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The Hague, 20 February 2014

Oral Decision on Defence Motion for Acquittal Pursuant to Rule 98 *bis*

Please find the oral decision read out today by Judge Delvoie.

Today, the Chamber will render its decision on the Defence's Rule 98 *bis* motion.

On 16 December 2013, the Defence moved—pursuant to Rule 98 *bis* of the Tribunal's Rules of Procedure and Evidence—for acquittal on specific charges contained within counts 2 through 9 of the Indictment. The Prosecution responded on 18 December 2013.

The Chamber recalls that Rule 98 *bis*, as amended in 2004, provides that, at the close of the Prosecution's case-in-chief, the Trial Chamber shall, by oral decision, and after hearing the oral submissions of the parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction.

The Defence **has made submissions** on the scope of Rule 98 *bis*, submitting that the Rule allows the Chamber to look within counts in the Indictment to examine whether an accused may be acquitted on a portion of a count. The Defence argued that—if the Chamber agrees with this view—it should acquit Goran Hadžić of specific charges contained within counts 2 through 9 of the Indictment—namely those related to events at Opatovac, Lovas, Velepromet, and Ovčara—because there is insufficient evidence linking Hadžić to these crimes to enable any conviction. The Defence also submitted that the Chamber should acquit Hadžić of specific charges contained within counts 5 through 9 where they relate to detention facilities located in the territory of Serbia because the Prosecution has failed to establish that international humanitarian law applied to crimes allegedly committed within Serbia.

In its **response**, the Prosecution requested the Chamber to reject what it described as the Defence's piece-meal and incident-based application of Rule 98 *bis*. The Prosecution urged the Chamber to decline to enter a judgement of acquittal regarding the specific charges within counts 2 through 9 that were challenged by the Defence. It submitted that the approach proposed by the Defence was not only contrary to the plain language and intent of Rule 98 *bis*, but also contrary to the manner in which other Trial Chambers have consistently interpreted and applied the Rule since it was amended in 2004. The Prosecution submitted that there was abundant evidence of Hadžić's criminal liability in relation to all counts charged and that no judgement of acquittal should be entered on any charges or counts.

The Chamber will now address the Defence's submissions related to **the scope of Rule 98 *bis*.** While the Defence stated its conviction that, based on the totality of the evidence, none of the fourteen counts against the accused have been

proved, it did not move for a full acquittal—or even for an acquittal on any count in its entirety. Instead, the Defence moved for acquittal only on specifically identified charges within counts 2 through 9 of the Indictment.

The Defence submitted that the Chamber is not bound by the four corners of the counts, as articulated in the Indictment, when determining what portions of the case to allow to proceed and that other Trial Chambers have gone within counts to examine whether there is a portion of a count that may be dismissed under Rule 98 *bis*. The Defence argued that the Chamber should exercise this discretion to identify and analyse discrete events charged in the Indictment, regardless of whether such events have been characterised as component parts of a larger count by the Prosecution. According to the Defence, such an approach is appropriate in light of the purpose of Rule 98 *bis* and is fairer to the Defence. In this connection, the Defence argued that the Rule 98 *bis* process is an efficiency mechanism that allows chambers to eliminate charges or counts that have no merit, thereby obviating the need for the Defence to call evidence in response. The Defence submitted that it would be paradoxical to the purpose of Rule 98 *bis* if a chamber were to find itself unable to decide that particular, discrete, and identifiable charges of an indictment should not go forward where there is no evidence capable of supporting a conviction in relation to them.

The Chamber notes that, prior to the amendment, the Rule expressly provided for a Trial Chamber to enter a judgement of acquittal where the Chamber found insufficient evidence to sustain a conviction on challenged charges. The current text of the Rule, however, focuses on acquittal on any count if there is no evidence capable of supporting a conviction.

The Chamber will now review the manner in which trial chambers have applied Rule 98 *bis*, following the 2004 amendment.

In the Orić case, the Chamber vacated some counts in their entirety. It also determined that there was no case to answer in respect of certain portions of certain counts, where the Prosecution had conceded there was no evidence capable of supporting a conviction. In Krajišnik, the Chamber determined that there was a case to answer on all counts, including in respect of those charges and counts to which the Defence made specific submissions. The Krajišnik Chamber noted that the parties were in agreement that charges related to two municipalities would not proceed due to insufficient evidence.

The Mrkšić Chamber found that the amendment to the Rule had materially altered the requirements for Rule 98 bis and that the Rule, in its amended formulation, required a Chamber to enter a judgement of acquittal when there is no evidence capable of supporting a conviction on a particular count—as opposed to the earlier form of the rule, which turned on offences charged. This count-focused approach was followed by both the Martić and Dragomir Milošević Chambers. The Dragomir Milošević Chamber did however hold that, given the multi-layered nature of indictments at the Tribunal, the 2004 amendment had the potential to defeat the intended expeditiousness of Rule 98 *bis* and had the potential to render the process "virtually devoid of any practical application at the Tribunal." The Milutinović Chamber found that there was insufficient evidence capable of supporting a conviction in relation to some of the crime sites listed under the wanton destruction and damage to religious and cultural heritage portion of the persecution count, but that there was evidence on other sites. The Milutinović Chamber therefore allowed the entire count to withstand the Rule 98 *bis* challenge.

In the Prlić case, the Defence, in a preliminary motion related to the Rule 98 *bis* proceedings, requested the Chamber to apply the pre-December 2004 version of Rule 98 bis, so that the Chamber would conduct its analysis on charges rather than counts. The Chamber denied the motion, noting that, under the amended Rule, a chamber is only expected to determine whether there is sufficient evidence for some of the charges constituting a count, rather than evidence for each and every charge within a count. The Prlić Chamber therefore held that a chamber may only enter a judgement of acquittal with respect to an entire count of an indictment.

In Lukić and Lukić, the Chamber also focused on the sufficiency of the counts. However, counts and charges were synonymous in the Lukić Indictment in the sense that each count generally comprised a single charge. Hence, the Lukić decision is not directly relevant to the present discussion.

The Trial Chambers in Popović and Gotovina followed a count-focused approach, as did the Šešelj Chamber, by majority. Most recently, in Karadžić, as with the other cases just discussed, the Chamber addressed the Rule 98 bis challenge by determining the sufficiency of the counts, with reference to some, but not all of the specific charges or events contained within the counts.

These cases reveal settled practice within the ICTY trial chambers to entertain motions for judgement of acquittal in respect of entire counts and not individual charges within a count. The Chamber notes that the nature of the defence submissions in these cases have varied, reflecting the specifics of each individual case. However, in general, the defence in prior cases has requested either a full acquittal on all the counts of the indictment or acquittal on entire counts. In contrast, in the instant case, the Defence has not requested a full acquittal on any count in the Indictment.

The Trial Chamber is not indifferent to the criticism of the 2004 amendment of Rule 98 bis, as articulated in the Dragomir Milošević decision. However, based on the legislative history of Rule 98 *bis* and the settled practice of the trial chambers following the 2004 amendment, the Trial Chamber is of the view that it is appropriate to entertain a motion for judgement of acquittal only with regard to all the counts of an Indictment or with regard to entire counts.

Due to the fact that the Defence in the present case has not challenged any count in its entirety, there is no possibility of a judgement of acquittal on an entire count or on all counts, as contained in the Indictment.

Based on the foregoing, and pursuant to Rule 98 *bis*, the motion of the Defence is hereby dismissed.

Despite the foregoing dismissal, the Trial Chamber finds it appropriate—in the present circumstances of this case—to address the specific challenges of the Defence in relation to several crime sites contained within the Indictment.

The Chamber notes that the legal test under Rule 98 *bis* is whether there is evidence upon which, if accepted, a reasonable trier of fact could be satisfied beyond reasonable doubt of the guilt of the accused. The test is not whether a trial chamber would convict beyond reasonable doubt, but rather whether it could do so. The Chamber will therefore consider if there is no evidence to sustain a conviction or if the only relevant evidence is so incapable of belief that it could not properly sustain a

conviction, even when the evidence led by the Prosecution is taken at its highest. At this stage, the Trial Chamber will not evaluate the credibility of witnesses or the strengths and weaknesses of contradictory evidence. Furthermore, if the Chamber considers now that there is evidence capable of sustaining a conviction, it does not mean that the Trial Chamber will enter a conviction at the end of the case.

The Chamber notes that, where evidence is mentioned in this analysis, the fact that it has been considered is not a fixed indication that the Chamber will ultimately accept it in whole or in part. Similarly, the Chamber may accept and rely upon evidence in its final judgement, even if it is not referred to in this decision.

For purposes of Rule 98 *bis* and this analysis, it is sufficient if there is evidence capable of supporting a conviction on the basis of one of the modes of responsibility charged in the indictment.

Although Hadžić has challenged more than one mode of responsibility, the present analysis concentrates on the allegations of the Prosecution that Hadžić is responsible under Article 7(1) of the Tribunal's Statute through his alleged participation in a joint criminal enterprise—or JCE.

As a preliminary matter, the Chamber is of the view that the Defence challenge in relation to the detention centres in Serbia involves a legal issue that is not appropriate to address at this stage of the proceedings.

Although the Defence focuses its challenges on Hadžić's alleged responsibility for the crimes alleged to have been committed in Opatovac, Lovas, Velepromet, and Ovčara—the Chamber will nevertheless consider whether the Prosecution has adduced evidence upon which a Chamber could find that the crimes in those four locations were committed.

The Defence challenges Hadžić's responsibility for charges related to Opatovac. The Defence submits that, at the time of the alleged crimes, a JNA town command controlled civilian affairs in Opatovac and that it was the JNA, Serbian reservists, and non-local TO members who were involved in perpetrating those crimes. According to the Defence, there is no evidence that Hadžić intended these crimes or that these crimes were encompassed by the alleged JCE. In addition, the Defence argues that there is no evidence of an organisational structure or connection between Hadžić, as President of the district government, and the people who are criminally liable for the crimes committed in Opatovac.

The Prosecution responds that there is sufficient evidence to show that members of the alleged JCE, JNA units, the local TO, local Serb forces, and Serb paramilitary groups committed the crimes in Opatovac. The Prosecution submits that there is sufficient evidence to show coordination and cooperation between the civilian affairs organs of the JNA and the civilian authorities in the Opatovac area. On these grounds, the Prosecution submits that, under the doctrine of JCE, there is no need to show that Hadžić was aware of all of the specific criminal incidents in Opatovac in order to be held criminally responsible for them.

The Chamber notes that there is evidence that—from around October 1991 to February 1992—the JNA, the TO, and local Serb volunteers physically and psychologically abused non-Serb residents at the police station in Opatovac. The residents were given a curfew and labour assignments from the JNA and TO. Many

non-Serbs were forced to leave their homes. There is also evidence of cooperation between the civilian authorities and the JNA town command in Opatovac.

The Trial Chamber therefore finds that the Prosecution has adduced sufficient evidence upon which a Chamber could find that there was cooperation between the civilian authorities and the JNA town command that controlled civilian affairs in Opatovac and that the JNA, TO, and local Serbs forcibly took the town and then committed various crimes charged in the Indictment against the civilian population. In so finding, the Chamber has relied upon the evidence of witnesses Mate Brletić, Reynaud Theunens, GH-061, GH-085; and upon exhibit P327.

The Defence challenges Hadžić's responsibility for charges related to Lovas, including an incident at a minefield on 18 October 1991. According to the Defence, in the absence of an established civilian authority in Lovas, the JNA exercised full control there. The Defence also argues that Hadžić only visited Lovas after the minefield incident and had no prior or contemporaneous knowledge of those events. Finally, the Defence avers that individuals—such as Ljuban Devetak in Lovas—unlawfully appropriated titles and positions for themselves and that Devetak's presence at the 20 November meeting in Velepromet—where Hadžić was also present—is not probative of Hadžić's responsibility.

The Prosecution responds that there is evidence that civilian authorities were established soon after the takeover of Lovas, with Ljuban Devetak in control and with Milan Radojđić as the commander of the Lovas TO. According to the Prosecution, there is sufficient evidence in relation to these crimes to establish a link between the government and other members of the JCE.

The Chamber notes that there is evidence that, on 10 October 1991, the predominantly Croat village of Lovas was attacked by the JNA and the Valjevci and Dušan Silni units. Following the takeover, Ljuban Devetak declared himself the president of Lovas. Croats and other non-Serbs were transported to the Zadruga complex, where they were severely mistreated. On the order of Devetak, on 18 October 1991, a group of about 50 detainees were escorted by members of the Valjevci and Dušan Silni units to de-mine a field outside the village. As a result of a mine explosion and gunfire at the minefield, 22 detainees were killed. The surviving detainees were escorted back by the Dušan Silni unit, and some of them returned the next day to bury the dead in a mass grave.

The Trial Chamber therefore finds that the Prosecution has adduced sufficient evidence upon which a Chamber could find that the crimes at Lovas were committed as charged in the Indictment. In so finding, the Chamber has relied upon the evidence of witnesses Čeljko Cirba, Milan Conjar, Emanuel Filić, Reynaud Theunens, Ivan Mujić, GH-095, GH-113, and GH-168; and upon exhibits P302, P309, and P298.1.

The Defence challenges Hadžić's responsibility for charges related to the alleged unlawful imprisonment, inhumane treatment, and killing of detainees by Serb Forces at the Velepromet facility on or around 19 November 1991. The Defence submits that the JNA controlled the Velepromet facility. The Defence also argues that the JNA had authority over the Vukovar TO and other units—including military police and reservists—that were present and involved in perpetrating the crimes there. Finally, the Defence avers that there is no evidence that Hadžić had any knowledge of what was occurring at Velepromet at this time—or that he had any effective control over the perpetrators.

The Prosecution responds that there is sufficient evidence to show that Hadžić bears responsibility for these crimes because the perpetrators were linked to members of the JCE and because Hadžić was a member of this JCE and intended the crimes to be committed. On this basis, the Prosecution avers that there is no need to show that Hadžić had knowledge of every alleged incident that occurred at Velepromet between 19 and 21 November 1991.

The Chamber notes that there is evidence that, around 10 November 1991, a Centre for the Admission of Civilians and Preservation of Material Goods was established at Velepromet by Operational Group South—or OG South. The Velepromet centre was directly managed by the security organ of the Guards Motorised Brigade, which was subordinate to Major Veselin Šljivančanin, who was the head of security of both the Guards Motorised Brigade and OG South. On 20 November 1991, hundreds of non-Serbs were taken by the JNA from Vukovar Hospital to Velepromet. There is evidence that Hadžić was present at Velepromet on this day, along with Željko Ražnatović. Ražnatović—also known as Arkan—was the commander of the Erdut TO centre. Detainees at Velepromet were secured by an OG South military police unit, JNA officers, and Vukovar TO members. There is evidence that some of the detainees were shot dead at Velepromet by members of the TO or Serb volunteers or paramilitaries—and that one detainee had his throat cut with a broken bottle. Other detainees were subjected to overcrowding and beatings by members of the JNA and the Vukovar TO.

The Trial Chamber therefore finds that the Prosecution has adduced sufficient evidence upon which a Chamber could find that the crimes at Velepromet were committed by the JNA , TO, and Serb volunteers as charged in the Indictment. In so finding, the Chamber has relied upon the evidence of witnesses Vilim Karlović, Reynaud Theunens, GH-126, GH-054, GH-028; and upon exhibits P3003 and P2285.2284.

The Defence challenges Hadžić's responsibility for charges related to the alleged killing of approximately 260 detainees by Serb Forces at a site between Ovčara Farm and Grabovo on the evening of 20 November 1991, as well as Hadžić's responsibility for the alleged unlawful imprisonment under inhumane conditions of approximately 300 non-Serbs at Ovčara Farm. The Defence submits that the JNA was responsible for the entire operation and that there is no evidence to show that Hadžić knew these events were going to occur. The Defence avers that evidence regarding a meeting of the SAO SBWS government at Velepromet on 20 November 1991 cannot be taken to show that Hadžić knew or could have foreseen that the detainees would be mistreated and killed.

The Prosecution responds that there is sufficient evidence to show that Hadžić played a decisive role in pressuring the JNA to hand the prisoners over to the SAO SBWS authorities and the local TO. According to the Prosecution, the Chamber could find Hadžić responsible for these crimes under any of the modes of liability charged in the Indictment.

The Chamber notes that there is evidence that, on 20 November 1991, the JNA removed hundreds of Croats and other non-Serbs from Vukovar Hospital. Many detainees were transported to Ovčara Farm. There is evidence that representatives of the SAO SBWS government negotiated with the JNA for those prisoners to remain detained in the territory of the SBWS rather than be transported to detention facilities in Serbia. Some of these negotiations took place at a meeting at Velepromet on 20

November 1991, which was chaired by Hadžić and attended by Arkan. Moreover, at a meeting with the JNA, Arkan articulated his take-no-prisoners policy and expressed his view that it was unacceptable for the JNA to take Croat POWs from the SBWS to Serbia.

The Chamber heard evidence that—on 20 November 1991—JNA soldiers, local Serb TO forces, and others subjected detainees at Ovčara Farm to imprisonment, torture, inhumane acts, and cruel treatment. During the evening of 20 November 1991, these perpetrators transported most of the detainees to a site between Ovčara Farm and Grabovo, where—under the guidance of the Deputy Commander of the Vukovar TO, Stanko Vujanović—they shot and killed at least 194 of them. The Vukovar TO—commanded by Miroljub Vujović and his deputy Stanko Vujanović—was acting in close cooperation with OG South at the time.

The Trial Chamber therefore finds that the Prosecution has adduced sufficient evidence upon which a Chamber could find that the crimes at Ovčara were committed as charged in the Indictment. In so finding, the Chamber has relied upon the evidence of witnesses Dušan Jakšić, Milorad Vojnović, Reynaud Theunens, GH-103, GH-054, GH-028, GH-129; exhibit P1984.1981; adjudicated facts 121, 124, 125, 204, 214, 217, 221, and 222; and agreed facts 103 and 104.

The Trial Chamber will now assess whether the Prosecution has adduced evidence upon which a Chamber could find that Hadžić was responsible for the alleged crimes in Opatovac, Lovas, Velepromet, and Ovčara by examining the Prosecution's allegation that Hadžić committed the alleged crimes through his participation in a joint criminal enterprise—or JCE.

The Indictment alleges that a JCE came into existence no later than 1 April 1991 and continued at least until 31 December 1995 and that the purpose of this enterprise was the permanent removal of a majority of the Croat and other non-Serb population from a large part of the territory of Croatia through the commission of crimes in violation of Articles 3 and 5 of the Tribunal's Statute.

The Indictment alleges that Hadžić's participation in the JCE began no later than 25 June 1991 and continued until at least December 1993. The other named members of the alleged JCE were: Slobodan Milošević, Milan Martić, Milan Babić, Jovica Stanišić, Franko Simatović, Vojislav Šešelj, Radovan Stojičić, Veljko Kadijević, Blagoje Adžić, Radmilo Bogdanović, Mihalj Kertes, and Željko Ražnatović—or Arkan. Other members of the enterprise are said to have included political leaders from the Socialist Federal Republic of Yugoslavia and the Republic of Serbia; members of the Croatian Serb and Bosnian Serb leadership; and others referred to collectively as Serb Forces.

The Chamber will first address the evidence in relation to the second physical element of JCE liability—namely, whether a common plan, design, or purpose existed.
The Chamber has received evidence—through witnesses Veljko Džakula and GH-010, as well as exhibit P16—about the intentions of alleged members of the JCE. For example, the Serbian Chetnik Movement—led by Vojislav Šešelj, the President of the Serbian Radical Party—had as its political platform the aim to renew a free, independent, and democratic Serbian State in the Balkans, comprising "all Serbdom and Serbian lands." Šešelj also publicly conveyed his views that Croats were dishonest.

In a video clip of television news coverage, Arkan—in the presence of Lieutenant-General Andrija Biorčević, the commander of the JNA Novi Sad Corps—said, "I think we all have one common goal, and that is the United Serbian States, which would consist of Serbia, Montenegro, the Serb Republic of Krajina, and the Serb Republic in Bosnia—in order to create the united Serbian State." There is evidence that Hadžić and Arkan were close friends and collaborators, that they were often seen together, and that Arkan was closely linked to Serbian political circles. The Chamber refers to the evidence of witnesses Christian Nielsen, GH-101, and GH-003; as well as to exhibits P117.111 and P1004.

Radovan Stojičić—commander of the SBWS TO—approached the SBWS government at the request of his superiors in Belgrade and at the request of the SBWS government itself, in order to discuss linking up all the forces in the area so that they could take Vukovar. There is evidence that Stojičić was closely linked to Slobodan Milošević. The Chamber refers to the evidence of GH-016.

There is evidence that Mihalj Kertes—who was a leading political figure in Serbia, the deputy of the Federal Minister of Interior, and a close associate of Milošević—was involved in all aspects of personnel policy in the area of the SBWS. Kertes stated, during a visit to Borovo Selo, that Milošević was aware of and fully supported the arming of the Serbs on the western bank of the Danube. The Chamber refers to the evidence of witnesses Borivoje Savić, GH-026, and GH-015.

There is evidence that Slavko Dokmanović—former President of Vukovar municipality—stated that "Vukovar indeed is the most destroyed city", but that it would be rebuilt as "a real Serbian city and would never be an Ustasha city." The Chamber refers to the evidence of witnesses Hicham Malla and Vesna Bosanac; and to exhibit P1515.

There is evidence that the JNA was transformed into a Serb-only force. As articulated by Šešelj, "the JNA is also Serbian, and it is our only army." Veljko Džakula—the former Prime Minister of Western Slavonia and Deputy Prime Minister of the RSK from February 1992 to March 1993—testified that the JNA crossed over to the Serbian side in the war, as the conflict intensified. The JNA and the Serbian MUP worked closely with paramilitary organisations, and Arkan attended JNA meetings. The Chamber refers to the evidence of witnesses Veljko Džakula and Reynaud Theunens; and to exhibits P22, P1004, and P2937.

The Chamber has heard evidence that Serb Forces in Croatia received significant funds from Serbia and that Hadžić was involved in securing this funding. This is based on the evidence of witnesses Morten Torkildsen, GH-016, and GH-021; and exhibits P37, P263.253, P216.140, P266.253, P264.253, P266.253, P156, P209.140, P156, and P209.140.

The Chamber has heard evidence about the pattern of crimes committed in the relevant areas and about the expulsion of the non-Serb population—as was indicated in the evidence of witnesses Veljko Džakula, Herbert Okun, and numerous other eye-witnesses to the crimes alleged to have been committed in SAO SBWS and the RSK.
On the basis of the foregoing, the Chamber finds that the Prosecution has adduced sufficient evidence upon which a Chamber could find that there existed a common plan, design, or purpose, as charged in the Indictment—and that at least the following persons were members of the JCE: Slobodan Milošević, Vojislav Šešelj, Radovan Stojičić, Željko Ražnatović, Slavko Dokmanović, Andrija Biorčević, and Mihalj Kertes. It therefore also follows that the Prosecution has adduced sufficient evidence upon

which a Chamber could find that the first physical element of a JCE has been fulfilled—namely, a plurality of persons.

Turning to Hadžić's alleged significant contribution to the alleged JCE and his state of mind, as set forth in the Indictment, there is evidence that Hadžić became President of the SAO SBWS on 25 September 1991. He presided over SBWS government meetings and had the power to appoint ministers, TO commanders, and presidents of municipal executive councils. During times of war, Hadžić could issue orders and decisions on his own and in the absence of the Assembly. And there is evidence that the SBWS government declared an imminent state of war in August 1991. The Chamber refers to the evidence of witnesses Aleksandar Vasiljević and GH-016; and to exhibits P75.50, P1267, P168, P197.140, L43, L56, and L3.

The Trial Chamber heard evidence—from witnesses GH-003, GH-016, GH-015, and GH-024—that, in September 1991, Hadžić established a special unit for his security, which was involved in killings charged in the Indictment. The Chamber also refers to P201.140 and P241 in this regard.

According to an order of 21 September 1991, signed by Hadžić, Arkan was appointed the Commander of the TO Training Centre in Erdut, where Arkan remained based until 1993. This can be found in the evidence of witnesses Christian Nielsen and GH-016; and in exhibit P194.140.

In September, October, and November 1991, Hadžić was actively involved in the appointment of Radovan Stojičić as TO Commander; in briefing the TO and police commanders about the political situation, the situation in the field, and strategic objectives, following his trips to Novi Sad and Belgrade; and in replacing police personnel. The Chamber refers to the evidence of witnesses GH-016 and GH-015; and to exhibit P251.245.

In a televised interview in early November 1991, Hadžić stated that the appeal to get volunteers from Serbia to help in the war effort in Vukovar had been successful. And he particularly thanked the Serbian volunteers from Belgrade. In this regard, the Chamber notes the evidence of witness Borivoje Savić and exhibit P58.

There is evidence from witness GH-028 that, on 20 November 1991—at the time when the JNA had taken hundreds of non-Serbs from Vukovar Hospital to the detention facility at Velepromet—the SAO SBWS government held a meeting at Velepromet. The government session was attended by, among others, Slavko Dokmanović, Hadžić, Arkan, and the JNA. The fate of the prisoners was discussed. Subsequent to this meeting, Hadžić—dressed in the green fatigue uniform of the SBWS TO—gave a televised interview—exhibit P1731. In this interview, he stated that one of the groups of Croatian prisoners had already been taken to Sremska Mitrovica and that he had personally undertaken to return these people to the SBWS for trial—if they could be named people at all, he added. Hadžić further stated in the interview that it had been agreed with the military authorities that "those Ustasha" would remain in camps in the vicinity of Vukovar. The Chamber notes that the evidence of the fate of the prisoners who remained in the SBWS was discussed earlier in this decision in relation to the crimes in Velepromet and Ovčara. The Chamber also refers to the evidence of Borivoje Savić.

The Chamber heard evidence that Hadžić assisted in the financing of SBWS forces through enterprises set up in the SBWS and through aid from Serbia.

Reference is made to the evidence of witnesses Milosav Žor|ević, Emerik Mijatović, GH-021, and GH-016; as well as to exhibits P214.140, P215.140, and P216.140.

The Chamber heard evidence that, on 21 September 1991, Hadžić and Arkan—accompanied by approximately 20 men—arrived at the Zadruga building in Dalj. Hadžić and Arkan released two of the detainees. The other detainees were taken away by Arkan in his military truck, and there is evidence that they were subsequently killed. When confronted about the lack of legal justification for the detention and release of the men, there is evidence that Hadžić responded that, as Prime Minister, he could order anything to be done and that the detainees were Ustashas who had killed Serbs in Baranja. The Chamber refers to the evidence of witnesses Slavko Palinka{ and GH-003; and to exhibits P250.245 and P113.1.

Witness Borivoje Savić gave evidence that Hadžić knew about the Lovas minefield incident, as well as other killings and mistreatment of the non-Serb population in the SBWS, but did nothing about it.

Witness GH-021 gave evidence that, at the beginning of November 1991, five non-Serb employees of the Ratarstvo Klisa work unit were taken by Arkan's men. Witness GH-021 further said that the Acting Director of DP Dalj told Hadžić that the missing persons were his employees and asked why they were detained. There is evidence that Hadžić replied that it was none of the Acting Director's business and then walked away. Of the five employees who were taken in November 1991, three were never seen again.

The Chamber received evidence—from witness GH-016 and through exhibit P144—that Hadžić was kept well informed on security issues in the SBWS region by touring the region; by speaking with the presidents of various municipalities; and by speaking with the TO, police, and his government ministers. There is also evidence from witness GH-016 that Hadžić put into place a weekly reporting system between the SBWS TO and the government.

The Chamber received evidence that Hadžić stated in an interview that the SBWS leadership would not accept any option where certain areas remained in the Republic of Croatia, even if that meant a fight would be necessary. During a press conference on 21 September 1991, Hadžić is reported to have stated that Vukovar—the capital of SAO SBWS—was not yet liberated, but that he hoped it soon would be. There is evidence that, on 9 October 1991, Hadžić gave a speech during which he stated that, regardless of negotiations, he would level Ilok. There is also evidence that Hadžić, speaking to a reporter about fighting in Vukovar, commented that "our units" had control of nearly 50% of the city and were advancing house by house for "mopping up of Ustasha villages." This evidence was adduced through witnesses Mate Brletić and Veljko Džakula; as well as through exhibits P86.50, P39, P40, P321, and P322.

The Chamber received evidence that, in 1992 and 1993, United Nations representatives and international negotiators brought to Hadžić's attention crimes against the non-Serb population in the Serb-controlled areas of Croatia. The Chamber refers to the evidence of witnesses Geert Ahrens and John Brian Wilson; and to exhibit P2432.2398. There is evidence that, during a 4 September 1992 meeting with Marrack Goulding—who was the Under Secretary General for UN Peacekeeping Operations— Hadžić stated that Croats started the practice of ethnic cleansing in Western Slavonia prior to any such acts by the Serbs and that this is what had led to

the belief on the part of Serbs that they should act according to the principle of an eye for an eye and a tooth for a tooth. This evidence can be found in exhibit P2432.2398. On the basis of the above, the Chamber is of the view that the Prosecution has adduced sufficient evidence upon which a chamber could find that Hadžić significantly contributed to the common objective of the alleged joint criminal enterprise and that Hadžić shared the intent of the other alleged members of the joint criminal enterprise to carry out its objective.

The Trial Chamber will now analyse whether the Prosecution has adduced sufficient evidence upon which a Chamber could find that the alleged crimes in Opatovac, Lovas, Velepromet, and Ovčara could be imputed to Hadžić or another alleged member of the alleged JCE, acting in furtherance of the common plan, design, or purpose when using the physical perpetrators.

As already discussed, the Prosecution has adduced sufficient evidence upon which a chamber could find that the crimes committed at Opatovac, Velepromet, and Ovčara were committed by JNA, TO, and local Serb volunteers. There is evidence that—at a meeting of the TO and police commanders in SAO SBWS in Bobota on 5 or 6 August 1991—Radovan Stojičić introduced himself as a representative of the special police from the Serbian MUP and said that he had been sent from Belgrade to serve as the commander of the SBWS TO. Stojičić was appointed commander of the SBWS TO by Hadžić in late September or early October 1991 and then proceeded to transform the TO into a militarised and well-structured organisation. There is evidence that, before Stojičić's arrival in SBWS, the JNA planned operations without involvement of the TO. After his arrival, the TO commander was included in the regular decision-making with the Novi Sad Corps of the JNA. Officers of the JNA Novi Sad Corps visited Stojičić in Erdut. And there is evidence of close cooperation between the TO, Serb volunteers—including Arkan's and Šešelj's men—, and the JNA. As noted previously, as the conflict intensified, the JNA became a Serb army. Moreover, there is evidence that both Hadžić and Arkan were present at Velepromet for periods of time on 20 November 1991 when hundreds of non-Serbs were detained there. The Chamber refers to the evidence of Reynaud Theunens, GH-003, and GH-016; as well as to exhibit P121.111.

Based on the foregoing, there is evidence that Radovan Stojičić, Arkan, and Andrija Biorčević were members of the alleged JCE and that members of the TO and the JNA were used by them as tools in furtherance of the alleged JCE. Considering that there is sufficient evidence that Hadžić is also a member of the alleged JCE, there is sufficient evidence that Hadžić is criminally responsible pursuant to Article 7(1) of the Statute for the alleged crimes at Opatovac, Velepromet, and Ovčara.

With regard to Lovas, Ljuban Devetak was referred to as the president of the village, the unofficial master, and the be-all and end-all in Lovas—following the takeover. In minutes of meetings of village representatives with higher government representatives, Devetak was listed as the village commander of Lovas. There is evidence that the volunteers sent to Lovas were under the de facto control of the local government, which was run by Devetak. Milan Radojičić—the commander of the Lovas TO—and Milan Devčić—the head of the local police and Devetak's nephew—acted as his right hand men. There is also evidence that Devetak had de facto control over the Valjevci and Du{an Silni units, which were involved in the minefield incident on 18 October 1991. Dressed in a TO uniform, Devetak attended the meeting of 20 November 1991 at Velepromet. The Chamber refers to the evidence of witnesses Ivan Mujić, Emanuel Filić, Milan Conjar, Aleksandar Vasiljević, GH-095, GH-113, and GH-028; as well as to exhibits P79.50 and P2979.

Based on the evidence of Devetak's position in Lovas, the crimes committed during his reign there, and his interaction with other alleged JCE members, there is sufficient evidence that Devetak was a member of the alleged JCE and that he used the forces under his control as tools in furtherance of the JCE. Considering that there is sufficient evidence that Hadžić is also a member of the alleged JCE, there is sufficient evidence that Hadžić is criminally responsible pursuant to Article 7(1) of the Statute for the alleged crimes at Lovas.

For all of the foregoing reasons, even if the Trial Chamber had adopted the charges approach to Rule 98 *bis*—as advocated by the Defence—it still would have denied the motion of the Defence in its entirety.

The Chamber will soon issue a scheduling order regarding the preparation and commencement of the Defence case.

The hearing is hereby adjourned.

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