UNITED NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991	Case No.	IT-98-34-T
		Date:	31 March 2003
		Original:	English

IN THE TRIAL CHAMBER

Before: **Judge Liu Daqun**
Judge Maureen Clark
Judge Fatoumata Diarra

Registrar: **Mr. Hans Holthuis**

Judgement of: **31 March 2003**

PROSECUTOR

v.
Mladen NALETILIC, aka "TUTA"
And
Vinko MARTINOVIC, aka "ŠTELA"

JUDGEMENT

The Office of the Prosecutor:

Mr. Kenneth Scott
Mr. Douglas Stringer
Mr. Vassily Poriouvaev
Mr. Roeland Bos

Counsel for the Accused:

Mr. Krešimir Krsnik — For Mladen Naletilic
Mr. Christopher Meek

Mr. Branko Šeric — For Vinko Martinovic
Mr. Želimir Par

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I. INTRODUCTION

1. The facts underlying this judgement illustrate the complex situation that existed in Bosnia and Herzegovina following its independence in 1992. The relevant geographical area is Mostar and the surrounding municipalities in the South-western part of Bosnia and Herzegovina. Mostar is named after the famous bridge, which used to cross the Neretva River. The name of Mostar is now connected with a tragic example of a multi-cultural town divided by conflict. Mostar and the surrounding region was the ground for several conflicts between the different groups following the break-up of Socialist Federal Republic of Yugoslavia ("SFRY"). This judgement deals with period running from April 1993 to January 1994 and the conflict between the BH Croats[1] and BH Muslims.[2] The two ethnic groups had co-operated and jointly fought on the same side in 1992 against the Serb-Montenegrin forces.[3] Due to factors, which this judgement will not answer, the BH Croats and BH Muslims started a bitter conflict, and Mostar became divided into an Eastern part, dominated by BH Muslims and a Western part, dominated by BH Croats.

A. The accused and the charges

2. The two accused are Mladen Naletili} (Tuta) and Vinko Martinovi} ([tela). Mladen Naletili} is aged 56 and was born on 1 December 1946 in Široki Brijeg[4] in Bosnia and Herzegovina. Mladen Naletili} lived outside Bosnia and Herzegovina, for the most part in Germany. In 1990-1991 he returned to Široki Brijeg and set up a military group called the Convicts' Battalion ("KB"), which under his leadership fought against the Serb forces in Mostar during the spring of 1992.

3. Vinko Martinovic ([tela) is aged 39 and was born on 21 September 1963 in Mostar, Bosnia and Herzegovina. He was raised in a part of Mostar called Rodoc.[5] Prior to the war he had mostly been engaged in commerce and was for a while a taxi driver in Mostar.[6] In 1992 when the conflict

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1 The Chamber noted frequent assertions by the Defence for Mladen Naletili} and witnesses called on his behalf that there was no such thing as a Bosnian Croat, but that there were only "Croats from Bosnia and Herzegovina". Yet the witnesses frequently, inadvertently, used the description Bosnian Croat themselves. The Chamber notes that a country enjoying such a long name is described almost universally by its shortened name Bosnia but so as not to offend the sensibilities expressed, the Chamber will refer to participants as "BH Croats".

2 The Chamber notes that it is strange to describe the group of people by a religion and recognises that not all persons included in this group may have Islamic faith. Some witnesses have preferred to call himself or herself "Bosniak". The Chamber has included persons in this group that either religiously, ethnically or culturally formed part of, or identifies themselves with this group. The Chamber uses the term "BH Muslim" and notes that Muslim was used in Bosnia and Herzegovina to denote a separate group from Croats or Serbs.

3 These forces are sometimes referred to as JNA, or the Serb forces. In dealing with the background to the allegations in this case, the Chamber noted uniformity in the description of these tragic events from the witnesses. The war with the Serbs is referred to as the "Serb aggression" or the "Serb and Montenegrin aggression" but the conflict between the HVO and the ABiH or between the BH Croats and the BH Muslims is referred to as "the war".

4 By birth, he is a BH Croat and has acquired Croatian citizenship. [iroki Brijeg was previously named Lištica. It is fourteen kilometres from Mostar going west, with a population of less than 30,000 people.

5 Defence witness Jadranko Martinovi}, T 13753.

6 Defence witness Jadranko Martinovi}, T 13752.

in Mostar started against the Serb-Montenegrin army, Vinko Martinovi} joined the HOS and became a commander.[7] Vinko Martinovi} was never engaged politically.[8]

4. The Indictment contains a total of twenty-two counts.[9] The Prosecution charges the accused Mladen Naletili} with persecution on political, racial and religious grounds (Count 1). Counts 2-8 cover allegations of unlawful labour and the use of detainees as human shields. Counts 9-12 pertain to allegations of torture, cruel treatment and wilfully causing great suffering. Count 18 pertains to allegations of unlawful transfer of civilians and counts 19-22 concern allegations of plunder and destruction of properties.

5. Vinko Martinovi} is also charged with persecution (Count 1) as well as unlawful labour and the use of detainees as human shields (Counts 2-8). Counts 11-12 pertain to allegations of cruel treatment and wilfully causing great suffering. Counts 13-17 specifically concern allegations of murder, wilful killing and wilfully causing great suffering arising from the death of Nenad Harmandžic. Count 18 pertains to allegations of unlawfully transferring civilians. Count 21 concerns allegations of plunder.

6. Prior to the commencement of the trial, 16 prosecution witnesses were heard in The Hague by deposition pursuant to Rule 71 of the Rules.[10] The testimonies of twelve persons who had previously testified in the *Bla{ki}* case or the *Kordi}* case were admitted into evidence in the present case by allowing the relevant transcripts into evidence.[11]

7. The trial commenced on 10 September 2001 and concluded on 31 October 2002. The Chamber heard 56 *viva voce* witnesses for the Prosecution, making the total number of witnesses for the Prosecution to be 84. The Naletili} Defence presented a total of 35 witnesses, including 3 expert witnesses.[12] The Martinovi} Defence presented 27 witnesses, including 2 expert witnesses. Throughout the trial, approximately 2750 exhibits were admitted.[13]

B. General considerations regarding the evaluation of the evidence

8. The Chamber has applied the rules of evidence set forth in the Rules, as enshrined in Rule 89 of the Rules. Where the Rules did not provide for guidance, it has applied rules of evidence

[7] Defence witness Jadranko Martinovi}, T 13753.
[8] Defence witness Jadranko Martinovi}, T 13760-13761.
[9] The Indictment is attached as Annex I.
[10] A detailed description of the procedure is found in Annex II: Procedural Background.
[11] For details of the decision by the Chamber *see* Annex II: Procedural Background.
[12] The expert witnesses were considered joint witnesses for both the Naletili} Defence and the Martinovi} Defence. This figure also includes testimonies heard in rejoinder.
[13] 2,305 exhibits for the Prosecution, 370 for the Naletili} Defence and 76 for the Martinovi} Defence.

which will best favour a fair determination of the matter before it and which are consonant with the spirit of the Statute and the general principles of law.[14]

9. Articles 21(3) of the Statute enshrines the presumption of innocence to which each accused is entitled. The onus of establishing the guilt of the accused beyond reasonable doubt pursuant to Rule 87(A) of the Rules rests fully on the Prosecution. The Chamber has only entered convictions where the evidence of the witnesses and the other evidence on which the Prosecution has relied established the alleged facts and the responsibility of the accused beyond reasonable doubt, notwithstanding the evidence submitted by the Defence witnesses and in form of Defence exhibits. Article 21(4)(g) of the Statute provides that no accused shall be compelled to testify against him or herself. Mladen Naletili} and Vinko Martinovi} decided not to testify at trial. In line with Article 21(4)(g), the Chamber has not attached any probative value to their decisions.

10. In evaluating the evidence given by witnesses, the Chamber has taken into account that the alleged events took place almost ten years before the witnesses presented their testimonies in court. The Chamber accepts that due to the long period elapsed between the alleged commission of the crimes and the trial, witnesses cannot reasonably be expected to recall the precise minutiae, such as exact dates or times, of events. The Chamber further notes that many Prosecution witnesses were transferred through a number of different detention facilities, in a sequence that may, for some, have amounted to traumatic experiences. The Chamber finds that such witnesses cannot be expected to recall each and every detail regarding the sequence or details of the events. The Chamber further shares the view of Trial Chamber II that in most instances the oral evidence of a witness will not be identical with the evidence given in a prior statement. It lies in the nature of criminal proceedings that a witness may be asked different questions at trial than he was asked in prior interviews and that he may remember additional details when specifically asked in court.[15] Consequently, the Chamber has not attached particular significance to minor inconsistencies in the testimony of a witness or irrelevant discrepancies in peripheral matters in the testimonies of different witnesses who testified to the same events. The Chamber has, however, only attached probative weight to evidence submitted by witnesses who were, as a minimum, able to recount the essence of the incident charged in sufficient detail.

11. Due to the particular circumstances of the case, only a single witness has testified with regard to certain incidents alleged. The Chamber, as held by the Appeals Chamber,[16] accepts that the testimony of a single witness on a material fact does not, as a matter of law, require

[14] Rule 89(B) of the Rules.
[15] *Vasiljevi}* Trial Judgement, para 21.
[16] *Aleksovski* Appeal Judgement, para 62.

corroboration. It has however been very careful to scrutinise the evidence of a single witness with particular care before entering a conviction upon it. The Chamber has accepted hearsay evidence as being generally admissible under the Rules.[17] It has however taken into account that the weight or probative value to be afforded to hearsay evidence will usually be less than that given to the testimony of a witness who has given it under a form of oath and who has been cross-examined.[18]

12. The Chamber has carefully reviewed the deposition transcripts and the trial transcripts from the *Bla{ki}* and *Kordi}* case and has taken into account that all those witnesses were tested by cross-examination, even though not before the Chamber.[19] In cases where evidence given during deposition proceedings or contained in trial transcripts conflicted with evidence given by *viva voce* witnesses at trial, the Chamber has carefully scrutinised all evidence presented. The Chamber finds it generally appropriate to attach the highest probative value to evidence submitted by such witnesses who appeared before the Chamber *in personam*.

[17] *Prosecutor v. Aleksovski*, Case No.: IT-95-14/1-AR, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para 15. *See* also *Prosecutor v. Du{ko Tadi}*, Case No. IT-94-1-T, Decision on Defence Motion on Hearsay, 5 August 1996 and *Tadi}* Trial Judgement, para 555; *Prosecutor. v. Tihomir Bla{ki},* Case No.: IT-95-14-T, Decision on Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability, 26 January 1998.

[18] *Prosecutor v. Aleksovski*, Case No.: IT-95-14/1-AR, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para 1.

[19] *See supra* para 6.

II. GENERAL FINDINGS

A. Historical background[20]

13. In June 1991 both Slovenia and Croatia declared their independence from the SFRY.[21] This provoked a short military intervention in Slovenia by the JNA, which was dominated and led from Belgrade. In the Republic of Croatia, a full-scale conflict broke out during the second half of 1991. In January 1992, a peace agreement was signed and the Republic of Croatia was recognised in the spring of 1992.[22] Despite the boycott of the BH Serbs, a referendum on independence from SFRY was held in Bosnia and Herzegovina on 29 February and 1 March 1992. Based on overwhelming support from both BH Croats and BH Muslims, independence was declared on 3 March 1992.[23]

14. Following the declaration of independence, the BH Serbs attacked different parts of Bosnia and Herzegovina. The state administration of Bosnia and Herzegovina effectively ceased to function having lost control over the entire territory. The BH Serbs were not the only ones with ambitions for territorial expansion; the BH Croats and their leader Franjo Tu|man also aimed at securing parts of Bosnia and Herzegovina as Croatian. Secret discussions between Franjo Tu|man and Slobodan Milo{evi} on the division of Bosnia and Herzegovina were held as early as March 1991. The policies of the Republic of Croatia and its leader Franjo Tu|man towards Bosnia and Herzegovina were never totally transparent and always included Franjo Tu|man's ultimate aim of expanding Croatia's borders.

15. The BH Croats participated in the institutions of the newly independent Bosnia and Herzegovina in Sarajevo. Even before the referendum on independence, the "HZ H-B" was founded.[24] The HZ H-B started to play a more prominent role as the actual legislators and administrators of the areas of relevance to this Indictment. There were many differing expectations expressed on the reasons for the establishment of HZ H-B; some saw it as a temporary institution to

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[20] The Chamber has in this part considered the testimony of transcript witnesses Kljui}, Paji}, McLeod, Ribi~i}, Donia, Defence witnesses Ivan Bender, Milan Kovac; Božo Rajic, Jozo Mari}, Ivi} Pa{ali}, Damir Zori}, Slobodan Praljak, @eljko Glasnovi}, NA, NC , NM, NN, NR, NV; witnesses Salko Osmi}, O, P, U, Y, JJ; and expert witness Mladen Anci}. Documentary evidence was considered in, *inter alia,* exhibit PP 892, the so-called "Presidential transcripts."

[21] The European Community recognised the Republic of Slovenia on 15 January 1992. The Republic of Slovenia became a member of the United Nations on 22 May 1992.

[22] The European Community recognised the Republic of Croatia on 15 January 1992. The Republic of Croatia became a member state of the United Nations on 22 May 1992.

[23] The European Community recognised the Republic of Bosnia and Herzegovina on 6 April 1992. The Republic of Croatia recognised the Republic of Bosnia and Herzegovina on 6 or 7 April 1992. The Republic of Bosnia and Herzegovina became a member of the United Nations on 22 May 1992.

[24] Exhibit PP 104, Decision on the establishment of the HZ H-B which states in Article 2 of the Statute that HZ H-B is composed of the following municipalities: Jajce, Kre{evo, Busova~a, Vitez, Novi Travnik, Travnik, Kiseljak, Fojnica, Skender Vakuf/Dobrati}, Kakanj, Varo{, Kotor Varo{, Tomislavgrad, Livno, Kupres, Bugojno, Gornji Wakuf, Prozor, Konjic, Jablanica, Posu{je, Mostar, [iroki Brijeg, Grude, Ljubu{ki, ^itluk, ^apljina, Neum, Stolac, Trebinje/Ravno.

fill a void after virtual disintegration of the government of Bosnia and Herzegovina. Others saw it as a step towards forming part of the Republic of Croatia or creating an independent state. Regardless of which, many BH Croats wanted to take the initiative and create a structure for defence against the Serbs.

16. On 10 April 1992, the President of the HZ H-B, Mate Boban, issued a decree creating the HVO.[25] The HVO became the supreme executive and defence authority for the HZ H-B and the BH Croats. Mate Boban himself became the supreme commander of the HVO.[26] This meant that in this part of Bosnia and Herzegovina, the HZ H-B had the actual authority.

17. During the first months of 1992, the situation deteriorated in Mostar and armed conflict broke out. In April 1992, the Municipal Crisis Staff in Mostar stated that "the Mostar municipality is under partial occupation by units of the so-called Yugoslav People's Army ?JNA? and paramilitary formations which are engaged in co-ordinated armed operations".[27] The Municipal Crisis Staff was originally composed of representatives of different people but the Serb representatives left.

18. The BH Croats and BH Muslims organised a joint defence against the Serb forces.[28] In Mostar and the surrounding municipalities, it was organised under the auspices of the HVO. Even though the HVO was the military formation of the Croats, during this period it comprised of both BH Croats and BH Muslims. The Muslims formed their own military units that were under the overall command of the HVO.[29] This meant that while opposing the Serb forces, the Croats and the Muslims fought under the joint command of the HVO. During the summer of 1992, the shelling of Mostar continued and in the autumn, while the Serb forces withdrew from the town itself, they continued to shell it. Minor incidents between the BH Croats and the BH Muslims occurred.

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[25] Exhibit PP 123.2, Order recognising the Croatian Defence Council (HVO) as the exclusive supreme command of the forces, signed by Mate Boban on 10 April 1992.

[26] Defence witness Slobodan Praljak marking exhibit DD1/82, Schematic Overview of the HVO Structure in 1993, Defence witness Slobodan Praljak, T 9574. On the Structure of the HVO *see infra* paras 82-85, the general command structure in the HVO.

[27] Exhibit PP 125.1, decision from the Republic of Bosnia and Herzegovina Mostar Municipal Assembly, Municipal Crisis staff Number 427/92, dated 29 April 1992.

[28] Exhibit PP 125.1, decision from the Republic of Bosnia and Herzegovina Mostar Municipal Assembly, Municipal Crisis staff, dated 29 April 1992; exhibit PP 159, Agreement between Alija Izetbegovi} and Franjo Tu|man on friendship and co-operation, dated 21 July 1992. Alija Izetbegovi} and Franjo Tu|man agreed on measures for joint defence and on recognition of HVO and ABiH.

[29] Exhibit PP 125.1, decision by the Municipal Crisis Staff, Mostar Municipal Assembly, Republic of Bosnia and Herzegovina, Number 427/92, dated 29 April 1992, paragraph III states that "?t?he Croatian Defence Council consists of members of the Muslim and Croatian peoples and members of other peoples and nationalities who recognise the legal authorities of the Republic of Bosnia and Herzegovina and who have pledged their loyalty to them. BH Muslims may establish their own armed units which shall be subordinated to the united HVO Command, Mostar Municipal Staff".

Mladen Naletili} was seen as one of the great defenders of Mostar and posters with his picture were placed all over Mostar and its surroundings.

19. Efforts were made in order to find a solution to the conflict in Bosnia and Herzegovina. In January 1993 the active peace initiative was the so-called Vance-Owen Plan,[30] which involved the establishment of 10 provinces in Bosnia and Herzegovina. The idea was that during an interim period, these different provinces would be administered jointly by the three groups but with the dominating group appointing the Governor.[31] The BH Croats would be in a majority in three of the provinces, which in the plan were referred to as number 3, 8 and 10.[32] Province number 8 was the area relevant to the Indictment and included the following municipalities: ^itluk, ^apljina, Grude, Jablanica, Kojnic, Ljubu{ki, Mostar, Neum, Posušje, Prozor, Stolac, and parts of Trebinje.[33]

20. Mate Boban signed the Vance-Owen Plan on behalf of the BH Croats on 2 January 1993.[34] Neither the BH Serb nor the BH Muslim representatives had signed the plan at this stage. Despite knowing that the other parties had not signed, but filled with confidence that they had the world's opinion behind them, the BH Croats attempted to implement the Vance-Owen Plan unilaterally.[35] This attempt led to dramatically increased tensions between the BH Croats and the BH Muslims.[36]

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[30] Peace talks were held in Geneva form 23 January to 30 January 1993. The participants included the leaders from the three sides in Bosnia and Herzegovina, President Alija Izetbegovi}, Mr. Radovan Karad`i}, Mr. Mate Boban. Also present were the President of the Republic of Croatia Franjo Tu|man, and the President of the Federal Republic of Yugoslavia (Serbia and Montenegro), Mr. Dobrica]osi}, exhibit PP 239, p 1. The Vance-Owen Plan is also in certain documents referred to as the Geneva agreements, exhibit PP 214.

[31] Exhibit PP 239.1, Security Council Official Records Supplement for January, February and March 1993, dated New York 1995; exhibit PP 239.2 Vance-Owen Plan, stating under D (1) that "?d?uring the interim period, each province shall have an Interim Provincial Government composed of a Governor, a Vice-Governor, and ten other members, all of whom are to be nominated by the parties, with any representation of others to be decided by the Interim Presidency, on the basis of the composition of the population of the provinces (based on the results of the 1991 census), provided that none of the three constituent peoples may be left unrepresented in any province and that the Governor shall be a member of the most numerous constituent people and the Vice-Governor of the second most numerous".

[32] Exhibit PP 207.1.

[33] Exhibit PP 207.1.

[34] Exhibit PP 239, Report of the Secretary General on the Activities of the International Conference on the Former Yugoslavia, UN Doc. S/25221, 2 February 1993.

[35] The Croatian attempts are visual through a series of decisions that were issued. The president of the HVO in HZ H-B, Jadranko Prli} issued a decision dated 15 January 1993 ordering that all units of the ABiH in provinces 3, 8 and 10 of the Vance-Owen Plan to be subordinated to the Command of the Main Headquarters of the HVO starting from 20 January 1993 and that the HVO units in the BH Muslim provinces were to be subordinated to the Command of the ABiH, exhibit PP 214. In a subsequent order from the Head of the Defence Department at the HVO Mr. Bruno Stoji} giving details on the implementation of the decision of Jadranko Prli}, orders that in provinces 3, 8 and 10 when members of the ABiH refuse to acknowledge the superior command of the HVO they should leave the region or be disarmed and arrested and that officers of the ABiH should join the HVO command in "numbers proportionate to the number of soldiers at the front", exhibit PP 215. On 15 January 1993, Brigadier Milivoj Petkovi}, Chief of the HVO Main Staff, issued an order with the same content as the previous orders mentioned above, exhibit PP 216. These orders were issued with the BH Croatian leadership knowing that the Vance-Owen Plan was not signed by the BH Muslim representatives; Defence witness Božo Rajic denied this proposition and stated that it was said that Izetbegovi} had accepted the whole plan as far as the demarcations between the BH Croats and the BH Muslims went, but that Izetbegovi} rejected it later. However, Defence witness Božo Rajic explained that he knew that the Vance-Owen Plan had not been fully signed but that he thought that

21. The negotiations around the Vance-Owen Plan continued in February and March 1993 and President Izetbegovi} signed the plan on behalf of the BH Muslims on 25 March 1993.[37] The BH Serb representative still did not agree to the plan.

22. The Vance-Owen Plan states that "?b?oth Bosnian Army and HVO forces shall be deployed in the Provinces 5, 8, 9, 10 under arrangements agreed between them."[38] It meant that in the area relevant to this Indictment, province number 8, both the BH Croats and BH Muslims had agreed. After the BH Croat signing of the Vance-Owen Plan, the point of view of the Croats was clear regarding the arrangements in relation to the respective forces. Mate Boban drew up a proposal for a Joint Statement, which he intended to be signed by Alija Izetbegovi} and himself, outlining how their respective armies would operate within the different provinces. However, Alija Izetbegovi} never signed the statement, which meant that there never was a "Joint Statement", but only a "Boban's Statement".[39] In his statement Mate Boban repeated the demands of the BH Croats, that all ABiH units were to be subordinated to the HVO in the "Croat" provinces.[40]

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there were no pending disputes between the BH Croats and the BH Muslims. He further stated that he spoke to Mate Boban before he issued the order but not with Alija Izetbegovi} who was not willing to talk about those issues. Defence witness Božo Rajic insisted on his position that when he issued the order on 16 January 1993, exhibit DD1/90, he acted autonomously, as the Minister of Defence of Bosnia and Herzegovina and not as a BH Croat leader, Defence witness Božo Rajic, T9934, 9941, 9950. However, the Chamber disagrees with these latter proposition and is of the view that Božo Rajic acted to further interest of the BH Croats as the Order was issued following his conversation with Mate Boban, the negotiator for the BH Croats in the Vance-Owen Plan. Further, the order was annulled by a decision dated 29 January 1993, which further indicates that it was not an order furthering the interests of Bosnia and Herzegovina, exhibit PP 223.2, decision about annulment of order issued by Minister of Defence of Republic of Bosnian and Herzegovina, Official Gazette of the Republic of Bosnia and Herzegovina, 29 January 1993.

[36] The UNPROFOR Headquarters in Bosnia and Herzegovina reported on 24 January 1993 that "?o?ver the past week, the political and military leaders of the Croatian Community of HERCEG-BOSNA ?HZ H-B? have begun to implement their 'understanding' of the proposed settlement for the conflict in BH. This premature and imperfect grab for control of provinces 3, 8 and 10 ?of the Vance Owen Plan? has resulted in extremely high tensions in these and adjoining areas, and heavy fighting between Muslim and Croat Units in and around GORNJI VAKUF", exhibit PP 230.

[37] Exhibit PP 239.1, p 280, document S/25479, Report of the United Nation Secretary General on the activities of the International Conference on the Former Yugoslavia: Peace talks on Bosnia and Herzegovina, 26 March 1993.

[38] Exhibit PP 239.1, p 280.

[39] The Naletili} Defence argued that there was a Joint Statement (an agreement) signed by both the BH Croat and the BH Muslim side, outlining how their respective armies would operate within the different provinces. Naletili} Final Brief, pp 28-29, referring to exhibits DD1/90, PP 271, PP 295, Defence witness NC, T10487–10491; Defence witness Božo Rajic, T 9782–9784. The Chamber has considered the evidence relied on by the Naletili} Defence; exhibit PP 271 is a copy of the so-called joint statement, which only carries the signature of Mate Boban; exhibit PP 295 is an ECMM Report dated 10 - 11 April 1993, which reports of a joint statement signed by Mate Boban and Alija Izetbegovi} in Mostar on 2 April 1993; exhibit DD1/90 is an order issued by the Defence Minister of Bosnia and Herzegovina Božo Rajic to implement the Vance-Owen Plan, Defence witness Bo`o Rajic, T9783, *supra.* footnote 35. However, the evidence relied on by the Defence is contradicted by exhibit PP 272, which is a letter from President Alija Izetbegovi} stating that he did not sign the statement and that he was not in Mostar on 2 April 1993. Further, exhibit PP 273.1, minutes from the 34th Session of the HVO held on 3 April 1993, indicates that Izetbegovi} "had not signed the statement". In the meeting the HVO and the HZ H-B leadership announced their intention to set up HVO Governments in provinces 3, 8, and 10, whether Izetbegovi} signed the statement or not: "?t?he HVO HZ H-B expresses the hope that Mr. Izetbegovi} will sign this document," but "?i?f the common declaration is not carried out, military and other organs of the HVO HZ H-B will carry out this part of the Basic

23. The evidence does not allow the conclusion that a deadline was set for 15 April 1993, but the position of the BH Croats was again made clear to the BH Muslims.[41] The policy to make these areas Croatian was twofold: i) to establish a military frontline between the "BH Croat" provinces 8 and 10 and the "BH Muslim" province 9, and ii) to eliminate all Muslim resistance within these provinces in order for the BH Croats to have full military control of "their" provinces. The BH Muslims rejected wishes expressed in "Boban's Statement",[42] however the BH Croats proceeded to assume their control over these areas.

24. The incidents between BH Croats and BH Muslims during the end of 1992 and the spring of 1993 had an impact on the formation and composition of the armed forces in Bosnia and Herzegovina. As the former army of Yugoslavia, the JNA, was dominated and mostly controlled by the Serbs. The defense organized by the BH Croats and the BH Muslims mostly consisted of local territorial defense (often referred to as TO) and other units, which the BH Croats and BH Muslims had managed to get control of. The BH Croat and BH Muslim defence was organized under the umbrella of the HVO. However, these units were BH Croat, BH Muslim and mixed units or as one witness described them, "the Armed Forces were composed of all those who were prepared to fight for Bosnia and Herzegovina."[43] A separation and a clearer division started to develop: BH Muslims were either leaving the HVO units taking their weapons with them to join the increasing BH Muslim units, or were dismissed and thrown out of their HVO units.

25. Tension increased further, and by mid-April 1993, it turned into a full-scale conflict between the HVO and the ABiH in central Bosnia and in the area relevant to the Indictment. The

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Document of the Peace Plan on the territories of provinces 3, 8, and 10". The Chamber finds that the letter from President Alija Izetbegovi} and the minutes from the HVO meeting are credible. The Chamber is satisfied that the Prosecution has proved that the statement was only signed by Mate Boban and that it was not a joint statement.

40 Exhibit PP 271, the statement also includes a BH Croat undertaking to withdraw or subordinate itself to Muslim forces in the provinces dominated by BH Muslims.

41 The Prosecution relied on, *inter alia,* the following documents: exhibit PP 274, a Reuters Library Report, dated 4 April 1993, which states that "the HVO set an April 15 deadline for Bosnian President Alija Izetbegovi} to sign a joint communiqué" exhibit PP 275. An article from Slobodna Dalmacija, dated 4 April 1993, which states that HVO of the HZ H-B hopes that Izetbegovi} signs the Joint statement and that in the event he does not do that they will "apply the provisions of the Peace Plan, whereby each national armed force will have to withdraw to its domicile province"; exhibit PP 277, an article in Borba, dated 5 April 1993, which quotes Reuters as the source of information. As the Reuters report is already introduced as exhibit 274, this article does not have any value by itself; exhibit PP 273, ECMM report, dated 6 April 1993, which states that Mate Boban urged President Alija Izetbegovi} to implement the Vance-Owen Plan, that would mean that the ABiH should retire from provinces 3, 8 and 10 or accept to be under the HVO command; exhibit PP 288, Foreign Broadcast Information Services, Daily Report, dated 12 April 1993, "Clashes Between BH Croats, Muslims Escalating" which states that "?both Croats and Muslims, however, expect that the real conflict is yet to come after April 15, the deadline set by BH Croat leader Mate Boban, for withdrawal of all Muslim units from so-called Croat provinces of the Vance-Owen plan". However, in contradiction to these documents the exhibit PP 295, an ECMM report, states that there was a joint statement of the HVO and ABiH dated 2 April 1993.

42 Sometimes referred to as the Joint Statement. However, as seen above this statement was never signed by President Alija Izetbegovi}.

43 Witness Safet Idrizovi}, T 16305.

Prosecution deals with crimes related to three attacks: Sovi}i and Doljani on 17 April 1993, Mostar on 9 May 1993 and Ra{tani on 23 September 1993.

B. The conflict in the area

1. Sovi}i and Doljani- the attack on 17 April 1993 and the following days[44]

26. The villages of Sovi}i and Doljani are situated in the municipality of Jablanica, about 50 kilometers north of Mostar.[45] Prior to the conflict, Sovi}i had a population of around 800 people with predominantly BH Muslim background.[46] Both Sovi}i and Doljani are situated in a valley surrounded by mountains and are made of several small hamlets. Doljani is about six kilometers away from Sovi}i in the direction of Jablanica.[47] From early April 1993, the HVO headquarters was in a house with a fish-growing pond, the so-called fish farm in Orlovac ("the fishfarm"), which is one of the hamlets in Doljani.[48] The territorial defence, which was organized since 1992 in the conflict with the Serbs, was now divided, and the HVO and the ABiH held separate positions around the villages.[49]

27. The HVO started shelling the village of Sovi}i early in the morning on 17 April 1993.[50] The shelling came from the direction of Risovac, which is south of Sovi}i.[51] Certain witnesses described that the attack came as a surprise since there had been no previous animosity between BH Croats and BH Muslims and that the BH Muslims put up very little resistance.[52] The

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[44] The Prosecution alleges that "?o?n 17 April 1993, in the municipality of Jablanica, the KB, along with other HV and HVO units, attacked the villages of Sovi}i and Doljani and subsequently carried out the forcible transfer of the BH Muslim population, destruction of their properties and destruction of the mosque of Sovi}i", Indictment, para 25. The Naletili} Defence argues that the conflict in Sovi}i did not start because the HVO was realizing a plan of eviction of BH Muslims, but because the HVO Battalion Mijat Tomi}, situated in Sovi}i and Doljani was encircled by the ABiH that was stationed in the mountains above Sovi}i and even in Sovi}i itself, Naletili} Final Brief, p 26.

[45] Exhibit PP 2.

[46] Witness Y, T 3355. Witness A testified that the village had 1,200 inhabitants; witness A, T 492; witness W estimated the inhabitants to be 150-200 families, witness W, T 3174.

[47] Witness NW, T 14985.

[48] Witness Ralf Mrachacz, T 2711-2712; witness TT, T 6633; witness Y, T 3430-3431; Defence witness NN, T 12887, 12925; witness NW, T 14979-14981. Regarding the testimonies of witnesses Ralf Mrachacz and Falk Simang, both German mercenaries serving in the KB, the Naletili} Defence alleges that they "were bought and paid" and that their testimonies are "worthless," Naletili} Final Brief, pp 89-110. They are both currently serving sentences in Germany for having committed murder of two other mercenaries while serving in the KB. The Chamber has considered their testimonies against this background. Their testimonies were corroborated by other evidence. They showed respect for Mladen Naletili} as a leader and for leading his troops with concern for his soldiers. The fact that Falk Simnag expressed hope that his case in Germany would be reopened following these proceedings does not in the view of the Chamber make his testimony less reliable and credible. The Chamber finds their testimonies reliable and consistent.

[49] Witness AF, T 15983; witness W, T 3173-3176.

[50] Witness A, T 495; witness D, T 904-905; witness Salko Osmi}, T 3126; witness X, T 3306; witness AF, T 15917-15919; witness RR, T 6441.

[51] Witness A, T 494; witness RR, T 6446; witness W, T 3176.

[52] Witness A, T 493; witness X, T 3306; witness W, T 3177; witness Y, T 3354.

Chamber's view is, however, that there had been extreme tensions in the area for some time and that there was provocation and high alert on both sides.[53]

28. A member of the 3rd Mijat Tomi} Battalion, who was present at the fishfarm during the whole operation kept a diary of the events in Doljani, the so-called Rado{ Diary.[54] It states on 16 April 1993:

> ?w?e listened to the news on the car radio. There was fighting between the BH Army and the HVO all around central Bosnia, in Zenica, Vitez, Travnik, Busova~a, Kojnic and Jablanica. Srebrenica is on its last legs; they were sending appeals all around the world. I forgot to mention that we were visited by the following delegations: twice by the delegations from the BH Army – Zajko and D`ino first, than Zajko and Salih Jusi}; twice by Marc Deperot from the International Red Cross Committee (ICRC) and once by the ECMM (the European Monitoring Mission). They placed great blame on the HVO and local power brokers; our men referred them to the signed documents of the Vance-Owen plan.

29. The BH Croats were determined to implement their view of the Vance-Owen Plan and the BH Muslims knew that if they did not agree to the demands of BH Croats, a conflict would be imminent.[55] The ABiH soldiers as well as many of the BH Muslim women and children from Doljani left the village.[56]

30. The attack on Sovi}i and Doljani was part of a larger HVO offensive aimed at taking Jablanica,[57] the main BH Muslim dominated town in the area. The HVO commanders had

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[53] Witness Falk Simang testified that the ABiH had displaced the frontline, witness Falk Simang, T 3794-3796. On 15 April 1993 it is reported that there were explosions and shooting from Risovac; witness AF, T 15919; witness Safet Idrizovi}, T 16327. Witness Y testified that HVO was shelling Jablanica, witness Y, T 3362-3363. Defence witness NN testified that the ABiH was expecting a conflict and was setting up the Bokulja checkpoint, Defence witness NN, T 12916. Witness Salko Osmi} together with four other soldiers had come from Prozor and reported to the ABiH, witness Salko Osmi}, T 3124-3125. Witness C testified that relations between the inhabitants of the village worsened, witness C, T 854-855.

[54] Exhibit PP 928, Rado{ Diary. The Chamber has found the diary to be very reliable in describing the events since other evidence corroborates the content. *Inter alia* the following evidence has assisted the Chamber in finding the Rado{ Diary reliable; exhibits PP 314.1 and PP 314.2, which confirm that Mladen Naletilic released a detained Muslim because his brother was in his unit (*see* Rado{ Diary, p 75); exhibit PP 314, which confirms that on 19 April 1993 two members of the KB died, (*see* Rado{ Diary, p 76); the fact that it also mentions that Cikota (Mario Hrak}) was killed on 20 April 1993 and that they stopped fighting in order to pay last respects, (*see* Rado{ Diary, p 77), which is also corroborated by witness Falk Simang. In addition, little personal details, which have nothing to do with the war, are described. Therefore, the Chamber considers the Radoš Diary as a reliable source despite the testimony of Defence witness NW, who testified that the Radoš Diary is not reliable since it listed Defence witness NW as a participant in a meeting he claimed he did not attend, Defence witness NW, T 14987-14989. The Naletili} Defence argues that the Rado{ Diary was not written in Alojz Rado{'s hand-writing relying on witness Safet Idrizovi}, Naletili} Final Brief, p 35. However, witness Safet Idrizovi} testified that he is not familiar with Alojz Rado{'s hand-writing when it is written in capital letters, but confirmed that it was the diary of Rado{, witness Safet Idrizovi}, T 16374.

[55] Exhibit PP 928, Rado{ Diary, pp 67-68. The Chamber finds that the Rado{ Diary accurately describes the atmosphere that existed in the area prior to the attack and that it confirms that the HVO was determined to implement the Vance–Owen Plan.

[56] Witness NX, T 16463; witness C, T 856; exhibit PP 928, Rado{ Diary, p 71.

[57] Witness Safet Idrizovi}, T 16327; exhibit PP 325, report from an international observer dated on 21 April 1993, stating that the HVO offensive launched against Slatina and Doljani aims to push on through to Jablanica, exhibit PP 928, Rado{ Diary, p 84.

calculated that they needed two days to take Jablanica.[58] The location of Sovi}i was of strategic significance for the HVO as it was on the way to Jablanica. For the ABiH it was a gateway to the plateau of Risovac, which could create conditions for further progression towards the Adriatic coast.[59] The larger HVO offensive on Jablanica had already started on 15 April 1993.

31. The HVO shelling of Sovi}i continued uninterrupted until about five in the afternoon on 17 April 1993.[60] The artillery destroyed the upper part of Sovi}i,[61] as well as some houses.[62] The ABiH was fighting back, but at about five p.m. Džemal Ovnovi}, the ABiH commander in Sovi}i, surrendered.[63] Despite the surrender by their commander, some ABiH soldiers did not lay down their arms, but instead fled into the hills and woods, or hid in houses and continued to shoot.[64] In total, about 170 soldiers were under the command of Ovnovi} and they belonged to the 4th Corps of the ABiH.[65] Approximately 70 to 75 ABiH soldiers surrendered.[66] HVO soldiers searched the houses in Sovi}i for hidden weapons and soldiers.[67] A few civilians were brought to the school but most of the women, children and elderly were ordered to stay in their houses.[68]

32. The elementary school in Sovi}i was the main place of detention and interrogation of the captured ABiH soldiers.[69] In the early evening of 18 April 1993, the detained ABiH soldiers were taken out of the Sovi}i school[70] and were transported to Ljubu{ki prison,[71] situated in the town of Ljubu{ki, about 26 kilometres Southwest of Mostar.

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58 Exhibit PP 928, Rado{ Diary, p 65.
59 Witness @eljko Glasnovi}, T 11339-11340.
60 Witness W, T 3177; witness Y, T 3364.
61 Witness Y testified that on 17 April 1993 there were two tanks at Obruc, which fired at the upper part of Sovi}i from the mosque down taking all of the buildings, one after the other, witness Y, T 3369-3370. A tank was also seen by witness A, T 559.
62 Witness A testified that the only houses destroyed were those of Ramo and Omer Kovac, witness A, T 500; witness W, T 3181.
63 Witness A, T 495, 548; witness Salko Osmi}, T 3125 (confidential); witness W, T 3175-3177; Defence witness NW, T 14960 (confidential).
64 Witness Salko Osmi}, T 3127-3129; Defence witness NW, T 14982-14983.
65 Exhibit PP 314.3 (confidential).
66 Witness W, T 3175.
67 Witness C, T 860-864, exhibit PP 928, Rado{ Diary, p 73.
68 Witness C, T 858. *See* Defence witness NN, T 12895.
69 Witness W, T 3190-3191, witness A, T 496, witness Y, T 3382-3386. *See* further *infra* paras 123 and 643.
70 Boys who were not old enough were separated out and left in the school, witness RR, T 6459.
71 *See* further *infra* paras 654 and 417. Defence witness NN confirmed that the ABiH soldiers who surrendered on 17 April 1993 were taken by a military police platoon to Ljubu{ki, Defence witness NN, T 12894 and T 12934; exhibit PP 333, Report of 23 April 1993 from Marko Rožić, Head of Defence Office Jablanica Municipality to Slobodan Božić, personally, at Defence Department, HVO, HZ H-B, Number 02-106/93, states that 94 military conscripts were sent to Ljubu{ki prison. *See* also witness Salko Osmi}, T 3142; witness RR, T 6459; Defence witness NX, T 16468-16469; Naletili} Final Brief, p 26.

33. Following the transfer of the captured ABiH soldiers to Ljubu{ki prison, the fighting continued in the hills surrounding Sovi}i and the HVO attitude hardened.[72] On 18 April 1993, three HVO soldiers were killed. On 20 April 1993, Doljani was shelled and a smaller group of ABiH soldiers, who had resisted the HVO for some days were captured and brought for interrogation at the HVO headquarters, the fishfarm. These soldiers received harsher treatment.[73] In the evening of 20 April 1993, the operative commander of the KB based in [iroki Brijeg, Mario Hrka~ (^ikota), was killed in combat and the KB then withdrew to [iroki Brijeg to pay its respects.[74]

34. Starting on 18 April 1993, the civilians were forced by HVO soldiers to gather in the school in Sovi}i or in one of the six or seven houses in the Junuzovi}i hamlet, while the BH Croat civilians remained in their houses.[75] In total, at least 400 BH Muslim civilians were detained.[76] They were guarded by HVO soldiers - elderly men were mostly held in the school,[77] while women and children were held in the Junuzovi}i houses.[78]

35. On 3 May 1993, a Joint Commission with General Petkovi} representing the HVO and General Halilovi} representing the ABiH together with international representatives and medical personnel visited Sovi}i and Doljani.[79] The next evening, the civilians held in the school and the Junuzovi}i houses[80] were called out and transported to somewhere close to Gornji Vakuf, which was an area controlled by the ABiH.[81]

36. The HVO advance towards Jablanica was halted after a cease-fire agreement had been negotiated.[82] At the end of July 1993, the ABiH retook a part of Doljani.[83]

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[72] Witness Falk Simang testified about fighting around a bunker, witness Falk Simang, T 3794-3796. On 20 April 1993 the operative commander of the KB based in [iroki Brijeg Mario Hrka~ (^ikota) was killed in combat, which shows that the fighting was still ongoing, exhibit PP 928, Rado{ Diary, p 72-73.

[73] *See* further *infra* paras 353-369.

[74] Witness Falk Simang, T 3796, 3798.

[75] Witness D, T 907-909. The Naletili} Defence is admitting that civilians were in the school after the conclusion of the conflict, but that they were there for safety reasons, Naletili} Final Trial Brief, p 26. *See* also Defence witness NN, T 12895

[76] Witness C, T 865-866. Exhibit PP 314, a report from Stipe Pole, Battalion Commander of the Herceg Stjepan Brigade/Mihat Tomi} Brigade, 3rd Battalion, dated 19 April 1993, states that the "mopping up operation in the village of Sovi}i is nearing its end" and that the total number of prisoners had "risen to almost 100". It further states that "?t?wo members of our (Tuta's) unit died this morning in the mopping up / operation / in the Pa}i}I and Iline Grude hamlets".

[77] Exhibit PP 363; witness JJ, T 5008-5009; Defence witness NN, T 12355-12362; Defence witness Ivan Bagari}, T 12355-12356; Defence witness NX, T 16499-16501; exhibit PP 5.

[78] Witness X, T 3329 (confidential), witness C, T 864-869, 892, 899 (confidential); witness D, T 915-918.

[79] Exhibit PP 363; witness JJ, T 5008-5009; Defence witness NN, T 12895; Defence witness Ivan Bagari}, T 12355-12356; Defence witness NX, T 16500; exhibit PP 5.

[80] Witness C, T 865 is referring to 400 civilians being detained, witness D, T 917 is referring to 540 people, exhibit PP 333 is referring to 422.

[81] Witness NW, T 16468-16469; witness RR, T 6459; witness W, testified that his wife and child had told him that they were taken to "the first place in the direction of Bugojno from Makljen. I think it's Gornji Vakuf", T 3192; exhibit PP 443.1, also indicates that the civilians from Sovi}i and Doljani were in Gornji Vakuf.

[82] Witness Ralf Mrachacz, T 2717-2724. *See* also exhibit 928, Rado{ Diary, p 85.

2. Mostar – events between 9 May 1993 and January 1994[84]

37. Mostar is the largest town in South-eastern Bosnia and Herzegovina and the historic capital of Herzegovina. According to the 1991 census the population of the municipality of Mostar comprised of 126,628 inhabitants, of which 34.6% were BH Muslims, 33.9% BH Croats and 18.8% Serbs.[85] The remainder were "Yugoslavs"[86] and others. As a result of the conflict in 1992 between the BH Croats and BH Muslims on one side and the Serbs on the other side, most Serbs had left or been driven out of Mostar. In May 1993, between 16,000 and 20,000 BH Muslim civilians fleeing fighting in other parts of Bosnia and Herzegovina had taken refuge in Mostar.[87] The presence of these BH Muslim refugees from outside Mostar created a BH Muslim majority.[88] The HZ H-B authorities viewed this BH Muslim majority in Mostar as demographic aggression against them and began moves to favour BH Croats expansion in West Mostar.[89] Mostar was politically dominated by the BH Croats.[90] Control in Mostar was exercised on the military side by the HVO and on the civilian side by the HZ H-B, however, these institutions were closely interrelated.[91]

38. After the Serbs had left in the summer of 1992, tensions between the BH Croats and the BH Muslims rose and sporadic incidents occurred in Mostar. On 15 April 1993, there was an armed incident between the HVO and an ABiH unit stationed in Hotel Mostar, which was on the separation line between the BH Croat and BH Muslim part of town.[92]

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83 Defence witness @eljko Glasnovi}, T 11343; witness Safet Idrizovic, T 16281-16282. This incident is not charged in the Indictment.

84 The Prosecution alleges that "the forcible transfer and imprisonment of BH Muslim civilians started simultaneously with the HV and HVO attack of 9 May 1993 and continued until at least January 1994," Indictment, para 26. The Naletili} Defence argues that the HVO did not attack the BH Muslim population, rather the ABiH attacked the locations of the HVO, Naletili} Final Brief, p 44, relying on the testimony of Defence witnesses NC, NO, NB, ND and NA. Martinovi} Final Brief, pp 17-18.

85 The situation in the whole of Bosnia and Herzegovina was 44% BH Muslims and 17.5 % BH Croats, Defence witness NA, T 9144.

86 "Yugoslavs" was a category used in the census, to categorise people who did not consider themselves of a particular ethnic background.

87 Witness P, T 2244-2250, 2334-2339 (confidential). Exhibit PP 370 includes a letter from the Head of the Refugee Officer of the Mostar HZ H-B stating that 16,500 BH Muslims from the surrounding area and other municipalities have moved to the town of Mostar (confidential).

88 Witness P, T 2244-2250, 2334 (confidential).

89 Exhibit PP 370 a response to the protest from International Organisations against the Decision clarifies the position of the HZ H-B: "?i?t must be taken into account that 16.500 people, BH Muslims from the surrounding area and other municipalities have moved to the town of Mostar in a systematic way, without having authorised accommodation (without informing this office or the Police), wishing in this way to change demographics relations to their 'advantage' – then it must become clear to you that there is a system in this chaos, a form of demographic aggression against Mostar municipality." (confidential)

90 The local government in Mostar was formed following the elections in 1989. The HDZ had the majority. A coalition with the other parties lasted until April 1992 when the Serbs left and the Crisis Staff than only consisted of the HDZ and the SDA, with Jadranko Topi}, HDZ as the Mayor after having taken over from Mr. Gagro, witness WW, T 7011.

91 *See* for example official documents which often bear both HVO and HZ H-B.

92 Witness WW, T 7013.

39. Both the HVO and ABiH had military formations positioned in the town. Mostar was divided into a Western part, which was dominated by the HVO and an Eastern part where the ABiH was largely concentrated. However, the ABiH had its headquarters in West Mostar in the basement of a building complex referred to as Vranica.[93] In the early hours of 9 May 1993, the HVO attacked Mostar using artillery, mortars, heavy weapons and small arms.[94] The HVO controlled all roads leading into Mostar and international organisations were denied access.[95] Radio Mostar announced that all BH Muslims should hang out a white flag from their windows.[96] The HVO attack had been well prepared and planned.[97]

40. One of the targets was the ABiH headquarters in the Vranica building, which also was residential housing for about 200 civilians.[98] Around midday on 10 May 1993, the building caught fire and both civilians and soldiers surrendered.[99] Before leaving the building 20 to 30 ABiH soldiers changed their uniforms into civilians clothes.[100] They were then assembled in the yard outside the School of Economics, which is situated next to the Vranica building complex. [101] They were met by Juka Prazina, the commander of the Kru{ko ATG and Colonel @eljko Bo{njak, who was also a member of the KB.[102] Juka Prazina ordered the prisoners to be separated into three groups: i) BH Croat men and women, who were free to leave; ii) Muslim civilian men, women, children and elderly who were transported to the Vele` stadium; and iii) surrendered ABiH soldiers, who were moved to the Tobacco Institute in Mostar.[103]

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93 Witness AA, T3655, 3658; witness CC, T4372-4373; witness E, T 994; witness JJ, T 5272-5276; exhibits PP 11.18, PP 11.18/3.

94 Witness testimony vary between 03.30 and 06.00: witness EE, T 4510; witness DD, T 4464; witness AA, T3655, exhibits PP 375 (confidential), PP 379, para 2.

95 Exhibits PP 375 (confidential), PP 379, para 2.

96 On Radio Mostar: "Mrs. Zlata Brbor, a journalist and presenter, announced that the HVO was taking over -- was undertaking, was launching an armed attack against the BH army?ABiH?, that it would be over soon, that the population should not worry. But shortly after her, the radio station -- I heard over the radio Mr. Topi}'s ?the Mayor? voice, and he repeated that same thing, and also asked the citizens who were BH Muslims to put out white rags or cloth or flags or something like that and that then nothing would happen to them", witness WW, T 7014-7015; witness XX, T 7111.

97 Exhibits PP 379 and PP 376, witness U, T 2925; witness WW, T 7015; witness YY, T 7251.

98 Exhibit PP 375, holds "the main targets being the Americans bridge (Tito bridge) and the Armija (BH) HQ ?Vranica building?", witness EE, T 4510; witness DD, T 4464; witness AA, T 3655.

99 Witness DD, T 4464; witness AA, T 3657; witness O, T 2133.

100 Witness AA, T 3659-3660.

101 Exhibit PP 17.2, a video recording from the HTV (TV of the Republic of Croatia) showing captured ABiH soldiers in the yard of the School of Economics. Witness AA, T 3669; witness ZZ, T 7796-7799.

102 Exhibit PP 585, KB membership certificate signed by Col @eljko Bo{njak, Commander of the KB Engineers; exhibit PP 704, p 11, listing @eljko Bo{njak as a Colonel in KB. Bo{njak participated in the Mostar attack of 9 May 1993, and spoke on Croatian television that day describing the events; exhibit PP 17.1 (video); exhibit PP 17.3 video-still of exhibit PP 17.1 showing @eljko Bo{njak during interview, identified by Defence witness NR, T 13287. Witness BB testified that he saw @eljko Bo{njak together with Mladen Naletili} at [iroki Brijeg when witness BB "worked on a canal" there, witness BB T 4246.

103 Witness AA, T 3661 and T 3669; witness ZZ, T 7796-7799, witness CC, T 7796; witness E, T 1004-1005; witness O ,T 2133.

41. Approximately 30 to 35 Muslim men were made to walk to the Tobacco Institute. Mladen Naletili} accompanied by other HVO officials,[104] and a large group of soldiers received the group of prisoners.[105] This group was taken under guard to the MUP Station in [iroki Brijeg,[106] which is fourteen kilometres west of Mostar. It is a BH Croat town, with a population of less than 30,000 people.

42. The BH Muslim civilian population of Mostar was targeted on 9 May 1993. From about five o'clock in the morning, armed HVO units surrounded apartment buildings and houses and collected and rounded up BH Muslim civilians.[107] In certain apartment-blocks where both BH Muslims and BH Croats lived, only the BH Muslims were forced to leave.[108] Women, children, men and elderly were forced out of their homes. Witnesses have described these evictions in different manners. One witness testified:

> ?t?here was intimidation. Shots were fired, threats were uttered. For instance, my brother told me how he and his child, who is about five or six years old, how when they came to their flat, they had woken them up because they were still asleep, how they entered with their automatics, pointed their rifles at them and wanted to fire them. And they treated us arrogantly. They treated us just as arrogantly. Whoever was slower amongst us received the blows from those soldiers either with their feet or with a rifle.[109]

43. The Office for Displaced Persons and Refugees of the HVO and HZ H-B issued a decision setting 9 May 1993 as the deadline for people who had taken refuge in Mostar following upheavals in Eastern Bosnia and Herzegoniva in abandoned apartments (*i.e.* BH Muslims) to vacate them, without being given an alternative place to live. In addition, they would not be eligible for the humanitarian assistance given to refugees.[110] This decision affected approximately 10,000 BH Muslims.[111]

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[104] The HVO officials included Branko Kvesi}, the Minister of Interior for HZ H-B, in charge of the civilian police, Defence witness NC, T10517. Defence witness Božo Rajic was a leading official of the HVO and HZ H-B, Defence witness Božo Rajic, T 9731. Petar Zelenika is identified in exhibit PP 169, an HVO document dated 22 August 1992, as a Deputy Commander of the HVO Main Staff. "Mi{i}" was Mladen Mi{i}, commander of the HVO 4th Battalion, witness F, T 1094. "La{i}" was Miljenko La{i}, commander of the HVO South Eastern Operative Zone, witness T, T 2822; Defence witness NO, T 12977; Defence witness NC, T 10814 (confidential).

[105] Witness AA, T 3663-3665; witness BB, T 4245; witness CC, T 4387-4390; witness DD, T 4468.

[106] Witness O, T 2133. The treatment of the detainees at the MUP Station in [iroki Brijeg is considered below, *infra* paras 395-405.

[107] Witness U, T 2926; witness MM, T 5737-5738.

[108] Witness WW testified that the apartment block had sixteen apartments and in the morning of 9 May 1993 the eleven BH Muslim families were evicted and thrown out of their house, while nothing happened to their BH Croat neighbours, witness WW, T 7019.

[109] Witness GG, T 4746.

[110] Exhibit PP 370, decision on the statutory rights of refugees and expelled and displaced persons in Mostar Municipality, number 01-272/93 of 29 (confidential).

[111] Witness P, T 2253-2258 (confidential), exhibit PP 369 (confidential).

44. International observers noted that the HVO was pursuing ethnic cleansing.[112] Witness Falk Simang, a member of the KB, described how the KB drove BH Muslims from their houses and flats and how they gathered them and transported them mostly to the Vele` Stadium.[113]

45. Witnesses described how they were awoken by gunfire, and how columns of people started passing through the city.[114] Hundreds of people were taken to the Vele` Stadium. Most of them ended up at the Heliodrom,[115] west of Mostar in Rado~, which became the main HVO detention centre in the area. In total, between 1,500 and 2,500 Muslim civilians were rounded up and detained at the Heliodrom detention centre on that day.[116]

46. International observers testified that they had the opportunity to see and speak to prisoners at the Heliodrom.[117] They had been arrested without being given a reason and did not know why they were detained. [118] The position of the BH Croatian authorities was that people had been moved there for their own security. International observers testified that the majority of the detainees were of BH Muslim ethnicity, and since no BH Croats were detained, it could not be justified on security grounds.[119] Witnesses also referred to the fact that there were old men and underage boys in the Heliodrom.[120]

47. Following international pressure, the detained women and children were released after a few days. On 12 May 1993, a cease-fire agreement was signed between the HVO and ABiH providing the release of all prisoners.[121] Not all prisoners were released. Another meeting on 18 May 1993 was attended by the President of the Republic of Croatia, Franjo Tu|man, and the President of Bosnia and Herzegovina, Alija Izetbegovi}, as well as high level international representatives.[122]

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[112] Exhibit PP 376, para 1 (confidential), "?e?thnic cleansing of Muslims in Mostar appears to have begun in earnest"; exhibit PP 375.
[113] Witness Falk Simang, T 3817. The Chamber finds that the Stadium referred to is the Vele` Stadium in Mostar.
[114] Witness WW, T 7015.
[115] Witness U was brought to the Vele` Stadium together with his brother and 35 other BH Muslims. Witness U himself was allowed to go back but testified that some relatives of his were arrested for five to fifteen days in the Heliodrom, witness U, T 2926-2931. The husband and son of witness AD were detained, witness AD, T 8175-8177; witness GG was detained on 9 May 1993 for 15 to 20 days in the Heliodrom detention centre, and his wife, sister in law and nephew were detained for a couple of days, witness GG, T 4754.
[116] Witness P estimated 2,000 BH Muslims and some BH Serbs, T 2273 (confidential); exhibit PP 406, Report of Tadeusz Mazowiecki, 2nd Periodic Report – Situation of Human Rights in the territory of the former Yugoslavia, 19 May 1993, cites 1500 people; exhibit PP 382, Report of the ECMM, dated 11 May 1993, reports 2,500.
[117] Witness P, T 2273 (confidential); witness van der Grinten, T 7355-7359.
[118] Witness P, T 2274 (confidential).
[119] Witness P, T 2274 (confidential).
[120] Witness XX, T 7118, witness RR, T 6465-6467, witness AF, T 16134.
[121] Exhibit PP 388, cease-fire agreement signed by Sefer Halilovi} on behalf of the ABiH and Milivoj Petkovi} on behalf of the HVO at Me|ugorje.
[122] Exhibits PP 400, PP 400.1, PP 403. International negotiators Lord Owen and Mr Stoltenberg attended the meeting.

General Morillion of UNPROFOR was permitted to visit the Heliodrom. Following his visit, a large part of the male BH Muslim prisoners were released.[123]

48. The harassment of BH Muslims by forcing them out of their apartments and detaining them became common and widespread from 9 May throughout the autumn of 1993.[124] Many of the BH Muslims, who were taken to the Heliodrom on 9 May 1993 and subsequently released, returned and found that their apartments had been emptied of valuables and movable property.[125]

49. Following 9 May 1993, the fighting between the HVO and the ABiH was hard and bitter. The Bulevar, a main street in Mostar separated the two forces. Fighting for each meter and each building, both sides were constantly on guard against attacks and shooting from the other side.[126] The opposing forces took up positions within shouting distance of each other.

50. BH Muslims crossed over to the Eastern side of Mostar in large numbers.[127] A reliable estimate of the total number of expelled persons is difficult.[128] The population of East Mostar increased after 29 June 1993 from approximately 30,000 to 55,000.[129] The humanitarian situation on the Eastern side of Mostar was horrific. There was no running water, electricity and food.[130] The Eastern side was completely encircled. The bombardment was constant. An ECMM report

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[123] Witness P, T 2275; exhibits PP 405, PP 407.

[124] Many of Defence witness MA's relatives and other people were evicted by the HVO, Defence witness MA, T 13952-13954. On 1 July 1993, witness G was asked by unknown soldiers to board a bus, the soldiers went through all apartments (even BH Croat) in his building looking for hiding BH Muslims and than he was taken to the Dretelj detention centre, witness G, T 1185. On 2 July 1993 soldiers entered the apartment of Defence witness MF and took him into detention at the Heliodrom, witness MF, T 14165. Witness P testified that the evictions continued into the autumn months, witness P, T 2283 (confidential). *See* also exhibit PP 625, report dated 6 October 1993, exhibits PP 384, para 11, PP 401.

[125] For a detailed description regarding the apprehension of property, *see* Count 21: Plunder.

[126] Witness MM, T 14504-14509; witness S, T 2542; exhibits PP 524-528, PP 530-531, PP 533, PP 539, PP 540-543, PP 547, reports of the command of the 1st Battalion of the Military Police, describing the daily situation in Mostar form 16 July to 30 July 1993.

[127] Witness Sead Smajki}, T 4045; witness van der Grinten from ECMM testified that a lot of people were expelled from their homes and forced into the East side by military men. The situation became worse in June, witness van der Grinten, T 7338-7339 and T 7361. *See* also exhibit PP 435.1, a protest letter from Arif Pa{ali}, Commander 4th Corps of ABiH, dated 7 June 1993, which stated that the HVO was forcing and expelling the BH Muslim; exhibit PP 456.3, a report by the ECMM dated 14 June 1993 stated that more than 100 people were expelled from the West Side to the East Side of Mostar; exhibit PP 462, an ECMM report dated 16 June 1993 states: "the ethnic cleaning on the Westbank of Muslim families by HVO is still going on". Witness Sir Martin Garrod, T 8410-8412, witness GG, T 1184, witness Jeremy Bowen, T 5807-5808. *See* also exhibit PP 620.1.

[128] Witness van der Grinten, T 7338-7339, and T 7396, testified that it was difficult to get a reliable number, exhibit PP 456.3, a report by the ECMM dated 14 June 1993 states that the last two days more that 100 people were expelled from the West side to the East side of Mostar, witness van der Grinten testified about the document T 7361, exhibit PP 498; exhibit PP 670

[129] Exhibit PP 670, (confidential), the estimate is including the East side of Mostar, including the central urban area and outlying districts under the control of the ABiH.

[130] Witness J, T 5021, exhibit PP 508 (confidential), witness van der Grinten from ECMM, testified that he agreed with the situation as described in exhibit PP 435.1, a protest letter from Arif Pa{ali}, Commander 4th Corps of ABiH, dated 7 June 1993, which states that "?h?ospitals does not receive any help, citizens are not allowed to have a supply of water".

from June 1993 describes how the HVO is trying to have total control of Mostar and aiming "at cleaning all non-Croats from the West".[131]

51. The siege of East Mostar continued until the beginning of 1994, which is the period the Indictment is concerned with.

3. Ra{tani- the attack on 22 September 1993[132]

52. The village of Raštani is situated north of the town of Mostar and is located on the West Bank of the Neretva River. It consists of small hamlets of houses, silos and a hydroelectric dam located on the Neretva River and is essentially a suburb of Mostar.[133] The ethnic composition of the village of Raštani was mainly BH Serb and BH Muslim in approximately equal number, with one BH Croat household.[134] One BH Muslim part of the village consisted of a hamlet of a few houses called "Dumporove ku}e" or "Dumpor" houses.[135]

53. There had been a series of conflicts over control of Raštani between the ABiH and the HVO, possibly due to the strategic location of the hydroelectric dam. At the end of August 1993, the HVO gained control over Raštani.[136] On 20 September 1993, the ABiH regained control over the village.[137]

54. The HVO launched a successful counter attack to capture Raštani on 22 September 1993 and 23 September 1993.[138] Houses were burning. This involved the most intense shelling in the region in 1993.[139] The HVO used artillery fire from the area overlooking Raštani such as Djubrani, as part of the attack to regain Raštani.[140]

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[131] Exhibit PP 458, holds "In Mostar the HVO are trying to bring the Moslems under total control. HVO assault is aimed at cleaning all non-Croats from the West bank and eventually moving all Moslems out of the city. The Moslems are now encircled on the East bank without water, electricity or communications".

[132] The Prosecution alleges that on 22 September 1993, the KB commanded by Mladen Naletilic attacked ABiH forces in Raštani, thereby capturing the village. Pursuant to this attack and capture, members of the KB forced BH Muslim prisoners to take part in house to house searches, essentially acting as human shields. It is alleged that the KB also burnt down BH Muslim houses deliberately, the so-called "Dumpor" houses to ensure that they had no homes to return to in the future, Prosecution Final Brief, p 166. The position of the Naletili} Defence is that in the conflict in Raštani, Milan Štampar was the commander, Naletili} Final Brief, p 80 referring to exhibit DD1/390. It is argued that during the conflict in Raštani, the Home Guards and brigades thwarted the attack of the ABiH and that the HV or the KB were not involved in the attack, Naletilic Final Brief, p 80-81.

[133] Exhibits PP 34.1-PP 34.9, maps and photographs of the village of Raštani; exhibit PP 35, video footage of Raštani.

[134] Witness SS, T 6603.

[135] Witness SS, T 6601.

[136] Witness VV, T 6907.

[137] Witness VV, T 6907; witness L, T 1620-1623.

[138] Witness VV, T 6907-6908; witness L, T 1622-1623.

[139] Witness VV, T 6912-6914.

[140] Witness SS, T 6568-6573.

4. The impact of the conflict

55. Thousands of Muslim civilians were forced to leave their homes in Sovi}i, Doljani and West Mostar. The attacks also resulted in a large number of both prisoners of war and civilian prisoners who were held at different detention centres in the area. The main detention centre was the Heliodrom, which at times held thousands of prisoners. The Heliodrom was a former JNA barracks composed of several buildings and hangars. The Ljubu{ki prison became infamous because "special" prisoners were held there. The evidence shows that prisoners were moved around between places and detention centres. For example, the ABiH soldiers who surrendered or were captured in Sovi}i and Doljani were brought to the Ljubu{ki prison on 18 April 1993 and were later moved to the Heliodrom. The detainees at the Ljubu{ki prison included men involved in the fighting in Sovi}i, Doljani and the Jablanica area,[141] from the Vranica building in Mostar[142] who had surrendered or had been otherwise captured.[143] There were also non-combatants detained in Ljubu{ki Prison.[144]

56. Prisoners from the Heliodrom were taken to perform labour in different locations, but mainly on the frontline in Mostar. Other places where prisoners were held were the MUP Station and the Tobacco Station in Široki Brijeg. Soldiers captured in Raštani were detained at the MUP Station in autumn 1993.[145] Most of the captured men from the Vranica building were transferred from the Tobacco Institute in Mostar to the MUP Station in Široki Brijeg around 10 May 1993.[146]

C. Individual criminal responsibility and superior responsibility

1. The law

57. It is alleged in the Indictment that Mladen Naletilic and Vinko Martinovic are responsible for the crimes charged pursuant to both Article 7(1) and Article 7(3) of the Statute.[147]

[141] Witness Salko Osmi}, T 3136-3137; witness W, T 3175-3178; witness RR, T 6441-6446; witness UU, T6822; witness BB, T 4257.
[142] Witness AA, T 3659-3660, 3691; witness CC, T 4368; witness TT, T 6645.
[143] Defence witness NN confirmed that the ABiH soldiers who surrendered on 17 April 1993 were taken by a military police platoon to the military prison in Ljubu{ki, Defence witness NN, T 12894 and T 12934; *see* also exhibit PP 333, Report of 23 April 1993 from Marko Roži}, Head of Defence Office Jablanica Municipality to Slobodan Boži}, personally, at Defence Department, HVO, HZ H-B, Number 02-106/93, stating that 94 military conscripts were sent to Ljubu{ki Detention Centre. *See* also Naletili} Final Trial Brief, p 26.
[144] Witness QQ, T 6185-6186, 6194; witness FF, T 4677-4679.
[145] Witness VV and witness L.
[146] Witness AA, witness BB, witness CC, witness EE and witness ZZ.
[147] Regardless of the wording of Article 2 of the Statute the Chamber finds that all alternatives of Article 7 of the Statute also apply to Article 2 of the Statute.

(a) Individual criminal responsibility under Article 7(1) of the Statute

58. Article 7(1) of the Statute provides that:

> ?a? person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

59. "Planning" means that, "one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases".[148] The existence of a plan can also be proved by circumstantial evidence.[149] An accused held responsible for having committed a crime will not be found responsible for planning such crime.[150]

60. "Instigating" has been defined as "prompting another to commit an offence"[151] either through an act or an omission.[152] The *actus reus* requires a clear contribution to the act of the other person, but it needs not to be shown that the offence would not have been perpetrated without the participation of the accused.[153] The requisite *mens rea* is that the accused intended to provoke or induce the commission of the crime, or was aware of the substantial likelihood that the commission of a crime would be a probable consequence of his acts. [154]

61. "Ordering" "implies a superior-subordinate relationship between the person giving the order and the one executing it".[155] A formal superior-subordinate relationship is not required, but it must be established that the accused possessed the authority to order.[156] The order does not need to be given in any particular form and can be explicit or implicit.[157] That the order was given can be proved through circumstantial evidence.[158] It is not necessary that the order be given directly to the individual conducting it.[159]

62. "Committing" means physically and personally perpetrating a crime or engendering a culpable omission in violation of a rule of criminal law.[160] There can be several perpetrators regarding the same crime as long as each of them fulfils the requisite elements of the crime.[161]

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[148] *Akayesu* Trial Judgement, para 480, quoted in the *Blaškic* Trial Judgement, para 279.
[149] *Blaškic* Trial Judgement, para 279.
[150] *Kordic* Trial Judgement, para 386.
[151] *Akayesu* Trial Judgement, para 482, quoted in the *Blaškic* Trial Judgement, para 280, and endorsed in the *Kordic* Trial Judgement, para 387.
[152] *Blaškic* Trial Judgement, para 280; *Kordic* Trial Judgement, para 387.
[153] *Kordic* Trial Judgement, para 387; *Kvocka* Trial Judgement, para 252.
[154] *Kvo~ka* Trial Judgement, para 252 referring to *Akayesu* Trial Judgement, para 482.
[155] *Akayesu* Trial Judgement, para 483, endorsed in the *Blaškic* Trial Judgement, para 281.
[156] *Kordic* Trial Judgement, para 388.
[157] *Kordic* Trial Judgement, para 388, endorsing the *Blaškic* Trial Judgement, para 281.
[158] *Blaškic* Trial Judgement, para 281; *Kordic* Trial Judgement, para 388.
[159] *Blaškic* Trial Judgement, para 282.
[160] *Tadic* Appeal Judgement, para 188.

63. "Aiding and Abetting" is defined as rendering a substantial contribution to the commission of a crime. The contribution can consist of practical assistance, encouragement or moral support.[162] It is not necessary to prove that a cause-effect relationship existed between the participation and the commission of the crime.[163] The participation may happen before, during or after the commission of a crime.[164] Aiding and abetting can also be committed through an omission as long as the omission had a significant effect on the commission of the crime and was accompanied by the necessary *mens rea*.[165] An individual's position of superior authority does not suffice to conclude from his mere presence on the scene of the crime, that he encouraged or supported the crime. However the presence of a superior can be perceived as an important *indicium* for encouragement or support.[166] Regarding concomitant behaviour, the *Furundžija* Trial Chamber held that the accused had assisted another accused in the commission of a rape because he was continuing with the interrogation of the victim while being raped.[167] Concerning the *mens rea* it is required that the aider and abettor must have known, in the sense of being aware, that he was assisting in the commission of the crime.[168] It has to be shown that he was aware of the essential elements of the crime, which also means the necessary *mens rea* on the part of the principal.[169] The abettor need not have known the precise crime being committed as long as he was aware that one of a number of crimes would be committed, including the one actually perpetrated.[170]

(b) Command or superior responsibility under Article 7(3) of the Statute

64. Article 7(3) of the Statute provides that:

> [t]he fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

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[161] *Kunarac* Trial Judgement, para 390.
[162] *Tadic* Appeal Judgement, para 229; *Aleksovski* Appeal Judgement, para 164. *Celebici* Appeal Judgement, para 352.
[163] *Aleksovski* Trial Judgement, para 61, confirmed by the *Aleksovski* Appeal Judgement, para 164.
[164] *Aleksovski* Trial Judgement, para 62; *Kunarac* Trial Judgement, para 391; *Kvocka* Trial Judgement, para 256.
[165] *Blaškic* Trial Judgement, para 284.
[166] *Aleksovski* Trial Judgement, para 65; *Blaškic* Trial Judgement, para 284. The *Akayesu* Trial Chamber found a mayor guilty of abetting by considering his passive presence next to the scene of the crime in connection with his prior encouraging behaviour, *Akayesu* Trial Judgement, para 693.
[167] *Furundžija* Trial Judgement, para 273-274, confirmed by the *Furundžija* Appeal Judgement, para 126.
[168] *Tadic* Appeal Judgement, para 229; *Aleksovski* Appeal Judgement, para 162 referring to *Furundžija* Trial Judgement, para 249.
[169] *Aleksovski* Appeal Judgement, para 162 referring to the *Furundžija* Trial Judgement, paras 245 and 249.
[170] *Furundžija* Trial Judgement, para 246; followed by the *Blaškic* Trial Judgement, para 287. The finding in the *Tadic* Appeal Judgement, para 229, that it has to be shown that the aider and abettor knew that he was assisting the specific crime committed is not contradictory because it has to be read only in the context of contrasting aiding and abetting with the participation in a common purpose or design. *See* also *Aleksovski* Appeal Judgement, para 163.

65. The Chamber follows the *Celebici* Trial Judgement, which has set out the essential elements to establish command responsibility:

> (i) the existence of a superior-subordinate relationship
>
> (ii) the superior knew or had reason to know that the criminal act was about to be or had been committed; and
>
> (iii) the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator thereof.[171]

66. The basis of the superior-subordinate relationship is the power of the superior to control the actions of his subordinates. The *Celebici* Trial Chamber concluded that:

> it is necessary that the superior have ?sic? effective control over the persons committing the underlying violations of international humanitarian law, in the sense of having the material ability to prevent and punish the commission of these offences. With the caveat that such authority can have a *de facto* as well as a *de jure* character, the Trial Chamber accordingly shares the view expressed by the International Law Commission that the doctrine of superior responsibility extends to civilian superiors only to the extent that they exercise a degree of control over their subordinates which is similar to that of military commanders.[172]

67. The crucial question is therefore the actual possession or non-possession of power to control. Even if a formal appointment is an important aspect for command or superior authority, *de facto* control in the absence of *de jure* authority can be satisfactory for the assessment of superior responsibility.[173] This applies to many contemporary conflicts, in which only *de facto,* self-proclaimed governments with their *de facto* armies and paramilitary groups take part.[174] The capacity to sign orders is indicative of some authority, but in order to ascertain the actual powers of control of the superior it is also necessary to consider the substance of the documents signed and if they were complied with.[175] Both *de facto* and *de jure* superiors need to have effective control, which means significant ability to prevent and punish criminal behaviour, to be held responsible for the crimes of their subordinates. [176]

68. Although the doctrine of superior responsibility was at first intended for military commanders only, it is now established that it attaches also to civilian superiors in positions of

[171] *Celebici* Trial Judgement, para 346.
[172] *Celebici* Trial Judgement, para 378.
[173] *Celebici* Trial Judgement, para 736; confirmed by the *Celebici* Appeal Judgement, para 195.
[174] *Celebici* Appeal Judgement, para 193.
[175] *Kordic* Trial Judgement, para 421.
[176] *Celebici* Appeal Judgement, paras 196 and 256.

authority.[177] What is decisive is the power of effective control for which the mere proof of substantial influence is not sufficient.[178]

69. Even a rank-less individual commanding a small group of men can have superior responsibility.[179] When the subordinate perpetrator was under the command of two superiors, both of them may be held responsible for the same crime.[180]

70. Superior responsibility under Article 7(3) of the Statute does not impose strict liability for superiors. It requires that the superior "knew or had reason to know".

71. The superior's actual knowledge can be established by direct or circumstantial evidence.[181] In the absence of direct evidence the superior's actual knowledge can not be presumed.[182] Nevertheless the *Aleksovski* Trial Chamber stated that an individual's command position *per se* is at least an important *indicium* that he knew about the crimes committed by his subordinates.[183] However, the significance of this *indicium* depends on additional factors such as the ones provided by the *Celebici* and *Blaškic* Trial Judgements in a non-exclusive list, based on the Final Report of the Commission of Experts:

> the number, type and scope of the illegal acts; the time during which the illegal acts occurred; the number and type of troops involved; the logistics involved, if any; the geographical location of the acts; the speed of the operations; the *modus operandi* of similar illegal acts; the officers and staff involved; and the location of the commander at the time.[184]

72. Considering geographical and temporal circumstances, this means that the more physically distant the superior was from the commission of the crimes, the more additional *indicia* are necessary to prove that he knew of the crimes. On the other hand, if the crimes were committed next to the superior's duty-station this suffices as an important *indicium* that the superior had knowledge of the crimes, even more if the crimes were repeatedly committed.[185]

73. The fact that a military commander will most probably be part of an organised structure with reporting and monitoring systems can facilitate the showing of actual knowledge. For *de facto*

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[177] *Aleksovski* Appeal Judgement, para 76; *Celebici* Appeal Judgement, paras 195-196.
[178] *Kordic* Trial Judgement, para 840.
[179] *Kunarac* Trial Judgement, para 398.
[180] *Aleksovski* Trial Judgement, para 106; *Blaškic* Trial Judgement, para 303; *Krnojelac* Trial Judgement, para 93.
[181] *Celebici* Trial Judgement, para 383.
[182] *Celebici* Trial Judgement, para 386.
[183] *Aleksovski* Trial Judgement, para 80.
[184] *Blaškic* Trial Judgement, para 307, citing Final Report of the Commission of Experts, para 58, and following the *Celebici* Trial Judgement, para 386.
[185] *Aleksovski* Trial Judgement, para 80.

commanders in more informal military structures and for civilian superiors the standard of proof is higher.[186]

74. The Chamber finds that a superior "had reason to know" when the following *criteria* as adopted by the *Celebici* Trial Chamber are met:

> a superior can be held criminally responsible only if some specific information was in fact available to him which would provide notice of offences committed by his subordinates. This information need not be such that it by itself was sufficient to compel the conclusion of the existence of such crimes. It is sufficient that the superior was put on further inquiry by the information, or, in other words, that it indicated the need for additional investigation in order to ascertain whether offences were being committed or about to be committed by his subordinates.[187]

75. To interpret "had reason to know", the *Celebici* Trial Chamber considered the phrasing of Article 86(2) of the Additional Protocol I. The provision states that superiors can be held criminally or disciplinarily responsible if "they knew, or had information, which should have enabled them to conclude in the circumstances at the time, that the [subordinate] was committing or was going to commit such a breach". The *Celebici* Trial Chamber also noted that the drafters of Article 86(2) of the Additional Protocol I explicitly rejected the wording "should have had knowledge".[188] The *Celebici* Appeals Chamber upheld the Trial Chamber's finding, stating that the superior need not to know about the offences of his subordinates, but needs to have "some general information in his possession, which would put him on notice of possible unlawful acts by his subordinates".[189] The *Celebici* Appeals Chamber clarified that "available" and "in the possession of" are used equivalently and do not require that the superior "actually acquainted himself with the information".[190]

76. The superior must have failed to take the necessary or reasonable measures to prevent the crimes or to punish the perpetrator thereof. The Chamber agrees with the finding made by the *Blaškic* Trial Chamber that

> it is a commander's degree of effective control, his material ability, which will guide the Trial Chamber in determining whether he reasonably took the measures required either to prevent the crime or to punish the perpetrator.[191]

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[186] *Kordic* Trial Judgement, para 428.
[187] *Celebici* Trial Judgement, para 393.
[188] *Celebici* Trial Judgement, paras 390-391. The *Blaškic* Trial Chamber, by contrast, after an analysis of the post World War II jurisprudence found that a superior may be held responsible for the crimes committed by his subordinates if "he failed to exercise the means available to him to learn of the offence and, under the circumstances, he should have known and such failure to know constitutes criminal dereliction", *Blaškic* Trial Judgement, para 322. The finding of the *Blaškic* Trial Chamber was overruled by the *Celebici* Appeals Judgement.
[189] *Celebici* Appeal Judgement, para 238.
[190] *Celebici* Appeal Judgement, para 239.
[191] Following the *Celebici* Trial Chamber the *Blaškic* Trial Judgement, para 335.

77. Only feasible measures in the power of a superior are required. The determination is made on a case by case basis.[192]

(c) Concurrent application of Articles 7(1) and 7(3) of the Statute

78. The *Kordic* Trial Chamber found that superior responsibility is an indirect form of responsibility because it is not the answer to a direct involvement of a superior in the commission of a crime but to his failure to prevent or punish such crimes.[193] Accordingly, it held that when a superior not only knew or had reason to know about the crimes of his subordinates but also planned, instigated, ordered or otherwise aided and abetted in the planning, preparation or execution of these crimes, the application of Article 7(1) of the Statute is more appropriate to characterise his responsibility.[194]

79. The *Krnojelac* Trial Chamber stated that as it is inappropriate to convict under both heads of responsibility for the same conduct, the Trial Chamber has the discretion to choose which is the most appropriate one.[195]

80. The *Blaškic* Trial Chamber was in favour of a concurrent application of Articles 7(1) and 7(3) of the Statute in cases, where subsequent crimes have been committed. The Chamber was of the view that the failure to punish past crimes can not only be subject of superior's responsibility under Article 7(3) of the Statute but can also be the basis for a liability under Article 7(1) of the Statute for either "aiding and abetting" or "instigating" the commission of further crimes.[196]

81. The Chamber follows the finding of the *Krnojelac* Trial Chamber by choosing between Article 7(1) and Article 7(3) of the Statute the most appropriate form of responsibility. As held by the *Celebici* and *Aleksovski* Appeal Judgements the form of responsibility, which was not chosen, must be considered as aggravating circumstance, because the final sentence should reflect the totality of the culpable conduct.[197]

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[192] *Aleksovski* Trial Judgement, para 81. The *Blaškic* Trial Chamber found that under some circumstances a superior can discharge his obligation to prevent or to punish by reporting the matter to the competent authorities; *Blaškic* Trial Judgement, para 335. This may apply to superiors who have not the power to sanction themselves like for example civilian superiors whose duty and ability can be limited to call the competent authorities for reacting, *Kordic* Trial Judgement, para 446

[193] *Kordic* Trial Judgement, para 369.

[194] If the omission of a superior encourages the perpetrator and therefore contributes to the crime, the superior can be held liable pursuant to Article 7 (1), *Kordic* Trial Judgement, para 371. Likewise *Blaškic* Trial Judgement, para 337; *Krstic* Trial Judgement, para 605. *See* also *Kayishema and Ruzindana* Judgement, para 223.

[195] *Krnojelac* Trial Judgement, para 173.

[196] *Blaškic* Trial Judgement, para 337.

[197] *Celebici* Appeal Judgement, para 745 following the *Aleksovski* Appeal Judgement, para 183.

2. The general command structure in the Croatian Defence Council (HVO)

82. The HVO chain of command in 1993 consisted of a political figure at the top as supreme commander, who at the time was Mate Boban, the President of the HZ H-B.[198] The Defence Department of the HZ H-B was headed by the Minister of Defence Bruno Stojic, who was subordinate to the supreme commander.[199] Under the Defence Department was the HVO Main Staff, commanded by the Chief of the HVO Main Staff and for some time in 1993 also by a commander.[200] During different periods in 1993, Žarko Tole, Milivoj Petkovic, Slobodan Praljak and Ante Roso headed or commanded the HVO Main Staff.[201] In late 1992, four operative zones were formed under the HVO Main Staff.[202] They consisted of the Central Bosnia operative zone (Vitez) commanded by Tihomir Blaškic, the Northwest Herzegovina operative zone (Ora{je) commanded by @eljko [iljeg, the Southwest Herzegovina operative zone (Tomislavgrad) commanded first by Miljenko Lasic and then by Obradovic and the Southeast Herzegovina operative zone (Mostar) commanded by Miljenko Lasic.[203] The Chief of the HVO Main Staff gave the orders – usually in agreement with the Defence Department - to the operative zone commanders. There were two chains of command. The general chain of command was brigade commander, battalion commander, company commander, and commander of a unit. The other chain of command was related to the frontlines, where it was the HVO Main Staff, operative zone commander, commander of a particular area at the frontline and units that were subordinated to the area commander. These units mostly consisted of shifts provided by the Brigades.[204]

[198] Defence witness Slobodan Praljak marking exhibit DD1/82 (Schematic Overview of the HVO Structure in 1993), Defence witness Slobodan Praljak, T 9574. *See* also witness F, T 1161-1162; Defence witness NA, T9126 (confidential); Defence witness NC, T 10630 (confidential); Defence witness Ivan Bender, T 11580.

[199] Defence witness Slobodan Praljak marking exhibit DD1/82 (Schematic Overview of the HVO Structure in 1993), Defence witness Slobodan Praljak, T 9574. *See* also Defence witness NC, T 10593 (confidential); witness Marco Prelec, T 4576.

[200] Defence witness Slobodan Praljak, T 9568; Defence witness NP, T 13154-13155. According to Defence witness Slobodan Praljak, the commander and his deputy were both superiors to the Chief, Defence witness Slobodan Praljak, T 9570.

[201] From January until around mid of July 1993, Milivoj Petkovic was commander of the HVO Main Staff while Slobodan Praljak was deputy commander, then Slobodan Praljak was commander of the HVO Main Staff until November 1993 while Milivoj Petkovic was deputy commander. In November 1993, Slobodan Praljak was replaced by Ante Roso. @arko Tole was Chief of the HVO Main Staff in 1993; Defence witness Slobodan Praljak, T 9518, T 9531-9532, T 9568-9572; Defence witness NO, T 12977; witness Fransisco Aguirre, T5156-5158; witness Marko Prelec referring to PPIAC 67, T 4594. *See* also exhibit PP 631, certificate from HVO Deputy Commander Petkovic, dated 11 October 1993; exhibit PP 534.1.

[202] Exhibit DD1/82 (PP 904).

[203] Defence witness @eljko Glasnovi}, T 11463-11464; Defence witness NO, T 12977.

[204] Defence witness Slobodan Praljak, T 9483 and 9698; witness Marko Prelec, T 4567-4568.

83. Attached to the Defence Department were the Military Police.[205] In the military command structure they were positioned parallel to the HVO Main Staff except for situations in which the Military police units were deployed in military operations and were given operational orders. [206]

84. Outside the chain of command of the HVO regular units, there were professional units and units for special assignments. These units were attached to the HVO Main Staff through the Defence Department.[207] There were four professional units: the Convicts' Battalion ("KB"), the Baja Kraljevic unit, the Ludvig Pavlovic unit, and the Ante Bruno Bu{ic unit.[208] The units for special assignments were the so-called Anti-Terrorist-Groups (ATG), which were structurally sub-units of other units. The normal chain of command for these units was that the HVO Main Staff called on them when needed.[209] For an express need, the HVO Main Staff could call an ATG, however, the ATG units mostly worked for their mother units or locally at the municipal levels, because they had few members.[210] When the professional or ATG units arrived at the frontline the commander of the particular area at the frontline told them what their specific tasks were.[211] The ATG units did not operate independently at the frontline,[212] but were under the command of the area commander until they had finished their assignments.[213] The professional units attached themselves to the area commander but stayed under the direct command of the HVO Main Staff.[214] The execution of the task assigned to the professional units was within the discretion of their

[205] Defence witness Slobodan Praljak, T 9420.

[206] According to Defence witness Slobodan Praljak the reason behind this was the aim of a more independent Military Police which was not subordinate to the army and accountable to the Main Staff except when requested for operative deployment, Defence witness Slobodan Praljak, T 9689, 9722.

[207] Defence witness Slobodan Praljak marking exhibit DD1/82, Schematic Overview of the HVO Structure in 1993, Defence witness Slobodan Praljak, T 9420, 9576-9578.

[208] Defence witness NP, T 13155 regarding 1992; witness @eljko Glasnovic, T 11405-11406; exhibit PP 927/2, p5 citing the KB as a professional unit; exhibit PP 206.1, report dated 31 December 1992, on the professional structure of the HVO mentioning "Convicts' Battalion-Mostar-Heliodrom and Baja Kraljevic ATG-Mostar-Heliodrom"; exhibit PP 662.02, order from the Commander of the HVO Main Staff Slobodan Praljak, dated 30 October 1993, instructing the KB and other professional units to be on alert to be used as reserve units at direction of the HVO Main Staff; exhibits PP 563, PP 564, PP 566, orders from the Chief of the HVO Main Staff Žarko Tole, dated August 1993, concerning "Tuta ATGs" and "ATG and Convicts' Battalion"; exhibit PP 678, order from the Commander of the HVO Main Staff Ante Roso, dated 19 November 1993, ordering reports from HVO units including the KB. Several witnesses gave evidence that all members of the KB wore uniforms with HVO insignia, witness Allan Knudsen, T 5604; witness Ralf Mrachacz, who was a member of the KB, stating that in addition to the HVO patch there was a patch saying to which part of the KB someone was belonging to, witness Ralf Mrachacz T 2686. *See* also exhibit PP 354.1 (HVO identification card of KB member Falk Simang).

[209] Defence witness Slobodan Praljak, T 9577; Defence witness NB regarding the KB, T 10238-10239. The Head of the Defence Department could also issue a direct order to the ATG unit without going through the HVO Main Staff, but it was usually done in agreement with the HVO Main Staff, Defence witness Slobodan Praljak, T 9580.

[210] Defence witness NP, T 13078 and T 13081-13082; Defence witness Željko Glasnovic, T 11317-11318.

[211] Defence witness NP, T 13156-13157; exhibit PP 732.

[212] Defence witness NB, T 10232.

[213] Defence witness Slobodan Praljak, T 9574-9578; Defence witness NB, T 10232.

[214] Defence witness NR regarding the Baja Kraljevic ATG, which was rather a professional unit under the direct orders of the HVO Main Staff, Defence witness NR, T 13249-13250; exhibit PP 564.1, order from the commander of HVO Main Staff Slobodan Praljak, dated 13 August 1993, stating that units such as "Tuta ATG" shall be under the direct command of the HVO Main Staff; PP 327 (confidential).

commanders.[215] When not engaged in combat the professional units lived in barracks whereas the members of the ATG units went home.[216]

85. While ATG units and professional units had the above-described different characteristics the expression "ATG" happened to be also used for professional units.[217]

3. The Convicts' Battalion (KB)

(a) Introduction

86. The KB was set up by Mladen Naletilic, called "Tuta"[218], on 1 June 1991.[219] According to the Defence witnesses it was called "Convicts' Battalion" because it was organised by people who had been politically persecuted during the communist regime.[220] The KB and Mladen Naletilic, who was a very well known person in Mostar and Široki Brijeg, got a lot of credit during the conflict with the Serbs for the liberation of Mostar in 1992.[221] Mladen Naletilic was seen as a war hero in whom the people believed.[222] He had enormous authority and influence with effect beyond the KB.[223]

87. After the restructure of the HVO at the end of 1992 and the beginning of 1993, the KB became a so-called professional or independent unit put into action for special combat purposes.[224] As such it was under the direct command of the HVO Main Staff.[225] The KB had its headquarters

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[215] Defence witness NP, T 13124 (confidential).
[216] Defence witness NP, T 13064 (confidential).
[217] *See* for example exhibit PP 628, "Tuta ATG"; exhibit PP 732, "Tuta ATG"; PP 564.1, "Tuta ATG".
[218] Exhibits PP 704; PP 730, letter from "Mladen Naletilic-Tuta".
[219] Exhibit PP 757. However, Defence witnesses NH and NL testified that it was set up in 1992, Defence witness NH, T 11986; Defence witness NL, T 12675-12676.
[220] Defence witness NM, T 12745; Defence witness NH, T 11986-11987.
[221] Defence witness NJ, T 12169.
[222] Defence witness NR, referring to exhibit PP 939 (poster of Mladen Naletilic, which says "Tuta" and "our victory"), testified that Herzegovina and Široki Brijeg were full of such posters and that even today there are posters and graffiti painted on walls in Široki Brijeg saying "we love Tuta"; Defence witness NR, T 13322-13323. Mladen Naletilic also has the reputation of having brought money to help the poor, Defence witness NJ, T 12170.
[223] Mladen Naletili} was in a position to recommend people to the Minister of Defence Bruno Stojic, exhibit PP 558. He could further grant free passage, witness R, T 2481 referring to exhibits PP 262.1 (confidential), PP 54 confidential). As shown in exhibit PP 558 Mladen Naletilic was on a first name basis with the Croatian Minister of Defence Gojko Šušak, which contributed to his influence.
[224] Defence witness Slobodan Praljak marking exhibit DD1/82 (also PP 904), Defence witness Slobodan Praljak, T 9574; exhibit PP 437, letter to the Department of Defence from Mladen Naletilic as "Commander of the Independent Unit for Special Tasks, Convicts' Battalion", dated 9 June 1993. *See* also exhibits PP 200.1; PP 268.1; PP 368; PP 437; PP 494; PP 613. In the latter part of November and early December 1993, another restructure of the HVO took place, in which the professional units were reorganised into Guards Brigades. At that time the KB became part of the 2nd Guards Brigade, Defence witness NM, T 12753-12754 and T 12803-12804; Defence witness NQ, T 13190-13191.
[225] Exhibit PP 564.1, order from the commander of the HVO Main Staff Slobodan Praljak, that the "Tuta ATG" was under the direct command of the HVO Main Staff, dated 13 August 1993.

in the Tobacco Station in Široki Brijeg.[226] Attached to the KB were several ATG units.[227] The expression "KB" was not only used to describe the mother unit located in Široki Brijeg, but also - as an umbrella name - the mother unit together with the joined ATG sub-units.[228] Members of the KB wore patches indicating to which part of the KB they belonged.[229]

88. In May 1992, the KB Široki Brijeg had about 40 to 50 members.[230] After the successful operation in Mostar in June 1992, it became popular and the number of men in the unit increased to 80 to 100.[231] In the following time, the KB grew even stronger, also through ATG units that were joining it.[232] According to a KB salary list dated November 1993, the KB Široki Brijeg was composed of 282 soldiers and about ten ATG units.[233] The number of members of the ATG units ranged from approximately 20 to 80 soldiers. The KB Široki Brijeg and the ATG units altogether counted 846 soldiers.[234]

(b) Mladen Naletilic's command position

89. The Prosecution alleges that Mladen Naletilic was the highest level commander of the KB during the relevant time of the Indictment.[235]

90. The Naletilic Defence disputes that Mladen Naletilic was commander of the KB in 1993 and 1994. It agrees that Mladen Naletilic was one of the founders of the KB in 1991 and was its commander during the so-called liberation of Mostar from the Serbs in 1992.[236] The Naletilic Defence argues that Mladen Naletilic retired from the KB in the fall of 1992 and was not a soldier with any rank at the time relevant to the Indictment.[237] Instead, it is submitted that in 1993 he was

[226] Witness Ralf Mrachacz, T 2692; witness T, T 2814; witness DD, T 4475; witness AC marking the headquarters on exhibit DD1/43, witness AC, T 7935, 8070; Defence witness NG marking exhibit DD1/342, Defence witness NG, T 11942-11943. The Široki Brijeg Brigade was located there as well, Defence witness NQ, T 13211; Defence witness NG, T 11943, together with the Poskok Battalion and the command of the Home Guard Battalion, Defence witness NG, T 11943.
[227] Exhibit PP 927/2.
[228] When "KB" is used in the judgement without any specification, it is used as an umbrella name.
[229] Witness Ralf Mrachacz, T 2686.
[230] Witness Ralf Mrachacz, T 2671.
[231] Witness Ralf Mrachacz, T 2681.
[232] There were also ATGs that were formed by the KB; exhibit PP 927/2.
[233] Exhibit PP 704 differentiating between various combat groups stationed in Široki Brijeg and ATGs. In contrast Defence witness NQ testified that the KB was a small unit with about 60 soldiers in 1993, witness NQ, T13178. *See* also Defence witness NL speaking about 60 or 70 men, Defence witness NL, T 12682.
[234] *See* also exhibit PP 927/2 according to which the KB encompassed eight ATGs and had 1300 soldiers.
[235] Prosecution Final Brief, p 11.
[236] Naletilic Final Brief, pp 21, 31 and 41; exhibits PP 327 (confidential), PP 757.
[237] Defence witness NH, T 11989; Defence witness NL, T 12682. Many witnesses testified that there were no ranks in 1993 and that they were only introduced in 1994; *see* Defence witness NQ, T 13187; Defence witness NH, T 11989; Defence witness NL, T 12682. Defence witness NB testified that ranks were introduced in March 1994, T 10235. But see exhibit PP 353 reflecting a proposal for awarding ranks apparently signed by Ivan Andabak over the printed name of "Tuta", dated 27 April 1993.

Vice-Mayor in the Široki Brijeg Municipal council, *i.e.* "the HVO civil branch".[238] The Naletilic Defence further submits that by early 1993, Mario Hrka~ called "Cikota," and Ivan Andabak were the commanders of the KB.[239]

91. Witnesses Ralf Mrachacz and Falk Simang, who were members of the KB Široki Brijeg,[240] witness Q, who was a member of the Vinko Škrobo ATG[241] and witness T, who was a member of the Kruško ATG,[242] all testified that Mladen Naletilic was the overall or supreme commander of the KB.[243] Many details were described that constitute strong *indicia* for Mladen Naletilic's overall command position. Mladen Naletilic was called "general" or "boss" by members of the KB.[244] Mladen Naletilic assigned the military identity cards to members of the KB Široki Brijeg and Baja Kraljevic ATG[245] and conducted the military briefings.[246] Either Mladen Naletilic or his deputies "Cikota" who was commander of the troop based in Široki Brijeg,[247] or "Lija" who was commander of the Baja Kraljevic ATG[248] chaired daily morning meetings. These were sort of roll calls, held mostly at the Tobacco Station in Široki Brijeg.[249] Mladen Naletilic or the people around him brought the money to pay the soldiers[250] who called their unit "Tuta ekipa", which means "Tuta's unit" or "brigade".[251] Witness Ralf Mrachacz also testified about two orders, given by "Tuta" in front of the units, regarding military discipline. According to these orders, members of the KB, who committed a criminal act against civilians would be punished and foreigners who deserted and

[238] Naletilic Final Brief, pp 54 and 64. *See* also Defence witness NM, T 12870. According to Defence witness NH Mladen Naletilic as a war veteran "was responsible for the logistics and provided the link with the units which were in the area of Široki Brijeg at the time", Defence witness NH, T 11981.

[239] Naletilic Final Brief, pp 22, 65, 67 referring to Defence witness NR, who testified that Andabak became commander after Cikota had been killed in April 1993, Defence witness NR, T 13251; and Defence witness NM, who testified that Cikota was commander of the KB, Defence witness NM, T 12751. *See* also Defence witness Slobodan Praljak stating that Andabak was the commander, as far as he knew also in 1992, Defence witness Slobodan Praljak, T 9207-9208, 9424, 9540.

[240] Ralf Mrachacz was a member of the KB Široki Brijeg from mid 1992 until mid 1995, witness Ralf Mrachacz, T 2668, 2864. Falk Simang was a member of the KB Široki Brijeg from February 1993 until February or March 1994, witness Falk Simang, T 3787.

[241] Witness Q was a member of the Vinko Škrobo ATG from around August 1993 until probably at least the end of September 1993, witness Q, T 2349-2353, 2371.

[242] Witness T was a member of the Kruško ATG from 1993 until 1996, witness T, T 2806.

[243] This encompasses the KB stationed in Široki Brijeg, the Baja Kraljevic ATG, the Vinko Škrobo ATG, the Benko Penavic ATG, the Kruško ATG and the Željko Bošnjak ATG, witness Ralf Mrachacz, T 2670, 2677, 2684-8266; witness Falk Simang, T 3788-3789; witness Q, T 2354-2356, 2371-2372; witness T, T 2808-2809.

[244] Mladen Naletilic was introduced as General to witness Falk Simang, witness Falk Simang, T 3780-3781, 3930; witness Z testified that Mladen Naletilic was approached as "general" by one of his sub-commanders Juka Prazina to sign a request for the release of detained people, witness Z, T 3547; witness CC, T 4400.

[245] Witness Ralf Mrachacz, T 2686, 2688. The Chamber concludes from witness Ralf Mrachacz's testimony that it encompasses the KB Široki Brijeg and the Baja Kraljevic ATG, witness Ralf Mrachacz T 2685.

[246] Witness Ralf Mrachacz, T 2696.

[247] *See infra* para 96.

[248] *See infra* para 104.

[249] Witness Ralf Mrachacz, T 2698-2699.

[250] Witness Ralf Mrachacz, T 2705-2706.

[251] Witness Ralf Mrachacz, T 2684.

went to the other side had to be shot.[252] Witness Ralf Mrachacz also stated that in military operations they were directly subordinate to Mladen Naletilic. In his absence, "Cikota" and "Lija" would give orders.[253]

92. Numerous documents indicate Mladen Naletilic's superior command position in the KB in 1993. These include communications from the HZ H-B Minister of Defence Bruno Stojic, the Chief of the HVO Main Staff Ante Roso and the Head of the security sector of the HVO Main Staff, Marijan Biškic, addressed to the commander of the KB Mladen Naletilic, Tuta, in November and December 1993.[254]

93. Several witnesses described Ivan Andabak as Mladen Naletilic's deputy.[255] Ivan Andabak also introduced himself as "Tuta's deputy" to some of the witnesses.[256] Documents corroborate Ivan Andabak's position. He dealt on behalf of Mladen Naletilic with correspondence, signed payment requests and KB membership certificates over Mladen Naletilic's name.[257]

94. The Chamber is satisfied that Mladen Naletilic was the highest level commander of the KB in 1993 and 1994. The Chamber further finds that Mario Hrka~ called "Cikota" and Ivan Andabak were commanders subordinate to Mladen Naletilic as the overall or supreme commander.[258]

(c) The units of the KB

95. The following enumeration and description of units belonging to the KB only deals with such units, which are relevant to the Indictment.[259]

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[252] However, to witness Ralf Mrachacz's knowledge, no member of the KB was ever punished for crimes against civilians, T 2710-2711.

[253] Witness Ralf Mrachacz, T 2677, 2708.

[254] Exhibit PP 732, order to "General Mladen Naletilic personally" from Commander of the HVO Main Staff Ante Roso, dated 23 December 1993, regarding deployment of the "Tuta ATG – the Convicts' Battalion, Baja Kraljevic Battalion, Benko Penavic Battalion and others under your command"; PP 428, request from Mladen Naletilic as commander of the Independent Unit for Special Tasks, KB, to Bruno Stojic for money to buy weapons for KB and ATG Baja Kraljevic, dated 2 June 1993; (KB salary list for November 1993 signed by "Commander of the Convicts Battalion and Anti-terrorist Unit Mladen Naletilic-Tuta"; PP 589, KB membership certificate over the name and title of "Commander of the Convicts' Battalion and ATG, Mladen Naletilic-Tuta". *See* also exhibits PP 665, PP 697 (confidential).

[255] Witness T, T 2815; witness Sir Martin Garrod, T 8416; witness Ralf Mrachacz, T 2670, 2709; witness Falk Simang, T 3792. Witness Ralf Mrachacz testified that after failures of Ivan Andabak during an action around Mostar in June 1992 nobody was allowed to take orders from him anymore and he then only worked in administration and logistics, witness Ralf Mrachacz, T 2708.

[256] Witness BB, T 4273; witness CC, T 4418.

[257] *See* exhibits PP 613, PP 671, PP 730, PP 731, PP 734, PP 752, PP 753, PP 540, PP 263, Military Police report about problems since ATG arrived at HVO Dretelj barracks, dated 22 March 1993, referring to Andabak as the person to address for disciplinary matters.

[258] Exhibit PP 927/2 specifying them as the Colonels of the KB. Also Exhibit PP 268.1 (list of KB members with special permits for curfew hours) specifies them as colonels of the "Independent Unit for Special Assignments – the Convicts' Battalion" and is signed by Ivan Andabak as "Commander of the Independent Unit for Special Assignments".

(i) The mother unit KB Široki Brijeg

96. Mario Hrka~, called "Cikota", was commander of the KB Široki Brijeg until his death on 20 April 1993.[260] After Mario Hrka~ death Ivan Andabak became the operative commander of the KB Široki Brijeg.[261] According to Defence witnesses, in addition to Ivan Andabak, @eljko Vukoja was operative commander of the KB Široki Brijeg.[262] As overall commander of the KB, Mladen Naletilic had his office at the KB headquarters in the Tobacco Station in Široki Brijeg.[263]

(ii) Vinko Martinovic and the Vinko Škrobo ATG or Mrmak[264] ATG

97. The Prosecution alleges that the Vinko Škrobo ATG was a sub-unit of the KB, whose commander Vinko Martinovic was a subordinate of Mladen Naletilic.[265]

98. During the Prosecution case the Martinovic Defence disputed that Vinko Martinovic, called "[tela", was the commander of the Vinko Škrobo ATG. It changed its position during the Defence case and now admits Vinko Martinovic's command position.[266] The Martinovic Defence does not dispute that the Vinko Škrobo ATG headquarters was situated in Kalemova Street in Mostar[267] and that it held one part of the front line in the Sector Mostar Town Defence.[268]

99. The Martinovic Defence alleges that Vinko Martinovic was "not a military commander in the sense envisaged in terms of traditional notions of command responsibility."[269] It is argued that Vinko Martinovic "was a civilian, who ?…? voluntarily participated in a form of civil defence", that "he had not been subjected to rigorous military training or risen through the ranks of a military

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[259] For a complete picture *see* exhibit PP 704, KB salary list for November 1993; exhibit PP 927/2.
[260] Defence witness NJ, T 12171; witness Ralf Mrachacz, T 2684.
[261] Defence witness NJ, T 12171. Witness LL understood during a conversation with Ivan Andabak that "Tuta issued orders to Ivan Andabak, that he was the commander, that Ivan Andabak was the chief of his special forces", T 5216. *See* also exhibit PP 327 (confidential). For some time Ivan Andabak was also assistant commander of the HVO Main Staff for the professional units, which was probably after the KB ceased to exist at the end of 1993, witness NM, T 12755; witness NP for late 1993 or 1994, T 13078; witness NR for December 1995, T 13295-13296; *see* also exhibit PP 299.1, which mentions Colonel Ivan Andabak as representative of the HVO Main Staff for 15 April 1993.
[262] Defence witness NM, T 12771. *See* also Defence witness NL, who testified that Andabak and @eljko Vukoja led the KB after Mario Hrka~'s death, Defence witness NL, T 12683.
[263] Many witnesses testified that the headquarters of the KB were in Široki Brijeg in the Tobacco Station and that they saw the commander of the headquarters Mladen Naletilic there; witness T, T 2814; witness AC, T 7935. According to the testimony of witness Ralf Mrachacz Mladen Naletilic also used an office in the Ministry of Defence in Mostar, where all commanders were represented, from mid 1992 through 1993; T 2692 and T 2694.
[264] The Vinko Škrobo ATG was formerly called "Mrmak", and changed its name at the beginning of August 1993, Defence witness MQ, T 15074, 15158; exhibit PP 577; exhibit PP 702.
[265] Prosecution Final Brief, pp 6, 32.
[266] Martinovic Final Brief, pp 38 and 54. *See* also Defence witness NO, T 12953.
[267] Witness U, T 2939; witness KK, T 5197; witness AD, T 8192; witness AE, T 8231-8233.
[268] Martinovic Final Brief, pp 38 and 54.
[269] Martinovic Final Brief, p 31.

hierarchy," and that "he was not part of a detailed chain of command in a regular army falling under a state structure".[270] It is therefore submitted that the proper test to establish his command responsibility is the one applicable in the case of a civilian or quasi-military commander. It is argued that this test has to be stricter than the one in the case of soldiers in a regular army.[271] The Martinovic Defence further alleges that Vinko Martinovic had no power to effectively control the soldiers of his unit comparable to a military commander except while they were with him at the front line.[272]

100. The Chamber is satisfied that the Vinko Škrobo ATG was part of the KB.[273] Vinko Martinovic himself testified in 1997 during criminal court proceedings against Mladen Naletilic in the County Court of Zagreb that he was a member of the KB, headed by Mladen Naletilic, and that he was within the KB commander of the Vinko Škrobo ATG.[274] Witnesses Allan Knudsen and Q, both members of the Vinko Škrobo ATG, testified that Vinko [krobo ATG was a sub-unit of the KB.[275] In addition, the Vinko Škrobo ATG patch demonstrated that it was part of the KB.[276]

101. The Chamber further finds that the Vinko Škrobo ATG as part of the KB was a component of the HVO, a well-structured army with a clear chain of command.[277] As the HZ H-B was a *de facto* government, Vinko Martinovic as commander in the HVO held a command position in a *de facto* army. Thus, Vinko Martinovic has to be considered as a regular military commander whose command responsibility is determined on the basis of his possession of *de facto* control over the members of the Vinko Škrobo ATG.

102. According to several defence witnesses, the Vinko Škrobo ATG was formed by Vinko Martinovic.[278] While the evidence is not consistent as to exactly when the Vinko Škrobo ATG was formally established, the Chamber finds that Vinko Martinovic was the commander of a group of

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[270] Martinovic Final Brief, p 31.
[271] Martinovic Final Brief, pp 33-36.
[272] Martinovic Final Brief, pp 38-39.
[273] Witness U, T 2973; witness T, T 2810. *See* also witness FF, who testified that Tuta and [tela were members of the KB, T 4721. *See* also exhibit PP 556, HVO Military Police Report mentioning Vinko Škrobo ATG as being listed as part of the KB and enjoying a special status; exhibit PP 705.1, HVO Military Police Report; exhibit PP 594, membership certificate with the heading "Convict's Battalion, Vinko Škrobo ATG", dated 9September 1993; exhibit PP 707.
[274] Exhibit PP 830.1. Witness Jan van Hecke who was present in the courtroom in Zagreb confirmed the statement of Vinko Martinovic, witness Jan van Hecke, T 1980-1982, 2038-2039. Further, the statement was not challenged by the Martnovi} Defence.
[275] Witness Allan Knudsen, T 5596-5597, 5602-5605; witness Q, T 2354-2355. This evidence is corroborated by exhibit PP 702, a report of the HVO Military Police Administration, dated 30 November 1993; witness Sir Martin Garrod, who testified that he was aware that Vinko Martinovic held a lower position in the KB, witness Sir Martin Garrod, T 8416.
[276] Exhibit PP 51, photo of a Vinko Škrobo ATG patch.
[277] *See* witness van der Grinten, T 7444-7446; witness Alister Rule, T 8153-8154; exhibits PP 86.1; PP 122, PP 123, PP 532.1.
[278] Defence witness Jadranko Martinovi}, T 13755; Defence witness MP, T 15072.

soldiers, who held positions at the confrontation line next to the Health Centre, at least from mid-May 1993.[279]

103. Vinko Martinovi}'s subordinates were Dubravko Pehar called "Dubi" who was the deputy commander of the Vinko Škrobo ATG,[280] Ernest Taka~ called "Brada" who was a group leader of the Vinko Škrobo ATG,[281] Nino Pehar called Dolma,[282] Dra`en Galic,[283] Marin ^uljak,[284] Semir Bošnjic, called "Sema",[285] Dinko Kne`ovic,[286] Otto Wild,[287] Zdenko Zdena and Zdravko Buhovac, called Hecko.[288]

(iii) The Baja Kraljevic ATG

104. There is no dispute that the Baja Kraljevic ATG, stationed at the Heliodrom,[289] was commanded by Predrag Mandic called "Lija". From the end of June or beginning of July 1993, Stanko Sopta was the deputy commander until he subsequently was appointed commander of the 3rd HVO Brigade in October 1993.[290]

105. The Prosecution alleges that the Baja Kraljevic ATG was a subordinate unit of the KB.[291]

106. The Naletilic Defence argues that the Baja Kraljevic unit was a professional unit and was not part of the KB. It took its orders from the HVO Main Staff.[292] It is further alleged that the only

[279] Defence witness NO testified that the Vinko Škrobo ATG was established mid-May 1993, Defence witness NO, T 12962. Defence witness MT testified that the Vinko Škrobo ATG was formally established mid-May or second half of May 1993, Defence witness NT, T 15289. Defence witness Jadranko Martinovic testified that the Vinko Škrobo ATG was not established earlier than one month after the 9 May 1993 and that on the days following 9 May 1993,Vinko Martinovic was at the front line with a group of former HOS soldiers who reported to him, Defence witness Jadranko Martinovic, T 13768, 13773. Defence witness MQ stated that he saw Vinko Martinovic on 10 May 1993 and that they had put together a small unit of around 25 men, which was not official and still in process of being formed and that they had elected Vinko Martinovic as commander. They held positions next to the health centre; Defence witness MQ, T 15156-15158. Defence witness MP stated that at the end of May or early June 1993 a friend of his told him that Vinko Martinovic was about to put a unit together with former members of HOS, Defence witness MP, T 15072-15073. Exhibit PP 492, order of the Chief of the HVO Main Staff Milivoj Petkovic, dated 2 July 1993, subordinating the "Mostar ATG (from the Tuta ATG)" to the command of the Sector Mostar Town Defence.

[280] Witness KK, T 5188; exhibit PP 704, p 30 (nr. 2).

[281] Witness KK, T 5188; Defence witness MP, T 15184; witness BB, T 4281-4283; exhibit PP 633 (Record of an Interrogation of Vinko Martinovic by the HVO Military Police, dated 11 October 1993); PP 590.1; PP 634 PP 699; PP 704, p 30 (nr. 5).

[282] Witness KK, T 5188; witness BB, T 4281-4283; exhibit PP 704, P 31 (nr. 53).

[283] Defence witness MP, T 15103-15104.

[284] Exhibit PP 704, p 31 (nr. 56); PP 635.

[285] Witness KK, T 5188; witness SS stated that Semir Bošnjic called Vinko Martinovic "boss", witness SS, T6554; exhibit PP 704, p 31 (nr. 51).

[286] Exhibit PP 704, p 30 (nr. 28).

[287] Exhibit PP 704, p 31 (nr. 72).

[288] Witness KK, T 5188; exhibit PP 704, p 31 (nr. 77).

[289] Defence witness NB, T 10170; exhibit PP 177.

[290] Defence witness NM, T 12785-12786 (confidential). The witness' testimony is confirmed by exhibit PP 621.

[291] Prosecution Final Brief, p 41.

[292] Naletilic Final Brief, pp 43, 61-65; Defence witness NR, T 13249-13250; Defence witness NK, T 12661-12662.

connection that existed between the Baja Kraljevic and the KB was that members of the KB Široki Brijeg moved to the Baja Kraljevic unit, when it was founded.[293]

107. The Chamber is satisfied that the Baja Kraljevic ATG was part of the KB. This conclusion is based on both documents[294] and reliable witness testimonies. According to the member of the KB witness Ralf Mrachacz, there were two troops that were directly subordinate to Mladen Naletilic. One was a unit based in Široki Brijeg and commanded by "Cikota" and the other one was based at the Heliodrom and commanded by "Lija".[295] Witness Ralf Mrachacz stated that these two units formed the core of the KB, which further units (*i.e.* ATG units) then joined.[296] Witness Falk Simang stated that when he and another German mercenary arrived in Mostar in February 1993, they were introduced to two commanders called "Lija"[297] and "Baja". "Lija" informed them that they had to be introduced to "General Tuta" who would have the final say as to whether they would become members of their units. Once "Tuta" had accepted them, they were returned to Mostar and had to fill in a form that recorded their personal data in "Lija's" office at the Heliodrom.[298] Also witness Falk Simang's testimony shows that Predrag Mandic, called "Lija", and his ATG as well as the Benko Penavic ATG commanded by Mario Milicevic, called "Baja", were under the command of Mladen Naletilic.[299]

108. The Chamber finds that the Baja Kraljevic ATG had a special position amongst the ATG units. It enjoyed a degree of independence and was an elite unit unlike the Vinko Škrobo ATG and the Benko Penavic ATG. Rather, the Baja Kraljevic ATG held the position of a professional unit, called by the HVO Main Staff when needed, because it was not just an ATG attached to the KB but was one of the original KB units constituting the core KB.[300]

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[293] Defence witness NM, T 12866; Defence witness NP, T 13082.

[294] Predrag Mandic signed a KB membership certificates on 16 July 1993 as "commander of Convicts' Battalion", exhibit PP 524.3; and on 30 November 1993 as "commander of Convicts' Battalion and ATG", exhibit PP 702.1. *See* also exhibit PP 785, KB membership certificate, issued by the deputy commander of the Baja Kraljevic ATG stating that Baja Kraljevic ATG was part of the KB; exhibit PP 873, HVO record showing that Mladen Naletilic was commander of the Baja Kraljevic ATG; exhibit PP 428, request from Mladen Naletilic as commander of "the Independent Unit for Special Tasks, KB", to Bruno Stojic for weapons for KB and Baja Kraljevic ATG, dated 2 June 1993; exhibit PP 621, PP 705.1, PP 759.1(confidential), PP 804.1 (confidential).

[295] Witness Ralf Mrachacz also stated that both units operated in different places, witness Ralf Mrachacz, T 2684-2685.

[296] Witness Ralf Mrachacz, T 2685, 2869, 2887.

[297] Witness Falk Simang recognised Predrag Mandic, called "Lija" on exhibit PP 41.1, witness Falk Simang, T 3781.

[298] Witness Falk Simang, T 3778-3784.

[299] The Chamber does not find the testimonies of Defence Witness NM, T 12750, 12801, 1288; and Defence witness NR, T 13318 credible, according to which the Baja Kraljevic ATG was not part of the KB, as they are inconsistent with the other evidence. *See* exhibits PP 759.1(confidential), PP 804.1 (confidential).

[300] It was formed through a division of the KB Široki Brijeg before other ATG units like the Vinko Škrobo ATG joined the KB, *see* exhibit PP 927/2. Another reason for its special position was perhaps the qualities of its commander as a professionally trained soldier.

(iv) The Benko Penavic ATG

109. The Benko Penavic ATG was stationed in Mostar and was commanded by Mario Milicevic, called "Baja".[301] Witness S gave evidence that he learned on 8 May 1993 from "Baja" himself that he would be one of the commanders of an ATG, which was named Benko Penavic ATG.[302] The Chamber is satisfied that the Benko Penavic ATG was formally established around 9 May 1993.[303]

110. The headquarters of the Benko Penavic ATG was situated at the Rondo in Mostar[304] and its area of responsibility at the frontline was adjacent to the south of the Vinko Škrobo ATG.[305]

111. The Chamber is satisfied that, as submitted by the Prosecution,[306] the Benko Penavic ATG belonged to the KB.[307] According to witness AC, a Muslim member of the Benko Penavic ATG, Mladen Naletilic appointed "Baja" to lead the Benko Penavic ATG.[308] Witness AC further testified that "Baja" told him that the Benko Penavic ATG was under "Tuta's authority" and that he, "Baja", had to convince "Tuta" to be allowed to admit witness AC into his unit, because he was a Muslim.[309]

112. At the end of 1993, Mario Milicevic became commander of a newly created ATG of the KB called "Željko Bošnjak".[310]

(v) The Kruško ATG

113. The Samir Kafedzic Kruško ATG was first stationed at the Heliodrom and from October 1993 in Mostar.[311] It was an ATG with about 90 members including all ethnic groups[312] that was

[301] Witness S, T 2530; exhibit PP 650 (confidential); exhibit PP 620 (membership certificate, dated 1 October 1993 and signed by Mario Milicevic, commander of the ATG Benko Penavic; exhibit PP 621.1 (membership certificate, dated 3 October 1993, stating that as of 9 May 1993 a particular person was member of the "elite unit ATG 'Benko Penavic' Convicts' Battalion", signed by "Mario Milicevic, commander".

[302] Witness S, T 2527.

[303] Witness AC, T 7904-7909, witness S, T 2527.

[304] Witness U, T 2940; witness AE, T 8253.

[305] Witness AC marking exhibit PP 11.18/11 and PP 14.5/12, witness AC, T 7916-7917.

[306] Prosecution Final Brief, p 40.

[307] Witness T, T 2811; exhibit PP 629, HVO Military Police Report referring to the "Convicts' Battalion Benko Penavic ATG"; exhibit PP 556, HVO Military Police Report mentioning Benko Penavic as being listed as part of the Convicts' Battalion and enjoying a special status; exhibit PP 620, membership certificate, dated 1 October 1993 and signed by Mario Milicevic, commander of the Benko Penavic ATG stating that a particular person is "under the protection and control of the Benko Penavic ATG of the Convicts' Battalion"; exhibit PP 621.1.

[308] Witness AC, T 7975-7976.

[309] Witness AC, T 7906-7907. Witness S also stated that Tuta was the superior of the Benko Penavic ATG, witness S, T 2514, 2546-2548.

[310] Witness Allan Knudsen, T 5651; witness Q, T 2371-2372; exhibit PP 701, HVO Military Police Report, dated 30 November 1993, stating that the Željko Bošnjak ATG forms part of the KB; PP 720, HVO Military Police "Wanted Notices" concerning desertation of a member of the "Convicts' Battalion ATG Željko Bošnjak". Witness Allan Knudsen, who joined Željko Bošnjak ATG in November 1993, was told that it was a new platoon for the purpose of actions behind the frontlines, witness Allan Knudsen, T 5649-5655. The membership certificate of Allan

commanded by Jusuf Prazina, a Muslim, called "Juka".[313] When Jusuf Prazina disappeared in October 1993, his deputy commander Božo Šain replaced him.[314]

114. The Chamber finds that the Kruško ATG was also a sub-unit of the KB[315] as submitted by the Prosecution.[316] Witness T, a member of the Kruško ATG, testified that members of the Kruško ATG wore a camouflage uniform with a patch saying "ATG KB Kruško".[317] He also gave evidence that Jusuf Prazina had told him that Mladen Naletilic was his commander[318] and that both signed a permit in April 1993 that allowed him to travel freely in Bosnia and Herzegovina and to Croatia.[319]

(vi) Further Members of the KB

115. Further members of the KB were Juka Prazina,[320] Vedran Bijuk called "Splico",[321] Robert Medic called "Robo", "Roba", "Robi" and "Robia",[322] Željko Bošnijak;[323] Boro Pusic,[324] Miroslav

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Knudsen for "Convicts Battalion ATG Željko Bošnjak," is dated 5 November 1993, exhibit PP 241.1. The headquarters of the Željko Bošnjak ATG was located in Ljubuški, witness Allan Knudsen, T 5649; exhibit PP 927/2.

311 Witness T, T 2806-2808; exhibit PP 529.

312 Witness T, T 2811.

313 Defence witness NT, T13423, 13433; witness T, T2808, 2817, 2819; exhibit PP 706.1, HVO Military Police Report mentioning Božo Šain, member of KB and commander of Kruško ATG.

314 Defence witness NT, T 13423 and T 13439; witness T, T 2827.

315 Witness QQ, T 6214; witness Z testifying that Jusuf (Juka) Prazina and his soldiers told him that Tuta was their superior and that Jusuf Prazina approached Mladen Naletilic as "General," asking him for signing a release request for 16 detained men to join Jusuf Prazina's unit, witness Z, T3532-3533, 3547; witness CC testified that Jusuf (Juka) Prazina told him that Mladen Naletilic, called Tuta, was Jusuf Prazina's commander when Jusuf Prazina invited him to join his unit, witness CC, T 4378. *See* also exhibit PP 706.1, HVO Military Police Report; exhibit PP 501, HVO Military Police permit issued to a member of the "Convicts' Battalion Kruško" (confidential); exhibit PP 494, request signed by Andabak on behalf of Mladen Naletilic to authorise a telephone connection for Jusuf Prazina, commander of the "Kruško Convicts' Battalion".

316 Prosecution Final Brief, p 42.

317 Witness T, T 2811.

318 Witness T, T 2834-2835, 2808-2809.

319 Witness T referring to exhibit PP 303 (confidential), witness T, T 2819-2823.

320 Witness Z, T 3532 (confidential).

321 Witness Z, T 3547-3548 (confidential).

322 Witness CC testified that Robo Medic was member of the KB Široki Brijeg and that he had some rank being a commander of recruits who were trained there, T 4399-4400, T 4425; exhibit PP 607.2 (Central Military Prison Report, dated 21 September 1993, saying that Mladen Naletilic authorised Robert Medic to select prisoners), PP 702 p 2 (Military Police Administration Report, dated 30 November 1993, mentioning Robert Medic as member of the Convicts Battalion), PP 704 p 23 (as Robert Medic on KB salary list for November 1993), PP 745 (Ministry of Defence Report, dated February 1994, saying that Robert Medic took prisoners from the Heliodrom for the needs of the Convicts Battalion).

323 Witness BB, T 4245-4246, 4299-4300; witness CC, T 4400, 4403-4404, 4439, 4449, 4455; exhibit PP 704, p 11, KB salary list for November 1993; exhibit PP 585, KB membership certificate, signed by Colonel Željko Bošnijak, Commander of the "Convicts' Battalion Engineers"; exhibit PP 419, order, dated 29 May 1993, to take a vehicle located in Doljani "for the needs of the Convicts Battalion Special Purposes Independent Unit", signed by Željko Bošnijak.

324 Exhibit, PP 757.

Kolobara called "Droba",[325] Robert Kolobaric,[326] Romeo Bla‘evic,[327] Ivi}a Kraljevic,[328] and Ivan Hrka~ called "Cikota"[329] who was the brother of Mario Hrka~ called "Cikota".[330]

(d) Conclusion

116. It has been established that throughout the relevant time of the Indictment Mladen Naletilic was the overall commander of the KB and the attached ATG units. However, to find Mladen Naletilic responsible under Article 7 (3) of the Statute for crimes committed by members of the KB it has to be established for every incident charged in the Indictment that he knew or had reason to know of the crime and that he had the material ability to prevent it or punish the perpetrators thereof.

4. Command position of the accused in the individual operations

(a) Sovici and Doljani

117. The Prosecution alleges that Mladen Naletilic was the "overall on-the-ground commander" of the HVO forces in the attack against Sovici/Doljani that started on 17 April 1993.[331]

118. The Naletilic Defence does not dispute that the KB Široki Brijeg and the Baja Kraljevic ATG engaged in the action in Sovici/Doljani in April 1993.[332] It argues that Mladen Naletilic was neither overall commander in the military operation in Sovici/Doljani nor was present in Sovici on 17 and 18 April 1993 or in Doljani after 19 April 1993.[333] The Naletilic Defence claims that Mladen Naletilic spent the Easter holidays with his children from 12 April (Easter Monday) until 19 April 1993 at a friend's house in Risovac.[334] The Naletilic Defence further alleges that a

[325] Witness SS, T 6599-6600. *See* also exhibits PP 457, PP 648, PP 677, PP 680, PP 702 p 3, PP 704 p 9 (KB salary list for November 1993 on which Miroslav Kolobara is listed as captain of one of the combat groups of the KB), PP 707 p 44.
[326] Exhibits PP 619.1, PP 739, PP 753, PP 677.
[327] Witness AA testified that everyone in Mostar knew that Romeo Bla‘evic and Ernest Taka~ were in [tela's unit, witness AA, T 3680; witness BB identified Romeo Bla‘evic as one of [tela's soldiers, witness BB, T 4281. *See* also exhibit PP 540, official letter of the President of the Commission of the Southeast Herzegovina Operational Zone, dated 27 July 1993, regarding the distribution of apartments to "members of the ATG," referring to the verbal order of the Chief of the Defence Department and the agreement with Ivan Andabak, which lists amongst others Romeo Blaževic together with Vinko Martinovic and Mario Milicevic; exhibit PP 704, p 7.
[328] Exhibit PP 704, p 14.
[329] Witness BB, T 4256-4258; exhibit PP 704, KB salary list for November 1993, p 10.
[330] Witness CC, T 4394, Defence witness NQ, T 13202.
[331] Indictment, para 25, Prosecution Final Brief, p 56.
[332] Defence witness NR, T 13252, 13268; Defence witness NM; T 12761-12763.
[333] Naletilic Final Brief, pp 22-24; Defence witness NR, T 13256.
[334] Naletilic Final Brief, p 23; Defence witness NL, T 12687-12688, 12713-12714.

commander of the Sector was supposed to be the overall commander while Mladen Naletilic was not "Sector commander or any commander".[335]

119. Defence witness NL did not know about Mladen Naletilic whereabouts on 15 and 16 April 1993 as he left the house for Široki Brijeg on 12 April and did not return to Risovac before late afternoon on 16 April 1993.[336] He testified that Mladen Naletilic was with him in Risovac on 17 and 18 April 1993. He further stated that soldiers came by and told them what was going on. According to defence witness NL, two members of the KB came in the late afternoon of 19 April 1993 and informed Mladen Naletilic that a soldier of the KB had been killed. Mladen Naletilic allegedly left with them and returned around seven p.m. to go with Defence witness NL to Široki Brijeg. Defence witness NL did not know Mladen Naletilic's whereabouts from the evening of 19 April 1993 when they left Risovac. He only saw him again at the funeral of the member of the KB Boro Barbaric, called "Boka",[337] on 21 April and at the funeral of Mario Hrka~, called "Cikota", on 22 April 1993.[338]

120. The Chamber is satisfied that Mladen Naletilic commanded the Sovici/Doljani operation, which was – as already stated[339] - part of the larger operation to take Jablanica. It has been established that Mladen Naletilic was present in Sovici/Doljani at the time relevant to the Indictment and led the attack on Sovici/Doljani, not only heading the KB Široki Brijeg and the Baja Kraljevic ATG, but also the other troops involved.

121. The house in Risovac where Mladen Naletilic claims to have stayed is situated between Sovici and Doljani, which are about six kilometres apart from each other,[340] and about 13 kilometres from Doljani.[341] The Chamber is satisfied that Risovac is sufficiently close to Sovici and Doljani that had Mladen Naletilic in fact been staying there, it would not have prevented him from taking part in the Sovici/Doljani operation.

122. Even if Mladen Naletilic was with Defence witness NL in Risovac on 17 April 1993,[342] he would have had the possibility to give orders to his men through his Motorola or to the soldiers who

[335] Naletilic Final Brief, p 22.
[336] Defence witness NL, T 12713.
[337] Defence witness NM testified that Boka Barbaric was a member of the KB and was killed on 20 April 1993, Defence witness NM, T 12766.
[338] Defence witness NL, T 12690-12693, 12701-12704, 12707-12709, 12713-12715.
[339] *See supra* para 30.
[340] Defence witness NW, T 14985.
[341] Defence witness NL, T 12713.
[342] Only witness Y claimed that he had seen Mladen Naletilic in Sovici on 17 April, witness Y, T 3370-3379. As this evidence was not corroborated the Chamber did not find it sufficiently reliable.

came by the house of NL during these two days. A number of witnesses also gave evidence that when the attack started on 17 April 1993, the shelling mainly came from Risovac.[343]

123. The Chamber is satisfied that Mladen Naletilic was in Sovici on 18 April 1993 at least for some time. Several witnesses testified that they saw Mladen Naletilic at the Sovici school on 18 April 1993[344] and that his men were among the soldiers who took the prisoners from the school to buses and escorted them to Ljubu{ki.[345] Witness Y testified that on 18 April 1993, a man who introduced himself as "Mladen Naletilic, Tuta", came out of the house of Jure Groznica, called "Juka",[346] which was located in a part of Sovici called Srednja Mahala.[347] According to witness Y, Mladen Naletilic was accompanied by Stipe Pole, commander of the 3rd Mijat Tomic Battalion, "Cikota" and Ivan Andabak, who then interrogated witness Y at the Sovici school.[348]

124. The Chamber rejects that Mladen Naletilic was with Defence witness NL in Risovac until the late afternoon on 19 April 1993. According to the Radoš Diary,[349] which was written by a member of the HVO 3rd Mijat Tomic Battalion who was present at the HVO headquarters at the fish farm in Doljani during the whole Sovici/Doljani operation, "Tuta arrived almost exactly at noon" at the HVO headquarters on 19 April 1993.[350] The Chamber finds that the diary reflects the accurate time of Mladen Naletilic's arrival at Doljani on 19 April 1993 as this evidence is very precise in

[343] Witness A, who positively identified Mladen Naletilic in the courtroom, witness A, T 495 and T 508-510; witness C, T 856, witness AF, T 15917-15918, witness Y, T 3363. Witness Ekrem Lulic maintained that the KB was at Risovac, witness Ekrem Lulic, T 702.

[344] Witness A testified that Mladen Naletilic arrived at the school while Ivan Rogic gave a speech in front of the prisoners, who were lined up in the schoolyard, about an uprising against the lawful authority in BiH, witness A, T 506-508. Witness AF also argued that Tuta and the local commanders lined up the prisoners in front of the school building and that Ivan Rogic read out a paper saying that they were sentenced because of a rebellion against the legal government of Herceg-Bosna, witness AF, T 15925-15926. Witness AF identified Mladen Naletilic in the courtroom as the person who was present in Sovici that day, witness AF, T 16131. It does not challenge his testimony that he stated that Tuta was as tall as he is or even taller even though the witness is 1.82 metres (T 16012) as someone powerful can appear much taller in the perception of other people. The Defence claimed that witness AF had not mentioned Tuta in his first statement, but did not read out or put the statement to the witness, T 16014 and 16044. Witness Ekrem Lulic, whom the Chamber finds credible regarding his description of the events in Sovici, stated that Mladen Naletilic lined up the prisoners in the schoolyard and blamed them for having organised an armed rebellion against the legal Croatian authorities, witness Ekrem Lulic, T 647-648, T 650-651.

[345] Witness Ekrem Lulic, T 649; witness AF mentioned "Robi" and "Cikota", witness AF, T 15929. Witness A testified that the prisoners learned in Ljubuški that the soldiers were "Tuta's men", witness A, T 511-512. Witness Y testified that the bus had to stop near Januzovici houses and that Mladen Naletilic suddenly appeared and intervened when the witness was beaten up, witness Y, T 3388-3392 (confidential). Seen as a whole together with the other witness testimonies the Chamber finds witness Y's testimony reliable although not every detail in witness Y's description of Mladen Naletilic is right (witness Y, T 3451).

[346] Commander of a company/platoon of the 3rd Mijat Tomic Battalion, witness Y, T3442; Defence witness NW, T 14996. *See* also witness X, T 3339; Defence witness NX, T 16466.

[347] Witness Y, T 3367 (confidential).

[348] Witness Y, T 3378-3386 (confidential). That Ivan Andabak was conducting interrogations of Muslim prisoners on the 18 April 1993 is corroborated by a report of Bla' Azinovic, who was a member of the HVO 3rd Mijat Tomic Battalion and attended those interrogations, exhibit PP 368.

[349] *See supra* footnote 54.

[350] Exhibit PP 928, Radoš Diary, p 74.

describing the first time Mladen Naletilic came to the fish farm leaving an impression of great authority.[351]

125. Two members of the KB gave evidence that the KB Široki Brijeg and the Baja Kraljevic ATG headed by Mladen Naletilic took part in the Sovici/Doljani operation. Witness Ralf Mrachacz who drove a supply truck,[352] testified that Mladen Naletilic was in charge of the action in Sovici/Doljani as he saw Mladen Naletilic at the headquarters, the fishfarm.[353] As a result of the death of "Cikota", the witness described the operation as divided into two actions.[354] Thus, he stated that after "Cikota" had fallen during the first action in Doljani, Mladen Naletilic prior to the second action gave the order to make no prisoners.[355] KB member witness Falk Simang also maintained that Mladen Naletilic commanded the KB Široki Brijeg and the Baja Kraljevic ATG in the Sovici/Doljani operation.[356] He further stated that "Cikota" fell on the first day of their assignment in Doljani and that Mladen Naletilic ordered that the complete KB had to withdraw to Široki Brijeg for the funeral.[357] He also testified that captured Muslims in uniform were interrogated by Mladen Naletilic and Ivan Andabak at the headquarters next to a fish basin.[358] This statement of witness Falk Simang was confirmed by other witnesses who gave more specific evidence that Mladen Naletilic interrogated captured ABiH soldiers at the fishfarm on 20 April 1993.[359] Witness Falk Simang also corroborated witness Ralf Mrachacz's testimony that after they

[351] Mladen Naletilic's presence in Doljani on 19 April 1993 is also corroborated by Defence witness NR who testified that he met Mladen Naletilic on the road in Doljani in the afternoon of the 19 April 1993 and Defence witness NN who saw Mladen Naletilic "with two or three of his men" in the afternoon or evening of the 19 April 1993 in front of the HVO headquarter, Defence witness NR, T 13256; Defence witness NN, T 12902.

[352] Witness Ralf Mrachacz, T 2888, 2711-2712.

[353] Witness Ralf Mrachacz, T 2718, 2722.

[354] There is no dispute that Mario Hrka~, called Cikota, took part in the operation. Defence witness NM testified that when the fire was opened on the 17 April 1993 Mario Hrka~ went with the troops of the Convicts Battalion, the Baja Kraljevic ATG and the other units to the fire line, T 12761-12763. This does not imply, "that Mladen Naletilic was not the commander of the units in conflict", as submitted in the Naletilic Final Brief, p 23.

[355] Witness Ralf Mrachacz, T 2711-2712.

[356] Witness Falk Simang, T 3795. The Chamber does not believe Defence witness NK, who gave evidence that witness Falk Simang could not have participated in any action in Doljani around 19 and 20 April 1993 because he came with NK to Mostar to bring NK's mother to an eye clinic. According to Defence witness NK, witness Falk Simang was with him at "Cikota's" funeral, but neither of them travelled to Doljani after the funeral, T 12622-12624. Defence witness NK, a former member of the KB, did not appear to be credible because his statement was biased. In addition, the Defence never put to witness Falk Simang during his cross-examination that he was not in Sovici/Doljani, because he went with Defence witness NK and NK's mother to an eye clinic. Witness Falk Simang's testimony is also corroborated by other witness statements. Also the claim of the Defence in the Naletilic Final Brief, p 20, that witness Falk Simang wrongly described the route to Doljani and stated that he would not know Sovici (T 3894) does not reduce the reliability of his testimony. As witness Falk Simang was in Doljani, but not in Sovici, he could well have forgotten it or he might not have heard of Sovici at all.

[357] Witness Falk Simang, T 3796, 3798.

[358] Witness Falk Simang, T 3796, 3798-3799, 3800-3807.

[359] Witness Salko Osmic, who identified Mladen Naletilic in the courtroom, witness Salko Osmi}, T 3129-3139. The Naletili} Defence claimed that witness Osmi} never mentioned that Mladen Naletilic introduced himself as "General Tuta" to him, in his prior statements. However, the Naletili} Defence but did not read out or put the statements to the witness, T 3162. Witness B testified that he heard HVO soldiers calling the accused he identified in the courtroom "Tuta", witness B, T 783-788. The Defence argued that witness B did not mention "Tuta" in his statement in 1993, but only in his statement in 1997, however, the Naletili} Defence did not read out or put the

had returned from "Cikota"'s funeral, Mladen Naletilic ordered that no prisoners were to be taken. The witness further claimed that Mladen Naletilic ordered the complete cleansing of Doljani.[360]

126. The witness testimonies of the KB members are further corroborated by the Radoš Diary. It mentions the commanders of the KB Široki Brijeg and the Baja Kraljevic ATG, "Cikota" and "Lija", as members of Tuta's team during the Sovici/Doljani operation. It further states that Mladen Naletilic kept calling "Cikota" and "Lija" while issuing orders concerning the firing at Doljani on 20 April 1993.[361] This evidence demonstrates in particular Mladen Naletilic's command authority during the military operation in Sovici/Doljani as leader of the KB Široki Brijeg and the Baja Kraljevic ATG.

127. The documentary evidence considered in its entirety proves that Mladen Naletilic strategically planned and conducted the attack on Sovici/Doljani as commander of all troops deployed for this purpose. The Chamber is satisfied that the units acting in concert under Mladen Naletilic's command included, in addition to the KB Široki Brijeg and the Baja Kraljevic ATG, the 3rd Mijat Tomic Battalion of the HVO Brigade Herceg Stjepan, commanded by Stipe Pole, and the 4th Posušje Battalion of the HVO Brigade Kralj Tomislav, commanded by Ivan Bago.[362]

128. An order, dated 15 April 1993, shows that Mladen Naletilic was involved in the planning of the attack.[363] Pursuant to an agreement with Miljenko Lasic, commander of the Southeast Herzegovina operative zone, "co-ordinator for Herzeg-Bosna, Mladen Naletilic Tuta" and "representatives of the Main Staff, colonel Ivan Andabak" Ivan Bago, commander of the 4th Posušje Battalion,[364] ordered for the same day troops to be deployed at Sovicka Vrata, which is approximately 2.5 km away from Risovac.[365] This evidence is corroborated by a report, dated 16 April 1993, by Željko Šiljeg, commander of the Northwest Herzegovina operative zone, about the

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statement to the witness, T 842-843. Witness RR testified that he concluded that the man, who was standing in front of the soldiers at the fishfarm was Mladen Naletilic, because the soldiers who had captured them, told them that they had to turn them over to "Tuta". Witness RR maintained that Bla` from Jablanica, a member of Mladen Naletilic's unit, addressed him as "Tuta", when he tried to save the life of two of the captured BH Muslim soldiers, witness RR, T 6448-6450, 6452, 6456-6458, 6494. Witness RR's testimony is corroborated by witness TT, one of the saved BH Muslim soldiers, who stated that his comrade, who saved his life, told him that it was "Tuta", witness TT, T 6633-6634, 6639-6643. Seen together with the other witness testimonies the Chamber finds witness RR's testimony reliable although not every detail in his description of Mladen Naletilic is correct, *see* for example, witness RR, T 6496.

[360] Witness Falk Simang, T 3799-3800.
[361] Exhibit PP 928, Rado{ Diary, pp 74, 75, 77.
[362] Exhibits PP 299.1, PP 368, PP 928, Radoš Diary.
[363] Exhibit PP 299.1.
[364] Referring to exhibit PP 299.1, Defence witness Željko Glasnovic, who was commander of the HVO Brigade Kralj Tomislav testified that the Posušje Battalion of the HVO Brigade Kralj Tomislav was detached to the Konjic area in 1993 by Željko Šiljeg and that the Battalion and its commander Ivan Bago were not under his direct command, Defence witness Željko Glasnovic, T 11465, 11499.
[365] Defence witness NL, T 12686, 12713.

co-ordination with Mladen Naletilic through the Pošušje unit on Sovicka Vrata.[366] There is a report, dated 20 April 1993, by HVO Officer Stanko Maric, military spokesman of the HVO headquarters,[367] informing Tuta, Mi}o (Miljenko Lasic),[368] and Slavko (Slavko Puljic)[369] that SPABAT and ECMM were on their way to Sovici/Doljani.[370]

129. A report of a member of the HVO 3rd Mijat Tomic Battalion describes Mladen Naletilic's overall command position in the Sovici/Doljani operation:

> Mr. Tuta commanded the overall operation in this area (Risovac, Sovici and Doljani) in which troops from elsewhere also took part, such as, for instance, the Convicts battalion, the Poskok battalion, the Grdani, the Posušje mortarmen, and others.[371]

130. This is corroborated by two reports of international observers from April 1993, concluding that Mladen Naletilic was leading the HVO forces in the attack against Sovici/Doljani.[372] The reports refer to HVO sources, according to which

> the offensive launched against Slatina ?…? and Doljani ?…? aims to push on through to Jablanica. The offensive is directed by a person of substantial political, economic and military influence, someone who is tired of signatures ?…? and political treaties. Hence he has no wish to uphold the cease-fire agreement struck between the *Armija* BiH ?…? and the HVO ?…?. This person is known as Tuta and has chosen two collaborators he had with him in Operation *Bura* - namely Ivan Andavak and Brigadier Lasic.[373]

131. Mladen Naletilic's overall command position is further depicted in the Radoš Diary. It notes, that when Mladen Naletilic arrived with his team at the HVO headquarters on 19 April 1993

> ?t?hey immediately sat at the table with a map in front of them and started making a detailed plan. Tuta took everyone's comments into account, but the main decisions were his. The only other two

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366 Exhibit PP 301.1. The same report also speaks about establishing a wire connection with the command of the Mijat Tomic Battalion, which was situated at the fish farm in Doljani. Another combat report of the Northwest operative zone, dated 22 April 1993, complains about the ineffective firing of Tuta's artillery from Sovicka Vrata and the killing of a member of Tuta's unit called "Cikota", exhibit PP 326.

367 Witness van der Grinten, T 7354, 7447.

368 In connection with the other documents the Chamber finds that "Mi}o" is Miljenko Lasic. *See* also Defence witness NN, T 12924.

369 The Chamber is of the opinion that "Slavko" is identified as Slavko Puljic through exhibit PP 928, pp 72 and 75. According to witness van der Grinten, Slavko Puljic was first Chief of the HVO Main Staff and later on commander of one of the units, witness van der Grinten, T 7518.

370 Exhibit PP 318.1.

371 Exhibit PP 368. Defence witness NW disputes that the signature on the document is that of Bla` Azinovi}, T 14991-14993. The Chamber is satisfied that exhibit PP 368 is reliable and authentic for the reason that Bla` Azinovi} was identified by witness X, to be present and involved when the civilians were gathered in the hamlets of Junuzovi}i, witness X, T 3327 and that the involvement of Vlado ^uri} is corroborated by exhibit PP 928, Rado{ Diary, pp 90, 93, 95.

372 Exhibits PP 325(confidential), PP 361 (confidential). Notwithstanding the fact that the information reflected in these reports is only hearsay the Chamber considers them of probative value in connection with the other documents.

373 Exhibit PP 325, p 5 (confidential). The Chamber is satisfied that "Ivan Andavak" is '"Ivan Andabak". According to exhibit PP 361, p 8 (confidential)"the HVO forces in this area ?referring to Sovici, Doljani and Slatina? are led by Tuta, an adventurer who has great influence on Boban and Petkovic and who is resolved to continue the offensive until the 'liberation' of the Croatian villages along the route to, but without reaching, Konjic itself which, as he estimates, will fall easily into the hands of the Serbs."

> who were consulted were Mico Lasic and Slavko Puljic; the others would only make suggestions ?…? they needed to mop up in Doljani. Then it started. A thunderous roar of fire from mortars, Bofors, two-barrelled guns and the like.[374]

The Radoš Diary demonstrates that Mladen Naletilic was also at the HVO headquarters on 20 April 1993, "issuing orders quickly and with authority" while getting help from Miljenko Lasic and "other higher commanders whose opinions were taken into account".[375] Again, it is described that the fighting then started and that "Tuta was issuing orders" while observing the situation. As a result "the houses in Doljani were on fire."[376] The Radoš Diary furthermore states that Mladen Naletilic ordered someone from Pošušje to take over the command, when he left for the burial of Cikota in the evening on 20 April 1993.[377] This statement taken together with witness Falk Simang's testimony that Mladen Naletilic ordered the complete KB to withdraw to Široki Brijeg for the funeral, confirms that Mladen Naletilic was not only in command of the KB Široki Brijeg and the Baja Kraljevic ATG but also of all the troops deployed for the Sovici/Doljani operation. If this were otherwise, there would have been no reason for someone else to take over the command when Mladen Naletilic left with the KB.

132. According to the Radoš Diary, Miljenko Lasic was in command of "the operations"[378] as well as @eljko Šiljeg from the direction of Prozor.[379] Reading the Radoš Diary in context, it can be concluded that "the operations" mean all operations that were part of the larger operation to take Jablanica.[380] Miljenko Lasic and Željko Šiljeg as commanders of the Southeast and Northwest Herzegovina operative zones were in charge of the whole operation to take Jablanica.[381] As operative zone commanders, Željko Šiljeg and Miljenko Lasic were both direct subordinates of the HVO Main Staff, in the same way as was Mladen Naletilic as the commander of a professional

[374] Exhibit PP 928, Radoš Diary, p 74-75.
[375] Exhibit PP 928, Radoš Diary, pp 76.
[376] Exhibit PP 928, Radoš Diary, pp 77.
[377] Exhibit PP 928, Radoš Diary, p 77.
[378] Exhibit PP 928, Radoš Diary, p 65. Also Slavko Puljic is mentioned as "part of the command led by Lasic and Puljic", p 72.
[379] Exhibit PP 928, Radoš Diary, pp 73, 80.
[380] It is described that on 15 April "many high-ranking officials, led by Miljenko Lasic who is in command of the operations" were at Risovac from where the fighting started and that "they were ready to 'do the job' in two days", "to have coffee together in Jablanica"; exhibit PP 928, Radoš Diary, pp 65.
[381] The Radoš Diary also depicts that Mladen Naletilic continued to come to the HVO headquarters on 23, 24 and 25 April 1993 to give orders regarding the larger operation to take Jablanica. Željko Šiljeg and Željko Glasnovic, who was the commander of the Kralj Tomislav Brigade at the time, came to the headquarters on 22 April 1993 to plan and prepare further operations to take Jablanica. The troops, which were supposed to join in according to an agreement, were waiting for Tuta. As Mladen Naletilic arrived on 23 April 1993, "he changed some details of the plan and assigned certain tasks". On 25 April 1993 "Tuta and his men came earlier than ever before. He immediately sat down and worked out a plan. He said that he was going to see it through to the end this time, but thoroughly and safely. He requested communications and co-ordination with Šiljeg. He issued an order for mortars to start firing. This time it seems that the goal will be achieved and that they will reach Zlato and the entry into Jablanica", exhibit PP 928, Radoš Diary, p 84. Hence, the Chamber finds that the evidence indicates that Mladen Naletilic was also commander of the larger operation to take Jablanica.

unit.[382] The documentary evidence shows that all three men were planning the Sovici/Doljani operation[383], but that it was only Mladen Naletilic who took the final decisions as to how to carry it out.[384] The Chamber is therefore satisfied that Mladen Naletilic played the central command role in the Sovici/Doljani operation, which was part of the larger operation to take Jablanica.[385]

(b) Mostar

(i) The command structure of the HVO in Mostar

133. Prior to 30 June 1993, the units in the city of Mostar were under the command of the South Eastern Herzegovina operative zone (Mostar).[386] The commander of the Mostar Municipal Headquarters was Miljenko Lasic and its deputy commander was Petar Zelenika.[387]

134. For the short time from 12 May to 30 June 1993, the city of Mostar was divided into three sectors. Sector one was under the command of Zdenko Gavran, an officer of the 2nd HVO Brigade; sector two was under the command of Zlatan Mijo Jeli},[388] commander of the first light assault Battalion of the HVO Military Police,[389] and sector three was under the command of Fadil Halji~i}, an operations officer belonging to the 3rd HVO Brigade. The sector commanders were commanding all units deployed in their area of responsibility and were themselves subordinate to their Brigade commanders and the operative zone.[390]

[382] *See supra* paras 82 and 84.
[383] In addition to the already described evidence, exhibits PP 299.1, PP 301.1. *See* also exhibit PP 424.1, which is minutes of a meeting held by the HVO 3rd Mijat Tomic Battalion on 30 May 1993 because of "directives from the zone and Commander Naletilic Tuta".
[384] Mladen Naletilic only consulted Miljenko Lasic for the planning of the next steps in attacking Doljani, exhibit PP 928, Radoš Diary, pp 75, 76.
[385] Defence witness NR testified that the overall commander of the Sovici/Doljani action was the commander of the sector where the action was taking place and that he thinks it was Šiljeg, Defence witness NR, T 13252. In light of the striking evidence placing Mladen Naletilic as the commander being in charge of the Sovici/Doljani operation the Chamber does not find Defence witness NR's testimony credible in this regard as he is a very good friend of Mladen Naletilic. Defence witness Željko Glasnovic testified that the Tomislavgrad Brigade, which he commanded, was engaged in combat activities in the area of Sovici/Doljani towards the end of April 1993 and that Željko Šiljeg was the superior officer who ordered the assignment whereas Mico Lasic was not in that area at the time, Defence witness Željko Glasnovic T 11412, 11462-11463. As Defence witness Željko Glasnovic did not arrive at the HVO headquarters before 22 April 1993 to prepare further attacks to capture Jablanica his testimony is not relevant to the Sovici/Doljani operation.
[386] Defence witness NO, T. 12961.
[387] Exhibit PP 169, list of Mostar Municipal Headquarters Staff, dated 22 August 1992; exhibit PP 242 (confidential); for mid of April 1993, Defence witness NB, T 10184; exhibit PP 376.1 for 9 May 1993; exhibit PP 443 for 9 June 1993; exhibit PP 627 for 8 October 1993. *See* also exhibits PP 299.3 and PP 314, PP 325(confidential).
[388] *See* also exhibit PP 262.1 (confidential), certificate allowing freedom of movement, signed on 21 March 1993 by Mostar Defence Commander Zlatan Mijo Jeli}.
[389] Jeli} was appointed in the position of commander of the 1st light assault Battalion of the HVO military police on 10 February 1993; Defence witness NO referring to exhibit PP 246.1, Defence witness NO, T 12975-12976.
[390] Defence witness NB, T 10223-10228.

135. According to Defence witness NB this structure was not considered effective.[391] At the beginning of July 1993 the Southeast Herzegovina operational zone or operative zone Mostar[392] was therefore reorganised and subdivided into three sectors that was Sector North, Sector Mostar Town Defence and Sector South. The order was issued by the Chief of the HVO Main Staff Milivoj Petkovic in agreement with the Head of the Defence Department Bruno Stojic.[393] The command over Sector North was given amongst others to "M. Naletilic" and "M. Andric". The command over the Sector Mostar Town Defence was given to Miljenko Lasic[394] with amongst others Zlatan Mijo Jeli}.[395] The command over Sector South was given to Nedjeljko Obradovic and Ivan Primorac.[396] The order further determined that all commanders were directly subordinated to the HVO Main Staff until the completion of the assigned tasks.[397]

136. At the beginning of September 1993, the order of July was replaced by a new division of the Southeast operational zone into Sector North commanded by Ivan Primorac,[398] Sector Mostar Town Defence commanded by Zlatan Mijo Jeli} with Colonel Milan [tampar amongst others as Chief of Staff of the sector, and Sector South commanded by Nedjeljko Obradovic.[399]

137. From July 1993 onwards, the HVO units deployed in the Sector Mostar Town Defence were the Vinko Škrobo ATG, the Benko Penavic ATG, the 4th and 9th Battalion of the 3rd HVO Brigade,[400] commanded by Ivan Primorac from October 1992 until 20 July 1993,[401] and the 2nd Battalion of the 2nd HVO Brigade.[402]

138. Vinko Škrobo's area of responsibility was at the Bulevar next to the Health Centre, which was a polyclinic of a length of about 200 metres.[403] Adjacent to the South of Vinko Škrobo's area of responsibility was the one of the Benko Penavic ATG,[404] which was at Dr. Aleksi}'s house on

[391] Defence witness NB, T 10225.
[392] Both terms were used, *see* Defence witness Slobodan Praljak, T 9583.
[393] Witness Marko Prelec referring to exhibit PP 492, witness Marko Prelec T 4646.
[394] *See* also Defence witness NC, T 10660-10662 (confidential).
[395] *See* also Defence witness NO, T 12948.
[396] Defence witness NB confirmed that it was Ivan Primorac, Defence witness NB, T 10259 (confidential).
[397] Exhibit PP 492.
[398] According to Defence witness NB, Ivan Primorac became commander of Sector North on 25 August 1993, Defence witness NB, T 10248 (confidential).
[399] Exhibit PP 590.
[400] Defence witness NB referring to exhibit PP 492, Defence witness NB, T 10265-10266, 10233. Exhibit PP 478. The headquarters of the 3rd HVO Brigade were at the Heliodrom, Defence witness NB, T 10169.
[401] Defence witness NB, T10168, 10252 (confidential). His successor was Božo Pavlovic, Defence witness NB, T 10298 (confidential). *See* also exhibit PP 582.
[402] Defence witness NO, T 12951; exhibit PP 492, order of the Chief of HVO Main Staff of July 1993 subordinating the "Mostar ATG (from the Tuta ATG)" to the Mostar town command; exhibit PP 590, order of the HVO Chief of HVO Main Staff of September 1993 subordinating the Mrmak ATG and the Benko Penavic ATG to the Mostar town command.
[403] Martinovic Final Brief, pp 104-105. *See* also witness U, T 2938; exhibit PP 496, HVO Military Police Report.
[404] Witness AC marking exhibit PP 11.18/11 and PP 14.5/12, T 7916-7917; witness U, T 2938-2939.

the other side of the street.[405] It was followed by the area of responsibility of the 4th HVO Battalion Tihomir Mi{ic.[406] In the [anti}eva Street, which continues towards the north, different units alternated. It was an area belonging to the 2nd Battalion of the 2nd HVO Brigade.[407]

(ii) Mladen Naletilic's command position in the operations in Mostar relevant to the Indictment

139. The Prosecution alleges that Mladen Naletilic took "a leading role in the HVO attack in West Mostar that began on 9 May 1993" and which was part of "the broader HVO campaign designed to force all Muslims, combatant or civilian, out of Mostar".[408] It is submitted that he "was actively involved in the planning and preparation of the operation to expel all Muslims from West Mostar".[409]

140. The Naletilic Defence disputes generally that Mladen Naletilic was commander of the KB or that he held any military position during the relevant time of the Indictment and argues that the Prosecution presented only vague and hearsay evidence regarding Mladen Naletilic's role in Mostar.[410] The Naletilic Defence further submits that Mladen Naletilic "was not involved in any way in the events concerning the Mostar confrontation line ?…? as a soldier, commander or in any other capacity", ''nor was Vinko Martinovic subordinated to him."[411]

141. The Chamber is satisfied that Mladen Naletilic was one of the leading commanders in the attacks on Mostar.

a. The attack on 9 May 1993

142. Many witnesses placed Mladen Naletilic in the attack on Mostar on 9 and 10 May 1993. Witness AC, a Muslim member of the Benko Penavic ATG, gave evidence that Mario Milicevic called "Baja," told him after a meeting with Mladen Naletilic on 8 May 1993 that on 9 May 1993 at around five a.m. a war would break out between Muslims and Croats and that some parts of the city would be "ethnically cleansed" of Muslims.[412] Baja further told him that the Benko Penavic ATG would be a unit under Mladen Naletilic's authority and that they would take part in the ethnic

[405] Witness FF, T 4734-4735. Exhibit PP 496, HVO Military Police Report, dated 4/5 July 1993.
[406] Witness AC marking exhibit PP 11.18/11, witness AC, T 7916-7917, 7976.
[407] Witness U, T 2939; witness FF, T 4691-4692.
[408] Prosecution Final Brief, pp 85, 86.
[409] Prosecution Final Brief, p 103.
[410] Naletilic Final Brief, p 69.
[411] Naletilic Final Brief, p 73.
[412] Witness AC, T 7901-7904. Witness AC's testimony is corroborated by witness S, witness S, T 2525-2528.

cleansing of Muslim civilians in Mostar.[413] Witness AC stated that Mladen Naletilic had control over the most part of the Mostar forces while accepting that he would not know if Mladen Naletilic had control over all the battalions in the city of Mostar.[414]

143. Witness F, a Muslim member of the HVO 4th Battalion, testified that on 9 May 1993 members of the HVO 4th Battalion together with "Tuta's and Juka's men" were taking out Muslims from their flats.[415] Witnesses WW and GG gave evidence that Vinko Martinovic, Ernest Taka~ and Nino Pehar, called "Dolma," were amongst the soldiers who took them out of their apartments and that Vinko Martinovic was in charge of the operation.[416]

144. Several witnesses testified that after the attack of the Vranica building on 9 May 1993 there were negotiations to surrender with the commander of the Kruško ATG, Jusuf Prazina, called Juka. After the surrender they were gathered next to the Vranica building at the School of Economics awaited by Jusuf Prazina and amongst other members of the KB Željko Bošnijak. The BH Muslim men who were suspected of being ABiH soldiers were then taken to the Tobacco Institute.[417] At the Tobacco Institute, Mladen Naletilic and other high HVO and HZ H-B representatives like the Mostar operational zone commander Miljenko Lasic, his deputy Petar Zelenika[418], the Minister of Interior of HZ H-B Branko Kvesic, the Minister of Defence of the RBiH at the time Bo`o Rajic,[419] the commander of the 4th HVO Battalion at the time Mladen Mi{ic,[420] and the commander of the 3rd HVO Brigade, Ivan Primorac, were awaiting the BH Muslim prisoners.[421] Juka Prazina handed the

[413] Witness AC stated that in the time following the attack on 9 May 1993 they threw out the BH Muslims of their apartments and Baja would take their property away at night, Witness AC, T 7907, 7956-7957.

[414] Witness AC, T 7974. In cross-examination witness AC said that he was familiar with Zlatan Mijo Jelic having been the Mostar sector commander, witness AC, T 8004.

[415] Witness F, T 1094.

[416] Witness WW also stated that the three men were very well known in the city and that Vinko Martinovic as former chief of HOS was more or less known by everybody in town, witness WW, T 7016-7018, 7020, 7051. Witness GG, T 4744, 4776. Witness WW claimed as well that on 13 June 1993 [tela, Dolma and Taka~ came again and forced them to leave the building and that again [tela was in charge of it, witness WW, T 7034-7036. That mainly the same people who had evicted on 9 May 1993 came back to evict again on 13 June 1993 is corroborated by witness GG; witness GG, T 4757-4758.

[417] Witness AA, T 3661; witness CC, T 4384; witness E, T 1005, 1008.

[418] *See* also exhibit PP 376.1, order, dated 9 May 1993, signed by Petar Zelenika on behalf of Commander of the Southeast Operative Zone Miljenko Lasi} regarding the deployment of a unit of the 4th HVO Brigade Stjepan Radi} under the command of the commander of the Ludvig Pavlovi} Dragan ^ur~i} to meet the situation in the city of Mostar.

[419] Before he had been assistant for the Information and Propaganda Department of the HVO; T 9734.

[420] Witness F, T 1087.

[421] Witness BB, who knew Mladen Naletilic from before, testified that "Tuta", "Mi{ic" and "Primorac" were standing in front of a group of around 100 soldiers, witness BB, T 4245-4248. Witness AA, who was a former employee of the Bosnian-Croat Security and Information Service (SIS), saw Branko Kvesic, Bo`o Rajic and Petar Zelenika and Mladen Naletilic, whom he knew from before when he used to come to the SIS to see Branko Kvesic, witness AA, T 3663-3668. Witness CC saw Mladen Naletilic, "Mi{ic" and "Lasic", witness CC, T 4387-4389. Witness ZZ testified that the prisoners were lined in front of the ministry surrounded by HVO soldiers and part of Tuta's guards when Tuta came in, witness ZZ, T 7796. Also Defence witness NP testified that Jusuf Prazina led the prisoners to the Ministry of Defence building, in front of which he also saw Mladen Naletilic, Defence witness NP, T13070-13074.

BH Muslim prisoners over to Mladen Naletilic.[422] Witness E was released by Mladen Naletilic who furnished witness E with a piece of paper granting him free passage.[423] Two other former BH Muslim prisoners testified before the Chamber, that Mladen Naletilic and Mladen Mi{ic wanted to execute them, but that Jusuf (Juka) Prazina and Miljenko Lasic opposed this since they were needed for an exchange. Eventually, Mladen Naletilic ordered that they be brought to [iroki Brijeg.[424]

145. Witnesses Ralf Mrachacz and Falk Simang testified that the KB[425] took part in the operation in Mostar on 9 May 1993.[426] Both witnesses were assigned to the artillery (Bofors) above Mostar and Mladen Naletilic announced the targets to fire at through his Motorola.[427] According to witness Ralf Mrachacz Mladen Naletilic had command authority over the KB during all operations in Mostar.[428]

146. The Chamber rejects Defence witness NP's testimony that Mladen Naletilic did not command any units involved in the attack on Mostar on 9 and 10 May 1993[429] as this evidence is inconsistent with the testimonies of the numerous other witnesses.

147. The Chamber is satisfied that several units of the KB took part in the military operation in Mostar on 9 and 10 May 1993. The Chamber is further satisfied that Mladen Naletilic ordered

[422] Witness DD, T 4468; witness E, T 1009.

[423] Witness E, who identified Mladen Naletilic in the courtroom, T 1013-1014, referring to exhibit PP 54, "release the gentleman, free passage", signed "Tuta", (confidential).

[424] Witness CC, T 4387-4390; witness DD, who could not remember who apart from Mladen Naletilic was involved in the argument, T 4468-4469.

[425] The Chamber concludes from witness Ralf Mrachacz's testimony that this encompasses at least the KB Široki Brijeg and the Baja Kraljevic ATG. *See* witness Ralf Mrachacz, T 2685. *See* also a military police report, according to which the Baja Kraljevic ATG took part in the operation to bring in and detain Muslims at the Heliodrom on 10 May 1993, exhibit PP 413, p 3.

[426] Witness Ralf Mrachacz, T 2724. Falk Simang described three operations in Mostar, but was not able to recall the exact dates. Even if he testified that the first two operations were at the beginning of the war prior to the death of Cikota the Chamber finds that the first operation he described is the attack on 9 May 1993. Witness Falk Simang repeatedly said that he could not remember dates and that he might confuse them. He remembered that in the first operation he was assigned to the artillery (Bofors) at 5 a.m., witness Falk Simang, T 3814, 3821-3822. As the attack on 9 May 1993 was also at the beginning of the war between BH Croats and BH Muslims and started according to all witnesses at around 5 a.m., the Chamber is of the view that witness Falk Simang was referring to the 9 May 1993 attack when he spoke about the first operation.

[427] Witness Falk Simang, T 3814-3815, witness Ralf Mrachacz, T 2724. Witness Ralf Mrachacz also stated that whenever the artillery (Bofors) were used the orders came mostly from Tuta, witness Ralf Mrachacz, T 2729-2730. Defence witness NK testified that the KB did not have a "Bofors", and that he was deployed with witnesses Falk Simang and Ralf Mrachacz above Mostar from 11 a.m. on 9 May 1993 until the afternoon of 10 May 1993, without firing at Mostar, Defence witness NK, T 12624-12625. The Chamber does not find Defence witness NK's testimony reliable as it was biased and the Chamber finds the testomonies of witnesses Falk Simang and Ralf Mrachacz reliable and credible.

[428] Witness Ralf Mrachacz, T 2690. Witness Falk Simang also testified about a second operation in Mostar during which no Bofors were used. He stated that Mladen Naletilic assigned him to a group of BH Croats, with whom he marched into Mostar to cleanse one side of the city. He further testified that "all units who were under General Tuta's order, plus from the HV a group", took part in that operation and that "the supreme commander for us was General Tuta", witness Falk Simang, T 3816-3819, 3829. The involvement of the KB in the operations is also confirmed by exhibit PP 809, grant by the Široki Brijeg Defence Office of disability benefits to a KB member wounded at the Bulevar on 16 May 1993.

[429] Witness NP, T 13075.

members of the KB to fire artillery at Mostar and ordered in the presence of high representatives of the military and civilian HVO that the captured BH Muslim soldiers were to be brought to Široki Brijeg. The Chamber therefore finds that Mladen Naletilic was one of the commanders in charge of the operation.

b. The attack on 17 September 1993

148. There is some documentary evidence to connect Mladen Naletilic with the attempt to advance the HVO position on 17 September 1993. A SIS report, dated 22 September 1993,[430] describes that on 16 September 1993 Mladen Naletilic called the commanders of three ATG units, Franjo Coric, commander of the 4th Tihomir Mišic Battalion at the time, and Zlatan Mijo Jelic, commander of the Sector Mostar Town Defence, to Široki Brijeg. The commander of the Southeast Herzegovina operative zone Miljenko Lasic together with Zlatan Mijo Jelic went to Široki Brijeg the same evening. On the morning of 17 September 1993, a meeting was held by all the commanders of the units planned for the operation in the sector. The command in the area from the Grammar school to Hum was assigned to Mario Milicevic after it had first been offered to Vinko Martinovic, who did not accept. According to the report, the operation relied on the planning of the combat groups (ATG) that were also the Vinko Škrobo ATG and the Benko Penavic ATG. After delays, the attack started at exactly noon on 17 September 1993.[431] The Chief of the HVO Main Staff, Žarko Tole, did not know of or had approved the start of the combat operation.[432] The report complains of the non-existing command of the Sector Mostar Town Defence,[433] as that Sector had attacked without the approval from or the knowledge of the HVO Main Staff.

149. According to witnesses Falk Simang and Ralf Mrachacz, members of the KB headed by Mladen Naletilic took part in the attack on 17 September 1993. The witnesses were again assigned to the artillery (Bofors) and got orders from Mladen Naletilic.[434] Before taking up position with the Bofors, Mladen Naletilic furnished them with a map and instructions as to what to target.[435] The participation of the KB in this attack is confirmed by a document, signed by Ivan Andabak over the name and title of Mladen Naletilic as "Commander of the Convicts' Battalion", which indicates that

[430] Exhibit PP 608.
[431] Exhibits PP 608, PP 603.
[432] Exhibit PP 604 (statement of Žarko Tole, dated 18 September 1993, that he was not informed of the attack and did not authorise it).
[433] Exhibit PP 602, order of Žarko Tole for an offensive-defensive action on 17 September 1993 addressed to the "Tuta ATG forces" and the "Mostar Defence".
[434] Witness Falk Simang testified that he participated in a third operation in Mostar at a later stage, which started at noon, witness Falk Simang, T 3835-3836. Witness Ralf Mrachacz stated that Tuta ordered at noon on a day sometime in summer 1993 to shell mosques on the other side of Mostar, witness Ralf Mrachacz, T 2732-2733. According to exhibits PP 608, PP 603 the attack on 17 September 1993 started at noon.

he requested 20 prisoners from the Military Police in Ljubuški, urgently needed for the "Convicts' Battalion" the day before the attack.[436]

150. The Chamber finds that Mladen Naletilic at least together with the Southeast Herzegovina operational zone Commander Miljenko Lasic and the Commander of the Sector Mostar Town Defence Zlatan Mijo Jelic[437] played an important role in the planning and operation of the attack on 17 September 1993.

c. The superior-subordinate relationship

151. As the law requires actual power to control for superior responsibility it has to be determined whether Mladen Naletilic, while being one of the commanders in charge of an operation, had effective control over the ATG units involved in the operation.

152. The Prosecution argues that while the Vinko Škrobo ATG was deployed at the confrontation line in Mostar, it remained part of the KB and as such was under the responsibility of Mladen Naletilic.[438]

153. The Naletili} Defence argues that the Vinko Škrobo ATG, the Benko Penavic ATG and all other units deployed at the Mostar confrontation line were subordinated to the command of the Sector Mostar Town Defence and that Mladen Naletilic had no authority over them.[439]

154. The Chamber finds that the Vinko Škrobo ATG and the Benko Penavic ATG as all units deployed in the city of Mostar were under the command of the Southeast Herzegovina operative zone, which was the Sector Mostar Town Defence from July 1993.[440] Defence witness NO testified that the commander of the Sector Mostar Town Defence set the tasks for these local sub-units and had daily briefings with their commanders.[441] According to Defence witness NO, the commander of the Sector Mostar Town Defence while being the direct superior of Vinko Martinovic, was under the command of the Chief of the HVO Main Staff and the Southeast Herzegovina operative zone.[442]

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[435] Witness Falk Simang also stated that Mladen Naletilic later gave the permission to withdraw, witness Falk Simang, T 3835-3837.
[436] Exhibit PP 601.
[437] Defence witness NO confirmed that Zlatan Mijo Jelic was in command of the operation on 17 September 1993, Defence witness NO, T 12973.
[438] Prosecution Final Brief, p 6.
[439] Naletilic Final Brief, pp 55-56, 73, referring to Defence witness NO's testimony.
[440] Defence witness NB, T 10233; Defence witness NO, T 12951. Exhibits PP 492, PP 590.
[441] Defence witness NO, T 12954, 13052.
[442] Witness NO, T 12956.

155. However, for the attack on 17 September 1993 it has been established that Mladen Naletilic, Miljenko Lasic and Zlatan Mijo Jelic acted without the approval of the HVO Main Staff, therefore ignoring the HVO command structure set out by the HVO Main Staff. The SIS officer who wrote the report on the events of 17 September 1993 claimed that "the command of the Town Defence Sector does not exist, in other words, it does not function".[443] The situation was also commented on by the Chief of the SIS Centre as reflecting "the alarming situation in commanding and co-ordinating our units at all levels".[444] In addition, as Mladen Naletilic was commanding a professional unit called for special tasks, the command in operations for which the HVO Main Staff had called him could have been assigned to him notwithstanding the regular command structure in the Southeast Herzegovina operative zone. For that reason, the Chamber finds that the command structure set out by the HVO Main Staff cannot be considered as the only reliable source regarding the actual command structure. The Chamber has therefore to assess the entire factual evidence to find the actual command.

156. Mladen Naletilic was one of the commanders in charge of the attacks on 9 May and 17 September 1993. The evidence shows that Mladen Naletilic commanded the KB Široki Brijeg and the Kruško ATG on 9 May 1993. There is a lack of evidence connecting Mladen Naletilic to Vinko Martinovic on 9 May 1993.[445] The Chamber has received satisfying evidence of Mladen Naletilic's commanding role with Sector Mostar Town Defence Commander Zlatan Mijo Jelic in the 17 September 1993 attack. Mladen Naletilic planned the operation and commanded the artillery manned by members of the KB Široki Brijeg. However, there is insufficient evidence that Mladen Naletilic commanded the Vinko Škrobo ATG, the Benko Penavic ATG or Zlatan Mijo Jelic in regard to this operation.

157. The questionis therefore whether Mladen Naletilic had effective control over the ATG uniton the sole basis that he was the overall commander of the KB.

158. The Chamber finds that despite the command structure set out by the HVO Main Staff for the Sector Mostar Town Defence and the fact that it has been established that Mladen Naletilic was only one of the commanders in charge of the attacks, who was not necessarily commanding the ATG units during the attacks, the ATG units were at all time sub-units of the KB.[446] Documentary

[443] Exhibit PP 608, p 3.
[444] Exhibit PP 608, p 4, opinion attached to the report.
[445] The Chamber does not consider the Vinko Škrobo ATG on 9 May 1993 as it has already found that it was formally established only in mid-May 1993. *See supra* para 102.
[446] *See* the testimony of Defence witness NB who stated regarding the 4th and 9th Battalion of the 3rd HVO Brigade that they had to provide shifts for soldiers at the frontline in Mostar and that while performing their tasks at the frontline they were subordinated to the commander of the Sector Mostar Town Defence, but were still members of their Battalions, Defence witness NB, T 10266-10267.

evidence supports that Mladen Naletilic as overall commander of the KB was continuously in command of the ATG units.[447] The Vinko Škrobo ATG and the Benko Penavic ATG are described as units that enjoyed a "special status" amongst the units deployed in Mostar.

> Since these two units are listed as parts of the Convicts Battalion, they have special status for unknown reasons. This special status is reflected in the fact that neither the Military Police nor any law enforcement organ is taking any measures against the members of these units who commit crimes.[448]

As the special status of these two ATG units derived from being sub-units of the KB under the command of Mladen Naletilic, it indicates that Mladen Naletilic had the power to ensure immunity from investigation by police authorities. Witness AC testified about an incident where the commander of the Benko Penavic ATG Mario Milicevic called "Baja" had cleansed a village on his own initiative. Mladen Naletilic warned him and told him that regarding any decision including "ethnic cleansing" he had to be consulted first.[449] This evidence demonstrates Mladen Naletilic's effective control over the Benko Penavic ATG, a unit, which was also under the command of the Sector Mostar Town Defence.

159. The Chamber is therefore satisfied that Mladen Naletilic had effective control over the ATG units in Mostar during the operations relevant to the Indictment.

(iii) Vinko Martinovic's command position in the operations in Mostar relevant to the Indictment

160. As the Chamber has already found that the Vinko Škrobo ATG was not formally established before mid-May 1993,[450] Vinko Martinovic cannot be held responsible as commander for crimes committed on 9 May 1993.

161. The Martinovic Defence does not dispute generally that the Vinko Škrobo ATG held positions next to the Health Centre.[451] It alleges that Vinko Martinovic did not have any command

[447] Exhibit PP 627 describes an armed clash between members of the Vinko Škrobo ATG and the Benko Penavic ATG shows that both ATGs were in general under the command of Mladen Naletilic and not the commander of the Southeast Herzegovina Operational Zone Miljenko Lasic.

[448] Exhibit PP 556, Military Crime Police Department - Centre Mostar Report, dated 3 August 1993. *See* also exhibit PP 699, Military Crime Police Department - Centre Mostar Report, dated 28 November 1993, which states that "the members of the Convict's Brigade have been placed in an especially protected position since VP officers have been forbidden to act against them ?…?until the status of the members of the Convicts' Battalion is precisely defined on a political level, officers of this Department are unable to proceed against them."

[449] Witness AC, T 7921.

[450] *See supra* para 102. The Martinovic Defence had claimed that it did not exist on 9 May 1993, see Martinovic Final Brief, p 107.

[451] Martinovic Final Brief, p 105.

responsibility for what happened at the confrontation line on 17 September 1993.[452] The Martinovic Defence refers to the already cited SIS report,[453] which states that the

> command in the area from the Grammar School to Hum was offered to Vinko Martinovic, known as Štela, which he did not accept … After that, Mario Milicevic, known as Baja, was appointed as the commander …[454]

162. This statement only shows that Vinko Martinovic did not accept additional command authority over the other commanders, and their units, of all the other areas of responsibility from the Grammar School to Hum during the operation on 17 September 1993. The Chamber therefore finds that the statement does affect his command authority over the Vinko Škrobo ATG and his area of responsibility next to the Health Centre. There is also ample witness testimony that Vinko Martinovic commanded the Vinko Škrobo ATG on 17 September 1993.[455]

163. As commander of the Vinko Škrobo ATG, Vinko Martinovic can be held responsible for crimes committed by members of his unit particularly in its area of responsibility at the front line from mid-May 1993, as long as he knew or had reason to know of these crimes and took no measures to prevent their commission or to punish the unlawful behaviour of his subordinates.

(c) Ra{tani

164. The Prosecution alleges that on 22 and 23 September 1993 "the Convicts Battalion, under the command of the accused Naletilic, attacked ABiH forces located in Raštani and captured the village".[456]

165. The Naletilic Defence argues that Mladen Naletilic did not have any role in the conflict in Raštani on 22 and 23 September 1993 and that the KB was not involved in the attack. The Naletilic Defence furthermore claims that Milan [tampar was the commander in the conflict in Raštani.[457]

166. The Chamber finds that the KB commanded by Mladen Naletilic took part in the operation in Raštani on 22 and 23 September 1993.

167. Documentary evidence shows that the KB was involved in an operation in Raštani in mid-August 1993. Pursuant to an order of the Southeast Herzegovina operational zone, the Commander of the Sector North Miro Andric ordered on 24 August 1993 that the "Tuta professional unit" be

[452] Martinovic Final Brief, p 79.
[453] Exhibit PP 608.
[454] Exhibit PP 608, p 2.
[455] *See infra* paras 276-290.
[456] Prosecution Final Brief, p 165.
[457] Naletilic Final Brief, pp 79-81.

relieved from the Raštani area.[458] On 25 August 1993 the Commander of the HVO Main Staff Slobodan Praljak assigned the command of the Raštani frontline to Milan Štampar and ordered that all units in Raštani be subordinated to him.[459] The Defence now argues that Milan Štampar was the commander of the operation on 22 and 23 September 1993.[460] However, the Chamber finds that this situation does not preclude the HVO Main Staff calling the KB as a professional special purposes unit for intervention tasks in September to retake Raštani.[461] As a professional unit, the KB had to report to Milan Štampar as the commander of the particular area of the frontline, who would then task the KB. The commander of the professional unit was than responsible for determining how the task should be implemented.[462] If he decided to organise an operation, he was in charge of its execution. Thus, while the commander of the area was responsible for the execution of the task given by the HVO Main Staff to the area, Mladen Naletilic as the commander of the KB professional unit was responsible for the execution of the specific task given to him.[463]

168. Several witnesses testified that the KB participated in the Raštani operation on 22 and 23 September 1993. Witness VV, an ABiH soldier, gave evidence that the HVO soldiers who captured him on 23 September 1993 in Raštani, wore insignia that indicated that they belonged to the KB.[464] He further stated that he recognised a member of the KB called "Kolobara", whom he identified as Marinko Kolobara.[465] Witness VV testified that "Kolobara" was called through the Motorola and then told the soldiers that the prisoners had to be taken alive to Široki Brijeg because "the old man" had ordered so.[466] Witness VV did not at the time know who "the old man" was, but learned later that it was Mladen Naletilic when he was a prisoner in his headquarters in Široki Brijeg.[467] Witness VV's testimony is corroborated by witness SS, a former ABiH soldier who was a prisoner at the Heliodrom and sent to Raštani on 22 September 1993. Witness SS gave evidence

[458] Exhibit PP 573. This order followed an order of the Chief of the HVO Main Staff Žarko Tole to the Southeast Herzegovina Operational Zone to replace the shifts of the KB in the village of Raštani, because they "are tired as a result of combat operations". It was also ordered that the Ludvig Pavlovic unit, which was another professional unit, should "stay until further orders in the Raštani village area as a reserve for the forces that are occupying the frontline", exhibit PP 575.

[459] Exhibit DD1/390.

[460] Defence witness NS testified that Milan [tampar was the commander in Raštani when they liberated Raštani in September 1993; Defence witness NS, T 13388-13389. *See* also Defence witness NM, T 12770.

[461] This finding is even supported by the testimonies of Defence witnesses NM and NL, who testified that at least a part of the KB was deployed in Djubrani, which is only about two kilometres away from Raštani and part of the Raštani frontline, Defence witness NO, T 12958, from 30 June until the end of 1993; T 12752-12753, 12679-12681.

[462] *See supra* para 84.

[463] Defence witness NP, T 13123-13124 (confidential), 13156-13157.

[464] Witness VV, T 6916.

[465] According to witness VV's testimony, Marinko Kolobara was like the "other Kolobara", called "Droba", a member of the KB, witness VV, T 6916-6920, 6972-6973.

[466] Witness VV, T 6916.

[467] Witness VV, T 6920-6921. The Chamber found witness VV's testimony also credible in that respect despite the fact that the Defence challenged his testimony, T 6969-6970.

that he saw one of the groups of the KB in the Raštani village commanded by "Kolobara".[468] Witness SS also stated that a soldier had said that the "old man" had called on the Motorola and ordered to bring the prisoners alive.[469] Witness L, another captured ABiH soldier, testified that the soldiers, who captured him on 23 September 1993 in Raštani, were members of an ATG from Mostar and an ATG from Široki Brijeg.[470] He concluded that they were from the Mostar ATG because "Miro Kolobara" was present and he later learned that he was from the Mostar ATG, when he saw him again in the Ljubu{ki prison.[471] He knew that some of the HVO soldiers were also from the Široki Brijeg ATG, because he and witness VV were brought to their headquarters, which was the Tobacco Station in Široki Brijeg.[472] The Chamber is satisfied that the person "Kolobara" was member of the KB Miro(slav) Kolobara.[473] All three witnesses also testified that a soldier called "Splico", took part in the operation in Raštani.[474] The Chamber finds that the person "Spli}o" was Vedran Bijuk, who had the nickname "Spli}o" and was also member of the KB.[475]

169. The documents corroborate the witness testimonies. According to a Central Military Prison Report, dated 21 September 1993 and signed by the warden of the prison Stanko Bo'ic, 24 detainees were released on 20 and 21 September 1993 on foot of an order from Mladen Naletilic, who needed them because of a lack of manpower at the frontline.[476] A letter of the Head of the Military Police Crime Department – Mostar Centre addressed on 29 September 1993 to the Head of the Defence Department Bruno Stojic, complains that amongst the chosen detainees, who were all of Croatian nationality, four were murderers.[477] It further notes that the detainees were handed over the week before, because of Mladen Naletilic's order and that "they all, allegedly, went off to take part in the action to liberate Raštani". According to the Central Military Prison Report, dated

[468] Witness SS, who did not remember Kolobara's first name, which could have been "Mario" or "Marin", witness SS, T 6599-6600.

[469] Witness SS, T 6606. Witness SS further testified that when he was ordered to go into the Raštani village on 22 September 1993 he witnessed a soldier, who had fled the fighting in the village, and was asking someone to notify "Tuta, as he said" that he had come back because he was sick, witness SS, T 6598.

[470] Witness L, T 1624.

[471] Witness L, T 1624. That member of the Convicts Battalion Miro(slav) Kolobara was in the Ljubu{ki prison is corroborated by exhibit PP 677.

[472] Witness L, T 1624-1626.

[473] The Chamber based its finding on the witness statements taken together with exhibit PP 648, according to which Miro Kolobara's unit was under the command of Mladen Naletilic. *See* also exhibit PP 704, KB salary list for November 1993 on which Miroslav Kolobara appears as captain of combat group 6, p 9.

[474] Witness L, T 1625; witness VV, T 6916; witness SS testified that he knew Spli}o from the Heliodrom and that he later saw Spli}o in the KB, witness SS, T 6541, 6602.

[475] Exhibits PP 538.1, report on a statement of "Vedran Bijuk aka Splico" dated 26 July 1993, in which Spli}o stated that he was under the command of Juka Prazina; exhibit PP 704, KB salary list for November 1993, p 9. *See* also exhibits PP 607.2, PP 614, which corroborate that Vedran Bijuk took part in the action.

[476] Exhibit PP 607.2. Mladen Naletilic addressed Josip Praljak, who is the deputy director of the central military remand prison/Mostar, exhibit PP 682. The release of about 20 prisoners from the Heliodrom on 21 September 1993 in order to join the KB is also corroborated by a SIS Report dated 4 December 1993, which judges the release as illegal, exhibit PP 707. A report on the situation at the Heliodrom, dated 3 February 1994, also states that "on 22 September 1993, just before the Muslim attack on Raštani, Mr. Ivan Andabak, who was accompanied by 15 soldiers, took 20 prisoners without a written order", exhibit PP 745.

21 September 1993, one of the released prisoners was Robert Kolobaric.[478] A certificate, signed by Mladen Naletilic on 8 March 1994, not only confirms that Robert Kolobaric was a member of the KB from 20 September 1993[479] to first January 1994 but also that he was "wounded in the right arm by an enemy shell in Raštani action on 22 September 1993".[480]

170. A SIS record of a statement given by Ante Bradic confirms that the released prisoners were taken to participate with the KB commanded by Mladen Naletilic in the operation in Raštani on 22 and 23 September 1993.[481] Ante Bradic claimed that he was a detainee in the Heliodrom until 21 September 1993 when he was taken with another 20 prisoners to Mladen Naletilic, who told them that "anyone who joins the Convicts Battalion will have all disciplinary and criminal penalties against him cancelled". The next day, on 22 September 1993, they

> were all issued Aps/automatic rifles/, uniforms and ammunition, and that very same day we participated in an operation to liberate the Raštani suburb ?…? After that operation we participated in another one at Vrdi and Višnjica. The commander of our unit was Miro Kolobara.[482] Every morning the commander went to Široki Brijeg to see Mladen Naletilic aka Tuta, and then passed on the orders to us … We were under the direct command of the Convicts' Battalion and Mladen Naletilic aka Tuta.[483]

171. Ante Bradic's statement is consistent with the other documents. The fact that Ante Bradic is not listed as one of the released detainees on the Central Military Prison Report of 21 September 1993 does not affect the reliability of his statement. Another Central Military Prison Report of 5 January 1994[484] shows that not all released detainees were listed in the Central Military Prison Report of 21 September 1993, and for that reason the latter report can not be seen as complete.

172. On 23 September 1993, the Minister of Defence Bruno Stojic praised the KB and its Commander Tuta

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[477] Exhibit PP 614.
[478] Exhibit PP 607.2, p 2. This is corroborated by exhibit PP 739, Military Police Administration Report, dated 5 January 1994.
[479] The released prisoners "were given the legitimate status of soldiers in HVO units" is corroborated by exhibit PP 614. Robert Kolobaric and the released prisoners Rade Maricic, Drago Klemo, Vedran Bijuk and Vlado Anic listed on exhibit PP 607.2 are also listed as KB members on exhibit PP 704, KB salary list for November 1993, p 9.
[480] Exhibit PP 753. Robert Kolobaric is also listed as member of a KB combat group on its salary list for November 1993, exhibit PP 704, p 9.
[481] Exhibit PP 648.
[482] Ante Bradic's statement that Miro Kolobara's unit was under the command of Mladen Naletilic and that it was billeted in 163 Rudarska street in Rudnik, exhibit PP 648, p 3 is also corroborated by exhibit PP 707, SIS report, dated 4 December 1993, saying that soldiers from the KB staying in Rudarska street 163 and 163 a, are under the command of Miro Kolobara. Exhibit PP 704, KB salary list for November 1993 on which Miroslav Kolobara appears as captain of combat group 6), p 9.
[483] Exhibit PP 648.
[484] Exhibit PP 739. The report states that on 20 September 1993 five listed detainees, of whom one was not mentioned in the report of 21 September 1993, were released on Mladen Naletilic's orders.

> for extraordinary valour and combat skill displayed during combat in Raštani and in the fighting for the Mostar hydroelectric power plant.[485]

As the KB took part in an operation in Raštani on 24 August 1993,[486] this statement on its own is not sufficient to prove the participation of the KB in the operation in Raštani on 22 and 23 September 1993. However, in connection with the other evidence the Chamber is satisfied that the citation relates to the 22 and 23 September 1993, because of its temporal link to the operation. This inference is further supported by a report of the Southeast Herzegovina operational zone Commander Miljenko Lasic to the HVO Main Staff, dated 23 September 1993, mentioning the great success of the troops in Raštani on 22 and 23 September 1993. In the report Miljenko Lasic praises "the superhuman courage of our soldiers and artillery" and states that "this has clearly been our greatest victory over the MOS ever since the war began two years ago".[487]

173. Defence witness NB's testimony does not contradict or diminish the evidence called by the Prosecution of the presence of the KB and Mladen Naletilic at Raštani. Defence witness NB testified that he did not know what exactly happened in Raštani and that only "members" of the KB were with him at a place called Goranci, Jedrinje between the 20 and 24 September 1993.[488] According to NB's testimony it is therefore possible that another combat group of the KB commanded by Mladen Naletilic was in Raštani at the time.[489]

174. The witness testimonies together with the documentary evidence have satisfied the Chamber that the KB commanded by Mladen Naletilic took part in the Raštani operation on 22 and 23 September 1993.

175. It has not been established that Mladen Naletilic while commanding his soldiers was actually present in Raštani during the operation. However, the Chamber is satisfied that Mladen

[485] Exhibit PP 611.
[486] Exhibit PP 573.1, Military Police Administration Report, dated 24 August 1993. *See* also exhibit PP 574, p 3, report of 24 August 1993 stating that "a group of 24 soldiers was involved in the operation of liberating Raštane with Tuta's unit".
[487] Exhibit PP 610.
[488] Defence witness NB, T10239-10240, 10317-10318. Also Defence witness NM who was called with the Baja Kraljevic unit to Goranci, Jedrinje on 23 September 1993, testified that "a unit of the Convicts' Battalion had been sent to that area"; Defence witness NM, T 12768. *See* also Defence witness NB's testimony referring to another operation that like on 19 September 1993 he requested the special purpose unit and they sent him a part of the KB, Defence witness NB, T 10302 (confidential).
[489] Defence witnesses Slobodan Praljak and NS testified that the KB did not take part in the action, Defence witnesses Slobodan Praljak, T 9426-9427; Defence witness NS, T 13388-13389. The Chamber does not find this reliable as these statements are inconsistent with the reliable testimonies of witnesses VV, SS and L and the documentary evidence.

Naletilic was in a village above Raštani on 23 September 1993[490] and effected command by radio communication on his Motorola.[491]

D. Requirements under Article 2 of the Statute

176. Article 2 of the Statute deals with grave breaches of the Geneva Conventions of 1949.[492] The applicability of Article 2 of the Statute is subject to four prerequisites: an armed conflict must exist;[493] there must be a nexus between this conflict and the crimes alleged;[494] the armed conflict must be international in scope;[495]and the persons or property subject of grave breaches must be defined as "protected" in the Geneva Conventions.[496]

1. Armed Conflict and nexus to the alleged crimes

177. According to the jurisprudence of the Tribunal, an armed conflict exists:

> whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State ?…? whether or not actual combat takes place there.[497]

Once it is established that an armed conflict occurred in a territory, the norms of international humanitarian law apply.[498] It is not necessary to further establish that actual combat activities occurred in a particular part of the territory.[499] The existence of an armed conflict nexus is established if the alleged crimes "were closely related to the hostilities".[500]

178. The Naletili} Defence does not dispute the armed conflict between the HVO and the ABiH.[501] It disputes the nature of the conflict. The Martinovi} Defence does not challenge the

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[490] Witness SS identified Mladen Naletilic in the courtroom, only testified that he saw Mladen Naletilic, whom he knew from the media, in a village above Raštani on 23 September 1993, witness SS, T 6573-6574, 6590-6591.

[491] *See* witnesses VV and SS's testimonies.

[492] Article 2 of the Statute reads as follows: "The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (a) wilful killing; (b) torture or inhumane treatment, including biological experiments; (c) wilfully causing great suffering or serious injury to body or health; (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power; (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial; (g) unlawful deportation or transfer or unlawful confinement of a civilian; (h) taking civilians as hostages".

[493] *Tadi}* Jurisdiction Decision, para 84.

[494] *^elebi}i* Trial Judgement, paras 182-185, 193-195.

[495] *Tadic* Jurisdiction Decision, para 84.

[496] *Tadi}* Jurisdiction Decision, para 80.

[497] *Tadi}* Jurisdiction Decision, para 70.

[498] *Tadic* Jurisdiction Decision, para 70.

[499] *Tadic* Jurisdiction Decision, para 70.

[500] *Tadic* Jurisdiction Decision, para 70.

[501] Naletili} Final Brief, p 116, "?o?f course, there is no dispute that *in the time and place covered by the Indictment* in Herzegovinian municipalities, and in Central Bosnia occurred an armed conflict between BIH Croats and BIH Muslims, but there is not any reason at all to estimate the character of this type of conflict as international" (emphasis added).

existence of a conflict. The Chamber is not clear on which date the Martinovi} Defence agrees that the conflict started.[502]

179. The Chamber is satisfied that an armed conflict existed during the time relevant to the Indictment, *i.e.* at least between 17 April 1993 and the end of February 1994.[503]

180. The Chamber is satisfied that the acts with which Mladen Naletili} and Vinko Martinovi} are charged were committed in the course, and as a consequence, of the armed conflict between the HVO and the ABiH. The victims of this conflict were living within the relevant territory in the relevant period. Further, both accused were members of the armed forces taking part in the hostilities. The Chamber is thus satisfied that the nexus requirement has been met in the present case.

2. Character of the conflict

181. In the Pre-Trial Brief, the Prosecution sets out to prove the existence of an international armed conflict in two ways: (1) through the active participation of the Croatian Army HV in Bosnia and Herzegovina, engaged with the HVO against the ABiH,[504] and (2) through the overall control exercised by the Republic of Croatia over the HVO throughout the conflict.[505]

182. In this respect, the Appeals Chamber has held that an internal conflict may be deemed international if "another State intervenes in that conflict through its troops or ?…? some of the participants in the internal armed conflict act on behalf of that other State."[506] Concerning the first of these two legal tests, namely the direct participation of foreign troops on the territory of a State, both Defences acknowledge that an armed conflict is international if the troops of another State intervene in an internal armed conflict.[507]

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[502] Martinovic Final Brief, p 15, "?t?he conflict nevertheless broke out on 23 October ?1992?"; on p 17, "?t?he beginning of the conflict between BH Army and HVO took place on 9.5.1993"; on p 18, "in the early morning of 30.6.1993 ?…?the real conflict broke out between Muslims and Croats in the municipality of Mostar".

[503] The evidence before the Chamber shows that fighting ensued in the Sovi}i-Doljani area on the morning of 17 April 1993 as part of a larger offensive to take Jablanica. In those same days, incidents between military formations of the HVO and of the ABiH were taking place in Mostar. In the early hours of 9 May 1993, large-scale hostilities broke out in Mostar. Single attacks went on during the summer and autumn of 1993 and ended only in late February 1994 as a consequence of the Washington Agreement.

[504] Concerning this first test, the Prosecution relies on the definition given in the Commentary of Article 2 of the Geneva Convention IV, according to which an international armed conflict exists whenever "any difference arising between two States lead?s?to the intervention of members of the armed forces". Prosecution Pre-trial Brief, p 37.

[505] Concerning this second test, the Prosecution relies on the jurisprudence of the Appeals Chamber defining what constitutes overall control and when armed forces may be regarded as acting on behalf of a foreign power, thereby rendering an apparently internal conflict international. Prosecution Pre-trial Brief, p 38, relying on the *Tadi}* Appeal Judgement, para 137.

[506] *Tadic* Appeal Judgement, para 84.

[507] Naletili} Final Brief, pp 111, 116-117; Martinovi} Final Brief, p 21.

183. Concerning the second test, namely the exercise of an overall control by the Republic of Croatia over the HVO, the Naletili} Defence refers to the findings of the International Court of Justice in the *Nicaragua* case,[508] thereby raising arguments which have previously been refuted by the Appeals Chamber. The test defined in the *Nicaragua* case to determine whether, in the absence of having a formal status as State officials, individuals were acting *de facto* on behalf of a State was discussed at length by the Appeals Chamber of this Tribunal in the *Tadi}* case.[509] Having found that the *Nicaragua* test of effective control would be consonant neither with the logic of the law of State responsibility nor with judicial and State practice, the Appeals Chamber departed from it. Instead, it found that depending on the nature of the entity involved, one of three tests could be used to demonstrate that participants in an internal armed conflict acted on behalf of another State. First, there is the specific instructions (or subsequent public approval) test for individuals or militarily unorganised groups.[510] To prove that a State had control over organised and hierarchically structured groups, namely armed forces or militias or paramilitary units, there is a second test. It must be shown that the State organised, co-ordinated or planned the military actions of the military group as well as financed, trained and equipped or provided operational support to it.[511] This is known as the overall control test.[512] The third test to demonstrate that participants in an internal conflict acted on behalf of another State requires proof that private individuals acted "within the framework of, or in connection with, armed forces, or in collusion with State authorities."[513]

184. In the present case, as both accused were members of organised and hierarchically structured groups, namely military units,[514] the relevant test is the overall control test, which was defined as follows by the Appeals Chamber:

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[508] *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)* (Merits), Judgement, ICJ Reports (1986) ("*Nicaragua* case"). The Naletili} Defence argues that this case "considered the level of control required with ?sic? imposing civil liability, not criminal liability, as is the case here. However, there is no sound basis for arguing that less control is required in order to impose criminal liability. If anything, this Tribunal should require a more stringent showing in order to find liability in a criminal case. At a minimum, the standards should be the same, as ?sic? comparison of *Nicaragua v. United States*". Naletili} Final Brief, p 119. The Defence previously referred to the findings in the *Aleksovski* Appeal Judgement, whereby the Appeals Chamber confirmed its previous jurisprudence concerning the degree of control required to consider that armed forces are acting on behalf of a foreign State, namely the overall control test. *See* Naletili} Final Brief, p 115. As it is not clear which of these tests the Defence actually relies on, the Chamber will still examine the arguments put forward in favour of the test issued from the *Nicaragua* case.

[509] *Tadi}* Appeal Judgement, paras 98-145.

[510] *Tadic* Appeal Judgement, para 141. The Appeals Chamber held: "?w?here the question at issue is whether a *single* private individual or a *group that is not militarily organised* has acted as a *de facto* State organ when performing a specific act, it is necessary to ascertain whether specific instructions concerning the commission of that particular act had been issued by that State to the individual or group in question; alternatively, it must be established whether the unlawful act had been publicly endorsed or approved *ex post facto* by the State at issue." *Tadic* Appeal Judgement, para 137.

[511] *Tadic* Appeal Judgement, para 137.

[512] *Tadic* Appeal Judgement, para 141.

[513] *Tadic* Appeal Judgement, paras 141, 144.

[514] *See supra* para 94, 100.

> control by a State over subordinate *armed forces or militias or paramilitary units* may be of an overall character (and must comprise more than the mere provision of financial assistance or military equipment or training). This requirement, however, does not go so far as to include the issuing of specific orders by the State, or its direction of each individual operation. Under international law, it is by no means necessary that the controlling authorities should plan all the operations of the units dependent on them, choose their targets, or give specific instructions concerning the conduct of military operations and any alleged violations of international humanitarian law. The control required by international law may be deemed to exist when a State (or, in the context of an armed conflict, the Party to the conflict) *has a role in organising, coordinating or planning the military actions* of the military group, in addition to financing, training and equipping or providing operational support to that group.[515]

185. The Appeals Chamber has also previously disposed of the issue raised by the Naletili} Defence of State responsibility *versus* individual criminal responsibility[516] and stated that this distinction was not relevant:

> Rather, the question is that of establishing the criteria for the legal imputability to a State of acts performed by individuals not having the status of State officials. In the one case these acts, if they prove to be attributable to a State, will give rise to the international responsibility of that State; in the other case, they will ensure that the armed conflict must be classified as international.[517]

186. A further argument is raised by the Martinovi} Defence in relation to which entities or individuals might be found to be acting on behalf of another State. It is formulated as follows:

> only those entities or individuals acting on behalf of a state may in fact be said to be party to that international armed conflict. Individuals acting on behalf of a non-state entity continue to be acting in the context of an internal armed conflict running in parallel to the international armed conflict and cannot be held responsible in terms of the general provisions of the Geneva Conventions.[518]

187. The Appeals Chamber previously distinguished private individuals or unorganised groups from organised and hierarchically structured groups, such as military units. With respect to the latter, it held that a group might be found to be acting on behalf of a State if it is, "as a whole", under the overall control of that State.[519] The Chamber previously found that the accused were members of an organised and hierarchically structured entity, namely the HVO.[520] The question of fact that remains for the Chamber to answer is whether the HVO, as a whole, was acting on behalf of the Republic of Croatia. The question of whether particular members of the HVO were individually acting for a non-state entity is irrelevant. The Chamber therefore rejects the argument of the Martinovi} Defence.

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[515] *Tadi}* Appeal Judgement, para 137.
[516] Naletili} Final Brief, p 119.
[517] *Tadi}* Appeal Judgement, para 104.
[518] Martinovi} Final Brief, p 21. It further states that the Prosecution "has failed to establish beyond all reasonable doubt the intervention of troops representing a state in the conflict zone of Mr. Martinovi} on the front line in Mostar. It is in any event submitted that such intervention would not have affected Mr. Martinovi}'s legal status in the conflict zone since he was acting on behalf on a non-state entity in its own right and therefore could not be representing a party to the conflict for the purposes of the general application of the Geneva Conventions. Further, the Prosecution has failed to establish beyond all reasonable doubt or at all that the Croatian Community of Herceg-Bosna was fighting on behalf of the Republic of Croatia as opposed to acting on behalf of itself in the context of the specific fighting in which Mr. Martinovi} was involved," Martinovi} Final Brief, p 22.

188. The Chamber will now analyse the evidence presented in the course of the trial to determine whether an international armed conflict may be deemed to have existed in the relevant context of the present case. In doing so, it will first determine whether there is sufficient evidence to prove beyond reasonable doubt that the armed forces of the Republic of Croatia directly intervened on the territory of Bosnia and Herzegovina in support of the HVO against the ABiH. The Chamber will then make its findings as to whether the Republic of Croatia exercised an overall control over the HVO, bearing in mind that those two tests are alternative tests.

(a) Direct intervention of the army of the Republic of Croatia (HV)

189. The question first arises as to whether during the relevant period, troops of the army of the Republic of Croatia (HV) intervened in the conflict between the HVO and the ABiH, in particular in the area covered by the Indictment, namely "in Mostar, and other municipalities of Bosnia and Herzegovina".[521] The Prosecution alleges that the direct involvement of the Republic of Croatia in the armed conflict between the HVO and the ABiH is established both by the actual presence of troops in the area of the conflict, and by the appointment of Croatian officers in the command of the HVO.[522]

190. The Naletili} Defence argues that any such intervention on the part of the Republic of Croatia occurred in 1992 and was aimed at fighting against Serb forces rather than in the 1993 conflict between the HVO and the ABiH.[523] It further argues that the Republic of Croatia did not intervene militarily where the alleged violations occurred.[524] While acknowledging that HV units participated in some operations in Bosnia in the course of 1993, the Martinovi} Defence submits that this was not the situation in Herzegovina and that the HV was never present in any significant numbers.[525] It also suggests that the soldiers and officers present on the territory of Bosnia and Herzegovina were Bosnian citizens who had previously joined the HV and voluntarily returned to the HVO after the war ended in the Republic of Croatia.[526]

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[519] *Tadi}* Appeal Judgement, para 120.
[520] *See supra* para 87 and 101.
[521] Indictment, para 7.
[522] Prosecution Final Brief, pp 276-283.
[523] Naletili} Final Brief, p 116.
[524] Naletili} Final Brief, p 117.
[525] Martinovi} Final Brief, pp 26-27. In this context, the Martinovi} Defence further alleges that the HV troops "never engaged in any acts of authority which would have been essential for an occupational force". This argument is rejected in the course of the discussion relating to occupation. *See infra* paras 210-223.
[526] Martinovi} Final Brief, p 26.

191. The Chamber heard numerous testimonies and received ample documentary evidence showing the presence of HV soldiers and units on the territory of Bosnia and Herzegovina in the context of the conflict between the HVO and the ABiH.

192. In spite of the denial of political officials from the Republic of Croatia and HZ-HB,[527] personnel from the ECMM and UNPROFOR witnessed the presence and direct intervention of HV troops in Bosnia and Herzegovina in general, and in the area of Mostar in particular, throughout 1993.[528] The Chamber also takes note of numerous United Nations documents condemning the presence of HV troops in the region. As early as 1992, the United Nations Security Council adopted resolutions demanding that all form of external interference cease immediately, and that "all forces, in particular elements of the Croatian Army, be withdrawn, or be subject to the authority of the Government of the Republic of Bosnia and Herzegovina, or be disbanded or disarmed".[529] Similarly, in early 1994, the Secretary General of the United Nations informed the Security Council that the Republic of Croatia was providing support to the HVO and indicated in particular that:

> ?t?he Croatian Army (HV) has directly supported the HVO in terms of manpower, equipment and weapons for some time… It is assessed that in total, there is the equivalent of three Croatian Brigades of regular Army personnel in Bosnia and Herzegovina, approximately 3,000 to 5,000.[530]

193. This evidence is further corroborated by the testimony of many eyewitnesses, who saw HV troops in several relevant locations.[531] Those HV soldiers belonged to different units and were based in different locations[532] and at times took part in the crimes committed against the Muslim population.[533]

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[527] *See* exhibits PPIAC-17, PPIAC-45, PPIAC-46, PPIAC-53.

[528] The following exhibits are reports from the personnel of international organisations on the involvement of the HV from late 1992 to early 1994: exhibits PPIAC-23 (confidential), PPIAC-24 (confidential), PPIAC-25 (confidential), PPIAC-26 (confidential), PPIAC-29 (confidential), PPIAC-40 (confidential), PPIAC-42 (confidential), PPIAC-46 (confidential), PPIAC-47 (confidential), PPIAC-48 (confidential), PPIAC-52 (confidential), PPIAC-54 (confidential), PPIAC-55 (confidential), PPIAC-56 (confidential), PPIAC-57 (confidential), PPIAC-58 (confidential), PPIAC-59 (confidential), PPIAC-62 (confidential), PPIAC-66, PPIAC-68 (confidential), PPIAC-69 (confidential), PPIAC-70 (confidential),PPIAC-73, PPIAC-74, PPIAC-75, PPIAC-76 (confidential), PPIAC-77 (confidential), PPIAC-78 (confidential), PPIAC-79 (confidential), PPIAC-81 (confidential), PPIAC-84 (confidential), PPIAC-85 (confidential), PPIAC-87 (confidential), PPIAC-91 (confidential), PP 595.1 (confidential), PP 612 (confidential). Defence expert witness Davor Marijan admitted that there was a HV presence in the operatives zones of Southeast Herzegovina and Northwest Herzegovina, T 15532-15533.

[529] Exhibit PPIAC-18. *See* also PPIAC-9.

[530] Exhibit PPIAC-82. *See* also PPIAC-88.

[531] Transcript witness Edward Vulliamy, BT 8593; witness PP, T 6160-6162; witness QQ, T 6256-6261; witness CC, T 4426-4427; witness NN, T 5879-5880; witness Jeremy Bowen, T 5806-5807; witness Sir Martin Garrod, T 8423; Transcript witness Michael Buffini, BT 5566-5567.

[532] Several witnesses testified that HV units such as the 1st and 2nd Guards brigades were stationed at the Heliodrom detention centre in Mostar. Witness U, T 2654-2655; witness OO, T 5938 and T 6032-6036; Defence witness NN, T 5879-5880; witness YY, T 7279-7280. Witness U further mentioned the presence of HV soldiers belonging to a unit from Osijek. According to him, the unit was deployed South of Mostar and was responsible to cut communication between the ABiH in Mostar and the BH Muslims in Blagaj, witness UU, T 2956-2959. Witnesses

194. While it is clear from the evidence that HV troops were directly involved in the conflict in and around Mostar,[534] this is not the case as far as the HVO attacks on Sovi}i/Doljani and Ra{tani are concerned.[535] This finding does not have the effect that the Geneva Conventions were not applicable in Sovi}i/Doljani and Ra{tani. There is no requirement to prove that HV troops were present in every single area where crimes were allegedly committed. On the contrary, the conflict between the ABiH and the HVO must be looked upon as a whole and, if it is found to be international in character through the participation of HV troops, then Article 2 of the Statute will apply to the entire territory of the conflict.[536]

195. Numerous Defence witnesses testified that the HV soldiers present in Bosnia and Herzegovina were in fact volunteers who in their vast majority had come from Bosnia and Herzegovina to fight in the Republic of Croatia and returned to defend their homeland.[537] The Chamber does not accept this version of the facts. While volunteer defenders may have accounted for some of the HV troops present in Bosnia and Herzegovina, it is the Republic of Croatia that did in fact organise the sending of the vast majority of them,[538] while attempting to conceal their

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NN and PP testified that other units coming from Split, Rijeka or Karlovac were based in the area, Witness PP, T 6160; witness NN, T 5879.

[533] Witness AE testified that early on 9 May 1993, Muslim civilians were arrested by soldiers wearing both HV and HVO uniforms and insignias, witness AE, T 8236. A former member of the KB, witness Falk Simang, testified that HV soldiers took part to the evictions of BH Muslims in Mostar, together with the HVO, witness Falk Simang, T 3817-3819.

[534] Witness QQ, T 6265; witness CC, T 4426-4427; witness NN, T 5879-5880; witness SS, T 6562-6567; witness OO, T 5938; witness DD, T 4481; witness EE, T 4544. *See* also, exhibit PP 373 according to which the HV participated in the conflict in Mostar on 9 May 1993; exhibits PPIAC-42; PPIAC-43; PPIAC-48; PPIAC-52; PPIAC-54; PPIAC-55; PPIAC-56; PPIAC-57; PPIAC-65; PPIAC-68.

[535] Witness VV testified that when he was captured on 23 September 1993, he saw about 50 HV soldiers on his way to Bakina Luka, witness VV, T 6921. Witness QQ also testified that HV troops were deployed in Ra{tani, witness QQ, T 6265-6266. However, the Chamber finds that there is not sufficient evidence to conclude that those soldiers participated in the attack that occurred that same day. Similarly, although documents were tendered to prove the presence of HV troops in the region between Prozor and Jablanica (exhibits PPIAC-58; PPIAC-62; PPIAC-63; PPIAC-70; PPIAC-76; PPIAC-80), the Chamber did not hear sufficient evidence to establish that HV troops took part in the attack on Sovi}i and Doljani on 17 April 1993.

[536] *Tadi}* Jurisdiction Decision, para 68.

[537] Defence witness Slobodan Praljak, T 9322-9823. Slobodan Praljak himself denied having gone to Bosnia and Herzegovina under the order of the President of the Republic of Croatia or the Minister of Defence, and, in doing so, denies the content of the meeting held on 8 March 1993 in President Tudman's office. Exhibit PP 892/PT-7, pp R0180812, R0181148. He stated that he went of his own free will for moral and ethical reasons. However, he admitted that he did not resign from the HV when he departed, because the army tolerated departures and the "struggle against evil" in Bosnia and Herzegovina. He further testified that other HV senior officers in Bosnia and Herzegovina also went on a voluntary basis. Defence witness Slobodan Praljak T 9461-9463, 9511, 9529. *See* also Defence @eljko Glasnovi}, T 11501; Defence witness NJ, T 12168; Defence witness Ivan Bender, T 11554-11555; Defence witness Ivi} Pa{ali}, T 12274-12276; Defence witness Milan Kovac, T 11188; Defence witness Damir Zori}, T 11072-11074; Defence witness NP, T 13076, 13173; Defence witness NO, T 12994; Defence witness NB, T 10270-10273; Defence expert witness Davor Marijan, T 15532-15533; *see* also exhibit PPIAC-53.

[538] Exhibits PPIAC-35; PPIAC-36; PPIAC-38. Mate Boban himself stated in the course of a meeting with President Tudman and Defence Minister Gojko [u{ak: "I would ask for a list of all Croats from Herceg-Bosna, if they do not return to Bosnia within 24 hours under police escort, we will send our police, arrest, bind and take them to Herceg-Bosna", to which Defence Minister Gojko [u{ak answered: "PRALJAK has made a list of names of several colonels and majors including the young LUBURI] to send down there." Exhibit PP 892/PT-7, pp R0180823, R0180828. *See* also, exhibit PP 892/PT-8, p 12.

presence by asking them, for example to replace their uniforms and insignia for those of the HVO.[539] The Chamber notes that HV troops in Bosnia and Herzegovina maintained their rights as members of the HV, including the right to a monthly salary.[540] The Chamber notes that in early 1994, while declaring that it "had no moral right to prevent the Croatian volunteers from helping the imperilled BH Croat community",[541] the Government of the Republic of Croatia admitted the presence of regular HV units, albeit limited to the border areas, and stated that it would organise their withdrawal.[542]

196. The Chamber thus finds that the conflict between the HVO and the ABiH in Bosnia and Herzegovina was internationalised by the intervention of the troops of the Republic of Croatia in the conflict.

(b) Overall control exercised by the Republic of Croatia over the HVO

197. While proof of the direct intervention of HV troops in the conflict between the HVO and the ABiH in Bosnia and Herzegovina is sufficient to establish that the conflict was international in character, the Chamber will, in the interest of completeness, examine whether the second legal test is met in the present case, namely whether the Republic of Croatia exercised overall control over the HVO in the course of the conflict.

198. There is no doubt that the Republic of Croatia enjoyed a strong connection with the Croats of Bosnia and Herzegovina.[543] Examples of such links include the fact that BH Croats could with ease obtain Croatian passports, enjoy Croatian nationality[544] and vote in elections in the Republic of Croatia.[545] Several Defence witnesses testified as to the special obligation laid down in Article 10 of the Constitution of the Republic of Croatia to look after Croats abroad and, in particular, the Croats living in Bosnia and Herzegovina in light of the dangers that they were facing at the time.[546] In itself, this strong connection is nevertheless not sufficient to establish that the Republic of Croatia exercised overall control over the HVO. The Prosecution must show that the Republic of Croatia:

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[539] Exhibits PPIAC-5; PPIAC-19; PPIAC-20; PPIAC-22. *See* also witness NN, T 5895; Defence witness NS, T 12168; Defence witness NB, T 10270-10273. International officials acknowledged that such a process was being implemented, exhibits PPIAC-91; PPIAC-92; PPIAC-93.

[540] Defence expert witness Davor Marijan, T 15699. *See* also exhibit PP 122.2

[541] Exhibit PPIAC-83.

[542] *See* Letters of the Permanent Representative of Croatia to the Secretary General of the United Nations, dated 16 and 17 February 1993, exhibits PPIAC-86 and PPIAC-90; *see* also PPIAC-83.

[543] Witness Jeremy Bowen, T 5806-5807; witness Sir Martin Garrod, T 8402.

[544] Witness Sir Martin Garrod, T 8402; *See* also exhibits PPIAC-30; PPIAC-33; PPIAC-34; PPIAC-41; PPIAC-44; PPIAC-50 and PPIAC-51.

[545] Witness Sir Martin Garrod, T 8402.

i) provided financial and training assistance, military equipment and operational support, as well as;

ii) participated in the organisation, co-ordination or planning of military operations.

199. The Chamber is satisfied that the Republic of Croatia financed and provided military equipment to the HVO in the course of its conflict with the ABiH. The evidence shows that the provision of assistance in terms of military equipment was considerable. In fact, the presence of large numbers of HV vehicles and weaponry was reported on many occasions,[547] thereby testifying as to *de facto* logistical support coming from the Republic of Croatia. The Defence Minister Gojko [usak of the Republic of Croatia himself stated:

> if we calculate, without including anything else, only the weapons, the number of 100 million dollars is a small number in comparison to what we have sent to these territories.[548]

HVO commanders would address requests for ammunition to Gojko [u{ak directly.[549] The testimony of Defence witnesses, that until the conflict between the HVO and the ABiH broke out, the ABiH was also receiving military supplies through the Republic of Croatia,[550] does not affect this conclusion. Slobodan Praljak also acknowledged that HVO troops were sent for training to the military academy of the HV.[551] The personnel was managed both by the HVO and the HV command structure,[552] and members of the HVO were paid directly by the government of the Republic of Croatia.[553]

200. The Chamber is further satisfied that the Republic of Croatia took part in the organisation, planning or co-ordination of military operations conducted in the context of the conflict between the HVO and the ABiH. There is no doubt that the Republic of Croatia and the HZ-HB were pursuing the same ultimate goals, namely the incorporation of Croatian provinces of Bosnia and Herzegovina into a single Croatian State. In this respect, the Chamber notes the words of President Tu|man himself during a meeting held on 22 October 1993:

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[546] Defence witness Ivi} Pa{ali}, T 12197-98; Defence witness Milan Kovac, T 11166. Milan Kovac specified that this obligation was introduced in the context of the dislocation of the former Yugoslavia and the dangerous situation in which BH Croats were finding themselves, Defence witness Milan Kovac, T 11291.

[547] *See* for example, witness Sir Martin Garrod, T 8424. *See* also exhibits PPIAC-46; PPIAC-47; PPIAC-49.

[548] Exhibit PP892/PT-7, pp R0180827-28. Furthermore, Ralf Mrachaz confirmed that most of the KB equipment was coming from Croatia, T 2673, 2705-2706. *See* also, exhibit PPIAC-13

[549] Defence witness NB, T 10267-10269, referring to exhibit PP 301.2.

[550] Defence witness Damir Zori}, T 11071; Defence witness Slobodan Praljak, T 9331-9340, referring to exhibits D1/53 to D1/63.

[551] Defence witness Slobodan Praljak, T 9603-9605; *see* also exhibits PP 662.1; PPIAC-67.

[552] Exhibits PPIAC-35; PPIAC-36; PPIAC-38; PPIAC-39.

[553] Witness Ralf Mrachacz, T 2673, 2688. HVO commanders would also request that the HV rather than the HVO pay their soldiers, Defence witness NP, T 13140-13141. *See* exhibit PP 761.1.

> ?s?everal months ago, I told you about the situation and gave the tasks to the Minister of Defence Mr [U[AK and General BOBETKO, /as regards/ our help and our engagement in Herceg-Bosna. I told them that this was where the future borders of the Croatian state are being resolved. That is when I pointed out that it was very important that they defended the positions and the territory the HVO was holding there ?…? The general political situation is such today that very few of the international factors think that the union of Bosnia and Herzegovina will survive.[554]

201. To allow for the implementation of this common goal, the Croatian leadership issued orders for HVO or HV troop movements[555] and military strategies[556] in Bosnia and Herzegovina. It further ensured control over the HVO by appointing HV officers at the most senior positions in the HVO command structure.[557]

202. For the foregoing reasons, the Chamber finds that the Republic of Croatia exercised overall control over the HVO in the context of the conflict relevant to the present case.

3. Protected persons and property

(a) Civilians and Prisoners of war

203. The Prosecution relies on Article 4 (1) of Geneva Convention IV, which defines protected persons as "those civilians who find themselves" in the hands of a Party to the conflict or Occupying Power of which they are not nationals.[558] It further submits that the expression "in the hands of" should not be interpreted literally, and that persons who find themselves in territory that is under the control of an occupying power are protected under Article 4 (1) of the Geneva Convention IV.[559]

204. The Naletili} Defence submits that in order for victims to gain "protected persons" status, it is required that the person be of a different nationality than the perpetrators of the alleged offence.[560] For its part, the Martinovi} Defence argues that the conflict was political rather than

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[554] Exhibit PP892/PT-11, pp R0180830-31. In spite of the fact that according to Defence witness Milan Kovac, the issue of the annexation of the Croatian regions in Bosnia and Herzegovina was never expressly included as a goal of any Croatian political party, Defence witness Milan Kovac, T 11194, referring to exhibit D1/301; witness Paddy Ashdown confirmed that President Tu|man's aspiration to that effect, witness Paddy Ashdown, BT 7344-7348. Witness Sir Martin Garrod testified that President Tu|man and Mate Boban shared views on this matter, witness Sir Martin Garrod, T 8402.

[555] Exhibits PPIAC-7; PPIAC-8; PPIAC-10; PPIAC-13.

[556] Exhibit PPIAC-37. In this respect, Mate Boban stated during one of the meetings held in Zagreb with President Tu|man: "there is no document which has been addressed from any Croatian area to me or our services that we have organised that has not been transmitted to President Tu|man or Minister [u{ak", exhibit PP 892/PT-7, p R0181130. *See* also exhibit PP 562.12.

[557] For example, Milivoj Petkovi} was replaced by Slobodan Praljak as the commander of the HVO Main Staff on 24 July 1993, exhibit PP 534.1. Subsequently Slobodan Praljak was replaced by Ante Roso who was appointed commander of the HVO Main Staff pursuant to an order by Franjo Tudman, exhibit PP 664.2.

[558] Prosecution Pre-trial Brief, p 39.

[559] Prosecution Pre-trial Brief, p 39.

[560] Naletili} Pre-trial Brief, p 11.

ethnic and that the victims may not be considered as protected persons "since they were of the same nationality as the opposing forces".[561]

205. Article 4 of Geneva Convention IV defines as protected persons "those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals."[562] According to the Commentary to Geneva Convention IV there are two main types of protected persons: (i) "enemy nationals" and (ii) "the whole population" of occupied territories (excluding nationals of the Occupying Power).[563]

206. In the *Tadi}* Appeal Judgement, it was found that the Geneva Conventions intend to protect civilians "who do not have the nationality of the belligerent in whose hands they find themselves, or who are stateless persons",[564] bearing in mind that "already in 1949, the legal bond of nationality was not regarded as crucial".[565] In doing so, the Appeals Chamber determined that:

> Article 4 of Geneva Convention IV, if interpreted in the light of its object and purpose, is directed to the protection of civilians to the maximum extent possible. It therefore does not make its applicability dependent on formal bonds and purely legal relations. ?…? In granting its protection, Article 4 intends to look to the substance of relations, not to their legal characterisation as such.[566]

207. This approach was further confirmed in the *^elebi}i* Appeal Judgement which stated that "formal nationality may not be regarded as determinative in this context, whereas ethnicity may reflect more appropriately the reality of the bonds".[567] The Chamber abides by the consistent

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[561] "It is submitted that the prosecution would have to establish, and has not, that this was a conflict between ethnic groups as opposed to a conflicts ?sic? between political factions within a state. Evidence has shown, or at least raised a reasonable doubt to the effect, that at least in the zone of conflict of Mr Martinovi}, the conflict was political and not ethnic since BH Muslims were employed in the HVO and in particular the Mr Martinovi}'s unit. Consequently, it is submitted that the victims in the relevant zone of conflict cannot be considered as protected persons for the purposes of the fourth Geneva Convention since they were of the same nationality as the opposing forces." Martinovi} Final Brief, p 38.

[562] Article 4 of Geneva Convention IV reads as follows: "Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals. Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are. ?…? Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, shall not be considered as protected persons within the meaning of the present Convention."

[563] Commentary to Geneva Convention IV, p 46.

[564] *Tadi}* Appeal Judgement, para 164.

[565] *Tadi}* Appeal Judgement, para 165.

[566] *Tadi}* Appeal Judgement, para 168. *See* also, *Aleksovski* Appeal Judgement, paras 151, 152.

[567] *^elebi}*i Appeal Judgement, para 82. The Appeals Chamber held: "Article 4 of Geneva Convention IV is to be interpreted as intending to protect civilians who find themselves in the midst of an international, or internationalised, conflict to the maximum extent possible. The nationality requirement of Article 4 should therefore be ascertained upon a review of ?the substance of the relations? and not based on the legal characterisation ?…? In today's ethnic

jurisprudence on this issue and will review, on a case by case basis, the effective allegiance of the victims rather than their formal nationality.

208. Furthermore, the Chamber accepts the argument of the Prosecution that the expression "in the hands of" a party or occupying power, as it appears in Article 4 of Geneva Convention IV, refers to persons finding themselves on the territory controlled by that party or occupying power.[568]

(b) Prisoners of war

209. Article 4 of Geneva Convention III protects prisoners of war, *i.e*. persons who have fallen into the power of the enemy[569] and belong to one of the specified categories listed in Article 4.[570] Article 5 of Geneva Convention III states that prisoners of war are protected "from the time they fall into the power of the enemy and until their final release and repatriation."[571]

(c) Occupation

210. Occupation is relevant in dealing with the charges of unlawful labour of civilians (Count 5), forcible transfer of a civilian (Count 18) and destruction of property (Count 19). The Prosecution relies on provisions of Geneva Convention IV, which have no application in the absence of a state

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conflicts, the victims may be ?assimilated? to the external State involved in the conflict, even if they formally have the same nationality as their captors, for the purposes of the application of humanitarian law, and of Article 4 of Geneva Convention IV specifically. The Appeals Chamber thus agrees with the *Tadi}* Appeal Judgement that "even if in the circumstances of the case the perpetrators and the victims were to be regarded as possessing the same nationality, Article 4 would still be applicable." ^*elebi}i* Appeal Judgement, para 83.

[568] Commentary to Geneva Convention IV, p 47, relating to Article 4 of Geneva Convention IV states: "?t?he expression 'in the hands of' is used in an extremely general sense. It is not merely a question of being in enemy hands directly, as a prisoner is. The mere fact of being in the territory of a Party to the conflict or in occupied territory implies that one is in the power or "hands" of the Occupying Power".

[569] The expression "fallen into the power of the enemy" has a wide significance and covers the case of soldiers who became prisoners without fighting, for example following a surrender. Commentary to Geneva Convention IV, p 10.

[570] Article 4 of Geneva Convention III provides: "(1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces. (2) Members of other militias and members of other volunteer corps, including those of organised resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organised resistance movements, fulfil the following conditions: (a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed distinctive sign recognisable at a distance; (c) that of carrying arms openly; (d) that of conducting their operations in accordance with the laws and customs of war. (3) Members of regular armed forces who profess allegiance to a government or an authority not recognised by the Detaining Power. (4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorisation from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model. (5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law. (6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war."

[571] Article 5 of Geneva Convention III.

of occupation.[572] The question therefore arises as to what constitutes occupation for the purpose of the application of those provisions to the present case.

211. In the Prosecution Final Brief, the issue of occupation is only discussed in relation to the extensive destruction of property. It alleges that occupation, as defined in Article 6 of Geneva Convention IV, has a wider meaning than in Article 42 of the Hague Regulations,[573] and that in line with the jurisprudence of the Tribunal, occupied territory means "any territory under the overall control of a party to the conflict".[574] The Prosecution further stresses that "occupation remains a question of fact".[575] The Chamber agrees that the determination of the existence of a state of occupation is a question of fact.

212. The Naletili} Defence argues that occupation "is defined to exist, in contrast to the invasion, when the enemy territory is actually placed under the authority of the invading army".[576] The Martinovi} Defence submits that "occupation involves more than the mere presence of troops, but further implies that the territory is being administered by a foreign state through the control of its troops".[577] It alleges that on this basis, the Prosecution failed to prove that the relevant territories were occupied.[578]

213. To support its argument, the Prosecution relies on the *Bla{ki}* Trial Judgement, which held:

> by using the same reasoning which applies to establish the international nature of the conflict, the overall control exercised by Croatia over the HVO means that at the time of its destruction, the property of the Bosnian Muslims was under the control of Croatia and was in occupied territory.[579]

214. The Chamber notes that the jurisprudence of the Tribunal relating to the legal test applicable is inconsistent. In this context, the Chamber respectfully disagrees with the finding in the *Bla{ki}* Trial Judgement argued by the Prosecution. The overall control test, submitted in the *Bla{ki}* Trial Judgement, is not applicable to the determination of the existence of an occupation. The Chamber is of the view that there is an essential distinction between the determination of a state of occupation and that of the existence of an international armed conflict. The application of the overall control test is applicable to the latter. A further degree of control is required to establish occupation.

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[572] Articles 49, 51 and 53 of Geneva Convention IV respectively dealing with forcible transfers, labour and destruction of property fall within the section of the said Convention dealing with occupied territories. These legal foundations will be further separately examined in the sections dealing with each of these offences.
[573] In the absence of a clear definition in the Geneva Convention IV, the *Kordi}* Trial Chamber previously had recourse to the definition provided in the Hague Regulations, as evidence of customary international law. *See Kordi}* Trial Judgement, para 338.
[574] Prosecution Final Brief, p 289, relying on *Bla{ki}* Trial Judgement, paras 149-150, and *Raji}* Review Decision, paras 40-42.
[575] Prosecution Final Brief, p 289.
[576] Naletili} Final Brief, p 112.
[577] Martinovi} Final Brief, p 27.
[578] Martinovi} Final Brief, p 27.

Occupation is defined as a transitional period following invasion and preceding the agreement on the cessation of the hostilities. This distinction imposes more onerous duties on an occupying power than on a party to an international armed conflict.

215. According to the Commentary to Geneva Convention IV, the section dealing with occupied territories

> represents the first attempt to codify the rules of international law dealing with occupation since the conclusion of the Hague Conventions of 1899 and 1907 concerning the laws and customs of war on land. The rules set forth in Section III will *supplement* Section II and III of the Regulations annexed to these Conventions, by making numerous points clearer.[580]

The Chamber is of the view that while Geneva Convention IV constitutes a further codification of the rights and duties of the occupying power, it has not abrogated the Hague Regulations on the matter.[581] Thus, in the absence of a definition of "occupation" in the Geneva Conventions, the Chamber refers to the Hague Regulations and the definition provided therein, bearing in mind the customary nature of the Regulations.[582]

216. Article 42 of the Hague Regulations provides the following definition of occupation:

> ?t?erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.

The Chamber endorses this definition.[583]

217. To determine whether the authority of the occupying power has been actually established, the following guidelines provide some assistance:

- the occupying power must be in a position to substitute its own authority for that of the occupied authorities, which must have been rendered incapable of functioning publicly;[584]

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[579] *Bla{ki}* Trial Judgement, para 149.

[580] Commentary to Geneva Convention IV, on Section III, p 272 (emphasis added). Furthermore, Article 154 of Geneva Convention IV states: "In the relations between the Powers who are bound by the Hague Conventions respecting the Laws and Customs of War on Land ?…? and who are parties to the present Convention, this last Convention shall be supplementary to Sections II and III of the Regulations annexed to the above-mentioned Conventions of The Hague."

[581] The Hague Regulations. *See* "Manual of Military Law of War on Land", United Kingdom, Part III, 1958, p 140.

[582] *See* Report of the Secretary General, para 41, where it is stated that "?t?he 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto comprise a second important area of conventional humanitarian international law which has become part of the body of international customary law".

[583] This reasoning was previously followed in the *Kordi}* Trial Judgement, para 339. The matter has not been determined by the Appeals Chamber at this stage.

[584] *Raji}* Review Decision, para 41-42, quoting Adam Roberts, *What is a Military Occupation?*, vol. 53, British Yearbook of International Law, pp 249 and 300 (1984). *See* also "Manual of Military Law of War on Land", United Kingdom, Part III, 1958, para 503; "The Law of Land Warfare", Field Manual No. 27-10, US Department of the

- the enemy's forces have surrendered, been defeated or withdrawn. In this respect, battle areas may not be considered as occupied territory. However, sporadic local resistance, even successful, does not affect the reality of occupation;[585]

- the occupying power has a sufficient force present, or the capacity to send troops within a reasonable time to make the authority of the occupying power felt;[586]

- a temporary administration has been established over the territory;[587]

- the occupying power has issued and enforced directions to the civilian population;[588]

218. The law of occupation only applies to those areas actually controlled by the occupying power and ceases to apply where the occupying power no longer exercises an actual authority over the occupied area.[589] As a result, the Chamber finds that it must determine on a case by case basis whether this degree of control was established at the relevant times and in the relevant places. There is no requirement that an entire territory be occupied, provided that the isolated areas in which the authority of the occupied power is still functioning "are effectively cut off from the rest of the occupied territory".[590]

219. The Commentary to Geneva Convention IV makes clear that the application of the law of occupation to the civilian population differs from its application under Article 42 of the Hague Regulations. It states:

Army, 18 July 1956, chapter 6, para 355; "Interim Law of Armed Conflict Manual", New Zealand Defence Force, 26 November 1992, para 1302.4.

[585] *See* "Manual of Military Law of War on Land", United Kingdom, Part III, 1958, paras 502, 506 and 509; "The Law of Land Warfare", Field Manual No. 27-10, US Department of the Army, 18 July 1956, chapter 6, para 356 and 360; "Interim Law of Armed Conflict Manual", New Zealand Defence Force, 26 November 1992, at paras 1302.2 and 1302.5. *See* also, "Humanitarian Law in Armed Conflicts, Manual", edited by the Federal Ministry of Defence of the Federal Republic of Germany, August 1992, para 528.

[586] *See* "Manual of Military Law of War on Land", United Kingdom, Part III, 1958, paras 502, 506 ; "The Law of Land Warfare", Field Manual No. 27-10, US Department of the Army, 18 July 1956, chapter 6, para 356; "Interim Law of Armed Conflict Manual", New Zealand Defence Force, 26 November 1992, paras 1302.2, 1302.3 and 1302.5.

[587] *See* "Manual of Military Law of War on Land", United Kingdom, Part III, 1958, para 501. *See* also, Lauterpacht, *in* "Oppenheim's International Law", 7th ed. Vol. II, 1952, para 167.

[588] *See* Article 43 of The Hague Regulations, according to which "?t?he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country"; "Humanitarian Law in Armed Conflicts, Manual", edited by the Federal Ministry of Defence of the Federal Republic of Germany, August 1992, para 527; Dieter Fleck, "The Handbook of Humanitarian Law in Armed Conflicts", Oxford University Press, 1999, para 525.2.

[589] Article 42 of The Hague Regulations; *see* also, Manual of Military Law of War on Land, United Kingdom, Part III, 1958, at p 142. *See* also, Dieter Fleck, "The Handbook of Humanitarian Law in Armed Conflicts", Oxford University Press, 1999, paras 527-528.

[590] L.C. Green, "The Contemporary Law of Armed Conflicts", Manchester University Press, 2nd ed., 2000, Chapter 15. *See* also, "Manual of Military Law of War on Land", United Kingdom, Part III, 1958, para 502.

> ?i?n all cases of occupation, whether carried out by force or without meeting any resistance, the Convention becomes applicable to individuals, i.e. to the protected persons, as they fall into the hands of the Occupying Power.[591]

220. It goes on to state:

> ?i?t follows from this that the word "occupation", as used in the Article, has a wider meaning than it has in Article 42 of the Regulations annexed to the Fourth Hague Convention of 1907. *So far as individuals are concerned*, the application of the Fourth Geneva Convention does not depend upon the existence of a state of occupation within the meaning of Article 42 referred to above. The relations between the civilian population of a territory and troops advancing into a territory, whether fighting or not, are governed by the present Convention. *There is no intermediate period between what might be termed the invasion phase and the inauguration of a stable regime of occupation*.[592]

221. The Chamber accepts this to mean that the application of the law of occupation as it effects "individuals" as civilians protected under Geneva Convention IV does not require that the occupying power have actual authority. For the purposes of those individuals' rights, a state of occupation exists upon their falling into "the hands of the occupying power." Otherwise civilians would be left, during an intermediate period, with less protection than that attached to them once occupation is established.

222. Consequently, the Chamber will have recourse to different legal tests to determine whether the law of occupation applies, depending on whether it is dealing with individuals or with property and other matters. In the present case, it finds that the forcible transfer (Count 18) and the unlawful labour (Count 5) of civilians were prohibited from the moment that they fell into the hands of the opposing power, regardless of the stage of the hostilities. There is no further need to establish that an actual state of occupation as defined under Article 42 of the Hague Regulations existed at the relevant time in the relevant place. However, such a state of occupation is required in relation to the alleged destruction of property (Count 19). In this respect, the Chamber will apply the actual authority test, as defined above.

223. The Chamber's factual findings on the existence of a state of occupation in the relevant areas are made in the sections dealing with the destruction of property.[593]

E. Requirements under Article 3 of the Statute

224. Article 3 of the Statute[594] has been interpreted as a general and residual clause covering all violations of humanitarian law not falling under Articles 2, 4 or 5 of the Statute, and more

[591] Commentary to Geneva Convention IV, p 60.
[592] Commentary to Geneva Convention IV, p 60 (emphasis added).
[593] *See infra* para 587 and infra footnote 1481.
[594] Article 3 of the Statute (Violations of the Laws or Customs of War) reads as follows: "The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include but

specifically: (i) violations of the Hague law on international conflicts; (ii) infringements of provisions of the Geneva Conventions other than those classified as "grave breaches" by those Conventions; (iii) violations of common Article 3 of the Geneva Conventions ("common Article 3") and other customary rules on internal conflicts, and (iv) violations of agreements binding upon the parties to the conflict, considered *qua* treaty law, *i.e.*, agreements which have not turned into customary international law.[595]

225. For a crime to be adjudicated under Article 3 of the Statute, two preliminary requirements must be satisfied.[596] First, there must have been an armed conflict,[597] whether internal or international in character,[598] at the time the offences were allegedly committed.[599] Secondly, there must be a close nexus between the armed conflict and the alleged offence, meaning that the acts of the accused must be "closely related"[600] to the hostilities. As was previously found, those requirements have been met in the present case.[601]

226. In view of the jurisprudence of the Tribunal, the Chamber must be satisfied of four additional requirements: [602]

(i) the violation must constitute an infringement of a rule of international humanitarian law;

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not be limited to: (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering; (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity; (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings or buildings; (d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science; (e) plunder of public or private property."

[595] *Tadi}* Jurisdiction Decision, para 89.

[596] Those requirements are also common to the applicability of Article 2 of the Statute (grave breaches of the Geneva Conventions).

[597] An armed conflict is deemed to exist "whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State… whether or not actual combat takes place there". *Tadi}* Jurisdiction Decision, para 70.

[598] *Tadi}* Jurisdiction Decision, para 137: "under Article 3, the International Tribunal has jurisdiction over the acts alleged in the indictment, regardless of whether they occurred within an internal or an international armed conflict". This finding was also endorsed by the Appeals Chamber in the ^e*lebi}i* Appeal Judgement, paras 140 and 150.

[599] *Tadi}* Jurisdiction Decision, para 67. *See* also, *Bla{ki}* Trial Judgement, para 160; *Kordi}* Trial Judgement, para 22; *Kunarac* Trial Judgement, 22 February 2001, para 402; *Krsti}* Trial Judgement, para 480; *Kvo~ka* Trial Judgement, para 123; *Krnojelac* Trial Judgement, para 51.

[600] *Tadi}* Jurisdiction Decision, para 170. The Appeals Chamber deemed it "sufficient that the alleged crimes were closely related to the hostilities occurring in other parts of the territories". *See* also, ^e*lebi}i* Trial Judgement, paras 193 and 197; *Bla{ki}* Trial Judgement, paras 65 and 69; *Kordi}* Trial Judgement, para 32; *Kunarac* Trial Judgement, para 402; *Krsti}* Trial Judgement, para 480; *Kvo~ka* Trial Judgement, para 123; *Krnojelac* Trial Judgement, para 51. Therefore, there is no requirement that an armed conflict "was occurring at the exact time and place of the proscribed acts alleged to have occurred", nor that the crimes "be part of a policy or of a practice officially endorsed or tolerated by one of the parties to the conflict, or that the act be in actual furtherance of a policy associated with the conduct of the war or in the actual interest of a party to the conflict", *Tadi}* Trial Judgement, para 573.

[601] *See supra* paras 179-180**.**

[602] *Tadi}* Jurisdiction Decision, para 94. *See* also *Tadi}* Trial Judgement, para 610; ^e*lebi}i* Trial Judgement, para 1154; *Kunarac* Trial Judgement, para 403; *Kvo~ka* Trial Judgement, para 123; *Krnojelac* Trial Judgement, para 52.

(ii) the rule must be customary in nature, or, if it belongs to treaty law, the required conditions must be met;[603]

(iii) the violation must be serious, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim;[604]

(iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.

227. Accordingly, some of those latter requirements may differ, depending on the specific basis of the relevant charges brought under Article 3 of the Statute. In the present case, while the charges alleging wanton destruction not justified by military necessity (Count 20), plunder of public and private property (Count 21), and seizure, destruction or wilful damage done to institutions dedicated to religion (Count 22) arise directly out of paragraphs (b), (d) and (e) of Article 3 of the Statute respectively, the charges of cruel treatment (Counts 4, 11 and 16) and murder (Counts 8 and 15) are based on common Article 3. Additionally, the unlawful labour charges (Count 5) are based on Article 51 of Geneva Convention IV and Articles 49, 50 and 52 of Geneva Convention III. The Chamber will therefore determine whether additional requirements arise out of the application of those extra-statutory provisions.

228. Regarding the charges of cruel treatment and murder are brought under common Article 3.[605] It is now undisputed in the jurisprudence of the Tribunal that Article 3 of the Statute covers violations of common Article 3.[606] It is also well established that common Article 3 has acquired the status of customary international law[607], and that it applies regardless of the internal or international character of the conflict.[608] Moreover, it appears from the jurisprudence that common

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[603] In this respect, the Appeals Chamber added that a charge based on treaty law would necessitate that two additional requirements be met, namely, that the agreements (i) were unquestionably binding on the parties at the time of the alleged offence and (ii) are not in conflict with or derogate from peremptory norms of international law. *Tadi}* Jurisdiction Decision, para 143.

[604] *See* Article 1 of the Statute, which gives the Tribunal jurisdiction over "serious violations of international humanitarian law".

[605] Common Article 3 provides that: "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture".

[606] *Tadi}* Jurisdiction Decision, para 89: "it can be held that Article 3 is a general clause covering all violations of humanitarian law not falling under Article 2 or covered by Articles 4 or 5, more specifically: ?…g violations of common Article 3 and other customary rules on internal conflicts". This finding was confirmed in the *^elebi}i* Appeal Judgement, para 136.

[607] *Tadi}* Jurisdiction Decision, paras 98, 134; *^elebi}i* Appeal Judgement, para 139; *Kunarac* Trial Judgement, para 406; *Kvo~ka* Trial Judgement, para 124.

[608] *Tadi}* Jurisdiction Decision, para 102: "?T?hese rules reflect ?elementary considerations of humanity? applicable under customary international law to any armed conflict, whether it is of an internal or international character (Nicaragua Case, at para 218). Therefore, at least with respect to the minimum rules in common Article 3, the character of the conflict is irrelevant". In the *^elebi}i* Appeal Judgement, the Appeals Chamber held that

Article 3 of the Statute entails individual criminal responsibility.[609] Those requirements are therefore met in the present case.

229. Common Article 3 imposes that victims be persons taking no active part in the hostilities. In view of the jurisprudence, this test extends to "any individual not taking part in hostilities",[610] and is therefore broader than that envisioned by Geneva Convention IV, under which the status of "protected person" is only accorded in defined circumstances.[611] The Chamber is satisfied that in the present case, the victims were all civilians or prisoners of war, and as such were not or no longer taking part in the hostilities. The Chamber therefore finds that this requirement has been met.

230. For the charges specifically brought under common Article 3, the Chamber is still to determine, on a case by case basis and in light of the evidence presented in the case, whether the violation is serious enough to fall within the jurisdiction of the Tribunal in general,[612] and Article 3 of the Statute in particular.

231. With regard to the requirements arising out of the application of the Article 51 of Geneva Convention IV and Articles 49, 50 and 52 of Geneva Convention III,[613] the Chamber refers to the discussion in the section dealing with unlawful labour.[614]

F. Requirements under Article 5 of the Statute

232. The *chapeau* requirements for crimes against humanity have been repeatedly analysed in the jurisprudence of both Tribunals.[615] The Appeals Chamber recently confirmed that the following

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"?cgommon Article 3 may thus be considered as the "minimum yardstick" of rules of international humanitarian law of similar substance applicable to both internal and international conflicts", para 147. It further added, as to whether common Article 3 applied in international armed conflict, that "something which is prohibited in internal conflicts is necessarily outlawed in an international conflict where the scope of the rules is broader", para 150.

609 *Tadi}* Jurisdiction Decision, para 129. While the Appeals Chamber found that common Article 3 of the Geneva Conventions contains no explicit reference to criminal liability for violation of its provisions, it relied on the findings of the Nuremberg International Military Tribunal, on State practice, national legislation, including the law of the former Yugoslavia, Security Council resolutions and the agreement reached under the auspices of the ICRC on 22 May 1992. Its finding was confirmed in the *^elebi}i* Appeal Judgement, para 174.

610 *^elebi}i* Appeal Judgement, para 420.

611 *^elebi}i* Appeal Judgement, para 420.

612 Article 1 of the Statute confers jurisdiction to the Tribunal over "serious violations of international humanitarian law".

613 In addition to being charged "autonomously" as a violation of the laws or customs of war (Count 5), the practice of unlawful labour is also cumulatively charged as inhumane act (Count 2), inhumane treatment (Count 3) and cruel treatment (Count 4). Furthermore, the deaths resulting from this practice are charged under murder and wilful killing (Counts 6 to 8).

614 *See infra* paras 250-261.

615 In the jurisprudence of the Tribunal, *see Tadi}* Trial Judgement, para 618; *Kupre{ki}* Trial Judgement, para 543; *Bla{ki}* Trial Judgement, paras 201-214; *Kordi}* Trial Judgement, paras 172-187; *Jelisi}* Trial Judgement, paras 50-57; *Kunarac* Trial Judgement, para 410; *Krsti}* Trial Judgement, para 482; *Kvo~ka* Trial Judgement, para 127, *Krnojelac* Trial Judgement, para 53; *Tadi}* Appeal Judgement, paras 247-272; *Kunarac* Appeal Judgement, paras 82-105. In the jurisprudence of the ICTR, *see Akayesu* Trial Judgement, paras 563-584, *Musema* Trial

elements must be fulfilled in order to classify an act under Article 5(a) to (i) of the Statute as a crime against humanity:

(i) there must be an attack;

(ii) the acts of the accused must be part of the attack;

(iii) the attack must be directed against any civilian population;

(iv) the attack must be widespread or systematic;

(v) the perpetrator must know that his acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population and know that his acts fit into such a pattern.[616]

233. The attack has been defined as a course of conduct involving the commission of acts of violence.[617] The attack can precede, outlast, or continue during the armed conflict, but need not be a part of the conflict under customary international law. However, the jurisdiction of the Tribunal pursuant to Article 5 of the Statute only comprises such acts of an accused that were committed in "armed conflict".[618]

234. The acts of the accused must not be isolated but form part of the attack.[619] This means that the act, by its nature or consequence, must objectively be a part of the attack.[620] The only question with regard to the general requirements of Article 5 of the Statute that gave raise to controversy in the jurisprudence of the Tribunal was the question whether the acts of the accused must also be connected to some kind of policy or plan.[621] While it was held that the acts must be undertaken "in furtherance of a policy",[622] other Trial Chambers applied a more liberal view.[623] The Appeals

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Judgement, paras 199-211; *Rutaganda* Trial Judgement, paras 34-35, *Kayishema/Ruzindana* Trial Judgement, paras 119-134; *Akayesu* Appeal Judgement, paras 460-469.

616 *Kunarac* Appeal Judgement, para 85.

617 *Prosecutor v. Du{ko Tadi}*, Case No.: IT-94-1-A; Decision on the Form of the Indictment, 14 November 1995, para 9; *Kunarac* Trial Judgement, para 415; *Krnojelac* Trial Judgement, para 54. The *Kunarac* Appeal Judgement was satisfied that the concept of an "attack" was correctly defined in the Trial Judgement, *Kunarac* Appeal Judgement para 89.

618 *Tadi}* Appeal Judgement, para 249; *Kunarac* Appeal Judgement, para 86.

619 *Tadi}* Appeal Judgement, para 248.

620 *Tadi}* Appeal Judgement, paras 248, 251, 271; *Kunarac* Appeal Judgement, para 99.

621 *Kunarac* Trial Judgement, para 432; *Kordi}* Trial Judgement, para 181.

622 *Tadi}* Trial Judgement, paras 626 and 653; *Akayesu* Trial Judgement, para 580.

623 The *Kupre{ki}* Trial Judgement expressed "some doubt as to whether it is strictly a requirement, as such, for crimes against humanity", and held that, in any case, "such a policy need not be explicitly formulated, nor need it be the policy of a State", para 551. The *Kordi}* Trial Judgement held that the existence of a plan or policy should only be regarded as indicative of the systematic character of offences charged under Article 5 of the Statute, *Kordi}* Trial Judgement, para 182. The *Krnojelac* Trial Judgement did not accept the connection of the acts of the perpetrator to

Chamber has clarified that the existence of a policy or plan may serve as evidence in establishing that an attack was directed against a civilian population and that it was widespread or systematic. It does not however constitute a separate and additional legal element of the crime as it is neither enshrined in the Statute of the Tribunal nor a requirement under customary law.[624]

235. The term "population" in the meaning of Article 5 of the Statute does not imply that the entire population of a geographical entity in which an attack is taking place must be subject to the attack. The element is fulfilled if it can be shown that a sufficient number of individuals were targeted in the course of an attack, or that they were targeted in such a way as to satisfy the Chamber that the attack was in fact directed against a civilian population, and not only against a limited number of individuals who were randomly selected.[625] An attack is "directed against" a civilian population if the civilian population is the primary object of the attack.[626] The population against whom the attack is directed is considered civilian if it is predominantly civilian.[627] This means not only that the definition of civilian population includes individuals who may at one time have performed acts of resistance and persons *hors de combat* but also that the presence of a number of non-civilians cannot refute the predominantly civilian character of a population.[628]

236. The attack must be either widespread or systematic in nature. The element "widespread" refers to the large-scale nature of the attack and the number of the victims. The element "systematic" requires an organised nature of the acts and the improbability of their random occurrence.[629]

237. The accused must further possess the necessary *mens rea*. The accused must have the intent to commit the underlying offence with which he is charged, and he must have knowledge that there is an attack against the civilian population and that his act comprises part of that attack.[630]

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a policy or plan as a separate element of Article 5 of the Statute but concurred with the findings in the *Kordi}* Trial Judgement that such plan or policy may be indicative to determine that an attack is widespread or systematic and that the acts of the accused are part of the attack, *Kronojelac* Trial Judgement, para 58.

624 *Kunarac* Appeal Judgement, para 98.

625 *Kunarac* Appeal Judgement, para 90.

626 *Kunarac* Appeal Judgement, para 91. In the determination whether there was an attack upon a civilian population, it is not relevant that the other side may also have committed atrocities against its opponent's civilian population, *Kunarac* Appeal Judgement, para 87.

627 *Tadi}* Trial Judgement, para 638; *Kordi}* Trial Judgement, para 180; *Krnojelac* Trial Judgement, para 56.

628 *Tadi}* Trial Judgement, paras 638-639.

629 *Kunarac* Appeal Judgement, para 94, citing the *Kunarac* Trial Judgement, para 429 and the *Tadi}* Trial Judgement, para 648.

630 As a minimum, he must willingly have taken the risk that his act was part of said attack. The accused, however, does not need to have knowledge of the details of the attack, neither does he have to share the purpose or goal behind the attack to be held responsible for a crime against humanity, all other elements being met; *Kunarac* Appeal Judgement, paras 102-103.

238. The Chamber is satisfied that there was a widespread and systematic attack against the Muslim civilian population in Mostar, Sovi}i and Doljani at the time relevant to the Indictment. The attack took many forms. It started with the collection and detention of Muslim civilians after the fierce fighting around Sovi}i and Doljani and their subsequent transfer to detention centres and, later, to territory controlled by the ABiH.[631] The BH Muslim houses in the area were burnt to make sure that there would be no return of the Muslim population.[632] BH Muslim religious sites, like the mosques in the area, were systematically destroyed.[633] Detention facilities for the BH Muslim part of the population were established all over the area.[634] Detained BH Muslim civilians and BH Muslim soldiers *hors de combat* were often subjected to humiliating and brutal mistreatment by soldiers who had unfettered access to the detention facilities.[635]

239. The campaign against the BH Muslim population in the area reached a climax after the attack on Mostar in early May 1993, when following the hostilities, the BH Muslim civilian population was forced out of West Mostar in concerted actions. The evidence shows how groups of soldiers forcibly evicted BH Muslim civilian families out of their apartments at night, throwing them literally out on the streets and forcing them to leave everything behind.[636] The terror instilled made BH Muslim civilians leave the Western part of the city in large columns.[637] The few BH Muslim civilians who had a chance to return to their apartments at a later stage did so only to find out that their property had been looted or destroyed.[638]

240. The humanitarian conditions on the East bank of Mostar were appalling. While the Muslim population was swelling due to the intense expulsions from the West bank, water and electricity services were cut off and humanitarian organisations were denied access for weeks. Crucial public services, such as the hospital, were located on the West bank of Mostar and, thus, no longer accessible to the BH Muslim civilian population.[639] Architecture evocative of an oriental influence, as, for instance, the old bridge in Mostar, was destroyed.[640] The street names of West Mostar were

[631] *See supra* paras 30-35.
[632] *See infra* paras 582-585.
[633] Witness Said Smajki} testified that out of the 20 mosques in the area, there was not a single one left that could receive believers to come for prayers as the destruction was large-scale, witness Said Smajiki}, T 4079. Witness O corroborated this evidence, testifying that all mosques were literally razed to the ground, witness O, T 2158.
[634] *See supra* para 55 and *infra* paras 643-665.
[635] *See infra* paras 346-456.
[636] *See supra* paras 42-45 and *infra* paras 532-571.
[637] *See supra* para 45.
[638] *See infra* paras 618-631.
[639] Witness P, T 2287-2288; exhibit PP 623.
[640] Witness Said Smajki}, T 4074. Witness O, an architect, also testified that Mostar had 17 monuments, all of which were destroyed, witness O, T 2158. Witness P testified that the Eastern part of Mostar was the historic part with Ottoman architecture while the Western part was the more modern part with all major facilities, as for instance, the hospital, witness P, T 2330.

changed after the expulsion of the BH Muslim population.[641] The evidence thus establishes that there was a widespread and systematic attack against the Muslim part of the civilian population in the area relevant to the Indictment. It further establishes that this campaign had a specific aim: to transform the formerly ethnically mixed area in and around Mostar[642] into BH Croat territory, to be populated by an ethnically pure BH Croat population.

241. The Chamber is satisfied that the acts committed by Mladen Naletili} and Vinko Martinovi} as charged in the Indictment comprised part of this widespread and systematic attack against the BH Muslim civilian population in the area. The attack on the civilian population went hand in hand with the fierce fighting over the territory. Mladen Naletili} participated in the fighting as the commander of the KB. Vinko Martinovi} participated in the fighting as the commander of the Vinko [krobo ATG. Their acts directly contributed to the overall aim of the campaign against the civilian population, namely to expel the BH Muslim population from the area of Sovi}i, Doljani and Mostar, and thus were part of the attack.

242. The Chamber is further satisfied that Mladen Naletili} knew of the attack. In his function as commander of the KB, Mladen Naletili} was moving between Sovi}i, Doljani and Mostar and was present at all those locations at various times.[643] There is no reasonable possibility that he could not have known about the situation of the Muslim civilian population in those areas. Moreover, the Chamber is satisfied that Mladen Naletili} wilfully pursued the goals of the attack against the Muslim civilian population in the area and thus, also knew that his acts fit into the pattern of the attack. Witness LL whom the Chamber received as a reliable and credible witness, testified that Mladen Naletili} and Ivan Andabak, in the course of a dinner in Ivan Andabak's house, told him very frankly that it was their aim to expel the Muslim population from the area and that they intended to set up a Republic of Herceg-Bosna.[644] The Chamber is thus satisfied that the *chapeau* requirements under Article 5 of the Statute are met with regard to Mladen Naletili}.

243. The Chamber is also satisfied that Vinko Martinovi} knew of the general attack against the BH Muslim civilian population in Mostar. The headquarters of the Vinko [krobo ATG whose commander Vinko Martinovi} was, was based in the Kalemova street and his area of responsibility was the Bulevar, in the centre of Mostar and right at the frontline between the East and West Bank

[641] Exhibit PP 793.1 is a list of street names in West Mostar which were re-named after the conflict.
[642] Witness P testified that Mostar had the highest rate of inter-ethnic marriages of any city in Bosnia and Herzegovina and the relationship between BH Croats and BH Muslims was once strong as it was a very integrated community, witness P, T 2244.
[643] *See supra* paras 123, 142-147.
[644] He further testified that Mladen Naletili} explained to him that by getting rid of BH Muslims in Mostar, they intended to enhance the pressure and set a precedence for the expulsion of BH Muslims all over the area, witness LL, T 5218-5219.

of Mostar. During the operations, Vinko Martinovi} moved all over the town.[645] There is thus no reasonable possibility that he could not have known about the situation of the Muslim civilian population in Mostar. The Chamber is satisfied that Vinko Martinovi}, with the knowledge of the attack, decided to pursue the goal of the attack and that he knew that his acts constituted part of the attack.

244. The Chamber is thus satisfied that the requirements under Article 5 of the Statute are met.

[645] *See supra* paras 138, 161-163. As Vinko Martinovi} is not charged with any crimes alleged to have been committed in Sovi}i or Doljani, the Chamber finds it irrelevant whether Vinko Martinovi} also knew of the attack on the Muslim civilian population in these areas.

III. FINDINGS ON THE RESPECTIVE COUNTS

A. Counts 2-8: Unlawful labour and human shields

245. Vinko Martinovi} and Mladen Naletili} are charged with seven counts on the basis of their alleged use of BH Muslims detainees for forced labour and as human shields.[646] The practice of unlawful labour is cumulatively charged as inhumane act (Count 2), inhuman treatment (Count 3) and cruel treatment (Count 4). Furthermore, the deaths resulting from this practice are charged as murder and wilful killing (Counts 6 to 8). This Tribunal has held that the use of detainees for certain forms of labour and as human shields may amount to inhumane acts, inhuman treatment, cruel treatment[647] and/or murder and wilful killing, where the elements specific to these offences are also met.

1. The law

(a) Inhuman treatment, cruel treatment and inhumane acts

246. The jurisprudence of the Tribunal shows that the offences of inhuman treatment and cruel treatment are residual clauses under Articles 2 and 3 of the Statute respectively.[648] Materially, the elements of these offences are the same.[649] Inhuman treatment is defined as a) an intentional act or omission, which causes serious mental harm or physical suffering or injury or constitutes a serious attack on human dignity,[650] b) committed against a protected person.[651] Cruel treatment is constituted by a) an intentional act or omission, which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity,[652] b) committed against a person taking no active part in the hostilities.[653] The degree of physical or mental suffering required to prove either one of those offences is lower than the one required for torture, though at the same level as the one required to prove a charge of "wilfully causing great suffering or serious injury to body or health".[654]

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[646] Indictment, paras 35-44.
[647] *Bla{ki}* Trial Judgement, para 713; *Kordi}* Trial Judgement, para 773.
[648] *Celebici* Judgement, para 552.
[649] In the *Celebici* Appeal Judgement, the Appeals Chamber held that as between the offences of cruel treatment and inhumane treatment, the "sole distinguishing element stems from the protected person requirement under Article 2 of the Statute ".
Celebici Appeal Judgement, para 426.
[650] *Blaškic* Trial Judgement, para 154; applied in *Celebici* Appeal Judgement, para 426.
[651] *Celebici* Appeal Judgement, para 426.
[652] *Jelisic* Trial Judgement, para 41; applied in *Celebici* Appeal Judgement, para 424.
[653] *Celebici* Appeal Judgement, para 424.
[654] *Kvo~ka* Trial Judgement, para 161.

247. Similarly, Article 5(i) of the Statute (other inhumane acts) is a residual clause, which applies to acts that do not fall within any of other sub-clause of Article 5 of the Statute but are sufficiently similar in gravity to the other enumerated crimes.[655] Inhumane acts are "?…? acts or omissions intended to cause deliberate mental or physical suffering to the individual."[656] As constituting crimes against humanity, these acts must also be widespread or systematic.[657]

(b) Murder and wilful killing

248. The underlying elements of the offences of murder under Article 3 and 5 of the Statute and wilful killing under Article 2 of the Statute are the same.[658] These elements are:

> a. death of the victim as the result of the action(s) of the accused,
>
> b. who intended to cause death or serious bodily injury which, as it is reasonable to assume, he had to understand was likely to lead to death,[659]

249. The general requirements under Articles 2, 3 and 5 of the Statute apply to these crimes.[660]

(c) Unlawful labour

250. The charge of unlawful labour is also brought under Article 51 of Geneva Convention IV and Articles 49, 50 and 52 of Geneva Convention III.[661] The alleged violations of those provisions fall under Article 3 of the Statute, and more specifically within the category, as defined by the Appeals Chamber,[662] constituted by infringements of the Geneva Conventions other than those classified as grave breaches. As such, they clearly infringe upon a rule of international humanitarian law. Moreover, it is apparent from the jurisprudence of the Tribunal that the Geneva Conventions as a whole, including the above-mentioned provisions, have become part of customary

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[655] *Kvo~ka* Trial Judgement, para 206. The Chamber held that "?mgutilation and other types of severe bodily harm, beatings and other acts of violence, serious physical and mental injury, forcible transfer, inhumane and degrading treatment, forced prostitution and forced disappearance" were listed in the jurisprudence of the Tribunal as falling under this category, para 208.

[656] *Kayishema/Ruzindana* Trial Judgement, para 151; applied in *Blaškic* Trial Judgement, para 240.

[657] *Blaškic* Trial Judgement, paras 239-242.

[658] *Celebici* Trial Judgement, para 422, which discusses wilful killing in Article 2 of the Statute and murder in Article 3 of the Statute; *Kordic* Trial Judgement, para 236, which discusses wilful killing and murder under Articles 3 and 5 of the Statute; *Celebici* Appeal Judgement, para 422; *Bla{kic* Trial Judgement, para 153.

[659] *Bla{kic* Trial Judgement, para 153.

[660] For the purposes of Article 2 of the Statute, it must be committed against a protected person; *Celebici* Appeal Judgement, para 422. For the purposes of Article 3 of the Statute, it must be committed against a person taking no active part in the hostilities; *Celebici* Appeal Judgement, para 423. For the purposes of Article 5 of the Statute, the murder must be committed as part of a widespread or systematic attack against a civilian population; *Kordic* Trial Judgement, para 236. In the *Krstic* Trial Judgement, the Chamber cites the same definition for both Articles 3 and 5 of the Statute, *Krstic* Trial Judgement, para 485. *See* also, *Jelisic* Trial Judgement, para 51.

[661] Count 5 of the Indictment.

[662] *Tadi}* Jurisdiction Decision, para 89.

international law,[663] and entail the individual criminal responsibility of the offender.[664] Accordingly, the Chamber finds those requirements under Article 3 of the Statute are met in the present case. The additional requirement that the alleged offences of unlawful labour are serious enough to fall within the scope of Article 3 of the Statute[665] will be examined on a case by case basis and in light of the evidence introduced.

251. The Trial Chamber finds that additional requirements, besides that of the existence of an international armed conflict,[666] arise out of the application of the specific regime of labour as envisioned under the Geneva Conventions. The Prosecution relies on Article 51 of Geneva Convention IV, which governs the labour of civilians. It is clear from the wording of this article that its application is reserved to (1) protected persons, (2) finding themselves in occupied territories. Those two requirements were previously examined.[667] The Prosecution further relies on Articles 49, 50 and 52[668] of Geneva Convention III concerning the labour of prisoners of war.[669]

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[663] In the ^*elebi}i* Appeal Judgement, it was held that "?igt is indisputable that the Geneva Conventions fall within this category of universal multilateral treaties which reflect rules accepted and recognised by the international community as a whole. The Geneva Conventions enjoy nearly universal participation." It was added that "?ign light of the object and the purpose of the Geneva Conventions, which is to guarantee the protection of certain fundamental values common to mankind in times of armed conflict, and of the customary nature of their provisions, the Appeals Chamber is in no doubt that State succession has no impact on obligations arising out from these fundamental humanitarian conventions. In this regard, reference should be made to the Secretary-General's Report submitted at the time of the establishment of the Tribunal, which specifically lists the Geneva Conventions among the international humanitarian instruments, which are 'beyond any doubt part of customary law'", paras 112 and 113.

[664] In relation to charges arising out of common Article 3 *see supra* para 228.

[665] *See supra* para 230.

[666] *See supra* paras 176-202.

[667] *See supra* paras 203-223.

[668] Article 52 of Geneva Convention III has been added as a basis for the unlawful labour charges in the amended indictment dated 4 December 2000, following the Chamber's "Decision on Prosecution Motion to Amend Count 5 of the Indictment", issued on 28 November 2000.

[669] Articles 49, 50 and 52 read as follows:

Article 49 – General Observations: "?t?he Detaining Power may utilise the labour of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly to maintaining them in a good state of physical and mental health.

Non-commissioned officers who are prisoners of war shall only be required to do supervisory work. Those not so required may ask for other suitable work, which shall, so far as possible, be found for them.

If officers or persons of equivalent status ask for suitable work, it shall be found for them, so far as possible, but they may in no circumstances be compelled to work." Article 50 – Authorised Work: "Besides work connected with camp administration, installation or maintenance, prisoners of war may be compelled to do only such work as included in the following classes: (a) agriculture; (b) industries connected with the production or the extraction of raw materials, and manufacturing industries, with the exception of metallurgical, machinery and chemical industries; public works and building operations which have no military character or purpose; (c) transport and handling of stores which are not military in character or purpose; (d) commercial business, and arts and crafts; (e) domestic service; (f) public utility services having no military character or purpose. Should the above provisions be infringed, prisoners of war shall be allowed to exercise their right of complaint, in conformity with Article 78." Article 52 – Dangerous or Humiliating Labour: "Unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature. No prisoner of war shall be assigned to labour which would be looked upon as humiliating for a member of the Detaining Power's own forces. The removal of mines or similar devices shall be considered as dangerous labour."

For those provisions to be applicable, the persons performing the labour must be protected persons within the meaning of Article 4 of the said Convention, in other words, prisoners of war.[670]

252. The Prosecution stated in its Final Brief that, as a result of the difficulty in distinguishing between civilians and prisoners of war, it "will only apply the lower standards set by the Geneva Convention III, and consider all victims of forced labour as prisoners of war".[671] The Martinovi} Defence does not specifically address this argument but only refers to labour by prisoners of war in its Final Brief.[672] The Chamber interprets this statement by the Prosecution as an admission that it has failed to establish the status of the victims.[673] However, in light of the fact that the persons forced to undertake unlawful labour were all detained in various detention centres, the Chamber accepts that the victims were all protected persons within the meaning of Geneva Convention III or IV, depending on their status either as a prisoner of war or as a civilian. The Chamber accepts that the application of the regime laid out in Geneva Convention III in relation to forced labour is more favourable to the accused than the protection afforded to civilian detainees under Geneva Convention IV. As such, the Chamber will apply the lower standard laid out in Geneva Convention III relating to the labour of prisoners of war.

253. The Prosecution relies on Articles 49, 50 and 52 of Geneva Convention III to support the charges involving the use of prisoners of war to perform unlawful labour. As a preliminary remark, it is apparent that not all labour is prohibited during times of armed conflict, but that specific provisions must be respected.[674] Furthermore, forced labour does not always amount to unlawful labour. Article 49 of Geneva Convention III establishes a principle of compulsory labour for prisoners of war. The basic principle stated in Paragraph 1 of this provision "is the right of the Detaining Power to require prisoners of war to work".[675] Nevertheless, this principle is subject to two fundamental conditions, the first one relating to the prisoner himself, and the second one to the nature of the work required.

254. Thus, prisoners of war may be required to work provided that this is done in their own interest,[676] and those considerations relating to their age and sex,[677] physical aptitude[678] and rank[679]

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[670] *See supra* para 209.
[671] Prosecution Final Brief, pp 200-201.
[672] Martinovi} Final Brief, pp 72-87. The Naletili} Defence did not submit any argument on this matter.
[673] In this respect, the Chamber reviewed the background of each of the relevant witnesses and found that the very vast majority of them were in fact prisoners of war.
[674] *Kunarac* Trial Judgement, para 542; *Kronjelac* Trial Judgement, para 359. In those two judgements however, unlawful labour was only envisioned as the basis for enslavement, charged as a crime against humanity.
[675] *See* Commentary to Geneva Convention III, p 260.
[676] *See* Commentary to Geneva Convention III, p 260: this provision is based on humanitarian considerations, its primary purpose being to preserve the bodily health and morale of prisoners of war, while facilitating the camp administration and ameliorating the financial situation of the prisoners.

are taken into account. In this respect, it is also noteworthy that according to Article 51 of Geneva Convention III, prisoners of war must work under "suitable working conditions, especially as regards to accommodation, food" and "climatic conditions."[680]

255. Articles 50 and 52 of Geneva Convention III define which type of labour might be required and which might not. It is emphasised in the Commentary that:

> ?tghe core of the question is still the distinction to be made between activities considered as being connected with war operations and those which are not.[681]

256. Accordingly, prisoners of war may be forced to perform several forms of labour. First, Article 50 of Geneva Convention III grants a general authorisation for any work "connected with camp administration, installation or maintenance", bearing in mind that this type of work "is done by prisoners of war in their own interest".[682] Secondly, prisoners of war may always be compelled to perform work in relation to agriculture, commercial business, arts and crafts, and domestic services, regardless of whether the "produce of their labour is intended for soldiers in the frontline or for the civilian population of the country".[683] Thirdly, prisoners of war may be compelled to perform work in industries other than metallurgical, machinery and chemical industries, public works and building operations, transport and handling of stores and public utility services, provided that those forms of labour have no military character or purpose. While the condition that the work has no military character or purpose is of delicate interpretation, the Commentary provides some guidance. It states that:

> ?egverything *which is commanded and regulated by the military authority* is of military character, in contrast to what is commanded and regulated by the civil authorities.[684]

The Commentary further suggests a flexible interpretation of the concept of "military purpose":

> Prisoners of war may therefore be employed on all work which ?…g *normally serves to maintain civilian life, even if the military authorities incidentally benefit by it*. The participation of

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677 *See* Article 16 of Geneva Convention III, according to which "privileged treatment ?…g may be accorded to ?prisonersg by reason of their state of health, age or professional qualifications".

678 According to Commentary to the Geneva Convention III, "the Detaining Power may only require physically fit prisoners to work, in order precisely to maintain them in a good state of physical and mental health", p 260. A medical examination is required to this purpose under Article 55 of the said Convention.

679 Paragraph 2 of Article 49 of Geneva Convention III expressly provides that non-commissioned officers may only be required to do supervisory work, and paragraph 3, that officers may in no circumstances be compelled to work.

680 Article 51 of Geneva Convention III, para 1.

681 Commentary to Geneva Convention III, p 266. This statement must be read in light of Article 23 of Geneva Convention III which provides that "?n?o prisoner of war may at any time be sent to, or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations".

682 Commentary to Geneva Convention III, p 266.

683 Commentary to Geneva Convention III, p 266.

684 Commentary to Geneva Convention III, p 267 (emphasis added).

> prisoners of war in such work is prohibited, however, whenever it is done for the sole or principal benefit of the military, to the exclusion of civilians.[685]

257. However, other classes of labour may not be imposed on prisoners of war. As just discussed, they first include work in industries, public works and building operations, transport and handling of stores and public utility services where it has a military character or purpose. Secondly, Article 50 of Geneva Convention III expressly prohibits the forced employment of prisoners of war in the metallurgical, machinery and chemical industries. The Commentary emphasises the importance of this prohibition, "for in the event of a general war, these industries will always be turned over to armaments production".[686] Thirdly, Article 52 of Geneva Convention III prohibits the use of prisoners of war to perform unhealthy or dangerous work unless the prisoners volunteer to undertake such work. While this provision expressly only refers to mine-lifting as constituting dangerous labour, the Commentary provides further guidance by distinguishing three situations: (1) work which is not dangerous in itself but which may be dangerous by reason of the general conditions in which it is carried out: this situation is intended to cover particularly work done "in the vicinity either of key military objectives ?…g or of the battlefield",[687] (2) work which by its very nature is dangerous or unhealthy,[688] and (3) work which is not in itself dangerous but which may be or may become so if it is done in inadequate technical conditions.[689] An essential aspect of this protection afforded to prisoners of war is the responsibility that rests on the detaining authorities to ensure that the work is performed with maximum safety.[690] Finally, Article 52 of Geneva Convention III prohibits the assignment of prisoners of war to labour, which would be deemed humiliating for a member of the detaining forces.[691]

258. The Chamber notes that those forms of labour may only be lawful where the prisoner of war volunteers or consents to the work. While the possibility for prisoners to consent is expressly formulated in Article 52 of Geneva Convention III, there is no clear provision on the possibility for

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[685] Commentary to Geneva Convention III, p 268 (emphasis added).
[686] Commentary to Geneva Convention III, p 268. In this respect, another consideration is the safety of the prisoners of war, as these industries always count among the objectives of enemy air operations. Commentary to Geneva Convention III, p 269.
[687] Commentary to Geneva Convention III, pp 274-275.
[688] Commentary to Geneva Convention III, p 275.
[689] Commentary to Geneva Convention III, p 275.
[690] In this respect, the Commentary to Geneva Convention III indicates that "the reference to volunteering in no way diminishes the responsibility of the Detaining Power and cannot excuse any lack of discernment in the selection of prisoners for such work. The Detaining Power must choose from among the volunteers who come forward those best qualified to do the work required with the maximum safety, and it must give them all the necessary training or, if they claim to have been trained already, check their ability and reject all those who do not meet the required standards," Commentary to Geneva Convention III, p 277.
[691] According to the Commentary to Geneva Convention III, the reference is to objective rules normally enforced in the armed forces rather than the personal feelings of any of its individual members. Commentary to Geneva Convention III, p 277.

prisoners of war to consent to perform military related work under Article 50.[692] In this context, the Chamber interprets this Article and the related Commentary[693] so as to aim at regulating only the forced utilisation of prisoners' labour. Article 50 of Geneva Convention III provides that prisoners of war may be *compelled* to perform certain forms of work. Accordingly, the prohibited act is that of *compelling* a prisoner of war against his or her will. It appears from the *travaux préparatoires* that the decision to use the words "compelled to" was reached after rejecting an alternative proposal that would have excluded the possibility for prisoners of war to volunteer to do military work.[694] Such interpretation is also in accordance with Article 52 of Geneva Convention III, which allows prisoners to consent to perform dangerous or unhealthy labour.

259. As a result of the foregoing, the Chamber will have to determine on a case by case basis whether the forms of labour alleged in the Indictment were indeed undertaken voluntarily or whether the detainees were compelled to do so. To determine whether a person was not in a position to make a "real choice"[695] to undertake labour in contravention of the law, the following criteria may be considered, in accordance with previous jurisprudence: (a) the substantially uncompensated aspect of the labour performed; (b) the vulnerable position in which the detainees found themselves; (c) the allegations that detainees who were unable or unwilling to work were either forced to do so or put in solitary confinement; (d) claims of longer term consequences of the labour; (e) the fact and the conditions of detention;[696] and (f) the physical consequences of the work on the health of the internees.[697]

260. In order to establish the *mens rea* requirement for the crime of unlawful labour, the Prosecution must prove that the perpetrator had the intent that the victim would be performing

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[692] The way Article 50 of Geneva Convention III is phrased, namely that "prisoners of war may be compelled to do only such work as is included" in the Article, does not explicitly deal with the issue of a possible consent to labour that prisoners may not be forced to perform.

[693] If the intention is "to protect prisoners from the dangers of war",[693] nothing precludes a prisoner of war from volunteering to perform labour which would be considered as unlawful if it was compulsory. Commentary to Geneva Convention III, p. 264.

[694] Final Record of the Diplomatic Conference of Geneva of 1949, Vol. III, Section A, pp. 342-44. *See* also, Howard S. Levie, "Prisoners of war in International Armed Conflict", International Law Studies, Vol. 59, pp 231 *et seq.*, which states : "?i?t should be borne in mind that the prohibition under discussion is directed only against *compelling* prisoner of war to work in the specified industries ?…? The question then arises as to whether they may volunteer for employment in the prohibited industries. Based upon the discussions at the 1949 Diplomatic Conference, it clearly appears that the prohibitions contained in the various provisions of Article 50 are not, and were not intended to be, absolute in character and that a prisoner of war may volunteer to engage in the prohibited employments, just as he is affirmatively authorized by Article 52 to volunteer for labor which is 'of an unhealthy or dangerous nature'. The problem will, of course, arise of assuring that the prisoner of war is a true volunteer and that neither mental coercion nor physical force has been used to 'persuade' him to volunteer to work in the otherwise prohibited field of labor. However, the fact that this particular problem exists ?…? cannot be permitted to justify an incorrect interpretation of these provisions of the Convention, as to which the indisputable understanding of the 1949 Diplomatic Conference is clearly evidence in the *travaux préparatoires*," Prisoners of war in International Armed Conflict, pp 231-32 (footnotes omitted).

[695] *Krnojelac* Trial Judgement, para 372.

[696] *Krnojelac* Trial Judgement, para 373.

prohibited work. The intent can be demonstrated by direct explicit evidence, or, in the absence of such evidence, can be inferred from the circumstances in which the labour was performed.

261. For the foregoing reasons, the Chamber finds that the offence of unlawful labour against prisoners of war may be defined as an intentional act or omission by which a prisoner of war is forced to perform labour prohibited under Articles 49, 50, 51 or 52 of Geneva Convention III.

2. The findings

262. Mladen Naletili} and Vinko Martinovi} are both charged with inhumane acts, inhuman treatment, cruel treatment, unlawful labour, murder and wilful killing for allegedly forcing BH Muslim detainees from various detention centres "to perform labour in military operations and to be used as human shields on the Bulevar and [anti}eva streets; Ra{tani; Stotina; and other locations along the front line in the municipality of Mostar",[698] as well as in locations other than the front lines, where detainees are alleged to have been forced "*inter alia*, to engage and participate in the following works: building, maintenance and reparation works in private properties of the members and commanders of the KB; digging trenches, building defences in the positions of the KB or other HV and HVO forces; and assisting the KB members in the process of looting houses and properties of BH Muslims".[699]

(a) Detainees working for Vinko [krobo ATG

263. In paragraph 37 of the Indictment, the Prosecution alleges that between May 1993 and January 1994, detainees from the Heliodrom and other detention camps were taken to KB bases in Mostar for eventual transfer to the confrontation lines where they were forced to perform military support tasks.[700] Mladen Naletili} and Vinko Martinovi} are alleged to have known of the danger to which the detainees were exposed.[701] Furthermore, Vinko Martinovi} is specifically accused to have used detainees for labour in military operations and as human shields along the confrontation line in his area of responsibility.[702]

264. The Martinovi} Defence does not contest that prisoners of war detained at the Heliodrom were regularly sent to work for the Vinko [krobo ATG.[703] However, it submits that the command

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[697] *Krnojelac* Trial Judgement, para 378.
[698] Indictment, para 35.
[699] Indictment, para 44.
[700] Indictment, para 37.
[701] Indictment, para 38.
[702] Indictment, para 40.
[703] Martinovi} Final Brief, p 73. This allegation is confirmed, *inter alia*, by exhibit PP 434 which is a sample of 440 orders allowing the release of prisoners of war to work for various HVO and HV units between 5 June and

of the military police issued the orders singling out which prisoner was to work in the respective units.[704] It further argues that:

> ?a?ll responsibility for the treatment of the prisoners of war was in the sole jurisdiction of the Heliodrom command and the command of the defence of Mostar, where individual units, such as Vinko [krobo ATG was, only executed orders from the superior commands pertaining to prisoners of war.[705]

The Martinovi} Defence relies on several orders for the sending of prisoners of war to the Vinko [krobo ATG, as well as on the testimony of the commander of the first light assault battalion of the military police who signed such orders.[706] However, a review of those documents, read in the light of other similar orders, shows that the Vinko [krobo ATG regularly, and at times daily, requested the HVO military police, in charge of the Heliodrom detention centre, to provide detainees to perform labour for the unit, and that these requests were mostly granted by the commander of the first light assault battalion of the military police.[707] On this basis, the Chamber is satisfied that the prisoners of war were sent on the request and for the discretionary needs of the individual units.[708]

265. It is also apparent that, contrary to the Martinovi} Defence argument, the military police did not bear all responsibility for the treatment of the detainees during the time they were discharged to work in the Vinko [krobo ATG. The above-mentioned orders all expressly specify that the responsibility to treat the detainees in accordance with the Geneva Conventions rested on the member of the unit who came to pick them up, which Defence witness NO also confirmed.[709] In some cases, Vinko Martinovi} himself was that person,[710] but mostly, as many former Heliodrom

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9 December 1993, including the Vinko [krobo ATG. Concerning the Heliodrom specifically, exhibits PP 567.1 and PP 601.1, which are the Heliodrom logbooks, show clearly that detainees were daily taken to work for a whole range of HVO units, including the Vinko [krobo ATG.

[704] Martinovi} Final Brief, pp 73-74. *See* Defence witness MT, T 15338.

[705] Martinovi} Final Brief, p 73.

[706] Martinovi} Final Brief, pp 73-74, referring to exhibits PP 505, PP 512, PP 515 and PP 554, and to the testimony of Defence witness NO, T 12967.

[707] Exhibits PP 505; PP 512; PP 514; PP 515; PP 562.1; PP 562.2; PP 563.1; PP 597.1; PP 597.2; PP 601.1; PP 600.2; PP 603.2 and PP 607.1: orders signed by Zlatan Jeli} for the taking of Heliodrom detainees to the Vinko [krobo ATG between the 8 July 1993 and the 20 September 1993. Zlatan Jeli} was subsequently replaced by Vladimir Primorac as the commander of the first light assault battalion of the military police. *See* exhibit PP 551.1 assembling 31 orders for the taking of Heliodrom detainees to the Vinko [krobo ATG, signed by Vladimir Primorac on an almost daily basis between the 30 July 1993 and the 9 September 1993.

[708] In this respect, the Chamber takes note of Defence witness NO who confirmed the "procedure" followed for the taking of detainees. He testified: "Q Mr. NO, do you know how the detainees were taken over, how they were brought to these various units? A The person -- first of all I would receive a request from a unit and with the request, the person in charge would come to me, that person would be in charge of the security of these detainees, that person would then go to the Heliodrom military investigative prison, that person would take over those prisoners, and then the same person would return the same prisoners to the Heliodrom," Defence witness NO, T 12967.

[709] Defence witness NO, T 12967.

[710] Exhibit PP 597.1, order signed by Zlatan Jeli} allowing for the taking of 30 detainees on 12 September 1993, stated that the "responsibility for the take-over of detainees, their security and care during the execution of communal labour (cleaning of streets, parks, settlements, premises) will rest personally on Mr. Vinko Martinovi} [tela until the

detainees testified before the Chamber, the driver of Vinko Martinovi}'s unit, a man named Dinko Kne`ovi}, would come in the morning and select a group of prisoners that would then be driven to the headquarters of the Vinko [krobo ATG in the Kalemova street.[711] Sometimes however, other soldiers would come to pick up the prisoners.[712] In light of this evidence, the Chamber concludes that the detainees were not "singled out" or selected by the military police, but by the Vinko [krobo ATG itself.[713] In any event, the commander of the unit using prisoners of war to perform labour does bear a responsibility for ensuring that the relevant provisions of the Geneva Conventions are applied in the course of this labour.[714]

266. Upon arrival at the headquarters, Vinko Martinovi} gave orders and assigned labour.[715] The Martinovi} Defence argues that the prisoners were only made to carry out light and non-dangerous work.[716] It further claims that the prisoners had their meals in the Hladovina restaurant together with the soldiers, could move freely around the premises and, for some jobs, were paid with cigarettes and food.[717] Several Defence witnesses testified to that effect.[718]

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completion of the task." Witness HH also testified that Vinko Martinovi} went himself to the Heliodrom to pick up prisoners, witness HH, T 4822-4823. *See* also exhibit PP 434, pp 11-13.

[711] Witness I, T 1391-92; witness J, T 1503; witness PP, T 6078-79. *See* also, Defence witness MI, T 14342; Defence witness MT, T 15295.

[712] Witness Allan Knudsen, T 5632. Exhibit PP 434 (confidential) also reveals that while it was mostly Dinko Kne`ovi} who would come to fetch the prisoners, other soldiers would also sometimes be responsible for this task.

[713] Witness J, T 1502; witness I, T 1391-1392; witness PP, T 6077-78. The Chamber further heard Defence witnesses testifying that [tela would "chose" detainees whom he intended to protect to work in his unit. *See*, for example, Defence witness ME testified that [tela always took the same men because his soldiers knew them and wanted to protect them, Defence witness ME , T 14100-01.

[714] *See* also *Kordi}* Trial Judgement, para 801. The Chamber does not exclude the possibility that the commander of the military police may also be found responsible for allowing the release of prisoners if he knew or had reasons to know that they would be forced to perform unlawful labour.

[715] Witness YY, T 7266. Defence witness ML testified that "there was an explicit order, the order from Mr. Martinovi}, that without him, nobody could even order a prisoner to go and do something personally," Defence witness ML, T 14438.

[716] It stated that "the prisoners of war who were brought to Vinko Martinovi}'s unit stayed in the premises around the command, far away from the confrontation lines, in conditions posing no danger to their lives, performing light manual and craftsmen's work for the unit, mostly voluntarily as they themselves volunteered to come to this unit to work, since the conditions for the imprisoned were much better than in other units." Martinovi} Final Brief, p 76.

[717] Martinovi} Final Brief, pp 74-75.

[718] Defence witness ME recalled that he was taken everyday to work for [tela's unit from late August 1993 until he was released in early December 1993. Mostly, Vinko Martinovi} selected the same men because he knew them and wanted to protect them. The prisoners were all coming voluntarily, as the unit was where they felt the safest. They would eat the same food as the soldiers, in the Hladovina restaurant near the Rondo and the labour performed, such as repairing cars, was paid with money or cigarettes. Moreover, Vinko Martinovi} would drive the witness to his family whenever he wanted to, Defence witness ME, T 14100-14102, T 14133-14134 and T 14104-14105. Defence witness MH testified that he performed electrical repair work for Vinko Martinovi}'s unit, and that [tela always paid him for this, Defence witness MH, T 14274, 14295. Defence witness MI testified that he was often taken to work to Vinko Martinovi} unit. The work involved repairing vehicles of the members of the units, which he did voluntarily. Generally, the soldiers would bring him cigarettes or give him some money for the work. He was also taken home almost every day. The majority of the prisoners would receive the same treatment. There was never any mistreatment and the prisoners were never sent to the front line. Once, the witness was wounded by shrapnel in the Kalemova street, near the headquarters. Vinko Martinovi} immediately took him to the hospital where he received treatment before being taken back to the base, Defence witness MI, T 14318-14327. Defence witness MJ stated that

267. However, the Chamber is not persuaded by this version of the facts. While it has no doubt that some of the prisoners enjoyed a privileged treatment and a certain protection from Vinko Martinovi}, either because they were friends or family acquaintances before the war[719] or because they had special skills,[720] it is satisfied that this was not the case for the vast majority of the Heliodrom detainees who were taken to work to the Vinko [krobo ATG.[721]

268. The Chamber heard numerous testimonies from prisoners who were forced to perform military support tasks in extremely dangerous conditions, such as digging trenches near the confrontation line,[722] sealing exposed windows or areas with sandbags,[723] or other forms of fortification labour.[724] Further evidence was presented that detainees were made to carry explosives across the confrontation line,[725] or to retrieve bodies of wounded or killed HVO soldiers.[726] Former detainees, but also former members of the Vinko [krobo ATG, testified that the prisoners were often in direct exposure to fire from the other side of the front-line,[727] as a result of which some

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he worked every day between the end of July 1993 until the end of August 1993 in Vinko Martinovi}'s unit. The witness and others would generally maintain vehicles and do small repairs. Every day, he would receive cigarettes and food, and he could go home visit his family twice a week. According to the witness, the prisoners were never taken to the front line, and he never saw any prisoners being injured, killed or mistreated in the unit, Defence witness MJ, T 14369-14370. Defence witness MK testified in court that he would go visit [tela at the headquarters about twice a week and that the prisoners of war who were working there were mainly cleaning the base or repairing cars. The conditions of labour were safe, away from the frontline. Some of the prisoners were even allowed to go home to take a bath and visit their family, Defence witness MK, T 14407-14408. *See* also, Defence witness MM, T 14512; Defence witness MO, T 15027-15030; Defence witness ML, T 14435-14438; Defence witness MN, T 14598-14600; Defence witness MQ, T 15171-15173; Defence witness MP, T 15081-15088; Defence witness Jadranko Martinovi}, T 13788-13789; Defence witness MC, T 14010.

[719] The Chamber takes note of the fact that a substantial number of the above-mentioned Defence witnesses personally knew Vinko Martinovi} before the war, Defence witness ME, T 14096; Defence witness MH, T14267-14268; Defence witness MI, T 14310; Defence witness MJ, T 14375; Defence witness MK, T 14403. It is noteworthy that those prisoners were not taken out to work for the Vinko [krobo ATG on 17 September 1993, exhibit PP 601.1, Heliodrom logbook. This is corroborated by witness I who testified that on the morning of 17 September 1993, Dinko Kne`ovi} told the inmates who regularly worked for [tela that they would not go that day, witness I, T 1391.

[720] Defence witness MG recalled that a group of skilled prisoners were given a very privileged treatment in [tela's unit, Defence witness MG, T 14239-14240. Defence witness ML also stated that only the people who enjoyed skills in relation to car repairing would come and work at the base, Defence witness ML, T 14436. Witness J confirmed that a group of 5 or 6 prisoners was working as mechanics for [tela all the time, witness J, T 1515.

[721] The Chamber takes note of the testimony of witness YY who stated that he was detained at the headquarters of the Vinko [krobo ATG from 21 September 1993 until early December 1993, and described the conditions of his detention in a completely different fashion. He testified that the detainees were locked in the garage, could not move freely and that there was never enough food for all of them, witness YY, T 7287-7289.

[722] Witness AF, T 15940, 16086. According to witness J, the work consisted of filling sandbags and digging trenches. To fill the bags and build bunkers, they had to cross the line, witness J, T 1504. Witness PP had to take bunkers apart and destroy trenches, sometimes in the line of fire, witness PP, T 6077. *See* also, witness YY, T 7269.

[723] Witness F testified that he was made to carry sandbags to the frontline, witness F, T 1105. Witness H testified that he was forced to fill sandbags, which were used as a barrier between the two sides, witness H, T 1313. Witness PP had to fill sandbags near the confrontation line on the Bulevar, witness PP, T 6134.

[724] Witness SS, T 6557-59; witness NN, T 5896; witness A, T 592; witness Salko Osmi}, T 3145; witness KK, T 5191; witness OO, T 5939; witness YY, T 7269; Defence witness MG, T 14228.

[725] Witness EE testified that four prisoners were selected while at the Health Centre and made to carry the explosives over to the other side through a man hole underground near the school, witness EE, T 4520-23.

[726] Witness I, T 1423-1424; witness NN, T 5906.

[727] Witness Allan Knudsen testified that prisoners were working on the frontline all the time, doing the things that were too dangerous for the BH Croats to do, witness Allan Knudsen, T 5608; witness Q, T 2438; witness II, T 4970.

were injured.[728] However, the evidence is not sufficient to establish beyond reasonable doubt that detainees were killed in the area of responsibility of Vinko Martinovi} as a direct result of them performing labour.[729]

269. The Chamber finds that labour performed in the headquarters of the Vinko [krobo ATG, such as cleaning of the premises and repairing of private vehicles,[730] does not fall within the categories set out in the Geneva Conventions and that the prisoners of war could be compelled to do such work.[731] This is however not the case for the forms of labour performed on the front line, in the circumstances described by many witnesses.[732] As stated above, compelling prisoners of war to perform these forms of labour is patently prohibited under Geneva Convention III, and in particular under Articles 50 and 52 of the said Convention, which respectively prohibit work of "military character or purpose", and "unhealthy or dangerous labour". The labour may therefore only have been lawful if the prisoners consented to perform it.

270. The Chamber is satisfied that the opportunity to volunteer was never given to the prisoners who performed the forms of labour described above and that they were forced to do so. First, it appears clearly that to the exception of those prisoners who enjoy a privileged treatment, the Heliodrom detainees did not come forward, but were selected by the member of the unit who came to the Heliodrom to pick them up.[733] In the absence of direct evidence that the prisoners were

[728] *See* exhibits PP 774, p 24, PP 562.2. Witness A testified that Asif Rado{, was wounded in the leg while working on the frontline in [tela's area of responsibility, witness A, T 518. Witness I testified that he was injured in the leg while trying to reach the bodies he had been ordered to retrieve, witness I, T 1427-29. Witness NN testified that on 17 September 1993, he retrieved two wounded prisoners who had been sent in front of the soldiers, namely D`emal Spahi} and a man called Hajdarevi}, witness NN, T 5907.

[729] Witness PP testified that prisoners got killed while working in the line of fire, witness PP, T 6077. Witness M stated that he did not *see* anyone get killed but that he gathered many dead prisoners, including Enes Pajo, witness M, T 1678-79. Witness S also testified that he witnessed the death of two prisoners, witness S, T 2554. However, in the absence of any further specification as to the exact circumstances of those deaths, the Chamber cannot rely solely on these general assertions to conclude that killings occurred in the course and as a direct result of labour. As for the allegations set forth in paragraph 42 of the Indictment, they were already dropped to the extent that there was not sufficient evidence that the killings of Enes Pajo, Aziz ^olakovi} and Hamdija ^olakovi} were a direct result of the detainees being used as human shields. Similarly, the Chamber is not satisfied beyond reasonable doubt that the three prisoners mentioned were killed as a result of the labour they performed as the relevant witnesses had no knowledge of the actual circumstances of the death of the prisoners: witness OO stated that members of his family were killed, but has not provided any specification as to the circumstances of their death, witness OO, T 5955; witness I also stated that he saw Aziz ^olakovi} lying dead on 17 September 1993, but did not witness his killing, witness I, T 1430; similarly, witness NN testified that he saw Enes Pajo lying in a pool of blood and that he later found out that he was missing, "which means he was dead", but here again, the Chamber has not heard evidence relating to the exact circumstance of his death, witness NN, T 5921-5922. In light of the foregoing, the Chamber accepts the Defence's argument that there is a reasonable possibility that the prisoners got killed while they were attempting to escape. *See* Martinovi} Final Brief, p 80.

[730] *See supra* para 266 and *supra* footnote 720.

[731] The Chamber further finds that these forms of labour do not amount to inhumane acts, inhuman treatment or cruel treatment.

[732] *See supra* para 268.

[733] Witness J, T 1501-1502; Defence witness ME, T 14096. In this respect, it is noteworthy that those "privileged" prisoners who testified that they would always volunteer to work for [tela's unit because this is were they felt the safest, also stated that they were never sent to the frontline. For example, Defence witness ME testified that he went only once to the frontline, voluntarily, to *see* a friend there, Defence witness ME, T 14105-14106; Defence witness

forced to work,[734] the Chamber is satisfied that the circumstances under which the detainees were put and the nature of the labour interfered with their capacity to make a real choice. Prisoners were under constant guard and regularly mistreated while working for the Vinko [krobo ATG.[735] The atmosphere prevailing in and around the confrontation line was one of fear and threats.[736] The nature of the work itself is also indicative of the fact that the prisoners did not have a real choice.[737]

271. The Chamber finds that with regard to the work performed in the area of responsibility of the Vinko [krobo ATG, the offence of unlawful labour under Article 3 of the Statute (Count 5) is established. The Chamber is satisfied that the injuries sustained by some of the prisoners in the course of their work caused serious mental harm or physical suffering or injury and that therefore the charges of inhumane acts, inhuman treatment and cruel treatment under Articles 5(i), Article 2(b) and Article 3 of the Statute (Counts 2-4) are proven. As it has not been proven that the detainees were killed as a direct result of their labour, the Chamber finds that the charges of murder and wilful killing (Counts 6-8) have not been proven.

272. The Chamber finds that the responsibility of Vinko Martinovi} has been established both under Articles 7(1) and 7(3) of the Statute. Vinko Martinovi} sometimes himself ordered the prisoners to perform labour and as a result, directly exposed them to a great risk of injury and possibly death.[738] The Chamber is further satisfied that as a commander of the Vinko [krobo ATG, Vinko Martinovi} knew that prisoners were used in his area of command to perform unlawful labour and that he did not take any measures to prevent such practice, or punish those responsible.

MH stated that he was never taken to the frontline during the summer and autumn 1993, Defence witness MH, T 14275. Defence witness MK also testified that he never went to the confrontation line, Defence witness MK, T 14409.

[734] In this respect, the Chamber takes note of the testimony of witness K that he never volunteered, and that a man called Dinko came to fetch the prisoners, witness K, T 1576, 1605. Witness M also testified that he never volunteered to work, witness M, T 1675.

[735] See *infra* paras 385-389.

[736] Witness S testified that the prisoners were particularly afraid to work where [tela was in command and feared it would be the last day of their life, witness S, T 2556. Witness PP recounted threats that they would be killed by [tela if they did not comply with orders, witness PP, T 6168. Witness K testified that on one occasion, after having beaten a prisoner, [tela ordered them to go to work, otherwise they would all be killed, witness K, T 1582. Witness NN also testified that [tela told the prisoners: "Go to work and whoever won't work will be reported to me," T 5903.

[737] In this respect, the Chamber takes note of the finding of another Trial Chamber relating to detainees performing mine-clearing: "?t?he nature of the work ?…?is such that it is prohibited under both articles 3 and 5 of the Statute, so that any supposed consent to it would be irrelevant," *Kronjelac* Trial Judgement, para 411. In the present case, the Chamber is aware that in theory, it is possible for prisoners of war to consent to the labour that they performed in the area of responsibility of Vinko Martinovi}. In determining whether they actually did consent to perform such labour, the Chamber takes into account the fact that the work put the prisoners in direct risk for their life, and that a person in a position to make a real choice is highly unlikely to chose to perform such work.

[738] Witness K, T 1582. According to Defence witness ML, there was an explicit order by [tela that no one could order a prisoner to go and do something without his approval, Defence witness ML, T 14438.

The Chamber finds that Vinko Martinovi}'s responsibility is most appropriately described under Article 7(1) of the Statute.

273. The Chamber is not satisfied that Mladen Naletili} was responsible under Article 7(1) or 7(3) of the Statute. There is no evidence that he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of the offences described above. The Prosecution has not adduced sufficient evidence to prove that Mladen Naletili} knew or had reasons to know that detainees were used to perform unlawful labour in the area of responsibility of the Vinko [krobo ATG. The Prosecution relies on the testimony of witness HH who testified that sometime in mid-July 1993, while he was walking in a column, together with HVO soldiers and prisoners of war, through the Liska park and towards the confrontation line, he witnessed an exchange between Tuta and one of the prisoners named Zikret Karso.[739] The Chamber does not find this evidence sufficient to establish that Mladen Naletili} knew or had reasons to know that the prisoners were subsequently taken to perform dangerous labour on the frontline.

(i) Incidents on 17 September 1993

a. The wooden rifles incident[740]

274. In paragraph 41 of the Indictment, the Prosecution alleges that as part of an offensive launched by the HV and the HVO on 17 September 1993, Vinko Martinovi} ordered and directed the use of BH Muslim detainees for military attack purposes in the part of the Bulevar under his command. It further submits that several detainees were given imitation wooden rifles and military clothing and were forced to walk alongside a tank moving towards enemy positions.

275. The evidence proves that on 17 September 1993, at 12 pm, the HVO launched an offensive operation against the ABiH on the right bank of the Neretva river, which did not succeed in taking any grounds, and led to many casualties among the HVO soldiers.[741]

276. In the morning of 17 September 1993, Dinko Kne`ovi} came to fetch approximately 30 prisoners from the Heliodrom to take them to the headquarters of the Vinko

[739] Witness HH, T 4839-4856.
[740] The Chamber heard in court of another incident involving the use of wooden rifle and that allegedly occurred in July 1993. However, only the incident of 17 September 1993 has been charged in the Indictment. The Chamber therefore disregarded the testimony related to the former.
[741] Exhibit PP 608. *See* also exhibit PP 603. Defence witness MP testified that the objective of the operation was to move across the Bulevar and take positions on the Eastern side, Defence witness MP, T 15110.

[krobo ATG.[742] Upon their arrival, Vinko Martinovi} ordered Ernest Taka~ to select four prisoners, who were taken down to the basement of the headquarters.[743] There, [tela ordered them to wear camouflage uniforms.[744] The prisoners also received wooden rifles.[745] Three of those prisoners testified about the incident, which ensued that day.

277. Witness J testified that after the four selected prisoners were given camouflage uniforms and wooden rifles, they were ordered to clean the soldiers' weapons.[746] A while later, Ernest Taka~ took them to the building called the "first aid post".[747] Vinko Martinovi} met them there and told them about a combat operation, which was to take place at noon and during which, after a short shelling, a tank would come from the Rondo and stop in front of the building. It would fire a few times and the prisoners would have to take position around the tank facing the ABiH, supposedly to find out where their positions were.[748] Vinko Martinovi} promised the prisoners that they would be freed within 48 hours if they succeeded.[749] A while later, a tank arrived from the Rondo as planned and the prisoners started to walk toward the ABiH positions. They lay down as soon as they heard shots,[750] and witness J was wounded while lying on the ground.[751] However, the prisoners managed to take shelter in the basement of the building where the ABiH was positioned.[752]

278. Witness OO corroborated that the four prisoners were taken by Ernest Taka~ to the basement of the headquarters, where Vinko Martinovi} told them to dress in camouflage uniforms and gave them instructions for the imminent operation.[753] The prisoners were supposed to jump into the enemy trenches and disarm whomever they would find there.[754] As they came out of the basement, a man called Marinko gave wooden rifles to the prisoners, as well as bottles of oil, meant

[742] Witness J, T 1513; witness I, T 1391-93; witness OO, T 5944-45; witness PP, T 6084. Witness PP recollects the date as being the 19 September 1993, however, he could not guarantee that this date was the correct one, witness PP, T 6143-6145. The Chamber does not find this discrepancy to be affecting the rest of his testimony. Witness OO, T 5943-5945.

[743] Witness J, T 1514-1516; witness OO, T 5944-45; The witnesses gave the names of the four prisoners selected in private session. As one of the prisoners lost consciousness while putting on a uniform in the basement, he was subsequently replaced by witness J, T 1515; witness I, T 1394; witness PP, T 6085; witness OO, T 5946. *See* also exhibits PP 601.1 and PP 603.2.

[744] Witness OO, T 5947.

[745] Witness J, T 1516; witness OO, T 5948. It is not entirely clear who gave the wooden rifles to the prisoners. Witness OO testified that a man named Marinko did so, while witness PP could not remember the name of the person who handed the wooden rifles, T 6107.

[746] Witness J, T 1516.

[747] Witness J, T 1516. The Chamber understands this building to be the Health centre.

[748] Witness J, T 1517-1519.

[749] Witness J, T 1519.

[750] Witness J, T 1520-21.

[751] Witness J, T 1558.

[752] Witness J, T 1521-22.

[753] Witness OO, T 5947. Once taken outside, the four prisoners were also given wooden rifles, rucksacks and a bottle of engine oil meant to look like a Motorola.

[754] Witness OO stated that [tela assured them that they would be freed within 48 hours if they succeeded in their mission, witness OO, T 5947-5948.

to look like Motorolas.[755] A while later, Ernest Taka~ arrived and took them to the Health centre,[756] where they remained until a T55 tank arrived, shortly before noon.[757] The prisoners were then pushed by Ernest Taka~ to walk aside the tank that opened fire.[758] Two of them were hit as they had almost reached the other side,[759] and were helped inside the ABiH building. According to witness OO, [tela had remained in the headquarters.[760]

279. Witness PP was the third prisoner involved in this incident to testify in court. However, his testimony differs in several respects from those of his former fellow detainees. He stated that after he arrived at the Health centre,[761] he witnessed that four men were taken to the basement. As one of the prisoners appeared to have passed out, witness PP was ordered to come down[762] by a man called Dado, whose description the Chamber believes to be fitting Ernest Taka~.[763] In the basement, the witness found himself alone with [tela who was sitting at a desk, and a man called Dolma who instructed him to put on a uniform and go across the street to bring back any wounded persons.[764] The witness was then brought back to the other three prisoners, given a backpack full of stones and [tela put a bottle in his pocket, which was supposed to look like a Motorola. The three other prisoners had already been given uniforms,[765] when a man brought four wooden rifles.[766] The prisoners were then brought by Ernest Taka~ to the side of the building of the Health centre and instructed to remove the bodies of injured or dead soldiers.[767] They had started to cross when the tank opened fire.[768] Witness PP managed to reach the building on the other side and this is when he was wounded.[769] He lost consciousness and was later told that he had been pulled inside the building.[770]

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[755] Witness OO, T 5948.
[756] Witness OO marked the building where the prisoners waited on the frontline as number 2 on exhibit PP14.5/9.
[757] Witness OO, T 5948.
[758] Witness OO testified that the tank hit a building of which a wall fell on the prisoners. One of the prisoners was injured by stones while another was injured by shrapnel, witness OO, T 5949.
[759] Witness OO, T 5949.
[760] Witness OO, T 5977.
[761] Witness OO and Witness J situated this event as having occurred while the prisoners were still in the headquarters, that is before they were taken to the Health centre. *See supra* paras 277-278**.**
[762] This testimony contradicts the evidence given by both witness J and witness OO, according to which another prisoner replaced the prisoner who lost consciousness. Witness J, T 1516; witness OO, T 5851.
[763] Witness PP described the man called Dado as very tall, with a very dark complexion and a beard, T 6085. The Chamber takes note of the testimony of witness J in this respect, witness J, T 1516.
[764] Witness PP, T 6086-6087. In the course of his testimony, Witness PP confirmed that he entered the basement as the other prisoners were coming out and that he was alone in the basement, witness PP, T 6087-6088, 6106. This evidence contradicts the testimony of witness J and witness OO who stated that the four prisoners were together in the basement, and that Ernest Taka~ was also present. Witness J, T 1514-1515; witness OO, T 5846.
[765] Witness PP, T 6087.
[766] Witness PP, T 6114-6115, 6168.
[767] Witness PP, T 6088.
[768] Witness PP marked the place of the tank when it opened fire as number 1 on exhibit PP 888 (confidential).
[769] Witness PP, T 6088, 6110.
[770] Witness PP, T 6113.

280. In the meantime, 13 other prisoners had been taken to the confrontation line and ordered by Ernest Taka~ to remove sandbags on two locations in order to unblock the street so that the tank could pass through.[771] While performing this labour, the prisoners were directly exposed to gunfire. Later on, the prisoners were told to rescue a HVO soldier who had been wounded and was lying in an exposed area. Witness I was injured when he reached the position.[772]

281. The Chamber takes note that the testimonies of the three prisoners involved present some inconsistencies, in particular in relation to the sequence of events before the witnesses were made to cross over. Nevertheless, it does not find those discrepancies to be determinative. In particular, it notes that the testimony of witness OO and witness J are largely consistent, while witness PP had only a vague recollection of the details of the events.[773] However, in relation to the allegation made by the Martinovi} Defence that totally different descriptions were given of the wooden rifles, the Chamber notes that both witness OO and witness PP testified that the rifles had been painted in black and were bearing a green strap.[774]

282. As corroborative evidence, the Prosecution introduced the testimonies of two former members of the Vinko [krobo ATG, witness Q and witness Allan Knudsen, who appear to have been related to a similar event involving prisoners using wooden rifles on the same day.[775]

283. Allan Knudsen testified that on the day before the attack, he was informed that an operation would be taking place. According to him, on 17 September 1993, [tela explained to the soldiers that the aim was to take over two buildings on the other side of the front line[776] and that the operation would involve heavy artillery and the use of prisoners carrying wooden rifles as human shields.[777] The witness and the prisoners were all waiting in the Health centre for the operation to

[771] Witness I was one of those prisoners, T 1414 and T 1420. *See* also witness OO, who testified that prisoners were made to remove sandbags to allow the tank to go through, witness OO, T 5954.
[772] Witness I, T 1427-1429.
[773] The Chamber notes that witness PP encountered great difficulties in trying to recognise the scene of the incident on several exhibits, witness PP, T 6114. It also bears in mind that the witness was injured at the scene and lost consciousness during the incident.
[774] Witness OO, T 5970, 6048; witness PP, T 6128. Witness OO further recalls having *seen* a detainee called Hu{kovi} painting the last rifle. He added that the rifle also had a nail, witness OO, T 5975, 6048. Witness J also testified that the wooden rifle had been painted the day before in a dark brown paint by a man called Semir Edi}, witness J, T 1543.
[775] In this respect, Witness Q replaced the attack in "late August of 93", T 2363. The Chamber is satisfied that the attack that he is referring to is in fact the attack that occurred on 17 September 1993. Witness Allan Knudsen confirmed that he participated to the said attack together with Witness Q, T 5644.
[776] The witness marked the buildings as numbers 5 and 6 on exhibit PP 14.4/3. The Martinovi} Defence called Defence witness MQ to contradict the witness' testimony that a man called Alan was translating [tela's instructions for the foreign soldiers. However, witness Allan Knudsen could neither confirm the full name of this man, nor that it was indeed the witness called by the Martinovi} Defence, witness Allan Knudsen T 5682-5683. The Chamber also takes note that neither Allan Knudsen nor witness Q testified that Allan was the interpreter of the unit, but only that he spoke some English, as did other soldiers. Witness Q, T 2409-10.
[777] Witness Allan Knudsen, T 5637-5638.

start,[778] which happened around 11 a.m., when a T55 tank arrived and started to fire.[779] At that point, the prisoners, who were wearing camouflage uniforms and carrying wooden rifles, were ordered to run in front of the soldiers.[780] While the soldiers were supposed to reach a wall, the prisoners had been instructed to keep going forward towards the ABiH lines.[781] The operation did not succeed however, and the soldiers had to withdraw back inside the building of the Health centre.[782] Allan Knudsen stated that in the midst of the action, he saw the prisoners fall down, but that he could not ascertain whether they had been hit or killed.[783]

284. Witness Q corroborated Allan Knudsen's testimony to a great extent, although his recollection was somewhat less precise. Witness Q testified that the soldiers and the prisoners were waiting together before the order to attack was given.[784] The soldiers then moved from the Health centre to a small wall while the prisoners were running a few meters ahead of them.[785] He remembers seeing three prisoners wearing camouflage jackets and carrying wooden rifles.[786] In the course of the attack, a tank passed through where sandbags had been removed and started to fire.[787] There was violent fire from all sides, and the witness lost sight of the prisoners.[788]

285. Several Defence witnesses testified that there were no prisoners near the tank or around the Health centre on that day.[789] However, in light of the overwhelming credible evidence to the contrary, the Chamber does not accept these testimonies as an accurate representation of the events.

286. The Chamber observes that the description of the wooden rifles as given by the former soldiers differs from that given by the prisoners involved in the action.[790] While witness OO and

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[778] The witness marked the building when the soldiers and the prisoners were waiting as number 1 on exhibit PP 14.5/8.
[779] Witness Allan Knudsen, T 5638. The witness marked the positions of the tank when it fired as numbers 2 and 3 on exhibit PP 14.5/8. Later on, the tank moved back as its telescope was hit, witness Allan Knudsen, T 5643.
[780] Witness Allan Knudsen, T 5641-5642. The witness marked the itinerary taken with an arrow on exhibit PP 14.5/8. He testified that the purpose was to form a shield for the soldiers coming behind, in order to give them the time to get in cover as the prisoners were to take the first line of fire, witness Allan Knudsen, T 5677-5678.
[781] Witness Allan Knudsen, T 5645.
[782] Witness Allan Knudsen, T 5645.
[783] Witness Allan Knudsen, T 5645-5646.
[784] Witness Q, T 2365.
[785] Witness Q, T 2370.
[786] Witness Q, T 2367.
[787] Witness Q, T 2365.
[788] Witness Q, T 2370.
[789] Defence witness MM, T 14518-14519; Defence witness MN, T 14602; Defence witness MP, T15081-15088; Defence witness MQ, T 15165-15167; Defence witness MT, T 15310-15311. The Chamber notes that those testimonies also present inconsistencies, in particular with regard to the movements of the tank. Several witnesses testified that the tank was hit and damaged, and that it did not move in front of the sandbags, *see* Defence witness MQ, T 15165. Defence witness MM on the other hand testified that sandbags were moved in a V shape to allow for the tank to fire, Defence witness MM, T 14517.
[790] The Martinovi} Defence insisted on the fact that the witnesses gave a different description of the wooden rifles themselves and that the wooden rifle that was introduced into evidence was not authentic. *See* Martinovi} Final Brief, p 84.

witness PP remembered the rifles to be painted black,[791] both witness Allan Knudsen and witness Q testified that the rifles were in natural brown wood.[792] Furthermore, witness Allan Knudsen asserted that he saw those same prisoners used as human shields on 17 September 1993 making the wooden rifles the day before the attack.[793] This is inconsistent with the testimony of the three prisoners who have testified. In light of these discrepancies, the Chamber is not satisfied beyond reasonable doubt that the prisoners and the two former members of the unit were referring to the same incident. It finds that the testimony of the three prisoners is related to the incident alleged in the Indictment.

287. Moreover, the forensic examination of the wooden rifle produced in court (exhibit P962) does not allow the Chamber to conclude that this specific wooden rifle was the one used on 17 September 1993.[794] However, the Chamber finds that the issue of whether this particular rifle was the one used on 17 September 1993 does not affect its finding, based on the testimonies heard in court, that the alleged incident did occur. It has no doubt that wooden rifles were used on several occasions in the course of the conflict, and does not find the authentication of a specific rifle to be required in order to establish that the incident described in paragraph 41 of the Indictment did happen.

288. Having found that the allegations set forth in paragraph 41 of the Indictment have been established, the Chamber will now determine whether there is sufficient evidence that the prisoners were forced to perform such labour. As was stated above, this labour is only unlawful if prisoners are compelled to perform it. The Martinovi} Defence seems to suggest that the prisoners accepted to perform labour in dangerous conditions on the frontline in order to escape to the other side.[795] However, in the present case, the Chamber is satisfied that this was not the case and that the prisoners involved were forced to walk across the confrontation line wearing camouflage uniforms and carrying wooden rifles in the midst of a military operation involving heavy artillery and constant fire from both sides. The evidence shows clearly that the prisoners were under constant guard and that they did not have a real choice. Witness PP testified that he never heard of a

[791] *See supra* para 281**.** Witness OO further stated that he saw a prisoner called Hu{kovi} paint the last rifle, witness OO, T 5965.
[792] Witness Allan Knudsen, T 5675; witness Q, T 2411. Witness Allan Knudsen specified that one of them seemed to bear a strap, witness Allan Knudsen, T 5675.
[793] Witness Allan Knudsen, T 5638, 5673-5674.
[794] Expert Opinion, Netherlands Forensic Institute, 19 December 2002. The experts concluded that the age of the rifle could not be determined. They further asserted that in the butt of the rifle, there was a hole that may have contained a nail or a screw but that it is not the usual place for fastening a rifle sling. Finally, according to the experts, the rifle had been painted with a layer of dark-coloured material. There is a high probability that this is the wooden rifle carried by witness PP. The soldier who retained it described receiving it from a person who fits witness PP's description.
[795] Martinovi} Final Brief, p 80; s*ee* also cross-examination of witness Q, T 2415-2416.

prisoner who would volunteer to recover bodies on the frontline.[796] According to witness J, "all we had in our heads was death, in view of the task given ?to? us".[797] Similarly, witness OO testified that he "was about to meet ?his? death".[798] It is apparent that the fact that the prisoners managed to escape is only the result of luck or circumstances, rather than of a plan.[799] Similarly, the Chamber does not consider the promise of release within 48 hours as indicative of consent on the part of the prisoners.[800]

289. The Chamber finds that the offence of unlawful labour under Article 3 of the Statute (Count 5) is established in relation to the wooden rifle incident as charged in paragraph 41 of the Indictment. It is further satisfied that the prisoners suffered a serious mental harm and, as far as at least two of them are concerned, serious physical suffering or injury.[801] Therefore, the charges of inhumane acts, inhuman treatment and cruel treatment under Articles 5(i), 2(b) and 3 of the Statute (Counts 2-4) are also proven with respect to this incident.

290. In respect to this event, the Chamber is satisfied that the responsibility of the accused Vinko Martinovi} has been established both under Article 7(1) and Article 7(3) of the Statute. The Martinovi} Defence asserts that "the event with the wooden rifles did not happen in Vinko Martinovi}'s unit".[802] It relies on exhibit PP 608, according to which [tela declined to take command of the operation and Marijo Mili}evi}, nicknamed "Baja", took over. However, while the Chamber cannot conclude that Vinko Martinovi} was the overall commander of the operation, it has no doubt that he was in charge in his specific area of responsibility on that particular day. Further evidence also confirms that Vinko Martinovi} was in command on the frontline in the area of the Health centre on 17 September 1993,[803] although contradicting testimony was heard concerning his presence on the frontline itself.[804] The Chamber also notes that the four prisoners in question were

[796] Witness PP, T 6146-6147.
[797] Witness J, T 1547.
[798] Witness OO, T 5963.
[799] Witness PP, T 6146; Witness OO further stated that he was pushed out by Ernest Taka~, as he would not go on his own, witness OO, T 5977.
[800] Witness PP testified that he has not heard of people who would volunteer to retrieve bodies from the front line in exchange for being set free, witness PP, T 6147.
[801] Witness PP testified that he was wounded probably as a result of a shell which had hit the building that he had reached and that he lost consciousness, witness PP, T 6110. Witness OO confirmed that witness PP was severely wounded in the leg when the wall collapsed, witness OO, T 5950-5951. Witness J stated in court that he was wounded while lying down, T 1561. Furthermore, witness OO testified that the fourth prisoner was injured in the back by shrapnel, T 5950-5951.
[802] Martinovi} Final Brief, p 78.
[803] Witness Allan Knudsen, T 5637; Defence witness MM, T 14544. Witness Q testified that [tela was giving orders from the headquarters, witness Q, T 2364.
[804] Witness J testified that Vinko Martinovi} met the prisoners at the frontline and told them about the operation that was about to take place, witness J, T 1517-1518. However, according to witness OO, [tela remained in the headquarters after the prisoners were taken to the front line, witness OO, T 5977. Witness PP also testified that he did not *see* [tela at the front line, but that he was in the basement, witness PP, T 6147.

signed out to the Vinko [krobo ATG.[805] As far as Vinko Martinovi}'s direct responsibility is concerned, the prisoners involved in the wooden rifle incident all testified that Vinko Martinovi} himself issued the instructions to them.[806] On this basis, the Chamber is satisfied that on 17 September 1993, he directly ordered that the four selected prisoners be used as human shields in the conditions described above. The Chamber finds that the responsibility of Vinko Martinovi} is most appropriately described under Article 7(1) of the Statute.

291. The Chamber finds that Mladen Naletili}'s direct responsibility under Article 7(1) of the Statute has not been established. It has not heard any evidence that he committed the crimes described above or that he planned, ordered, instigated or aided and abetted in their commission. With regard to his command responsibility under Article 7(3) of the Statute, it is apparent that Mladen Naletili} had knowledge of, and even participated in the planning and conduct of the operation which took place on 17 September 1993.[807] However, the Chamber finds no evidence that he knew or had reasons to know that prisoners of war were made to carry wooden rifles across the confrontation line in the course of this operation. Mladen Naletili}'s responsibility has thus not been established under Article 7(3) of the Statute.

b. <u>The use as human shields and killing of approximately 15 detainees</u>

292. In paragraph 42 of the Indictment, the Prosecution further alleges that on 17 September 1993, "approximately fifteen prisoners and detainees were deployed as human shields in an adjacent section of the Bulevar front line under the command of Vinko Martinovi} in order to protect attacking HVO soldiers" and that ten of them were killed.[808]

293. In its Decision on Motions for Acquittal, the Chamber found that "there ?wa?s insufficient evidence that Aziz ^olakovi}, Hamdija ^olakovi}, Enis Pajo died as a direct result of being used as human shields",[809] and entered a finding of no case to answer in relation to paragraph 42 of the Indictment.[810] However, pursuant to the Chamber's finding that "the evidence presented with regard to the incident described in paragraph 42 may serve as a basis for the Chamber's findings in relation to the allegations set out in paragraphs 35-41 in the Indictment",[811] the charges have been

[805] Exhibit PP 601.1.
[806] Witness PP, T 6086, 6088; witness OO, T 5976-5978; witness J, T 1547-1548.
[807] Exhibit PP 608. *See supra* para 150.
[808] In its Pre-trial Brief, the Prosecution only indicated as follows: "Other prisoners were deployed as human shields in an adjacent section of the front-line. As alleged in paragraph 42, approximately ten of them were killed", p 14.
[809] Decision on Motions for Acquittal, IT-98-34-T, 28 February 2002, para 17.
[810] Decision on Motions for Acquittal, IT-98-34-T, 28 February 2002, para 18.
[811] Decision on Motion for Acquittal, IT-98-34-T, 28 February 2002, disposition, p 9.

examined in the context of the work performed within the area of responsibility of the Vinko [krobo ATG.[812]

(b) Detainees working in the [anti}eva street

294. In paragraph 35 of the Indictment, the Prosecution alleges that between April 1993 and January 1994, "Mladen Naletili}, Vinko Martinovi} and their subordinates forced BH Muslim detainees from the various detention centres under the authority of the HVO to perform labour in military operations and to be used as human shields on the Bulevar and [anti}eva streets", which were "the scene of intense small arms fire and artillery exchanges between the opposing factions".[813] In the Prosecution Pre-trial Brief, it is stated that the accused engaged in the practice of "forcing BH Muslim prisoners to work on dangerous front-line positions in Mostar, particularly the perilous Bulevar-[anti}eva Street front-line within the area of responsibility of the Vinko [krobo ATG".[814]

295. The Chamber heard ample evidence that prisoners were taken from the Heliodrom to perform labour in the [anti}eva street.[815] It is satisfied that the labour involved included military related tasks, such as building bunkers,[816] repairing trenches,[817] filling sandbags and carrying them to the confrontation line,[818] and was performed in extremely dangerous conditions, the prisoners finding themselves constantly in crossfire. There are clear accounts of prisoners being used as human shields[819] and injured while working in the [anti}eva street.[820]

296. However, the Chamber rejects the allegation made by the Prosecution in its Pre-trial Brief that this section of the front-line was within the area of responsibility of Vinko Martinovi}. The evidence adduced relating to the area of responsibility of Vinko Martinovi} proves that it excluded the [anti}eva street.[821]

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[812] *See supra* paras 263-273.
[813] Indictment, paras 35-36.
[814] Prosecution Pre-trial Brief, p 14.
[815] Witness AA, T 3697-3698; witness AB, T 7865-7869; witness II, T 5123-5125; witness FF, T 4691-4692; witness NN, T 5896; witness XX, T 7122-7123.
[816] Witness AA, T 3697; witness FF, T 4691-4692.
[817] Witness FF, T 4691-4692; witness NN, T 5908-5910.
[818] Witness AB, T 7865-7869; witness FF, T 4691-4692; witness RR, T 6467.
[819] Witness ZZ, T 7814.
[820] Witness II testified that his hand was injured while he was working, witness II, T 5123-5125; witness FF also stated that he was wounded by a bullet while filling up a place with sandbags in the [anti}eva street on 30 August 1993, and that he lost 90 % of the use of his arm as a result, witness FF, T 4693-4695; Moreover, witness AB testified that within a single day, 20 prisoners were wounded and one killed in the [anti}eva street, witness AB, T 7876-7877; witness F stated that he was injured by a shell, together with many other prisoners, while working in the [anti}eva street on the evening of 13 August 1993, witness F, T 1111-1112.
[821] *See supra* para 138.

297. The Chamber finds that Mladen Naletili}'s responsibility as a commander has not been established. The evidence proves that the [anti}eva street was under the responsibility of the 2nd HVO battalion.[822] However, there is no evidence to prove the formal link of command between the accused and this battalion. Furthermore, the only evidence that was introduced to prove Mladen Naletili}'s knowledge of the acts described above is the testimony of witness AB, who stated that he saw Braco Merd`o speaking with Tuta in the Hotel Ero.[823] On its own, this evidence is not sufficient to establish Mladen Naletili}'s responsibility.

(c) Detainees performing military tasks in Ra{tani

298. In paragraph 43 of the Indictment, the Prosecution alleges that on 22 and 23 September 1993, in the course of the attack of Raštani under the command of Mladen Naletili}, prisoners were used to accompany soldiers during the attack functioning as human shields. It is alleged that they were forced to enter and search houses where it was suspected that enemy forces had positions.

299. The Naletili} Defence argues that the evidence does not show that Mladen Naletilic was even in Raštani or that he took detainees from the Heliodrom, forcing them to act as human shields. Even assuming that some detainees were made to perform forced labour, there is no evidence that Mladen Naletilic took them, or had knowledge of this.[824]

300. Witnesses who were detained at the Heliodrom testified to the events in Raštani on 22 and 23 September 1993. They were made to perform tasks such as picking up bodies of dead soldiers and participating with the HVO soldiers in search operations in the village.[825] In the search

[822] Witness FF, T 4691-4692.
[823] Witness AB, T 7871-7874.
[824] Naletilic Final Brief, p 79.
[825] Witness M witnessed heavy fighting in Raštani and was told by HVO soldiers to gather up the dead and wounded. He saw bodies of two soldiers from the ABiH army and another in civilian clothes in the Dumpor houses. Witness M was also made to walk in front of soldiers who were five or six metres behind and to open doors when the HVO thought that there was someone inside. The prisoners combed the place and were used as human shields, witness M, T 1685-1686. Witness SS testified that on 22 September 1993, he was taken to a bunker at the edge of Ra{tani. In the bunker there were about 10 soldiers. Witness SS was asked to put together bandoliers which were used for the machine-guns. Shells were falling very close to them, from both sides. The soldiers found shelter in the bunker and the prisoners were told to sit down near the bunker. One shell fell about 10 meters away, witness SS, T 6594-6595. After witness SS helped the soldier to assemble projectiles, they were told that they had to go to the village where the fighting was in progress, witness SS, T 6597. Witness SS was ordered to take two bags filled with food, drinks and cigarettes and deliver them to the soldiers in combat at location "2" as indicated on exhibit 34.2. Witness SS went down to the house and after about 200 meters, he saw a dead soldier; after 100 meters, he found another body. Witness SS arrived at the houses and there he encountered one of the other prisoners. There were four prisoners at location "2". The prisoner said that in the house they were alive, had not been mistreated and that they had to search houses to see if there where any ABiH soldiers. Witness SS reached the first house and saw soldiers from the Convicts Battalion. The commander was Kolobara, whose first name was Mario or Marin, witness SS, T6597-6600. When witness SS and the other prisoner came to the house where they met Kolobara, they delivered food, drinks and cigarettes. First they did not dare to tell the HVO soldiers that they had seen two dead soldiers on the way. However, it was soon understood that they were aware of this. In fact, Kolobara asked witness SS and the other prisoner to collect the dead bodies and put them in front of the house. The prisoners did it and put the corpse in a cellar. After that, the prisoners had to carry gear like ammunition, grenades or projectiles. Some of the prisoners

operations, they were made to walk five or six metres in front of soldiers and had to open doors and search houses when the HVO soldiers suspected that enemy soldiers were hiding.[826] On a hill overlooking Raštani, a detainee had to help assemble projectiles and was in the close vicinity of shelling. He and another prisoner were taken to a bunker on the northern hillside of Raštani and when the ABiH forces fired upon the position, the prisoners were forced to remain outside exposed to the artillery fire.[827] He was then ordered to carry food and drinks to the soldiers in Raštani where fighting was in progress.[828] The detainees saw bodies of dead soldiers in the village and were ordered to collect them.[829] They were made to carry ammunition and other gear, and mingled with the soldiers.[830]

301. There is also testimony of witnesses who were soldiers captured by the HVO in Raštani on 23 September 1993, who saw groups of soldiers and civilians.[831] On entering Raštani, a witness encountered a civilian who had been taken out of the Heliodrom in order to act as a scout for the HVO, but had escaped.[832] One witness saw three or four civilians walking in front of the soldiers and saw them collecting bodies of soldiers killed and wounded.[833]

302. The labour of prisoners of war at the frontline in Raštani is dangerous by its very nature. The detainees were exposed to shelling and gun fire in the conflict, and participated in tasks involving transporting food and ammunition, collecting bodies as well as search operations. Furthermore, this labour was not undertaken voluntarily. One witness testified that he never volunteered for labour.[834] Another witness who performed these dangerous tasks in Raštani testified that trucks arrived at the Heliodrom every day to transport the detainees for such labour, and that they were guarded.[835] Therefore, the Trial Chamber finds that the offence of unlawful labour under Article 3 of the Statute (Count 5) has been proven.

303. The Chamber further finds the circumstances in which the detainees were used and the nature of the work they were forced to perform caused them a serious mental suffering. The

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mingled with the soldiers, witness SS, T 6600-6601. The group comprising witness SS, other prisoners and the soldiers were at the hamlet called "Dumpor" houses. Witness SS testifies that the group was composed of about ten soldiers and six prisoners, witness SS, T 6756.

826 Witness M, T 1685-1686; witness SS, T 6729-6735.
827 Prosecution Final Brief, p 170, referring to witness SS, T 6594-6595.
828 Witness SS, T 6594-6597, 6739.
829 Witness M, T 1685; witness SS, T 6600-6601, 6741.
830 Witness SS, T 6600-6601.
831 Witness L, T 1627; witness VV, T 6920.
832 Witness L, T 1622-1623.
833 Witness VV, T 6920.
834 Witness M, T 1674.
835 Witness SS, T 6793, 6568-6570, 6717-6718.

offences of inhumane acts, inhuman treatment and cruel treatment under Articles 5(i), 2(b) and 3 of the Statute have thus been proven (Counts 2-4).

304. The Chamber previously found that while it has been established that Mladen Naletili} commanded the operation on 22 and 23 September 1993 from a village above Ra{tani, there was not enough evidence to prove that he was present in the village itself.[836] Furthermore, no evidence was adduced to prove that Mladen Naletili} knew or had reasons to know that prisoners were forced to perform unlawful labour in the course of this operation. Hence, the Chamber finds that the responsibility of Mladen Naletili} has not been established.

(d) Detainees performing military tasks in Stotina

305. The Prosecution alleges in the Indictment that detainees were forced "to perform labour in military operations and to be used as human shields on ?…? Stotina".[837] The Chamber only heard one reference to such allegation in the course of the entire trial, when witness J testified that he performed labour in various places, including Stotina.[838] However, there is no evidence as to the type of labour performed, or as to the responsibility of either of the accused in this regard. For these reasons, the Chamber finds that the allegation as formulated in the Indictment has not been established.

(e) Assisting KB members in the process of looting Muslim houses and property

306. Mladen Naletili} and Vinko Martinovi} are both charged with having forced BH Muslim detainees to assist KB members in the process of looting houses and properties of BH Muslims.[839] The Prosecution specified in the Pre-trial Brief that "detainees were forced by Martinovi} to loot the homes of BH Muslims who had been evicted across the front-line into East-Mostar".[840]

307. Several witnesses testified that they were forced to participate in the looting of houses that had been abandoned in various areas throughout West Mostar.[841] The testimonies are very consistent as they describe how prisoners were made to carry all sorts of goods out of apartments

[836] *See supra* para 175.
[837] Indictment, para 35.
[838] Witness J, T 1501-1502.
[839] Indictment, para 44.
[840] Prosecution Pre-trial Brief, p 14-15.
[841] Witness PP testified that he was made to loot the houses of people who had been previously expelled in Centar I, Centar II and Bakina Luka, witness PP, T 6154. Witness YY stated that he assisted loading goods onto trucks from houses in the areas of Duma, Centar II and in the Liska street, witness YY, T 7276.

and load them onto a truck.[842] Such goods included furniture, household appliances and television sets.[843]

308. Geneva Convention III does not expressly prohibit the use of prisoners for looting. However, the Chamber finds that it constitutes unlawful labour under Article 3 (Count 5). The commission of looting being a crime in itself, the consent of prisoners may not render the labour lawful and is therefore irrelevant.[844] However, no evidence was introduced to establish that as a result of the labour, the detainees suffered the required degree of mental harm or physical suffering or injury for the offence to amount to inhumane acts, inhuman treatment or cruel treatment (Counts 2-4).

309. The Chamber is not satisfied that the responsibility of Vinko Martinovi} under Article 7(1) of the Statute has been established. There is no evidence that he planned, committed, instigated or ordered the use of detainees to loot private property. The mere presence of Vinko Martinovi} on one occasion as described by one witness, is not sufficient to prove that the accused participated in the commission of the crime.[845]

310. Regarding Vinko Martinovi}'s responsibility under Article 7(3) of the Statute, the Chamber accepts the testimonies of witnesses who stated that it was [tela's soldiers who forced them to assist in looting the houses of BH Muslims. Witness F testified that he was working for [tela's men and in particular for one of his subordinates, a man called Zubac.[846] Witness YY stated that he was selected by Ernest Taka~ to assist in looting apartments that had been pre-selected.[847] The Chamber is satisfied that Vinko Martinovi} knew or had reasons to know that his soldiers were forcing prisoners to perform unlawful labour. Witness AB testified that he once saw Vinko Martinovi} standing outside the apartment with soldiers while he was carrying goods out and loading them, but he did not hear him communicating to the soldiers.[848] The Chamber is satisfied that the responsibility of Vinko Martinovi} has been established under Article 7(3) of the Statute.

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[842] Witness AB, T 7879-7880; witness II, T 4962-4963; witness PP, T 6080; witness YY, T 7275; witness F, T 1105-1106; witness Sulejman Had`isalihovi}, T 1246; witness OO, T 5943.
[843] Witness PP, T 6077-6080; witness CC, T 4423-4426.
[844] The consent of the prisoner may only be relevant to the extent that it might relate to the prisoner's own liability for his participation in a crime. In the present case however, only the responsibility of the accused for his actions or for those of his subordinates is to be established.
[845] *Aleksovski* Trial Judgement, para 65; *Bla{ki}* Trial Judgement, para 284.
[846] Witness F, T 1105-1107. Furthermore, witness SS testified that while he was working for the Vinko [krobo ATG, soldiers came to fetch three or four prisoners who told the witness upon their return that they had been carrying things from one apartment to another which one of the soldiers was furnishing for himself, witness SS, T 6558-6559.
[847] Witness YY, T 7275.
[848] Witness AB, T 7880-7881.

311. The Prosecution adduced evidence with regard to another incident that took place around 7 July 1993. Witness SS testified that he was among the prisoners made to turn an abandoned house[849] into the Vinko [krobo ATG's Headquarters.[850] The Chamber is satisfied that compelling prisoners of war to turn a private property into a military headquarters does amount to unlawful labour as it falls under the category of labour, which is only authorised provided that it has no military character or purpose.[851] In the present case, the setting up of a military headquarters clearly has a military purpose and would therefore only be lawful if the prisoners gave their consent. In this respect, witness SS testified that he acted on orders and that the prisoners were under guard while they were working. He also stated that earlier that day, a prisoner had been severely beaten.[852] The Chamber is satisfied that in these circumstances, the witness was not in a position to refuse to perform the labour he was ordered to do.

312. The Chamber finds that the offence of unlawful labour under Article 3 of the Statute (Count 5) has been proven in relation to this incident. However, no evidence was introduced to suggest that the prisoners suffered serious mental harm or physical suffering or injury as a result of the labour. The Chamber therefore finds that the offences of inhumane acts, inhuman treatment and cruel treatment under Article 5(i), 2(b) and 3 of the Statute (Counts 2-4) have not been established.

313. The Chamber is satisfied that Vinko Martinovi} ordered the prisoners to empty the apartment. Witness SS testified that [tela had previously divided the prisoners into two groups, one of them being sent to the frontline, and that he remained in the house while the furniture was being taken away.[853] For these reasons, the Chamber finds that the responsibility of Vinko Martinovi} in relation to this incident has been established under Article 7(1) of the Statute. The Chamber is further satisfied that Vinko Martinovi} was the commander of the perpetrators and that he knew or had reasons to know of their behaviour but took no measures to prevent or punish them. His responsibility under Article 7(3) of the Statute is therefore established. The Chamber finds that the responsibility of Vinko Martinovi} is most appropriately described under Article 7(1) of the Statute.

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[849] Witness M confirmed that [tela's command was located in the house of the Kajtaz family, T 1680. *See* also Defence witness ML, T 14433.

[850] Witness SS testified that "?t?hey probably intended to turn that apartment into his office. And we were ordered to throw out all the belongings that were in that apartment, and it was a very well-furnished apartment indeed. They told us not to touch one room only where they had some leather furniture. I entered that room two or three times on that day. And [tela stayed in that room, and he and a few of his soldiers had some alcoholic beverages in it. All the other belongings from that apartment, we had to take out, and we loaded it into a truck in front of the building, that same blue truck that we were brought in on. And that truck went in the direction of Široki Brijeg. And about 5, 6 kilometres before Mostar, we threw all those things off the truck down a slope," witness SS, T 6556.

[851] The issue as to whether this act also amounts to plunder is discussed in the relevant section. *See infra*, para 623.

[852] *See infra* para 385.

[853] Witness SS specified that the prisoners were told not to touch a room, where there was some leather furniture. He added that he entered that room three or four times that day, and that [tela was there with some of his soldiers, witness SS, T 6556.

314. In relation to these incidents, the Chamber heard no evidence to prove the responsibility of Mladen Naletili}, either under Article 7(1) or under Article 7(3) of the Statute.

(f) Detainees working in private properties of members and commanders of the KB

315. From April 1993 to January 1994, both Mladen Naletilic and Vinko Martinovi} and their subordinates are alleged to have forced Muslim detainees to perform "building, maintenance and reparation works in private properties of the members and commanders of the KB".[854]

(i) "Tuta's pool" in [iroki Brijeg

316. In its Final Brief, the Prosecution states that several prisoners detained at the MUP Station by members of the KB were forced to work at the old swimming pool of [iroki Brijeg, in close proximity to the headquarters of the KB at the Tobacco Station.[855] In the course of the trial, several witnesses testified that after they were transferred as prisoners to the MUP Station in [iroki Brijeg in May 1993, they were forced to work on the former municipal pool,[856] and identified the location of the said pool.[857] The Chamber notes that the Indictment refers to "building, maintenance and reparation works in private properties of the members and commanders of the KB".[858] In support of this allegation in its Pre-trial Brief, the Prosecution stated that the work that BH Muslim prisoners were forced to perform included the "construction of the villa and swimming pool for Naletili}".[859] In light of these inconsistent allegations, the Chamber feels obliged to determine, before going into the merits of the matter, whether the accused Mladen Naletili} was put on sufficient notice of the nature of the allegation against him.[860]

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[854] Indictment, para 44.

[855] Prosecution Final Brief, p 97. While this particular incident was not specifically alleged in the Indictment, the Chamber finds that it can be deemed to have fallen under paragraph 44, alleging various types of labour performed at locations other than the frontlines.

[856] Witness AA, T 3682; witness BB, T 4255, 4260-4263; witness CC, T 4393; witness ZZ, T 7804; witness DD, T 4474; witness EE, T 4518. Furthermore, while he was detained at the Ljubu{ki prison, witness FF heard from detainees that had previously been held at the MUP centre that they had been taken to work at "some swimming pool", witness FF, T 4683.

[857] Exhibits PP 26.9, PP 26.10.

[858] Indictment, para 44.

[859] Prosecution Pre-trial Brief, pp 14-15.

[860] Pursuant to Article 18(4) of the Statute, an indictment shall contain "a concise statement of the facts and the crime or crimes with which the accused is charged." Similarly, Rule 47(C) of the Rules provides that an indictment shall set forth "A concise statement of the facts of the case". In this respect, the Chamber relies on the jurisprudence of the Appeals Chamber, which has held that the right of the accused to be informed of the nature and cause of the charges against him and to have adequate time and facilities for the preparation of his defence "translates into an obligation on the part of the Prosecution to state the material facts underpinning the charges in the indictment, but not the evidence by which such material facts are to be proven," *Kupre{ki}* Appeal Judgement, para 88, referring, *inter alia*, to *Furund`ija* Appeal Judgement, para 147. The Appeals Chamber added that "?p?ursuant to elementary principles of criminal pleading, it is not sufficient for an indictment to charge a crime in generic terms. An indictment must delve into particulars," *Kupre{ki}* Appeal Judgement, para 98.

317. In the present case, the Chamber is of the view that nothing could possibly have put the Naletili} Defence on notice[861] of what the Prosecution relied on as a material fact underpinning the charges against the accused, namely that detainees were forced to work on the municipal swimming pool in [iroki Brijeg. The Naletili} Defence was only appraised of this allegation when Prosecution witnesses related this matter in court,[862] and it is the view of the Chamber that it is not for the Defence to divine the Prosecution case from the evidence presented.

318. The Chamber finds that the Prosecution failed to plead appropriately the material fact of the labour allegedly performed at the municipal swimming pool in [iroki Brijeg and to inform the accused, in this particular respect, of the nature of the charge held against him. Accordingly, this particular evidence may not serve as a material basis to prove the allegations set forth in paragraph 44 of the Indictment.

(ii) Construction of the private villa of Mladen Naletili}

319. Prosecution witness NN testified that he heard from a prisoner at the Heliodrom that sometime in October or November 1993, he had been taken away with a group of prisoners for about 20 days to build "Tuta's house" in [iroki Brijeg.[863] The Chamber is not satisfied that this allegation has been proven. The evidence is not sufficiently detailed, is indirect and has not been corroborated. In fact, it is contradicted by several testimonies relating to the construction of Mladen Naletili}'s villa.[864]

(iii) Digging of a trench in the vicinity of Mladen Naletili}'s villa

320. Several witnesses testified that around July 1993, and for a period of two to three months, they had been taken to dig an irrigation canal at Mladen Naletili}'s villa.[865] Witness BB stated that

[861] In this respect, the Chamber observes that the Naletili} Defence manifestly based its defence on the reasonable assumption that the pool in question was the one built on the accused's private property. Thus, it argued (1) that the pool that Prosecution witnesses identified as "Tuta's pool" does not belong to Mladen Naletili}, and (2) that no detainees ever worked on the construction of Mladen Naletili}'s private property. *See* Naletili} Final Brief, p 39.

[862] In this respect, the Chamber notes that witness AA testified on 10 October 2001, witness BB on 22 October 2001, witness CC on 23 October 2001, witness DD on 25 October 2001, witness EE on 25 October 2001 and witness ZZ on 11 January 2001.

[863] Witness NN, T 5898, 5911-5913.

[864] Defence witnesses NF and NH testified that no detainees ever worked on the construction of Mladen Naletili}'s private property, as this work, including the building of the support walls of the swimming pool, was mostly subcontracted to a local company from Polog called MTV Garant, Defence witness NF, T11884-11888, 11896; Defence witness NH, T 11995-11996. Witness BB also stated that he never worked on Mladen Naletili}'s house, witness BB, T 4268-4269.

[865] Witness BB, T 4266; witness CC, T 4413; witness DD, T 4476-4478; witness EE, T 4518. Witness CC marked the location of the canal on exhibit PP25.2, witness CC, T 4453.

the canal started about 500 meters from Tuta's house but could not confirm its purpose.[866] Witness CC testified that he heard from guards that Tuta needed water supply for his house.[867]

321. Defence witnesses testified that the work on Mladen Naletili}'s property was performed by a local company from Polog called MTV Garant.[868] Defence witness NF adds that the site did not allow for the construction of a water pipe connected to a main water supply,[869] and that such a pipe does not exist to this date.[870] The Naletili} Defence submits that the canal was dug "for the purposes of running lines for a radio tower on top of the hill".[871]

322. In light of this contradicting evidence, the Chamber is not satisfied that the digging of the trench was for a private purpose, namely the construction of a water pipe to supply the villa. The digging of a trench constitutes labour that prisoners of war may be compelled to perform under Article 50 of Geneva Convention III, if it has no military character or purpose.[872] The Chamber finds that the digging of the trench, whether it was for the purpose of power supply or for an irrigation canal, had no military character or purpose.

323. However, the conditions in which the labour was performed do not comply with the required applicable standards and may therefore render the labour unlawful. Witness BB described the conditions in which the detainees were working as being extremely difficult, with very little food and water.[873] Witness DD corroborated that the work was very arduous, the weather very hot and that the detainees had to dig by hand and worked from morning to dusk. He further stated that he was never paid.[874]

324. While Defence witnesses NH and NI testified that the detainees who volunteered to work on the radio line were compensated for their work,[875] there is no evidence that they were actually paid. Defence witness NI acknowledged that while he heard from the military police that the municipality

[866] Witness BB, T 4266. *See* also witness CC, T 4413.
[867] Witness CC, T 4413.
[868] *See* Defence witness NF, T 11884-11888, 11896; Defence witness NH, T 11995-11996.
[869] Defence witness NF, T 11886, 11911.
[870] Defence witness NF, T 11887.
[871] Naletili} Final Brief, p 37; *see* also Defence witness NI, T 12072.
[872] Even if the Chamber found that the trench had been dug in order to supply the private villa of Mladen Naletili} with water, this labour would have fallen under the "domestic services" category, which prisoners of war may be compelled to perform. *See supra* para 256.
[873] Witness BB testified "Q. How many hours per day did you work? A. We would leave in the morning, around 8.00, and then we were there until 5.00 in the afternoon. Q. Did anyone pay you for your job? A. No, nobody paid us. And the food that we were getting over there at this prefab building where we slept consisted of two slices of bread and some jam. Then we would bring that along. The first five days, the food was being delivered there. We also received a little -- some water, three, two-litre bottles for a group of 20 to 25 of us. And this was during the month of August, when the temperatures are very high. So there you have it," witness BB, T 4269.
[874] Witness DD, T 4478-4480.

would pay the detainees, he does not know whether they were actually paid or not.[876] The Chamber accepts the testimony of witness BB contradicting this allegation, as further corroborated by witness DD.[877]

325. The Chamber finds that the digging of the trench constitutes unlawful labour under Article 3 of the Statute (Count 5) within the meaning of Geneva Convention III as a result of the conditions in which it was performed. In light of the fact that the detainees worked in these conditions for at least two months, the Chamber finds that the conditions of labour constitute a sufficiently serious violation of a rule of humanitarian law to fall within the ambit of Article 3 of the Statute. No evidence was led to show that the prisoners suffered serious mental harm or physical suffering or injury. The charges of inhumane acts, inhuman treatment and cruel treatment under Articles 5(i), 2(b) and 3 of the Statute (Counts 2-4) have therefore not been proven with regard to this incident.

326. The Chamber has not received sufficient evidence to establish Mladen Naletili}'s direct involvement under Article 7(1) of the Statute. Some of the detainees working on the canal were held at the Tobacco Station in [iroki Brijeg, where Mladen Naletili} had his headquarters and office.[878] Although he was not personally supervising the detainees, the evidence shows that he visited the construction site on several occasions and was seen talking with the guards while the prisoners were working.[879] Thus, the Chamber is satisfied that Mladen Naletili} knew or had reasons to know that the detainees were subjected to conditions susceptible to render the labour unlawful. It further infers from the fact that the work lasted at least two months that in spite of his knowledge, he did not take any measures to ameliorate those conditions. The Chamber is satisfied that the responsibility of Mladen Naletili} has been established under Article 7(3) of the Statute.

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[875] Defence Witness NH, T 11996: "A. they were given cigarettes, they had bigger rations of food, and they were paid 5 German marks per person a day at the time in [iroki Brijeg that was a lot of money. Q. So they were paid from the municipal budget? A. Yes, they were paid from the municipal budget."; Defence witness NI, T 12083.
[876] Defence witness NI, T 12092, 12100.
[877] Witness DD, T 4480.
[878] Witness CC, T 4409; witness DD, T 4478.
[879] Witness CC testified that Tuta came on several occasions while he was working on the canal, witness CC, T 4414; witness DD also testified that he saw Tuta once at the scene, talking with a guard, witness DD, T 4476.

(iv) Other labour performed on a private basis for members of the KB

a. Members of the Vinko [krobo ATG

327. The Prosecution introduced into evidence a report of the SIS dated 18 November 1993.[880] This report alleges that two members of the Vinko [krobo ATG, Miroslav and Dragan ^ule, have been taking out BH Muslim brick-layers and tile-layers from the Heliodrom to work on their private property. No additional evidence was introduced to corroborate this report. The Chamber finds that this allegation has not been established.

b. Other members of the KB

328. The Chamber heard evidence that prisoners detained at the Tobacco Station were taken to work on the houses of Ivan ^ikota,[881] and @eljko Bo{njak.[882] As such, this form of labour is not prohibited under Geneva Convention III as it falls under the category of domestic services which prisoners of war may be compelled to do. The Prosecution has not established that the detainees were not paid as a compensation for their labour. The Chamber finds that this allegation has not been established.

(g) Detainees building defences in positions of the KB, HV or HVO forces at locations other than the frontlines

329. In the course of the trial, the Chamber heard evidence of labour performed in Sovi}i. Witness PP testified that while being detained at the Heliodrom, he was taken to work on a regular basis to places such as Buna, [anti}eva street, Sovi}i, Doljani, Risovac and Ra{tani. In particular, witness PP recalled being brought by truck to Sovi}i in mid-August 1993;[883] he was picked up in the middle of the night and arrived in Sovi}i early in the morning. He and the other detainees were made to clean houses, dig trenches, chop wood, and bury dead cattle.[884] In the same period, he stated that he was taken out to dig nine graves in Risovac, near Sovi}i.[885]

[880] Exhibit PP 675.
[881] Witness BB, T 4265; witness CC, T 4403-4405; witness EE, T 4519.
[882] Witness BB, T 4265-4266; witness CC, T 4403.
[883] Witness PP, T 6082.
[884] Witness PP, T 6077, 6082.
[885] Witness PP, T 6083.

330. Similarly, witness YY testified that around 18 or 20 July 1993, he was temporarily transferred to the area of Doljani and Sovi}i, where he was used to assist in the construction of fortifications, as well as in the recovery of the dead bodies of HVO soldiers and in their burial.[886]

331. The Chamber notes that the Indictment does not spell out the specific material facts underpinning the charge of forced labour in Sovi}i. The allegation that detainees were forced to work on the frontline only refers to locations within the municipality of Mostar.[887] As a result, the Chamber construes the evidence of labour in Sovi}i as falling within the ambit of paragraph 44 of the Indictment, dealing with labour in "locations other than the front lines, including ?…? digging trenches, building defences in the positions of the KB or other HV and HVO forces."[888]

332. The Chamber finds that, as they have a military character or purpose, certain forms of labour described by the witnesses[889] would only be lawful where the prisoners gave their consent. The Prosecution has not proven that the prisoners were compelled to perform those forms of labour. The Chamber has not heard any evidence relating to the context in which this labour was performed, and in particular which units were in charge of the prisoners. The responsibility of Mladen Naletili} with regard to these incidents has not been established.

3. Summary of findings

(a) Mladen Naletili}

333. The Chamber finds Mladen Naletili} guilty of unlawful labour under Articles 3 and 7(3) of the Statute for the use of detainees to dig a trench in the vicinity of his private villa in very harduous conditions (Count 5).

(b) Vinko Martinovi}

334. The Chamber finds Vinko Martinovi} guilty of unlawful labour, inhumane acts, inhuman treatment and cruel treatment under Articles 2(b), 3, 5(i) and 7(1) of the Statute for ordering prisoners of war to perform labour in dangerous conditions in the area of responsibility of the Vinko [krobo ATG (Counts 2, 3, 4 and 5). It further finds Vinko Martinovi} guilty of unlawful labour, inhumane acts, inhuman treatment and cruel treatment under Articles 2(b), 3, 5(i) and 7(1) of the Statute for ordering four prisoners of war to walk across the front line with wooden rifles on 17 September 1993 in his area of responsibility (Counts 2, 3, 4 and 5). The Chamber finds Vinko

[886] Witness YY, T 7260.
[887] Indictment, para 35.
[888] There is also a reference to the allegations contained in paragraph 44 of the Indictment, but no reference is made to events taking place in Sovi}i, Prosecution Pre-trial Brief, pp 14-15.

Martinovi} guilty of unlawful labour under Articles 3 and 7(3) of the Statute for the use of detainees to assist in the looting of private property (Count 5). Finally, the Chamber finds Vinko Martinovi} guilty of unlawful labour under Articles 3 and 7(1) of the Statute for ordering prisoners to turn a private property into the headquarters of the Vinko [krobo ATG (Count 5).

B. Counts 9-12: Torture and mistreatment

335. Counts 9 and 10 charge Mladen Naletili} with torture as a crime against humanity under Article 5 (f) of the Statute and with torture as a grave breach of the Geneva Conventions of 1949 under Article 2(b) and Articles 7(1) and 7(3) of the Statute. Count 11 and 12 charge Mladen Naletili} with cruel treatment as a violation of the laws or customs of war under Article 3 of the Statute and with wilfully causing great suffering or serious injury to body or health as a grave breach of the Geneva Conventions of 1949 under Articles 2(c), 7(1) and 7(3) of the Statute. Vinko Martinovi} is charged under Count 11 and 12 with cruel treatment as a violation of the laws or customs of war under Article 3 of the Statute and with wilfully causing great suffering or serious injury to body or health as a grave breach of the Geneva Conventions of 1949 under Articles 2(c), 7(1) and 7(3) of the Statute.

1. The law

(a) Torture

336. Various judgements of the Tribunal have considered charges of torture as a grave breach of the Geneva Conventions of 1949, a violation of the laws or customs of war and as a crime against humanity.[890] The *Celebici* Trial Judgement stated that the prohibition on torture is a norm of customary international law and *jus cogens*[891].

337. The definition of the prohibition on torture was modified in relation to the perspective of an armed conflict in the *Furundžija* Trial Judgement, which was approved by the *Furundžija* Appeal Judgement.[892] The definition reads:

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[889] Such as the digging of trenches, the construction of fortifications and the recovery of dead bodies.
[890] In the *Celebici* Trial Judgement, torture was considered as both a grave breach of the Geneva Conventions and a violation of the laws or customs of war. In the *Furundžija* Trial Judgement it was considered as a violation of the laws or customs of war. In the *Kunarac* Trial Judgement it was considered as a crime against humanity and violation of the laws or customs of war and in the *Kvocka* Trial Judgement it was considered as a crime against humanity and violation of the laws or customs of war.
[891] *Celebici* Trial Judgement, para 454.
[892] *Furundžija* Appeal Judgement, para 111.

> [t]he elements of torture in an armed conflict require that torture: (i) consists of the infliction, by act or omission, of severe pain or suffering, whether physical or mental; in addition (ii) this act or omission must be intentional; (iii) it must aim at obtaining information or a confession, or at punishing, intimidating, humiliating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person; (iv) it must be linked to an armed conflict; (v) at least one of the persons involved in the torture process must be a public official or must at any rate act in a non-private capacity, *e.g.,* as a de facto organ of a State or any other authority-wielding entity.[893]

338. The Trial Chamber in *Kunarac* held that the definition of torture under international humanitarian law does not comprise the same elements as the definition of torture generally applied in human rights law.[894] It abandoned the element that the perpetrator of the crime of torture must be a public official. It also held the view that humiliation is not a purpose of torture acknowledged under customary law.[895] The *Kunarac* Appeal Judgement confirmed the position of the *Kunarac* Trial Chamber in excluding the public official requirement when considering criminal responsibility of an individual for torture outside the framework of the Torture Convention.[896] It remained silent with regard to the exclusion of "humiliation" as a purpose of torture by the *Kunarac* Trial Judgement. The Chamber finds that the underlying facts of the case do not require the Chamber to take position on this question since the torture allegations contained in the Indictment do not refer to humiliation as a purpose of torture.[897]

(b) Wilfully causing great suffering or serious injury to body or health

339. The offence of wilfully causing great suffering or serious injury to body or health under Article 2(c) of the Statute is defined as:

> a. an intentional act or omission consisting of causing great suffering or serious injury to body or health, including mental health,
>
> b. committed against a protected person.[898]

340. The Commentary to Article 147 of Geneva Convention IV describes the offence of wilfully causing great suffering as referring to suffering which is inflicted without ends in view for which torture or biological experiments are carried out. It could be inflicted for other motives such as punishment, revenge or out of sadism, and could also cover moral suffering. In describing serious

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[893] *Furundžija* Trial Judgement, para 162.

[894] *Kunarac* Trial Judgement, para 496. It stated that "[i]n particular, the Chamber is of the view that the presence of a state official or of any other authority-wielding person in the torture process is not necessary for the offence to be regarded as torture under international humanitarian law".

[895] *Kunarac* Trial Judgement, para 497.

[896] *Kunarac* Appeal Judgement, para 148.

[897] Paragraphs 33 and 45 of the Indictment allege that severe physical and mental suffering was inflicted to obtain information, to punish, to retaliate and to intimidate. The Prosecution has not alleged or argued during the trial that humiliation was a purpose of any severe physical or mental suffering inflicted.

[898] *Celebici* Appeal Judgement, para 424.

injury to body or health, it states that the concept usually uses as a criterion of seriousness the length of time the victim is incapacitated for work.[899]

341. This offence includes those acts that do not fulfil the conditions set for torture even though acts of torture may also fit the definition given.[900] The *Kordic* Trial Judgement concurred with the *Celebici* Trial Judgement that the words "great" and "serious" in the definition "merely require a finding that a particular act of mistreatment, in order to fall within the ambit of this crime, must possess suffering or injury of the requisite level of seriousness."[901] It stated that the requisite level of suffering or injury must be proven:

> ?t?his crime is distinguished from that of inhuman treatment (under Article 2) in that it requires a showing of serious mental or physical injury. Thus, acts where the resultant harm relates solely to an individual's human dignity are not included within this offence. Provided the acts of causing injuries alleged in the Indictment meet the requirements set forth by the Chamber, they may be characterised as the crime of wilfully causing great suffering.[902]

342. In the *Krstic* Trial Judgement, the Chamber considered how the term serious should be interpreted and stated:

> ?s?erious harm need not cause permanent and irremediable harm, but it must involve harm that goes beyond temporary unhappiness, embarrassment, or humiliation. It must be harm that results in a grave and long-term disadvantage to a person's ability to led a normal and constructive life.[903]

343. The gravity of the suffering is determined on a case by case basis taking into account the circumstances of the case.[904]

(c) Inhuman treatment, cruel treatment and inhumane acts

344. The law on these crimes has been considered above.[905]

2. The findings

(a) Torture and mistreatment in Sovi}i and Doljani by Mladen Naletili}

345. Paragraph 46 of the Indictment alleges that Mladen Naletili} committed and instigated the commission of torture or the infliction of great suffering to BH Muslim detainees on 20 April 1993, following the attack against the BH Muslim population of Sovi}i and Doljani carried out by HV and HVO forces under his overall command.

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[899] Commentary to Geneva Convention IV, p 599, referred to in *Kordic* Trial Judgement, para 243.
[900] *Celebici* Trial Judgement, para 511, followed in the *Blaškic* Trial Judgement, para 156.
[901] *Kordic* Trial Judgement, para 244, citing the ^*elebi}i* Trial Judgement, para 510.
[902] *Kordic* Judgement, para 245.
[903] *Krstic* Trial Judgement, para 513 referring to the *Akayesu* Trial Judgement. The Chamber made this statement when defining serious bodily or mental harm as crime of genocide within Article 4 of the Statute.

(i) The commission of torture or infliction of great suffering on BH Muslim detainees by Mladen Naletili} in Sovi}i

346. The Chamber finds that no evidence was adduced to prove that Mladen Naletili} personally committed torture or inflicted great suffering on BH Muslim civilians in the village of Sovi}i on 20 April 1993. Evidence was led on several incidents involving the interrogation and maltreatment of civilians on 17, 18 and 20 April 1993. None of the specific incidents however, involved Mladen Naletili} as a perpetrator.

347. Witness AF was the only Prosecution witness who placed Mladen Naletili} in the role of a perpetrator of torture and mistreatment at Sovi}i school. He testified that Mladen Naletili} arrived at Sovi}i school in the morning of 18 April 1993 and that he conducted interrogations and mistreated the detained soldiers for several hours.[906] This testimony was not corroborated by other witnesses.

348. The testimony of a single witness on a material fact does not require, as a matter of law, any corroboration.[907] However, such evidence must be scrutinised with particular care before accepting it as sufficient to make a finding of guilt against an accused.[908] In doing so, the Chamber took into consideration that witness AF made non-specific allegations. No evidence of any particular incident involving Mladen Naletili} as a perpetrator was adduced. The Chamber is thus not satisfied that the general allegation of Mladen Naletili} conducting interrogations and beating prisoners put forward by a single witness can, be accepted as a sufficient basis for a finding of guilt against Mladen Naletili}. The Chamber thus finds that it has not been established that Mladen Naletili} committed torture and inflicted great suffering as charged in paragraph 46 of the Indictment.

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[904] *Krstic* Trial Judgement, para 513.
[905] *See supra* paras 246-247.
[906] However, witness AF was not interrogated by Mladen Naletili} himself. He conceded that he spent only a limited period of time at the school on that day. Consequently, he was not in a position to testify about any further details of his allegation.
[907] *Tadic* Appeal Judgement, para 65; *Aleksovski* Appeal Judgement, para 62.
[908] *See supra para XX, Kunarac* Trial Judgement, para 566; *Krnojelac* Trial Judgement, para 71; *Vasiljevi}* Trial Judgement, para 22.

(ii) Instigation of torture or infliction of great suffering on BH Muslim detainees by Mladen Naletili} in Sovi}i

349. Witnesses X,[909] W,[910] A,[911] B,[912] AF,[913] and Y[914] testified about incidents involving mistreatment of BH Muslim detainees in and around Sovi}i in the period from 17 to 20 April 1993. The Chamber is satisfied that mistreatment of detainees occurred[915] and that the mistreatment described by witnesses A, B, X, Y and W possessed the requisite seriousness to amount to cruel treatment and wilfully causing great suffering under Articles 2(c) and 3 of the Statute.

350. The Chamber finds that the most serious maltreatment of prisoners was committed during their transport from Sovi}i to Ljubu{ki on 18 April 1993. The captured soldiers who were assembled in the Sovi}i school were taken out and loaded on buses in the presence of ^ikota.[916] While entering the bus, several of them were mistreated. Muharem Helbet was stabbed in the leg with a knife by Roba. Witnesses Y, Mustafa Kuki} and a younger man Hamdija Luli} were hit. [917]

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[909] On 20 April 1993, while being held at the Sovi}i school, two women were called out of the room where everyone was held by Velimir Doj~inovi}, nicknamed Veljo. They were brought into the library where there were about 7 or 8 HVO soldiers. A man called "Robert" was in charge, witness X, T3318 (confidential). "Robert" was not identified further, but was not from Sovi}i. The women were interrogated about weapons held by some of their relatives. Robert tore the hair of one of the women and kicked her between her shoulder blades so that she lost her breath. The two women were than made to beat each other with a stick for between 10-15 minutes. Robert was beating them with a stick. They were then taken to the school gym where they were again beaten, witness X, T 3317-3323 (confidential). Robert, Robo, Roba and Robi are one and the same person.

[910] On 17 April 1993, witness W observed his brothers being beaten by a HVO soldier called "Robo" and other soldiers in front of the school with shovels and buts of guns so that they fell to the ground. They were tied to a plum tree and beaten again, witness W, T 3190-3191.

[911] Witness A was escorted in an HVO police vehicle to Stipe Pole's house situated just next to the school and was searched and beaten while being searched; witness A, T 495. He was then brought to the school and again searched, beaten and questioned by HVO soldiers, who he thought to be Tuta's men, witness A, T 496-497.

[912] It has not established on which day in April 1993 witness B, who at the time was a minor of 16 years was taken back from Doljani to the Sovi}i school, witness B, T 782. There, the soldiers who had escorted him started cutting his hair with a knife, which was painful, beat him, threw him on the ground and tied his hands. One of them cut witness B's chin with a knife. Witness B also saw an older person named Hasan Rado{ being beaten and being forced to sing various songs. He had to say, "Long live Tuta", witness B, T 797.

[913] On 18 April 1993, witness AF was taken away from Sovi}i school by soldiers from Mladen Naletili}'s unit and brought to a smoke house belonging to Ivan Pole where he was threatened. Only after a neighbour intervened and assured the soldiers that witness AF did not possess a sniper's rifle was he released back to the school, witness AF, T 15926-15928

[914] Witness Y had previously been with the HVO, witness W, T 3194. Witness Y was taken for interrogation by Ivan Andabak. Before the interview started, Ivan Andabak introduced himself with name, rank and the unit he belonged to. He said that he was member of the KB, witness Y, T 3386. Witness Y identified the person on exhibit PP 39 as Ivan Andabak, who was in the school, witness Y, T 3384 (confidential). Witness Y was taken out of the interrogation room and hit by a soldier in a black-uniform, witness Y, T 3381 (confidential). Ivan Andabak then started the interrogation and ordered witness Y's wife and child, who were held in the Sovi}i school, into the room, witness Y, T 3382-3386 (confidential). Witness Y was threatened that his wife and child would be killed unless he assisted in finding the BH Muslim men, who had fought for the ABiH, and who had fled into the wood and hills around Sovi}i. The black-uniformed man told witness Y that his child was looking nice, and that it would be his privilege to cut his throat. Upon the order of Ivan Andabak, the soldier in the black uniform and ^ikota, the witness joined in the search for the ABiH soldiers, witness Y, T 3382-3386 (confidential).

[915] *See supra* footnotes 909-914.

[916] Witness W, T 3192.

[917] Witness W, T 3193. He also testified that the soldier called Robo introduced himself and told them that they were Tuta's troops, witness W, T 3178. He described Robo as being rather short but overweight, wearing a green beret he had found somewhere, witness W, T 3179.

On the bus, they were made to sing Croatian nationalistic songs and forced to sing louder and louder.[918] Witness AF testified that Roba and ^ikota were in the bus all the way to Ljubu{ki.[919] The soldiers wore camouflage uniforms and had badges on their shoulders saying KB.[920]

351. On its way to Ljubu{ki, the bus got stuck in the mud. The prisoners were taken out of the bus and lined up. Shots were fired over their heads.[921] The prisoner Salim Kladu{ak was forced to chew and eat a bullet and was beaten severely.[922] Witness Y was ordered to strip down to the waist, to do push-ups for the ABiH and for the HVO, to clean the boots of some of the officers with his clothes. He then was beaten until he fainted.[923] Water was poured over him and when he came to, they went on with the beating. He had to be carried onto the bus again.[924] Mladen Naletili} came by when the bus was stuck in the mud and while witness Y was beaten. He stopped the beatings, telling the soldiers that they had to get going.[925] The bus stopped once more on its way to Ljubu{ki at Sovi}ka Vrata where witness Y was taken out again and severely beaten by all of the soldiers. One of them was Robo.[926] They started hitting his head against the bus until he passed out.[927] He was carried back onto the bus unconscious.[928]

352. The Chamber finds that the KB soldiers Robo (Roba), Ivan Andabak and ^ikota (Mario Hrka~) who were under the command responsibility of Mladen Naletili} participated in the mistreatment of BH Muslim detainees in the Sovi}i school and, in particular, on the bus ride from Sovi}i to Ljubu{ki. The Chamber is not satisfied that Mladen Naletili} instigated his soldiers to commit those acts, as charged in paragraph 46 of the Indictment. There is no evidence to show that Mladen Naletili} prompted Robo, Ivan Andabak and ^ikota to mistreat their victims through any act or omission. Regarding the mistreatment of detainees at the Sovi}i school, no evidence was adduced to show that Mladen Naletili} was aware of the mistreatments committed there by his subordinates. In relation to the severe mistreatment of detainees on the bus ride to Ljubu{ki, witness Y, one of the beating victims, testified that Mladen Naletili} only arrived at the scene after his maltreatment had already started and that he then told the soldiers to stop beating him. The

[918] Witness W, T 3193-3194.
[919] Witness AF, T 15929. Witness W also testified that the mistreatments on the bus on the way to Ljubu{ki took place while Roba and his team was in charge of the bus. A change of guards only took place afterwards. There were four or five HVO soldiers from Tuta's Unit on the bus, witness W, T 3193, 3199; witness Y, T 3388-3389.
[920] Witness Y, T 3388.
[921] Witness W, T 3194.
[922] Witness W, T 3198.
[923] Witness Y, T 3390.
[924] Witness W, T 3198.
[925] Witness Y, T 3390.
[926] Witness Y, T 3391.
[927] Witness Y, T 3391.
[928] Witness W, T 3199; witness Y, T 3391. Witness AF also testified that witness Y suffered the most during this bus ride, witness AF, T 15929.

Chamber thus finds that it has not been established that Mladen Naletili} instigated torture and mistreatment of BH Muslim detainees in Sovi}i by prompting his soldiers to commit these crimes.

(iii) The commission of torture or infliction of great suffering on Muslim detainees by Mladen Naletili} in Doljani

353. The Chamber is satisfied beyond reasonable doubt that severe mistreatment of Muslim detainees occurred at the fishfarm in Doljani on 20 April 1993 and that Mladen Naletili} participated as a perpetrator in that mistreatment. The Chamber is satisfied that the testimonies of witnesses Falk Simang, TT, B, RR and Salko Osmi} prove the following facts[929]:

354. Witnesses TT and RR, both members of the Territorial Defence in Sovi}i, witnesses B, a boy of 16, and Salko Osmi} were captured and brought to the fish farm in the morning of 20 April 1993 in a group of about ten men.[930] Salko Osmi} and two others who had been arrested last, were beaten by ^ikota .[931] As they were approaching the fish farm, witness B was hit in the face by one of the soldiers so hard that he fell down.[932] Witness TT was hit in the face by a man he later learnt to be Mladen Naletili}. He wore a black shirt and camouflage trousers.[933] Witness TT fell and Mladen Naletili} ordered that everybody should get down, kiss the Croatian soil and crawl to a wooden shed. While they were crawling, the beating and kicking in the stomach and ribs continued.[934] Anyone who tried to stand up was immediately hit and beaten.[935] Near the command post, they were ordered to crawl in the mud in a single file and were hit on the head with boots.[936] They were then lined up in front of the command. There were about 100 or 200 soldiers present, wearing different uniforms,[937] among them some Germans and soldiers who wore the patches of the Bruno Bu{i} Brigade and the KB.[938] Mladen Naletili} was standing in front of the soldiers and was present when the beatings occurred.[939]

[929] The Chamber also takes note of an entry in the Rado{ Diary on 21 April 1993, referring to the abuse and beating of eight captured ABiH members in Doljani by Tuta and his men, exhibit PP 928, Rado{ Diary, p 78.
[930] Witness TT, T 6627, T 6634-6663; witness RR, T 6441, T 6448; witness B, T 782-783; witness Salko Osmi}, T 3134-3135. Witness Salko Osmi} submitted the names of other prisoners in the group to the Chamber; witness Salko Osmi}, T 3134-3135 (confidential). Exhibit PP 8.3 contains an aerial view of Doljani. Exhibits PP 8.8, PP 8.9, PP 8.10 and PP 8.11 show different aerial views of the fishfarm.
[931] Witness Salko Osmi} had not known ^ikota before the beating incident occurred. However, after they arrived at Ljubu{ki, they found a newspaper that contained his picture and he then recognised the man who had beaten him, witness Salko Osmi}, T 3136-3137.
[932] Witness B testified that at the time he was a rather small person since he was only 16, witness B, T 782-783.
[933] Witness TT, T 6637.
[934] Witness TT, T 6634.
[935] Witness B, T 783.
[936] Witness RR marked on exhibit PP 8.8/1 where he was crawling, where the guard house used to be and where the beatings started.
[937] Witness RR, T 6451.
[938] Witness TT, T 6649, 6676.
[939] Witness RR, T 6450-6452.

355. Witness B was separated from the older men and taken to a small wooden shed. There, the beating resumed. The prisoners were forced to keep their hands up. They were instructed to act as they were picking grapes. After a while, Mladen Naletili} appeared.[940] Witness B watched him approach Fikret Begi}, one of the prisoners who was kneeling, and shove his pistol into his mouth.[941] Witness RR corroborated this evidence by testifying that, as he was beaten and turning to the left and to the right, he could see Fikret Begi} lying on his left side, being beaten on the head by Mladen Naletili} with his pistol while demanding the password to Jablanica.[942] The prisoner was then pushed into the wooden shed and witness B could hear blows.[943] Afterwards, Mladen Naletili} approached witness TT and Fikret Begi} outside the shed and told them that he intended to put them in front of a firing squad since they were responsible for the death of some of his men.[944] He looked witness TT in the eye, asked him whether he was afraid and hit him in the face with his Motorola.[945] A member of the KB whom he knew from before the war told witness TT that the man who had just threatened him was Tuta.[946] Witness TT was then also taken into the shed and interrogated by Mladen Naletili} and Ivan Andabak. He answered some questions and was told that this had saved his neck.[947]

356. After a while, witness B was also taken into the shed. Mladen Naletili} pulled out his pistol forcing him to speak, or he would be killed.[948] Witness B told Mladen Naletili} all he knew. He was then taken out in front of the shed where the beating of the prisoners continued. From there, he could hear the interrogations and the beatings in the shed.[949]

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[940] Witness B testified that Tuta wore a camouflage uniform with a black sweater, that he had glasses and a beard. He identified Mladen Naletili} as being this person Tuta in the courtroom, testifying that today the beard seems to be greyer and that he looked older but that he was the same man, witness B, T 787.

[941] Witness B, T 787-788.

[942] Witness RR testified that he was five or six metres away from where Tuta beat Fikret Begi} to request the password. He explained that each time, he turned to the left while being beaten, he saw Fikret Begi} being beaten on the head, witness RR, T 6456-6457. Witness RR did not know who Tuta was before the incident occurred. It was the first time that he saw him at the fishfarm. When witness RR was arrested, he was told by the soldiers however that they would be turned over to Tuta. From Mladen Naletili}'s behaviour at the base, witness RR concluded that this was the person Tuta. He assumed that he was the person in charge since he was standing in front of the other soldiers when they arrived, since he had the power to order that Fikret Begi} and witness TT were to be shot by a firing squad and since it was also him who finally gave the order that six of his group should be taken to Ljubu{ki while the underage person should be returned to Sovi}i school, witness RR, T 6456-6458.

[943] Witness B, T 787-788. Witness TT confirmed that Fikret Begi} and then witness B were taken into the shed; witness TT, T 6637.

[944] Witness TT, T 6637. This evidence was corroborated by the testimony of witness RR who further testified that it was only due to the intervention of Mr. Bla` from Jablanica that the two persons were not executed; witness RR, T 6458. Witness RR testified that the person Tuta had quite thick glasses, a medium grey beard and wore an army uniform, witness RR, T 6457. Boka Barbari}, a KB member had been killed on 19 April 1993.

[945] Witness TT, T 6641.

[946] Witness TT, T 6643. He testified that in 1993, Tuta had long greying hair, parted in the middle, with a beard and round glasses, witness TT, T 6645.

[947] Witness TT, T 6643.

[948] Witness B, T 788.

[949] Witness B, T 789.

357. While the interrogations in the shed were conducted by Mladen Naletili}, the soldiers continued mistreating the other prisoners who were assembled outside the shed. They were ordered to act as if they "picked grapes". Witness RR testified that he first did not understand what was meant by this instruction. The soldiers then showed him that he had to kneel down and stretch his arms above his head, so that the soldiers could hit and kick him more easily on the stomach and other parts of his body with their boots.[950] The soldiers then beat them around the area of the ribcage and the stomach. All of the prisoners were beaten.[951] While "picking grapes" after his interrogation, witness TT watched his friend being beaten and bleeding from the mouth. A German member of the KB asked whether he could beat the person who was spitting on Croatian ground.[952] Witness TT himself was kicked so hard in the mouth that he lost two teeth.[953] The prisoners were also forced to sing Croatian songs. [954]

358. The evidence submitted by the victims of the brutal maltreatment and the interrogations conducted by Mladen Naletili} at the HVO headquarters at the fishfarm on 20 April 1993 was corroborated by the testimony of witness Falk Simang, one of the German mercenaries in the KB. He confirmed that beatings of prisoners took place, that a group of prisoners who had been arrested was made to crawl on their hands and knees through the mud to the shed, that they were kicked and beaten with rifle butts in their backs. Witness Falk Simang even conceded having participated in these beatings himself.[955] He confirmed that the prisoners were taken, one by one, into a wooden shed to be interrogated there by Mladen Naletili} and Ivan Andabak. Witness Falk Simang was not present in the shed but he confirmed that he could hear shouting and screaming from the shed.[956]

359. Witness RR testified that it was Tuta who finally gave the order that six prisoners of his group should be taken to Ljubu{ki while the underage person, witness B, should be returned to the Sovi}i school.[957]

360. The Naletili} Defence submitted that Mladen Naletili} was not present at the fishfarm in Doljani on 20 April 1993 but instead was in [iroki Brijeg. It submits that Defence witnesses NM, NR, NL, NN and NK testified that Mladen Naletili} only came to Doljani on 19 April 1993 and that he only stayed there for half an hour. It was submitted that he never returned to Doljani

[950] Witness RR, T 6452-6455. This was corroborated by witness B, T 785.
[951] Witness TT, T 6639. The witness provided some names of his co-prisoners in private session, witness TT, T 6640.
[952] Witness TT testified that the soldier spoke German and that he was able to understand him since he had lived for six months in Germany, witness TT, T 6644.
[953] Witness TT, T 6644.
[954] Witness B, T 785.
[955] Witness Falk Simang, T 3801.
[956] Witness Falk Simang, T 3805.
[957] Witness RR, T 6456-6458.

afterwards.[958] The Naletili} Defence further submits that ^ikota (Mario Hrka~) was not present in Doljani on 20 April 1993 and that he could not have participated in the beatings at Doljani since he was killed on the very same day on a mountain called Iljina Grude or point 902.[959]

361. Defence witness NN testified that he saw Mladen Naletili} in front of the command in Doljani in the afternoon of 19 April 1993, who was there only briefly as he had to go back in order to prepare the funeral for three members of the KB who had been killed.[960] Defence witness NN further testified that ^ikota (Mario Hrka~) did not leave with him but stayed on at Tovarnica because he was to reinforce the positions facing Jablanica. Witness NN did not testify that Mladen Naletili} never returned to Doljani after 19 April 1993, but only stated that he did not see the ATG's in Sovi}i or Doljani after that date.[961]

362. In contrast to what the Defence claims, Defence witness NM testified that he saw Mladen Naletili} in Doljani on 20 April 1993, at around 5 or 6 p.m.[962] He further testified that at the time he arrived, Mladen Naletili} was already there.[963] Defence witness NM could not have been in a position to know for how long Mladen Naletili} may already have been present in Doljani and whether he indeed participated in the interrogations at the fish farm. Defence witness NM testified that Mladen Naletili} left with him and the others to [iroki Brijeg the same afternoon.[964] Defence witness NM also confirmed that ^ikota remained below Kosna Luka, towards elevation 902, to man the line there.[965] He explained that Ilijina Grude was a rock below Doljani.[966]

363. Defence witness NL testified that Mladen Naletili} spent 19 April 1993 at his father's house and only left in the afternoon to fetch the body of the killed Boro Barbari} and to go to Doljani.[967] He testified that Mladen Naletili} returned after about two hours and that they then went to [iroki Brijeg.[968] Defence witness NL testified that the next time he saw Mladen Naletili} was on 21 April 1993, at the funeral of ^ikota (Mario Hrka~).[969] Witness NL was thus not in a position to testify regarding Mladen Naletili}'s whereabouts on 20 April 1993.

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[958] Naletili} Final Brief, p 31.
[959] Naletili} Final Brief, pp 30-31.
[960] Defence witness NN, T 12902.
[961] Defence witness NN, T 12904.
[962] Defence witness NM testified that Boka Barbari}, a member of the KB was killed one day after 19 April 1993, in the afternoon. Since at that time, they had three killed soldiers and several wounded and as their task in the operation had been completed, a team came and pulled out Boka Barbari}'s body. Witness NM arrived in Doljani the same afternoon, Defence witness NM, T 12766.
[963] Defence witness NM, T 12766.
[964] Defence witness NM, T 12767.
[965] Defence witness NM, T 12767.
[966] Defence witness NM, T 12766.
[967] Defence witness NL, T 12692-12693.
[968] Defence witness NL, T 12693.
[969] Defence witness NL, T 12709.

364. Defence witness NR also testified that he met Mladen Naletili} in the afternoon of 19 April 1993 on the road in Doljani, that he then went together with him in the direction of [iroki Brijeg after he heard that Boro Barbari} had been killed.[970] He did not testify, however, as to the whereabouts of Mladen Naletili} on 20 April 1993.

365. The Chamber finds that the testimony of the Prosecution witnesses proved the allegation, notwithstanding the evidence given by Defence witnesses. None of the Defence witnesses' testimonies raised any reasonable doubt as to Mladen Naletili} having been present at Doljani on 20 April 1993. Neither does the fact that ^ikota (Mario Hrka~) was killed later the same day on a rock below Doljani exclude the reasonable finding that he was present at the fishfarm in Doljani at the time when the beatings occurred.

366. The Chamber is satisfied that Mladen Naletili} committed torture by beating Fikret Begi} with a pistol on the head and shoving the pistol in his mouth and demanding the password to Jablanica. He intentionally inflicted severe physical pain and suffering on his victim with the aim of obtaining information (Counts 9 and 10).

367. The Chamber is satisfied that Mladen Naletili} inflicted torture on witnesses TT and Fikret Begi} by telling them that they would be put before a firing squad. The Chamber took into consideration that this "death sentence" was issued by Mladen Naletili} in the brutal context of the overall situation at the fishfarm on 20 April 1993 and that, in those particular circumstances, witness TT and Fikret Begi} could not but consider this death sentence as real. The Chamber further notes witness RR's testimony that only the intervention of another person prevented witness TT and Fikret Begi} from being executed, as demanded by Mladen Naletili}. The Chamber is satisfied that the act was committed with the specific purpose of punishing witnesses TT and Fikret Begi} for having caused the death of Mladen Naletili}'s soldiers. The Chamber is thus satisfied that Mladen Naletili} inflicted severe mental suffering on witness TT and Fikret Begi} by informing them that they would be executed by a firing squad and that this mental suffering was of the requisite seriousness to amount to torture within the meaning of Articles 2(c) and 5 (f) of the Statute (Counts 9 and 10).

368. The Chamber is satisfied that Mladen Naletili} inflicted torture on witness B by demonstratively putting his pistol on the desk while demanding information from witness B or face being killed. The Chamber takes note that this threat was issued in a context of violent beatings that took place outside the shed and systematic violent interrogations conducted by Mladen Naletili} inside the shed. The Chamber further takes into account that witness B at the time was only 16

[970] Defence witness NR, T 13255-13256.

years old and must have been particularly vulnerable and scared by the beatings inflicted on him before he was brought to the interrogation and was threatened with being killed. The Chamber is therefore satisfied that Mladen Naletili} inflicted mental suffering on witness B which was sufficiently severe as to amount to the crime of torture. The Chamber further finds that this mental pain was inflicted with the aim of obtaining information from witness B. It therefore finds that the elements of torture pursuant to Articles 2(c) and 5(f) of the Statute have been met (Counts 9 and 10).

369. The Chamber finds that Mladen Naletili} committed cruel treatment under Article 3 of the Statute and wilfully caused great suffering under Article 2(c) of the Statute to witness Salko Osmi} in the course of his interrogation in the wooden shed (Counts 11 and 12). The Chamber is not satisfied that the mistreatment of Salko Osmi} in the course of the interrogation was severe enough to amount to the crime of torture. In this regard, the Chamber notes that upon his simple resistance of pulling away his head, witness Salko Osmi} was allowed to leave the shed without further complications. However, it is satisfied that the mistreatment of pulling his head close to the red-hot stove was serious enough to cause severe mental suffering.

(iv) Instigation of torture or infliction of great suffering on BH Muslim detainees by Mladen Naletili} in Doljani

370. The Chamber finds that Mladen Naletili} is not responsible for instigating torture and the infliction of great suffering on BH Muslim detainees at the fishfarm in Doljani on 20 April 1993. The Prosecution has not proved that Mladen Naletili} prompted the soldiers who participated in the beatings to commit those crimes. There was evidence that the beatings already occurred before Mladen Naletili} started interrogating the prisoners. The Chamber notes that Mladen Naletili} did have command responsibility for beatings committed by KB soldiers, as, for instance, by witness Falk Simang. The Chamber will therefore consider the responsibility of Mladen Naletili} pursuant to Article 7(3) of the Statute with regard to beatings administered by his subordinates under paragraph 50 of the Indictment.[971]

(b) Torture and mistreatment of witness "B" by Mladen Naletili}

371. Paragraph 47 of the Indictment charges Mladen Naletili} with the torture of witness "B" a prominent member of the BH Muslim community, at the KB base in Li{tica-[iroki Brijeg, after he had been arrested by unidentified KB members on 7 May 1993.

[971] *See infra* paras 390-438.

372. On 14 January 2002, the Prosecution confidentially filed a Motion to admit the witness statement of "B" given to an investigator of the Prosecution, as "B" had died in the meantime.[972] By Decision of 22 January 2002, the Chamber denied the Motion as it was not satisfied on a balance of probabilities that there were satisfactory *indicia* of the reliability of the statement.[973] On 7 February 2002, the Prosecution filed a submission concerning, *inter alia*, paragraph 47 of the Indictment. The Prosecution conceded that the "evidence does not specifically establish the charge against Mladen Naletili} contained in paragraph 47 due to the death of "B" and the decision of the Chamber not to admit his witness statement into evidence and the unavailability of other evidence.[974] In its decision of 28 February 2002, the Chamber decided pursuant to Rule 98*bis* of the Rules that "there is no or insufficient evidence presented under counts 9, 10, 11 and 12 in the Indictment in relation to the incident involving witness "B" as described in paragraph 47 of the Indictment" and, in this respect, granted the Motion of the Defence of Mladen Naletili} for acquittal.[975]

373. The allegations included in paragraph 47 of the Indictment have not been proven. Mladen Naletili} has already been acquitted pursuant to Rule 98*bis* of the Rules on Counts 9 to 12 to the extent that they are based on paragraph 47 of the Indictment.

(c) Torture and mistreatment of "M" by Mladen Naletili}

374. Paragraph 48 of the Indictment alleges that Mladen Naletili} physically assaulted and repeatedly hit witness "M", a prisoner of war, in the presence of his subordinates and other commanders of the HVO, on 10 May 1993 in the streets of Mostar. The act is charged as torture under Articles 2(b) and 5(f) of the Statute and as cruel treatment and wilfully causing great suffering or serious injury to body or health under Articles 3 and 2(c) of the Statute. Witness AA is the same person as witness "M" of the Indictment.[976]

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[972] Prosecutor's Motion to Admit Statement of Deceased witnesses ?...? and ?..?, Case No. IT-98-34-T, 14 January 2002. The name of the Motion has been redacted for the purpose of this judgement due to requirements of victim protection.

[973] The Chamber held that Rule 92*bis*(C) of the Rules applies as the *lex specialis* to the general provision of Rule 89(C) for the statements of deceased witnesses and that, therefore, the prerequisites of Rule 92*bis*(C)(i) and (ii) of the Rules must be satisfied for their admission. Upon Request of the Prosecution, dated 22 January 2002, the confidential Decision of the Chamber was re-filed in a redacted public version; *see* Decision on the Prosecutor's Request for Public Version of the Chamber's "Decision on the Motion to Admit Statement of Deceased witnesses […]" of 22 January 2002, Annex A, Case No. IT-98-34-T, 27 February 2002.

[974] Prosecutor's Submission Concerning Paragraphs 42 and 47 of the Second Amended Indictment, 7 February 2002, p 4.

[975] Decision on Motions for Acquittal, 28 February 2002, pp 5, 9.

[976] For the purpose of the proceedings he was granted the pseudonym "AA" when testifying as a witness in the Prosecution's case, T 3651 (confidential).

375. The Naletili} Defence submits that the testimony of witness AA is not credible and that the incident charged did not happen since none of the Defence witnesses NA, NP, NT and Bo`o Raji} saw such an incident. It is further argued that, in any event, the mistreatment did not reach the level of severity required by the law to constitute torture or any other crime under the Statute.[977]

376. The Chamber finds that the evidence submitted by the Defence witnesses does not raise any reasonable doubt as to whether the incident took place as charged. First, the Chamber notes that two of the Defence witnesses, in contrast to what the Defence claimed in its Final Brief, were not even present at the site where the incident allegedly occurred while another one did not testify to the incident at the Vranica building.[978] Defence witness NP only arrived later at the Defence Ministry building, after he had searched the premises of the 4th Corps in the Vranica building and compiled and seized a collection of documents there.[979] The group of prisoners, Juka Prazina and Mladen Naletili} were already there when he arrived.[980] Defence witness NP's testimony, that he did not see Mladen Naletili} hit one of the prisoners[981] does not exclude the possibility that he may have done so before Defence witness NP arrived or after he had left.[982]

377. The Chamber finds the testimony of witness AA and the other Prosecution witnesses credible and reliable and is thus satisfied that the incident charged in paragraph 48 of the Indictment has been established. The incident occurred after the HVO had launched the attack against the headquarters of the 4th corps of the ABiH in the basement of the Vranica Building on 9 May 1993 in the course of the overall attack on Mostar.[983] The eleven floors above the ABiH headquarters in the Vranica building contained residential apartments.[984] Several ABiH soldiers and residents of

[977] Naletili} Final Brief, p 77; also referring to the testimonies of witnesses NA, NP, NT and Božo Rajic.
[978] Defence witness NA only saw the group leaving the Vranica building. He testified that he did not see them anymore after they had started moving in the direction of the cantonal building of the police forces, Defence witness NA, T 9105 (confidential). He was therefore not in a position to testify about what happened in front of the Ministry of Defence building. The same applies with regard to Defence witness NT who certainly could not have seen the incident happen because, as he himself testified, he spend 9 and 10 May 1993 at the Heliodrom; Defence witness NT, T 13424 (confidential). With regard to the underlying events to this charge, Defence witness NT only testified that he was told by Juka Prazina that they had liberated the Vranica building and that a friend of Defence witness NT had been turned over to the military police, Defence witness NT, T 13426 (confidential). Defence witness Božo Rajic did not testify to the event concerned.
[979] Defence witness NP, T 13073-13074, 13109.
[980] Defence witness NP, T 13073-13074.
[981] Defence witness NP, T 13074.
[982] As to the latter, the Chamber notes that Defence witness NP testified that Mladen Naletili} proceeded towards his car when witness NP left for ^aplijna. He did not testify, however, that Mladen Naletili} indeed left the scene at the same time he did; Defence witness NP, T 13075. It is apparent that Defence witness NP can only have stayed at the Vranica building for a short while since he testified that within half an hour since he had collected the documentation in the Vranica building, he moved his unit toward ^apljina; Defence witness NP, T 13109.
[983] The evidence and the findings of the Chamber with regard to the attack on Mostar are set out above, *supra* paras 37-51. The Vranica building is shown on exhibit PP 11.13, PP 16.4.
[984] Witness AA, T 3657; witness BB, T 4241.

the Vranica building testified as eyewitnesses who were caught in the complex during the attack,[985] including witness AA, a member of the second Mostar Battalion of the ABiH.[986] In the afternoon of 10 April 1993, the building caught fire and the ABiH soldiers decided to leave together with the civilian residents. There were between 20 and 30 soldiers in the group that left the building.[987] Outside, the group was awaited by Juka Prazina, @eljko Bo{njak and other members of the KB.[988] The Muslim men of military age were separated from the rest of the group and marched to the Ministry of Defence building.[989]

378. There, witness AA was recognised by his former superior.[990] Mladen Naletili} was also there.[991] His former superior approached witness AA and asked him why he had left his employment without asking him. Upon witness AA's explanation that he did not want to shoot at his own people, his former superior called over Mladen Naletili}, telling him that witness AA had formerly been with him and that he had now turned his weapon against the Croats.[992] Mladen Naletili} approached witness AA and started hitting him with his Motorola on the left side of his forehead, swearing at his "balija" mother. After witness AA told him that his mother was a

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985 Witness BB, T 4239; witness CC, T 4372; witness DD, T 4464, 4466; witness ZZ, T7794**.** The evidence and the findings of the Chamber with regard to the attack on the Vranica building are set out above, *supra* para 40.

986 Witness AA identified the Vranica Building to consist of a residential complex and two kiosks, as shown on exhibit PP 16.4, T 3656. On exhibit PP 17, he recognised the headquarters of the 4th Corps Brigade command in the Vranica building, witness AA, T 3674. This testimony was corroborated by the testimony of witness BB, a resident of the Vranica Building, witness BB, T 4239. Witness CC testified that the Vranica complex also contained a logistics building which was linked with a passageway to the backdoor of the Vranica building, witness CC, T 4372.

987 Witness AA, T 3658-3659; witness E, T 997.

988 Witness AA, T 3660. While witness AA did not know Juka personally, he knew who he was because he was "a hero of the city of Mostar" in 1992. Witness AA had seen his photographs in the newspapers and had seen him walking around in Mostar in the past, witness AA, T 3660-3661. Witness BB testified that it was Juka Prazina, the commander of an ATG who asked the ABiH army members in the Vranica building to surrender, witness BB, T 4241. He did not know Juka Prazina personally but only from sight and his name was well-known, witness BB, T 4245. Witness E testified that Juka Prazina took part in the negotiations and threatened the inhabitants of the Vranica building should they not surrender, witness E, T 999. The evidence concerning the active participation of Juka Prazina and his ATG in the attack of the Vranica building and the events thereafter was further corroborated by the testimonies of witnesses, witness T, T 2817; witness Z, T3532; witness CC, T 4377-4378, 4380, witness H, T 1294; witness DD, T 4467; witness EE, T 4511 4527. Also Defence witness NP confirmed the participation of Juka Prazina and his unit in the attack on the Vranica building, Defence witness NP, T 13073. Witnesses CC and BB testified as to the presence of @eljko Bo{njak, witness CC, T 4374; witness BB, T 4246. Witness CC did not know who he was at that time, but later came to know him as a member of the KB when he saw him again while he was detained in the camp at Široki Brijeg, witness CC, T 4380-4381. Witness BB knew @eljko Bo{njak superficially from before the war as he used to install poker machines in cafes. He became aware of @eljko Bo{njak being a KB member while working at the Široki Brijeg canal, witness BB, T 4246. Exhibit PP 17 contains a video clip of 9 May 1993, showing the Vranica building and the captured soldiers.

989 Witness AA, T 3663; witness BB, T 4245; witness CC, T 4384. Witness ZZ only testified that they were taken to a Ministry without further specification, witness ZZ, T 7796. Witness DD did not recognise the building on exhibit DD1/22, witness DD, T 4467, 4494. However, the Defence did not dispute that the group of prisoners was taken to the Ministry of Defence, Defence witness NP, T 13070, 13072.

990 Witness AA, T 3663-3664. The name of the superior has been submitted to the Chamber in closed session.

991 Witness AA, T 3664; witness BB, T 4245; witness DD, T 4468. The Defence has not disputed that Mladen Naletili} was present at the Ministry building on 10 May 1993 during the time concerned, Defence witness NP, T 13074.

992 Witness AA, T 3664.

Catholic, Mladen Naletili} struck him several times more with the Motorola.[993] Mladen Naletili} then drew a cross on witness AA's forehead with the aerial of the Motorola and stated that he sentenced him to death to serve as an example to others.[994]

379. While the injuries following the physical and psychological mistreatment of witness AA by Mladen Naletili} may not possess the requisite seriousness to amount to the crime of torture under Articles 2 (b) and 5 (f) of the Statute, the threat of a death sentence is severe enough to amount to the crime of cruel treatment and wilfully causing great suffering pursuant to Articles 2(c) and 3 of the Statute. This act takes on a more serious aspect as it was committed in the presence of many of Mladen Naletili}'s subordinates. The Chamber finds that Mladen Naletili} bears individual criminal responsibility for these crimes as a perpetrator pursuant to Article 7(1) of the Statute (Counts 11 and 12).

(d) Beatings of BH Muslim civilians by Vinko Martinovi}

(i) Beatings of BH Muslim civilians in the course of evictions

380. Paragraph 49 of the Indictment alleges that Vinko Martinovi} repeatedly beat in the presence of his subordinates BH Muslim civilians in the process of their eviction and deportation. The Chamber finds that it has been proven that Vinko Martinovi} participated in the eviction of BH Muslim civilians in the city of Mostar.[995] The Prosecution has further established that Vinko Martinovi} in the course of the evictions maltreated some individuals. While the Chamber finds that maltreatment in the context of terrifying evictions conducted by armed soldiers is serious, it is not satisfied that the Prosecution established that the concrete incidents as such possess the requisite seriousness to amount to cruel treatment or wilfully causing great suffering under Articles 2 (c) and 3 of the Statute.[996]

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[993] In total, witness AA was struck by Mladen Naletili} with the Motorola about six to eight times on the forehead. He did not bleed but his skin was slightly damaged, witness AA, T 3364. The testimony of Defence witness NP that he did not see Mladen Naletili} hit anybody in front of the Ministry does not contradict the testimony of the victim of the beatings. Defence witness NP testified that he searched the premises of the ABiH headquarters in the Vranica building while Juka Prazina took the prisoners to the ministry, Defence witness NP, T 13073. He did not testify that Mladen Naletili} arrived at the Ministry only after him but that Mladen Naletili} approached him at some point, Defence witness NP, T 13074. The beating of witness AA by Mladen Naletili} may therefore well have occurred before Defence witness NP arrived at the scene. Alternatively, the event may have taken place after Defence witness NP left the scene and entered the Ministry building. Defence witness NP did not testify that Mladen Naletili} left before him, he only testified that he "proceeded towards his car," Defence witness NP, T 13075. This testimony does therefore also not exclude the possibility that the event took place after Defence witness NP had already left. The reliability and credibility of the testimony of witness AA, of which the Chamber is satisfied, can thus not be undermined by the testimony of Defence witness NP.

[994] Witness AA, T 3666.

[995] *See infra* paras 536, 559-566, 676.

[996] The Chamber finds it proved that Vinko Martinovi} maltreated one of witness WW's neighbours and kicked witness WW in the back in the course of their forcible eviction on 13 June 1993, witness WW, T 7034-7039 (confidential),

381. The Chamber thus finds that the allegation contained in paragraph 49 of the Indictment has not been proven with regard to the beating of BH Muslim civilians in the course of evictions.

(ii) Beatings of BH Muslim detainees in the area under the command of Vinko Martinovi}

382. Paragraph 49 of the Indictment further alleges that Vinko Martinovi} repeatedly beat BH Muslim detainees in the presence of his subordinates in the area under his command.[997] The Chamber is satisfied that this allegation has been proven. Numerous witnesses, who the Chamber found reliable and credible, testified as to Vinko Martinovi} beating BH Muslim detainees both at his headquarters and at the frontline on the Bulevar.

383. The Martinovi} Defence abstained from submitting detailed arguments with regard to each particular incident. Instead, it submits that the Prosecution generally failed to establish the most basic facts for the alleged incidents and that the evidence presented is merely "second hand" evidence.[998] The Martinovi} Defence further argues that Defence witnesses testified that prisoners asked to be brought to the Vinko [krobo ATG because they felt safe there and that Vinko Martinovi} treated all prisoners as correctly as he treated his own soldiers.[999]

384. The Chamber accepts that Vinko Martinovi} may have helped and protected some BH Muslim prisoners with whom he or his family had a personal relationship or others who may have bought his protection.[1000] However, reliable and corroborated evidence submitted by a

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T 7092. Her testimony as to the seriousness of the mistreatment is however contradictory. While the witness in direct examination first testified that Vinko Martinovi} pushed and shoved her neighbour but did not hit him T 7036, she then testified that he stroke her neighbour with his fist on the chest and on the leg. In cross-examination, witness WW then testified that Vinko Martinovi} treated her neighbour very roughly, shoved him, pushed him and hit him, witness WW, T 7060. She also testified that her neighbour was not injured badly, that she could not recognise any bruises or blood, witness WW, T 7061. Based on the testimony of witness WW, the Chamber is not satisfied that the maltreatment of witness WW's neighbour meets the requisite seriousness of the physical or mental mistreatment under Articles 2(c) and 3 of the Statute. In relation to witness WW's testimony that Vinko Martinovi} kicked her in the back, the Chamber notes that this evidence was not led by the Prosecution in direct examination. It only arose out of a question by the Judges at the very end of witness WW's testimony, witness WW, T 7092. The Chamber is not satisfied that this treatment amounts to a serious physical suffering or injury which is required for an act to be classified as cruel treatment or wilfully causing great suffering or serious injury to body or health pursuant to Articles 2(c) and 3 of the Statute. Witness GG observed [tela, whom he identified as Vinko Martinovi}, slapping one of his neighbours several times in the course of their eviction, witness GG, T 4746. Witness AA, while detained at the MUP Station in [iroki Brijeg, met Ibrahim Bad`ak who told him that while being thrown out of his house, [tela's men punched him, witness AA, T 3686. The Chamber is not satisfied that either of these two incidents amounts to cruel treatment or wilfully causing great suffering or serious injury to body or health as the requisite seriousness has not been established.

997 For the details concerning Vinko Martinovi}'s area of command, *see supra* para 138.

998 Martinovi} Final Brief, pp 87-88.

999 Martinovi} Final Brief, p 89.

1000 Defence witnesses who testified as to Vinko Martinovi} protecting and helping Muslim neighbours and treating BH Croats and BH Muslims generally alike were Defence witness Jadranko Martinovi}, T 13784-13786; Defence witness MD, T 14055-14057; Defence witness MI, T 14329, 14334; Defence witness MO, T 15033-15034; Defence

number of Prosecution witnesses shows that this protection was only granted to a handful of Muslims. This relationship with favoured prisoners did not impede his treatment of other prisoners with cruelty and indifference as to their fate. The Chamber thus finds that the following incidents have been proven:

385. Witnesses SS, K and NN testified about an incident that took place at Vinko Martinovi}'s headquarters in July or August 1993 when several prisoners were beaten by Vinko Martinovi}.[1001] On that occasion, witnesses SS, K and NN were taken in a group of 24 detainees from the Heliodrom to Vinko Martinovi}'s headquarters.[1002] After they got off the bus, the prisoners were told to wait for "the boss." Shortly thereafter, Vinko Martinovi} arrived in a car.[1003] Vinko Martinovi} introduced himself as [tela, started yelling and ordered the prisoners to stand against the wall and to lower their heads. He started beating one of the prisoners.[1004] The beating was so violent that at one point Vinko Martinovi}'s watch bracelet broke from the force of the blows delivered. They were so brutal, that the prisoner standing immediately next to Vinko Martinovi}'s victim became ill and collapsed.[1005] Another prisoner held him to prevent him from falling. Vinko Martinovi} then also beat the two prisoners standing next to his initial victim.[1006] The soldiers who had escorted the prisoners to Vinko Martinovi}'s headquarters were present during the incident; one of them, Semir (Sema) Bo{nji}, did not only observe but participated in the beating of the first prisoner.[1007] Witness NN was also threatened and seriously beaten by Vinko Martinovi}, punched and kicked in the head, on the chest and in the stomach during this incident.[1008]

MG, T 14229-14231; Defence witness ML, T 14435-14438; Defence witness MB, T 13968; Defence witness MC, T 14010; Defence witness MH, T 14259.

[1001] Witness SS testified that the incident took place on 6 July 1993, witness SS, T 6550. Witness NN remembered it to have been in mid-August, witness NN, T 5899.

[1002] Witness SS, T 6550. The group of prisoners, all of whom had been ABiH members, was called the "Blue Orchestra" because they were given blue outfits and were constantly forced to sing songs; witness SS, T6550; witness K, T 1574; witness NN, T 5898. The name referred to a musical band from Sarajevo, witness SS, T 6550. On exhibit PP 12, witness SS indicated the location of [tela's headquarters.

[1003] Witness SS understood him to be the boss based on the reactions of the soldiers, witness SS, T 6551. Witness SS and K described him as being of medium height, strongly built, his hair cut short or receding, witness SS, T 6552; witness K, T 1583.

[1004] While witness SS could not see the beating since he had to keep his head down, he could hear his co-prisoner being punched and kicked. Witnesses K and NN also testified that they had to stand with their heads bowed; witness K, T 1608; witness NN, T 5900. The witnesses submitted the name of the co-prisoner who was beaten by Martinovi}, witness NN, T 6553; witness K, T 1583 (confidential). Witness OO testified that Vinko Martinovi} always introduced himself as [tela to the prisoners, witness OO, T 5940.

[1005] Witness K testified that he was also standing next to the victim and that the beating did not last very long but that it appeared to him to last a long time, witness K, T 1582. Witness K was not one of the co-prisoners who were referred to by witness SS as also having been beaten by Vinko Martinovi}, witness K, T 1582. NN confirmed the name of one of the prisoners, who was beaten and to whom witness SS referred, witness NN, T 6553 (confidential).

[1006] The two prisoners were also identified by witness SS, witness SS, T 6552-6553 (confidential).

[1007] Witness SS, T 6554; witness K, T 1582.

[1008] Witness NN, T 5901-5902.

386. Witness OO was present during another incident when a co-prisoner who had told witness OO and the other prisoners that he was on good terms with Vinko Martinovi}'s father, and whom witness OO knew as the "Professor", greeted Vinko Martinovi} and asked him about his father.[1009] Vinko Martinovi} started beating the man and then allowed the present soldiers to take him behind the building and dump him in a garbage container.[1010]

387. Witness A, who was taken to the Bulevar twice,[1011] saw Vinko Martinovi} beat two BH Muslim prisoners, Mirsad Kuki} and Enes Kladu{ak there.[1012] The Prosecution did not call further evidence regarding this beating incident. Witness W testified as to an incident at Vinko Martinovi}'s headquarters in which Vinko Martinovi} beat up a BH Muslim person who had been found hiding.[1013]

388. Witness Y testified about an incident that took place sometime between June and August 1993.[1014] On this occasion, he was taken with other prisoners to the Health Centre on the Bulevar.[1015] They were taken to the Rondo and made to sit down against the wall of a building until several soldiers in uniform arrived. The prisoners were told that this was [tela's command post.[1016] The soldiers started shooting bursts of fire over the prisoners and hurled hand grenades.[1017] One of the prisoners, a man named Tsotsa was beaten in front of the building by Vinko Martinovi} and

[1009]The Prosecution did not establish the date or month when the incident happened apart from the fact that it must have been after 24 or 25 July 1993, which were the first days that witness OO was taken to work for Vinko Martinovi}'s unit.

[1010]Witness OO, T 5956. Witness II also referred to a beating incident involving a person with the name "Professor" that took place at Vinko Martinovi}'s headquarters. According to his testimony, Vinko Martinovi} beat the Professor since he did not want to let go of his bag when the detainees boarded the truck to go back to Heliodrom. The Professor was then pushed into the garage from where he re-occurred completely soaked, witness II, T 4973-4974. The Chamber is satisfied that witnesses OO and II referred to the same incident. Witness BB testified that he met a professor from Mostar in the Ljubu{ki prison who told him that he had been beaten and brought by [tela and his men. The professor had a swollen jaw when he saw him, witness BB, T 4258. However, according to witness BB's testimony he met the "Professor" the in Ljubu{ki prison around 18 May 1993, *i.e.*, before the first time that witness OO was ever brought to Vinko Martinovi}'s headquarters and before the beating incident concerning the professor could have been eyewitnessed by him. According to witness BB's testimony, he was arrested and brought to the MUP Station on 10 May 1993. He was then kept there for about ten days before he was transferred to the Ljubu{ki prison. Accordingly, he must have met the professor in Ljubu{ki around 18 May 1993, witness BB, T 4251, 4255, 4258. The Chamber therefore finds that the testimony of witness BB about the professor with the swollen jaw cannot be taken into account in relation to the seriousness of the beatings since it is impossible that witness BB testified about the same person described by witness OO and testified to by witness II. In favour of the accused, the Chamber therefore finds that only one incident involving a beating victim called "Professor" has been established.

[1011]Witness A, T 518.

[1012]Witness A, T 521.

[1013]Vinko Martinovi} approached the person "like a boxer coming to a person" and beat him so that he fell down, witness W, T 3215, 3217.

[1014]Witness Y testified that he was transferred to Ljubu{ki on 19 April 1993 where he then was kept for 47 days. Thereafter, he was transferred to the Heliodrom where he was imprisoned until 1 March 1994. The beating incident occurred while he was first kept on an upper floor of a Heliodrom building for about one and a half month, witness Y, T 3392, 3395, 3398, 3400.

[1015]Witness Y marked the location of the Health Centre on exhibit PP 14.5; exhibit PP 14.5/7; witness Y, T 3400.

[1016]Witness Y, T 3402.

[1017]Witness Y, T 3400.

other soldiers, then taken to the cellar of the building from where witness Y could hear his screams and moans.[1018]

389. The Chamber is satisfied that the frequent beatings of prisoners by Vinko Martinovi} as established for the incident in July or August 1993 involving several prisoners, the incident with the "Professor" and the one concerning the prisoner called Tsotsa amount to cruel treatment and wilfully causing great suffering or serious injury to body or health pursuant to Articles 2(c) and 3 of the Statute and that Vinko Martinovi} bears individual criminal responsibility for those acts as a perpetrator pursuant to Article 7(1) of the Statute. The beatings administered by Vinko Martinovi} in those incidents caused serious physical suffering to the victims who were protected persons within the meaning of Article 2 of the Statute and who were taking no active part in the hostilities within the meaning of Article 3 of the Statute. Vinko Martinovi} is thus guilty of wilfully causing great suffering pursuant to Article 2(c) of the Statute and of cruel treatment pursuant to Article 3 of the Statute with regard to these incidents (Counts 11 and 12). With regard to the beating of Mirsad Kuki} and Enes Kladu{ak and the incident described by witness W, the Chamber is not satisfied that the Prosecution has established that the mistreatment possessed the requisite seriousness for a conviction under either Article 2(c) or Article 3 of the Statute.

(e) Torture and mistreatment at different KB bases by subordinates of Mladen Naletili} and Vinko Martinovi}

390. Paragraph 50 of the Indictment charges Mladen Naletili} and Vinko Martinovi} with command responsibility for the beating and torture of BH Muslim civilians and prisoners of war which, it is alleged, was a common practice amongst KB members and commanders and that were committed at different KB bases in Mostar, Li{tica-[iroki Brijeg, Ljubu{ki, Heliodrom and other locations. It is alleged that Mladen Naletili} and Vinko Martinovi} knew, or had reason to know, that their subordinates were about to commit such acts, or had done so, and they failed to take the necessary and reasonable measures to prevent such further acts, or to punish the perpetrators thereof.

391. The Martinovi} Defence generally submits that the Prosecution failed to prove that Vinko Martinovi} possessed any knowledge of mistreatment of prisoners allegedly committed by his

[1018]Witness Y, T 3400, 3402. Witness Y got to know that the soldier who was giving orders to the others and who participated in the beating was [tela since a co-detainee, Hasib Luli}, was asked by this person why he was there and Hasib Luli} addressed [tela by name when he answered him. Later, Hasib Luli} explained to witness Y that he and [tela knew each other from serving time together in the correction centre in Zenica before the war. He identified Vinko Martinovi} as [tela in the courtroom, testifying that at the time the incident happened, he had his head shaved, witness Y, T 3401, 3404. This testimony is in line with the description of other witnesses who described Vinko Martinovi} of having been bald or with receding hairline.

subordinates.[1019] The Naletili} Defence generally argued that Mladen Naletili} had nothing to do with the detention centres and that he did not know that prisoners were mistreated in those locations.[1020] It further submitted arguments with regard to some individual incidents which will be considered in the context of the specific allegation below.[1021]

392. A number of witnesses testified about beatings and mistreatment in the places charged under paragraph 50 of the Indictment. On the basis of the evidence heard, the Chamber is satisfied that many Muslim civilians and prisoners of war were beaten and otherwise severely mistreated in various detention facilities and that the soldiers who engaged in this came from various military units. The Chamber has carefully examined the evidence with regard to each individual incident and will enter its findings accordingly.

(i) Mostar

393. The maltreatment of "witness M" who testified as witness AA by Mladen Naletili} in Mostar on 10 May 1993 has been charged under paragraph 48 of the Indictment and the Chamber has already entered its findings accordingly.[1022] After Mladen Naletili} had stopped beating him, he was also beaten by Juka, Dujmovi}, Slezak and some others two or three times until he fell down.[1023] These beatings were carried out in the presence of Mladen Naletilic.[1024] Witness BB also testified about further maltreatment of prisoners at the Tobacco Institute during the incident charged under paragraph 48 of the Indictment. A soldier named Mi{ic began swearing at the prisoners and started shooting. An ABiH soldier was shot in the leg.[1025] In the ensuing chaos, people standing on the side began beating some of the other prisoners.[1026] Witness DD was hit when he was boarding the bus to be taken to Široki Brijeg.[1027] The mistreatment by the soldiers only started after Mladen Naletilic had hit another person[1028] in the face with his Motorola.[1029] Witness E testified that if Mladen Naletilic marked out someone by a blow or some other way, then a person belonging to the

[1019]Martinovi} Final Brief, p 90.
[1020]Naletili} Final Brief, p 43.
[1021]Naletili} Final Brief, pp 38-39, 42-42, 76-78.
[1022]For the Chamber's findings with regard to paragraph 48 of the Indictment, *see supra* paras 374-379.
[1023]Witness AA, T 3667.
[1024]Witness AA, T 3669.
[1025]Witness BB submitted the name of the soldiers, witness BB, T 4300-4301 **(**confidential). The prisoner did not dare show that he had been hit, but all the others knew and witness BB learnt this while at the prison in Široki Brijeg; T 4300-4301 (confidential).
[1026]Witness BB, T 4246.
[1027]Witness DD, T 4471.
[1028]The name of the person was submitted to the Chamber; witness BB, T 4246 (confidential).
[1029]Witness BB, T 4246-4248. (confidential)

ABiH would be attacked.[1030] As an example, Witness E described how a young man was first threatened by Mladen Naletilic and was then beaten up by his escorts with fists and rifle butts.[1031]

394. The Chamber is satisfied that Mladen Naletili} was present when KB soldiers under his command, among them Juka Prazina, maltreated the group of prisoners who had been taken from the Vranica building to the Tobacco Institute in Mostar by swearing at them, shooting at them and beating several of them. The random beating of and shooting at the prisoners created an atmosphere of terror that caused severe physical and mental suffering to the prisoners. The mistreatment committed by the soldiers under Mladen Naletili}'s command was therefore sufficiently severe to amount to crimes under the Statute. The Chamber is further satisfied that Mladen Naletili} had the material ability to prevent those crimes and that he wilfully chose not to do so but instead set the pattern for the mistreatment of prisoners. The Chamber thus finds that Mladen Naletili} bears command responsibility for cruel treatment and wilfully causing great suffering pursuant to Articles 2(c), 3 and 7(3) of the Statute (Counts 11 and 12).

(ii) KB Bases Lištica-Široki Brijeg

a. MUP Station

395. The Naletili} Defence submits that only military police members had access to the MUP Station and that the testimony of Defence witness NG proved that he would have known had prisoners been ill-treated. Defence witness NG testified that it was a lie that people were beaten at the MUP Station in Široki Brijeg, and that no one apart from the military police was allowed to see the detainees.[1032] He deemed that neither Romeo Bla`evi}, nor Ivan or Mario Hrka~ mistreated detainees at the MUP Station in Široki Brijeg. He testified that they kept details of who was interrogated and by whom in logbooks that are archived.[1033] He further testified that he spent most days and nights at the MUP Station and that beatings could not have taken place without him knowing it.[1034] Defence witness NQ confirmed that there were detainees at the military police and testified he mobilised serious people such as teachers to guard them, to avoid any mistreatment by civilians or military.[1035]

[1030]Witness E, T 1011-1012. Witness E was also in the group that was taken to the Tobacco Institute on 10 May 1993 and was handed over to Mladen Naletilic by Juka, witness E, T 1009.
[1031]Witness E, T 1009, 1011-1012.
[1032]Witness NG, T 11936.
[1033]Witness NG, T 11967-11969.
[1034]Witness NG, T 11939, 11948-11949.
[1035]Witness NQ, T 13193-13194.

396. The Chamber rejects the evidence given by Defence witness NG that he would have known had such mistreatment taken place. It takes note that the MUP Station logbook was never produced and that the testimonies of Defence witnesses NG and NQ are contradictory. It is irrelevant whether Defence witness NG was aware of the mistreatment of prisoners or whether he did not want to know about it. In any event, the strongly corroborated, credible and reliable evidence submitted by witnesses AA, BB, CC, DD, EE, ZZ and VV proves that brutal mistreatment of prisoners took place at the MUP Station on various occasions as set out below.

397. Witnesses AA, BB, CC, EE and ZZ, all ABiH soldiers who had been taken from the Vranica building, and witness DD were taken in a bus from the Tobacco Institute in Mostar to the MUP Station in Široki Brijeg by Juka Prazina's soldiers on 10 May 1993.[1036] While they were waiting outside, a MUP officer beat a man several times.[1037] Meho Zili} was hit by a man whom witness AA believed to be Tuta's man. Witness AA was also hit by him.[1038] The prisoners were taken to cells in the basement.[1039]

398. While detained at the MUP Station,[1040] several witnesses were beaten and mistreated by Romeo Bla`evi}, Ernest Taka~ and Ivan ^ikota. Witness AA was beaten badly by Romeo Bla`evi} and Ernest Taka~, with sticks and pistols.[1041] Witness AA was beaten on another occasion during the weekend. Four or five soldiers took another prisoner out and beat him, after which they took witness AA out of the cell. They beat him around the kidneys and told him to do push ups.[1042] The soldier who had already beaten him and Meho Zili} at their arrival pointed a pistol at him and fired but he only heard the pin. Ivan ^ikota and the others extinguished a cigarette in Witness AA's mouth and forced him to swallow it. He then had to hit his head against the wall counting 10 times, after which he was returned to his cell.[1043] The Chamber accepts this evidence and rejects Defence witness NG's evidence that Ivan ^ikota was not present as he was working as a policeman in Croatia at the time. The Chamber heard credible and reliable evidence from prisoners with building skills that they worked for Ivan Hrka~ (^ikota) at this time.

[1036]Witness AA, T 3678; witness BB, T4251; witness CC, T 4391-4392; witness DD, T 4473; witness EE, T4514; witness ZZ, T 7799-8000. Exhibit PP 26.1 is a map locating Široki Brijeg/Li{tica and exhibit PP 26.2 contains an aerial view of [iroki Brijeg. Exhibit PP 26.3 shows the square of the MUP Station in an aerial view. The MUP building is the building to the right of a long building with red/white checkerboard, witness Jan van Hecke, T 1901.
[1037]Witness EE, T 4514.
[1038]Witness AA, T 3679.
[1039]Witness AA, T 3680-3681; witness DD, T 4473.
[1040]The witnesses were detained in cells in the basement of the MUP Station, as shown on exhibits PP 26.6 (staircase leading to basement) and exhibits PP 26.7 and PP 26.8 (prison cells in the basement) which were identified by witnesses Jan van Hecke, AA, CC, ZZ, VV and NG.
[1041]Witness AA, T 3680-3681.
[1042]Witness AA, T 3687-3688.
[1043]Witness AA, T 36890.

399. Witness BB was beaten by Romeo Bla`evi}, Darko Dodig and a waiter with the first name Vinko.[1044] They also beat others in his cell and the next cell.[1045] On around 17 May 1993, nine people were taken out of the cells and received a severe beating from Ivan ^ikota.[1046] Ivan ^ikota also beat witness BB severely, kicked him on the head and handcuffed him to the stairs. He extinguished two cigarettes on witness BB's tongue, making him swallow them, while kicking and beating him. This beating lasted about 15 minutes.[1047]

400. Witnesses CC, DD, EE and the other prisoners in their room were beaten during one incident when Romeo Bla`evi} entered the cells and started mistreating the prisoners with a rod coated with leather with a metal ball at the top.[1048] Witnesses CC, DD and EE were hit on their bodies, backs and heads.[1049] After beating the prisoners, he pulled out a pistol and put it in their mouths, and blood spurted out all over.[1050] In another incident, Ivan ^ikota came to the cells and chose some prisoners who were beaten in the kitchen area.[1051] Witness ZZ was also beaten by soldiers who entered his cell. He was hit on the head with a pistol butt.[1052] Some days later, they were taken out of the room and beaten. Witness ZZ heard one man being called ^ikota and the other Romeo Bla`evi}.[1053]

401. Witness VV, one of two ABiH soldiers who had been captured in Raštani on 23 September 1993, was transferred from the Tobacco Station to the MUP Station.[1054] After some time, five or six soldiers entered his cell and hit him until they were stopped by a policeman. These soldiers who beat him belonged to the KB as they had KB insignia on the left sleeve.[1055] After the soldiers left his cell, they entered the cell of his colleague and mistreated him also.[1056]

[1044]Witness BB, T 4254.
[1045]Witness BB, T 4254.
[1046]Witness BB, T 4255.
[1047]He learnt ^ikota's name and that he belonged to the KB from the policemen at the MUP who helped the detainees clean themselves after the beatings, witness BB, T 4256-4258.
[1048]Witness DD, T 4473. Witness DD and Romeo Bla`evi} knew each other as they were neighbours in the same street, witness DD, T 4495-4496. Witness EE also knew Romeo Bla`evi} since they had lived in the same area; witness EE, T 4516 (confidential).
[1049]Witness DD further testified that Romeo Bla`evi} broke the head of Goran Zeki} and the arm of another person during this incident, witness DD, T 4393-4394. Witness EE testified that he broke the nose of Armin Omerika, witness EE, T 4516-4517 (confidential).
[1050]Witness CC, T 4393-4394. Witness DD testified that when Bla`evi} beat him, he was wearing a military uniform and there were no civilian police in the cell, witness DD, T 4498.
[1051]Witness CC, T 4394-4395. The witness submitted the names of persons who were beaten during this incident to the Chamber, witness CC, T 4396 (confidential). Witnesses DD and EE also testified that Ivan, nicknamed ^ikota, beat the prisoners in a terrible way, witness DD, T 4474; witness EE, T 4517 (confidential).
[1052]Witness ZZ, T 7803.
[1053]Witness ZZ, T 7803.
[1054]For details on the beatings at the Tobacco Station in Široki Brijeg, *see infra* paras 406-413.
[1055]Witness VV, T 6921-6923. He testified that it consisted of small letters, which said "Convicts' Battalion" and also an emblem, witness VV, T 6955.
[1056]Witness VV, T 6921-6923.

402. The commander of the MUP Station was Cane who, to witness BB's knowledge, was with the KB.[1057] Defence witnesses NG and NH testified that the name of Cane was Danko Bilinovac.[1058] The guards were civilian police.[1059]

403. The Chamber is satisfied beyond reasonable doubt that detainees were beaten at the MUP Station on various occasions in a brutal manner that caused severe physical and mental suffering. The Chamber finds that the main perpetrators of these beatings were Romeo Bla`evi}, Ivan Hrka~, nicknamed ^ikota, and Ernest Taka~, all KB members and therefore in a subordinate relationship to Mladen Naletili}.[1060] The Chamber notes that also the name Danko Bilinovac appears on the KB salary list, dated November 1993.[1061] The Chamber finds that Mladen Naletili} knew or had reason to know that the mistreatment of MUP detainees were about to be committed or had been committed by these soldiers of the KB. The Prosecution has not led direct evidence of Mladen Naletili}'s actual knowledge. In the absence of such, actual knowledge of Mladen Naletili} cannot be presumed.[1062] The Prosecution has however adduced evidence that Mladen Naletili} himself participated in the mistreatment of the same group of detainees at the Tobacco Institute in Mostar before they were transferred to the MUP Station and that he did not intervene when his soldiers continued the beatings he had started.[1063] At the Tobacco Institute in Mostar, Mladen Naletili} personally ordered that this group of prisoners should be brought to [iroki Brijeg and that ten of them, who he designated himself, should be executed there.[1064] The Chamber is satisfied that Mladen Naletili} had reason to know that his subordinates were mistreating the prisoners who had been singled out by Mladen Naletili} and mistreated at the Tobacco Institute after their transfer to the MUP Station. The Chamber finds that Mladen Naletili} had the material ability to prevent these further crimes but that he chose not to do so. The Chamber finds that the established pattern of behaviour, starting with the Sovi}i/Doljani operations, indicates supreme indifference regarding the conditions and fate of Muslim prisoners on the part of Mladen Naletili}.

404. The Chamber finds that Mladen Naletili} bears command responsibility under Article 7(3) of the Statute for cruel treatment and wilfully causing great suffering to detainees at the MUP Station in [iroki Brijeg under Articles 2(c) and 3 of the Statute (Counts 11 and 12).

[1057]Witness BB, T 4254; witness CC, T 4391-4392.
[1058]Defence witness NG, T 11953. Defence witness NH also testified that Danko Bilinovac was in charge of the MUP in [iroki Brijeg, Defence witness NH, T 12040-12041.
[1059]Witness BB, T 4254.
[1060]*See supra* paras 86-116.
[1061]It appears under the category "SPSN Convicts Battalion" under No. 21; exhibit PP 704.
[1062]*See supra* paras 64-77.
[1063]*See supra* paras 393-394.
[1064]Witness DD, T 4469.

405. The Prosecution has not adduced evidence that proves that Vinko Martinovi} knew or had reason to know that his subordinates participated in the beatings at the MUP Station. The Chamber finds that Vinko Martinovi} does not bear command responsibility under Article 7 (3) of the Statute for these acts.

b. Tobacco Station

406. The Tobacco Station in [iroki Brijeg centre was under the command of the KB as it was its headquarters.[1065] Only KB members and the Poskok battalion were allowed to enter.[1066]

407. The Naletili} Final Brief is silent with regard to the allegations of beatings at the Tobacco Station in [iroki Brijeg. The testimonies submitted by Defence witnesses on this matter are contradictory and, thus, not credible. Defence witnesses NK and NM denied that they ever saw prisoners being held at the Tobacco Station in Široki Brijeg during the summer of 1993 and that there indeed were no prisoners there.[1067] On the other hand, Defence witnesses NS and NH testified that there were Muslim detainees in Široki Brijeg from June until August 1993, who were brought there by the military police for interrogation.[1068] All Defence witnesses claimed that they never saw any detainees mistreated[1069] while at least one Defence witness testified that the prisoners were exhausted and very thin.[1070] The Chamber rejects the Defence evidence as lacking credibility.

408. Witness CC was transferred from the MUP Station to the Tobacco Station in Široki Brijeg.[1071] Witness BB was detained at the Tobacco Station in Široki Brijeg for about a month.[1072] Witness DD was transferred to the Tobacco Station in Široki Brijeg from Ljubu{ki.[1073] While being held there, witness CC saw Mladen Naletilic about three times.[1074] In early August 1993, Ivan Andabak came to the Tobacco Station with two men named Bim and Mario.[1075] Witnesses CC and BB were interrogated about an alleged tunnel from the Vranica building and a safe in the ABiH headquarters. They were beaten and kicked and trampled upon by Bim and Mario after each question.[1076] Witness BB was threatened with a pistol in his mouth.[1077] It lasted about 10

[1065]Exhibit PP 26.9 contains an aerial view of the Tobacco Station in [iroki Brijeg. Exhibit PP 28 is a video clip taken from a helicopter of the Tobacco Station.
[1066]Witness BB, T 4271.
[1067]Defence Witness NM, T 12749; Defence witness NK, T 12666.
[1068]Witness NH, T 11993-11994.
[1069]Witness NI, T 12084.
[1070]Witness NS, T 13370.
[1071]Witness CC, T 4409.
[1072]Witness BB, T 4265.
[1073]Witness DD, T 4475.
[1074]Witness CC, T 4413.
[1075]Witness CC, T 4417, 4420. Witness BB testified that one of the soldiers was nicknamed Robi, witness BB, T 4273.
[1076]Witness CC, T 4420-4422. Witness BB corroborated that witness CC was beaten at the Tobacco Station; witness BB, T 4276.

minutes.[1078] Ivan Andabak did not physically participate in the beating but issued the orders and watched.[1079] Witness DD confirmed that witnesses BB and CC were taken from among the prisoners, questioned and beaten.[1080] While he could not see the beating, he could hear the blows and moans as the room they were interrogated in was next door.[1081]

409. Witnesses L and VV, the two ABiH soldiers who had been captured in Raštani, were taken to Široki Brijeg on 23 or 24 September 1993.[1082] They were interrogated in the Tobacco Station and beaten[1083], taken outside and further beaten until they fainted.[1084] Witness VV testified that they were bloodied and their eyes were swollen and shut from the beatings.[1085] In that condition, Witness VV was taken to an office where Mladen Naletilic was sitting. Witness VV knew Mladen Naletili} from 1992 when Tuta had visited his commander in the area of [ipovac. Mladen Naletili} ordered tea for witness VV and asked him about the whereabouts of his commander.[1086] He also asked him who had hurt him so badly. Tuta assured him that no one would hurt him again while he was a prisoner.[1087] He introduced himself as "Commander Tuta".[1088] The change in attitude may have developed following witness VV's responses to the interrogation. Then Bosanac was called in and he took witness VV back to the cellar. Over the next twelve days, witness VV was beaten several times a day by groups of four or five soldiers, with fists, boots, belts and a crutch. Bosanac who was with the soldiers also beat witness VV. The beatings would only stop when he said enough.[1089] Witness VV's colleague was beaten so severely on the first night that he could not walk and was left alone in the cellar for the twelve days.[1090]

410. Witness L shared the cell with witness VV and saw him being taken away on another occasion. Witness VV was taken to an office by Bosanac and another KB member who was called "General". [1091] Bosanac was fair-haired, between 175 and 180 centimetres tall, strongly built and

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[1077]Witness BB, T 4274.
[1078]Witness BB, T 4273.
[1079]Witness CC, T 4423. Witness BB did not know Andarbak from before the incident but described him as not very tall, with a round face, spectacles, short hair and dressed in camouflage uniform, witness BB, T 4274-4275.
[1080]Witness DD, T 4476. The names of the prisoners were submitted to the Chamber, witness DD, T 4477 (confidential).
[1081]Witness DD, T 4477 (confidential).
[1082]Witness L, T 1628; witness VV, T 6921.
[1083]Witness L, T 1628.
[1084]Witness L, T 1631.
[1085]Witness VV, T 6921-6923.
[1086]Witness VV, T 6926.
[1087]Witness VV, T 6923-6926.
[1088]Witness VV, T 6999.
[1089]Witness VV, T 6926, 6958.
[1090]Witness VV, T 6927.
[1091]The "general" had black hair and was thin, about 180 to 185 centimetres tall and between 25 and 30 years old; witness VV, T 6929.

not older than 25 years.[1092] They fixed wires from an induction telephone on his fingers and electrocuted him. From their conversation during this time, he knew their names or nicknames and that they were members of the KB.[1093] At some point, they said in a panicky and upset voice that the old man was coming and that they had to stop and take him away. They switched him off and took him back to the cellar.[1094] Witness L testified that he heard witness VV scream and that he was later told by VV that he had been electrocuted by the soldiers, using a telephone inductor wired to his hands.[1095] On yet another occasion around 10 November 1993, witnesses L and VV were taken to another building in the same compound.[1096] Military police in the other building began to interrogate them and beat them.[1097] After some time, they were taken out of the building, made to stand under a drain pipe and then left to sit in front of the building, shivering due to the cold before they were then taken back to the building and questioned again.[1098] The group consisted of 5 or 6 people and the leader of the group seemed to be a man called Robo.[1099]

411. On the evidence established by the Prosecution, the Chamber finds that witnesses BB and CC were brutally beaten and interrogated by KB soldiers under the direct command and participation of Ivan Andabak, a subordinate of Mladen Naletili}. The Chamber is satisfied that the mistreatment was serious and conducted with the purpose of extracting information from witnesses BB and CC. It therefore amounts to torture. The Chamber is further satisfied that Mladen Naletili} had reason to know that such mistreatment was about to be committed by his subordinates since the crimes took place in the cellar of his own headquarters which he visited on a regular basis. According to witness CC, he saw Mladen Naletili} three times at the Tobacco Station while detained there. The Chamber is satisfied that Mladen Naletili} could not but have had reason to know about what was going on in his own headquarters, especially since he had personally ordered the detention of the prisoners there. The Chamber thus finds that Mladen Naletili} bears command responsibility for the torture of witnesses BB and CC under Articles 5(f) and 2(b) of the Statute (Counts 9 and 10).

412. The Chamber is satisfied that witnesses L and VV were repeatedly mistreated while detained in the Tobacco Station from September 1993 until November 1993. The beatings and other mistreatment were severe enough to amount to cruel treatment and causing severe physical

[1092]Witness VV, T 6928.
[1093]Witness VV, T 6929.
[1094]Witness VV, T 6961.
[1095]Witness L, T 1631.
[1096]They were forced to run 100 metres to the building. It was raining and witness L was emaciated and weak so he could not run, witness L, T 1635-1636.
[1097]Witness L, T 1636.
[1098]Witness L, T 1636.
[1099]Witness L, T 1636-1637.

suffering but as no specific purpose was shown, do not amount to torture.[1100] The Chamber is satisfied that Mladen Naletili} knew about the beatings and mistreatment of the ABiH soldiers who were detained in the cells at his headquarters. He personally saw witness VV and asked the visibly injured man who had beaten him. Moreover, he promised him that he would no longer be mistreated. In the following 12 days, however, the soldiers continued to beat witness VV on a daily basis. The Chamber is thus satisfied beyond reasonable doubt that Mladen Naletili}, despite his false promise, failed to take the necessary measures to punish the perpetrators who had beaten witness VV and witness L and to prevent his other subordinates, in particular Roba, from committing further mistreatment of prisoners at the Tobacco Station. Witness VV further testified that the soldiers once stopped with administering electric-shocks to him because they were warned that "the old man" was coming. The Chamber is satisfied that the reference concerned Mladen Naletili}. It is further satisfied that this evidence shows that his subordinates respected and feared him and that Mladen Naletili} thus had the material ability to prevent mistreatment of prisoners at his headquarters had he only cared to do so. The Chamber finds that Mladen Naletili} bears command responsibility for the cruel treatment and the causing of great suffering of witnesses VV and L at the Tobacco Station pursuant to Articles 2(c), 3 and 7(3) of the Statute (Counts 11 and 12).

413. The Chamber finds that the Prosecution did not adduce evidence to prove that subordinates of Vinko Martinovi} participated in the beatings and that he as their superior knew or had reason to know of the crimes. He thus is not responsible under Article 7(3) of the Statute.

(iii) Primary School of Dobrkovi}i

414. The Prosecution submits that the evidence related to the crimes associated with the Primary School of Dobrkovi}i originated from conversations which the prisoners at the Tobacco Station had with those detained at the school.[1101] The Chamber notes that the Prosecution did not call witnesses

[1100] The Chamber notes that the witnesses have testified about having been interrogated. However, the evidence remained unclear as to which information the perpetrators tried to obtain. In addition, the evidence established does not allow the Chamber to clearly distinguish between such beatings, which were inflicted with a specific purpose and others that may have been administered for reasons of pure cruelty. *In dubio pro reo*, the Chamber therefore finds that the specific purpose that needs to be proven for the crime of torture has not been established beyond reasonable doubt.

[1101] Prosecution Final Brief, p 131-132. Exhibit PP 33.1 contains a map locating Dobrkovi}i. Exhibit PP 33.4 contains an aerial view of Dobrkovi}i School. The witnesses who heard of the alleged atrocities at the Dobrkovici School were witness BB, T 4270; witness CC, T 4414-4416. Witness BB testified that he talked with prisoners from Dobrkovi}i school because they were working together at a canal. They told him that they were hit with tinned food. Witness BB noticed black and blue marks on them when they took off their shirts due to the heat, witness BB, T 4270. Witness CC did not testify that he was told about beatings but testified that while being driven to work, he saw a body being carried out of Dobrkovi}i school and that Ivan ^ikota told them that they had killed a man there. He found out that killed person's name was Krili} when they met the others from the school working with them on the canal, witness CC, T 4414-16. The Chamber does not consider the evidence concerning the alleged killing of the prisoner Krili} further since Counts 9 to12 do not charge the accused with murder or wilful killing.

who were detained themselves at the Primary School of Dobrkovi}i and who would have been in a position to submit direct evidence on these allegations.

415. It is settled in the jurisprudence of the Tribunal that hearsay evidence is admissible and that the Chambers have a broad discretion under Rule 89(C) of the Rules to admit relevant hearsay evidence.[1102] As confirmed by the Appeals Chamber, the absence of the opportunity to cross-examine the person who made the original statements, and the fact whether the hearsay is "first-hand" or more removed is however relevant to the probative value of the evidence. It is acknowledged that the weight or probative value to be afforded to hearsay evidence will usually be less than that given to the testimony of a witness who has given it under a form of oath and who has been cross-examined.[1103]

416. The Chamber finds that the testimony of a single witness that he was told about mistreatments by prisoners kept in the Primary School of Dobrkovi}i lacks sufficient probative weight for a finding by the Chamber. The Chamber therefore finds that there is insufficient evidence to hold that prisoners were mistreated by subordinates of Mladen Naletili} or Vinko Martinovi} at the Primary School of Dobrkovi}i.

(iv) Ljubu{ki and Ljubu{ki prison

417. Detainees were transferred from various detention centres and places to the Ljubu{ki prison.[1104] The Naletili} Defence only addresses the allegations concerning Ljubu{ki peripherally. They appear not to dispute that prisoners were mistreated in Ljubu{ki but submit that this suffering was inflicted by guards "and others" in Ljubu{ki, but not by KB members.[1105]

[1102] *Prosecutor v. Zlatko Aleksovski*, Decision on Prosecutor's Appeal on Admissibility of Evidence, Case No. IT-95-14/1-AR, 16 February 1999, para 15. *See* also *Prosecutor v. Du{ko Tadi}*, Decision on Defence Motion on Hearsay, Case No. IT-94-1-T, 5 August 1996 and *Prosecutor v. Du{ko Tadi} a/k/a DULE*, Opinion and Judgement, Case No.: IT-94-1-T, 7 May 1997, para 555; *Prosecutor v. Tihomir Bla{ki},* Decision on Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability, Case No. IT-95-14-T, 26 January 1998.

[1103] *See supra para XX, Prosecutor. v. Aleksovski*, Appeals Chamber Decision on Prosecutor's Appeal on Admissibility of Evidence, Case No. IT-95-14/1-AR, 16 February 1999, para 1.

[1104] Witnesses AA and BB were transferred with a group of about 36 prisoners from the MUP Station in Široki Brijeg to the Ljubu{ki prison in late May 1993, witness AA, T 3690-3691; witness BB, T 4258. Witnesses AA and BB testified that, when they arrived at Ljubu{ki, there were already a group of people from Sovi}i and some people from Stolac and Mostar, witness AA, T 3691; witness BB, T 4258. Witness Salko Osmi} was brought there from the fishfarm in Doljani and was detained for two and a half months before he was transferred further to the Heliodrom; witness Salko Osmi}, T 3141. He testified that he saw some men from Sovi}i there when he arrived, witness Salko Osmi}, T 3142. Witnesses RR, Y and W were brought in from Sovi}i on 19 April 1993, witness Y, T 3392, 3199-3200. Witness HH arrived at Ljubu{ki prison around 14 May 1993. He was brought from the MUP station in Mostar, witness HH, T 4784. Witness VV and a colleague of his were transferred from Široki Brijeg to Ljubu{ki, witness VV, T 6929. Witness FF was moved with a group of prisoners from the MUP Station, witness FF, T 4678. The building of Sovi}i prison was identified by witness Jan van Hecke and witness AA on exhibit PP 9.9; witness AA, T 3692. Exhibit PP 10 is a videoclip taken from a helicopter of the Ljubu{ki prison.

[1105] Naletili} Final Brief, p 31.

418. The Chamber is satisfied beyond reasonable doubt that prisoners, among them Rudi Jozeli}, witnesses AA, BB, Z, W and VV, were mistreated by KB soldiers while they were detained in Ljubu{ki prison.

419. Witness FF was transferred to the Ljubu{ki prison around 13 May 1993 and was detained there for about one month.[1106] Two days after his arrival, Romeo Bla`evi} and Ernest Taka~ came to the Ljubu{ki prison. They said that they belonged to the KB and witness FF also knew them by sight from before the war.[1107] They were looking for an ethnic Croat who was an ABiH member, named Rudolf (Rudi) Jozeli}, who was detained in witness FF's cell. They took him outside and when witness FF was taken to the courtyard together with the other detainees, they saw him covered in blood.[1108] Later, Jozeli} told witness FF that they had beaten him with a shovel all over his body and that they had broken several ribs and his nose.[1109] In the courtyard, witness FF observed Taka~ and Bla`evi} also hitting, kicking and punching the detained journalists Alija Lizde and D`emal Hamd`i} several times.[1110] Ernest Taka~ who knew witness FF's father told him that other soldiers, like the Juki} brothers, also came to the Ljubu{ki prison "to beat up the balijas."[1111]

420. Witness AA was present during another incident when Rudi Jozeli} was mistreated by a military policeman called Petkovi}. He forced Jozeli} to sing the Croatian anthem and while he was about to do so, Petkovi} started beating him and told him that traitors will not sing the Croatian anthem. Jozeli}, who was married to a BH Muslim woman, was then forced to pray the Muslim way. When he did not know how, he was beaten again. Afterwards, Petkovi} threw Jozeli} on the table where the prisoners usually had their meals and started jumping on him.[1112] On another occasion, witness AA saw ^ikota entering their cell on a weekend. Witness AA heard ^ikota say to Jozeli}, who was an instructor pilot for Helicopters, that those who fly high fall low. Jozeli} was taken outside together with two other men called Kajtaz and D`emo. Witness AA could not observe what happened to them but Jozeli} later told them that D`emo was hit with a stick and immediately fell, and that he and Kajtaz were forced to slap each other in the face.[1113]

[1106]Witness FF, T 4677-4678.
[1107]Witness FF, T 4678.
[1108]This evidence is corroborated by the testimony of witness AA. While detained at Ljubu{ki prison, witness AA met a co-prisoner named Rudi Jozeli} who told him that in the evening of 10 May 1993, two soldiers had come to Ljubu{ki prison, had handcuffed him with his hands on his back and that a man named Romeo had then beaten him with a shovel over his exposed body, witness AA, T 3692.
[1109]Witness FF, T 4679. Witness AA confirmed that Rudi Jozeli} told him that his ribs cracked and his nose was broken and that he was so severely injured that he had to be extended medical aid after the incident, witness AA, T 3693.
[1110]Witness FF, T 4679, 4681.
[1111]Witness FF, T 4681.
[1112]Witness AA, T 3693.
[1113]Witness AA, T 3694. Witness FF corroborated the evidence that Rudi Jozeli} was beaten during another occasion when the Ivan ^ikota came to Ljubu{ki. He came looking for members of the army, but, like other people before,

421. Witness BB testified that on the day after his arrival in the Ljubu{ki prison, in late May 1993, he was taken out with a group of prisoners.[1114] Ernest Taka~ and two men named Peri} and Pehar, nicknamed Dolma, arrived and started beating them. They were beaten with all sorts of instruments, including electric cables, which were tied together and were seven centimetres thick.[1115]

422. Witness Z who was detained at Ljubu{ki prison from September 1993 until the end of March 1994,[1116] was brought to Ivi}a Kraljevi}'s, the warden's, office on one occasion. After Kraljevi} left the office, he was maltreated with electric shocks, administered by electrodes that were put on his ears. First, electrodes were put on both ears, then both were put on one and, finally, water was filled in his ear, which felt like it was boiling when the electric shocks were inflicted. When Kraljevi} returned to the room, he pretended that nothing had happened during his absence and witness Z was taken back to his cell.[1117]

423. Witness Y had already been seriously maltreated on his way to Ljubu{ki before he arrived at the prison on 19 April 1993.[1118] He stayed there for 47 days, until he was transferred to the Heliodrom.[1119] In the Ljubu{ki prison, they continued beating him on a daily basis. He grew so weak that he was no longer able to walk. Robo was always among the men who beat him. At some point, he felt so broken that he asked the police commander, Prli}, to kill him. Prli} told him that he could not stop the beatings since the men who administered them were all Tuta's soldiers.[1120] On 21 April 1993, two soldiers came to the prison who wanted access to all detainees from Sovi}i since their commander ^ikota had been killed. Somebody prevented them from shooting the prisoners. However, witness Y was beaten again until he fainted. He still has a depression on his head as the result of this beating.[1121]

424. Witness HH arrived at Ljubu{ki in a beaten up condition around 14 May 1993. When he was not able to spread his legs and stand against a wall as ordered, he received a painful kick in the

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particularly for Rudi Jozeli}. When he found him, he beat him up. Witness FF did not observe the beating but learned that Jozeli} later was taken to the hospital to bandage his ribs because they were broken again, witness FF, T 4682.

[1114] In cross-examination, witness BB testified that the incident may have occurred on 18 or 19 May 1993, witness BB, T 4326.

[1115] Witness BB, T 4260.

[1116] Witness Z, T 3553. The Prosecution did not adduce evidence as to the possible date, month or year in which the incident occurred.

[1117] Witness Z, T 3553-3554. No evidence was adduced by the Prosecution to show any particular purpose of the treatment inflicted on witness Z; it was, in particular, not asked whether witness Z was interrogated during the administration of electric shocks.

[1118] *See supra* paras 349-351, witness Y, T 3392-3393.

[1119] Witness Y, T 3395.

[1120] Witness Y, T 3393.

leg.[1122] When he turned around, he recognised Zdenko Prli} whom he knew from his former job at a gas station in Taso~i}i. Among the other guards, there was a man nicknamed Struja and a policeman named Petrovi}.[1123] In another incident at Ljubu{ki, Ernest Taka~ and Romeo Bla`evi} came to the prison "to drink Balija blood", as they expressed themselves. The prisoner standing next to witness HH received blows by them because he knew them well. Witness HH recognised them as the persons who had mistreated him in Mostar. He received their names from his co-detainee who knew them.[1124]

425. In another wing of the Ljubu{ki prison, HVO soldiers were imprisoned in open cells. One of them, Mile Kordi}, nicknamed Tuta and Pop, had the keys to the cells of the Muslim prisoners. On a number of occasions, Mile Kordi} ill-treated and beat witness VV. The prisoners used to say that he was a member of the KB.[1125]

426. The person who brought the prisoners to Ljubu{ki and who later released them was called Prli}.[1126] The prison warden was Ivi}a Kraljevi} from Stolac.[1127] The prisoners were guarded by the military police.[1128] Their commander and the commander of the Ljubu{ki prison, Prli} said that he could stop individual members of the HVO from beating the detainees but not others who were coming in.[1129] The prisoners were told that the guards were not in a position to protect them because they were only civilians while soldiers who came in and beat them belonged to the army.[1130] Witness W watched Roba come to the prison. On one occasion, he wanted to take out 17 detainees and put them on the bus, including witness Y. Roba told witness Y that he would never see any of his family again. Only after Prli} informed Roba, that the Red Cross had registered the detainees, were they allowed to leave the bus. Witness W overheard Roba say to witness Y that he would now continue to live after all.[1131]

427. The Chamber is satisfied that the beatings administered to Rudi Jozeli} during his detention at the Ljubu{ki prison on at least three occasions were severe enough to amount to the crimes of cruel treatment and wilfully causing great suffering. The same finding applies with regard to the beating of witness BB with several objects, including thick electric cables, with regard to the

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[1121]Witness Y, T 3393-3395.
[1122]Witness HH, T 4807.
[1123]Witness HH, T 4808.
[1124]Witness HH, T 4805.
[1125]Witness VV, T 6933.
[1126]Witness W, T 3200.
[1127]Witness VV, T 6932.
[1128]Witness BB testified that HVO civilian policemen were guarding the prisoners at Ljubu{ki, witness BB, T 4337.
[1129]Witness FF, T 4733.
[1130]Witness BB, T 4337.
[1131]Witness W, T 3202.

electric-shocks applied to witness Z and the beatings administered to witness Y who already was in a desperate physical condition when he first arrived at the Ljubu{ki prison. The Chamber is not satisfied that the mistreatment of witnesses HH and VV possessed the requisite seriousness to amount to cruel treatment and wilfully causing great suffering pursuant to Articles 2(c) and 3 of the Statute

428. The Chamber finds that it has been proven beyond reasonable doubt that soldiers of the KB and the Vinko [krobo ATG under the command of Mladen Naletili} and Vinko Martinovi}, namely Romeo Bla`evi}, Ernest Taka~, Robo and Ivan Hrka~, the brother of ^ikota, participated in those severe beatings of the helpless prisoners. The Chamber notes that the name Ivi}a Kraljevi} appears on Exhibit PP 704, the salary list of the KB as of November 1993.[1132] The Chamber is satisfied that Mladen Naletili} had reason to know about these crimes being committed by his subordinates after he had seen for himself how KB soldiers, in particular Robo, had severely mistreated some of the same prisoners, as for instance, witness Y, already on the bus ride on their way to the Ljubu{ki prison. The evidence shows that Mladen Naletili} merely told his soldiers on that occasion to stop and to get back on the bus. The Chamber finds that Mladen Naletili}'s failure to punish his soldiers for the mistreatment of witness Y near Sovi}i conveyed the message that their behaviour was tolerable. After this incident, he knew that his soldiers engaged in brutal mistreatment of prisoners. He had reason to know that there was a high risk of his soldiers visiting the Ljubu{ki prison to continue their revenge action on enemy soldiers by maltreating prisoners there. The evidence from several witnesses regarding the complaint of the warden about his inability to prevent KB soldiers from entering the prison and mistreating prisoners is telling. Mladen Naletili} bears command responsibility pursuant to Article 7(3) of the Statute (Counts 11 and 12). The evidence adduced does not establish that Vinko Martinovi} knew or had reasons to know that soldiers under his command mistreated prisoners at Ljubu{ki. He is therefore not responsible under Article 7(3) of the Statute.

(v) Heliodrom

429. Prisoners in the Heliodrom were not only kept in the prison building but also in the school and the two gymnasiums.[1133] The Chamber is satisfied that the mistreatment and beating of BH Muslim prisoners was a common practice in the Heliodrom.[1134]

[1132]The name appears under the category "Artillery" under No. 2, exhibit PP 704.
[1133]Witness SS, T 6543. Exhibit PP 20.8 shows the school.
[1134]The area of the Heliodrom is shown on exhibit PP 11.17. Exhibit PP 18 contains an aerial view on the Heliodrom and exhibit PP 19 is a video clip taken from a helicopter of the Heliodrom complex. The complex is a huge compound with many different buildings, witness Jan van Hecke, T 1897-1898. The distance between Mostar and the Heliodrom is a five minutes drive, witness Jan van Hecke, T 1896-1897.

430. The Chamber rejects the evidence submitted by Defence witnesses who generally denied that any mistreatment of prisoners took place within Heliodrom.[1135] The Chamber also rejects the testimony of Defence witnesses who visited Heliodrom during the relevant time and who testified that they never observed any injuries, bruises or scars on any Heliodrom inmate. Finally, the Chamber rejects the argument of the Naletili} Defence that Mladen Naletili} cannot be held responsible for any mistreatment which may have occurred at the Heliodrom since he had no authority over the Heliodrom.[1136] The Chambers concurs with the Naletili} Defence that knowledge of the existence of the Heliodrom and even personal visits there, by itself, cannot establish the command responsibility of Mladen Naletili} for all crimes that may have been committed there. However, Mladen Naletili}'s knowledge of beatings of Heliodrom inmates committed by subordinates may do so. Command responsibility pursuant to Article 7 (3) of the Statute does not require that Mladen Naletili} have authority over the Heliodrom; it only requires that he was the superior of the perpetrators, that he knew or had reason to know and that he had a material ability to prevent those acts or to punish subordinates who had committed them.

431. Many witnesses credibly and reliably testified of being victims of beatings or having observed co-prisoners being mistreated in the Heliodrom.[1137] With regard to some of the incidents, witnesses were not able to specify who the individual perpetrators were or which unit they belonged to.[1138] With regard to others, it has been proven that the beatings were administered by Croat co-

[1135]Defence witness ND, T 11020; Defence witness NU, T 14653; Defence witness Ivan Bagari}, T 12545, 12547; Defence witness ME, T 14154; Defence witness MF, T 14166; Defence witness NO, T 12982. However, Defence witness NO admitted that he received complaints that detainees were being mistreated one to three times, T 12969. Defence witness @eljko Glasnovi} testified that he first learned about the existence of prison camps from the media and that the media reported about human rights abuses, Defence witness @eljko Glasnovi}, T 11434.

[1136]Naletili} Final Brief, pp 42-43.

[1137]Witness F, T 1103; witness QQ, T6213-6214, 6223; witness Salko Osmi}, T 3144; witness Y, T3398, 3404; witness Z, T 3534, 3537, 3541, 3544; witness W, T 3210; witness HH, T 4816-4818; witness OO, T 5936; witness G, T 1189; witness H, T 1290, 1300, 1312; witness K, T 1574; witness SS, T 6541; witness Halil Ajani}, T 7566; witness UU, T6825-6826, 6831-6833, 6837, 6839; witness O, T 2150-2151; witness RR, T6466; witness XX, T 7114-7115; witness AD, T 8179, 8185; witness AE, T 8244-8245.

[1138]Witness F testified that the soldiers in the Heliodrom belonged to different units, witness F, T 1103. Witness Salko Osmi} testified that a lot of soldiers passed through the Heliodrom and that he did not remember particular units, witness Salko Osmi}, T 3143. Witness Z was beaten up brutally by three HVO policeman, one of whom was called Nazdraji}, who punched him in the head and the kidneys and who would hold him by the hair and the ears to beat him more easily. They were interrogating him about the money in the safe of the 4th Corps ABiH headquarters in the Vranica building and mistreated him until he fell unconscious. This mistreatment was repeated the following two days, witness Z, T 3534, 3537. Witness OO testified that the prisoners were beaten upon their arrival in the Heliodrom by military policemen, witness OO, T 5936. Witness G testified about a brutal beating of a police officer with the nickname Nedjo who, according to the corroborative evidence of witnesses AD and AE, must have been Nenad Harmand`i}. While witness G testified that the soldiers who took him out for the beatings said that they were Tuti}i, witness AE testified that they were soldiers of the Bruno Bu{i} Brigade, witness G, T1188-1189; witness AE, T 8244-8245, witness AD, T 8211. The Chamber is thus not satisfied that it has been proved which unit the perpetrators of these beatings belonged to. Witness XX testified that two young men once entered their cell at the Heliodrom with a cocked pistol and circled it around the room until they found somebody and took him out for a beating, witness XX, T 7114. Late in the night, the Heliodrom guards also woke up the detainees and forced them to run out of the room and down a passage while strokes were administered and they were forced to sing the Croatian anthem and Croatian songs dating back to the second world war, witness XX, T 7115. Witness H testified that after the lights had been switched off at night, guards would enter the gymnasium at Heliodrom and would kick

prisoners who had access to their cells.[1139] There is however also overwhelming evidence that establishes that Miro Marjanovi},[1140] Ante Smiljani},[1141] Ante Buhovac,[1142] Jozo Pole,[1143] Slavko Skender,[1144] and Juka Prazina[1145] were among the most notorious perpetrators. It has been established that Juka Prazina was a member of the KB and, as such, subordinated to Mladen Naletili}. The Chamber further notes that the name of Marinko Marjanovi} appears on a salary list of the KB dated November 1993.[1146] Regarding Ante Buhovac, Slavko Skender, Jozo Pole and

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and beat the prisoners and take some of them out at random. It was difficult to see who the soldiers were who came at night and the prisoners were scared when they heard the sound of a car approaching because this could mean that beatings would start again. The soldiers who came during the day wore HVO uniforms, witness H, T 1290, 1300, 1312. Witness Salko Osmi} saw eight or nine men being taken out of his cell. When they returned, some were dragged back, some hobbled back. They could not recognise anymore who was who although they knew each other. They were black all over their bodies, there was no white flesh left, witness Salko Osmi}, T3144. Witness UU testified that there were a lot of HVO soldiers and military HVO policemen at the Heliodrom, witness UU, T 6825. According to witness SS, amongst other units that he did not recognise, an HVO unit from Konjic, HV units and the Bruno Bu{i} unit were stationed at the Heliodrom, witness UU, T 6619-6620.

[1139] Witness K testified that they were mistreated by co-prisoners who were HVO members who had refused to go to the frontline or who had committed crimes, witness K, T 1574. Witness SS testified that on the first floor of the building, there were 15 to 20 Croat prisoners who had permission by the guards to mistreat witness SS and his 24 co-prisoners. They provoked and beat them for about three days. One of them had the nickname Spli}o. Later on, witness SS saw him with the Convicts Battalion. Another one was nicknamed Pop, witness SS, T 6541. Witness Halil Ajani} testified that there were cases in the Heliodrom where prisoners beat up one another, like in every prison, witness Halil Ajani}, T 7566.

[1140] Witness QQ testified that Miro Marjanovi} was particularly dangerous for the prisoners, witness QQ, T6217. Witness W was slapped in the face and kicked in the back by Marjanovi} while distributing food to his co-prisoners, witness W, T 3210. Witness HH wrote a letter to the warden in Heliodrom requesting permission for the Muslim detainees to pray on the religious holiday Bajram. He was brutally beaten for that by Marjanovi}, Slavko Skender, Smiljani} and Buhovac for about an hour and then ordered to assume the praying position, witness HH, T4817-4818. Witness O testified that Marjanovi} and Ante Buhovac stood out by their cruelty among those who beat the prisoners, witness O, T 2150-2151. When witness O was first brought to the Heliodrom, he recognised six men with their heads bandaged. He was told that the night before his arrival, Marjanovi} and Buhovac, amongst others, had beaten the men in the hallway to their cell and smashed their heads against the wall. The injured prisoners were from the village of Sovi}i where at that time fighting was still going on, witness O, T 2150. Witness RR testified that " a certain Miro" was among the worse at Heliodrom when it came to beatings, witness RR, T 6511.

[1141] Witness QQ, T 6217. According to witness SS, Smiljani} was the commander of the prison guards, witness SS, T 6615. Ante Smiljani} also participated in the cruel beating of witness HH (*see supra* footnote 1140), witness HH, T 4817-4818.

[1142] Witness QQ testified that Buhovac mistreated prisoners, witness QQ, T 6217. While being detained in a dark solitary confinement cell in the basement of the Heliodrom, witness Z heard other people being brought to the cells next to him and being beaten up.

[1143] Witness W testified that Jozo Pole was a policeman from Sovi}i who spent some days at the Heliodrom beating up witness Y and another prisoner, witness W, T 3211.

[1144] Witness HH testified that Slavko Skender was a policeman who also participated in his brutal beating as a reaction to his request for the granting of praying time for the Bajram holiday (*see* supra footnote); witness HH, T4817-4818.

[1145] Witness QQ testified that Juka Prazina came to the Heliodrom on several occasions to beat people, witness QQ, T 6213-6214. Witness G testified that Juka Prazina had his headquarters in the gymnasium at the Heliodrom and that he visited the detainees in the gymnasium, witness G, T 1188. Witness H corroborated this evidence by testifying that he had his headquarters close to the school building in the Heliodrom. Witness NN often saw Juka Prazina in the Heliodrom with groups of soldiers, witness NN, T 5879. Witness H however also testified that Juka Prazina distributed food to the prisoners when he frequently visited them in the evenings; witness H, T1306. Witness UU testified that upon his arrival at Heliodrom he was asked by Juka Prazina what had happened to him since he was in a beaten up condition. Juka Prazina arranged for him to be taken down to a cellar with a very bad stench in which several coffins were. Witness UU heard Juka Prazina say clearly and loudly that they also had a coffin for him; witness UU, T 6825-6826. In another incident, Juka Prazina let loose his German shepherd to attack a prisoner in one of the cells, witness UU, T 6835, 6837.

[1146] Exhibit PP 704.

Ante Smiljani}, the Prosecution failed to adduce evidence to prove that they were under the command of Mladen Naletili} as KB members or subordinated to Vinko Martinovi}.[1147]

432. The Chamber is satisfied that Mladen Naletili} knew that his subordinates were beating and mistreating prisoners at the Heliodrom. Witness Salko Osmi} saw Mladen Naletili} once at the Heliodrom when by mistake he entered the prisoners' premises on the first floor.[1148] Witness Y was brought to the Heliodrom already in a bad physical state after having been beaten on a daily basis for the 47 days he was detained at Ljubu{ki.[1149] Mladen Naletili} visited him in his cell which proves beyond reasonable doubt Mladen Naletili}'s knowledge and approval of the mistreatment of the prisoners. Witness Y testified that after having been detained at the Heliodrom for about a month, he was sent from the common rooms to an isolation cell in the basement for approximately 40 days.[1150] He was only allowed to step out of this completely dark room into the hallway to be beaten.[1151] There was a particular shift, which always beat him when they were on duty. They told him that they belonged to Tuta and that the detainees were "Tuta's prisoners".[1152] Witness Y was beaten so badly that he could not move. After that, he would be left alone for a couple of days until he had recovered before the next beating would begin. When he fainted during beatings, they brought in a hose, hosed him down and left him lying in the puddle.[1153] While he was undergoing this cruel regime in the isolation cell, the police opened the door and ordered him to introduce himself to Tuta.[1154] When he did so, Tuta told him that the condition witness Y was in was still rather good compared to what he deserved for what he had done. Five minutes after Tuta had left, the military policemen came, ordered him to come out in front of the cell and started beating him with various objects.[1155] Witness Y fell down and his blood dripped on the floor. One of the policemen ordered him to lick the blood and told him that no balija blood should remain on Croatian soil.[1156]

433. Another witness who had encounters with Mladen Naletili} at the Heliodrom was witness UU. The first took place about 15 to 20 days after his arrival. Due to his bad physical condition, witness UU was alone in his room during daytime while his co-detainees were taken out to work. On one occasion, Mladen Naletili} came with a group of people, including Armin Pohara, Rusmir

[1147] According to the evidence, they were members or higher-ranking officers of the HVO military police who were not subordinated to the KB or to Mladen Naletili}, witness QQ, T 6216; witness W, T 3211; witness HH, T4898; witness SS, T 6615; *see* also *supra* paras 82-115.
[1148] Witness Salko Osmi}, T 3144.
[1149] Witness Y, T 3393, 3395. Regarding his mistreatment in Ljubu{ki *see supra* para 423.
[1150] Witness Y, T 3398.
[1151] Witness Y, T 3398.
[1152] Witness Y, T 3399.
[1153] Witness Y, T 3399.
[1154] Witness Y, T 3403.
[1155] Witness Y, T 3403.
[1156] Witness Y, T 3404.

Aga}evi} and other soldiers and uniformed individuals and stood at the entrance of his room. One of the soldiers approached witness UU who was crouching in the opposite corner of the room and asked him whether he had not seen who had come to his room and ordered him to get up. Witness UU apologised and told him that he was physically not capable of moving, let alone standing up. The soldier bellowed at him until he tried to support himself, like a dog, with two hands. As he was about to stand up, the soldier hit him with his fist in the stomach. Witness UU bled at the mouth and fell down. The group including Mladen Naletili} was standing in the other corner of the room while the incident was happening. Witness UU testified that Mladen Naletili} was in a position to see him being mistreated. However, nobody intervened. After 10 or 15 minutes, the group left his room.[1157]

434. Witness UU testified that the second time he saw Mladen Naletili}, he was with Vinko Martinovi}, Juka Prazina and a group of about 15 HVO soldiers and military policemen. It was in the evening and they were standing at the door to his room, talking among themselves. Suddenly, one of the HVO soldiers hit a civilian who was nearby. Another soldier approached him and they were shouting and cursing the prisoner, mentioning Prozor. Witness UU concluded that the prisoner was from Prozor or from nearby.[1158] A huge commotion developed and witness UU could see that the young man was bleeding and heard him moaning. Juka Prazina, who had his German shepherd dog with him in the Heliodrom, let the dog loose who then assailed the prisoner. After that, the prisoner was pulled out of the room and witness UU does not know what happened to him afterwards.[1159] Mladen Naletili} and Vinko Martinovi} were in the group near the door but did not act to prevent the incident.[1160] Witness UU did not see that anyone took any steps to defend the young prisoner, who was attacked.[1161]

435. Mladen Naletili} was physically present when prisoners were mistreated by soldiers who accompanied him and personally participated in the mistreatment of the Heliodrom prisoners.[1162] The Chamber is satisfied that it has been established that witness FF, an ABiH member from Mostar, and witness Z, a prominent SDA member, were mistreated by Mladen Naletili} while being

[1157]Witness UU, T 6831-6833.
[1158]Witness UU, T 6834.
[1159]Witness UU, T 6835.
[1160]They were about 12 to 15 metres away from the very corner where witness UU laid, witness UU, T 6835.
[1161]Witness UU, T 6837.
[1162]Paragraph 50 of the Indictment charges Mladen Naletili} and Vinko Martinovi} only with command responsibility under Article 7(3) of the Statute. The individual criminal responsibility of Mladen Naletili} pursuant to Article 7(1) of the Statute for mistreatment he personally inflicted on detainees in the Heliodrom is thus subject to a finding only under paragraph 45 of the Indictment and will be considered below, see *infra* paras 441-451.

detained at the Heliodrom prison. Both witnesses were interrogated by Mladen Naletili} in the Heliodrom and physically and mentally maltreated in the course of their interrogation.[1163]

436. Although the Heliodrom was under the authority of the military police,[1164] soldiers of the KB and other units had unfettered access to the Heliodrom and to the prisoners' cells where they mistreated the prisoners at random.[1165] The Chamber is satisfied that the evidence establishes that Mladen Naletili} knew that prisoners at the Heliodrom were mistreated, both physically and psychologically, by soldiers, including members of the KB, and that he failed to take any measures to prevent his subordinates from committing those crimes. The Chamber is satisfied that Mladen Naletili}s indifference to the fate of BH Muslim prisoners in the Heliodrom at the hands of his soldiers is yet another example of a pattern established at Sovi}i and Doljani which continued throughout the conflict. The Chamber finds that the beatings administered to the prisoners at the Heliodrom[1166] by Juka Prazina and Miro Marjanovi} amount to cruel treatment and wilfully causing great suffering under Article 2(c) and 3 of the Statute and that Mladen Naletili} bears command responsibility pursuant to Article 7(3) of the Statute for those acts committed by his subordinates (Counts 11 and 12).

437. The Chamber is not satisfied that it has been established that subordinates of Vinko Martinovi} participated in the mistreatment of prisoners at the Heliodrom. Witness UU saw Vinko Martinovi} at the Heliodrom about five to six times when he came to his room in the company of HVO soldiers.[1167] Vinko Martinovi} was present during another beating of witness UU, which took place at the infirmary of the Heliodrom where witness UU asked for medical help. One of the soldiers present there started hitting and kicking him in the stomach and the head. Another soldier in camouflage uniform joined in and knocked witness UU down. While the beatings were administered, witness UU saw Vinko Martinovi} sitting in the room with the soldiers.[1168] It has not been established however whether the soldiers who beat witness UU were members of the Vinko [krobo ATG or whether they were military police who were not under the command responsibility

[1163]The details of these incidents are laid out under the Chamber's findings with regard to paragraph 45 of the indictment; *see infra* paras 441-451.
[1164]The soldiers wore insignias saying "HVO Military Police" and white belts over their camouflage uniforms, witness K, T 1572; witness M, T 1672; witness NN, T 5878; witness SS, T 6619-6620; witness UU, T 6825-6826; witness RR, T 6511.
[1165]Witness GG testified that one night they could hear terrible noise and argument in front of the door of their cell in the Heliodrom. The next morning, the more moderate soldiers told them that Tuta's soldiers had come and had asked to be given the keys to the cells, witness GG, T 4753.
[1166]*See supra* footnotes 1137-1145.
[1167]Witness UU, T 6838.
[1168]Witness UU, T 6839. He knew that the person was Vinko Martinovi} because on several occasions when he had entered his room before, his co-detainees had pointed him out to him as Vinko Martinovi} aka "[tela," witness UU, T 6840.

of Vinko Martinovi}. The Chamber thus finds that it has not been proven that the soldiers who beat witness UU were subordinates of Vinko Martinovi}.

(vi) Other places

a. HVO headquaters, the fishfarm-Doljani

438. The Chamber is satisfied that Mladen Naletili} bears command responsibility pursuant to Article 7(3) of the Statute for the mistreatment of prisoners at the fishfarm in Doljani under Articles 2(c) and 3 of the Statute (Counts 11 and 12). It has been established that subordinates of Mladen Naletili}, such as, for instance, witness Falk Simang, participated in the beatings.[1169] Mladen Naletili} was present at the fishfarm while the beatings were administered. He thus knew of the crimes being committed by his subordinates. He chose not to prevent them although he had the material ability to do so.

b. Vinko [krobo ATG headquarters and the Bulevar

439. The Chamber is satisfied that Vinko Martinovi} bears command responsibility pursuant to Article 7(3) of the Statute for the mistreatment of BH Muslim detainees in the area under his command, *i.e.*, at his headquarters and the Bulevar (Counts 11 and 12). The Chamber finds that it has been established that in the incident that took place at his headquarters in July or August 1993, Semir (Sema) Bo{nji}, a soldier under Vinko Martinovi}'s command, participated in the beating of a prisoner.[1170] The Chamber is further satisfied that soldiers under Vinko Martinovi}'s command participated in the beating of the professor that took place sometime after 25 July 1993[1171] and in the beating of a prisoner called Tsotsa which happened between June and August 1993.[1172] The Chamber has already found that those incidents were serious enough to amount to cruel treatment and wilfully causing great suffering pursuant to Articles 2(c) and 3 of the Statute. The Chamber is satisfied that Vinko Martinovi} was present while his soldiers mistreated the persons and that he had the material ability to prevent those crimes from being committed. However, he wilfully decided not to do so. The Chamber therefore finds that the elements of Article 7(3) of the Statute have been met. The Chamber has, however, already found that Vinko Martinovi} bears individual

[1169] The factual findings of the Chamber have been set out above; *see supra* paras 353-369.
[1170] The Chamber has entered its finding with regard to Vinko Martinovi}'s responsibility as a perpetrator for this incident as charged under paragraph 49 of the Indictment, *see supra* para 385. The prisoner was identified by witnesses SS and K, witness SS, T 6552 (confidential); witness K, T 1583 (confidential).
[1171] The Chamber has entered its findings with regard to Vinko Martinovi}'s responsibility as a perpetrator for this incident as charged under paragraph 49 of the Indictment, *see supra* paras 386 and 389.
[1172] The Chamber has entered its findings with regard to Vinko Martinovi}'s responsibility as a perpetrator for this incident as charged under paragraph 49 of the Indictment, see *supra paras* 388-389.

criminal responsibility for those beatings as a perpetrator under Article 7 (1) of the Statute. The Chamber finds that the most appropriate head to chose in the circumstances of the case is Article 7 (1) of the Statute as the criminal behaviour of Vinko Martinovi} is better characterised as that of a perpetrator.

c. Dretelj and Gabela

440. The Prosecution has also led evidence of maltreatment of detainees in the prison camps of Dretelj and Gabela.[1173] In its Final Brief, however, the Prosecution conceded that the involvement of the KB in these acts has not been proven.[1174] The Chamber finds therefore that neither Mladen Naletili} nor Vinko Martinovic bear command responsibility for maltreatment of prisoners that may have been committed by soldiers in the prison camps of Dretelj and Gabela.

(f) Repeated commission of torture and mistreatment between May 1993 and January 1994

441. Paragraph 45 of the Indictment charges both accused with repeatedly having committed and aided and abetted torture and wilfully causing great suffering of BH Muslim civilians and prisoners of war captured by the KB or detained under the authority of the HVO and with having instigated their subordinates to do so with regard to BH Muslim detainees throughout the period from May 1993 to January 1994.

(i) Mladen Naletili}

442. Paragraph 45 of the Indictment charges Mladen Naletili}, *inter alia*, with having repeatedly committed torture and cruel treatment and having wilfully caused great suffering with regard to BH Muslim civilians and prisoners of war captured by the KB or detained under the authority of the HVO.

443. The Chamber notes that torture and mistreatment incidents related to Sovi}i and Doljani have been separately charged under paragraph 46 of the Indictment. The findings of the Chamber

[1173]Witness AA, T 3695; witness II, T 4941; witness I, T 1384; witness J, T 1499; witness P, T 2289; witness O, T 2138; witness FF, T 4690; witness PP, T 6074; witness OO, T 5936: witness YY, T 7260; Defence witness NU, T 14691; Defence witness ME, T 14119; Defence witness NV testified about the bad living conditions in the prison camps Dretelj and Gabela, Defence witness NV T 14834. Witnesses PP, YY, ME, P, FF, I, and II testified that mistreatment, torture and beatings of prisoners were common at Dretelj, witness PP, T 6074; witness YY, T 7260; witness ME, T 14119; witness P, T 2293; witness FF, T 4690; witness I, T 1385, witness II, T 4948, exhibit PP 593.1. Exhibit PP 21.1 is a map locating Dretelj. Exhibit PP 21.2 shows an aerial view of Dretelj camp. Exhibit PP 24.1 is a map locating Gabela. Exhibit PP 24.10 is a general aerial view of Gabela camp.

[1174]Prosecution Final Brief, p 126.

have been set out above. These findings will be taken into account in the determination whether a repeated commission of such crimes has been proven.[1175]

444. The Naletili} Defence submits, without conceding any of the allegations, that any incidents in which Mladen Naletili} was allegedly involved were, "at best, isolated". The Defence submits that witnesses FF and Z were untruthful when they testified as to having been interrogated by Mladen Naletili} and that the testimony of witness E as to Mladen Naletili} having mistreated another soldier has not been corroborated.[1176]

445. The Chamber rejects the Defence arguments.[1177] It is satisfied that it has been established beyond reasonable doubt that witness FF, an ABiH member from Mostar, and witness Z, a prominent SDA member, were tortured by Mladen Naletili} while being detained at the Heliodrom prison.[1178]

446. Witness FF was brought to the Heliodrom in early June 1993.[1179] Some days later, he was taken to a room in which three men, among them Mladen Naletili}, were awaiting him.[1180] The second man in the room with Tuta was Josip Marcinko whom he knew from before the war as a retired policeman.[1181] He did not know the name of the third person but after describing him to co-detainees he was later told that it was Samir Bo{nji}.[1182] Mladen Naletili} started interrogating witness FF, asking him about the whereabouts of his father and other members of his family.[1183] When witness FF answered that he did not know anything, the man he later learnt to be Samir Bo{nji} started hitting him. He was struck three times in the stomach before Mladen Naletili} ordered Bosnij} to stop.[1184] After about 20 minutes of interrogation, Mladen Naletili} suddenly

[1175] *See supra* paras 345-370.
[1176] Naletili} Final Brief, pp 77-78
[1177] The Chamber rejects the Naletili} Defence's allegation that the father of witness FF was a "Muslim extremist who was to blame for all tensions and finally for conflict in Mostar between BiH Croat and BiH Muslim" as inappropriate. The Chamber does also not accept the argument that this "indicates that witness FF has a special interest to present himself as victim and present Naletili} as a person who was deeply involved in inhuman treatment to corroborate his father's testimony concerning how BiH Croats persecuted BiH Muslims". The Chamber further rejects the Naletili} Defence argument that "there is no plausible reason that Naletili} would interrogate him," Naletili} Final Brief, p. 78. The Chamber finds that the allegation of the Naletili} Defence concerning the role of witness FF's father in the conflict, if anything, rather supports the evidence submitted by witness FF himself since it makes it even more apparent why Mladen Naletili} would have wished to interrogate him and to punish him, being the son of his father.
[1178] *See* also paras 441-451.
[1179] Witness FF, T 4683
[1180] Witness FF, T 4684. He recognised Mladen Naletili} because he had seen a picture of him and a Croatian General in a coffee bar and had asked a colleague of his who the person shaking hands with the Croatian General on the picture was. His colleague told him that it was Tuta. FF testified that Mladen Naletili} at the time had glasses, relatively long grey hair and a beard and that he wore a camouflage uniform. He identified Mladen Naletili} in the courtroom, witness FF, T 4685, 4689.
[1181] Witness FF, T 4685.
[1182] Witness FF, T 4686.
[1183] The father of witness FF, witness O, was a prominent political person, witness FF, T 4729 (confidential).
[1184] Witness FF, T 4686, 4688.

expressed his condolences to witness FF and told him that they had shot his father this very morning. Witness FF was so shocked that he felt like collapsing. Before witness FF was escorted to an isolation cell, Mladen Naletili} leant over the table and asked him whether he felt his stomach burning.[1185] Witness FF was kept in the isolation cell for about an hour during which he felt terrified because he did not know what would happen to him next and because some guards passed by who threatened that they would return in the evening to beat him up.[1186]

447. The Chamber finds that Mladen Naletili} inflicted great suffering and mental pain on witness FF and that he did so for the purpose of obtaining information about witness FF's father and to punish him for being the son of this politically prominent person. Mladen Naletili} allowed witness FF to be physically mistreated by Samir Bo{njic after he did not answer his questions and he also inflicted severe mental suffering on the witness by falsely informing him that they had killed his father on that morning. The Chamber is satisfied that the acts of Mladen Naletili} possess the requisite seriousness to amount to torture pursuant to Articles 2(b) and 5(f) of the Statute. Mladen Naletili} is individually responsible as a co-perpetrator with Samir Bosnijc for the torture of witness FF under Article 7(1) of the Statute (Counts 9 and 10).

448. Witness Z was brought to Heliodrom in May 1993.[1187] On 31 August 1993, he was taken out of his solitary confinement cell and told by Ante Smiljani} that Tuta had come and wanted to question him. When he entered the small building, Tuta was sitting at a conference table. Witness Z sat between two men who he believed to be Tuta's escorts.[1188] Tuta was the only person who spoke. He told witness Z that a certain person had offered money to have witness Z released from the Heliodrom but that he had not offered enough. Tuta asked witness Z whether he was aware that he was a dead man. When witness Z answered that he did not know why, the soldier who was sitting to his right-hand side hit him with his hand brutally and instructed him to answer with "Yes, General". Tuta then told him that for every man of his killed, 10 or 15 "balijas" would be killed. When witness Z was about to answer, the soldier started hitting him again until Tuta told him to stop by giving a sign with his finger. He was not beaten again after that but accused of having stolen money from a safe at the 4th Corps ABiH headquarters.[1189] Only upon the intervention of a person called Spli}o who informed Tuta that he had observed two civilian policemen stealing the

[1185]Witness FF, T 4688.
[1186]Witness FF, T 4689.
[1187]Witness Z, T 3534.
[1188]Witness Z, T 3544.
[1189]Witness Z, T 3545-3546, 3548.

money, witness Z was sent back to his cell.[1190] Tuta told him to go and pray and to prepare to die before he was led out of the room.[1191]

449. The Chamber is satisfied that the psychological mistreatment of witness Z amounts to torture. By telling witness Z that he was a dead man and by ordering him to go back to his cell and pray and prepare to die, Mladen Naletili} wilfully inflicted severe mental suffering on witness Z with the purpose to punish him for the alleged stealing of money from the safe at the ABiH safe at the 4th Corps headquarters. He is therefore responsible as a perpetrator pursuant to Articles 5(f), 2(b) and 7(1) of the Statute (Counts 9 and 10).

450. The Chamber further finds that Mladen Naletili} committed cruel treatment and wilfully caused great suffering when he hit another prisoner in the face with a Motorola at the Tobacco Institute in Mostar on 10 May 1993 (Counts 11 and 12).[1192] The beating was so violent that the Motorola broke and the victim was all bloodied.[1193] Mladen Naletili} further committed cruel treatment and wilfully caused great suffering to other prisoners who were assembled at the Tobacco Institute by informing them that they would be taken to Široki Brijeg to be executed there (Counts 11 and 12).[1194] On the same occasion, Mladen Naletili} threatened a young man named Zili}. After he had allowed his escorts to beat him up with fists and rifle butts[1195], Mladen Naletili} himself beat the victim on the genitals with his hand and hit him on the face with his fist before Zili} was further beaten by his men.[1196] The Chamber is satisfied that the mistreatment of the prisoner amounts to cruel treatment and wilfully causing great suffering and that Mladen Naletili} bears individual criminal responsibility as a perpetrator pursuant to Articles 2(c), 3 and 7 (1) of the Statute (Counts 11 and 12).

451. The evidence presented to the Chamber removes all doubt that Mladen Naletili} mistreated and tortured prisoners in Doljani, at the Tobacco Institute in Mostar and at the Heliodrom. The Chamber is satisfied that Mladen Naletili} repeatedly committed torture, cruel treatment and wilfully caused great suffering pursuant to Articles 2(b), 2 (c), 3 and 5 (f) of the Statute (Counts 9, 10, 11 and 12).

[1190]Witness Z, T 3548.
[1191]Witness Z, T 3549.
[1192]The name of the soldier has been submitted to the Chamber, witness BB, T 4246; witness DD, T 4469; witness CC, T 4387 (confidential). The Defence arguments regarding this incident have been considered above, see *supra* paras 374-379.
[1193]Witness BB, T 4246-4248 (confidential).
[1194]Witness BB, T 4246.
[1195]Witness E, T 1009, 1011-1012.
[1196]Witness E, T 1012.

(ii) Vinko Martinovi}

452. The Chamber notes that Vinko Martinovi}, despite the ambiguous language used in paragraph 45 of the Indictment,[1197] is not charged with torture for any mistreatment incidents charged in paragraphs 45, 49 and 50 but only with cruel treatment and wilfully causing great suffering or serious injury to body or health. The Chamber further notes that the allegation that Vinko Martinovi} repeatedly committed mistreatment of BH Muslim civilians and prisoners of war captured by the KB or detained under the authority of the HVO is also charged in paragraph 49 of the Indictment. The Chamber has laid out its findings with regard to paragraph 49 of the Indictment above. The same allegations can therefore not be subject to a finding under paragraph 45 of the Indictment.

3. Summary of findings

(a) Mladen Naletili}

453. The Chamber finds Mladen Naletili} guilty as a perpetrator of repeated acts of torture as a crime against humanity and a grave breach of the Geneva Conventions of 1949 pursuant to Articles 2(b) and 5(f) and 7(1) of the Statute.[1198] The Chamber finds Mladen Naletili} also guilty as a perpetrator of repeated acts of cruel treatment as a violation of the laws or customs of war and of wilfully causing great suffering as a grave breach of the Geneva Conventions of 1949 pursuant to Articles 2(c), 3 and 7(1) of the Statute.[1199] The Chamber further finds that Mladen Naletili} bears command responsibility for the cruel treatment and wilfully causing great suffering committed by members of the KB against prisoners at the fishfarm in Doljani, the Tobacco Institute in Mostar, the MUP Station, Ljubu{ki and the Heliodrom pursuant to Article 7(3) of the Statute.[1200]

454. Mladen Naletili} is guilty with regard to Counts 9, 10, 11 and 12 of the Indictment.

(b) Vinko Martinovi}

455. The Chamber finds Vinko Martinovi} guilty as a perpetrator of cruel treatment as a violation of the laws or customs of war and of wilfully causing great suffering as a grave breach of the

[1197] Para 45 of the Indictment alleges that "Mladen Naletili} and Vinko Martinovi} repeatedly committed, aided and abetted torture, wilfully caused great suffering, and by their example instigated and encouraged their subordinates to torture or cause great suffering on BH Muslim detainees". In contrast to the language, Counts 9 and 10 (torture) only relate to Mladen Naletili} while Counts 11 and 12 (cruel treatment and wilfully causing great suffering or serious injury to body or health) relate to both accused.

[1198] Committed against Fikret Begi}, witness TT and witness B at the fishfarm in Doljani and against witnesses FF and Z at the Heliodrom.

[1199] Committed against Salko Begi} at the fishfarm and witnesses AA, a soldier (confidential) and a person named Zili} at the Tobacco Institute in Mostar.

[1200] *See supra* paras 390-438.

Geneva Conventions of 1949 pursuant to Articles 2(c), 3 and 7(1) of the Statute.[1201] While it has been established that subordinates of Vinko Martinovi}, in particular Ernest Taka~, repeatedly participated in mistreating prisoners in various detention facilities, the Chamber finds that the Prosecution has not established that Vinko Martinovi} knew or had reason to know about the crimes being committed at places other than his base or the Bulevar. It has thus not been proven that Vinko Martinovi} bears command responsibility for the mistreatment and beatings of prisoners that occurred at the Tobacco Institute in Mostar, the MUP Station, Ljubu{ki prison or the Heliodrom.

456. Vinko Martinovi} is guilty with regard to Counts 11 and 12 of the Indictment.

C. Counts 13-17: Nenad Harmand`i}

457. Counts 13 to 15 charge Vinko Martinovi} with the murder of Nenad Harmand`i} as a crime against humanity pursuant to Article 5(a) of the Statute and as a violation of the laws or customs of war under Article 3 of the Statute and with wilful killing as a grave breach of the Geneva Conventions of 1949 as recognised by Article 2(a) of the Statute. Alternatively, Vinko Martinovi} is charged with cruel treatment as a violation of the laws or customs of war under Article 3 of the Statute and wilfully causing great suffering or serious injury to body or health as a grave breach of the Geneva Conventions of 1949 under Article 2(c) of the Statute. Vinko Martinovi} is charged with individual criminal responsibility for all Counts under both Article 7(1) and 7(3) of the Statute.

1. The law

(a) Cruel treatment and wilfully causing great suffering or serious injury to body or health

458. The law on cruel treatment as a violation of the laws or customs of war under Article 3 of the Statute and on wilfully causing great suffering or serious injury to body or health as a grave breach of the Geneva Conventions under Article 2 of the Statute has been set out above.[1202]

(b) Murder and wilful killing

459. The law on murder and wilful killing has been considered above.[1203]

2. The facts

460. Before the war, and until relieved of his duties, Nenad Harmand`i} was a police officer with the Ministry of Interior in Mostar.[1204] About a month prior to the breakout of the conflict in Mostar,

[1201] Committed against an unknown prisoner in July or August 1993, the "Professor" and Tsotsa at the Vinko [krobo Base.
[1202] *See supra* paras 246, 339-343.

Nenad Harmand`i} was verbally abused and threatened by Vinko Martinovi} and his soldiers on various occasions.[1205] On 10 May 1993, Nenad Harmand`i} and witness AE were forced to the Heliodrom where they were detained for ten days.[1206] During his first stay in the Heliodrom, Nenad Harmand`i} was taken out and seriously beaten up by four soldiers wearing the insignia of the Bruno Bu{i} Brigade.[1207] After his release, he continued to live in his apartment with his family until approximately 30 June 1993. During this period, he had an encounter with Vinko Martinovi} near his headquarters at Kalemova street. Following this chance meeting he expressed his fear to witness AD that Vinko Martinovi} may intend to kill him.[1208] On 30 June 1993, Nenad Harmand`i} was again arrested and transferred to the Heliodrom.[1209] In July 1993, a number of witnesses saw or met him as a co-detainee in the Heliodrom.[1210] They recounted that Nenad Harmand`i} appeared very tense and frightened, expressing fear of becoming the victim of revenge actions by criminals, who he had investigated as a police officer before the war.[1211]

461. On 12 or 13 July 1993, the Strumpf brothers entered the Heliodrom specifically seeking for Nenad Harmand`i} who tried to hide in another room. A co-detainee told the Strumpf brothers where he was hiding and helped them to find him.[1212] Nenad Harmand`i} was then transported from the Heliodrom to Vinko Martinovi}'s headquarters with a group of 25 prisoners in a blue pick-up truck.[1213] Among the prisoners who were transported with Nenad Harmand`i} were Halil Ajani}

[1203] *See supra* paras 248-249.

[1204] Witness AD, T 8174 (confidential); witness XX, T 7117; witness H, T 1300; witness U, T 2962; witness Halil Ajani}, T 7608; Defence witness MO, T 15030. Exhibit PP 48 is an undated photo of Nenad Harmand`i}; witness AD, T 8195; witness AE, T 8276.

[1205] Witness AD, T 8186 (confidential); witness AE, T 8233.

[1206] Witness AD, T 8177.

[1207] Witness AE, T 8247. He further testified that Nenad Harmand`i} complained about pain in the ribcage and the lower legs and that he started urinating blood at the end of the night. Both Nenad Harmand`i} and witness AE returned from their detention in a poor physical and mental state; Nenad Harmand`i} suffered from broken ribs, wounds on his knee and haematoma around his eyes, witness AD, T 8185. Witness AE testified that Nenad Harmand`i} was beaten on two occasions, witness AE, T 8245. Witness H who was detained with Nenad Harmand`i} during this period and who identified him on exhibit PP 48, testified that Nenad Harmand`i} was taken out and beaten several times between 12 and 14 May 1993. When he refused to go he was dragged out by his feet. He called for help but the co-detainees were too scared to interfere. After he was brought back into the room, witness H recognised wound marks and lesions on Nenad Harmand`i}'s back and chest, witness H, T 1376-1377.

[1208] Witness AD, T 8186.

[1209] Witness AD, T 8186.

[1210] Witness H, T 1300; witness N, T 1739; witness U, T 2962.

[1211] Witness XX testified that, in early July, Nenad Harmand`i} was tense, upset and restless. He told witness XX that he had been arrested and mistreated before. Witness XX advised him to calm down and try to hide in the crowd of detainees so that he would not be spotted by any criminals he may have had dealings with in his function as a police officer before the war and who may therefore try to take revenge due to the helplessness of his situation as a detainee, witness XX, T 7142-7144. Witness U also testified that Nenad Harmand`i} told him in Heliodrom that he was very afraid of people trying to take revenge on him, witness U, T 2963 (confidential). Witness Halil Ajani} testified that Nenad Harmand`i} tried to hide in different rooms in Heliodrom because he was afraid, witness Halil Ajani}, T 7608-7610.

[1212] Witness Halil Ajani}, T 7418, 7609-7610.

[1213] Witness Halil Ajani}, T 7413. Defence witness MN testified that he never saw Nenad Harmand`i} at Vinko Martinovi}'s unit, Defence witness MN, T 14600. Defence witness MT however testified that he saw Nenad

and Mujo Tuta.[1214] Halil Ajani} knew Nenad Harmand`i} as a police officer as in the past he had arrested him for minor frauds.[1215] On the same morning, witness AD, in passing by at about 9 a.m., saw the prisoners arrive in a truck and being lined up outside Vinko Martinovi}'s base. She recognised Nenad Harmand`i} among them.[1216] She testified that he wore a dark blue T-shirt, blue jeans and burgundy-coloured moccasins. He was surrounded by armed soldiers and she was too frightened to say anything to him. She also remembered that he had one eye shot.[1217]

462. Halil Ajani} had the chance to talk to Nenad Harmand`i} while they were unloading canned food at the base. Nenad Harmand`i} told him that he was very worried he might not return alive from Vinko Martinovi}'s base. While they unloaded the tin cans, Ernest Taka~ and a man nicknamed Dolma passed by. They both hit Nenad Harmand`i} brutally in the crotch several times until he fell down. Nenad Harmand`i} was then unable to assist further Halil Ajani} in the unloading of the tin cans because he was in too much pain.[1218]

463. Later, when Halil Ajani} was cleaning Vinko Martinovi}'s office, Ernest Taka~ entered the office and informed Vinko Martinovi} that he had brought Nenad Harmand`i} who had tried to run away.[1219] Nenad Harmand`i} denied the accusation and Vinko Martinovi} ordered him to be brought to the basement but not to be beaten.[1220] Ernest Taka~ took Nenad Harmand`i} down the stairs and some minutes later, Halil Ajani} heard a loud scream.[1221] Halil Ajani} saw five or six soldiers on the stairs to the basement. About half an hour to an hour later, he was called to come downstairs. Vinko Martinovi} was present with a number of soldiers. He ordered Halil Ajani} to either hit Nenad Harmand`i} or to suffer the same treatment himself.[1222] Nenad Harmand`i} was bloodied at that time.[1223]

Harmand`i} at Vinko Martinovi}'s base in Kalemova street, Defence witness MT, T 15297. The Vinko [krobo ATG headquarters is shown on exhibit PP 11.10. Its location within Mostar is shown on exhibit PP 15.1. Exhibit PP 15.2 shows the front side of the building.

[1214] Witness Halil Ajani}, T 7414.

[1215] Witness Halil Ajani}, T 7572.

[1216] Witness AD, T 8193. On exhibit PP 15.2, witness AD recognised the building in front of which she saw the prisoners, including Nenad Harmand`i}.

[1217] Witness AD, T 8193-8194.

[1218] Witness Halil Ajani}, T 7550.

[1219] Witness Halil Ajani} identified the office on exhibit PP 15.7.

[1220] Witness Halil Ajani}, T 7414-7416. Exhibit PP 15.9 shows the staircase to the basement in the Vinko [krobo ATG's base. Exhibit PP 15.27 contains a map of the basement.

[1221] Witness Halil Ajani}, T 7416, 7610.

[1222] Witness Halil Ajani}, T 7416.

[1223] Witness Halil Ajani}, T 7419.

464. Halil Ajani} first wanted to comply and hit Nenad Harmand`i} because he had a little personal grudge against him.[1224] However, when he saw his poor condition, he could not bring himself to hit him.[1225] Nenad Harmand`i} asked him not to hesitate to hit him since Halil Ajani} had many children and since he himself had no chance of surviving this incident anyway.[1226] The soldiers laughed at Halil Ajani} and let him go back upstairs from where he could hear Nenad Harmand`i} starting to scream again. After a while it stopped and he saw Nenad Harmand`i} being taken out of the building by some soldiers to wash a car. The soldiers urinated into emptied cans of beer and forced Nenad Harmand`i} to drink.[1227] One of them took out his penis, forced it into Nenad Harmand`i}'s mouth and asked him whether he liked it.[1228] This second time he saw Nenad Harmand`i} he looked black and blue.[1229]

465. Defence witness MT, a member of the ATG Vinko [krobo, testified that he saw a detainee working on a car at Vinko Martinovi}'s base and that he was all covered in bruises.[1230] The man had bruises over his head, a black eye, but he walked normally.[1231] When he asked his colleagues who he was, they told him that it was Nenad Harmand`i} who had been brought from the Heliodrom. When he asked them who had beaten him, they laughed and told him that he already was in this condition when he arrived at the base.[1232] Defence witness MT left the base to make a delivery and when he returned, Nenad Harmand`i} was gone. He was told that he had been returned to the Heliodrom.[1233]

466. Halil Ajani} saw Nenad Harmand`i} for the last time shortly before he was transported back with the group of the twenty-three co-detainees to Heliodrom. Before the group was sent back, Vinko Martinovi} had them lined up. He told them "?w?hat you saw you did not see. What you heard, you have not heard."[1234] He warned them that they should understand that "such things" could also happen to them. He instructed the driver Vlaho to take the detainees back to the Heliodrom and to inform the people in charge that Nenad Harmand`i} had tried to escape and had

[1224]Witness Halil Ajani}, T 7572, 7577. In the past, Nenad Harmand`i} had punched him in the heart once when he had arrested him in his function as a police officer.
[1225]Witness Halil Ajani}, T 7572.
[1226]Witness Halil Ajani}, T 7612.
[1227]Witness Halil Ajani}, T 7417.
[1228]Witness Halil Ajani}, T 7417, 7419.
[1229]Witness Halil Ajani}, T 7419. Witness AD testified that, after she had seen Nenad Harmand`i} at Vinko Martinovi}'s base in the morning, she returned to the base in the afternoon to find out about his fate. She hid behind a tree and observed Nenad Harmand`i} wash a car. He was weak and frail, as if he had been beaten, witness AD, T 8194. Witness AE testified that Halil Ajani} had told him that he had seen Nenad Harmand`i} being mistreated and that Vinko Martinovi} had forced him personally to participate in the beatings, witness AE, T 8292.
[1230]Defence witness MT, T 15298, 15346.
[1231]Defence witness MT, T 15346.
[1232]Defence witness MT, T 15298, 15346.
[1233]Defence witness MT, T 15298.
[1234] Witness Halil Ajani}, T 7418.

been left behind.[1235] When the truck with Halil Ajani} left for the Heliodrom, he caught a last glance of Nenad Harmand`i}. He was alive but in a very bad physical shape; he looked as if he had gained 15 to 20 kilogram.[1236] Halil Ajani} saw that soldiers had put him alive in the pit of the garage where the cars were repaired and had covered him with boards. The soldiers started pouring buckets of water over him through the boards while verbally abusing him.[1237]

467. Nenad Harmand`i} never returned to the Heliodrom or to his family.[1238] The Prosecution was not able to establish in detail the further fate of Nenad Harmand`i} after he was last seen at Vinko Martinovi}'s base by witness Halil Ajani}. However, the Prosecution called various witnesses whose testimonies established the following evidence:

468. Witness U, who was a prisoner at the Heliodrom, testified that he saw Nenad Harmand`i} being taken away together with Halil Ajani} and returned shocked without him.[1239] Witness AE had hidden himself from being arrested a second time in the attic his girlfriend's house from 30 June 1993 onwards.[1240] This house was near Vinko Martinovi}'s headquarters.[1241] While hiding there, he overheard a conversation relating to the death of Nenad Harmand`i}. He saw Vinko Martinovi}, Nino Pehar, nicknamed Dolma, and Dobravko Pehar, called Dubi and Ernest Taka~ talk to the owner of the house.[1242] Since it was a very old and small house, he could hear what was discussed. They asked the owner where witness AE was hiding and why the family was helping witness AE. Witness AE heard one of them say that they already killed Nenad Harmand`i} and that they would kill witness AE too.[1243]

469. Shortly before witnesses AE and AD were expelled from their flat in West Mostar in early August 1993, they had a conversation with Novica Knezevi} who worked at the Heliodrom as a cook. The cook told them that Nenad Harmand`i} had been killed at Vinko Martinovi}'s headquarters but that the people in charge at the Heliodrom had been told that he had tried to escape.[1244] Around the same time, witnesses AE and AD were also approached by a soldier called

[1235]Witness Halil Ajani}, T 7418.
[1236]Witness Halil Ajani}, T 7419.
[1237]Witness Halil Ajani}, T 7418, 7601.
[1238]Witness Halil Ajanic, T 7418. Defence witness MQ testified that after the war, he heard that Nenad Harmand`i} had been killed, Defence witness MQ, T 15030. Witness AD testified that the last time she saw Nenad Harmand`i} alive was when she watched him washing the car at Vinko Martinovi}'s base in July 1993, witness AD, T8196. Exhibit PP 816 is a death certificate of Nenad Harmand`i}, issued in 1996, witness AE, T 8276.
[1239] Witness U, T 2962-2965 (confidential).
[1240]Witness AE, T 8248.
[1241]Witness AD, T 8192.
[1242]Witness AE, T 8248-8349.
[1243]Witness AE, T 8248-8249.
[1244]Witness AE, T 8251 and T 8292. The Chamber notes that a person named Novica Kne`ivi} can be found on the salary list of the KB, dated November 1993, under the category "SPSN Convicts Battalion" under No. 93, exhibit PP 704, p 12.

Dinko who told them that he came from Vinko Martinovi}'s unit.[1245] He told them that Nenad Harmand`i} had been killed.[1246] When witness AE asked about the circumstances, Dinko told him that Nenad Harmand`i}, as a former police officer, may have met somebody who had a grudge against him and that the times were such that the roles were reversed. When witness AE asked Dinko to clarify this rather vague information, Dinko turned around and left.[1247]

470. Witness AE further testified that he had a conversation with witness AF who told him about the location of Nenad Harmand`i}'s grave in Jablanica in September or October 1993.[1248] According to witness AE, witness AF told him that he had helped to bury a corpse on Vinko Martinovi}'s orders.[1249] Witness AE testified that witness AF told him that the corpse was transferred from the area of the Health Centre where it had been laying for a while, that it was then transported to a garden before a soldier nicknamed Cigo intervened and the corpse was taken to Liska park and buried there.[1250] Witness AE further testified that witness AF gave him the exact location of the body, that it was in the second row from the sidewalk, looking in the direction from the park.[1251] He testified that he was convinced of the fact that the corpse was indeed Nenad Harmand`i}'s body since witness AF described his height, greying hair, weight, and overall appearance. He described how the body was in a blue blanket.[1252] According to witness AE, witness AF also mentioned the nickname of Nenad Harmand`i}, Neno.[1253] Witness AE transmitted the received information to the Ministry of Internal Affairs.[1254]

471. Witness AF called as a rebuttal witness testified that he could not recall a conversation with witness AE in Jablanica in September or October 1993 but that he met him only once at a later time.[1255] He confirmed that he told witness AE where the grave of Nenad Harmand`i} was located but could not recall when this conversation took place.[1256] He testified that he never referred to a man called Cigo but only described to witness AE a person whom witness AE, as a local person, then identified as being the man nicknamed Cigo.[1257] Witness AF also testified that he never

[1245]Witness AE, T 8252, witness AD, T 8198. The Chamber notes that Dinko Kne`ovi} was a member of the Vinko [krobo ATG and a subordinate of Vinko Martinovi}, exhibit PP 704, p 30 under No. 28.
[1246]Witness AD, T 8198.
[1247]Witness AE, T 8253.
[1248]Witness AE, T 8259.
[1249]Witness AE, T 8259.
[1250]Witness AE, T 8259.
[1251]Witness AE, T 8260.
[1252]Witness AE, T 8260.
[1253]Witness AE, T 8261.
[1254]Witness AE, T 8262.
[1255]Witness AF, T 16081.
[1256]Witness AF, T 16082.
[1257]Witness AF, T 16082. Witness AD in her testimony referred to a certain Ciga. When she went to Vinko Martinovi}'s base to bring cigarettes and a change of clothes, she was told by Ciga to come back in the evening, witness AD, T 8194, 8205. Witness AE testified that Ciga was a person with the name Danko Tadi} and that Nenad Harmand`i} had told him that he was with Vinko Martinovi} when he encountered him and received the first threats

referred to the nickname of Nenad Harmand`i}, Neno, but that he described the body he had buried to his co-detainees in the Heliodrom who then had told him that the dead man must have been Neno.[1258]

472. Regarding his participation in the burial of the body, witness AF testified that on the particular morning, he was taken from Heliodrom in a group of 30 to 40 detainees to Vinko Martinovi}'s base by a driver called Luka Stojanovski.[1259] Ernest Taka~ who was in charge of the detainees lined them up and asked them whether there was any detainee who was strong enough to carry about 50 kilogram. Ernest Taka~ selected two detainees and took them behind the medical centre.[1260] Witness AF and the other detainees were then looked into a garage. When Ernest Taka~ returned, he took three detainees out, including witness AF. They were given shovels and were taken behind the garage to a garden. Ernest Taka~ instructed them to dig a hole there within fifteen minutes.[1261] After some time, the two co-detainees selected to go to the medical centre returned, carrying a corpse in a black-blue blanket. It was a big man who weighed a lot.[1262] Before they could put the body in the ground, a soldier appeared and told them that the body could not be buried there since it would be an obstacle to people passing through.[1263] Vinko Martinovi} then came to the spot and instructed Ernest Taka~ to clean everything in this area.[1264] The detainees then had to transport the body to Liska park where they buried it.[1265] They did not have to dig a hole since there already were some wholes that had been dug out before. Witness AF testified that the corpse was put in a grave in row number 1.[1266] He noted the exact location on a piece of paper which he later handed over to the exhumation team.[1267] Witness AF recalled that the body was badly damaged in the area of the head, the chest and the stomach. According to the stench, the body appeared to have been dead for a while.[1268] The corpse was the body of a big well-developed man who weighted over a hundred kilos. Witness AF recognised that he wore a bloodstained summer T-shirt and had some kind of a sport shoe on one foot while the other shoe was missing.[1269] That evening when he returned from the burial, he talked to co-detainees in the Heliodrom about the

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before the war broke out, witness AE, T 8234. The Chamber notes that Danko Tadi} appears on exhibit PP 704 as a member of the Vinko [krobo ATG, p 30 under no. 26.

[1258] Witness AF, T 16083.
[1259] Witness AF, T 15938.
[1260] The medical centre is shown on exhibit PP 11.1.
[1261] Witness AF, T 15942.
[1262] Witness AF, T 15943-15944.
[1263] Witness AF, T 15946.
[1264] Witness AF, T 15947.
[1265] Exhibit PP 11.8 shows the cemetery at Liska park.
[1266] Witness AF, T 15948-15950.
[1267] Witness AF, T 15950.
[1268] Witness AF, T 15947.
[1269] Witness AF, T 15948, 16074. In cross-examination, witness AF clarified that he did not refer to a tennis shoe when he referred to a sport shoe but that he meant a shoe one would use for sports, witness AF, T 16075.

incident. He described the body to them and co-detainees who were locals from Mostar told him that this person was a former police employee from Mostar.[1270]

473. Witness N, another Heliodrom detainee, testified that some time in July 1993, he was taken out of a garage he was locked in with co-detainees together with two other detainees.[1271] He recognised the driver as the man who regularly took him and other detainees to Vinko Martinovi}'s base where they then had to work on the frontline.[1272] The garage was located behind the frontline.[1273] He knew only one of the co-detainees who were taken out with him by name, a man called [ukali}.[1274] The three of them were taken by the driver to Vinko Martinovi}'s base, to a pit which was used for repairing the lower part of a car and handed over to a group of soldiers.[1275] The soldiers used torches to light up the pit and witness N saw two bodies in civilian clothes with bloodied shirts. They were ordered to get the corpses out of the pit, to wrap them in blankets, and to pull them to over to Liska park and to bury them there.[1276] They did this with difficulty, as the bodies were stiff. Witness N recalled that one of the bodies was a particularly big man who was difficult to carry and whom they had to drag through the streets and gardens for about 200 meters to reach Liska park.[1277] He testified that the burial of the corpses took place around 2 or 3 a.m. in the early morning.[1278]

474. Witness N, who was not from Mostar, testified that he had seen Nenad Harmand`i} in the Heliodrom on various occasions but did not know him personally. He described him as about 190 to 195 centimetres tall, broad shouldered and strongly built, about 50 years old. Witness N was also aware that Nenad Harmand`i} was a police officer and had the nickname Neno or Nano.[1279] The corpse witness N buried had about the build and height of Nenad Harmand`i} as he had seen him in Heliodrom.[1280] In cross-examination, witness N identified Nenad Harmand`i} on a photograph.[1281] He could not say that the body he had buried was, or was not, Nenad Harmand`i} was indeed the person he had been forced to bury that night in July in Liska park. Witness N testified that he was only able to catch a cursory look at the face of the corpse when the torch light went over it and that

[1270]Witness AF, T 15949.
[1271]Witness N, T 1743.
[1272]Witness N, T 1743, 1739.
[1273]Witness N, T 1743-1744.
[1274]Witness N, T 1745.
[1275]Witness N, T 1745.
[1276]Witness N, T 1746, 1748.
[1277]Witness N, T 1747.
[1278]Witness N, T 1747.
[1279]Witness N, T 1738.
[1280]Witness N, T 1748.
[1281]Exhibit PP 48.

he, therefore, could not be sure whether this body was the body of Nenad Harmand`i} or of somebody else.[1282]

475. Witness Y testified that one day he was taken from the Heliodrom to work in the area of the Health Centre.[1283] Upon arrival, the prisoners were lined up in front of [tela's base and asked who was the strongest in the group of detainees. Two detainees were elected and told that they had a job to do. A person who witness Y at that moment did not know but who later introduced himself as [tela, told them that one of their co-detainees had tried to escaped and had been killed in the process and that they needed to bring his body back from the intersection.[1284] It was [tela who directed the prisoners to go and pick up the body.[1285] The two detainees went and brought back the body.[1286] Later these two men told the group that they brought the corpse to Liska Street to be buried.[1287] Witness Y did not know whose body it was, nor did he know how he had been killed. He did not see the body himself.[1288]

476. On 30 March 1998, a completely skeletonised body of a man aged about 45 was exhumed in Liska park in Mostar by an exhumation team of the Institute for Forensic Medicine at the University of Sarajevo.[1289] The forensic experts from the Institute acted under an order from the Mostar county court. The autopsy report was subsequently submitted to an investigating judge with the High Court in Mostar.[1290] According to this autopsy report submitted as Prosecution exhibit PP 877.1, the corpse was identified as the body of Nenad Harmand`i}, born 1947.[1291] Witness AE who was present during the exhumation testified that the location of the body was consistent with the description of its location by witness AF in September or October 1993.[1292] Witness AF was not present during the exhumation. After he had handed over the note with the location of the body to the exhumation team, he waited in the office.[1293] When the exhumation team returned after about an hour, they told him that the body was the one they suspected it to be and that it had been identified by a relative.[1294]

[1282]Witness N, T 1766.
[1283]Witness Y, T 3399.
[1284]Witness Y, T 3399, 3460, 3476.
[1285]Witness Y, T 3999, 3476.
[1286]Witness Y, T 3401. Witness Y also testified that a co-detainee in his group identified [tela for him and told him that he had been serving time together with [tela in a correction centre before the war, witness Y, T 3401.
[1287]Witness Y, T 3461.
[1288]Witness Y, T 3461.
[1289]Expert witness Dr. Hamza Zujo, T 7624, 7629-7630, 7631.
[1290]Expert witness Dr. Hamza Zujo, T 7629.
[1291]Prosecution exhibit PP 877.1. In court, expert witness Dr. Hamza Zujo testified that he upholds his identification of the corpse as the body of Nenad Harmand`i}, expert witness Dr. Hamza Zujo, T 7629, 7775-7776.
[1292]Witness AE, T 8269.
[1293]Witness AF, T 15957, 16137.
[1294]Witness AF, T 16138.

477. The identification of the body was conducted following usual medical procedure, taking account of a calculation of the body height and age, state of the teeth, injuries sustained earlier and scar tissue, the clothes and personal items found on the body and all other information received by the family of the victim.[1295] Expert witness Dr. Hamza Zujo testified that the identification of Nenad Harmand`i} left no doubt and that, for this reason, no DNA analysis was performed.[1296]

478. Witness AE, who participated in the identification of the body, testified that he recognised the single moccasin type shoe found with the body as being Nenad Harmand`i}'s shoe. He was in a position to identify it since he had once bought these shoes for himself and passed them on to Nenad Harmand`i}.[1297] He recognised the characteristic belt buckle and a lighter as belonging to Nenad Harmand`i}.[1298] He testified that Nenad Harmand`i} had accidentally shot himself in the leg with his 6.35 millimetre calibre pistol and that he had drawn this fact specifically to the attention of the pathologists since the bullet had never been removed.[1299] Expert witness Dr. Hamza Zujo testified that such a 6.35 millimetre calibre bullet was found in the region of the right upper leg soft tissues that were decayed from the skeleton.[1300]

479. According to the exhumation report, the body displayed multiple injuries, including fractures of the right shin bone, the pelvic bones, the right ulna, left shoulder blade, collarbone, left and right jaws, caused by blunt blows or blows with blunt mechanical objects and inflicted on the person while he was still alive.[1301] The fracture of the right elbow was consistent with an injury sustained as a defensive reflex, *i.e.* in situations where there is a blunt blow and the arm is protruding in front of the body with the elbow facing the offender who is inflicting the blow.[1302] All the fractures to the bones were of a comminuted nature but were not in themselves the specific cause of death. The specific injury causing the death was a bullet.[1303] However, the bone fractures found on the body were of such scale and seriousness that, in the absence of a fatal bullet injury to the head, they could have led to a traumatic shock, a medical state that might eventually lead to

[1295] Expert witness Dr. Hamza Zujo, T 7641-7642.
[1296] Expert witness Dr. Hamza Zujo, T 7723. Defence expert witness Prof. Josip Skavi} also testified that DNA analysis are only done when other conventional methods of identification are not fully reliable, Defence expert witness Professor Josip Skavi}, T 14897.
[1297] Witness AE, T 8306.
[1298] Witness AE, T 8274.
[1299] Witness AE, T 8274. Witness AD also testified with regard to the bullet wound of Nenad Harmand`i}, witness AD, T 8200.
[1300] Expert witness Dr. Hamza Zujo, T 7732-7733.
[1301] Expert witness Dr. Hamza Zujo, T 7634.
[1302] Expert witness Dr. Hamza Zujo, T 7632-7234.
[1303] Expert witness Dr. Hamza Zujo, T 7640.

death.[1304] The autopsy report concludes that Nenad Harmand`i} was first severely beaten and then shot to death.[1305]

480. The Martinovi} Defence challenged the validity of the findings in the autopsy report submitted by the Prosecution and called the Defence expert witness Professor Josip Skavi} to testify on the reliability of the identification of the body of Nenad Harmand`i}.[1306] Defence expert Professor Josip Skavi} testified that the identification method used by Prosecution expert witness Dr. Hamza Zujo was identical with the methods used by him and his team.[1307] He generally shared the opinion of Dr. Hamza Zujo that the age of the body, the identification of the belt buckle and the shoe, the fact that the shoe was the shoe size of the late Nenad Harmand`i} and the fact that he had once shot himself into the leg and that a bullet was found with the body were all valid indicators to be considered collectively for a positive identification.[1308] Professor Skavi} concluded that, excluding the issue of the body height, to which he attributed great importance, all of the other elements suggest that the body belonged to Nenad Harmand`i}.[1309]

481. The Defence expert's view was that the identification was unreliable due to a non-reconcilable difference between the body height estimated by the pathologists and the body height provided by Nenad Harmand`i}'s relatives.[1310] Both expert witnesses arrived at an estimated living height of the body of approximately 182 to 185 centimetres.[1311] According to information of his family and others who knew the late Nenad Harmand`i}, he was a tall man, about 196 centimetres tall.[1312] Prosecution expert Dr. Zujo testified that margins of error in the calculation of the height of a body may be as high as 10 centimetres.[1313] Defence expert Professor Skavi} held the opinion that such a height difference could not be explained by any margins of error and thus made the identification, despite the other acknowledged positive factors, unreliable.[1314]

[1304] Expert witness Dr. Hamza Zujo, T 7771-7772.
[1305] Expert witness Dr. Hamza Zujo, T 7640.
[1306] Defence expert witness Professor Josip Skavi}, T 14870.
[1307] Defence expert witness Professor Josip Skavi}, T 14871, 14883.
[1308] Defence expert witness Professor Josip Skavi}, T 14874-14876, 14886-14889.
[1309] Defence expert witness Professor Josip Skavi}, T 14891.
[1310] Defence expert witness Professor Josip Skavi}, T 14872-14873, 14897.
[1311] Exhibit PP 877.1; Expert witness Dr. Hamza Zujo, T 7631; Defence expert witness Professor Josip Skavi}, T 14873.
[1312] Witness AE, T 8304. Witness AD testified that he was a very big man, close to two metres, witness AD, T 8201. Defence witness MO testified that he was about two metres tall and strongly built, witness MO, T 15030. Witness N testified that he was about 180 to 190 centimetres tall and well built, witness N, T 1739.
[1313] Expert witness Dr. Hamza Zujo, T 7680.
[1314] Defence expert witness Professor Josip Skavi}, T14872-14873, 14897. He agreed that the important bone to measure when trying to estimate the pre-death height of a skeleton was the femur. He agreed that the discrepancy between the length of the femur as measured at the autopsy and the expected length for a person of 196 cm was 2.12 centimetres. He also agreed that the formula used to estimate the living height of a skeleton was not an absolute. He was prepared to accept that if the femur length did not accord with the generally accepted formula for estimating height but that the DNA was positive, the DNA would prevail, Defence expert witness Professor Josip Skavi}, T 14931-14936.

482. The Martinovi} Defence seriously challenged the reliability of the testimony of witness Halil Ajani}. Defence witnesses ML, MM, MN and Jadranko Martinovi}, the brother of the accused testified that Halil Ajani} was an alcoholic, a vagabond and a criminal.[1315] Defence witnesses also testified that Halil Ajani} lost his son in a tragic accident involving a German mercenary of Vinko Martinovi}'s unit.[1316] It was asserted that Halil Ajani} might hold Vinko Martinovi} responsible for the death of his son.[1317] Defence witness Jadranko Martinovi} testified that Halil Ajani} has been in treatment for psychiatric disorders several times.[1318]

483. The Martinovi} Defence thus called expert witness Dr. Dra`en Begi}, a psychiatrist, on the question of reliability of Halil Ajani}'s testimony.[1319] The expert opinion given was based upon medical records, in particular, the medical report by Dr. Omanovi}.[1320] Dr. Begi} did not meet or examine Halil Ajani} in person.[1321] He was not given the witness statement of Halil Ajani} nor a transcript of his testimony.[1322] He did not contact Dr. Omanovi} to inform him that he was reviewing his findings.[1323] Dr. Begi} confirmed that this was a very limited basis upon which to give an opinion.[1324] On this basis, Dr. Begi} advised the Chamber that Halil Ajani} suffered from alcohol-induced psychosis, amnesiac syndrome and debility leading to a restricted capacity of perception and reproduction of material and thus was an unreliable witness.[1325]

484. The Prosecution's submission during cross-examination of Dr. Begi} was that information provided to Dr. Begi} was too limited to allow an expert opinion and that another professional may have refused to provide an expert opinion in similar circumstances. This was rejected by Dr. Begi}.[1326] Dr. Begi} conceded that he was not in a position to give an expert opinion about Halil Ajani}'s mental condition neither at the time of the events in 1993 nor at the time he gave his witness interview.[1327] He further conceded that he could not know how successful the therapy

[1315]Defence witness ML, T14443-14444, 14475; Defence witness MM, T 14520; Defence witness MN, T14600-14601; Defence witness MQ, T 15171; Defence witness Jadranko Martinovi}, T 13804.
[1316]Defence witness MN, T 14600-14601; Defence witness MQ, T 15170-15173; Defence witness Jadranko Martinovi}, T 13805.
[1317]Defence witness MN, T 14600-14601; Defence witness Jadranko Martinovi}, T 13806.
[1318]Defence witness Jadranko Martinovi}, T 13804.
[1319]Exhibit DD2/57; exhibit PP 877.23; Expert testimony of Dr. Begi} on the medical documentation of Mr. Halil Ajani}, dated 6 March 2002; Expert witness Dr. Dra`en Begi}, T 15450.
[1320]Exhibit DD2/58, exhibit PP 877.22, Letter from Dr. Omanovi} to Mr. Seri} and entry of the illness for Mr. Ajani}, Halil, from Mostar, Mostar 26 February 2002.
[1321]Defence expert witness Dra`en Begi}, T 15458. Upon questions of the Judges, Dr. Begi} conceded that direct contact would have helped him to form an expert opinion which would be based on more facts. However, he was not asked to do so, his task was only to consider medical documents; Defence expert witness Dr. Dra`en Begi}, T 15485.
[1322]Defence expert witness Dr. Dra`en Begi}, T 15460.
[1323]Defence expert witness Dr. Dra`en Begi}, T 15486.
[1324]Defence expert witness Dr. Dra`en Begi}, T 15463.
[1325]Defence expert witness Dr. Dra`en Begi}, T 15452, 15456-15457.
[1326]Defence expert witness Dr. Dra`en Begi}, T 15465.
[1327]Defence expert witness Dr. Dra`en Begi}, T 15467-15468, 15477.

prescribed in 1996 might have been.[1328] Dr. Begi} agreed that there was no indication in the notes of Dr. Omanovi} that Halil Ajani} could suffer a chronic psychosis.[1329] Dr. Begi} further confirmed that a person may be suffering from a psychotic episode as a result of a combination of horrible events affecting his life, such as the loss of a child, and the abuse of certain substances. He conceded that such a psychotic episode would not automatically render the person incapable of giving reliable testimony.[1330]

485. The Martinovi} Defence challenged the testimony of witnesses AE and AF regarding their conversation about witness AF's participation in the burial of a corpse in Liska park. Defence witness MU testified that he carried the nickname "Cigo" but that he never intervened in the burial of Nenad Harmand`i}.[1331] He testified that he never participated in a burial incident as described by witness AF.[1332] In cross-examination, witness MU conceded that there are other people in Mostar who are called by the nickname "Cigo".[1333]

486. In sum, it is the Martinovi} Defence case that Nenad Harmand`i} was taken to the Vinko [krobo ATG base on 12 July 1993 and returned unharmed to the Heliodrom the same day.[1334] The Martinovi} Defence submits that exhibits PP 434, PP 520 and PP 747 prove that Nenad Harmand`i} was then taken to the 1st Light Assault Battalion on the following day being the 13 July 1993 from where his flight was arranged against payment.

3. The findings

(a) The beating and mistreatment of Nenad Harmand`i}

487. The Chamber is satisfied that on 12 or 13 July 1993, Nenad Harmand`i} was taken from the Heliodrom to Vinko Martinovi}'s base and was seriously beaten and mistreated for a period of, at least, several hours.

488. The first observation of the Chamber is that there is no clear record of the date on which he was taken from the Heliodrom to the Vinko [krobo ATG.[1335] The Martinovi} Defence argues that

[1328] Defence expert witnessDr. Dra`en Begi}, T 15473.
[1329] Defence expert witness Dr. Dra`en Begi}, T 15487.
[1330] Defence expert witness Dr. Dra`en Begi}, T 15488.
[1331] Defence witness MU, T 15405 (confidential)
[1332] Defence witness MU, T 15404-15405 (confidential).
[1333] Defence witness MU, T 15407. The Chamber notes that Defence witness MU is not the same person as the person identified by witness AE as the soldier "Ciga", *see supra* footnote 1257.
[1334] Martinovi} Final Brief, pp 94, 95.
[1335] The Chamber has carefully considered the evidence presented on behalf of the Prosecution and the Defence regarding the alleged killing of Nenad Harmand`i}. The event cannot be more specifically dated than having occurred on 12 or 13 July 1993. Witness AD was led to 12 July 1993 by the Prosecution and did not mention the date specifically herself. Neither witness AF, nor witness N or witness Y could specifically date the events at the

exhibit PP 434 indicate that Nenad Harmand`i} was released from the Heliodrom to the base of the 1st Light Assault Battalion to work on 13 July 1993 by Milenko ^ule on an order of Zlatan Mijo Jeli}, commander of the sector Mostar Town Defence. This document indicates that prisoners were released to work as argued by the Martinovi} Defence but does not record the names of the prisoners who were released.[1336]

489. The Martinovi} Defence further relies on exhibit PP 520, which it is argued is a document that "represents a list of certain prisoners from the Heliodrom - with a remark where they were taken and who took them. Under the ordinal number 1 of this document there is the name of Nenad Haramand`i} ?sic? with a remark that he was taken to the 1st assault battalion on 13.7.1993., and there is the name of the soldier who took him – Milenko ^ule".[1337]

490. The Martinovi} Defence further relies on a SIS report (exhibit 774), indicating that Nenad Harmand`i} was taken to work on 13 July 1993 and escaped that day. It is argued that these documents prove that Nenad Harmand`i} returned to the Heliodrom from Vinko Martinovi}'s headquarters on 12 July 1993 and was brought again for work for the 1st Light Assault Battalion the following day in the care of Milenko ^ule.

491. In the view of the Chamber, these documents do not indicate that Nenad Harmand`i} was taken to the 1st Light Assault Battalion instead of the Vinko [krobo ATG. They only indicate that Milenko ^ule, who belonged to the 1st Light Assault Battalion,[1338] signed Nenad Harmand`i} out of the Heliodrom, based on an order of Zlatan Mijo Jeli}, commander of the sector Mostar Town Defence. As the Chamber has already found, it was a common practice and thus not unusual that soldiers from various units would be involved in the transport of the prisoners from Heliodrom to the sites where they then were forced to work.[1339]

Vinko [krobo ATG base. Defence witness MT did not mention the date on which he saw Nenad Harmand`i} in a bruised condition. Halil Ajani} could not remember dates.

[1336] The Prosecution has furnished the Chamber with documents detailing the prisoner's names for work together with dates on which the release took place, however, the record commence in late August 1993 and continue up to October 1993.

[1337] Martinovi} Final Brief, p 93. This document has a stamp of the HVO archive, Zagreb and has the appearance of being an extract from a fuller record but on its face contains no suggestion what the extracts are supposed to indicate. It was introduced by witness Marco Prelec, an archive expert employed by the Prosecution, who described the document as from the Bjekstvo notebook "action humanitaire France" containing 30 names of prisoners including Nenad Harmand`i}. It is unlikely that the list was supposted to represent prisoners taken from the Heliodrom that day. Nenad Harmand`i} is the only prisoners named on 13 July 1993. Entry 2 and 3 refer to 16 July 1993, entry 4 refers to 28 July 1993 and so on. The Chamber believes that this list represents prisoners who are listed as missing, injured or killed. This view is reinforced by exhibit PP 774.

[1338] Exhibit PP 434, p 3 under No. 37.

[1339] *See supra* para 265. The Chamber found that soldiers who were not members of the KB or the Vinko [krobo ATG were regularly involved in the transport of prisoners to working sites which were under the authority of the KB or the Vinko [krobo ATG. The Chamber is of the view that the documents relied upon must be viewed in the light of

492. The Chamber rejects that the SIS report (exhibit PP 774), supports the argument of the Martinovi} Defence as to Nenad Harmand`i}'s flight having been arranged by Milenko ^ule from the base of the 1st Light Assault Brigade base on 13 July 1993. The document merely confirms information furnished to the authorities that Nenad Harmand`i} had escaped and was "at large"[1340] and it does not contradict the evidence given by Prosecution witnesses. Several witnesses testified that Vinko Martinovi} gave instructions that the officials of the Heliodrom be informed that Nenad Harmand`i} had fled from his base and had been left behind. The fact that this (mis-) information was later entered accordingly in an official "report concerning the mistreatment, deaths, wounding and escape of prisoners of war while working", issued in August 1994 (exhibit PP 774) rather corroborates the testimonies of the Prosecution witnesses than discredit them. It supports the thesis that that Vinko Martinovi} was covering up the fate of Nenad Harmand`i}.

493. The Chamber is satisfied that Nenad Harmand`i} was taken to Vinko [krobo ATG on 13 July 1993 as described by Halil Ajani},[1341] he was also seen by Defence witness MT and witness AD.

494. The Chamber received witness Halil Ajani} as at times emotional and excitable but a reliable and honest witness, who, as many other witnesses, suffered tragic losses in his family due to the destructive dynamics of the war. The Chamber in particular noted that witness Halil Ajani} did not attempt to hide his psychiatric history. He showed no sign to the Chamber of any thought or memory disorientation. He did not display behaviour to justify an assumption that he may suffer from a mental disorder that would render his testimony unreliable. The Chamber finds that the opinion of expert witness Dr. Begi} was presented on a scientifically questionable basis being based on a medical report prepared by another doctor in the year 1996. Dr. Begi} made no attempt to examine witness Halil Ajani} nor did he discuss his condition with his current doctor. He was thus neither in a position to establish the general current mental condition of witness Halil Ajani} nor to

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findings made on compelling evidence. A point of note in the documents is that on a large number of occasions Dinko Kne`ovi}, a member of the Vinko [krobo ATG, is listed as the person in charge of signing out prisoners to the 1st Light Assault Brigade.

[1340] The Chamber accepts that a person with the name "Neno Harmand`u} " appears on the list contained in exhibit PP 774, p 16. The name does not appear, as alleged by the Martinovi} Defence as item 56, but as item 66. The date of record is 6 September 1993 and there is no entry in the list as to which unit took him to the labour site from which he allegedly disappeared. The Chamber notes that the list contains various entries referring explicitly to the "escape" of prisoners, (see the entries under items 6, 7, 14, 18, 19, 22, 31, 34, 35, 39, 101 (escape attempt), 121, 131, 135 and 137), but that "Neno Harmand`u}" appears under the category of "prisoners of war *at large.*" Taking into account the date of record in September 1993 and the fact that Nenad Harmand`i} is not entered as escaped but as "at large", the Chamber finds that the document does not, as the Martinovi} Defence argues, prove that he escaped from the 1st Light Assault Brigade on 13 July 1993. In the view of the Chamber, it only allows the reasonable conclusion that in September 1993, the military police had no information on Nenad Harmand`i}'s whereabouts. Moreover, even if the language of the document ("at large") is interpreted as stating that Nenad Harmand`i} was one of the prisoners who escaped.

opine that he suffered from any *current* mental disorder that would render his testimony invalid. Dr. Begi} conceded that the medical report of Dr. Omanovi} did not contain any indicia that witness Halil Ajani} suffered from any *chronic* psychosis. Upon question of the court, he further conceded that Halil Ajani}'s prior psychotic behaviour could have been a unique episode, caused by the traumatic experience of his son's death during this period in time, and that it does not automatically exclude any reliability as a witness. In sum, the Chamber finds that the Defence expert opinion does not raise any doubts on his reliability.

495. The Chamber is satisfied that the beatings administered to Nenad Harmand`i} at Vinko Martinovi}'s base possessed the requisite seriousness to qualify as cruel treatment and wilfully causing great suffering or serious injury to body or health. Witness Halil Ajani} described how he saw Nenad Harmand`i} three times on the particular day and how, each time, his physical condition had deteriorated dramatically. In the beginning, he was bloodied, later black and blue, and in the end, he was so beaten up and swollen that he looked as if he had gained 15 kilograms. The findings in the autopsy report prove that the beatings led to serious injuries, including multiple comminuted fractures, received from blunt blows while Nenad Harmand`i} was still alive. The evidence established thus leaves no reasonable doubt that the beatings administered to Nenad Harmand`i} at Vinko Martinovi}'s base were violent, brutal and savage.

496. The Chamber is further satisfied that Nenad Harmand`i} was particularly targeted by Vinko Martinovi}. Witness AE and AD established that Nenad Harmand`i} repeatedly received threats from Vinko Martinovi} prior to and after the outbreak of the war in Mostar. Several witnesses observed how tense and scared Nenad Harmand`i} appeared while being detained in the Heliodrom and that he expressed fears of being subject to reprisals due to his prior official function as a police officer. They also testified that he tried to hide from being taken out of the Heliodrom, anticipating his fate. Vinko Martinovi} gave the order to take Nenad Harmand`i} down to the basement and that he then attended and observed the beatings that took place there. He also instigated witness Halil Ajani} to participate in the beating of Nenad Harmand`i}. The Chamber finds that Vinko Martinovi} bears individual criminal responsibility for the cruel treatment and wilfully causing great suffering or serious injury to body or health of Nenad Harmand`i} pursuant to Articles 2(c), 3 and 7(1) of the Statute (Counts 16 and 17).

[1341]Witness Halil Ajani}, T 7418, 7609-7613. This testimony is corroborated by witness U, T 2963-2966 (confidential).

(b) The murder of Nenad Harmand`i}

497. The Chamber is satisfied that Nenad Harmand`i} was killed by a gunshot through his cheek and that his corpse was retrieved from the area of the Health Centre and buried in Liska park from where it was exhumed in 1998.

498. The Chamber finds that the exhumation report, the testimony of Dr. Hamza Zujo and the testimonies of witnesses AE, AF and Y leave no reasonable doubt that it was indeed the body of Nenad Harmand`i} that was buried that night by witness AF and Mustafa [ukali} in Liska park. The Chamber is satisfied that the corroborating evidence of witnesses AE, AF and Y exclude the reasonable possibility that the body exhumed in Liska park could have been anyone other than Nenad Harmand`i}.[1342]

499. The Prosecution in its Final Brief conceded that it was not in a position to adduce evidence as to who shot Nenad Harmand`i} and where and when his killing occurred.[1343] It submitted that evidence concerning the exact circumstances of the shooting of Nenad Harmand`i} is not necessary for the finding that Vinko Martinovi} and his subordinates bear criminal responsibility for the death of Nenad Harmand`i}. The Prosecution argues that the injuries sustained by Nenad Harmand`i} according to the opinion of the Prosecution expert witness could ultimately have led to his death if left untreated and that Vinko Martinovi} and his subordinates, having custody over him, were responsible to ensure that he received medical treatment.[1344]

500. The Chamber finds that it has not been established who shot Nenad Harmand`i} after he had been beaten so severely that he was in a state of helplessness. However, the Chamber finds that the chain of circumstantial evidence established by the Prosecution allows only one reasonable conclusion, namely that Vinko Martinovi} at least participated in the murder of Nenad Harmand`i}.

[1342]Regarding the testimony of witness N, the Chamber finds that there remain doubts as to whether he participated in the burial of Nenad Harmand`i} or whether he was ordered to bury someone else. Witness N testified that the body he buried was difficult to move since it was stiff. This testimony contradicts the testimony of witness AF who testified that the body already had a bad stench and must have been out on the streets for a while. The Chamber finds that that the testimony of witness N does, however, not raise any reasonable doubts with regard to the reliability and credibility of the testimony of witness AF since it only indicates that the two witnesses attended to different burials. In particular, the Chamber notes that the testimony of witness AF is corroborated by witness Y. Further, the Chamber notes that the body of Nenad Harmand`i} was only found and exhumed because witness AF was in a position to provide the exact location of the corpse. The Chamber finds that witness AF can only have known of the location if he participated in the burial, as he testified to. Regarding the identification of the body, the Chamber noted that the only substantial difference in the expert opinions of the Prosecution and the Defence expert witness relate to the margin applicable for the calculation of the body height of a body. The Chamber accepts the opinion of the Prosecution expert witness that such a margin may amount to 7 to 10 centimetres.

[1343]Prosecution Final Brief, p 160.

[1344]Prosecution Final Brief, pp 161, 162.

501. It has been proved that even before the war started, Vinko Martinovi} repeatedly threatened and verbally abused Nenad Harmand`i}. After the conflict broke out in Mostar, Nenad Harmand`i} had another encounter with Vinko Martinovi} which concerned him so much that he expressed his fear of Vinko Martinovi} planning to kill him to witness AD. Nenad Harmand`i} was visibly frightened while detained at the Heliodrom and that he feared reprisal actions because of his former position of a police officer. Nenad Harmand`i} knew what to expect when he tried to hide from being called out of the Heliodrom to be taken to Vinko Martinovi}'s base. The Chamber is satisfied that Vinko Martinovi} specifically targeted Nenad Harmand`i} and that he had him being brought to his base in order to take revenge on him.

502. Nenad Harmand`i} was mistreated by Vinko Martinovi} and his soldiers at the Vinko [krobo ATG base, in the most inhumane way. He was beaten so savagely that he suffered several fractures and other injuries that made any attempt to flee physically impossible, in particular since one of his legs were broken. He was last seen alive when he was put in the pit attached to Vinko Martinovi}'s base and being further mistreated by soldiers of the Vinko [krobo ATG.

503. When Nenad Harmand`i} was still alive but helplessly lying in the pit, Vinko Martinovi} threatened and ordered the other detainees to forget what they had seen unless they wanted to face the same fate. He then instructed the driver who took the detainees back to the Heliodrom to leave Nenad Harmand`i} behind and to inform the people in charge of the Heliodrom that Nenad Harmand`i} had tried to escape. It is very likely that the severe injuries suffered from the continuos beatings may have triggered some inquiries into what had happened to him while at Vinko Martinovi}'s base. Nenad Harmand`i} was last seen alive at the Vinko [krobo ATG. It is a reasonable inference to make that he met his death while in the custody of the commander of that base. The evidence of Vinko Martinovi}'s threat, the order to the co-detainees of Nenad Harmand`i} to keep silent about what they had witnessed at the base, and, in particular, his direct order to the driver to wrongly inform the administration of the Heliodrom about the fate of Nenad Harmand`i}, allows no other reasonable conclusion.

504. The further circumstantial evidence adduced supports the only reasonable conclusion that Nenad Harmand`i} was killed at or near Vinko Martinovi}'s base. His physical condition excludes any reasonable possibility of attempting to escape. It is reasonable to suppose that extensive bone fractures would have been absent at any autopsy carried out after the body had been found. If Nenad Harmand`i} had died trying to escape then there is no sense to the conversations reported by witness AE of Vinko Martinovi} and his subordinates Dolma, Dubi and Taka~ stating that they had killed Nenad Harmand`i}. Witness AD's testimony that the cook at the Heliodrom told her that Nenad Harmand`i} had been killed at Vinko Martinovi}'s headquarters, would also be redundant.

The visit by Dinko, another subordinate of Vinko Martinovi}, would make no sense. While most of this evidence is hearsay it provides strong links in a chain of circumstantial evidence.

505. There is no evidence that Vinko Martinovi} was personally involved in the shooting of Nenad Harmand`i}. He was however involved in the burial of the body.[1345] Ernest Taka~ supervised the burial of Nenad Harmand`i}'s corpse. Vinko Martinovi} himself gave instructions to the prisoners to pick up the body and to Ernest Taka~ to clean up the spot first chosen as the gravesite. On this occasion, Vinko Martinovi} again recounted the story of Nenad Harmand`i} having been killed while attempting to escape.

506. Against the background of the overall evidence, as set out above, Vinko Martinovi}'s continuous attempts to explain Nenad Harmand`i}'s death and his direct intervention in the secret burial of Nenad Harmand`i} allows only one reasonable conclusion: namely that Vinko Martinovi} was involved in the murder of Nenad Harmand`i} and that he, as a participant in this crime, had a strong interest in hiding the evidence.

507. The Chamber thus finds that the sum of all evidence adduced excludes any reasonable possibility that Vinko Martinovi} could *not* have participated in the murder. The Chamber finds that he aided and abetted the murder by various means and at various stages: First, he encouraged his soldiers to mistreat Nenad Harmand`i} in the most brutal way at his base. He designated him as "game" that could be mistreated and humiliated by his soldiers at random. He then practically assisted the murder by preventing Nenad Harmand`i} from returning to the Heliodrom in the group of prisoners. He further practically assisted the murder when he instructed the co-detainees of Nenad Harmand`i} to not tell anybody about what they had witnessed at the base and, in particular, when he instructed the driver to give false information about the whereabouts of Nenad Harmand`i} to the Heliodrom administration. By doing so, Vinko Martinovi} made sure that nobody would interfere with his personal plans for Nenad Harmand`i} and that, in particular, the Heliodrom administration would not start wondering about a missing prisoner. Vinko Martinovi} also rendered a substantial contribution to the murder when it came to the disposition of the corpse. He gave direct orders with regard to the burial of the body, thereby initiating and substantially contributing to the covering up of the murder of Nenad Harmand`i}.

508. The Chamber is satisfied that Vinko Martinovi}'s participation before and after the shooting of Nenad Harmand`i} amounts to substantial involvement in the murder in the form of encouragement and practical assistance. The Chamber thus finds that Vinko Martinovi} bears

[1345] The Chamber took into account the eyewitness testimony of witnesses AF and Y, both of whom testified that Vinko Martinovi} personally attended and participated in the burial of the body, *see supra* paras 472, 475.

individual criminal responsibility for aiding and abetting the murder and wilful killing of Nenad Harmand`i} pursuant to Articles 2(a), 3(1)(a), 5(a) and 7 (1) of the Statute (Counts 13, 14 and 15).

(c) The conviction

509. Under Counts 13 to 17, the Prosecution has charged Vinko Martinovi} with murder pursuant to Article 5(a) of the Statute and Article 3 of the Statute and wilful killing pursuant to Article 2(a) of the Statute and with cruel treatment under Article 3 of the Statute and wilfully causing great suffering or serious injury to body or health under Article 2(c) of the Statute. The mistreatment charges (Counts 16 and 17) and the murder charges (Counts 13, 14 and 15) have, however, been charged *in the alternative*. In its Pre-Trial Brief, the Prosecution has clarified its pleading by requesting the Chamber to "consider Counts 16 and 17 only if it concludes that the Prosecutor has failed to prove beyond a reasonable doubt that the accused are ?sic? responsible for the unlawful killing of Harmand`i} that is charged in Counts 13-15".[1346] The Martinovi} Defence has argued in its Pre-Trial and Final Brief that the theory and practice in criminal law in Bosnia and Herzegovina does not recognise the institute of alternative charges and that alternative or cumulative charges violate the rights of the accused.[1347]

510. The Appeals Chamber has found that cumulative charging is to be allowed in the jurisdiction of the Tribunal "in light of the fact that, prior to the presentation of all of the evidence, it is not possible to determine to a certainty which of the charges brought against an accused will be proven".[1348] The Chamber finds that the permission of cumulative charges includes alternative charges *a maiore ad minus*. The Chamber is satisfied that the right of Vinko Martinovi} to receive full notice of the charges against him, *i.e.*, the right to a fair trial, has been properly safeguarded by the reference and the explanation of the Prosecution with regard to their alternative charges in the Pre-Trial Brief.

511. The Chamber has found that Vinko Martinovi} bears individual criminal responsibility for murder and wilful killing. It thus finds that a conviction shall be entered for Counts 13 to 15 of the Indictment. Due to their character as alternative charges, the findings on the alternative Counts 16 and 17 will not be considered.

[1346] Prosecution Pre-trial Brief, p 18. The issue in not addressed in the Prosecution Final Brief, pp 155-165.
[1347] Martinovi} Pre-trial Brief, p 7; Martinovi} Final Brief, p 91.
[1348] ^*elebi}i* Appeal Judgement, para 400.

D. Count 18: Unlawful transfer

512. The Indictment charges both accused Mladen Naletili} and Vinko Martinovi} with unlawful transfer of a civilian under Article 2(g) of the Statute as a grave breach of the Geneva Conventions of 1949 (Count 18).[1349] The same acts are also charged as persecution under Article 5(h) of the Statute, and will be dealt with as such under Count 1.

1. The law

513. There is yet no decision dealing with the charge of unlawful transfer of a civilian under Article 2(g) of the Statute as a grave breach of the Geneva Conventions of 1949. The *Bla{ki}* Trial Judgement, the *Krnojelac* Trial Judgement and the *Krsti}* Trial Judgement dealt with forcible transfer and/or deportation as a crime against humanity under Article 5 of the Statute.

514. The Prosecutor, in its submissions, relies on Article 49 of Geneva Convention IV and suggests that the essential elements of unlawful transfer of a civilian under Article 2(g) of the Statute are:

> i) the occurrence of acts or omissions intended to forcibly remove civilians from their residence, or from the areas where they were present, to a place outside of that area;
>
> ii) the removal was not warranted for the security of the population or for reasons of imperative military necessity;
>
> iii) the victims were protected persons pursuant to Geneva Convention IV.[1350]

515. Neither the Naletili} Defence nor the Martinovi} Defence made any submissions as to the definition.

516. Article 147 of Geneva Convention IV determines that unlawful deportation and transfer is considered to be a "grave breach".[1351] The Commentary to Geneva Convention IV with regard to Article 147 of Geneva Convention IV refers to breaches of the provisions of Articles 45 and 49 of Geneva Convention IV. The relevant article in the present case is Article 49 of Geneva Convention IV which provides, in part, that "Individual or mass forcible transfers, as well as

[1349] Both accused are charged under Articles 7(1) and 7(3) of the Statute. Indictment, paras 25, 26, 32, 53, 54.

[1350] Prosecution Final Brief, p 208. The definition submitted by the Prosecutor in the Prosecution Pre-trial Brief was slightly different as the Prosecution did not include the requirement that "the victims were protected persons pursuant to Geneva Convention IV".

[1351] Article 147 of Geneva Convention IV provides "Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhumane treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out lawfully and wantonly."

deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive."[1352]

517. Article 49 of Geneva Convention IV is among the articles found under the chapter concerned with occupied territories. As held above these articles become applicable with regard to individuals as soon as a person falls into the hands of the occupying power. [1353]

518. Article 49 of Geneva Convention IV prohibits transfers from occupied territory and within occupied territory.[1354] Geneva Convention IV does not prohibit evacuations being transfers motivated by the security of the population or imperative military reasons.[1355]

519. Transfers motivated by an individual's own genuine wish to leave, are lawful. In determining whether a transfer is based on an individuals "own wish" the Chamber is assisted by Article 31 of the Geneva Convention IV.[1356] It provides for a general prohibition of physical and moral coercion covering pressure that is direct or indirect, obvious or hidden[1357] and further holds

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[1352] Article 49 of Geneva Convention IV provides: "?i?ndividual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. The Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased. The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated".

[1353] For a more detailed discussion on occupied territory *see supra* paras 210-223.

[1354] Commentary on the Additional Protocols, footnote 28 in para 3502, p 1000. Transfer of parts of one's own civilian population into occupied territory is, however, not considered as a grave breach pursuant to Article 49 of Geneva Convention IV as it was a new element added through Article 85(4) of Additional Protocol I, Commentary to the Additional Protocols, para 3504, p 1000.

[1355] Article 49 of Geneva Convention IV. Geneva Convention IV further, sets out safeguards to protect the interests of the population, including the precaution that an evacuation must not involve the movement of protected persons to places outside the occupied territory, unless it is physically impossible to do otherwise, and holds that "?u?nlike deportation and forcible transfer, evacuation is a provisional measure," Commentary to Geneva Convention IV, p 280.

[1356] Article 31 of Geneva Convention IV states: "?n?o physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties".

[1357] The Commentary to Geneva Convention IV, pp 219-220. In the Final Record of the Diplomatic Conference Convened by the Swiss Federal Council for the Establishment of International Conventions for the Protection of the War Victims and Held at Geneva from April 21st to August 12th, 1949, it is stated that the words "against their free will", which occurred in a previous draft (the so–called Stockholm text) was omitted, as the Drafting Committee had considered that they were valueless in view of the pressure which could be brought to bear on internees, p 759. The Chamber sees this as indicative of a recognition that in situations where individuals are, for example, detained, even an expression of consent does not automatically make the transfer lawful, as such consent may have been rendered "valueless" by the situation. The Commentary to Geneva Convention IV holds that "?t?he Diplomatic Conference preferred not to place an absolute prohibition on transfers of all kinds, as some might up to a certain point have consent of those being transferred. The Conference had particular in mind the case of protected person belonging to ethnic or political minorities who might have suffered discrimination or persecution on that account and might therefore wish to leave the country. In order to make due allowances for that legitimate desire the Conference decided to authorise voluntary transfers by implication, and only to prohibit 'forcible' transfers," Commentary to Geneva Convention IV, p 279. *See* also *Krsti}* Trial Judgement, para 528.

that this prohibition "applies in so far as the other provisions of the Convention do not implicitly or explicitly authorise a resort to coercion".[1358] The jurisprudence of the Tribunal also supports that the term 'forcible' should not be restricted to physical coercion.[1359] The *Kunarac* Appeals Judgement held that the coercive circumstances made "true consent ?…? not possible."[1360] The Chamber recognises that this statement was made in the context of discussing the definition of rape, but is of the opinion that the considerations on consent are similar for many crimes.[1361] The determination as to whether a transferred person had a "real choice" has to be made in the context of all relevant circumstances on a case by case basis. Forcible transfer is the movement of individuals underduress from where they reside to a place that is not of their choosing.

520. The Prosecution needs to prove the intent to have the person (or persons) removed, which implies the aim that the person is not returning.[1362]

521. In order to the Chamber to be satisfied of Article 2(g) of the Statute proof of the following is required:

i) the general requirements of Article 2 of the Statute are fulfilled;

ii) the occurrence of an act or omission, not motivated by the security of the population or imperative military reasons, leading to the transfer of a person from occupied territory or within occupied territory;

iii) the intent of the perpetrator to transfer a person.

[1358] Evacuations may be conducted using force, *see* Commentary to Geneva Convention IV, p 220, a party to the conflict would be entitled to use coercion with regard to protected persons in order to carry out the necessary evacuation measures pursuant to Article 49 para 2 of Geneva Convention IV.

[1359] *Krnojelac* Trial Judgement, para 475, *Krsti}* Trial Judgement, para 529, *Kunarac* Trial Judgement, para 542 also cited in *Krnojelac* Trial Judgement, para 359. In relation to discussion on "real choice", which the Chamber finds relevant also in the present case, *see Kunarac* Trial Judgement, para 453 and *Krnojelac* Trial Judgement para 475. The Chamber notes that in *Kunarac* Appeal Judgement, para 129, quoting *Kunarac* Trial Judgement, para 458, was stated that "force or threat of force provides clear evidence of non-consent, but force is not an element *per se* of rape". The Chamber is of the view that this also applies in the present case with regard to transfers. The Geneva Convention IV refers to unlawful transfer, but the term forcible transfer is often used interchangeably. However, the Chamber considers a transfer to be unlawful or forcible when it has determined that there is a lack of consent, provided that the transfer does not fulfil the requirements of an evacuation. For this reason the Chamber prefers in this context the term unlawful transfer to that of forcible transfer.

[1360] *Kunarac* Appeal Judgement, para 129.

[1361] The Commentary to Geneva Convention IV holds that, in relation to unlawful transfer, the authorities exercise the coercion and therefore the coercion is not easy to deal with by analogy with offences against ordinary law, p 599. The Chamber recognises this but is of the view that the determination of "real choice" and lack of consent in this respect can be drawn from the *Kunarac* Appeal Judgement.

[1362] The Commentary to the Geneva Convention IV holds "[unlike? deportation and forcible transfer, evacuation is a provisional measure", p 280. The Chamber sees this as indicative of that deportation and forcible transfer are not by their nature provisional, which implies an intent that the transferred persons should not return.

2. The findings

(a) Sovi}i and Doljani

522. The Prosecution alleges that the accused Mladen Naletili} was in command of the forces which on the days following 19 April 1993, "confined the whole of the BH Muslim civilian population of Sovi}i, around 450 women and children and elderly, to the hamlet Junuzovi}i, and forcibly transferred them subsequently to the territory of Gornji Vakuf under control of the ABiH".[1363] The Naletili} Defence does not dispute that the transfer occurred, but argues that the transfer was conducted following an agreement between the Chief of the Main Staff of the HVO, Milivoj Petkovi}, and the commander of the ABiH, Sefer Halilovi}.[1364] Further, it is agreed that the civilians were in the Sovi}i school, but it is argued that they gathered there spontaneously for their own safety.[1365]

523. The Chamber is not satisfied that any such agreement on exchange was negotiated.[1366] The Chamber, however, is of the view that an agreement between two military commanders or other representatives of the parties in a conflict does not have any implications on the circumstances under which a transfer is lawful. Military commanders or political leaders cannot consent on behalf of the individual.

524. The Chamber rejects the argument by the Naletili} Defence that the civilians gathered spontaneously in the houses of Junuzovi}i, and in the school in Sovi}i for safety reasons.[1367] The BH Muslim civilians of Sovi}i were forced or threatened by force by HVO soldiers to leave their homes. Witness X described how she and her family were afraid of the HVO, and sought refuge and safety in the home of their neighbour, but the HVO soldiers came and forced her and her family to leave the house while the neighbour could stay.[1368] The HVO themselves considered the civilians to be detained from 23 April 1993.[1369]

[1363] Indictment, para 53.
[1364] Naletili} Final Brief, p 27.
[1365] Naletili} Final Brief, p 26.
[1366] The Naletili} Defence stated that such an agreement would be submitted for admission into evidence with the identification number is D1/360. However, no such document was ever presented. The evidence presented by Defence witness NW was not credible in this regard. Further, the international observers present reported nothing about an agreed transfer.
[1367] Naletili} Final Brief, p 26. Further, the Defence is stating that the accused had nothing to do with the situation in the school.
[1368] Witness X, T 3312.
[1369] Exhibit PP 333, a report sent to Slobodan Boži}, at the Defence Department of the HVO, asking for instructions of what to do with the 422 prisoners.

525. Defence witness NW testified, in relation to the transfer on 4 May 1993 that "there were talks with civilians. They had no objections".[1370] The Chamber refutes much of Defence witness NW's testimony. An overall consideration of the evidence shows that the civilians did not have a "real choice" and no consent was expressed to the transfer. The Chamber considers the general situation in Sovi}i following the attack is that the women, children and older men were detained for at least ten days prior to the transfer; buses were provided by the HVO for the transfer and there was a general discriminatory threat from the HVO directed against the BH Muslims in Sovi}i.

526. The remaining question is whether the transfer was a lawful evacuation. The civilians were transferred from Sovi}i during the night between 4 and 5 May 1993. On 18 April 1993 they were forced by armed soldiers to leave their houses. They were then held under armed guard in crowded housing with approximately seventy people to each house. No imperative military reasons existed. When a genuine evacuation takes place, there is an obligation to bring the population back when the hostilities have ended. No attempts to return them were made. In fact most of their houses were torched after 18 April 1993. An evacuation must not involve the movement of protected person to places outside the occupied territory, unless it is physically impossible to do otherwise.[1371] The civilians were deliberately transferred to an area outside the occupied territory. The Chamber is satisfied the BH Muslim civilian population in Sovi}i was not evacuated.

527. The Chamber finds the transfers unlawful.

528. The Prosecution alleges that the transfer was conducted by forces under the overall command of Mladen Naletili}, following his plans.[1372]

529. The Chamber is satisfied that there was a plan early on in the operation to have the BH Muslim civilian population transferred from Sovi}i, intending to use them in exchange for BH Croat prisoners taken by the ABiH elsewhere.[1373] Evidence has been led to the fact that the plan was implemented. A report[1374] dated 7 May 1993[1375] signed by Bla` Azinovi}, Herceg Stjepan

[1370] Defence witness NW, T 14966-14968.
[1371] Commentary to Geneva Convention IV, p 280.
[1372] Indictment para 53. The organised manner in which the BH Muslims civilians were held first in the Sovi}i school and then later at the Junuzovi}i houses suggest that a plan to evict the BH Muslim population existed from the beginning and that Mladen Naletili}, being among "the highest–level HVO commanders", was involved in the planning. As evidence of the fact that a plan existed the Prosecution is referring to witness C, who testified that the Junuzovi}i houses, where the civilians in Sovi}i were held prior to the transfer were deliberately not destroyed so that the BH Muslim civilians "could be kept their until their eventual expulsion", Prosecution Final Brief, p 185. The Naletili} Defence argues that Mladen Naletili} was not present in Sovi}i and Doljani and that he was not the commander of the KB. These issues have been addressed in *supra* paras 89-94 and 117-132.
[1373] Exhibit PP 333.
[1374] Exhibit PP 368. As to its reliability see supra footnote 1373.
[1375] The date of the report was raised by Defence witness NW, as the date 7 May 1993 is written with the number 5 which has replaced the original number 4 (indicating April). However, witness NW later in his testimony admits

Battalion, Mijat Tomi} Brigade, states that the transfer was ordered by Vlado ^uri} referred to as "Tuta's Commissioner". Defence witness NW confirms that the transfer referred to in the report is the transfer of the civilians from the Junuzovi}i houses to Gornji Vakuf relevant to the Indictment.[1376]

530. There is evidence of involvement of the KB in the transfer. One witness stated that a group of soldiers wearing camouflage uniforms with insignia of the HVO arrived at the Junuzovi}i hamlets in a blue and white van stating that they were "Tuta's army".[1377] Another witness testified that following a change among the guards outside the Junuzovi}i hamlets, "Tuta's soldiers" guarded them and that the soldiers on the bus transporting them to Gornji Vakuf had identified themselves as "Tuta's army".[1378] This evidence seen in the context of documentary evidence satisfies the Chamber that the KB was involved in the transfer of the BH Muslim civilians.

531. The Chamber has previously found that Mladen Naletili} was the commander of the KB and was in command of the operation in Sovi}i, which involved the planning of the operation and the strategic moves.[1379] The Chamber is satisfied that transfer of the civilian population from Sovi}i was part of a plan drawn up by among others, Mladen Naletili}. He is, thus, responsible under Article 7(1) of the Statute.

532. The transfer was conducted by soldiers under the command of Mladen Naletili}. Mladen Naletili} further had knowledge of the transfer as he was involved in the planning of it and did nothing to prevent or to punish. The Chamber is satisfied that Mladen Naletili} is responsible under Article 7(3) of the Statute. The Chamber finds that the responsibility of Mladen Naletili} is most accurately described under Article 7(1) of the Statute as that of a commander who planned the operation in Sovi}i and Doljani.

(b) Mostar

533. The Prosecution alleges that "Mladen Naletili} and Vinko Martinovi} were responsible for and ordered the forcible transfer of BH Muslim civilians starting on 9 May 1993 and continued at least until January 1994, particularly during the two large waves of forcible transfers that took place

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that the transfer referred to is that of the civilians from Sovi}i to Gornji Vakuf, Defence witness NW, T 14991-14993. As the transfer was in May 1993, the Chamber is satisfied that the correct date of the report is 7 May 1993.

[1376] Defence witness NW, T 14991-14993.

[1377] Witness X, T 3330.

[1378] Witness C, T 867, 873. Witness C stated that the hamlet of Junuzovi}i belonged to one of Mladen Naletili}'s soldiers. Exhibit PP 314.2 states that a soldier named Emir Januzovi} was a member of the KB. Even if the Chamber would find that the house belonged to a soldier in the KB, such finding does not support that the KB was involved in the forcible transfer. In addition, the Junuzovi}i houses were burnt down following transfer.

[1379] *See supra* paras 89-94, 117-132.

in May and July 1993".[1380] It is further argued that "once the KB and other HVO units had identified persons of Muslim ethnic background, they arrested them, evicted them, plundered their homes and forcibly transferred them to detention centres under HVO authority, or across the confrontation lines to the territories under ABiH control".[1381]

534. The Chamber has identified two different situations which the Prosecution seems to argue constitutes unlawful transfer;[1382] i) situations when civilians were forced out of their homes to one of the detention centres under HVO control; and iii) situations when civilians were forced from their homes to leave the territory controlled by the HVO and to enter the territory controlled by the ABiH.[1383]

(i) Civilians forced out of their homes to one of the detention centres under HVO control

535. The evidence presented is clear on the fact that BH Muslim civilians were forced out of their apartments and detained mostly at the Heliodrom detention centre and that this became a consistence pattern from 9 May 1993 until November 1994.[1384] The overwhelming evidence, which comes from Prosecution and Defence witnesses, is that the arrests occurred in circumstances of great stress and fear and without warning.

536. Most of the BH Muslim civilians were transported to the Vele` Stadium in Mostar, from where many were taken to the Heliodrom. The women and children who were detained at the Heliodrom were released after a few days, pursuant to the cease-fire agreement entered into between the ABiH and the HVO. Many of the persons detained at the Heliodrom who were released, were subsequently detained again.

537. The Chamber is not satisfied that these acts constitute unlawful transfer under Article 2(g) of the Statute, even though the persons, technically speaking, were moved from one place to another against their free will. They were apprehended and arrested in order to be detained and not in order to be transferred. Therefore, the requisite intent is not established. These arrests and movements to the Heliodrom on 9 May 1993 is further considered under unlawful confinement detention as persecution.

[1380] Indictment, para 54.
[1381] Indictment, para 54.
[1382] Indictment paras 26, 54 state: "they arrested them, evicted them, plundered their homes and forcible transferred them to detention centre under HVO authority, or across the confrontation lines to the territories under ABiH control."
[1383] Indictment paras 26, 54, where the Prosecution is arguing that the HVO "arrested them, evicted them, plundered their homes and forcibly transferred them to detention centres under HVO authority, or across confrontation lines to the territories under ABiH control."
[1384] *See supra* paras 42-48.

(ii) Civilians forced to leave the territory controlled by the HVO and enter the territory controlled by the ABiH

538. The Prosecution alleges that forcible transfers occurred in two large waves in May and July 1993. The Prosecution charges that "Mladen Naletili} and Vinko Martinovi} commanded operations for this purpose and gave orders to their subordinates to proceed with the forcible transfers".[1385]

539. The Chamber is satisfied that BH Muslim civilians crossed over to the Eastern Side of Mostar in large numbers.[1386] It is difficult to get a reliable estimate of the total number of affected persons as the sheer volume of movements and the situation in Mostar, together with limited access for International observers, made it very difficult to determine whether the ultimate reason of BH Muslims leaving the West side of Mostar was detention, forced or voluntary movement to the East side of Mostar to other parts of Bosnia and Herzegovina or to a third country.[1387]

540. 9 May 1993 became the starting date for these kind of transfer. An International Observer stated that first the transferred persons were mostly Muslims who were living in abandoned Serb flats, but by mid June 1993 the evictions had started to become more violent in character primarily targeting long-term BH Muslim residents of Mostar. The transfers were carried out well orchestrated and well organized. HVO soldiers would come to a building, shouting out that all Muslims had to leave the building and they would go from flat to flat.[1388]

[1385] Indictment, para 54.

[1386] Defence witness MF stated that "quite a few" BH Muslims were evicted from his neighbourhood, Defence witness MF, T 14178; witness van der Grinten from the ECMM testified that a lot of people were expelled from their homes and forced to the East side of Mostar by military men. The situation worsened in June. He confirmed the description in exhibit PP 435.1, which is a protest letter from Arif Pa{ali}, Commander 4th Corps of ABiH, dated 7 June 1993, describing that the HVO was forcing and expelling the BH Muslim people. He further confirmed the content of exhibit PP 456.3, a report by the ECMM dated 14 June 1993 stating more than 100 people had been expelled from the West side of Mostar the last two days, and exhibit PP 462, an ECMM report dated 16 June 1993 stating that "ethnic cleaning on the Westbank of Muslim families by HVO is still going on", witness van der Grinten, T 7338-7339, 7361. Witness Sir Martin Garrod testified that Arif Pa{ali} had told him that between 20-90 BH Muslims were expelled from West Mostar to East Mostar every night, witness Sir Martin Garrod, T8410-8412. Witness G's wife asked a policeman to transfer her and the family to the eastern side of Mostar. Also witness G himself once released from the Dretelj camp went the Eastern Side of Mostar and by going over the mountains from Jablanica, witness GG, T 1184. Witness Jeremy Bowen's movie "Unfinished Business", exhibit PP 586, captures images of BH Muslims crossing into East Mostar in the night between 29 and 30 September 1993, witness Jeremy Bowen, T 5807-5808, witness Q testified that while on guard he saw mostly old people with their belongings being sent from the western side over to the eastern side, escorted by HVO soldiers, witness Q, T 2362.

[1387] Witness van der Grinten testified that it was difficult to get a reliable number, exhibit PP 456.3, a report by the ECMM dated 14 June 1993 states that the last two days more that 100 people were expelled from the West side to the East side of Mostar, witness van der Grinten T 7338-7339, 7396. Witness van der Grinten further testified about exhibits PP 498, PP 670; witness van der Grinten, T 7361.

[1388] Witness P, T 2280-2281; exhibit PP 456.

541. Evidence[1389] presented indicates from July 1993 a hardening attitude in Mostar. Estimations show that after 29 June 1993, when the ABiH had attacked the HVO northern barracks, the population of East Mostar increased from approximately 30,000 to 55,000.[1390] The dramatic increase is attributed to movements from West Mostar, as well as from the area of ^apljina and Stolac.[1391]

542. In conclusion, during the period 9 May 1993 to November 1993 unlawful transfers of BH Muslim civilians from West Mostar to East Mostar were regular and a common occurrence.

a. 9 May 1993

543. Substantial evidence was led relating to the event in Mostar on 9 May 1993, however, the evidence mostly related to evictions and transfers of BH Muslim civilians to the Heliodrom. Limited evidence was led in relation to transfers to the East Side of Mostar on that day. One witness giving evidence about transfers to East Mostar was witness Sead Smajki} who testified that:

> ?o?n 9th of May, 1993, in the early morning hours, I could hear heavy artillery fire and also firing from all kinds of other weapons. And so there was thunderous fire all around at the same time. Because I live near the line of separation, the present-day line of separation, near my house a river of people passed by, men, women, children, in their pyjamas, and they were moving in a direction of the eastern part of town. The fire was intense. People's hearts were freezing with the apprehension of what may happen.[1392]

544. The only witness testifying about having being transferred to East Mostar was Defence witness MF. He testified that unknown soldiers came to his apartment on the Western side of Mostar and forced him and his family to the eastern side of Mostar.[1393] He returned to his apartment 22 days later. This does not mitigate the fact that he and his family were involuntary transferred to East Mostar. Soldiers collected them in their apartment, accompanied them to the

[1389] Witness P testified that on the 29 June 1993 there was an attack by the ABiH on HVO barracks North of Mostar and after that, the conflict in Mostar escalated significantly as did the evictions and expulsions of the BH Muslims from the West bank. There was also escalation of the rounding up and expulsion of BH Muslims from other BH Croatian controlled territory around ^apljina and Stolac after 29 June 1993. These people were expelled into the East of Mostar. From 29 June until the end of August 1993, humanitarian organisations were denied access into the East bank of Mostar, witness P, T 2286-2287.

[1390] Exhibit PP 670 (confidential), the estimate is including the East Side of Mostar, including the central urban area and outlying districts under the control of the ABiH.

[1391] Witness P, T 2286-2287; exhibit PP 670. The Indictment only covers the municipality Mostar; therefore transfers from ^apljina and Stolac. In the Prosecution Final Brief, p 98 it is argues that following the ABiH attack on the HVO northern barracks on 30 June 1993, the HVO "continued to expel Muslims from West Mostar, but also from the municipalities to the South of Mostar, such as Stolac and ^apljina."

[1392] Witness Said Smajki}, T 4046.

[1393] Witness MF, T 14165.

front line and directed them to cross over to the East Side.[1394] The Chamber is satisfied that these were unlawful transfers.

545. No evidence has been led to establish the involvement of Vinko Martinovi} in the unlawful transfers on 9 May 1993.

546. The Chamber is not satisfied that Mladen Naletili}, can be held responsible under Article 7(1) of the Statute. Mladen Naletili} was found to be one of the commanders on that day in the operation in Mostar. Defence witness MF testified that unknown soldiers were responsible for the unlawful transfer. Mladen Naletili} was not found to have been in a position of command in relation to any other HVO units apart from the KB. There is no evidence led in relation to involvement of the KB in unlawful transfers.[1395] Mladen Naletili} is, therefore, found not responsible under Article 7(3) of the Statute.

b. 25 May 1993

547. A transfer of about 300 Muslim civilians to the eastern side of Mostar occurred on 25 May 1993.[1396] The civilians were taken by the HVO to East Mostar. At the same time 250 civilians were transported from East Mostar to West Mostar based on an agreement for exchange concluded at the Joint Commission between the HVO and ABiH.[1397]

548. As discussed above in relation to unlawful transfer from Sovi}i, an agreement as such does not in itself alter the conditions rendering a transfer lawful. The civilians that were transported to the East Side came from the central collective centre in Mostar.[1398] The collective centre was guarded by HVO military police. The affected civilians were mostly from other parts of Bosnia and Herzegovina, who subsequent to the Decision of the HVO Office for Displaced Persons and

[1394] Witness MF, T 14177.

[1395] The evidence led in relation to the alleged unlawful transfers conducted by witness AC does not relate to 9 May 1993 as witness AC was at that time was hiding in the apartment of "Baja", Mario Mili~evi}, the commander of the Benko Penavi} ATG, witness AC, T 7903-7905.

[1396] The majority of the 300 BH Muslims were persons who had fled other parts of Mostar and had resided in an apartment belonging to a Serb that had left or been forced to leave. These BH Muslims had been affected by exhibit PP 370, Decision on the Statutory Rights of Refugees and Expelled and Displaced Persons in Mostar Municipality, number 01-272/93 of 29 April 1993, (confidential), whereby it was decided that they would have to leave the apartment they occupied and were stripped of refugee status which had guaranteed access to humanitarian assistance. Also BH Muslims with legal rights to be in the apartment were among the group that was expelled, exhibit PP 416 (confidential).

[1397] Exhibit PP 416 (confidential), report dated 26 May 1993 by International Observer, stating that the transfer was based on an agreement made at the Joint Commission between the HVO and ABiH , being agreed to, monitored and escorted by SPABAT, UNPROFOR. At the same time 250 civilians were transported from the eastside to the West side.

[1398] Exhibit PP 416 (confidential), exhibit PP 370.

Refugees[1399] were evicted and denied humanitarian assistance.[1400] No witness testimony was called in relation to this incident. The only evidence presented to the Chamber in relation to this incident is exhibit PP 416. In the absence of further evidence, the Chamber is not satisfied that the Prosecution has proved that it was an unlawful transfer.

c. 13 June and 14 June 1993

549. The forcing of BH Muslims civilians to the Eastern Side of Mostar escalated during the month of June 1993.[1401] On 13 and 14 June 1993, the HVO expelled witnesses WW together with between 88[1402] and 100[1403] BH Muslims from the DUM neighbourhood in West Mostar.[1404]

550. At around four in the afternoon witness WW saw cars driving in and surround the buildings in the area where she lived with her husband.[1405] A HVO soldier entered her apartment. He checked their ID cards and asked them to leave.[1406] Outside the building BH Muslims from the neighboring buildings had been rounded up.[1407] Ernest Taka~ and Pehar called "Dolma" participated in the operation.[1408] The civilians were lined up and escorted by soldiers through the town to the church; from there, they were forced to run under gunfire to the eastern side of Mostar.[1409]

551. The Chamber finds that the transfer of civilians from the DUM neighbourhood on 13 and 14 June 1993 is an unlawful transfer under Article 2(g) of the Statute.

552. Vinko Martinovi} was identified by witnesses as the person in charge of the operation.[1410] This is corroborated by three internal Military Police reports[1411], identifying Vinko Martinovi} as in charge of the operation, and commanding about 40 armed men.[1412] Exhibit PP 456.1 held that:

[1399]Exhibit PP 370.
[1400]Exhibit PP 370.
[1401]Witness van der Grinten, T 7339-7342, referring to exhibit PP 417.1 confirms that evictions were taken place in the end of May 1993.
[1402]Exhibit PP 456.4, a letter of protest dated 14 June 1993 signed by Commander Arif Pa{ali}, list 88 persons who were forced to leave their apartments on Petar Drap{in in West Mostar and were taken to the East side.
[1403]Exhibit PP 456.3, a report from ECMM (European Monitoring Mission) dated 14 June, reports that: "approximately more than 100 BH Muslims people were Sunday night and today expelled from the quarters of DUM".
[1404]Exhibit PP 456, Report by an International Observer dated 14 June 1993, confirms that BH Muslims were evicted on 13 June 1993. Witness WW testimony is corroborated by witness GG.
[1405]Witness WW, T 7034.
[1406]The HVO soldier asked for identity cards. And he read them, and then he said, "Sorry. I am sorry, but I have to put you out. And if I don't do that, then they will kill me." Witness WW's husband then said told the soldier not to worry, that we would leave, and so we did, witness WW, T 7035.
[1407]Witness WW, T 7036.
[1408]Witness WW, T 7038; witness GG, T 4757-4758.
[1409]Witness WW, T 7039-7042, witness marked the route taken to the eastern part, exhibit PP 11.18/7 (confidential).
[1410]Witness WW, testified that [tela was in charge of the operation, witness WW, T7036. Witness WW further testified how she knew of [tela. She held that after having been thrown out of her apartment on the way to the

?a?round 16.30 hours we received a report that uniformed men were rounding up Muslim civilians in the DUM block. A patrol was sent to the site and where they found [tela ?Vinko Martinovi}? with around 40 well armed soldiers expelling Muslims for their homes. Asked by the patrol why they were expelling Muslims from their homes they replied that they were acting on Tuta's ?Mladen Naletili}'s? orders.[1413]

553. The Chamber finds that Vinko Martinovi} committed unlawful transfer by participating in the operation, which led to the unlawful transfer of between 88-100 civilians from the DUM area. Vinko Martinovi} is thus responsible under Article 7(1) of the Statute.

554. The Chamber is satisfied that Vinko Martinovi} had command responsibility pursuant to Article 7(3) of the Statute. Members of his unit, including Ernest Taka~ and "Dolma" participated in the unlawful transfer and Vinko Martinovi} knew about their behaviour and did nothing to prevent it, but rather participated in it. Vinko Martinovi} is responsible under Article 7(3) of the Statute. The responsibility of Vinko Martinovi} is most appropriately described under Article 7 (1) of the Statute.

555. The Chamber does not find that Mladen Naletili} is responsible pursuant to Article 7(1) of the Statute. The military police reports referred to above state that once at the scene the Military Police was told that the transfer was conducted on "Tuta's orders". The two reports, exhibits

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Heliodrom, she heard that the full name of Mr. Martinovi} was Vinko Martinovi}, [tela; and that she knew Martinovi} from before because he was the chief man of the HOS, when the JNA was there and attacked Mostar, T 7018: she further described Vinko Martinovi} as "kind of bold", wearing an earring and black gloves with the fingers cut off and he was carrying a weapon, being between 35 and 40, T 7016 T 7048 and that he was wearing black uniforms, T 7062. She further identified Pehar called "Dolma" as participants, T 7016-7020 and T 7049. The testimony of witness WW is corroborated by witness GG, T 4757-4758. The testimonies of witnesses WW and GG are corroborated by witness van der Grinten, T 7360, a monitor for the ECMM who testified that he received a note containing the names of Vinko Martinovi} and Ernest Taka~ as having participated in the expulsions, exhibit PP 452.1. *See* also exhibits PP 455.1, PP 456.1, PP 456.2.

[1411] Exhibits PP 455.1, PP 456.1, PP 456.2.

[1412] Defence witness MM testified that Vinko Martinovi} could not have been expelling BH Muslims on 13 and 14 June 1993 as he and his men had to be at he frontline, Defence witness MM, T 14560. The Chamber does not find this a convincing argument since first no evidence was led that Vinko Martinovi} in deed was in another location on this date and further, exhibit PP 456.1 holds that military policemen were taken off their regular duties in order to be deployed on the frontline. Further, Defence witness NO testimony challenged the reliability of the reports, exhibits PP 456.1 and PP 456.2. He does not challenge the authenticity of the document. He verified that the document was properly signed by a duty office. He further stated that he went to the scene and found out that it was not Vinko Martinovi} but someone else pretending to be him. He therefore put aside the report, which he says was probably later sent by a duty officer on 17 June 1993. However, in cross-examination Defence witness NO testified that he was not with the officer who wrote the report at the scene but only arrived there later on, witness NO, T 13037-13040, 13055-13059. Even though the credibility of these documents were challenged the Chamber is satisfied of their reliability since the facts are corroborated by the testimonies of witnesses WW and GG.

[1413] Exhibit PP 455.1 corroborates Vinko Martinovi}'s involvement and the details of the incident. It is reported that "?a?t 1700 hrs we received a report from MPs /military policemen/ in zone 3 that HVO units under the command of Vinko Martinovi} aka [tela and the 4th Battalion were carrying out illegal ethnic cleansing operations against the Muslim population on the right riverbank. They were transferring the Muslims to the left riverbank." Further, exhibit PP 456.2 corroborates both involvement of Vinko Martinovi} as the operation was conducted on Tuta's orders. The report states: "men in uniforms were moving about in zone III, that is to say, in the DUM complex of buildings, gathering Muslims in the buildings, firing and disturbing public law and order. I immediately went to the

PP 455.1, and PP 456.1, are generally reliable. The specific fact relating to the ordering was not corroborated and the Military Police *was told* that Mladen Naletili} ordered the transfer. The Chamber is not satisfied that there is sufficient evidence to hold that Mladen Naletili} ordered the unlawful transfer on 13 and 14 June 1993.

556. The Chamber has found that Vinko [krobo ATG was involved in the unlawful transfer on 13 and 14 June 1993 and that Mladen Naletili} was in an a command position in relation to this unit.[1414] The Chamber finds that based on the regular occurrence of such transfers Mladen Naletili} knew or had reasons to know and did nothing to prevent or punish.

557. Mladen Naletili} was the commander over both the Vinko [krobo ATG and the Benko Penavi} ATG. As early as 9 May 1993, Mladen Naletili} instructed Baja, the commander of the Benko Penavi} ATG that they would carry out special tasks, including evictions and transfers.[1415] Witness AC a former member of the Benko Penavi} ATG testified how, from May until the end of 1993,[1416] he regularly participated in actions forcing BH Muslim civilians to cross over to the Eastern Side of Mostar[1417] from the following areas: Zudum, Panjevina, Kralja Tvrtka, DUM and Avenija.[1418] He further held that the operations were conducted by "themselves" and not in co-operation with the Military Police.[1419] As discussed above, a parallel command structure existed due partly to the fact of the "special status" the KB held.[1420]

558. The Chamber finds on the basis of Military Police reports[1421] considered in the context of witness AC's testimony of the regularity of such operations that Mladen Naleitli} knew or had reason to know of this activity. The regular occurrence of such transfers was sufficient to put Mladen Naletili} on notice. Mladen Naletili} choose to do nothing to prevent or to punish but

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scene and encountered [tela with 40 soldiers. I asked one of them what they were doing. He said that they were with Tuta and that Tuta told them to gather all /Muslims/ and send them to the other side".

[1414] *See supra* paras 91-94 and 100.

[1415] Witness AC, T 7900-7910.

[1416] Witness AC, T 7955.

[1417] "The persons who were supposed to be conducting these types of operations of cleansing of ethnic population knew each other. I was one of these persons. What we did was we would come to certain neighbourhoods, which were predesignated by Baja ?the commander of the Benko Penavi} ATG?to be ethnically cleansed. We would come with both trucks and private cars. When we would come to the neighbourhood, which was to be cleansed, personnel would be assigned to all cardinal points so that we would protect this so-called cleansing operation. I was one of those who was guarding and protecting this quadrant or the neighbourhood. The others would enter the apartments on which - on the front doors they would find Muslim names. If they weren't sure whether the person in question was of Muslim background, they were to knock on the door and ask for the necessary documents. Keys would then be taken away from these people and handed over to Baja. The persons who were detained or expelled from the apartments would then be loaded onto the trucks. At first, the men would be taken to the Heliodrom and women and children over to the other bank," witness AC, T 7956-7957.

[1418] Witness AC, T 7910-7911, marking exhibit PP 11.18/11.

[1419] Witness AC, T 7957.

[1420] *See supra* paras 151-159.

[1421] Exhibits PP 455.1, PP 456.1, PP 456.2.

rather communicated to his subordinates that he endorsed the behaviour. Therefore, the Chamber is satisfied that Mladen Naletili} is responsible as a commander under Article 7(3) of the Statute.

d. 29 September 1993

559. International Observers reported that during one week (29 September – 5October 1993) approximately 600 Muslims were forced from the area Centar II in West Mostar to East Mostar and that the highest number of evictions were carried out on 30 September 1993.[1422]

560. Witness MM, (a resident of the Centar II area in Mostar), recalled how nine soldiers, qualifying themselves as "Štelici", entered her apartment in the evening of 29 September 1993, searching for money and gold valuables.[1423] The soldiers evicted them together with other families from the same building and divided men from women, children, and elderly.[1424] Women, children and elderly were put on two trucks and brought to the yard of the health centre.[1425] They were all lined up and their bags were taken away from them. Witness MM testified "?t?hey told other people to turn around, and then they opened fire. At that moment, I fled".[1426] She crossed over to the eastern side of Mostar.

561. Witness MM testified that the group of evicted BH Muslims was taken to the Health Centre, which is within Vinko Martinovi}'s area of responsibility. This supports her testimony that it was "[teli}i", i.e. soldiers from the Vinko [krobo ATG that entered her apartment. In addition, two reports from SIS, the 'Secret Police' of the Republic of Croatia corroborate that a transfer of civilians took place on 29 September 1993 involving Vinko Martinovi} and the Vinko Škrobo ATG. The relevant portion of the report reads:

> ?a? plan was drawn up for the transfer of women and children to the left bank and men to Heliodrom (to be kept for labour). The plan also envisaged seizing all apartment keys and placing stickers on apartment doors.[1427]

[1422] Exhibit PP 623, Memorandum on population Movements dated 5 October 1993 from an International Observer, Exhibit PP 620.1, a Report by SIS, the Secret Information Services, ("the Secret Police") of the Republic of Croatia, corroborates that during the night 29 September 1993 BH Muslims crossed over to the eastern side. Further, witness Jeremy Bowen's movie "Unfinished Business", exhibit PP 586, captures images of BH Muslims crossing into East Mostar in the night between 29 and 30 September 1993, witness Jeremy Bowen, T 5807-5808.

[1423] Witness MM, T 5754-5755 (confidential).

[1424] Witness MM, T 5758 (confidential).

[1425] Witness MM, T 5758 (confidential). Witness MM described that she was taken in the direction of the Bulevar to what sued to be the hospital for pulmonary diseases. The Chamber is satisfied that this is the health centre, which was used by Vinko [krobo ATG. Exhibit PP 11.28/5. She further describes how she fled to East Mostar as follows: "?w?e first went across the street, and that is where the eastern Mostar begins. We reached a neighbourhood called Cernica, below the Bulevar cross the Neretva River to the eastern side of Mostar", this further indicates that she was at the Health Centre.

[1426] Witness MM, T 5755 (confidential).

[1427] Exhibit PP 620.1. The content is also found in exhibit PP 707, pp 45-46.

562. According to the SIS report, the two units carrying out the operation were headed by Vinko Martinovi} and Ivi}a]avar, who met on 29 September 1993 around 16.00 hours to draw up detailed plans on the operation.[1428] According to the same report, Ivan Andabak, the Deputy Commander of the KB, was also informed of the operation after it took place.[1429] There is further documentary evidence of involvement of KB members or units in transfers on several occasions during the month leading up to this incident.[1430]

563. Vinko Martinovi} committed unlawful transfer by participating in the operation, which led to the unlawful transfer of civilians from the Centar II area of West Mostar on 29 September 1993. The Chamber finds that he is responsible pursuant to Article 7(1) of the Statute.

564. Vinko Martinovi} had command responsibility pursuant to Article 7(3) of the Statute since members of his unit participated in the unlawful transfer and Vinko Martinovi} knew about their behaviour and did nothing to prevent it and on occasion actively participated. The responsibility of Vinko Martinovi} is most appropriately described as committing unlawful transfer pursuant to Article 7(1) of the Statute.

565. The Chamber is not satisfied that Mladen Naletili} is responsible for the unlawful transfer pursuant to Article 7(1) of the Statute.

566. The Chamber found that Vinko Martinovi} and the Vinko [krobo ATG participated in unlawful transfer on 29 September 1993. Mladen Naletili} was in command of this unit.[1431] The Chamber is further satisfied that Mladen Naletili} knew or had reasons to know. Mladen Naletili} was put on notice by the regularity of such transfers, as discussed above, his deputy Ivan Anderbak was informed about this specific event and did nothing to prevent or to punish. The Chamber finds that such conduct was condoned by the leadership of KB. Mladen Naletili} is responsible under Article 7(3) of the Statute.

e. Other incidents

567. Witness G's wife asked a policeman to transfer her and her family to the Eastern Side of Mostar. Witness G himself, once released from the Dretelj camp, went to the Eastern Side of Mostar and by going over the mountains from Jablanica.[1432]

[1428] Exhibit PP 620.1.
[1429] Exhibit PP 620.1.
[1430] Exhibits PP 588, PP 707, PP 556.
[1431] *See supra* paras 91-94, 100.
[1432] Witness GG, T 1184.

568. No evidence was led to the effect that witness G's wife and witness G himself were forced to leave. The Chamber is not satisfied that the Prosecution has proved unlawful transfer. The evidence is considered further in relation to count 1 – persecution.

(c) Summary of the findings

569. The Chamber finds Vinko Martinovi} guilty of committing unlawful transfer of a civilian as a grave breach of the Geneva Conventions of 1949, under Articles 2(g) and 7(1) of the Statute on 13 and 14 June 1993, from the DUM area in Mostar and on 29 September 1993 from the Centar II area in Mostar. Vinko Martinovi} is also found to have command responsibility pursuant to Article 7(3) of the Statute. The Chamber found that the responsibility of Vinko Maritnovi} was most appropriately described under Article 7(1) of the Statute.

570. The Chamber finds Mladen Naletili} guilty of unlawful transfer of a civilian as a grave breach of the Geneva Conventions of 1949, under Articles 2(g) and 7(1) of the Statute for the transfer of approximately 400 BH Muslim civilians from Sovi}i on 4 May 1993 to a place close to Gornji Vakuf. The Chamber also finds that Mladen Naletili} had command responsibility pursuant to Article 7(3) of the Statute. Mladen Naletili}'s responsibility is most appropriately described for this incident as that of Article 7(1) of the Statute.

571. The Chamber finds Mladen Naletili} guilty of unlawful transfer of a civilian as a Grave Breach of the Geneva Conventions of 1949, under Articles 2(g) and 7(3) of the Statute on 13 and 14 June 1993, from the DUM area in Mostar and on 29 September 1993 from the Centar II area in Mostar.

E. Counts 19, 20 and 22: Destruction

572. The Prosecution alleges that, following the capture of the villages Sovi}i and Doljani in the municipality of Jablanica on 17 April 1993, Mladen Naletili} ordered the destruction of all Muslim houses in the area and the destruction of the mosque in Sovi}i.[1433] These acts are charged under count 19 as extensive destruction of property as grave breaches of the Geneva Conventions of 1949 prohibited under Article 2(d) of the Statute; under Count 20 as wanton destruction not justified by military necessity as violations of the laws and customs of war as prohibited under Article 3(b) of the Statute; under count 22 as seizure, destruction or wilful damage done to institutions dedicated to religion as violations of the laws and customs of war as prohibited under Article 3(d) of the Statute.

[1433] Indictment, paras 55, 56.

573. It is further alleged that, following the capture of the village of Ra{tani on 23 September 1993, the forces under the command of the accused Mladen Naletili}, destroyed the Muslim houses in the village.[1434]

1. Counts 19 and 20: Destruction of houses

(a) The law

(i) Extensive destruction of property

574. Article 2(d) of the Statute sanctions "extensive destruction and appropriation of property when it is not justified by military necessity and is carried out unlawfully and wantonly" as a grave breach of the Geneva Conventions of 1949. This article covers two different offences - destruction and appropriation. The Prosecution has only charged the offence of destruction.

575. The Chamber considers that two types of property are protected under the grave breach regime:[1435] i) property, regardless of whether or not it is in occupied territory, that carries general protection under the Geneva Conventions of 1949, such as civilian hospitals, medical aircraft and ambulances;[1436] and ii) property protected under Article 53 of the Geneva Convention IV, which is real or personal property situated in occupied territory when the destruction was not absolutely necessary by military operations.[1437]

576. The Chamber holds that Article 2(d) of the Statute requires the destruction to be extensive regardless of whether the property is characterised as carrying general protection or is protected because it is situated on occupied territory. A single act may, in exceptional circumstances, be

[1434] These acts are charged: in Count 19 under extensive destruction of property as grave breaches of the Geneva Conventions of 1949 prohibited under Article 2 (d) of the Statute; in count 20 under wanton destruction not justified by military necessity as violations of the laws and customs of war as prohibited under Article 3 (b) of the Statute.

[1435] The *Kordi}* Trial Judgement held that both property on occupied territory and property which carries general protection are covered, *Kordi}* Trial Judgement, para 171. *See* also Commentary to Geneva Convention IV, p 601. The *Bla{ki}* Trial Judgement held that "(a)n occupying Power is prohibited from destroying movable and non-movable property" and that "a single act, such as the destruction of a hospital, may suffice to characterise an offence under this count", para 157. In so far as the *Bla{ki}* Trial Judgement meant that the hospital carried general protection, the Chamber agrees.

[1436] Several kinds of property are generally protected by the Conventions, irrespective of any military need to destroy them. *See* Chapters III, V and VI of Geneva Convention I (Protecting medical units, vehicles, aircraft, equipment and material) and Articles 22-35 (protecting hospital ships) and Articles 38-40 (protecting medical transports) of Geneva Convention II. *See* also Article 18 of Geneva Convention IV which provides that a civilian hospital "may in no circumstances be the object of an attack, but shall at all times be respected and protected by the parties to the conflict".

[1437] Commentary to Geneva Convention IV, p 601.

interpreted as fulfilling the requirement of extensiveness, as for instance the bombing of a hospital.[1438]

577. The Chamber considers that a crime under Article 2(d) of the Statute has been committed when:

i) the general requirements of Article 2 of the Statute are fulfilled;

ii) property was destroyed extensively;

iii) the extensive destruction regards property carrying general protection under the Geneva Conventions of 1949, or;

the extensive destruction not absolutely necessary by military operations regards property situated in occupied territory;

iv) the perpetrator acted with the intent to destroy this property or in reckless disregard of the likelihood of its destruction.

(ii) Wanton destruction not justified by military necessity

578. Wanton destruction of cities, towns or villages, or devastation not justified by military necessity constitutes a violation of the laws or customs of war under Article 3(b) of the Statute. The Tribunal has already considered the definition of this crime.[1439]

579. The Chamber agrees with the definition put forward in the *Kordic* Trial Judgement:

(i) the destruction of property occurs on a large scale;

(ii) the destruction is not justified by military necessity; and

(iii) the perpetrator acted with the intent to destroy the property in question or in reckless disregard of the likelihood of its destruction.[1440]

[1438] *Blaškic* Trial Judgement, para 157 held that "a single act, such as the destruction of a hospital, may suffice to characterise an offence under this count" and *Kordi}* Trial Chamber held that property that has general protection does not need to have been destroyed on a large scale. In so far that the *Kordi}* Trial Judgement and the *Bla{ki}* Trial Judgement suggest that the destruction does not have to be extensive the Chamber disagrees, however, the Chamber agrees that a single act may in exceptional circumstances suffice to characterise an offence under Article 2(d) of the Statute. The Commentary to Geneva Convention IV, p 601, holds that "?t?o constitute a grave breach, such destruction and appropriation, must be extensive: an isolated incident would not be enough," however in making this statement it also states in a footnote "?i?t might be concluded from a strict interpretation of this provision that the bombing of a single civilian hospital would not constitute a grave breach, but this would be an inadmissible inference to draw if the act were intentional."

[1439] *Bla{ki}* Trial Judgement, para 183; *Kordi}* Trial Judgement, paras 342-347.

[1440] *Kordic* Trial Judgement, para 346. Whereas the *mens rea* requirement in the *Blaškic* Trial Judgement is intent or foreseeability, para 183, it is defined in *Kordi}* Trial Judgement, para 346, as intent or reckless disregard. Whether

580. The protection under Article 3 of the Statute is extended to property in enemy territory and not under effective occupation.[1441]

(b) The findings

(i) Destruction of BH Muslim houses in Sovi}i and Doljani

581. The Prosecution alleges that, following the capture of the villages Sovi}i and Doljani in the municipality of Jablanica on 17 April 1993, Mladen Naletili} ordered the destruction of all BH Muslim houses in the area.[1442] The Naletili} Defence does not dispute that the majority of the houses in Sovi}i were destroyed in the days and weeks following the conflict, but submits that "roving bands of irregulars, unknown, and controlled by nobody were responsible and that there is no evidence supporting that Mladen Naletili} or the KB were in Sovi}i after 20 April 1993 or that he gave any order for destruction."[1443]

582. International observers confirmed that Sovi}i was destroyed.[1444] Shelling destroyed the upper part of Sovi}i,[1445] as well as some other houses.[1446] The destruction caused by the fighting and the shelling was not directed particularly against BH Muslim houses or BH Muslim parts of the villages.[1447]

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the *mens rea* requirements described in *Kordi}* were intended to conform to those articulated in *Blaškic* is unclear. The Chamber sees no substantial difference in the two above-cited judgements, both requiring either intent (knowledge and will of the proscribed result) or reckless disregard (foreseeability of the consequences of the conduct and acceptance of the results as its very likely consequence).

[1441] The *Kordic* Trial Judgement explicitly stated that "while property situated on enemy territory is not protected under the Geneva Conventions, and is therefore not included in the crime of extensive destruction of property listed as a grave breach of the Geneva Conventions, the destruction of property is criminalised under Article 3 of the Statute," *Kordi}* Trial Judgement, para 347, citing the Commentary to Geneva Convention IV, p 615. The Chamber agrees with this finding and further refers to Articles 51 and 52 of Additional Protocol I, which hold that attacks not directed against specific military objectives are prohibited and that civilian objects shall not be the object of attack or of reprisals. Article 54 of Additional Protocol I, moreover, prohibits attacks to objects indispensable to the survival of the civilian population. Further, Article 23(g) of the Hague Regulations prohibits unnecessary destruction of all enemy property, covering all properties in the territories at war (as it is placed in that part of the Regulations entitled "Hostilities"), "unless such destruction ?…? be imperatively demanded by the necessities of war". The scope is therefore wider than the provision in Article 53 of Geneva Convention IV, which is concerned only with property located in the territory under belligerent occupation. Not abiding by this standard is a clear violation of the laws of war, Commentary to Geneva Convention IV, p 301. *See* also Article 6(b) of the Nüremberg Charter.

[1442] Indictment, para 55.

[1443] Naletili} Final Brief, pp 24-25.

[1444] Witness JJ, T 5008; exhibit PP 357 (confidential).

[1445] Witness Y testified that on 17 April 1993 there was two tanks at Obuc, which fired at the upper part of Sovi}i from the mosque down taking all of the buildings, one after the other; witness Y, T 3369-3370.

[1446] Witness A testified that the only houses destroyed during the attack were those of Ramo and Omer Kovac, witness A, T 500; witness W, T 3181.

[1447] Witness C testified that she was in her house in Doljani on 17 April 1993, and that in Sovi}i the hamlets of Kovici, Rudina were shelled as well as in Doljani the hamlet called Kraj, and that further down in Donji Doljani shelling was not possible as it was a mixed BH Muslim and Croat population. The targeted hamlets were all BH Muslim,

583. The deliberate destruction of the houses in Sovi}i started on 18 April 1993 and continued until 23 April.[1448] In contrast to the shelling, the BH Muslim houses were now specifically targeted.[1449] Defence witness NN confirmed that BH Muslim houses were torched but denied that all houses were destroyed.[1450] A Report from the ECMM recounts that "during the fighting the HVO have systematically burn ?sic? Muslim houses".[1451]

584. On 20 April 1993, the HVO was firing at Doljani.[1452] The village was on fire and houses were burning.[1453] International observers visiting Doljani after the conflict reported that half of Doljani were destroyed.[1454] The hamlet of Kraj was destroyed by shelling.[1455]

585. The deliberate destruction of houses in Doljani occurred on 21 and 22 April 1993 and, as in Sovi}i, only BH Muslim houses were targeted.[1456]

586. The property destroyed in Sovi}i and Doljani does not carry general protection under the Geneva Conventions. It is thus only protected under Article 2(d) of the Statute.

587. The question is therefore whether Sovi}i and Doljani were occupied on the relevant days. Ivan Rogi},[1457] with Mladen Naletili} by his side, lined up ABiH captured soldiers on 18 April 1993 and accused them of rebelling against the Croatian authorities.[1458] The Chamber finds that this is not sufficient to show that a new administration had been established over that territory, nor that an effective replacement of the old authority by the new one had occurred. In fact, although on that

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witness C, T 856-861. However, this testimony is not consistent with the testimonies of witness Y, who states that the upper part of Sovi}i was targeted, witness Y, T 3369-3370. Witness A testified that the only houses destroyed were those of Ramo and Omer Kovac, witness A, T 497, witness W, T 3181.

[1448] Witness W, T 3180-3181; witness C testified that the houses were being set on fire on approximately 21 or 22 April 1993, witness C, T 862; witness X, T 3327; witness JJ, T 5004; exhibit PP 357 (confidential).

[1449] Witness W testified "Can you tell the Chamber, please, what was the condition of the houses in Sovi}i when you passed through the village at that time? A. But I was passing by Croat houses all the time. Q. Well, what was the condition of those houses? A. Well, naturally like today. Nobody ever touched them, not a bullet nor anything else" witness W, T 3179-3181.

[1450] Defence witness NN, T 12900, 12994.

[1451] Exhibit PP 344.

[1452] Exhibit PP 928, pp 74, 75,77.

[1453] Witness RR, T 6441-6459, while being taken from Orlovac to Kr~ine, saw the village on fire.

[1454] Witness JJ, T 5008; exhibit PP 357 (confidential).

[1455] Witness C, T 857.

[1456] Witness Falk Simang testified that KB set to fire all BH Muslim houses in Doljani after the death of Mario Hrka~(Cikota), witness Falk Simang, T 3809-3810. *See* also Rado{ Diary, exhibit PP 928, pp 78-79, where it is stated that after the death of Cikota on 20 April 1993, Tuta (Mladen Naletili}) ordered all Muslim houses in Doljani to be burnt down and that this continued at least until 22 April 1993.

[1457] Witness Y, T 3376 (confidential), Defence witness NE, T 11802 (confidential).

[1458] Witness AF, T 16132-16133. The Chamber finds witness AF's identification of Ivan Rogi} reliable as he testified that he knew Ivan Rogi} personally prior to 18 April1993 and knew that Rogi} had been a Judge and that he was the local HDZ leader. The Chamber finds witness AF's testimony reliable with regard to his description of the event and the presence of Ivan Rogi}. This evidence is corroborated by witness W, who testified that Ivan Rogi} was present and positively identified him, exhibit PP 56, witness W, T 3184.

day the commander of the ABiH in Sovi}i surrendered to the HVO,[1459] many soldiers refused to give up their weapons; a search for these soldiers house by house, and for weapons, was deemed necessary.[1460] The fighting, together with the mopping up of ABiH soldiers, continued through 19, 20, 21, and 22 April 1993.[1461] The area was thus under occupation beyond any reasonable doubt only by 23 April 1993.[1462]

588. The Chamber finds that it has not been proven that property was destroyed after 23 April 1993, *i.e,* after occupation was established. The destruction in this area is therefore not a violation of Article 2(d) of the Statute as a grave breach of the Geneva Conventions of 1949.

589. Article 3(b) of the Statute does not require the proof of the existence of a state of occupation to be applicable. The destruction was not justified by military necessity as it occurred both in Sovi}i and Doljani after the actual shelling had ceased.[1463] The Chamber is satisfied that the houses in Sovi}i and Doljani were destroyed in violation of the law or customs of war under Article 3(b) of the Statute.

590. The Chamber is not satisfied that Mladen Naletili} is responsible under Article 7(1) of the Statute. The report sent on 23 April 1993 to Slobodan Bo~i}, at the Defence Department of the HVO,[1464] reads: "?a?fter the cessation of the hostilities in the area, all Muslim houses were torched, two mosques destroyed according to the orders of senior commanders". This report, even seen in context of the Chamber's previous finding that Mladen Naletili} was in charge of the operation in Sovi}i and Doljani, is insufficient to find him responsible since the report could refer to other commanders than Mladen Naletili} and no further evidence was presented to prove that Mladen Naletili} ordered the destruction.

[1459] Witness A, T 547-548; witness Salko Osmi}, T 3125(confidential).
[1460] Defence witness NW, T 14982-14983; witness C, T 856-864; exhibit PP 928, p 73; exhibit PP 368.
[1461] *See* exhibits PP 314, PP 314.1, PP 314.2, on mopping up and arrest operations on 19 April 1993; Defence witness NN, T 12906; Defence witness NK, T 12624; exhibit P 928, Rado{ Diary, p 77; witness Falk Simang, T 3794-3796 (on the killing of Mario Hrka~ (^ikota) on 20 April 1993, apparently during a fighting around a bunker).
[1462] Exhibit PP 333. This report, signed on 23 April 1993 by the Head of the Defence Office in the Jablanica Municipality Marko Rožić, states that "?a?fter the armed conflicts in the settlements of Doljani and Sovi}i, the interrogation and arrest of *all members* of the ?ABiH?was carried out and civilians were collected in several places" (emphasis added). References to preparations of attacks on 23 April 1993 in the Rado{ Diary clearly refer to a further offensive towards Jablanica, exhibit PP 928, Rado{ Diary, p 81.
[1463] Houses in Sovi}i and Doljani were destroyed on a large scale after the actual shelling of the villages had ceased. The shelling of Sovi}i ceased on 18 April, while that of Doljani on 20 April 1993. The torching of the houses in Sovi}i occurred after 18 April 1993. In Doljani it occurred on 21 and 22 April 1993.
[1464] Exhibits PP 333, PP 333.1.

591. Mladen Naletili} is also charged with command responsibility under Article 7(3) of the Statute. As already found above, Mladen Naletili} had a command position in relation to the other HVO units involved in the Sovi}i and Doljani operation.[1465]

592. Witness D testified that everyone knew that it was the HVO, the HV and soldiers in black uniforms without insignia that were setting fire to BH Muslim houses.[1466] Based on this testimony, the Chamber is not satisfied that HVO soldiers were involved in the destruction.

593. Witness X testified how she and another woman were taken by a soldier named Robert to her house and that he spread fuel on the garage and that the other woman had been forced to set her own house on fire.[1467] The Chamber has previously found that Robert was a member of the KB.[1468] The Chamber finds that this testimony is not sufficiently clear and detailed in order to base a conviction on it only without further corroboration of involvement of either the HVO or the KB in the destruction of houses in Sovi}i, it cannot be the basis of a conviction.

594. Defence witness NW testified that while being involved in the military police patrols, members of the Gr|ani Battalion were caught setting fire to a couple of houses and that the commander of that unit together with the commander of the Mijat Tomi} Battalion arrived at the scene. Defence witness NW was not informed on how the commanders proceeded.[1469]

595. The Chamber finds that it has not been established that the HVO or the KB were involved in the destruction in Sovi}i. Therefore, Mladen Naletili} cannot be held responsible as a commander under Article 7(3) of the Statute.

596. With regard to the destruction in Doljani, witness Falk Simang, a former member of the KB, testified that the KB set fire to all BH Muslim houses in Doljani after 20 April 1993.[1470] However, Falk Simang testified that he had never heard of Sovi}i and was referring to Doljani throughout his testimony.[1471] His testimony is corroborated by the Rado{ Diary, which holds for 21 April 1993

[1465] *See supra* paras 127-132.

[1466] Witness D testified that "Q. Can you explain a little bit better what you mean by 'the burning of Muslim houses began'? Who did it and what exactly did they do? A. Hah. Well, who did it. Well, everybody knows who did that. Members of the HVO and the Croatian army did that, and soldiers wearing black uniforms. Q. And those soldiers wearing black uniforms, these were not soldiers from either the HVO or the HV? You didn't recognise those uniforms? A. They did not have any patches," witness D, T 908.

[1467] Witness X, T 3324-3327 (confidential).

[1468] *See supra* para 115.

[1469] Defence witness NW, T 14964-14965.

[1470] Witness Falk Simang testified that the houses were set on fire after the death of Mario Hrka~ (^ikota), which the Chamber is satisfied occurred on 20 April 1993, witness Falk Simang, T 3809-3810.

[1471] Witness Falk Simang testified "?a?nd can you tell me now whether you know where Sovi}i is? Have you ever heard of Sovi}i? A. Sovi}i? Q. You've never heard of the place? A. Sovi}i does not ring a bell with me," witness Falk Simang, T 3893-3894.

that "Tuta [Mladen Naletili}] ordered all Muslim houses in Doljani to be burnt down."[1472] The Chamber is satisfied that Mladen Naletili} ordered the destruction of the houses in Doljani and that he is responsible under Article 7(1) of the Statute. The Chamber is further satisfied that the destruction was carried out by KB soldiers under the command of Mladen Naletili}. Mladen Naletili} knew about the destruction, since he himself had ordered it; he did not prevent it and, therefore, he is also responsible under Article 7(3) of the Statute.

597. The Chamber finds Mladen Naletili} guilty of wanton destruction not justified by military necessity under Article 3(b) of the Statute in Doljani between 21 and 22 April 1993. He is responsible both under Articles 7(1) and 7(3) of the Statute. The Chamber finds the responsibility of Mladen Naletili} most appropriately described under Article 7(1) of the Statute (Count 20).

(ii) The destruction of BH Muslim houses in Ra{tani

598. The Prosecution alleges that, after the capture of the village of Raštani on 23 September 1993, Kolobara and Spli}o (soldiers of the KB under the command of Mladen Naletilic) deliberately set fire to a cluster of seven to ten BH Muslim houses known as the "Dumpor" houses.[1473]

599. One part of the village of Raštani, to the right of the electric plant, consisted of a hamlet of a few BH Muslim houses called "Dumporove ku}e" or "Dumpor" houses.[1474] It has been established that a cluster of the "Dumpor" houses was indeed destroyed,[1475] but it is to be determined whether this destruction occurred before or during the conflict on 23 September 1993 in the village of Raštani. On that day, there were houses burning in Raštani and there was perhaps the most intense shelling in the region during 1993.[1476]

600. The Prosecution relies upon the testimony of witnesses who were in Raštani on 23 September 1993.[1477] Prosecution witnesses testified that the "Dumpor" houses had been set on fire.[1478] However, one of the witnesses also testified that the houses were not "untouched",

[1472]Exhibit PP 928, Rado{ Diary, pp 78-79. The destruction continued at least until 22 April 1993, *see supra* para 585.
[1473]Prosecution Final Brief, p 165. The Prosecution relies, in particular, on Witness SS, who testified that a soldier Spli}o, carrying a 20 litre canister, set on fire the "Dumpor" houses. Witness SS stated that he did not remember if some of the houses were damaged by shelling, and that there were houses afire all over Raštani that day. He stated that when he saw the "Dumpor" houses they were intact. He further stated that the "Dumpor" houses were BH Muslim owned. Only one house was BH Croat. The BH Serb houses had been set on fire in 1992, witness SS, T 6601-6603, 6761-6762.
[1474]Witness SS, T 6601.
[1475]Witnesses VV, SS, M.
[1476]Witness VV, T 6912-6914.
[1477]Witness SS, witness VV, witness L, witness M.
[1478]Witness SS testified that he saw a soldier identified as Spli}o carrying a 20 litre canister. He did not remember whether some of the houses were damaged by shelling. Further, when he saw the "Dumpor" houses they were

implying that they had been partly destroyed before hand.[1479] Witness VV similarly testified that the "Dumpor" houses were already burnt down before 23 September 1993.[1480]

601. The Chamber finds that the Prosecution has not established beyond reasonable doubt that the "Dumpor" houses in Raštani were destroyed on 23 September 1993. In fact, there is reliable evidence indicating that the so-called "Dumpor" houses had been destroyed prior to 23 September 1993.

602. The Chamber is not satisfied that the allegations in relation to Raštani as set out in paragraph 58 the Indictment have been proven.[1481]

2. Count 22: Destruction of institutions dedicated to religion

(a) The law

603. The seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science constitute a violation of the law or customs of war under Article 3(d) of the Statute. In paragraph 56 of the Indictment, the Prosecution has charged the destruction of an institution dedicated to religion. The Chamber will only deal with this part of the offence. The *Kordi}* Trial Judgement and the *Bla{ki}* Trial Judgement have previously dealt with this offence.[1482] The *Blaškic* Trial Judgement adopted the following definition:

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intact, witness SS T 6601-6603, 6761, 6762. Witness M testified that the "Dumpor" houses were set on fire after having been searched, witness M, T 1685.

[1479] Witness M, T 1685.

[1480] Witness VV testified that upon reaching the "Dumpor" Houses in the afternoon, witness VV and witness L hid in the cellar of a house that had burnt down a long time before. In the "Dumpor" Houses, there were no ABiH soldiers as they had already withdrawn. The "Dumpor" Houses were already burnt down, maybe during the hostilities against the BH Serbs or it is possible that they were burnt down that day. There were some other houses on fire towards the Ra{ka Gora and those were new flames. Witness VV did not see anyone torching the houses, although he saw smoke and flames. He saw Kolobara walking around with a 10 -15 litre container. Witness VV did not see Kolobara torch anything, but he doused him. Witness VV did not see Spli}o. From the "Dumpor" Houses towards Pinjuh's Houses they could see thick smoke. The houses were they were then taken as prisoners had been burnt down some time before. The houses that were on fire would have been torched a couple of hours earlier. Witness VV did not know Raštani well and could not tell the ethnicity of the people who owned the houses on fire, witness VV, T 6914-6915, 6965-6966, 6998.

[1481] In any event, even if these allegations had been established, the Chamber wishes to state that the requirement of occupation is also necessary under Article 2(d) of the Statute. On 23 September 1993, the ABiH was withdrawing; the HVO had entered Ra{tani, and were searching houses for hidden ABiH soldiers; the fighting was still ongoing. No additional evidence was presented in order to prove that the HVO or HZ H-B had actual authority over Ra{tani. Therefore, the Prosecution has failed to prove the requirements for the property in Ra{tani to be considered protected under Article 2(d) of the Statute. This finding as such would be sufficient to conclude that the Prosecution has failed to prove the elements underlying count 19 of the Indictment.

[1482] In the *Kordi}* Trial Judgement it was held "[t]he offence appears, from the submissions of the parties, to be of a narrower scope than the one recognised by Article 3(d) of the Statute, in that no reference is made to the seizure of,

> ?t?he damage or destruction must have been committed intentionally to institutions which may clearly be identified as dedicated to religion or education and which were not being used for military purposes at the time of the acts. In addition, the institutions must not have been in the immediate vicinity of military objectives.[1483]

604. The Chamber respectfully rejects that protected institutions "must not have been in the vicinity of military objectives". The Chamber does not concur with the view that the mere fact that an institution is in the "immediate vicinity of military objective" justifies its destruction.[1484]

605. The Chamber considers that a crime under Article 3(d) of the Statute has been committed when:

i) the general requirements of Article 3 of the Statute are fulfilled;

ii) the destruction regards an institution dedicated to religion;

iii) the property was not used for military purposes;

iv) the perpetrator acted with the intent to destroy the property.

(b) The findings

606. The Prosecution alleges that, following the capture of the villages Sovi}i and Doljani in the municipality of Jablanica on 17 April 1993, Mladen Naletili} ordered the destruction of the mosque in Sovi}i.[1485]

607. There is no dispute that the mosque in Sovi}i was blown up and destroyed.[1486] The date of the destruction of the mosque is unclear; from the evidence presented at trial, however, the

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or destruction or damage done to, institutions of charity, the arts and sciences, works of art and science, or historic monuments", para 358. In the *Kordi}* Trial Judgement only a part of the offence was considered in detail.

[1483] *Blaškic* Trial Judgement, para 185. A similar definition was presented in the *Kordic* Trial Judgement, para 361: "?t?he destruction or damage is committed wilfully and the accused intends by his acts to cause the destruction or damage of institutions dedicated to religion or education and not used for a military purpose." In addition, in the *Kordi}* Trial Judgement further analysis was carried out in relation to provisions on which it seems this offence is based, paras 359–360: Article 27 of the Hague Regulations, protecting buildings dedicated to, *inter alia*, religion provided they are not being used at the time for military purposes and Article 53 of Additional Protocol I, concerning a prohibition against acts of hostility in relation to *inter alia*, places of worship. In addition, reference is made to Article 1 of the Cultural Property Convention which lists cultural property for protection.

[1484] This conclusion follows from Article 27 of the Hague Regulations.

[1485] Indictment paras 55, 56.

[1486] Naletili} Final Brief, p 33, states that "?t?he Defence does not dispute the Sovi}i mosque was blown up and destroyed, but there has not been evidence beyond reasonable doubt that this was accomplished under the command, order or direction of Naletili}". *See* also witness NN, T 12899-12900 and witness NW, T14965-14966, both testifying for the Defence of Mladen Naletili}. In the earlier stages of the trial the Defence seems to have argued that the mosque was not recognisable as a mosque, *see inter alia*, witness A, T 550-552.

Chamber is satisfied that the mosque was destroyed between 18 and 20 April 1993.[1487] Both the mosque in Sovi}i and the one in Doljani were destroyed.[1488]

608. The Chamber has not heard sufficient evidence in order to be satisfied as to who the perpetrators were. As already discussed above,[1489] the report sent on 23 April 1993 to Slobodan Bo~i}, at the Defence Department of the HVO reads: "?a?fter the cessation of the hostilities in the area, all BH Muslim houses were torched, two mosques destroyed according to the orders of senior commanders."[1490] Witness NW testified that the military police was called to investigate the destruction of the mosque in Sovi}i; nonetheless, he did not have any information on the results of such investigation.[1491] In the absence of further evidence of the involvement of Mladen Naletili}, the KB, or the HVO in the destruction of the mosque in Sovi}i, the Chamber is not satisfied that the Prosecution has proved the responsibility of Mladen Naletili} in this instance.

609. The Prosecution relies on the testimony of witness Falk Simang, a member of the KB, who testified that he saw members of the KB attach explosives to a mosque.[1492] However, Falk Simang testified that he had never heard of Sovi}i, and was referring to Doljani throughout his testimony.[1493] Further, the Rado{ Diary states that the KB mined the Doljani mosque.[1494]

[1487] Witness W testified that he learned in Ljubu{ki prison, *i.e.* after 18 April 1993, that the mosque had been destroyed, witness W, T 3180-3181. On 17 April 1993, the mosque was still intact, witness A, T 500. On 20 April, witness D heard a blast, and they later learned that the mosque had been destroyed; witness D, T 912 and T 945. Witness X could see the mosque burning from the Sovi}i school, witness X, T 3326, 3342 (confidential), in drawing conclusions form the rest of her testimony the day she saw the mosque burn was most probably 19 or 20 April 1993. Defence witness NW testified that the mosque was blown up on 18 April 1993, Defence witness NW, T 14965-14966. Witness B testified that during the night, he heard a very loud explosion and later he learned that the mosque had been blown up, witness B, T 790-791. Defence witness NN testified that the mosques in Sovi}i and Doljani had been blown up on 17, 18 or 19 May 1993, Defence witness NN, T 12899-12900, 12934 Witness Y testified that on 18 April 1993 he saw that the mosque was damaged, T 3389. Witness A testified that the mosque was not damaged on 17 April 1993, witness A, T 500-501; witness B, T 790-791. Exhibits PP 333 and PP 333.1 state that the mosque was destroyed after the hostilities.

[1488] Witness Said Smajki}, T 4086-4087; exhibits PP 333, PP 333.1. *See* also exhibit PP 6.6, which is an aerial photograph of the destroyed mosque in Sovi}i; exhibits PP 8.6, PP 8.7, which are aerial photographs of the destroyed mosque in Doljani.

[1489] *See supra* para 590.

[1490] Exhibits PP 333, PP 333.1.

[1491] Defence witness NW, T 14965-14966.

[1492] Witness Falk Simang, T 3808.

[1493] Witness Falk Simang, testified that he had never heard of Sovi}i, "?a?nd can you tell me now whether you know where Sovici is? Have you ever heard of Sovi}i? A. Sovi}i? Q. You've never heard of the place? A. Sovi}i does not ring a bell with me," witness Falk Simang, T 3893-3894.

[1494] Exhibit PP 928, Rado{ Diary, p 78, states that "Tuta ordered that all Muslim houses in Doljani be burned, because of the death of four members of the [iroki Brijeg Punishment Battalion. This must be done. They had mined the mosque themselves, it was no longer there". The Chamber is of the view that this testimony refers to the mosque in Doljani.

610. The Indictment in paragraph 56 only refers to the mosque in Sovi}i.[1495] The Chamber therefore makes no findings with regard to the reliability of witness Falk Simang's testimony or the Rado{ Diary relating to the alleged involvement of the KB and the accused Mladen Naletili} in the destruction of the mosque in Doljani.

F. Count 21: Plunder

611. The Prosecution alleges that following the attack on Mostar of 9 May 1993, the units under the command of Mladen Naletili} and Vinko Martinovi} systematically plundered BH Muslim houses and properties.[1496] These acts are charged under count 21, plunder of public or private property as a violation of the laws or customs of war pursuant to Article 3(e) of the Statute.

1. The law

612. The Tribunal has dealt with plunder in several cases.[1497] This crime has been defined as "wilful[1498] and unlawful appropriation of property",[1499] and, as enshrined in Article 3(e) of the

[1495] Indictment para 56 holds "?f?ollowing the capture of Sovi}i and Doljani on 17 April 1993, Mladen Naletili} ordered the destruction of the mosque of Sovi}i". Further, para 55 refers to "the destruction of all BH Muslim houses in the are" and is not referring to any other buildings than houses.

[1496] Indictment, paras 44, 57.

[1497] Plunder under Article 3(e) of the Statute has been dealt with by the following judgements: *Celebici* Trial Judgement, paras 584-592; *Bla{kic* Trial Judgement, para 184; *Jelisi}* Trial Judgement, paras 46-49; *Kordi}* Trial Judgement, paras 349-353.

[1498] The *Celebici* Trial Judgement, paras 587-592, does not explicitly discuss the subjective element of plunder; however, it mentions looting by soldiers for their private gain and systematic economic exploitation of occupied territory, both clearly implying intent, para 590. The *Bla{kic* Trial Judgement, para 184, asserts that plunder is "wanton appropriation", seemingly referring to the indifference to consequences for the victims rather than to a specific *mens rea* requirement. The *Kordi}* Trial Judgement, para 349, requires that property be acquired "*wilfully*". The *Jelisi}* Trial Judgement, para 48, requires appropriation to be "fraudulent", motivated by greed. The Chamber reads these judgements, restating the present state of international law on this issue, as meaning that *intent* in the appropriation of property is the necessary subjective element of plunder.

[1499] Unlawful appropriation of public or private property in armed conflicts has been variously referred to, and proscribed, as: (i) "Plunder" (*See* Article 6(b) of the Nüremberg Charter, considering "plunder of public or private property" as one of the war crimes coming within the jurisdiction of the Tribunal; Article 2(1)(b) of Control Council Law n. 10, recognising "plunder of public or private property" as a war crime; Article 3(e) of the Statute, which includes "plunder of public or private property" into the violations of the laws or customs of war); (ii) "Pillage" (*See* Article 47 of The Hague Regulations: "Pillage is formally prohibited"; Article 33(2) of the Geneva Convention IV: "Pillage is prohibited"; Article 4(f) of the ICTR Statute: "Pillage ?among the serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims and of Additional Protocol II thereto of 8 June 1977?); (iii) "Spoliation" (a synonym of "plunder" according to the *Flick* Case, in 6 Trials of War Criminals before the Nuerenberg Military Tribunals, pp 1205-1206 and to the *Krauch* Case, in 10 Law Reports of Trials of War Criminals, pp 42-47). Article 5(b) of the Tokyo Charter merely referred to "?V?iolations of the laws or customs of war". The ICC Statute lists, among punishable war crimes: "Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" among the grave breaches of the Geneva Conventions (Article 8(2)(a)(iv)); "Pillaging a town or place, even when taken by assault" under "Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law" (Article 8(2)(b)(xvi)). The Chamber will use the term plunder contained in the Statute.

Statute, it may affect both private and public property.[1500] The term is general in scope, comprising not only large-scale seizures of property within the framework of systematic economic exploitations of occupied territory[1501] but also acts of appropriation committed by individual soldiers for their private gain.[1502] In fact, under international law, plunder does not require the appropriation to be extensive or to involve a large economic value. Dispossession of personal property, a common way individual soldiers gain illicit booty, is considered a war crime of the more traditional type.[1503] Isolated instances of theft of personal property were treated as war crimes in a number of trials before French Military Tribunals[1504] and other courts[1505] following the Second World War although, in each instance, the overall value of the robbery was modest. Further, the Commentary on the Additional Protocols clarifies that "pillage" is prohibited whether organised or resulting from "isolated acts of indiscipline".[1506] A different question is whether plunder committed on a small scale fulfils the requirements of Article 3(e) in conjunction with Article 1 of the Statute, which states that the Tribunal "shall have the power to prosecute persons responsible for *serious* violations of international humanitarian law".[1507]

613. The *Kunarac* Trial Chamber held that the word "plunder" contained in the Statute would require a theft at least committed by at least one person; an interpretation apparently supported by the fact that "pillage" is often used as a synonym of "plunder".[1508] The Chamber concurs with the

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[1500] Article 3(e) of the Statute holds: "?t?he International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to: ?…? (e) plunder of public or private property".

[1501] Such proposition was apparently first presented in the *Krupp* Trial Judgement (10 Law Reports, pp 162-163). *See* also the decision by the General Tribunal at Rastadt of the Military Government for the French Zone of Germany in the case *In re Roechling and others*, reported in 15 Annual Digest and Reports of Public International Law Cases, 1948, p 408.

[1502] *Celebi}i* Trial Judgement, para 590, followed by the *Jelisi}* Trial Judgement, para 48, by the *Bla{ki}* Trial Judgement, para 184, and by the *Kordi}* Trial Judgement, paras 352-353.

[1503] *Celebi}i* Trial Judgement, para 590, citing the *United Nations War Crimes Commission* (15 Digest of Laws and Cases, Law Reports, p 130).

[1504] *See* the decisions by the Permanent Military Tribunal at Metz in the cases of *Alois and Anna Bommer and their daughters* (reprinted in 9 Law Reports of Trials of War Criminals, 1948-49, p 62), *August Bauer* (*id*., p 65), *Willi Buch* (*id*., p 65), *Elizabeth Neber* (*id*., p 65), *Christian Baus* (*id*., p 68), cited in the *Celebi}i* Trial Judgement, para 590.

[1505] *See*, among others: the decision by the Austrian Supreme Court of 1 October 1947 in the case *Austrian Treasury v. Auer*, reported in 14 Annual Digest and Reports of Public International Law Cases, 1947, p 276 (no distinction as to the amount of property apprehended); the decision by the Court of Appeals of Bologna (Italy) on 4 May 1947 in the case *Maltoni v. Companini*, reprinted in 71 Foro Italiano, 1948, I, p 1090 (seizure of two cows constitutes spoliation if, among other circumstances, no indemnity in cash is paid); the decision by the Court of Appeal of Norway of 4 March 1948 in the case *Johansen v. Gross*, reported in 16 Annual Digest and Reports of Public International Law Cases, 1949, p 481 (apprehension of one motor is illegal if procedures set forth in the Hague Regulations are not followed).

[1506] International Committee of the Red Cross, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, Geneva, 1987, annotation 4542.

[1507] Emphasis added.

[1508] *Prosecutor v. Dragoljub Kunarac, Radomir Kova~ and Zoran Vukovi}*, Cases No.: IT-96-23-T and IT-96-23/1-T, Decision on Motion for Acquittal, 3July 2000, paras 15-16. In para 16 the Chamber found that it would be "inappropriate to include within that term ?plunder? a theft from only one person or from only a few persons in ?…? one building".

legal findings in the *Kunarac* Decision of Motion for Acquittal if read to mean that *as far as the jurisdiction of the Tribunal is concerned*, plunder must involve grave consequences for the victims, thus amounting to a "serious violation".[1509]

614. The *Celebi}i* Trial Chamber stated that, in order for the dispossession to involve grave consequences for the victim(s), the property has to be of "sufficient monetary value".[1510] The Chamber finds that the seriousness of the violation must be ascertained on a case by case basis, taking into consideration the specific circumstances of each instance. Plunder may be a serious violation not only when one victim suffers severe economic consequences because of the appropriation, but also, for example, when property is appropriated from a large number of people. In the latter case, the gravity of the crime stems from the reiteration of the acts and from their overall impact.

615. The Chamber finds that Article 3(e) of the Statute proscribes plunder committed on the entire territory of the parties to a conflict. This is the current state of the law as codified in Geneva Convention IV, which indicates that the prohibition of pillage is not limited to acts committed in occupied territories.[1511]

616. Belligerent occupants[1512] may, in certain instances, lawfully subject private property in the occupied territory to their military needs. According to the Hague Regulations forcible contribution

[1509]Referring to the *Tadi}* Jurisdiction Decision, the *Celebi}i* Trial Judgement stated that for plunder to be considered a serious violation under Article 1 of the Statute, the apprehension of property should both (i) constitute a breach of a rule protecting important values and (ii) create grave consequences for the victim, *Celebi}i* Trial Judgement, para 1154.

[1510]*Celebi}i* Trial Judgement, para 1154 referring to *Tadi}* Jurisdiction Decision, para 94; followed by the *Kordi}* Trial Judgement, paras 352-353.

[1511]Pillage is prohibited by Article 33, under Section I of Part III of the Geneva Convention IV, containing "?p?rovisions common to the territories of the parties to the conflict and to occupied territories", referred to in the *Celebi}i* Trial Judgement, para 588.

[1512]The conditions for a regime of occupation must therefore be established before these exceptions apply.

of money,[1513] requisition for the needs of the army of occupation,[1514] and seizure of material obviously related to the conduct of military operations,[1515] though restricted, are lawful in principle.

617. Plunder as a crime under Article 3(e) of the Statute has been committed when:

i) the general requirements of Article 3 of the Statute, including the seriousness of the violation,[1516] are fulfilled;

ii) private or public property was appropriated unlawfully and wilfully.

2. The findings

618. Starting on 9 May 1993, as a consequence of the large offensive by the HVO on Mostar, the city experienced a period of lawlessness and violence. According to a number of witnesses, in fact, that day also marked the beginning of the looting of a high number[1517] of BH Muslim apartments and houses,[1518] which lasted at least until July 1993.[1519]

619. Witness U (a BH Muslim) testified that, on 9 May 1993, HVO units not engaged in combat were involved in evicting people and taking property; ten HVO soldiers entered his apartment and, while allegedly looking for weapons, took away some gold jewellery, a computer and other valuables.[1520] On that same day, seven armed men evicted Witness WW, her family and all BH

[1513]The Hague Regulations, Article 51, which reads "No contribution shall be collected except under a written order, and on the responsibility of a commander-in-chief. The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force. For every contribution a receipt shall be given to the contributors". On the application of this principle, *see*, among others, the decision by the Tribunal of Turin (Italy) of 11 July 1947 in the case *Ostino v. Fantini*, reprinted in 71 Foro Italiano, 1948, I, p 44.

[1514]The Hague Regulations, Article 52, which reads "Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country. Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied. Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible". On the application of this principle, *see*, among others, the decision by the French Court of Cassation of 6 July 1948 in the case *Soubrouillard contre Kilbourg*, reprinted in Gazette du Palais, 1948, II sem., p 163.

[1515]The Hague Regulations, Article 53 (2), which reads "All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of munitions of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made". On the application of this principle, *see*, among others, the decision by the Swiss Federal Tribunal (Chamber for the Restitution of Assets Seized in Occupied Territory) of 24 June 1948 in the case *P. contre A.G.K. et P.*, reprinted in 7 Annuaire Suisse de droit international, p 160.

[1516]Although proof of this element is necessary to establish jurisdiction of the Tribunal over plunder in each specific instance, and is therefore *in abstracto* a preliminary matter, it may not be logically dealt with until a decision on the other elements is made by the fact-finder.

[1517]Witness U, T 2927, 2928; witness AB, T 7859-7861; witness AC, T 7904-7912.

[1518]Witness U, T 2927, 2928; witness CC, T 4426. According to Defence witness MG some Muslim apartments in Mostar were spared from the looting, Defence witness MG, T 14214-14216. This fact is immaterial to the case.

[1519]Witness GG, T 4756; witness II, T 4962.

[1520]Witness U, T 2927-2928.

Muslims living in the same building from their apartments in the DUM area;[1521] on that occasion, Vinko Martinovi} ordered a soldier to drive away a car belonging to one of the neighbours of Witness WW.[1522]

620. Two reports by the Military Police in Mostar recount that, on 13 June 1993, Vinko Martinovi} with 40 armed soldiers was expelling BH Muslims from their apartments in the DUM area on Mladen Naletili}'s orders. During these expulsions, apartments were robbed; the looting did not stop even after the police had inquired into the situation.[1523] Witness GG was dispossessed of his car and other belongings by six HVO soldiers between the end of May and middle-June 1993 in the DUM area.[1524] Exhibits PP 456.4 and PP 458.1 show protests from the ABiH 4th Corps Commander Arif Pa{ali} for large evictions of civilians from the DUM area on 13 and 14 June 1993; the first of these documents also reports robbery from ousted people.[1525] Witness P testified that in the days before 14 June 1993 violent evictions of BH Muslim residents in Mostar involved robbery of private property.[1526] A memorandum by an international observer states that evictions of BH Muslims on 12 and 13 June 1993 took place in upper middle-class neighbourhoods where the most desirable properties were to be found. In particular, on 13 June 1993 around 5 p.m., thirty soldiers evicted BH Muslims from their apartments, and proceeded to take away the name-plates on the doors.[1527] An ECMM report of 14 June 1993 also corroborates these findings, describing expulsions and dispossession of apartments in the DUM and Vatikana areas of Mostar.[1528]

621. Between the end of July and 17 September 1993, Witness OO was repeatedly forced by the Vinko [krobo ATG, under the overall authority of Vinko Martinovi}, to carry looted household appliances in areas of Mostar far away from the combat zones of the Bulevar.[1529] Witness F testified that in the period between July 1993 and March 1994 he was once forced to loot apartments in an area under the responsibility of Vinko Martinovi}, loading the booty on trucks that soldiers would drive away. Vinko Martinovi}'s soldiers were there and he recognised Zubac, a

[1521]Witness WW, T 7083 (confidential).
[1522]Witness WW, T 7014-7021. When witness WW returned to her apartment around mid-June, she found it emptied of valuables, witness WW, T 7032. These testimonies are corroborated by witnesses participating in the attack on Mostar. Witness Falk Simang, a mercenary fighting in the KB, admitted that after the attack on Mostar KB soldiers drove BH Muslims out of their homes and took away all valuables they could carry, witness Falk Simang, T 3830. Witness Q, a Danish mercenary fighting with the Vinko [krobo ATG, described an instance when soldiers from his unit met at Mladen Naletili} headquarters and went to loot valuables in Muslim houses using civilian cars, witness Q, T 2375.
[1523]Exhibits PP 456.1, PP 456.2. The latter document explicitly defines the course of conduct by Vinko Martinovi} as "pillage".
[1524]Witness GG, T 4757 (confidential).
[1525]Exhibits PP 456.4, PP 458.1.
[1526]Witness P, T 2280-2281 (confidential).
[1527]Exhibit PP 456.
[1528]Exhibit PP 456.3.
[1529]Witness OO, T 5943.

subordinate of Martinovi}, acting as commander.[1530] According to witness II, Vinko Martinovi} was never present during the plunder and it was his subordinates, who chose the prisoners.[1531]

622. Witness Sulejman Had`isalihovi}, after being captured by the HVO on 25 June 1993,[1532] was forced by HVO soldiers to loot apartments in Mostar together with other prisoners, mostly at night.[1533] This testimony is consistent with the statement of witness AC that Baja and other men were taking property away at night from BH Muslim apartments.[1534] Witness F was forced to loot apartments after June 1993, loading the booty on trucks that soldiers would drive away.[1535] Witness II was frequently ordered by soldiers from the Vinko [krobo ATG to loot abandoned apartments between the end of July and December 1993.[1536] Witness AB testified that he was forced to loot apartments many times from mid-August 1993 onwards;[1537] in one of these instances, Vinko Martinovi} was present and, while not explicitly ordering the looting, did nothing to prevent or stop it.[1538]

623. According to witness SS, a prisoner working for the Vinko [krobo ATG, a portion of a private building in Mostar was emptied in order to set up a military headquarters around 7 July 1993.[1539] This instance might arguably constitute an exception to the general prohibition of plunder and destruction, due to the military needs underlying this appropriation of property. As noted above,[1540] appropriation of property under a regime of occupation is lawful in some instances. In this case, the Prosecution has failed to prove that the relevant area of Mostar was not under occupation by the HVO in the relevant period, or that the property was not used for military purposes. Therefore the Chamber is satisfied that turning the apartment into a military headquarters, seen in a more favourable light to the accused, may be defined as a "contribution in kind" from the population to satisfy the needs of the occupational forces, lawful under Article 52(1) of the Hague Regulations. No evidence was led as to whether the owners of the building received compensation. The Chamber will not deal with the personal responsibility of the accused for plunder in this incident.

[1530]Witness F, T 1106-1108.
[1531]Witness II, T 4962.
[1532]Witness Sulejman Had`isalihovi}, T 1222.
[1533]Witness Sulejman Had`isalihovi}, T 1247.
[1534]Witness AC, T 7912.
[1535]Witness F, T 1106.
[1536]Witness II, T 4962.
[1537]Witness AB, T 7867. The Prosecution Final Brief, p 121, refers instead to witness ZZ.
[1538]Witness AB, T 7880-7881.
[1539]Witness SS, T 6554-6556. The fact that the building identified by witness SS was used as a headquarters by Vinko Martinovi} is corroborated by witness M, T 1680.
[1540]*See supra* para 616.

624. The amount of evidence referring to plunder committed directly and indirectly by HVO units allows the Chamber to conclude that a general and systematic assault against BH Muslim civilian property was being carried out in connection with the military attack on Mostar since 9 May 1993. Although single instances of plunder, taken in isolation, may not reach the threshold of seriousness set out above in order to vest the Tribunal with subject matter jurisdiction,[1541] collectively they show a clearly serious pattern of plunder against a large part of the BH Muslim population in Mostar.

625. Neither of the accused has alleged the lawfulness of the taking of property from BH Muslim private individuals. The plunder did not involve property related to military operations or the needs of the occupant. Some of the evidence presented at trial explicitly refers to the planning of large-scale operations including plunder against BH Muslims.[1542] Other evidence points to systematic plunder due to the choice of BH Muslim apartments among possible targets as well as the means employed during the plunder.[1543] The Chamber is satisfied that private property was unlawfully appropriated in Mostar following the attack on 9 May 1993 in a systematic way. The Chamber is satisfied that property was chosen because of its monetary value, not its military usefulness.[1544]

626. The Chamber takes note of the fact that neither the Naletili} Defence nor the Martinovi} Defence seem to challenge that property was illegally apprehended from BH Muslims after the conflict broke out on 9 May 1993.[1545] Both submit, however, that plunder was carried on by impostors, that is civilians or soldiers from other areas pretending to be soldiers from the KB or the Vinko [krobo ATG in order to avoid facing responsibility for their acts.[1546] The Chamber accepts that, in some instances, events may have taken place as submitted. There is evidence that property was apprehended not only by HVO soldiers but also by civilians acting as gangs and trying to shift the blame on other persons.[1547] However, the fact that these criminal bands had a role in the looting does not preclude that the accused were involved as well.

627. With regard to the incidents occurring in the DUM area on 13 June 1993, it has been established that a large-scale operation of plunder, in connection with evictions, was carried out by soldiers acting under the supervision of Vinko Martinovi}. Vinko Martinovi} ordered the

[1541] *See supra* para 613.
[1542] Witness P, T 2280; witness AC, T 7904; exhibit PP 456.
[1543] Witness CC, T 4423; witness YY, T 7275-7276; exhibit PP 456.1.
[1544] *See* especially witness U, T 2927, witness WW, T 7032, witness F, T 1106; exhibit PP 456. An exception is the incident described in *supra* para 623.
[1545] This may be inferred from the arguments contained in Naletili} Final Brief, pp 59-61 and Martinovi} Final Brief, pp 42-44, based especially on Defence witness NO, T 13043; Defence witness Jadranko Martinovi}, T13779-13780.
[1546] Naletili} Final Brief, p 59-61; Martinovi} Final Brief, pp 42-44.

modalities of the evictions; such modalities included plunder of BH Muslim property in the neighbourhood. He organised his men during this operation and took no action even after police had inquired about the events.[1548] Vinko Martinovi} is therefore responsible under Articles 3(e) and 7(1) of the Statute.

628. Regarding the other plunder incidents, Vinko Martinovi} was present on some occasions when his soldiers committed acts of looting;[1549] sometimes explicitly organising how plunder should take place.[1550] On other occasions, apartments were looted by soldiers in areas under his responsibility[1551] and by soldiers subordinate to Martinovi} himself, even if he was not present on the spot.[1552] The evidence shows that Vinko Martinovi} knew that plunder was occurring in several instances during this period and failed to take the necessary and reasonable measures to prevent it or to punish the perpetrators.[1553] The Chamber finds him responsible of plunder in locations other than the DUM neighbourhood under Articles 3(e) and 7(3) of the Statute.

629. Witness Falk Simang testified that following the attack of 9 May 1993 on Mostar, Mladen Naletili}, together with Ivan Andabak and Mario Hrka~ (^ikota), was present when soldiers were loading looted goods to their cars after BH Muslims were evicted from their houses.[1554] Witness AC testified that soldiers from his unit, the Benko Penavi} ATG under the authority of Mladen Naletili},[1555] took part in the seizure of apartment keys and valuable objects from BH Muslims during the ethnic cleansing operations in Western Mostar (DUM, Zahum, Panjevina, Avenija).[1556] However, the Chamber does not find that, taken as a whole, the evidence submitted by the Prosecution allows a finding that Mladen Naletili} ordered the commission of plunder. He is, therefore, not responsible under Article 7(1) of the Statute.

[1547]Defence witness MN, for example, has testified that both soldiers and civilians (usually people from out of Mostar) looted apartments in the area of the town where he lived, Defence witness MN, T 14560.
[1548]Exhibit PP 456.1
[1549]Witness WW, T 7020; witness AB, T 7880. The Chamber has however not found that by 9 May 1993 the Vinko [krobo ATG was formally established; due to this uncertainty, and in favour of the accused, the incident recounted by witness WW will therefore not be regarded as a ground for responsibility under Article 7(3) of the Statute.
[1550]Witness OO, T 5943.
[1551]Witness F, T 1106-1108.
[1552]Witness F, T 1107; witness II, T 4962; witness OO, T 5943.
[1553]Witness AB, T 7880; witness Falk Simang, T 3830, witness Sulejman Had`isalihovi}, T 1249; exhibit PP 456.1.
[1554]Witness Falk Simang, T 3830.
[1555]Witness AC, T 7907.
[1556]Witness AC, T 7911-7912.

630. Plunder was carried out by HVO soldiers directly[1557] or forcing prisoners to do it for them.[1558] In this respect, Mladen Naletili} was giving specific orders as to the modalities of the operations.[1559]

631. Mladen Naletili} knew that this kind of operations was being carried out by soldiers under his authority since he was present in some instances of plunder.[1560] He was therefore put on notice, but disregarded his duties of taking reasonable measures to prevent plunder or punish the perpetrators. The Chamber finds Mladen Naletili} responsible for plunder committed in Mostar by the KB, including the Vinko [krobo ATG, pursuant to Articles 3(e) and 7(3) of the Statute.

G. Count 1: Persecution

632. The first count in the Indictment relates to persecution as a crime against humanity pursuant to Article 5(h) of the Statute. The Prosecution has charged different acts as persecution.[1561] Most of these acts have also been charged separately and have been dealt with previously. However, the Chamber will now consider the additional requirements necessary to determine whether those acts amount to persecution. The acts of unlawful confinement and detention, deportation and killings in the detention centres will be considered in greater detail, as these have not previously been addressed.

1. The law

633. The accused Vinko Martinovi} and Mladen Naletili} are charged under Count 1 with persecution as a crime against humanity pursuant to Article 5(h) of the Statute.

634. The crime of persecution has been analysed in various previous judgements of the Tribunal.[1562] The following elements must be proven to establish that persecution as a crime against humanity has been committed:

(i) The perpetrator commits a discriminatory act or omission;[1563]

[1557] Witness U, T 2927-2928; witness GG, T 4756.
[1558] Witness Sulejman Had`isalihovi}, T 1246; Witness II, T 4962; witness CC, T 4423-4426.
[1559] Exhibits PP 456.1, and PP 456.2. These exhibits are reports by two different officials at the Command of the HVO 1st Military Police Battalion in Mostar, alleging that soldiers participating in the operation were "Tuta's men" acting on "Tuta's orders." *See* also witness AC, T 7907-7911, stating that his unit, the Benko Penavi} ATG under the authority of Mladen Naletili}, was often divided into groups, one of which had the task to ethnically cleanse a portion of Mostar. Specific instructions were given that plunder of Muslim property was part and parcel of these cleansing operations.
[1560] Witness Falk Simang, T 3830.
[1561] Indictment, para 34.
[1562] *Tadi}* Trial Judgement, paras 694-713; *Kupre{ki}* Trial Judgement, paras 567-636; *Bla{ki}* Trial Judgement, paras 218-236; *Kordi}* Trial Judgement, paras 188-220; *Krsti}* Trial Judgement, paras 533-538; *Kvo~ka* Trial Judgement, paras 184-205; *Krnojelac* Trial Judgement, paras 431-436.

(ii) The act or omission denies or infringes upon a fundamental right laid down in international customary or treaty law;[1564]

(iii) The perpetrator carries out the act or omission with the intent to discriminate on racial, religious or political grounds;[1565]

(iv) The general requirements for a crime against humanity pursuant to Article 5 of the Statute are met.[1566]

635. It is settled in the jurisprudence of the Tribunal that discriminatory acts or omissions are not limited to those enumerated in other sub-clauses of Article 5 of the Statute but may also include a variety of other discriminatory acts or omissions which are laid down in Articles 2 or 3 of the Statute or which are not listed in the Statute at all.[1567] Acts or omissions that are not enshrined in Article 5 of the Statute must reach the same level of gravity as the crimes against humanity enlisted in Article 5 of the Statute,[1568] *i.e*. they must constitute a gross or blatant denial of a fundamental human right.[1569] Crimes under Articles 2 or 3 of the Statute or acts not enumerated in the Statute must be of the same gravity or severity, either "separately or combined", as the crimes enumerated under Article 5 of the Statute.[1570]

636. A discriminatory basis exists where a person is targeted on the basis of religious, political or racial considerations, i.e. for his or her membership in a certain victim group that is targeted by the perpetrator group. The Chamber concurs with the view expressed in the *Kvo~ka* Trial Judgement that the targeted group does not only comprise persons who *personally* carry the (religious, racial or

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[1563] *Tadi}* Trial Judgement, para 694; *Kupre{ki}* Trial Judgement, para 615; *Bla{ki}* Trial Judgement, para 218; *Kordi}* Trial Judgement, para 195; *Krsti}* Trial Judgement, para 535; *Kvo~ka* Trial Judgement, para 184; *Krnojelac* Trial Judgement, para 431.

[1564] *Tadi}* Trial Judgement, para 697; *Kupre{ki}* Trial Judgement, para 621; *Bla{ki}* Trial Judgement, para 220; *Kordi}* Trial Judgement, para 195; *Krsti}* Trial Judgement, para 535; *Kvo~ka* Trial Judgement (referring to the *Tadi}* and *Kupre{ki}* Trial Judgements), para 184; *Krnojelac* Trial Judgement, para 431-432.

[1565] *Tadi}* Trial Judgement, paras 711 and 712; *Kupre{ki}* Trial Judgement, paras 634 and 636; *Bla{ki}* Trial Judgement, para 235; *Kordi}* Trial Judgement, para 212; *Kvo~ka* Trial Judgement, para 194; *Krnojelac* Trial Judgement, para 431.

[1566] The general requirements for a crime against humanity are set out in *supra* paras 232-244.

[1567] *Tadi}* Trial Judgement, paras 703, 704, 710; *Kupre{ki}* Trial Judgement, paras 605, 614, 615; *Bla{ki}* Trial Judgement, paras 220, 227, 233; *Kordi}* Trial Judgement, para 194; *Krsti}* Trial Judgement, para 535; *Kvo~ka* Trial Judgement, para 185; *Krnojelac* Trial Judgement, para 433.

[1568] The *Tadi}* Trial Judgement acknowledged, in general terms, that "(t)here is, however, a limit to the acts which can constitute persecution within the meaning of crimes against humanity", para 707. The *Kupre{ki}* Trial Judgement specified that an act or omission not enlisted under Article 5 of the Statute should reach "the same level of gravity as the other acts prohibited under Article 5"; para 627. The *Kordi}* and *Krnojelac* Trial Judgements both referred to the definition of the *Kupre{ki}* Trial Judgement in this regard, *Kordi}* Trial Judgement; para 195; *Kronojelac* Trial Judgment, para 434. The *Krsti}* Trial Judgement held that such acts must be of "equal gravity or severity", para 535.

[1569] *Kupre{ki}* Trial Judgement, paras 621, 627; *Krnojelac* Trial Judgement, para 434.

[1570] *Kvo~ka* Trial Judgement, para 185.

political) criteria of the group. The targeted group must be interpreted broadly,[1571] and may, in particular, include such persons who are *defined by the perpetrator as belonging to the victim group due to their close affiliations or sympathies for the victim group*. The Chamber finds this interpretation consistent with the underlying *ratio* of the provision prohibiting persecution, as it is the perpetrator who defines the victim group while the targeted victims have no influence on the definition of their status. The Chamber finds that in such cases, a factual discrimination is given as the victims are *discriminated in fact* for who or what they are on the basis of the perception of the perpetrator.[1572]

637. In order to determine the severity of the discriminatory acts or omissions not listed under Article 5 of the Statute, they should be considered in their context and their cumulative effect, and not in isolation.[1573] In the jurisprudence of the Tribunal, various acts or omissions have already been acknowledged[1574] as discriminatory acts in the meaning of Article 5(h) of the Statute while others have been rejected.[1575] While this jurisprudence may render some guidance for the consideration of the severity of certain acts or omissions, the findings of the Chamber, will be made on a case-by-case basis on the merits of each individual persecution allegation, taking into account the particular context and details of the individual act or omission charged in the Indictment.

638. The crime of persecution is a crime requiring a specific intent of the perpetrator. He or she must willingly commit the act or omission and must carry it out with the specific intent to

[1571]The Chamber in the *Kvo~ka* Trial Judgement held that also persons suspected of being members of the targeted group are covered as possible victims of discrimination and that, thus, a BH Serb, targeted on suspicion of sympathising with BH Muslims, could be the victim of persecution. It further held that the discrimination element was met in cases where the victim was suspected of belonging to the targeted group, even if the suspicion later proved inaccurate, *Kvo~ka* Trial Judgement para 195.

[1572]The Chamber thus respectfully disagrees with the interpretation of the *Kvo~ka* Trial Judgement by the Chamber in the *Krnojelac* Trial Judgement where it held that the approach taken in *Kvo~ka* rejected the need for discriminatory consequences. The Chamber in *Krnojelac* found that the Statute does not expressly require that the discrimination take place against a member of the targeted group but that this is a necessary implication of the occurrence of an act or omission on a discriminatory basis; para 432. The Chamber generally agrees with the finding that the victim of persecution must be a member of the targeted group. It is, however, in disagreement with the overly narrow interpretation of the term "targeted group" apparently implied by the Chamber in *Krnojelac* as it appears to ignore the specific nature of the crime of persecution. In the view of the Chamber, a teleological interpretation of the element "discriminatory basis" demands to take into account the fact that the power to define the "targeted group" rests solely in the hands of the perpetrator group. If a certain person is defined by the perpetrator as belonging to the targeted group, this definition thus becomes "discriminatory in fact" for the victim as it may not be rebutted, even if such classification may be incorrect under objective criteria.

[1573]*Kupre{ki}* Trial Judgement, paras 615, 622; *Krnojelac* Trial Judgement, para 434.

[1574]The *Kvo~ka* Trial Judgement contains a list of acts that have been found to constitute persecutory acts in the jurisprudence of the Tribunal. These acts include, inter alia, murder, imprisonment, unlawful detention of civilians, deportation or forcible transfer, comprehensive destruction of homes and property, destruction of towns, villages and other public of private property and the plunder of property, trench-digging and the use of hostages and human shields, destruction and damage of religious or educational institutions; para 186 with further references.

[1575]The *Kordi}* Trial Judgement rejected "encouraging and promoting hatred on political etc. grounds" and "dismissing and removing BH Muslims from government" as persecutory acts in the meaning of Article 5(h) of the Statute since they do not rise to the "same level of gravity as the other crimes against humanity enumerated in Article 5," *Kordi}* Trial Judgement, paras 209, 210.

discriminate on racial, religious or political grounds.[1576] It is settled in the jurisprudence of the Tribunal that each of the three grounds listed in the Statute is in and of itself a sufficient basis for persecution, notwithstanding the conjunctive "and" in the text of the provision.[1577]

2. The findings

(a) Unlawful confinement and detention

639. The Prosecution alleges that persecution was carried out by, *inter alia*, unlawful confinement and detention of civilians.[1578] Subsequent to the attack in Sovici on 17 April 1993 Mladen Naletilic ordered his subordinates to arrest all of the BH Muslim adult males[1579] and several hundreds of BH Muslim civilians were forcibly interned in the local primary school on 18 and 19 April 1993. Following this, the whole of the BH Muslim civilian population of Sovi}i, around 450 women, children and elderly, were confined to the hamlet of Junuzovi}i.[1580] In relation to the attack on Mostar, it is alleged that "imprisonment of Muslim civilians started simultaneously with the HV and HVO attack of 9 May 1993 and continued until at least January 1994".[1581] Another allegation is that between April 1993 and at least January 1994, thousands of BH Muslim civilians were interned under HVO authority in detention centres in the area of Mostar and neighbouring municipalities.[1582]

640. The Naletili} Defence submits that the existence of the detention centres in itself is not a crime, and that Mladen Naletilic was not responsible for founding them, nor was in charge of them nor had any power to improve the conditions prevailing in the detention centres.[1583] It is argued that as it was not possible to verify who were ABiH soldiers, all BH Muslim civilians of military age were taken to the Heliodrom and other centres on 10 May 1993.[1584] It submits that those who were not soldiers were released after a short time while only members of the ABiH were detained further.[1585] The Naletili} Defence submits that the detainees were not captured by Mladen Naletilic or on his orders.[1586] It is further submitted that in relation to Sovici, the BH Muslim civilians

[1576] *Kupre{ki}* Trial Judgement, para 636; *Krnojelac* Trial Judgement, para 435.
[1577] *Tadi}* Trial Judgement, para 713. Several Trial Judgements, by using "or" instead of "and" when referring to the three discriminatory grounds in the context of Article 5 (h) of the Statute, have made clear that they follow the approach taken in the *Tadi}* Trial Judgement; *see Bla{ki}* Trial Judgement, para 235; *Kvo~ka* Trial Judgement, para 200; *Krnojelac* Trial Judgement, para 431.
[1578] Indictment, para 34.
[1579] Indictment, para 25.
[1580] Indictment, para 53.
[1581] Indictment, para 26.
[1582] Indictment, para 27.
[1583] Naletilic Final Brief, p 43.
[1584] Naletilic Final Brief, p 45.
[1585] Naletilic Final Brief, p 45.
[1586] Naletilic Final Brief, p 46.

moved voluntarily for mutual support and security.[1587] The Martinovi} Defence submits that the accused did not persecute BH Muslims, but instead protected his BH Muslim neighbours.[1588]

(i) The law

641. Article 2(g) of the Statute lists unlawful confinement of a civilian as grave breach of the Geneva Conventions of 1949.[1589] It may thus amount to persecution under Article 5(h) of the Statute when committed on a discriminatory basis and with discriminatory intent. The Appeals Chamber has confirmed in the *^elebi}i* Appeal Judgement that the confinement of civilians is unlawful (i) when a civilian or civilians have been detained in contravention of Article 42 of Geneva Convention IV, *i.e.,* they are detained without reasonable grounds to believe that the security of the Detaining Power makes it absolutely necessary and (ii) where the procedural safeguards required by Article 43 of Geneva Convention IV are not complied with in respect of detained civilians, even where their initial detention may have been justified.[1590]

642. "Detention" of civilians is not a crime contained in Article 5(h) of the Statute or listed in any provision of the Statute. Article 5(e) of the Statute lists "imprisonment" as a crime against humanity and the Chamber interprets the charge of the Prosecution "detention of civilians" to relate to the crime of imprisonment. In defining imprisonment, the *Krnojelac* Trial Judgement held that "any form of arbitrary physical deprivation of liberty of an individual may constitute imprisonment under Article 5(e) of the Statute as long as the other requirements of the crime are fulfilled".[1591] The Chamber further found that "prolonged and routine imprisonment and confinement" constituted persecution.[1592] The jurisprudence of the Tribunal provides that the organised detention of

[1587] Naletilic Final Brief, p 88.
[1588] Martinovic Final Brief, p 59.
[1589] The definition of unlawful confinement has been dealt with extensively in the *Celebi}i* Trial Judgement, paras 559-583) and in the *Kordi}* Trial Judgement, paras 274-292.
[1590] *^elebi}i* Appeal Judgement, para 322. The Appeals Chamber explicitly confirmed the finding of the Chamber that "the mere fact that a person is a national of, or aligned with, an enemy party cannot be considered as threatening the security of the opposing party where he is living, and is not, therefore, a valid reason for interning him"; para 327. It underlined that the Detaining Power is obliged to make an assessment "that each civilian taken into detention poses a *particular risk* to the security of the State" and must not detain the entire population of a party to the conflict; para 327.
[1591] *Krnojelac* Trial Judgement, para 112.
[1592] It was held "?t?his act is separately charged as imprisonment, a crime against humanity pursuant to Article 5(e) of the Statute, and as such is of sufficient gravity to constitute persecution. The Trial Chamber is satisfied that the imprisonment and confinement of non-Serbs at the KP Dom was carried out with the intent to discriminate on religious or political grounds. The Trial Chamber has already found that, during the time period relevant to this Indictment, non-Serbs were illegally imprisoned at the KP Dom and that this imprisonment was effected primarily or solely with the intent to discriminate against them because of their religious or political affiliations. The discriminatory nature of the imprisonment itself is clear from the evidence given. While some Serbs were also held in the KP Dom, they were held legally, having been convicted by courts of law prior to the outbreak of the conflict or having been detained for military offences during the conflict. By contrast, the non-Serbs were not detained on any legal ground, nor was their continued confinement subject to review," *Krnojelac* Trial Judgement, para 438.

civilians[1593] and infringements upon individual freedom[1594] may constitute persecution when committed with the requisite discriminatory intent.[1595]

(ii) The findings

a. Sovi}i and Doljani

643. The Prosecution alleges that the arrest of all of the BH Muslim adult men in Sovi}i was part of persecution.[1596] As previously found, HVO soldiers searched the houses in Sovici for soldiers and weapons on 17 April 1993, and eventually around 75 soldiers were captured.[1597] The captured men were then taken to the school in Sovici for questioning. In total, approximately 75 to 100 men were detained and sent to the Ljubu{ki prison. The arrested men were soldiers, who had been involved in the conflict in Sovici, and were taken as prisoners of war.[1598] This is a legitimate act under international law, wherein captured combatants are to be treated as prisoners of war that can be detained.[1599] Therefore these detentions cannot be considered as unlawful confinement of civilians or as an underlying act for persecution.

644. The Prosecution further alleges that several hundreds of BH Muslim civilians were forcibly interned in the local primary school on 18 and 19 April 1993, and that the whole of the BH Muslim civilian population, around 400 people, was confined to the hamlet of Junuzovici.[1600]

645. The BH Muslim civilian population of Sovici was taken by the HVO soldiers to a hamlet of houses that were not destroyed called the Junuzovici houses and were made to stay there.[1601] They were subsequently transferred to Gornji Vakuf, an area under the control of the ABiH.[1602] There were at least 400 civilians detained, approximately two weeks.[1603] In relation to the allegation of

[1593] *Kupreski}* Trial Judgement, para 629.

[1594] *Bla{ki}* Trial Judgement, para 220. "There is no doubt that ?…? infringements upon individual freedom may be characterised as persecution when ?…? they target the members of a group because they belong to a specific community. The Chamber considers that infringements of the elementary and inalienable rights of man, which are "the right to life, liberty and the security of person", ?…? the right not to be "subjected to arbitrary arrest, detention or exile" by their very essence may constitute persecution when committed on discriminatory grounds."

[1595] The *Bla{ki}* Trial Judgement stated "the unlawful detention of civilians, as a form of the crime of persecution, means unlawfully depriving a group of discriminated civilians of their freedom," *Bla{ki}* Trial Judgement, para 234. The *Kvo~ka* Trial Judgement stated that "confinement in camps under inhumane conditions can be included under sub-clauses (e) and (i) prohibiting "imprisonment" and "other inhumane acts" and also meets the definition of a persecutory act", *Kvo~ka* Trial Judgement, para 189.

[1596] Indictment paras 25, 34 (a).

[1597] For details of the attack on Sovici and the subsequent events, *see supra* paras 26-36.

[1598] For details of the attack on Sovici, *see supra* paras 26-36.

[1599] Article 21 of Geneva Convention III enshrines that the Detaining Power may subject prisoners of war to internment.

[1600] Indictment, para 53.

[1601] Witness X, T 3327-3329.

[1602] For details of the transfer of the BH Muslim civilians, *see supra* paras 521-531.

[1603] Witness C, T 866; witness D, T 917-918.

detention at the Sovici school, there is testimony of three civilians who were held there between 20 and 22 April 1993.[1604] There is also evidence in relation to the detention of approximately 60 elderly men in the Sovici school.[1605]

646. The Chamber has already found there was a widespread or systematic attack against civilians in Sovi}i.[1606] The Chamber is further satisfied that civilians from Sovici were detained collectively. The measure was directed only towards civilians of Muslim ethnicity. The confinement lasted a considerable amount of time. There is no indication that it was absolutely necessary for the security of the Detaining Power or that it was justified on any other legal basis.

647. The Chamber has already found that Mladen Naletilic was present in Sovici and that he planned and conducted the operation in the village.[1607] It has also been established that soldiers of the KB were present in Sovici. A witness testified that a group of soldiers in camouflage uniform with HVO insignia arrived in a blue van and said that they were "Tuta's army."[1608] Another witness stated that initially they were guarded by HVO who were neighbours, but that later a soldier told them that "Tuta's men" would guard them and to be careful.[1609] The soldiers introduced themselves as "Tuta's men" and had photos of Tuta on their car.[1610] A witness overheard a conversation between soldiers saying that they were to be shot.

648. It has already been found by the Chamber that there was a plan implemented in relation to the transfer of the civilians from Sovici.[1611] An essential part of the plan was the detention of the BH Muslim civilians, to be able to transfer them subsequently. The Chamber is satisfied that Mladen Naletilic was aware of this plan and acted according to it. The Chamber thus finds that he bears responsibility for the unlawful confinement of the civilians, under Article 7(1) of the Statute. Further, as the soldiers involved were under his command, he is also found responsible under Article 7(3) of the Statute. The Chamber finds that his responsibility is most appropriately described by Article 7(1) of the Statute.

[1604] Witness D, T 914; witness C, T 862-864; witness X, T 3327.
[1605] Exhibit PP 363, which is a SPABAT Canarias Tactical Group report dated 3 May 1993, stating that Sovici was visited and there were some 60 elderly men detained in the school building; exhibit DD1/426 is an order dated in the beginning of May 1993 stating that civilian prisoners in Doljani and Sovici should be released.
[1606] *See supra* para 238.
[1607] *See supra* para 117-132.
[1608] Witness X, T 3330.
[1609] Witness C, T 867-868.
[1610] Witness C, T 868, 898.
[1611] *See* section on unlawful transfer from Sovici, *supra* paras 521-531.

b. Mostar

649. On 9 May 1993, the HVO commenced an attack on Mostar.[1612] BH Muslim civilians - women, children and the elderly - were rounded up from their houses and evicted.[1613] They were intimidated, and were forced out of their homes at gunpoint, accompanied by blows from the soldiers and rifles. These BH Muslim civilians were targeted specifically, which is evident as their BH Croat neighbours were not made to leave their houses. Many of those evicted were subsequently detained.

650. The Chamber has already found, that BH Muslim civilians were transported to the Vele` Stadium in Mostar and then taken to the Heliodrom.[1614] The people who were arrested and detained were not given a reason for their detention.

651. The Chamber finds that the arrest and detention of the civilian population in Mostar was carried out on a discriminatory basis, as the BH Muslim population was targeted specifically while their Croat neighbours were left unharmed. It was unlawful since there was no legal basis for this measure.

652. The Chamber finds that Vinko Martinovic is responsible under Article 7(1) of the Statute in regard to the events in Mostar on 9 May 1993. A witness testified that on 9 May 1993, some people knocked on her door and asked for her and her husband's name. They were called "balija" and were taken to the Heliodrom. Among the men involved in taking them to the Heliodrom were Vinko Martinovic, Ernest Taka~ and Dolma.[1615] Vinko Martinovic was in charge of the operation and was giving orders to Taka~ and the others.[1616] Another witness testified that on the same day, he was evicted with his family by soldiers with automatic rifles. They included Pehar, Dolma and Vinko Martinovic.[1617] Vinko Martinovic was personally involved in the rounding up of the BH Muslim civilian population of Mostar, ordering and aiding and abetting their detention at the Heliodrom. The Chamber is satisfied that he possessed the intent to discriminate against the BH Muslim part of the population in Mostar. The Chamber thus finds that he is responsible under

[1612] For details of the attack and the evidence relied upon in this section, *see supra* paras 39-51.
[1613] Witness U, T 2926; witness MM, T 5737-5738; witness WW, T 7019; witness GG, T 4746. For details, *see supra* paras 42-48 relating to the attack on Mostar.
[1614] *See supra* paras 44-45.
[1615] Witness WW, T 7016. Witness WW knew Vinko Martinovic from before as he was the main person of the HOS, when the JNA was there and attacked Mostar, witness WW, T 7018.
[1616] Witness WW, T 7051.
[1617] Witness GG, T 4744-4746.

Article 7(1) of the Statute. He is not responsible as a commander pursuant to Article 7(3) of the Statute as the Vinko [krobo ATG had not yet been founded on 9 May 1993.[1618]

653. In relation to Mladen Naletilic, evidence has been adduced that he was seen at the Heliodrom on numerous occasions,[1619] and that he questioned prisoners there.[1620] The Chamber is not satisfied on the basis of this evidence that he also participated in the arrest and detention of the BH Muslim civilians at the Heliodrom. His ability to have access to the detainees at the Heliodrom does not necessarily imply any authority over their detention or the conditions thereof. No evidence has been adduced to prove that Mladen Naletili} knew or had reasons to know about the involvement of the Vinko [krobo ATG in the detention. Hence, the Chamber finds that the Prosecution has not established that Mladen Naletilic bears any responsibility relating to detention of BH Muslim civilians in the Heliodrom.

c. Ljubu{ki

654. A prison for captured BH Muslim civilians and former ABiH soldiers was operational in Ljubu{ki, a town 26 kilometres Southwest of Mostar, at least from April 1993[1621] to March 1994.[1622] The prison also hosted BH Croatian HVO soldiers, who enjoyed a better treatment and a certain degree of freedom, which they used to mistreat BH Muslim civilians and soldiers.[1623] The prison was manned by policemen.[1624]

655. As a consequence of the military conflict ensued on 17 April 1993, many people with rather different personal backgrounds were detained at Ljubu{ki. There were defenders of Sovi}i, Doljani and the Jablanica area,[1625] as well as of the Vranica building in Mostar[1626] who had surrendered or had been otherwise captured.[1627] The Chamber is convinced that the KB, and the Vinko [krobo ATG, actively participated in securing some of these soldiers so that they could be detained in

[1618] *See supra* para 102.
[1619] Witness A, T 513-515; witness H, T 1314-1315.
[1620] Witness Z, T 3544-3545 (confidential); witness FF, T 4684-4689 (confidential).
[1621] Witness RR, T 6459; witness W, T 3192; witness Y, T 3392; witness A, T 510-511.
[1622] Witness O, T 2155; witness VV, T 6949.
[1623] Witness VV, T 6933, stating that "[t]here were HVO prisoners too, but they were in another wing, and their cells were open so that in daytime they could walk around the compound, around the prison compound. One of them had the keys to our cells, and he locked us up and opened it and on a number of occasions he ill-treated me, beat me, and so on".
[1624] Witness HH, T 4902; witness DD, T 4474-4475.
[1625] Witness Salko Osmi}, T 3136-3137; witness W, T 3175-3178; witness RR, T 6441-6446; witness UU, T6822; witness BB, T 4254-4257.
[1626] Witness AA, T 3659-3660, 3691; witness CC, T 4368; witness TT, T 6645.
[1627] Defence witness NN confirmed that the ABiH soldiers who surrendered on 17 April 1993 were taken by a military police platoon to the military prison in Ljubu{ki, Defence witness NN, T 12894, 12934; *see* also exhibit PP 333, Report of 23 April 1993 from Marko Roži}, Head of Defence Office Jablanica Municipality to Slobodan Boži},

Ljubu{ki.[1628] As already found, the Chamber is satisfied that combatants may lawfully be detained by the enemy, according to international law.[1629] No evidence has been adduced that would prove that their detention was discriminatory in nature.

656. There were however also non-combatants, such as witness O, witness QQ, and witness FF, kept in detention.[1630] These BH Muslim civilians were imprisoned without explanation[1631] or serious interrogation,[1632] sometimes with the excuse of a mock trial.[1633] The evidence shows that many of them were prominent exponents of the BH Muslim community, arrested mainly because of their position in the Bosnia-Herzegovina society at that time. Such prominent members of the BH Muslim community were witnesses O[1634] and FF[1635], apparently detained for the same reason. Witness O also recounted that he met co-detainees who were physicians, lawyers, economists, and a pilot in Ljubu{ki.[1636] A pilot is also cited by witness DD.[1637] A professor arrived at Ljubu{ki prison together with witness BB[1638], and witness FF mentioned two journalists and a former judge among the detainees.[1639] Witness VV testified that among the 80 prisoners, there were members of the army, police and members of the SDA party.[1640] These testimonies are further corroborated by a letter of 3 February 1994 from President Izetbegovi} to the government of Croatia identifying "with certainty" 51 BH Muslim public figures imprisoned in Ljubu{ki.[1641]

657. The Chamber is satisfied that detention of BH Muslim civilians at Ljubu{ki was unlawful and grounded on a discriminatory basis. The confinement of prominent members of the BH Muslim community was conducted systematically, undermining the vitality and the possibility of physical and moral resistance of that part of the population. It only concerned the BH Muslim part of the population.

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personally, at Defence Department, HVO, HZ H-B, Number 02-106/93, stating that 94 military conscripts were sent to Ljubu{ki Prison. *See* also Naletili} Final Trial Brief, p 26.

[1628] Witness Salko Osmi}, T 3132-3136; witness RR, T 6458; witness TT, T 6645.

[1629] *See supra* paras 642. *See* also Article 21 of Geneva Convention III.

[1630] Among the civilians, witness FF arrived at the detention centre around mid-May 1993. Witness QQ arrived in June and Witness O in August.

[1631] Witness QQ, T 6185-6186, 6194; witness FF, T 4677-4679; witness DD, T 4469.

[1632] Witness FF, T 4684-4686.

[1633] Witness O, T 2148-2150.

[1634] Witness O, T 2122, 2134.

[1635] Witness FF, T 4669-4670.

[1636] Witness O, T 2151.

[1637] Witness DD, T 6195(confidential).

[1638] Witness BB, T 4258-4261.

[1639] Witness FF, T 4678-4679.

[1640] Witness VV, T 6930.

[1641] Exhibit PP 745.1. The Prosecution alleges that "81 Muslim religious and public figures" are identified in the document.

658. Mladen Naletili} was present on some occasions in Ljubu{ki prison[1642] and he even used some prisoners from this detention centre as labour force for construction works.[1643] A hand-written letter attached to exhibit PP 314.2 shows a request by Mladen Naletili} to release a certain Feriz Januzovi} and his father from Ljubu{ki. On the back of the document a note reports that the former was then released, while the latter was hospitalised. Vinko Martinovi} personally brought at least one civilian to Ljubu{ki.[1644]

659. The Chamber is not satisfied that Vinko Martinovi} and Mladen Naletili} had any authority over the detention facility at Ljubu{ki. It has been proven that the KB could force some prisoners to work for them on certain occasions and that KB soldiers could access Ljubu{ki prison and beat the prisoners held there.[1645] The Chamber also accepts that Mladen Naletili}, based on his reputation and charisma, could, if he wished, trigger the release of prisoners because of their personal ties with him or with his soldiers. The Chamber is, however, not satisfied that these specific instances show a general authority of Mladen Naletili}, or subordinates commanders, like Vinko Martinovi}, over the civilian prisoners in Ljubu{ki prison. The Chamber thus finds that the Prosecution failed to establish that Mladen Naletili} and Vinko Martinovi} bear criminal responsibility for the detention of BH Muslim civilians at Ljubu{ki prison.

d. Other detention centres

660. The Prosecution charges that BH Muslim civilians were also detained at other locations. These are "detention centres located in the municipality of Li{tica-Široki Brijeg, such as the Primary School of Dobrkovici, the MUP Police Station, and the bases of the KB in Li{tica – Široki Brijeg, Ljubuški and Mostar where Bosnian Muslims were also detained".[1646]

661. The Chamber has already found that the evidence adduced with regard Dretelj and the Primary School of Dobrkovici is insufficient.[1647]

662. In Široki Brijeg, people were detained at two detention centres: the MUP Station and the Tobacco Station.[1648]

[1642]Witness HH, T 4809-4810, apparently testifying that in May 1993 Naletili} visiting the camp.
[1643]Witness FF recounted that Mladen Naletili} came because he needed work force to finish the construction of a swimming pool, witness FF, T 4682-4683. *See* also witness BB, T 4260-4263.
[1644]Witness BB, T 4258, testifying that a professor told him that he was brought there by [tela and his men.
[1645]Witness Y, T 3393-3399.
[1646]Indictment, para 31.
[1647]The Prosecution has submitted that there is no evidence of direct involvement of the KB in detentions at Dretelj, Prosecution Final Brief, p 125. The Prosecution submits only hearsay evidence in relation to the Primary School of Dobrkovici, Prosecution Final Brief, pp 131-132.
[1648]*See supra* paras 56, 395-413.

663. BH Muslim men were brought to the MUP station after the attack of 9 May 1993 on Mostar. All men of military age were taken from the Vranica building to the Tobacco Institute and then to the MUP Station in Široki Brijeg.[1649] However, the evidence presented does not indicate that there were civilians present at these centres. Most of the detainees were former ABiH soldiers from the Vranica building, who were prisoners of war. The Prosecution has adduced insufficient evidence to find that there were also civilians among those prisoners.

664. While many of the detainees were, subsequent to their detention at the MUP station in Široki Brijeg or in Ljubu{ki, transferred to the Tobacco Station in Široki Brijeg, there is also no clear evidence in relation to the detention of civilians at the Tobacco Station.

665. The Chamber is not satisfied that BH Muslim civilians were detained at the MUP Station and the Tobacco Station in [iroki Brijeg and thus finds that this charge has not been proven.

(b) Conditions at the Heliodrom

666. In paragraph 29 of the Indictment, the Prosecution has also charged the inhumane conditions at the Heliodrom as persecutory act.

667. The Prosecution adduced evidence in relation to the conditions of detention at the Heliodrom. The detainees were at times not fed for two or three days as a punishment at the Heliodrom.[1650] Witness II testified that the detainees could take a shower and were given two meals a day consisting of a 750 gram loaf of bread, beans during the day, and tea or coffee in the morning with milk.[1651] The living conditions at the Heliodrom were harsh through overcrowding and bad hygienic conditions.[1652] In the gymnasium, there were around 700 people detained and there were only two taps, and the toilets were blocked.[1653] In the central prison, 105 persons were detained in a room of 70 square metres and were not given any food for the first few days.[1654]

668. No evidence has been adduced by the Prosecution to show that Mladen Naletili} was responsible for the conditions prevailing at the Heliodrom or that he had any power to improve them. The Chamber thus finds that Mladen Naletilic does not bear any criminal responsibility for conditions of detention at the Heliodrom.

[1649]Witness AA, T 3661, 3678.
[1650]Witness F, T 1100-1103; witness K, T 1575-1578; witness SS, T 6620-21; witness RR, T 6509-6510.
[1651]Witness II, T 5122; witness H, T 1298-1300; witness SS, T 6620-6621; witness XX, T 7119.
[1652]Witness U, T 2952-2953; witness H, T 1298-1299.
[1653]Witness H, T 1298-1299.
[1654]Witness GG, T 4750-4751.

(c) Forcible transfer and deportation

669. Paragraphs 25 and 26 of the Indictment charges persecution as a crime against humanity under Article 5(h) by means of "forcibly transferring and deporting Bosnian Muslim civilians"[1655] in. These acts were also charged separately under count 18 as unlawful transfer of a civilian as a grave breach of the Geneva Conventions of 1949 and have been considered by the Chamber accordingly.[1656]

670. Deportation has not been charged separately and has therefore not been considered by the Chamber previously. The jurisprudence of the Tribunal has found that deportation requires transfer beyond state borders, to be distinguished from forcible transfer, which may take place within national borders.[1657] The acts described in the Indictment do not contain any allegations of transfers across any state boarder, nor has any evidence been led to that effect. Therefore, the Chamber finds that there is no basis to find that persecution was conducted by means of deportation.

671. The Chamber has found that Mladen Naletili} was responsible for the forcible transfer of at least 400 civilians from Sovi}i and Doljani on 4 May 1993. The transfers were effected on discriminatory grounds since only BH Muslim civilians were targeted. The Chamber is satisfied that these transfers amount to persecution pursuant to Article 5(h) of the Statute and that Mladen Naletili} bears individual criminal responsibility under Article 7(1) of the Statute. The Chamber has already found that Mladen Naletili}, as he himself expressed to witness LL, pursued the goal of expelling the BH Muslim part of the population from the area. He thus acted with discriminatory intent.[1658]

672. In relation to the unlawful transfers in Mostar, the Chamber has found Vinko Martinovi} responsible under Article 7(1) of the Statute for the unlawful transfer of BH Muslim civilians to the Heliodrom. It also found him responsible under Article 7(1) of the Statute for the unlawful transfer of BH Muslim civilians from the DUM area on 13 June 1993 and from the Centar II area in West Mostar on 29 September 1993 to East Mostar. The Chamber has further found that Mladen Naletilic bears responsibility under Article 7(3) of the Statute for the unlawful transfer on 13 June and 29 September 1993.[1659] The forcible transfers were carried out on discriminatory grounds as

[1655] Indictment, para 34.
[1656] *See supra* paras 512-571.
[1657] *Krsti}* Trial Judgement, paras 519, 521; *Krnojelac* Trial Judgement, para 474; *Bla{ki}* Trial Judgement, para 234.
[1658] Witness LL, T 5218-5219.
[1659] *See supra* paras 557-558 and 566. The underlying persecutory act of forcible transfer as a crime against humanity may be proved even if not all the requirements of grave breaches of the Geneva Conventions of 1949 in Article 2(g) of the Statute are met, as the transfer is not restricted to transfers from or within occupied territory but includes all transfers when persons are moved from the place where they are lawfully present. In *Krnojelac* Trial Judgement, para 111, the Chamber found that "as a crime against humanity, the definition of imprisonment is not restricted by

BH Muslims were selected and forced out of their homes while their BH Croat neighbours were allowed to stay. The forcible transfers were part of a well-organised campaign aimed at removing the BH Muslim civilian population from the West bank of Mostar. Both accused were aware of and participated in this campaign. The fact that Vinko Martinovi} may have protected some BH Muslims does not deviate from the fact that forcible evictions of other BH Muslims were carried out by him with a discriminatory intent. The Chamber is satisfied that these acts amount to persecution pursuant to Article 5(h) of the Statute. Vinko Martinovi} bears individual criminal responsibility under Article 7(1) of the Statute. The Chamber finds that Mladen Naletili} has command responsibility under Article 7(3) of the Statute.

(d) Torture, cruel treatment and wilfully causing great suffering

673. Paragraphs 33 and 34(b) of the Indictment charge Mladen Naletili} and Vinko Martinovi} with "subjecting BH Muslims to torture and inhumane acts, inhuman and cruel treatment?…?, wilfully causing them great suffering" as persecution. These acts have also been charged separately under Counts 9 and 10 (torture as a crime against humanity and torture as a grave breach of the Geneva Conventions) and under Counts 11 and 12 (cruel treatment as a violation of the laws or customs of war and wilfully causing great suffering or serious injury to body or health as a grave breach of the Geneva Conventions) and have been considered by the Chamber accordingly.[1660] The Chamber will now consider whether any of those incidents charged amount to acts of persecution, punishable pursuant to Article 5(h) of the Statute.

674. The Chamber has already found that Mladen Naletili} bears individual criminal responsibility for the torture of witnesses TT, B and Fikret Begi} and for the cruel treatment and wilfully causing great suffering to witness Salko Osmi} at the fishfarm in Doljani on 20 April 1993 (paragraph 46 of the Indictment).[1661] It has also been established that he bears command responsibility for the beating of prisoners at the fishfarm by soldiers of the KB. The Chamber finds that it has not been established that any of the incidents were carried out on discriminatory grounds. The interrogations were conducted by Mladen Naletili} in the aftermath of the attack on Sovi}i. It is clear from the evidence that with regard to the interrogation of Fikret Begi} and witness B, Mladen Naletili} tried to obtain information for military purposes. Regarding the torture of Fikret Begi} and witness TT, the evidence proves that Mladen Naletili} intended to punish the two

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the grave breaches provisions of the Geneva Conventions. The Trial Chamber is thus not satisfied that imprisonment as a crime against humanity can only be established if the requirements of unlawful confinement pursuant to Article 2 are met." The Chamber finds that the same principle applies in relation to forcible transfer.

[1660] *See supra* paras 345-456.

[1661] *See supra* paras 366-369.

members of the ABiH in Sovi}i for their alleged participation in the killing of KB soldiers. With regard to the beating of other prisoners at the fishfarm by KB soldiers, the Chamber also finds that the evidence proves that they were conducted in revenge for the fierce fighting that went on in Sovi}i the days before. The incidents charged under paragraph 46 of the Indictment thus do not amount to persecution pursuant to Article 5(h) of the Statute.

675. The Chamber has already found that Mladen Naletili} committed cruel treatment and wilfully caused great suffering pursuant to Articles 2(c) and 3 of the Statute when he hit witness "M" (aka witness AA) with his Motorola and sentenced him to death on 10 May 1993 in the streets of Mostar (paragraph 48 of the Indictment).[1662] The Chamber finds that the incident was not carried out on discriminatory grounds. The evidence shows that witness AA was singled out and mistreated because he was considered to have turned his weapons against the BH Croats when the conflict broke out in Mostar. The beatings were administered as a punishment for being a "traitor" to the BH Croat people and not with the intent to discriminate on political, racial or religious grounds. The incident charged under paragraph 48 of the Indictment does thus not amount to persecution pursuant to Article 5(h) of the Statute.

676. With regard to paragraph 49 of the Indictment, the Chamber found that the beating incidents of BH Muslim civilians in the course of evictions have been established but that they do not possess the requisite seriousness to amount to cruel treatment or wilfully causing great suffering pursuant to Articles 2(c) and 3 of the Statute. The Chamber finds, however, that they are sufficiently serious to amount to acts of persecution as a crime against humanity pursuant to Article 5(h) of the Statute by virtue of the context in which they occurred. The Chamber took into consideration that the mistreatment of witness WW and her neighbour by Vinko Martinovi} was conducted while the victims were forcibly thrown out of their homes, in an atmosphere of terror, fear and uncertainty of what to expect next. The mental harm was inflicted on the victims on discriminatory grounds, since only the BH Muslim population of Mostar was forcibly evicted and mistreated. The Chamber finds that the mistreatment of BH Muslim civilians in the course of their evictions amounts to persecution pursuant to Article 5(h) of the Statute.

677. Paragraph 49 of the Indictment also charges Vinko Martinovi} with beatings of BH Muslim detainees in the area under his command. The Chamber has found that it has been proven that Vinko Martinovi} is responsible under Article 7(1) of the Statute for beating BH Muslim detainees at his headquarters and at the frontline on the Bulevar.[1663] The Chamber finds that for none of the incidents established, evidence has been led that would prove that they were carried out on

[1662] *See supra* para 379.

discriminatory grounds. According to the evidence, these beatings occurred randomly and without a specific religious, political or racial background. The Chamber thus finds that these incidents do not amount to acts of persecution pursuant to Article 5(h) of the Statute.

678. Paragraph 50 of the Indictment charges Mladen Naletili} and Vinko Martinovi} with command responsibility for beatings administered by their subordinates to prisoners at various detention camps and KB bases. The Chamber has already entered its findings above.[1664] Regarding the beatings that occurred in front of the Vranica building in Mostar,[1665] the Chamber finds that no evidence has been adduced to prove that these beatings were anything else than random revenge acts carried out in the aftermath of the attack on Mostar. The same finding applies with regard to the beatings of prisoners that occurred at the MUP Station in [iroki Brijeg.[1666] They concerned some of the same individuals who, as participants in the conflict, had already been victim of reprisal acts on their way to the MUP Station or in Mostar. Witness VV, an ABiH soldier captured in Ra{tani was beaten by KB soldiers in his cell a few days after his capture. He was victim to a revenge act for his participation in the conflict in Ra{tani. The Chamber is further not satisfied that the beatings in the Tobacco Station in [iroki Brijeg were carried out on discriminatory grounds. While in some instances, the victims were interrogated with regard to military and monetary questions,[1667] others were victims of revenge actions for having participated in the conflict.[1668] There is no evidence to indicate that any of the beatings were committed on racial, political or religious grounds.

679. The Chamber is satisfied that the beatings of Rudolf Jozeli} at Ljubu{ki prison[1669] were carried out with discriminatory basis. Jozeli} was an ethnic BH Croat, married to a BH Muslim woman and member of the ABiH. Ernest Taka~, one of the main perpetrators, told witness FF that he and other soldiers came to Ljubu{ki prison "to beat up balijas and to drink balija blood". The term "balija" is a derogatory term for BH Muslims, carrying religious connotations. Jozeli} was forced to sing the Croatian anthem, was beaten and told that traitors were not allowed to do so. He was made to pray the Muslim way although he himself was Christian. The Chamber is thus satisfied that Jozeli} was mistreated on religious and political grounds and that the incident amounts to persecution pursuant to Article 5(h) of the Statute. The Chamber finds that the evidence is not

[1663] *See supra* para 389.
[1664] *See supra* paras 390-440.
[1665] *See supra* paras 393-394.
[1666] *See supra* paras 395-405.
[1667] This applies for the beating of witnesses CC and BB, see *supra* para 408.
[1668] This applies for witnesses L and VV; *see supra* paras 409-410.
[1669] *See supra* paras 419-420 and 427.

clear as to the grounds on which the beatings of witnesses Z, Y and H were administered[1670] and that on this basis, it has not been established that they amount to persecution pursuant to Article 5(h) of the Statute.

680. The Chamber finds that most of the beatings that took place at the Heliodrom were not carried out on discriminatory grounds. The continuous beating of witness Y in various detention centres, including the Heliodrom, was revenge for the role he played in the conflict in Sovi}i.[1671] The assault on the young prisoner in the cell of witness UU by Juka Prazina's dog also was a revenge action for his involvement in the fighting. Witness UU testified that Prozor was mentioned when the victim was yelled and cursed at.[1672] The only incident in the Heliodrom carried out on the ground of religious discrimination is the beating of witness H who was brutally beaten and then ordered to assume the BH Muslim praying position after having filed a letter with the warden, asking for permission for the detainees to pray on the Muslim religious holiday of Bajram.[1673] While the Chamber is satisfied that discriminatory grounds have been established for this incident, however, the perpetrators were not subordinates of Vinko Martinovi} or Mladen Naletili}.[1674] Therefore, even though this crime amounts to a persecutory act, neither of the accused bears responsibility pursuant to Article 7(3) of the Statue.

681. Paragraph 45 of the Indictment charges Mladen Naletili} and Vinko Martinovi} with the repeated commission of torture and mistreatment. The Chamber has found that Mladen Naletili} tortured witnesses FF and Z and committed cruel treatment and wilfully caused great suffering to a captured soldier and the prisoner Zili}.[1675] The Chamber is satisfied that the incidents concerning witnesses FF and Z were carried out on discriminatory grounds. The father of witness FF was a prominent BH Muslim politician and witness Z was a prominent SDA member. The Chamber is satisfied that their mistreatment was carried out by Mladen Naletili} on the basis of political discrimination and that the mental harm caused amounts to persecution pursuant to Article 5(h) of the Statute. Regarding the mistreatment of the captured soldier and Zili}, the Chamber finds that no evidence has been led that it was committed on discriminatory grounds. As the incident charged under paragraph 48, those beatings occurred after the take-over of the Vranica building, in the aftermath of the breakout of the conflict in Mostar and, in the view of the Chamber, as revenge against enemy soldiers.

[1670] *See supra* paras 422-424.
[1671] The Chamber notes in this regard that Mladen Naletili} told witness Y that he was still in a good condition compared to what he deserved for what he had done, hereby referring to the fighting in Sovi}i, *see supra* paras 423 and 432.
[1672] *See supra* para 434.
[1673] *See supra* footnote 1140.
[1674] *See supra* para 431.
[1675] *See supra* paras 447-450.

682. The Chamber thus finds that the torture of witness FF and Z amount to persecution pursuant to Article 5 (h) of the Statute and that Mladen Naletili} bears individual criminal responsibility as a perpetrator pursuant to Article 7(1) of the Statute. The Chamber further finds that the beating of Rudolf Jozeli} at Ljubu{ki prison amounts to persecution pursuant to Article 5(h) of the Statute and that Mladen Naletili} bears command responsibility pursuant to Article 7(3) of the Statute with regard to this incident.

683. The Chamber finds that the mistreatment of witness WW and her neighbour in the course of their forcible eviction from their homes amounts to persecution pursuant to Article 5(h) of the Statute and that Vinko Martinovi} bears individual criminal responsibility as a perpetrator pursuant to Article 7(1) of the Statute.

(e) Killings in the detention centres

684. The Prosecution alleges that "?b?eatings, torture, killings were common and persistent in these detention facilities" under the HVO authority in the area of Mostar and the neighbouring municipalities.[1676]

685. With regard to the allegation of killings, evidence was presented suggesting that four detainees were killed in April 1993 in front of Sovi}i school.[1677] The Prosecution also presented hearsay evidence in relation to an alleged killing at the Primary School of Dobrkovici.[1678]

686. The Chamber notes that the Indictment does not contain any material facts relating to specific killings in detention centres charged as persecution. It finds that the Prosecution thus failed to give sufficient notice to the accused in relation to these charges of a particularly serious character. Hence, the Chamber finds it inappropriate to consider the evidence adduced with regard to such killings.

(f) The murder of Nenad Harmand`i}

687. In paragraph 34 of the Indictment, the Prosecution charges Mladen Naletili} and Vinko Martinovi} with persecution carried out by various means "including, as applicable, the acts and conduct described in Counts 2 through 22 below". The mistreatment, wilful killing and murder of Nenad Harmand`i} has been charged under Counts 13 to 17 and is, thus, subject to the persecution allegations of the Prosecution as laid out in paragraph 34 of the Indictment.

[1676] Indictment, para 27.
[1677] Witness A, T 498-499; witness B, T 795(confidential); witness W, T 3192.

688. The Chamber has already found that Vinko Martinovi} bears individual criminal responsibility for both the mistreatment and the wilful killing and murder of Nenad Harmand`i} under Article 7(1) of the Statute. The Chamber has held that due to the alternative charging of the Prosecution, Vinko Martinovi} is only convicted for aiding and abetting murder and wilful killing of Nenad Harmand`i} pursuant to Articles 2(a), 3, 5 and 7(1) of the Statute.[1679]

689. The Chamber is not satisfied that the killing of Nenad Harmand`i} was carried out on discriminatory grounds. The evidence proves that Nenad Harmand`i} was not singled out and killed be cause his race, religion or for political reasons. He was targeted because, before the conflict, he was a police officer in Mostar and had dealt with local criminals. He died because these criminals saw the outbreak of the conflict and the state of lawlessness that followed as a unique chance to take revenge on him without being held responsible for it.[1680]

690. The Chamber thus finds that the murder of Nenad Harmand`i} does not amount to persecution pursuant to Article 5(h) of the Statute.

(g) Unlawful labour and human shields

691. In paragraphs 28, 30, 31 and 34(b) of the Indictment, Vinko Martinovi} and Mladen Naletili} are charged with persecution for having used BH Muslims "to perform unlawful and forced labour, including on the confrontation lines in Mostar",[1681] and for having used "them as human shields".[1682] These acts have also been charged separately under Counts 2 to 8 of the Indictment and have been considered by the Chamber accordingly.[1683] The Chamber will now consider whether any of those incidents amount to acts of persecution, punishable under Article 5(h) of the Statute.

692. The Chamber has already found that Vinko Martinovi} bears responsibility under Articles 7(1) and 7(3) of the Statute for unlawful labour, inhumane acts, inhumane treatment and cruel treatment as a result of the labour of prisoners of war in the area of responsibility of the Vinko [krobo ATG.[1684] The Prosecution has however not led sufficient evidence to prove that the

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[1678]Prosecution Final Brief, pp 131-132; The Prosecution submitted that the evidence was based on conversations that prisoners from the Tobacco Station had with those detained at the school, witness BB, T 4270; witness CC, T 4414-4416

[1679]*See supra* paras 509-511.

[1680]This is the only reasonable conclusion that can be drawn from the concise and corroborative testimonies of all witnesses who testified with regard to this charge; *see supra* para 460.

[1681]Indictment, para 34(b).

[1682]Indictment, para 34(b).

[1683]*See supra* paras 262-334.

[1684]*See supra* paras 271-272.

prisoners were taken to perform labour on the basis of their specific religious, political or racial background.[1685] The Chamber thus finds that in the absence of a discriminatory basis, these acts do not amount to persecution within the meaning of Article 5(h) of the Statute.

693. The Chamber has already found that Vinko Martinovi} bears responsibility under Articles 7(1) and 7(3) of the Statute for unlawful labour, inhumane acts, inhuman treatment and cruel treatment as a result of the incident involving the use of prisoners carrying wooden rifles across the confrontation line on 17 September 1993.[1686] However, no evidence was introduced regarding the grounds upon which the four prisoners involved were selected. As such, the Chamber finds that the required discriminatory basis has not been established and that this incident does not amount to persecution.

694. The Chamber further held Vinko Martinovi} responsible under Article 7(3) of the Statute for having forced prisoners to assist in the looting of Muslim houses and property.[1687] No evidence has been adduced that the prisoners were selected to perform this type of labour on the basis of their religious, political or racial background. The Chamber thus finds that the required discriminatory basis has not been established and that as a result, these acts do not amount to persecution.

695. Regarding the incident involving the setting up of the headquarters of the Vinko [krobo ATG around 7 July 1993, for which the Chamber has found Vinko Martinovi} responsible under Article 7(1) of the Statute, there is no evidence that witness SS and the other prisoners involved were selected on a discriminatory basis. The Chamber therefore finds that the crime of persecution has not been proven with regard to this incident.

696. With regard to the digging of a trench in the vicinity of Mladen Naletili}'s private property in [iroki Brijeg, the Chamber has found Mladen Naletili} responsible under Article 7(3) of the Statute for having subjected detainees to conditions of labour such as to render the labour unlawful.[1688] No evidence was led to establish that the detainees were subjected to such conditions on the basis of their religious, political or racial background. The Chamber finds that in the absence of the required discriminatory intent, these acts do not amount to persecution.

[1685] Witness J testified that Vinko Martinovi} often called the prisoners "balijas" or extremists, witness J, T 1503-1504. However, there is not any evidence showing that the prisoners were taken to work on this specific basis. In fact, the Chamber is satisfied that the prisoners were used because Vinko Martinovi} would have used the enemy to perform dangerous tasks rather than his own soldiers. In this respect, witness SS testified that he was selected, together with the other "Blue orchestra prisoners", because he had been serving in the ABiH, witness SS, T 6793.
[1686] *See supra* para 289-291.
[1687] *See supra* para 310.
[1688] *See supra* para 326.

(h) Plunder

697. The Prosecution charges plunder of public and private property of BH Muslims under Count 1.[1689] Plunder of BH Muslim property has only been charged in relation to Mostar.[1690]

698. According to the jurisprudence of the Tribunal, plunder undertaken within a widespread or systematic attack against civilians and coupled with the necessary discriminatory intent may constitute persecution.[1691]

699. Plunder of personal belongings may rise to the level of persecution if the impact of such deprivation is serious enough.[1692] This is so if the property is indispensable and a vital asset to the owners.[1693]

700. Regarding the incident involving the setting up of the headquarters of the Vinko [krobo ATG around 7 July 1993, the illegality of this act has not been proven.

701. The Chamber has already found that plunder was committed in Mostar after the attack of 9 May 1993 and that it formed part of a widespread and systematic attack on the BH Muslim population. Mladen Naletilic was found responsibly for plunder in Mostar as a violation of the laws and customs of war with command responsibility.[1694] The plunder was carried out on a discriminatory basis as only the property of BH Muslims was targeted. Mladen Naletili} knew that his subordinates carried out the plunder with the intent to discriminate. The Chamber is satisfied that Mladen Naletili} is responsible for persecution under Article 7(3) of the Statute.

702. The Chamber has found that Vinko Martinovi} was responsible under Article 7(1) of the Statute for ordering the commission of plunder in connection with evictions of BH Muslims from the DUM area in Mostar on 13 and 14 June 1993.[1695] He was also found responsible under Article

[1689] Indictment, para 34(d).
[1690] Indictment, para 25 referring to Sovi}i and Doljani, but not mentioning plunder and para 26 referring to Mostar and mentioning plunder, refering to count 1; para 57 referring to Mostar and mentioning plunder under Count 21.
[1691] *Tadi}* Trial Judgement, paras 704, 707, 710; *Kupre{kic* Trial Judgement, para 631; *Bla{ki}* Trial Judgement, paras 227-229; *Kordi}* Trial Judgement, para 205. In the recent *Plav{i}* Sentencing Judgement plunder was charged, together with wanton destruction, as a persecutory act, but it was only briefly analysed under "destruction of property and religious buildings", *Plav{i}* Sentencing Judgement, paras 15, 43.
[1692] *Tadi}* Trial Judgement, para 707.
[1693] *Kupre{kic* Trial Judgement, para 631. The Chamber acknowledges that the expression was used in that judgement to describe destruction as an underlying act of persecution, but finds that any attack against property, including plunder, must reach this threshold to constitute persecution. There is a general consensus in international law on the protection of the right to property and freedom from unlawful interference thereof. *See* Article 12 of the Universal Declaration of Human Rights; Article 8(1) ECHR; Article 1 of the Protocol to the ECHR; Article 11(2) of the American Convention on Human Rights; Article 14 of the African Charter on Human and People's Rights; Articles 17, 25 of the Arab Charter on Human Rights; Article 17(1) of the International Covenant on Civil and Political Rights. *See* also *Bla{ki}* Trial Judgement, paras 227-233.
[1694] *See supra* paras 630-631 on Naletili} responsibility for plunder.
[1695] *See supra para 628.*

7(3) of the Statute for other instances of plunder in Mostar.[1696] He carried out these acts and omissions with the intent to discriminate against the BH Muslim population. The Chamber is satisfied that Vinko Martinovi} is responsible under Article 7(1) of the Statute for persecution.

(i) Destruction of property

703. The Prosecution charges destruction and wanton devastation of BH Muslim dwellings and buildings as persecution.[1697] Paragraphs 55, 56 and 58 of the Indictment refer to "all BH Muslim houses in the area" of Sovi}i and Doljani, the mosque of Sovi}i, "the BH Muslim houses" in Ra{tani.

704. The Tribunal has already dealt with destruction as an underlying offence of persecution.[1698]

705. The Chamber has already found Mladen Naletili} responsible under Article 7(3) of the Statute for the destruction of houses in Doljani.

706. The evidence shows that the destruction of BH Muslim houses in Doljani occurred after the death of Mario Hrka~ (^ikota).[1699] While his death may have prompted the devastation of those buildings to a certain extent,[1700] the BH Muslim buildings were not targeted randomly but on a discriminatory basis. The destruction of the houses was not a simple revenge action in the absence of discriminatory intent, as has been found with regard to many of the beating incidents.[1701] In those cases soldiers targeted enemy soldiers to take revenge for fierce fighting. The destruction of the BH Muslim houses in Doljani, however, was exclusively aimed at the BH Muslim civilian population, indicating the discriminatory character of the measure. The Chamber finds that Mladen Naletili} knew that the destruction of the houses in Doljani was carried out by his subordinates with discriminatory intent. Mladen Naletili} is also guilty of persecution pursuant to Article 5(h) and 7(3) of the Statute.

707. The Prosecution has not established that BH Muslim houses (the "Dumpor" houses) were destroyed in Ra{tani after the capture of the village on 23 September 1993[1702] or that Mladen Naletili} was involved in the destruction of the houses and the mosque in Sovi}i.[1703]

[1696] *See supra* para 631.
[1697] Indictment, para 34(c).
[1698] *Kupre{kic* Trial Judgement, para 631; *Bla{ki}* Trial Judgement, paras 220-234; *Kordi}* Trial Judgement, paras 205-206; *Kvo~ka* Trial Judgement, para 186; the recent *Plav{i}* Sentencing Judgement, based on the Indictment and the guilty plea by the accused, also considered destruction as an underlying offence of persecution, *Plav{i}* Sentencing Judgement, paras 15, 43-44.
[1699] *See supra* paras 584-597.
[1700] Witness Falk Simang, T 3809-3810; exhibit PP 928, Rado{ Diary, pp 78-79.
[1701] *See supra* paras 674-675, 677-678, 680.
[1702] *See supra* paras 598-602.

708. Evidence was led regarding destruction of the mosques in Doljani and Mostar, which are not charged in the Indictment as a specific offence.[1704] It could be interpreted as part of the persecutory pattern described in the Indictment, if this is read with broad reference to "Muslim dwellings and buildings".[1705] However, the Indictment explicitly charged the destruction of the mosque in Sovi}i during the same period.[1706] The Chamber thus finds that the Prosecution was equally obliged to put the Defence on notice in relation to the alleged destruction of the mosques in Doljani and Mostar. Since the Prosecution failed to do so, the Chamber finds it inappropriate to consider it.

(j) Summary of the findings

709. Count 1 of the Indictment charges persecution as a crime against humanity based on a variety of acts and offences.

710. In relation to the allegations of unlawful confinement, the Chamber finds the detention of the BH Muslim civilians in Sovici and Doljani was unlawful and discriminatory. Mladen Naletilic bears command responsibility under Article 7(3) of the Statute for the crime of persecution. The Chamber also finds that the unlawful arrest and detention of civilians in Mostar is persecution and holds Vinko Martinovic responsible under Article 7(1) of the Statute.

711. The Chamber finds Mladen Naletilic responsible under Article 7(1) of the Statute for the persecution of BH Muslim civilians by forcibly transferring them from Sovici and Doljani. The forcible transfers from Mostar amount to persecution. Vinko Martinovic is responsible under Article 7(1) of the Statute and Mladen Naletilic is responsible under Article 7(3) of the Statute.

712. The beatings of the BH Muslim civilians in the course of evictions amount to persecution for which Vinko Martinovic is responsible under Article 7(1) of the Statute. The beating of Rudi Jozelic was conducted on discriminatory grounds and constitutes persecution, for which Mladen Naletilic bears command responsibility, under Article 7(3) of the Statute. Mladen Naletilic is also responsible under Article 7(1) of the Statute for the torture of witnesses FF and Z, which is found to be persecutory.

713. The Chamber finds that the plunder committed in Mostar after the attack of 9 May 1993 constitutes persecution. The Chamber finds that Mladen Naletilic is responsible under Article 7(3) of the Statute and Vinko Martinovic is responsible under Article 7(1) of the Statute for these acts.

[1703] *See supra* paras 607, 610.
[1704] Indictment, paras 55-56.
[1705] Indictment, para 34(c).
[1706] Indictment, para 56.

714. The Chamber finds that Mladen Naletilic bears command responsibility under Article 7(3) of the Statute for the destruction of BH Muslim houses in Doljani, constituting persecution.

715. The Chamber thus finds Mladen Naletili} and Vinko Martinovi} guilty of persecution pursuant to Article 5(h) of the Statute (Count 1).

IV. CUMULATIVE CONVICTIONS

716. The Prosecution argued in favour of cumulative charging on the grounds that it is justified legally and practically.[1707]

717. The Martinovi} Defence opposes alternative and cumulative charging on the basis that this is a violation of the rights of the accused, putting him in a more difficult position than if he were tried in his country.[1708] The Naletili} Defence submits that alternative charging violates his right to defend himself and cumulative charging and convictions is permitted only in exceptional cases.[1709]

A. The law

718. Cumulative charging is permissible according to the practice of the Tribunal, as a Trial Chamber is in a position to evaluate the charges to be retained only after the presentation of the evidence.[1710] Multiple convictions for the same conduct are permissible if each offence involved contains materially distinct elements, which requires proof of a fact not required by another offence.[1711] In the event that this test is not satisfied, the Chamber must uphold a conviction under the more specific provision.[1712] In determining whether a provision contains a materially distinct element, all the elements of the offence are to be taken into account, including the *chapeau* requirements.[1713]

719. Convictions under both Articles 3 and 5 of the Statute were permitted in the *Kunarac* Trial Judgement, and reaffirmed in the *Jelisic* Appeal Judgement. In Article 3, the materially distinct element is the nexus between the acts of the accused and the armed conflict, while in Article 5, it is

[1707] The Prosecution relies on the concept of "ideal concurrence" under civil law and draws this analogy to the charges against Mladen Naletilic and Vinko Martinovic. Reliance is placed on the Appeals Chamber which upheld the cumulative convictions in the case of *Prosecutor v. Du{ko Tadic,* Case No.: IT-94-1-T*bis*-R117, Sentencing Judgement, 11 November 1999, para 32, though it did not comment on the issue specifically, Prosecution Pre-trial Brief, pp 71-74.

[1708] Martinovic Pre-trial Brief, pp 6, 7.

[1709] Naletilic Pre-trial Brief, pp 7, 11. Joining distinct offences into a single count violates the right of the accused against double jeopardy and makes the accused appear worse than warranted by the evidence, Naletilic Final Brief, pp 157, 158. Multiple charging is permissible where there is a merger of acts, which has not been fulfilled to enable the Prosecution to charge Mladen Naletilic with violations of Articles 2, 3 and 5 of the Statute, Naletilic Final Brief, p 160. Further, Article 3 is a residual clause, and offences should be charged under Article 2 or Article 5, Naletilic Final Brief, pp 160, 161.

[1710] *Celebici* Appeal Judgement, para 400.

[1711] The Appeals Chamber stated: "multiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other," *Celebici* Appeal Judgement, para 412.

[1712] *Celebici* Appeal Judgement, para 413.

[1713] *Celebici* Appeal Judgement, paras 420-423.

the requirement of a widespread and systematic attack.[1714] The *Celebici* test was further applied in relation to convictions under Articles 2, 3 and 5 of the Statute.[1715]

B. The findings

1. Mladen Naletilic

720. The Chamber has found Mladen Naletilic guilty of multiple offences based on the same underlying acts. These are Counts 11 and 12 of the Indictment in relation to mistreatment of prisoners; Counts 9 and 10 of the Indictment in relation to the treatment of some detainees in Doljani and the Tobacco Station in Široki Brijeg; Counts 1, 9 and 10 of the Indictment in relation to the mistreatment of witness FF and witness Z; Counts 1, 11 and 12 of the Indictment in relation to the mistreatment of Rudi Jozelic; Counts 1 and 18 of the Indictment in relation to the unlawful transfers of civilians from Sovici and Mostar; Counts 1 and 20 of the Indictment in relation to the wanton destruction of houses in Doljani; Counts 1 and 21 of the Indictment in relation to the plunder of property in Mostar. In accordance with the jurisprudence of the Tribunal, the Chamber will make a determination regarding which convictions are to be upheld.

721. Mladen Naletilic has been found guilty of cruel treatment under Article 3 of the Statute as recognised by common Article 3[1716] and wilfully causing great suffering or serious injury to body or health under Article 2(c) of the Statute,[1717] for the mistreatment meted out to witness AA as well as to prisoners at Doljani, KB Base Mostar, the MUP Station in Široki Brijeg, the Tobacco Station in Široki Brijeg, Ljubuški prison and the Heliodrom. The offence of wilfully causing great suffering or serious injury under Article 2(c) of the Statute is more particular than that of cruel treatment under Article 3 of the Statute, due to the requirement of a "protected person". Hence, the offence of wilfully causing great suffering or serious injury under Article 2(c) of the Statute (Count 12) stands.

722. Mladen Naletilic has also been found guilty of torture under Article 5(f) of the Statute[1718] and torture under Article 2(b) of the Statute[1719] in relation to Fikret Begic, witness TT and witness BB in Doljani, as well as witness BB and witness CC while being detained in the Tobacco Station in Široki Brijeg. As Articles 2 and 5 of the Statute have materially distinct elements as part of the

[1714] *Kunarac* Trial Judgement, paras 556 and 557; *Jelisic* Appeal Judgement, para 82.
[1715] It was held that in the case of the offences under Article 2 (wilful killing) and Article 5 (murder) each contained an additional element that was not contained in the Article 3 (murder) offence. This meant that the accused could not be convicted of the offence charged under Article 3. *Kordic* Trial Judgement, para 820.
[1716] Count 11 of the Indictment.
[1717] Count 12 of the Indictment.
[1718] Count 9 of the Indictment.
[1719] Count 10 of the Indictment.

chapeau requirements, the convictions of torture under both are upheld. Hence, the convictions of torture under Counts 9 and 10 are upheld.

723. Mladen Naletilic has been found guilty of persecution under Article 5(h) of the Statute,[1720] torture under Article 5(f) of the Statute[1721] and torture under Article 2(b) of the Statute,[1722] for his treatment of witnesses FF and Z.

724. When there are positive findings in relation to both persecution and another crime against humanity, the conviction that is upheld is that of persecution.[1723] On a comparison of the offences of persecution under Article 5(h) of the Statute and torture under Article 2(b) of the Statute, they both comprise distinct elements. Therefore, the offences of persecution (Count 1) and torture under Article 2(b) (Count 10) are upheld.

725. Mladen Naletilic has been found guilty of persecution under Article 5(h) of the Statute,[1724] cruel treatment under Article 3 of the Statute as recognised by common Article 3[1725] and wilfully causing great suffering or serious injury to body or health under Article 2(c) of the Statute,[1726] in relation to the mistreatment of Rudi Jozelic at the Ljubuški prison. The offence of wilfully causing great suffering or serious injury under Article 2(c) of the Statute is more particular than that of cruel treatment under Article 3 of the Statute, due to the requirement of a "protected person". Upon a comparison to the offence of persecution, the offence of wilfully causing great suffering or serious injury under Article 2(c) of the Statute as well as that of persecution under Article 5(h) consist of distinct elements. Therefore, the offences of wilfully causing great suffering or serious injury under Article 2(c) of the Statute (Count 12) and persecution (Count 1) are upheld.

726. Mladen Naletilic has been found guilty of the unlawful transfer of a civilian under Article 2(g) of the Statute,[1727] wanton destruction not justified by military necessity under Article 3(b) of the Statute[1728] and plunder of public or private property under Article 3(e) of the Statute.[1729] The

[1720]Count 1 of the Indictment.
[1721]Count 9 of the Indictment
[1722]Count 10 of the Indictment.
[1723]The *Krstic* Trial Judgement applied this test to offences charged as murder under Article 5 and persecutions under Article 5. It determined that the offence of persecution contained the additional element of discrimination that was not required by that of murder as a crime against humanity. This meant that the conviction under the persecution charge would be entered, but not that of murder as a crime against humanity. *Krstic* Trial Judgement, para 675.
[1724]Count 1 of the Indictment.
[1725]Count 11 of the Indictment.
[1726]Count 12 of the Indictment.
[1727]Count 18 of the Indictment.
[1728]Count 20 of the Indictment.
[1729]Count 21 of the Indictment.

Chamber has also found Mladen Naletilic guilty of persecution under Article 5(h) of the Statute for each of these offences.[1730]

727. The Chamber finds that the convictions of unlawful transfer of a civilian under Article 2(g) of the Statute (Count 18), wanton destruction not justified by military necessity under Article 3(b) of the Statute (Count 20) and plunder of public or private property under Article 3(e) of the Statute (Count 21) as well as the convictions of persecution (Count 1) for each count, are upheld.

728. In conclusion, upon a comparison of multiple convictions based on the same acts, the Chamber upholds the following convictions in relation to Mladen Naletilic: Count 12 in relation to mistreatment of prisoners; Counts 9 and 10 in relation to the treatment of some detainees in Doljani and the Tobacco Station in Široki Brijeg; Counts 1 and 10 in relation to the mistreatment of witness FF and witness Z; Counts 1 and 12 in relation to the mistreatment of Rudi Jozelic; Counts 1 and 18 in relation to the unlawful transfers of civilians from Sovici and Mostar; Counts 1 and 20 in relation to the wanton destruction of houses in Doljani; Counts 1 and 21 in relation to the plunder of property in Mostar.

2. Vinko Martinovic

729. The Chamber has found Vinko Martinovic guilty of multiple offences based on the same underlying acts. These are Counts 2, 3, 4 and 5 in relation to the use of detainees in operations in Mostar; Counts 11 and 12 in relation to mistreatment of detainees; Counts 13, 14 and 15 in relation to the killing of Nenad Harmandžic; Counts 1 and 18 relating to the unlawful transfer of civilians in Mostar; Counts 1 and 21 in relation to the plunder of property in Mostar. In accordance with the jurisprudence of the Tribunal, the Chamber will make a determination regarding which convictions are to be upheld.

730. Vinko Martinovic has been found guilty of inhumane acts under Article 5(i) of the Statute,[1731] inhuman treatment under Article 2(b) of the Statute,[1732] cruel treatment under Article 3 of the Statute (common Article 3)[1733] and unlawful labour under Article 3 of the Statute (Articles 49, 50 and 52 of Geneva Convention III)[1734] in relation to the use of detainees in operations in Mostar.

[1730] Count 1 of the Indictment.
[1731] Count 2 of the Indictment.
[1732] Count 3 of the Indictment.
[1733] Count 4 of the Indictment.
[1734] Count 5 of the Indictment.

731. Upon a comparison of the elements of the offences of inhuman treatment under Article 2(b) of the Statute and cruel treatment under Article 3 of the Statute, the offence of inhuman treatment contains a materially distinct element, namely the requirement of a "protected person". Applying the *Celebici* Appeal Judgement test, this is the more particular offence and hence a conviction is to be entered on this count. The offence of unlawful labour has been charged under Article 3 of the Statute.[1735] This offence relates to prisoners of war, who are protected under Geneva Convention III. In this instance, both the offences of unlawful labour under Article 3 of the Statute and inhuman treatment under Article 2 of the Statute relate to protected persons. The elements of the offence of unlawful labour include a prohibition on certain types of work, and work that may be of a dangerous, unhealthy or humiliating nature. The offence of inhuman treatment under Article 2 of the Statute also contains distinct elements such as the requirement that there be serious mental harm or suffering caused. Hence, both the offences of unlawful labour and inhuman treatment contain distinct elements, and are upheld.

732. The offence of inhumane acts under Article 5(i) of the Statute contains the additional element of a widespread or systematic attack in the *chapeau* requirement, which is not required for the offence of unlawful labour. The offence of unlawful labour similarly, contains the additional elements stipulated, which are not required for the offence of inhumane acts.

733. Hence, upon a comparison of these offences, Vinko Martinovic can be convicted of inhumane acts under Article 5(i) of the Statute (Count 2), inhuman treatment under Article 2(b) of the Statute (Count 3) and unlawful labour under Article 3 of the Statute (Count 5).

734. Vinko Martinovic has been found guilty of cruel treatment under Article 3 of the Statute as recognised by common Article 3[1736] and wilfully causing great suffering or serious injury to body or health under Article 2(c) of the Statute,[1737] in relation to mistreatment of detainees in the area under his command. Upon a comparison of the elements of the offences of wilfully causing great suffering or serious injury to body or health under Article 2(c) of the Statute and cruel treatment under Article 3 of the Statute, the offence under Article 2(c) contains a materially distinct element, namely the requirement of a "protected person". As this is the more particular offence, a conviction is to be entered on this count. Hence, a conviction of wilfully causing great suffering or serious injury to body or health (Count 12) is upheld.

[1735] The Chamber has made a finding for the offence of unlawful labour under Article 3 of the Statute as recognised by Articles 49, 50 and 52 of Geneva Convention III.
[1736] Count 11 of the Indictment.
[1737] Count 12 of the Indictment.

735. Vinko Martinovic has been found guilty of murder under Article 5(a) of the Statute[1738], wilful killing under Article 2(a) of the Statute[1739] and murder under Article 3 of the Statute as recognised by common Article 3,[1740] in relation to the killing of Nenad Harmandžic. The convictions of murder under Article 5(a) of the Statute (Count 13) and wilful killing (Count 14) are upheld.

736. Vinko Martinovic has been found guilty of the unlawful transfer of a civilian under Article 2(g) of the Statute[1741] and plunder of public or private property under Article 3(e) of the Statute.[1742] A finding of guilt has also been entered in relation to the charge of persecution under Article 5(h) of the Statute,[1743] for each of these acts.

737. The Chamber finds that the convictions for unlawful transfer of a civilian under Article 2(g) of the Statute (Count 18) and plunder of public or private property under Article 3(e) of the Statute (Count 21) as well as the convictions of persecution (Count 1) for both counts, are upheld.

738. In conclusion, upon a comparison of multiple convictions based on the same acts, the Chamber upholds the following convictions in relation to Vinko Martinovic: Counts 2, 3 and 5 in relation to the use of detainees in operations in Mostar; Count 12 in relation to mistreatment of detainees; Counts 13 and 14 in relation to the killing of Nenad Harmandžic; Counts 1 and 18 relating to the unlawful transfer of civilians in Mostar; Counts 1 and 21 in relation to the plunder of property in Mostar.

[1738]Count 13 of the Indictment.
[1739]Count 14 of the Indictment.
[1740]Count 15 of the Indictment.
[1741]Count 18 of the Indictment.
[1742]Count 21 of the Indictment.
[1743]Count 1 of the Indictment.

V. SENTENCING

A. The law

739. Deterrence and retribution are the underlying principles in relation to the sentencing of an individual by the Tribunal.[1744] While retribution entails a proportionate punishment for the offence committed,[1745] deterrence ensures that the penalty imposed will dissuade others from commission of such crimes.[1746] Article 24 of the Statute and Rule 101 of the Rules stipulate the factors to be taken into account by the Chamber in determining the sentence.[1747]

740. According to Article 24(2) of the Statute, a consideration in the imposition of sentence is the gravity of the offence. The Appeal Chamber has held that it is a factor of primary importance.[1748] A "consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime" is required in determining the gravity of the crime.[1749]

741. Article 24(1) of the Statute and Rule 101(B)(iii) of the Rules require the Trial Chamber to have recourse to the general sentencing practice in the courts of the former Yugoslavia.[1750]. Rule

[1744] *Celebici* Appeal Judgement, para 806; *Aleksovski* Appeal Judgement, para 185.
[1745] *Todorovic* Sentencing Judgement, para 29; *Plavšic* Sentencing Judgement, para 23.
[1746] *Todorovic* Sentencing Judgement, para 30.
[1747] Article 24 of the Statute provides "1.The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia. 2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. 3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners." Rule 101 of the Ruels provides"(A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life. (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as: (i) any aggravating circumstances; (ii) any mitigating circumstances including the substantial co-operation with the Prosecutor by the convicted person before or after conviction; (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia; (iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10, paragraph 3, of the Statute. (C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal."
[1748] *Aleksovski* Appeal Judgement, para 182; *Celebici* Appeal Judgement, para 731; *Jelisic* Appeal Judgement, para 101.
[1749] *Kupreškic* Trial Judgement, para 852 cited in *Aleksovski* Appeal Judgement, para 182; *Celebici* Appeal Judgement, para 731; *Jelisic* Appeal Judgement, para 101.
[1750] The former Yugoslavia had statutory provisions in relation to crimes committed during armed conflict. Chapter 16 of the SFRY Criminal Code relates to "Criminal Offences Against Humanity and International Law". Article 142 of the SFRY Criminal Code provides for punishment of no less than five years in prison or the death penalty, for violations of international law in times of war or armed conflict, *Vasiljevic* Trial Judgement, footnote 669. In 1977, the death penalty was abolished in some republics of the SFRY, barring Bosnia and Herzegovina, and the maximum sentence that could be imposed was 20 years imprisonment. Article 38 of the SFRY Criminal Code provides for the imposition of a maximum sentence of 20 years imprisonment for criminal acts that are eligible for the death penalty, *Celebici* Trial Judgement, para 1204. The Criminal Code of the Federation of Bosnia and Herzegovina, which came into force on 28 November 1998, provides for the imposition of long term imprisonment ranging from 20 to 40 years. Article 38 of the Criminal Code of the Federation of Bosnia and Herzegovina provides for long term imprisonment for "the gravest forms of criminal offences ?…? committed with intention". (Criminal Code of the Federation of Bosnia and Herzegovina published by "Official Gazette of Federation of Bosnia and Herzegovina", No. 43-98, Nov 20, 1998). Cited from *Vasiljevic* Trial Judgement, footnote 669. Apart from the length of the

101(A) of the Rules, which grants the power to imprison for the remainder of the convicted persons life, is indicative of the fact that the Chamber is not bound by a maximum sentence possible under a national legal system.[1751] It is settled by the jurisprudence of the Tribunal that the Chamber is not bound to follow these principles, but should refer to this as an aid in determining an appropriate sentence.[1752]

742. Pursuant to Article 24(2) of the Statute and Rule 101(B)(i) and (ii) of the Rules, the Chamber shall take into account the individual circumstances of the convicted person as well as aggravating and mitigating factors. The Appeals Chamber has stated that since the factors to be taken into account for aggravation or mitigation of a sentence have not been defined exhaustively by the Statute and the Rules, a Trial Chamber has a considerable amount of discretion in deciding these factors.[1753] The Chamber is obliged to take into account mitigating circumstances when determining the sentence, but the weight to be attached thereto is discretionary.[1754]

743. The Chamber bears in mind the impact of cumulative convictions upon sentencing of the accused. The Appeals Chamber has stated:

> ?t?he fact that an accused's conduct may legitimately be legally characterised as constituting different crimes would not overcome the fundamental principle that he should not be punished more than once in respect of the same conduct. In the case of two legally distinct crimes arising from the same incident, care would have to be taken that the sentence does not doubly punish in respect of the same act which is relied on as satisfying the elements common to the two crimes, but only that conduct which is relied on only to satisfy the *distinct* elements of the relevant crimes.[1755]

744. It has been held that the sentence imposed should reflect the relative significance of the role of the accused in the context of the conflict in the former Yugoslavia.[1756] However, this has been interpreted to mean that even if the position of an accused in the overall hierarchy in the conflict in the former Yugoslavia was low, it does not follow that a low sentence is to be automatically

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sentence that may be imposed, there are also general rules for the determination of sentence, which have been laid down in Article 41 of the SFRY Criminal Code, which provides: "A court shall determine sentence for the perpetrator of a crime within the boundaries prescribed by the code for this crime, bearing in mind the purpose of punishment and taking into account all circumstances influencing the degree of severity (mitigating and aggravating circumstances, and, in particular: the level of criminal responsibility, the motive for the crime, the level of threat to or violation of protected assets, the circumstances under which the crime was committed, the previous character of the perpetrator, his/her personal circumstances and conduct after the commission of the crime, and other circumstances relating to the personality of the perpetrator".

[1751] *Tadic* Sentencing Appeal, para 21 cited in *Kunarac* Appeal Judgement, para 377.

[1752] *Tadic* Sentencing Appeal, para 20; *Kupreškic* Appeal Judgement, para 418; *Jelisic* Appeal Judgement, para 117; *Celebici* Appeal Judgement, para 813.

[1753] *Celebici* Appeal Judgement, para 780.

[1754] *Celebici* Appeal Judgement, para 777.

[1755] *Celebici* Appeal Judgement, para 769.

[1756] *Tadic* Sentencing Appeal, para 55.

imposed. The requirement that the inherent gravity of the crime be reflected in the sentence was again reiterated in this context.[1757]

745. The Chamber will impose a single sentence for each of the accused, Mladen Naletilic and Vinko Martinovic, in accordance with Rule 87(C) of the Rules.[1758]

B. The findings

1. Mladen Naletilic

746. The Prosecution submits that a critical factor to consider when determining the sentence is the status of Mladen Naletilic as a commander. It is argued that as a result of this status, crimes committed in the presence of subordinates had a great impact upon them.[1759] Also, an important test to consider is the *per se* gravity of the offence, as well as the impact of the offence upon the victim, their family and entire communities subjected to ethnic cleansing.[1760] It is further submitted that the acts of the accused contributed to the broader campaign against the BH Muslims throughout the region.[1761]

747. The Prosecution recommends sentences for both of the accused between 20 and 40 years, placing reliance upon the sentencing provisions under the SFRY Criminal Code and the Criminal Code of the Federation of Bosnia and Herzegovina.[1762] The Prosecution submits that the appropriate sentence for Mladen Naletilic is 35 years.[1763]

748. The Prosecution submits that no mitigating factor is applicable to Mladen Naletilic.[1764] The Prosecution submits that following jurisprudence of the Tribunal, the medical condition of Mladen Naletilic should not be taken into account as a mitigating factor.[1765] It is further submitted that Mladen Naletili} did not voluntarily surrender to the Tribunal and he has not co-operated with the Prosecution.[1766] Regarding the previous criminal record of Mladen Naletili}, the Prosecution submits that though criminal charges were brought against him in the Republic of Croatia, the

[1757] *Celebici* Appeal Judgement, para 847.
[1758] Rule 87(C) of the Rules provides: "?i?f the Chamber finds the accused guilty on one or more of the charges contained in the indictment, it shall impose a sentence in respect of each finding of guilt and indicate whether such sentences shall be served consecutively or concurrently, unless it decides to exercise its power to impose a single sentence reflecting the totality of the criminal conduct of the accused."
[1759] Prosecution Pre-trial Brief, p 60.
[1760] Prosecution Pre-trial Brief, pp 60, 61.
[1761] Prosecution Final Brief, pp 293, 294.
[1762] Prosecution's Additional Sentencing Submissions, pp 8, 9.
[1763] Prosecution Final Brief, p 295.
[1764] Prosecution Pre-trial Brief, pp 64, 65; Prosecution's Additional Sentencing Submissions, p 2.
[1765] Prosecution Final Brief, p 295; Prosecution's Additional Sentencing Submissions, p 3.
[1766] Prosecution's Additional Sentencing Submissions, pp 4, 5.

proceedings were not concluded due to his transfer to the Tribunal.[1767] According to the Prosecution, no compassion was shown by the accused towards the victims of the crimes described by the Indictment.[1768]

749. The Naleitli} Defence submits that Mladen Naletilic completed management school in Germany and has been working in the hotel industry.[1769] He was granted asylum in Germany.[1770] He has always been a law-abiding citizen enjoying the respect of his community, to which he was committed even while abroad.[1771] It is submitted that Mladen Naletilic had friends who were not only Croats or BH Croats and that he did not have any ethnic prejudice or intolerance towards BH Muslims. He instilled these virtues in his family too.[1772] This positive attitude continued during detention.[1773] It is submitted that Mladen Naletilic has poor health.[1774] He has no previous criminal record.[1775] Despite his lack of military education, Mladen Naletilic undertook whatever was in his power to protect civilians during the conflict in the former Yugoslavia.[1776] Mladen Naletilic has compassion towards victims of any crime.[1777] It is submitted that the claim of the Prosecution that under the SFRY Criminal Code, perpetrators could be sentenced to 40 years imprisonment is inaccurate. Mladen Naletilic submits that for the most heinous crimes, the mildest sentence was 5 years and the strictest was the death penalty. After the abolition of the death penalty, the maximum imprisonment permissible has become 20 years, and not 40 years.[1778] Mladen Naletili} submits that it was impossible for him to surrender voluntarily to the Tribunal due to his detention in Zagreb.[1779] Finally, the Naletili} Defence states that any lack of co-operation with the Prosecution during the trial was caused only by the exercise of his rights under the Statute and international law.[1780]

750. The Chamber holds that the role of Mladen Naletilic and the gravity of the crimes he has been found guilty of are of primary consideration in determining the sentence to be imposed. The circumstances of the crimes that Mladen Naletilic has been found guilty of have been discussed in

[1767] The allegations related to the crimes of kidnapping, attacking a policeman on duty, participation in a group that committed a criminal act and incitement to murder, Prosecution's Additional Sentencing Submissions, pp 5, 6.
[1768] Prosecution's Additional Sentencing Submissions, pp 6, 7.
[1769] Naletili} Submission on Sentencing Considerations, p 1.
[1770] Naletili} Submission on Sentencing Considerations, p 1.
[1771] Naletili} Additional Submission on Sentencing Considerations, p 6.
[1772] Naletilic Final Brief, p 178; Naletili} Additional Submission on Sentencing Considerations, p 6.
[1773] Naletili} Additional Submission on Sentencing Considerations, p 9.
[1774] Naletili} Submission on Sentencing Considerations, p 1.
[1775] Naletili} Submission on Sentencing Considerations, p 2; Naletili} Additional Submission on Sentencing Considerations, p 9.
[1776] Naletili} Additional Submission on Sentencing Considerations, p 10.
[1777] Naletili} Submission on Sentencing Considerations, p 2.
[1778] Naletilic Pre-trial Brief, p 12; Naletili} Submission on Sentencing Considerations, p 3; Naletili} Additional Submission on Sentencing Considerations, p 4.
[1779] Naletili} Submission on Sentencing Considerations, p 2.
[1780] Naletili} Additional Submission on Sentencing Considerations, pp 2, 3.

detail above. The Chamber has examined in detail the grave nature of the crimes and the criminal conduct of the accused. The Chamber has also considered the sentencing practice of the former Yugoslavia as an aid in determining the appropriate sentence for the accused.

751. Though the role of Mladen Naletilic in the context of the conflict in the former Yugoslavia was relatively small, and his actions were restricted to the municipalities of and around Mostar, this does not automatically entitle the accused to a lesser sentence. Mladen Naletilic was a man of considerable influence in the Mostar region. He was born in Široki Brijeg, and though he later lived in Germany, retained close ties with the region and events there. Mladen Naletilic was a founding member of the KB. He was the commander of this unit, and was greatly respected and admired by his peers as well as his subordinates. The role of Mladen Naletilic in the conflict against the Serbs in Mostar earned him accolades and enhanced his stature. He was something of a legend in the region, and was in a position of great influence. As a consequence, the Chamber finds that the command role of Mladen Naletilic is an aggravating factor.

752. In accordance with the jurisprudence of the Tribunal, the Chamber may look into the medical condition of the accused. The Naletili} Defence has not presented the Chamber with evidence in relation to the seriousness of his medical condition, or the effect of detention on his health. The Chamber does not consider this as a factor in mitigation of the sentence.

753. On the issue of voluntary surrender, the Chamber finds that Mladen Naletilic made every effort to resist transfer from the Republic of Croatia to the Tribunal. He appealed the decision of the Zagreb County Court allowing the transfer to the Tribunal in every instance possible.[1781] The Chamber finds that given the circumstances of his transfer, this cannot be considered to be voluntary. Hence, this will not be considered as a mitigating factor.

754. The Chamber finds that Mladen Naletilic has not previously been convicted of any offence, this is not a significant factor and will not be taken into consideration for the purpose of mitigation of sentence. There has been no evidence of substantial co-operation with the Prosecutor and hence this will not be considered to be a mitigating circumstance.

2. Vinko Martinovic

755. The Prosecution submits that an important factor to be considered while determining the sentence for Vinko Martinovic is his role as a commander, the *per se* gravity of the offences

[1781] The Zagreb County Court decided in favour of the transfer of Mladen Naletilic to the Tribunal on 1 September 1999; the appeal in the Supreme Court of Croatia was rejected on 15 October 1999, and the appeal in the Constitutional Court of Croatia was rejected on 21 October 1999, filed confidentially before the Chamber on 23 March 2000.

committed, the impact on victims and entire communities subjected to ethnic cleansing.[1782] It is also submitted that the acts of Vinko Martinovic contributed to the broader campaign against the BH Muslims throughout the region.[1783] Further, it is submitted that no mitigating factor is applicable in relation to Vinko Martinovic.[1784] The Prosecution submits that no weight should be given to assistance by Vinko Martinovi} to BH Muslims; if any gratuitous assistance was ever lent by him, it was just in favour of some friends or neighbours.[1785] No relevant medical condition of the accused is known to the Prosecution.[1786] Vinko Martinovi} did not surrender voluntarily to the Tribunal, although he did not appeal against the order for transfer by the Zagreb County Court.[1787] He also did not co-operate with the Prosecution during the Trial.[1788] As regards his previous criminal record, an appeal was pending on a conviction against Martinovi} rendered on 7 March 1996 for murder.[1789] An investigation request by the District Prosecutor's Office in Zagreb and an indictment were lodged in 1999 against the accused where reference is made to two previous convictions of Vinko Martinovi} for grand larceny and looting in 1985 and 1986.[1790] According to the Prosecution, no compassion was shown by the accused towards the victims of the crimes described by the Indictment.[1791]

756. The Prosecution submits that, taking into account the sentencing provisions under the SFRY Criminal Code and the Criminal Code of the Federation of Bosnia and Herzegovina, the appropriate sentence for Vinko Martinovic is 25 years.[1792]

757. The Martinovi} Defence submits that Vinko Martinovic completed elementary school and worked as a taxi driver. His wife and son live in Mostar, on his wife's income.[1793] The Martinovi} Defence submits that his health has deteriorated due to his detention.[1794] It is submitted that he came to the Tribunal voluntarily, having requested authorities in Croatia to surrender him to the Tribunal. He waived his right to appeal against a decision of the Higher Court of Zagreb, which authorised his transfer to the Tribunal.[1795] His BH Muslim neighbours testified that he helped them as much as possible; his general attitude is the same towards BH Muslims and BH Croats.[1796] It is

[1782]Prosecution Pre-trial Brief, pp 60, 61.
[1783]Prosecution Final Brief, pp 293, 294.
[1784]Prosecution Pre-trial Brief, pp 64, 65; Prosecution's Additional Sentencing Submissions, p 2.
[1785]Prosecution's Additional Sentencing Submissions, p 3.
[1786]Prosecution's Additional Sentencing Submissions, p 3.
[1787]Prosecution's Additional Sentencing Submissions, pp 3, 4.
[1788]Prosecution's Additional Sentencing Submissions, p 5.
[1789]Prosecution's Additional Sentencing Submissions, p 6.
[1790]Prosecution's Additional Sentencing Submissions, p 6, Attachments D, E.
[1791]Prosecution's Additional Sentencing Submissions, pp 6, 7.
[1792]Prosecution Final Brief, p 295.
[1793]Martinovi} Submission on Sentencing Considerations, p 2.
[1794]Martinovi} Submission on Sentencing Considerations, p 2.
[1795]Martinovic Final Brief, p 125.
[1796]Martinovic Final Brief, p 125; Martinovi} Submission on Sentencing Considerations, p 4.

submitted that BH Muslim detainees were helped by Vinko Martinovic and they wanted to stay with him rather than in other units.[1797] As far as his previous criminal record is concerned, the accused stresses that the criminal procedure against him before the Higher Court of Zagreb has not been completed.[1798] Vinko Martinovic finally submits that criminal legislation of the former Yugoslavia is applicable with respect to sentencing and other legal standards.[1799]

758. The Chamber has found Vinko Martinovic guilty of the most heinous crimes, which include murder. The gravity of these offences is of primary consideration in determining a sentence that reflects the criminal conduct of the accused. Vinko Martinovic did not have a significant role in the context of the wider conflict in the former Yugoslavia, his criminal conduct, and the nature of the crimes he participated in, are of grave significance. Vinko Martinovic was the commander of the Vinko Škrobo ATG. He was respected by his subordinates and set an example by his behaviour. The Chamber finds that he was in a position to exert influence on the behaviour of his unit and could have played a significant role in the prevention of crime. Instead of doing so, Vinko Martinovic permitted the commission of atrocities and was often a direct participant. The Chamber therefore finds his command role an aggravating factor.

759. The Chamber has also considered the sentencing practice of the former Yugoslavia as an aid in determining the appropriate sentence.[1800]

760. The Chamber has not been appraised of any significant medical condition of Vinko Martinovic that could have impact in the sentencing considerations.

761. Vinko Martinovic was transferred from the Republic of Croatia to the Tribunal upon the decision by the Zagreb County Court of 8 June 1999. This decision was upheld by the Supreme Court of the Republic of Croatia upon appeal by the Zagreb Public Prosecutor.[1801] Vinko Martinovic was in detention in the Republic of Croatia and did not appeal the decision for his transfer to the Tribunal. However, though there was no impediment raised by Vinko Martinovic to his transfer to the Tribunal, it cannot be said that he surrendered voluntarily. The Chamber finds that the circumstances of his transfer to the Tribunal cannot be considered in mitigation of sentence.

762. In relation to his prior criminal conduct, Vinko Martinovic was found guilty by the Zagreb County Court of murder, but pending appeal of this decision, he was transferred to the Tribunal.

[1797] Martinovic Final Brief, p 128.
[1798] Martinovi} Submission on Sentencing Considerations, p 4.
[1799] Martinovic Pre-trial Brief, pp 7 and 8; Martinovi} Submission on Sentencing Considerations, p 2.
[1800] *See supra* paras 744 and 756-757.
[1801] Decision of the Zagreb County Court, 8 June 1999; Decision of the Supreme Court of the Republic of Croatia, 8 July 1999, both filed before the Chamber on 11 August 1999.

The Chamber finds that as the appeal is pending and the judicial process has not been completed, this conviction cannot be considered in relation to prior criminal conduct. Vinko Martinovic has previously been convicted of two criminal offences in 1985 and 1986 for grand larceny and looting.[1802] The Chamber finds it inappropriate to take these prior convictions into account in determining the sentence for the serious violations of international humanitarian law he is convicted for. There has been no substantial co-operation with the Prosecution and hence this will not be considered to be a mitigating factor.

[1802] Reference to the convictions is made in an investigation request made by the District Court in Zagreb, Prosecution's Additional Sentencing Submissions, p 6, Attachment D.

VI. DISPOSITION

FOR THE FOREGOING REASONS, having considered all of the evidence and the arguments of the parties, the Statute and the Rules, the Chamber finds, and imposes sentence as follows:

763. Mladen Naletili} is found guilty on the following counts:

Count 1 (persecutions on political, racial and religious grounds as a crime against humanity, under Article 5(h) of the Statute)

Count 5 (unlawful labour as a violation of the laws or customs of war, under Article 3 of the Statute)

Count 9 (torture as a crime against humanity, under Article 5(f) of the Statute)

Count 10 (torture as a grave breach of the Geneva Conventions of 1949 under Article 2(b) of the Statute)

Count 12 (wilfully causing great suffering or serious injury to body or health as a grave breach of the Geneva Conventions of 1949, under Article 2(c) of the Statute)

Count 18 (unlawful transfer of a civilian as a grave breach of the Geneva Conventions of 1949, under Article 2(g) of the Statute)

Count 20 (wanton destruction not justified by military necessity as a violation of the laws or customs of war, under Article 3(b) of the Statute)

Count 21 (plunder of public or private property as a violation of the laws or customs of war, under Article 3(e) of the Statute)

764. Mladen Naletili} is acquitted on the following counts:

Count 2 (inhumane acts as a crime against humanity, under Article 5(i) of the Statute)

Count 3 (inhuman treatment as a grave breach of the Geneva Conventions of 1949, under Article 2(b) of the Statute)

Count 4 (cruel treatment as a violation of the laws or customs of war, under Article 3 of the Statute)

Count 6 (murder as a crime against humanity, under Article 5(a) of the Statute)

Count 7 (wilful killing as a grave breach of the Geneva Conventions of 1949, under Article 2(a) of the Statute)

Count 8 (murder as a violation of the laws or customs of war, under Article 3(1)(a) of the Statute)

Count 11 (cruel treatment as a violation of the laws or customs of war, under Article 3 of the Statute)

Count 19 (extensive destruction of property as a grave breach of the Geneva Conventions of 1949, under Article 2(d) of the Statute)

Count 22 (seizure, destruction or wilful damage done to institutions dedicated to religion as a violation of the laws or customs of war under Article 3(d) of the Statute)

765. The Chamber hereby sentences Mladen Naletili} to a single sentence of twenty years of imprisonment.

766. Pursuant to Rule 101(C) of the Rules, the accused is entitled to credit for time spent in detention. Mladen Naletili} was arrested on 18 October 1999, and has been in custody since then. He is entitled to credit for this period towards service of the sentence imposed, together with such additional time he may serve pending the determination of any appeal. Pursuant to Rule 103(C) of the Rules, Mladen Naletili} shall remain in custody of the Tribunal pending finalisation of arrangements for his transfer to the State were he shall serve his sentence.

767. Vinko Martinovi} has been found guilty on the following counts:

Count 1 (persecutions on political, racial and religious grounds as a crime against humanity, under Article 5(h) of the Statute)

Count 2 (inhumane acts as a crime against humanity, under Article 5(i) of the Statute)

Count 3 (inhuman treatment as a grave breach of the Geneva Conventions of 1949, under Article 2(b) of the Statute)

Count 5 (unlawful labour as a violation of the laws or customs of war, under Article 3 of the Statute)

Count 12 (wilfully causing great suffering or serious injury to body or health as a grave breach of the Geneva Conventions of 1949, under Article 2(c) of the Statute)

Count 13 (murder as a crime against humanity, under Article 5(a) of the Statute)

Count 14 (wilful killing as a grave breach of the Geneva Conventions of 1949, under Article 2(a) of the Statute)

Count 18 (unlawful transfer of a civilian as a grave breach of the Geneva Conventions of 1949, under Article 2(g) of the Statute)

Count 21 (plunder of public or private property as a violation of the laws or customs of war, under Article 3(e) of the Statute)

768. Vinko Martinovi} is acquitted on the following counts:

Count 4 (cruel treatment as a violation of the laws or customs of war, under Article 3 of the Statute)

Count 6 (murder as a crime against humanity, under Article 5(a) of the Statute)

Count 7 (wilful killing as a grave breach of the Geneva Conventions of 1949, under Article 2(a) of the Statute)

Count 8 (murder as a violation of the laws or customs of war, under Article 3(1)(a) of the Statute)

Count 11 (wilfully causing great suffering or serious injury to body or health as a grave breach of the Geneva Conventions of 1949, under Article 3 of the Statute)

Count 15 (violation of the laws or customs of war, under Article 3 of the Statute)

Count 16 (cruel treatment as a violation of the laws or customs of war, under Article 3 of the Statute)

Count 17 (wilfully causing great suffering or serious injury to body or health as a grave breach of the Geneva Conventions of 1949, under Article 2(c) of the Statute)

769. The Chamber hereby sentences Vinko Martinovi} to a single sentence of eighteen years of imprisonment.

770. Pursuant to Rule 101(C) of the Rules, the accused is entitled to credit for time spent in detention. Vinko Martinovi} was arrested on 9 August 1999, and has been in custody since then. He is entitled to credit for this period towards service of the sentence imposed, together with such additional time he may serve pending the determination of any appeal. Pursuant to Rule 103(C) of the Rules, Vinko Martinovi} shall remain in custody of the Tribunal pending finalisation of arrangements for his transfer to the State were he shall serve his sentence.

Done in English and French, the English being authoritative.

Dated this thirty-first day of March 2003
At The Hague
The Netherlands

Judge Liu Daqun
Presiding

Judge Maureen Clark

Judge Fatoumata Diarra

?**Seal of the Tribunal**?

ANNEX I – INDICTMENT

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE NO: IT-98-34-PT

THE PROSECUTOR

v.

Mladen NALETILI] also known as (a/k/a) "Tuta"
Vinko MARTINOVI] also known as (a/k/a/) "[tela"

SECOND AMENDED INDICTMENT

The Prosecutor of the International Criminal Tribunal for the former Yugoslavia, pursuant to her authority under Article 18 of the Statute of the International Criminal Tribunal for the former Yugoslavia (hereinafter the Statute of the Tribunal), charges:

Mladen NALETILI] a/k/a "Tuta"
and
Vinko MARTINOVI] a/k/a "[tela"

with CRIMES AGAINST HUMANITY, GRAVE BREACHES OF THE GENEVA CONVENTIONS and VIOLATIONS OF THE LAWS OR CUSTOMS OF WAR.

BACKGROUND

1. On 25 June 1991, Croatia declared its independence which was suspended until 8 October 1991. The Republic of Croatia was recognised by the European Community on 15 January 1992, and it was admitted as a member State of the United Nations on 22 May 1992.

2. Bosnia and Herzegovina declared its independence on 3 March 1992. The Republic of Bosnia and Herzegovina was recognised by the European Community on 6 April 1992 and by the Republic of Croatia on 7 April 1992. The Republic of Bosnia and Herzegovina was admitted as a member State of the United Nations on 22 May 1992.

3. The Croatian Community of Herceg-Bosna (HZ H-B) proclaimed its existence on 18 November 1991, and claimed to be a separate or distinct "political, cultural, economic and territorial whole" in the territory of Bosnia and Herzegovina. Its purposes included, *inter alia*, the establishment of closer ties with the Republic of Croatia. These aspirations, which were supported by the Republic of Croatia, were evidenced by the HZ H-B's use of the Croatian currency and the Croatian language and the granting by the Republic of Croatia of Croatian citizenship to Bosnian Croats.

4. The Constitutional Court of the Republic of Bosnia and Herzegovina declared the HZ H-B illegal on 14 September 1992. Neither the self-proclaimed HZ H-B, nor the later self-proclaimed Croatian Republic of Herceg-Bosna (HR H-B) were ever internationally recognised.

5. Article 3 of the HZ H-B proclamation of 18 November 1991 designated Mostar as the capital of this community. This designation of Mostar as capital of the self-proclaimed Croat community was re-affirmed by the decree issued by the President of HZ-HB on 8 April 1992, setting up the Croatian Defence Council (hereinafter referred as HVO) as the supreme executive, administrative and defence body of Herceg-Bosna, with its headquarters in Mostar; and the decree by such president on 28 August 1993, by which the HZ H-B declared itself the HR H-B.

6. The population of the municipality of Mostar prior to the beginning of the conflict (1991 official census) was composed of 126, 628 inhabitants, of which 43,856 (34.6%) were Muslims; 43,037 (33.9%) were Croats; 23,846 (18.8%) were Serbs; 12.768 (9.9%) were Yugoslavs; and 3,121 (2.4%) were others. The city of Mostar is the historical capital and

largest city of Herzegovina. The territory of the municipality of Mostar includes, among others, the following districts and villages: Ra{tani, Bijelo Polje, Vojno, Poto}i, Rudnik, Ili}i, \ikovina, Panjevina, Rodo}, Podhum, Zahum and Blagaj.

7. At all times during the relevant period the Army of the Republic of Croatia (HV) backed and supported the HVO and deployed its own units in Mostar, and other municipalities of Bosnia and Herzegovina. Among the units that were acting in connection with the authorities of the Republic of Croatia and participated in joint actions with units of the HV was the "Ka`njeni~ka Bojna" (Convicts' Battalion, also known as the "Punishment Battalion", "Tuti}eva Brigade", "Tuti}i", or "Tuta's men", hereinafter referred to as KB), under the command of **MLADEN NALETILI].**

8. As early as October 1992, the HVO launched an attack against the Bosnian Muslim population of the municipality of Prozor. Subsequently the HV and HVO participated in an armed conflict with the Armed Forces of the Government of Bosnia and Herzegovina (ABiH) until February 1994.

9. In April 1993, the HVO launched a series of attacks against the Bosnian Muslim civilian population, such as the attack of Ahmi}i on 16 April and others in central Bosnia. At the same time, on 17 April 1993, forces of the HV and HVO, including the KB, attacked the villages of Sovi}i and Doljani (municipality of Jablanica) under the overall command of **MLADEN NALETILI]**, and carried out the forcible transfer of the Bosnian Muslim population and destruction of their properties. Beginning simultaneously in April 1993, in the Herzegovinian municipalities of Stolac, ^apljina and Mostar, the HVO carried out the arrest of prominent Bosnian Muslims and imposed different measures of persecution against the Bosnian Muslim population, such as dismissals from work positions and public service, discrimination in the delivery of humanitarian aid, attacks against Bosnian Muslim houses and properties, and imposition of Croat language and education.

10. On 9 May 1993, the HV and HVO, including the KB, launched a large military offensive against the Bosnian Muslim population of Mostar and the positions of the ABiH in the city, provoking the start of an armed conflict with the ABiH in the municipality of Mostar. Subsequently the Bosnian Muslim population was the target of a broad campaign of violence in the areas of Mostar occupied by the HV and HVO, lasting at least until the cease-fire and peace agreements of February and March 1994. Across the confrontation line, the ABiH held

section of the city was under siege by the HV and HVO forces, who were shelling intensely the area and preventing the arrival of humanitarian aid and basic supplies. **MLADEN NALETILI]**, as commander of the KB, and **VINKO MARTINOVI]**, as commander of the "Mrmak" or "Vinko [krobo" sub-unit of the KB were leading perpetrators of this campaign against the Bosnian Muslim population.

11. The goal of this campaign by the HV and HVO forces, commonly referred to as "ethnic cleansing", was to gain control of the municipalities of Mostar, Jablanica and others in Bosnia Hercegovina and to force the Bosnian Muslim population to leave these territories or to substantially reduce and subjugate this population. The means used for this purpose included killings, beatings, torture, evictions, destruction of cultural and religious heritage, looting, deprivation of basic civil and human rights, and mass expulsions, detentions and imprisonments, all of them executed following a systematic pattern of ethnic discrimination. As a result of this campaign, tens of thousands of Bosnian Muslims abandoned Mostar, Jablanica and other municipalities in Bosnia Hercegovina. The traditional ethnic diversity of these municipalities was virtually eliminated, and an ethnically homogeneous society and institutions were imposed in these areas.

THE ACCUSED

12. **MLADEN NALETILI]**, a.k.a. "Tuta", son of Mate and Slavka, was born on 1 December 1946 in Li{tica-[iroki Brijeg, in the municipality of [iroki Brijeg, Bosnia and Herzegovina. **MLADEN NALETILI]** is by birth a Bosnian Croat who later acquired the citizenship of the Republic of Croatia, which he maintains to date. **MLADEN NALETILI]** graduated from elementary school. **MLADEN NALETILI]** left the Socialist Federal Republic of Yugoslavia in the late 1960's or early 1970's, and remained abroad until his return to his country of origin in 1990.

13. **VINKO MARTINOVI]**, a.k.a. "[tela", son of Ivan, was born on 21 September 1963 in Mostar, Bosnia and Herzegovina. **VINKO MARTINOVI]** is by birth a Bosnian Croat who later acquired the citizenship of the Republic of Croatia, which he maintains to date.

SUPERIOR AUTHORITY

14. At all times material to this indictment, **MLADEN NALETILI]** was the commander of the KB, a special unit founded by him on or about June 1991. The KB was composed of approximately 200 to 300 soldiers grouped in several sub-units, called ATG or ATJ ("Anti Terrorist Group" or "Unit") with bases in the municipalities of Mostar, Li{tica-[iroki Brijeg and Ljubu{ki. The main tasks of the KB were combat missions on the front line, expulsions and attacks against Bosnian Muslim civilians in the territories under HV and HVO occupation. The KB acted as part of, or in co-ordination with the HVO and HV.

15. **MLADEN NALETILI]** exercised his control in military matters in a manner consistent with the exercise of superior authority, including the development of the organisational structure within the KB. He was involved in the management and control of the finances of the KB. **MLADEN NALETILI]** was also in charge of disbursing the salaries of members of the KB; deciding on logistical and tactical matters; ensuring the combat readiness of his troops; planning the preparation and implementation of military operations performed either by the KB alone, or in co-ordination with other HVO and HV units under the general command of both armies; and co-ordinating with high ranking officers of the HZ H-B, the HR-HB, and the Republic of Croatia.

16. **MLADEN NALETILI]** exercised his authority over the members of the KB in a direct manner by meeting with his direct subordinates and KB sub-commanders on virtually a daily basis, interacting with the rank and file soldiers frequently, visiting the different bases of the KB, and acting as field commander for certain military actions.

17. **VINKO MARTINOVI]** was a commander in the HOS (Croatian Defence Forces) militia in Mostar in 1992, and later joined the KB. At all times material to this indictment, **VINKO MARTINOVI]** was the commander of the KB sub-unit, ATG "Mrmak", later named "Vinko [krobo", and a subordinate to **MLADEN NALETILI]**. In a manner consistent with the exercise of superior authority, **VINKO MARTINOVI]** participated in military operations under the command of the KB and in co-ordination with other HVO and HV units under the general command of both armies. At all times material to this indictment in the city of Mostar **VINKO MARTINOVI]** was in command of a section of the front line in the Bulevar street, where the ATG "Mrmak", later named "Vinko [krobo", was deployed under his command, and the base and facilities of this unit in the Kalemova street.

GENERAL ALLEGATIONS

18. At all times relevant to this indictment, a state of international armed conflict and partial occupation existed on the territory of the Republic of Bosnia and Herzegovina.

19. All acts or omissions set forth as Grave Breaches of the Geneva Conventions of 1949 (hereinafter "Grave Breaches"), recognised by Article 2 of the Statute of the Tribunal, occurred during that international armed conflict and partial occupation.

20. All of the victims to whom the charges refer, whether they were civilians or prisoners of war, were, at all relevant times, persons protected by the Geneva Conventions of 1949.

21. In each paragraph charging Crimes Against Humanity, the alleged acts or omissions were part of a widespread, large-scale or systematic attack directed against the Bosnian Muslim population.

22. The accused in this indictment were required to abide by the regulations of the laws or customs of war governing the conduct of war, including the Geneva Conventions of 1949.

23. **MLADEN NALETILI]** and **VINKO MARTINOVI]** are individually responsible for the crimes with which they are charged in this indictment pursuant to Article 7(1) of the Statute of the Tribunal. Individual criminal responsibility involves planning, instigating, ordering, committing, or otherwise aiding and abetting in the planning, preparation or execution of the acts or omissions set forth below.

24. **MLADEN NALETILI]** and **VINKO MARTINOVI]** are also, or alternatively, responsible as superiors for the acts of their subordinates pursuant to Article 7(3) of the Statute of the Tribunal. A superior is responsible for the acts of his subordinates if the superior knew, or had reason to know, that his subordinate was about to commit such acts, or had done so, and the superior failed to take the necessary and reasonable measures to prevent such further acts, or to punish the perpetrators thereof.

CHARGES

COUNT 1
PERSECUTIONS

25. On 17 April 1993, in the municipality of Jablanica, the KB, along with other HV and HVO units, attacked the villages of Sovi}i and Doljani and subsequently carried out the forcible transfer of the Bosnian Muslim population, destruction of their properties and destruction of the mosque of Sovi}i. **MLADEN NALETILI]** was the overall commander of this attack and ordered his subordinates to destroy the Bosnian Muslim properties and the mosque of Sovi}i, to arrest all of the Bosnian Muslim adult males and to expel and forcibly transfer Bosnian Muslim civilians to the territory under ABiH control.

26. In the municipality of Mostar, the forcible transfer and imprisonment of Bosnian Muslim civilians started simultaneously with the HV and HVO attack of 9 May 1993 and continued until at least January 1994. However, there were two large waves of forcible transfers and imprisonment: one in the days following the 9 May 1993 attack, and a second during the first days of July 1993. Once the KB and other HVO units had identified persons of Muslim ethnic background, they arrested them, evicted them, plundered their homes and forcibly transferred them to detention centres under HVO authority, or across the confrontation lines to the territories under ABiH control.

27. Between April 1993 and until at least January 1994, thousands of Bosnian Muslim civilians were interned in the detention centres under HVO authority in the area of Mostar and neighbouring municipalities. Beatings, torture, killings, were common and persistent in these detention facilities.

28. The HELIODROM compound, located in Rodo}, municipality of Mostar, was the main detention centre in the area. Bosnian Muslim civilians and prisoners of war arrested under the command of **MLADEN NALETILI]** and **VINKO MARTINOVI]** were interned in the HELIODROM. Members of the KB mistreated and tortured Bosnian Muslim detainees at the HELIODROM. Furthermore, throughout the relevant period, subordinates to **MLADEN NALETILI]** and **VINKO MARTINOVI]** regularly took detainees from the HELIODROM to the front lines to force them to perform labour and use them as human shields.

29. Throughout this period, **MLADEN NALETILI]** visited on numerous occasions the HELIODROM camp and had knowledge of the existence of Bosnian Muslim civilian prisoners, and the inhumane conditions of this camp and the mistreatment of detainees. **MLADEN NALETILI]** was in contact with the commanders of the HELIODROM, had access to the main facilities of the compound and exerted command over the KB troops based in the compound.

30. In the Kalemova street of the city of Mostar, the KB maintained the base of the sub-unit called ATG "Mrmak", later named "VINKO [KROBO", under the command of **VINKO MARTINOVI]**. Bosnian Muslim detainees were kept in this base, which was used as centre for the attacks against Bosnian Muslim civilians, particularly evictions, looting, expulsions across the front lines and use of detainees for forced labour and human shield purposes. **MLADEN NALETILI]** regularly visited these premises to meet **VINKO MARTINOVI]** and other KB members.

31. **MLADEN NALETILI]** knew of the existence of detention centres in Mostar and neighbouring municipalities other than the HELIODROM in which Bosnian Muslim civilians were interned and mistreated. In particular, **MLADEN NALETILI]** had knowledge of the detention centres located in the municipality of Li{tica - [iroki Brijeg, such as the primary school of DOBRKOVI]I, the MUP POLICE STATION, and the bases of the KB in Li{tica - [iroki Brijeg, Ljubu{ki and Mostar where Bosnian Muslims were also detained. Bosnian Muslim detainees of the primary school of DOBRKOVI]I were forced to work in **MLADEN NALETILI]**'s private estate.

32. Under the command of **MLADEN NALETILI]** and **VINKO MARTINOVI],** the KB forcibly transferred Bosnian Muslim civilians to the confrontation line in the municipality of Mostar and forced them to cross the confrontation line towards the ABiH side. **MLADEN NALETILI]** and **VINKO MARTINOVI]** gave orders to expel the Bosnian Muslim population and loot and destroy their houses and properties.

33. Throughout this period, **MLADEN NALETILI]** and **VINKO MARTINOVI]** repeatedly tortured Bosnian Muslim detainees, ordered their subordinates to torture Bosnian Muslims and by their example instigated their subordinates to commit and carry out torture. Severe physical and mental suffering was intentionally inflicted on Bosnian Muslims for the following purposes: to obtain from them information; to punish them; to retaliate due to

adverse developments in the front lines; to intimidate them; or based on their ethnicity or religion.

34. Between about April 1993 and at least January 1994, **MLADEN NALETILI]**, as commander of the KB, and **VINKO MARTINOVI]**, as commander of the "Mrmak" or "Vinko [krobo" sub-unit of the KB, together with other leaders, agents and members of the HV and HVO, planned, instigated, ordered or committed, or aided and abetted the planning, preparation or execution of a crime against humanity, through the widespread or systematic persecutions of Bosnian Muslim civilians on political, racial, ethnic or religious grounds, throughout the territory claimed to belong to the HZ H-B and HR H-B by the following means, including, as applicable, the acts and conduct described in Counts 2 through 22 below:

(a) unlawfully confining, detaining, forcibly transferring and deporting Bosnian Muslim civilians, including as described in paragraphs 53 and 54;

(b) subjecting Bosnian Muslims to torture and inhumane acts, inhuman and cruel treatment, murdering and wilfully killing them, wilfully causing them great suffering, using them to perform unlawful and forced labour, including on the confrontation lines in Mostar, and using them as human shields, which in some instances resulted in their death, including as described in paragraphs 35 to 52;

(c) destroying and wantonly devastating Bosnian Muslim dwellings and buildings, including as described in paragraphs 55, 56 and 58; and

(d) plundering public and private property of Bosnian Muslims, including as described in paragraph 57.

By these acts and omissions, **MLADEN NALETILI]** and **VINKO MARTINOVI]** committed:

COUNT 1: persecutions on political, racial and religious grounds, a **CRIME AGAINST HUMANITY**, as recognised by Articles 5(h), 7(1) and 7(3) of the Statute of the Tribunal.

COUNTS 2 to 8
UNLAWFUL LABOUR AND HUMAN SHIELDS
AS INHUMAN TREATMENT AND WILFUL KILLING

35. Between about April 1993 and at least through January 1994, **MLADEN NALETILI], Vinko MARTINOVI]** and their subordinates forced Bosnian Muslim detainees from the various detention centres under the authority of the HVO to perform labour in military operations and to be used as human shields on the Bulevar and [anti}eva streets; Ra{tani; Stotina; and other locations along the front line in the municipality of Mostar.

36. Following the HV and HVO attack on the city of Mostar on 9 May 1993, the confrontation line with the ABiH was settled along the Bulevar and [anti}eva streets. From May 1993 to February 1994, the KB was engaged in fighting along the Bulevar and [anti}eva streets and had control over particular sections of this confrontation line. This confrontation line was both the scene of intense small arms fire and artillery exchanges between the opposing factions, and it was the main site to which Bosnian Muslim prisoners were taken to perform forced labour and to be used as human shields.

37. From May 1993 through at least January 1994, on a regular basis, detainees were taken from the HELIODROM camp and other detention centres to the bases of the KB, in the city of Mostar, for eventual transfer to the confrontation lines. The detainees were forced, at great risk to their lives, to perform various dangerous military support tasks benefiting the HV and HVO; including: digging trenches, building defences with sandbags, carrying wounded or killed HV or HVO soldiers, carrying ammunition and explosives across the confrontation line, and placing them in front of ABiH positions. These tasks were often performed by the detainees, under conditions which exposed them directly to hostile fire, and thereby served the purpose of protecting HVO soldiers. Consequently, the detainees were turned into human shields. On other occasions, the KB used detainees exclusively to protect the KB and other HV and HVO soldiers from hostile fire or to attract hostile fire on the detainees in order to ascertain the ABiH positions.

38. The circumstances of intense fire exchange and the direct exposure of the detainees and prisoners to such fire, adding to the short distance between the two warring factions, presented a high likelihood of death or serious injury to the detainees and prisoners. **MLADEN NALETILI]** and **VINKO MARTINOVI]** were aware of these circumstances.

The knowing exposure of the Bosnian Muslim detainees to these conditions resulted in their inhuman treatment and, in some instances, injuries and death.

39. From May 1993 to January 1994, **MLADEN NALETILI]** repeatedly visited the HELIODROM camp and the bases of the KB in the city of Mostar, where he met his subordinates and detainees. **MLADEN NALETILI]** had knowledge of the use of prisoners and detainees for forced labour and human shields and was also aware of the resulting injuries and deaths, based on his presence at the relevant sites and the reports he received from his subordinates.

40. Throughout this period, **VINKO MARTINOVI]**, as the commander of the sub-unit "Mrmak" or "Vinko [krobo", regularly used detainees for forced labour in military operations and as human shields along the confrontation lines in the city of Mostar.

41. On 17 September 1993, the HV and HVO launched an offensive on the positions of the ABiH along the Bulevar and [anti}eva streets in the city of Mostar. As part of this offensive, **VINKO MARTINOVI]** ordered and directed the use of Bosnian Muslim detainees for military attack purposes in the part of the Bulevar front-line under his command. Following the orders of **VINKO MARTINOVI]**, several detainees were given imitation wooden rifles and military clothing and were forced to walk alongside a tank moving towards the enemy positions. The purpose of this action was to prompt fire from the ABiH positions against the disguised detainees in order that the attacking HVO tank could ascertain these enemy positions.

42. On the same day and about the same time, approximately fifteen prisoners and detainees were deployed as human shields in an adjacent section of the Bulevar front line under the command of **VINKO MARTINOVI]** in order to protect attacking HVO soldiers. Approximately ten detainees were killed as a result of their use as human shields, including the following:

1. **^OLAKOVI] Aziz**
2. **^OLAKOVI] Hamdija**
3. **PAJO Enis**

43. On 23 September 1993, **MLADEN NALETILI]** commanded an attack by the KB on the village of Ra{tani, municipality of Mostar. In the course of the attack Bosnian Muslim detainees taken from the HELIODROM were forced to walk in front of the attacking forces,

and to enter and search enemy positions. The detainees were forced to perform these tasks exposed to the on-going exchange of fire at great risk to their lives.

44. Throughout this period, **MLADEN NALETILI], VINKO MARTINOVI]** and their subordinates also forced Bosnian Muslim detainees to perform labour in locations other than the front lines. The Bosnian Muslim detainees were forced, *inter alia*, to engage and participate in the following works: building, maintenance and reparation works in private properties of the members and commanders of the KB; digging trenches, building defences in the positions of the KB or other HV and HVO forces; and assisting the KB members in the process of looting houses and properties of Bosnian Muslims.

By these acts and omissions, **MLADEN NALETILI]** and **VINKO MARTINOVI]** committed:

COUNT 2: inhumane acts, a **CRIME AGAINST HUMANITY**, as recognised by Articles 5(i), 7(1) and 7(3) of the Statute of the Tribunal.

COUNT 3: inhuman treatment, a **GRAVE BREACH OF THE GENEVA CONVENTIONS OF 1949**, as recognised by Articles 2(b) and 7(1) and 7(3) of the Statute of the Tribunal.

COUNT 4: cruel treatment, a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR** under Statute Articles 3 as recognised by Article 3(1)(a) of the Geneva Conventions and Statute Articles 7(1) and 7(3).

COUNT 5: unlawful labour, a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR** under Statute Article 3 as recognised by Article 51 of Geneva Convention IV and Articles 49, 50 and 52 of Geneva Convention III, and Statute Articles 7(1) and 7(3).

COUNT 6: murder, a **CRIME AGAINST HUMANITY** as recognised by Articles 5 (a), 7(1) and 7(3) of the Statute of the Tribunal.

COUNT 7: wilful killing, a **GRAVE BREACH OF THE GENEVA CONVENTIONS OF 1949**, as recognised by Articles 2 (a), 7(1) and 7(3) of the Statute of the Tribunal.

COUNT 8: murder, a **VIOLATION OF THE LAW OR CUSTOMS OF WAR** under Statute Article 3 as recognised by Article 3 (1) (a) of the Geneva Conventions, and Statute Articles 7(1) and 7(3).

COUNTS 9 to 12

TORTURE

AND

WILFULLY CAUSING GREAT SUFFERING

45. Beginning in May 1993 and at least through January 1994, **MLADEN NALETILI], VINKO MARTINOVI]** and their subordinates tortured or wilfully caused great suffering to Bosnian Muslim civilians and prisoners of war captured by the KB or detained under the authority of the HVO. Severe physical and mental suffering was intentionally inflicted on Bosnian Muslim detainees for the following purposes: to obtain from them information; to punish them; to retaliate due to adverse developments in the front lines; or to intimidate them, based on their ethnicity or religion. Throughout this period, **MLADEN NALETILI]** and **VINKO MARTINOVI]** repeatedly committed, aided and abetted torture, wilfully caused great suffering, and by their example instigated and encouraged their subordinates to torture or cause great suffering on Bosnian Muslim detainees.

46. **MLADEN NALETILI]** committed and instigated the commission of torture or the infliction of great suffering on Bosnian Muslim detainees on 20 April 1993 following the attack against the Bosnian Muslim population of Sovi}i and Doljani carried out by HV and HVO forces under his overall command.

47. In the context of the preparations of the HV and HVO attack on Mostar, on 7 May 1993, unidentified members of the KB arrested in Mostar witness "B", whom at the time was a prominent figure within the Bosnian Muslim community, and took him to a base of the KB in Li{tica - [iroki Brijeg. At that base **MLADEN NALETILI]** and his subordinates tortured witness "B", causing severe injuries.

48. Following the HV and HVO attack on Mostar, on 10 May 1993, **MLADEN NALETILI]** physically assaulted Witness "M", who was a prisoner of war captured in Mostar by **MLADEN NALETILI]**'s subordinates. **MLADEN NALETILI]** hit repeatedly witness "M" in an open area of the streets of Mostar, in presence of his subordinates and other commanders of the HVO.

49. Throughout this period, **VINKO MARTINOVI]** repeatedly beat in the presence of his subordinates Bosnian Muslim detainees in the area under his command and Bosnian Muslim civilians in the process of their eviction and deportation.

50. Throughout this period, the beatings and torture of Bosnian Muslim civilians and prisoners of war became a common practice of the members of the KB. Beatings and torture of Bosnian Muslim civilians and prisoners of war were committed by a large number of members of the KB, including commanders. These beatings and tortures were committed at different bases of the KB in Mostar, Li{tica - [iroki Brijeg and Ljubu{ki. Beatings and tortures were also inflicted at other detention centres and camps under the authority of the HVO, such as the Ljubu{ki prison, the HELIODROM camp. Beatings and tortures were additionally inflicted at several other locations following the capture of prisoners. **MLADEN NALETILI]** and **VINKO MARTINOVI]** knew, or had reason to know, that their subordinates were about to commit such acts, or had done so, and they failed to take the necessary and reasonable measures to prevent such further acts, or to punish the perpetrators thereof.

By the acts and omissions alleged in Paragraphs 45 - 48 and 50, **MLADEN NALETILI]** committed:

COUNT 9: torture, a **CRIME AGAINST HUMANITY**, under Articles 5(f), 7(1) and 7(3) of the Statute of the Tribunal.

COUNT 10: torture, a **GRAVE BREACH OF THE GENEVA CONVENTIONS OF 1949**, under Statute Article 2 (b), and 7(1) and 7(3) of the Statute of the Tribunal.

By the acts and omissions alleged in Paragraphs 45 - 50, **MLADEN NALETILI]** committed, and by the acts and omissions alleged in Paragraphs 45, 49 and 50, **VINKO MARTINOVI]** committed:

COUNT 11: cruel treatment, a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, under Statute Article 3 as recognised by Article 3 (1)(a) of the Geneva Conventions, and Articles 7(1) and 7(3) of the Statute of the Tribunal.

COUNT 12: wilfully causing great suffering or serious injury to body or health, a **GRAVE BREACH OF THE GENEVA CONVENTIONS OF 1949**, under Articles 2 (c), 7(1) and 7(3) of the Statute of the Tribunal.

COUNT 13 to 17
MURDER , WILFUL KILLING AND
WILFULLY CAUSING GREAT SUFFERING
OF NENAD HARMAND@I]

51. Nenad HARMAND@I], son of Salko, born in Mostar on 19 February 1947, was taken in July 1993 with a group of approximately fifty detainees from the HELIODROM camp to the base of the sub-unit of the KB under the command of **VINKO MARTINOVI]**, known as ATG (Anti Terrorist Group) "Mrmak" or "Vinko [krobo", located in the Kalemova street in the city of Mostar. **VINKO MARTINOVI]** was present at the base and was exercising direct command when the group of prisoners, including Nenad HARMAND@I], arrived.

52. On the same day, following the arrival of Nenad HARMAND@I] at the facilities of the Kalemova street, he met **VINKO MARTINOVI]** and was thereafter the subject of severe beatings by subordinates under the command of **VINKO MARTINOVI]**. Later on the same day, Nenad HARMAND@I] was killed by subordinates of **VINKO MARTINOVI]**.

By these acts and omissions, **VINKO MARTINOVI]** committed:

COUNT 13: murder, a **CRIME AGAINST HUMANITY,** as recognised by Articles 5(a), 7(1) and 7(3) of the Statute of the Tribunal.

COUNT 14: wilful killing, a **GRAVE BREACH OF THE GENEVA CONVENTIONS OF 1949**, as recognised by Articles 2 (a), 7(1) and 7(3) of the Statute of the Tribunal.

COUNT 15: murder, a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR** under Statute Article 3 as recognised by Article 3(1)(a) of the Geneva Conventions and Articles 7(1) and 7 (3) of the Statute of the Tribunal.

Alternatively,

COUNT 16: cruel treatment, a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, under Statute Article 3 as recognised by Article 3(1)(a) of the Geneva Conventions and Articles 7(1) and 7(3) of the Statute of the Tribunal.

COUNT 17: wilfully causing great suffering or serious injury to body or health, a **GRAVE BREACH OF THE GENEVA CONVENTIONS OF 1949**, under Articles 2 (c), 7(1) and 7(3) of the Statute of the Tribunal.

COUNT 18
FORCIBLE TRANSFER

53. On about 17 April 1993, following the plans and under the overall command of **MLADEN NALETILI],** the KB, along with other HV and HVO forces, attacked the villages of Sovi}i and Doljani in the municipality of Jablanica. After the capture of Sovi}i, the attacking forces forcibly interned several hundreds of Bosnian Muslim civilians in the local primary school on 18 and 19 April 1993. On the following days, the forces under the command of **MLADEN NALETILI]** confined the whole of the Bosnian Muslim civilian population of Sovi}i, around 450 women, children and elderly, to the hamlet of Junuzovi}i, and forcibly transferred them subsequently to the territory of Gornji Vakuf under control of the ABiH.

54. In the municipality of Mostar, **MLADEN NALETILI]** and **VINKO MARTINOVI]** were responsible for and ordered the forcible transfer of Bosnian Muslim civilians that started on the 9 May 1993 and continued until at least January 1994. The KB members under their command were prominent in the eviction, arrest and forcible transfers of Bosnian Muslim civilians throughout the relevant period, and particularly during the two large waves of forcible transfers that took place in May and July 1993. Once the KB and other HVO units had identified persons of Muslim ethnic background, they arrested them, evicted them, plundered their homes and forcibly transferred them across the confrontation lines to the territories under ABiH control. The ABiH held a section of the city which was under siege by the HV and HVO forces, who were shelling intensely the area and preventing the arrival of

humanitarian aid and basic supplies. **MLADEN NALETILI]** and **VINKO MARTINOVI]** commanded operations for this purpose and gave orders to their subordinates to proceed with the forcible transfers.

By these acts or omissions, **MLADEN NALETILI]** and **VINKO MARTINOVI]** committed:

COUNT 18: unlawful transfer of a civilian, a **GRAVE BREACH OF THE GENEVA CONVENTIONS OF 1949**, as recognised by Articles 2(g), 7(1) and 7(3) of the Statute of the Tribunal.

COUNTS 19 to 22
DESTRUCTION AND PLUNDER OF PROPERTY

55. Following the capture of Sovi}i and Doljani on 17 April 1993, **MLADEN NALETILI]** ordered the destruction of all the Bosnian Muslim houses in the area. The systematic destruction of the Bosnian Muslim houses was carried out by the forces under the authority of **MLADEN NALETILI]**, who at the relevant time was in command over the area occupied by the HV and HVO forces.

56. Following the capture of Sovi}i and Doljani on 17 April 1993, **MLADEN NALETILI]** ordered the destruction of the mosque of Sovi}i. The mosque was destroyed by the forces under the authority of **MLADEN NALETILI]**, who at the relevant time was in command over the area occupied by the HV and HVO forces.

57. Following the HV and HVO attack on Mostar of 9 May 1993 and in the context of the subsequent campaign of persecutions against the Bosnian Muslim population, the units under the command of **MLADEN NALETILI]** and **VINKO MARTINOVI]** plundered systematically the Bosnian Muslim houses and properties.

58. Following the capture of the village of Ra{tani, municipality of Mostar on 23 September 1993, the forces under the command of **MLADEN NALETILI]** destroyed the Bosnian Muslim houses of the village.

By the acts and omissions alleged in Paragraphs 55, 56 and 58, **MLADEN NALETILI]** committed:

COUNT 19: extensive destruction of property, a **GRAVE BREACH OF THE GENEVA CONVENTIONS**, recognised by Articles 2(d), 7(1) and 7(3) of the Statute of the Tribunal.

COUNT 20: wanton destruction not justified by military necessity, a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, as recognised by Articles 3(b), 7(1) and 7(3) of the Statute of the Tribunal.

By the acts and omissions alleged in Paragraph 57, **MLADEN NALETILI]** and **VINKO MARTINOVI]** committed:

COUNT 21: plunder of public or private property, a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, as recognised by Articles 3(e), 7(1) and 7(3) of the Statute of the Tribunal.

By the acts and omissions alleged in Paragraph 56, **MLADEN NALETILI]** committed:

COUNT 22: seizure, destruction or wilful damage done to institutions dedicated to religion, a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, as recognised by Articles 3(d), 7(1) and 7(3) of the Statute of the Tribunal.

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Carla Del Ponte
Prosecutor

Dated this ____ September 2001
The Hague, The Netherlands

ANNEX II – PROCEDURAL BACKGROUND

1. The Indictment against Vinko Martinovi} and Mladen Naletili} was confirmed on 21 December 1998 by Judge Richard May.[1803] It contains a total of twenty-two counts. The accused Martinovi} is charged with four crimes against humanity (Counts 1, 2, 6, and 13), six grave breaches of the Geneva Conventions of 1949 (Counts 3, 7, 12, 14, 17, and 18), and six violations of the laws and customs of war (Counts 4, 5, 8, 15, 16, and 21). The accused Naletili} is charged with four crimes against humanity (Counts 1, 2, 6 and 9), six grave breaches of the Geneva Conventions of 1949 (Counts 3, 7, 10, 12, 18 and 19), and seven violations of the laws and customs of war (Counts 4, 5, 8, 11, 20, 21, and 22).

2. Vinko Martinovi} was transferred from the Republic of Croatia to the United Nations Detention Unit in The Hague on 9 August 1999 and pleaded "not guilty" to all charges against him at his initial appearance on 12 August 1999.[1804] Mladen Naletili} was transferred to Tribunal from the Republic of Croatia on 21 March 2000 and pleaded "not guilty" to all charges against him at his initial appearance three days later.[1805] On 7 December 2000, both of the accused pleaded "not guilty" to the new charges of unlawful labour and human shields.

3. During the pre-trial phase of this case, the Chamber was composed of Judge Almiro Rodrigues, Presiding, Judge Fouad Riad and Judge Patricia Wald. The pre-trial proceedings lasted 327 days. Prior to the commencement of the trial, between 23 July and 3 August 2001,

[1803] Order confirming indictment, 21 December 1998. On 11 October 2000, the Prosecutor filed a motion to amend Count 5 of the Indictment by adding a reference to Article 52 of the Third Geneva Convention, which prohibits dangerous and humiliating labour (Prosecutor's Motion to amend count 5 of the indictment, 11 October 2000). The Trial Chamber granted this motion. On 27 December 2000 and 3 January 2001, Vinko Martinovi} and Mladen Naletili} respectively objected to the Amended Indictment (Vinko Martinovic's objection to the Amended Indictment, 27 December 2000; Defence's Preliminary Motion, 3 January 2001). The Defence submitted that unless it is advantageous for the accused, an indictment cannot be amended without new factual allegations or new evidence adduced to support it. In its decision, the Trial Chamber found that there was nothing under Rule 50 of the Tribunal's Rules that addresses the issue of new charges (Decision on Prosecution Motion to amend count 5 of the Indictment, 28 November 2000). Accordingly, the Trial Chamber canvassed the principles governing the amendment of indictments in common and civil law jurisdictions and found that most of the States surveyed allow amendments unless prejudice to the accused can be shown. Applying this test, the Trial Chamber held that the accused had failed to show that the amendment to Count 5 would cause prejudice to them in the preparation of their defence. In accordance with the Tribunal's jurisprudence, the Trial Chamber further ruled that cumulative charging, as opposed to cumulative convictions or sentences, is permissible. At the Chamber's request, the Prosecutor filed a motion to amend the Amended Indictment (Prosecutor's Motion to amend the amended indictment, 28 September 2001). The Prosecution requested permission to clarify that Vinko Martinovi} is not charged in counts 9, 10, 19, 20 and 22. The Trial Chamber granted the Prosecution's motion (Decision on Prosecutor's Motion to amend the amended indictment, 16 October 2001). This Judgement responds to the Second Amended Indictment (hereinafter "the Indictment") *The Prosecutor v. Mladen Naletili} and Vinko Martinovi} ("Tuta and Štela")* as amended for the second time on 16 October 2001 further to the decision of the Trial Chamber.

[1804] Warrant of arrest order for surrender for Vinko Martinovic sent to the Republic of Croatia, 21 December 1998.

[1805] Warrant of arrest order for surrender for Mladen Naletilic sent to the Republic of Croatia, 18 April 2000.

16 prosecution witnesses were heard by depositions in The Hague before the presiding officer Olivier Fourmy.[1806]

4. Following the depositions proceedings, the Naletili} Defence filed a motion requesting a six-month continuance.[1807] The Martinovi} Defence also filed a declaration on this matter.[1808] The Chamber ruled that although the Prosecution and Defence did not have identical amounts of time and resources to prepare their respective cases, the appropriate test is whether either party is disadvantaged concerning the presentation of their case.[1809] It further held that "…while complex, this is not an overly complicated case requiring more than the time and resources already provided to the parties",[1810] and ordered that the trial commence on 10 September 2001 as scheduled. By oral decision on the first day of the trial, the Chamber dismissed a subsequent request by Naletili}'s Defence Counsel to postpone the start of the trial by two months.[1811] The Naletili} Defence applied for leave to appeal this decision, which the Appeals Chamber dismissed.[1812]

5. The trial commenced before Judge Liu as the presiding Judge, Judge Clark and Judge Diarra on 10 September 2001 and was concluded on 31 October 2002.[1813] The Chamber heard 56 *viva voce* witnesses for the Prosecution, making the total number of witnesses for the Prosecution 84.

[1806] The Prosecution filed the "Motion for approval of Rule 94*ter* procedure (formal statements)" on 14 March 2000, proposing that its investigators be allowed to formalise affidavits from witnesses, which would then be admitted into evidence. The Trial Chamber rejected this motion holding that the proposed procedure did not comport with Rule 94 *ter* because it was not in accordance with the laws of Bosnia and Herzegovina. The Prosecution subsequently filed the "Amended Motion for approval of Rule 94 *ter* procedure (formal statements)" on 11 October 2000, proposing a procedure for obtaining affidavits that met the requirements of Rule 94 *ter.* The Trial Chamber granted the Prosecution's motion in "Decision on Prosecution amended Motion for approval of Rule 94 *ter* procedure (formal statements)" issued on 10 November 2000. Shortly thereafter, the Rules were amended, and Rule 94 *ter* was replaced with Rule 92 *bis* (A), which holds that a written statement may be admitted in lieu of oral testimony provided it "goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment". Accordingly, the Prosecution reconsidered its Rule 94 *ter* list. The Prosecution filed "Prosecutor's Motion to take depositions for use at trial (Rule 71)" on 11 October 2000, proposing depositions for 23 named witnesses. The Chamber granted the Prosecution's motion in "Decision on Prosecutor's Motion to take depositions for use at trial (Rule 71)", issued on 10 November 2000. On 17 November 2000, the accused Naletili} applied for leave to appeal the Trial Chamber's decision. The same day, Martinovi} filed a notice of joinder in the leave to appeal. The Appeals Chamber refused leave to appeal. The Prosecution submitted a second motion, "Prosecutor's Motion to take additional depositions for use at trial (Rule 71)" on 11 April 2001 proposing depositions for 11 additional witnesses. The Trial Chamber authorised depositions for 6 witnesses to whom the accused maintained no objection.

[1807] Motion of Defendant Mladen Naletili} pursuant to Rule 73(A) of the Rules of Procedure and Evidence and Article 21(4)(B) to continue the trial date, 8 August 2001; Response to the Prosecutor's objection to continual trial date on the motion of the Accused, 27 August 2001.

[1808] Declaration with respect to the Motion of defendant Mladen Naletili} pursuant to Rule 73(A) of the Rules of Procedure and Evidence and Article 21(4)(B) to continue trial date, 24 August 2001.

[1809] Decision on the accused Naletili}'s Motion to continue trial date, 31 August 2001.

[1810] Decision on the accused Naletili}'s Motion to continue trial date, 31 August 2001.

[1811] 10 September 2001, T 1803.

[1812] Decision on application by Mladen Naletili} for leave to appeal the decision of Trial Chamber I dated 10 September 2001, 12 November 2001.

[1813] By order of the President the Chamber was reconsidered on 3 August 2001 and the Judges were assigned on 7 September 2001. The prosecutor's cases lasted from 10 September 2001 to 4 February 2002. The last day of hearing for Prosecution witnesses was 24 January 2002; on 30 January a Status conference was held regarding

The Naletili} Defence commenced its case on 25 March 2002[1814] and presented a total of 35 witnesses, including 3 expert witnesses.[1815] The Martinovi} Defence started the presentation of its case on 16 July 2002 and called a total of 27 witnesses, including 2 expert witnesses. Throughout the trial, a large number of exhibits were admitted: approximately 2,305 for the Prosecution, 370 for the Naletili} Defence and 76 for the Martinovi} Defence. In total, the transcripts of the trial amounted to 16,876 pages.

6. Throughout the proceedings, numerous motions were filed by both sides on a variety of issues. The purpose of this section is to canvass the most significant decisions that the Chamber rendered.

A. Preliminary motion on the form of the Indictment

7. Pursuant to Rule 72(A)(ii) of the Rules, each of the accused filed preliminary motions alleging defects in the form of the Indictment.[1816] The Chamber rejected both motions and held that the Indictment is not too vague, that proof of the facts contained in the Indictment is a matter for trial and that the issue of cumulative charging would be decided after the evidence was presented at trial.[1817] In its decision on Martinovi}'s motion, the Chamber further rejected the argument that those portions of the Indictment charging Martinovi} with responsibility under Article 7(1) and 7(3) of the Tribunal's Statute are defective.[1818]

B. Competence to stand trial

8. At the behest of Naletili} Defence, the Chamber ordered that expert medical and psychological examinations of Naletili} be conducted.[1819] Although these examinations were postponed on several occasions for logistical reasons, they were ultimately completed by July 2000, and experts found Mladen Naletili} physically and mentally competent to stand trial.

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admission of exhibits and on 4 February 2002 the decision regarding the admission of exhibits was taken; Decision on admission of two binders.

[1814] The Naletili} Defence case was concluded on 4 July 2002, apart from two witnesses heard by video-link between 26 August and 21 September 2002.

[1815] The expert witnesses were considered by the Defence as joint witnesses. This figure also includes testimonies heard in rejoinder.

[1816] Defendant Vinko Martinovic's objection to the indictment, 4 October 1999; Defence's preliminary Motion, 20 April 2000.

[1817] Decision on Defendant Vinko Martinovi}'s objection to the indictment, 15 February 2000; Decision on preliminary Motion of Mladen Naletilic, 11 May 2000.

[1818] Decision on Defendant Vinko Martinovi}'s objection to the indictment, 15 February 2000.

[1819] Order concerning Motion of the accused Mladen Naletilic for a medical and psychiatric exam, 18 April 2000.

C. Polygraph examination

9. Prior to the commencement of the trial, the Naletili} Defence repeatedly demanded that he be examined by polygraph.[1820] The Chamber rejected the request on four grounds.[1821] First, according to the Rules, the manner in which witnesses are to be questioned is a discretionary power of the Prosecution.[1822] Second, since the accused is indigent, the Tribunal would not necessarily and reasonably incur in the expenses related to the test, taking into account that such tests are generally regarded as unreliable.[1823] Third, the test would delay rather than expedite the proceedings.[1824] Finally, the Chamber emphasised that it is its role to determine the credibility of the accused.[1825]

D. Evidence

10. Throughout the trial, evidentiary issues gave rise to numerous motions pertaining to the form and admissibility of evidence.

1. Affidavits and depositions

11 The Prosecution filed a motion proposing that its investigators be allowed to formalise affidavits from witnesses, which would then be admitted into evidence.[1826] The Chamber rejected this motion holding that the proposed procedure did not comply with Rule 94*ter* of the Rules because it was not in accordance with the laws of Bosnia and Herzegovina.[1827] The Prosecution subsequently filed a motion proposing a procedure for obtaining affidavits that met the requirements of Rule 94*ter* of the Rules,[1828] which the Chamber granted.[1829] Shortly thereafter, the Rules were amended, and Rule 94*ter* was replaced with Rule 92*bis.* Pursuant to the new rule, a written statement may be admitted in lieu of oral testimony provided it "goes to proof of a matter

[1820] Request of the accused to be given the opportunity to be interrogated under application of a polygraph, 12 October 2000; Prosecutor's response to the request of the accused Mladen Naletilic to be given the opportunity to be interrogated under application of a polygraph, 1 November 2000.
[1821] Decision on the request of the accused to be given the opportunity to be interrogated under application of a polygraph, 27 November 2000.
[1822] Decision on the request of the accused to be given the opportunity to be interrogated under application of a polygraph, 27 November 2000.
[1823] Decision on the request of the accused to be given the opportunity to be interrogated under application of a polygraph, 27 November 2000.
[1824] Decision on the request of the accused to be given the opportunity to be interrogated under application of a polygraph, 27 November 2000.
[1825] Decision on the request of the accused to be given the opportunity to be interrogated under application of a polygraph, 27 November 2000.
[1826] Motion for approval of Rule 94 *ter* procedure (formal statements), 14 March 2000.
[1827] Decision on the Prosecutor's Motion for approval of Rule 94 *ter* procedure (formal statements), 14 March 2000.
[1828] Amended Motion for approval of Rule 94 *ter* procedure (formal statements), 11 October 2000.
[1829] Decision on Prosecution amended Motion for approval of Rule 94 *ter* procedure (formal statements), 10 November 2000.

other than the acts and conduct of the accused as charged in the indictment".[1830] Accordingly, the Prosecution reconsidered its Rule 94*ter* list and reassigned these individuals as Rule 92*bis* affidavit witnesses, deposition witnesses, and live witnesses.

12. The Prosecution filed a motion proposing depositions for 23 named witnesses.[1831] In accordance with Rule 71 of the Rules, the Chamber granted the Prosecution's motion, as the testimonies of the named witnesses would either pertain to background information or repeat the testimony of live witnesses.[1832] On 17 November 2000, the Naletili} Defence applied for leave to appeal the Chamber's decision.[1833] The same day, Martinovi} filed a notice of joinder.[1834] The Appeals Chamber refused to grant leave to appeal.[1835]

13. The Prosecution submitted a second motion proposing depositions for eleven additional witnesses.[1836] The Naletili} Defence filed a response pursuing his objection in respect of five witnesses.[1837] The Chamber ordered the Prosecution to clarify why the additional witnesses proposed for deposition should not be entirely removed from the witness list.[1838] After receiving the Prosecution's response[1839], the Chamber authorised depositions for the six witnesses not objected by the accused and for one witness who would not proffer evidence directly implicating the accused.[1840] In the presence of the accused, the depositions took place in The Hague over a fortnight commencing 23 July 2001.

14 During the depositions proceedings, both the Naletili} and the Martinovi} Defence tendered a number of witness interview statements for admission into evidence. The Chamber ruled that witness interview statements not covered by Rules 71 or 92*bis* of the Rules shall not be admitted into evidence unless, in extraordinary cases, the Chamber rules otherwise.[1841] The Chamber reiterated that witnesses are generally to testify live, and that they are alternatively allowed to offer

[1830] Rule 92*bis*(A) of the Rules.
[1831] Prosecutor's Motion to take depositions for use at trial (Rule 71), 11 October 2000.
[1832] Decision on Prosecutor's Motion to take depositions for use at trial (Rule 71), 10 November 2000.
[1833] Defence's leave to appeal against Trial Chamber I order, 17 November 2002.
[1834] Vinko Martinovi}'s Defence's notice of joining the request of the Defence for the accused Mladen Naletili} for a permission to lodge the appeal against the decision on the Prosecutor's Motion to take depositions for use at trial (Rule 71), 17 November 2000.
[1835] Decision on application for leave to appeal by the accused Mladen Naletili} and notice of joinder in that application by the accused Vinko Martinovi} against the decision of Trial Chamber I of 10 November 2000.
[1836] Prosecutor's Motion to take additional depositions for use at trial (Rule 71), 11 April 2001.
[1837] The Defence's response to the Prosecutor's Motion to take additional depositions for use at trial (Rule 71), 25 April 2001; Declaration with respect to Prosecutor's Motion to take additional depositions for use at trial (Rule 71), 26 April 2001.
[1838] Order for clarification regarding Prosecutor's Motion to take additional depositions for use at trial (Rule 71), 4 May 2001.
[1839] Prosecutor's clarification of Motion to take additional depositions for use at trial (Rule 71), 18 May 2001.
[1840] Prosecutor's clarification of Motion to take additional depositions for use at trial (Rule 71), 18 May 2001.
[1841] Decision on the admission of witness statements into evidence, 14 November 2001.

their testimonies or statements only in accordance with specific Rules.[1842] The Chamber considered that it would not assign the same probative value to witness interview statements made in the absence of judicial control as it would to live testimony in court.[1843] It further held that live witness testimony in reaction to being challenged by confrontation with the interview statements represents "evidence",[1844] while the statements could only serve as an aid to this end and could not independently constitute "evidence".[1845]

15 Pursuant to Rule 71 of the Rules, the Naletili} Defence also filed a motion proposing depositions to be taken in closed session in Mostar.[1846] The Chamber authorised depositions for twelve witnesses to be taken in closed session in Mostar over a period of eight days commencing 7 July 2002.[1847] Upon notification by the Registry of security concerns with taking depositions in Mostar, the Trial Chamber ordered the depositions to be taken in The Hague during the same period.[1848]

16 On 25 June 2002, the Naletili} Defence filed submissions proposing the cancellation of the Mostar depositions,[1849] and the replacement of depositions with testimony via video-conference link and live testimony by those witnesses who are able to travel to the Hague.[1850] In its decision, the Chamber ordered one witness to testify before the Chamber and nine witnesses to testify via video-conference link from Zagreb in late August and early September 2002.[1851] The Defence subsequently called only two of the nine witnesses selected to testify via video-conference link from Zagreb.

2. Translation of documents

17 On 11 September 2001, the Naletili} Defence made an oral motion requesting translation into BCS, the language of the accused, of all evidence submitted by the Prosecution.[1852] By decision issued on 18 October 2001, the Chamber held that all exhibits, when submitted to the Chamber for admission, must be made available in a language that the accused understands and in

[1842] Decision on the admission of witness statements into evidence, 14 November 2001.
[1843] Decision on the admission of witness statements into evidence, 14 November 2001.
[1844] Decision on the admission of witness statements into evidence, 14 November 2001.
[1845] Decision on the admission of witness statements into evidence, 14 November 2001.
[1846] Naletilic Motion to take depositions for use at the trial per Rule 71 of the Rules of Procedure and Evidence, 14 March 2002.
[1847] Decision on "Naletili}'s Motion to take depositions for use at the trial per Rule 71 of the Rules of Procedure and Evidence", 5 June 2002.
[1848] Order on depositions, 21 June 2002.
[1849] Accused Naletilic's submission concerning the order cancelling the Mostar depositions, 25 June 2002.
[1850] Accused Naletili}'s submission concerning the order cancelling the Mostar depositions, 25 June 2002.
[1851] Decision on video-link testimonies, 2 August 2002.
[1852] T 1922.

at least one of the Tribunal's official languages.[1853] The Chamber held that although Rule 3(A) of the Rules provides that the working languages of the Tribunal are English and French, this Rule must be consistent with Article 21 of the Statute, which guarantees all accused the right to a fair trial.[1854]

18 An oral order of the Chamber on 13 November 2001 clarified its ruling on the translation of documents.[1855] The Chamber held that three categories of documents must be translated into BCS.[1856] These include documents directly referring to facts that form the foundation for the charges in the Indictment, documents containing direct references to one of the accused, and documents concerning the specific areas and time of the allegations set out in the Indictment.[1857] Documents that do not need to be translated into BCS are official United Nations documents and reports, excerpts from books or other publications that are publicly available and documents that contain mere background evidence.[1858]

3. Admission of evidence

19 In accordance with the Tribunal's jurisprudence and Rule 89(C) of the Rules, the Trial Chamber admitted evidence that presented "sufficient *indicia* of reliability" and which it deemed to be relevant and probative.[1859] The Chamber issued 38 written decisions and 50 oral decisions on the admission of exhibits.

(a) Transcripts from the *Blaški}* and *Kordi}* cases

20 The Prosecution filed a motion seeking to admit transcripts and exhibits of certain witness testimony in the *Blaški}* and *Kordi}* cases.[1860] By decision dated 27 November 2000, the Chamber granted the motion and admitted the transcripts of seven prior witnesses and the exhibits tendered through them.[1861] The Chamber found that the transcripts and exhibits were reliable, probative and

[1853] Decision on Defence's Motion concerning translation of all documents, 18 October 2001.
[1854] Decision on Defence's Motion concerning translation of all documents, 18 October 2001.
[1855] T 5576-5577.
[1856] T 5576-5577.
[1857] T 5576-5577.
[1858] T 5576-5577.
[1859] *Prosecutor v. Delali} et al.,* Decision on application of Defendant Zejnil Delali} for leave to appeal against the decision of the Trial Chamber of 19 January 1998 for the admissibility of evidence, Case No.: IT-96-21-AR73.2, 4 March 1998, para 17; See also, *Prosecutor v. Aleksovski,* Decision on Prosecutor's appeal on admissibility of evidence, Case No.: IT-95-14/1-A, 16 February 1999; *Prosecutor v. Kordi} and Cerkez,* Decision on appeal regarding statement of a deceased witness, Case No.: IT-95-14/2-A, 21 July 2000; *Prosecutor v. Brdanin and Tali},* Order on the standards governing the admission of evidence, Case No.: IT-99-36-T, 15 February 2002, para 18.
[1860] Motion for admission of transcripts and exhibits tendered during testimony of certain Blaškic and Kordic witnesses, 11 October 2000.
[1861] Decision on Prosecution Motion for admission of transcripts and exhibits tendered during testimony of certain Blaškic and Kordic witnesses, 27 November 2000.

that it had not been shown that the rights of the accused would be infringed by their admission.[1862] Upon application by the Naletili} Defence for leave to appeal this decision, the Martinovi} Defence filed a notice of joinder.[1863] The Appeals Chamber denied the accused leave to appeal.[1864]

21 Subsequent to the Chamber's decision, the Rules were amended and under Rule 92*bis* of the Rules, transcripts from other cases before the Tribunal may be entered into evidence if they go to proof "of a matter other than the acts and conduct of the accused".[1865] The Prosecution, therefore, offered the same transcripts to be entered into evidence under the new rule, which the Chamber admitted.[1866] Pursuant to Rule 92*bis* of the Rules, the Chamber granted a subsequent request from the Prosecution to admit the transcripts and exhibits tendered during the testimony of three more witnesses in the *Blaškic* and *Kordic* cases.[1867] In accordance with the decision issued in *The Prosecutor v. Sikirica* case,[1868] the Chamber considered that instead of allowing the Defence to cross-examine these witnesses, rebuttal evidence could be called as part of the Defence's case.[1869]

(b) Statements of deceased witnesses

22 In a confidential motion and pursuant to Rule 89(C) of the Rules, the Prosecution requested the admission of two written statements made by witnesses that had since deceased. After issuing a confidential decision and at the behest of the Prosecution, the Chamber issued a public version of its decision on 27 February 2002.[1870] The Chamber held that concerning the admission of statements of deceased witnesses, Rule 92*bis*(C) constitutes the *lex specialis* to the "general provisions" of Rule 89(C) of the Rules. Commenting on the general reliability of statements that are given to investigators of the Prosecution, the Chamber expressed a number of concerns. As stated in the Interlocutory Appeals Decision in *The Prosecutor v. Kordi} and Cerkez* case, such statements are not given under oath, they are not subject to cross-examination, they are given by witnesses many

[1862] Decision on Prosecution Motion for admission of transcripts and exhibits tendered during testimony of certain Blaškic and Kordic witnesses, 27 November 2000.
[1863] Defence's application for leave to appeal against Trial Chamber I decision dated 27 November 2000, 6 December 2000; Notice of the Defence for the accused Vinko Martinovic of joining the request by the Defence for the accused Mladen Naletilic for a permission to lodge the appeal against the decision on Prosecutor Motion for admission of transcripts and exhibits tendered during testimony of certain Blaškic and Kordic witnesses, 7 December 2000.
[1864] Decision on application by the accused Mladen Naletilic for leave to appeal and notice of joinder in that application by the accused Vinko Martinovic against the decision of Trial Chamber I dated 27 November 2000, 2 February 2001.
[1865] Rule 92*bis*(D) of the Rules.
[1866] Prosecutor's notice of intent to offer transcripts under Rule 92*bis*(D), 29 May 2001; Decision regarding Prosecutor's notice of intent to offer transcripts under Rule 92*bis*(D), 9 July 2001.
[1867] Decision on Prosecutor's Motion for admission of additional transcripts and exhibits from other ICTY proceedings, 27 November 2000.
[1868] *The Prosecutor v. Sikirica et. al.,* Case No.: IT-95-8-T, Decision on Prosecution's application to admit transcripts under Rule 92*bis,* 23 May 2001.
[1869] Accused Naletili}'s submission concerning the order cancelling the Mostar depositions, 25 June 2002.

years after the events occurred and they are translated multiple times.[1871] The Chamber held that in accordance with Rule 92*bis*(A) of the Rules, both witness statements were inadmissible as they "go directly to proof of the acts and conduct of the accused as charged in the indictment".[1872]

(c) Documents seized per search warrant

23 In a confidential motion, the Naletili} Defence objected to the admission of documents that were seized per search warrant by the Tribunal. The Chamber held that the Tribunal has jurisdiction to issue and execute search warrants pursuant to Articles 18(2) and 29 of the Statute and Rules 39 and 54 of the Rules.[1873] It further found that the search warrant in question was sufficiently precise.[1874] In its decisions dated 31 January 2002 and 5 February 2002, the Chamber held that the seized documents are sufficiently reliable, and accordingly, it admitted them into evidence.[1875]

E. Missing files

24 In a confidential motion, the Naletili} Defence alleged that certain files were sent to the Prosecution from the High Court of Mostar and requested an order to institute an investigation to locate them. These files allegedly pertained to an indictment concerning the mistreatment of BH Muslim civilians by HVO soldiers. The Defence asserted that neither Mladen Naletili} nor the Convicts' Battalion are mentioned in this document. Seeking to rely on that indictment and its supporting material in order to prove the accused Naletili}'s innocence in relation to certain charges against him, the Defence requested that an investigation be undertaken. The Chamber ordered both the Prosecution and the Defence to provide information to the Chamber regarding the Mostar High Court files.[1876] On 29 May 2002, the Prosecution disclosed a copy of one Mostar High Court file to both Defences.

[1870] Decision on the Prosecutor's request for public version of Trial Chamber's "Decision on the Motion to admit statement of deceased witnesses." of 22 January 2002.", 27 February 2002.
[1871] *The Prosecutor v. Kordi} and Cerkez,* Decision on Appeals Regarding Statement of a Deceased Witness, Case No.: IT-95-14/2-AR73.5, 21 July 2002.
[1872] Decision on the Prosecutor's request for public version of Trial Chamber's "Decision on the Motion to admit statement of deceased witnesses. (…)" of 22 January 2002.", 27 February 2002.
[1873] Decision on accused Naletilic's reasons why documents seized per search warrant are inadmissible, 14 November 2001.
[1874] Decision on accused Naletilic's reasons why documents seized per search warrant are inadmissible, 14 November 2001.
[1875] Decision on admission of seized documents, 31 January 2002; Corrigendum, 5 February 2002.
[1876] Order to the Prosecution to provide definitive information on their alleged possession of the Mostar court files, 27 March 2002; Order for additional information, 5 April 2002.

F. Motion for judgement of acquittal

25 After the close of the Prosecution's case, the Naletili} Defence confidentially filed a motion for acquittal pursuant to Rule 98*bis* of the Rules. The following day, the Martinovi} Defence also filed a motion for acquittal. Rule 98*bis*(B) of the Rules states that the Chamber shall acquit the accused on one or more counts in an indictment if "the evidence is insufficient to sustain a conviction". The Chamber held that the Prosecution "has presented sufficient evidence to meet the standard under Rule 98 *bis* of the Rules on all the counts" with which the accused were charged.[1877] However, it further determined that no or insufficient evidence had been presented concerning the incidents described in paragraphs 42 and 47 of the Indictment.[1878] It held that the incident described in paragraph 42 could serve as a basis for the Chamber's findings in relation to the allegations contained in paragraphs 35 to 41 of the Indictment.[1879]

G. Motion to stay the deliberations

26 On 12 March 2003, the Naletili} Defence filed a confidential motion to stay the delivery of the Judgement[1880] on the ground that the Prosecution had just disclosed material that may be exculpatory.[1881] Having heard the parties and reviewed the material, the Chamber held that the material was not falling within the ambit of Rule 68 of the Rules and therefore dismissed the Motion.[1882] Accordingly, the delivery of the Judgement was rescheduled to take place on 31 March 2003.[1883]

[1877] Decision on Motions for acquittal, 28 February 2002.
[1878] Decision on Motions for acquittal, 28 February 2002.
[1879] Decision on Motions for acquittal, 28 February 2002.
[1880] The date for the delivery of the Judgement had been set by the Chamber on 24 March 2003. *See* Scheduling Order, 27 February 2003.
[1881] Motion for Stay of Further Deliberation of the Evidence and Expedited Request for the Taking of Further Evidence in Light of Newly Disclosure Material Provided by OTP, 12 March 2003.
[1882] Decision on Defence Motion to Stay the Deliberations in Light of Material Newly Disclosed by the Prosecution, 24 March 2003.
[1883] Scheduling Order, 24 March 2003.

ANNEX III – GLOSSARY

ABiH	Armed Forces of the Government of Bosnia and Herzegovina
Additional Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 8 June 1977
Additional Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977
Akayesu Appeal Judgement	*Prosecutor v. Jean-Paul Akayesu*, Case No.: ICTR-96-4-A, Judgement, 1 June 2001
Akayesu Trial Judgement	*Prosecutor v. Jean-Paul Akayesu*, Case No.: ICTR-96-4-T, Judgement, 2 September 1998
Aleksovski Appeal Judgement	*Prosecutor v. Zlatko Aleksovski*, Case No.: IT-95-14/1-A, Judgement, 24 March 2000
Aleksovski Trial Judgement	*Prosecutor v. Zlatko Aleksovski*, Case No.: IT-95-14/1-T, Judgement, 25 June 1999
ATG	Anti Terrorist Group
BCS	Bosnian Croatian Serbian language
Bla{ki} Trial Judgement	*Prosecutor v. Tihomir Bla{ki},* Case No.: IT-95-14-T, 3 March 2000
Bosnia and Herzegovina	Republic of Bosnia and Herzegovina
BT	Transcripts of the hearing in *Prosecutor v. Tihomir Bla{ki},* Case No.: IT-95-14-T, 3 March 2000 ("*Bla{ki}* Trial Judgement")
Chamber	Trial Chamber I Section A of the Tribunal
^*elebi}i* Appeal Judgement	*Prosecutor v. Zejnil Delalic et al*, Case No.: IT-96-21-A, Judgement, 20 February 2001
^*elebi}i* Trial Judgement	*Prosecutor v. Zejnil Delalic et al*, Case No.: IT-96-21-T, Judgement, 16 November 1998
Common Article 3	Article 3 of Geneva Conventions I through IV

Commentary on the Additional Protocols	Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, International Committee of the Red Cross, Geneva, 1987
Commentary to Geneva Convention III	Commentary, III Geneva Convention relative to the Treatment of Prisoners of War (1949), International Committee of the Red Cross, Geneva, 1960
Commentary to Geneva Convention IV	Commentary, IV Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949), International Committee of the Red Cross, Geneva, 1958
Croatia	Republic of Croatia
Defence exhibits	Exhibits tendered by the Defence and admitted into evidence by the Chamber
ECMM	European Community Monitor Mission
Exhibit DD1/X	Exhibits tendered by the Defence for Mladen Naletili} and admitted into evidence by the Chamber
Exhibit DD2/X	Exhibits tendered by the Defence for Vinko Martinovi} and admitted into evidence by the Chamber
Exhibit PP X	Prosecution's exhibits admitted into evidence by the Chamber
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950
Erdemovi} Appeal Judgement	*Prosecutor v. Dra`en Erdemovi}*, Case No.: IT-96-22-A, Judgement, 7 October 1997
Erdemovi} First Sentencing Judgement	*Prosecutor v. Dra`en Erdemovi}*, Case No.: IT-96-22-T, Sentencing Judgement, 29 November 1996
Erdemovi} Second Sentencing Judgement	*Prosecutor v. Dra`en Erdemovi}*, Case No.: IT-96-22-T*bis*, Sentencing Judgement, 5 March 1998
Furund`ija Appeal Judgement	*Prosecutor v. Anto Furund`ija*, Case No.: IT-95-17/1-A, Judgement, 21 July 2000
Furund`ija Trial Judgement	*Prosecutor v. Anto Furund`ija,* Case No.: IT-95-17/1-T, Judgement, 10 December 1998
Geneva Convention I	Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949
Geneva Convention II	Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949

Geneva Convention III	Geneva Convention III Relative to the Treatment of Prisoners of War of 12 August 1949
Geneva Convention IV	Geneva Convention IV Relative to the Protection of Civilian Person in Time of War of 12 August 1949
Geneva Conventions	Geneva Conventions I to IV of 12 August 1949
Hague Convention IV	The 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land of 18 October 1907
Hague Regulations	Regulations Respecting the Laws and Customs of War on Land annexed to Hague Convention IV of 18 October 1907
HDZ	Croatian Democratic Union
HOS	Croatian Defence Forces (military wing of the Croatian Party of Rights)
HV	Army of the Republic of Croatia
HVO	Croatian Defence Council (army of the Bosnian Croats)
HZ H-B	Croatian Community of Herceg-Bosna
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States, Between 1 January 1994 and 31 December 1994
Indictment	*Prosecutor v. Mladen Naletili} aka "Tuta" and Vinko Martinovi} aka "[tela"*, Case No.: IT-98-34-I, Second Amended Indictment, 16 October 2001
JNA	Yugoslav Peoples' Army
Jelisi} Appeal Judgement	*Prosecutor v. Goran Jelisi}*, Case No.: IT-95-10-A, Judgement, 5 July 2001
Jelisi} Trial Judgement	*Prosecutor v. Goran Jelisi}*, Case No.: IT-95-10-T, Judgement, 14 December 1999
Kayishema/Ruzindana Trial Judgement	*Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No.: ICTR-95-T, Judgement, 21 May 1999
Convicts' Battalion	
Kordi} Trial Judgement	*Prosecutor v. Dario Kordi} & Mario Cerkez,* Case No.: IT-95-14/2-T, Judgement, 26 February 2001

Krnojelac Trial Judgement	*Prosecutor v Milorad Krnojelac* Case No.: IT-97-25-T, Judgement, 15 March 2002
Krsti} Trial Judgement	Prosecutor v. *Radislav Krsti}*, Case No.: IT-98-33-T, Judgement, 2 August 2001
Kunarac Trial Judgement	*Prosecutor v. Dragoljub Kunarac et al.,* Case No. IT-96-23/1-T, Judgement, 22 February 2001
Kunarac Appeal Judgement	*Prosecutor v. Dragoljub Kunarac et al*., Case No. IT-96-23/1-T, Judgement, 12 June 2002
Kupre{ki} Appeal Judgement	*Prosecutor v. Zoran Kupre{ki} et al.*, Case No.: IT-95-16-A, Judgement, 23 October 2001
Kupre{ki} Trial Judgement	*Prosecutor v. Zoran Kupre{ki} et al.*, Case No.: IT-95-16-T, Judgement, 14 January 2000
Kvo~ka Trial Judgement	*Prosecutor v. Miroslav Kvo~ka et al.,* Case No.: IT-98-30-T, Judgement, 2 November 2001
KT	Transcripts of the hearing in *Prosecutor v. Dario Kordi},* Case No.: IT-95-14/2-T, ("*Kordi}* Trial Judgement")
Martinovic Defence	Counsel for Vinko Martinovic
Martinovi} Submission on Sentencing Considerations	*Prosecutor v. Mladen Naletili} aka "Tuta" & Vinko Martinovi} aka "[tela"*, Case No.: IT-98-34-T, "Submission on Sentencing Considerations", filed on 20 February 2003
Martinovi} Final Brief	*Prosecutor v. Mladen Naletili} aka "Tuta" & Vinko Martinovi} aka "[tela"*, Case No.: IT-98-34-T, filed 19 November 2002. A confidential version was filed on 23 October 2002
Martinovi} Pre-trial Brief	*Prosecutor v. Mladen Naletili} aka "Tuta" & Vinko Martinovi} aka "[tela"*, Case No.: IT-98-34-T, "The Defence's Pre-Trial Brief", filed 23 November 2000
MUP	Ministry of the Interior Police
Musema Trial Judgement	*Prosecutor v. Alfred Musema*, Case No.: ICTR-96-13-T, Judgement, 27 January 2000
Naletili} Additional Submission on Sentencing Considerations	*Prosecutor v. Mladen Naletili} aka "Tuta"& Vinko Martinovi} aka "[tela"*, Case No.: IT-98-34-T, "Additional Submission on Sentencing Considerations for the Accused Mladen Naletilic aka "Tuta"", filed on 24 February 2003
Naletilic Defence	Counsel for Mladen Naletilic

Naletili} Final Brief	*Prosecutor v. Mladen Naletili} aka "Tuta" & Vinko Martinovi} aka "[tela"*, Case No.: IT-98-34-T, filed 4 November 2002. A confidential version was filed on 23 October 2002
Naletili} Pre-trial Brief	*Prosecutor v. Mladen Naletili} aka "Tuta" & Vinko Martinovi} aka "[tela"*, Case No.: IT-98-34-PT, "The Defence's Pre-Trial Brief", filed 22 November 2000
Naletili} Submission on Sentencing Considerations	*Prosecutor v. Mladen Naletili} aka "Tuta" & Vinko Martinovi} aka "[tela"*, Case No.: IT-98-34-T, "Submission on Sentencing Considerations for the Accused Mladen Naletilic 'Tuta'", filed on 21 February 2003
Plav{i} Sentencing Judgement	*Prosecutor v. Biljana Plav{i}*, Case No.: IT-00-39&40/1-S, Sentencing Judgement, 27 February 2003
Prosecution	The Office of the Prosecutor
Prosecution's Additional Sentencing Submissions	*Prosecutor v. Mladen Naletili} aka "Tuta" & Vinko Martinovi} aka "[tela",* Case No.: IT-98-34-T, "Prosecution's Additional Sentencing Submissions", filed on 21 February 2003
Prosecution exhibits	Exhibits tendered by the Prosecutor and admitted into evidence by the Chamber
Prosecution Final Brief	*Prosecutor v. Mladen Naletili} aka "Tuta" & Vinko Martinovi} aka "[tela"*, Case No.: IT-98-34-T, filed on 4 November 2002. A confidential version was filed on 23 October 2002.
Prosecution Pre-trial Brief	*Prosecutor v. Mladen Naletili} aka "Tuta" & Vinko Martinovi} aka "[tela"*, Case No.: IT-98-34-T, "Prosecutor's Pre-Trial Brief", filed 11 October 2000
Raji} Review Decision	*Prosecutor v. Ivica Raji} aka Viktor Andri}*, Case No: IT-95-12-R61, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, 13 September 1996
Rules	Rules of Procedure and Evidence of the Tribunal
Statute	Statute of the Tribunal
SDA	Party of Democratic Action
SFRY	Socialist Federal Republic of Yugoslavia
SIS	HVO Security and Information Service
SPABAT	Spanish Battalion of UNPROFOR

T	Transcript of hearing in the present case. All transcript pages referred to in this judgement are taken from the unofficial, uncorrected version of the transcript. Minor differences may therefore exist between the pagination therein and that of the final transcript released to the public
Tadi} Appeal Judgement	*Prosecutor v. Du{ko Tadi},* Case No.: IT-94-1-A, Judgement, 15 July 1999
Tadi} Jurisdiction Decision	*Prosecutor v. Du{ko Tadi},* Case No.: IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995
Tadi} Sentencing Appeal	*Prosecutor v. Du{ko Tadi},* Case No.: IT-94-1-A and IT-94-1-A*bis*, Judgement in Sentencing Appeals, 26 January 2000
Tobacco Institute	Tobacco place in Mostar
TO	Territorial Defence
Tobacco Station	Former tobacco factory in the town of Široki Brijeg (Li{tica) used as headquarters by the HVO (including the KB)
Transcript witness	Testimony of witness in another case before the Tribunal and admitted into this case by decision of the Chamber
Tribunal	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
UNPROFOR	United Nations Protection Forces
Vasiljevic Trial Judgement	*Prosecutor v. Mitar Vasiljecvic,* Case No. IT-98-32-T, Judgement, 2 November 2002
Washington Agreement	Agreement between the Republic of Bosnia and Herzegovina and the Republic of Croatia signed on 18 March 1994 creating the Federation of Bosnia Herzegovina