

SUD BOSNE I HERCEGOVINE



СУД БОСНЕ И ХЕРЦЕГОВИНЕ

COURT OF BOSNIA AND HERZEGOVINA

Case No.: X-KR-06/180-2

Date: **Delivered** **22 April 2010**
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Before: **Judge Senadin Begtašević, Presiding**
 Judge Vesna Jasenković
 Judge David Re

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

RADOMIR VUKOVIĆ
ZORAN TOMIĆ

VERDICT

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No.: X-KR-06/180-2

Sarajevo, 22 April 2010

The Court of Bosnia and Herzegovina, Section I for War Crimes, in the Panel composed of Judge Senadin Begtašević as the Presiding judge and Judges Vesna Jesenković and David Re, as the Panel members, with the participation of the Legal Officer Stanislava Nuić as the Record-Taker, in the criminal case against the accused Radomir Vuković and Zoran Tomić , for the criminal offence of Genocide, in violation of Article 171a) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the CC of BiH), all in conjunction with Article 31 of the CC of BiH, deciding upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina, No. KT-RZ-53/08, of 26 August 2008 and the Indictment No. KT-RZ-143/07, of 18 August 2008, following the public main trial, in the presence of the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Ibro Bulić, the accused Radomir Vuković and Zoran Tomić, as well as their Defense Counsels, Attorneys Radivoje Lazarević, Rade Golić, Petko Pavlović and Miloš Perić, on 22 April 2010 rendered and the Presiding Judge publicly pronounced the following:

VERDICT

ACCUSED:

1. **Radomir Vuković**, a.k.a. "Vojvoda", son of Vojin and Mira nee Ivanišević, born on 16 February 1974 in Tuzla, JMBG: 1602974183483, a Serb, citizen of BiH, with the application for the citizenship of the Republic of Serbia in process, with residence in Belgrade, at Marijane Gregoran 83, tile layer by occupation, literate, completed high school, married, father of a minor child, completed military service in 1992 in Han Pijesak, holds no rank of a reserve military officer, registered in the military records of the Šekovići Municipality, awarded a Gold Medal for Courage in 1993 by the VRS Main Staff and a Medal of Hero Milan Tepić, of average financial standing, no

previous convictions, no other criminal proceedings pending against him, currently held in custody in the Kula Penal and Correctional Institution - Eastern Sarajevo;

2. **Zoran Tomić**, a.k.a. “Zgembo”, son of Ratko and Đurđijana nee Vasilić, born on 3 August 1971 in Stupari, Kladanj Municipality, JMBG: 0308971182398, living in Ulice bb (no number), Zvornik, citizen of BiH, literate, secondary school education, construction machines operator, employed in the Zvornik Police Station, MUP of Republika Srpska, single, served compulsory military service in 1990/1991 in Kuršumlija, no reserve officer rank, no decorations awarded, average financial standing, no previous convictions, no other criminal proceedings pending against him, currently held in custody in the Kula Penal and Correctional Institution - Eastern Sarajevo;

ARE GUILTY

Inasmuch as:

As members of the special police force, together with other members of the 2nd Detachment of the Šekovići Special Police of the Republika Srpska MUP and together with other members of the VRS and RS MUP, on 12 July 1995 in the afternoon hours, and on the following day of 13 July 1995, at the section of the Bratunac-Konjević Polje road in Sandići, Bratunac Municipality, they participated in keeping the road passable so that Bosniaks could be transported by buses and trucks without obstruction, in securing the road, closing and opening it for traffic in line with the plan to forcibly transfer Bosniak women, children and elderly, and after they participated on 13 July 1995 in the capturing of a large number of Bosniak males who, following the fall of the Srebrenica Safe Area and its total occupation by the VRS, attempted to escape from the Srebrenica Safe Area, in the afternoon of that same day, they took part in escorting the captured Bosniak men from the village of Sandići to the warehouse of the Kravica Farming Cooperative where they were imprisoned together with other Bosniak males

who had been bused to the warehouse, the total number of whom exceeded one thousand, so the accused, knowing that the detained Bosniak men would be executed, together with other members of the 2nd Detachment of the Šekovići Special Police of the Republika Srpska MUP, killed the majority of the captives in such a manner that the accused Radomir Vuković participated in the execution of the prisoners by throwing hand grenades at them, and the second accused Zoran Tomić by shooting from an automatic rifle.

Therefore, by killing members of the group of Bosniaks they assisted in exterminating in part the Bosniak group in Srebrenica as a national, ethnic and religious group,

Whereby they committed the criminal offence of Genocide under Article 171, subparagraph a) of the Criminal Code of Bosnia-Herzegovina, as read with Article 31 of the same Code.

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

SENTENCES

- 1. The Accused Radomir Vuković TO A LONG-TERM IMPRISONMENT OF 31 (THIRTY-ONE) YEARS.**
- 2. The Accused Zoran Tomić TO A LONG-TERM IMPRISONMENT OF 31 (THIRTY-ONE) YEARS.**

Pursuant to the provision under Article 56 of the BiH CC, the time the Accused Radomir Vuković spent in custody starting from 8 August 2008 and the Accused Zoran Tomić starting from 30 July 2007, shall be credited towards the imprisonment sentence.

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

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

REASONING

1. The Court has carefully evaluated the testimony of every witness heard and every document it admitted into evidence. The Court, however, has referred only to the evidence necessary to reach this verdict. It has referenced by footnote, where necessary, the source of the testimony or other evidence supporting a finding. The procedural history of the trial is in Annex 1. Annex 2 is the presentation of evidence including the witnesses heard and the documentary evidence accepted in the main trial. Annex 3 is the list of accepted facts established by ICTY judgements and proposed by the parties.¹ These annexes are an integral part of the reasoning. The closing arguments of the parties are referred to contextually, where necessary, in the verdict.
2. The Court has structured this written verdict by analyzing the evidence relating to two accused and their unit, the 2nd Šekovići Detachment, then providing an overview of the events comprising the genocide in Srebrenica in July 1995, analyzing the evidence of the participation of the two accused in those events and specifically in the massacre at Kravica warehouse, making the necessary legal findings in relation to genocide, assessing the criminal liability of the two accused, and then turning to the appropriate sentence. Cross-referencing is indicated where necessary to aid understanding of the reasoning.

I. THE INDICTMENT

3. The indictment charged Radomir Vuković and Zoran Tomić with genocide contrary to Article 171 the Criminal Code of Bosnia and Herzegovina and in perpetrating the offence through specified conduct over two days.

¹ Decision pursuant to Article 4, the Law of the Transfer of Cases.

4. The criminal responsibility is alleged to arise from their conduct as knowing participants in a joint criminal enterprise between 10 July and 19 July 1995 in which military and police forces of Republika Srpska (RS), the Bosnian Serb Army, (Vojaska Republike Srpske or VRS) and the RS MUP (Ministry of the Interior) carried out a widespread and systematic attack against members of the Bosniak people. In summary, the indictment alleges that the two accused:

- By intending to exterminate in part a group of Bosniaks,
- Causing them anguish by the forcible transfer and separation of men from their families,
- Capturing and executing them,
- With the common aim of the forcible permanent transfer from the UN safe area of Srebrenica of around 40,00 civilians,
- Summarily execute and bury more than 7,000 Bosniak men,

Committed the following acts:

- On 12 July 1995 they participated in a search of villages in the Bosniak populated villages in the Potočari area of the enclave to find Bosniak people and to force them out of their homes,
- On 13 July 1995, at Sandići, they participated in securing the road between Bratunac and Konjević Polje to keep it open, to allow the forcible transfer of women and children from Srebrenica,
- On 13 July 1995, they participated in a reconnaissance operation and in attacking a column of Bosniaks above Kamenica by encouraging them to surrender with false promises of exchange,
- Participating in capturing several thousand Bosniaks who attempted to escape through forest fearing execution by the RS MUP and VRS, who were searched and their money and valuables confiscated and ordered to lay down food, clothes and other possessions,
 - And specifically in relation to Zoran Tomić,

searching the surrendered captives and confiscating their money and valuables,

- Taking part in escorting a column of around 1,000 Bosniaks from Sandići to a warehouse of the Kravica Farming Cooperative knowing that they would be executed,

And,

- After the Bosniaks were imprisoned in the warehouse, members of the 2nd Detachment executed the prisoners,

Specifically in respect of Radomir Vuković:

- By participating in the execution by throwing hand grenades at prisoners while other members of the 2nd Detachment used light machine guns, rifles and hand grenades to kill the prisoners, and

Specifically in respect of Zoran Tomić:

- By participating in the execution by firing from an automatic gun at the captives while other members of the 2nd Detachment used light machine guns, rifles and hand grenades to kill the prisoners.

II. EXISTENCE OF AN ARMED CONFLICT

5. The events charged occurred in the so-called United Nations safe enclave of Srebrenica in July 1995. Genocide, proscribed by international law and Article 171 Criminal Code of BiH, does not require the existence of an armed conflict. The Court need not make such a finding although the Prosecutor submitted evidence of its existence. The totality of the evidence and that specifically referred to below proves, and the Court notes, that an armed conflict was in existence in Bosnia and Herzegovina between the ABiH (Army of Bosnia and Herzegovina) and the VRS in July 1995 in the Srebrenica area.

6. The Prosecutor submitted evidence that on 13 June 1992, Radovan Karadžić as President of the Presidency of the Serbian Republic of Bosnia and Herzegovina, issued an order on the application of the rules of international laws of war in the VRS stating that international treaties signed by the SFRY, the rules of international customs of war and the generally accepted principles of international criminal law applied,² including of course the Genocide Convention 1948.
7. The Court admitted the following facts established in final ICTY judgements: “There was an armed conflict in eastern Bosnia between 11 July and 1 November 1995”.³ “The attack was widespread or systematic. The attack, carried out by the VRS and MUP was planned and defined in the “*Krivaja 95*” order.”⁴ “The attack was clearly directed against the Bosnian Muslim civilian population in the Srebrenica enclave.”⁵

III. THE SECOND ŠEKOVIČI DETACHMENT AND THE TWO ACCUSED

8. As set out in the operative part of the verdict the Court has found the accused guilty of committing genocide in violation of Article 171a) of the CC of BiH in conjunction with Article 31 of the same Code by participating in the murder of many hundreds of Bosnian Muslim males in the Kravica warehouse in the Srebrenica area on 13 July 1995. Both accused were members of the Republika Srpska Ministry of the Interior (MUP) Special Police Units (PJP) during the war.
9. Radomir Vuković, nicknamed “Vojvoda”, was born on 16 February 1974 in Tuzla and is Serb by nationality. In July 1995 he was a member of the 1st platoon of the 2nd Šekovići Detachment.⁶ Zoran Tomić, nicknamed “Zgembo”, was born on 3 August

² Exhibit T.66.

³ Accepted fact number 1 (Annex 3).

⁴ Accepted fact number 2 (Annex 3).

⁵ Accepted fact number 4 (Annex 3).

⁶ Mirko Aščerić, 13 January 2009, Marko Aleksić, 4 February 2009, Slobodan Stjepanović, 5 February 2009.

1971 in Supari, Kladanj Municipality and is also Serb by nationality. In July 1995 he was a member of the 2nd platoon of the 2nd Šekovići Detachment.⁷

10. Both accused were members of the 2nd Detachment of the Šekovići Special Police Brigade (2nd Šekovići Detachment) in July 1995.⁸ The Detachment was established as a unit of the Republika Srpska MUP PJP in 1993. The special police units were formed in 1994, and were comprised of 30 to 40% from active police units and the remainder from the reserves.⁹

11. The 2nd Šekovići Detachment had five platoons - three infantry platoons, a support or armoured platoon and a rear, or logistics, platoon. Two platoons were from the village of Šekovići and one from the village of Skelani (which bordered the Srebrenica enclave).¹⁰ The detachment strength was around 100, and three platoons each had around 30 members, the armoured support platoon had around 20 members and the logistics platoon, about five or six.¹¹

12. The tasks of the 2nd Šekovići Detachment included deployment in securing the front-lines and some police duties including securing border crossings.¹² The 1st and 2nd platoons were based in Šekovići. The 3rd infantry platoon, also called the Skelani platoon, was based in Skelani.¹³ It always had between 20 and 30 members.¹⁴ Witness D5, a member of 1st section of that platoon, who joined in March/April 1993 and remained in it until late 1995, stated that it had between 30 and 50 members as of July 1995.¹⁵

⁷ Slaviša Žugić, 13 January 2009, Mirko Aščerić, 13 January 2009, Marko Aleksić, 4 February 2009, Pedrag Čelić, 5 February 2009, Slobodan Stjepanović, 5 February 2009.

⁸ Exhibit T.59, list of members.

⁹ Danilo Zoljić, 20 March 2009.

¹⁰ Exhibit T.45, Miloš Stupar transcript of evidence in *Prosecutor v Blagojević and Jokić*, IT-02-60-T, 28 April 2004, T.8328-8329.

¹¹ Witness D5, 11 February 2009, Marko Aleksić, 4 February 2009, Miladin Stevanović, 2 April 2009, Duško Mekić, 18 June 2009, Aleksander Radovanović, 18 November 2009.

¹² Aleksander Radovanović, 18 November 2009, Milenko Pepić, 4 February 2009.

¹³ Drazen Erzić, 12 June 2009, Aleksander Radovanović, 18 November 2009.

¹⁴ Exhibit T.45, Miloš Stupar, *Blagojević*, 28 April 2004, T.8328.

¹⁵ Witness D5, 11 February 2009, exhibit T.12a statement 18 April 2008 .

13. The Court heard conflicting evidence as to who was the commander of the 2nd Šekovići Detachment in July 1995. Miloš Stupar testified at the ICTY that he had been the commander until 15 June 1995 and that his deputy Rade Čuturić was appointed to take over.¹⁶ However, as of 13 July 1995 Čuturić had only received oral orders from Tomislav Kovać, the RS Acting Minister of the Interior, to assume this post.¹⁷ Some witnesses described him as the commander at the relevant time.¹⁸ Others said that Rade Čuturić had taken command.¹⁹ The Court had insufficient evidence to determine who precisely was commanding the Detachment on 12 and 13 July 1995 and notes the acquittal by this Court on appeal of Miloš Stupar for command responsibility in relation to the events at the Kravica warehouse.²⁰ The circumstances of the case do not make it necessary for the Court to make a finding as to command of the 2nd Šekovići Detachment in July 1995..

14. In July 1995 Marko Aleksić commanded (as acting commander) the 1st platoon, and Milenko Tifunović (Čop) commanded the 3rd platoon.²¹ Marko Aleksić was the acting commander after its commander, Milenko Kovačević, was wounded on the field mission to Srednje.²² The 2nd platoon was commanded by Jelenko Lukić.²³ Several members of the detachment testified in the main trial, including 1st platoon members Mirko Aščerić, Marko Aleksić, 2nd platoon members Milenko Pepić, Slobodan Stjepanović, Drazen Erzić and Nedeljko Sekula, and Skelani platoon members, Petar Mitrović, Witness D5, Aleksander Radovanović, and Duško Mekić and Pedrag Čelić, Zoro Lukić and Slaviša Žugić.²⁴

¹⁶ Exhibit T.45, Miloš Stupar, *Blagojević*, 28 April 2004, T.8330-8331.

¹⁷ Exhibit T.45, Miloš Stupar, *Blagojević*, 28 April 2004, T.8367-8368.

¹⁸ For example, Nedeljko Sekula, 27 August 2009.

¹⁹ For example, exhibit T.140, witness examination record of Radoslav Stuparović, 29 June 2006 and Radoslav Stuparović 10 August 2009.

²⁰ *Prosecutor's Office of Bosnia and Herzegovina v Miloš Stupar*, X-KRŽ-05/24, Second instance verdict, 9 September 2009.

²¹ Miladin Stevanović, 2 April 2009, Petar Mitrović, 8 April 2009.

²² Marko Aleksić, 4 February 2009. Other witnesses described him as “the commander”, e.g. Slaviša Žugić, 13 January 2009.

²³ Milenko Pepić, 4 February 2009, Marko Aleksić, 4 February 2009.

²⁴ Pedrag Čelić, 5 February 2009, Milenko Pepić, 4 February 2009, Drazen Erzić, 12 June 2009, Duško Mekić, 18 June 2009, Slobodan Stjepanović, 5 February 2009.

15. Members of the detachment testified about their weaponry. As a special police unit, the 2nd Detachment was well-armed, having several Pragas and weaponry such as howitzers and mortars.²⁵ Witness D5 was issued with an automatic rifle (four magazines and 5 x 30 rounds) and had hand held grenades and a pistol. Mirko Milanović was issued with a light machine-gun. Duško Mekić testified that the Skelani platoon was mainly armed with automatic rifles and that unit had one or two tanks, a Praga and some mortars (120mm and 82mm and an armoured BOV).²⁶ Some members of the 1st platoon had hand-held grenades and some had pistols.²⁷ The support platoon had a tank, a Praga and 68 and 82 mm mortars and a three barreled BOV.²⁸

IV. SECOND ŠEKOVIĆI DETACHMENT FIELD MISSION TO SREDNJE IN JUNE 1995

16. As a Special Police Unit, the 2nd Šekovići Detachment was regularly deployed on field combat missions. On 15 July 1995, Miloš Stupar, as commander, signed a report of the “work of the 2nd Police Department for the 1st half of 1995” describing nine various combat missions between February and June 1995.²⁹ Witness D5 testified of field missions to Treskavica, Srednje, Ozren, Goražde and Višegrad during the war.³⁰ The unit members took their regular combat sets on field missions, including in their deployment to Bratunac on 11 July 1995.³¹ In late June/July 1995, the unit was deployed on a combat mission to Srednje near Sarajevo. This mission had some significance to the unit because nine police were wounded and five were killed in this deployment.³²

²⁵ Witness D5, 11 February 2009

²⁶ Duško Mekić, 18 June 2009, exhibit T.137, witness statement to SIPA, 20 October 2005.

²⁷ Nenad Andrić, 13 August 2009.

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

²⁹ Exhibit T.70. It is dated 5 July 1995 but was signed on 15 July 1995, see T.45, Miloš Stupar, *Blagojević*, 29 April 2004, T.8413.

³⁰ Witness D5, 11 March 2009.

³¹ Nenad Andrić, 13 August 2009.

³² Danilo Zoljić, 20 March 2009.

17. The relevance of the deployment to Srednje to the resolution of this case is that the Prosecutor alleges that Witness D5 learnt while deployed at Srednje that his unit was to travel to Srebrenica and participate in expelling the civilian population and murdering the Bosnian Muslim men. For this reason, the Verdict analyses the evidence of the deployment, and makes the necessary findings in relation to the allegation. The findings in relation to the alleged conversation are in the section below “**Assessment of Witness D5’s evidence**” below.

18. Rade Čuturić (nicknamed “Oficier”), normally the deputy commander, commanded the 2nd Šekovići Detachment on its field mission to Srednje before its deployment to Srebrenica.³³ Members of the three platoons were deployed on this field mission and travelled separately there,³⁴ for example, Mirko Aščerić a member of the 1st platoon was deployed there in early July,³⁵ and Petar Mitrović, from the 3rd Skelani platoon, was also sent there.³⁶ Nedeljko Sekula, the commander of the armoured (or mortar) section of the 2nd platoon was deployed to Srednje and Treskovica tasked with providing support during combat with 82 mm mortars. He was there from June 1995 until his unit was relieved on 11 July 1995.³⁷ Several members were given leave after going to Srednje. Drazen Erzić, of the 2nd platoon was on the field mission until 9 July 1995 when Rade Čuturić granted him five days leave, and Duško Mekić, of the Skelani platoon, returned from the the field mission and was granted 10-12 days leave.³⁸

19. Witness D5 thought that the unit was in Srednje for about ten days with between 50 and 60 members of the detachment were deployed there.³⁹

20. The unit was ordered to leave the field mission to Srednje on the evening of 11 July 1995 when Rade Čuturić, in the presence of platoon commander Milenko Trifunović,

³³ Witness D5, 11 March 2009, Duško Mekić, 18 June 2009.

³⁴ Marko Aleksić, 4 February 2009.

³⁵ Mirko Aščerić, 13 January 2009. He also testified that Radomir Vuković is the godfather of his nephew.

³⁶ Petar Mitrović, 8 April 2009.

³⁷ Nedeljko Sekula, 27 August 2009.

³⁸ Drazen Erzić, 12 June 2009, Duško Mekić, 18 June 2009.

³⁹ Witness D5, exhibit T.12b statement 22 May 2008

ordered their return to Šekovići,⁴⁰ Witness D5 also testified that Čuturić ordered the withdrawal by conveying it to Milenko Trifunović (Čop).⁴¹ Aleksander Radovanović said that it was on the bus back that Trifunović told them that they were going to Srebrenica.⁴² Miladin Stevanović, of the Skelani platoon, said that they assumed they were going to Bratunac.⁴³ Duško Mekić was not told about the deployment to Bratunac and Srebrenica before he left Srednje on leave.⁴⁴ Nedeljko Sekula testified that the unit was not told it was going to Srebrenica. He left with Rade Čuturić in a truck, and took two days leave, returning to the base in Šekovići on 13 July after he was told to report for duty.⁴⁵ Witness D5 said that unit set off a day or two before St Peters Day (Petrodan) 12 July 1995, travelling in buses and a truck.⁴⁶

21. The Court finds that these versions are consistent with each other as some members may have been informed that they were being deployed to Srebrenica, while others may not have been so informed.
22. The evidence of the normal manner of communication of deployments to field missions, and their redeployment, was consistent. For example, Aleksander Radovanović testified that unit members would normally receive notice to gather at base and a truck would come to collect them and that they never knew in advance where they were going or why.⁴⁷ Drazen Erzić said that members of the Detachment in Skelani would be picked up or taken directly to the field mission.⁴⁸ Zoro Lukić, another detachment member, said that the practice was to inform the members of their destination but not the reason for the deployment.⁴⁹

⁴⁰ Aleksander Radovanović, 18 November 2009.

⁴¹ Witness D5, 11 March 2009.

⁴² Aleksander Radovanović, 18 November 2009.

⁴³ Miladin Stevanović, 2 April 2009.

⁴⁴ Duško Mekić, 18 June 2009.

⁴⁵ Nedeljko Sekula, 27 August 2009.

⁴⁶ Witness D5, 11 February 2009.

⁴⁷ Aleksander Radovanović, 18 November 2009.

⁴⁸ Drazen Erzić, 12 June 2009.

⁴⁹ Zoro Lukić, 3 March 2009.

23. Witness D5 testified that whenever he went on field missions he would see members of the other platoons there as well as his own. He saw Radomir Vuković on field missions armed with a light machine gun, caliber 7.62 mm. Drazen Erzić also testified that Vuković was armed with an M-84 machine gun.⁵⁰ Duško Mekić said it was a light machine gun, caliber 7.62 mm.⁵¹ Witness D5 testified that “As far as I recall he occasionally was issued with an M-84, occasionally with an automatic rifle”.⁵² Witness D5 testified that he as a member of the Skelani platoon would see other members of the 2nd Šekovići Detachment only when they were together on field missions.⁵³ He recalled going to Srednje twice, first in 1994.⁵⁴

24. Witness D5 gave conflicting evidence as to whether Radomir Vuković was on the Srednje field mission. Initially he testified that could not recall whether Vuković was on that field mission.⁵⁵ However, in cross-examination he recalled Vuković being in one of the vehicles transporting the police to Srednje, but could not recall which, and recalled seeing him at Srednje but could not remember where.⁵⁶ The Court heard evidence corroborating this from Slaviša Žugić who testified as a witness for Radomir Vuković and stated that Vuković was on the Srednje field mission.⁵⁷

Findings

25. The closing submissions of Radomir Vuković argue that the Prosecutor did not establish beyond reasonable doubt that Vuković was on the field mission “based on which it could infer that he allegedly knew about the developments in and around Srebrenica”.⁵⁸ The question arises as to whether Vuković was on the field mission, and if so, whether he had the same knowledge as Witness D5 claims to have had

⁵⁰ Drazen Erzić, 12 June 2009.

⁵¹ Duško Mekić, 18 June 2009.

⁵² Witness D5, 11 March 2009 .

⁵³ Witness D5, 11 March 2009 .

⁵⁴ Witness D5, 11 March 2009 .

⁵⁵ Witness D5, 11 March 2009

⁵⁶ Witness D5, 11 March 2009.

⁵⁷ Slaviša Žugić, 1 July 2009.

⁵⁸ Radomir Vuković, closing submissions of Rade Golić, para. 52.

about the forthcoming mission to Srebrenica. The Court is prepared to make the first finding but not the second. Two witnesses, including one called by the defence of Radomir Vuković, testified positively that he was there.

26. The Court finds that the evidence establishes that Radomir Vuković was in fact on the field mission to Srednje. The only issue of any substance turning upon this particular finding is the reliability of Witness D5's recollection. However, as Slaviša Žugić corroborates him on this issue nothing of substance turns on this.

27. The Prosecutor has not proved that that Radomir Vuković could have had the same knowledge about the events in Srebrenica that Witness D5 claims he had himself gained while on the field mission to Srednje.

28. The Court heard no evidence that Zoran Tomić was on the field mission. No evidence was led suggesting that he could have had the same knowledge that Witness D5 claims to have had about the mission to Srebrenica.

V. CHRONOLOGY OF EVENTS IN SREBRENICA

29. In this verdict the Court will analyse the evidence relating to the attack on Srebrenica and its takeover by the VRS in July 1995. The Court need not analyse the events in the years preceding the attack on Srebrenica commencing on 6 July 1995. However as the charge is one of genocide committed by the accused as participants in a joint criminal enterprise, a broad overview is required of the threats facing the Republika Srpska and its military in the months leading up to the attack on Srebrenica. A report by former ICTY military analyst Richard Butler report provides a useful overview for these purposes.⁵⁹

(i) Evidence admitted under Law of Transfer of Cases

⁵⁹ Exhibit T.86.

30. The Court admitted into evidence, under Article 5 of the Law on Transfer of Cases (LOTC), transcripts of evidence at the ICTY of ten witnesses. The military witnesses were the Dutchbat Commander, Lieutenant Colonel Thomas Karremans, his Deputy Commander Robert Franken, and Dutchbat members 1st Lieutenant Lendert Cornelius van Duijn, Major Pieter Boering, Robert Groenewegen, and UNMO member Joseph Kingori. The others were Miloš Stupar, Dragan Obrenović, Momir Nikolić and Miroslav Deronjić.⁶⁰ Miloš Stupar provided direct evidence about events at the Kravica warehouse. However, at the time of the main trial he had been convicted at first instance by the Court of BiH for genocide by virtue of his position as the 2nd Šekovići Detachment commander,⁶¹ and was then awaiting retrial by an appellate panel. He did not testify at the main trial and the Court has referred only to his evidence relating to the structure of the Detachment and has not used his evidence against the accused in relation to any of the charges concerning their conduct in Sandići or the Kravica warehouse. The Court also allowed the Prosecutor under the LOTC to tender into evidence statements of Ljubiša Borovčanin to the ICTY.⁶² The Court, however, is mindful that during the main trial Borovčanin was on trial at the ICTY on charges of genocide in the *Popović* trial. The Court is not satisfied of the reliability of Borovčanin's statements and determined not to rely upon them in its consideration of the evidence against the two accused.⁶³

31. Joseph Kingori testified by video-link. The Defence did not request the attendance for cross-examination of Lieutenant van Duijn or Major Boering. The Defence requested the attendance of Karremans, Franken and Groenewegen for cross-

⁶⁰ Decision 19 February 2009.

⁶¹ *Prosecutor's Office of Bosnia and Herzegovina v. Miloš Stupar, Milenko Trifunović, Brano Džinić, Aleksandar Radovanović, Slobodan Jakovljević, Velibor Maksimović, Dragiša Živanović, Branislav Medan and Milovan Matić*, X-KR-05/24, 29 July 2008 First Instance Verdict (written verdict 13 January 2009)

⁶² Decisions of 19 February and 24 June 2009 “(*Kravica (Stupar and others)*)”.

⁶³ Borovčanin was convicted by the ICTY Trial Chamber of aiding and abetting extermination as a crime against humanity; murder as a violation of the laws or customs of war, persecution, as a crime against humanity and inhumane acts (forcible transfer), a crime against humanity, and, as a superior of murder, as a crime against humanity; and as a violation of the laws or customs of war. He was acquitted of committing genocide, *Prosecutor v Popović and others* IT-05-88.T, Judgement, 10 June 2010.

examination. The Dutch authorities were unable to find Karremans.⁶⁴ Attempts to cross-examine Franken and Groenewegen, both of whom appeared for cross-examination by video-link were, for technical reasons, unsuccessful.⁶⁵

32. The Court has used the transcripts of the ICTY evidence of Karremans, Franken and Groenewegen as general corroborative evidence of the attack on Srebrenica and the events surrounding the crimes committed at the Kravica warehouse. The Court has not based its convictions of the two accused either “solely or to a decisive extent on the prior statements of witnesses who did not give oral evidence at trial”.⁶⁶ The ICTY transcripts admitted into evidence corroborate the evidence of Colonel Joseph Kingori and other witnesses. Using the transcript in this manner is compatible with the rights of the accused to a fair trial. These witnesses did not provide any evidence relating directly to the Kravica warehouse or any direct evidence against the accused or members of their unit.

(ii) Creation of “safe areas” and presence of UNPROFOR and UNMO

33. 16 April 1993, the UN Security Council passed resolution 819 (1993) creating the Srebrenica “safe area”, intended to protect Muslims fleeing attacks by the VRS. In Resolution 824 (1993) of 6 May 1993 it designated an area surrounding Žepa and Goražde as “safe areas”. The safe areas were within the territory of the VRS’s Drina Corps.⁶⁷

34. By early 1995, the political and military leadership of the Republika Srpska became aware that they had to attain either a military victory or a negotiated end to the

⁶⁴ The Dutch authorities notified the Prosecutor's Office that Karremans was no longer a resident of The Netherlands.

⁶⁵ A video link broke down on 22 January 2010 during the testimony of Paul Groenewegen. Robert Franken appeared for cross-examination by video-link from The Netherlands on 4 December 2009, but the link did not work. The Court attempted to reschedule the hearing to 14 December 2009. Mr. Franken, however, through a Dutch judge in The Hague indicated that he did not wish to return for cross-examination. The Dutch authorities did not summons him to return to the Court for cross-examination.

⁶⁶ Article 3, LOTC.

⁶⁷ Exhibit T.86, Butler report, 1.24-1.26.

hostilities by year's end, having indications that the ABiH and the HVO were preparing offensives against both the Republika Srpska and the Republika Serb Krajina.⁶⁸ The Butler report describes how a decision had been taken by the RS leadership by January 1995 to apply pressure to the safe areas, including restricting the movement of UN forces in eastern Bosnia, and in particular in the supply convoys for the three safe areas. Limitations were placed on fuel, ammunition and provisions going to the UN forces, thus seriously undermining their ability to monitor the activities in the safe areas.⁶⁹

35. The Srebrenica area was within the geographical area of the VRS Drina Corps, commanded by General Milenko Živanović until 13 July 1995, and from then by General Radoslav Krstić. The Zvornik Brigade and the Bratunac Brigades were units within the Drina Corps.

36. The United Nations had a permanent peace-keeping presence in the enclave (UNPROFOR) with a base at Potočari operated by Dutch soldiers (Dutchbat) and several observation posts at other points in the enclave. It also had military observers (UNMO) stationed within the enclave but reporting within a separate chain of command.⁷⁰ The UNMO chain of command was to its headquarters in Zagreb. UNMO was working with UNPROFOR but they had different missions.⁷¹

37. Colonel Joseph Kingori was based in UNMO HQ Srebrenica from early April 1995 to 11 July 1995 as one of (only) UNMO three officers, whose tasks included monitoring cease-fires and observing and assessing the capabilities of the warring parties. They held separate weekly meeting with representatives of the VRS and ABiH.⁷²

⁶⁸ Exhibit T.86, Butler report, 1.30-1.33.

⁶⁹ Exhibit T.86, Butler report, 1.34.

⁷⁰ The Court admitted into evidence, under Article 5 LOTC, a transcript of the evidence of UN Military Observer Colonel Joseph Kingori who testified at the ICTY, exhibit T.46, transcript of evidence in *Prosecutor v Krstić*, IT-98-33-T, 31 March 2000 and 3 April 2000.

⁷¹ Joseph Kingori, 12 November 2009.

⁷² Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1812.

38. The Court heard evidence of the presence of the ABiH in the Srebrenica safe area, including some evidence of ABiH soldiers launching minor attacks on Serb forces and villages from within the enclave. No dispute seems to exist between the parties that the ABiH had at least some presence within the enclave. The area of dispute is the size of the presence, its weaponry and whether it posed a significant military threat to the Serb forces. The Defence submissions appear to suggest that the Defence considered this relevant to the status of any Bosnian Muslim male prisoners. The Court admitted a number of facts from ICTY judgements in relation to these issues. It also heard direct evidence on the issue and most particularly from Colonel Kingori.

39. According to Dutchbat Deputy Commander Robert Franken the enclave had not been successfully demilitarized, as a “mass of small weapons was still in the enclave”.⁷³ Dutchbat soldier Paul Groenewegen saw only small-calibre weapons. He had observed small units of ABiH soldiers of groups of five to ten men, but he did not consider them to be directly “organized in a military way”.⁷⁴ Lieutenant-Colonel Karremans described incidents of “Muslim fighters” leaving enclave at night, returning the next morning and hearing the sounds of fire exchanges outside the enclave. ABiH leaders told him they were looking for food.⁷⁵

40. Colonel Kingori testified that the VRS side had a proper structure and heavy weapons, unlike the Bosnian Muslim side which, from his observations, did not have an organized army in Srebrenica. The Bosnian Muslims had handed over all their heavy weaponry, and so far as UNMO could tell, there were no military activities within the Srebrenica enclave, although complaints were made from time to time by the VRS of attacks from within the enclave. Kingori described having six observers

⁷³ Exhibit T.52, Robert Franken, transcript of evidence in *Prosecutor v Krstić*, IT-98-33-T, 4 April 2000, T.2006.

⁷⁴ Exhibit T.48, Paul Groenewegen, transcript of evidence in *Prosecutor v Blagojević and Jokić*, IT-02-60-T, 24 June 2004, T.11165 (incorporated into witnesses’ transcript of evidence in *Prosecutor v Popović and others*, IT-05-88-T, 25 October 2005 admitted into evidence pursuant to Article 4, LOTC.)

⁷⁵ Exhibit T.52, Thomas Karremans, transcript of evidence in *Prosecutor v Blagojević and Jokić*, IT-02-60-T, 24 June 2004, T.11165, T.11170.

and undertaking regular patrols in most of the enclave, although it was difficult to patrol the enclave with this limited number of people.⁷⁶

41. Colonel Kingori described the military situation within the enclave in that period as characterized by violations of the status of the safe area by the Serb side, “basically, the BSA (VRS) are the one who were most of the time there actually the aggressors, as far as I know”.⁷⁷ From his observations, “from the Muslim side, that is BiH, there was no organized military as such. For one, it is good to remember that they did not have heavy weapons... they had some small arms.... AK-47s and all that... they were not armed as such” and “I don’t think they posed any threat at all... it was not an organized structure the way the military should be.... and were not match for the Serbs”.⁷⁸ On the other hand, the Serbs “had an organized structure and... were armed with heavy weapons. At least they had artillery because they used it. They had mortars. They had machine-guns. They had rockets... tanks and many other types of heavy weapons”.⁷⁹ “It was a real organized army”.⁸⁰ The ABiH “during my whole stay there, I saw only one machine-gun belonging to the BiH. And that as compared to what the BSA had, it was nothing”.⁸¹ According to Dutchbat Deputy Commander Robert Franken the ABiH’s “divisional headquarters” was a small conference room with no maps or communications, a room with some desks – “with not more than about ten guys” that did not look like a divisional headquarters.⁸²

42. The ICTY found that “Defence witnesses accused the Bosnian Muslim forces of using the safe area as a fortified base from which to launch offensives against the Bosnian Serb forces. In particular, on 26 June 1995, several weeks prior to the offensive of the VRS on Srebrenica, the Bosnian Muslim forces launched an assault from the enclave on the Serbian village of Višnica 5 km away.”⁸³

⁷⁶ Joseph Kingori, 12 November 2009.

⁷⁷ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1812.

⁷⁸ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1813-1815.

⁷⁹ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1815.

⁸⁰ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1914.

⁸¹ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1914.

⁸² Exhibit T.52, Robert Franken, *Krstić*, 4 April 2000, T.2009-2010.

⁸³ Accepted fact number 55 (Annex 3).

43. ICTY judgements made findings about the prevailing military situation. “From the outset, both parties to the conflict violated the “safe area” agreement.”⁸⁴ But, in relation into the strength of the VRS the ICTY found, “Generally, the Bosnian Serb forces surrounding the enclave were considered well disciplined and armed. The VRS was organized on a geographic basis and Srebrenica fell within the domain of the Drina Corps. Between 1,000 and 2,000 soldiers from three Drina Corps Brigades were deployed around the enclave. These Bosnian Serb forces were equipped with tanks, armoured vehicles, artillery and mortars. The unit of the AFBiH that remained in the enclave – the 28th Division – was not well organized and well equipped. A firm command structure and communications system was lacking, some ABiH soldiers carried old hunting rifles or no weapons at all and few had proper uniforms. However, the Trial Chamber also heard evidence that the 28th Division was not as weak as they have been portrayed in some quarters. **Certainly the number of men in the 28th Division outnumbered those in the Drina Corps** and reconnaissance and sabotage activities were carried out on a regular basis against the VRS forces in the area.”⁸⁵

44. “The Trial Chamber heard credible and largely uncontested evidence of a consistent refusal by the Bosnian Muslims to abide by the agreement to demilitarize the “safe area”. **Bosnian Muslim helicopters flew in violation of the no-fly zone**; the ABiH opened fire toward Bosnian Serb lines and moved through the “safe area”; the 28th Division was continuously arming itself; and at least some humanitarian aid coming into the enclave was appropriated by the ABiH. To the Bosnian Serbs it appeared that Bosnian Muslim forces were using the “safe area” as a convenient base from which to launch offensives against the VRS and that UNPROFOR was failing to take any action to prevent it. **General Halilović admitted that Bosnian Muslim helicopters had flown in violation of the no-fly zone and that he had personally dispatched eight helicopters with ammunition for the 28th Division.** In moral

⁸⁴ Accepted fact number 51 (Annex 3).

⁸⁵ Accepted fact number 50 (Annex 3).

terms, he did not see it as a violation of the “safe area” agreement given that the Bosnian Muslims were so poorly armed to begin with.”⁸⁶ The Court notes that the closing submissions of Zoran Tomić argue that the Srebrenica was not demilitarized.⁸⁷ It agrees that Srebrenica was not entirely demilitarized but that this actually has no bearing on its determination that genocide was committed at Srebrenica or its consideration of the guilt of the accused.

45. Dutchbat officer Major Pieter Boering had the task of liaison between the commander and the civilian and military leadership within the enclave and the VRS and ABiH.⁸⁸ Dutchbat had several operations posts in the enclave, described as somewhat elevated and reinforced with sandbags and wood, armed with firearms and perhaps some anti-tank weapons, small arms and a machine-gun, and in dimension, the size of a small residence able to sleep six to eight.⁸⁹
46. UNPROFOR’s role included ensuring that humanitarian aid reached its intended targets. Major Boering described the deterioration in conditions in mid-1995, saying that conditions of food, hygiene and humanitarian supplies deteriorated considerably in May, June and the first week of July.⁹⁰ He described seeing Muslim homes facing the Dutchbat camp in Potočari being shelled from VRS positions Bratunac in June and July forcing the occupants to move in the direction of Potočari or closer to Srebrenica. From late May/early June the Dutchbat patrols faced direct fire on their vehicle, with shells landing some 50 metres or so from their vehicles.⁹¹ Boering interpreted this as a warning “and I personally decided that only in dire emergencies would I leave the camp and I would not go on patrols without good reason.”⁹² Major Boering was ambushed by the VRS near an observation post near the yellow bridge and taken from his vehicle at gunpoint by VRS soldiers. He was escorted to VRS

⁸⁶ Accepted fact number 52 (Annex 3).

⁸⁷ Zoran Tomić, closing submissions of Petko Pavlović

⁸⁸ Exhibit T.47, Pieter Boering, transcript of evidence in *Prosecutor v Popović and others*, IT-05-88-T, 19 September 2006, T.1873.

⁸⁹ Exhibit T.47, Pieter Boering, *Popović*, 19 September 2006, T.1889-1890.

⁹⁰ Exhibit T.47, Pieter Boering, *Popović*, 19 September 2006, T.1893-1894.

⁹¹ Exhibit T.47, Pieter Boering, *Popović*, 19 September 2006, T.1895-1898.

⁹² Exhibit T.47, Pieter Boering, *Popović*, 20 September 2006, T.1935

officers Momir Nikolić and Colonel Beara who were nearby.⁹³ (Major Momir Nikolić was the Chief of Intelligence and Security of the Bratunac Brigade and Colonel Ljubiša Beara was chief of security administration of the VRS Main Staff. Both faced trial at the ICTY. Beara was convicted of genocide for his role in the crimes committed at Srebrenica and sentenced to life imprisonment).⁹⁴

47. The ICTY testimony of Dutchbat platoon commander 1st Lieutenant Lendert Cornelius van Duijn was admitted into evidence without objection.⁹⁵ He testified that resupply convoys to Dutchbat were continually cancelled in March/April 1995 because the Serb forces would not give them clearance, and Dutchbat personnel on leave were not permitted to return to the enclave. The Dutch personnel were suffering from health problems because they had insufficient food and fresh water, and were eating only rations for a period of about four months before July 1995. A lack of fuel forced them to resupply the operational posts on foot and using local horses. The only manageable patrols were on foot. They had limited means to repair their weapons, they were using old ammunition and no new supplies were arriving.⁹⁶ The convoys were both resupply and for humanitarian aid.⁹⁷

48. The Court also admitted into evidence pursuant to Article 5 of the LOTC the ICTY testimony of Momir Nikolić, and pursuant to Articles 3 and 4 LOTC, four investigative statements admitted into evidence at the ICTY. The Defence requested his attendance for cross-examination but he did not wish to testify and the Court was unable to secure his attendance for cross-examination. The Court has used his evidence as corroboration and has not based its convictions on solely or to a decisive extent on his testimony at the ICTY.

49. Nikolić testified regarding the actions his unit took to implement this policy:

⁹³ Exhibit T.47, Pieter Boering, *Popović*, 19 September 2006, T.1899-1904.

⁹⁴ *Prosecutor v Popović and others*, IT-05-88-T, Judgement, 10 June 2010.

⁹⁵ Exhibit T.49, Leendert Cornelius van Duijn, transcript of evidence in *Prosecutor v Popović and others*, IT-05-88-T, 27 September, 28 September, 29 September 2006.

⁹⁶ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2260-2263.

⁹⁷ Exhibit T.49, Leendert van Duijn, *Popović*, 28 September 2006, T.2324.

Q. Was there anything done by the Bratunac Brigade command to reduce the amount of international aid and convoys into the enclave?

A. Yes. As for convoys... I was personally responsible for checks at the yellow bridge. I was personally responsible for everything concerning the entry of convoys, catering to the needs of DutchBat and the Muslim population. I'm talking about humanitarian aid convoys. I was responsible for everything to do with international organisations present in Srebrenica. As concerns the convoys, mostly during that period of time, immediately before the attack on Srebrenica, convoys for the Dutch and for the Muslim civilians coming in were prevented from entering. The Bratunac Brigade had no authority to keep convoys out or let them in. All orders that were issued in this respect went from the main staff through the Drina Corps command, trickling down to us eventually. We were the last to receive these orders, and we had the task to stop certain convoys, to reduce the number of trucks in a convoy, or to make certain requests regarding the humanitarian aid being shipped into Srebrenica. As for the Dutch Battalion, the situation was perfectly clear. DutchBat was not allowed to have sufficient supplies of fuel, victuals, or other staples that were necessary for the proper and normal functioning of DutchBat. The final aim of these restrictions imposed against DutchBat was for DutchBat not to be ready for combat, not to be ready for carrying out their tasks within the enclave. This was the chief reason why no supplies of fuel, victuals, clothes and other staples, and other things were not allowed into the enclave. The rotation of certain units and companies was not allowed either. All these restrictive measures had the same aim as I just described⁹⁸

(iii) RS Supreme Command Directive no. 7 of 8 March 1995 and no. 7.1 of 31 March 1995 and implementation

⁹⁸ Exhibit T.44, Momir Nikolić, transcript of evidence in *Prosecutor v Blagojević and Jokić*, IT-02-60-T, 22 September 2003, T.1634-1635.

50. The RS Supreme Command published Directive no. 7 on 8 March 1995.⁹⁹ The Directive outlined the four main priorities of the VRS, namely (1) to impose a military solution that the international community would be forced to accept (2) improve the operational and strategic position of the VRS (3) improving prospects for economic revival by sending military conscripts home and (4) creating the conditions to negotiate a peace agreement. “In March 1995, Radovan Karadžić, President of Republika Srpska (“RS”), issued a directive to the VRS concerning the long-term strategy of the VRS forces in the enclave. The directive, known as “Directive 7”, specified that the VRS was to:

[C]omplete the physical separation of Srebrenica from Žepa as soon as possible, preventing even communication between individuals in the two enclaves. By planned and well-thought out combat operations, create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica.”¹⁰⁰

51. The ICTY found that; “On 31 March 1995, the VRS Main Staff issued Directive 7.1, signed by General Mladić. Directive 7.1 was issued “on the basis of Directive No. 7” and directed the Drina Corps to, *inter alia*, conduct “active combat operations...around the enclaves”.¹⁰¹ Directive No. 7 spelt out the VRS strategy in relation to the safe areas, stating that the role of the Drina Corps was to “complete the physical separation of Srebrenica from Žepa as soon as possible, preventing even communication between individuals in the two enclaves. By planned and well-thought out combat operations, create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica” and “in case that UNPROFOR forces leave Srebrenica and Žepa, the Drina Corps Command shall plan an operation named *Jadar* with the task of breaking up and destroying the Muslim forces in these enclaves and definitively liberating the Drina Valley region”. With

⁹⁹ Exhibit T.67. Further instructions were published on 31 March 1995, exhibit T.68.

¹⁰⁰ Accepted fact number 5 (Annex 3).

¹⁰¹ Accepted fact number 7 (Annex 3).

respect to supporting this effort, “The relevant State and military organs responsible for work with UNPROFOR and humanitarian organizations shall, through planned and unobtrusively restrictive issuing of permits, reduce and limit the logistics support of UNPROFOR to the enclaves and the supply of material resources to the Muslim population, making them dependent on our good will while at the same time avoiding condemnation by the international community and international public opinion”.¹⁰²

52. Asked at the ICTY about the implementation of this policy, Momir Nikolić testified;

Q. What was your opinion of the reason to restrict humanitarian aid to the Muslim inhabitants of Srebrenica?

A. My personal opinion, and this was common knowledge, this was one of the ways to make the Muslim population leave the enclave as soon as possible. This was the final aim, the final objective, to make life unbearable for the people in the enclave. To make it impossible for them to live on, and as a consequence people would then eventually leave the enclave.¹⁰³

53. In May 1995, Serb forces suffered a major defeat in Western Slavonia when Croatian forces recaptured Serb-held areas in “Operation Flash”. In June 1995, following NATO bombardments of VRS positions, the VRS retaliated by taking UNPROFOR hostages. On 16 June 1995, the ABiH mounted a major offensive to relieve Sarajevo.¹⁰⁴ That same day, President Karadžić ordered the “highest-special measures to ensure combat readiness” on the VRS and all government organs in the RS. The order was aimed at a “total defeat of the enemy”.¹⁰⁵

54. The UN Dutchbat had observation posts in the enclave and at most entry points into it.¹⁰⁶ On 31 May 1995, the VRS launched operation “Jadar-95”, forcing Dutchbat troops to abandon an important observation post south of Srebrenica, allowing the

¹⁰² Exhibit T.67.

¹⁰³ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1634-1635.

¹⁰⁴ Exhibit T.86, Butler report, 1.32-1.33.

¹⁰⁵ Exhibit T.69.

¹⁰⁶ Joseph Kingori, 12 November 2009.

VRS to take the village of Zeleni Jadar at a key junction required for future operations. According to the Butler report, this set the basis for Operation *Krivaja* the battle plan to capture Srebrenica.¹⁰⁷

(iv) Evidence of Miroslav Deronjić

55. Miroslav Deronjić was an SDS Main Board member whom Karadžić appointed as the Serb civilian commissioner for Srebrenica. He pleaded guilty at the ICTY to a single count of persecutions as a crime against humanity in relation to events in Glogova in 1992 and was sentenced to ten years of imprisonment.¹⁰⁸ He was not indicted for his role in the events in Srebrenica. He died on 17 May 2007 while serving his sentence in Sweden. The Prosecutor tendered into evidence several statements and a transcript of his testimony given on sentence to the ICTY in the case of *Momir Nikolić*. During those proceedings he was cross-examined. The Prosecutor also tendered into evidence, pursuant to Article 7 of the LOTC and Article 273 (2) of the Criminal Code of BiH, as a deceased witness, statements made by Deronjić to ICTY investigators in 1998, 1999 and 2003.¹⁰⁹

56. The Court has given greater weight in assessing the evidence of Deronjić to his testimony given under oath and subject to cross-examination. Deronjić is deceased and could not testify in the main trial. The Court has not based its Verdict solely or to a decisive extent on Deronjić's statements or testimony. The Prosecutor did not allege that Deronjić was an eye-witness to the events in the Kravica warehouse or that he could provide any relevant evidence in relation to the actions of the two accused. The accused's right to a fair trial has not been diminished by admitting these transcripts into evidence.

¹⁰⁷ Exhibit T.86, Butler report, 1.38.

¹⁰⁸ *Prosecutor v Miroslav Deronjić*, IT-02-61-S, Sentencing Judgement, 30 March 2004, and *Prosecutor v Miroslav Deronjić*, IT-02-61-S, Judgement on Sentencing Appeal, 20 July 2005.

¹⁰⁹ Exhibits T.55a, T.55b, T.55c and T.55d.

57. Deronjić stated that in spring 1995 (most probably May), he met Karadžić in Zvornik. Karadžić said “Miroslav, a military operation will soon take place in Srebrenica. I cannot give you any details and please, don’t tell anyone about this, but take the necessary steps when you come back, or rather, the actions that you think are necessary in Bratunac.” He asked whether I understood, and I told him that I did. The practice was that the civilian authorities assisted the army in various ways. Deronjić then carried out preparations in Bratunac including attempting to obtain oil for oil reserves, and food reserves especially dry rations. He stated that he noticed greater military activity in Bratunac in the second half of June 1995.¹¹⁰

VI. JUNE TO JULY 1995 – LEAD-UP TO VRS MILITARY TAKEOVER OF SREBRENICA

58. Colonel Joseph Kingori, a United Nations Military Observer stationed in the enclave, attended a meeting with VRS representatives at the Hotel Fontana in Bratunac in June 1995 during which the VRS’s Colonel Vuković told UNMO that the people in the enclave should leave “they do not belong there; they should leave the enclave in totality” and that the words were menacing because “he said if the Muslims do not leave, he is going to kill all of them.... If the Muslims decide to leave... they would be given a safe passage to leave through up to Tuzla, to join their brothers in Tuzla”.¹¹¹ Colonel Vuković told UNMO to tell the Muslims to “pack up and leave the enclave”.¹¹²

59. In July 1995, Momir Nikolić was the Chief of Intelligence and Security of the Bratunac Brigade. In 2003 he pleaded guilty to persecutions as a crime against humanity at the ICTY and was sentenced to 20 years of imprisonment.¹¹³ The Prosecutor tendered into evidence his “Statement of facts and acceptance of

¹¹⁰ Exhibit T.55d, statement of 25 November 2003, paragraphs 163-166.

¹¹¹ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1816-1817.

¹¹² Joseph Kingori, 12 November 2009.

¹¹³ *Prosecutor v Momir Nikolić*, IT-02-60/1-S, Sentencing Judgment, 2 December 2003, *Prosecutor v Momir Nikolić*, IT-02-60/1-A, Judgment on Sentencing Appeal, 8 March 2006.

responsibility”.¹¹⁴ He stated “During the attack and takeover of the Srebrenica enclave by VRS forces in July 1995 it was the intention of the VRS forces to cause the forcible removal of the entire Muslim population from Srebrenica to Muslim-held territory”.

60. Colonel Kingori had a dinner meeting with Colonel Vuković at the Hotel Fontana in early June 1995. Vuković “insisted on trying to find out what would be the reaction of the UN in case the BSA (VRS) would capture the enclave and expel the population” meaning “...he said they would capture the enclave and expel the population... it literally means all the people living inside the enclave... so this is something that was preconceived, something they had thought of, maybe even planned, and they were telling us to pass it on to the Muslims so that they are not blamed for the repercussions. That’s how I concluded it”.¹¹⁵

61. The ICTY found “Just as envisaged in this decree, by mid-1995, the humanitarian situation of the Bosnian Muslim civilians and military personnel in the enclave was catastrophic.”¹¹⁶

62. Dragan Obrenović, then the Zvornik Brigade’s Chief of Staff, first learned of the intended attack on Srebrenica on 29 June 1995. He was on leave and preparations were already underway. Obrenović was the chief of staff of the Zvornik Brigade until 4 July 1995 and was its deputy commander until 15 July when he resumed his duties as chief of staff.¹¹⁷ Obrenović pleaded guilty at the ICTY to persecutions as a crime against humanity and was sentenced to 17 years of imprisonment.¹¹⁸ He had jointly been indicted with Vidoje Blagojević, Dragan Jokić and Momir Nikolić in relation to the events in Srebrenica in July 1995.¹¹⁹ The Court admitted into evidence

¹¹⁴ Exhibit T.56, dated 6 May 2003, admitted into evidence under Articles 3 and 4, LOTC, on 19 February 2009.

¹¹⁵ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1895-1896.

¹¹⁶ Accepted fact number 6 (Annex 3).

¹¹⁷ Exhibit T.50, Dragan Obrenović, transcript of evidence in *Prosecutor v Blagojević and Jokić*, IT-02-60-T, 1 October 2003, T.2421.

¹¹⁸ *Prosecutor v. Dragan Obrenović*, IT-02-60/2-S, Sentencing Judgement, 10 December 2003.

¹¹⁹ He had been indicted for complicity in genocide, murder, persecutions, and inhumane acts as crimes against humanity, and murder as a violation of the laws or customs of war, contrary to the ICTY Statute.

under Article 4 LOTC transcripts of his evidence at the ICTY. He provided no direct evidence in relation to Kravica warehouse and provided no evidence about the two accused or their participation in the massacre.

63. Momir Nikolić first became aware of the plan to attack Srebrenica in early July 1995 at the Bratunac Brigade headquarters when General Milenko Živanović told him Srebrenica should be separated from Žepa, “that an attack on Srebrenica should be carried out, and that Srebrenica was to be defeated militarily and cleansed from its Muslims.”¹²⁰

64. The preparations for the participation of the Zvornik Brigade in *Krivaja 95* began intensively on 2 July 1995 when it received a preparatory order from the Drina Corps defining its role in the operation.¹²¹ Preparations began in earnest for the military operations against the safe areas when General-Major Živanović, the Drina Corps Commander, published “Preparation Order Number 1” alerting the units to pending operations against the enclaves. The objective of the order was “with a sudden attack to completely separate and narrow down the Srebrenica and Žepa enclaves, improve the tactical position of the forces deep in the AOR and create the conditions for the elimination of the enclaves”.¹²² An order for full combat readiness was issued on 4 July, and, on 5 July Živanović published an air defence order (as NATO air intervention was anticipated).¹²³

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

65. To explain how the Court has reached its conclusion that genocide was committed in Srebrenica in July 1995 and that the Kravica warehouse massacre was part of the

¹²⁰ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1636.

¹²¹ Exhibit T.50, Dragan Obrenović, *Blagojević*, 2 October 2003, T.2452-2453.

¹²² Exhibit T.86, Butler report, 3.1.

¹²³ Exhibit T.86, Butler report, 3.7.

genocide, the verdict gives an overview of the events surrounding the massacre at the Kravica warehouse on 13 July 1995. The participation of members of the 2nd Šekovići Detachment in these events, and the massacre at the Kravica warehouse, are dealt with separately.

(i) 6 July 1995

66. At 4.30 on 6 July 1995 the VRS attacked positions of the ABiH's 28th Infantry Division and directed fire at UNPROFOR Observation Posts. In the face of VRS fire, over the next three days, the Dutchbat soldiers retreated from their positions.¹²⁴ According to Colonel Kingori the attack on the enclave started on 6 July 1995 with shelling in the early morning - "there were no military targets in the area... they were hitting on the roads, next to the hospital, hitting houses".¹²⁵ The attack was of high intensity considering the size of the villages "and at times we could count over a hundred shells landing in the same place".¹²⁶ The manner and intensity of the attack convinced Kingori that it was intended to inflict maximum civilian casualties and "to harass these people in such a way as they were forced to leave the enclave... they just wanted to cause fear, panic and force the Muslims to flee the enclave".¹²⁷ And "they were aiming at the populated areas... you don't just aim there for any other purpose other than for hitting those people who are there, the inhabitants".¹²⁸

(ii) 7 to 8 July 1995

67. The VRS attack on Srebrenica continued on 7 July 1995. By the second day of shelling civilians were streaming in from villages towards Srebrenica.¹²⁹ UNMO was able to obtain the actual locations of the guns used to shell Srebrenica by crater analysis, noting both the range and type of weapon and pin-pointing its location on a

¹²⁴ Exhibit T.86, Butler report, 3.10.

¹²⁵ Exhibit T.46, Joseph Kingori, *Krstić*, 31 March 2000, T.1820-21.

¹²⁶ Exhibit T.46, Joseph Kingori, *Krstić*, 31 March 2000, T.1827.

¹²⁷ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1829.

¹²⁸ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1900.

¹²⁹ Joseph Kingori, 12 November 2009.

map.¹³⁰ Major Boering described shelling on 8 July 1995 on populated areas as targets, meaning “they were targeting the populated areas, not just to harass... but also to kill”.¹³¹

68. Of the presence of Bosnian Government military forces in the enclave, Colonel Kingori testified that the Bosnians had a communications post in the PTT building above UNMO HQ. The Bosnian Muslims were not able to resist the shelling attack on Srebrenica, which Kingori described as an “onslaught on the enclave”. The attack, in his view, was intended to “soften the target first to force the other side to negotiate.” The VRS shelled first, forcing people to flee to make them go to a place where the VRS could negotiate on its own terms.¹³² When questioned about a mortar being fired from near a service station in Srebrenica shown in a video exhibit,¹³³ he described it as only one mortar and having a “negligible” effect. He described the VRS as the “aggressor” in military terms, having started the attack.¹³⁴

69. The Butler report describes UNPROFOR positions on the south side of the enclave being occupied by Drina Corps soldiers on 8 July, OP Foxtrot (operational post) being abandoned and Dutch soldiers of OP Uniform in Serb custody.¹³⁵ Dutchbat Lieutenant van Duijn saw shells flying overhead the Dutch base in Potočari, aimed at the town of Srebrenica, a “very intense, constant shelling of the whole area”, so much so that they stopped counting the number of shells and explosions.¹³⁶

70. Miroslav Deronjić described a meeting with Karadžić in Pale on 8 or 9 July 1995 during which Karadžić had said of those in Srebrenica “Miroslav those people there must be killed... whatever you can, you have to kill... the Western Slavonian

¹³⁰ Joseph Kingori, 12 November 2009.

¹³¹ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1901.

¹³² Joseph Kingori, 12 November 2009.

¹³³ Exhibit T.1, Petrović video.

¹³⁴ Joseph Kingori, 12 November 2009.

¹³⁵ Exhibit T.86, Butler report, 3.10.

¹³⁶ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2264.

principle” referring to a operation by the Croatian army in which the Serb population had been expelled and numerous civilians killed.¹³⁷

(iii) 9 July 1995

71. The Butler report describes the VRS operations against Srebrenica continuing on 9 July and in the morning hours the Dutchbat OP Sierra fell to the advancing Drina Corps forces. Later that day OP Kilo was overrun.¹³⁸ President Karadžić transmitted an order to Generals Krstić and Gvero expressing his satisfaction with the results so far, and authorizing the Drina Corps to take Srebrenica.¹³⁹

72. Lieutenant van Duijn described the shelling of Srebrenica by the VRS on 9 July 1995:¹⁴⁰

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

73. Colonel Kingori testified that the Serbs also shelled the Potočari compound, concluding “so definitely they were targeting UNPROFOR and also civilians”.¹⁴¹ The Bosnian “Muslims were not given the choice to leave or to continue staying in Srebrenica. After the enclave fell, they were just told “We’re providing transport to

¹³⁷ Exhibit T.55d, *Prosecutor v Momir Nikolić*, IT-02-60/1-S, 28 October 2003, T.1565, also exhibit T.55d. Statement of 25 November 2003, paragraphs 180-181.

¹³⁸ Exhibit T.86, Butler report, 3.12.

¹³⁹ Order 12/46-501/95, see Exhibit T.86, Butler report, 3.13.

¹⁴⁰ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2226.

¹⁴¹ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1882.

take you out” and that was it. They were not even asked where they want to be taken”.¹⁴² He concluded that General Krstić and the other high ranking VRS officers “certainly they were all working together, for the same cause, just to ensure that all the Muslims leave that place, all of them board those buses and go outside that enclave”.¹⁴³

74. Miroslav Deronjić described drafting a joint statement with UNPROFOR which stated in part “the civilian population may remain in the enclave or be evacuated depending on the wish of each individual”. Deronjić stated that he, Karadžić and others knew that there had been killings and liquidation and said, “the unfavourable conditions under which the population was evacuated from Potočari, and the situation in Potočari and beyond were such that they did not allow for the possibility of Muslims remaining in the area. The civilians did not have a choice”... “the actual intent was to have them leave the area and to cleans the area of Muslims”.¹⁴⁴

75. On 9 July van Duijn’s platoon set up a blocking position on the road to the south to try to prevent the Serb forces from taking Srebrenica. He had a clear view of the shelling of Srebrenica and described the shelling as changing every half an hour to 45 minutes. It would go for five to ten minutes against the town and then it would start at their location, landing 50 to 100 metres from their APCs. He could see shells hitting houses.¹⁴⁵ He had two APCs.¹⁴⁶ He was unable to say whether the shells were aimed directly at his APCs.¹⁴⁷

76. The UNMOs left Srebrenica on 9 July for Potočari because they felt they were directly threatened by possible tank fire. Colonel Kingori said that between 18.45 and 20.51 on 9 July shells flew over the UN DutchBat compound “deliberately missing the buildings... causing a lost of panic among the refugees”. Between 12.50

¹⁴² Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1884.

¹⁴³ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1887.

¹⁴⁴ Exhibit T.55d, statement of 25 November 2003, paragraphs 226-227.

¹⁴⁵ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2264-2267.

¹⁴⁶ Exhibit T.49, Leendert van Duijn, *Popović*, 28 September 2006, T.2321.

¹⁴⁷ Exhibit T.49, Leendert van Duijn, *Popović*, 29 September 2006, T.2401.

and 13.50 49 shells were recorded falling in the town of Srebrenica.¹⁴⁸ Several hit the hospital and others fell near it, about which he testified, “I inspected the hospital, there were no soldiers there and there was no military base or headquarters or an ammo depot... inside the hospital”.¹⁴⁹ According to Colonel Kingori, the refugees were forced to flee towards Potočari because of targeted bombardment from all sides leaving no escape route “they were all channelled to one area”.¹⁵⁰

(iv) 10 July 1995

77. By the morning of 10 July the VRS forces were advancing on the Dutch positions between Srebrenica with the VRS using blocking tactics aimed at forcing them back without actually firing on them. The Dutch requested NATO air support, and NATO aircraft circled overhead causing the Serbs to halt their fire. As the aircraft departed, the VRS resumed its fire and manoeuvre tactics against the Dutch, until the VRS was in Srebrenica itself.

78. By the end of the day, the Dutchbat still held Srebrenica, but the VRS held all the key heights and was ready to enter the town the following day. Additional VRS reinforcements arrived for use the next morning. Throughout the afternoon and evening of 10 July, an estimated several thousand civilians from the southern parts of the enclave had taken refuge in Srebrenica, with a considerable number occupying the Bravo Company compound in Srebrenica.¹⁵¹ Major Pieter Boering described that by 10 July “there was a general sentiment of panic” in the Srebrenica enclave.¹⁵²

79. Colonel Vidoje Blagojević, the Chief of Staff of the Bratunac Brigade conveyed an order for full mobilization by 18.00 on 10 July 1995 applicable to all engaged in compulsory work and all men liable for military service.¹⁵³ The Acting Minister of the Interior, Tomislav Kovać, issued a dispatch note ordering all units operating in

¹⁴⁸Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T. T.1903

¹⁴⁹Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T. T.1914.

¹⁵⁰Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T. T.1915

¹⁵¹Exhibit T.86, Butler report, 3.14-3.15.

¹⁵²Exhibit T.47, Pieter Boering, *Popović*, 20 September 2006, T.1937.

¹⁵³Exhibit T.71.

combat near Sarajevo, including the 2nd Šekovići Detachment, to the Srebrenica sector by 11 July. He also appointed Ljubiša Borovčanin to command the MUP units.¹⁵⁴ The units were ordered to leave Trnovo during the night and to report to the police station in Bratunac by 12.00 on 11 July and for the unit commanders to contact General Krstić upon arrival.¹⁵⁵ Dragomir Vasić testified that this meant that the units were to be subordinated to Borovčanin.¹⁵⁶

80. The Butler report noted that from the night of 10 July ABiH soldiers from the 28th Division and Muslim men started gathering in the area of the villages of Šušnjari and Jaglići in the north-west corner of the enclave. This was the departure point through the VRS minefields and the most direct route towards ABiH held territory near Tuzla. Butler noted the estimates that “between 10,000 and 15,000 men would ultimately be part of a “mixed” (military and civilian) column that would attempt to escape along this route”.¹⁵⁷

(v) 11 July 1995

81. The VRS attack on the town of Srebrenica and the enclave continued on 11 July 1995. That day President Karadžić issued two directives related to Srebrenica, the first appointing Miroslav Deronjić as “Civilian Commissioner for the Serbian Municipality of Srebrenica” saying that “the decision of the civilian commissioner shall be binding for all civilian authority organs in the Serbian municipality of Srebrenica”. The second ordered the formation of a public security station in Serb Srebrenica.¹⁵⁸

82. Colonel Kingori estimated that, by 11 July, up to 10,000 refugees were in the UN Potočari compound, about 80% were women, the rest were older men and boys.

¹⁵⁴ Dragomir Vasić, 1 April 2009.

¹⁵⁵ Exhibit T.28.

¹⁵⁶ Dragomir Vasić, 1 April 2009.

¹⁵⁷ Exhibit T.86, Butler report, 3.16, 3.21.

¹⁵⁸ Exhibit T.86, Butler report, 4.1-4.2, and RS Presidential Order O1-1341.

Shelling was ongoing and “Potočari and Srebrenica were still being targeted”.¹⁵⁹ Jovan Nikolić testified that he saw a great number of women and children attempting to seek refuge in the factory at Potočari who had gone there in panic. He saw a fairly large number of buses there.¹⁶⁰

83. Lieutenant van Duijn said that by the morning of 11 July Srebrenica was empty. The civilians and any ABiH soldiers had fled. Many had gathered at the Bravo Company in Srebrenica, which he described as “one big chaos where people were scared and hysterical and running through each other and grabbing whatever they could take with them and running or walking to the north following the road”. He was ordered to deploy blocking positions to allow the Dutch to retreat and to give the refugees time to make it to Potočari.¹⁶¹ UN Dutchbat Deputy Commander Robert Franken said that the Dutchbat “essentially withdrew on the tail of the refugees as they moved towards Potočari”.¹⁶²

84. By 11.00 on 11 July 1995 Serb forces were advancing towards Srebrenica with the Dutch peacekeepers withdrawing before them and the last ABiH rear guard positions had withdrawn. At 14.30 NATO F-16s bombed VRS tanks advancing towards the town. Subsequent strikes were cancelled after the VRS threatened to kill the Dutch soldiers in VRS custody. By 16.00 the Dutch began evacuating the remaining 4,000-5,000 Muslims from the Bravo Company compound in Srebrenica towards their main UN compound in Potočari several kilometres to the north. The VRS soldiers then entered an almost deserted town.¹⁶³

85. The ICTY found “Late in the afternoon of 11 July 1995, General Mladić, accompanied by General Živanović (then Commander of the Drina Corps), General Krstić (then Deputy Commander and Chief of Staff of the Drina Corps) and other

¹⁵⁹ Exhibit T.46, Joseph Kingori, *Krstić*, 31 March 2000, T.1835.

¹⁶⁰ Jovan Nikolić, 15 December 2008.

¹⁶¹ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2267-2268.

¹⁶² Exhibit T.52, Robert Franken, *Krstić*, 4 April 2000, T.2021.

¹⁶³ Exhibit T.86, Butler report, 3.17-3.20.

VRS officers, took a triumphant walk through the empty streets of Srebrenica town.”¹⁶⁴

86. Video footage shows General Mladić entering Srebrenica on 11 July 1995. Before departing he gave a television interview for the Serbian news in which he declared, “Here we are on 11 July in Serb Srebrenica. On the eve of yet another great Serb holiday, we give this town to the Serb people as gift. Finally after the rebellion against the Dahis, the time has come to take revenge on the Turks in this region”.¹⁶⁵ The video shows him directing and ordering his soldiers straight to Bratunac and Potočari.

87. The Court received evidence that the UN peace-keepers were overwhelmed. Major Boering testified that on 11 July the VRS had deployed two guns, two tanks three multi-launch rocket systems (MLRS) and an anti-aircraft in direct line of the Dutchbat compound, which turned them Dutch into a “sitting duck” with the result that they could not defend their own battalion.¹⁶⁶

88. Robert Franken said that the Dutch could not have mounted a defence in Potočari because there would have been a massacre by the VRS which had already shown that it did not respect civilians or non-combatants, “They fired at them with artillery in Srebrenica; they fired on them with artillery on the way down to Potočari and further on”.¹⁶⁷ The VRS threatened that if the Dutch did not stop opposing them, and especially with air support, “they would fire on the refugees in Potočari and ...kill our POWs”, by then about 50 UN Dutchbat soldiers were prisoners of war after being captured when the VRS overran their observation posts. At that time Franken counted that the VRS had about 35 artillery pieces including tanks and rocket launchers. Dutchbat had no such weapons, no heavy artillery and no air support.¹⁶⁸

¹⁶⁴ Accepted fact number 10 (Annex 3).

¹⁶⁵ Exhibit T.1 at 30.30.

¹⁶⁶ Exhibit T.47, Pieter Boering, *Popović*, 20 September 2006, T.1965-1967.

¹⁶⁷ Exhibit T.52, Robert Franken, *Krstić*, 4 April 2000, T.2023.

¹⁶⁸ Exhibit T.52, Robert Franken, *Krstić*, 4 April 2000, T.2023-2024.

89. The VRS also took UNPROFOR APCs and uniforms and blue helmets. The Petrović video shows General Mladić on the road south of Srebrenica attempting to have a UNPROFOR APC pulled out of a ditch.¹⁶⁹ Survivors of the column also described seeing Serb soldiers wearing UN gear (see section **XVII. Evidence of survivors in the column** below).

90. Miroslav Deronjić, then in Bratunac, stated that Karadžić telephoned him on 11 July and told him that he had been appointed the new civilian commissioner in Srebrenica. Karadžić told him to contact Mladić and to have him arrange a meeting with UNPROFOR and Muslim representatives at which they would be offered three variants. The first was “that they would remain in Srebrenica which was inconceivable. The second variant was that they would go in the direction of Kladanj which was under the control of the Muslim army. Under the third variant they would go to third countries which was also not a real variant”.¹⁷⁰

91. ICTY judgements have found that “Thousands of Bosnian Muslim residents from Srebrenica fled to Potočari seeking protection within the UN compound.”¹⁷¹ “By the evening of 11 July 1995, approximately 20,000 to 25,000 Bosnian Muslim refugees were gathered in Potočari.”¹⁷² “The refugees in the (UN) compound (*in Potočari*) could see Serb soldiers setting houses and haystacks on fire.”¹⁷³ Major Pieter Boering testified that Dutchbat could do very little for the thousands of refugees gathering in Potočari. “We figured out that this could only last a few days until we could no longer provide for ourselves and the people, perhaps two or three days. If we were to tap into our own supplies, they would be exhausted.”¹⁷⁴

92. As an example, Munira Subašić, who moved to Srebrenica in 1993, left for Potočari on 11 July 1995 after shells had landed at a school, killing people. The UN was

¹⁶⁹ Exhibit T.1. A Reuters video still shows Mladić next to the APC with General Krstić and Colonel Pandurević on either 10 or 11 July 1995, exhibit T.134.

¹⁷⁰ Exhibit T.55d, statement of 25 November 2003, paragraph 187.

¹⁷¹ Accepted fact number 12 (Annex 3).

¹⁷² Accepted fact number 11 (Annex 3).

¹⁷³ Accepted fact number 32 (Annex 3).

¹⁷⁴ Exhibit T.47, Pieter Boering, *Popović*, 20 September 2006, T.1940.

attempting to transfer people to Potočari and she described travelling there in a convoy. Her husband and son had left for Potočari on the morning of 11 July.¹⁷⁵

93. Dutchbat estimated that between by the evening of 11 and 12 July some 17,500 refugees had gathered at the UN compound in Potočari. UNMOs put the number at between 30,000 and 35,000.¹⁷⁶ “Several thousand had pressed inside the UN compound itself, while the rest were spread throughout the neighboring factories and fields”.¹⁷⁷ “Conditions in Potočari were deplorable. There was very little food or water available and the July heat was stifling.”¹⁷⁸ Dutchbat soldier Paul Groenewegen testified that thousands of people were seeking refuge, “people tried to find shelter in the factories and the houses that were left empty” but most people stayed outside overnight.¹⁷⁹

Meetings at Hotel Fontana in Bratunac between UNPROFOR and General Mladić

94. Following the VRS takeover of Srebrenica three meetings were held between the VRS and UNPROFOR at the Hotel Fontana in Bratunac on 11 and 12 July. The first meeting was held at 20.30 on 11 July and was attended by General Mladić and other senior VRS officers on one side and Dutchbat representatives, including Lieutenant Colonel Karremans, on the other. Karremans requested a withdrawal of the Dutchbat, the Muslim population and Médecines Sans Frontières. Mladić asked his officers whether buses could be provided.¹⁸⁰

95. Momir Nikolić was present at the first meeting, describing it:¹⁸¹

“my assessment is that this was no meeting at all. All those who were present were standing. General Mladić was the only speaker. He was trying to

¹⁷⁵ Munira Subašić, 24 April 2009.

¹⁷⁶ Exhibit T.86, Butler report, 3.22.

¹⁷⁷ Accepted fact number 13 (Annex 3).

¹⁷⁸ Accepted fact number 14 (Annex 3).

¹⁷⁹ Exhibit T.48, Paul Groenewegen, *Blagojević*, 19 July 2003, T.1020-1021.

¹⁸⁰ Exhibit T.86, Butler report, 4.4.-4.8.

¹⁸¹ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1657-1658.

intimidate the DutchBat commander and his officers. He was threatening them. And he was acting violently. He dictated his terms, told them what he wanted to say. The tone was that of an order, and no one except Mladić said anything at that meeting. He asked the questions and provided the answers. This was all finished in no time at all. An ultimatum was given to the DutchBat commander as to what he should do before the next meeting”.

96. After the first meeting the first buses and trucks appeared.¹⁸² In Robert Franken’s view, he saw a “planned deportation” of the Muslim population from Srebrenica.¹⁸³ The ICTY found “Certainly, the Bosnian Muslim refugees were not consulted or given a choice about their final destination.”¹⁸⁴ Dutchbat soldier Paul Groenewegen described the VRS soldiers putting the civilians onto buses, saying initially “there was only shouting and people being called names. And if they still didn’t want to get in, then violence was used”.¹⁸⁵ And “the refugees did not come to Potočari of their own free will “I think they had no other option”.¹⁸⁶

97. At the second (video-recorded) meeting at the hotel, between Mladić and representatives of the civilian Bosnian Muslim population in Potočari, Mladić set conditions that he wanted the population disarmed and would organize the “evacuation” of the population from the enclave and treat the soldiers in the “spirit of international conventions”. He said he was starting to organize transportation for the citizens out of the protected area.¹⁸⁷

(vi) 12 July 1995

98. Following the fall of Srebrenica to the VRS, the transportation of the civilian population of the enclave by the authorities of the Republika Srpska began in earnest.

¹⁸² Exhibit T.52, Robert Franken, *Krstić*, 4 April 2000, T.2028.

¹⁸³ Exhibit T.52, Robert Franken, *Krstić*, 4 April 2000, T.2087-2088.

¹⁸⁴ Accepted fact number 40 (Annex 3).

¹⁸⁵ Exhibit T.48, Paul Groenewegen, *Blagojević*, 19 July 2003, T.1026.

¹⁸⁶ Exhibit T.48, Paul Groenewegen, *Blagojević*, 19 July 2003, T.1041-1042.

¹⁸⁷ Exhibit T.1.

At the same time the VRS believed it was facing a possible military attack by the ABiH.

99. The ICTY found that “Immediately following the take-over of Srebrenica, the whereabouts of the 28th Division of the ABiH were unknown. This was of great concern to the VRS, as was the possibility that forces of the 2nd Corps of the ABiH attacking from the direction of Tuzla and Kladanj would link up with elements of the 28th Division. Radio intercepts indicate that the VRS first became aware of the formation of the column around 0300 hours on 12 July 1995.”¹⁸⁸ It also found “Certainly the Drina Corps Command was well aware of the general VRS plan to capture the Bosnian Muslim men trying to breakthrough to Tuzla. Indeed, the Drina Corps Command received direct orders from the Main Staff to take prisoners from the Bosnian Muslim column.”¹⁸⁹

100. The transportation of the entire civilian population from Srebrenica was a complex logistical task requiring planning and co-ordination between the military and civilian and authorities. Early on 12 July, the Drina Corps Command issued an order and the RS Ministry of Defence issued three orders relating to bus transportation. The Drina Corps order required all buses and mini-buses in the VRS to be secured for use by the Drina Corps, and to arrive at Bratunac stadium by 16.30. It also said the command had requested that private and state owned buses be mobilized and put under brigade control. The RS Ministry of Defence issued orders for 100 buses to report to the Bratunac that day. That day General Krstić ordered 50 buses from municipalities in eastern Bosnia to report to Bratunac by 17.00. At 8.00 CJB Chief Vasić reported that “over 100 trailer trucks have already been provided”.

101. By 12.00 on 12 July the first bus convoys began leaving the UN Compound at Potočari under the direction of the Drina Corps Command. The Bratunac Brigade Command was logistically supporting the operation by disbursing and accounting for

¹⁸⁸ Accepted fact number 53 (Annex 3).

¹⁸⁹ Accepted fact number 54 (Annex 3).

fuel. By early afternoon, a number of senior VRS officers, including Generals Mladić, Živanović and Krstić had come to Potočari to personally observe the situation.¹⁹⁰

102. The Butler report concluded in relation to the buses that the buses and later trucks that began arriving on the morning of 12 July “became the vehicles which the VRS Drina Corps used to transport the civilian population out of Potočari on 12 and 13 July 1995. Many of these same vehicles were probably then used to move Muslim males from detention sites near Bratunac to detention and execution sites near Zvornik between 13 and 16 July 1995”.¹⁹¹ Exhibit T.103 shows the location of the mass-executions, stretching from Pilica in the north to Potočari some 50 kilometres south to the north of Vlasenica, about 30 kilometres west.¹⁹²

103. Dragomir Vasić testified that the prisoners were under army jurisdiction and that Deronjić had said (in code) that the “goods should be in the warehouse” meaning prisoners should be taken to Bratunac prison.¹⁹³ According to Vasić the police who were requested by order on 10 July to return and they did so on 12 July were then taken out of his chain of command. Dragomir Vasić did not see Borovčanin on 12 July because Borovčanin was on the road and Vasić was in Bratunac.¹⁹⁴

104. “From the morning of 12 July, Bosnian Serb forces began gathering men from the refugee population in Potočari and holding them in separate locations.”¹⁹⁵

105. Lieutenant van Duijn testified that on 12 July General Mladić came to the refugees outside the Potočari compound, describing it as “a sort of propaganda visit” an extension of the first Serb soldiers who had arrived, handing out food and drinks

¹⁹⁰ Exhibit T.86, Butler report, 5.3-5.9, see exhibit T.73 “Provision of buses for the evacuation from the Srebrenica enclave order” issued by Major General Živanović, sent at 8:35 on 12 July 1995.

¹⁹¹ Exhibit T.86, Butler report, 12.3.

¹⁹² Exhibit T.103. Also exhibit T.104 showing the locations of sites in Kozluk, Pilica, Kula, Ročević, Petkovci and Orahovac.

¹⁹³ Dragomir Vasić, 1 April 2009.

¹⁹⁴ Dragomir Vasić, 1 April 2009.

¹⁹⁵ Accepted fact number 21 (Annex 3).

to the refugees.¹⁹⁶ “Captain Mane”, who identified himself as the local Serb commander informed van Duijn that 200 buses were coming to take the civilians from Srebrenica. “He mentioned that the refugees were going to leave and that he wanted to know if the UN would stay, or otherwise the Serbs would do it their own way”.¹⁹⁷ “Captain Mane” supervised the transportation of the civilians outside the Dutch compound on 12 July, “Basically the way it worked was that Mane told me how many trucks or buses that were present, so how many refugees could be seated in those trucks. And I would give orders to the UN soldiers to let people through...”¹⁹⁸

106. General Mladić made at least several visits to the vicinity of the Dutchbat compound in Potočari on 12 July. Dutchbat soldier Paul Groenewegen saw Mladić outside the compound (and again on 13 July) and concluded that he was “controlling the situation”.¹⁹⁹ He observed soldiers wearing camouflage and others with partial camouflage with black pants, and some with different insignia and units with dogs, “the camouflage suits were identical to those used by the vast majority of the soldiers present...”²⁰⁰

107. Lieutenant van Duijn described Serb soldiers putting civilians on buses outside the Dutch compound on 12 July, while singling out the Muslim men and taking them to a lawn in front of a house. Asking why, he was told that they had a list of war criminals and they need to check. At the time he found it a credible explanation.²⁰¹ Another video still from the Petrović video shows van Duijn speaking to a company commander and another member of the special police from the Jahorina Training Centre near the bus depot in Potočari on 13 July 1995.²⁰² Describing the condition of the refugees, van Duijn testified “People sat in their own faeces. They were injured,

¹⁹⁶ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2277.

¹⁹⁷ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2284-2285.

¹⁹⁸ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2286.

¹⁹⁹ Exhibit T.48, Paul Groenewegen, *Blagojević*, 19 July 2003, T.1044.

²⁰⁰ Exhibit T.48, Paul Groenewegen, *Popović*, 25 October 2006, T.2975-2976.

²⁰¹ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2286-2287.

²⁰² Exhibit T.134.

wounded; to stay was not an option for them, without food, without water, and it was clear that they had to leave and leave fast”.²⁰³

108. Colonel Kingori described how on the morning of 12 July 1995, VRS soldiers came into the Dutchbat compound to check for the presence of ABiH soldiers. Major Nikolić, Colonel Vuković, General Krstić and other officers came into the base to speak to the UN. General Mladić came to the base on 12 July and with other senior officers “was distributing soft drinks and candies to the refugees who were outside the main compound”.²⁰⁴ It was being filmed, Kingori thought, for propaganda purposes. The Petrović video shows Kingori outside a building known as the “white house” speaking to Borovčanin and a member of the special police from the Jahorina Training Centre Potočari on 13 July 1995.²⁰⁵

109. On the morning of 12 July 1995 Momir Nikolić met Lt-Colonel Vujadin Popović, the Chief of Security of the Drina Corps in Bratunac. Popović told him “that the thousands of Muslim women and children in Potočari would be transported out of Potočari towards Muslim-held territory near Kladanj and that the able-bodied Muslim men within the crowd of Muslim civilians would be separated from the crowd, temporarily detained in Bratunac, and killed shortly thereafter. I was told that it was my responsibility to help coordinate and help organize this operation.” They then discussed appropriate sites for detention and then execution.²⁰⁶ (Popović was convicted of genocide for his role in the crimes committed at Srebrenica and sentenced to life imprisonment).²⁰⁷

110. Momir Nikolić met Lieutenant-Colonel Kosorić and Lieutenant-Colonel Popović in front of the Fontana Hotel on the morning of 12 July.²⁰⁸

²⁰³ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2300.

²⁰⁴ Exhibit T.46, Joseph Kingori, *Krstić*, 3 April 2000, T.1841.

²⁰⁵ Exhibits T.1 and T.134.

²⁰⁶ Exhibit T.56, dated 6 May 2003.

²⁰⁷ *Prosecutor v Popović and other*, IT-05-88-T, Judgement, 10 June 2010.

²⁰⁸ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 2003, T.1751.

“And in answer to my question to Popović and Korić as to what would happen next, Lieutenant-Colonel Popović told me that on that day, the women and children would be evacuated and that they would be evacuated in the direction of Kladanj. Also that on that day, the men, the able-bodied men, would be separated and that those men would be temporarily detained once they had been separated. And when I asked what would happen to them next, he told me that all *balijas* needed to be killed. That was a conversation in the presence of Popović, myself, and Korić. In continuation, we discussed the provisional places of detention for the separated men. I suggested to Popović and Korić that the buildings of the Vuk Karadžić elementary school, that the Djuro Pucar Stari secondary school in Bratunac, the gym, and the hangar should be used as detention facilities for the men separated from the group at Potočari. That was a part of the conversation we had. Another part of that conversation relating this operation had to do with my own role, and I was told that my task in that operation would be to coordinate the forces that would be engaged in Potočari for this operation of separation, temporary detention, and later the killing of those men”.

111. A video still shows Nikolić standing with Colonel Radislav Janković and Lt-Colonel Popović outside the hotel at about 10.00 on 12 July.²⁰⁹

3rd Meeting at Hotel Fontana

112. The third meeting at the Fontana Hotel occurred at 10.00 on 12 July and included the presence of three Muslim civilian representatives. During the meeting Mladić insisted that all Muslim men aged between 16 and 60 were to be screened for war crimes, and insisted that the Muslim military hand over its weapons and surrender.²¹⁰ Mladić told them that they had a choice either to “survive or disappear”. Dragomir Vasić participated in the meeting at the Fontana Hotel at 12.00

²⁰⁹ Exhibit. T.134.

²¹⁰ Exhibit T.86, Butler report, 4.14.-4.15.

on 12 July and recognized himself in the video of it. The meeting had been ordered by General Mladić, and, according to Vasić, its purpose was to organize civilian issues.²¹¹

113. Miroslav Deronjić attended the meeting and said that Radovan Karadžić had given him authority over civilians in Srebrenica.²¹² When Vasić arrived at the meeting he was informed that Borovčanin had been tasked by the military to secure the area near the yellow bridge (*žuti most*).²¹³ Vasić also identified himself attending that meeting with Mladić.²¹⁴

114. Momir Nikolić was also there, saying “I knew before the third meeting from the conversation with Lieutenant-Colonel Kosorić and Lieutenant-Colonel Popović, namely, I knew what would be done in Srebrenica, who would be transported, and who would be separated from Potočari, temporarily detained, and ultimately executed. That is what I knew because I heard this piece of information from the two lieutenant-colonels in front of the Fontana Hotel”... and “At that time, I suggested a site for temporary detention... We then had a discussion in front of Fontana about execution sites in the territory of the Municipality of Bratunac... namely, the area of Ciglane, the socially owned company in Bratunac, and the area where the lead and zinc mine is, the lead and zinc mine of Saše in Saše.”²¹⁵

Separation of men from women, children and elderly

115. The separation of the Bosnian Muslim men from the women, children and the elderly continued at Potočari in the presence of senior VRS officers, including General Mladić. Major Pieter Boering described seeing Mladić outside the UN Compound on 12 July, after the third meeting at the Hotel Fontana, with a Serb camera crew, speaking to the population as they appeared to be “planning to prepare

²¹¹ Dragomir Vasić, 1 April 2009.

²¹² Dragomir Vasić, 1 April 2009.

²¹³ Dragomir Vasić, 1 April 2009.

²¹⁴ Exhibit T.1.

²¹⁵ Exhibit T.44, Momir Nikolić, *Blagojević*, 1 October 2003, T.2377-2379.

transport and board the people”. At Colonel Karreman’s request Boering spoke to Mladić and asked him to ensure that the infirm, elderly and women should be transported first. Mladić listened but nothing changed in relation to the order of transportation.²¹⁶

116. Munira Subašić, a refugee from Srebrenica, saw General Mladić at the UN base at Potočari on 12 July around noon. He said that the men had to be screened and the women and children could go home. Munira Subašić asked him to save her son, and he asked for his name, and sent three people to find the son, who was brought to her and then taken away again. She did not see her husband or son again. Her husband’s body was recovered in 2004 and she believes that her son was taken to Kravica. Before Mladić arrived, she saw VRS soldiers organizing the boarding of buses and were separating the men from the women at the gate and personal belongings were taken from her at Potočari.²¹⁷

117. Paul Groenewegen described the physical process of the VRS separating the men from the women and children at Potočari; “It was done in different ways. A single soldier removing a single man or a single soldier picking out groups, or groups of soldiers picking out groups of people. And, finally, they were all gathered in the house”.²¹⁸ Groenewegen spent the entire day standing between the refugees and the VRS and assisting the refugees, by providing them with water, helping women with children and trying to prevent panic breaking out. The Dutchbat soldiers and the VRS were together forming a human barrier separating the refugees from the buses. The men being separated were being escorted past the human barrier to the house.²¹⁹

118. Colonel Kingori saw Mladić a second time on 12 July at the UN base while the VRS was separating women and children from the men and the men were being held in a separate building (a white building). Kingori asked Mladić why and Mladić took

²¹⁶ Exhibit T.47, Pieter Boering, *Popović*, 22 September 2006, T.2008-2010.

²¹⁷ Munira Subašić, 24 April 2009.

²¹⁸ Exhibit T.48, Paul Groenewegen, *Blagojević*, 19 July 2003, T.1027.

²¹⁹ Exhibit T.48, Paul Groenewegen, *Popović*, 25 October 2006, T.2980-2985.

him into the house and told him that the prisoners were “very comfortable in there”.²²⁰²²¹ Kingori saw that the men were forced to leave all their belongings in a truck by the road, including their wallets and their identification. The men were searched twice. The Dutch told him that some men had been taken behind the building followed by the sound of shooting. Colonel Kingori testified that the men and women were very afraid of what may happen to them. On 12 July “they were separating some very young boys, some as young as 13, 14, and they were telling them to go and join the other men”. Colonel Kingori witnesses the separations continuing on 13 July with the VRS soldiers taking things from the DutchBat soldiers and the civilians.²²² At the UN Potočari base Milutin Kandić, a member of the 1st PJP Company, saw UNPROFOR soldiers holding hands to prevent the Serb forces entering.²²³

119. Colonel Kingori saw VRS soldiers separating the men from the women and putting the men in a white house. He complained directly to Mladić about this, saying that it was wrong and that they should not separate family members. Kingori thought that this was bad because family units should not be separated after they had been forced to leave their homes, and it was wrong to remove their identification documents. They were also kept in a small house. He was very concerned about their fate because they were being required to remove their identification. The men were in fear.²²⁴

120. On 12 July 1995, Dragomir Vasić sent a dispatch note, in which he stated that “the military operation is continuing according to plan. The Turks are fleeing towards Sućeska, while the civilians have gathered in Potočari (about 15,000)”. He also reported that a meeting was to occur with UNPROFOR and the ICRC and Muslim representatives from Srebrenica to reach an agreement about the evacuation

²²⁰ Exhibit T.46, Joseph Kingori, *Krstić*, 31 March 2000 T.1844, exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2293.

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²²² Exhibit T.46, Joseph Kingori, *Krstić*, 31 March 2000 T.1857-58.

²²³ Milutin Kandić, 12 August 2009.

²²⁴ Joseph Kingori, 12 November 2009.

of the civilian population from Potočari to Kladanj. “Joint police forces are advancing on Potočari with the aim of taking UNPROFOR personnel prisoner, surrounding the entire civilian population and cleansing the area of enemy troops.” It went on “The objective of today’s military operations is to ensure that all roads from Srebrenica to Skelani, Bratunac and Vlasenica are passable”.²²⁵

121. On 12 July Major Boering went briefly into the building before he was ordered to leave by VRS soldiers at gunpoint. Some Muslim prisoners were sitting on the floor, and some passports or identity documents were in a corner. VRS soldiers, led by one of Mladić’s bodyguards, went behind the building and he heard gunshots fired. The bodyguard had said to him in English “look, Major, what I’m going to do”. VRS soldiers with dogs then prevented him from going there to see what had happened.²²⁶ Leendert van Duijn testified that Mladić “has some dark form of charisma, and he sure by using his bodyguards in such a way that everyone knows he’s present”.²²⁷ “Identification papers and personal belongings were taken away from both Bosnian Muslim men at Potočari and from men captured from the column; their papers and belongings were piled up and eventually burnt.”²²⁸

122. Momir Nikolić testified:²²⁹

“At the very spot where the separation was taking place of the men from their families, I saw innumerable cases of abuse and mistreatment of the men being separated.....After the separation, which was done in a rough and inappropriate way, personal belongings were seized and thrown onto a pile which was formed on the way to the White House where they were taken. Then there was physical abuse and beating of those men with hands and feet. Then there was verbal abuse; that is, they were called balijas and Turks and Ustashas and the like. Then those who passed through this point were turned back from the buses they

²²⁵ Exhibit T.29.

²²⁶ Exhibit T.47, Pieter Boering, *Popović*, 22 September 2006, T.2013-2018.

²²⁷ Exhibit T.49, Leendert van Duijn, *Popović*, 28 September 2006, T.2330.

²²⁸ Accepted fact number 34 (Annex 3).

²²⁹ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1696-1697.

had reached and separated and told to go back to the place where the already separated men were temporarily detained.”

123. Dragomir Vasić testified that Mladić ordered the separation of women and children from the men. He said that he and Deronjić did not agree with the order but that it was correct in military terms.²³⁰ An ICTY judgement found that “On 12 July 1995, as the bus convoys were being organized, General Mladić was heard to say during an intercepted conversation: They’ve all capitulated and surrendered and we’ll evacuate them all – those who want to and those who don’t want to.”²³¹

124. A Reuters video still shows Borovčanin with Bosnian Muslim women and children at Potočari, several hundred metres from the UN Base on 12 July 1995. Another shows a member of the special police from the Jahorina Training Centre near passing buses about 100 metres from the UN base on the same day.²³²

125. The separation and transport lasted until the evening of 12 July. “Captain Mane” told van Duijn that his forces were going back to Bratunac for the night (to the Hotel Fontana to celebrate) and that van Duijn was to keep the road clear for transportation in the morning. Mane also asked van Duijn to hand over his pistol. Van Duijn could not because it had been taken from the Dutch APC where he had left it.²³³ “Mane” was most likely Lieutenant Colonel Mane Đurić, the deputy chief of the security centre in Zvornik.²³⁴ That night, after the soldiers left, some women and children were accommodated inside the the Dutchbat compound.²³⁵ Leendert van Duijn was able to keep about 100 to 150 Muslim men with their families and to put them on the buses, but without the presence of Serb soldiers.²³⁶

²³⁰ Dragomir Vasić, 1 April 2009.

²³¹ Accepted fact number 39 (Annex 3).

²³² Exhibit T.134.

²³³ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2296-2297.

²³⁴ Exhibit T.50, Dragan Obrenović, *Blagojević*, 2 October 2003, T.2581.

²³⁵ Exhibit T.48, Paul Groenewegen, *Popović*, 28 September 2006, T.2985.

²³⁶ Exhibit T.49, Leendert van Duijn, *Popović*, 28 September 2006, T.2318-2319.

126. Dispatch note 281/95 dated 12 July 1995 bears Vasić's name but he denied authoring it. It says that "the evacuation and transport of the civilian population from Srebrenica is underway... the majority men of military age, about 8,000 men (of whom 1,500 armed)... are in the Konjević Polje and Sandići sector. The Šekovići Detachment, the 1st Company of the PJP of the Zvornik CJB and the 5th Company of the Zvornik CJB are blocking this section with the goal of destroying these forces".²³⁷ Vasić testified that the 5th Company was not there and the aim was to secure the road to chase the people from the woods. He explained that "destroying" or "liquidating" in military terms is meant in combat terms.²³⁸ The Court notes that Richard Butler came to a similar conclusion, and draws no sinister conclusion from the wording. Momir Nikolić testified in relation to this document, saying that in the military context described in the document, it meant "there was fighting going on and there was an attempt to destroy those Muslim soldiers".²³⁹ The VRS believed that the column contained about 1,000 to 1,500 members of the ABiH's 28th Division on 12 July,²⁴⁰ and Danilo Zoljić believed that the column was heading towards Tuzla and posed objective danger to the Serbs.²⁴¹

127. The ICTY found that "By the afternoon of 12 July 1995, or the early evening hours at the latest, the Bosnian Serb forces were capturing large numbers of these men in the rear."²⁴² "Drina Corps Command officers and units were present in Potočari monitoring the transportation of the Bosnian Muslim civilians out of the area on 12 and 13 July 1995."²⁴³ "On 12 and 13 July 1995, the women, children and elderly were bussed out of Potočari, under the control of VRS forces, to Bosnian Muslim held territory near Kladanj."²⁴⁴ On 12 July Dragan Obrenović was informed

²³⁷ Exhibit T.30. The time on the note is 17.30.

²³⁸ Dragomir Vasić, 1 April 2009.

²³⁹ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 2003, T.1818.

²⁴⁰ Exhibit T.50, Dragan Obrenović, *Blagojević*, 2 October 2003, T.2467.

²⁴¹ Danilo Zoljić, 20 March 2009.

²⁴² Accepted fact number 33 (Annex 3).

²⁴³ Accepted fact number 15 (Annex 3).

²⁴⁴ Accepted fact number 16 (Annex 3).

that the 28th Division was fleeing the Srebrenica area and moving in the direction of Tuzla, and that Zvornik was in its path.²⁴⁵

128. “The VRS and MUP, walking among the Bosnian Muslim refugees, were separating all Bosnian Muslim men aged 16 to approximately 60 or 70 from their families.”²⁴⁶ “The separations continued throughout 12 and 13 July.”²⁴⁷ “The Bosnian Muslim men who had been separated from the women, children and elderly in Potočari (numbering approximately 1,000) were transported to Bratunac.”²⁴⁸

129. Nikolić, the chief of intelligence and security of the Bratunac Brigade, testified that at around 20.00 on 12 July at his headquarters he told the commander of the Bratunac Brigade, Vidoje Blagojević, of what had happened in Potočari that day and that the men who had been separated from the women and detained in the white house and the Vuk Karadžić school were to be killed.²⁴⁹ After this meeting, Nikolić, who was the brigade’s duty officer that day, he wrote an intelligence report for the corps command regarding the situation and the progress of the evacuation that day but “in that report I didn’t indicate the intention to kill”.²⁵⁰

130. Miroslav Deronjić described meeting Dragomir Vasić at the SDS office in Bratunac on 12 July: “Vasić told me they were separating the men from the women outside UNPROFOR. I asked Vasić to tell Mladić that this was insane and that they shouldn’t be doing it right where UNPROFOR was, and that this simply was not the place for it”.²⁵¹

Meeting in SDS office in Bratunac on night of 12 July 1995

²⁴⁵ Exhibit T.50, Dragan Obrenović, *Blagojević*, 8 October 2003, T.2799.

²⁴⁶ Accepted fact number 19 (Annex 3).

²⁴⁷ Accepted fact number 20 (Annex 3).

²⁴⁸ Accepted fact number 23 (Annex 3).

²⁴⁹ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1700.

²⁵⁰ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1702.

²⁵¹ Exhibit T.55d, statement of 25 November 2003, paragraph 198.

131. Momir Nikolić described the meeting at the SDS office on the night of 12 July, with Deronjić and Colonel Ljubiša Beara the chief of the security administration of the VRS Main Staff. Deronjić firmly said that the prisoners in Bratunac should be transported out that night “he opposed any idea of executions and killings taking place in and around Bratunac”.²⁵² Beara brought up the subject of killing the prisoners and “at that meeting there was open discussion about those Muslims who had been captured would later be killed... the problem discussed was whether this should be done in Bratunac, in Zvornik, or somewhere else. And there was a lot of debate and dispute and argument about this between Colonel Beara and Miroslav Deronjić”.²⁵³

132. Dragomir Vasić also participated in the meeting in Miroslav Deronjić’s office at midnight on 12/13 July 1995 between Beara and Deronjić. Beara said that he came with an order from his boss (Mladić) to liquidate the prisoners (i.e. Muslims who had surrendered during the day and been transported to Bratunac). Deronjić called Karadžić who said that the prisoners should be taken to prison. Vasić did not know who Beara was before then and Beara had been drinking, and, Vasić testified, he did not believe him to be serious.²⁵⁴

133. Miroslav Deronjić said that Beara appeared intoxicated; “I told Mr. Beara that I had received instructions and an order and that I had to inform him that the prisoners should be taken in the direction of Bijeljina and Zvornik and to Batkovici. He then said to me: “I have orders instructing these prisoners to be killed in Bratunac.” These prisoners were to be killed in Bratunac. And he said he had received these orders from the top.”²⁵⁵ Deronjić thought this might mean either “from the Main Staff or from Mr. Karadžić”.²⁵⁶ Deronjić was concerned that the killings would occur in Bratunac and told Beara that the prisoners were supposed to be taken towards

²⁵² Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1676-16377.

²⁵³ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 2003, T.1752.

²⁵⁴ Dragomir Vasić, 1 April 2009.

²⁵⁵ Exhibit T.55d, *Prosecutor v Momir Nikolić*, IT-02-60/1-S, 28 October 2003, T.1550.

²⁵⁶ Exhibit T.55d, *Prosecutor v Momir Nikolić*, IT-02-60/1-S, 28 October 2003, T.1563, also exhibit T.55d, statement of 25 November 2003, paragraphs 208-210.

Bijeljina towards Batkovići and “that I would not allow any killings in Bratunac”.²⁵⁷ Deronjić also described driving after Beara on the morning of 14 July after hearing that Beara was going to the brickyards in Bratunac and assuming that executions were going to occur there and find Beara in his jeep and “I told him that there could be absolutely no liquidations in Bratunac brickyard or anywhere else”. Beara agreed and Deronjić understood that the prisoners would be taken to Zvornik instead.²⁵⁸

134. The Butler report – unchallenged in cross-examination by counsel for the two accused – provides an overview of the executions (not the direct subject of this indictment) that occurred between 12 July and 18 July. These are referred to in the day by day findings below. It also provides evidence of the mass-burials necessary to dispose of the bodies.²⁵⁹ The report describes executions in Bratunac and how Muslim males separated from the women and children in Potočari on 12 July were bused to Bratunac and put in a large building known as “the hangar”. Numerous were beaten and killed during the night of 12 July with the murders continuing through 13 July.²⁶⁰

135. On 12 July 1995 Radovan Karadžić gave a television interview on SRT, saying of the situation in Srebrenica, “Our army is enabling the establishment of our civil authorities there because the Serbs were exiled from Srebrenica at the beginning of the war. These Serbs are coming back now, from the neighbouring villages. There are already existing organs there, elected organs of the Municipal Assembly, the Serb organs. And there is now, as affairs settle down, an activity of the refugees who want to leave. In fact, the majority, the vast majority of these refugees declared they wished to go to Tuzla... If they want to accept the authorities of the Republika Srpska, and become its citizens, then they don’t have to go” and “... And I am [...] that this war will only end with a complete Serb victory, although we wanted to separate from them, rather than defeat and incorporate them into our state. In the

²⁵⁷ Exhibit T.55d, statement of 25 November 2003, paragraph 209.

²⁵⁸ Exhibit T.55d, statement of 25 November 2003, paragraph 211.

²⁵⁹ Exhibit T.86, Butler report.

²⁶⁰ Exhibit T.86, Butler report, 6.2-6.3.

final analysis, Bosnia once belonged to the Serbs and it may happen that it will return, in its entirety, to Yugoslavia.”²⁶¹

136. Colonel Karremans, the Dutchbat commander, expressed great surprise at the speed with which the buses and trucks arrived in Potočari after the morning meeting to collect the refugees “How is it possible that one can get together such a large number of vehicles in such -- so short a time? And therefore, I concluded to myself that it was a preplanned operation operation.”²⁶²

(vii) 13 July 1995

137. The first mass-executions of Bosnian Muslim prisoners began on 13 July 1995. The ICTY found that “On 13 July 1995, the Dutch Bat troops witnessed definite signs that the Bosnian Serbs were executing some of the Bosnian Muslim men who had been separated.”²⁶³ That day, Colonel Radislav Janković of the VRS told Major Franken that the men had been transferred to a POW camp. He said that the ICRC was monitoring the POWs and that the VRS already had 6,000 POWs.²⁶⁴

138. Dutchbat attempted to organize escorts for the buses taking the refugees from the Srebrenica enclave, but were prevented by the Serbs from doing so. The Serbs also took about 33 UN vehicles from the Dutch. In Franken’s view the Serbs prevented the Dutch from escorting the refugees because “obviously they didn’t want us to witness whatever would happen”. They also took weapons, flak jackets and other gear from the UN including armoured personnel carriers.²⁶⁵ Franken estimated there were about 300 to 350 women and children inside the compound and 500 to 600 men outside the compound. Mladić demanded that the men aged between 16 and 60 be separated from the women and children. They were then separated and the

²⁶¹ Exhibit T.1, transcript. Video still, exhibit T.134

²⁶² Exhibit T.52, Thomas Karremans, *Blagojević*, 25 June 2004, T.11314-11315.

²⁶³ Accepted fact number 22 (Annex 3).

²⁶⁴ Exhibit T.52, Robert Franken, *Krstić*, 4 April 2000, T.2049-2050. Janković was on the VRS Main Staff Intelligence Administration – see exhibit T.86, Butler report, 12.13.

²⁶⁵ Exhibit T.52, Robert Franken, *Krstić*, 4 April 2000, T.2030-2034.

men were interrogated in a white house several hundred metres from the compound. Franken received “reports that the interrogation was done with physical violence”. The men were then taken from the house in buses and the Dutch were prevented from escorting them.²⁶⁶ The men had to leave their personal belongings outside the house before interrogation.²⁶⁷

139. Early in the morning of 13 July Leendert van Duijn watched a roll call of Serb soldiers near the Dutch compound of between 50 and 70 soldiers.²⁶⁸ The Serb soldiers, supervised by “Captain Mane”, started separating the men from about 8:30.²⁶⁹

140. Colonel Kingori informed Leendert van Duijn of overcrowded conditions in the white house. Van Duijn went into the house and found it was packed with men and the front lawn was packed with a “mixture of personal belongings, photographs... and passports from the men sitting inside the house”. He started assembling the passports and then asked “Captain Mane” why if they needed to check for war criminals they needed the passports to ascertain identities. “Mane” “basically he... grinned at me and he told me that the men didn’t need their passports anymore, which at that point made clear to me that there was a very dark future ahead for the men in the house and in fact for the men that had been singled out the day before”. Having images of camps in Bosnia from 1991 and 1992 van Duijn tried to get on a bus to accompany the men who were being put on buses. “Mane” told him he could not and he was prevented from boarding a bus at gunpoint. “Mane” physically pulled him away from the bus.²⁷⁰ He put about 20 to 25 until his pockets were full. He looked inside the white house.²⁷¹

²⁶⁶ Exhibit T.52, Robert Franken, *Krstić*, 4 April 2000, T.2037-2038.

²⁶⁷ Exhibit T.52, Robert Franken, *Krstić*, 4 April 2000, T.2039.

²⁶⁸ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2298.

²⁶⁹ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2300-2301.

²⁷⁰ Exhibit T.49, Leendert van Duijn, *Popović*, 27 September 2006, T.2302-2306.

²⁷¹ Exhibit T.49, Leendert van Duijn, *Popović*, 28 September 2006, T.2355.

141. Paul Groenewegen saw a few hundred men being separated from the women and children at Potočari and being taken to a house. As soon as the house was full, they were put on buses and driven off in the same direction as the buses containing the women and children “As soon as the house was full again, the same was repeated”. He also witnessed VRS soldiers placing Muslim man wearing civilian clothes against a wall and shooting him through the head from a distance of about three metres. The man had been offering some “resistance” to the soldiers.²⁷²
142. At 10.09 Colonel Beara of the VRS Main Staff made an intercepted telephone call saying 400 Muslims had come out at Konjević Polje and they needed to be taken to the football field at Nova Kasaba. Prisoners held there were transported to detention site near Bratunac and then to execution sites in the zone of the Zvornik Brigade”.²⁷³
143. The ICTY found that “The removal of the Bosnian Muslim civilian population from Potočari was completed on the evening of 13 July 1995 by 2000 hours.”²⁷⁴ “As the buses carrying the women, children and elderly headed north towards Bosnian Muslim-held territory, they were stopped along the way and again screened for men.”²⁷⁵ Ljubiša Borovčanin reported to Pale on 13 July 1995 “A part of the MUP forces was involved in the organization of the evacuation of civilians from Srebrenica to Kladanj”.²⁷⁶ A Reuters video still provides corroboration, showing a member of the special police from the Jahorina Training Centre near Bosnian Muslim women refugees and piles of discarded possessions near the bus depot in Potočari on 13 July.²⁷⁷
144. That day the RS Ministry of Defence ordered the mobilization of 50 buses in the Biljelina area and additionally ordered the Sarajevo and Zvornik Secretariats of

²⁷² Exhibit T.48, Paul Groenewegen, *Blagojević*, 19 July 2003, T.1031-1036.

²⁷³ Exhibit T.86, Butler report, 12.8.

²⁷⁴ Accepted fact number 17 (Annex 3).

²⁷⁵ Accepted fact number 18 (Annex 3).

²⁷⁶ Exhibit T.76

²⁷⁷ Exhibit T.134.

Defence to mobilize all “available means of transportation...for the transportation of personnel”.²⁷⁸ General Krstić prepared a regular combat report in which he stated “The Corps zone of responsibility is under full control. So far the transport of 15,000 Muslims from Potočari to Kladanj has been organized”.²⁷⁹

145. That afternoon, General Mladić visited captured Muslim prisoners held at a meadow in Sandići on the road between Konjević Polje and Bratunac. After he left, the prisoners were marched in a column to the nearby Kravica agricultural cooperative where many hundreds were murdered by members of the 2nd Šekovići Detachment commencing in the late afternoon. The full evidence is detailed below in section **XX. Visit of General Mladić to prisoners on Sandići meadow** and **XXV. Conveying prisoners to Kravica warehouse**.

146. Dragomir Vasić sent a dispatch note to the Office of the Minister of Interior referring to a battle between a PJP company in the Sandići and Konjević Polje area in which a police officer was killed and three others were wounded.²⁸⁰ Vasić sent another, referring the evacuation of the “remaining civilian population from Srebrenica to Kladanj (about 15,000) by bus. We urgently need 10 tonnes of petrol” and “Killing of about 8,000 Muslim soldiers whom we blocked in the woods near Konjević Polje. Fighting is going on. This job is being done solely by MUP units”.²⁸¹

147. At 19:45 Krstić sent a regular combat report to the VRS Main Staff reporting that the “Corps zone of responsibility is under full control. So far the transport of 15,000 Muslims from Potočari to Kladanj has been organized. In Konjević Polje and also in Nova Kasaba the reception of Muslim civilians and soldiers who surrender is being carried out in an organized fashion”.²⁸² The Drina Corps reported that the last civilians had been removed from Potočari by 20.00 on 13 July. Zoran Petrović,

²⁷⁸ Exhibit T.86, Butler report, 5.14.

²⁷⁹ Exhibit T.75.

²⁸⁰ Exhibit T.31.

²⁸¹ Exhibit T.32.

²⁸² Exhibit T.75.

accompanying Borovčanin, filmed one of the last groups of Muslim refugees preparing to leave Potočari, at about 15.00 on 13 July.²⁸³

148. Dragan Obrenović, the chief of staff of the Zvornik Brigade received a call from Lieutenant Drago Nikolić, the chief of security of the Zvornik Brigade at around 20.00 on 13 July 1995. Nikolić told Obrenović that Lieutenant-Colonel Popović had told him that he had to make preparations to take in a large number of prisoners from Srebrenica who were not going to be sent to Batković camp, which the ICRC and UNPROFOR knew about, but rather the order was to take them to Zvornik and to execute them. The order had come personally from Mladić and was to be personally implemented by Beara and Lieutenant-Colonel Popović. Nikolić asked Obrenović to place the military police at his disposal. As a result Obrenović ordered a military police platoon to return and he placed this unit at Nikolić's disposal.²⁸⁴

149. Colonel Janković reported to the Main Staff about the completion of the "evacuation of the entire Muslim population from the former enclave of Srebrenica".²⁸⁵ That evening General Mladić issued an order to the Drina Corps command referring to the closure of the Konjević Polje-Kravica-Bratunac road and instructing the command to set up traffic regulation points and to restrict traffic to military vehicles and MUP vehicles engaged in combat operations. No information was to be provided to the "... media regarding the course, situation, and results of combat operations in the area and the overall activities in this area, particularly on prisoners of war, evacuated civilians, escapees and similar".²⁸⁶

150. On the evening of 13 July Dragan Obrenović allowed Drago Nikolić to be released from his duties at the Zvornik Brigade forward command post (IKM). By doing this he was tacitly approving Nikolić's participation in the murder operation.²⁸⁷

²⁸³ Exhibit T.86, Butler report, 5.16-5.17, exhibit T.1.

²⁸⁴ Exhibit T.50, Dragan Obrenović, *Blagojević*, 2 October 2003, T.2468-2475.

²⁸⁵ Exhibit T.86, Butler report, 12.11.

²⁸⁶ Exhibit T.86, Butler report, 10.13, referring to order 3/4-1638.

²⁸⁷ Exhibit T.50, Dragan Obrenović, *Blagojević*, 2 October 2003, T. 2471-2472.

151. “A conversation, intercepted on 13 July 1995 at 2040 hours, reveals that General Krstić spoke to Colonel Borovčanin, the Deputy Commander of the MUP unit, asked how things were going and stated that he would be in touch.”²⁸⁸

First mass-executions of Bosnian Muslim prisoners

152. By the time of this conversation the executions were under way, the first major killing having occurred at the Kravica warehouse in the late afternoon.

153. The Butler report also describes how, on the afternoon of 13 July, a group of Muslim males was taken in trucks and buses from the direction of Konjević Polje and executed in the Cerska Valley by VRS soldiers. At least one piece of earth-moving equipment was part of the convoy. He describes these executions as the “first known major organized killing of Muslim male prisoners captured the column”.²⁸⁹ “”During the afternoon hours of 13 July 1995, at least one Drina Corps Staff Officer attempted to locate earth-moving equipment and have it sent to Konjević Polje. The time period of these efforts roughly equates with the executions in the Cerska Valley”.²⁹⁰

154. A group of prisoners captured along the Konjević Polje-Bratunac Road on 13 July was held in Bratunac, spending the night on trucks. In the morning of 14 July a convoy of five or six buses and trucks took them to the school in Petkovci (associated with the Petkovci Dam execution site).²⁹¹ They were then executed.

155. A head count at 18.00 on 13 July at the Bratunac “hangar” found 296 Bosnian Muslim prisoners. Six buses then transported them to Grabvi School in the early hours of 14 July. They were later executed. The Butler report concluded that this was associated with the Orahovac execution site.²⁹²

²⁸⁸ Accepted fact number 43 (Annex 3).

²⁸⁹ Exhibit T.86, Butler report, 6.26-6.27.

²⁹⁰ Exhibit T.86, Butler report, 10.10, at 13.55 Colonel Milanović made the request of the Drina Corps Duty Officer – see para. 6.27.

²⁹¹ Exhibit T.86, Butler report, 6.9-6.10.

²⁹² Exhibit T.86, Butler report, 6.2-6.3.

156. Separated men were also taken to the “old school” behind the Vuk Karadžić school in Bratunac and were held there from the afternoon of 13 July until the afternoon of 15 July. During that time some were taken out and murdered. The remaining prisoners were then transported to the school in Pilica from where they were taken to the Branjevo Military Farm where a mass execution occurred.²⁹³
157. The organized nature of these executions is shown by evidence from Momir Nikolić at the ICTY.
158. Nikolić met Beara on the night of 13 July in the main street of Bratunac.²⁹⁴ He said “Colonel Beara ordered me to go to the command of the Zvornik Brigade and see Drago Nikolić personally that same evening. He also ordered me to convey his orders to Drago Nikolić that the Muslim prisoners in Bratunac would be transferred to Zvornik the same evening and that he should secure accommodation for those prisoners. Further, he told me to tell him to get his people ready because a lot of Muslim prisoners would be coming along. He also told me to convey these orders to Drago Nikolić; namely, that the people who were to be transferred would be temporarily detained in buildings assigned by Dragan and that those people would be killed in the territory of Zvornik Municipality.” He then went to the Zvornik Brigade’s forward command post and conveyed Beara’s orders to Nikolić.²⁹⁵ He reported this to Beara later that night in Bratunac.²⁹⁶
159. On the night between 13 and 14 July Dragan Mirković, the civilian affairs unit commander told Momir Nikolić him that there had been killings of Muslims “that some people had been taken off the buses and that Muslims who had been staying in

²⁹³ Exhibit T.86, Butler report, 6.4-6.5.

²⁹⁴ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 1993, T.1744.

²⁹⁵ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 1993, T.1745.

²⁹⁶ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 1993, T.1750.

the hangar had been killed. I received information that between 80 and a hundred Muslims had been killed that night.”²⁹⁷

(viii.) 14 July 1995

160. The mass-executions of Bosnian Muslim prisoners continued on 14 July 1995. The Butler report details mass-executions and burials in the zone of the 1st Zvornik Infantry Brigade between 13 and 15 July 1995. At Orahovac and Grbavci School, for example, captured Muslim males were taken to the school in Grbavci on the afternoon of 14 July. They were then taken from the school, blindfolded put in a military truck and taken to a field where they were lined up and shot.²⁹⁸ “A large group of the prisoners who had been held overnight in Bratunac were bussed in a convoy of 30 vehicles to the Grbavci school in Orahovac early in the morning of 14 July 1995.”²⁹⁹ “It is estimated that there were 2,000 to 2,500 Bosnian Muslim men were detained in the school gym.”³⁰⁰ “Prisoners not killed on 13 July 1995 were subsequently bussed to execution sites further north of Bratunac, within the zone of responsibility of the Zvornik Brigade.”³⁰¹ The ICTY found that “The large-scale executions in the north took place between 14 and 17 July 1995.”³⁰²

161. Dragan Obrenović learned that member of the 4th Battalion of the Zvornik Brigade had joined the first group of soldiers guarding the school and had later volunteered to participate in the killings.³⁰³ The prisoners detained in schools in the Zvornik area were under his responsibility as the deputy commander of the Zvornik Brigade – for example, the prisoners at the Orahovac school were guarded by members of its military police.³⁰⁴ Obrenović put at Drago Nikolić’s disposal several military police officers after Nikolić informed him that the prisoners were to be

²⁹⁷ Exhibit T.44, Momir Nikolić, *Blagojević* 23 September 2003, T.1762.

²⁹⁸ Exhibit T.86, Butler report, 7.6-7.27.

²⁹⁹ Accepted fact number 28 (Annex 3).

³⁰⁰ Accepted fact number 29 (Annex 3).

³⁰¹ Accepted fact number 35

³⁰² Accepted fact number 36 (Annex 3).

³⁰³ Exhibit T.50, Dragan Obrenović, *Blagojević*, 2 October 2003, T.2537-2538.

³⁰⁴ Exhibit T.50, Dragan Obrenović, *Blagojević*, 10 October 2003, T.3023-3023.

killed; he testified “I wasn’t sure whether they would just be guarding the position or whether they would actually be shooting. I gave them to him, and he could use them any way he wanted to use them”.³⁰⁵ In his plea agreement at the ICTY, Obrenović stated “On hearing of this plan to kill the prisoners, I as acting Commander, took responsibility for the plan and supported the implementation of the plan”.³⁰⁶

162. A body removal and burial operation in relation to the victims of the Kravica commenced on the morning of Saturday 14 July in which municipal, police and military authorities cooperated and coordinated in removing the bodies from the Kravica warehouse and burying them in pre-dug graves in the Glogova area (see below section **XXIX. Removal and burial of bodies from Kravica warehouse**). On 14 July Miroslav Deronjić drove past the warehouse. He stated “I paid special attention to the agricultural cooperative because I knew that a massacre had taken place there: The building could be seen from the road. I could see that the whole building had been riddled with bullets and that its façade was damaged. Parts of the façade had fallen off and there were some big holes caused by some large-calibre ammunition”.³⁰⁷

163. Another group of prisoners captured at the same location was taken to the football field at Nova Kasaba and were transported to Bratunac where they spent the night before being taken on 14 July to a sports hall in Pilica (this massacre is associated with the mass executions at Branjevo). The Butler report described this as associated with the mass executions at Branjevo Farm.³⁰⁸

164. Deronjić met Karadžić in Pale on 14 July 1995 and told him of the conversation with Beara. He told Karadžić about the killings in the Vuk Karadžić School and “I told him about other liquidations on the Konjević Polje-Kasaba road. What we particularly focused on was the liquidation in the Kravica cooperative. I told him

³⁰⁵ Exhibit T.50, Dragan Obrenović, *Blagojević*, 10 October 2003, T.3027-3028.

³⁰⁶ Exhibit T.58, Statement of facts as set out by Dragan Obrenović, page 2.

³⁰⁷ Exhibit T.55d, statement of 25 November 2003, paragraph 212.

³⁰⁸ Exhibit T.86, Butler report, 6.9-6.10.

what I know and what I had learned from Ljubiša Borovčanin. I remembered that he said that our reprisal, that is, the reprisal by our men was provoked by what they had done. I remember that he asked me what had happened to the bodies” and responded that he did not know.³⁰⁹

165. According to the eye-witness testimony, the deportations of the women, children and elderly from Potočari finished on 14 July. Munira Subašić testified that she left Potočari on Saturday 14 July on the second last bus and was taken to Dubrava, near Tuzla.³¹⁰ All buses were stopped by Serb soldiers who boarded each one. Armed men stopped her bus – they boarded it and said “Get up Baliya women this is the last time you will see your sons and husbands”. They also asked for gold and money and tried to take attractive women off the bus.³¹¹

166. The deportation of the civilian population of the Srebrenica enclave began to draw international attention and, “On 14 July 1995, the UN Security Council expressed concern about the forced relocation of civilians from the Srebrenica “safe area” by the Bosnian Serbs, asserting it was a clear violation of their human rights.”³¹²

167. The men, however, continued to be held in holding areas pending execution. The ICTY found “Most of the Bosnian Muslim men separated at Potočari and captured from the woods were held in Bratunac for one to three days before being transferred to other detention and execution sites.”³¹³

168. Momir Nikolić estimated that on the night of 14 July there were between four and four and a half thousand Muslim prisoners being held in Bratunac in facilities including, the school, the hangar, the secondary school centre, the gym. And, that

³⁰⁹ Exhibit T55d, statement of 25 November 2003, paragraph 214.

³¹⁰ Munira Subašić, 24 April 2009.

³¹¹ Munira Subašić, 24 April 2009.

³¹² Accepted fact number 41 (Annex 3).

³¹³ Accepted fact number 27 (Annex 3).

evening buses and trucks containing more Muslim prisoners arrived in Bratunac but they had insufficient personnel to properly secure all the prisoners.³¹⁴

169. Dragomir Vasić testified that he learned from Borovčanin on 14 July about an incident at Kravica involving prisoners grabbing a rifle and that some had been killed. On 14 July 1995 Tomislav Kovać came to the police station at Bratunac, and Vasić and Kovać then travelled together to Srebrenica police station where Kovać ordered the protection of civilian property from plundering.³¹⁵ Dispatch note 508 to Minister of the Interior dated 14 July, under the hand of Dragomir Vasić, reported on the activities of PJP units in the Konjević Polje and Sandići areas, including that a company from Jahorina Camp was setting up ambushes near Konjević Polje and Sandići.³¹⁶

170. After midnight on 14 July Momir Nikolić conveyed the order to the commander of the Bratunac Brigade, Colonel Vidoje Blagojević, in the operations room in Bratunac, telling him that the Muslims prisoners in Bratunac would be transported to Zvornik on 14 July and killed.³¹⁷ This Court notes that the ICTY Trial Chamber in *Blagojević and Jokić* found, after hearing the testimony of Nikolić, that he “cannot be considered a wholly credible or reliable witness on matters bearing directly on the knowledge” of Blagojević without corroboration. No corroborating evidence was brought and the Trial Chamber was not prepared to accept Nikolić’s evidence on this point.³¹⁸

171. The Butler report describes executions sites at Brana (the dam) and Petkovci School. On 13 and 14 July prisoners were taken by bus and truck to the Petkovci school where they were held until the early hours of the morning of 15 July when they were taken by truck to an execution site and shot in groups of five to ten.³¹⁹

³¹⁴ Exhibit T.44, Momir Nikolić, *Blagojević*, 19 September 2003, T.1749-1750.

³¹⁵ Dragomir Vasić, 1 April 2009.

³¹⁶ Exhibit T.33, Vasić said that he did not compose it himself, Dragomir Vasić, 1 April 2009.

³¹⁷ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 2003, T.1757-1758.

³¹⁸ *Prosecutor v Blagojević and Jokić*, IT-02-60-T, Judgement, 17 January 2005, paras. 472, 740.

³¹⁹ Exhibit T.86, Butler report, 7.28-7.32.

172. Momir Nikolić heard about the incident at the Kravica warehouse on 14 July while in Bratunac, saying “already on the 14th, this was common knowledge. That is, almost the entire town, all the soldiers, had heard about it. People I saw and came across that day had heard that this incident had occurred in town. One of the people I heard about it from was the chief of the public security station, Miodrag Jospivoić”.³²⁰

173. Nikolić learned on 14 July 1995,³²¹ “on the previous day, that is, the 13th of July 1995, an incident had occurred in a building known as OK Kravica in which among the Muslim prisoners, an automatic rifle was seized from a member of the police who was guarding them and who had captured them and was holding them there. And then the person who had grabbed the rifle shot at the policeman, and a police officer was killed. One or two others were wounded. And that after that, a group of policemen who were there used automatic weapons and other weapons they had on them to execute the prisoners in that facility. I also learned that in addition to the sidearms used to shoot at the captured Muslims in that facility, they brought boxes of hand grenades. They shut the doors. And then they killed the people inside using those grenades.” He heard that “most of those who had taken part” were members of the 2nd Šekovići Detachment who had been at Sandići. The earliest information was that hundreds of Muslims had been killed and that the bodies had been taken away and MUP members and buried in the Glogovi village area.³²²

(ix) 15 July 1995

174. The mass-executions continued on 15 July 1995. The Butler report summarized that “Sometime after midnight the Bosnian Muslim men held at the Petkovic ‘new’ school start to be placed on trucks, and moved to the damn, where they are subsequently executed”. Zvornik Brigade logs revealed ten trips between the school

³²⁰ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 2003, T.1734.

³²¹ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 2003, T.1736.

³²² Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 2003, T.1737.

and the damn and later in the morning, an ultra light truck and an excavator were working at the damn.³²³

175. Around 11:00 on 15 July Dragan Obrenović returned to the Zvornik Brigade headquarters. Major Dragan Jokić, he chief of the engineers told him that “he had a lot of problems with securing the prisoners of war and with burying them.”³²⁴ In his plea agreement, Obrenović stated, “He said that Beara, Popović and Drago Nikolić were taking people wherever they wanted to take them. He said Popović had instructed him not to make a record of the activities involving the killing operation or speak on the radio about it. I was aware that the killing operation was occurring”.³²⁵

176. Obrenović testified that on the morning of 15 July 1995 at the brigade headquarters, in a meeting with Vasić and Borovčanin and Miloš Stupar (during which he had telephoned General Krstić and Vasić had telephoned the Ministry of Police in Pale), Stupar had informed him on the morning of 15 July of an incident at Kravica warehouse in which a Muslim prisoner had killed a police officer and that his men had opened fire on the remaining prisoners and killed them. Obrenović stated, “Based on our conversation I supposed that everyone present knew of the plan to kill the prisoners who had been brought to Zvornik. I also reasoned that, if I had known of the plan whilst in the hills, these officers who were dealing with the prisoners in Bratunac would have known about the plan”.³²⁶ Stupar denied this, saying the Obrenović was lying.³²⁷ The Court need not make a finding on who is truthful but notes that Stupar testified at the ICTY that he had not heard about the massacre at Kravica until some time later, perhaps even in 1996, despite the fact the he was there present when members of this detachment were firing automatic weapons into the warehouse and that he took the injured Rade Čuturić to hospital.³²⁸ He also did not

³²³ Exhibit T.86, Butler report, 10.21.

³²⁴ Exhibit T.50, Dragan Obrenović, *Blagojević*, 2 October 2003, T.2519.2521.

³²⁵ Exhibit T.58, Statement of facts as set out by Dragan Obrenović, page 3.

³²⁶ Exhibit T.58, Statement of facts as set out by Dragan Obrenović, page 3-4.

³²⁷ Exhibit T.45, Miloš Stupar, *Blagojević*, 29 April 2004, T.8422.

³²⁸ Exhibit T.45, Miloš Stupar, *Blagojević*, 29 April 2004, T.8422, T.8435-8436, T.8437-8438.

see the bodies outside the warehouse shown in the Petrović video.³²⁹ The Court does not find his evidence capable of belief on these points.

177. Immediately after this meeting, Obrenović briefed his commander Vinko Pandurević “about the Muslim prisoners and the murder operation, in which Beara and Popović were active. I informed Pandurević of the problems reported to me by Jokić regarding the burial of all the executed prisoners and the guarding of men who had not yet been executed. Pandurević asked me why the civilian protection people were not doing the burial as ordered. I just shrugged, as I did not know that the civilian protection was supposed to be involved. Based on this comment by Pandurević and what Drago Nikolić had told me on 13th July, I realized that Pandurević had knowledge of the murder operation”.³³⁰

178. At about 14.00 on 15 July Dragan Obrenović went to the forward command post of the 4th Battalion and spoke to its commander who told him that he had found “his men guarding prisoners in the gymnasium of the school at Orahovac and that the execution of prisoners had already commenced in a nearby location”.³³¹

(x) 16 July 1995

179. Mass executions occurred at the Branjevo Military Farm in the afternoon of 16 July 1995 when captured Muslims were taken to the farm and 15 to 20 bus loads of men were murdered.³³² Hundreds of prisoners were also assembled at the Pilica Cultural Centre and executed by soldiers from Bratunac.³³³ “Buses loaded with Bosnian Muslim men start arriving from Pilica at approximately 10.00 hours. The men are subsequently executed during the course of the day, first by members of the 10th Sabotage Detachment, and later by ‘men in military uniforms from

³²⁹ Exhibit T.45, Miloš Stupar, *Blagojević*, 29 April 2004, T.8442.

³³⁰ Exhibit T.58, Statement of facts as set out by Dragan Obrenović, page 5.

³³¹ Exhibit T.58, Statement of facts as set out by Dragan Obrenović, page 5.

³³² Exhibit T.86, Butler report, 7.36-7.42.

³³³ Exhibit T.86, Butler report, 7.47-7.48.

Bratunac””.³³⁴ By the evening of 16 July, “earthmoving equipment from the Zvornik Brigade was enroute from Orahovac to the Branjevo Military Farm to bury the dead””.³³⁵

180. A large-scale mass-execution and burial occurred at Kozluk between 15 and 17 July of which there were no known survivors.³³⁶ A bulldozer operated for 1.5 hours at Kozluk on 18 July 1995.³³⁷ The Butler report concludes that these executions involved “a coordinated effort involving elements and personnel of the VRS Main Staff, the Drina Corps, the Zvornik Brigade and the Bratunac Brigade all coordinate in various components of the mass executions at the Branjevo Military Farm and the Pilica Dom. The burial process continues on 17 and 18 July 1995””.³³⁸

(xi) 17 to 28 July 1995

181. The search for any remaining Bosnian Muslims continued on 17 July 1995. The Butler report concluded that “By the evening of 17 July 1995, all large-scale execution activity was completed. Most of the burial activity related to the execution was also completed””.³³⁹

182. Dragomir Vasić signed a dispatch note 206 sent to the Minister of the Interior in Pale on 17 July 1995 reporting that MUP units were searching the terrain and referring to 200 abandoning Turks being allowed to pass.³⁴⁰ On 19 July 1995 Dragomir Vasić signed dispatch note 534 to the Minister of the Interior referring to searches for Muslim soldiers.³⁴¹

³³⁴ Exhibit T.86, Butler report, 10.39.

³³⁵ Exhibit T.86, Butler report, 10.47.

³³⁶ Exhibit T.86, Butler report, 7.53-7.54.

³³⁷ Exhibit T.86, Butler report, 7.58.

³³⁸ Exhibit T.86, Butler report, 10.70.

³³⁹ Exhibit T.86, Butler report, 10.53.

³⁴⁰ Exhibit T.35, Dragomir Vasić, 1 April 2009.

³⁴¹ Exhibit T.36.

183. Dragomir Vasić reported to the Minister of the Interior in Pale on 22 July 1995 reporting on the co-ordinated action of his PJP units with the VRS in searching terrain near Mrmići.³⁴² He also signed a dispatch note on 28 July 1995 reporting an incident on 12 July 1995 at a checkpoint at which Mladić had been stopped and in which Mladić had ordered a soldier to slap the deputy commander of the Vlasenica Police Station, and, on 19 July at the same checkpoint when Mladić had personally slapped a police officer.³⁴³

184. Ljubiša Borovčanin drafted a comprehensive report about the role of the police in the Srebrenica 95 operation, stating that the Bratunac Brigade took the UN checkpoint on 12 July without incident. Between 25,000 and 28,000 civilians gathered in Potočari and after 14.00 “they began to be transported to Kladanj in an organized way” supervised by the VRS and with the MUP forces having a “supporting role, such as regulating traffic and maintaining public order”. It reported that the 2nd Special Police Detachment was led by Miloš Stupar and Rado Čturić, and the Special Police Unit forces were commanded by Danilo Zoljić, while the logistics officer of the 2nd Special Police Department had responsibility for logistics.³⁴⁴ Dragomir Vasić testified that he first saw this document when Borovčanin gave it to him when they were called to the ICTY in Belgrade and that Borovčanin tore off the part containing his signature and Vasić put his own signature on it.³⁴⁵ (It appears to be undated, with a latest event described of 20 July 1995). Dispatch note 205 to the Minister of the Interior dated 15 July 1995 under the hand of Dragomir Vasić, reported on activities of PJP units in the area around Kravica and Srebrenica.³⁴⁶ Dragomir Vasić denied writing it.³⁴⁷

185. The Butler report concluded, and the Court agrees with this assessment, that “it is evident that significant portions of the Zvornik Brigade participated in the

³⁴² Exhibit T.38.

³⁴³ Exhibit T.37.

³⁴⁴ Exhibit T.39

³⁴⁵ Dragomir Vasić, 1 April 2009.

³⁴⁶ Exhibit T.34.

³⁴⁷ Dragomir Vasić, 1 April 2009.

detention, execution and mass burials of Bosnian Muslims from 14 July 1995 through 18 July 1995”.³⁴⁸

Findings

186. The Court has concluded that the totality of these events amounted to the crime of genocide. The findings in relation to this are below in section **XXXIII. Genocide**.

VIII. SUBORDINATION OF THE MUP TO THE VRS IN SREBRENICA OPERATION

187. The Butler report also describes the subordination of the RS MUP to the Drina Corps in July 1995. The Court notes that this portion on of his report was not challenged in cross-examination by the Defence or the two accused. Special Departments were organized as combat formations and their primary role was internal security operations, directly under the control of the RS Minister of the Interior.

188. ICTY judgements have found: “... there was close co-operation and co-ordination between the MUP and Drina Corps units. On 11 July 1995, before the VRS found out about the formation and movement of the Bosnian Muslim column, the Main Staff ordered the Drina Corps to take pre-emptive steps, “by arrangement and co-operation with the MUP” to block the passage of Bosnian Muslims to and from the enclave.”³⁴⁹

189. The civilian police of the Republika Srpska was organized under the Ministry of Interior. In July 1995, Tomislav Kovać was the acting Minister of Interior. The civilian police was organized in two sections: the regular police force and the special

³⁴⁸ Exhibit T.86, Butler report, 7.59.

³⁴⁹ Accepted fact number 44 (Annex 3).

police brigade.”³⁵⁰ The ICTY found that “In accordance with the law in effect in the RS, MUP units could be re-subordinated to the VRS for various purposes, including to reinforce the VRS during combat activities.”³⁵¹ More specifically, The RS Law on the Implementation of the Law on Internal Affairs During an Imminent Threat of War or a State of War, provided:³⁵² “Police units assigned to combat operations by an order of the commander-in-chief of the Armed Forces shall be resubordinated to the commander of the unit in whose zone of responsibility they are performing combat tasks”. Under Article 7, the President of the RS defined the organisation of the police force and issued orders for their deployment in times of war. The police could be resubordinated to military command upon the orders of the Minister.³⁵³ Dragan Obrenović testified that the resubordination was done on a case by case basis.³⁵⁴

190. The MUP special police units were headquartered in Bijeljina under the command of General Goran Sarić and his deputy, Lieutenant-Colonel Ljubiša Borovčanin.³⁵⁵ ICTY judgements established: “The Special Police Brigade was a combat unit of the MUP. Colonel Goran Sarić was the commander and Colonel Ljubiša Borovčanin was the deputy commander.”³⁵⁶ “The Special Police Brigade consisted of approximately eight detachments, including the 2nd Detachment from Šekovići commanded by Miloš Stupar, and a Training Centre at Jahorina, commanded by Duško Jević.”³⁵⁷ “Members of the detachments were armed with automatic and semi-automatic weapons and were trained differently than the regular police force.”³⁵⁸ “The detachments also had heavy weapons and vehicles, such as tanks, armored personnel carriers (“APCs”) and Pragas.”³⁵⁹

³⁵⁰ Accepted fact number 45 (Annex 3).

³⁵¹ Accepted fact number 56 (Annex 3).

³⁵² Of 29 November 1994, Sect.IV, Article 14.

³⁵³ Danilo Zoljić, 20 March 2009.

³⁵⁴ Exhibit T.50, Dragan Obrenović, *Blagojević*, 7 October 2003, T.2764-2765.

³⁵⁵ Exhibit T.62 is a diagram setting out the structure of the MUP special police brigades in July 1995.

³⁵⁶ Accepted fact number 46 (Annex 3).

³⁵⁷ Accepted fact number 47 (Annex 3). Exhibit T.63 is a diagram of the RS Police Structure in the Drina Corps zone from 12 July 1995.

³⁵⁸ Accepted fact number 48 (Annex 3).

³⁵⁹ Accepted fact number 49 (Annex 3).

191. The PJP units were within the Zvornik Regional Centre for Public Security (CJB), commanded by Dragomir Vasić and his deputy Mane Đurić. The Butler report describes six nominally police companies organized to supplement military forces or to conduct security sweeps in the rear areas of the Drina Corps. Their organization was under the command of Danilo Zoljić. Richard Butler noted that in practice the units were resubordinated on deployment on mission.³⁶⁰ No evidence in the main trial contradicted this and the Court finds that this occurred in fact and according to law.

192. Danilo Zoljić testified, and the Court admits his evidence, that the police were not involved in the military operation to take Srebrenica, between 10 and 17 July 1995. He stated that the special police units became involved as of 12 July.³⁶¹ This is consistent with the other evidence and is supported by various orders issued to the MUP units and tendered into evidence.

193. On 10 July 1995, the Republika Srpska's Acting Minister of the Interior, Tomislav Kovać issued an order to send the 1st company of the PJP, the Zvornik Public Security Centre, a company from the Jahorina Training Centre, and the 2nd Šekovići Detachment to Bratunac.³⁶² By this order the commander of the 2nd Šekovići Detachment was supposed to be subordinated to Ljubiša Borovčanin, the deputy commander of the RS Special Police Brigade.³⁶³

194. Dragomir Vasić the Chief of the RS MUP's Public Security Centre in Zvornik testified that in July 1995 four PJP units were operating within his sector, of which one was involved in combat activities Trnovo.³⁶⁴ His sent dispatch notes on 12 July and 14 July referring to the presence of the following MUP units "engaged in blocking and crushing enemy forces", the 2nd Šekovići Detachment, 1st PJP Company

³⁶⁰ Exhibit T.28 also referenced in exhibit T.86, Butler report, 2.14-2.19.

³⁶¹ Danilo Zoljić, 20 March 2009.

³⁶² Danilo Zoljić, 20 March 2009.

³⁶³ Danilo Zoljić, 20 March 2009.

³⁶⁴ Dragomir Vasić, 1 April 2009.

of Zvornik, the 2nd PJP Company of Zvornik, the 5th Company of the Zvornik CJB, 6th Company of Zvornik CJB PJP, a company of the Bijeljina CJB PJP, a company of the Jahorina Training Camp, a company of the Doboj CJB PJP,³⁶⁵ and, in a dispatch note of 13 July, a PJP company from Srbinje.³⁶⁶

195. The closing submissions of Radomir Vuković submitted that the defence was denied a fair trial because the Court refused to allow it to call an expert witness in relation to the legal issue of subordination.³⁶⁷ The Court, however, rejected the very late application to add the witness to the Vuković witness list. His evidence would have added nothing to the Court's understanding of the prevailing law in the Republika Srpska in 1995. The law and practice in relation to subordinating the MUP to the VRS in defined circumstances was so clear that additional expert evidence was unnecessary.

Findings

196. The Court finds that the evidence of the subordination of the MUP forces to the VRS in the Srebrenica post-take-over operation is overwhelming. Armed ABiH units were posing a military threat to the VRS and a genuine belief existed that Bratunac was threatened. A major military clean up operation was underway involving VRS and MUP units. In these circumstances the MUP units could not operate independently. In both a military and a legal sense the MUP had to be subordinated to the VRS.

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

³⁶⁵ Exhibits T.30 and T.33.

³⁶⁶ Exhibit T.32.

³⁶⁷ Radomir Vuković, closing submissions of Radivoje Lazarević, 9 March 2010, referring to witness Mile Matejević.

197. The Court turns to the issue of the deployment of the 2nd Šekovići Detachment in Srebrenica in July 1995 and its role in the crimes committed in the Srebrenica area. After leaving Srednje on 11 July 1995 the 2nd Šekovići Detachment was deployed to assist the VRS in its engagement in the Srebrenica enclave. Dragomir Stupar was the assistant commander of logistics in the 2nd Šekovići Detachment in July 1995. Several days before the mission to Srednje, the commander of the MUP Special Police Units, Ljubiša Borovčanin, ordered Stupar to establish a logistics base for the detachment in Bratunac. It was set up in a make-shift warehouse and contained fuel, food and other provisions.³⁶⁸

198. Witness D5 described that the day after leaving Srednje, the unit went to a school near Bratunac where they spent the night.³⁶⁹ Witness D5 thought that Zoran Tomić was at the school, saying that it was possible that the two shared a room that night.³⁷⁰ It was dark when they arrived.³⁷¹ Miladin Stevanović described staying one night near Vlasenica in a school (arriving around 2.30 am on 11/12 July) and going to Bratunac the next morning.³⁷² According to Milenko Pepić, a member of the 2nd platoon, who was deployed to Srednje, on around 11 July the unit was sent back to Bratunac and they stayed the night in a school. (Milenko Pepić was armed with an automatic rifle and carried some hand grenades.³⁷³) Slobodan Stjepanović was deployed to Srednje, joining the unit after it had arrived there. It left towards Bratunac and spent the night in a school at Bjelovac. They did not know what their task was to be.³⁷⁴

199. Aleksander Radovanović said that the unit stopped in Vlasenica and was told to head to Bratunac but on the way there were sent instead to Srebrenica. Most combat members of the 2nd Šekovići Detachment were on the bus.³⁷⁵ They arrived in

³⁶⁸ Dragomir Stupar, 27 February 2009.

³⁶⁹ Witness D5, 11 February 2009

³⁷⁰ Witness D5, 13 March 2009 .

³⁷¹ Witness D5, 13 March 2009 .

³⁷² Miladin Stevanović, 2 April 2009.

³⁷³ Milenko Pepić, 4 February 2009.

³⁷⁴ Slobodan Stjepanović, 5 February 2009.

³⁷⁵ Aleksandar Radovanović, 18 November 2009.

Bratunac in the early hours of the morning and “Oficier” (Rade Čuturić) said they were going to Skelani. They stopped at a school in Bjelovac and stayed overnight.

200. Slaviša Žugić, a member of the 1st platoon of 2nd Šekovići Detachment, in July 1995, was also deployed to Srednje in June 1995. The unit completed its task in Srednje and Rade Čuturić ordered them back to Bratunac. They arrived there at night and were told that they were to secure the road to Konjević Polje for the passage of passing vehicles. They were told that a convoy of buses containing women and children from Srebrenica were passing by. They spent the night at a school near Bratunac. The orders they received came from the platoon commander, from the detachment commander. They were also told that a large armed column was coming from the enclave and they had to stay alert.³⁷⁶

201. Marko Aleksić went to the field mission only on its last few days after Milenko Kovačević was wounded and he was ordered to take over the command role.³⁷⁷

202. Pedrag Čelić was also on the Srednje field mission and testified that the unit left for Bratunac on the night of 11 July, arriving in the early hours of 12 July, and spending the night in a school near Bratunac.³⁷⁸

203. Witness D5 testified that the members of the 2nd Šekovići Detachment left Srednje in three vehicles, two 110 trucks and a *Dubrava* bus.³⁷⁹ Zoro Lukić said they travelled by bus back to Bratunac arriving at 3 or 4 in the morning of 12 July to sleep. The next morning Rade Čuturić lined them up and told the members that they were going to Potočari in relation to the Srebrenica military action.³⁸⁰ Mirko Aščerić testified that the unit travelled to Vlasenica and were told to go to near Bratunac, where they spent the night in a school. When they arrived in Bratunac he did not

³⁷⁶ Slaviša Žugić, 13 January 2009.

³⁷⁷ Marko Aleksić, 4 February 2009.

³⁷⁸ Pedrag Čelić, 5 February 2009.

³⁷⁹ Witness D5, 11 March 2009.

³⁸⁰ Zoro Lukić, 13 March 2009.

know anything about Srebrenica.³⁸¹ The next day they were deployed to the road at Sandići. Rade Čuturić issued this order to the platoon commanders who in turn issued the orders to the platoon members. They were told that their task was to secure the road as a column was on the move from Srebrenica and to prevent the column from crossing the road. They also needed to allow the passage of traffic including buses and trucks containing Muslims coming from the Srebrenica enclave, and to prevent anyone from stopping these buses and trucks.³⁸²

204. Witness D5 testified that Trifunović told the detachment members that they were to pack and to head towards Bratunac.³⁸³ Trifunović told him that the unit had been ordered to go to Srebrenica and that they would stay in Bratunac and that Muslims would be surrendering and that large-scale killing would occur. He says that “Miladin Stevanović opposed it, and I protested”.³⁸⁴

205. Witness D5 stated that that night they asked Milenko Tifunović (Čop) about what they were to do the next day and he said “we would go through Potočari towards Budak, I think. To secure that area and escort anyone who came along... Bosniaks... able-bodied... to Bratunac” but did not say what would “happen to them once they reach Bratunac”.³⁸⁵

206. The closing submissions of Zoran Tomić argue that his unit arrived in the Bratunac area between 2.00 and 3.00 on the morning of 12 July.³⁸⁶

Findings

207. The Court is satisfied beyond reasonable doubt that the 2nd Šekovići Detachment was deployed for combat operations in the Srednje area in June 1995 and, on 11 July

³⁸¹ Mirko Aščerić, 13 January 2009.

³⁸² Mirko Aščerić, 13 January 2009.

³⁸³ Witness D5, 13 March 2009.

³⁸⁴ Witness D5, 12 February 2009.

³⁸⁵ Witness D5, exhibit T.12b statement 22 May 2008.

³⁸⁶ Zoran Tomić, closing submissions of Petko Pavlović, page 19.

was ordered deployed to the Srebrenica area to assist the VRS in its operations after taking over the enclave. The evidence establishes the unit travelled to Bratunac on the night of 11 July, was billeted in a school at Bjelovac, and, the next morning was deployed to secure the road between Bratunac and Konjević Polje.

X. SECOND ŠEKOVIĆI DETACHMENT AND MUP SEARCH OF BUDAK AREA ABOVE POTOČARI

208. The indictment charges the two accused with participating in a search for civilians as part of a joint criminal enterprise to commit genocide. On 12 July 1995 members of the PJP units – the 1st PJP Company from Zvornik and the 2nd Šekovići Detachment – searched Muslim populated villages in the area above the UN Dutchbat Base at Potočari. The purpose of the search was to find any remaining civilians and to capture any armed Bosnian Muslims. The Court heard evidence establishing beyond reasonable doubt that Zoran Tomić took part. It heard no evidence that Radomir Vuković did.

Findings

209. The evidence established beyond reasonable doubt that members of the MUP and specifically the 2nd Šekovići Detachment participated on 12 July 1995 in the search. The MUP was deployed in this search after the VRS had taken Srebrenica and while thousands of refugees were streaming towards the UN compound and the VRS was separating the men from the women and children at Potočari. Numerous buses were on the road between Srebrenica and Bratunac taking women and children out of the enclave. The search occurred in full view of what was then occurring in Potočari (as described in section **VII. The VRS takeover of Srebrenica**).

210. The evidence clearly established that the 2nd Šekovići Detachment participated in the search in the Budak area. Members of the three platoons participated in the search.

211. Within the context of the overwhelming evidence of the plan to forcibly transfer the women, children and elderly and to murder the men, the Court has to assess the role of the 2nd Šekovići Detachment and the two accused.
212. The legal issue for determination is whether those who participated in the search did so with the intention of separating the women and children and forcibly deporting them from Srebrenica, while knowing that the men were to be separated and murdered. The Court is not satisfied on the evidence it heard, *at that particular point* that all of those those participating in the search from the 2nd Šekovići Detachment were aware of the plan to execute the men.
213. Most specifically, the Court is not satisfied beyond reasonable doubt that the two accused – at that point – were aware of the plan to execute the men. The Court notes though, that at that point in time, it had to have been obvious to anyone within view of the refugees at Potočari that a mass movement of the civilian population out of the Srebrenica was occurring.
214. The closing submissions of Zoran Tomić argue that “the members of the 2nd Šekovići Detachment were on a legitimate military assignment that day. No one searched houses or expelled Muslims from them”.³⁸⁷ The Court agrees with the third part of this submission. The evidence established, however, that houses were searched. The Court does not disagree that the assignment had a legitimate military component to it.

Evidence

215. On the morning of 12 July 1995 members of the 2nd Šekovići Detachment were deployed to search the terrain above the UN Dutchbat compound in the immediate vicinity of Potočari in the area of Budak which contained mainly Muslim inhabitants.

³⁸⁷ Zoran Tomić, closing submissions of Petko Pavlović.

The commanders of the police units met at a yellow bridge (*žuti most*) near the UN Base at Potočari to coordinate their activities.

216. Zvornik Special Police commander Danilo Zoljić went to the yellow bridge and met the commanders of the police units there. He met Ljubiša Borovčanin, whom he described as the commander of the police units in the field in Srebrenica, Rade Čuturić and his deputy commander. Zoljić spoke to each company to find out why they were there and what their assignments were. He himself had no command responsibilities. Zoljić heard Borovčanin directly ordering Rade Čuturić and the commander of the 1st PJP Company to cross the yellow bridge and search the settlements along the road for armed men as civilians were coming from Srebrenica. Borovčanin tasked the 1st company to search the terrain. The purpose of the search was to see whether armed men were in the area and whether civilians had been left behind.³⁸⁸

217. Zoljić remained in the vicinity of the yellow bridge until both units went up to the elevation. He could see the 2nd Detachment from that position and the members of both detachments could see each other. Members of the PJP units wore RS emblems and special police unit emblems, arm patches; they did not wear blue uniforms. Zoljić saw two police entering houses for a minute or so and then leaving. He remained in the area for as long as it took for the two units to search the area above the road. He then left and returned to Zvornik and informed Vašić that the task had been accomplished.³⁸⁹

218. Various members of the 2nd Šekovići Detachment testified of their involvement in the deployment. Marko Aleksić, a member of the 1st platoon, testified that his unit travelled to Bratunac and awaited instructions, where Rade Čuturić gave them a task to head towards Srebrenica and form combat lines.³⁹⁰ They were in a combat

³⁸⁸ Danilo Zoljić, 20 March 2009.

³⁸⁹ Danilo Zoljić, 20 March 2009.

³⁹⁰ Marko Aleksić, 4 February 2009.

formation and went into houses to inspect them looking for people.³⁹¹ Witness D5, a member of the Skelani platoon, said that on 12 July they were told to go to an area near Potočari and to search villages populated by Muslims and to escort to Bratunac and Potočari anyone that they found there. Milenko Trifunović told them that any civilians found would be escorted to Tuzla and Kladanj.³⁹² He said “In Potočari we did not have any orders about civilians”.³⁹³ Those villages were populated by Muslims.³⁹⁴ They got out of their vehicles at a yellow bridge where Witness D5 thinks he saw Zoran Tomić.³⁹⁵

219. Miladin Stevanović said that when they got to Bratunac, Rade Čturić “Oficier” ordered the unit to the yellow bridge near Potočari. When they got there Oficier told them to search the terrain near Budak. Their instructions were that any armed groups were to surrender – if this happened they would have handed them over to the army. They found nothing and returned to the yellow bridge.³⁹⁶

220. According to Slaviša Žugić, a member of the 1st platoon, the morning after their return from Srednje they stopped on route to search the terrain to see whether anyone was still alive there. They were ordered to find Muslims, to apprehend them and to take them to the UN base in Potočari. Zoro Lukić, a member of the 2nd Detachment, stopped at the yellow bridge and Čturić told them, to go uphill for a kilometre or so and search for any enemy soldiers heading towards Bratunac. They then searched the area. He did not remember whether anyone went into houses. The unit was not long in Potočari before Čturić ordered them to deploy to the Konjević Polje road at Sandići.³⁹⁷

221. Pedrag Čelić testified that on the morning of 12 July 1995 his unit was sent to Potočari and was told to go and form a combat front-line. In his initial statement to

³⁹¹ Marko Aleksić, 4 February 2009.

³⁹² Witness D5, 11 February 2009.

³⁹³ Witness D5, 11 March 2009.

³⁹⁴ Witness D5, 11 March 2009.

³⁹⁵ Witness D5, 13 March 2009.

³⁹⁶ Miladin Stevanović, 2 April 2009.

³⁹⁷ Zoro Lukić, 3 March 2009.

the Prosecutor, however, says that they went up a hillside to search houses but found no-one in them.³⁹⁸ His initial statement to the Prosecutor is more consistent with the testimony of the other witnesses who participated in the search than his oral testimony and Court prefers the evidence in his statement to his testimony on this point.

222. Witness D5 provided detailed evidence about the search and its purpose. He described performing the search in a standard manner, that is, entering the house to ensure that no-one was left inside,³⁹⁹ “in an organized manner”.⁴⁰⁰ He stated that during the search he was armed with an automatic rifle with folding butt, an ammunition bag with two clips on his belt and four in his bag and was wearing two-piece green camouflage overalls. He had an emblem fixed on his epaulets. The civilian police were wearing mainly blue.⁴⁰¹ When they reached Budak they formed a skirmish line, moving side by side, about five to ten metres apart.⁴⁰² They could see each other in the skirmish line.⁴⁰³ From Budak Witness D5 could see the collection centre in Potočari and could see women, children and elderly gathered there but no men.⁴⁰⁴ Witness D5 was aware the villages he was supposed to search were populated by Muslims.⁴⁰⁵ The Budak settlement contained scattered houses.⁴⁰⁶

223. Witness D5 testified that the search was performed in “the usual” way and they found no persons or weapons. They made sure that no-one was inside any of the houses.⁴⁰⁷ The police went into houses to search for occupants, forcing their way in by smashing in doors. The search was organized and was not a spontaneous act. He described going into some houses “in a slow-motion manner; as we would put it by sneaking under the window in order to get to the door” not knowing who may be

³⁹⁸ Pedrag Čelić, 5 February 2009, exhibit T.10, statement 7 October 2005.

³⁹⁹ Witness D5, 11 February 2009.

⁴⁰⁰ Witness D5, 13 March 2009.

⁴⁰¹ Witness D5, exhibit T12.a statement 18 April 2008.

⁴⁰² Witness D5, 20 March 2009.

⁴⁰³ Witness D5, 20 March 2009.

⁴⁰⁴ Witness D5, 11 February 2009.

⁴⁰⁵ Witness D5, 11 February 2009.

⁴⁰⁶ Witness D5, 20 March 2009.

⁴⁰⁷ Witness D5, 11 February 2009.

waiting inside and the police going into the houses in pairs to cover each other.⁴⁰⁸ Trifunović had ordered the unit to check for people in the villages and, if found, Witness D5 presumed they were “probably to detain them”, he presumed in the “police station in Bratunac” including women and children.⁴⁰⁹ Witness D5 said “I don’t even know why we went there, we never saw anyone.”⁴¹⁰

224. The Court has noted and analyzed a discrepancy between Witness D5’s oral testimony and one of his statements to the Prosecutor. In the second part of his statement to the Prosecutor on 22 May 2008 he stated that “the houses were open” and that they determined that the houses were empty by the police entering houses and seeing whether they were, but that the inhabitants had already “fled or were expelled”.⁴¹¹ In court, he said that they had smashed down doors. Explaining the difference between his testimony that the houses were locked and they had to break into them and, in another case, that they were open, he said, “Some of the houses were locked and some weren’t. I came to, I am not sure, two to three houses that were locked; most of the houses were not locked, but two to three were and we had to break in to check if there was anyone inside.” He was with Petar Mitrović and broke into at least two houses.⁴¹² The Court is satisfied with this explanation of the discrepancy and is satisfied that nothing of any significance turns on this. The Court is of the view that a search of houses for armed men of necessity may have entailed a forced entry.

225. Aleksander Radovanović testified that the next morning (13 July) his unit travelled to Bratunac again and when they were there were told they were going to Srebrenica. They were then taken to the yellow bridge near Potočari and Čturić to seize the abandoned demarcation lines near Bratunac. Scouts went ahead; they did not find anyone and were given no orders in relation to civilians. If found they would have been searched for weapons, the commander notified and then probably taken to

⁴⁰⁸ Witness D5, 13 March 2009.

⁴⁰⁹ Witness D5, exhibit T.12a statement 18 April 2008.

⁴¹⁰ Witness D5, exhibit T.12a statement 18 April 2008.

⁴¹¹ Witness D5, exhibit T12.b statement 22 May 2008.

⁴¹² Witness D5, 20 March 2009.

command HQ. He did not see members of the 2nd Šekovići Detachment entering houses. They were deployed at the yellow bridge for several hours when Trifunović ordered them to withdraw back to Bratunac.⁴¹³

226. Slaviša Žugić testified that maybe 15 members of his 1st platoon participated in the search, using a skirmish line of police working 5 to 7 metres apart.⁴¹⁴ Milenko Pepić, of the 2nd platoon, found out that they were going to the Potočari area to search and inspect the terrain, assuming that armed Muslims might be there. They went through the villages above Potočari. They went into the houses but no-one was in them. He testified that had they found civilians they would have taken them to Potočari.⁴¹⁵

227. Nenad Andrić, of the 1st platoon, commanded by Cvijan Ristić, was ordered to report for duty at the police station in Zvornik for a field mission, and upon arrival was sent by bus to Bratunac. Other platoons were at Bratunac. They slept overnight and the next morning were taken by bus to the yellow bridge and told to position themselves along the side of the bridge. After several hours set out to “inspect” villages looking for left-over groups to stop them taking Bratunac. They walked to a hilly area above a village and were ordered back without encountering anyone. He said that did not enter any houses and that there was no need to do so.⁴¹⁶ Cvijan Ristić testified that they did not enter houses in the village and no-one was there.⁴¹⁷

228. As noted above, the PJP 1st company from Zvornik – under the command of Radomir Pantić – also participated in the search. The company had three police platoons, with one from Zvornik.⁴¹⁸ Cvijan Ristić, of the 1st PJP Company, worked at the Zvornik Police Station in 1995. On the afternoon of 11 July 1995 he was substituting for his wounded commander and received a dispatch note deploying the

⁴¹³ Aleksander Radovanović, 18 November 2009.

⁴¹⁴ Slaviša Žugić, 13 January 2009.

⁴¹⁵ Milenko Pepić, 4 February 2009.

⁴¹⁶ Nenad Andrić, 13 August 2009.

⁴¹⁷ Cvijan Ristić, 2 July 2009.

⁴¹⁸ Radoslav Stuparović, 9 July 2009.

1st Company to Bratunac. He gathered about 20 of his unit and they took a bus, some were deployed to Bratunac and some to Konjević Polje. They were wearing olive drab camouflage with police insignia. After receiving their tasks at about 5.00 to 6.00 am on 12 July about 50 to 60 of his unit travelled by bus from Bratunac to Potočari to the yellow bridge. Many soldiers were there and he recognized members of the 2nd Šekovići Detachment. “Oficier”, Miloš Stuparić and his commander Radomir Pantić were there.⁴¹⁹ Ristić estimates about 200 men were at the yellow bridge. His unit was then deployed in the hills above Potočari to protect against attacks by armed Muslim men, while he remained by the yellow bridge for two to three hours. They searched about 500 metres into the woods until they reached some houses but found no civilians. They passed by the houses. They were there for about half an hour. They were tasked only to engage armed groups, and to seize their weapons and to send any prisoners to the commanders for decision. They stayed there until 14.00 or 15.00 pm and then withdrew to Bratunac by bus on Pantić’s orders.

229. The deputy commander Radoslav “Raci” Stoparović was called up on the afternoon of 11 July (the day before Petrodan), and, with about 20 others was sent by bus from Zvornik to Bratunac police station where Pantić was waiting. Early the next morning (12 July), before daybreak, Pantić ordered them by bus to the yellow bridge near Potočari. Upon arrival, he saw members of the 2nd Šekovići Detachment. “Oficier” Čturić was there and spoke to Pantić. Several hours later they were ordered to deploy to the right above a demarcation line to protect Bratunac from armed incursion. They deployed in groups and walked with the 2nd Šekovići Detachment flanking them. Radoslav Stuparović did not see members of the 2nd Šekovići Detachment searching houses and did not himself receive an order to search houses. He did not see any Muslim residents. They stayed in the area for several hours and were ordered back to Bratunac.⁴²⁰ He signed an investigative statement

⁴¹⁹ Cvijan Ristić, 2 July 2009.

⁴²⁰ Radoslav Stuparović, 9 July 2009.

saying he had seen a huge mass of people near the factory in Potočari and learned that the army was rounding up civilians and guarding them there.⁴²¹

230. Milutin Kandić (“Sego”) of the 1st Company was ordered to Bratunac, arriving there in the afternoon and in the evening before ordered to the area near the yellow bridge and staying there for an hour before returning to spend the night in a house. Early the next morning they returned to the yellow bridge, tasked to search for enemy soldiers near Potočari. After half an hour or so, commander Radomir Pantić ordered them back to Bratunac where they spent the night. Kandić said that he was not ordered to search for civilians in the villages and take them to Potočari.⁴²²

231. As described above, the Dutchbat witnesses described a chaotic scene at Potočari on the morning of 12 July with thousands of refugees congregating seeking assistance at the compound while the VRS was engaged in separating the men from the women, children and elderly.

232. Most witnesses who participated in the search – one exception was Witness D5 – described the situation in Potočari somewhat differently.

233. For example, Slobodan Stjepanović, of the 2nd platoon, testified that he was deployed towards Potočari and the area near it. He went to the last village, the unit members were 10 metres apart. From his position he could see more than 50 civilians gathered in Potočari.⁴²³ (However, in his statement to State Investigation and Protection Agency (SIPA) investigators he described seeing “even 15,000 civilians” within the compound when he passed it several hours later).⁴²⁴ Slaviša Žugić was aware that women and children were coming on buses from Srebrenica and were supposed to be going to Kladanj.⁴²⁵ From the hillside above Potočari they

⁴²¹ Radoslav Stuparović, 9 July 2009, statement 29 June 2006.

⁴²² Milutin Kandić, 12 August 2009.

⁴²³ Slobodan Stjepanović, 5 February 2009.

⁴²⁴ Exhibit T.11, signed statement of Slobodan Stjepanović to SIPA, 27 October 2005.

⁴²⁵ Slaviša Žugić, 13 January 2009.

could see Muslims at the UN base - Pedrag Čelić assumed that they were refugees.⁴²⁶ Cvijan Ristić also testified that he could see a huge mass of people in the UN base, whom he thought had “escaped” from Srebrenica.⁴²⁷ Milenko Pepić said that the civilians had gone to the UN Base to be transferred to “free territory”.⁴²⁸

234. Witness D5, on the other hand, stated that when his unit went down the hill after searching the villages above Potočari he saw many people gathered near the factory there, maybe 500, 1,000, 1,500 mainly women and children from Srebrenica and some elderly men and young aged about 15 to 17, “there were no men in Potočari who were capable for the army, meaning 16, 17 years”. Unlike, Milenko Pepić (and the Dutchbat witnesses) he did not think that the people had left their houses voluntarily saying “but who would leave his house voluntarily”.⁴²⁹

235. Witness D5’s evidence is entirely consistent with that of the UN witnesses and the Court accepts his evidence as to what the police participating in the search of Budak would have seen. The Court finds that it must have been obvious to anyone within sight of the Dutchbat compound that many hundreds, if not thousands, of refugees from Srebrenica were gathering there for protection.

236. The Court places no weight on the evidence of Richard Butler in cross-examination (referred to in the closing submissions of Zoran Tomić) to the effect that the MUP did not search the terrain but were merely deployed there.⁴³⁰ The Court heard direct eye-witness evidence of the search. Butler was not there. Similarly the closing argument of Zoran Tomić that Witness D5 alone described searching houses are without merit and fly in the face of the evidence.⁴³¹

⁴²⁶ Pedrag Čelić, 5 February 2009.

⁴²⁷ Cvijan Ristić, 2 July 2009.

⁴²⁸ Milenko Pepić, 4 February 2009.

⁴²⁹ Witness D5, exhibit T.12a statement 18 April 2008.

⁴³⁰ Zoran Tomić, closing submissions of Petko Pavlović, page 27..

⁴³¹ Zoran Tomić, closing submissions of Petko Pavlović, page 27.

XI. PARTICIPATION OF THE ACCUSED IN THE SEARCH OF BUDAK AREA ABOVE POTOČARI

237. Two witnesses testified that Zoran Tomić participated in the search at Budak. Zoro Lukić testified that Zoran Tomić was with them in the search of Budak. The commander told them to keep together in small groups. Brano Đinić was with Zoran Tomić.⁴³² Witness D5 saw Zoran Tomić participating in the search at Budak but did not see him going into any houses.⁴³³

238. The Defence of Zoran Tomić has made no submission denying that Tomić participated in a search or submitting that the evidence did not establish beyond reasonable doubt that he did. It states that he “did not participate in the search of houses and the expelling of Muslims from those house in the village of Potočari”.⁴³⁴ But the submission also state that “the detachment did pass along the former trench lines of the VRS and ABiH from *Žuti Most* to the hill of Budak on 12 July 1995 in the afternoon”, but submitting that this cannot establish that this proves that the Detachment took part in a widespread attack.⁴³⁵ This, however, seems to be arguing the position both ways – stating on the one hand that a search occurred, but on the other that it did not involve houses or expulsions. The submission then goes on to say that “even a child understands that one cannot participate in something that is already over!” This however misunderstands that a widespread or systematic attack on a civilian population could continue after the military takeover of Srebrenica was completed.

Findings

239. The Court is satisfied beyond reasonable doubt that Zoran Tomić participated in the search of the terrain above Potočari on 12 July 1995.

⁴³² Zoro Lukić, 3 March 2009.

⁴³³ Witness D5, 13 March 2009.

⁴³⁴ Zoran Tomić, closing submissions of Petko Pavlović, page 47.

⁴³⁵ Zoran Tomić, closing submissions of Petko Pavlović, page 19.

240. The Court, however, heard no evidence capable of proving beyond reasonable doubt that Radomir Vuković participated in the search on the morning of 12 July 1995. Accordingly it makes no finding as to his participation in the search as alleged in the indictment.

XII. DID THOSE PARTICIPATING IN THE SEARCH DO SO WITH THE INTENTION OF FORCIBLY DEPORTING THE BOSNIAN MUSLIM POPULATION FROM SREBRENI

241. The legal issue is whether the unit in searching the terrain above Budak was doing so with the intention of forcibly deporting the Muslim population. The Court is satisfied beyond reasonable doubt that those who participated in the search must have known that they were assisting the forcible deportation of the civilian population from the enclave. The requirements for establishing forcible deportation contrary to international humanitarian law are dealt with below in section **XXXII. Forcible deportation**. The Court is not satisfied beyond reasonable doubt, however, that they were aware that they were also assisting in the planned execution of the Bosnian Muslim male population in Srebrenica.

242. The defence of Radomir Vuković submitted that “only one reasonable and logical inference may be rendered – during 12 July 1995, members of the Detachment did not perform any operations or activities concerning the search of the terrain, capturing, apprehension, or any other activities directed against Bosniak civilians. The testimonies of these witnesses about the events which took place in Potočari were given sincerely and, interestingly, through the direct examination by the Prosecutor.”⁴³⁶

243. The Court disagrees with this submission: The evidence establishes clearly and without equivocation that the search was directed towards apprehending anyone who

⁴³⁶ Radomir Vuković, closing submissions of Rade Golić, para. 57.

was still in the location. The VRS had captured Srebrenica, its inhabitants had been forced to flee, they were being forcibly deported from the enclave, the Muslim men were being separated with the intention of murdering them. And all of this was occurring within view those searching within a short distance of Potočari. The only conclusion available from the evidence is that the search was part of the overall plan to forcibly transfer the women, children and elderly and to murder the men.

244. The Court recognizes the conflict in Witness D5's evidence, pointed out in Vuković's closing submissions,⁴³⁷ that he had testified, "We were told that whoever surrendered or was captured would be escorted towards Kladanj and Tuzla", whereas in his statement of 22 May 2008, he said "Civilians were not mentioned to us at all, because we did not have any contact with civilians".⁴³⁸ In the Court's view, however, this conflict is unimportant, as the evidence clearly establishes that the police searched houses in Muslim villages above Potočari as part of the Srebrenica operation. In the overall context of the attack directed against the civilian population then ongoing, the only explicable reason for this was to search for Bosnian Muslim civilians and armed Muslim groups.

245. Radomir Vuković also submitted that Witness D5 provided the only evidence that members of the 2nd Šekovići Detachment were in Potočari and submits that no members of the Detachment were there.⁴³⁹ This submission, however, is irrelevant. It does not matter whether they were actually in Potočari itself (however generically described) because the evidence clearly establishes that the police were at the yellow bridge which is very close to Potočari and that they could see Potočari during the search of the villages above Potočari.

Findings

⁴³⁷ Radomir Vuković, closing submissions of Rade Golić, para. 59.

⁴³⁸ Witness D5, exhibit T.12b statement 22 May 2008.

⁴³⁹ Radomir Vuković, closing submissions of Rade Golić, para. 61.

246. As noted above the Court is not satisfied beyond reasonable doubt that those participating in the search – *at that point* – having just been deployed to the Srebrenica area could have been aware of the plan to execute the men although it had to have been obvious to anyone who could see the refugees at Potočari that a mass movement of the civilian population was occurring. The Court is therefore satisfied beyond reasonable doubt that those participating in the search – and in particular here – Zoran Tomić, did so with the knowledge that they were assisting in the expulsion of the civilian population from Srebrenica. The Court is not satisfied beyond reasonable doubt however that they did so with the specific intent required to commit genocide as charged.

XIII. DEPLOYMENT OF SECOND ŠEKOVIĆI DETACHMENT ON KONJEVIĆ POLJE TO BRATUNAC ROAD ON 12 JULY 1995 AFTER SEARCH OF BUDAK AREA NEAR POTOČARI

247. The Prosecution case is that on 12 July and 13 July 1995 as part of the plan to commit genocide, the two accused “participated in keeping the road passable so that the Bosniaks could be transported by buses and trucks without obstruction”.

Findings

248. The Court is satisfied beyond reasonable doubt that the MUP units, including the 2nd Šekovići Detachment, the 1st PJP Company from Zvornik, the Jahorina Training Center were deployed along Konjević Polje to Bratunac road on 12 to 13 July. The Court is also satisfied beyond reasonable doubt that two accused were among those deployed along the road. The Court is satisfied that that the purpose of the deployment was threefold, namely, to capture surrendering Bosnian Muslims to keep the road passable for military traffic and the passage of civilians who were being deported, and to guard the road from attacks by ABiH soldiers.

249. The Court heard consistent evidence of the manner and purpose of the deployment. Significantly, the deployment along the road occurred immediately after search for Bosnian Muslim soldiers and civilians above Potočari.

250. The evidence also clearly established that the VRS and MUP were co-ordinating their activities and under the subordination of the VRS. The Court is therefore also satisfied beyond reasonable doubt that the deployment was co-ordinated with the VRS and was part of the overall military operation in the enclave.

Evidence

251. After completing their search of the terrain above Potočari on the morning of 12 July the 2nd Šekovići Detachment was deployed to the Konjević Polje to Bratunac road. No dispute exists between the Prosecution and Defence that this deployment occurred or that Radomir Vuković and Zoran Tomić were deployed along the road.

252. Several members of the the MUP units including Witness D5, testified of their deployment in securing the road. Witness D5 testified that after completing the search at Budak, the unit was briefly taken back to Bratunac and the police waited near the Hotel Fontana for further instructions.⁴⁴⁰ The 3rd Skelani platoon commander Milenko Trifunović then ordered those engaged in the search to deploy to the Konjević Polje to secure it as Muslims were believed to be on the road, coming from Srebrenica out of the hilly forested area. Trifunović assigned them to relocate to Kravica, to “relocate to maintain the road from Kravica towards Konjević Polje as it was assumed that the surrender would take place there, meaning Muslims surrendering”. They were to go to Sandići and Kravica and receive further instructions there.⁴⁴¹ They were sent there in either buses or trucks, taking about 20

⁴⁴⁰ Witness D5, 13 March 2009.

⁴⁴¹ Witness D5, 11 February 2009.

minutes to get there.⁴⁴² Witness D5 got out at the Kravica farming co-operative and walked several hundred metres up the road to a destroyed house. He was there with Miladin Stevanović.⁴⁴³ Miladin Stevanović testified that after they had searched near Budak, at the yellow bridge, “Oficier” (Trifunović) then told them to secure the road. They went to the Bratunac to Konjević Polje road. There was a high frequency of bus traffic on the road: he saw buses passing containing with mainly women and children, and some old men.⁴⁴⁴

253. After several hours in the vicinity of Potočari, Slobodan Stjepanović’s unit, the 2nd platoon, went towards Bratunac and was then sent towards Konjević Polje. His platoon was deployed on the road between Kravica and Bratunac. He went to a house with Pedrag Čelić, Brano Đinić and Zoran Tomić and they were deployed on one spot on the road tasked with securing the road to allow the unimpeded passage of road traffic.⁴⁴⁵ Pedrag Čelić said that after the search they returned to Bratunac and then headed to the road near Kravica, where he was told to cover a portion of the road to secure the undisturbed passage of traffic. The 2nd platoon was deployed on the road between Sandići and Bratunac. Zoran Tomić was on the road for sometime with Brano Đinić. Four of them were there together – Čelić, Tomić, Đinić and Slobodan Stjepanović were there near a house. They spent the night of 12 July in the house. Pedrag Čelić knows both accused and identified them in court.⁴⁴⁶

254. Milenko Pepić testified that after completing the search his commander ordered them to Sandići to secure the road, he assumed because it could be blocked by Muslim forces from Srebrenica trying to break through to Tuzla. He was deployed with other members of the 2nd platoon by the road near Sandići near a supporting wall on the border between Kravica and Sandići. The 1st platoon was deployed in the direction of Kravica and the 3rd was deployed next along the road. Zoran Tomić was

⁴⁴² Witness D5, 13 March 2009.

⁴⁴³ Witness D5, 13 March 2009.

⁴⁴⁴ Miladin Stevanović, 2 April 2009.

⁴⁴⁵ Slobodan Stjepanović, 5 February 2009.

⁴⁴⁶ Pedrag Čelić, 5 February 2009.

along the road with other members of the 2nd platoon. He knew him by the nickname of Zgembo and identified him in court.⁴⁴⁷

255. Duško Mekić, of the Skelani platoon, testified that he was on leave on 12 July and heard on the radio that all members of the 2nd Šekovići Detachment were to report for duty, so he reported with Alekšis Drasko at the hotel in Bratunac. They drove to Konjević Polje and at around 18.30 to 19.00 found their unit deployed along the road. They deployed there until nightfall, spending the night in a hole under the road, going to Zvornik the next day.⁴⁴⁸

256. On 12 July, the acting commander of the 1st platoon, Marko Aleksić personally deployed his unit members Radomir Vuković, Duško Mekić, Mirko Aščerić by the road adjacent to members of the 2nd platoon about 500 metres from the Kravica Farming Cooperative.⁴⁴⁹

257. The Court also heard evidence showing that the resupply of the units was centrally co-ordinated. For example, on Thursday 12 July 1995, Dragomir Stupar was at the base at Bratunac when he was ordered to take food to members of the unit on the road at Konjević Polje.⁴⁵⁰

258. The 1st PJP Company was also deployed along the road. At around 18.00 to 19.00 on 12 July Radoslav Stuparović's unit was ordered onto buses to Konjević Polje. Upon arrival at Sandići, their commander Radomir Pantić ordered them to deploy along the road in groups to protect the road from armed attack. Pantić told him to connect with the 2nd Šekovići Detachment.⁴⁵¹ Nenad Andrić, of the 1st PJP Company's 1st platoon, said that after the search (above Potočari) they returned to Bratunac by bus.⁴⁵² At about 17.00 on 12 July they were ordered to return and were

⁴⁴⁷ Milenko Pepić, 4 February 2009.

⁴⁴⁸ Duško Mekić, 18 June 2009.

⁴⁴⁹ Exhibit T.8, signed statement of Marko Aleksić to SIPA, 12 October 2005.

⁴⁵⁰ Slobodan Stjepanović, 5 February 2009.

⁴⁵¹ Radoslav Stuparović, 9 July 2009.

⁴⁵² Nenad Andrić, 13 August 2009.

taken by bus to Sandići and told to take up positions on the road to secure it to allow the free passage of vehicles. He observed that soldiers were standing along the road every 300 metres or so.

259. Cvijan Ristić's 2nd platoon returned to Bratunac on 12 July 1995. Members of the 2nd Šekovići Detachment were there and, after remaining for a short time, travelled to Sandići by bus, where members of the 2nd Šekovići Detachment had already arrived. Cvijan Ristić's unit was then deployed along the road in the direction of Konjević Polje while the 2nd Šekovići Detachment was deployed towards Bratunac. The 2nd Šekovići Detachment 1st and 2nd platoons were deployed towards Konjević Polje. Radomir Pantić told Ristić to keep the road passable for vehicles because armed Muslim groups were thought to be in the hills.⁴⁵³

260. Danilo Zoljić testified that the 1st Company was on the road from Konjević Polje to Bratunac on the saddle. Each police officer on the road could see the next one. Others from the 2nd detachment were on the saddle towards Sandići. He was informed that both units were moved to the road at Sandići before nightfall to secure the road and to prevent penetration by the Bosnian army. The units travelled to Sandići and maintained radio communication with the base. Zoljić himself returned to Zvornik on the night of 12 July as there was an emergency there and he was supposed to assist in planning pre-emptory measures to prevent the column which was moving towards Tuzla from entering Zvornik.⁴⁵⁴

261. The Court also heard evidence of the passage of buses along the road on 12 July. Nenad Andrić said that in the late afternoon he saw several buses of civilians from Srebrenica, escorted by UNPROFOR vehicles. Two or three soldiers were in each UN vehicle, either jeeps or off-road vehicles. Between five and ten buses were

⁴⁵³ Cvijan Ristić, 2 July 2009.

⁴⁵⁴ Danilo Zoljić, 20 March 2009.

escorted in several convoys being escorted, with one UN vehicle followed by several buses continuing until nightfall.⁴⁵⁵

XIV. ATTACK BY ABiH ON POLICE UNITS ON ROAD ON MORNING OF 13 JULY 1995

262. The Court also heard evidence of the military threat to the MUP units guarding the road. Before dawn on 13 July 1995, some police in the 1st PJP Company stationed on the road were attacked by an ABiH unit. Several eye-witnesses testified to this event. For example, Nenad Andrić said that around 4 am on 13 July his unit was attacked by shooting and blasts in which Nenad Filipović was injured and Niković was killed. Andrić was injured in the leg and taken to Bratunac for medical treatment.⁴⁵⁶ Radoslav Stuparović described an attack early in the morning by hand-held mortars and an infantry attack which lasted between half an hour and an hour, resulting in a death and three injuries.⁴⁵⁷ Cvijan Ristić gave similar evidence of the attack saying the dead officer was from the 3rd platoon.⁴⁵⁸ Aleksander Radovanović heard explosions and shooting, and saw Rade Čuturić touring the line and informing the other police.⁴⁵⁹

263. On the morning of 13 July Danilo Zoljić went to the Konjević Polje road after being informed of a conflict in the early hours in which a police officer had been killed. Members of the 2nd Detachment were there. Zoljić also saw some people coming out of the woods and surrendering and being secured by three to five police.⁴⁶⁰ Milutin Kandić described being ordered to Sandići to collect some wounded police and taking two or three wounded police one of whom died in the

⁴⁵⁵ Nenad Andrić, 13 August 2009.

⁴⁵⁶ Nenad Andrić, 13 August 2009.

⁴⁵⁷ Radoslav Stuparović, 9 July 2009.

⁴⁵⁸ Cvijan Ristić, 2 July 2009.

⁴⁵⁹ Aleksandar Radovanović, 18 November 2009.

⁴⁶⁰ Danilo Zoljić, 20 March 2009.

vehicle on the way back. He took them to the hospital health centre and returned to Sandići.⁴⁶¹

Findings

264. The Court is satisfied beyond reasonable doubt that the attack or ambush occurred as described by these witnesses before dawn on 13 July 1995. It is satisfied that the armed Bosnian Muslim groups, presumably members of the ABiH's 28th Division, posed some military threat to the MUP units stationed on the road and that the MUP units took defensive action when under attack. This finding, however, is irrelevant to the treatment that must be accorded under international humanitarian law to prisoners of war and civilians entitled to protection under the Geneva Conventions.

XV. DEPLOYMENT OF 2ND ŠEKOVIĆI DETACHMENT ON KONJEVIĆ POLJE TO BRATUNAC ROAD ON 13 JULY 1995

265. The deployment of the 1st PJP Company and the 2nd Šekovići Detachment continued on 13 July 1995. As described above in section **VII. The VRS takeover of Srebrenica** the enforced separation of men was continuing at Potočari, civilians were being put on buses and trucks and transported out of the enclave and the VRS was continuing to search for Bosnian Muslims in the column fleeing Srebrenica.

266. Cvijan Ristić testified for Zoran Tomić. He said that after the attack that morning the police guarding the road moved closer to each other standing maybe three to four metres apart. Traffic was unimpeded in both directions with buses, trucks, combat vehicles, tanks and trailers passing by. Buses with passengers were travelling "in both directions". However, in cross-examination he clarified that the buses and trucks going in the opposite direction were not carrying Bosnian Muslims.

⁴⁶¹ Milutin Kandić, 12 August 2009. Exhibit T.64 is an extract from the hospital records of 13 July 1995 referring to Rade Čuturić and Krsto Dragičević.

In response to a question from the Court he stated that he saw about 20 to 30 buses and thought they contained Muslims who were leaving because of what had happened in Srebrenica. The buses had “Drina Trans” on the side.⁴⁶² This provides eye-witness evidence of the organized nature of the transportation.

267. On 13 July Aleksander Radovanović and his unit were ordered from Bratunac towards Zvornik. They stopped at the saddle in Sandići and were deployed along the road to secure the line. Rade Čturić told them it was to prevent armed Muslims from getting onto the road, and that they were to expect attacks. About 13 or 14 members of the Skelani platoon were on the road standing in pairs; this allowed allow one to rest.⁴⁶³ Witness D5, who was also deployed along the road near between Sandići and Kravica, believed that Muslim men were expected to come out of the forest above the road. The rumours were that some were civilians and some were armed.⁴⁶⁴

268. On the morning of 13 July 1995, Momir Nikolić, the chief of intelligence and security of the Bratunac Brigade met Duško Jević (the commander of the Jahorina Training Centre, whose unit had also been ordered to Srebrenica on 11 July) and told him to convey the orders to his units that the captured Muslims should be assembled in one place, secured and would later be evacuated to Bratunac.⁴⁶⁵

269. The Petrović video shows a *praga* or tank on the meadow on 13 July.⁴⁶⁶

270. Marko Aleksić, the acting commander of the 1st platoon testified that his unit was deployed along the road from Kravica to Konjević Polje near Sandići tasked with securing the road by establishing a combat line to prevent Muslims from passing through. The 1st platoon was in the meadow and the 3rd platoon was deployed towards Kravica. He was aware that a convoy was coming along the road. He heard

⁴⁶² Cvijan Ristić, 2 July 2009.

⁴⁶³ Aleksandar Radovanović, 18 November 2009.

⁴⁶⁴ Witness D5, 11 February 2009.

⁴⁶⁵ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1713-1714.

⁴⁶⁶ Exhibit T.1, see also Witness D5, 11 March 2009.

the sound of a Praga firing.⁴⁶⁷ Witness D1, a prisoner on the meadow, saw an anti-aircraft gun and a tank which was firing shells into the woods. He also saw it fire at the wall of a building, blasting one person out of it.⁴⁶⁸

271. Zoro Lukić was also deployed on the road, standing about five to ten metres from him were Zigić and Zoran Tomić. Their task was to guard the road to allow the unhindered passage of vehicles and to defend Serb villages from attack.⁴⁶⁹ Rade Čuturić told them that they were to return fire if attacked, and to inform the command if Muslim soldiers tried to cross the road. Zigić and Tomić were with Lukić when Muslims started surrendering on the morning of 13 July. They moved the surrendered Muslims to the place where the Serb police had been killed early that morning. Some of the Muslims were wounded; one was being carried on a blanket. Rade Čuturić was using a megaphone to call on the Muslims to surrender.⁴⁷⁰

272. Dragomir Stupar testified that he took food from Bratunac to the members of the 2nd Šekovići Detachment on the road. They were deployed all the way from the first village to the Konjević Polje at intervals spaced along the road and it took one to two hours to distribute the food and return.⁴⁷¹

273. Mirko Aščerić, of the 1st platoon, and stationed on the road was armed with an automatic rifle and two hand grenades and wore a bullet proof vest and an olive grey uniform with PJP badges. The police could see each other on the road. Duško Mekić and Slaviša Žugić were to the left and right of Mirko Aščerić.⁴⁷²

274. Witness D5 was assigned to stand with Miladin Stevanović.⁴⁷³ They were told that a large column of Muslims was moving slowly through the woods and that they

⁴⁶⁷ Marko Aleksić, 4 February 2009.

⁴⁶⁸ Witness D1, 18 December 2008.

⁴⁶⁹ Zoro Lukić, 13 March 2009.

⁴⁷⁰ Zoro Lukić, 3 March 2009.

⁴⁷¹ Dragomir Stupar, 27 February 2009.

⁴⁷² Mirko Aščerić, 13 January 2009.

⁴⁷³ Witness D5, 13 March 2009.

were deployed there because the column could have cut off the Serb villages.⁴⁷⁴ Witness D5 stated that their task was “to capture and take to the meadow... to encircle the captured individuals.”⁴⁷⁵ He stated that “there was one individual every ten metres and they formed a circle”.⁴⁷⁶

275. Hitchhiking to Vlasenica and Konjević Polje on 13 July Nedeljko Sekula was told his unit was in Sandići, and he found his mortar section by the road. The mortars were not set up.⁴⁷⁷

276. In June 1995 Stanislav Vukaljović was living in the Republic of Serbia, having left Bosnia and Herzegovina as a refugee. He had been born in Šekovići and his father was a driver for the 2nd Šekovići Detachment. Serbian police apprehended him and put him on a bus to Bijelina and he was taken to the MUP training centre at Jahorina. After about ten days he was sent to Bratunac, where he and about 30 others were taken by bus to the Konjević Polje road and ordered to secure the road. Standing to the left and right of him were other men who had been brought back from Serbia. They were referred to as “deserters”. He was armed with an automatic rifle.⁴⁷⁸ On the second day of his unit’s deployment he passed Sandići and saw a tank turned towards a hill and “Bosniaks who were surrendering were coming down that hill. Before that I heard a praga shooting, but I don’t remember the tank shooting”.⁴⁷⁹ He saw police in Sandići whom he later learned were from the 2nd Šekovići Detachment. He knows Tomić as a person who protected him while others tried to beat him while he was in the 2nd Šekovići Detachment but did not know Tomić in July 1995.⁴⁸⁰

⁴⁷⁴ Witness D5, 13 March 2009.

⁴⁷⁵ Witness D5, exhibit T.12b statement 22 May 2008.

⁴⁷⁶ Witness D5, exhibit T.12b statement 22 May 2008.

⁴⁷⁷ Nedeljko Sekula, 27 August 2009.

⁴⁷⁸ Stanislav Vukaljović, 23 March 2009.

⁴⁷⁹ Exhibit T.19, statement of Stanislav Vukaljović to investigators, 18 October 2005.

⁴⁸⁰ Stanislav Vukaljović, 23 March 2009.

277. Nedeljko Sekula testified that he saw a unit of “deserters” comprised of people who had fled to Serbia and knew them from field missions.⁴⁸¹ The Petrović video also shows armed members of the Jahorina Training Center unit in camouflage uniform on the road to the south and east of the Sandići meadow on 13 July.⁴⁸²

(i) Presence of Radomir Vuković and Zoran Tomić on Konjević Polje to Bratunac Road on 13 July 1995

278. Members of the three platoons of the 2nd Šekovići Detachment, those of Radomir Vuković, Zoran Tomić and Witness D5 were deployed along the road on 13 July 1995. Witness D5 described how the 1st or 2nd platoon was deployed on the road to the Kravica warehouse hangar and his unit was deployed approximately in the middle. Either the 2nd or 3rd platoon was deployed near the destroyed house where the Muslims were surrendering.⁴⁸³ The Zvornik Company, containing a mixture of police and military, was to his right towards Konjević Polje.⁴⁸⁴

279. Several witnesses testified to the deployment of the two accused along the road on 13 July 1995, including Witness D5 who testified that both were deployed on the road.⁴⁸⁵ Cvijan Ristić said Zoran Tomić was securing the road near Pedrag Čelić. He saw Tomić and Zoran Lukić near a house the 2nd Šekovići Detachment was using. His commander ordered them to form a horse shoe formation to guard against attack. He saw Zoran Tomić on the night of 12 July with Čerić, guarding each other, one sleeping and one awake.⁴⁸⁶

280. Nedeljko Sekula first saw Tomić when he arrived, near the destroyed house – Pedrag Čelić was further away. Tomić came to smoke near the four men who were on the mortars; Sekula described him as a chain-smoker. His unit was normally

⁴⁸¹ Nedeljko Sekula, 27 August 2009.

⁴⁸² Exhibits T.1 and T.134.

⁴⁸³ Witness D5, 13 March 2009.

⁴⁸⁴ Witness D5, 20 March 2009.

⁴⁸⁵ Witness D5, 11 February 2009.

⁴⁸⁶ Cvijan Ristić, 2 July 2009.

armed with mortars, two tanks, a praga and rifles.⁴⁸⁷ On 13 July 1995 Radoslav Stuparović toured along the road and saw Zoran Tomić with Zoran Lukić and Pedrag Čelić aka “Brane”.⁴⁸⁸

281. Slaviša Žugić also testified that Radomir Vuković was deployed along the road. Žugić did not know him well, but knew his nick-name was Vojvoda and did not know any other Vojvodas in the 1st platoon. Žugić also identified Vuković in court as this Vojvoda.⁴⁸⁹

Findings

282. The two accused and their defence counsel made no submission that they were not deployed on the road on 13 July 1995. No dispute seems to exist about their presence there as part of the MUP operation to secure the road. The closing submissions of Zoran Tomić describe him “as an ordinary police officer was deployed along the Bratunac-Konjević Polje road to carry out ordinary tasks in time of war. The task was to secure the road, to secure the traffic for civilians and others, to prevent the 28th Division of the ABiH or its parts from cutting off the road and reaching Serb villages on the right from the road to the Drina River”.⁴⁹⁰

283. The Court has assessed the evidence and is satisfied beyond reasonable doubt that both were deployed and present on the road on 12 and 13 July 1995.

XVI. SURRENDER OF BOSNIAN MUSLIMS ALONG KONJEVIĆ POLJE TO BRATUNAC ROAD

284. On 13 July 1995 many Bosnian Muslims in the column surrendered to the MUP and VRS members along the Konjević Polje to Bratunac road. The evidence

⁴⁸⁷ Nedeljko Sekula, 27 August 2009.

⁴⁸⁸ Radoslav Stuparović, 9 July 2009.

⁴⁸⁹ Slaviša Žugić, 13 January 2009.

⁴⁹⁰ Zoran Tomić, closing submissions of Petko Pavlović.

established that hundreds of prisoners were taken to a meadow in Sandići next to the road, after first being searched for valuables and weapons. The 3rd Skelani platoon of the 2nd Šekovići Detachment was present in Sandići next to where the surrenders were occurring. The surrenders were occurring first in small groups and then in larger groups. There were coming out of the woods and the members of the 3rd platoon were stopping them and taking their belongings. The Court heard positive evidence that Zoran Tomić searched at least one prisoner and took his valuables.

285. Witness D5 testified that when the Muslims came out of the woods “frisking was carried out and belongings were seized” mainly by “guys from the Šekovići Detachment meaning from Šekovići, but there were individuals from Skelani”. Those surrendering were unarmed. No-one verified the identity of those who were surrendering, by looking at personal documents and no list was made.⁴⁹¹ Witnesses D1 and D2 also described being searched for valuables after surrendering – see section **XXI. Prisoners on Sandići meadow** below.

286. Loudspeakers were being used from the destroyed house to persuade the Muslims to surrender.⁴⁹² Witness D5 stated that a person from Šekovići, he thinks called Zoran, was standing by the house using a megaphone calling on people to surrender, telling them that they would be safe and allowed to go to Tuzla.⁴⁹³ He was calling out “Muslims, surrender yourselves”.⁴⁹⁴ This evidence was corroborated by Nedeljko Sekula who testified that Zoro Lukić was using a megaphone near the destroyed house.⁴⁹⁵ Aleksander Radovanović heard Muslims being called upon to surrender by megaphone at the saddle in Sandići.⁴⁹⁶ Marko Aleksić also heard a loudspeaker urging Muslims to surrender.⁴⁹⁷ Cvijan Ristić did not see Zoran Tomić

⁴⁹¹ Witness D5, 11 February 2009.

⁴⁹² Witness D5, 13 March 2009.

⁴⁹³ Witness D5, exhibit T.12a statement 18 April 2008.

⁴⁹⁴ Witness D5, exhibit T.12b statement 22 May 2008.

⁴⁹⁵ Nedeljko Sekula, 27 August 2009.

⁴⁹⁶ Aleksandar Radovanović, 18 November 2009.

⁴⁹⁷ Marko Aleksić, 4 February 2009.

calling for Muslims to surrender but saw surrendered Muslims, guarded by members of the 2nd Šekovići Detachment.⁴⁹⁸

287. Danilo Zoljić described men coming from the woods in small groups of one or two and saying “we surrender” and going to the meadow to join those already there. He saw about ten people coming from the stream saying that they wanted to surrender.⁴⁹⁹

288. Milutin Kandić’s 1st PJP Company unit was also deployed to guard the road and ordered to secure the road in Sandići. When he returned to Sandići on 13 July he saw small groups of men aged between 15 and 17 and 60 surrendering. Some were in civilian clothes. They were surrendering by coming out of the woods and joining the others on the meadow. Members of the 1st PJP company were near the destroyed house. From its balcony he could see civilians going to the Sandići meadow to surrendering. Some wore backpacks which they tossed onto the road when the soldiers ordered them to discard them. One particular incident stuck in this witness’s mind; he recalled seeing a little girl, aged about 10, coming out of the woods with her father. He was shocked that the girl was there and asked the father why, but the father just shrugged and said she wanted to come. Buses were passing and the father agreed to put the child on the bus. Milutin Kandić put the girl on the bus of his own initiative because he thought they were going to “a camp”.⁵⁰⁰

289. Cvijan Ristić marked on a diagram the position of his unit and the 2nd Šekovići Detachment, including the house, saying the tank or praga was positioned nearby. While he was in Sandići, he saw a large number of buses. He identified the Muslims as surrendering down the yellow line marked on the photograph. The megaphone

⁴⁹⁸ Cvijan Ristić, 2 July 2009.

⁴⁹⁹ Danilo Zoljić, 20 March 2009.

⁵⁰⁰ Milutin Kandić, 12 August 2009.

was about 100 metres from him.⁵⁰¹ Witness D5, on the other hand, did not see a Praga or tank.⁵⁰² Zoro Lukić testified that the unit's tank was near the meadow.⁵⁰³

290. Witness D5 did not personally see people taking money from the prisoners but heard rumours later that up to 15,000 to 20,000 DM was taken. The Muslims who surrendered were unarmed. Their identification was not checked. No lists of names were compiled. After apprehension they were taken to a large meadow in Sandići.⁵⁰⁴ Corroborating the testimony of the calls to surrender, the Petrović video clearly shows Serb soldiers calling out to the Muslims to surrender.⁵⁰⁵

Findings

291. The Court is satisfied beyond reasonable doubt that MUP members were encouraging Bosnian Muslim men in the column to surrender, promising them exchange and safe passage to ABiH held territory. The evidence has established that the prisoners were searched, their valuables were seized and they were taken to a meadow at Sandići where they were guarded by MUP members.

XVII. WHETHER ZORAN TOMIĆ SEARCHED PRISONERS FOR MONEY AND VALUABLES

292. Witness D5 testified about the allegation in the indictment that Zoran Tomić searched the surrendered captives for money and valuables.

293. As the column was forming on the afternoon of 13 July at Sandići meadow, a former police officer from Skelani surrendered. Witness D5 attempted to get the police officer to return to the woods, but before he could, Zoran Tomić seized money

⁵⁰¹ Cvijan Ristić, 2 July 2009, marked on exhibit T.106.

⁵⁰² Witness D5, 11 March 2009 (page 111 English), Witness D5, exhibit T.12a statement 18 April 2008.

⁵⁰³ Zoro Lukić, 3 March 2009.

⁵⁰⁴ Witness D5, 11 February 2009.

⁵⁰⁵ Exhibit T.1.

from him. Describing the incident he said, “That man knew me well. He came to see me. Zoran Tomić came along and ordered that he empty his pockets. The man took his money out, I do not know how much there was, he took out an official ID. As I knew everything that was going on and what would happen, I tried to take him behind the house so that he could head back to the woods, but I was unsuccessful. He joined the column and ended up in the warehouses...” “That was on the Sandići meadow across the road from a large group that was formed to the right when looking from the direction of Bratunac, and we were on the left-hand side of the road when looking from the direction of Bratunac; the column already started forming on the asphalt road. I tried to send him back to the woods, asking him not to mention my name if anything should happen. This gentleman put him in the column, who went with us in the escort to the warehouse.”... “Before he was put in the column, I intended to take him around the other side of the house, it means he would not pass by the men he had passed by because, when looking from the direction of the road, they were coming out of the woods to the right. I tried to send him back by the left-hand side of the house when looking from the direction of the asphalt road so that the other men would not notice him. But I told him that if anything should happen, if someone were to catch him, he should not mention my name. Because he knew my name...I was unsuccessful because Zoran Tomić did not allow it”.⁵⁰⁶ Witness D5 thought his name was Hasan.⁵⁰⁷ Petar Mitrović was with Witness D5 when this happened.⁵⁰⁸

Findings

294. The Court is satisfied beyond reasonable doubt of Witness D5’s evidence about Zoran Tomić searching the prisoner and taking his valuables. The Court has generally assessed Witness D5’s evidence as credible and reliable and sees no reason for his fabricating such an allegation, and in particular, against Tomić. The incident he described was quite specific and concerned a person known to Witness D5. It is

⁵⁰⁶ Witness D5, 20 March 2009.

⁵⁰⁷ Witness D5, 13 March 2009, 20 March 2009.

⁵⁰⁸ Witness D5, 20 March 2009.

precisely the sort of incident that one could be expected to remember with some clarity many years later. Fabricating such an allegation could not have boosted his own credibility in the separate criminal proceedings against him. The prisoner is long-dead, murdered at the Kravica warehouse, and Witness D5 may be the only living witness to the incident. His evidence of Tomić, as a police officer, robbing a surrendering prisoner is consistent with the evidence of others that the police and soldiers were taking the valuables from prisoners.

295. The Court is therefore satisfied beyond reasonable doubt that the incident occurred in the manner described by Witness D5. However, the Court is not satisfied beyond reasonable doubt that when Tomić did this that did so with the necessary special intention to commit genocide. The Court is not satisfied beyond reasonable doubt that when Tomić committed this particular act he was aware that the prisoners were to be murdered as part of a plan to commit genocide in Srebrenica.

XVIII. EVIDENCE OF SURVIVORS IN THE COLUMN WITNESSES D1, D2 AND ENVER HUSIĆ

296. The Court heard evidence from three witnesses who were in the column escaping from Srebrenica, Witness D1, Witness D2 and Enver Husić.

297. Witness D1 was one of several known survivors of the massacre in the Kravica warehouse of 13 July 1995 and one of those in the column attempting to break out of Srebrenica. He described his flight from Srebrenica in the face of the VRS onslaught. On 11 July 1995 he was in his house in Srebrenica when he started out trying to reach “free territory” in Tuzla after receiving a message from a courier to do so. The women and children tried to make it to Potočari, while the men set off through the woods, thinking it was safer that way. Seventeen men left from his village that day: he testified that all are still missing.

298. Witness D1, who is now elderly, was in the military in July 1995. Some of the younger men in the column carried weapons. Some armed men were at the head of the column, but most of the men were elderly. The column was armed at the front and rear but not in the middle. He was near the rear of the column. The column was first ambushed near Baljkovica. About 45 were in the first group. At first he carried his hunting rifle, but then gave it to his son-in-law (who has not been seen since). He carried a backpack containing bread and water. While travelling in the woods, shots were fired at the column. They went in the direction of the shooting, intending to surrender, and called out not to shoot. Near Kamenica they encountered some acquaintances and could hear calls for them to surrender. Many people in the column were wounded.

299. They crossed the river and put the wounded down. They surrendered to the Bosnian Serbs and two soldiers searched them for weapons and money. Witness D1 had 100 Deutsche Marks and he gave it to the soldiers. The Serb soldiers were armed with automatic weapons.⁵⁰⁹

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

301. The witness testified in the ICTY in the *Krstić* case under the pseudonym Witness K, and the Prosecutor read this testimony onto the record after the Court had

⁵⁰⁹ Witness D1, 18 December 2008.

admitted it into evidence pursuant to Article 5 of the LOTC.⁵¹⁰ The witness is in poor health, does not live in Bosnia and Herzegovina, and was unwilling to testify. He did not identify the two accused or know them. The Court was satisfied that interests of justice were served by receiving his evidence in this manner.

302. Enver Husić was born on 4 July 1978 and had just turned 17 in July 1995. In July 1995, he was living with his family as a refugee in the Srebrenica enclave. He testified that the shelling of Srebrenica started on 10 July and stopped at around 10 am on 11 July. It started again in the afternoon and his family decided to leave. His mother and sister headed towards Potočari and his brother and his father and he joined the column in the direction of Kazani. His mother and sister decided to go with the majority of civilians to the UNPROFOR base in Potočari believing that they could obtain protection there. The men were afraid that they would be slaughtered by the Serbs and decided instead to join the column and head through the woods.⁵¹¹

303. Enver Husić described the column as organized but not structured. Most of those in the column were civilians and he did not see weapons. He saw some armed men at the back of the column. On 12 July, as the column made its way through the woods, it was shelled. Enver Husić found his father injured on a hill-side, having been wounded in the shelling. The column was fired on from all sides. Enver Husić estimated that the column may have stretched for some two to three kilometres ahead of him. They were walking two abreast in pairs when they set off from Jaglići.

304. On 13 July he awoke to see many bodies and blood on the hill side. He could hear the Serbs calling them to surrender, telling them that were surrounded and would not be hurt and that UNPROFOR would help them and take them to Tuzla. On the road below they could see soldiers in UN APCs wearing UN blue helmets.⁵¹² The Serbs said that they had until 14.00 to surrender or they will “kill you all”. Those in

⁵¹⁰ Exhibit T.143, Witness D2, 10 September 2009, *Prosecutor v Radislav Krstić*, IT-98-33-T, 10 April 2000, T.2497-T.2575, Witness K.

⁵¹¹ Enver Husić, 6 March 2009

⁵¹² Thomas Karremans testified at the ICTY that, on the other hand, he was unaware of Muslims ever impersonating Dutchbat or UN soldiers with blue helmets, exhibit T.52, *Blagojević*, T.11165.

the column thought that it was UNPROFOR in the UN APCs and that they would be protected. He knew that the column could not reach Tuzla as it would be shelled and was happy to see the UNPROFOR APCs and blue helmets. He walked with a group to the road, seeing armed soldiers on both sides of the path on the way down. He crossed a bridge across a stream and encountered Serb police who asked them to hand over any valuables and money that they had. They were wearing UNPROFOR flak jackets and red emblems, but Enver Husić was aware that they were members of the Serb police. He saw two armed women near the destroyed house. They singled out his neighbour and told him to go inside the house. They were taken to the meadow and ordered to sit. A tank was parked about 10 metres away. Some prisoners were taken off and searched separately for valuables.⁵¹³

305. The Court also heard evidence, depicted in the Petrović video, of Serb soldiers and police using stolen UNPROFOR vehicles and wearing UN blue helmets in the presence of the surrendering prisoners.⁵¹⁴ The only conclusion available from this is that this was a deliberate ruse designed to trick prisoners into believing that if they surrendered they were doing so in UN presence and hence would be safe.

306. Prosecution military witness Richard Butler provided an opinion that the column contained approximately 12,000 to 15,000 of which perhaps one-third were armed. In his view, the front end of the column represented a significant military threat to the VRS as it made its way to Tuzla. The column, he says, was a legitimate military target, despite its mixed civilian-military character. He believed it to pose a realistic military threat to Zvornik.⁵¹⁵ Richard Butler, however, did not explain the basis of his opinion or mention the issue of proportionality and what would have been a proportionate response to such a threat. The Court does not rely upon his assessment of whether the column posed a significant military threat. The Court finds that even if it did the issue for determination is not the existence or magnitude

⁵¹³ Enver Husić, 6 March 2009.

⁵¹⁴ Exhibits T.1 and T.134.

⁵¹⁵ Richard Butler, 29 September 2009.

of any threat but rather the treatment of the Bosnian Muslims who were in the column and surrendered to the VRS and MUP.

(i) In-court identification of Zoran Tomić by Enver Husić

307. The Court also heard some spontaneous in-court identification evidence from Enver Husić who identified Zoran Tomić in court, saying that he recognized him, having seen him twice near the destroyed house and again near the meadow. Husić said that Tomić was wearing drab olive camouflage uniform and was armed with an automatic weapon. He first saw Tomić from about five metres away and again second from about five to ten metres. The first time he saw him in passing, the second time for maybe a minute.⁵¹⁶

308. Defence counsel for the two Accused, on the other hand, described the identification as “miraculous”.⁵¹⁷ The Court does not go that far, but agrees with defence submissions that this evidence is not reliable. The Court is not prepared to accept beyond reasonable doubt the reliability of the witness’ in-court identification of Zoran Tomić. The witness did not know the accused, had not seen him before and his purported interaction with him fourteen years earlier lasted (twice) for a matter of seconds. In addition, the witness had not been shown contemporaneous (1995) photographs of members of the 2nd Šekovići Detachment and asked whether he recognized anyone. His identification of the accused was indeed spontaneous, but the Court notes that the accused was sitting several metres away from the witness, at the bar table, next to his counsel, and wearing casual clothing clearly distinguishing him as an accused person. The appearance of the accused had also changed significantly in the intervening fourteen years. In these circumstances, the Court cannot rely upon the identification as safe.

⁵¹⁶ Enver Husić, 6 March 2009.

⁵¹⁷ Zoran Tomić, closing submissions of Petko Pavlović.

XIX. PARTICIPATION IN A RECONNAISSANCE OPERATION AND ATTACKING A COLUMN OF BOSNIAKS ABOVE KAMENICA

309. The indictment also charges the two accused that on 13 July 1995 they participated in a reconnaissance operation and in attacking a column of Bosniaks above Kamenica by encouraging them to surrender with false promises of exchange.

310. The Court heard no evidence that the two accused participated in such a reconnaissance operation above Kamenica and makes no finding in respect of this allegation.

XX. PRISONERS AT SANDIĆI MEADOW VISIT OF GENERAL RATKO MLADIĆ

311. The evidence established that in the middle of the day on 13 July 1995, while the prisoners were being taken to meadow in Sandići General Ratko Mladić, accompanied by his escort, several senior officers and Ljubiša Borovčanin, arrived. A number of witnesses testified to this. The significance of this evidence is that it shows the high level of coordination between the MUP and VRS and the interest of the VRS leadership in the fate of the prisoners. Mladić visited the surrendering prisoners, to reassure them they would be exchanged. However, this occurred after the executions had already commenced and VRS intelligence officers were scouting out execution sites.

312. Momir Nikolić knew that the MUP forces were under the immediate command of Duško Jević and under the command of Ljubiša Borovčanin.⁵¹⁸ On the morning of 13 July he became aware that Mladić was to visit the area. Before General Mladić arrived at Sandići, Momir Nikolić gave instructions to the MUP officers in Konjević Polje:

⁵¹⁸Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1712. Dragan Jokić was the chief of engineering of the Zvornik Brigade in July 1995.

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

313. Of the fate of those prisoners he thought, “The same that was to happen, or rather, what had been planned and ordered regarding prisoners in Potočari. And in my opinion, all those captured in that period enjoyed the same status, whether it was on the roads or in Potočari itself... Those prisoners were to be transported to Bratunac, temporarily detained in premises and buildings designated for that temporary detention, and after that, killed like all the others that had been separated on the 12th and 13th in Potocari.”⁵¹⁹

314. Milutin Kandić was in the shade out of the sun on the balcony of the destroyed house near the meadow. He says that police were in the house and soldiers were on the road. He saw Mladić arrive and speak to the civilians about 10 to 15 metres away. They were sitting as Mladić passed by with his security detail.⁵²⁰

315. The diameter of the meadow is around 100 metres.⁵²¹ Witness D5 saw General Mladić arriving at the Sandići meadow and addressing the prisoners. He was between 15 to 50 metres away and did not recall Mladić using a megaphone.⁵²² Witness D5 also saw Borovčanin on the meadow while the prisoners were being addressed by General Mladić.⁵²³ Borovčanin stayed with Čturić after Mladić’s departure.⁵²⁴

⁵¹⁹ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1716-1717.

⁵²⁰ Milutin Kandić, 12 August 2009.

⁵²¹ Enver Husić, 6 March 2009.

⁵²² Danilo Zoljić, 20 March 2009, Witness D5, 11 March 2009. In testimony in the *Kravica (Stupar and others)* case on 20 June 2008, the witness had estimated he was 100-130 metres from Mladić, Witness D5, 11 March 2009. The Court finds that nothing turns on this difference in distance estimation.

⁵²³ Witness D5, 11 February 2009, Witness D5, exhibit T.12b statement 22 May 2008.

⁵²⁴ Witness D5, exhibit T.12b statement 22 May 2008.

316. Witness D5 stated of Borovčanin that he did not know him personally but had seen him from a distance several times and could recognise him in a group. He did not see Borovčanin in Bratunac.⁵²⁵ In his statement of 18 April 2008, however, Witness D5 said of Borovčanin, “I really haven’t seen before and I could not recognize him, he was the deputy of the commander Goran Sarić, but I really could not recognize him”.⁵²⁶ Witness D5 testified that he did not tell the full truth in this statement and the Court analyses this below in section **XXX. Assessment of Witness D5's evidence**. His evidence of the visit of Borovčanin is also consistent with that of Momir Nikolić and Dragomir Stupar who knew Borovčanin and say he was there, and of video evidence showing Borovčanin speaking to MUP officers by the road in the afternoon of 13 July 1995.⁵²⁷

317. Of Mladić’s visit, Witness D5 initially told the Prosecutor in his statement of 18 April 2008 “I haven’t seen him but I heard he was” (coming). And, “It was told by commander Čop. They said for Mladić, because I haven’t seen him, that he ordered that nobody can be mistreated”, and “I’ve heard a story that Mladić ordered that nobody can be mistreated. I haven’t seen him, but word was that he was there”.⁵²⁸ As noted above Witness D5 did not tell the full truth in his initial statement to the Prosecutor. The Court finds his testimony in court to be truthful; it is consistent with that of the other witnesses to the visit and is the evidence of one who actually witnessed what would have been a significant event to unranked police and soldiers, namely the visit of the Chief of Staff of the VRS. Nothing turns on this explicable difference between his testimony at the main trial and his statement as a suspect to the Prosecutor.

318. At around 12.30 Momir Nikolić arrived at Konjević Polje and saw about 80 to 100 prisoners on the Sandići meadow. He awaited Mladić’s arrival. After Mladić

⁵²⁵ Witness D5, exhibit T.12b statement 22 May 2008.

⁵²⁶ Witness D5, exhibit T.12a statement 18 April 2008.

⁵²⁷ Exhibits T.1 and T.134.

⁵²⁸ Witness D5, exhibit T.12a statement 18 April 2008.

left Nikolić drove back to Bratunac noticing about 500 men being marched along the road. He then passed the Kravica warehouse and noticed a few soldiers there.⁵²⁹ Consistent with Momir Nikolić's evidence, Witness D5 thinks that Mladić arrived before noon and came to the meadow with Borovčanin and other senior officers.⁵³⁰ Dragomir Stupar said that Mladić was accompanied by his entourage and Borovčanin was there from the police. Miloš Stupar was also there.⁵³¹ Dragomir Stupar said that he saw (only) 20 to 30 surrendered Bosniaks sitting on the saddle (meadow) at Sandići guarded by some police.⁵³²

319. The witnesses also gave consistent evidence about what Mladić said to the prisoners. Witness D5 heard Mladić addressing the prisoners offering them security and safety. Mladić told them that they “would all be escorted, that they would be exchanged, that they would be transferred over to the territory under the control of the Army of BiH”, but he (Witness D5) “personally found it to be a lie”.⁵³³

320. Witness D1 described sitting on the meadow when Mladić showed up with his escorts who were all wearing uniforms. Mladić said, “Do you know who I am. I am General Mladić. You were left by Naser Orić who has fled to Tuzla. You will be exchanged and given food”. He said that they would be accommodated somewhere. Applause followed. Witness D1 asked Mladić if he could get his shoes out of his backpack, to which Mladić responded “Yes”. Mladić was there for about 15 minutes.⁵³⁴ Zoro Lukić was also there when Mladić gave his speech.⁵³⁵

321. Dragomir Stupar, who was delivering food to members of the 2nd Šekovići Detachment, saw Mladić at the meadow addressing addressing Bosniak women and

⁵²⁹ Exhibit T.56, dated 6 May 2003.

⁵³⁰ Witness D5, 11 February 2009.

⁵³¹ Dragomir Stupar, 27 February 2009.

⁵³² Slobodan Stjepanović, 5 February 2009.

⁵³³ Witness D5, 11 February 2009.

⁵³⁴ Witness D1, 18 December 2008.

⁵³⁵ Zoro Lukić, 3 March 2009.

children on five or six buses coming from Srebrenica saying “Don’t be afraid, nothing will happen to you and you will be transferred to a safe area”.⁵³⁶

322. Momir Nikolić told the prisoners that they should not worry, transportation would be organized and they would be transferred to free territory.⁵³⁷ After this Momir Nikolić spoke to Mladić “in the middle of the road where I had reported to him, I asked him: “General, sir, what is going to happen to these men?” And he simply gestured. He didn’t say anything. With his hand in answer to my question, he waved his hand and showed me what would happen. I understood that to mean that those men would be killed. Actually, I saw that to be a confirmation of what was already happening”.⁵³⁸ In court he made a gesture with his hand across his chest area with his palm down – a sweeping gesture. Radoslav Stuparović stated that General Mladić came by and addressed the soldiers and police. He heard Mladić say “whoever does not have blood on their hands won’t be harmed”.⁵³⁹

323. Witness D2 also described General Mladić addressing the prisoners, telling them that they would all be exchanged for Serbs. After Mladić left, a VRS commander selected the more-able bodied prisoners telling them that they would be exchanged. The selected men, including Witness D2, were put onto waiting buses and taken to Kravica where they were taken into the warehouse. He realised as soon as they were put onto crowded buses in the direction of Bratunac that they were not going to be exchanged. This was especially obvious when they reached the warehouse.⁵⁴⁰

Findings

324. The Court finds that Mladić and Borovčanin visited the meadow in the manner described and Mladić addressed the prisoners promising them that they would be

⁵³⁶ Dragomir Stupar, 27 February 2009.

⁵³⁷ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1718.

⁵³⁸ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1718.

⁵³⁹ Exhibit T.140, Radoslav Stuparović, 9 July 2009, statement of 29 June 2006.

⁵⁴⁰ Exhibit T.143, Witness D2 (Witness K), *Krstić*, 10 April 2000, T.2497-T.2575.

exchanged. The Court is also satisfied that this was knowingly untrue as the executions of the captured Bosnian Muslim men had started the night before in Bratunac. The Court is not satisfied beyond reasonable doubt, however, that every MUP officer guarding the prisoners knew that Mladić's promises were untrue, nor that the men were to be executed, nor that Bosnian Muslim men were already being executed according to a plan to commit genocide.

XXI. PRISONERS AT SANDIĆI MEADOW

TREATMENT OF PRISONERS ON SANDIĆI MEADOW

325. The Court heard evidence about the mistreatment of the prisoners detained on the Sandići meadow. The two survivors of the massacre and Enver Husić were prisoners on the Sandići meadow on 13 July 1995. The prisoners were on the meadow for several hours and described the conditions of detention in the hot summer sun. Witness D1 also saw Serb police or soldiers murdering some prisoners.

326. Many prisoners were wounded; they received no medical treatment. Water was provided for the prisoners, but no food.⁵⁴¹ Witness D1 said that it was very hot and the soldiers sprayed the prisoners with water from a water tank.⁵⁴² Witness D5 described the surrendered prisoners as "exhausted, in rags... most of them were in plain clothes" and there were elderly men among them.⁵⁴³ He saw a water truck arrive and someone took water to the prisoners in a jerry can.⁵⁴⁴

327. Witness D1 described how a young man asked for water and Serb soldiers then hit him on the head with a shoe and took him away and shot him in the head about 7 to 8 metres away. Another person asked for his wounds to be treated, but instead was shot on the spot. Witness D1 realised that they were all going to be murdered. Witness D1 also saw Serb soldiers taking away a Muslim police officer they knew

⁵⁴¹ Witness D5, 11 February 2009.

⁵⁴² Witness D1, 18 December 2008.

⁵⁴³ Witness D5, exhibit T.12b statement 22 May 2008.

⁵⁴⁴ Witness D5, 13 March 2009.

from Vlasenica (Ahmed) and taking into a house for an hour before bidding him farewell. He came back to the meadow to collect his three brothers and three soldiers took them away. The body of one has been recovered.⁵⁴⁵

328. Enver Husić was ordered by a soldier on the tank to obtain some water for the prisoners. He took two jerry cans and went to the creek and filled it with water. He estimated there were fewer than 1,000 men on the meadow. The prisoners were crowded in together sitting and many were wounded.⁵⁴⁶ The temperature was around 30 degrees. Each prisoner was entitled to a capful of water. He, Enver Husić, was on the meadow for maybe two or three hours, estimating that he left around 14.00 or 15.00. Enver Husić identified himself in the Petrović video where the words “surrender – where the fuck did you get that T-shirt” are spoken.⁵⁴⁷ He remembered seeing a civilian camera man, in the company of two or three soldiers, when he surrendered.

329. He managed to escape when he was sent again to fetch water. The treatment the prisoners were receiving convinced him that he would die on the meadow or somewhere else. A bus stopped by the meadow and the driver asked Enver Husić to fill his water bottle. He put the water in a bottle and got on the bus when the driver was talking to a soldier. The women hid him by covering him with bags. The bus drove off without the driver noticing that he was on the bus. He got off in Tišca and walked to Kladanj. His wounded father stayed on the meadow and was never seen again. He left two friends, the “Tihić brothers from Skelani” on the meadow. He said that they have been unaccounted for since. His brother survived because a man from Vlasenica saved him.⁵⁴⁸

330. Members of the three platoons of the 2nd Šekovići Detachment were guarding the prisoners on the meadow. Witness D5 was told to go there with other members

⁵⁴⁵ Witness D1, 18 December 2008.

⁵⁴⁶ Enver Husić, 6 March 2009.

⁵⁴⁷ Enver Husić, 6 March 2009, exhibit T.1.

⁵⁴⁸ Enver Husić, 6 March 2009

of the 3rd platoon.⁵⁴⁹ Stanislav Vukaljović stated that about seven members of his unit from Jahorina were also guarding the prisoners on the meadow in Sandići.⁵⁵⁰

331. Witness D5 also guarded the prisoners. Very many had surrendered and were gathered on the meadow.⁵⁵¹ He went to the meadow several times with prisoners. His specific assignment was to be by the water fountain near the destroyed house and to send anyone who surrendered to behind the house to be searched.⁵⁵² A large number of police were searching the prisoners on the meadow.⁵⁵³ Zoro Lukić also saw some soldiers frisking prisoners in the meadow.⁵⁵⁴

332. Witness D5 recalled an elderly man calling out to his son to surrender. This is shown in the Petrović video, and in his opening address the Prosecutor said the man's body, found in a mass-grave, had recently been identified by DNA evidence.⁵⁵⁵ The man is Ramo Osmanović and his wife identified him from the video. Standing behind him in the video still is Slobodan Petrović, a member of the 1st PJP Company from Zvornik.⁵⁵⁶

333. After viewing the footage, Witness D5 recognized the man as his neighbour (Omer) and stated that he could hear Milenko Trifunović's voice on the tape calling out to them to surrender. Witness D5 knows that the elderly man was in the column and ended up in the hangar where he was killed.⁵⁵⁷ Witness D5 also said that some prisoners asked him what would happen to them. He knew what their fate was but dared not tell them.⁵⁵⁸ Radoslav Stuparović stated that "people were surrendering in

⁵⁴⁹ Witness D5, 11 February 2009.

⁵⁵⁰ Exhibit T.19, statement of Stanislav Vukaljović to investigators, 18 October 2005.

⁵⁵¹ Witness D5, 11 February 2009.

⁵⁵² Witness D5, 20 March 2009.

⁵⁵³ Witness D5, 13 March 2009.

⁵⁵⁴ Zoro Lukić, 3 March 2009.

⁵⁵⁵ Exhibit T.1, 13 July 1995.

⁵⁵⁶ Exhibit T.134.

⁵⁵⁷ Witness D5, exhibit T.12b statement 22 May 2008.

⁵⁵⁸ Witness D5, 11 February 2009.

large numbers”. He clarified this in his testimony by saying that smaller groups were surrendering as well.⁵⁵⁹

Findings

334. The Court finds that the prisoners in the custody and care of members of the 2nd Šekovići Detachment and others were severely mistreated during their detention on the Sandići meadow on 13 July 1995.

(i) Number of prisoners and soldiers/MUP officers on Sandici meadow

335. The Court heard varying estimates of the number of prisoners and the number of guards on the meadow on 13 July. For example, Witness D1 testified that “many” soldiers were guarding the prisoners on the meadow. He recognised about 50 men on the meadow saying “none of them are around now” meaning that they were all murdered.⁵⁶⁰ Enver Husić, then aged 17, and a prisoner on the meadow, estimated seeing some 300 or so Serb soldiers on the meadow.⁵⁶¹ Milutin Kandić estimated at one point he saw between 50 and 100 prisoners at one point on the meadow.⁵⁶² Witness D5 estimated that there were around 50 to 60 police in the vicinity of meadow of whom about 20 were from the 1st, 2nd and 3rd platoons. About 30 were on the meadow standing maybe five to ten metres apart.⁵⁶³

336. Radoslav Stuparović estimated seeing 400 to 500 prisoners from the meadow moving along the road in both directions.⁵⁶⁴ He stated that while he was at Sandići he saw soldiers taking the prisoners there and heard vehicles taking them away. Some people were wounded and people were asking for water.⁵⁶⁵

⁵⁵⁹ Exhibit T.140, Radoslav Stuparović, 9 July 2009, statement of 29 June 2006.

⁵⁶⁰ Witness D1, 18 December 2008.

⁵⁶¹ Enver Husić, 6 March 2009.

⁵⁶² Milutin Kandić, 12 August 2009, marked on exhibit photo T.141.

⁵⁶³ Witness D5, 13 March 2009.

⁵⁶⁴ Radoslav Stuparović, 9 July 2009.

⁵⁶⁵ Exhibit T.140, Radoslav Stuparović, 9 July 2009, statement 29 June 2006.

337. Danilo Zoljić estimated there were hundreds of unarmed people on the meadow and about 50 to 60 police were stretched out along the road but only a small number guarding the prisoners on the meadow. He radioed Dragomir Vasić for military assistance because only some three to four police were securing the prisoners.⁵⁶⁶ The Court accepts that he radioed for reinforcements but finds it difficult to accept that he saw only three to four police guarding hundreds of prisoners. It is obvious that the number of prisoners greatly outnumbered those guarding them, and when Zoljić went past it is possible that only a limited number of police were there at the time.

338. The Court does not accept Enver Husić's estimate as reliable, although the Court accepts that he saw what he thought was a large number of uniformed Serbs in the vicinity of the meadow. The Court prefers the evidence of those who were actually on the meadow for a significant period such as Witness D1 and Witness D5. In making this finding the Court does not agree with the closing submissions of Zoran Tomić which argue bias by Enver Husić claiming that he "demonstrated strong hatred towards Serbs" for example, in describing the VRS as 'Četniks'.⁵⁶⁷ This particular witness was then only 17, and by using his wits and crawling onto a bus he narrowly escaped death in the Kravica warehouse, unlike his father who was murdered there. It is not unreasonable to expect that he thus would harbour strong feelings against those who are responsible. This of itself does not render his evidence incredible or unreliable.

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

339. Members of the platoons of both accused were on or near the meadow on the afternoon of 13 July 1995. The Court heard positive evidence that both accused were there. The evidence noted above, of Witness D5 seeing Zoran Tomić search a

⁵⁶⁶ Danilo Zoljić, 20 March 2009.

⁵⁶⁷ Zoran Tomić, closing submissions of Petko Pavlović, page 33.

prisoner, and of other members of his platoon that he was in the vicinity of the destroyed house directly opposite the meadow, proves the presence of Zoran Tomić near or on the meadow on 13 July 1995.

340. Mirko Aščerić saw Radomir Vuković at Sandići, wearing the bandana that he always wore and had seen him in the bus.⁵⁶⁸ Photographs tendered into evidence by defence counsel for Vuković also show him in 1995 wearing green camouflage and blue police uniforms and wearing a black bandana.⁵⁶⁹

Findings

341. The Court is satisfied beyond reasonable doubt that both Radomir Vuković and Zoran Tomić were present on and in the near vicinity of the Sandići meadow on 13 July 1995.

XXIV. CONVOYS OF CIVILIANS FROM SREBRENICA

342. The indictment charges that at Sandići on 13 July 1995 both accused participated in securing the road between Bratunac and Konjević Polje to keep it open, to allow the forcible transfer of women and children from Srebrenica. The Court heard a great deal of evidence about the movement of civilians along the road from Srebrenica in the direction of Bratunac via Potočaria and along the Bratunac to Konjević Polje road in the direction of Tuzla and Kakanj.

Evidence

343. The Court heard evidence from those deployed along the road and from the survivors of the massacre. Some MUP members even testified that their task included keeping the road open to allow the passage of civilians from Srebrenica.

⁵⁶⁸ Mirko Aščerić, 13 January 2009.

⁵⁶⁹ Exhibits O.1.25, 27, 28, 29, 30 and 37.

The Court is satisfied beyond reasonable doubt that on 13 July 1995 many buses containing civilians from Srebrenica and Potočari passed those guarding the road travelling in the direction of Konjević Polje from Bratunac.

344. Various witnesses stationed along the road testified about the buses, the civilians and the reasons for the deployment there. Slaviša Žugić said that on 13 July their deployment was to secure the Konjević Polje to Bratunac road to allow the unhindered passage of a convoy of women and children coming from Srebrenica. He also saw UN APCs on the road. He was on the road for the entire day before being deployed back to Zvornik to reinforce it to protect it from possible attacks from Bosnian Army units coming from Srebrenica and Tuzla.⁵⁷⁰ Duško Mekić, a member of the Skelani platoon deployed along the road, gave similar evidence. He was aware that their instructions were to guard the road to secure the deportation of women and children from Srebrenica.⁵⁷¹

345. Stanislav Vukaljović, from the Jahorina Training Centre unit, stated that on the 13 July, “a lot of buses and trucks transporting civilians, women and children from Srebrenica, were passing down the road that day, they were coming from the direction of Bratunac and going towards Konjević Polje. We were not given any particular orders as to what to do, but I understood that we were supposed to secure unhindered passing of civilians”.⁵⁷² He testified that he saw many buses containing women and children going in that direction.⁵⁷³

346. Marko Aleksić saw buses with mostly women, children and “elderly men heading to Kladanj and Tuzla” that he thought were coming from Srebrenica, but vehicles moving in the opposite direction towards Bratunac were “mainly Serbs. Those were private and military vehicles”.⁵⁷⁴ According to Mirko Aščerić they were

⁵⁷⁰ Slaviša Žugić, 13 January 2009.

⁵⁷¹ Duško Mekić, 18 June 2009.

⁵⁷² Exhibit T.19, statement of Stanislav Vukaljović to SIPA investigators, 18 October 2005.

⁵⁷³ Stanislav Vukaljović, 23 March 2009.

⁵⁷⁴ Exhibit T.8, signed statement of Marko Aleksić to SIPA, 27 June 2005.

securing the road for all traffic, yet, while deployed on the road he saw buses and trucks and vans transporting people from Srebrenica to, he thought, Kladanj.⁵⁷⁵

347. Witness D5 also saw buses and trucks passing by containing civilians who had been at the “collection centre” in Potočari, travelling towards Konjević Polje in the direction of Tuzla.⁵⁷⁶ There was no traffic on the road while the column was being escorted to Kravica but traffic had been on the road throughout the day. He had seen buses and trucks of civilians from Potočari and Srebrenica passing by. He stated “I knew I was assisting the safe passage of those buses containing people from Srebrenica in the direction of Kladanj and Tuzla”.⁵⁷⁷

348. Radoslav Stuparović, deployed next to the Sandići meadow, on the afternoon of 13 July, saw passing buses containing civilians whom he assumed were Muslims.⁵⁷⁸ In an investigative statement, at paragraph 18, he said “I saw buses and trucks containing women, children and elderly men constantly passing by... The convoy was escorted by UN-marked vehicles.... I assumed they were coming from the UN base in Potočari”.⁵⁷⁹ Exhibit T.140 is a witness examination record taken on 29 June 2006 by an international prosecutor Kwai Hong Ip in the presence of four others. It was audio-recorded. The Court has assessed the witness’ evidence and prefers his audio-recorded statement to the Prosecutor on any points of conflict between his in court testimony and his original statement.

349. While detained on the meadow Witness D1 also saw buses containing women and children passing on the way to Potočari. He also some regular traffic of a few vehicles.⁵⁸⁰ Enver Husić, detained on the meadow, saw buses and trucks travelling

⁵⁷⁵ Mirko Aščerić, 13 January 2009.

⁵⁷⁶ Witness D5, 11 February 2009.

⁵⁷⁷ Witness D5, 11 February 2009.

⁵⁷⁸ Radoslav Stuparović, 9 July 2009.

⁵⁷⁹ Exhibit T.140, Radoslav Stuparović, 10 August 2009.

⁵⁸⁰ Witness D1, 18 December 2008.

along the road describing them as packed full of women and children from Potočari.⁵⁸¹

350. On second day of their deployment (13 July) Slobodan Stjepanović saw civilians from Srebrenica passing by in buses. He said that the four in his group (Đinić, Tomić, Pedrag Čelić and he) stayed in the destroyed house and that Đinić and Tomić left and did not come back.⁵⁸²

351. The photographic exhibits corroborate the eye-witness testimony. An aerial photograph taken at about 14.00 on 13 July 1995 shows buses on the road between Novo Kasaba and Konjević Polje passing a group of prisoners next to a football field near Novo Kasaba.⁵⁸³ Another aerial photograph, taken at the same time, shows a group of prisoners in the meadow at Sandići and a number of buses and or trucks either parked or passing on the road.⁵⁸⁴ The Petrović video also shows a group of prisoners on the meadow on the afternoon of 13 July.⁵⁸⁵

Findings

352. The Bratunac to Konjević Polje road is a back-road in a relatively isolated area. The type and volume of traffic on 13 July 1995 was extraordinary for that particular road. The Court finds beyond reasonable doubt that on 13 July 1995, the volume of the traffic, and most specifically that of buses containing civilians on the Bratunac to Konjević Polje road, was such that every police officer and soldier along the road or at the Sandići meadow must have known that it was civilians leaving Srebrenica. Anyone who saw the traffic must have realized that the buses contained only women, children and the elderly. It must have been obvious to anyone deployed along the road that the women, children and elderly were being transported in the direction of ABiH-held territory. No other conclusion is available from the evidence.

⁵⁸¹ Enver Husić, 6 March 2009.

⁵⁸² Slobodan Stjepanović, 5 February 2009.

⁵⁸³ Exhibit T.105.

⁵⁸⁴ Exhibit T.107.

⁵⁸⁵ Exhibits T.1 and T.134.

353. However, despite this, the Court is not satisfied beyond reasonable doubt that those securing the road were aware *on the afternoon of 13 July 1995* that by securing the road they were assisting a plan not only to deport the civilian population but also to murder the men as part of a plan to commit genocide.

XXV. CONVEYING PRISONERS TO KRAVICA WAREHOUSE

354. The Court heard evidence that the prisoners on the meadow were taken to the Kravica warehouse on the afternoon of 13 July. Some prisoners were taken in buses, while a large group was marched there in a column. As described above in section **XXI. Treatment of prisoners on Sandići meadow – presence of Radomir Vuković and Zoran Tomić on Sandići meadow**, the Court has found that both Accused were present on or in the immediate vicinity of the meadow in Sandići before the prisoners were taken to the warehouse.

355. This Court heard evidence from some members of the 2nd Šekovići Detachment who were in the vicinity of the Sandići meadow and stationed along the road when the prisoners were marched to the warehouse. Most of these witnesses had an obvious motive to downplay their own role and to minimize, if not attempt to render exculpatory, their observations of what was occurring. The Court observed a pattern of their attempting to minimize the crime, by for example, referring to war crimes allegedly committed by the ABiH against Serb civilians and in attempting to portray the executions as occurring only because a prisoner had seized a weapon from a MUP officer thus causing them to shoot back in self-defence. Witness D5, on the other hand, provided clear and cogent evidence of exactly what the members of the 2nd Šekovići Detachment did. Because of this, where the evidence of 2nd Šekovići Detachment members conflicts with that of the survivors and Witness D5, the Court has preferred that theirs over the detachment members.

356. The evidence has established beyond reasonable doubt by the afternoon of 13 July the plans to execute the Bosnian Muslim prisoners were being carried out and that temporary holding areas for the prisoners before their execution had been selected.

357. The Butler report observed in relation to the Kravica warehouse that it was a “‘known’ collection site. Presumably, as this was the designated holding area, it would have then required specific arrangements to ensure the security of the incoming prisoners. As elements of the VRS and MUP were also along the road during the period, one can infer that this location was designated by a higher headquarters, and transmitted to the subordinate units. This should have been a function of the Intelligence and Security Branch of the Bratunac Brigade, and the VRS Drina Corps”.⁵⁸⁶

358. It is clear that the transportation of the prisoners who surrendered on the road near Sandići was occurring in a staged process. This involved, first their surrender, then their temporary transfer to the meadow, followed by transporting them to a more secure yet temporary detention location. Then they were to be executed either there or at another location. The Court does not need to make a finding as to whether the plan provided for the executions to occur at the warehouse itself or at some other location shortly afterwards because the evidence has established beyond reasonable doubt that the plan was to execute the prisoners whether it occurred at the warehouse or another location. The Court notes that one witness, Marko Aleksić, even stated that “in my opinion the column was formed in order to move the captured men from the Sandići meadow to a place where they could be guarded more easily”.⁵⁸⁷

Evidence

⁵⁸⁶ Exhibit T.86, Butler report, paragraph 6.37.

⁵⁸⁷ Exhibit T.8, signed statement of Marko Aleksić to SIPA, 27 June 2006.

359. The prisoners were taken to the nearby Kravica warehouse in several groups. Two witnesses, the survivor Witness D2, and Luka Marković, describe buses taking prisoners there. Other witnesses, including another survivor, Witness D1, and Witness D5, describe a column of prisoners being marched from the Sandići meadow to the warehouse.

360. When the orders were given to move the prisoners from the meadow, the traffic was still passing on the road. Milenko Pepić testified that Rade Čuturić gave him a motorola radio in the afternoon of 13 July with orders to keep him informed. Čuturić told him that a group of Muslims was supposed to surrender and be transferred to the farming co-operative in Kravica. He said the road should be freed to allow unhindered passage. By motorola Čuturić ordered Milenko Pepić to keep the road closed to allow the escort of a column of Muslims. All traffic should be stopped to allow this. The traffic was then mainly buses and trucks taking Muslim civilians from Srebrenica to Kladanj and other areas. Upon receiving the order Pepić stopped the buses for a period.⁵⁸⁸ Slobodan Stjepanović's evidence was similar, stating that he received information at about 18.00 to 19.00 that a "group of civilians was soon to pass from Konjević Polje to Bratunac and that it was necessary to secure their passing through the secured sections of the road".⁵⁸⁹ It was only then that the column set off from the Sandići meadow.

361. The column set off sometime in the late afternoon of 15 July 1995. Witness D5 stated that it was maybe an hour after Mladić's departure when Milenko Trifunović issued an order that they were to march the prisoners to the hangar and to detain them. The order was passed along to each member. Rade Čuturić ordered the prisoners to form a column. Borovčanin and Miloš Stupar were both present when the column was moving.⁵⁹⁰ Witness D5 stated that he had seen Stupar in Sandići "passing through two or three times... in a jeep of some sort".⁵⁹¹ The Petrović video

⁵⁸⁸ Milenko Pepić, 4 February 2009.

⁵⁸⁹ Exhibit T.11, signed statement of Slobodan Stjepanović to SIPA, 27 October 2005.

⁵⁹⁰ Witness D5, exhibit T.12b statement 22 May 2008.

⁵⁹¹ Witness D5, exhibit T.12b statement 22 May 2008.

also shows Trifunović at the Sandići meadow on 13 July 1995 standing with some prisoners with the destroyed house in the background.⁵⁹²

362. Witness D5 testified that after several hours on the meadow, the prisoners were taken in groups of four by four and lined up on the asphalt road. Witness D5's task was to secure the column by escorting it. Both accused and Čupo Bana Đinić went with the column.⁵⁹³ Witness D5 estimated that the column set off between 17.00 and 18.30 or maybe earlier.⁵⁹⁴ However he thought the column set off within an hour of Mladić's departure. This cannot be accurate as the most reliable evidence places Mladić on the meadow after midday but well before 17.00. Witness D5 also described prisoners still surrendering as the column set off, saying it was continuing after their departure.⁵⁹⁵

363. Witness D5 testified that "Rade Čuturić was at the head of the column".⁵⁹⁶ However in his statement of 18 April 2008, when asked if anyone was at the head of the column "Maybe yes, I don't know that. I think it should have been" and that commander Trifunović had said to them something like, "Take them up to the hangars and they will get into buses and if these come and to send them to Tuzla. Kladanj, somewhere".⁵⁹⁷ For reasons set out in section **XXX. Assessment of Witness D5's evidence**, Witness D5 explained that his initial statement to the Prosecutor was not entirely truthful and the Court prefers his in-court testimony.

364. Witness D5 was certain that no-one from the Skelani platoon stayed behind with the exception of Miladin Stevanović and Nenad Vasić who had left before before the column left.⁵⁹⁸ Witness D5 was on the left hand side of the column. Slobodan Jakovljević was behind him.⁵⁹⁹ The column was escorted by members of the 2nd

⁵⁹² Exhibit T.1, exhibit T.134.

⁵⁹³ Witness D5, 11 February 2009.

⁵⁹⁴ Witness D5, 13 March 2009.

⁵⁹⁵ Witness D5, 11 March 2009.

⁵⁹⁶ Witness D5, 11 March 2009, 11 February 2009, Witness D5, exhibit T.12b statement 22 May 2008.

⁵⁹⁷ Witness D5, exhibit T.12a statement 18 April 2008.

⁵⁹⁸ Witness D5, 13 March 2009.

⁵⁹⁹ Witness D5, 13 March 2009.

Šekovići Detachment, and so far as Witness D5 could recall “no-one outside of the 2nd Detachment participated in marching the column off”.⁶⁰⁰ Of the uniforms the escorts were wearing he testified, “I can say for the Special Police Detachment that we never wore the same uniforms. Some wore blue fatigues, some wore two-piece uniforms, but it was general practice that we all wear the same uniforms. Although this was not always the case.”⁶⁰¹ The photographs of Radomir Vuković in both blue and green uniforms provide corroborative evidence in support of this.⁶⁰²

365. The column walked for about a kilometre. There was no traffic on the road when the column set off. During the day buses and trucks containing civilians had been passing. Witness D5 thought that they were civilians from Potočari and Srebrenica, the same civilians he had seen in Potočari.⁶⁰³

366. Witness D1 estimated that the column was about 300 to 400 metres long and every six or seven metres was guarded by a soldier with a rifle. Some soldiers from the meadow escorted the column to the warehouse.⁶⁰⁴ Zoro Lukić testified that the prisoners got up and left in the direction of Kravica; soldiers lined them up in rows of two to three on the road. He estimates that between 100 and 300 men were in the column on the road. Everyone on the meadow left at the same time.⁶⁰⁵ The Court gives no weight to Zoro Lukić’s evidence that he did not see any members of his unit escorting the column and that he would have seen them if they were them.⁶⁰⁶ The Court does not believe Zoro Lukić and prefers the evidence of Witness D5. Credible evidence was given at the main trial that Lukić was using a megaphone and making false promises in calling upon Bosnian Muslims to surrender to the MUP and

⁶⁰⁰ Witness D5, 20 March 2009.

⁶⁰¹ Witness D5, 20 March 2009.

⁶⁰² Exhibits O.1.25, 27, 28, 29, 30 and 37.

⁶⁰³ Witness D5, 11 February 2009.

⁶⁰⁴ Witness D1, 18 December 2008.

⁶⁰⁵ Zoro Lukić, 3 March 2009.

⁶⁰⁶ See Zoran Tomić, closing submissions of Petko Pavlović.

VRS.⁶⁰⁷ This evidence of his active involvement in the surrenders provides him with the motive to minimize his own the involvement and that of members of his unit.

367. Witness D1 testified that at about 16.00 a soldier with a German shepherd dog and a machine gun ordered the prisoners to form a column.⁶⁰⁸ An issue appeared to arise in the proceedings in relation to the dog and the identity of the soldier. The Court is satisfied that nothing turns on either the existence of the dog or identity of the soldier accompanying it. The Court has received evidence of the presence of VRS soldiers with dogs at Potočari on 13 July and believes it entirely possible that Witness D1 witnessed a soldier and a dog at the meadow before the column set off towards Kravica warehouse. As an illustration, Aleksander Radovanović testified that when the column set off heard dogs barking but did not see any.⁶⁰⁹

368. Milutin Kandić says that he saw soldiers escorting a group of prisoners in the direction of Konjević Polje. Soldiers who escorted them joined two groups and took them in the direction of Bratunac. He thought that they were civilians because they were wearing civilian clothes and had no weapons.⁶¹⁰ The Court does not accept that he only saw soldiers escorting prisoners in the direction of Bratunac.

369. Nedeljko Sekula, a serving police officer in the RS MUP, provided a signed statement to SIPA investigators on 12 October 2005.⁶¹¹ In testimony, however, he denied saying a number of the things attributed to him, saying that the statement was dictated by the investigators and did not contain his word. The Court notes that the Defence of the two accused did not seek to call any of the SIPA investigators to corroborate his version of what happened in the interview. The Court is thus left with the testimony of a serving police officer to the effect that SIPA officers investigating offences of genocide dictated in the statement given after summoning and under

⁶⁰⁷ For example, Nedeljko Sekula, 27 August 2009, Witness D5, exhibit T.12a statement 18 April 2008. Witness D5, exhibit T.12b statement 22 May 2008.

⁶⁰⁸ Witness D1, 18 December 2008.

⁶⁰⁹ Aleksander Radovanović, 18 November 2009.

⁶¹⁰ Milutin Kandić, 12 August 2009.

⁶¹¹ Exhibit T.142.

caution things that he had not seen or witnessed, yet he, as a serving police officer, still signed the statement. This is so inherently implausible that the Court does not accept that it occurred in this manner. In addition, his statement provides a version far closer to other witnesses than his testimony does. For example, at paragraph 5, he stated that Radomir Vuković, aka Vojvoda, carried an M-84 machinegun. In testimony he stated that he did not say this but merely said that he remembered him.⁶¹²

370. Predrag Čelić stated that “a fairly large column of about 1,000 Srebrenica civilians set off from Konjević Polje towards Kravica... The column was marched by members of the military and police”.⁶¹³ Nedeljko Sekula, who stayed in Sandići for about three to four hours, he says until about 21.00, did not see any column of prisoners, although he was standing about 10 to 15 meters from the road.⁶¹⁴ The Court does not find this evidence credible.

371. Stanislav Vukaljović, whose Jahorina unit was also guarding the prisoners on the meadow, stated that “some of the prisoners who were gathered at the spot entered buses in which there were already some prisoners, and they were transported in the direction of Konjević Polje”.⁶¹⁵

372. Some police who were stationed along the road on the afternoon of 13 July testified about seeing a column passing by. For example, Marko Aleksić testified that a column of Muslims who had surrendered somewhere near Sandići passed by them as they were securing the road. They were walking three or four abreast along the road coming from Sandići. He thinks those accompanying them could have been police from his unit. He concluded that they were going to be imprisoned. He thinks there were about 500 in the column.⁶¹⁶

⁶¹² Nedeljko Sekula, 27 August 2009.

⁶¹³ Exhibit T.10, signed statement of Predrag Čelić to SIPA, 27 October 2005. He was then a serving police officer and provided the statement under caution.

⁶¹⁴ Nedeljko Sekula, 27 August 2009.

⁶¹⁵ Exhibit T.19, statement of Stanislav Vukaljović to investigators, 18 October 2005.

⁶¹⁶ Marko Aleksić, 4 February 2009.

373. Radoslav Stuparović testified that he gave a general estimate of seeing 400-500 prisoners moving in both directions.⁶¹⁷ But this was his “total estimate” of the number of prisoners on the Sandići meadow, as he also he said that he saw between 100 and 150 prisoners in the column.⁶¹⁸ He stated, “We asked Zoljić to find someone to take those men from there, because we could not leave them there in the field over night. There were around 50 of us and there were from 400 to 500 prisoners there. The vehicles came and they picked up those people and took them to Bratunac. The vehicles included several military trucks and buses. The transportation was done quickly”.⁶¹⁹

374. Slobodan Stjepanović testified that sometime in the afternoon a large group of mostly civilians from Srebrenica passed by on the road heading towards Bratunac. Maybe up to 500 were in the column. Afterwards he heard shooting that lasted for maybe 30 minutes.⁶²⁰ He also stated to SIPA that he saw about 400 people in a column in lines of four going in the direction of Bratunac.⁶²¹

375. At about the same time as the prisoners were being held on the Sandići meadow and marched and bused to the warehouse, executions of prisoners from the column were occurring in the Cerska Valley.⁶²²

Findings

376. The Court finds that the Prosecutor has established beyond reasonable doubt that a lengthy column of hundreds of prisoners was marched by members of the 2nd Šekovići Detachment from the Sandići meadow to the Kravica warehouse on 13 July 1995.

⁶¹⁷ Radoslav Stuparović, 9 July 2009.

⁶¹⁸ Radoslav Stuparović, 10 August 2009.

⁶¹⁹ Exhibit T.140, para.17.

⁶²⁰ Slobodan Stjepanović, 5 February 2009.

⁶²¹ Exhibit T.11, signed statement of Slobodan Stjepanović to SIPA, 27 October 2005.

⁶²² Exhibit T.86, Butler report, paragraph 6.26.

XXVI. PRESENCE OF THE ACCUSED IN THE COLUMN OF PRISONERS

377. The evidence has established beyond doubt that members of the 2nd Šekovići Detachment escorted the prisoners to the Kravica warehouse. Witness D5, however, provided the only evidence that the two accused escorted the column. He testified that the police escorting the column were: “Trifunović, Radovanović, late Rade Čturić, me, Jovanović Milija, Savić Milenko, Jovanović Milija, Blagojević Milija, Mitrović Petar, Medan Branislav, Jakovljević Slobodan walked behind me, Vuković Radomir”.⁶²³

378. In his witness statement of 22 May 2008, Witness D5 said that the following members of the Skelani platoon were escorting the column towards Kravica, “Milenko Trifunović, Vaso Todorović, Aleksandar Radovanović, Petar Mitrović, Branislav Medan, Slobodan Jakovljević, Jovan Mijatović, Milenko Savić, Milija Blagojević, Milija Jovanović, Miko Milić, Mirko Milanović, I am not sure about Slaviša Jovanović... Miladin Jovanović and Nenad Vasić went to Bratunac, they were not with us, but returned later on, but they were on the ground”. Others were from the 1st and 2nd platoons were escorting the column, but the witness was unsure of their names.⁶²⁴ Zgembo was escorting the column. Dragan Vesić was not.⁶²⁵

379. The Petrović video corroborates Witness D5 in relation to the presence of Mirko Milanović of the 2nd Šekovići Detachment who is shown sitting with Milojkó Milanović of the 1st PJP Company Zvornik in vegetation on the side of the road about 100 metres south of the Sandići meadow at 16.12 on 13 July 1995. Witness D5’s evidence that Borovčanin was present when the column set off is consistent with the video evidence which shows Ljubiša Borovčanin in this same location 22 seconds

⁶²³ Witness D5, 11 March 2009.

⁶²⁴ Witness D5, exhibit T.12b statement 22 May 2008.

⁶²⁵ Witness D5, exhibit T.12b statement 22 May 2008.

later. Another video still shows him on the Sandići meadow with a member of the 1st Intervention Platoon of the Zvornik CSB. Another shows him at the meadow standing next to a Serb soldier or MUP officer in camouflage uniform wearing a stolen UN blue helmet.⁶²⁶

380. Witness D5 testified that Zoran Tomić was escorting the column. Witness D5 was on the left hand side facing towards Sandići, and thinks that Tomić must have been on the other side of the column because he could not see him on the same side. He was 99% sure that the Skelani platoon members police left with the column but Miladin Stevanović and Nenad Vasić had left before it set off.⁶²⁷

381. Against this, a number of witnesses who knew Zoran Tomić testified that he did not escort the column. Zoro Lukić said that Tomić and Brano Đinić were with him all the time, meaning that that Tomić did not go to Kravica.⁶²⁸ Radoslav Stuparović last saw Zoran Tomić near the water fountain, near a destroyed house last seeing him in the afternoon when they packed to leave. Radoslav Stuparović stayed at Sandići until early evening when Danilo Zoljić ordered them to leave and return to Bratunac by bus.⁶²⁹ A bus arrived and a group of seven to eight, including Zoran Tomić, got on the bus. He saw a column of between 50 and 100 prisoners in a long column being escorted by a group of soldiers – but said that the escorts were soldiers not police. He did not see Zoran Tomić escorting the column. It was going in the direction of Konjević Polje, in a single or double file and posed no danger because the prisoners were unarmed.⁶³⁰

382. In the afternoon of 13 July 1995 Cvijan Ristić saw soldiers escorting a group of about 60 to 70 prisoners along the road passing by him on the road, but he did not see Zoran Tomić escorting them.⁶³¹ The Court does not accept as reliable or credible his

⁶²⁶ Exhibit T.1, exhibit T.134.

⁶²⁷ Witness D5, 13 March 2009.

⁶²⁸ Zoro Lukić, 3 March 2009.

⁶²⁹ He was unable to identify the area on photo exhibit T.106.

⁶³⁰ Radoslav Stuparović, 9 July 2009.

⁶³¹ Cvijan Ristić, 2 July 2009.

estimate of the number of prisoners being escorted and it is apparent that the witness was attempting to minimize the number.

383. Aleksandar Radovanović, sentenced to serve 32 years of imprisonment as an accessory to genocide testified that he saw Muslim soldiers in a company sized column (maybe 100) at about 17.00 on 13 July passing on the road heading in the direction of Bratunac. Some were wearing civilian and some military clothing. He did not see Zoran Tomić escorting the column and is sure that he would have recognized him there. Soldiers were escorting the column, but he did not recognise any.⁶³² The Court also does not accept as reliable or credible the evidence of this witness who has been convicted for his participation in the genocide, in claiming that he saw only Muslim soldiers being escorted by unknown Serb soldiers.

384. Pedrag Čelić testified that on 13 July 1995, a column passed along the road towards Bratunac. Tomić and Brano Đinić left in the direction of Sandići and Kravica, saying that Zoran Lukić had called for them. They did not return to their position that day.⁶³³ Marko Aleksić also testified that he did not see Zoran Tomić escort the column.⁶³⁴ The Court notes that Đinić was convicted at second instance for his participation in the genocide which included positive findings that he escorted the column to the warehouse and murdered the prisoners. The Court rejects as untrue Pedrag Čelić's evidence that Tomić and Đinić left together and did not escort the column.

Findings

385. The Court finds the evidence of Witness D5 on the presence of the two accused in the column credible and reliable. It is satisfied beyond reasonable doubt that both escorted the column in the manner described by the witness. It does not believe the evidence of the MUP members who stated either that Tomić was not in the column or

⁶³² Aleksander Radovanović, 18 November 2009.

⁶³³ Pedrag Čelić, 5 February 2009.

⁶³⁴ Marko Aleksić, 4 February 2009.

that they had not seen him in it. The evidence of some is clearly incorrect, for example in their stating that the column was escorted by unknown soldiers rather than known police officer colleagues.

386. The evidence has clearly established that members of the 2nd Šekovići Detachment were deployed along the road and were guarding the prisoners on the meadow. Witness D5, who was a member of the Detachment, was one of those who escorted the prisoners to the meadow. The evidence is overwhelming that members of the 2nd Šekovići Detachment were at the warehouse. In fact, indisputably, one was killed and another, the commander Rade Čuturić, was injured in an altercation with a prisoner. Other members of the Detachment were called to assist by taking them for medical help. The Detachment members were under a single command and given defined tasks. No reason in military terms could exist for Witness D5 alone of all 2nd Šekovići Detachment members to have been with VRS soldiers in escorting the column. The video evidence also clearly shows that MUP officers were deployed on the road at Sandići and were guarding the prisoners. The only inference available beyond reasonable doubt is that those who escorted the column to the warehouse were also those who had guarded the prisoners on the meadow and then executed them.

387. The Court does not believe the evidence of members of the 2nd Šekovići Detachment who say that Tomić left and did not escort the column. For these reasons, the Court has preferred the evidence of Witness D5 in any conflict between their evidence and his on the issue of who was escorting the column. The Court therefore finds that both Accused escorted the column to the warehouse.

XXVII. EXECUTION OF THE PRISONERS AT KRAVICA WAREHOUSE

388. The Court notes that three ICTY trial and two ICTY appeal judgements and one other trial panel judgement of this Court have found that members of the 2nd Šekovići

Detachment Detachment were responsible for the mass murder of many hundreds of prisoners on 13 July 1995 at Kravica warehouse. This Court heard similar evidence.

389. The column of prisoners was marched along the road until it reached the agricultural warehouse at Kravica. The warehouse or hangar is 61.2 metres in length, 10.2 metres wide and 4.1 metres high.⁶³⁵ It is divided into two separate parts entered by separate entrances on the side facing the road. The rear side of both parts has windows.⁶³⁶ The side to the east and on the left when facing it from the road, is 30.77 metres wide, the other to the west is 24.26 metres in width.⁶³⁷ Primary school principal Jovan Nikolić who was then working as the director of the Kravica Farming Co-operative described it as an independent farming co-operative with five or six workers and was mainly dealing with fruit storage and transportation.⁶³⁸ An ICTY investigation report described it “a large warehouse of prefabricated construction utilized as an agricultural warehouse. The walls consist of concrete on the exterior and interior walls sandwiching Styrofoam sheet insulation. There are several other buildings in the complex...”⁶³⁹

390. When the column reached the warehouse some of the men entered by the door on the right hand side (when facing the hangar from the road), but they could not all fit, so the remainder entered through the second door.⁶⁴⁰

391. Witness D1 entered through the second door as the first part had filled up by the time he got there. Men from the column were sitting on the floor and it was very tight. He saw a bus parked in front of the warehouse, and an UNPROFOR APC on the road, but no other traffic.⁶⁴¹

⁶³⁵ Exhibit T.96.

⁶³⁶ Jovan Nikolić, 15 December 2008.

⁶³⁷ Exhibit T.96.

⁶³⁸ Jovan Nikolić, 15 December 2008.

⁶³⁹ Exhibit T.40 “Summary of Forensic Evidence – Execution Points and Mass Graves”, page 6.

⁶⁴⁰ Witness D5, 11 February 2009.

⁶⁴¹ Witness D1, 18 December 2008. Luka Marković, who worked there said it was about 50 metres long.

392. Witness D5 does not remember seeing any prisoners arriving by bus,⁶⁴² and could not remember whether there was a bus parked in front of the warehouse saying “I don’t remember, there may have been, but I don’t remember”.⁶⁴³ Defence submissions point out that the Petrović video, exhibit T.1, shows a bus parked in front of the warehouse after the massacre. However, nothing of any importance turns on Witness D5’s memory or otherwise of the presence of the bus when he was there. The evidence is clear that buses were used to transport male prisoners to the warehouse and to transport the women, children and elderly to ABiH held territory. The VRS had mobilized every bus possible for these tasks, and, after transporting the male prisoners to the warehouse, it would be expected that the buses would be sent elsewhere, especially given that the deportation of the civilians was ongoing on the afternoon of 13 July.

393. Witness D5 thought that prisoners would be taken to the hangar to be killed.⁶⁴⁴ He stated that when they arrived at the warehouse there were already some people there, a mixture of civilians and soldiers.⁶⁴⁵ Several were dressed in multi-coloured camouflage uniforms, although there could have been up to twenty people there.⁶⁴⁶

394. Upon arrival at the warehouse the members of the detachment were ordered into a semi-circle in front of the warehouse. Witness D5 testified that the two accused, Zoran Tomić and Radomir Vuković were in the semi-circle.⁶⁴⁷ Rade Čuturić was first from the corner and Radovanović was next to Witness D5.⁶⁴⁸ Four others - Petar Mitrović, Branislav Medan, Slobodan Jakovljević and Željko Ivanović - went behind the building to prevent flight by the prisoners out of the back windows, after they

⁶⁴² Witness D5, 11 March 2009.

⁶⁴³ Witness D5, exhibit T.12b statement 22 May 2008.

⁶⁴⁴ Witness D5, 11 February 2009.

⁶⁴⁵ Witness D5, exhibit T.12b statement 22 May 2008.

⁶⁴⁶ Witness D5, 11 March 2009.

⁶⁴⁷ Witness D5, 11 February 2009.

⁶⁴⁸ Witness D5, 13 March 2009.

were ordered to do this.⁶⁴⁹ Luka Marković also described seeing one armed “soldier” covering each window at the rear, standing under each window, holding a rifle.⁶⁵⁰

395. Witness D5 marked the positions of those he could remember on exhibit T.12e, marking with a “2” where Zoran Tomić was standing in the semi-circle firing into the warehouse. Witness D5 knew Tomić by the nickname of “Zgembo” and Vuković by the nickname of “Vojvoda” (duke). He has known both since “we joined the Special Police Brigade... I believe in 1993”.⁶⁵¹ He had only known Tomić by his nickname in 1995, learning his name from the newspapers after Tomić’s arrest.⁶⁵² In his statement of 18 April 2008, Witness D5 identified a person named “Zgembo” in photograph no. 2, saying that he thought that this person was escorting the column of prisoners to the warehouse.⁶⁵³ In the second part of his statement to the Prosecutor on 22 May 2008, Witness D5 stated that Zgembo (i.e. Zoran Tomić) was shooting.⁶⁵⁴ In the second part of his statement to the Prosecutor on 22 May 2008, Witness D5 stated that those in the semi-circle were: “Trifunović, Radovanović, Savić, Blagojević, Jovanović, Miko Milić, Mirko Milanović” and Dragičević was already dead.⁶⁵⁵ He stated that Medan Mostarac (i.e. Branislav Medan), Slobodan Jakovljević and Petar Mitrović secured the building from behind.⁶⁵⁶ In court he testified that Petar Mitrović, Branislav, Slobodan Jakovljević and Željko Ivanović went behind the building.⁶⁵⁷

396. Witness D5 described what happened next. “Krstó Dragičević (Krle) one time came inside the warehouse and then returned. The second time he came inside the warehouse and a man from the captured group robbed him of his rifle and fired one bullet at him... The bullet shot him through his neck. Rade Čuturić came running to

⁶⁴⁹ Witness D5, 11 February 2009. Witness D5 said that he was not “100% certain” that Ivanović was behind the building, Witness D5, 13 March 2009.

⁶⁵⁰ Exhibit T.15.

⁶⁵¹ Witness D5, 11 February 2009.

⁶⁵² Witness D5, 13 March 2009.

⁶⁵³ Witness D5, exhibit T.12a statement 18 April 2008.

⁶⁵⁴ Witness D5, exhibit T.12b statement 22 May 2008.

⁶⁵⁵ Witness D5, exhibit T.12b statement 22 May 2008.

⁶⁵⁶ Witness D5, exhibit T.12b statement 22 May 2008.

⁶⁵⁷ Witness D5, 11 February 2009.

take the rifle away, there was jostling in place, they fell down. Milenko Trifunović crossed over pulled a rifle from beneath them, and threw it behind the back. After a minute, or half a minute, minute and a half or two, I pulled out Krsto Dragičević. And then the shooting started... It first started from the light machine-gun of the late Milko Milanović... (and) not maybe everybody at the same moment, but most of them from an automatic rifle... shooting at prisoners who were located inside... at close range... from a couple of metres...not maybe everybody at the same moment, but most of them from an automatic rifle... shooting at prisoners who were located inside... by rotating, as one magazine would be emptied”.⁶⁵⁸ Asked to clarify this in cross-examination, he stated: “Oficir grabbed the barrel, pointed the barrel up in the air, and the man who had seized the rifle from Krsto fired an entire clip”.⁶⁵⁹

397. Ilija Nikolić described police being in two groups to the left and right of the doors to the warehouse and seeing a Muslim killing a police officer at the entrance door.⁶⁶⁰ The closing submissions of Zoran Tomić describe this evidence as “completely contradictory” to that of Luka Marković and Witness D5 and then submits that the versions of none of the three “should be trusted”.⁶⁶¹ The Court does not quite understand what is meant by this submission, given that Defence counsel (whose client was running an alibi defence) were not really in a position to put a different version to the witnesses.

398. Witness D5 testified that Mirko Milanović started shooting without orders, shooting into the second part of the hangar first.⁶⁶² Most of the other men then started shooting inside the hangar, firing with their automatic rifles, shooting at the prisoners until their clips were emptied and they had to reload them.⁶⁶³ Witness D5 was a few metres from the entrance when the shooting was occurring.⁶⁶⁴ He did not

⁶⁵⁸ Witness D5, 11 February 2009.

⁶⁵⁹ Witness D5, 11 March 2009.

⁶⁶⁰ Nikola Ilić, 27 March 2009.

⁶⁶¹ Zoran Tomić, closing submissions of Petko Pavlović.

⁶⁶² Witness D5, 11 March 2009 (page 25), 13 March 2009.

⁶⁶³ Witness D5, 11 February 2009.

⁶⁶⁴ Witness D5, 11 March 2009.

hear any shooting coming from behind the hangar.⁶⁶⁵ Both Radomir Vuković and Zoran Tomić were in semi-circle.⁶⁶⁶ He could not state exactly where Tomić stood in the circle, but said that Radovanović was standing next to him (Witness D5).⁶⁶⁷ He is certain that Zoran Tomić was one of those firing, using his automatic weapon to fire into the warehouse.⁶⁶⁸

399. Witness D5 stated that after Krsto was killed some of the Muslim prisoners attempted to escape, maybe between 15 and 20, who made it into the semi-circle and were made to return into the hangar.⁶⁶⁹ They were firing from close range, up to two metres from the door and firing “by rotating, as one magazine would be emptied”.⁶⁷⁰

400. Witness D5 testified that he personally did not shoot at the prisoners and had his rifle hanging from a tree. He could hear voices inside cursing and calling names at the soldiers.⁶⁷¹ He did not shoot and the four men behind the hangar who were guarding it did not shoot in front of the hangar.⁶⁷² One member of the detachment, Aleksandar Radovanović, told Witness D5 that he was a traitor and asked why he did not fire.⁶⁷³ Radovanović had said “you, pussy, why aren’t you shooting?”⁶⁷⁴ Witness D5 also had had conflict with his Serb neighbours in his place of residence and his child was harassed in the first year of school being called the “child of the traitor” because he did not shoot at Kravica.⁶⁷⁵

401. The shooting lasted, in the words of Witness D5 “quite a long time”,⁶⁷⁶ or longer than half an hour.⁶⁷⁷ No-one did anything to prevent the shooting.⁶⁷⁸ In his

⁶⁶⁵ Witness D5, exhibit T.12b statement 22 May 2008.

⁶⁶⁶ Witness D5, 11 February 2009.

⁶⁶⁷ Witness D5, 13 March 2009.

⁶⁶⁸ Witness D5, 11 February 2009.

⁶⁶⁹ Witness D5, exhibit T.12a statement 18 April 2008.

⁶⁷⁰ Witness D5, 11 February 2009.

⁶⁷¹ Witness D5, 11 February 2009.

⁶⁷² Witness D5, 11 March 2009.

⁶⁷³ Witness D5, 11 February 2009.

⁶⁷⁴ Witness D5, exhibit T.12b statement 22 May 2008.

⁶⁷⁵ Witness D5, exhibit T.12a statement 18 April 2008.

⁶⁷⁶ Witness D5, 11 February 2009.

⁶⁷⁷ Witness D5, 11 March 2009.

statement of 18 April 2008, Witness D5 said that no-one entered the hangar and shot the men inside it.⁶⁷⁹ But for reasons set out in section **XXX. Assessment of Witness D5's evidence**, the Court prefers the evidence of Witness D5 given in the main trial to that in his statement in which he admits he was not truthful.

402. Marko Aleksić stated that about half an hour after the column had passed he heard “a rapid succession of fire coming from the direction of Kravica and one could hear our soldiers cursing and Muslims were heard as exclaiming ‘Alah u egber’. This was followed by intensive firing in rapid successions.”⁶⁸⁰

403. Nikola Ilić was a member of the intervention platoon of the 1st battalion of the VRS Bratunac Brigade. He said that he was on leave between 10 and 14 July 1995. While passing along the road to Sandići on 13 July he saw up to 200 captured Muslim men on a small hill being guarded by ten police. Leaving there, he stopped at the Kravica warehouse to speak to the workers (five were there including Luka Marković). Some soldiers were there, one was slapping Milan Nikolić around the face. While he was there he saw a column of three to four in line (of maybe a maximum of 100 people) escorted by the about 10 to 15 armed police in camouflage uniform. The column entered the hangar. A Muslim grabbed a rifle and killed a police officer at the door and another grabbed a rifle and held it in the air. A police officer grabbed it by the barrel and the police made a circle around the building to prevent the Muslims from leaving and they started shooting. This happened just before evening. The police were shooting from 7 to 8 metres away directly into the warehouse (“because Muslims started to leave the warehouse”). One police officer was wounded. A bus arrived and was parked at the door to prevent the Muslims from leaving. The police were using automatic weapons and sub-machine guns to shoot. Nikola Ilić stayed for about 15 minutes left, as he did so, he heard the blasts of hand grenades. He claimed not to have seen Zoran Tomić at the warehouse.⁶⁸¹

⁶⁷⁸ Witness D5, 11 February 2009.

⁶⁷⁹ Witness D5, exhibit T.12a statement 18 April 2008.

⁶⁸⁰ Exhibit T.8 signed statement of Marko Aleksić to SIPA, 12 October 2005.

⁶⁸¹ Nikola Ilić, 27 March 2009.

404. Witness D5 stated that Miladin Stevanović came later on to the warehouse.⁶⁸² He stated that Stevanović transported Krsto's body.⁶⁸³

405. Witness D1, a survivor of the massacre, detained in the second part of the hangar, testified that the last man could not get into the warehouse, so a Serb soldier kicked him in and the shooting then started. The shooting started with a burst of fire fired from an automatic rifle. It lasted some time and the Serbs used hand grenades and machine guns. The shooting lasted until the night. There would be pauses and then it would start again. He heard laughing outside the hangar and the sounds of wounded people crying within it.⁶⁸⁴ (In relation to the hand grenades, see section **XXVII. (iii) Hand grenades** below).

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

407. Aleksandar Radovanović testified that he heard shooting. Milanović, armed with a machine gun, received a communication by Motorola radio, and left to find out what had happened to his brother. Trifunović came back and told Radovanović to go with him and they both went to the Kravica warehouse. Aleksandar Radovanović assisted by dragging Krle's body out of the hangar. The shooting had stopped by the time he reached the warehouse. Miladin Stevanović arrived at the same time, but from the direction of Bratunac, and he put the body in the van. He did not see Zoran Tomić while he was at the warehouse.

⁶⁸² Witness D5, exhibit T.12b statement 22 May 2008.

⁶⁸³ Witness D5, exhibit T.12b statement 22 May 2008.

⁶⁸⁴ Witness D1, 18 December 2008.

408. Aleksandar Radovanović saw Witness D5 at the warehouse when he arrived there.⁶⁸⁵ Radovanović gave similar evidence in his own trial in which he was convicted by the Court of Bosnia and Herzegovina of aiding and abetting genocide (in the second instance verdict) and sentenced to 32 years of imprisonment. The first instance panel found that Radovanović had participated in escorting the prisoners to the warehouse and had shot the prisoners through the front door of the warehouse. Radovanović had testified in his own defence that he had remained at Sandići during the shooting (which he had heard) and that he had gone to the warehouse afterwards and had seen ten to twenty bodies lying on the ground outside. The first instance verdict held “The Accused’s testimony as a witness is unreliable because he had a good reason to be silent on the truth in order to be acquitted of the charges.”⁶⁸⁶

409. This Court similarly finds the evidence of Radovanović to be self-serving and unreliable. It prefers the evidence of Witness D5 to that of Radovanović in any inconsistency between the two and in particular as to the presence of Zoran Tomić at the warehouse.

410. Marko Aleksić testified that after the column passed, and he remained in the vicinity of Sandići, he heard shooting and then the sounds of detonations and screams and yelling, as if in combat.

411. Rade Čuturić called Milenko Pepić on the motorola and told him to allow the traffic through. Pepić then got on a passing bus and went past Kravica. He saw hay outside the warehouse on the way back that it had not been there before.⁶⁸⁷ The Zoran Petrović drove past the warehouse on the afternoon of 13 July. His video shows a 27 second clip of a bus and a pile of bodies outside the warehouse.⁶⁸⁸

⁶⁸⁵ Aleksandar Radovanović, 18 November 2009.

⁶⁸⁶ *Prosecutor’s Office of Bosnia and Herzegovina v. Miloš Stupar, Milenko Trifunović, Brano Džinić, Aleksandar Radovanović, Slobodan Jakovljević, Velibor Maksimović, Dragiša Živanović, Branislav Medan and Milovan Matić*, X-KR-05/24, 29 July 2008 First Instance Verdict (written verdict 13 January 2009).

⁶⁸⁷ Milenko Pepić, 4 February 2009.

⁶⁸⁸ Exhibit T.1, and still exhibit T.111.

412. Witness D5 stated that it was still daylight when they left. He was unsure who ordered them to leave, and they left by bus and truck to Bratunac where they stayed for about half an hour.⁶⁸⁹ Milenko Trifunović was with them the whole time at the warehouse.⁶⁹⁰ The entire 3rd platoon with the exception of Miladin Stevanović (and the police officers who had left earlier with Krle's body) were on the bus. After the shooting the Skelani platoon left for Skelani and "some people with yellow belts arrived".⁶⁹¹ Witness D5 testified that the Skelani platoon left immediately after the shooting finished and were taken by bus back to Skelani.⁶⁹² Some others, he presumed Serb, in black uniforms, who he was later told were "Milan Lukić's men" (maybe, five, six, seven) also participated in the killings.⁶⁹³

413. Jovan Nikolić testified that, with Zoran Erić, he drove to the Kravica warehouse at about 22.00 on the evening of 13 July. Upon arrival, a man came out of the cornfield and told him to turn off his headlights. He was told of an incident in which many prisoners had been killed. He heard sporadic shooting coming from an unidentified direction. He did not stay and returned to Bratunac.⁶⁹⁴

414. Witness D1 described holding his head down and sitting in a corner waiting for something to hit him. He survived the shooting and spent the Friday night in the hangar. Two dead bodies were on top of him. People were crying out for help. The soldiers responded that whoever was healthy should come out. Some wounded people went out and were immediately shot. Witness D1 remembered one person jumping from the window, and surviving and still living. Witness D1 said that after nightfall loader was parked in front of the hangar with a water truck to wash away the blood. At about 2 am, when there was no sound from outside, he sat up and heard two people whispering, discussing how to escape. Witness D1 went out the door and saw a loader there. Blood was on the road in front of the warehouse. A soldier saw

⁶⁸⁹ Witness D5, exhibit T.12b statement 22 May 2008.

⁶⁹⁰ Witness D5, exhibit T.12b statement 22 May 2008.

⁶⁹¹ Witness D5, 11 March 2009.

⁶⁹² Witness D5, 13 March 2009.

⁶⁹³ Witness D5, exhibit T.12b statement 22 May 2008.

⁶⁹⁴ Jovan Nikolić, 15 December 2008.

him and told him to stop. Witness D1 lay down and the soldier told him to disappear. He then went in the direction of the river and managed to escape through the woods.⁶⁹⁵

415. Milenko Pepić heard gunfire from the direction of Kravica and heard Čuturić speaking by motorola to Borovčanin, telling him that Krle had been killed. Čuturić came and told him that Krle had been killed and that he was going to Bratunac to obtain medical treatment. He said Krle had been shot and Muslims started escaping and the Serbs started shooting.⁶⁹⁶ In the second part of his statement of 22 May 2008, Witness D5 stated that he was unsure whether Miladin Stevanović participated in the shooting but he did turn up at the warehouse.⁶⁹⁷

416. Miladin Stevanović sought and was given permission to go to Bratunac. He hitchhiked there and on the way back, around 17.00-17.30 he got to Kravica and was stopped there by two soldiers. He saw the body of Krle lying covered by a tarp outside the warehouse. He saw about 7-8 other bodies. Trifunović and other members of the detachment were there. Trifunović said that he had just come and did not know what had happened. Mirko Milanović had a light machine gun. They put Krle's body on the truck. Miladin Stevanović heard some detonations from hand grenades from behind the co-operative. Oficier told them to drive the injured to the medical center. They took Krle's body to the health center in Bratunac around 17.30.

417. According to Miladin Stevanović, Zoran Tomić was not at the warehouse and he would have seen him if he had been there. The closing submissions of Zoran Tomić argue that the Court should not have received into evidence the statements of the witness to the Prosecutor during the investigation, arguing that it was unlawfully obtained because it was taken without an oath.⁶⁹⁸ The Court has not used this

⁶⁹⁵ Witness D1, 18 December 2008.

⁶⁹⁶ Milenko Pepić, 4 February 2009.

⁶⁹⁷ Witness D5, exhibit T.12b statement 22 May 2008.

⁶⁹⁸ Zoran Tomić, closing submissions of Petko Pavlović, page 38, referring to exhibit T.21, 1 July 2005.

evidence in finding Zoran Tomić guilty and in making its findings about the reliability and credibility of Witness D5's evidence.

418. Petar Mitrović, who was also convicted of participation in the massacre in the *Kravica (Stupar and others)* case, denied being there during the shooting.⁶⁹⁹ The Court does not assess his evidence as reliable or credible and does not rely upon it.

(i) Evidence of Witness D2

419. Witness D2 estimated that between 1,000 and 1,500 prisoners were in the warehouse with him. He described what happened,⁷⁰⁰

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

So I got wounded, I was injured, but I felt well. I wasn't seriously injured. People started screaming, and it was terrible. It is hard for me to describe it. I haven't seen anything like it in any of the horror movies that I saw. This was far worse than any film.

And this lasted all night long, with short breaks. Bosnian Serbs would take some rest, make a short break, and then they would resume. They opened fire from anti-aircraft weapons that were positioned on the asphalt road, with Zoljas as well. All I saw was some kind of lightning coming from weapons.

⁶⁹⁹ Petar Mitrović, 8 April 2009

⁷⁰⁰ Exhibit T.143, Witness D2 (Witness K), *Krstić*, 10 April 2000.

A bullet hit me which came from, I believe, an infantry weapon, but I'm not sure".

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

(ii) Evidence of Luka Marković

421. The evidence of Luka Marković, another eye-witness to the massacre, varies from that of other witnesses in several respects. He was working at the Kravica agricultural co-operative in July 1995 with responsibilities for purchasing. On 12 July (St. Peter's Day) soldiers were at the warehouse sitting in the grass. He was working there on Thursday 13 July 1995.⁷⁰¹

422. He saw a bus arrive carrying, in his words about "70-80 refugees" seeking water. Between about noon and 13.00 bus came from Konjević Polje carrying captured Muslim soldiers (up to 35 Muslims) and stayed there for several hours. More buses came to the warehouse – he counted 15 or 16 – he estimates that about 70 to 80 people were on each bus. The passengers got off the buses and went into the hangar. They were holding their hands in front of themselves. The buses were coming at intervals of 15 to 30 minutes and unloading their passengers. There were no prisoners in the hangar before the buses arrived. After this he heard short bursts of fire. Some people rushed towards the entrance but they had no weapons. He saw seven men using automatic weapons, including a machine gun, to shoot into the hangar. Hand grenades were also used to kill the prisoners in the hangar. He

⁷⁰¹ Luka Marković, 3 March 2009.

estimated that the hangar contained 1,000 to 1,100 people. Luka Marković estimated that the shooting occurred between 20.00 and 21.30 and that it was all finished by 22.00. He said that the shooting started at around 21.00 with one man being killed. Luka Marković testified that the hand grenades brought tears to his eyes and he presumed that they had been thrown in through the windows.⁷⁰² He also described the prisoners being taken off the buses with their hands behind their necks and going into the warehouse.⁷⁰³

423. An aerial photograph of the Kravica warehouse taken at about 14.00 on 13 July 1995 shows two buses parked directly in front of the doors on the western half of the warehouse.⁷⁰⁴

424. Luka Marković testified that on Saturday 14 July a man came out of the closed part of the warehouse and tried to escape and ran off but was shot and killed.⁷⁰⁵

Findings

425. An obvious discrepancy exists in the evidence as to the time when the shooting started and finished. Witness D5 testified that the shooting could not have begun around 21.00 because by then he was on the way to Skelani (saying that Luka Marković was incorrect in saying that the shooting commenced around then).⁷⁰⁶ Witness D1 testified that the shooting continued into the night. The accounts of Witness D1 and D5 are not inconsistent. Witness D1 remained in the warehouse long after Witness D5 and the police in the 2nd Šekovići Detachment had left. Marko Aleksić described hearing shooting from about 18.30 lasting for an hour to an hour and half “and in the end one could only hear single shots”.⁷⁰⁷ Luka Marković, on the other hand, could not be correct in stating that the shooting started around 21:00. He

⁷⁰² Luka Marković, 3 March 2009.

⁷⁰³ Exhibit T.15.

⁷⁰⁴ Exhibit T.110.

⁷⁰⁵ Luka Marković, 3 March 2009.

⁷⁰⁶ Witness D5, 11 March 2009.

⁷⁰⁷ Exhibit T.8, signed statement of Marko Aleksić to SIPA, 12 October 2005.

is obviously mistaken in this part of his evidence. The Court finds that the shooting most likely started in the late afternoon of Friday 13 July 1995.

(iii) Hand grenades

426. The indictment alleges that Radomir Vuković threw hand grenades at the prisoners in the warehouse. The eye-witness and forensic evidence has established beyond reasonable doubt that hand grenades were thrown into the warehouse while the prisoners were inside it. Witness D1, who was inside the hangar, saw hand grenades being thrown in through the windows and heard and felt grenades exploding inside.⁷⁰⁸

427. Witness D5 saw two boxes of hand grenades, but does not know whether they were full or empty. The hand grenades were brought to the warehouse on a truck.⁷⁰⁹ Witness D5 could see inside the hangar: “Dead bodies one over the other, across one another and fell down”, and after the shooting from rifles and light machine-guns members of the 2nd Detachment used hand-held grenades. Radomir Vuković and Brano Đinić threw hand grenades into the hangar at the prisoners.⁷¹⁰ He is certain of this. The hand grenades were thrown into the first part of the hangar. Two cases of hand grenades were thrown into the warehouse.⁷¹¹

428. Witness D5 stated, “Of the men from Šekovići, there were Čupo, Zgembo... I am sure they were shooting. When the shooting stopped, grenades were thrown... only two men were throwing hand grenades... Vojvoda and Čupo”.⁷¹² (“Čupo” is the nickname of Brano Đinić). Witness D5 testified that some prisoners were still alive after the shooting and hand grenade throwing was over as he could hear voices from inside the hangar, cursing and calling names.⁷¹³ The closing submissions of Zoran

⁷⁰⁸ Witness D1, 8 December 2008.

⁷⁰⁹ Witness D5, 20 March 2009.

⁷¹⁰ Witness D5, 11 February 2009.

⁷¹¹ Witness D5, 11 March 2009.

⁷¹² Witness D5, exhibit T.12b statement 22 May 2008, also Witness D5, exhibit T.12b statement 22 May 2008.

⁷¹³ Witness D5, 11 February 2009.

Tomić argue that Witness D5's statements to the Prosecutor allow for the possibility that Zoran Tomić was present in the circle but not shooting.⁷¹⁴ The Court rejects this submission and finds it to be irrelevant given the finding of his participation as an accessory to genocide.

429. About 30 minutes after the column had passed, Slobodan Stjepanović heard from about a kilometre away, rifle shooting "accompanied with sporadic light detonations resembling the detonations of hand grenades".⁷¹⁵ The Court finds that this is consistent with what happened.

430. Luka Marković took officials from the Prosecutor's Office to the Kravica warehouse: it was video recorded – of the hand grenades he said, "I only heard detonations and we felt pinching you know in our eyes. We assumed that was because of hand grenades because they could not kill them inside because they were locked" and then showed the window through which hand grenades could have been thrown in.⁷¹⁶ Marko Aleksić described hearing "after some time, in addition to firing, one could hear the sound of detonating grenades... similar to the sound of hand grenades blasts".⁷¹⁷

Findings

431. The Court is satisfied beyond reasonable doubt that members of the 2nd Šekovići Detachment threw hand grenades into the warehouse with the intention of killing the prisoners. No other conclusion is available from the evidence of the eye-witnesses. In addition, the forensic evidence – set out in section **XXIX. (i) Forensic evidence at the Warehouse** unequivocally found that explosive devices had been used inside the hangar.

⁷¹⁴ Zoran Tomić, closing submissions of attorney Miloš Perić.

⁷¹⁵ Exhibit T.11, signed statement of Slobodan Stjepanović to SIPA, 27 October 2005.

⁷¹⁶ Exhibit T.15.

⁷¹⁷ Exhibit T.8, signed statement of Marko Aleksić to SIPA, 12 October 2005.

(iv) Defence arguments that the murders were self-defence

432. The Defence submissions also tended to attempt to describe the incident as only an altercation involving the rifle.

433. The defence of Radomir Vuković submitted “In the broader context, it is important to state that there was an incident in the Kravica warehouse which included prisoners of war, the incident that excludes the direct intent, and the immediate trigger for the incident was the murder of the police officer Krsto Dragičević and the captives' moving towards the police officers, which certainly excludes the existence of a plan for the execution of prisoners” (footnotes omitted).⁷¹⁸ The Court does not disagree that the “immediate trigger” for the initial shooting may well have been the shooting of Krsto Dragičević (leaving aside the attempted classification of it as a “murder”). However, this cannot explain in any way the semi-circle outside the warehouse *before* the initial shooting incident, the guarding of the back of the warehouse, the sustained shooting until every prisoner was dead, the throwing of hand grenades into the warehouse, the arrival of loaders to remove the bodies, their transportation to pre-dug burial pits (and their subsequent reburials), and the other mass-executions of military age men occurring in Srebrenica at the same time.

434. This line of argument appears to have long been part of the narrative of those who participated in the events of Srebrenica. For example, Miroslav Deronjić, when interviewed by ICTY investigators in October 1999 said, “I was told that one of the captured Muslim soldiers just took the weapon from one of the Serb police officers and that he opened fire on the police and that that soldier, the weapon was captured from, got killed and that there was more wounded soldiers, officers and the remaining body, remaining part of the police officers in that moment opened fire on the captured Muslim soldiers”.⁷¹⁹ This is tantamount to some submission that they were acting in self-defence. However, after entering into a plea agreement with the ICTY

⁷¹⁸ Radomir Vuković, closing submissions of attorney Rade Golić.

⁷¹⁹ Exhibit T55c, statement of Miroslav Deronjić, 21 October 1999.

Prosecutor, Deronjić, stated of 13 July, “in the afternoon I received a report that large numbers of Muslims had been massacred in the agricultural cooperative in Kravica. Borovčanin later told me the details”.⁷²⁰

435. The Court rejects entirely that the massacre was an act of self-defence. Even accepting that the first MUP officer fired in self-defence after a Bosnian Muslim prisoner, by then clearly becoming aware of his fate, grabbed a rifle and killed a MUP officer, this cannot explain the organized nature of a massacre involving automatic weapons and hand grenades. And, of course, occurring contemporaneously with the murder of all captured Bosnian Muslim men in the enclave.

(v) Presence of the two accused at the Kravica warehouse

436. This case concerns the recognition of the two accused by Witness D5 as opposed to his identification of them. Witness D5 knew both in July 1995. The issue is thus the reliability of his evidence that they escorted the prisoners to the warehouse and participated in their murders, and the credibility of his evidence generally.

(vi) Presence of Radomir Vuković at Kravica warehouse

437. The defence of Radomir Vuković is that he was not present at the warehouse during the murders and did not escort the column to the warehouse. Witness D5 provides the only evidence of Vuković’s participation in the executions. In his initial statements to the Prosecutor Witness D5 did not list Vuković as one of the perpetrators.

438. Witness D5 was cross-examined as to why he had not mentioned the presence of Vuković in his statement of 22 May 2008, he said “I didn’t remember it all, but

⁷²⁰ Exhibit T55d, statement of Miroslav Deronjić, 25 November 2003.

later after I thought about what had happened and how it had happened, I reached the conclusion and for sure he was there”.⁷²¹

439. In his statement of 22 May 2008 he named “Aleksandar Radovanović, Petar Mitrović, Branislav Medan, Slobodan Jakovljević, Jovan Mijatović, Milenko Savić, Milija Blagojević, Milija Jovanović, Miko Milić, Mirko Milanović”. However he testified that they were not the only police escorting the column. Explaining why he said, “Because I was not sure by name who was who, and I cannot say about those people from Šekovići that this or that person was there if I don’t know them by their full names. Now I am certain that the two of them were there”. Of Vuković’s presence he testified, “I am sure about Vojvoda based on the throwing of hand grenades, because as far as I recall nobody joined us later.”⁷²²

Findings

440. After assessing the entirety of the evidence the Court is satisfied beyond reasonable doubt that Radomir Vuković was present at the Kravica warehouse and participated in the execution of the prisoners.

(vii) Presence of Zoran Tomić at Kravica warehouse

441. Likewise, Zoran Tomić’s defence is that he did not escort the column and was not present at the warehouse. Witness D5 however was certain of Tomić’s role, testifying of his recollection,⁷²³

“Zoran Tomić escorted the column also, I remember him well, he will probably not admit it. A police officer, many years my senior, who used to work in Skelani and later moved to Srebrenica, came and surrendered himself to me. I tried to send him back to the woods, he was a good friend of my father, before the war they worked

⁷²¹ Witness D5, 11 March 2009.

⁷²² Witness D5, 11 March 2009.

⁷²³ Witness D5, 11 March 2009.

in firearms procurement a lot, procurement of licensed firearms, with ammunition. I wanted to send him back to the woods, but Mr. Tomić forced him into the column. Before forcing him into the column, he took his money away, I don't know how much of it he had, he also took his official police ID, which he threw away and trampled on, now, if he will admit doing that, most probably he will not."

Findings

442. After assessing the entirety of the evidence the Court is satisfied beyond reasonable doubt that Zoran Tomić was present at the Kravica warehouse and participated in the execution of the prisoners.

XXVIII. REMOVAL AND BURIAL OF BODIES FROM KRAVICA WAREHOUSE

443. The removal of the bodies of the murdered prisoners and their burial in ready dug graves commenced on 14 July, the morning after the massacre. A number of witnesses testified to the operation, which was coordinated by the VRS and civilian authorities (see also section **VII. VRS takeover of Srebrenica** above in relation to the later reburials in September and October 1995).

444. On the morning of Saturday 14 July 1995, Jovan Nikolić telephoned Drago Nikolić about the killings at the warehouse and they arranged to meet. Jovan Nikolić travelled to Kravica at around 9.30 to 10 on the morning of 14 July. There were piles of dead people in front of the hangar covered in straw. Entering the hangar he saw more piles of dead people covered in straw. Some soldiers were guarding the hangar.⁷²⁴ The closing submissions for Zoran Tomić argue that something significant must turn on the fact that Jovan Nikolić did not know anything about the military operation in Srebrenica until its fall on 11 July.⁷²⁵ In the Court's view, the

⁷²⁴ Jovan Nikolić, 15 December 2008.

⁷²⁵ Zoran Tomić, closing submissions of attorney Petko Pavlović.

submission is misplaced. No reason exists for him to have been privy to secret plans for military operations.

445. Ostoje Stanojević was a member of the Zvornik Brigade engineering company, tasked with driving freight trucks. On Friday, 13 July 1995, he reported for duty to Major Dragan Jokić, the commander of the engineering company of the Zvornik Brigade, at the civilian protection office in Zvornik. He was told he had to “clean the trash in Srebrenica”, that much trash had been left behind after the buses containing the civilians had left.⁷²⁶ He stayed in a hotel in Bratunac, and the following day, the Saturday, in the afternoon, a man came to him and told Stanojević to follow him to Kravica, where they were to “do a job together”. They drove together in an 8 tonne, six wheel yellow tip truck to the Kravica warehouse. A truck at the entrance had broken down. The driver of that truck said that his truck was broken and bodies had to be loaded onto the truck. Four men with masks were taking bodies out of the warehouse. Two were putting them onto a loader from which they were loaded onto the truck. Each bucket held one cubic metre. Two were loaded onto the truck. The stench was terrible. Stanojević got into the cabin.

446. When the truck was loaded he drove it to a pre-dug grave site – maybe two metres long. There were already bodies in the grave. Two men were there with shovels, and wearing masks. Stanojević opened the rear side. Stanojević returned to Kravica for a reloading of bodies and took them to the burial site. He then returned to the hotel in Bratunac.⁷²⁷

447. Dragan Obrenović stated in his plea agreement at the ICTY that at about 14.00 on 14 July 1995 he received a message to release two machine operators, saying it was “related to the work of Popović and Nikolić”, meaning that it was for the burial

⁷²⁶ Ostoja Stanojević, 15 December 2008.

⁷²⁷ Ostoja Stanojević, 15 December 2008.

of the prisoners as part of the plan that Drago Nikolić had told him of the night before.⁷²⁸

448. Luka Marković testified that on Saturday 14 July they started loading bodies onto trucks, manually loading the bodies onto loaders. Part of the wall was broken by a loader to make an opening to get in to load bodies onto the trucks. The body loading operation took two days; the bodies loaded onto the trucks were covered with hay – workers came with forks and put hay over them.⁷²⁹

449. Krstan Simić was the driver of a construction machine, normally employed in a mine. In July 1995 he was a member of the VRS Bratunac Brigade performing his work obligation as a truck driver. Krstan Simić and two other truck drivers met Momir Nikolić in front of the Bratunac command. Nikolić ordered them to drive their tip trucks to the Kravica farming co-operative. They refueled and he and another driver, Miodrag Obrenović (now deceased), drove there in a convoy of five trucks. Some military police accompanied them to the warehouse. He was unaware of his task before he got there. An excavator and a loader were there. Bodies were both inside and outside the warehouse hangar. Military police from the Bratunac Brigade were at the scene but did not help in the body removal. Krstan Simić saw Momir Nikolić and about ten civilian police wearing blue uniforms. The police assisted by putting bodies into the bucket of the loader. Around 20 buckets of bodies were loaded into his truck.

450. Bodies were being taken from the hangar through a small opening, but the loader was unable to get in. They had to pull down part of the wall to allow the loader's bucket access to the warehouse – using a bucket and tools to create a hole to get in. Krstan Simić recognised the hole in photographs tendered into evidence. The civilian protection people were manually putting the bodies onto the bucket which was being loaded onto the trucks. The bodies were all male.

⁷²⁸ Exhibit T.58, Statement of facts as set out by Dragan Obrenović.

⁷²⁹ Luka Marković, 3 March 2009.

451. When all five trucks were loaded with bodies, a military police officer told the truck drivers they were going in a convoy to Glogova. They followed a vehicle containing military police. The convoy drove along an unpaved road near Glogova until they reached a mass grave which was about 50 to 60 metres in length and about 2 metre wide. Soldiers and military police were present. The bodies were unloaded by opening the back of the truck and several men climbed onto the truck and pushed the bodies into the grave. Krstan Simić's truck was the fourth in line. After unloading the bodies, the trucks travelled back to Bratunac to wash the trucks.⁷³⁰

452. Aerial photographs taken of Glogova on 27 July 1995 show "two areas of disturbed soil on either side of the roadway" with a bulldozer parked nearby.⁷³¹ An aerial photograph taken on 17 July 1995 at Glogova shows disturbed soil,⁷³² at a location shown on a map a few kilometres to the west of Bratunac.⁷³³

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

453. Several months after the massacre of 13 July 1995 at Kravica warehouse, authorities at the highest level of the Republika Srpska decided that the bodies had to be dug up and reburied in different places. In September 1995, the chief of security of the Drina Corps Lieutenant Colonel Popović told Momir Nikolić that "the Main Staff of the Army of Republika Srpska had ordered him to transfer the bodies of the Muslims who had been buried in the village of Glogovi to a set of new locations in Srebrenica Municipality". Nikolić was placed in charge of co-ordinating this, which was to involve the 5th Engineering Corps of the Drina Corps, Bratunac Brigade military police, the MUP and logistical assistance from the civilian authorities including obtaining additional heavy equipment and trucks and fuel. Using heavy

⁷³⁰ Krstan Simić, 18 December 2008.

⁷³¹ Exhibit T.40, page 11 (Manning Report February 2001), see photograph exhibit T.122.

⁷³² Exhibit T.120.

⁷³³ Exhibit T.123.

equipment from socially and state owned enterprises (e.g. Bratunac Brickworks, Radnik construction company), the graves in Glogova were dug and the bodies moved to new gravesites in the Srebrenica Municipality. Nikolić coordinated the entire operation. The assistant chief of intelligence of the Bratunac Brigade, Dragiša Jovanović selected the reburial sites.⁷³⁴

454. Nikolić testified that it was supposed to be a secret or clandestine activity, but because of the number of participants – including vehicles, logistic support and people involved – it could not have been kept secret. The reason for the secrecy was “because it was an illegal act of removing a large mass grave to another site”.⁷³⁵

455. Dragan Obrenović, the chief of staff of the Zvornik Brigade, testified that the reburials occurred in September and October 1995 under the control of Beara and Popović and involved military police, engineers and civilian authorities. The civilian police supervised traffic clearance on the roads.⁷³⁶

456. A participant to the reburial testified. Several months after participating in the burial operation on 14 July 1995, Krstan Simić received an order from Momir Nikolić at the Bratunac command. He was told he had to “clean Srebrenica of trash and debris”. With the same colleague he took his truck back to the mass grave near Glogova. They drove in the dark and when they got there people were digging up the grave. Backhoes loaded the trucks with bodies and once loaded they drove them to a location near Jadar where they unloaded the bodies into new graves. Another loader was waiting and it put the bodies in the grave. A man from civilian protection was providing light for the workers. All five trucks were involved in this reburial. Krstan Simić did one return trip during the night.⁷³⁷ Aerial photographs taken on 30 October

⁷³⁴ Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 2003, T.1767-1769.

⁷³⁵ Exhibit T.44, Momir Nikolić, *Blagojević*, 30 September 2003, T.2294-2296.

⁷³⁶ Exhibit T.50, Dragan Obrenović, *Blagojević*, 2 October 2003.

⁷³⁷ Krstan Simić, 18 December 2008

and 9 November 1995 shows disturbed earth at the sites of the Glogova 1 and 2 mass burial sites.⁷³⁸

457. In late September or October 1995 Momir Nikolić told Miroslav Deronjić that the grave in Glogova had been excavated and that the bodies had been moved elsewhere. Nikolić had said that the army had ordered him to do it and that most bodies had been moved to the Zeleni Jadar and Čizmići area.⁷³⁹ Maps and photograph maps show that location to be in an isolated area several kilometres south of Srebrenica.⁷⁴⁰ Aerial photographs taken on 2 and 23 October 1995 show disturbed earth around the sites of the Zeleni Jadar secondary graves.⁷⁴¹

458. When Momir Nikolić transferred his responsibility to his successor, he burned any documents that he thought could “compromise” him and the brigade in the presence of a three person commission of senior officers who came to Bratunac, including the chief of security of the Drina Corps, Majo Pajić.⁷⁴² He destroyed a report he had compiled in relation to the reburial operation.⁷⁴³

459. The Butler report noted that “in contrast to the pattern of normal military accountability procedures followed by the VRS Drina Corps and subordinate formations during the actual commission of the criminal acts, the concealment aspects of the crime took place under a much greater cloak of secrecy” leaving few records.⁷⁴⁴ It notes records of reburial activity between about 7 September and 2 October at Lazete 2 (Orahovac), Petkovci and Kozluk with reburials at, respectively, Hodžići, Liplje and Čančari.⁷⁴⁵

(i) Forensic evidence at the warehouse

⁷³⁸ Exhibit T.124, exhibit T.125.

⁷³⁹ Exhibit T.55d, statement of 25 November 2003.

⁷⁴⁰ Exhibit T.126, exhibit T.127.

⁷⁴¹ Exhibits T.128, T.129, T.130.

⁷⁴² Exhibit T.44, Momir Nikolić, *Blagojević*, 23 September 2003.

⁷⁴³ Exhibit T.44, Momir Nikolić, *Blagojević*, 1 October 2003.

⁷⁴⁴ Exhibit T.86, Butler report, 11.0.

⁷⁴⁵ Exhibit T.86, Butler report, 11.1.

460. The forensic evidence was unequivocal in its conclusion that a massacre had occurred at the Kravica warehouse, and that automatic weapons and explosive devices had been used inside the warehouse.

461. In September 1996, a team from the UN Naval Investigation Service assisted investigators from the ICTY in a forensic examination of part of the Kravica warehouse. The team collected biological evidence and took samples of human tissue, hair and blood and swabs of explosive residue from the walls and floor and collected projectiles and fragments from the walls and building.⁷⁴⁶

462. The team examined the west (left) room in the warehouse. The forensic report provided evidence consistent with that of the eye-witnesses and survivors of the use of explosives to kill the prisoners. The team found on the interior north wall suspected “impact areas” next to suspected blood and tissue splatter extending to the ceiling. The interior west wall had an explosive “impact site with significant blood and tissue splatter and dripping patterns” with “two suspected seats of explosive detonations along the wall”. One explosion originated near the floor. Suspected tissue and blood splatter patterns were near the explosion site and extending almost 4 metres off the floor.

463. The interior south wall had six areas marked with suspected explosive residue detonations and numerous impacts consistent with having been the seat of explosive detonations. Dispersed around the residue were extensive suspected blood splatter patterns extending up the wall. Steel reinforcing bars inside the concrete walls were broken at the point of an explosion. The east interior wall contained the possible seat of a blast and numerous impact defects with suspected explosive residue and blood and tissue splatter.

⁷⁴⁶ Exhibit T.87.

464. The exterior south (i.e. front) wall was heavily marked with hundreds of impact defects, most heavily concentrated around the doors. Three metal fragments consistent with the jacketed portion of a bullet were recovered. The exterior north wall had a hole. Underneath it was a shallow mound of earth with 30 suspected human bone fragments. Numerous impact marks were around a smaller doorway and to the exterior wall. Significant damage was along the top and western margins of the larger doorway (at the eastern end). This was indicative of an inward force being applied.⁷⁴⁷

465. Investigations and analyses of mass grave sites provided additional forensic evidence of the murders. ICTY judgements found; “In April 1996 they commenced forensic examinations of suspected execution points and exhumation of mass graves.”⁷⁴⁸ (This refers to ICTY investigators) “Forensic evidence showed that there were two types of mass graves, “primary graves”, in which individuals were placed soon after their deaths and “secondary graves”, into which the same individuals were later reburied.”⁷⁴⁹

466. This forensic evidence is consistent with that of the eyewitnesses. An ICTY investigation report, “Graves Exhumed in 2000” concluded that one mass grave site in particular, Glogova 1, was linked to the Kravica murders through artifacts and other evidence. The report stated:⁷⁵⁰

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

Ample evidence was located within the Glogova 1 grave linking it to the mass execution point of Kravica Warehouse. This evidence includes broken masonry and door frames indistinguishable from that located at the Kravica Warehouse,

⁷⁴⁷ See photographs exhibits T.112, T.113, T.114, T.115.

⁷⁴⁸ Accepted fact number 30 (Annex 3).

⁷⁴⁹ Accepted fact number 31 (Annex 3).

⁷⁵⁰ Exhibit T.41, page 11.

as well as artifacts such as car parts and straw described by a survivor of the massacre as being present in the warehouse.

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

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

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

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

467. In 2000, ICTY investigators exhumed mass-graves in Glogova (Glogova 01 and 02). Emeritus Professor Richard Wright concluded in respect of Glogova 01 that bodies had been dug up and taken from that grave.⁷⁵¹ ICTY investigator Dean

⁷⁵¹ Exhibit T.85.

Manning's report of February 2001 concluded that "ample evidence was located within the Glogova 1 grave linking it to the mass execution point of Kravica warehouse. The evidence includes broken masonry and door frames indistinguishable from that located at the Kravica warehouse, as well as artefacts such as car parts and straw described by a survivor of the massacre as being present in the warehouse".⁷⁵² An ICTY investigation diagram gives an overview of the execution sites, and primary and secondary graves.⁷⁵³ A map shows their location.⁷⁵⁴

468. In 2000, ICTY investigators took masonry, tile, insulation and paint samples from the warehouse for comparison with similar materials present in the sites of mass-graves. The investigators reported that forensic samples taken from the mass-grave Glogova 01 matched those taken from the warehouse. The report concludes, "the action of enlarging the doorway of Kravica warehouse... would have resulted in the component parts of that doorway and the surrounding masonry falling on and amongst the bodies of the victims that lay within. It would have been inevitable that the use of a bucketed plant machine, scooping up and removing those bodies from the building would also have picked up anything lying with the bodies... that debris was conveyed with the bodies and deposited with them in their place of burial".⁷⁵⁵ Forensic expert Vedo Tuco also provided detailed evidence of the exhumation from secondary gravesites.⁷⁵⁶

469. Miroslav Deronjić, in his statement of 25 November 2003, stated that he spoke to Karadžić several times in the weeks following the takeover of Srebrenica. He stated "what I knew for certain was that Muslims had been killed in Bratunac and buried in a collective grave in Glogova, on the left side of the road to Kravica, while others had been buried in a place called Halilovići. These were the two graves that I knew about at this point, and I told Karadžić about them".⁷⁵⁷

⁷⁵² Exhibits T.40, T.31, T.42 "4. Glogova 1 – primary grave".

⁷⁵³ Exhibit T.116.

⁷⁵⁴ Exhibit T.133.

⁷⁵⁵ Exhibit T.90.

⁷⁵⁶ Vedo Tuco, 27 May 2009.

⁷⁵⁷ Exhibit T.55d, statement of 25 November 2003, paragraph 221.

Findings

470. The Court has no doubt in concluding that bodies from the Kravica warehouse were buried in primary graves in Glogova commencing on 14 July 1995 and, in a reburial operation, several months later, were dug up and buried in a number of secondary graves, with the bodies of victims of other Srebrenica massacres taken from other primary graves. The only conclusion is that this was a well organized and coordinated attempt to conceal the crimes and their scope.

XXX. ASSESSMENT OF WITNESS D5'S EVIDENCE

471. The only direct evidence of the participation of the two accused in the massacre at Kravica warehouse was provided by Witness D5. The Court has accordingly paid particular attention to his evidence and has carefully assessed and scrutinized it.

472. The Prosecutor's Office first questioned Witness D5 as a suspect on 8 April 2008 following his extradition to Bosnia and Herzegovina from the Republic of Serbia. He exercised his right of silence and did not provide a statement. On 18 April 2008 he asked to provide a statement as a suspect. His legal counsel spoke to the Prosecutor about Witness D5 co-operating as part of a plea agreement. The witness then gave a statement as a suspect. After further communication with the witness and his counsel, the Prosecutor gave him immunity from prosecution in relation to that statement. The statement was to be used for plea bargaining and could not be used against him in a criminal prosecution if the plea bargaining process failed. On 22 May 2008, the witness gave the statement as a witness, subject to prosecution for perjury.⁷⁵⁸ He subsequently testified in the *Kravica (Stupar and others)* case, identifying those who participated in the massacre.

⁷⁵⁸ Exhibit T.12(b), 22 May 2008.

473. The statements contain some material differences and the Court has noted and examined the various differences and inconsistencies between the two. The Court has also been assisted by the careful and detailed submissions of defence counsel Radivoje Lazarević listing various differences and inconsistencies.⁷⁵⁹

474. Witness D5's second statement, of 22 May 2008, is far more detailed than the first and is more incriminating of the witness than the first. The witness explained to the Court that he did not tell the full truth in his first statement.⁷⁶⁰ The Court notes that the manner in which the witness went from providing an untruthful statement as a suspect to a truthful one as a witness is far from unusual. As a suspect he was not obligated to tell the truth. As a witness he was. His testimony in Court was broadly consistent with his statement of 22 May 2008, as opposed to his statement of 18 April 2008.

475. The Court is not satisfied that any material differences between the two statements undermine Witness D5's credibility as a witness when testifying. The Court is convinced from its observations of the manner and content of his testimony that the witness was truthful and was reliable on the points material to the case against the two accused.

476. The Court has also noted the decision in *M. Š* of the Constitutional Court of Bosnia and Herzegovina, holding that that the evidence of witnesses testifying under a plea agreement or immunity should not be presumed unreliable, or discounted and subjected to a higher degree of scrutiny than other evidence. The Court held, "As to the testimony of the mentioned witness (who testified pursuant to a plea agreement), even though such witnesses may often be unreliable, *it in itself is not a reason not to have faith in the statement of such witness.*"⁷⁶¹ The reason for the particular scrutiny

⁷⁵⁹ Radomir Vuković, closing submissions of Radivoje Lazarević, 9 March 2010.

⁷⁶⁰ Witness D5, 11 March 2009 (page 75-76 English).

⁷⁶¹ *M.Š.*, AP-661/04, Constitutional Court of BiH, "Decision on Admissibility and Merits" 22 April 2005, para. 37 (emphasis added).

is not because he received immunity but rather because he was the only witness who provided direct eyewitness testimony implicating the two accused in the massacre.

477. The Defence closing submissions vigorously attacked the veracity and reliability of Witness D5 and his testimony. The closing submissions of Zoran Tomić argue that Witness D5 was “a confused and insecure witness who lacked credibility and lied before the Panel”.⁷⁶² Defence counsel Miloš Perić’s closing submissions argue that Witness D5 lied because he was afraid of receiving a lengthy sentence for genocide and thus agreed to testify against others in relation to Srebrenica and Kravica. He argued that the Prosecutor had exerted psychological pressure on the witness because he was granted immunity in relation to a statement and testified five days later, but had not yet been charged with genocide. It also argued that the witness’s memory improved with the passage of time.⁷⁶³ Defence counsel argues that if Zoran Tomić had been in the column Witness D5 should have been able to describe where he was. Further, that Petar Mitrović, Miladin Stevanović and Aleksandar Radovanović had no reason to lie, unlike Witness D5.⁷⁶⁴ The Court, however, finds this submission illogical. Mitrović and Radovanović were both convicted as accessories to genocide by an Appellate Panel yet continued to protest their innocence. They had the perfect motive to lie. Stevanović is in the same position as any other witness and the Court must decide whose evidence it prefers.

478. The closing submissions of Zoran Tomić also argue that the witness often stated “if I remember correctly”, “I think”, “I can’t recall”, “I am not sure” and “I assume”, casting doubt on his reliability.⁷⁶⁵ The Court, however, does not find that a witness who so qualifies his answers is, because of this, either inherently unreliable or lacking in credibility. Similarly, the submissions argue that the Court should not believe Witness D5 because he was unable to recall a number of specific things in relation to Zoran Tomić’s movements on 12 and 13 July 1995, such as who he was

⁷⁶² Zoran Tomić, closing submissions of Petko Pavlović, page 49 (English).

⁷⁶³ Zoran Tomić, closing submissions of Miloš Perić, page 3 (English).

⁷⁶⁴ Zoran Tomić, closing submissions of Miloš Perić, page 4 (English).

⁷⁶⁵ Zoran Tomić, closing submissions of Petko Pavlović, page 26 (English).

with in the school in Bjelovac, who he was next to in the line-up, who he was with in Budak, where he stood in the semi-circle in front of the warehouse and where he was when he was escorting the column.

479. On the other hand, the submissions argue that Witness D5 remembers four important facts, that Zoran Tomić searched houses, that he robbed prisoners, escorted the column and killed them.⁷⁶⁶ This is precisely correct, and in the Court's view, adds to rather than detracts from the witness's credibility. No suggestion exists that Witness D5 was paying particular attention to the movements of Zoran Tomić or was watching him closely or taking notes of his whereabouts or his actions, or that he would have any reason to do so. To the contrary, one would expect – especially with the passage of time – that a person would remember the most significant things about an event and a person. The things that Witness D5 remembers about Tomić are these such important things, namely his participation in events that one would remember such as searching houses for civilians, robbing a prisoner (known to Witness D5) and in particularly memorable circumstances, escorting a column of prisoners to their death and then actually murdering them.

480. Radomir Vuković's closing submissions argued against the general credibility of Witness D5 as a witness, saying that it was significant that the ICTY Prosecutor did not call Witness D5 in the *Prosecutor v Popović* case.⁷⁶⁷ The Court, however, finds no inference adverse to the credibility or reliability of the witness from this.

481. One witness launched a character attack on Witness D5. Aleksander Radovanović, convicted on appeal in the *Kravica (Stupar and others)* case of aiding and abetting genocide, testified that Witness D5 was not properly educated and had an alcohol problem and criminal convictions and had told Witness D5 that he should leave the police before he was removed. He did in the presence of others, on one occasion at the duty base, calling D5 a "peasant". Witness D5 testified against

⁷⁶⁶ Zoran Tomić, closing submissions of Petko Pavlović, page 27 (English).

⁷⁶⁷ Radomir Vuković, closing submissions of Radivoje Lazarević, 9 March 2010.

Aleksander Radovanović, and Radovanović conceded in the main trial that Witness D5's evidence had implicated him.⁷⁶⁸ The Court finds that Aleksander Radovanović's attack on Witness D5 was gratuitous and was in the form of "pay-back" for Witness D5's testimony against him. In addition, his assessment of Witness D5's character is irrelevant to the Court's own assessment of Witness D5's evidence.

482. The Court notes that Witness D5 is uneducated and did not attend high school but rather worked with his father. He joined the special police brigade in February 1993 and remained in it until late 1993, but without qualification.⁷⁶⁹ Radomir Vuković's closing submissions described him as having only a "primary school education".⁷⁷⁰ The Court, however, finds that these matters may be relevant to the witness's qualifications and his intelligence but are not relevant to the strength or reliability of his first hand observations. Witness D5 also testified that he had been diagnosed with a personality disorder while detained in Belgrade Prison awaiting extradition.⁷⁷¹ He was prescribed some medication (Bromezepam) for his condition.⁷⁷² No evidence, however, was presented to show that any medical condition could have affected the accuracy of his recollection nor his veracity. In this respect the Court finds the medical condition did not affect the witness's testimony.

483. The Court also places no weight on the submission that Witness D5 did not remember the presence of 1st PJP Company from Zvornik at the yellow bridge (*žuti most*).⁷⁷³ People see and remember things differently.

484. Defence counsel for Radomir Vuković also submitted that the Court gave preferential treatment to Witness D5 over the other witnesses.⁷⁷⁴ An argument advanced to support this was that Witness D5 testified in the presence of his lawyer while other witnesses convicted of the same crime did not. However, every

⁷⁶⁸ Aleksander Radovanović, 18 November 2009.

⁷⁶⁹ Witness D5, 11 March 2009 (page 32 English).

⁷⁷⁰ Radomir Vuković, closing submissions of Radivoje Lazarević, 9 March 2010.

⁷⁷¹ Witness D5, 20 March 2009 (page 14-15 English).

⁷⁷² Witness D5, 11 March 2009 (page 54 -56 English).

⁷⁷³ Zoran Tomić, closing submissions of Petko Pavlović, page 27 (English).

⁷⁷⁴ Radomir Vuković, closing submissions of Radivoje Lazarević, 9 March 2010.

convicted witness who testified was warned of his right not to incriminate himself and the Court would not have allowed a witness to incriminate himself. Nothing in the Criminal Procedure Code mandates the testimony of accused or convicted persons in the presence of their own lawyer. A decision to allow this is discretionary and is assessed on a case by case basis. The Court determined that it was appropriate in all of the circumstances for Witness D5 to testify in the presence of his lawyer.

485. The Court does not understand the general thrust of the submission and rejects it. The Court was careful to treat all witnesses, prosecution and defence with equal respect. The Court questioned different witnesses in the manner most appropriate to aid its understanding of the evidence and its determination of the charges in the indictment.

(i) Witness D5's identification of the two accused

486. Witness D5 also provided the only evidence identifying the two accused as present at the warehouse. His ability to recognise or identify is thus extremely important to the Court's determination. Witness D5 testified that he and his family were not in dispute with either accused.⁷⁷⁵

(ii) Radomir Vuković

487. In respect of Radomir Vuković, Witness D5's identification or recognition was, in the Court's view, strong. Witness D5 first met Vuković in 1993 when he (Witness D5) joined the Special Police Brigade.⁷⁷⁶

488. No evidence was led to suggest that Witness D5 and Radomir Vuković did not know each other in July 1995. The Court finds that the two knew each other from at

⁷⁷⁵ Witness D5, 20 March 2009 (page 4 English).

⁷⁷⁶ Witness D5, 11 March 2009 (page 33 English).

least 1993 and that Witness D5's evidence of the presence of Vuković in the events in Srebrenica is recognition rather than identification evidence.

489. In 1995 Witness D5 only knew Vuković as "Vojvoda". The unit had only one person called Vojvoda. He did not recall Vuković having long hair, but he recalled him wearing a black bandana over his forehead.⁷⁷⁷ Of Vuković's appearance in 1995, "he wore a black bandana across his forehead many times, we all wore black berets with an emblem. I am not sure if he wore at that time, but we were all issued with black berets".⁷⁷⁸ He said "Vojvoda is shorter than me, broad-shouldered, he was bald at the time and he is still bald. I saw him in Belgrade in the Central Prison."⁷⁷⁹ However, in testimony he described Vuković in 1995 "I am not sure whether he was bald, but his hair was close-cropped like mine now for example".⁷⁸⁰ The Court heard no evidence suggesting that anyone other than Radomir Vuković was nick-named Vojvoda.

490. Contemporary photographs from 1995 show that Radomir Vuković was not bald in 1995 and several witnesses also testified to this. Dražen Erzić, a friend of Vuković, and Duško Mekić testified that he was not bald in 1995.⁷⁸¹ Marko Ostoje, a member of the 1st Posavina Brigade, testified that his friend Vuković, whom he had known since 1992, was not bald during the war, but gained his "bald appearance" in 1998. He identified Vuković in a photograph that Vuković had given him in July 1995 as a souvenir. Vuković had written on the back "Bratunac '95" and "Srebrenica '95".⁷⁸² Slavo Pavlović developed the photograph in his photography business in Šekovići 1995 and identified Radomir Vuković as the third person in the photo. He wrote the words "July '95" on the back.⁷⁸³

⁷⁷⁷ Witness D5, 20 March 2009 (page 9 English).

⁷⁷⁸ Witness D5, 20 March 2009 (page 9 English).

⁷⁷⁹ Witness D5, exhibit T.12b statement 22 May 2008 (Part 2, page 49, English).

⁷⁸⁰ Witness D5, 11 March 2009 (page 122 English).

⁷⁸¹ Dražen Erzić, 12 June 2009, Duško Mekić, 18 June 2009.

⁷⁸² Marko Ostoje 25 June 2009, exhibit O-I-37.

⁷⁸³ Slavo Pavlović, 1 July 2009, exhibit T.30. Exhibit O-1-37 is the same photograph.

491. On the other hand, defence counsel for Radomir Vuković had Witness D5 correctly identify his client from five photographs of Vuković in uniform during the war, some from 1995.⁷⁸⁴ Witness D5 also correctly identified a contemporaneous photograph of Radomir Vuković.⁷⁸⁵

492. In 2008, Radomir Vuković and Witness D5 were briefly incarcerated at the same time in Belgrade Central Prison awaiting extradition to BiH in respect of charges related to Srebrenica. Witness D5 said he saw Vuković every day in the prison. They saw each other once and he recognised Vuković immediately. Witness D5 tried to contact Vuković.⁷⁸⁶ They did not actually speak but Witness D5 tried to get a message to him via members of the Zemun gang. A prison guard told him that Vuković had told him that he did not want to talk to him.⁷⁸⁷ No evidence was presented to suggest that Witness D5 knew that Vuković was in custody or why he was there before he saw him in the prison. The Court finds that this recognition of Vuković in prison in 2008 strengthens his evidence identifying Vuković as one of the participants in the massacre.

Findings

493. The Court has no doubt that Witness D5 knew Radomir Vuković for several years during the war by serving within the same unit and recognized him when he saw him again in 2008. The Court is satisfied beyond reasonable doubt of the reliability of Witness D5's evidence about this.

(iii) Zoran Tomić

494. Witness D5 also knew Zoran Tomić in 1995. He had seen Zoran Tomić on one of the field missions. Zoran Tomić looked similar in 1995 to his appearance in 2009,

⁷⁸⁴ Witness D5, 11 March 2009 (page 122-126), exhibits O-I-25, O-I-26, O-I-27, O-I-28, O-I-29, O-I-30.

⁷⁸⁵ Witness D5, 11 March 2009 (page 114), exhibit O-I-10.

⁷⁸⁶ Witness D5, 11 March 2009 (page 121 English).

⁷⁸⁷ Witness D5, 20 March 2009 (page 10 English).

except that he was thinner and had more hair. He then knew him as Zgembo. He learnt the name Zoran Tomić only when he read reports that he had been arrested.⁷⁸⁸

495. Witnesses at the main trial gave similar testimony about the change in Zoran Tomić's physical description between 1995 and 2009/2010. Slaviša Žugić said he was then dark-haired, but is now fatter with no hair.⁷⁸⁹ Cvijan Ristić described Tomić then as short, skinny with black hair and a having very different physical appearance to today.⁷⁹⁰ Duško Mekić said he was not bald in 1995.⁷⁹¹ Radoslav Stuparović described his appearance in 1995 as being "quite different", thin with dark hair.⁷⁹² Nedeljko Sekula said Tomić was then skinny with long, thick black hair.⁷⁹³ Nikola Milaković also described him as much skinnier with more hair.⁷⁹⁴ Dražen Erzić who has known Tomić since primary school said he weighed less and had more hair in 1995.⁷⁹⁵

496. In 1995 Zoran Tomić was 24. In 2009 he was 38. The Court notes, that despite these physical changes, each of these witnesses, just like Witness D5, could recognise and thus identify Zoran Tomić fourteen or fifteen years later. And in any event, the physical changes described, namely hair loss and weight gain commonly occur as men age.

497. The Court also notes that Witness D5 misidentified a photograph of Nikola Milaković as Zoran Tomić, having "identified" Zoran Tomić from photo 37 in exhibit T.12c. Witness D5 made the same mis-identification in cross-examination in the main trial while seated close to Zoran Tomić and asked by counsel for Radomir Vuković to identify the person in the photograph.⁷⁹⁶ Dražen Erzić said that no. 37

⁷⁸⁸ Witness D5, 13 March 2009 (page 5, English).

⁷⁸⁹ Slaviša Žugić, 25 June 2009.

⁷⁹⁰ Cvijan Ristić, 2 July 2009.

⁷⁹¹ Duško Mekić, 18 June 2009.

⁷⁹² Radoslav Stuparović, 9 July 2009.

⁷⁹³ Nedeljko Sekula, 27 August 2009.

⁷⁹⁴ Nikola Milaković, 27 August 2009.

⁷⁹⁵ Dražen Erzić, 12 June 2009.

⁷⁹⁶ Also exhibit O-I-12, Witness D5, 11 March 2009 (page 115 English).

was actually Nikola Milaković.⁷⁹⁷ Nikola Milaković, nickname “Tito”, a member of the 2nd Šekovići Detachment in July 1995, who drove the commander, confirmed that the photograph was of him and on his identity card.⁷⁹⁸ The closing submissions of Zoran Tomić submit that this renders Witness D5’s evidence unreliable.⁷⁹⁹

498. The Court notes, however, in relation to this misidentification, that the witness was shown photographs some fourteen years after the events in Srebrenica. The particular photograph was not one from 1995 but a later one taken for an identity document. The photograph does not depict Zoran Tomić as Witness D5 knew him in 1995. And, in addition, it is obvious from seeing both Nikola Milaković and Zoran Tomić in the same court room together, that they bear a remarkable resemblance to each other. The Court does not find that this diminishes the strength of Witness D5's evidence that he knew Zoran Tomić in 1995 and that Tomić was present at the warehouse.

499. This case is one of recognition, not identification. Miloš Perić's closing submissions for Tomić also concede that the two bear a strong resemblance to each other, but pointing out that this means that Witness D5 had mistakenly identified Tomić from the photograph.⁸⁰⁰ The Court disagrees. Witness D5 knew Tomić at the time, but by his nickname not his full name.

500. Witness D5 was also unsure in his testimony as to the exact location of Zoran Tomić in the semi-circle at the warehouse. He was certain though that Tomić was there. The closing submissions of Zoran Tomić argue that this also made Tomić’s evidence unreliable.⁸⁰¹ The Court disagrees. An inability to recollect some fourteen and a half years later Tomić’s precise firing location does not make Witness D5’s evidence either unreliable or incredible.

⁷⁹⁷ Dražen Erzić, 12 June 2009.

⁷⁹⁸ Nikola Milaković, 27 August 2009.

⁷⁹⁹ Zoran Tomić, closing submissions of Petko Pavlović, page 30 (English).

⁸⁰⁰ Zoran Tomić, closing submissions of Miloš Perić, page 7 (English).

⁸⁰¹ Zoran Tomić, closing submissions of Petko Pavlović, page 28 (English).

501. Witness D5 also misidentified another person from photographs shown to him by the Prosecutor in 2008. In his statement to the Prosecutor, Witness D5 identified one Stevo Ilić as a member of the 2nd Šekovići Detachment and identified him by photograph.⁸⁰² Ilić however testified that he did not know Witness D5 and was never a member of the 2nd Šekovići Detachment. His name does not appear the list of its members as of 26 October 1995.⁸⁰³ He denied that he was at Sandići on 12 to 13 July 1995, contrary to the testimony of Witness D5. He testified that he was on leave between 12 and 14 July (or doing police tasks in Bratunac), but in cross-examination said that on 13 July he drove about 1.25 kilometres from Kravica – saying “our task was to provide security”. He heard shooting from the hills on the right. He was assigned to Srebrenica Police Station from 20 July 1995.⁸⁰⁴ The Court does not find that this apparent misidentification detracts from the fact that Witness D5 knew Zoran Tomić in 1995 and testified that he was one of those present and shooting at the Kravica warehouse.

Findings

502. The Court is satisfied beyond reasonable doubt of the reliability of Witness D5’s recognition evidence of Zoran Tomić.

(iv) Witness D5's claim to have known in advance of plan

503. A significant issue for the Court is the reliability of Witness D5’s claim that he knew in advance of the deployment to Srebrenica of the plan to kill the men and forcibly transfer the women, children and elderly from the enclave.

504. Part of the Prosecution case is that Witness D5 was aware in advance of the deployment of the unit to Srebrenica and a plan to kill the men and to deport the women and children. In his statement of 18 April 2008, Witness D5 said that his unit

⁸⁰² Exhibit T.12c, photograph no. 41.

⁸⁰³ Exhibit T.59.

⁸⁰⁴ Stevo Ilić, 25 June 2009.

was in Srednje for a few days and “then we were told to go to Bratunac” by the 3rd platoon commander Mileniko Trifunović. Witness D5 said his unit was speculating as to why “like this, it will be Srebrenica this, that”.⁸⁰⁵ At trial Witness D5 testified that while the unit was on deployment in Srednje, he learned from commander Trifunović that they were to be redeployed to the Srebrenica enclave safe area where they were to kill and persecute the Muslims living there, meaning “taking over the terrain, persecution, killing...” The information came from Rade Čuturić who had obtained it from his superiors, namely, Ljubiša Borovčanin. Čuturić conveyed this information to Trifunović, who in turn informed Witness D5.⁸⁰⁶ The witness did not say how he knew this.

505. Witness D5 testified that “Miladin Stevanović opposed it and I protested”. He was particularly bothered by knowing that he would encounter people from his neighbourhood and nearby.⁸⁰⁷ In questioning by the Court Witness D5 said “That was mentioned while we were in the field mission in Srednje; that statement was mentioned, and the order was mentioned in the village of Sandići... I couldn't say where I was exactly, it was Srednje field mission and we were divided in groups of 5, 6 or 7 men, I do not know who was with me except Petar Mitrović, I remember him well, he was with me because we were together most of the time... *komandir* Trifunović conveyed it directly, he conveyed it directly to someone and then we would pass it on.”⁸⁰⁸ Witness D5 also stated that in relation to their tasks on 13 July, “we did not know anything until we reached Budak”.⁸⁰⁹ He also stated that “I will say that if we had found anyone, we would not have left them there, civilians, women and children. We would bring them in to Potočari or Bratunac or turn them over to someone”. The order was “to take them to Bratunac”.⁸¹⁰ In the second part of his statement to the Prosecutor on 22 May 2008, Witness D5 stated that the order in relation to the search was “to kill the able-bodied and bring civilians to Bratunac or

⁸⁰⁵ Witness D5, exhibit T.12a statement 18 April 2008 (page 9 English).

⁸⁰⁶ Witness D5, 11 February 2009 (page 10-12 English).

⁸⁰⁷ Witness D5, 11 February 2009 (page 12-13, English).

⁸⁰⁸ Witness D5, 20 March 2009 (page 8 English).

⁸⁰⁹ Witness D5, exhibit T.12b statement 22 May 2008 (Part 1, pages 19-20, English).

⁸¹⁰ Witness D5, exhibit T.12b statement 22 May 2008 (Part 1, pages 21-22, English).

Potočari... because that was considered to be a collection centre”. “Only civilians, women, children” were to be taken to Potočari or Bratunac”.⁸¹¹

506. In his statement of 18 April 2008 Witness D5 said “Nobody said what we would be asked either to shoot or not to shoot either to capture or not to capture, nobody mentioned that. Nor I even consider that I can, I don’t know how to explain, that we didn’t know shall there be any capturing or not”.⁸¹² In response to a question as to what he had found out about Srebrenica, “the women and children are separated from the adults and they are getting ready for transport towards Tuzla”. He knew this because “people were talking among themselves that day, and already when we departed from Srednje someone was presuming this someone that, so few of us heard that there will be move on Srebrenica and maybe in Srebrenica. Couple of us complained on that and wanted to stay in Srednje in the field and not go up there”. Petar Mitrović had also complained.⁸¹³

507. Witness D5 stated on 22 May 2008, that the platoon commander told them they were to go to Bratunac “where we would receive further instructions” and “there was talk that Srebrenica was about to be dealt with. That we should go to Srebrenica” and “there was talk that we should secure areas, capture Bosniaks if they decided to surrender, escort them” and “we were told that all those who surrendered and captured would be taken in the direction of Kladanj and Tuzla”. And, in relation to the civilian population, “the civilian population was not mentioned because we had no contact with the civilians”.⁸¹⁴ Witness D5 had protested the assignment because “we assumed there would be incidents, that there would probably be killings” and they did not know that they had to kill civilians until “calls for surrender started” and they learned that they would be killing civilians “in Kravica...not before” but “Sandići, Kravica, that is the same to me... [they] are next to each other”.⁸¹⁵ Witness D5 said “I personally did not attend meetings, but there was talk of separating

⁸¹¹ Witness D5, exhibit T.12b statement 22 May 2008 (Part 2, pages 6-7, English).

⁸¹² Witness D5, exhibit T.12a statement 18 April 2008 (page 11, English).

⁸¹³ Witness D5, exhibit T.12a statement 18 April 2008 (page 10, English).

⁸¹⁴ Witness D5, exhibit T.12b statement 22 May 2008 (Part 1, pages 11-12, English).

⁸¹⁵ Witness D5, exhibit T.12b statement 22 May 2008 (Part 1, pages 12-13, English).

civilians from able-bodied men...on the ground once we got there when we spent the night in the school... near Bratunac”.⁸¹⁶

508. In his statement of 22 May 2008, Witness D5 was asked “what tasks were you given in Srednje and what were those tasks, the tasks you were given in Bratunac and what were those tasks, so can you again specify?” to which he responded, “To kill all the able-bodied and escort civilians” and that he had been given this task “in Srednje” by “Rade Čuturić” and that “we should keep it secret”. He had heard it from Milenko Trifunović. The majority of the unit had disagreed with the order. Trifunović had said that “the order came from the top... he mentioned Ljubiša Borovčanin”. Miladin Stevanović had “complained more than anyone else” saying that he did not want to go. Trifunović told them that they were to keep the order secret.⁸¹⁷

509. In the second part of his statement of 22 May 2008, Witness D5 stated that when he saw the civilians in Potočari he knew that the separation of the civilians from the able-bodied men had started. He knew this because “I heard stories from people... that civilians would be separated and prepared to go to Tuzla, Kladanj, Olovo and other places” and the men “they would be killed”.⁸¹⁸ They left Potočari because they received an order “to go and secure the road towards Kravica, towards Konjević Polje... it was said that there would be a large inflow of Bosniaks, that they would pass there”. They were “first to capture and then kill”.⁸¹⁹ Witness D5 assumed that the population was permanently leaving the area “that they would leave and never come back”.⁸²⁰ Trifunović told them on 12 July after leaving Potočari that the captured prisoners were to be detained in the hangar “we knew when we passed by it”.⁸²¹

⁸¹⁶ Witness D5, exhibit T.12b statement 22 May 2008 (Part 1, page 15, English).

⁸¹⁷ Witness D5, exhibit T.12b statement 22 May 2008 (Part 2, pages 1-4, English).

⁸¹⁸ Witness D5, exhibit T.12b statement 22 May 2008 (Part 2, page 11, English).

⁸¹⁹ Witness D5, exhibit T.12b statement 22 May 2008 (Part 2, page 12, English).

⁸²⁰ Witness D5, exhibit T.12b statement 22 May 2008 (Part 2, pages 14-15, English).

⁸²¹ Witness D5, exhibit T.12b statement 22 May 2008 (Part 2, pages 19-20, English).

510. The Court has also closely scrutinized and compared the statements of Witness D5 and his testimony. A number of discrepancies are obvious. The Prosecutor first examined the witness, as a suspect, on 8 April 2008. He exercised his right to remain silent. On 18 April 2008, the witness, through his lawyer requested to provide a statement to the Prosecutor's Office.⁸²² On 22 May 2008, in the presence of his lawyer, the witness provided a statement to the Prosecutor's Office, but as a witness and subject to prosecution for making a false statement.⁸²³ The Prosecutor's Office granted him immunity from prosecution in respect of the contents of the statements and reached agreement that it would be used solely to negotiate a plea bargain, and would not be used against him if the negotiations failed.

511. Witness D5 was questioned about discrepancies between his statements given on 18 April and 22 May 2008 and responded that he was not completely honest in his first statement as he did not want to incriminate himself. After giving this statement, the witness decided to tell the full truth, and did so in his second statement.⁸²⁴ The Prosecutor submitted that "this is a credible and consistent explanation of the discrepancies". The Prosecutor had shown Witness D5 the statements of Petar Mitrović and Miladin Stevanović before he made his first statement of 18 April 2008, after which he decided "to talk", but did not tell the truth.⁸²⁵ Witness D5 said that a Prosecutor in Belgrade offered him "a deal", namely, that he would not be extradited to Bosnia and Herzegovina if he testified in Serbia, but he did not accept the offer.⁸²⁶

512. The Prosecutor argued that in his statement and testimony, "Witness D5 consistently noted those subjects about which he could not provide either full or direct evidence, and he consistently refused to guess, hypothesize, or speculate about those subjects. Many of these issues were of particular importance to the Prosecution, but D5 testified only to what he knew directly and could be sure of. Moreover, his manner of answering questions demonstrated that

⁸²² Exhibit T.12a.

⁸²³ Exhibit T.12b.

⁸²⁴ Witness D5, 11 March 2009 (page 75-76 English).

⁸²⁵ Witness D5, 11 March 2009 (page 75-76 English).

⁸²⁶ Witness D5, 11 March 2009 (page 77 English).

he was attempting to recall all of the facts; his testimony was more complete with regard to some facts than others, he clarified what he had learned at the relevant time and what he later learned, and he noted those facts about which he believed his memory was accurate but could not be sure. It was very clear from his testimony that D5 was not reciting a memorized version of the facts or offering memories as his own that had been told to him by other persons.”⁸²⁷

513. The Prosecutor also conceded that “Witness D5’s assertion that he protested the mission may in fact be self-serving”. No-one else could testify to the contrary and the Court is prepared to accept that Witness D5 may have overstated his opposition to the order to redeploy to the Srebrenica area.

514. The Defence submits that Witness D5 was lying because he was attempting to secure a plea agreement with the Prosecutor.

515. However, the Court is of the view that the Prosecutor’s submissions contain much merit. Without Witness D5’s own admissions against himself, the Prosecution case against him would have been extremely weak. It was basically because Witness D5 admitted his own role in the events at Kravica warehouse that the Prosecutor had a case against him. The Court finds it difficult to accept why – on the evidence in the main trial – Witness D5 would have lied in order to secure a plea agreement, in circumstances in which the Prosecutor himself concedes that the Prosecution case against the witness would have been extremely weak without his own admission. The Court of course accepts that had the witness believed that others may have been ready to testify against him and incriminate him to a greater extent in the crimes than that to which he was prepared to admit, the motive to understate his own role and to incriminate others may have existed. However, no evidence was brought to this effect and the witness was not questioned about this. In addition, the fundamental issue is the presence and participation or otherwise of the two accused in the crimes committed at the warehouse. In the circumstances described, the Court finds it

⁸²⁷ Prosecutor's closing submissions, para. 10.2.

difficult to accept why Witness D5 would have chosen to incriminate these two particular accused. No motive – apart from securing a plea agreement, on extremely thin identification evidence – was suggested for Witness D5 to fabricate the presence of the two accused at the warehouse on 13 July 1995. The Court therefore rejects the submission that Witness D5 deliberately lied by implicating the two Accused in the crimes.

516. The closing submissions for the Radomir Vuković also submit that no other witness had the same knowledge as Witness D5 of the claimed purpose of the deployment to Srebrenica.⁸²⁸ His defence submits that Pedrag Čelić stated that his unit was informed at around 19.00 that they were to retreat from Srednje without saying where to; Marko Aleksić stated that he joined the unit one day before the order to move them to the Srebrenica region; Slobodan Stjepanović stated that while at Srednje they were ordered home or against Srebrenica; and Milutin Kandić stated that the assignment was to go to Bratunac. The Vuković defence submitted that “The analysis of these witnesses’ statements evidently shows that the Detachment members in Srednje did not have any knowledge whatsoever of their engagement concerning Srebrenica”.⁸²⁹

517. The defence of Radomir Vuković submitted “the Prosecutor’s Office, probably being guided by the principle of collective responsibility, did not even try to prove at least presence of the Accused Vuković in Srednje and, in that context, to attempt to subsume his state of mind under the legal qualification “*knowledge of a widespread and systematic attack*” which was allegedly specified in the *Krivaja 95* order... the Prosecutor’s Office did not prove beyond reasonable doubt that the Accused Radomir Vuković had been involved in the field operation in Srednje, based on which it could infer that he allegedly knew about the developments in and around Srebrenica” (footnote omitted).⁸³⁰ The Court does not disagree with this submission. As found above in section IV. **Second Šekovići Detachment Field Srednje in June 1995**, it is

⁸²⁸ Radomir Vuković, closing submissions of Rade Golić, paras. 43-52.

⁸²⁹ Radomir Vuković, closing submissions of Rade Golić, para. 47.

⁸³⁰ Radomir Vuković, closing submissions of Rade Golić, para. 52.

not satisfied beyond reasonable doubt that the Prosecution proved the presence of Radomir Vuković on the Srednje field mission. The Court also finds that the Prosecution did not present any evidence capable of establishing that even if the conversation alleged by Witness D5 did in fact occur, that Radomir Vuković was present or a participant nor that it was conveyed to him at some later point.

518. The Prosecutor appeared to argue, at least implicitly that because Witness D5 as member of the 2nd Šekovići Detachment said that he knew of the plan to murder the men and to deport the women and children before his unit left Srednje on 11 July 1995, that other members of the unit must also have known of the plan.

(v) Alleged threats to Witness D5 while in custody

519. Another defence challenge to the credibility of Witness D5 related to whether he received threats about his testimony while incarcerated. Witness D5 testified that he was threatened by another prisoner who told him he was passing on a message from Zoran Tomić. Damir Brekalo, imprisoned at Kula Prison with Witness D5, and serving a sentence of 20 years for crimes against humanity, including committing rapes, torture and unlawful imprisonment, denied conveying threats to Witness D5.⁸³¹

520. The Court has evaluated the evidence of both and prefers that of Witness D5. The Court cannot find a motive for Witness D5 to give false testimony on this point. The threats were made just before Witness D5 was to testify against the two accused and Witness D5 had no reason to make up such a threat. At that point no criminal proceedings were outstanding against him.

521. The defence of Zoran Tomić also called Dušan Spasojević in relation to the alleged threats. Spasojević, sentenced in 2008 for committing war crimes, owned a bar in Zvornik and knew Tomić by his nickname Zgembo and knew him as a police

⁸³¹ Damir Brekalo, 12 June 2009. Exhibits T.138A, 138B and 138C were records of previous convictions. He was convicted in the Court of BiH X-KR-05/139 in the *Prosecutor v Marko Radić, Dragan Šunjić, Damir Brekalo and Mirko Vračević* First Instance Verdict, 20 February 2009, Second Instance Verdict, 15 March 2010.

officer who would come into his bar. He testified that the two were never in the same detention. He testified to meeting Witness D5 at a prison for several days but denied passing on a message from Tomić to Witness D5 threatening him or discussing the case with him.⁸³² The Court has similarly rejected Spasojević's evidence in relation to his contact with Witness D5 and prefers Witness D5's evidence. The Court, however, makes no finding as to whether Zoran Tomić arranged for a threatening message to be passed onto Witness D5 while he was incarcerated. Witness D5's evidence on this point was hearsay and the Court understands the point of calling the two witnesses was to cast doubt on the veracity and reliability of Witness D5 as a witness rather than to attempt to disprove that Zoran Tomić sent such a message through Dušan Spasojević.

Findings

522. The Court finds it inherently implausible that the conversation occurred in the manner in which Witness D5 described in his testimony, and believes it is more likely that he is conflating it with other conversations or reconstructing it many years after the event. The Court places no weight on his testimony in relation to this alleged conversation. The Prosecutor has not averred that either accused was present during the conversation or otherwise informed of its content. The Court does not take the view that even if Witness D5 were privy to the information that other members of the detachment were similarly informed or aware of it. For a matter such as this to be proved against an accused, strict proof that the information had been conveyed to them would be required. As no suggestion is made that the accused had this explicit information in Srednje – nor indeed at any point afterwards – the Court need not make a positive finding as to whether it actually occurred. The Court however, is not satisfied beyond reasonable doubt, that it occurred in the manner or place described. This evidence actually supports the suggestion that at least some members of the Detachment had notice that of an assignment in the Srebrenica area. For example,

⁸³² Dušan Spasojević, 9 July 2009.

Aleksander Radovanović, who was also deployed to Srednje, testified that while there they heard rumours of the offensive in Srebrenica.⁸³³

523. It is very clear from the evidence that, by 12 July 1995, many of those involved had to have been aware of the plan to kill the prisoners and to expel the remaining civilians from the enclave. The plan and its execution were well-advanced. The refugees were being bused and trucked from Potočari, and as noted above, the ICTY found that “From the morning of 12 July, Bosnian Serb forces began gathering men from the refugee population in Potočari and holding them in separate locations.”⁸³⁴

524. The executions of the separated Bosnian Muslim men had already commenced by the evening of 12 July and were continuing on 13 July (see section **VII. The VRS takeover of Srebrenica**). The VRS security staff members were also identifying holding and execution sites for the prisoners. Ljubiša Borovčanin, for example, whom Witness D5 assumed had told Milenko Trifunović of the plan, would have to have known of the plan on 11 July 1995. Given the brief period of less than 24 hours between their capture, their conveyance to the warehouse, the executions and the removal of the bodies with earth-moving equipment and trucks and the burials, it is obvious that the execution at the warehouse had to have been pre-planned.

525. It is difficult to believe that anyone present witnessing the surrender of the Bosnian Muslim men, the movement of the civilians to Potočari, their transportation out, could not have known that the men were being separated and the women, children and elderly were being transported from the enclave.

526. The Court is satisfied that Witness D5 provided a detailed and comprehensive account, corroborated in a both a general and specific sense, in relation to the events of 14 and 15 July 1995 – and most specifically in relation to the search of the villages above Potočari, the securing of the Bratunac to Konjević Polje Road, the surrendering

⁸³³ Aleksander Radovanović, 18 November 2009.

⁸³⁴ Accepted fact number 21 (Annex 3).

and capturing of the Bosnian Muslims, taking them to Kravica and their execution. The Court is satisfied that the witness gave as accurate an account as he could of the events described and, further, that the discrepancies in his evidence, and between his evidence and that of other witnesses, are those to be expected in the context of the workings of human recollection, that different people see different things and remember them in different ways and that a considerable period of time has elapsed since July 1995.

XXXI. STATUS OF THE DEAD PRISONERS

527. The prisoners murdered in the warehouse were both civilian and military. During the main trial defence arguments seemed to be directed at establishing that the prisoners on the Sandići meadow were soldiers, many of whom had discarded their uniforms and weapons. The Defence closing submissions, possibly to advance an argument that the column was a legitimate military target, make the same point. However, even if the Court were to accept that the presence of soldiers within the escaping column made it a legitimate military target, these arguments overlook two essential things. The first is the issue of proportionality and the whether the attacks on the column were disproportionate to the threat posed to the VRS by the column. The second, and most obvious, is the irrelevance of whether the prisoners were civilian, military or a mixture in determining a charge of genocide. They were unarmed prisoners. Their murder in cold blood in the warehouse was simply murder. The Court has rejected the defence arguments relating to the status of the prisoners on the meadow and in the warehouse in determining whether genocide was committed at Srebrenica.

XXXII. FORCIBLE DEPORTATION

528. The indictment alleged the forcible transfer of the civilian population of Srebrenica as part of a widespread and systematic attack against members of the Bosniak people with the intention of committing genocide. The Court is satisfied

beyond reasonable doubt that the VRS attack against Srebrenica was directed to force the civilian population to permanently leave the enclave. The Court heard clear and cogent evidence supporting this, even though the Court accepts that some small scale military action against the VRS was coming from within the enclave.

529. The evidence on those who were direct eye-witnesses to the attack was particularly clear, for example from military observers such as Colonel Kingori and Dutchbat peace-keepers. In contradiction to this evidence and without citing or providing any evidence to the contrary the defence closing submissions attempted to portray the population movement to Potočari as a natural response to a war on its doorstep. The defence of Radomir Vuković submitted that the civilian population moved to Potočari because it was the safest part of the enclave, arguing “It is a natural aspiration of the civilian population feeling endangered by war hostilities to seek shelter in the area under the control of the military forces of their ethnicity or that which is at least not under the control of the enemy army. That was the reason why a large number of civilians concentrated in Potočari, not because of their planned persecution from Srebrenica as imputed by the challenged verdict.”⁸³⁵

530. The Court agrees with the first sentence of this submission but not the second. The evidence clearly established that a deliberate and planned military action of the VRS drove the civilian population from Srebrenica towards Potočari, from where the VRS organised its transportation and deportation to ABiH held areas.

531. The written submissions refer in support of these arguments to evidence given at the ICTY in the *Popović* trial of 1st Lieutenant van Duijn (although inaccurately describing him as a “high-ranking officer of the Dutch army) and rejecting what it describes as the “platitute of Witness D5 “*Separate women, children and elderly...*”⁸³⁶ The submissions quote van Duijn as saying “*the Muslim people were very eager to leave*”. However, the Court has examined the full transcript of his

⁸³⁵ Radomir Vuković, closing submissions of Rade Golić, para. 21.

⁸³⁶ Radomir Vuković, closing submissions of Rade Golić, para. 21.

evidence in *Popović* and has read this quotation in its full context. The full contextual passage actually reads as follows:⁸³⁷

Q. Is it right to say that the quick evacuation of the people from Potočari was the only solution for the population?

A. At that time, when all the refugees were gathered at the factory sites, from that moment on, there was no other solution there than to evacuate them because, like I said before, there were -- there was a big possibility that epidemics would break out, people had no food, no water, and the temperature was very high. So from that moment on, there was no other solution, that's correct".

532. The defence submission is to the effect that the men were separated from the women and children only for legitimate military purposes of screening for suspected war criminals. The Court cannot agree with this and cannot agree with the submission that the refugees had a choice. They had to leave Potočari. Contrary of the defence submission, van Duijn's evidence makes it abundantly clear that they could not remain there.

533. The submission also refers to van Duijn stating that "I am certain I did a good thing" by assisting the evacuation of the refugees. This, however, has to be viewed in the context of his evidence on the point, namely that the questions related to whether van Duijn – who had been criticized in The Netherlands for his role in the "evacuation" – believed with the benefit of hindsight and testifying eleven years after the events, that he had personally done the right thing in the circumstances and whether his career had suffered as a result of his actions in Potočari. He believed that his career in the Dutch military had suffered in the early years following Srebrenica, but (not surprisingly) testified that he felt that he had personally done the right thing

⁸³⁷ Exhibit T.49, Leendert van Duijn, *Popović*, 28 September 2006, T.2380.

in the circumstances.⁸³⁸ That evidence cannot support an inference that the Muslim refugees gathered in Potočari were there voluntarily, and or that they voluntarily left the enclave.

534. Defence counsel for Zoran Tomić argued in closing submissions that the civilians voluntarily left Srebrenica so that they could be with their husbands who had left the area in a column, arguing “it is quite possible that the VRS leadership, for military-strategic and tactical reasons and to avoid engaging in new conflicts, agreed to honour the will of the Bosniak civilians and send them to follow their army”.⁸³⁹ Defence counsel for Tomić also submitted that “citizens would leave the territory each time a territory would fall or be captured by any one army, one can infer that Srebrenica civilians decided for the same reasons to leave the territory of Srebrenica and move to the territory under the ABiH control”.⁸⁴⁰ In effect they say the civilians left Srebrenica in the usual manner, i.e. that “civilians would leave the territory each time a territory would fall or be captured by one army”.⁸⁴¹ This submission, however, is contrary to all the evidence, especially that of the international observers. They also argue that intolerable and inhuman living conditions in Srebrenica between 1992 and 1995 (no electricity, water, heating, phone lines, lacking housing, food and hygienic conditions) encouraged them to leave when they had the choice.⁸⁴² The Court rejects this submission in its entirety. It flies in the face of the evidence of direct shelling attacks on the civilian population aimed at driving them out of the enclave towards Potočari. The civilians in Srebrenica were forced to leave in the face of a military attack against them and were deliberately streamed towards Potočari where a well-oiled deportation operation was under way.

535. The Court also notes the finding of the ICTY in *Blagojević* that the “request on the part of the Bosnian Muslims to leave Srebrenica was not the result of a genuine

⁸³⁸ Exhibit T.49, Leendert van Duijn, Popović, 29 September 2006, T.2405-2406.

⁸³⁹ Zoran Tomić, closing submissions of Miloš Perić, page 19 (English).

⁸⁴⁰ Zoran Tomić, closing submissions of Petko Pavlović, page 23 (English).

⁸⁴¹ Zoran Tomić, closing submissions of Petko Pavlović, page 23 (English).

⁸⁴² Zoran Tomić, closing submissions of Petko Pavlović, page 42 (English).

choice, but rather stemmed from the coercive circumstances in which they found themselves and the humanitarian disaster caused by the VRS's unlawful activity".⁸⁴³

536. The International Criminal Court, Elements of Crime, defining **Article 7 (1) (d) Crime against humanity of deportation or forcible transfer of population** as "(1). The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts" footnotes "The term 'forcibly' is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment."⁸⁴⁴

537. The ICTY Appeals Chamber in *Stakić* reviewed the law on the *actus reus* of the crime of forcible transfer and held (footnotes omitted);⁸⁴⁵

"The definition of deportation requires that the displacement of persons be forced, carried out by expulsion or other forms of coercion such that the displacement is involuntary in nature, and the relevant persons had no genuine choice in their displacement. Factors other than force itself may render an act involuntary, such as taking advantage of coercive circumstances. The Appeals Chamber has previously stated, albeit in the context of forcible displacement, that "it is the absence of genuine choice that makes displacement unlawful", a statement which is equally applicable to deportation. Therefore, while persons may consent to (or even request) their removal, that consent must be real in the sense that it is given voluntarily and as a result of the individual's free will, assessed in the light of the surrounding circumstances.

⁸⁴³ *Prosecutor v Blagojević and Jokić*, IT-02-60-A, Judgement, 9 May 2007, para.109 upholding the finding in *Prosecutor v Blagojević and Jokić*, IT-02-60-T, Judgement, 17 January 2005, para. 596

⁸⁴⁴ ICC Statute, Elements of Crime, Art. 7(1)(d), note 12.

⁸⁴⁵ *Prosecutor v Milorad Stakić*, IT-97-24-A, Judgement, 22 March 2006, paras. 279-281.

In the *Krstić* Trial Judgement, for example, the Trial Chamber held that “despite the attempts by the VRS to make it look like a voluntary movement, the Bosnian Muslims of Srebrenica were not exercising a genuine choice to go, but reacted reflexively to a certainty that their survival depended on their flight.”

The Appeals Chamber therefore agrees with the statement made in the *Krnjelac* Trial Judgement that the term “forced”, when used in reference to the crime of deportation, is not to be limited to physical force but includes the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment”.

538. Forcible deportation is not a crime contrary in international humanitarian law in prescribed circumstances such as those in Articles 49 (2) of the Fourth Geneva Convention and Article 17 (1) of Additional Protocol II provide an exception when “the security of the civilians involved or imperative military reasons so demand”. Legally, this means a temporary or provisional evacuation.⁸⁴⁶ The ICTY has held that assistance of a temporary evacuation by humanitarian organizations does not of itself render displacement lawful.⁸⁴⁷ This would include assistance by UN peacekeepers – such as for example, Dutchbat in the circumstances in Potočari in July 1995. “Forcible” means that the population does not have a free or genuine choice to remain in the territory in which they are present,⁸⁴⁸ and it is the “absence of genuine choice that makes the displacement unlawful”.⁸⁴⁹

539. The closing submissions for Radomir Vuković argue that any evacuation of the civilian population occurred in accordance with Article 49 of the Convention and

⁸⁴⁶ This is actually an „evacuation“ in legal terms and is a temporary and provisional measure, see e.g. *Prosecutor v Blagojević and Jokić*, IT-02-60-T, Judgement, 17 January 2005, paras. 597, 598, 600.

⁸⁴⁷ *Prosecutor v Milomir Stakić*, IT-97-24-T, Judgement, 31 July 2003, para. 683.

⁸⁴⁸ *Prosecutor v Blagojević and Jokić*, IT-02-60-T, Judgement, 17 January 2005, para. 596

⁸⁴⁹ *Prosecutor v Milomir Stakić*, IT-97-24-A, Judgement, 22 March 2006, para. 279, *Prosecutor v Milorad Krnjelac*, IT-97-25-A, Judgement, 17 September 2003, para. 229.

Article 17 of the Protocol, submitting that that this situation of insecurity continued until the signing of the Dayton Peace Accords.⁸⁵⁰ The Vuković defence also submits that “Since the taking of the enclave was not operationally planned, it is absolutely incorrect to argue that the evacuation of the civilians from Srebrenica was predictable, foreseen or planned activity. The prosecution failed to offer a single planning document indicating that there was a plan on evacuation devised in advance. To the contrary, the massive evacuation of the civilians from Srebrenica to Potočari was totally unexpected and a kind of a surprise.”⁸⁵¹ The Court also rejects both submissions; the VRS launched an unlawful military attack on the civilian population of Srebrenica designed to drive the population out. And it succeeded.

540. If the evacuation were in fact an act of persecution, as is the Prosecution case, one would not expect it to be catalogued in writing. One would expect the opposite. Indeed the evidence of Momir Nikolić was of the VRS destroying any compromising documentary evidence and being very careful not to put anything in writing.

541. The defence of Radomir Vuković submitted in relation to the VRS attack on Srebrenica; “That this was a legitimate military operation, given that the enclave was not disarmed and that in that sense it posed a military threat was confirmed by witness Richard Butler in his testimony before the trial panel and finally that it was a restricted operation by the Drina Corps is best illustrated by the name given to it by the command.”⁸⁵² This submission, however, is contradicted by the deputy commander of Dutchbat, Robert Franken, who was actually in the Srebrenica enclave at the time of the attack, rather someone in Mr Butler’s position of analysing documents well after the event. Robert Franken, stationed in Potočari, testified of receiving reports of massive shelling of Srebrenica by the VRS on 11 July. He stated that there was no military objectives “other than the so-called telegraph, post and telegraph building, where part of the HQ of the 28th Division was... in the northern part of the city. The city did not give any military objective in that stage, other than

⁸⁵⁰ Radomir Vuković, closing submissions of Rade Golić, para. 29.

⁸⁵¹ Radomir Vuković, closing submissions of Rade Golić, paras. 22.

⁸⁵² Radomir Vuković, closing submissions of Rade Golić, para. 12.

of course the UN forces. But then again it was random shooting at the city” from heavy artillery, of calibers of around 100 mm and from tanks positions outside the town.⁸⁵³ Dutchbat stopped counting the shelling when it reached around 200.

542. Momir Nikolić testified “I do know the town of Srebrenica was the target of artillery fire, a target which I consider to be a civilian target” and “I know for a fact that civilians were being targeted, civilians who were on the move, and those were certainly no military units travelling down that road”.⁸⁵⁴

543. In Robert Franken’s opinion the only purpose of the shelling was “killing people or trying to raise panic by killing people ... civilians, women and children”.⁸⁵⁵ Franken estimated the size of the 28th Division as 4,000 to 4,500 men armed with Kalashnikovs and equivalents.⁸⁵⁶ The Court prefers Franken’s account to Richard Butler’s as to the presence of legitimate military targets in Srebrenica. In any event, even accepting the existence of several minor military targets, the issue would then become one of proportionality and whether the attack on Srebrenica was proportionate to any risk posed to the VRS (for example Article 57 (2) (a) (iii) and (2) (b) Additional Protocol I of the Geneva Conventions). “Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects” is a grave breach of Additional Protocol I, Article 85 (3) (b).

Findings

544. The Court relies upon the evidence of UN personnel Karremans, Kingori and Franken in finding that that the attack was grossly disproportionate to any risk posed to the VRS.

⁸⁵³ Exhibit T.52, Robert Franken, *Krstić*, 4 April 2000, T.2017-2019.

⁸⁵⁴ Exhibit T.44, Momir Nikolić, *Blagojević*, 22 September 2003, T.1638-1639.

⁸⁵⁵ Exhibit T.52, Robert Franken, *Krstić*, 4 April 2000, T.2019.

⁸⁵⁶ Exhibit T.52, Robert Franken, *Krstić*, 4 April 2000, T.2075.

545. The only conclusion available on the evidence – and similar to that found by the ICTY in its several judgements – is that the military attack on Srebrenica and the subsequent transportation of its women, children and elderly was amounted to a forcible deportation under international law.

XXXIII. GENOCIDE

546. Article 2 of the 1948 Genocide Convention is enacted in Article 171 of the Criminal Code of BiH which defines the crime of genocide, mirroring the definition in the 1949 Genocide Convention provides:

“Whosoever, with an aim to destroy, in whole or in part, a national, ethnical, racial or religious group, orders perpetration or perpetrates any of the following acts:

- a) Killing members of the group;
 - b) Causing serious bodily or mental harm to members of the group;
 - c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - d) Imposing measures intended to prevent births within the group;
 - e) Forcibly transferring children of the group to another group,
- shall be punished by imprisonment for a term of not less than ten years or long-term imprisonment.

547. Article 171 is almost identical to the provisions of Article 141 of the Criminal Code of the Socialist Federal Republic of Yugoslavia which were in force in BiH in 1995. No issue arises as to the applicability of the crime of genocide under BiH law then or now.

548. The ICTY in *Krstić, Blagojević and Popović* at trial, and, on appeal in *Krstić and Blagojević*, found that genocide had been committed at Srebrenica in July 1995.⁸⁵⁷ The International Court of Justice in *Bosnia and Herzegovina v. Serbia and Montenegro* found that genocide had occurred in Srebrenica in 1995, holding,⁸⁵⁸

“The Court concludes that the acts committed at Srebrenica falling within Article II (a) and (b) of the Convention were committed with the specific intent to destroy in part the group of the Muslims of Bosnia and Herzegovina as such; and accordingly that these were acts of genocide, committed by members of the VRS in and around Srebrenica from about 13 July 1995.”

549. The Appellate verdict of the Court of BiH in the *Kravica (Stupar and others)* case (involving co-accused of Vuković and Tomić tried separately) concluded “this Panel finds that Genocide was committed in Srebrenica in July 1995. Due to its nature, that crime could not have been committed by a single person but it had to include the active participation of a number of persons, each of whom had a role.”⁸⁵⁹ The first instance panel – after hearing evidence near identical to that presented in the present case in relation to the circumstances surrounding the attack on Srebrenica and the ensuing mass-murders of Muslim murders – had determined the “that there was a plan to destroy a protected group in part, perpetrated against the Bosniaks in Srebrenica by the Bosnian Serb forces, and implemented by forcibly transferring the women children and elderly and killing the males”.⁸⁶⁰

⁸⁵⁷ *Prosecutor v Radislav Krstić*, IT-98-33-T, Judgement, 2 August 2001, para. 598, (*Krstić* Trial Judgement) *Prosecutor v Radislav Krstić* IT-98-33-A, Judgement, 19 April 2004, para. 37 (*Krstić* Appeal Judgement), *Blagojević and Jokić* Trial Judgement, paras. 671-677, *Blagojević and Jokić* Appeal Judgement, paras. 122-123, *Popović* Trial Judgement, paras. 837-866.

⁸⁵⁸ “*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*” 26 February 2007, at paras. 296-297.

⁸⁵⁹ *Prosecutor’s Office of Bosnia and Herzegovina v. Miloš Stupar, Milenko Trifunović, Brano Džinić, Aleksandar Radovanović, Slobodan Jakovljević, Branislav Medan and Milovan Matić*, X-KRŽ-05/24, Appellate Verdict, 9 September 2009, para. 572 “(*Kravica (Stupar and others* appellate verdict))”.

⁸⁶⁰ *Prosecutor’s Office of Bosnia and Herzegovina v. Miloš Stupar, Milenko Trifunović, Brano Džinić, Aleksandar Radovanović, Slobodan Jakovljević, Branislav Medan and Milovan Matić*, X-KR-05/24, 29 July 2008 First Instance Verdict (written verdict 13 January 2009), page 102 English).

550. A trial panel in *Prosecutor's Office v Milorad Trbić* reached the same conclusion.⁸⁶¹

551. The ICTY in the cases of *Krstić*, *Blagojević* and *Popović*, the International Court of Justice in the case of *Bosnia and Herzegovina v Republic of Serbia*, the appellate division of this Court in *Kravica*, and three trial panels of Division I of this Court, in hearing similar (if not identical) evidence, have each reached the same conclusion as to whether genocide was committed in Srebrenica in July 1995. Each court, panel, tribunal has decided that the perpetrators of the mass murders and deportations that occurred in Srebrenica in July 1995 committed these acts with an intention to destroy in whole or in part a national, ethnic, racial or religious group.

Findings

552. The Court has found persuasive the reasoning of these Courts and Tribunals and no valid legal or evidentiary reason to depart from their reasoned conclusions as to whether genocide occurred at Srebrenica.

553. This Court has reached an identical conclusion by evaluating the entirety of the evidence presented in this case. This targeted group was clearly a “part” of a “national, ethnical” or “religious group”. The combination of the acts described in the section above amounted to genocide. As the ICTY Trial Chamber held in *Krstić*, “The Bosnian Serb forces knew, by the time they decided to kill all of the military aged men that the combination of those killings with the forcible transfer of the women, children and elderly would inevitably result in the physical disappearance of the Bosnian Muslim population at Srebrenica”.⁸⁶²

554. The Court accordingly finds that genocide was committed at Srebrenica in July 1995 and the massacre at the Kravica warehouse was committed according to the genocide.

⁸⁶¹ *Prosecutor's Office of BiH v Milorad Trbić*, X-KR-07/386, 16 October 2009, First Instance Verdict, paras. 223-229 (written verdict 29 April 2010).

⁸⁶² *Krstić* Trial Judgement, para. 595.

(i) Genocide and numbers

555. Genocide requires proof of a specific intent, namely, to destroy “in whole or in part” a “national, ethnical, racial or religious group”. The group in this case is alleged in the indictment to be at least 1,000 Bosnian Muslim males. The Court is unable to determine how many people were murdered in the warehouse but the best estimate from the evidence of the eye-witnesses and survivors is that many hundreds and probably over one thousand people died in the warehouse on 13 July 1995.

556. The ICTY Appeals Chamber has held – in relation to the crimes committed in Srebrenica in July 1995 that the part of the protected group must be a “substantial part of that group”.⁸⁶³ In relation to determining “substantial”, the Appeals Chamber held “The determination of when the targeted group is substantial enough to meet this requirement may involve a number of considerations. The numeric size of the targeted part of the group is the necessary and important starting point, though not in all cases the ending point of the enquiry. The number of individuals targeted should be evaluated not only in absolute terms, but also in relation to the overall size of the entire group. In addition the numeric size of the targeted portion, its prominence within the group can also be a useful consideration. If a specific part of the group is emblematic of the overall group or is essential to its survival, that may support a finding that the part qualifies as substantial within the meaning” (of Article 4 of the ICTY Statute).⁸⁶⁴

557. It held that the Muslim population in Srebrenica in July 1995 “represented not only the Muslim inhabitants of the Srebrenica municipality but also many Muslim refugees from the surrounding region. Although this population constituted only a small percentage of the overall Muslim population of Bosnia and Herzegovina at the time, the importance of the Muslim community of Srebrenica is not captured only by

⁸⁶³ *Krstić* Appeal Judgement, paras. 8-12.

⁸⁶⁴ *Krstić* Appeal Judgement, para. 12.

its size.... Control over the Srebrenica region was consequently essential to the goal of some Bosnian Serb leaders of forming a viable political entity in Bosnia, as well as to the continued survival of the Bosnian Muslim people. Because most of the Muslim inhabitants of the region had, by 1995, sought refuge within the Srebrenica enclave, the elimination of that enclave would have accomplished the goal of purifying the entire region of its Muslim population”.⁸⁶⁵ And, “the ambit of the genocidal enterprise in this case was limited to the area of Srebrenica. While the authority of the VRS Main Staff extended throughout Bosnia, the authority of the Bosnian Serb forces charged with the take-over of Srebrenica did not extend beyond the Central Podrinje region. From the perspective of the Bosnian Serb forces alleged to have had genocidal intent in this case, the Muslims of Srebrenica were the only part of the Bosnian Muslim group within their area of control”.⁸⁶⁶

558. ICTY Demographer Helge Brunborg in his report of April 2003 wrote “There is a great uncertainty and debate about the number of people who were in the enclave before it fell on 12 July 1995. Moreover, it is not known where the people in the enclave came from. Most of them probably came from the municipality of Srebrenica itself but there were many who came from the surrounding municipalities, as there were large flows of displaced people in and out of Srebrenica after April 1992... It is assumed that about 40,000 people were in the town of Srebrenica before it fell, but the exact size of this population and its distribution is not known.”⁸⁶⁷

559. Another estimate was given by Miroslav Deronjić, the Serb civilian commissioner for Srebrenica who had assessed the population of the enclave at around 40,000.⁸⁶⁸

560. Helge Brunborg assessed a total of 7,433 men missing from Srebrenica and surrounding municipalities in 1995. Matching the names of the missing with those

⁸⁶⁵ *Krstić* Appeal Judgement, para. 15.

⁸⁶⁶ *Krstić* Appeal Judgement, para. 17.

⁸⁶⁷ Exhibit T-88, “1. Missing by municipality of residence”.

⁸⁶⁸ Exhibit T-55d, statement of 25 November 2003, paragraph 179.

recorded by the 1991 census as living in the Srebrenica area then gave an 87% match.⁸⁶⁹ Comparing the list of missing persons of the ICRC and PHR (Physicians for Human Rights) with those of the OSCE's Voters' Registers for BiH in 1997 and 1998 elections and 1991 census data resulted in a conclusion that 7,475 people from the Srebrenica enclave were missing and presumed dead.⁸⁷⁰

561. In 2004, an ICTY forensic anthropologist estimated in a report that the minimum number of individuals exhumed by the ICTY from primary and secondary graves between 1996 and 2001 was 2,541 (including one female).⁸⁷¹ The Court also notes that a number of missing prisoners, shown in the Petrović video, have been identified by witnesses who gave statements or testified at the ICTY.⁸⁷²

562. Svetlana Radovanović, Professor of Geography at the University of Belgrade testified at the main trial for Zoran Tomić.⁸⁷³ Her report "The Number of Dead in Kravica on 13 July 1995" challenged Dr Vedo Tuco's conclusions and his two expert reports.⁸⁷⁴ Dr. Tuco had concluded that there were at least 856 confirmed dead in Kravica warehouse.

563. She concluded that Dr. Tuco's figure of 856 was wrong and "Out of those cases only 95 or 11.1% of the identified persons may be brought into connection with Kravica, of which for 27 persons 13 July was established as the date of death". She also concluded that "The statistic indicators of the mortality proportion, both for total number killed and for those killed in Kravica, show that these values are not vital threat to the survival and possibility of reproduction of Muslims (Bosniaks) in individually observed municipalities and they are certainly not considered a

⁸⁶⁹ Exhibit T-88.

⁸⁷⁰ Exhibit T-89. The Court understands from the International Commission of Missing Person's web-site that it has compiled an updated and revised list of over 8,000, however, no party tendered this into evidence, and the Court hence does not rely upon it.

⁸⁷¹ Jose Baraybar, exhibit T.84.

⁸⁷² Exhibit T-135, "Bosnian Muslim Photo Identification Book".

⁸⁷³ Professor Svetlana Radovanović, 26 August 2009.

⁸⁷⁴ Exhibit O-II/13B, dated 1 August 2009.

significant factor of vital threat to the survival and possibility of reproduction of the overall Muslim community in Bosnia and Herzegovina”⁸⁷⁵

564. Professor Radovanović described definitional problems with the geography of the Srebrenica enclave and accurately assessing who was living in it at the time of the attack in July 1995.⁸⁷⁶ She concluded that the ICTY demographic experts were misusing the data in concluding that 40,000 people were living in Srebrenica in July 1995, based upon the word of the President of the Municipality who had estimated that between 45,000 and 52,000 were living there at the time. The estimate could have been between 36,000 and 54,000.⁸⁷⁷

565. With respect to Professor Radovanović’s reasoning, this conclusion misunderstands the legal definition of genocide, which requires only an intention to destroy in whole or part a protected group. No minimum threshold is required to establish genocidal intention.⁸⁷⁸ In addition, the evidence of the body removal and burial, was of an operation lasting over the weekend and involving a excavators and number of trucks making return visits to collect bodies. Krstan Simić, one of the drivers, described travelling to the warehouse on the morning of 14 July in a convoy of five trucks, all of which were loaded with bodies. Far more than the 97 bodies referred to by Professor Radovanović were loaded onto the trucks and buried and in multiples more than the 27 dead she refers to. The Court does not give much weight to the fact that she could only find 27 death certificates stating that the deceased had died on precisely on 13 July 1995 and at Kravica warehouse.

566. The closing submissions of Zoran Tomić argue that there is an inconsistency between the evidence of Luka Marković and Witness D5 as to the number of prisoners in the warehouse, especially as Witness D5 had estimated the length of the column to be 400 metres in length with between 700 and 1,000 prisoners and that the

⁸⁷⁵ Exhibit O-II/13B, findings paras. a) and e).

⁸⁷⁶ Professor Svetlana Radovanović, 26 August 2009.

⁸⁷⁷ Professor Svetlana Radovanović, 27 August 2009.

⁸⁷⁸ For example, in *Prosecutor v Emmanuel Ndindabahizi*, ICTR-01-7-I, Judgement and Sentence, 15 July 2004, the ICTR found that murdering one person satisfied the *actus reus* of genocide.

warehouse was empty when the prisoners arrived, arguing “who should we trust?”⁸⁷⁹ The Court has already noted the discrepancy and notes that it is obvious that the bare versions of both eye-witnesses do not stand easily together. However, witnesses remember different things and remember them differently. The Court has positive evidence from three witnesses that prisoners were bused to Kravica from the Sandići meadow. It has also positive evidence from numerous witnesses that they were also marched there. The Court has found – as has the ICTY – that prisoners were both bused and marched to the warehouse. The closing submissions of Zoran Tomić also argue that Witness D2’s evidence should be preferred to that of Witness D5 because Witness D2 had no reason to lie, unlike Witness D5.⁸⁸⁰ However, whether one witness thinks that it was empty when the marched prisoners arrived and the other thinks that it was already filling with bused prisoners is not a conflict capable of resolution by the Court. The Court can only find that the evidence supports both versions as to when and how the prisoners arrived.

Findings

567. This Court, like the trial panel in the *Kravica (Stupar and others)* warehouse case cannot estimate with any accuracy exactly how many prisoners were murdered on 13 July 1995. The best estimate is that many hundreds and most probably over one thousand died that day. This of itself is a significant proportion of those who were murdered in the Srebrenica genocide of July 1995. The Court has insufficient evidence to determine when the plan when the plan to execute the Bosnian Muslim men in Srebrenica was conceived. However, the evidence is clear that it existed at least from 9 July 1995.

XXXIV.INTENTION TO COMMIT GENOCIDE

ACCESSORY TO GENOCIDE PURSUANT TO ARTICLE 31 CRIMINAL CODE BiH

⁸⁷⁹ Zoran Tomić, closing submissions of Petko Pavlović.

⁸⁸⁰ Zoran Tomić, closing submissions of Petko Pavlović.

568. The *mens rea* or intention required to commit genocide requires a specific intention. The destruction in whole or in part of the protected group must be the aim of the underlying crimes.⁸⁸¹ These acts must have been carried out against the victims because of their membership of the protected group, although they need not have been committed solely because of their membership.⁸⁸²

569. The element of “destruction” requires that the perpetrator intended the physical or biological destruction of the group, or the destruction of its material existence.⁸⁸³ The ICTY has held that “destroy” in the definition of genocide “can encompass the forcible transfer of a population” and “the physical or biological destruction of the group in the likely outcome of a forcible transfer of the population when his transfer is conducted in such a way that the group can no longer reconstitute itself – particularly when it involves the separation of its members”.⁸⁸⁴

570. Finding that genocide was committed in July 1995 in Srebrenica does not resolve whether the two accused had the requisite *mens rea* to commit genocide, as opposed to extermination or murder. To find them guilty of genocide the Court has to be satisfied beyond reasonable doubt that they had the necessary intention to commit genocide. Intending to destroy the Bosnian Muslim population of Srebrenica would constitute the special intention necessary for genocide.

571. The plan to commit genocide at Srebrenica required the participation of numerous people: soldiers, police officers and civilian officials. The evidence proves conclusively that the plan was well-organised – the taking of the UN positions, the separation of men from the women and children, organizing buses to forcibly transfer the women and children from the Srebrenica enclave, moving the detained men to execution sites, murdering them on-masse, and then taking well-organised steps to

⁸⁸¹ *Blagojević and Jokić* Trial Judgement, para. 656.

⁸⁸² *Prosecutor v Eliezer Niyitegeka*, ICTR-96-14-A, Judgement, 9 July 2004, para. 53.

⁸⁸³ *Krstić* Appeal Judgement, para. 25.

⁸⁸⁴ *Blagojević and Jokić* Trial Judgement, paras. 665-666, *Krstić* Appeal Judgement, para. 31.

conceal the murders by moving the bodies to mass-graves and, later, reburials. Those within the chain of command acted upon orders from further up the chain.

572. It is inconceivable that police officers such as the accused (or soldiers) were aware of the extent of the plan or all of its components. Clearly, knowledge of its ambit and the methods of its execution were known only to a few. No evidence has been led that suggests that the accused could have been aware of the totality of what was happening at Srebrenica. Indeed, the evidence suggests otherwise. The tasks of the accused were confined to: assist in searching for Bosnian Muslims who may have been in houses or on the hill-side above Potočari on 12 July 1995, to secure the Konjević Polje to Bratunac road, to assist in capturing Bosnian Muslim males, to escort surrendered prisoners to the Kravica warehouse, and there to execute them. In carrying out these tasks, the accused had own their precise role in contributing to the genocide. The Court finds established beyond reasonable doubt that the actions of the accused made a substantial contribution to the execution of the genocide. The evidence establishes that they murdered – with other members of their detachment – upwards of 1,000 prisoners over the course of several hours. This was out of the perhaps 8,000 prisoners who were murdered over the course of that week in July.

573. The legal question is one of the intention of the accused, and whether, in participating in the single act of murdering numerous prisoners confined in a warehouse in one afternoon/evening that the Prosecution has proved that the accused themselves had genocidal intention, as opposed to their knowing that their actions were providing a substantial contribution to the genocide.

574. By their very actions, the two accused must have been aware that their murdering so many people - out of the relatively small population of Srebrenica - would destroy the Bosnian Muslim group in part. The Court is satisfied that the accused, in murdering many hundreds of prisoners, were aware that their actions were making a substantial contribution to the genocide. However, finding that the accused shared this genocidal intention is another matter. It does not automatically

logically follow that their participation in the plan – on the orders of their superiors – means that they had the requisite genocidal intention themselves.

575. Given the huge numbers of military, police and civilian officials required to bring the genocidal plan to fruition, clearly not every one involved had the same level of intention. The numerous participants included those who organized the bus transportation for the women and children out of Srebrenica, those who assisted the women and children in boarding the buses, those who organized the meetings between General Mladić and the UN DutchBat officers, those who drove the buses containing the women and children, those who loaded the bodies of the murdered prisoners onto trucks, those who drove away those trucks, those who buried the bodies in mass-graves, and numerous others. The accused held no rank in the military or police and essentially followed orders. The Court must give the benefit of the doubt to the accused in circumstances in which it cannot determine with sufficient certainty their level of intention. The Court is unable to find beyond reasonable doubt - because of the low rank of the accused - that they shared the genocidal intention of those who hatched the plan and put it into place.

576. The Court has found that the two accused had the intention to kill the prisoners they escorted to the Kravica warehouse and then murdered. The Court, however, can only find the accused guilty of genocide as a principal perpetrator if it is satisfied that the accused personally intended to destroy a protected group in whole or in part. The Court is therefore satisfied that the accused intended, by their actions in murdering the prisoners, to further an obvious plan to destroy in part the Bosnian Muslim group, and that they were aware that their actions amounted to aiding and abetting genocide. The Court is accordingly not satisfied that the Prosecution has proven beyond reasonable doubt that the Accused had the requisite genocidal intention to find them guilty of committing genocide.

577. The *Kravica (Stupar and others)* Appellate verdict held, in relation to seven co-accused of Vuković and Tomić, that “all the foregoing facts and circumstances

indicate that there actually existed a genocidal plan to destroy in part or in whole a group of the Bosniak people and that the Accused did possess knowledge of the existence of the referenced plan. However based on the evidence presented with regard to their state of mind and mental attitude towards the action, the Appellate Panel finds that, based on the presented evidence, it is not possible to conclude beyond a reasonable doubt that the Accused shared the special intent to destroy, in part or in whole, the protected group of Bosniaks”.⁸⁸⁵

578. This Court agrees with this finding. In implementing the principle of *in dubio pro reo* (in the case of doubt rendering a decision more favourable to an accused person), the Court holds that it is not satisfied beyond reasonable doubt that the two accused had the specific intention required to commit genocide as a principal perpetrator.

579. Article 31 of the Criminal Code of BiH defines as a person who “intentionally helps another to perpetrate a criminal offence” and lists some of the means of assistance, namely “giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating the criminal offence, removing obstacles to the perpetration of a criminal offence...”

580. The Appellate Panel in *Kravica (Stupar and others)* held that “if the person whose actions contributed to the perpetration of genocide had the intent to bring about the destruction of a group in whole or in part, then that person is a perpetrator of genocide. If a person is only aware of the genocidal intent of the perpetrator, but the person did not share the intent, the person is an accessory to genocide”.⁸⁸⁶ It went on “it is evident that not all participants in the events in Srebrenica at the referenced time acted with the identical state of mind, nor did they take the same actions”.⁸⁸⁷ It

⁸⁸⁵ *Prosecutor’s Office of Bosnia and Herzegovina v Miloš Stupar, Milenko Trifunović, Brano Džinić, Aleksandar Radovanović, Slobodan Jakovljević, Branislav Medan and Milovan Matić*, X-KRŽ-05/24, Appellate Verdict, 9 September 2009, para. 544.

⁸⁸⁶ *Kravica (Stupar and others)* at paras. 569-570.

⁸⁸⁷ *Kravica (Stupar and others)* at para. 572.

also held “The Accused’s knowledge of the plan and their participation in its implementation does not establish that they also shared the genocidal intent”.⁸⁸⁸

581. This Court is of the same opinion. It is not satisfied beyond reasonable doubt that the two accused had the necessary specific intention required to commit genocide. It is satisfied that they were both aware by the time they participated in the massacre of the existence of a plan to murder the Bosnian Muslim men and of the forcible transfer of the women, children and elderly from the enclave. Participation in the massacre of itself does not infer an intention to commit genocide. However, the Court is satisfied beyond reasonable doubt that the accused were aware when they participated in the massacre that in so doing they were knowingly assisting in the perpetration of the crime of genocide.

(i) Other acts alleged in the indictment to be part of the genocide

582. The Court also notes that the criminal activities alleged against the accused were charged in the indictment as two separate counts but under the one charge of genocide. The accused are charged with committing the actions under Counts 1 and 2 of the Indictment. The actions referred to in the referenced counts constitute a whole and include a series of activities undertaken by the accused on 12 and 13 July 1995 and qualified in the Indictment as the criminal offense of Genocide under Article 171 of the CC BiH. The Prosecutor's Office could have charged these acts under a single count. At any rate, one should bear in mind that each individual count does not represent a separate offense but rather, all counts should be viewed as a whole for the purpose of describing the committed offense as precisely as possible. Omitting certain actions from the factual description (having previously determined, in application of *in dubio pro reo* principle, that the actions have not been proved or do not fall under the charge against the accused), the Court has nevertheless fully addressed the charges since the omitted portions do not represent a separate offense. In doing so, the Court was mindful of the fact that its interventions in the factual

⁸⁸⁸ *Kravica (Stupar and others)* at para. 560.

description of the offense are allowed if they are directed at defining the offense in more precise terms; the Court was also cautious not to exceed the charges bringing about more serious qualification of the offense. The factual description is merely harmonized with the established facts, the legal qualification from the Indictment is not more lenient than the one determined by the Court and the omitted portions of the Indictment do not place the accused in a more serious position; on the contrary, the accused are now in a more favorable procedural position. The Court therefore has not rendered an acquittal in relation to the portions of the Indictment that are omitted in the Verdict's operative part. Those portions include existence of specific genocidal intent, infliction of serious physical and mental injuries, forcible transfer of population, separation of men from their families, imprisonment, awareness of a joint criminal enterprise and a widespread and systematic attack, search of village(s) to find Bosniacs, expulsion of Bosniacs from their homes, carrying out reconnaissance operations and armed attacks using tanks, PRAGAs, anti-aircraft guns and other infantry weapons against the column of Bosniacs so that they surrender (encouraging and luring them by making false promises that they would be exchanged), frisking and taking money and valuables from the prisoners, ordering the prisoners to discard food, clothes and anything else they had in their bags, and activities of other members of the 2nd Šekovići Detachment. It should be noted that the Court omitted awareness of a widespread and systematic attack on the part of the accused because that does not constitute one of essential elements of the criminal offense the accused have been found guilty of, as opposed to the criminal offense of Crimes against Humanity under Article 172 of the CC BiH. In finding the accused responsible as accessories for their participation in the massacre at Kravica warehouse but not for the forcible deportation the Court makes the following observations. The Court has not entered a verdict of acquittal in relation to the charge of participating in the forcible deportation as it believes that the incidents described in the indictment relate to a series of interconnected events. In the context of the genocide committed at Srebrenica, the separate counts do not necessarily constitute separate criminal offenses and should be viewed as part of one criminal offense. For these reasons the Court has not divided its verdict into an acquittal and a conviction in respect of forcible deportation and mass-

murder respectively. In doing this the Court has not placed the accused in a more serious position. This finding has not affected the ultimate result or the sentence. No acquittal is thus made in relation to the averment of forcible transfer.

XXXV. JOINT CRIMINAL ENTERPRISE

583. The Court has found that the genocide was committed in Srebrenica and that the two Accused participated in the massacre at the Kravica warehouse as an accessory to genocide under Articles 171 (a) and 31 of the Criminal Code of BiH. Having made this finding it is not legally possible to find them guilty as participants in a joint criminal enterprise.

584. The indictment alleged that the accused participated in the genocide as knowing participants in a joint criminal enterprise “from 10 July to 19 July 1995, in which the VRS and the RS MUP carried out a widespread and systematic attack against members of the Bosniak people, knowing of such an attack, in co-perpetration with other members of the VRS and the RS MUP, with the common aim to permanently transfer and 40,000 civilians from the UN safe area of Srebrenica and summarily execute and bury more than 7,000 Bosniak men aged between 13 and 70”.

585. The Prosecutor’s opening statement also alleged that they were involved in a joint criminal enterprise that was conceived on or about 8 March 1995 to forcibly transfer the Bosnian Muslim population from the Srebrenica enclave to areas outside the control of the RS between March and August 1995. The Prosecutor alleged that the accused actively participated in the enterprise by (a) maintaining a clear road for the passage of women and children being forcibly transferred (b) capturing and detaining Muslim men from the column and (c) hold these men prisoner at the Sandići meadow and then subsequently executing them. The Prosecutor alleged that that the accused knew of the plan to transfer or capture and to kill the Bosnian male population, the conditions under which the population would be destroyed and of the

purpose and intention of the enterprise when they captured, guarded and executed the prisoners at the Kravica warehouse.

586. The Court analyzed the evidence consistent with their being knowing participants in a joint criminal enterprise. The evidence establishes that the two accused knew that their prisoners were all Bosnian Muslims. They also knew that Srebrenica had been “liberated”. It was also obvious to them that the women and children were being forcibly transferred by bus and truck from the enclave. They also knew that the prisoners were going to be executed when they took them to the warehouse. It was also obvious that the prisoners executed in the warehouse comprised a “part” of the Bosnian Muslim ethnic or religious or national group from Srebrenica.

587. Against this is that both accused were ordinary police without rank or position ordered deployed, like numerous other police and soldiers to Srebrenica, with their units. They were direct perpetrators of a massacre. They do not need to have participated as members of a joint criminal enterprise to be found guilty as accessories to genocide.

588. The jurisprudence of international criminal tribunals (the ICTR, ICTY, Special Court for Sierra Leone and the East Timor Special Panels) recognizes joint criminal enterprise as a form of commission liability in the commission of crimes recognized under international criminal law.⁸⁸⁹ Genocide is of course one of these.

589. A person who aids and abets, or is an accessory to the commission of a crime, however, cannot be guilty as participant in a joint criminal enterprise. The ICTY Appeals Chamber held that a participant to a joint criminal enterprise must share “the

⁸⁸⁹ For example, the *Brđanin* Appeal Chamber held “The Appeals Chamber in *Tadić* held that JCE existed as form of responsibility in customary international law at the time of the events in the former Yugoslavia”, para. 363 (*Tadić* Appeal Judgement, para. 226) and also referred to the *Vasiljević* Appeal Judgement, para. 95.

purpose of the joint criminal enterprise... as opposed to merely knowing about it”.⁸⁹⁰ In *Kvočka* it held “joint criminal enterprise is simply a means of committing a crime; it is not a crime in itself. Therefore, it would be inaccurate to refer to aiding and abetting a joint criminal enterprise. The aider and abettor assists the principal perpetrator or perpetrators in committing the crime”.⁸⁹¹

590. The Court legally cannot, having found that the accused are accessories, find that they aided and abetted crimes committed pursuant to a joint criminal enterprise.

591. The Court also adds some comments in relation to the charging practices in relation to direct perpetrators of the crimes committed at Srebrenica in July 1995 that alleging participation in a joint criminal enterprise may over-complicate the trial process. A form of joint criminal enterprise liability may well be necessary to establish the guilt of those who did not directly perpetrate the numerous crimes that occurred in Srebrenica in July 1995 (the murders etc.) but instead participated through their involvement as members of the military or civilian hierarchy that formulated the plan to commit genocide. It does not follow that every soldier who committed a crime pursuant to the general plan to commit genocide did so as a knowing participant to a joint criminal enterprise to do so. Nor does it follow that a Court must determine whether they did. It suffices, when it is proven beyond reasonable doubt that accused persons directly participated by murdering many prisoners, to make a finding that they committed the crime alleged – here, genocide, but without having to determine whether they did so as participants in a joint criminal enterprise. In this respect the Court agrees with the assessment of the Trial Panel in *Trbić* that “This mode of liability is not appropriate for every case or every accused. It is cautiously applied to certain actors whose actions and intent meet the criteria”.⁸⁹²

⁸⁹⁰ *Prosecutor v Milan Milutinović and others*, IT-05-87-PT “Decision on Ojdanić's Motion challenging Jurisdiction: indirect co-perpetration”, 22 March 2006, at para. 20.

⁸⁹¹ *Prosecutor v Miroslav Kvočka, Mlado Radić, Zoran Žigić, Dragoljub Prcać*, IT-98-30/1-A, Judgement, 28 February 2005, para. 91.

⁸⁹² *Prosecutor's Office of BiH v Milorad Trbić*, First Instance Verdict, para. 222.

592. The evidence clearly establishes beyond a reasonable doubt that a plan existed to commit genocide in Srebrenica as charged. The evidence at trial, however, was not capable of establishing beyond reasonable doubt that the criminality of the two accused was pursuant to their *knowing* participation in a joint criminal enterprise to forcibly transfer the Bosnian Muslim population from Srebrenica.

593. Having determined that it is unnecessary to find whether the crimes were committed pursuant to a joint criminal enterprise, the Court need not consider the closing arguments the Defence of Zoran Tomić that joint criminal enterprise formed no part of the law of the former Yugoslavia and Bosnia and Herzegovina, arguing that the Article 29 of the Criminal Code of BiH cannot co-exist with the notion of complicity via joint criminal enterprise; that the two concepts – joint criminal enterprise and complicity liability under Article 29 - are mutually exclusive.⁸⁹³

594. Joint criminal enterprise requires “participation by the accused, which may take the form of assistance in, or contribution to, the execution of the common purpose.”⁸⁹⁴ The Court finds that the contributions of the two Accused to the furtherance to the plan to commit the genocide were substantial. However, they do not need to have been members or “participants” in a joint criminal enterprise to be guilty of genocide pursuant to a common plan to commit genocide. They need not have had meetings with or discussed the plans with those who actually planned the genocidal operation (such as senior VRS officers). Nor need they have needed to have known of the entirety of the plan. They directly participated in the brutal murder of maybe 1,000 prisoners knowing that in doing so they were destroying in whole or in part a protected population, namely Muslim males, while the women, elderly and children were being forcibly transported from their homes to ABiH held territory.

595. The closing arguments of Zoran Tomić argued against the retroactive application of the Criminal Code of BiH in relation to the application of joint

⁸⁹³ Zoran Tomić, closing submissions of Petko Pavlović.

⁸⁹⁴ *Brđanin* Appeal Judgement, para. 424.

criminal enterprise liability theory in Bosnia and Herzegovina. As the Court has not found the accused guilty by virtue of knowing participation in a joint criminal enterprise, it does not need to deal with these arguments.⁸⁹⁵

596. The Court has found that the two Accused were aware that they were intentionally helping others to commit a criminal offence (Article 31 Criminal Code) and that they so intended. The Court finds that the two Accused were aware that they were intentionally helping others (the VRS, MUP) to commit genocide when they led the prisoners to the warehouse and murdered them, knowing that the women and children from Srebrenica were being forcibly deported, and that they so intended.

XXXVI. SENTENCE

597. Genocide has been recognised as one of the gravest of crimes. The United Nations General Assembly 1946 Resolution on genocide stated,⁸⁹⁶

“Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations. ... The punishment of the crime of genocide is a matter of international concern”.

598. This Court adopts the reasoning of the ICTY in the most recent genocide case, that of *Popović and others* in which it held,⁸⁹⁷

“The calculated destruction of the Bosnian Muslims of Srebrenica in July 1995 stands out as one of the worst crimes committed in Europe after the Second World War. The extermination of the Bosnian Muslim males from Srebrenica,

⁸⁹⁵ Zoran Tomić, closing submissions of Petko Pavlović.

⁸⁹⁶ United Nations General Assembly Resolution 96 (I) 11 December 1946.

⁸⁹⁷ *Prosecutor v Popović and others*, IT-05-88-T, Judgement, 10 June 2010, para.2148.

accompanied by the forcible transfer and persecution of the Bosnian Muslim populations from the Srebrenica and Žepa enclaves all together encompass the gravest of crimes under international criminal law”.

599. In imposing sentence, the Court has considered all factors in Article 39 and Article 48 of the Criminal Code. It has considered the seriousness of the criminal conduct and all of the circumstances in which the crimes were committed, including the motives of the accused.

600. The punishment must fit the crime and must deter others from committing similar offences. It must also reflect the community’s condemnation of the conduct. It must also serve to inform the public of the nature and gravity of the crime. The prosecution of this offence, and the sentence imposed, must demonstrate that such crimes committed during the war must be acknowledged and punished.

601. The victims of this crime were particularly helpless and vulnerable after their capture in an exhausted state fleeing a shelling attack on civilian targets in Srebrenica. Many had been lured to surrender with false promises of a safe passage out of the area to ABiH held territory. The Court considers, as aggravating, the vulnerability of the victims. In this respect the Court adopts the reasoning of the trial panel in the *Kravica (Stupar and others)* case in finding “The suffering imposed physically and physiologically on the direct victims was extreme. The detained males of all ages who were killed in the Kravica warehouse were unarmed prisoners who had been captured or surrendered to the Bosnian Serbs in exchange for promises of safety”.⁸⁹⁸

602. The genocide has had a terrible and permanent impact on the Bosnian Muslim community in the Srebrenica area. The community was devastated by the crime. Many lost their lives. The few survivors of the Kravica warehouse massacre continue

⁸⁹⁸ *Prosecutor v Stupar*, First Instance Verdict, page 89.

to suffer to this day. Thousands of others lost their husbands, fathers, sons and other close family members.

(i) Radomir Vuković

603. At the conclusion of the main trial Radomir Vuković made a statement to the Court saying that he was not present in Kravica at the time and “as for those who were present there and committed those acts, in my opinion, they are neither men nor soldiers. They are but criminals and cowards”.⁸⁹⁹

604. Defence counsel submitted that he displayed no ethnic bias and treated all people equally. Tahir Ibrišimović, a Bosniak part-time resident of Šekovići, provided character evidence saying that the Vuković family and his family had been neighbours and family friends. Tahir Ibrišimović was one of only five Bosniaks living in the village in 1992. The others were two police officers and two doctors, who were forced to leave in 1992.⁹⁰⁰

605. At the time of his arrest Radomir Vuković was resident in Belgrade, the Republic of Serbia, seeking Serbian citizenship and working as a tiler. He has a young child and is married. He is previously of good character and has no criminal record.

(ii) Zoran Tomić

606. At the conclusion of the main trial, Tomić made a statement to the Court, saying that he spoke about Kravica for the first time in 2001 in a police station. He was not in the column as he was further down the road. He said that Witness D5 was not sincere as he wanted to tie five or six police, who were not there, to Kravica. He wanted to confront Witness D5 in court.

⁸⁹⁹ Radomir Vuković, 26 March 2010.

⁹⁰⁰ Tahir Ibrišimović, 25 June 2009.

607. The Court has carefully considered the character evidence given for Zoran Tomić in the main trial. Muhamed Buševac gave character evidence for him; their fathers knew each other as “brothers”. Muhamed Buševac was wounded in June 1992 while deployed as the commander of an ABiH sabotage platoon operating near Pelemiš. Tomić, wearing camouflage, and another similarly dressed found him in a creek bleeding. Tomić recognized him and pulled him 200 metres to safety closer to the ABiH lines. Muhamed Buševac regards Tomić as saving his life. Muhamed Buševac described Tomić as being skinnier and not bald during the war.⁹⁰¹ Another character witness, Slaviša Vlačić, described Tomić as well-mannered and a keen supporter of the Partizan football club.⁹⁰²

608. Milica Bogicević, a school principal from Zvornik testified that Tomić had been assigned as a police officer for her school for three years, until his arrest in 2008. She described the students as loving Tomić, whom they called Zoka.⁹⁰³

609. At the time of his arrest, Tomić was working as a police officer in Zvornik. He is previously of good character and has no criminal record.

(iii) Arguments against alleged retroactive application of the 2003 Criminal Code of Bosnia and Herzegovina

610. The Defence closing submissions argued, on principles of legality and against retroactivity, that the law of the former Yugoslavia in 1995 was more lenient and should be applied to this case.⁹⁰⁴ Although the submissions are not expressed to be strictly confined to sentencing, the argument cannot apply to the prosecution of genocide itself; genocide was an offence under both the Criminal Code of the SFRY

⁹⁰¹ Muhamed Bušavac, 8 July 2009.

⁹⁰² Slaviša Vlačić, 25 June 2009.

⁹⁰³ Milica Bogicević, 8 July 2009.

⁹⁰⁴ Zoran Tomić, closing submissions of Petko Pavlović.

and Article 141 of the adopted SFRY Criminal Code SFRY of Bosnia and Herzegovina, in force in 1995.⁹⁰⁵

611. The maximum penalty specified for committing genocide under both SFRY and the adopted Bosnia and Herzegovina Criminal Codes in 1995 was between five years imprisonment and the death penalty; the death penalty could be commuted to 20 years in specified circumstances. The Criminal Code of 2003 provides a penalty of long-term imprisonment, of between 20 and 45 years imprisonment.

612. Trial and appellate panels of this Court in sentencing for the crime of genocide have taken the view that imposition of a sentence of long-term imprisonment in lieu of the death penalty does not infringe any principle of retroactivity or infringe Article 7 (1) of the European Convention on Human Rights.⁹⁰⁶

613. The Court agrees with this reasoning and rejects arguments that imposing a sentence of long-term imprisonment violates the European Convention. This Court holds that imposing a sentence of 31 years of imprisonment is more lenient than the maximum penalty of death prescribed in 1995.

(iv) Sentencing factors

614. The Court has considered the personal and family situations of the two accused, their personal situations and their conduct after committing the crime. Both, as noted, are of previous good character and neither has a prior criminal record. However, against this, the Court has to consider the sheer magnitude of this crime. This crime is objectively very serious. The two accused by their actions on 13 July are responsible

⁹⁰⁵ Decree with the Force of Law on the Application of the Criminal Code of Bosnia and Herzegovina and the Criminal Code of the Socialist Federal Republic of Yugoslavia which has been adopted as the Republic law during the imminent threat of war or a state of war (*Official Gazette of R BiH*, No 6/92) and the Law on the Confirmation of Decree Law.

⁹⁰⁶ For example, *Prosecutor v Stupar*, First Instance Verdict, pages 186-187, English. The appellate verdict upheld this in *Prosecutor v Stupar*, Second Instance Verdict, at paras. 484-518 and imposed sentences of between 28 and 33 years.

for taking the lives of many hundreds of Bosnian Muslim prisoners and thus contributing to the destruction of the Bosnian Muslim population of Srebrenica. The actions of the accused and the other members of the 2nd Šekovići Detachment who participated in the massacre have had long-term consequences to the Bosnian Muslim community in the Srebrenica area and, directly to the families and those close to the victims.

615. The Court has been assisted by the sentences imposed in other verdicts of the Court of Bosnia and Herzegovina in relation to the crimes committed at the Kravica warehouse and most specifically for a conviction as an accessory to genocide.

616. The Court notes in particular the sentences imposed on appeal for the co-accused in the *Kravica (Stupar and others)* case. The accused in that case were convicted of the same crime as Vuković and Tomić, namely as accessories to genocide, in almost identical circumstances. The sentences imposed ranged between 28 and 33 years of imprisonment. Recognising the desirability for consistency in sentencing for similar conduct in Bosnia and Herzegovina, the Court has determined that the appropriate sentence for each accused, reflecting the gravity of the crimes, is one of 31 years of imprisonment. This sentence is necessary and proportionate to the suffering of the direct and indirect victims and to the degree and danger to the “protected objects”, as set out in Article 48 of the Criminal Code.

617. The Court is inclined to accept Defense assertions that the accused “did not have ethnic bias” during certain periods or most of their lives, as indicated by defense counsel for Vuković. The Court is also inclined to believe that the accused Tomić saved the life of Witness Muhamed Buševac, a Bosnian Muslim, and that the accused was popular with the school children while looking after their safety, that his friends knew him to be a fan of Partizan FC, while the accused Vuković is a devout believer. The Court took all these factors into consideration when meting out the sentence, noting that it was normal for a human being to have no ethnic bias, to root for a football club, to love children and to be a devout believer. This Panel, however, notes

that what is most difficult to understand is the fact that in Srebrenica in July 1995, once again, numerous and most heinous crimes were committed by ordinary people with average intellect and moral values.

618. The Court has calculated the sentences, pursuant to Article 56 of the Criminal Code to take into account the time already spent in custody, to commence for Radomir Vuković on 8 August 2008, and for Zoran Tomić from 3 June 2008.

XXXVII. DECISION ON THE COSTS OF THE PROCEEDINGS AND CLAIM UNDER PROPERTY LAW

619. Pursuant to Article 189(1) of the Criminal Procedure Code of Bosnia and Herzegovina, the costs of criminal proceedings referred to in Article 185(2) subparagraphs (a) - (f) shall be paid from budget appropriations.

620. Pursuant to Article 198(3) of the Criminal Procedure Code of Bosnia and Herzegovina, and considering that no aggrieved parties pursuing a claim under the property law have been identified, aggrieved parties are instructed to pursue their potential claim under property law in a civil action.

/signed/

Stanislava Nuić

RECORD KEEPER

LEGAL ADVISOR

/signed/

Senadin Begtašević

PRESIDING JUDGE

/Round stamp of the Court of BiH duly affixed/

LEGAL REMEDY: An appeal from this Verdict may be submitted to the Appellate Division of this Court within 15 days from when a written copy of the Verdict is received.

ANNEX 1 - PROCEDURAL HISTORY

I. Indictment and Procedural History

1. The Prosecutor's Office of Bosnia and Herzegovina issued the indictment No. KT-RZ-143/07 dated 18 August 2008, that was confirmed on 19 August 2008. Another indictment issued was the indictment No. KT-RZ-53/08 dated 26 August 2008 that was confirmed on the same date. The indictments charged Zoran Tomić and Radomir Vuković respectively with the criminal offence of Genocide in violation of Article 171 CC BiH, in conjunction with Article 29 and 180 (1) thereof.
2. The indictments charge the accused that intending to exterminate in part a group of Bosniaks, by causing serious bodily and mental harm to a group of Bosniak people by forcibly transferring and separating men from their families, by capturing and executing people, as a member of the special police force, together with a number of other members of the 2nd Detachment of the Šekovići Special Police of the Republika Srpska MUP (Ministry of the Interior), as knowing participants in the joint criminal enterprise during the period from 10 July to 19 July 1995, in which the Republika Srpska Army (VRS) and the Republika Srpska MUP carried out a widespread and systematic attack against members of the Bosniak people, knowing of such an attack, in co-perpetration with other members of the VRS and the RS MUP, with the common aim to permanently forcibly transfer around 40,000 civilians from the UN safe area of Srebrenica and summarily execute and bury more than 7,000 Bosniak men aged between 13 and 70:

On 12 July 1995, the Accused took part in the search of the Bosniak-populated villages in the UN safe area of Srebrenica, in the vicinity of Potočari, in order to find Bosniaks, force them out of their homes and take them to the area of Potočari, where Bosniaks were rounded up. In the afternoon of that same day and on the following day, 13 July, at the section of the Bratunac-Konjević Polje road at Sandići, Bratunac Municipality, they participated in keeping the road passable so that Bosniaks could be transported by buses and trucks without obstruction, in securing the road, closing and opening it for traffic in line with the plan to forcibly transfer Bosniak women, children and elderly. On 13 July 1995, the Accused participated in the reconnaissance operation and the armed attacks with

tanks, Pragas (self-propelled anti-aircraft guns), anti-aircraft guns and other infantry weapons against the column of Bosniaks in the area above Kamenica close to the said road, forcing the Bosniak men to surrender, encouraging and enticing them with false promises of exchange, so the Accused participated in the capturing of several thousand Bosniaks who attempted to escape from the safe area through the forest, after which they were searched, their money and valuables were confiscated and they were ordered to lay down food, clothes and other things they had in their bags, following which in the afternoon of the same day they took part in escorting a column of around 1,000 captured Bosniaks from Sandići to the warehouse of the Kravica Farming Cooperative, knowing that they were to be executed, and, after the captured Bosniaks were imprisoned in the Warehouse, killed the majority of the captives. The accused Zoran Tomić participated in the execution by shooting from an automatic rifle, while the accused Radomir Vuković threw hand grenades at prisoners.

3. Defense counsel for the Accused submitted preliminary motions with reference to the indictments confirmed. The preliminary hearing judge rendered a Decision number X-KR-08/552 of 16 September 2008 refusing the preliminary motion of defense counsel for the accused Zoran Tomić, attorney Petko Pavlović as unfounded. The Decision number X-KR-06/180-2 dated 26 September 2008 granted in part the preliminary motions of defense counsel for the accused Radomir Vuković, attorney Radivoje Lazarević, and removed two examination records from the case file as illegal evidence⁹⁰⁷. The remainder of the preliminary motions was refused as unfounded.
4. Upon the motion of the Prosecutor's Office of BiH, on 20 October 2008, the Court rendered the Decision on joinder of proceedings. The proceedings resumed under number X-KR-06/180-2.
5. At the hearing held on 19 September 2008 and 1 October 2008, the accused Zoran Tomić and Radomir Vuković respectively pled not guilty to the offences with which the Prosecutor's Office charged them.

⁹⁰⁷ Record of statement taking No. 12-1-7/02/230-468/03 dated 21 August 2003, Record of statement taking No. 12-02/4- of 19 June 2005.

6. On 5 November 2008, a pre-trial hearing before the Trial Panel was held. At the hearing defense counsel announced their motions for disqualification of the Trial Panel. The hearing was adjourned pending the decision on the motion for disqualification.
7. The Plenary Session of the Court of BiH⁹⁰⁸ rendered a decision refusing as unfounded the motion of defense counsel for disqualification of the Trial Panel. Acting Chief Prosecutor of the Prosecutor's Office of BiH⁹⁰⁹ rendered a decision refusing as unfounded the motion of the defense counsel for the accused Zoran Tomić for disqualification of the prosecutor of the Prosecutor's Office of BiH, Mr. Ibro Bulić.
8. The pretrial hearing resumed on 26 November 2008. The prosecution presented the planned schedule of evidence and submitted two trial motions⁹¹⁰. The defense objected to the schedule of evidence and moved for appointment of co-counsel for the Accused, due to the complexity of the case.

II. Procedural Decisions

9. Attorney Rade Golić from Zvornik was appointed co-counsel for the accused Radomir Vuković while attorney Miloš Perić also from Zvornik was appointed co-counsel for the accused Zoran Tomić.⁹¹¹
10. The Panel decided in part on the Trial Motion No. 1 of the Prosecutor's Office and refused the motion of the Prosecutor's Office to admit into evidence the transcripts of testimonies in the Court of BiH case No. X-KR-05/24 (*Kravica*), referenced in paragraph I of the Trial Motion, unless requirements under Article 273 CPC BiH are met.⁹¹²

⁹⁰⁸ Decision of the Plenary Session of the Court of BiH, No. Su-01-598/08 dated 21 November 2008.

⁹⁰⁹ Decision of the Acting Chief Prosecutor of the Prosecutor's Office of BiH, No. A-RZ-232/08 of 26 November 2008.

⁹¹⁰ **Prosecutor's Office of BiH Trial Motion No. 1** (motion to admit into evidence transcripts of testimonies in the Court of BiH case No. X-KR-05/24, and in the ICTY cases of Radislav Krstić, Vidoje Blagojević and Vujadin Popović and the statements of witnesses to the ICTY OTP); **Prosecutor's Office of BiH Trial Motion No. 2** (motion to admit facts established in the final judgments of the ICTY).

⁹¹¹ Decision of the Court of BiH, No. X-KR-06/180-2 of 26 November 2008.

⁹¹² Decision of the Court of BiH, No. X-KR-06/180-2 of 12 December 2008.

11. The Panel granted the motion of the Prosecutor's Office of BiH to hear Petar Mitrović and Miladin Stevanović as witnesses. The Court prohibited the use of information from the testimonies of Mitrović and Stevanović obtained in this case in the proceedings pending against them before the Court of BiH.⁹¹³
12. The Panel rendered a Decision⁹¹⁴ dated 19 February 2009 allowing the use of statements and transcripts from the ICTY, pursuant to the LOTC⁹¹⁵, and the statement of one witness pursuant to Article 273(2) CPC BiH.
13. Following the review of the motion of the prosecution and the responses of the defense, the Panel rendered a Decision⁹¹⁶ dated 27 February 2009 admitting 49 facts [listed in Annex 1 to this Verdict](#).
14. The purpose of acceptance of established facts is to ensure judicial economy and at the same time protect the rights of the accused to a fair, public and speedy trial pursuant to Article 13 CPC BiH and Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms.
15. With reference to protective measures for witnesses, the Panel rendered procedural decisions maintaining the ICTY protective measures for Witness D1, namely a pseudonym, protection of identity and image and voice distortion⁹¹⁷, and granting protective measures to Witness D5, namely protection of identity and ban on publishing photos, audio and video recordings of the witness and the contents of his testimony in the media.⁹¹⁸ Witness D5 was appointed a legal counsel upon his request for the protection of his interests during the hearing. The legal counsel appointed was Haris Bojić, attorney from Sarajevo. The identities of both witnesses were disclosed to the defense.

⁹¹³ Decision of the Court of BiH No.X-KR-06/180-2 dated 6 February 2009.

⁹¹⁴ Decision of the Court of BiH, No. X-KR-06/180-2 dated 19 February 2009.

⁹¹⁵ Law on the Transfer of Cases from the International Criminal Tribunal for the former Yugoslavia (ICTY) to the Prosecutor's Office of BiH and the Use of Evidence Collected by ICTY in Proceedings Before the Courts in BiH.

⁹¹⁶ Decision of the Court of BiH No. X-KR-06/180-2 dated 27 February 2009.

⁹¹⁷ Decision of the Court of BiH, No. X-KR-06/180-2 dated 18 December 2008.

⁹¹⁸ Decision of the Court of BiH, No. X-KR-06/180-2 dated 3 February 2009.

16. At the hearing held on 1 April 2009, the Panel appointed Todor Todorović, attorney from Vlasenica, as legal counsel for witness Petar Mitrović. The Panel also rendered a decision allowing the Prosecutor's Office to call witness Munira Subašić, instead of witness Hajra Ćatić who was unable to testify due to her poor health. Witness Munira Subašić was not initially proposed as a witness in the indictment, but she would testify about the same circumstances. The Court was satisfied that this replacement was justified and in the interest of both the defense and judicial economy.
17. On 30 March 2009, the Prosecutor's Office of BiH filed the Prosecution Motion No. 4 for admission of the transcript of Hajra Ćatić's testimony. In their submission, the Defense for the accused Tomić objected to the admission of the transcript of Witness Hajra Ćatić's testimony arguing that the witness testified in a case before the Court of BiH. At the main trial held on 1 April 2009, the Court refused the motion to admit the transcript of the testimony of Hajra Ćatić. At the same time, the Court decided to accept the proposal of the Prosecutor's Office of BiH to examine Witness Munira Subašić during the Prosecution case, thus safeguarding the right of the Defense to direct and/or cross examination of a witness. Witness Munira Subašić was proposed to testify about the same circumstances as Munira Ćatić.⁹¹⁹
18. When on 8 April 2009 the trial resumed, the Prosecutor's Office of BiH sought admission of the record of on-site visit and reconstruction no. KT-RZ 10/05 dated 4 October 2005 as T-28, arguing that it was corroborative of all the statements presented at the hearing of 8 April 2009 and that by this record the Prosecution wished to corroborate that attorney Slavica Čvoro attended the on-site visit and reconstruction in this case. The Defense for the First Accused and the Second Accused objected to the admission of the record in terms of its contents, not contesting the fact that attorney Čvoro attended the on-site visit and reconstruction. As the Prosecutor noted that this exhibit was proposed for the purpose of understanding the contents of the witness statement in its entirety, but resolutely underlined that the exhibit aimed to prove that attorney Čvoro attended the on-site visit and

⁹¹⁹ Audio recording of the main trial of 1 April 2009, case no. X-KR-06/180-2.

reconstruction which the Defense did not contest at all, the Court decided not to admit this piece of evidence.⁹²⁰

19. On 23 April 2009, the Court of BiH rendered a Decision granting defense motion to cross examine witnesses Momir Nikolić, Joseph Kingori, Paul Groenewegen, Robert Aleksander Franken, Dragan Obrenović, Thomas Karremans, Ljubomir Boročvanin and refusing defense motion to summon and cross examine witnesses Miloš Stupar, Pieter Boering, Lendert Cornelis van Dujin and Dean Manning.⁹²¹
20. On 14 May 2009, the Court of BiH rendered a Decision granting the motion of defense counsel for the accused Milenko Trifunović, attorney Rade Golić, to disclose the identity of Witness D5 to the accused Trifunović, excluding all other persons, and to disclose non-redacted transcript of the testimony of Witness D5 and the contents of his evidence in the criminal case No. X-KR-06/180-2, in view of the protective measures granted to this witness. Defense counsel undertook to move for a closed session in case any oral submissions were to be made before the Court of BiH concerning the contents of the transcript, in order not to compromise the protected identity of the witness.⁹²²
21. On 19 May 2009, the Panel rendered a decision granting the prosecution motion, in relation to the criminal proceedings against Željko Ivanović, to allow the disclosure of non-redacted transcript of the testimony of Witness D1 and the contents of his evidence in the case of the Court of BiH No. X-KR-06/180-2 to the suspect Željko Ivanović and his ex officio defense counsel, excluding all other persons, in accordance with the protective measures granted to this witness, in the proceedings conducted against the suspect Željko Ivanović. Witness D1 was to testify in those proceedings under pseudonym I-1. The prosecution undertook to move for a closed session in case any oral submissions were to be made before the Court of BiH concerning the contents of the transcript, in order not to compromise the protected identity of the witness.⁹²³

⁹²⁰ Audio recording of the main trial of 8 April 2009, case no. X-KR-06/180-2.

⁹²¹ Decision of the Court of BiH No. X-KR-06/180-2 of 23 April 2009.

⁹²² Decision of the Court of BiH No. X-KR-06/180-2 of 14 May 2009.

⁹²³ Decision of the Court of BiH No. X-KR-06/180-2 of 19 May 2009.

22. On 24 August 2009, the Court of BiH rendered a Decision granting the Prosecution Trial Motion No. 5 to use the transcripts of the testimony of the protected witness D2 in the ICTY case of Radoslav Krstić (IT-98-33), dated 10 April 2009. The witness testified under pseudonym K. The testimony was admitted subject to limitations referred to in Article 3(2) of the LOTC. Defense motion to cross examine the witness was refused.⁹²⁴
23. On 24 August 2009, the Court of BiH rendered a Decision granting the disclosure of identity of Witness D5 to the accused Miloš Stupar, excluding all other persons, and the disclosure of non-redacted transcript of the testimony of Witness D5 and/or the contents of his evidence in the criminal case of the Court No. X-KR-06/180-2, in view of the protective measures granted to this witness. Defense counsel undertook to move for a closed session in case any oral submissions were to be made before the Court of BiH concerning the contents of the transcript, in order not to compromise the protected identity of the witness.⁹²⁵
24. On 27 August 2009, the Court of BiH rendered a decision granting permanent approval to Danilo Jokić, Dražen Erkić, Cvijan Matić and Milutin Kandić to visit Radomir Vuković at the Detention Unit.⁹²⁶
25. On 3 September 2009, the Court of BiH rendered a Decision granting in part the trial motion of the defense for the accused Radomir Vuković and Zoran Tomić to admit established facts, dated 26 May 2009. Facts established by the Trial and Appeals Chambers of the ICTY in the Krstić and Blagojević and Jokić cases, listed in Annex I to the Decision, were accepted as proven pursuant to Article 4 of the LOTC. The remainder of the facts proposed was refused for reasons elaborated in the reasoning of the Decision.⁹²⁷
26. On 22 September 2009, the Court of BiH rendered a Decision granting visitations by Predrag Marjanović, Milisav Popović and Zdravko Mičić to the accused Zoran Tomić.⁹²⁸

⁹²⁴ Decision of the Court of BiH No. X-KR-06/180-2 of 24 August 2009.

⁹²⁵ Decision of the Court of BiH No. X-KR-06/180-2 of 24 August 2009.

⁹²⁶ Decision of the Court of BiH No. X-KR-06/180-2 of 27 August 2009.

⁹²⁷ Decision of the Court of BiH No. X-KR-06/180-2 of 3 September 2009.

⁹²⁸ Decision of the Court of BiH No. X-KR-06/180-2 of 22 September 2009.

27. On 16 November 2009, the Court rendered a Decision refusing the motions filed by co-counsel for the accused Radomir Vuković, attorney Rade Golić from Vlasenica, to admit into evidence the transcript of the testimony of Ljubomir Borovčanin given in the *Kravica* case before the Court of BiH on 21 May 2008, and to admit the transcript of the testimony of Richard Butler, as evidence obtained by the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the *Popović et. al* case dated 17 January 2008.⁹²⁹
28. On 26 November 2009, the Court of BiH rendered a Decision refusing the motion of defense counsel for the accused Radomir Vuković and Zoran Tomić, attorneys Radivoje Lazarević, Petko Pavlović and Miloš Perić, of 20 May 2009, 10 November 2009 and 18 November 2009 respectively, for expert evaluation by Prof. Mile Matijević.⁹³⁰
29. On 21 December 2009, the Court of BiH rendered a Decision refusing the motion of defense counsel for the accused Radomir Vuković, attorney Radivoje Lazarević, dated 14 December 2009 to call witness Hasan Hasanović and to tender into evidence the statement of Mevludin Orić given in the ICTY Case No. It-05-88-T (*Popović et. al.*).⁹³¹
30. On 5 February 2010, the Court of BiH rendered a Decision refusing as unspecified the motion of the accused Radomir Vuković, attorney Radivoje Lazarević, to re-summon Witness D5 and to hear witnesses claiming that they threw hand grenades in the warehouse in Kravica on 13 July 1995.⁹³²
31. The Defense for the Accused moved the Court to summon Witness Hasan Hasanović and admit into evidence the transcript of testimony of Mevludin Orić dated 24 December 2009 before the ICTY in *Popović et al.* Notwithstanding the fact that the Court had already ruled on these motions, the Court delivered the submission to the Prosecutor's Office of BiH. The Prosecutor's Office of BiH filed a written response to the motion, claiming that the Court had already ruled on the motion and that this was "res iudicata" –an adjudicated matter and that, in the view of the Prosecution, the motions should be refused. Although the

⁹²⁹ Decision of the Court of BiH No. X-KR-06/180-2 of 16 November 2009.

⁹³⁰ Decision of the Court of BiH No. X-KR-06/180-2 of 26 November 2009.

⁹³¹ Decision of the Court of BiH No. X-KR-06/180-2 of 21 December 2009.

⁹³² Decision of the Court of BiH No. X-KR-06/180-2 of 5 February 2010.

Panel does not share the view of the Prosecutor's Office of BiH because it believes that "res iudicata" does not apply to procedural decisions, the Panel decided to refuse the motions.⁹³³

32. On 5 February 2010, the Court received a repeated motion by attorney Perić, defense counsel for the accused Tomić, for expert evaluation by Prof. Mile Matijević, a police expert from Banja Luka. The Court made a decision on 26 November 2009 refusing the motion. The Prosecution opposed the motion. The Panel took the motion under advisement and refused it on the same grounds as in the Court of BiH's Decision dated 26 November 2009. The Panel held that the motion essentially did not contain new information that would lead to a different decision of the court.⁹³⁴

33. On 22 January 2010, the examination of Witness P. Groenewegen was interrupted for technical reasons and the witness was examined in part. At the next hearing of 5 February 2010, the Court received a statement by Witness P. Groenewegen communicated to the Prosecutor's Office of BiH by ICTY Judge Mariette Moussault. In his statement, the witness said that he was not interested in testifying again and that he did not believe that he would have anything to add, other than what he had already stated. In light of the contents of this letter, the Court holds that there are obstacles to examining this witness again and that the re-examination is not possible; there are no procedural or legal mechanisms to make this witness appear in the Court for the purpose of cross-examination.⁹³⁵

⁹³³ Audio recording of the main trial of 5 February 2010, case no. X-KR-06/180-2.

⁹³⁴ Audio recording of the main trial of 5 February 2010, case no. X-KR-06/180-2.

⁹³⁵ Audio recording of the main trial of 5 February 2010, case no. X-KR-06/180-2.

ANNEX 2 - TRIAL RECORD

Prosecution

Evidentiary procedure

Prosecution witnesses

1. The following witnesses for the Prosecution were examined in the course of the main trial:

During the evidentiary procedure the Prosecution presented evidence by examining the following witnesses: protected witnesses D1, D4 and D5, Jovan Nikolić, Ostoja Stanojević, Krsto Simić, Slaviša Žugić, Mirko Aščerić, Milenko Pepić, Marko Aleksić, Predrag Čelić, Slobodan Stjepanović, Dragomir Stupar, Luka Marković, Zoro Lukić, Danilo Zoljić, Stanislav Vukajlović, Ilija Nikolić, Miladin Stevanović, Petar Mitrović, Dragomir Vasić, Munira Subašić, Dražen Erkić, Damir Brekalo, Duško Mekić, Stevo Ilić, Slaviša Vlačić, Marko Ostojić, Tahir Ibrišimović, Richard Butler, Joseph Kingori and Paul Groenwegen. Expert Vedo Tuco was examined at the proposal of the Prosecution.

Prosecution documents

The Court reviewed the following documentary evidence of the Prosecution:

The Prosecution presented the following documentary evidence:

T1 – cd (Zoran Petrović's film) and transcript

T2 – Record of Interview of Witness Jovan Nikolić, No. KT-RZ-10/05 dated 10 October 2005

T2a, T2b, T2c, T2d – photos of the Kravica Warehouse

T3a – photograph of a truck

T 3b – sketch for Witness Ostoja Stanojević

T4 – photo (tendered during the examination of Witness D1) of the Kravica Warehouse

T5 – photo (tendered during the examination of Witness Krsto Simić) of the Kravica Warehouse taken from P-10.1

T6 – aerial photo (tendered during the examination of Witness Krsto Simić) of Glogova dated 17 July 1995

T7- aerial photo (tendered during the examination of Witness Krsto Simić) of Glogova dated 17 July 1995

T8 –Record of Interview of Witness Marko Aleksić, composed by the SIPA War Crimes Investigation Center, No. 14-04/2-327/05 dated 12 October 2005

T9 – Record of Interview of Witness Milenko Pepić, composed by the SIPA War Crimes Investigation Center, No. 14-04/2-388/05 dated 26 October 2005

T10 – Record of Interview of Witness Predrag Čelić, composed by the SIPA War Crimes Investigation Center, No. 14-04/2-391/05 dated 27 October 2005

T11- Record of Interview of Witness Slobodan Stjepanović (Counsel Golić raised an objection under CPC Article 273), composed by the SIPA War Crimes Investigation Center, No. 14-04/2-393/05 dated 27 October 2005

T11a – photo shown to Witness Slobodan Stjepanović and the latter made certain notes and markings on it

T12 a- Prosecutor's Office of BiH Record of Interview of a Suspect No. KT-RZ-10/05 dated 18 April 2008, and a transcript dated 18 April 2008 (Witness D-5)

T12 b- Record of Interview of Witness D-5 dated 22 May 2008, and a transcript dated 22 May 2008 (Witness D-5)

T 12 c – Record of Interview of Witness D-5 dated 18 August 2008

T12d – photo with markings of Witness D-5 on it

T12e – photo taken from P-10.6

T13 – photo tendered during the examination of Witness Dragomir Stupar, taken from P-10.1

T14 – Record of Interview of Witness Luka Marković dated 20 September 2005

T15 – Minutes of on-site visit and reconstruction dated 29 September 2005, with a CD (titled: reconstruction Luka Marković)

T16- photo marked by Witness D-4

T17 – sketch pertaining to Witness D-4

T18 – Transcript of Interview of Witness Danilo Zoljić dated 15 September 2006

T19 – Record of Interview of Witness Stanislav Vukajlović

T20a – sketch

T20b – photo of the Kravica Warehouse

T21 – Record of Interview of Suspect Miladin Stevanović dated 1 July 2005

T22 – 22 photos of the Kravica Warehouse

T23 – Record of Interview of Suspect Miladin Stevanović dated 24 June 2005

T24 – Record of Interview of Suspect Petar Mitrović dated 21 June 2005

T25 – Decision of the Court of BiH No. X-KR-05/24 dated 18 April 2007

T26 – photo of the Kravica Warehouse

T27 – photo taken from P-10.6

T28 – Order no. 64/95 dated 10 July 1995 issued by Staff Commander Tomislav Kovač

T29 – Dragomir Vasić's Dispatch Note, Zvornik CJB /Public Security Center/, no. 277/95 dated 12 July 1995

T30 - Dragomir Vasić's Dispatch Note, Zvornik CJB, no. 281/95 dated 12 July 1995

T31 - Dragomir Vasić's Dispatch Note, Zvornik CJB, no. 282/95 dated 13 July 1995

T32 - Dragomir Vasić's Dispatch Note, Zvornik CJB, no. 283/95 dated 13 July 1995

T33 - Dragomir Vasić's Dispatch Note, Zvornik CJB, no. 12-6/08-508/95 dated 14 July 1995

T34 - Dragomir Vasić's Dispatch Note, Zvornik CJB, no. 01-16-02/1-205/95 dated 15 July 1995

T35 - Dragomir Vasić's Dispatch Note, Zvornik CJB, no. 01-01-0211-206/95 dated 17 July 1995

T36 - Dragomir Vasić's Dispatch Note, Zvornik CJB, no. 12-6/08-534/95 dated 19 July 1995

T37 - Dragomir Vasić's Dispatch Note, Zvornik CJB, no. 01-16-02/12231/95 dated 28 July 1995

T38 - Dragomir Vasić's Dispatch Note, Zvornik CJB, no. 01-16-02/1-221/95 dated 22 July 1995

T39 – Report by Ljubiša Borovčanin, Deputy Commander of the SBO

T40 – Dean Meaning's Report

T41 – Dean Meaning's Report

T42 – Dean Meaning's Report

T43 – Dean Meaning's 2003 Report in the Blagojević case

T44 – Transcript of Momir Nikolić's testimony

T45 – Transcript of Miloš Stupar's testimony

T46 – Transcript of Joseph Kingori's testimony

T47 - Transcript of testimony of Pietera

T48 - Transcript of Paul Groenwegen's testimony

T49 - Transcript of Leendert Van Duijn's testimony

T50 - Transcript of Dragan Obrenović's testimony

T51 - Transcript of Robert Franken's testimony

T52 - Transcript of Thomas Karremans' testimony

T53 - Transcript of Miroslav Deronjić's testimony

T54 – Ljubomir Borovčanin's statements to the OTP on 20 February 2002

T54b – 11 March 2002, 12 March 2002

T55a – Miroslav Deronjić's statement from 1997

T55b – Statement from 1998

T55c – Statement from 1999

T55d – Statement from 2003

T56 – Statement of Facts and Acceptance of Responsibility (Momir Nikolić)

T57 – Obrenović

T58 – Statement of Facts and Acceptance of Responsibility (Dragan Obrenović)
(listed on record for 29 April 2009, book 4)

T59 – List of members of the 2nd Šekovići Detachment who received their July 1995 salary - Special Brigade – 2nd Šekovići Special Police Detachment

T60 – RS MUP /Republika Srpska Ministry of Interior/ letter no. 02/3-strictly confidential 1091/05 dated 22 November 2005

T61 - List of members of the Special Police Brigade, submitted by the Crime Police Administration of the Republika Srpska MUP, no. 02/3- strictly confidential 994/05 dated 26 October 2005

T62 – Structure of the Special Police Brigade of the RS MUP, Janja HQ (Bijeljina)

T63 – Structure of the RS police in the Drina Corps area, dated 12 July 1995 - P363

T64 – Hospital admissions register (entry for 13 July 1995)

T65 – 1992 guidelines for setting out criminal prosecution criteria; author: Military Prosecutor's Office attached to the RS Army Main Staff

T66 – Order to apply rules of international laws of war in the Army of the Serb Republic of Bosnia and Herzegovina, Official Gazette of the Serb People, dated 13 June 1992; author: Radovan Karadžić

T67 - Directive for Further Operations no. 7, ref. number Dt 2/2-11 dated 8 March 1995, Republika Srpska Armed Forces Supreme Command; author: Supreme Commander Radovan Karadžić

T68 - Directive for Further Operations op.7/1, ref. number Dt 2/2-15 dated 31 March 1995, Republika Srpska Army Main Staff, Commander Ratko Mladić

T69 - Radovan Karadžić's order to introduce the highest state of combat readiness, dated 16 June 1995

T70 – Semi-annual report, RS MUP, Special Police Brigade, 2nd Šekovići Special Police Detachment, no. 01/1-1-1/2-230/95 dated 5 July 1995

T71 - Order to mobilize all military conscripts, dated 10 July 1995; author: Vidoje Blagojević

T72 – Security-related events report, no. 200, dated 12 July 1995, Bijeljina MUP

T73 - Order to procure buses for evacuation, dated 12 July 1995; author Milenko Živanović

T74 - Order to prevent passing of Muslim groups towards Kladanj and Tuzla, dated 13 July 1995; author: Milenko Živanović

T75 – Regular Combat Report dated 13 July 1995; author: Radislav Krstić

T76 –MUP Special Police Brigade's Report no. 284/95 dated 13 July 1995 (Ljubiša Borovčanin, Deputy Commander of the Special Police Brigade)

T77 - Regular Combat Report dated 14 July 1995, author: Mile Simanić

T78 – Delivery of information to deputy minister, dated 14 July 1995; author: Dragan Kijac

T79 - Regular Combat Report dated 17 July 1995; author: Mile Simanić

T80 – Report on the security situation in the 2nd Šekovići Police Detachment dated 3 August 1995; author: Nedeljko Sekula

T81 – Treatment of prisoners of war, Milomir Savčić

T82 – Laboratory report

T83 – Analysis of samples of explosives recovered from various sites in Srebrenica; author: Netherlands Forensic Institute

T84 – Estimation of the minimum number of individuals exhumed by the ICTY between 1996 and 2001, January 2004; author Jose Pablo Baraybar

T85 – Report on excavations and exhumations at the Glogova 1 mass grave in 2000, Richard Wright - missing

T86 – Srebrenica Military Narrative (revised) – operation “Krivaja 95” dated 1 November 2002, Richard Butler

T87 – United States Naval Criminal Investigative Service's report on the review and finding of evidence from the Kravica Warehouse

T88 - Addendum on the Number of Missing and Dead from Srebrenica by H. Brunborg

T89 – Report on the Number of Missing and Dead from Srebrenica by H. Brunborg and H. Urdal

T90 - Michael Hedley’s report on the review and finding of evidence from the Kravica Warehouse, dated March 2001

T91 - Report on blood and tissue samples found in Grbavica School, Kravica Warehouse

T92 - OTP’s report titled “Missing from Srebrenica – persons who were registered missing after the fall of Srebrenica“

T93 - Report on Excavations and Exhumations at Glogova 2 mass grave, 1999-2001, forensic anthropologist Jose Pablo Baraybar

T94 - Report by the Chief Pathologist- mass burial sites of Srebrenica, ICTY, 1999, John Clark

T95 - ICTY publications, missing persons in the territory of BiH, dated 30 June 1998

3C-18 Dean Manning’s report (addendum), dated 8 June 2007 and 27 November 2007 (Srebrenica investigation).

T96 – Sketch of Kravica, no. 14-13/1-7-243/05 dated 4 October 2005

T97 – photo of Srebrenica and Žepa, July 95

T98 - photo - “White house”- ICTY

T99 – aerial photo - Potočari- ICTY, 13 July 2009 (with notes)

T100 – aerial photo -Potočari dated 13 July 1995 – ICTY

T101 - Map-movement of the column and the position of the Serb forces- ICTY

T102 - photo –depicting the hill and the woods where Muslim columns were moving- ICTY

T103 - Map depicting movement of the column -P138

T104 - Map depicting movement of columns, routed to north and south- P24

T105 - aerial photo -Nova kasaba, football pitch, dated 13 July 1995 – ICTY

T106 – aerial photo of the Sandići valley-P9.3

T107 - photo of the Sandići valley 13 July 1995-P9.1

T108 – blown-up photo of the Sandići valley-P9.2

T109 - photo taken from the direction of Bratunac, depicting an area between Kravica and Sandići; the warehouse marked -P9.5

T110 - photo of the Kravica Warehouse, 13 July 1995-P10.2

T111 – still images extracted from video footage of bodies in front of the Kravica Warehouse, 13 July 1995

T112 – photo of the ceiling in the western section, with blood traces-P10.5

T113 - photo of the interior of the warehouse (western section) with blood stains on the wall-P10.4

T114 - photo of a shoeprint under a window-P10.7

T115 – blown-up photo of the shoeprint under the window -P10.8

T116 – Map of primary and secondary graves, ICTY

T117 - photo of Konjević Polje dated 14 August 1995-P8.4

T118 – photo of Glogova dated 5 July 1995 (with a note)-P11.2

T119 – aerial photo of Glogova (with a note)-P11.1

T120 - aerial photo of Glogova dated 17 July 1995-P11.3

T121 – ID card photo (Dahmo Kadrić, from Glogova)-P657

T122 - Mass graves in Tatar-Bratunac, 27 July 1995 and 20 October 1995, ICTY, Tatar Bratunac -P567

T123 - GL 1-photo

T124 - photo of disturbed soil, Glogova, 30 October 1995-P570
T125 - photo of disturbed soil, Glogova, 9 November 1995-P571
T126 - Zeleni Jadar- grave, ICTY
T127 - aerial photo - Zeleni Jadar, ICTY
T128 - Zeleni Jadar- grave, disturbed soil, 7 September 1995 and 2 October 1995, ICTY
T129 - Zeleni Jadar- grave, disturbed soil, 24 August 1995 and 2 October 1995, ICTY
T130 - Zeleni Jadar- grave, disturbed soil, 20 October 1995 and 23 October 1995, ICTY
T131 - Map showing the village of Kravica and the road in Kravica-P674
T132 – Map of Kravica -P4.3
T133 - Srebrenica graves, primary and secondary, chart
T134 - Brochure- still images extracted from video footage of the Srebrenica trial-P22
T135 - Brochure- Book for identification of Bosnian Muslims -P23
T137 – Record of Interview of Witness Duško Mekić, SIPA War Crimes Investigation Center, dated 20 October 2005
T138a – Judgment of the Municipal Court of Mostar Posl.br.K. 30/98 dated 26 November 2001
T138b – Judgment of the District Court of Mostar no. K 30/98 dated 26 November 2001
T138c – Judgment of the Higher Court of Mostar no. KŽ. 14/96 dated 22 April 1997
T139 – aerial photo of the Sandići valley-P9.3
T140 – Prosecutor's Office of BiH Record of Interview of Witness Radoslav Stuparević, no. KT-RZ-18/05 dated 29 June 2006
T141 - aerial photo of the Sandići valley -P9.3
T142 – Record of Interview of Witness Nedeljko Sekula, SIPA War Crimes Investigation Center, dated 12 October 2005
T143 – Transcript of Testimony of Witness „K“ in Case No. IT-98-33-T on 10 April 2000
T144-1 – Interim Combat Report, strictly confidential, no. 03/253-54-1 dated 25 May 1995; commander: Colonel Vidoje Blagojević
T144-2 - Order to prevent passing of Muslim groups towards Kladanj and Tuzla, dated 13 July 1995; author: Milenko Živanović
T144-3 – Regular Combat Report dated 17 July 1995

T144-4 – Interim Combat Report about the situation in the area of responsibility of the 1st Zvornik Infantry Brigade, Drina Corps Command, strictly confidential, no. 03/2-221; author: Major-General Radislav Krstić

T144-5 - Regular Combat Report dated 18 July 1995, Drina Corps Command, strictly confidential, no. 03/2-222; author: Major-General Radislav Krstić

T144-6 - Regular Combat Report dated 19 July 1995, Drina Corps Command, strictly confidential, no. 03/2-223; author: Major-General Radislav Krstić

Defense

Defense witnesses

2. The following witnesses for the defence of Radomir Vuković and Zoran Tomić were examined in the course of the main trial:

During the evidentiary procedure the Defense for the accused Vuković and Tomić presented evidence by examining the following witnesses: Slaviša Žugić, Savo Pavlović, Cvijan Ristić, Muhamed Buševac, Milica Bogičević, Dušan Spasojević, Radoslav Stuparević, Milutin Kandić, Nenad Andrić, Nedeljko Sekula, Nikola Milaković and Aleksandar Radovanović. Expert Svjetlana Radovanović was examined at the proposal of the Defense.

Radomir Vuković

The Defense for the accused Vuković presented the following evidence:

Documents

3. The Court reviewed the following documentary evidence for Radomir Vuković:

O - I - 1 – Photo of the Kravica warehouse – tendered on 18 December 2008 during the examination of Witness D1

O - I - 2 – Prosecutor’s Office Record of Interview of Witness Marko Aleksić No. KT-RZ-10/05 dated 27 June 2006, in *Stupar and Others* – tendered on 4 February 2009

O - I - 3 a – Main trial immunity agreement entered into between the Prosecutor’s Office of BiH and Marko Aleksić, No. KT-RZ-10/05 dated 27 June 2006 (tendered on 4 February 2009)

O - I - 3 b – Decision on immunity granted by the Prosecutor’s Office of BiH to Witness Marko Aleksić at the main trial, no. KT-RZ-10/05 dated 6 July 2006 (tendered on 4 February 2009)

O - I - 3 c – Information on immunity granted by the Prosecutor’s Office of BiH to Marko Aleksić during the investigation, dated 5 May 2006 (tendered on 4 February 2009)

O - I - 4 – Set of photos marked with number 1 (Witness D5 wrote names on photos)

O - I - 5 – Set of photos marked with number 2

O - I - 6 – Set of photos marked with number 3

O - I - 7 – Set of photos marked with number 4

O - I - 8 – photo on which Witness D5 marked the location of the rifle and the body of Krsto Dragičević

O - I - 9 – Report by a doctor of the Belgrade District Prison on the health condition of Witness D5, no. 713-1-1605/08-04 dated 30 May 2008

O - I - 10 – Set of photos marked with number 5

O - I - 11 – Set of photos marked with number 6

O - I - 12 – Set of photos marked with number 7

O - I - 13 – Set of photos marked with number 8

O - I - 14 – Set of photos marked with number 9

O - I - 15 – Set of photos marked with number 10

O - I - 16 – Set of photos marked with number 11

O - I - 17 – Set of photos marked with number 12

O - I - 18 – Set of photos marked with number 13

O - I - 19 – Set of photos marked with number 14

O - I - 20 – Photo marked with number 15

O - I - 21 – Set of photos marked with number 16

O - I - 22 – Set of photos marked with number 17

O - I - 23 – Set of photos marked with number 18

O - I – 24 through O – I - 30 – photos marked with numbers 19, 20, 21, 22, 23, 24 and 25 respectively

O - I - 31 – Trial transcript in Case No. X – KR-05/24 (*Stupar and Others*), dated 11 June 2008

O - I - 32 – Trial transcript in Case No. X-KR-05/24-II (*Miladin Stevanović and Others*), dated 11 June 2008

O - I - 33 – Verdict of the Court of BiH No. X-KR-06/236 dated 6 November 2008 in the *Mladen Blagojević* case

O - I - 34 – Verdict of the Court of BiH No. X-KR-06/294 dated 11 April 2008 in the *Šefik Alić* case

O - I - 35 – Expert witness’s report on the mental state and competence of Petar Mitrović

O - I - 36 – Živinice Municipality Commission Record (State Commission for Collection of War Crimes Facts) – no. 01-0564/95 dated 8 August 1995

O - I - 37 – photo

O - I - 38 – Operational Report by the Command of the 28th Division of the Army of BiH, strictly confidential, no. 04-114/95, Srebrenica, 30 June 1995, operative time, 17:00 hours

O - I - 39 – Notification from the session of the Presidency of the Srebrenica Municipality, no. 00342255 01- /95, held on 9 July 1995 at 19:00 hours

O - I - 40 – List of war criminals (known to the Command of the 1st Light Infantry Brigade) who committed war crimes in the municipalities of Bratunac, Srebrenica, Milići, Vlasenica and Skelani (with regard to whom there are indications suggesting that they are located in Srebrenica), no. 00678851 Bratunac, 12 July 1995

O - I - 41 – Report on supplies of UBS /ordnance/ and MTS /materiel/ to the Žepa and Srebrenica enclaves, R BiH, the Army of R BiH General Staff, Army Staff, no. 1-1/7-169 dated 28 May 1996, Kakanj

O - I - 42 – Presentation of the Army of BiH Commander General Rasim Delić, R BiH, the Army of BiH General Staff, Commander’s Office, strictly confidential, no. 1/1-941, Sarajevo, 30 July 1996

O - I - 43 – Information related to the document by the GSS /translator's note: extension unknown/ of the A R BiH, the Army of R BiH, the 28th Division Command, Intelligence Section, strictly confidential, no. 02-06/95, Srebrenica, 29 June 1995

O - I - 44 – Information on combat results of the units and commands of the 28th Division (ground forces) of the 2nd Corps of the Army of RBiH, Army of R BiH, the 2nd Corps Command, strictly confidential, no. 04/1-105-603, Tuzla, 8 July 1995

O - I - 45 – Statement of the representative(s) of the Srebrenica enclave civilian authorities regarding the implementation of the agreement on the evacuation of civilians from the enclave, the Commissioner for Civilian Affairs in Srebrenica, no. 07-27/95 dated 17 July 1995

O - I - 46 – Order to make preparations for launching of offensive combat operations; order, Army of BiH General Staff, R BiH, no. 1/825-84 dated 17 June 1995

O - I - 47 – Information about the results of the negotiations on demilitarization of Srebrenica, the R BiH Armed Forces Supreme Command Staff, Sarajevo, R BiH, strictly confidential, no. 02/520-2, Sarajevo, 20 April 1993

O - I - 48 – Intelligence information of the Military Security Service Section of the 2nd Corps Command, no. 06-101-197-7/95 dated 11 September 1995

O - I - 49 – Ramiz Bećirović's statement composed by the Military Security Service Section of the 2nd Corps Command of the Army of R BiH, Tuzla 11 August 1995

O - I - 50 – Information and Order related to the successes and tasks of ARBiH units, 2nd Corps Command of the Army of R BiH, strictly confidential, no. 02/1-604/123, Tuzla, 2 July 1995

O - I - 51 – Accommodation of R/Z /prisoners of war/, the 1st Light Infantry Brigade Command, strictly confidential, no. 04-520-51/95 dated 13 July 1995

O - I - 52 – Telegram no. E8EAS60G dated 28 June 1995 relating to a successfully accomplished sabotage b7d /translators note: abbreviation unknown/. Congratulatory message, Command of the 2nd Corps of the A R BiH, strictly confidential, no. 02/1-670/4, Tuzla 28 June 1995

O - I - 53 – Report on reinforcement of RJ /war units, reserve units/, the 28th Division, Personnel, the A RBiH, the 2nd Corps Command, strictly confidential, no. 03-183-231, Srebrenica: 1 July 1995

O - I - 54 – Interim Report by the 5th Engineers Battalion Command, strictly confidential, no. 107-1 dated 13 July 1995

O - I - 55 – Report on partly clearing up the Srebrenica terrain, Kravica sector, Republika Srpska, the Government, the State Commission for Exchange of Prisoners of War and Missing Persons, Banja Luka, no. 193/97 dated 29 May 1997

O - I - 56 – Translation of Richard Butler’s VRS Brigade Command Responsibility Report

O - I – 57 – Certificate in the name of Radomir Vuković, issued by the RS Ministry of Interior, the Police Brigade for ATD /antiterrorist operations/ Bijeljina, the 2nd Detachment for ATD, Šekovići, no. 01/1-1.4/2-851/96, dated 24 October 1996

O - I – 58 – Certificate in the name of Radomir Vuković, issued by the Šekovići Section of the RS Ministry of Defense, no. 02-835-149/98 dated 18 March 1998

O - I – 59 – Death certificate in the name of Milica Vuković, Serbia and Montenegro, the Republic of Serbia, the Belgrade registrar region, ref. number: 00444, dated 6 April 2005

O - I – 60 – Request for registration – cancellation of registration of permanent – temporary place of residence and change of address – apartment, in the name of Radomir Vuković, the RS Ministry of Interior, Šekovići, dated 2 February 2006

Zoran Tomić

Documents

4. The Court reviewed the following documentary evidence for Zoran Tomić:

The Defense for the Accused Zoran Tomić presented the following evidence:

O-II-1 – photo of a house

O-II -2 – photo of the school

O-II-3 – photo

O-II-4 – photo of Krsto Dragičević’s monument

O-II-5 – photo depicting six individuals

O-II-6 – photo depicting 20 individuals

O-II-7 – photo depicting 22 individuals

O-II-8 – photo depicting 14 individuals

O-II-9 – Plea Agreement No. KT-RZ 43/08 dated 16 October 2008 – a photocopy

O-II-10 – Statement of facts and admission of guilt No. KT-RZ 43/08 dated 16 October 2008 – a photocopy

O-II-11 – Verdict of the Court of BiH No. X-KR-06/180-1 dated 22 October 2008 – a photocopy

O-II-12 – Certificate on injuring of Nenad Andrić No. 13-09/1-29-341 dated 9 September 1995, RS MUP- Zvornik Public Security Centre; a photocopy

O-II- 12a – Discharge sheet

O-II- 12b – Delivery sheet

O-II-13 a – Order dated 14 July 2009, issued to expert witness Professor Svetlana Radovanović by Defense Counsel Miloš Perić, Zvornik – a photocopy

O-II-13 b – Expert witness Dr Svetlana Radovanović's report dated 1 August 2009, Belgrade – a photocopy

O-II-13 c – Consolidated overview of medical certificates of cause of death from the list of the ICTY – a photocopy

O-II-13 d – Dr Svetlana Radovanović's CV

O-II-13 e – Summary of the Report on the number of the dead in the Kravica ZZ /Farming Cooperative/ on 13 July 1995 – a photocopy

O-II-13 f – OSCE's Voter Registration Manual, the Federation of BiH Statistics Bureau, demographic statistics 2000, Sarajevo, June 2001 – a photocopy.

O-II-13 g – Summary of the Findings on the missing and dead from Srebrenica – the 2005 Report, Dr Svetlana Radovanović

O-II-13 h – CD, Dr Svetlana Radovanović

O-II-14 – Agreement for the Demilitarization of Srebrenica and Žepa entered into by Lieutenant General Ratko Mladić and General Sefer Halilović on 8 May 1993, in the presence of Lieutenant General Phillippe Morillon – a photocopy

O-II-15 – Photo of the Kravica Warehouse

O-II-16 – Drina Corps Command Order, strictly confidential, no. 03/157-7, dated 15 July 1995

ANNEX 3 – ACCEPTED FACTS ESTABLISHED BY FINAL ICTY JUDGEMENTS

| Fact no. ⁹³⁶ | ACCEPTED FACT ESTABLISHED BY A FINAL ICTY JUDGMENT ⁹³⁷ | Paragraph in ICTY judgment <i>Blagojević and Jokić, and Krstić</i> |
|-------------------------|--|--|
| 1. | There was an armed conflict in eastern Bosnia between 11 July and 1 November 1995. | <i>Blagojević, para. 549</i> |
| 2. | The attack was widespread or systematic. The attack, carried out by the VRS and MUP was planned and defined in the “ <i>Krivaja 95</i> ” order. | <i>Blagojević, para. 551</i> |
| 3. | The attack continued after the fall of Srebrenica and affected the approximately 40,000 people who lived within the Srebrenica enclave at the time of the attack. | <i>Blagojević, para. 551</i> |
| 4. | The attack was clearly directed against the Bosnian Muslim civilian population in the Srebrenica enclave. | <i>Blagojević, para. 552</i> |
| 5. | In March 1995, Radovan Karadžić, President of Republika Srpska (“RS”), issued a directive to the VRS concerning the long-term strategy of the VRS forces in the enclave. The directive, known as “Directive 7”, specified that the VRS was to: [C]omplete the physical separation of Srebrenica from Žepa as soon as possible, preventing even communication between individuals in the two enclaves. By planned and well-thought out combat operations, create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica. | <i>Krstić, para. 28</i> |
| 6. | Just as envisaged in this decree, by mid 1995, the humanitarian situation of the Bosnian Muslim civilians and military personnel in the enclave was catastrophic. | <i>Krstić, para. 28</i> |
| 7. | On 31 March 1995, the VRS Main Staff issued Directive 7.1, signed by General Mladić. Directive 7.1 was issued “on the basis of Directive No. 7” and directed the Drina Corps to, <i>inter alia</i> , conduct “active combat operations...around the enclaves”. | <i>Krstić, para. 29</i> |
| 8. | The VRS offensive on Srebrenica began in earnest on 6 July 1995. | <i>Krstić, para. 31</i> |
| 9. | On 9 July 1995, President Karadžić issued a new order authorizing the VRS Drina Corps to capture the town of Srebrenica. | <i>Krstić, para. 33</i> |

⁹³⁶ Ordinal number of the fact established in this case (established fact in the Vuković and Tomić case)

⁹³⁷ *Prosecutor v. Krstić*: Trial Chamber’s judgment (IT-98-33-T) dated 2 August 2001 affirmed by the Appeals Chamber’s judgment (IT-98-33-A) dated 19 April 2004, *Prosecutor v. Blagojević and Jokić*: Trial Chamber’s judgment (IT-02-60) dated 17 January 2005 affirmed by the Appeals Chamber’s judgment (IT-02-60-A) dated 9 May 2007.

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| 10. | Late in the afternoon of 11 July 1995, General Mladić, accompanied by General Živanović (then Commander of the Drina Corps), General Krstić (then Deputy Commander and Chief of Staff of the Drina Corps) and other VRS officers, took a triumphant walk through the empty streets of Srebrenica town. | <i>Krstić</i> , para. 36 |
| 11. | By the evening of 11 July 1995, approximately 20,000 to 25,000 Bosnian Muslim refugees were gathered in Potočari. | <i>Krstić</i> , para. 37 |
| 12. | Thousands of Bosnian Muslim residents from Srebrenica fled to Potočari seeking protection within the UN compound. | <i>Krstić</i> , para. 37 |
| 13. | Several thousand had pressed inside the UN compound itself, while the rest were spread throughout the neighboring factories and fields. | <i>Krstić</i> , para. 37 |
| 14. | Conditions in Potočari were deplorable. There was very little food or water available and the July heat was stifling. | <i>Krstić</i> , para. 38 |
| 15. | Drina Corps Command officers and units were present in Potočari monitoring the transportation of the Bosnian Muslim civilians out of the area on 12 and 13 July 1995. | <i>Krstić</i> , para. 432 |
| 16. | On 12 and 13 July 1995, the women, children and elderly were bussed out of Potočari, under the control of VRS forces, to Bosnian Muslim held territory near Kladanj. | <i>Krstić</i> , para. 48 |
| 17. | The removal of the Bosnian Muslim civilian population from Potočari was completed on the evening of 13 July 1995 by 2000 hours. | <i>Krstić</i> , para. 51 |
| 18. | As the buses carrying the women, children and elderly headed north towards Bosnian Muslim-held territory, they were stopped along the way and again screened for men. | <i>Krstić</i> , para. 56 |
| 19. | The VRS and MUP, walking among the Bosnian Muslim refugees, were separating all Bosnian Muslim men aged 16 to approximately 60 or 70 from their families. | <i>Blagojević</i> , para. 168 |
| 20. | The separations continued throughout 12 and 13 July. | <i>Blagojević</i> , para. 168 |
| 21. | From the morning of 12 July, Bosnian Serb forces began gathering men from the refugee population in Potočari and holding them in separate locations. | <i>Krstić</i> , para. 53 |
| 22. | On 13 July 1995, the Dutch Bat troops witnessed definite signs that the Bosnian Serbs were executing some of the Bosnian Muslim men who had been separated. | <i>Krstić</i> , para. 58 |
| 23. | The Bosnian Muslim men who had been separated from the women, children and elderly in Potočari (numbering approximately 1,000) were transported to Bratunac. | <i>Krstić</i> , para. 66 |
| 24. | The men and boys in Potočari were separated from the women, children and elderly and taken to the White House for interrogation. | <i>Krstić</i> , para. 157 |
| 25. | Drina Corps officers were also seen in the vicinity of the White House during the time the separated men were detained there. | <i>Krstić</i> , para. 158 |
| 26. | Beginning on the afternoon of 12 July 1995 and continuing throughout 13 July 1995, men detained in the White House were bussed out of the Potočari compound to detention sites in Bratunac. | <i>Krstić</i> , para. 159 |
| 27. | Most of the Bosnian Muslim men separated at Potočari and captured | <i>Krstić</i> , para. |

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| | from the woods were held in Bratunac for one to three days before being transferred to other detention and execution sites. | 179 |
| 28. | A large group of the prisoners who had been held overnight in Bratunac were bussed in a convoy of 30 vehicles to the Grbavci school in Orahovac early in the morning of 14 July 1995. | <i>Krstić</i> , para. 220 |
| 29. | It is estimated that there were 2,000 to 2,500 Bosnian Muslim men were detained in the school gym. | <i>Krstić</i> , para. 320 |
| 30. | In April 1996 they commenced forensic examinations of suspected execution points and exhumation of mass graves. | <i>Blagojević</i> , para. 381 |
| 31. | Forensic evidence showed that there were two types of mass graves, "primary graves", in which individuals were placed soon after their deaths and "secondary graves", into which the same individuals were later reburied. | <i>Blagojević</i> , para. 381 |
| 32. | The refugees in the (UN) compound (<i>in Potočari</i>) could see Serb soldiers setting houses and haystacks on fire. | <i>Krstić</i> , para. 41 |
| 33. | By the afternoon of 12 July 1995, or the early evening hours at the latest, the Bosnian Serb forces were capturing large numbers of these men in the rear. | <i>Krstić</i> , para. 63 |
| 34. | Identification papers and personal belongings were taken away from both Bosnian Muslim men at Potočari and from men captured from the column; their papers and belongings were piled up and eventually burnt. | <i>Krstić</i> , para. 547 |
| 35. | Prisoners not killed on 13 July 1995 were subsequently bussed to execution sites further north of Bratunac, within the zone of responsibility of the Zvornik Brigade. | <i>Krstić</i> , para. 67 |
| 36. | The large-scale executions in the north took place between 14 and 17 July 1995. | <i>Krstić</i> , para. 67 |
| 37. | Plans to transport the Bosnian Muslim civilians out of the enclave crystallized at this second meeting (<i>between Generals Mladić, Krstić and the UN Dutch Bat and a Bosnian Muslim representative at the Hotel Fontana in Bratunac at 23.00 hours on 11 July 1995</i>). | <i>Krstić</i> , para. 129 |
| 38. | Further, it was General Mladić who initiated the meetings at the Hotel Fontana when he made it abundantly clear that he wanted the Bosnian Muslims out of the area. | <i>Krstić</i> , para. 147 |
| 39. | On 12 July 1995, as the bus convoys were being organized, General Mladić was heard to say during an intercepted conversation: They've all capitulated and surrendered and we'll evacuate them all – those who want to and those who don't want to. | <i>Krstić</i> , para. 147 |
| 40. | Certainly, the Bosnian Muslim refugees were not consulted or given a choice about their final destination. | <i>Krstić</i> , para. 147 |
| 41. | On 14 July 1995, the UN Security Council expressed concern about the forced relocation of civilians from the Srebrenica "safe area" by the Bosnian Serbs, asserting it was a clear violation of their human rights. | <i>Krstić</i> , para. 148 |
| 42. | The Drina Corps Command was also in contact with the MUP unit along the Bratunac - Konjević Polje road, monitoring their progress. | <i>Krstić</i> , para. 176 |
| 43. | A conversation, intercepted on 13 July 1995 at 2040 hours, reveals that | <i>Krstić</i> , para. |

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| | General Krstić spoke to Colonel Borovčanin, the Deputy Commander of the MUP unit, asked how things were going and stated that he would be in touch. | 176 |
| 44. | ... there was close co-operation and co-ordination between the MUP and Drina Corps units. On 11 July 1995, before the VRS found out about the formation and movement of the Bosnian Muslim column, the Main Staff ordered the Drina Corps to take pre-emptive steps, "by arrangement and co-operation with the MUP" to block the passage of Bosnian Muslims to and from the enclave. | <i>Krstić</i> , para. 287 |
| 45. | The civilian police of the Republika Srpska was organized under the Ministry of Interior ("MUP"). In July 1995, Tomislav Kovač was the acting Minister of Interior. The civilian police was organized in two sections: the regular police force and the special police brigade. | <i>Blagojević</i> , para. 71 |
| 46. | The Special Police Brigade was a combat unit of the MUP. Colonel Goran Sarić was the commander and Colonel Ljubiša Borovčanin was the deputy commander. | <i>Blagojević</i> , para. 75 |
| 47. | The Special Police Brigade consisted of approximately eight detachments, including the 2nd Detachment from Šekovići commanded by Miloš Stupar, and a Training Centre at Jahorina, commanded by Duško Jević. | <i>Blagojević</i> , para. 75 |
| 48. | Members of the detachments were armed with automatic and semi-automatic weapons and were trained differently than the regular police force. | <i>Blagojević</i> , para. 75 |
| 49. | The detachments also had heavy weapons and vehicles, such as tanks, armored personnel carriers ("APCs") and Pragas. | <i>Blagojević</i> , para. 75 |

| EFV ⁹³⁸ No. | ACCEPTED FACT ESTABLISHED BY A FINAL ICTY JUDGMENT ⁹³⁹ | Paragraph in ICTY judgment |
|---------------------------|---|----------------------------|
| 50. | Generally, the Bosnian Serb forces surrounding the enclave were considered well disciplined and armed. THE VRS was organized on a geographic basis and Srebrenica fell within the domain of the Drina Corps. Between 1,000 and 2,000 soldiers from three Drina Corps Brigades were deployed around the enclave. These Bosnian Serb forces were equipped with tanks, armoured vehicles, artillery and mortars. The unit of the AFBiH that remained in the enclave – the 28th Division – was not well organized and well equipped. A firm command structure and communications system was lacking, some ABiH soldiers carried old hunting rifles or no weapons at all | <i>Krstić</i> , para. 21 |

⁹³⁸ Ordinal number of the fact established in this case (established fact in the Vuković and Tomić case)

⁹³⁹ *Prosecutor v. Krstić*: Trial Chamber's judgment (IT-98-33-T) dated 2 August 2001 affirmed by the Appeals Chamber's judgment (IT-98-33-A) dated 19 April 2004, *Prosecutor v. Blagojević and Jokić*: Trial Chamber's judgment (IT-02-60) dated 17 January 2005 affirmed by the Appeals Chamber's judgment (IT-02-60-A) dated 9 May 2007.

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| | and few had proper uniforms. However, the Trial Chamber also heard evidence that the 28th Division was not as weak as they have been portrayed in some quarters. Certainly the number of men in the 28th Division outnumbered those in the Drina Corps and reconnaissance and sabotage activities were carried out on a regular basis against the VRS forces in the area. | |
| 51. | From the outset, both parties to the conflict violated the "safe area" agreement. | <i>Krstić</i> , para. 22 |
| 52. | The Trial Chamber heard credible and largely uncontested evidence of a consistent refusal by the Bosnian Muslims to abide by the agreement to demilitarize the "safe area". Bosnian Muslim helicopters flew in violation of the no-fly zone ; the ABiH opened fire toward Bosnian Serb lines and moved through the "safe area"; the 28th Division was continuously arming itself; and at least some humanitarian aid coming into the enclave was appropriated by the ABiH. To the Bosnian Serbs it appeared that Bosnian Muslim forces were using the "safe area" as a convenient base from which to launch offensives against the VRS and that UNPROFOR was failing to take any action to prevent it. General Halilović admitted that Bosnian Muslim helicopters had flown in violation of the no-fly zone and that he had personally dispatched eight helicopters with ammunition for the 28th Division. In moral terms, he did not see it as a violation of the "safe area" agreement given that the Bosnian Muslims were so poorly armed to begin with. | <i>Krstić</i> , para. 24 |
| 53. | Immediately following the take-over of Srebrenica, the whereabouts of the 28th Division of the ABiH were unknown. This was of great concern to the VRS, as was the possibility that forces of the 2nd Corps of the ABiH attacking from the direction of Tuzla and Kladanj would link up with elements of the 28th Division. Radio intercepts indicate that the VRS first became aware of the formation of the column around 0300 hours on 12 July 1995. | <i>Krstić</i> , para. 162 |
| 54. | Certainly the Drina Corps Command was well aware of the general VRS plan to capture the Bosnian Muslim men trying to breakthrough to Tuzla. Indeed, the Drina Corps Command received direct orders from the Main Staff to take prisoners from the Bosnian Muslim column. | <i>Krstić</i> , para. 169 |
| 55. | Defence witnesses accused the Bosnian Muslim forces of using the safe area as a fortified base from which to launch offensives against the Bosnian Serb forces. In particular, on 26 June 1995, several weeks prior to the offensive of the VRS on Srebrenica, the Bosnian Muslim forces launched an assault from the enclave on the Serbian village of Višnica 5km away. | <i>Krstić</i> , para. 567 |
| 56. | In accordance with the law in effect in the RS, MUP units could be re-subordinated to the VRS for various purposes, including to reinforce the VRS during combat activities. | <i>Blagojević</i> , para. 76 |

ANNEX 4 – TABLE OF AUTHORITIES

ICTY

Prosecutor v Vidoje Blagojević and Dragan Jokić, IT-02-60-T, Judgement, 17 January 2005 (*Blagojević and Jokić Trial Judgement*)

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Prosecutor v Momir Nikolić, IT-02-60/1-A, Judgment on Sentencing Appeal, 8 March 2006

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Prosecutor's Office of Bosnia and Herzegovina v. Miloš Stupar, Milenko Trifunović, Brano Džinić, Aleksandar Radovanović, Slobodan Jakovljević, Velibor Maksimović, Dragiša Živanović, Branislav Medan and Milovan Matić, X-KR-05/24, 29 July 2008, First Instance Verdict (written verdict 13 January 2009)

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Prosecutor's Office of Bosnia and Herzegovina v Miloš Stupar, Milenko Trifunović, Brano Džinić, Aleksandar Radovanović, Slobodan Jakovljević, Branislav Medan and Milovan Matić, X-KRŽ-05/24, Second Instance Verdict, 9 September 2009

Prosecutor's Office of Bosnia and Herzegovina v Milorad Trbić, X-KR-07/386, 16 October 2009, First Instance Verdict (written verdict 29 April 2010)