinate had the required genocidal intent* (and Pandurevic must have been aware of his subordinate's genocidal intent).

1057. In relation to all crimes, for which Pandurevic is said to bear superior responsibility, a failure by the Prosecution to prove the *mens rea* on the part of the subordinate, will render the conviction of Pandurevic impossible. In *Blagojevic*, the Trial Chamber found that:

1058. "... the participation of units of the Bratunac Brigade in the crimes established above has been reflected in the responsibility of Colonel Blagojević for aiding and abetting, with the following exceptions. In relation to the participation of the units in the murder operation, the Trial Chamber is convinced that they rendered practical assistance that furthered the crimes of murder and extermination. However, the Trial Chamber is unable to determine that they "committed" any of the crimes charged under the counts of murder or extermination. Therefore, the Trial Chamber cannot, with any precision, identify the specific perpetrators for whom Colonel Blagojević had the duty to punish."¹⁷⁴⁵

1059. The Appeals Chamber reviewed the finding as follows:

"The Prosecution submissions fail to demonstrate that any assistance rendered by Bratunac Brigade members prior to or contemporaneously with the killings was done with knowledge that executions would occur."¹⁷⁴⁶ If it is alleged, that the crimes of perpetrators have been committed by *omission* rather than action, then proof of mere presence at the crime scene is not sufficient. The Prosecution must also prove to the requisite standard that the omission was a failure to exercise a *legal duty to act*.¹⁷⁴⁷

1060. The Statute of the Tribunal and all jurisprudence prior to 2007 spoke unanimously to the fact that superior responsibility only existed in relation to crimes '*committed*' by subordinates.¹⁷⁴⁸ However, given certain more recent decisions of the ICTY¹⁷⁴⁹ it may be necessary to address the question of whether Pandurevic may be liable for his subordinates whose participation in crime may better be described under *other modes of liability* described by article 7(1). In the submission of the Defence, and in the particular circumstances of this case, and especially the proven involvement of various members of the Zvornik Brigade, it is a distinction without a difference, and it does not relieve the Prosecution of the burden of proving participation in crime by a subordinate with an appropriate *mens rea* as a condition precedent to superior liability.

¹⁷⁴⁵ See BLAGOJEVIC, Trial Judgment, Para 794. In relation to this also see BLAGOJEVIC, Appeal Judgment, Para 287: "Rather, it appears to be the Trial Chamber's conclusion that it lacked sufficient evidence to find that one of Blagojević's subordinates "committed", in the broad sense of the word, one of the crimes encompassed in the murder operation. Indeed, the Trial Chamber specified on numerous occasions throughout the Trial Judgement the identity of the members of the Bratunac Brigade who rendered practical assistance to the murder operation ()

¹⁷⁴⁶ See See BLAGOJEVIC, Appeal Judgment, Para 295.

¹⁷⁴⁷ See ORIC, Trial Judgment, Para 302-304.

¹⁷⁴⁸ See for example CELEBICI, Appeal Judgment, Para 196-198; BLASKIC, Appeal Judgment, Para 67; BAGILISHEMA, Appeal Judgment, Para 49-55; KRNOJELAC, Trial Judgment, Para 93; See Article 7(3) of the ICTY Statute

¹⁷⁴⁹ See BLAGOJEVIC, Appeal Judgment, Para 280: "As a threshold matter, the Appeal chamber confirms that superior responsibility under Article 7(3) of the Statute encompasses all forms of criminal conduct by subordinates, not only the "committing" of crimes in the restrictive sense of the term, but all other modes of participation under Article 7(1)." See also BOSKOVSKI, Trial Judgment, Para 404; ORIC, Trial Judgment, Para 300-302; ORIC, Appeal Judgment, Para 21

1061. Moreover, it behooves the Prosecution *sufficiently to identify* each of Pandurevic's subordinates among the participants in the underlying offence¹⁷⁵⁰ and prove beyond reasonable doubt his participation in *an offence*.¹⁷⁵¹ In short, if the Prosecution fails to establish *which crimes were committed by which subordinates*, then there can be no finding that Pandurevic is liable under Article 7(3).¹⁷⁵² In the submission of the Defence, such matters ought properly to have been pleaded in the indictment.

4.1. Superior-subordinate relationship

1062. A relationship of subordination between Pandurevic and the perpetrators can be either *de jure* (a relationship that is supported in law) or *de facto* (supported in factual situation that existed between Pandurevic and the perpetrators).¹⁷⁵³

4.1.1. De jure command

1063. De jure superior-subordinate relationship means that the superior has been appointed to a *position of authority for the purpose of commanding* other persons.¹⁷⁵⁴ The Defence submissions as to the position in law relating to the command of the Zvornik Brigade throughout the period July – September 1995 are dealt with in detail elsewhere in this brief.¹⁷⁵⁵

1064. *De jure* powers can be granted in writing or *orally*.¹⁷⁵⁶ Obrenovic's position was by appointment, namely:

- (1) THE ORDER: his permanent order of appointment as deputy commander in 1993,¹⁷⁵⁷
- (2) THE LAW: the Article 17 of the Regulations,¹⁷⁵⁸
- (3) ORALLY: the official and oral handover of duties¹⁷⁵⁹

1065. Moreover, *de jure* command can be established *circumstantially*. Proof of *de jure* command does not always require *an order*.¹⁷⁶⁰ [REDACTED].¹⁷⁶¹

¹⁷⁵⁰ See ORIC, Appeal Judgment, Para 32-49

¹⁷⁵¹ See BLAGOJEVIC, Appeal Judgment, Para 284; KAYISHEMA and RUZINDANA, Appeal Judgment, Para 186

¹⁷⁵² See KVOCKA, Appeal Judgment, Para 144

¹⁷⁵³ See CELEBICI, Appeal Judgment, Para 192; BAGILISHEMA, Appeal Judgment, Para 50

¹⁷⁵⁴ See STUPAR, Trial Judgment, Para 142

¹⁷⁵⁵ See Part 3 Sections 2 and 3; Part 4, Sections 4, 6, 14.

¹⁷⁵⁶ See NAHIMANA, Appeal Judgment, Para 787

¹⁷⁵⁷ See section

¹⁷⁵⁸ See Part 3 Sections 2 and 3.

¹⁷⁵⁹ See Part 3 Sections 2 and 3

¹⁷⁶⁰ See KORDIC, Trial Judgment, Para 424; RASEVIC and TODOVIC, Trial Judgment, Para 149

¹⁷⁶¹ See sections 2,3 of Part 3.

Proof of de jure command is insufficient

1066. In law, ‘*de jure authority is not synonymous with effective control*’¹⁷⁶² and *de jure* position is *not sufficient proof* of effective control.¹⁷⁶³ In other words, ‘*it is necessary to look to effective exercise of power and control and not to formal titles*’.¹⁷⁶⁴ The reason for such a standpoint in law is that a *de jure* commander might actually lack a ‘material ability to prevent or punish the crimes of individuals, who are *legally, but not effectively* under his command. A commander could thus be found to have *de jure* command whilst having no effective control over his superiors, and vice-versa.’¹⁷⁶⁵

1067. The existence of *de jure* command therefore does *not* allow for an *inference or presumption* that the *de jure* superior had and exercised effective control over his subordinates, since it would place the burden of proof on the Defence.¹⁷⁶⁶

1068. Even if the Trial Chamber was to conclude, that Pandurevic had *de jure* command during one or both of the two crucial periods, they would have to be satisfied, that Pandurevic possessed the *actual powers of authority and control* in order to find him criminally liable.¹⁷⁶⁷

4.1.2. De facto command and ‘effective control’

1069. A superior can only be held criminally liable, if he exercised ‘*effective control*’ over the perpetrators. Effective control means having the ‘*material ability to prevent offences*

¹⁷⁶² ORIC, Appeal Judgment, Para 91-92

¹⁷⁶³ See also HADZIHSANOVIC, Appeal Judgment, Para 20-21; HALILOVIC, Appeal Judgment, Para 85; BAGILISHEMA, Appeal Judgment, Para 50, 56; CELEBICI, Appeal Judgment, Para 192-193; NAHIMANA, Appeal Judgment, Para 787

¹⁷⁶⁴ See CELEBICI, Appeal Judgment, Para 197

¹⁷⁶⁵ See BLAGOJEVIC, Appeal Judgment, Para 302: “The Appeals Chamber does not consider the conclusions regarding the scope of Blagojevic’s [*de jure*] authority irreconcilable with the finding that he exercised no effective control over Momir Nikolic. In the CELEBICI Appeal Judgment, the Appeals Chamber discussed the possibility that *de jure* authority alone may not lead to the imposition of command responsibility. The relevant discussion indicated “possession of *de jure* power in itself may not suffice for the finding of command responsibility if it does not manifest in effective control.” In the view of the Appeals Chamber, the Trial Chamber’s conclusion in paragraph 419 of the Trial Judgment that Blagojevic remained in command and control of all units of the Bratunac Brigade reflects its assessment of his *de jure* authority over all members of the brigade, including Nikolic, following a lengthy discussion of various legal provisions, orders, and expert testimony. The Trial Chamber’s subsequent finding in paragraph 795 of the Trial Judgment that Blagojevic lacked effective control over Momir Nikolic reflected its assessment of the actual facts on the ground in light of the earlier legal discussion.”

¹⁷⁶⁶ See ORIC, Appeal Judgment, Para 91-92; HADZIHSANOVIC, Appeal Judgment, Para 20-21, 190-191; HALILOVIC, Appeal Judgment, Para 85

¹⁷⁶⁷ See BLAGOJEVIC, Appeal Judgment, Para 302; CELEBICI, Appeal Judgment, Para 197, 306; STUPAR, Trial Judgment, Para 142-143

or punish the principal offenders'.¹⁷⁶⁸ Effective control is the threshold requirement for superior liability.¹⁷⁶⁹

1070. Effective control over *third parties* is irrelevant to establishing superior responsibility.¹⁷⁷⁰ The superior and subordinate relationship is an *inter-personal relationship* and the Prosecution must prove that Pandurevic had the effective control over *those members* of the Zvornik Brigade, *who had committed* the crimes. If certain members of the Zvornik brigade went beyond his control (for example, because of temporary interference with the command structure of the unit), it would not be sufficient to prove that Pandurevic exercised overall or effective control over *the rest of the brigade*.

1071. As an example, in *Blagojevic*, Trial Chamber came to the following conclusion:

“Considering that during the period between July and November 1995 senior members of the VRS were in the Srebrenica area issuing orders and instructions, and taking into consideration the Trial Chamber’s findings in relation to the functional chain of command for the security organ, the Trial Chamber is unable to conclude that Colonel Blagojević had ‘effective control’ over Momir Nikolić to the threshold required in order to establish a superior-subordinate relationship for the purpose of Article 7(3) of the Statute – namely, that he had the “material ability to prevent or punish the commission of the offences”. Moreover, while recognizing that Colonel Blagojević failed to take any measure to prevent or punish the crimes of Momir Nikolić, the Trial Chamber is convinced that “a commander is not obliged to perform the impossible” and that reporting the matter to the competent authorities may not have been, in the circumstances at that time, a reasonable measure that would have led to the punishment of Momir Nikolić.”¹⁷⁷¹

4.1.3. Establishing ‘effective control’

1072. The evidential burden on the Prosecution when establishing effective control is ‘high’.¹⁷⁷² The ‘indicators of effective control are more a *matter of evidence* than of substantive law’¹⁷⁷³ and those indicators are limited to ‘showing that the accused had the power to *prevent, punish, or initiate measures leading to proceedings* against the alleged perpetrators where appropriate’.¹⁷⁷⁴ In the words of the Trial Chamber in *Oric*, ‘any

¹⁷⁶⁸ See BLAGOJEVIC, Trial Judgment, Para 791; BLASKIC, Appeal Judgment, Para 67; CELEBICI, Appeal Judgment, Para 196-198; KRNOJALAC, Trial Judgment, Para 93; BAGILISHEMA, Appeal Judgment, Para 49-55; HADZIHASANOVIC, Trial Judgment, Para 1101

¹⁷⁶⁹ See HADZIHASANOVIC, Appeal Judgment, Para 20; CELEBICI, Appeal Judgment, Para 196; STUPAR, Trial Judgment, Para 142; BAGILISHEMA, Appeal Judgment, Para 50, 56

¹⁷⁷⁰ See CELEBICI, Appeal Judgment, Para 249, 992; CELEBICI, Trial Judgment, Para 377-378; BRDJANIN, Trial Judgment, Para 276; BLASKIC, Appeal Judgment, Para 67

¹⁷⁷¹ See BLAGOJEVIC, Trial Judgment, Para 795

¹⁷⁷² See BRIMA, Trial Judgment, Para 1660

¹⁷⁷³ See BLASKIC, Appeal Judgment, Para 69; ALEKSOVSKI, Appeal Judgment, Para 73-74; CELEBICI, Appeal Judgment, Para 206

¹⁷⁷⁴ See BLASKIC, Appeal Judgment, Para 69; ALEKSOVSKI, Appeal Judgment, Para 76

attempt to formulate a general standard *in abstracto* (of what would constitute ‘‘necessary and reasonable’’ measures) may not be meaningful’.¹⁷⁷⁵

1073. Moreover, Pandurevic’s effective control cannot be established by the ‘*process of elimination*’ whereby the effective control over the perpetrators could be inferred from the absence of evidence that *any other authority* exercised such control over them.¹⁷⁷⁶

1074. It is further necessary for the Prosecution to establish that Pandurevic had ‘effective’ control, *not just* ‘*any level of control*’ or ‘*some control*’. There is no intermediate level of control that would be relevant to command responsibility.¹⁷⁷⁷

1075. As has been observed elsewhere¹⁷⁷⁸ one of the indicia of a command relationship is the giving of orders. However, whilst it is a relevant factor it is not conclusive or automatic proof of effective control over the perpetrators of crimes.¹⁷⁷⁹

1076. In particular, evidence that an accused had a general authority to issue orders to an individual or unit may serve no greater purpose than to underline his *de jure* command. What will be of greater relevance is the accused’s particular control over the perpetrator at the appropriate time.

1077. The following evidential features of the case mitigate against a finding that Pandurevic had effective control over any of his subordinates alleged to have participated in crimes:

- The lack of professionalism of the brigade as an army unit¹⁷⁸⁰
- The lack of continuity and discipline amongst the members of the brigade¹⁷⁸¹
- The interruption of the command chain by orders coming from another source¹⁷⁸²
- The unique and chaotic nature of the events¹⁷⁸³
- The existence of parallel chain of commands between military and military-security organs¹⁷⁸⁴
- The presence of officers from superior command at the crimes sites

¹⁷⁷⁵ See ORIC, Trial Judgment, Para 329

¹⁷⁷⁶ See HADZIHASANOVIC, Appeal Judgment, Para 217

¹⁷⁷⁷ See BAGILISHEMA, Appeal Judgment, Para 56; HALILOVIC, Trial Judgment, Para 752

¹⁷⁷⁸ See section ??? on

¹⁷⁷⁹ See HALILOVIC, Appeal Judgment, Para 204; STRGAR, Appeal Judgment, Para 195, 253-254: ‘ In situation involving formal hierarchies of command structures, a superior’s capacity to issue orders can amount to a *factor* indicative of his effective control over subordinates.’ And ‘The superior’s authority to issue orders does *not automatically* establish that a superior had effective control over his subordinates.’

¹⁷⁸⁰ See Part 3 Section 4

¹⁷⁸¹ See Part 3 Sections 1 and 4.

¹⁷⁸² See Part 3, Section 6; Part 4, Section 8.

¹⁷⁸³ See ORIC, Appeal Judgment, Para 145-149; See Part 4 Section 7

¹⁷⁸⁴ See Part 3 Section 5 ‘Security organs’: Interference with the normal chain of command was such that Pandurevic, who was formally in the line of command with the perpetrators, was in fact not able to exercise effective control over them because they ultimately answered not to him, or to the chain of command, but up to the security line chain of command.

- The presence of different units not under Pandurevic's command¹⁷⁸⁵
- The lack of reporting to Pandurevic¹⁷⁸⁶
- Pandurevic's lack of knowledge of the extent or whereabouts of the criminal activity
- The resources available to Pandurevic at that time¹⁷⁸⁷
- Pandurevic's preoccupation with the military situation
- The obligation of soldiers of the VRS to follow the orders of the senior officer present in the absence of their commander¹⁷⁸⁸
- The advanced stage of the killing operation when Pandurevic re-assumed command on 15th July¹⁷⁸⁹

1078. Graphically in this case, a security officer from the Main Staff used Pandurevic's office in his absence to announce to members of the brigade and local civic officials that Pandurevic was not present, and that he [Beara] was in command. In a case with a similar factual matrix in terms of command chain interference, the Trial Chamber made the following finding:

‘The commander must have formal and factual authority to command, which means that **his command is not brought into question by the command of someone else who is higher up, at the same level or even lower** down the chain of command, and who then, in the course of commanding, exercise the command authority and/or command powers of a formal commander, with the **result that the formal commander actually loses his formal position.**’¹⁷⁹⁰

1079. The Trial Chamber in *Ademi and Norac* case went on and acquitted the accused Ademi on the basis that the units ‘were not really subordinated to him and he did not have the necessary scope of command authority. His powers were significantly diminished and reduced, which meant that his command power was also reduced.’¹⁷⁹¹

1080. Where a number of individuals have been temporarily re-subordinated to another unit for a *temporary operation*¹⁷⁹², they belong to another chain of command and their new commander or commanding officer is responsible for them if he has effective control over them.¹⁷⁹³

1081. ‘Both those permanently under an individual's command and those who are so only temporarily or on an *ad hoc* basis can be regarded as being under the effective control of that particular individual. The temporary nature of a military unit is not, in itself,

¹⁷⁸⁵ See Part 4 Section 8.

¹⁷⁸⁶ HADZIHASANOVIC, Trial Judgment, Para 795, 844 etc.

¹⁷⁸⁷ See Part 4 Section 7.

¹⁷⁸⁸ KUNARAC, Trial Judgment, Para 628, 863; CELEBICI, Appeal Judgment, Para 266; KORDIC, Trial Judgment, Para 412-413

¹⁷⁸⁹ See Part 4 Section 8

¹⁷⁹⁰ See ADEMI and NORAC, Trial Judgment, Section 10

¹⁷⁹¹ See ADEMI and NORAC, Trial Judgment, Section 10

¹⁷⁹² See Part 4 Sections 4, 13 and 14.

¹⁷⁹³ See HALILOVIC, Trial Judgment, Para 61

sufficient to exclude a relationship of subordination between the members of a unit and its commander. To be held liable for the acts of men who operated under him on an *ad hoc* or temporary basis, it must be shown that, *at the time when the acts charged in the Indictment were committed*, these persons were under the effective control of that particular individual.¹⁷⁹⁴ To hold Pandurevic or any other commander liable for the acts of troops who operated under his command on a *temporary basis* it must be shown that at the time when the acts charged in the indictment were committed, these troops were under his effective control.¹⁷⁹⁵

1082. Moreover, for units such as 10th Sabotage Detachment, MUP, Bratunac Brigade units, Krajisniki etc the Prosecution must prove that Pandurevic in reality did exercise effective control over these troops.¹⁷⁹⁶

1083. The Chamber can find Pandurevic was in effective control, only after considering *all relevant circumstances* as they existed at the time, and only after it is satisfied beyond reasonable doubt that *the only reasonable conclusion* is that Pandurevic had effective control over the perpetrators who may have received orders from others.¹⁷⁹⁷

1084. Effective control must exist ‘*at the time when the crimes are alleged to have been committed*’.¹⁷⁹⁸ Put another way:

‘Article 7(3) provides the legal criteria for command responsibility, thus giving the word “commander” a juridical meaning, in that the provision becomes applicable only where a superior with the required mental element *failed to exercise his powers* to prevent subordinates from committing offences or to punish them afterwards. This necessarily implies that *a superior must have such powers prior to his failure to exercise them*.’¹⁷⁹⁹

1085. This is a particularly relevant consideration in the case of Pandurevic, who, it is submitted had no such powers during much of the relevant period of the indictment.

¹⁷⁹⁴ See KUNARAC, Trial Judgment, Para 399

¹⁷⁹⁵ See HALILOVIC, Trial Judgment, Para 61

¹⁷⁹⁶ See section Killing operation???; Compare with the finding in KRSTIC, Trial Judgment, Footnote 1418, Page 229: “In the absence of other conclusive evidence, that he (Krstic) in reality did exercise effective control over these troops (10th Sabotage detachment, MUP), General Krstic cannot be said to incur command responsibility for their participation in the crimes.”

¹⁷⁹⁷ See HADZIHASANOVIC, Article 7(3) AC Decision, Para 51; CELEBICI, Trial Judgment, Para 413; AKAYESU, Trial Judgment, Para 319; KAYISHEMA, Trial Judgment, Para 103

¹⁷⁹⁸ See HADZIHASANOVIC, Article 7(3), AC Decision, Para 37(ff) See KUNARAC, Trial Judgment, Para 399; Such a position is also supported by the highly respected scholars such as GREENWOOD and MERON. See for example C. Greenwood, Command Responsibility and the Hadzihasanovic Decision, 2(2), JICJ 598 (2004) and T. Meron, Revival of Customary International Law, 99, American Journal of International Law 817 (2005)

¹⁷⁹⁹ See ALEKSOVSKI, Appeal Judgment, Para 76

4.2. Knowledge

4.2.1. Types and timing of knowledge

1086. To establish liability under Article 7(3), it must be proven that Pandurevic either (1) knew or (2) had reason to know that his subordinates were about to commit or had committed the crime.¹⁸⁰⁰ Proof of actual knowledge means Pandurevic's awareness not just of the commission of *a* crime but of *the* crime charged against him by one or more of his subordinates. Imputed knowledge requires that Pandurevic be shown to have possessed such information that *put him on notice* of the commission of the crimes by his subordinates or of the *strong likelihood* that they were about to be committed.¹⁸⁰¹ The 'standard of proof of imputed knowledge is strict'.¹⁸⁰² The Appeals Chamber has expressly *rejected* the view that a commander could be criminally liable for the action of his subordinates *based solely on a failure to obtain information of a general nature* within his reasonable access due to a serious dereliction of duty.¹⁸⁰³ Or in other words, 'negligent ignorance is insufficient to attribute imputed knowledge'.¹⁸⁰⁴

1087. Moreover, the information that is relevant to establish Pandurevic's *mens rea* must be shown to have been available to him *prior to* his alleged failure to act adequately, but not at a later stage.¹⁸⁰⁵ Pandurevic should therefore not be held criminally responsible for a failure to prevent or punish a crime of which he had no or insufficient knowledge at the time of his alleged failure.

4.2.2. Object of knowledge – General knowledge of the commission of crimes insufficient

1088. (1) Mere *general information* will not suffice to establish that Pandurevic 'knew' or 'had reason to know' of the crimes or of their likely occurrence, *even if* this information *relates to criminal involvement* on the part of the perpetrators.¹⁸⁰⁶ Pandurevic must be shown to have known or had reason to know that '*acts such as those charged*' or '*acts of similar gravity*' and not just '*any*' crime had been committed or was about to be committed by his subordinates.¹⁸⁰⁷ The Prosecution must show that Pandurevic knew or

¹⁸⁰⁰ See BLAGOJEVIC, Trial Judgment, Para 792; CELEBICI, Appeal Judgment, Para 223-226; KRNOJALAC, Trial Judgment, Para 94; BAGILISHEMA, Appeal Judgment, Para 26-38

¹⁸⁰¹ See CELEBICI, Appeal Judgment, Para 238; KORDIC, Trial Judgment, Para 437; BAGILISHEMA, Appeal Judgment, Para 28;

¹⁸⁰² See BRIMA, Trial Judgment, Para 1734

¹⁸⁰³ See CELEBICI, Appeal Judgment, Para 238, 239, 240; KORDIC, Trial Judgment, Para 432

¹⁸⁰⁴ See BRIMA, Trial Judgment, Para 796

¹⁸⁰⁵ See ALEKSOVSKI, Appeal Judgment, Para 76

¹⁸⁰⁶ See ALIC, Trial Judgment, Para 48; BAGILISHEMA, Appeal Judgment, Para 42

¹⁸⁰⁷ See KRNOJALAC, Appeal Judgment, Para 155, 178, 179; HADIZHASANOVIC, Trial Judgment, Para 106; STRUGAR, Trial Judgment, Para 416, 417; ALIC, Trial Judgment, Para 48

had reason to know *all the material elements* that constitute each crime committed by his subordinates.¹⁸⁰⁸

(2) Moreover, Pandurevic must be shown, to have known of '*his subordinates*' criminal involvement in the commission of the crimes', not just anybody else.¹⁸⁰⁹

(3) Pandurevic must also be shown to have been aware of the fact that *his own conduct was illegal* and criminal, and with that knowledge he must have persisted.¹⁸¹⁰

4.2.3. Knowledge in relation to failure to prevent

1089. In terms of failure to prevent, it is not sufficient to simply demonstrate that Pandurevic was aware that there was *a risk* that his subordinates would commit crimes, because there is *always* a risk of the commission of crimes.¹⁸¹¹ Or as put by Appeals Chamber in *Blaskic*: 'The knowledge of *any kind of risk*, however low, does not suffice for the imposition of criminal responsibility for serious violations of international law'.¹⁸¹² The risk must be 'substantial' or 'strong' risk that a crime would be committed by the subordinates.¹⁸¹³

1090. The risk must also be 'present', 'concrete' and 'real' and not just 'abstract' or 'possible' or 'objective'.¹⁸¹⁴ It is also not sufficient to prove that the information Pandurevic had at the time of the offence would have indicated to him the possibility that such crimes '*might occur*'; it must be proven that information indicated to Pandurevic that such crimes '*would occur*'.¹⁸¹⁵

1091. Moreover, '[t]he *mere awareness* of a commander of the risk of a crime being committed by his subordinates is not sufficient to trigger his legal responsibility (as a superior). It must be shown that the commander was *aware of the substantial likelihood* that a crime would be committed as a result of his failure to act and that, aware of that fact, he failed to do anything about it.'¹⁸¹⁶

1092. The crimes must have moreover an imminent probability. Indeed since the law requires that they are 'about to be committed', some evidence is necessary that the superior knew *crimes were being prepared or planned*.¹⁸¹⁷

¹⁸⁰⁸ See KRNOJALAC, Appeal Judgment, Para 155, 178, 179; NALETILIC, Appeal Judgment, Para 114

¹⁸⁰⁹ See ORIC, Appeal Judgment, Para 52, 55-60, 169-174; BAGILISHEMA, Appeal Judgment, Para 42

¹⁸¹⁰ See NALETILIC, Appeal Judgment, Para 117

¹⁸¹¹ See ALIC, Trial Judgment, Para 48

¹⁸¹² See BLASKIC, Appeal Judgment, Para 41

¹⁸¹³ See BLASKIC, Appeal Judgment, Para 41-42; KVOCKA, Appeal Judgment, Para 155, 179; STRUGAR, Trial Judgment, Para 370, 417, 418, 420, 421, 422

¹⁸¹⁴ See HALILOVIC, Trial Judgment, Para 68; CELEBICI, Appeal Judgment, Para 223, 241; BLASKIC, Appeal Judgment, Para 41, 42; STRUGAR, Trial Judgment, Para 417, 418

¹⁸¹⁵ See KRNOJALAC, Appeal Judgment, Para 169; HADZIHASANOVIC, Trial Judgment, Para 1543, 1748, 1749, 1750; STRUGAR, Appeal Judgment, Para 301; HADZIHASANOVIC, Appeal Judgment, Para 30

¹⁸¹⁶ See ALIC, Trial Judgment, Para 31

¹⁸¹⁷ See HADZIHASANOVIC Appeal Judgment, Para 30; STRUGAR, Appeal Judgment, Para 301; KRNOJALAC, Appeal Judgment, Para 169

4.2.4. Knowledge in relation to failure to punish

1093. In terms of failure to punish, Pandurevic must be shown to have sufficient information in his possession to *put him on notice* that his subordinates had committed crimes such as those he is charged with.¹⁸¹⁸ *General rumours* that crimes have been committed (whether he came to know of them or not) will not be sufficient to discharge the burden of proving that he had reason to know that his subordinates had committed such crimes as he is charged with.¹⁸¹⁹

4.2.5. Establishing Pandurevic's knowledge

1094. Pandurevic's knowledge that crimes had been committed by his subordinates (if indeed they had) *cannot be presumed*,¹⁸²⁰ or *inferred from* the position he held.¹⁸²¹ Nor can it be properly inferred from the fact that others knew.¹⁸²² There must be cogent evidence that he was '*in possession*' of such information.¹⁸²³

1095. The circumstances listed above as being relevant to the question of effective control are equally important in considering Pandurevic's actual or imputed knowledge of the commission of crimes by his subordinates.¹⁸²⁴ In addition the Trial Chamber should bear in mind:

- The prior behavior of the Brigade towards prisoners of war;
- The secrecy of the Killing operation¹⁸²⁵
- The by-passing of Pandurevic in communications relating to prisoners¹⁸²⁶
- The geographical spread of the execution sites¹⁸²⁷
- The short period of time during which the murders occurred¹⁸²⁸

¹⁸¹⁸ See for example BAGILISHEMA, Appeal Judgment, para 155

¹⁸¹⁹ See HADZIHASANOVIC, Trial Judgment, Para 1222-1223

¹⁸²⁰ See BOSKOSKI, Trial Judgment, Para 413; ALIC, Trial Judgment, Para 50

¹⁸²¹ See BRIMA, Trial Judgment, Para 792

¹⁸²² See ALIC, Trial Judgment, Para 50

¹⁸²³ See CELEBICI, Trial Chamber, Paras. 383-386.

¹⁸²⁴ See ORIC, Trial Judgment, Para 319

¹⁸²⁵ See Part 4 Section 8

¹⁸²⁶ See Part 4 Section 11

¹⁸²⁷ See Part 4 Section 10

¹⁸²⁸ See Part 4 Section 10

4.3. Failure to prevent or punish

1096. A failure to take ‘necessary and reasonable measures’ to *prevent or punish* the crimes must be proven.¹⁸²⁹ Mere knowledge that Pandurevic’s subordinates have committed or are about to commit crimes such as he is charged with, is not sufficient to establish his *mens rea* for command responsibility. Additionally, he must be shown to have *intended not to act despite the acquired knowledge* (i.e. deliberately failed to perform his duties).¹⁸³⁰ In other words, it must also be proven that the accused *acquiesced* in the commission of the crimes or (tacitly) *approved* them.¹⁸³¹
1097. For Pandurevic to be guilty of command responsibility, he must also be shown that he was able ‘to determine *ex ante*, based on the facts available to him, that the conduct was criminal’.¹⁸³² Mere *criminal negligence is not* a basis for liability under Article 7(3).¹⁸³³ Therefore, if Pandurevic made an honest error in judgment or was negligently not aware of the illegality of his conduct, he will not be liable as a commander.

4.3.1. Duty to prevent

1098. The Duty to prevent concerns ‘*future crimes*’, or crimes, that have not yet been committed.¹⁸³⁴ The duty arises from the moment a commander acquires sufficient knowledge that such a crime is *being prepared or planned* (i.e. ‘*about to be committed*’)¹⁸³⁵ and subsists until the moment when the crimes have been committed.¹⁸³⁶

4.3.2. Duty to punish

1099. The Duty to punish concerns ‘*past crimes*’ which have been committed by subordinates and need to be investigated and the perpetrators punished.¹⁸³⁷ Such a duty arises only once a commander knows or has reason to know that such crimes have been committed by his subordinates.¹⁸³⁸

¹⁸²⁹ See BLASKIC, Appeal Judgment, Para 83; HALILOVIC, Trial Judgment, Para 72; ALEKSOVSKI, Appeal Judgment, Para 72, 76; CELEBICI, Appeal Judgment, Para 192, 193, 198; HADZIHASANOVIC, Appeal Judgment, Para 259; BLASKIC, Appeal Judgment, Para 83

¹⁸³⁰ See BAGILISHEMA, Appeal Judgment, Para 35;

¹⁸³¹ See BLASKIC, Appeal Judgment, Para 41; STRUGAR, Trial Judgment, Para 439; MUSEMA, Trial Judgment, Para 131; ADEMI and NORAC, Trial Judgment, Section 10 (at 265);;

¹⁸³² See NALETILIC, Appeal Judgment, Para 114

¹⁸³³ See BLASKIC, Appeal Chamber, Para 63; BAGILISHEMA, Appeal Judgment, Para 34, 35; HALILOVIC, Trial Judgment, Para 71; See AKAYESU, Trial Judgment, Para 489; MUSEMA, Trial Judgment, Para 131

¹⁸³⁴ See ORIC, Trial Judgment, Para 574; BAGILISHEMA, Appeal Judgment, Para 33; HADZIHASANOVIC; Trial Judgment, Para 1042, 1231, 1457; KVOCKA, Trial Judgment, Para 317

¹⁸³⁵ See BLASKIC, Appeal Judgment, Para 83; KORDIC, Trial Judgment, Para 445, 446; STRUGAR, Trial Judgment, Para 373

¹⁸³⁶ See HADZIHASANOVIC, Trial Judgment, Para 1042, 1231, 1457; ORIC, Trial Judgment, Para 574; BAGILISHEMA, Appeal Judgment, Para 33; KVOCKA, Trial Judgment, Para 317; KORDIC, Trial Judgment, Para 445

¹⁸³⁷ See ORIC, Trial Judgment, Para 574; BAGILISHEMA, Appeal Judgment, Para 33; HADZIHASANOVIC; Trial Judgment, Para 1042, 1231, 1457; KVOCKA, Trial Judgment, Para 317

¹⁸³⁸ See LIMAJ, Trial Judgment, Para 527; BLASKIC, Appeal Judgment, Para 83; KORDIC, Trial Judgment, Para 445, 446

1100. A commander does not need to investigate the crimes himself, he can delegate that responsibility by *reporting the matter to the competent authority*.¹⁸³⁹ Other steps in the investigative and prosecutorial process might thereafter be the responsibility of *other people* or agencies.¹⁸⁴⁰ In other words, the duty to investigate and punish is temporarily limited - it is finished when the superior has been *relieved of his responsibility to investigate by his own superiors*. As particularized elsewhere in this brief, it is the Defence submission that Pandurevic discharged this duty through reporting the matter in:

- (1) the VBI on 15th July¹⁸⁴¹
- (2) the VBI on 18th July¹⁸⁴²
- (3) his meeting with Krstic on 26 or 27th July¹⁸⁴³

1101. In such a way he delegated his responsibility to punish the crimes.¹⁸⁴⁴ Such reporting to Krstic had the practical effect of extinguishing in principle the duty of Pandurevic to punish.¹⁸⁴⁵

1102. Moreover, in relation to any alleged involvement of his own subordinates of which he was aware, Pandurevic's failure to report matters to his superiors attracts no superior criminal liability where he knew that those *superiors were themselves involved* in the commission of such crimes.¹⁸⁴⁶

1103. In the circumstances of this case, Pandurevic did all that was reasonable to discharge his duty to report matters. To expect him to report the matter beyond his immediate superior, when he believes that the organs of the Corps and Main Staff are involved in the commission of crimes, is unrealistic.¹⁸⁴⁷ The theoretical but impractical possibility of

¹⁸³⁹ See BLAGOJEVIC, Trial Judgment, Para 793; HADZIHASANOVIC, Appeal Judgment, Para 154; HADZIHASANOVIC, Trial Judgment, Para 1052-1055, 1061-1062; BLASKIC, Trial Judgment, Para 302, 734; DELIC, Trial Judgment, Para 74, 75; BLASKIC, Appeal Judgment, Para 72;

¹⁸⁴⁰ See BOSKOSKI, Trial Judgment, Para 529-536; ADEMI and NORAC, Trial Judgment, Section 10.2. at 265

¹⁸⁴¹ See Part 4 Section 11

¹⁸⁴² Idem.

¹⁸⁴³ Idem.

¹⁸⁴⁴ See T.20816-20817, 31 January 2008, Richard BUTLER: Q. Well, just suppose this: Suppose a brigade commander was informed by his chief of staff and deputy commander that in his absence, crimes had been committed by his security officer and his professional superior, what realistically could the brigade commander do in those circumstances? A. I think his most realistic course of action is going to be he's going to be sitting in his -- his corps commander's office, explaining that situation. I mean, the fact that -- the fact that he is limited with respect to raising legal charges, I mean, and let's put words to the -- to the hypothetical here. Colonel Pandurevic encounters that situation and he wants to, you know, raise charges against Drago Nikolic, he's going to obviously have to go to Colonel Popovic first. If Colonel Popovic either non-concurs or Colonel Popovic himself is involved in this, Colonel Pandurevic's actions doesn't stop. His next port of call is his corps commander, and we go up that same issue. You involve your next superior operational commander, and your next superior operational commander starts to get involved in why his security officer may have been involved in this. And if we don't -- you know, and we go to the next operational commander, Mladic. Q. Right. A. I mean, that's how it would work. Q. **So his course of action would be to report the matter to his corps commander?** A. **Yes, sir.**

¹⁸⁴⁵ See STRUGAR, Appeal Judgment, Joint Dissenting Opinion of Judge Meron and Judge Kwon, Para 3; HADZIHASANOVIC, Trial Judgment, Para 152-153; ADEMI and NORAC, Trial Judgment, Section 10.2. at 265; DELIC, Trial Judgment, Para 74, 75; KORDIC, Trial Judgment, Para 446;

¹⁸⁴⁶ See NTAGERURA, Appeal Judgment, Para 345

¹⁸⁴⁷ T.31067, 3 February 2009, Vinko PANDUREVIC.

submitting reports in a situation where the whole system was malfunctioning should not be put on the commander:

“Reporting the matter to the competent authorities may not have been, in the circumstances at that time, a reasonable measure that would have led to the punishment of Momir Nikolić.”¹⁸⁴⁸

1104. Moreover, international law does not require a superior to set up a special procedure to investigate allegations of crimes.¹⁸⁴⁹

4.3.3. ‘Necessary’ and ‘reasonable’ measures

1105. What is ‘necessary’ and ‘reasonable’ will depend upon the *circumstances of each case*, in particular on the extent of the commander’s *actual* and *proven* material ability to prevent or punish the crimes.¹⁸⁵⁰ In other words, measures that should have been taken by Pandurevic must be limited to those which are ‘*feasible in all the circumstances*’ and are ‘*within his powers*’. A superior is ‘*not obliged to perform the impossible*’.¹⁸⁵¹ It will not always be possible to prevent a crime or punish the perpetrators. In the Defence submission, it must follow that it would not be incumbent upon Pandurevic to punish one of his subordinates for following the illegal orders of one of his superiors (if nothing else, the first element of effective control is completely distorted). The Defence submits that the failure to exercise his power to punish or prevent crimes committed becomes relevant only if he actually had the real capability of preventing the crimes alleged. Pandurevic had no power to prevent persons from committing crimes who were not under his *de jure* and/or *de facto* command (for example, members of the 10th Sabotage detachment, Bratunac Brigade Military Police Company, or Drina Corps Military Police) nor any power to punish them. It is nonsense to suggest that his notional powers to punish his own subordinates for guarding or burying prisoners pursuant to orders from officers from superior command create a liability on his part for the actions of those he could neither order nor punish. In the circumstances, his reporting to his own superior of the events was all that was reasonable and necessary.¹⁸⁵²

1106. The concept of ‘reasonableness’ allows a commander a certain *choice of means* which he can adopt to prevent and punish the crimes of his perpetrators without breaching his duty to act. For example, where a commander learns of the commission of the crimes while he and his troops are engaged in combat activities he would be permitted to delay dealings with the investigation of those crimes until that time when he is able to do so without endangering the on-going combat operation.¹⁸⁵³ Commanders who are in the field

¹⁸⁴⁸ See BLAGOJEVIC, Trial Judgment, Para 795

¹⁸⁴⁹ See HADZIHASANOVIC, Appeal Judgment, Para 154; BLASKIC, Trial Judgment, Para 335; BLASKIC, Appeal Judgment, Para 72

¹⁸⁵⁰ See BLASKIC, Trial Judgment, Para 302; ALEKSOVSKI, Trial Judgment, Para 78; CELEBICI, Trial Judgment, Para 302, 394, 395; STRUGAR, Trial Judgment, Para 378

¹⁸⁵¹ See BLAGOJEVIC, Trial Judgment, Para 792; KRNOJALAC, Trial Judgment, Para 95; CELEBICI, Appeal Judgment, Para 226

¹⁸⁵² See HALILOVIC, Appeal Judgment, Para 63; See also ORIC, Appeal Judgment, Para 177; ALEKSOVSKI, Appeal Judgment, Para 76 See ADEMI and NORAC, Trial Judgment, section 8.2.3.

¹⁸⁵³ Under Bosnian Law for example, a military commander could request that aspects of an investigation into allegation of crimes be deferred with a view to permit a military operation to proceed, or for security reasons. See HALILOVIC, 10 April 2005, pp 80, 81

are generally better placed to decide what measures are likely, in a given situation, to achieve the goal of preventing and punishing the crimes than would a court of law 15 years after the events.

1107. Pandurevic's first task after returning to Zvornik was to deal with the column of the 28th Division in Baljkovica.¹⁸⁵⁴ It was a serious combat and humanitarian situation. To impose upon him a responsibility effectively to ignore that and embark upon an investigation into matters of which he knew very little at the time is not a reasonable requirement. Even with the wonderful benefit of hindsight, it is certain that his chosen course of action saved more life than it cost. Judged contemporaneously, which is the appropriate mark, his actions were entirely reasonable. A superior cannot be held criminally liable if he chose measures that were reasonable in the circumstances, even if other measures might have been available to him.¹⁸⁵⁵

1108. The commander's action needs to be *adequate* in the circumstances. It is of no consequence that his actions do not lead in fact to prevention of the crimes or punishment of the perpetrators.¹⁸⁵⁶

5. Conclusion

1109. In the submission of the Defence, none of the modes of liability discussed above can be averred as forming the basis of Vinko Pandurevic criminal responsibility under Article 7 of the Statute.

¹⁸⁵⁴ See Part 4 Section 6 and 7

¹⁸⁵⁵ See HADZIHASANOVIC, Appeal Judgment, Para 152-154; HADZIHASANOVIC, Trial Judgment, Para 1052-1055, 1061, 1062; BOSKOSKI, Trial Judgment, Para 529-536 HADZIHASANOVIC, Trial Judgment, Para 1477

¹⁸⁵⁶ See STRUGAR, Trial Judgment, Para 378

PART 6 – COUNTS OF THE INDICTEMENT

1. Statutory crimes

1110. The indictment alleges the commission of three crimes expressly defined in the ICTY statute: genocide (Article 4), crimes against humanity (Article 5) and violations of the laws or customs of war (Article 3).
1111. After discussing the different modes of responsibility relevant to Vinko Pandurevic, the Defence now will examine the conditions pertinent to the participation of the accused in these crimes.

2. Counts 1 and 2: Genocide and Conspiracy to Commit Genocide

2.1. Genocide

1112. Vinko Pandurevic has been indicted with genocide punishable under Article 4 of the Statute. The Prosecution, therefore has to prove, beyond reasonable doubt the existence of two constitutive elements of genocide:

- the *actus reus* of the offence, which consists of one or several of the acts enumerated under Article 4(2);
- the *mens rea* of the offence, which is described as the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

1113. The Prosecution has to prove beyond reasonable doubt that Vinko Pandurevic had this specific intent to destroy all or part of a group defined by nationality, ethnicity, race or religion as such, unless this requirement is satisfied, no act qualifies as genocide.¹⁸⁵⁷ The Prosecution has failed to present any direct evidence of Vinko Pandurevic's genocidal intent.

1114. Genocidal intent may be inferred from the circumstances surrounding the commission of the alleged offences when there is no direct evidence.¹⁸⁵⁸ However, the inference of genocidal intent must be the only reasonable conclusion from the facts presented at the trial and doesn't relieve the Prosecution of its burden of proof beyond reasonable doubt.¹⁸⁵⁹

1115. In this case the Prosecution rely upon the murder of able-bodied Muslim men, the opportunistic killings and the destruction of women and children through separation from

¹⁸⁵⁷ Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, Appeal Judgment, 1 June 2001

¹⁸⁵⁸ Prosecutor v. Radislav Krstic, Case No. IT-98-33-A, Appeal Judgment, 19 April 2004, para 34

¹⁸⁵⁹ Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-T, Trial Judgment, 1 September 2004, para 970

the men and the forcible transfer as the evidence from which such an inference can be drawn.¹⁸⁶⁰ In the Defence submission there is insufficient evidence that Pandurevic participated in or knew of these events for the inference to be drawn in his case.

1116. The Defence further submits that even if the Prosecution did prove his knowledge of or participation in forcible transfer alone or coupled with the separation, murders and mistreatment in the town, that alone would not suffice to demonstrate Pandurevic's intent to destroy a protected group.¹⁸⁶¹

1117. Much has been made in this case of the use of racial pejoratives by various of the accused. However, the Defence rejects the suggestion that such material can form the basis of a finding of genocidal intent. The submission is especially strong in the case of Pandurevic, whose character on his own evidence, is devoid of prejudice.

1118. The Defence agrees that evidence of a plan to commit the offences constitutive of genocide is strong evidence of genocidal intent.¹⁸⁶² However, the Prosecution has failed to prove Pandurevic's participation in that plan or that he shared the intent of its authors.

1119. Two pieces of evidence alone, in the submission of the Defence negate any suggestion of genocidal intent on the part of Pandurevic:

- (1) The sending of the combat reports of 15th, 16th and 18th July. Indeed the Defence submit that even if he had meant he would let the prisoners go, which of course is denied, the Chamber would struggle to find he had the requisite intent ; and
- (2) The letting of the column of the 28th Division pass at Baljkovica

2.2. Conspiracy to commit genocide

1120. As pointed out by the Prosecution, the underlying facts and agreements of the conspiracy to commit genocide are identical to the facts and agreements identified in the Joint Criminal Enterprise.¹⁸⁶³ The difference between the two is that the crime of conspiracy is an inchoate crime and it is punishable even if it fails to lead to its result (that is, even if genocide is not perpetrated).¹⁸⁶⁴

1121. Accordingly, the requisite intent for conspiracy to commit genocide is identical to the specific intent required for JCE 1. Pandurevic's lack of knowledge of the common plans and the lack of shared intent for the common objectives has already been dealt with in the section pertaining to the joint criminal enterprise.

¹⁸⁶⁰ Prosecutor vs Popovic et al., Case IT-05-88, Indictment, 4 August 2006, para 26 to 33

¹⁸⁶¹ Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-A, Appeal Judgment, 9 May 2007, para 123

¹⁸⁶² Prosecutor v. Radislav Krstic, Case No. IT-98-33-A, Appeal Judgment, 19 April 2004, para 225

¹⁸⁶³ Prosecutor vs Popovic et al., Case IT-05-88, indictment, 4 August 2006, para. 34.

¹⁸⁶⁴ Cassese, A., International Criminal Law, Oxford University Press, 2008, p. 229.

2.3.Aiding and abetting genocide

1122. In order to maintain that Pandurevic aided or abetted, in any way, the crime of genocide, the Prosecution has to prove, beyond reasonable doubt that he *intentionally* assisted, morally supported or encouraged the commission of such a crime, while being aware of the specific intent on behalf of one or more perpetrators.¹⁸⁶⁵ Indeed, there is no need for Pandurevic to know about the overall plan for being held responsible as an aider and abettor. Nevertheless, it must be proven that “the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist in the commission of a crime by the perpetrator”.¹⁸⁶⁶ In cases of specific intent crimes such as genocide, it also must be proven that the aider and abettor knew of the principal perpetrator’s *specific* intent.¹⁸⁶⁷

1123. This conclusion has to be the only reasonable inference made on the basis of Pandurevic’s acts and behaviour. Even though Pandurevic found out about some of the executions, his peripheral knowledge of these crimes is far from sufficient to form the basis for his responsibility. In the submission of the Defence, not only have the Prosecution failed to prove that Pandurevic aided and abetted genocide, but it has also failed to contradict the compelling evidence that, in reality, Pandurevic acted in a counterproductive manner in relation to these crimes. Accordingly, a long history of successful negotiations and prisoner exchange, a proven trend to disagree with Mladic’s military priorities, an honest reporting to his superior about prisoners and a risky decision to let the column pass not only negate any real assistance, support or encouragement, but also show that *he never intended to be of any help* in such criminal endeavours.

3. Counts 3, 4 and 6: Extermination, Murder and Persecution as Crimes against Humanity

1124. Counts 3, 4 and 6 all refer to paragraphs 30 and 31 in relation to the alleged murder operation and opportunistic killings. Count 6 (Persecutions) additionally refers to the planning and the circumstances of both the murder and the forcible removal operation (paragraphs 27-29 and 50-71).

3.1.Preliminary matters regarding the applicability of Article 5 (crimes against humanity)

1125. In order to amount to a crime against humanity, the acts of an accused must be part of a widespread or systematic attack directed against any civilian population. This phrase encompasses the following elements:

- (i) there must be an attack;

¹⁸⁶⁵ Prosecutor v. Furundzija, Trial Chamber Judgment, 10 December 1998, para. 246.

¹⁸⁶⁶ Cassese, A., International Criminal Law, Oxford University Press, 2008, p. 216, citing para. 776 from Brima and others, SCSL Trial Chamber.

¹⁸⁶⁷ Prosecutor v. Blagojevic and Jokic, Appeal Chamber Judgment, 9 May 2007, paragraph 107.

- (ii) the attack must be widespread or systematic;
- (iii) the attack must be directed against any civilian population;
- (iv) the acts of the perpetrator must be part of the attack; and

(v) the perpetrator must know that his acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population and know that his acts fit into such a pattern.¹⁸⁶⁸

1126. Accordingly, an offence can amount to a crime against humanity only if it is directed against civilians. It must be proven, that the victims of an offence were indeed civilians.

1127. The Defence acknowledges the fact that a population is considered a civilian population if it is predominantly civilian in nature,¹⁸⁶⁹ and the presence of the combatants within the population at issue does not alter its civilian character.¹⁸⁷⁰ The Appeal Chamber in the Blaskic case noted that if a member of armed forces is not armed during the crime, it doesn't give him the status of a civilian.¹⁸⁷¹ The Appeal Chamber considered furthermore that "in order to determine whether the presence of soldiers within a civilian population deprives the population of its civilian character, the number of soldiers, as well as whether they are on leave must be examined".¹⁸⁷²

1128. Consequently, it must be proven that the persons **targeted** through the alleged crimes were civilians. Accordingly, the Prosecution has to prove, beyond reasonable doubt, that the extermination, murder and persecution was directed against civilians and not other categories. If it cannot be concluded with certainty that the persons targeted were civilians, one has to admit the non-incidence of Article 5 of the Statute and perhaps analyse the applicability of Article 3 (war crimes).

1129. In this case, it is the prosecution's position that the persons targeted for murder were the able bodied men, and nobody else. Given the fact that able-bodied men and combatants were virtually synonymous in Srebrenica and Zepa, it is difficult to see how the prosecution can even begin to prove to the requisite standard that civilians were the targets of the crimes.

¹⁸⁶⁸ Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković, Case No. IT-96-23 & IT-96-23/1-A, Appeal Judgment, 12 June 2002, para. 85.

¹⁸⁶⁹ Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-T, Trial Judgment, 17 January 2007, para 544

¹⁸⁷⁰ Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu, Case No. IT-03-66-T, Trial Judgment, 30 November 2005, para 186; Prosecutor v. Stanislav Galic, Case No. IT-98-29-A, Judgment, 30 November 2006, para 143; Prosecutor v. Tihomir Blaskic, Case No. IT-95-14-A, Appeal Judgment, 29 July 2004, para 113

¹⁸⁷¹ Prosecutor v. Tihomir Blaskic, Case No. IT-95-14-A, Appeal Judgment, 29 July 2004, para 114

¹⁸⁷² Prosecutor v. Tihomir Blaskic, Case No. IT-95-14-A, Appeal Judgment, para 113-115, Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu, Case No. IT-03-66-T, Trial Judgment, 30 November 2005, para 186

3.2.The alleged participation of Vinko Pandurevic in the crime of extermination

1130. Two elements have to be proven by the Prosecution in order to show Pandurevic's responsibility for the crime of extermination :

a) an act or omission that results in the death of persons on a massive scale (actus reus), and

b) the intent to kill persons on a massive scale, or to inflict serious bodily injury or create conditions of life that lead to the death in the reasonable knowledge that such act or omission is likely to cause the death of a large number of persons (mens rea).¹⁸⁷³

1131. Leaving aside the bogus zone of responsibility theory, the Prosecution has failed to prove, beyond reasonable doubt, any relevant act or omission by Pandurevic that would make him responsible for the death of prisoners.¹⁸⁷⁴

1132. Likewise, the Prosecution has failed to prove beyond reasonable doubt any intent on behalf of Vinko Pandurevic to kill prisoners. The Defence repeats the observations as to the relevance of his reporting¹⁸⁷⁵ and action towards the Muslim column in this respect¹⁸⁷⁶.

3.3.The alleged participation of Vinko Pandurevic in the crime of murder

Pandurevic and the murder operation

1133. Pandurevic never participated directly or indirectly in the executions, nor was he present at any of the detention and execution sites. He was absent from the command between the 4th and the 15th and, until the afternoon of the 15th July, Dragan Obrenovic was in command of the Zvornik Brigade.¹⁸⁷⁷ Accordingly, the execution of prisoners at Orahovac and Petkovci was completed during Obrenovic's period of command, and the execution of prisoners from Rocevic was under way.¹⁸⁷⁸

1134. Secondly, the individuals who did take part in the events of 13th to 17th July did so on the basis of orders from officers of superior command and not pursuant to any order or authorization from Pandurevic. Moreover, there is strong evidence to suggest that those carrying out the executions were military units, policemen and paramilitaries without any connection to the Zvornik Brigade.¹⁸⁷⁹

¹⁸⁷³ Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-T, Trial Judgment, 1 September 2004, para 388; Prosecutor v. Mitar Vasiljevic, Case No. IT-98-32-T, Trial Judgment, 29 November 2002, para 229

¹⁸⁷⁴ See section 'JCE I and Superior responsibility'

¹⁸⁷⁵ See section on Baljkovica

¹⁸⁷⁶ See section on "Vbi 15th as an exculpatory document"

¹⁸⁷⁷ See section 'absence of Pandurevic from 4th till 15th July'

¹⁸⁷⁸ See section on Detention sites

¹⁸⁷⁹ See section on Detention sites

Opportunistic killings

1135. As indicated in the JCE 3 part, the Prosecution has failed to prove any involvement of Pandurevic in the alleged opportunistic killings. It has also failed to show that Pandurevic could, in any way, have foreseen the occurrence of such acts.¹⁸⁸⁰
1136. More specifically, Pandurevic never ordered the execution of the prisoners from Milici Hospital, nor did he order them not be registered ; that was Obrenovic's initiative.¹⁸⁸¹ Concerning the killings near Snagovo, no obvious link between the perpetrators of the offence and the VRS, let alone the Zvornik Brigade, has been established.¹⁸⁸² The soldiers allegedly involved in the executions near Nezuk were part of the unit from Krajina. They had been given orders by Obrenovic. Pandurevic received no report of any such incident. The killing of enemy soldiers and the taking of prisoners by the Zvornik Brigade was at that time being recorded in a number of ways and the procedure was governed by Vinko Pandurevic's order to fully respect the procedures to take prisoners.¹⁸⁸³
1137. In the course of these events, Pandurevic never gave orders permitting the use of resources under his control, including personnel, to facilitate the perpetration of a crime and it cannot therefore be considered as an actus reus for aiding and abetting.¹⁸⁸⁴ The specific conditions concerning the responsibility of Pandurevic as a commander have been addressed in Part 5 of this final brief.¹⁸⁸⁵
1138. There is insufficient evidence to show Pandurevic had an intent to kill the prisoners or reasonable knowledge that his acts or omission might lead to death.

3.4.The alleged participation of Vinko Pandurevic in the crime of persecution

1139. The crime of persecutions consists of an act or omission which :
- (i) discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law; and
 - (ii) is carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics.¹⁸⁸⁶
1140. With regard to the required mens rea, persecution as a crime against humanity requires evidence of a specific intent to discriminate on political, racial or religious grounds. This intent may not be inferred directly from the general discriminatory nature of an attack characterised as a crime against humanity ; such a context may not infer and of itself amount to evidence of discriminatory intent. However, discriminatory intent may

¹⁸⁸⁰ See section JCE 3

¹⁸⁸¹ See section 'prisoners from milici hospital'

¹⁸⁸² See section 'executions in snagovo'

¹⁸⁸³ See section 'executions near nezuk'

¹⁸⁸⁴ Prosecutor v. Radislav Krstic, Case No. IT-98-33-A, Appeal Judgment, 19 April 2004, paras. 137, 138, 144.

¹⁸⁸⁵ See section 'superior responsibility'

¹⁸⁸⁶ Prosecutor v. Tihomir Blaskic, Case No. IT-95-14-A, Appeal Judgment, para. 131. See also Prosecutor v. Mitar Vasiljevic, Case No. IT-98-32-A, Judgment, 25 February 2004, para. 113; Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgment, 17 September 2003, para. 185.

be inferred from such a context as long as, in view of the facts of the case, circumstances surrounding the commission of the alleged acts substantiate the existence of such intent. Circumstances which may be taken into consideration include the systematic nature of the crimes committed against a racial or religious group and the general attitude of the alleged perpetrator as demonstrated by his behaviour.¹⁸⁸⁷

1141. Arguments regarding Pandurevic's lack of knowledge of the alleged murder operation have been expressed already. To prove that Vinko Pandurevic had any discriminatory intent, the Prosecution cannot merely rely on the fact that the whole general attack was characterized as discriminatory. Indeed, a discriminatory intent may be inferred from the context in which the conduct of Vinko Pandurevic occurred, but it should not be presumed merely because the attack of which it is alleged to be a part is itself discriminatory.

1142. The Defence submits that no discriminatory intent can be inferred from Pandurevic's behaviour.

- As already discussed,¹⁸⁸⁸ Vinko Pandurevic did not intervene or participate in any way in the organization of the mass or opportunistic killings, nor did units under his command participate in executions.¹⁸⁸⁹
- The Chamber has heard compelling evidence about his treatment of prisoners of war from a number of sources, and the orders he gave in that respect,¹⁸⁹⁰ The evidence has tended to suggest that the actual execution of prisoners was not performed by members of the Zvornik Brigade. Indeed, there is evidence of humane behaviour towards prisoners by Brigade members..¹⁸⁹¹ Pandurevic's personal conduct in combat towards the town of Srebrenica is also highly relevant.¹⁸⁹²

1143. Vinko Pandurevic did not participate, give any order or support in any way the organization of the transfers of population from Srebrenica or Zepa, nor did his units participate under his orders.¹⁸⁹³ His units were not in Potocari.¹⁸⁹⁴ He did not participate in the meetings preparing the evacuation of the population from Srebrenica. What can be inferred from his actions and his behaviour in general is at odds with any discriminatory intent required to establish the offence of persecution. He let the column go despite his fears from any sanction he could risk,¹⁸⁹⁵ asked his soldiers to treat the prisoners fairly¹⁸⁹⁶

¹⁸⁸⁷ Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgment, 17 September 2003, para. 184; Prosecutor v. Tihomir Blaskic, Case No. IT-95-14-A, Appeal Judgment, para. 164; Prosecutor v. Miroslav Kvocka et al., Case No. IT-98-30/1-A, Judgment, 28 February 2005 para 460

¹⁸⁸⁸ See section about murder and detention sites

¹⁸⁸⁹ See Command of the Zvornik brigade during Pandurevic's absence

¹⁸⁹⁰ Section on Vinko Pandurevic's character evidence

¹⁸⁹¹ Section on detention sites

¹⁸⁹² Section on shelling of Srebrenica

¹⁸⁹³ Section on Potocari and the column

¹⁸⁹⁴ Section on Potocari and the column

¹⁸⁹⁵ Section on Baljkovic

¹⁸⁹⁶ Section on Vinko's character evidence

and urged the Drina Corps to deal with exchange of prisoners so that they would not remain too much time in the overcrowded Zvornik Brigade facilities.¹⁸⁹⁷

3.5. Aiding and abetting crimes against humanity

1144. Pandurevic acknowledged during his testimony that he found out about some of the executions upon his return to Zvornik. The Defence agrees that aiding and abetting may occur before, during, or after the commission of the principal crime.¹⁸⁹⁸
1145. Nonetheless, there is no conclusive evidence of any of Pandurevic's acts amounting to practical assistance, moral support or encouragement of those who committed the crimes. He was not present at any of the detention or execution sites when prisoners were there, thus there is no conclusive evidence of any "tacit approval" on his part. The Prosecution alleges that Pandurevic assisted the murders and the forcible movement by „authorizing" or allowing Zvornik Brigade men and material to be used for the detention and execution of these prisoners.¹⁸⁹⁹
1146. It is worth to note that, in Blagojevic and Jokic, the Trial Chamber did not consider that the available evidence was sufficient to establish beyond reasonable doubt that Blagojevic knew about the mass killings and thus, did not convict him of aiding and abetting them.¹⁹⁰⁰ The Appeals Chamber upheld that finding despite the fact that Blagojevic's participation in searching the terrain for armed men from the enclaves and his knowledge of some of the executions showed a much greater involvement of his in those events than can ever be maintained in the case of Pandurevic.
1147. The obligations of Vinko Pandurevic as a commander have been addressed in the section concerning superior responsibility. The Defence submits that there is no conclusive evidence that Pandurevic, as an individual, assisted, encouraged or morally supported any acts amounting to murder, extermination or persecution. Moreover, in cases of specific intent crimes such as persecutions, the Prosecution has to prove, beyond reasonable doubt, that the aider and abettor knew of the principal perpetrator's specific intent.¹⁹⁰¹ Such evidence has not been adduced by the Prosecution.

4. Counts 5: Murder as a war crime

1148. The elements of the offence of murder as a crime against humanity and as a violation of the laws or customs of war are identical, except for the category to which the victim or

¹⁸⁹⁷ Section on sending pows to Batkovci

¹⁸⁹⁸ Prosecutor v. Haradinaj et al., Trial Chamber Judgment, 3 April 2008, paragraph 145; Prosecutor v. *Blagojević and Jokić*, Appeal Chamber Judgment, 9 May 2007, paragraph 127; . Prosecutor v. *Simić et al.* Appeal Chamber Judgment, 28 November 2006, paragraph 85; Prosecutor v. *Blaškić*, Appeal Chamber Judgment, 29 July 2004, paragraph 48.

¹⁸⁹⁹ Prosecution Pre-Trial Brief, paras. 228-232.

¹⁹⁰⁰ Prosecutor v. Blagojevic and Jokic, Trial Chamber Judgment, 17 January 2005, paragraphs 740-744,

¹⁹⁰¹ Prosecutor v. Blagojevic and Jokic, Appeal Chamber Judgment, 9 May 2007, paragraph 107.

targeted person belongs to.¹⁹⁰² Accordingly, the victim has to be someone not taking any active part in the hostilities at the time the offence is committed. This covers, *inter alios*, members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause.¹⁹⁰³ The perpetrator must know or should have known the status of the victims as persons taking no active part in the hostilities.¹⁹⁰⁴ Victims of murder, bodily harm and theft, all placed *hors de combat* by their detention, are clearly protected persons within the meaning of common Article 3.¹⁹⁰⁵

1149. Whereas the Defence admits that the prisoners in the Zvornik and Bratunac area fall in the category described above, it also reiterates the arguments put forward in the paragraphs above regarding the alleged involvement of Pandurevic in the crime of murder.

1150. The arguments made above regarding aiding and abetting murder and extermination are also applicable to the present section.

5. Counts 7 and 8: Forcible transfer and deportation

1151. Legally, Counts 7 and 8 have the same elements, with the exception of the requirement of destination in Count 8, and are dealt with here for convenience sake, as well as the nexus provided by Count 7 itself. The underlying prerequisites have been dealt with above. In addition to that, the prosecution have to prove: absence of justification for the transfers ; an intention on the part of the accused that the group of persons should be transferred, and an intention that the transfer should be permanent rather than merely provisional.¹⁹⁰⁶ Justification for a transfer or deportation can derive from its being motivated by the security of the population or imperative military reasons.¹⁹⁰⁷ A transfer of persons who genuinely want to leave will neither be precluded.¹⁹⁰⁸

5.1. Count 7

1152. The form of Count 7 bears some careful analysis, as it embraces both the removal of the population of Srebrenica (11th -13th July) and the removal of the population of Zepa (25th-28th July).¹⁹⁰⁹ The prosecution case theory is that the two events are inextricably linked through Directive 7.¹⁹¹⁰ All seven accused are indicted jointly in relation to Count

¹⁹⁰² See, e.g., Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgment, 17 September 2003, para. 323; The Prosecutor v. Mladen Naletilic and Vinko Martinovic, Case No. IT-98-34-T, Trial Judgment, 31 March 2003, para. 248

¹⁹⁰³ Common Article 3(1); Čelebići Appeal Judgment, para. 420

¹⁹⁰⁴ Prosecutor v. Sefer Halilovic, Case No. IT-01-48-T, Trial Judgment, 16 November 2005, para. 36.

¹⁹⁰⁵ Prosecutor v. Goran Jelusic, Case No. IT-95-10-A, Appeal Judgment, 5 July 2001, para. 34

¹⁹⁰⁶ The Prosecutor v. Mladen Naletilic and Vinko Martinovic, Case No. IT-98-34-T, Trial Judgment, 31 March 2003., paragraphs 518-522

¹⁹⁰⁷ The Prosecutor v. Mladen Naletilic and Vinko Martinovic, Case No. IT-98-34-T, Trial Judgment, 31 March 2003, paragraph 518

¹⁹⁰⁸ The Prosecutor v. Mladen Naletilic and Vinko Martinovic, Case No. IT-98-34-T, Trial Judgment, 31 March 2003, paragraph 519

¹⁹⁰⁹ Prosecution Pre-Trial Brief para 182

¹⁹¹⁰ Prosecution Pre-Trial Brief paras 169-172

7. No concurrent conspiracy is charged. Evidentially, there is plainly a wide spectrum of involvement and/or participation at each of the locations.

1153. It is only pleaded as a Joint Criminal Enterprise, the purpose of which was the removal of both populations. As identified above the prosecution must identify the point at which the accused joined the JCE.¹⁹¹¹ The mere drafting of Directive 7, is in the defence submission, incapable of amounting to a JCE, as at that point in time, there was simply no enterprise. Admittedly, there may have been a form of conspiracy involving certain persons, but that is not alleged. Curiously, whereas the conspiracy count in relation to genocide is wholly otiose in this indictment, a conspiracy count in relation to forcible transfer would have been quite appropriate, given the way in which the case is put by the prosecution.
1154. The Prosecution has been quite particular in relation to Srebrenica to allege when the actual enterprise began forcibly to transfer the population. Interestingly, it does not allege that the JCE began with the drafting of the combat order Krivaja '95, which presumably, amounts to a concession that the operation did not have as a significant part of its purpose the goal of removing the population. Nor yet does it allege that the JCE began once combat operations were under way. In fact the Prosecution do not allege that the permanent removal of the population was an objective prior to July 11th.
1155. In relation to Zepa, no such particulars are offered as to when the the JCE was formed or as to when any accused joined it. The history of the negotiations and the evacuation have been detailed in the indictment and in the evidence, but no point is identified as to when the forcible transfer of the population of Zepa became part of the wider criminal enterprise. The evacuation of the population of Zepa was moreover a completely different affair to Srebrenica. The town was not taken. The United Nations was involved on the ground throughout at the highest available level. There were prolonged ceasefires and extensive discussions. The (much smaller) population was consulted over several days as to their wishes.
1156. The manifest differences temporally, geographically, and in terms of the personnel involved ought to have been recognized by the inclusion in this indictment of two separate counts of forcible transfer : one for Srebrenica ; one for Zepa, each, almost certainly, involving different accused. The joining of both events in one count is an unnecessary complication, and presents the prosecution with difficulties of proof which it needn't have taken on - for, to achieve a conviction on this count, it has to prove firstly, that there did in act exist a JCE to forcibly transfer the populations of both Srebrenica and Zepa, and secondly that each of these accused participated in that rather than any other enterprise. It is not, with respect, for the Trial Chamber to rewrite the indictment and treat it as if it contained two separate counts of forcible transfer.
1157. The particulars of involvement of the accused Pandurevic in Count 7 allege he commanded forces which took part in the attacks on Srebrenica and Zepa, knowing one of the main objectives was to force the population out of the enclaves¹⁹¹². In relation to

¹⁹¹¹ Prosecutor v. Krajisnik, Appeals Chamber Judgment, 17 March 2009

¹⁹¹² Prosecutor vs Popovic et al., Case IT-05-88, Indictment, 4 August 2006, para 77(a)(i)

Srebrenica, only he is said to have participated in the forcible removal of the population by arranging for the Zvornik Brigade to receive prisoners.¹⁹¹³

1158. Leaving aside for the time being, consideration of the prisoners in Zvornik, the principle action of Pandurevic in support of the forcible transfer centred on his conduct of combat operations.

1159. The combat operation in Srebrenica and Zepa was legal and militarily justifiable.¹⁹¹⁴ The combat objectives were clear and did not involve the taking of the enclave nor any attempt to remove the civilian population.¹⁹¹⁵ Having achieved those objectives on 9th July, Pandurevic and his forces withdrew to a retreated position to allow reserve troops to secure the new positions.¹⁹¹⁶

1160. It is of course correct that Pandurevic commanded a battalion sized unit in the operation to reduce the enclave of Srebrenica.¹⁹¹⁷ However, the commander of the operation was General Krstic, and the force he commanded was the size of a brigade.¹⁹¹⁸ Direction of the operation was the responsibility of the operational combat commander, Krstic. The fact that Pandurevic was in command of a small unit is of scarce relevance. In particular, the evidence now before the Chamber suggests that real care was taken to target known military facilities by Pandurevic's unit.¹⁹¹⁹ It is furthermore, significant that the indictment levels no allegation against Pandurevic that his units shelled the town. The Pre-Trial Brief only makes this accusation against the Bratunac Brigade.¹⁹²⁰ The written and oral orders he received from Krstic were lawful and militarily justifiable and, accordingly, he attracted no responsibility as a commander for the combat action.

1161. More to the point, if the plan permanently to remove the population of Srebrenica did not fully form until 11th July, his actions prior to that can scarcely be said to have been in support of such a plan.

1162. The occupation of Srebrenica itself was a consequence of a decision by the forces of the BiH to quit the town.¹⁹²¹ It is plain that the VRS forces were aware of this from their own radio intelligence.¹⁹²² The forces assembled for Krivaja '95 did not have the capability to take the town in the face of any substantial resistance.¹⁹²³ Srebrenica could have been defended effectively with ease.¹⁹²⁴ As an experienced military commander, those factors alone would have borne heavily on Pandurevic's perception of the objectives of the operation.

1163. Pandurevic's presence and actions in the town itself on 11th July is more eloquent of his commitment to his combat orders than to any wish to see the civilian population

¹⁹¹³ Prosecutor vs Popovic et al., Case IT-05-88, Indictment, 4 August 2006, para 77(b)

¹⁹¹⁴ See Part 4 Section 4.

¹⁹¹⁵ Part 4 Section 4.

¹⁹¹⁶ Idem

¹⁹¹⁷ Part 4 Section 4

¹⁹¹⁸ Idem

¹⁹¹⁹ T.30854, 29 January 2009,

¹⁹²⁰ See Prosecution Pre-Trial Brief paragraph 143

¹⁹²¹ T.29541, 11 December 2008, Milenko JEVDJEVIC

¹⁹²² T.30866-T.30868, 29 January 2009, Vinko PANDUREVIC; T.29541, 11 December 2008, Milenko JEVDJEVIC

¹⁹²³ T.29526, 11 December 2008, Milenko JEVDJEVIC

¹⁹²⁴ T.30866, 29 January 2009, T.30875, 30 January 2009, Vinko PANDUREVIC

removed.¹⁹²⁵ His concerns at that time, as expressed in his own evidence, are diametrically opposed to any such understanding of the purpose of the mission being to that effect, in whole or in part.¹⁹²⁶

1164. Pandurevic was not present in Potocari on 11th or 12th July. There is no evidence suggesting that he had any contemporaneous knowledge of events there. No unit which he commanded as part of operation Krivaja '95 was present, and even if the Chamber accepts the highly questionable evidence that members of the so-called Drina Wolves were in Potocari, those men were under the direct command of the Drina Corps.¹⁹²⁷

1165. Turning briefly to the receipt of prisoners in Zvornik - if, which is strenuously denied, Pandurevic was involved in the arrangements made for the receipt of prisoners in Zvornik, this had little or nothing to do with the plan to evacuate the civilians from Potocari, but rather the other JCE alleged in this indictment, to kill the able bodied men. The fact that Pandurevic was not involved in arranging for the receipt of prisoners is probably best illustrated by the report he wrote on 18th July :

*"It is inconceivable to me that someone brought in 3,000 Turks of military age and placed them in schools..."*¹⁹²⁸

1166. The combat action towards Zepa was legal and militarily justifiable. Disarming the enclave and reducing its size was consistent with the creation of the safe area and the terms agreed. Stupcanica '95 was a lawful combat order, respecting the situation of civilians.¹⁹²⁹ It is plain that an attack on Zepa was not contemplated at all, prior to the capitulation of the muslim forces in Srebrenica. Pandurevic's own evidence was that after the taking of Zivkovo Brdo, he anticipated he would return to Zvornik with his unit.¹⁹³⁰ His evidence as to his understanding of the purpose of the operation is to the effect that the town and its population were of no interest to the VRS, as it was and always had been a muslim town, but that the Zepa brigade had to be disarmed.¹⁹³¹

1167. Despite the unsubstantiated and unsupportable claims made in the Prosecution's Pre-Trial Brief, the evidence discloses that the forces commanded by Pandurevic did no more than close with the enemy in preparation for combat on 14th July.¹⁹³²

1168. Thereafter, no unit of the Zvornik brigade (which would, in any event, have been under the command of the operational commander, Krstic) was present in the area until 31st July.¹⁹³³

1169. The defence of Vinko Pandurevic adopts such submissions of other accused as suit its purposes as to whether in fact and in law the offences of forcible transfer and deportation are made out in relation to events at Zepa. Plainly, there was a wholly different situation there. Zepa was a small hamlet with a few outlying villages. It was isolated after the fall

¹⁹²⁵ T.30879, 30 January 2009, Vinko PANDUREVIC; P02048, Srebrenica Trial Video

¹⁹²⁶ T.30885, 30 January 2009, Vinko PANDUREVIC

¹⁹²⁷ See section 'Potocari and the column'

¹⁹²⁸ P00334, Zvornik Brigade Interim Combat Report 06-222, dated 18 July 1995, paragraph 4

¹⁹²⁹ See section Stupcanica '95

¹⁹³⁰ T.31331-T.31332, 12 February 2009, Vinko PANDUREVIC

¹⁹³¹ T.30915-T.30916, 30, January, 2009, Vinko PANDUREVIC

¹⁹³² See Part 4 Section 13

¹⁹³³ Idem.

of Srebrenica and it required both the presence of a peacekeeping force and continued supply of aid for viability as an enclave. All parties had a voice in fairly protracted negotiations. The muslim negotiators obviously consulted with the army, their government, the UN and most importantly, the population, and they clearly had a mandate to negotiate and reach agreement on their behalf. The evacuation was conducted in a humane fashion, and under UN supervision.

1170. Jurisprudentially, the evacuation of Zepa has an interesting history. Neither General Krstic nor Colonel Blagojevic were indicted for any crime against humanity relating to Zepa. Nor did Richard Butler consider the events prior to the commencement of this trial, notwithstanding the existence of all the relevant source material at the time of the writing of all his prior reports. Moreover, Mirko Trivic appeared as a witness for the Prosecution and was neither deemed worthy of a caution¹⁹³⁴, nor inclusion in the members of the JCE, notwithstanding the fact that his infamous diary disclosed “hands-on” involvement in the evacuation of civilians.¹⁹³⁵

1171. Whilst of course the prosecution is completely at liberty to charge such persons with such offences as it believes are made out, the conviction, in particular of Pandurevic for forcible transfer and deportation in relation to the events at Zepa creates an anomaly in the Tribunal’s jurisprudence and the so-called “historical record”¹⁹³⁶. No further evidence has come to light in relation to the removal of the population of Zepa in the last 8 years or so, accordingly, it is difficult to imagine what makes this a crime now, that didn’t make it one then.

5.2. Count 8

1172. Leaving aside issues of participation, the defence for Pandurevic will make brief submissions about the offence of Deportation charged under Count 8. In the submission of the defence, the preponderance of evidence reveals that virtually all of those who fled to Serbia were members of the armed forces. Their choice of decisions, as such, was to fight, to surrender or to flee. They chose the latter, and in doing so, crossed a state border. According to Pandurevic, they were the focus of the attack.¹⁹³⁷

1173. In the defence submission, the crimes of transfer and deportation are not intended to protect retreating armies, and this count on the indictment must fail, by reason of the fact that the prosecution has failed to prove to the requisite standard that :

- the attack was directed against a civilian population ;
- Pandurevic knew that his acts were directed against a civilian population¹⁹³⁸ and

¹⁹³⁴ T.11746, 18 May 2007, Mirko TRIVIC

¹⁹³⁵ 2D00125, Personal Trivic diary, Page 12

¹⁹³⁶ Prosecutor vs Popovic et al., Case IT-05-88, “*Response to Prosecution's second motion to reopen its case and or admit evidence in rebuttal*”, 14 April 2009

¹⁹³⁷ T.30915-T.30916, 30, January, 2009, Vinko PANDUREVIC

¹⁹³⁸ Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković, Case No. IT-96-23 & IT-96-23/1-A, Judgment, 12 June 2002, para 85

- That the decision of the armed forces to retreat to Serbia was not genuinely voluntary.¹⁹³⁹

1174. The above submissions have substantial force in relation to the alleged forcible transfer of the civilian population from Zepa.

5.3. Aiding and abetting forcible transfer and the Boksanica footage

1175. The Defence submits that the presence of Pandurevic at Boksanica on or about 26th July 1995 is no evidence of his aiding and abetting the evacuation. ICTY jurisprudence has rightly set out the notion that mere presence may only *imply* aiding and abetting when such presence involves substantial encouragement to the crime on account of the authority of the onlooker, with the consequence that the perpetrator draws moral and psychological support or a legitimizing effect from that presence.¹⁹⁴⁰ Accordingly, such a person should be a superior to the perpetrator or have an important status in society or military hierarchy.¹⁹⁴¹
1176. In the context of those present at Boksanica, Pandurevic is a very junior officer. He plays no active role. His presence cannot amount to encouragement, and in fact a detailed examination of the footage reveals that his Nissan vehicle disappears sometime between General Mladic's salutations to the 8th and 9th of 23 coaches. His discourse with Generals Gvero, Krstic and Mladic on that occasion is not merely trivial, it speaks eloquently of his unfamiliarity with events there.
1177. The Defence submits that Pandurevic's presence at Boksanica does not show any or any substantial encouragement or legitimizing effect of the evacuation and, thus, his presence cannot amount to aiding and abetting.

¹⁹³⁹ The Prosecutor v. Mladen Naletilic and Vinko Martinovic, Case No. IT-98-34-T, Trial Judgment, 31 March 2003, para 519

¹⁹⁴⁰ Prosecutor v. Haradinaj et al., Trial Chamber Judgment, 3 April 2008, paragraph 145; Prosecutor v. Brdanin, Appeal Chamber Judgment, 4 April 2007, paragraphs 273, 277; Prosecutor v. Brdanin, Trial Chamber Judgment, 10 December 1998, para. 232; Cassese, A., International Criminal Law, Oxford University Press, 2008, pp. 214-215;

¹⁹⁴¹ Cassese, A., International Criminal Law, Oxford University Press, 2008, pp. 214-215.

PART 7 - CONCLUSION

1178. The events of this indictment have just passed their 14th anniversary. This Chamber has spent three years examining them. Other Chambers have considered them too, and they stand to bear further consideration in the future. There is already a body of consensus about the way in which matters unfolded, the cost in human terms, where responsibility lay, and how culpability ought to be measured in punitive terms.
1179. It would be pleasant to think that the “search for truth” often cited in these proceedings would succeed both in bringing “justice to victims” and perfecting the fabled “historical record.” Sadly, too many compromises may already have been made out of expediency for those twin objectives to be achieved.
1180. For various reasons, those who were most culpable for these events will not ultimately be brought to bear for their actions. In their absence, those for whom this case has been both life and livelihood for years naturally seek to spread the load of the blame. It is only human. Every person available is accused of every matter possible, and the maximum penalty is demanded across the board.
1181. But that is not to serve history or justice. Both now demand that, if any of those before this Chamber are found to be responsible for events in July 1995, their punishment has logic and parity.
1182. One further thing has become clear, namely that not everybody was or could have been complicit in the schemes at the heart of the indictment, and that knowledge cannot be inferred merely from ethnicity or office. That much is plain from the investigations of the Prosecution as much as from the decisions of the Tribunal.
1183. The name of Vinko Pandurevic has resonated through the history of this case, but only this Chamber has heard the evidence against him and perhaps more importantly, for him and from him. At the start of his analysis of the materials in the case, Richard Butler was perturbed by the reports written by Pandurevic on 15th and 18th of July 1995. He sensed in them the seed of innocence.
1184. That seed has grown now, through the evidence in this case, including that of Pandurevic himself, which of course, Butler was never able to consider before coming to his opinions. The case for Pandurevic has branches and leaves, but its roots are in those reports and in the events of 16th of July at Baljkovica.
1185. By reason of his actions there, thousands of people of that generation alone, have a father, a brother, a husband, an uncle or a son. He was not supposed to do that, allow those people to live, and his action stands like a shining beacon in the darkness of this case.
1186. To conclude that the man who did that bears a heavy or central responsibility for acts of mass murder or should in some other way be severely punished would be unfaithful to history and to justice.

