



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No. IT-04-83-T
Date: 15 September 2008
Original: English

IN TRIAL CHAMBER I

Before: Judge Bakone Justice Moloto, Presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: Mr. Hans Holthuis

Judgement of: 15 September 2008

PROSECUTOR

v.

RASIM DELIĆ

PUBLIC

JUDGEMENT

The Office of the Prosecutor:

Mr. Daryl Mundis
Ms. Laurie Sartorio
Mr. Matthias Neuner
Mr. Kyle Wood
Mr. Aditya Menon

Counsel for the Accused:

Ms. Vasvija Vidović
Mr. Nicholas Robson

CONTENTS

I. INTRODUCTION	1
A. THE ACCUSED RASIM DELIĆ	1
B. THE CASE AGAINST RASIM DELIĆ	2
1. Alleged Crimes at Maline/Bikoši (June 1993)	2
2. Alleged Crimes at Livade and Kamenica Camp (July - August 1995)	3
3. Alleged Crimes at Kesten and Kamenica Camp (September 1995)	4
C. GENERAL CONSIDERATIONS REGARDING THE EVALUATION OF EVIDENCE	6
II. APPLICABLE LAW	10
A. GENERAL REQUIREMENTS OF ARTICLE 3 OF THE STATUTE	10
1. The Crimes Must be Linked to the Armed Conflict	10
2. The Four <i>Tadić</i> Conditions	11
3. Status of the Victims	11
B. MURDER	11
C. CRUEL TREATMENT	12
D. SUPERIOR RESPONSIBILITY PURSUANT TO ARTICLE 7(3)	13
1. Introduction	13
2. The Elements of Superior Responsibility	14
(a) Superior-Subordinate Relationship	14
(b) Mental Element: “Knew or Had Reason to Know”	17
(i) Actual Knowledge	17
(ii) “Had Reason to Know”	18
(c) Failure to Prevent or Punish	19
(i) Duty to Prevent	20
(ii) Duty to Punish	21
(iii) Necessary and Reasonable Measures	22
III. GENERAL OVERVIEW	23
A. INTRODUCTION	23
B. THE EMERGENCE OF THE ABiH	23
C. THE CONFLICT IN CENTRAL BOSNIA	24
D. CONCLUSION	26
IV. STRUCTURE AND FUNCTIONING OF THE ARMY OF BOSNIA AND HERZEGOVINA	27
A. INTRODUCTION	27
B. THE PRESIDENCY	27
C. THE ABiH MAIN STAFF	28
1. Introduction	28
2. The Commander of the Main Staff	29
3. Deputy Commanders	30
4. Chief of Staff	31
5. Operations Centre	31
6. Security Administration	32
7. Intelligence Administration	33
D. PRESENCE OF NON-RBiH CITIZENS IN THE RANKS OF THE ABiH	33
E. ABiH UNITS RELEVANT TO THE INDICTMENT	34
1. The 2 nd Corps	34
2. The 3 rd Corps	34
3. The 35 th Division	35

4. The 328 th Mountain Brigade.....	36
5. The 306 th Brigade.....	36
6. The 7 th Muslim Mountain Brigade.....	37
7. The <i>El Mujahed</i> Detachment	37
F. DIFFICULTIES FACED BY THE ABiH	37
(a) Lack of Trained Personnel and Equipment	37
(b) Command and Control	39
(c) Communications.....	40
(d) Influence of Civilian Authorities	41
G. REPORTING.....	41
1. General Principles.....	41
2. Types of Reports Received by the Main Staff	42
(a) Combat Reports.....	42
(b) Security Reports.....	42
3. Information Processing and Incorrect Reporting	43
4. Rasim Delić's Knowledge of Documents.....	44
5. Meetings of Rasim Delić	45
H. MILITARY JUSTICE IN THE ABiH.....	46
V. MUJAHEDIN FORCES.....	49
A. THE TERM "MUJAHEDIN".....	49
B. GROUPS OF MUJAHEDIN IN CENTRAL BOSNIA	49
C. THE " <i>EL MUJAHED</i> " DETACHMENT ("EMD").....	51
1. The Group of Mujahedin at Mehurići Village	51
2. The Establishment of the EMD.....	51
3. Bases	54
4. Members	54
5. Structure and Leadership	56
6. Rules of Conduct.....	58
7. Disbandment	58
VI. MALINE/BIKOŠI: JUNE 1993.....	61
A. MILITARY OPERATIONS IN THE MALINE AREA IN JUNE 1993	61
1. Background	61
2. The Attack on Maline on 8 June 1993	62
B. THE MARCH TO MEHURIĆI AND THE AMBUSH AT POLJANICE	64
C. THE KILLING OF 24 BOSNIAN CROATS AT BIKOŠI	65
D. IDENTITY OF THE PERPETRATORS	66
E. CONCLUSION	67
F. ENQUIRIES INTO THE BIKOŠI KILLINGS	68
1. June 1993	68
2. October 1993.....	69
VII. LIVADE AND KAMENICA CAMP: JULY – AUGUST 1995	72
A. MILITARY OPERATIONS IN THE VOZUĆA POCKET IN JULY 1995	72
B. KILLINGS AND MALTREATMENT IN LIVADE	72
1. Capture and Maltreatment of VRS Soldiers on 21 July 1995.....	72
2. Killings of Momir Mitrović and Predrag Knežević.....	73
3. Capture of Other VRS Soldiers and Maltreatment in Livade	74
4. Conclusion	76
C. KAMENICA CAMP, 23 JULY 1995 – 23 AUGUST 1995	76
1. Kamenica Camp.....	76
2. Transfer of 12 VRS Soldiers to Kamenica Camp.....	77
3. Killing of Gojko Vujičić	77

4. Maltreatment at Kamenica Camp	79
5. Transfer to Zenica <i>KP Dom</i> 24 August 1995.....	81
6. Conclusion	81
D. ENQUIRIES INTO THE LIVADE AND KAMENICA EVENTS.....	82
1. Interviews at Livade by Members of the 35 th Division	82
2. Evidentiary Record at the 3 rd Corps Regarding the VRS Detainees.....	83
3. Evidentiary Record at the Main Staff Regarding the VRS Detainees	84
4. Interviews by the 3 rd Corps at <i>KP Dom</i> Facility in Zenica	85
VIII. KESTEN AND KAMENICA CAMP: SEPTEMBER 1995	86
A. MILITARY OPERATIONS IN THE VOZUĆA POCKET IN SEPTEMBER 1995	86
B. KILLINGS ON THE ROAD TO KESTEN	86
1. Evidence.....	86
2. Identity of the Perpetrators.....	88
3. Conclusion	88
C. THE EVENTS AT THE HALL IN KESTEN.....	89
D. KILLING AND MISTREATMENT OF 52 DETAINEES AT THE KAMENICA CAMP	90
1. Transport to the Kamenica Camp	90
2. Events at the Kamenica Camp	91
3. Evidence of Exhumation and Missing Persons.....	92
4. Conclusion	93
E. KILLING OF NENAD JOVIĆ AND MISTREATMENT OF TEN VRS SOLDIERS AT KAMENICA CAMP	94
1. Evidence.....	94
2. Conclusion	95
F. MISTREATMENT OF THREE BOSNIAN SERB WOMEN (DRW-1, DRW-2 AND DRW-3).....	96
1. Evidence.....	96
2. Conclusion	97
G. ENQUIRIES REGARDING APPROXIMATELY 60 CAPTURED BOSNIAN SERB SOLDIERS AND CIVILIANS.....	98
1. Reports Originating From the Field.....	98
2. Intercepted Fax From the EMD	99
H. ENQUIRIES REGARDING TEN CAPTURED VRS SOLDIERS	100
I. ENQUIRIES REGARDING DRW-1, DRW-2 AND DRW-3	101
IX. INDIVIDUAL CRIMINAL RESPONSIBILITY	102
A. EXISTENCE OF A SUPERIOR-SUBORDINATE RELATIONSHIP	102
1. Maline/Bikoši, June 1993	102
(a) Identity of the Perpetrators	102
(b) Whether the Mujahedin From the Poljanice Camp Were Subordinated to the ABiH	103
(c) Whether “the Mujahedin” Were Subordinated to the ABiH.....	104
(d) The Time of Rasim Delić’s Appointment as Commander of the ABiH Main Staff.....	106
(e) Conclusion.....	106
2. Livade, Kesten and Kamenica Camp, July – September 1995.....	107
(a) Introduction	107
(b) <i>De jure</i> Subordination of the EMD.....	108
(c) Effective Control Over the EMD	110
(i) EMD Compliance with ABiH Orders in General	112
(ii) Participation of the EMD in ABiH Combat Operations and its Compliance With ABiH Combat Orders.....	113
a. EMD Participation in Combat in 1993, 1994 and Early 1995.....	116
b. EMD Participation in Combat in the “Vozuća Pocket” in 1995	118
i. Operations <i>Sabur</i> and <i>Proljeće</i>	118
ii. Operation <i>Proljeće</i> II	119
iii. Operations <i>Farz</i> and <i>Uragan</i>	120

(iii) EMD Compliance With ABiH Procedure Concerning the Handling of Captured Enemies	122
(iv) Access to EMD Premises and Captured Enemies.....	123
(v) Recruitment of Locals by the EMD and Replenishment With ABiH Soldiers.....	124
(vi) Mutual ABiH Assistance Between ABiH and EMD	126
(vii) Procedure of Reporting Followed by the EMD	128
(viii) EMD Relationship With ABiH Units and Soldiers	131
(ix) Relationship Between the EMD and Authorities Outside the ABiH.....	132
i. RBiH Civilian Authorities and Muslim Clergy	133
ii. Foreign Authorities	134
(x) The Ability to Investigate and Punish EMD Members.....	135
(xi) Appointments and Promotions of, and Awards to, EMD Members by the ABiH.....	137
(xii) Disbandment of the EMD	138
3. Conclusion of the Majority	138
B. KNOWLEDGE OR “REASON TO KNOW”	143
1. Livade and Kamenica Camp – July-August 1995	143
(a) Introduction	143
(b) Whether Rasim Delić had Knowledge of the Crimes of July and August 1995.....	144
(c) Whether Rasim Delić had Reason to Know of the Crimes of July-August 1995	145
(i) Was the Information Contained in Bulletin 137 Available to Rasim Delić?.....	145
(ii) Did Rasim Delić Have Sufficiently Alarming Information to Justify Further Enquiry?..	146
a. The Bikoši 1993 Crimes	146
b. The Killing of a Humanitarian Worker in 1994.....	149
c. The Propensity of EMD Members to Commit Crimes	150
(iii) Conclusion	155
2. Kesten and Kamenica - September 1995	156
(a) Whether Rasim Delić had Knowledge of the Crimes in September 1995	156
(b) Whether Rasim Delić had Reason to Know of the Crimes in September 1995.....	157
C. FAILURE TO PREVENT OR PUNISH	160
1. Submissions	161
2. Preliminary Observation	162
3. Failure to Prevent.....	162
4. Failure to Punish	165
5. Conclusion	166
D. MAJORITY’S CONCLUSION AS TO RASIM DELIĆ’S INDIVIDUAL CRIMINAL RESPONSIBILITY	166
X. SENTENCING	167
A. SENTENCING LAW AND PURPOSES.....	167
B. DETERMINATION OF SENTENCE	168
1. Gravity of the Offence	168
2. Aggravating and Mitigating Circumstances	169
(a) Aggravating Circumstances	170
(i) Superior Position of Rasim Delić	170
(ii) Duration of Criminal Conduct	171
(b) Mitigating Circumstances	171
(i) Voluntary Surrender and Provisional Release	171
(ii) Cooperation With the Tribunal	171
(iii) Good Character and Absence of Prior Criminal Record	172
(iv) Personal and Family Circumstances	174
(v) Circumstances Prevailing in Bosnia and Those Particular to Rasim Delić	174
3. Arguments of the Defence Relating to Referral Proceedings.....	174
4. General Practice Regarding the Prison Sentences in the Courts of the Former Yugoslavia.....	175
5. Credit for Time Served in Custody	176
XI. DISPOSITION	177

XII. DISSENTING OPINION OF JUDGE MOLOTO.....	179
A. IMPROVEMENT OF COMMAND AND CONTROL AND EMD’S COMPLIANCE WITH ORDERS	179
B. REPORTING	182
C. LINKS WITH FOREIGN AUTHORITIES	183
D. THE EMD AS AN ASSAULT UNIT	184
E. INVESTIGATIVE AND PUNITIVE MEASURES	186
F. CONCLUSION	187
ANNEX A – GLOSSARY	189
A. LIST OF ABBREVIATIONS, ACRONYMS AND SHORT REFERENCES	189
B. LIST OF CASES	192
1. Tribunal	192
2. Other Decisions	195
ANNEX B – PROCEDURAL BACKGROUND	196
A. PRE-TRIAL PROCEEDINGS	196
1. Surrender and Initial Appearance	196
2. Indictment	196
3. Composition of the Trial Chamber	196
4. Counsel	197
5. Provisional Release	197
6. Preparations for Trial and Request for Referral	197
B. TRIAL PROCEEDINGS	199
1. Overview	199
2. Provisional Release	199
3. Acquittal of Rape Pursuant to Rule 98 <i>bis</i>	200
4. Site Visit	200
5. Hearings Away From the Seat of the Tribunal	200

I. INTRODUCTION

A. The Accused Rasim Delić

1. Rasim Delić, son of Rašid, was born on 4 February 1949 in Čelić, which at the time, was an independent municipality in the Republic of Bosnia and Herzegovina (“RBiH”).¹ Rasim Delić commenced his career as a professional military officer of the Yugoslav People’s Army (“JNA”) on 1 October 1967 at the Military Academy for Land Forces, which he completed on 31 July 1971.² From 1971 to 1985, he served in an artillery division of the JNA in Sarajevo, and from October 1980 to September 1984 as its Commander.³ From September 1984 to August 1985, Rasim Delić was the Chief of Staff and Deputy Commander of a joint artillery regiment.⁴ Between August 1985 and July 1990, with an interruption of about 11 months in 1988/1989 when he attended the Command Staff School, Rasim Delić was the Commander of a joint artillery regiment.⁵ On 22 December 1987, he was promoted to the rank of Lieutenant-Colonel.⁶

2. From 16 July 1990 to 13 April 1992, Rasim Delić was Assistant Chief of the Department for Operational and Training Services in the Command of the JNA 4th Corps in Sarajevo.⁷ He officially requested to leave the JNA on 13 April 1992.⁸

3. Shortly after 13 April 1992, Rasim Delić was appointed Head of the Training and Operations Organ of the Territorial Defence (“TO”) of RBiH.⁹ On 16 April 1992, he was ordered to leave Sarajevo and on 19 April 1992, he arrived in Visoko where he worked with a group of TO officers on the formation of TO units in central Bosnia.¹⁰ Eventually, the Visoko Tactical Group was formed, headed by Rasim Delić.¹¹ By 12 May 1992, he also became a member of the TO Main Staff, and on that date he was officially tasked with organising and commanding armed combat activities in various municipalities in central Bosnia.¹²

4. On 20 May 1992, the TO forces became the Army of the Republic of Bosnia and Herzegovina (“ABiH”).¹³ On 17 October 1992, Sefer Halilović, then the Chief of the ABiH Main

¹ Agreed Facts 1, 2.

² Agreed Facts 3, 4.

³ Agreed Facts 5, 6.

⁴ Agreed Fact 7.

⁵ Agreed Facts 8, 11.

⁶ Agreed Fact 10.

⁷ Agreed Fact 9.

⁸ Agreed Fact 12.

⁹ Agreed Fact 13.

¹⁰ Agreed Fact 14.

¹¹ Agreed Fact 15.

¹² Agreed Fact 16.

¹³ Agreed Fact 17.

Staff (“Main Staff”), appointed Rasim Delić as Acting Head of the Department for Operations Planning and Training within the Main Staff.¹⁴ On 27 April 1993, Sefer Halilović appointed Rasim Delić to be one of four officers representing the ABiH in the joint command of the ABiH and the Croatian Defence Council (“HVO”).¹⁵

5. On 8 June 1993, the RBiH Presidency issued a decision on the restructuring of the ABiH Supreme Command Headquarters to include establishing the post of Commander of the Main Staff.¹⁶ By the same decision, Rasim Delić was appointed Commander of the ABiH Main Staff.¹⁷ On this basis, Rasim Delić became a member of the extended RBiH Presidency.¹⁸

6. Rasim Delić officially retired from active service on 1 September 2000.¹⁹

B. The Case Against Rasim Delić

7. An initial indictment against Rasim Delić was confirmed on 16 February 2005 and unsealed on 23 February 2005.²⁰ Rasim Delić expressed his intention to voluntarily surrender and on 28 February 2005, he was transferred into the custody of the Tribunal.²¹ An amended indictment was issued on 17 March 2005, and again on 14 July 2006 (“Indictment”) which is the operative one in this case.²²

8. The Office of the Prosecutor (“Prosecution”) charges Rasim Delić with four counts of violations of the laws or customs of war pursuant to Article 3 of the Statute of the Tribunal (“Statute”). Pursuant to Article 7(3) of the Statute, Rasim Delić, as a superior, is alleged to incur individual criminal responsibility for having failed to prevent or punish the perpetrators of the violations alleged in the Indictment.

1. Alleged Crimes at Maline/Bikoši (June 1993)

9. The Prosecution alleges that on 8 June 1993, units of the ABiH 3rd Corps, including the 306th Mountain Brigade, 7th Muslim Mountain Brigade and foreign Muslim fighters who referred to themselves as “Mujahedin” launched an attack on the village of Maline in Travnik Municipality and

¹⁴ Agreed Fact 17.

¹⁵ Agreed Fact 18.

¹⁶ Agreed Fact 21.

¹⁷ Agreed Fact 22.

¹⁸ Agreed Fact 23. *See* para. 94 *infra*.

¹⁹ Agreed Fact 20.

²⁰ Initial Indictment, 16 February 2005; Decision on Review of Indictment and Order for Non-Disclosure, 16 February 2005.

²¹ Order for Detention on Remand, 2 March 2005.

²² *See* Annex B, Procedural Background, for details of the indictment and its amendments.

captured more than 200 Bosnian Croat civilians and HVO soldiers.²³ It is alleged that on the march to the nearby village of Mehurići, a group of approximately ten Mujahedin and local Bosnian Muslim soldiers approached from the direction of Mehurići, and ordered the column to stop. They then removed approximately 35–40 Bosnian Croats and surrendered HVO soldiers from the group of captives and ordered them to walk back to Maline.²⁴ After being joined with a smaller group of captives that had also been captured in Maline, the combined group was taken to the village of Bikoši where they were ordered to form a line.²⁵ According to the Indictment, the Mujahedin then indiscriminately opened fire on the group and executed some of the survivors by shooting them in the head, resulting in the death of at least 24 individuals.²⁶ At least six people survived with serious gunshot wounds.²⁷

10. The Prosecution contends that all units participating in the attack on Maline on 8 June 1993, including the Mujahedin, were under the command and effective control of Rasim Delić.²⁸ It is alleged that Rasim Delić was put on notice of the murders and woundings in Bikoši but nevertheless failed to take the necessary and reasonable measures to punish the perpetrators.²⁹

2. Alleged Crimes at Livade and Kamenica Camp (July - August 1995)

11. The Prosecution alleges that in the early hours of 21 July 1995, the “El Mujahed” Detachment of the ABiH 3rd Corps, which was comprised of foreign volunteers, launched an attack in Krčevine in the municipality of Zavidovići.³⁰ Soldiers of the Army of the Republika Srpska (“VRS”) were captured and taken to Livade village, where two of them, Momir Mitrović and Predrag Knežević, were allegedly killed and decapitated by ABiH soldiers.³¹ In Livade, VRS prisoners are said to have been subjected to daily beatings before being taken to a camp in the Gostović valley, in the vicinity of Zavidovići (“Kamenica Camp”) on 23 July 1995.³²

12. It is alleged that in the Kamenica Camp, which was operated by ABiH soldiers from the “*El Mujahed*” Detachment, the VRS prisoners were subjected to various forms of maltreatment.³³ On 24 July 1995, one of the prisoners, Gojko Vujičić, was allegedly decapitated and the other prisoners

²³ Indictment, paras 12, 24.

²⁴ Indictment, para. 24.

²⁵ Indictment, para. 25.

²⁶ Indictment, para. 25; Annex B to the Indictment.

²⁷ Indictment, para. 26.

²⁸ Indictment, paras 17, 24. *See also* Decision on Prosecution Notice of Compliance With Court Order, 6 July 2007.

²⁹ Indictment, para. 27.

³⁰ Indictment, paras 14, 33.

³¹ Indictment, para. 33.

³² Indictment, para. 33.

³³ Indictment, paras 34, 36.

were forced to kiss the severed head.³⁴ On 24 August 1995, the VRS prisoners were transferred to the *KP Dom* prison in Zenica.³⁵

13. The Prosecution contends that Rasim Delić was put on notice that ABiH soldiers from the “*El Mujahed*” Detachment were operating the Kamenica Camp and that they had a propensity to commit crimes, in particular against captured enemy soldiers and civilians. It alleges that Rasim Delić knew or had reason to know of the crimes that were about to be or had been committed but nevertheless failed to take the necessary and reasonable measures to prevent and punish the perpetrators of these crimes.³⁶

3. Alleged Crimes at Kesten and Kamenica Camp (September 1995)

14. The Prosecution alleges that on 11 September 1995, after the fall of Vozuća to the ABiH, units of the ABiH 328th Mountain Brigade captured approximately 60 individuals, primarily VRS soldiers and a few civilians, including three females, who were then briefly detained in a hall in the nearby village of Kesten.³⁷ It is alleged that ABiH soldiers of the “*El Mujahed*” Detachment killed two of the captured soldiers, Zivinko Todorović and Milenko Stanić, on the road near Kesten, and took away four others.³⁸ On 11 September 1995, the remaining captives were delivered to the Kamenica Camp, where it is alleged that they were subjected to various forms of maltreatment by members of the “*El Mujahed*” Detachment.³⁹ According to the Indictment, 52 VRS soldiers are missing and presumed dead; it is alleged that members of the “*El Mujahed*” Detachment killed all but three or four of these soldiers in or around the Kamenica Camp in September 1995.⁴⁰

15. The Prosecution further alleges that on or about 17 September 1995, a group of ten VRS soldiers who had surrendered to the ABiH in the Vozuća area were brought to the Kamenica Camp. While detained, it is alleged, the detainees were beaten, electrically shocked with wires attached to a car battery, stomped on and hit with shovels, pieces of iron and police batons by members of the “*El Mujahed*” Detachment. On 29 September 1995, the detainees were then transferred to a prison in Zenica by the military police of the ABiH 3rd Corps.⁴¹

16. According to the Indictment, a few days subsequent to 17 September 1995, an elderly Bosnian Serb prisoner, Nenad Jović, was brought into the Kamenica Camp where he was beaten,

³⁴ Indictment, para. 35.

³⁵ Indictment, para. 37.

³⁶ Indictment, para. 38.

³⁷ Indictment, paras 39, 40.

³⁸ Indictment, para. 40.

³⁹ Indictment, paras 40, 41.

⁴⁰ Indictment, paras 40, 41, 44, 46; Annex C to the Indictment.

⁴¹ Indictment, paras 42, 43, 46; Annex D to the Indictment.

stripped of his clothes and given water mixed with petrol to drink. It is alleged that he died after a few days.⁴²

17. The Prosecution contends that Rasim Delić was put on notice that ABiH soldiers from the “*El Mujahed*” Detachment were operating the Kamenica Camp and that they had a propensity to commit crimes, in particular against captured enemy soldiers and civilians. It alleges that Rasim Delić knew or had reason to know of the crimes that were about to be or had been committed but nevertheless failed to take the necessary and reasonable measures to prevent and punish the perpetrators of these crimes.⁴³

18. Thus, in relation to crimes allegedly committed at Maline/Bikoši in June 1993, as well as in Livade, Kesten and the Kamenica Camp between July and September 1995, Rasim Delić is charged with individual criminal responsibility under Article 7(3) of the Statute for murder (Count 1) and cruel treatment (Count 2) as violations of the laws or customs of war pursuant to Article 3 of the Statute.

19. Furthermore, the Prosecution also alleges that on 11 September 1995, three women who had been captured during the attack on Vozuća were taken to the Kamenica Camp where they were beaten and kicked, hit with metal sticks and rifle butts, raped and subjected to sexual assaults.⁴⁴ According to the Indictment, on 13 September 1995, the women were transferred to a location near Zenica and eventually, the military police of the ABiH 3rd Corps transferred them to the *KP Dom* prison in Zenica from where they were released on 15 November 1995.⁴⁵

20. The Prosecution contends that Rasim Delić was put on notice that ABiH soldiers from the “*El Mujahed*” Detachment were operating the Kamenica Camp and that they had a propensity to commit crimes, in particular against captured enemy soldiers and civilians. It alleges that Rasim Delić knew or had reason to know of the crimes that were about to be or had been committed but nevertheless failed to take the necessary and reasonable measures to prevent and punish the perpetrators of these crimes.⁴⁶ For these events, Rasim Delić is charged separately with individual criminal responsibility under Article 7(3) of the Statute for rape (Count 3) and cruel treatment (Count 4) as violations of the laws or customs of war pursuant to Article 3 of the Statute.

⁴² Indictment, para. 45.

⁴³ Indictment, para. 47.

⁴⁴ Indictment, para. 48.

⁴⁵ Indictment, para. 49.

⁴⁶ Indictment, para. 50.

21. In its Judgement of Acquittal of 26 February 2008, the Trial Chamber held that Rasim Delić had no case to answer in respect of rape (Count 3) as a violation of the laws or customs of war.⁴⁷ In relation to the events involving the three women, Rasim Delić remains only charged with individual criminal responsibility under Article 7(3) of the Statute for cruel treatment (Count 4) as a violation of the laws or customs of war pursuant to Article 3 of the Statute.⁴⁸

C. General Considerations Regarding the Evaluation of Evidence

22. *General Principles.* The Trial Chamber has assessed the evidence in this case in light of the entire trial record, in accordance with the Tribunal's Statute and its Rules of Procedure and Evidence ("Rules"). The Trial Chamber emphasises that it has duly considered and given appropriate weight to *all* the evidence adduced at trial, even if not expressly referred to in this Judgement.⁴⁹

23. *Burden and Standard of Proof.* Rasim Delić is presumed innocent until proven guilty, as enshrined in Article 21(3) of the Statute. It follows that the Prosecution bears the burden of proof for the guilt of Rasim Delić and must establish each and every element of the offences charged against him beyond reasonable doubt.⁵⁰

24. In determining whether the Prosecution has done so, the Trial Chamber has resolved any reasonable doubt in favour of Rasim Delić, in accordance with the principle of *in dubio pro reo*.

25. *Silence of the Accused.* Article 21(4)(g) of the Statute provides that no accused shall be compelled to testify against himself. In the present case, Rasim Delić exercised his right to remain silent. No adverse inference has been drawn from his choice not to testify.

26. *The "Guidelines" on the Admission of Evidence.* At the outset of the trial, the Trial Chamber adopted a decision regulating the conduct of counsel in court and governing the presentation and standard of admission of evidence at trial.⁵¹ These "Guidelines" were amended on one occasion.⁵² The Trial Chamber underlines that the mere admission of evidence in the course of the trial has no bearing on the weight subsequently attached to it.

⁴⁷ 98 *bis* Motion Hearing, T. 6890-6893.

⁴⁸ Indictment, paras 47, 50.

⁴⁹ See *Prosecutor v. Radoslav Brdanin*, IT-99-36-A, Judgement, 3 April 2007, para. 11.

⁵⁰ Rule 87(A); *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-T, Judgement, 30 November 2005 ("*Limaj et al.* Trial Judgement"), para. 10. The fact that the Defence has not challenged certain factual allegations contained in the Indictment does not mean that the Trial Chamber has accepted these facts to be proven.

⁵¹ Decision Adopting Guidelines on the Admission and Presentation of Evidence and Conduct of Counsel in Court, 24 July 2007 ("Guidelines").

⁵² Addendum to Decision Adopting Guidelines on the Admission and Presentation of Evidence and Conduct of Counsel in Court, 22 October 2007.

27. *Hearsay Evidence.* Rule 89(C) of the Rules states that “[a] Chamber may admit any relevant evidence which it deems to have probative value.” The Trial Chamber has admitted hearsay evidence⁵³ but carefully considered all indicia of its reliability, including whether the evidence was “voluntary, truthful and trustworthy”, and has considered its content and the circumstances under which the evidence arose.⁵⁴ In this respect, the Trial Chamber took into account that its source is not the subject of a solemn declaration or tested by cross-examination, and that its reliability may be affected by a potential compounding of errors of perception and memory.⁵⁵

28. *Circumstantial Evidence.* The Prosecution submits that the present case is “primarily a circumstantial case”.⁵⁶ The jurisprudence of this Tribunal holds that

[a] circumstantial case consists of evidence of a number of different circumstances which, taken in combination, point to the guilt of the accused person [...] Such a conclusion must be established beyond reasonable doubt. It is not sufficient that it is a reasonable conclusion available from that evidence. It must be the *only* reasonable conclusion available. If there is another conclusion which is also reasonably open from that evidence, and which is consistent with the innocence of the accused, he must be acquitted.⁵⁷

29. *Matters of Interpretation and Transcription.* On a number of instances, the Tribunal’s Conference Language Service Section has been asked by the Prosecution, counsel for Rasim Delić (“Defence”) (collectively: “Parties”) or the Judges to verify the accuracy of interpretation given in court or the translation of a document.⁵⁸ The Trial Chamber has also taken into account that, as a result of interpretation and transcription, names given by witnesses of locations or individuals which are similar, but not identical, may refer to the same place or person.

30. *Credibility of Witnesses.* In evaluating the evidence given *viva voce*, the Trial Chamber has considered the demeanour and conduct of the witness on the stand and the individual’s circumstances, including any protective measures granted. The Trial Chamber recognises that a significant period of time has elapsed between the events described in the Indictment and the testimony given in court. Therefore, the lack of precision and minor discrepancies between the

⁵³ Hearsay evidence is evidence of facts not within the testifying witness’ own knowledge, see *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-T, Judgement, 16 November 2005 (“*Halilović* Trial Judgement”), para. 15.

⁵⁴ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Decision on Defence Motion on Hearsay, 5 Aug 1996, para. 16.

⁵⁵ *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T, Judgement, 15 March 2002 (“*Krnojelac* Trial Judgement”), para. 70.

⁵⁶ T. 871. See also T. 243, 2697, 8820.

⁵⁷ *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, Judgement, 20 February 2001 (“*Čelebići* Appeal Judgement”), para. 458; *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-A, Judgement, 22 April 2008 (“*Hadžihasanović* Appeal Judgement”), para. 286 (emphasis in the original).

⁵⁸ See, e.g., T. 3500, 8406.

evidence of different witnesses, or between the evidence given in court and a prior statement, do not necessarily discredit their testimony.⁵⁹

31. A number of “victim witnesses” gave evidence on events that must have been extremely traumatic. When evaluating their evidence, the Trial Chamber has taken into account that the observations of these witnesses may have been affected by stress and fear.⁶⁰

32. The Prosecution submits that the Trial Chamber should exercise “extreme caution” when considering the testimony of witnesses who are former members of the ABiH. It contends that their versions of the events, and in particular the involvement of the “El-Mujahed Detachment” in the crimes alleged in this case, might represent “a form of historical revisionism” as these witnesses would have a motive to deny anything that might call into question the “sincerity of the [ABiH’s] goal of maintaining a secular and multi-ethnic Bosnia”.⁶¹ The Defence responds that the Prosecution’s allegations are vague, unsubstantiated and impermissibly selective. Moreover, it contends that the Prosecution has not sought to discredit its own witnesses who were ABiH members, and therefore, the Prosecution cannot now be heard to say such witnesses may not be believed or that their evidence be treated with caution.⁶² The Trial Chamber has taken these views into account when assessing the credibility of both Prosecution and Defence witnesses.

33. *Corroboration.* In some instances, only one witness has given evidence regarding a particular event in issue. In this regard, the Trial Chamber has taken into consideration that, according to the Appeals Chamber’s jurisprudence, the testimony of a single witness on a material fact does not, as a matter of law, require corroboration.⁶³

34. *Documentary Evidence.* In its Final Brief, the Defence objected to the authenticity of a number of documents admitted as exhibits in this case.⁶⁴ As regards the authenticity of documentary evidence, the Trial Chamber considered the source of the evidence and its chain of custody, to the extent known. When the Trial Chamber was satisfied of the authenticity of a particular document, it did not automatically accept the statements contained therein to be an accurate portrayal of the

⁵⁹ *Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-A, Judgement, 23 October 2001 (“*Kupreškić et al.* Appeal Judgement”), para. 31; *Čelebići* Appeal Judgement, paras 496-498.

⁶⁰ In paras 593 and 610 of the Defence Closing Brief, 13 June 2008 (public redacted version) (“Defence Final Brief”), the Defence submits that the testimony of “victim witnesses” DRW-3, PW-7 and PW-12 should not be relied upon. However, the Trial Chamber does not consider that the stress and fear experienced by these witnesses categorically undermine their reliability.

⁶¹ Prosecution’s Final Trial Brief, 13 June 2008 (public redacted version) (“Prosecution Final Brief”), paras 13-15.

⁶² Defence Closing Argument, T. 8873-8876.

⁶³ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999, para. 65; *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 March 2000 (“*Aleksovski* Appeal Judgement”), para. 62.

⁶⁴ Defence Final Brief, e.g., paras 77, 79, 311, 509, 868, 924, 959, 1109.

facts.⁶⁵ Rather, the Trial Chamber evaluated all evidence within the context of the trial record. The Trial Chamber also took into account objections raised on grounds of authenticity and reliability.⁶⁶

35. The Defence did not submit English translations of exhibits 566 and 569, which were tendered on 9 October 2007 in Bosnian/Croatian/Serbian (“B/C/S”) only.⁶⁷ Consequently, the Trial Chamber has disregarded these exhibits for the purposes of this Judgement.

36. *Written Statements.* The Trial Chamber has admitted into evidence a number of written witness statements and transcripts from prior proceedings in conformity with Rules 92 *bis*, 92 *ter* and 92 *quater* of the Rules. As regards evidence in statements and transcripts admitted without cross-examination, the Trial Chamber recalls that “the evidence which the statement contains may lead to a conviction only if there is other evidence which corroborates the statement”.⁶⁸ Such “other evidence” may include other witnesses’ testimony or documentary evidence, including video evidence.⁶⁹

37. *Agreed Facts.* The Trial Chamber has given appropriate weight to 163 facts agreed upon between the Parties which were admitted into evidence on 9 July 2007.⁷⁰ These agreed facts were subjected, as all other evidence, “to the tests of relevance, probative value and reliability”, according to Rule 89 of the Rules.⁷¹

⁶⁵ Guidelines, para. 27.

⁶⁶ Guidelines, paras 27-30.

⁶⁷ See T. 3825, 3830, respectively, for the admission of these exhibits. Attempts were made in June 2008 by the Registry Court Officer and Chambers Legal Officer to obtain from the Defence the English translations for the two exhibits, albeit to no avail.

⁶⁸ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal concerning Rule 92 *bis* (C), 7 June 2002, fn. 34.

⁶⁹ *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, Judgement, 17 January 2005 (“*Blagojević and Jokić* Trial Judgement”), para. 26; *Halilović* Trial Judgement, para. 19.

⁷⁰ Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Joint Motion Concerning Agreed Facts, 9 July 2007.

⁷¹ *Halilović* Trial Judgement, para. 20; *Blagojević and Jokić* Trial Judgement, para. 28.

II. APPLICABLE LAW

A. General Requirements of Article 3 of the Statute

38. Rasim Delić is charged with the following crimes as violations of the laws or customs of war punishable under Article 3 of the Statute: murder and cruel treatment. The jurisprudence of the Tribunal denotes Article 3 of the Statute as an “umbrella rule” extending to all violations of international humanitarian law not covered by Articles 2, 4 or 5 of the Statute.⁷²

1. The Crimes Must be Linked to the Armed Conflict

39. The application of Article 3 of the Statute requires that an armed conflict existed at the time material to the indictment, and that the alleged crimes were linked therewith.⁷³

40. An armed conflict exists “whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised groups or between such groups within a State.”⁷⁴ Until a general conclusion of peace or a peaceful settlement is reached, international humanitarian law continues to apply “in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there”.⁷⁵ It is immaterial whether the armed conflict was international or non-international in nature.⁷⁶

41. When the alleged crime did not occur at a time and place in which fighting was actually taking place, it is sufficient “that the alleged crimes were closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict.”⁷⁷ However, the armed conflict must have played a substantial part in the perpetrator’s ability and his decision to commit the crimes, and the manner and purpose of their commitment.⁷⁸

⁷² *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998, para. 133; *Prosecutor v. Duško Tadić*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 (“*Tadić* Jurisdiction Decision”), para. 89; re-affirmed in *Čelebići* Appeal Judgement, paras 133-136.

⁷³ *Tadić* Jurisdiction Decision, paras 67-70.

⁷⁴ *Tadić* Jurisdiction Decision, para. 70; see also *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Judgement, 17 December 2004 (“*Kordić and Čerkez* Appeal Judgement”), para. 341.

⁷⁵ *Tadić* Jurisdiction Decision, para. 70; see also *Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23-A & IT-96-23/1-A, Judgement, 12 June 2002, (“*Kunarac et al.* Appeal Judgement”) paras 57, 64.

⁷⁶ *Tadić* Jurisdiction Decision, paras 65, 67, 137; *Čelebići* Appeal Judgement, paras 150, 420; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006 (“*Galić* Appeal Judgement”), para. 120.

⁷⁷ *Kunarac et al.* Appeal Judgement, para. 57.

⁷⁸ *Kunarac et al.* Appeal Judgement, para. 58.

2. The Four *Tadić* Conditions

42. For an offence to be justiciable before the Tribunal under Article 3 of the Statute, four requirements, commonly referred to as the “*Tadić* conditions”, must be satisfied:

- (i) The violation must constitute an infringement of a rule of international humanitarian law;
- (ii) The rule must be customary in nature, or, if it belongs to treaty law, the required conditions must be met;
- (iii) The violation must be “serious”, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim; and
- (iv) The violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.⁷⁹

43. Murder and cruel treatment are proscribed by Article 3(1)(a) common to the four Geneva Conventions of 12 August 1949 (“Common Article 3”).⁸⁰ It is settled in the jurisprudence of the Tribunal that Article 3 of the Statute encompasses violations of Common Article 3.⁸¹ The Appeals Chamber has held that serious violations of Common Article 3 would at once satisfy all four *Tadić* conditions.⁸²

3. Status of the Victims

44. Violations of Common Article 3 must have been committed against “persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause”.⁸³ The perpetrator must have or should have been aware of this fact.⁸⁴ Thus, the specific situation of victims at the time when the crime was committed is determinative of their protection under Common Article 3.⁸⁵

B. Murder

45. Under Count 1, Rasim Delić is charged with murder as a violation of the laws or customs of war pursuant to Article 3 of the Statute.

⁷⁹ *Tadić* Jurisdiction Decision, para. 94; *see also Kunarac et al.* Appeal Judgement, para. 66.

⁸⁰ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949 (“Geneva Convention I”); Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, 12 August 1949 (“Geneva Convention II”); Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949 (“Geneva Convention III”); Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (“Geneva Convention IV”).

⁸¹ *Tadić* Jurisdiction Decision, paras 87, 89; *Čelebići* Appeal Judgement, para. 136; *Krnjelac* Trial Judgement, para. 52.

⁸² *Kunarac et al.* Appeal Judgement, para. 68, referring *inter alia* to *Tadić* Jurisdiction Decision, paras 98, 134.

⁸³ Geneva Conventions, Common Article 3; *see also Čelebići* Appeal Judgement, para. 420.

⁸⁴ *Halilović* Trial Judgement, para. 36; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Judgement, 27 September 2006, para. 847.

⁸⁵ *Halilović* Trial Judgement, para. 34.

46. In addition to the above-mentioned general requirements of Article 3 of the Statute, the elements of the crime of murder are the following:

- a. The victim died as a result of an act or omission of the perpetrator;
- b. The act or omission was committed with intent to kill, or to cause serious bodily harm, which the perpetrator should reasonably have known might lead to death.⁸⁶

47. Proof of the death of the victim does not necessarily require recovery of the body. The death may be established by circumstantial evidence, provided it is the only reasonable inference that can be drawn from the evidence.⁸⁷

48. The *mens rea* for murder includes both direct and an indirect intent. Direct intent is a state of mind in which the perpetrator desired the death of a victim to be the result of his act or omission, whereas indirect intent comprises knowledge that the death of a victim was a “probable” or “likely” consequence of such act or omission. Negligence and gross negligence do not form part of indirect intent.⁸⁸

C. Cruel Treatment

49. Under Counts 2 and 4, Rasim Delić is charged with cruel treatment as a violation of the laws or customs of war pursuant to Article 3 of the Statute.

50. In addition to the general requirements of Article 3 of the Statute,⁸⁹ the elements of the crime of cruel treatment are the following:

⁸⁶ See *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Judgement, 28 February 2005 (“*Kvočka et al.* Appeal Judgement”), para. 261; *Kordić and Čerkez* Appeal Judgement, para. 37; *Čelebići* Appeal Judgement, para. 423. See also *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13/1-T, Judgement, 27 September 2007, para. 486; *Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Judgement, 12 June 2007 (“*Martić* Trial Judgement”), para. 58; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Judgement and Opinion, 5 December 2003, para. 150.

⁸⁷ *Kvočka et al.* Appeal Judgement, para. 260. See also *Martić* Trial Judgement, para. 59; *Prosecutor v. Radoslav Brdanin*, IT-99-36-T, Judgement, 1 September 2004 (“*Brdanin* Trial Judgement”), paras 383-385. Relevant factors to be considered include, *inter alia*, proof of incidents of mistreatment directed against the victim, patterns of mistreatment and disappearances of other victims, the coincident or near-coincident time of death of other victims, the fact that the victims were present in an area where an armed attack was carried out, when, where and the circumstances in which the victim was last seen, behaviour of soldiers in the vicinity, as well as towards other civilians, at the relevant time, and lack of contact by the victim with others whom he/she would have been expected to contact, such as his/her family, *Martić* Trial Judgement, para. 59, fn. 112; *Halilović* Trial Judgement, para. 37. See also *Knojelac* Trial Judgement, para. 327.

⁸⁸ *Martić* Trial Judgement, para. 60; *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, Judgement, 31 January 2005 (“*Strugar* Trial Judgement”) paras 235-236; *Limaj et al.* Trial Judgement, para. 241. See also *Prosecutor v. Naser Orić*, Case No. IT-03-68-T, Judgement, 30 June 2006 (“*Orić* Trial Judgement”), para. 348; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Judgement, 31 July 2003 (“*Stakić* Trial Judgement”), para. 587; *Brdanin* Trial Judgement, para. 386.

⁸⁹ See paras 39-44 *supra*.

- a. An act or omission of the perpetrator causing serious mental or physical suffering or injury or constituting a serious attack on human dignity;
- b. The act or omission was committed intentionally.⁹⁰

51. When assessing the seriousness of the relevant act or omission, the Trial Chamber will take into consideration, *inter alia*, the age and health of the victim, duration of the act or omission and the physical and mental effects of the crime upon the victim.⁹¹

52. The *mens rea* for cruel treatment includes both direct and indirect intent as set out above.⁹²

D. Superior Responsibility Pursuant to Article 7(3)

1. Introduction

53. It is well established in customary international law, and in the jurisprudence of this Tribunal⁹³ that superiors, both civilian and military, may be held responsible for their failure to prevent or punish the acts of their subordinates.⁹⁴ Article 7(3) of the Statute, which enshrines this rule, is applicable to all acts referred to in Articles 2 to 5 of the Statute and applies to both international and non-international armed conflicts.⁹⁵

54. Superior responsibility may be applied to every superior at every level. This also includes responsibility, for example, for military troops who have been temporarily assigned to a military commander,⁹⁶ if the troops were under the effective control of that commander at the time when the acts charged in the indictment were committed.⁹⁷

55. With regard to the nature of command responsibility in international law, this Trial Chamber concurs with the *Halilović* Trial Chamber, which, having examined in detail the development of

⁹⁰ *Čelebići* Appeal Judgement, para. 424. See also *Martić* Trial Judgement, para. 79; *Limaj et al.* Trial Judgement, para. 231.

⁹¹ See *Martić* Trial Judgement, para. 80; *Prosecutor v. Blagoje Simić et al.*, Case No. IT-95-9-T, Judgement, 17 October 2003, para. 75; *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-T, Judgement, 29 November 2002, para. 235; *Krnjelac* Trial Judgement, para. 131; *Orić* Trial Judgement, para. 352.

⁹² See para. 48 *supra*.

⁹³ See, e.g., *Čelebići* Appeal Judgement para. 195. See also Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, edited by Yves Sandoz, Christophe Swinarski and Bruno Zimmermann, ICRC, Geneva 1987 ("ICRC Commentary on the Additional Protocols"), which states that "responsibility for a breach consisting of a failure to act can only be established if the person failed to act when he had a duty to do so", p. 1010, para. 3537.

⁹⁴ *Čelebići* Appeal Judgement, paras 195-196, 240; *Aleksovski* Appeal Judgement, para. 76.

⁹⁵ See, e.g., *Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003, para. 31.

⁹⁶ *Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23-T & IT-96-23/1-T, Judgement, 22 February 2001 ("*Kunarac et al.* Trial Judgement"), para. 399. The temporary nature of a military unit is not, in itself, sufficient to exclude a relationship of subordination, *ibid.*

⁹⁷ *Kunarac et al.* Trial Judgement para. 399, citing *Čelebići* Appeal Judgement paras 197-198, 256.

command responsibility with a view to determining its nature, held that “command responsibility is responsibility for [the] omission” to prevent or punish crimes committed by subordinates,⁹⁸ and that the gravity to be attached to the superior’s omission is to be considered in proportion to the gravity of the crime committed by the subordinate.⁹⁹

2. The Elements of Superior Responsibility

56. To hold a superior responsible under Article 7(3) of the Statute, the jurisprudence of the Tribunal has established that three elements must be satisfied:

- i. The existence of a superior-subordinate relationship;
- ii. the superior knew or had reason to know that the criminal act was about to be or had been committed; and
- iii. the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator thereof.¹⁰⁰

It may be noted as a preliminary point, that the term “committed” in Article 7(3) encompasses other forms of criminal conduct by subordinates, that is, all other modes of participation listed in Article 7(1) of the Statute.¹⁰¹ Furthermore, the superior does not necessarily need to know the exact identity of his subordinates who commit crimes in order to incur liability under Article 7(3) of the Statute.¹⁰²

(a) Superior-Subordinate Relationship

57. The superior’s position of command over the perpetrator forms the legal basis for the superior’s duty to act to prevent or punish the crimes of their subordinates and for the corollary liability in the event of a failure to do so.¹⁰³

58. The existence of a superior-subordinate relationship depends on two factors: i) the perpetrators were subordinates of the accused at the time of the commission of the crimes, that is

⁹⁸ *Halilović* Trial Judgement para. 54; *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-T, Judgement, 15 March 2006 (“*Hadžihasanović and Kubura* Trial Judgement”), paras 75, 191. *See also Orić* Trial Judgement, para. 293.

⁹⁹ *Halilović* Trial Judgement para. 54. *See also Čelebici* Appeal Judgement para. 741: “[A]s the Appeals Chamber has made clear, such an approach fails to take account of the essential consideration that the gravity of the failure to prevent or punish is in part dependent on the gravity of the underlying subordinate crimes.”

¹⁰⁰ *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004 (“*Blaškić* Appeal Judgement”), para. 484.

¹⁰¹ *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Judgement, 9 May 2007 (“*Blagojević and Jokić* Appeal Judgement”) para. 280; *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Judgement, 3 July 2008 (“*Orić* Appeal Judgement”), para. 21.

¹⁰² *Blagojević and Jokić* Appeal Judgement, para. 287; *Orić* Trial Judgement, para. 305.

¹⁰³ *Aleksovski* Appeal Judgement, para. 76.

the accused was “by virtue of his position, senior in some sort of formal or informal hierarchy to the perpetrator”; and ii) the superior exercised effective control over his subordinates.¹⁰⁴

59. The hierarchical subordination can either be *de jure*, that is, embodied or expressed in a formal act, or *de facto*, that is when, even in the absence of such a formal act establishing the subordination, in practice both superior and subordinate operate as if subordination existed. Once the Trial Chamber is satisfied beyond reasonable doubt that the subordination is proven, it must determine whether effective control over the subordinate existed, irrespective of whether the subordination was *de jure* or *de facto*.¹⁰⁵

60. The Trial Chamber endorses the Trial Chamber’s finding in *Hadžihasanović and Kubura* where it stated that the formal status of the commander is neither required nor sufficient to entail the superior’s responsibility pursuant to Article 7(3) of the Statute, which may derive from a “person’s *de facto*, as well as *de jure*, position as commander so long as he has the material ability to prevent and to punish.”¹⁰⁶ The Appeals Chamber in *Čelebići* held that a court may presume that the possession of *de jure* power over a subordinate may result in effective control unless proof to the contrary is produced.¹⁰⁷ However, as clarified by the Appeals Chamber in *Hadžihasanović and Kubura*,

the Appeals Chamber in *Čelebići* did not reverse the burden of proof. It simply acknowledged that the possession of *de jure* authority constitutes *prima facie* a reasonable basis for assuming that an accused has effective control over his subordinates. Thus, the burden of proving beyond reasonable doubt that the accused had effective control over his subordinates ultimately rests with the Prosecution.¹⁰⁸

Effective control, in the sense of the material ability to prevent and to punish, is the threshold to be reached in establishing a superior-subordinate relationship for the purpose of Article 7(3) of the Statute.¹⁰⁹ The Appeals Chamber held that

¹⁰⁴ *Čelebići* Appeal Judgement, para. 303; *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-A, Judgement, 16 October 2007 (“*Halilović* Appeal Judgement”), para. 59.

¹⁰⁵ *Čelebići* Appeal Judgement, paras 193, 195. The Appeal Chamber in *Čelebići* stated that a superior vested with *de jure* authority who does not have effective control over his or her subordinates would therefore not incur criminal responsibility pursuant to the doctrine of superior responsibility, whereas a *de facto* superior who lacks formal letters of appointment or commission but, in reality, has effective control over the perpetrators of offences would incur criminal responsibility where he failed to prevent or punish such criminal conduct, *ibid.*, para. 197. The necessity to establish the existence of a hierarchical relationship does “not [...] import a requirement of *direct* or *formal* subordination”, *Čelebići* Appeal Judgement, para. 303 (emphasis in the original). *See also United States v. Wilhelm von Leeb et al.*, Judgement, 27 October 1948, Trials of War Criminals Before the Nuernberg Military Tribunals Under Control Council Law No. 10, Vol. XI (“*High Command Case*”), pp 543-544. *Strugar* Trial Judgement, para. 363.

¹⁰⁶ *Hadžihasanović and Kubura* Trial Judgement, para. 78; *Čelebići* Appeal Judgement, para. 197.

¹⁰⁷ *Čelebići* Appeal Judgement, para. 197.

¹⁰⁸ *Hadžihasanović and Kubura* Appeal Judgement, para. 21.

¹⁰⁹ *Čelebići* Appeal Judgement, para. 256; *Halilović* Appeal Judgement, para. 59.

The ability to exercise effective control in the sense of a material power to prevent or punish [...] will almost invariably not be satisfied unless such a relationship of subordination exists. However, it is possible to imagine scenarios in which one of two persons of equal status or rank (...) could in fact exercise “effective control” over the other at least in the sense of a purely practical ability to prevent the conduct of the other by, for example, force of personality or physical strength.¹¹⁰

Cooperation in itself and/or the mere ability to exercise influence over subordinates is not sufficient to establish effective control.¹¹¹

61. The Appeals Chamber in *Hadžihasanović and Kubura* further clarified the position of a commander who militarily benefits from a unit which he knows holds an exceptional position in terms of independence, thus accepting all the consequences of its actions. Although such circumstance may entail some form of responsibility, “if the particulars of such responsibility are adequately pleaded in an Indictment”, the commander’s responsibility under Article 7 (3) is only triggered upon a showing of the existence of a superior-subordinate relationship.¹¹²

62. The indicators of effective control are more a matter of evidence than of law¹¹³ and 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.”¹¹⁴ Factors indicative of an individual’s position of authority and effective control may include: the procedure used for appointment of an accused,¹¹⁵ his official position,¹¹⁶ the power to give orders and have them executed,¹¹⁷ the power to order combat action and re-subordinate units,¹¹⁸ the availability of material and human resources,¹¹⁹ the authority to apply disciplinary measures,¹²⁰ the authority to promote, demote or remove particular soldiers¹²¹ and the capacity to intimidate subordinates into compliance.¹²² The Appeals Chamber in *Blaškić* found that the capacity to report to competent

¹¹⁰ *Čelebići* Appeal Judgement, para. 303.

¹¹¹ *Hadžihasanović and Kubura* Appeal Judgement, para. 214; *Hadžihasanović and Kubura* Trial Judgement, paras 78, 795; *Čelebići* Appeal Judgement, para. 266.

¹¹² *Hadžihasanović and Kubura* Appeal Judgement, para. 213.

¹¹³ *Blaškić* Appeal Judgement, para. 69; *Aleksovski* Appeal Judgement, paras 73-74; *Čelebići* Appeal Judgement, para. 206.

¹¹⁴ *Blaškić* Appeal Judgement, para. 69; *Aleksovski* Appeal Judgement, para. 76.

¹¹⁵ *Halilović* Trial Judgement, para. 58.

¹¹⁶ *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-T, Judgement, 26 February 2001 (“*Kordić and Čerkez* Trial Judgement”), para. 418. The Appeals Chamber recognised that the *de jure* position of a superior may be a *prima facie* indicia of effective control. See *Čelebići* Appeal Judgement, para. 197; *Hadžihasanović and Kubura* Appeal Judgement, para. 21; *Orić* Appeal Judgement, para. 91.

¹¹⁷ *Blaškić* Appeal Judgement, para. 69, where the Appeals Chamber endorsed “the Appellant’s argument that to establish that effective control existed at the time of the commission of subordinates’ crimes, proof is required that the accused was not only able to issue orders but that the orders were actually followed”. See also *Hadžihasanović and Kubura* Appeal Judgement, para. 199; *Kordić and Čerkez* Trial Judgement, para. 421.

¹¹⁸ *Strugar* Trial Judgement, paras 393-397.

¹¹⁹ *Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, Judgement and Sentencing, 12 September 2006, para. 497.

¹²⁰ *Strugar* Trial Judgement, paras 406, 408; *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-T, Judgement, 16 November 1998 (“*Čelebići* Trial Judgement”), para. 767.

¹²¹ *Strugar* Trial Judgement, paras 411, 413; *Čelebići* Trial Judgement, para. 767.

¹²² *Prosecutor v. Alex Tamba Brima et al.*, SCSL-04-16-T, Judgement, 20 June 2007, para. 788.

authorities the criminal acts of subordinates for the taking of proper measures is indicative of the superior's limited ability to punish, which determines that he had limited effective control.¹²³

(b) Mental Element: "Knew or Had Reason to Know"

63. Article 7(3) of the Statute does not impose strict liability on the superior who has failed to prevent or punish the crimes committed by his subordinates.¹²⁴ The Prosecution must instead prove: (i) that the superior had actual knowledge that his subordinates were committing or about to commit crimes within the jurisdiction of the Tribunal, or (ii) that the superior had in his possession information which would at least put him on notice of the risk of such offences, and alert him to the need for additional investigation to determine whether such crimes were about to be, or had been, committed by his subordinates.¹²⁵ When assessing the mental element required under Article 7(3), the Trial Chamber should take into account the specific circumstances of the case.¹²⁶

(i) Actual Knowledge

64. A superior's actual knowledge that his subordinates were committing or were about to commit a crime may be established by direct or circumstantial evidence, but it may not be presumed.¹²⁷ Factors which the Trial Chamber takes in consideration include, but are not limited to: the number, type and scope of illegal acts committed by the subordinates, the time during which the illegal acts occurred, the number and types of troops and logistics involved, the geographical location, whether the occurrence of the acts is widespread, the tactical tempo of operations, the *modus operandi* of similar illegal acts, the officers and staff involved, and the location of the

¹²³ *Blaškić* Appeal Judgement, para. 499. See also *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-T, Judgement, 25 June 1999 ("*Aleksovski* Trial Judgement"), para. 78.

¹²⁴ *Čelebići* Appeal Judgement, para. 239.

¹²⁵ *Čelebići* Appeal Judgement, paras 223, 241.

¹²⁶ *Čelebići* Appeal Judgement, para. 239; *Hadžihasanović and Kubura* Appeal Judgement, para. 28. The Appeals Chamber in *Čelebići* (para. 239) held that "an assessment of the mental element required by Article 7(3) of the Statute should be conducted in the specific circumstances of each case, taking into account the specific situation of the superior concerned at the time in question." See also the ILC comment on Article 6 of the ILC Draft Code of Crimes against the Peace and Security of Mankind: "Article 6 provides two criteria for determining whether a superior is to be held criminally responsible for the wrongful conduct of a subordinate. First, a superior must have known or had reason to know *in the circumstances at the time* that a subordinate was committing or was going to commit a crime. This criterion indicates that a superior may have the *mens rea* required to incur criminal responsibility in two different situations. In the first situation, a superior has actual knowledge that his subordinate is committing or is about to commit a crime [...]. In the second situation, he has *sufficient relevant information to enable him to conclude under the circumstances at the time* that his subordinates are committing or are about to commit a crime" (ILC Report, pp 37-38, quoted in *Čelebići* Appeal Judgement, para. 234), *Hadžihasanović and Kubura* Appeal Judgement, para. 28, fn. 77 (emphasis in the original).

¹²⁷ *Hadžihasanović and Kubura* Trial Judgement, para. 94; *Čelebići* Trial Judgement, para. 386. See also *Krnjelac* Trial Judgement, para. 94; *Kordić and Čerkez* Trial Judgement, para. 427; *Brđanin* Trial Judgement, para. 278; *Strugar* Trial Judgement, para. 368.

superior at the time.¹²⁸ Physical proximity to, or distance from the scene of the crimes may be taken into consideration when assessing the superior's actual knowledge of those crimes.¹²⁹

(ii) "Had Reason to Know"

65. A superior will be considered to have "had reason to know" only if information was available to him which would have put him on notice of offences committed by his subordinates, or that were about to be committed.¹³⁰ In *Čelebići*, the Appeals Chamber held that:

The phrase, "had reason to know", is not as clear in meaning as that of "had information enabling them to conclude", although it may be taken as effectively having a similar meaning. The latter standard is more explicit, and its rationale is plain: failure to conclude, or conduct additional inquiry, in spite of alarming information constitutes knowledge of subordinate offences. Failure to act when required to act with such knowledge is the basis for attributing liability in this category of case.¹³¹

66. The information available to the superior does not need to be detailed. Even general information, which would put the superior on notice of possible unlawful acts by his subordinates, is sufficient to trigger the superior's duty to act.¹³² A superior may be regarded as having "reason to know" if the superior is in possession of sufficient information to be on notice of the likelihood of illegal acts by his subordinates, that is, if the information available is sufficient to justify further inquiry.¹³³ The Trial Chamber in *Strugar* held:

[A]n accused cannot avoid the intended reach of the provision by doing nothing, on the basis that what he knows does not make it entirely certain that his forces were actually about to commit offences, when the information he possesses gives rise to a clear prospect that his forces were about to commit an offence. In such circumstances the accused must at least investigate, *i.e.* take steps *inter alia* to determine whether in truth offences are about to be committed, or indeed by that stage have been committed or are being committed.¹³⁴

Finally, as stated by the Appeals Chamber, the "information needs to have been provided or available to the superior [...]. It is not required that he actually acquainted himself with the information."¹³⁵

¹²⁸ *Čelebići* Trial Judgement, para. 386, citing United Nations Commission of Experts Report, p.17. *See also* *Kordić and Čerkez* Trial Judgement, para. 427.

¹²⁹ *Aleksovski* Trial Judgement, para. 80.

¹³⁰ *Hadžihasanović and Kubura* Appeal Judgement, para. 27, citing *Čelebići* Trial Judgement, para. 383. *See also* *Blaškić* Appeal Judgement, para. 62, citing *Čelebići* Appeal Judgement, para. 241.

¹³¹ *Čelebići* Appeal Judgement, para. 232. *See also* *Hadžihasanović and Kubura* Appeal Judgement, para. 28.

¹³² *Čelebići* Appeal Judgement, para. 238; *Hadžihasanović and Kubura* Appeal Judgement, para. 28. The Appeals Chamber also made reference to the Commentary to Additional Protocol I, which refers to "reports addressed (to the superior), [...] the tactical situation, the level of training and instruction of subordinate officers and their troops, and their *character traits*" as potentially constituting the information referred to in Article 86(2) of Additional Protocol I, *Čelebići* Appeal Judgement, para. 238 (emphasis added), citing ICRC Commentary on the Additional Protocols, p. 1014, para. 3545.

¹³³ *Kordić and Čerkez* Trial Judgement, para. 437.

¹³⁴ *Strugar* Trial Judgement, para. 416.

¹³⁵ *Čelebići* Appeal Judgement, para. 239.

67. In this context, it should be noted that a superior cannot incur criminal responsibility for neglecting to acquire knowledge of the acts of his subordinates, unless sufficiently alarming information is available to him. In the words of the Appeals Chamber in *Čelebići*:

Article 7 (3) of the Statute is concerned with superior liability arising from failure to act in spite of knowledge. Neglect of a duty to acquire such knowledge, however, does not feature in the provision as a separate offence [...] [A]lthough a commander's failure to remain apprised of his subordinates' action, or to set up a monitoring system may constitute a neglect of duty which results in liability within the military disciplinary framework, it will not necessarily result in criminal liability.¹³⁶

68. The Appeals Chamber also held that the knowledge of and failure to punish crimes previously committed by the same group of subordinates, is not, by itself, sufficient to conclude that the commander knew that similar offences would be committed by the same perpetrators. However, depending on the circumstances of the case, such failure may be relevant to determine whether "a superior possessed information that was sufficiently alarming to put him on notice of the risk that similar crimes might subsequently be carried out by subordinates and justify further inquiry."¹³⁷

(c) Failure to Prevent or Punish

69. Article 7(3) contains two distinct and separate legal obligations: (i) to prevent the commission of the crime, and (ii) to punish the perpetrators thereof.¹³⁸ The duty to prevent arises when the superior acquires actual or constructive knowledge that a crime is about to be or is being committed. The duty to punish arises where the superior obtains the requisite knowledge only after the commission of the crime.¹³⁹ Failure to take the necessary and reasonable measures to prevent a crime of which a superior knew or had reason to know cannot be cured by subsequently punishing the subordinate for the crime.¹⁴⁰

70. Although the powers and duties of civilian and military representatives of a State are established by the national law of that State, it is international law that "lays down the way in which

¹³⁶ *Čelebići* Appeal Judgement, para. 226; see also *Blaškić* Appeal Judgement, para. 406; *Hadžihasanović and Kubura* Trial Judgement, para. 96.

¹³⁷ *Hadžihasanović and Kubura* Appeal Judgement, para. 30. The Appeals Chamber underscored that finding that a "superior's failure to punish a crime of which he has knowledge *automatically* constitutes sufficiently alarming information under the "had reason to know" standard, irrespective of the circumstances of the case" would amount to an error of law, para. 31.

¹³⁸ *Blaškić* Appeal Judgement, para. 83 (citing the Appellant's Brief): "[I]t is illogical to argue both that "a superior's responsibility for the failure to punish is construed as a sub-category of his liability for failing to prevent the commission of unlawful acts" and that "failure to punish only led to the imposition of criminal responsibility if it resulted in a failure to prevent the commission of future crimes." The failure to punish and failure to prevent involve different crimes committed at different times: the failure to punish concerns past crimes committed by subordinates, whereas the failure to prevent concerns future crimes of subordinates." See also *Hadžihasanović and Kubura* Appeal Judgement, para. 259; *Kordić and Čerkez* Trial Judgement, paras 445-446.

¹³⁹ *Blaškić* Appeal Judgement, para. 83; *Kordić and Čerkez* Trial Judgement, paras 445-446.

¹⁴⁰ *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Judgement, 3 March 2000 ("*Blaškić* Trial Judgement"), para. 336. See also *Strugar* Trial Judgement, para. 373; *Hadžihasanović and Kubura* Trial Judgement, para. 126.

it may be exercised within the area governed by it”. A Trial Chamber must evaluate his duty to act in view of international law.¹⁴¹ The superior therefore cannot be relieved of his duty to act under international law by reference to domestic laws.

71. Article 7(3) makes an explicit distinction between the duty to prevent and the duty to punish, and is silent with regard to a duty to put a stop to the unlawful act while it is being committed. It is however accepted that the superior also has a duty to “suppress” such crimes.¹⁴²

(i) Duty to Prevent

72. From the wording of Article 7(3) it is clear that the duty to prevent attaches where the subordinate “was *about* to commit such acts”, but before the actual offence was committed. Thus, the duty to prevent crimes rests on a superior at any stage before the commission of a crime by a subordinate if the superior acquires knowledge, or has reason to know, that the crime is about to be committed.¹⁴³

73. In establishing individual responsibility of superiors, military tribunals set up after World War II have established some, non-exhaustive, factors such as the superior’s failure to secure reports that military actions have been carried out in accordance with international law,¹⁴⁴ the failure to issue orders aiming at bringing the relevant practices into accord with the rules of war,¹⁴⁵ the failure to take disciplinary measures to prevent the commission of atrocities by the troops under their command,¹⁴⁶ the failure to protest against or to criticise criminal action,¹⁴⁷ and the failure to insist before a superior authority that immediate action be taken.¹⁴⁸ In the Tokyo Judgement, it was

¹⁴¹ *Hadžihasanović and Kubura* Trial Judgement, paras 137-138, citing the ICRC Commentary on the Additional Protocols (Additional Protocol I), Article 86, para. 3537.

¹⁴² *Hadžihasanović and Kubura* Trial Judgement, para. 127, referring, *inter alia*, to the *Strugar* Trial Judgement, para. 446, where the Trial Chamber found that “[t]he Accused had the legal authority and the material ability to stop the unlawful shelling of the Old Town and to punish the perpetrators” and that he “did not take necessary and reasonable measures to ensure at least that the unlawful shelling of the Old Town be stopped.”

¹⁴³ *Kordić and Čerkez* Trial Judgement, para. 445. See *Strugar* Trial Judgement, para. 416.

¹⁴⁴ *United States v. Wilhelm List et al.*, Judgement, 19 February 1948, Trials of War Criminals Before the Nuernberg Military Tribunals Under Control Council Law No. 10, Vol. XI (“*Hostage Case*”), p. 1290; *Strugar* Trial Judgement, para. 374; *Hadžihasanović and Kubura* Trial Judgement, para. 153.

¹⁴⁵ *Hostage Case*, p. 1311; *Strugar* Trial Judgement, para. 374; *Hadžihasanović and Kubura* Trial Judgement, para. 153.

¹⁴⁶ Judgement of the International Military Tribunal for the Far East, Tokyo, 12 November 1948 (“*Tokyo Judgement*”), Volume I, p. 452; *Strugar* Trial Judgement, para. 374; *Hadžihasanović and Kubura* Trial Judgement, para. 153.

¹⁴⁷ *High Command Case*, p. 623; *Strugar* Trial Judgement, para. 374.

¹⁴⁸ *Tokyo Judgement*, Volume I, p. 448; *Strugar* Trial Judgement, para. 374; *Hadžihasanović and Kubura* Trial Judgement, para. 153.

found that a superior's duty may not be discharged by the issuance of routine orders but that more active steps may be required.¹⁴⁹

(ii) Duty to Punish

74. The duty to punish includes at least an obligation to investigate (or have investigated) possible crimes, to establish facts, and, if the superior has no power to initiate sanctions himself, to report the crimes to the competent authorities.¹⁵⁰ Furthermore, the Appeals Chamber in *Blaškić* noted that the duty of the commander to report to competent authorities is specifically provided for under Article 87(1) of Additional Protocol I.¹⁵¹ The obligation on the part of the superior is to take active steps to ensure that the perpetrators are brought to justice.¹⁵² The thoroughness of the investigation and whether the superior has called for a report on the incident may be relevant in this respect.¹⁵³

75. The superior does not have to be the person who dispenses the punishment, but it is required that the superior take an "important step in the disciplinary process".¹⁵⁴ In the words of the Appeals Chamber, "a superior need not dispense punishment personally and may discharge his duty to punish by reporting the matter to the competent authorities."¹⁵⁵ The superior has a duty to exercise all measures possible under the circumstances.¹⁵⁶

¹⁴⁹ Tokyo Judgement, Volume I, p. 452: "The duty of an Army commander in such circumstances is not discharged by the mere issue of routine orders [...]. His duty is to take such steps and issue such orders as will prevent thereafter the commission of war crimes and to satisfy himself that such orders are being carried out"; *Strugar* Trial Judgement, para. 374; *Hadžihasanović and Kubura* Trial Judgement, para. 153.

¹⁵⁰ *Kordić and Čerkez* Trial Judgement, para. 446. The Trial Chamber in *Kordić and Čerkez* also noted that according to the ICRC Commentary on the Additional Protocols (Additional Protocol I), para. 3562, the military commander will normally only have a duty to start an investigation.

¹⁵¹ *Blaškić* Appeal Judgement, para. 69.

¹⁵² See, e.g., *High Command* Case, p. 623.

¹⁵³ See, e.g., *Strugar* Trial Judgement, para. 376 and jurisprudence cited therein. It is a matter of fact as to whether the efforts made by a commander to investigate crimes were sufficient to meet the standard of "necessary and reasonable measures" within the meaning of Article 7(3). See, e.g., *Blaškić* Trial Judgement, paras 488-495. See also the Tokyo Trial Official Transcript, 49, 846. Further guidance as to the duty to punish is provided by Article 87, paragraph 3 of Additional Protocol I, which requires a military commander, who is aware that his subordinates have committed a breach of the Geneva Conventions or the Protocol, "where appropriate, to initiate disciplinary or penal action" against them. The ICRC Commentary to Additional Protocol I suggests that this action may include informing their superior officers of the situation: "drawing up a report in the case of a breach, [...] proposing a sanction to a superior who has disciplinary power, or – in the case of someone who holds such power himself – exercising it, within the limits of his competence, and finally, remitting the case to the judicial authority where necessary with such factual evidence as it was possible to find.", see ICRC Commentary on the Additional Protocols, p. 1023, para. 3562.

¹⁵⁴ *Prosecutor v. Miroslav Kvočka et al*, Case No. IT-98-30/1-T, Judgement, 2 November 2001, para. 316.

¹⁵⁵ *Hadžihasanović and Kubura* Appeal Judgement, para. 154.

¹⁵⁶ *Krnjelac* Trial Judgement, para. 95.

(iii) Necessary and Reasonable Measures

76. The determination of what constitutes “necessary and reasonable measures” to prevent the commission of crimes or to punish the perpetrators is not a matter of substantive law but of evidence and depends on the circumstances surrounding each particular situation.¹⁵⁷ This Trial Chamber recalls the Appeals Chamber finding that “a determination of the necessary and reasonable measures that a commander is required to take in order to prevent or punish the commission of crimes, is dependent on the circumstances surrounding each particular situation.”¹⁵⁸ A superior is not required to perform the impossible and will be liable for a failure to take such measures that are “within his material possibility”.¹⁵⁹ The theory of command responsibility is based on existence of effective control, irrespective of *de jure* or *de facto* qualification of the superior’s status. It follows that whether a superior had the explicit legal capacity to take such measures is irrelevant if it is proven that the superior had the material ability to act.¹⁶⁰ These measures are such as can be taken within the material ability of a superior as evidenced by the degree of effective control the superior wields over his subordinates.¹⁶¹ This Trial Chamber understands this to mean that necessary and reasonable measures are those suitable to contain the situation at hand, namely to prevent and/or punish. It is well established that these measures may vary from case to case.¹⁶² Relevant factors to consider include: whether specific orders prohibiting or stopping the criminal activities were issued, what measures were taken to secure the implementation of these orders, what other measures were taken to ensure that the unlawful acts were stopped and whether these measures were reasonably sufficient in the specific circumstances, and, after the commission of the crime, what steps were taken to secure an adequate investigation and to bring the perpetrators to justice.¹⁶³

¹⁵⁷ *Hadžihasanović and Kubura* Appeal Judgement, para. 33. The Appeals Chamber in *Hadžihasanović and Kubura* stressed that under the circumstances of the case, it cannot be excluded that disciplinary measures will be sufficient to discharge a superior of his duty to punish crimes under Article 7(3) of the Statute. In other words, whether the measures taken were solely of a disciplinary nature, criminal or a combination of both, cannot in itself be determinative of whether a superior discharged his duty to prevent or punish under Article 7(3) of the Statute. See also *ibid.* para. 142 (footnote omitted): “The Appeals Chamber recalls that the relevant inquiry is whether a reasonable trier of fact could conclude that Hadžihasanović took measures to punish the perpetrators which were “necessary and reasonable” in the circumstances of the case, not whether those measures were of a disciplinary or criminal nature.” See also *Halilović* Appeal Judgement, paras 63-64; *Blaškić* Appeal Judgement, paras 72, 417; *Čelebići* Trial Judgement, para. 394.

¹⁵⁸ *Blaškić* Appeal Judgement, para. 417. See also *Hadžihasanović and Kubura* Trial Judgement, para. 155.

¹⁵⁹ *Blaškić* Appeal Judgement, para. 417, citing *Čelebići* Trial Judgement, para. 395.

¹⁶⁰ *Strugar* Trial Judgement, para. 372. See also *Kordić and Čerkez* Trial Judgement, para. 443.

¹⁶¹ See *Blaškić* Appeal Judgement, para. 72; *Blaškić* Trial Judgement, para. 335.

¹⁶² *Blaškić* Appeal Judgement, para. 72, referring to *Aleksovski* Appeal Judgement, paras 73-74; *Čelebići* Appeal Judgement, para. 206.

¹⁶³ *Strugar* Trial Judgement, para. 378.

III. GENERAL OVERVIEW

A. Introduction

77. The events alleged in the Indictment took place against the background of the break-up of the former Socialist Federal Republic of Yugoslavia (“SFRY”).¹⁶⁴

78. Between 29 February and 1 March 1992, the majority of the non-Serb population living in the RBiH voted for independence.¹⁶⁵ On 3 March 1992, the country declared its independence.¹⁶⁶ By 7 April 1992, the European Community and the United States recognised RBiH as an independent state,¹⁶⁷ and it became a member of the United Nations (“UN”) on 20 May 1992.¹⁶⁸

79. On 7 April 1992, the self-proclaimed “Assembly of the Serbian People in Bosnia and Herzegovina” declared the independence of the “Serbian Republic of Bosnia and Herzegovina”, later renamed Republika Srpska.¹⁶⁹ Around this date, an armed conflict began between the forces of that entity, which was supported by the JNA, and those of the RBiH.¹⁷⁰ In May 1992, the JNA and the VRS placed Sarajevo under siege.¹⁷¹ Following a demand by the UN Security Council, the JNA formally withdrew from the RBiH on 19 and 20 May 1992.¹⁷² The VRS continued the siege of Sarajevo, which lasted for 44 months.¹⁷³

B. The Emergence of the ABiH

80. On 8 April 1992, the RBiH Presidency established the RBiH TO Staff with a multi-ethnic command composed of former JNA officers.¹⁷⁴ On 20 May 1992, the TO forces became the ABiH.¹⁷⁵ The siege of Sarajevo, where the ABiH Supreme Command was headquartered, negatively impacted the formation of the ABiH forces.¹⁷⁶ On 20 June 1992, President Alija Izetbegović proclaimed a state of war.¹⁷⁷

¹⁶⁴ Agreed Fact 24. *See also* Agreed Fact 84.

¹⁶⁵ Agreed Facts 27, 30.

¹⁶⁶ Agreed Fact 85.

¹⁶⁷ Agreed Fact 28.

¹⁶⁸ Agreed Fact 31.

¹⁶⁹ Agreed Facts 25, 32.

¹⁷⁰ Agreed Fact 33. *See also* PW-3, T. 1435-1437 (closed session).

¹⁷¹ Jovan Divjak, T. 2225.

¹⁷² Agreed Facts 88, 95.

¹⁷³ Jovan Divjak, T. 2225. A tunnel underneath the airport was dug which allowed food and supplies to come into the city, Agreed Fact 106.

¹⁷⁴ Agreed Fact 46; PW-3, T. 1440-1444 (closed session).

¹⁷⁵ Agreed Fact 17; PW-3, T. 1200 (closed session).

¹⁷⁶ PW-3, T. 1451-1452 (closed session); Alija Lončarić, T. 8318-8319.

¹⁷⁷ Agreed Facts 29, 47.

81. The ABiH's primary aim was the defence of the RBiH's sovereignty and territorial integrity.¹⁷⁸ However, the ABiH was unprepared to face the outbreak of the conflict because it lacked professional personnel, weaponry and military equipment.¹⁷⁹ An arms embargo was also imposed by the UN Security Council on the former SFRY.¹⁸⁰ The VRS, on the other hand, had at its disposal weaponry and equipment of the JNA.¹⁸¹ This exacerbated the imbalance between the fighting forces and resulted in the military superiority of the VRS over the ABiH.¹⁸² As the conflict erupted, the VRS also destroyed the infrastructure used for communication in central Bosnia.¹⁸³

C. The Conflict in Central Bosnia

82. VRS attacks elsewhere in the RBiH caused a massive influx of Bosnian Muslim refugees to central Bosnia, in particular in the area of Travnik.¹⁸⁴ In the summer of 1992, the fighting spread to central Bosnia.¹⁸⁵ VRS forces captured a strategic communication facility on Mount Vlašić and launched attacks on the surrounding villages.¹⁸⁶ Both Bosnian Croats and Bosnian Muslims reacted by setting up defensive lines in their respective villages and collaborating with each other in the fight against the VRS.¹⁸⁷

83. At the end of 1992, tensions between Bosnian Croats and Bosnian Muslims rose and their collaboration fell apart. In January 1993, the two former allies engaged in open conflict.¹⁸⁸ As the HVO blocked the borders of the RBiH with Croatia and the main roads, the ABiH was cut off from supply routes.¹⁸⁹ In spring 1993, both the ABiH and the HVO conducted numerous military operations in central Bosnia.¹⁹⁰ During these operations, the HVO to some extent received support

¹⁷⁸ Agreed Fact 92.

¹⁷⁹ See PW-3, T. 1234, 1437, 1441-1442 (closed session); Haso Ribo, T. 6962-6963. See paras 128 *et seq. infra*.

¹⁸⁰ Ex. 187, UN Security Council Resolution 713, 25 September 1991.

¹⁸¹ See PW-3, T. 1434-1437 (closed session). See also Ex. 186, Order of General Veljko Kadijević Concerning the Relocation of Troops from Slovenia, 23 January 1991.

¹⁸² Vahid Karavelić, T. 7796-7797.

¹⁸³ Enver Berbić, T. 2376-2377; Jovan Divjak, T. 2227; Haso Ribo, T. 6962-6963; PW-3, T. 1450-1451 (closed session), also testifying that at the beginning of the war in April 1992, in the broader area of Sarajevo, the VRS "seized the database, [and] they also took away the coding documents that were in effect for the entire Yugoslav People's Army at that time", *ibid.*, T. 1445-1447.

¹⁸⁴ Sinan Begović, T. 482-483, 485-486; Šaban Alić, T. 680; PW-2, T. 792. See also Ex. 80, Video Clip; Ex. 81, Video Clip; Ex. 82, Transcript of Video Exhibit 81; Ex. 1179 and 1180, "Seasons in Hell" by Ed Vulliamy, pp 127, 139.

¹⁸⁵ Sinan Begović, T. 380.

¹⁸⁶ Hasib Alić, T. 622, Sinan Begović, T. 381-382, 490-491; Šaban Alić, T. 637-638; Berislav Marijanović, T. 912.

¹⁸⁷ Berislav Marijanović, T. 911, 940; Zdravko Pranješ, T. 998; Šaban Alić, T. 637-638; Hasib Alić, T. 555, 622.

¹⁸⁸ Agreed Facts 91, 122. See also Ex. 191, Order of Milivoj Petković Concerning Raising of Combat Readiness of HVO Units, 15 January 1993; PW-3, T. 1472-1474 (closed session); Sinan Begović, T. 489; Halim Husić, T. 7364-7366.

¹⁸⁹ Šaban Alić, T. 673; Sinan Begović, T. 490; PW-3, T. 1474-1475 (closed session); Ex. 192, Order Imposing Blockade Between BiH and Croatia, 14 January 1993; Ex. 195 (under seal); Haso Ribo, T. 6963- 6966.

¹⁹⁰ Zdravko Pranješ, T. 999, 1005; Osman Fuško, T. 1135-1136; Asim Delalić, T. 1707-1708, 1738-1739; Sinan Begović, T. 393-394. See also Ex. 306, Situation Report from BRITBAT, 27 April 1993; Ex. 267, Record of the Military Security Service of the 306th Brigade on the HVO Attack on Velika Bukovica, 26 June 1993.

from the VRS.¹⁹¹ Hence, while the ABiH fought on several fronts, central Bosnia was effectively isolated from the outside world.¹⁹² This had serious humanitarian consequences for the local civilian population.¹⁹³

84. The United Nations Protection Force (“UNPROFOR”), deployed to the RBiH in the second half of 1992, had the mission to facilitate a cease-fire between the belligerents and support the delivery of humanitarian relief to the civilian population.¹⁹⁴ As of April 1993, a British Battalion of UNPROFOR attempted to facilitate a cease-fire in central Bosnia.¹⁹⁵ However, the conflict between ABiH and HVO continued unabated.¹⁹⁶

85. An agreement ending the hostilities between the ABiH and the HVO was reached in Washington on 18 March 1994.¹⁹⁷ As a result, the “Federation of Bosnia and Herzegovina” as a political entity of Bosnian Muslims and Bosnian Croats was created.¹⁹⁸ On 22 July 1995, Alija Izetbegović and the Croatian President Franjo Tudjman signed a joint declaration on a Muslim-Croat defence against “Serbian aggression”.¹⁹⁹

86. In January 1995, the ABiH Supreme Command indicated two main military objectives for the coming year: the capture of the so-called “Vozuća pocket” in central Bosnia, which was held by Serb forces,²⁰⁰ and the breaking of the blockade of the besieged towns of Srebrenica, Žepa and Sarajevo.²⁰¹

87. In the summer of 1995, the ABiH made several attempts to end the siege of Sarajevo.²⁰² At around the same time, the ABiH intensified military activities in the “Vozuća pocket”.²⁰³ In

¹⁹¹ PW-3, T. 1281-1282, 1490-1491 (closed session); Alastair Duncan, T. 1970; Ex. 198, Order of Momir Talić to VRS, 6 June 1993; Ex. 294, Military Information Summary No. 39, 7 June 1993.

¹⁹² PW-3, T. 1281-1282 (closed session). The witness testified that in 1993 the ABiH forces were fighting on the following fronts: Sarajevo (3rd Corps), Tuzla (2nd Corps), Bihać (5th Corps), and Herzegovina (4th Corps).

¹⁹³ Sinan Begović, T. 490; Šaban Alić, T. 679-680; PW-2, T. 792.

¹⁹⁴ Alastair Duncan, T. 1909-1912.

¹⁹⁵ Ex. 284, Military Information Summary No. 38, 6 June 1993. *See also* Ex. 300, Military Information Summary No. 9, 8 May 1993; Ex. 301, Military Information Summary No. 20, 19 May 1993.

¹⁹⁶ PW-3, T. 1282-1283, 1334-1335 (closed session); Alastair Duncan, T. 1967.

¹⁹⁷ Agreed Fact 91.

¹⁹⁸ Jovan Divjak, T. 2200, 2297-2298.

¹⁹⁹ Ex. 612, “Joint Defence Against Aggressor”, *Oslobodenje* Newspaper Article, 23 July 1995.

²⁰⁰ Sead Delić, T. 2710-2711, 2811-2813; Kadir Jusić, T. 2495-2496; Fadil Hasanagić, T. 2929-2930.

²⁰¹ Sead Delić, T. 2842; Kadir Jusić, T. 2556, 2558-2559; Ex. 384, Directive for the Continuation of Offensive Combat Operations, 5 January 1995, which indicates the tasks of the liberation of the Vozuća pocket and the lift of the siege on Srebrenica, Žepa and Sarajevo. *See also* Ismet Alija, T. 4205-4206; Coordination Plan of ABiH General Staff for August 1995.

²⁰² Fadil Hasanagić, T. 3185-3186; Ferid Buljubasić, T. 5495; Ex. 494, Order of Rasim Delić on Undertaking Combat Operations, 17 July 1995; Vahid Karavelić, T. 7921-7922.

²⁰³ Fadil Hasanagić, T. 2954-2955. *See paras* 238, 395-396 *infra*.

September 1995, the ABiH launched two successful operations, which forced the VRS out of the Vozuća area.²⁰⁴

88. These events provide the background for crimes charged in the Indictment which are described in more detail elsewhere in this Judgement.²⁰⁵

89. The General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the “Dayton Agreement”, was signed on 14 December 1995 and finally brought an end to the conflict.²⁰⁶

D. Conclusion

90. On the basis of the above, the Trial Chamber finds that an armed conflict existed on the territory of RBiH during the time relevant to the Indictment and that the alleged crimes were linked to such conflict.²⁰⁷

²⁰⁴ Sead Delić, T. 2751. *See* paras 285, 397-402 *infra*.

²⁰⁵ *See* paras 200 *et seq. infra*.

²⁰⁶ Agreed Fact 34; Ex. 48, General Framework Agreement for Peace in BiH, 14 December 1995.

²⁰⁷ *See* paras 200 *et seq. infra*.

IV. STRUCTURE AND FUNCTIONING OF THE ARMY OF BOSNIA AND HERZEGOVINA

A. Introduction

91. The ABiH was created out of the RBiH Territorial Defence (“TO”) after the outbreak of hostilities in mid-1992.²⁰⁸ Although initially founded as a multi-ethnic force composed of Bosnian Muslims as well as Bosnian Croats and Bosnian Serbs, towards the end of the conflict the higher ranks of the ABiH were almost exclusively occupied by Bosnian Muslims.²⁰⁹

92. During wartime, the Armed Forces of the RBiH consisted of two separate components: the ABiH and the police, the latter being commanded by the RBiH Minister of Internal Affairs.²¹⁰ The police could only exceptionally be subordinated to the ABiH for combat operations.²¹¹ The RBiH Presidency exercised overall control as the Supreme Command of the Armed Forces.²¹²

B. The Presidency

93. In peacetime, the RBiH Presidency was composed of a total of seven individuals, consisting of two representatives of each of the three major ethnic groups—Croats, Serbs and Muslims—as well as one additional representative of the remaining ethnic or minority groups.²¹³ The President of the Presidency was elected from among its members for a term of four years.²¹⁴

94. In wartime, an expanded Presidency could exercise legislative power adopting “decrees with the force of law regarding issues from the competence of the Assembly” and included, in addition to its ordinary members, the President of the Assembly, the Prime Minister and the Commander of the ABiH Main Staff.²¹⁵ The Presidency as the Supreme Command of the Armed Forces could order the mobilisation and engagement of both the ABiH and the police.²¹⁶ While command and

²⁰⁸ Agreed Facts 17, 48. *See also* PW-3, T. 1200, 1228-1229 (closed session); Jovan Divjak, T. 2125-2126; Ex. 156, Order of Ministry of Defence Renaming the TO RBiH, 23 June 1992.

²⁰⁹ PW-3, T. 1467-1468 (closed session); Jovan Divjak, T. 2144-2145, 2295-2297; Ivan Negovetić, T. 6845-6849.

²¹⁰ PW-3, T. 1458-1459, 1460-1465 (closed session); Fadil Imamović, T. 4081-4082; Ex. 9, Decree With the Force of Law on the RBiH Armed Forces, 20 May 1992, Art. 2.

²¹¹ PW-3, T. 1463-1465 (closed session); Fadil Imamović, T. 4081-4082; Ex. 1335, Decree Law on Amendments to the Decree Law on the RBiH Armed Forces, 14/31 December 1993, Art. 2.

²¹² Agreed Facts 40, 50; Ex. 9, Decree With the Force of Law on the RBiH Armed Forces, 20 May 1992, Arts 8-9; Jovan Divjak, T. 2128-2129; Sead Delić, T. 2830.

²¹³ Zdravko Đuričić, T. 2065-2068; Jovan Divjak, T. 2126-2129; Vahid Karavelić, T. 7964.

²¹⁴ Jovan Divjak, T. 2126-2128.

²¹⁵ Agreed Fact 42; Ex. 42, Decision on Ratifying the Revised Text of the RBiH Constitution, RBiH Official Gazette of 14 March 1993, Art. 222; Zdravko Đuričić, T. 2066-2069; Ismet Dedović, T. 8238. When Rasim Delić was unable to attend the Presidency meetings, he sent one of his deputies to represent him, Jovan Divjak, T. 2140; Ismet Alija, T. 4250.

²¹⁶ Ex. 7, Decree With the Force of Law on Defence, RBiH Official Gazette of 20 May 1992, Art. 8; Ex. 9, Decree With the Force of Law on the RBiH Armed Forces, 20 May 1992, Arts 6, 9(5), 21; Ex. 42, Decision on Ratifying

control of the army remained the responsibility of the “senior officers of the units and institutions”,²¹⁷ the Presidency retained overall responsibility for organisational issues and the management of human resources.²¹⁸ The Presidency also had the power to accept new positions, promotions and ranks, on proposal of the Commander of the Main Staff.²¹⁹ The Presidency also decided on the appointment or dismissal of the Commander of the ABiH Main Staff.²²⁰

95. The President of the Presidency, being the Supreme Commander of the Armed Forces, “sign[ed] the legal decisions of the Presidency [...] which relate to the Army and ensure[d] their implementation”.²²¹ During the period covered by the Indictment, the President of the Presidency was Alija Izetbegović.²²²

C. The ABiH Main Staff

1. Introduction

96. From 8 June 1993, the Main Staff was headed by the Commander and three Deputy Commanders; one of the Deputy Commanders also held the position of the Chief of Staff of the Main Staff.²²³ All the Corps of the ABiH were directly subordinated to the Commander of the Main Staff.²²⁴

97. The Main Staff of the ABiH consisted of various administrations, such as the Security and Intelligence Administrations, which oversaw the work of their counterpart services in the Corps and subordinate units.²²⁵ The Main Staff was renamed General Staff on 24 October 1994.²²⁶ For reasons of convenience, this body will be referred to as Main Staff throughout this Judgement.

the Revised Text of the RBiH Constitution, RBiH Official Gazette of 14 March 1993, Art. 222. *See* Ex. 22, Decree Law on the RBiH Armed Forces, RBiH Official Gazette of 20 May 1992, Arts 8-9.

²¹⁷ Ex. 9, Decree With the Force of Law on the RBiH Armed Forces, 20 May 1992, Art. 12; Ismet Dedović, T. 8201.

²¹⁸ Ex. 7, Decree With the Force of Law on Defence, RBiH Official Gazette of 20 May 1992, Art. 8. *See* Sead Delić, T. 2837.

²¹⁹ Alija Lončarić, T. 8377-8378; Ex. 470, Proposal of General Delić Concerning Promotion of Ranks, 25 July 1994.

²²⁰ Agreed Fact 41; Ex. 7, Decree With the Force of Law on Defence, RBiH Official Gazette of 20 May 1992, Art. 9.

²²¹ Ex. 9, Decree With the Force of Law on the RBiH Armed Forces, 20 May 1992, Art. 10; Sead Delić, T. 2832-2833; Vahid Karavelić, T. 7843.

²²² Jovan Divjak, T. 2126-2128.

²²³ Ex. 154, Decision of Alija Izetbegović on the Organisational Structure of the Ministry of Defence and the ABiH, 18 July 1993, p. 3; Ex. 419, Decision on Organisational Chart of the ABiH, 18 and 24 October 1994. It appears that in 1994, the Army Staff or planning organ was a separate body within the Main Staff, Kadir Jusić, T. 2548-2549, 2622-2624; Ex. 281, Order of Rasim Delić to the Ministry of Defence and the Chiefs of Administrations, 16 February 1994.

²²⁴ Sead Delić, T. 2837-2838, also testifying that only Rasim Delić as the Commander of the Main Staff could issue orders to the Commanders of the six ABiH Corps. *See* Ex. 419, Decision on Organisational Chart of the ABiH, 18 and 24 October 1994.

²²⁵ Ex. 154, Decision of Alija Izetbegović on the Organisational Structure of the Ministry of Defence and the ABiH, 18 July 1993, pp 4-6. *See also* Vahid Karavelić, T. 7919-7920.

98. The Main Staff was located in various buildings in Sarajevo.²²⁷ Due to ongoing communication problems in the besieged city, a major part of the Main Staff was relocated to Kakanj, which is about 40 kilometres from Sarajevo, on 2 January 1994.²²⁸ The Command Post in Kakanj (“KM Kakanj”) was in operation until the conclusion of the Dayton Agreement in 1995.²²⁹

2. The Commander of the Main Staff

99. Prior to 8 June 1993, Sefer Halilović was the Chief of Main Staff and as such the most senior officer in the ABiH.²³⁰ At the time, Rasim Delić held the position of Chief of the ABiH Operations and Training Organ and was not involved in the operative work of the Main Staff.²³¹

100. Because there was discontent in the ABiH with Sefer Halilović’s work, it was suggested to Alija Izetbegović to introduce a new position, the Commander of the Main Staff, which would be superior to the Chief of Staff of the Main Staff.²³² As a graduate of the Yugoslav Military Academy, Rasim Delić was eligible for “one of the highest-level positions”.²³³

101. On 8 June 1993, from 11:00 onwards, the expanded RBiH Presidency convened in Sarajevo. According to the minutes of the session, the first agenda item was entitled “Organisational and Personnel Changes in the RBiH Armed Forces”.²³⁴ Alija Izetbegović described Rasim Delić as “our best educated officer” and proposed him to the position of Commander of the Main Staff.²³⁵ After an adjournment, the meeting resumed at 14:00.²³⁶ At a subsequent point, although the exact time is unknown, there was a unanimous vote with one abstention—that of Sefer Halilović—in favour of the proposal to appoint Rasim Delić as ABiH Main Staff Commander.²³⁷ The evidence is inconclusive as to when exactly Rasim Delić was informed about his appointment. The minutes record that at the

²²⁶ Ex. 148, Decision of Alija Izetbegović on Reorganisation of the ABiH Main Staff, 24 October 1994, p. 2; Ex. 164, Order of Rasim Delić Renaming and Reforming the ABiH Main Staff, 30 December 1994, p. 2; Ex. 419, Decision on Organisational Chart of the ABiH, 18 and 24 October 1994, p. 2; PW-3, T. 1278 (closed session).

²²⁷ Agreed Fact 52; Ferid Buljubašić, T. 5497-5498; Ismet Dedović, T. 8167-8168.

²²⁸ Murat Softić, T. 1805-1806, 1873-1876; Kadir Jusić, T. 2545-2547; Nermin Pešto, T. 3428; Ismet Alija, T. 4116-4117, 4186-4187, 4194; Ex. 279, Order of Rasim Delić to all Administrations, 23 November 1993; Ex. 280, Order of the ABiH Chief of Staff to the Chiefs of Administrations, 2 January 1994; Ex. 1357, Video Clip.

²²⁹ Enver Berbić, T. 2373-2374, 2383.

²³⁰ Osman Fuško, T. 1180; Murat Softić, T. 1834-1835; Vahid Karavelić, T. 7808.

²³¹ PW-3, T. 1521-1522, 1638 (closed session); Agreed Fact 13.

²³² PW-3, T. 1277, 1516 (closed session); Jovan Divjak, T. 2135-2136; Ex. 209 (under seal).

²³³ Ex. 765, “Arguments and Memories of War, Volume 1 (1990-1993)” by Fikret Muslimović, pp 307-308; Kadir Jusić, T. 2531-2532; Ex. 209 (under seal).

²³⁴ Ex. 315, Minutes of the 203rd Session of the RBiH Presidency, 8 June 1993, pp 2-3. *See also* Agreed Facts 21, 97.

²³⁵ Ex. 315, Minutes of the 203rd Session of the RBiH Presidency, 8 June 1993, p. 5. *See also* Zdravko Đuričić, T. 2074.

²³⁶ Ex. 315, Minutes of the 203rd Session of the RBiH Presidency, 8 June 1993, p. 6.

²³⁷ Ex. 315, Minutes of the 203rd Session of the RBiH Presidency, 8 June 1993, p. 7. Zdravko Đuričić testified that the voting took place “in the second part of the session”, but could not specify when the meeting ended, T. 2101, 2111. Likewise, Ex. 354 (War Diary of Jovan Divjak, Entry of 8 June 1993) does not specify when the voting took place but gives an account of the meeting: “1350-1400 Delivery and examination of proposals for staff changes, 1615-

end of the session, Rasim Delić was called in and that he expressed his gratitude to the attendants for the trust that was vested in him.²³⁸ Between 19:00 and 21:00, the decision of the Presidency was communicated to a group of senior officers.²³⁹ Vahid Karavelić, then a member of the Command of the ABiH 1st Corps, testified that it was not until this moment that Rasim Delić assumed his new office.²⁴⁰ On 8 June 1993, the RBiH Presidency issued a decision announcing the appointment of Rasim Delić as Commander of the Main Staff, with Stjepan Šiber and Jovan Divjak as deputies.²⁴¹ Rasim Delić was introduced into his new post on the next morning.²⁴²

102. The offices of the Commander of the Main Staff were located in the centre of Sarajevo.²⁴³ In 1993, his Chef de Cabinet was Murat Softić. On 10 January 1995, Ferid Buljubašić was appointed to this position.²⁴⁴ The cabinet also included two secretaries, a spokesperson, a typist, drivers and several body guards.²⁴⁵

3. Deputy Commanders

103. The Deputy Commanders of the ABiH were assigned specific duties. The Chief of Staff—an office held by Sefer Halilović and later Enver Hadžihasanović—was a Deputy Commander.²⁴⁶ The second Deputy Commander, Jovan Divjak, was responsible for co-operation with journalists, UNPROFOR and the International Red Cross. His responsibility also included coordinating logistics as well as organisational, mobilisation and personnel affairs.²⁴⁷ The third Deputy Commander, Stjepan Šiber, dealt with, *inter alia*, the immediate security of Sarajevo.²⁴⁸

104. Each of the Deputy Commanders was eligible to stand in for the Commander in the latter's absence.²⁴⁹

1645 Informed that /illegible/commission for handover/ of duties/, 1650-1715 Discussion of /?commission/ with Sefer /?Halilović/, 1745-2030 Meeting of commanders' collegium"; see also Jovan Divjak, T. 2248.

²³⁸ Ex. 315, Minutes of the 203rd Session of the RBiH Presidency, 8 June 1993, p. 8; Jovan Divjak, T. 2255.

²³⁹ Vahid Karavelić, T. 7805, 7808-7811.

²⁴⁰ Vahid Karavelić, T. 7810-7812.

²⁴¹ Ex. 161, Decision of Alija Izetbegović on the Restructuring of the Armed Forces Supreme Command Headquarters and the Appointment of Rasim Delić, 8 June 1993; PW-3, T. 1312, 1521 (closed session); Ex. 211 (under seal).

²⁴² Jovan Divjak, T. 2257; Ex. 355, War Diary of Jovan Divjak, Entry of 9 June 1993. A commission was formed to assist in the hand-over, Ex. 315, Minutes of the 203rd Session of the RBiH Presidency, 8 June 1993, p. 7; Zdravko Đuričić, T. 2110-2111; Jovan Divjak, T. 2248-2249.

²⁴³ Murat Softić, T. 1804-1806; Ferid Buljubašić, T. 5497; Vahid Karavelić, T. 7804; Ismet Dedović, T. 8167.

²⁴⁴ Murat Softić, T. 1804; Ex. 815, Witness Statement of Ferid Buljubašić, 14 August 2007, para. 2. See Alija Lončarić, T. 8314-8316.

²⁴⁵ Ex. 815, Witness Statement of Ferid Buljubašić, 14 August 2007, para. 3.

²⁴⁶ See paras 105-106 *infra*.

²⁴⁷ Jovan Divjak, T. 2312-2313. See also PW-3, T. 1216, 1277-1279 (closed session).

²⁴⁸ Jovan Divjak, T. 2125, 2141-2142, 2312-2313. See also PW-3, T. 1280-1281 (closed session).

²⁴⁹ PW-3, T. 1511-1512 (closed session); Ex. 619, Regulation of Alija Izetbegović on the Structure of the General Staff, 24 November 1994; Ex. 208 (under seal); Ex. 1226 Order of the Supreme Command Staff, 29 January 1994.

4. Chief of Staff

105. The Chief of Staff of the ABiH Main Staff was in charge of the Command Operations Centre (“Operations Centre”), Headquarters Administration and Combat Arms Administration.²⁵⁰ In 1994, the Chief of Staff also assumed responsibility for the Operative Planning Administration.²⁵¹ An order of Rasim Delić of 29 March 1995 regulating the “command and control at the KM” states that “[a]t a time when the Commander is absent from the KM, the Chief of Staff of the [ABiH] exercises command and control. [...] The Chief of Staff shall exercise command and control by using Military Police through the Administration organ at the KM”.²⁵²

106. After the appointment of Rasim Delić to the position of the Commander of the Main Staff, Sefer Halilović remained the Chief of Staff of the Main Staff.²⁵³ On 1 November 1993, Halilović was replaced by Enver Hadžihasanović.²⁵⁴ The office of the Chief of Staff was initially located in Sarajevo but moved to the KM Kakanj in early 1994.²⁵⁵

5. Operations Centre

107. In October 1994, the Operations Centre was integrated into the Operative Planning Administration.²⁵⁶ In 1995, the Operations Centre was headed by Ferid Tabaković, and Asim Džambasović was the chief of the Operative Planning Administration.²⁵⁷ The Operations Centre was initially located in Sarajevo, but moved to the KM Kakanj in 1994.²⁵⁸

108. The Operations Centre was tasked with the daily monitoring of the military situation in the field. To that end, it received reports from the operations centres within the Corps, compiled them

²⁵⁰ Ex. 154, Decision of Alija Izetbegović on the Organisational Structure of the Ministry of Defence and the ABiH, 18 July 1993, pp 3-4. As the Chief of Staff was in charge of the Operations Centre, all the documents received by the Operations Centre had to be presented to him, Murat Softić, T. 1848-1849.

²⁵¹ Ex. 597, Chart on the Organisation of the ABiH, 18 October 1994, Marked by Ismet Alija.

²⁵² Ex. 370, Order of Rasim Delić Regarding Command Post, 29 March 1995; Ismet Alija, T. 4242, 4253. *See also* Ferid Buljubašić, T. 5492-5494; Ex. 621, Reports and Orders of General Hadžihasanović as Representative of the ABiH Supreme Commander, 5-16 September 1995.

²⁵³ Murat Softić, T. 1834-1835; Ismet Alija, T. 4108; Alija Lončarić, T. 8326.

²⁵⁴ PW-3, T. 1308-1309 (closed session); Ex. 1012, Order of Alija Izetbegović on Appointment of Military Personnel, 1 November 1993. *See also* Ex. 815, Witness Statement of Ferid Buljubašić, 14 August 2007, para. 6.

²⁵⁵ Ismet Alija, T. 4111-4112; Ex. 281, Order of Rasim Delić to the Ministry of Defence and the Chiefs of Administrations, 16 February 1994.

²⁵⁶ Ismet Alija, T. 4108-4109, 4115-4116; Ex. 597, Chart on the Organisation of the ABiH, 18 October 1994, Marked by Ismet Alija.

²⁵⁷ Ismet Alija, T. 4108-4109, 4111-4112, 4232; Ex. 276, Order of Rasim Delić Concerning the Establishment and Organisation of Operations Centre, 29 June 1993. *See also* Murat Softić, T. 1811, 1895-1896; Alija Lončarić, T. 8324-8325 (private session).

²⁵⁸ Ismet Dedović, T. 8168; Murat Softić, T. 1877-1878; Ex. 281, Order of Rasim Delić to the Ministry of Defence and the Chiefs of Administrations, 16 February 1994.

and sent them to the Commander of the Main Staff.²⁵⁹ The Operations Centre also prepared monthly, quarterly and annual plans.²⁶⁰

6. Security Administration

109. The Military Security Service (“Security Service”) was responsible for all security matters relating to the Armed Forces, such as the protection of persons and facilities.²⁶¹ The Security Service also performed counter-intelligence functions and documented war crimes,²⁶² analysed reports submitted by subordinate units²⁶³ and coordinated the work of the military police.²⁶⁴ The security of prisoners from the enemy side also fell within its purview.²⁶⁵ The Security Service was present on all levels of the ABiH from the battalions upwards, *i.e.*, at the levels of battalions, brigades, divisions (Operative Groups), the Corps and the Main Staff.²⁶⁶

110. The Military Security Administration at the level of the Main Staff (“Security Administration”) was the highest security organ within the ABiH and supervised the security organs of all units subordinated to the Main Staff.²⁶⁷ The Chief of the Security Administration reported directly to the Commander of the Main Staff.²⁶⁸ It was initially headed by Fikret Muslimović, who

²⁵⁹ Ex. 276, Order of Rasim Delić Concerning the Establishment and Organisation of Operations Centre, 29 June 1993; Murat Softić, T. 1811, 1847-1848; Ismet Alija, T. 4115-4116. *See also* Nermin Pešto, T. 3423-3424, 3444. *See paras 141-144 infra.*

²⁶⁰ Ismet Alija, T. 4104, 4109-4110; Vahid Karavelić, T. 7928-8929.

²⁶¹ Ex. 585, Rules of Operation for the Military Security Service in the ABiH, 11 September 1992, para. 1. *See also* Džemal Vučković, T. 5138-5139; Fadil Imamović, T. 4026-4027.

²⁶² Fadil Imamović, T. 4028; PW-4, T. 4749-4751, 4859 (closed session); Ekrem Alihodžić, T. 6428; Ex. 585, Rules of Operation for the Military Security Service in the ABiH, 11 September 1992, para. 5. *See also* Ex. 1263, Order of Rasim Delić on Development and Control Over the Military Security Service, Dated 13 February 1995.

²⁶³ Ex. 706, Witness Statement of Džemal Vučković, 5 November 2007, paras 18-19, 24, 27. *See paras 141-142, 145-146 infra.*

²⁶⁴ Fadil Imamović, T. 3963; Hamdija Šljuka, T. 4297; Zakir Alispahić, T. 6530-6531; Ex. 585, Rules of Operation for the Military Security Service in the ABiH, 11 September 1992, paras 7, 52-53; Ex. 586, Rules for the Work of the ABiH Military Police, 1 September 1992, paras 7-8.

²⁶⁵ PW-11, T. 6390-6391, 6397-6400 (closed session), testifying that it was the duty of both the commander of the unit that took the prisoners, as well as that of its security organ.

²⁶⁶ Džemal Vučković, T. 5137; Fadil Imamović, T. 3963-3964; Hamdija Šljuka, T. 4294-4295, 4342-4343; Ekrem Alihodžić, T. 6446-6449; *see* Ex. 585, Rules of Operation for the Military Security Service in the ABiH, 11 September 1992, Art. 12 reads “[The commanding officer [...]] may order authorised officers of the Military Security Service to deal with security matters within their competence in other commands, staffs, units and institutions of the armed forces do not normally have members of the Military Security Service, and shall determine the tasks and ways for professional control of their work”.

²⁶⁷ Ex. 585, Rules of Operation for the Military Security Service in the ABiH, 11 September 1992, paras 10-11, 45 *et seq.*; Džemal Vučković, T. 5140-5141, 5144-5145. *See also* Murat Softić, T. 1837-1838.

²⁶⁸ Ex. 585, Rules of Operation for the Military Security Service in the ABiH, 11 September 1992, para. 46; Kadir Jusić, T. 2494; PW-4, T. 4753, 4971-4972 (closed session). For a period of time in 1994, the Security Administration reported to the Ministry of Defence, *see* Ex. 1254, Report of the Chief of the Ministry of Defence Security Administration, 20 January 1994.

was replaced by Jusuf Jašarević at the end of 1993.²⁶⁹ The Security Administration had its headquarters in Sarajevo and it was relocated in part to the KM Kakanj in 1994.²⁷⁰

7. Intelligence Administration

111. The Intelligence Service was responsible for gathering intelligence on the enemy.²⁷¹ It monitored, for instance, communications by the enemy and analysed and processed all relevant information submitted by subordinate units.²⁷² The Intelligence Service gathered information through surveillance, intercepts as well as through reconnaissance and questioning of prisoners.²⁷³ The Intelligence Service was present on all levels of the ABiH from the battalion level upwards.²⁷⁴

112. The Intelligence Administration at the level of the Main Staff (“Intelligence Administration”) was the highest intelligence organ within the ABiH and supervised the intelligence organs of all units subordinated to the Main Staff.²⁷⁵ The Chief of the Intelligence Administration, Mustafa Hajrulahović a.k.a. Talijan, reported directly to the Commander of the Main Staff.²⁷⁶ The Intelligence Administration was headquartered in Sarajevo but relocated in part to the KM Kakanj from 1994 onwards.²⁷⁷

D. Presence of non-RBiH Citizens in the Ranks of the ABiH

113. The ABiH had rules regulating the inclusion of volunteers in its ranks, which could include both locals and foreigners.²⁷⁸ A person with citizenship other than that of the RBiH could join the ABiH only in a state of war and if he was not suspected of having “assisted the aggression against the [RBiH]”.²⁷⁹ In addition, such a person needed to make a statement that he voluntarily wished to join the ABiH.²⁸⁰

²⁶⁹ PW-3, T. 1650 (closed session); Hamdija Šljuka, T. 4358; Ex. 241, Order of Chief of Security Administration Concerning Operation Trebević-3, 6 December 1993.

²⁷⁰ Enver Berbić, T. 2330; Ekrem Alihodžić, T. 6483-6484; Vahid Karavelić, T. 7804.

²⁷¹ Izudin Hajderhodžić, T. 3701-3703.

²⁷² Izudin Hajderhodžić, T. 3701-3703; Sejfulah Mrkaljević, T. 3872-3874. *See paras 141-142 infra.*

²⁷³ Izudin Hajderhodžić, T. 3701-3703; Ex. 931, Witness Statement of Enes Malićbegović, 18 January 2006, para. 89 and 18 October 2007, para. 17.

²⁷⁴ Izudin Hajderhodžić, T. 3701-3703, 3706-3709.

²⁷⁵ Džemal Vučković, T. 5140-5141; Sejfulah Mrkaljević, T. 3869-3871. *See also* Murat Softić, T. 1837-1838.

²⁷⁶ Sejfulah Mrkaljević, T. 3869-3871; Edin Husić, T. 4389; Kadir Jusić, T. 2495; Ex. 154, Decision of Alija Izetbegović on the Organisational Structure of the Ministry of Defence and the ABiH, 18 July 1993; Ex. 597, Chart on the Organisation of the ABiH, 18 October 1994, Marked by Ismet Alija.

²⁷⁷ Sejfulah Mrkaljević, T. 3869-3871, who testified that the office of the Chief of the Intelligence Administration was in Sarajevo.

²⁷⁸ Ex. 1310, Decree on the Criteria and Standards for the Assignment of Citizens and Material Resources to the Armed Forces, 26 October 1992; Hajrudin Hubo, T. 7597-7601, 7609-7610.

²⁷⁹ In this Judgement, whenever the gender of an individual is unknown, the masculine form will be used. For this purpose, the masculine shall be read to also include the feminine.

²⁸⁰ Ex. 21, Decree Law on Service in the ABiH, RBiH Official Gazette of 1 August 1992, Art. 31; Ex. 1283, Memorandum of the Chief of the Office of Staffing and Legal Affairs, 28 August 1995; Alija Lončarić, T. 8333-

114. Through his service in the ABiH, a foreigner became eligible for RBiH citizenship even when he did not meet the normal requirements for naturalisation.²⁸¹ Service in the ABiH could be proved through a certificate issued by the commander of the unit of which the applicant was a member.²⁸² The Trial Chamber has been provided with evidence showing the functioning of this procedure in practice and instances of abuse where forged ABiH membership certificates were submitted.²⁸³

E. ABiH Units Relevant to the Indictment

1. The 2nd Corps

115. The 2nd Corps of the ABiH was formed on 29 September 1992.²⁸⁴ Throughout its existence, it was headquartered in Tuzla and consisted of around 80,000 members.²⁸⁵ The first commander of the 2nd Corps was Željko Knez, a Bosnian Croat.²⁸⁶ In October 1994, he was succeeded by Sead Delić who remained in this position until the end of the war.²⁸⁷

116. The evidence establishes that the following units were within the composition of the 2nd Corps of the ABiH: the 9th Muslim Brigade, the 115th Zrinjski Brigade as well as the 21st, 22nd, 24th and 25th Divisions.²⁸⁸

2. The 3rd Corps

117. The 3rd Corps of the ABiH was formed pursuant to the decision of the RBiH Presidency of August 1992.²⁸⁹ However, it was not before April 1993 that it became operational.²⁹⁰ Its

8334. *See also* Ex. 1097, Decision of Alija Izetbegović on Amendments to the Decision on Commission, Promotion and Adjudication in Military Personnel Service, 18 July 1993, Art. 7 (“The Presidency [...] shall be authorised to [...] decide on permanent engagement of foreign citizens in regular Army units [...]).

²⁸¹ Ex. 976, Witness Statement of Vjekoslav Vuković, 20 November 2007, paras 28-29 and Arts 8 and 9(5) of the Decree Law on Citizenship of 7 October 1992 (amended 10 May 1993), attached to Ex. 976.

²⁸² Ex. 976, Witness Statement of Vjekoslav Vuković, 20 November 2007, para. 61.

²⁸³ Ex. 1028, Request of the Head of the Police Sector, 6 March 1995; Ex. 1033, Request for Citizenship for an EMD Member, 29 April 1995; Ex. 1086, Request of the Zenica Security Services Centre, 21 November 1995; Ex. 1088, Request for Citizenship of an EMD Member, 22 December 1995; Ex. 1139, Video Clip; Ex. 1385, Certificate of the Tešanj Municipality, 16 January 1995; Ex. 689 (under seal).

²⁸⁴ Sead Delić, T. 2707-2710.

²⁸⁵ Sead Delić, T. 2710, 2811.

²⁸⁶ Sead Delić, T. 2819.

²⁸⁷ Sead Delić, T. 2710, 2811.

²⁸⁸ Sead Delić, T. 2816-2817, 2845-2846; Ex. 1083, Order of the 2nd Corps Commander on a Ceasefire, 11 October 1995.

²⁸⁹ PW-3, T. 1230 (closed session); Vahid Karavelić, T. 7799-7801; Ex. 158, Decision of Alija Izetbegović on the Formation of the ABiH Corps and Their Respective Zones of Responsibility and Resubordination, 11 October 1992. *See also* Agreed Fact 96.

²⁹⁰ Jovan Divjak, T. 2125-2126, 2230-2232; PW-3, T. 1273-1274 (closed session).

headquarters were in Zenica, close to the ironworks compound.²⁹¹ The area of responsibility of the 3rd Corps covered central RBiH, including the municipalities of Travnik and Zavidovići.²⁹² Enver Hadžihasanović was the first Commander of the 3rd Corps, succeeded by Mehmed Alagić on 1 November 1993.²⁹³ Sakib Mahmuljin was appointed to this position in early 1994 and held it until the end of the war.²⁹⁴

118. By January 1995, the 3rd Corps consisted of 30,000-40,000 men.²⁹⁵ They were grouped into two Divisions, as well as several independent units directly subordinated to the Corps command.²⁹⁶ The 3rd Corps also had a military police battalion of around 500 men ("MP Battalion") which was billeted at the *KP Dom* facility in Zenica.²⁹⁷ The MP Battalion was directly subordinated to the Commander of the 3rd Corps.²⁹⁸

3. The 35th Division

119. The 35th Division was formed as a permanent unit of the 3rd Corps out of the Operations Group ("OG") *Bosna*, a temporary military formation, on 1 March 1995.²⁹⁹ The headquarters of the 35th Division were in Zavidovići and its zone of responsibility included the area of Maglaj, Zavidovići, Vozuća and Kakanj.³⁰⁰ The 35th Division was at all times directly subordinated to the 3rd Corps of the ABiH.³⁰¹ It was commanded by Fadil Hasanagić from its inception until the end of the war.³⁰²

²⁹¹ Sejfulah Mrkaljević, T. 3879; Nermin Pešto, T. 3424; Hamdija Šljuka, T. 4294; Ex. 507, Map Marked by Fadil Hasanagić.

²⁹² Agreed Fact 53. *See also* Agreed Fact 54, stating that "[o]wing to combat operations, this zone of responsibility was slightly changed and reduced, although the municipality of Vareš was subsequently added to it".

²⁹³ Agreed Fact 57; Jovan Divjak, T. 2189.

²⁹⁴ Jovan Divjak, T. 2151, 2189; Ex. 331, Order by Alija Izetbegović Appointing Commanders of the 3rd and 7th Corps, 26 February 1994.

²⁹⁵ Alastair Duncan, T. 1972-1974; PW-11, T. 6409-6410 (closed session). *See* Ex. 1162, Combat Report of the 3rd Corps Commander, 28 May 1995.

²⁹⁶ Kadir Jusić, T. 2477-2480, 2482, 2569-2570, 2637-2639, 2682-2683; Sejfulah Mrkaljević, T. 3872, 3920; Ekrem Alihodžić, T. 6429-6430; Ex. 1216, Order of the 3rd Corps Commander, 10 December 1992; Ex. 379, 3rd Corps Organisational Chart.

²⁹⁷ PW-11, T. 6390-6391, 6396-6397 (closed session); PW-4, T. 5007-5008 (closed session); Zaim Mujezinović, T. 6012, 6025-6026, 6052-6054.

²⁹⁸ Zaim Mujezinović, T. 6019-6022; Zakir Alispahić, T. 6530-6531. *See also* paras 160-162 *infra*.

²⁹⁹ Fadil Hasanagić, T. 2926-2927, 3073, 3097; Hamdija Šljuka, T. 4292; Ex. 1265, Report of Operations Planning Administration on Reorganisation in the ABiH, 23 February 1995; Ex. 378, Order of the ABiH Main Staff, 12 January 1995; Ex. 165, Order of Rasim Delić Forming the 35th and 37th Divisions, 12 January 1995.

³⁰⁰ Sejfulah Mrkaljević, T. 3871; Hamdija Šljuka, T. 4292, 4322; Fuad Zilkić, T. 5357-5358; Ex. 931, Witness Statement of Enes Maličbegović, 18 January 2006, para. 116.

³⁰¹ Fadil Hasanagić, T. 2926-2927; Hamdija Šljuka, T. 4293-4294.

³⁰² Fadil Hasanagić, T. 2925, 3073; Hamdija Šljuka, T. 4293-4294; Fuad Zilkić, T. 5357-5358.

120. With its subordinate units, the 327th, 328th, 329th Brigades and the 3rd, 4th and 5th Manoeuvre Battalions, the 35th Division numbered approximately 11,000-12,000 men.³⁰³ A military police company of around 100 men was attached to the 35th Division.³⁰⁴

4. The 328th Mountain Brigade

121. The 328th Mountain Brigade was formed at the end of 1994 as a unit within the *OG Bosna*, subsequently the 35th Division.³⁰⁵ The headquarters of the Brigade were located in Zavidovići.³⁰⁶ Throughout the war, the Brigade was commanded by Fuad Zilkić.³⁰⁷ A military police unit of around 30 men was attached to the Brigade.³⁰⁸

122. Within the 328th Mountain Brigade was the so-called “Asim Čamdžić” unit which consisted of about 60 Bosnian Muslim men who were mainly from Zavidovići, grew longer beards and emulated the appearance of Arabs.³⁰⁹ They were well-equipped, provided for their own logistics and enjoyed the support of the local civilian and religious authorities. The members of that unit did not wear ABiH insignias and some evidence suggests that they were not within the proper command and control structure of the ABiH.³¹⁰

123. The 5th Battalion of the 328th Brigade was headquartered in the village of Marići.³¹¹ It was commanded by Ahmet Šehić and comprised around 500-600 men.³¹²

5. The 306th Brigade

124. The 306th Mountain Brigade was formed as a unit of the 3rd Corps. Between November 1992 and October 1993, it was commanded by Esad Sipić.³¹³ In mid-1993, the Brigade had between 1500 and 1700 members.³¹⁴

³⁰³ Fadil Hasanagić, T. 2926-2927, 2994, 3081-3082; Kadir Jusić, T. 2636; Fuad Zilkić, T. 5357-5358; Ahmet Šehić, T. 5015-5016; Ex. 379, 3rd Corps Organisational Chart.

³⁰⁴ Hamdija Šljuka, T. 4322, 4354-4355.

³⁰⁵ Fuad Zilkić, T. 5299-5301, 5357-5358; Ahmet Šehić, T. 5013.

³⁰⁶ Fuad Zilkić, T. 5299-5301; Ahmet Šehić, T. 5014, 5020, 5022.

³⁰⁷ Fuad Zilkić, T. 5299-5301; Izudin Hajderhodžić, T. 3750; Ahmet Šehić, T. 5013-5014.

³⁰⁸ Fuad Zilkić, T. 5432.

³⁰⁹ Fuad Zilkić, T. 5336, 5372-5373, 5423-5424; Izudin Hajderhodžić, T. 3764-3765; Ex. 931, Witness Statement of Enes Malićbegović, 18 January 2006, paras 17-18, 50; Ex. 1235, Report of the Chief of the 3rd Corps Security Service, 6 March 1995. See Ex. 794, Order of the Commander of the 35th Division, 3 September 1995.

³¹⁰ Izudin Hajderhodžić, T. 3764-3765, 3776-3779; Fuad Zilkić, T. 5372-5373; Fadil Imamović, T. 4062-4064; Džemal Vučković, T. 5195-5196; Ex. 810, Report of the Assistant Commander for Security of the 35th Division, 24 October 1995; Ex. 1084, Report of the Assistant Commander for Security of the 35th Division, 24 October 1995; Ex. 509, Report of the Chief of the Security Service Department of the 3rd Corps, 12 August 1995; Ex. 1235, Report of the Chief of the 3rd Corps Security Service, 6 March 1995.

³¹¹ Fuad Zilkić, T. 5299-5301, 5366-5367.

³¹² Ahmet Šehić, T. 5012, 5017, 5020, 5022, 5085; Ex. 970, Witness Statement of Muhamed Omerašević, 24 October 2006, para. 54, 8 May 2007, para. 51. See Muhamed Omerašević, T. 6739; Ex. 931, Witness Statement of Enes Malićbegović, 18 January 2006, para. 49.

125. The headquarters of the Brigade were in Rudnik and its zone of responsibility covered the Bila Valley area.³¹⁵ The Brigade's 1st Battalion was located in the primary school in the village of Mehurići.³¹⁶

6. The 7th Muslim Mountain Brigade

126. The 7th Muslim Mountain Brigade was formed in November 1992 as a unit of the 3rd Corps.³¹⁷ Its 1st Battalion consisted mostly of former members of the so-called "Muslim Forces of Travnik" (*Muslimanske Snage*), a paramilitary religious unit which had been disbanded in the winter of 1992/1993.³¹⁸ The headquarters of the Brigade were in Zenica and in mid-1993, it was commanded by Amir Kubura.³¹⁹ The 7th Muslim Brigade earned a reputation for its bravery and well-trained soldiers.³²⁰

7. The *El Mujahed* Detachment

127. The Prosecution alleges that the so-called *El Mujahed* Detachment ("EMD") was created in August 1993 as a unit subordinated to the 3rd Corps.³²¹ The EMD will be described in detail in the following chapter of this Judgement.³²²

F. Difficulties Faced by the ABiH

128. The Trial Chamber has been presented with a great deal of evidence concerning problems faced by the ABiH from the moment of its inception.

(a) Lack of Trained Personnel and Equipment

129. In the initial phase of the conflict until early 1993, the ABiH was in a nascent state.³²³ Its units lacked the very fundamentals: uniforms, equipment, including weaponry and means of communication, as well as qualified officers.³²⁴ In the words of one witness:

³¹³ Osman Fuško, T. 1070, 1077, 1148; Sinan Begović, T. 385; Asim Delalić, T. 1706-1707. *See* Ex. 134, Combat Report of the Commander of the 306th Mountain Brigade, 14 May 1993.

³¹⁴ Osman Fuško, T. 1122, 1158.

³¹⁵ Agreed Fact 72; Sinan Begović, T. 493; Osman Fuško, T. 1091; Halim Husić, T. 7431, 7574-7575.

³¹⁶ Osman Fuško, T. 1071-1072, 1076-1078; Halim Husić, T. 7432; Ex. 137, Map Marked by Osman Fuško.

³¹⁷ Agreed Facts 63, 81; Jovan Divjak, T. 2148-2149, 2157-2158; Sead Delić, T. 2920-2921; Enver Adilović, T. 7246-7247; Ex. 107, Order from Sefer Halilović, Chief of the Supreme Command Staff, to the 3rd Corps Command on Organisational Preparations, 19 November 1992. *See also* Sead Delić, T. 2920-2921.

³¹⁸ PW-2, T. 713-714; 732-733, 740-741, 803, 806-810; Haso Ribo, T. 6972, 6974-6977, 6986, 6990-6991, 7111-7112. *See also* Ex. 103 (under seal); Haso Ribo, T. 6997.

³¹⁹ Agreed Fact 82; PW-2, T. 742; Enver Adilović, T. 7195-7196; Ajman Awad, Hearing Sarajevo, T. 10, 18.

³²⁰ Jovan Divjak, T. 2159; PW-3, T. 1339-1340 (closed session).

³²¹ Indictment, paras 14, 17.

³²² *See* paras 170 *et seq. infra*.

³²³ *See* Šaban Alić, T. 696, 670; PW-2, T. 814-815.

The army consisted of people wearing civilian clothes or uniforms that were plundered from the warehouses, depots of the former army. And they wore the same kind of pants, the same kind of jackets, and they would put just some new insignia. This was not an army that was established, equipped. It wasn't the case that everybody knew what to do. It looked like a peasant uprising of some sort.³²⁵

130. The shortcomings in weaponry, equipment and trained personnel negatively affected the functioning of the ABiH throughout the conflict.³²⁶ By way of example, it has been estimated that less than 10% of the 3rd Corps officers, including those in the security and intelligence organs, had the necessary training to perform their functions.³²⁷ The evidence shows that although the Main Staff of the ABiH was trying to improve the situation by organising specialised trainings, in reality, the officers, including those responsible for security and intelligence, were not properly trained to do their job.³²⁸

131. Problems associated with the lack of military equipment were, on occasion, minimised with the help of civilian authorities.³²⁹ For instance, the counter-intelligence department within the security organ of the 3rd Corps was able to rely on the State Security Service and their technical resources to intercept enemy communications.³³⁰

132. The evidence also shows that a considerable number of petty crimes, such as theft, smuggling or violent behaviour, were committed by soldiers of the 3rd Corps and that problems of discipline and desertion were frequent.³³¹

³²⁴ Sinan Begović, T. 491-492, 494-495, 497; Hasib Alić, T. 622-624; Šaban Alić, T. 670, 676-677; Osman Fuško, T. 1125; Asim Delalić, T. 1747; Ex. 84, Video Clip; Ex. 85, Transcript of Ex. 84; Ex. 86, 306th Brigade Operations Report for 11 April 1993; Alastair Duncan, T. 1979-1980; PW-2, T. 815; Alija Lončarić, T. 8317.

³²⁵ Šaban Alić, T. 695.

³²⁶ PW-2, T. 814; Osman Fuško, T. 1123; PW-3, T. 1457-1458, 1536-1537, 1661-1662 (closed session); Vahid Karavelić, T. 7859-7860, 7967; Halim Husić, T. 7344-7345, 7512, 7516-7517; Jovan Divjak, T. 2231-2232; Ex. 123, Reply of the Commander of the 7th Muslim Brigade, 30 May 1993; Ex. 215 (under seal); Alastair Duncan, T. 1972-1974.

³²⁷ Kadir Jusić, T. 2538-2540; Sejfulah Mrkaljević, T. 3918, 3925-3926; Izudin Hajderhodžić, T. 3756-3757, 3765-3768; Edin Husić, T. 4438-4440; PW-4, T. 4859-4863 (closed session); Ex. 1262, Information Bulletin of the ABiH Press Centre, 5 February 1995.

³²⁸ Edin Husić, T. 4438-4440; PW-4, T. 4859-4863 (closed session); Ex. 1262, Information Bulletin of the ABiH Press Centre, 5 February 1995; Ex. 1266, Order of Rasim Delić on the Development of a Syllabus in Training the ABiH, 1 March 1995; Ex. 1294, Order of Rasim Delić on Training Officers of the ABiH, 14 October 1995; PW-11, T. 6295-6296; Ekrem Alihodžić, T. 6446-6449, 6453-6456, 6490-6491; Fadil Hasanagić, T. 3084-3086; Izudin Hajderhodžić, T. 3756-3757, 3765-3768; Fadil Imamović, T. 4020, 4022-4025; Hamdija Šljuka, T. 4339, 4341-4342; Ex. 583, Report of the Security Service of the 35th Division, 30 August 1995, p. 9; Ex. 1342, Order of Rasim Delić on Training, 6 February 1995; Ex. 1343, Order of Rasim Delić on Training, 26 February 1995.

³²⁹ Edin Husić, T. 4438-4440; PW-4, T. 4859-4863 (closed session); Jovan Divjak, T. 2230-2231; Alastair Duncan, T. 1972-1974; PW-11, T. 6297-6298 (closed session); Ex. 1267, Report of the General Staff, 3 March 1995.

³³⁰ PW-4, T. 4751-4752, 4866-4870 (closed session); PW-11, T. 6297-6298 (closed session); Ekrem Alihodžić, T. 6518.

³³¹ PW-11, T. 6350-6360 (closed session); Ekrem Alihodžić, T. 6513-6514, 6517-6518; Ex. 906 (under seal); Ex. 907 (under seal); Ex. 908 (under seal); Ex. 909 (under seal); Ex. 910 (under seal); Ex. 942, Report of the Assistant Commander for Security of the 3rd Corps, 29 July 1995; Ex. 943, Report of the Chief of the Military Security Administration, 10 April 1995; Ex. 944, Report of the Chief of the Zenica Security Service Centre, 19 August 1995; Ex. 1239, Report of the Chief of the 3rd Corps Security Service, 28 July 1995; Ex. 1247, Report of the Igman Defence Command, 30 July 1993; Ex. 1248, Report of Rasim Delić on Conclusions and Tasks Adopted at a

(b) Command and Control

133. The establishment of a chain of command in the ABiH was a slow process which some of the local commanders resisted.³³²

134. The evidence suggests that there was a split in the ABiH between officers who were members of the so-called “Patriotic League” on the one side, and former JNA members who joined the defence of the RBiH only after the outbreak of conflict on the other side.³³³ Patriotic League members such as Sefer Halilović, Zičro Suljević, Rifat Bilajac and Kemo Karišik, held various key positions within the Main Staff. Also President Izetbegović was a member of the Patriotic League.³³⁴ According to one witness, distrust between the two groups remained throughout the entire conflict.³³⁵

135. The evidence shows that the appointment of Rasim Delić, who had not been a member of the Patriotic League, as Commander of the Main Staff in June 1993 was not immediately accepted and caused a rift among the senior officers. As a consequence, some of his orders at that time were not complied with.³³⁶ According to Vahid Karavelić, Rasim Delić needed to “work hard over the next months and years maybe to win over the commanders and officers to get them to really listen to him”.³³⁷

136. In late October 1993, the ABiH conducted a crackdown on two disobedient units within the encircled city of Sarajevo.³³⁸ Ramiz Delalić (“Čelo”) from the 9th Mountain Brigade and Mušan Topalović (“Caco”) from the 10th Mountain Brigade, both units of the 1st Corps, were notorious criminals who terrorised the Sarajevo population regardless of their ethnicity.³³⁹ The crackdown,

Meeting in Zenica, 29 August 1993; Ex. 1258, Order of Rasim Delić to the 1st, 2nd, 3rd, 4th and 7th Corps Commands on Convoy Security, 5 June 1994.

³³² Ex. 214 (under seal); PW-3, T. 1362-1363, 1534-1535, 1642-1644 (closed session); Vahid Karavelić, T. 7799-7801; Alija Lončarić, T. 8318-8319; Ex. 1223, Order of 3rd Corps Commander, 3 April 1993, para. 16; Ex. 1224, Order of the Chief of the 3rd Corps Security Sector, 16 March 1993; Ex. 1251, Letter of Alija Izetbegović, 28 November 1993.

³³³ Alija Lončarić, T. 8311-8312. *See* PW-3, T. 1453-1454 (closed session).

³³⁴ Alija Lončarić, T. 8312-8313, 8319-8320, 8440, 8456; Vahid Karavelić, T. 7793, 7806; Ismet Dedović, T. 8173 (private session).

³³⁵ Alija Lončarić, T. 8320-8321, 8324, 8337 (private session in part).

³³⁶ Vahid Karavelić, T. 7806, 7857-7858 (private session); PW-3, T. 1339-1340, 1363-1364, 1534-1535 (closed session); Alija Lončarić, T. 8314-8316, 8320-8321, 8324, 8327-8331, 8337-8338, 8375, 8440-8443 (private session in part); Ismet Dedović, T. 8171, 8174-8175, 8293 (private session in part); Ex. 214 (under seal); Ex. 1373, “War Diary 1993” by Stjepan Šiber, 18 July 1993; Jovan Divjak, T. 2255.

³³⁷ Vahid Karavelić, T. 7857-7858. *See also* Vahid Karavelić, T. 7806, 7886, 7967.

³³⁸ Zdravko Đuričić, T. 2116-2117; Ex. 316, “Balkan Battlegrounds: A Military History of the Yugoslav Conflict, 1990-1995, Volume II”, CIA, October 2003, p. 410.

³³⁹ PW-3, T. 1538-1541, 1543-1546 (closed session); Ex. 1246, Report of the BiH Ministry of the Interior, 5 July 1993. *See also* Ismet Dedović, T. 8175, 8183-8184, 8192-8193.

named “*Trebević-1*”, was approved by Alija Izetbegović and entailed casualties on both sides.³⁴⁰ Criminal reports were filed against some members of the disobedient Brigades.³⁴¹ Although they were removed from duty, they were not put on trial or punished for their actions.³⁴² Rasim Delić was part of the “war council” that made the decision on the crackdown.³⁴³ “*Trebević-1*” has been described as the “first and most dramatic step” to regularise and professionalise the ABiH.³⁴⁴ Conditions for the population in Sarajevo improved thereafter.³⁴⁵

137. Subsequently, Rasim Delić authorised several operations to remove obstacles to the functioning of the ABiH system of command and control.³⁴⁶ To that end, Rasim Delić also permitted the use of weapons.³⁴⁷ However, according to Vahid Karavelić, any use of force within the ABiH had first to be approved by the RBiH Presidency.³⁴⁸

(c) Communications

138. The ABiH did not possess sophisticated communication equipment and relied mainly upon telephone and radio transmission.³⁴⁹ The so-called packet communication system, which used cryptographic protection, was only available to the Main Staff and the Corps.³⁵⁰ When the circumstances so required, information was sent by courier.³⁵¹

³⁴⁰ PW-3, T. 1558-1560 (closed session); Vahid Karavelić, T. 7854-7855, 7866-7867 (private session); Ex. 218 (under seal). *See also* Vahid Karavelić, T. 7865.

³⁴¹ Ex. 217, Criminal Report filed by the District Military Prosecutor’s Office Sarajevo against Members of the 9th and 10th Brigades, 29 October 1993; Ex. 960, Criminal Report of the Military Security Administration, 21 November 1993; PW-13, T. 6631-6632, 6634.

³⁴² PW-3, T. 1551-1552, 1555-1556 (closed session); Vahid Karavelić, T. 7983-7984. *See* Ex. 961, Report of the Sarajevo District Military Prosecutor, 2 February 1994.

³⁴³ PW-3, T. 1552-1553, 1556 (closed session); Vahid Karavelić, T. 7975-7976.

³⁴⁴ Zdravko Đuričić, T. 2116-2117; Ex. 316, “Balkan Battlegrounds: A Military History of the Yugoslav Conflict, 1990-1995, Volume II”, CIA, October 2003, p. 410.

³⁴⁵ Zdravko Đuričić, T. 2117.

³⁴⁶ “**Trebević-2**” (October/November 1993): Murat Softić, T. 1880-1882, 1897-1899; Ex. 282, Order of Rasim Delić Concerning Operation Trebević and Trebević-2, 25 October 1993; PW-13, T. 6625; “**Trebević-3**” (November 1993): PW-3, T. 1646-1649 (closed session); Ex. 239, Order from Rasim Delić Concerning Operation Trebević-3, 3 November 1993; Murat Softić, T. 1900-1901; Ex. 240, Proposal to 3rd Corps Commander Concerning Operation Trebević-3, 5 November 1993; “**Trebević-4**” (March 1994): PW-3, T. 1656-1657 (closed session); Ex. 244, Order of Rasim Delić Concerning Operation Trebević-4, 22 March 1994; Ex. 1233, Order of the Chief of the Security Administration of the Ministry of Defence, 19 April 1994; Ex. 1238, Bulletin of the Military Security Administration, 9 May 1995. *See also* Zvonko Jurić, T. 8490-8491, testifying about the successful efforts of Rasim Delić to incorporate HVO units into the ABiH in late 1993 and early 1994.

³⁴⁷ Murat Softić, T. 1882-1884; Ex. 239, Order from Rasim Delić Concerning Operation Trebević-3, 3 November 1993.

³⁴⁸ Vahid Karavelić, T. 7871-7872, 7877-7878, 7883-7884 (closed session in part). *See also* Ismet Dedović, T. 8293-8294.

³⁴⁹ Jovan Divjak, T. 2225-2227; Enver Berbić, T. 2376-2377, 2437; Vahid Karavelić, T. 7972; Ismet Dedović, T. 8170, 8245-8247; *but see* Alastair Duncan, T. 1925-1926, testifying that already in 1993, the 3rd Corps had access to satellite telephones.

³⁵⁰ Enver Berbić, T. 2418-2419; Vahid Karavelić, T. 7947-7948. *See* Ex. 375, Three Reports on the Successes of Units of the ABiH, 22 July 1995.

³⁵¹ Kadir Jusić, T. 2541; Fadil Imamović, T. 3968; Vahid Karavelić, T. 7970-7971.

139. The siege of Sarajevo hampered communication between the Main Staff and the units in the field.³⁵² Communication problems also prevailed during the ABiH operations in the area of Maline in June 1993³⁵³ and in the Vozuća pocket in 1995.³⁵⁴

(d) Influence of Civilian Authorities

140. The evidence shows that some ABiH units were strongly influenced by local civilian and religious authorities, especially in the areas of Zenica and Zavidovići.³⁵⁵ Legislation passed in August 1992 provided for the civilian authorities to play a role in supplying the Armed Forces with “basic material and other needs”, such as fuel and food.³⁵⁶ As a result, civilian authorities sometimes interfered with the command of ABiH units.³⁵⁷

G. Reporting

1. General Principles

141. Reporting within the ABiH followed the principle of “unity of command and subordination”, according to which a lower unit would only report to the first immediately superior unit along the chain of command. By way of illustration, a company would report information from the field to the battalion. This information would be processed and passed on to the brigade, and so forth, up the chain of command.³⁵⁸

142. The security and intelligence services of each unit reported not only to the Commander of that unit, but also along a “line of speciality”, that is, to the organ of the same service at the next higher level.³⁵⁹ For instance, the security organ at the Corps level would report both to the Corps

³⁵² Jovan Divjak, T. 2225-2226, 2309-2310; Kadir Jusić, T. 2540-2541; Enver Berbić, T. 2377-2378; Vahid Karavelić, T. 7816.

³⁵³ Osman Fuško, T. 1102-1103, 1127. *See also* Ex. 142, Weekly Report of Assistant Commander for Military Security of the 306th Brigade, 8 January 1993; Asim Delalić, T. 1708, 1735, 1746-1747, 1751-1752; Ex. 265, Operations Report of the Commander of the 306th Brigade, 13 April 1993, p. 2; Ex. 258, Report of OG Bosanska Krajina, 5 June 1993.

³⁵⁴ Izudin Hajderhodžić, T. 3839-3841. *See also* Safet Sivro, T. 3357-3358; Kadir Jusić, T. 2508, 2607-2608; Haso Ribo, T. 7089-7090.

³⁵⁵ PW-3, T. 1456, 1459, 1685-1686 (closed session); Džemal Vučković, T. 5196-5197; Vahid Karavelić, T. 7839-7840, 7844-7845; Fuad Zilkić, T. 5358.

³⁵⁶ PW-3, T. 1462-1463 (closed session); Vahid Karavelić, T. 7802-7803, 7839-7840; Halim Husić, T. 7413-7415; Ex. 188, Decree Law on the Formation of Work Districts, 13 August 1992.

³⁵⁷ PW-3, T. 1462-1463, 1688-1689 (closed session); Vahid Karavelić, T. 7839-7840, 7845-7849; Ex. 1330, Video Clip; Fadil Hasanagić, T. 3311-3312; Izudin Hajderhodžić, T. 3761-3762, 3771-3772, 3775-3780; Ex. 509, Report of the Chief of the Security Service Department of the 3rd Corps, 12 August 1995. *See para. 441 infra.*

³⁵⁸ Enver Berbić, T. 2394-2395, 2398-2399; Sead Delić, T. 2889-2890; Ismet Alija, T. 4122, 4180-4181, 4216; Ex. 371, Orders of the Chief of the Main Staff, 27 September 1994. *See also* Ex. 22, Decree Law on the RBiH Armed Forces, RBiH Official Gazette of 20 May 1992, Art. 13.

³⁵⁹ Ismet Alija, T. 4182; Džemal Vučković, T. 5137-5141, 5143; Ex. 706, Witness Statement of Džemal Vučković, 5 November 2007, paras 27, 31; Ex. 585, Rules of Operation for the Military Security Service in the ABiH,

Commander and the Security Administration of the Main Staff.³⁶⁰ The MP Battalion reported both to the 3rd Corps Commander and the security organ of the 3rd Corps.³⁶¹

2. Types of Reports Received by the Main Staff

(a) Combat Reports

143. ABiH Corps Commands sent daily combat reports to the Operations Centre in Sarajevo.³⁶² As of 1994, they were only sent to the Operations Centre in Kakanj.³⁶³ Information was also relayed to the Operations Centre by telephone.³⁶⁴ A team consisting of representatives of the different administrations examined and selected the information contained in the reports and compiled it into one consolidated report.³⁶⁵ Only information that was considered relevant or significant was included in the consolidated reports.³⁶⁶ The consolidated combat reports were sent to the President of the Presidency and the Commander of the Main Staff.³⁶⁷

144. Monthly reports were sent directly by the Corps to the Chief of Staff in the Main Staff.³⁶⁸ The evidence also shows that the Chief of Staff, when he stood in for Rasim Delić, sent extraordinary reports to the President of the Presidency.³⁶⁹

(b) Security Reports

145. The security organs of all ABiH Corps sent security reports to the Security Administration of the Main Staff in Sarajevo.³⁷⁰ Exceptionally, the reports were also sent to the Security

11 September 1992, item 11. *See e.g.*, Ex. 931, Witness Statement of Enes Maličbegović, 18 January 2006, paras 36-37, 41.

³⁶⁰ Ismet Alija, T. 4182; Sejfulah Mrkaljević, T. 3869-3870; Edin Husić, T. 4387-4390; Džemal Vučković, T. 5137-5141, 5143; Salih Spahić, T. 5258-5264; Ex. 770, Witness Statement of Salih Spahić, 20 September 2006, paras 15-29 (testifying that the Assistant Commander also decided whether the information was to be passed on to the 3rd Corps Commander). Regarding the reporting between the security organs of lower units, *see* Fadil Imamović, T. 3967-3968; Izudin Hajderhodžić, T. 3702-3703, 3705-3706; Ex. 931, Witness Statement of Enes Maličbegović, 18 January 2006, paras 41, 57.

³⁶¹ Zaim Mujezinović, T. 6040-6041, 6062-6064. *See also* Halim Husić, T. 7401; Ex. 926, Witness Statement of Zakir Alispahić, 22 December 2005, paras 13, 15. The MP Battalion did not have command authority over the military police units in subordinate units, Zaim Mujezinović, T. 6026.

³⁶² Kadir Jusić, T. 2612-2613; Ivan Negovetić, T. 6782-6783, 6790-6792.

³⁶³ Ferid Buljubašić, T. 5488; Murat Softić, T. 1848-1849; Ismet Alija, T. 4116-4117; Ex. 371, Orders of the Chief of the Main Staff, 27 September 1994; Ex. 276, Order of Rasim Delić Concerning the Establishment and Organisation of Operations Centre, 29 June 1993. Jovan Divjak testified that with the relocation of the majority of the Main Staff to the KM Kakanj, the role of the Operations Centre in Sarajevo was greatly reduced, T. 2238-2239.

³⁶⁴ Nermin Pešto, T. 3423-3424, 3461. *See also* Ex. 931, Witness Statement of Enes Maličbegović, 18 January 2006, paras 43, stating that "there were oral reports and written reports coming from the field".

³⁶⁵ Enver Berbić, T. 2348, 2399; Ismet Alija, T. 4122-4124.

³⁶⁶ Enver Berbić, T. 2438-2440; Ismet Alija, T. 4218.

³⁶⁷ Murat Softić, T. 1879; Ex. 274, Regular Combat Report of the 3rd Corps, 24 December 1993; Ismet Alija, T. 4118-4124; Enver Berbić, T. 2414-2416.

³⁶⁸ Sead Delić, T. 2861-2862; Ismet Alija, T. 4109-4110, 4130-4132. *See, e.g.*, Ex. 532, Monthly Analysis of Combat Readiness of the 3rd Corps, 26 July 1995; Safet Sivro, T. 3339.

Administration of the Main Staff at the KM Kakanj.³⁷¹ In both locations, the reports were registered in a log-book and distributed to the different departments of the Security Administration.³⁷² These reports formed the basis for “bulletins” which were submitted by the Security Administration to, among others, the Main Staff Commander on a daily basis, unless there was nothing relevant to report.³⁷³

146. The bulletins were distributed according to a standard procedure.³⁷⁴ After having received final approval by the Chief of the Security Administration, the bulletins were stamped on each page and put in a sealed envelope.³⁷⁵ They were then sent to the President of the Presidency, the Commander of the Main Staff, and a number of other persons occupying senior positions in the RBiH Government and the ABiH.³⁷⁶ When Rasim Delić was travelling, the bulletins were generally sent to him by packet communication, including when he was at the KM Kakanj.³⁷⁷ The bulletins had to be returned to the Chief of the Security Administration and they frequently included Rasim Delić’s comments or suggestions.³⁷⁸

3. Information Processing and Incorrect Reporting

147. In reporting along the chain of command, each ABiH unit summarised the information received from its subordinated units by selecting only what it considered sufficiently relevant or significant.³⁷⁹ The Trial Chamber heard evidence, for instance, that the Operations Centre did not generally include activities of smaller ABiH units in its consolidated reports unless they related to

³⁶⁹ See Ex. 1289, Report of the General Staff, 15 September 1995; Ex. 1290, Report of the General Staff, 16 September 1995.

³⁷⁰ Ex. 585, Rules of Operation for the Military Security Service in the ABiH, 11 September 1992, item 11; Ex. 706, Witness Statement of Džemal Vučković, 5 November 2007, paras 25-27.

³⁷¹ The reports were sent to Kakanj only by special order, Sejfulah Mrkaljević, T. 3870; PW-4, T. 4752, 4798 (closed session); Salih Spahić, T. 5241-5242. See Ex. 774, Report of the Assistant Commander for Security of the 3rd Corps, 1 July 1995, which was sent both to the Security Administration in Sarajevo and Kakanj.

³⁷² Ex. 708, Logbook of the Military Security Administration, 1 July-30 September 1995; Džemal Vučković, T. 5144-5145; Ex. 706, Witness Statement of Džemal Vučković, 5 November 2007, paras 25-26. See also Ex. 1120-1125, Logbooks of Incoming Documents for the Military Security Administration.

³⁷³ Džemal Vučković, T. 5129; Enver Berbić, T. 2423-2424. See, e.g., Ex. 365, Bulletin of the Chief of Security Administration, 17 December 1995. “Bulletins” were summaries containing selected information from reports received by the Security Administration in the preceding 24 hours. The Security Administration also submitted “special information reports”, “analyses” and “overviews” on specific issues, but not in regular intervals. Distribution of these documents followed the same procedure as the bulletins, Ex. 706, Witness Statement of Džemal Vučković, 5 November 2007, paras 35, 42-44.

³⁷⁴ Ex. 706, Witness Statement of Džemal Vučković, 5 November 2007, paras 34-44.

³⁷⁵ Džemal Vučković, T. 5135-5136, 5173; Ex. 706, Witness Statement of Džemal Vučković, 5 November 2007, paras 63, 65-66.

³⁷⁶ Ex. 376, Order of the Chief of Security Administration, 22 July 1993.

³⁷⁷ Ex. 706, Witness Statement of Džemal Vučković, 5 November 2007, para. 61; Ex. 377, Bulletins of the Chief of Security Administration, 19 January-30 December 1995; Džemal Vučković, T. 5132-5133, 5153-5154.

³⁷⁸ Džemal Vučković, T. 5173, 5176-5177; Ex. 706, Witness Statement of Džemal Vučković, 5 November 2007, para. 40. See Ex. 761, Special Information of the Chief of Military Security Administration, 2 December 1993.

³⁷⁹ Ismet Alija, T. 4122-4124; Izudin Hajderhodžić, T. 3706; Halim Husić, T. 7520-7521; Safet Siro, T. 3322, 3340, 3342, 3358-3359.

important events such as, for instance, the taking of a large number of prisoners or the alleged commission of a crime.³⁸⁰

148. There is also evidence that the flow of information along the chain of command was sometimes hampered due to the lack of trained and experienced personnel. Fadil Hasanagić, Commander of the 35th Division, testified that the Division's command post in Zavidovići faced disruption of reporting during Operation *Farz*.³⁸¹ There were also difficulties in maintaining regular documentation.³⁸² In fact, the 35th Division issued an order to remind all subordinated units about the duty to submit reports.³⁸³

149. The ABiH was also faced with distorted reports received from its subordinated units.³⁸⁴ This was a recurrent problem which was linked to the wider issue of lack of trained and experienced personnel.³⁸⁵ Nermin Pešto, the Chief of the 3rd Corps' Operation Centre, estimated that when the intelligence organ of a ABiH unit reported to the 3rd Corps "100 Chetniks are surrounded", the correct information was, probably, "drop[ping] half of those, 100 divided by 2".³⁸⁶

150. The lack of reliability of some of the information arriving from the field was one of the reasons Rasim Delić toured the units whenever he could.³⁸⁷ There is also evidence that Rasim Delić occasionally sought reports directly from the Corps.³⁸⁸

4. Rasim Delić's Knowledge of Documents

151. When Rasim Delić was in Sarajevo, the Security Administration would send documents to him by courier.³⁸⁹ Rasim Delić's cabinet had a protocol where incoming and outgoing mail was logged and it was the duty of his Chef de Cabinet to inform Rasim Delić of all the documents that were arriving at his office.³⁹⁰ After a document was received, the Chef de Cabinet would assess its

³⁸⁰ Enver Berbić, T. 2407-2408, 2412-2415, 2445-2446; Ismet Alija, T. 4220, 4231, 4235, 4239.

³⁸¹ The disruption was also caused by the fact that the operation officers who were in charge of receiving reports from the subordinated units were in the field, Fadil Hasanagić, T. 3234-3235; Ex. 484, Order of the Chief of Staff of the 35th Division, 5 April 1995.

³⁸² Fadil Hasanagić, T. 3234-3235.

³⁸³ Ex. 484, Order of the Chief of Staff of the 35th Division, 5 April 1995; *see* Fadil Hasanagić, T. 3104-3105.

³⁸⁴ Nermin Pešto, T. 3474-3478, testifying that the problem of false and inaccurate reports was discussed by the 3rd Corps Commander Mahmuljin with other ABiH Commanders.

³⁸⁵ Ismet Alija, T. 4215-4216; Kadir Jusić, T. 2540; Safet Sivro, T. 3353; Ex. 614, Warning of Chief of the Supreme Command Staff on Truthful and Timely Submission of Reports, 31 January 1994. *See* paras 129-130 *supra*.

³⁸⁶ Nermin Pešto, T. 3475, referring to Ex. 535, Briefing Notes of 11, 13, 15 and 18 September 1995. *See also* Safet Sivro, T. 3358 testifying that the consolidated reports were based on reports received by the Corps which could contain incorrect information; Džemal Vučković, T. 5199-5200, 5204-5210.

³⁸⁷ Nermin Pešto, T. 3477; Murat Softić, T. 1840-1841.

³⁸⁸ Ismet Alija, T. 4258-4260; Ex. 496, Order of Rasim Delić on Undertaking Combat Operations, 16 July 1995.

³⁸⁹ Ex. 706, Witness Statement of Džemal Vučković, 5 November 2007, para. 62.

³⁹⁰ Murat Softić, T. 1806-1807, 1846-1847. *See, e.g.*, Ex. 276, Order of Rasim Delić Concerning the Establishment and Organisation of Operations Centre, 29 June 1993.

importance, make a summary and brief Rasim Delić as to its content “when the Commander had time”.³⁹¹

152. Ferid Buljubašić, who was Rasim Delić’s Chef de Cabinet throughout 1995, gave evidence that he received documents from the Security Administration in a sealed envelope for Rasim Delić, which he, Buljubašić, was not authorised to open.³⁹² These envelopes were handed over to Rasim Delić personally, or to his secretary in case he was absent.³⁹³

153. When Rasim Delić was known to be at the KM Kakanj, the Chef de Cabinet would transmit relevant information there.³⁹⁴ Although Rasim Delić was at the KM Kakanj only rarely, the officers there usually knew where he was and dispatches would still be sent to the KM.³⁹⁵ When Rasim Delić was visiting a specific Corps, the Chef de Cabinet would communicate with him *via* the Corps Command.³⁹⁶ If the Chef de Cabinet was not able to reach Rasim Delić, he would communicate the information to one of Rasim Delić’s deputies or anyone else standing in for the commander.³⁹⁷

154. Enver Berbić, who worked in the Security Administration at the KM Kakanj, testified that when he received the bulletins from the Security Administration in Sarajevo, he handed them over to Rasim Delić, or in his absence, to the Chief of Staff of the Main Staff, or otherwise, to the most senior administration officer present.³⁹⁸

5. Meetings of Rasim Delić

155. The Chef de Cabinet scheduled and organised meetings on behalf of Rasim Delić in his Sarajevo office, involving the Chiefs of the different administrations and Corps Commanders.³⁹⁹ Because Sarajevo was under siege and it was thus not always possible to convene meetings there,

³⁹¹ Murat Softić, T. 1806-1807, 1841-1843.

³⁹² Ex. 816, Witness Statement of Ferid Buljubašić, 12 November 2007, para. 19.

³⁹³ Ex. 816, Witness Statement of Ferid Buljubašić, 12 November 2007, para. 19; Ferid Buljubašić, T. 5502-5503.

³⁹⁴ Murat Softić, T. 1877-1878. *See also* Ex. 816, Witness Statement of Ferid Buljubašić, 12 November 2007; Ferid Buljubašić, T. 5498-5500; Enver Berbić, T. 2377-2378, 2419-2420; Edin Šarić, T. 5984-5985.

³⁹⁵ Murat Softić, T. 1877-1878, 1895-1896. *See also* Enver Berbić, T. 2372, 2426-2427, 2448; Ismet Dedović, T. 8194-8195; Ferid Buljubašić, T. 5499-5500; Ex. 816, Witness Statement of Ferid Buljubašić, 12 November 2007, paras 12, 16, according to whom Rasim Delić spent about “half his time” in Sarajevo.

³⁹⁶ Murat Softić, T. 1895-1896.

³⁹⁷ Murat Softić, T. 1841-1843; Ismet Dedović, T. 8203-8204; Ex. 275, Order of Stjepan Šiber, 19 September 1993; Ex. 816, Witness Statement of Ferid Buljubašić, 12 November 2007, paras 15-18, 36-38.

³⁹⁸ Enver Berbić, T. 2371-2372 (*see e.g.* Ex. 365-368, bulletins addressed personally to Berbić from Jusuf Jašarević; Berbić was instructed by the latter to forward them to Rasim Delić); *see* Ex. 1125, Logbook of Incoming Documents for the Military Security Administration, 1 October 1995-31 December 1995; Murat Softić, T. 1896; Ferid Buljubašić, T. 5500-5501.

³⁹⁹ Murat Softić, T. 1810-1811; Ex. 816, Witness Statement of Ferid Buljubašić, 12 November 2007, paras 9-11, 35; Ex. 706, Witness Statement of Džemal Vučković, 5 November 2007, para. 33; Džemal Vučković, T. 5128-5129, 5180; Jovan Divjak, T. 2130-2133; Ismet Dedović, T. 8251.

Rasim Delić often met the Corps Commanders in the field.⁴⁰⁰ Rasim Delić was seen at the Command of the 3rd Corps “maybe one, two or three times a month” between June 1993 and March or April 1994. He was less frequently present at the 3rd Corps in 1995.⁴⁰¹

156. In the second half of 1995, Rasim Delić went to a series of diplomatic missions, including a military conference in Kuala Lumpur, Malaysia, to which he departed on 8 September 1995.⁴⁰² He returned from this conference on or about 17 September 1995.⁴⁰³ In the second half of September 1995, Rasim Delić travelled the area of Bihać in western Bosnia and on 22 September 1995, he went to central Bosnia and visited the area of responsibility of the 2nd Corps in the Vozuća area.⁴⁰⁴

H. Military Justice in the ABiH

157. The system of military justice in the ABiH was predicated on District Military Courts and District Military Prosecutor’s Offices.⁴⁰⁵ Decisions of the District Military Courts could be appealed before the RBiH Supreme Court in Sarajevo.⁴⁰⁶

158. ABiH military courts had jurisdiction over ABiH personnel.⁴⁰⁷ In case of certain offences against the Armed Forces, the military courts were also competent to try civilians.⁴⁰⁸ Certain

⁴⁰⁰ Murat Softić, T. 1810-1811, 1895-1896; Ferid Buljubašić, T. 5457-5458; Ex. 816, Witness Statement of Ferid Buljubašić, 12 November 2007, para. 13; Jovan Divjak, T. 2189-2191; Ismet Dedović, T. 8170-8171; Alija Lončarić, T. 8379-8380; Kadir Jusić, T. 2674-2675.

⁴⁰¹ Kadir Jusić, T. 2674-2675. On 1 and 2 August 1995, Rasim Delić visited the 35th Division’s Command at Zavidovići together with Alija Izetbegović and Sakib Mahmuljin, Ismet Dedović, T. 8272-8273; Ex. 1366, Regular Combat Report of the 3rd Corps Command, 2 August 1995.

⁴⁰² Sead Delić, T. 2788; Ex. 622, Video Clip; Ex. 816, Witness Statement of Ferid Buljubašić, 12 November 2007, paras 36-37; Ferid Buljubašić, T. 5491; Vahid Karavelić, T. 7937-7938; Ismet Dedović, T. 8209-8210, 8212-8213, 8296-8297; Ex. 1360, Newsletter of the ABiH Information Department on a Meeting in Split, 23 July 1995; Ex. 1362, “Successful and Useful Cooperation”, Article in Večernje Novine, 3 September 1995.

⁴⁰³ Ismet Dedović, T. 8209, 8222-8223; Ex. 1292, Order of Rasim Delić to 5th and 7th Corps Commands and Joint Command on Establishing Command and Zones of Responsibility, 20 September 1995.

⁴⁰⁴ Ferid Buljubašić, T. 5539-5540; Sead Delić, T. 2788-2789. See also Vahid Karavelić, T. 7944; Ex. 1292, Order of Rasim Delić to 5th and 7th Corps Commands and Joint Command on Establishing Command and Zones of Responsibility, 20 September 1995; Ismet Dedović, T. 8226, 8283-8285, testifying that Rasim Delić was in the Vozuća area on 22 September 1995; Ex. 1363, Photograph.

⁴⁰⁵ Ex. 925, Witness Statement of Sead Žerić, 12 November 2003 and 5 April 2004, para. 8; Ex. 25, Decree Law on District Military Courts, RBiH Official Gazette of 13 August 1992; Ex. 36, Amendment to the Decree Having the Force of Law on District Military Prosecutor’s Offices, Official Gazette of 23 November 1992; Ex. 26, Decree Having the Force of Law on the District Military Prosecutor’s Office, RBiH Official Gazette of 13 August 1992.

⁴⁰⁶ The evidence shows that during the siege on Sarajevo, it was not possible to transfer files to the Supreme Court of the RBiH, and therefore, a branch of the Supreme Court was established at the High Court in Zenica that handled appeals from the Travnik and Zenica District Military Courts, Ex. 925, Witness Statement of Sead Žerić, 12 November 2003 and 5 April 2004, para. 7.

⁴⁰⁷ Ex. 25, Decree Law on District Military Courts, RBiH Official Gazette of 13 August 1992, Art. 6; Agreed Fact 138.

⁴⁰⁸ Ex. 25, Decree Law on District Military Courts, RBiH Official Gazette of 13 August 1992, Art. 7.

offences punishable by up to three years imprisonment could also be punished with disciplinary measures meted out by the relevant commanders or disciplinary courts.⁴⁰⁹

159. The commander of a military unit was obliged to “take measures to prevent the perpetrator of a criminal offence prosecutable *ex officio* from going into hiding or escaping, to preserve the evidence of the criminal offence and all the objects that may be used as evidence and to gather all the information that may be of use for the conduct of the proceedings” and to “notify the district military prosecutor or their immediate superior”.⁴¹⁰

160. The procedure of investigating the crimes falling under the jurisdiction of the military courts involved the Security Service organs as well as the military police (“MP”).⁴¹¹ The officers of the Security Service were obliged to submit criminal reports to the competent District Military Prosecutor’s Office.⁴¹²

161. In practice, upon receiving information on the commission of crimes, the MP would notify the investigative military judge and send an official note to the Security Service.⁴¹³ The MP would be tasked to seal off the crime scene, conduct interviews with eyewitnesses and gather evidence prior to the arrival of the military investigative judge, who would then take over the investigation.⁴¹⁴ The District Military Prosecutor had the authority to initiate investigations, and when the investigation was completed, he would decide to either close the case or to have an indictment issued.⁴¹⁵ Evidence has been led to the effect that the MP would only investigate when it received information from an official source.⁴¹⁶

162. When ascertaining breaches of military rules committed by ABiH members, the MP would submit a report to the commander of the unit of the perpetrator.⁴¹⁷ Daily, weekly and monthly reports were also sent from the MP to the Security Service.⁴¹⁸

⁴⁰⁹ Ex. 1095, Section on Rules of Military Discipline, RBiH Official Gazette no. 11/92, 13 August 1992; Ex. 3, Criminal Code of the SFRY, Entered into Force on 1 July 1977 (published 28 June 1990); Ex. 21, Decree Law on Service in the ABiH; Decree Law on Conscription, RBiH Official Gazette of 1 August 1992.

⁴¹⁰ Ex. 25, Decree Law on District Military Courts, RBiH Official Gazette of 13 August 1992, Art. 27.

⁴¹¹ Ex. 585, Rules of Operation for the Military Security Service in the ABiH, 11 September 1992, para. 40; Ex. 586, Rules for the Work of the ABiH Military Police, 1 September 1992, paras 1-2, 9.

⁴¹² Ex. 585, Rules of Operation for the Military Security Service in the ABiH, 11 September 1992, para. 41. *See also* Ex. 931, Witness Statement of Enes Malićbegović, paras 20-21, 24-25.

⁴¹³ Zaim Mujezinović, T. 6028, 6131-6132. *See* Ex. 931, Witness Statement of Enes Malićbegović, para. 45.

⁴¹⁴ Zaim Mujezinović, T. 6028-6029, 6077-6079; Ex. 585, Rules of Operation for the Military Security Service in the ABiH, 11 September 1992, paras 39-44; Ex. 586, Rules for the Work of the ABiH Military Police, 1 September 1992, para. 2.

⁴¹⁵ Muris Hadžiselimović, T. 6130.

⁴¹⁶ Zaim Mujezinović, T. 6118.

⁴¹⁷ Zaim Mujezinović, T. 6030-6031. *See also* Ex. 931, Witness Statement of Enes Malićbegović, paras 27-28.

⁴¹⁸ Zaim Mujezinović, T. 6064.

163. Civilian courts with analogous territorial jurisdiction to the military courts were competent to try offences committed by civilians as well as ABiH personnel when they co-perpetrated crimes with civilians.⁴¹⁹

164. The area of Maline in the Bila Valley fell in the area of jurisdiction of the District Military Court in Travnik, whereas the municipality of Zavidovići was within the territorial jurisdiction of the District Military Court in Zenica.⁴²⁰ Both courts were functional during the relevant time covered by the Indictment.⁴²¹

⁴¹⁹ Ex. 25, Decree Law on District Military Courts, RBiH Official Gazette of 13 August 1992, Art. 9; Muris Hadžiselimović, T. 6125-6126.

⁴²⁰ Agreed Facts 132, 141; Ex. 24, Decree Having the Force of Law on the District Military Prosecutor's Office, RBiH Official Gazette of 13 August 1992; Muris Hadžiselimović, T. 6126-6127; Ex. 925, Witness Statement of Sead Žerić, 12 November 2003, p. 15. *See* Ex. 25, Decree Law on District Military Courts, RBiH Official Gazette of 13 August 1992; Ex. 36, Amendment to the Decree Having the Force of Law on District Military Prosecutor's Offices, Official Gazette of 23 November 1992.

⁴²¹ Agreed Fact 136. *See* Muris Hadžiselimović, T. 6146.

V. MUJAHEDIN FORCES

A. The Term “Mujahedin”

165. The term “Mujahedin”, meaning “fighter of Allah”,⁴²² has been widely used to refer to the foreigners – mainly from the Arab world – who came to Bosnia and Herzegovina during the war in support of Bosnian Muslims.⁴²³ Those foreign Mujahedin were of a darker complexion, wore long beards and did not speak the local language.⁴²⁴ However, the term “Mujahedin” has also been used to describe Bosnian Muslims who joined those foreign Mujahedin, subscribed to their ideology and adjusted to their way of dressing.⁴²⁵ Where the evidence so permitted, a distinction between foreign and Bosnian Mujahedin was made in this Judgement.

B. Groups of Mujahedin in Central Bosnia

166. In the summer of 1992, the first foreign Mujahedin arrived in the areas of Travnik and Zenica in central Bosnia.⁴²⁶ They entered the RBiH mostly *via* Croatia and with the assistance of the Croatian authorities.⁴²⁷ It appears that the advent of foreign Mujahedin was endorsed by the political leadership of the RBiH.⁴²⁸

167. While the presence of at least some foreign Mujahedin seems to have been motivated by a desire to provide humanitarian assistance to the Bosnian Muslim population,⁴²⁹ the evidence shows that most of them actively supported the military struggle against the Bosnian Muslims’ adversaries, ready to conduct a *Jihad* or “Holy War”.⁴³⁰ According to Ali Hamad, a witness of Bahraini origin who came to Bosnia and Herzegovina in 1992, some of the foreign Mujahedin were

⁴²² PW-3, T. 1235-1236 (closed session). Although there is a grammatical difference between words “Mujahedin” and “Mujahid”, they both mean the same, PW-9, T. 5650-5651 (private session).

⁴²³ PW-3, T. 1238 (closed session); PW-2, T. 818, 863; PW-9, T. 5745.

⁴²⁴ Osman Fuško, T. 1143; Fadil Hasanagić, T. 3182; Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 53.

⁴²⁵ PW-2, T. 851; Alastair Duncan, T. 1940-1941, 1943-1944; Ex. 290, Military Information Summary No. 59, 27 June 1993, p. 3. The Croatian media used the term “Mujahedin” as well as “Turks” sometimes to refer to the ABiH at large, PW-2, T. 864-865.

⁴²⁶ PW-2, T. 711; PW-3, T. 1236-1238 (closed session); Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 8-12; Andrew Hogg, T. 313-314, 316, 320; Ex. 54, “Arabs Join in Bosnia War” by Andrew Hogg, The Sunday Times, 30 August 1992, p. 1. *See also* Agreed Fact 125.

⁴²⁷ Agreed Facts 126, 130; Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 9-12; PW-3, T. 1575-1576 (closed session); Ex. 220, Permit for Representatives of Iranian Government for Travel in Herceg-Bosna, 7 November 1992.

⁴²⁸ Ex. 54, “Arabs Join in Bosnia War” by Andrew Hogg, The Sunday Times, 30 August 1992, p. 1; Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 25.

⁴²⁹ PW-2, T. 801-802; Osman Fuško, T. 1136-1137; PW-4, T. 4880-4882, 4884-4886 (closed session); Sinan Begović, T. 537-538. *See* Ajman Awad, Hearing Sarajevo, T. 5, 239-240, 254-255; Ex. 1141, Report of the Zenica Security Centre, 24 November 1995; Agreed Facts 127, 130.

⁴³⁰ Andrew Hogg, T. 347-348, 353-354; Ex. 51, Audio Clip; Ex. 52, Transcript of Ex. 51, 2 August 1992; Ex. 317, Video Clip. *See also* Ex. 905 (under seal); Ajman Awad, Hearing Sarajevo, T. 5-7, 139-141, 257-258, 267.

members of *Al-Qaeda* with the objective of “creating a base that would allow them to increase their area of operations”.⁴³¹ Some foreign Mujahedin also came to perform missionary work (*dawa*).⁴³²

168. Upon arrival, groups of foreign Mujahedin settled in various locations and did not form a homogeneous entity.⁴³³ In the Travnik area, foreign Mujahedin under the command of Abdel Aziz closely co-operated and went into combat with the “Muslim Armed Forces”.⁴³⁴ A number of groups comprising foreign and/or Bosnian Mujahedin were active in central Bosnia between 1993 and 1995, including the groups of Abu Zubeir at Željezno Polje, Tešanj and Borovnica,⁴³⁵ Abu Hamza at Guča Gora,⁴³⁶ the so-called “Turkish Guerilla” in Zenica,⁴³⁷ and other Mujahedin groups at Mehurići/Poljanice, Maglaj, Imamovići, Željezni, Konjic and Bistričak.⁴³⁸ Notwithstanding instances of participation in combat alongside each other, it appears that these groups were anxious to maintain their distinct identities.⁴³⁹ There were religious and ideological differences between the Mujahedin groups, which resulted in occasional violent clashes.⁴⁴⁰

169. A number of witnesses testified that the group to which a particular Mujahedin belonged could not be identified with certainty in the field because the fighters did not wear uniforms or distinguishing insignia.⁴⁴¹

⁴³¹ Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 89-90, 135-136; Ex. 326, Interview with Ali Ahmad Ali Hamad in *Der Spiegel* Magazine, 3 December 2006, pp 3-4.

⁴³² PW-9, T. 5622-5623 (private session); Ex. 54, “Arabs Join in Bosnia War” by Andrew Hogg, *The Sunday Times*, 30 August 1992, p. 1. *See also* Ajman Awad, Hearing Sarajevo, T. 213; PW-9, T. 8649-8650.

⁴³³ PW-4, T. 4916 (closed session); *see also* PW-2, T. 744; PW-9, T. 5743-5744; Zaim Mujezinović, T. 6101-6107; Ivan Negovetić, T. 6816-6817.

⁴³⁴ PW-2, T. 716-717, 816-818; Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 14, 28; Osman Fuško, T. 1158. *See also* Šaban Alić, T. 678; Ex. 121, Report of the Commander of the 1st Company of the 7th Muslim Brigade, 28 December 1992; Ex. 55, Video Clip; Ex. 51, Audio Clip; Ex. 52, Transcript of Ex. 51, 2 August 1992. *See also* para. 126 *supra*.

⁴³⁵ PW-2, T. 890-891; PW-9, T. 5629-5634, 8642-8643, 8645-8646 (closed session in part); Ex. 342, “Al-Qaida’s Jihad in Europe” by Evan Kohlmann, p. 52; Ex. 783, Report of the Assistant Commander for Security of the 3rd Corps, 21 June 1995.

⁴³⁶ Asim Delalić, T. 1762-1763; Halim Husić, T. 7306-7307, 7313, 7336-7337, 7513-7514; PW-9, T. 5635-5636; Ajman Awad, Hearing Sarajevo, T. 165-167, commenting on Ex. 841, Report of the 3rd Corps Security Service, 5 November 1995.

⁴³⁷ Šaban Alić, T. 677-678; PW-4, T. 4767 (closed session); PW-9, T. 5628-5629; Ex. 1430, Information from Intelligence and Security Service on BiH on Criminal Activities of Mujahedin, 14 October 2003.

⁴³⁸ Ex. 1428, Official Note on Existence of Different Mujahedin Groups in BiH, 24 August 1995; Ahmet Šehić, T. 5092-5095; Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 39; PW-9, T. 5627-5628. As to the Mujahedin group based at Mehurići/Poljanice, *see* paras 170-171 *infra*.

⁴³⁹ Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 10, 23, 48, 60, 110, 177-178; Ajman Awad, Hearing Sarajevo, T. 154-155; PW-2, T. 816, 891; Ex. 680, Official Note of the State Security Service on Operative Intelligence During Operation “Vranduk”, 23 October 1995, items 11, 12; Edin Husić, T. 4477-4478, 4481-4482.

⁴⁴⁰ Ahmet Šehić, T. 5093-5094; Ex. 685, Request for Information of the Chief of the Security Administration, 22 November 1995; Ex. 1439, Information from the ABiH Security Service, 15 November 1995; PW-4, T. 4916-4917, 4921-4922 (closed session); Ex. 826 (under seal), paras 101, 284; PW-9, T. 5623-5624, 5632-5634, 8650 (private session in part); Ajman Awad, Hearing Sarajevo, T. 155-156.

⁴⁴¹ Ahmet Šehić, T. 5093-5094; Ajman Awad, Hearing Sarajevo, T. 155-156, 158-159; PW-9, T. 5636, 5638; Ex. 1285, Minutes of Meeting of the 3rd Corps Security Organ and Zenica Security Centre, 2 September 1995.

C. The “*El Mujahed*” Detachment (“EMD”)

1. The Group of Mujahedin at Mehurići Village

170. In May 1992, a group of foreign Mujahedin arrived at the village of Mehurići in the vicinity of Travnik. A local commander of the Patriotic League arranged for them to be billeted on the second floor of a primary school.⁴⁴² Soldiers who later formed part of the ABiH 306th Brigade were also billeted in this building.⁴⁴³ In late 1992 or early 1993, the foreign Mujahedin moved to abandoned houses in a location called Poljanice or Zapode (“Poljanice Camp”), a few hundred metres from the Mehurići primary school.⁴⁴⁴ For a short time-span in mid-1993, some of the foreign Mujahedin who were associated with the Poljanice group of Mujahedin were stationed at the Bilmište Barracks in Zenica, a facility of the 7th Muslim Mountain Brigade.⁴⁴⁵

171. Towards the end of 1992, young Bosnian Muslims from the area started to join the foreign Mujahedin.⁴⁴⁶ The locals were provided with military training and participated in combat action.⁴⁴⁷ They were also given religious instruction.⁴⁴⁸ The local population referred to the group based at Poljanice by various names, such as “the Arabs”, “*El Jihad*” and “*El Mujahed*”.⁴⁴⁹

2. The Establishment of the EMD

172. The presence of foreign fighters in central Bosnia and their participation in the war effort did not go unnoticed by the ABiH 3rd Corps and the ABiH Main Staff in Sarajevo. The minutes of a meeting held on 8 May 1993 of a “Mixed Operations Team” composed of HVO *Frankopan* Brigade and ABiH 306th Brigade members note that there was a “problem of foreigners in the brigades’ zones of responsibility” and refer to a request that had been made to the 3rd Corps Command “to either relocate them from the zone of responsibility of the 306th Brigade or to place them under their

⁴⁴² Andrew Hogg, T. 323-325; Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 15-16; Asim Delalić, T. 1696-1698; Ivan Negovetić, T. 6771, 6818, 6827-6831; Haso Ribo, T. 7011-7013; Halim Husić, T. 7436-7437; Ex. 997, Report of the Assistant Commander for Morale of the 306th Brigade, 6 May 1993, pp 2-3; Ex. 136, Report of Assistant Commander for Security of the 306th Brigade, 13 May 1993, p. 1.

⁴⁴³ Sinan Begović, T. 385-386; Osman Fuško, T. 1071; Ivan Negovetić, T. 6818.

⁴⁴⁴ Sinan Begović, T. 386-387, 408-409; Ex. 63, Map Marked by Sinan Begović; Hasib Alić, T. 559-560; Šaban Alić, T. 642-643; Ajman Awad, Hearing Sarajevo, T. 28, 148, 167-168; Halim Husić, T. 7325-7329, 7437, 7518-7519.

⁴⁴⁵ Ajman Awad, Hearing Sarajevo, T. 8-9, 13-15, 22-23; Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 48.

⁴⁴⁶ Šaban Alić, T. 640; Hasib Alić, T. 625; Berislav Marijanović, T. 940-941.

⁴⁴⁷ Sinan Begović, T. 409; Šaban Alić, T. 644-645; Halim Husić, T. 7302-7305.

⁴⁴⁸ Hasib Alić, T. 560; Halim Husić, T. 7299-7303, 7435-7436.

⁴⁴⁹ Šaban Alić, T. 657, 699; Sinan Begović, T. 405, 414-415, 505-506; Halim Husić, T. 7312, 7533-7534. *See also* Ex. 88, Information on the Situation of Combat Morale in the Zone of Responsibility of the 306th Brigade, 30 July 1993, p. 3; Ex. 89, Report on the Inspection of the 306th Brigade, 2 August 1993, p. 2; Ex. 1215, Information on Factors Affecting Combat Operations, 11 August 1993, p. 4.

command”.⁴⁵⁰ On 13 June 1993, the 3rd Corps Commander reported to the ABiH Main Staff in Sarajevo as follows:

In the general area of Zenica municipality since the beginning of the war there have been volunteers from foreign countries [...] who have not entered the ranks of the BH Army [...] In fighting to date they have been acting outside the usual context and lawful methods of combat, which is directly detrimental to the BH state, and especially to the RBiH Army.⁴⁵¹

173. On 18 June 1993, the issue of “soldiers from foreign countries” was discussed at a morning briefing of the ABiH Main Staff, in the presence of Rasim Delić and the chiefs of administrations. It was reported that those foreigners displayed “conduct that was not befitting that of members of the Army of Bosnia and Herzegovina”.⁴⁵² The attendants of the meeting proposed to Rasim Delić that those “foreign citizens” should either be sent back to where they had come from, or organised into a unit within the ABiH.⁴⁵³ Rasim Delić agreed with this proposal.⁴⁵⁴

174. At around the same time, the Mujahedin from the Poljanice Camp sent a request to the 3rd Corps to be incorporated and operate legally under the auspices of the ABiH. Ajman Awad, a former member of the EMD of Syrian origin, explained this in the following terms:

In my view there are two main reasons. With the Arab Mujahedin there was a group of Bosniaks who had left their units and joined the Arabs, and they fought with them. They were fighters, combatants. But their units considered them to be deserters. They sent the military police to arrest them and so on. And their families couldn’t realise their rights in terms of medical care and such similar things, so they had to have some kind of regular status. They didn’t wish to go back to their original units. They wanted to stay with the Arabs, with the Mujahedin.

And the second reason was that the battles were ongoing and whatever the Mujahedin were doing should be legal [...] So we wanted this group of people to be distinguished from the free-fighters, so to speak, and others.⁴⁵⁵

175. On 23 July 1993, Rasim Delić issued a written authorisation to Sakib Mahmuljin, then a member of the 3rd Corps Command, to enter into negotiations with representatives of the “Mujahedin unit from Zenica” regarding the following issues:

1. The inclusion of the Mujahedin unit in the [ABiH]
2. The use of the unit in joint struggle against the Chetniks and the manner of its resubordination to the 3rd Corps Command.⁴⁵⁶

⁴⁵⁰ Ex. 167, Minutes from the 8 May 1993 Meeting of the Mixed Operations Team of the *Frankopan* and 306th Brigades Sent to Joint Command Travnik, 20 May 1993, p. 2.

⁴⁵¹ Ex. 179, Report from 3rd Corps Commander to Rasim Delić Concerning Foreign Volunteers in the Zenica Area, 13 June 1993.

⁴⁵² Jovan Divjak, T. 2177.

⁴⁵³ Jovan Divjak, T. 2178.

⁴⁵⁴ *Ibid.* See also Ex. 225, Warning of Rasim Delić to Corps Commanders Concerning the Creation of Muslim Armed Forces within the ABiH, 27 July 1993.

⁴⁵⁵ Ajman Awad, Hearing Sarajevo, T. 34-36, 268. See also Šaban Alić, T. 674-675; Sinan Begović, T. 405-407; PW-11, T. 6410-6411; Ex. 65, Request for Approval for the Transfer of Soldiers from the 306th Brigade to the EMD, 9 September 1993; but see Ex. 577, Report of the Security Service of the 35th Division, 6 August 1995; Fadil Imamović, T. 3979-3980; Osman Fuško, T. 1142.

The authorisation was issued “with the aim of solving problems on the territory of Zenica in connection with the above-mentioned formation”.⁴⁵⁷

176. On 12 August 1993, the Commander of the 3rd Corps, Enver Hadžihasanović, submitted a written proposal to the Main Staff in Sarajevo in view of “the need to organise and make use of foreign volunteers, as well as their written request to the 3rd Corps Command”.⁴⁵⁸ It provided:

1. Organise all foreign volunteers in the [ABiH] in the zone of responsibility of the 3rd Corps into a detachment [...]
2. Mobilisation collection point for this detachment would be in the village of Mehurić [...]
3. The name of the detachment is *El Mujahedin* [...]
4. Logistics support will be regulated by the logistics services of the 3rd Corps.
5. We request urgency.⁴⁵⁹

177. The Main Staff reacted promptly. The next day, 13 August 1993, Rasim Delić signed an order authorising the formation of a detachment named “*El Mujahedin*” in the area of responsibility of the 3rd Corps (“Order of 13 August 1993”).⁴⁶⁰ The Detachment was to be replenished with “foreign volunteers currently on the territory of the 3rd Corps zone of responsibility” and its formation be completed before 31 August 1993. The Detachment was also given a code and the military unit number “5689”. The 3rd Corps was ordered to provide logistics and a written report on the implementation of the order was to be submitted to the Main Staff by 5 September 1993.⁴⁶¹

178. Later in August 1993, an inaugural ceremony was held to commemorate the formation of the EMD.⁴⁶² Sakib Mahmuljin and the Commander of OG *Bosanska Krajina*, Mehmed Alagić, as well as representatives of local civilian authorities, participated in the ceremony.⁴⁶³

⁴⁵⁶ Ex. 271, Authorisation of Rasim Delić to Sakib Mahmuljin to Carry out Negotiations with the Mujahedin Unit from Zenica, 23 July 1993; see Murat Softić, T. 1814.

⁴⁵⁷ Ex. 271, Authorisation of Rasim Delić to Sakib Mahmuljin to Carry out Negotiations with the Mujahedin Unit from Zenica, 23 July 1993. See also Ajman Awad, Hearing Sarajevo, T. 217-218, according to whom Mahmuljin did not introduce himself during the negotiations as a representative of Rasim Delić, but rather of Alija Izetbegović.

⁴⁵⁸ Ex. 272, Proposal from the 3rd Corps Commander to the ABiH Supreme Command Staff Concerning Formation of a Detachment of Foreign Citizens, 12 August 1993. See also PW-3, T. 1586 (closed session).

⁴⁵⁹ *Ibid.* See also Murat Softić, T. 1817, 1856, 1890.

⁴⁶⁰ Ex. 273, Order of Rasim Delić to the 3rd Corps Command Concerning the Formation of “El Mujahedin” Detachment, 13 August 1993; Murat Softić, T. 1819-1820. See also Jovan Divjak, T. 2180; Ajman Awad, Hearing Sarajevo, T. 40-41.

⁴⁶¹ Ex. 273, Order of Rasim Delić to the 3rd Corps Command Concerning the Formation of “El Mujahedin” Detachment, 13 August 1993. See also Murat Softić, T. 1855-1856; Hajrudin Hubo, T. 7696-7697 (private session); PW-9, T. 5554, 5651-5652 (private session). However, Murat Softić, Rasim Delić’s Chef de Cabinet during this time, testified that he did not remember seeing a report on the implementation of the order to form the EMD, T. 1856.

⁴⁶² Ajman Awad, Hearing Sarajevo, T. 41-42.

⁴⁶³ Ajman Awad, Hearing Sarajevo, T. 42-44, 50, 52-53; Ex. 1127, Video Clip.

179. There is evidence that after its formation, the EMD continued to be referred to by other names, such as “*El Mudžahedin*” or “*Jihad Unit*”.⁴⁶⁴

3. Bases

180. Soon after the establishment of the EMD in August 1993, its command moved from Poljanice into the *Vatrostalna* building in the Podbrežje neighbourhood of Zenica, which had been assigned to it by the 3rd Corps.⁴⁶⁵ There was also a clinic and a religious school (*medresa*).⁴⁶⁶ *Vatrostalna* remained the headquarters of the EMD until the end of the war.⁴⁶⁷

181. As of December 1993, new members of the EMD had to pass a six-week religious course given at the *Vatrostalna* facility, followed by six weeks of military training at facilities in the hamlet of Orašac in the municipality of Travnik.⁴⁶⁸

182. Members of the EMD were also billeted at a number of temporary bases, for instance, in the area of Teslić in mid-1994 and in the village of Livade, around 10 kilometres east of Zavidovići, in 1995.⁴⁶⁹ In April or May 1995, the EMD set up a base in the valley of the Gostović River, at a location known as the “13th kilometre”, indicating the distance from Zavidovići.⁴⁷⁰ This location was also known as the “Kamenica Camp” due to its proximity to the village of Kamenica.⁴⁷¹

4. Members

183. Following its establishment, the EMD significantly grew in size. Although there were only a handful of “Arabs” in mid-1992, the overall number rose sharply in 1993.⁴⁷² By 1995, the EMD

⁴⁶⁴ Ekrem Alihodžić, T. 6453-6456; Ex. 934, Report of the Assistant Commander for Security of the 3rd Corps, 26 May 1995; Ex. 1019, Letter of the 7th Muslim Brigade Security Service, 1 October 1994 (“*El Mudžahedin*”); Ajman Awad, Hearing Sarajevo, T. 54-56; Ex. 1015, Report of the Zenica Public Security Centre, 30 August 1994 (“*Jihad Unit*”).

⁴⁶⁵ Ex. 836, Order of 3rd Corps Command, 2 August 1994; PW-9, T. 5590-5592, 5676; Ex. 826 (under seal), para. 8; Sinan Begović, T. 439-440; PW-2, T. 901; Hajrudin Hubo, T. 7631; Ajman Awad, Hearing Sarajevo, T. 23-24, 127; Ex. 770, Witness Statement of Salih Spahić, 20 September 2006, para. 10. *See also* Ex. 1133, Order of the Commander of the 3rd Corps, 28 December 1995, p. 1.

⁴⁶⁶ PW-2, T. 902; Sinan Begović, T. 548.

⁴⁶⁷ *See* Ex. 1133, Order of the Commander of the 3rd Corps, 28 December 1995.

⁴⁶⁸ Sinan Begović, T. 438; Ex. 826 (under seal), paras 49, 51. The Orašac facility was also known as “*Al Faruk*”, Ex. 826 (under seal), paras 109-110. *See also* Ex. 1040, Report of the Assistant Commander for Security of the 1st Corps, 9 June 1995, p. 3; Ex. 826 (under seal), paras 49, 51; Ex. 720, Bulletin No. 45 of the Security Sector of the Ministry of Defence, 27 February 1994, p. 2.

⁴⁶⁹ Ajman Awad, Hearing Sarajevo, T. 73-75; Fuad Zilkić, T. 5317-5318; Ex. 826 (under seal), para. 198. *See* paras 239-240 *infra*.

⁴⁷⁰ Kadir Jusić, T. 2517; Fuad Zilkić, T. 5317-5318; Ex. 826 (under seal), para. 135; Sinan Begović, T. 441-444; Ex. 71, Map Marked by Sinan Begović; Hasib Alić, T. 606-607. The EMD had in fact been ordered by the 35th Division to set up a camp at the 12th kilometre but of its own volition chose the site at the 13th kilometre, *see* Fadil Hasanagić, T. 3102-3103. *See* paras 253-254 *infra*.

⁴⁷¹ *See* paras 253-254 *infra*.

⁴⁷² Sinan Begović, T. 386-387, 416, 421; Šaban Alić, T. 642; Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 39; Ex. 67, Overview of the EMD; Ajman Awad, Hearing Sarajevo, T. 39-40, 167-168.

consisted of approximately 1,000 fighters.⁴⁷³ While some witnesses gave evidence that most of the Mujahedin in central Bosnia were integrated into the EMD, others testified that there may have been more Mujahedin who were not members of the EMD.⁴⁷⁴

184. The Order of 13 August 1993 provided for the "[replenishment of] the *El Mujahedin* Detachment with foreign volunteers currently on the territory of the 3rd Corps area of responsibility".⁴⁷⁵ However, the evidence demonstrates that local Bosnian Muslim men soon outnumbered the foreign members of the EMD.⁴⁷⁶ The factors that motivated locals to join the EMD included: the stricter regime of discipline, better degree of organisation, superior equipment and combat morale, its religious dedication and certain material benefits awarded to members of the Detachment.⁴⁷⁷

185. Many of the locals who joined the Mujahedin at the Poljanice Camp – and later the EMD – had abandoned units of the ABiH, such as the 306th Brigade and the 7th Muslim Mountain Brigade.⁴⁷⁸ It appears that initially, the ABiH could not effectively prevent those moves due to a general lack of organisation at the time and because confrontation with the Mujahedin seemed inopportune.⁴⁷⁹ After the creation of the EMD, there were instances when the ABiH took measures against the recruitment of locals by the Detachment.⁴⁸⁰ However, documentary evidence also indicates that there were occasions when the ABiH transferred some of members of other units to the EMD up until late 1995.⁴⁸¹

⁴⁷³ PW-9, T. 5758; Hasib Alić, T. 594-595; Ex. 77, List of the EMD Members on 12 June 1995; Sinan Begović, T. 467-468; Fadil Imamović, T. 4037-4039; PW-11, T. 6408-6410 (closed session); Ex. 396, Order Activating the EMD in the Zone of Responsibility of the 35th Division, 2 June 1995; Ex. 589, Proposal of the Commander of the 35th Division, 2 June 1995.

⁴⁷⁴ PW-9, T. 5626, 5642. *See also* Ajman Awad, Hearing Sarajevo, T. 143-144, 150-152, 154; Osman Fuško, T. 1143-1144; Ekrem Alihodžić, T. 6452-6453.

⁴⁷⁵ Ex. 273, Order of Rasim Delić to the 3rd Corps Command Concerning the Formation of "El Mujahedin" Detachment, 13 August 1993, p. 1.

⁴⁷⁶ PW-9, T. 5641-5642; Ajman Awad, Hearing Sarajevo, T. 153-154; Ex. 683, Report of the Chief of the Security Service of the 3rd Corps, 26 February 1994, p. 1, referring to 59 foreigners and 152 locals fighting in the EMD.

⁴⁷⁷ Šaban Alić, T. 675, 680-681, 690, 695-696; Sinan Begović, T. 405-406.

⁴⁷⁸ Hasib Alić, T. 556-558; Šaban Alić, T. 640-642; PW-2, T. 849; Asim Delalić, T. 1705; Ex. 256, Reports of Commander of the 306th Brigade, 2 August 1993, pp 5, 7-8; Halim Husić, T. 7304-7305, 7310, 7312, 7339-7340, 7510; Ex. 88, Information on the Situation of Combat Morale in the Zone of Responsibility of the 306th Brigade, 30 July 1993, p. 3; Ex. 89, Report on the Inspection of the 306th Brigade, 2 August 1993, pp 1-2; Ex. 135, Report of the Security Sector of the 3rd Corps Command, 10 May 1993, pp 1, 3.

⁴⁷⁹ Sinan Begović, T. 514-516; Osman Fuško, T. 1138-1139. In some instances, unauthorised transfer to the EMD was subject to prosecution, Asim Delalić, T. 1765; Ex. 925, Witness Statement of Sead Žerić, para. 32.

⁴⁸⁰ Ex. 590, Order of the 3rd Corps Commander to the EMD, 9 August 1995; Ex. 591, Request of the Security Service of the 3rd Corps, 22 April 1995; Fadil Imamović, T. 4055-4057; Ekrem Alihodžić, T. 6476-6477; PW-9, T. 5681-5682; Hajrudin Hubo, T. 7665-7667; PW-11, T. 6411-6412 (closed session); Ajman Awad, Hearing Sarajevo, T. 214-216.

⁴⁸¹ Ex. 1146-1152, Orders of the Commander of the 3rd Corps, 25 October 1994; Ex. 1156, Order of the Commander of the 3rd Corps, 16 December 1994; Ex. 1164-1167, Orders of the Commander of the 3rd Corps, 16 August 1995; Ex. 1169, Unit Card Files of 7th Muslim Brigade Members Transferred to the EMD, 4 September 1995.

5. Structure and Leadership

186. The EMD had a number of features setting the Detachment apart from regular units of the ABiH.⁴⁸²

187. The evidence suggests that the EMD was led by foreign Mujahedin who were not appointed by the ABiH.⁴⁸³ The original request for incorporation of the Mujahedin into the 3rd Corps also contained the names of the leaders of the proposed Detachment, although Rasim Delić's Order of 13 August 1993 made no reference to them.⁴⁸⁴

188. At the top of the hierarchy was the "Emir", who has been described as the "most responsible person" within the EMD, overseeing all military and civilian matters, including external relations of the Detachment.⁴⁸⁵ Abu Haris, a Libyan, was the first Emir of the EMD when it was established.⁴⁸⁶ In December 1993, he was succeeded by an Algerian, Abu Maali, who remained in that position until the EMD was disbanded.⁴⁸⁷ A different person from the Emir, the military commander, headed the "military council" and was responsible for the conduct of combat operations.⁴⁸⁸ In 1993, this post was held by an Egyptian named Vahidin or Wahiuddin.⁴⁸⁹ After Vahidin's death in October of the same year, another Egyptian, Muatez, succeeded him.⁴⁹⁰ Muatez was killed on 22 September 1995.⁴⁹¹

189. The EMD had a "religious council", the *shura*, which was its supreme decision-making body.⁴⁹² It consisted of approximately 20 prominent members of the Detachment, mostly of Arab origin.⁴⁹³ Several witnesses gave evidence that the *shura* was the final authority within the EMD

⁴⁸² Šaban Alić, T. 683; Sinan Begović, T. 532; Zakir Alispahić, T. 6558-6559; Hajrudin Hubo, T. 7626-7628.

⁴⁸³ PW-9, T. 8672-8673, 8683-8684.

⁴⁸⁴ Ajman Awad, Hearing Sarajevo, T. 38.

⁴⁸⁵ PW-9, T. 5647-5648 (private session), 5727 (referring to the "Emir" as "Commander"); Sinan Begović, T. 418-419.

⁴⁸⁶ Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 62-63; PW-9, T. 5640-5642; Ex. 826 (under seal), para. 33; Sinan Begović, T. 389, 548; Ex. 68, Photographs, pp 8-10; Ajman Awad, Hearing Sarajevo, T. 8-9, 38, 57-58.

⁴⁸⁷ Fadil Hasanagić, T. 3130-3131, 3278-3279; Fuad Zilkić, T. 5302-5303; PW-9, T. 5640-5641; Ex. 826 (under seal), para. 52; Ex. 68, Photographs, pp 13-15; Ajman Awad, Hearing Sarajevo, T. 57-58, 210; Ex. 1432, Information from BiH Investigation Agency on Abu Maali, 6 December 2001.

⁴⁸⁸ PW-9, T. 5727, 8686-8687, 8690-8692.

⁴⁸⁹ PW-2, T. 754-755; Sinan Begović, T. 418-419; Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 24, 63; Ajman Awad, Hearing Sarajevo, T. 38, 57-58.

⁴⁹⁰ PW-2, T. 755-756 (private session); Fadil Hasanagić, T. 3131; Sinan Begović, T. 550; Fuad Zilkić, T. 5445; Ex. 68, Photographs, p. 16; Ex. 826 (under seal), para. 37; PW-9, T. 5647 (private session).

⁴⁹¹ PW-9, T. 5578.

⁴⁹² Ajman Awad, Hearing Sarajevo, T. 197-198; PW-2, T. 876.

⁴⁹³ PW-2, T. 884-885, 897; PW-9, T. 5648-5649, 5726 (private session).

regarding all matters of importance.⁴⁹⁴ The Emir was elected by and answerable to the *shura*; his decisions could be amended or overturned only by that body.⁴⁹⁵

190. At the end of 1994, Sheik Enver Shaban joined the leadership of the EMD.⁴⁹⁶ Shaban was the head of the Islamic Cultural Institute in Milan and known to be an “extremist” who was well-connected with Islamic fundamentalists all over the world.⁴⁹⁷ There is evidence that he facilitated the recruitment of volunteers from Arab countries for the struggle in Bosnia and Herzegovina.⁴⁹⁸ Although Shaban did not hold an official function within the EMD, its members considered him to be the “political authority” and even the “real Emir” within the Detachment.⁴⁹⁹ Shaban could issue binding rulings (*fatwāt*). His authority was never challenged by the *shura*.⁵⁰⁰ Shaban was killed, together with Abu Haris, at an HVO checkpoint on 14 December 1995.⁵⁰¹

191. Internally, the Detachment was divided into fighting groups named after their leaders and composed of either local or foreign Mujahedin.⁵⁰² None of the fighters held a particular rank.⁵⁰³ Members of the EMD did not wear uniforms or insignia, nor did they carry military identification documents.⁵⁰⁴ In combat, they wore ribbons.⁵⁰⁵ The EMD had a flag of its own which consisted of white Arabic writing on a black background.⁵⁰⁶ The Detachment used a stamp bearing the RBiH coat of arms.⁵⁰⁷

192. Although the EMD formally had a structure that resembled that of other ABiH units, the evidence suggests that the Detachment functioned in quite a different manner from other ABiH

⁴⁹⁴ Sinan Begović, T. 542-543; Šaban Alić, T. 685-686; PW-2, T. 876; PW-9, T. 5648-5649 (private session), 5657-5658, 5702, 8691-8692; Ajman Awad, Hearing Sarajevo, T. 197-198, 250-251. *See also* Halim Husić, T. 7528-7529.

⁴⁹⁵ PW-9, T. 5648-5649 (private session), 8691-8692.

⁴⁹⁶ PW-2, T. 889-890; PW-9, T. 5660-5661; Ex. 844, “Croatia is Holding Šejh Ebu Talal in Prison”, Interview with Enver Shaban in Liljan Magazine, 15 November 1995, 30 November 1995; PW-11, T. 6320-6321 (closed session); Ex. 68, Photographs, pp 1-3; Ajman Awad, Hearing Sarajevo, T. 210.

⁴⁹⁷ Ex. 1424-1427, Excerpts from Judgement of Penal Court of Milan, 1 January 2006; PW-9, T. 8680-8681.

⁴⁹⁸ Ex. 1201, Collection of Faxes and Communications Between Mujahedin and the Islamic Cultural Institute in Milan, 1993-1995.

⁴⁹⁹ Ex. 826 (under seal), paras 160, 164; PW-9, T. 5656-5658, 8664-8665, 8678-8679; Ajman Awad, Hearing Sarajevo, T. 209-210, 212-213. *See* Ex. 1423, DIGOS Dossier on Anwar Shaban, 1 January 1997, p. 4.

⁵⁰⁰ PW-9, T. 5657-5658, 5662-5663, 8669-8670.

⁵⁰¹ PW-2, T. 753; Ex. 923, Witness Statement of Luka Babić, 10 January 2007, paras 21-22, 39; Ex. 1423, DIGOS dossier on Anwar Shaban, 1 January 1997; Ajman Awad, Hearing Sarajevo, T. 206-207.

⁵⁰² Sinan Begović, T. 415-418. During combat, one or two foreign Mujahedin would be added to a group of Bosnian Mujahedin, Sinan Begović, T. 461. One group communicated in English, PW-9, T. 5646 (private session); Ex. 826 (under seal), para. 154. *See also* Ex. 1040, Report of the Assistant Commander for Security of the 1st Corps, 9 June 1995, p. 4.

⁵⁰³ Šaban Alić, T. 685.

⁵⁰⁴ Hamdija Šljuka, T. 4370-4371; PW-2, T. 885-886 (allowing for the possibility that locals brought with them uniforms with ABiH insignia); PW-9, T. 5677, 5746; Fadil Hasaganić, T. 3129; *but see* Ex. 923, Witness Statement of Luka Babić, para. 31; Ahmet Šehić, T. 5087. The Trial Chamber notes that as late as at the end of 1993, also the 7th Muslim Brigade did not have its own insignia, Enver Adilović, T. 7245.

⁵⁰⁵ PW-9, T. 5759.

⁵⁰⁶ Ex. 128, Video Clip; PW-3, T. 1356-1357 (closed session); Ex. 168 (under seal), p. 1.

⁵⁰⁷ PW-9, T. 5651-5653 (private session), 5747; Ex. 842, Decision of the Shura of the EMD, 23 October 1993.

units.⁵⁰⁸ For instance, in accordance with ABiH regulations, Ajman Awad a.k.a. Abu Ajman was officially designated as the EMD's Assistant Commander for Security.⁵⁰⁹ However, as Ajman stated himself,

I worked as an interpreter. In the beginning until the end I was the translator or interpreter in that unit. On paper, formally, it says that I was the deputy -- assistant commander for security [...]. But never actually carried out those duties, nor do I know how to carry them out. So that's why I say that from the beginning until the end I was the interpreter or translator.⁵¹⁰

193. The EMD's press office published bulletins to promote the Detachment among its members and in Islamic countries.⁵¹¹

6. Rules of Conduct

194. The EMD placed great emphasis on religious instruction.⁵¹² It maintained a strict regime of discipline; there were instances where members who violated the rules of conduct were excluded from the Detachment.⁵¹³ The *shura* exercised quasi-judicial functions within the EMD and could decide to hand over an individual to the Bosnian authorities for trial although there is no evidence that this ever occurred.⁵¹⁴

195. As a rule, a foreign Mujahedin needed the Detachment's permission to get married to a local woman, and marriage was not permitted until six months after arrival of the foreign Mujahedin.⁵¹⁵

7. Disbandment

196. The Dayton Agreement, which ended the war in Bosnia and Herzegovina in 1995, provided for the "withdrawal of foreign forces" in the following terms:

⁵⁰⁸ PW-9, T. 5560-5565, 5641, 5644-5646 (private session in part); Ex. 830 (under seal); Ex. 826 (under seal), paras 148-150. *See also* Ex. 826 (under seal), paras 155-159, 169; PW-9, T. 5675-5676; Ex. 777, Report of the Assistant Commander for Security of the 3rd Corps, 8 July 1995.

⁵⁰⁹ *See* Ex. 585, Rules of Operation for the Military Security Service in the ABiH, 11 September 1992, para. 12; Hamdija Šljuka, T. 4301, 4368; PW-9, T. 5644-5645, 5675-5676, 5743; Ex. 67, Overview of the EMD, p. 1; Ex. 570, Proposal of General Delić Concerning Promotion of Ranks, 25 July 1994, p. 14; Kadir Jusić, T. 2524; Zakir Alispahić, T. 6557-6558; Ex. 830, Decision of the Presidency on Appointment/Promotion to the ABiH, 5 October 1994; Ex. 826 (under seal), paras 148-149.

⁵¹⁰ Ajman Awad, Hearing Sarajevo, T. 57, 123-124, 172-173.

⁵¹¹ Ajman Awad, Hearing Sarajevo, T. 92-93, 116; PW-9, T. 8648-8649, 8653, 8679-8680, 8697-8698, 8700-8701; Ex. 1386, EMD Bulletin. *See also* PW-9, T. 5587; Ex. 826 (under seal), paras 120-127.

⁵¹² Sinan Begović, T. 534; Hasib Alić, T. 560; Ahmet Šehić, T. 5084.

⁵¹³ Sinan Begović, T. 540-541; PW-9, T. 5668-5669, 8647-8648; Ex. 826 (under seal), paras 106-107. *See also* Ajman Awad, Hearing Sarajevo, T. 154-155, 199-201.

⁵¹⁴ Ex. 826 (under seal), para. 108; PW-9, T. 5649-5651, 5668, 5749; Ajman Awad, Hearing Sarajevo, T. 154-155, 274. There was a small room at the *Vatrostalna* building in which EMD members could be temporarily detained, Ex. 826 (under seal), para. 304; Ex. 842, Decision of the Shura of the EMD, 23 October 1993; Ajman Awad, Hearing Sarajevo, T. 201, 270-271. *But see* Ex. 1013, Letter of Abu Haris Requesting the Release of two Members of the EMD, 30 January 1994.

⁵¹⁵ PW-9, T. 5668; Ex. 826 (under seal), paras 106-107; Ajman Awad, Hearing Sarajevo, T. 154-155.

All Forces in Bosnia and Herzegovina as of the date this Annex enters into force which are not of local origin, whether or not they are legally and militarily subordinated to the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, or Republika Srpska, shall be withdrawn together with their equipment from the territory of Bosnia and Herzegovina within thirty (30) days.⁵¹⁶

197. In early December 1995, two meetings were held at which the dissolution of the EMD was discussed. One of the meetings was attended by Rasim Delić and President Izetbegović, as well as representatives of the 3rd Corps and the EMD.⁵¹⁷ On 12 December 1995, Rasim Delić ordered the 3rd Corps Command to disband the EMD.⁵¹⁸ Two days later, the 3rd Corps issued an order for disbandment to the EMD.⁵¹⁹ Both orders provided that “foreign citizens” should be dismissed from the EMD by 31 December 1995 and leave the country by 10 January 1996. EMD members “of Bosniak nationality”, as well as their weapons and facilities, were to be transferred to the 3rd Corps.⁵²⁰

198. Despite initial resistance on the part of the EMD, the *shura* accepted that the Detachment be disbanded. According to a former EMD member, without the *shura*’s consent, the EMD would have continued fighting.⁵²¹ One witness suggested that awards, such as the “Golden Lily”, were issued by Rasim Delić and given by the ABiH to EMD members as an incentive for foreigners to leave.⁵²² EMD members were also provided with ABiH certificates of service which assisted its foreign members to acquire RBiH citizenship.⁵²³

199. On 1 January 1996, the ABiH hosted a farewell function for the EMD at *Dom Armije* in Zenica. This event was attended by 200-300 EMD members, including its Emir, Abu Maali, as well

⁵¹⁶ Ex. 48, General Framework Agreement for Peace in BiH, 14 December 1995, Annex 1-A, Article 3. *See also* Ajman Awad, Hearing Sarajevo, T. 258-259.

⁵¹⁷ Ex. 673 (under seal); Ajman Awad, Hearing Sarajevo, T. 121-123.

⁵¹⁸ Ex. 824, Order of Rasim Delić to 3rd Corps Command Disbanding the EMD, 12 December 1995.

⁵¹⁹ Ex. 900, Order of the 3rd Corps Commander on Disbanding the EMD, 14 December 1995; PW-11, T. 6293 (closed session). *See also* Kadir Jusić, T. 2650-2652; Ferid Buljubašić, T. 5518-5519, 5541-5144; Ex. 826 (under seal), para. 275.

⁵²⁰ Ex. 824, Order of Rasim Delić to 3rd Corps Command Disbanding the EMD, 12 December 1995; Ex. 900, Order of the 3rd Corps Commander on Disbanding the EMD, 14 December 1995. *See also* PW-11, T. 6394-6395 (closed session); Ajman Awad, Hearing Sarajevo, T. 125-129, 135-136, 207-208, 261-262; Ex. 1132, Regular Combat Report of the Commander of the 3rd Corps, 31 December 1995, p. 3; Ex. 1133, Order of the Commander of the 3rd Corps, 28 December 1995; Ex. 1237, Letter of the Chief of the Military Security Administration, 13 December 1995.

⁵²¹ Ajman Awad, Hearing Sarajevo, T. 202-203, 206-207, 252-253; PW-9, T. 5656; Halim Husić, T. 7428-7429, 7528-7529; *but see* Ex. 1136, Report of the Assistant Commander for Security of the 3rd Corps, 20 December 1995, which refers to an intercepted fax from foreign Mujahedin in Bosnia and Herzegovina sent to an unknown recipient: “We are finished here and we do not [...] want to be in prison like the Arabs in Pakistan are. We are all going back to London now, we can only remain as civilians [...] the jihad is over, I repeat, over. Bosnia is over.”

⁵²² Alija Lončarić, T. 8363-8365. *See also* Zaim Mujezinović, T. 6018-6019; Ex. 817, Order of Rasim Delić Commending Units and Members of the ABiH 3rd Corps, 1 December 1995; Ex. 827-829, Awards of ABiH Golden Lily to ABiH Members, December 1995.

⁵²³ Ex. 976, Witness Statement of Vjekoslav Vučković, 11 July 2007, paras 44, 61-62.

as Rasim Delić and the most senior officers of the 3rd Corps and the 35th Division.⁵²⁴ A former EMD member recalled that Rasim Delić addressed the audience by conveying the greetings of President Izetbegović, commending the EMD and thanking the “Arabs” for the assistance they provided to the Bosnian people.⁵²⁵ The EMD was subsequently disbanded, most of its foreign members left Bosnia and Herzegovina, and the *Vatrostalna* building was returned to the 3rd Corps.⁵²⁶ Some foreign EMD members applied for R BiH citizenship and continue to live in Bosnia and Herzegovina to date.⁵²⁷

⁵²⁴ PW-2, T. 786-787; PW-9, T. 5576-5582, 5692-5694; Ex. 826 (under seal), para. 277. *See* Ajman Awad, Hearing Sarajevo, T. 130-133; Ex. 1089, Memorandum of the 3rd Corps Command, 29 December 1995. The Defence accepts that Rasim Delić was present at this event, *see* Defence Final Brief, para. 959.

⁵²⁵ PW-9, T. 5580-5582; Ex. 826 (under seal), paras 277-278. *See also* Ajman Awad, Hearing Sarajevo, T. 132-133. However, PW-9 could not authenticate the voice on Ex. 833, Video Clip, as belonging to Rasim Delić, *see* T. 5581-5582.

⁵²⁶ Ajman Awad, Hearing Sarajevo, T. 127-128, 135-136; Ex. 675 (under seal).

⁵²⁷ Ajman Awad, Hearing Sarajevo, T. 3, 30; Ex. 1033, Request for Citizenship for an EMD Member, 29 April 1995; Ex. 1140, Video Clip; Ex. 1440, Decision Revoking the Citizenship of Karray Kamel Ben Ali, 23 May 2006.

VI. MALINE/BIKOŠI: JUNE 1993

A. Military Operations in the Maline Area in June 1993

1. Background

200. The village of Maline is located in the Bila Valley in the municipality of Travnik in central Bosnia.⁵²⁸ In June 1993, it was an ethnically mixed village.⁵²⁹ Its upper part, Gornje Maline, was inhabited by Bosnian Croats, whereas Bosnian Muslims lived in the lower part, Donje Maline.⁵³⁰ Around two kilometres to the north of Maline is the village of Mehurići, where the 1st Battalion of the ABiH 306th Brigade was billeted.⁵³¹ At the same distance from Maline and only a few hundred metres away from Mehurići is Poljanice, which at the time hosted a Mujahedin camp.⁵³²

201. As mentioned earlier,⁵³³ the collaboration between Bosnian Muslims and Bosnian Croats that had existed in 1992 fell apart and in the beginning of 1993, hostilities between both sides broke out.⁵³⁴ Towards the end of May 1993, the Muslim and Croat populations in the Bila Valley prepared for combat. Both sides dug trenches and put up guards in their respective settlements.⁵³⁵ The HVO conscripted the male Bosnian Croat population and established a brigade in the area.⁵³⁶ Freedom of movement became restricted due to roadblocks set up by both sides and increasing skirmishes.⁵³⁷

202. Between the end of May and about 10 June 1993, the Bila Valley became the scene of intensive combat activity between the ABiH and the HVO.⁵³⁸ From 4 to 6 June 1993, the HVO attacked and took over Velika Bukovica, a Bosnian Muslim village.⁵³⁹ At that time, the ABiH also

⁵²⁸ Agreed Fact 160.

⁵²⁹ There were about 100 Bosnian Croat households and between 150 and 200 Bosnian Muslim households in the village, Agreed Fact 161.

⁵³⁰ Agreed Fact 162; Zdravko Pranješ, T. 975; Šaban Alić, T. 691; Ex. 1213, Map Marked by Halim Husić, marks 11 and 12.

⁵³¹ Ex. 1213, Map Marked by Halim Husić, mark 2; *see* para. 125 *supra*.

⁵³² Sinan Begović, T. 387, 389-391; Ex. 63, Map Marked by Sinan Begović, mark 1; Hasib Alić, T. 559-560; Šaban Alić, T. 642; Ajman Awad, Hearing Sarajevo, T. 148; *see* para. 170 *supra*.

⁵³³ *See* para. 83 *supra*.

⁵³⁴ *See also* Zdravko Pranješ, T. 976; Berislav Marijanović, T. 941.

⁵³⁵ Zdravko Pranješ, T. 977, 979-980; Berislav Marijanović, T. 941; Halim Husić, T. 7468-7470; Ex. 132, Map Marked by Zdravko Pranješ.

⁵³⁶ Zdravko Pranješ, T. 975-976, 997; Asim Delalić, T. 1733-1734; Ex. 264, Report of the Commander of the 306th Brigade, 11 April 1993.

⁵³⁷ Šaban Alić, T. 671; Osman Fuško, T. 1126-1127, 1135; Asim Delalić, T. 1734-1735; Ex. 143, Intelligence Report of the Commander of the 306th Brigade, 9 May 1993; Ex. 265, Operations Report of the Commander of the 306th Brigade, 13 April 1993; Ex. 254, Operations Report of the Commander of the 306th Brigade, 5 May 1993.

⁵³⁸ Halim Husić, T. 7374, 7378-7380, 7468-7470; Željko Pušelja, T. 1023-1024; Asim Delalić, T. 1707; Ex. 1221, Report of the 306th Mountain Brigade, 1 June 1993.

⁵³⁹ Asim Delalić T. 1707-1708; Šaban Alić, T. 671; Halim Husić, T. 7377-7378; Ex. 267, Record of the Military Security Service of the 306th Brigade on the HVO Attack on Velika Bukovica, 26 June 1993; Ex. 284, Military Information Summary No. 38, 6 June 1993, p. 4; Ex. 1213, Map Marked by Halim Husić.

lost control of a number of other villages in the area to the HVO.⁵⁴⁰ By 5 June 1993, the Commander of the ABiH 306th Brigade at Mehurići was tasked to move with “one battalion strong unit” *via* Maline to Velika Bukovica and beyond to “break the blockade of Travnik”.⁵⁴¹

2. The Attack on Maline on 8 June 1993

203. On 8 June 1993, the ABiH started an offensive in the Bila Valley in a push towards Travnik. The evidence establishes that units from the 306th Brigade were involved in the operation.⁵⁴² The evidence is unclear as to the participation of elements from any other ABiH units. One witness suggested the possibility that elements from the 312th, 314th and 325th Brigades, as well as the 307th Muslim Unit and the 17th Krajina Unit, took part in operations in the Bila Valley.⁵⁴³ However, this evidence does not relate specifically to the operation carried out on 8 June 1993. Although the Indictment alleges that the 7th Muslim Brigade participated in this offensive, the evidence before the Trial Chamber does not establish the participation of this unit.⁵⁴⁴

204. In the early morning hours of that day, the ABiH forces launched an artillery attack on Maline and the surrounding villages.⁵⁴⁵ HVO soldiers located in the village returned fire.⁵⁴⁶ Starting between 10:00 and 11:00 hours, the HVO soldiers surrendered and handed over their weapons to ABiH soldiers who then took over control of Maline.⁵⁴⁷

205. Simultaneously, Mujahedin from the Poljanice Camp near Mehurići engaged in the fighting against the HVO at various locations in the Bila Valley.⁵⁴⁸ A spearhead group of Mujahedin left the Poljanice Camp before dawn to break through the enemy lines, and a second group of 10-15 fighters followed shortly thereafter.⁵⁴⁹ On that day, Mujahedin from the Poljanice Camp were

⁵⁴⁰ Halim Husić, T. 7468; Osman Fuško, T. 1135-1136. *See also* Ex. 283, Military Information Summary No. 37, 5 June 1993, pp 1-2.

⁵⁴¹ Ex. 258, Report of OG Bosanska Krajina, 5 June 1993, p. 2; Asim Delalić, T. 1708.

⁵⁴² Ex. 285, Military Information Summary No. 40, 8 June 1993; Asim Delalić, T. 1708; Sinan Begović, T. 392-394, 403; Halim Husić, T. 7374-7375, 7471-7473, 7478, 7482, 7574-7575; Ex. 1001, Report of the 306th Brigade, 8 June 1993.

⁵⁴³ Halim Husić, T. 7574-7575. *See also* Ex. 1000, Order of the Commander of the 3rd Corps, 8 June 1993; but *see* Halim Husić, T. 7381-7382.

⁵⁴⁴ Indictment, para. 24; *but see* Prosecution Closing Argument, T. 8759-8760; *see, e.g.*, Enver Adilović, T. 7196-7197, 7227-7231; Halim Husić, T. 7341, 7384-7385, stating that the reference to the 7th Muslim Brigade in Ex. 167, Minutes from the 8 May 1993 Meeting of the Mixed Operations Team of the *Frankopan* and 306th Brigades Sent to Joint Command Travnik, 20 May 1993, and Ex. 998, Report of the Commander of the 306th Brigade on Combat Readiness, 19 May 1993, is inaccurate.

⁵⁴⁵ Berislav Marijanović, T. 941; Zdravko Pranješ, T. 978; Željko Pušelja, T. 1024. According to these witnesses, the attack commenced between 03:30 and 05:00. *See also* Ex. 292, Annex A to Military Information Summary No. 40, 8 June 1993.

⁵⁴⁶ Berislav Marijanović, T. 942; Zdravko Pranješ, T. 981; Željko Pušelja, T. 1024-1025.

⁵⁴⁷ Željko Pušelja, T. 1027-1029; Zdravko Pranješ, T. 982, 1000.

⁵⁴⁸ Šaban Alić, T. 645-652; Hasib Alić, T. 573-574; Ajman Awad, Hearing Sarajevo, T. 25, 27-28.

⁵⁴⁹ Šaban Alić, T. 645-646; Ex. 99, Map Marked by Šaban Alić; Hasib Alić, T. 573-575; Ex. 91, Map Marked by Hasib Alić. Besides Hasib Alić and Šaban Alić, the groups included “Vahidin”, “Muategz”, Ramo Fuško and Zuhdija Sehić, Šaban Alić, T. 644, 646, 664.

involved in combat activity at various locations in the area, and passed through Simulje, Borje, Radonjići and Bandal.⁵⁵⁰ The evidence indicates that between Simulje and Borje, the Mujahedin crossed a trench nearby Maline. However, the evidence does not show that they passed through or stopped by the village of Maline proper.⁵⁵¹ Two witnesses gave evidence as to the presence of “dark-skinned” men “speaking Arabic” and having “long beards” in Maline after the take-over by the ABiH.⁵⁵² However, the evidence is not clear as to whether any Mujahedin fighters participated in the actual attack on Maline.⁵⁵³

206. In relation to the overall offensive in the Bila Valley, the evidence shows that both the ABiH soldiers and the Mujahedin from the Poljanice Camp were aware, through rumours, of each other’s presence in the area, whereabouts and direction of movement.⁵⁵⁴ One witness, then a soldier of the 306th Brigade, stated that he learned from rumours circulating among the other soldiers, and not from his commander, that Mujahedin “participated in the attack.”⁵⁵⁵ Ali Hamad, a Mujahedin who was stationed in Bijelo Bučje, gave evidence that “the Mujahedin who were in Mehurići, as well as other units of the B and H army, [...] were given assignment of clearing the terrain from Mehurići up to Guča Gora”.⁵⁵⁶ Several witnesses, on the other hand, testified that the two forces were not acting in concert.⁵⁵⁷

207. The evidence also shows that on or around 8 June 1993, other Mujahedin groups, such as “Abu Hamza’s group” based in Guča Gora or the “Turkish Guerrilla” from Zenica, were carrying out attacks on villages in the Bila Valley.⁵⁵⁸

⁵⁵⁰ Hasib Alić, T. 573-574 (Šimulje, Borje/Borovi, Radonjići); Šaban Alić, T. 647-652 (Šimulje, Borje/Borovi, Radonjići, Bandal). *See also* Ajman Awad, Hearing Sarajevo, T. 25, 27-28, stating that Mujahedin, including those from the Poljanice Camp, departed from Guča Gora to attack Radojčići.

⁵⁵¹ Šaban Alić, T. 650-651, 659.

⁵⁵² Željko Pušelja, T. 1030-1031; Ex. 50, Witness Statement of PW-8 from *Prosecutor v. Hadžihasanović and Kubura*, 15 September 2000, p. 31.

⁵⁵³ *See* Šaban Alić, T. 645-653; Hasib Alić, T. 573-575. PW-8 is the only witness who provided the evidence that “the BH army [and] the Arabs [...] were involved in this attack together”, *see* Ex. 50, in particular, Transcript of PW-8 in *Prosecutor v. Blaškić*, T. 16011. The Trial Chamber, however, places little weight on his uncorroborated evidence, in view of inconsistencies among his statements in relation to the identity of Muslim soldiers, namely whether they were members of the ABiH or Mujahedin.

⁵⁵⁴ Sinan Begović, T. 394-395, 522; Ex. 64, Map Marked by Sinan Begović. Sinan Begović, however, could not confirm that the Mujahedin were assigned a particular area of responsibility, T. 401-402. Hasib Alić, T. 574.

⁵⁵⁵ Sinan Begović, T. 396, 401, 522.

⁵⁵⁶ Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 60-61.

⁵⁵⁷ Asim Delalić, T. 1788-1789; Halim Husić, T. 7316-7324, 7444-7445; Ex. 263, Report of Assistant Commander for Morale of the 306th Brigade, 28 July 1993, p. 2; *see also* Ajman Awad, Hearing Sarajevo, T. 27-28, 149-150; Šaban Alić, who fought with the group of Mujahedin, described an incident of “friendly fire” between a group called the “Travnik unit” and the 306th Brigade at Bukovica, T. 691-692.

⁵⁵⁸ Halim Husić, T. 7306-7308, 7389-7390; Šaban Alić, T. 677. Abu Zubeir’s group was also present in this area in May and June 1993, Halim Husić, T. 7336; Šaban Alić, T. 677. *See also* Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 59-62. As regards Abu Hamza’s group, the evidence does not show whether it included also Bosnian Mujahedin. As regards the “Turkish Guerrilla”, the evidence indicates that it was comprised “mostly” of foreigners, Halim Husić, T. 7308; Sinan Begović, T. 538; *see also* Ex. 1430, Information on Criminal Activities of Mujahedin, 14 October 2003; Ex. 179, Report from 3rd Corps Commander to Rasim Delić Concerning Foreign Volunteers in

B. The March to Mehurići and the Ambush at Poljanice

208. After taking control of Maline, the ABiH soldiers gathered Bosnian Croat civilians and HVO soldiers, approximately 350 persons in total.⁵⁵⁹ Military police members of the 1st Battalion of the ABiH 306th Brigade then escorted them from Maline towards Mehurići on foot.⁵⁶⁰

209. Before reaching Mehurići, on their way through Poljanice, the column of the Bosnian Croat civilians and HVO soldiers was intercepted by an armed group of four to five foreign Mujahedin and four to five Bosnian Mujahedin. The foreign Mujahedin had beards, were of dark complexion and spoke in a language unintelligible to the captives, whereas the Bosnian Mujahedin wore green uniforms and had masks pulled over their faces.⁵⁶¹ According to one witness, one of the Bosnian Mujahedin had a uniform with ABiH insignia.⁵⁶²

210. The Mujahedin threatened the ABiH military police soldiers and seized at gunpoint about 15 able-bodied men from the column.⁵⁶³ The Mujahedin then ordered the group of men to walk back in the direction of Bikoši, a few hundred metres north-west of Maline, while the ABiH military police soldiers continued with the column towards Mehurići.⁵⁶⁴

211. Shortly thereafter, a second group of about 50 Bosnian Croat men and women, who had departed from Maline in the afternoon and were also escorted by ABiH soldiers on foot, encountered the group of about 15 able-bodied men.⁵⁶⁵ The Mujahedin forcibly seized between seven and 12 able-bodied Bosnian Croat men from the second group.⁵⁶⁶

212. On their way to Bikoši, the Mujahedin encountered another group of Bosnian Croats escorted by “local Muslim soldiers”, consisting of about seven wounded and four to six captured Bosnian Croat soldiers who had been transported on a truck as far as Bikoši and were then ordered

the Zenica Area, 13 June 1993; Ex. 163, Order of Rasim Delić to Send the Guerrilla Unit to Mt Igman to join “Zuka”’s Unit, 16 June 1993. As regards Abu Zubeir’s group, one witness stated that to his knowledge, it “was composed of Arabs alone” as of the end of 1994, Ex. 826 (under seal), paras 101, 105.

⁵⁵⁹ Željko Pušelja, T. 1029-1030; Zdravko Pranješ, T. 984-985, 1001.

⁵⁶⁰ Asim Delalić, T. 1710, 1712; Željko Pušelja, T. 1033-1034; Zdravko Pranješ, T. 985; Ex. 133, Map Marked by Zdravko Pranješ.

⁵⁶¹ Zdravko Pranješ, T. 985-988, 1002, 1011; Željko Pušelja, T. 1036, 1063; Berislav Marijanović, T. 920-922, 944-945, 948-949; Ex. 133, Map Marked by Zdravko Pranješ.

⁵⁶² Berislav Marijanović, T. 921, 959-960 (private session), stating that he also saw one Bosnian Mujahedin wearing civilian clothes.

⁵⁶³ Zdravko Pranješ, T. 985-989, 1002-1003; Željko Pušelja, T. 1035-1038; Berislav Marijanović, T. 920.

⁵⁶⁴ Zdravko Pranješ, T. 985, 989-990, 1003; Željko Pušelja, T. 1038; Berislav Marijanović, T. 919-920. As regards the location of Bikoši, *see* Ex. 133, Map Marked by Zdravko Pranješ.

⁵⁶⁵ Berislav Marijanović, T. 916-920; Ex. 129, Map marked by Berislav Marijanović. The group included Berislav Marijanović, his brother-in law and his nephew. Berislav Marijanović also testified that the group departed about 10 hours after the commencement of the attack on Maline, T. 914.

⁵⁶⁶ Berislav Marijanović, T. 919-921, 944-945, 948-979.

to continue on foot to Mehurići.⁵⁶⁷ The Mujahedin joined them to the group which was heading back to Bikoši.⁵⁶⁸

C. The Killing of 24 Bosnian Croats at Bikoši

213. The group which was eventually taken back to Bikoši by the Mujahedin comprised approximately 30 individuals, including a lady named Ana Pranješ.⁵⁶⁹ The evidence indicates that she was captured and forced to join this group somewhere near Poljanice.⁵⁷⁰ She was dressed in a camouflage uniform with a Red Cross armband.⁵⁷¹ Ana Pranješ was harassed by two foreign Mujahedin and when she refused to take off her jacket, one of them killed her through a volley of gunfire.⁵⁷²

214. When the group reached Bikoši, one of the captives was shot dead as he attempted to flee.⁵⁷³ The Mujahedin lined up the captives in front of a house.⁵⁷⁴ The Bosnian Mujahedin took off their masks and one witness recognised some of them as being Muslims from the area of Mehurići. When this witness later described to other locals the appearance of two Mujahedin whom he did not know, he was told that they might have been Zihnad Šejdić and Isak Aganović.⁵⁷⁵

215. Shortly after the line-up, suddenly, one of the captives started screaming in an epileptic fit. The Mujahedin reacted by opening fire at the entire group. A number of men were shot dead immediately; others fell down seriously injured. When everyone was lying on the ground, the Mujahedin fired shots at those who appeared to be still alive.⁵⁷⁶

216. However, a small number of victims survived by pretending to be dead or hiding below dead bodies. After the Mujahedin had left the scene, these men were able to escape in different

⁵⁶⁷ Ex. 50, Witness Statement of PW-8 from *Prosecutor v. Hadžihasanović and Kubura*, 19 April 2000, pp 31-32 and 15 September 2000, pp 47-48; Berislav Marijanović, T. 923-924; Zdravko Pranješ, T. 990-991.

⁵⁶⁸ Ex. 50, Witness Statement of PW-8 from *Prosecutor v. Hadžihasanović and Kubura*, 19 April 2000, p. 32 and 15 September 2000, p. 48; Berislav Marijanović, T. 923-924.

⁵⁶⁹ Besides Ana Pranješ, the group included Željko Pušelja, Vlado Pušelja, Niko Bobaš, Goran Bobaš, Dalibor Janković, Stipo Janković, Bojan Barać, Pavo Barać, Srećo Bobaš, Pero Bobaš, Ivo Tavić, Niko Jurčević, Franjo Pušelja, Vinko Pušelja, Anto Balta, Jozo Balta, Nikica Balta, Zdravko Pranješ, Jako Pranješ, Jako Tavić, Mijo Tavić, Slavko Kramar, Berislav Marijanović, Ivo Jurić and Ivo Volić, see Zdravko Pranješ, T. 988; Željko Pušelja, T. 1037-1038, 1045; Berislav Marijanović, T. 919-920, 922-923. See also Ex. 50, Witness Statement of PW-8 from *Prosecutor v. Hadžihasanović and Kubura*, p. 49, Statement of PW-8 to Medugorje Human Rights Centre, 18 October 1993, p. 67 and Statement of PW-8 to Herceg-Bosna War Crimes Commission, 25 June 1996, p. 82, where the witness mentions, in addition, Marijan Bobaš, Anto Matić, Luka Balta, Slavko Bobaš, Davor Barać, Ivo Balta, Predrag Pušelja, Ljubomir Pušelja, Tihomir Peša and Stipo Tavić.

⁵⁷⁰ Berislav Marijanović, T. 922-923.

⁵⁷¹ Željko Pušelja, T. 1038; Berislav Marijanović, T. 922-923.

⁵⁷² Željko Pušelja, T. 1038-1039, 1063; Berislav Marijanović, T. 923.

⁵⁷³ Zdravko Pranješ, T. 991-992.

⁵⁷⁴ Željko Pušelja, T. 1039-1040.

⁵⁷⁵ Željko Pušelja, T. 1039-1041, 1043-1044, 1056-1057, also stating that he heard one of the Mujahedin being called "Isak" by the other Mujahedin.

⁵⁷⁶ Željko Pušelja, T. 1045-1047; Zdravko Pranješ, T. 992-993; Berislav Marijanović, T. 925-927.

directions although they had suffered serious gunshot wounds in different parts of their bodies.⁵⁷⁷ According to one of the survivors, the injuries he sustained resulted in permanent disability and a lasting psychological trauma.⁵⁷⁸

217. The evidence before the Trial Chamber is unclear on the precise time when the massacre occurred, although it can reasonably be inferred that it was some time in the afternoon of 8 June 1993.⁵⁷⁹

218. On one of the following days, the dead bodies were buried at a nearby location called Pješčara by a civil protection unit of the RBiH in charge of the sanitation of the terrain.⁵⁸⁰

D. Identity of the Perpetrators

219. With respect to the identification of the Mujahedin perpetrators, the evidence is not clear as to which particular unit or group they belonged. One witness stated that one of the perpetrators wore a uniform with ABiH insignia.⁵⁸¹ However, this evidence standing alone does not establish that some or all of the perpetrators were in fact ABiH members.⁵⁸²

220. As regards the question whether the perpetrators belonged to a particular group of Mujahedin, the Trial Chamber took into account the following factors.

221. The ambush of the column of the Bosnian Croats from Maline occurred in close proximity to the Camp of the Poljanice Mujahedin.⁵⁸³ The Poljanice Mujahedin were carrying out attacks in the Bila Valley on 8 June 1993, crossing a trench nearby Maline.⁵⁸⁴ However, there was more than

⁵⁷⁷ Željko Pušelja, T. 1045-1047; Zdravko Pranješ, T. 992, 994; Berislav Marijanović, T. 926-930; Ex. 50, Transcript of PW-8 in *Prosecutor v. Blaškić*, T. 16015-16017. The wounded survivors included Željko Pušelja, Zdravko Pranješ, Berislav Marijanović, Darko Pušelja, Marijan Bobaš, and Pavo Barać; *but see* Berislav Marijanović, T. 930 who testified that Pavo Barać had not been wounded.

⁵⁷⁸ Željko Pušelja, T. 1052-1054.

⁵⁷⁹ Berislav Marijanović, T. 914 (“the conflict started in the morning and went on for about ten hours”); Osman Fuško, T. 1096 (“it was in the afternoon” when he heard about killing); Ex. 50, Statement of PW-8 to Medugorje Human Rights Centre, 18 October 1993, p. 66 (“we ... were all taken back to Bikoši ... around 0900 or 1000 hrs”). The Trial Chamber has found the following hearsay evidence to be of less probative value: Ex. 921 (under seal), containing information which provides that the massacre took place “at around 1400 hours”; Ex. 917, 92 *bis* transcript of PW-5, 20 May 2004, T. 7777-7779, stating that when he asked an ECMM monitor about the “alleged mass execution” in Maline, this monitor told him that two people in Zenica told this monitor “that they had seen people having been killed at 9.00 on the 8th June by Muslim soldiers”.

⁵⁸⁰ Asim Delalić, T. 1711-1714; Osman Fuško, T. 1104; Ex. 140, Report of Assistant Commander for Military Security of the 306th Brigade, 19 October 1993; Ex. 231, Report from 3rd Corps Concerning Events in Maline, 21 October 1993, p. 2; Ex. 141, Map marked by Osman Fuško.

⁵⁸¹ *See* fn. 562 *supra*.

⁵⁸² This is particularly so because the evidence shows that a number of ABiH members left their original units and joined Mujahedin groups around this time, Sinan Begović, T. 405-407, Hasib Alić, T. 556-557, 563, Šaban Alić, T. 640-641. One witness testified that there might have been instances where former ABiH members who joined the Mujahedin kept their ABiH uniforms, PW-2, T. 885-886. *See also* para. 185 *supra*.

⁵⁸³ *See* paras 170, 209 *supra*.

⁵⁸⁴ *See* para. 205 *supra*.

one active Mujahedin group in the area at the relevant time, who were indistinguishable from one another on their appearance.⁵⁸⁵ The evidence allows for the possibility that these groups were composed not only of foreign Mujahedin, but also of Bosnian Mujahedin.⁵⁸⁶ Therefore, the fact that the Mujahedin who intercepted the column of the Bosnian Croats were both foreign and Bosnian Mujahedin lends no or only limited support for the inference that they belonged to the Poljanice Mujahedin.

222. One witness identified two individuals among the perpetrators as Zihnad Šejdić and Isak Aganović.⁵⁸⁷ The evidence indicates that Zihnad Šejdić and Isak Aganović were members of the Mujahedin from the Poljanice Camp.⁵⁸⁸ However, the witness' identification of the two individuals is based on the knowledge of other persons who told the witness that they might have been Zihnad Šejdić and Isak Aganović.⁵⁸⁹ As this hearsay evidence is uncertain and uncorroborated, the Trial Chamber attaches only limited weight to it.

223. An investigation conducted by the 306th Brigade into the Bikoši events "showed that the perpetrators were the Mujahedin", without mentioning a specific group.⁵⁹⁰ The 306th Brigade did not continue the investigation because access to the Poljanice Camp was denied.⁵⁹¹ There is no evidence to suggest that access to other Mujahedin camps was sought.

224. Consequently, the Trial Chamber is of the view that it is not established beyond reasonable doubt that the perpetrators were Mujahedin from the Poljanice Camp.

E. Conclusion

225. On the evidence, and considering that the Defence does not dispute the identity of the victims, the Trial Chamber is satisfied that on 8 June 1993 at least the following 24 individuals were killed with the required intent by foreign and Bosnian Mujahedin: Anto Balta, Ivo Balta, Jozo Balta, Luka Balta, Nikica Balta, Bojan Barać, Davor Barać, Goran Bobaš, Niko Bobaš, Slavko Bobaš, Srećo Bobaš, Pero Bobaš-Pupić, Dalibor Janković, Stipo Janković, Slavko Kramar, Anto Matić, Tihomir Peša, Ana Pranješ, Ljubomir Pušelja, Predrag Pušelja, Jakov Tavić, Mijo Tavić, Stipo Tavić and Ivo Volić.⁵⁹² The Trial Chamber also finds that these persons were taking no active

⁵⁸⁵ See paras 168-169, 207 *supra*.

⁵⁸⁶ See fn. 558 *supra*.

⁵⁸⁷ See para. 214 *supra*.

⁵⁸⁸ Šaban Alić, T. 664-666, 668; Asim Delalić, T. 1767-1768; Ex. 65, Approval for the Transfer of Soldiers from the 306th Brigade to the EMD, 9 September 1993.

⁵⁸⁹ See para. 214 *supra*.

⁵⁹⁰ Asim Delalić, T. 1710-1711, 1714; Halim Husić, T. 7399-7400, 7042-7043; para. 227 *infra*.

⁵⁹¹ Asim Delalić, T. 1711. See also Prosecution Closing Argument, T. 8786.

⁵⁹² Agreed Fact 39.

part in hostilities at the time when the crime occurred.⁵⁹³ The Trial Chamber holds that the Prosecution has established beyond reasonable doubt the elements of murder as a violation of the laws or customs of war (Count 1).

226. Furthermore, the Trial Chamber finds that on 8 June 1993, at a minimum, the following five individuals were seriously injured with the required intent by gunfire from foreign and Bosnian Mujahedin: Marijan Bobaš, Berislav Marijanović, Zdravko Pranješ, Zeljko Pušeljja and Darko Pušeljja. Likewise, these persons took no active part in hostilities at that time. The Trial Chamber holds that the Prosecution has established beyond reasonable doubt the elements of cruel treatment as a violation of the laws or customs of war (Count 2).

F. Enquiries Into the Bikoši Killings

1. June 1993

227. On 12 June 1993, the ABiH 306th Brigade opened an investigation into the abduction of Bosnian Croat captives at Poljanice. The investigation ended after some two weeks because it showed that the perpetrators were “the Mujahedin”.⁵⁹⁴ The 3rd Corps was informed of this investigation.⁵⁹⁵

228. On 23 June 1993, Fadil Alihodžić and Ivan Negovetić, both members of the ABiH Main Staff, visited Mehurići and observed approximately 250 Bosnian Croats who were guarded by the ABiH and civilian police in a school gym.⁵⁹⁶ An ABiH officer told Alihodžić and Negovetić that on the previous day, Mujahedin billeted “in the immediate vicinity” of Mehurići had executed “some 50 Croat civilians”.⁵⁹⁷

229. Later on the same day at the forward command post (“IKM”) in Zenica, Alihodžić and Negovetić reported to Stjepan Šiber, the Deputy Commander of the Main Staff, on their visit to Mehurići.⁵⁹⁸ Still on 23 June 1993, the three men sent a report to the Main Staff, for the attention of President Izetbegović, stating that an ABiH officer “informed us that a day before our arrival

⁵⁹³ See para. 44 *supra*.

⁵⁹⁴ Asim Delalić, T. 1710-1711; 1716, 1780-1785; Halim Husić, T. 7399-7400, 7402-7403. While Asim Delalić can be understood to imply that the perpetrators were from the Poljanice Camp, Halim Husić testified that Asim Delalić reported in a meeting that the investigation did not reveal the group to which the Mujahedin belonged.

⁵⁹⁵ Asim Delalić, T. 1710-1711, 1714, 1769-1771; Halim Husić, T. 7400-7401; Ex. 138, Telegram of the 306th Brigade, 12 June 1993; Ex. 228, Reply of the 3rd Corps Commander, 20 June 1993.

⁵⁹⁶ Ex. 977, Witness Statement of Ivan Negovetić, 27 July 2007, paras 15, 31; Ivan Negovetić, T. 6775; Ex. 990, Diary of Ivan Negovetić, Entry of 23 June 1993, p. 3; Ex. 1370, Witness Statement of Fadil Alihodžić, 29 February 2008, paras 11, 13, 18.

⁵⁹⁷ Ex. 977, Witness Statement of Ivan Negovetić, 27 July 2007, paras 37-42; Ivan Negovetić, T. 6774-6775, 6817-6818; Ex. 978 (under seal); Ex. 990, Diary of Ivan Negovetić, Entry of 23 June 1993, pp 1-2; Osman Fuško, T. 1144-1145, 1174; Željko Pušeljja, T. 1049.

⁵⁹⁸ Ex. 977, Witness Statement of Ivan Negovetić, 27 July 2007, para. 23.

[foreigners located in the immediate vicinity] executed about 50 civilians in a nearby village.”⁵⁹⁹ In the report, it was proposed that Rasim Delić and President Izetbegović should come to Zenica or summon the 3rd Corps Commander to Sarajevo for admonishment.⁶⁰⁰ There is no evidence that there was any reaction to this report.⁶⁰¹

230. On 25 June 1993, Stjepan Šiber wrote a letter addressed personally to Rasim Delić and President Izetbegović, reiterating the information about the execution of 50 civilians “by the Mujahedin” and also referring to “35 Croats [who] were executed in the village of Bikoši [...] shot by the Mujahedin” on 8 June 1993.⁶⁰² On 3 July 1993, Stjepan Šiber sent a follow-up letter to Rasim Delić in which he reiterated the request that Rasim Delić come to Zenica.⁶⁰³

231. During this span of time, Rasim Delić appears to have also been *orally* informed of criminal incidents within the area of responsibility of the 3rd Corps, although the evidence is not clear whether reference was made to the killings in Bikoši.⁶⁰⁴ Rasim Delić “was busy doing other things, and [...] he only shrugged his shoulders. [...] Nobody wanted to listen to him, so nothing could be done.”⁶⁰⁵

2. October 1993

232. In the months following the Bikoši incident, various international organisations, including the United Nations Commission for Human Rights and the European Commission Monitoring Mission, enquired into the killing of Bosnian Croats.⁶⁰⁶

233. On 15 October 1993, the United Nations Special Rapporteur on the former Yugoslavia, Tadeusz Mazowiecki, sent a letter to President Izetbegović requesting information on some incidents including reported killings of “at least 25 Bosnian Croat civilians [...] in the Maljine

⁵⁹⁹ Ex. 978 (under seal); Ex. 170 (under seal); PW-3, T. 1373-1374 (closed session); Ivan Negovetić, T. 6774-6775, 6807-6810; Ex. 977, Witness Statement of Ivan Negovetić, 27 July 2007, paras 22-24; Ex. 169 (under seal); *but see* Ex. 1370, Witness Statement of Fadil Alihodžić, 29 February 2008 paras 20-24; Asim Delalić, T. 1743-1745.

⁶⁰⁰ Ex. 978 (under seal); Ex. 170 (under seal); PW-3, T. 1362-1363 (closed session).

⁶⁰¹ Ex. 169 (under seal); PW-3, T. 1362, 1371-1372 (closed session).

⁶⁰² Ex. 171 (under seal); Ivan Negovetić, T. 6853; *but see* Defence Final Brief, para. 318.

⁶⁰³ Ex. 174 (under seal). *See also* PW-3, T. 1600; Defence Final Brief, paras 319-320, 344, where it is argued that Ex. 225 (Warning of Rasim Delić to Corps Commanders Concerning the Creation of Muslim Armed Forces within the ABiH, 27 July 1993, generally addressing problems with the “Muslim Armed Forces”) was the response of Rasim Delić to Stjepan Šiber’s request in Ex. 174 (under seal).

⁶⁰⁴ PW-3, T. 1336, 1339-1340, 1374, 1374, 1396 (closed session); Ex. 166, Questions to the 3rd Corps Commander Including on Incident in Maline/Bikoši, 20 June 1993.

⁶⁰⁵ PW-3, T. 1339-1340 (closed session).

⁶⁰⁶ Ex. 305 (under seal); Ex. 921 (under seal); Ex. 920 (under seal); Ex. 917 (under seal), T. 7737-7750, 7769-7779, 7782-7786, 7795, 7798-7804; Alastair Duncan, T. 2045-2046 (private session). *See also* Agreed Fact 163; Asim Delalić, T. 1772-1773, 1776; Ex. 231, Report from 3rd Corps Concerning Events in Maline, 21 October 1993.

village” on 8 June 1993, in which “so-called Mojahedin troops were [allegedly] involved”.⁶⁰⁷ On 17 October 1993, President Izetbegović, without mentioning the Mujahedin, ordered Rasim Delić to carry out an investigation and submit a report concerning these incidents.⁶⁰⁸ On the same day, Rasim Delić ordered the 3rd Corps Command to immediately submit necessary information on “an alleged massacre of 25 Bosnian Croats (civilians) in the village of Maljine on 8 July 1993 [...] with the aim of providing objective information to Mr. Mazowiecki.”⁶⁰⁹

234. On 19 October 1993, Osman Fuško, Security Officer of the 306th Brigade, wrote a report on behalf of Asim Delalić, Assistant Commander for Security of the Brigade, to the Security Service of the 3rd Corps, stating that “the bodies of 25 Croats were collected in the period between 8 June and 10 June 1993. [...] They were all dressed in uniforms. [...] We repeat that all these individuals died in combat.”⁶¹⁰ Osman Fuško testified that he wrote this report on instructions of Asim Delalić, without basing the report on any evidence.⁶¹¹ On the other hand, Asim Delalić stated that he had neither seen this report during the war nor given any instructions to Fuško about its contents.⁶¹²

235. On 21 October 1993, the 3rd Corps sent a report to the ABiH Main Staff, which stated as follows:

Soldiers [...] who were not members of BH Army units and who obtained weapons through some private channels took part in the combat actions in the region of the village Maline. [...] During the combat actions, there was no massacre of civilians by the members of RBH Army, nor were there HVO soldiers executed. After the end of combat actions, the regular clearing up of the battlefield was done. All Croats killed by bullets and shells (a total of 25 soldiers and civilians) were collected in one spot and buried [...]⁶¹³

236. On 23 October 1993, Rasim Delić sent a report to the RBiH Ministry of Foreign Affairs in order for it to be conveyed to Mr. Mazowiecki, stating:

[T]he massacre which is being attributed to the RBH Army did not take place. As a result of an armed conflict caused by extremist HVO forces, 25 people were killed on one side, including civilian villagers of Croatian nationality. [...] [This was] an armed conflict in which, apart from

⁶⁰⁷ Ex. 182, Letter from Tadeusz Mazowiecki to Alija Izetbegović, 15 October 1993, pp 3-5; Ex. 917 (under seal), T. 7749-7750, 7804.

⁶⁰⁸ Ex. 182, Order from Alija Izetbegović to Rasim Delić Concerning the Investigation into the Incident in Maline, 17 October 1993, p. 1.

⁶⁰⁹ Ex. 176, Request for Information of Rasim Delić to 3rd Corps Command on Incident in Maline, 17 October 1993. The Commander of the 3rd Corps immediately passed down the order to the Command of OG *Bosanska Krajina*, Ex. 177, Order from 3rd Corps Commander to the Command of the OG *Bosanska Krajina* Requesting Information on the Incident in Maline, 17 October 1993.

⁶¹⁰ Ex. 140, Report of Assistant Commander for Military Security of the 306th Brigade, 19 October 1993; Osman Fuško, T. 1114-1115.

⁶¹¹ Osman Fuško, T. 1114-1117, 1119-1120, 1148-1150, 1152-1155, 1161-1164, 1179, 1181-1183.

⁶¹² Asim Delalić, T. 1716-1718, 1771-1772.

⁶¹³ Ex. 231, Report from 3rd Corps Concerning Events in Maline, 21 October 1993.

RBH Army members, the cited number of the HVO soldiers and armed civilians whom the soldiers had included in the fighting lost their lives.⁶¹⁴

237. The Trial Chamber notes that while the 3rd Corps' report of 21 October 1993 describes the victims as "soldiers and civilians", Rasim Delić's report of 23 October 1993 refers to the victims as "soldiers and *armed* civilians".⁶¹⁵

⁶¹⁴ Ex. 178, Information from Rasim Delić to the Ministry of Foreign Affairs Referring to the Letter of Tadeusz Mazowiecki on the Incident in Maline, 23 October 1993; Murat Softić, T. 1829-1830, also stating that the basis of this report was "the source from the 3rd Corps".

⁶¹⁵ Emphasis added.

VII. LIVADE AND KAMENICA CAMP: JULY – AUGUST 1995

A. Military Operations in the Vozuća pocket in July 1995

238. On 21 July 1995, the ABiH launched an offensive in the Vozuća pocket against the VRS with a view to capturing the features of Krčevine, Gaj, and Malovan (“Operation *Proljeće II*”).⁶¹⁶ The EMD was reported to be “the primary leader of the upcoming tasks.”⁶¹⁷ In the early morning hours of 21 July 1995, EMD forces spearheaded the attack, breaking through the VRS lines and entering the villages of Krčevine and Kesten.⁶¹⁸

B. Killings and Maltreatment in Livade

1. Capture and Maltreatment of VRS Soldiers on 21 July 1995

239. On 21 July 1995, at the time when Operation *Proljeće II* commenced, the only residents remaining in Krčevine were the staff of a forward medical post of the VRS 1st Prnjavor Light Infantry Brigade (“Prnjavor Brigade”): Branko Šikanić, a doctor, and Velibor Trivičević, a paramedic.⁶¹⁹ Soon after the beginning of the attack, both men surrendered to a group of approximately ten to fifteen armed Mujahedin who wore a mix of military and civilian clothes and spoke both in local and foreign languages.⁶²⁰ Šikanić and Trivičević were escorted by two Mujahedin to Livade, where the EMD had their “place of assembly.”⁶²¹ They arrived in Livade at around 7:00 hours⁶²² and were detained in a two-storey house for the next two days.⁶²³ Later that same morning, the Mujahedin brought in another VRS soldier, Igor Guljevatej.⁶²⁴

⁶¹⁶ Ex. 430, Map Marked by Fadil Hasanagić, marked as “9” and “10” the line of attack towards Krčevine, Gaj, and Malovan, Fadil Hasanagić, T. 2936-2937, 2980-2983; Ex. 444 Order of the Commander of the 35th Division, for the Continuation of “Proljeće-95 II”, 18 July 1995; Ex. 445, Map of the “Proljeće-95 II” Operation; Ex.448, Map Marked by Fadil Hasanagić.

⁶¹⁷ Ex. 606, Combat Report of the 3rd Corps, 18 July 1995; Ex. 525, Report of the 3rd Corps Command on Combat Operations, 18 July 1995, referring to the EMD as the “main unit in charge of the coming assignment”; Ex. 789, Combat Report of the Commander of the 328th Brigade, 3 August 1995, reporting that *Proljeće II* was conducted “according to a plan” of the EMD; Fuad Zilkić, T. 5325-5326. *See also* Ex. 826 (under seal), paras 202-204, 207-208; PW-9, T. 5706; Ex. 1044, Order of the Commander of the 329th Brigade, 19 July 1995.

⁶¹⁸ Ex. 826 (under seal), paras 214-215; Ex. 526, Extraordinary Combat Report of the 3rd Corps Command, 21 July 1995; *see also* Ex. 537, Compilation of Reports of the Main Staff, July 1995, p. 6; Ex. 668 (under seal); Sinan Begović, T. 454-457; Ex. 75, Map Marked by Sinan Begović; Ex. 375, Three Reports on the Successes of Units of the ABiH, 22 July 1995, p. 4; Ex. 789, Combat Report of the Commander of the 328th Brigade, 3 August 1995, p. 6.

⁶¹⁹ Velibor Trivičević T. 3597-3598; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 4; Sinan Begović, T. 460. The Trial Chamber is satisfied that Branko Šikanić and Velibor Trivičević were “soldiers” as pleaded in the Indictment.

⁶²⁰ Velibor Trivičević, T. 3600-3603; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, pp 4-5.

⁶²¹ Ajman Awad, Hearing Sarajevo, T. 98; Sejfulah Mrkaljević, T. 3898. Fadil Hasanagić explained that elements of the EMD were deployed in Livade and that is where the 3rd Corps would send material and documents for the EMD, T. 2979. *See also* Ex. 450, Order of the Commander of the 35th Division, 20 July 1995.

⁶²² Velibor Trivičević, T. 3609, Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 6. Ajman Awad, a member of the EMD, stated that he saw “two people who were captured being led by an Arab who was about a

240. In the absence of evidence showing that there were other groups of Mujahedin in or around Livade, and also in light of the fact that the detainees were later transferred to the EMD Kamenica Camp with no evidence of change of custody,⁶²⁵ the Trial Chamber is satisfied that the detainees who were confined in this house at Livade were held in the custody of the EMD.

2. Killings of Momir Mitrović and Predrag Knežević

241. Velibor Trivičević testified that at some point on 21 July 1995, he heard noises coming from outside the house and shouts of “Allahu Ekber”.⁶²⁶ One of the Mujahedin who had been guarding the detainees ran out of the room and quickly returned carrying a severed head.⁶²⁷ Although the detainees had not witnessed the killing, blood gushed from the head onto the ground and onto the detainees’ legs.⁶²⁸ The Mujahedin asked the detainees if they knew the victim.⁶²⁹ Although Velibor Trivičević testified that he recognised the head as that of Momir Mitrović, a soldier in the VRS Prnjavor Brigade, he did not dare then to admit it and denied knowing the victim, as did the other detainees.⁶³⁰ The Mujahedin placed Mitrović’s head in a cardboard box and took it outside.⁶³¹

242. Shortly after, the same Mujahedin returned, carrying another severed head from which fresh blood also gushed.⁶³² Holding the head in front of the detainees, he asked if they recognised the second head.⁶³³ Neither Velibor Trivičević nor Branko Šikanić knew this man.⁶³⁴ Velibor Trivičević, however, was later able to identify him as Predrag Knežević, a soldier in the VRS Prnjavor Brigade, on the basis of a photograph shown to him after his eventual release.⁶³⁵ The Mujahedin also placed the severed head of Predrag Knežević in a cardboard box and also carried it outside.⁶³⁶

metre and a half. And there was another person who was very tall. He was a doctor. He was almost two metres tall”, Hearing Sarajevo, T. 98, 264.

⁶²³ Velibor Trivičević, T. 3611.

⁶²⁴ Velibor Trivičević, T. 3611; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 6.

⁶²⁵ See para. 255 *infra*.

⁶²⁶ Velibor Trivičević, T. 3613.

⁶²⁷ Velibor Trivičević, T. 3613; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 8.

⁶²⁸ Velibor Trivičević, T. 3673-3674.

⁶²⁹ Velibor Trivičević, T. 3613.

⁶³⁰ Velibor Trivičević, T. 3613.

⁶³¹ Velibor Trivičević, T. 3613.

⁶³² Velibor Trivičević, T. 3614.

⁶³³ Velibor Trivičević, T. 3614.

⁶³⁴ Velibor Trivičević, T. 3614; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 8.

⁶³⁵ Velibor Trivičević, T. 3614, stating that the photograph was shown to him by Predrag Knežević’s sister, who was seeking information on her brother.

⁶³⁶ Velibor Trivičević, T. 3614.

243. In May 2006, the mortal remains of two bodies were exhumed at Božići⁶³⁷ and later identified as those of Predrag Knežević and Momir Mitrović.⁶³⁸ The hands and legs of Predrag Knežević's carcass were tied with a thin electrical cable with nooses.⁶³⁹ The subsequent autopsy showed that four cervical bones were missing.⁶⁴⁰ Likewise, during the exhumation of Momir Mitrović, the hands of the skeleton were tied with a green rope. The autopsy indicated that the third cervical vertebra had been "smoothly split with a sharp object."⁶⁴¹

244. While the detainees did not witness the killing of Momir Mitrović and Predrag Knežević, the Trial Chamber is satisfied that these men were not killed on the battlefield, as suggested by the Defence,⁶⁴² for the following reasons. On the above evidence, the only reasonable inference is that the two men were tied to facilitate their killing.⁶⁴³ Both Velibor Trivičević and Branko Šikanić, who had medical expertise, described "fresh blood" gushing from the victims' heads.⁶⁴⁴ Moreover, the evidence indicates that there was no fighting going on in and around Livade at the relevant time. Krčevine, which is at a distance of about two kilometres, had already fallen earlier that morning.⁶⁴⁵ Finally, Branko Šikanić gave evidence that he observed in the house in Livade "Mujahedin having butchers rubber aprons. They had a white belt with knives and axes attached to it."⁶⁴⁶

3. Capture of Other VRS Soldiers and Maltreatment in Livade

245. A number of other VRS soldiers of the VRS Prnjavor Brigade, who were holding the front line in the vicinity of Krčevine, sought refuge in the woods after the commencement of the attack on 21 July 1995.⁶⁴⁷ Three soldiers, Krstan Marinković, Petko Marić and Velibor Tošić, hid in the woods until the evening of that same day. When they reached their former command post in

⁶³⁷ Ex. 1174, Exhumation Report and Photographic Documentation, 16 May 2006; Božići is about one kilometre from Livade, Ex. 430, Map Marked by Fadil Hasanagić.

⁶³⁸ Ex. 644, Witness Statement of Goran Krčmar, 6 June 2007, pp 104-108 of the English Translation and pp 62-67 of the B/C/S Original. The Trial Chamber finds no merit in the Defence argument that the identities of the two victims cannot be established, also because there is no chain of custody for the DNA samples gathered at the exhumation site, Defence Closing Argument, T. 8964; Defence Final Brief, paras 403-406.

⁶³⁹ Ex. 1174, Exhumation Report and Photographic Documentation, 16 May 2006, p. 7 of the English Version and p. 13 (photograph 10) of the B/C/S Version.

⁶⁴⁰ Ex. 1174, Exhumation Report and Photographic Documentation, 16 May 2006, p. 7.

⁶⁴¹ Ex. 1174, Exhumation Report and Photographic Documentation, 16 May 2006, pp 13, 15 of the English Version and p. 20 (photograph 10), p. 23 (photographs 22-23) of the B/C/S Version. *See also* Prosecution Closing Argument, T. 8802.

⁶⁴² Velibor Trivičević, T. 3671.

⁶⁴³ Ex. 1174, Exhumation Report and Photographic Documentation, 16 May 2006, pp 7 and 13.

⁶⁴⁴ Velibor Trivičević, T. 3673-3674, voicing his certainty that the men were not killed at the front line and brought to the house in Livade because the heads were "obviously [...] freshly severed" and spilling blood: "[I]f this had been done somewhere along the front line, and it had taken them 15 to 20 minutes to get me there from the front line, if they had arrived all the way from the front line, I don't know how much blood would have still been left in those heads to gush forth like that". *See also* Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 8, stating that "there was fresh blood dripping from the heads."

⁶⁴⁵ Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 6, stating that Livade was about two kilometres from the frontline.

⁶⁴⁶ Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 6.

Krčevine they surrendered to a group of foreign and Bosnian Mujahedin.⁶⁴⁸ The Mujahedin tied and brought them to the house in Livade where the other VRS soldiers were already held.⁶⁴⁹ Upon their arrival in Livade, Marinković was forced to bend down to allow a young boy to hit him repeatedly, breaking his nose.⁶⁵⁰

246. During the night of 21 July 1995, six other members of the VRS Prnjavor Brigade arrived at the house in Livade to be confined with the other detainees: Miodrag Šamac, Goran Stokanović, Vinko Aksentić, Vlado Čučić, Gojko Vujičić and Duško Pejičić.⁶⁵¹ A foreign Mujahedin always remained in the room guarding the 12 detainees.⁶⁵²

247. That same night, one detainee, Vinko Aksentić, leapt out of a window, attempting to escape.⁶⁵³ The Mujahedin guard ran after Aksentić, fired shots and brought Aksentić back into the house, where the Mujahedin beat him unconscious.⁶⁵⁴ A Mujahedin boy joined in the attack by removing one of Aksentić's boots and biting his toes.⁶⁵⁵ Another Mujahedin boy, approximately 12 years old and from Saudi Arabia, cut Velibor Trivičević's ears with a pocket knife⁶⁵⁶ and stepped on Branko Šikanić's throat while Šikanić was physically restrained.⁶⁵⁷

248. At some point, a Mujahedin approached Branko Šikanić with a knife and ordered him to kill Krstan Marinković, threatening to cut off Šikanić's head if he refused.⁶⁵⁸ When Šikanić refused to kill his fellow detainee, the Mujahedin intimidated Šikanić by pulling the blunt edge of a knife across Šikanić's neck.⁶⁵⁹

249. The Mujahedin restrained the detainees in uncomfortable positions, using poles or sticks as part of the restraint.⁶⁶⁰ The detainees were kept in that position until their hands started to swell

⁶⁴⁷ Krstan Marinković, T. 3513-3514.

⁶⁴⁸ Krstan Marinković, T. 3514-3516. Krstan Marinković estimated that the proportion of foreign Mujahedin to Bosnian Mujahedin was about 50/50, T. 3517.

⁶⁴⁹ Krstan Marinković, T. 3515, 3520-3523; Ex. 544, Photograph-still from Video Ex. 540.

⁶⁵⁰ Krstan Marinković, T. 3522.

⁶⁵¹ Velibor Trivičević, T. 3617; Ex. 543, List of Captured Prisoners of 3rd Corps Security Service, 3 September 1995, pp 1-5.

⁶⁵² Velibor Trivičević, T. 3616.

⁶⁵³ Velibor Trivičević, T. 3618.

⁶⁵⁴ Velibor Trivičević, T. 3618.

⁶⁵⁵ Velibor Trivičević, T. 3618.

⁶⁵⁶ Velibor Trivičević, T. 3635, 3694; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 8.

⁶⁵⁷ Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 8.

⁶⁵⁸ Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 8; Krstan Marinković, T. 3526, corroborating the main details of this incident, although indicating that it occurred in Kamenica Camp.

⁶⁵⁹ Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 8; Krstan Marinković, T. 3527, noting that nobody was injured and the incident was simply a form of intimidation.

⁶⁶⁰ Velibor Trivičević, T. 3612, 3615. Branko Šikanić described in some detail the manner in which they were tied: "[the sticks] were about 1-meter long, and 5cm thick. All three of us, Igor, Velibor and myself were tied to these sticks. Our legs were bent as we were sitting. Our knees were next to our faces, and our hands were crossed and tied in front. The stick was placed under our knees, and our arms were bent under the stick. There was possibly also a rope around my neck, which was connected to the stick, but I am not sure about that. I had a lot of problems with

from lack of circulation.⁶⁶¹ On occasion, the Mujahedin allowed local civilians into the house to attack the detainees. The civilians used poles to beat the detainees.⁶⁶²

250. The detainees were kept in Livade until 23 July 1995, when they were transferred to the Kamenica Camp.⁶⁶³

4. Conclusion

251. On the above evidence, the Trial Chamber is satisfied that on 21 July 1995, members of the EMD intentionally killed Momir Mitrović and Predrag Knežević in Livade. The Trial Chamber finds that these persons were taking no active part in hostilities at the time when the crime occurred. The Trial Chamber holds that the Prosecution has established beyond reasonable doubt the elements of murder as a violation of the laws or customs of war (Count 1).

252. The Trial Chamber further finds that between 21 and 23 July 1995, members of the EMD intentionally caused the 12 VRS detainees serious mental and physical suffering, as well as injury. The detainees were also subjected to serious attacks on human dignity. The prohibited treatment included beatings, the manner in which the detainees were physically restrained, and the display of the freshly severed heads of Momir Mitrović and Predrag Knežević. The 12 VRS detainees were taking no active part in hostilities at the time when the crime occurred. The Trial Chamber finds that the Prosecution has established beyond reasonable doubt the elements of cruel treatment as a violation of the laws or customs of war (Count 2).

C. Kamenica Camp, 23 July 1995 – 23 August 1995

1. Kamenica Camp

253. In the beginning of April 1995, Fadil Hasanagić, Commander of the 35th Division, ordered the Commander of the EMD to set up a base camp at an intersection 12 kilometres from Zavidovići so that the EMD could be provided with “undisturbed work and living conditions”.⁶⁶⁴ However, in disregard of this order, the EMD “arbitrarily” established a base camp at a place some 13 kilometres from Zavidovići in the direction towards Kamenica, on a plateau by the Gostović River.⁶⁶⁵ This

this stick, and the terrible position that I was tied.”, Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 7. Izudin Hajderhodžić (T. 3717) also described the way Šikanić was tied as a “nasty sight”.

⁶⁶¹ Velibor Trivičević, T. 3612. *See also* Izudin Hajderhodžić, T. 3718.

⁶⁶² Velibor Trivičević, T. 3615.

⁶⁶³ *See para. 255 infra.* Velibor Trivičević, T. 3611, 3618-3619; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 9.

⁶⁶⁴ Ex. 434, Preparatory Order of the Commander of the 35th Division, 7 April 1995, p. 2; Fadil Hasanagić, T. 2943, 3102; *see also* Ex. 786, Combat Report of the Commander of the 328th Brigade, 16 April 1995; Fuad Zilkić, T. 5318-5319.

⁶⁶⁵ Fadil Hasanagić, T. 2961, 3102-3103.

camp has been referred to as “Kamenica Camp”, “13 Kilometre Camp” or “Gostovići Camp”.⁶⁶⁶ For convenience, the Trial Chamber will refer to this location as “Kamenica Camp”.

254. Two flags with Arabic writing flanked the gate of the Kamenica Camp.⁶⁶⁷ Inside the Camp, there were two derelict houses, and a shed. There was also a large white tent which the Mujahedin used for prayers, and a weeping willow. The Emir’s tent was also close by.⁶⁶⁸ Behind the derelict houses, there was a larger area used by the EMD members to parade and play football, with dozens of white tents pitched around this plain.⁶⁶⁹

2. Transfer of 12 VRS Soldiers to Kamenica Camp

255. On 23 July 1995, the Mujahedin transferred the 12 VRS detainees from Livade to Kamenica Camp in a van.⁶⁷⁰ The Mujahedin tied ropes tightly around the detainees’ necks, hands and backs.⁶⁷¹ Upon arrival at Kamenica Camp on the same day, the Mujahedin pulled the detainees out of the van by their feet and dragged them all the way to the Camp gate.⁶⁷²

256. Throughout their detention in Kamenica, the detainees were kept in the derelict house closest to the Emir’s tent and near the weeping willow.⁶⁷³ They were guarded around the clock by members of the EMD.⁶⁷⁴

3. Killing of Gojko Vujičić

257. On the night of the detainees arrival at the Camp, the Emir and a number of Mujahedin took them out of the house in which they were held. The Mujahedin blindfolded the detainees and took

⁶⁶⁶ Hasib Alić, T. 581-582, 599-600; Ex. 94, Map Marked by Hasib Alić, mark 7; Sinan Begović, T. 440-444; Ex. 71, Map Marked by Sinan Begović; Hamdija Šljuka, T. 4325; Ex. 826 (under seal), paras 230-231, Attachment C; Kadir Jusić, T. 2522-2523; Ex. 381, Map of Operation Farz Marked by Kadir Jusić, mark 7; Velibor Trivičević, T. 3619, 3625-3626; Ex. 549, Sketch Drawn by Velibor Trivičević; Krstan Marinković, T. 3540; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 9.

⁶⁶⁷ Velibor Trivičević, T. 3620, 3626-3627, 3633, 3636; Ex. 549, Sketch Drawn by Velibor Trivičević, marks 4 and 5; Ex. 547, Photographs Marked by Velibor Trivičević, pp 1, 6; Ex. 546, Video Clip.

⁶⁶⁸ Velibor Trivičević, T. 3626, 3628; Ex. 549, Sketch Drawn by Velibor Trivičević, mark 10.

⁶⁶⁹ Sinan Begović, T. 443; Hasib Alić, T. 582, 599, 606-607, 632-633; Hamdija Šljuka, T. 4325, 4327-4328; Ex. 970, Witness Statement of Muhamed Omerašević, 24 October 2006, para. 46 and 8 May 2007, para. 50; Ex. 826 (under seal), paras 222, 224-228, 230-231; Ex. 926, Witness Statement of Zakir Alispahić, 22 December 2005, paras 61, 63, and attached sketch; Velibor Trivičević, T. 3619-3620, 3626-3629, 3632-3638; Ex. 549, Sketch Drawn by Velibor Trivičević; Ex. 546, Video-Clip; Ex. 929, Witness Statement of PW-7, 8 March 2000, p. 4; Ex. 547, Photographs Marked by Velibor Trivičević; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, pp 9, 11 and attached sketch; Ex. 951 (under seal), p. 4; PW-7, T. 6700; PW-12, T. 6569, 6571-6572; Ex. 952, Photographs Marked by PW-12, photos 5 and 6.

⁶⁷⁰ Velibor Trivičević, T. 3618-3619; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 9.

⁶⁷¹ Velibor Trivičević, T. 3677.

⁶⁷² Velibor Trivičević, T. 3621, 3623-3624.

⁶⁷³ Velibor Trivičević, T. 3627; Ex. 549, Sketch Drawn by Velibor Trivičević.

⁶⁷⁴ Velibor Trivičević, T. 3641, Krstan Marinković, T. 3540.

them to a location within the Camp⁶⁷⁵ where they were strung up by their ankles, with their torsos resting on the ground and their hands tied behind the back.⁶⁷⁶ The detainees remained there throughout the night and into the morning of 24 July 1995.⁶⁷⁷

258. Krstan Marinković described the restraint as so tight that it felt like it would cut his feet off.⁶⁷⁸ At some point during the night, a Mujahedin known as “Habib” replaced Velibor Trivičević’s blindfold tape with a single layer of gauze through which he could see what was going on.⁶⁷⁹ Habib also tried to make Trivičević more comfortable and released his legs, warning him not to attempt an escape.⁶⁸⁰

259. To Trivičević’s left, a detainee named Gojko Vujičić had managed to turn onto his back during the night.⁶⁸¹ Vujičić had been previously wounded in the groin area and was moaning in pain.⁶⁸² He begged for water or to have his hands or legs untied.⁶⁸³ Although the Mujahedin had warned the detainees not to swear in their presence, Gojko Vujičić started uttering curses.⁶⁸⁴

260. A Mujahedin came out from the prayer tent, collected an automatic rifle and cocked it as he walked toward the detainees.⁶⁸⁵ He stopped near Vujičić’s head and in cold blood fired a shot to Vujičić’s right temple.⁶⁸⁶ The same Mujahedin soldier went back to the tent where he collected a sword and returned to Vujičić, severing his head in several strokes.⁶⁸⁷ He then attempted to place the severed head on Vujičić’s torso, but it rolled off.⁶⁸⁸ Ultimately, the Mujahedin placed the head on Vujičić’s stomach and turned Velibor Trivičević around so that he could see Vujičić’s dismembered body.⁶⁸⁹ Shortly thereafter, the Mujahedin untied the detainees and took them back to the house in which they were previously held.⁶⁹⁰

⁶⁷⁵ Velibor Trivičević, T. 3637, estimating that this location was close to the tent where the Mujahedin would gather to pray. *See also* Ex. 549, Sketch Drawn by Velibor Trivičević.

⁶⁷⁶ Velibor Trivičević, T. 3637; Krstan Marinković, T. 3536; and Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 9.

⁶⁷⁷ Velibor Trivičević, T. 3637.

⁶⁷⁸ Krstan Marinković, T. 3536-3537. *See also* Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 9.

⁶⁷⁹ Velibor Trivičević, T. 3638-3639.

⁶⁸⁰ Velibor Trivičević, T. 3639.

⁶⁸¹ Velibor Trivičević, T. 3639.

⁶⁸² Velibor Trivičević, T. 3639; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 9.

⁶⁸³ Velibor Trivičević, T. 3639.

⁶⁸⁴ Velibor Trivičević, T. 3639; Krstan Marković, T. 3537.

⁶⁸⁵ Velibor Trivičević, T. 3639.

⁶⁸⁶ Velibor Trivičević, T. 3639.

⁶⁸⁷ Velibor Trivičević, T. 3639.

⁶⁸⁸ Velibor Trivičević, T. 3639-3640.

⁶⁸⁹ Velibor Trivičević, T. 3640.

⁶⁹⁰ Velibor Trivičević, T. 3640.

261. Back in the house, a Mujahedin entered the detainees' room carrying Gojko Vujičić's head on an s-shaped butcher's hook.⁶⁹¹ Blood dripped from the head.⁶⁹² The Mujahedin threw Vujičić's head onto Krstan Marinković's lap,⁶⁹³ then took the severed head from one detainee to another, forcing them to "kiss your brother".⁶⁹⁴ The Mujahedin then hung Vujičić's head on a hook in the room where it remained for several hours.⁶⁹⁵

262. The Defence argues that the killing of Gojko Vujičić amounts to manslaughter on the basis of provocation and that as a crime it falls outside the jurisdiction of the Tribunal.⁶⁹⁶ In addition, the Defence argues that the perpetrator could have been a non-EMD member as there is no evidence that the perimeter of the camp was guarded against "unwanted visitors".⁶⁹⁷

263. The Trial Chamber does not accept that Gojko Vujičić's curses constituted provocation such as to exclude the required *mens rea* for murder on the part of the Mujahedin who killed him. Apart from the fact that Gojko Vujičić's curses seem to have been themselves a reaction to the conditions of his detention and his injury, firing a shot into Vujičić's temple would be completely out of proportion to the alleged provocation.

264. As regards the allegation that anyone could have had access to the detainees in the Kamenica Camp, the Trial Chamber finds that the evidence establishes that the detainees were constantly guarded by EMD members and that no one approached them without the Muhajedin's authorisation and supervision.⁶⁹⁸ The evidence further establishes that non-EMD members could not enter Kamenica Camp without authorisation of the EMD.⁶⁹⁹

4. Maltreatment at Kamenica Camp

265. While at the Kamenica Camp, the Mujahedin routinely subjected the VRS detainees to maltreatment and humiliation. Moments before Gojko Vujičić's killing, in response to the detainees' pleas for water, a Bosnian Mujahedin offered Krstan Marinković a bottle of urine and put

⁶⁹¹ Velibor Trivičević, T. 3640; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 9.

⁶⁹² Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 9.

⁶⁹³ Krstan Marinković, T. 3537, stating that he still had Vujičić's blood on his jeans six months later when he returned home; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 9; Velibor Trivičević, T. 3640, stating that the head was thrown first to either Krstan Marinković or Igor Guljevatej.

⁶⁹⁴ Velibor Trivičević, T. 3641; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 9.

⁶⁹⁵ Velibor Trivičević, T. 3641; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 9.

⁶⁹⁶ Defence Final Brief, paras 418-423.

⁶⁹⁷ Defence Closing Argument, T. 8966.

⁶⁹⁸ Velibor Trivičević, T. 3691-3692; Krstan Marinković, T. 3540.

⁶⁹⁹ For example, the circumstances surrounding the transfer of the detainees from Kamenica Camp to *KP Dom Zenica* show that the 3rd Corps Military Police Battalion did not pick up the detainees. Rather, it was EMD members who took them to the transport van. *See para. 270 infra. See also paras 406-411 infra*; Hamdija Šljuka, T. 4310-4311, 4315-4316, 4325-4329, 4363, 4365-4367, 4374; PW-4, T. 4825-4827, 4830-4831 (closed session); PW-11, T. 6271, 6273-6274.

it straight into his mouth.⁷⁰⁰ When Marinković realised what the bottle contained, he turned his head and the urine spilled over his face.⁷⁰¹ Branko Šikanić and Velibor Trivičević were forced to clean the toilets with their hands.⁷⁰² As a general rule the detainees were chained together all the time.⁷⁰³ The Mujahedin would order the detainees to lie down on the camp's "football field" and then they would walk on the detainees' stomachs.⁷⁰⁴ Once, the Mujahedin took the chained and padlocked detainees outside in a line, removed individual detainees from the line and beat them.⁷⁰⁵ The detainees were all barefoot, kept in a room with a leaking roof and the floor was constantly wet. They only had a couple of blankets to cover themselves.⁷⁰⁶

266. In his testimony, Krstan Marinković refuted the Defence suggestion that after Gojko Vujičić's killing the conditions of the detainees improved. Marinković described how the Mujahedin would come back to the camp each day about 14:30 hours, take out the detainees, line them up and spit at them until they were "literally dripping".⁷⁰⁷

267. On 27 or 28 July 1995, Branko Šikanić was interrogated on the upper floor of the derelict house, by individuals whom he believed to be ABiH soldiers.⁷⁰⁸ The soldiers placed electrical devices on his chest and stomach, to cause muscular cramps and threatened him with knives.⁷⁰⁹ Velibor Trivičević also testified that sometime around 4 August 1995 the detainees were taken, one by one, for an interrogation on the upper floor during which they were beaten with plastic pipes, similar to water pipes.⁷¹⁰

268. The Mujahedin generally fed the detainees twice a day,⁷¹¹ but did not provide them with sufficient water.⁷¹² In the month of August, the detainees were sometimes left without water for 36 hours, after which the Mujahedin might bring a bottle of beverage to be shared between the 11 of

⁷⁰⁰ Krstan Marinković, T. 3537.

⁷⁰¹ Krstan Marinković, T. 3537.

⁷⁰² Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 11.

⁷⁰³ Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 10.

⁷⁰⁴ Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 10.

⁷⁰⁵ Velibor Trivičević, T. 3642.

⁷⁰⁶ Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 10.

⁷⁰⁷ Krstan Marinković, T. 3565-3566. *See* Defence Final Brief, paras 424-428; Defence Closing Argument, T. 8967-8968. Velibor Trivičević (T. 3682), however, testified that to a degree the conditions improved.

⁷⁰⁸ Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 10, stating while he believed that three ABiH soldiers were involved, he could not be sure, because he was not allowed to look up.

⁷⁰⁹ Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 10.

⁷¹⁰ Velibor Trivičević, T. 3690.

⁷¹¹ Krstan Marinković, T. 3567; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 11; *but see* Velibor Trivičević, T. 3678, stating that the Mujahedin fed the detainees erratically, sometimes three times a day, but sometimes they skipped meals and water altogether.

⁷¹² Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 11, stating, "The food was not as big problem [*sic*] as the lack of water."

them.⁷¹³ As an exception to this treatment, Velibor Trivičević recalled an elderly man who provided the detainees with food and water regularly whenever he was guarding them.⁷¹⁴

269. On 24 August 1995, the last day of their detention in the Kamenica Camp, Branko Šikanić and Goran Stokanović were beaten and given electrical shocks.⁷¹⁵ Later on the same day, the Mujahedin took the chained and padlocked detainees outside, beat them one by one and forced them to imitate animal sounds such as dogs, horses and pigs.⁷¹⁶

5. Transfer to Zenica KP Dom 24 August 1995

270. Later on 24 August 1995, the Mujahedin unlocked the padlocks, blindfolded and handcuffed the detainees.⁷¹⁷ They then threw the detainees into the back of a vehicle, hitting them with rifle butts.⁷¹⁸ The van was manned by the men of 3rd Military Police Battalion of the ABiH 3rd Corps⁷¹⁹ who instructed the detainees to conceal themselves at Mujahedin checkpoints and “not to complicate things and get killed in the end.”⁷²⁰ Eventually, the detainees were taken to the *KP Dom* facility in Zenica.⁷²¹

271. When Krstan Marinković arrived at the *KP Dom*, he had some visible signs of mistreatment, such as wounds on his face and his leg.⁷²² The serious lack of water caused Branko Šikanić dehydration and weight loss. As a consequence, Šikanić suffers from kidney problems that cause him serious pain to this day. Furthermore, he also still suffers from post-traumatic stress disorder, lack of sleep and nightmares.⁷²³

6. Conclusion

272. Based on the above evidence, the Trial Chamber is satisfied that during the night of 23 July 1995, a member of the EMD intentionally killed Gojko Vujičić in the Kamenica Camp and that Gojko Vujičić was taking no active part in hostilities at the time when the crime occurred. The Trial

⁷¹³ Velibor Trivičević, T. 3678.

⁷¹⁴ Velibor Trivičević, T. 3679.

⁷¹⁵ Krstan Marinković, T. 3541; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 10-11; *but see* Velibor Trivičević, T. 3623, 3641, stating that their last day in Kamenica was 23 August 1995.

⁷¹⁶ Krstan Marinković, T. 3542; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 10-11; Velibor Trivičević, T. 3642.

⁷¹⁷ Velibor Trivičević, T. 3642; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 11; Krstan Marinković, T. 3542.

⁷¹⁸ Krstan Marinković, T. 3542-3543.

⁷¹⁹ Velibor Trivičević, T. 3642-3643; Ex. 542, “Escort Sheet” of 3rd Corps Military Police Battalion, 24 August 1995.

⁷²⁰ Velibor Trivičević, T. 3643; Krstan Marinković, T. 3543.

⁷²¹ Krstan Marinković, T. 3543; Ex. 499, Report of the 3rd Military Police Battalion of the 3rd Corps, 29 August 1995; Ex. 543, List of Captured Prisoners of 3rd Corps Security Service, 3 September 1995.

⁷²² Krstan Marinković, T. 3569-3570. A “Bosnian soldier” did not have the keys to Krstan Marinković’s padlock and used a hammer to break the lock, injuring Marinković’s leg in the process. Krstan Marinković still has an open wound to this day, Krstan Marinković, T. 3542, 3570, 3582.

Chamber holds that the Prosecution has established beyond reasonable doubt the elements of murder as a violation of the laws or customs of war (Count 1).

273. Furthermore, the Trial Chamber finds that members of the EMD intentionally caused the 12 VRS detainees at the Kamenica Camp serious mental and physical suffering as well as injury. The Trial Chamber further finds that the 12 VRS detainees were taking no active part in hostilities at the time when the crime occurred. This treatment included regular beatings, electric shocks and insufficient supply of water throughout their detention in Kamenica Camp, as well as the manner in which they were restrained on the night of 23 July 1995. The Trial Chamber also finds that the detainees were subjected to serious attacks on human dignity, including being forced to kiss a severed head and imitate animal sounds. The Trial Chamber finds that the Prosecution has established beyond reasonable doubt the elements of cruel treatment as a violation of the laws or customs of war (Count 2).

D. Enquiries into the Livade and Kamenica Events

1. Interviews at Livade by Members of the 35th Division

274. On 22 July 1995, Izudin Hajderhodžić and Fadil Imamović, Assistant Commanders of the 35th Division for Intelligence and Security, respectively, travelled to Livade to interview the VRS detainees.⁷²⁴ An unidentified individual directed Hajderhodžić and Imamović to a house which was guarded by an EMD soldier.⁷²⁵ Imamović and Hajderhodžić were allowed to see the detainees only after the guard received authorisation *via* radio to let the visitors pass.⁷²⁶

275. Although Hajderhodžić only recalled speaking to one of the VRS detainees,⁷²⁷ the evidence indicates that the two 35th Division's Assistant Commanders met with three of the detainees: Branko Šikanić, Velibor Trivičević and Igor Guljevatej.⁷²⁸ All of the detainees looked "very, very

⁷²³ Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 12.

⁷²⁴ Izudin Hajderhodžić, T. 3714-3715; Fadil Imamović, T. 3991. It is unclear from the evidence who instructed the men to go to Livade. Izudin Hajderhodžić (T. 3714) testified that "somebody" called him on the phone, told him about the detainees and instructed him to go to Zavidovići and meet the assistant commander for security. Fadil Imamović testified that he was in the vicinity of Livade when he found out from a "soldier" that some detainees were kept in a house in Livade, so he went there. However, he could not remember whether anyone accompanied him, T. 3987.

⁷²⁵ Izudin Hajderhodžić, T. 3715; Fadil Imamović, T. 3987. The guard possibly mentioned the name "Abu Maali" in his radio conversation, Fadil Imamović, T. 3988.

⁷²⁶ Fadil Imamović, T. 3987-3988.

⁷²⁷ Izudin Hajderhodžić, T. 3720.

⁷²⁸ Fadil Imamović distinctly recalled seeing 11 Bosnian Muslims, who had served in the VRS as a work platoon, and three soldiers of the VRS. Fadil Imamović, T. 3989-3990; Ex. 553, Report of the Assistant Commander for Security of the 35th Division, 22 July 1995; Velibor Trivičević, T. 3616-3617; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 7, also stating that the interviews were conducted by ABiH officers.

scared”.⁷²⁹ “Two Arabs” carried Šikanić, who was tied to a pole and whose hands were blue, into the room where the two ABiH officers waited.⁷³⁰ Because of Šikanić’s condition, Hajderhodžić only asked him about his personal details.⁷³¹ When Imamović asked the detainees about the circumstances of their capture, an armed Mujahedin appeared and started yelling in a foreign language. Out of concern for their own safety, the two ABiH officers left.⁷³²

2. Evidentiary Record at the 3rd Corps Regarding the VRS Detainees

276. On 22 July 1995, Imamović submitted a report to the Security Service of the 3rd Corps on his visit to Livade.⁷³³ The report mentioned the particulars of the VRS detainees, without referring to their condition, and that the EMD “only gave permission for a short interview”.⁷³⁴ The report further stated as follows:

On the telephone we agreed with the 3rd Corps Security Organ to send a written order regarding the takeover of the captured Chetniks. The El-Mudžahedin Detachment does not allow us the takeover. It has been proposed that the 3rd Corps Security Organ try to agree on the hand over with the El Mudžahedin Detachment Commander.⁷³⁵

277. On or before 24 July 1995, Hajderhodžić orally briefed Sejfulah Mrkaljević, the Chief of the Analysis Section of the Intelligence Service of the 3rd Corps, that VRS prisoners were held by the EMD in the Kamenica Camp.⁷³⁶ Based on this information, Mrkaljević obtained authorisation by the 3rd Corps Commander to “meet with superior officer of the El-Mujahidin Detachment to remove part of the seized documents and request approval to contact the prisoners of the 1st Prnjavor Light Infantry Brigade at their camp located 14 km towards Kamenica village”.⁷³⁷

⁷²⁹ Fadil Imamović, T. 3988.

⁷³⁰ Izudin Hajderhodžić, T. 3717-3718, 3720; *see also* Velibor Trivičević, T. 3616-3617; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 7; *but see* Fadil Imamović, T. 3988.

⁷³¹ Izudin Hajderhodžić, T. 3718-3719, stating, “[T]he moment I saw what this man looked like and the way he was tied up, you can’t talk to a man like that, so I don’t remember what the conversation was like”.

⁷³² Fadil Imamović, T. 3990. *See also* Izudin Hajderhodžić, T. 3723-3724.

⁷³³ Ex. 553, Report of the Assistant Commander for Security of the 35th Division, 22 July 1995. *See also* Fadil Imamović, T. 3991-3992. Fadil Imamović explained that the report did not bear his signature as it was sent through “packet radio”. However, he confirmed that the report reached the 3rd Corps because the document was stamped, Fadil Imamović, T. 3994.

⁷³⁴ Ex. 553, Report of the Assistant Commander for Security of the 35th Division, 22 July 1995.

⁷³⁵ *Ibid.*

⁷³⁶ Sejfulah Mrkaljević, T. 3889-3890. This evidence, however, stands in contradiction to Izudin Hajderhodžić, who testified that he was “pretty certain” that he did not inform his superiors in the 35th Division or the 3rd Corps Intelligence Service, orally or in writing, about the VRS detainees, T. 3725-3726. *See also* the following reports, which contain no reference to these events: Ex. 559, Intelligence Report of the 35th Division, 22 July 1995; Ex. 560, Intelligence Report of the 35th Division, 23 July 1995; Ex. 561, Intelligence Report of the 35th Division, 23 July 1995; Ex. 562, Intelligence Report of the 35th Division, 24 July 1995; Ex. 563, Intelligence Report of the 35th Division, 25 July 1995.

⁷³⁷ Ex. 554, Report of the Desk Officer of the Intelligence Department of the 3rd Corps, 24 July 1995, p. 3; Sejfulah Mrkaljević, T. 3887-3888, 3892-3897. Mrkaljević, however, testified that he did not in fact discuss the prisoners with the 3rd Corps Commander, as his direct superior, Edin Husić, told him not to as the Military Security Service was responsible for prisoners. T. 3892. *But see* Edin Husić, T. 4455, stating that he did not recall such situation and denying that he would interfere with the Commander’s decision.

278. On the following day, Mrkaljević and Hajderhodžić travelled to Livade village to retrieve the documents seized from the VRS detainees by the EMD.⁷³⁸ In Livade, they were received by a person who identified himself as “Ajman Awar” and refused to hand over the documents.⁷³⁹ Mrkaljević did not raise any other issue in respect of the detainees, nor did he go to the Kamenica Camp.⁷⁴⁰

3. Evidentiary Record at the Main Staff Regarding the VRS Detainees

279. On 21 and 22 July 1995, the Security Service of the 3rd Corps submitted daily reports to the ABiH Main Staff Security Administration in Sarajevo, which included the following information:

We do not have information about the number of aggressor’s soldiers killed and wounded. Around fifty aggressor’s soldiers have been captured [...] All the persons captured are under the control of the “El Mudžahedin” Detachment, who does not allow access. There are two doctors and one nurse among the captured.⁷⁴¹

280. An internal report within the Main Staff Security Administration dated 22 July 1995 discusses the “successes of the ABiH fighters” and mentions “[f]ifty bodies of killed Chetniks” and “40 alive ones [who] were captured by the El Mudžahid unit”.⁷⁴² In a “report” to all ABiH Corps issued on behalf of Rasim Delić on the same day, there is only reference to killed, not to captured, enemy soldiers.⁷⁴³

281. A bulletin issued by the Main Staff Security Administration which on 22 July 1995 (“Bulletin 137”) was sent to the KM Kakanj stated as follows:

Fifty aggressor soldiers have been eliminated and around forty have been captured, including two doctors and one nurse. [...] All the captured aggressor soldiers are being held by the “El Mudžahid” Detachment members and so far they do not allow anyone access to these prisoners.⁷⁴⁴

The cover note of Bulletin 137 was addressed to Colonel Arnautović with the instruction “You are required to forward the Bulletin to the [Main Staff] Commander, Army General Rasim Delić, for his information”.⁷⁴⁵

282. On 23 July 1995, the Security Service of the 3rd Corps reported to the Main Staff Security Administration on the interviews with the VRS soldiers at Livade. The report noted the particulars

⁷³⁸ Sejfulah Mrkaljević, T. 3897-3898.

⁷³⁹ Sejfulah Mrkaljević, T. 3898.

⁷⁴⁰ Sejfulah Mrkaljević, T. 3900-3902.

⁷⁴¹ Ex. 364, 3rd Corps Regular Combat Report, 21 July 1995, p. 9; Ex. 580, Report of the Security Service of the 3rd Corps, 22 July 1995, pp 1-2. *See* Prosecution Final Brief, para. 309.

⁷⁴² Ex. 375, Three Reports on the Successes of Units of the ABiH, 22 July 1995, p. 1.

⁷⁴³ Ex. 375, Three Reports on the Successes of Units of the ABiH, 22 July 1995, p. 5; Enver Berbić, T. 2420-2421; Sead Delić, T. 2881.

⁷⁴⁴ Ex. 582, Bulletin of the General Staff Security Administration, 22 July 1995, pp 4-5.

⁷⁴⁵ Ex. 377, Bulletins of the Chief of Security Administration, 19 January-30 December 1995, p. 87.

of the detainees and that the EMD “does not allow the take over of these aggressor soldiers.”⁷⁴⁶ A subsequent report dated 25 July 1995 authored by the 3rd Corps and containing detailed interviews with the VRS soldiers, was sent to the Main Staff Security Administration.⁷⁴⁷

4. Interviews by the 3rd Corps at *KP Dom* Facility in Zenica

283. As described earlier, on 24 August 1995, the VRS detainees held in the Kamenica Camp were transferred by the 3rd Military Police Battalion of the 3rd Corps to the *KP Dom* facility in Zenica.⁷⁴⁸ Upon arrival, two ABiH officers from the Counter-Intelligence Department of the 3rd Corps interviewed several of the detainees, including Branko Šikanić, Velibor Trivičević, Goran Stokanović, Igor Guljevatej, Miodrag Samac, Krstan Marinković and Duško Pejičić.⁷⁴⁹ Edin Šarić, one of the interviewers, had concerns based on rumours about possible “inhumane” treatment of detainees held by the EMD.⁷⁵⁰ Šarić testified that the detainees indicated that they were treated fairly by the EMD.⁷⁵¹ Accordingly, the official notes from these interviews do not mention any killings or mistreatment of the detainees.⁷⁵²

284. However, Velibor Trivičević, who was one of the detainees interviewed by Šarić, gave evidence that, prior to a visit by the International Committee of the Red Cross, one of the wardens in *KP Dom* Zenica warned the VRS detainees not to mention the existence of the EMD and to say instead that they had been captured by an assault group of the ABiH.⁷⁵³ Trivičević further claimed that the interview was conducted under “threat and duress” and that Šarić told him to “watch [his] words”, otherwise it would be arranged for Trivičević to be sent back to the Kamenica Camp.⁷⁵⁴ Similarly, Krstan Marinković distanced himself from the official note recording the interview with him.⁷⁵⁵ Šarić denied these allegations.⁷⁵⁶

⁷⁴⁶ Ex. 581, Report of the Security Service of the 3rd Corps, 23 July 1995, p. 2. *See also* Ex. 957 and 858, which contain almost identical information as Ex. 581.

⁷⁴⁷ Ex. 859, Report of the Assistant Commander for Security of the 3rd Corps, 25 July 1995.

⁷⁴⁸ *See* para. 270 *supra*.

⁷⁴⁹ Edin Šarić, T. 5903-5905, 5913-5915, 5944-5945.

⁷⁵⁰ Edin Šarić, T. 5997.

⁷⁵¹ Edin Šarić, T. 5995, 5997.

⁷⁵² Ex. 861, Report from the 3rd Corps Security Service, 25 August 1995; Ex. 865, Official Note of the Security Service of the 3rd Corps, 26 August 1995; Ex. 552, Official Note of 3rd Corps Security Service, 26 August 1995; Ex. 545, Official Note of 3rd Corps Security Department, 28 August 1995; Ex. 862, Official Note of the Assistant Commander for Security of the 3rd Corps, 30 August 1995; Ex. 863, Report of the Assistant Commander for Security of the 3rd Corps, 30 August 1995. Edin Šarić, one of the interviewers, testified that these official notes were reviewed by his superior, Major Vlajčić, who determined whether the notes were forwarded to the Main Staff, T. 5905.

⁷⁵³ Velibor Trivičević, T. 3690.

⁷⁵⁴ Velibor Trivičević, T. 3690.

⁷⁵⁵ Krstan Marinković, T. 3575-3577. *See* Ex. 545, Official Note of 3rd Corps Security Department, 28 August 1995, p. 3.

⁷⁵⁶ Edin Šarić, T. 6005.

VIII. KESTEN AND KAMENICA CAMP: SEPTEMBER 1995

A. Military Operations in the Vozuća Pocket in September 1995

285. In the morning of 10 September 1995, forces of the ABiH 2nd and 3rd Corps launched Operations *Uragan* and *Farz* to repel the VRS from the Vozuća pocket.⁷⁵⁷ The EMD was given the task of participating in the attack, along with manoeuvre battalions of the 35th Division and with artillery support provided by the 328th Brigade.⁷⁵⁸ According to an order issued on 10 September 1995, the EMD “shall be kept for intervention [...] along the defence line in the sector of the Kesten village [...]”.⁷⁵⁹ In the afternoon of 11 September, EMD forces were seen moving from Đurića Vis in the direction of Kvrge, both in the vicinity of Kesten.⁷⁶⁰

286. There is evidence that on 8 and 9 September 1995, a group of Mujahedin other than the EMD commanded by Abu Zubeir arrived in Borovnica in the Zavidovići area.⁷⁶¹ On 10 September 1995, this group moved into the combat zone from the south.⁷⁶²

B. Killings on the Road to Kesten

1. Evidence

287. When the ABiH commenced its attack in the morning hours of 10 September 1995, many Bosnian Serb soldiers and civilians from the Vozuća area fled and hid in the woods.⁷⁶³ In the afternoon of the following day, soldiers from the 5th Battalion of the ABiH 328th Brigade and Mujahedin captured approximately 60 Bosnian Serb soldiers and civilians, including three women

⁷⁵⁷ Sead Delić, T. 2713, 2737-2739, 2751-2752, Kadir Jusić, T. 2525-2527, 2583, 2587; Ex. 380, Map of Operation Farz. *See also* para. 87 *supra*.

⁷⁵⁸ Ex. 461, Order of the Commander of the 35th Division, 25 August 1995, p. 5; Kadir Jusić, T. 2515-2517; Fuad Zilkić, T. 5308; Sinan Begović, T. 462.

⁷⁵⁹ Ex. 466, Order of the Commander of the 35th Division, 10 September 1995, item 8; Ex. 469, Map marked by Fadil Hasanagić; Fadil Hasanagić, T. 3034-3035.

⁷⁶⁰ Fuad Zilkić, T. 5384-5387; Ex. 802 and Ex. 803, Maps Marked by Fuad Zilkić, indicating that Đurića Vis is one kilometre from Kesten and Kvrge is about three kilometres north of Đurića Vis; Fadil Hasanagić, T. 3039, 3043-3044; Ex. 849, Map Marked by PW-9; PW-9, T. 5709-5710; Ex. 467, Order of the Commander of the 35th Division, 11 September 1995.

⁷⁶¹ DW-4, T. 7755-7756; Ahmet Šhić, T. 5092-5093; Muhamed Omerašević, T. 6741-6742; Ajman Awad, Hearing Sarajevo, T. 170-171; Ex. 493, Map Marked by Fadil Hasanagić, indicating that Borovica is about 13 kilometres south-west of Kesten; Fadil Hasanagić, T. 3178-3180. *See also* Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 164-166; PW-9, T. 5720, testifying that the group was composed of about 200 men.

⁷⁶² DW-4, T. 7755-7761, 7774-7775, stating that this group continued to move northwards from Gradac and Ostrić; Ex. 1320, Map Marked by DW-4; PW-9, T. 5711-5715, 5720, testifying that he “came across” Abu Zubeir’s group at Stog; Ex. 826 (under seal), para. 284; Ex. 343, Map Drawn by Ali Ahmad Ali Hamad. Gradac and Ostrić are about seven kilometers south-west of Kesten and Stog is about four kilometres south-west of Kesten, Ex. 493, Map Marked by Fadil Hasanagić.

⁷⁶³ DRW-3, T. 5781 (closed session); Ex. 975 (under seal), p. 15.

—DRW-1, DRW-2 and DRW-3—, in the vicinity of the village of Kesten.⁷⁶⁴ The captives were lined up on the road and ordered to walk in a column towards Kesten. On the way, some of the Mujahedin kicked and hit the detainees with rifles and belts.⁷⁶⁵

288. One of the captives, a mentally retarded person named Milenko Stanić, protested against one of the women being beaten. When Stanić grabbed the throat of one Mujahedin, this Mujahedin fired several shots from an automatic rifle at him. After he had fallen to the ground, the same Mujahedin stabbed the chest of Stanić a number of times with a knife and fired more bullets from the automatic rifle into his head. Stanić's corpse was then thrown into a ditch on the side of the road.⁷⁶⁶ The Trial Chamber does not accept that Stanić's behaviour was of a nature that would make him an active participant in hostilities. Nor is the Trial Chamber persuaded that the Mujahedin who killed him acted in self-defence, as alleged by the Defence.⁷⁶⁷

289. According to DRW-3, a VRS soldier from the column, Živinko Todorović, at some point suffered "some sort of stroke" and "began dragging his left side". Shortly thereafter, she heard three shots fired and Todorović was not seen again.⁷⁶⁸ DRW-1 corroborates that one man from the column fell down and was shot in the head.⁷⁶⁹ In 2002, the remains of Živinko Todorović were exhumed at Đurića Vis, one kilometre from Kesten.⁷⁷⁰

290. Izet Karahasanović, the Assistant Commander for Security of the 5th Battalion, testified that according to the company commander of the 5th Battalion who was present on the scene, these two captives attempted to seize weapons from the captors and were killed during the ensuing fighting.⁷⁷¹ This evidence alone, however, does not show that these two captives were Stanić and Todorović. Moreover, it is uncorroborated hearsay evidence to which the Trial Chamber accords lesser weight than to the evidence of DRW-1 and DRW-3 who were present at the scene.⁷⁷²

⁷⁶⁴ DRW-3, T. 5781-5784 (closed session); Ex. 975 (under seal), p. 15; Ex. 930 (under seal), p. 4; Ex. 974 (under seal), p. 2; Ex. 856 (under seal), pp 1-2. As regards the identity of the captors, *see also* Ex. 480, Combat Report of the 328th Brigade, 13 September 1995, p. 3; Izet Karahasanović, T. 8036-8037, 8039; Ex. 970, Witness Statement of Muhamed Omerašević, 8 May 2007, para. 38. Kesten is approximately seven kilometres from Vozuća, *see* Ex. 76, Map Marked by Sinan Begović.

⁷⁶⁵ Ex. 975 (under seal), p. 15; Ex. 974 (under seal), pp 2-3.

⁷⁶⁶ DRW-3, T. 5783 (closed session); Ex. 975 (under seal), p. 15; Ex. 974 (under seal), p. 3; Ex. 856 (under seal), p. 2.

⁷⁶⁷ Defence Closing Argument, T. 8968; Defence Final Brief, paras 574, 576.

⁷⁶⁸ Ex. 856 (under seal), p. 2. As regards Todorović's status as a VRS soldier, *see* Ex. 928, Witness Statement of Milan Todorović, 25 March 2007, para. 7.

⁷⁶⁹ Ex. 975 (under seal), p. 15, stating that DRW-1 did not see this incident, and that only DRW-2 and DRW-3 later told her about it.

⁷⁷⁰ Goran Krčmar, T. 4620-4621; Ex. 644, Witness Statement of Goran Krčmar, 7 June 2007, para. 40; Ex. 652, Documentation of Exhumation of Živinko Todorović; Ex. 928, Witness Statement of Milan Todorović, 25 March 2007, para. 7. As regards the location of Đurića Vis, *see* Ex. 73, Map Marked by Sinan Begović.

⁷⁷¹ Izet Karahasanović, T. 8039-8040, 8104.

⁷⁷² *See* paras 287-289 *supra*.

2. Identity of the Perpetrators

291. The Indictment pleads that “[s]oldiers *from the El Mujahed Detachment* killed two of the captured soldiers on the road near Kesten”.⁷⁷³ As regards Živinko Todorović, the evidence allows for the possibility that he was killed by a soldier of the 5th Battalion of the ABiH 328th Brigade. As this is not pleaded in the Indictment, the Trial Chamber does not base a finding in relation to murder (Count 1) on the killing of Živinko Todorović.

292. With respect to the identification of the perpetrators, the Trial Chamber recalls that none of the Bosnian Serb witnesses captured on 11 September 1995 could identify the group to which their Mujahedin captors belonged. However, members of the EMD were seen by a witness between one and three kilometres from Kesten in the afternoon of 11 September 1995. Although there is also evidence on the presence of Mujahedin from Abu Zubeir’s group in the area, this evidence relates to 10 September 1995 and a location four kilometres from Kesten. Moreover, the evidence shows that on 11 September 1995, the EMD was ordered to fight jointly with manoeuvre battalions of 35th Division, “with the support of” the 5th Battalion of 328th Brigade.⁷⁷⁴ The captors of the group of Bosnian Serbs were ABiH soldiers from the 5th Battalion of the 328th Brigade and Mujahedin.⁷⁷⁵ The evidence indicates that Abu Zubeir’s group did not fight along with ABiH units.⁷⁷⁶ Therefore, the only reasonable inference is that Mujahedin in question were from the EMD.

3. Conclusion

293. The Trial Chamber is satisfied that on 11 September 1995, Milenko Stanić was killed intentionally by a soldier of the EMD. The Trial Chamber also finds that he took no active part in hostilities at the time he was killed. The Trial Chamber therefore finds that the Prosecution has established beyond reasonable doubt in relation to Milenko Stanić the elements of murder as a violation of the laws or customs of war (Count 1).

294. As stated above, the Trial Chamber finds that the Prosecution has not proved beyond reasonable doubt that Živinko Todorović was killed by a soldier of the EMD, as alleged in the Indictment.

⁷⁷³ Indictment, para. 40 (emphasis added).

⁷⁷⁴ Ex. 467, Order of the Commander of the 35th Division, 11 September 1995. *See also* Ahmet Šchić, T. 5017-5018; Fuad Zilkić, T. 5301; Fadil Hasanagić, T. 3039-3044.

⁷⁷⁵ *See* para. 287 *supra*.

⁷⁷⁶ DW-4, T. 7758; Fadil Hasanagić, T. 3182; *but see* Ex. 343, Map Drawn by Ali Ahmad Ali Hamad.

C. The Events at the Hall in Kesten

295. Before arriving at Kesten, some Mujahedin took away four Bosnian Serb men from the group; no further evidence was offered during trial about the fate of these four men.⁷⁷⁷ The remainder of the group was taken to a building in Kesten known as the “Youth Centre” or “Youth Hall”.⁷⁷⁸ Inside the hall, a small number of soldiers of the 5th Battalion of the ABiH 328th Brigade guarded the detainees and lined them up against the wall.⁷⁷⁹ The detainees were stripped down to the waist, with their hands tied behind their backs using wire.⁷⁸⁰ There is evidence that they were beaten with chains.⁷⁸¹ The ABiH soldiers took away personal documents from the detainees.⁷⁸² At one point, the ABiH soldiers separated two male youths.⁷⁸³ They were subsequently handed over to the Military Police of the 328th Brigade and eventually exchanged.⁷⁸⁴

296. Izet Karahasanović was called to the scene by a company commander of the 5th Battalion.⁷⁸⁵ Karahasanović, whose task included the processing of enemy captives, made a list of the names of the detainees, 51 VRS soldiers in total, by asking the particulars from each of them.⁷⁸⁶ In addition to the 51 persons, Marko Marić, another VRS soldier, was seen among the detainees in the hall.⁷⁸⁷ Karahasanović through his superiors sent out a request for trucks to be provided by the Military

⁷⁷⁷ Izet Karahasanović, T. 8036-8038. *See* Indictment, para. 40.

⁷⁷⁸ Ex. 974 (under seal), p. 3; Ex. 975 (under seal), pp 15-16; Ex. 930 (under seal), p. 4; Ex. 970, Witness Statement of Muhamed Omerasević, 8 May 2007, para. 25 and Attachment A.

⁷⁷⁹ Izet Karahasanović, T. 8018-8019; Ex. 970, Witness Statement of Muhamed Omerasević, 24 October 2006, paras 81-82 and 8 May 2007, para. 46; Ahmet Šehić, T. 5022-5023.

⁷⁸⁰ DRW-3, T. 5783-5784 (closed session); Ex. 974 (under seal), p. 3; Ex. 930 (under seal), p. 4.

⁷⁸¹ Ex. 974 (under seal), pp 3-4; DRW-3, T. 5784 (closed session); Ex. 930 (under seal), p. 4; but *see* Ex. 970, Witness Statement of Muhamed Omerasević, 8 May 2007, para. 46, who stated that the detainees were in a good condition when he arrived.

⁷⁸² Izet Karahasanović, T. 8020.

⁷⁸³ Ex. 970, Witness Statement of Muhamed Omerasević, 24 October 2006, para. 84 and 8 May 2007, paras 23, 27, 35, 49; Ex. 974 (under seal), p. 4; Izet Karahasanović, T. 8040, 8104-8105; Ahmet Šehić, T. 5054.

⁷⁸⁴ Ex. 974 (under seal), pp 4-6; Ahmet Šehić, T. 5054, 5063; Muhamed Omerasević, T. 6745; Ex. 970, Witness Statement of Muhamed Omerasević, 24 October 2006, para. 89 and 8 May 2007, para. 23; Ex. 480, Combat Report of the 328th Brigade, 13 September 1995, p. 3.

⁷⁸⁵ Izet Karahasanović, T. 8015-8016.

⁷⁸⁶ Izet Karahasanović, T. 8020-8022, 8033; Ex. 646, Handwritten List of Names, 11 September 1995; Ex. 974 (under seal), p. 3; Ahmet Šehić, T. 5023, 5058-5059, 5095-5096. *See also* DRW-3, T. 5783 (closed session); Ex. 970, Witness Statement of Muhamed Omerasević, 24 October 2006, para. 82. According to the index cards submitted by Goran Krčmar, individual no. 7 of Ex. 646 (Mirko Čupeljić, born in 1954) and individual no. 51 (Miodrag (M) Čupeljić, born in 1975) are the same person, Ex. 647, Index Cards of Missing or Detained Persons, 30 December 2005, pp 13-14 and 101-102; *see also* Goran Krčmar, T. 4579-4580. However, the Trial Chamber is persuaded by the evidence of Izet Karahasanović who stated that the two individuals were father and son, T. 8043-8045.

⁷⁸⁷ Ex. 974 (under seal), p. 5. Regarding his status as a VRS soldier, *see* Ex. 1398, Index Card of Missing Person, 1 July 2005, according to which Marko Marić was born in Banovići/Podvol in 1946. Although Goran Krčmar (T. 4630, 4637) testified that Marko Marić is identical with an individual named Mirko Maričić (born in 1946, Podvolijak and listed as no. 46 of Ex. 646), the Trial Chamber is not persuaded by this testimony because Ex. 647 (pp 91-92) contains the index card providing the information of Mirko Maričić, which is distinct from Ex. 1398, the index card of Marko Marić. *See also* Goran Krčmar, T. 4579, 4600; Ex. 644, Witness Statement of Goran Krčmar, 7 June 2007, paras 33, 35.

Police of the 328th Brigade to transport the detainees to Zavidovići, where the Brigade command was located.⁷⁸⁸

297. As Karahasanović was about to finish writing down the names of the detainees, approximately 20 armed foreign Mujahedin barged into the hall. They demanded that the ABiH soldiers leave and vociferously laid claim to the detainees on the ground that the Mujahedin had “liberated” this area, pointing their weapons at the ABiH soldiers.⁷⁸⁹ Meanwhile, Muhamed Omerašević, the Deputy Commander of the 5th Battalion arrived. He, Karahasanović and the other ABiH soldiers initially attempted to put up resistance to the Mujahedin’s demand. However, they eventually decided that this was futile and withdrew from the hall.⁷⁹⁰ Shortly thereafter, the Mujahedin escorted the detainees out of the hall, where at least ten more Mujahedin waited, and took them away in a northerly direction towards Krčevine.⁷⁹¹ The detainees were seen lined up in Krčevine later on the same day.⁷⁹²

D. Killing and Mistreatment of 52 Detainees at the Kamenica Camp

1. Transport to the Kamenica Camp

298. Circumstantial evidence shows that later on 11 September 1995, the 52 detainees were loaded on two trucks.⁷⁹³ The evidence is unclear as to whether the trucks were those requested by Izet Karahasanović from the Military Police of the 328th Brigade.⁷⁹⁴ The trucks delivered the men to a location which the Trial Chamber is satisfied was the Kamenica Camp of the EMD.⁷⁹⁵ The

⁷⁸⁸ Izet Karahasanović, T. 8019, 8099; Ahmet Šehić, T. 5020-5021; Fuad Zilkić, T. 5312; Ex. 970, Witness Statement of Muhamed Omerašević, 24 October 2006, para. 79 and 8 May 2007, para. 43.

⁷⁸⁹ Izet Karahasanović, T. 8022-8024, also stating that despite the situation, he continued to make the list until he finished taking 51 names; Ex. 970, Witness Statement of Muhamed Omerašević, 24 October 2006, paras 80-83.

⁷⁹⁰ Izet Karahasanović, T. 8024-8025, 8138; Ex. 970, Witness Statement of Muhamed Omerašević, 24 October 2006, paras 81-84; Ahmet Šehić, T. 5023.

⁷⁹¹ Izet Karahasanović, T. 8026-8027; Ex. 970, Witness Statement of Muhamed Omerašević, 24 October 2006, paras 82-85; Muhamed Omerašević, T. 6743-6745; Ahmet Šehić, T. 5053-5055. The evidence indicates that the Mujahedin did not wear any insignia, and that it was not possible for the ABiH soldiers at the scene to determine to which unit or group they belonged, Muhamed Omerašević, T. 6744-6745; Ahmet Šehić, T. 5024-5025, 5053, 5095, 5099; Izet Karahasanović, T. 8022-8023, 8075-8083, also providing clarification to his previous statements, Ex. 1354, Statement of Izet Karahasanović to the OTP, 18 September 2006, para. 51; Ex. 1355, Supplementary Statement of Izet Karahasanović, 19 October 2007, para. 11. In this regard, the Trial Chamber is not persuaded by the Defence argument that Izet Karahasanović gave the statements under undue pressure exerted by Prosecution investigators, Defence Final Brief, para. 587; Defence Closing Argument, T. 8877-8879.

⁷⁹² Ex. 970, Witness Statement of Muhamed Omerašević, 24 October 2006, para. 88 and 8 May 2007, para. 45; Ahmed Šehić, T. 5055, 5096, 5101-5102; Ex. 974 (under seal), p. 4. Krčevine is about one kilometre north from Kesten, *see* Ex. 73, Map Marked by Sinan Begović.

⁷⁹³ DRW-3, T. 5786 (closed session); Ex. 975 (under seal), p. 16; Ex. 930 (under seal), p. 5. All of these witnesses heard vehicles sounding like trucks following a van by which they were transferred, and the Mujahedin who were with them mentioning “two trucks of Chetniks”. *See also* Ex. 970, Witness Statement of Muhamed Omerašević, 8 May 2007, para. 45.

⁷⁹⁴ Izet Karahasanović, T. 8098-8099, 8114-8115; Ex. 970, Witness Statement of Muhamed Omerašević, 24 October 2006, para. 79 and 8 May 2007, paras 22, 43, 45; DRW-3, T. 5784-5786 (closed session).

⁷⁹⁵ *See* DRW-3, T. 5786-5687 (closed session); Ex. 975 (under seal), p. 16; Ex. 930 (under seal), p. 5.

general features of the Camp have already been described earlier in this Judgement.⁷⁹⁶ As there is no evidence that custody of the detainees was relinquished on the way to the Kamenica Camp, the irresistible conclusion is that the Mujahedin who seized the men at the hall in Kesten were members of the EMD.

2. Events at the Kamenica Camp

299. At the Camp, some or all of the 52 detainees were incarcerated on two floors of a derelict house.⁷⁹⁷ During the first night, the three women DRW-1, DRW-2 and DRW-3 – who had been brought to the Camp separately and were detained in a wooden shed – heard the sound of beatings and screams coming from the outside.⁷⁹⁸ One of the voices they could discern belonged to Mitar Jović.⁷⁹⁹ They also heard someone saying, “prepare your weapons” and “shoot”, and automatic weapons being fired.⁸⁰⁰ Some time during that night or the following morning, a Mujahedin came to the shed and told DRW-1 that Miloš Jović was dead.⁸⁰¹ Mitar Jović and Miloš Jović were in the group of 52 detainees detained at the Kesten hall.

300. During that night or on the next day, the names of detainees who seemingly had been killed were announced over a loudspeaker. These names included Mitar Jović, Miloš Jović, Nenad Gligorić, Miodrag Martićić and Mirko Martićić,⁸⁰² who were all in the group of 52 detainees detained at the Kesten hall.⁸⁰³ DRW-1 and DRW-2 overheard men outside their shed saying, “Our commander [...] Sakib would be very happy that we captured many Serbs”, referring to “Sakib” as the “Zenica Corps Commander”.⁸⁰⁴

301. On or about 17 September 1995, a new group of ten Bosnian Serb captives arrived at the Kamenica Camp and were detained on the ground floor in the derelict house.⁸⁰⁵ One of the new detainees, Witness PW-12, was told by a fellow inmate from the first group that most of them had been executed by the Mujahedin and that the only ones left were three or four men on the ground

⁷⁹⁶ See paras 253-254 *supra*.

⁷⁹⁷ PW-12, T. 6584-6585; 6588-6590, 6595; Ex. 951 (under seal), p. 4; PW-7, T. 6698, 6704-6705 (closed session); Ex. 929 (under seal), p. 5; Ex. 549, Sketch Drawn by Velibor Trivičević, marking no. 8. See also Ex. 648, Photograph, 17 September 1995; Goran Krčmar, T. 4566-4570, 4577-4578, 4622-4630; Ex. 644, Witness Statement of Goran Krčmar, 7 June 2007, para. 28.

⁷⁹⁸ Ex. 975 (under seal), p. 16; Ex. 930 (under seal), p. 5; Ex. 856 (under seal), p. 3.

⁷⁹⁹ DRW-3, T. 5789 (closed session); Ex. 930 (under seal), p. 5; Ex. 856 (under seal), p. 3.

⁸⁰⁰ Ex. 930 (under seal), p. 5; Ex. 856 (under seal), p. 3.

⁸⁰¹ DRW-3, T. 5787-5788 (closed session); Ex. 975 (under seal), p. 16; Ex. 930 (under seal), p. 5.

⁸⁰² DRW-3, T. 5788, 5790-5791 (closed session); Ex. 930 (under seal), p. 6; Ex. 856 (under seal), p. 3. The evidence is unclear whether the announcement referred to the names of persons to be killed, or persons who had been killed.

⁸⁰³ See para. 296 *supra*.

⁸⁰⁴ Ex. 975 (under seal), p. 17; Ex. 930 (under seal), p. 6.

⁸⁰⁵ See paras 308-309 *infra*.

floor and seven upstairs.⁸⁰⁶ According to Witness PW-12, this man had eye-witnessed some of the killings and “had gone mad”. The other three or four inmates from the first group also looked stressed out and very disturbed.⁸⁰⁷ Witness PW-7, another man who arrived with the second group of captives, was also told by a fellow inmate that around 60 individuals from Vozuća had been killed by the Mujahedin.⁸⁰⁸

302. On or about 20 September 1995, PW-12 heard the sound of people shouting in a foreign language and walking down the stairs of the building where the detainees were kept. After some interval, he heard ten consecutive pistol shots. PW-12 is certain that this was the sound of executions of the detainees held on the upper floor of the derelict house.⁸⁰⁹ On the following days, PW-12 also heard the sound of beatings and screaming from an adjacent room where some three to four men from the first group were held.⁸¹⁰ These men remained behind when PW-12 and PW-7 left the Camp at the end of September 1995, and PW-12 and PW-7 never saw them thereafter.⁸¹¹

3. Evidence of Exhumation and Missing Persons

303. In June 2006, the mortal remains of several bodies were found on the banks of the Gostović River, about 15 kilometres south of Zavidovići.⁸¹² The subsequent autopsy results indicate that the bodies were most likely first buried on one site and later transferred to another site on the banks of the Gostović River in a skeletal state.⁸¹³ From the mortal remains, seven individuals were identified by name: Radomir Blagojević, Božidar Todorić, Drago Stjepanović, Čedo Dabić, Radovan Radojčić, Savo Todorović and Miladin Pejić.⁸¹⁴ Six of these persons are also included on Izet Karahasanović’s list of 51 men detained at the Kesten hall.⁸¹⁵ The expert conducting the autopsy

⁸⁰⁶ Ex. 951 (under seal), p. 4; PW-12, T. 6584-6586, 6588-6590, 6595-6597. PW-12 in fact saw some detainees on the upper floor in the derelict house.

⁸⁰⁷ PW-12, T. 6588-6589.

⁸⁰⁸ Ex. 929 (under seal), p. 5; PW-7, T. 6704-6706 (closed session). When PW-7 took the stand, he explained that most of the Serbs captured from Vozuća were in fact soldiers and not “civilians” as it appears in his Witness Statement.

⁸⁰⁹ Ex. 951 (under seal), p. 5; PW-12, T. 6591-6593, 6596-6598.

⁸¹⁰ PW-12, T. 6589; Ex. 951 (under seal), p. 5.

⁸¹¹ Ex. 951 (under seal), pp 5-6; PW-12, T. 6597-6598; Ex. 929 (under seal), p. 5.

⁸¹² Sabiha Silajdžić-Brkić, T. 4670, 4679-4681; Ex. 654, Expert Report of Sabiha Silajdžić-Brkić (Part One), p. 2; Ex. 653, Order of the Zenica-Doboj Cantonal Prosecutor’s Office, 27 June 2006.

⁸¹³ Sabiha Silajdžić-Brkić, T. 4709-4710; Goran Krčmar, T. 4615-4646; Ex. 644, Witness Statement of Goran Krčmar, 7 June 2007, para. 27.

⁸¹⁴ Sabiha Silajdžić-Brkić, T. 4683-4691, 4701, 4723-4724, 4727-4731; Goran Krčmar, T. 4530-4536, 4587-4591; Ex. 644, Witness Statement of Goran Krčmar, 7 June 2007, paras 19, 28-30, 41-43, Attachments E to K (“Records of Identification of Mortal Remains” regarding Radomir Blagojević, Božidar Todorić, Drago Stjepanović, Čedo Dabić, Radovan Radojčić, Savo Todorović and Miladin Pejić); Ex. 649, DNA Reports of International Commission for Missing Persons (regarding Radomir Blagojević, Božidar Todorić, Drago Stjepanović, Čedo Dabić, Radovan Radojčić, and Miladin Pejić); Ex. 650, Record of Forensic Examination of Radovan Radojčić, 26 October 2006; Ex. 928, Witness Statement of Milan Todorović, 25 March 2007, paras 5-6 and 29 June 2007, paras 2-4 and the photo attached thereto.

⁸¹⁵ See para. 296 *supra*; Ex. 646, Handwritten List of Names, 11 September 1995, which does not include Miladin Pejić but one *Miloš* Pejić, and does not include Savo Todorović but one *Slavko* Todorović. In light of Ex. 647,

concluded that the deaths of Božidar Todorić, Drago Stjepanović and Čedo Dabić were “probably” violent.⁸¹⁶

304. As of 2007, the remaining individuals on Izet Karahasanović’s list (with the exception of Miodrag Čupeljić) and Marko Marić were recorded as missing persons by the Republika Srpska Commission for Tracing of Missing Persons.⁸¹⁷

4. Conclusion

305. In light of the evidence as a whole, the Trial Chamber is satisfied that the Prosecution has proved beyond reasonable doubt that the 52 Serb men listed in Annex C to the Indictment were intentionally killed by members of the EMD at the Kamenica Camp between 11 September 1995 and 14 December 1995.⁸¹⁸ In arriving at this conclusion, the Trial Chamber had particular regard to the list authored by Izet Karahasanović naming 51 men detained at the hall in Kesten on 11 September 1995,⁸¹⁹ the evidence of Marko Marić’s presence in the hall in Kesten and in the Kamenica Camp,⁸²⁰ as well as the evidence indicating that most of these men were eventually killed within days of their arrival at Kamenica Camp.⁸²¹ The Trial Chamber also took into consideration the evidence on exhumation and missing persons.⁸²²

306. While there can be no certainty about the exact number and identity of those Serb detainees who remained alive after the departure of PW-12 and PW-7 from the Camp, the Trial Chamber finds there to be compelling circumstantial evidence that the remaining men eventually met the same fate as those who were earlier executed by members of the EMD. The Trial Chamber further finds that none of the 52 victims took an active part in hostilities at the time they were killed. The

Index Cards of Missing or Detained Persons, 30 December 2005; Goran Krčmar, T. 4579, 4600; Ex. 644, Witness Statement of Goran Krčmar, 7 June 2007, paras 33, 35, the Trial Chamber considers Slavko Todorović in Ex. 646 to be Savo Todorović.

⁸¹⁶ Sabiha Silajdžić-Brkić, T. 4696, 4718-4722, 4733-4734, 4736; Ex. 654, Expert Report of Sabiha Silajdžić-Brkić (Part One), pp 10, 14, 16; Ex. 857, Expert Report of Sabiha Silajdžić-Brkić (Part Two), p. 4.

⁸¹⁷ Goran Krčmar, T. 4539, 4545-4546. *See also* Ex. 647, Index Cards of Missing or Detained Persons, 30 December 2005; Ex. 1398, Index Card of Missing Person, 1 July 2005; Goran Krčmar, T. 4606-4609; Ex. 1090, Report of the International Committee of the Red Cross on Missing Persons, 11 October 2004. The Trial Chamber has not been provided with any information on the status of Miodrag Čupeljić (born in 1975).

⁸¹⁸ In this regard, the Trial Chamber finds the following evidence not credible: Ex. 826 (under seal), paras 232-236, 253-254, 256; PW-9, T. 5719-5720, 5736-5737, 5750-5751, 5754; Ajman Awad, Hearing Sarajevo, T. 113. Moreover, the Trial Chamber is not persuaded that Ex. 651 (Letter Addressed to the Prosecution by BiH Ministry of Defence, 19 April 2006) “supports the Defence theory that one of the other mujahedin groups could have seized the [Serb captives]” (Defence Final Brief, para. 626). *See also* Goran Krčmar, T. 4592-4600, 4604-4609; Ex. 1399, Request for Assistance of the OTP and Related Correspondence, 30 June 2006; Ex. 1400, Letter from the OTP to the Defence, 28 September 2007.

⁸¹⁹ Ex. 646, Handwritten List of Names, 11 September 1995; *see fn. 786 supra*.

⁸²⁰ Ex. 974 (under seal), p. 5; Ex. 648, Photograph, 17 September 1995.

⁸²¹ *See fns 799, 801, 802, 806, 808 supra*.

⁸²² *See para. 303 and fns 811, 817 supra*.

Trial Chamber therefore holds that the Prosecution has established beyond reasonable doubt the elements of murder as a violation of the laws or customs of war (Count 1).

307. The Trial Chamber recalls that witnesses heard the sound of beatings and screams at the Kamenica Camp, including the voice of Mitar Jović.⁸²³ However, this circumstantial evidence is insufficient to establish in what manner the beatings were carried out. The Trial Chamber is therefore not in a position to ascertain whether the beatings rise to the required level of severity. Consequently, the Trial Chamber finds that the Prosecution has not proved beyond reasonable doubt the elements of cruel treatment as a violation of the laws or customs of war in relation to the 52 men listed in Annex C to the Indictment (Count 2).

E. Killing of Nenad Jović and Mistreatment of Ten VRS Soldiers at Kamenica Camp

1. Evidence

308. On or about 17 September 1995, approximately seven days after the commencement of Operation *Farz*, a group of ten VRS soldiers who had been hiding in the woods around Vozuća surrendered to four Bosnian Mujahedin in dark green camouflage uniforms with an insignia that resembled two crossed rifles.⁸²⁴ The VRS soldiers were taken to a school building in the village of Brezik where some 20 EMD members were present.⁸²⁵ At this location, the VRS soldiers were subjected to abuse, including beatings with sticks, batons and shovels.⁸²⁶

309. After a few hours, the VRS soldiers were put on a truck and delivered to the Kamenica Camp.⁸²⁷ Upon arrival, the detainees were forced to walk a gauntlet of men who hit and spat on them.⁸²⁸ They were then placed in a room on the ground floor of the derelict house.⁸²⁹ In the beginning, the men were not given anything to eat and their hands and legs were tied.⁸³⁰ During the first days of their stay, the detainees were taken individually for interrogations to a room on the

⁸²³ See fns 798, 799, 810 *supra*.

⁸²⁴ Ex. 929 (under seal), pp 3-4; PW-7, T. 6695-6696 (closed session); Ex. 951 (under seal), p. 3; PW-12, T. 6566-6567, 6581 (private session in part). The group consisted of Ljubomir Sikimić, Boro Glavić, Nedeljko Pećanac, Nedeljko Vučković, Mile Gojić, Milorad Panjić, Nedeljko or Nebojša Banjac, Mile or Drago Gajić, Radivoje Račić and Gojko Macanović.

⁸²⁵ Ex. 929 (under seal), pp 3-4; PW-7, T. 6696 (closed session); Ex. 951 (under seal), p. 4; Ex. 826 (under seal), paras 142, 288. Brezik is about 10 kilometres downstream from Vozuća, *see* Ex. 72, Map Marked by Sinan Begović.

⁸²⁶ Ex. 929 (under seal), p. 4; Ex. 951 (under seal), p. 4.

⁸²⁷ Ex. 929 (under seal), pp 4, 6; Ex. 951 (under seal), p. 4; Ex. 671, Report of the Chief of the Security Service of the 3rd Corps, 1 October 1995, p. 2.

⁸²⁸ Ex. 929 (under seal), p. 4; Ex. 951 (under seal), p. 4.

⁸²⁹ Ex. 929 (under seal), p. 4; PW-7, T. 6696-6697 (closed session); Ex. 951 (under seal), p. 4; PW-12, T. 6569-6572, 6583-6584 (private session in part); Ex. 952, Photographs Marked by PW-12; Ex. 549, Sketch Drawn by Velibor Trivičević, marking no. 8. *See also* the following evidence depicting the ten VRS soldiers in a room just above the room where they were detained: Ex. 548, Video Clip; Ex. 550, Photographs Marked by Velibor Trivičević; Ex. 953, Video Clip; Ex. 954 (under seal). *See also* Velibor Trivičević, T. 3646-3648, 3650-3651; Ex. 929 (under seal), pp 5, 7; PW-12, T. 6574, 6576-6577, 6584, 6595 (private session in part).

upper floor of the derelict house. During the interrogations, at least some of them were routinely beaten, including with objects like sticks and a rubber hose. At least on one occasion, electric shocks were administered on a detainee.⁸³¹

310. While detained in the Camp, the ten men were regularly beaten by the guards and others.⁸³² According to one account, “[a]nyone in the camp could come in and beat us whenever they chose.”⁸³³ Some of the Mujahedin also spoke to the detainees on religious matters and promoted Islam.⁸³⁴ One of them, Mile Gojić, eventually converted to Islam following which he was given a separate cell and better food than the others.⁸³⁵

311. Several days after 17 September 1995, Nenad Jović, a Bosnian Serb who was probably in his 70s, was put in the room of the ten detainees.⁸³⁶ Because he was frequently swearing and cursing, Mujahedin specifically targeted him for beatings.⁸³⁷ At one point, Jović drank from a bucket of water given to the detainees by the guards. The bucket also contained traces of oil. Jović died on one of the following days and his body was carried away on a wheelbarrow.⁸³⁸

312. On 29 September 1995 at around noon, the ten detainees left the Kamenica Camp and were transferred to the *KP Dom* facility in Zenica. The transfer took place in a bus manned by members of the Military Police Battalion of the 3rd Corps.⁸³⁹

2. Conclusion

313. With respect to Nenad Jović, the Trial Chamber finds that he died either as a result of the beatings or of drinking unsuitable water, or a combination of both in conjunction with the conditions of detention at the Kamenica Camp. Consequently, the Trial Chamber finds that EMD members at the Kamenica Camp inflicted acts on him with the intent to cause serious bodily harm, which the perpetrators should reasonably have known might lead to death. The Trial Chamber also

⁸³⁰ Ex. 929 (under seal), p. 4; Ex. 951 (under seal), p. 6; Witness PW-7, T. 6697 (closed session).

⁸³¹ Ex. 929 (under seal), p. 4; Witness PW-12, T. 6590; Ex. 951 (under seal), p. 4.

⁸³² Ex. 929 (under seal), p. 5; PW-12, T. 6589; Ex. 951 (under seal), p. 6.

⁸³³ Ex. 929 (under seal), p. 5.

⁸³⁴ Ex. 929 (under seal), p. 5; Ex. 951 (under seal), p. 6.

⁸³⁵ Ex. 929 (under seal), p. 5; Ex. 951 (under seal), p. 6; PW-12, T. 6577, 6584 (private session in part); Velibor Trivićević, T. 3648-3649; Edin Šarić, T. 5921-5922, 5977-5978; Ex. 671, Report of the Chief of the Security Service of the 3rd Corps, 1 October 1995, p. 2.

⁸³⁶ Ex. 929 (under seal), pp 5, 9; PW-7, T. 6700-6701 (closed session); Ex. 951 (under seal), p. 5; PW-12, T. 6593-6594.

⁸³⁷ Ex. 929 (under seal), p. 5, also stating that the Mujahedin replaced Jović’s warm clothes with a thin uniform; PW-7, T. 6701 (closed session); Ex. 951 (under seal), p. 5; Witness PW-12, T. 6594-6595.

⁸³⁸ Ex. 929 (under seal), p. 5; PW-7, T. 6702 (closed session); Ex. 951 (under seal), p. 5; PW-12, T. 6594-6595, 6597-6598.

⁸³⁹ Ex. 929 (under seal), p. 6; Ex. 951 (under seal), p. 6; Ex. 926, Witness Statement of Zakir Alispahić, 22 December 2005, paras 55-60. See also Ex. 875, List of Bosnian Serb Prisoners, 29 September 1995; Ex. 876, List of Bosnian

finds that Jović was taking no active part in hostilities when these acts were inflicted. The Trial Chamber therefore finds that the Prosecution has proved beyond reasonable doubt the elements of murder as a violation of the laws or customs of war (Count 1).

314. Furthermore, the Trial Chamber finds that the ten individuals listed in Annex D to the Indictment were routinely subjected by EMD members to acts amounting to serious mental and physical suffering during their detention at the Kamenica Camp, including beatings and the infliction of electric shocks. The Trial Chamber further finds that none of the victims took an active part in hostilities at the time of the mistreatment. The Trial Chamber therefore finds that the Prosecution has proved beyond reasonable doubt the elements of cruel treatment as a violation of the laws or customs of war (Count 2).

F. Mistreatment of Three Bosnian Serb Women (DRW-1, DRW-2 and DRW-3)

1. Evidence

315. As described earlier, DRW-1, DRW-2 and DRW-3 originally formed part of the group of approximately 60 Bosnian Serbs who were captured on 11 September 1995.⁸⁴⁰ After their separation from the men, they were briefly detained at the Kesten hall. From there, one or more ABiH soldiers of the 5th Battalion took the three women towards the Battalion's IKM in Marići⁸⁴¹ so that they would not fall into the hands of the Mujahedin.⁸⁴² Near Marići, however, a group of Mujahedin took over the women from their ABiH escort. The women were blindfolded and taken away in a van.⁸⁴³

316. The van passed through Zavidovići. The Mujahedin eventually delivered the women to a wooden shed in a location which the Trial Chamber is satisfied was the Kamenica Camp.⁸⁴⁴ They remained detained in this shed for two days, blindfolded, with hands and legs tied, and without being given any food or water.⁸⁴⁵

Serb Prisoners, 19 October 1995; Ex. 948, Document of the Military Police Battalion, 29 September 1995; *but see* Ajman Awad, Hearing Sarajevo, T. 113.

⁸⁴⁰ See para. 287 *supra*.

⁸⁴¹ Izet Karahasanović, T. 8011; Muhamed Omerašević, T. 6740,

⁸⁴² Izet Karahasanović, T. 8017, 8031-8032; Ex. 970, Witness Statement of Muhamed Omerašević, 24 October 2006, paras 79, 89 and 8 May 2007, paras 41-42; Muhamed Omerašević, T. 6746; Ex. 975 (under seal), p. 16; DRW-3, T. 5784-5785 (closed session).

⁸⁴³ Izet Karahasanović, T. 8031-8032; Muhamed Omerašević, T. 6746; Ahmet Šehić, T. 5060-5061, 5102-5103; DRW-3, T. 5784-5786 (closed session); Ex. 975 (under seal), p. 16; Ex. 930 (under seal), pp 4-5.

⁸⁴⁴ DRW-3, T. 5786-5787, 5803-5805, 5823, 5832 (closed session); Ex. 975 (under seal), p. 16; Ex. 930 (under seal), p. 5; Ex. 856 (under seal), p. 3. Although the women do not refer explicitly to the Kamenica Camp, the Trial Chamber bases its finding on their description of the location, including the announcement of names through a loudspeaker (*see* fns 799, 801, 802) and the evidence pertaining to the 52 men (*see* fns 806, 808).

⁸⁴⁵ Ex. 975 (under seal), p. 16; Ex. 930 (under seal), p. 6; DRW-3, T. 5788-5789, 5791, 5823 (closed session).

317. On both days, Mujahedin entered the shed and beat the three women with their hands, metal sticks and rifle butts. They were also verbally abused and kicked.⁸⁴⁶ On the second day, the women underwent questioning by Bosnian Mujahedin, in the course of which they were beaten with fists and given electric shocks on various body parts.⁸⁴⁷ Not long thereafter, a Mujahedin entered the shed and threatened to kill the three women with a knife but was prevented from doing so by a Bosnian Mujahedin.⁸⁴⁸

318. In the evening of 13 or 14 September 1995, the women were taken out of the shed and put on a van which brought them to the *Vatrostalna* facility on the outskirts of Zenica,⁸⁴⁹ where the command of the EMD was located at the time.⁸⁵⁰ At *Vatrostalna*, their blindfolds were removed and their hands and legs were untied.⁸⁵¹ When asked by the women what would happen to them, a Mujahedin told them that “General Sakib would make the decision after he returns from the frontline.”⁸⁵² The three women were interrogated but not beaten while detained there.⁸⁵³ During one interrogation, a foreign Mujahedin pulled DRW-3’s track suit down to her knees and forced her to stand with her back against the wall for a couple of minutes.⁸⁵⁴ On a different occasion, a foreign Mujahedin forcibly lifted DRW-1’s shirt, took down her pants, and touched her breasts and other private parts.⁸⁵⁵ On 28 September 1995, a vehicle manned by Military Police of the ABiH 3rd Corps arrived at *Vatrostalna* and transported the three women to the *KP Dom* facility in Zenica.⁸⁵⁶ They were eventually released from the *KP Dom* on 15 November 1995.⁸⁵⁷ Two of the women described that, as a result of their detention, they are still traumatised and have ongoing health problems.⁸⁵⁸

2. Conclusion

319. The Trial Chamber finds that, during their detention at Kamenica Camp, DRW-1, DRW-2 and DRW-3 were routinely subjected by EMD members to acts amounting to serious mental and

⁸⁴⁶ Ex. 975 (under seal), p. 16; Ex. 930 (under seal), p. 5; DRW-3, T. 5788, 5847-5848 (closed session); Ex. 856 (under seal), p. 3.

⁸⁴⁷ Ex. 975 (under seal), p. 17; Ex. 930 (under seal), p. 6; DRW-3, T. 5792, 5847-5848 (closed session).

⁸⁴⁸ Ex. 975 (under seal), p. 17; Ex. 930 (under seal), p. 6; DRW-3, T. 5792-5793 (closed session).

⁸⁴⁹ Ex. 975 (under seal), p. 17; Ex. 930 (under seal), pp 6-7; DRW-3, T. 5793 (closed session). *See also* Zakir Alispahić, T. 6535 (private session), Ex. 926, Witness Statement of Zakir Alispahić, 22 December 2005, para. 28; Ex. 852 (under seal); Ex. 946 (under seal); Ex. 947 (under seal); Ex. 945 (under seal).

⁸⁵⁰ *See* para. 180 *supra*.

⁸⁵¹ Ex. 975 (under seal), p. 17; Ex. 930 (under seal), p. 6; DRW-3, T. 5793-5794 (closed session).

⁸⁵² Ex. 930 (under seal), p. 7.

⁸⁵³ Ex. 975 (under seal), p. 17; Ex. 930 (under seal), p. 7; DRW-3, T. 5798-5799, 5800 (closed session).

⁸⁵⁴ DRW-3, T. 5799, 5846-5847 (closed session). *See also* Ex. 975 (under seal), p. 17.

⁸⁵⁵ Ex. 975 (under seal), p. 18; Ex. 930 (under seal), p. 7.

⁸⁵⁶ Ex. 975 (under seal), p. 18; Ex. 930 (under seal), p. 8; DRW-3, T. 5797-5802, 5830 (closed session); Zakir Alispahić, T. 6530, 6532-6533, 6535-6536, 6540-6541 (private session in part); Ex. 926, Witness Statement of Zakir Alispahić, 22 December 2005, paras 37-38, 43-44, 48; Ex. 855 (under seal); Ex. 852 (under seal); Ex. 946 (under seal); Ex. 947 (under seal); Ex. 945 (under seal).

⁸⁵⁷ Ex. 975 (under seal), p. 18; Ex. 930 (under seal), p. 8; DRW-3, T. 5805 (closed session); Ex. 856 (under seal), p. 4.

⁸⁵⁸ Ex. 975 (under seal), p. 18; DRW-3, T. 5807-5808 (closed session); Ex. 856 (under seal), p. 4.

physical suffering, including beatings, as well as the infliction of electric shocks. The Trial Chamber further finds that none of the victims took an active part in hostilities at the time of the mistreatment. The Trial Chamber therefore finds that the Prosecution has proved beyond reasonable doubt the elements of cruel treatment as a violation of the laws or customs of war (Count 4).

320. In relation to this finding, it should be noted that the Indictment alleges that DRW-1, DRW-2 and DRW-3 were subjected to sexual assaults while they were detained in the Kamenica Camp.⁸⁵⁹ However, the evidence indicates that these victims were subjected to sexual assaults while they were detained at the *Vatrostalna* facility.⁸⁶⁰ Because no sexual assaults at *Vatrostalna* are alleged in the Indictment,⁸⁶¹ the Trial Chamber does not base its finding concerning Count 4 on that evidence.

G. Enquiries Regarding Approximately 60 Captured Bosnian Serb Soldiers and Civilians

1. Reports Originating From the Field

321. In the afternoon of 11 September 1995, Ahmet Šehić, the Commander of the 5th Battalion of the 328th Brigade, informed the Commander of the 328th Brigade, Fuad Zilkić, that “Arabs” had captured approximately 60 Bosnian Serb detainees at Kesten.⁸⁶²

322. On 13 September 1995, Zilkić submitted to the 35th Division a daily combat report (“13 September Report”) which contained the following information:

On 11 September 1995, two companies of the 5th Battalion of the 328th [Brigade] captured 61 hostiles and three Serbian women in the Kesten village sector. Members of the *El Mudžahid* unit took charge of all the captives except two, while the two were turned over to the 328th [Brigade] VP /Military Police/.⁸⁶³

323. There is conflicting evidence on whether the 35th Division Command was apprised of the information contained in the 13 September Report, and if so, whether this information was reported further to the 3rd Corps.⁸⁶⁴

⁸⁵⁹ Indictment, para. 48.

⁸⁶⁰ See para. 318 *supra*.

⁸⁶¹ Indictment, para. 49.

⁸⁶² Ahmet Šehić, T. 5053, 5055-5056; Fuad Zilkić, T. 5312-5315, 5390-5391, 5446-5448.

⁸⁶³ Ex. 480, Combat Report of the 328th Brigade, 13 September 1995, p. 3; *but see* Izet Karahasanović, T. 8057-8059. Fuad Zilkić testified that already on 11 September 1995, he passed on the information contained in Ex. 480 by radio communication to the 35th Division, T. 5314-5316. The Trial Chamber is not persuaded that Fuad Zilkić’s previous statement on this radio communication was “coerced” by the Prosecution, Defence Final Brief, para. 744; Defence Closing Argument, T. 8878-8879. See Fuad Zilkić, T. 5407-5409, 5446.

⁸⁶⁴ Fadil Hasanagić, T. 3068-3069, 3234, 3236-3238, 3240-3243; Izudin Hajderhodžić, T. 3747-3751, 3812-3819, 3838-3839, 3852-3853; *but see* Fuad Zilkić, T. 5397-5399, 5404-5406, 5413; Edin Husić, T. 4457-4460. See also Ex. 565, 567 and 568, Intelligence Reports of the 35th Division, 11, 13 and 14 September 1995 respectively; Ex. 1231, Report of the 3rd Corps Intelligence Service, 14 September 1995. Fadil Hasanagić further testified that he had never seen Ex. 481, Report of the Commander of the 328th Brigade to the 35th Division Command, 16 October

324. Several former officers from the 3rd Corps, 35th Division and 328th Brigade testified that they did not receive through official channels any information on the capture of a large group of Bosnian Serb soldiers or civilians by the Mujahedin or the EMD during Operation *Farz*, notwithstanding that rumours to this effect circulated.⁸⁶⁵ The entry of 11 September 1995 in the war diary of the 3rd Corps Command mentions that “60 Chetniks were killed and 57 captured.”⁸⁶⁶

325. At an unspecified time after 11 September 1995, security officers from the 35th Division and the 3rd Corps approached the Kamenica Camp in an attempt to verify rumours that the EMD held a number of captured VRS soldiers. However, guards at the gate of the Camp denied them access to the premises and the officers left without having accomplished their mission.⁸⁶⁷

326. There is no evidence to suggest that the killing of Milenko Stanić by an EMD member on the road to Kesten was reported to either the 35th Division or the 3rd Corps.

327. Likewise, with the exception of the intercepted fax as discussed hereunder, there is no evidence to suggest that the ABiH Main Staff was informed through regular reports from the field that 50 to 60 Bosnian Serbs had been captured by Mujahedin in Kesten.⁸⁶⁸ However, two ABiH publications issued in October 1995 contain references to “Chetnik officers” detained by the EMD during Operation *Farz*.⁸⁶⁹

2. Intercepted Fax From the EMD

328. On an unknown date between 11 and 16 September 1995, the EMD sent two reports in Arabic by fax from the *Vatrostalna* facility to an unknown recipient abroad. One of the reports contained the following information:

1995, which states that “around 65 active soldiers [...] have been captured” during the “F-95” operation, T. 3070-3072.

⁸⁶⁵ PW-4, T. 4851-4852 (closed session); Salih Spahić, T. 5267-5270; Ex. 770, Witness Statement of Salih Spahić, 8-9 November 2007, paras 37, 41, 43; Hamdija Šljuka, T. 4310-4311, 4363, 4365; Fadil Hasanagić, T. 3068, 3071-3072; Izudin Hajderhodžić, T. 3751-3752; Ex. 931, Witness Statement of Enes Maličbegović, 18 January 2006, paras 102-103, 122; Ex. 970, Witness Statement of Muhamed Omerašević, 24 October 2006, para. 92. *See also* PW-11, T. 6264, 6267-6269, 6361, 6365, 6412; Kadir Jurić, T. 2598-2600; Haso Ribo, T. 7067-7068, 7070-7073; Zaim Mujezinović, T. 6113-6114.

⁸⁶⁶ Ex. 512, Wartime Diary of the ABiH 3rd Corps for Operation “Farz-95”, p. 13; *but see* Haso Ribo, T. 7072, who testified that a war diary was a “historical document” which “no one [...] read”.

⁸⁶⁷ Hamdija Šljuka, T. 4310-4311, 4315-4316, 4325-4329, 4363, 4365-4367, 4374; PW-4, T. 4825-4827, 4830-4831 (closed session); PW-11, T. 6271, 6273-6274 (closed session).

⁸⁶⁸ Ex. 636, Interim Intelligence Report of 3rd Corps Intelligence Service, 12 September 1995, mentioning four “prisoners-of-war” without any further specifics; Ex. 1232, Report of the 3rd Corps Intelligence Service, 13 September 1995; Ex. 393, Regular Combat Report of 3rd Corps Commander, 15 September 1995, p. 4, stating that “[p]risoners of war [are] being treated in the spirit of the Geneva Convention” and brought to the Zenica “POW Reception Centre” to be processed; Kadir Jurić, T. 2599-2600; Ex. 864, Report of the Assistant Commander for Security of the 3rd Corps, 15 September 1995, p. 2; Ex. 893 (under seal); PW-11, T. 6259 (closed session).

⁸⁶⁹ Ex. 1194, “The ‘Chetnik Stalingrad’ Liberated” by Adnan Džonlić, “Prva Linija” Magazine, 1 October 1995, p. 4; Ex. 1195, “The ‘Četnik Stalingrad’ Liberated” by Adnan Džonlić, “Patriotski List” Magazine, 1 October 1995, p. 5. *See paras 523, 530 infra.*

Praise Allah, Lord of the Worlds, peace and salvation to the leader of the Mujahedin of our prophet Mohamed, his family and comrades. A Jihad military operation is under way even as this report is being written [...] We have taken new territories and new strategic points around Mt. Paljenik, which we took in the first stage of the operation. The Mujahedin gained ground and entered a group of Serbian villages, and took 60 prisoners after the killing.⁸⁷⁰

329. The RBiH State Security Service intercepted this fax and forwarded it to the 3rd Corps Security Service. On 16 September 1995, the 3rd Corps Security Service submitted the fax to the ABiH Main Staff Security Administration.⁸⁷¹

330. Within the Security Administration, the fax was received by the Analysis and Information Activities Department. However, its contents were not included in the Security Administration's bulletins; rather, the fax was eventually deposited with the war crimes section of the Counter-Intelligence Department.⁸⁷²

331. The evidence shows that Jusuf Jašarević, the Chief of the Security Administration, was familiar with the contents of the intercepted fax.⁸⁷³

H. Enquiries Regarding Ten Captured VRS Soldiers

332. As described above, the ten VRS soldiers who were captured on or about 17 September 1995 and detained at the Kamenica Camp were transferred to the *KP Dom* facility in Zenica on 29 September 1995.⁸⁷⁴ According to one of their escorts, there were no visible signs of injuries, nor did the detainees tell him that they had been mistreated.⁸⁷⁵

333. Between 30 September and 19 October 1995, the 3rd Corps Security Service submitted to the Main Staff Security Administration a number of reports which included information on interviews with some or all of the ten VRS detainees.⁸⁷⁶ Although one of these reports mentions that two of the

⁸⁷⁰ Ex. 669, Report of the Chief of the Security Service of the 3rd Corps, 16 September 1995, p. 4; PW-4, T. 4822-4823 (closed session). PW-9 allowed for the possibility that "the Mujahedin" could mean members of Mujahedin groups other than the EMD who participated in the *Farz* Operation, T. 5711-5712, 5716-5718, 5720.

⁸⁷¹ PW-4, T. 4822-4823, 4996-4997 (closed session); PW-11, T. 6262-6263 (closed session); Ex. 706, Witness Statement of Džemal Vučković, 22-23 September 2006/2-3 November 2007, para. 57; Ex. 770, Witness Statement of Salih Spahić, 19-20 September 2006, paras 39-40; Ex. 669, Report of the Chief of the Security Service of the 3rd Corps, 16 September 1995.

⁸⁷² PW-13, T. 6608, 6610, 6617-6618 (private session in part); Džemal Vučković, T. 5114-5115, 5124-5125, 5186-5187; Ex. 706, Witness Statement of Džemal Vučković, 22-23 September 2006 and 2-3 November 2007, para. 57; Ex. 669, Report of the Chief of the Security Service of the 3rd Corps, 16 September 1995; Ex. 707, Report of the Security Service of the 3rd Corps, 16 September 1995 (Ex. 669), Annotated by Džemal Vučković; Ex. 1306, Logbook of the Military Security Administration, 30 September 1995.

⁸⁷³ Ex. 709, Information of the Chief of Military Security Administration, 22 October 1995; Džemal Vučković, T. 5123-5124.

⁸⁷⁴ See para. 312 *supra*.

⁸⁷⁵ Zakir Alispahić, T. 6547, 6555-6556; Ex. 949, Official Note of the Military Police 3rd Battalion, 30 September 1995, pp 3-4. See also Edin Šarić, T. 5921-5922, 5976-5978, 5999-6000.

⁸⁷⁶ Ex. 949, Report of the Security Service of the 3rd Corps, 30 September 1995, pp 1-2; Ex. 671, Report of the Chief of the Security Service of the 3rd Corps, 1 October 1995; Ex. 694 (under seal); Ex. 898 (under seal); Ex. 897 (under

VRS detainees had been in the custody of the EMD,⁸⁷⁷ none of the reports indicate that the detainees had been harmed. One witness gave evidence that prior to a visit by the International Committee of the Red Cross (“ICRC”), the guards at *KP Dom* intimated to the detainees that they should not speak about their experiences at the Kamenica Camp.⁸⁷⁸

I. Enquiries Regarding DRW-1, DRW-2 and DRW-3

334. As described above, on 28 September 1995 the three Bosnian Serb women (DRW-1, DRW-2 and DRW-3) who had been detained at the Kamenica Camp and the *Vatrostalna* facility were transferred to the *KP Dom* facility in Zenica.⁸⁷⁹ Both the officer who escorted the women, as well as a 3rd Corps security officer who interviewed them subsequently, testified that DRW-1, DRW-2 and DRW-3 did not display any traces of physical abuse or maltreatment.⁸⁸⁰ The evidence also shows that the women did not say that they had been mistreated during the detention.⁸⁸¹ However, according to DRW-3, the security officers at *KP Dom* said they were not interested in the antecedent treatment of the women as the 3rd Corps had nothing to do with it.⁸⁸² DRW-3 further testified that she was afraid to come out with the truth.⁸⁸³

335. On 29 September, 9 October and 19 October 1995, the 3rd Corps Security Service submitted to the Main Staff Security Administration three reports which included information on interviews with DRW-1, DRW-2 and DRW-3. None of the reports contained any indication that the three women had been mistreated, nor did they specify who had detained them prior to their arrival at *KP Dom*.⁸⁸⁴

seal). *See also* Zakir Alispahić, T. 6556; Ex. 926, Witness Statement of Zakir Alispahić, 27 January 2006, para. 20; Edin Šarić, T. 5977; PW-4, T. 5002 (closed session); Ex. 412 (under seal); Ex. 854 (under seal).

⁸⁷⁷ Ex. 671, Report of the Chief of the Security Service of the 3rd Corps, 1 October 1995, p. 1; Ex. 1125, Logbook of Incoming Documents for the Military Security Administration, 1 October 1995-31 December 1995.

⁸⁷⁸ PW-7, T. 5924, 5926, 5952-5955 (private session); *but see* PW-11, T. 6374-6375 (closed session).

⁸⁷⁹ *See* para. 318 *supra*.

⁸⁸⁰ Zakir Alispahić, T. 6533; Edin Šarić, T. 5926, 5953 (private session).

⁸⁸¹ Ex. 926, Witness Statement of Zakir Alispahić, 22 December 2005, paras 38-41; Zakir Alispahić, T. 6532-6533, 6537, 6539-6541, 6543 (private session in part); Ex. 853 (under seal); Ex. 852 (under seal); Ex. 946 (under seal); Ex. 947 (under seal); Ex. 874, Report of the 3rd Corps Military Police Battalion, 29 September 1995, p. 3; Ex. 930 (under seal), p. 8; Ex. 975 (under seal), p. 18; DRW-3, T. 5802-5805, 5834-5836, 5849 (closed session); Edin Šarić, T. 5924, 5926, 5952-5955 (private session); PW-4, T. 4842 (closed session); Ex. 913 (under seal); PW-11, T. 6374-6376.

⁸⁸² DRW-3, T. 5835, 5848-5849, 5805-5806 (closed session).

⁸⁸³ DRW-3, T. 5849 (closed session).

⁸⁸⁴ Ex. 958 (under seal); Ex. 672, Report of the Chief of the Security Service of the 3rd Corps, 9 October 1995; Ex. 694 (under seal). *See also* Ex. 895, Instruction of the Chief of the Military Security Administration, 3 October 1995; Ex. 896 (under seal).

IX. INDIVIDUAL CRIMINAL RESPONSIBILITY

336. The Trial Chamber now turns to the issue of whether Rasim Delić can be held criminally responsible for not having prevented and/or punished the perpetrators of the crimes described above. To that end, the Trial Chamber will first examine whether there existed a superior-subordinate relationship between Rasim Delić and the said perpetrators at the relevant time. The Trial Chamber will then turn to the question whether Rasim Delić knew or had reason to know about the commission of these crimes and, if so, whether he took any necessary and reasonable measures to prevent or punish the crimes in question.

A. Existence of a Superior-Subordinate Relationship

1. Maline/Bikoši, June 1993

337. The Trial Chamber recalls its earlier finding that a number of unidentified foreign and Bosnian Mujahedin murdered at least 24 Bosnian Croats in Bikoši on 8 June 1993, the very day when Rasim Delić was appointed as Commander of the ABiH Main Staff.⁸⁸⁵ For Rasim Delić to be held individually responsible for this crime pursuant to Article 7(3) of the Statute, it is required, at the outset, that a superior-subordinate relationship existed at the time between Rasim Delić and the perpetrators.⁸⁸⁶

(a) Identity of the Perpetrators

338. The Indictment alleges that the killings in Bikoši were committed by “[t]he Mujahedin”, without further specification.⁸⁸⁷ However, the position taken by the Prosecution in its Pre-Trial Brief and throughout the trial is that the perpetrators of the killings were Mujahedin from the Poljanice Camp.⁸⁸⁸

339. Earlier in this Judgement, it has been mentioned that as of May 1992, a group of foreign Mujahedin was billeted in the Mehurići primary school, along with soldiers who later formed part of the ABiH 306th Brigade.⁸⁸⁹ However, in late 1992 or early 1993, the foreign Mujahedin moved out of the primary school to abandoned houses in Poljanice “after beginning to get into conflict”

⁸⁸⁵ See paras 101, 225-226 *supra*.

⁸⁸⁶ See paras 53 *et seq. supra*.

⁸⁸⁷ Indictment, para. 25.

⁸⁸⁸ Prosecution Pre-Trial Brief, para. 24.11; Prosecution Final Brief, paras 215-217; Prosecution Closing Argument, T. 8784-8787; *but see* Defence Final Brief, para. 228.

⁸⁸⁹ See para. 170 *supra*.

with the ABiH soldiers.⁸⁹⁰ ABiH soldiers were not allowed to enter the Poljanice Camp.⁸⁹¹ At times, their relationship even seemed to have been quite hostile.⁸⁹²

340. Although the evidence establishes that the killings in Bikoši were committed by foreign and Bosnian Mujahedin, as has been pointed out earlier in this Judgement, the Trial Chamber found it not proved beyond reasonable doubt that the perpetrators of the killings in Bikoši were members of the Poljanice group of Mujahedin.⁸⁹³ The Trial Chamber will nonetheless examine the Prosecution's contention that on 8 June 1993, the Poljanice Mujahedin were *de facto* subordinated to the 3rd Corps.⁸⁹⁴

(b) Whether the Mujahedin From the Poljanice Camp Were Subordinated to the ABiH

341. The Prosecution's main argument in this regard refers to the "numerous instances of joint combat in which the Poljanice Mujahedin engaged in [*sic*] from the time of their arrival in the RBiH" and says that "where the ABiH is setting the combat priorities for the Mujahedin that is a sufficient indication of subordination".⁸⁹⁵ Specifically in relation to the events of 8 June 1993, the Prosecution submits that

it is simply implausible to expect that they would have been able to engage in these combat [*sic*] without coordinating their activities with neighbouring units, and without receiving instructions as to what to do from superior ABiH authorities.⁸⁹⁶

342. The Defence submits that "beyond a shadow of doubt [the Poljanice Mujahedin] were not under the effective control of any part of the Army, whether *de facto* or *de jure*."⁸⁹⁷ Amongst others, the Defence argues that the Poljanice Mujahedin, when in combat, did not accept orders from the ABiH, that the Poljanice Mujahedin received logistical and financial support from abroad, and that the ABiH had no means to punish any member of the group of Poljanice Mujahedin.⁸⁹⁸

⁸⁹⁰ Halim Husić, T. 7325-7326.

⁸⁹¹ Asim Delalić, T. 1711; Osman Fuško, T. 1138-1139.

⁸⁹² Asim Delalić, T. 1715, 1727-1728, 1758; Osman Fuško, T. 1074-1075; Ajman Awad, Hearing Sarajevo, T. 269; Halim Husić, T. 7321-7326, 7438, 7444, 7534; Ex. 977, Statement of Ivan Negovetić, 27 November 2007, paras 28, 33-36; Ivan Negovetić, T. 6818; Ex. 1370, Statement of Fadil Alihodžić, 29 January 2008, para. 16; Sinan Begović, T. 519-520; Šaban Alić, T. 681; Ex. 254, Collective Operations Report of Commander of the 306th Brigade, 5 May 1993; Ex. 997, Report of the Assistant Commander for Morale of the 306th Brigade, 6 May 1993; Ex. 135, Report of the Security Sector of the 3rd Corps Command, 10 May 1993; Ex. 90, Official Note about the Killing of Sakib Brkić, 28 May 1993; Ex. 291, Military Information Summary No. 100, 7 August 1993; Kadir Jusić, T. 2648.

⁸⁹³ See paras 219-224 *supra*.

⁸⁹⁴ Prosecution Final Brief, paras 218-228.

⁸⁹⁵ Prosecution Closing Argument, T. 8797-8798.

⁸⁹⁶ Prosecution Closing Argument, T. 8798.

⁸⁹⁷ Defence Final Brief, para. 114.

⁸⁹⁸ Defence Final Brief, paras 114-134.

343. Although the Prosecution relies on five instances of participation in combat by the Poljanice Mujahedin alongside the ABiH, it has offered no specific evidence concerning orders received by the Poljanice Mujahedin from units of the ABiH.⁸⁹⁹

344. On 8 June 1993, Mujahedin from the Poljanice Camp engaged in the fighting against the HVO in the Bila Valley simultaneously as the units of the ABiH.⁹⁰⁰ There is no evidence that the participation of the Poljanice Mujahedin was in compliance with any order given to them by the ABiH. In this regard, the Trial Chamber notes the testimony of Ali Hamad who gave evidence that “the Mujahedin who were in Mehurići, as well as other units of the [ABiH], including Zenica, were given the *assignment* of clearing the terrain from Mehurići up to Guča Gora”.⁹⁰¹ However, it is unclear whether this assignment was given to the Mujahedin fighters by the upper echelons of the Mujahedin, or by the ABiH. As the witness was not stationed at Poljanice, nor was he a member of the ABiH, the Trial Chamber attaches little weight to this evidence.

345. While the evidence shows that the Mujahedin from the Poljanice Camp and the ABiH soldiers were aware of each other’s presence, the evidence is unclear whether the two groups were acting in concert and if so, whether it was as a result of orders from one to the other, or cooperation.⁹⁰² It is not implausible that engagement in combat can take place on the basis of mutual consultations and agreement between two fighting forces, as opposed to orders issued from one to the other. Thus, the fact that the Poljanice group of Mujahedin participated in combat simultaneously as units of the ABiH is insufficient to prove the *de facto* subordination of that group to the ABiH.

346. As a consequence, the Trial Chamber is not satisfied that the Poljanice Mujahedin were *de facto* subordinated to Rasim Delić. There is therefore no need to examine whether Rasim Delić exercised effective control over them.

(c) Whether “the Mujahedin” Were Subordinated to the ABiH

347. In the Indictment, the Prosecution also alleges that “the Mujahedin”—without further specification—were under the command and effective control of Rasim Delić.⁹⁰³ The Defence

⁸⁹⁹ See Prosecution Final Brief, para. 53, with further references; Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 138.

⁹⁰⁰ See paras 203-205 *supra*.

⁹⁰¹ Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 60 (emphasis added).

⁹⁰² See para. 206 *supra*.

⁹⁰³ Indictment, para. 17; Decision on Prosecution Notice of Compliance With Court Order, 6 July 2007, p. 4.

responds that none of the numerous groups of Mujahedin active in central Bosnia in 1993 were “under *de jure* or *de facto* effective control of any part of the [ABiH], let alone the Accused.”⁹⁰⁴

348. It has not been alleged, nor is there any evidence, that on 8 June 1993 any or all of the Mujahedin operating in central Bosnia were *de jure* subordinated to the ABiH. Hence, the Trial Chamber will proceed to consider whether the evidence demonstrates that those Mujahedin groups were *de facto* subordinated to the ABiH.

349. As found earlier in this Judgement, the foreign fighters who came to Bosnia and Herzegovina during the conflict did not form a homogeneous entity; they came from different countries and cultures and settled in various locations in central Bosnia and were anxious to defend their independence from one another and the ABiH.⁹⁰⁵ Several witnesses testified in general terms that these Mujahedin groups were not controlled by the ABiH.⁹⁰⁶ Ali Hamad, a witness of Bahraini origin who in 1992/1993 was the deputy commander and subsequently commander of a group of foreign Mujahedin in Bijelo Buće,⁹⁰⁷ testified that, prior to an attack, Mujahedin leaders would sometimes meet with Mehmed Alagić, the Commander of the ABiH OG *Bosanska Krajina*: “... [H]e would come to talk to me and to learn from me what had been done and how much progress we had made.”⁹⁰⁸ At the same time, Ali Hamad testified that he never received an order from Alagić or the ABiH.⁹⁰⁹ According to this witness,

we foreign Mujahedin do not take orders from anyone but our own chiefs, which doesn't mean, however, that we were fighting independently. And this does not mean that we were not under the control of the BH army, because there was a certain organisation between the BH leaders and the Mujahedin leaders, and these leaders would agree on what was to be done. And after agreement with the BH army leaders, then our chiefs would issue us orders, being foreign Mujahedin.⁹¹⁰

Ali Hamad further elaborated on this relationship by explaining that

[w]e foreign Mujahedin did not participate in any battle without cooperating with the BH army – or, rather, the local commanders decided the locations where we would attack. Then they would ask us for our assistance, and then we would take part in that operation but on condition that we, too, have to carry out surveillance of the area.

Q. And during those operations you received orders from your commanders?

⁹⁰⁴ Defence Final Brief, paras 107 *et seq.*

⁹⁰⁵ See para. 168 *supra*.

⁹⁰⁶ PW-2, T. 745-746, 875-876; Šaban Alić, T. 678-679. See also Ex. 56, “Terror Trail of the Mujahedin” by Andrew Hogg, 27 June 1993; PW-3, T. 1562 (closed session); Ex. 61, “The Jihad In Bosnia”, Ad-Dawah Magazine (Pakistan), January 1993; Andrew Hogg, T. 364.

⁹⁰⁷ Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 27, 29.

⁹⁰⁸ Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 24-25, 31, 113-114.

⁹⁰⁹ Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 109-110.

⁹¹⁰ Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 22-23.

A. Yes, because whichever battle we agreed to take part in, we set as a precondition to the Bosnian commanders that during the attack itself we should be in command, and they agreed to that.⁹¹¹

350. This evidence demonstrates that, although there may have been instances where the ABiH instructed the Mujahedin as to the locations to attack, the relationship between any groups of foreign Mujahedin and the ABiH at this time of the conflict in Bosnia and Herzegovina is appropriately characterised as cooperation between such groups as separate and independent military entities, rather than subordination of the Mujahedin within a single military structure.

351. As a consequence, the Trial Chamber is not satisfied that “the Mujahedin” were *de facto* subordinated to the ABiH. There is therefore no need to examine whether the ABiH exercised effective control over them.

(d) The Time of Rasim Delić’s Appointment as Commander of the ABiH Main Staff

352. Although it has not been proved that the perpetrators of the Bikoši killings were in a superior-subordinate relationship with any unit of the ABiH, the Trial Chamber will briefly address the Defence argument that Rasim Delić does not incur individual criminal responsibility for the crimes committed in Bikoši on 8 June 1993 on the grounds that he had not assumed command at the relevant time.⁹¹²

353. According to the evidence, the killings in Bikoši took place at some time in the afternoon of 8 June 1993.⁹¹³ The evidence also establishes that on the same day, but some time after 14:00, the RBiH Presidency elected Rasim Delić as Commander of the ABiH Main Staff. However, Rasim Delić did not assume this position until between 19:00 and 21:00, when that decision was communicated to a group of senior ABiH officers.⁹¹⁴

354. Hence, the evidence does not establish beyond reasonable doubt that Rasim Delić was already the Commander of the ABiH Main Staff when the killings in Bikoši were committed.

(e) Conclusion

355. For the above reasons, the Trial Chamber finds that no superior-subordinate relationship existed between Rasim Delić and the perpetrators of the killings in Bikoši on 8 June 1993. Rasim Delić, therefore, does not incur individual criminal responsibility pursuant to Article 7(3) of the Statute for the crimes committed in Bikoši on 8 June 1993.

⁹¹¹ Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 138-139. *See also* T. 38-39.

⁹¹² Defence Final Brief, paras 239-260.

⁹¹³ *See* para. 217 *supra*.

⁹¹⁴ *See* para. 101 *supra*.

2. Livade, Kesten and Kamenica Camp, July – September 1995

(a) Introduction

356. The Trial Chamber found earlier in this Judgement that murder and cruel treatment were committed in Livade and the Kamenica Camp in July-August 1995, as well as in Kesten and the Kamenica Camp in September 1995. The Trial Chamber also found that members of the EMD committed the crimes in question.⁹¹⁵ For Rasim Delić to be held individually responsible for these crimes pursuant to Article 7(3) of the Statute, it is required, at the outset, that a superior-subordinate relationship existed between Rasim Delić and the perpetrators at the relevant time.⁹¹⁶

357. In order to determine whether there existed a superior-subordinate relationship between Rasim Delić and the perpetrators of the crimes committed between July and September 1995, the Trial Chamber first has to establish whether the EMD was, either *de jure* or *de facto*, subordinated to the ABiH. In the affirmative, and only then, the Trial Chamber is confronted with one of the salient questions in this case, namely, whether the EMD was “under the command and effective control” of Rasim Delić, as alleged in the Indictment.⁹¹⁷ In support of this allegation, the Prosecution submits that (i) Rasim Delić created and disbanded the EMD; (ii) the ABiH involved the EMD in its combat operations; (iii) the ABiH subordinated the EMD to its units, provided logistics and replenished it with manpower; (iv) the ABiH issued orders to attack to the EMD and provided it with installations and artillery support; (v) the EMD trained ABiH units, spearheaded combat operations and held ABiH front-lines until they were relieved; (vi) Rasim Delić issued awards to EMD soldiers; and (vii) Rasim Delić had the authority to apply necessary measures against the EMD.⁹¹⁸

358. The Defence, by contrast, avers that the EMD was not under the effective control of Rasim Delić. It submits a number of arguments, including that (i) the creation of the EMD was a political decision made by the RBiH Presidency; (ii) the EMD did not accept the authority of the ABiH, nor did it fit into its system of command and control; (iii) the EMD did not report to and obey orders from its purported ABiH superiors; (iv) the EMD had its own objectives and reported to foreign superiors; and (v) Rasim Delić had no power to authorise the use of force against the EMD.⁹¹⁹

⁹¹⁵ See paras 251-252, 272-273, 293-294, 305-307, 313-314, 319-320 *supra*.

⁹¹⁶ See paras 56 *et seq. supra*.

⁹¹⁷ Indictment, para. 17(i).

⁹¹⁸ Prosecution Final Brief, para. 46. See also para. 184.

⁹¹⁹ Defence Final Brief, paras 463, 867-872, 891-922, 972-1002, 1115-1136.

359. Before examining whether Rasim Delić exercised effective control over the EMD between July and September 1995, the Trial Chamber will consider whether the EMD was a unit *de jure* or *de facto* subordinated to the ABiH and Rasim Delić. In the words of the Appeals Chamber,

[...] the necessity to prove that the perpetrator was the “subordinate” of the accused, [does not] import a requirement of *direct* or *formal* subordination but [means] that the relevant accused is, by virtue of his or her position, senior in some sort of formal or informal hierarchy to the perpetrator.⁹²⁰

(b) *De jure* Subordination of the EMD

360. The Prosecution submits that “following its official formation in mid-August 1993 the EMD was *de jure* subordinated to the [3rd Corps] and to Rasim Delić as the head of the [ABiH].”⁹²¹ The Defence does not dispute the *de jure* subordination of the EMD as such, but claims that the authority of Rasim Delić to form the EMD “flowed from the decision and authority of his superior, the President and ABiH Supreme Commander, Izetbegović”.⁹²²

361. As described earlier in this Judgement, the EMD came into existence as a unit of the ABiH 3rd Corps by virtue of the Order of 13 August 1993, which was signed by Rasim Delić; the authenticity of this Order is not in dispute.⁹²³ The Trial Chamber is satisfied that when Rasim Delić signed the Order of 13 August 1993, he acted in his capacity and within his competence as the ABiH Main Staff Commander as appointed by the RBiH Presidency.⁹²⁴ Thus, he incurs responsibility for all actions taken in his official capacity, even if they were politically influenced by the RBiH Presidency, of which he was himself a member.⁹²⁵

362. Several witnesses testified about the *de jure* subordination of the EMD to the ABiH and about the fact that this unit was incorporated into the 3rd Corps.⁹²⁶ Furthermore, the Trial Chamber recalls that the EMD was referred to in ABiH documents by the military unit number “5689” and was using the stamp with the RBiH coat of arms.⁹²⁷

⁹²⁰ Čelebići Appeal Judgement, para. 303 (underline added).

⁹²¹ Prosecution Final Brief, para. 42.

⁹²² Defence Final Brief, paras 870-872; citing PW-3, T. 1352, 1588 (closed session).

⁹²³ See para. 177 *supra*.

⁹²⁴ See para. 94 *supra*.

⁹²⁵ Sead Delić, T. 2832, 2837-2838, testified that President Izetbegović represented the Armed Forces, of which the ABiH was only one component. According to Sead Delić, the Main Staff was a “specialised organ” of the Presidency and only Rasim Delić as the Commander of the Main Staff could issue orders to the Commanders of the six ABiH Corps. See also Jovan Divjak, T. 2176-2178, 2308-2309. See also para. 94 *supra*.

⁹²⁶ Jovan Divjak (T. 2196) testified that the EMD was “comprised within the 3rd Corps”. See also Jovan Divjak, T. 2308; PW-9, T. 5746-5748; PW-3, T. 1324-1325 (closed session); Murat Softić, T. 1819; Ajman Awad, Hearing Sarajevo, T. 75-76; PW-9, T. 5651-5653, 5747 (private session). But see Jovan Divjak, T. 2326-2327; Haso Ribo, T. 7132.

⁹²⁷ Ex. 439, Plan of Attack of the Commander of the EMD, 15 May 1995; Murat Softić, T. 1855-1856; Hajrudin Hubo, T. 7696-7697; PW-9, T. 5554, 5651-5652; Ex. 78, Specification of Photocopied Documents found in the Travnik

363. On several occasions, the EMD was re-subordinated by the 3rd Corps Command to other units of the 3rd Corps for the purpose of particular combat operations.⁹²⁸ Although there is evidence that some re-subordination orders in 1993 and 1994 were not implemented,⁹²⁹ there is also evidence that the EMD participated, at the time, in combat actions with the units to which it had been re-subordinated within the 3rd Corps,⁹³⁰ e.g., the OG *Bosanska Krajina* in September 1993,⁹³¹ the OG North and the OG *Bosna* in autumn of 1994.⁹³² After 31 March 1995 and again as of 2 June 1995, the EMD was re-subordinated to the 35th Division.⁹³³ However, the Commander of the 35th Division testified that, in the fall of 1995, when the EMD was still formally subordinated to the 35th Division, the Detachment received some orders directly from the 3rd Corps Command.⁹³⁴ On 23 September 1995, the EMD was re-subordinated to the 3rd Corps, where it remained until its disbandment.⁹³⁵

364. The Trial Chamber is satisfied beyond reasonable doubt that from the time of its establishment in August 1993 until its disbandment in December 1995, the EMD was a unit *de jure* subordinated to the ABiH 3rd Corps or to one of the units that were subordinated in turn to the ABiH 3rd Corps. The Trial Chamber recalls that Rasim Delić, by virtue of his position as the Commander of the Main Staff from 8 June 1993 until the end of the war, was the *de jure* superior of

Defence Administration; Ex. 1315, Record on the Inspection of Facilities, 17 June 1995; Ex. 842, Decision of the Shura of the EMD, 23 October 1993.

⁹²⁸ Re-subordination is a military term meaning that a unit is formally brought under the command of another unit, the latter providing logistical and other support to the former, Kadir Jusić, T. 2673; Fadil Hasanagić, T. 3100.

⁹²⁹ As to the attempt of re-subordination of the EMD to the 7th Muslim Brigade, see PW-9, T. 5702-5704; Ex. 848, Order by 3rd Corps Commander, 9 April 1994; Ajman Awad, Hearing Sarajevo, T. 220; the 306th Brigade, see Ex. 269/1137, Order of the 3rd Corps Commander, 28 August 1993; Asim Delalić, T. 1758-1760, 1795; Ajman Awad, Hearing Sarajevo, T. 219; Halim Husić, T. 7330, 7332-7333, 7439; the 330th Brigade, see Ex. 845, Order of 3rd Corps Commander, 3 April 1994; PW-9, T. 5697-5698, 5701. See also Ex. 847, Official Note of Assistant Commander for Security of the 330th Brigade, 8 October 1994.

⁹³⁰ See paras 387-389 *infra*.

⁹³¹ Ex. 1010, Order of the 3rd Corps Command, 6 September 1993; Ajman Awad, Hearing Sarajevo, T. 60-62, 64, 187-189.

⁹³² Ajman Awad, Hearing Sarajevo, T. 75-76; Ex. 1144, Request of the Commander of the 3rd Corps, 14 June 1994. See also Ex. 846, Order of 3rd Corps Commander, 5 April 1994; PW-9, T. 5698-5699; Fadil Hasanagić, T. 3094-3095, 3097, 3121; see Ex. 1159, Order of the 3rd Corps Commander, 13 February 1995, Ex. 378, Order of the ABiH Main Staff, 12 January 1995, p. 3; Ex. 379, 3rd Corps Organisational Chart, showing that in January 1995 the EMD was subordinated directly to the 3rd Corps, Kadir Jusić, T. 2477-2479. OG *Bosna* was the predecessor of the 35th Division, and both units were commanded by Fadil Hasanagić, T. 2926-2927.

⁹³³ Kadir Jusić, T. 2525-2526; Ex. 431, Order of the 3rd Corps Commander on Subordination of the EMD to the 35th Division, 31 March 1995; Ex. 1030, Order of 3rd Corps Commander, 31 March 1995; Ex. 396, Order Activating the EMD in the Zone of Responsibility of the 35th Division, 2 June 1995; Fadil Hasanagić, T. 2939, 3097-3098, 3257-3258. See also Ex. 439, Plan of Attack of the Commander of the EMD, 15 May 1995; Ex. 485, Order of the Commander of the 35th Division, 8 May 1995; Haso Ribo, T. 7048-7049, 7056; Ex. 165, Order of Rasim Delić Forming the 35th and 37th Divisions, 12 January 1995; Ex. 583, Report of the Security Service of the 35th Division, 30 August 1995, p. 20.

⁹³⁴ Fadil Hasanagić, T. 3293-3294; Ex. 590, Order of the 3rd Corps Commander to the EMD, 9 August 1995; Ex. 1165-1167, Orders of the 3rd Corps Commander to the EMD, 16 August 1995.

⁹³⁵ Ex. 506, Order of the Commander of the 3rd Corps on Withdrawal of the EMD, 23 September 1995; Fadil Hasanagić, T. 3099-3100, 3261.

the ABiH 3rd Corps which in this period was directly subordinated to him.⁹³⁶ Therefore, following the chain of command, the EMD was *de jure* subordinated to Rasim Delić.

(c) Effective Control Over the EMD

365. In addition to proving subordination *de jure* or *de facto*, the Prosecution must in any event prove beyond reasonable doubt that Rasim Delić had effective control over the members of the EMD, *i.e.*, that he had the “material ability” to prevent the crimes which were committed between July and September 1995, and/or punish the perpetrators thereof.⁹³⁷

366. As noted above, the Prosecution asserts that Rasim Delić exercised effective control over the EMD and sets forth a number of indicators, including the role of the EMD before, during and after combat activity, and the execution of ABiH orders by the EMD.⁹³⁸ The Defence sets forth its own arguments to support lack of effective control by Rasim Delić, and contests the evidentiary basis upon which the Prosecution relies.⁹³⁹

367. Since the indicators of effective control are more a matter of evidence than of substantive law, it is not possible to identify an exhaustive list of such indicators *in abstracto*. As the Appeals Chamber underlined on several occasions, the issue will always turn on the particular facts of the case.⁹⁴⁰ In this light, the Trial Chamber has scrutinised the evidence, also on the basis of the arguments of the Parties, and ultimately based its conclusion on a number of different indicators which it considered suitable to determine whether effective control in this particular case existed.⁹⁴¹

368. The analysis below is based on the following indicators:

- (i) EMD compliance with ABiH orders in general;
- (ii) Participation of the EMD in ABiH combat operations and its compliance with ABiH combat orders;
- (iii) EMD compliance with ABiH procedure concerning the handling of captured prisoners;
- (iv) Access to EMD premises and captured enemies;

⁹³⁶ Ex. 154, Decision of Alija Izetbegović on the Organisational Structure of the Ministry of Defence and the ABiH, 18 July 1993, pp 3-4; Ex. 419, Decision on Organisational Chart of the ABiH, 18 and 24 October 1994, pp 2-3; Sead Delić, T. 2836-2838.

⁹³⁷ See paras 57 *et seq. supra*.

⁹³⁸ Prosecution Final Brief, para. 46. See para. 357 *supra*.

⁹³⁹ Defence Final Brief, paras 891-1024. See para. 358 *supra*.

⁹⁴⁰ *Blaškić* Appeal Judgement, para. 69; *Aleksovski* Appeal Judgement, paras 73-74; *Čelebići* Appeal Judgement, para. 206.

⁹⁴¹ See para. 62 *supra*.

- (v) Recruitment of locals by the EMD and replenishment with ABiH soldiers;
- (vi) Mutual assistance between ABiH and EMD;
- (vii) Procedure of reporting followed by the EMD;
- (viii) EMD relationship with ABiH units and soldiers;
- (ix) Relationship between the EMD and authorities outside the ABiH;
- (x) The ability to investigate and punish EMD members;
- (xi) Appointments and promotions of, and awards to, EMD members by the ABiH;
- (xii) Disbandment of the EMD.

369. In evaluating the relevance of these indicators in order to determine whether Rasim Delić exercised effective control over the perpetrators of the crimes committed between July and September 1995, the Trial Chamber was also guided by the Appeals Chamber's holding that

the possession of *de jure* authority constitutes *prima facie* a reasonable basis for assuming that an accused has effective control over his subordinates. [...] The burden of proving beyond reasonable doubt that the accused had effective control over his subordinates ultimately rests with the Prosecution.⁹⁴²

370. Although the crimes in Livade, Kesten and Kamenica were committed by members of the EMD between July and September 1995, the Trial Chamber finds it appropriate to analyse the evidence relating to the issue of effective control of the ABiH over the EMD from the time of the creation of this Detachment in August 1993 until its disbandment. Recalling that the ABiH was faced with numerous and serious problems during the initial phase of its existence,⁹⁴³ the Trial Chamber will verify whether Rasim Delić succeeded in the task of improving the command and control level within the ABiH in the period of 1993-1995 and whether the possible success in this task had any impact on the level of control exercised by Rasim Delić over the EMD and its members.

⁹⁴² *Hadžihasanović and Kubura* Appeal Judgement, para. 21.

⁹⁴³ See paras 128 *et seq. supra*.

(i) EMD Compliance with ABiH Orders in General

371. The evidence shows that the EMD and its members did not reliably execute all of the orders issued by the ABiH.⁹⁴⁴

372. In August 1995, EMD fighters captured a VRS tank but refused to hand it over to the Tank Company of the 3rd Corps. The EMD retained and operated the tank with the crew from the Tank Company. One witness testified that the crew did not dare to take the tank to the 3rd Corps as the EMD fighters “would search you out, find you, and kill you”.⁹⁴⁵

373. Although the EMD was instructed by the 3rd Corps to establish an accurate record of all members of the Detachment, it did not report this information to the 3rd Corps.⁹⁴⁶ Instead, the EMD provided the 3rd Corps with lists containing, along with dates of birth and nationalities, mostly nicknames.⁹⁴⁷ On 27 October 1995, the 3rd Corps Commander instructed the foreign citizens in the ABiH to make a statement that they joined the army units voluntarily, failing which no ABiH membership certificates would be issued to them.⁹⁴⁸ Members of the EMD did not make this statement, considering it unnecessary.⁹⁴⁹ Furthermore, although all foreign members serving in the EMD, the commander of the EMD, or the EMD as a unit were obliged by a decree of the RBiH Minister of Defence of June 1994 to register with the Municipal Defence Secretariats, this was not complied with.⁹⁵⁰ The 3rd Corps forwarded to “other institutions” the information in its possession concerning EMD members.⁹⁵¹ One witness gave evidence that the information compiled in a list of EMD members “registered in the military records of the Defence Ministry Department in the

⁹⁴⁴ Fadil Imamović, T. 4040, 4042; Hamdija Šljuka, T. 4378-4381. *See also* Fadil Hasanagić, T. 3132.

⁹⁴⁵ Haso Ribo, T. 7035-7037, 7151-7153, 7172-7173; 7179-7180; Ex. 1188, Conclusions and Tasks of a Meeting of 3rd Corps Senior Officers, 9 August 1995, p. 1.

⁹⁴⁶ Ex. 1311, Order of the 3rd Corps Command, 18 July 1994; Hajrudin Hubo, T. 7619, 7622-7624, 7629-7630, 7633, 7663; Ekrem Alihodžić, T. 6477, 6502-6503. *See also* Ex. 1314, Order of the 3rd Corps Command, 13 November 1995; Ex. 770, 92 *bis* statement of Salih Spahić, 20 September 2006, para. 56; Sinan Begović, T. 475, 525; Hasib Alić, T. 628-629; Ex. 719, Bulletin No. 35 of the Security Sector of the Ministry of Defence, 13 February 1994, p. 2.

⁹⁴⁷ PW-9, T. 5676-5677, 8636-8637, explaining that the personal data of the EMD’s foreign members was not shared with others; Ex. 1201, Collection of Faxes and Communications Between Mujahedin and the Islamic Cultural Institute in Milan, 1993-1995, item 2; Ajman Awad, Hearing Sarajevo, T. 173-175, 177-178, 180, 221-222; Hajrudin Hubo, T. 7643-7644, 7656. *See* Ex. 67, Overview of the EMD. *See also* Ex. 718, Report of the 3rd Corps Security Service, 12 February 1994.

⁹⁴⁸ Ex. 1138, Instructions of the Commander of the 3rd Corps, 27 October 1995. *See also* paras 113-114 *supra*.

⁹⁴⁹ Ajman Awad, Hearing Sarajevo, T. 233-235, 275; Hajrudin Hubo, T. 7603, 7661-7662; Ex. 1433, Information on Volunteers from Islamic Countries Refusing Membership of the BH Army, 7 November 1995.

⁹⁵⁰ Ex. 1312, Rules on Registration of Foreigners who are ABiH Members in Times of War, 13 June 1994; Hajrudin Hubo, T. 7638-7640; PW-2, T. 887-888.

⁹⁵¹ Hajrudin Hubo (T. 7640-7644) testified that the information concerning the EMD members was in the 3rd Corps’ electronic database. *See also* Haso Ribo, T. 7010-7011; Ex. 78, Specification of Photocopied Documents found in the Travnik Defence Administration; PW-9, T. 5553, 5676-5677.

Municipality of Zenica” dated 1996, was compiled on the basis of the data in the possession of the 3rd Corps.⁹⁵²

374. Fadil Hasanagić, the Commander of the 35th Division, testified that the EMD “arbitrarily” established the Kamenica Camp at the 13th kilometre from Zavidovići, although he had ordered that it be set up at a road junction at the 12th kilometre.⁹⁵³ Hasanagić gave evidence that he may have reported this to the 3rd Corps, but that he “accepted their deployment at that location.”⁹⁵⁴

375. Responding to a question by one of the judges as to what he did when the EMD was not obeying his orders, the Commander of the 35th Division testified that he would “invite” their leaders and “[m]ost frequently, Aiman would come and one Moatez appeared.”⁹⁵⁵ They told him: “En-Shala, God willing, everything is going to be okay.”⁹⁵⁶ The witness further testified:

I could not really do much or maintain frequent contacts with them or try to prevail over them the same way that I succeeded in prevailing upon the commander of the 4th Manoeuvre Battalion when I threatened him that he would be replaced. My purview and my authority powers were not such that I could threaten the same threat to the EMD.⁹⁵⁷

(ii) Participation of the EMD in ABiH Combat Operations and its Compliance With ABiH Combat Orders

376. Before addressing the details of the EMD’s participation in ABiH combat operations, the Trial Chamber finds it appropriate to make some observations of a general nature regarding the evidence on command and control in the ABiH.

377. The strategic goals of the overall operations were determined by the Main Staff and instructions passed down to the Corps Commands for implementation.⁹⁵⁸ According to the Commander of the 35th Division, the Corps Commands in turn issued combat orders to its subordinate units on the basis of proposals for specific combat actions proposed by the latter.⁹⁵⁹ The proposals coming from the subordinate unit were assessed by the superior unit and could be modified in an interchange of views and concerns between the superior and subordinate units although ultimate decisions were taken by the superior unit.⁹⁶⁰

⁹⁵² Hajrudin Hubo, T. 7720-7721; Ex. 114 (under seal).

⁹⁵³ Fadil Hasanagić, T. 2961-2962, 3101-3103. *See also* Ahmet Šehić, T. 5067; Ex. 826 (under seal), paras 134-135; Ex. 434, Preparatory Order of the Commander of the 35th Division, 7 April 1995.

⁹⁵⁴ Fadil Hasanagić, T. 3102-3103. *See* Ex. 1055, Request of the Commander of the 35th Division, 4 August 1995.

⁹⁵⁵ Fadil Hasanagić, T. 3296.

⁹⁵⁶ Fadil Hasanagić, T. 3297.

⁹⁵⁷ Fadil Hasanagić, T. 3297.

⁹⁵⁸ Ex. 384, Directive for the Continuation of Offensive Combat Operations, 5 January 1995; Kadir Jusić, T. 2554-2556, 2560-2561; Sead Delić, T. 2840, 2844.

⁹⁵⁹ Fadil Hasanagić, T. 2945. *See also* Ajman Awad, Hearing Sarajevo, T. 67.

⁹⁶⁰ Fadil Hasanagić, T. 2959-2960.

378. Through combat orders and the reporting system, a superior ABiH unit controlled its subordinate units, not only with respect to combat priorities and targets, but also the *modus operandi* of combat activities, including “the initial positions, how they reached the target of their action, what they are supposed to do at that facility that they had taken, that was their target, and also the continuation of combat activity, if required.”⁹⁶¹

379. Paul Cornish, a military expert, referred to this dialectical approach as follows:

I think there should be that exchange of ideas, and I think a mature well-organised and self-confident military command chain would enable precisely that flow to take place.

As regards the latitude of each unit to make decisions during combat on its own, Cornish testified:

In strategic thinking, there are very broadly two approaches, and they both employ German terms. One is [*Befehlstaktik*] which is order based tactics. You only do what are you instructed to do and nothing else. The modern, much more dynamic approach is known as [*Auftragstaktik*] which is extraction. You understand what your superior is to do, and you, then, as a junior, undertake your mission in order to achieve that. *But are you trusted at that level to do your job.*⁹⁶²

At the same time, he added:

[i]n the end, after all that exchange of ideas and it is all happening very rapidly, in the end there is authority and there is decision and that someone somewhere, nevertheless, says Thank you for the information, thank you for the ideas, it will be done the following way.⁹⁶³

380. As discussed in greater detail below, the EMD participated in numerous combat operations alongside the ABiH between September 1993 and September 1995. The role of the EMD was essentially that of an assault unit tasked with spearheading a particular attack and breaking through the enemy lines.⁹⁶⁴ Sometimes, the EMD acted as an intervention unit or held the lines of defence after a combat action.⁹⁶⁵

381. In an intercepted fax sent by the EMD in November 1993 to unknown recipients, the *modus operandi* of the EMD at the time was described as follows:

We are now one unit, we have our own body which is formally under the control of the [ABiH], but the [ABiH] cannot order us to engage in actions against our will. To the contrary, we set plans for them because they have little experience.⁹⁶⁶

⁹⁶¹ Fadil Hasanagić, T. 3287-3288.

⁹⁶² Paul Cornish, T. 8560 (emphasis added).

⁹⁶³ Paul Cornish, T. 8600-8602.

⁹⁶⁴ Ismet Alija, T. 4159; Haso Ribo, T. 7132-7133; Ex. 439, Plan of Attack of the Commander of the EMD, 15 May 1995.

⁹⁶⁵ Fadil Hasanagić, T. 3037, 3142; Ajman Awad, Hearing Sarajevo, T. 91; Ex. 466, Order of the Commander of the 35th Division, 10 September 1995.

⁹⁶⁶ Ex. 127, Report of the Chief of Security of the 3rd Corps, 28 November 1993, p. 1; Ex. 761, Special Information of the Chief of Military Security Administration, 2 December 1993; PW-2, T. 884-885. *See also* Ex. 669, Report of the Chief of the Security Service of the 3rd Corps, 17 September 1995.

382. The evidence shows that the ABiH would usually seek to reach agreement with the EMD on the Detachment's role in an upcoming combat operation before handing down an order to it.⁹⁶⁷ Ajman Awad, a former EMD member, testified that the situation in the field was such that the superior ABiH units—in the present case being either 3rd Corps or the 35th Division—tasked with a certain combat operation decided only the main parameters of and set the priorities for the overall operation.⁹⁶⁸ Once the EMD agreed to participate, it would master the particulars of its assignment with a larger degree of autonomy than that of other ABiH units.⁹⁶⁹ According to the Assistant Commander for Security of the 35th Division,

the El Mudjahedin Detachment was given its tasks in the documents -- in the document signed by the commander of the 35th Division, but in the field, during the action itself, as far as I know, their commanders, if I may call them that, made their own decisions. They decided when to start the action, how they intended to go about it, and in such a situation the 35th Division Command did not have much influence. So, in other words, in the field they made their own decisions and they were not influenced by the 35th Division commander. That's as far as I know.⁹⁷⁰

383. As detailed further below,⁹⁷¹ the EMD frequently made its participation in combat contingent on certain requirements, such as conducting its own reconnaissance prior to the engagement, waiting for more favourable weather conditions, ensuring that participating EMD members were “ready”, ensuring mine clearance in combat areas, securing evacuation routes for the wounded, *etc.*⁹⁷² When it deemed that the preconditions were not met, the EMD would decline to take part in a given ABiH operation, or would postpone the time of its participation. At the same time, the evidence shows that the EMD provided the superior command with “reasons” for its position.⁹⁷³ Ajman Awad described the situation in the following terms:

There wasn't refusal outright, but usually if reconnaissance is carried out of the terrain and if the military commander and the reconnaissance people see that we lack the proper elements for an attack, for the attack to be successful – because an attack is not for the sake of an attack and for people to get killed, but when one attacks, the aim is to succeed, to gain control of the location we are attacking.

...

As for actual opting out or refusal, there weren't cases when anyone said, “I will not attack,” but , rather, there would be *talks, discussions to explain the situation.*⁹⁷⁴

384. During cross-examination, Awad testified as follows.

⁹⁶⁷ PW-9, 5731-5732, 5766-5767, 5769-5770, 5773-5774, 8738, 8744 (private session). See Ajman Awad, Hearing Sarajevo, T. 106, 191; PW-9, T. 5695, 5730-5731 (private session), testifying that the EMD accounted for a postponement of the “second operation on the Vozuća front” (T. 5730).

⁹⁶⁸ Ajman Awad, Hearing Sarajevo, T. 62-66, 69-72, 195-196, 223-224, 268-269; PW-9, T. 5696, 5705-5706 (private session), 5708; Fadil Hasanagić, T. 3145-3146, 3287-3289; Fuad Zilkić, T. 5324-5326, 5369; Fadil Imamović, T. 4041-4042.

⁹⁶⁹ *Ibid.*

⁹⁷⁰ Fadil Imamović, T. 4041-4042; PW-9, T. 5704.

⁹⁷¹ See paras 388-390 *infra*.

⁹⁷² Ajman Awad, Hearing Sarajevo, T. 64-65, 76-77, 196; Fuad Zilkić, T. 5369-5371; PW-9, T. 5704.

Q. In other words, a high level command, whether it was the division or the 3rd Corps, could not count on the detachment at a point in time when it felt the detachment was necessary or when it ordered that it was necessary.

A. Until the conditions were fulfilled for an attack, we would never carry out an attack.

...

Q. The command did give orders, but unlike other units, you did not observe those orders. You simply decided on your own whether you would accept an order or not. Would that be a fair summary of what you have said?

A. Yes.⁹⁷⁵

385. Several witnesses testified that within the EMD, the supreme decision-making body was the *shura*.⁹⁷⁶ At the same time, the evidence shows that this body had a general competence for political and strategic issues within the EMD, including whether the EMD would participate in a military operation.⁹⁷⁷ Operative military issues fell within the purview of the Emir and the military commander.⁹⁷⁸ A “military council” assisted them in carrying out these tasks.⁹⁷⁹

386. Finally, there is evidence that the EMD never took part in combat or carried out a military operation without the authorisation of the 3rd Corps or one of its subordinate units to which it was subordinated for a concrete combat action.⁹⁸⁰

a. EMD Participation in Combat in 1993, 1994 and Early 1995

387. In September 1993, the EMD was re-subordinated to the OG *Bosanska Krajina* and took part, together with other ABiH units, in combat operations at Vitez, Ćotline Kuće and Zabrdžje near Kruščica.⁹⁸¹ According to Ajman Awad, the Commander of the OG *Bosanska Krajina* did not issue orders to the EMD fighters, but tried to reach agreement with the EMD.⁹⁸² Ajman Awad gave evidence that the Commander of the OG was viewed by the EMD as “a man who was a soldier with

⁹⁷³ PW-9, T. 5704; Ajman Awad, Hearing Sarajevo, T. 64-72, 187-189, 195-196, 251, 268-269. *See also* Haso Ribo, T. 7039, 7042, 7050, 7178; Kadir Jusić, T. 2632-2633.

⁹⁷⁴ Ajman Awad, Hearing Sarajevo, T. 66-67 (emphasis added).

⁹⁷⁵ Ajman Awad, Hearing Sarajevo, T. 195-196. Another former member of the EMD gave evidence that “[t]he orders were coming from the 3rd Corps, but for the [EMD] the Commander MUATEZ had the final authority to make decisions whether it will or won’t take part in an operation”, Ex. 826 (under seal), para. 67.

⁹⁷⁶ *See* para. 189 *supra*.

⁹⁷⁷ Ajman Awad, Hearing Sarajevo, T. 197-198, 204-206, 208; PW-2, T. 876-878, 899; PW-9, T. 5648-5649, 5695-5696, 5702, 8691.

⁹⁷⁸ PW-9, T. 5598, 5613, 5620-5621, 5647-5648, 5727-5728, 8686-8587, 8691; Ajman Awad, Hearing Sarajevo, T. 58, 86, 92; Fadil Hasanagić, T. 3279-3280; Sinan Begović, T. 454-455, 462, 464-465, 550.

⁹⁷⁹ *See* para. 188 *supra*.

⁹⁸⁰ PW-9, T. 5734-5735, 8743-8744; Ajman Awad, Hearing Sarajevo, T. 191, 252. *See also* Prosecution Closing Argument, T. 8838.

⁹⁸¹ Ajman Awad, Hearing Sarajevo, T. 60-62, 64, 187-189; Ex. 834, Joint Operative Report for OG *Bosanska Krajina*, 10 September 1993; Ex. 262, Report of Commander of the 306th Brigade, 10 September 1993; Ex. 826 (under seal), paras 40, 46; Ex. 1207, Information of the 306th Brigade, 21 September 1993; Sinan Begović, T. 415-416; PW-2, T. 751, 755-756; Ex. 719, Bulletin No. 35 of the Security Sector of the Ministry of Defence, 13 February 1994, p. 2. *See also* Ex. 1009, Order of the Commander of the 325th Brigade, 3 September 1993, mentioning the “El Mudahidi Company” taking part in combat together with the 325th Brigade.

strict military -- and a strict military attitude. As far as he was concerned, we were undisciplined.”⁹⁸³ However, in October and November 1993, the EMD participated in two other ABiH combat actions in the Travnik area in the area of responsibility of the said OG.⁹⁸⁴

388. In the summer of 1994, the EMD refused to participate in an assault on the Pišana Jelika and Visoka Glava features in the area of Teslić at the time set by the Commander of the OG North on the grounds that it “was not ready for it”.⁹⁸⁵ Subsequently, in August 1994, the EMD was ordered by the 3rd Corps Commander to attack Pišana Jelika and Visoka Glava features.⁹⁸⁶ The EMD indeed took part in combat operations in this area and captured these features.⁹⁸⁷ After preparations in which the EMD was assisted by the OG North, on 3 October 1994, the EMD successfully took over two other features in the same area.⁹⁸⁸

389. In October 1994, the 3rd Corps issued an order redeploying the EMD to Livade in the wider area of Vozuća.⁹⁸⁹ The Trial Chamber notes that the EMD complied with this order. Soon thereafter, in November 1994, the EMD did not comply with an order to take part in an attack ordered by the Commander of the 35th Division, arguing that the conditions to attack enemy positions were unsuitable in that period of the year due to the shedding of leaves from the trees.⁹⁹⁰ Nevertheless, the EMD was willing to “avoid a conflict or a misunderstanding between the *El Mujahedin* command and the corps and division command”, and therefore carried out a “fake attack”.⁹⁹¹ The envisaged attack was successfully carried out by the EMD six months later.⁹⁹²

⁹⁸² Ajman Awad, Hearing Sarajevo, T. 60-62, 187-189, 218-219.

⁹⁸³ Ajman Awad, Hearing Sarajevo, T. 189.

⁹⁸⁴ Ajman Awad, Hearing Sarajevo, T. 64; PW-2, T. 755-756; Ex. 826 (under seal), paras 40, 46.

⁹⁸⁵ Ex. 826 (under seal), paras 62, 64-66, 75; PW-9, T. 5596-5601, 5603-5604, 5699-5700, 5728-5730, 8736-8737 (private session).

⁹⁸⁶ Ex. 837, Attack Decision of the Commander of the 3rd Corps, 20 August 1994. The Trial Chamber notes that during this period the EMD was re-subordinated to the OG-North. Although the order comes from the 3rd Corps Commander, it is addressed to all units of the OG North.

⁹⁸⁷ Ex. 1016, Report of the 3rd Corps Morale Department, 4 September 1994; Ex. 826 (under seal), paras 62, 64-66, 75; PW-9, T. 5596-5601, 5603-5604, 5699-5700, 5728-5730, 8736-8737 (private session); Ex. 361, 3rd Corps Regular Combat Report, 8 October 1994; Ex. 837, Attack Decision of the Commander of the 3rd Corps, 20 August 1994; Ex. 838, Report on Situation in the 3rd Corps Area of Responsibility, 29 August 1994; Ajman Awad, Hearing Sarajevo, T. 195-196. *See also* PW-9, T. 5762-5763 (private session); Ajman Awad, Hearing Sarajevo, T. 66-68, 73-78, 218-219; Ex. 1128, Order of the Commander of the 3rd Corps, 16 September 1994.

⁹⁸⁸ Ex. 1020, Report of the 3rd Corps, 3 October 1994; PW-9, T. 5606-5607, 5612-5614, 8653-8655, 5663; Ajman Awad, Hearing Sarajevo, T. 73-75; Ex. 839, Combat Report of the 3rd Corps Command, 3 October 1994; Ex. 1386, EMD Bulletin; Ex. 1201, Collection of Faxes and Communications Between Mujahedin and the Islamic Cultural Institute in Milan, 1993-1995. *See also* Ex. 1128, Order of the Commander of the 3rd Corps, 16 September 1994.

⁹⁸⁹ Ex. 826 (under seal), paras 86, 100, 130-131; Ajman Awad, Hearing Sarajevo, T. 70, 73, 83-84. *See* Ex. 1021, Memorandum of the 3rd Corps Command, 25 October 1994; Ex. 1022, Combat Report of the 3rd Corps, 11 November 1994; Ex. 1142, War Diary of the 3rd Corps, 1 December 1993-6 September 1995; Ex. 1154, Combat Report of the Command of the 3rd Corps, 2 November 1994.

⁹⁹⁰ Ajman Awad, Hearing Sarajevo, T. 66-72.

⁹⁹¹ Ajman Awad, Hearing Sarajevo, T. 66-72, 191-195. *See* Ex. 826 (under seal), para. 136. The witness also explained that other ABiH units pressured the 3rd Corps and the 35th Division Commanders to carry out an attack. According to Ajman Awad (Hearing Sarajevo, T. 68), those other units were “full of zeal”.

⁹⁹² *See* para. 394 *infra*.

390. In March 1995, the EMD opposed an order by the 3rd Corps to prepare for combat on the Vlašić plateau in a joint action of the 3rd and the 7th Corps.⁹⁹³ The EMD justified this by submitting that it was “not ready enough”.⁹⁹⁴ Consequently, the 3rd Corps Commander annulled his order.⁹⁹⁵ One witness testified that in April 1995, EMD members abandoned the positions at the front-line without prior notice and for unknown reasons.⁹⁹⁶

b. EMD Participation in Combat in the “Vozuća Pocket” in 1995

391. In the spring of 1995, the ABiH commenced a major military enterprise aimed at taking control of the so-called “Vozuća pocket” from VRS forces. This included a number of small-scale preparatory operations and ultimately, in a simultaneous move in September 1995, units of the 3rd Corps attacked the pocket from the west (Operation *Farz*), while units of the 2nd Corps advanced from the east (Operation *Uragan*).⁹⁹⁷

i. Operations *Sabur* and *Proljeće*

392. Three operations of a smaller scale, with a view to gain tactical positions, preceded Operations *Farz* and *Uragan*. Those operations were conducted by the 35th Division with the authorisation of the 3rd Corps Command.⁹⁹⁸ The EMD was re-subordinated to the 35th Division for this purpose, and redeployed to the area of Zavidovići.⁹⁹⁹

393. In April 1995, Operation *Sabur* was launched to gain control over the south-eastern part of the Krivaja valley.¹⁰⁰⁰ The EMD was given the task by the 35th Division Commander to “[c]arry out

⁹⁹³ Ex. 1029, Order of 3rd Corps Commander, 24 March 1995; Haso Ribo, T. 7039.

⁹⁹⁴ Haso Ribo, T. 7039-7040; Ex. 1029, Order of 3rd Corps Commander, 24 March 1995.

⁹⁹⁵ Haso Ribo, T. 7047; Ex. 395, Order of Sakib Mahmuljin to EMD, 28 March 1995.

⁹⁹⁶ Ahmed Šchić, T. 5067-5070, 5087; Ex. 697, Combat Report of 326th Mountain Brigade, 29 January 1995.

⁹⁹⁷ The “Vozuća pocket” is a rugged area in central Bosnia and includes a part of the Krivaja River valley east of Zavidovići. See Sead Delić, T. 2710-2711, 2738; Fadil Hasanagić, T. 2935-2936, 3091.

⁹⁹⁸ Fadil Hasanagić, T. 2935-2937, 2941, 2947-2948, 2955-2956; Kadir Jusić, T.2495-2497; Sinan Begović, T. 444-445.

⁹⁹⁹ Ajman Awad, Hearing Sarajevo, T. 70, 73; Fadil Hasanagić, T. 2939, 3256, 2966-2967; Ex. 826 (under seal), paras 86-87, 100, 130; Ex. 431, Order of the 3rd Corps Commander on Subordination of the EMD to the 35th Division, 31 March 1995; Ex. 396, Order Activating the EMD in the Zone of Responsibility of the 35th Division, 2 June 1995.

¹⁰⁰⁰ Fadil Hasanagić, T. 2935; Ex. 432, Order of the Commander of the 35th Division for “Sabur-95”, April 1995; Ex. 1025, Map; Ex. 797, Maps Concerning Military Operations in the Vozuća Area, n. 3.

[a] sudden and strong, moving attack in the early morning hours [...]”.¹⁰⁰¹ However, the evidence is inconclusive whether the EMD participated in the operation.¹⁰⁰² The operation was unsuccessful.¹⁰⁰³

394. On 27 May 1995, Operation *Proljeće* was launched, in which the Podsjelovo ridge to the north-east of Zavidovići was successfully taken from the VRS.¹⁰⁰⁴ The operation was spearheaded by the EMD and units of the 328th Mountain Brigade, as ordered by the 35th Division Commander.¹⁰⁰⁵ Following its capture, EMD soldiers stayed at the Podsjelovo ridge for about six days to fortify the new positions.¹⁰⁰⁶ They were assisted in this task by soldiers of the 5th Battalion of the 328th Brigade.¹⁰⁰⁷

ii. Operation *Proljeće* II

395. According to Ajman Awad, Sakib Mahmuljin, the 3rd Corps Commander, made a “recommendation” to the EMD after Operation *Proljeće* to change the direction of its attack to features overlooking the Paljenik elevation, and the EMD adjusted its plans accordingly.¹⁰⁰⁸ EMD members also consulted with the 35th Division Command to coordinate tasks and agree on the exact time of the operation.¹⁰⁰⁹

396. On 21 July 1995, Operation *Proljeće* II was launched with a view to capture the area of Krčevine and the features of Gaj and Malovan.¹⁰¹⁰ The 35th Division ordered the EMD to launch an attack in the Podsjelovo area.¹⁰¹¹ The 3rd Corps reported to the Main Staff that the EMD was “the primary leader of the upcoming tasks”.¹⁰¹² In the early morning hours of 21 July 1995, EMD forces

¹⁰⁰¹ Ex. 432, Order of the Commander of the 35th Division for “Sabur-95”, April 1995, p. 6.

¹⁰⁰² Ex. 433, Report on Delivery of Combat Documents Concerning Operation “Sabur-95”, 3 April 1995; Ex. 1025, Map; Ex. 362, 3rd Corps Regular Combat Report, 3 April 1995; Fadil Hasanagić, T. 2935-2936, 3122-3123. *See also* Ajman Awad, Hearing Sarajevo, T. 83; Ex. 826 (under seal), para. 137.

¹⁰⁰³ Fadil Hasanagić, T. 2935-2936, 3122-3123. *See also* Sinan Begović, T. 444-445.

¹⁰⁰⁴ Fadil Hasanagić, T. 2935-2936, 2954-2955. *See* Ex. 430, Map Marked by Fadil Hasanagić, where Podsjelovo is marked as “8”; Ex. 436, Map of the “Proljeće-95” Operation; Ex. 489, Operative Report of the Commander of the 2nd Manoeuvre Battalion, 28 May 1995.

¹⁰⁰⁵ Fuad Zilkić, T. 5304-5305, 5344-5345; Ex. 435, Combat Order of the Commander of the 35th Division for “Proljeće-95”, 24 May 1995; Ex. 1036, Map; Ex. 574, Report of the Security Service of the 35th Division, 27 May 1995; Sinan Begović, T. 452-453; Ex. 826 (under seal), paras 137, 172; Ex. 797, Maps Concerning Military Operations in the Vozuća Area, no. 5; Fadil Hasanagić, T. 2948-2949; Ex. 1037, Report of the 35th Division Command, 28 May 1995; Ex. 1038, Report of the 35th Division Commander, 1 June 1995.

¹⁰⁰⁶ Sinan Begović, T. 452-453; Ex. 826 (under seal), para. 172.

¹⁰⁰⁷ Fuad Zilkić, T. 5302; Ahmet Šehić, T. 5080; Ex. 703, Order of the Commander of the 5th Battalion of the 328th Brigade, 30 May 1995. *See also* Sinan Begović, T. 452-453; Ajman Awad, Hearing Sarajevo, T. 90.

¹⁰⁰⁸ Ajman Awad, Hearing Sarajevo, T. 93-94.

¹⁰⁰⁹ Ex. 602, Regular Combat Report of the 3rd Corps, 6 July 1995, p. 3; Ex. 826 (under seal), paras 212-213.

¹⁰¹⁰ Fadil Hasanagić, T. 2936-2937, 2955, 2980-2981; Ex. 430 and Ex. 448, Maps Marked by Fadil Hasanagić.

¹⁰¹¹ Ex. 444, Order of the Commander of the 35th Division for the Continuation of “Proljeće-95 II”, 18 July 1995, p. 7; Ex. 445, Map of the “Proljeće-95 II” Operation.

¹⁰¹² Ex. 606, Report Combat Report of the 3rd Corps, 18 July 1995; Ex. 525, Report of the 3rd Corps Command on Combat Operations, 18 July 1995, referring to the EMD as the “main unit in charge of the coming assignment”; Ex. 789, Combat Report of the Commander of the 328th Brigade, 3 August 1995, p. 3, reporting that *Proljeće* II was

broke through the enemy lines, entered the villages of Krčevine and Kesten in the wider Podsjelovo area, and took an elevation of strategic importance, “Trigonometry 551”.¹⁰¹³ During the operation, the EMD successfully prevented “any further progress by the Chetniks”, as instructed by the 35th Division Commander.¹⁰¹⁴ During the operation, the EMD shared an IKM with other ABiH units subordinated to the 35th Division which took part in the fighting.¹⁰¹⁵ Ultimately, the operation was successful and the EMD even captured a tank.¹⁰¹⁶ EMD soldiers subsequently stayed in that area for some days to fortify the new positions, before returning to Livade.¹⁰¹⁷

iii. Operations *Farz* and *Uragan*

397. In accordance with the military priorities envisaged by the ABiH Main Staff at the beginning of 1995, the Commanders of the 2nd and 3rd Corps, Sead Delić and Sakib Mahmuljin, planned Operation *Uragan* and Operation *Farz* to repel the VRS from the Vozuća pocket.¹⁰¹⁸ Rasim Delić signed the maps of the operations where the plan of attack was set out.¹⁰¹⁹ The map of Operation *Farz* contained no explicit reference to units subordinated to the 35th Division, such as the EMD.¹⁰²⁰ However, the EMD was referred to in the attack order by the Commander of the 35th Division.¹⁰²¹

conducted “according to a plan” of the EMD; Ex. 1044, Order of the Commander of the 329th Brigade, 19 July 1995; Fuad Zilkić, T. 5325-5326. *See also* Ex. 826 (under seal), paras 202-204, 207-208; PW-9, T. 5706.

¹⁰¹³ Sinan Begović, T. 454-457; Ex. 826 (under seal), paras 214-215; Ex. 526, Extraordinary Combat Report of the 3rd Corps Command, 21 July 1995; Ex. 537, Compilation of Reports of the Main Staff, July 1995; Ex. 668 (under seal); Ex. 75, Map Marked by Sinan Begović; Ex. 375, Three Reports on the Successes of Units of the ABiH, 22 July 1995, p. 4; Ex. 789, Combat Report of the Commander of the 328th Brigade, 3 August 1995, p. 6.

¹⁰¹⁴ Ajman Awad, Hearing Sarajevo, T. 104; Ex. 1049, Combat Report of the 35th Division Commander, 27 July 1995.

¹⁰¹⁵ Ex. 449, Order of the Commander of the 35th Division, 16 July 1995. *See* Fadil Hasanagić, T. 2979-2981; Ex. 448, Map Marked by Fadil Hasanagić.

¹⁰¹⁶ Ajman Awad, Hearing Sarajevo, T. 97-98, 261. *See also* para. 372 *supra*.

¹⁰¹⁷ Sinan Begović, T. 458-459; Ex. 826 (under seal), para. 238, testifying that the EMD stayed on the frontline until the arrival of ABiH units which were supposed to take over duty at the frontline.

¹⁰¹⁸ Ex. 384, Directive for the Continuation of Offensive Combat Operations, 5 January 1995; Sead Delić, T. 2713, 2737-2739; Ex. 397, Map Marked by Sead Delić; Kadir Jusić, T. 2640, 2590, 2587-2588, 2496-2497; Fadil Hasanagić, T. 3013-3014, 3030-3031, 3248; Ismet Alija, T. 4211; Ex. 385, Order of 3rd Corps Commander Concerning Combat Readiness, 22 August 1995, p. 3, item 1; Ex. 826 (under seal), para. 257; Ex. 505, Plan of the Operation “Farz”, 25 August 1995; Ex. 389, Order of 3rd Corps Concerning Command and Control for Operation Farz, 8 September 1995.

¹⁰¹⁹ Ex. 387, Map of Operation Farz; Kadir Jusić, T. 2500-2501, 2579-2581; Haso Ribo, T. 7054-7055; Vahid Karavelić, T. 7929, testifying that Rasim Delić’s involvement was limited solely to the approval of the operation.

¹⁰²⁰ Kadir Jusić, T. 2579-2581, testifying that the map of Operation *Farz* did not report the activities of any particular unit of the 35th Division at the level of battalion; Ex. 380, Map of Operation Farz; Ex. 381, Map of Operation Farz Marked by Kadir Jusić.

¹⁰²¹ Ex. 461, Order of the Commander of the 35th Division, 25 August 1995, p. 5; Fadil Hasanagić, T. 3015-3017; Kadir Jusić, T. 2580-2581; Ex. 1063, Map. *See also* Ex. 1064, Report of the 35th Division Commander, 28 August 1995, which is a report on preparatory activities related to Operation *Farz* mentioning the EMD.

398. On 25 August 1995, the Commander of the 35th Division ordered the EMD to capture from the VRS the elevation of Paljenik, “the gateway to enter the Vozuća pocket”.¹⁰²² In the morning of 10 September 1995, the EMD took the Paljenik feature within a very short time.¹⁰²³ In the evening of that day, the Commander of the 35th Division issued an order according to which the EMD “shall be kept for intervention [...] along the defence line in the sector of the Kesten village, Kosa village and Prokop”.¹⁰²⁴ The EMD was in fact present in the area of Kesten on 11 September 1995.¹⁰²⁵

399. On 11 September 1995, the 2nd and 3rd Corps forces linked up at Prokop and jointly advanced towards Kvrge.¹⁰²⁶ EMD forces and the 2nd and 4th Manoeuvre Battalions of the 35th Division were ordered by the Commander of the 35th Division to move in the direction of Kvrge.¹⁰²⁷ The evidence shows that the EMD moved accordingly along this axis.¹⁰²⁸ During the operation, an officer of the 35th Division command was present at the IKM of the EMD.¹⁰²⁹

400. Also on 11 September 1995, the Commander of the 35th Division issued an order re-subordinating the 5th Manoeuvre Battalion to the EMD to participate in combat at Radulovo Brdo and Karačić.¹⁰³⁰ The evidence shows that some units of the 35th Division launched an offensive along this axis.¹⁰³¹

401. In the afternoon of 11 September 1995, when Vozuća had been taken by the ABiH, President Izetbegović arrived there and met with the commanders of the participating units,

¹⁰²² Ex. 505, Plan of the Operation “Farz”, 25 August 1995; Kadir Jusić, T. 2515; Ex. 461, Order of the Commander of the 35th Division, 25 August 1995; Ex. 1060, Map; Ex. 463, Record of Delivery of an Order to Attack to the EMD, 25 August 1995.

¹⁰²³ Units of the 35th Division provided artillery support to the EMD, Kadir Jusić, T. 2515-2516, 2522-2523, 2525; Fuad Zilkić, T. 5308; Sinan Begović, T. 462. *See also* Haso Ribo, 7135-7138. The EMD also reported by phone to the 3rd Corps Command that it had seized Paljenik, Kadir Jusić, T. 2663. *See also* Ex. 394, Operations Log of the 3rd Corps, 9-10 September 1995, p. 4.

¹⁰²⁴ Ex. 466, Order of the Commander of the 35th Division, 10 September 1995; Ex. 469, Map Marked by Fadil Hasanagić. The Prosecution submits that the EMD was in Kesten on 11 September 1995 in accordance with this order, Prosecution Final Brief, paras 75, 77, 79.

¹⁰²⁵ *See paras 287 et seq. supra.*

¹⁰²⁶ Fuad Zilkić, T. 5308, 5311-5312, 5385-5388; Ex. 467, Order of the Commander of the 35th Division, 11 September 1995; *see* Ex. 802, Map Marked by Fuad Zilkić and Ex. 803, Map Marked by Fuad Zilkić.

¹⁰²⁷ Ex. 467, Order of the Commander of the 35th Division, 11 September 1995.

¹⁰²⁸ Ex. 467, Order of the Commander of the 35th Division, 11 September 1995; Fuad Zilkić, T. 5384-5387; Fadil Hasanagić, T. 3039, 3043-3044; Ex. 849, Map Marked by PW-9; PW-9, T. 5709-5710.

¹⁰²⁹ Ex. 464, Order of the Commander of the 35th Division, 6 September 1995; Ajman Awad, Hearing Sarajevo, T. 107-108.

¹⁰³⁰ Fadil Hasanagić, T. 3044, 3162; Ex. 468, Order of the Commander of the 35th Division, 11 September 1995; *see* Ex. 469, Map Marked by Fadil Hasanagić.

¹⁰³¹ Ex. 481, Report of the Commander of the 328th Brigade, 16 October 1995. The Trial Chamber notes that Ex. 481 does not show whether the EMD was involved.

including the EMD.¹⁰³² On the following day, President Izetbegović attended a ceremony in the centre of Vozuća in the presence of both the EMD and other ABiH members.¹⁰³³

402. On 15 September 1995, the 35th Division Commander ordered his subordinate units, including the EMD, to resume combat activities in the Maglaj area. The EMD complied with this order.¹⁰³⁴ By 11 October 1995, combat in the wider Vozuća area came to an end.¹⁰³⁵

(iii) EMD Compliance With ABiH Procedure Concerning the Handling of Captured Enemies

403. In July 1995, the EMD took the detainees captured by them during Operation *Proljeće II* to Livade and subsequently to Kamenica Camp.¹⁰³⁶ However, 11 captured Bosnian Muslims, who had been members of a VRS work platoon, were handed over shortly thereafter to the ABiH, whereas 12 VRS soldiers were delivered to the Kamenica Camp and held there for several weeks.¹⁰³⁷ By doing so, the EMD did not comply with the obligations as set out by the 35th Division Commander concerning the handling of captives taken during combat:

[b]ring in all prisoners to the nearest unit's [security organ], and then to the 35th Division [security organ]. Collection centre in Zavidovići, with the 35th Division Military Police Company.

[...]

Gather prisoners of war at the SRZ / prisoner of war collection point/ at the school in Kovači village [...] their evacuation, questioning and subsequent care is within the competence of the 35th dKoV intelligence and security organ.¹⁰³⁸

404. Likewise, in September 1995, the EMD detained 62 VRS soldiers, as well as three Bosnian Serb women, at the Kamenica Camp for several weeks.¹⁰³⁹ This was in defiance of the ABiH combat order for operation *Farz* stipulating that:

Take the military prisoners of war with the captured documentation and hand them over to the military police company.¹⁰⁴⁰

¹⁰³² Sead Delić, T. 2779-2782, 2785, 2922; Ex. 409, Video Clip; Ex. 410, Pictures Marked by Sead Delić, 11 September 1995; Ex. 424, Picture Marked by Sead Delić; Ex. 425, Picture Marked by Sead Delić.

¹⁰³³ Fadil Hasanagić, T. 3060, 3066-3067; Ex. 474, Order of the Commander of the 35th Division, 11 September 1995.

¹⁰³⁴ Ex. 478, Order of the Commander of the 35th Division, 15 September 1995; Fadil Hasanagić, T. 3066, 3161. *See also* Ex. 481, Report of the Commander of the 328th Brigade, 16 October 1995.

¹⁰³⁵ Sead Delić, T. 2751; Fuad Zilkić, T. 5339; Ex. 1082, Order of the 3rd Corps Commander on a Ceasefire, 11 October 1995; Ex. 1083, Order of the 2nd Corps Commander on a Ceasefire, 11 October 1995; Ex. 481, Report of the Commander of the 328th Brigade, 16 October 1995.

¹⁰³⁶ *See paras 238 et seq. supra.*

¹⁰³⁷ Ex. 499, Report of the 3rd Military Police Battalion of the 3rd Corps, 29 August 1995; Velibor Trivičević, T. 3617-3619; Ex. 927, Witness Statement of Branko Šikanić, 13 December 1999, p. 9; Fadil Hasanagić, T. 3216-3217; Fadil Imamović, T. 3992-3993, 4003; Ex. 581, Report of the Security Service of the 3rd Corps, 23 July 1995. *See also paras 238 et seq. supra.*

¹⁰³⁸ Ex. 444, Order of the Commander of the 35th Division, for the Continuation of "Proljeće-95 II", 18 July 1995, pp 11, 15. *See also* Izudin Hajderhodžić, T. 3791-3792; Sejfulah Mrkaljević, T. 3949-3950.

¹⁰³⁹ *See also paras 285 et seq. supra.*

405. In September 1995, a number of Bosnian Serb detainees were handed over to members of the MP Battalion of the 3rd Corps at the Kamenica Camp.¹⁰⁴¹ The officer-in-charge of the MP Battalion acted on the assumption that an agreement on the handover of detainees had been reached between the EMD and the 3rd Corps.¹⁰⁴² According to one witness, it was “normal” that the MP Battalion and the EMD would act in a consensual manner because the two units were not in a hierarchical relationship.¹⁰⁴³

(iv) Access to EMD Premises and Captured Enemies

406. Evidence has been led showing that on some occasions, the EMD did not allow other ABiH units unqualified access to its premises. Access was denied in particular when military police and security service wanted to conduct interviews with captives in the hands of the EMD or when conducting criminal investigations.¹⁰⁴⁴

407. On one occasion, officers of the OG North who carried out a field inspection in August 1994 were denied access to facilities of the EMD.¹⁰⁴⁵

408. The report of a 35th Division security officer of 22 July 1995 mentions a conversation with captured VRS soldiers in Livade “carried out with the approval of Abu Mali” who had authorised “only [...] a short interview”.¹⁰⁴⁶ The 35th Division’s Assistant Commander for Security testified that, despite having been given access to carry out a short interview with the VRS detainees, he left out of concern for his own safety after one of the EMD soldiers started threatening him.¹⁰⁴⁷ On the same day, the 3rd Corps Security Service reported that “[a]ll those captured are under the control of the [EMD], who do not allow any access to them”.¹⁰⁴⁸ The Intelligence Service of the 3rd Corps

¹⁰⁴⁰ Ex. 505, Plan of the Operation “Farz”, 25 August 1995, pp 13-14; Fadil Hasanagić, T. 3250-3251; Fuad Zilkić, T. 5393.

¹⁰⁴¹ Ex. 876, List of Bosnian Serb Prisoners, 19 October 1995; Ex. 853 (under seal); Ex. 926, Witness Statement of Zakir Alispahić, 22 December 2005, paras 32-38, 55-68.

¹⁰⁴² Ex. 926, Witness Statement of Zakir Alispahić, 22 December 2005, paras 55-60.

¹⁰⁴³ Zaim Mujezinović, T. 6097-6098, 6100-6101, 6104-6105.

¹⁰⁴⁴ Ex. 1300, Report of the Head of the State Security Service, 14 December 1995; Haso Ribo, T. 7016-7018, 7022-7023; PW-11, T. 6313 (closed session); Sejfulah Mrkaljević T. 3898; Ex. 1058, Report of the Assistant Commander for Security of the 3rd Corps, 17 August 1995; Ex. 710, Bulletin No. 161 of the Military Security Administration, 18 August 1995, p. 3. *See also* Ex. 770, Witness Statement of Salih Spahić, 20 September 2006, para. 10; Fadil Hasanagić, T. 3139-3140, 3151; *but see* Ex. 826 (under seal), para. 129.

¹⁰⁴⁵ Haso Ribo, T. 7015-7017; Ex. 1185, Order of the 3rd Corps Chief of Staff, 29 August 1994.

¹⁰⁴⁶ Ex. 553, Report of the Assistant Commander for Security of the 35th Division, 22 July 1995. *See also* Fadil Imamović, T. 3987-3990.

¹⁰⁴⁷ Fadil Imamović, T. 3990.

¹⁰⁴⁸ Ex. 580, Report of the Security Service of the 3rd Corps, 22 July 1995, p. 2; Ekrem Alihodžić, T. 6433-6434. *See also* Ex. 581, Report of the Security Service of the 3rd Corps, 23 July 1995; Ex. 582, Bulletin of the General Staff Security Administration, 22 July 1995, pp 4-5.

reported that it intended to “request approval to contact the prisoners [...] at [the EMD’s] camp [...]” from the commander of the EMD.¹⁰⁴⁹

409. An intelligence officer of the 3rd Corps testified that, although he received authorisation by the Commander of the 3rd Corps to seize certain documents from the EMD and make contact with the detainees held by the EMD, he only attempted to retrieve the documents and did not contact the detainees because his superior had told him that the matter was within the competence of the Military Security Service.¹⁰⁵⁰

410. At some time after Operation *Farz* took place, ABiH security officers from the 35th Division and the 3rd Corps went to the Kamenica Camp to verify rumours that the EMD held a number of captured VRS soldiers.¹⁰⁵¹ However, at the gate of the Camp, they were denied access to the premises and told that there were no detainees. The officers left without having accomplished their mission and reported this incident to the 3rd Corps.¹⁰⁵²

411. The Trial Chamber was presented with evidence showing that on two occasions, the Commander of the 3rd Corps, Sakib Mahmuljin, visited the EMD headquarters at *Vatrostalna*.¹⁰⁵³ The evidence also shows that meetings between the Commander of the 35th Division and the EMD command were held at the EMD’s “place of deployment”.¹⁰⁵⁴ There were other instances where ABiH soldiers were allowed to take part in prayers at the Kamenica Camp.¹⁰⁵⁵

(v) Recruitment of Locals by the EMD and Replenishment With ABiH Soldiers

412. The Order of 13 August 1993 establishing the EMD provided for the replenishment of the EMD “with foreign volunteers currently on the territory of the 3rd Corps area of responsibility”, also stating that “these people keep the weapons and other equipment which has already been issued to them”.¹⁰⁵⁶ However, local Bosnian Muslim men also joined for religious reasons and due to the

¹⁰⁴⁹ Ex. 554, Report of the Desk Officer of the Intelligence Department of the 3rd Corps, 24 July 1995, p. 3.

¹⁰⁵⁰ Sejfulah Mrkaljević T. 3894, 3897-3898, 3900-3901. It should be noted, however, that Mrkaljević testified that in fact he never discussed the VRS detainees with the Commander of the 3rd Corps because his superior, Edin Husić, instructed him not to, Sejfulah Mrkaljević T. 3892; *but see* Edin Husić, T. 4455, who stated that he could not recall such instructions and disavowed that he would interfere with the Commander’s decision.

¹⁰⁵¹ Hamdija Šljuka, T. 4310-4311, 4315-4316, 4325-4329, 4363, 4365-4367, 4374; PW-4, T. 4825-4827, 4830-4831 (closed session); PW-11, T. 6271, 6273-6274 (closed session).

¹⁰⁵² Hamdija Šljuka, T. 4325-4329, 4373-4374. *See also* PW-4, T. 4825-4826, 4830 (closed session); PW-11, T. 6271, 6273-6274 (closed session).

¹⁰⁵³ Ex. 826 (under seal), paras 53, 118-119.

¹⁰⁵⁴ Fadil Hasanagić, T. 2960. In August 1993, an inception ceremony for the EMD was held in Mehurići, which was attended by various ABiH commanders, Ajman Awad, Hearing Sarajevo, T. 42-43.

¹⁰⁵⁵ Ex. 826 (under seal), paras 53, 118-119, 238-240; Ex. 926, Witness Statement of Zakir Alispahić, para. 56.

¹⁰⁵⁶ *See* paras 174-177 *supra*.

EMD's superior equipment and combat morale.¹⁰⁵⁷ These locals soon outnumbered the foreign members of the EMD.¹⁰⁵⁸

413. It appears that the move of fighters from the ABiH to the group of Mujahedin which later became the EMD was not – at least not initially – approved by the ABiH.¹⁰⁵⁹ In one instance, the Commander of the 3rd Corps ordered the EMD to return to the 328th Brigade soldiers that had joined the EMD's ranks.¹⁰⁶⁰ However, there is evidence that the ABiH, in spite of some efforts,¹⁰⁶¹ could not effectively prevent those moves because, as the evidence suggests, it shied away from conflict with the EMD.¹⁰⁶² But the evidence also suggests that subsequent authorisation for some of the transfers was given by the ABiH units which the local Bosnians had left.¹⁰⁶³ On several occasions between 22 October 1994 and 22 December 1994, the 3rd Corps Command transferred personnel to the EMD.¹⁰⁶⁴

414. In early 1995, the 3rd Corps Command ordered that the staffing of the EMD be limited and that further admittance of local and foreign fighters be suspended “because the EMD had reached the manning levels foreseen by the formation units”.¹⁰⁶⁵ At the same time, the evidence shows that still in August 1995, the 3rd Corps Command kept transferring soldiers from its units to the EMD.¹⁰⁶⁶ Local Bosnian Muslims continued joining the EMD up until its disbandment.¹⁰⁶⁷

415. Furthermore, the evidence shows that in the beginning of 1995, some Bosnian members of the EMD were appointed to high positions within the unit. In 1994, one of them became the deputy

¹⁰⁵⁷ See para. 184 *supra*.

¹⁰⁵⁸ PW-9, T. 5641-5642; Ajman Awad, Hearing Sarajevo, T. 153-154; Ex. 683, Report of the Chief of the Security Service of the 3rd Corps, 26 February 1994, referring to 59 foreigners and 152 locals fighting in the EMD. See paras 183-185 *supra*.

¹⁰⁵⁹ Šaban Alić, T. 674-675; Sinan Begović, T. 405-407 (“Later, I found out that we received some sort of permit ... we were never given [documentation]. We just heard this.”), 514-516; PW-11, T. 6410-6411 (closed session); Ex. 65, Request for Approval for the Transfer of Soldiers from the EMD to the 306th Brigade, 9 September 1993 and attached List, 28 August 1993; *but see* Ex. 577, Report of the Security Service of the 35th Division, 6 August 1995; Fadil Imamović, T. 3979-3980 (“wilful abandonment without approval”); Osman Fuško, T. 1142.

¹⁰⁶⁰ Ex. 590, Order of the 3rd Corps Commander to the EMD, 9 August 1995; Fadil Imamović, T. 4055; Hajrudin Hubo, T. 7665-7667. See also PW-11, T. 6411-6412 (closed session); Ajman Awad, Hearing Sarajevo, T. 214-216.

¹⁰⁶¹ PW-9, T. 5679; Halim Husić, T. 7510-7512; Ex. 925, Witness Statement of Sead Žerić, 21 May 2007, para. 32.

¹⁰⁶² Osman Fuško, T. 1138-1139.

¹⁰⁶³ Sinan Begović, T. 406-407.

¹⁰⁶⁴ Ex. 1145, Order of the Commander of the 3rd Corps, 22 October 1994; Ex. 1146-1152, Orders of the Commander of the 3rd Corps, 25 October 1994; Ex. 1156, Order of the Commander of the 3rd Corps, 16 December 1994; Ex. 1157, Order of the Commander of the 3rd Corps, 22 December 1994.

¹⁰⁶⁵ The Trial Chamber has not been presented with this order. However, Ex. 591, Request of the Security Service of the 3rd Corps, 22 April 1995, mentions that such an order was issued by the 3rd Corps Commander; Fadil Imamović, T. 4056-4057; Ekrem Alihodžić, T. 6476-6477; PW-9, T. 5681-5682. Hajrudin Hubo (T. 7666) testified that the EMD constantly tried to circumvent this order.

¹⁰⁶⁶ Ex. 1164-1167, Orders of the Commander of the 3rd Corps, 16 August 1995; Hajrudin Hubo, T. 7671-7672; Ex. 1169, Unit Card Files of 7th Muslim Brigade Members Transferred to the EMD, 4 September 1995.

¹⁰⁶⁷ Ajman Awad, Hearing Sarajevo, T. 221-222; PW-9, T. 5681-5682; Ex. 1286, Report of the Military Security Administration, 8 September 1995, p. 3; Ex. 1293, Report of the Military Security Administration, 11 October 1995, p. 3.

of the military commander of the EMD.¹⁰⁶⁸ Local Bosnian Muslims were also leading some of the combat groups within the EMD.¹⁰⁶⁹

(vi) Mutual ABiH Assistance Between ABiH and EMD

416. On a number of occasions, the ABiH temporarily re-subordinated soldiers and units to the EMD for particular combat operations.¹⁰⁷⁰ These ABiH soldiers were mostly used for specific auxiliary tasks, but occasionally also in combat.¹⁰⁷¹ ABiH soldiers, as well as entire units of the ABiH such as the 5th Manoeuvre Battalion of the 35th Division, were re-subordinated to the EMD and participated both in Operations *Proljeće II*¹⁰⁷² and *Farz*.¹⁰⁷³

417. The evidence also shows that the units of the ABiH provided support needed by the EMD, in particular in reconnoitring,¹⁰⁷⁴ de-mining¹⁰⁷⁵ or in evacuation of wounded fighters.¹⁰⁷⁶ During the 1995 combat operations in the Vozuća area, the EMD received artillery support from its superior

¹⁰⁶⁸ PW-9 (T. 5562-5563, 5620-5621, 5645-5648) testified that this appointment was “just for the sake of meeting the establishment form”, *i.e.*, that the function existed only on paper; Ex. 826 (under seal), paras 150, 152-154.

¹⁰⁶⁹ Sinan Begović, T. 450, 454.

¹⁰⁷⁰ Ex. 1234, Order of the 328th Mountain Brigade Commander, 14 September 1995. *See also* Ex. 1068, Report of the 35th Division Commander, 29 August 1995, p. 3; Haso Ribo, T. 7134-7136; Ex. 794, Report of the Chief of the Security Service of the 3rd Corps, 19 October 1995; Fuad Zilkić, T. 5301-5302, 5305, 5423-5426; Ex. 479, Excerpt from Regular Operations Report of the Commander of the 35th Division, 22 September 1995, p. 3; Fadil Hasanagić, T. 3310; Ex. 700, Order of the Commander of the 328th Brigade, 23 May 1995, p. 2; Ex. 699, Order of the Commander of the 328th Brigade, 19 May 1995, pp 4-5; Ahmet Šehić, T. 5073-5076, 5080, 5088-5090; Ex. 703, Order of the Commander of the 5th Battalion of the 328th Brigade, 30 May 1995; Ex. 701, Report of the Commander of the 328th Mountain Brigade, 24 May 1995, p. 4; Ex. 793, Order of the Commander of the 35th Division, 25 August 1995; Ex. 505, Plan of the Operation “Farz”, 25 August 1995, pp 5-10.

¹⁰⁷¹ Ahmet Šehić, T. 5075-5076.

¹⁰⁷² Ex. 789, Combat Report of the Commander of the 328th Brigade, 3 August 1995, p. 6; Ex. 444, Order of the Commander of the 35th Division, for the Continuation of “Proljeće-95 II”, 18 July 1995, pp 6-8.

¹⁰⁷³ Ex. 505, Plan of the Operation “Farz”, 25 August 1995, pp 7-8, subordinating the 4th Manoeuvre Battalion to the EMD; Ex. 793, Order of the Commander of the 35th Division, 25 August 1995, which reports an assignment to 200 men out of 328th Brigade to carry out the evacuation of the wounded “for the purposes of the El Mujahedin Detachment”. Zilkić testified that soldiers were also seconded to the EMD for combat activities, Fuad Zilkić, T. 5301, 5305, 5371-5372; Ex. 465, Order of the Commander of the 35th Division, 7 September 1995, re-subordinating the 3rd Manoeuvre Battalion to the EMD; Ex. 468, Order of the Commander of the 35th Division, 11 September 1995, re-subordinating the 5th Manoeuvre Battalion to the EMD; Ex. 794, Order of the Commander of the 35th Division, 3 September 1995. *See also* PW-9, T. 5732-5733 (private session) referring to military support requested by the EMD to the 35th Division Command; Ex. 479, Excerpt from Regular Operations Report of the Commander of the 35th Division, 22 September 1995, p. 3; Fadil Hasanagić, T. 3067-3068. Asked why he was subordinating the 5th Manoeuvre Battalion to the EMD, Fadil Hasanagić (T. 3044) testified that “[t]he manoeuvre battalion, a 100-man-strong unit, and given that combat activities were moving northwards, I re-subordinated the 5th Manoeuvre Battalion, which is mobilised out of Maglaj, to them because the activities were moving in the direction of Maglaj.”

¹⁰⁷⁴ Ajman Awad, Hearing Sarajevo, T. 64, 70-71; Ex. 812, Report of the Commander of the 328th Brigade, 16 August 1995, p. 3.

¹⁰⁷⁵ Ajman Awad, Hearing Sarajevo, T. 76-77; Ex. 1128, Order of the Commander of the 3rd Corps, 16 September 1994; Fuad Zilkić, T. 5370.

¹⁰⁷⁶ Ex. 700, Order of the Commander of the 328th Brigade, 23 May 1995; Ex. 702, Order of the Commander of the 328th Mountain Brigade, 24 May 1995; Ahmet Šehić, T. 5076-5077; Ex. 459, Report of the Commander of the 35th Division, 24 July 1995, p. 2; Ex. 793, Order of the Commander of the 35th Division, 25 August 1995; Fuad Zilkić, T. 5334-5335, 5371-5372; Ex. 479, Excerpt from Regular Operations Report of the Commander of the 35th Division, 22 September 1995, p. 3; Fadil Hasanagić, T. 3067-3068; Ex. 481, Report of the Commander of the 328th Brigade, 16 October 1995, p. 2.

unit – the 35th Division.¹⁰⁷⁷ Tactical support granted by the ABiH also included assistance in fortifying newly reached positions.¹⁰⁷⁸

418. The ABiH also provided the EMD with logistical support, including weaponry and ammunition, engineering assistance and medical services.¹⁰⁷⁹ However, the evidence suggests that this assistance was sporadic and insufficient, partly because the ABiH itself did not have sufficient resources, in particular in the initial phase of its existence, and because the EMD was also financed through separate channels.¹⁰⁸⁰ One witness testified that the Mujahedin even supported the ABiH financially.¹⁰⁸¹ Occasionally, the EMD supported the ABiH logistically.¹⁰⁸²

419. One former EMD member testified that the EMD soldiers began receiving a salary at the same time as other ABiH soldiers. This salary was higher than that of the regular ABiH soldiers.¹⁰⁸³ The evidence suggests that the salaries came from funds secured by the EMD.¹⁰⁸⁴

420. The ABiH also provided the EMD with the *Vatrostalna* barracks.¹⁰⁸⁵

421. In December 1994, two Bosnian members of the EMD attended a training session for ABiH officers held in Zenica.¹⁰⁸⁶ On several occasions in 1995, the EMD conducted military training for members of the 35th Division in a school in Čardak, not far from the Kamenica Camp.¹⁰⁸⁷ The training sessions also included religious instruction.¹⁰⁸⁸

¹⁰⁷⁷ Ajman Awad, Hearing Sarajevo, T. 87-88, 109; PW-9, T. 5732-5733. See Ex. 444, Order of the Commander of the 35th Division, for the Continuation of “Proljeće-95 II”, 18 July 1995, p. 9; Ex. 1072, Order of the 35th Division Commander, 3 September 1995.

¹⁰⁷⁸ Ex. 1072, Order of the 35th Division Commander, 3 September 1995; Fuad Zilkić, T. 5321, 5348-5349; Ahmet Šehić, T. 5080; Ex. 703, Order of the Commander of the 5th Battalion of the 328th Brigade, 30 May 1995; Ex. 699, Order of the Commander of the 328th Brigade, 19 May 1995, pp 4, 10; Ex. 701, Report of the Commander of the 328th Mountain Brigade, 24 May 1995, p. 4; Ex. 1054, Combat Report of the 3rd Corps Commander, 31 July 1995, p. 3; Sinan Begović, T. 452-453; Ajman Awad, Hearing Sarajevo, T. 90-92.

¹⁰⁷⁹ Fuad Zilkić, T. 5321-5323; Ex. 788, Combat Report of the Commander of the 328th Brigade, 14 July 1995, p. 3; Ex. 447, Order of the Commander of the 35th Division, 15 July 1995, p. 3; Ex. 450, Order of the Commander of the 35th Division, 20 July 1995; Ex. 451, List of Materiel and Technical Equipment for the EMD, 22 July 1995; Ex. 452, Interim Intelligence Report of the Commander of the 35th Division, 28 July 1995; Ex. 1055, Request of the Commander of the 35th Division, 4 August 1995; Fadil Hasanagić, T. 2982-2984, 3143, 3211-3212, 3287-3289; Ajman Awad, Hearing Sarajevo, T. 195-196, 260-261. See also PW-9, T. 5731-5733 (closed session).

¹⁰⁸⁰ PW-9, T. 5682-5683; Fadil Hasanagić, T. 3211-3212, 3289; Ajman Awad, Hearing Sarajevo, T. 260.

¹⁰⁸¹ Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 131.

¹⁰⁸² Ajman Awad, Hearing Sarajevo, T. 164, testifying that the EMD donated a vehicle to the 3rd Corps.

¹⁰⁸³ Ex. 826 (under seal), paras 84, 87, stating that 100 Deutschmarks was the salary for “special units” and that the EMD only received 80 Deutschmarks because 20 Deutschmarks would be paid in cigarettes, which the EMD did not accept; Hajrudin Hubo, T. 7695.

¹⁰⁸⁴ PW-9, T. 5683-5684; see PW-2, T. 780-781.

¹⁰⁸⁵ Ajman Awad, Hearing Sarajevo, T. 8, 24. See Ex. 1133, Order of the Commander of the 3rd Corps, 28 December 1995; Ex. 1315, Record on the Inspection of Facilities, 17 June 1995. See also Ex. 434, Preparatory Order of the Commander of the 35th Division, 7 April 1995, p. 2.

¹⁰⁸⁶ Ajman Awad, Hearing Sarajevo, T. 118-120, 241, 259-260; Ex. 1130, Order of the 3rd Corps Commander, 6 December 1994; Ex. 1023, Proposal of the 3rd Corps Command, 13 November 1994.

¹⁰⁸⁷ Ahmet Šehić, T. 5083-5084; Ex. 1056, Order of the 35th Division, 13 August 1995; Ex. 1067, Order of the 35th Division Commander, 28 August 1995; Ex. 1068, Report of the 35th Division Commander, 29 August 1995, p. 2;

422. Some EMD members were granted permission by the ABiH, in one instance even personally by Rasim Delić, to travel abroad for medical treatment.¹⁰⁸⁹ Passports were also issued to members of the EMD on the instruction of the 3rd Corps.¹⁰⁹⁰

(vii) Procedure of Reporting Followed by the EMD

423. The EMD as one of the ABiH units was obliged to report to the Command of the unit which was its immediate superior, this being, in 1995, either the Command of the 3rd Corps or that of the 35th Division. The Trial Chamber also heard evidence about a separate line of reporting from security organs of lower units to security organs of the superior units.¹⁰⁹¹

424. Fadil Hasanagić, the Commander of the 35th Division, testified that the EMD never submitted written or oral operative reports to the 35th Division.¹⁰⁹² In this regard, the Trial Chamber notes that the leadership of the EMD mainly consisted of foreigners who did not speak the local language, and who communicated with Bosnians through interpreters.¹⁰⁹³

425. Regarding EMD reports on security matters, the Trial Chamber recalls that the EMD had an Assistant Commander for Security, although the evidence suggests that this security organ existed only on paper.¹⁰⁹⁴ In the words of one witness,

Ex. 1069, Report of the 35th Division Commander, 30 August 1995; Ex. 1073, Memorandum of the 3rd Corps Security Service Department, 3 September 1995; Ex. 438, Regular Combat Report of the Commander of the 35th Division, 26 August 1995, p. 3; Fadil Hasanagić, T. 2949-2950, 2952-2953, 2960-2961, 2965-2966; Ex. 789, Combat Report of the Commander of the 328th Brigade, 3 August 1995, p. 7; Fuad Zilkić, T. 5325-5328; Ex. 1064, Report of the 35th Division Commander, 28 August 1995, pp 3-4; Ex. 575, Report of the Security Service of the 35th Division, 18 August 1995, p. 2; Ex. 512, Wartime Diary of the ABiH 3rd Corps for Operation "Farz-95", p. 7.

¹⁰⁸⁸ Ex. 774, Report of the Assistant Commander for Security of the 3rd Corps, 1 July 1995; Ex. 798, Report of the Chief of the Security Service of the 3rd Corps, 3 July 1995; Ex. 735, Report No. 120 of the Military Security Administration, 4 July 1995, p. 4. *See* Ex. 505, Plan of the Operation "Farz", 25 August 1995, p. 16; Fuad Zilkić, T. 5326-5328, 5361-5362; Ahmet Šehić, T. 5083-5084.

¹⁰⁸⁹ Ex. 823, Authorisation of Rasim Delić for Travel of an EMD Member, 5 December 1995. *But see* Farid Buljubašić (T. 5530) who testified that Rasim Delić would not usually sign travel documents, Ex. 816, Witness Statement of Farid Buljubašić, 30 July 2007, para. 27; PW-9, T. 5722-5723, 5738-5739.

¹⁰⁹⁰ Ekrem Alihodžić, T. 6461-6464, 6459; Ex. 772, Approval of 3rd Corps Security Service, 11 August 1994; Ex. 773, Request of EMD, 31 July 1995; Ex. 771, Marked Version of Ex. 773; Salih Spahić, T. 5236-5237.

¹⁰⁹¹ *See* paras 141 *et seq. supra*. *See also* Fadil Hasanagić, T. 3104.

¹⁰⁹² Fadil Hasanagić, T. 3104-3105, 3154-3156, 3158. *See also* Fadil Imamović, T. 4045; Ajman Awad, Hearing Sarajevo, T. 221-222. *See also* Ex. 491, Order of the Commander of the 35th Division, 17 May 1995. Regarding the difficulties faced by ABiH concerning reporting *see* paras 130, 138-139, 148-150 *supra*. Regarding oral reports, *see* para. 143 *supra*.

¹⁰⁹³ Ajman Awad, Hearing Sarajevo, T. 58-59, 87-88; Ex. 826 (under seal), paras 53, 166; PW-9, T. 5565, 5676. *See also* paras 188-190 *supra*.

¹⁰⁹⁴ Kadir Jusić (T. 2524) testified that "Ajman [...] I think that his duty was a security officer in [the EMD] I'm not certain"; Fadil Hasanagić (T. 3140) testified that "we did not know whether [the EMD] had a [security] organ there and who it was"; Ex. 570, Proposal of General Delić Concerning Promotion of Ranks, 25 July 1994, p. 14, referring to Ajman Awad as the EMD's "Assistant Commander for Intelligence and Security Affairs"; Ex. 585, Rules of Operation for the Military Security Service in the ABiH, 11 September 1992, para. 12; Ex. 826 (under seal), para. 165: "[Ajman Awad] was formally Assistant Commander for Security, but in fact he was an interpreter because he did not have influence on other [EMD] members." *See also* Ex. 926, Witness Statement of Zakir

each battalion had a security organ, brigades had a security organ, and a division had a security organ. The exception to this was the [EMD], which – with which we never established contacts with respect to the security organs.¹⁰⁹⁵

Ajman Awad, who was designated as the EMD's Assistant Commander for Security, testified that in fact he did not actually carry out any security-related duties, but rather worked as an interpreter.¹⁰⁹⁶ In any event, neither the security nor the intelligence organs of the 3rd Corps and the 35th Division received any written reports from the EMD.¹⁰⁹⁷

426. Haso Ribo, the Chief of the Department for Operation Records in the 3rd Corps, testified that he never received any report on ammunition requested by the Commander of the 3rd Corps from the EMD on 9 January 1995.¹⁰⁹⁸ The evidence further suggests that the EMD failed to comply with an order of 8 May 1995 by the 35th Division Commander to submit a list of the possessed equipment.¹⁰⁹⁹ Yet, the EMD subsequently submitted a written plan of attack containing information on "what they had available to them".¹¹⁰⁰ Furthermore, the EMD did not reply to a request of 27 May 1995 by the 35th Division to submit a combat report on newly reached lines.¹¹⁰¹ An order of 10 June 1995 by the 35th Division to the EMD to submit a report on reconnaissance results was not complied with.¹¹⁰² Finally, the EMD did not comply with an order by the 35th Division of 17 July 1995 to submit daily combat reports.¹¹⁰³ As a consequence, when the 35th Division submitted its own reports to the 3rd Corps, it had to rely on information from other field units who fought alongside the EMD.¹¹⁰⁴

427. In 1994 and 1995, the EMD command participated in numerous meetings with ABiH senior officers from the 3rd Corps, OG North, OG *Bosna* and 35th Division. These meetings, as explained in the paragraphs hereunder, were typically held on ABiH premises, in preparation or the aftermath of a joint military operation, and in the presence of senior officers from both the EMD and other

Alispahić, 22 December 2005, paras 50-55; Ex. 1131, Report of the Assistant Commander for Security of the 3rd Corps, 11 December 1995, p. 3; PW-9, T. 5742-5743; *see* para. 192 *supra*.

¹⁰⁹⁵ Hamdija Šljuka, T. 4369.

¹⁰⁹⁶ Ajman Awad, Hearing Sarajevo, T. 57, 123-124, 172-173.

¹⁰⁹⁷ Salih Spahić, T. 5290-5291; PW-9, T. 5675-5676; Edin Husić, T. 4499-4500, 4503; Fadil Imamović, T. 4046. *See also* Zaim Mujezinović, T. 6096; Hamdija Šljuka, T. 4368-4369.

¹⁰⁹⁸ Ex. 1187, Order of the 3rd Corps, 9 January 1995; Haso Ribo, T. 7028. Responding to a question by one of the judges whether the witness was the one who was supposed to receive the report or whether it was the Corps Commander, he stated: "All the reports are sent to the corps commander or his deputy, the person who also goes through the mail, indicates to whom the document should be given. And in view of the fact that I was at the head of the department maintaining the operations records, this was something that was a part of my department's duties, then a document like this would be addressed to me or sent to me."

¹⁰⁹⁹ Ex. 485, Order of the Commander of the 35th Division, 8 May 1995; Fadil Hasanagić, T. 3125-3128.

¹¹⁰⁰ Fadil Hasanagić, T. 3126-3128; Ex. 439, Plan of Attack of the Commander of the EMD, 15 May 1995.

¹¹⁰¹ Ex. 488, Order of the Commander of the 35th Division, 27 May 1995; Fadil Hasanagić, T. 3141-3142.

¹¹⁰² Ex. 442, Order of the Commander of the 35th Division, 10 June 1995; Fadil Hasanagić, T. 3154.

¹¹⁰³ Ex. 491, Order of the Commander of the 35th Division, 17 May 1995; Fadil Hasanagić, T. 3155-3156.

¹¹⁰⁴ Hamdija Šljuka, T. 4371-4373; Ex. 455, Combat Report of the Commander of the 35th Division, 21 July 1995; Fadil Imamović, T. 4046; Fadil Hasanagić, T. 3041-3042.

ABiH units.¹¹⁰⁵ The Trial Chamber has not been presented with evidence as to what was discussed at these meetings.

428. During Operation *Proljeće*, the EMD Commander was “connected to the division command or to the command of the 3rd Corps” through a radio device.¹¹⁰⁶ In this respect, Ajman Awad testified that

[w]e rarely spoke to the corps command. This was just in case of necessity. If I failed to establish contact with the division centre, then I would try and contact the corps command, but that was very rarely done.¹¹⁰⁷

429. Before Operation *Proljeće* II, EMD representatives and the 3rd Corps Commander met to discuss the upcoming operation.¹¹⁰⁸ After the operation concluded, EMD members met the Commander of the 35th Division.¹¹⁰⁹

430. In preparation for Operation *Farz*, several meetings took place between the EMD and the Commander of the 35th Division as well as the 3rd Corps Commander.¹¹¹⁰ On 9 September 1995, the EMD Commander arrived at the IKM of the 3rd Corps for “final coordination of the forthcoming combat activities”.¹¹¹¹ On the following evening, the commanders of the different units participating in Operation *Farz*, including Abu Maali and Muatez on behalf of the EMD, convened at the IKM of the 35th Division.¹¹¹² After this meeting, the EMD was ordered to be “at the disposal for intervention in the 328th [Mountain Brigade]’s zone of responsibility”.¹¹¹³ Although the EMD was officially re-subordinated to the 35th Division, on 10 September 1995, it orally reported several times to the 3rd Corps Command on the progress of combat activities.¹¹¹⁴

¹¹⁰⁵ Ajman Awad, Hearing Sarajevo, T. 69-70, 94-96, 101-102, 109-110; Ex. 429, Order of the 3rd Corps Commander, 23 October 1994; PW-9, T. 5605, 5727-5729, 5760-5763; Ex. 508, Official Note of the Chief of the Security Service Department of the 3rd Corps, 7 June 1995.

¹¹⁰⁶ Ajman Awad, Hearing Sarajevo, T. 87-88.

¹¹⁰⁷ *Ibid.*

¹¹⁰⁸ Ajman Awad, Hearing Sarajevo, T. 94-95; PW-9, T. 5732-5733. *See also* Ex. 363, 3rd Corps Regular Combat Report, 16 June 1995, p. 3.

¹¹⁰⁹ Ajman Awad, Hearing Sarajevo, T. 101-102, 242-243; Fadil Hasanagić, T. 3274-3275.

¹¹¹⁰ Ajman Awad, Hearing Sarajevo, T. 106-107; PW-9, T. 5732-5733; Ex. 394, Operations Log of the 3rd Corps, 9-10 September 1995.

¹¹¹¹ Ex. 512, Wartime Diary of the ABiH 3rd Corps for Operation “Farz-95”, p. 11; Ex. 394, Operations Log of the 3rd Corps, 9-10 September 1995, p. 3. *See* Ajman Awad, Hearing Sarajevo, T. 106-107.

¹¹¹² Fadil Hasanagić, T. 3032, 3034; Ajman Awad, Hearing Sarajevo, T. 110, 249-250; Fuad Zilkić, T. 5306-5307. *See also* Fadil Hasanagić, T. 3046-3049.

¹¹¹³ Ex. 466, Order of the Commander of the 35th Division, 10 September 1995, pp 2-3; Fadil Hasanagić, T. 3035.

¹¹¹⁴ Ex. 394, Operations Log of the 3rd Corps, 9-10 September 1995, pp 3, 5-8 (items 7, 21, 25, 29, 35); Ex. 512, Wartime Diary of the ABiH 3rd Corps for Operation “Farz-95”, p. 11; Kadir Jusić, T. 2662-2664. *See* para. 363 *supra*. *See also* Safet Sivro, T. 3367-3368, 3413-3415.

(viii) EMD Relationship With ABiH Units and Soldiers

431. The evidence shows that Sakib Mahmuljin, the Commander of the 3rd Corps, was the ABiH officer who was most respected by EMD members.¹¹¹⁵ It appears that Mahmuljin meted out special treatment to the EMD in that he did not issue orders to the Detachment “in the same manner as he did to brigade commanders”.¹¹¹⁶ There is hearsay evidence that EMD members considered Mahmuljin as their “commander”.¹¹¹⁷ The Trial Chamber recalls that in the fall of 1995, at the time when the EMD was still formally subordinated to the 35th Division, the Detachment received some orders directly from the 3rd Corps Command.¹¹¹⁸ Mahmuljin held meetings with the EMD Command, sometimes in the presence of commanders of other units subordinated to the 3rd Corps.¹¹¹⁹ On two occasions in 1994 and 1995, he also visited the EMD headquarters at *Vatrostalna*.¹¹²⁰

432. In respect of the time period in 1994 when the EMD was *de jure* re-subordinated to the OG North, the Trial Chamber notes that two former EMD members testified that they did not consider themselves to be part, nor did they accept the authority of the OG North.¹¹²¹

433. In comparison, relations between the EMD and the 35th Division, and particularly its Commander Fadil Hasaganić, were less cordial. Although EMD representatives attended meetings with the command of the 35th Division,¹¹²² according to Ajman Awad, “[w]e couldn’t trust such a commander, because we wouldn’t know what he would do or what he would say.”¹¹²³ However, on 15 May 1995, pursuant to an order of the 35th Division Commander, the EMD forwarded to the 35th Division a “proposed plan of attack”,¹¹²⁴ although, as affirmed by Ajman Awad, “[i]t was not habitual for the detachment to forward its plans of attacks [...]”. In fact, according to the same witness, the “fake attack” of October 1994 had caused “great distrust” and

in order for us to make them believe us that we are serious in our intent and that we do intend to realise this attack, we sent this plan of attack so that the commander of the 35th Division could be assured that we -- we were doing something, but it wasn't realised, and we -- we didn't know.¹¹²⁵

¹¹¹⁵ Kadir Jusić, T. 2629; Ajman Awad, Hearing Sarajevo, T. 206-207. *See also* Halim Husić, T. 7526-7527; Ex. 770, Witness Statement of Salih Spahić, 20 September 2006, para. 10.

¹¹¹⁶ Kadir Jusić, T. 2627-2628.

¹¹¹⁷ Ex. 975 (under seal), p. 4; Ex. 930 (under seal), pp 4-5.

¹¹¹⁸ Fadil Hasanagić, T. 3293-3294.

¹¹¹⁹ Ajman Awad, Hearing Sarajevo, T. 62-64, 72-73, 218; Ex. 826 (under seal), paras 53, 118-119; Ex. 770, Witness Statement of Salih Spahić, 20 September 2006, paras 10-12; Ex. 1144, Request of the Commander of the 3rd Corps, 14 June 1994. *See* paras 429-430 *supra*.

¹¹²⁰ Ex. 826 (under seal), paras 53, 118-119.

¹¹²¹ PW-9, T. 5699; Ajman Awad, Hearing Sarajevo, T. 219-220.

¹¹²² Fadil Hasanagić, T. 3274-3275, 3281; Ajman Awad, Hearing Sarajevo, T. 66-73, 84-86.

¹¹²³ Ajman Awad, Hearing Sarajevo, T. 221.

¹¹²⁴ Ex. 439, Plan of Attack of the Commander of the EMD, 15 May 1995; Fadil Hasanagić, T. 2956-2960, 3125-3128.

¹¹²⁵ Ajman Awad, Hearing Sarajevo, T. 221.

434. There are many examples in the evidence where members of the EMD interfered with members of other ABiH units,¹¹²⁶ in particular those of Croat and Serb ethnicities. In July 1995, members of the EMD announced on the front-line that they would “slaughter” all the “Croats and Chetniks” who were in the 1st Battalion of 328th Mountain Brigade, which was also on the front-line. Out of fear for their safety, the Battalion command stopped sending its non-Muslim soldiers to the front-line.¹¹²⁷

435. In September 1995, armed EMD members forcibly seized war booty from an ABiH unit and abducted a Bosnian Serb detainee, one Milenko Petrović, from a military police patrol of the 35th Division.¹¹²⁸

436. Furthermore, there were instances in which the EMD harassed, insulted and threatened ABiH soldiers.¹¹²⁹ However, the evidence also shows that on one occasion, the EMD assisted the 3rd Corps military police in arresting members of Abu Zubeir’s group.¹¹³⁰

(ix) Relationship Between the EMD and Authorities Outside the ABiH

437. The Defence contends that the EMD “was much closer to civilian and religious authorities than it was to the [ABiH]. Certain members of civilian and religious authorities supported the EMD and had close ties with it.”¹¹³¹

438. The Defence also submits that the EMD reported, in a parallel chain of command, to foreign powers outside the RBiH, and that such a second chain of command would be fatal to the effective control allegedly exercised by the ABiH.¹¹³² The Prosecution counter-argues that

the fact that the *El Mujahedin* Detachment sought support from abroad does not impact upon the control which the [ABiH] exerted over that unit, because the purpose of those reports in the sense of receiving funds from abroad and/or perhaps encouraging other men to join the *El Mujahedin*

¹¹²⁶ See, e.g., Ahmed Šehić, T. 5086-5087 on the EMD’s lack of notification to the 1st Battalion of the 328th Brigade when it passed through the Battalion’s area of responsibility. See also Ex. 903, Report of the Assistant Commander for Security of the 35th Division, 27 October 1995; Ex. 1431, Information of the Military Security Administration on Serious Incidents Involving the EMD, 28 October 1995. However, this incident took place on 27 October 1995, hence at the time when the EMD was no longer re-subordinated to the 35th Division, PW-11, T. 6315-6316 (closed session).

¹¹²⁷ Ex. 667, Report of the Chief of the Security Service of the 3rd Corps, 9 July 1995; PW-4, T 4807-4808 (closed session); Ex. 938, Official Note of the 35th Division Security Service, 5 July 1995; Ex. 760, Information of the Chief of Military Security Administration, 10 July 1995. See also Ex. 737, Report No. 130 of the Military Security Administration, 15 July 1995, p. 2.

¹¹²⁸ Ex. 670 (under seal); Ex. 740, Bulletin No. 149 of the Military Security Administration, 4 August 1995, p. 3; Ex. 747, Bulletin No. 181 of the Military Security Administration, 16 September 1995, p. 3.

¹¹²⁹ Ex. 800, Information of the Chief of the Military Security Administration, 20 July 1995; Ex. 801, Report of the Chief of the Security Service of the 3rd Corps, 15 July 1995; Ex. 740, Bulletin No. 149 of the Military Security Administration, 4 August 1995, p. 3.

¹¹³⁰ Ex. 826 (under seal), para. 284.

¹¹³¹ Defence Final Brief, para. 1017; Defence Closing Argument, T. 8903-8904.

¹¹³² Defence Final Brief, paras 123-124, 972-1016; Defence Closing Argument, T. 8902-8903, 8922.

Detachment and to enter Bosnia from abroad were consistent with the war efforts directed by the [ABiH].¹¹³³

i. RBiH Civilian Authorities and Muslim Clergy

439. Although there is no clear evidence from which to conclude that the RBiH Government was directly involved in the arrival of the foreign Mujahedin in Bosnia and Herzegovina,¹¹³⁴ it seems that the EMD had direct access to President Izetbegović.¹¹³⁵ For instance, in 1994 or 1995, EMD representatives, including Abu Maali and Abu Haris managed, as a result of direct consultations with President Izetbegović, to have ABiH soldiers transferred to the Detachment.¹¹³⁶ It was again President Izetbegović, in a meeting attended by both Rasim Delić and the 3rd Corps Commander, who discussed with the EMD plans for its disbandment in anticipation of the Dayton Agreement.¹¹³⁷

440. After the end of the conflict, EMD members received investment certificates from the RBiH Ministry of Defence¹¹³⁸ and sometimes disability pensions.¹¹³⁹ Some of them applied for, and were granted, RBiH citizenship on the basis of their membership of the ABiH.¹¹⁴⁰

441. There is evidence that the EMD had relations with civilian and religious authorities in Zenica and Zavidovići and that it relied to some extent on these institutions for logistical and financial support.¹¹⁴¹ However, other ABiH units also relied on civilian and religious authorities, in

¹¹³³ Prosecution Closing Argument, T. 8983.

¹¹³⁴ PW-9, T. 5743-5744; Ajman Awad, Hearing Sarajevo, T. 139; *but see* Ex. 763, Bulletin No. 9 of the Military Security Administration, 13 January 1995, pp 2-3; Džemal Vučković, T. 5198-5199; *see* Ex. 680, Official Note of the State Security Service on Operative Intelligence During Operation "Vranduk", 23 October 1995, p. 5; PW-4, T. 4948 (closed session); Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 25.

¹¹³⁵ PW-9, T. 5678-5680 (private session); Ex. 668 (under seal), p. 4; Ex. 902 (under seal); Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 157. *See also* Ex. 1302, Letter of Ebu El-Me' Ali to Alija Izetbegović.

¹¹³⁶ Ex. 826 (under seal), para. 296; PW-9, T. 5567-5568; Ajman Awad, Hearing Sarajevo, T. 214-216. *See also* PW-9, T. 5678-5681 (private session).

¹¹³⁷ Ajman Awad, Hearing Sarajevo, T. 120-123; Ex. 1131, Report of the Assistant Commander for Security of the 3rd Corps, 11 December 1995; Alija Lončarić, T. 8365-8366. According to Ajman Awad, Hearing Sarajevo, T. 121-122, when EMD representatives talked to President Izebegović at the meeting "to see if he would yield a little bit in his position", Rasim Delić intervened by saying "President, do you remember what we agreed in December?"

¹¹³⁸ PW-2, T. 776-777, 780-781, 892-893; Ex. 114 (under seal); Ex. 115 (under seal); Ex. 78, Specification of Photocopied Documents found in the Travnik Defence Administration. According to PW-2, these certificates were issued to "everyone", including HOS and HVO members, and they were practically worthless, PW-2, T. 776, 780, 892-893; PW-9, T. 5553-5554, 5618-5619 (private session).

¹¹³⁹ Hasib Alić, T. 618-619; PW-2, T. 782.

¹¹⁴⁰ *See* para. 114 *supra*.

¹¹⁴¹ Fadil Hasanagić explained that EMD received much bigger support from civil and religious authority than the 35th Division, T. 3313; Ex. 509, Report of the Chief of the Security Service Department of the 3rd Corps, 12 August 1995; Izudin Hajderhodžić, T. 3779; Ex. 742, Special Report No. 87 of the Military Security Administration, 16 August 1995, p. 2; Džemal Vučković, T. 5195-5196; Ex. 679, Official Note of the State Security Service on Intercepts of Conversations During Operation "Kinšasa", 6 September 1995; PW-4, T. 4890 (closed session); Ex. 1235, Report of the Chief of the 3rd Corps Security Service, 6 March 1995. *See also* Ex. 941, Report of the Assistant Commander for Security of the 3rd Corps, 7 June 1995; Ekrem Alihodžić, T. 6507-6509, 6511-6512; PW-11, T. 6344-6346 (closed session); Fadil Imamović, T. 4060-4061, 4067; PW-4, T. 4882-4883 (closed session); Ex. 677, Report of the Chief of the Security Service of the 3rd Corps, 17 April 1995; Kadir Jusić, T. 2686 (private

particular on a local level, for logistical and financial support.¹¹⁴² The degree of influence of local civilian and religious authorities on ABiH units in their area was an ongoing problem for the ABiH.¹¹⁴³ On one occasion in 1995, the Commander of the 35th Division asked the municipal authorities in Zavidovići for assistance to raise the issue of “disorderly conduct by individual members of the *El Mudžahidin* unit”.¹¹⁴⁴

ii. Foreign Authorities

442. The EMD received funds and assistance from a number of organisations and individuals from the Islamic world,¹¹⁴⁵ including a Kuwaiti organisation,¹¹⁴⁶ the “Al-Haramain Islamic Balkan Centre” and the “Benevolence International Foundation”.¹¹⁴⁷ The Islamic Cultural Institute (“ICI”) in Milan provided logistical support to the EMD, and Sheikh Shabaan was instrumental in recruiting EMD members from abroad and verifying their credentials.¹¹⁴⁸ As a result, the EMD relied only to a limited extent on the ABiH in terms of logistics, equipment and food for its members.¹¹⁴⁹ However, the Trial Chamber notes that also other ABiH units were financially supported by private entities. For example, some ABiH soldiers continued receiving salaries from the companies where they worked prior to the war.¹¹⁵⁰

443. Throughout its existence, the EMD regularly communicated with entities outside Bosnia and Herzegovina, including the ICI in Milan.¹¹⁵¹ In these communications, the EMD included

session); Ex. 940, Report of the Assistant Commander for Security of the 3rd Corps, 17 May 1995. *See also* PW-11, T. 6344-6346 (closed session); Ex. 892 (under seal); Ex. 1386, EMD Bulletin, p. 5.

¹¹⁴² *See* para. 140 *supra*.

¹¹⁴³ *See* para. 140 *supra*.

¹¹⁴⁴ Ex. 593, Report of the Commander of the 35th Division, 19 July 1995; Fadil Imamović, T. 4063-4064.

¹¹⁴⁵ Ex. 681, Chart of the Hierarchical Relations in the EMD, Prepared by the Security Administration, 28 November 1995, p. 4; Ajman Awad, Hearing Sarajevo, T. 116, 260; PW-9, T. 8667, 8693, 8698-8699; Ex. 1425-1427, Excerpts from Judgement of Penal Court of Milan, 1 January 2006; Ex. 1436-1437, Excerpts from Dossier of Shaaban Anwar Elsayed, 1 January 1997; Andrew Hogg, T. 348-349; Alastair Duncan, T. 1941; Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 132-133; Ex. 1201, Collection of Faxes and Communications Between Mujahedin and the Islamic Cultural Institute in Milan, 1993-1995, p. 9; Ex. 338, Official Note Regarding Talal Filal, 4 November 1997; Ex. 339, Official Record by the RBiH State Security Service Regarding Operation Vranduk, 23 October 1995. *See also* Ex. 678, Report of the State Security Service on Humanitarian Organisations in the Tuzla-Podrinje Canton, 10 November 1995; Ex. 1141, Report of the Zenica Security Centre, 24 November 1995.

¹¹⁴⁶ Ex. 1259, Official Record of the 3rd Corps Military Police Battalion, 26 June 1994; Ali Ahmad Ali Hamad, Hearing Sarajevo, T. 132.

¹¹⁴⁷ Ex. 1268, Report of the Chief of the 3rd Corps Security Service, 17 April 1995; Ex. 963, Information of the Chief of the Military Security Administration, 12 April 1995.

¹¹⁴⁸ Halim Husić, T. 7523; PW-11, T. 6321 (closed session); PW-9, T. 8672-8674, 8680-8681; Ex. 1390, Intercepted Telephone Conversation Between Anwar Shaaban and Abu Abd El Aziz; Ex. 1393, Letter of EMD, 25 December 1994; Ex. 1425, Excerpt from Judgement of Penal Court of Milan, 1 January 2006. *See also* para. 190 *supra*.

¹¹⁴⁹ Fadil Hasanagić, T. 3211-3214; Sinan Begović, T. 506, 534; Salih Spahić, T. 5278; Šaban Alić, T. 690; PW-9, T. 5643-5644, 5682-5683; Ex. 826 (under seal), para. 73; Ajman Awad, Hearing Sarajevo, T. 59, 260-262; Ex. 782, Report of the Assistant Commander for Security of the 3rd Corps, 20 June 1995.

¹¹⁵⁰ Hajrudin Hubo, T. 7692; Vahid Karavelić, T. 7802-7803.

¹¹⁵¹ PW-9, T. 5738 (private session), 8633, 8648-8649, 8657-8658, 8661-8669, 8695-8701, 8715-8716 (partially private session); Ex. 1201, Collection of Faxes and Communications Between Mujahedin and the Islamic Cultural

information on the Detachment's benefactors or the progress achieved in missionary work.¹¹⁵² The EMD also periodically issued newsletters in Arabic which glorified its own achievements.¹¹⁵³

444. Other communications were, on their face, more concerned with military matters.¹¹⁵⁴ One described a combat operation of 3 October 1994 in the following words:

By the grace of God and the generosity bestowed by God, yesterday, Monday 28 of the month of Rabih Thani, corresponding to 3.10.94, the Brdo mountain range was occupied during the second largest military operation carried out by the Mujahedin in one month. During this operation full control was taken of the Kajin Sopz, Previja, Brdo mountain range, which is 30 km south-east of the city of Tselte [*sic*] (?) (The largest Serbian urban agglomeration north of Zenica). [...] The Mujahedin assault force was split (divided) into six (6) assault groups supported by three (3) support groups, in addition to two relief squadrons and an aid and supplies squadron. The assault groups began to advance at 12.02 a.m. [...]¹¹⁵⁵

445. Already by the end of 1993, the fact that the EMD was in constant touch with foreign entities was well-known within the ABiH. Then, the 3rd Corps Assistant Commander for Security reported to the Corps Command that

[i]n contact with a colleague [...] we came by photocopies of letters addresses [*sic*] to Ebu Ahmedia and Edu Hasira in Saudi Arabia. In this letter sent to Saudi Arabia certain Imad fighter of the unit "*El Mujahedin*" informs Ebu Ahmedia and Ebu D'Asira about the situation in Bosnia and Herzegovina [...] [w]e are of the opinion that these individuals are under the direct patronage of some foreign intelligence service and that their aim [is] to weaken the Army of Bosnia and Herzegovina and to create discord amongst Muslims living in the area of central Bosnia.¹¹⁵⁶

446. Finally, evidence dated 20 December 1995 suggests that the EMD also received "instructions" from abroad, although the exact content and consequences of these "instructions" are not clear.¹¹⁵⁷

(x) The Ability to Investigate and Punish EMD Members

447. The Trial Chamber has been presented with evidence of a few instances where investigations were conducted with a view to take punitive measures against members of the EMD.

Institute in Milan, 1993-1995; Ex. 1387, Report of the EMD, 31 May 1995. *See also* Ex. 127, Report of the Chief of Security of the 3rd Corps, 28 November 1993.

¹¹⁵² Ex. 1298, Handwritten Note, 20 November 1995; Ex. 1388, Fax Communication of the EMD to the Islamic Cultural Institute in Milan; Ex. 1394, Letter of EMD, 7 March 1995.

¹¹⁵³ Ex. 1200, "Call of Jihad", Newsletter of the EMD, Issue 6, March 1995.

¹¹⁵⁴ Ex. 1387, Report of the EMD, 31 May 1995; Ex. 1201, Collection of Faxes and Communications Between Mujahedin and the Islamic Cultural Institute in Milan, 1993-1995, p. 3.

¹¹⁵⁵ Ex. 1201, Collection of Faxes and Communications Between Mujahedin and the Islamic Cultural Institute in Milan, 1993-1995, p. 3.

¹¹⁵⁶ Ex. 127, Report of the Chief of Security of the 3rd Corps, 28 November 1993. *See also* Ex. 935, Report of the Assistant Commander for Security of the 3rd Corps, 28 July 1995; Ekrem Alihodžić, T. 6456-6457.

¹¹⁵⁷ Ex. 904 (under seal), "I read your fax and discussed the contents. Security prevents elaboration, but at the individual level some of us have decided to go. ... Decision will be made at EYEBALL level"; PW-11, T. 6317-6318 (closed session).

448. In February 1994, two members of the EMD were arrested by a joint military-civilian force in the wake of the killing of Paul Goodall, a British humanitarian worker, near Zenica. Criminal proceedings were instituted against them before a civilian court but were never concluded because the suspects escaped from custody.¹¹⁵⁸

449. On 9 December 1994, Rasim Delić ordered a “clamp down on the illegal activities of the Guerilla Mujahedin and EMD”, but actual measures were taken only against the so-called Guerrilla Group.¹¹⁵⁹

450. Exhibit 934 is a report dated 26 May 1995 by the Assistant Commander for Military Security of the 3rd Corps that was made within the context of Operation *Vranduk*.¹¹⁶⁰ It concerned an incident in January 1995 in which “members of the “El Mudžahedin” unit” or “Mujahideen” allegedly demolished tombstones in the orthodox cemetery in Čurići. According to the author of the report, the words “El Mudžahedin” and “Mujahideen” were used randomly and the investigation did not establish if the perpetrators were members of the EMD or other foreign Mujahedin.¹¹⁶¹

451. In July 1995, the 3rd Corps conducted an investigation concerning threats by EMD members against an ABiH soldier of Croat ethnicity.¹¹⁶² There is no evidence whether any further action was taken in this respect.

452. Evidence has also been led that members of the EMD were subject to criminal proceedings following the assault on a foreign soldier of the peacekeeping force. However, the evidence is inconclusive as to whether these crimes were reported to a military or a civilian court, what the result of the criminal proceedings was and whether this occurred during or after the war.¹¹⁶³ On another occasion, in October 1995, one member of the EMD was subject to criminal proceedings for theft.¹¹⁶⁴ Likewise, there is no evidence on the outcome of those proceedings.

¹¹⁵⁸ PW-4, T. 4771-4772, 4777 (closed session); Muris Hadžiselimović, T. 6197-6198; PW-13, T. 6637-6638; Ex. 658 (under seal); Ex. 887, Report of Senior Public Prosecutor’s Office Zenica, 1 February 1994; Ajman Awad, Hearing Sarajevo, T. 271. *See also* paras 493 *et seq. infra*.

¹¹⁵⁹ Ex. 690, Order of Rasim Delić to the 3rd Corps Command, 9 December 1993; PW-4, T. 4965-4967 (closed session). Fadil Imamović (T. 4011-4012) confirmed that the security service of the 35th Division registered cases of EMD misconduct, but no “energetic measures” were taken in order to not spoil the relations with the EMD; Ex. 583, Report of the Security Service of the 35th Division, 30 August 1995, p. 20.

¹¹⁶⁰ Ex. 934, Report of the Assistant Commander for Security of the 3rd Corps, 26 May 1995.

¹¹⁶¹ Ekrem Alihodžić, T. 6451-6456, 6490-6491.

¹¹⁶² Ex 938, Official Note of the 35th Division Security Service, 5 July 1995, stating that EMD members justified themselves by saying that they did not know that the Croat soldier had been in the ABiH from the beginning of the war, otherwise they would not have threatened him; Ex. 764, Statement of Reasons of the 3rd Corps Commander, 7 July 1995; Ekrem Alihodžić, T. 6487-6488. *See also* Ex. 736, Report No. 125 of the Military Security Administration, 10 July 1995, p. 7.

¹¹⁶³ Hamdija Šljuka, T. 4323-4324.

¹¹⁶⁴ Hamdija Šljuka, T. 4323-4324; Ex. 880, Report of the 3rd Police Battalion to the Military Security Service of the 3rd Corps, 7 October 1995, p. 3; Zaim Mujezinović, T. 6111.

453. Responding to the hypothetical question whether he would feel responsible if it were brought to his attention that EMD members had committed war crimes during combat operations, the Commander of the 35th Division, Fadil Hasanagić, testified that

I would take measures, inform the corps command, and certainly I would have been partly responsible for what they had done, because it's my area of responsibility.¹¹⁶⁵

However, Hasanagić also stated that

I did not and I could not have control over [the EMD] because I did not have enough information and everything else that we discussed so that I could have control over that detachment. Starting with the establishment, head count, reporting, and the other elements that are of very great importance for me having any control over them.¹¹⁶⁶

...

I could not really do much or maintain frequent contacts with them or try to prevail over them the same way that I succeeded in prevailing upon the commander of the 4th Manoeuvre Battalion when I threatened him that he would be replaced. My purview and my authority powers were not such that I could threaten the same threat to the EMD.¹¹⁶⁷

(xi) Appointments and Promotions of, and Awards to, EMD Members by the ABiH

454. The Prosecution submits that Rasim Delić assigned ranks to EMD members and issued awards to them.¹¹⁶⁸ The Defence contends that, even if Rasim Delić formally issued some of these awards, it was the RBiH Presidency which decided on awards, as well as on appointment or promotions of officers who held the rank of Colonel or higher.¹¹⁶⁹

455. The evidence indicates that in 1994, a number of EMD members were promoted by a decision of the RBiH Presidency, on the proposal of Rasim Delić as the Commander of the Main Staff.¹¹⁷⁰ On 4 June 1995, the EMD as a unit was granted a Certificate of Merit by the Commander of the 35th Division.¹¹⁷¹ At the end of 1995, both the EMD as a unit and some of its members individually were given awards of the ABiH and RBiH. Some of these documents were signed by or on behalf of Rasim Delić.¹¹⁷² For instance, witness PW-9 and Sinan Begović received awards in recognition of their wartime service within the ABiH.¹¹⁷³

¹¹⁶⁵ Fadil Hasanagić, T. 3289.

¹¹⁶⁶ Fadil Hasanagić, T. 3286-3287.

¹¹⁶⁷ Fadil Hasanagić, T. 3297.

¹¹⁶⁸ Prosecution Final Brief, paras 163-164.

¹¹⁶⁹ Defence Final Brief, paras 770, 955.

¹¹⁷⁰ Ex. 571, Decision of the RBiH Presidency on the Promotion of ABiH Officers, 5 August 1994; Ex. 570, Proposal of General Delić Concerning Promotion of Ranks, 25 July 1994; PW-9, T. 5554-5555, 5561-5566 (private session); Ex. 830 (under seal); Alija Lončarić, T. 8343-8344, 8376-8378. See Sejfulah Mrkaljević, T. 3866, 3932-3933.

¹¹⁷¹ Ex. 437, Certificate of Merit to the EMD, 4 June 1995; Fadil Hasanagić, T. 2948-2949.

¹¹⁷² Ex. 1134, Order of Rasim Delić on Commending Certain Members of the EMD, 23 December 1995; Ajman Awad, Hearing Sarajevo, T. 129-130. Decorations were the highest awards and were issued by the RBiH Presidency, whereas citations and incentives lay within the purview of the Commander of the Main Staff, Alija Lončarić, T.

456. Some evidence shows that awards were presented to the EMD and its members at the end of 1995 to induce them into leaving Bosnia and Herzegovina, as prescribed by the Dayton Agreement.¹¹⁷⁴

(xii) Disbandment of the EMD

457. The Trial Chamber recalls that, in accordance with the Dayton Agreement, all foreign forces on the territory of Bosnia and Herzegovina were to withdraw.¹¹⁷⁵ In early December 1995, two meetings were held at which the dissolution of the EMD was discussed. One of these meetings was also attended by Rasim Delić and Alija Izetbegović as well as representatives of the 3rd Corps and the EMD. President Izetbegović said that the EMD had to be dismantled.¹¹⁷⁶

458. The EMD was disbanded following an order of the 3rd Corps Commander who was in turn ordered to do so by Rasim Delić.¹¹⁷⁷ The evidence shows that the EMD complied with this order and despite initial resistance by the EMD, its *shura* accepted that the Detachment be disbanded.¹¹⁷⁸

3. Conclusion of the Majority

459. The following observations and findings are made by the Majority of the Trial Chamber, Judge Moloto dissenting.¹¹⁷⁹

460. The Majority finds that the structure, organisation as well as command and control within the ABiH improved significantly from the time when Rasim Delić was appointed as Commander of

8335-8336, 8346-8349, 8355-8356, 8408-8409, 8414-8415, 8421-8423, 8443-8447; Ex. 111, Proposal of 3rd Corps Commander, 10 November 1995; Ex. 817, Order of Rasim Delić Commending Units and Members of the ABiH 3rd Corps, 1 December 1995; Ex. 1377, Letter of the Deputy Minister of Defence, 7 February 2002. *See* Ex. 1374, Order of Rasim Delić Concerning Incentives, 20 February 1995; PW-9, T. 5558-5560 (partially private session). *See also* Ex. 828, Award of ABiH Golden Lily to ABiH Members, 23 December 1995; Ex. 829, Award of ABiH Silver Shield to ABiH Members, 23 December 1995; PW-9, T. 5556-5559 (partially private session).

¹¹⁷³ On 1 December 1995, Sinan Begović (T. 480) was awarded the Silver Shield, although he testified that he learned about it only two years later; Ex. 79, Document awarding Silver Shields, 1 December 1995. On the same day, PW-9 was awarded the Golden Lily, which was the highest award to be given to members of the ABiH for their wartime service, PW-9, T. 5556-5557; Ex. 826 (under seal), para. 306; Ex. 827 (under seal).

¹¹⁷⁴ Alija Lončarić, T. 8363-8365, 8424, 8446-8448, 8454-8455; Ferid Buljubašić, T. 5519; Halim Husić, T. 7428-7429.

¹¹⁷⁵ *See* para. 196 *supra*.

¹¹⁷⁶ Ajman Awad, Hearing Sarajevo, T. 121-124 *See* para. 197 *supra*. Regarding the role of Rasim Delić in this meeting, *see* fn. 1137 *supra*.

¹¹⁷⁷ Ex. 824, Order of Rasim Delić to 3rd Corps Command Disbanding the EMD, 12 December 1995; Ex. 900, Order of the 3rd Corps Commander on Disbanding the EMD, 14 December 1995; Ex. 824, Order of Rasim Delić to 3rd Corps Command Disbanding the EMD, 12 December 1995. *See* para. 197 *supra*.

¹¹⁷⁸ Ajman Awad, Hearing Sarajevo, T. 202-203, 206-207, 252-253; PW-9, T. 5656; Halim Husić, T. 7428-7429, 7528-7529. *See also* Ex. 1136, Report of the Assistant Commander for Security of the 3rd Corps, 20 December 1995, which refers to an intercepted fax from foreign Mujahedin in Bosnia and Herzegovina sent to an unknown recipient: "We are finished here and we do not [...] want to be in prison like the Arabs in Pakistan are. We are all going back to London now, we can only remain as civilians [...] the jihad is over, I repeat, over. Bosnia is over."

¹¹⁷⁹ Rule 87(A) of the Rules provides that "[a] finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt." *See* Dissenting of Judge Moloto *infra*.

the Main Staff on 8 June 1993 until the EMD was disbanded in December 1995 at the end of the armed conflict in Bosnia and Herzegovina. The general functioning of the ABiH regarding the planning and preparation of combat operations gradually improved during the war, not least as a result of Rasim Delić's continuous efforts to ameliorate the system of command and control between the Main Staff and the commanders in the field. Likewise, the loyalty difficulties originally incurred by Rasim Delić in relation with some ABiH units, undermining his ability to exercise command and effective control over the forces subordinated to him, gradually subsided.¹¹⁸⁰ When the crimes were committed in Livade and Kamenica between July and September 1995, thus, Rasim Delić was in a consolidated position which enabled him to enforce his decisions upon his subordinates, including the EMD and its members.

461. The establishment of the EMD as an ABiH unit and the *de jure* subordination of it to the ABiH 3rd Corps by an order given by Rasim Delić is the first and a *prima facie* indicator of effective control exercised over that Detachment by Rasim Delić.¹¹⁸¹ The main objective of the creation of this Detachment as an ABiH unit was to associate its members fully with the war efforts of the RBiH by incorporating the unit into the Army's system of command and control.¹¹⁸² For all operational purposes, this objective was achieved at the latest when Operation *Proljeće* II was launched; as of this time, the EMD complied with the tactical parts of the combat orders and with many of the other orders handed down by its ABiH superior commanders.¹¹⁸³ The Majority is of the

¹¹⁸⁰ See paras 133-137 *supra*.

¹¹⁸¹ See paras 177, 361-364 *supra*. The Majority recalls that only Rasim Delić could issue orders to the ABiH Corps, Sead Delić, T. 2837-2838; Ismet Alija, T. 4178; Ex. 419, Decision on Organisational Chart of the ABiH, 18 and 24 October 1994.

¹¹⁸² The establishment of EMD was first proposed during a meeting of Rasim Delić with the heads of the Administrations of the ABiH on 18 June 1993, *see para. 173 supra*.

¹¹⁸³ The Majority recalls that the EMD complied with many combat orders, including the following: regarding Operation *Proljeće* – *see* Ex. 435, Combat Order of the Commander of the 35th Division for “*Proljeće*-95”, 24 May 1995; regarding Operation *Proljeće* II – *see* Ex. 444, Order of the Commander of the 35th Division, for the Continuation of “*Proljeće*-95 II”, 18 July 1995; finally, regarding Operation *Farz* – *see* Ex. 505, Plan of the Operation “*Farz*”, 25 August 1995; Ex. 466, Order of the Commander of the 35th Division, 10 September 1995; Ex. 467, Order of the Commander of the 35th Division, 11 September 1995; Ex. 478, Order of the Commander of the 35th Division, 15 September 1995, *see paras 394-399, 402 supra*. *See also* Ex. 1082, Order of the 3rd Corps Commander on a Ceasefire, 11 October 1995. The Majority also recalls that the EMD complied with Ex. 837, Attack Decision of the Commander of the 3rd Corps, August 1994 and in September 1994 successfully attacked Pišana Jelika and Visoka Glava, *see para. 388 supra*. The Majority notes instances of EMD compliance with ABiH non-combat orders, including: Order of the 3rd Corps Commander of October 1994 to redeploy the EMD to Livade; Ex. 1130, Order of the 3rd Corps Commander, 6 December 1994; Order of the 35th Division Commander to submit an attack proposal – *see* Ex. 439, Plan of Attack of the Commander of the EMD, 15 May 1995; a “recommendation” of the 3rd Corps Commander to change the direction of the reconnaissance after Operation *Proljeće*; Ex. 474, Order of the Commander of the 35th Division, 11 September 1995, *see paras 389, 395, 401, 421, 433 supra*. At the same time, the Majority notes the instances of the EMD non-compliance with the ABiH non-combat orders (regulations), including: Ex. 1138, Instructions of the Commander of the 3rd Corps, 27 October 1995; Ex. 1312, Rules on Registration of Foreigners who are ABiH Members in Times of War, 13 June 1994; Ex. 434, Preparatory Order of the Commander of the 35th Division, 7 April 1995; Ex. 444, Order of the Commander of the 35th Division, for the Continuation of “*Proljeće*-95 II”, 18 July 1995 and Ex. 505, Plan of the Operation “*Farz*”, 25 August 1995, as far as they relate to the hand-over of the prisoners; several orders concerning reporting duties: Ex. 491, Order of the Commander of the 35th Division, 17 May 1995; partly – Ex. 485, Order of the Commander of the 35th Division, 8 May 1995; Ex. 488, Order of the Commander of the 35th Division, 27 May 1995; Ex. 442,

view that the ABiH's ability to govern the EMD's participation and engagement in the armed conflict against the VRS lies at the core of the determination of Rasim Delić's command and effective control over the EMD.

462. When the EMD deviated from some of the combat orders handed down to the Detachment—in 1994 and in March 1995—it normally explained its motives for doing so to its superior commanders, *e.g.*, that it needed the necessary time to prepare its combat actions thoroughly, or that the conditions in the field were not yet satisfactory for a successful action.¹¹⁸⁴ No steps were ever taken, nor were any attempts ever made by the ABiH commanders to sanction the EMD for its non-compliance with or deviation from these orders; rather, the combat actions were carried out by the EMD at a later stage.¹¹⁸⁵ This means that the ABiH commanders ultimately accepted the EMD's positions and its reasons. Thus, in the view of the Majority, the reticent approach by the EMD in respect of some superior orders does not create a reasonable doubt as to the general ability of ABiH commanders to have their orders implemented. Consequently, this indicator militates in favour of effective control.

463. On the issue of the EMD's reporting to its superior ABiH units, the Majority draws attention to the fact that the EMD, just as any other ABiH unit, provided oral briefings to its superior commanders, in particular before, during and after combat operations.¹¹⁸⁶ These oral reports or briefings allowed the superior commanders to monitor the operations as they developed and to have command and control of all the units involved in the combat operations, including the EMD. In the Majority's view, moreover, *oral* reports and briefings were particularly useful and practical in the relationship between the EMD and its superior units because of the language differences and the ensuing need to use an interpreter for all exchange of information between the EMD and the ABiH.¹¹⁸⁷ The Chamber finds that the EMD's failure to comply with several orders to submit *written* reports to its ABiH commanders was at least partly made up for by the EMD's *oral* communications, in particular in the meetings before, during and after combat. In the Majority's view, therefore, the EMD's failure to comply with each and every order to submit written reports –

Order of the Commander of the 35th Division, 10 June 1995; Ex. 491, Order of the Commander of the 35th Division, 17 May 1995, *see* paras 373-374, 403-404, 425-426 *supra*. *See also* the incident involving a captured tank, *see* para. 372 *supra*.

¹¹⁸⁴ The Majority recalls in this respect that a) in the summer of 1994, the EMD refused to launch an attack in the area of responsibility of the OG North explaining that it was not ready for combat; b) in November 1994, the EMD limited itself to feign an attack in the area of responsibility of the OG *Bosna* due to unfavorable weather conditions; and c) in March 1995, the EMD refused to prepare itself for an action in the area of *Vlašić* plateau pursuant to an order of the 3rd Corps Commander, again arguing that it was not ready for combat. In respect of the last incident, the Majority notes that the 3rd Corps annulled its order four days later, *see* paras 388-390 *supra*.

¹¹⁸⁵ *See* paras 388-389 *supra*.

¹¹⁸⁶ *See* paras 427-430 *supra*.

¹¹⁸⁷ *See* paras 188-190, 192, 424 *supra*.

many of which were of an administrative nature¹¹⁸⁸ – does not raise a reasonable doubt as to the ability of these commanders to exert command and control over the EMD for the purposes of the war effort.

464. It is true that the EMD communicated with foreign institutions outside Bosnia and Herzegovina.¹¹⁸⁹ However, in the Majority's view, the main purpose of these communications was to promote its cause and attract financial support.¹¹⁹⁰ Thus, this did not affect the chain of command and the effective control exercised by Rasim Delić over EMD and its members.

465. The EMD functioned essentially as a specialised assault unit and was tasked with carrying out the most dangerous activities on the field. It held a special position and enjoyed certain autonomy within the ABiH. This special position allowed the EMD to make its participation in combat actions conditional upon satisfaction of particular combat-related requirements.¹¹⁹¹ However, this "dialectical" procedure was not unusual and did not defy the general practice in the ABiH's planning and preparation of its combat actions. The planning process in the ABiH was normally based on a *dialogue* between the superior and the subordinate units. In this dialogue, the superior unit would set out the main goals of the overall operation, coordinate between the units participating in the action and then discuss with them how to best achieve the main goals. It would ultimately be left to each unit to determine the details of its action in the field. At the end of this process, the operation had to be conducted under a unified command and control. A combat order would finally be issued to this effect.¹¹⁹² The EMD never engaged independently in any combat action without express authorisation from its superior ABiH commanders.¹¹⁹³

466. In the Majority's view, all of this confirms that although the EMD enjoyed a certain degree of autonomy in respect of its superior commanders, it was not an independent unit merely cooperating with the ABiH.

467. The Majority recalls that on several occasions during the EMD's existence, even as late as 1995, when the ABiH concentrated its efforts to lift the Sarajevo siege and defeat the VRS, the 3rd Corps transferred local Bosnian Muslim soldiers to the Detachment.¹¹⁹⁴ The Majority is satisfied that the ABiH would not relinquish command and control over these soldiers to the EMD in those

¹¹⁸⁸ Such as the order for foreigners to register properly with the authorities - *see* para. 373 *supra*.

¹¹⁸⁹ *See* paras 443-446 *supra*.

¹¹⁹⁰ The intercepted fax (*see* para. 446 *supra*), on the said "instructions" is completely cryptic and it was, in any case, sent when the war was already over and the Dayton Agreement signed.

¹¹⁹¹ *See* paras 380-384 *supra*. Jovan Divjak (T. 2149) described the role of the EMD in the ABiH in the following terms: "it was concluded that it was supposed to be an elite unit, to be used at such positions or locations at the front line that were in danger, that were under the most pressure by the opposing party".

¹¹⁹² *See* paras 377-379 *supra*.

¹¹⁹³ *See* para. 386 *supra*.

circumstances. In the Majority's view, these transfers of ABiH soldiers to the EMD have to be understood as reinforcement of an ABiH assault unit which was under its effective control to achieve its war objectives.

468. The EMD participated in the important Operation *Farz*, conducted under the overall command and control of Rasim Delić.¹¹⁹⁵ According to the combat orders, enemy captives were to be gathered at ABiH collection points.¹¹⁹⁶ The EMD did so only once, but failed to hand over the detainees who ended up being subjected to the crimes committed by members of the EMD in July, August and September 1995.¹¹⁹⁷ ABiH officers were denied access to these detainees during their detention at the Kamenica Camp.¹¹⁹⁸ Several witnesses testified that, in their view, nothing could be done to discipline the EMD since coercive measures would have entailed a violent conflict with the EMD,¹¹⁹⁹ but this position is not borne out by facts adduced in the evidence. Rather than saying that nothing *could be done* to oppose undisciplined behavior of EMD members, the Majority finds that nothing *was* done or even *attempted* to be done, in particular in connection with the alleged violations of international humanitarian law during the detention of enemy soldiers and civilians by the EMD.¹²⁰⁰ In the Majority's view, this failure to take *any* steps to assume control over the detainees constitutes a failure to take the necessary and reasonable measures to prevent and punish the crimes in question.

469. Just as Rasim Delić had the authority to establish the EMD as an ABiH unit, he also had the authority, and indeed exercised this authority, to disband the Detachment. The fact that the *shura* accepted the disbandment does not in any way affect the determination of his effective control; he ordered the disbandment of the EMD, and the Detachment was disbanded accordingly.¹²⁰¹

470. As the Appeals Chamber has stated in several judgements, the effective control of a superior, in fulfilment of his responsibilities over his subordinates, consists in the material ability of

¹¹⁹⁴ See paras 412-414 *supra*.

¹¹⁹⁵ The evidence shows that different ABiH Corps participated in these operations and as a consequence, they needed coordination by the Main Staff and their direct superior, Rasim Delić; see paras 397-402 *supra*.

¹¹⁹⁶ See paras 403-404 *supra*.

¹¹⁹⁷ See paras 403-405 *supra*. On two other occasions, the EMD handed over prisoners to the ABiH MP only after having subjected them to cruel treatment.

¹¹⁹⁸ See paras 406-410 *supra*.

¹¹⁹⁹ See Asim Delalić, T. 1761-1762; Osman Fuško, T. 1138-1140; PW-11, T. 6346 (closed session); Kadir Jusić, T. 2685-2687; Vahid Karavelić, T. 7988-7990. See also Halim Husić, T. 7357, 7510-7512.

¹²⁰⁰ The ABiH officers who were denied or given only limited access to the detainees held by the EMD refrained from any further attempt to seek access to the detainees, for example by requesting from their superiors a written order or an oral intervention with a view to providing access.

¹²⁰¹ See paras 196-199, 457-458 *supra*. The Majority recalls that in the fax of 16 December 1995 intercepted by the ABiH during Operation *Vranduk* (Ex. 1136), a member of the EMD described the circumstances of the EMD's disbandment in the following terms: "The Army has told us that we are to disarm and to leave by 7 January 1996. The meeting of the Council (*Shura*) was yesterday, it decided to dissolve. The Army today prevented us from attacking Žepče for revenge. We are finished here and we do not wish to be in prison like Arabs in Pakistan are. We are all going back to London now."

the superior *to prevent* and *punish* crimes committed by his subordinates. The Majority recalls that foreign members of the EMD were in fact subject to criminal proceedings in some instances of illegal behaviour, although not for violations of international humanitarian law.¹²⁰² In the Majority's view, this confirms that the superior commanders did have the material ability to prevent and/or punish crimes committed by the EMD. The Majority therefore adds little weight to the statements made by several witnesses that nothing could be done.¹²⁰³ These statements do not raise a reasonable doubt as to whether the ABiH commanders, and Rasim Delić in particular, had the material ability to investigate, prevent and punish the commission by the EMD members of the war crimes of July and September 1995, just as they had investigated other illegal acts committed by these same members.

471. On the basis of the all the relevant evidence heard during the trial and evaluated both in isolation and collectively, the Majority, Judge Moloto dissenting, finds beyond reasonable doubt that Rasim Delić had effective control over the EMD in the period between July and December 1995. Consequently, the Majority is satisfied that a superior-subordinate relationship existed between Rasim Delić and the EMD perpetrators of the crimes in question, as charged in the Indictment. Judge Moloto's position regarding the other elements of Rasim Delić's individual criminal responsibility is explained in the Dissenting Opinion attached to this Judgement.

B. Knowledge or "Reason to Know"

472. Having established that in the relevant period of 1995, Rasim Delić and the EMD perpetrators of the crimes were in a superior-subordinate relationship, the Majority must now examine whether Rasim Delić had knowledge or had reason to know that the crimes of murder and cruel treatment were about to be or had been committed by members of the EMD in Livade and the Kamenica Camp in July-August 1995, and in Kesten and the Kamenica Camp in September 1995.

1. Livade and Kamenica Camp – July-August 1995

(a) Introduction

473. The Prosecution submits that Rasim Delić had information available that put him on notice of the crimes committed by EMD members in Livade and the Kamenica Camp.¹²⁰⁴ In particular, the Prosecution submits that Rasim Delić knew, through Bulletin 137 dated 22 July 1995 of the Security Administration, that the EMD was holding VRS detainees in Livade and the Kamenica

¹²⁰² See paras 447-452 *supra*.

¹²⁰³ For example, criminal proceedings against members of the EMD for such crimes could have been initiated, or an intervention could have been made by the 3rd Corps Commander, who enjoyed the trust and respect of the EMD.

¹²⁰⁴ Prosecution Final Brief, paras 308-314.

Camp.¹²⁰⁵ It further contends that (i) Rasim Delić knew that in June 1993, men who later formed the EMD murdered captives in Bikoši, (ii) EMD members were implicated in the abduction and murder of a British humanitarian worker in early 1994 and (iii) generally, EMD members were notorious for their violent criminal behaviour, incidents which were often reported in security bulletins at Rasim Delić's disposal. This information, according to the Prosecution, put Rasim Delić on notice that members of the EMD had a propensity to commit violent acts against persons protected by the Geneva Conventions.¹²⁰⁶ Although the Prosecution's case is that Rasim Delić *had reason to know* of these crimes, it submits that there is evidence from which the Trial Chamber could infer his *actual knowledge*.¹²⁰⁷

474. The Defence argues that Rasim Delić did not receive information that the EMD was holding captives in Livade and the Kamenica in July and August 1995, let alone that any of them were killed or mistreated. The Defence submits that Rasim Delić neither knew nor had reason to know that Mujahedin committed crimes in Bikoši, nor that members of the EMD subsequently committed other crimes.¹²⁰⁸

(b) Whether Rasim Delić had Knowledge of the Crimes of July and August 1995

475. As described earlier in this Judgement, the evidence shows that information concerning the VRS detainees held by the EMD in July 1995 was reported to the Main Staff Security Administration.¹²⁰⁹ These reports formed the basis for Bulletin 137, which on 22 July 1995 was sent to KM Kakanj with the instruction "to forward [it] to [...] Rasim Delić for his information". The bulletin stated as follows:

Fifty aggressor soldiers have been eliminated and around forty have been captured, including two doctors and one nurse. [...] All the captured aggressor soldiers are being held by the "El Mudžahid" Detachment members and so far they do not allow anyone access to these prisoners.¹²¹⁰

476. The Majority notes that Bulletin 137 did not contain information on crimes committed against the captured VRS detainees. As there is no other evidence, either direct or circumstantial, from which to infer that Rasim Delić was actually aware that EMD members were about to commit or had committed crimes in July and August 1995, the Majority is not satisfied that Rasim Delić had knowledge of these crimes.

¹²⁰⁵ Prosecution Final Brief, paras 308-310.

¹²⁰⁶ Prosecution Final Brief, paras 301-307.

¹²⁰⁷ Prosecution Closing Argument, T. 8760.

¹²⁰⁸ Defence Final Brief, paras 483-569.

¹²⁰⁹ See paras 276 *et seq. supra*.

¹²¹⁰ Ex. 582, Bulletin of the General Staff Security Administration, 22 July 1995, pp 4-5.

477. The Majority will therefore turn to the issue whether Rasim Delić “had reason to know”, *i.e.*, whether he had information available “that was sufficiently alarming to put him on notice of the risk that crimes might be committed by his subordinates”.¹²¹¹

(c) Whether Rasim Delić had Reason to Know of the Crimes of July-August 1995

(i) Was the Information Contained in Bulletin 137 Available to Rasim Delić?

478. The Defence generally disputes the reliability of the information contained in bulletins submitted to Rasim Delić.¹²¹² Regarding Bulletin 137, which contained information on the capture of 40 VRS soldiers by the EMD, the Defence contends that “the fact that a document was sent to be delivered to Delić does not necessarily mean that this was carried out, and it certainly wasn’t in this case.”¹²¹³ Specifically, the Defence denies that this bulletin was delivered to Rasim Delić because on 22 and 23 July 1995, he was attending a conference in Split, Croatia.¹²¹⁴

479. The Majority recalls that the jurisprudence of the Tribunal requires that, to establish knowledge of a superior, “the relevant information only needs to have been provided or available to the superior or [...] ‘in the possession of’”. It is not required that a commander actually acquainted himself with the information”.¹²¹⁵ The Majority further recalls the holding in the *Hostage* case that “an army commander will not ordinarily be permitted to deny knowledge of reports received at his headquarters, they being sent there for his special benefit”.¹²¹⁶ Even though the information contained in the bulletins may have been unverified and sometimes inaccurate,¹²¹⁷ the Majority is satisfied that the bulletins served as a means through which Rasim Delić was kept apprised of all relevant developments in the ABiH and the theatre of war.¹²¹⁸

480. As described elsewhere in this Judgement, bulletins were placed in a sealed envelope and sent on a daily basis by the Security Administration to Rasim Delić personally. These bulletins contained sensitive information and had to be returned to the Chief of the Security Administration.¹²¹⁹ Whereas there is evidence that, in Rasim Delić’s absence, the bulletins were delivered to the Chief of Staff or to another senior officer standing in for the Main Staff Commander, it is reasonable to conclude that due to the confidential nature of these documents and

¹²¹¹ *Hadžihasanović* Appeal Judgement, paras 27-28, 30.

¹²¹² Defence Final Brief, paras 488, 727-737.

¹²¹³ Defence Final Brief, para. 558.

¹²¹⁴ Defence Final Brief, paras 515, 559-564.

¹²¹⁵ *Čelebici* Appeal Judgement, para. 239.

¹²¹⁶ *Hostage* Case, p. 1260.

¹²¹⁷ Defence Final Brief, paras 488, 733-734.

¹²¹⁸ See paras 145-146, 151 *et seq. supra*.

¹²¹⁹ See paras 146, 152.

the fact that they were addressed to the Main Staff Commander for his special benefit, the information contained therein was routinely conveyed to Rasim Delić.

481. Although the evidence shows that Rasim Delić was in Split on 22 July 1995 and that he visited the KM Kakanj only on 29 July 1995,¹²²⁰ the Majority is satisfied, in light of the very purpose for which these bulletins were sent, that the information contained in Bulletin 137 of 22 July 1995 was still “available” to Rasim Delić when travelling on official mission.

482. Against this backdrop, the Majority finds it established beyond reasonable doubt that Rasim Delić as of 22 July 1995 had available information that a substantial number of VRS soldiers were captured by the EMD who did not allow “anyone” to access the detainees.¹²²¹

(ii) Did Rasim Delić Have Sufficiently Alarming Information to Justify Further Enquiry?

483. The next question arising for determination at this juncture is whether the information contained in Bulletin 137 was sufficiently alarming to trigger the duty of Rasim Delić to take further steps with a view to enquiring into the fate of the detainees held by the EMD. The Majority notes that the information that the EMD had captured “around forty [aggressor soldiers]” is not, in and of itself, sufficiently alarming information to put Rasim Delić on notice of the crimes later committed in Livade and the Kamenica Camp. Therefore, the Majority will analyse whether he had additional information which would qualify the report on the capture of “aggressor soldiers” as sufficiently alarming. In this context, the Majority recalls that a superior’s knowledge of and failure to punish his subordinates’ past offences is relevant to the determination as to whether he possessed sufficiently alarming information to justify further enquiry.¹²²²

a. The Bikoši 1993 Crimes

484. The Majority recalls that on 23 and 25 June 1993, two letters were sent to the Main Staff and Rasim Delić, respectively. The letter of 23 June 1993 was signed by Fadil Alihodžić, Ivan Negovetić and Stjepan Šiber. The letter of 25 June 1995 was only signed by Stjepan Šiber. Both letters denounced, albeit in different terms, the killings of Bosnian Croats by unidentified

¹²²⁰ Ismet Dedović, T. 8206-8207; T. 8270-8271; Ex. 1360, Newsletter of the ABiH Information Department on a Meeting in Split, 23 July 1995; Ex. 601, Conclusions from the Meeting of the Core Sections of the ABiH General Staff, 29 July 1995.

¹²²¹ The Majority recalls that while ABiH officers interviewed several of the VRS prisoners at *KP Dom Zenica* none of these interviews did however contain any mention of murders or cruel treatment of the prisoners, *see paras 283 et seq. supra*.

¹²²² *See Hadžihasanović Appeal Judgement*, para. 30.

Mujahedin in the village of Bikoši.¹²²³ Both documents were received at the Operations Centre in Sarajevo.¹²²⁴

485. The Defence submits that the Operations Centre in Sarajevo was at that time under the command of the Chief of Staff of the Main Staff, Sefer Halilović.¹²²⁵ In the Defence's submission, "due to the conflict between Delić and Halilović [...] it cannot be assumed that information arriving at the Operations Centre was passed to Rasim Delić".¹²²⁶ This, in the Defence's view, is further corroborated by the fact that the letters under examination bear no markings suggesting that they were in actual fact delivered to Rasim Delić.¹²²⁷

486. The Majority notes that the letter of 23 June 1993 was addressed to the Main Staff, for the attention of President Izetbegović, and there is no conclusive evidence showing that the document was, within the Main Staff, transmitted to Rasim Delić personally.¹²²⁸ The Majority is therefore not satisfied that the letter of 23 June 1993 was provided to Rasim Delić.¹²²⁹

487. By contrast, the letter of 25 June 1993 contains the type-written word "personally", next to the recipient, Rasim Delić.¹²³⁰ The evidence also shows that, when Sefer Halilović was the Chief of Staff, documents addressed personally to Rasim Delić were regularly transmitted to him.¹²³¹ The Majority thus finds that Rasim Delić was informed by the letter of 25 June 1993 that Mujahedin had executed a group of Croats in the village of Bikoši.¹²³²

¹²²³ See paras 229-230 *supra*.

¹²²⁴ The letter of 23 July 1993 was marked by the duty officer, Zičro Suljević, whereas the letter of 25 July 1993 contains the hand-written marking "Hari", Ivan Negovetić, T. 6807-6808, 6855-6857.

¹²²⁵ Defence Final Brief, para. 312; Defence Closing Argument, T. 8955-8957.

¹²²⁶ Defence Final Brief, para. 283.

¹²²⁷ Defence Final Brief, para. 313.

¹²²⁸ See paras 228-229 *supra*.

¹²²⁹ The Majority notes that a document which was also addressed to the "Supreme Command Staff" in August 1993 bears a handwritten marking "K-dant" to indicate that it was delivered to the Main Staff Commander, Ex. 272, Proposal from the 3rd Corps Commander to the ABiH Supreme Command Staff Concerning Formation of a Detachment of Foreign Citizens, 12 August 1993; Murat Softić, T. 1818-1819.

¹²³⁰ Ex. 171 (under seal) contains the type-written word of "*na ličnost*" ("personally") next to the recipient "Supreme Commander".

¹²³¹ Murat Softić, for instance, testified that Rasim Delić received Ex. 272, Proposal from the 3rd Corps Commander to the ABiH Supreme Command Staff Concerning Formation of a Detachment of Foreign Citizens, 12 August 1993 and this is proved by a hand-written notation made by the Main Staff Commander on that document, Murat Softić, T. 1818-1819. Several other documents were sent to Rasim Delić personally and it is not disputed that they were provided to him: *see, e.g.*, Ex. 173 (under seal); Ex. 174 (under seal). *See also* Ex. 168 (under seal) and Ex. 179, Report from 3rd Corps Commander to Rasim Delić Concerning Foreign Volunteers in the Zenica Area, 13 June 1993, which also do not contain any hand-written notation.

¹²³² A further confirmation that Rasim Delić was familiar with the letter comes from the fact that at that time Rasim Delić was in Sarajevo. Ismet Dedović testified that Rasim Delić left Sarajevo for the first time in late August 1993 to go to Zenica, Ismet Dedović, T. 8181.

488. There is no evidence that Rasim Delić reacted to the letter of 25 June 1993.¹²³³ However, on 17 October 1993, Rasim Delić initiated an investigation into the Bikoši killings after he was requested to do so by President Izetbegović. On 21 October 1993, Rasim Delić was informed that 25 Bosnian Croat civilians died as a result of combat activities around 8 June 1993. This information was in turn reported by Rasim Delić to the RBiH Ministry of Foreign Affairs.¹²³⁴

489. The Prosecution submits that the sole fact that the investigation was conducted in only four days should have persuaded Rasim Delić that this was not “a real investigation”.¹²³⁵ The Prosecution further argues that Rasim Delić was still obliged to conduct an investigation into the allegations raised by Stjepan Šiber as these were conflicting with the result of the investigation of October 1995.¹²³⁶

490. The Majority notes that Rasim Delić instituted an investigation into the Bikoši events by an order to the 3rd Corps. The 306th Brigade and 3rd Corps reported back along the chain of command.¹²³⁷ Furthermore, the Prosecution’s argument that the investigation was not a “real” one as it took only four days is not convincing in light of the fact that President Izetbegović requested that it be carried out “urgently”.¹²³⁸ Finally, the need for Rasim Delić to further enquire into allegations raised in respect of the killings would normally have been triggered by substantiated claims brought to Rasim Delić’s attention *after*, not *before* the investigation.

491. In any event, even assuming that the allegations raised by Stjepan Šiber would have called into question the reliability of the investigation of October 1993, the information available to Rasim Delić in 1993 indicated that the perpetrators of the crimes in question were “the Mujahedin”, and did not allow, as alleged by the Prosecution, for the conclusion that they were the men who later formed the EMD. Hence, his failure to conduct further enquiry into the allegations raised in 1993 cannot be considered as an indicator that Rasim Delić had sufficiently alarming information that

¹²³³ *But see* Defence Final Brief, paras 319-320, 344, where it is argued that Ex. 225 (Warning of Rasim Delić to Corps Commanders Concerning the Creation of Muslim Armed Forces within the ABiH, 27 July 1993, generally addressing problems with the “Muslim Armed Forces”) was the response of Rasim Delić to Stjepan Šiber’s request in Ex. 174 (under seal), which refers to the letter of 25 June 1993, Ex. 171 (under seal). However, the Majority notes that Rasim Delić in Ex. 225 did not make any mentioning of Stjepan Šiber’s allegations of crimes committed by the Mujahedin.

¹²³⁴ *See* paras 232 *et seq. supra*.

¹²³⁵ Prosecution Closing Argument, T. 8794.

¹²³⁶ Prosecution Closing Argument, T. 8793-8794.

¹²³⁷ *See* paras 232 *et seq. supra*.

¹²³⁸ Ex. 182, Order from Alija Izetbegović to Rasim Delić Concerning the Investigation into the Incident in Maline, 17 October 1993, p. 1.

future similar crimes could be committed by EMD members in 1995, more than two years after the Bikoši events.¹²³⁹

492. In light of the foregoing evidence, the Majority concludes that Rasim Delić's knowledge of the allegations raised in respect of the crimes committed by the Mujahedin in 1993 does not constitute information which would qualify the report on the capture of enemy soldiers in Bulletin 137 as sufficiently alarming to justify further enquiry as to whether EMD members were about to commit or had committed crimes in Livade and Kamenica in July and August 1995.

b. The Killing of a Humanitarian Worker in 1994

493. The Prosecution submits that the kidnapping and killing of a British humanitarian worker, Paul Goodall, by members of the EMD in 1994 alerted Rasim Delić to the Detachment's "capacity to commit violent acts against civilians, protected by the Geneva Conventions".¹²⁴⁰ The Defence disputes that EMD members committed this act.¹²⁴¹

494. On 29 January 1994, a bulletin of the Security Administration sent to Rasim Delić reported that two days earlier, Paul Goodall and two of his colleagues were assaulted while riding in a UNHCR vehicle in Zenica municipality by "5 uniformed individuals [...] probably members of the Muhajedeen unit of the 6th Corps." Whereas Goodall was shot dead, his colleagues survived with injuries.¹²⁴²

495. In the wake of this incident, a joint military-civilian force was set up which arrested three suspects, two of whom were identified as members of the EMD. It is in dispute whether Rasim Delić authorised this operation.¹²⁴³ On 2 February 1994, a bulletin of the Security Administration informed Rasim Delić that criminal charges against the three suspects had been filed.¹²⁴⁴ Criminal

¹²³⁹ See *Hadžihasanović* Appeal Judgement, para. 30, referring to the relevance in establishing the superior's knowledge of past offences committed by the "same group of subordinates".

¹²⁴⁰ Prosecution Final Brief, paras 303, 314.

¹²⁴¹ Defence Final Brief, paras 485-486.

¹²⁴² Ex. 714, Situation Report No. 22 of the Security Sector of the Ministry of Defence, 29 January 1994, p. 2; Ex. 658 (under seal).

¹²⁴³ Prosecution Final Brief, para. 303; Defence Final Brief, para. 509, referring to the testimony of PW-13, T. 6638; Ex. 658 (under seal); Ex. 887, Report of Senior Public Prosecutor's Office Zenica, 1 February 1994; PW-4, T. 4777. The Majority notes that Ex. 658 (under seal) is a plan of action taken in relation to the killing ("Action Tim") and, although it contains at the end of the document the type-written names of Azim Fazlić and Rasim Delić, bears no signature next to the names.

¹²⁴⁴ Ex. 659, Report of the BiH Ministry of Defence Concerning Criminal Reports Against EMD Members, 2 February 1994, p. 2.

proceedings against the suspects were initiated by the civilian prosecutor's office in Zenica, but never completed, as the suspects escaped from custody.¹²⁴⁵

496. Rasim Delić had information available to him that criminal proceedings were initiated with a view to punishing the perpetrators of the Goodall killing. Given that Rasim Delić was aware that adequate measures were taken to punish the perpetrators, and considering that no subsequent incidents of murders by EMD members were reported to him in the following sixteen months, this militates against his reason to know in July 1995 that similar crimes would be committed in the future by the same group of subordinates.¹²⁴⁶

497. The Majority concludes that the killing of Paul Goodall does not constitute information which would qualify the report on the capture of enemy soldiers in Bulletin 137 as sufficiently alarming to justify further enquiry as to whether EMD members were about to commit or had committed crimes in Livade and Kamenica in July and August 1995.

c. The Propensity of EMD Members to Commit Crimes

498. The Prosecution contends that information contained in numerous bulletins of the Main Staff Security Administration alerted Rasim Delić to the propensity of members of the EMD to commit crimes. In the Prosecution's submission,

aware of the history of the EMD to commit violence against civilians and [detainees], Rasim Delić had reason to know [that detainees] in the custody of the EMD would be subjected to Cruel Treatment and Murder, but failed inquire [*sic*] further.¹²⁴⁷

499. The Defence submits that it is not proved that Rasim Delić was always familiar with the contents of the bulletins.¹²⁴⁸ It argues that any misbehaviour of members of the EMD concerned mostly petty offences and "had nothing to do with the behaviour of EMD members during combat activities nor with captured enemy combatants and civilians".¹²⁴⁹ The Defence further argues that often "incidents committed by Arabs who were not EMD members [...] were erroneously attributed to the EMD".¹²⁵⁰ Moreover, the Defence contends that the EMD misbehaviour must be considered within the context of the "terrible circumstances" faced by the ABiH in 1995, showing that

¹²⁴⁵ PW-4, T. 4771-4772, 4777 (closed session); Muris Hadžiselimović, T. 6198. *See* para. 448 *supra*.

¹²⁴⁶ *See Hadžihasanović and Kubura* Appeal Judgement, para. 163.

¹²⁴⁷ Prosecution Final Brief, para. 308.

¹²⁴⁸ Defence Final Brief, paras 510-513, 557-558.

¹²⁴⁹ Defence Final Brief, paras 484, 488.

¹²⁵⁰ Defence Final Brief, paras 490-493 citing evidence that incidents involving Afro-Asians were arbitrarily attributed to the EMD.

among the ABiH members, there were mass desertion, murders, large-scale wilful abandonment of positions, self-wounding, suicide, disturbance of public peace and order, arbitrary shooting, refusal to obey orders etc.¹²⁵¹

500. The Majority reiterates that a commander will not ordinarily be permitted to deny knowledge of reports such as the bulletins which are sent to him for his special benefit.¹²⁵² Although the information contained in the bulletins may not always have been accurate, they were a critical tool through which Rasim Delić was kept up-to-date of relevant developments.¹²⁵³

501. The evidence establishes that, prior to 21 July 1995, Rasim Delić was informed *via* bulletins sent by the Security Administration of numerous instances of misconduct involving EMD members, some of which amounted to criminal offences. The bulletins reported that EMD members (i) in August 1994, “behave[d] violently, causing displeasure among citizens and ABiH members” and “violate[d] public law and order”;¹²⁵⁴ (ii) on 19 December 1994, abducted “Safet Šabić, his wife and his son from their home in Travnik” and “stripped [Safet Šabić] off, then beat him”;¹²⁵⁵ (iii) on 11 February 1995, “physically abused a young couple who were strolling [...] in Zenica”;¹²⁵⁶ (iv) on 4 March 1995, abducted “Jasranko Bošnjak, a war invalid, [...] and badly maltreated him”;¹²⁵⁷ (v) on 21 March 1995, abducted a man from Travnik and “physically abused him and tortured him, accusing him of being involved [...] in stealing cattle that allegedly belonged to the *El Mudžahid* Detachment”;¹²⁵⁸ (vi) on 15 April 1995, were accused of “unacceptable activities”, specifically of “impos[ing] the Sharia lifestyle”, abducting a young Bosnian girl and physically mistreating young people in the streets;¹²⁵⁹ (vii) on 15 May 1995, desecrated “tombstones [...] at the Catholic cemetery in the village of Ovnak”;¹²⁶⁰ (viii) on 3 July 1995, visited soldiers of the 328th Brigade during the operations in the Vozuća area and “threaten[ed] them especially the Croatian and Serbian soldiers” by telling a Croat soldier of the Brigade that “they would slaughter all Croats and

¹²⁵¹ Defence Final Brief, para. 499, citing Ex. 1270, 1286, 1293, and Defence Final Brief, para. 500, citing Ex. 994. Other documents show that numerous criminal reports were filed against ABiH members, *see* Ex. 906-910, Ex. 942 and Ex. 1239 cited in the Defence Final Brief, para. 501.

¹²⁵² *See* paras 145-146, 151 *et seq supra*.

¹²⁵³ *See* paras 145-146, 151 *et seq supra*.

¹²⁵⁴ Ex. 721, Bulletin No. 162 of the Security Sector of the Ministry of Defence, 14 August 1994, p. 2 and 722, Bulletin No. 163 of the Security Sector of the Ministry of Defence, 15 August 1994, p. 3. *See also* Ex. 723, Bulletin No. 211 of the Security Sector of the Ministry of Defence, 15 October 1994, p. 4, referring to EMD members who beat a girl who was wearing a skirt in Krpeljići. *See also*, Ex. 963, Information of the Chief of the Military Security Administration, 12 April 1995.

¹²⁵⁵ Ex. 724, Bulletin No. 7 of the Military Security Administration, 10 January 1995, p. 3.

¹²⁵⁶ Ex. 725, Bulletin No. 29 of the Military Security Administration, 20 February 1995, p. 4.

¹²⁵⁷ Ex. 727, Bulletin No. 38 of the Military Security Administration, 12 March 1995, p. 3.

¹²⁵⁸ Ex. 733, Bulletin No. 85 of the Military Security Administration, 23 May 1995, pp 3-4.

¹²⁵⁹ Ex. 963, Information of the Chief of the Military Security Administration, 12 April 1995, pp 1-2.

¹²⁶⁰ Ex. 731, Bulletin No. 78 of the Military Security Administration, 15 May 1995 and Ex. 732, Bulletin No. 81 of the Military Security Administration, 18 May 1995, p. 5.

Serbs”;¹²⁶¹ (ix) on 15 July 1995, threatened to blow up a house of a video shop owner;¹²⁶² (x) on 19 July 1995, harassed girls on Savići- Krivaja road, forcibly taking them towards Paljenik and forcing them to cut their hair.¹²⁶³ The Majority is satisfied that the bulletins served as a means through which Rasim Delić was kept apprised of all relevant developments in the ABiH and the theatre of war.¹²⁶⁴ Moreover, the Majority notes that in spite of the “terrible circumstances” stressed by the Defence, the Security Administration considered that the mentioning of these incidents in the bulletins was warranted.

502. As regards the conduct of EMD members during combat activities *vis-à-vis* enemy soldiers, a report from the 1st Corps to the Main Staff Security Administration dated 9 June 1995 stated:

During the conduct of combat activities, the foreigners from the Detachment are characterised by fanatical courage that comes from religious fanaticism. They are unfamiliar with the concept of prisoner of war. [...] According to the available information, the cause of the Detachment members’ illegal activities lies in religious fanaticism also, which is supported by their intention to blow up a Catholic church in Vučija Gora, from which they were diverted only on the insistence of the 306th Mountain Brigade Command. Basically, members of the Detachment consider as enemies all those who are not of the Islamic faith.¹²⁶⁵

503. A second report dated 15 June 1995 sent from the 3rd Corps Security Service to the Main Staff Security Administration informed that members of the EMD “ventured ahead of the defence line, killed many Chetniks, slit the throats of two of them and carried their heads through the villages of the Krivaja river, showing them to villagers and schoolchildren.”¹²⁶⁶ There is, however, no evidence that the information contained in these two reports was included in the bulletins that were sent to Rasim Delić personally or otherwise made available to him.

504. In the absence of bulletins which conveyed to Rasim Delić the information on the incidents contained in the reports from the 1st and 3rd Corps, the Majority finds that knowledge of these incidents cannot be imputed to him.

505. Having established that Rasim Delić was informed by a number of bulletins about the criminal behaviour of EMD members, the Majority will turn to determine whether this information was sufficiently alarming to justify further enquiries on the part of Rasim Delić regarding the fate of the detainees captured by the EMD in July 1995. The Majority will also consider whether the circumstances of the case allow for the inference that because of Rasim Delić’s failure to conduct

¹²⁶¹ Ex. 736, Report No. 125 of the Military Security Administration of the General Staff, 10 July 1995, p. 7. *See also* Ex. 740, Bulletin No. 149 of the Military Security Administration, 4 August 1995, p. 3, referring to alleged “physical assault” by EMD members against members of the 328th Brigade due to rumors of an “alleged betrayal of officers from the 328th [Mountain Brigade].”

¹²⁶² Ex. 737, Report No. 130 of the Military Security Administration, 15 July 1995, pp 2-3.

¹²⁶³ Ex. 738, Bulletin No. 134 of the Military Security Administration, 19 July 1995, p. 2.

¹²⁶⁴ *See* paras 145-146, 151 *et seq supra*.

¹²⁶⁵ Ex. 1040, Report of the Assistant Commander for Security of the 1st Corps, 9 June 1995, pp 3-4.

such enquiries, he accepted the risk that crimes were about to be committed or had been committed in July and August 1995.

506. To begin with, the Majority agrees with the Defence that the aforementioned bulletins did not report the commission of war crimes by members of the EMD, but mainly misdemeanours and some ordinary crimes committed outside combat operations.

507. It should also be noted that the foregoing bulletins informed Rasim Delić of counter-measures taken by the Military Security Service. For instance, the bulletin of 23 May 1995 reported acts of torture by an EMD member against a civilian, but also informed Rasim Delić that “[t]he [Military Security Service] is taking measures within its competence to review this case and establish the responsibility of those involved in the incident.”¹²⁶⁷ Likewise, the bulletin of 3 July 1995, in reporting threats by members of the EMD to Croatian and Serb soldiers, informed Rasim Delić that the Military Security Service, “in coordination with the organs of RiK/command and control/, is taking steps to resolve this problem”.¹²⁶⁸ Another bulletin indicated that the Military Security Service, in relation to threats by members of the EMD to a shop owner, was undertaking measures “to prevent such incidents”.¹²⁶⁹ A further bulletin, with regard to an episode of abduction and mistreatment by members of the EMD, reported that the Military Security Service “is undertaking measures to clarify the case”.¹²⁷⁰

508. The foregoing evidence demonstrates that information was made available to Rasim Delić about incidents in which measures within the competence of the Military Security Service were taken against EMD members suspected of having committed crimes. A bulletin dated 12 March 1995 from the 3rd Corps Military Security Service conveyed a call for action:

Bearing in mind the ever increasing number of incidents caused by certain members of the El Mujahid [D]etachment and the consequent protests of the citizens on this territory, the 3rd Corps [Military Security Service] suggests that the higher competent organs undertake measures to curb such and similar cases.¹²⁷¹

509. The Majority notes that the bulletin of 15 April 1995 reported “unacceptable activities” by the EMD as follows:

[T]heir activities are more and more expressed in the attempts to impose the Sharia lifestyle [...] More frequent are the complaints from the citizens regarding their forced moving into the houses and apartments, as well as the intercepting and physical maltreatment of young people in the

¹²⁶⁶ Ex. 665, Report of the Chief of the Security Service of the 3rd Corps, 15 June 1995, p. 1.

¹²⁶⁷ Ex. 733, Bulletin No. 85 of the Military Security Administration, 23 May 1995, p. 4.

¹²⁶⁸ Ex. 736, Report No. 125 of the Military Security Administration of the General Staff, 10 July 1995, p. 7.

¹²⁶⁹ Ex. 737, Report No. 130 of the Military Security Administration, 15 July 1995, p. 3.

¹²⁷⁰ Ex. 724, Bulletin No. 7 of the Military Security Administration, 10 January 1995, p. 3. A similar wording is used in Ex. 738, Bulletin No. 134 of the Military Security Administration, 19 July 1995, p. 2.

¹²⁷¹ Ex. 727, Bulletin No. 38 of the Military Security Administration, 12 March 1995, p. 3.

streets to whom they “explain” that this is Allah’s country and that their behaviour is not “in the spirit of Sharia regulations” and similar. It is already known to the public that the members of this detachment in the village of Čurići, in Zavidovići municipality, completely destroyed an orthodox cemetery. [...] Third Corps Military Security Service proposes that an adequate solution for the status of these foreign citizens in our country be found by the organs in authority.¹²⁷²

Rasim Delić reacted by a hand-written remark on the first page of the bulletin, which was sent back to the Security Administration, with the words “proposal to finally resolve this”.¹²⁷³

510. However, despite the “ever increasing number of incidents”, there is no evidence of any measures imposed against members of the EMD. In particular, the criminal reports in evidence before the Trial Chamber show that proceedings were initiated only against those ABiH members who did not form part of the EMD.¹²⁷⁴

511. The Majority is of the view that the number of incidents attributed in the above bulletins to EMD members¹²⁷⁵ – whether correctly or not – called for further enquiry on the part of Rasim Delić, in particular to mitigate the risk with a view to preventing the commission of war crimes by EMD members.

512. It follows that the frequent occurrence of misdemeanours and criminal offences by members of the EMD was a matter which ought to have alerted Rasim Delić to the risk that similar offences against persons might recur in the future. The apparent impunity of its members was also likely to have an encouraging effect on the perpetrators and the EMD at large. The risk of recurring crimes became all the more tangible when Rasim Delić received the information that the EMD held VRS captives and that the ABiH was not allowed to have access to them. He was also informed that “two doctors and one nurse” were detained by the EMD, whereas according to international humanitarian law, their detention could only be justified “in so far as the state of health, the spiritual needs and the number of prisoners of war require”.¹²⁷⁶ In light of the EMD’s record of misdemeanours and criminal offences, this constitutes information which would qualify the report on the capture of enemy soldiers in Bulletin 137 as sufficiently alarming to justify his immediate intervention to determine whether members of the EMD were about to commit or had committed crimes in Livade and Kamenica in July and August 1995. Therefore, in failing to conduct any enquiry, Rasim Delić

¹²⁷² Ex. 963, Report of the Assistant Commander for Security of the 3rd Corps, 20 November 1994.

¹²⁷³ Ex. 963, Report of the Assistant Commander for Security of the 3rd Corps, 20 November 1994.

¹²⁷⁴ Ex. 906-910 (under seal), Ex. 942, Report of the Assistant Commander for Security of the 3rd Corps, 29 July 1995 and Ex. 1239, Report of the Chief of the 3rd Corps Security Service, 28 July 1995, refer to criminal reports filed against ABiH members. Ex. 880, Report of the 3rd Police Battalion to the Military Security Service of the 3rd Corps, 7 October 1995, reports a member of the EMD for theft. However, this took place after the alleged crimes in the Indictment were committed.

¹²⁷⁵ See para. 501 *supra*.

¹²⁷⁶ Art. 28, Geneva Convention I.

accepted the risk that crimes were about to be or had been committed by EMD members in July and August 1995.

(iii) Conclusion

513. The Majority notes that a holistic reading of the information reported in the bulletins shows that members of the EMD had a propensity for violence and to commit crimes. In light of the entire evidence, the Majority is satisfied beyond reasonable doubt that Rasim Delić, when he received the information that VRS soldiers were held by the EMD, had reason to know that members of the EMD were about to commit or had committed the crime of cruel treatment against these detainees.

514. In order to determine whether Rasim Delić had reason to know that EMD members had committed or were about to commit the crime of murder in July-August 1995, the Majority has to rely on the instances of violent behaviour, as reported in the bulletins mentioned above. However, the Majority finds that these instances do not constitute a sufficient evidentiary basis to show beyond reasonable doubt that Rasim Delić was also alerted to the commission of murder by EMD members in Livade and the Kamenica Camp.

515. In particular, the Majority stresses that the killing of Paul Goodall occurred nearly one and a half years before the July-August 1995 crimes. Furthermore, reasonable measures were taken against the alleged perpetrators. As regards other instances of violent behaviour imputed to EMD members, the Majority notes that, although they also include acts of abduction and mistreatment, there is no mention of killings. Against this background, the Majority also finds that the information referred to above that EMD members “would slaughter all Croats and Serbs” is an insufficient evidentiary basis to show that Rasim Delić was alerted to the *commission* of murder.

516. In conclusion, the Majority is not satisfied beyond reasonable doubt that the killing of Paul Goodall, even if considered in conjunction with other instances of criminal behaviour and the reported threats, may constitute information which would qualify the report on the capture of enemy soldiers in Bulletin 137 as sufficiently alarming to put Rasim Delić on notice that murder might be committed by members of the EMD in July and August 1995.

517. For the above reasons, the Majority finds that the evidence does not establish beyond reasonable doubt that Rasim Delić, when he received the information that VRS soldiers were held by the EMD, had reason to know that members of the EMD were about to commit or had committed the crime of murder against these detainees.

2. Kesten and Kamenica - September 1995

(a) Whether Rasim Delić had Knowledge of the Crimes in September 1995

518. The Prosecution does not allege that Rasim Delić acquired knowledge of the crimes in Kesten and Kamenica in September 1995 by direct evidence. Rather, the Prosecution submits that Rasim Delić's knowledge can be inferred from a number of circumstantial factors, including (i) his control over Operation *Farz* as confirmed by an interview released by Rasim Delić;¹²⁷⁷ (ii) the visit of Rasim Delić to the Zavidovići area and the 3rd Corps Command;¹²⁷⁸ and (iii) the "stories going round, according to which members of the EMD had slaughtered a portion of the [detainees]".¹²⁷⁹

519. The Majority notes that in an undated interview, the content of which was subsequently transcribed in an ABiH publication of October 1995,¹²⁸⁰ Rasim Delić addressed the issue of his command and control over the ABiH during Operation *Farz* when he was in Malaysia between 8 and about 16 September 1995. In that interview, Rasim Delić stated that

[...] while I was in Malaysia, the Army was fighting over here. One must know that those operations had been planned for a long time, that I personally watched over every of those maps, that they began on 9 September, that is the day after I left for Malaysia, but they kept being performed under my immediate supervision because the system of command and control functions although one is not physically present at the site because I was in continuous contact and secured that all that kept functioning [...].¹²⁸¹

520. However, the content of this interview does not suggest that Rasim Delić acquired actual knowledge of any crimes. The Majority also finds that his knowledge cannot be inferred from Rasim Delić's statement that he remained in "continuous contact" as the evidence is unclear as to what information, if any, he received.

521. While the evidence shows that on or about 22 September 1995, Rasim Delić visited the area of responsibility of the 2nd Corps in the Vozuća area, the evidence is silent on the agenda of this visit and the contents of any briefings. Therefore, the Majority finds that it cannot be established that Rasim Delić acquired knowledge about the killings or mistreatment of Serb detainees by the EMD during that visit.¹²⁸² Furthermore, it has not been proved that Rasim Delić acquired knowledge on the basis of rumours that may have circulated in the ABiH.

¹²⁷⁷ Prosecution Final Brief, para. 379, citing Ex. 622 and Ex. 1170.

¹²⁷⁸ Prosecution Final Brief, para. 379.

¹²⁷⁹ Prosecution Final Brief, para. 380, citing PW-4, T. 4852 (closed session).

¹²⁸⁰ Ex. 1170, Interview with Rasim Delić in *Prva Linija Magazine* 10/1995, 1 October 1995, p. 7. *See also* para. 156 *supra*.

¹²⁸¹ Ex. 622, Video Clip/Transcript, p. 4.

¹²⁸² *See* paras 155-156 *supra*.

522. Considering other circumstances which might point to Rasim Delić's knowledge, the Majority recalls the Trial Chamber's earlier finding that in the days following 11 September 1995, the information that the EMD had forcibly seized between 50 and 60 Serb captives at Kesten from the 5th Battalion of the 328th Brigade was reported along the ABiH chain of command.¹²⁸³ On 16 September 1995, the Main Staff Security Administration received a report from the Security Service of the 3rd Corps which forwarded an intercepted fax of the EMD stating that "[t]he Mujahedin gained ground and entered a group of Serbian villages, and took 60 prisoners after the killing."¹²⁸⁴ As described earlier, this information was not included in the bulletins sent to Rasim Delić.¹²⁸⁵ Rather, the report of 16 September 1995 was eventually deposited with the war crimes section of the Counter-Intelligence Department of the Security Administration where a file of the documents related to Operation *Vranduk* was maintained.¹²⁸⁶

523. Moreover, the Majority notes that the intercepted fax did not contain any reference to crimes committed by EMD members against the detainees. Similarly, both the entry in the war diary of the 3rd Corps and the ABiH publications *Prva Linija* and *Patriotski List* issued in October 1995 contain references to "Chetniks" who had been captured by the EMD, but they do not mention the commission of any crimes against them.¹²⁸⁷ This evidence alone, notwithstanding its significance as regards the availability to Rasim Delić of alarming information on the captured Serbs discussed below, is insufficient to establish beyond reasonable doubt that Rasim Delić had knowledge of crimes committed by members of the EMD in September 1995.

524. In conclusion, the Majority finds that it cannot be established beyond reasonable doubt that Rasim Delić had actual knowledge of the crimes committed by members of the EMD in Kesten and Kamenica Camp in September 1995. The Majority will thus turn to the question whether Rasim Delić had sufficiently alarming information that put him on notice that these crimes were about to be or had been committed by members of the EMD.

(b) Whether Rasim Delić had Reason to Know of the Crimes in September 1995

525. Although the intercepted EMD fax which made reference to captured Serbs was sent to the Main Staff Security Administration and not to Rasim Delić, the Prosecution contends that, "[g]iven

¹²⁸³ See paras 321 *et seq. supra*.

¹²⁸⁴ See paras 328 *et seq. supra*.

¹²⁸⁵ Džemal Vučković testified that the information contained in the intercepted fax about the captured Serbs "should [have] become part of the bulletin". However, he testified that "evidently [the fax] did not become part of the next bulletin because I crossed it out, presumably after having consulted with General Popović, who was the chief of the counter intelligence department or perhaps even after consultation with General Jašarević", Džemal Vučković, T. 5114-5115.

¹²⁸⁶ Ex. 706, Witness Statement of Džemal Vučković, 5 November 2007, para. 57; PW-13, T. 6017-6618 (closed session). See paras 328 *et seq. supra*.

the significance of the information contained [therein], it is implausible that it would not have been communicated to Rasim Delić”.¹²⁸⁸ The Prosecution also refers to Rasim Delić’s authorisation of Operation *Vranduk*, which included the monitoring of the EMD, and argues that Rasim Delić was in direct contact with his subordinate Jusuf Jašarević, the Chief of the Security Administration.¹²⁸⁹ Finally, the Prosecution submits that, although he was in Malaysia when the intercepted fax was sent to the Security Administration on 16 September 1995, Rasim Delić “proved to be accessible” as he enquired about the situation at the frontline.¹²⁹⁰

526. In the spring of 1995, the EMD was subject to counter-intelligence measures carried out by both the ABiH and the RBiH civilian authorities with a view to “monitor[ing] and tak[ing] measures to prevent certain situations that may significantly undermine security and the political situation in the territory”.¹²⁹¹ The plan for this operation, which was given the code name *Vranduk*, had the objective of “taking measures and actions to document and curb subversive and other counter-constitutional and illegal activities of a number of members of the “El-Mujahedin” Detachment and their ties”.¹²⁹² It was envisaged to disband the EMD should these measures and actions fail.¹²⁹³ Rasim Delić authorised Operation *Vranduk*.¹²⁹⁴ However, there is no evidence that he ever received a report with information gathered on the EMD.¹²⁹⁵

527. The evidence also shows that Rasim Delić returned to Sarajevo only at the end of September 1995 to meet with foreign representatives.¹²⁹⁶ There is no evidence that he met with the Chief of the Security Administration during that time.¹²⁹⁷

528. Although Rasim Delić acknowledged in the above-mentioned interview that he “was in continuous contact” with the ABiH, the evidence is unclear as to the information that reached him.¹²⁹⁸ The same holds true for the visit of Rasim Delić to the Vozuća area at the end of September 1995. It cannot be concluded on the basis of this evidence that Rasim Delić had information in his

¹²⁸⁷ See para. 327 *supra*.

¹²⁸⁸ Prosecution Final Brief, para. 384.

¹²⁸⁹ Prosecution Final Brief, paras 383-384.

¹²⁹⁰ Prosecution Final Brief, para. 385, citing Ex. 1078, Report of the Duty Operations Officer, 14 September 1995.

¹²⁹¹ Ex. 939, Proposal of the Assistant Commander for Security of the 3rd Corps, 6 March 1995.

¹²⁹² Ex. 661 (under seal), p. 1; PW-4, 4783-4786 (closed session).

¹²⁹³ Ex. 661 (under seal), pp 5-7.

¹²⁹⁴ Ex. 661 (under seal), p. 8; Ex. 964, Proposal of Military Security Administration, 23 May 1995, p. 3.

¹²⁹⁵ See also para. 450 *supra* regarding a report by the 3rd Corps within the context of Operation *Vranduk*.

¹²⁹⁶ Ismet Dedović, T. 8225-8226.

¹²⁹⁷ See paras 155 *et seq. supra*.

¹²⁹⁸ The Majority notes that the entries of the war diary of the 3rd Corps for 13 September 1995 (Ex. 511, ABiH 3rd Corps War Diary From 26 August 1995-8 October 1995, Entries 309 & 310) show that an urgent call was made that day by “General Delić” to the 3rd Corps Commander, Sakib Mahmuljin. However, the evidence is inconclusive as to whether it was Rasim Delić or General Sead Delić, the 2nd Corps Commander, who made the phone call, Sejfullah Mrkaljević, T. 3906-3911, 3939-3941.

possession that the EMD had taken captives, much less that any crimes were committed against them.

529. Likewise, an entry in the war diary of the 3rd Corps about the “capture of 57 Chetniks” only shows that this information was known to the 3rd Corps Command, but there is no evidence to suggest that such information was provided or available to Rasim Delić.¹²⁹⁹

530. The Majority notes that two articles published in October 1995 in the ABiH publication *Prva Linija* and *Patriotski List* contain references to “Chetnik officers” who had been captured by the EMD.¹³⁰⁰ These journals were open source documents and thus, in principle, they were accessible to Rasim Delić. However, unlike the bulletins which were provided specifically to Rasim Delić and which contained sensitive information, there is no evidence on the distribution or circulation of *Prva Linija* and *Patriotski List*, whether Rasim Delić was ever provided with a copy, and whether the information contained therein was brought to his attention. The Majority holds that it cannot be inferred that the *information* contained in an open source document was “available” to Rasim Delić. The Majority stresses that the flow of information must strictly be assessed on a case-by-case basis.¹³⁰¹

531. In light of the foregoing evidence, the Majority finds that this evidence is insufficient to show beyond reasonable doubt that Rasim Delić had available information that the EMD held captured Bosnian Serb soldiers and civilians in September 1995.

532. Despite the absence of available information in relation to the captured Bosnian Serb soldiers and civilians, the Majority will examine whether Rasim Delić had other information available to him regarding the EMD which should have alerted him to the fact that members of the Detachment were about to commit or had committed crimes in September 1995.

533. The Majority notes that during August and September 1995, Rasim Delić received a number of bulletins which informed him that members of the EMD: (i) in August 1995, frequently “provoked people of Croatian ethnicity” and “exerted pressure on the Croats”;¹³⁰² (ii) on 11 August 1995, “started abusing” students at a school in Zavidovići and a teacher at the school was “hit [...]”

¹²⁹⁹ Ex. 512, Wartime Diary of the ABiH 3rd Corps for Operation “Farz-95”, p. 13. See Haso Ribo, T. 7072, who testified that a war diary was a “historical document” which “no one [...] read”.

¹³⁰⁰ Ex. 1194, “The ‘Chetnik Stalingrad’ Liberated” by Adnan Džonlić, “Prva Linija” Magazine, 1 October 1995, p. 4; Ex. 1195, “The ‘Chetnik Stalingrad’ Liberated” by Adnan Džonlić, “Patriotic List” Magazine, October 1995, p. 5. See also Prosecution Final Brief, para. 378. The evidence indicates that *Prva Linija* was a publication of either the Main Staff or the 1st Corps, Haso Ribo, T. 7140-7141.

¹³⁰¹ See *Čelebici* Appeal Judgement, para. 239.

¹³⁰² Ex. 739, Bulletin No. 146 of the Military Security Administration, 1 August 1995, p. 3.

with the stick in the back”;¹³⁰³ (iii) on 19 August 1995, refused to cooperate in relation to “a number of serious crimes and other misdemeanours for which there are indications that they might have been perpetrated by members of the Detachment”;¹³⁰⁴ (iv) on 26 August 1995, physically abused Nijaz Mujagić and other three “disabled veterans” who were taken away for questioning and released on the following day;¹³⁰⁵ (v) on 1 September 1995, demolished a restaurant in the village of Poda and maltreated the people present;¹³⁰⁶ (vi) on 4 September 1995, warned the police officers that “they would not tolerate visits of Croat nationality to the convent in Guča Gora and the village of Radojčići, adding that they would shoot at the police officers protecting these people during their movements in these locations”;¹³⁰⁷ (vii) on 16 September 1995, clashed over war booty and abducted the prisoner Milenko Petrović from custody of the Military Police of the 35th Division.¹³⁰⁸

534. The information contained in the foregoing bulletins put Rasim Delić on notice of criminal behaviour of EMD members. However, in the absence of evidence that Rasim Delić knew that Bosnian Serb soldiers and civilians were detained by the EMD, the Majority finds that the information in the bulletins *alone* is insufficiently alarming to put him on notice of the risk of the crimes committed in Kesten and the Kamenica Camp in September 1995.

535. The Majority finds therefore that on the evidence, it cannot be concluded beyond reasonable doubt that Rasim Delić had reason to know that members of the EMD were about to commit or had committed the crimes of murder and cruel treatment against Bosnian Serb soldiers and civilians in Kesten and the Kamenica Camp in September 1995.

C. Failure to Prevent or Punish

536. Having established that Rasim Delić had reason to know that members of the EMD were about to commit or had committed the crime of cruel treatment against the VRS soldiers detained in Livade and the Kamenica Camp in July and August 1995, the Majority must now examine whether Rasim Delić failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. The duty to take necessary and reasonable measures to prevent or punish reaches to the top of the chain of command.

¹³⁰³ Ex. 741, Bulletin No. 155 of the Military Security Administration, 11 August 1995, pp 5-6.

¹³⁰⁴ Ex. 710, Bulletin No. 161 of the Military Security Administration, 18 August 1995, p. 3.

¹³⁰⁵ Ex. 744, Report No. 167 of the Military Security Administration, 26 August 1995, p. 3.

¹³⁰⁶ Ex. 745, Report No. 171 of the Military Security Administration, 3 September 1995, p. 6.

¹³⁰⁷ Ex. 746, Bulletin No. 172 of the Military Security Administration, 4 September 1995, p. 2.

¹³⁰⁸ Ex. 747, Bulletin No. 181 of the Military Security Administration, 16 September 1995, p. 3.

1. Submissions

537. The Prosecution submits that Rasim Delić, holding the highest position within the ABiH, “had both a responsibility to prevent and punish the criminal activity of his subordinates and all means at his disposal to fulfil this obligation.”¹³⁰⁹ The obligations incurred by Rasim Delić, according to the Prosecution, included monitoring his subordinates’ compliance with the provisions of international humanitarian law, taking all necessary steps to establish responsibility for breaches of discipline, imposing measures to enforce compliance with international humanitarian law and, if necessary, transferring the case to a prosecuting agency.¹³¹⁰ In particular, the Prosecution contends that Rasim Delić had the authority to request the Security Administration to apply disciplinary and criminal measures against the EMD.¹³¹¹ The Prosecution also makes reference to Operation *Trebević-1*, where Rasim Delić “exercised his power by ordering the arrest of the criminal elements in the leadership of the 9th Motorised Brigade and 10th Motorised Brigade in Sarajevo [in] late October 1993. [...] Arrests were also applied against individual members of the EMD: after the killing of Paul Goodall two soldiers of the EMD were detained and questioned by the civilian authorities.”¹³¹²

538. Although the Prosecution does not specifically address whether Rasim Delić failed to take the necessary and reasonable measures to prevent or punish the perpetrators of the crimes committed in Livade and the Kamenica Camp, it claims that “no proceedings were ever instituted against any perpetrators from the EMD in relation to these crimes and no referrals were ever made from any [ABiH] unit to the Zenica District Military Prosecutor’s office in relation to these crimes.”¹³¹³ The Majority will discuss this below even though there are no particular submissions as to the necessary and reasonable measures to prevent or punish the crimes committed in Livade and the Kamenica Camp.

539. The Defence submits that, due to the specific position held by Rasim Delić “at the strategic level”, he was not obliged, whether under international or national law, to take any of the measures described by the Prosecution.¹³¹⁴ Rather, it was the duty of the Military Security Service to conduct “the investigation of crimes and going after the perpetrators”, while “the disciplinary infractions were the responsibility of the officers that were superior to the alleged perpetrators”.¹³¹⁵ Therefore, in the Defence’s position, “a commander should not be held responsible for the failure of *his*

¹³⁰⁹ Prosecution Final Brief, para. 175.

¹³¹⁰ Prosecution Final Brief, para. 177.

¹³¹¹ Prosecution Final Brief, para. 184.

¹³¹² Prosecution Final Brief, para. 186. *See also* paras 136, 448 *supra*.

¹³¹³ Prosecution Final Brief, para. 387.

¹³¹⁴ Defence Final Brief, paras 1054-1062.

subordinates to properly investigate or prevent crimes, but only for his own”.¹³¹⁶ The Defence further submits that the Prosecution’s contention that Rasim Delić should have been in charge to take these measures “demonstrates the total absence of understanding of the role of the commanders, their obligation under international law and the way in which an army functions”.¹³¹⁷

540. According to the Defence, Rasim Delić was a “reasonable commander” who took various measures to improve the system of command and control within the ABiH, as well as measures to ensure that the norms of international humanitarian law were applied.¹³¹⁸ The Defence avers that moreover, attempts by Rasim Delić to bring the EMD into the ABiH’s system of command and control failed for a number of reasons, including the presence and influx of foreign Mujahedin in central Bosnia and the resistance put up by the EMD.¹³¹⁹

2. Preliminary Observation

541. As a preliminary point, the Majority finds that the Defence argument that a commander should “not be held responsible for the failure of *his subordinates*” is untenable in light of the jurisprudence of the Tribunal on superior responsibility pursuant to Article 7(3) of the Statute. The Defence is equally mistaken in arguing that Rasim Delić was not required to take measures such as imposing measures to enforce compliance with international humanitarian law and, if necessary, transfer the case to a prosecuting agency. It is settled in the case-law that a superior needs to take the “necessary and reasonable measures” in view of his or her position, and a superior cannot be relieved of this duty by reference to domestic law or the setting in which he operates.¹³²⁰

3. Failure to Prevent

542. The Majority recalls that according to the jurisprudence, a superior is required to prevent the commission of a crime when he acquires actual or constructive knowledge that a crime is about to be or is being committed. The determination of what constitutes “necessary and reasonable measures” to prevent the commission of crimes depends on the circumstances surrounding each particular situation.¹³²¹ In this case, the Majority has found that Rasim Delić had reason to know that the crime of cruel treatment was about to be committed by members of the EMD in Livade and Kamenica camp in July and August 1995. Hence, the Majority will proceed to examine whether Rasim Delić took “necessary and reasonable measures” to follow up on the alarming information

¹³¹⁵ Defence Final Brief, paras 1057, 1060.

¹³¹⁶ Defence Final Brief, paras 1064.

¹³¹⁷ Defence Final Brief, para. 1066.

¹³¹⁸ Defence Final Brief, paras 1069-1088.

¹³¹⁹ Defence Final Brief, paras 1092-1113.

¹³²⁰ See *Orić* Trial Judgement, paras 563-564. See also para. 70 *supra*.

¹³²¹ See para. 76 *supra*.

available to him, with a view to preventing the occurrence of cruel treatment in Livade and the Kamenica camp in July and August 1995.

543. At the outset, the Majority finds that a superior need not take preventive measures personally and that a superior may discharge his duty to prevent by delegating the matter to the competent authorities. Therefore, the Majority finds that there is no merit in the Defence argument that Rasim Delić was under no obligation to take the measures pointed out by the Prosecution.

544. As a general observation, the Majority notes that, in his capacity as Main Staff Commander, Rasim Delić took action with a view to enhancing the knowledge and application of the provisions of international humanitarian law within the ABiH.¹³²² Rasim Delić also instructed the commands of the ABiH Corps to treat enemy detainees in accordance with the Geneva Convention and to allow the ICRC access to detention facilities.¹³²³ However, such general measures alone are insufficient to discharge Rasim Delić of his duty to prevent the occurrence of cruel treatment in Livade and the Kamenica camp in July and August 1995.¹³²⁴

545. Rasim Delić's duty to prevent the crime of cruel treatment committed by EMD members in Livade and the Kamenica camp in July and August 1995 arose as soon as the information contained in Bulletin 137 of 22 July 1995—that around 40 “aggressor soldiers” had fallen into the hands of the EMD—was available to Rasim Delić. The duty to prevent continued until the last act of cruel treatment was committed against the VRS soldiers on 24 August 1995, when they were handed over to the MP Battalion. There is no evidence before the Trial Chamber to indicate that Rasim Delić reacted in any way to the information contained in Bulletin 137 of 22 July 1995, nor is there any other piece of evidence which would suggest that Rasim Delić attempted to find out more about the fate of the detainees in the custody of the EMD, or to have them handed over.

546. By contrast, one instance needs to be recalled where Rasim Delić acted in response to the information conveyed to him on “unacceptable activities” by the EMD. The report of 15 April 1995 stated that EMD members had harassed “young people in the streets” and that the destruction of an orthodox cemetery by EMD members was a notorious fact. Rasim Delić placed a hand-written

¹³²² Ex. 1245, Order of Rasim Delić to the 3rd Corps Command on Preparations for Combat, 21 June 1993; Ex. 392, Order of Rasim Delić to the Commands of All Corps for the Implementation of Provisions of International Humanitarian Law, 8 May 1995; Kadir Jusić, T. 2596-2597; Sejfulah Mrkaljević, T. 3941-3943. *See also* Vahid Karavelić, T. 7918-7919; Fadil Imamović, T. 4033-4034.

¹³²³ Ex. 391, Request of Rasim Delić to 3rd Corps Command, 27 July 1993; Ex. 1340, Order of Rasim Delić on Implementation of the Geneva Conventions, 26 November 1993; Vahid Karavelić, T. 7910-7911, 7921-7922; Ex. 1249, Order of Rasim Delić to the 1st, 3rd, 4th and 6th Corps Commands Granting Access to the ICRC to all Detention Facilities, 14 October 1993; Ex. 1346, Addendum to the Order of Rasim Delić to Attack, 30 May 1995. *See also* Ex. 1345, Letter of Alija Izetbegović on Incorrect Treatment of Captured Enemy Soldiers, 18 September 1995.

¹³²⁴ *See Halilović Appeal Judgement*, paras 62-64; *Halilović Trial Judgement*, para. 89. *See also* fn. 149 *supra*.

remark on the first page of that bulletin, which was sent back to the Security Administration, with the words “proposal to finally resolve this”.¹³²⁵

547. Although there is no evidence that Rasim Delić proceeded in a similar way with Bulletin 137 as he had done with the report of 15 April 1995, the Majority notes that this does not exclude the possibility that Rasim Delić did in fact indicate to the Security Administration by way of a hand-written note in Bulletin 137 that the matter should be followed up or “resolved”. Rasim Delić was one of five recipients of Bulletin 137.¹³²⁶ The evidence establishes that the recipients of the bulletins returned them to the Security Administration where they were destroyed, save for one copy which was archived.¹³²⁷ Hence, the possibility exists that the copy in evidence before the Trial Chamber is not the copy which went through the hands of Rasim Delić.¹³²⁸

548. However, even on the assumption that Rasim Delić reacted meaningfully to the information in Bulletin 137, *e.g.*, by enquiring further into the matter, the course of events demonstrates that he failed to take the necessary and reasonable measures that were within his material ability to prevent the cruel treatment of the VRS soldiers. There is no evidence that Rasim Delić requested, for example, the Security Administration to apply measures against the EMD, nor that he took any other steps within the institutional framework of the ABiH to impede the imminent commission of the crimes.

549. On 29 July 1995, Rasim Delić attended a meeting with the Corps Commanders at the KM Kakanj.¹³²⁹ The evidence shows that Rasim Delić had the authority to seek reports directly from the Corps.¹³³⁰ He was therefore in a position to acquire further information about the results of the enquiries conducted by his subordinates, and order further enquiry on the condition of the detainees. Yet, the evidence shows that the reports that were transmitted up the chain of command only concerned the collection of intelligence from the detainees and entirely failed to address the conditions of detention at Livade and the Kamenica Camp.

550. The fact remains that the crimes committed by EMD members in Livade and the Kamenica Camp resulted in the cruel treatment of VRS soldiers. There is no evidence that Rasim Delić requested the Security Administration to apply measures against the EMD, nor that he took any other steps within the institutional framework of the ABiH to impede the imminent commission of

¹³²⁵ Ex. 963, Information of the Chief of Security Administration, 12 April 1995. There is no evidence whether further action was taken by anyone in the ABiH in compliance with Rasim Delić’s instructions.

¹³²⁶ Ex. 376, Order of the Chief of Security Administration, 22 July 1993.

¹³²⁷ Ex. 706, Witness Statement of Džemal Vučković, 5 November 2007, pp 7-8.

¹³²⁸ See also Džemal Vučković, T. 5173, 5176-5177.

¹³²⁹ Ismet Dedović, T. 8270-8271.

¹³³⁰ See para. 150 *supra*.

the crimes. The only reasonable conclusion to draw from the evidence is that neither Rasim Delić, nor anyone else acting under his command and control, took any measures to prevent the future commission of cruel treatment in Livade and the Kamenica Camp by members of the EMD in July and August 1995.

551. The Majority therefore finds that Rasim Delić failed to take the necessary and reasonable measures to prevent the crime of cruel treatment committed by members of the EMD against the VRS soldiers who were detained in Livade and the Kamenica Camp in July and August 1995.

4. Failure to Punish

552. The Majority recalls that a superior is bound to take active steps to ensure that the perpetrators of the crimes in question are brought to justice. Again, the determination of what constitutes “necessary and reasonable measures” to punish past crimes depends on the circumstances surrounding each particular situation.¹³³¹

553. Referring to the findings reached in the previous section, the Majority recalls that Rasim Delić’s imputed knowledge of the crime of cruel treatment committed in Livade and the Kamenica Camp in July and August 1995 was based on the receipt of Bulletin 137. As found earlier, Rasim Delić did not follow up, nor did he instruct anyone else to do so, on the information that around 40 “aggressor soldiers” had fallen into the hands of the EMD. Naturally, the establishment of the facts is the first step in any attempt to ensure that the perpetrators of crimes are brought to justice. This lack of further enquiry is critical when considering whether a superior took necessary and reasonable measures to punish these crimes, and any omission on part of a superior to enquire cannot relieve that superior of taking punitive action. Because Rasim Delić took no further action following his receipt of Bulletin 137, he did not obtain the information that 12 VRS soldiers detained in Livade and the Kamenica Camp in July and August 1995 were cruelly treated. The Majority finds that Rasim Delić’s imputed knowledge based on his receipt of Bulletin 137 was sufficient to trigger his duty to enquire with a view to punish after the crime of cruel treatment had actually been committed.

554. There is no evidence that EMD members, as a result of the information brought to the attention of Rasim Delić in Bulletin 137, were subjected to disciplinary or criminal proceedings within the ABiH system of military justice. Nor is there evidence that Rasim Delić or anyone else within the ABiH referred a member of the EMD for disciplinary or criminal proceedings to the

¹³³¹ See para. 76 *supra*.

relevant authorities.¹³³² Kadir Jusić, who was the Chief of Staff of the 3rd Corps as of March 1995, gave evidence that he never heard that any member of the EMD was prosecuted for these crimes.¹³³³ The Zenica District Military Court, which had territorial jurisdiction over Zavidovići municipality, never tried any perpetrators of the crimes alleged in the Indictment.¹³³⁴

555. The Majority therefore finds that Rasim Delić failed to take the necessary and reasonable measures to punish the crime of cruel treatment committed by members of the EMD against the VRS soldiers who were detained in Livade and the Kamenica Camp in July and August 1995.

5. Conclusion

556. To sum up, the Majority finds beyond reasonable doubt that Rasim Delić failed to take the necessary and reasonable measures to prevent and punish the crime of cruel treatment committed by members of the EMD against the VRS soldiers who were detained in Livade and the Kamenica Camp in July and August 1995.

D. Majority's Conclusion as to Rasim Delić's Individual Criminal Responsibility

557. On the basis of the foregoing analysis, the Majority of the Trial Chamber, Judge Moloto dissenting, is satisfied that (i) in 1995, Rasim Delić and the EMD perpetrators of the crimes committed in Livade, Kesten and the Kamenica Camp were in a superior-subordinate relationship; (ii) Rasim Delić had reason to know that members of the EMD were about to commit or had committed the crime of cruel treatment against VRS detainees in Livade and the Kamenica Camp in July and August 1995, but not in relation to the crimes committed in Kesten and the Kamenica Camp in September 1995; and (iii) Rasim Delić failed to take the necessary and reasonable measures to prevent and punish the perpetrators thereof.

¹³³² Ex. 881, Letter of the Zenica Cantonal Prosecutor's Office, 24 October 2006; Ex. 882, Letter from the Zenica-Doboj Cantonal Prosecutor's Office, 22 August 2007; Muris Hadžiselimović, T. 6160-6163; Ex. 1092, Letter from the Zenica Cantonal Court, 25 October 2006. *See also* paras 157-164 *supra*. As regards the killing of Paul Goodall, the Majority notes that, although a joint military-civilian force to arrest the suspects was set up, criminal proceedings were initiated by the civilian prosecutor's office in Zenica, *see* para. 448 *supra*.

¹³³³ Kadir Jusić, T. 2475, 2643-2644.

¹³³⁴ Ex. 885, Report of Zenica Cantonal Court, 10 May 2002; Muris Hadžiselimović, T. 6190-6191. *See* Ex. 1113-1115, Reports of the Zenica District Military Court Archive; *see also* Ex. 1171, Response to Request for Information about District Military Courts in Zenica and Travnik, 22 April 2002; Ex. 1116 and Ex. 1112, Reports of the Travnik District Military Court Archive.

X. SENTENCING

A. Sentencing Law and Purposes

558. Sentencing is governed by Article 24 of the Statute and Rule 101 of the Rules. A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.¹³³⁵ In determining the appropriate sentence, the Trial Chamber shall take into account such factors as the gravity of the offence or totality of the culpable conduct, the individual circumstances of the convicted person, aggravating and mitigating circumstances and the general practice regarding prison sentences in the courts of the former Yugoslavia.¹³³⁶ This list of factors does "not constitute binding limitations on a Chamber's discretion to impose a sentence", which in each case must be determined based on the individual facts at hand.¹³³⁷ Decisions on sentence in other cases of the Tribunal may provide limited guidance if they relate to the same offence committed in substantially similar circumstances.¹³³⁸

559. The jurisprudence of the Tribunal has consistently held that the main purposes of sentencing for crimes within the jurisdiction of the Tribunal are retribution and deterrence.¹³³⁹ As a form of retribution, the sentence serves as condemnation by the international community of the crimes committed, and should not be misunderstood as a means of expressing revenge or vengeance.¹³⁴⁰ Retribution incorporates a principle of restraint, and requires the imposition of a just and appropriate punishment that is proportionate to the wrongdoing.¹³⁴¹ Deterrence as a sentencing purpose encompasses two forms: individual and general. Accordingly, the penalties imposed by the Tribunal must have sufficient deterrent value both to dissuade the wrongdoer from repeating the offences in the future and to discourage others from committing similar crimes.¹³⁴² However, deterrence "must not be accorded undue prominence in the overall assessment of the sentences to be

¹³³⁵ Article 24(1) of the Statute; Rule 101(A) of the Rules.

¹³³⁶ Article 24(2) of the Statute; Rule 101(B) of the Rules; *Hadžihasanović and Kubura* Appeal Judgement, para. 301; *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-A, Judgement, 27 September 2007, para. 126; *Blaškić* Appeal Judgement, para. 679.

¹³³⁷ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Judgement, 19 April 2004, paras 241-242; *Čelebići* Appeal Judgement, paras 715, 717-718, 780; *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Judgement, 28 November 2006 ("*Blagoje Simić* Appeal Judgement"), para. 234; *Prosecutor v. Goran Jelisić*, Case No. IT-95-10-A, Judgement, 5 July 2001, para. 101.

¹³³⁸ *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-A, Judgement, 21 July 2000, para. 250; *Čelebići* Appeal Judgement, paras 719-721; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgement, 22 March 2006 ("*Stakić* Appeal Judgement"), para. 381. See also Defence Final Brief, para. 1144, referring to the *Hadžihasanović and Kubura* Appeal Judgement.

¹³³⁹ *Čelebići* Appeal Judgement, para. 806; *Aleksovski* Appeal Judgement, para. 185; *Stakić* Appeal Judgement, para. 402. As regards deterrence, see also *Čelebići* Appeal Judgement, para. 800, citing *Tadić* Jurisdiction Decision, para. 72.

¹³⁴⁰ *Kordić and Čerkez* Appeal Judgement, para. 1075; *Aleksovski* Appeal Judgement, para. 185.

¹³⁴¹ *Kordić and Čerkez* Appeal Judgement, para. 1075.

¹³⁴² *Kordić and Čerkez* Appeal Judgement, paras 1076-1078.

imposed on persons convicted by the International Tribunal”.¹³⁴³ Rehabilitation is another legitimate purpose of punishment, although one that should not be assigned undue weight.¹³⁴⁴

B. Determination of Sentence

560. The Majority makes the following determination of Rasim Delić’s sentence.

1. Gravity of the Offence

561. The gravity of an offence is the primary consideration in determining a sentence.¹³⁴⁵ A sentence must reflect the inherent gravity or the totality of the criminal conduct of the convicted person, giving due consideration to the particular circumstances of the case and to the form and degree of the convicted person’s involvement in the crime.¹³⁴⁶

562. In this regard, it is important to note that the conviction of Rasim Delić is solely based on superior responsibility under Article 7(3) of the Statute. The Majority is mindful that under Article 7(3), an individual is not convicted for the commission of crimes by his subordinates, but for the failure to prevent or punish such crimes. In light of this *sui generis* nature of superior responsibility under Article 7(3), and agreeing with the Trial Chambers in *Orić* and *Hadžihasanović and Kubura*, the Majority is of the view that the sentencing scale applied to those convicted for crimes involving individual criminal responsibility pursuant to Article 7(1) may not be directly applicable to those convicted solely under Article 7(3).¹³⁴⁷

563. When assessing the gravity of a crime in the context of a conviction under Article 7(3) of the Statute, two matters must be taken into account: (i) the gravity of the underlying crimes committed by the convicted person’s subordinate; and (ii) the gravity of the convicted person’s own conduct in failing to prevent or punish the underlying crimes.¹³⁴⁸ As for the gravity of the subordinate’s underlying crimes, factors to be considered include the scale and brutality of the offences; the vulnerability of the victims; and the consequences of the crime upon the immediate victims and their relatives.¹³⁴⁹ The seriousness of a superior’s conduct in failing to prevent or punish crimes is in part dependent on the gravity of the underlying crimes of his subordinate.¹³⁵⁰ Relevant considerations in assessing the gravity of the superior’s conduct also include whether the

¹³⁴³ *Kordić and Čerkez* Appeal Judgement, para. 1078; *Čelebići* Appeal Judgement, para. 801.

¹³⁴⁴ *Čelebići* Appeal Judgement, para. 806; *Stakić* Appeal Judgement, para. 402.

¹³⁴⁵ *Galić* Appeal Judgement, para. 442; *Blaškić* Appeal Judgement, para. 683; *Čelebići* Appeal Judgement, para. 731; *Kupreškić et al.* Appeal Judgement, para. 442; *Aleksovski* Appeal Judgement, para. 182.

¹³⁴⁶ *See Blaškić* Appeal Judgement, para. 683; *Stakić* Appeal Judgement, para. 380.

¹³⁴⁷ *Hadžihasanović and Kubura* Trial Judgement, paras 2075-2076; *Orić* Trial Judgement, para. 724. *Cf. Čelebići* Appeal Judgement, para. 735.

¹³⁴⁸ *Hadžihasanović and Kubura* Appeal Judgement, para. 313; *Čelebići* Appeal Judgement, paras 732, 741.

¹³⁴⁹ *Blaškić* Appeal Judgement, paras 683-684 with further references; *Orić* Trial Judgement para. 729.

superior had actual knowledge or imputed knowledge of the subordinate's crimes, and how foreseeable the commission of the said crimes was.¹³⁵¹

564. Rasim Delić has been found responsible for failure to prevent and punish the crime of cruel treatment committed against 12 VRS soldiers by his subordinate EMD members. It is important to note that Rasim Delić was found to have had imputed knowledge of the crime, as opposed to actual knowledge.¹³⁵² The Majority is also mindful of the appallingly brutal nature of the acts of mistreatment against the victims, which lasted more than one month, and the physical and mental suffering that the victims endured while subjected to such abysmal treatment during their detention in Livade and in the Kamenica Camp.¹³⁵³ The Majority further recalls the evidence given by one of the victims regarding health problems and post-traumatic stress disorders that he suffers to this day.¹³⁵⁴

565. The Majority notes that all of the victims were VRS soldiers,¹³⁵⁵ who were detained under strict guard of the EMD. This situation, in the Majority's view, rendered the victims particularly vulnerable.¹³⁵⁶ Furthermore, two of the victims were VRS medical personnel, who, under international humanitarian law, are to be "respected and protected under all circumstances".¹³⁵⁷ These factors add to the gravity of the offences in question.

2. Aggravating and Mitigating Circumstances

566. The weight to be assigned to aggravating and mitigating circumstances is at the discretion of the Trial Chamber.¹³⁵⁸ Aggravating factors to be taken into account for sentencing must be limited to those circumstances directly related to the commission of the offence charged, and proved beyond reasonable doubt against the convicted person.¹³⁵⁹ Factors taken into consideration as aspects of the gravity of the crime cannot additionally be taken into account as separate aggravating circumstances, and *vice versa*.¹³⁶⁰ In contrast to aggravating circumstances, mitigating

¹³⁵⁰ *Hadžihasanović and Kubura* Appeal Judgement, para. 313; *Čelebići* Appeal Judgement, paras 732, 741.

¹³⁵¹ *Orić* Trial Judgement, para. 728.

¹³⁵² See paras 513-517 *supra*.

¹³⁵³ See paras 245-249, 257-261, 265-269 *supra*. The mistreatments include repeated beatings, electronic shocks, the cruel manner in which the detainees were physically restrained and the display of the fleshly severed heads.

¹³⁵⁴ See para. 271 *supra*.

¹³⁵⁵ See paras 239, 245-246 *supra*; Ex. 543, List of Captured Prisoners of 3rd Corps Security Service, 3 September 1995; Ex. 542, "Escort Sheet" of 3rd Corps Military Police Battalion, 24 August 1995.

¹³⁵⁶ See also *Orić* Trial Judgement, para. 736; *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-S, Sentencing Judgement, 2 December 2003, para. 137, confirmed by *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006 ("*Momir Nikolić* Sentencing Appeal Judgement"), paras 65-66.

¹³⁵⁷ See para. 239 *supra*; Articles 24 and 25, Geneva Convention I.

¹³⁵⁸ *Čelebići* Appeal Judgement, paras 718, 777, 780; *Blaškić* Appeal Judgement, para. 696.

¹³⁵⁹ *Blaškić* Appeal Judgement, para. 686, citing *Čelebići* Appeal Judgement, para. 763; *Stakić* Trial Judgement, para. 911; *Kunarac et al.* Trial Judgement, para. 850.

¹³⁶⁰ *Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61-A, Judgement on Sentencing Appeal, 20 July 2005, para. 106; *Momir Nikolić* Sentencing Appeal Judgement, para. 58.

circumstances that are not directly related to the offence charged may be considered at sentencing.¹³⁶¹ Mitigating factors have to be proven “on a balance of probabilities”, that is “the circumstance in question must have existed ‘more probably than not’.”¹³⁶² The absence of a mitigating factor can never serve as an aggravating factor.¹³⁶³

(a) Aggravating Circumstances

(i) Superior Position of Rasim Delić

567. The Prosecution submits that the fact that Rasim Delić held “the highest military position” in the ABiH must be considered as an aggravating circumstance. The Prosecution argues that by virtue of this position, ultimate responsibility for the conduct of ABiH soldiers rested with Rasim Delić and that he had more power than any other person in the ABiH to ensure that his subordinates were punished for their misdeeds and prevented from perpetrating other criminal conducts. According to the Prosecution, his failure to prevent and punish those soldiers therefore sent a “tacit signal” to each soldier in his command that they may act with impunity.¹³⁶⁴

568. The Defence contends that a position of authority does not in and of itself attract a higher sentence, and that it is only an abuse of that authority by a superior that could be taken into account at sentencing. The Defence claims that the evidence clearly shows that Rasim Delić did not abuse his authority.¹³⁶⁵

569. The Majority recalls the Appeals Chamber’s holding that “in the context of a conviction under Article 7(3) of the Statute, use of the superior’s position of authority as an aggravating circumstance would be inappropriate since it is itself an element of criminal liability.”¹³⁶⁶ It is the superior’s abuse of authority that may be taken into consideration.¹³⁶⁷ In this case, there is no evidence suggesting that Rasim Delić abused his authority.

¹³⁶¹ *Kunarac et al.* Trial Judgement, para. 850; *Martić* Trial Judgement, para. 494.

¹³⁶² *Prosecutor v. Milan Babić*, Case No. IT-03-72-A, Judgement on Sentencing Appeal, 18 July 2005 (“*Babić* Sentencing Appeal Judgement”), para. 43.

¹³⁶³ *Blaškić* Appeal Judgement, para. 687.

¹³⁶⁴ Prosecution Final Brief, para. 396.

¹³⁶⁵ Defence Closing Argument, T. 8978.

¹³⁶⁶ *Hadžihasanović and Kubura* Appeal Judgement, para. 320.

¹³⁶⁷ *Hadžihasanović and Kubura* Appeal Judgement, para. 320; *Stakić* Appeal Judgement, para. 411; *Babić* Sentencing Appeal Judgement, para. 80. *See also Galić* Appeal Judgement, para. 412.

(ii) Duration of Criminal Conduct

570. The Prosecution argues that the fact that the criminal acts at issue in this case occurred during a period of more than two years must be treated as an aggravating circumstance.¹³⁶⁸

571. However, the responsibility of Rasim Delić, as established by the Majority, is limited to the events in Livade and the Kamenica Camp in July and August in 1995. Therefore, the Prosecution's argument carries no merit and is not applicable to the crimes for which Rasim Delić has been found guilty.

(b) Mitigating Circumstances

(i) Voluntary Surrender and Provisional Release

572. The Defence refers to Rasim Delić's voluntary surrender immediately after his indictment as a mitigating factor.¹³⁶⁹ The Defence adds that when granted provisional release, Rasim Delić reported to the police and returned back to the United Nations Detention Unit ("UNDU") pursuant to Trial Chamber's order.¹³⁷⁰

573. The Majority notes that Rasim Delić voluntarily surrendered to the custody of the Tribunal on 28 February 2005, immediately after being made aware that he had been indicted by the Tribunal.¹³⁷¹ The Majority takes this into account as a mitigating factor.¹³⁷²

574. The Majority considers that an accused is expected to comply with all conditions of provisional release.¹³⁷³

(ii) Cooperation With the Tribunal

575. The Defence argues that Rasim Delić cooperated with the Tribunal during the trial proceedings, showing full respect towards the Trial Chamber as well as the Prosecution.¹³⁷⁴ Furthermore, the Defence submits that Rasim Delić took steps to ensure cooperation between the ABiH and the Prosecution even before the end of the war.¹³⁷⁵

¹³⁶⁸ Prosecution Final Brief, para. 397.

¹³⁶⁹ Defence Final Brief, para. 1142 (1).

¹³⁷⁰ Defence Final Brief, para. 1142 (1).

¹³⁷¹ Decision on Defence Request for Provisional Release, 6 May 2005, p. 4; *see* para. 600 *infra*.

¹³⁷² In this regard, *see, Blaškić* Appeal Judgement, para. 696; *Hadžihasanović and Kubura* Trial Judgement, para. 2078.

¹³⁷³ During his provisional release in the winter of 2007/2008, Rasim Delić was found to have breached one of his provisional release conditions and was placed under house arrest for the remainder of his provisional release term, *see* Decision on Prosecution Motion to Arrest the Accused Rasim Delić, 19 December 2007.

¹³⁷⁴ Defence Final Brief, para. 1142 (2).

¹³⁷⁵ Defence Final Brief, para. 1142 (2).

576. Although the Majority accepts that Rasim Delić showed full respect for the decorum of the court, the Majority does not consider this to be a mitigating factor, given that every accused is expected to behave respectfully during the trial proceedings.

577. The Majority also notes evidence suggesting that Rasim Delić facilitated cooperation by the ABiH with the Prosecution as early as September 1994.¹³⁷⁶ However, the Majority does not consider this to serve as a mitigating factor, since the ABiH as a State institution of the RBiH was, and still is, under an obligation to cooperate with the Tribunal under its Statute.¹³⁷⁷ There is no other evidence that would indicate that Rasim Delić's cooperation with the Prosecution was "substantial" enough to be considered a mitigating circumstance, as required by Rule 101(B)(ii) of the Rules.¹³⁷⁸

(iii) Good Character and Absence of Prior Criminal Record

578. The Defence submits that Rasim Delić had never been indicted nor convicted before any court prior to his indictment by this Tribunal.¹³⁷⁹ The Defence also submits that Rasim Delić "was respected as an officer and as a personality among military officers of all nationalities."¹³⁸⁰ According to the Defence, Rasim Delić "worked tirelessly" to develop, professionalise and stabilise the ABiH by introducing training for officers and by continuously emphasising the importance of complying with international humanitarian law.¹³⁸¹ The Defence particularly points out the operative action "*Trebević-1*" and subsequent operations, as examples of his efforts to fight against crimes within the ABiH.¹³⁸² The Defence also stresses Rasim Delić's balanced attitude towards the non-Muslim population.¹³⁸³ The Defence further submits that Rasim Delić made a "deep contribution" to the peace process in Bosnia and Herzegovina from the summer of 1995 onwards.¹³⁸⁴

579. The Prosecution, on the other hand, submits that the impression of impunity created by a commander's failure to act in the face of serious crimes "can never be washed away [from his subordinates' minds] even by the issuance of repeated written reminders to honour the Geneva Convention."¹³⁸⁵ The Prosecution also argues that Rasim Delić's engagement in forming the EMD, his insufficient action against the EMD members' criminal behaviour and his involvement in

¹³⁷⁶ Džemal Vučković, T. 5224-5225; Ex. 769, Minutes of the Meeting of the Chief of the Security Administration, 8 August 1994, p. 3.

¹³⁷⁷ See, in particular, Article 29 of the Statute.

¹³⁷⁸ In this regard, see *Kvočka et al.* Appeal Judgement, para. 722.

¹³⁷⁹ Defence Final Brief, para. 1142 (2).

¹³⁸⁰ Defence Final Brief, para. 1142 (2).

¹³⁸¹ Defence Closing Argument, T. 8979.

¹³⁸² Defence Final Brief, para. 1142 (2).

¹³⁸³ Defence Final Brief, para. 1142 (2).

¹³⁸⁴ Defence Closing Argument, T. 8979.

¹³⁸⁵ Prosecution Final Brief, para. 396.

awarding the EMD, are inconsistent with the Defence's arguments regarding his supposedly positive character.¹³⁸⁶

580. Several witnesses, including those of Serb and Croat origin, described Rasim Delić as “a courteous, decent man who was not a fanatic in any sense”,¹³⁸⁷ “[an] industrious, educated [man who] has no bad habits”,¹³⁸⁸ “a good, honest man, who was very knowledgeable”,¹³⁸⁹ “a man of his words” and “a man of integrity” who tried to avoid armed conflict wherever possible.¹³⁹⁰

581. The evidence shows that Rasim Delić, in his capacity as Main Staff Commander, made efforts to disseminate relevant aspects of international humanitarian law within the ABiH and to promote compliance therewith.¹³⁹¹

582. The evidence further shows that Rasim Delić was instrumental in the initiation of Operation “*Trebević-1*” and subsequent actions to crack down on unruly ABiH units.¹³⁹²

583. Whereas there is evidence that Rasim Delić strove to preserve the multi-ethnic character of the ABiH,¹³⁹³ the evidence shows that, towards the end of the conflict, officers holding higher ranks within the ABiH were almost exclusively Bosnian Muslims.¹³⁹⁴

584. The evidence also demonstrates that Rasim Delić was substantially involved in the negotiation of peace accords, including the Dayton Agreement which ended the war in Bosnia and Herzegovina in 1995.¹³⁹⁵

585. The Majority accepts that Rasim Delić has no prior criminal record. The Majority has taken into account this factor, as well as the other mitigating circumstances referred to above. However, the Majority has carefully weighed them against the gravity of the crimes at issue and Rasim Delić's culpable omission established earlier.¹³⁹⁶

¹³⁸⁶ Prosecution Rebuttal Argument, T. 8991.

¹³⁸⁷ Zdravko Djuričić, T. 2112.

¹³⁸⁸ Džemal Vučković, T. 5212; PW-3, T. 1520 (closed session); Ex. 210 (under seal), p. 3.

¹³⁸⁹ Alija Lončarić, T. 8338

¹³⁹⁰ Zvonko Jurić, T. 8485-8486, 8488, 8495-8496.

¹³⁹¹ See para. 544 *supra*.

¹³⁹² See paras 136-137 *supra*.

¹³⁹³ Zvonko Jurić, T. 8472-8474; Ex. 993 (under seal); Ex. 357, Recommendation of Rasim Delić, 17 June 1993, p. 12.

¹³⁹⁴ See para. 91 *supra*.

¹³⁹⁵ Vahid Karavelić, T. 7946-7947; Ferid Buljubašić, T. 5487-5488; Ismet Alija, T. 4186-4189; Ismet Dedović, T. 8198-8199; Ex. 1359, Newsletter of the ABiH Information Department on a Meeting between Rasim Delić and Ambassador Preinsinger, 15 March 1995; Ex. 1299, Order of Rasim Delić, on Taking Measures Related to the Peace Agreement, 22 November 1995.

¹³⁹⁶ In this regard, see *Blaškić* Appeal Judgement, para. 696; *Hadžihasanović and Kubura* Trial Judgement, paras 2080-2081.

(iv) Personal and Family Circumstances

586. The Defence submits that Rasim Delić is married, has two sons and three grandchildren. According to the Defence, Rasim Delić suffers from diabetes and needs constant supervision by a medical doctor.¹³⁹⁷

587. The Majority accepts the personal and family circumstances of Rasim Delić as presented by the Defence. However, the Majority recalls the jurisprudence of this Tribunal that poor health is to be considered at sentencing only in exceptional cases.¹³⁹⁸ The Majority has attached minimal weight to the family circumstances of Rasim Delić.

(v) Circumstances Prevailing in Bosnia and Those Particular to Rasim Delić

588. The Defence directs the Trial Chamber's attention to the "difficult problems" in ABiH and the Main Staff at that time.¹³⁹⁹ The Defence points out in particular the fact that immediately after his appointment as the Commander of the Main Staff, Rasim Delić faced resistance by a part of the Main Staff, as well as certain political groups.¹⁴⁰⁰

589. The Majority acknowledges that Rasim Delić faced a number of extraordinary challenges and difficulties from the moment he took office as ABiH Main Staff Commander on 8 June 1993. The problems faced by the ABiH in general, which were to some extent ongoing in 1995, have been described elsewhere in this Judgement.¹⁴⁰¹ In addition, a number of senior officers did not immediately accept the authority of Rasim Delić. Although these circumstances mainly pertain to the initial period of Rasim Delić's tenure as Main Staff Commander, and they do not in any way diminish his individual criminal responsibility for the crimes in July and August 1995, the Majority is of the view that these particular circumstances deserve to be considered to have some mitigating effect on the sentence.¹⁴⁰²

3. Arguments of the Defence Relating to Referral Proceedings

590. The Defence also submits that on the eve of the commencement of the trial, when the Prosecution requested referral of the case to a domestic court pursuant to Rule 11 *bis* of the Rules, the Prosecution made "concessions" by underlining that the case is limited in terms of number of

¹³⁹⁷ Defence Final Brief, para. 1142 (4).

¹³⁹⁸ *Blaškić* Appeal Judgement, para. 696; *Prosecutor v. Milan Simić*, Case No. IT-95-9/2-S, Sentencing Judgement, 17 October 2002, para. 98.

¹³⁹⁹ Defence Final Brief, para. 1142 (2), citing Ex. 1333, Report of Rasim Delić on Analysis of a Year's Work of the ABiH.

¹⁴⁰⁰ Defence Final Brief, para. 1142 (3).

¹⁴⁰¹ See paras 129-140, 148-150 *supra*.

victims, geographical and temporal scope and Rasim Delić's role in the commission of the crimes. The Defence argues that the Trial Chamber should take into account those submissions of the Prosecution when now assessing a potential sentence to be imposed on Rasim Delić.¹⁴⁰³

591. In the view of the Majority, the Parties' arguments proffered during the referral proceedings concerned the appropriate forum to try the case and were made solely on the basis of the Indictment, pending the presentation of evidence before this Trial Chamber.¹⁴⁰⁴ Therefore, those arguments carry no weight at the sentencing stage of the proceedings.

4. General Practice Regarding the Prison Sentences in the Courts of the Former Yugoslavia

592. The Trial Chamber is required to take into account the general practice regarding prison sentences in the courts of the former Yugoslavia, although it is not obligated to conform to such practice in making its sentencing determination.¹⁴⁰⁵ While review of such practice serves as an aid in determining the appropriate penalty, the Trial Chamber may, if the interests of justice so merit, impose a sentence less than or in excess of that which would be applicable under the relevant law of the former Yugoslavia.¹⁴⁰⁶

593. During the period relevant to the Indictment, the Criminal Code of the Socialist Federal Republic of Yugoslavia ("SFRY Criminal Code") governed the law on sentencing in the RBiH in relation crimes which are pertinent to this case.¹⁴⁰⁷ In terms of punishment, Article 34 of the SFRY Criminal Code provides that the court could impose capital punishment, imprisonment or a fine.¹⁴⁰⁸ Article 38 of the SFRY Criminal Code provides further that prison sentences could not exceed 15 years unless the crime was eligible for the death penalty, in which case the term of imprisonment could not exceed 20 years. Articles 142 and 144 of the SFRY Criminal Code penalise war crimes,

¹⁴⁰² See *Čelebići* Trial Judgement, para. 1248; *Hadžihasanović and Kubura* Trial Judgement, para. 2081; *Orić* Trial Judgement, paras 767-771.

¹⁴⁰³ Defence Final Brief, paras 1143-1144, referring to Motion by the Prosecutor for Referral of the Indictment Pursuant to Rule 11 *bis*, 5 July 2007, paras 11, 14-15, 17; Defence Closing Argument, T. 8978-8979.

¹⁴⁰⁴ See Decision on Motion for Referral of Case Pursuant to Rule 11 *bis*, 9 July 2007, paras 15-17, 21-22.

¹⁴⁰⁵ Article 24(1) of the Statute; Rule 101(B)(iii); *Čelebići* Appeal Judgement, para. 813, citing *Prosecutor v. Omar Serushago*, Case No. ICTR-98-39-A, Reasons for Judgement, 6 April 2000, para. 30; *Kunarac et al.* Appeal Judgement, para. 377; *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A and IT-94-1-Abis, Judgement in Sentencing Appeals, 26 January 2000, para. 21; *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-A, Judgement on Sentencing Appeal, 4 February 2005, para. 69; *Stakić* Appeal Judgement, para. 398.

¹⁴⁰⁶ *Blagoje Simić* Appeal Judgement, para. 264; *Stakić* Appeal Judgement, para. 398.

¹⁴⁰⁷ Ex. 3, SFRY Criminal Code, adopted by the SFRY Assembly at the Session of Federal Council held on 28 September 1976, declared by decree of the President of the Republic on 28 September 1976 and took effect on 1 July 1977; Ex. 2, SRBiH Criminal Code of 7 June 1977. The SFRY Criminal Code was adopted by RBiH through a decree law on 11 April 1992, Ex. 5, Decree Law on the Adoption of the SFRY Criminal Code, RBiH Official Gazette of 11 April 1992. See also Ex. 13, Decree Law on Applying the Criminal Codes of the RBiH and SFRY, 2 June 1992.

¹⁴⁰⁸ Also note Article 41 of the SFRY Criminal Code providing for the various factors to be taken into account in determining the sentence, including mitigating and aggravating circumstances, the degree of criminal

including inhumane treatment, against the civilian population and prisoners of war, respectively. As a penalty, these provisions provide for a minimum sentence of five years imprisonment. The most severe sentence under the provisions is a penalty of death.¹⁴⁰⁹

594. As the SFRY Criminal Code does not provide for a mode of liability directly corresponding to Article 7(3) of the Statute, the Majority has taken into consideration the relevant sentencing practice of the Tribunal.

5. Credit for Time Served in Custody

595. Pursuant to Rule 101(C) of the Rules, credit shall be given to the convicted person for the period during which the convicted person was detained pending surrender to the Tribunal or pending trial. Rasim Delić surrendered and was transferred to the UNDU on 28 February 2005. He was provisionally released between 7 May 2005 and 25 June 2007, when he was recalled for the commencement of trial. Rasim Delić was also on provisional release between 11 December 2007 and 11 January 2008. Against the sentence imposed, Rasim Delić is therefore entitled to credit of 488 days.

responsibility, the motives for which offences were committed, the offender's personal circumstances, and his conduct after the commission of the crime, Ex. 3, SFRY Criminal Code, pp 29-30.

¹⁴⁰⁹ Ex. 3, SFRY Criminal Code, pp 69-71. *See also* Prosecution Final Brief, fn. 888.

XI. DISPOSITION

596. For the foregoing reasons, having considered all of the evidence and the submissions of the Parties, it is decided as follows.

The Trial Chamber unanimously finds **RASIM DELIĆ NOT GUILTY** pursuant to Article 7(3) of the Statute and therefore **ACQUITS** him of the following counts:

- **Count 1:** Murder as a Violation of the Laws or Customs of War pursuant to Article 3 of the Statute;
- **Count 2:** Cruel Treatment as a Violation of the Laws or Customs of War pursuant to Article 3 of the Statute, in relation to the events in Bikoši on 8 June 1993, as well as the events in Kesten and the Kamenica Camp in September 1995;
- **Count 4:** Cruel Treatment as a Violation of the Laws or Customs of War pursuant to Article 3 of the Statute.

The Trial Chamber finds by majority, Judge Moloto dissenting, **RASIM DELIĆ GUILTY** pursuant to Article 7(3) of the Statute of the following count:

- **Count 2:** Cruel Treatment as a Violation of the Laws or Customs of War pursuant to Article 3 of the Statute, in relation to the events in Livade/Kamenica Camp in July-August 1995.

597. The Trial Chamber by majority, Judge Moloto dissenting, hereby sentences Rasim Delić to a single sentence of three (3) years of imprisonment. Rasim Delić has been in custody for 488 days. Pursuant to Rule 101(C) of the Rules, he is entitled to credit for the period of time he has been in custody towards service of the sentence imposed.

598. Pursuant to Rule 103(C) of the Rules, Rasim Delić shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the state where he shall serve his sentence.

599. Judge Moloto appends a Dissenting Opinion.

Judge Bakone Justice Moloto
Presiding

Judge Frederik Harhoff

Judge Flavia Lattanzi

Dated this fifteenth day of September 2008

At The Hague

The Netherlands

[Seal of the Tribunal]

XII. DISSENTING OPINION OF JUDGE MOLOTO

1. I respectfully dissent from the Majority's finding as to Rasim Delić's individual criminal responsibility pursuant to Article 7(3) of the Statute. In particular, I cannot agree with the Majority's finding that Rasim Delić exercised effective control over the perpetrators of the crimes committed in July and September 1995.

2. In line with the order followed by the Majority in laying down its reasoning, I will set forth my arguments under the following issues: (i) improvement of command and control and EMD's compliance with orders; (ii) reporting; (iii) links with foreign authorities, and finally (iv) investigative and punitive measures.

A. Improvement of Command and Control and EMD's Compliance with Orders

3. The Majority holds that the main objective of the creation of the EMD was "to associate its members fully with the war efforts of the RBiH by incorporating the unit into the Army's system of command".¹ I respectfully disagree with the conclusion that such "objective was achieved at the latest when Operation *Proljeće* II was launched" and that as of that time "the EMD complied with the tactical parts of the combat orders and with many of the other orders handed down by its ABiH superior commanders."²

4. I first take issue with the assertion that the EMD's compliance with the tactical parts of combat orders is an indicium of effective control. I am of the view that this compliance only shows an improvement in the cooperation between the ABiH and the EMD in 1995 with respect to the planning and preparation of combat operations. Besides, the fact that the ABiH benefited from the EMD during the carrying out of combat operations does not provide *per se* support for the existence of effective control.³

5. That the EMD's compliance with the tactical parts of ABiH orders shows cooperation rather than effective control finds support in the evidence. Up until the disbandment of the EMD, the ABiH would usually seek agreement with the EMD on the Detachment's role in an upcoming combat operation before handing down an order to it. The EMD made its participation in combat contingent on certain requirements. In the absence of these conditions, the EMD sometimes postponed its participation or even refused to participate.⁴ This, admittedly, did not happen during the spring and summer of 1995 as the EMD always agreed to participate along with ABiH forces in

¹ See para. 461 *supra*.

² See para. 461 *supra*.

³ See *Hadžihasanović and Kubura* Appeal Judgement, para. 213.

operations conducted in the Vozuća pocket. However, the fact that the issuing of orders was preceded by an “agreement” between the two forces is inconsistent with the system of command and control. Indeed, it calls into question the ABiH’s power *vis-à-vis* the EMD to issue orders and to have them executed.⁵

6. The evidence therefore warrants the conclusion that this improvement of the level of compliance by the EMD with respect to tactical parts of combat orders only demonstrates a consolidated level of cooperation between EMD and ABiH units, rather than proving that Rasim Delić exercised effective control over the former.

7. This conclusion is also supported by the fact that the EMD’s compliance was mostly limited to the tactical parts of the combat orders. The evidence indeed shows that throughout 1995, the EMD *erratically* complied with the ABiH orders. More precisely, during that period, the EMD not only defied orders of general nature, but also orders issued by the ABiH during combat operations. In July 1995, the EMD detained VRS captives in Livade and Kamenica Camp.⁶ In September 1995, the EMD seized 52 VRS soldiers at gunpoint from the ABiH and detained VRS soldiers and civilians, including three women, in the Kamenica Camp.⁷ By doing so, the EMD violated combat orders issued by its ABiH superior unit regulating the handling of prisoners of war.⁸ Furthermore, the EMD refused ABiH officers access to EMD premises when they came to investigate whether there were captives at the Kamenica Camp.⁹ In August 1995, due to a dispute with ABiH soldiers in relation to war booty, the EMD left the area of responsibility of the 35th Division.¹⁰ In September 1995, it also refused to hand over a tank to the ABiH and forcibly seized war booty from the ABiH, again in violation of a combat order.¹¹ Against this backdrop, the fact that “the EMD complied with many orders handed down by its ABiH superior commanders” cannot serve as an indicium of the effective control of Rasim Delić over the EMD. Nor can the effective control be dependent on the number of compliances in relation to violations.

8. The Majority refers to the EMD explaining its motives for deviating from some orders and holds that no steps were taken to enforce the wishes of the ABiH commanders. This lack of action

⁴ See paras 383 *et seq. supra*.

⁵ See *Hadžihasanović and Kubura* Appeal Judgement, para. 199, holding that the power of a unit to issue orders and to have them executed can serve as an indicium of effective control. On this matter, I find, for instance, emblematic the testimony of Ajwad Aman who testified, in connection with the preparation for Operation *Proljeće*, that the Commander of the 3rd Corps *recommended* and not *ordered* that the EMD changed their plan of attack, *see* para. 395 *supra*.

⁶ See paras 239 *et seq. supra*.

⁷ See paras 295 *et seq. supra*.

⁸ See paras 403-405 *supra*.

⁹ See 406-411 *supra*.

¹⁰ Ex. 740, Bulletin No. 149 of the Military Security Administration, 4 August 1995, p. 3. *See* para. 435 *supra*.

¹¹ *See* paras 435, 533 *supra*.

on the part of the ABiH seems to be the premise for the Majority's conclusion that the ABiH commanders accepted the EMD's explanations.¹² As a general point, it bears mentioning that the practice of deviating from commanders' orders, whether justified or not, is contrary to and undermines the system of command and control. I also do not agree that the ABiH commanders "accepted" the explanations. The evidence supports the holding that the ABiH commanders simply acquiesced in the situation because they could not impose their will on the EMD. They acquiesced because the EMD had a propensity to resort to violence or the threat of it when confronted.¹³ As a result, the ABiH was fearful of the EMD or sceptical to confront it for fear of starting a war on a "third front".¹⁴ The testimony of Fadil Hasanagić, the Commander of the 35th Division and to whose Division the EMD was subordinated, explained the situation succinctly:

I could not really do much or maintain frequent contacts with them or try to prevail over them the same way that I succeeded in prevailing upon the commander of the 4th Manoeuvre Battalion when I threatened him that he would be replaced. My purview and my authority powers were not such that I could threaten the same threat to the EMD.¹⁵

9. The fear of a "third front" war and Fadil Hasanagić's remarks can hardly be termed "acceptance". Even on the Majority's argument that the ABiH "accepted" the EMD's explanations, the only reasonable conclusion that can be drawn is that the ABiH negotiated with the EMD and reached agreement, as against ordering them.

10. Given these circumstances, in my view, there was nothing the ABiH commanders could do. I therefore disagree with the Majority's conclusion that Rasim Delić in 1995 "was in a consolidated position which enabled him to enforce his decisions upon his subordinates, including the EMD and its members".¹⁶ It is clear that if a decision had been made to confront the EMD by force, the ABiH would have encountered resistance comparable to an enemy force, rather than a force which is under its control. Such a scenario can hardly be reconciled with the theory of "effective control" as set forth in the Tribunal's jurisprudence.¹⁷

¹² See para. 462 *supra*.

¹³ See paras 434-436, 498 *et seq. supra*.

¹⁴ See Asim Delalić, T. 1761-1762; Osman Fuško, T. 1138-1140; PW-11, T. 6346 (closed session); Kadir Jusić, T. 2685-2687. Regarding the fear perceived by ABiH members towards the EMD I find illustrative, in this regard, the episode when the EMD refused to hand over a tank to the ABiH despite an order to this effect. As shown by the evidence, the crew of the ABiH manning the tank did not even dare to take it to the 3rd Corps as the EMD fighters "would search you out, find you and kill you", see para. 372 *supra*.

¹⁵ Fadil Hasanagić, T. 3297.

¹⁶ See para. 460 *supra*.

¹⁷ See *Hadžihasanović and Kubura* Appeal Judgement, paras 229, 230.

B. Reporting

11. I also respectfully disagree with the Majority's evaluation of the evidence concerning the reporting system in relation to the EMD.¹⁸ In my view, the evidence is clear that the EMD as an ABiH unit was obliged to report directly to its immediately superior unit.¹⁹ During the combat operations in 1995 in the Vozuća pocket, the EMD was directly re-subordinated to the 35th Division. However, the EMD never reported either in writing or orally to that unit.²⁰ The argument of the Majority that the EMD nevertheless reported orally to the 3rd Corps, by-passing the 35th Division, misconstrues the system of command and control in place in the ABiH. Such system was based on the "unity of command and subordination", according to which a lower unit would only report to the first immediately superior unit along the chain of command.²¹ That both the Commanders of the 35th Division and the 3rd Corps acquiesced in that situation is demonstrative of their lack of the material ability to enforce the rules of the ABiH. This resulted in the 3rd Corps Commander also giving orders directly to the EMD, by-passing the 35th Division.

12. The evidence also shows that the ABiH established a security organ within the EMD.²² However, this security organ *never* complied with its obligation to report separately to the security and intelligence organs of its immediately superior unit. Ajman Awad, the security organ in the EMD, boastfully testified that: "On paper, formally, [...] I was the deputy -- assistant commander for security [...]. [b]ut never actually carried out those duties, nor do I know how to carry them out."²³ It is worth recalling the evidence that the ABiH was composed of people who were generally not trained professional soldiers, hence, did not know what their duties entailed.²⁴ Yet they learned and were also trained on the job, but Ajman Awad was never instructed by the ABiH to acquaint him with his duties, nor did he bother to get such training.

13. Therefore, while it is true that there were *informal* contacts between the EMD and the 3rd Corps, it would be inappropriate, at least technically, to consider such contacts as evidence that the EMD complied with its reporting obligation. Nor can such contacts be a factor indicative of effective control. Indeed, it is undeniable that the cooperation between two units in the field requires, by its very nature, some degree of coordination and reciprocal contacts.

¹⁸ See para. 463 *supra*.

¹⁹ See paras 141 *et seq. supra*.

²⁰ See paras 423 *et seq. supra*.

²¹ See paras 141 *et seq. supra*.

²² See para. 192 *supra*.

²³ See para. 192 *supra*.

²⁴ See paras 128 *et seq. supra*.

14. I also note the holding that the EMD provided oral briefings to its superior commanders before, during and after combat operations, “just as any other ABiH unit.”²⁵ However, while it is true that the other ABiH units held meetings with their superior commanders, these briefings did not relieve them of their obligation to report to their immediately superior units according to the reporting system applied within the ABiH.

15. In conclusion, the EMD’s failure to report to its immediately superior unit coupled with the EMD’s erratic behaviour towards the orders of the ABiH seriously undermined the command and control of Rasim Delić. A chain of command lies in the flow of orders and information. The transmission of information up and down the chain of command and the ability of a commander to exercise his authority through orders constitute the two essential components of a system of command and control. Only if these two components function, is a commander in a position to control his units and induce obedience from them. However, this did not happen in relation to the EMD. As the Commander of the 35th Division clearly described:

I could not control some of their actions, because I didn't have any reports. [...] I am referring to combat activities, action in terms of combat activity; what they were doing at that place, how much time they were spending there and so on, because they had been given an orientational task and it is that facility that is the target. Now, how they would get to that facility or target is something that I could not control.²⁶

16. The Majority’s argument that oral reporting by the EMD was “useful and practical” because of “language differences” is, with full respect, without merit. The EMD’s interpreter could write such reports if the EMD really wanted to submit written reports. Besides, there were many local Bosnian Muslim members of the EMD who could have fulfilled the task. There is also evidence that some of the Bosnian Muslim members held senior positions in the EMD.²⁷

C. Links with Foreign Authorities

17. The evidence shows that members of the EMD were constantly in contact with local and foreign authorities outside the ABiH.²⁸ I disagree with the Majority that these communications did not affect the chain of command and the effective control exercised by Rasim Delić over the EMD because they aimed only to “promote its cause and attract financial support”.²⁹

18. The links of the EMD with the foreign authorities show another area in which the EMD acted independently from the ABiH. Indeed none of the EMD members was paid by the ABiH.

²⁵ See para. 463 *supra*.

²⁶ Fadil Hasanagić, T. 3288.

²⁷ See para. 415 *supra*.

²⁸ See paras 186-193, 442 *et seq. supra*.

²⁹ See para. 464 *supra*.

Furthermore, the fact that these contacts were put in place by the EMD with a view to promoting its cause and attract funds may also allow the inference that the authorities sponsoring the EMD might have retained a significant influence over them. This was confirmed by a bulletin which reached Rasim Delić on 2 December 1993, according to which:

[...] the dominant influence on those units [EMD] by “their headquarters” from abroad is unacceptable, as is their establishment as some type of “armed forces” parallel with the Army of RBiH, *i.e.* some of its Corps”.³⁰

19. Although this information refers to the early period of the establishment of the EMD, the Majority has failed to show how the situation evolved or differed in 1995. The Majority did not point to any evidence to this effect. On the contrary, there is evidence that in 1995, the degree of influence of civilian and religious authorities over the EMD was such that, at least on one occasion, the ABiH had to ask for their assistance to raise the issue of “disorderly conduct by individual members” of the EMD.³¹ The fact that the EMD had allegiance to other superiors inside and outside the RBiH undermined command and control within the ABiH. Indeed, there is also evidence to the effect that the EMD regarded Sheik Enver Shaban, the head of the Islamic Cultural Institute in Milan, as their “real Emir”.³²

D. The EMD as an Assault Unit

20. The Majority also places emphasis on the role of the EMD as a specialised unit to boost its holding that the EMD enjoyed a certain degree of autonomy within the ABiH.³³ It is respectfully submitted that the Majority conflated two separate issues here: the role of the EMD in combat and the significant degree of independence from the ABiH units it fought alongside.

21. While it is indisputable that the EMD acted as a special assault unit, more contentious is whether such fact could explain the significant degree of independence enjoyed by the EMD within the ABiH. The EMD’s erratic behaviour and the setting up of conditions before their participation in combat operations are hardly compatible with the ABiH’s system of command and control. The evidence shows that no other ABiH specialised unit such as the 7th Muslim Brigade or the Manoeuvre Battalions enjoyed the same degree of independence. Had they enjoyed the same privileges as the EMD, then hardly any military success could have been achieved.

22. While the Corps Commands of the ABiH issued orders to its subordinates on the basis of proposals for specific combat actions proposed by the latter, the ultimate decisions rested however

³⁰ Ex. 761, Special Information of the Chief of Military Security Administration, 2 December 1993, p. 3.

³¹ See para. 441 *supra*.

³² See para. 190 *supra*.

³³ See para. 465 *supra*.

on the superior units. It is respectfully submitted that the Majority misconceives the military reality and the functioning of system of command and control when it holds that a “dialectical procedure was not unusual” within the ABiH and that the “planning process in the ABiH was normally based on a dialogue”. In a military context, if, indeed, a “dialogue” takes place between the superior and the subordinate units, it would serve solely the purpose to clarify matters for the benefit of the commander, who however, retains the ultimate authority to give orders. As the expert witness Cornish rightly pointed out:

[i]n the end, after all that exchange of ideas and it is all happening very rapidly, in the end there is authority and there is decision and that someone somewhere, nevertheless, says Thank you for the information, thank you for the ideas, it will be done the following way.³⁴

23. This procedure which characterises the functioning of the military system of command and control never took place in the relation between the ABiH and the EMD. The EMD’s erratic behaviour and the setting up of conditions before their participation in combat operations show that the EMD carried out the tasks given by the ABiH only when it *chose* to do so. Indeed, many witnesses testified that only the *shura* could take the ultimate decision as to whether the EMD should be engaged in the fighting.³⁵ This is also confirmed by the evidence showing – contrarily to the Majority’s view – that the decision of the *shura* was also decisive for the disbandment of the EMD after the war.³⁶

24. The evidence in this case also shows an example of how in 1995 an ABiH commander annulled an order to prepare for combat as the EMD refused to participate.³⁷ The annulment of a combat order issued with a view to preparing an attack when all other units were ready could undermine the war efforts.

25. In light of the above evidence, it can be argued that the EMD enjoyed a “special treatment” or a certain degree of independence because there was no material ability to enforce the wishes of its superiors. Quite clearly, the “special treatment” given to the EMD was to induce cooperation which the ABiH was unable to get through the system of command and control and not because the EMD was a specialised assault unit. A similar inducement was provided by Rasim Delić and Alija Izetbegović in the form of awards to get the EMD to agree to disband at the end of the war.³⁸

26. I respectfully submit that again the Majority erred in trying to find a justification for the EMD’s degree of independence of the ABiH in the fact that it was a special unit.

³⁴ Paul Cornish, T. 8600-8602.

³⁵ See paras 189, 385 *supra*.

³⁶ See paras 198, 458 *supra*.

³⁷ See para. 390 *supra*.

³⁸ See paras 454 *et seq. supra*.

E. Investigative and Punitive Measures

27. The Majority also finds that Rasim Delić did have the material ability to punish and that he simply did not use the means available to him. In particular, in relation to the episode of the EMD's denial of ABiH members' access to the camp, the Majority holds that "rather than saying that nothing *could be done*" against the EMD, the Majority only finds that "nothing *was done*".³⁹ Following this reasoning, the Majority seems to draw Rasim Delić's effective control from the fact that he did not take measures against the EMD, while he *could* do so. I am respectfully of the opinion that Rasim Delić's inaction only confirmed, in light of the totality of the evidence, the absence of his effective control. He did nothing because he did not have effective control over the EMD. To this end, it is worth mentioning that, despite the fact that the ABiH, on some occasions, took investigative steps against EMD members, all attempts to punish the EMD members for their criminal behaviour inevitably failed. The case of the killing of Goodall is, in this respect, paradigmatic. In that case, the ABiH had to be assisted by the civilian authority to conduct an investigation and arrest the perpetrators. Furthermore, the criminal proceedings were never completed.⁴⁰ Other examples, in my view, demonstrating the lack of Rasim Delić's material ability to prevent and punish the commission of crimes by the EMD regard a proposal by Rasim Delić "to sort[...] out militarily" a situation of "unacceptable behaviour" of EMD members⁴¹ and "to finally resolve" a number of incidents involving EMD members.⁴² In both cases, the evidence shows that, despite the attempts made by Rasim Delić, no measures were taken against the EMD.

28. It is also clear from the evidence that the ABiH was fearful of the EMD and could not take actions against it even when EMD members hindered other ABiH units in their military action. In this regard, the many examples in the evidence where members of the EMD interfered with other ABiH units are emblematic.⁴³ I refer, for instance, to the episode where EMD members threatened non-Muslim soldiers of the ABiH, causing the non-Muslim soldiers to be removed from the front-line, which "affected combat readiness of the unit in a very negative way".⁴⁴

29. Against this backdrop, the fact that, in principle, Rasim Delić *could* follow up in cases of non-compliance by the EMD does not therefore show *in practice* that he had the material ability to punish them. The Majority appears therefore to hinge its conclusion solely on what Rasim Delić

³⁹ See para. 468 *supra*.

⁴⁰ See paras 493 *et seq. supra*.

⁴¹ Ex. 761, Special Information of the Chief of Military Security Administration, 2 December 1993.

⁴² See paras 509 *et seq. supra*.

⁴³ See paras 434-436 *supra*.

⁴⁴ Ex. 736, Report No. 125 of the Military Security Administration of the General Staff, 10 July 1995, p. 7. See para. 434 *supra*.

could possibly do, failing, however, to demonstrate how he had, in reality, a material ability to punish the EMD.

F. Conclusion

30. The Prosecution must prove *beyond reasonable doubt* that Rasim Delić exercised effective control over the relevant perpetrators within the EMD. In a case where this finding is based, as it is *in casu*, on circumstantial evidence, it is not sufficient that it is a reasonable conclusion available from that evidence. It must be the *only* reasonable conclusion available.⁴⁵

31. By the foregoing analysis, I provided examples of how circumstantial evidence is reasonably open to the conclusion that Rasim Delić did not have effective control. The Majority, instead, embarked, on several occasions, on an analysis of the evidence with a view to showing that such evidence *did not* exclude the existence of effective control by Rasim Delić over the EMD.⁴⁶ However, it fails to show any positive evidence from which effective control, and notably the material ability to prevent and punish, may be reasonably inferred, let alone that it must be the only reasonable conclusion.

32. I therefore respectfully submit that the Majority erred in concluding that Rasim Delić is criminally responsible because he had a material ability to prevent and punish the crimes committed by the EMD in July and September 1995, but failed to prevent and/or punish the perpetrators of such crimes. In my view, Rasim Delić did not have effective control over the EMD at any time from the time of his assumption of duties as the Commander of the Main Staff of the ABiH on 8 June 1993, until the EMD was disbanded in December 1995.

33. Consequently, I would acquit Rasim Delić of all counts at this stage of the proceedings. Whereas the Judgement refers to the Majority on its findings subsequent to effective control, I also place on record that I participated in the deliberations on and agree with all findings on Rasim Delić's notice and failure to prevent and punish. However, based on my conclusion on effective control, I dissent from any sentence that the Majority may impose on Rasim Delić.

⁴⁵ See para. 28 *supra*.

⁴⁶ See, e.g., paras 463-464 *supra*.

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

Judge Bakone Justice Moloto

Dated this fifteenth day of September 2008

At The Hague

The Netherlands

[Seal of the Tribunal]

ANNEX A – GLOSSARY

A. List of Abbreviations, Acronyms and Short References

13 September Report	Ex. 480, Combat Report of the 328 th Brigade, 13 September 1995
ABiH	Army of the Republic of Bosnia and Herzegovina
Accused	Rasim Delić
Additional Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3
aka	Also known as
Armed Forces	ABiH and the police of the RBiH during wartime
Art.	Article
B/C/S	The Bosnian/Serbian/Croatian languages
BiH	Bosnia and Herzegovina
Bulletin 137	Ex. 582, Bulletin of the General Staff Security Administration, 22 July 1995
Common Article 3	Article 3 common to the four Geneva Conventions of 1949
Defence	Counsel for the Accused
Defence Final Brief	Defence Closing Brief in <i>Prosecutor v. Rasim Delić</i> , 13 June 2008 (public redacted version)
EMD	“ <i>El Mujahed</i> ” Detachment
Ex.	Exhibit in <i>Prosecutor v. Rasim Delić</i>
fn./fns	Footnote(s)
Geneva Convention I	Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 UNTS 31
HVO	Croatian Defence Council

ICI	Islamic Cultural Institute in Milan, Italy
ICRC	International Committee of the Red Cross
ICRC Commentary on the Additional Protocols	Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, edited by Yves Sandoz, Christophe Swinarski, Bruno Zimmermann, ICRC, Geneva 1987.
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994, established pursuant to Security Council Resolution 955 of 8 November 1994 (UN Doc. S/RES/955)
IKM	Forward Command Post
Indictment	Amended Indictment in <i>Prosecutor v. Rasim Delić</i> , 14 July 2006
Initial Indictment	Indictment in <i>Prosecutor v. Rasim Delić</i> , 16 February 2005
Intelligence Administration	The highest intelligence organ within the ABiH
Intelligence Service	Intelligence organ within the ABiH, present on all levels from the battalion level upwards
JNA	Yugoslav Peoples' Army (Army of the Socialist Federal Republic of Yugoslavia)
Kamenica Camp	Camp in the Gostović valley, in the vicinity of Zavidovići, BiH
km	Kilometre
KM Kakanj	Command Post in Kakanj, BiH
<i>KP Dom</i>	Prison complex situated in the town of Zenica, BiH
Main Staff	Main Staff of the Army of Bosnia and Herzegovina, later renamed General Staff of the Army of Bosnia and Herzegovina (also referred to as Supreme Command Staff)

Military Security Service	Military Security Service in the Armed Forces of the Republic of Bosnia and Herzegovina
MP	Military police within the ABiH
MP Battalion	Military police battalion of the ABiH 3 rd Corps
OG	Operations Group
Operation <i>Proljeće II</i>	ABiH offensive in the Vozuća pocket against the VRS with a view to capture the features of Krčevine, Gaj, and Malovan, launched on 21 July 1995
Operations Centre	Command Operations Centre of the ABiH
Order of 13 August 1993	Ex. 271, Authorisation of Rasim Delić to Sakib Mahmuljin to Carry out Negotiations with the Mujahedin Unit from Zenica, 23 July 1993
p./pp	Page(s)
Parties	Prosecution and Defence
Poljanice Camp	Abandoned houses in a location called Poljanice or Zapode, BiH, a few hundred metres from the Mehurići primary school, used by Mujahedin fighters
Prnjavor Brigade	VRS 1 st Prnjavor Light Infantry Brigade
Prosecution	Office of the Prosecutor of the Tribunal
Prosecution Final Brief	Prosecution's Final Trial Brief in <i>Prosecutor v. Rasim Delić</i> , 13 June 2008 (public redacted version)
RBiH	Republic of Bosnia and Herzegovina
Rules	Rules of Procedure and Evidence of the International Tribunal for the Former Yugoslavia, 11 February 1994, as amended 28 February 2008 (UN Doc. IT/32/Rev. 41)
SCSL	Special Court for Sierra Leone
Security Administration	Security Administration of the ABiH Main Staff
Security Service	Military Security Service within the ABiH
SFRY	Socialist Federal Republic of Yugoslavia

SFRY Criminal Code	Criminal Code of the Socialist Federal Republic of Yugoslavia; published in the SFRY Official Gazette No. 44 of 8 October 1976 (corrections in the SFRY Official Gazette No. 36 of 15 July 1977), entry into force on 1 July 1977
SRBiH	Socialist Republic of Bosnia and Herzegovina (1945-1992)
Statute	Statute of the Tribunal, adopted by Security Council Resolution 827 of 25 May 1993 (UN Doc. S/RES/827), last amended by Security Council Resolution 1660 of 28 February 2006 (UN Doc. S/RES/1660)
T.	Transcript page from hearing in <i>Prosecutor v. Rasim Delić</i>
TO	Territorial Defence of the RBiH
Tribunal	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by Security Council Resolution 827 of 25 May 1993 (UN Doc. S/RES/827)
UN	United Nations
UNDU	United Nations Detention Unit in The Hague, The Netherlands
UNPROFOR	United Nations Protection Force
VRS	Army of the Serbian Republic of Bosnia and Herzegovina, and later Republika Srpska, as of 19 May 1992

B. List of Cases

1. Tribunal

ALEKSOVSKI

Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-T, Judgement, 25 June 1999 (“*Aleksovski* Trial Judgement”).

Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-A, Judgement, 24 March 2000 (“*Aleksovski* Appeal Judgement”).

BABIĆ

Prosecutor v. Milan Babić, Case No. IT-03-72-A, Judgement on Sentencing Appeal, 18 July 2005 (*Babić Sentencing Appeal Judgement*)).

BLAGOJEVIĆ AND JOKIĆ

Prosecutor v. Vidoje Blagojević and Dragan Jokić, IT-02-60, Judgement, 17 January 2005 (*Blagojević and Jokić Trial Judgement*)).

Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-A, Judgement, 9 May 2007 (*Blagojević and Jokić Appeal Judgement*)).

BLAŠKIĆ

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-T, Judgement, 3 March 2000 (*Blaškić Trial Judgement*)).

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-A, Judgement, 29 July 2004 (*Blaškić Appeal Judgement*)).

BRĐANIN

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-T, Judgement, 1 September 2004 (*Brđanin Trial Judgement*)).

ČELEBIĆI

Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka "Pavo"), Hazim Delić and Esad Landžo (aka "Zenga"), Case No. IT-96-21-T, Judgement, 16 November 1998 (*Čelebići Trial Judgement*)).

Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka "Pavo"), Hazim Delić and Esad Landžo (aka "Zenga"), Case No. IT-96-21-A, Judgement, 20 February 2001 (*Čelebići Appeal Judgement*)).

GALIĆ

Prosecutor v. Stanislav Galić, Case No. IT-98-29-A, Judgement, 30 November 2006 (*Galić Appeal Judgement*)).

HADŽIHASANOVIĆ AND KUBURA

Prosecutor v. Enver Hadžihasanović and Amir Kubura, Case No. IT-01-47-T, Judgement, 15 March 2006 (*Hadžihasanović and Kubura Trial Judgement*)).

Prosecutor v. Enver Hadžihasanović and Amir Kubura Case No. IT-01-47-A, Judgement, 22 April 2008 (*Hadžihasanović and Kubura Appeal Judgement*)).

HALILOVIĆ

Prosecutor v. Sefer Halilović, Case No. IT-01-48-T, Judgement, 16 November 2005 (*Halilović Trial Judgement*)).

Prosecutor v. Sefer Halilović, Case No. IT-01-48-A, Judgement, 16 October 2007 (*Halilović Appeal Judgement*)).

KORDIĆ AND ČERKEZ

Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-T, Judgement, 26 February 2001 (*Kordić and Čerkez Trial Judgement*)).

Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-A, Judgement, 17 December 2004 (*Kordić and Čerkez Appeal Judgement*)).

KRNOJELAC

Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, Judgement, 15 March 2002 (*Krnojelac Trial Judgement*)).

KUNARAC, KOVAČ AND VUKOVIĆ

Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković, Case No. IT-96-23-T & IT-96-23/1-T, Judgement, 22 February 2001 (“*Kunarac et al.* Trial Judgement”).

Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković, Case No. IT-96-23-A & IT-96-23/1-A, Judgement, 12 June 2002 (“*Kunarac et al.* Appeal Judgement”).

Z. KUPREŠKIĆ, M. KUPREŠKIĆ, V. KUPREŠKIĆ, JOSIPOVIĆ, (PAPIĆ) AND ŠANTIĆ

Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović and Vladimir Šantić (aka “Vlado”), Case No. IT-95-16-A, Judgement, 23 October 2001 (“*Kupreškić et al.* Appeal Judgement”).

KVOČKA, KOS, RADIĆ, ŽIGIĆ AND PRCAĆ

Prosecutor v. Miroslav Kvočka, Mlado Radić, Zoran Žigić and Draguljub Prcać, Case No. IT-98-30/1-A, Judgement, 28 February 2005 (“*Kvočka et al.* Appeal Judgement”).

LIMAJ, BALA AND MUSLIU

Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu, Case No. IT-03-66-T, Judgement, 30 November 2005 (“*Limaj et al.* Trial Judgement”).

MARTIĆ

Prosecutor v. Milan Martić, Case No. IT-95-11-T, Judgement, 12 June 2007 (“*Martić* Trial Judgement”).

NIKOLIĆ (MOMIR)

Prosecutor v. Momir Nikolić, Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006 (“*Momir Nikolić* Sentencing Appeal Judgement”).

ORIĆ

Prosecutor v. Naser Orić, Case No. IT-03-68-T, Judgement, 30 June 2006 (“*Orić* Trial Judgement”).

Prosecutor v. Naser Orić, Case No. IT-03-68-A, Judgement, 3 July 2008 (“*Orić* Appeal Judgement”).

SIMIĆ (BLAGOJE)

Prosecutor v. Blagoje Simić, Case No. IT-95-9-A, Judgement, 28 November 2006 (“*Blagoje Simić* Appeal Judgement”).

STAKIĆ

Prosecutor v. Milomir Stakić, Case No. IT-97-24-T, Judgement, 31 July 2003 (“*Stakić* Trial Judgement”).

Prosecutor v. Milomir Stakić, IT-97-24-A, Judgement, 22 March 2006 (“*Stakić* Appeal Judgement”).

STRUGAR

Prosecutor v. Pavle Strugar, IT-01-42, Judgement, 31 January 2005 (“*Strugar* Trial Judgement”).

TADIĆ

Prosecutor v. Duško Tadić (aka “Dule”), Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 (“*Tadić* Jurisdiction Decision”).

2. Other Decisions

Judgement of the International Military Tribunal for the Far East, Tokyo, 12 November 1948 (“Tokyo Judgement”).

United States v. Wilhelm List et al., Judgement, 19 February 1948, Trials of War Criminals Before the Nuernberg Military Tribunals Under Control Council Law No. 10, Vol. XI (“*Hostage Case*”).

United States v. Wilhelm von Leeb et al., Judgement, 27 October 1948, Trials of War Criminals Before the Nuernberg Military Tribunals Under Control Council Law No. 10, Vol. XI (“*High Command Case*”).

ANNEX B – PROCEDURAL BACKGROUND

A. Pre-Trial Proceedings

1. Surrender and Initial Appearance

1. An initial indictment against Rasim Delić was confirmed by Judge Carmel Agius on 16 February 2005 and unsealed on 23 February 2005.¹ This initial indictment charged Rasim Delić with four counts of violations of the laws or customs of war pursuant to Article 3 of the Statute: murder, two counts of cruel treatment and rape. Rasim Delić was exclusively charged with failure to prevent or punish the aforementioned crimes as a superior pursuant to Article 7(3) of the Statute.²

2. Rasim Delić expressed his intention to voluntarily surrender and on 28 February 2005, he was transferred into the custody of the Tribunal.³ Rasim Delić was admitted into the UNDU where he was to be detained until further order.⁴

3. Rasim Delić made his initial appearance before Trial Chamber III on 3 March 2005. He pleaded not guilty to all counts in the indictment.⁵

2. Indictment

4. On 17 March 2005, the Prosecution filed a public version of the initial indictment.⁶ On 30 June 2006, Trial Chamber III denied an application by the Prosecution to amend the indictment with three additional crime scenes on the grounds that this was likely to delay the start and prolong the course of the trial, although it did allow other minor amendments.⁷ Pursuant to the Trial Chamber's instructions, the Prosecution, on 14 July 2006, filed an amended indictment, which is the operative Indictment in this case.⁸

3. Composition of the Trial Chamber

5. The case was initially assigned to Trial Chamber III composed of Judges Patrick Robinson (Presiding), O-Gon Kwon and Iain Bonomy.⁹ Judge O-Gon Kwon was designated pre-trial Judge.¹⁰

¹ Decision on Review of Indictment and Order for Non-Disclosure, 16 February 2005; Order to Vacate in Part the Order for Non-Disclosure, 23 February 2005.

² Initial Indictment, 16 February 2005.

³ Order for Detention on Remand, 2 March 2005.

⁴ *Ibid.*

⁵ Initial Appearance, 3 March 2005, T. 5-7.

⁶ Indictment, 17 March 2005.

⁷ Decision on the Prosecution's Submission of Proposed Amended Indictment and Defence Motion Alleging Defects in Amended Indictment, 30 June 2006.

⁸ *Ibid.*

⁹ Order Assigning a Case to a Trial Chamber, 25 February 2005.

On 16 May 2006, Judges Frank Höpfel and Krister Thelin were assigned as pre-trial judges to the case, replacing Judges O-Gon Kwon and Iain Bonomy, and Judge Krister Thelin was designated pre-trial Judge.¹¹ On 17 April 2007, the President of the Tribunal ordered that the case be reassigned to Trial Chamber I and assigned Judge Janet Nosworthy to replace Judge Frank Höpfel for the purposes of pre-trial work.¹² On 19 April 2007, the Presiding Judge of Trial Chamber I ordered that the pre-trial bench consist of Judges Bakone Justice Moloto, Krister Thelin and Janet Nosworthy, and designated Judge Bakone Justice Moloto as pre-trial Judge.¹³

6. On 2 July 2007, the President of the Tribunal ordered that the trial bench be composed of Judge Bakone Justice Moloto (South Africa) as Presiding Judge, Judge Frederik Harhoff (Denmark) and Judge Flavia Lattanzi (Italy).¹⁴

4. Counsel

7. Rasim Delić was initially represented by Stéphane Bourgon.¹⁵ However, representation could not continue due to a conflict of interest.¹⁶ Rasim Delić's request to appoint Asim Crnalić as lead counsel was denied as Mr. Crnalić did not meet the required qualifications.¹⁷ On 27 June 2005, the Registrar assigned Vasvija Vidović as lead counsel.¹⁸ On 23 January 2007, Nicholas David Robson was appointed co-counsel.¹⁹

5. Provisional Release

8. On 6 May 2005, the Trial Chamber granted the Defence request for provisional release of Rasim Delić.²⁰ He returned to the UNDU in The Hague on 25 June 2007.²¹

6. Preparations for Trial and Request for Referral

9. The Prosecution filed its Pre-Trial Brief on 31 October 2006.²² The Defence submitted its Pre-Trial Brief on 19 January 2007.²³

¹⁰ Order Designating Pre-Trial Judge, 7 March 2005.

¹¹ Orders Assigning an Ad Litem Judge for Pre-trial Work, 12 May 2006; Order Regarding Composition of Trial-Chamber and Designating a Pre-Trial Judge, 16 May 2006.

¹² Order Reassigning a Case to a Trial-Chamber and Assigning Ad Litem Judges for Pre-Trial Judges, 17 April 2007.

¹³ Order Regarding Composition of Trial Chamber and Designating a Pre-Trial Judge, 19 April 2007.

¹⁴ Order Assigning Judges to a Case Before a Trial Chamber, 2 July 2007.

¹⁵ Decision of the Registrar, 2 March 2005.

¹⁶ Decision of Motion Seeking Review of the Registry Decision Stating that Mr. Stéphane Bourgon Cannot be Assigned to Represent Rasim Delić, 10 May 2005.

¹⁷ Decision on Motion Seeking Review of the Decision of the Registry and Assignment of Mr. Asim Crnalić as Lead Counsel, 22 April 2005.

¹⁸ Decision of the Registrar, 27 June 2005.

¹⁹ Decision of the Registrar, 23 January 2007.

²⁰ Decision on Defence Request for Provisional Release, 6 May 2005.

10. Pursuant to Rule 65 *bis* of the Rules, status conferences were held on 29 June 2005, 3 November 2005, 2 March 2006, 29 June 2006, 15 November 2006, 27 February 2007 and 21 May 2007.

11. A Pre-Trial Conference pursuant to Rule 73 *bis* was held on 2 July 2007.²⁴ At the Pre-Trial Conference, the Trial Chamber set the number of witnesses to be called by the Prosecution at 55 and determined that 170 hours would be available to the Prosecution for the presentation of evidence.²⁵

12. On 5 July 2007, the Prosecution filed a motion for suspension of the commencement of trial on the basis that the number of witnesses and time allocated by the Trial Chamber would not allow the Prosecution to adequately present its case.²⁶ On the same day, the Prosecution also filed an urgent motion for referral of the case to the authorities of Bosnia and Herzegovina pursuant to Rule 11 *bis*.²⁷ The Defence opposed both motions.²⁸ On 5 July 2007, the Trial Chamber denied the motion for suspension of the commencement of trial and all related proceedings.²⁹ On 9 July 2007, the Referral Bench, composed of Judges Alphons Orie (Presiding), Kevin Parker and O-Gon Kwon, also denied the motion for referral.³⁰

13. On 16 July 2007, the Prosecution filed a motion requesting the Trial Chamber to modify its decision under Rule 73 *bis* (C) of the Rules and permit it to call a total 73 witnesses, of whom 15 were proposed as 92 *bis* witnesses, to testify over a period of 106 hours of direct examination.³¹ On 24 July 2007, the Trial Chamber issued a decision allowing the Prosecution to call 73 witnesses and granting it 109 hours for the direct examination.³² The Trial Chamber orally granted a Prosecution request for additional eight hours on 7 December 2007.³³

²¹ Order Recalling Rasim Delić From Provisional Release, 14 June 2007; Pre-Trial Conference, 2 July 2007, T. 177-178.

²² Prosecution Submission Pursuant to Rule 65 *ter*, 31 October 2006 (partly confidential), Annex A.

²³ Pre-Trial Brief of Rasim Delić Pursuant to Rule 65*ter* (F), 19 January 2007.

²⁴ Scheduling Order, 22 May 2007.

²⁵ Pre-Trial Conference, 2 July 2007, T. 180.

²⁶ Prosecution Motion for Suspension of the Commencement of Trial and all Related Proceedings, 5 July 2007.

²⁷ Motion by the Prosecutor for Appointment of a Referral Bench Pursuant to Rule 11 *bis*, 5 July 2007.

²⁸ Defence Response to Prosecution Motion for Suspension of the Commencement of Trial and all Related Proceedings, 5 July 2007; Rule 11*bis* Hearing, 6 July 2007, T. 207-215, 223-224.

²⁹ Decision on Prosecution Motion for Suspension of the Commencement of Trial and all Related Proceedings, 5 July 2007.

³⁰ Decision on Motion for Referral of the Case Pursuant to Rule 11*bis*, 9 July 2007.

³¹ Prosecutor's Motion Pursuant to Rule 73 *bis* (F) and Motion for Leave to Withdraw Witnesses with Confidential Annexes, 16 July 2007.

³² Decision on Prosecution Motion Pursuant to Rule 73 *bis* (F) and Motion for Leave to Withdraw Witnesses, 24 July 2007.

³³ Hearing of 7 December 2007, T. 6733-6735.

B. Trial Proceedings

1. Overview

14. The trial was held between 9 July 2007 and 11 June 2008. The Trial Chamber sat for 114 trial days.

15. The Prosecution case commenced on 9 July 2007 and concluded on 10 February 2008. The Prosecution called a total of 64 witnesses, of whom 52 testified *viva voce*.³⁴ The evidence of 11 witnesses was admitted exclusively in written form pursuant to Rule 92 *bis* and one pursuant to Rule 92 *quater*.

16. The Defence case commenced on 4 March 2008 and concluded on 21 April 2008. A total of 13 witnesses were called, of whom 11 testified *viva voce*. The evidence of two witnesses was admitted in written form pursuant to Rule 92 *bis*.

17. The Trial Chamber admitted a total of 1399 exhibits into evidence. 689 exhibits were tendered by the Prosecution, 657 by the Defence, 5 by the Trial Chamber and 48 were jointly tendered by the Parties.

2. Provisional Release

18. On 23 November 2007, Rasim Delić was again granted provisional release, to last from 11 December 2007 until 11 January 2008 during the court winter recess.³⁵ On 14 December 2007, the Prosecution filed a motion to arrest Rasim Delić on the grounds that he had allegedly violated the conditions of his provisional release when he allegedly discussed his case with Haris Silajdžić, a current member of the Presidency of Bosnia and Herzegovina.³⁶ On 19 December 2007, Judge Wolfgang Schomburg, in his capacity as duty Judge, ordered that Rasim Delić be placed under house arrest until the end of the provisional release period.³⁷ Rasim Delić returned to the UNDU on 11 January 2008.³⁸

³⁴ On the request of the Defence, the Trial Chamber recalled one Prosecution witness for further cross-examination on 17 and 18 April 2008, *see* Decision on Defence Motion to Recall Witness, 4 April 2008.

³⁵ Decision on Defence Motion for Provisional Release, 23 November 2007.

³⁶ Prosecution Motion to Arrest the Accused Rasim Delić with Public Annexes A and B, 14 December 2007.

³⁷ Decision on the Prosecution Motion to Arrest Rasim Delić, 19 December 2007.

³⁸ *See* Correspondence from State, 10 January 2008.

19. On 16 May 2008, the Defence requested provisional release for Rasim Delić for the period immediately subsequent to the conclusion of closing arguments until the Trial Chamber was to reconvene to issue its judgement in the case.³⁹ Provisional release was denied on 5 June 2008.⁴⁰

3. Acquittal of Rape Pursuant to Rule 98 bis

20. On 7 December 2007, the Prosecution sought leave to withdraw Count 3 of the Indictment, which is rape as a violation of the laws or customs of war. The Trial Chamber denied that request by deciding that “the withdrawal of a count after the accused has entered a plea and on which the Prosecution has led evidence would not be in the interests of justice because the accused could be tried again on that count” and because he is entitled to a formal verdict on that count once he has entered a plea of not guilty.⁴¹

21. On 14 February 2008, the Defence made an oral submission for acquittal in respect of Count 3 of the Indictment.⁴² The Prosecution responded on the same day concurring with the Defence that Rasim Delić should be acquitted of Count 3.⁴³

22. On 26 February 2008, the Trial Chamber issued an oral ruling acquitting Rasim Delić of Count 3.⁴⁴

4. Site Visit

23. Between 3 and 6 September 2007, the Trial Chamber conducted a site visit to locations in central Bosnia mentioned in the Indictment.⁴⁵

5. Hearings Away From the Seat of the Tribunal

24. The Trial Chamber in this case twice conducted hearings away from the seat of the Tribunal in The Hague, in accordance with Rule 4 of the Rules. On 7 and 8 September 2007, the testimony of Ali Ahmad Ali Hamad was heard⁴⁶ and on 8, 9 and 10 February 2008, Ajman Awad gave

³⁹ Defence Motion for Provisional Release, 16 May 2008 (confidential), para. 1.

⁴⁰ Decision on Defence Motion for Provisional Release of the Accused Rasim Delić, 5 June 2008 (public redacted version).

⁴¹ Hearing of 10 December 2007, T. 6763.

⁴² Hearing of 14 February 2008, T. 6878-6887 (partly private session).

⁴³ Hearing of 14 February 2008, T. 6888.

⁴⁴ Hearing of 26 February 2008, T. 6891-6893.

⁴⁵ Order on Site-Visit, 13 July 2007.

⁴⁶ Decision on Oral Prosecution Motion Pursuant to Rule 4 for a Hearing to be Held in Sarajevo, 26 July 2007 (confidential).

evidence before the Trial Chamber.⁴⁷ Those hearings were conducted on the premises and with the assistance of the Court of Bosnia and Herzegovina in Sarajevo, in the presence of Rasim Delić.

⁴⁷ Order Concerning Hearing to be Held in Sarajevo Pursuant to Rule 4 and Transfer of the Accused, 1 February 2008 (confidential).